

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

Appellate Case No. 2015-000392
Opinion Filed December 13, 2018

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

v.

IMK Development Co., LLC; Keowee Townhouses, LLC; Ludwig Corporation, LLC; SDI Funding, LLC; Medallion at Keowee, LLC; Integrys Keowee Development, LLC; Marick Home Builders, LLC; Bostic Brothers Construction, Inc.; Miller/Player & Associates; Bradford D. Seckinger; John Ludwig; William Cox; Larry D. Lollis; Rick Thoennes; M Group Construction and Development, LLC; Mel Morris; Joe Bostic; Jeff Bostic; Clear View Construction, LLC; Michael Franz; MHC Contractors; Miguel Porras Choncoas; Builders First Source-Southeast Group; Mike Green; Southern Concrete Specialties; Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises; Gunter Heating & Air; All Pro Heating; A/C & Refrigeration, LLC; Coleman Waterproofing; Heyward Electrical Services, Inc.; Tinsley Electrical, LLC; Hutch N Son Construction, Inc.; Upstate Utilities, Inc.; Southern Basements; Carl Catoe Construction, Inc.; T.G. Construction, LLC; Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction; Alejandro Avalos Cruz; Herberto Acros Hernandez; Martin Hernandez-Aviles; Francisco Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester Moran Mentado; Socorro Castillo Montel; MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillio; Garcia Parra Insulation, Inc.; J&J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; Vincent Morales d/b/a Morales Masonry and Miller/Player & Associates, Defendants,

Of Which Marick Home Builders, LLC and Rick Thoennes are the Petitioners,

APPENDIX
VOLUME III OF VIII

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

RECORD ON APPEAL
Volume II of VII

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1 A. For interior problems, yes, sir.

2 Q. Did you bring any notice here today that Rick
3 Thoennes or Marick received to put them on notice that
4 your unit was having construction issues while they were
5 there?

6 A. No.

7 Q. Thank you, Ms. Furnari.

8 THE COURT: Ms. Brown?

9 CROSS-EXAMINATION

10 BY MS. BROWN:

11 Q. Ms. Furnari, I just have a couple questions. You
12 are aware that the homeowners association has sued
13 Integrrys Keowee and I.M.K. and Mr. Cox and Mr. Lollis; is
14 that correct?

15 A. Yes.

16 Q. Okay. And you are aware that Integrrys Keowee is
17 made up of Mr. Lollis, Mr. Cox and Mr. Roberson?

18 A. Yes.

19 Q. Okay. And you did not bring suit against Mr.
20 Roberson; is that correct?

21 A. Yes.

22 Q. Is there a reason for that?

23 A. Probably not a good one.

24 Q. Okay. Well, what's the bad one?

25 A. Well, Mr. Roberson lives there.

00501

1 Q. Okay.

2 A. He is a resident. He is part of the owners
3 association. He has been a face at all of our functions
4 and everything. And in the beginning of the lawsuit, Mr.
5 Lyles wanted to bring him in, and the litigation
6 committee sort of said that we felt a little funny about
7 it. Kind of like suing our neighbor, you know. And we
8 wouldn't necessarily do that to him.

9 Q. Okay. And is Mr. Lollis an owner out there?

10 A. Yes.

11 Q. But you did sue Mr. Lollis?

12 A. Yes.

13 Q. And why him?

14 A. Mr. Lollis is part -- as part of the lawsuit -- he
15 doesn't live there. Like I said, Mr. Roberson lives
16 there. That was our distinction. And it's not a good
17 one.

18 Q. Okay. That's all I've got. Thank you.

19 THE COURT: Mr. Hemphill?

20 MR. HEMPHILL: No questions, Your Honor.

21 THE COURT: Very well.

22 Re-examine?

23 MR. LYLES: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. LYLES:

1 Q. Ms. Furnari, Mr. Imhoff mentioned your requirement
2 in exhibit 5, which was the unanimous resolution -- your
3 requirement that for the H.O.A. to be responsible for
4 interior damage, notice had to be given; is that right?

5 A. Yes.

6 Q. And would you please again look at the date on
7 exhibit 5?

8 A. Can you help me find the date? Oh, the date down
9 here?

10 Q. Do you know when exhibit 5, the resolution, was
11 passed by the association board?

12 A. Here you go. November 24th, 2010.

13 Q. At that time you were in a lawsuit with Mr.
14 Thoennes?

15 A. Yes.

16 Q. And that resolution didn't exist when Mr. Thoennes
17 was on the board?

18 A. That's correct.

19 (WHEREUPON, Plaintiff's Exhibit Number 6 was marked
20 for identification only.)

21 MR. LYLES: Number 39, Your Honor.

22 THE COURT: Will this be Plaintiff's ---

23 MR. LYLES: Number 6.

24 Q. Ms. Furnari, let me show you what's been marked for
25 identification as number 6 and see if you recognize that?

1 A. Yes.

2 Q. And what is that?

3 A. This is the letter that Mr. Logan, the attorney,
4 drafted to Bostic that we were referring to to ask them
5 to remedy our situation.

6 MR. LYLES: Your Honor, I'd like to move that
7 in as Plaintiff's Exhibit 6.

8 MR. BELCHER: Without objection.

9 THE COURT: All right. Any other objections?

10 (No response)

11 THE COURT: Very well. It will be admitted as
12 Plaintiff's Exhibit Number 6.

13 (WHEREUPON, Plaintiff's Exhibit Number 6 was
14 admitted into evidence.)

15 Q. And Donna, on the front page, are there references
16 to Bostic Construction?

17 A. Yes.

18 Q. Several addresses?

19 A. Yes.

20 Q. Do you know whether or not Mr. Logan ever received
21 any response to this?

22 A. I don't.

23 Q. As a board member at the time, did you -- were you
24 ever made aware of any response?

25 A. I was not.

00504

1 Q. You were asked some questions by Mr. Imhoff about
2 your inspection report?

3 A. Yes.

4 Q. And I think a reference was made to some loose
5 exterior components; is that right?

6 A. Yes.

7 Q. Go back and look at exhibit 1, which is the
8 marketing literature. Does it indicate to you that the
9 maintenance that is required of the unit is to be
10 included simply in your homeowners' dues?

11 A. Yes.

12 Q. And that's how maintenance was to be accomplished to
13 your unit pursuant to that marketing literature; is that
14 right?

15 A. That's correct. The maintenance-free was that that
16 was for me, that the homeowners association would have
17 some maintenance, yes.

18 Q. You were asked a series of questions about Mr.
19 Moore?

20 A. Yes.

21 Q. Rick Moore and his scope of repair. Have you
22 reviewed his scope of repair?

23 A. Briefly.

24 Q. So you don't really recall his scope of repair?

25 A. No, not totally. I do recall that it was a somewhat

1 surgical approach.

2 Q. And do you recall whether or not it actually
3 contemplated during the repair the contractor opening up
4 conditions and seeing what all was wrong with the
5 project?

6 A. I don't remember if it -- I believe it had a
7 contingency for that that -- I'm not sure.

8 Q. Okay. And you were asked some questions about J.R.?

9 A. Yes.

10 Q. The jury's going to know he's J.R. when he walks in?

11 A. Yes.

12 Q. Have you been happy with J.R.?

13 A. Yes.

14 Q. And you've been satisfied with his work?

15 A. Yes.

16 Q. Have you been satisfied with his crew?

17 A. Yes.

18 Q. And are you willing to retain J.R. in the future?

19 A. Yes.

20 Q. Have you made a decision about what contractor
21 you're actually going to hire to implement the repair of
22 this project, to repair this project?

23 A. No, not completely. But we will definitely
24 entertain J.R.

25 Q. So you think a lot of him?

00506

1 A. We do.

2 Q. And I understand -- and Mr. Belcher asked you a
3 series of questions about work that J.R.'s been doing out
4 there on your foundation wall?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. And you made some references to J.R. testifying in
9 this case that he's fixed your foundation walls?

10 A. Yes.

11 Q. And you had a discussion with J.R. about J.R.'s
12 warranty with respect to the work he's doing?

13 A. Yes.

14 Q. And what did he say to you about his warranty?

15 A. He says he is guaranteeing the work he does.

16 Q. And what is he not willing to guarantee?

17 A. That he fixed the problem.

18 Q. And why would you do a scope of work that was less
19 than what C.S.E. recommended that you do?

20 A. Because it's all we could afford to do.

21 Q. So J.R. has not guaranteed you that he's fixed your
22 leaks?

23 A. No, he hasn't.

24 Q. And are you okay with that, with J.R., at this point
25 in time?

00507

1 A. For right now.

2 Q. You were asked finally about Mr. Moore and whether
3 or not if Mr. Moore was willing to represent to you with
4 his engineering seal a scope of repair that would address
5 your problems completely. And you were asked if you
6 would accept that. Do remember that?

7 A. Yes.

8 Q. Would you be willing to accept that if Mr. Hodgkin
9 recommended that you accept that scope of repair?

10 A. Yes.

11 Q. Would you rely on Mr. Hodgkin to let you know whether
12 or not that scope of repair is sufficient or not?

13 A. Absolutely.

14 MR. LYLES: I think that's all I've got, Your
15 Honor.

16 THE COURT: All right. You may step down.
17 Thank you very much.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. You may call your next
20 witness.

21 MR. LYLES: Your Honor, the plaintiff would
22 like to call Steve Taylor.

23 (WHEREUPON, the witness was duly sworn.)

24 THE COURT: All right. If you would, please,
25 sir, give us your full name for the record, spelling your

00508

1 last name.

2 THE WITNESS: Steven Burgess Taylor.

3 THE COURT: Very good. Thank you, sir.

4 STEVEN BURGESS TAYLOR,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. LYLES:

8 Q. Steve?

9 A. Yeah.

10 Q. You're here with Donna. And I just want to make
11 sure that you enunciate clearly and speak to the jury.
12 So I'm going to stand back here as much as I can so
13 you'll have to reach with your voice. Okay?

14 A. Okay.

15 Q. Steve, where are you from?

16 A. I'm from Long Island, New York.

17 Q. And how long did you live in Long Island, New York?

18 A. All my life. Sixty years up until moving here.

19 Q. Okay. And when did you move here?

20 A. 2002. 2003. Excuse me.

21 Q. What brought you down here, Steve?

22 A. The area, the wonderful people, the lake, the
23 stability to retire for the lifestyle.

24 Q. And what sort of job did you have when you were in
25 Long Island, New York?

00509

- 1 A. I was the local Allstate Agent.
- 2 Q. So you were in the insurance business?
- 3 A. Correct.
- 4 Q. When you came down here, how did you -- well, do you
- 5 live at Stoneledge?
- 6 A. Yeah.
- 7 Q. And how long have you lived at Stoneledge?
- 8 A. Ten years.
- 9 Q. And what attracted you to Stoneledge?
- 10 A. It was the lifestyle we wanted. We had some
- 11 thoughts about a turnkey operation. We were going to do
- 12 some mission work, and we were going to work at Disney
- 13 World and so on and so forth. And it really did fit in
- 14 with the lifestyle that we wanted.
- 15 Q. When you say we, who are you referring to?
- 16 A. My wife, Betty.
- 17 Q. And do y'all have children?
- 18 A. We have one daughter.
- 19 Q. Do you have any grandchildren?
- 20 A. We have three grandchildren.
- 21 Q. How old are they?
- 22 A. It's tough to remember. But eleven, ten and four.
- 23 Q. Did you retire from the Allstate business when you
- 24 moved down here?
- 25 A. I did.

00510

1 Q. And did you pursue any other occupation when you
2 moved down here?

3 A. I have my real estate license, and that's about it.
4 I currently am employed at Stoneledge.

5 Q. Do you have an active real estate practice?

6 A. Active is an overstatement. I'm a retired person
7 that has some interest in real estate.

8 Q. And when you moved to Stoneledge, how many people
9 had bought at Stoneledge?

10 A. Say that again?

11 Q. How many people lived at Stoneledge when you moved
12 there?

13 A. When we moved there, physically lived there were
14 actually three people. And there were nine others that
15 had bought units around the same time that we did.

16 Q. So you're one of the early people at Stoneledge?

17 A. Yeah, the originals.

18 Q. And, again, that was in 2003?

19 A. 2003.

20 Q. And was Bostic still there?

21 A. Yes.

22 Q. And what did you understand to be Bostic's role or
23 position at Stoneledge when you moved down here?

24 A. Bostic was the builder, the developer of that area.

25 Q. Are you aware of any other development entities down

00511

1 there at the time you purchased?

2 A. I think there was a gentleman by the name of Bobby
3 Carpenter who had -- and I'm not sure of the relationship
4 between Bostic. I believe Bobby Carpenter initiated the
5 project and the Bostics were building that project in
6 conjunction with him.

7 Q. Did you ever get to know anybody with Bostic?

8 A. Not personally, no. We had some relationships, if
9 you'd call them that, with some of the craftsmen that
10 were, you know, working there. Just a, "hello" and
11 "goodbye." And, "Do you need a Coca-Cola?" One of
12 those.

13 Q. Did you ever meet either of the Bostic Brothers?

14 A. I met Jeff one time. He had a welcoming party or
15 whatever you want to call it in Greenville one evening.

16 Q. And how about Mel Morris? You've seen him. Do you
17 know Mel?

18 A. I don't think we've ever met, no.

19 Q. Okay.

20 A. Or he might have been there. I just -- you know, it
21 was a long time ago.

22 Q. And how would you describe the process of the sell-
23 out of the Stoneledge units while Bostic was still on
24 site?

25 A. The sell-out? It was erratic at best. I mean,

00512

1 there seemed to be a number of different sales people
2 moving in and out. It was a situation where they were
3 contracted to somebody down in Charleston. And it just
4 didn't seem like it was going to happen at that point.

5 Q. Were you part of the process with Bostic leaving the
6 project? In other words, were you involved in it?

7 A. Involved in it, no.

8 Q. Were you notified?

9 A. Not really. I mean, it just came to an end. I
10 mean, we really didn't have much contact with why or how
11 or whatever.

12 Q. Do you remember when Bostic left the project?

13 A. No, I'm not sure exactly. I believe it was sometime
14 in mid 2004, I believe.

15 Q. What was the status in your observation of the
16 project when Bostic left the site?

17 A. It wasn't good. We had a number of issues. It was
18 like a ghost town. As I said, there was only three
19 people living there. One of them went to Florida for the
20 winter and so on. We were very much concerned about the
21 liability of Stoneledge. We weren't sure who was paying
22 the bills. We weren't sure whether the lights were going
23 to stay on. And we weren't sure about the septic system
24 and whether it would do what it had to do and so on. It
25 was getting severely overgrown. It just wasn't a good

00513

1 situation at all.

2 Q. Not a place that you were particularly proud at that
3 time to call home?

4 A. To say the least, no.

5 Q. And after Bostic left -- well, did you know anything
6 about the quality of construction in the unfinished units
7 or the level of construction in the unfinished units
8 after Bostic left?

9 A. No, other than the fact that they were basically,
10 basically finished, you know. There were situations
11 where there was a window left out or doors would swing
12 open because they didn't have locks on them. And garage
13 doors were open and -- in other words, it just was pretty
14 much abandoned.

15 Q. And what, if anything, could you do at that point as
16 an owner to try to carry the project forward?

17 A. There wasn't much that we could do. We were just
18 floundering. I'd see cars drive in, cars drive out, so
19 on. I actually threw a little sign in front of my garage
20 say, you know, "Stoneledge Information." It had nothing
21 to do with real estate. It just had to do with
22 Stoneledge information, knock on my door, you know,
23 thinking that it would be a shame if somebody came in and
24 drove out that wanted some more information about the
25 place.

00514

1 Q. Did you have any responses to your sign on your
2 garage door?

3 A. No. No.

4 Q. Do you remember anybody coming in looking at
5 Stoneledge to buy the project after the Bostics had left?

6 A. Yeah. There was a time in early 2005 when -- and it
7 seemed to all happen at once. We had three potential
8 people that were interested. And when I say we, you
9 know, it's just -- you know, I presume that they were
10 dealing with Bobby Carpenter. I had no idea. But there
11 were three people that looked at the project, and it
12 seemed to -- ironically, it just seemed to happen all at
13 once.

14 Q. But nothing came of those ---

15 A. Well, one of them was Marick, yeah. It was I.M.K..

16 Q. Okay. And tell me about that. What do you remember
17 about I.M.K. and Marick and their involvement?

18 A. Nothing other than I had a nice conversation. I
19 believe we met one time as they were walking the project.
20 We just went into our low level and had a brief
21 conversation, you know, on the project and so on and so
22 forth.

23 Q. Who's we?

24 A. That would be me.

25 Q. With whom?

- 1 A. With I.M.K..
- 2 Q. Okay. And who, specifically?
- 3 A. You know, it's hard to remember. I think Rick was
- 4 there. And I'm not sure whether Bill Cox was there. I
- 5 think Tim Roberson was there, but it was a long time ago.
- 6 Q. When you say, Rick, you mean Rick Thoennes?
- 7 A. Rick -- right.
- 8 Q. Do you remember what you talked about in that
- 9 meeting?
- 10 A. That, yeah, Stoneledge could be just a terrific
- 11 place if it was properly developed and properly run. I
- 12 mean, it was a -- it's a unique property around the lake.
- 13 And it was just going to be terrific if it was done
- 14 properly.
- 15 Q. At what point did you learn that Marick and I.M.K.
- 16 had decided to purchase an interest in Stoneledge?
- 17 A. Pretty much when it happened. I mean, I wasn't --
- 18 there wasn't really a loop for me to be in, you know. It
- 19 was just a matter of an understanding when you'd start to
- 20 see more people around that something was happening. You
- 21 know, it appeared that it was -- that that sale was going
- 22 to happen.
- 23 Q. And was that good news to you?
- 24 A. Yeah, it was great news for us.
- 25 Q. And why was that?

1 A. Well, you know, obviously we had a number of
2 concerns about the way things were shaping up around
3 Stoneledge and if anybody could come in and do a good
4 job. I think Jason mentioned rescue or whatever the word
5 was. Yeah, that was the way we looked at it at that
6 point.

7 Q. Did you feel as though at that point in time, to use
8 Mr. Imhoff's word, that Marick and I.M.K. were saviors in
9 the Stoneledge property?

10 A. We were real happy to see them there, yeah.

11 Q. Do you feel that way today?

12 A. Not exactly, no.

13 Q. What corporate distinctions did you make between
14 I.M.K. and Marick?

15 A. None.

16 Q. And why is that?

17 A. It was just I.M.K. to us, you know. I'm not the
18 smartest guy in the world. And it wasn't -- it was only
19 a year or so ago that I figured out that I.M.K. was
20 Integrys and Marick and Keowee. But it was just --
21 I.M.K. was the only thing that we knew about. But we
22 knew that Rick Marick was the builder.

23 Q. Rick Thoennes?

24 A. Rick Thoennes.

25 Q. Did you know chip Albert?

- 1 A. Yeah.
- 2 Q. And who did you understand Mr. Albert was?
- 3 A. Well, I think he was part of an I.M.K. sales team
- 4 along with a number of other gentlemen.
- 5 Q. What did you think Marick's role was in this
- 6 organization?
- 7 A. As a hands-on builder guy.
- 8 Q. You didn't believe that Mr. Albert worked for
- 9 Marick?
- 10 A. We didn't really make that distinction. It was just
- 11 the I.M.K. operation. And they had a sales team, and
- 12 they did what they did.
- 13 Q. Did you ever see anybody with an I.M.K. hat on or an
- 14 I.M.K. uniform?
- 15 A. I don't remember.
- 16 Q. Did you ever see an I.M.K. truck?
- 17 A. An I.M.K. truck, no.
- 18 Q. Did you see a Marick truck?
- 19 A. We saw a lot of trucks that had Marick people in
- 20 them. I don't think they had a name on them.
- 21 Q. Who did you believe Integrys to be?
- 22 A. Integrys, I believe, was a group with Bill Cox, Tim
- 23 Roberson and perhaps other people. I really don't know.
- 24 But they were, I believe, involved in a business in
- 25 Greenville.

00518

1 Q. Okay. Starting in 2005 when I.M.K. and Marick
2 became involved in Stoneledge, were you on the board of
3 the association?

4 A. No.

5 Q. Who, if you know, was on the board of the
6 association starting in 2005?

7 A. Bill Cox, Tim Roberson, Rick Thoennes and a
8 gentleman by the name of Smith. I believe it was Matt
9 Smith.

10 Q. Okay.

11 (WHEREUPON, Plaintiff's Exhibit Number 7 was marked
12 for identification only.)

13 Q. Steve, I'm going to show you what's been marked as
14 Number 7 and ask you if you recognize that.

15 A. Yeah.

16 Q. And what is that?

17 A. Written evidence of a formal action of the Townhomes
18 of Keowee Association, and it had to do with resolutions.

19 Q. And does it identify who the board members were
20 going to be of the Stoneledge Homeowners Association?

21 A. Yes.

22 Q. And who are those board members?

23 A. Tim Roberson, Bill Cox, Rick Thoennes, and then it
24 names -- there's a Matt Smith as the treasurer and
25 secretary.

1 Q. Okay. And then there's also a reference in that
2 document, is there not -- there's a reference to Rick
3 Thoennes. And there's a reference to Rick Thoennes, III.

4 A. Oh, the third. I'm sorry. Yes.

5 Q. Is that who you understand to be the son of Rick
6 Thoennes?

7 A. Correct.

8 MR. LYLES: I'd like to move to admit that as
9 Plaintiff's Exhibit 7.

10 MR. BELCHER: No objection, Your Honor.

11 THE COURT: Without objection, Plaintiff's
12 Exhibit Number 7 is admitted.

13 (WHEREUPON, Plaintiff's Exhibit Number 7 was
14 admitted into evidence.)

15 Q. Steve, if you could, tell the jury about how active
16 the Stoneledge Homeowners Association was from 2005 on,
17 just say all the way up to 2008.

18 A. Business seemed to be conducted. We had yearly
19 meetings, as indicated by the -- or necessary by the
20 covenants and restrictions that we had. And other than
21 that, we really didn't have a lot of interaction with the
22 board. I mean, we knew Tim because he lived there, and
23 so on and so forth. And we were talking about one thing
24 or another. But it really wasn't -- we didn't have much
25 of a knowledge of what the board did as far as conducting

1 board business.

2 Q. Were you satisfied with the way that the homeowners
3 association was being managed and the project was being
4 managed during those years?

5 A. We didn't know a lot about it, but it seemed to be
6 progressing. It seemed to be progressing.

7 Q. Was the maintenance performed regularly or to your
8 satisfaction?

9 A. Well, it was performed regularly but not to our
10 satisfaction. There was a series of lawnmower blow-and-
11 go guys, you know, that were just in there and out of
12 there, and so on and so forth. And there were some
13 maintenance issues that we felt could have deserved, you
14 know, more attention, and so on.

15 Q. During the time of the I.M.K. and Marick control of
16 the board, did you have any problems or experience any
17 problems with your unit with regard to water
18 infiltration?

19 A. Yeah. We had water, a lot of water, every time it
20 rained coming into our lower level.

21 Q. And when was that?

22 A. Since we moved in.

23 Q. And that was also during the period of time that
24 Marick and I.M.K. controlled the board?

25 A. Yeah. And we had a roof leak in the porch. It was

00521

1 very -- it was impossible to use the outside porch when
2 it was raining and for hours afterwards.

3 Q. And did you request that Marick or I.M.K. make
4 repairs?

5 A. Yes.

6 Q. And did they make repairs?

7 A. Yeah. They replaced the roof on our porch.

8 Q. And did that seem to stop the ---

9 A. That seemed to stop that. We had the -- there was
10 an attempt to shore up the water situation. That just
11 never, never happened. And then we had a deck issue.

12 Q. Okay. What water situation are you referring to?

13 A. The water coming into our lower level.

14 Q. Okay. I mean, is that a finished lower level?

15 A. Yeah. That part is not finished. When we bought,
16 the lower levels were not completed.

17 Q. So let's focus then -- you had water coming into an
18 unfinished area beneath your home; is that right?

19 A. Correct.

20 Q. And then you said you had some water on your back
21 porch from your lakeside porch and deck; is that right?

22 A. That's correct.

23 Q. Okay. Now, on the water that was coming in beneath
24 home ...

25 A. Uh-huh (affirmative).

00522

1 Q. ... did Marick attempt to fix that?

2 A. There was an attempt to fix that.

3 Q. And who did that?

4 A. You know, I don't know specifically who, but they
5 came in and they caulked, you know, the foundation sill
6 plate area.

7 Q. And you understood that to be somebody working with
8 or for Marick?

9 A. Yeah, correct.

10 Q. And is it -- did the water infiltration into that
11 area of your home abate or slow down any?

12 A. It's a hard question to ask. And the answer is
13 probably not. But the situation is that you've got to
14 wait for it to be raining outside. You know, you're not
15 in the home or down there listening. But it's still
16 happening today.

17 Q. And the water that's coming in beneath your home
18 simply goes down through gravel and into the earth?

19 A. Yes. It's in a crawlspace area.

20 Q. That water is not causing any damage to your home?

21 A. Not presently. It's very -- it's wet down there,
22 and it's always damp and moldy.

23 Q. Now, the water that you mentioned on your lakeside
24 porch?

25 A. Uh-huh (affirmative).

00523

1 Q. If you would, focus on that period of 2005 and
2 shortly thereafter when I.M.K. and Marick are in control.
3 Describe for the jury, if you will, the type of water
4 that you had beneath the lakeside porch?

5 A. Beneath the lakeside porch or on top?

6 Q. On top.

7 A. Yeah, okay. The cement on our top patio had some
8 cracks that were obviously getting bigger. And that --
9 and some water was infiltrating through the cement patio
10 and caused a small leak in the lower roof and dripping
11 into the lower -- this was back then.

12 Q. And did you request that Marick make that repair or
13 repair that condition?

14 A. Yes.

15 Q. And did they?

16 A. Yes.

17 Q. And what did they do?

18 A. They put an epoxy coat on top of the cement.

19 Q. And did that appear to abate or eliminate the leak?

20 A. Abate. Perhaps not eliminate.

21 Q. And, again, describe the leak that you're referring
22 to. How significant was it in your observation?

23 A. It started as a not too significant leak. Annoying.
24 And it seemed to stop when they put the coating on for a
25 period of time.

00524

1 Q. And then did you do anything else on your deck to
2 try to address that annoying leak?

3 A. Well, yeah. Eventually, the coating, the epoxy
4 coating, every time that it would get over eighty
5 degrees, would start to bubble up. And we had bubbles,
6 big bubbles, all over that. And that's when it started
7 to leak again.

8 Q. And what did you do?

9 A. We, at that point, decided that we would tile our
10 deck.

11 Q. And did you do that?

12 A. We did that.

13 Q. And did that help with the problem?

14 A. No.

15 Q. Did it help with the bubbling?

16 A. We had to take the epoxy off to put the tile down.

17 Q. Are you aware of whether or not Marick made any
18 other repairs to any other units in phase one?

19 A. I believe that they put the epoxy coating on all of
20 the decks.

21 Q. Okay. And how about other repairs at the foundation
22 walls. Do you know if any other repairs were made?

23 A. I know of no other repairs.

24 Q. Have you determined whether or not that leak on your
25 porch has caused any damage to your porch?

00525

1 A. Yeah. It's caused significant damage. And when we
2 got involved in destructive testing and they removed part
3 of my ceiling, it was pretty grantus (phonic) as to what
4 was going on up there.

5 Q. Could you have observed that from the outside?

6 A. No.

7 Q. You only observed that when they removed part of
8 your ceiling?

9 A. Correct.

10 Q. Did they remove part of the stones on the stone
11 columns and the other parts of the surround?

12 A. Yeah, some of it.

13 Q. And what did you observe behind those stones?

14 A. Some rotten wood.

15 Q. Did you have any idea before that destructive
16 testing was done that water was infiltrating into those
17 stone columns?

18 A. Absolutely not.

19 Q. Did you have any idea that water was infiltrating up
20 against the heated wall in your unit?

21 A. No.

22 Q. As I.M.K.'s tenure at Stoneledge began to come to an
23 end, were you satisfied that I.M.K. had done everything
24 you expected them to do at Stoneledge?

25 A. No.

00526

1 Q. And what sort of things -- if we can move on to the
2 summer of 2008, what sort of things were, in your
3 estimation, left undone by I.M.K.?

4 A. Well, there was some landscaping items, the need for
5 dumpster pads. Signage was not good. The irrigation
6 system was questionable. There were just a number of
7 basic things that it was pretty obvious that the
8 homeowners association was going to have to get into.

9 Q. Were you satisfied with the level of maintenance on
10 the units themselves?

11 A. No. No. There was a need for some sort of long-
12 term maintenance program.

13 Q. And had one been put in place by I.M.K. or Marick?

14 A. Not that I know of.

15 Q. That information was never shared with you?

16 A. No.

17 Q. When did you learn that I.M.K. was interested in
18 selling their interest in Stoneledge?

19 A. All at once around the middle of 2008.

20 Q. And what did you hear?

21 A. Just that there was a company called S.D.I. that was
22 more than likely going to assume control of Stoneledge.

23 Q. And do you know whether or not that happened?

24 A. Yeah, it happened.

25 Q. Well, you said that S.D.I. assumed control of

1 Stoneledge. Do you know if any S.D.I. people ever served
2 on the board of Stoneledge?

3 A. On?

4 Q. The board of the homeowners association?

5 A. The board prior -- oh, of the homeowners? Yes.

6 Q. And did Rick Thoennes and Mr. Cox get off of the
7 board after they conveyed their interest to S.D.I.?

8 A. No.

9 Q. We saw a document earlier today that indicated that
10 as of September 2008, Mr. Cox and Mr. Thoennes were still
11 on the board of Stoneledge in 2008?

12 A. That's correct. S.D.I. took over June or whenever
13 they did. And the board was turned over to the
14 homeowners association in September.

15 Q. At the time the board was turned over to the
16 association in September, Mr. Cox and Mr. Thoennes were
17 still on the board?

18 A. Correct.

19 Q. At the time of the turnover, the first meeting of
20 the owners, were you elected to the board?

21 A. I was.

22 Q. And what was your position?

23 A. I became the president of the board.

24 Q. And how long did you serve in the position?

25 A. Two years.

00528

1 Q. And if you can -- that was in 2008; is that right?

2 A. That's correct, September.

3 Q. How much rain had there been at the Stoneledge area
4 in the couple of years preceding that?

5 A. Not much. We were in a real serious drought. I
6 mean, it was a level, whatever it was, drought.

7 Q. After taking over control of the board in September
8 of 2008 and becoming president, did you become aware of
9 problems, water infiltration problems, throughout phase
10 one?

11 A. Yes. We started to -- as the board was formed and
12 we were -- we started to get phone calls that coincided
13 with the rain. And at the very end of 2008, we were
14 experiencing some pretty heavy rains. And certainly into
15 2009, it really started to -- the drought was obviously
16 over.

17 Q. And are you the person who was getting those phone
18 calls?

19 A. Yeah. Believe me, I was getting the phone calls.

20 Q. How many phone calls were you getting from phase one
21 people?

22 A. That they were experiencing pretty significant water
23 damage, interior water damage, in their units through the
24 roof. And, also, it was -- people were questioning the
25 integrity of the columns because the columns were always

00529

1 wet. We had mushrooms growing out of the columns.

2 Q. And this was when did you observe that?

3 A. This is the early part of 2009, early to mid 2009.

4 Q. And did you go actually in person and look at these
5 units that were having the problems?

6 A. Yeah, absolutely.

7 Q. And what sort of response did you offer to these
8 owners?

9 A. Well, we initiated an emergency repair procedure
10 that essentially said that we would do whatever we can to
11 help you. And the situation just seemed to be moving in
12 the opposite direction than we would have liked it to
13 move.

14 Q. At what point did you realize that the rot and
15 deterioration in phase one had become severe, even a
16 life-threatening issue?

17 A. There was -- I got a phone call from Jim Logan --
18 whose name keeps coming up here, but he is a resident
19 there -- who asked me -- who said to me that the railing
20 was falling off of his upper deck.

21 Q. And what did you do in response to that?

22 A. We had a contractor at the time that was doing some
23 work for us, doing some dumpster work and miscellaneous
24 things. And I asked him to go up and take a look at it.

25 Q. And did he do that?

00530

1 A. They did that.

2 Q. And after they did that, what happened next?

3 A. They asked me to come over and take a look at it,
4 and I watched them try to attach it to the columns and
5 the nail just went right through.

6 Q. And what happened then?

7 A. Well, we were both, you know, shocked at the
8 situation. We have stone columns with a cap on top. And
9 I asked them to pop that cap off and just see why that
10 was happening.

11 Q. And what did you find?

12 A. Nothing. Just mushy, black goo that used to be
13 wood.

14 Q. Was that the first time you had seen degradation
15 like that, rot and decay, at Stoneledge?

16 A. Absolutely.

17 Q. And when was that?

18 A. I'd say in -- you know, I don't have an exact date.
19 But March, April, May of 2009.

20 Q. And following that discovery at Mr. Logan's unit,
21 what did you do?

22 A. Well, we had done a bit before that, was to -- since
23 we were getting overwhelmed with calls, we, as the board,
24 decided that maybe we should talk to somebody about this.
25 And we went and sought the advice of a gentleman by the

00531

1 name of Mike Smith in Seneca. Mike's active with
2 homeowners associations, and so on and so forth. We went
3 to see Mike. And Mike said, you know, this isn't exactly
4 what I do. And then the name came up again, Jim Logan,
5 you know. He said there's a guy down in Anderson that
6 works for Logan, Jolly and Smith, I believe it is. And
7 he's the guy that you should talk to. Ironically, you
8 know, Jim had a unit at Stoneledge. And it was then --
9 it immediately after that that we had the nailing
10 incident with Jim.

11 Q. And Mr. Smith, was he an attorney?

12 A. Yeah.

13 Q. And when did you go meet with Mr. Smith?

14 A. We went the early part of the year, I believe it
15 was. I'm a little fuzzy on dates, but the early, yeah;
16 2009.

17 Q. 2009?

18 A. Yeah. We were just trying to figure out where we
19 were and what we should do about this.

20 Q. And this was just a few months after the association
21 had been turned over to you?

22 A. Correct.

23 Q. At any point, did you decide to retain the services
24 of an engineering firm?

25 A. Yeah.

00532

1 Q. And who was that?

2 A. That was the Warren Group.

3 Q. And did the Warren Group do an investigation for
4 you?

5 A. Yes, they did.

6 Q. And did that investigation call for you to shore up
7 the porches and decks?

8 A. Yeah. Their recommendation, they ---

9 MR. ANDERSON: Objection, hearsay. Your Honor,
10 objection. Hearsay.

11 THE COURT: Sustained.

12 Q. As a result of getting the Warren Group report, what
13 did you do?

14 A. We shored up the decks.

15 Q. Using what?

16 A. Six by six -- perhaps eight by eight, I'm not too
17 sure. But posts that ran along the top with four or five
18 columns that came down to hold the top up.

19 Q. Are they still there?

20 A. Yeah, they are.

21 Q. And how much did the association pay to have that
22 done?

23 A. Eighteen thousand dollars.

24 Q. Describe for the jury, if you will, Mr. Taylor, what
25 your life has been like since taking over as president as

00533

1 you tried to deal with these problems related to water
2 infiltration and rot in phase one?

3 A. My wife and I have spent countless, countless plus
4 hours dealing with this particular situation. It's a
5 twenty-four/seven situation with us. We get -- I got
6 phone calls continually. I'm one of the people that are
7 involved and are there and try to respond to the calls.
8 More than once, more than twice, more than a lot of
9 times, I've gotten out of bed at two o'clock in the
10 morning when its been raining just to see what somebody's
11 -- what's happening to somebody's -- where the water was
12 actually coming from when it started to pour. Many
13 times, we've gotten up from the dining room table with
14 the grandchildren there just to -- you know, had to leave
15 because it was raining so hard that we just had to know
16 where some of this water was coming from. It hasn't been
17 a real pleasant experience for us.

18 Q. You mentioned that you're a real estate agent?

19 A. Uh-huh (affirmative).

20 Q. Have you sold any Stoneledge units?

21 A. Yeah.

22 Q. How many?

23 A. Six totally.

24 Q. And has the presence or the awareness of these
25 construction defects affected or impacted how you sell

1 units?

2 A. Absolutely.

3 Q. How so?

4 A. We have a disclosure that -- a disclosure form that
5 people must sign. Being associated with the real estate
6 business, as soon as we made a decision from the board to
7 get involved in any sort of litigation, we made it a
8 policy, a strong policy from the board, that we would
9 have a disclosure, required disclosure, and make that
10 available to anyone who listed any units there. We
11 spoke. And you gave us some information as to what
12 should be in this disclosure. We spent an awful lot of
13 time reviewing listings just to make sure that everything
14 is disclosed. There was an auction that we insisted that
15 this had to be done. We communicate this continually to
16 all of our residents in newsletters that it's very
17 important. And I've become kind of the sounding board, I
18 think, for my fellow real estate agents who have called
19 me up to make sure that -- or to find out what this
20 disclosure is all about. Once they see it, they want
21 some information about it. And my advice is simple.
22 It's just this is the way it is. Okay? And if you want
23 to buy a unit in Stoneledge, you're going to be in a
24 lawsuit with the rest of the group. And you have to be
25 comfortable with this, or if you're not comfortable, then

00535

1 you probably shouldn't buy a unit at Stoneledge. It
2 seems -- you know, we're very, very strong on the
3 disclosure.

4 Q. What do you seek to get out of this lawsuit that the
5 association is in?

6 A. A home that, when we show up after a rainstorm that
7 we can walk in and not look at the stains in the ceiling
8 and that we can use our lower level again. We haven't
9 been able to use it for five years. Just a peace of
10 mind. I don't think anybody should be involved in a
11 situation where you really don't know what your home is
12 going to look like when you come back. It's just not
13 right.

14 Q. Given the amount of repair that is necessary at
15 Stoneledge, are you fearful that you could lose your
16 home?

17 A. Yeah. Yeah. We couldn't afford to repair it
18 ourselves.

19 MR. LYLES: Nothing further, Your Honor, at
20 this time.

21 THE COURT: Cross-examination?

22 MR. IMHOFF: Thank you.

23 THE COURT: Mr. Imhoff?

24 CROSS-EXAMINATION

25 BY MR. IMHOFF:

00536

1 Q. Mr. Taylor?

2 A. Yeah.

3 Q. Good afternoon.

4 A. How you doing?

5 Q. Mr. Taylor, just to make sure the jury understands,
6 you bought your unit from Bostic?

7 A. Yeah.

8 Q. Is that right?

9 A. Yeah.

10 Q. Okay. You actually bought two from Bostic?

11 A. Yeah, I bought two.

12 Q. You bought one for you and one for investment?

13 A. One for my sister-in-law, yes.

14 Q. Okay. Okay. I'm sorry. And you had some problems
15 with those units before Bostic left, didn't you?

16 A. Yeah. I think we had the water infiltration on the
17 one that we're living in.

18 Q. Water through the roof?

19 A. Through the foundation.

20 Q. And water in the basement?

21 A. Yeah.

22 Q. Okay. And when Bostic left, just to make sure that
23 the jury understands -- the jury needs to understand that
24 -- did anybody ever call you the mayor of Stoneledge?

25 A. Yeah, a couple of times.

00537

- 1 Q. Why do they call you mayor of Stoneledge, Mr. Smith?
- 2 A. I was the guy that was around. You know, as I
- 3 mentioned, there were only three of us. One is an
- 4 elderly gentleman, and so on. And I just seemed to be
- 5 the guy that people sounded off to or talked to.
- 6 Q. Yeah. You walk around the neighborhood and keep an
- 7 eye on it?
- 8 A. Yeah. I'm there all the time.
- 9 Q. Pick up trash?
- 10 A. Absolutely.
- 11 Q. Let contractors in and out of buildings?
- 12 A. Yeah. That's what I do. I let you into more than
- 13 one building; right?
- 14 Q. Yeah. The mayor of Stoneledge.
- 15 A. That's right.
- 16 Q. There's no question. Nobody's going to deny it, Mr.
- 17 Taylor. So you're around. All right. So you're around.
- 18 And when Bostic left -- so, you're right. It's just your
- 19 personality, isn't it? You're just kind of around. You
- 20 move around a lot, don't you, Mr. Taylor?
- 21 A. Yeah, I move around.
- 22 Q. So when Bostic left, the exteriors were up, roofs
- 23 were on? Stone? Right? Siding?
- 24 A. Yeah. Yeah.
- 25 Q. Okay. I just want to make sure the jury hears that.

00538

1 A. Yeah.

2 Q. And you're the guy. You're the mayor. If anybody
3 would know, you would know; right?

4 A. You're making me blush.

5 Q. Okay. All right. So when Bostic leaves, exteriors
6 weren't -- interiors weren't done. There were places
7 unsold. Is that fair?

8 A. Yeah. They were all over the place. I mean, there
9 was windows in, windows out, doors open. Some were
10 finished more than others, yeah.

11 Q. You got worried. Now what? Right? You bought this
12 house down here or this townhome down here? You've got
13 an investment?

14 A. Yeah, we were worried.

15 Q. You put money in it?

16 A. Yeah.

17 Q. You move your sister-in-law down?

18 A. Yeah.

19 Q. Were you worried about that?

20 A. Yeah. The whole thing. Yeah.

21 Q. All right. So worried about these issues? You had
22 some issues, right, in your own place? Worried about
23 getting that stuff fixed?

24 A. Yeah.

25 Q. Okay. So I think you said it earlier. When I.M.K.

1 and Marick and Rick came in, savior; right? Finally;
2 right?
3 A. When they came in, yes.
4 Q. Somebody's going to help us?
5 A. Uh-huh (affirmative).
6 Q. Is that right?
7 A. Correct.
8 Q. Okay. And later on -- and we'll talk about this
9 letter later. But in 2008, you said, "They took us from
10 the depths of bankruptcy to a functioning neighborhood."
11 Remember writing that when you took over as the H.O.A.
12 president?
13 A. Yeah, I do.
14 Q. Okay. Do you believe that? They took you from the
15 depths of bankruptcy to a functioning neighborhood?
16 A. Yeah, until it started to rain.
17 Q. Right. But from 2005 to 2008, you were pretty happy
18 with them; right?
19 A. Yeah.
20 Q. All right.
21 A. I mean, not unhappy, yeah.
22 Q. Okay. And these guys that came, your saviors, Rick
23 and Bill and Tim and Larry, they all bought out there,
24 didn't they?
25 A. Yeah. Yeah. Yeah.

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1 Q. Okay. Well, Tim Roberson still lives out there?

2 A. Yeah. He's a full-time person.

3 Q. Yeah. And you didn't sue him, is that right, in the
4 H.O.A.?

5 A. That's correct.

6 Q. Okay. And Rick and Larry and Bill all had units out
7 there also; right?

8 A. Yeah. I believe Bill sold his pretty quickly after
9 buying it to someone else. But, yes.

10 Q. Okay. Did you see them out there at functions and
11 during the summer and on the lake and that type thing?

12 A. We saw Tim. Rick would be there a couple of
13 weekends a month, yes. Larry Lollis, I don't think has
14 ever -- I have never met Larry Lollis, and he has the
15 unit right next to ours.

16 Q. So they were using their units out there?

17 A. Well, Lollis, I don't think has ever used it.

18 Q. Some. Some of them were using it?

19 A. Some, yeah.

20 Q. All right. And did you have issues in this
21 basement, this crawlspace, after I.M.K. and Marick and
22 Rick and all those folks came?

23 A. I'm still having issues, yeah, today.

24 Q. Okay. But it appeared -- Bostic's gone. I.M.K.
25 Marick's there. It happened again. Right?

- 1 A. Yeah.
- 2 Q. I don't understand, Mr. Taylor, exactly what the
3 issue is. There's water in a crawlspace underneath your
4 house?
- 5 A. Yeah, pouring into a crawlspace. It's like a horse
6 pasture falls. When it rains, it's pouring in there. If
7 you were down in the basement, the only thing you would
8 hear is the water just pouring into our crawlspace.
- 9 Q. Okay. Your basement isn't finished?
- 10 A. Our basement is finished. This is in a crawlspace
11 as part of -- in the lower level; right.
- 12 Q. Is there a door to the crawlspace, Mr. Taylor?
- 13 A. There is.
- 14 Q. How high is that door?
- 15 A. I'd say six foot.
- 16 Q. Is it six foot from the ground or a six-foot door?
- 17 A. It's six foot from the floor of the crawlspace.
- 18 Q. Okay. Is the bottom of the door six foot?
- 19 A. Yeah, the bottom of the door. It's a, you know,
20 probably three-foot-by-three-foot door.
- 21 Q. So it's about this high up?
- 22 A. Yeah.
- 23 Q. Up like this?
- 24 A. Right.
- 25 Q. So you have to step on a chair to get into the

1 crawlspace?

2 A. Right.

3 Q. And it's a dirt floor in that crawlspace?

4 A. Yeah.

5 Q. Okay. And that's not part of your finished
6 basement?

7 A. That's correct.

8 Q. This is in a door, a little cubby door, that you
9 open?

10 A. Right.

11 Q. And you go out into a -- in the dirt?

12 A. Yeah, you climb into it. Right.

13 Q. You climb into it. Okay. Below the porch; right?

14 A. No, no. This is in the front. Oh, yeah, the front
15 porch; correct.

16 Q. Okay. And you had Marick -- first, you had Bostic
17 come out and fix it or try to fix it; is that right?

18 A. I believe so, yeah.

19 Q. What did Bostic do?

20 A. The same thing that -- the same thing. Caulked it
21 up.

22 Q. All right. So Marick caulked it up? Bostic caulked
23 it up?

24 A. Yeah.

25 Q. What did they caulk up, Mr. Taylor?

1 A. They caulked up the, you know, the foundation wall.

2 And then you have the sill of the house. And they

3 caulked that -- that area right there.

4 Q. Okay. All right. And did you ever tell either

5 Marick or Rick or I.M.K. or any of those other folks that

6 were on the board, this isn't going to work; this does

7 not fix it; I am not happy?

8 A. We were in a drought. I don't know that we -- we --

9 we didn't know whether it was leaking or not because

10 there wasn't any significant rain.

11 Q. Is the answer to that question, Mr. Taylor, that you

12 didn't have any problems with it, well, from the time

13 Marick fixed it until after Marick and I.M.K. and those

14 folks left?

15 A. No, it isn't. The answer is that we had to wait for

16 some rain. And I didn't know whether it was fixed or

17 not. It was not fixed.

18 Q. Well, if you heard water pouring into your

19 crawlspace ---

20 A. Right.

21 Q. --- in 2005 to 2008 -- Marick's still there -- Mr.

22 Taylor, wouldn't you have picked up the phone and called

23 Mr. Thoennes, wrote him a letter or sent an email?

24 A. Well, he had made an attempt to fix it. But, you

25 know, until it rained again, you wouldn't know whether it

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1 was fixed or not. So there was no reason to call him up.

2 Q. It didn't rain between 2005 and 2008?

3 A. It didn't rain much. It rained, but -- you know,
4 you have to be there to know whether it's happening. And
5 we didn't know that any additional water was coming in.
6 We subsequently found that when it started to rain again
7 that it probably wasn't fixed.

8 Q. Okay. So that's just what I'm asking.

9 A. Yeah. Yeah. Yeah.

10 Q. So from 2008 -- I'm sorry. 2005 to 2008, you didn't
11 know that there was a continuing problem?

12 A. That's correct.

13 Q. Okay. Thank you.

14 All right. Now, do you have a sump pump in your
15 crawlspace?

16 A. No.

17 Q. You're one of the units that doesn't have one of
18 those?

19 A. I only believe one unit has one of those.

20 Q. Okay. All right. Now, let's talk about the decks
21 problem.

22 A. Okay.

23 Q. You said that there were cracks in the cement on the
24 concrete?

25 A. Correct.

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1 Q. Okay. And you thought that there was water getting
2 through the cracks and getting into the ceiling of an
3 outside deck downstairs?

4 A. Correct.

5 Q. Okay. Did you have that discussion with I.M.K. or
6 Rick or Marick or any of those folks?

7 A. They came -- yes.

8 Q. Okay.

9 A. And they came and put that epoxy coating on.

10 Q. Okay. Was that a discussion that you had and other
11 homeowners had with Rick and his helper, Nathan, and
12 those folks about what to do about that?

13 A. I think there was a general consensus of people
14 talking to him. You know, we let him know that there was
15 a problem. And they came and they -- I presume that they
16 thought everybody had that problem. That's why they
17 fixed every one of these decks.

18 Q. Okay. The fixed every one; right?

19 A. I believe so.

20 Q. Okay. And they hired a company called Coleman
21 Waterproofing to do that?

22 A. Yeah.

23 Q. Did you ever talk to the folks at Coleman
24 Waterproofing?

25 A. No.

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1 Q. Do you know what they did? I mean, do you know what
2 they did to inspect and see what the problem was?

3 A. No.

4 Q. Okay. Do you know what they proposed?

5 A. Well, I assume that they proposed what they did,
6 which is put that epoxy coat down.

7 Q. And you agreed to have that done to your unit?

8 A. Yeah.

9 Q. And the other owners that were living there agreed
10 to have that done to their unit?

11 A. I believe so. I'm not sure that it was an optional
12 thing to do. You know, why not?

13 Q. Do you know any owners that said, I don't want that?

14 A. Not personally, no.

15 Q. Okay. And at the time, did it seem like a
16 reasonable thing to do?

17 A. Yeah.

18 Q. You wouldn't let them do it if you didn't think it
19 was reasonable?

20 A. Absolutely, no.

21 Q. Okay.

22 A. No.

23 Q. Do you know if the H.O.A. was charged for that
24 repair?

25 A. I have no knowledge of that. We weren't - no, that

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- 1 would have not been anything that we would have known.
- 2 Q. Did you get an assessment from the H.O.A.?
- 3 A. No.
- 4 Q. It was just done and you don't know if anybody ever
- 5 -- or who paid for it; is that right?
- 6 A. Well, we had no access to the H.O.A. books. So we,
- 7 you know, had no ability to know that.
- 8 Q. But you didn't get a bill?
- 9 A. I did not get a bill for it.
- 10 Q. Now, your testimony earlier was that you hired the
- 11 Warren Group and then Derek Hodgins with C.S.E.?
- 12 A. Uh-huh (affirmative).
- 13 Q. And you became aware in 2009 that there were
- 14 problems out there?
- 15 A. Correct.
- 16 Q. Mr. Taylor, you were not aware between 2005 and 2008
- 17 that the columns were rotten behind that stone on the
- 18 decks, were you?
- 19 A. I was not aware.
- 20 Q. Were you aware -- did you have the opinion that
- 21 between 2005 and 2008 that the roofs were all bad?
- 22 A. The roofs? Yeah, shingles. Was I aware that what?
- 23 Q. Did you have the opinion between 2005 and 2008 when
- 24 Marick and Rick Thoennes were on site and Rick was on the
- 25 H.O.A. that all of the roofs were bad?

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1 A. No. We didn't come to that point.

2 Q. Did you have the opinion between 2005 and 2008 that
3 all of the foundations were leaking?

4 A. No.

5 Q. Okay. Did you have the opinion that all of the
6 stonework and all of the siding and all of the windows
7 were bad between 2005 and 2008?

8 A. No. But I had an opinion that the siding wasn't
9 right.

10 Q. Did you share that opinion with the homeowners
11 association, the developers?

12 A. No.

13 Q. So they wouldn't know that you had that opinion?

14 A. That's correct.

15 Q. Did Marick have someone that would respond to repair
16 requests?

17 A. Yeah. There was a gentleman by the name of Nathan
18 who was on site.

19 Q. And they also had an email address and phone
20 numbers, didn't they?

21 A. Yeah.

22 Q. Okay. So if you're a homeowner between 2005 and
23 2008 at Stoneledge, you could call or you could email or
24 you could grab Nathan, you could grab Rick?

25 A. Yeah.

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- 1 Q. And say, help me; right?
- 2 A. Yeah.
- 3 Q. And did they? Did they go out and repair things,
- 4 Mr. Taylor?
- 5 A. They did some punch list items for people. And, you
- 6 know, that's it. I mean, you know, we're primarily
- 7 talking about water, water situations dealing with roofs
- 8 and porches, and so on and so forth. And as I mentioned
- 9 before, there was very little rain.
- 10 Q. Were you selling homes out there at the time?
- 11 A. I sold, you know, just -- yeah.
- 12 Q. Were you trying to sell homes out there?
- 13 A. Yeah. You know, most of the opportunities that I
- 14 had were strictly people that knew me that said, "Would
- 15 you list my house?" And there weren't, you know -- there
- 16 weren't that many.
- 17 Q. And you weren't telling people between 2005 and
- 18 2008, these townhomes are just terrible and the H.O.A.
- 19 won't do a thing about it?
- 20 A. No. No.
- 21 Q. Because you didn't believe that?
- 22 A. I didn't believe that.
- 23 Q. Because you could call Rick or Nathan or email;
- 24 right?
- 25 A. Yeah.

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1 Q. And they would fix things; right?

2 A. Yeah.

3 Q. And it would help them sell units to have happy
4 homeowners out there, wouldn't it?

5 A. Yeah, no question.

6 Q. Are you still selling units out there?

7 A. At some point it becomes -- I've got two listings
8 out there, yeah.

9 Q. You have two listed?

10 A. Two listed.

11 Q. Is one of them your home?

12 A. No.

13 Q. What do you tell homeowners when they come in, Mr.
14 Taylor, or potential homeowners?

15 A. I tell them about twenty-five times that Stoneledge
16 is in the middle of litigation, that there's probably
17 three questions they're going to ask me. What is it
18 going to cost to fix? And the answer is we don't know.
19 What's it going to -- what would a potential assessment
20 be? We don't know, and so on. And there's a third one I
21 can't think of right now. And as I mentioned before,
22 that if there's some -- if this is going to get into your
23 head and you're not going to be able to be comfortable
24 with the fact that what you're paying for this particular
25 unit is -- might not include some assessment in the

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- 1 future, then you probably shouldn't be buying this home.
- 2 Q. And you don't tell them this can't be fixed, do you?
- 3 A. No. I tell them it's fixable.
- 4 Q. It is fixable, isn't it?
- 5 A. Yeah.
- 6 Q. You believe it's fixable?
- 7 A. Absolutely.
- 8 Q. And you've hired, as an H.O.A., J.R. Watkins to fix
- 9 this; right?
- 10 A. The H.O.A. has hired him. I'm not a member of the
- 11 board right now. I'm a property manager, and I report to
- 12 the board right now. So I don't make the decisions, but,
- 13 yes. They make the decisions.
- 14 Q. If you believe they couldn't be fixed, that would be
- 15 terribly dishonest for you to sell these?
- 16 A. Oh, they can definitely be fixed. Right.
- 17 Q. So you wouldn't do that. They can be fixed?
- 18 A. Of course.
- 19 Q. Okay. And they need to be fixed; right?
- 20 A. They've got to be fixed.
- 21 Q. And Mr. Taylor, your part of the H.O.A. that, as Mr.
- 22 Lyles pointed out, is suing -- I guess you're just suing
- 23 Rick, not Marick for his membership on the H.O.A., his
- 24 actions on the H.O.A.; is that right?
- 25 A. I'm not sure of that. As a member of the H.O.A.

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1 board?

2 Q. Yes, sir. Yes, Mr. Taylor.

3 A. Back then?

4 Q. From 2005 to 2008.

5 A. They were responsible for the running of Stoneledge
6 at that point, yeah.

7 Q. And when you became the president -- how many times
8 have you been the president, Mr. Taylor?

9 A. Just once.

10 Q. Okay. When you became the president, you thought
11 Mr. Thoennes did a great job, didn't you?

12 A. When I became the president, we were faced with a
13 significant amount of work that had to be done by the
14 board that I became president of.

15 MR. IMHOFF: May I approach, Your Honor?

16 THE COURT: Certainly.

17 Q. Let me hand you a document, Mr. Taylor.

18 A. Uh-huh (affirmative).

19 Q. Can you tell the jury what that is, please?

20 A. It looks like it's a part of a newsletter that was
21 sent out.

22 Q. Did you draft that newsletter, Mr. Taylor?

23 A. Yeah, I believe I did.

24 Q. And you wrote -- here, Mr. Taylor.

25 A. Yeah, I see it.

1 Q. You wrote, "I.M.K. Marick took us from the depths of
2 bankruptcy and created a community which is one of a kind
3 on Lake Keowee." Did you write that?

4 A. Yeah.

5 Q. Did you believe that at the time?

6 A. At the time, I did.

7 Q. And you said ---

8 A. Although I will say -- what date was this? I don't
9 see the date on here. When did I write this? I don't
10 see the first page.

11 Q. I'm sorry, Mr. Taylor. I wasn't there. But I
12 believe ---

13 A. Yeah. Well, it's part of a newsletter that would
14 have been dated. I'm not sure.

15 Q. Would it make sense, because you're talking about
16 I.M.K. Marick, that it would have been near the handover
17 of the H.O.A. to you as president?

18 A. Yeah. But I'm not sure how far before that.

19 Q. Okay. Well, I mean, it's not that important. But
20 that's what you wrote at the time; right?

21 A. Yeah. Yeah.

22 Q. And you wrote, "It appears they could have done a
23 better job in responding to punch list items, but we
24 essentially have an attractive community."

25 A. Yeah.

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1 Q. Did you write that?

2 A. Yeah.

3 Q. Okay. "For those who have been involved in the day-
4 to-day activities, however, the consensus is that they
5 are honest and, after sharing expenses with the
6 homeowners, have generously left the H.O.A. with a bank
7 account of seventy thousand dollars. In reality, it was
8 close to a hundred thousand dollars, since we chose to
9 spend approximately twenty-six thousand dollars on
10 mulch." Did you write all of that, Mr. Taylor?

11 A. Yeah. Yeah.

12 Q. So after Mr. Thoennes handed the H.O.A. over to you
13 ...

14 A. Uh-huh (affirmative).

15 Q. ... you looked at the balance sheets; right?

16 A. Uh-huh (affirmative).

17 Q. And you had been involved in the day-to-day
18 activities out there as the mayor of Stoneledge; right?

19 A. Correct.

20 Q. And you knew the goings-on out there at Stoneledge;
21 right?

22 A. Right.

23 Q. And you were letting contractors in and out of
24 buildings and homes; right?

25 A. Not at that point, but go ahead.

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1 Q. All right. And at that time, you believed that Mr.

2 Thoennes was honest and had done a good job with the

3 H.O.A.; correct?

4 A. Yeah.

5 Q. Thank you, Mr. Taylor.

6 A. I don't believe ...

7 THE COURT: Is it Ms. Brown?

8 MS. BROWN: No questions, Your Honor.

9 THE COURT: Mr. Hemphill?

10 MR. HEMPHILL: No questions, Your Honor.

11 THE COURT: I go back to Mr. Belcher.

12 MR. BELCHER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BELCHER:

15 Q. Good afternoon, Mr. Taylor. I promise to be brief

16 with you.

17 A. That'll be fine.

18 Q. And it's been a pleasure getting to know you a

19 little bit, and I appreciate the soft drinks you've given

20 us over the years while we've been out there trying to

21 find out what's going on with your buildings. I just

22 have a couple of questions for you just to sort of shore

23 up some of your testimony here. Bostic left and Marick

24 took over; right?

25 A. Uh-huh (affirmative).

1 Q. Or I.M.K., whatever the developer was?

2 A. Right.

3 Q. All right. And you understand that the developer,
4 based on your understanding, prior to I.M.K. was someone
5 named Bobby Carpenter?

6 A. Yes.

7 Q. And Bostic Construction or Bostic Brothers
8 Construction, depending on what time of year it was, was
9 the general contractor; correct?

10 A. That was my opinion, yes.

11 Q. That was your understanding?

12 A. Yes.

13 Q. Now, when Carpenter stopped developing ---

14 A. Uh-huh (affirmative).

15 Q. --- Bostic stopped building; correct?

16 A. Yeah. I don't know about the Carpenter stopped
17 developing part. The only thing we knew is that Bostic,
18 you know, got on their horse and rode out of town.

19 Q. Pulled off the job?

20 A. That's right.

21 Q. Now, Bostic wasn't out there mowing the grass during
22 the development or during its construction; correct?

23 A. You know, I'm not sure who the -- was there an
24 H.O.A. or who it was at that point.

25 Q. Was there an association at that point?

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1 A. You know, I really don't know. We were so new at
2 this, you know.

3 Q. It would have been incumbent upon the developer ---

4 A. Yeah. Yeah.

5 Q. --- to the extent still in existence, to go out
6 there and mow the grass?

7 A. Yeah. Somebody was sort of mowing the grass. They
8 mowed the grass some, yeah.

9 Q. But someone needed to be out there maintaining the
10 site and keeping it looking sightly so it doesn't look
11 like a forest again?

12 A. Yeah. Yeah. Yeah. Yeah. It was a building site
13 is what it was.

14 Q. All right. When Marick -- and tell me if I'm wrong.
15 But it's my understanding that Marick took over the
16 project from Townhomes of Keowee sometime around May of
17 '05. Is that your understanding?

18 MR. IMHOFF: Objection, Your Honor.

19 THE COURT: What is your objection?

20 MR. IMHOFF: They keep referring to Marick
21 taking over the project. Marick never owned anything out
22 there.

23 MR. BELCHER: I'll rephrase the question.

24 THE COURT: All right. Rephrase your question.

25 Q. All right. Marick assumed general contractor duties

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1 on the project at some time around April/May of 2005?

2 A. Yes.

3 Q. And I.M.K. as developer acquired the property
4 sometime prior to that from the developer before?

5 A. Yeah. I believe so, yeah.

6 Q. Now, did I.M.K. start taking care of the grounds
7 when they acquired the property?

8 A. Yes. At that point, we had more grounds to take
9 care of.

10 Q. So there was some improvement there once the new
11 developer came on board?

12 A. Yeah. Yes. I mean, the lawn was sort of mowed.
13 Not up to Stoneledge standards, but it was done.

14 Q. Now, Marick, they made repairs to all of the decks?

15 A. Yes. But I know there was a number, but I'm not
16 sure. I believe they did a significant number of decks;
17 right.

18 Q. And from the time it took over general contractor
19 responsibilities on this project, it took care of any
20 warranty issues that any unit owner had?

21 A. I don't know that they finished the warranty issues
22 that any owner had. They did some of ours, and some of
23 them were left undone. And you just were kind of that
24 way, you know. It's okay. We'll live with it.

25 Q. All right. At any time did Marick tell you we're

- 1 not going to make those repairs?
- 2 A. No.
- 3 Q. All right. And when you personally asked Marick to
- 4 make a repair, Marick by and large came and made those
- 5 repairs?
- 6 A. That's correct.
- 7 Q. Or just didn't get around to it and you didn't push
- 8 the issue?
- 9 A. That's correct.
- 10 Q. And was that -- and as mayor out there, was it your
- 11 understanding that Marick was making repairs like that
- 12 for other unit owners?
- 13 A. There weren't many unit owners, you know, at that
- 14 point. But I don't know. We didn't have those
- 15 conversations in the neighborhood.
- 16 Q. You've heard reference to the fact that ten units
- 17 were sold that Bostic actually completed. Do you know
- 18 who those ten -- were there ten people living there at
- 19 one time before Marick came on board?
- 20 A. No. And it was ten, and there were really only
- 21 three of us that lived there.
- 22 Q. So the rest were purchased for investment or
- 23 something else?
- 24 A. For whatever, yeah.
- 25 Q. Out of the people that you know out there, the two

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1 or three that were actually living out there ---

2 A. Right.

3 Q. --- was Marick addressing warranty issues?

4 A. You know, I don't know specifically. We weren't
5 having those conversations.

6 Q. All right. As people started to fill in out there
7 and buy the rest of those units ---

8 A. Uh-huh (affirmative).

9 Q. --- was Marick conducting warranty duties?

10 A. I don't know. You know, when you're out there with
11 folks that show up, you know, once a month or whatever it
12 is, you know, you really don't get a chance to
13 communicate with these folks and find out what's
14 happening.

