

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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

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

v.

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

AND

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

v.

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

RECORD ON APPEAL - VOLUME II

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SC Court of Appeals

Andrew F. Lindemann
Michael B. Wren
Daniel C. Plyler
DAVIDSON & LINDEMANN, P.A.
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8822

*Counsel for Appellant-Respondent
Town of Latta*

Reynolds Williams
WILLCOX, BUYCK & WILLIAMS
Post Office Box 1909
Florence, South Carolina 29503-1909
(843) 662-3258

*Counsel for Respondents-Appellants
Claude Graham and Vickie Graham*

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1 excused.

2 MR. WILLIAMS: Call John Benton.

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

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

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. She said state your full name, John?

11 A. John S. Benton.

12 Q. And where do you live?

13 A. In Florence.

14 Q. What do you do for a living now?

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

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

19 A. Benton Construction Company, Inc. Incorporated.

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

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

22 Q. What do you do now?

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

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

1 general contractor?

2 A. I'm still doing the same thing just helping him.

3 Q. You're working for your brother instead of working
4 for yourself?

5 A. Yeah, I'm working form him, but you know, in the same
6 capacity that I always have.

7 Q. Okay. What -- tell the jury a little bit about
8 yourself. What's your background and experience that made
9 you become a contractor?

10 A. I been around construction since I was about 14 or
11 15. Graduated high school. Didn't go to college. Worked
12 with architect in high school and a couple years
13 thereafter. And then I went to work with a contractor,
14 Kyle Construction. And with them I built banks, motels,
15 superintendent of Nucor Steel. And '73 I believe it was I
16 went in business myself, and I do -- during all that time
17 I did custom homes and light commercial, banks -- not
18 banks. Office buildings, motels, that sort of thing.

19 Q. You did that from '73 until now?

20 A. Yes.

21 Q. When you say a custom home tell the jury what a
22 custom home is?

23 A. Usually, a home an architects has designed. I guess
24 you may say higher end homes.

25 Q. Okay. What's the name of the other home that are not

1 custom homes that people usually use?

2 A. Most speculative, you know.

3 Q. Spec houses?

4 A. Yeah.

5 Q. Okay. Comparing the quality of construction and
6 workmanship and materials between custom homes and other
7 homes?

8 A. Normally, it's just -- I don't know how to say it.
9 Things are more expensive. Higher more -- higher quality
10 materials, and I built some -- a few regular homes also,
11 you know. But it's quality. Not going in a knock it out
12 and run, you know. You should take your time and do a
13 good job.

14 Q. All right. I take it from your answer that you did
15 mostly custom homes, but every now and then would do a
16 regular?

17 A. Yes, sir.

18 Q. How many, over the course of the years from 1973
19 until now, how many custom homes do you think you've
20 built?

21 A. I don't know. I don't have a clue. Couple hundred.

22 Q. Couple hundred?

23 A. Yes.

24 Q. Close enough. As part of that process is -- do you
25 have to determine what the charge somebody to build a

1 house?

2 A. Yeah. Yeah.

3 Q. All right. What experience do you have in
4 determining how much to charge somebody?

5 A. Well, when you go into business yourself and you give
6 somebody a price you've got to live with it. So, you
7 know, you figure what exactly what it's going to cost to
8 build a house and you give a firm price and you work
9 towards that contract price.

10 Q. And why is it important, if it is, that your price be
11 accurate?

12 A. Either I make a living or I go broke.

13 Q. Have you made a living all that time?

14 A. Yes, I have.

15 Q. And how important is your ability to accurately
16 estimate the construction cost of a house accurately to
17 your having been able to make a living all this time?

18 A. Well, you have to be pretty accurate or you lose
19 money. You know, you can't stay in business if you don't.

20 Q. Okay. What has been your number one job as a
21 construction company building customs houses?

22 A. Estimating. I do some drawing of homes or
23 businesses. But now the way codes are commercial is
24 almost out of the question. And I supervise my work,
25 order materials.

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

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

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

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

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

23 THE COURT: Repeat the question.

24 BY MR. WILLIAMS:

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

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

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

8 Q. Every piece of material?

9 A. Every piece of material.

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

11 A. No, sir.

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

14 A. Yes, sir.

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

17 A. Yes.

18 Q. Okay?

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

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

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

24 THE COURT: Any voir dire?

25 MR. PLYLER: Yes, please, Your Honor.

1

2

VOIR DIRE EXAMINATION

3

BY MR. PLYLER:

4

Q. Mr. Benton, Daniel Plyler. We met last month I

5

think; is that right?

6

A. Yes, sir.

7

Q. Now, you never actually constructed a home in Latta,

8

South Carolina, have you?

9

A. No, I have not.

10

Q. Well, I guess the next thing answer should be pretty

11

simple. You didn't construct the Graham's house, did you?

12

A. No, I did not.

13

Q. In fact you never constructed a house in Dillon

14

County, have you?

15

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

16

Q. Okay. Well, I think during your deposition I asked

17

you that question, and you said you'd done one in

18

Bennettsville?

19

A. I did a house in Bennettsville. I built a Save Way

20

Convenience Store here in Dillon.

21

Q. Well, you agree with me that commercial and residence

22

construction are different, correct?

23

A. Different materials.

24

Q. Okay. But you never built a residential home in

25

Dillon County, have you?

1 A. No, I have not.

2 Q. And correct me if I'm wrong, but you haven't done any
3 testing or inspection to determine whether or not the
4 Graham's property, the house on the Graham's property,
5 needs to be destroyed?

6 A. Needs to be what, sir.

7 Q. Needs to be bulldozed, torn down, destroyed?

8 A. Environmentally, that sort of thing I'm not qualified
9 for that.

10 Q. Right. All you can talk about is if I was going to
11 build that house how much it would cost?

12 A. What it cost to replace it. Yes, sir.

13 Q. But you have no evidence, testing, inspection,
14 anything to suggest that it needs to be replaced?

15 A. No, sir.

16 Q. That's correct, right?

17 A. That's correct.

18 Q. All right?

19 MR. PLYLER: Your Honor, our objection here is
20 Mr. Benton -- I'm sorry. We had a Benton Henry earlier so
21 I was attempted to call you Henry. I'm apologize. Mr.
22 Benton's work in this case is -- our objection would be
23 that it's irrelevant. There has been no evidence and no
24 testimony that the house in question needs to be replaced.
25 And I happen to know that his estimate is done as a

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

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

7 VOIR DIRE EXAMINATION

8 BY MR. WILLIAMS:

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

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

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

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

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

20 A. No, sir.

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

23 A. Oh, yes.

24 Q. And you just named some?

25 A. Yes.

1 Q. Okay.

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

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

4 THE COURT: Yes, sir.

5

6 FURTHER VOIR DIRE EXAMINATION

7 BY MR. PLYLER:

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

10 A. I dropped my license about two years ago.

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

13 A. That is correct.

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

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

20 THE COURT: Yes, sir.

21 FURTHER VOIR DIRE EXAMINATION

22 BY MR. WILLIAMS:

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

25 A. Yes, he is.

1 Q. And what job do you do for -- what's the name of his
2 company?

3 A. Now it's Construction Management of Florence.

4 Q. What's your principle function with Construction
5 Management of Florence?

6 A. Estimating, supervision.

7 Q. Any difference between that type of estimating you're
8 doing now and what you used to do when you owned your own
9 company?

10 A. No, it is not.

11 Q. Okay. Thank you?

12 CLERK OF COURT: I'll find him qualified as an expert
13 in estimating residential home building.

14 MR. WILLIAMS: Thank you, Your Honor.

15 THE COURT: And I'll overrule your objection
16 otherwise.

17 MR. PLYLER: Thank you, Your Honor.

18 FURTHER DIRECT EXAMINATION

19 BY MR. WILLIAMS:

20 Q. John, were you engaged to do certain work with
21 respect to the Graham house?

22 A. Pardon?

23 Q. Were you engaged to do something relating to the
24 Graham house?

25 A. I was asked to work up an estimate to replace it as

1 built as close as possible.

2 Q. And who asked you to do that?

3 A. You did.

4 Q. And did you do it?

5 A. Yes, I did.

6 Q. Approximately, when was that?

7 A. February this past year.

8 Q. Okay. Of 2012?

9 A. Yes, sir.

10 Q. Okay. How did you -- in order to do that what did
11 you do?

12 A. I got a set of floor plans from your office, I think.
13 Made a copy of them. Returned those to your office. Went
14 to the site. You gave me Mr. Graham's number. I called
15 him. He met me, opened the door, showed me though the
16 house, and he left. And I went through the house.
17 Upstairs, down. I looked under the house, but I didn't go
18 under the house for obvious reasons.

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

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

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

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

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

16 A. I don't understand.

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

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

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

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

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

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

7 A. Yes.

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

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

13 Q. Okay.

14 A. Some of them dramatically.

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

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

19 Q. You just use paper and pencil?

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

23 Q. How about calculators? You use a calculator?

24 A. Oh, yes, sir.

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

1 A. Yes. Advanced to master calculator.

2 Q. Okay. Did you prepare a written estimate in this?

3 A. Yes. Yes, I did?

4 Q. Okay. I'm going to show it to you. It's Plaintiff's
5 Exhibit 15. It's been marked, and here it is. Can you
6 identify Plaintiff's Exhibit 15?

7 A. Yes. That's my estimate.

8 Q. Okay. And what is it consist of?

9 A. Every piece of material in the house.

10 Q. And the front page is what?

11 A. It's a cover sheet of accumulation of different
12 items. Everything from what a survey would have to be
13 done. Get it on the property for a new house all the way
14 down to paint, plumbing, electrical, everything.

15 Q. And what are all the other pages in there?

16 A. Those are an accumulation of itemized materials in
17 the house.

18 Q. Give us an example of what you mean by itemized
19 material?

20 A. Well, if you go to any sheet you will find, like on
21 this one, is two by tens. I've get the lengths of every
22 different length, every different length, every different
23 amount of every different length that I use, and i put
24 where they're used. And it's just an accumulation. Like
25 in the floor systems of how many two by tens. Anywhere

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

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

7 A. Yes.

8 Q. Is that typical?

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

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

11 A. Yeah. I -- might as well as I reconstructed one.

12 Somebody had an old house that was built in, you know,
13 late 18, 1900s. You would go a measure it, redraw it and
14 rebuild it, you know.

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

17 A. No. No.

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

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

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

1 house' What kind of house was the Graham's house in Latta
2 from its original, as is construction when you saw it?

3 A. It was a reasonably nice home.

4 Q. Would you put it in a category of a custom house or
5 ordinary house?

6 A. Yeah. Yeah. I mean it's just some things, you know,
7 aren't updated maybe. Like everybody now is using granite
8 countertops, you know. But there were some unique things
9 about the house that were unique. Yes.

10 Q. When you were pricing it did you price it like you
11 were trying to reconstruct that house as a custom house or
12 as it set?

13 A. As it set.

14 Q. As it set?

15 A. Yep.

16 Q. And is that what you did?

17 A. Yes. Like upstairs they had something I've never
18 seen anybody do. It was oak flooring, and they had sanded
19 them and went back and used a sand blaster. And it eat
20 out the soft porous part of the wood and made it look like
21 it was, you know, a couple hundred years old. I'd never
22 seen that done before. It was real neat. And I priced
23 which costs about another \$1,800 over just refinishing the
24 oak floors.

25 Q. Okay. Any other special features that you noticed in

1 the house that affected the pricing?

2 A. I mean every house has it's little quirks, you know,
3 but those kitchen countertops were I think -- I can't
4 remember exactly. I believe they were heart pine and they
5 were naturally finished.

6 Q. All right. Well, let's ---

7 A. It's been six or eight months since I've done this so
8 I don't remember everything.

9 Q. Okay. Well, look back at your work if you need to
10 and let me just ask you this question. After all that
11 work, all that analysis and applying your training and
12 background and experience, did you determine what it would
13 cost to rebuild the Graham house on a different piece of
14 land?

15 A. Yes.

16 Q. And what was that?

17 MR. PLYLER: Your Honor, I just renew my objection as
18 to relevance. Just to make sure the record is protected.

19 THE COURT: Overruled.

20 BY MR. WILLIAMS:

21 Q. You may answer.

22 A. \$478,280.

23 Q. And does that include everything?

24 A. I think the only thing it didn't do would be grading
25 and seeding the yard. Landscaping and that sort of thing.

1 Q. Okay. So does it include buying the land?

2 A. No.

3 Q. So this is just to reconstruct that house on a
4 different piece of land?

5 A. The house, the driveway, the fence, the brick fences,
6 storage, the back part of the carport, everything.
7 Everything that is on that piece of property. Not
8 including the pool nor irrigation, nor grading and
9 landscaping.

10 Q. Did you say not including the pool?

11 A. Not including the pool.

12 Q. Okay. Does that include the appliances?

13 A. Yes, it did.

14 Q. Let's say that for some reason they decided to not
15 use the appliances you priced but to take the appliances
16 from the existing house and put them in this other house.
17 How much did the appliances cost out of that \$468,000?

18 A. \$4,500.

19 Q. \$4,500.

20 A. Yes, sir.

21 Q. And give me the ---

22 A. I rounded that figure off cause it was a few dollars
23 of being that.

24 Q. All right. Give me the figure again. - The bottom
25 line what it would cost to rebuild the house?

1 A. \$478,280.

2 Q. \$478,280?

3 A. And 56 cents.

4 Q. Okay. And is all that paperwork there in your
5 handwriting and you did the calculations yourself?

6 A. Yes, sir, it is.

7 Q. And does that reflect your opinions that you just
8 expressed here today?

9 A. Yes, sir.

10 MR. WILLIAMS: Your Honor, I would offer that in
11 evidence.

12 MR. PLYLER: Objection, Your Honor. It's not
13 admissible evidence. This is hearsay. He just
14 specifically said it was his opinions so it's not
15 available to exception under the hearsay rules. He's
16 obviously testified to it. Mr. Williams is willing to
17 talk a bit more if he likes, but that doesn't mean that it
18 comes in evidence.

19 MR. WILLIAMS: Your Honor, I think it would have
20 helpful for the jury to examine it during their
21 deliberations, and I believe it is admissible.

22 THE COURT: Then the opinions only relate as to the
23 pricing? Is that what it is?

24 MR. WILLIAMS: Yes, Your Honor. And the whole
25 exhibit relates to the pricing.

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

2 THE COURT: Yes, sir.

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

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

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

18 BY MR. WILLIAMS:

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

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

24 Q. Exactly the same way?

25 A. Yes, sir.

1 Q. And if you got it wrong what would happen to your
2 livelihood?

3 A. I would -- it would be my problem.

4 Q. Okay?

5 A. Not the homeowner.

6 Q. Thank you.

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

8 THE COURT: Any cross?

9 MR. WREN: Yes, Your Honor. Briefly.

10 CROSS-EXAMINATION

11 BY MR. WREN:

12 Q. You still have the estimate in front of you, sir?

13 A. Yes, sir.

14 Q. Okay. I have a few questions. All right, sir.

15 \$478,000 -- excuse me. \$200 -- excuse me. \$478,280.56; is
16 that correct?

17 A. Yes, sir.

18 Q. And that includes 10 percent for your fee?

19 A. Yes, sir.

20 Q. And 10 percent for the use of your equipment? Is
21 that how I understood that?

22 A. That's overhead and expenses. Trucks, gas,
23 equipment.

24 Q. All right. So that's almost \$80,000 right there,
25 isn't it?

1 A. Yes, sir.

2 Q. So just to build the house, taking out your fee and
3 overhead for just a minute, and I understand you wouldn't
4 build a house without charging a fee. Wouldn't expect you
5 to. Taking that out we're down to \$398,580.56, correct?

6 A. That is correct.

7 Q. That doesn't include the pool?

8 A. No, sir.

9 Q. And that didn't include the irrigation system; is
10 that correct?

11 A. That's correct.

12 Q. And doesn't include the land that it's going to be
13 built on?

14 A. That is correct.

15 Q. And it doesn't include the grading of the property
16 where this house will be built?

17 A. Final grading, yeah.

18 Q. And -- but it does include -- does that say -- make
19 sure I get it right. \$34,000 -- \$34,620 for paint?

20 A. Yes, sir.

21 Q. Okay. And to get somebody to put the paint on the
22 walls?

23 A. Painting inside and outside. Yes, sir.

24 Q. Is any part of the Graham's property painted on the
25 outside? It's a brick house, correct?

1 A. Brick house, vinyl siding, but it did have some
2 painting. Yes, sir.

3 Q. Okay. On the inside was there anything particularly
4 extravagant about the paint on the walls?

5 A. No, sir.

6 Q. Have you ever heard the term 'true cut lumber'?

7 A. Yeah.

8 Q. I think when we talked about this last month you
9 called it rough stone. Am I saying that right?

10 A. That house was built out of mostly rough stone
11 lumber. Yeah.

12 Q. All right. But you wouldn't use rough stone lumber
13 today because it's not treated; is that right?

14 A. True.

15 Q. And I think you calculated, and I understand you
16 didn't price is per square foot. I'm not asking you to,
17 but you calculated this particular house was 2900 square
18 feet; is that correct?

19 A. I've forgotten now, sir.

20 Q. Okay. Well ---

21 A. I wouldn't object to that. I don't know.

22 Q. That sound about right, 2900?

23 A. Probably right.

24 Q. All right. We can get your deposition. I think
25 there in your deposition you said 2900 square feet?

1 A. If I did that's -- if I said that that's what it is.
2 I don't have that.

3 Q. That's fine.

4 A. I had a rough sheet that had something about it.

5 Q. And when you were contacted by Mr. Williams to put
6 together this estimate he told you what it was for,
7 correct?

8 A. Told me what?

9 Q. He told you why he wanted you to calculate this
10 estimate, correct?

11 A. Yeah.

12 Q. I mean you knew you weren't actually going to go
13 build this house, am I right?

14 A. No, I didn't know.

15 Q. Okay. Did you think you were going to build this
16 house for Claude and Vickie Graham?

17 A. I -- no. No, I hadn't planned on it.. No.

18 Q. Okay. So you knew you weren't going to be going to
19 build this house when you were putting this estimate
20 together, am I right?

21 A. No. I mean it's a possibility if I could rebuild
22 this house somewhere else.

23 Q. Have you ever had somebody come to you and ask you to
24 build a house when they didn't have a piece of property
25 for you to build it on?

1 A. Yeah.

2 Q. Okay. That happens a lot?

3 A. No. But it happens, yes.

4 Q. And I think you included the price of your estimate
5 the cost of the survey, correct?

6 A. Yeah.

7 Q. And you wouldn't build a house without a survey,
8 would you?

9 A. No.

10 Q. Why?

11 A. Because I want to be sure it's put on the right
12 place.

13 Q. And you want to be sure you know what the value of
14 that property is, correct? You don't want to put it on
15 somebody else's property?

16 A. True.

17 Q. You want to know it's on the property, right?

18 A. I think I know where you're going, but I don't know
19 how to answer that question.

20 Q. All right. It seems to me like a pretty simple
21 question. If you're going to go build somebody's house
22 you would want to know what's on that property before you
23 started building it, correct?

24 A. I want to be sure it's put in the right place and
25 good soil perk, maybe -- even possibly soil treatment. I

1 mean soil testing, you know.

2 Q. I mean you don't ---

3 A. With the new code.

4 Q. You don't want somebody to spend \$478,280.56 and you
5 end up putting on top of something it shouldn't be on top
6 of?