15 Q. So when you had any water issue ---

16 A. Yeah.

17 Q. --- Marick came out and fixed it?

18 A. They came out and fixed it.

19 Q. And Marick didn't say, oh, that's a Bostic problem?

20 A. No.

21 Q. They just said, we'll take care of it. So they
22 honored that warranty?

23 A. Yeah.

24 Q. I understand that you ---

25 MR. BELCHER: How do we turn that off?

- 1 Q. Mr. Taylor, this is my -- I may appear to look young
2 to you, maybe I don't. But I'm not big with this
3 technology stuff. So I'll just tell you that right now.
4 You're a realtor; right?
- 5 A. Correct.
- 6 Q. All right. And this is your website?
- 7 A. That's correct.
- 8 Q. And this is Stoneledge?
- 9 A. That's correct.
- 10 Q. And you sell Stoneledge on your website; right?
- 11 A. And anything.
- 12 Q. You have a copy on here or at least some photographs
13 of an example property with some photographs, like --
14 that's your unit; right?
- 15 A. No. It's a unit of somebody that lived there who
16 did an exceptionally good job who we happen to know. And
17 I asked for permission to do a visual tour of his home
18 and they were more than happy to let me do that.
- 19 Q. And it's not a listing; right?
- 20 A. No, it's not.
- 21 Q. It's just an example of what you have out there?
- 22 A. That is correct. Of what an interior at Stoneledge
23 could be and what Stoneledge is.
- 24 Q. And like that's a picture of what it looks like on
25 the inside, and you put that on your website?

1 A. Yeah. That's part of the visual tour; right.

2 Q. And some of the other places on your website here --

3 I know that you've said you're selling or what's being

4 offered out there at Stoneledge is a lake lifestyle;

5 right?

6 A. That's correct.

7 Q. And the benefits of living near Seneca?

8 A. Uh-huh (affirmative).

9 Q. And the benefits of living on the lake?

10 A. Correct.

11 Q. And is it fair to say that while there are issues

12 that need to be repaired, Stoneledge is a premiere

13 beautiful property?

14 A. It is.

15 Q. And people come from all over the southeast to own

16 these units?

17 A. We would hope so.

18 Q. You have residents in there who are from Georgia?

19 A. Uh-huh (affirmative).

20 Q. Ohio?

21 A. Uh-huh (affirmative).

22 Q. New York?

23 A. Correct.

24 Q. All over the east coast?

25 A. All over.

- 1 Q. The eastern seaboard?
- 2 A. California.
- 3 Q. That's right.
- 4 A. Washington, D.C.
- 5 Q. We know some over there that have come from
- 6 California to have a home there?
- 7 A. Right.
- 8 Q. And you love the place; right?
- 9 A. Yeah.
- 10 Q. You just want your buildings fixed?
- 11 A. Absolutely. We love the place.
- 12 Q. All right. You like J.R. Watkins?
- 13 A. Yeah. He's a good guy.
- 14 Q. Would you let him fix your buildings?
- 15 A. Yeah.
- 16 Q. If he sat up here -- you may have heard me ask Ms.
- 17 Furnari. But if he sat up here with a contract that he
- 18 was willing to hand you, that he would fix your buildings
- 19 for the price that he has quoted in his most recent
- 20 estimate to bring your buildings up to code and beyond,
- 21 to get rid of all that nasty stuff that we've seen, would
- 22 you let him do that?
- 23 A. That's not my decision to make.
- 24 Q. Would you cast your vote in that favor?
- 25 A. Only with proper warranties.

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- 1 Q. Right. That would be your recommendation to the
2 board?
- 3 A. (Nodded head up and down in the affirmative)
- 4 Q. Just briefly, are you aware or do you know anything
5 about this exhibit, about the letter that apparently was
6 at least on a letterhead with about seven or eight
7 different addresses that the Bostics may have been at?
- 8 A. That's the Jim Logan letter?
- 9 Q. Yeah.
- 10 A. Yeah. I'm aware of it, yeah.
- 11 Q. Was he your attorney at that time or the H.O.A.'s
12 attorney?
- 13 A. Yeah. Yes.
- 14 Q. Do you know if he tried to send it certified?
- 15 A. I do not know.
- 16 Q. Do you know if he tried to send it to one of the
17 Bostics' attorneys?
- 18 A. I do not know.
- 19 Q. Do you know if he actually got confirmation that
20 they ever received this?
- 21 A. I do not know.
- 22 Q. All right. You know the Bostics are not exactly
23 private people; right?
- 24 A. Yeah.
- 25 Q. If you want to find them, you can probably find them

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1 somewhere?

2 A. Uh-huh (affirmative).

3 Q. But y'all never heard back from them. And to your
4 knowledge, was there ever a second attempt to try to
5 locate the Bostics to tell them there were issues so they
6 could step in and do something if they needed to?

7 A. I don't know.

8 Q. Okay. All right. Thank you very much for your
9 time. I hope I was brief enough for you.

10 A. You were fast.

11 Q. Thanks.

12 THE COURT: Mr. Anderson?

13 MR. ANDERSON: No questions, Your Honor.

14 THE COURT: Mr. Buckley?

15 MR. BUCKLEY: I have a couple, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BUCKLEY:

18 Q. Mr. Taylor, I'm Ed Buckley. And I'm going to stand
19 back here.

20 MR. BUCKLEY: If it's okay, Your Honor. Is
21 that all right?

22 THE COURT: Certainly.

23 Q. I represent Everado Jaramillo. I assume you do not
24 know who he is?

25 A. I do not know.

1 Q. You don't have any leaks in your windows, do you?

2 A. Yes.

3 Q. Okay. Well, you didn't mention that before.

4 A. But we just -- it's funny you should bring that up.

5 But within the last month, we were wondering what all
6 that water sound was coming into our dining room and our
7 living room. And it was coming right through the
8 windows.

9 Q. Okay. Let me ask you this. Back between the time
10 of 2005 when you purchased your unit to 2008 when you got
11 on the board as its first president ---

12 A. Uh-huh (affirmative).

13 Q. --- there were years of punch work that was being
14 conducted by whoever was in charge before the owners took
15 charge of the project itself?

16 A. That's correct.

17 Q. And that punch process was very frustrating for the
18 owners, I'm sure; right?

19 A. Yeah.

20 Q. Because it took literally years to get it
21 accomplished. And even though that finally was
22 accomplished to your satisfaction, you weren't entirely
23 happy with the way that went; correct?

24 A. Yeah, that's correct.

25 Q. Okay. And before you took -- before the owners took

1 over in September of 2008, you had become convinced in
2 your mind that there was an issue that was not being
3 addressed by anybody. And that was a deficiency in the
4 siding on those buildings as well; correct?

5 A. I don't remember having extensive conversations. I
6 had my thoughts on that just watching some of the siding
7 buckling and pulling off the, you know ---

8 Q. And I'm not saying you had conversations about it
9 ---

10 A. Yeah.

11 Q. --- but you had formed in your own mind the idea
12 that there were defects in either the siding material or
13 the installation or both that were causing the conditions
14 you observed prior to September of 2008?

15 A. I'm not an engineer. But, you know, as I was
16 walking around, I noticed some boards loose. But it's
17 also a big place. And you'd expect a board to be looser,
18 probably loose someplace.

19 Q. And what you observed led you to believe or suspect
20 that there might be a problem that somebody needed to
21 look at in that regard; correct?

22 A. Not necessarily. We addressed that issue when we
23 put together a long-term maintenance program. And as
24 part of that, we removed all the caulk and we re-nailed
25 all the siding and repainted and a number of different

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1 things that we did. So, you know, my thinking at that
2 point was that while this board is loose, a lot of boards
3 -- some are going to be loose. Let's just tack it back
4 up. You know, we'll tack it back up.

5 Q. So even though you might have had a right to make a
6 claim against somebody for the fact that that board
7 should not have been loose, you chose not to make a claim
8 and instead to go ahead and make the repairs at your own
9 expense?

10 A. It was part of the overall maintenance program. It
11 seemed to be an expeditious thing to do.

12 Q. But you knew that if you wanted to, you could make a
13 claim against whoever put that board up there incorrectly
14 so that came loose; correct?

15 A. If we wanted to ---

16 Q. Right.

17 A. --- get involved in some long-term litigation to
18 nail two boards in, yes.

19 Q. You could have; correct?

20 A. Yeah.

21 O. Okay. And you took that knowledge with you when you
22 became president of the H.O.A., the first president of
23 the H.O.A., in September of 2008; correct?

24 A. Right.

25 MR. BUCKLEY: That's all I have.

1 THE COURT: Re-examine?

2 MR. LYLES: Yes, sir. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. LYLES:

5 Q. Steve?

6 A. Yeah.

7 Q. The siding issue that Mr. Buckley was just referring
8 to, describe that, if you will, for the jury.

9 A. Just on occasion I would see, you know, a board that
10 was coming loose from the -- it wasn't a lot of boards.
11 We have a lot of boards. But I would see an occasional
12 board that was coming loose.

13 Q. Did you go see a lawyer about that?

14 A. No.

15 Q. Why not?

16 A. It was something that it was not -- didn't seem to
17 be a major issue.

18 Q. Was it something that you thought the H.O.A. should
19 take care of as part of its ongoing maintenance
20 responsibility?

21 MR. WOODS: Object to the leading, Your Honor.

22 THE COURT: Sustained.

23 By the way, there are two objections that you've
24 heard to evidence today. This afternoon rather. One has
25 been hearsay. Hearsay is just what the term implies.

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1 That's when someone is testifying to what someone else
2 has said. In other words, what they hear somebody say.
3 The reason that's not admissible is because you don't
4 know the context or whether it's correct. In other
5 words, did they actually hear what they said or did they
6 miss a word or two?

7 And the other one here is leading. And when an
8 attorney has his own client or a party has his own client
9 or witness on the stand, he cannot lead the witness.
10 Leading means asking a question that suggests the answer
11 which means, as it turns out, that the lawyer is
12 testifying, and then the witness is just agreeing with
13 them. And so you can't do that if it's your witness.
14 However, on cross-examination, you can lead the other
15 side.

16 And on this case, this is Mr. Lyles' witness, and so
17 an objection has been made to leading. I'm going to have
18 to sustain the objection.

19 Restate your question.

20 MR. LYLES: Yes, sir.

21 Q. Who's responsible for the maintenance of the siding?

22 A. The homeowners association.

23 Q. And at what point did you observe the problems that
24 Mr. Buckley was asking you about with respect to the
25 siding?

1 A. Just in general, you know, wandering around the
2 neighborhood.

3 Q. And was that before you became president of the
4 association?

5 A. Yeah. It was just a continuing situation.

6 Q. And you mentioned also to Mr. Buckley some caulking
7 and re-nailing?

8 A. Uh-huh (affirmative).

9 Q. When was that done?

10 A. When we had -- we had three goals when we took over
11 the association. One of them was to develop a long-term
12 maintenance plan for Stoneledge. And that included --
13 the first thing we did was to start to revamp and repaint
14 the buildings, which included the siding.

15 Q. And how much did you pay for that?

16 A. Well, it was -- we got various quotes. But about
17 three thousand dollars a unit times thirty-seven units in
18 phase one.

19 Q. And that included what?

20 A. That included removing all of the caulk, a power
21 washing, repainting with Sherwin Williams being on site
22 and making sure that it was all being done properly, re-
23 caulking and also checking some of the stone work to see
24 if there was any loose stones.

25 Q. Do you know how much that three thousand per unit

1 was spent re-nailing siding?

2 A. Very little.

3 Q. Of a percentage, if you know?

4 A. About two percent. Very little.

5 Q. Were you aware of any deficiencies in the
6 construction of the units behind the siding at that time?

7 A. No, absolutely not.

8 Q. When you observed the siding, did you observe any
9 damages that you associated with that siding? Damage to
10 your building?

11 A. No.

12 Q. Now, Mr. Imhoff read a letter that you said was part
13 of a newsletter; is that right?

14 A. Uh-huh (affirmative).

15 Q. And I think you indicated in that letter that there
16 was seventy thousand dollars in the account of the
17 association?

18 A. Yeah, I believe so. Yeah.

19 Q. And I don't remember if Mr. Imhoff made that an
20 exhibit or not.

21 A. I think I've got it right here.

22 Q. Was there a reference to the bank account having
23 seventy thousand dollars in it?

24 A. Yes, it was. That the H.O.A. with a bank account of
25 seventy thousand dollars.

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1 Q. Do you know where the money came from that comprised
2 that seventy thousand dollars?

3 A. Yeah. That was our money. You know, that would
4 have come from the assessments that we paid. I would
5 have expected that that money would go back to us.

6 Q. We, being the association?

7 A. We, being the association. I mean, it had to be
8 collected from somebody.

9 Q. And who was it collected from?

10 A. Well, whoever was living there at the time was
11 paying -- I believe it was three hundred dollars a month.

12 Q. You don't believe that that seventy thousand dollars
13 was money that I.M.K. or Marick gave to you?

14 A. I don't believe that, no.

15 Q. Mr. Imhoff indicated that at the time Mr. Thoennes
16 turned over the H.O.A. to you, you didn't have any
17 complaints about his operation of the H.O.A.; is that
18 right?

19 A. That's what he might have believed, but that was not
20 the case. I mean, we had a -- prior to the -- well, it
21 got a little confusing between I.M.K. and then S.D.I.
22 took over three or four months before the homeowners took
23 over in September. And we weren't real sure who to
24 communicate with, who to talk to about punch list items,
25 who was going to do what. And there was a number of

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1 items -- I've mentioned them before -- that really should
2 have been -- we felt should have been the responsibility
3 of whoever was running the place at that point. And we
4 weren't sure whether I.M.K. was in charge or S.D.I. was
5 in charge and who was going to do this. And they were
6 some pretty costly items. And seventy thousand dollars
7 would have been gone in a heartbeat.

8 Q. And Mr. Thoennes turn the H.O.A. over to you in
9 September of 2008?

10 A. September; correct.

11 Q. And when did you go see the attorney, Mr. Smith?

12 A. The early part of -- I believe the early part of
13 2009.

14 Q. And when did you find the -- go inspect the columns
15 at Mr. Logan's house?

16 A. Probably in the April/May range.

17 Q. Do you know how long that rot had been there?

18 A. Probably a long time. I mean, it was just nothing
19 holding up those columns.

20 MR. LYLES: I don't have any further questions,
21 Judge.

22 MR. IMHOFF: Just briefly, Your Honor.

23 THE COURT: All right, Mr. Imhoff. Now,
24 remember on recross-examine, it has to be something
25 brought out on re-examine?

1 MR. IMHOFF: Yes, sir.

2 RECROSS-EXAMINATION

3 BY MR. IMHOFF:

4 Q. Mr. Taylor?

5 A. Yeah.

6 Q. Didn't Marick I.M.K. repaint your unit and every
7 other unit out there in 2005 and 2006?

8 A. Repaint all the units?

9 Q. Every one, Mr. Taylor.

10 A. They could have. I have no -- it could be because
11 I'm getting old. And I'm not saying it's wrong. But I'm
12 just trying to figure out why we would have repainted
13 those units in 2008 if it had been done in 2006? That's
14 just the way my head's going right now. But, you know, I
15 don't know.

16 Q. And isn't it true that if you asked I.M.K., Nathan,
17 Rick, Bill, will you nail those boards in, they would
18 have nailed the boards in?

19 A. Yeah.

20 Q. Thank you, Mr. Taylor.

21 THE COURT: All right. You may step down, sir.
22 Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Obviously, this is a
25 good time for us to recede today. Again, what time would

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1 you like to start in the morning, Mr. Foreman? You can
2 check with your jury just in the room -- in the box.
3 Either, nine, nine-thirty, or ten o'clock.

4 MR. FOREMAN: Some of them have issues with
5 children.

6 THE COURT: That's exactly why I asked, and
7 that's why ---

8 MR. FOREMAN: And we had talked earlier and
9 nine-thirty did sound like a good hour.

10 THE COURT: All right. Is nine thirty the
11 consensus there?

12 MR. FOREMAN: It is.

13 THE COURT: Very good. All right. We'll come
14 back at nine-thirty. Come back to the jury room that
15 you've been using today, and we'll continue with the
16 trial of the case. Again, do not undertake the
17 discussion of the case among yourselves or permit anybody
18 to discuss it with you.

19 By the way, I don't know if I went into my little
20 explanation of the rules of evidence. I don't know if I
21 mentioned it. Those rules apply to both sides and all
22 parties. It just it depends on which one is applicable
23 depending on whose witness it is.

24 Very well. All right. Y'all are excused.

25 Everyone else remain seated while the jury retires

1 from the courtroom.

2 (WHEREUPON, the jury exited the open court at
3 approximately 5:20 p.m.)

4 THE COURT: All right. Is there anything from
5 the plaintiff before we take an evening recess?

6 MR. LYLES: No, sir.

7 THE COURT: All right. Mr. Belcher, anything
8 from the defendants?

9 MR. BELCHER: Nothing that can't wait until
10 tomorrow, Your Honor.

11 THE COURT: All right. Well, that's an
12 interesting thing. Now, is it something that I need to
13 think about over the evening, or am I going to be
14 surprised? Not that I don't like surprises. But -- what
15 is it? -- it's just that it helps to have a little
16 notice, you know.

17 MR. BELCHER: Mr. Bostic and Mr. Bostic are
18 here through Thursday evening. You had talked at one
19 point about moving witnesses around, because this trial
20 is so long, so that everyone has a chance to come testify
21 that would obviously be testifying in Mr. Lyles' case-in-
22 chief unless we're allowed to take a break and let me ask
23 them some questions.

24 THE COURT: All right. Now, let's see. Y'all
25 will be here through Thursday?

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1 MR. BELCHER: That's right. Yes, sir.

2 THE COURT: All right.

3 MR. BELCHER: They had some philanthropy to
4 engage in for the next five or ten days.

5 THE COURT: All right. Well, I'm glad to hear
6 that, but that's not necessarily the thing that's going
7 to control it.

8 Mr. Lyles, do you have any problem with that?

9 Now, of course, if you do, that you waive -- what is
10 it? -- your directed verdict -- having put up evidence
11 during the ---

12 MR. LYLES: I know.

13 THE COURT: But, I mean, do you have any
14 problem with ---

15 MR. LYLES: I don't, Your Honor.

16 MR. IMHOFF: Your Honor, you're going to grant
17 -- you can grant directed verdict?

18 THE COURT: Huh?

19 MR. IMHOFF: You're going to grant a directed
20 verdict?

21 THE COURT: A what?

22 MR. LYLES: You've got one ---

23 THE COURT: I don't think that's in my
24 vocabulary.

25 MR. LYLES: Your Honor, I mean, I'm not waiving

1 a right to ---

2 THE COURT: Well, that's what I wanted to be
3 sure that's on the record, that this is done as an
4 accommodation. It's the type of thing that I expect
5 attorneys to do.

6 MR. LYLES: Right.

7 THE COURT: But I just wanted to be sure that
8 was something you had to consider.

9 MR. LYLES: I had considered that.

10 THE COURT: All right. In other words, Mr.
11 Lyles, he will be able to do that as an accommodation?

12 MR. LYLES: Yes, sir.

13 THE COURT: Rather than to his prejudice?

14 MR. LYLES: Because we will be moving for a
15 directed verdict, particularly with regard to these
16 individuals.

17 THE COURT: Okay. Well, that's what I want to
18 know just to be sure.

19 MR. IMHOFF: The only thing I have to say is I
20 would ask again for Mr. Lyles to consider, to think about
21 what his setoff is going to be. I'd like to have those
22 numbers sort of set in stone so we have an idea.

23 THE COURT: What numbers are those?

24 MR. LYLES: He is asking about the setoff that
25 he's entitled to ...

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1 THE COURT: Uh-huh (affirmative).

2 MR. LYLES: ... as a result of the settlements.

3 And I have provided the settlement agreements to all
4 parties. The architect has settled. And what I talked
5 to them about a couple of weeks ago was how to allocate
6 the architect's settlement less to phase one and phase
7 two. But I've basically just said, let's just split it
8 in two because the architect was involved in both phases.

9 And then the only other party I've settled with that
10 I made an sort of allocation was the S.D.I. Ludwig
11 settlement. And S.D.I. and Ludwig sold seventeen units.
12 They sold three in phase one, and they sold fourteen in
13 phase two. And so I allocated the settlement based on
14 the number of units in each phase. And so my letter
15 agreements with Frank Smith and Frank Mack say -- I
16 believe it's a hundred and nine thousand of the six
17 twenty goes to phase one, and the balance goes to phase
18 two. And so -- and if I didn't give you that number, I
19 apologize. But it's a hundred and nine and change.

20 MR. IMHOFF: Okay. It wasn't a number. It was
21 just that that was the final decision. That's what I was
22 looking for.

23 MR. LYLES: Yeah. That's right.

24 MR. IMHOFF: He's right. He gave me the
25 numbers; he was just going, eh, he wasn't sure.

1 MR. LYLES: I know that was -- the architect
2 was the only one that I was worried about was the
3 architect.

4 MR. IMHOFF: Okay. All right. So two seventy-
5 five and one oh nine?

6 MR. LYLES: Plus the other settlements from
7 phase two people.

8 MR. IMHOFF: But those aren't going to be
9 apportioned?

10 MR. LYLES: They're not going to be
11 apportioned. They're just straight phase two.

12 MR. IMHOFF: That's all, Your Honor. No
13 surprises from me in the morning, Your Honor.

14 THE COURT: Okay. Very good. Thank you. So,
15 I mean, have we taken care of the matters that we need to
16 so if we get here at nine thirty we can start at that
17 time?

18 MR. BELCHER: Yes, Your Honor.

19 THE COURT: All right. That's how we work
20 here. We have to speak for the court reporter.

21 MR. BELCHER: Yes, Your Honor.

22 THE COURT: Thank you.

23 MR. LYLES: Thank you, Your Honor.

24 THE COURT: All right. Well, I'll see you here
25 in the morning.

1 (WHEREUPON, court stood at recess for the day at
2 approximately 5:30 p.m.)

3 October 30, 2013

4 (WHEREUPON, court convened with all parties present
5 and the following proceedings were had commencing at
6 approximately 9:54 a.m.)

7 THE COURT: All right. Is there anything from
8 the plaintiff before we bring the jury back?

9 MR. LYLES: No, Your Honor.

10 THE COURT: From the Defendants?

11 MR. BELCHER: No, Your Honor.

12 THE COURT: Very good. Thank you very much.
13 Ask the jury to join us.

14 (WHEREUPON, the jury entered the open court at
15 approximately 9:54 a.m.)

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

18 Mr. Foreman, ladies and gentlemen of the jury, we'll
19 continue with the plaintiffs' case.

20 Mr. Lyles?

21 MR. LYLES: Yes, sir. Your Honor, the
22 plaintiff would call Mel Morris.

23 (WHEREUPON, the witness was duly sworn.)

24 THE COURT: All right. If you would, please,
25 sir, give us your full name spelling your last name for

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1 the record.

2 THE WITNESS: My full name is Melvin Eugene
3 Morris, M-O-R-R-I-S.

4 THE COURT: Very good. Thank you, sir.

5 THE WITNESS: Thank you.

6 MELVIN EUGENE MORRIS,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. LYLES:

10 Q. Good morning, Mr. Morris.

11 A. Good morning.

12 Q. I hope you're doing well today.

13 A. Doing okay.

14 Q. Have you testified before, Mr. Morris?

15 A. No, sir.

16 Q. Well, just try to answer my questions. And I've
17 stood over here because I want you to make sure that you
18 enunciate loudly so that the jury can hear you, even
19 though the room is microphoned.

20 A. Okay. Let me know if I'm not speaking loud enough.

21 Q. Yes, sir, I will. Thank you very much.

22 A. Thank you.

23 Q. Mr. Morris, were you affiliated with a company
24 called Bostic Brothers Construction?

25 A. Yes, I was.

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1 Q. And when did you become affiliated with Bostic
2 Brothers Construction?

3 A. I would say in the mid 90s. I don't remember
4 exactly the year. '96, '5, '6, '7. Somewhere in there.

5 Q. And was Bostic Brothers Construction domiciled in
6 North Carolina?

7 A. Yes, they were.

8 Q. And what was the city?

9 A. In Greensboro, North Carolina.

10 Q. And how did you become familiar with Bostic Brothers
11 Construction?

12 A. I was the superintendent/project manager on a job
13 that Bostic Construction/Bostic Brothers Construction,
14 was doing at the Cardinal in Greensboro.

15 Q. What's the Cardinal?

16 A. The Cardinal is a development outside -- northwest
17 of Greensboro pretty near the airport.

18 Q. So you were actually employed by Bostic Brothers
19 Construction in connection with the Cardinal?

20 A. I had a contract with Bostic Brothers Construction
21 to do the field supervision and do the project management
22 work on that project. That's correct.

23 Q. So at that point in time, you had a different
24 company?

25 A. No. I was just an individual by my person.

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- 1 Q. And what sort of license did you have?
- 2 A. I had no license.
- 3 Q. And so you were a project manager and job
- 4 superintendent, did you say?
- 5 A. Right.
- 6 Q. But you didn't have a license?
- 7 A. Well, I was in contract with Joe Bostic. Joe had
- 8 the license for Bostic Brothers Construction who had the
- 9 general contractor's license for that project.
- 10 Q. So you were working on the Cardinal project under
- 11 the license of Joe Bostic?
- 12 A. That's correct.
- 13 Q. Have you ever been licensed in the State of North
- 14 Carolina ---
- 15 A. I have not.
- 16 Q. If you'll allow me to finish asking my question
- 17 before you give me an answer.
- 18 A. I will.
- 19 Q. I'll try to do my best to let you finish your answer
- 20 before asking another question. Okay?
- 21 A. That's fine.
- 22 Q. Thank you. So you've not had a contractor's license
- 23 in the State of North Carolina?
- 24 A. That's correct.
- 25 Q. Have you ever had a contractor's license in any

1 other state?

2 A. I have not.

3 Q. Are you licensed in any capacity in the design or
4 construction business in any state?

5 A. I am not.

6 Q. If you would, describe for me what the business was
7 of Bostic Brothers Construction when you became
8 affiliated with the company in the late 1990s.

9 A. It was on a project at the time with the
10 construction company then. We worked in -- the first
11 project we worked in phases. We'd finish one phase and
12 move to a different phase. So we would do maybe seventy
13 units at a time or so, seventy-two. And then we would
14 finish those and move to the next phase. The Cardinal
15 project lasted probably over two years. It was maybe
16 between two fifty and three hundred units. I don't
17 exactly remember. And then we would finish a phase, and
18 then we would go to the next phase.

19 Q. And so at the time you became affiliated with Bostic
20 Brothers, they were working on that one project, the
21 Cardinal?

22 A. That's correct.

23 Q. And that was an apartment project; is that right?

24 A. That's correct.

25 Q. And is that apartment project -- was it owned by the

1 Bostic Brothers in some capacity?

2 A. It was.

3 Q. And so the Bostic Brothers were effectively using
4 their own construction company to construct apartment
5 buildings for them?

6 A. That's correct.

7 Q. And after the Cardinal was complete, did you do
8 other projects with Bostic Brothers Construction?

9 A. After that project was completed, we did a project
10 for Joe's college roommate in Raleigh, North Carolina.
11 It was a seventy-two unit project. Steve Kinney was the
12 owner/developer, and Bostic Brothers Construction was the
13 general contractor.

14 Q. And was that also an apartment project?

15 A. That's correct. It was a seventy-two unit apartment
16 project.

17 Q. And if we focus on the time period between the late
18 1990s when you became affiliated with Bostic and doing
19 the Cardinal project in 2002 when the Stoneledge project
20 began, how many apartment buildings would you say that
21 you had built with Bostic Brothers Construction Company?

22 A. Between the Cardinal Apartments and the Lake Keowee
23 project, I would say we built close to a thousand units.
24 Between maybe five hundred and a thousand. We built
25 several units.

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1 Q. And when you refer to units, again, you're referring
2 to apartment units?

3 A. That's correct. All apartment units.

4 Q. And were they all owned in part, in whole or in
5 part, by the Bostic Brothers in some capacity?

6 A. Not all.

7 Q. On any projects that were not owned by the Bostics
8 other than the one that was done for Mr. -- I think you
9 said -- McKinney or Kinney?

10 A. Kinney. Yes, there were projects that they owned
11 only part of, and there were projects that they owned
12 nothing in that Bostic Brothers Construction served as
13 the general contractor for those projects.

14 Q. Do you agree that there is a distinction between the
15 construction of an apartment building, apartment units,
16 and condominiums or townhomes that are supposed to be or
17 going to be put in the stream of commerce and sold to the
18 public?

19 A. Well, there's design differences for sure between
20 townhomes and flat garden apartments. You know, the flat
21 garden apartments have also been built as condominiums,
22 so they have some similarities in terms of the products
23 that are used in those projects. It's the design that's
24 mainly different, but the products are generally the
25 same. There may be an upgrade in cabinets or an upgrade

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1 in kitchen faucets or an upgrade in carpet, but it's
2 generally the same line of products that are being used
3 in both of those developments.

4 Q. And, of course, with apartment buildings that the
5 Bostic Brothers were building and owning themselves, they
6 would ultimately be responsible for long-term maintenance
7 and care of those buildings while they owned them as
8 apartments; is that right?

9 A. That's correct.

10 Q. But when units are constructed for sale to the
11 public, then the public assumes responsibility for the
12 maintenance and repair or the owners assume
13 responsibility for maintenance and repair?

14 A. Well, there is, I guess a one-year warranty period
15 generally with those units. But then after that, either
16 the homeowner or the association, whichever it might be,
17 would assume that responsibility.

18 Q. How did Bostic Brothers -- well, let me step back.
19 When did Bostic Brothers become involved in what we now
20 refer to as the Stoneledge property?

21 A. I guess probably early 2000. I'm not sure exactly
22 what the dates are.

23 Q. And tell me how that occurred. Do you know?

24 A. Well, one, it was in Clemson. And we had -- we were
25 building probably quite a few units at that time. And it

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1 was an opportunity really for Joe and Jeff to go back and
2 build something around Clemson. And the Lake Keowee
3 project came through some negotiations with someone. And
4 we negotiated an opportunity for them, for us, for Bostic
5 Construction to build that project.

6 Q. And you think that was in about 2000?

7 A. All those years run together. I'm not sure what the
8 exact date of that was, but I would say probably the late
9 '90s or the early 2000s. Yes, about then.

10 Q. And what was your position at Bostic Brothers
11 Construction when Bostic Brothers Construction got
12 involved in the Stoneledge project?

13 A. So if it was 2000, I don't -- I may have been
14 president then. I probably wasn't president then. Joe
15 was still involved in the company in 2000, so I was
16 probably -- I was vice president of Bostic Construction
17 at that time, I think.

18 Q. And did you have an ownership interest in Bostic
19 Brothers Construction?

20 A. I had some ownership interest at that time. It was
21 -- I'm not sure whether it was the thirty percent at that
22 time or the forty-nine percent at that time.

23 Q. And when did you first obtain an ownership in Bostic
24 Brothers Construction?

25 A. Late 1990s. I'm not sure exactly when that was

1 either.

2 Q. And who were the owners of Bostic Brothers
3 Construction along with you during the time period from,
4 say, 2000 to 2004?

5 A. If memory serves me well, Joe and Jeff were owners
6 of Bostic Brothers Construction until sometime late 1998
7 or '99, at which time I purchased Jeff's position in the
8 construction company and became a forty-nine percent
9 owner, and Joe a fifty-one percent owner. And I may have
10 owned -- I don't think I owned anything before that.

11 Q. Was that your ownership percentage throughout the
12 life of Bostic Brothers Construction?

13 A. Well, it changed when Joe resigned in 2003. And I
14 became a sixty percent owner, and Jeff was a forty
15 percent owner.

16 Q. So in 2003, up until the time that Joe resigned,
17 which you just said it was 2003, did you and Joe own
18 Bostic Brothers Construction?

19 A. I think I'm getting some of these things confused
20 possibly because I don't remember all the dates. And I
21 haven't written them down, so I don't remember. But
22 there was a time that we transitioned, and I think we
23 sold some of the interest back to Jeff. And I'm not sure
24 what that calculation was. And I'm not sure really how
25 much I owned in 2002. I know that I got some ownership

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1 probably '97, '98. And then when Jeff retired and moved
2 back to Atlanta, I think that we sold him an interest
3 back in the construction company. And I'm really not
4 even sure about that, but I think that's what happened.
5 And then when Jeff retired -- I mean, when Joe retired
6 from the construction company in January of 2003, we
7 redid the ownership. And I was a sixty percent owner in
8 the construction company, and Jeff was a forty percent
9 owner in the construction company.

10 Q. When Bostic Brothers began the work on -- or its
11 work at Stoneledge -- at the time the project was called
12 what? It was called something different, wasn't it?

13 A. I think -- I'm not sure what it was. It was
14 different. I don't think it was Stonehedge [sic].

15 Q. The Townhomes at Lake Keowee ---

16 A. Could have very well been. Excuse me.

17 Q. But we're talking about the same project. You're
18 familiar with the place I'm talking about?

19 A. Yes, sir. I have one in my mind. I hope it's the
20 same.

21 Q. Yes.

22 A. Yeah.

23 Q. Okay. At the time that Bostic Brothers Construction
24 started its work at Stoneledge, do you know who the
25 owners were of Bostic Brothers Construction?

1 A. Well, I know it was some formula with Joe, Jeff and
2 I. I do know that. I don't really know what the
3 percentage was at that time.

4 Q. And at the time that that work was started, would
5 you describe the responsibilities of the three owners
6 within the company? What did you do, what did Jeff do,
7 and what did Joe do?

8 A. I think Joe would have been the president up until
9 2003, so he would have done those duties. I was the -- I
10 was responsible for the construction and the purchasing
11 and the procurement of the subcontractors. We had
12 developed a program of what we call vertical integration.
13 And it was that we sort of had a deal with all of the
14 contractors that we would find the projects and we would
15 develop a core of contractors that were willing to
16 travel, because we were working in North Carolina on
17 several different jobs and then South Carolina and some
18 in Georgia. I don't know at that time what we had under
19 construction in Georgia, but we had several contracts in
20 several different cities. And we developed a group of
21 contractors that would travel to those different projects
22 and do the construction on those projects. So we tried
23 to be consistent across the board in who our contractors
24 were and try not to have new contractors on every job.
25 And that worked very well for us because we didn't have

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1 to spend time finding subcontractors. And we were able
2 to control that, the work production. And that worked
3 well.

4 Jeff was involved in the construction company then
5 very minimally. He was living in Atlanta. And I'm not
6 -- we opened an office in Atlanta sometime before the
7 Lake Keowee project, I think. And Jeff worked more on
8 the development side, equity raising, than he did in the
9 construction company. So both Joe and Jeff were mostly
10 managers. They were not on-site guys who traveled to all
11 the jobs every day looking at those projects and making
12 sure that the work was done. So they were more involved
13 on the equity side, on the management side, than they
14 were in the actual physical construction of the projects
15 that we had under construction.

16 Q. When you say management, you mean management of the
17 business, not management of the construction?

18 A. Yeah. Mostly in the management of the business.
19 And really there was a lot to go into getting projects
20 underway and funding projects with either their own
21 equity or equity partners that may come to surface from
22 time to time.

23 Q. Mr. Morris, I'm going to show you a document ...

24 MR. LYLES: Could I have this marked, please?

25 (WHEREUPON, Plaintiff's Exhibit Number 8 was marked

1 for identification only.)

2 Q. I'm going to show you what I've marked as
3 Plaintiff's Exhibit 8 and ask you if you can identify
4 this. It came from your deposition transcript. Just see
5 if you recognize what's contained within number 8?

6 A. It appears to be a marketing piece prepared for this
7 project, for the Townhomes at Lake Keowee.

8 Q. And the first couple of pages of that is a
9 description of Bostic Brothers Construction at that time;
10 is that right?

11 A. Yes. This was the marketing description of Bostic
12 Brothers Construction.

13 MR. LYLES: Your Honor, I'd like to move that
14 in as Plaintiff's Exhibit 8.

15 THE COURT: Any objection?

16 MR. BELCHER: Without objection, Your Honor.

17 THE COURT: All right. Without -- Mr. Imhoff?

18 MR. IMHOFF: No objection, Your Honor.

19 THE COURT: All right. Without objection,
20 Plaintiff's Exhibit Number 8 is admitted.

21 (WHEREUPON, Plaintiff's Exhibit Number 8 was
22 admitted into evidence.)

23 THE COURT: You may proceed.

24 MR. LYLES: Thank you very much.

25 Q. In the first couple of pages of the marketing

1 literature, I think that you refer to the vertical
2 integration process; is that right?

3 A. That's correct.

4 Q. And by vertical integration, as I understand it, you
5 have a collection of subcontractors that are utilized by
6 Bostic Brothers Construction on jobs wherever those jobs
7 take place?

8 A. That was the intent, yes, sir.

9 Q. And the idea being that you didn't have to move from
10 city to city and find local people. You had folks you
11 were comfortable with; is that right?

12 A. That's correct.

13 Q. And you were working in -- I think you mentioned at
14 the time you began the work at the Keowee project, you
15 were working in -- had several jobs in North Carolina,
16 had a job in South Carolina and maybe one in Georgia?

17 A. We probably had several jobs at that time, yes.

18 Q. There was a reference two days ago to y'all having
19 twenty jobs going on at the time y'all were working at
20 Stoneledge. Is that something that rings a bell?

21 A. You know, I think the time period at Stonehenge
22 [sic], if it ran from 2001 -- I'm not sure when the start
23 was. But during that period of time, we were growing
24 quite rapidly, and we had several jobs in several states.
25 I mean, I don't know if was twenty -- could very well

1 have been -- at different times of the construction going
2 on at Lake Keowee. I mean, because that went on until
3 2004, I think. And so we quite possibly had, at one time
4 during that time period, as many as twenty projects under
5 construction.

6 (WHEREUPON, Plaintiff's Exhibit Number 9 was marked
7 for identification only.)

8 Q. Mr. Morris, I'm going to show you what I marked for
9 identification as number 9 and ask you if you if you
10 recognize that?

11 A. Yes, I do.

12 Q. And what is it?

13 A. It is a list of subcontractors that Bostic used and
14 their payment schedule.

15 Q. And is that a list of subcontractors that Bostic
16 would have used as part of this vertical integration
17 process?

18 A. The vertical integration process references a
19 different set of things, not subcontract labor. We did
20 additional things that are off-site that is part of the
21 vertical integration, what we called vertical
22 integration. But it has really nothing to do with this
23 list of subcontractors.

24 Q. Were those subcontractors that Bostic utilized on
25 some number of the jobs that it had ongoing?

1 A. That's correct. It is.

2 Q. And those are subcontractors that you personally had
3 approved for use on Bostic Brothers Construction
4 projects?

5 A. That's correct.

6 Q. Did Jeff or Joe have any responsibility in
7 connection with the selection of subcontractors?

8 A. They had -- they utilized no say in the selection of
9 the contractors.

10 MR. LYLES: Your Honor, I'd like to move that
11 in as Plaintiff's Exhibit 9.

12 MR. BELCHER: Without objection.

13 THE COURT: Plaintiff's Exhibit Number 9 is
14 admitted without objection.

15 (WHEREUPON, Plaintiff's Exhibit Number 9 was
16 admitted into evidence.)

17 Q. Mr. Morris, what did you do to assess the
18 qualifications of subcontractors that you utilized for
19 Bostic Brothers Construction projects?

20 A. Well, they generally all came with a history of that
21 particular trade they were doing. So we, from time to
22 time, had a program and classes on how to do certain
23 individual things. Mostly had to do with OSHA compliance
24 and utilizing the right materials or the materials that
25 were given to them on those projects and how to do

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1 certain areas of complete work and design work.

2 Q. Did you go out and actually personally inspect work
3 that had been done by the subcontractors on that list to
4 satisfy yourself that it had been done properly?

5 A. Well, certainly if we had twenty jobs going at one
6 time or even ten jobs going at one time while we were
7 building this project, personal assessment by myself was
8 virtually impossible. I could not get to all of those
9 jobs. I did travel a lot. And I did visit jobs from
10 time to time, but not in a constant, everyday Monday,
11 Tuesday, Wednesday, Thursday, Friday on every job. It
12 was impossible to do.

13 Q. Well, rather than asking about compliance or job
14 performance on each and every individual job, did you at
15 least satisfy yourself by looking at work that those
16 subcontractors had done on some jobs to ensure that in
17 your mind they were capable of doing the work that you
18 required them to do?

19 A. Well, we had built lots of jobs, so I was very
20 convinced that the work being done on any and every job
21 was the same across the board. And I had no reason to
22 doubt that we were building it in compliance with the
23 plans and the specifications as well as meeting the
24 requirements of the local inspection office. So I
25 visited jobs. If there was problems on a job per se, I

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1 would go definitely and try to render through those.
2 Generally, we had no problems on jobs in terms of
3 construction and inspections. So I was never alerted to
4 deficiencies or if, you know, if we were beyond what the
5 plans and the specifications were.

6 Q. Are you familiar with the licensing requirements in
7 the various states?

8 A. I'm somewhat familiar with that, yes.

9 Q. Are you familiar with licensing requirements in
10 South Carolina for contractors?

11 A. Not particularly, but I am cognizant of the fact
12 that you have to have a general contractor's license in
13 order to build projects of this size.

14 Q. Are you familiar with licensing requirements in
15 South Carolina relative to specialty subcontractors?

16 A. No, sir. I mean, other than the heating, electrical
17 and plumbing.

18 Q. And any other subcontractors that you can think of?

19 A. None that I think of that may have to have a special
20 license.

21 Q. Masons?

22 A. I'm not sure that they do, sir.

23 Q. Framers?

24 A. Not sure that they do, sir.

25 Q. Roofers?

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1 A. Not sure that they do, sir.

2 Q. Do you know whether or not Georgia has requirements
3 that require subcontractors like that to be licensed?

4 A. Not for residential construction, no, sir.

5 Q. Meaning that you're not familiar with whether or not
6 it requires it in Georgia?

7 A. No, sir, I'm not familiar.

8 Q. How about in North Carolina?

9 A. In North Carolina, as far as I know, only the
10 general contractor and the H.V.A.C., electrical, and the
11 plumber.

12 Q. So it's fair to say that your knowledge of licensing
13 requirements for subcontractors in South Carolina when
14 Bostic Brothers Construction was constructing Stoneledge
15 was incomplete?

16 A. Well, I don't know ---

17 MR. BELCHER: Objection.

18 THE COURT: Yes, sir.

19 MR. BELCHER: I object to the form of that
20 question, Your Honor.

21 THE COURT: Restate your question.

22 Q. At the time Bostic Brothers Construction was
23 performing the work at Stoneledge, you were unaware of
24 the licensing requirements for subcontractors?

25 MR. BELCHER: Objection again. I think that

1 misstates his testimony.

2 THE COURT: I think so. Let's do this. Ask
3 him if he has any other licensure requirements or was he
4 aware of any other licensure requirements other than what
5 he's mentioned.

6 Q. Other than the requirement that the general
7 contractor be licensed in South Carolina and other than
8 the requirement that an H.V.A.C. subcontractor and a
9 plumber to be licensed, do you have any knowledge of any
10 requirement for any other subcontractor in South
11 Carolina?

12 A. The licensing or the permit ensuring [sic]
13 department -- I don't know. That's not the right word.
14 But issuing, I'm going to say. The planning and
15 developing departments of each and every place that we
16 built had certain requirements for subcontractor
17 licensing. Whether it was in Georgia, North Carolina,
18 South Carolina, anywhere, the local county
19 representative, inspection department and planning
20 department would require you to have certain license. If
21 those license were required by other subs, then I would
22 have knowledge of that because we could not get a permit
23 without having licensed subs. So I have knowledge
24 inasmuch as the inspection departments, planning
25 departments required certain license, and they would

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1 require us to have those contractors licensed.

2 Q. Do you have any knowledge whether or not the
3 stonemasons that were used by Bostic Brothers
4 Construction on phase one had any sort of license in
5 South Carolina?

6 A. I am not -- I have no knowledge of that. No, sir, I
7 do not.

8 Q. Do you know whether or not the contractor or
9 subcontractor who installed the foundation walls at
10 Stoneledge was licensed in any way in this state?

11 A. Here's what I think. The stone was a veneer. It
12 wasn't a foundation. It was not a supporting part of the
13 vertical construction of the project. It was on face
14 veneer. It was attached to the foundation wall, which I
15 think in this case were eight by eight concrete blocks,
16 as best I remember. And this was veneer that was either
17 glued on or it was put on on top of the mortar base that
18 they put on the side of the foundation. So the stone had
19 no significance in the vertical integration of those
20 foundations. It was not really a foundation piece. It
21 was a veneer piece. It was just stuck on. It could have
22 very well could have been paint or just -- but the stone
23 was there for decoration purpose and eye to sight to
24 enhance the community. It could have been anything.

25 Q. So you don't know whether or not the subcontractor

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1 who installed it was licensed in any way in South
2 Carolina?

3 A. I do not know.

4 Q. And it's your recollection that the columns and
5 piers related to the porches and decks at Stoneledge are
6 constructed out of concrete block?

7 A. I'm not sure whether they're block or whether
8 they're -- I mean, I've seen pictures of wood frame stuff
9 that you had earlier, so -- but once again, the stone
10 would have been only a veneer and not a structural part
11 of that.

12 Q. You mentioned that Joe Bostic had a general
13 contractor's license in North Carolina. Do you know
14 whether or not he had one in South Carolina?

15 A. I'm sure that he did, yes, sir.

16 Q. And is that the license under which Bostic Brothers
17 Construction was building Stoneledge?

18 A. I'd have to look at the record, but I think so.

19 Q. And then when he retired, I think you said in
20 January of 2003 and left the company and took his license
21 with him, what, if anything, did Bostic Brothers
22 Construction do about licensing?

23 A. We had several people in our company that were
24 licensed. That was part of our upgrading our employees
25 and having them being a contractor, licensed contractor.

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1 And their licenses were assigned to Bostic Brothers
2 Construction. So after Joe retired, we may have used
3 their contractor's license as part of Bostic
4 Construction, not Bostic Brothers Construction.

5 Q. So after Joe retired, it became Bostic Construction?

6 A. That's correct.

7 Q. There's no Bostic Brothers?

8 A. No. It became Bostic Construction.

9 Q. Bostic Construction after Joe retired?

10 A. After Joe retired.

11 Q. But that was after you -- it had -- the Stoneledge
12 project had begun?

13 A. Well, Joe retired in 2003. And I guess we began
14 that project somewhere in 2001 or '2. I'm not sure.

15 Q. Now, the ownership of Bostic Construction was you
16 and Joe?

17 A. Depending on what year you're speaking of. It was
18 always Joe, Jeff and myself, or Joe and Jeff at the early
19 days. Joe, Jeff and myself. And then Joe and I, and
20 then Joe, Jeff and myself, and then Jeff and myself
21 during that time span if you can figure all of that out.

22 Q. I think I've got it.

23 A. It's a puzzle.

24 Q. After Joe retired in early 2003 when you were still
25 working on the Stoneledge project or the Keowee project?

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1 A. Yes. We did not leave that project, I don't think,
2 until late 2004 or mid summer, late summer.

3 Q. Who had the license with the company that was doing
4 the construction in South Carolina -- that is the general
5 contractor's license -- at that point?

6 A. I'm not sure who that would be.

7 Q. It wasn't you?

8 A. It was not me, no, sir.

9 Q. And it was not Jeff?

10 A. It was not Jeff.

11 Q. You mentioned a moment ago that you had a lot of
12 jobs going on at the time Bostic was working on the
13 Stoneledge project. You didn't have an opportunity to
14 get around to every job all the time; is that right?

15 A. That's correct.

16 Q. And I believe you testified during your deposition
17 that you got to Stoneledge once every month to six weeks?

18 A. Well, at least once every month, I was there
19 probably.

20 Q. And what would you do when you went there?

21 A. I mean, if there were no issues, I would walk units
22 and I would have conferences with the superintendent.
23 And maybe the development manager would be there as well.
24 And we would basically talk about the progress or the
25 problems that we were having on the site on that

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1 particular job.

2 Q. What were some of the problems that you can recall
3 having on Stoneledge?

4 A. I really don't recall too many or if any at all
5 actually. It more had to do with the piers, the access
6 to the piers, to the boat ramps and different things. I
7 mean, the project went along well. And I mean, there
8 were no major projects -- I mean, no major problems that
9 I remember.

10 Q. Did Bostic Brothers Construction have an interest in
11 the sale of the Stoneledge units or Lake Keowee
12 Townhomes?

13 A. Well, I think the development side -- we had a
14 development project manager on that job at that time. I
15 think a young man working out of the Atlanta office. And
16 he worked with the local sales company there. I think we
17 had -- and I don't even remember. I think we had a house
18 in front of Lake Keowee that they used for sales. Now,
19 that may not be exactly correct, but I think that is what
20 happened. And I'm not even sure who the sales people
21 were if you want to know the truth. I know -- but I do
22 think we had some.

23 Q. Okay. And when you say we, are you referring to you
24 and Joe and Jeff?

25 A. I'm referring to the development, Bostic Development

00608

1 and Management and the project manager that was assigned
2 to Lake Keowee.

3 Q. And did you have an interest in that development
4 entity?

5 A. At that time, I may have had a twenty or forty
6 percent, I don't know, in Bostic, Bostic Development.

7 Q. And was the balance of that company owned by Jeff
8 and Joe Bostic?

9 A. I don't think Joe was a part of the ownership in the
10 development company. I don't remember. And then Jeff
11 had an ownership in the development company. And I'm not
12 sure what those ownerships were. Ownerships in those
13 companies didn't interest me much, so I really didn't
14 care.

15 Q. Were you personally profiting, either through Bostic
16 Brothers or Bostic Development Company, from the sale of
17 Stoneledge units?

18 A. No.

19 Q. In other words, you didn't realize a profit; is that
20 right?

21 A. No, I didn't. But Bostic Construction or Bostic
22 Development, other than the salary that I was making,
23 never made a contribution to my income.

24 Q. Do you know whether or not Jeff or Joe ever profited
25 from the sale at Stoneledge?

1 A. They did not.

2 Q. Did they have the opportunity to? In other words,
3 was there a business model where if the development had
4 gone better, there would have been a profit realized?

5 A. If we had built out that total project, I would have
6 hoped there would have been a profit.

7 Q. Was the Stoneledge project the first for-sale
8 project done by Bostic in South Carolina?

9 A. We may have had -- we may have started -- and I
10 think that we did -- a for-sale project in Charleston,
11 Riverland Woods. That would have been running parallel
12 with the Lake Keowee development.

13 Q. So it was either the first or barely the second for-
14 sale project in South Carolina?

15 A. Yes. Yes. Right. We did not do a lot of for-sale
16 projects.

17 Q. Most of your work was apartments?

18 A. Yes. And they were mostly, yes, the Bostic Botch as
19 we refer to it.

20 Q. Now, at the time Bostic was constructing Stoneledge,
21 do you know what building code applied to that
22 construction?

23 A. Particularly, I do not know the exact name of the
24 building code. I would assume it was that South Carolina
25 has a building code as well as the Oconee County would

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1 have. But I don't know whether it was a national code or
2 a South Carolina code. I do not.

3 Q. Do you ever recall looking at the plans, the
4 architectural plans that were done for this project by a
5 company called Miller Player?

6 A. I'm sure that I have, yes, sir.

7 Q. Do you remember that the plans called out for
8 construction to be in conformance with a certain building
9 code?

10 A. Well, I'm sure the architect did, yes.

11 Q. But you don't remember what that was?

12 A. I don't remember which code it was in reference to,
13 no, sir.

14 Q. Would you agree with me that Bostic, in substantial
15 ways, did not build these units as reflected on the
16 plans?

17 A. I'm not sure of that, no, sir.

18 Q. Do you remember that Bostic put on a different
19 siding than called for in the plans?

20 A. I'm not sure about that.

21 Q. Do you remember a different deck construction, deck
22 and balcony construction, that was called for in the
23 plans?

24 A. I do not remember that either, sir.

25 (WHEREUPON, Plaintiff's Exhibit Number 10 was marked

1 for identification only.)

2 Q. I'm going to show you what I marked as number 10 and
3 represent to you that this is a grouping of building
4 permits relative to this project that were pulled by
5 Bostic. If you'll take a moment, and I'll ask you if you
6 recognize those documents. Do you recognize those
7 building permits?

8 A. I don't know that I've seen these previously.

9 Q. Do they appear to be permits that were pulled by
10 Bostic Construction ---

11 A. They ---

12 Q. --- relative to this project?

13 A. They appear to be. Excuse me from interrupting
14 there. But as I look at these, I see a gentleman listed
15 here as Mr. Johnson. I think Jeff Johnson.

16 Q. Yes.

17 A. I'm not even sure who that is. I don't know that I
18 know Jeff Johnson referencing this set of building
19 permits.

20 Q. Okay. Do you recall a Jeff Johnson working for
21 Bostic Brothers Construction?

22 A. I do not remember. He may very well have because we
23 had lots of superintendents in different places.

24 Q. Do you recognize any other names on the building
25 permits that are in front of you?

1 A. None of the signatures. Sherry Spearman, I do not
2 know who that is. I guess she is a representative of
3 Oconee County. But these appear just to be permits.
4 Jeff Johnson may have very well worked for Bostic at that
5 time as a superintendent on that project.

6 Q. What other superintendents that were working for
7 Bostic would you have expected to pull the building
8 permits?

9 A. Well, you know, if the County allows employees or
10 agents, whatever, as an employee, to sign for permits to
11 get them issued -- obviously, we'd already paid for these
12 permits, so they were just ready to be picked up. I
13 think sometimes different counties have different
14 procedures about that. But generally, it's the
15 construction project manager that signs for those
16 permits. That's generally the way it is.

17 Q. Would you agree that Bostic in fact did go and
18 secure building permits for their work at the Stoneledge
19 project?

20 A. Well, I would assume so because this is -- all of
21 these are contractors of Bostic Brothers. So I think the
22 answer would be yes.

23 Q. Okay. And I think you said a moment ago that Bostic
24 Brothers would have paid the County ---

25 A. Yes.

1 Q. --- the fees that were required for the permits?

2 A. Well, I'm not sure whether the development company
3 would have paid that or whether -- no. The construction
4 company would have paid for that permit as a part of its
5 overhead.

6 Q. Okay. And you recognize all of those permits to be
7 permits for Bostic Brothers Construction?

8 A. Yes, sir. They all are assigned to Bostic Brothers
9 Construction. Some Bostic Brothers but all Bostic
10 Brothers Construction.

11 Q. All right. I think that was number 10; is that
12 right?

13 A. Number 10, yes, sir.

14 MR. LYLES: Your Honor, I'd like to move to
15 admit that exhibit into evidence.

16 MR. BELCHER: No objection.

17 THE COURT: All right. Without objection.
18 Plaintiff's Exhibit Number 10 is admitted.

19 (WHEREUPON, Plaintiff's Exhibit Number 10 was
20 admitted into evidence.)

21 Q. Mr. Morris, would you agree with me that building
22 permits obligate the contractor who pulls those permits
23 to comply with local ordinances and the building code
24 generally?

25 A. I would agree that, yes, that we would build the

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1 building in compliance with the plans and the
2 specifications, all of which would be inspected by the
3 local authority and inspected by the architect as well.

4 Q. Speaking of the architect, with regard to those
5 representations and the obligations that a company
6 pulling a building permit, you would agree that those
7 obligations are the obligations of the general contractor
8 even where the work that is done by a subcontractor?

9 A. Well, the ultimate responsibility lies with the
10 general contractor. But the subcontractor as well is
11 responsible for doing his work according to the plans and
12 the specifications. And I would think that the contracts
13 that each of those subcontractors had on this job would
14 have been in compliance with that.

15 Q. And a general contractor's duties, even when a
16 general contractor hires subcontractors to do work, the
17 general contractor's duties include things such as
18 sequencing or scheduling the subcontractors; right?

19 A. That's correct.

20 Q. And ensuring that qualified subcontractors are
21 retained to do the work?

22 A. That's correct.

23 Q. And does the general contractor also, as part of
24 their obligations, observe generally the work that is
25 being performed by subcontractors?

1 A. Well, that's the responsibility of the
2 superintendents that are assigned to those jobs and the
3 project manager that's in charge of the superintendents
4 ultimately, working with the local board or the local
5 inspection department. And each of those buildings have
6 to be inspected at different times and the architect,
7 when he comes on site once a month to review the work and
8 review the changes.

9 Q. And one of the obligations or one of the objectives
10 of the job superintendent is to ensure that the work of
11 the subcontractor is being done in conformance with local
12 ordinances and building codes?

13 A. Yes, sir, in compliance with.

14 Q. And you mentioned the architect a moment ago. Did
15 you, Bostic Brothers Construction or you personally, did
16 you have any relationship with the architect Miller
17 Player?

18 A. I think Miller Player was the architect when we
19 purchased the property from Mr. Carpenter, I think, or
20 his group, whatever that group was. And I don't remember
21 that either. So I had very little interface with Miller
22 Player.

23 Q. And did you ever meet anyone from Miller Player that
24 you know of?

25 A. I may have. I may very well have at one point in

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1 time.

2 Q. You mentioned just a minute ago the architect's
3 obligation to observe construction during the
4 construction process; is that right?

5 A. That's correct.

6 Q. Is that something that's generally referred to in
7 the business as contract administration services?

8 A. Yes.

9 Q. And an architect can actually contract with an owner
10 or a contractor to provide those contract administration
11 services; is that right?

12 A. That's generally the way that it's done, yes.

13 Q. And they do it for obviously a fee?

14 A. That's correct.

15 Q. They get paid by the hour to go out; is that right?

16 A. By the hour or by the contract or whatever.

17 Q. Do you know what level of contract administration
18 services Miller Player had in connection with the work
19 that Bostic did at Stoneledge?

20 A. I do not.

21 Q. Do you have any recollection of specifically
22 contracting with Miller Player to perform those services?

23 A. I did not, no, sir.

24 Q. At any time, did you go out and actually see Miller
25 Player performing that level of service on those

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1 properties?

2 A. I do not know that they were on the job when I was
3 on the job. I do not recall that.

4 Q. You mentioned the foundation -- do you need some
5 water?

6 A. Pardon me. I'm good.

7 Q. Just a moment ago, we were talking about foundation
8 walls. What do you remember about the foundation walls
9 that were installed by Bostic at Stoneledge?

10 A. I don't remember much. I do know the foundations
11 were the block. They were all masonry concrete block.

12 Q. And are you familiar with a product call Superior
13 wall?

14 A. Superior walls? I remember the name. I don't know
15 in what reference.

16 Q. Do you know if that product was installed at
17 Stoneledge?

18 A. I do not know. Could have been.

19 Q. Do you know what subcontractor would have done that
20 work?

21 A. I guess Superior walls. I don't know.

22 Q. Do you know what subcontractor, if any, would have
23 waterproofed that wall?

24 A. I do not know.

25 Q. You had a subcontractor on this project, I believe,

1 named Nino.

2 A. Yes. Jose Nino, yes.

3 Q. And do you recall specifically Jose Nino working on
4 the Stoneledge project?

5 A. I do not recall specifically -- what is it? --
6 certificately [phonic] that he was there. He was the
7 framing contractor for Bostic on all of our jobs. So I
8 would assume in reference that he traveled from city to
9 city, job to job, framing, that he was indeed the
10 contractor on this particular job.

11 Q. But you don't know that in particular?

12 A. I don't remember. There was no reason other --
13 there's no other reason for someone else to have done
14 that job because he was doing all of our jobs at that
15 time.

16 (WHEREUPON, Plaintiff's Exhibit Number 11 was marked
17 for identification only.)

18 Q. Mr. Morris, I'm going to show you a set of documents
19 that's been marked as number 11 and ask you if you
20 recognize those documents?

21 A. Yes, sir. These appear to be a set of invoices
22 prepared for Jose Nino on the Lake Keowee project.

23 MR. LYLES: Your Honor, I'd move to have that
24 admitted as Plaintiff's Exhibit 11.

25 MR. BELCHER: That's without objection.

1 THE COURT: That includes Mr. Anderson; right?
2 You've looked at them?

3 MR. ANDERSON: I have, Your Honor, yes.

4 THE COURT: Very well. All right. Without
5 objection, Plaintiff's Exhibit 11 is admitted.

6 (WHEREUPON, Plaintiff's Exhibit Number 11 was
7 admitted into evidence.)

8 (WHEREUPON, Plaintiff's Exhibit Number 12 was marked
9 for identification only.)

10 Q. Now, Mr. Morris, I'm going to hand you another
11 document that's been marked as number 12 and ask you if
12 you recognize that document as well?

13 A. I'm not sure that I've seen this document
14 previously. And I may have, but I'm not sure. But it is
15 a Bostic Brothers Construction invoice approval form that
16 should match the same invoice that Jose Nino would submit
17 for approval for payment.

18 Q. And does -- excuse me -- number 12, does it refer to
19 invoices that have been submitted by Mr. Nino?

20 MR. ANDERSON: Your Honor, I'd object at this
21 point. He said he's not seen this document before. It
22 was a standard business form. I would object.

23 MR. LYLES: Well, I'm asking him if it refers
24 to Jose Nino. I'll establish ---

25 THE COURT: Well, just lay the proper

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1 foundation.

2 MR. LYLES: Yes, sir.

3 Q. You indicated a minute ago that you've not seen that
4 form, is that correct, until now?

5 A. I indicated that I didn't know if I had. Of course,
6 there was lots and lots of paperwork. See, this project
7 was handled out of the Atlanta office. And I think
8 probably Keith MacConochie was the construction project
9 manager on this. So these numbers would more than likely
10 have been generated there. The invoices process through
11 the Atlanta office back to the Greensboro office for
12 payment. So the probability of me having seen this one
13 particular invoice or group of invoices would indicate I
14 probably did not see it. But it was part of the, I
15 think, of the corporate process, so somebody saw it. But
16 maybe I didn't see it.

17 Q. Do you recognize the form that the information is
18 contained in?

19 A. I do recognize the -- right, the form.

20 Q. And is that a form that was utilized by Bostic
21 Construction in its internal accounting?

22 A. Yeah. It was a detailed accounting method that
23 allowed us to pay Mr. Nino by performing certain things.
24 Like he got money for this one for nails for these seven,
25 eight buildings. And then he got money for doing a floor

1 structure. Then he got money for putting -- so we didn't
2 have to argue about whether he was twenty percent
3 complete or he was seventy percent complete. So this
4 gives us a more quantitative approach to paying him his
5 money. So it was a form that we used for Mr. Nino. And
6 we prepared this generally for him in advance of him
7 being on the job.

8 Q. And you recognize the form, the accounting form,
9 that was used internally by Bostic Brothers Construction
10 even though you have not necessarily seen the information
11 contained on that form before now?

12 A. Yes, sir. We broke down the payment schedules like
13 this on all of the jobs.

14 Q. And so that information that's contained on that
15 form is information that's compiled or was compiled
16 customarily by Bostic Brothers Construction?

17 A. By the project manager for Bostic Construction
18 assigned to the job; that's correct.

19 Q. And can you tell by looking at that form who
20 compiled that information?

21 A. I really cannot, not by looking at this form.
22 There's no -- there are no signatures on this form. And
23 there are -- I mean, I do not see any names that, other
24 than Bostic Brothers Construction, Inc. and invoice
25 approval form. But I do not see any individual

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1 signatures nor initials.

2 Q. Is it your belief that that form that you're looking
3 at that's been marked as exhibit 12 was generated by
4 Bostic Brothers Construction?

5 A. I would believe that it is, yes, sir.

6 Q. And that it relates to work that was done by Jose
7 Nino on this project?

8 A. It would -- yes, it refers to work assigned to Jose
9 Nino on this project.

10 MR. LYLES: Your Honor, with that foundation,
11 I'd move to have it admitted as Plaintiff's Exhibit 12.

12 THE COURT: Any objection?

13 MR. ANDERSON: No, Your Honor. I think he
14 satisfied my objection. Thank you.

15 THE COURT: Very good. Thank you. So
16 Plaintiff's Exhibit Number 12 is admitted.

17 (WHEREUPON, Plaintiff's Exhibit Number 12 was
18 admitted into evidence.)

19 THE COURT: Let's see. Do we have several
20 exhibits you want to get through this?

21 MR. LYLES: This is, I think, the last -- there
22 are three more.

23 MR. BUCKLEY: I think I'm going to stipulate
24 that these come in, but I just want to make sure, Judge.

25 THE COURT: All right. Well, I was just

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1 thinking we've been here about a little over an hour,
2 almost an hour and a half. I would suggest we take a
3 short break while we go through the paperwork.

4 MR. LYLES: Thank you.

5 THE COURT: Very good.

6 Mr. Foreman, if you would, please, retire to the
7 jury room. But, again, do not undertake the discussion
8 among yourselves in any way.

9 (WHEREUPON, the jury exited the open court at
10 approximately 10:56 a.m.)