7 A. No, I wouldn't.

8 Q. That would be bad, wouldn't it?

9 A. Yes, it would.

10 Q. And as a builder you could be liable for that,
11 couldn't you?

12 A. No, I don't think so.

13 Q. All right. That's fine. We'll move on to something
14 else. Now, I think I asked you this already during what
15 we call voir dire when I was talking to you a minute ago,
16 but you didn't do any testing or inspecting to determine
17 whether or not this house needs to be replaced, did you?

18 A. No.

19 Q. Okay. And when you were getting estimates for those
20 numbers that are in your estimate here you're getting
21 quotes from people; is that correct?

22 A. Yes, sir.

23 Q. You didn't get any quotes from anybody in Dillon
24 County, did you?

25 A. No.

1 Q. Nobody from the Town of Latta?

2 A. No, sir.

3 Q. Okay. And you didn't do any -- you weren't asked to
4 do, I assume, so it might be why you didn't do it. But
5 you didn't do any investigation to see what property and
6 houses cost in the Town of Latta, did you?

7 A. No.

8 Q. And you charge \$2,800 to put this estimate together;
9 is that correct?

10 A. That is correct.

11 MR. WREN: Court's indulgence.

12 BY MR. WREN:

13 Q. Thank you for your time, Mr. Benton. We had a Benton
14 Henry earlier, and I'm tempted to call you Mr. Henry. I
15 apologize.

16 A. Okay.

17 THE COURT: Any redirect?

18 MR. WILLIAMS: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WILLIAMS:

21 Q. John, you didn't put this appraisal -- this estimate
22 together for the purpose of bidding on building this
23 house, correct?

24 A. No, sir.

25 Q. Okay. If Mr. Graham had said to you, "Cool. I

1 really like this estimate. I've got a piece of land.

2 Will you build this house for me for that price," would
3 you have at that time?

4 A. At that time. I wouldn't today do it for that price.

5 Q. And why not?

6 A. The prices have increased.

7 Q. They've increased since then?

8 A. Yes.

9 Q. Okay.

10 A. Plywood has gone up \$8 a sheet in the last three
11 weeks.

12 Q. Okay. But as of the time you prepared that estimate
13 it was suitable for entering into a contract or testifying
14 in court, either one?

15 A. I would replace it for that price. Yes.

16 Q. All right. Thank you.

17 THE COURT: You may step down.

18 MR. WILLIAMS: That's it. May Mr. Benton be excused,
19 Your Honor?

20 THE COURT: Without objection you may be excused.

21 MR. WILLIAMS: Than means you can go home. Your
22 Honor, may I approach the bench?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held off the
25 record in the presence of the jury, but out of the

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

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

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

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

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

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

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

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

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

24 THE COURT: Are there motions at this time?

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

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

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

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

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

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

1 whatever suits Your Honor?

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

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

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

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

25 And, Four, that the taking has some degree of

1 permanence.

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

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

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

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

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

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

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

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

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

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

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

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

4 Additionally, Judge, Balou v. City of Spartenburg,
5 1981 Supreme Court Opinion, which had to do with actually
6 designing of a building, inverse condemnation was not
7 established. I would not that that case was actually
8 overruled on our grounds, but not withstanding as to the
9 inverse claim it's still good law.

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

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

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

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

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

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

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

1 whether or not a claim for inverse has been established.

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

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

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

1 addressed.

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

8 MR. WREN: That is our contention, Judge.

9 THE COURT: Yes.

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

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

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

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

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

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

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

25 THE COURT: Can you define what you mean by dumping

1 sewage on the property?

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

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

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

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

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

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

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

12 MR. WILLIAMS: Okay.

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

14 MR. WILLIAMS: Correct.

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

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

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

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

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

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

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

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

13 What evidence is there about that actual leaking?

14 MR. WILLIAMS: The evidence is ---

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

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

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

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

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

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

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

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

19 MR. WREN: Okay. Thank you.

20 THE COURT: Anything further, Mr. Williams?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Yes, sir, Mr. Wren.

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

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

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

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

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

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

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

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

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

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

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

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

1 earthened dam to control the water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And our position is what the Plaintiff has pled, Your

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

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

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

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

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

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

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

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

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

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

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

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

18 THE COURT: I'm sorry. Which one?

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

21 THE COURT: Yes, sir.

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

23 THE COURT: I have that one.

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

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

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

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

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

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

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

9 THE COURT: Mr. Wren.

10 MR. WREN: Yes, ma'am.

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

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

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

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

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

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

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

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

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

14 To this idea of post-September 2008. With a
15 recognition or the complaints that were lodged. In fact
16 just the civil action, Your Honor, was filed the end of
17 2008. That alone we know these claims have been set forth
18 at that time. Your Honor, that point there is still no
19 intent. There is still no affirmative act. So the first
20 two necessary elements.

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

1 the theories they've advanced.

2 Let me while I'm on this issue, Judge, address one
3 other thing cause I think it's important to set forth is
4 that, and I'm going to cite you a case, Judge. It's
5 Loftus -- I misplaced it. I set it down. Judge, it's
6 Loftus v. S.C.E. & G, a utility case. It's a South
7 Carolina Court of Appeals Opinion. A 2004. The cite is
8 694 SE 2d 714. It's a prescriptive easement case, Judge,
9 and essentially dealt with what they contended was open
10 and obvious utility lines across a property.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Mr. Williams.

25 MR. WILLIAMS: May it please the Court. Plaintiffs

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

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

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

19 THE COURT: Well, so basically, what you're saying is
20 that any argument about an easement by prescription
21 doesn't apply even though the pipe has been there since
22 1924?

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

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

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

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

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

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

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

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

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

23 Ms. Graham has testified that she did not learn it
24 until sometime after I began representing her which was in
25 2010 this record will reflect. Until 2010 that she

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

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

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

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

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

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

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

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

21 THE COURT: Yes, sir.

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

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

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

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

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

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

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

10 THE COURT: From what time period?

11 MR. WILLIAMS: Starting in 2008. September 5th and
12 6th 2008; that's when they acquire the knowledge that they
13 were dumping sewage on those people's property. And they
14 intended their intentional act was to not do something it.
15 Their original intention not intentional act was to invade
16 the property of the predecessor in title with no right to
17 do so.

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

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

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

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

4 THE COURT: Yes.

5 MR. WREN: Okay.

6 THE COURT: Yes.

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

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

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

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

16 MR. WREN: Thank you, Judge

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

19 THE COURT: We're ready.

20 MR. WILLIAMS: Plaintiff is ready, Your Honor.

21 MR. WREN: Defendant is ready, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Expert witnesses as Your Honor is aware can do a lot

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

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

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

22 But, foremost, Judge, the immunities found under
23 15-78-60, Subsections One and Two which deal with the
24 legislative, and it goes on to say judicial or quasi
25 judicial errs of the legislator action or inaction which

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MR. WILLIAMS: Please the Court.

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

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

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

1 Perhaps it also goes to statute of limitations or
2 something.

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

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

8 MR. WILLIAMS: May it please the Court.

9 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: What's the special relationship?

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

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

1 they were in dispute the issue of negligence was for the
2 jury." and it cites Davis v. Piedmont Engineers, 284 SC
3 20.

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

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

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

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

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

25 THE COURT: Would you agree that any breach of the

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

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

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

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

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

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

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

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

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

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

3 THE COURT: But ---

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

6 THE COURT: There is a step missing in there.

7 MR. WILLIAMS: Pardon?

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

9 MR. WILLIAMS: I think Mr. Davis supplied that step
10 when he said that when there is in fact infiltration,
11 exfiltration that you could expect with a terra cotta pipe
12 that's some 85 years old when it has a life expectancy of
13 40 years it's going to crack. It's going to have defects
14 in it, and it's going to, your know, it's going to
15 deteriorate.

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

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

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

6 THE COURT: Yes, sir.

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

16 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Your Honor, that's a serious flaw then for purposes
17 of their negligence claim against the Town for these
18 events because, otherwise, there is still no evidence of
19 it being the proximate cause in my mind and based on the
20 evidence, but as to -- if that's the event that
21 precipitated the discovery of the alleged negligence, and
22 I even questioned then how is that an act of negligence,
23 but notwithstanding, that's the event what their argument
24 is and pled is that it was done on September 5th and 6th
25 2008. There is no notice. And I'll step down. Thank

1 you, Judge.

2 THE COURT: I'm sorry. No notice?

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

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

16 THE COURT: Yes, sir.

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

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

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

13 THE COURT: Anything further.

14 MR. WREN: No, Your Honor.

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

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

19 THE COURT: Whichever.

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

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

7 THE COURT: I'm sorry ---

8 MR. WREN: The only evidence is ---

9 THE COURT: The statute repose would bar?

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

22 THE COURT: What's the cite?

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

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

3 THE COURT: Yes.

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

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

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

24 THE COURT: Is there one on statute of limitations?

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

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

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

4 THE COURT: Yes.

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

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

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

1 knew that they had a claim.

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

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

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

24 THE COURT: Yes, sir, Mr. Williams.

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

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

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

19 If the Town was negligently maintaining that sewage
20 line from the beginning of time up until September 5th
21 2008 these people wouldn't have any negligence claim cause
22 they wouldn't have any damages arising from it. So the
23 September 5th, 6th 2008 is when the statute of limitations
24 should begin to run. This suit for negligence was
25 brought -- I don't recall the exact date, but it was very

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

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

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

19 THE COURT: Thank you.

20 MR. WREN: Your Honor.

21 THE COURT: Let's take a lunch break and come back at
22 1:30.

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

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

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

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

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

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

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

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

21 THE COURT: Okay.

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

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

1 will come back.

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

4 THE COURT: 1:30.

5 MR. WREN: Thank you, Judge.

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

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

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

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

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

7 Certainly, in this case there has been evidence
8 presented that the pipe was placed on the property in
9 1924. And that it has continuously been on that property
10 since 1924. The house that was built on this property
11 that the Graham's subsequently purchased was not built
12 until 1960. At the time of -- up until I guess this is
13 lawsuit or shortly before this lawsuit the Town was under
14 the impression and had a belief that the pipe was there
15 pursuant to an easement.. And so they were claiming a
16 right to use the property for the pipe.

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

25 And the information about the license has been

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Other than there was infiltration and exfiltration

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

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

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

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

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

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

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

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

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

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

13 Anything else?

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

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

21 THE COURT: Okay.

22 MR. WREN: If I may, Judge?

23 THE COURT: Yes.

24 MR. WREN: Okay.

25 (WHEREUPON, a short break was taken.)

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

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

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

6 THE COURT: You may ask the jury to come in, please.
7 (WHEREUPON, the jury panel enters the courtroom at
8 2:30 p.m.)

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

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

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

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

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

24 DIRECT EXAMINATION

25 BY MR. PLYLER:

1 Q. Mr. Hooks, what do people generally call you?

2 A. Willie

3 Q. You mind if I call you Willie?

4 A. No, sir.

5 Q. And could you please tell the jury where you grew up.

6 A. Dillon County.

7 Q. Where do you live now?

8 A. Oak Grove.

9 Q. You pretty much spend your whole life here in Dillon
10 County?

11 A. Yes.

12 Q. Where do you currently work?

13 A. Town of Latta.

14 Q. And what do you do there?

15 A. I'm an assistant supervisor.

16 Q. What does that mean?

17 A. I basically do everything; water, sewer, street. All
18 the utilities.

19 Q. How long you been working for the Town of Latta?

20 A. Since September 4th of 2007.

21 Q. Has it always been in that same role?

22 A. Yes, sir.

23 Q. Now, how about tell us a little bit about your
24 average daily job duties. What do you do everyday when
25 you go to work?

1 A. First thing in the morning I check the pump stations,
2 the pond, the chlorine in the water, general duties. It's
3 usually that first thing in the morning. Rain gauges,
4 things like that.

5 Q. You say the pond what are you talking about?

6 A. The retention pond.

7 Q. You said something about a rain gauge?

8 A. Yes.

9 Q. What is that?

10 A. Every day we check the gauge. It tells you how much
11 rain comes that night from the time you checked it the
12 morning before.

13 Q. Now, try to speed things up. My understanding is you
14 hurt your back recently; is that correct?

15 A. Yes.

16 Q. I see you're kind of leaning over there. I'm not
17 going to take up much of your time. Try to speed things
18 up a little bit. We've already heard a lot about Claude
19 and Vickie Graham's resident in the Town of Latta; about
20 an event that happened in September of 2008 and about
21 things that have happened since. So I'm just going to try
22 to get you to that point.

23 Did you check the rain gauge or are you aware of what
24 the rain gauge read on September 6th 2008?

25 A. Yes, sir.

1 Q. What did it read?

2 A. Seven and a half inches.

3 Q. And what did you do that day for the Town of Latta?

4 A. The day of the rain?

5 Q. September 6th 2008.

6 A. I came in. We had a lot of flooding of ditches, and
7 just had a lot of water.

8 Q. Was that in any one particular location or tell us?

9 A. It was all over town. That was just a lot of water
10 to consume at one time.

11 Q. And tell us in particular if you had any involvement
12 with the residence on Eas Rice Street owned by Claude and
13 Vickie Graham?

14 A. Yes, sir. I was the first one that got the complaint
15 cause we have a complaint system cause if they call the
16 Town Hall they call the supervisor. The supervisor will
17 call me. And if I don't have nobody to go I have to go.

18 Q. Did you go to residence?

19 A. Yes, I did.

20 Q. What did you see there?

21 A. A lot of water in the road. They had -- there was
22 water coming out the ditch behind their home flooding
23 their yard. Flooding the -- next door to them is the
24 Coxes. That had their yard flooded, and the road was
25 flooded.

1 Q. Did you notice anything else?

2 A. No, sir. Just, you know, there was where the manhole
3 is in the middle of the road there was water all around
4 it.

5 Q. There was water coming out of the manhole?

6 A. I can't tell you that it was and I can't tell you it
7 wasn't.

8 Q. Okay. When you were at the Graham's residence that
9 day did you have an opportunity to look underneath their
10 house?

11 A. Yes.

12 Q. Tell us what you saw under their house?

13 A. About 2-inches of water.

14 Q. Water under their house?

15 A. Yes, sir.

16 Q. Anything else?

17 A. No, sir.

18 Q. Well, let's talk -- let's move away from the event of
19 September 6th -- an th and 6th 2008. Let's talk about
20 sensors cause we've heard a lot about sewer pipes that's
21 allegedly running across the Graham's property. Are you
22 aware of whether or not there is a sewer pipe running
23 across the Graham property?

24 A. Yes, sir.

25 Q. And how do you know that?

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

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

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

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

22 A. Yes, sir.

23 Q. And when did that testing occur?

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

1. 2010 and October..

2 Q. How did you test them?

3 A. We tested them with smoke.

4 Q. I think I just asked you how you test the pipes?

5 A. We test them with some.

6 Q. Okay. Can you explain that to us a little bit?

7 A. Well, what they got is a fan that covers the whole
8 manhole, and you put a bucket under it and you drop the
9 smoke bombs which are real -- they've got a lot of smoke
10 coming out of them. And you put it over the manhole with
11 the bucket under it and it blows the smoke through the
12 line. And if there's a crack or any kind of thing where
13 smoke can get through it's going to come through.

14 Q. And I think you said y'all tested all the lines and
15 the manholes in Latta. What I'm interested in and the
16 jury is interest in are the lines and manholes near the
17 Graham residence. Did y'all test those lines?

18 A. Yes, sir. We intensively tested. we used two box
19 almost of smoke bombs on that specific line.

20 Q. Why?

21 A. Because we wanted to make sure there was no leak.

22 Q. What did y'all find?

23 A. Nothing.

24 Q. What do you mean by that?

25 A. There was no smoke coming from under his home or near

1 his home or anybody else on that street.

2 Q. Who -- let me start again. Why did you go test these
3 lines? I mean was it your decision to test these lines?

4 A. No, sir. That's just routine with B.P. and Barber.

5 Q. Who B.P. and Barber?

6 A. It's our engineers.

7 Q. The Town engineers?

8 A. Yes.

9 MR. PLYLER: Court indulgence.

10 BY MR. PLYLER:

11 Q. Willie, I appreciate your time. Please answer any
12 questions Mr. Williams has for you.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q. Mr. Hooks, when you got there on September 5th what
16 time of day was it? September 6th, I'm sorry. What time
17 of day was it?

18 A. I come to work every morning at seven o'clock.

19 Q. What time did you get to the Graham house?

20 A. We went out on the 5th at night because it was
21 raining.

22 Q. You said it rained 6 inches that day?

23 A. Seven and a half.

24 Q. Seven and a half inches?

25 A. Yes, sir.

1 Q. By the time you got there the water in Mr. Graham's
2 basement was down to 2 inches, correct?

3 A. That's what it looked like to me from what I could
4 see.

5 Q. So you must have gotten there after the water
6 subsided and everything dropped down at least five and a
7 half inches, right?

8 A. On the 5th, the night of the 5th it was still raining
9 when I went.

10 Q. Did you look under his house?

11 A. I didn't look in the man's house until the next day
12 on the 6th.

13 Q. When you looked at -- under his house the next day on
14 the 6th the water had already gotten down to 2 inches
15 under the house?

16 A. That's what it looked like under his home, yeah. I
17 don't know if it was higher than that.

18 Q. So to you when you were there it was 2 inches?

19 A. It was 2 inches under his home.

20 Q. Okay... And there was no water in the yard by then,
21 was it?

22 A. It was coming out the ditch the next day or the next
23 morning.

24 Q. The ditch at the back had plenty of water in it?

25 A. Yes.

1 Q. Got all over town, right?

2 A. Yes.

3 Q. But his yard didn't, but under his house there was
4 still 2 inches? Now, this water wasn't good, clean,
5 clear, pure water, was it?

6 A. It was regular ditch water.

7 Q. Ditch water or sewage water?

8 A. I don't know what you mean by ditch water, sewer
9 water?

10 Q. You do -- your responsible for the sewage system in
11 part, right?

12 A. Yes.

13 Q. Was it not water that came out of the sewage system?

14 A. I can't say it was. No, sir.

15 Q. You can't deny it was either, can you?

16 A. No, sir.

17 Q. Okay. Now, did it smell under there?

18 A. I didn't put my head under it. I seen the water
19 cause you can stand at the edge of his home and see under
20 the house.

21 Q. All right. So you stood at the edge of the home and
22 looked under the house, but you didn't get down on your
23 hands and knees and look around under there?

24 A. I looked from where I was standing.

25 Q. Looked from where you were standing?

1 A. Yes, sir.

2 Q. About -- let's say that the edge of his house is
3 right here. Tell me how far away you were. Where were
4 you standing?

5 A. About where you're standing at.

6 Q. About where I'm standing. You can look down over
7 there at a hole in the crawl space?

8 A. Crawl space about two by two. Two foot by two foot
9 crawl space.

10 Q. Were you standing up?

11 A. Yes.

12 Q. Okay. All right. And it was 7 and a half inches of
13 rain on September -- the night of September 5th and 6th,
14 right?

15 A. Yes, sir.

16 Q. How much rain was there on September the 13th?

17 A. I would have to look back in my book.

18 Q. You have your book with you?

19 A. No, sir. No, sir.

20 Q. Well, let me ask you. Since the night of
21 September 6th have there ever been 7 inches of rain since
22 that day?

23 A. I wouldn't say quite 7 and a half. There has been
24 significant rain since.

25 Q. Has there been any rain as heavy as the night of

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

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

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

11 A. It was just a normal rain I imagine.

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

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

16 Q. Nothing sticks out in your mind?

17 A. No, sir.

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

20 A. No, sir.

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

22 A. No, sir.

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

25 A. Not that I know of.

1 Q. Okay. How about March 18th 2012? That was this
2 year. There wasn't a big tropical storm or hurricane?

3 A. No. We got quite a lot of the rain in March.

4 Q. Lot of rain in March?

5 A. Yes, sir.

6 Q. Was it as bad as the rain in September of 2008?

7 A. Probably so.

8 Q. Okay?

9 A. Cause it was a lot of rain.

10 Q. How about April 10th of this year?

11 A. We had a lot of rain this year period.

12 Q. Not real heavy, unusual rain, was it?

13 A. We had it a couple times.

14 Q. Couple of times this year? All right? I asked you
15 about March 18th and April the 10th. You said those were
16 heavy rains, but those may or may not be the two times you
17 talked about?