11 THE COURT: All right. Would you like to
12 stretch your legs?

13 THE WITNESS: I would.

14 THE COURT: Okay. Very good.

15 (WHEREUPON, court stood at recess for a short break
16 during which Plaintiff's Exhibit Number 13 through
17 15 were marked for identification only.)

18 THE COURT: All right. Are we ready to go back
19 on the record from the plaintiff?

20 MR. LYLES: Yes, sir.

21 THE COURT: Defendants ready?

22 MR. BELCHER: Yes, Your Honor.

23 MR. ANDERSON: Yes, Your Honor.

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

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1 (WHEREUPON, the witness resumed the witness stand
2 after which the jury entered the open court at
3 approximately 11:11 a.m.)

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

6 Mr. Lyles, I think before we took the break there
7 were some exhibits that you were going to offer.

8 MR. LYLES: Yes, sir.

9 THE COURT: Has there been any agreement on
10 them?

11 MR. LYLES: There has been an agreement with
12 the lawyer for Mr. Jaramillo.

13 MR. BELCHER: And I have no objection to it,
14 Your Honor.

15 MR. ANDERSON: We agree that they are in
16 evidence, Your Honor.

17 THE COURT: All right. Now, how about put them
18 on record as to what the numbers are?

19 MR. LYLES: Yes, sir.

20 These are exhibits 13, 14, and 15, Plaintiff's
21 Exhibits 13, 14, and 15.

22 THE COURT: Very good. Thank you.

23 (WHEREUPON, Plaintiff's Exhibit Number 13 through 15
24 were admitted into evidence.)

25 DIRECT EXAMINATION

1 CONTINUED BY MR. LYLES:

2 Q. Mr. Morris, I'm going to show you these three
3 exhibits. I'll show them to you and just take a look at
4 them.

5 THE COURT: Excuse me. Without objection,
6 Plaintiff's Exhibits 13, 14, and 15 are admitted. Very
7 good. Thank you.

8 Q. I'll show you these exhibits and let you review
9 them. And then if you'll tell me if you recognize those
10 documents and describe them for the jury.

11 A. Yes. These appear to be a series of invoices from
12 E.E.J., Everado whatever, for work done at Lake Keowee.

13 Q. And the number that you're looking at right now is
14 what?

15 A. Exhibit number 13.

16 Q. Okay. And how about number 14?

17 A. (Reviewed exhibit)

18 Q. When you see E.E.J., would that be Jaramillo?

19 A. Yes. These appear to be a series of invoices that
20 were approved by -- I do not recognize the initial. I
21 would assume that would be a Bostic employee for E.E.J.
22 at Lake Keowee on payments. I do not know that these
23 payments match these invoices, but they are a series of
24 approved payment requests by Everado.

25 Q. Okay. And then number 15, if you will, please?

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1 A. These appear to be a series of checks to Everado,
2 E.E.J. Everado, for different jobs it looks like that he
3 had worked on for Bostic, Lake Keowee being L.K., I would
4 assume. And payments made to him.

5 Q. Okay. Thank you very much. With regard to those
6 two subcontractors, and specifically Mr. Nino, describe
7 for me, if you will, the work that you believe Mr. Nino
8 performed at the Lake Keowee Project.

9 A. Nino Construction would have performed the framing
10 labor which would mean that he would come in after the
11 foundation was set, and he would install the floor
12 trusses, the floor, subfloor. He would install the two-
13 by-four framing, and he would install the second floor.
14 And then he would install the roof and the roof
15 sheathing. He would put the exterior sheathing on the
16 buildings. And that would be about the extent of his
17 framing.

18 Q. Would he install drywall that was associated with
19 fire-rated walls?

20 A. He would install drywall in relationship to fire-
21 rated walls where it had to be installed as a part of his
22 framing if it wasn't exposed after he finished the
23 building. If it was an interior condition, he would
24 install that fire retention drywall, yes, sir.

25 Q. And with regard to the porches and decks, I think

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1 you mentioned a moment ago that you had seen photographs
2 which indicated that the porches and decks at Lake Keowee
3 were constructed with floor joists; is that correct?

4 A. I would have to look at that again. I think they
5 were floor trusses. I'm not sure.

6 Q. Excuse me. Floor trusses. Do you know whether or
7 not the architectural plans for phase one required that
8 the porch and deck framing be sloped away from the
9 houses?

10 A. I do not recall that.

11 Q. If that was required, would you have expected Mr.
12 Nino to slope those porches and decks?

13 A. I would expect him to do that, yes, as part of his
14 job description.

15 Q. And, again, with respect to the work of those
16 subcontractors, Bostic expected those subcontractors to
17 perform their work in conformance with the building code;
18 is that right?

19 A. That's correct.

20 Q. And in conformance with the plans?

21 A. That's correct.

22 Q. And in conformance with industry standards?

23 A. That's correct.

24 Q. But if there was a failure to do that, ultimately
25 it's your belief that Bostic Brothers would have

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1 responsibility for that?

2 A. Ultimately. But we would make every effort to get
3 him back on the particular project, the particular item
4 to fix that project, to fix that deficiency, whatever it
5 may have been at that time.

6 Q. And we may have discussed this earlier. If we have,
7 I apologize. I apologize to the jury for rehashing it.
8 Who specifically at Bostic Brothers Construction was
9 responsible for overseeing the work of the subcontractors
10 at the Stoneledge project?

11 A. The project superintendent. The project
12 superintendent that was there every day overseeing the
13 work and scheduling the subcontractors.

14 Q. And that person was who at Bostic?

15 A. I'm not sure exactly who that person was on that
16 job. I think we had a couple there.

17 Q. Now, during the course of the construction, did you
18 become aware of leaks in the porches and decks at
19 Stoneledge?

20 A. No, sir, I don't think that I did.

21 Q. Do you have any knowledge of one of your project
22 superintendents calling a subcontractor out to come and
23 inspect the porches and decks?

24 A. No, sir, I don't.

25 Q. Do you have any recollection of problems with water

1 infiltrating through the foundation walls being brought
2 to your attention before Bostic left this project?

3 A. I don't think that I do. I mean, it was -- I
4 thought it was a beautiful project, and that's what we
5 wanted it to be. But I do not have any recollection
6 specifically of foundations leaking or grading being done
7 toward a building instead of away from the building.
8 It's generally not done that way. That was a sloping
9 site. And all the units were staggered so they would
10 have some privacy. But I do not remember that, no.

11 Q. Who is Nash Duggins?

12 A. Nash Duggins was one of the superintendents that was
13 -- that worked for Bostic that could have been on that
14 job.

15 Q. And was he a management-level employee for Bostic?

16 A. He was a field superintendent for Bostic; that's
17 correct.

18 Q. And he had the authority, at least in connection
19 with that job, to represent Bostic?

20 A. Depending on the time that he was there and who else
21 was assigned to the job.

22 Q. Who else would have been assigned to the job that
23 would have been above Nash Duggins?

24 A. Keith MacConochie would have been above him. And I
25 think he was the project manager for the construction

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1 company there assigned to that job. The other
2 superintendents, I really do not know who they were. I
3 mean, if you mentioned their names and say they were on
4 the job, I would know who they are. Other than that Jeff
5 Johnson. I do not remember him.

6 Q. You mentioned earlier that Bostic left the site in
7 late 2004; is that right?

8 A. To my recollection.

9 Q. And why did Bostic Brothers leave the site?

10 A. We were having problems finishing other jobs, and
11 really, we had a close-down of everything.

12 Q. And Bostic's attorney mentioned the other day that
13 the developer had asked Bostic to stop work on the
14 project. Do you remember that?

15 A. The developer? I do not -- well, the developer
16 would have been Lake Keowee Townhomes, I guess. I don't
17 remember that, no, that they would have asked us as
18 Bostic Construction to leave the job independently. I
19 don't think that happened.

20 Q. And it was a Bostic Development Company that was
21 involved in the project?

22 A. Yeah, that's what I'm saying. It doesn't make sense
23 that they would have asked Bostic Construction to leave
24 the job to bring in another contractor. I don't think
25 so.

1 Q. So the Bostic Brothers' departure from the project
2 was the result of the fact that Bostic Brothers
3 Construction simply couldn't continue to construct the
4 buildings?

5 A. That's correct at that time.

6 Q. And that was in, I think, December of 2004?

7 A. I think that was more like October 2004. I think
8 the company officially dissolved itself in December of
9 2004; that's correct.

10 Q. And if you will, describe the status of Stoneledge
11 or Townhouses of Lake Keowee when Bostic left the site.

12 A. I think probably the last time I was there was early
13 spring. Maybe May. June or May. And we had a large
14 marketing day there. We had a band there, and we had
15 helicopters dropping balls out of the air for discounts
16 on trying to make a sales, a big sales splash. Sales had
17 been stagnant there at that time. And I was on the
18 project. That was a Saturday, I think. And I was on the
19 site most of the day. The site was certainly absolutely
20 beautiful on Lake Keowee. We really wanted to do that
21 job and do it well and do it to enhance the whole lake
22 and the condition. All the buildings were designed so
23 you'd have a private screened-in porch. They were set
24 back. The roof lines weren't all straight, so everything
25 was different. And, you know, we took a lot of pride in

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1 that because Joe and Jeff, certainly, from Clemson and
2 the attachment with them to that project, we didn't want
3 anything to go wrong with that project. And it was our
4 intent to build really a high-quality, a high-quality
5 property at a competitive price. And so I remember the
6 project as being really a beautifully landscaped project.
7 It was dry that day, so there wasn't a lot of water to
8 control coming off the hillside there. And we had the
9 exteriors pretty well finished. There may have been some
10 stuff to punch out. And the landscaping was done. It
11 was a beautiful project enhanced by the lake. So that's
12 how I remember the job. There were some -- there were
13 units that were not complete that -- and we made the
14 decision, I think, to not put drywall because we had so
15 many selections on that job that we would want to finish
16 out the units at the request of the buyer. And so the
17 buildings were all under roof, doors and windows in, some
18 having roughed-in heating and air conditioning ready for
19 drywall, and maybe some not. But I remember the units as
20 being very beautiful and very marketable at that time.

21 Q. And that was in May of 2004?

22 A. I think in May of 2004.

23 Q. And I think you said just a moment ago that Bostic
24 Brothers closed up shop and left in October of 2004?

25 A. I think that's probably the time they would have

1 pulled off that job.

2 Q. And so from May of 2004 to October of 2004, you
3 didn't go back to the project?

4 A. I may have gone back one time, but probably not. We
5 had so many problems on other jobs at that time that were
6 further away from Keowee, Lake Keowee, that required a
7 lot of time.

8 Q. How much time did Joe Bostic spend at the Stoneledge
9 project?

10 A. I think Joe probably spent very little time. He
11 wasn't there the day we had the big promotional thing.
12 And he may have been there a couple of other times when
13 he was visiting Clemson for one reason or the other. But
14 I'd say very few. One day, maybe two days at the most.

15 Q. And how about Jeff Bostic? How much time did he
16 spend at the project?

17 A. He may have spent more than Joe had. I know he was
18 there the day that we did the big marketing thing, but he
19 spent very little time there as well.

20 Q. I asked you when you and I first met a year or so
21 ago at your deposition if you had read the report that
22 had been prepared by Construction Science and
23 Engineering. Do you remember that?

24 A. I don't think I had read the report then, and I
25 haven't read the report today.

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1 Q. There was a discussion or some remarks made earlier
2 in this trial that Bostic Brothers wants to make sure
3 that the problems at this project that they caused are
4 fixed; is that right?

5 A. I don't think that -- up until 2004, I don't think
6 we would have ever walked away from a problem. It wasn't
7 the intent of our business plan to do that. Joe and Jeff
8 and myself owned part of or some of most every project
9 that we did. And we never had problems with callbacks.
10 We never had problems with construction other than South
11 Carolina. As has been denoted, we've had a few problems
12 there. But all of the projects that we've done -- and
13 we've done numerous. I mean, a lot of apartment projects
14 -- we didn't walk away. And we've done them for other
15 people. We've done them under the F.H.A. We've done
16 them under Section 8 for other owners. We never had
17 callback problems on any of those jobs. You know, it
18 just wasn't our nature to walk away from problems or not
19 fix anything that we were responsible for. And we would
20 do it even if it cost more money than we had allocated
21 for those things. So, you know, it was never our
22 intention to walk away from problems.

23 Q. I think you testified a moment ago that Bostic
24 Brothers Construction was dissolved in 2004?

25 A. It may have been. I don't know when they exactly

1 went out of business. It was either December of 2004 or
2 January of 2005 brought about by the bankruptcy.

3 Q. And even though there is a desire or a desire has
4 been expressed for Bostic Brothers to fix the problems,
5 there is no Bostic Brothers?

6 A. There is no Bostic Brothers.

7 Q. And you have not looked at the report that was done
8 by C.S.E. on this project?

9 A. I have not.

10 Q. Are you going to remain with us in the courtroom and
11 listen to the testimony of Derek Hodgins?

12 A. I plan to be gone tomorrow. And depending on what
13 happens Friday, possibly Friday. But I will be back all
14 of next week.

15 Q. Have you developed any opinions about what you think
16 needs to be done to fix the problems at Stoneledge?

17 A. I have not reviewed the site. I do not know the
18 condition of the site, so, you know, I have no opinion
19 about that as we sit here.

20 Q. You've been in the courtroom for the last couple of
21 days; is that right?

22 A. I have.

23 Q. And have you heard reports about significant rot and
24 deterioration at the project?

25 A. I have heard reports.

1 Q. Does that alarm you or concern you?

2 A. Well, it concerns me inasmuch as it certainly wasn't
3 our intention, you know. And it's been quite a few years
4 since we were out of there. And I do not -- I mean, I
5 can see those photos and know that it's not a good thing.
6 And the other items that have been mentioned, the water,
7 the flooding of the water, and the raining and all of
8 that, that is a steep site there with different
9 foundation areas that obviously have pushed water some to
10 the buildings. And that would certainly need to be
11 fixed. But other than just those few -- I mean, I do not
12 know the extent of what's happened and how it should be
13 remedied at this time because I have not been back to the
14 site since 2004. And so I have really no opinion about
15 that.

16 Q. Have you read the scope of repair that was done by a
17 fellow by the name of Rick Moore?

18 A. I have not.

19 Q. So you don't have any opinions on the adequacy or
20 appropriateness of that scope?

21 A. I do not know Rick Moore, and I have not read that
22 report.

23 Q. Do you remember when Bostic Brothers was named in
24 this lawsuit?

25 A. It obviously was before I met you down in South

1 Carolina, so it was quite a while. 2009, I think someone
2 said.

3 Q. And since that time, you haven't been back to the
4 site?

5 A. I have not. Wait a minute. I have. I visited that
6 site with our attorney one day. We walked the site.

7 Q. Have you made any proposals to the owners to address
8 the problems that ---

9 MR. BELCHER: Objection, Your Honor.

10 THE COURT: Sustained.

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

13 A. I appreciate it. Thank you.

14 Q. Thank you.

15 A. My pleasure.

16 THE COURT: If you wish to examine, it would be
17 cross-exam.

18 MR. BELCHER: Yes, Your Honor.

19 THE COURT: Very well.

20 CROSS-EXAMINATION

21 BY MR. BELCHER:

22 Q. Good morning, Mr. Morris. I just want to fill in a
23 few gaps there. Right at the end of your testimony -- I
24 may work backwards from what you just recently testified
25 about. You haven't read the report from C.S.E.?

1 A. No, sir, I haven't.

2 Q. You haven't read the report from Rick Moore?

3 A. No, sir.

4 Q. All right. You owned part of a construction
5 company, but you weren't a hammer swinger; right?

6 A. No, sir. I was the president and not a hammer
7 swinger, no, sir. Never have been.

8 Q. All right. So the things like flashing windows,
9 structural support loads, roof decking, those are things
10 that you rely on subcontractors to accomplish?

11 A. That's correct.

12 Q. And ultimately the general contractor is responsible
13 for that?

14 A. Ultimately, yes, sir.

15 Q. If they don't do it right?

16 A. That's correct.

17 Q. And we're all here today, and you want any issues to
18 be addressed for these people?

19 A. That's correct.

20 Q. And that has not changed since we started this
21 trial?

22 A. It has not.

23 Q. Now, you understand that we have hired Mr. Moore to
24 serve as our professional just like the plaintiffs have
25 hired Mr. Hodgkin to serve as their professional in this

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1 set of circumstances?

2 A. That's correct.

3 Q. And just like you rely on your subcontractors to
4 know how to do what they are supposed to do, are you
5 relying on Mr. Moore to develop the protocol that needs
6 to be implemented out there and the repair contractor to
7 then implement that protocol?

8 A. Yes, sir, I would.

9 Q. And if you read the Construction Science and
10 Engineering report or the report by Mr. Rick Moore or the
11 scopes of repair of either of those people, would it make
12 any sense to you?

13 A. I would hope so.

14 Q. Well, when you're reading down through there, you
15 would have to understand the entire construction process
16 to be able to understand what's contained in those
17 reports?

18 A. That's correct.

19 Q. Now, you can look at the pictures in those reports
20 and see something needs to be fixed; right?

21 A. I most certainly can.

22 Q. And that's what you want to have addressed. You
23 want the things that are depicted in those pictures to be
24 cleaned up for these people so that they can go on about
25 their lives and live in this community?

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1 A. Yes. I would love for that to be.

2 Q. There are just a few other things that I just want
3 to clean up. Bostic Construction, at the time of
4 Townhomes on Keowee, had several project managers who you
5 all invested in and got them to get their builder's
6 licenses; correct?

7 A. That's correct.

8 Q. All right. So that was part of your employee
9 incentive program that you wanted as many people as
10 possible to be knowledgeable and licensed to be
11 contractors?

12 A. That's correct. We had quite a few.

13 Q. All right. And people who were superintendents or
14 project managers on this project would have been
15 qualified or they would have had those licenses?

16 A. Yes. Both Mr. MacConochie and Nash Duggins had
17 general contractor license.

18 Q. All right. And it would have been one of them who
19 was a super or a project manager on this?

20 A. Keith MacConochie, I think, was the project manager
21 on this site the whole way through or until he left the
22 company.

23 Q. But we've pretty much established that it was
24 neither you nor Joe nor Jeff who had day-to-day
25 management activities at Stoneledge?

1 A. No, we did not. Joe and Jeff were very seldom
2 there, if at all.

3 Q. All right. Now, I remember you telling me when we
4 walked the site that before all the financial issues with
5 this project, you had your name on one of them; right?

6 A. Right. I had purchased one.

7 Q. And you wanted to live there?

8 A. It's a beautiful place.

9 Q. So you didn't want anybody to cut any corners in
10 construction on something you were going to buy, did you?

11 A. It was never the intent of Bostic to cut corners on
12 anything. And how all of this happened is strange to me.

13 Q. So if anybody gets up in this courtroom or if
14 anybody makes any insinuation that Mel Morris wanted this
15 project finished fast and he didn't care what was wrong
16 with these buildings, that's just nonsense, isn't it?

17 A. It is nonsense. It's absolute nonsense.

18 Q. And if you could have afforded at the completion of
19 this to go through with the purchase of your unit, you
20 would have?

21 A. I would have.

22 Q. And Joe and Jeff, to your knowledge, were going to
23 do the exact same thing; right?

24 A. That's correct. That's why it was important to us
25 to build a quality project there because we had a lot of

00642

1 contact with Clemson, and it was important that it be the
2 best project really on the lake.

3 Q. When Bostic Construction built a project, they put
4 their name on that project, didn't they?

5 A. That's correct.

6 Q. So it wasn't just going to be Townhomes of Keowee,
7 but the Bostic name was going to carry on with that
8 project for the rest of its existence had they been able
9 to complete it?

10 A. Yes, sir.

11 Q. You mentioned a couple of -- you said there were a
12 couple of issues out on the project. And I think you
13 were referring to piers. And I just want to clarify for
14 the jury because we're dealing with the piers on the
15 porches or whatever it takes to build the porches. But
16 you're talking about the docks; right?

17 A. I'm talking about the boat docks and a number of
18 docks that we had, the location of those docks around the
19 lake, making sure that everyone had access to a dock.

20 Q. And that lake is managed by Duke Power? .

21 A. That's correct. I believe that is so.

22 Q. All right. And originally, you had hoped to be able
23 to provide a dock for every unit owner out there?

24 A. That's correct.

25 Q. But Duke Power cut the number of permits you were

1 allowed to have?

2 A. They did.

3 Q. And that was a big going-back-and-forth issue with
4 you?

5 A. That was correct.

6 Q. That was a concern that you had, that you give
7 everybody an opportunity to have a boat dock?

8 A. That's correct. Have access to the boat dock and
9 have a boat dock out there.

10 Q. So when you referred to major issues of which you
11 were aware, that's what you're talking about?

12 A. That's correct.

13 Q. Just so we're clear, at no time did you have any
14 knowledge of any major construction issues out there that
15 you refused to address?

16 A. I did not.

17 Q. All right. And finally, Mr. Morris, just the
18 conversation about who needs what kind of license and
19 what trade needs a license. That certainly wasn't your
20 part of the company?

21 A. No. And that's clearly defined by the licensing
22 issue, the permit-issuing department. So whoever had to
23 have a license would have a license.

24 Q. Right. So if a stonemason for this project needed
25 to have a license, the building authority in Oconee

00644

1 County would have said, you need a license. And you
2 would have either found someone with a license, or you
3 wouldn't have put stone on the building. Is that fair?

4 A. That's correct.

5 Q. All right. Same goes with if a framer in Oconee
6 County is required to have some sort of a speciality
7 license, you're not going to get a permit if Jose Nino's
8 company, Nino Framing, doesn't have that license?

9 A. That's correct.

10 Q. All right. Because they go through inspections, and
11 they're going to check on that permit, that you have a
12 licensed contractor doing the job if a speciality license
13 is required?

14 A. Yes, sir.

15 Q. So you have complete confidence that everyone who
16 was on this job to the extent that they were required to
17 have licensure, they would have had to have it by virtue
18 of the Oconee County building authority requiring them to
19 get a permit?

20 A. That is my understanding and belief, yes, sir.

21 Q. All right. Okay. And just -- I understand that
22 this is all from more than ten years ago that you guys
23 were -- that you and Joe and Jeff were getting ready to
24 build this project. And I think that the time line is
25 pretty important here. Is it your understanding that as

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1 of January 1, 2003, Joe Bostic no longer had any
2 ownership interest in this company, Bostic Construction?

3 A. He had no ownership interest in Bostic Construction.
4 In fact, we owe him money.

5 Q. That's probably something I could go into, but I'll
6 wait. And this project, the permits start at sometime in
7 the fall of 2002. Is that your recollection? We can
8 certainly provide you with some permits, but ---

9 A. Yes. I think these permits were 2001 or 2002.

10 Q. And you have overseen in some capacity or another
11 tens, if not hundreds, of projects in your career as a
12 construction company owner?

13 A. Yes, sir, quite a few.

14 Q. Once you get a permit for a project like Stoneledge,
15 what's the next thing that gets done?

16 A. The grading.

17 Q. All right. So you do all the site work, all the
18 infrastructure, tap into the public utilities? All of
19 that stuff happens; right?

20 A. All of that happens as site preparation.

21 Q. All right. And when you do that, that's a couple
22 month process of getting it ready?

23 A. Or longer.

24 Q. Right.

25 A. Maybe six months.

00646

1 Q. And especially here where you've got to excavate to
2 put your building pads in because you're building down a
3 slope; right?

4 A. That's correct.

5 Q. So would it be fair to say that no footer was
6 poured, no concrete wall was put up, no framing was done,
7 no stone was applied, no building wrap was applied, no
8 roofs were set, no windows were set while Joe Bostic had
9 any ownership in this corporation?

10 A. That's probably correct. I do not know exactly the
11 date that we started footers. Somebody may have that in
12 this room. I do not know. But probably that's correct
13 because it wouldn't have taken two years for us to build
14 thirty-seven units or whatever it was.

15 Q. Right. I just wanted to -- and just so we're also
16 clear, your contract on this project, the Bostic
17 Construction contract, was with the developer Townhomes
18 of Lake Keowee?

19 A. That's correct.

20 Q. An L.L.C. or whatever it was?

21 A. Yeah. That's correct.

22 Q. All right. And it was Townhomes -- Bostic had run
23 into some financial issues on other projects; correct?

24 A. In 2004, that's correct.

25 Q. All right. And one of the projects that it had

1 financial issues on was the Lake Keowee Project because
2 as you said, sales were stagnant?

3 A. That's correct.

4 Q. All right. So Townhomes of Lake Keowee was the one
5 who wrote the checks to Bostic Construction so it could
6 continue construction; correct?

7 A. That's correct.

8 Q. And when Lake Keowee wasn't getting money because
9 the units weren't selling, it wasn't writing checks to
10 Bostic anymore. Is that fair to say?

11 A. That's correct.

12 Q. Based on your recollection, did this project wind up
13 with Bostic being owed money by the development entity by
14 virtue of these buildings not selling?

15 A. I do not remember what the status of that payment
16 against the contract was, but that could be possible.

17 Q. When the property was sold to I.M.K. or the next
18 developer in time, do you recall how that sale proceeded?

19 A. I do not.

20 Q. Okay. Do you recall whether or not the property
21 that was owned by the developer was close to a
22 foreclosure?

23 A. I left in October of 2004. I think the sale may
24 have been after that period of time, so I would have had
25 no knowledge of that transaction.

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1 Q. Did you ever receive any sort of a distribution
2 associated with the closing out of the Keowee Project
3 after Bostic was done?

4 A. No, sir, I have not.

5 Q. And finally, your contract was with the developer --
6 Bostic Construction's contract was with the developer. I
7 want to make sure that it's clear just for the jury.
8 Bostic Construction had no contract with an architect on
9 this project?

10 A. Bostic Construction did not have a contract with the
11 architect; that's correct.

12 Q. The architect had a contract with Robert Carpenter
13 who brought this project to you apparently?

14 A. I do not know who that contract was with, but it was
15 not with the construction company.

16 Q. Okay. So to make a long story short, this was a
17 build project not a design/build project?

18 A. No. That's correct.

19 Q. So Bostic did not assume any responsibilities for
20 the architectural designs of this building other than it
21 had some input on how it wanted it to look when it was
22 finished?

23 A. That's correct.

24 Q. Thank you, sir. I have no further questions.

25 A. Thank you.

1 THE COURT: Mr. Anderson?

2 MR. ANDERSON: Thank you, Your Honor. Your
3 Honor, may I go from this side of the bar?

4 THE COURT: Certainly.

5 MR. ANDERSON: Thank you.

6 CROSS-EXAMINATION

7 BY MR. ANDERSON:

8 Q. Mr. Morris, you and I have met previously. And I
9 represent Jose Nino. You indicated that -- or you have
10 already described for us the work that Mr. Nino's crews
11 and he did on the project. One clarification I'd like
12 you to make. You indicated that he did some roof work.
13 And that would be the roof trusses and the decking or
14 sheathing; is that correct?

15 A. Yes. The only -- yes, his roof work would limit to
16 the roof sheathing. So he set the roof trusses, and then
17 he put the roof sheathing on. Then the roofer came after
18 that to do the felt paper and then apply the roof.

19 Q. All right. So the only products that he would put
20 up there would be wood products on this project?

21 A. That's correct.

22 Q. Okay. And so it would be plywood or O.S.B.,
23 whatever was used as the -- you said sheathing or decking
24 on top of the trusses?

25 A. That's correct.

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1 Q. All right. And then his responsibility for the
2 roofs ends; is that correct?

3 A. That's correct.

4 Q. All right. Now, you also spoke about some drywall
5 application. Is it correct that his installation of
6 drywall would have been limited to that drywall that is
7 in tenant separation walls in which there's framing on
8 both sides of the drywall?

9 A. Yes, sir. That -- the code requires one-hour
10 separation between townhouse units. So there is an
11 existing two-by-four wall. There are two applications of
12 one-inch drywall that would go from the foundation up
13 through the roof line to the bottom of the roof line to
14 protect those units that are back to back against fire
15 spread. That's correct. And he would have installed the
16 one-inch drywall as a part of his process to construct
17 the building.

18 Q. All right. And that would have been sandwiched
19 between wood framing?

20 A. It would be sandwiched between wood framing and a
21 two-inch gap between the two ends.

22 Q. Now, any exterior drywall would have been installed
23 by the drywall subcontractor; is that correct?

24 A. Exterior drywall -- if there had been exterior
25 drywall, which could possibly be on the deck, it would be

1 installed by the drywall contractor, yes.

2 Q. Well, let me ask the question a different way. If
3 it is put for the outside of the wall and not sandwiched
4 between framing, that would have been the dry-waller?

5 A. I can't -- there may be some application somewhere
6 someplace, but I don't know particularly on this project.
7 But I do know that the -- his normal operation would not
8 assume installation of drywall. And if it were, it would
9 be denoted in his contract.

10 Q. Now, the trim work that was done on the exterior of
11 the building and the siding, that would have been done by
12 Eason Construction; is that correct?

13 A. Yes. He's listed in this list of subcontractors,
14 and I think he possibly was the siding contractor on that
15 job.

16 Q. And he would have been the one to assemble the
17 soffits and the trim work up underneath the edge of the
18 roof; is that correct?

19 A. That is correct.

20 Q. Now, Mr. Nino would have been gone from the roof and
21 the project when that work was done; is that correct?

22 A. Yes, sir, he would have been gone to another
23 project.

24 Q. All right. Now, you started with Bostic as a field
25 superintendent?

1 A. Yes. Field superintendent/project manager/trash
2 picker-upper, all those other things that come with being
3 on the job.

4 Q. All right. And you were actually physically on the
5 job site at that time; is that correct?

6 A. Every day.

7 Q. And your job was supervising subcontractors and
8 making sure they performed their job correctly?

9 A. That's correct.

10 Q. And was your start with Bostic the first time you
11 had ever done that?

12 A. No, I had not -- was not the first time.

13 Q. And when did you start in construction? When did
14 you start working?

15 A. I started in -- I got out of graduate school at the
16 University of Kentucky, I want to mention here, in 1971.

17 Q. And you went immediately into construction work?

18 A. Yes, out of graduate school; that's correct.

19 Q. And what position did you hold first out of graduate
20 school?

21 A. Sort of the same thing that I did for Joe at -- on
22 the first job that we did, I was project manager,
23 learner, and superintendent. All the things that go
24 along with being on a construction job in the field.

25 Q. Thank you very much.

1 A. Yes, sir. Thank you.

2 THE COURT: Mr. Buckley?

3 CROSS-EXAMINATION

4 BY MR. BUCKLEY:

5 Q. Mr. Morris, Ed Buckley. How are you?

6 A. I'm fine, sir.

7 Q. I wasn't in this case when you were deposed in -- I
8 think it was in March of 2012, and I never met you until
9 this week; right?

10 A. I don't really remember, but if you say so.

11 Q. You don't remember ever seeing me until you saw me
12 in the hall here; right?

13 A. Yeah. I don't think so. No, I haven't. I don't
14 know you.

15 Q. Okay.

16 A. You seem like a pleasant guy.

17 Q. Just wait a while.

18 A. I'll let you know later.

19 Q. I want to clear up a couple of things with the jury
20 if I can. Mr. Lyles introduced a number of invoices from
21 my client to Bostic. And what I want to show you first
22 ...

23 MR. BUCKLEY: Is it okay if I stand here, Your
24 Honor?

25 THE COURT: Certainly.

1 MR. BUCKLEY: So we can look at the exhibit
2 together.

3 THE COURT: Well, let's don't get between the
4 witness and the ...

5 MR. BUCKLEY: Can y'all see okay?

6 Q. This is Plaintiff's Exhibit Number 13. And as you
7 can see, it's a series of invoices. And the first
8 invoice is December 12th, 2002; correct?

9 A. That's correct.

10 Q. Okay. And they're in chronological order, I
11 believe. And the last of the invoices I can see, it
12 looks like it was approved November 3rd, 2003?

13 A. 2012 [sic] to November 3rd, 2003 is a long way.

14 Q. December 12, 2002, through November 2003; correct?

15 A. Yes. That's what is stamped on that page. I agree.

16 Q. Okay. And if you look first at the initial invoice
17 that's the December 2002 invoice, the very next invoice
18 is August 30th, 2003; right?

19 A. That's correct.

20 Q. And that's more than an eight-month gap; correct?

21 A. Yes. From December to September, nine months. Yes,
22 sir.

23 Q. And if you look at what was being done when we were
24 working on the job in December -- or when Mr. Jaramillo
25 was working on the job in December of 2002, the entire

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1 invoice that is representative of that date or that time
2 frame deals with building number one; correct?

3 A. That's correct.

4 Q. Okay. And we were working party walls. And a party
5 wall -- and correct me if I'm wrong. But a party wall is
6 a wall that separates units?

7 A. That's correct.

8 Q. Okay. So two units share a wall, so you call it a
9 party wall; right?

10 A. Yes. If two units share a wall, each -- in
11 townhouses, I think units do not share single walls. So
12 there has to be another wall with that wall. Okay?

13 Q. Okay. There has to be a gap between two complete
14 walls for a fire separation code requirement; right?

15 A. Yeah, that's correct.

16 Q. Okay.

17 A. Yeah.

18 Q. So in any event, Mr. Jaramillo was working on party
19 walls; right?

20 A. That's correct. That sheetrock on the party walls.

21 Q. Okay. And then he was working on framing interior
22 walls and doors for a shower on a third-floor unit?

23 A. Yes. That's what the invoice says; correct.

24 Q. Okay. And he was removing and relocating a wall in
25 an R.R., which I assume is a restroom?

00656

1 A. R.R., I'm not sure what he meant by that. Could be
2 anything with Jose. I mean, with ---

3 Q. With Mr. Jaramillo?

4 A. With Everado, yes.

5 Q. And what he was doing was punch work. And punch
6 work essentially means you do all the work that doesn't
7 fit into some other subcontractor's description. Am I
8 correct?

9 A. Yes. In this case, that interior wall for the
10 bathroom on the third floor may have been a change order
11 that the owner opted for a different thing. So he would
12 have framed a wall. That's correct.

13 Q. And then there's two units, whatever that means,
14 quantity of two, for removing an interior wall by a
15 stairway. See that?

16 A. I do.

17 Q. And he's removing a closet?

18 A. I do.

19 Q. And he's removing and relocating an interior wall?

20 A. I see that.

21 Q. And he's framing a closet.

22 A. I see that.

23 Q. And he's adding a wall for a shower?

24 A. I see that.

25 Q. And he's removing and relocating all the doors on

00657

- 1 the stairwell on the fourth floor?
- 2 A. I see that.
- 3 Q. Okay. He's adding headsets on ---
- 4 A. A header.
- 5 Q. Header. I'm sorry. On a regular door?
- 6 A. Right.
- 7 Q. And the header is the framing component that
- 8 supports whatever is above the door; right?
- 9 A. Right. It's a structural application.
- 10 Q. Okay. And he's removing and relocating A.C. walls
- 11 and framing the door opening?
- 12 A. That's correct.
- 13 Q. Okay. He's framing two walls for a bathtub on the
- 14 second floor?
- 15 A. That's correct.
- 16 Q. He's framing a sunlight in the roof?
- 17 A. That's it.
- 18 Q. Okay. And he's framing two-by-six walls for back
- 19 shower, and he's adding a two-by-four wall for a toilet;
- 20 right?
- 21 A. All of that's on there, yes, sir.
- 22 Q. And the very last, next to the last line item down
- 23 there, it says he's doing some house wrapping; right?
- 24 A. That's correct.
- 25 Q. Okay. And house wrapping is -- well, let me explain

00658

1 one more item.

2 A. Yes, sir.

3 Q. On the second page of that invoice for December
4 12th, 2002, near the top, the third item down, it says
5 that he's cutting the bottom of the windows that were
6 framed wrong. So he's actually changing the framing of
7 window openings apparently?

8 A. That's what you would think that would be. But see,
9 he's really not cutting the bottom of the windows. He's
10 cutting the framing.

11 Q. That's right. And the framing is the actual opening
12 itself?

13 A. Right.

14 Q. And then you insert the window into that opening?

15 A. That's correct.

16 Q. And then he's doing some house wrapping on building
17 one; correct?

18 A. That's correct.

19 Q. Okay. And we can't tell from this invoice whether
20 the house wrapping he's doing on building one is actually
21 wrapping the entire building or whether the work that's
22 described there involving house wrap might only have
23 involved cutting the house wrap around those openings
24 that he had to change the dimensions for?

25 A. Yes. You never know.

1 Q. So we can't infer from that that my client actually
2 installed all the house wrap on building one, can we?

3 A. From that we cannot, no, sir.

4 Q. Thank you. Now, Eason -- when Eason installed the
5 siding on these units, before the siding has to be
6 installed or is to be installed, what goes on the
7 sheathing itself prior to application of the siding
8 itself?

9 A. The entire units are to be covered with a Tyvek
10 material or equal and completely wrapped around the -- on
11 the O.S.B. framing of the building, the outside framing
12 of the building. And then Tyvek is a material that keeps
13 the moisture out and lets the house breathe. And as it
14 can pass through from the back side, air, and on the
15 front side reduce the possibility of moisture.

16 Q. Okay. Tyvek is the white-looking -- I think it's
17 actually a Teflon material, isn't it?

18 A. No. It may be Teflon, but it is the white stuff
19 that you see around all the buildings.

20 Q. But here's what I was going to ask you. Before
21 Eason installed its siding, Tyvek would have been
22 installed by someone on the buildings in order for Eason
23 to proceed with their work; right?

24 A. That's correct.

25 Q. Okay. And we know that my client wasn't present on

1 the scene between December 12, 2002, and sometime shortly
2 prior to August 30th when that bill was submitted in
3 2003; correct?

4 A. Yeah. Based on these invoices, that's correct. But
5 he was everywhere, and I do not know that he wasn't
6 there. But according to these invoices, he would not be
7 there.

8 Q. Okay. And, in fact, that is true. My client worked
9 on a dozen or more sites for Bostic during this time
10 frame throughout North Carolina, South Carolina and
11 possibly even Georgia?

12 A. That's correct.

13 Q. But here's what I want to show you.

14 A. Okay.

15 MR. BUCKLEY: And I want to go ahead and mark
16 this, but I need to show it to counsel first.

17 (WHEREUPON, Defendant Jaramillo Exhibit Number J2
18 was marked for identification only.)

19 THE COURT: Are you going to show it to the
20 other counsel?

21 MR. BUCKLEY: I was going to try to hide it
22 from them, Judge, but I got busted.

23 Q. Let me show you what's been marked as exhibit J2.
24 And that appears to be an invoice or a purchase order
25 issued by Bostic to Eason Construction Company for Lake

1 Keowee dated May 27, 2003, for Lake Keowee. And it
2 involves siding during that time period totaling two
3 hundred and forty thousand dollars for thirty-seven
4 units; correct?

5 A. Yes. This is the contract for siding for thirty-
6 seven buildings at Lake Keowee.

7 Q. Okay. So in May of 2003 ---

8 THE COURT: Let me ask you, y'all are moving
9 its admission?

10 MR. BUCKLEY: I am, Your Honor.

11 THE COURT: Any objection?

12 MR. LYLES: Without objection.

13 THE COURT: All right. Without objection,
14 Plaintiff [sic] J2 is admitted.

15 MR. BUCKLEY: Thank you, Your Honor.

16 (WHEREUPON, Defendant Jaramillo Exhibit Number J2
17 was admitted into evidence.)

18 Q. So as of May of 2003, the Tyvek must have been
19 installed by someone other than my client in order for
20 Eason to be ready to install the siding; correct?

21 A. That's not necessarily the case here. This purchase
22 order is -- we have a contract with Eason Construction.
23 Bostic Brothers Construction has a contract with Eason
24 Construction stipulating what the relationship is between
25 Bostic Construction and Eason Construction for all of our

1 jobs. Every job. And then the contract is extended with
2 a purchase order to assign to a particular job so we can
3 identify the price for that job. So this is a purchase
4 order issued to Eason Construction for the total amount
5 of that job. Whether he has started work on that job or
6 whether he has not started work on the job would not be
7 significant with the date. We could have actually
8 started work before May 27, 2003, or after that. But
9 that's -- sometime in that time frame, he was certainly
10 working on that job.

11 Q. And you would anticipate in the ordinary course of
12 the construction project's progress that the Tyvek would
13 be on the buildings at or around that time; correct?

14 A. That's correct.

15 Q. Thank you. Let me show you -- if you look at
16 exhibit, Plaintiff's Exhibit Number 14, those appear to
17 be the sort of -- I guess the payment authorizations for
18 my client's invoices; is that correct?

19 A. Yes. That's what it appears to be.

20 Q. Okay. There's a cost code down there 170500?

21 A. Uh-huh (affirmative). That's correct.

22 Q. Okay. And if you look at Bostic Construction
23 Company's job cost summary, what is cost code 170500?

24 A. That is punch labor.

25 Q. Thank you very much. And other than the one

1 reference in Plaintiff's Exhibit Number 13 on the
2 December 12, 2002, invoice, there is not a single record
3 you've seen that indicates that my client installed any
4 other building wrap other than on building one; correct?

5 A. Well, I haven't gone through the detail on each one
6 of those invoices, but the invoice that we have for
7 December 1 shows that he installed some or repaired some.
8 So I do not know the extent of the time period through
9 the rest of the year until the completion of those units.
10 I do not know.

11 Q. Okay. But in fairness to my client, you can't sit
12 here and testify under oath to the jury that my client
13 installed any Tyvek on any building other than one;
14 correct?

15 A. I'd have to really go back through the invoices --
16 and I'll be willing to do that -- to see if there was
17 any.

18 Q. Let's do it this way. You haven't done that; right?

19 A. I have not done that.

20 Q. Okay. So having not done that, you cannot testify
21 that my client installed any Tyvek on buildings other
22 than one; correct?

23 A. That's correct based on my ---

24 Q. That's all I have. Thank you.

25 A. Thank you.

1 THE COURT: Mr. Imhoff?

2 MR. IMHOFF: No questions, Judge.

3 THE COURT: Ms. Brown?

4 MS. BROWN: No questions, Your Honor.

5 THE COURT: Mr. Hemphill?

6 MR. HEMPHILL: None, Your Honor.

7 THE COURT: Very good.

8 Redirect?

9 MR. LYLES: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. LYLES:

12 Q. Mr. Morris?

13 A. Yes, sir.

14 Q. As I understood your role at Bostic Brothers
15 Construction, you were the member of Bostic Brothers who
16 was most responsible in dealing with the construction
17 processes; is that right?

18 A. That's absolutely correct.

19 Q. Okay. And so you do understand the construction
20 process from start to finish?

21 A. I do, sir.

22 Q. The development entity, Townhomes at Lake Keowee,
23 that Mr. Belcher referred to, the Bostic brothers, Jeff
24 and Joe, have an interest in that development company; is
25 that right?

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1 A. I would have to review the documents, but there's a
2 possibility that they have an interest there, yes.

3 Q. As you reflect back on the construction of the
4 Stoneledge project, your understanding and perception was
5 that either individually or through an entity owned by
6 them, the Bostic brothers had an interest as a developer
7 in that project?

8 A. Like I said, I'd have to really review the document
9 of the Townhomes on Lake Keowee or however what it was to
10 -- but probably they did. But I'm not absolutely sure
11 that they were.

12 Q. You mentioned in response to Mr. Anderson's
13 questions, you were talking about Jose Nino's
14 installation of components of the tenant separation
15 walls; is that right?

16 A. Yes, sir.

17 Q. And was Mr. Nino responsible not only for that, but
18 also for putting the exterior sheathing on the building?

19 A. That's correct.

20 Q. And to the extent we find drywall or gypsum
21 sheathing on the exterior of the building, is that
22 something that Mr. Nino would have installed?

23 A. If it were on the exterior of -- it depends on if it
24 was an addition or whether it was encompassed in the --
25 you know, in the plans. There could have been an

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1 additional wing or something. I'm really not sure in
2 this project whether there were any exterior sheathing or
3 not. I mean, there could have been. I mean, they have
4 five-eighths exterior sheathing that goes on buildings
5 all the time. But I do not know on this project.

6 Q. If that sheathing is found to exist, that is gypsum
7 sheathing found to exist, in the exterior walls that are
8 required to be fire-rated walls, would it be your
9 supposition that Mr. Nino installed that gypsum
10 sheathing?

11 A. Well, the five-eighths exterior gypsum exterior
12 sheathing -- excuse me. Exterior sheathing is a green
13 board, and it is fire rated, one-hour fire rated. So if
14 it were in the plans and specs that it be there and it
15 was exterior, he probably more than likely would have
16 installed that sheathing.

17 Q. Okay. I believe Mr. Buckley was showing you some
18 invoices from Mr. Jaramillo ---

19 A. That's correct.

20 Q. --- that ended -- the first group ended in December
21 of 2002?

22 A. The ones that we looked at ended on December 2012.

23 Q. 2002. December 12, 2002?

24 A. December 12, 2002. I'm sorry.

25 Q. And that's when Joe Bostic was still with the

1 company?

2 A. Yes. December the 12th, 2002, Joe was still with
3 the company.

4 Q. And then finally on this issue of the W.R.B., that
5 is the building wrap or the Tyvek, would you agree that
6 before the siding went onto these buildings that the
7 Bostic project manager was responsible for ensuring that
8 the W.R.B. had been installed correctly?

9 A. W.R.B. as water resistant ---

10 Q. Yes, sir.

11 A. --- Tyvek? I would say secondarily he would be
12 responsible, the building -- the construction project
13 manager. The first line would be the superintendent.
14 That would be certainly his responsibility. And then the
15 project manager would assume the second line of
16 responsibility whenever he saw a defect, and he would ask
17 him to correct that. But also, the building inspector
18 probably -- there may have been. Lots of places there
19 are. I'm not sure in Oconee County whether the building
20 inspector inspects the house wrap. But in lots of
21 conditions, they do.

22 Q. In any event, the first and second lines of
23 responsibility for making sure that the building wrap or
24 the Tyvek is properly installed before calling for the
25 siding would have been with Bostic Brothers Construction?

1 A. Well, ultimately, yes, sir, it would.

2 Q. Thank you.

3 A. Thank you.

4 THE COURT: All right. You may step down.

5 MR. ANDERSON: Briefly, Your Honor, may I
6 follow up on the questions that ---

7 THE COURT: Well, it has to be on something
8 that was brought out on redirect.

9 MR. ANDERSON: Yes, sir.

10 THE COURT: All right. Very well.

11 MR. ANDERSON: Thank you.

12 RECROSS EXAMINATION

13 BY MR. ANDERSON:

14 Q. Mr. Morris, Jose Nino was a labor-only contract; is
15 that correct?

16 A. Labor only, and we did supply him money to buy
17 nails. So we give him money on each job to buy nails.
18 Which was probably a mistake, but we did.

19 Q. All right. The nails were used on the project?

20 A. But the nails were used on the project, yes.

21 Q. And whether it was lumber or sheathing, any of those
22 materials would have been provided to Jose Nino by
23 Bostic; is that correct?

24 A. That's correct.

25 Q. All right. And those materials would be on site,

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1 and he would be directed where to install those
2 materials?

3 A. That's correct.

4 Q. And that was -- and you had Mr. Nino under fairly
5 close supervision as a framer to the extent that you were
6 marking floors and giving him specific directions as to
7 where certain materials were to be installed?

8 A. That was part of our system or process. Yes, sir,
9 that was.

10 Q. All right. Thank you very much.

11 MR. ANDERSON: That's all the questions I have.

12 MR. BELCHER: Thank you, Your Honor. I have
13 just one to two questions limited to the redirect.

14 THE COURT: Well, that's exactly what it would
15 have to be. Very good. Thank you.

16 RECROSS EXAMINATION

17 BY MR. BELCHER:

18 Q. You were just asked by Mr. Lyles about the ultimate
19 responsibility of the general contractor at the project
20 manager level and at the site manager level. Ultimately,
21 that is your testimony; correct?

22 A. That's correct.

23 Q. But, of course, the primary layer of making sure
24 that things are done right rests with the person who does
25 it; fair?

1 A. Yes, I think so.

2 Q. All right. Thank you.

3 A. Thank you.

4 THE COURT: Anyone else?

5 (No response)

6 THE COURT: Very good. You may step down now.

7 THE WITNESS: Are we off the record?

8 THE COURT: No, sir.

9 THE WITNESS: I had a little story to tell
10 about Tyvek.

11 THE COURT: We'll wait for lunch. Anybody that
12 would like to hear the story, they can gather in the
13 lobby.

14 (Laughter)

15 THE WITNESS: Thank you, Judge.

16 THE COURT: Yes, sir.

17 All right. Mr. Lyles, have you got another witness?

18 MR. LYLES: Yes, sir.

19 THE COURT: How lengthy a witness?

20 MR. LYLES: How long?

21 THE COURT: Yes, sir.

22 MR. LYLES: My guess would be probably an hour,
23 maybe an hour to an hour and a half.

24 THE COURT: Mr. Foreman, what would you
25 suggest? Or ask your jury. Would you like to take a

1 break now, come back a little bit earlier than usual or
2 go through this witness?

3 MR. FOREMAN: Sure. That would be good.

4 THE COURT: All right. Take a break now for
5 lunch?

6 MR. FOREMAN: (Nodded head up and down in the
7 affirmative.)

8 THE COURT: All right. Again, do not undertake
9 the discussion of the case among yourselves in any way.
10 What time you want to come back?

11 MR. FOREMAN: One-thirty.

12 THE COURT: Very good, sir. All right.

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

15 (WHEREUPON, the jury exited the open court at
16 approximately 12:15 p.m.)

17 THE COURT: All right. Anything from the
18 plaintiff?

19 MR. LYLES: No, sir.

20 THE COURT: From any of the defendants?
21 Yes, sir?

22 MR. LYLES: There actually is something, Your
23 Honor. This morning or yesterday actually the court
24 reporter indicated to me that I had failed to move what
25 we had marked as exhibit 5 for identification into

1 evidence. That's the letter that Mr. Logan wrote to
2 Bostic Construction. Mr. Belcher told me this morning he
3 was fine stipulating it come into evidence.

4 MADAM COURT REPORTER: It was 6.

5 MR. LYLES: It was 6, I'm sorry. 6 not 5.

6 MR. BELCHER: I'm familiar with the letter, the
7 letter from the attorney that purportedly went to Bostic
8 Construction. He's welcome to enter that into evidence.

9 THE COURT: All right. Very well.

10 MR. LYLES: All right. Thank you, sir.

11 THE COURT: Plaintiff's Exhibit 6 is admitted.

12 (WHEREUPON, Plaintiff's Exhibit Number 6 was
13 admitted into evidence.)

14 THE COURT: Anything else? I would like to
15 meet with counsel for a minute or two before we go to
16 lunch. I've got a conference room back here. I think we
17 can get everybody in. Just the lawyers. Well, I tell
18 you what. The grand jury room is right across the hall
19 in the back. So let's go back there if we could. That's
20 a larger table. I think it also has chairs unless y'all
21 brought them all in here.

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

24 MR. BUCKLEY: Your Honor, we have some good
25 news and some bad news.

1 THE COURT: How is that?

2 MR. BUCKLEY: The good news is Mr. Lyles has
3 settled with my client. The bad news he ain't settled
4 with anybody else.

5 THE COURT: Well, does that mean I'm going to
6 be missing you?

7 MR. BUCKLEY: You're going to be missing me.

8 THE COURT: All right. That is good news.

9 Mr. Lyles, you want to put anything on the record?

10 MR. LYLES: Yes, sir, that'd be good.

11 You want to put it on the record?

12 MR. BUCKLEY: Yeah.

13 MR. LYLES: The plaintiffs are dismissing all
14 of their claims against Everado Jaramillo for the sum of
15 ninety thousand dollars.

16 THE COURT: All right. Is that the extent of
17 it?

18 MR. BUCKLEY: That's the extent of it, Your
19 Honor.

20 THE COURT: All right. I asked that in the
21 last group that, is time of the essence. In other words,
22 is there some point of time?

23 MR. BUCKLEY: I can have it to you in thirty
24 days.

25 MR. LYLES: Due in thirty days, Your Honor.

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1 THE COURT: Due in thirty days?

2 MR. LYLES: Yes, sir.

3 THE COURT: I just need some times because many
4 times that's where the problem comes up.

5 MR. BUCKLEY: Your Honor, Bostic had cross-
6 claims against us which you dismissed. And I understand
7 from Mr. Belcher that he has no intention of appealing
8 that or pursuing those any further. But I did want to
9 put that on the record as well.

10 THE COURT: And is that correct, Mr. Belcher?

11 MR. BELCHER: That's right, Your Honor.

12 THE COURT: All right. Very good. So I thank
13 both of you then.

14 All right. And you too, of course, Mr. Lyles.

15 All right. Anything else?

16 MR. LYLES: Nothing from the plaintiff, Judge.

17 THE COURT: Very good.

18 MR. BELCHER: Nothing from the Defense, Your
19 Honor.

20 THE COURT: Let's see. We're ready for the
21 jury, I think.

22 MR. LYLES: Your Honor, may I step out and
23 check on co-counsel?

24 THE COURT: Certainly.

25 MR. LYLES: Thank you.

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

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

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

7 Mr. Lyles?

8 MR. LYLES: Yes, sir, Your Honor. The
9 plaintiff will call Nathan Hornaday.

10 (WHEREUPON, the witness was duly sworn.)

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

13 THE WITNESS: Okay. I'm Nathan William
14 Hornaday, H-O-R-N-A-D-A-Y.

15 NATHAN W. HORNADAY,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. LYLES:

19 Q. Thank you, Mr. Hornaday. How you doing?

20 A. I been better.

21 Q. Okay. Well, hopefully, I won't keep you too long
22 today. Okay?

23 Mr. Hornaday, would you tell the jury a little bit
24 about your background, where you're from?

25 A. I grew up in Myrtle Beach, South Carolina. Started

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1 framing when I was nineteen being a carpenter's helper.

2 Been doing carpentry every since.

3 Q. And where did you go to high school?

4 A. Socastee High School.

5 Q. Okay. So you've been involved in the construction
6 business for some time?

7 A. Yes.

8 Q. How long has that been, Mr. Hornaday?

9 A. Ever since I was nineteen, and I'm thirty-eight now.

10 Q. Where are you currently employed?

11 A. I'm working at Palmetto Aggregates. It's a sand-
12 pumping operation. I run a dredge. I don't do
13 construction anymore.

14 Q. How long have you been with the aggregate company?

15 A. Off and on four years.

16 Q. And Mr. Hornaday, did you work at any time with
17 Marick Home Builders?

18 A. Yes, sir.

19 Q. And how did you come to work with Marick Home
20 Builders?

21 A. I was -- me and another guy, a partner of mine, was
22 painting houses in a subdivision. And we were doing -- I
23 think we were doing trim. And Rick came up to us or we
24 come up to him and asked if he needed any trim
25 carpenters.

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- 1 Q. What was that subdivision?
- 2 A. Lakeside, I believe. I'm not sure.
- 3 Q. Where was it located?
- 4 A. In Greenville.
- 5 Q. So it wasn't at Lake Keowee?
- 6 A. No, no.
- 7 Q. Okay. And that's the first time you met Mr.
- 8 Thoennes?
- 9 A. Yes, sir.
- 10 Q. And is that the same Mr. Thoennes that's sitting
- 11 over at the table over here in the burgundy shirt?
- 12 A. Yes.
- 13 Q. And did you start working with Mr. Thoennes at that
- 14 point in time?
- 15 A. We were subbing for him.
- 16 Q. Did you understand or know the name of his company?
- 17 A. I don't -- it was Marick Homes at the time.
- 18 Q. Do you remember what it was?
- 19 A. I can't remember.
- 20 Q. What year was that, Mr. Hornaday?
- 21 A. I do not know. It was -- I do not know. It could
- 22 have been nine or ten years ago.
- 23 Q. What was the nature of the business that Mr.
- 24 Thoennes had at that time?
- 25 A. He was building residential homes.

1 Q. High quality? Low quality?

2 A. Both.

3 Q. So when you went to work with Mr. Thoennes, what did
4 you do for him?

5 A. We started out as doing trim.

6 Q. And who was your partner?

7 A. Toby Strandale.

8 Q. And did you do trim work for him for a while? That
9 is, Mr. Thoennes.

10 A. Yes.

11 Q. How long did you do trim work for him?

12 A. I do not know. I mean, if I had to guess, it would
13 be three or four years.

14 Q. Did you ever change the type of job that you did for
15 Mr. Thoennes?

16 A. Yes. I mean, we did -- sometimes we'd build decks,
17 did punch work, install door knobs, stuff like that.

18 Q. As a subcontractor to him?

19 A. Well, I didn't. I became an employee sometime after
20 I started.

21 Q. And do you know when that was?

22 A. I do not know.

23 Q. Did you ever frame a house for Mr. Thoennes?

24 A. No.

25 Q. Did you ever pour a foundation for Mr. Thoennes?

- 1 A. No.
- 2 Q. Ever do any roofing work for Mr. Thoennes?
- 3 A. No.
- 4 Q. Did you ever do any waterproofing work for Mr.
- 5 Thoennes?
- 6 A. No.
- 7 Q. Did you ever work on a project for Mr. Thoennes
- 8 called the Stoneledge project?
- 9 A. Yes.
- 10 Q. And do you know when that began?
- 11 A. Maybe 2006.
- 12 Q. And what did you do at the Stoneledge project for
- 13 Mr. Thoennes?
- 14 A. I was superintendent.
- 15 Q. And you were still employed at -- were you employed
- 16 at that time by Marick Home Builders?
- 17 A. Yes.
- 18 Q. And when did Marick Home Builders begin to employ
- 19 you in relation to when you started working at
- 20 Stoneledge?
- 21 A. What do you mean? I was employed before with them
- 22 already.
- 23 Q. Okay. But you mentioned earlier that the name of
- 24 the company wasn't Marick Home Builders. I'm just trying
- 25 to figure out when it became Marick Home Builders.

1 A. It was Marick Home Builders at that time. I can't
2 remember exactly when it was started as Marick Home
3 Builders.

4 Q. And so when you got to the Stoneledge project, you
5 were the project superintendent?

6 A. Yes.

7 Q. Had you ever served as a project superintendent
8 before?

9 A. No.

10 Q. Not for Marick Homes or anybody else?

11 A. Nobody.

12 Q. What did you understand your job to be as a project
13 superintendent?

14 A. To be on site at all times, to oversee some of the
15 work that the subs were doing, call subs in, make sure
16 subs showed up when they were supposed to.

17 Q. And at the time you became the superintendent on the
18 Stoneledge project for Marick Home Builders, were you a
19 licensed contractor in any way?

20 A. No.

21 Q. Have you ever held a contractor's license?

22 A. No.

23 Q. Mr. Hornaday, do you remember pulling building
24 permits for Marick Home Builders in relation to the work
25 that was being done at Stoneledge?

1 A. I never pulled any permits. I went and picked the
2 permits up.

3 (WHEREUPON, Plaintiff's Exhibit Number 16 was marked
4 for identification only.)

5 Q. Mr. Hornaday, I'm going to show you what I've marked
6 as number 16 and just ask you if you recognize the
7 documents that are contained within that exhibit?

8 A. I don't remember it.

9 Q. Is that your signature on the bottom of the page?

10 A. That's my signature.

11 Q. And you mentioned a moment ago -- can you just check
12 through and see if your signature is reflected on all of
13 those documents?

14 A. Yes.

15 Q. Okay. And you mentioned a moment ago that you went
16 to pick up the building permits for phase one at
17 Stoneledge?

18 A. Yes.

19 Q. And do those documents appear to be the building
20 permits that you picked up?

21 A. Yes.

22 MR. LYLES: Your Honor, I'd like to move to
23 have those admitted as Plaintiff's Exhibit 16.

24 THE COURT: Any objection?

25 MR. BELCHER: No objection, Your Honor.

1 THE COURT: All right. Without objection,
2 Plaintiff's Exhibit Number 16 will be admitted.

3 MR. LYLES: Thank you.

4 (WHEREUPON, Plaintiff's Exhibit Number 16 was
5 admitted into evidence.)

6 Q. Mr. Hornaday, were you the only superintendent for
7 Marick at Stoneledge?

8 A. Yes.

9 Q. And, if you will, I take you back to 2005. I think
10 -- is that the date of those permits, 2005?

11 A. Yes.

12 Q. If you would, describe for me the condition of phase
13 one at Stoneledge when you arrived as a superintendent in
14 2005.

15 A. Overall condition, mainly everything was finished
16 except for, I think, two or three units. I'm not sure.
17 And those units had all the exterior done. They didn't
18 have sheetrock inside of them, but I believe -- I'm not
19 sure, but I believe everything else was finished.

20 Q. And when you say finished, you mean roofs were on?

21 A. Roofs were on.

22 Q. Siding?

23 A. Siding. There were some doors and windows -- excuse
24 me -- doors missing. There were some, one, two, maybe
25 three at the most, exterior doors missing.

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- 1 Q. And the porches and decks, were they finished?
- 2 A. Yes.
- 3 Q. And the screens up on the screened porch?
- 4 A. Yes.
- 5 Q. And the grading had been completed by the time you
- 6 got there?
- 7 A. Yes.
- 8 Q. And were the buildings painted?
- 9 A. They were painted.
- 10 Q. What kind of shape was that in?
- 11 A. They needed to be repainted.
- 12 Q. Did you know when those units had been constructed?
- 13 A. No.
- 14 Q. Did you know who had constructed those units?
- 15 A. Yes. Well, I heard that it was Bostic.
- 16 Q. And in connection with your work as superintendent,
- 17 what were you asked to do with respect to the phase one
- 18 units at Stoneledge?
- 19 A. Walk around and walk through each unit, inspect for
- 20 damages and make a list of everything that needed to be
- 21 fixed.
- 22 Q. Was it the intention of Marick to fix the problems
- 23 that you found in phase one units?
- 24 A. Yes.
- 25 Q. And did you walk through the units as you just told

1 us you were supposed to?

2 A. Yes.

3 Q. And did Mr Thoennes walk through those units with
4 you?

5 A. I don't believe he walked through them at the same
6 time. We did walk through some units together, but I'm
7 not sure if he walked through all of them with me.

8 Q. Did you report what you observed and what you saw in
9 the phase one units to Mr. Thoennes?

10 A. Yes.

11 Q. And did you do that on a daily basis or a weekly
12 basis?

13 A. I can't remember. It could have been daily, or --
14 it was at least every other day.

15 Q. And was your work in phase one at Stoneledge pretty
16 steady during your time with Marick as the job
17 superintendent?

18 A. Yes. Well, I mean, I was overseeing -- I didn't do
19 none of the work myself personally. But I watched, and,
20 you know, I'd come back and check to see, make sure the
21 subs got it done.

22 Q. So you would retain subcontractors to do the work
23 that Marick needed to have done on those units?

24 A. Yes.

25 Q. Do you remember when you left the Stoneledge

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1 project?

2 A. No. I remember the month, but I don't remember the
3 year.

4 Q. You don't remember if it was 2007? 2008?

5 A. 2007 maybe.

6 Q. What month of the year?

7 A. February.

8 Q. At the time you were serving as the job
9 superintendent for Marick in connection with phase one,
10 did you know what building code applied to the
11 construction of those units?

12 A. What do you mean?

13 Q. Do you know what building code applied? What
14 standard had been set by Oconee County and the building
15 inspector?

16 A. No.

17 Q. And in your capacity as a superintendent for Marick,
18 did you read any of the manufacturers' literature for the
19 products that your subcontractors were utilizing in the
20 repair of phase one?

21 MR. IMHOFF: Your Honor, objection.

22 THE COURT: Please state your objection.

23 MR. IMHOFF: Relevancy, Your Honor. The issue
24 at question is the exterior of these units. All of the
25 testimony ---

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1 THE COURT: I didn't know that this witness was
2 limited. He was the superintendent over construction.

3 MR. IMHOFF: Well, the construction at issue is
4 the exterior.

5 THE COURT: Do you want to take this up outside
6 the ---

7 MR. IMHOFF: Sure.

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, I need to take up a matter of law
10 with the attorneys. If you would, please, retire to your
11 jury room. Do not undertake the discussion of the case
12 among yourselves in any way.

13 (WHEREUPON, the jury exited the open court at
14 approximately 1:55 p.m.)