18 A. I remember we had a couple times of heavy rain, but
19 we had to block the roads and stuff like that.

20 Q. How about May the 17th of this year? Anything stick
21 out in your mind?

22 A. No, sir.

23 Q. How about June the 23rd of this year? Anything stick
24 out in your mind about it?

25 A. I was on vacation at that time.

1 Q. All right. Where were you vacationing?

2 A. I think it was the beach if I remember right. The
3 beach.

4 Q. Did you have a nice vacation? Sunny the whole time?
5 You were at Myrtle Beach?

6 A. Yes.

7 Q. North Myrtle Beach?

8 A. Myrtle Beach.

9 Q. Myrtle Beach. All right. When you got back had
10 there been any records in the Water and Sewer Department
11 of Latta to indicate that there had been really heavy
12 rains in Latta on September 23rd 2012?

13 A. I ---

14 Q. I mean June 23rd 2012?

15 A. I didn't go back and check and see. No, sir, I
16 didn't.

17 Q. How about your employees and people working in the
18 Water Department and Sewer Department with you? Did they
19 chat with you about it? Tell you about it?

20 A. They didn't say nothing to me about it.

21 Q. Nothing important enough for them to say anything to
22 you about it, correct?

23 A. Yes, sir.

24 Q. On the smoke test you talked about where were you
25 when the smoke test was going on?

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

1 THE COURT: Rephrase the question.

2 BY MR. WILLIAMS:

3 Q. Why do you think they -- everybody got a notice?

4 A. I just figured they would get one?

5 Q. Did you just figure that or did somebody tell you
6 they're supposed to?

7 A. I just figured.

8 Q. You just figured that?

9 A. Yes.

10 Q. Why would you figure that they ought to have notice?
11 Just seems fair, doesn't it?

12 A. I imagine so.

13 Q. Okay. Did you know at that time that Mr. Graham --
14 that Mrs. Graham was in a suit with the Town and
15 Ms. Graham in a suit with the Town?

16 A. No. I didn't know nothing about this until this week
17 when I was told I was a witness.

18 Q. All right. So you didn't know he had a lawyer, Mr.
19 Rushton, at that time?

20 A. No, sir.

21 Q. And if you had known that it would only seem fair
22 that to you that Mr. Graham or his lawyer, Mr. Rushton, or
23 Ms. Graham or somebody of them ought to know that y'all
24 were going to running test at his property, right?

25 MR. PLYLER: Objection. It calls for speculation and

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

3 THE COURT: I'll sustain the objection.

4 BY MR. WILLIAMS:

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

9 A. No, sir.

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

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

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

16 THE COURT: I'll sustain the objection.

17 BY MR. WILLIAMS:

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

22 A. No, sir.

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

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

1 Q. The main line?

2 A. Yes, sir.

3 Q. Did the main line run on their property?

4 A. Yes, sir.

5 Q. So as part of your smoke tests you were smoke testing
6 the main line that run through their property?

7 A. Yes, sir.

8 Q. Were they there?

9 A. I don't know.

10 Q. You didn't see them there?

11 A. I didn't talk to them.

12 Q. And no one told you they were there, did they?

13 A. No, sir.

14 Q. Did you see Mr. Rushton, their lawyer, there?

15 A. I don't even know who that is.

16 Q. Okay. So you don't -- you didn't see him there?

17 A. No.

18 Q. Okay. Do you have any report or results or record of
19 the smoke -- conducting of this smoke test?

20 A. I myself don't, but the Town does.

21 Q. Do you have any pictures that were taken while y'all
22 were doing this smoke test?

23 A. I think our engineers do.

24 Q. Do you -- have you looked at any pictures of it?

25 A. No, sir. I was there. I don't need to see the

1 pictures.

2 Q. My question to you was did you look at any pictures?

3 A. No, sir.

4 Q. Have you looked at any videotapes?

5 A. No, sir.

6 Q. Okay. Do you know whether the pictures they took
7 were still pictures or moving pictures or video pictures?

8 A. I do not know.

9 Q. Okay. So you didn't take the pictures yourself?

10 A. No, sir.

11 Q. That's all I have. Thank you.

12 MR. PLYLER: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 MR. WREN: May this witness be excused.

15 MR. WILLIAMS: No objection.

16 THE COURT: You are excused. Thank you. Call your
17 next witness.

18 MR. WREN: Thank you, Your Honor. The Defendant
19 would like to call Mike Hanna.

20 MICHAEL HANNA, after being duly sworn, testified
21 as follows:

22 CLERK OF COURT: Be seated. State your full name for
23 the Court spelling your last for us.

24 THE WITNESS: Michael Harvey Hanna. H-A-N-N-A.

25 DIRECT EXAMINATION

1 BY MR. WREN:

2 Q. All right. Mr. Hanna, good afternoon. And again
3 just for the jury you go by Mike, correct?

4 A. Yes, sir.

5 Q. Is that okay if I call you that today?

6 A. That's fine.

7 Q. All right. Mike, can you for the jury's benefit tell
8 us a little bit about yourself. Are was from this area?

9 A. I am from Johnsonville, South Carolina. I live in
10 Florence currently.

11 Q. Okay. And how long have you lived over in that part
12 of the Pee Dee?

13 A. Oh, 29 years in Florence.

14 Q. And we'll kind of do this in reverse order. Give you
15 some kind of context perhaps for the jury. Tell us what
16 you do for a living, please?

17 A. I am a civil engineer with a consulting engineering
18 firm in Florence. I've been employed we two different
19 firms during my career. Both in Florence. Both of those
20 firms work for small towns and the Pee Dee area.

21 Generally within 45 miles of Florence. Fairly close by.

22 Q. And you were here in the courtroom with us a moment
23 ago, and you heard Mr. Hooks reference the Town engineer.
24 Did you hear that?

25 A. Yes, sir.

1 Q. He used the term, 'B.P. Barber'. Is that one of the
2 groups you had worked with?

3 A. Yes, sir. That B.P. Barber was a group I worked for
4 for 15 years, and we were recently bought out by a larger
5 firm called U.R.S. but it's still URS-BP Barber. Same
6 general company just changed the name.

7 Q. And do you still work locally here in the Pee Dee?

8 A. Yes, sir. I'm the branch manager for the Florence
9 office.

10 Q. Okay. And we'll come back to this is just a moment,
11 but let's try to tie this together now. Have you done
12 work for the Town of Latta?

13 A. Yes, sir, I've been the so called Town Engineer
14 for -- since 1997. Our firm has been the engineer for
15 Latta for many more years, 30, 40, 50 years. But I
16 recently took over the account in 1997. Been there a
17 while.

18 Q. All right. And with that said, Mike, let me back up
19 a little bit and ask you because what you do for a living
20 is what we consider the profession of engineering. Is
21 that what you would call it?

22 A. Yes. Consulting engineering.

23 Q. Okay. And tell us just where you went to school and
24 a little bit about your educational background?

25 A. After graduating from Johnsonville High School I went

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

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

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

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

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

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

22 A. Yes, sir.

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

24 A. In water, sewer and storm drains.

25 Q. And you mentioned a moment ago about working with

1 cities or municipalities. Is that the kind of work that
2 you've done with those towns and cities?

3 A. Yes, sir, for 29 years.

4 Q. Have you done that work with the Town of Latta?

5 A. Yes.

6 Q. Has that been since you started working with the Town
7 of Latta?

8 A. Yes.

9 Q. And you are a professional engineer; is that my
10 understand?

11 A. Yes, sir. After you graduate with a Bachelor of
12 Science degree you take part one of a certification called
13 an Engineering Training License, and once you pass that
14 test you go out into the world, you practice engineering
15 under another professional engineer for four years and
16 then you get to take a Professional Engineering
17 Certification Exam.

18 If you pass that then you can call yourself a
19 professional engineer and be licensed by the State of
20 South Carolina to design projects.

21 Q. And so in total how many years have you been a P.E?

22 A. Since 1987. I graduated in '83. Worked my four
23 years under a licensed, professional engineer. Took my
24 test in '87. Passed it and became a professional
25 engineer.

1 Q. And is your license in good standing?

2 A. Yes.

3 MR. WREN: At this time, Your Honor, move to have
4 Mr. Hanna qualified as an expert in the area of civil
5 engineering with his focus on sewer systems and water.

6 THE COURT: Any voir dire? Any objection?

7 MR. WILLIAMS: Focus was on?

8 MR. WREN: His focus on sewer and waste water?

9 MR. WILLIAMS: May I voir dire, Your Honor?

10 THE COURT: Yes, sir.

11 VOIR DIRE EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Mr. Hanna, as I understand your experience it's been
14 with waste water treatment plants; is that correct?

15 A. No, sir. Waste water collection, pumping stations,
16 enforcement, waste water treatment.

17 Q. Okay. Have you designed waste water collection
18 systems?

19 A. Yes, sir.

20 Q. Have you redesigned waste water collection systems?

21 A. Yes, sir.

22 Q. Give me some examples of when?

23 A. The last two projects have been in the City of
24 Bennettsville where we've rehabilitated old, existing
25 sewer lines. We've done that in various other town in one

1 fashion or another.

2 MR. WILLIAMS: Bear with me one second.

3 BY MR. WILLIAMS:

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

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

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

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

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

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

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

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

25 MR. WILLIAMS: Yes, Your Honor. Sh.

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

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

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

8 MR. WREN: Thank you, Judge.

9 FURTHER DIRECT EXAMINATION

10 BY MR. WREN:

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

17 A. Fifteen or 20.

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

20 A. Within 45, 50 miles, maybe.

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

22 A. Yes, sir.

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

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

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

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

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

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

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

21 A. Yes.

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

1 A. Everywhere.

2 Q. It exists in all of them?

3 A. Yes, sir.

4 Q. Is that part of what goes into the knowledge of the
5 engineer about operation and design of the sewer systems?

6 A. Yes.

7 Q. And from your experience with the Town of Latta has
8 that been taken into consideration in the operation and
9 maintenance of that sewer system?

10 A. Yes.

11 Q. And in September of 2008 do you recall a tropical
12 storm event named Tropical Storm Hanna?

13 A. Not specifically, but I remember the occasion because
14 it was named my last name, so I took specific interest
15 in -- Hanna dumped a lot of water on the Pee Dee, but not
16 the specifics of the dates and the amounts. That sort of
17 thing.

18 Q. So you just said. I had not put those two together?

19 A. Yes.

20 Q. I understand. But my question, my follow-up
21 question, for you. Immediately or immediately after that
22 storm event did you go to the Graham's property?

23 A. No, sir.

24 Q. Now, at some point subsequent did you become aware of
25 some complaints or concerns by the Grahams or any property

1 owner there about events that occurred at that tropical
2 storm at their property on's Rice Street?

3 A. Yes, sir. I'm not sure what date I was notified
4 about the problem.

5 Q. What was the understanding that was relayed to you?
6 What was their concern? What was their issue?

7 A. The initial understanding that was given to me and
8 without a lot of facts was that the line was under their
9 house and it was leaking and sewage was pouring out
10 underneath the house. That was very concerning, so -- but
11 that was the initial impression that I got from whoever I
12 talked to.

13 Q. And we were talking about sewer lines a moment ago.
14 A leak in a sewer line, can that be detected?

15 A. Yes.

16 Q. Can that be found and located?

17 A. Yes, and there is another term that I'd like to
18 explain.

19 Q. Please.

20 A. Besides the infiltration. Infiltration being
21 hundreds or thousands of very tiny leaks and cracked
22 joints. And then there is another term called inflow.
23 And this might occur in your yard what a clean-out cap had
24 been busted off by a lawn mower and now when a ditch
25 floods the water can directly get into the sewer system.

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

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

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

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

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

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

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

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

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

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

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

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

18 A. 2010, I believe.

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

22 A. Well, the first step before we do the smoke testing
23 is we go out and we find every manhole that we can find.
24 And in a Town of Latta's size I would say there are 200 to
25 300 manholes. We go find them. We take the top off. We

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

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

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

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

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

24 Q. During different times of the year?

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

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

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

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

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

19 A. No, sir. The entire system.

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

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

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

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

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

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

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

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

1 A. No.

2 Q. And the information that you obtained did you take
3 that back with you or did you comply it at your office in
4 Florence?

5 A. Over the next six months or so we completed all the
6 mapping of where all the leaks were, finished filling out
7 all the little forms. For every leak we found we will out
8 a form. We don't do it while the smoke is pouring out of
9 the man -- out of the yard or out the cleanout. We record
10 it, take a picture of it and come back in the next 20, 30
11 minutes after all the smoke is gone.

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

17 Q. All right. And earlier you mentioned that sometimes
18 when you do find there is a problem or an issue what do
19 you do in those regards to identifying the problem or
20 talking to the Town about it?

21 A. We produce it in an infiltration and inflow study
22 report and then make recommendations to the Town.

23 Q. And those recommendations you're telling the Town or
24 can you tell me what you tell them? Are you providing
25 them options? Are you telling them what to do? How does

1 that work?

2 A. Well, based on what we found we recommended that we
3 go to the next phase of the testing and that is a camera
4 survey. Camera surveys are extremely expensive, and we
5 had to seek outside funding for the camera survey. So we
6 are in the process of applying for funding that will
7 enable us to hire another firm, a construction firm, that
8 has these specialized camera equipment to put in the sewer
9 line, in all the sewer lines, and look at them from the
10 inside out and try to find any cracked pipes, broken
11 joints, and then prioritized what we find with that along
12 with the smoke test and the physical manholes and get all
13 that repair work done at one time.

14 Q. Okay. There is still all this work going on. And
15 the information you referenced, the study, the
16 investigation you've done at their property, are those
17 records that you've kept at your engineering office?

18 A. Yes.

19 Q. Okay. All right. Mr. Hanna, let me show you a
20 document we've premarked and identified and please take a
21 moment and see if you're familiar with what that document
22 is.

23 A. It's a flood plain map.

24 Q. All right. And have you seen this document before?

25 A. Yes, sir. We use them all the time in our office.

1 Q. What are flood plain maps?

2 A. I believe it is F.E.M.A. that defines how big of an
3 area around a street, or a river or a ditch is prone to
4 flooding over a 2500 year basis. And we use those as a
5 method of determining where the flood prone areas are.

6 Q. Are these documents that -- do you know if these are
7 documents that are in the public record or government
8 agency?

9 A. Yes, sir. Years ago we just got them from the Dillon
10 County Courthouse or whatever courthouse we were at. Now,
11 they are available online, and we don't much mess with the
12 paper maps anymore. We just have a layer on our computer
13 that we just turn on and it shows us the flood plains. So
14 this is how we used to do things with the paper, but the
15 same information is available online.

16 Q. And are those commonly and routinely used in your
17 professional occupation as an engineer?

18 A. Yes, sir. Certain governmental agencies will not let
19 me build a permanent structure, a pump station, a water
20 treatment plant, a sewage treatment plant within a flood
21 plain unless I design it to certain -- so I always have to
22 prove whether I'm inside or outside of the flood plain.

23 Q. Okay.

24 MR. WREN: With that, Your Honor, we would move to
25 admit Defendant's Exhibit I believe 13 into the record?

1 THE COURT: Any objection?

2 MR. WILLIAMS: Objection to relevance.

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

5 BY MR. WREN:

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

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

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

12 A. Rice Street, I believe.

13 Q. And is Rice Street depicted on that map?

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

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

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

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

22 A. Yes, sir.

23 Q. --- do you know?

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

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

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

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

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

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

12 THE COURT: Yes, you may.

13 BY MR. WREN:

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

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

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

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

22 BY MR. WREN:

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

25 A. Yes, sir.

1 Q. For the record this is just a larger, blown up
2 version of that map?

3 A. Yes, sir.

4 Q. Can you -- I've got a highlighter here. Can you
5 indicate to me approximately where the Graham's residence
6 is located?

7 A. Right about that location.

8 Q. Okay. And can you explain to the jury what the light
9 or white and the dark or shaded areas reflect?

10 A. Everything in the gray area is in the flood plain.
11 And this is Causey Reedy Creek outside -- I've known it as
12 Buck Swamp, but apparently everything north of that that
13 is called Reedy Creek. And Buck Swamp is down here. And
14 then you've got the drainage basin coming in the Town
15 right her up to the railroad tracks and another one north
16 of Town.

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

22 Q. And, Mike, do you have an opinion as to whether the
23 Graham's property is located in a flood plain?

24 A. Yes, sir.

25 Q. What is that opinion?

1 A. Yes, sir, it is located in a flood plain.

2 Q. Okay. Thank you, sir. You can have a seat. I'll
3 sit this over here. Now, Mike, you told the jury a moment
4 ago that y'all had done some investigation in the area.
5 Were maps generated as a result of that work?

6 A. Yes.

7 Q. Are these -- in what format do you in current times
8 with technology, how do y'all keep your maps and do your
9 mapping?

10 A. We have a system call G.I.S. in which we have aerial
11 photo backgrounds that we receive from Dillon County.
12 Once every ten years or so Dillon County and other
13 neighboring counties hire a firm to fly over the county,
14 take pictures, produce these aerial photos. They're an
15 excellent background for all the maps that I do, but they
16 are dated the day that they are flown.

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

1 Q. Mike, let me go ahead and show you right now for just
2 identification purposes. It's Defendant's Exhibits One
3 through Four. And it's four color maps, and take just a
4 minute. I want you to look at each one, and I've got some
5 questions for you, please.

6 A. All right, sir.

7 Q. Mike, are those -- are you familiar with those
8 documents?

9 A. Yes, sir, they're maps that I created.

10 Q. And what's the purpose of these maps for you?

11 A. Two fold. The Exhibit One is a map of almost the
12 entire Town of Latta. And it shows all of manholes that
13 we had surveyed. It shows the sewer line connecting those
14 manholes, and it shows you as a red dot the leak we found
15 when we blew the smoke into the system.

16 Q. All right. Is this a document which you keep in your
17 professional office and use ---

18 A. Yes, sir.

19 Q. --- in your engineering work?

20 A. Yes.

21 Q. And with that hold, same question, hold true for all
22 four documents? Are these documents which you use in the
23 course of a profession as an engineer?

24 A. Yes, sir.

25 Q. And have you used these documents in looking at the

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

3 A. Yes, sir.

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

7 THE COURT: Any objection?

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

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

14 THE COURT: Yes, sir.

15 BY MR. WREN:

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

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

25 Number Three is zooming in even tighter to show the

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

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

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

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

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

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

16 A. Yes, sir.

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

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

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

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

3 A. Map One does.

4 Q. All right.

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

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

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

20 MR. WREN: May I respond, Judge?

21 MR. WILLIAMS: You may.

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

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

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

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

21 THE COURT: Okay. I'm not sure they're notes or
22 reports, okay. But I'll rule that their admissible, and
23 he can testify to what they depict and what he did with
24 them.
25

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

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

5 THE COURT: Yes, sir.

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

8 BY MR. WREN:

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

14 A. Yes, sir.

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

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

25 So we know there is a connection between those two

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

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

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

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

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

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

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

23 A. Yeah.

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

1 A. ... What's in the vicinity?

2 Q. Yes, sir. What are the -- I guess you've explained
3 what the dots and the green lines mean?

4 A. There is a manhole at the intersection of Zeal and
5 King that we shot. There is one down here at -- almost at
6 Vanburg and Rice that we shot and several all the way
7 around it. Generally, the waste water from this part of
8 Town comes through -- goes through his property. The rest
9 of the Town comes right along Rice and flows right out of
10 Town. This is where all the sewer goes out to the Waste
11 Water Treatment Plant which is way off the map.

12 Q. Yes, sir.

13 A. That's pretty much the exit as far as waste water in
14 the Town.

15 Q. Okay. Again, what are the red dots?

16 A. Red dots are where we found leaks in the sewer
17 system.

18 Q. Where you found problems?

19 A. Yes. Broken clean outs, cracked joints. Anywhere
20 where the smoke appeared out of the sewer system.

21 Q. Okay. And point for me again where the Graham's
22 residence is, please?

23 A. Right here.

24 Q. Did you find any problems or leaks or red dots?

25 A. Closer to 32 and 33 that we could find to that area.

1 Q. Thank you, Mike. Let me stand right here, and I'll
2 try to make this short. The next one in order was
3 Defendant's Exhibit Number Two, and other way.

4 A. Other way.

5 Q. And could you just explain to the jury what this is.

6 A. All right. This one is slightly zoomed into the area
7 in question. A little bit more, but also turned on our
8 flood plain layer which is a depiction of our other map
9 with gray interior. Everything inside this red is inside
10 the flood plain. And between Zeal and Rice Street that's
11 the area in question. And I just showed you these two
12 manholes we shot and a green line that we drew straight
13 between the outside.

14 Q. And I didn't want to cut you off, but the red line
15 that is reflected is that same area that we looked at that
16 was the shaded area on the F.E.M.A. map?

17 A. Yes.

18 Q. Again, like we did on the last map, can you take the
19 highlighter and just generally show -- I think you did. I
20 just want to make sure we're clear. Where the Graham's
21 property is?

22 A. Right here.

23 Q. Is that a swimming pool is see?

24 A. I can see the swimming pool right there. I can
25 barely make it out. Few houses on this version, but

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

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

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

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

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

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

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

1 A. There is one right there without a cover on it.

2 Q. And are you familiar with looking at, reading and
3 interpreting these kinds of maps?

4 A. Yes, sir.

5 THE COURT: Y'all need to keep your voices up,
6 please.

7 MR. WREN: Thank you, Judge.

8 BY MR. WREN:

9 Q. Last one. Mike, this is the document you looked at
10 marked Defendant's Exhibit Number Four. Can you please
11 tell the jury what this is?

12 A. Once again an even more zoomed in version of the two
13 manholes. One at Zeal. One at Rice. A straight line to
14 the green line that we drew on top of it. You see the
15 roof outline here. You see the pool outline, and the
16 proximity to that. You also see the red lines.
17 Everything within this area is in the flood plain. You
18 also see the ditch that I pointed out before pretty
19 defined on the lower part.

20 Q. Okay. And, Mike, if the jury is like me I see we've
21 zoomed way in. You can see a little bit more. Mostly on
22 the really dark areas a little bit of this speckling
23 white. Do you know what that is?

24 A. Just the reproduction qualities of that photo that we
25 exported.

1 Q. When you zoom in?

2 A. Yes.

3 Q. And you pointed out the green lines same as the other
4 one that that location for manhole to manhole of the sewer
5 line?

6 A. Yes, sir.

7 Q. That crosses the Graham property?

8 A. Yes, sir.

9 Q. And, now, this photo is becoming more clear. Can you
10 tell the jury from your observation, your knowledge of
11 looking at this matter where the sewer line is located?

12 A. Well, here is -- you can barely see the outline of
13 the roof line right along that green line. So the sewer
14 line would be at least 3 or 4 feet outside the roof line.
15 It also skirts along the edge of this pool right here. So
16 in my opinion it's a few feet outside the house, but not
17 under the house.

18 Q. And have you seen anything throughout your work on
19 this, your experience and knowledge or investigation that
20 has indicated to you that or confirmed that the sewer line
21 on the Graham property is underneath their house?

22 A. I have not seen anything. The only two known points
23 I know of is this manhole, this manhole and a straight
24 line between them.

25 Q. And is this a gravity sewer system?

1 A. Gravity sewer lines with the direction of flow coming
2 this way and turning and going out.

3 Q. And my guess is civil engineer. Is it more common to
4 see a house built upon or in the vicinity of a line? Or a
5 line built somehow underneath a building?

6 A. It's very uncommon, but it does happen.

7 Q. Here, though, you have not seen anything to indicate
8 that that line runs underneath the house?

9 A. No.

10 MR. WILLIAMS: Objection.

11 MR. WREN: I'll be happy to rephrase it.

12 BY MR. WREN:

13 Q. Mike, have you seen anything, everything you looked
14 at in this case to indicate that that sewer line runs
15 underneath the Graham's residence?

16 A. I have not seen anything.

17 Q. Thank you. You may have a seat, Mike. I'm going to
18 wrap up.

19 MR. WREN: Beg the Court's indulgence.

20 BY MR. WREN:

21 Q. Mike, the couple of documents that we have looked at
22 today, have you looked at other documents relative to this
23 matter?

24 A. Yes, sir.

25 Q. Have you looked at other photographs and such things?

1 A. Yes.

2 Q. And are you familiar with residences having what
3 we -- service lines? Do you know what service lines are?

4 A. Yes, sir.

5 Q. Can you tell the jury what a service line is?

6 A. When the sewer comes from underneath your house from
7 your fixtures; maybe your toilet. Maybe your kitchen
8 sink, washer, all the different devices, all that
9 constitutes plumbing lines underneath your house. When it
10 leaves your house and all of those different fixtures are
11 now heading toward the street to hook into the Town sewer
12 line that's what I call the service line. Leaving your
13 house and going out to the main line in the street.

14 Q. And what is a tap with regards to sewer lines?

15 A. A tap is the junction of the City's main line and the
16 service line out at the road.

17 Q. And whose responsibility is the service line?

18 A. The service line is the responsibility of the
19 individual.

20 Q. Mike, a little bit ago during voir dire Mr. Williams
21 asked you a couple questions. I heard you say something
22 about -- I think he had asked you about doing work in
23 other municipalities. Do you recall that?

24 A. Slightly.

25 Q. Have you done work up in Bennettsville?

1 A. Yes, sir..

2 Q. Again, did I hear you to say that you did
3 rehabilitation of existing sewer line work in
4 Bennettsville?

5 A. Yes.

6 Q. And what is that for the jury?

7 A. Rehabilitation can be the full blown replacement of
8 the sewer line. It can be the lining of the sewer line.
9 A technology called pipe bursting. It can be many
10 different things. It can be an insider liner, spring
11 joints. There is many different ways to rehabilitate a
12 sewer line.

13 Q. And these sewer lines up in Bennettsville were there
14 problems with those lines?

15 A. Yes, sir. They were collapsed.

16 Q. And if you as an engineer have a collapsing line or
17 have the problems we've talked about with the sewer line a
18 there are there things you can do to fix it and repair it?

19 A. Yes.

20 Q. Is that how you operate?

21 A. Yes, sir.

22 Q. As to the Graham's property and everything you've
23 looked at after these issues came to your attention after
24 September of 2008 have you become aware of any problems
25 with the sewer line at the Graham's residence that

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

3 A. No, sir.

4 Q. Thank you, Mike. I appreciate it.

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

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

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

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

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

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

19 Q. Have you ever looked?

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

22 Q. Did you look under the house that day?

23 A. Yes.

24 Q. What day was that?

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

1 the house and they invited everybody there -- I think you
2 were there that day.

3 Q. Yeah. The day I was there, and that was the date
4 that there was no sewage alleged to be under the house or
5 no problems that day, correct?

6 A. That's true.

7 Q. All right. Back in September of 2008 and October of
8 2008, November of 2008, April of 2009, May of 2011, and
9 all this year, 2012, have you ever once looked under that
10 house when there was a time of sewage problems?

11 A. No, sir.

12 Q. Okay. You weren't there the day that smoke test was
13 done either, were you?

14 A. No, sir.

15 Q. Your people did smoke tests, but you weren't there?

16 A. That's right.

17 Q. Your people did camera tests on this sewer line, did
18 they not?

19 A. No, sir.

20 Q. Are you aware that camera tests were done on the
21 sewer line?

22 A. No.

23 Q. You did not report to Danielle Watson that y'all had
24 tried to do camera tests?

25 A. I don't recall that.

1 Q. You know nothing about any camera test?

2 A. I don't recall anything about a camera test.

3 Q. That's different. Have you looked at your records to
4 see if a camera test was attempted in preparation for your
5 testimony?

6 A. No, sir.

7 Q. You haven't looked at your records?

8 A. No, sir.

9 Q. Can you deny that you all attempted a camera test and
10 the line was so clogged that you couldn't get your camera
11 in there?

12 MR. WREN: Objection, Your Honor. Asked and
13 answered, number one. He can't disprove the negative. He
14 stated he has no knowledge of a camera test.

15 MR. WILLIAMS: I'll take that as a denial.

16 MR. WREN: Judge, for the record I don't think my
17 objection speaks for the witness.

18 THE COURT: You need to rephrase your question.

19 MR. WREN: Thank you.

20 BY MR. WILLIAMS:

21 Q. Are you saying that you're just unaware of a camera
22 test or do you have had an opinion that you can state to a
23 reasonable degree of engineering certainty that there has
24 been no camera test?

25 A. I don't recall a camera test being done on that

1 property.

2 Q. Okay. All right. Let me get you to, if you would,
3 to come down here and talk about the pictures. As I
4 recall your testimony what you're -- this is
5 Defendant's -- oh, this is the blow up of Defendant's
6 Exhibit ---

7 THE COURT: Mr. Williams, we need to take a brief
8 break? Comfort for one of our jurors.

9 MR. WILLIAMS: All right.

10 THE COURT: Let's take a break and come back and
11 continue on. Ladies and gentlemen, I'm going to remind
12 you not to begin to discuss this matter among yourselves
13 as you have not heard all the evidence. Let's take a
14 brief break and we'll come back.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 3:46 p.m.)

17 THE COURT: Mr. Hanna, you have not completed your
18 testimony so during this break I ask that you not discuss
19 it with anyone. Since you have not completed it it would
20 be inappropriate for you to discuss it with anyone at all.
21 You may step down. Let's take a brief break.

22 (WHEREUPON, Court was in recess at 3:46 p.m. and
23 reconvened at 3:56 p.m.)

24 THE COURT: Is there anything before we ask the jury
25 to come in?

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

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

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

5 (WHEREUPON, the jury panel enters the courtroom at
6 3:57 p.m.)

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

9 MR. WILLIAMS: May it please the Court.

10 BY MR. WILLIAMS:

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

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

17 Q. But what was your involvement prior to that?

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

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

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

1 Q. So you looked at options to relocate the line?

2 A. Yes.

3 Q. And that's on behalf of the Town of Latta?

4 A. Yes.

5 Q. Were you able to find options to locate the line?

6 A. I drew up a couple of scenarios, but there were no
7 good alternatives there.

8 Q. When was that?

9 A. I have no idea.

10 Q. It was after the litigation started, right?

11 A. I have no idea.

12 Q. Okay. While the problems were going on in September,
13 October, November 2008 and then through 2009 were you
14 involved in trying to fix the problem at the Graham's
15 house?

16 A. In ---

17 MR. PLYLER: Objection, Your Honor. I don't know
18 what testimony there is of a problem at this location.

19 THE COURT: Maybe you need to rephrase the question
20 or provide information from facts in evidence.

21 BY MR. WILLIAMS:

22 Q. Beginning in September 2008 and continuing to the
23 point at which you drew out some possible relocations of
24 the line did you have any involvement in trying to
25 analyze, correct or understand the problems the Grahams

1 were having with sewage under their house?

2 A. I'm not sure if any direct involvement, but somewhere
3 in that timeframe came the invention of let's do the
4 smoke, let's do the physical manhole survey. I'm just not
5 sure of the exact date when all that started.

6 Q. Okay. And I think you told the jury that the camera
7 test is the most effective test, right?

8 A. Not necessarily the most effective. There are
9 certain things that the smoke will show up that the
10 cameras will never see. There are certain things that the
11 cameras will see that the smoke will never show up. So
12 they're equal partners in determining what to do with the
13 line.

14 Q. But the smoke will detect as you testified to only
15 readily visible smoke, correct?

16 A. Yes.

17 Q. And if a line is blocked and smoke can't get past
18 that certain point then the smoke won't go somewhere else,
19 right?

20 A. That's true.

21 Q. Okay. And if somebody, not you, but if somebody is
22 conducting a smoke test and they see smoke coming out of
23 the roof of a house they won't think there is anything to
24 even observe, correct?

25 A. That is a good indication that smoke has made it that

1 far down the main line.

2 Q. Okay. It doesn't -- it's not an observation that
3 there is an issue, correct?

4 A. No, no issue.

5 Q. Okay. It's a normal expectation?

6 A. That is correct.

7 Q. All right. Now, let's talk about the maps that you
8 prepared, Number One, Two, Three and Four. The ones that
9 lead to -- this is the third of them, but zooming in on
10 the Graham's house?

11 A. Okay.

12 Q. The Dillon County Government did the ariel photos,
13 correct?

14 A. Yes.

15 Q. And you rely on those? Everybody relies on those?

16 A. Well the Dillon County Government did not do the
17 photos. They paid for them. The Pee Dee Regional
18 Council of Government hired the firm that did the photos.

19 Q. Okay. And the red lines are something you can mash a
20 button on a computer and that information comes from the
21 federal government, correct?

22 A. I think that information comes from the D.N.R.

23 Q. What?

24 A. Off of the D.N.R.'s website.

25 Q. Department of Natural Resources?

1 A. That's right.

2 Q. They get it from the federal government, correct?

3 A. From F.E.M.A.

4 Q. F.E.M.A. The Federal Emergency Management
5 Administration?

6 A. Yes, sir.

7 Q. Okay. And that's how these red lines got on this
8 drawing?

9 A. Yes, sir.

10 Q. The green lines that are on this drawing what map --
11 what computer did you go to find out where to put those
12 lines?

13 A. Those are lines that my G.I.S. technician drew from
14 known manhole locations.

15 Q. Okay. So you didn't have a governmental reference
16 source to determine where the Town of Latta's sewer lines
17 are located, do you?

18 A. No, sir.

19 Q. And you don't have a -- and the Town of Latta doesn't
20 have a map showing where its sewer lines is, does it?

21 A. Yes, sir.

22 Q. Did you look at that map?

23 A. Yes, sir.

24 Q. Did you use that map to prepare this photograph?

25 A. Yes.

1 Q. Okay. How did you use that map?

2 A. At this point we have two pieces of known
3 information. We have our physical manhole data that we
4 have GPSed and that is a known location on the face of the
5 earth. I can guarantee that within a foot or so.

6 Q. Okay.

7 A. The map for Latta is a map that is approximately 90
8 percent accurate that Latta has been using for 30 or 40
9 years. This represents a much more accurate rendition of
10 what is actually in place in the field than the old Latta
11 maps. But we use the Latta maps to tell us that the flow
12 goes from Manhole One to Two. Skips over to Four. Goes
13 down the Five. Just as a general representation to make
14 sure we're connecting the dots properly.

15 Q. All right. Each one of these dot is designed to
16 represent a manhole, correct?

17 A. Yes.

18 Q. You put those on there or your G.I.S. technician put
19 them on there?

20 A. Well, when you download the data off of the G.P.S.
21 device it puts them on there. Nobody draws them. It
22 shows a dot on that location on the face of the earth.

23 Q. So the global positioning satellite tells you where
24 this manhole is?

25 A. Yes.

1 Q. How does it know?

2 A. We have a device called a Tremble GOX-8. It's about
3 this big. It's like a very large calculator. We go stand
4 on top of the manhole. We push several buttons, and it
5 measures from seven to 12 of satellite locations where I'm
6 standing on the face of the earth. I'm standing on the
7 top of a manhole. You take that device back. You hook it
8 into the internet. It takes 24 hours to calibrate that
9 data. And then it produces an output file that you put on
10 the computer and the computer draws where that dot is on
11 the face of the earth.

12 Q. Okay. You prepared this for this litigation,
13 correct?

14 A. No, sir. I prepared that for the infiltration and
15 inflow study report that I'm doing.

16 Q. So what the satellite reads is not where the manhole
17 is. It's where the person is standing when they sent the
18 information to the satellite, correct?

19 A. Yes, sir.

20 Q. And if the person was not standing on the manhole the
21 satellite goes and pick a wrong location, correct?

22 A. Yes.

23 Q. And even if a person is trying to stand on the right
24 manhole and just 6 inches off of this. They should be on
25 the dead center of the manhole, right?

1 A. Yes, sir.

2 Q. If they're a few inches off the dead center of the
3 manhole that's going to go up to the satellite, come back
4 down 6-inches in the wrong location, right?

5 A. The Tremble GOX-8 device that I described as a large
6 calculator it is mounted to a pole. You sit the base of
7 the pole in the center of the manhole. You stand the pole
8 up straight. I agree it could be tilted 2 degrees one way
9 or the other. The device is sitting on that. The signal
10 is going from the top of the pole to the satellite. And
11 it's all within 3 or 4-inches. The accuracy of the
12 satellite, the G.P.S. device, is within 18 inches. So
13 generally we're within a foot, 18 inches of the actual
14 location.

15 Q. Okay. The accuracy of the satellite is within 18
16 inches, and that's from the -- with respect to the point
17 in which the signal is sent up to the satellite, right?

18 A. Yes.

19 Q. If the signal was sent a little bit off then it can
20 be more than 18 inches off, correct?

21 A. Sure.

22 Q. Sure?

23 A. Yes.

24 Q. Okay. Did you stand on this manhole cover?

25 A. No, sir.

1 Q. Did you stand on that manhole cover?

2 A. No.

3 Q. Did you stand on any of those manhole covers?

4 A. No, sir.

5 Q. Did you obvious the people who stood there?

6 A. No, sir.

7 Q. What kind of training do they have?

8 A. Years of experience with the GOX-8 Tremble device.

9 Q. Who were they?

10 A. Ryan Cox.

11 Q. Okay. Not employees of the Town of Latta?

12 A. My employees.

13 Q. Your employees?

14 A. My company's employees.

15 Q. Your company's employees, okay. Now, so what you --
16 correct me if I'm wrong, but basically what you did is
17 based on this manhole cover, supposed manhole cover, it's
18 either 18 inches on way or off one way or the other; is
19 that correct?

20 A. 18-inches total.

21 Q. When you say total what does that mean?

22 A. The center of the manhole, I make sure in this
23 location that it was either nine inches that way, 9 inches
24 that way. 18-inches circle.

25 Q. Okay. So it could be 9 inches off either way?

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

1 A. Normally city blocks are about 400 feet apart. That
2 looks like a normal city block.

3 Q. All right. When your man went out there to stand out
4 there and hold up the stick and send the signal to the
5 satellite did he have a map of where the manholes were in
6 Latta?

7 A. Yes.

8 Q. Okay. And he went and looked for the maps? I mean
9 looked for the manholes base on the map?

10 A.

11 Q. But the map was 30 or 40 years old?

12 A. Yes, sir.

13 Q. Okay. What if he got to a place and there was
14 supposed to be a manhole there and there wasn't? Did that
15 happens

16 A. Yes, sir.

17 Q. Okay. Did he get to other places where there wasn't
18 supposed to be a manhole and there was one?

19 A. That would not be as common as the previous scenario.

20 Q. Okay. But thinking there was going to be a manhole
21 and not seeing one is more common, correct?

22 A. Yes.

23 Q. Do you have a record of where they looked for manhole
24 and couldn't find one?

25 A. Yes, sir.

1 Q. Where were those locations?

2 A. I have no idea. I have a record of it. I don't have
3 it in my head.

4 Q. Wasn't one of them right there on Rice Street at the
5 front of the Graham's driveway where their driveway leads
6 to Rice Street?