15 THE COURT: Mr. Imhoff?

16 MR. IMHOFF: Your Honor, all the testimony and
17 evidence so far has been that these units, all of the
18 exteriors, all of the components that are at issue in
19 this case, were built by Bostic and were present when
20 Marick came on site. And plaintiff is asking Mr.
21 Hornaday about codes, about manufacturers' instructions
22 for the work that Marick did, which up to this point, all
23 of the evidence is it's not an issue in this case. So I
24 do not believe that it's relevant to talk about whether
25 or not this gentleman knew about the code for plumbing or

1 the code for electrical or whatever else Mr. Lyles has
2 asked him about when it's not an issue that I know of in
3 this case.

4 THE COURT: All right. Mr. Lyles?

5 MR. LYLES: Well, with regard to the code, the
6 building permits that he pulled specifically reference
7 his agreement and duty and certification to comply with
8 the building code. And I probably asked the questions
9 about the product literature perhaps out of order. But I
10 think what this witness' testimony is going to be that
11 they applied waterproofing to all of the decks in phase
12 one save one or two decks and did some roofing work in
13 phase one and did some additional work relative to the
14 foundation in phase one. And I probably should have
15 gotten this witness to identify that work and then asked
16 him about the products that he utilized. But I knew from
17 my deposition with Mr. Hornaday what the answer to the
18 question would be.

19 THE COURT: So you are seeking to prove other
20 than -- everything was finished except two or three?

21 MR. LYLES: Well, yes, sir. They did work, and
22 that's what I intend to ---

23 THE COURT: Well, that's what I'm asking.

24 MR. LYLES: Yes, sir.

25 THE COURT: I think what Mr. Imhoff is saying

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1 is that initially his testimony was everything was
2 finished except for two or three units. Now you're
3 saying there was more work done than just two or three
4 units?

5 MR. LYLES: Oh, yes, sir.

6 MR. IMHOFF: Well, Your Honor, he's talking
7 about repair work, I guess. I understand that now. But
8 I mean, I still think it's -- if we're talking about the
9 interior of the units and the work that subcontractors
10 were doing out there on the interior of the units, that's
11 not an issue in this case. If he's going to ask him
12 about the repairs that they did, the three things that he
13 just cited, he can certainly ask him about what ---

14 THE COURT: Mr. Lyles?

15 MR. LYLES: Yes, sir. I mean, that's what I
16 was getting at, Your Honor, is the materials that were
17 utilized in the repair. And I'm happy to ask about the
18 repair methods first.

19 THE COURT: Very well. Well, let's just be ...
20 Yes, sir?

21 MR. GRESH: And to the extent that Marick
22 performed ---

23 THE COURT: Identify yourself for the record.

24 MR. GRESH: That's right. Jack Gresh for the
25 Bostic Brothers. And to the extent that Marick performed

1 other work in addition to repairs, I think it's a fair
2 question to ask him about the code that would apply to
3 that frame of work.

4 MR. LYLES: Yes, sir.

5 MR. GRESH: Well, I think we're in agreement on
6 this.

7 MR. LYLES: With regard to the code, I mean, he
8 had to pull -- this project had to be re-permitted, and
9 so it was re-permitted. Mr. Hornaday picked up the
10 permits, and that permit obligates Marick to comply with
11 the building code. And so that was the relevance of the
12 question about the building.

13 MR. IMHOFF: Well, again, Your Honor, he hasn't
14 asked him the second question, but he did ask him the
15 first two which is, "Are you licensed?" and "Did you pull
16 the permit?" And he said, "I'm not licensed, and I
17 picked up the permit." So I don't know that this witness
18 is qualified to talk about what the code is. Obviously,
19 he needs to ask him another question about how he was
20 able to get the permit.

21 MR. LYLES: Well, I don't need to. He
22 certified that he was going to perform the construction
23 in conformance with the code when he picked up the
24 permit. That's what that document said.

25 MR. IMHOFF: Well, may I answer that here?

1 THE COURT: Certainly.

2 MR. IMHOFF: The license holder pulled the
3 permit. There is ---

4 THE COURT: Well, I know the difference. But
5 it also -- apparently there's a signature on each of the
6 permits when they are picked up after they've been
7 applied for.

8 MR. IMHOFF: He was -- I'm sorry, Your Honor.

9 THE COURT: And apparently the signature, by
10 signing, he is saying that not only is he authorized to
11 pick up the permits for the applicant, but also he is
12 authorized to acknowledge the requirements.

13 MR. IMHOFF: That's right. Acknowledge them,
14 Your Honor.

15 THE COURT: That's all he can do.

16 MR. IMHOFF: That's right. He's basically
17 signing his name on behalf of the license holder.

18 THE COURT: No. Does it say on behalf of or by
19 anybody?

20 MR. LYLES: It does not say that. And I'm
21 finished with my ---

22 THE COURT: Well, I mean, the thing is you
23 might be able to argue that to the jury that -- what is
24 it? -- that he signed his name. He wasn't authorized to,
25 but I'm not sure if you want to.

1 MR. IMHOFF: He was authorized to. Is that
2 what you meant?

3 THE COURT: That he was authorized to sign his
4 name to something that said he would do something.

5 MR. IMHOFF: That's why my objection stands,
6 Your Honor, as it's not relevant in the case ---

7 THE COURT: I understand.

8 MR. IMHOFF: --- which is the interior work. I
9 would restate ---

10 THE COURT: Well, of course, as I say, all I
11 know is that apparently he's going to limit it to repairs
12 or something like reworking or something like that. And,
13 of course, it would be limited to that, I mean, if that's
14 the only thing the permits applied to. Did the permit
15 say "for repairs"?

16 MR. LYLES: The permits vary depending on the
17 permits. Some of the permits say "from the foundation
18 up." Some of the permits say "complete the unit" or
19 something to that effect "from the rough-in stage." So
20 the units were in varying degrees ---

21 THE COURT: Well, whatever -- you're answering
22 my question, so it doesn't limit it to -- the permits
23 were not limited to just, I think you mentioned -- what
24 is it? -- putting on door knobs.

25 MR. LYLES: Not all the permits were limited.

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1 THE COURT: Are any of the permits limited?

2 MR. LYLES: There are some permits that are
3 more limited than others only because you can see a
4 general description of what the limitation is and the
5 amount of the value of the work. Some units the value of
6 the work is only a few thousand dollars. Some units the
7 value of the work in the permit is many tens of thousands
8 of dollars. And so the permits are somewhat different.
9 But I don't intend to ask him about work that he didn't
10 do.

11 THE COURT: All right. Maybe that's the
12 qualifying thing that Mr. Imhoff was looking for is that
13 with regard to the work that you did and the permits it
14 applied to, do they have -- what is it? -- requirements?

15 MR. LYLES: Yes, sir. And I think that my
16 question was did he read the literature of the products
17 that he applied. But I'll go back and be more specific
18 about ---

19 THE COURT: All right. Very good. I'm going
20 to overrule your objection on relevance. I think that,
21 of course, in order to bring it into admissibility,
22 though, it has to be material to the actual knowledge of
23 this witness.

24 MR. LYLES: Yes, sir.

25 THE COURT: all right. Or limited, if you

1 would give me the use of the word, to this witness'
2 knowledge.

3 MR. LYLES: Yes, sir.

4 THE COURT: Very well. But I'm overruling as
5 far as relevancy, and noted for the record.

6 MR. IMHOFF: Thank you, Your Honor.

7 (Off record discussion)

8 THE COURT: All right. Are we now ready to
9 proceed?

10 MR. LYLES: Yes, sir.

11 THE COURT: All right. Ask the jury to join
12 us.

13 (WHEREUPON, the jury entered the open court at
14 approximately 2:04 p.m.)

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

17 Mr. Lyles, you may proceed.

18 MR. LYLES: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 CONTINUED BY MR. LYLES:

21 Q. Mr. Hornaday, when you arrived in phase one at
22 Stoneledge, did you observe that the porches and decks
23 were leaking?

24 A. Yes.

25 Q. And if you will, describe the leaks that you found

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1 or observed.

2 A. There was water running down the rock on the front
3 of the decks, and there was some water that -- the water
4 stains on the tongue-and-groove ceiling. And there was
5 some water stains on the rock up against the back of the
6 house where it comes out onto the deck.

7 Q. When you say the back of the house, you're saying
8 the wall for what I would call the heated space?

9 A. Yes. Yes.

10 Q. And is there a sliding glass door or some other kind
11 of door there?

12 A. Just regular doors.

13 Q. Okay. And if you step through the door, you go to
14 the inside of the house?

15 A. Yes.

16 Q. And then on the lake side, there's a concrete patio
17 under many of these decks and porches?

18 A. Yes.

19 Q. Okay. And the tongue-and-groove ceiling you
20 referred to, if you look straight up on that deck, is
21 that where you saw water spots?

22 A. Yes.

23 Q. And the stone that you referred to, you saw water
24 stains on the stone on the heated space?

25 A. Yes.

1 Q. And did you see water stains on the stone of the
2 columns?

3 A. I don't remember. I know I seen water stains in-
4 between the columns, but I don't believe I seen water
5 stains on the columns.

6 Q. Okay. Did you observe any indication that there
7 were water leaks inside the units?

8 A. Yes.

9 Q. And did you associate those water leaks with the
10 porches and decks?

11 A. No.

12 Q. You associated those water leaks with the foundation
13 walls?

14 A. No. There was a lot of windows when I got there
15 that were broke. There was doors left open, just
16 swinging freely. No door knobs. There was windows
17 rolled out open. And when I got there, the water stains
18 -- I mean, I don't know if it come in from the window or
19 what.

20 Q. How did you determine that the stains that you saw
21 around the porches and decks were from leaks in the
22 porches and decks?

23 A. The next time it rained, it got wet. And we had --
24 I think we had closed the windows and doors.

25 Q. And where all did you see the water manifesting

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1 itself, showing up, that you associated with the porches
2 and decks?

3 A. Just running down the exterior rock on the heated
4 space and on the outside of the exterior rock.

5 Q. And you didn't see any evidence of water
6 infiltration on the inside of the units?

7 A. No.

8 Q. And was Mr. Thoennes aware of the decks and porches
9 leaking?

10 A. Yes.

11 Q. And did you walk around with him and show him those
12 conditions?

13 A. I believe I did.

14 Q. What, if anything, did you do to try to determine
15 why the porches and decks were leaking in phase one?

16 A. I did tear the tongue-and-grove off of up underneath
17 one of the porches, but I can't remember what I found. I
18 do remember doing that.

19 Q. And did Mr. Thoennes ask you to do that, or did you
20 do that on your own?

21 A. I can't remember.

22 Q. Did you ever recommend to Mr. Thoennes that he hire
23 some sort of expert to come and try to determine why
24 those porches and decks were leaking?

25 A. I think he took it and took care of that his self.

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1 Q. And did you or Mr. Thoennes or anybody else at
2 Marick ever try to really take apart a porch beyond
3 taking a few of those tongue-and-grove boards off ---

4 A. No.

5 Q. --- in order to figure out why the porches and decks
6 were leaking?

7 A. No.

8 Q. And you said that Mr. Thoennes took it upon himself
9 to address it. What did he do?

10 A. He called -- I believe they were Coleman
11 Waterproofing. He called them out to look at everything.

12 Q. Okay. And were you there when that happened? Were
13 you there?

14 A. Yes.

15 Q. And what did Coleman Waterproofing do?

16 A. They put some kind of membrane on top of the
17 concrete.

18 Q. And did you watch that process?

19 A. I watched some of it, but I didn't stay there the
20 whole time, you know. I looked, watched them doing some
21 of the work.

22 Q. Did you read anything about the product that they
23 put down?

24 A. No.

25 Q. Did you do anything to make sure that what they were

1 putting down was the appropriate product to put down?

2 A. No.

3 Q. Did you do anything to make sure that they were
4 putting it down the way they were supposed to put it
5 down?

6 A. No. I relied on their expertise. That's what they
7 done.

8 Q. In your observation, did the application of that
9 product by Coleman Waterproofing stop the leaking of the
10 decks?

11 A. Yes.

12 Q. And that was when? Do you remember?

13 A. I don't remember.

14 Q. Would it have been early on in your involvement in
15 phase one or towards the end?

16 A. I can't remember. I don't want to guess, but I
17 don't think it was too far into it.

18 Q. Did you see some evidence in the decks at phase one
19 that there was no waterproofing that had been applied
20 under the concrete?

21 A. What do you mean under the ---

22 Q. Under the concrete, that there was no waterproofing
23 membrane beneath the concrete ---

24 A. On the deck? There was no way to tell.

25 Q. Did you observe any locations in phase one where it

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1 appeared as though there was nothing that had been placed
2 underneath the exterior doors to the porches and decks?

3 No sort of waterproofing beneath the sliding glass door?

4 A. Not that I can remember.

5 Q. Did you ever become aware of any leaks through or
6 around the foundation walls into the basements of phase
7 one?

8 A. I don't remember any.

9 Q. Do you remember doing any excavation work around the
10 base of the wall on the front of the units, that is ---

11 A. I remember one unit.

12 Q. And tell me about that unit.

13 A. It was a bought unit. It was already a occupied
14 unit. And they kept having problems with water coming
15 through. And we tried tearing the sheetrock off the
16 inside, seeing where it was coming from. We went into
17 the crawlspace to see. We couldn't find it. So we
18 finally hired somebody to dig down. And I believe that
19 the waterproofing was damaged on the outside.

20 Q. Okay. What sort of waterproofing was it?

21 A. It was like a -- I think it was a spray-on and an
22 insulation mix waterproofing. I couldn't -- I can't
23 really remember.

24 Q. And how had it been damaged?

25 A. There was pieces of it missing. I mean, I don't

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1 know how it was damaged. It could have been from
2 landscaping machines, like a skid steer or something
3 could have scraped it while they were putting up the
4 mulch or the backfilling of dirt.

5 Q. And you don't remember any other leaks in any other
6 basements in phase one?

7 A. I do remember one where there was a dryer vent.

8 Q. And that was in a different unit?

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. And tell me what you found there.

13 A. It was a dryer vent that had been just rocked over.

14 Q. Was it rock?

15 A. I can't remember if it was rock or -- it was a dryer
16 vent that they had cut a hole for a dryer vent, and then
17 they had just finished over it.

18 Q. Okay. Let's -- the dryer vent hole had been cut
19 where?

20 A. It was through plywood, I remember.

21 Q. And where was the plywood? Was it on the front or
22 on the lake side of the unit?

23 A. It was on the front.

24 Q. At the driveway side?

25 A. Driveway? No. It was right there at the porch,

- 1 front porch.
- 2 Q. Okay. But the driveways were on that side of the
- 3 building?
- 4 A. Yes.
- 5 Q. Not the lake side?
- 6 A. Yes, the driveway side then.
- 7 Q. And as you were standing looking at that unit, was
- 8 the dryer vent hole cut at the bottom of the wall or the
- 9 middle of the wall?
- 10 A. Well, in the basement, we had to cut out the
- 11 ceiling. They had to cut out the ceiling to find it.
- 12 Q. Is that where the water was coming in the basement
- 13 of that unit?
- 14 A. Yes.
- 15 Q. And so you cut the ceiling out of the basement in
- 16 that unit; is that right?
- 17 A. I had somebody do that, yes.
- 18 Q. And what you did is you looked up and you could see
- 19 a dryer vent hole that had been cut?
- 20 A. Yes.
- 21 Q. But no dryer vent had been put in?
- 22 A. No.
- 23 Q. And in relation to the level of the earth on the
- 24 outside of the house, where was that dryer vent hole?
- 25 Was it below the ground, or was it above the ground?

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1 A. I believe it was halfway.

2 Q. And the hole hadn't been filled in or waterproofed
3 in any way?

4 A. No.

5 Q. They had put stone over the hole?

6 A. There was, I think -- I believe there was wire and
7 then stone, but I can't be sure.

8 Q. And did you repair that condition?

9 A. I had it repaired.

10 Q. And how did y'all repair it?

11 A. I can't remember.

12 Q. And then on the unit where you found the
13 waterproofing had been damaged, did y'all repair that?

14 A. Yes.

15 Q. And do you remember doing any other repairs at the
16 grade level or below the grade level on any other unit in
17 phase one?

18 A. No.

19 Q. Besides those two?

20 A. No.

21 Q. And you don't remember any other owner complaining
22 about leaks in their basement?

23 A. No, I don't remember.

24 Q. Okay. Now, you have mentioned that you observed
25 some window leaks when you got to phase one; is that

- 1 right?
- 2 A. Correct.
- 3 Q. And how many window leaks would you say that you
- 4 observed?
- 5 A. I can't be sure.
- 6 Q. Would you say it's five? Less than five? More than
- 7 five?
- 8 A. Maybe five or six, maybe.
- 9 Q. Do you remember what units it was in or they were
- 10 in, those window leaks?
- 11 A. They were different units.
- 12 Q. And what did you do to fix those leaks?
- 13 A. Well, most of the leaks were because of broken glass
- 14 or windows left open. We tried to close all the windows
- 15 we could. And we had to get with a company to special
- 16 order parts for those windows because they had been
- 17 discontinued.
- 18 Q. And did you do that?
- 19 A. Yes.
- 20 Q. And reinstall the windows?
- 21 A. Yes.
- 22 Q. Now, there were other units, I think you said, that
- 23 the drywall had not been installed on the interior of the
- 24 unit; is that right?
- 25 A. Right.

1 Q. Okay. And how many of those were there?

2 A. Two, maybe three.

3 Q. Do you remember one of them being unit thirty-three?

4 Does that ring a bell?

5 A. I don't remember the numbers on the units.

6 Q. I'd like to show you a picture if I can.

7 MR. LYLES: Lisa, is there any way we can dim
8 the lights just a little bit?

9 Q. Mr. Hornaday, I represent to you that that's a
10 photograph from unit -- on unit thirty-three. I call it
11 the unfinished unit.

12 A. Okay.

13 Q. Is that similar to the conditions that you saw when
14 you got to phase one?

15 A. Yes.

16 Q. And would you agree with me that you see water
17 staining around the corners of that window?

18 A. Yes.

19 Q. And on the floor?

20 A. Yes.

21 Q. And did you observe those types of staining patterns
22 when you were at the site?

23 A. Yes.

24 Q. Did Mr. Thoennes?

25 A. Yes.

1 Q. And Mr. Hornaday, I represent to you this is another
2 picture in that same unit. And is this similar to how it
3 looked when you were there?

4 A. Yes.

5 Q. And here's the last picture of an exterior wall in
6 that unit. Did you observe staining on the inside face
7 of the exterior sheathing like this in that unit?

8 A. I don't remember that.

9 Q. Mr. Hornaday, what we're looking at in the interior
10 from this unfinished unit is what's being depicted there
11 is the back phase ---

12 MR. IMHOFF: Your Honor, objection. Mr. Lyles
13 is testifying about what this picture is.

14 THE COURT: All right. Restate your question.

15 MR. LYLES: Yes, sir.

16 Q. Mr. Hornaday, what wood are we seeing in that
17 photograph? In other words, the material that looks like
18 it's a composite material.

19 A. That looks like exterior O.S.B. sheathing.

20 Q. And does that appear to be the back of the O.S.B.
21 sheathing?

22 A. Yes.

23 Q. And the reason you can see that -- do you see any
24 sheetrock in that picture?

25 A. No.

1 Q. You see any insulation in that picture?

2 A. No.

3 Q. Now, after the insulation is put in and the drywall
4 is put in, you wouldn't be able to see that gypsum --
5 excuse me -- that O.S.B. sheeting, would you?

6 A. No.

7 Q. And you say that Mr. Thoennes was aware of the
8 staining patterns similar to those that are depicted in
9 these pictures?

10 A. I believe he was. I'm not a hundred percent sure.

11 Q. And this is in, again, unit thirty-three, one of the
12 unfinished units. Can you tell if that's a window that
13 was removed and replaced by Marick?

14 A. I can't tell, but it looks like that was one of the
15 windows that was broke and was left open.

16 Q. Mr. Hornaday, do you recognize -- I represent to you
17 this is from the same unit. Do you recognize what's been
18 depicted in that photograph or what is depicted in that
19 photograph?

20 A. Yes.

21 Q. And what is that?

22 A. Fire-rated sheetrock.

23 Q. And do you remember observing that when you got to
24 the site?

25 A. Yes.

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- 1 Q. And now, the photograph was taken on December the
2 1st, 2009. Had you left the site before then?
- 3 A. That was taken when, now? 2009?
- 4 Q. December the 1st, 2009.
- 5 A. I couldn't be real sure.
- 6 Q. Were you ever asked -- was Mr. Thoennes aware of the
7 condition that's depicted in that photograph?
- 8 A. Well, what condition are you talking about?
- 9 Q. The firewall construction.
- 10 A. I believe he was.
- 11 Q. Did Mr. Thoennes ever ask that you complete or
12 repair that firewall?
- 13 A. No. The building officials did.
- 14 Q. And when did they ask that you do that?
- 15 A. They come out and seen those holes. And I think we
16 had to have a sub come out and fix all holes in any fire-
17 rated sheetrock.
- 18 Q. And that was on the order of the building official?
- 19 A. Yes.
- 20 Q. And, of course, the date of this photograph is 2009.
21 And do you know whether or not Marick would have been in
22 there doing that work after December the 1st of 2009?
- 23 A. I can't remember. I can't remember when I left.
- 24 Q. Okay. When the building officials asked Marick to
25 repair any holes in the firewalls, what did you or Marick

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1 do to investigate, if anything, to investigate the
2 firewalls at Stoneledge?

3 A. We didn't investigate.

4 Q. So to the extent any repairs were made, they were
5 made to walls that were simply open and obvious?

6 MR. IMHOFF: Object to the form. Objection,
7 Your Honor. He's already answered that question. He's
8 misrepresenting Mr. Hornaday's testimony.

9 THE COURT: All right. Restate your question.

10 MR. LYLES: Yes, sir.

11 THE COURT: Don't answer until I tell you to.

12 Go ahead, Mr. Lyles.

13 Q. Do you recall making repairs to firewalls in phase
14 one at the direction of the building official?

15 A. I don't remember.

16 THE COURT: All right. Move on.

17 MR. LYLES: Yes, sir.

18 Q. I want to just ask you a few questions about some
19 other conditions that you found when you arrived in phase
20 one at Stoneledge for Marick. Did you find any problems
21 with the electrical wiring in the walls of the units?

22 A. No.

23 Q. Did you not find some walls with no electrical
24 wiring in it?

25 A. We found some walls that had already been

1 sheetrocked with no electrical, yes.

2 Q. And was that proper or improper in your observation?

3 A. That was improper.

4 Q. And do you remember finding plumbing pipes stuck in
5 the wall that didn't have any plumbing attached to them?

6 A. Yes.

7 Q. Do you remember finding crushed drain pipes?

8 A. Yes.

9 Q. And those crushed drain pipes would have been
10 running along the grade level on the driveway side of
11 units?

12 A. Yes.

13 Q. I should say where were those drain pipes.

14 A. Yes.

15 Q. What did you do when you found a wall that had been
16 sheetrocked and didn't have any wiring?

17 A. We removed all sheetrock.

18 Q. And then did what?

19 A. Had the electrician do the rough-in electrical.

20 Q. And what did you do when you found plumbing pipes
21 coming out of the wall with no plumbing attached to it?

22 A. Well, that was one unit. And luckily it was a --
23 had a crawlspace, so we could actually cut holes -- we
24 had to cut holes in the sheetrock and run the plumbing.

25 Q. So when you walked into that particular unit, if

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1 you'll describe for the jury, you actually saw a pipe
2 coming out of the wall?

3 A. Yes.

4 Q. And sheetrock around the pipe?

5 A. Yes.

6 Q. But then nothing on the back side of the pipe?

7 A. No.

8 Q. And y'all were able to simply go up and attach
9 something to the back side of it from the crawlspace?

10 A. Yes.

11 Q. All of the problems and conditions that you've
12 referring to today, is it your belief that Mr. Thoennes
13 was aware of all those conditions?

14 A. Yes.

15 Q. Mr. Hornaday, I think that's all the questions I've
16 got for you. Thank you.

17 THE COURT: All right. Mr. Imhoff?

18 MR. IMHOFF: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. IMHOFF:

21 Q. Did you finish your water, Mr. Hornaday?

22 A. I'm fine.

23 Q. Mr. Hornaday, you scheduled repairs; is that right?

24 A. Yes.

25 Q. You didn't do any repairs except what we call

- 1 screwdriver repairs?
- 2 A. No, I didn't do any of the repairs.
- 3 Q. You hired somebody to go do that?
- 4 A. Yes.
- 5 Q. All right. And did any of those folks that you
- 6 hired, those contractors, ever come back to you or Mr.
- 7 Thoennes that you're aware of and say, it's a mess you've
- 8 got to fix this?
- 9 A. No.
- 10 Q. Okay. And if they did, did Mr. Thoennes ever refuse
- 11 to do a repair on these units?
- 12 A. No.
- 13 Q. Did he ever tell you to cover anything up?
- 14 A. No.
- 15 Q. Tell you to, hush, don't tell anyone?
- 16 A. Never.
- 17 Q. You said, "This unit doesn't have any electrical
- 18 back here. We need to fix it."
- 19 A. Yes.
- 20 Q. You told that to Mr. Thoennes?
- 21 A. Yes.
- 22 Q. What did he tell you to do?
- 23 A. He said to rip the sheetrock down.
- 24 Q. Did he do the same thing about the plumbing?
- 25 A. Yes.

00712

1 Q. When the building inspector told y'all that you
2 needed to fix the firewall, did you do it?

3 A. Yes.

4 Q. Did you hire somebody to do it?

5 A. Yes.

6 Q. Did he ever say no?

7 A. No.

8 Q. After the decks were repaired -- well, let me back
9 up a little bit. You worked on site; is that right?

10 A. Right.

11 Q. Walking around. You're the guy there on site?

12 A. Yes.

13 Q. Okay. You run into the mayor, the mayor of
14 Stoneledge?

15 A. Yes.

16 Q. Did he come and grab you and tell you do this or ask
17 you to do that?

18 A. He could have, but I don't remember what it was or
19 what it was about.

20 Q. After the repair to the decks was done by Coleman
21 Waterproofing, did you stop getting complaints about
22 water leaking through the decks?

23 A. I believe, yes, I did.

24 Q. Backing way up, all of the exteriors on all thirty-
25 seven buildings were complete when Marick got there?

- 1 A. Exteriors?
- 2 Q. Roof.
- 3 A. Yes.
- 4 Q. Siding?
- 5 A. Yes.
- 6 Q. Stone?
- 7 A. Yes, except for some -- there was broken stone that
- 8 had to be replaced.
- 9 Q. While you were there, did you paint every unit in
- 10 phase one?
- 11 A. Yes.
- 12 Q. Not you?
- 13 A. No, I didn't.
- 14 Q. You hired someone to do it?
- 15 A. Yes.
- 16 Q. Now, Mr. Lyles showed you a photograph of the unit
- 17 that was unfinished in 2009. Do you remember if any
- 18 units were left unfinished by Marick when you left?
- 19 A. No.
- 20 Q. You don't ---
- 21 A. I don't remember.
- 22 Q. Thank you, Mr. Hornaday.
- 23 CROSS-EXAMINATION
- 24 BY MR. GRESH:
- 25 Q. Good afternoon, Mr. Hornaday. I'm Jack Gresh.

00714

1 Along with Alan Belcher, I represent Bostic Construction
2 in this case. I've just got a few questions for you.

3 The work that y'all were doing was a little bit more
4 than repair work, wasn't it?

5 A. Well, what do you mean?

6 Q. Well, you had to re-flash some windows and re-flash
7 some doors; correct?

8 A. I guess. The subs, the people that we hired, did.

9 Q. That's right. And y'all were the general
10 contractor, so you would have relied on the expertise of
11 your subcontractors to do those sorts of things?

12 A. Yes.

13 Q. In addition to re-flashing windows and some doors,
14 you had to fix some leaky windows. That's true; right?

15 A. Yes. The windows that were broke and left, yes.

16 Q. Now, as I understand the time line when Bostic was
17 off the job and when y'all came in to the job, there was
18 a period of time in which these things just sat empty and
19 unoccupied. Is that fair?

20 A. Yes.

21 Q. Maybe a little bit less than a year. Is that your
22 recollection as well?

23 A. I don't remember how long it was.

24 Q. Now, these spaces, many of them, were not air
25 conditioned; correct?

00715

1 A. Correct.

2 Q. And they didn't have doors on all of them and
3 windows on all of them; right?

4 A. Correct.

5 Q. And some of the windows had been broken out?

6 A. Correct.

7 Q. Now, is that something that happens sometimes when
8 projects just sit empty for a year? Maybe some vandals
9 came by and broke some windows?

10 A. Yes.

11 Q. When y'all took over, y'all had to go pull some
12 permits. And we saw that in the Plaintiff's Exhibit 16
13 that you actually went and picked up those permits from
14 Oconee County?

15 A. Yes.

16 Q. All right. The codes, the building codes, to your
17 knowledge, had that changed from when Bostic had done the
18 construction to when Marick had come on site to finish
19 the construction?

20 A. Yes.

21 Q. And so in fact when y'all -- when Marick went and
22 picked up these permits, did y'all have to go back in and
23 make some changes to the property as it existed to bring
24 it back up to code, the current code?

25 A. Yes.

00716

1 Q. Now, these permits that you pulled -- if I can, I'm
2 just going to plug in real quick. Let's just kind of
3 walk through a couple of them. And this is already in
4 evidence as Plaintiff's 16. Okay. This is a terrible
5 copy of one of the things from Plaintiff's Exhibit 16.
6 And if I could, I just want to run through this real
7 quick on this one if I can. This is the top page, the
8 top part of that permit; correct?

9 A. Correct.

10 Q. And it talks about -- this is for lot number one --
11 one that had been started but not finished and picked up
12 from Marick [sic] and completed; right?

13 A. Yeah. I don't remember where lot number one was,
14 but I don't know.

15 Q. That's fine. What we have here at the top, "I.M.K.
16 Development." That's the name of the person that owns
17 the townhome; correct?

18 A. Correct.

19 Q. And down below that, the contractor's name is Marick
20 Home Builders. That's y'all?

21 A. Correct.

22 Q. And then right where I cut it off, it says,
23 "Valuation thirty-five thousand three hundred and ten
24 dollars and sixty-five cents." Do you see that there?

25 A. Yes.

1 Q. That part of the permit is the value of work that
2 Marick is going to do on Townhomes at Keowee, lot number
3 one. Is that fair?

4 A. Yes.

5 Q. That's how that number comes out?

6 A. (No verbal response)

7 Q. That's how that comes to be is y'all assigned that
8 number. True?

9 A. Yes, sir.

10 Q. And it's clear what the County does it says, okay,
11 if you're going to spend thirty-five thousand three
12 hundred and ten dollars on lot number one, the County
13 wants to get some money. So they say, you'll have fees
14 paid of a hundred and eighty dollars; is that right?

15 A. Right.

16 Q. And that's your permit fee, if you will, for lot
17 number one?

18 A. Yes.

19 Q. Okay. And here's just another one. This is lot
20 number twenty-five. But essentially it would be the same
21 thing, another permit that you all would have pulled;
22 true?

23 A. Okay.

24 Q. This one's got a valuation a little bit different.
25 Sixty-four thousand, six hundred and forty-one dollars

1 and ninety-eight cents. And your permit fee, of course,
2 goes up because the amount of money goes up; right?

3 A. Yes.

4 Q. Now it's three hundred and twenty dollars. So as
5 compared to lot number one to lot number twenty-five, it
6 looks like there's about twice as much work that needed
7 to go into lot number twenty-five as it did to lot number
8 one. Is that fair?

9 A. Yes.

10 Q. Going from a thirty-five thousand dollar job to a
11 sixty-five thousand dollar job. Okay?

12 A. (No verbal response)

13 Q. Let's just skip on down a little bit. This is lot
14 thirty-one. Again, y'all had to pull permits on all the
15 lots that hadn't been sold off by Bostic or Townhomes of
16 Keowee; correct?

17 A. All of them that wasn't occupied, yes.

18 Q. And they had sold about ten. So y'all had to pull
19 twenty-seven or so permits?

20 A. I think so.

21 Q. Is that about right? This one, let me see if I can
22 blow it up a little bit better. The other ones had said
23 that what the project was going to do was to bring up the
24 townhome from the roughed-in stage to completion?

25 A. Yes.

00719

1 Q. This one says something different. This one says,
2 "We're going to complete the townhome from the foundation
3 stage up to complete." Right? You see that?

4 A. Yes.

5 Q. And as you would expect, the price is a little
6 bigger. It's eighty-four thousand five hundred sixty-
7 three dollars and forty cents. And your fee is bigger,
8 the four hundred dollars; right?

9 A. Right.

10 Q. So on -- just taking as an example, on lot thirty-
11 one, you have a foundation. Marick has got a foundation
12 on its hands that y'all need to build up through
13 completion?

14 A. No.

15 Q. Okay?

16 A. There wasn't a home -- there wasn't one like that.

17 Q. Did y'all have to have these inspected after you
18 pulled these permits and did some work?

19 A. Yes.

20 Q. Okay. Well, I think what we were just talking
21 about, this home number thirty-one, that has up there at
22 the top the permit number is 05-01058. Do you see that
23 up there at the top right, "permit number"?

24 A. Yes.

25 Q. This is the inspection for that permit right here.

00720

1 You see that up there at the top right, "05-010508"?

2 A. Yes.

3 Q. Okay. What this says to me -- and you tell me if

4 I'm wrong ---

5 MR. IMHOFF: I'm going to object to that

6 question before he asks it.

7 MR. GRESH: I'll rephrase it then. We won't

8 even go there.

9 Q. Explain this to me, Nate. I see here that the
10 framing is done on November 3, 2005. That's when the
11 County came out after y'all had pulled the permits in
12 June, that the County came out in November and said that
13 your framing was okay?

14 A. I don't remember ever seeing that document.

15 Q. Okay. And what we have here is the E.L.E.R. with
16 that notation right there, you eventually get the yes on
17 all of these. That's the County saying that y'all's
18 framing is okay, that your electrical is okay, your
19 plumbing is okay, mechanical is all okay; is that right?

20 A. That's what that's saying.

21 Q. And all of that was done there in November of 2005,
22 about five months after y'all had pulled the permits to
23 take this townhome from its foundation and finish
24 building it out; is that correct?

25 A. Yes.

00721

1 Q. Now, Plaintiff's 16 has a lot of permits on it;
2 right?

3 A. Yes.

4 Q. And have you ever added those up to see the value of
5 Marick's work that they were going to do out there?

6 A. No.

7 Q. As Plaintiff's 16 for each one of those, y'all had
8 to assign, this is the amount of work I'm going to. And
9 we had number one, there's a thirty-five thousand dollar
10 number. We talked about some of these that are eighty-
11 four thousand dollar numbers. By the time you added them
12 all up, Marick had estimated to the Oconee County that
13 they were going to have to put in about one point four
14 seven million dollars worth of work to fix these things.
15 Is that about right?

16 A. I wouldn't know.

17 Q. Okay. But we can add them up on exhibit 1 if we
18 wanted to, but ---

19 A. You could add those numbers up, but I wouldn't know.

20 Q. All right. That's all. Thank you very much.

21 THE COURT: Yes, sir, Mr. Anderson?

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

24 THE COURT: Mr. Vick?

25 MR. VICK: We have no questions, Your Honor.

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1 THE COURT: Mr. Hemphill?

2 MR. HEMPHILL: No questions, Your Honor.

3 THE COURT: Mr. Lyles?

4 MR. LYLES: None from me, Judge.

5 THE COURT: All right. You may step down.

6 MR. IMHOFF: Your Honor, may I follow up on
7 Bostic's questions, Your Honor?

8 THE COURT: All right. Yes, sir. Yes.

9 MR. IMHOFF: Just limited to that, Your Honor.

10 THE COURT: It has to be. Only what was
11 brought out on cross.

12 RECROSS-EXAMINATION

13 BY MR. IMHOFF:

14 Q. Mr. Hornaday, did the cabinets in each of these
15 units cost about twenty thousand dollars?

16 THE COURT: I'm not sure we had any testimony
17 about cabinets.

18 MR. IMHOFF: He testified about how much money
19 -- or he asked him questions about how much money Marick
20 had to spend to make these units ---

21 THE COURT: Well, he didn't identify any.

22 I'm sorry. What we're talking about, Mr. Foreman,
23 ladies and gentlemen of the jury -- and this is also a
24 rather novel case because we have so many attorneys. But
25 the course of examination is direct examination of your

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1 witness. You call the witness. And normally you cannot
2 cross-examine a witness unless that witness is identified
3 with another party. And two, then you have cross-
4 examination. Then you can have redirect examination by
5 the first and the cross party. And you can have recross
6 limited entirely to what was brought out either on cross
7 in the first one or cross -- or in redirect. But none of
8 it can be new material. Now, he can call -- or any of
9 the attorneys can call the witness as their own witness
10 and ask them something else. But at some point, a line
11 of questioning has to end once you run out. It just is a
12 diminishing course of discussion. In other words, you're
13 limited each time.

14 Now, I do not remember anything about any particular
15 costs. I do remember the question that there were
16 figures on how much the value was. And rather than get
17 into any other, well, didn't something else cost
18 something, or is that a good price or anything, let's not
19 worry about it unless you have a line of questioning you
20 want to develop on your own.

21 MR. IMHOFF: I'll ask a specific question, Your
22 Honor.

23 THE COURT: Well, it has to be something that
24 was brought out by either the cross or the redirect of
25 the others.

00724

1 MR. IMHOFF: It's specifically as to Bostic's
2 line of questions, Your Honor. I'm going to ask him
3 right now.

4 Q. Mr. Gresh showed you an eighty-four thousand dollar
5 permit; is that right?

6 A. Yes.

7 Q. Okay. Can you build -- do you know -- can you build
8 one of these townhouses from the foundation up for
9 eighty-four thousand dollars?

10 A. I don't know that much about it, but I don't think
11 you can.

12 Q. Okay. What is a rough-in inspection, Mr. Hornaday?

13 THE COURT: Mr. Gresh, if you don't, I'm going
14 to have to.

15 MR. IMHOFF: Your Honor, he ---

16 MR. GRESH: I was going to object that he's
17 exceeding the cross ---

18 THE COURT: Now you're restating the testimony.

19 MR. GRESH: Yeah.

20 THE COURT: As I understand, the figures of
21 value were the values of the actual work done on that
22 apartment or that unit. Excuse me. Not apartment, a
23 unit. In other words, obviously some work is more
24 valuable and costs more than other. But he was not
25 talking about building a unit for that amount. It was to

1 correct or do whatever is in the permit that they would
2 be doing.

3 Now, you restate the question if that's what you're
4 asking, but not if you can build a unit for eighty-four
5 thousand dollars.

6 Q. Mr. Gresh asked you about the inspections that were
7 done by Oconee County?

8 A. Yes.

9 Q. He showed you a framing inspection, an electrical
10 inspection with mechanical and plumbing inspection?

11 A. Yes.

12 Q. In November of 2005; is that right?

13 A. Right.

14 Q. Is that a rough-in inspection?

15 A. A rough-in inspection. There's a rough-in framing
16 inspection. Then there's a rough-in electrical. Then
17 there's a rough-in plumbing. And then I think there's a
18 rough-in mechanical which is heating and air.

19 Q. And if that rough-in inspection has not been done in
20 that unit, it needs to be done?

21 A. Yes.

22 Q. Does it mean that the framing and the roof and the
23 windows and the siding and stone are not there prior to
24 that inspection?

25 A. No.

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1 Q. Were all of the units built, all thirty-seven, all
2 the way, roofs, shingles, stone?

3 A. Yes.

4 Q. When Marick arrived?

5 A. Yes.

6 Q. Thank you, Mr. Hornaday.

7 THE COURT: Very good. Thank you, Mr. Imhoff.

8 Mr. Foreman, ladies and gentlemen of the jury, one
9 of the things I have to do as trial judge is to be sure
10 that the information you get is not only trustworthy and
11 reliable, but also is material and relevant to the
12 information that the witness is testifying to. And we
13 don't need to go to go abreast. And now, these rules
14 apply to everybody, to the plaintiffs and to all of the
15 defendants. But it's just that I have to be sure that we
16 sort of stay on track here.

17 With that, we'll call the next witness.

18 You may step down.

19 Or any other cross exam of either the direct,
20 redirect or the cross of a prior attorney?

21 MR. LYLES: None.

22 MR. GRESH: None from us.

23 MR. IMHOFF: Did you release him?

24 MR. LYLES: Oh, yeah.

25 Your Honor, we ask that Mr. Hornaday be released

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1 from Mr. Lyles' subpoena.

2 THE COURT: All right. You may be excused,
3 sir. Thank you very much.

4 All right. Call your next witness.

5 MR. LYLES: Yes, sir. Your Honor, the
6 plaintiff would call Derek Hodgkin.

7 THE COURT: Mr. Lyles, how long do you think
8 this witness will be?

9 MR. LYLES: He'll be into tomorrow.

10 THE COURT: Well, then let's take a short break
11 before we start the witness.

12 MR. LYLES: Yes, sir.

13 THE COURT: And then we'll come back and maybe
14 finish.

15 All right. Mr. Foreman, ladies and gentlemen of the
16 jury, we'll take a short afternoon break. And when
17 you're ready to come back, just knock on the door. Thank
18 you.

19 (WHEREUPON, the jury exited the open court at
20 approximately 2:45 p.m. after which court stood at
21 recess for a short break.)

22 THE COURT: Thank you very much. You may take
23 your seat, please.

24 All right. Anything from the plaintiff before we
25 bring the jury back?

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1 MR. LYLES: No, sir.

2 THE COURT: From the Defense?

3 MR. BELCHER: No, Your Honor.

4 THE COURT: All right.

5 MR. IMHOFF: Your Honor, I do.

6 THE COURT: Yes, sir.

7 MR. IMHOFF: So we don't have to send the jury
8 out, can we talk about a little bit of the scope of what
9 Mr. Hodgin's going to talk about?

10 THE COURT: Certainly.

11 MR. IMHOFF: And I guess it's couched even a
12 little bit of a motion in limine although I think it's
13 not necessarily to exclude it but to limit it. There was
14 a question to Mr. Hodgin in his deposition about the
15 ultimate legal responsibility of my client when he pulled
16 the permit, when he finished the repairs and then when
17 they got the C.O. And Mr. Hodgin's specific testimony
18 is, he said, "I can't give you a legal opinion, but
19 here's my thoughts on that." And I think I would ask to
20 limit him to what the permit said, what contractors do,
21 but ultimately not to give a legal opinion of what my
22 client's duty was.

23 THE COURT: I wish I'd known that before the
24 break.

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

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1 THE COURT: No. That's all right. It's just
2 that there's a case on that. Just a second. Let me ---

3 MR. IMHOFF: Your Honor, would you like me to
4 read the question and the answer he gave?

5 (Off record discussions)

6 THE COURT: All right. Let me just -- the
7 reason I sort of got that a little quicker than I
8 expected, not only because my law clerk's a lot better
9 than I am in knowing things, but also it's come up
10 before. And let me just give you -- if you're not
11 familiar with the case, it's Shields versus the South
12 Carolina Highway Department or the Department of Highways
13 and Public Transportation.

14 The Department argues that the trial judge
15 committed prejudicial error in allowing the
16 expert witness to testify over the objection of
17 the Department's placement of warning signs and
18 devices on the highway on which the plaintiffs,
19 the testates, were killed, quote, bordered on
20 criminal negligence, close quotes. The Court
21 of Appeals held that rather than profess an
22 opinion of the law, the expert merely gave his
23 opinion on the issues of fact, whether the
24 signs and devices used by the Highway
25 Department warned travelers of the hazards they

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1 would encounter in using the highway at the
2 time.

3 Now, what's your objection? I mean, I haven't heard
4 the testimony, but just so we don't go too far down.

5 MR. IMHOFF: Well, let me couch it in general
6 terms and then specific. Generally, I think Mr. Hodgins
7 would qualify and could testify as to facts and his
8 opinions, you know, in his area of expertise on those
9 facts, but not ultimate conclusions of law. And ultimate
10 ---

11 THE COURT: Well, let me say this. "The
12 Department objected to the testimony and gave as its
13 ground ..." I'm sorry that I missed that portion. "...
14 that the witness does not have the ability to comment on
15 what the law is. As a general rule, a witness will not
16 be permitted to state a conclusion or opinion of law."
17 And that's what you're saying?

18 MR. IMHOFF: Yes, Your Honor.

19 THE COURT: And the Court of Appeals said that
20 an expert's testimony as to factual issues that are
21 within his understanding would not be a conclusion of
22 law.

23 MR. IMHOFF: Okay.

24 THE COURT: Let me give this to you so you can
25 look at it. I mean, I think it's so close on point that

1 you might want to ...

2 MR. IMHOFF: Okay. Do you want me to make the
3 objection again, Your Honor, when Mr. Hodgin gets up if
4 that question is asked?

5 THE COURT: Oh, yeah, certainly. Certainly.
6 You just renew it. And I'll -- what is it? -- of course,
7 I'm going to listen to the testimony too.

8 MR. LYLES: Thank you, Your Honor.

9 MR. VICK: Your Honor, for the record?

10 THE COURT: Yes, sir, Mr. Vick.

11 MR. VICK: For the record, we wish to join Mr.
12 Imhoff's motion to limit the testimony as was just
13 discussed.

14 THE COURT: Very good.

15 MR. VICK: Thank you.

16 THE COURT: Now, somebody might want to read to
17 me the testimony in the deposition that you have taken.

18 MR. IMHOFF: Yes, Your Honor. The question is,
19 "If a general contractor takes a building that's
20 partially completed but has to re-permit it, is he
21 responsible to confirm that the building in all facets
22 complies with the code and industry standards?" And his
23 answer is, "I don't know specifically from a legal
24 standpoint." And he goes on to say, "But I think to the
25 extent that there are any issues that are readily

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1 observable by the new entity that they would need to be
2 brought up to code compliance or a relevant standard to
3 deliver the product that I just described." That was the
4 question and answer, Your Honor.

5 THE COURT: Well, that's what I'm saying. He's
6 not giving a legal conclusion. He says he doesn't know.
7 Just as in the Shields case, the expert said that he
8 didn't know, but as far as his opinion as an expert
9 dealing with warning signs and all that this bordered on
10 a matter of reckless homicide which is obviously a legal
11 matter. Based on what you've read to me and my
12 understanding of the Shields case, my ruling would be
13 that if that's his testimony, it would be permitted.
14 But, of course, if he comes out and he says he's, you
15 know, been elevated to a Court of Appeals or municipal
16 judge position, then I might have some exception or I
17 might change my ruling.

18 MR. IMHOFF: There is one other one, Your
19 Honor. And it may be a clarification of your earlier
20 order which you may have forgotten from three years ago.

21 THE COURT: Excuse me. I don't even know where
22 my car's parked. What are you talking about?

23 MR. IMHOFF: And I don't want us to do this
24 while he's on the stand and send the jury out. But, Your
25 Honor, you found and ordered three years ago that Mr.

1 Hodgin could not testify about inspections,
2 investigations and testing he was not at. That was your
3 ruling then.

4 THE COURT: That he was not what?

5 MR. IMHOFF: Could not testify about
6 inspections, destructive testing and work that was done
7 if he was not present there. And there are numerous
8 photographs and these types of things that he's going to
9 testify about today which we'll have to get up -- Mr.
10 Lyles is going lay the foundation that he was there for
11 every one, or we're going to object to every one and Mr.
12 Lyles ---

13 THE COURT: What are you saying? That the
14 photographs -- I mean, that was three years ago. I'm not
15 exactly sure why I would say that an expert witness
16 cannot -- what is it? -- comment on evidence.

17 MR. IMHOFF: Your ruling was that it is
18 hearsay, that he was not at the destructive testing and
19 he did not see the destructive testing and he did not
20 take the photographs of the destructive testing.

21 THE COURT: I said that?

22 MR. IMHOFF: Yes, Your Honor.

23 THE COURT: You mean an expert can't rely on
24 other studies?

25 MR. IMHOFF: Am I misstating that ruling?

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1 MR. LYLES: In all honesty, Your Honor, I think
2 you did rule that. It's now up on appeal. And ---

3 THE COURT: I ruled that an expert can't rely
4 on other studies made on the same matter even though they
5 didn't conduct the studies?

6 MR. LYLES: That there was -- and I don't have
7 the order in front of me. I think that that -- and I
8 don't know that you ruled specifically on that. But you
9 excluded an affidavit from Mr. ---

10 THE COURT: Well, perhaps an affidavit. It's
11 not subject to -- what is it? -- cross-examination. I
12 think that when an expert testifies, that that's entirely
13 different because he is subject to cross-examination.
14 Because what expert testimonies -- and that is one thing
15 that they can do is give an opinion. They don't have to
16 be an eyewitness, a fact witness, for that matter. So
17 they can. And the reason they can give their opinion as
18 an expert is because they're subject to cross-
19 examination.

20 MR. IMHOFF: Okay.

21 THE COURT: And it goes to credibility, not to
22 admissibility because I'd hate to think that because
23 Galileo is no longer here that we're going to start
24 saying that we've got to go back to the sun revolving
25 around the earth. We can rely on -- what is it? --

1 another study that has credibility. But the credibility
2 is the question. Now, if it came up in a summary
3 judgement, I probably would have some ---

4 MR. LYLES: It did.

5 THE COURT: --- because I would not be -- I
6 wouldn't know if he was relying -- what he was relying on
7 other than what he stated. I couldn't -- what is it? --
8 question the reliability.

9 MR. IMHOFF: Thank you, Your Honor.

10 THE COURT: Yes, sir. And you can renew it,
11 but I was a little concerned about that.

12 MR. LYLES: Are you okay -- I gave you these
13 photographs, and I also gave you the documents that goes
14 ---

15 THE COURT: Oh, wait a minute. Is that what we
16 call a sham affidavit?

17 MR. LYLES: Yes, sir. That's what you called
18 it. I didn't call it that.

19 THE COURT: Well, I know. But -- what is it?
20 -- again, fortunately I've got good counsel here. Now,
21 that is -- I can understand why that rule -- and I'm not
22 sure if the Court of Appeals or the Supreme Court will
23 understand that, but that was the basis of it.

24 All right. Go ahead.

25 MR. LYLES: I had submitted -- before Mr.

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1 Hodgin's testimony, we submitted the documents that he
2 relied upon in formulating his opinions, the codes, the
3 manufacturer's literature and whatnot. And we also
4 submitted a stack of photographs that he has relied upon
5 and will rely upon in giving his testimony. We had a
6 discussion last night about the location and the dates
7 that those photographs were taken. And what I did this
8 morning was supplemented those photographs with
9 watermarked photographs showing the date and location.
10 And they're all in phase one. None of them are in phase
11 two. And I just want to see if you were okay with me
12 admitting the photographs as an exhibit. Or do I need to
13 do it one at a time?

14 MR. IMHOFF: Well, I'll tell you the truth. I
15 don't have a computer that I could have looked at that.
16 And I have the one that you handed me.

17 MR. LYLES: Well, I also gave you the
18 photographs. I mean, I gave you the photographs last
19 night in hard copy. I gave them ---

20 MR. IMHOFF: The ones that aren't marked, the
21 ones that aren't watermarked and don't have dates and ---

22 MR. LYLES: Well, it's the same photographs.
23 All I did was add a watermark showing that they all came
24 from phase one.

25 MR. IMHOFF: I'm struggling with this a little

1 bit because it's important to us to know which unit that
2 photograph came from.

3 THE COURT: Well, there's no question. I mean,
4 when you say unit, I'm talking about more phase than what
5 unit.

6 MR. LYLES: It says the unit, I think. Now,
7 you might not have seen the watermarked version.

8 (Off record discussion)

9 MR. LYLES: It's a photograph, all the
10 photographs, say as this one does, unit twenty-eight and
11 then the date or just did not include any narration.

12 MR. IMHOFF: That's all it says, unit and date,
13 that it was taken?

14 MR. LYLES: Correct.

15 MR. IMHOFF: Nothing else? I think that's
16 okay. Yeah. I may change my mind. I reserve the right
17 to change my mind as this goes forward.

18 MR. LYLES: At some point I'm going to ask him
19 about photographs that he relied on. And I'm going to
20 try to move the photographs into evidence rather than
21 doing them one at a time, so I'll guess we'll ---

22 THE COURT: Well, do you have your photographs
23 now that he can look at and see if he has any objection?

24 MR. LYLES: Yes, sir.

25 THE COURT: Again, the objection would have to

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1 be something as to relevance to the particular issues in
2 this case ---

3 MR. LYLES: Yes, sir.

4 THE COURT: --- and the authenticity that it
5 reflects what would be.

6 MR. LYLES: Yes, sir. And I gave him the
7 photographs last night. We realized after I gave him all
8 the photographs that those photographs were not
9 watermarked. So we went back this morning and added the
10 watermark.

11 MR. IMHOFF: And that was the issue that we had
12 is that it didn't say a date, a unit and that type of
13 thing.

14 THE COURT: All right. Well, do you have
15 copies of what you seek to introduce?

16 MR. LYLES: Yes, sir, with watermarks. And we
17 provided that ---

18 THE COURT: Well, I mean, what -- well, when I
19 say -- apparently, there is some language on the exhibit
20 you showed for demonstrative purposes that would be
21 objectionable.

22 MR. IMHOFF: Yes. But I don't believe that
23 language is on there.

24 THE COURT: But that language -- look at what
25 he wants to introduce, if you would, please.

1 MR. LYLES: Okay. Now I understand. What we
2 have are photographs ---

3 THE COURT: Just let him look at them. He
4 knows what they are. I wouldn't know what they are.

5 MR. LYLES: Yes, sir.

6 (Off record discussion)

7 MR. LYLES: I think we've got it, Judge.

8 THE COURT: All right. Why don't we go ahead
9 and have them marked for identification at least.

10 MR. LYLES: Yes, sir.

11 THE COURT: If you can't ---

12 MR. LYLES: I'll do that. Yes, sir. And the
13 only other issue I know before Mr. Hodgins's deposition --
14 excuse me -- before his testimony is this. His report,
15 obviously we're not going to move to introduce his
16 report. We've discussed that. They object to it. These
17 are his repair documents. These aren't the report. This
18 is actually the scope of repair that is necessary,
19 according to Mr. Hodgins, for this project. So we would
20 like to move in the scope of repair documents.

21 MR. IMHOFF: I'd have to look at it. I mean,
22 honestly, I need to spend some time with it.

23 THE COURT: All right. Well, the thing is, I
24 understand this witness is going to be here with us for a
25 while?

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1 MR. LYLES: Yes, sir.

2 THE COURT: How about -- I hate to ruin your
3 evening. But if y'all could maybe look at those.

4 MR. LYLES: And we gave them -- they've had
5 these documents, so it's ---

6 THE COURT: Well, apparently y'all were busy
7 last night on some other things -- I mean, other exhibits
8 -- and we've been in court today. So I'm just -- let's
9 put that on your agenda for this evening.

10 MR. LYLES: Yes, sir. And then what I had got,
11 Alan and Jason, is on the ---

12 THE COURT: Now, of course -- what is it? -- as
13 far as his report and anything else, it's what he would
14 recommend?

15 MR. LYLES: Yes, sir.

16 THE COURT: All right. He can testify to that.

17 MR. LYLES: Yes, sir.

18 THE COURT: But as far as coming in as an
19 exhibit, I think that would probably not be admissible
20 unless you have an opportunity to have both sides
21 consider it. Because let's just face it. I don't know
22 what's in there.

23 MR. LYLES: Yes, sir.

24 THE COURT: So it's kind of hard for me to rule
25 and say, oh, we're going to put this whole notebook in.

1 MR. LYLES: Yes, sir. Well, we're not going to
2 -- certainly on the report, we're just going to have him
3 testify. On the scope of repair, these are the scopes.
4 These are documents that were produced two years ago.
5 And these are the documents that form the basis of the
6 estimates that you've heard so much about.

7 THE COURT: Well, if you want to take a chance
8 on -- what is it? -- me ruling on it without having an
9 opportunity to think about it. And the most important
10 thing is y'all all know what this case is about, and I
11 don't. And I can't remember what I ruled three years
12 ago. The point is that I -- if y'all can agree, that's
13 fine, and that's what we should do. And then you both
14 can use it. It might be something in there that would
15 help a defendant.

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

17 (Laughter)

18 THE COURT: That's not going on the record.
19 But, I mean, if it's part of his testimony, that's
20 fine. But at the close of his testimony sometime
21 tomorrow, whenever that may be, you might want to move
22 for the admission of it. And depending on his testimony
23 -- because he's going to have to proffer it in some
24 fashion anyway.

25 MR. LYLES: Yes, sir. And these are extra

1 copies. In advance of that, would you like to ---

2 THE COURT: No. You need something to do
3 tonight.

4 MR. LYLES: You might want to give us a prize.

5 THE COURT: All right. Are we ready to proceed
6 from the plaintiffs?

7 MR. LYLES: Yes, sir.

8 THE COURT: Defendants ready?

9 MR. BELCHER: Yes, Your Honor.

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

12 Oh, by the way, I have promised the -- in regards to
13 what we're going to do as far as Friday, I have promised
14 the jury that they will be dismissed before five o'clock
15 tomorrow in order to trick and treat. Or is it Friday?

16 MR. LYLES: Tomorrow is trick or treat.

17 THE COURT: So understanding that we will be
18 out of here before five.

19 MR. Lyles: Yes, sir.

20 (WHEREUPON, the jury entered the open court at
21 approximately 3:25 p.m.)

22 THE COURT: Mr. Foreman, just so that you don't
23 think we've been spending all this time on your request,
24 everyone agreed that we would be out tomorrow a little
25 bit earlier so that important matters can be addressed.

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1 MR. FOREMAN: Thank you, sir.

2 THE COURT: All right. But we've had to take
3 up some evidentiary matters in order to avoid having to
4 do it piecemeal.

5 I'm going to recognize Mr. Lyles to proceed.

6 MR. LYLES: The plaintiff would call Derek
7 Hodgins, Your Honor.

8 (WHEREUPON, the witness was duly sworn.)

9 THE COURT: All right. If you would, please,
10 sir, give us your full name for the record spelling your
11 last name.

12 THE WITNESS: My name is Derek Arthur Hodgins,
13 H-O-D-G-I-N.

14 THE COURT: Thank you, sir.

15 DEREK ARTHUR HODGINS,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. LYLES:

19 Q. Good afternoon, Mr. Hodgins.

20 A. Good afternoon.

21 Q. You and I have known each other for quite a while.
22 So if I call you Derek, I hope that's okay.

23 A. Yes, sir.

24 Q. Okay. If you will, tell the jury a little bit about
25 your educational background.

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1 A. I have a bachelor of science degree from North
2 Carolina State in civil engineering. I have some
3 graduate work at the University of Florida and Clemson
4 University but no graduate degree that was awarded. I
5 have numerous hours of continuing education, I think over
6 a thousand hours of course work, that would be specific
7 to building envelope, structural issues, roofing,
8 waterproofing, those sorts of things, and along with
9 those various types of credentials and certifications.

10 Q. And where do you live, Mr. Hodgin?

11 A. I currently reside in Clemson, South Carolina.

12 Q. And how long have you been in Clemson?

13 A. About two years.

14 Q. And where were you before Clemson?

15 A. Westminster, South Carolina.

16 Q. And how long were you in Westminster?

17 A. I think about ten years.

18 Q. And what took you to Westminster?

19 A. A good deal on a house.

20 Q. And do you have a political office?

21 A. I was.

22 Q. And what office did you hold?

23 A. I was the mayor of Westminster from 2005 until 2011.

24 Q. And do you have a business in Westminster?

25 A. I do. Construction Science and Engineering. It's

- 1 on Main Street in Westminster.
- 2 Q. And how long has that company been there?
- 3 A. We just celebrated our ten-year anniversary October
- 4 16th of this year.
- 5 Q. And do you have a family?
- 6 A. Yes, I do.
- 7 Q. And tell me about your family.
- 8 A. I have a wife, Jane, who's a nurse and engineer. I
- 9 have three girls, twenty, nineteen, and fifteen years old
- 10 and a little boy that's six.
- 11 Q. And they all live in Clemson with you?
- 12 A. Most of them. I have two -- the two that are in
- 13 college come home and steal food, but they live someplace
- 14 else.
- 15 Q. You've told us about your educational background.
- 16 If you will, tell the jury about your employment history.
- 17 A. All the way back from college or ---
- 18 Q. Let's just say as in -- are you a licensed engineer?
- 19 A. Yes, sir.
- 20 Q. In South Carolina?
- 21 A. Yes, sir.
- 22 Q. In any other states?
- 23 A. Yes. I think a total of nineteen or twenty states
- 24 I'm licensed as a professional engineer.
- 25 Q. And so if you would, tell the jury about your

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1 employment history as an engineer, a licensed engineer.

2 A. Okay. I got my professional engineering license in
3 1997. I was employed with another forensic engineering
4 firm called Campbell Schneider and Associates based out
5 of Charleston. I operated a satellite office, first in
6 North Carolina and then Westminster, basically doing the
7 same types of things that Construction Science does,
8 investigate building problems, exterior walls, roofing,
9 water intrusion, structural issues, natural disaster type
10 work. And so I've continued to do that after starting
11 Construction Science and do the same types of
12 investigations today.

13 Q. And did you start Construction Science after you
14 left Campbell Schneider?

15 A. Correct.

16 Q. And how many employees do you have at Construction
17 Science?

18 A. I think there's ten of us now.

19 Q. And how many engineers?

20 A. Four.

21 Q. Do you have any architects?

22 A. One.

23 Q. Is that Mr. -- is that Burgess?

24 A. Yes, sir.

25 Q. Okay. How would you describe your work generally?

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1 What sort of engineer are you?

2 A. Well, we call ourselves forensic engineers which
3 just means that we work on things that are subject to
4 debate in a court of law. But in general, we investigate
5 problems with buildings. So it could be a natural
6 disaster like I described, fire losses, wind, hail,
7 hurricane-type work. But we also get involved quite a
8 bit with construction litigation where either somebody's
9 not happy with the performance of a building or something
10 wasn't delivered that was supposed to be delivered and a
11 variety of different issues related to construction.

12 Q. And do you typically represent in litigation one
13 side or the other? That is, owners or plaintiffs versus
14 contractors or developers and defendants?

15 A. No. We made a conscious decision when we started
16 Construction Science that we would work for all parties
17 equally. So we have a pretty big split, about
18 fifty/fifty, between working for defense attorneys
19 representing engineers, architects, general contractors,
20 subcontractors, et cetera. Then we have, fifty percent
21 is plaintiff-type work.

22 Q. And what did you find to be the benefit of
23 representing both plaintiffs and owners and defendants
24 who were contractors?

25 A. Well, I think there are several advantages. One is

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1 it kind of keeps your -- it keeps you balanced that if
2 you do both, it really makes you think about what you're
3 putting out in writing in terms of -- if I put out a
4 plaintiff report, I want to make sure that I'm not
5 overreaching or exaggerating claims. If I'm a defense
6 expert, I try to acknowledge when my client screwed up
7 and there's actually a repair that's necessary to fix
8 problems. So I think it helps you kind of keep that
9 balanced perspective. I think it also gave us a lot of
10 business and respect in the construction litigation
11 environment because we work for so many different
12 attorneys and law firms.

13 Q. Speaking of working with attorneys, have you ever
14 worked with me before?

15 A. Yes.

16 Q. How often would you say you've worked with me,
17 actually been retained by me?

18 A. Well, I think your firm, I think you have a handful
19 of cases with me now, and I think I've had a handful of
20 cases in the past. I think -- prior to this case, I
21 think there were a lot of cases I was on the opposite
22 side of you, and I would say maybe a dozen or more times
23 over the last five years.

24 Q. And you and I have been on the opposite sides of
25 cases; is that right?

1 A. Correct.

2 Q. And have you worked with other attorneys that are in
3 this case?

4 A. Yes.

5 Q. And which attorneys who are still here have you
6 worked with?

7 A. I'm working with Mr. Imhoff on cases, Mr. Anderson
8 on cases. I don't know specifically all the -- I know
9 when I did a count on the caption sheet I think more than
10 fifty percent of the attorneys that are in this case
11 originally C.S.E. has been retained by.

12 Q. How many cases would you estimate that you've worked
13 on since you've been with C.S.E.?

14 A. More than a thousand.

15 Q. And how many times have you been called to testify
16 in a courtroom?

17 A. In a courtroom, probably only nine or ten times
18 because most of the cases I work on settle in mediation
19 prior to going to trial. So I think this is probably
20 number ten.

21 Q. And how about arbitrations or other types of ---

22 A. A handful of arbitrations I've testified in and then
23 probably, I think, close to two hundred times in
24 depositions.

25 Q. And have you been qualified to testify as an expert

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1 witness in a circuit court of South Carolina?