7 A. I don't recall it.

8 Q. Didn't there used to be a manhole there?

9 A. I don't know.

10 Q. Years ago?

11 A. I don't recall that either.

12 Q. Wasn't there a manhole there that was covered up when
13 they repaved -- when they paved Rice Street?

14 A. I don't recall that either.

15 Q. Okay. All right. You're an engineer. If this line
16 here is a straight line from the Zeal Street manhole to
17 the Rice Street manhole.

18 A. Okay.

19 Q. And it's 400 feet long. If you moved one of the --
20 let's say if you moved the Zeal Street -- I mean the Rice
21 Street manhole 9 inches to the left. Got me so far? Now,
22 let's move the Zeal Street manhole 9 inches to the right,
23 correct? Now, you have a right triangle the hypothesis of
24 which is 400 feet, correct?

25 A. Yes, sir.

1 Q. And you know the Pythagorean Theory, don't you?

2 A. Yes, sir.

3 Q. Tell the jury what that is?

4 A. Z squared equals X squared plus Y squared.

5 Q. Okay. So if -- and Z squared being the hypothesis.

6 That's this line here?

7 A. Yes, sir.

8 Q. So if you know what this line is you can -- you will
9 know what every other line forming a right triangle with
10 it is, is that correct?

11 A. Yes.

12 Q. If you're 18-inches off. If you're 9-inches off to
13 the right on Zeal Street and 9 inches off to the left on
14 Rice Street you're going -- you can be as much as how many
15 feet off on this straight line?

16 A. In the midpoint I would be the exact same place I
17 started.

18 Q. In the midpoint. I said if you're 9 inches off this
19 way and 9 inches off that way you can -- this line here,
20 this portion on Rice Street can be as much as 45 to 50
21 feet off, isn't that right?

22 A. No, sir.

23 Q. Do you have a calculator with you?

24 A. I do not.

25 Q. Do you have a cell phone with you?

1 A. No, sir.

2 Q. Do you have a pencil and paper?

3 A. No.

4 Q. Do the math necessary using the Pythagorean Theory we
5 just described to determine the possible locations of this
6 line. The lines connecting this manhole to that manhole
7 if you're off 9 inches to the right on Zeal Street, 9
8 inches to the right of Rice Street?

9 A. Zero. I would demonstrate. May I?

10 Q. Yep.

11 A. I have a vertical line. That's where I say the line
12 is. You say that I am off 9 inches at this location. I'm
13 off 9-inches at this location. I connect the dot. I'm at
14 the exact same point, midpoint.

15 Q. Midpoint, okay.

16 A. If this is 200 feet and half way if this is off 9
17 inches that would be off four and a half inches. Same way
18 up here. If you're going a third point it would be off
19 two and a half inches. If it was off here it would be six
20 and a half inches. Those are rough numbers out of my
21 head.

22 Q. So if this line here -- if this point here is 9
23 inches this way and this point here is 9 inches this way
24 the line would run just like this, would it not?

25 A. And meet at the exact same location in the middle of

1 that line.

2 Q. In the middle?

3 A. Yes.

4 Q. The middle of the line would be at the ditch though,
5 wouldn't it?

6 A. Yes, sir.

7 Q. So the middle of the line would be the ditch, but
8 then that line would continue on a little bit to the left?

9 A. 9 inches to the left.

10 Q. 9-inches to the left. 18 inches total. 18 inch gap
11 here. If you tip this line just a little bit it runs
12 right through that house, doesn't it?

13 A. I disagree.

14 Q. It runs partly under the house, correct?

15 A. No, sir.

16 Q. Not at all under the house?

17 A. No, sir.

18 Q. Okay. So this -- no matter where you put the manhole
19 cover on Zeal Street or Rice Street it doesn't affect the
20 drawing of that line?

21 A. Within a reasonable degree of accuracy which I've
22 stated is about 9 inches. 18 inches total.

23 Q. When you drew this that's a line, isn't it?

24 A. Yes.

25 Q. All right.

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

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

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

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

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

15 THE COURT: Any objection?

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

20 THE COURT: Plaintiff's Exhibit 19.

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

23 BY MR. WILLIAMS:

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

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

3 A. You asked me what the Pythagorean Theory was.

4 Q. Right.

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

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

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

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

14 A. Right.

15 Q. I said just write down the number?

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

18 Q. Right.

19 A. The approximate distance.

20 Q. Right. Why don't you write Z for that so everybody
21 can know what you're doing. All right. Now, under the
22 scenario that I've described where the satellite is
23 18-inches off. The base of they triangle is going to be
24 18-inches, right?

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

1 Q. I'm trying to move the manhole 18-inches to the
2 right -- to the left, actually. I'm trying to move the
3 Rice Street manhole 18 inches to the left relative to the
4 Zeal Street manhole. You see what I'm trying to do?

5 A. What's your question.

6 Q. Would the base -- would that line on the triangle be
7 18 inches?

8 A. I will draw another scenario. If you only want to
9 move one manhole. I say it is here. You say it is 18
10 inches off. And now I connect the lines. At
11 approximately half way it would be 9 inches off.

12 Q. What about at the full way?

13 A. At the way.

14 Q. At the -- all the way down, how much would it be?

15 A. You said 18 inches.

16 Q. Okay.

17 A. Give and take.

18 Q. But it would be 9-inches off at the midpoint?

19 A. Yes, sir.

20 Q. Okay.

21 A. I disagree with the 18-inches.

22 Q. Okay. What -- if the base of that triangle is 9
23 inches, the one that you want to use, what would the long
24 line be?

25 A. The hypotenuse.

1 Q. Well, the second angle? The second line? The second
2 largest line? Not the hypotenuse, but the second largest
3 line?

4 A. If the hypotenuse is 400 it would be 399.8. I mean
5 it would be slightly less than 400.

6 Q. Let me abandon that line of questioning. Let's go
7 back to this. If in fact there was a manhole cover, and
8 if you'd come over here and look at it more closely, if
9 there is a manhole whose cover had been paved over at the
10 end of the Graham's driveway and you drew up -- and you
11 got the G.P.S. You stood there with the G.P.S. device.
12 You would draw a straight line right through their house,
13 would you not?

14 A. If I knew that to be the case.

15 Q. If that were the case?

16 A. Yes, sir.

17 Q. Okay. And your people had no way of determining what
18 was under the pavement, do you?

19 A. No.

20 Q. Okay. Thank you. That's all I have.

21 MR. WILLIAMS: Your Honor, I have broken my grasses.
22 Can I have a minute to try to reconnect them?

23 THE COURT: Yes.

24 BY MR. WILLIAMS:

25 Q. Mr. Hanna, you do disagree that the type of pipe used

1 in 1924 was terra cotta pipe? Most likely terra cotta
2 pipe running underneath the Graham's house?

3 A. I do not know what was used in 1924.

4 Q. Do you know what's under the Mr. Graham's house?

5 A. No, sir.

6 Q. And Mrs. Graham's house?

7 A. Yes, sir, I do.

8 Q. What's under there?

9 A. I saw a picture that made it resemble cast iron pipe.
10 Now, that's the service line underneath the house. I did
11 not see the main line for the Town of Latta.

12 Q. Okay. The service line is metal?

13 A. Yes, sir. Cast iron.

14 Q. That would mean the line from the commode to the main
15 line?

16 A. It would appear to be cast iron. I don't know for
17 sure.

18 Q. Appears to be cast iron?

19 A. Yes, sir.

20 Q. What about the main line that's owned by the Town of
21 Latta?

22 A. No, sir.

23 Q. Did you attempt to look at it?

24 A. No, sir.

25 Q. Did you look at it?

- 1 A. No, sir.
- 2 Q. Did you stumble across it?
- 3 A. It's underground.
- 4 Q. Okay. Did Mr. Graham show you the spot where he had
- 5 dug up the line and look at it?
- 6 A. I don't recall that.
- 7 Q. Dug up to the seal where the service line is
- 8 connected with the main line?
- 9 A. I don't recall that.
- 10 Q. Okay. You didn't look at that?
- 11 A. I don't recall that.
- 12 Q. Didn't you look at the hole at his back door and
- 13 say -- and he point to you and show you where that was?
- 14 A. I don't recall that.
- 15 Q. Well, under -- If there is a service line connecting
- 16 to your main line that someone had actually looked at
- 17 would that be a good reference point for drawing a
- 18 straight line out to a manhole on Rice Street?
- 19 A. I'm not sure what that point would represent.
- 20 Q. It would represent a line running from that point to
- 21 Rice Street?
- 22 A. I'm not sure how I can determine that by looking into
- 23 a whole.
- 24 Q. What if you looked in the hole and saw the main line?
- 25 A. I would not be sure how I would determine if that

1 would be the main line.

2 Q. You can't look at one and tell what it is?

3 A. It's according to what I'm looking at.

4 Q. So would it not be more reliable to look at it and
5 see -- say to yourself, 'this is the main line. It looks
6 like the main line'; that is to go out and stand on a
7 manhole and have somebody else stand far away and you look
8 over there and they wave to you and see that that's the
9 main line between the two?

10 A. I'm not sure what your question is.

11 Q. Is a hole dug in the ground where you see the main
12 line, isn't that a good reference point from which to draw
13 a straight line?

14 A. As long as you know what line you're looking at.

15 Q. You made no attempt to look at any such line, did
16 you?

17 A. No, sir.

18 Q. Okay. Tropical Storm Hanna didn't go through Latta,
19 did it?

20 A. I have no idea, sir.

21 Q. All right. That's the one you were fond of because
22 you had the same name.

23 A. I remember the storm. I don't remember it's path.

24 Q. Didn't it go out in the ocean and go ashore well
25 north of Latta?

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

4 BY MR. WILLIAMS:

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

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

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

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

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

19 A. That's right.

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

22 A. I'm not sure what coring is.

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

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

1 Q. Where the back steps join the grass, if there is a
2 main line connection to the service line at that point
3 would you agree with me that you can't get to Rice Street
4 from that point without going under their house?

5 A. That would be true.

6 Q. Thank you.

7 MR. WILLIAMS: I'm sorry. I'm through, Your Honor.

8 THE COURT: Any redirect?

9 MR. WREN: Yes, brief redirect, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. WREN:

12 Q. Mike, the -- all the opinions you've relied to the
13 jury here today have they all been to a reasonable degree
14 of engineering certainty?

15 A. Yes, sir.

16 Q. And that is your profession; is that correct?

17 A. Yes, sir.

18 Q. If there had been a camera study done of this
19 particular location would you have seen it?

20 A. Yes, sir.

21 Q. You recall Mr. Williams asked you about options of
22 the potentially relocating the line. Do you recall all
23 that from a little bit earlier ago?

24 A. Yes, sir.

25 Q. And you actually, indeed, did look at options of

1 possibly relocating the line. Was that your earlier
2 testimony?

3 A. Yes, sir.

4 Q. Did you need to relocate this line?

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

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

8 A. Thank you.

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

10 RECROSS-EXAMINATION

11 BY MR. WILLIAMS:

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

15 A. No, sir.

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

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

22 Q. So you block it off somewhere?

23 A. Yes, sir.

24 Q. Block it off upstream and downstream?

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

1 Q. Only upstream?

2 A. Yes, sir.

3 Q. Then you can work on it?

4 A. Yes.

5 Q. Okay. Has the Town of Latta ever done that with its
6 main line during your relationship with them?

7 A. I don't recall any specific events, but I'm sure they
8 probably have. Contractors do it more frequently than the
9 to Town staff do it.

10 Q. When I say, "the Town" I mean the Town and its
11 contractors and subcontractors and people like you. Has
12 the Town in the few few years not had occasions where it
13 would shut down the sewer line temporarily to do repairs?

14 MR. WREN: Your Honor, objection. I was trying to
15 give some deference, but my redirect was pretty brief.
16 And I'm pretty sure I didn't go into any of this, Judge?

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

18 MR. WILLIAMS: Thank you.

19 BY MR. WILLIAMS:

20 Q. Have they done that?

21 A. Yes.

22 Q. And after affecting the repair cut the sewer system
23 back on?

24 A. Yes, sir.

25 Q. And what's the most recent occasion for that?

1 A. In the last few weeks.

2 Q. How often does it happen?

3 A. Not very often. The Town is going through a project
4 right now because of a highway expansion on 301 and 501.
5 Some of that work is causing us to tie into the sewer
6 lines with contractors. Not the Town's staff, and I do
7 believe that they've had to plug and bypass lines around
8 things while they can make the new repairs.

9 Q. Okay. Is that a once a year thing?

10 A. I'd say more like once every three to four to five
11 years.

12 Q. But most recently two or three weeks ago?

13 A. Yes, sir.

14 Q. Thank you.

15 COLLOQUY

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

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

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

21 THE COURT: Is there any rebuttal testimony?

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

25 THE COURT: Yes. Ladies and gentlemen, once again

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

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

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

19 THE COURT: Whatever will speed us along.

20 MR. WILLIAMS: Pardon me?

21 THE COURT: Whatever will speed us along.

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

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

1 got time let's go ahead and do that.

2 MR. WREN: Thank you, Your Honor.

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

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

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

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

15 THE COURT: That's fine.

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

17 THE COURT: We ready?

18 MR. WREN: Yes, Your Honor.

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

20 (WHEREUPON, the jury panel enters the courtroom at
21 4:52 p.m.)

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

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

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

1 still under oath to tell the truth in this matter.

2 THE WITNESS: Yes, ma'am.

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

5 DIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Claude, you're still under oath?

8 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. And how did you do that?

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

16 Q. And did you watch that hole being dug?

17 A. Yes, sir.

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

19 A. Yes, sir.

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

22 A. Yes, sir, I did.

23 Q. Describe to the jury what you say?

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

1 in the top of the line the service line was like hooked to
2 the bigger line with cement all around it.

3 Q. All right. So the service line ran up and down from
4 your house?

5 A. Yes. Well, it came from the house like this and
6 whenever it got to the sewer line it went like this to the
7 sewer line.

8 Q. It crooked down?

9 A. Yes, sir.

10 Q. To the sewer line?

11 A. Right.

12 Q. Okay. What was the size of the service line? Use
13 your hand if you want to.

14 A. About this big around.

15 MR. PLYLER: Objection. Calls for an opinion, an
16 estimate and speculation.

17 THE COURT: He can give an estimate of what he saw.

18 THE WITNESS: It was approximately that big around.

19 BY MR. WILLIAMS:

20 Q. And was the other line bigger or smaller?

21 A. Smaller.

22 Q. I asked -- my question ---

23 A. About this big. The other line coming from the house
24 was about that big.

25 Q. All right. The line coming from your house was how

1 big?

2 A. The line coming from the house was about that big.

3 Q. Okay. And the other line?

4 A. The other line was about that big.

5 Q. Okay. So the other line was bigger?

6 A. Much bigger, yes, sir.

7 Q. What did you believe -- as a result what did you
8 believe the other line to be?

9 A. The main sewer line.

10 MR. PLYLER: Objection. This is speculation. He's
11 asking what he believes it to be. He's not been qualified
12 as an expert. It's lay opinion and it's speculation.

13 THE COURT: I'll sustaining that one, and you can
14 rephrase the question.

15 BY MR. WILLIAMS:

16 Q. Did you have any line on your property other than the
17 service line?

18 A. No, sir.

19 Q. Okay. So that other bigger line was somebody else's
20 line, correct?

21 A. Yes, sir.

22 Q. All right. That other bigger line, where did it
23 lead? What direction was it running?

24 A. Towards my house.

25 Q. Towards your house?

1 A. Yes, sir.

2 Q. And how far away from your house was this hole that
3 you dug?

4 A. 8 feet, 6 feet, eight feet.

5 Q. Let me get you to -- this is a blow up of Defendant's
6 Exhibit Number Three. And I believe that we've got an
7 even better one, view. Okay, this is a blow up of
8 Defendant's Exhibit Number Four. You may -- with the
9 Court's permission ask you to step down?

10 THE COURT: Just keep your voice up so we can hear
11 you.

12 BY MR. WILLIAMS:

13 Q. It's a Sharpie that I borrowed from the Clerk of
14 Court. Do you recognize this picture?

15 A. Yes, sir.

16 Q. Okay. Show, just so we can all reorient ourselves,
17 show us Rice Street?

18 A. Rice Street is right here.

19 Q. Where is your house?

20 A. This is my house.

21 Q. And where is your pool?

22 A. This is swimming pool.

23 Q. Okay. This green line that might represent a sewer
24 line, does that run underneath your swimming pool?

25 A. I couldn't tell you.

1 Q. Have you ever had any trouble with your swimming pool
2 related to sewage?

3 A. No, sir.

4 Q. Okay. Draw with that Sharpie on here where you
5 observed the hole that you saw the service line?

6 A. Where the service line came from the house?

7 Q. Where the service line came from the house and
8 connected with the other larger line.

9 A. I don't know what this black stuff is, but it was
10 right in there.

11 Q. All right. Make a -- draw a big circle around that
12 little circle that you just drew. And put 'CG'. So on
13 the center of this circle right here is where the hole
14 was?

15 A. Yes, sir.

16 Q. How big around was that hole?

17 A. Pretty big.

18 Q. But was it big?

19 A. Yes, sir.

20 Q. As big as that?

21 A. Yes, sir.

22 Q. You had a clear, unobstructed view of it?

23 A. Yes, sir.

24 Q. Okay. Did you get down on your hands and knees and
25 feel around in there or just looked?

1 A. I just looked.

2 Q. Okay. Could you tell what the other line was made
3 out of?

4 A. It was covered in mud and everything else. So the
5 thing I could see was where it was connected.

6 Q. Okay? All right. From this point here where you saw
7 that connection if you wanted to get to Rice Street how
8 could you do it?

9 A. Right there.

10 Q. And what direction was that other line pointed that
11 you saw?

12 A. Right like that.

13 Q. Just like you just depicted?

14 A. Yes, sir.

15 Q. Both of them going through your house or under your
16 house?

17 A. Underneath the house.

18 Q. Through the line running under your house.

19 A. Yes, sir.

20 Q. You can sit down back up there. Now, you recall some
21 earlier testimony about Melvin Jackson, the supervisor of
22 the Sewer Department for the Town of Latta?

23 A. Yes, sir.

24 Q. Did you ever have a discussion with him while he was
25 in that capacity about the location of the manholes around

1 your house?

2 A. Yes.

3 Q. Tell the jury what he said, what you asked him, what
4 he said as best you can remember?

5 A. He told me there was a manhole cover out at the end
6 of my driveway that was covered up by pavement by the
7 Highway Department the last time they paved the road.

8 Q. Did he say when the last time they paved the road
9 was?

10 A. No, sir.

11 Q. And tell again the location of it that he said?

12 A. Out at the end of my driveway in the road. In Rice
13 Street.

14 Q. And that line that you just showed the jury, the line
15 that you drew on the map from your hole in the ground
16 where the other line was, tracing it out, where would it
17 have ended in relation to Rice street?

18 A. Pretty much in that area that we're talking about.

19 Q. At the end of your driveway?

20 A. At the end of my driveway.

21 Q. Okay.

22 MR. WILLIAMS: That's all the questions I have.

23 THE COURT: Mr. Plyler.

24 CROSS-EXAMINATION

25 BY MR. PLYLER:

1 Q. Mr. Graham, you were up here a little over three days
2 ago, is that right? And then on Monday weren't you on the
3 stand?

4 A. Yes, sir.

5 Q. Now, I think we started about two o'clock on Monday;
6 is that right?

7 A. Yes, sir.

8 Q. You were up there for like two hours, weren't you?

9 A. Long time.

10 Q. Right. You were asked a whole bunch of questions,
11 and you knew what you were going to be asked about, didn't
12 you?

13 A. Yes, sir.

14 Q. And you knew that this whole lawsuit that you and
15 your wife brought was about whether there is a line
16 running underneath your house?

17 A. Yes, sir.

18 Q. And I asked you, just like we're doing right now, I
19 asked you did you do anything to inspect that line?
20 Anything to show that that line was running underneath
21 your house, and what did you say? You said, "No."

22 A. No.

23 Q. So now you're telling me that I remember the time
24 when the plumber came and dug the hole, and I can see that
25 that main line is running underneath my house." So all of

1 a sudden two days later you remember this particular
2 event; is that correct?

3 A. Yes, sir.

4 Q. And you understand that you're under oath, sir?

5 A. Yes, sir.

6 Q. You understand what that means?

7 A. I understand perfectly what it means, yes, sir.

8 Q. All right?

9 A. Yes, sir.

10 Q. And you understand that this lawsuit is important,
11 correct?

12 A. Yes, sir.

13 Q. You understand it's important to all of us?

14 A. Yes, sir.

15 Q. You understand that it takes our time, our personal
16 time, correct?

17 A. As well as mine.

18 Q. Right. And you could have provided that testimony on
19 Monday, couldn't you?

20 A. I could have ---

21 Q. All right. So were you lying then?

22 A. If I remember ---

23 Q. --- or now, sir?

24 A. I'm telling the truth then and now.

25 Q. So when I asked you had you done anything to try to

1 show where that pipe goes and you said, "no" that was the
2 truth?

3 A. No. You asked me if I had conducted an inspection.
4 I have not still conducted an inspection. I watched a
5 plumber dig a hole to install my service line.

6 Q. Wait. To install your service line?

7 A. Hook it back up in there if it was disconnected.

8 Q. So a plumber came to install your service line? So
9 where is your sewage ---

10 A. Plumber came ---

11 Q. Excuse me, sir ---

12 (WHEREUPON, both parties speaking on top of each
13 other.)

14 THE COURT: One moment. We cannot have people
15 talking over each other. The court reporter can only take
16 one person's voice. Both of you need to listen to each
17 other and wait until the other person is finished speaking
18 before you answer the question or ask the question.

19 THE WITNESS: Yes, ma'am.

20 BY MR. PLYLER:

21 Q. Please allow me to finish my questions?

22 A. Go ahead.

23 Q. So where has your sewage been going since 1960? Has
24 anybody been using a restroom in that house if the plumber
25 came whenever it was that you couldn't remember on Monday

1 and installed your service line?

2 A. It was going down that service line. That's why I
3 asked him to come and check it to see if there was
4 something wrong with it.

5 Q. Did you take pictures of that hole?

6 A. No, sir, I did not.

7 Q. You didn't think that was important?

8 A. No, sir.

9 Q. When did that occur?

10 A. Prior to this rain event that we're talking about.

11 Q. And did you think it was, I don't know, unusual that
12 this pipe you saw in the ground that your service line was
13 connecting to pointing directly at your house?

14 A. Most unusual.

15 Q. Okay. So you obviously went on the Town and
16 complained about it, didn't you?

17 A. No, sir.

18 Q. Okay. And why is that? If it's unusual and you see
19 it pointing at your house why you didn't go and complain
20 to somebody about it?

21 A. It's not normally the way we do it in Latta.

22 Q. Okay. You never complain to the Town of Latta?

23 A. Oh, yeah.

24 Q. But the fact that there is a sewer pipe, according to
25 you, that you just remembered was pointing at your house,

1 even though two days ago you didn't remember it. You
2 didn't think that was important to tell us about on
3 Monday?

4 A. I believe I did tell you about the sewer line on
5 Monday.

6 Q. I believe you told us that a plumber told you that
7 there is a pipe on your property running under your house;
8 isn't that correct?

9 A. I'm sorry. Rephrase that.

10 Q. You told us that a plumber came to your property,
11 because I remember having this discussion with you. So
12 the plumber told you that this pipe was running under your
13 house, right? You said, "No, Melvin Jackson told me the
14 pipe was under my house?"

15 A. No, sir. I don't remember that.

16 Q. You don't remember saying that?

17 A. No, sir.

18 Q. Okay. But the fact that you had actually laid eyes
19 on this pipe you didn't remember that two days ago to tell
20 us that?

21 A. At that particular time I wasn't concerned about
22 that.

23 Q. Now, I'm asking you on Monday you weren't concerned
24 about that? You weren't concerned that you actually saw a
25 pipe running under your house? Isn't that what this whole

1 lawsuit has been about?

2 A. I didn't think there was any question about that
3 particular thing.

4 Q. You didn't think there was any question about whether
5 you had seen this particular sewer pipe that you're suing
6 about that you believe it was running under your house?

7 A. I believe my testimony was that there was a sewer
8 line running underneath my house.

9 Q. Now, you don't think that telling us that you had
10 actually seen it; that you had laid eyes on it; that
11 somebody had dug it up and you could see it in the ground
12 pointing at your house, two days ago you didn't think
13 that was important to tell us?

14 A. I believe I told you I did see the line. I did not
15 say I saw somebody digging it up on Monday. I didn't say
16 that.

17 Q. Only after you saw this map, right? You were in the
18 courtroom when then map was produced, right, Defendant's
19 Exhibit Four? Actually, One through Four; you were in the
20 court room, were you not?

21 A. Yeah. That's what y'all did a few minutes ago?

22 Q. I'm sorry. Did you forget when these were produced?

23 A. I was not privileged to see that map. I saw the back
24 end of it. If that's what it was.

25 Q. Sir, didn't you just draw a circle on it?

1 A. I saw -- I just saw -- that's the first time I've
2 seen that map.

3 Q. Okay. So when we gave these to you before trial your
4 attorney didn't share them with you? That's what you're
5 telling us?

6 A. I don't remember him showing me a map like that.

7 Q. We exchanged exhibits with your attorney before
8 trial. Your attorney didn't show you these photographs?

9 A. I don't recall whether he did or didn't.

10 Q. Okay. Don't you think it's a little convenient that
11 you remember today after these have been produce that all
12 of a sudden, oh, yeah. I saw that pipe in the ground
13 pointing straight at my house. Don't you think that's a
14 little convenient that you come back on the stand today
15 and say that?

16 A. I think it's honest.

17 Q. Why weren't you honest on Monday then?

18 A. Didn't have any reason to even consider it.

19 Q. Well, you knew what your lawsuit was about, correct?

20 A. And I ---

21 Q. Sir. You knew what your lawsuit was about, correct?

22 A. I do.

23 Q. All right. And you knew the lawsuit was about a
24 sewer pipe underneath your house, correct?

25 A. Correct.

1 Q. Okay. But you didn't think there was any reason to
2 share with the jury that you had laid eyes on it?

3 A. I believe it did tell you I laid eyes on it.

4 Q. Okay. We'll just let your earlier testimony speak
5 for itself and our collective memories will remind us what
6 you said on Monday. No further questions for you, Mr.
7 Graham.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Mr. Graham, when did you first learn that the Town of
12 Latta was even saying that that line was running under
13 your house? When did you learn that the Town of Latta is
14 now saying that that line is running under your house?

15 A. Just a few minutes ago.

16 Q. Thank you.

17 MR. PLYLER: I have nothing further, Your Honor.
18 He's welcomed to be excused.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you.

21 COLLOQUY

22 MR. WILLIAMS: Your Honor, we do have one additional
23 witness, Ms. Watson. She's off doing D.H.E.C. work right
24 now. She could be here first thing in the morning.

25 THE COURT: At this time, ladies and gentlemen, we'll

1 take up before we adjourn for the evening?

2 MR. WILLIAMS: No. Not from the Plaintiff, Your
3 Honor.

4 MR. WREN: Nothing from the Defendant, Your Honor,
5 but we would like to renew our motion for directed
6 verdict. I guess that will be at the close of all the
7 witnesses.

8 THE COURT: And I'm also going to ask that if you
9 have any request to charge, if you happen to have them
10 with you I would appreciate having them at this point. I
11 understand there have been some rulings today, but I'm
12 going to need them very quickly in the morning. So I need
13 them first thing in the morning if you don't have them
14 already. If you have them you can pass them up.

15 MR. WREN: Judge, I do, but if you can give us a few
16 minutes or we can e-mail them to you.

17 THE COURT: No, I don't want e-mail.

18 MR. WREN: If you can give us a couple of moments.

19 THE COURT: I'll give you a couple of moments to
20 produce them while I clean my desk.

21 MR. PLYLER: Your Honor, I would think there might be
22 one, given your rulings earlier today, there may be one
23 issue that we need to take up briefly.

24 THE COURT: Yes, sir.

25 MR. PLYLER: Plaintiff's Exhibit One was identified

1 as a photograph taken by either Claude or Vickie Graham on
2 September 6th 2008. My understanding of Your Honor's
3 earlier ruling today was any claims associated with the
4 flooding event from September 5th and 6th 2008 were no
5 longer in the case. Therefore, those exhibits would not
6 be relevant at this point. So I don't think that they
7 should be allowed to go to the jury when we get to that
8 point.

9 THE COURT: Mr. Williams.

10 MR. WILLIAMS: Your Honor, the events of
11 September 5th and 6th 2008 are not part of the damages or
12 cause of action at this point, but those events are the
13 same events that gave the Town notice that they better get
14 out there and start looking at the sewer lines and repair
15 it. And I think the jury -- and I think that these
16 photographs are helpful to the jury in the sense of the
17 magnitude of the issue the Town is faced with.

18 THE COURT: I'll consider those arguments and give
19 them some thought.

20 MR. PLYLER: Thank you, Your Honor.

21 END OF TRANSCRIPT OF RECORD
22
23
24
25

1 might have been done. So this is going to be speculation
2 and hearsay. So we would have a serious concern if there
3 is anything that stands off of that testimony.

4 THE COURT: Well, she can take the witness stand and
5 you can impeach her if you choose to do so.

6 MR. PLYLER: Thank you, Your Honor.

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

8 (WHEREUPON, the jury panel enters the courtroom at
9 9:40 a.m.

10 THE COURT: Good morning, ladies and gentlemen. At
11 this time we are ready to continue on. You may call your
12 next witness, Mr. Williams.

13 MR. WILLIAMS: Thank you, Your Honor. At this time
14 we call Danielle Watson to the stand.

15 THE COURT: Ms. Watson, if you will step forward. I
16 will remind you that you're still under oath to tell the
17 truth in this matter.

18 DANIELLE WATSON, after previously being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q. Good morning, Ms. Watson?

23 A. Good morning.

24 Q. In your capacity in your employment with D.H.E.C. can
25 your tell the jury what a camera line is?

1 A. To camera a line?

2 Q. To camera a line. I beg your pardon. Tell the jury
3 what to camera a line means?

4 A. It's an instrument that has a camera on it that is
5 run into sewer/water lines to look to see what's inside.

6 Q. Okay. And why would one want to do that?

7 A. Well, if you want to see actually where it goes or if
8 there is cracks or if there is problems in there or what's
9 in it you need to see. You really can't -- I mean you
10 can't crawl in there. And that's a good way to look
11 inside lines.

12 Q. And how big a camera is that?

13 A. They come in different sizes.

14 Q. Typically, how big?

15 MR. PLYLER: Objection, Your Honor.

16 THE COURT: Overruled. If she knows.

17 THE WITNESS: Well, I don't -- there is different
18 sizes for different lines.

19 Q. Okay.

20 A. I mean there is not a specific size, you know.

21 Q. Well, let me ask you this. It's small enough to get
22 inside the lines?

23 A. Yes, sir.

24 Q. Okay?

25 A. They make them small enough to get in lines, and they

1 make them big enough for bigger lines.

2 Q. How do you get it in there? Do you push it or pull
3 it or what?

4 A. The cameras usually have some type of mobility
5 wheels, tracks. They can be changed out for different
6 sizes per lines to pull the cords in there ---.

7 Q. Okay.

8 A. --- to see.

9 Q. All right. Do you know James Bailey?

10 A. Yes, sir.

11 Q. Who is James Bailey?

12 A. He was the Operator at the Town of Latta?

13 Q. Operator of what?

14 A. The water/sewer system.

15 Q. Would he have -- would he have been the successor to
16 Melvin Jackson?

17 A. No.

18 Q. Some time after Melvin Jackson?

19 A. He was after Melvin Jackson.

20 Q. But of people in between Melvin Jackson?

21 A. Yes, sir.

22 Q. Okay. Is he the Town Sewer Supervisor now?

23 A. No.

24 Q. Who is?

25 A. Harold Snipes.

1 Q. Okay. Do you know Willie Hooks?

2 A. Yes, I've met Willie.

3 Q. Okay. What's the relationship in employment terms
4 between Willie Hooks and James Bailey?

5 A. He worked for the Town of Latta. I don't know the
6 hierarchy.

7 Q. Okay.

8 A. I'm not sure exactly how they -- he was employed with
9 the Town of Latta.

10 Q. Okay. This trial is about events that first started
11 in September of 2008. Let me direct your attention to the
12 timeframe of mid-September, mid to late September 2008
13 through the end of that year.

14 A. Okay.

15 Q. Did you have any discussions with the Town of Latta
16 Sewer Supervisor, James Bailey, about cameraing a line?

17 A. Yes.

18 Q. Tell the jury about that?

19 A. After they ---

20 MR. PLYLER: Objection, Your Honor. Calls for
21 hearsay.

22 THE COURT: Overruled.

23 THE WITNESS: After they had the flooding in the
24 Town, of course, there were some problems in the line, and
25 I became aware of a line under a house and ---

1 Q. The Graham house?

2 A. Yes.

3 Q. Okay?

4 A. And to look to see -- I wanted to make sure the line
5 was intact and was not going to cause problems. I asked
6 that the Town do a line -- if they could -- if they could
7 get somebody to go look at it or do a smoke test on it.
8 They were actually in the process of doing smoke tests
9 before that incident, and they were still in the process
10 of doing that and mapping.

11 So I asked them to see if they could get somebody to
12 do that.

13 Q. So smoke tests has been done before this incident?

14 A. In some parts of Town. I don't know if it was that
15 section yet.

16 Q. Okay. Now, when you say you asked the Town to camera
17 the line does that mean you asked James Bailey?

18 A. Yes.

19 Q. Okay. And did he agree to camera the line?

20 A. They agreed to camera it. To try to get somebody to
21 camera it.

22 Q. Okay. Did he report back to you on what steps they
23 had taken or what happened?

24 A. He reported back saying that they did, and I can't
25 remember if that got the City of Dillon to do it or

1 another company to do it. I can't remember which, but he
2 said they did try to camera the line.

3 Q. Tried to camera the line?

4 A. Um hum.

5 Q. Did he say why it was a trial and not a success?

6 MR. PLYLER: Objection, Your Honor. At this point
7 we're getting into double hearsay. Apparently a third
8 entity tried to camera this line, and he would be
9 reporting to her what they reported to him.

10 THE COURT: And the statements that would be made by
11 Mr. Bailey would be as a representative and an agent of
12 the Town of Latta, and so I'm going to allow the testimony
13 because he was responsible for that and would be the party
14 who would be responsible for supervising and making sure
15 it was done. And so I'll overrule your objection.

16 MR. PLYLER: Thank you, Your Honor.

17 BY MR. WILLIAMS:

18 Q. What did Mr. Bailey say happened when they tried to
19 camera the line?

20 A. That they were going to come up behind the house to
21 get to the line, and once they got so far they had
22 obstruction in the line. They couldn't get the camera
23 over or to go any forward. So they couldn't get to that
24 part to took at.

25 Q. Did he say what the nature of the obstruction was?

1 A. If he did I don't remember. I mean those cameras can
2 be stopped by a lot of things. I could be solids. It
3 could have been a rock. It could have been a root. It
4 could have been -- he just said obstruction.

5 Q. And where would those obstructions be?

6 A. It was before. It was in the lot behind the house.
7 I don't know exactly. I wasn't present during the
8 cameraing. So I don't know exactly how far they got into
9 the line.

10 Q. What I mean is would obstruction be inside the line
11 or outside the line?

12 A. Obstruction could be something in the line or it
13 could be that the line was pushed up and the camera
14 couldn't get over it. So it could be a lot of things.

15 Q. Did he say what the nature of the obstruction was?

16 A. He just said obstruction.

17 Q. Did he say anything else about their inability to
18 camera the line?

19 A. Not that I remember. No.

20 Q. Okay. Would the Town have records of that attempt?

21 A. I would think he would have put it in his logs ---

22 MR. PLYLER: Objection, Your Honor.

23 THE WITNESS: --- but I don't know.

24 MR. PLYLER: Objection, Your Honor.

25 THE COURT: To the extent that it calls for

1 speculation I sustain your objection.

2 BY MR. WILLIAMS:

3 Q. Has it been your observation that towns keep records
4 of events like these?

5 A. Yes, sir. Operators have logs that they keep, and
6 they you write down -- should write down what they do
7 every day.

8 Q. Thank you.

9 MR. WILLIAMS: That's all the questions I have.

10 MR. PLYLER: Briefly, Your Honor. If I may?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. PLYLER:

14 Q. Ms. Watson, welcome back. Thank you for being here
15 today.

16 A. Thank you.

17 Q. Now, so you have seen a copy of some camera reports;
18 is that correct?

19 A. I have not seen a copy of a camera report.

20 Q. Have you seen some photos from this?

21 A. They did not have the capable of filming it.

22 Q. Okay. So this wasn't recorded?

23 A. Not on film, no.

24 Q. And the Town of Latta doesn't own one of these
25 camera, do they?

1 A. No, sir.

2 Q. Okay. And they're fairly expensive, aren't they?

3 A. Yes, sir.

4 Q. And they can be stopped -- you can have one root

5 going through the middle of that pipe and the camera might

6 not be able to get over and under it, right?

7 A. Yes.

8 Q. And that can be 10 feet into the pipe, right?

9 A. Yes, sir.

10 Q. And your understanding of the system is that the

11 sewage flows from Zeal Street from the lot behind the

12 house, across the Graham's property and down to Rice

13 Street; isn't that correct?

14 A. I think so. Yes, sir. Without looking at a map I

15 can't be sure.

16 Q. Well, let me show you a map?

17 A. Okay.

18 Q. This is a blow up diagram that was produced to us

19 yesterday. Defendant's Exhibit Three. Make sure I get it

20 oriented correctly. Can you see that? All right.

21 A. Can you bring that a little closer?

22 Q. Well, I want to be able to have the jury see it, too.

23 A. I understand.

24 Q. I should have made it a little bit bigger. All

25 right. This is Zeal Street, right?

1 A. Okay.

2 Q. Here is Rice Street, correct?

3 A. Yes, sir.

4 Q. Sewage treatment facility is way down there near

5 Buck's Swamp, right?

6 A. Yes.

7 Q. Well, let me show you the bigger picture then.

8 You've seen F.E.M.A. Flood Maps, haven't you?

9 A. Yes, sir.

10 Q. Okay. And you recognize based on this map that we're

11 looking at?

12 A. Hold it up this way.

13 Q. I represent to you that that's the Town of Latta

14 right there, isn't it?