2 A. Yes, sir.

3 Q. And what subjects have you been qualified to testify
4 as an expert on, if you can recall?

5 A. Well, my best recollection is a larger case called
6 Tenneson Row where I was defending a general contractor.
7 I think in that case I was qualified on roofing,
8 construction, building codes, water intrusion, windows,
9 exterior claddings. And there might have been something
10 else, but I think that's the gist of it.

11 Q. You indicated earlier that you have an engineer's
12 license in South Carolina; is that right?

13 A. Yes, sir.

14 Q. What type of engineer's license is that?

15 A. Well, you can be licensed -- it's -- generically,
16 it's a professional engineer. I took the test in --
17 civil engineering is the discipline. You're allowed to
18 practice essentially if it's within your area of
19 expertise. And you can sign and seal other documents,
20 but you have to be comfortable that what you're doing is
21 within your area of expertise.

22 Q. As a licensed engineer in South Carolina, are you
23 regulated?

24 A. Yes.

25 Q. And by whom?

1 A. The L.L.R. of South Carolina, Labor and Licensing.
2 Q. Do you have any sort of unique or extra
3 certifications?
4 A. Yes.
5 Q. And tell me about those.
6 A. I'm a registered ---
7 Q. Do you need some water?
8 A. No. I've got some. I'm a registered roof observer
9 with a group called R.C.I., which is a roofing building
10 envelope group; a registered roof consultant, same group.
11 Registered waterproofing consultant with that group; a
12 registered exterior wall consultant with that group. And
13 if you have those designations, you're what's called a
14 building envelope consultant or B.E.C. I'm a certified
15 roof inspector with a group called Hague. I'm a third-
16 party eaves inspector with a company called E.D.I.,
17 Exterior Design Institute; a exterior wall -- I forget
18 that designation -- same group, E.D.I. -- a moisture
19 analyst with E.D.I.; a construction document technologist
20 with a company -- with a group called the Construction
21 Specifications Institute that has to do with how
22 construction projects are supposed to be run and what the
23 documents are that you rely on with contracts and who the
24 parties are in a construction case and what each
25 responsibility is for each of the parties. With that

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1 same group, I'm also a certified construction contract
2 administrator. I think that's it.

3 Q. And these certifications that you've just reeled off
4 for us, what's typically involved in securing those
5 certifications? Or is there anything that's typically
6 involved?

7 A. Well, what's typically involved is that you first
8 have to qualify to sit for an exam. And the
9 qualification would be based on your experience and
10 knowledge of a particular subject matter. And once you
11 are qualified, then you sit for an exam of varying
12 lengths. Some of them are as little as two or three
13 hours, and some of them are eight-hour exams.

14 Q. You mentioned -- one of the first designations you
15 mentioned was a building envelope, certified building
16 envelope?

17 A. Well, what I was saying that this group, R.C.I., if
18 you are the registered roof consultant, exterior wall
19 consultant and waterproofing consultant, that pretty much
20 comprises the building envelope. So if you have those
21 three, then by default you are considered a building
22 envelope consultant.

23 Q. And what sort of subjects or construction conditions
24 are at issue for those types of certifications? I mean,
25 what are you trying -- what are you certified in?

1 A. Well, each one would be separate. For a roof
2 consultant, you would have to know a lot about roofing,
3 about different materials and products, about some
4 moisture transport, a little bit of physics, a little bit
5 of structural stuff, some what they call psychometrics,
6 which is basically thermal and moisture drive issues,
7 drainage, that type stuff. Exterior wall, it's about
8 exterior claddings, siding, stucco and windows and loads
9 and code issues. On waterproofing, it's about typically
10 below-grade issues with walls and plaza decks and parking
11 garages and even water fountains, those types of
12 waterproofing applications.

13 Q. Does part of the work of C.S.E. involve doing
14 original design or repair design?

15 A. I've done a little bit of original design. But
16 primarily if we're doing design work, it's incidental to
17 a failure or some problem. So we're designing the repair
18 and a fix. But some of those have been so extensive,
19 it's almost as if we're doing the original design.

20 Q. And when you do a design for a repair, I guess it
21 goes without saying you're typically designing a repair
22 for a building that's in distress?

23 A. Yes.

24 Q. It leaks or is broken and otherwise broken?

25 A. Yes.

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1 Q. How many of those repair designs would you say that
2 you have done with C.S.E.?

3 A. Well, we didn't start out doing that type of work.
4 It just kind of evolved. That became an area that we
5 felt like we could serve our clients. When you get
6 through with that type of litigation, you're ultimately
7 -- you're probably the most familiar with the building
8 and the issues with the building. And so it was logical
9 that after the conclusion of litigation or at some point
10 when the building's available to be repaired that you
11 would be able to provide the service to make the repairs
12 for the owners. Not make them personally, but to design
13 the repairs and oversee the repairs. So I would say
14 probably zero in the first several years of C.S.E., and I
15 would say probably ten to twenty in the last five years
16 or so.

17 Q. You mentioned just now designing the repairs.
18 What's typically involved in the design of a repair?
19 What sort of documents, drawings, work product?

20 A. Well, what we try to do is -- first, you learn from
21 what failed previously, what's not working. So you try
22 to trace the problem, what the problem is. And then come
23 up with a design detail that would preclude whatever the
24 event was from happening again, whether it's water
25 intrusion or differential settlement or whatever the

1 issue is that you design the fix for it. And then we
2 would usually have an outline set of specifications. And
3 by that, I mean -- I just mean that it's not so specific
4 that you lock in contractors to certain materials. We'll
5 give an outline specification, but we'll make references
6 to industry standards, best practices. We might have
7 some products that we like working with that we'll
8 specify. But then the contractor would have the ability
9 to say, I'm going to bid that product or I'm going to
10 some alternate that we would review to take its place.

11 Q. And do you provide details along with your repair
12 documents?

13 A. Yes, sir.

14 Q. And I think you mentioned specifications?

15 A. Yes.

16 Q. What are specifications?

17 A. That is the written instructions that the contractor
18 would follow. So for a particular repair work like
19 replacing the window, we would have written steps as to
20 what we expect the contractor to do. So like in this
21 case, you would remove a window. You would fix damage
22 around the window. You would properly flash the rough
23 opening of the window. You would reset a window. And
24 then it's just all the steps in writing of what it would
25 take to make the window replacement.

1 Q. You also mentioned as part of the design, repair
2 design process, overseeing repair?

3 A. Yes.

4 Q. What is that?

5 A. That's where we would go out on a fairly regular
6 basis -- and weekly if we could depending on the
7 contractor and what the extent to the repair project is
8 -- review the work to make sure it complies with what our
9 plans and specifications require. And then that would
10 also entail reviewing pay applications from the
11 contractor. They would come to us. And then by signing
12 the pay application, we're saying that we've reviewed the
13 work, it looks like it's in accordance with our
14 documents, and then submit that to the owner for them to
15 pay the contractor. So I think you talked about earlier
16 with other witnesses -- it's called C.A. work, contract
17 administration-type work.

18 Q. And does C.S.E. get paid for that?

19 A. Yes.

20 Q. And have you had experience in estimating what C.A.
21 costs are going to be for an owner in connection with a
22 remedial repair?

23 A. I have. I'm usually not as good at estimating those
24 costs as I am forensic investigations because you just
25 never know how the project is going to play out. So I've

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1 had to eat some costs on those jobs. And sometimes I get
2 it right and hopefully not have to bite off too much
3 money.

4 Q. In your experience as a licensed engineer, do you
5 have experience overseeing or observing the work of
6 contractors?

7 A. Yes.

8 Q. And subcontractors?

9 A. Yes.

10 Q. Are you familiar with the standards of care that are
11 applicable to general contractors in South Carolina?

12 A. Yes.

13 Q. Are you familiar with standards of care that are
14 applicable to subcontractors in South Carolina?

15 A. Yes. I will say this. When you say it, I'm
16 answering yes. But it is somewhat of a moving target. I
17 mean, the term "standard of care" to me is what a
18 reasonable person with similar qualifications and
19 experience would do in the same set of circumstances.

20 And so there are varying levels of contractors. And some
21 guy who's just starting out in the construction business
22 would have a different standard of care than somebody who
23 has years of experience, an even higher standard of care
24 if they've been sued by an attorney over some
25 construction issues that now they have a heightened

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1 awareness of problems. So I'm familiar with standards of
2 care, yes.

3 Q. Okay. And you've applied those standards of care in
4 your work as an expert witness?

5 A. Yes.

6 Q. And you've assessed the conformance, peoples'
7 conformance, with the standard of care in your work as an
8 expert witness?

9 A. Yes.

10 Q. Do you have experience with building codes?

11 A. Yes.

12 Q. And what sort of experience do you have with
13 building codes?

14 A. Well, from a design standpoint, we have experience
15 making designs that comply with building code
16 requirements. From a owner of a house and a commercial
17 building or a couple of commercial buildings that I've
18 done major renovations on, I've had experience complying
19 with the codes as an owner hiring contractors to do work.
20 And then, lastly, as the mayor of Westminster, we were
21 too small to have our own building codes department, so I
22 subcontracted -- or the City of Westminster subcontracted
23 all of our building code enforcement to Oconee County for
24 the time that I was mayor.

25 MR. LYLES: Your Honor, at this time, I'd like

1 to move to have Mr. Hodgins qualified as an expert witness
2 in the subject matters of construction, building codes,
3 building envelopes, water intrusion, roofing,
4 waterproofing, construction engineering and systems.

5 THE COURT: Mr. Belcher?

6 MR. BELCHER: Your Honor, I think we have one
7 small matter of law that will take just a moment.

8 THE COURT: All right. Very good.

9 Mr. Foreman, ladies and gentlemen of the jury, if
10 you would, please, retire to the courtroom [sic]. I need
11 to take up a matter of law with the attorneys. Again, do
12 not undertake the discussion of the case among yourselves
13 in any way.

14 (WHEREUPON, the jury exited the open court at
15 approximately 3:47 p.m.)

16 THE COURT: All right. Mr. Belcher?

17 MR. BELCHER: Thank you, Your Honor. At first,
18 I would request that we excuse the witness from the
19 courtroom because I think that the testimony that he has
20 already given is a part of this record. And it's
21 something that we need to address with the Court with
22 regard to his qualifications as an expert, and I don't
23 think he's necessarily entitled to hear the objections
24 that we have made so as to educate the witness on what
25 the issues are here.

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1 THE COURT: Sequester the witness after being
2 sworn?

3 MR. BELCHER: Well, the issue is we need to
4 address what his qualifications are to serve as an
5 expert. And if ---

6 THE COURT: Well, that's usually done by voir
7 dire. He has to participate in that.

8 MR. BELCHER: Well, we have a legal objection
9 to his serving.

10 THE COURT: All right. Mr. Lyles, do you have
11 anything in reply to the request? I mean, I don't laugh
12 because I think it's humorous. I laugh because it's
13 rather unusual.

14 MR. LYLES: Well, I don't know the grounds upon
15 which they are seeking the request or the objections that
16 they have to his qualifications.

17 THE COURT: Well, he says that it goes to his
18 reliability, I guess. Is he qualified? But as I say, I
19 would normally do that on voir dire. I have always done
20 it on voir dire.

21 MR. LYLES: And by voir dire, you mean
22 questioning the witness?

23 THE COURT: Exactly.

24 MR. LYLES: Allowing him to examine the
25 witness?

1 THE COURT: Yes, sir.

2 MR. LYLES: Which is what I would think would
3 be the normal course.

4 THE COURT: Just for the -- in order that --
5 what is it? -- we let this matter -- what is it? -- have
6 a record, if you would, Mr. Hodgins, I'm going to ask you
7 to retire from the courtroom. And we'll call you back in
8 a minute. I just want to hear what is on the mind of the
9 attorneys.

10 THE WITNESS: All right. Which way do I need
11 to go?

12 THE COURT: Sir?

13 THE WITNESS: Which way do I need to go?

14 THE COURT: Go back to the back of the room
15 there and out in the hall will be fine, I think.

16 THE WITNESS: All right.

17 (WHEREUPON, the witness exited courtroom at the
18 direction of the Court.)

19 MR. LYLES: Your Honor, we've got some other
20 experts in the room too.

21 THE COURT: Well, I don't know if they --
22 there's no objection to the other experts.

23 MR. LYLES: I don't know what it is he doesn't
24 want Mr. Hodgins to hear. But if he doesn't want Mr.
25 Hodgins to hear it, I don't know that I want their experts

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1 to hear it either. And so I would request that those
2 experts also be asked to leave the courtroom.

3 MR. BELCHER: You're not going to get any
4 objection from me on that, Your Honor. If that's what he
5 wants to do ---

6 THE COURT: All right. Listen, don't play high
7 horse with me.

8 MR. BELCHER: All right.

9 THE COURT: All right. Any other individuals
10 who consider themselves or have been summoned retained as
11 experts in this case -- I know you can be an expert in
12 something else, but expert in this case -- if you would,
13 please, retire from the courtroom.

14 (WHEREUPON, the remaining expert witnesses exited
15 the courtroom.)

16 THE COURT: And if the bailiffs would be sure
17 that the lobby is secure.

18 All right. Now, Mr. Belcher?

19 MR. BELCHER: Yes, Your Honor. And I apologize
20 for what seems to be an unconventional request here. But
21 it doesn't go to the voir dire. It goes to what his
22 testimony already is in this case. And he's testified as
23 to what his opinion is with regard to the standard of
24 care of a construction contractor. And he's totally got
25 it wrong. He's saying that there are different standards

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1 of care for different contractors depending on their
2 professionalism or their degree of experience. And the
3 standard of care is across the board. He can't be
4 qualified to testify as to a standard of care of my
5 contractors if he doesn't himself know what it is.

6 THE COURT: You know what that's called?
7 Credibility. You qualify an expert witness by reason of
8 their background, training and experience. And if they
9 have a unique background and training and experience,
10 then, of course, they can give testimony as to an opinion
11 as to what they perceive as a standard care. Now,
12 admittedly, you can't use separate standards of care for
13 one area, one geographical area or another. But you most
14 definitely can use standard of care based on what the
15 person should expect from someone. In other words,
16 there's a different standard of care for specialists from
17 those who might be a general practitioner. And that's
18 all a matter of credibility. And you can -- what is it
19 -- voir dire him in front of the jury and show how --
20 what is it? -- unreliable his standard of care is, if you
21 can.

22 MR. BELCHER: All right. All right.

23 THE COURT: All right. How about with the
24 others? What's your complaint about the others? Your
25 complaint about -- do you have any? I'm sure you do if

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1 they don't agree with you. But do you have any complaint
2 about any of the qualifications of the other experts?

3 MR. LYLES: No, sir.

4 THE COURT: But you do understand that as far
5 as I know, if he has the qualifications by reason of
6 background, training, and experience to be given the
7 recognition as an expert in that particular area, then he
8 can give his opinion. As far as what the opinion is
9 worth, that is up to the jury to determine based on your
10 examination and your -- what is it?-- or your cross-
11 examination, voir dire and your examination.

12 Anybody else? Mr. Imhoff, do you want to add
13 anything?

14 MR. IMHOFF: Your Honor, I guess I just join
15 in.

16 THE COURT: All right. Mr. Anderson? Mr.
17 Anderson, you want to -- are you adopting his objection?

18 MR. ANDERSON: We are not.

19 THE COURT: All right. I'm not being
20 facetious. But I do want to go ahead. I think that, you
21 know ---

22 MR. BELCHER: Thank you for entertaining my
23 objection.

24 THE COURT: It's not -- I'm just thinking
25 about, you're in the wrong place. This is Oconee County.

1 And it was established in a case in 1932 in Oconee County
2 -- and I have a problem remembering it. But anyway --
3 that a rural policeman could testify to the state or lack
4 of intoxication of a driver of an automobile. He was a
5 very fine gentleman, but he could neither read nor write.
6 And our Supreme Court has said that by reason of his
7 background, training, and experience, he could give his
8 -- what is it? -- opinion. And I think that that's
9 closer to what it is. As I say, though, you can't pick
10 and choose as far as locality of something that is
11 arbitrary. But as far as standing and what they hold
12 themselves out to be, I think it does have a relevant
13 standard of care. I might be wrong, but we'll find out.

14 MR. BELCHER: So you will allow Mr. Hodgkin to
15 testify ---

16 THE COURT: It depends on -- what is it? --
17 after your voir dire, if you haven't completely destroyed
18 him and he says, no, I can't give an opinion.

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

21 THE COURT: You're welcome, sir. All right.

22 MR. LYLES: Your Honor, I had moved for him to
23 be qualified ---

24 THE COURT: Well, now, let me be sure I got all
25 of this. I had him down as a forensic engineer ...

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1 MR. LYLES: Yes, sir.

2 THE COURT: ... involved in particular areas of
3 building envelope which includes roof observation, roof
4 construction, waterproofing, exterior walls, construction
5 documents, supervision of construction, and building --
6 compliance with building codes.

7 MR. LYLES: Yes, sir. And the other ---

8 THE COURT: And those are the areas of
9 expertise, not that -- what is it? -- it's conclusive.

10 MR. LYLES: And the other two areas I moved
11 were structural engineering and systems.

12 THE COURT: All right. Just a second.

13 MR. LYLES: I think that was all, Judge.

14 THE COURT: Structural engineering and
15 structural systems or structural engineering and systems.

16 MR. LYLES: And systems.

17 THE COURT: All right. So what we'll do now,
18 of course, is to bring the jury back. And then I'll ask
19 for any voir dire as to the witness before I address the
20 motion to qualify.

21 MR. BELCHER: Your Honor, I would just withdraw
22 my voir dire and just reserve the right to address it in
23 cross-examination.

24 THE COURT: No question. I mean, that's why I
25 say it's not whether or not he is an expert; it's just

1 whether or not his expert testimony and his opinion is
2 subject to -- what is it? -- reliability.

3 MR. BELCHER: Right. And as far as I'm
4 concerned, we made the objection. It's been ruled up.

5 THE COURT: Exactly.

6 MR. BELCHER: I just reserve the right to
7 question him in my ---

8 THE COURT: All right. And I'm even going to
9 do this for the sake of convenience, if you don't mind.
10 I note that it is a continuing objection, and you will
11 not have to renew it in the event that you do decide to
12 cross-examine.

13 MR. BELCHER: Thank you, Your Honor.

14 THE COURT: But you do not want to exercise the
15 voir dire at this time?

16 MR. BELCHER: Right.

17 THE COURT: All right. Very good.

18 MR. BELCHER: Thank you, Your Honor.

19 THE COURT: All right. Yes, Mr. Imhoff?

20 MR. IMHOFF: Your Honor, and I just wanted to
21 ask the same, to renew my objection ---

22 THE COURT: Well, this goes -- we are beyond
23 the old rule where you had to renew your objection every
24 time you ask a question.

25 MR. IMHOFF: It was to my motion, I guess, in

1 limine before Mr. Hodgins got up about what he could
2 testify about.

3 THE COURT: I got you. In other words, a
4 conclusion of law?

5 MR. IMHOFF: Yes, Your Honor.

6 THE COURT: All right.

7 MR. IMHOFF: Thank you.

8 THE COURT: All right. All of the objections
9 are overruled.

10 Mr. Anderson?

11 MR. ANDERSON: I was going to ask you if I
12 could include -- be included in that objection.

13 THE COURT: Certainly.

14 MR. ANDERSON: Thank you, Your Honor.

15 THE COURT: All right. I tell you who I am
16 going to include. Of course, Mr. Belcher, Mr. Gresh, Mr.
17 Anderson, Mr. Imhoff, Mr. Vick. I don't know. I haven't
18 heard from you at all really.

19 MR. VICK: Sure, Your Honor.

20 THE COURT: All right.

21 And Mr. Hemphill.

22 MR. HEMPHILL: Toss me in, Judge.

23 THE COURT: All right. Very good. All of you
24 are overruled.

25 All right. Let's do bring the jury back. And let's

1 see if we can get -- how much -- what do you wish to get
2 from this witness today? And is there anything you can
3 get from him noncontroversial? In other words, are we
4 going to have more objections to evidence or something
5 like that? Because those are issues I do really want you
6 to look after without the jury having to sit back in the
7 jury room.

8 MR. LYLES: I don't know. What are you going
9 to think about the authorities that I gave you? The
10 code, the ---

11 MR. BELCHER: He's going to authenticate those
12 on the stand as he is testifying about them; right?

13 MR. LYLES: He will do that as he's testifying
14 about it. What I've got is I've got the ---

15 THE COURT: Well, now, are you going to try to
16 publish codes?

17 MR. LYLES: Well, we have certain portions of
18 building codes ---

19 THE COURT: Well, you can do that, but you're
20 not going to put a whole code in.

21 MR. LYLES: Exactly. And so what we did is
22 last night we gave them excerpts from the code and from
23 various manuals that he is relying on. Just excerpts
24 along with the cover sheet. Alan raised an objection
25 last night about the dating of the materials that we

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1 gave. That is, the year that they were produced. So
2 what we've done is we've brought in the documents
3 themselves so you can verify the copyright date and the
4 promulgation date of the documents so that you can be
5 certain that they are standards that were applicable to
6 this work.

7 MR. BELCHER: So to answer your question, Your
8 Honor, we spent a lot of time before this witness took
9 the stand ---

10 THE COURT: All right.

11 MR. BELCHER: --- making sure that we're not
12 going to be peppering the record with a bunch of
13 objections and a bunch of musical chairs in the box.

14 THE COURT: Well, let me do this. Of course --
15 what is it? -- fortunately, as I tell the few friends I
16 have on the appellate courts, that I'm not perfect
17 because I want them to have a job. So do not hesitate to
18 note your objections. But the only thing is we do need
19 to move on.

20 MR. BELCHER: Right.

21 THE COURT: So I note your objection. I'll
22 rule on them. And if you have any concern about it, give
23 me a nod and I'll make the record clear that it's a
24 continuing objection.

25 MR. IMHOFF: Thank you, Your Honor.

1 MR. BELCHER: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. LYLES: What I'll do is when I get him to
4 talk about those standards and stuff, I will get him ---

5 THE COURT: Well, let's don't put any evidence
6 in. You can talk about them, but let's -- and then --
7 what is it? -- after the jury's out, if there's any
8 contention about any bit of the evidence, then we'll
9 decide that.

10 MR. LYLES: Yes, sir.

11 THE COURT: And then at the close of his
12 testimony, direct and cross and redirect, then you can
13 move for the admission if he has laid a foundation for
14 it.

15 MR. LYLES: And if he refers to a code section
16 or a manufacturer's data sheet in his presentation, then
17 don't move to admit that. He can refer to it.

18 THE COURT: He can refer to it. I guess it's
19 kind of like a treatise or something of that nature ...

20 MR. LYLES: Yes, sir.

21 THE COURT: ... at this time. And then later
22 if it is -- what is it? -- not only relevant but
23 material, then -- what is it? -- we can. As far as
24 putting in the whole Southeastern Code or whatever it is,
25 no, I don't think so.

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1 All right. We need to bring the witnesses and
2 potential witnesses and punitive witness all back in.

3 (WHEREUPON, the witness and other expert witnesses
4 returned to the courtroom after which the witness
5 resumed the stand.)

6 THE COURT: All right. Is there anything from
7 the plaintiff before we bring back the jury?

8 MR. LYLES: No, sir.

9 THE COURT: Anything from the defendants?

10 MR. BELCHER: Nothing, Your Honor.

11 THE COURT: Just so the record is clear,
12 certain objections have been made, the Court has ruled on
13 those objections, and the objections shall be continuing
14 without renewal. Very good.

15 All right. Ask the jury to join us, please.

16 (WHEREUPON, the jury entered the open court at
17 approximately 4:04 p.m.)

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

20 Mr. Lyles, you may proceed. I think you had made a
21 motion.

22 MR. LYLES: To have Mr. Hodgin qualified as an
23 expert in a number of subjects including: construction,
24 building codes, building envelopes, water intrusion,
25 roofing, waterproofing and structural engineering and

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1 systems.

2 THE COURT: All right. Any voir dire from the
3 defendants?

4 MR. BELCHER: Just as previously noted, Your
5 Honor.

6 THE COURT: All right. Very good. All voir
7 dire has been noted for the record.

8 All right. I do find that the witness is a --
9 qualifies as an expert witness in the area of forensic
10 engineering to include building envelopes, which would be
11 roof consultations and observation, waterproofing,
12 exterior walls, construction documentation, supervision
13 of construction, building codes, structural engineering
14 and systems. Is that all that you wish to have him
15 qualified under?

16 MR. LYLES: Yes, Your Honor.

17 THE COURT: Mr. Foreman, ladies and gentlemen
18 of the jury, an expert witness -- and I think you've
19 noted that sometimes the objection has been made that the
20 witness has been testifying to hearsay or something else
21 of that nature that does not relate what they know of
22 their own knowledge. In other words, what they've heard
23 something, not -- or what they saw. But if an individual
24 is qualified by reason of their background, training and
25 experience in a particular area that others as ourselves

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1 might not be so qualified, then they are -- they can be
2 qualified as an expert witness which means they can give
3 their opinion. In other words, they do not have to have
4 experienced something in order to testify if it's based
5 in that particular area that they are qualified as an
6 expert in.

7 Now, the Court has found this gentlemen as an expert
8 in forensic engineering with all of the subtopics that
9 have been mentioned, so he will be able to or be
10 permitted to give his opinion.

11 Now, an expert witness's testimony is like the
12 testimony of all witnesses. It's for your evaluation as
13 to whether the -- or weight to be given it same as any
14 other witness.

15 All right. With that, Mr. Lyles, I recognize you
16 for your examination.

17 MR. LYLES: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 CONTINUED BY MR. LYLES:

20 Q. Mr. Hodgins, are you familiar with the project known
21 as the Stoneledge project?

22 A. Yes, sir.

23 Q. And when did you become familiar with Stoneledge?

24 A. I believe that was May of 2009.

25 Q. And who contacted you in regards to the Stoneledge

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1 project?

2 A. I believe that would be you.

3 Q. And what were you asked to do by me?

4 A. You asked me to look at some ongoing repairs at
5 Stoneledge, and while I was at the Stoneledge project to
6 kind of do a general overview of the property and
7 determine if there were any open and obvious issues that
8 might cause any concern.

9 Q. And did you go through phase one in Stoneledge?

10 A. Yes, sir.

11 Q. Did you look at all the buildings from the outside?

12 A. I have.

13 Q. And were there any conditions in your initial
14 retention in phase one that appeared either disconcerting
15 or were of any concern to you?

16 A. Yes.

17 Q. And would you describe those, please?

18 A. Well, I might not get them all, but the ones I can
19 remember off-the-top-of-my-head that stuck out the most
20 would be as previously discussed. Whenever you're
21 standing on a walk-out basement patio and you look up,
22 there are some cedar plank ceilings. And when you walk
23 on those patios that's on most of the units, there's some
24 level of staining where water has penetrated through the
25 balcony above and caused damage to the ceiling in those

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1 areas. Also, there were some -- there's some overhanging
2 walls at the rear elevations that face the lake. And the
3 same type of condition. There's some cedar ceiling or
4 soffit, you might want to call it, where there's
5 staining, where there's flashing above some trim. And
6 it's obvious that the flashing is not doing an adequate
7 job of managing the water. So water is penetrating the
8 walls simply and then staining that ceiling area. I
9 noted some just in general flashing issues around the
10 buildings. But without doing destructive testing, my
11 first visit was totally a visual survey of things that I
12 just had a concern about that could be areas of distress.

13 Q. What's flashing?

14 A. Flashing is just a material that's used to manage
15 water, either to prevent water from penetrating to an
16 undesirable location like a wall or a roof. It could
17 also be used to manage water. So if water does penetrate
18 a wall, it could also serve to exit water from a wall or
19 some other construction assembly.

20 Q. In the cases that you've been involved in since
21 you've had C.S.E. -- I think you said it was more than a
22 thousand; is that right?

23 A. Yes, sir.

24 Q. How many of those cases have you involved damage to
25 buildings as the result of water intrusion?

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- 1 A. I would say the majority of them.
- 2 Q. And you find that water and water intrusion is a
- 3 common defect in your line of work?
- 4 A. In my line of work, yes.
- 5 Q. Following your initial visit to Stoneledge, were you
- 6 retained by the homeowners association?
- 7 A. Yes, sir.
- 8 Q. Okay. Do you remember when that was?
- 9 A. I don't specifically. I think that we first talked
- 10 about the project in May. I think it was by the end of
- 11 that year I remember going to a meeting at the site and
- 12 discussing our concerns with the H.O.A.
- 13 Q. And with whom did you deal at the H.O.A.? Do you
- 14 recall?
- 15 A. Mr. White.
- 16 Q. And is that Bob White?
- 17 A. Yes, sir.
- 18 Q. And what did you understand his position to be?
- 19 A. For my purposes, it was just the H.O.A. liaison. I
- 20 think he may have had a position on the H.O.A., but I
- 21 think from a construction standpoint, he was my go-to
- 22 person. He was the person that filtered anything from
- 23 C.S.E. to the H.O.A.
- 24 Q. And were you ultimately retained by the Stoneledge
- 25 H.O.A.?

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1 A. Yes, sir.

2 Q. And what were you asked to do?

3 A. Well, ultimately to do a comprehensive survey of the
4 buildings to determine the extent of any defects and/or
5 damages. Initially, there was a look at the balconies,
6 just the balconies. There was a concern about the
7 condition of the structural framing. So I think that was
8 one of the first things that we did was took a borescope,
9 and we drilled a two-inch -- we had a hole saw and we
10 just drilled a two-inch hole into those ceilings and put
11 a borescope in the ceilings to see the extent of the
12 damage in the balcony areas. And ultimate there's some
13 shoring that was put up to keep those balconies, you
14 know, in a safer condition than they were in.

15 Q. And what's a borescope?

16 A. Borescope is just a -- my borescope is an instrument
17 that has a small screen on it, like a camera screen, like
18 a computer screen. It has about a three-foot-long
19 flexible tube that has a viewing lense at the end of it
20 so you can -- it's basically a camera. I can take
21 pictures of it, and I can put that three-foot flexible
22 lens up inside the plenum that's between the patio
23 downstairs and the balcony upstairs and observe the
24 framing in-between the two locations.

25 Q. And what did those borescope pictures, if you will,

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1 reveal about the balconies in phase one?

2 A. That at specific locations, particularly the
3 outboard edge of the balconies where there is some stone
4 pillars that extended above the balconies, and then at
5 the balcony-to-wall intersection, that there had been
6 extensive water intrusion that was causing damage to the
7 paneled subflooring and also to the framing, the floor
8 framing, below those areas.

9 Q. And I think you said that ultimately you were
10 retained to do a complete survey of the buildings in
11 phase one?

12 A. Yes, sir.

13 Q. And was that via the H.O.A.?

14 A. Yes, sir.

15 Q. The H.O.A. retained you? And were you still working
16 with Mr. White on that?

17 A. Yes.

18 Q. And who determined how you were going to do that
19 survey?

20 A. C.S.E. has a lot of experience doing these types of
21 surveys. So it was our -- I got a written proposal that
22 outlined what we would look at. And essentially start at
23 the roof and do certain observations of the roof and then
24 the exterior walls and the foundation, the framing. So
25 we kind of had our own laundry list, if you will, of

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1 things that we thought would be important to look at to
2 make sure that they were properly constructed.

3 Q. Did the owners of the H.O.A. tell you what kind of
4 survey to do?

5 A. No, not specifically. There was some information
6 that was available. And I knew that the balconies had
7 been an issue that they already knew about, so we knew we
8 would spend some time looking at the balconies. At some
9 point, I don't recall exactly when, we were told of some
10 water intrusion in the basements. So that made us make
11 sure that we addressed those issues. I think it would
12 have been on our radar anyway, but there were certain
13 things that the owners did express concerns about that we
14 made sure it was part of survey.

15 Q. Did you do any owner surveys?

16 A. We did. At some point, I think early in the
17 process, just to try to get an idea of in particular --
18 interior damages are always hard for us to have a full
19 survey of all the units. So it's nice to know, if you
20 put a survey out and you can ask people if there are
21 stains around their doors or windows or having water
22 intrusion in the basement, that we can at least know
23 about the extent of the problems that were showing up to
24 the occupants themselves. So I don't know that we had a
25 great response. I can't remember how many were returned,

1 but we did do a survey, and it did provide some
2 information about ongoing problems.

3 Q. Did the owners place any limitations on C.S.E. or
4 you with respect to the scope of your investigation?

5 A. No.

6 Q. What were you seeking to do? What was your
7 objective in the performance of your survey?

8 A. Well, in all these types of assignments, the
9 ultimate objective is just to see the construction
10 details of the building, make sure that they are code
11 compliant, that they're safe and durable. So what we
12 would seek to find in our investigation would be the
13 extent of any defects and/or damages that would require a
14 repair.

15 Q. Who assisted you with your investigation?

16 A. Mr. Metcalf, our architect. We had another
17 architect at the time, Ross Clements. I think he was
18 involved to a small degree. And I know we had at least
19 one technician, R.T. Harris, I think, has been out to the
20 site on several occasions.

21 Q. If you would, describe, physically describe, what's
22 involved in doing the survey or the investigation that
23 you did. Your various activities.

24 A. Well, when we would go out to the site, we would try
25 to access various areas of -- I'll just start at the

1 roof. Looking at the roof/wall intersections, the edges
2 of the roofs, the way they're flashed. If there's some
3 skylights, we look around skylights to see how those are
4 flashed. Look at, you know, intersections, terminations,
5 places that you, as a forensic engineer or a building
6 envelope person, know that those are areas where problems
7 are the most common.

8 And then as you work your way down, you look in the
9 attic. I don't think there's a whole lot of attics that
10 you could access. But where we could see any roof
11 framing, we'd look at roof framing and make sure it's in
12 good condition and it's structurally adequate and met the
13 code.

14 The fire-rated wall assemblies. There was one
15 unfinished unit, I think that we've seen a picture of
16 today, that we observed where there problems with the
17 fire-rated wall. Most of the units are finished. We
18 didn't do a whole lot of destructive testing on the
19 inside of the units except for where we were
20 investigating the water intrusion through the foundation
21 walls.

22 On the exterior walls, we did some destructive
23 testing. We'd take some siding off. We would look at
24 the condition of the underlying wall sheathing, how
25 things are assembled, how things are integrated with each

1 other, properly or improperly, to try to determine the
2 cause of water intrusion.

3 And then the stone. There's stone cladding that's
4 around all the balconies and at the base of the walls.
5 We did some destructive testing of the stone as well.
6 And then on the foundations, we started just with some
7 limited excavations just to see what we could tell about
8 the waterproofing. And it varied. The conditions varied
9 with what we found there.

10 Q. Did you look at the original construction documents?

11 A. We did.

12 Q. And do you recall specifically what you were able to
13 find or see?

14 A. Yeah.

15 Q. What did you look at from a construction document
16 standpoint?

17 A. Well, there's various sets of plans. And so I think
18 it was even a few, two or three, versions of the drawings
19 for this particular set of buildings. We looked at the
20 details on those drawings that were relevant to our work.
21 So we looked at the balcony details. We looked at roof
22 flashing details. We looked at foundation waterproofing
23 details, window installation details, whatever we could
24 find that was relevant to our work in the areas that we
25 were finding problems.

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1 Q. And did you determine who had performed the
2 construction in the phase-one units?

3 A. Yeah. We had some production from Oconee County
4 building department. And we had determined that all of
5 the originally permits for these buildings was Bostic.
6 And then at some point, there was a lapse in time. And
7 then around 2005, I think there were twenty-six new
8 permits that were pulled by Marick.

9 Q. And were you able to -- did you review the codes
10 that you believed to be applicable to the work of Bostic
11 and Marick on these buildings?

12 A. Yes.

13 Q. And tell me what you did to analyze the applicable
14 code or determine which code applied?

15 A. Well, there are several things. One would be the
16 plans themselves. They specifically refer to the 2000
17 I.R.C.

18 Q. What's the I.R.C.?

19 A. The International Residential Code. And the work,
20 the later work of Marick when that second permit was
21 pulled, that would be the 2003 International Residential
22 Code. I have a lot of experience in Oconee County,
23 again, personally through projects I've worked on,
24 professionally through projects that I worked on. As
25 mayor, I knew which codes were being enforced at which

1 times by Oconee County. And then I also contacted the
2 building department to check that we were correct in our
3 interpretation of which codes were being enforced.

4 Q. Which code do you think was applicable to the work
5 of Bostic in phase one at Stoneledge?

6 A. The 2000 I.R.C.

7 Q. And which code do you believe was applicable to the
8 work of Marick with respect to phase one in Stoneledge?

9 A. I believe the 2003 I.R.C., but I haven't looked at
10 all twenty-six permits to know that for sure. I will say
11 that there's really no substantial or substantive
12 difference between the two codes, as far as I know, for
13 any of the issues that we would discuss today.

14 Q. Did your findings or investigation reveal that it
15 was those two codes that were being enforced by Oconee
16 County at that time?

17 A. Yes. In fact, there's even a C.O. in the Oconee
18 County file that talks about the phase one building being
19 compliant with the 2003 I.R.C. when it was issued.

20 Q. What is a building code?

21 A. It is the bare minimum legal requirement the
22 contractor has to meet to construct a building. It's
23 supposed to be a safe, durable structure.

24 Q. And are you familiar with the application of
25 building codes?

1 A. Yes, sir.

2 Q. Did you review any applicable industry or
3 manufacturer's documents or materials relative to your
4 investigation at Stoneledge?

5 A. Yes, sir.

6 Q. And if you will, describe to the jury the types of
7 industry materials that you reviewed?

8 A. Well, again, I start at the roof and work my way
9 down. Off-the-top-of-my-head there's two industry
10 standards for residential-type roofing. And residential
11 is typically a steeper slope with -- in this case it's
12 composition shingles or asphalt shingles. So N.R.C.A.,
13 National Roofing Contractors Association, puts out a
14 roofing and waterproofing manual that we rely on for
15 standards as far as flashing and installation of roofing
16 products on that type of roof. A.R.M.A., Asphalt Roofing
17 Manufacturers Association, also has a residential roofing
18 guide that we referenced. They're really somewhat
19 redundant, and they would share the same types of details
20 that N.R.C.A. would show.

21 As you work your way down the wall, there's a
22 western red cedar standard that has to do with siding,
23 cedar siding. The stone was actually identified to be a
24 particular manufacturer. If you take a stone off the
25 wall and you turn it over, it would say "C.S.V. Cultured

1 Stone Veneer." And that's a mark that Owens Corning puts
2 on their stone. And so we had the Owens Corning
3 manufacturer installation instructions.

4 Q. Now, when I think of stone, I think of a rock out of
5 a field. What kind of stone are you referring to?

6 A. This is cast to look like a stone. It's concrete
7 basically. It just comes out in patterns that look like
8 natural stone when you put it on the side of the wall.
9 And I think I've actually crossed over. You asked me
10 about industry standards, and I just mixed in
11 manufacturer instructions.

12 Q. Okay.

13 A. Another industry standard for windows would be AAMA,
14 A-A-M-A, which has a training manual for installation of
15 windows. There's a book that we reference for that.
16 Also, there's kind of a generic industry standard that's
17 put out by a group called the Journal of Light
18 Construction. These are typically -- this is a magazine
19 subscription that most -- a lot of contractors subscribe
20 to. And it's been coming out for years. But at one
21 point in 2003, they decided to take all this information
22 they've been publishing in their magazines and put it
23 into what's called the Best Practice Guide. And so it
24 has to do with everything. Roofing, exterior walls, the
25 windows, all these different subjects in one book. And

1 so that J.L.C. Guide of Best Practices I think was also
2 included in our references.

3 Q. Any other industry or manufacturer's materials that
4 you can recall relying on in formulating your opinions
5 regarding Stoneledge?

6 A. There might be. I can't think of anything else
7 right now.

8 Q. You mentioned destructive test cuttings ---

9 A. Yes, I did.

10 Q. -- as you described it. How did you determine where
11 to perform those test cuts around the buildings?

12 A. Well, again, from experience you know areas that are
13 of particular concern or areas that can be problematic.
14 One that stands out for me, and I think for most other
15 building envelope experts, are roof/wall intersections.
16 So I know that we did several destructive tests in those
17 areas where if the roof and the wall -- roof meets the
18 wall it's not flashed properly, you can get water that
19 penetrates the wall and causes damage below that
20 intersection. So we knew from experience that that would
21 be a place that we should look at Stoneledge. And we did
22 that and found some damage in those areas.

23 Windows are another hotspot, so to speak. So we did
24 some destructive testing on windows. I've mentioned the
25 balconies. And anyplace that a roof intersects another

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1 plane or wall, a head wall or a side wall, those are all
2 areas that are important to see how things are integrated
3 or not integrated and how they're performing.

4 Q. And do you know how many test cuts C.S.E. made in
5 phase one at Stoneledge?

6 A. I don't now specifically. I know that we've
7 document damages in approximately two-thirds of the
8 units. And I guess I should clarify that the one-third
9 that we haven't documented damages just haven't been
10 observed. We don't have photographs of damage. But the
11 two-thirds -- basically the two-thirds that we looked and
12 photographed all had some type of damage. So we're
13 batting a thousand. Everyplace, every unit that we
14 looked at in any comprehensive way at all, we found
15 damage.

16 Q. I'd like to show you a graphic and ask you, these
17 are the areas where you observed damage?

18 A. Yes, sir.

19 Q. C.S.E. observed damage? And what's represented in
20 that footprint, Mr. Hodgkin? Can you tell?

21 A. Yes. That's the, I think, thirty-seven units that
22 are in phase one. And I think that's twenty-three units
23 where we have documented damages.

24 Q. And what's the significance of the red?

25 A. Those are the units where damages have been

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1 documented.

2 Q. In addition to the test cuts that were made by
3 C.S.E., did you have an opportunity to view destructive
4 test cuts that were made by experts, other experts, in
5 this case?

6 A. Yes, sir.

7 Q. And do you know how many test cuts you were able to
8 observe by other experts?

9 A. I don't know specifically. I haven't done that
10 count. I do know, just reviewing the file recently, that
11 we have made close to a hundred site visits over the last
12 four years between all the people on our team. And I
13 know many of those were either destructive test visits by
14 our own personnel, destructive testing by others or
15 emergency repairs where we were observing repairs that
16 were going on.

17 THE COURT: Yes, sir?

18 MR. IMHOFF: Your Honor, I have an objection.

19 THE COURT: Yes, sir.

20 MR. IMHOFF: And it may be better heard outside
21 of the jury's presence.

22 THE COURT: All right. Very good.

23 Mr. Foreman, ladies and gentlemen of the jury ---

24 MR. IMHOFF: May we sidebar, Your Honor?

25 THE COURT: Certainly.

1 MR. IMHOFF: So we can do this quickly.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 THE COURT: All right. You may proceed.

5 Q. Mr. Hodgins, in addition to the test cuts made by you
6 and made by other experts ---

7 A. Yes, sir.

8 Q. --- did you have an opportunity to observe the
9 conditions in phase one as part of the emergency repair
10 process?

11 A. Yes, sir.

12 Q. And I'm putting up on the screen right now the
13 location of the phase one emergency repairs.

14 A. Yes, sir.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. And what were you able to see -- or if you would
18 describe for the jury generally what you were able to see
19 during the emergency repair phase?

20 A. Well, first, the emergency repairs included about
21 one-third of the thirty-seven units in phase one. And
22 there were varying types of repairs. Most of the repairs
23 had to do with ongoing water intrusion that was being
24 experienced by the occupant of the unit at different
25 locations. I remember several repairs on sidewalls and

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1 around dormers at the rear of the buildings where either
2 window flashing wasn't proper or the roof-to-wall
3 flashing was not proper. And I will say we had somewhat
4 of a difficult time to try to do localized repairs
5 because you're trying to fix a leak on one part of the
6 building. There's a couple, at least a couple of times
7 that we oversaw the work, it was completed in accordance
8 with our specs, and there's still a problem because the
9 repair never extended far enough where there would still
10 be adjacent areas that were problematic. So we had to
11 expand at least a couple of the emergency repairs. There
12 were varying types but all the same concept in terms of
13 water intrusion and trying to stop water intrusion.

14 Q. And during the course of your test cuts and the test
15 cuts of defendants in the emergency repair process, did
16 you document your findings?

17 A. We did.

18 Q. And did you photograph your findings?

19 A. Yes.

20 Q. And did you rely on all those materials in
21 formulating your opinions in this case?

22 A. Yes.

23 Q. Is there anything else that you have reviewed in
24 formulating your opinions that comes to mind?

25 A. (No verbal response)

1 Q. Have you looked at the expert reports by other
2 defendants?

3 A. I have. I haven't again recently, but I know I have
4 in the past. And I would say, my opinions were what they
5 were. And then expert reports came out by others that
6 haven't sort of changed my opinions.

7 Q. There's been an expert that's been mentioned in this
8 trial named Rick Moore. Do you know Mr. Moore?

9 A. Yes, sir.

10 Q. How do you know Mr. Moore?

11 A. I've been long-time colleagues. He's been forensic
12 engineering as long as I have.

13 Q. Are you satisfied with the job that C.S.E. has done
14 with respect to its investigation and analysis in phase
15 one at Stoneledge?

16 A. Yes.

17 Q. Do you feel like you know where the problems are in
18 phase one at Stoneledge?

19 A. Well, I will say for the most part, yes. There are
20 certain areas that are just a little more difficult to
21 pin down. The one that I'm thinking of right now is the
22 below-grade waterproofing issue. That's a big issue.
23 And we've been trying to wrestle with that, even recently
24 trying to make repairs to stop water intrusion. And the
25 way the foundation walls are constructed in phase one,

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1 because it's a panelized system, if there's a gap in a
2 wall panel, water can penetrate that gap anywhere from
3 the top of the wall to the bottom of the wall. And so
4 it's just been difficult to try to come up with a repair
5 scope other than excavating down to the base of the wall
6 and waterproofing the entire wall to keep the water out.
7 So I think I know the pattern, and I think I know where
8 things are problematic that need to be repaired. But the
9 extent of the damage and the extent of the defects, I
10 don't think would be fully known until a comprehensive
11 repair scope is accomplished.

12 Q. Okay. Are you satisfied that you have, in your
13 investigation, developed information that's sufficient to
14 allow you to create a sufficient scope of repair, an
15 adequate scope of repair?

16 A. Yes.

17 Q. Do you believe that you know how to fix the problems
18 in phase one at Stoneledge?

19 A. Yes.

20 Q. And the objective with the fix that you have arrived
21 at is what?

22 A. To provide a code-compliant, safe, durable structure
23 for human occupancy.

24 Q. Mr. Hodglin, at this time, what I would like to do is
25 to review your findings ---

1 A. Okay.

2 Q. --- and results of your investigation.

3 A. All right.

4 MR. LYLES: And I'll ask Burgess to put the
5 findings up on the screen and start our presentation.

6 Q. Now Mr. Hodgins, if you will, what I want you to do
7 is to review for the jury in terms of findings that you
8 made as part of your investigation?

9 A. Okay.

10 Q. I'm going to give you something that very few people
11 have used this week.

12 A. Okay.

13 Q. There it is. And the Judge, I've been told, does
14 not want anybody to walk out of the courtroom.

15 A. All right. Let's try it out.

16 Q. All right.

17 MR. LYLES: Lisa, can we ... Thank you.

18 Q. Mr. Hodgins, the first screen that Burgess has put
19 up, it says underlayment code requirement. What's
20 underlayment?

21 A. It's the material that goes underneath your roof
22 shingles. Your shingles are not totally waterproof. And
23 they're the primary barrier against water penetration,
24 but when water gets below the shingles you have to have
25 underlayment to protect your wood roof deck.

1 Q. And what type of material is this underlayment
2 typically?

3 A. Typically, it's what's called asphalt saturated
4 felt, either a fifteen-pound or thirty-pound felt
5 material.

6 Q. Okay. And it says, "construction drawings, code
7 requirements, references and industry standards."

8 A. That would just be a slide that going to introduce
9 what references that we use to base our opinions on
10 regarding the construction at Stoneledge.

11 Q. All right.

12 A. So that would be the cover of the 2000 I.R.C.

13 Q. And that's the code that you believe was applicable
14 to the work of Bostic?

15 A. I believe so. That says codes and the 2003 would be
16 later when Marick came on site. But it sounds like from
17 earlier testimony, the roofs, you know, may have been
18 done. I don't know there was any additional roof repairs
19 or work done by Marick.

20 Q. Okay.

21 A. That's hard to read. But it does say right here,
22 "applicable codes." These are the architect drawing
23 prepared for phase one of Stoneledge. And it says,
24 "applicable code, International Residential Code 2000."

25 Q. And is that the I.R.C.?

1 A. Yes, sir. This is the cover of the AMMA training
2 manual for window and door installation, the industry
3 standard that was published, I think, in 2000.

4 Q. And how do you know that that was published in 2000?

5 A. I use it a lot.

6 Q. Are you satisfied that it was in existence and
7 applicable when Bostic did its work at the project?

8 A. Yes. This is the Journal of Light Construction
9 Field Guide. And I called it earlier the manual of best
10 practice. That's what they call it. It's a combination
11 of all kinds of details for residential construction, and
12 it was published in 2003.

13 Q. And is this a document that you believe to have been
14 applicable to the work that was done by Bostic?

15 A. Yes.

16 Q. Was there such a field guide before 2003?

17 A. Well, as I said, there's a lot of the stuff I
18 recognize in this book come from the magazine that we've
19 had a subscription to for years. But this would be --
20 all of this would meet the code, but -- and some of the
21 codes in the best practices guide and some details may
22 not be technically required, but they are good details
23 that would result in a code-compliant building.

24 Q. In your opinion, would the details that are
25 referenced in the J.L.C. Field Guide, Manual of Best

1 Practice, were those details that were available and
2 applicable to the work that Bostic did at Stoneledge?

3 A. Yes. This is the cover of the Owens Corning -- it
4 says, "Best Practices for Flashing Details for Cultured
5 Stone Veneer." This is the 2005 version. I believe we
6 also have the 1997, 2002, and 2004 versions.

7 Q. And do the details differ between those versions of
8 that document?

9 A. Not significantly, no.

10 Q. And are you satisfied that in your opinion the
11 details and practices outlined in that document were in
12 existence and applicable to the work that Bostic did on
13 this project in 2002 and 2003?

14 A. Yes. This must be the title page about what we saw
15 with the shingles and underlayment or what the standards
16 are going to show.

17 Q. Okay.

18 A. So this detail is from the Journal of Light
19 Construction. And it simply shows a wall on the left
20 side, a vertical wall. And this is a roof that
21 intersects the wall. And down the, what they, call the
22 rake of the roof, this sloped part, is what they call
23 step flashing, which are individual pieces of metal
24 flashing that go against the wall. And the important
25 part of this that when the water comes to the base of the

1 wall, this either, what they call diverter or kick-out
2 flashing is installed at this location so that the water
3 doesn't run from the step flashing and get behind your
4 siding or exterior cladding and cause damage.

5 Q. And is it your testimony that this detail was
6 required in those conditions on this project?

7 A. Well, it wasn't specifically required by the plans.
8 It just pointed to different places and said flashing.
9 Unfortunately, the code has a kind of generic discussion
10 about flashing. Flashing shall be installed in a manner
11 to prevent water intrusion. So they describe the intent
12 in the code, but they don't describe the means and
13 methods by which the contractor accomplishes the intent.
14 But certainly this was a known detail at the time that
15 Stoneledge was constructed.

16 Q. Okay.

17 A. This actually what I was talking about. I think
18 it's pointing to this head wall where this roof slope
19 intersects the vertical wall. It just says flashing.
20 That's throughout the architect plans. It's just very
21 generic. We specified at the different terminations of
22 the roof to have flashing.

23 Q. And did that come out of the plans that were done by
24 Miller Player for phase one at Stoneledge?

25 A. Yes, sir.

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1 Q. And Mr. Hodgins, where there's a generic detail
2 called out like that, if a general contractor or a
3 subcontractor requires additional detail, what are they
4 obligated to do?

5 A. Well, they could contact the architect to get a
6 clarification or more information in this case, or they
7 could refer to an industry standard or best practice
8 guide.

9 Q. What's in this photograph, Mr. Hodgins?

10 A. This would be one of our destructive tests at a
11 phase one building where we took some siding, some cedar
12 siding off of the side of the building at a roof/wall
13 intersection. We can see that water has been getting
14 behind the siding and causing damage to the sheathing
15 below.

16 Q. Now, did you find that kick-out flashing or
17 converter in that location?

18 A. I don't think so. It seemed like there may have
19 been at some places some retrofit flashing, but I don't
20 know about any functional kick-out flashing.

21 Q. Okay.

22 A. I think that's the same area. But now we've taken
23 off some of the -- there's actually two layers of
24 sheathing. There's the O.S.B., which is this oriented
25 strand board wall sheathing. And over the top of it was

1 gypsum to create a fire-rated wall assembly between two
2 units. So you cut the gypsum off and now you're looking
3 at damage to the O.S.B. behind the gypsum.

4 Q. What is this, Mr. Hodgins?

5 A. This is what I would say is a pretty typical detail
6 at these dormer areas above the roof where you've got --
7 you would have a sloped roof section down here. This is
8 some vertical cedar trim at the corner. This is the
9 individual pieces of step flashing coming out from the
10 roof. But what they did is they laid over the top of
11 this weather-resistant barrier. The code calls it the
12 W.R.B. And it serves to protect the wall assembly. So
13 what's happened is because of the lack of integration
14 between the step flashing and the W.R.B., water has been
15 able to accumulate behind the step flashing and cause
16 damage. We found damage on the vertical walls as well as
17 the roof deck areas. So you can see the damage at this
18 corner.

19 Q. And is the condition that's reflected in that
20 photograph, is that a proper construction condition?

21 A. No.

22 Q. And has it caused some damage to the building?

23 A. Yes.

24 Q. And is the manner in which that condition was
25 created in your opinion a breach of a standard of care or

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1 the standard of care?

2 A. Yes.

3 Q. In what respect?

4 A. It would not meet the code in terms of the walls
5 providing -- exterior walls providing weather resistance.

6 Q. And who, in your opinion, was responsible for
7 constructing this condition in conformance with the code
8 or other industry standards?

9 A. Well, anytime you ask me that question, I mean, I'll
10 try to remember. But always the general contractor is
11 responsible. But then in addition to the general
12 contractor, the subs. In this particular condition would
13 be the roofing contractor who put this step flashing
14 perhaps over the weather barrier. The weather barrier
15 installer, if they were there, second. And then the
16 siding installer that covered that condition up with the
17 siding. It's going to be difficult for me to know for
18 sure which trade was there first. Based on that W.R.B.
19 being there, it looks like they dried the walls in first,
20 and then the step flashing came second. But definitely
21 the siding contractor. And then based on that
22 chronology, likely the roofing contractor.

23 Q. And you said in response to that question, I think
24 you said -- you prefaced it by saying your answer will
25 always be the general contractor?

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1 A. Well, in case I forget to say that. And you and I
2 have had cases before. I've defended the general
3 contractor. And they're ultimately responsible for all
4 of the -- the work all flows through the general
5 contractor. They're responsible for sequencing all the
6 subs, and they're responsible in general to ensure that
7 the work of each sub is adequate before they invite the
8 next sub to the site to do the next phase of work.

9 Q. Going back to this photograph, I think we had a
10 couple of photographs of this same condition. Do you
11 find that that condition represents a breach of a code or
12 a standard of care by the general contractor and others?

13 A. Yes.

14 Q. And in what way?

15 A. It would be the same way. The exterior wall is not
16 providing weather resistance. And because of that, it's
17 now caused a life safety issue that it's compromised the
18 fire-rated wall assembly at that location.

19 Q. Since you mentioned the fire-rated wall assembly,
20 could you tell the jury what a fire-rated wall assembly
21 is?

22 A. A fire-rated wall assembly would just be walls that
23 are required to be protected in a certain manner to
24 contain a fire. So in townhome construction, what's
25 important is that each of the units that are occupied are

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1 segregated individually by the separation walls. So from
2 the foundation all the way up to the roof, and in this
3 case even four feet on each side of that wall in the
4 plane of the roof, would have to be a non-combustible
5 type assembly. And the way it's accomplished
6 traditionally or in this case is through the use of what
7 they call type X gypsum board. It's just like drywall
8 like you see in your house. But it has a special mixture
9 in the core of the board that makes it fire resistant.
10 It has a certain thickness to give a certain amount of
11 time to create a one-hour or a two-hour rated wall. And
12 if it's properly constructed, if a fire breaks out in one
13 unit, it'll be contained to that unit. It won't spread
14 across the building and cause the entire building to be
15 lost. It would be just the unit where the fire
16 originates.

17 Q. What's depicted in that photograph?

18 A. That is a picture of some pretty recent damage that
19 we observed. I actually observed it first when I was out
20 there on a rainy, one of many summer rainy days in Oconee
21 County this summer. And I took some pictures on my
22 phone. And then I sent one of our technicians back to
23 get some better pictures when it wasn't pouring down
24 rain. There's a flashing detail on the roof above this
25 location. This is at the entry door of unit thirty-one

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1 in phase one. And the water has penetrated that
2 roof/wall intersection and has migrated down this corner
3 and has totally rotted the framing, the studs, the
4 vertical studs, the O.S.B. sheathing. And it gets worse
5 as you go down the wall.

6 Q. And did you observe as part of that photograph, a
7 breach of an applicable standard of care or the code?

8 A. Yes.

9 Q. And where was that? That was up on the roof?

10 A. Yes. And this was totally hidden. We never knew
11 about this damage. I think it became known because an
12 occupant observed a stain, just some staining on the
13 floor and on the base trim, just inside this foyer behind
14 this corner.

15 Q. So it manifested itself on the interior of the unit?

16 A. Yes.

17 Q. At some trim in a bedroom or something?

18 A. No. It's a foyer. You see right behind this guy
19 standing here, that's the front door. If you open that
20 front door and look down to your left, you're looking at
21 the corner of a little foyer area. And there's a painted
22 wall, and then there's some like white or off-white base
23 trim that had been stained and causing damage to the
24 hardwood floor, I think it was. So they observed it on
25 the interior first that caused us to do a destructive

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1 test on the exterior.

2 Q. Is that damage that you would describe as latent
3 damage?

4 A. Yes.

5 Q. And latent damage means what?

6 A. Hidden or not known.

7 Q. Is it common to find, in your business, latent
8 damage?

9 A. Yes.

10 Q. What's this a photograph of, Mr. Hodgin?

11 A. That is the same corner a little bit further down.

12 You can tell that the stone was taken off, and this is
13 framing that's rotted. And they put their knife in the
14 side of the vertical wall framing.

15 Q. Has the structural integrity of the wood been
16 compromised?

17 A. Yes, sir.

18 Q. Is there any structural integrity left in that wood?

19 A. Well, I mean, it's still standing. It's still
20 standing. So, I mean, it has some structural
21 contribution to the wall. But I would say certainly it's
22 compromised and required an emergency repair.

23 Q. And we've been looking at a number of photographs of
24 flashing details adjacent to the roof; is that right?

25 A. Yes.

1 Q. And did you find problems with the flashing adjacent
2 to the roof in one unit or more units?

3 A. I think in most, if not all, the units that we
4 looked at. I don't recall many, if any, proper flashing
5 details.

6 Q. How pervasive throughout the project, throughout
7 phase one did you find that condition?

8 A. I think pretty much throughout the project.

9 Q. And how pervasive were the damages that you observed
10 related to that condition in the project?

11 A. I think there was consistent damage, but I think the
12 extent of the damage would vary based on exposure of the
13 area of the building and how big the breach in the
14 construction was.

15 Q. What is this, Mr. Hodgins?

16 A. I think what we'll find in the presentation is just
17 various code sections or industry standard sections that
18 we pulled just to highlight requirements. And this one
19 just simply says that the roof shall serve to protect the
20 building or structure. And so we feel like that has not
21 been accomplished.

22 Q. As I recall, there are different types of roofs at
23 Stoneledge; is that right? There's a low slope and a
24 high pitch roof?

25 A. Well, there are sloped roofs that have a lesser

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1 slope that have been problematic. They're less than a
2 four-twelve slope, which requires heightened protection
3 below the shingles that was not provided. And so they
4 are different in that regard, but they can be addressed
5 by the same section of the code.

6 Q. What is this, Mr. Hodgin?

7 A. I think this is just showing what the architect's
8 intent was as far as the edges of the roof. And so you
9 can see at the top, there is clearly a sub-facia and
10 facia type detail here. And the deck, the roof deck runs
11 over complete, and then he has this felt over the framing
12 or over the roof deck, which is O.S.B. or plywood. And
13 the shingles over the top of it. So it's showing that
14 the closure at that location and the closure that's
15 supposed to be provided at the eave of the roof.

16 Q. Did you find the closure that was anticipated by the
17 plans in place in the field?

18 A. No.

19 Q. Is that a breach of the standard of care of the
20 general contractor?

21 A. Yes.

22 Q. And you attribute that breach to the damages that
23 you observed or we've seen in some of these photographs?

24 A. In some cases, yes. I think in other cases, it's
25 just a clear defect that may not have significant damage

1 yet, but there's certainly other areas that have been
2 damaged.

3 Q. Okay.

4 A. This is just showing an example of that
5 inconsistency. What -- we saw what the plans showed, and
6 here you see that the plywood deck comes down and there's
7 actually a gap here. And then there's a lack of
8 continuity in the felt. There's no step flashing here at
9 the side. Here is some damaged plywood. That's just --
10 I think it was actually wet when we did the destructive
11 test.

12 Q. Do you know what's between those fingers in the
13 lower photograph?

14 A. I think that's a piece of what's left of some felt.

15 Q. And is that felt degraded?

16 A. I think there's some degradation, but there's also
17 -- we don't know exactly what happened. But there's
18 clearly places we tore up roofs for emergency repairs.
19 And there's actually like torn pieces of felt, just the
20 remnants of felt. There was not many roofs that we tore
21 off where there's a uniform application of felt properly
22 layered from the eave all the way up the roof. It was
23 kind of haphazard the way the felt was observed.

24 Q. And you saw locations where it appeared as though
25 scraps of felt had been installed as underlayment?

00810

1 A. Right or torn. We're not exactly sure what
2 happened.

3 Q. And the material that's beneath the fingers -- not
4 within the fingers -- was that -- that looks like roof
5 sheathing of some type?

6 A. The material below the hand here is plywood that's
7 black.

8 Q. Is that roof sheathing?

9 A. Yes, a roof deck. You can call it different things.

10 Q. And is the sheathing that's shown there damaged?

11 A. It is.

12 Q. And what caused that damage besides water
13 infiltration. What's the source of that water
14 infiltration?

15 A. Well, it would be the inadequate installation of
16 roofing felt from the eave up the roof. I would say you
17 can contribute the lack of any kind of closure. There
18 should be a metal drip edge at the base of this eave, and
19 it be properly wrapped over with the felt. And then you
20 have this whole step flashing issue on the roof/wall
21 intersection. All could be contributing.

22 There's also -- you'll see later pictures where the
23 top of that same roof section, there's a problem with the
24 flashing at the top where water penetrates at the top and
25 then just migrates down the slope of the roof due to

1 gravity.

2 Q. What's in this photograph?

3 A. This looks like we were in an attic in unit thirty-
4 seven. And, you know, typically when you're looking at
5 the attic, you're looking at the framing and structural
6 issues. But here you're looking at a -- one roof is a
7 roof slope that's going down. So you're looking kind of
8 at the eave of one roof, and you're seeing an
9 intersection of another roof. And you see that there's
10 been water intrusion that's caused damage to the framing
11 in the attic.

12 Q. And did you find damages like that beneath the roofs
13 throughout the project?

14 A. I know there were many places. I don't think we've
15 done that level of investigation on every roof that we've
16 looked at. We don't always have the benefit of looking
17 at the top of the roof and the underlying framing. But I
18 think in several places if we looked at the framing, we
19 did find water intrusion damage.

20 Q. And what's this a photograph of?

21 A. This is while we were standing on the roof we lift
22 up the shingles along the edge of the roof. There's a
23 eave condition here, and then you have a sloped roof
24 that's intersecting. And that creates a, what they call,
25 a valley where two roofs come together. And what's

1 supposed to happen is a higher level of protection along
2 the valley with a thirty-six inch wide piece of felt that
3 goes over all the other felt. And so you'd have a double
4 layer at the valley. And here there might be a single
5 layer, and then you could see that even a small edge of
6 the O.S.B. deck is out of plane and unprotected. And
7 there's just a little bit of damage at the bottom corner.
8 It's really more of a workmanship issue that I'm showing
9 there than physical damage. I mean, there's a little bit
10 damage, but it's just -- there's a lot of stuff that's
11 wrong in that picture.