15 A. Um hum.

16 Q. And that's Buck's Swamp right there, isn't it?

17 A. Yes, sir.

18 Q. So the sewage comes from -- generally from this

19 direction coming down towards Buck's Swamp, correct?

20 A. Yes, sir, it should.

21 Q. Downhill?

22 A. Yeah.

23 Q. In fact you're familiar with a retention pond that

24 was built by the Town of Latta, aren't you?

25 A. Yes, sir.

1 Q. Okay. Let me show you what's -- no, that's the
2 closer one. Let's go a little further out. You see that
3 retention pond on this aerial photo?
4 A. Let me get my bearings.
5 Q. I represent to you that it's right there?
6 A. Oh, yes, sir.
7 Q. I mean it's pretty obvious, isn't it?
8 A. Can I see it?
9 Q. Yeah.
10 A. Can you turn it this way?
11 Q. In fact there is a smaller version right there if you
12 want to look at that?
13 A. That's fine.
14 Q. And you can hold it as close as you'd like?
15 A. I'm just fine. I'm just trying to get my bearings.
16 Q. That's fine. I'm trying to help you. My
17 understanding is this is the retention pond right here.
18 If you'd like to look at that photograph there it might be
19 a little clearer. Do you need your glasses?
20 A. No. I've got contacts on. Give me a minute.
21 Q. Take your time.
22 A. Actually, way down here ---
23 Q. Correct.
24 COURT REPORTER: Y'all need to speak up.
25 THE WITNESS: Oh, I'm sorry. The waste water plant

1 is down here, and that's a storm.

2 Q. That's a what?

3 A. The pond.

4 Q. Right. The retention pond. Right? That retains the
5 water?

6 A. I call it a storm water pond. I'm sorry. All right.

7 Q. That's fine?

8 A. It doesn't have anything to do with the sewer.

9 Q. I know. Right. But it stops the water, correct?

10 A. Yes.

11 Q. And water runs downhill just like sewer?

12 A. Correct.

13 Q. Okay. So this would be above the Town of Latta?

14 A. Yes, sir.

15 Q. And down below the Town of Latta somewhere is the
16 waste water treatment facility?

17 A. Well, yes. The waste water plant is below that map.

18 Q. Correct?

19 A. That storm water pond is on that side of town. Yes,
20 sir.

21 Q. Well, water doesn't run uphill, does it?

22 A. No, sir. But they do have pumping stations.

23 Q. Okay. So does that help you figure out which way the
24 sewage runs?

25 A. Yes.

1 Q. So it runs from Zeal to Rice, correct?

2 A. It should. Yes.

3 Q. All right. So if, just assuming, there is a blockage
4 up here above their house that's going to stop sewage from
5 getting to their house, isn't that right?

6 A. Yes, sir.

7 Q. Okay?

8 A. If that line runs that way. Yes, sir.

9 Q. You don't have any information or evidence to give to
10 us today to suggest that it doesn't run that way, do you?

11 A. I do not have anything.

12 Q. In fact you haven't done any inspections or testing
13 or mapping or surveying of this pipe that runs across the
14 Graham's property, have you?

15 A. No, sir. I have not.

16 Q. All right. So you don't have any information to add
17 or give to us that this pipe is actually leaking, do you?

18 A. I have no idea whether it is or not.

19 Q. Thank you very much.

20 MR. WILLIAMS: Nothing further of this witness.

21 THE COURT: You may step down. Thank you. You may
22 be excused. Anything further in rebuttal?

23 MR. WILLIAMS: Nothing further from the Plaintiff,
24 Your Honor.

25 THE COURT: Is there anything further from the

1 Defendants?

2 MR. PLYLER: Just a moment, Your Honor. Beg the
3 Court's indulgence, Judge. Judge, the Defendant would
4 call one additional rebuttal witness, a record's custodian
5 on behalf of the Town. That individual is on his way to
6 the court house. If we may have just a few minutes to put
7 up that final witness.

8 THE COURT: Yes, sir. Ladies and gentlemen, I'll ask
9 that you retire to the jury room and not engage in any
10 discussions until we hear from the final witness and until
11 you are instructed on the law. We will bring you back
12 very shortly. Thank you.

13 (WHEREUPON, the jury panel was excused from the
14 courtroom at 9:56 a.m.)

15 (WHEREUPON, Court was in recess at 9:56 a.m. and
16 reconvened at 10:04 a.m.)

17 THE COURT: If everybody is ready we can bring the
18 jury back in.

19 (WHEREUPON, the jury panel enters the courtroom at
20 10:05 a.m.)

21 THE COURT: Mr. Wren, you may call your witness.

22 MR. WREN: Your Honor, in hindsight we deferred. We
23 are not going to call a rebuttal. I apologize. There was
24 a slight delay, Judge, but the Defendant will rest. There
25 will be no rebuttal witness. We move things along, Judge.

1 THE COURT: We're playing musical chairs today cause
2 now that I've brought you back in I've got to send you
3 back out cause we'll need to take up some legal issues
4 before we get to closing and charge. So I'm going to ask
5 that you go back to the jury room. Make yourselves
6 comfortable. Not to discuss any of the evidence that
7 you've heard even though you've now heard all the evidence
8 in this case. It is still premature for you to begin to
9 have any deliberations or discussions about this case
10 until such time as you hear my instructions to you as to
11 the law. And so I ask that you not begin to engage in any
12 deliberations or discussions about this matter. If you
13 will just retire to the jury room we'll bring you back in
14 a few minutes.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 10:05 a.m.)

17 MR. WREN: And, Judge, my apologies. I assure you
18 that we're not trying to waste the Court's time, but as
19 you know sometimes we make decisions on the fly. We made
20 a very last minute decision. I apologize.

21 THE COURT: Especially after you told me you were
22 ready.

23 MR. WREN: When I say last minute, Judge, they don't
24 come much more last minute.

25 THE COURT: All right. Are there any motions?

1 MR. WILLIAMS: Your Honor, the Plaintiff has a
2 motion.

3 THE COURT: Yes, sir.

4 MR. WILLIAMS: The Plaintiff moves the Court to
5 reconsider it's rulings on inverse condemnation and
6 trespass based on the testimony of the Town's engineer to
7 the effect that they cut off and cut back on the sewer
8 lines every three to five years at least. And as recently
9 as three weeks ago. And the basis for the reconsideration
10 would be that every time they cut back on the sewer line
11 that's an affirmative act; that the Town is electing to
12 cut it back on knowing that it's going to create a
13 trespass on the Plaintiff's property in times of rain.

14 The bottom line of the argument is that cutting it
15 back on is an affirmative act.

16 THE COURT: The way -- I believe the way the case law
17 reads is it has to be an affirmative act that causes the
18 damage to the property. And that or the act has to
19 proceed the actual damage to the property or whatever
20 injury has been suffered. And so the simple act of -- I
21 view that as maintenance on the line; that that is not an
22 affirmative act that creates the inverse condemnation
23 which is -- you're claiming that the way the line was
24 maintained or whatever the Town specifically caused the
25 problems that led to your clients moving and whatever

1 injuries and damage to either include their health or to
2 the property itself.

3 And I don't believe that the fact that they are
4 exercising their duties and discretions in maintaining the
5 lines or allowing contractors to come in and perform work
6 for other people, for other entities whether it's the
7 Department of Transportation or some other entity. But
8 the fact that they are allowing people to come in and
9 they -- and that affects the line is what caused the
10 damage to your client's property, and I think affirmative
11 act, it has to be some correlation between the affirmative
12 act that is done by the Town and the actual damage that's
13 caused to your clients.

14 And so on that basis simply because they have
15 performed work or they have allowed sewer -- the flow of
16 sewage to be disrupted for periods of time for maintenance
17 or to allow other contractors for other governmental
18 agencies to come in and perform work in which the lines
19 had to be -- the flow had to be stopped I don't think that
20 that is the precipitating reasons for the damage.

21 So I don't consider those to be affirmative acts and
22 I think the case law supports me on that and so I deny
23 that request.

24 MR. WILLIAMS: Thank you, Your Honor.

25 THE COURT: Any other motions by the Plaintiff.

1 MR. WILLIAMS: There are no other motions from the
2 Plaintiff at this time, Your Honor.

3 THE COURT: Any motions from the Defense?

4 MR. WREN: Your Honor, at this time the Defendant
5 would renew their motion for directed verdict. Of course,
6 as Your Honor is aware the focus of this motion from our
7 prior argument and discourse would be in respect to the
8 remaining portion of the Plaintiff's negligence claims.

9 Of course, Judge, as I understand your earlier ruling
10 and what we have left and what I think was touched on in
11 some instances in the remainder of this case, the
12 Defendant's case in chief, as well as the Plaintiff's
13 rebuttal what it had to do with was the events after the
14 September 5th and 6th storm event.

15 Your Honor specifically understood that to be any
16 questions, inferences or otherwise that have been asserted
17 by the Plaintiffs with respect to any subsequent leaks or
18 release of sewage.

19 And, Judge, foremost, in regards to those I would go
20 ahead and renew all the arguments, of course, we had
21 asserted prior at directed verdict. I think all of those
22 are still applicable. In fact I still contend, Your
23 Honor, that the main focus here, the fatal flaw here of
24 the Plaintiff's negligence claim is the inherent lack of
25 evidence that they have set forth in their initial case,

1 but in the remainder of this case to establish that the
2 Town has breached a duty which proximately caused these
3 damages. It's as simple as that.

4 The reminder of the evidence put up in this case,
5 Judge, essentially argued the initial directed verdict
6 motion, of course, consisted of an employee of the Town
7 who was there and saw the event and testified and it did
8 not provide any evidence to support that for the
9 Plaintiff. And, of course, the expert witness, the
10 engineer which the Town put up in their case in chief.

11 Judge, I think Mr. Hanna extremely well frankly for
12 all intents and purposes I think he explained the fact
13 that there was not a proximate cause. Not that the -- by
14 no means trying to shift the burden on the Defendant to
15 affirmative somehow prove it didn't exist. But at the
16 same time I think it became very clear to Your Honor to
17 counsel, of course, to the jury that there was not this
18 cause, proximate cause, for purposes of establishing the
19 Plaintiff's case.

20 Further, there has been nothing elicited in rebuttal
21 witnesses, Your Honor, that have add to that or
22 established that. You know, of course, there was some
23 question and discourse as to a different location of the
24 line. Questions as to whether or not a camera was run.
25 Of course, that doesn't change the fact that there has

1 been no evidence introduced to establish anything to
2 support that proximate cause. So I think that's the
3 inherent fatal flaw here, Judge. Nothing has changed or
4 been established by the Plaintiff throughout the entirety
5 of this case to establish that.

6 Judge, we would further renew and argue our motion
7 for directed verdict based upon the immunities which were
8 set forth in our initial motion. Again, so that we won't
9 belabor this, Your Honor, we raised and asserted
10 Subsections 1, 2, 4, 5, 7, 8, 9 and 13. I accidentally
11 included Seven, Judge. I think that is nuisance. I think
12 that's already been dealt with.

13 But as to the remainder of those we do still contend,
14 and in the questioning and examination with Mr. Hanna, I
15 think it was clearly established as much as in the Hawkins
16 case it was found that here you have several of those
17 applicable immunities.

18 THE COURT: I'm having difficulty with Numbers One
19 and Two.

20 MR. WREN: Legislative immunity, Your Honor?

21 THE COURT: Yes, sir.

22 MR. WREN: I would reference, Judge, to the testimony
23 elicited from Mr. Hanna with regards to the actions that
24 were taken subsequent to September, the September event.
25 And September 5th and 6th wherein Mr. Hanna had been

1 advised that the work, the investigation that was done,
2 the information that had been obtained and discussed. And
3 inherently, I asked Mr. Hanna that when you have that
4 information you take it to the Town.

5 They make a decision on it. Now this is where it
6 goes to discretionary as well, Judge. But as to
7 legislative I mean in did not proffer Mr. Hanna as an
8 expert to explain municipal law and how a municipality
9 operates. But what he did establish he takes it to the
10 Town. The Town makes a decision. Your Honor, the Town of
11 Latta -- I ask the Court to take judicial notice, of
12 course, operates via a Town Council and it is a
13 legislative body. I think it's fairly recognized in South
14 Carolina.

15 So that is our position, Your Honor, as to how
16 legislative immunity would apply. May I touch on any of
17 the others, Judge or any questions?

18 THE COURT: Give me just a second. Number Four,
19 Number Five. You might as well go ahead and discuss them
20 all again. Provide a little bit more detail so you make
21 sure I can understand.

22 MR. WREN: Certainly, Judge. This would include the
23 group that was addressed in the Hawkins opinion that we
24 discussed earlier. We're already touched on One and Two.
25 Moving ahead then to the next one being Number Four,

1 Adoption Enforcement or Compliance with Laws, Ordinances,
2 Regulations, Judge, there has been nothing set forth in
3 the Plaintiff's case except for the discourse from
4 Miss Watson with regards to D.H.E.C. enforcement, and
5 that's where that comes into place, Your Honor. You
6 recall there was some questioning.

7 I think Miss Watson just provided information with
8 regards to enforcement. Named storm events are exceptions
9 that D.H.E.C. was, D.H.E.C. being the regulator agency
10 that would be the pertinent body to address these issues
11 was involved in this, and did look at this as to whether
12 or not the Town of Latta complied with or violated any
13 regulations or laws. And that she said there was no
14 finding as to the Town doing something improper.

15 So, Judge, that's where we believe this immunity
16 would apply. And to the degree, Judge, that there was not
17 evidence D.H.E.C. regulations applied to the Town of Latta
18 I would simply ask the Court to take judicial notice of
19 those State regulations.

20 THE COURT: And Number Five?

21 MR. WREN: Yes, Your Honor. Number Five being
22 discretionary immunity. Craig referenced from what we put
23 in our first motion what we argued point to Mr. Hanna's
24 testimony, Judge, wherein he went through the process, the
25 undertaking of the investigation that occurred, after this

1 initial event. The information that he obtained, the
2 options that he considered, and the passing of that
3 information along to the Town. That, Your Honor, is
4 certainly not a ministerial duty. It is not a ministerial
5 action.

6 It's the undertaking with the investigation, with
7 research, an understanding of the issue, and then
8 making -- and having options available -- available
9 options to consider and make the decision which was
10 ultimately made here, Judge, which is interesting which
11 wasn't picking. It was none of the above because as you
12 recall Mr. Hanna testified that there was not a causative
13 factor relative to the Graham's property.

14 THE COURT: So I guess I'm having a hard time trying
15 to figure out how the immunity applies when according to
16 your version of the facts there was nothing for the --
17 there was no discretion for the -- there was no reason for
18 the Town to exercise any discretion at all. So how would
19 the fact -- how would that create the immunity for the
20 Town.

21 MR. WREN: Well, Your Honor, Mr. Hanna if you
22 recall -- I don't recall whose questioning it was
23 identified the two options. He looked at it as to moving
24 the location of the line. I think he actually said this
25 for the purposes of the jury, but Mr. Davis had some of

1 that information that came up in the Plaintiff's case in
2 chief that he had plans from B.P. Barber that indicated
3 the different options. Ironically, all those options are
4 still on the Graham's property. But notwithstanding Mr.
5 Hanna's testimony was neither option was good; that they
6 were considered, however, that's where discretion comes
7 in.

8 So the ultimate decision being made is that they
9 don't have to pick A or B. They're not the best options.
10 So I think the discretion, of course, being the different
11 things. The discretion can also be choosing the fact that
12 you don't need to do something.

13 THE COURT: And, Number Eight?

14 MR. WREN: Yes, Your Honor. Number Eight, and I did
15 I think in our initial motion I did distinguish. I didn't
16 want to misrepresent that. Eight and Nine I believe were
17 not in the Hawkins opinion for a bases for the immunities
18 that the Court found there. And what I contend is a very
19 analogous situation, but it's our position on this perhaps
20 as additional grounds that Number Eight dealing with
21 weather conditions; that the -- of course, the initial
22 event which the Court's prior ruling is not really on
23 purpose right now.

24 The initial event was caused by a very large storm
25 event, Tropical Storm Hanna. However, Judge, the

1 testimony and evidence as to the subsequent event and the
2 other event I create reference to Mr. Graham's testimony
3 with respect to the September 13th where he did
4 testify ---

5 THE COURT: You can stop. Number Eight talks about
6 on the public way or the public place. "It's a snow or
7 ice -- snow or ice conditions or temporary or natural
8 conditions on any public way or other public place due to
9 weather conditions unless the snow or ice thereon is
10 affirmatively caused by a negligent act."

11 MR. WREN: Judge, I thought the testimony was that
12 there was flooding on East Rice Street.

13 THE COURT: I'm talking about the -- beyond the
14 flooding. We're talking about the allegations that not
15 only was there flooding which is separate, but also the
16 problems underneath the house from what the Plaintiff's
17 claim. So I don't think -- while certainly to the extent
18 that it was a natural event that the rain storms caused
19 the flooding.

20 MR. WREN: Yes, Your Honor.

21 THE COURT: There could be in fact some type of --
22 perhaps some type of immunity related to that. But it
23 goes beyond -- I think it goes beyond that because it's
24 not just on the public place.

25 MR. WREN: Fair enough, Judge. The only thing I

1 would add, and I certainly understand your position, I
2 would cite to the testimony and evidence that came in in
3 the Defendant's case in chief with regards to the
4 residence, the property being in a flood zone. But with
5 that said, Your Honor, I'm happy to move along if you care
6 to.

7 THE COURT: Yes, sir. Number Nine.

8 MR. WREN: Number Nine, Your Honor, and of course,
9 you understand, and I think it's how I positioned it in
10 our first argument. There we had couched it along the
11 context of the trespass claim. Judge, with respect to
12 the -- where Number Nine bring entry on property where the
13 entry is expressly or impliedly authorized by law. So I
14 think that's how we argued it and couched it the first
15 time.

16 Here, however, I think the, based on the Court's
17 prior ruling and what we now understand the evidence as
18 put up is that that was the Town's understanding that they
19 were allowed to have this pipe in the location that is
20 was. I think based on the Court's earlier ruling with
21 regards to prescriptive easements that that has been
22 established as the law of the case. And, Judge, I think
23 that immunity would come into play.

24 THE COURT: And then Number 13.

25 MR. WREN: Yes, Your Honor. And we are back to a

1 ground that was -- an immunity that was found in the
2 Hawkins opinion dealing with regulatory inspection powers
3 over functions. I would, of course, note that includes
4 the failure to make a proper or to make an inspection or
5 making a negligent inspection. There, Your Honor, the
6 Plaintiff's case, of course, I think there was some
7 testimony or evidence, if not at least insinuation; that
8 the Town failed to do that.

9 And I'm speaking now in the context of post-September
10 5th and 6th 2008. And I think that the testimony, the
11 evidence put up in the Defendant's case in chief notably
12 the testimony of the two Town's representatives clearly
13 established that with regard to that they were out there
14 and did inspect it. In fact went above and beyond the
15 testing; that whether it was done right or wrong that's
16 where this immunity applies.

17 And ultimately, Judge, if you read that immunity
18 subsection all the way through it goes on to say, "To
19 determine whether the property complies or violates any
20 law or regulation, so forth." Interestingly here I would
21 note, Judge, that it was the Town's determination that,
22 no, there is was absolutely no violation or problem or
23 issue with regards to the sewer lines in question.

24 THE COURT: Anything else?

25 MR. WREN: Yes, Your Honor. We would again hopefully

1 just for purposes -- for your purposes again hope we
2 haven't left anything out from our initial directed
3 verdict motion. I think Your Honor has already ruled on
4 the statute of repose. I frankly don't think any evidence
5 came in otherwise. I understand that. As to statute of
6 limitations on the negligence claim again, Your Honor, for
7 purposes of the discovery rule and the when a Plaintiff
8 should or should not have been on notice it is our
9 position that going back to the earlier events they should
10 have been on notice of the line.