12 Q. What does that photograph tell you about the
13 workmanship with respect to the roof installation?

14 A. I'll tell you overall poor workmanship.

15 Q. What's this, Mr. Hodgin?

16 A. This is the section out of the code that describes
17 installation of underlayment. And one thing that it
18 talks about is that if you have a roof slope that is
19 between two-twelve -- it's a two vertical, twelve
20 horizontal -- a two-twelve slope and four-twelve slope,
21 you have to have additional underlayment. And it
22 specifically requires a double underlayment application
23 on those slopes. And that shows you how to do that. And
24 the way that you do it is you start with the seventeen-
25 inch piece, and then you have your thirty-six inch pieces

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1 over the top, and you have seventeen inch laps so that
2 every single place where you could see the felt, you'd
3 have two layers. But you've got a seventeen-inch lap,
4 not a two-inch lap like you'd have with a regular single
5 layer of felt.

6 Q. But in those pitches that are two-twelve and four-
7 twelve, what is that?

8 A. That's the slope of the roof. And that's vertical
9 to horizontal, the ratio to the vertical, four units to
10 twelve units or one for every one foot the slope would go
11 up four inches for a four-twelve. And for a two-twelve,
12 you would go over twelve and up two.

13 Q. So a two-twelve slope is a less steep roof ---

14 A. Correct.

15 Q. --- that a four slope roof?

16 A. Right. And so the general concept is as you reduce
17 the slope you get less gravity to shed the water off the
18 roof, the more you have to protect the roof from water
19 penetration.

20 Q. Okay.

21 A. I think this is basically the same section of the
22 code. But it talks about if you've got something greater
23 than four, then you have a single layer. Between two and
24 four is two layers.

25 Q. Okay.

1 A. This is the architect's drawing showing that the
2 slope of some of the roofs were three-twelve. And he's
3 got over fifteen-pound roofing felt. That would actually
4 be a code violation. It should indicate that a double
5 layer is required.

6 Q. Did you find fifteen-pound roofing felt in those
7 locations?

8 A. I believe so, yes.

9 Q. And was it properly installed?

10 A. No.

11 Q. And what sort of installation errors did you find in
12 the fifteen-pound felt that you found on those -- is that
13 a low-slope roof?

14 A. Technically, when you say low slope -- I mean, it's
15 less than four-twelve. But traditionally when you talk
16 about low slope, you're usually talking about a
17 commercial roof which has the quarter-inch-per-foot
18 slope. So I would still categorize in general a three-
19 twelve as a steep-slope roof. It's just low enough that
20 it requires special attention.

21 Q. When a contractor, a general contractor, has a
22 subcontractor install something like fifteen-pound
23 roofing felt on a roof with that slope, is the contractor
24 obligated to make sure that the installation is properly
25 done?

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- 1 A. Yes.
- 2 Q. And is it a breach of the standard of care
3 applicable to the general contractor if it's not?
- 4 A. To both the general contractor and the roofing
5 contractor, yes.
- 6 Q. What's reflected in that photograph?
- 7 A. That is a area where it looks like I'm lifting up
8 some shingles and showing the absence of nails. There
9 should be a nail close to each end of the shingles.
10 We've got two shingle courses that I lifted up that I
11 shouldn't be able to lift up if the fasteners were placed
12 properly.
- 13 Q. Where would the general contractor or a roofing
14 subcontractor find information about nailing on shingles?
- 15 A. The building code.
- 16 Q. Anywhere else?
- 17 A. N.R.C.A., AAMA, J.L.C. All those would have it.
- 18 Q. Those authorities that you mentioned previously?
- 19 A. Correct.
- 20 Q. And did you find that the nailing of the shingles in
21 this instance constitutes a violation of the standard of
22 care of the general contractor and the roofing
23 subcontractor?
- 24 A. Yes. There was source information on every single
25 bundle of shingles. The wrapper has the nailing

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1 requirement on it.

2 Q. What is the damage that can occur or does occur as a
3 result of improperly nailed shingles?

4 A. I don't know that on this roof that I could say
5 there's been any damage. But the potential damage is
6 that -- I do a lot of natural disaster claim
7 investigation. And the edge of the roof in particular
8 receives a lot of wind blow. So if you had a wind event,
9 these shingles would get sucked off much easier than they
10 would if they were installed properly.

11 Q. Okay.

12 A. This is a photograph we took of the rake of the
13 roof. And this goes back to the architect plan detail
14 showing the way that the roof was supposed to have
15 closure. And so here you can see this is a piece of
16 O.S.B. roof deck that stops. There's a joint, and then
17 there's a steep offset. So there's actually a hole
18 between the rake of the roof, this fascia or sub-fascia
19 component, and the deck where the shingles are
20 unsupported. There's no metal drip edge, and there's a
21 lack of roof deck below the shingles.

22 Q. Did you find damage associated with that condition?

23 A. I would say, you know, based on localized damage,
24 but nothing significant. I don't think I have to replace
25 much material there. I could probably just patch in some

1 roof deck along the edge and leave the components that
2 are there and just properly reconstruct it.

3 Q. Does that condition represent a breach of the
4 standard of care by the general contractor?

5 A. Yes. And the roofing contractor.

6 Q. What's in this photograph, Mr. Hodglin?

7 A. This one is interesting. It's got the sub-facia and
8 facia detail, trim detail, like they show. But then they
9 ran the O.S.B. panels over the top of the facia, so all
10 these pieces that you see here are actually exposed ends
11 of O.S.B. roof deck. That should never be exposed to the
12 weather. That should terminate at the back side of the
13 trim and then the metal drip edge go over the top of it
14 to make a closure and then the felt go underneath the
15 metal drip edge. So you should never be able to see a
16 roof deck hanging out like that from the outside of a
17 building.

18 Q. You've used the term O.S.B. a lot, and I think I
19 have too. What is O.S.B.?

20 A. I thought I said it once. Oriented strand board.
21 It's a bunch of wood chips glued together and pressed
22 under heat and pressure.

23 Q. And was that condition a breach of the applicable
24 standard of care or the standard of care applicable to
25 the general contractor?

00818

1 A. Yes.

2 Q. And the damage that occurs from that is what?

3 A. Well, already you can see that these edges are
4 weathered. There's no closure there, so the water could
5 penetrate that location and get into the roof or into the
6 unit.

7 Q. What's in this photograph?

8 A. This is at unit two. That's really hard to see, but
9 you can see in the closeup here where there's an exposed
10 nail. There's actually a series of red circles all over
11 the surface of this roof. I don't know how many total.
12 But you really should have no exposed nails. Each
13 shingle course should cover the nails of the previous
14 course. When you get to the head wall up here, you might
15 have some nails that would be exposed that you'd put some
16 sealant on. But there really -- other than that, there
17 should be no nails visible anywhere on that asphalt
18 shingle roof surface. And there were multiple nails that
19 were exposed.

20 Q. And is the exposure of those nail heads -- is that
21 problematic from a water infiltration standpoint?

22 A. It certainly could be. Again, those are all holes
23 that penetrate through the shingle up into the roof deck.
24 And typically, they're covered up. You should get some,
25 what they call, self-healing, you know, around the

1 shingle nail. I mean, it wouldn't allow, you know, a
2 large volume of water, but it certainly could be a path
3 for water intrusion. And then you get corrosion of the
4 nails once they're weathered like that.

5 Q. And is that the big problem with the exposed nails
6 is the corrosion from the water?

7 A. It's both. It's just something that you shouldn't
8 see on a properly installed roof.

9 Q And is that a breach of the standard of care
10 applicable to a general contractor?

11 A. Yes. And the roofing contractor.

12 Q. What's reflected in this photograph, Mr. Hodgins?

13 A. It says, "broken shingle at valley," which I'm sure
14 that there is a broken shingle right here. But what I
15 would say is a bigger concern for me is the way that this
16 rake edge is detailed with this trim stopping short of
17 the shingles and this piece of metal that extends from
18 the roof surface behind that trim. That's totally
19 incorrect and poor flashing detail. That could allow
20 water to get behind that trim, and it's not a good
21 closure for the rake of the roof.

22 Q. So the flashing is the -- put your pointer on the
23 flashing again.

24 A. It's just a flexible, very thin piece of metal
25 that's been placed between the shingles and the trim.

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1 Q. So the water that hits that flashing is being
2 diverted where?

3 A. Well, apparently, he's going to take it down the
4 slope, and it's going to fall off here. But you can see
5 at the edge, he ran it behind a piece of wood trim.
6 That's never a good idea. Water's going to soak into
7 this trim and cause it to deteriorate.

8 Q. Is that a breach of the standard of care applicable
9 to a general contractor?

10 A. Yes.

11 THE COURT: Mr. Lyles?

12 MR. LYLES: Yes, sir.

13 THE COURT: How much -- are you getting onto
14 the side wall?

15 MR. LYLES: We are, I think, finished with the
16 roof portion of it.

17 THE WITNESS: I think there might be a little
18 bit more roof, not much though on the roof.

19 MR. LYLES: You want to try to finish the roof
20 tonight?

21 THE COURT: Yeah, let's finish the roof, but
22 it's -- they've been here a while.

23 A. This is the code requirement that just talks about
24 flashing at the side walls that's required.

25 Q. What's a side wall?

1 A. It's where the roof would intersect a vertical wall
2 along the slope of the roof.

3 Q. And what does it require?

4 A. Step flashing.

5 Q. And what is step flashing?

6 A. It's individual pieces of metal, kind of in an L-
7 shape. And with every course of shingles that you put
8 down, when you come against a wall, you put a piece of
9 step flashing that would terminate that course against
10 the wall. And so they lap as they go up the roof with
11 each course of singles in water shedding faster. And
12 then that step flashing should be what they call counter-
13 flashed, a vertical leg of it, by a weather barrier and
14 siding or some exterior cladding on the wall. So
15 everything is in a water shedding manner.

16 Q. Okay.

17 A. This is just the industry standard that shows a
18 graphic of what I just described. You've got the step
19 flashing going up the wall. Then you've got a weather
20 barrier coming down over it and then siding over the top
21 of that.

22 Q. Okay.

23 A. And then just the standard line in the architect
24 plans that say flashing. So this is -- you can see all
25 the individual pieces of step flashing. It's just a

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1 little bit offset between each one as you step down the
2 roof of each course of shingles. So what's happened here
3 is this is a fire-rated -- it's supposed to be a fire-
4 rated wall. And they have gypsum sheathing that's a
5 moisture sensitive product that's been damaged at every
6 piece of siding lap. And there's no weather-resistant
7 barrier or anything to counter-flash the step flashing.
8 So water, when it comes down the wall, can go behind the
9 vertical leg of the step flashing and cause damage to the
10 roof.

11 Q. And is there a condition in that photograph that in
12 your opinion constitutes a violation of the standard of
13 care applicable to a general contractor?

14 A. Yes.

15 Q. And what conditions are those?

16 A. It would be that the roof would not provide weather
17 protection. The fire-rated wall assembly is being
18 compromised, so the exterior walls aren't providing
19 weather resistance. The roof's not going to provide
20 weather resistance, and you've got a life safety issue.

21 Q. Were you able to determine whether or not that
22 gypsum sheathing was fire-rated sheathing?

23 A. I don't recall if we specifically found the tag on
24 that. I know we had a concern at one time about whether
25 it's exterior or interior grade. It's performing like

00823

1 interior grade. And it's not a color that's typical of
2 an exterior-grade gyp. As you heard -- I think a
3 gentleman earlier testified ---

4 Q. Mr. Morris?

5 A. Yeah. He was used to seeing green as the color of
6 exterior gyp. It's usually green, purple, black or
7 yellow of the manufacturers that I'm familiar with. And
8 so this paper face here is the same color as interior,
9 but we never were able to confirm definitively its fire
10 resistance or its exterior grade. It's just damaged.

11 Q. What's the effect of that damage on that gypsum?

12 A. Well, it compromised it's integrity. And I would
13 say by compromising its integrity, you compromise a fire-
14 rated wall some way.

15 Q. Okay.

16 A. This is an industry standard. It's showing where
17 flashing is supposed to be installed at what they call a
18 head wall. So instead of the side wall that we've been
19 talking about, this is where a roof would intersect a
20 vertical wall at the top of a slope.

21 And then there's the architect callout for flashing
22 to be installed at that location. And this is what we
23 found in phase one was significant water intrusion
24 occurring at breaches or improper laps of the flashing at
25 the head wall that's migrating down the roof. You can

00824

1 see there's actually a joint in the sheathing at that
2 location where it's penetrating into the attic space
3 below.

4 Q. And did you call that at the very top -- you said
5 the head course, did you say?

6 A. Head flashing.

7 Q. The head flashing?

8 A. Right.

9 Q. And did you find that the head flashing was properly
10 installed or improperly installed?

11 A. Improper because when we've taken off the cladding,
12 it has that same problem as the side wall. There's
13 nothing to protect the vertical legs. Any water that
14 penetrates in the wall above goes behind the flashing
15 underneath the felt.

16 Q. And was that a breach of the standard of care
17 applicable to a general contractor?

18 A. Yes.

19 Q. And the felt, is that felt that's depicted in the
20 photograph on the left?

21 A. Yes.

22 Q. And is that felt -- has felt been removed as part of
23 this destructive test or emergency repair, or is that how
24 you found it?

25 A. I think -- I'm not sure what the particular photo --

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1 I'd have to research it more. But I can tell you this
2 for sure. We found some places that look like this
3 without disturbing it. And in other places, we removed
4 felt. This one looks like it's undisturbed and we found
5 it like that, but I'd have to check to be sure.

6 Q. And what's the photograph on the right?

7 A. That's where we've taken out the roof deck. And you
8 can see some staining of the framing below, and the
9 insulation has gotten wet.

10 Q. What's the staining on the framing below?

11 A. It's water penetrates the joint right here that's
12 getting to the trusses causing damage to the top of the
13 trusses.

14 Q. Did you find this condition throughout phase one?

15 A. Well, we didn't take the roof off of all of the
16 phase one units, but when we did the emergency repairs
17 and we had an opportunity to take the roof deck off, we
18 did find damage on several of those roofs that we
19 removed.

20 Q. Did you find damage to roof trusses?

21 A. We did. There would be localized damage to the top
22 cord where the water penetration would hit first. This
23 would be interior damage that would be related to that
24 type condition.

25 Q. And does that sheetrock on the interior -- does it

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1 need to be replaced?

2 A. I don't know for sure. I would say most likely. If
3 you've seen it that much on the bottom of the visible
4 side that faces the occupant, if you cut that out, it
5 would probably be pretty significant on the other side.
6 I would say that one probably we need to replace. If
7 you've got something like this that's isolated, you might
8 be able to salvage it and just stop the water intrusion
9 and then put some Kilz on it and paint.

10 These are other damages from that same type of
11 condition.

12 Q. And did you find that these damages were common or
13 pervasive throughout the phase one?

14 A. It would be the same answer I gave you a minute ago.
15 We didn't always have the opportunity to do the cuts
16 above and below the roof. But when we did, and
17 especially in the emergency repairs where there was known
18 water intrusion and we were able to have a more
19 comprehensive look during our repair process, we
20 typically found damage.

21 Q. Now, those photographs are actually taken inside
22 somebody's house?

23 A. Yes.

24 Q. And what's this photograph?

25 A. That's that same area. And we're just putting our

1 finger through the O.S.B. deck just to show how
2 compromised it is. You can also see kind of the same
3 felt condition I was describing earlier. It's either
4 been compromised or it's just kind of in a ragged non-
5 uniform condition when we find it.

6 Q. What's in these photographs?

7 A. This looks like more of the same type of water
8 intrusion damage on the deck. And when we took the deck
9 off -- this is what I was talking about earlier -- the
10 top cord of the roof framing gets compromised where the
11 water penetrates.

12 And these are more interior damages that --
13 basically, that was the mode of discovery of the problem.
14 Nobody's looked at their roof and thought there was a
15 problem with the roof. It just -- ultimately, you know,
16 it takes a long time. Eventually the water -- at first
17 it's absorbed by the roof deck and by the insulation and
18 by the wood and the roof framing. And when it finally
19 makes it way to the interior, it's been going on for a
20 while. And so this is what prompted the emergency
21 repair. And then when you open it up, we'd find the
22 damage.

23 And this is a roof intersection between two units.
24 And it just shows -- again, it's mostly just showing the
25 workmanship issue. This is a two-by-four that's creating

00828

1 an offset between these two groups just laying there
2 without any paint or protection and all the shingle
3 layers just hanging over with no drip edge or no uniform
4 termination.

5 Q. How would you describe that workmanship?

6 A. Poor.

7 Q. And what's this, Mr. Hodgin?

8 A. These are damages around a skylight where water
9 intrusion has incurred in unit twenty-eight.

10 Q. And what's the source of water intrusion there?

11 A. There's improper flashing around a skylight that's
12 allowed water ---

13 THE COURT: Are we getting away from the roof
14 now?

15 MR. LYLES: We have three more photographs.

16 THE COURT: Very good, but let's move on.

17 Q. Is this the same condition, Mr. Hodgin?

18 A. It is, but a different unit.

19 Q. That's a different unit?

20 A. I think so. I think the other one was twenty-eight,
21 and this one is thirty-one.

22 Q. And is the problem a pervasive or common problem
23 throughout phase one?

24 A. In the areas that we looked at the skylights, yeah.

25 I think that that's not uncommon, that there's been some

1 water intrusion at those locations.

2 Q. And are the flashing conditions around the skylight
3 similar to those that you were referring to on the roof
4 edge and the wall intersections?

5 A. Yes.

6 Q. And did you find those to be breaches of the
7 standard of care that's applicable to a general
8 contractor?

9 A. Yes. And a roofing contractor.

10 MR. LYLES: Your Honor, that, I think,
11 concludes the roof.

12 THE COURT: All right. Very well.

13 I tell you what ...

14 Oh, that's all right. You just sit with us if you
15 would, please, sir.

16 All right. Mr. Foreman, ladies and gentlemen of the
17 jury, I am going to excuse you at this time. And I do
18 appreciate your patience with the Court. Now, what time
19 would you like to start in the morning?

20 MR. FOREMAN: Nine-thirty would be fine.

21 THE COURT: Nine-thirty.

22 And let's see if we can't resolve all those little
23 matters we've discussed at sidebars and things like that
24 so that we can begin at that time.

25 Also, we would -- what time would you like -- I know

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1 five o'clock was mentioned, but do you need some more
2 time to get everybody organized for tomorrow? Tell the
3 Foreman.

4 MR. FOREMAN: Four thirty, five, somewhere.

5 THE COURT: Well, about four-thirty.

6 MR. FOREMAN: That'd be good.

7 THE COURT: All right. That'll give you a
8 little more.

9 All right. With that, I'll see you in the morning.
10 But, again, please do not undertake the discussion of the
11 case among yourselves in any way.

12 (WHEREUPON, the jury exited the open court at
13 approximately 5:27 p.m.)

14 THE COURT: Now, the witness is under oath, so
15 he can't discuss his testimony with anyone, particularly
16 the lawyers. Do you understand that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Now, we do have a holding cell that
19 we'd be glad to put you in. I hope that won't be
20 necessary. No. The reason for that is that now -- once
21 you're placed under oath, then you become the Court's
22 witness.

23 THE WITNESS: Yes, sir.

24 THE COURT: But I don't want to go home with
25 you.

1 THE WITNESS: No.

2 THE COURT: Very good. Thank you, sir.

3 THE WITNESS: Thank you.

4 THE COURT: All right. We'll see you at nine-
5 thirty in the morning. I do want to kind of go over some
6 things we talked about at lunch.

7 We're off the record now though.

8 (WHEREUPON, court stood at recess for the day at
9 approximately 5:31 p.m.)

10 October 31, 2013

11 (WHEREUPON, court convened with all parties present
12 and the following proceedings were had commencing at
13 approximately 10:00 a.m.)

14 THE COURT: Is the plaintiff ready?

15 MR. LYLES: Yes, Your Honor.

16 THE COURT: Mr. Belcher, are the defendants
17 ready?

18 MR. BELCHER: Yes, Your Honor. We do have a
19 matter to put on the record ahead of time, though.

20 THE COURT: That'll be good, I hope.

21 MR. BELCHER: We have a settlement, so we can
22 whittle down these parties a little bit more.

23 THE COURT: Very good.

24 MR. BELCHER: I'll have Mr. Lyles explain it
25 and fill in the gaps.

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1 MR. LYLES: The plaintiffs are going to dismiss
2 their claims against Jeff and Joe Bostic personally and
3 Mel Morris personally in exchange for the sum of forty-
4 five thousand dollars. The Bostics and Mr. Morris will
5 also give us an assignment of whatever rights and claims
6 they may have against their company, Cincinnati Insurance
7 Company.

8 MR. BELCHER: And that settlement covers not
9 only this lawsuit but any subsequent lawsuits that may be
10 filed by any homeowners for loss of use or any other
11 claims that may arise out of the Stoneledge or Townhomes
12 of Lake Keowee Project for whatsoever.

13 THE COURT: All right. Again, you've heard me
14 ask before in the others. Is there any requirements in
15 the settlement as far as time or anything of that nature?

16 MR. LYLES: I'd like it in thirty days. I
17 don't think that's -- I've been told I could have it
18 today. But thirty days is fine once we get the paperwork
19 drawn up.

20 THE COURT: All right. So we'll -- let's say
21 time is of the essence of thirty days.

22 MR. LYLES: Yes, sir.

23 MR. BELCHER: Just to be clear, Joe Bostic,
24 Jeff Bostic and Mel Morris no longer have any liability
25 or responsibility to anything or anyone at Stoneledge?

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1 MR. LYLES: That's right.

2 THE COURT: All right. How about Bostic
3 Brothers?

4 MR. LYLES: Well, Bostic Brothers Construction
5 has not settled.

6 THE COURT: All right. So they're ---

7 MR. LYLES: This is the claims against them
8 personally.

9 THE COURT: All right. Is Bostic Brothers
10 still in existence?

11 MR. LYLES: It is not.

12 THE COURT: Okay. Well, anyway, that's the
13 settlement.

14 MR. BELCHER: And this involves any developer
15 liability under their ownership of Townhomes of Keowee or
16 any other entity that they may have owned, Bostic
17 Development. There are just no more claims against those
18 three guys, Joe Bostic, Jeff Bostic, and Mel Morris,
19 arising out of this project from any way you can slice
20 it. All right?

21 THE COURT: Understood, Mr. Belcher.

22 MR. BELCHER: And I can draft a release that
23 sounds a little bit more legal than that, but ---

24 THE COURT: Which that would be. And it might
25 be well to do that sort of thing. And then you can

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1 submit your check with the release.

2 MR. BELCHER: We'll do that. And it's a
3 dismissal prejudice.

4 MR. LYLES: It is.

5 THE COURT: All right.

6 MR. LYLES: Thank you.

7 THE COURT: Well, now that you mention that --
8 now, does that mean that you will be retiring from the
9 proceeding?

10 MR. BELCHER: No. I'll continue to represent
11 Bostic Construction, Incorporated.

12 THE COURT: Okay. Very good. That's what I
13 think I was trying to get to.

14 MR. BELCHER: We're just here for the sole
15 purpose of seeking insurance proceeds from that company.

16 THE COURT: I understand.

17 All right. Now, while we were out, I received this
18 from one of the jurors. "Judge, first I need to
19 apologize to this Court. During jury selection, you
20 asked if any if we ever worked construction. I didn't
21 stand up. I don't like talking in front of a large crowd
22 or large groups. I worked in construction as a carpenter
23 helper and then went on to be a plumber's helper. I did
24 this for many years. I can't let this go any further
25 without telling you this. I didn't know this trial was

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1 about construction at the beginning. I can be fair to
2 both parties, but they don't know I worked construction.
3 It's probably unfair to them, both parties." It's signed
4 the juror.

5 What are the thoughts of the plaintiff? You want to
6 take a few minutes?

7 MR. LYLES: I just don't -- there are a couple
8 of different things I'm thinking about, and I want to
9 talk to my folks about that if that's okay.

10 THE COURT: Yeah. That's what I'm saying.
11 We'll take a few minutes. And all of you, if you would,
12 please, consult with your clients who are here. If you
13 need to contact them, do that as well.

14 All right. And if you need to see it, here's the
15 note. Let them look at it if they need to.

16 MR. LYLES: Thank you.

17 (WHEREUPON, court stood at ease.)

18 MR. BELCHER: Your Honor?

19 THE COURT: Yes, sir.

20 MR. BELCHER: My position is that he just needs
21 to be questioned again as to whether or not he can be
22 fair and impartial and non-biased. I mean, I understand.
23 In fact I think going back through what I recall of the
24 empaneling, we -- I'm sorry. I thought he was standing
25 right there. I'll wait. I'll respond later.

1 (WHEREUPON, court stood at ease.)

2 THE COURT: All right. Has everybody had an
3 opportunity to look at the note?

4 MR. LYLES: Yes, Your Honor, I think so. We
5 have.

6 THE COURT: Wait a minute. How about Mr.
7 Anderson?

8 MR. ANDERSON: I'm sorry?

9 THE COURT: Mr. Hemphill?

10 (WHEREUPON, court stood at ease.)

11 THE COURT: All right. We're back on the
12 record. Have the plaintiffs been able to consider what
13 they would like to do as far as the juror's information?

14 MR. LYLES: Yes, sir, Your Honor. We are fine
15 with him if he can be an impartial juror.

16 THE COURT: All right. And the defendants?

17 MR. BELCHER: We agree, Your Honor. As long as
18 he can come out here and say, "I'll be impartial."

19 THE COURT: All right. So in other words,
20 bring the juror out and just put him on his voir dire.
21 Of course, I will remind him he's still under oath and
22 things of that nature. The only thing is that would be
23 the question, can he be fair and impartial to both
24 parties.

25 MR. LYLES: And we appreciate his candor. And

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1 I hope that's not hard.

2 THE COURT: Well, listen, I tell you that is
3 one thing -- y'all have to forgive me. I'm a little bit
4 -- as far as Oconee's concerned. And we've got good
5 people here. And we might not always agree, but they are
6 about as straightforward and candid as well as honorable
7 as you can find. So, in fact, if you read the content of
8 his note, he said he could be fair. But he just felt
9 that -- as I told them, it's not only what the juror can
10 do but what the parties feel. So with that, I will.
11 I'll ask -- now, again, it's Mr. Wilbanks.

12 Ask him to come out and just ask him to stand at the
13 end of the row right there.

14 By the way, any mention needs to be made of the
15 settlement this morning?

16 (WHEREUPON, the juror entered the open courtroom.)

17 THE BAILIFF: Just stand right there.

18 THE COURT: Mr. Wilbanks.

19 THE BAILIFF: That's fine.

20 THE COURT: This will be fine. And, of course,
21 you understand you're still under oath from the other day
22 when I swore you as a juror?

23 THE JUROR: Yes, sir.

24 THE COURT: I've gotten your note. I've read
25 it. I've also read it to the parties. And there's one

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1 thing that you put in the note that we're very concerned
2 about. And that's not only -- what is it? -- what you
3 might personally feel, but also do you feel that you can
4 be both and fair and impartial to the plaintiffs and the
5 defendants?

6 THE JUROR: Yes, sir.

7 THE COURT: Any question in your mind?

8 THE JUROR: No, sir.

9 THE COURT: Well, again, I want to thank you.
10 And the parties said that they are satisfied with your
11 integrity, if you would -- what is it? -- your candor.
12 And I appreciate your bringing it to the Court's
13 attention.

14 THE JUROR: Well, I felt like the Court
15 deserved that.

16 THE COURT: Well, you did absolutely right.
17 And I thank you. So you rejoin the jury. We'll bring
18 you out in a few minutes.

19 THE JUROR: Yes, sir. Thank you.

20 THE COURT: Thank you, sir.

21 (WHEREUPON, the juror exited the open courtroom.)

22 THE COURT: All right. I do find that the
23 juror is qualified and may serve.

24 (WHEREUPON, Court's Exhibit Number 2 was marked for
25 identification only.)

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

3 MR. LYLES: No, sir.

4 THE COURT: From the defendants?

5 MR. BELCHER: The only thing that we need to
6 just reiterate on the record is that we are going to call
7 Joe Bostic and Jeff Bostic this morning for their
8 convenience.

9 THE COURT: This morning or after the direct on
10 this witness?

11 MR. BELCHER: The parties have discussed it.
12 And if it suits the Court, to call them this morning just
13 to get their testimony out of the way.

14 THE COURT: That's no problem at all.

15 MR. LYLES: No objection.

16 THE COURT: I mean, of course -- what is it? --
17 that's what I've asked you to do, and y'all have been
18 good about that. Now, wait a minute. I see Mr. Vick and
19 Mr. Imhoff.

20 MR. IMHOFF: Very simply, this has already been
21 said on the record. We've talked about it, but we just
22 wanted to make sure it was on the record again. That
23 this taking witnesses out of order doesn't prejudice any
24 party's right on directed verdict.

25 MR. VICK: That's our ---

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1 THE COURT: All right. That is. I thought
2 that was resolved yesterday, but it would be renewed now
3 much like a motion in limine, that when the time comes,
4 you need to renew it on the record just for the
5 protection. But, no. All right. It is understood --
6 are you going to put the Bostics up at this time?

7 MR. BELCHER: Yes, Your Honor. And that's why
8 I stood up is because we wanted to confirm and renew the
9 statement that we are not prejudicing any rights to
10 anyone.

11 THE COURT: All right. Any question about
12 that, Mr. Lyles?

13 MR. LYLES: No question, Your Honor.

14 THE COURT: All right. Very good.

15 All right. Taking the witnesses out of order will
16 be done without prejudice to the parties. And that's all
17 of the parties, not only the ones whose witnesses are
18 involved, but also any of the others involved in the
19 action.

20 All right. Ask the jury to join us.

21 (WHEREUPON, the jury entered the open court at
22 approximately 10:16 p.m.)

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

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

1 want to thank you for your patience this morning, but we
2 have been able to move the case along a little bit. And,
3 in fact, at this time we are going to do what we call
4 take witnesses out of order. In other words, normally
5 the attorneys have a certain schedule for witnesses. And
6 of course -- what is it? -- as far as the trial is
7 concerned, the plaintiffs who is the -- the plaintiffs
8 are the moving parties. They have the burden of proof
9 for their case. They usually go first and complete their
10 case, then the defendants present their case. But in
11 this matter, in order to accommodate each other, we're
12 going to -- well, actually just recede. In other words,
13 put on hold the plaintiffs' case with the witness that we
14 had yesterday.

15 And now I am going to recognize Mr. Belcher for a
16 presentation of his clients. Now, the fact they're being
17 taken out of order is not in any way to prejudice the
18 parties. It's just for the convenience of the witnesses
19 because they have a conflict. And we just want all the
20 information that you have, you will need available to you
21 at the time you reach your deliberations.

22 All right. Mr. Belcher?

23 MR. BELCHER: All right. Thank you, Your
24 Honor. The defense calls Mr. Joe Bostic.

25 (WHEREUPON, the witness was duly sworn.)

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

3 THE WITNESS: My name is Joe Earl Bostic, Jr.,
4 B-O-S-T-I-C.

5 THE COURT: Thank you, sir.

6 JOE BOSTIC, JR.,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. BELCHER:

10 Q. Good morning, Mr. Bostic. I just wanted to give you
11 a few moments to testify. I understand you have other
12 obligations later in the week that are going to interfere
13 with you being here. First, I want you to just tell the
14 jury a little bit about yourself.

15 A. I live in Greensboro, North Carolina. Three
16 children, twenty-eight- and twenty-seven-year-old girls,
17 sixteen-year-old boy. I grew up in Greensboro, graduated
18 from high school there. Went to Clemson University down
19 the street and played football there for four years. Got
20 drafted in the N.F.L. in 1979 and was fortunate to play
21 eleven years with the Cardinals and moved back to
22 Greensboro. Been in construction and property management
23 since about 1990. I got a general contractors license in
24 the State of North Carolina in 1990. And that's about
25 it. I've got a wife.

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1 Q. Life is good, huh?

2 A. It's gotten better today.

3 Q. Well, Mr. Bostic, I understand that you started
4 construction right after your first career. How hands-on
5 were you in construction when you were first building
6 apartments buildings?

7 A. It varied. We started out at an apartment complex
8 in my hometown of Greensboro, North Carolina. A two
9 hundred and fifty-six unit complex. And I teamed up with
10 Mr. Morris that you have met with yesterday. And we had
11 built that. And I was pretty hands-on with that. And we
12 had a company that grew. And I found myself later on in
13 my career in construction more working in the
14 administrative end in the offices than I was out in the
15 field.

16 Q. All right. As you became less and less involved in
17 field work, did Bostic hire employees that it later
18 helped get general contractor's licenses?

19 A. Yes. We had a number of people. I was a qualifier,
20 and there were a number of people who worked for Bostic
21 Construction that had licenses in North Carolina. I have
22 a license in North Carolina, South Carolina, and
23 Tennessee. And I think Tennessee carries eleven
24 additional states, but I could not tell you what those
25 states are. And I have never ever built anything in

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1 those states, but I qualified to have a license in eleven
2 additional states, I think.

3 Q. And you've heard the names of some of the project
4 managers who were on-site at the Townhomes of Keowee. I
5 think including Nash Duggins and Keith MacConochie?

6 A. Yes, sir.

7 Q. Were they both licensed contractors?

8 A. They were at that time.

9 Q. And did Bostic Construction rely on them to stage
10 subcontractors and make sure they were doing what they
11 were supposed to be doing?

12 A. Yes.

13 Q. You've seen all the reports of the experts, even
14 before trial here today; right?

15 A. Yes.

16 Q. All right. Obviously, it didn't go as planned. Is
17 that a fair statement?

18 A. Absolutely.

19 Q. Tell me about this Keowee project, when you were
20 first approached about it?

21 A. I'm going to do the best I can by memory. This has
22 been eleven or twelve years ago. I met a guy named Ron
23 Cobb at that site. I don't know who made the connection
24 or whatever. But Mel Morris and I went down to this
25 site, I think, sometime in the early part of 2002. And

1 it's a breathtaking place on the lake. And we were --
2 you know, walked around and talked about the number of
3 boat slips you could get and the possibility for septic
4 tanks or whatever there in the middle of 2002. And, you
5 know, we thought it was a wonderful place. You know, I
6 come to Clemson a lot, and I thought it would be a great
7 place. We wanted to have a -- Jeff and I both wanted to
8 have a unit over there ourselves if things would have
9 worked out differently.

10 Q. So was this sort of a pet project for you?

11 A. Yeah. Anything around Clemson is just, you know,
12 it's -- that's -- you know, it's Halloween, but orange is
13 my favorite color. And I kind of wanted to go incognito
14 today, but it's -- yeah, I just love being around here.
15 I live in North Carolina, but I love my time being around
16 Clemson.

17 Q. This is a second home to you, isn't it?

18 A. It is.

19 Q. You're here almost every weekend during football
20 season?

21 A. You're doggone right. I wish I wouldn't have been
22 here for the Florida State game.

23 Q. That was a tough one. So when you ventured to build
24 this project, it was going to have the Bostic name on it;
25 right?

1 A. Yeah.

2 Q. And that's important to you that when Bostic builds
3 something, it gets done right?

4 A. Well, it's not even just building. I mean, my whole
5 life, you know, going to school, playing football, you
6 know, I tried to do things right and to work hard. And,
7 you know, it's tough for me looking at stuff like, you
8 know, some of the things that we watched yesterday. And,
9 you know, it is what it is. But our name's on it. And,
10 you know, I want things to get right and make, you know,
11 things -- get this repaired.

12 Q. Now, over the course of Bostic Construction, how
13 many thousands of units do you think you all built?

14 A. Fifteen to twenty thousand units.

15 Q. And most of those, were they apartments, student
16 housing, or did you build a lot of these townhome
17 developments?

18 A. Mostly apartments. Student housing would come in --
19 I would say apartments were probably seventy percent of
20 what we did, sixty to seventy percent. Student housing,
21 we'd go around to different universities all throughout
22 the southeast and build student housing with a four-
23 bedroom complex where you'd rent bedrooms to students.
24 And we probably did four or five condo-type jobs, for-
25 sale units.

1 Q. Do you take any exception to these plaintiffs
2 wanting their buildings fixed?

3 A. No.

4 Q. You think they need to be fixed?

5 A. Absolutely.

6 Q. Have you reviewed the scope of repair prepared by
7 the expert that Bostic Construction hired, Mr. Moore?

8 A. I haven't looked at it in, you know, real detail.
9 But I have looked at it.

10 Q. And do you understand that it just provides a
11 ~~different way of fixing the buildings from what Mr.~~

12 Hodgkin is going to testify about later today?

13 A. Yeah. And you and I have talked about both
14 approaches. And I've gotten really more of my
15 information from him. But one is basically tear
16 everything off the buildings and, you know -- and the
17 other one is to identify areas that have damage and to
18 correct the damage.

19 Q. And you've looked at the estimates that this jury is
20 going to see later on during the course of this trial
21 from Trehel Construction and from Watkins Services?

22 A. Yes, I have.

23 Q. All right. You've heard some testimony about
24 Watkins Services already doing work out there?

25 A. Yes.

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1 Q. Tell me what you want to have done.

2 A. I want these people to have the homes that the
3 gentleman testified about, I guess, in 2003. I want him
4 to have the home that he thought he would have ten years
5 after that purchase, the condition that he expected it to
6 be. And that's a home that, you know, that you've got a
7 deck that you can enjoy, you've got a place that doesn't
8 have water infiltration and a place that, you know,
9 you're comfortable and you like calling home. It's a
10 beautiful place.

11 Q. And you have some, albeit somewhat removed,
12 construction experience?

13 A. Yes.

14 Q. Do you feel comfortable with the things that we
15 discussed about what Rick Moore says needs to be done to
16 the building can be done for the estimate that J.R.
17 Watkins has provided that this jury is going to hear
18 about later on in the trial?

19 A. Yes. I mean, the most encouraging thing that I
20 heard was from these two witnesses that own units there.
21 They've got a great relationship with Mr. Watkins. And I
22 don't know Mr. Watkins. If he came up and punched me in
23 the nose, I wouldn't know who did it. I've never met the
24 guy. But that was the most encouraging thing that I
25 heard is that, you know, "We have confidence in his

1 work." And everything I've heard about, "He does great
2 work." And that the people that live there have
3 confidence in his work. So, I mean, to me, that's a huge
4 hurdle to have to climb over.

5 Q. All right. Thank you, sir. I don't have any
6 further questions for you.

7 A. Thank you.

8 THE COURT: Mr. Lyles?

9 MR. LYLES: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LYLES:

12 Q. Mr. Bostic, I think I speak for everybody here that
13 we have very little worry about Mr. Watkins coming and
14 punching you in the nose. I believe you're okay.

15 Just a couple of things from me. You and your
16 brother Jeff had an ownership interest in the entity that
17 we have referred to as the development entity Townhomes
18 on Lake Keowee; is that right?

19 A. Yes, sir.

20 Q. And that's the entity that contracted with Bostic
21 Brothers to construct these units; is that right?

22 A. Yes, sir.

23 Q. And not to belabor the point, but in looking at the
24 C.S.E. reports and the other expert reports and the
25 photographs that you've seen in the courtroom over the

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1 last few days, is it accurate to say that you're
2 disappointed in how this project was constructed?

3 A. Yes.

4 Q. And you've already acknowledged that the project
5 needs to be repaired. And I think that you actually
6 summed it up much more eloquently than I can. You
7 believe that my clients should have units that are safe;
8 is that right?

9 A. Absolutely.

10 Q. And comply with the building code?

11 A. Yeah.

12 Q. And don't have water infiltration; is that right?

13 A. Correct. And enjoyable.

14 Q. And enjoyable. And that they're entitled to have
15 the damages and decay at their units repaired?

16 A. Yes.

17 Q. During the course of that repair, or as we focus on
18 that repair, would you agree with me that as the repair
19 begins, my clients should be confident that the repair
20 that's undertaken is going to give them those units?

21 A. Yes.

22 Q. In other words, it's going to be a repair that fixes
23 all the damages and fixes all the problematic conditions
24 and provides them with a safe and comfortable unit?

25 A. Correct.

1 Q. I think that's all the questions I've got for you,
2 Mr. Bostic. Thank you.

3 THE COURT: All right. Are there any of the
4 other defendants have any cross-examination?

5 Mr. Anderson?

6 MR. ANDERSON: I do not, Your Honor. Thank
7 you.

8 THE COURT: Mr. Imhoff?

9 MR. IMHOFF: Nothing, Your Honor.

10 THE COURT: Mr. Vick?

11 MR. VICK: No questions, Your Honor.

12 THE COURT: Mr. Hemphill?

13 MR. HEMPHILL: No, Your Honor.

14 THE COURT: Very good. Thank you.

15 Any redirect, Mr. Belcher?

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

17 THE COURT: All right. You may step down.
18 Thank you, sir.

19 All right. You may call your next witness.

20 MR. GRESH: Your Honor, the defense would call
21 Jeff Bostic.

22 THE COURT: All right. If you would, please,
23 sir, give us your full name for the record, spelling your
24 last name.

25 THE WITNESS: Jeffrey Lynn Bostic, B-O-S-T-I-C.

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1 And I had no control over my mom naming me Lynn for my
2 middle name, so ...

3 JEFF BOSTIC,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. GRESH:

7 Q. Well, I know we just heard from your brother Jeff.
8 But, I guess, tell us again where did you grow up, where
9 did you go to school, and what's your story?

10 A. We grew up in Greensboro, North Carolina, and went
11 to Smith High School. I'm a little bit younger than Joe.
12 I'm not going to tell you how much because we're real
13 close. But we were fortunate enough to have come down to
14 Clemson and played college football. We spent four years
15 here. And afterwards, I went to play in the
16 professionals with the Washington Redskins and spent
17 fourteen years there. And I played in four Super Bowls
18 and won three world championships, enjoyed a lot of great
19 things. And after retiring, I did some broadcasting and
20 obviously some building and construction development. I
21 have three children and a wife, three girls. So y'all
22 pray for me every night. Okay? And two of them have
23 graduated from Clemson, and one is a sophomore there now.
24 Q. When you were at Clemson, did you have any formal
25 education in architecture or engineering, anything like

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1 that?

2 A. No, I didn't. I was a sociology major with a
3 communication minor.

4 Q. Okay. Your brother Joe is a general contractor, a
5 licensed general contractor. Are you also a licensed
6 general contractor?

7 A. You don't want me swinging a hammer. No, I'm not.

8 Q. Well, then if you weren't a construction guy, what
9 was your role? Tell us what your role was within the
10 Bostic Brothers Construction Company.

11 A. Well, to try and get loans from banks. Obviously,
12 you've got to provide a financial statement and the like
13 and obtain loans. But later into our building of multi-
14 family, there was more requirement for equity
15 involvement. And I knew a lot of people anywhere from
16 the Maryland area down to Georgia and Florida that were
17 entrepreneurial types that could contribute equity
18 towards projects. And in return, they would have
19 ownership and the like in that project.

20 Q. Did you or did Bostic Brothers Construction rely
21 upon folks with actual expertise in the construction
22 industry, such as Mel and others, to do the day-to-day
23 construction operations?

24 A. Yes.

25 Q. And you were an owner of the company, but not a

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1 hammer-swinger or anything like that?

2 A. I was an owner of the company in name, but I was
3 really -- for the last fourteen years, I've lived in
4 Georgia. And Bostic Construction was based out of
5 Greensboro, North Carolina. And for years before that, I
6 was in the Washington, D.C. area for twenty years.
7 Fourteen of those years was playing and six years -- like
8 I said earlier, I did broadcasting when I finished. So I
9 did broadcasting for six years. And finally, after a
10 twenty-year span, I'd had enough of the northeast
11 winters. If anybody's been up there, they'll know what
12 they're like. And I moved to Georgia.

13 Q. Did you have any individual involvement with the
14 construction of the Stoneledge project we've been hearing
15 about?

16 A. No, I didn't.

17 Q. But you have been to the site. You went for at
18 least a marketing event, I guess; right?

19 A. I was there. And I can't remember the gentleman
20 that testified for the plaintiff that's the realtor. And
21 I'm sorry. I don't remember meeting him in Greenville
22 for the original marketing thing. But I was there. We
23 had a helicopter drop over, and he dropped out ping pong
24 balls with discounts for people that would buy. I was
25 there for that and probably one other thing. It's a

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1 beautiful facility. I mean, it's really breathtaking
2 when you walk up to that place.

3 Q. Jeff, there was a letter that was introduced into
4 evidence that was addressed to Bostic Brothers
5 Construction that had several addresses on that letter.
6 Did you ever receive that letter?

7 A. No, I didn't.

8 Q. Do you know if anybody in the company ever received
9 that letter?

10 A. Not to my knowledge.

11 Q. Your brother has the expertise in construction, and
12 he was asked about the estimates. I won't do that with
13 you. But tell the ladies and gentlemen of the jury what
14 you want to have happen in this case.

15 A. I want to have these things made right. And, you
16 know, it's got our name on them. And we don't get but
17 one chance with our name, so we want to do what's right.
18 How we get there -- I mean, it will be determined how
19 we'll get there. But I want something right.

20 Q. You'll leave how we get there up to the experts?

21 A. I'll let the construction and the legal people deal
22 with that. But I know what side I stand. I want to be
23 the person on the side of right.

24 Q. That's all I have.

25 THE COURT: Cross-examination?

1 MR. LYLES: Yes, sir. Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LYLES:

4 Q. You said that you want to be the person on the side
5 of right. And that's Bostic Brothers Construction; is
6 that right?

7 A. I think it's -- right is on both sides.

8 Q. You've acknowledged that Bostic Brothers
9 Construction served as the first general contractor on
10 this project?

11 A. Yes, sir.

12 Q. And like your brother, were you disappointed to see
13 the conditions at Stoneledge that resulted from that
14 construction?

15 A. Yes, I was.

16 Q. And is it your testimony that you expect Bostic
17 Brothers Construction to stand behind their product and,
18 as you say, make this situation right?

19 A. Yes.

20 Q. Thank you very much.

21 THE COURT: All right. Any further cross-
22 examination from Mr. Anderson?

23 MR. ANDERSON: No, Your Honor. Thank you.

24 THE COURT: Mr. Imhoff?

25 MR. IMHOFF: Nothing, your Honor.

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1 THE COURT: Mr. Vick?
2 MR. VICK: No, Your Honor.
3 THE COURT: Mr. Hemphill?
4 MR. HEMPHILL: No, Your Honor.
5 THE COURT: Very good. Thank you.
6 Any redirect, Mr. Gresh?
7 MR. GRESH: Nothing, Your Honor.
8 THE COURT: Very good. You may step down.
9 Thank you, sir.
10 THE WITNESS: Thank you, Your Honor.
11 THE COURT: All right. Any further witnesses,
12 Mr. Belcher?
13 MR. BELCHER: Not at this time, Your Honor.
14 Thank you.
15 THE COURT: All right. So we will go back now
16 to the plaintiffs' witness ...
17 MR. LYLES: Mr. Hodgin.
18 THE COURT: ... Mr. Hodgin.
19 Mr. Hodgin, if you would, please.
20 (WHEREUPON, Derek Hodgin resumed the witness stand.)
21 THE COURT: You do understand that the two
22 witnesses you heard from were from the defendants. And
23 now we will go back to the plaintiffs and Mr. Hodgin.
24 Mr. Hodgin, you have been sworn. You understand
25 that?

00858

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. So you're still under
3 oath.

4 THE WITNESS: Yes, sir.

5 DEREK A. HODGIN,

6 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 CONTINUED BY MR. LYLES:

9 Q. Mr. Hodgin?

10 A. Good morning.

11 Q. How are you doing today?

12 A. Fine, thanks.

13 Q. Good. Good. Yesterday, we looked at a lot of
14 photographs and a lot of information about roofs and roof
15 flashing?

16 A. Yes, sir.

17 Q. I indicated -- and I think a couple of my questions
18 yesterday I asked you if the roofing conditions, that is
19 the roof flashing details, shingle details, felt details,
20 were violations of the applicable building code?

21 A. Yes, sir.

22 Q. And were, in fact, the photographs that you put up
23 on the screen yesterday representations of conditions
24 that were, in addition to being violations of the
25 applicable standard of care, violations of the applicable

00859

1 building code?

2 A. Yes.

3 Q. You mentioned that the building code that was
4 applicable to this project were the 2000 and 2003 I.R.C.;
5 is that right?

6 A. That's correct.

7 Q. And are you aware of any building code that has been
8 applicable in Oconee County over the last fifteen years
9 or so that those conditions would be acceptable?

10 A. No.

11 Q. So it would have violated other building codes had
12 they been applicable?

13 A. Right. The code that preceded the 2000 I.R.C. is a
14 1995 CABO. And the requirements are the exact same in
15 that code.

16 Q. Okay. Now, we've put up on the screen another
17 document. What is this, Mr. Hodgins?

18 A. This is a paragraph on the code. It just talks
19 about that it's not okay to modify trusses without the
20 engineer of record approving a modification.

21 Q. And what is a truss?

22 A. A truss is a structural framing component. It's
23 several pieces that are made together at a manufacturing
24 plant. And they're typically wood pieces connected with
25 a metal plate connector in residential construction

00860

1 anyway.

2 Q. And where do we typically find trusses?

3 A. In a roof system or a floor system.

4 Q. Okay. And what does the code require with regard to
5 trusses?

6 A. That you can't modify them without the engineer of
7 record approving any modification.

8 Q. Okay. What's this photograph?

9 A. When we did some of the destructive testing, we
10 found a broken truss that was not fixed. So what was
11 supposed to happen here is when the truss broke, there
12 should have been some repair made pursuant to an
13 engineer's specification.

14 Q. And is that the only broken truss you found in phase
15 one?

16 A. I don't think we found too many. That's not the
17 only one. There wasn't a whole lot of others. I think
18 maybe one or two.

19 Q. Does that photograph depict any water damage in your
20 estimation?

21 A. Yes. At least some staining. So there's evidence
22 that water intrusion was occurring, yes.

23 Q. And what would have been on top of that truss before
24 you took it apart?

25 A. You have O.S.B., oriented strand board, or plywood

1 roof deck.

2 Q. And the shingles would have been on top of that?

3 A. Right. And the felt under the shingles.

4 Q. What's this section, Mr. Hodgins?

5 A. This is about the fire-rated wall assemblies that
6 are required for the Stoneledge construction.

7 Q. And is this the building code?

8 A. It is. And it just talks about the importance of
9 the separation between units and the two-hour rated wall
10 and that the continuity of those walls provide
11 protection.

12 Q. And, again, the purpose of a fire-rated wall was
13 what?

14 A. That if a fire broke out in an individual unit, that
15 the fire would be contained within that unit and not be
16 able to spread across the building.

17 Q. So that's a life safety issue?

18 A. It is.

19 Q. What is this?

20 A. These are the architect plans that show the two-hour
21 rated wall between the units. And so when they
22 physically connect and there's a commonality of a wall
23 between two units, that's a two-hour wall. Those are all
24 within the interior of the buildings. Because they're
25 offset, the wall extends to the front, back. And it's a

00862

1 one-hour wall on the exterior part, but it's continuous
2 from front to back. The entire wall would be rated.

3 Q. And the way this is drawn, is there essentially a
4 one-hour wall for each unit?

5 A. Yes.

6 Q. As the units adjoin together; right?

7 A. Yes. I think it was described yesterday as two
8 totally independent wall sections with gypsum on each
9 side.

10 Q. And this is what the architect showed?

11 A. Yes.

12 This is just a plan with you looking down on it.

13 And you can see the -- can I have the pointer?

14 Q. Sure.

15 A. I didn't take it.

16 These heavier lines between the units would be the
17 two-hour walls. You can see, it says, "two-hour wall."
18 And then where it extends to the exterior, this section
19 would be a one-hour wall, and this section would be a
20 one-hour wall. So the common areas are going to describe
21 two-hour in-between and then one hour at each end.

22 Q. You testified, I think, the general contractor and
23 subcontractors are required to comply with the applicable
24 building code; is that right?

25 A. Correct. That's an absolute minimum.

1 Q. And then is a general contractor also obligated to
2 comply with the requirements of the drawings?

3 A. Yes.

4 Q. What is this?

5 A. These are the references to what's called U.L.,
6 Underwriter Laboratory, assembly on the drawings. But it
7 shows more specific detail about the wall assembly.

8 Q. And what is -- if you could, describe to the jury
9 what an assembly is, how that works.

10 A. It's all the components that would make up the fire-
11 rated wall. So this is a very specific detail. It talks
12 about the studs, the stud facing, the gypsum thickness
13 and the type that's supposed to be used, the fasteners
14 that are supposed to be used, the tape and mud that are
15 supposed to be on the exterior of the wall. So it's very
16 specific in terms of all the components that are to be
17 used.

18 Q. And what is U.L.? What does that mean?

19 A. Underwriter Laboratories, a facility that does the
20 testing of these wall assemblies. Because it's a U.L.
21 listed assembly, it's what they call a rated assembly.
22 So if you do it this way, they know from tests that it
23 would comply with the one- or two-hour rating.

24 Q. And did the architect reference this in his
25 drawings?

00864

1 A. Yes. This is straight from the drawings.

2 Q. And what's the purpose of a reference like that in
3 architectural drawings?

4 A. It just provides more detail to the contractor.

5 Q. And this?

6 A. It's really the same thing. That's just the cover
7 of the book, the U.L. Directory. And then this is the
8 specific detail as referenced by the architect.

9 Q. And were these U.L. references in existence and
10 available to Bostic Brothers Construction when it
11 constructed phase one?

12 A. Yes. I think that directory is like a 1996 or 1998
13 directory. So that assembly's been around for a long
14 time, yes.

15 Q. And when a U.L. assembly has been referenced by
16 architectural plans, are the general contractor and the
17 appropriate subs obligated to comply with that assembly?

18 A. Yes. Well, yes, or you have to have an approved
19 alternate. If the contractor came to the architect and
20 said, can we do it a different way, it would have to be
21 approved by the architect or be another tested, rated
22 assembly.

23 Q. Did you see any evidence in this case as you did
24 your investigation that an alternative had been proposed
25 by Bostic Brothers?

- 1 A. No.
- 2 Q. What's this a photograph of?
- 3 A. This is one of the common walls between two units.
- 4 And I would say this is probably one of the larger
- 5 disparities between our scope and what the defense scope
- 6 is, is that in my opinion, from a life safety standpoint,
- 7 these tenant separation walls have to be totally de-clad
- 8 because there is a lack of the fire-rated assembly
- 9 throughout the entire wall. You've got combustible
- 10 O.S.B. sheathing that should not be there in this wall
- 11 assembly. It's combustible. The whole thing is supposed
- 12 to be covered with gyp. And you can see that it's
- 13 lacking a weather barrier. So I don't see any scope
- 14 possible to comply with the code and provide a safe
- 15 structure without totally de-cladding every single common
- 16 tenant separation wall. And that's -- from an engineer's
- 17 standpoint, that's our number one duty is to protect the
- 18 life, safety and welfare of the general public. And so
- 19 from an engineering standpoint, I can't have a scope that
- 20 doesn't address every one of these tenant separation
- 21 walls.
- 22 Q. And what is the problem with the O.S.B. sheathing in
- 23 that wall?
- 24 A. It's a combustible material. It would not be a U.L.
- 25 rated assembly that would provide adequate fire

00866

1 protection.

2 Q. So the materials that are in a rated assembly can't
3 catch fire; is that right?

4 A. Well, you can have combustible in the studs.
5 Obviously behind this would be combustible. But you can
6 see at the outer face there's O.S.B. That would not be
7 an accepted rated assembly.

8 Q. Is there anything in the design drawings or in the
9 U.L. details that approve the use of O.S.B. in the fire-
10 rated wall assemblies that were referenced in these
11 plans?

12 A. No.

13 Q. And does that photograph indicate to you a violation
14 of the applicable building code by the general contractor
15 and subcontractors?

16 A. Yes.

17 Q. What's in this photograph?

18 A. This is in unit thirty-three. It was one unit that
19 was available to me shortly after we started our work
20 that was unfinished. And when I went to the unit and I
21 was able to photograph a tenant separation wall, I'm
22 actually standing in one unit and I'm looking through
23 this hole to another unit. So there's actually a breach
24 in what was supposed to be a two-hour wall. So it's not
25 a two-hour wall because it doesn't have -- it's not

00867

1 complete. It doesn't have gyp on this side of the stud.
2 So I'm looking at just one layer. But I'm also looking
3 at a hole through the other unit so that there was a
4 breach. So that would be an obvious code violation.

5 Q. And that unit, I think you said, was an unfinished
6 unit?

7 A. The one on the side that I'm standing on is
8 unfinished. Unfortunately, there had been C.O. issued,
9 and the unit on the other side of the wall was occupied.
10 So I had to write a letter to make sure that was an
11 emergency repair that had to be fixed. The building
12 official told me if I didn't take care of this right away
13 that the person next door would have to move out. That
14 there should never have been a C.O. issued because of
15 that breach.

16 Q. When was that photograph taken, Mr. Hodgkin?

17 A. 2009.

18 Q. And was that after you had been retained by the
19 H.O.A.?

20 A. It was.

21 Q. To your knowledge, was Marick still on the site
22 working at that time?

23 A. I believe so. Either that or it's very close to
24 when they were still there.

25 Q. Did you hear Mr. Hornaday testify yesterday that the

00868

1 building official had demanded that Marick repair the
2 rated walls in this project?

3 A. Yes.

4 Q. And when you got there in 2009, that had not been
5 done; is that right?

6 A. It had not been done to this unit. That's the only
7 one I can testify about. This one certainly had an
8 obvious breach that had not been repaired.

9 Q. And what's this a photograph of?

10 A. This is -- it's a couple of things. But the purpose
11 of the photo is to show that there's no mud or tape over
12 these nails that's required by the U.L. rated assembly.
13 But it would also show the water staining over this
14 gypsum sheathing that's getting wet and damaged.

15 Q. And the photograph, does that depict conditions that
16 are contrary to the requirements of the plans and the
17 U.L. assemblies?

18 A. Yes.

19 Q. And is that also a violation of the applicable
20 building code?

21 A. Yes.

22 Q. And this?

23 A. Similar issue, different unit, where we've taken off
24 some of the siding. I'm not exactly sure why there's an
25 offset laterally between these two gypsum boards. But

00869

1 there's a joint, and they're out of plane. So that made
2 a kind of bulge in the siding here. There's no kick-out
3 flashing. There's water damage, and there's no tape or
4 mud over the joints.

5 Q. All right. What's this a photograph of?

6 A. That's windows that should never have been placed in
7 the fire-rated wall assembly. That's not in our repair
8 scope. We were hoping that we could negotiate something
9 with the building official. I hate to make owners take
10 out windows that shouldn't be there. But technically,
11 the plans never showed windows in those walls. But when
12 they put the units together, windows got installed at
13 those locations. And they shouldn't be. Or we could
14 probably replace them with some type of a fire-rated
15 window, but we would have to upgrade them.

16 Q. As it exists in that photograph, is that a life
17 safety issue?

18 A. Yes.

19 Q. And is it a violation of the applicable building
20 code?

21 A. Yes.

22 Q. What's this next section, Mr. Hodgkin?

23 A. This is -- this one shows issues with siding and
24 flashing issues on the walls.

25 Q. Mr. Hodgkin, going back just briefly -- and you don't

00870

1 have to go back. But going back briefly to the fire-
2 rated wall issue ---

3 A. Yes, sir.

4 Q. --- are those problems that you found pervasive and
5 consistent throughout phase one?

6 A. Yes.

7 Q. Okay.

8 A. This is just the code reference that I had mentioned
9 yesterday that there's a general requirement that
10 exterior walls provide weather resistance.

11 Q. And weather resistance means?

12 A. That you're protecting the structure and the
13 occupants from water intrusion in this case.

14 And this is the drawing to show an exterior wall
15 detail. It's very generic. It just has flashing at the
16 windows with no specific information about how it's to be
17 installed.

18 Q. I asked you a moment ago about an alternative that
19 might have been -- well, you said there were no
20 alternatives suggested that you'd seen in the file from
21 the general contractor for the fire-rated wall assembly.
22 Did you see any evidence or indication in the file that
23 the general contractor or the subcontractors for Bostic
24 had requested more detail, flashing detail?

25 A. No.

1 Q. And what are we looking at here?

2 A. This is a destructive test that we -- we took off
3 some vertical trim at a corner. And for whatever reason,
4 there was a void in the weather-resistant barrier.
5 That's, you know, the membrane that's supposed to be
6 behind the siding to protect the building. It was
7 missing. And then there's a piece at the base of the
8 wall. And so what that would do is any water that would
9 get behind that trim would be able to migrate behind this
10 weather barrier and bypass any flashing at the base of
11 the wall and cause damage to the wall and cause damage to
12 the roof.

13 Q. You mentioned water getting behind the trim. Is
14 that a condition that is uncommon?

15 A. Well, it's not uncommon if the flashing is wrong and
16 it has opportunities to penetrate the siding. It just
17 has to be managed. So I would say it's not necessarily
18 uncommon, but you have to have components in place to
19 protect the building and to exit the water. And in this
20 case, those features aren't there.

21 Q. Would building wrap, something like building wrap,
22 be considered a redundant system of sorts?

23 A. No. You expect -- as a design professional, as a
24 contractor, you expect water to get behind this primary
25 layer. And you need to have provisions to protect the

00872

1 building.

2 Q. And the provisions to protect the building is what?

3 A. Flashing and weather-resistant barrier.

4 Q. And do you have an opinion about where you should
5 have seen the weather-resistant barrier in this
6 photograph when you pulled that trim off?

7 A. Yeah. That should be on this entire wall surface,
8 sitting behind the siding, around the corner, and then
9 lapping over the flashing, the vertical leg of the
10 flashing, that came up from the roof so that everything's
11 in the water lacked a water shedding condition and then
12 exit out the base of the wall.

13 Q. Can you think of any reason why that W.R.B., the
14 weather-resistant barrier, would have been omitted there?

15 A. No. What's confusing is that it is there to some
16 small degree. We'd had very erratic conditions when we
17 opened walls up of where it was placed and where it
18 wasn't. In fact, that large wall, the fire-rated wall,
19 when we took that off, they just had weather barrier over
20 the O.S.B. and not on the gyp. And you have pieces next
21 to each other, part of it with weather barrier and part
22 of it without weather barrier. That's ---

23 Q. Is this the photograph you're talking about?

24 A. Yeah. We found walls like this where they actually
25 put weather barrier over the O.S.B. but didn't put it

1 over the gyp, which was odd because they're both very
2 moisture sensitive.

3 Q. And did the plans call for the use of W.R.B.?

4 A. Well, the plans didn't specifically because if you
5 remember the plans for these buildings, this was stucco.
6 So technically, yes, because stucco requires a W.R.B.
7 But there's a switch to siding, and the stone required
8 W.R.B. But the plans, because it had a different
9 cladding, didn't specifically call it out.

10 Q. What's in this photograph, Mr. Hodgins?

11 A. This would be a tenant separation wall. It should
12 be a fire-rated wall. It has the gyp. It has taped
13 joints. They didn't mud the fasteners. There's no
14 W.R.B., so there's water damage to the fire-rated wall.
15 And you can see because there's no W.R.B., all of this
16 step-flashing that goes along the roof is vulnerable to
17 water penetrating behind the step-flashing and causing
18 damage to the roof like we saw yesterday.

19 Q. And does this photograph represent conditions that,
20 in your opinion, are violative of the applicable code?

21 A. Yes.

22 Q. And the standards of care applicable to a general
23 contractor?

24 A. Yes.

25 Q. Did you find damage resulting from the lack of

00874

1 W.R.B. beneath this condition?

2 A. I think this is one of the areas that we did
3 additional work. We'd have to go back and look at the
4 references. But definitely in some areas where this roof
5 is taken out, there's damages along these roofs.

6 Q. What's this a photograph or what are these two
7 photographs?

8 A. This is an area -- and I think I described it
9 yesterday when I first got called out, that I look at
10 some ongoing repairs and then just do a general review of
11 the buildings and see if I saw anything that caused me
12 any concern. The photograph on the right -- if you walk
13 around the property, you'll see a lot of this, both in
14 the balconies, in the ceilings of the balconies and these
15 overhanging walls that are at the rear elevation. The
16 staining of this cedar plank area from water that's
17 coming in from above. So this is kind of the symptom
18 that you see from below. When you take the siding off,
19 you'll see that this flashing, what they call Z-flashing,
20 is over the trim like it should be. But then it's not
21 lapped properly with this weather barrier. So the water
22 comes down, the weather barrier goes behind that flashing
23 and gets into the trim and causes damage to the trim and
24 the O.S.B. into that ceiling. And then there's a gap.
25 They should never have put this trim and siding on

00875

1 without that W.R.B. going all the way around the corner
2 and the corner being actually double wrapped because the
3 -- you should have a lap that goes in both directions
4 about sixteen inches and then put your siding trim on.

5 Q. Is it important to have W.R.B. consistently applied
6 throughout?

7 A. Yeah. I think the contractor even testified to that
8 yesterday, that before you put any siding trim on, the
9 whole thing is covered with W.R.B. So I don't know if
10 there's a sequence issue, if they put they trim on first
11 and they just couldn't physically put the W.R.B. on. But
12 for whatever reason, there's a void and water is getting
13 into those areas.

14 Q. And would you see damage that resulted from the
15 water that got into that location?

16 A. Yeah. You can see it. O.S.B. and the -- I think on
17 the back of the trim and then here on the ceiling below.

18 Q. And did the conditions represented in those
19 photographs -- I think it's actually a photograph of the
20 same condition ---

21 A. It is.

22 Q. --- like was just depicted?

23 A. Yes.

24 Q. Does that represent a violation of the applicable
25 building code?

1 A. Yes.

2 Q. And the standards of care applicable to a general
3 contractor?

4 A. Yes.

5 Q. Are there instructions and information that's
6 provided to a general contractor and a subcontractor with
7 W.R.B., showing how it should be installed?

8 A. There is. I don't know if we were able to identify
9 this particular product. This is not Tyvek. This is a
10 woven Polyolefin product. Tyvek is a spun bonded
11 product. But there are typically instructions that come
12 with it. And all of the instructions I've ever seen
13 talked about it being complete on the building and being
14 properly lapped and sometimes taped, but not all
15 manufacturers require taping.

16 Q. And you mentioned the lap, and I want to go back to
17 that. Can you describe for the jury how you would have
18 expected to see or what would be a proper lapping of the
19 W.R.B. with that Z flashing?

20 A. Well, what has to happen for this flashing to allow
21 water to run down the wall and exit at the base of the
22 wall above the trim is that this vertical leg -- which is
23 pretty short by the way. It should be a little bit
24 longer, really -- would be lapped over with this weather-
25 resistant barrier. Or an alternate would be, you can

00877

1 take some, what they call peel-and-stick or self-adhere
2 flashing tape, and you could put it across this flashing
3 and onto the O.S.B. and then let the weather barrier lap
4 over that tape. As long as you've got everything in what
5 they call water shedding condition. Well, if you don't
6 have it, this condition contractors sometimes call
7 tucking your pants into your rain boots. You're going to
8 get water in your boots because you put your pants inside
9 the boot. So that's what this condition is. That
10 doesn't work. Water will get behind the flashing and
11 into the wall.

12 Q. Okay. And this photograph?

13 A. It looks like the same kind of condition that we've
14 seen, damaged gyp, which would be part of the fire-rated
15 wall assembly. It's getting water damaged. And then
16 because there's no W.R.B., you have the step-flashing
17 that's not properly integrated with anything. Water
18 could get behind that and cause damage to the roof.

19 Q. And missing W.R.B. is a violation of the building
20 code?

21 A. Yes.

22 Q. And the standards of care applicable to a
23 contractor?

24 A. Yes.

25 Q. Did you find that condition consistent or pervasive

00878

1 throughout phase one?

2 A. Yes.

3 Q. The next section?

4 A. That's trim flashing details.

5 Q. And I think the jury's seen this photograph once
6 before too. But what is this?

7 A. This is that same unit, number thirty-three, that I
8 was able to access. And I'm looking at an outside
9 corner. And this happens to correspond to, I think, some
10 stone siding intersection. You can see -- you're
11 actually seeing the back side of the oriented strand
12 board, the interior side of oriented strand board. So
13 because you see it here, that means that there's
14 significant water intrusion that's occurred from the
15 outside that's actually progressed toward the inside of
16 the building. So this is -- it's pretty significant when
17 you start to see it on the inside of the sheathing.

18 Q. And if this unit was a finished unit, would you be
19 able to see that?

20 A. No.

21 Q. And do you have an opinion about what caused the
22 water damage at that location?

23 A. I think it's a flashing detail. And I think that's
24 what these photographs show so that there's problems with
25 the integration between the siding and the stone areas

00879

1 where flashing's not properly integrated below the trim
2 or above the trim. Water comes down and is able to get
3 behind this stone and cause damage below. This is the
4 outside. This is a kind of behind-the-wall view.

5 Q. And when you say flashing was improperly integrated,
6 what do you mean?

7 A. It'd be the same type of issue we just looked at
8 where we had the siding off where this flashing -- that
9 you can see the outward side of it here is not properly
10 integrated with the weather barrier. And then the way
11 the weather barrier came down and integrated with the
12 stone, I think we'll see later, water was able to run
13 behind the stone on the lower level and cause damage.

14 Q. And, again, this condition, does it represent a
15 violation of the applicable building code?

16 A. Yes.

17 Q. And the standards of care that are applicable to a
18 contractor?

19 A. Yes.

20 Q. What are these?

21 A. I'd say that you're going to see a series of
22 manufacturer instruction. These are the Owens Corning
23 instructions for installing their stone. And I think
24 there's different locations where we found violations in
25 the installation of the stone. The most important part

00880

1 of all of these details is the presence of flashing and
2 this weather barrier lap behind the stone to exit water.

3 Q. Okay. And the stone details that you're showing are
4 from what year?

5 A. These are 2005. We also have, I think, '04, '02 and
6 1997 details. And they have varying level of details,
7 but they all have the same information about best
8 practices requiring the flashing and weather-resistant
9 barriers.

10 MR. BELCHER: Your Honor, I have an objection.
11 It can be handled at sidebar.

12 THE COURT: Very good. Let's do this side.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. I do note a sidebar for
16 the record. We'll now move on.

17 Q. Mr. Hodgins, you indicated that you had Owens Corning
18 literature -- that this was 2005?

19 A. That's correct.

20 Q. Do you have other Owens Corning literature that is
21 -- that you contend was in existence and applicable to
22 the work that was done by Bostic and its subcontractors
23 with respect to the stone installation?

24 A. I do.

25 Q. And do you have that information available to you?

1 A. Yes.

2 Q. And does that information change anything? Excuse
3 me. Did that information -- which standards of Owens
4 Corning do you believe were applicable -- in existence
5 and applicable to Bostic and its subcontractors at the
6 time the stonework was done in phase one?

7 A. For phase one and Bostic's work, I think it would be
8 most likely the 2002.

9 Q. And did the standards with respect to this condition
10 change any in the Owens Corning literature between 2002
11 and what has been shown as 2005?

12 A. No, I don't think so. I mean, conceptually
13 certainly not. The only thing that's a little bit better
14 about the 2005 instructions is they have a few more
15 graphics. But all the information about the flashing ---

16 MR. IMHOFF: Your Honor, I would object.

17 Again, the same basis as Mr. Belcher objected to.

18 THE COURT: All right. I think we're going to
19 have to put this on the record if you would, please.

20 MR. IMHOFF: Yes, we are.

21 THE COURT: Mr. Foreman, ladies and gentlemen
22 of the jury, I'm going to ask you to retire to the jury
23 room for a few minutes while I take up a matter of law
24 with the attorneys. Again, do not undertake the
25 discussion of the case among yourselves in any way.

1 (WHEREUPON, the jury exited the open court at
2 approximately 11:11 a.m.)

3 THE COURT: All right. Mr. Imhoff, state your
4 objection.

5 MR. IMHOFF: Your Honor, this is following up
6 on the sidebar. Mr. Belcher made an objection to Mr.
7 Hodgin testifying about the standard of installation of
8 stone based upon a 2005 manufacturer's installation
9 instructions when I think all of the evidence is that
10 stone was put on before 2005.

11 THE COURT: When was the stone put on?

12 MR. IMHOFF: Certainly before 2005.

13 MR. LYLES: 2002, 2003.

14 THE COURT: That's what I was asking. I heard
15 '97 as well as -- what is it? -- 2002 or 2005?

16 MR. LYLES: It probably was put on in 2003,
17 Your Honor, just based on the testimony we heard
18 yesterday about the status of construction.

19 THE COURT: All right.

20 MR. IMHOFF: And, Your Honor, the issue here is
21 now his testimony is that, well, I think so. It's kind
22 of the same. In fact, this diagram may be a little bit
23 better showing -- sure, everything should be the same but
24 this is a little bit better depiction of how to do it.
25 That's exactly what my objection is, is that this is a

00883

1 different standard.

2 THE COURT: Well, I think it he said it had
3 more -- what is it? -- more ---

4 MR. BELCHER: More detail, yes.

5 THE COURT: -- detail. But, I mean, again, I
6 don't know that it changed.

7 MR. BELCHER: Well, if it has more detail from
8 what it had in 1997 or 2000, then this is not something
9 that Bostic would have had the benefit of. And it's
10 irrelevant, and all of the testimony about it should be
11 stricken.

12 THE WITNESS: Am I allowed to ---

13 THE COURT: No, no, no. You want to talk to
14 your lawyer, not to me.

15 MR. LYLES: We've got the 2002 Owens Corning
16 book coming up. It's here in the courthouse. Burgess
17 went down to go get it. And I'll be glad to ask him
18 questions about the 2002.

19 THE COURT: Well, let's see. In other words, I
20 think it is something that the jury needs to understand.
21 Because as I understand, the standard of care that you've
22 been relying on is not only the specifications or the
23 architect requirements, but also the information
24 available in the industry.

25 MR. LYLES: Yes, sir.

00884

1 THE COURT: And when I say available, that
2 means that it's out there at the time. Not that -- what
3 is it? -- it was later or -- what is it? -- might have
4 been out there, but it was not -- what is it? --
5 memorialized in drawings or anything like that.

6 MR. LYLES: Yes, sir.

7 THE WITNESS: Can I ask a question? I mean, I
8 thought there was testimony yesterday by Marick that the
9 stonework had been performed by Marick after they were at
10 the site. I was fully aware of the date issue. That's
11 why I left it in there. That this is applicable to any
12 stonework that had been done by Marick after they got on
13 the site.

14 MR. LYLES: Yeah.

15 MR. IMHOFF: There is no testimony, no evidence
16 of that, Your Honor. I mean, not that. But I think if
17 it was said -- and I don't remember it -- there were
18 broken pieces of rock that were replaced. There
19 certainly wasn't this detail done. So we would ask that
20 it be stricken entirely. I mean, it is clearly not the
21 standard. It shouldn't have been in front of the jury,
22 and ---

23 THE COURT: Well, I'll concede that as far as
24 this particular exhibit for demonstration, it's not
25 apparently applicable to the work that was done prior to

00885

1 its depiction or drawing publication.

2 THE WITNESS: I have it.

3 MR. IMHOFF: If we're going to look at the next
4 book, is the -- would the Court instruct the jury that
5 any reference to this -- that this be stricken.

6 THE COURT: Well, that's just it. That's what
7 I'm trying to -- I think so. In other words, let's not
8 confuse things any further than we need to at all.

9 All right. Do you need some time to go through to
10 see what you're going to be relying on?

11 MR. LYLES: Is he getting it out of your car?

12 THE WITNESS: I don't need any time.

13 MR. LYLES: He's getting it out of the car.

14 THE COURT: Well, we're not going to bring the
15 jury in while people are coming back and forth with ---

16 MR. LYLES: He's running down to the cars to
17 get the 2002; is that right?

18 THE WITNESS: That's correct.

19 THE COURT: All right. Well, let's do. Why
20 don't we wait and see. But I understand your objection,
21 and I think that I follow it provided -- what is it? --
22 if there is anything -- and, of course, that would be the
23 best evidence of what was available to anybody doing this
24 type of work at the time. Now, of course, it still comes
25 back to the question of whether or at what point in time

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1 the work was done. I'm not sure that that's in the
2 record or not. I mean, I do remember looking at -- when
3 one of the witnesses -- it might have been this one --
4 was talking about repairs that were done. But as far as
5 installation ...

6 All right. Well, let's wait until you have what you
7 need, Mr. Lyles.

8 MR. LYLES: Yes, sir.

9 THE COURT: And if you'd like to, Mr. Hodgins,
10 you can step down, but you cannot discuss it. You can --
11 what is it? -- locate what you're going to rely on.

12 THE WITNESS: Yes, sir.

13 MR. VICK: Your Honor, while they're ---

14 THE COURT: Yes, sir, Mr. Vick.

15 MR. VICK: I just -- while they're retrieving
16 that, I just wanted to add to the record that we join in
17 this objection.

18 THE COURT: Very good. All right. And I'm
19 sure that Mr. Hemphill and Mr. Anderson does too; is that
20 correct?

21 MR. ANDERSON: That's correct, Your Honor.

22 MR. HEMPHILL: That is correct, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, court stood at recess for a short break
25 during which Plaintiff's Exhibit Number 17 was

1 marked for identification only.)

2 THE COURT: All right. Back on the record in
3 the case of Stoneledge versus others, because I'm not
4 exactly sure who's in it now. But anyway ...

5 All right. Mr. Lyles, anything before we start?

6 MR. LYLES: Well, we did secure the 2002 Owens
7 Corning instructions which were relevant and applicable
8 to the work that Bostic did. Mr. Belcher has looked at
9 those. And my proposal is to -- the details are
10 different. There are more details in 2005 even though
11 Mr. Hodgins would testify that conceptually the
12 instructions that govern the work were the same. So what
13 we would propose to do is we'll remove any reference in
14 the presentation to 2005 standards and instead refer to
15 the 2002 standards.

16 THE COURT: All right. Well, Mr. Belcher, what
17 do you think?

18 MR. BELCHER: That sounds to me like that's
19 what I was asking for is just that they be held to the
20 standards that existed at the time.

21 THE COURT: All right. And Mr. Imhoff, you are
22 involved in this too. Would that satisfy you?

23 MR. IMHOFF: And let me just clarify what I
24 think I heard. Is they're going to remove the 2005
25 standard -- that's not going to go into evidence -- and

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1 they're going to use the 2002 standard. And that's what
2 they're going to put into evidence. Is that correct?

3 MR. LYLES: Okay.

4 MR. IMHOFF: Yes, Your Honor, that satisfies
5 me.

6 THE COURT: All right. The danger of having
7 matters like this taken under consideration while y'all
8 discuss it is that sometimes I start playing with this
9 machine up here. And, of course, just to satisfy
10 everybody that I came across the Elledge versus Lexington
11 School District case -- which I'm sure all of you are
12 familiar with -- talking about the evidence of the
13 industry safety standards that's admissible to establish
14 the standards of care on evidence of guidelines and
15 standards, which is exactly the type of evidence
16 contemplated by the rule if it helps the experts' opinion
17 testimony. However, it does, of course -- and I think
18 y'all have satisfied that now -- require as far as the
19 admissibility requires that, one, that they were in
20 effect at the time, and two, would have applied to the
21 particular application for which the application is
22 sought.

23 MR. IMHOFF: Yes, Your Honor. Are you going to
24 ask the jury to ignore or strike any testimony?

25 THE COURT: I tell you what -- well, what do

00889

1 you want me to do?

2 MR. BELCHER: I think that's the appropriate
3 remedy.

4 THE COURT: Well, that's what I'll do. Do you
5 have any objection to that? What I'm doing -- I'll be --
6 now, this is how I probably will couch my instruction is
7 that they're to disregard anything having to do -- and
8 can we agree that 2002 would be admissible?

9 MR. BELCHER: Yes, Your Honor.

10 MR. IMHOFF: Yes, Your Honor.

11 THE COURT: All right. That anything to do --
12 and I'll even say this particularly. You're going to
13 bring this one down; right?

14 MR. LYLES: Yes, sir.

15 THE COURT: The manufacturer's best practices
16 as of 2005 would not be the best evidence or even
17 relevant, I might say, to the testimony as to what
18 occurred at a different time which would be 2002. Can we
19 agree on 2002 as being the time that it would be in
20 effect? Not this. But I mean, the evidence that would
21 be relevant.

22 MR. LYLES: 2002.

23 MR. IMHOFF: Well, I don't know that I have any
24 say on that. I don't know when the time frame is, so
25 I'll leave it up to Mr. Belcher. His client put it on.

00890

1 THE COURT: Well, if anybody does an interest
2 in the question, is 2002 the ---

3 MR. BELCHER: That's fine with me, Your Honor.

4 THE COURT: All right. Very good. So that's
5 what I'll do. I'll say disregard anything having to do
6 with later industry standards to include drawings, and
7 that my understanding that the plaintiff will submit
8 something that will be applicable to anything after 2002
9 now afterward?

10 MR. LYLES: Yes, sir.

11 THE COURT: All right. Very good.

12 MR. BELCHER: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. BELCHER: I think there's several of these
15 slides. We didn't get past them all, but I don't see
16 anything else.

17 MR. LYLES: Yes, sir, we got that.

18 THE COURT: You've got them all out all and
19 taken care of?

20 MR. LYLES: Yes, sir.

21 THE COURT: All right. Do leave this up for
22 the time so I can just explain to them what they'll be
23 doing.

24 MR. LYLES: Yes, sir.

25 THE COURT: It's not they're going to be what

00891

1 they're going to have to deal with.

2 All right. If there's nothing else, ask the jury to
3 join us.

4 Yes, sir, that's right. Ask the jury to join us.

5 THE BAILIFF: I couldn't hear you back here.

6 THE COURT: You still can't? Everything is on
7 up here.

8 Lisa?

9 THE CLERK: Yes, sir.

10 (WHEREUPON, the jury entered the open court at
11 approximately 11:48 a.m.)

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen of the jury, we had a question about some of
14 the proposed exhibits that we'll be considering -- or
15 you'll be considering for your decision. And it's the
16 Court's understanding that the exhibit that we have up
17 there now, to include the drawing, is a 2005 exhibit.
18 And I think the parties have agreed or stipulated that
19 that is later than any construction that would be
20 relevant to the case here, particularly the type of
21 construction meaning the stonework. But they do have --
22 at least they propose to have -- standards of the
23 industry that apply to 2002 which would be relevant to
24 the period of time we're talking about the construction
25 here. So I'm going to ask you to disregard anything that

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1 has to do -- to include this exhibit. And we're taking
2 this one down. And I think there are several others that
3 have to do with a time period after 2002. And that
4 anything to be relied on would have to be, as far as this
5 witness' testimony and any other consideration, would
6 have to be 2002. Very good.

7 You may proceed.

8 DIRECT EXAMINATION

9 CONTINUED BY MR. LYLES:

10 Q. Before we dim the lights, Mr. Hodgin, I've marked
11 for identification a document that's number 17?

12 A. Yes, sir.

13 Q. And do you know what that is?

14 A. This is the 2002 instructions for Owens Corning
15 cultured stone veneer.

16 Q. And what's the relevance of Owens Corning again?

17 A. That's the manufacturer of the stone that was
18 installed at the Stoneledge property.

19 Q. And these instructions were promulgated or prepared
20 by Owens Corning when?

21 A. 2002.

22 Q. And are those the instructions that were in
23 existence and applicable to the work of Bostic in
24 connection with the stonework at Stoneledge?

25 A. Yes.

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1 MR. LYLES: And, Your Honor, I'd like to move
2 that in as Plaintiff's Exhibit 17.

3 THE COURT: All right. Any objection?

4 MR. BELCHER: None from the defense, Your
5 Honor.

6 THE COURT: Mr. Imhoff, any objection?

7 MR. IMHOFF: No objection, Your Honor.

8 THE COURT: All right. Any other objections?

9 (No response)

10 THE COURT: Very well. All right. Plaintiff's
11 Exhibit Number 17 is admitted.

12 (WHEREUPON, Plaintiff's Exhibit Number 17 was
13 admitted into evidence.)

14 MR. LYLES: Okay. Dim the lights. Thank you
15 very much.

16 Q. Okay. Mr. Hodgin, what's reflected in the
17 photograph that's being shown?

18 A. This is a transition between the cedar siding that
19 would be above the stone and then the stone veneer at the
20 bottom of the wall. And you can see that there's a piece
21 of cedar trim that's been pulled away from the wall.

22 Q. And is there a deficiency or a defect that's
23 reflected in that photograph?

24 A. Yeah. Well, there's -- you can see there's a little
25 bit of water damage to the trim, but there's no flashing

00894

1 detail between -- below the trim and between the trim and
2 the stone as was required.

3 Q. Is there any evidence of W.R.B. on that wall?

4 A. It's kind of bright on that side. It looks like
5 there is.

6 Q. Okay. And is it your testimony that flashing was
7 required?

8 A. Yes.

9 Q. And you've got in your hand the 2002 Owens Corning
10 installation instructions. Was flashing required at that
11 location in those instructions?

12 A. Yes.

13 Q. Does that condition also represent a violation of
14 the applicable building code?

15 A. Yes.

16 Q. How so?

17 A. Well, just the general requirement that we looked at
18 earlier in 703.1 that says exterior walls shall provide
19 weather resistance.

20 Q. Okay. What's in this, Mr. Hodgin?

21 A. This is showing the stone veneer at the base of the
22 wall. And you could see that there is some weather-
23 resistant barrier above and an additional layer of
24 asphalt-saturated felt behind stone, which there should
25 be. There's just no provision to preclude water from

00895

1 getting between the two layers of moisture barrier. So
2 the water bypasses basically the outer layer. The second
3 layer would provide protection if water penetrated the
4 wall lower down. But if it penetrates the wall above,
5 then the water gets between the two layers and causes
6 damage.

7 Q. And so what should have been there, Mr. Hodgkin?

8 A. Well, whenever you have that two-layered system at
9 that top where the stone terminating the siding began,
10 you should have had some flashing that went behind the
11 upper layer of weather barrier. And then that way, the
12 water could exit out above the stone and no water could
13 penetrate behind the felt.

14 Q. And is this also a condition that's addressed in the
15 Owens Corning 2002 instructions?

16 A. Not specifically. It just says to flash at wall
17 penetrations as necessary to meet the code.

18 Q. And does that condition reflect a breach of the
19 applicable building code by the general contractor?

20 A. I believe so, for the same reason about the exterior
21 walls providing weather resistance.

22 Q. Did you find this condition throughout the project,
23 or was this an isolated incident?

24 A. I think this was common whenever we did destructive
25 tests in these areas.

1 Q. And does that condition, in your opinion, lead to
2 damage to the building components?

3 A. It did, yes.

4 Q. And it needs to be repaired?

5 A. Yes.

6 Q. And this photograph?

7 A. I think that's the damage that was observed behind
8 the stone when the stone was removed from the wall.

9 Q. So this is beneath or behind the areas that we've
10 just looked at?

11 A. Yes. You can see just a little bit of it. But you
12 can see there's lathe, which is a metal called diamond
13 lathe. That's a material put on open felt which is right
14 there. And you can see a little piece of it. And then
15 there's some stone on the wall, and the felt is pulled
16 back. And so this was where stone used to be, and you
17 can see water damage to the O.S.B. sheathing.

18 Q. Is this the location above the damaged sheathing we
19 just saw?

20 A. It's in the proximate area. The damage, I think, is
21 the corner to the left of this.

22 Q. And can you see the degree of damage to the
23 sheathing behind the stone ---

24 A. No.

25 Q. --- without taking the stone off?

- 1 A. No. You have to take the stone off.
- 2 Q. And what is this?
- 3 A. This the same unit, if you remove the siding and the
4 weather barrier, showing what's happening to the O.S.B.
5 wall sheathing, looks like completely from left to right.
6 And also, you know, this discontinuity of the what's
7 supposed to be a rated wall. They should not have this
8 O.S.B. there. But it's damaged as well as the gypsum
9 sheathing is damaged along the top of where the stone
10 terminates.
- 11 Q. Should that be a rated wall?
- 12 A. Yes.
- 13 Q. A fire-rated wall?
- 14 A. Yes.
- 15 Q. And is it, in your opinion, properly constructed as
16 a fire-rated wall?
- 17 A. No.
- 18 Q. And the water staining at the bottom, in your
19 opinion, what was the cause of the cause of that water
20 staining?
- 21 A. The improper flashing details where you've got the
22 water that runs between the two layers of W.R.B. and the
23 felt and an inadequate integration of any flashing.
- 24 Q. Is this the same unit we looked at, we've been
25 looking at?

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1 A. It is.

2 Q. And did you find this in other locations at the
3 project?

4 A. I think we did, but I don't know that we had any
5 other destructive tests that were as large as this. This
6 one was an emergency repair. So it gave us a lot more
7 opportunity to see the extent of the damage.

8 Q. Did you find locations in phase one that where the
9 stone application was consistently in conformance with
10 the 2002 Owens Corning requirements?

11 A. No.

12 Q. What's this?

13 A. This is on the interior of that unit. So the reason
14 that the emergency repair happened is this occupant's
15 wood floor was buckled. And he had torn the wood floor
16 out and replaced it. And then they buckled again. And
17 then he tore them, I think, a second time. And when he
18 tore it out the second time is when we did the
19 destructive test to see what was going on with the wall
20 outside of his unit. So this -- I think this wall that
21 you see is the tenant separation wall. This would be the
22 rear wall that faces the lake. And so the water
23 intrusion -- you can see a stain where it had been coming
24 in the base of the wall.

25 Q. What's this a photograph of?

1 A. This is where we removed the O.S.B. sheathing. And
2 you can see that the water has actually gotten in the
3 wall sufficiently to cause the fiberglass insulation to
4 be wet, the framing to be wet, and then some compromising
5 of the vertical wall studs.

6 Q. And is this again in that same unit?

7 A. Yes.

8 Q. Did you find other locations in phase one that was
9 similar to this?

10 A. We have. I think we looked at one yesterday. There
11 was a roof issue, but it was the same type of damage. It
12 was more extensive at the entry area.

13 Q. And what's in this photograph?

14 A. This is an area where there's just a large stone
15 that had been displaced or failed and dropped from the
16 wall surface. I don't think that that's a widespread
17 issue. But it is indicative of -- what you would expect
18 is that what we've seen is these balconies are
19 problematic and have significant water intrusion that's
20 occurring in the outboard framing areas. And so I think
21 that this failure of the stone was likely due to the
22 water intrusion that's happening behind the stone.

23 Q. And the defect that you said or the problem that you
24 said you didn't think was very pervasive was what?

25 A. The stones falling off the building. I think that's

00900

1 a symptom of the extent of the water intrusion, but it's
2 not happening all over the buildings at this time.

3 Q. And what's the source of the water that is
4 observable in that photograph?

5 A. Well, based on our investigation, I would say
6 improper waterproofing details. At the top of this stone
7 wall as it integrates with the balcony, the balcony
8 waterproofing was not properly integrated with the
9 vertical wall. And water's getting behind the stone
10 causing damage.

11 Q. And what's this?

12 A. This is table 703.4 of the I.R.C. It just talks
13 about the requirement for water-resistant barrier behind
14 stone veneer. Which it was installed; it just wasn't
15 installed properly.

16 Q. And the I.R.C. again is what?

17 A. The International Residential Code.

18 Q. And what's this a photograph of?

19 A. It's stone veneer that extends below the grade. I
20 think we're probably looking at waterproofing issues in
21 the walls. But we also, at the same time, documented
22 that the stone goes below grade. It's not held four
23 inches above grade with a proper drainage termination as
24 required by the 2002 instructions.

25 Q. So the condition that's reflected in that is a

1 violation of the Owens Corning instructions from 2002?

2 A. Yes.

3 Q. Is it also a violation of the applicable building
4 code?

5 A. It may be. I mean, the only reason I can think of
6 is they may sometimes have a sentence that says you're
7 supposed to follow the manufacturer's instructions. I
8 don't think there's -- there might not be specific
9 information about cultured stone veneer in the code of
10 2000. The waterproofing issue would be addressed by the
11 code, but that's a different subject.

12 Q. But the photograph depicts a condition that, in your
13 opinion, is violative of the standard of care applicable
14 to a general contractor?

15 A. Yes.

16 Q. And that it violates the Owens Corning 2002
17 installation instructions for its product?

18 A. Yes.

19 Q. And is that causing any damage?

20 A. I would say in some instances it could contribute to
21 the water intrusion that's happening at the front. On
22 the sides of the building, it's hard to say. I think it
23 could be a factor to water intrusion, but I don't think
24 it's a significant contributing factor.

25 Q. Did you find that condition pervasively at the

00902

1 project?

2 A. Yes.

3 Q. And does it need to be repaired?

4 A. I think the old stone has to come off because
5 there's so much damage behind that stone. And when it
6 gets put back on, it would be my recommendation to follow
7 the manufacturer instructions. I think you could
8 interrupt the stone at a point above grade and have a
9 proper drainage and flashing detail. And then if you
10 wanted to continue that look down the wall, you could
11 probably do that. But I think it needs to be interrupted
12 with the proper drainage detail.

13 Q. Okay. What is this a photograph of?

14 A. That's on the back side of a wall clad of stone
15 veneer showing. It looks like termite and water
16 intrusion-type damage to the O.S.B. wall sheathing.

17 Q. And do you have an opinion about the source of the
18 water infiltration that's being reflected in that
19 photograph?

20 A. Well, I think because it's below grade -- I guess
21 that would be an exception. When I was talking about
22 water intrusion a second ago when we talked about damage
23 of the stone below grade, another issue is that you can
24 allow a path for termites. So the presence of the
25 termites, I think, is a direct relationship to the stone

00903

1 going below grade. I'm not sure if I answered your
2 question. I can't remember what the question was.

3 Q. Does the photograph that is depicted up there
4 represent a violation of the Owens Corning instructions
5 or some other code provision?

6 A. Well, I think the cause of the damage would be the
7 stone going below grade. And then the damage, you know,
8 would violate the code in terms of that the walls are not
9 providing weather protection.

10 Q. And would that be the responsibility of the general
11 contractor?

12 A. Yes.

13 Q. What's this?

14 A. It looks like it's more damage to wall sheathing
15 that was behind the stone that extended below grade.
16 That looks like the same thing. It's a combination of
17 water-related damage and some termite damage.

18 Q. And this?

19 A. More damage of wall sheathing below grade.

20 Q. Thank you.

21 A. These are recent pictures, I think, of repairs that
22 have been performed. This is a ---

23 Q. The repairs that you just mentioned, who performed
24 those repairs?

25 A. Watkins Services.

00904

1 Q. And what's this a photograph of?

2 A. This is -- you can see damage here in the sheathing.

3 But one thing we've been seeing several of -- don't know

4 how many times we've seen it. But there are several

5 places -- and I think you may have talked about it

6 yesterday with the Marick witness. There's places where

7 they cut holes in the sheathing for a dryer vent and they

8 never patched it. It was never used for the dryer vent.

9 The hole stayed in place. They just put the stone over

10 the hole and allowed water to penetrate into the

11 building.

12 Q. Is that a proper construction practice?

13 A. No.

14 Q. And who do you think would have responsibility for

15 that condition?

16 A. Well, I think certainly the G.C., but also the

17 person who put the stone on would. I see some weather

18 barrier. The person who put the weather barrier for sure

19 would have seen the hole. I don't know if the stone guy

20 would have seen the hole if it was covered up with the

21 white weather barrier. But certainly the G.C. and the

22 person installing the weather barrier.

23 Q. Do you know what's reflected or can you tell us

24 what's reflected in this photograph?

25 A. That's another dryer vent hole. And we think a

00905

1 previous repair had been performed because of the
2 different, dissimilar material. There's a what's called
3 Bituthene which is a sheet that was placed over the wall
4 at some time in the past.

5 Q. Did you hear Mr. Hornaday's testimony yesterday?

6 A. Yes.

7 Q. And you heard reference to a repair?

8 A. Yes.

9 Q. To at least one wall?

10 A. Yes.

11 Q. Was the repair that you've observed properly made?

12 A. No.

13 Q. And why not?

14 A. Well, it doesn't really address the dryer vent. And
15 I think the repairs were fairly limited to upper portions
16 of the wall and didn't provide an extensive enough
17 repair.

18 Q. When a general contractor undertakes to make a
19 repair of a problematic condition ...

20 A. Yes.

21 Q. ... what are they required to do?

22 A. Well, the repair would need to solve the problem and
23 meet the code.

24 Q. In this instance, do you have an opinion as to
25 responsibility of the repair contractor with respect to

00906

1 this condition?

2 A. I think the repair contractor would be responsible
3 for the inadequate repair that was performed. I mean, it
4 wouldn't be repaired again in 2013 if it had functioned
5 properly when it was repaired in whatever it was, 2009 or
6 post 2009. I'm not sure when it was repaired.

7 Q. Does the code have a provision that would be
8 applicable to the repair that was made?

9 A. Yeah. The entire code applies to new construction
10 as well as repairs. The code in chapter one says even if
11 you have a project that you're working on that doesn't
12 require a permit, you are not allowed to violate any
13 provision of the code. So even if you didn't require a
14 permit for the repair, you're still required to meet the
15 code.

16 Q. And does the repair that's reflected there violate
17 the provisions of the applicable building code?

18 A. Yeah.

19 Q. And what is this?

20 A. This is just talking about if you have an enclosed
21 space below earth that you're supposed to damp-proof the
22 wall from the top of the footing to finished grade.

23 Q. And what does damp-proof mean?

24 A. Provide some type of material that's going to
25 prohibit water penetrating through the wall. Whenever

00907

1 the water soaks into the soil, we have what's called
2 hydrostatic head. That would be water pushing against
3 the wall. And you want to be able to keep the wall from
4 penetrating -- or keep the water rather from penetrating
5 the wall, getting into the occupied space.

6 Q. And did you find foundation walls at this project?

7 A. Foundation walls, yes. Almost all the buildings
8 have foundation walls that surround the habitable below-
9 grade space.

10 Q. And with respect to those foundation walls, the code
11 requires that it's damp-proofed?

12 A. Yes.

13 Q. And what is this?

14 A. This is, I would say, a confusing detail by the
15 architect. It says, "waterproofing on a line," at one
16 point. And in that same line later, it's referred to as
17 filtered fabric. I think it's a decent conceptual
18 drawing, but it's not labeled and finished properly to --
19 for the contractor to know exactly what's required. We
20 don't know what's specified when it says waterproofing.
21 That's a pretty generic term.

22 Q. Did you see any evidence in the file that the
23 contractor had requested more detail or explanation from
24 the architect about damp-proofing the foundation wall?

25 A. No.

1 Q. What's reflected in these photographs?

2 A. These are conditions that I've seen at several units
3 in phase one. This is unit twenty-two. And this is a
4 closeup of what's called Superior wall. It's a concrete
5 framed wall with extruded polystyrene insulation board.
6 And you're looking at the top of the wall. This wall is
7 stopped. And above it would be conventional wood
8 framing. That's why these bolts are here. There's a
9 sill plate above this. And water's just seeping along
10 the top of this wall into the crawlspace. And then
11 here's some interior damages where the water makes its
12 way down to the base of the wall and starts showing up at
13 the floor and at the baseboard and at the gypsum, the
14 drywall finish.

15 Q. And do you have an opinion about the source of the
16 water infiltration that led to what was reflected in
17 those photographs?

18 A. Well, the experience is -- and I think Mr. Watkins
19 might be able to testify the best. There's just a whole
20 variety of conditions that exist in phase one of the
21 Stoneledge property as to what was done or not done on
22 the foundation walls. And there is all types of water
23 intrusion that's occurred. And they've been slowly
24 working their way through the project to address those
25 damages. I think they're still out there as we speak.

00909

1 Q. And do these photographs reflect conditions that, in
2 your opinion, indicate a breach of the applicable code
3 with regards to the foundation walls?

4 A. Yes.

5 Q. And the standards of care applicable to a general
6 contractor?

7 A. Yes.

8 Q. And these photographs?

9 A. They're just two different units that have similar
10 types of symptoms that are showing up near the front of
11 the units, what you called yesterday the driveway side of
12 the unit, where water's penetrated. Now it's showing
13 itself on the inside of the unit.

14 Q. And did you find this foundation wall leaking to be
15 pervasive through the phase one?

16 A. Yes.

17 Q. Does it require repair?

18 A. Yes. Like I said, it's being repaired.

19 Q. And what's this?

20 A. Just a different unit with the same types of water
21 intrusion.

22 Q. What's reflected in these photographs?

23 A. This is unit twenty-three. And it looks like -- I'm
24 not sure what the date would be as far as installation.

25 There's no specification in the plans or instruction

00910

1 documents that call for sump pumps. It looks like there
2 has been previous water intrusion and buildup based on
3 these mud lines that you see. But also the installation
4 of a sump pump just suggests that at some point there's
5 an identification that water intrusion in the crawlspace
6 was a problem, and it was at least attempted to be
7 addressed by the installation of a sump pump.

8 Q. What are these photographs?

9 A. This is unit twenty-eight. You see that same
10 Superior wall-type framing system. And so where water
11 has intruded at the top of the wall, it's now causing
12 damage to what's called the bottom core and the floor
13 truss and into the sill plate.

14 Q. And the damage to the trusses, is that damage that
15 needs to be repaired?

16 A. In some cases, it's significant enough that it
17 requires repair. Some of them I think you could salvage
18 as long as you stop the source of the water intrusion now
19 and there's not physical compromise to the truss. So it
20 would be a mixture of -- there's places that we'd have to
21 put in like a gusset plate or reinforcement in the truss
22 and some places that we can just stop the water and leave
23 it in place.

24 Q. What's this a photograph of?

25 A. It's some damaged framing that was in a crawlspace

1 in unit twenty-five. You see the top of the Superior
2 wall, and you can just see the O.S.B. right here. It
3 looks like it might be another dryer vent hole. But then
4 there's water damage showing itself on the back side of
5 the O.S.B.

6 Q. You mentioned earlier the grade and the rock being
7 put below grade. Which went on first, the grade or the
8 rock, during the construction process?

9 A. Oh, the backfill, you mean?

10 Q. Yes.

11 A. Well, based on the stone being there, the stone
12 would have had to have been there when they pushed the
13 least the final grading against the building.

14 Q. And who would have been responsible for that final
15 grading?

16 A. The simplest way I can say it is the final grading
17 contractor.

18 Q. And the general contractor, would he have any
19 responsibility for that?

20 A. Yeah.

21 Q. What's this a photograph of?

22 A. This is in unit twenty-six. There's a porch area
23 where there's some water intrusion. And you can see
24 damage to the O.S.B. subfloor as well as to the framing
25 components. It's a little bit dark, but you can see it

1 here that there's water damage to the bottom of the
2 framing where it meets the Superior wall.

3 Q. And on the bottom photograph, what's above that
4 condition?

5 A. A rear porch.

6 Q. And the source of that water infiltration is what?

7 A. Improper flashing details above.

8 Q. Is this a Superior wall situation, or have we moved
9 back to the lake side of the house?

10 A. We've moved back to the lake side of the house, I
11 believe.

12 Q. And does that condition reflect, in your opinion, a
13 breach of the applicable building code?

14 A. Yes.

15 Q. And the standards of care applicable to a general
16 contractor?

17 A. Yes.

18 Q. And do those conditions need to be repaired?

19 A. Yes.

20 Q. And what's reflected here?

21 A. It's more water intrusion at a foundation wall. And
22 it looks like it's all three in the same unit. So you
23 can see there's actually a gap between two panels of
24 foundation wall that were never treated or sealed. The
25 water can penetrate into this gap. And then two

1 locations on the interior where water has shown itself on
2 the drywall, baseboard trim and on the flooring.

3 Q. You mentioned gaps in the panels of the foundation
4 wall. What sort of panels?

5 A. Well, the Superior wall systems have to mate
6 together, and you'd have to have some way that the panels
7 are sealed or waterproofed from the outside. If they
8 move and there's a gap, you would have to close that gap
9 with sealant and/or some type of a waterproofing system
10 to preclude water from penetrating between the panels.

11 Q. And does that condition that's causing the damage as
12 reflected in those other two photographs?

13 A. I believe so, yes. At least contributing to it.

14 Q. And is that a violation of the applicable building
15 code?

16 A. Yes.

17 Q. And this section is windows and doors?

18 A. Yes, sir.

19 Q. What's being reflected in that photograph?

20 A. These are just a series of installation details from
21 the 2002 AAMA, A.A.M.A., training and installation manual
22 to just show how to properly install a window.

23 Q. And the 2000 AAMA guidelines would have been
24 applicable to the construction at Stoneledge?

25 A. Yes.

00914

1 Q. What's reflected here?

2 A. They don't show up very well, but basically it's
3 showing how to integrate rough opening flashing. Rough
4 opening is where the hole is located in the wall where
5 the window is about to be set. The opening is the rough
6 opening of the window unit that's put inside of. And so
7 before you do that, what they're showing is two details.
8 I like this one better. You take a beveled piece of
9 siding and you put a piece waterproofing membrane over
10 the top of this -- this is the sill of the window
11 opening. And the weatherproofing would come out and then
12 turn over the house wrap, Tyvek, or weather-resistant
13 barrier that's on the vertical surface. And ---

14 THE COURT: Just a moment.

15 MR. BELCHER: Pardon the interruption, Your
16 Honor. We have another objection to this series of
17 documentation.

18 THE COURT: All right. Sidebar?

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 as a result of the objection, I am going to take down the
23 exhibit that you had or the proposed exhibit you had and
24 find one that is, again, back in that time frame of
25 2000/2002.

1 Q. Mr. Hodgkin, what's reflected in that photograph?

2 A. This is a window installation on unit thirty-two.

3 There are several things that are depicted. One is

4 there's an attempt by a contractor to actually wrap the

5 rough opening with a black plastic material that we see

6 coming out of the head of the window here. There is no

7 weather-resistant barrier over the -- it should be a

8 fire-rated wall assembly with this gypsum sheathing. So

9 because of that, any water that comes in the wall above

10 the window would come behind the black plastic and be

11 trapped by the black plastic. This is the nailing fin of

12 the window. They put a tape over the flange of the

13 window. And I don't think you can see it here. But it's

14 a tape that we weren't familiar with. And there's a

15 manufacturer stamp or information on the tape that we

16 looked up. I think the next slide might show what we

17 found.

18 What they sealed the window with was duct tape that

19 is supposed to be used on H.V.A.C. duct work. And so

20 this is a totally inappropriate product for what it was

21 used for.

22 Q. Now, the conditions that you're referring to there,

23 you've indicated a number of deficiencies?

24 A. Yes, sir.

25 Q. The components that you contend were required, were

00916

1 they required by the industry standard in 2002 or 2003
2 when Bostic was working on this project?

3 A. Well, in several different ways, yes. The code
4 isn't so great on flashing requirements. It says two
5 things primarily. One is that flashing shall be
6 installed in the manner to prevent water, you know,
7 penetration. The second is that exterior walls shall be
8 provided to -- shall provide weather resistance. So it
9 would violate both of those provisions. Then you've got
10 Andersen Window Manufacturer instructions that talk about
11 flashing at least generically, that there's to be
12 flashing of the windows. You've got the weather-
13 resistant barrier requirements that we talked about
14 windows generically. So, yeah, there would be several
15 standards and codes that would be violated.

16 Q. And hence a violation of the standard of care
17 applicable to a general contractor?

18 A. Right.

19 Q. And the installation -- with regard to the
20 installation of windows?

21 A. Yes.

22 Q. And did you find this type of condition consistent
23 or pervasive in phase one?

24 A. Yes, I believe so.

25 Q. And did this condition cause any damage in your

00917

1 opinion?

2 A. Yes, it did.

3 Q. And what sort of damage?

4 A. Well, on the outside you can see damage to the gyp
5 around the window. Whenever we look later at some
6 pictures on the inside of that unit thirty-three that I
7 was able to see in unfinished condition, you can see that
8 below every single window in that unit, there's damage
9 below every one of the windows.

10 Q. And do those have to be repaired?

11 A. Yes.

12 And this was to show that flashing was required
13 above and below the window. This is the header of the
14 window; this is the sill. Just a generic callout that
15 flashing was to be installed. I don't think it was
16 installed at either location.

17 The same thing, just talking about flashing. That's
18 the trim detail. Oh, I'm sorry. I think -- this --
19 also, while we're here, this shows the balcony condition
20 I think we're going to look at in a minute where this
21 aluminum threshold of the door is located at this flush
22 condition with the exterior balcony. No callout for
23 flashing, sealant or any kind of waterproofing.

24 Q. Okay. And what's reflected here?

25 A. So unit thirty-two, we actually removed a window

00918

1 from the unit. And this black plastic that they put in,
2 they're trying to wrap the rough opening like I was
3 talking about a minute ago. But when they did it, they
4 just have these separate pieces. So it would afford some
5 protection here at the sill and a little bit on the jamb.
6 But if you go back to the head, you've got a reverse lap
7 with no weather barrier to protect it. So water would
8 actually funnel into the window opening from above. And
9 then what's important at these vital corners, there's no
10 protection at the corners. So any water that lands on
11 this plastic that runs over to the corner, it has this
12 entry point right here. It's going to damage the wall
13 sheathing on the exterior of the building at every one of
14 those corners.

15 Q. And did you find that that had occurred?

16 A. Yes.

17 Q. That you could observe?

18 A. Yes.

19 Q. And is that condition a violation of the building
20 code?

21 A. Yes. And the fact that it's caused damage I think
22 is the best evidence that it violates the building code.
23 But there's an intent to try to do it with some rough
24 opening flashing which is great. They just didn't finish
25 it at these corners, and they didn't integrate with

1 anything at the top. So it's more problematic with what
2 they installed than probably not install anything.

3 Q. And the manner in which they installed it, was it
4 violative of the standard of care that was applicable to
5 the general contractor?

6 A. Yes.

7 Q. This is back to our unfinished unit, I believe.

8 A. Right. And this is what I saw at every single
9 window is damage of the O.S.B. on the interior side of
10 the O.S.B. So the damage is so significant that it's
11 actually coming through and showing itself on this side.
12 This is not something that would happen from a broken
13 window or an open window. This has to be damage that's
14 on the outside of the building envelope behind the siding
15 and on the O.S.B. sheathing. These are damages we saw
16 throughout on the inside of the unit. This one's a
17 little interesting because the rough opening was actually
18 too large and they added framing below which appears to
19 be inadequate, and then didn't repeat the rough opening
20 flashing with the newer, smaller window opening.

21 Q. In your opinion, Mr. Hodgins, do window installation
22 deficiencies exist throughout phase one?

23 A. As far as we can tell. We haven't seen any that
24 were correct.

25 Q. And do you have an opinion about whether or not the

00920

1 damage that you see in the unfinished unit also exists
2 behind the finished walls throughout phase one?

3 A. Yeah, I'm sure it would.

4 Q. And this photograph?

5 A. This is the same kind of condition that we saw on
6 the outside, but now you're seeing an inside version of
7 it. They carried the black plastic. And this was the
8 sill; these are jambs. And then there's a gap at each
9 one of these corners. You can see the damage of the
10 O.S.B. wall sheathing here, here, and then you can see
11 some staining on the floor where water intrusion has
12 occurred.

13 Q. And this photograph?

14 A. This is the exterior side of a wall in phase one
15 where the siding has been taken off. There's a weather-
16 resistant barrier here, but it's not properly integrated
17 with the rough opening flashing. And so water has
18 penetrated. You can see that this stain actually goes
19 all the way up to the head. So it relates to that black
20 plastic not integrating properly with the weather barrier
21 above and there being an absence of flashing at the
22 window head.

23 Q. What's depicted in this photograph?

24 A. These are photographs that I did not take or C.S.E.
25 did not take. They were provided by an owner. And I can

00921

1 see a date on it, but I can't tell what it is. It's a
2 repair that was done on unit six. It's a second-story
3 window where there's significant water intrusion damage
4 between the window and this shingle roof. And so the
5 left picture is where they took off the siding. You can
6 see significant damage to the O.S.B. And then they took
7 off the O.S.B., and you can see some wet insulation and
8 some damage to the framing.

9 Q. And are the conditions depicted in there consistent
10 with the conditions that you observed as part of the
11 emergency repair process or your destructive testing?

12 A. That's correct.

13 Q. And what's depicted here?

14 A. This is a door installation. So we're standing on
15 the rear balcony, but we're facing the occupied space.
16 There's a swinging door that goes between the balcony and
17 the interior of the unit. And it looks like there is
18 weather barrier installed, but then it's either torn or
19 cut at the door opening. So instead of wrapping it into
20 the door -- this is the jamb of the door -- there is no
21 protection that's turned in to the jamb of the door. And
22 then at the base of the wall, there's this reverse lap
23 with the membrane that's on the balcony.

24 Q. And is there any damage that occurs as a result of
25 those conditions?

00922

1 A. Yes.

2 Q. And what damage is that?

3 A. There is significant damage to the subfloor and to
4 the framing below some of these areas that we were able
5 to view with our -- either with our borescope or we took
6 off some of the cedar ceiling to observe damages at those
7 locations.

8 Q. And do those conditions represent a violation of the
9 applicable building code by the general contractor?

10 A. Yes.

11 Q. What's this a photograph of?

12 A. I think that's the same unit, and now we're looking
13 below the door. And so this is a floor truss. This is
14 the top cord in the floor truss. This would be the
15 exterior wall where the door is located. And so this is
16 damage to the truss. This is damage to the O.S.B.
17 subfloor.

18 Q. How are you accessing that to see that damage?

19 A. That picture is so good that I think it's probably
20 with a regular camera. There must have been an access
21 hole with some ceiling room. A borescope takes pretty
22 good pictures, but you usually don't see -- you'll have
23 kind of a dark edge to it with the borescope pictures.
24 That's like a camera picture that would have been taken
25 with some ceiling removed.

00923

1 Q. But you couldn't see those damages if you were just
2 walking around the Stoneledge property, would you?

3 A. No, sir. You may see the symptoms. And that was
4 the other thing. When I did my initial site visit, we
5 talked about that overhanging area on these balconies.
6 You could look up at these ceilings, and you could see
7 damages. But there's different types of damage. Just
8 from a door you may not see on the ceiling below. But
9 waterproofing problems on the outboard edge were visible
10 on the ceiling of those patios.

11 Q. And are these the types of damages that you found to
12 be pervasive throughout phase one?

13 A. I would say the condition that led to the damage
14 seems to be consistent. I don't know that we've opened
15 up enough of the balconies -- I would expect there to be
16 some damage in all areas, but I wouldn't know about the
17 extent in all locations until comprehensive repair is
18 performed.

19 Q. Okay. And what is this photograph of?

20 A. This is back to that unfinished unit again where you
21 can see that water intrusion has occurred below these
22 doors that have been set. Now, I think the testimony was
23 that when everything's dried in and these doors are set,
24 they're not going to take them back out. And what we
25 found was, both in this unfinished unit and in the

00924

1 finished units, there is no integration with the
2 threshold of the door with any waterproofing on the
3 outside. There's no flashing. There's no functional
4 flashing. There's no sealant. There's no anything to
5 preclude water intrusion passing below the door.

6 Q. Yesterday, again, you heard the testimony of Mr.
7 Hornaday?

8 A. Yes.

9 Q. That he observed these conditions when Marick got to
10 the site?

11 A. Yes.

12 Q. What's reflected in that photograph, Mr. Hodgins?

13 A. This is unit nineteen. I don't know if we've seen
14 elevation views of the units. But if you look -- if
15 you're standing at the -- if the lake is behind you and
16 you're looking at the units, each one of them has a
17 balcony that would have -- like half of it is a screen
18 enclosed porch, and half of it is an open balcony. And
19 there's stone-clad pillars that come up, and then there's
20 a railing that goes between the pillars. And so this is
21 the top of one of those stone-clad pillars. And they had
22 a flat cap on it which would violate the 2002
23 installation instructions.

24 But beyond that, when you take that cap off, all
25 they did was take some weather-resistant barrier that was

00925

1 around the perimeter and just kind of fold it over on top
2 and put that stone cap over it. So all they've done
3 there is remove the cap. And this is the damage of the
4 framing to the pillar that supports all of the guardrails
5 that are on this elevated balcony.

6 Q. You mentioned that a flat cap violated the 2002
7 Owens Corning requirements?

8 A. Yes.

9 Q. And what did it require in terms of the slope of the
10 cap?

11 A. It just said you'd have to have a sloped cap to
12 provide drainage.

13 Q. And the black portion in that photograph, again,
14 that's what?

15 A. This is rotten wood.

16 Q. Was it treated lumber?

17 A. No.

18 Q. Did you find evidence of damage like that throughout
19 phase one?

20 A. I think we found damage where we looked. But we
21 haven't, you know, looked at every pillar. But in the
22 pillars where we did look, I think there's damage in each
23 one.

24 Q. And are the conditions that are reflected there, in
25 your opinion, violative of the applicable building code?

00926

1 A. Yes.

2 Q. And are they violative of the Owens Corning
3 installation instructions?

4 A. Yes.

5 Q. And a breach of the applicable standard of care,
6 that is the standard of care applicable to a general
7 contractor?

8 A. Yes.

9 Q. What's in that photograph, Mr. Hodgin?

10 A. It's hard to read, but I think it's just the detail
11 on the architect plans about the stone-clad columns or
12 pillars.

13 Q. And this photograph?

14 A. This is where the stone pillars come down on top of
15 the balcony. And what we're showing is that there's no
16 provision for drainage at the base of the stone. And so
17 water collected between the balcony and pillar
18 intersection caused damage.

19 Q. Did the columns that you're looking at in that -- or
20 that appears that you're looking at in that photograph,
21 do they provide structural support?

22 A. They provide the support for all of the railings.

23 Q. And the -- let me go back. What, in your opinion,
24 is causing damage to the base of that column?

25 A. Well, there is a couple things. One is lack of

00927

1 proper integration between the waterproofing, if there is
2 any, on the balcony to the column. And then when the
3 stone came down on top of the weather barrier, they
4 should have held this off of the balcony and had some
5 type of a -- they call it a weep screed or a way to
6 terminate the stone above the balcony that would allow it
7 to drain freely on top of the balcony surface and not go
8 down to the balcony level or get trapped in the column
9 where the wood is located.

10 Q. And was that required by Owens Corning in 2002?

11 A. Only generically. They just talk about you should
12 provide proper drainage details.

13 Q. And was proper drainage provided here?

14 A. No.

15 Q. And so is that condition violative of the Owens
16 Corning 2002 instructions?

17 A. I would say in general, yes.

18 Q. And are the conditions reflected there a violation
19 of the standard of care that was applicable to the
20 general contractor?

21 A. Yes.

22 Q. And the building code?

23 A. Yes.

24 Q. What does your water meter say -- or your moisture
25 meter say to the right?

1 A. It's saturated.

2 Q. What's reflected here?

3 A. These are looking inside of one of those pillars or
4 columns that support the rails. You can see how damaged
5 the wood framing components are. And here you're
6 actually looking at a void in the framing. So here you
7 can see O.S.B. Here you're actually looking at the back
8 of the weather-resistant barrier. So there is no
9 adequate substrate at that location.

10 Q. What's reflected here?

11 A. This is when you -- on the outboard edge of the
12 balcony where those pillars are located, you can see that
13 there's water intrusion occurring. This is the subfloor
14 of the balcony, so this is significantly damaged here.
15 Also damaged the components of the truss. Coming down
16 it's damaging the outboard framing of the wall and
17 damaging the cedar plank ceiling.

18 Q. Did you find damage of this type consistent
19 throughout phase one?

20 A. We did. We didn't look at this level everywhere,
21 but you can see the staining on the ceilings, I think,
22 throughout the project.

23 Q. And this photograph or these photographs?

24 A. There's the staining on the ceiling that we're
25 talking about. This is interesting because you're

00929

1 actually looking at the bottom edge, exposed edge, of an
2 O.S.B. sheathing. That should not be visible. And then
3 on the right photograph, just more water intrusion
4 damage. It looks like at a balcony corner.

5 Q. And the bottom photograph, is that, again, related
6 to flashing or the absence of flashing ...

7 A. Yes.

8 Q. ... above it?

9 A. Yes.

10 Q. And it's a representation of a condition that
11 indicates a violation of the applicable building code?

12 A. Yes.

13 Q. And the standards of care applicable to a
14 contractor?

15 A. Yes.

16 Q. And these photographs?

17 A. This is a different unit, twenty-eight. And this
18 damage, I don't think it's quite as common. But this is
19 damage actually looks like in the field of the balcony.

20 So it's away from the door or a pillar. And this is
21 subfloor that has visible damage to it. And then the
22 right photograph looks like it's at an edge condition.
23 So it would likely be related to one of those pillar
24 conditions.

25 Q. And these damages resulted from the same types of

00930

1 conditions we've already talked about?

2 A. Yes.

3 Q. And this?

4 A. This is -- looks like we're on the outside edge of a
5 balcony. So this is the guardrail that's supported by
6 the pillars that we've talked about, and this is a piece
7 of brown flashing material that transitions from the
8 balcony to the stone. I've taken some of the stone off,
9 and this is very deteriorated framing that's behind the
10 stone at that location.

11 Q. Are you concerned about the structural integrity of
12 the framing of the porch and deck when you see damage
13 like that?

14 A. Yes.

15 Q. And in your opinion, what's the source of the water
16 infiltration at that location?

17 A. There is a lack of proper integration between the
18 waterproofing membrane on the balcony and the vertical
19 waterproofing components that were located behind the
20 stone that allowed water to penetrate the wall just below
21 the balcony.

22 Q. And is that a violation of the applicable building
23 code?

24 A. Yes.

25 Q. And the standards of care applicable to a general

00931

1 contractor?

2 A. Yes.

3 Q. All right. And this, Mr. Hodglin?

4 A. This is a balcony edge where we're taking up the
5 concrete surface to look at the subfloor. And you can
6 see there's a termination piece here and then some damage
7 to the subfloor.

8 Q. And what is that, Mr. Hodglin?

9 A. That's more of the same type damage we looked at a
10 couple of photos ago below a balcony edge where we've
11 taken some stone off and found damage to the framing.

12 Q. Is that a different unit, or do you recall?

13 A. I don't recall if it's a different unit. This is
14 Rick Moore's identification. It's test cut number two on
15 March 13, 2012. And then this is Rick's initials. So
16 that's test cut number two. If you go to the other one,
17 that's test cut number eighteen on 3 -- I don't know if
18 it's a 4 -- 14/12. So these are also Mr. Moore's test
19 cuts.

20 Q. Is the damage that's reflected in there damage that
21 you think is pervasive throughout phase one?

22 A. I think it's consistent. I mean, you might have
23 varying degrees, but you've got to totally de-clad all of
24 those balconies so you know you've fixed the extent of
25 the damage during the repair process.

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1 Q. Okay.

2 MR. LYLES: Your Honor, that's the end of the
3 photographs for this part, for this presentation. I
4 don't know if it's a good time to break for lunch.

5 THE COURT: All right. Very well.

6 Mr. Foreman, ladies and gentlemen of the jury, as
7 you've heard, this is a place where we can break because
8 the presentation will change, I trust, as far as
9 exhibits. So I'm going to suggest that you do go to
10 lunch at this time and come back at -- what time? Now,
11 remember, we want to be out of here at least by four-
12 thirty. So you have to come back before then.

13 MR. FOREMAN: Four fifteen. Two o'clock, Your
14 Honor. That'll give us an hour and fifteen minutes.

15 THE COURT: That'll be good. All right. Two
16 o'clock come back to the jury room where you've been.
17 And please do not undertake the discussion among
18 yourselves in any way.

19 Everyone else remain seated -- thank you -- while
20 the jury retires from the courtroom.

21 (WHEREUPON, the jury exited the open courtroom at
22 approximately 12:46 p.m.)

23 THE COURT: All right. Is there anything from
24 the plaintiff before we take a break for lunch?

25 MR. LYLES: The only issues I wanted to bring

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1 up are yesterday I indicated that I wanted to make sure
2 that we actually got into evidence -- not Mr. Hodgkin's
3 report, but the repair manuals that he's prepared which
4 outline and detail the repair that he has specified and
5 which has been priced by two experts in this case. And
6 he went to some degree of care to put that manual
7 together. It contains relevant specifications and
8 details. I think it shows that his repair is thorough
9 and thoughtful. And again, those contractors ---

10 THE COURT: Is this his product though? This
11 is his product?

12 MR. LYLES: It's his product that he gave to my
13 clients.

14 THE COURT: But I'm asking if he produced it so
15 he knows the ---

16 MR. LYLES: Oh, yes, sir.

17 THE COURT: --- source of it?

18 All right. Mr. Belcher?

19 MR. BELCHER: Your Honor, it would be my
20 position that's just redundant to his testimony. He's
21 going to testify to what the scope's going to be. It
22 doesn't need to be admitted into evidence. We're not
23 admitting our scope of repair.

24 THE COURT: Yes, sir.

25 Mr. Imhoff?

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1 MR. IMHOFF: Your Honor, I don't have an
2 objection necessarily to his repair scope. But I would
3 have an objection necessarily to putting documents in
4 that would be Owens Corning application, roof
5 application, those types of things, which I understand,
6 Your Honor, that are used for his repair. But they might
7 be misinterpreted by the jury to be the standard at the
8 time that this stuff was installed. In other words,
9 you've got a ten-year lapse. And I'm not sure that a
10 curative directive to the jury would fix that problem.
11 This is complicated already. So I think Mr. Belcher's
12 correct that he's going to be testifying about it. His
13 testimony will be there. I think there's going to be a
14 lot of testimony about what his repair scope is. I don't
15 know that we necessarily need to confuse the jury with
16 how exactly the repair is going to be done.

17 MR. BELCHER: And we'll have estimates that the
18 jury will see, and those will be entered into evidence.
19 And those paint the picture of what the scope is. So
20 it's not like they're going to forget what's being done
21 or what needs to be done.

22 MR. IMHOFF: Frankly, if Mr. Hodgins just says,
23 "We're going to repair it, and we're going to repair it
24 right," that's probably all the jury will hear out of all
25 of that anyway. So ...

1 THE COURT: All right. Anything else?

2 MR. LYLES: No, sir.

3 THE COURT: Well, I'm certainly glad that y'all
4 gave me an opportunity to do a little research. And I'm
5 coming back to the Elledge case where so much of this
6 matter dealing with standards and instructions come to
7 light. And in that case, of course, we're dealing with
8 ---

9 MR. BELCHER: Your Honor, I think it's probably
10 referred to as the continuing witness rule or the
11 continuing testimony rule that experts' reports should
12 not be part of the record. So that if you're researching
13 it ---

14 THE COURT: I beg your pardon?

15 MR. BELCHER: If you're researching it, it's
16 called the continuing witness rule that the experts'
17 reports don't go back into evidence with the jury. That
18 what he testifies about is fair game and then the
19 exhibits that are entered into evidence. But it's not
20 ---

21 THE COURT: I thought you were talking about
22 the standards, the applications.

23 MR. BELCHER: No, the scope of repair.

24 THE COURT: Huh?

25 MR. BELCHER: The scope of repair that he is

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1 going to testify needs to be done is what he -- is what
2 Mr. Lyles wants to put into evidence. All the
3 specifications of what he wants to have done. He's going
4 to testify about all of those. And if that report goes
5 back to the jury, then it's the continuing witness rule
6 that we ---

7 THE COURT: Well, I'll look at that. But as
8 I've been looking at dealing with guidelines and industry
9 standards, this evidence is highly probative on the issue
10 of defining the duty of care -- citing obviously Rules
11 401 and 402 -- if it has a tendency to make the existence
12 of any fact of consequence to the action more or less
13 probable than it would be without the evidence. Now,
14 there's no question about testimony being -- what is it?
15 -- very valuable. But if it has something to support
16 that testimony, I think that perhaps that might be of
17 value to the jury. Evidence of industry standards,
18 customs, and practices often are highly probative when
19 defining a standard of care.

20 I'll look at the continuing witness rule. But I
21 also understand that -- I don't understand standards and
22 guidelines and things of that nature. And sometimes I
23 need to look at them.

24 MR. BELCHER: And we would not -- we may not
25 object to those being entered into evidence and going

1 back to the jury. But our concern is that the scope of
2 repairs goes back there because we're not going to
3 suggest that that happen with our witness.

4 THE COURT: Well, that's -- you made your
5 decision on how you wanted to approach it.

6 MR. BELCHER: Right.

7 THE COURT: I'll look to see if it's admissible
8 or not. And the mere ---

9 MR. BELCHER: Thank you, Your Honor.

10 THE COURT: --- fact that one did not take that
11 approach is not going to necessarily determine how or
12 what the jury needs to have in order to be able to
13 evaluate the testimony.

14 MR. BELCHER: Right. And I'm not asking you to
15 ---

16 THE COURT: Well, I understand that. I'm just
17 telling you what my, you know, my thought process is.

18 MR. BELCHER: Thank you.

19 THE COURT: Yes, sir?

20 MR. IMHOFF: Correct me if I'm wrong. And I'm
21 sure Mr. Belcher will. But I think just sort of
22 philosophically what he's saying is Mr. Hodgkin doesn't
23 get to go sit with the jury while they're deliberating
24 and continue explaining and testifying. And if the
25 document goes back that essentially is a hand or a typed-

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1 up ---

2 THE COURT: Report.

3 MR. IMHOFF: --- report which says again
4 exactly what he testified to again, then he essentially
5 is testifying continually in the jury room while they
6 deliberate. I think philosophically I may be wrong ---

7 THE COURT: Well, we'll find out.

8 Philosophically is in a different forum.

9 MR. IMHOFF: The reason for it.

10 THE COURT: Well, no, I mean, really -- what is
11 it? -- I'm not being facetious. Well, I am being
12 facetious, but not necessarily. But what I'm concerned
13 about is the law. And as we know, that evidence and the
14 rules of evidence are all designed to facilitate the
15 jury's application of the law and the facts to the
16 decision they have to make. And we might differ on the
17 philosophy of it, but I'm going to have to be guided by
18 the rules.

19 Yes, sir, Mr. Lyles?

20 MR. LYLES: Well, the -- and I agree completely
21 about the expert's report. Jason raised ---

22 THE COURT: So you're not intending on
23 introducing the report.

24 MR. LYLES: I never intended to introduce the
25 report.

1 THE COURT: Well, then why are we talking?

2 MR. LYLES: Because what I am intending to
3 introduce is the scope of repair which is different than
4 the report. And I was careful not to talk about the
5 report or want to introduce it because I think they're
6 right.

7 THE COURT: In other words -- forgive me. And
8 I don't want to be too simple here. But it's almost like
9 a punch list is what you're saying?

10 MR. LYLES: No, sir. It's a very -- as you
11 listen to the testimony, including this morning from the
12 Bostics and in the opening arguments, the real issue of
13 this case is what repair is going to be necessary ---

14 THE COURT: Well, that's what I'm saying.
15 Forgive me. As I say, perhaps I'm being too simplistic.
16 To me, when you have a construction job and something is
17 not exactly right, before you usually accept it -- what
18 is it? -- you give the builder a punch list.

19 MR. LYLES: Yes, sir.

20 THE COURT: And is that not what you're trying
21 to -- is that not what your exhibit would be?

22 MR. LYLES: No, sir. It's the exhibits that I
23 gave you last night. It is what Mr. Hodgins says needs to
24 happen to correct the deficiencies.

25 THE COURT: Well, what is a punch list?

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1 MR. LYLES: Well, a punch list is what's given
2 to a contractor as he is completing construction ---

3 THE COURT: Right.

4 MR. LYLES: --- those items that he's not yet
5 finished.

6 THE COURT: Right.

7 MR. LYLES: And this is -- this is ---

8 THE COURT: Well, apparently these things
9 aren't finished.

10 MR. LYLES: They're not finished, but this is
11 what ---

12 THE COURT: All right. Maybe -- you might --
13 what is it? -- rested -- what is it? -- defeat from the
14 jaws of victory here. So I'm going to agree. If it's
15 not a punch list and it's merely -- what is it? -- a
16 formula or something like that, then that's more
17 testimonial than it is -- what is it? -- of value to ---

18 MR. LYLES: Well, except, Your Honor ---

19 THE COURT: It's an exhibit?

20 MR. LYLES: --- it is not only a -- he cannot
21 only describe -- which he will do is describe what he
22 calls for in the repair. What's important about the
23 repair documents that I submitted yesterday, that I gave
24 to these guys a couple years ago, is that they are -- he
25 has gone through and he has in detail prepared plans,

1 details, as well as specifications to repair this
2 building in a proper way. And I think frankly ---

3 THE COURT: Would you say that would
4 demonstrate what his testimony would be?

5 MR. LYLES: Well, they go beyond what his
6 testimony will be because it graphically shows what a
7 contractor ---

8 THE COURT: Well, isn't that what demonstrative
9 evidence is?

10 MR. LYLES: Yes, sir. I mean, he could ...

11 THE COURT: So, well, maybe that's the approach
12 we need to take. The exhibit would be a demonstrative
13 evidence, and he can use it and you can use it in the
14 arguments and all of that, but it doesn't go back. Think
15 about it. I'll take it under consideration.

16 MR. BELCHER: Thank you, Your Honor.

17 (WHEREUPON, court stood at recess for a lunch break
18 during which Plaintiff's Exhibits Number 18 through
19 25 were marked for identification only.)

20 THE COURT: All right. I understand the jury's
21 back. Anything from the plaintiffs before we bring the
22 jury back?

23 MR. LYLES: None from the plaintiff, Your
24 Honor.

25 THE COURT: From the defendants?

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1 MR. BELCHER: None from the defense, Your
2 Honor.

3 (WHEREUPON, the witness resumed the witness stand.)

4 THE COURT: All right. Before we broke for
5 lunch, I understood that the witness is going to be
6 testifying to a report on estimates to repair or things
7 to be done for the repair; is that correct?

8 MR. LYLES: A scope of repair. Not the
9 estimates, but, yes, sir, the scope of repair.

10 THE COURT: Well, I mean, the scope he's having
11 to estimate?

12 MR. LYLES: Well, a different witness is
13 estimating the scope. We have a different witness doing
14 that.

15 THE COURT: So he didn't prepare it?

16 MR. LYLES: He didn't prepare ---

17 THE COURT: You just snatched it from victory
18 again.

19 MR. LYLES: Your Honor, this is what Mr.
20 Hodgins, as an engineer, he's designed the repair. And
21 that's what's before you. There's another -- there is an
22 estimate, two estimates, that have been prepared based on
23 that. Those will come later through different witnesses.
24 This is what Mr. Hodgins has said needs to occur to repair
25 the project, but he's not estimating ---

1 THE COURT: And he didn't prepare it?
2 MR. LYLES: He did prepare it, yes, sir.
3 THE COURT: I thought that was my question.
4 MR. LYLES: Well, you mentioned an estimate. I
5 just want to make sure. This is not an estimate.
6 THE COURT: It's a what?
7 MR. LYLES: This is a repair design.
8 THE COURT: And it was handed down from Mt.
9 Sinai?
10 MR. LYLES: No, sir. Derek Hodgkin prepared the
11 repair design.
12 THE COURT: So he did prepare it?
13 MR. LYLES: He did prepare it, yes, sir.
14 THE COURT: Oh, oh, oh. I understand now. Mr.
15 Hodgkin prepared it?
16 MR. LYLES: Yes, sir. He did prepare it, yes,
17 sir.
18 THE COURT: Prepare it. In other words, it
19 wasn't already in existence from on high or anywhere
20 else?
21 MR. LYLES: No, sir.
22 THE COURT: That's my question.
23 MR. LYLES: Okay.
24 THE COURT: Regardless of what we call it.
25 MR. LYLES: Okay.

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1 THE COURT: And it was done in the course of
2 his business?

3 MR. LYLES: Yes, sir.

4 THE COURT: All right. Now, you've got a
5 continuing testimony rule that I tried to find. I did
6 find a Georgia case that talked about something like
7 that. But do you have a South Carolina case?

8 MR. GRESH: Your Honor, if I may, for Mr.
9 Belcher?

10 THE COURT: That'll be fine. I'm asking any
11 defendants that want to enter that objection.

12 MR. GRESH: I just would point the Court's
13 attention to the Allegro, Inc. versus Scully. It's at
14 400 ---

15 THE COURT: Just a second. 400 ---

16 MR. GRESH: 400 S.C. 33. It's a 2012 Court of
17 Appeals opinion where it allowed the expert witness to
18 testify as to the contents of the report, but the
19 admission of the report itself was deemed to be -- the
20 exclusion of the expert witness' report ---

21 THE COURT: Well, that's what this -- 400 S.C.
22 33?

23 MR. GRESH: Yes, sir.

24 THE COURT: Okay. I'm checking. That's what I
25 was looking -- I couldn't find it. What's the head note?

1 Do you have any idea? You wouldn't have a copy of it,
2 would you?

3 MR. GRESH: I'm sorry, Your Honor. I don't.

4 THE COURT: Very well. All right. So what we
5 will do, I'll let him testify. And I trust you are going
6 to mark what he's testifying from as an exhibit for
7 identification?

8 MR. LYLES: Yes, sir.

9 THE COURT: All right. And then we'll
10 determine whether or not it's going to be admissible to
11 go back to the jury or not.

12 MR. LYLES: Yes, sir.

13 THE COURT: All right. And I'll look this up.
14 Thank you, sir.

15 All right. Anything else?

16 MR. LYLES: Before the jury comes out -- Bo got
17 my copy.

18 THE COURT: You can have it.

19 MR. LYLES: Yes, sir.

20 THE COURT: Unfortunately, I've got it. You
21 know, let me do this in the future. I love the legal
22 matters and all of that. But I operate better on
23 authorities than I do -- what is it? -- arguments. And
24 so if you have an authority that supports your position,
25 particularly if it's conclusive, give me the authority.

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1 All right? Very good. Thank you. You may proceed.

2 Let's see. Have we got anybody to call the jury?

3 There he is.

4 THE BAILIFF: They're ready, Your Honor.

5 THE COURT: Yes, sir. Thank you, Mr. Anderson.

6 If you would, ask the jury to join us.

7 (WHEREUPON, the jury entered the open court at
8 approximately 2:16 p.m.)

9 THE COURT: All right. Let the record reflect
10 the jury and alternate are in the jury box. We will now
11 proceed with the examination of Mr. Hodgin.

12 MR. LYLES: Yes, sir.

13 DIRECT EXAMINATION

14 CONTINUED BY MR. LYLES:

15 Q. Mr. Hodgin, I'm going to show you what has been
16 marked as number 22 for identification. See if you
17 recognize those photographs.

18 A. Exhibit number 22 appears to be all the photographs
19 from the PowerPoint presentation that we discussed
20 yesterday and today.

21 Q. These are just photographs? There's no text or
22 documents that are contained with them?

23 THE COURT: All right. In other words that's
24 the photographs that have been used in the exhibits or at
25 least demonstration?

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1 MR. LYLES: Yes, sir.

2 THE COURT: Any objection?

3 MR. BELCHER: No, Your Honor, not from the
4 defendant Bostic Brothers.

5 THE COURT: Very good. All right. So without
6 objection Defendant's [sic] Number 22 -- how many
7 different photographs are there collectively?

8 MR. LYLES: Probably ---

9 THE COURT: Can you count them?

10 MR. LYLES: We've got pages right here that we
11 can count.

12 THE WITNESS: You want me to check?

13 MR. LYLES: Sure.

14 THE COURT: The reason we do that is either
15 we're going to identify each page of an exhibit or we're
16 going to do an exhibit with so many pages because the
17 record has to be complete. And if any of them are
18 missing -- and I might note and I think we've already
19 said that -- that no lawyer leaves the courtroom until
20 the court reporter is satisfied she has all of the
21 exhibits. So we have to know how many exhibits there
22 are.

23 THE WITNESS: I counted eighty pages. And some
24 of the pages do have more than one photograph, but it's
25 eighty pages.

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1 THE COURT: But we're talking about an exhibit
2 that has eighty pages?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Very good. So
5 Plaintiff's Exhibit Number 22 consisting of eighty pages
6 is admitted without objection.

7 (WHEREUPON, Plaintiff's Exhibit Number 22 was
8 previously admitted into evidence.)

9 Q. And Mr. Hodgin, I'm going to show you what I've
10 marked as exhibit 18.

11 A. Yes, sir.

12 Q. Do you recognize that?

13 A. It appears to be the cover of the International
14 Residential Code along with relevant sections from the
15 same code.

16 Q. And how many pages is that?

17 A. Twelve pages.

18 Q. Okay.

19 THE COURT: All right. Any objection? You
20 might want to look at them.

21 MR. ANDERSON: I would object, Your Honor. I
22 don't believe it's proper.

23 THE COURT: I beg your pardon? All right. You
24 heard the objection.

25 MR. LYLES: I did. And, Your Honor, this ---

1 THE COURT: You want to lay a foundation?

2 MR. LYLES: Yes, sir.

3 Q. Mr. Hodgins, did you rely on the building code in
4 formulating your opinions?

5 A. Yes.

6 Q. And the contents of exhibit ---

7 THE COURT: Wait. Let me ask you. This is a
8 building code?

9 MR. LYLES: Yes, sir. Excerpts of the building
10 code.

11 THE COURT: And what exception to the rules of
12 evidence are you getting that in?

13 MR. LYLES: The ---

14 THE COURT: Treatises or whatever would be
15 something that you could publish which has been done
16 apparently. But the actual document itself would not be
17 admissible.

18 MR. LYLES: The ---

19 THE COURT: I mean, I just -- I'm just thinking
20 that off-the-top-of-my-head.

21 MR. LYLES: Well, we have -- in the discussion
22 that we had prior to the lunch break, we were discussing
23 the materials relied upon by Mr. Hodgins that were
24 applicable to and guided and determined the standards
25 that applied to the construction of this project. I

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1 think that there are three or four code sections that Mr.
2 Hodgins referred to a number of times in his testimony.
3 And what we seek to introduce are those standards to
4 guide the jury in their deliberations.

5 THE COURT: All right. Mr. Anderson, what do
6 you say?

7 MR. ANDERSON: Your Honor, he's placing into
8 evidence -- it's a standard, but they have statutory
9 foundation. And we believe that the law is your
10 providence and not in that of the jury.

11 THE COURT: Well, what I'm asking about is a
12 rule of admissibility. Again, I'm not -- what is it? --
13 interested in exercising discretion. Rule 803, paragraph
14 18, learned treatises, to the extent called to the
15 attention of an expert witness upon cross-examination or
16 relied upon by the expert witness in direct examinations,
17 statements contained in published treatises, periodicals
18 or pamphlets on the subject of the history of medicine or
19 other science or art establishes a reliable authority by
20 the testimony or omission of the witness or by other
21 expert testimony or by judicial notice. If admitted, the
22 statements may be read into evidence but may not be
23 received as exhibits. Is that what you're saying?

24 MR. ANDERSON: Yes, sir. I believe that that's
25 the old exception eighteen to the hearsay rule.

1 THE COURT: The old one?

2 MR. ANDERSON: Well, not -- I mean, exception
3 eighteen.

4 THE COURT: Y'all have to forgive me. I was
5 there when they adopted it.

6 MR. ANDERSON: I do remember that myself, Your
7 Honor.

8 THE COURT: All right. Again, I'm going to
9 leave that to further decision as to whether it goes
10 back. And so I'll have it marked for identification as
11 Plaintiff's Exhibit 18 ...

12 ... containing how many pages, Mr. Hodgkin?

13 THE WITNESS: I think it was twelve.

14 THE COURT: Twelve pages.

15 THE WITNESS: Do you want a recount?

16 THE COURT: But it's for ID.

17 Mr. Foreman, ladies and gentlemen of the jury, there
18 are different types of exhibits. Some are fact exhibits
19 or exhibits that go back to the jury under certain rules
20 of evidence, one of our rules of evidence. And then
21 others are exhibits that may be used for demonstrative
22 purposes. In other words, something that is -- well, for
23 example, a diagram. Somebody draws on a board or
24 something like that. Now, that's a demonstrative
25 exhibit, but it does not go back to the jury because it

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1 doesn't meet any of the particular qualifications or
2 exceptions under our rules of evidence. So that's what
3 we're dealing with here. It's in evidence, but it's not
4 -- and if you wanted to see it when you begin your
5 deliberations, you can come back to the courtroom and see
6 it. But it would not -- what is it? -- go back as an
7 exhibit for a factual determination in the courtroom.

8 All right. That's -- one of the things it would be
9 hearsay because it wasn't prepared by this witness. All
10 right. Very good.

11 MR. LYLES: Thank you very much.

12 THE COURT: Very good. Thank you, sir.

13 Q. Mr. Hodgin, I show you what's been marked as number
14 25 and ask if you recognize that.

15 MR. LYLES: And I represent to you that's
16 twelve pages. I did the count.

17 THE COURT: Thank you, sir.

18 A. Exhibit Number 25 is the Western Red Cedar
19 installing cedar siding instruction document published in
20 1993.

21 Q. And is that a document that contains information
22 relied upon by you in the formulation of your opinions in
23 connection with the case?

24 A. Yes.

25 Q. And was that document, in your opinion, or the

1 contents of that document applicable to the construction
2 of this project by Bostic and Marick?

3 A. Yes.

4 Q. If you'd put that there. Okay. Let me show you
5 what I have marked as exhibit 24.

6 A. Exhibit 24 is the research that we did on the Ideal
7 Seal tape that was used around windows at the Stoneledge
8 property.

9 Q. And is that something that you relied upon in
10 formulating your opinions in this case?

11 A. Yes.

12 MR. LYLES: And that's one page, Your Honor.

13 THE COURT: All right. And that's 24?

14 MR. LYLES: Yes, sir. I'm sorry these are out
15 of order.

16 THE COURT: That's all right.

17 Q. Let me show you what I've marked as 23 and ask if
18 you recognize that. And that's -- is that 23?

19 A. Yes.

20 MR. LYLES: That's three pages.

21 THE COURT: Very good.

22 A. This actually needs to be broken apart. There is
23 one page which has the exhibit sticker, exhibit 23, which
24 is a page from the N.R.C.A. Roofing and Waterproofing
25 Manual, fifth edition. And then the other two pages are

1 from the AAMA Residential Roofing Guide. Two different
2 references.

3 Q. Let's go back to the N.R.C.A. first.

4 A. Okay.

5 Q. Okay. What's the number on that?

6 A. 23.

7 MR. LYLES: And, Your Honor, that's one page,
8 not three.

9 Q. And if you would, describe that for me again, Mr.
10 Hodglin.

11 A. It's a single page out of the N.R.C.A. Roofing and
12 Waterproofing Manual that shows the diagram that was in
13 my presentation on proper step-flashing at a side wall.

14 Q. Okay.

15 THE COURT: Plaintiff's Exhibit 23 consisting
16 of one page for I.D.?

17 MR. LYLES: One page, yes, sir.

18 Q. Did you rely on that in formulating your opinions in
19 connection with this case?

20 A. Yes.

21 Q. And were the contents of that document applicable to
22 the work of Bostic or any other contractor on phase one
23 at Stoneledge?

24 A. Yes.

25 MR. ANDERSON: Excuse me, Your Honor. But by

1 my count that's the second exhibit 23.

2 THE COURT: No. I think he's going to come in
3 with another one. It had three pages, and then he's
4 taken one out. And that's going to be exhibit number 23
5 consisting of one page for identification.

6 Now next?

7 MR. LYLES: Yes, sir.

8 Q. I show you what I marked as number 19 and ask you if
9 you recognize that.

10 A. Exhibit 19 is three pages from the AAMA, A.A.M.A.,
11 training manual for window and door installation
12 published in 2000.

13 Q. And did you rely upon that information in
14 formulating your opinions in this case?

15 A. Yes.

16 Q. And was the contents of that material applicable to
17 the work that was performed at phase one at Stoneledge?

18 A. Yes.

19 Q. I'm showing you what I've marked as 21.

20 THE COURT: All right. So that will also be
21 for I.D. at this time?

22 MR. LYLES: Yes, sir.

23 A. Number 21 is two pages. It looks like two different
24 permits for work performed in the phase one of
25 Stoneledge. They're Oconee County permit documents.

1 Q. And did you rely on those Oconee County permit
2 documents in formulating your opinions in this case?

3 A. Yes.

4 Q. And that's two pages?

5 A. Yes.

6 THE COURT: And did I understand those are
7 records of Oconee County?

8 MR. LYLES: Yes, sir.

9 Q. Let me show you what I marked as number -- is it 20?

10 A. Yes.

11 Q. And that document is -- the number of pages on the
12 front?

13 A. Nineteen pages. These are copies of details from an
14 architect's plans prepared for phase one at Stoneledge.
15 But I will say, within this set there is a copy of a page
16 out of the Underwriter's Lab directory that was -- it's
17 actually shown on the plan, but then this is a page
18 straight out of the directory. So it would be companion
19 to those details.

20 Q. And did you rely on those details and that
21 information in formulating your opinions in this case?

22 A. Yes.

23 THE COURT: And what number is that?

24 THE WITNESS: That was 20.

25 THE COURT: Very good. Thank you, sir. How

00957

1 many pages?

2 THE WITNESS: Nineteen.

3 THE COURT: Nineteen pages?

4 THE WITNESS: Yes, sir.

5 (WHEREUPON, Plaintiff's Exhibit Number 26 was marked
6 for identification only.)

7 Q. And then finally, let me show you what's been marked
8 as 26 and ask you if you recognize that.

9 A. Yes, sir.

10 Q. And what is that?

11 A. 26 is two pages copied from the AAMA Residential
12 Asphalt Roofing Manual.

13 Q. And did you rely on the information contained in
14 that in formulating your opinions?

15 A. Yes.

16 Q. And was that information applicable to the work that
17 was done by the contractors in phase one at Stoneledge?

18 A. Yes.

19 Q. Thank you very much.

20 THE COURT: How many pages again? I'm sorry.

21 THE WITNESS: Two.

22 THE COURT: Thank you.

23 Q. Mr. Hodgkin, again, I think you testified that you
24 heard the testimony of Nathan Hornaday yesterday?

25 A. Yes, sir.

00958

1 Q. And have you reviewed the building permits, or are
2 you familiar with the building permits that were pulled
3 by Marick Home Builders in connection with phase one?

4 A. I've seen them, yes.

5 Q. And did you see the -- hear the testimony yesterday
6 about the value of those permits?

7 A. I did.

8 Q. And do you remember what that value was?

9 A. I don't recall. The earlier testimony was it varied
10 from a few thousand on some up to, I think it was,
11 seventy-five to eighty thousand on others. And the total
12 was somewhere north of a million dollars on one over a
13 half a million. Something like that.

14 Q. And you have referenced in your presentation some
15 photographs from unit thirty-three which, again, is the
16 unfinished unit?

17 A. Yes, sir.

18 Q. And I believe you heard Mr. Hornaday say yesterday
19 that Marick saw those same conditions when they arrived
20 at the site?

21 A. I think that's correct, yes, sir.

22 Q. Does the building code refer to the obligations of a
23 contractor who re-permits a project?

24 A. In chapter one of the building code, it talks about
25 if a project has elapsed a hundred and eighty days or

00959

1 more, that it shall be re-permitted. And then the permit
2 process obligates the permit holder to comply with the
3 building code.

4 Q. And is it your opinion that Marick, in pulling the
5 permits for the units that it did in phase one, was
6 obligated to comply with the building code in the
7 performance of its work?

8 A. Yes.

9 Q. In your opinion, did the conditions observed in
10 phase one by Marick, as revealed to us by Mr. Hornaday,
11 impose any obligations on Marick ---

12 (Telephone interruption)

13 THE WITNESS: I'm sorry. I should have turned
14 it off. I apologize.

15 THE COURT: Well, I tell you what. Madam
16 Clerk, would you retrieve the cell phone?

17 THE CLERK: Yes, sir.

18 THE WITNESS: Certainly. Thank you.

19 THE COURT: Okay.

20 THE WITNESS: Please remind me to ---

21 MR. LYLES: If it was a judge in Charleston,
22 they would throw you in jail.

23 THE WITNESS: My sincere apologies.

24 Q. Do you have an opinion about the obligations of
25 Marick at the time it began to work on phase one at

00960

1 Stoneledge?

2 MR. IMHOFF: Your Honor, I'm going to renew my
3 objection to my motion in limine. And I'm not sure if we
4 need to do this in front of the jury or not.

5 THE COURT: All right.

6 Mr. Foreman, ladies and gentlemen of the jury, if
7 you would, please, retire to the jury room for just a
8 moment while I take up a matter of law with the
9 attorneys. Again, do not undertake a discussion of the
10 case among yourselves in any way.

11 (WHEREUPON, the jury exited the open court at
12 approximately 2:34 p.m.)

13 THE COURT: All right. Mr. Imhoff, state your
14 objection.

15 MR. IMHOFF: Your Honor, my objection -- I'm
16 going to renew my motion in limine, and I think I'm going
17 to add to it. So I would incorporate the arguments that
18 I made with my motion in limine which were, among others,
19 were that Mr. Hodgin was going to testify, as you just
20 heard, to the ultimate legal responsibility of a general
21 contractor based on the code and based on a permit. And
22 I believe that's your province because it's a legal
23 issue. I believe it's an Oconee County inspector
24 province that should come from him. And additionally, I
25 do not believe he was qualified -- he was not qualified

00961

1 to testify as to the standard of conduct of a subsequent
2 purchaser of already completed work on a project. That
3 is very different than testifying about the standard of
4 investigation or the standard of construction of a
5 general contractor because we're talking about
6 investigation now. What should a contractor investigate?

7 THE COURT: All right. Mr. Lyles, do you
8 withdraw the question?

9 MR. LYLES: No, sir, I don't. He has been
10 qualified as an expert in a number of areas. He clearly
11 is familiar with the code, and he's clearly familiar with
12 the standards of care that are applicable to a general
13 contractor. And I think that Mr. Hodgkin is more than
14 capable and qualified to testify about what standard of
15 care applied to a general contractor who became aware of
16 building deficiencies which were open and obvious at the
17 time he took over a project.

18 THE COURT: All right. Mr. Imhoff?

19 MR. IMHOFF: Your Honor, they're talking about
20 one unit. And that's couched a little differently than
21 the question was that was asked of Mr. Hodgkin. It was,
22 "What are his obligations? What are his legal duties as
23 a general contractor or pursuant to the code?" It was a
24 different question than what Mr. Lyles just said. Again
25 ---

00962

1 THE COURT: Well, he'll restate his question to
2 the standard to meet necessary, if he can.

3 MR. IMHOFF: Well, I think ---

4 THE COURT: In other words, I think -- again,
5 I'm not going to reverse my ruling on -- well, I think it
6 was the Shields versus the Highway Department case where
7 they said that if a witness who is qualified by reason of
8 background, training, and experience to give an opinion,
9 which is an expert, and he doesn't necessarily have to be
10 licensed or degreed. But yet if his qualifications are
11 such that he is qualified as an expert -- in other words,
12 he knows more than the rest of us do -- I think that's
13 what the definition under the rules are as an expert
14 about certain subjects -- then he is entitled to give his
15 opinion as a fact witness as to -- what is it? -- as to
16 his experience in that particular area. Would it be as
17 much as reckless homicide or reckless disregard, which
18 was the case, I think, in the Shields case? So I am
19 going to permit him to say what he wants to. And if you
20 don't agree with him, that's fine. That's why we have
21 cross-examination. And you can just do your, you know,
22 what you would do in your profession even though you're
23 not an engineer or a contractor.

24 MR. IMHOFF: Your Honor, is that ruling
25 qualifying him to testify as to what inspection a general

00963

1 contractor should do when he ---

2 THE COURT: If he knows. I mean, if he knows
3 from -- what is it? -- doing -- what is it? -- consulting
4 or whatever with engineering and science. I mean C.S.E.
5 Is that it?

6 THE WITNESS: Yes. Construction Science and
7 Engineering.

8 THE COURT: All right. If he does that as a
9 part of his profession or calling, yes. Now, let's see.
10 If we have to ---

11 MR. IMHOFF: He was not qualified for that,
12 Your Honor. I looked for that specifically.

13 THE COURT: Well, he's not qualified for what?

14 MR. IMHOFF: As to the standard of care of a
15 general contractor who purchased a unit that was already
16 majority constructed. That is very different than the
17 standard of care of an original contractor. I mean, if
18 you're an original contractor, you build the building in
19 a certain way. If you buy a building, you buy a condo
20 down at Myrtle Beach that's not quite finished, it's a
21 completely different analysis ---

22 THE COURT: That's a wonderful -- what is it?
23 -- argument. And you can argue that to the jury.

24 MR. IMHOFF: Okay.

25 THE COURT: I mean, again, let's understand

00964

1 something. There's a difference between admissibility
2 and credibility. Now, as I understand, I think -- what
3 is it? -- Rule 702, if scientific, technical or other
4 specialized knowledge will assist the trier of facts to
5 understand the evidence or to examine a fact at issue, a
6 witness qualified as an expert, not by degree, not by --
7 what is it? -- certification, but expert by knowledge,
8 skill, experience, training or education, may testify
9 thereto in the form of an opinion or otherwise.

10 I find that this witness is -- as far as
11 construction aspects of our industry or whatever, yes, he
12 is qualified under 702. So I overrule your objection.
13 In order to -- I think you've now made it at the time
14 he's testifying, so I don't think you have to renew it.
15 In fact, I'm going to rule that you do not need to renew
16 it anymore. It was a motion in limine before the
17 testimony. You did have to renew it at the time of the
18 testimony. I find that you've done that.

19 MR. IMHOFF: Thank you, Your Honor.

20 THE COURT: Yes, sir. Very good. Thank you.

21 Anything else?

22 (No response)

23 THE COURT: All right. We'll ask the jury to
24 join us.

25 (WHEREUPON, the jury entered the open court at

00965

1 approximately 2:42 p.m.)

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

4 You may proceed, Mr. Lyles.

5 Q. Mr. Hodgins, I think we were looking at the
6 photographs on the wall. Do you recall that as being an
7 unfinished unit number thirty-three?

8 A. Yes, sir.

9 Q. And do you recall Mr. Hornaday's testimony about
10 Marick's observations of those conditions when they got
11 on the site in 2005?

12 A. Yes, sir.

13 Q. Would those open and obvious conditions have imposed
14 upon the re-permitting contractor, that is Marick, an
15 obligation to repair the window installation deficiencies
16 which led to those conditions?

17 A. Yes, I believe so.

18 Q. And what would impose that obligation on the
19 contractor?

20 A. The open and obvious evidence of damage to the wall
21 assembly that would be a direct indication that the walls
22 are not performing as intended by the code to provide
23 weather resistance.

24 Q. And would the observation of those conditions have
25 triggered an obligation on the part of the contractor to

00966

1 do further investigation in other units of the project?

2 MR. IMHOFF: Your Honor, I'm going to renew the
3 same objection.

4 THE COURT: Overruled.

5 MR. IMHOFF: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 A. Can you repeat the question?

8 Q. Sure. Would the observation of these conditions in
9 the unfinished unit have triggered an obligation on the
10 part of the general contractor to do a further
11 investigation into other units at the project?

12 A. I would think certainly to some degree. I don't
13 know if he'd have to open up every window at the project.
14 But when you see these types of conditions, I think it
15 would at least warrant an investigation to determine if
16 the window installer -- would have to look at other
17 windows in finished units to see if it was installed the
18 same way and if the same types of damages existed. And
19 based on what he found there, that would dictate how much
20 additional investigation might be necessary.

21 Q. Would the same thing be true for the conditions that
22 you observed at the doors in the unfinished unit?

23 A. Yes.

24 Q. And if the general contractor failed to do that
25 level of investigation, do you think that would have been

00967

1 a breach of the applicable -- the standard of care
2 applicable to the general contractor at the time?

3 A. Yes.

4 Q. Do you recall Mr. Hornaday's testimony about decks
5 and porch leaks?

6 A. Yes.

7 Q. And what do you recall about that?

8 A. That he had observed water damages in the area of
9 the balconies.

10 Q. And would the observation of water damage and
11 continuing water problems as described by Mr. Hornaday
12 trigger an obligation on the part of a licensed general
13 contractor to investigate the source of those water
14 leaks?

15 A. Yes.

16 Q. And did you hear Mr. Hornaday's testimony about the
17 extent of Marick's investigation?

18 A. Yes.

19 Q. And what was that?

20 A. That in the areas that they knew that there were
21 problems, they had called a waterproofing contractor.
22 And they simply put a waterproof coating on the top of
23 the concrete surface and that that seemed to mitigate
24 that issue.

25 Q. Did you see any evidence that that had occurred?

00968

1 A. Yes.

2 Q. That is the application of the waterproofing
3 material?

4 A. I think in a few places. The more dominate
5 condition is the original condition that does not include
6 any type of waterproofing on top of the concrete.

7 Q. In those areas where you saw the waterproofing on
8 top of the concrete, in your opinion, had the
9 waterproofing been applied properly?

10 A. Well, at the time I saw it, I would say it was not
11 functioning as an adequate repair. And it certainly
12 wouldn't be a long-term repair. It would be more termed
13 a band-aid type repair.

14 Q. Did the application of waterproofing membrane by
15 Marick Construction address the root cause of the leaking
16 problems in your opinion?

17 A. No. It would slow it down, but it wouldn't
18 eliminate the problem.

19 Q. Do you believe the response to the information that
20 Marick had, as testified to by Mr. Hornaday, that the
21 application of a liquid waterproofing was -- comported
22 with the standard of care applicable to a general
23 contractor?

24 A. I'm not certain. I don't think I've investigated
25 enough the application of the waterproofing. I know that

00969

1 there are still problems even in those areas where
2 waterproofing was installed. So I don't believe it met
3 the standard, but I haven't investigated it thoroughly
4 enough to say to a reasonable degree of certainty.

5 Q. Would the water infiltration on the porches and
6 decks, in your opinion, that Mr. Hornaday testified
7 about, have triggered an obligation on the part of the
8 general contractor to actually investigate the source of
9 those water infiltration problems?

10 A. Yes.

11 Q. And did you see any evidence that Marick actually
12 performed a suitable investigation of the porches and
13 decks in order to ascertain the source of the water
14 infiltration problem?

15 A. No. I think the testimony was just that he had a
16 waterproofing contractor address the known issues.

17 Q. Do you remember Mr. Hornaday testifying about
18 removal of the ceiling boards and looking up underneath
19 the porch?

20 A. I believe so, yes.

21 Q. And would that have been, in your opinion, a
22 sufficient investigation to ascertain the source or cause
23 of the water infiltration that he'd observed?

24 A. Not all by itself. I mean, I think you need to see
25 the top side to see what's allowing the water to come

00970

1 through the ceiling and cause damage. So it would be
2 additional symptoms of the problem, but it wouldn't
3 necessarily identify the cause of the problem.

4 Q. In your opinion, is it important to identify the
5 cause of a problem, of a leak problem, in order to
6 determine how best to fix it?

7 A. Yes, sir.

8 Q. And you saw no evidence that Marick did that? That
9 is, ascertain the source of the water infiltration
10 problems on those porches and decks?

11 A. I would just say if they did, it wasn't adequate.

12 Q. And it didn't fix the problem?

13 A. No, sir.

14 Q. You heard Mr. Hornaday testifying yesterday about
15 water infiltration into some of the basements?

16 A. Yes, sir.

17 Q. Do you recall that?

18 A. Yes, sir.

19 Q. Did the information that Mr. Hornaday communicated
20 to the Court yesterday about the nature of those leaks,
21 in your opinion, trigger a duty on the part of Marick
22 Construction to investigate problems with the damp-
23 proofing of the foundation walls?

24 A. Yes.

25 Q. And did you hear any evidence that Marick had

00971

1 fulfilled that duty?

2 A. Well, they -- similar to the balconies, they did say
3 that -- or the testimony was that there were stones
4 removed from the front elevations. There was a
5 waterproofing contractor called out to the site. And I
6 think even one of the photographs that we looked at
7 earlier showed evidence of the Bituthene material that I
8 think may have been part of that effort. So I think
9 there was some effort made, but it wasn't a complete
10 effort, and it wasn't effective.

11 Q. And did the effort that was made, in your opinion,
12 comport with the standard of care that was applicable to
13 a general contractor?

14 A. No.

15 Q. So the effort to address the water infiltration at
16 the foundation walls, in your opinion, would have been a
17 breach of the applicable standards of care that Marick
18 owed at that time?

19 A. Yes.

20 Q. And in regard to that repair, is it your testimony
21 that the repair that you observed out there -- and I
22 think we looked at the photograph earlier -- had been
23 incorrectly made?

24 A. Yes.

25 Q. And was Marick, as the re-permitting contractor,

1 obligated to perform work at this project in conformance
2 with the code?

3 A. Yes.

4 Q. The damages that were reflected in the photographs
5 that we've looked at over the last day ...

6 A. Yes, sir.

7 Q. And this would be the damages -- if you could focus
8 just for a minute on the damages on the porches and the
9 decks.

10 A. Okay.

11 Q. Do you have an opinion as to when those damages
12 began to occur?

13 A. With the defects that allowed the water to penetrate
14 into these moisture-sensitive areas where the wood
15 framing is and so forth, it would have been present at
16 the time that it was originally constructed. So the
17 first rain event, you would have rain water that would
18 likely be able to penetrate those areas. But as far as
19 physical damage, I mean, that would -- it would start at
20 that point. And then, you know, if you got a little bit
21 of water in and it dried out, you wouldn't necessarily
22 have rotted wood. It can take some wetting and drying to
23 a certain extent. But then each time it rains, the path
24 of the water is extended as the path becomes more worn,
25 so to speak. And the path -- the water can penetrate

00973

1 deeper each time it rains, depending on the rain event.
2 So over time, those damages developed to the point that
3 we saw in 2009 through up until this year. So it slowly
4 developed over that whole range of time.

5 Q. You got out to the site, I think you said, in 2009?

6 A. Yes, sir.

7 Q. A number of your photographs were taken in 2009?

8 A. That's correct.

9 Q. Do you have an opinion as to whether or not the
10 damages that you observed and photographed were
11 substantially in evidence in September of 2008?

12 A. I would think so, yes.

13 Q. Is that your opinion to a reasonable degree of
14 certainty?

15 A. Yes, sir.

16 Q. Knowing what you know today, do you have an opinion
17 as to whether or not the building envelopes, to include
18 the roofs, the walls, the porches and the decks, were in
19 good condition in September of 2008?

20 A. I would think not.

21 Q. Do you have an opinion?

22 A. They would not be in good condition. They would
23 have had a range of damages similar to what we
24 photographed in 2009, but some a slightly lesser extent.

25 Q. So it's your opinion to a reasonable degree of

00974

1 certainty that it's more likely than not that those
2 building envelope components were not in good condition
3 in September of 2008?

4 A. That's correct.

5 Q. Would you describe for the jury, based on your
6 substantial experience, the degree of damage at
7 Stoneledge in phase one? Relative to other projects that
8 you've had, is it significant? Moderate? How would you
9 describe it?

10 A. Well, I have seen other projects with similar
11 damage. But in terms of the extent of damage, the damage
12 is pretty widespread on these buildings. You could have
13 localized damages on other projects that might be limited
14 to just walls or areas below windows. As far as the top-
15 to-bottom damage where you've got damage at the roofs,
16 you've got damage with the walls, balconies, the
17 foundation, it's pretty widespread. So I would say it's
18 more comprehensive in terms of the damage I see on most
19 projects. But I do have other projects where I have
20 pretty extensive rot and water intrusion.

21 Q. Mr. Hodgin, in addition to doing your investigation
22 and surveying the project, what else did the homeowners
23 association ask you to do?

24 A. Prepare a repair scope to fix the buildings.

25 Q. And did they put any sort of limitations or give you

1 any expectations about the nature of the repair scope?

2 A. The expectation would be just to address all the
3 problems that we've identified and make the buildings
4 safe and compliant with the code.

5 Q. Have you done that?

6 A. Yes.

7 Q. In doing your repair scope -- is it called a scope
8 of repair?

9 A. Yes.

10 Q. In doing your scope of repair -- is it called a
11 scope of repair?

12 A. Yes.

13 Q. In doing the scope of repair, did you keep the
14 owners' objectives in mind?

15 A. Yes.

16 Q. Did the owners ask you to implement in your scope of
17 repair any betterments or enhancements for them? That
18 is, things better than what they have today from a
19 material standpoint.

20 A. No.

21 Q. Did the owners place any responsibility on you for
22 the scope of repair other than asking you to do it?

23 A. Well, I don't know that they needed to place any
24 responsibility. As a design professional, you would have
25 your own set of independent responsibilities to meet the

00976

1 code and make sure that you're adequately addressing the
2 problem. So I think our repair scope does that.

3 Q. And do you think that the owners are relying on you
4 to do that?

5 A. Yes.

6 Q. And have you agreed to allow them to rely on you to
7 do that?

8 A. Yes.

9 Q. And have you -- in preparing your scope of repair,
10 did you use your skill and qualifications as an engineer?

11 A. Yes.

12 Q. And does the repair scope contain a representation
13 by you that, as a licensed engineer in South Carolina,
14 it's your repair scope?

15 A. Yes.

16 Q. Are you willing to, with regard to the repair scope
17 that you did, stand behind it with respect to these
18 owners?

19 A. Yes.

20 Q. And what does that mean?

21 A. That I would take responsibility for the completed
22 repairs. And if there's any issues in the performance of
23 the buildings after the repairs are completed, then if
24 it's a design-related issue that C.S.E. would be
25 responsible for that issue.

00977

1 Q. And obviously one way to repair problems like these
2 is to tear everything down and simply rebuild it?

3 A. Correct.

4 Q. Did you recommend that?

5 A. No.

6 Q. And if you would, just generally tell the jury how
7 you approached the development of your repair scope?

8 A. Well, you would look at each of the problems
9 individually first. The roof repairs would be one
10 component. The balcony repairs would be another
11 component. The below-grade waterproofing would be
12 another component. Exterior walls and window damages
13 would be another component. The life safety issue with
14 the fire-rated walls is certainly important. So we had
15 individual repair scopes for those items. We felt like
16 there was enough salvageable completed components -- the
17 interiors are fine. There's beautiful interior work we
18 hope to leave completely in place. All the finished
19 drywall interior should be able to stay in place. We
20 have to make an assumption that the completed fire-rated
21 walls on the interior spaces are adequate and complete.
22 We're not going to destruct interior walls looking for a
23 problem. We feel like that there's sufficient evidence
24 that those are covered with drywall. There are no
25 obvious breaches. So we'll look at the places that we

00978

1 know are issues. And when we put all of those together,
2 we came up with a repair scope that I would say when you
3 combine all those individual repair scopes is a pretty
4 comprehensive fix that requires a lot of removal of
5 siding. There might be a few small areas of walls that
6 you could salvage, but I don't think many because you
7 don't have a confidence of where there's weather barrier,
8 where there's not weather barrier, where there's fire-
9 rated gyp, where there's not, the extent of the damage on
10 the O.S.B. and the gypsum. So the repair scope is
11 essentially to take the materials on the exterior walls
12 off -- the stone and the siding have to come off so we
13 can make the repairs -- and then put it all back properly
14 with proper flashing and waterproofing details.

15 Q. We've got a few repair slides, Mr. Hodgkin. If you
16 could just show the jury what you're anticipating.

17 A. Could you turn the lights off maybe? And I need my
18 pointer.

19 Q. Uh oh.

20 A. I got it.

21 Q. Jason took it.

22 A. This is a ceiling of a balcony. I think this is
23 just showing how we're going to terminate the stone below
24 the ceiling with a soft joint at the bottom of that
25 ceiling.

00979

1 I can't see this very well. But I think essentially
2 what they're showing is stone that's going to terminate
3 above the balcony. Like if there's pillars or at the
4 walls, we're going to hold the stone up. We're going to
5 have proper waterproofing details with flashing that's
6 going to allow the stone to drain out of the bottom of
7 the stone onto the top of the balcony. And there'll be
8 waterproofing details on the balconies.

9 Another detail at another portion of the ceiling
10 where the soft joint is located.

11 Another drainage detail at a balcony. I think this
12 time with siding, it looks like.

13 That's hard for me to see. I think it's another
14 ceiling detail. You can tell when you look at all these
15 details, it's all about the terminations of these
16 different products. It's all about the details of how
17 different things intersect with each other to make sure
18 that the water is properly managed and doesn't get to
19 places that are undesirable that can cause structural
20 issues or wood rot. So that's essentially the concept of
21 the repair is to protect the frame or the envelope of the
22 building.

23 This is an outboard edge, I think. And there's a
24 drip edge. And I think this is a balcony edge.

25 I think this is a balcony intersection again and the

00980

1 drainage details on the balcony.

2 Q. In these details are you're showing the repair
3 contractor how the condition is supposed to be
4 constructed?

5 A. Yes.

6 Q. During the repair?

7 A. Yes, sir.

8 Q. Okay.

9 A. This is a series of illustrations that were put
10 together by Mr. Metcalf, our architect. So basically,
11 it's almost like a storybook illustration for a
12 contractor to follow step-by-step flashing details for
13 different scenarios.

14 Q. Is this windows? Doors?

15 A. It looks like a window. That might be a door. You
16 can see the door slide right there.

17 And this is a balcony pier system. So you can see
18 -- here's the finished part when you get done with it.
19 Here's when we take it apart to correct the damages. And
20 then here's just step-by-step how to put it back together
21 with the flashing details.

22 Same thing.

23 This is the foundation repair showing -- this is a
24 concrete wall that will have waterproofing membrane that
25 comes down the wall to this sub-grade drain system.

00981

1 Q. Does your foundation repair contemplate excavating
2 down in front on the driveway side down to the bottom of
3 the foundation walls?

4 A. Yes.

5 Q. And completely providing the damp-proofing that's
6 required by the code?

7 A. Yes.

8 I think that's a base-of-the-wall detail that shows
9 flashing detail that is just above grade at the side of
10 the building.

11 Q. Okay.

12 MR. LYLES: Cut the lights back on, if you
13 would.

14 Q. Now, with regard to this repair, Mr. Hodgins ---

15 A. Yes, sir.

16 Q. --- let's start at the roof. Are you calling for
17 the removal and replacement of all of the shingles?

18 A. No. We found problems with the main roof areas.
19 They're not nailed properly, and they have some problems
20 on the edges, but I think substantially they're serving
21 their intended function to keep water out of the
22 building. We do have on the main roofs a repair detail
23 just around the edges just to get the eave and rake
24 condition right at the metal tip edge and the felt. And
25 then the only roofs that'll be replaced are those lower

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1 roofs that have all these problems with the felt.
2 There's never been a double layer of felt to be found
3 that's required on that lower slope. And they're small,
4 and they've got termination details with side walls and
5 head walls. So those will be replaced in their entirety,
6 but the main roofs will stay intact.

7 Q. And the siding, what are you going to do with the
8 siding? Let's focus on the cedar siding first.

9 A. The siding has to come off on every single tenant
10 separation wall. We've got to see what's going on with
11 the fire-rated wall assemblies to get the gyp right, to
12 repair any damage and then put weather barrier over the
13 wall and then put the siding back on.

14 Q. And how about on the non fire-rated walls?

15 A. On those, I mean, like I said, there might be some
16 areas you could find that are protected. Like within the
17 screened-enclosed porch, we could leave some siding in
18 place. But for the most part, it's all exposed, and you
19 have questions about the flashing and the weather-
20 resistant barrier issues. I think it's coming off. We
21 have to take it off anyway for other reasons. Around
22 every window we're going to have to take it off. So if
23 you connect the dots, there's not a whole lot to save.

24 Q. I was going to ask you next about windows. What are
25 you going to do with the windows and doors, exterior

1 doors?

2 A. They need to be removed and reset into their
3 openings. So we take that window out. We can set it
4 aside. We can save the window. We'll fix any damage to
5 the O.S.B., take that black plastic material off,
6 properly flash the opening, put the window back in the
7 same opening.

8 Q. So you don't contemplate giving them all new
9 windows. They're going to have the same windows; they're
10 just going to be properly installed?

11 A. Correct.

12 Q. What are you going to do below or at around the
13 stone areas? Let's say the stone areas on the buildings
14 itself, not the porches and decks.

15 A. Well, the stone between the balconies and the front
16 walls, the only stone that's left is what's on those side
17 walls. That's got to come off because that's the fire-
18 rated wall where there's so much damage. There's really
19 not any stone to save that I'm aware of.

20 Q. So all the stone's going to come off?

21 A. Yes.

22 Q. And then what are you going to do with the porches
23 and decks?

24 A. The framing -- you saw the pictures of the framing.
25 The trusses and the subfloor at the outboard side and

1 next to the heated wall where you have a unit are
2 significantly damaged. And we're taking all of that
3 stone off. And you saw the pillars or the framing of the
4 columns. Those are extensively damaged. To me, I think
5 it's easiest just to remove the balconies and reconstruct
6 the balconies with proper pressure-treated wood framing.
7 And we'll put a sloped framing system on the back of the
8 building. Everything else is pretty much torn off. So
9 it would not be a lot more effort to just reframe it and
10 have a new balcony.

11 Q. And I think you've already testified that you
12 anticipate repairing the foundation walls?

13 A. Yes.

14 Q. And that's excavating out and waterproofing
15 properly?

16 A. Yes.

17 Q. Are you satisfied that that is the work that needs
18 to be done in order to ensure these owners that they've
19 got units that are code compliant and don't leak?

20 A. Yes.

21 Q. And you heard the testimony of Mr. Bostic, I think,
22 this morning saying that's what he wanted these owners to
23 have?

24 A. Yes. When I testified yesterday -- or maybe it was
25 today. But we've tried limited repairs on the emergency

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1 work that we've done, and it's been very difficult. It's
2 been hard to address the problems in a localized way.

3 And so I feel like that helps support the comprehensive
4 repair scope that we think is necessary.

5 Q. Can you say for certain that you know what the
6 degree of damages behind walls, even walls that you
7 haven't looked at?

8 A. No, I mean, I don't. I can't say. You're not going
9 to know that until you tear it apart.

10 Q. Have you made some assumptions based on your
11 experience in the process of remediation and in your
12 expert work ---

13 A. Yes.

14 Q. --- about the degree of damage that you're likely to
15 find?

16 A. Yes.

17 Q. And have you incorporated those assumptions into
18 your scope of repair?

19 A. Yes.

20 Q. And that's the repair that you believe is necessary?

21 A. Yes, sir.

22 Q. The scope of repair was developed by your company
23 when?

24 A. I believe 2010.

25 Q. If you could go back in time to October of 2004 --

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1 and I think that the testimony was that that's when
2 Bostic left the job site?

3 A. Yes, sir.

4 Q. Knowing what you know today, do you know how
5 different your repair scope would have been then compared
6 to what it is today?

7 A. The allowances that you have -- and allowances are
8 just -- because I don't know how much damage there's
9 going to be to the O.S.B. and the framing, I have to make
10 guesses how much -- how many square feet of O.S.B. and
11 how many linear feet of framing. Those would go down
12 because the water damage would be less substantial in
13 2004. Certain things wouldn't change at all. The need
14 for the fire-rated walls to be correct would not change.
15 The need for every window to be removed and reset with
16 proper flashing would not change. The waterproofing of
17 the foundation walls would not change. The balcony
18 reconstruction, I don't think would change. There may
19 have been -- you may have had some framing to salvage in
20 the balconies in 2004. I don't know. But other than
21 that, it would essentially be the same fix.

22 Q. Are you satisfied that the scope of repair that you
23 -- let me -- Mr. Hodgins, I'm going to hand you a document
24 and ask you if that's your scope of repair?

25 A. Yes. And I was incorrect on the date. It's January

1 of 2011.

2 Q. And does that scope of repair contain -- what does
3 it contain? Not item by item, But generally speaking,
4 what does it contain?

5 A. There's five tabs. And what we have as tab number
6 one is our written scope of repairs. That's all the text
7 that describes each section of repair. Two is the
8 details like you saw up on the screen. Three are
9 building code references. Four is industry standards,
10 and five is manufacture instructions.

11 Q. And do you believe that the contents of that scope
12 of repair are necessary so that the contractor who's
13 going to implement this repair does a thorough and
14 correct job of it?

15 A. For us to be involved with the project, yes.
16 Someone else might accept less, but that's what our scope
17 standard is.

18 Q. And do you know whether or not any contractors have
19 actually used this scope of repair to come up with a
20 price?

21 A. Yes.

22 Q. And who are those contractors?

23 A. Watkins Services and Trehel.

24 MR. LYLES: Your Honor, I'd like to mark this.

25 (WHEREUPON, Plaintiff's Exhibit Number 27 was marked

1 for identification only.)

2 Q. Mr. Hodgins, the scope of repair that you and I have
3 been just talking about has now been marked as exhibit 27
4 for identification.

5 A. Yes, sir.

6 (WHEREUPON, Plaintiff's Exhibit Number 28 was marked
7 for identification only.)

8 Q. Mr. Hodgins, now I'm going to show you what I've
9 marked as exhibit number 28 for identification and ask
10 you to identify that for me.

11 A. Exhibit number 28 is essentially an addendum to 27.
12 On exhibit 27, we were still trying to figure out what we
13 might be able to do on the foundation repairs, the below-
14 grade waterproofing repairs. We knew that that would be
15 an expensive undertaking to excavate the front walls.
16 And we were looking at some modern technology, if you
17 will, to have an alternate repair that we thought might
18 be less expensive. It didn't pan out. We had concerns
19 about the long-term maintenance of this system that we
20 were investigating. And so exhibit 28 is the below-grade
21 waterproofing repair that we ultimately recommended,
22 which includes excavation and the waterproofing membrane
23 on that wall.

24 Q. And that also has details and specifications
25 necessary for the waterproofing repair of the foundation

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1 wall?

2 A. Yes, sir.

3 Q. And do you know whether or not that document has
4 been used by a contractor to develop a price?

5 A. I believe it has been used by both Watkins and
6 Trehel.

7 Q. With those scopes of repair, are you satisfied that
8 you've done what your client has asked you to do?

9 A. Yes.

10 Q. Are you satisfied that you can stand behind that
11 scope of repair if it's recommended in full by a
12 contractor?

13 A. Yes.

14 Q. And you can be held accountable to these owners for
15 the repair?

16 A. Yes.

17 Q. Is there anything short of that repair that you
18 would recommend and still represent to these owners that
19 their problems are going to be fixed and that their
20 buildings are going to be code compliant and comfortable
21 and dry?

22 A. No, not that I know of. I mean, I qualified my
23 earlier answers to say as it goes through the process, if
24 there's small areas we can salvage, we'd certainly try to
25 do that. But, no, this is the repair scope that I feel

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1 is necessary to meet the code and make the buildings safe
2 and dry.

3 MR. LYLES: Your Honor?

4 THE COURT: Yes, sir.

5 MR. LYLES: May we have just a quick sidebar?

6 THE COURT: Certainly.

7 MR. LYLES: Thank you.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 MR. LYLES: Your Honor, the documents that I
11 have moved to have marked for identification and I have
12 talked about to Mr. Hodgin, I would seek to move those
13 documents into evidence as a group or independently. And
14 I understand ---

15 THE COURT: Well, you have them marked for
16 identification Plaintiff's Exhibit 27 and Plaintiff's
17 Exhibit 28; is that correct?

18 MR. LYLES: Yes, sir.

19 THE COURT: All right. They've already been
20 marked for identification. I understand there's no
21 objection to the identification of the exhibits as being
22 relied on, if not admitted into evidence itself to go to
23 the jury. That decision will require further argument.

24 MR. LYLES: Yes, sir.

25 THE COURT: All right. Understanding then that

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1 Plaintiff's Exhibit 27 for identification and 28 for
2 identification has been authenticated for consideration
3 as evidence.

4 MR. LYLES: There were a number of other --
5 those other documents that I had for identification,
6 those pamphlets and standards. Not the code, but I think
7 it was ---

8 THE COURT: Aren't they also identified?

9 MR. LYLES: Yes, sir.

10 THE COURT: I mean, maybe for identification
11 ---

12 MR. LYLES: Yes, sir.

13 THE COURT: --- that would be Plaintiff's
14 Exhibits 19, 20, 21, 23, 24, 25, 26 for identification.
15 But Plaintiff's Exhibit Number 22 consisting of eighty
16 pages is admitted into evidence.

17 MR. LYLES: Yes, sir.

18 THE COURT: All right. Any objection or
19 anything you want to put on the record on that?

20 (No response)

21 THE COURT: Very well.

22 (WHEREUPON, Plaintiffs' Exhibit 22 was previously
23 admitted into evidence.)

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, as far as the scheduling, I need a

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1 break with the attorneys. And then we'll see how we'll
2 proceed because I have not forgotten that we're going to
3 break a little bit earlier today.

4 All right. If you would, please, though, retire to
5 the jury room while I do that.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:17 p.m.)

8 THE COURT: All right. I still want to reserve
9 determining whether or not the exhibits 27 and 28 will be
10 admitted into evidence over the objections of the
11 defendants. Now, I have looked at the Allegro case. And
12 there, of course -- what is it? -- they didn't reach the
13 question because they said it wasn't preserved. I've
14 looked at another case. That was a Court of Appeals.
15 But a Supreme Court Case, Fields versus J. Haynes Waters
16 Builders, 376 S.C. 545. And, again, they, although they
17 did not reach the decision of whether or not it was a
18 report by the contractors on the general standard of care
19 that went to the jury, it was improperly admitted or
20 admitted in error. But they decided that even if it was
21 -- and I think that's what the footnote says for argument
22 on the issue -- we decided -- without deciding that the
23 trial court erred in admitting Wilson's report. So,
24 again, we don't have a decision as such. And I have yet
25 to find the continuing testimony identification.

1 Anyway, I'll be candid with you because I've looked
2 at some old cases. And I think it was Jenkins versus
3 Dixie Specialty Company. And this is, of course, before
4 we adopted the rules of evidence. In there they say that
5 the admitting into evidence of a written estimate of the
6 cost repairs by reason of flooding by the contractor was
7 not error. And, of course, they did it under -- well,
8 not the old, but it's still the business record statute,
9 Section § 19-5-510. And I'm sure that under 803(18) that
10 -- what is it? -- that probably -- and I shepherded it
11 the best I could. We don't have the old red books where
12 we used to shepherdize cases, but -- and I understood --
13 and now we've got West Law that other people understand.
14 But we shepherdized and we couldn't find that there was
15 anything that would suggest that it has been overruled.
16 So, I'll be honest with you. At this time if it is
17 established that -- and it has been -- that it was
18 prepared -- well, 27 and 28 -- let me be sure. I haven't
19 -- I'm not that familiar. Which one was prepared by this
20 witness?

21 MR. LYLES: Both of those.

22 THE COURT: Both of them? They're actually his
23 product?

24 MR. LYLES: Yes, sir.

25 THE COURT: And it's done in the course of his

1 business?

2 MR. LYLES: Yes, sir.

3 THE COURT: As a consultant or whatever on
4 construction and things of that nature?

5 MR. LYLES: Yes, sir.

6 THE COURT: That and relying on Jenkins versus
7 Dixie Speciality, then I would find that it was
8 identified by the witness who had personally prepared it
9 shortly after the flooding occurred as part of his
10 business, and that would be acceptable. So now, I'm not
11 telling you that without ruling on it because I see Mr.
12 Imhoff is standing.

13 I'll be glad to hear you on it now, but I'm not
14 going to rule on the record because it's in, unless you
15 want to -- if you want to -- it's an exhibit for
16 identification. In other words, it's been authenticated,
17 so you can use it on cross-examination. But the question
18 comes at the time, at the end of all of the evidence, I'm
19 going to entertain a motion to have them admitted into
20 evidence. And we'll decide the ultimate issue about
21 admission of it for presentation to the jury at that
22 time. Now, you can argue now if you'd like to, but ...

23 MR. IMHOFF: Are you looking at me, Your Honor?

24 THE COURT: Yes, sir.

25 MR. IMHOFF: My question is really one of

1 clarification. Mr. Lyles had said earlier that he agreed
2 that some of the standards, codes, some of that from
3 2012, or whatever it is, probably shouldn't be in there.
4 I didn't know if he'd removed that or not. So I'm asking
5 to clarify it. And I guess ---

6 THE COURT: And, again -- I tell you what. We
7 realize now that we're going to be breaking probably
8 pretty soon, depending on if you want to start your
9 cross-examination today and be out of here in an hour.
10 Or would you rather go ahead and make an explanation
11 to them that tomorrow is -- I'm not going to meet
12 tomorrow, not convene tomorrow. Is that the
13 understanding?

14 MR. BELCHER: That's right, Your Honor.

15 THE COURT: All right. And that we'll come
16 back Monday. So you'll have some time to -- I wouldn't
17 want to interrupt cross-examination for a whole weekend.

18 MR. BELCHER: Right.

19 MR. LYLES: Your Honor, we have a -- Mr. Hodgins
20 has a scheduling conflict for Monday. He's got a
21 deposition on Tuesday, and he's got a lawyer coming in
22 from out of town, I think, Monday to prep him for his
23 deposition. So I don't know that he is going to be
24 available much Monday.

25 THE COURT: Well, he's certainly not going to

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1 be available Tuesday.

2 MR. LYLES: Not Tuesday.

3 THE WITNESS: Wednesday, Thursday, Friday I'm
4 in Florida.

5 MR. BELCHER: Did you put him under subpoena?

6 MR. LYLES: He's here.

7 THE COURT: Do what, now?

8 MR. LYLES: I hadn't heard that before. Just
9 now, Your Honor.

10 THE COURT: That's the first I've heard of it
11 too. And I'm afraid I'm in deep trouble.

12 MR. BELCHER: Well ...

13 THE COURT: Because what we will do is we will
14 adjourn whenever we finish this afternoon so the jury can
15 be out by four thirty. But it looks like we're going to
16 be reconvening tomorrow.

17 MR. LYLES: Do you have any time on Monday?

18 THE WITNESS: I would think so. I mean, I'm
19 not sure what the schedule is for the attorney coming up
20 from Florida.

21 THE COURT: All right. I might have to take a
22 break to make a call.

23 MR. BELCHER: I'll be done with my cross. If
24 Mr. Lyles is done -- which it sounds like he's coming to
25 an end here -- I'll be done today. And I can't imagine,

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1 -- I mean, I don't want to prejudice anyone else as to
2 how long they want to take with him, but I'm not going to
3 spend more than hour with him.

4 THE COURT: Well, about an hour is what we're
5 going to have ---

6 MR. BELCHER: Right.

7 THE COURT: --- just as a matter of just move
8 it.

9 MR. BELCHER: And if I need to move up, move it
10 along a little bit faster and talk faster to let other
11 people ---

12 THE COURT: No, well, we don't want to do that.

13 MR. LYLES: Is there -- if we reconvene Monday,
14 could you -- do you have two hours Monday morning? I'm
15 just trying to figure out ---

16 THE WITNESS: I would certainly think so.

17 MR. IMHOFF: Could we find that out on a break,
18 Your Honor?

19 THE COURT: Yeah. All right. We'll take a
20 very short break. Y'all see if you can't work out the
21 logistics of it.

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

24 THE COURT: All right. Ladies and gentlemen,
25 thank you very much. And if you do still need to carry

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1 on a conversation, take it outside. But we need to get
2 this jury out of that jury room and on their way. And
3 then we'll take up all the matters we need to this
4 afternoon.

5 All right. Anything from the plaintiff before we
6 bring the jury back?

7 MR. LYLES: No, sir.

8 THE COURT: From the defendant?

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

10 THE COURT: Now, I am going to bring them back
11 and release them until nine o'clock Monday morning. All
12 right. Very good.

13 Ask the jury to join us, please.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:30 p.m.)

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

18 Mr. Foreman, ladies and gentlemen of the jury, I've
19 got good news and bad news. The good news, you're going
20 to get out early this afternoon. In fact, I'm going to
21 let you go in a few minutes. The bad news is we've run
22 into a little scheduling problem for tomorrow. So I am
23 going to not only give you an early out today, but also a
24 day off tomorrow. Now, we will come back, though, at
25 nine o'clock if that's -- you can so that we'll not catch

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1 up but at least get a better start.

2 And for the benefit of everyone here and
3 participating, I will be here at nine o'clock, maybe a
4 little bit earlier. And we will start at nine. So if
5 you're not here and you don't have anybody here for you,
6 you might have to make some arrangements for a
7 transcript.

8 But the point is we will start at nine because I
9 appreciate your patience this week, and we will try to
10 move on quicker with this. Now, again, we needn't worry
11 about the case until nine o'clock Monday morning. But at
12 that time, come back and we'll see if we can't complete
13 it. The plan is to complete it entirely next week, early
14 next week if possible.

15 All right. With that, I wish you all a very -- you
16 say Happy Halloween, I guess. But have a good Halloween
17 regardless. And I do thank you for your patience with
18 the Court today. So you will be excused and I'll see you
19 at nine o'clock Monday morning.

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

22 (WHEREUPON, the jury exited the open courtroom at
23 approximately 3:40 p.m.)

24 THE COURT: All right. Anything you want to
25 bring to the Court's attention now, or do you need to

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