11 The testimony of Mr. Claude Graham was that this
12 Melvin Jackson was with him on the property and the line.
13 I think there is sufficient evidence there to put them on
14 notice that there may be an issue.

15 THE COURT: During what timeframe?

16 MR. WREN: And, Your Honor, that -- it was indicated
17 that it was well before these events, but as we stand the
18 evidence is in the record. Beg the Court's indulgence.
19 Only evidence that's come in since, Judge, is
20 Miss Watson's testimony of the fact that Mr. Jackson was
21 more than one public director before the subject event.

22 Beyond that, Judge, all the evidence in the record I
23 can point to establish that. So, Judge, we would renew on
24 that ground as well.

25 And then also out of -- of course, we have two

1 clients in this case. They are separate claims on behalf
2 of Claude and Vickie Graham. As to -- we spent a lot of
3 time talking about Vickie Graham's claim because it
4 included the inverse and the trespass. Like I said we've
5 already discussed that and have been ruled upon. But Mr.
6 Graham's complaint, Your Honor, deals with and the damages
7 sought pertain to personal property that he has sustained.

8 He testified at length at his direct on it. It
9 included equipment in the shed. I don't recall. Things
10 like that. The vehicles for which they have sought
11 damages in their complaint in that case on behalf of
12 Mr. Graham. Judge, our position would be that those
13 damages would be related, and the only cause of action for
14 negligence would be related to the initial flooding event.

15 There had been no evidence to establish that any
16 subsequent event caused any of the damages for which they
17 seek relief on behalf of Mr. Graham. And for all intense
18 and purposes, Judge, I believe that would be on that
19 ground alone perhaps fatal to his entire claim.

20 And, Your Honor, finally, beyond that no separate
21 grounds. I would just point out to the Court's indulgence
22 this, of course, we had specific reference to Hawkins
23 which I've already done. And, of course, Snow v. City of
24 Columbia case as it pertains to negligence. My position,
25 my argument, Judge, is the Plaintiffs have put up

1 probability a pretty decent res ipsa case.

2 Judge, South Carolina does not recognize res ipse.

3 And with that and in conjunction with other arguments on
4 immunity we made I think the end result would be the Town
5 would seek is a motion or a ruling directing verdict on
6 all claims asserted by both the Plaintiffs in this matter.

7 THE COURT: Talk to me again about the duty issue.

8 MR. WREN: Yes, Your Honor. And I'll couch it as
9 best I can, Your Honor, and try to be objective as to what
10 the Plaintiff's theory here is. The Plaintiffs have
11 asserted that the Town had a duty to not cause sewage or
12 flood or property damage to their property. Where the
13 Plaintiffs have failed is to establish, of course,
14 causation which we've already talked about. But they
15 failed to establish exactly what that is, Judge.

16 THE COURT: What is?

17 MR. WREN: The duty which you were questioning about.
18 Of course, there is just an inherent duty of due care. I
19 don't disagree with that. My focus has been more so on
20 the problem that they have is the causation. But,
21 underlying, I think the Defendants has failed to establish
22 what the duty of care specific to municipalities is. I
23 recall there being some questioning and testimony before
24 about what do municipalities do. It was never established
25 by the Plaintiff in their case what the standard of care

1 whether it be a medical malpractice case.

2 Of course, Judge, we look to what the professional
3 standard is. It can be established by experts, and an
4 engineering case, same thing. I think in the professional
5 malpractice context. Here, Judge, there is some standard,
6 some duty, that exists. I don't disagree with that. My
7 position to your question would be that the Plaintiffs
8 have failed to establish exactly what that is.

9 And I rambled a little bit. Perhaps that why I'm
10 having trouble doing it. It's not been established in
11 this case. And to that duty issue, Judge, of course, if I
12 may going to the pleadings and the testimony, Judge, it
13 expounds around a little bit. But case is there that it
14 was leaking. It was leaking. There was a line under the
15 house that was leaking sewage.

16 The bottom line through all of the entire case that's
17 been put up is that there has been zero, not an iota of
18 evidence that there is a leak causing the damages for
19 which they seek relief. So to the degree that that ties
20 back into duty I think that's what another one, Judge.

21 THE COURT: Anything further, Mr. Wren?

22 MR. WREN: No, Your Honor. One housekeeping matter
23 that just noticed, and I don't believe it's been
24 establish, but it's moot now anyway. In Vickie Graham's
25 complaint there was -- in her amended complaint there was

1 under the trespass claim a claim for injunctive relief.
2 That's actually where I think we found the punitive damage
3 reference that's already been stipulated and dismissed.

4 With the trespass claim gone, Judge, that would not
5 give me any concern, but just as an additional ground for
6 clarity in her relief she does reiterate the claim for
7 injunctive relief. Your Honor, our position would be that
8 it was asserted pursuant to their trespass cause of
9 action. Again, I take it as moot. I just want to clarify
10 because it was the one damage that was sought that I had
11 not addressed.

12 THE COURT: And it relates to easement, I believe?

13 MR. WREN: Yes, Your Honor. The injunctive relief
14 sought was to cease operation on the line or to move it.
15 Oh, excuse me. I misspoke. Just to cease operation on
16 the line due to its presence on the property.

17 THE COURT: And I would agree that that's been
18 resolved by the trespass issue.

19 MR. WREN: Yes, Your Honor. Thank you.

20 THE COURT: Mr. Williams.

21 MR. WILLIAMS: Thank you, Your Honor. Let me address
22 a couple of three issues, and then I'll be happy to
23 address any additional issues as Your Honor would like for
24 me to do if we haven't sufficiently argued since
25 yesterday.

1 THE COURT: Yes, sir.

2 MR. WILLIAMS: Mr. Wren, again, says that I had some
3 obligation to establish a standard of care. This is not a
4 an action for professional negligence of any kind. The
5 ability of the jury to understand whether there was or was
6 not negligence is not dependent upon testimony from
7 specialized experts to say what people in the particular
8 field like law or medicine or architecture or engineering
9 usually do.

10 So the jury, any more than in an automobile accident
11 case, you put up a driver to establish the standard of
12 care for what a reasonable driver does. It's just
13 something the jury can do on their own using their common
14 sense and the testimony we gave. There was -- Mr. Wren
15 said there was not and iota of evidence of the crack in
16 the pipe.

17 THE COURT: Well, before you move on let's talk about
18 the duty issue.

19 MR. WILLIAMS: Okay.

20 THE COURT: What are you claiming is that duty, and
21 what evidence is there to show that duty?

22 MR. WILLIAMS: The duty is to operate the sewer line
23 in such a way that it doesn't do damage to people like the
24 Grahams. Ms. Watson established that duty, testified to
25 that duty. The Mayor testified. The evidence that the

1 Mayor recognized that duty. And Mr. Davis testified to
2 that duty existed. The duty is to maintain and operate
3 the sewer system.

4 THE COURT: Okay. Yes, sir.

5 MR. WILLIAMS: The second point that I wanted to
6 address is yesterday Mr. Wren mentioned something about a
7 public duty exception. Are you withdrawing that? If
8 that's withdrawn I won't address that. If it's still out
9 there for consideration I would.

10 THE COURT: I would say go ahead it and argue it as
11 we'll.

12 MR. WILLIAMS: Only briefly I would address the
13 public duty exception, that exception that he relied upon
14 yesterday. The refer the Court to Tresdale v. Cannon, 572
15 SE 2d 264. That's a 2002 case as is Morris v. Anderson.
16 At 564 SE 2d 649. And both of those cases rely on Arthurs
17 v. Aiken County, 531 SE 2d 579, a 2001 case also from the
18 South Carolina Supreme Court which stood unequivocally for
19 the proposition that when the Plaintiff's negligence cause
20 of action is predicated on the governmental entity's
21 breach of a statutory duty, whether that duty was
22 supported and is under the public duty rule the duty
23 alleged to have been breached, based on common law,
24 however, the existence of that duty is analyzed as it
25 would be were the Defendant a private entity.

1 And, of course, we have not alleged that the Town of
2 Latta violated a statutory duty or obligation. And the
3 other point I wanted to specifically address, Your Honor,
4 and I'll address this again more -- not in more detail.
5 In equal detail when it comes to considering the
6 Defendant's charge request. But you know we have not pled
7 that we are res ipse loquitur. I know South Carolina law
8 does not recognize the doctrine of res ipse loquitur.

9 But I would refer the Court to the case of O'Leary
10 Cain v. R.R. Hilton Head, 371 SC 340 at Pages 348 and 349.
11 Also found at 638 SE 96 at Page 100. That is a 2006 Court
12 of Appeals case. And in that case the Court of Appeals
13 state today res ipse loquitur. I quote now, and this is
14 from Page 244, and I quote now, "There must be a
15 reasonable evidence of negligence. But where the thing is
16 shown to be under the management of the Defendant or his
17 servants, and the accident is such as in the ordinary
18 course of things does not happen it goes use proper care.

19 It affords reasonable evidence in the absence of an
20 explanation by the Defendant that the accidents arose --
21 accident arose from lack of care." And that's quoting
22 from Keaton and Prosser on Torts.

23 THE COURT: You need to speak up.

24 MR. WILLIAMS: Pardon?

25 THE COURT: The court reporter didn't hear the last

1 part of what you said because you were talking down.

2 MR. WILLIAMS: The Court was -- the Court in that
3 opinion was quoting from Page 244 of Prosser and Keaton on
4 Torts. Section 39, Page 243. The Fifth Edition of 1984.
5 And the Court went on to adopt that articulation of the
6 exclusive control argument. If Your Honor has any others
7 question you want to ask me about the Defendant's motions
8 I'll be happy to try to answer them.

9 THE COURT: What about the tort claim issues?

10 MR. WILLIAMS: Your Honor, I think we argued all of
11 those and addressed them yesterday, but -- and I don't
12 think anything to add now that I didn't say then.

13 THE COURT: Well, can you repeat the argument for me
14 just to make sure I understood it because I'm not sure
15 that I understood half the argument yesterday.

16 MR. WILLIAMS: Okay. One of their defenses relates
17 to -- referred to as Number Four, the immunity for
18 following regulations. They haven't shown any regulations
19 that they followed, and I'm not contending that they
20 didn't follow regulations.

21 THE COURT: So you're just saying the Four doesn't
22 apply?

23 MR. WILLIAMS: Right, doesn't apply. I addressed
24 discretionary immunity yesterday, and I think the
25 essential argument there is that while they may have the

1 discretion about how to operate the system in a way that
2 doesn't harm other people they don't have the discretion
3 about whether they should fulfil their duty to operate it
4 in a way that doesn't harm other people.

5 THE COURT: And ---

6 MR. WILLIAMS: And especially when they have
7 knowledge that they're causing harm. They don't have the
8 discretion to fail to correct the thing. They may have
9 discretion on how to correct it, but they don't have
10 discretion to fail to correct it.

11 THE COURT: That goes back to your argument from
12 Mr. Davis's testimony that there was infiltration and
13 exfiltration in the lines, and therefore, the system was
14 not properly maintained?

15 MR. WILLIAMS: And that there was a leak under their
16 house that caused the feces and the sewage stuff to
17 collect under there.

18 THE COURT: Yes.

19 MR. WILLIAMS: I don't remember Mr. Wren skipping
20 around a little bit, and I'm not sure which ones I have
21 not addressed, and I'm sorry, Your Honor.

22 THE COURT: Number 13, which is the regulatory
23 inspections, make an inspection or inadequate inspection.

24 MR. WILLIAMS: Your Honor, I think that -- we haven't
25 claimed there is a regulatory inspection. They haven't

1 asserted there was a regulatory inspection, and in any
2 event I don't think that exception would apply to a town
3 that conducts a regulatory inspection on itself. If, you
4 know, that would seem to me that that immunity would apply
5 when a governmental entity inspects somebody other than
6 themselves and fails to find a defect that some person
7 later contends they should have been found in the exercise
8 of ordinary care.

9 I don't know think that immunity applies -- if that
10 immunity applies then every government could just
11 periodically say, "Well, we've inspected ourselves and we
12 don't find we did anything wrong." So they ought to do
13 that every three days and then they could exempt
14 themselves from all of their defenses. In other words
15 it's not a self-examination immunity.

16 And, of course, I think Your Honor was right -- was
17 correct to point out the public way ice and snow immunity.

18 THE COURT: I don't have any additional questions.

19 MR. WILLIAMS: Thank you, Your Honor.

20 THE COURT: Will you repeat the cite for O'Leary --
21 the O'Leary case, please.

22 MR. WILLIAMS: For which one, Your Honor?

23 THE COURT: O'Leary.

24 MR. PLYLER: Your Honor, I have it right here. 371
25 SE 340, from (inaudible): I can give you that as well.

1 THE COURT: Yes, sir.

2 MR. PLYLER: 638 SE 2nd 96.

3 THE COURT: Thank you.

4 MR. PLYLER: You're welcomed.

5 MR. WILLIAMS: And I was Page -- from Pages 348 and
6 349 of the South Carolina Reporter at Page 100 of the
7 Southeastern Reporter, Your Honor.

8 THE COURT: Thank you. Mr. Wren, any response?

9 MR. WREN: Yes, Your Honor. And, of course, Judge,
10 if you look at the opinion. I'm looking at it pretty
11 quickly. I'm sure only take a second to look at the
12 O'Leary opinion. I can tell right off it's dealing with
13 defective and dangerous conditions in a totally different
14 premises liability context. I think it was a trip and
15 fall case, Judge.

16 So I think it's extremely distinguishable, and I
17 don't know if it's dispositive of anything to begin with
18 on this res ipse. I think that is clearly established
19 under Snow, a case that is interestingly on point.
20 Although in Snow as Your Honor is aware the end result on
21 negligence was that it was denied and no summary judgment
22 or directed verdict.

23 There, again, I want to distinguish Snow because it
24 holds I think it's on point with the issues we raised.
25 Where I distinguish Snow, Judge, is the issue of

1 determining negligence involve them, and I recited all
2 this during our initial verdict motion. But I cited to
3 all this stuff that they had done with a leaking pipe. It
4 was identified. They tried to patch it. It didn't work.
5 It combusted or something. Totally different facts in
6 that regard under Snow.

7 Hawkins, for all our purposes, I think is more point
8 with how these several immunities and issues with
9 negligence apply. And, Judge, to this issue, and I've
10 heard Mr. William's reference to the degree I hadn't
11 totally understood what they were contending was the duty
12 here; this duty to maintain. That is what Hawkins looked
13 at where they had a finding that the City was immune from
14 liability for negligence for claims arising out of --
15 there they dealt with the design, and it was obviously a
16 more recent system. And maintenance of the drainage
17 system and the basis area they were dealing with.

18 Here, Judge, to that degree that's the question here
19 about maintenance. They haven't established that, Judge.
20 But our focus still has been consideration of Hawkins that
21 almost not withstanding the ultimate problem is the breach
22 of the duty. I just want to reference that because that's
23 what Hawkins dealt with.

24 Judge, one other issue that I don't think we touched
25 on, but to the degree that we're now getting into this

1 what a duty is versus driving a car and operating a public
2 sewer system I don't think those two are analogous. To
3 the degree that it's not before the Court, this question
4 of this governmental function of the Town of Latta in
5 operating or maintaining it's sewer system I would further
6 then assert that this is, and there is some case law out
7 there. I don't have it in front of me, but I can give you
8 the cite's Judge.

9 That this is a situation where there is no private
10 analog. This is an inherently governmental function that
11 we're dealing with which is the provision of sewer
12 service. It is undertaken by the Town of Latta, as has
13 been for a tremendous period of time. I would just cite
14 to the Court the cases of United States v. Olson, which is
15 a U.S. Supreme Court case. 126 Supreme Court 510, out of
16 2005. And then back in -- there was a Court of Appeals
17 opinion out of South Carolina. I apologize. I don't have
18 the cite, but it was Sloan Construction v. South Co.
19 Grassing. I dealt with this issue, Judge, in other cases
20 involving zoning.

21 THE COURT: I'm sorry. South Carolina Court of
22 Appeals?

23 MR. WREN: Yes, Your Honor. It was Sloan
24 Construction.

25 THE COURT: Versus?

1 MR. WREN: South Co.

2 THE COURT: S-O-U-T-H, South Company?

3 MR. WREN: Yes, Your Honor. It's short. South Co.
4 Grassing.

5 THE COURT: South Co.

6 MR. WREN: Grassing, G-R-A-S-S-I-N-G.

7 THE COURT: Thank you.

8 MR. WREN: It's a 2006 Court of Appeals opinion. So,
9 anyway, I was further an additional ground, Judge, to
10 assert that if that's what they're contending that this is
11 not a private analog.

12 THE COURT: Meaning that there is not -- there is --
13 it's not a situation where you treat the municipality as
14 if it were some other regular defendant?

15 MR. WILLIAMS: I use the analogy of a person
16 operating a motor vehicle. I don't think this is that
17 case.

18 MR. WREN: Judge, also, one additional thing, and I
19 apologize. I'm trying to read the opinion as I'm
20 listening to questions and speaking, but the O'Leary
21 opinion, and I'm sure you've got the cite now to look at
22 it. Beyond the distinguishments that I was able to
23 accurately make a moment ago the other thing is the
24 discourse on this defective condition issue there as to
25 res ipse and how it applies.

1 There what they were saying is this is not common
2 person's knowledge. This requires expert testimony to
3 establish for purposes of duty. And again, Judge, to the
4 point that we just made and you questioned on, I think
5 this is clearly a case where the operation of a sanitary
6 sewer system and necessary maintenance is not within the
7 layperson's knowledge.

8 THE COURT: Anything else?

9 MR. WREN: Nothing, Judge.

10 THE COURT: Anything further, Mr. Williams?

11 MR. WILLIAMS: Your Honor, I don't have any cases to
12 cite on this inherently public duty on sewer system work,
13 but I do know as a matter of fact, and I think the Court
14 knows this as a matter of fact, that there are such things
15 as private sewer systems. And an operator of a private
16 sewer system is going to be held liable for the negligence
17 damages unincorporated associations, developments. They
18 have it in parts of other counties.

19 Again, Dillon County. I don't know, but there are
20 such animals in South Carolina as privately owned sewer
21 systems. And I don't think they're -- and there are
22 governmental entities around the country that contract out
23 their sewer system to private entities. And I don't think
24 a municipality would be held to any different standard
25 than the standard of ordinary care.

1 THE COURT: If you all will give me a few minutes to
2 review some of the cases that have been cited and then
3 I'll get back with you. Let's take a break. Let me look
4 at those.

5 MR. WREN: Thank you, Your Honor.

6 (WHEREUPON, Court was in recess 10:35 a.m. and
7 reconvenes at 10:50 a.m.)

8 THE COURT: Okay. Counsel, I have considered the
9 arguments that have been made in this -- on the directed
10 verdict. And after considerable thought and research and
11 review of the facts in this case I find that, Number One,
12 the public duty rule does not apply in that we're not
13 relating to any specific statutes. And this is a common
14 law situation. And that pursuant to the Arthur case that
15 the City -- the Town would be treated as any other
16 ordinary citizen.

17 I heard Mr. Wren's argument that should not be the
18 case, but in reviewing that case and in looking at some of
19 the other case law related to those issues I find that a
20 proper analogy would be appropriate. And so, therefore,
21 the public duty exception does not apply.

22 I also considered the evidence relating to the
23 negligence claim in specific -- in particular whether or
24 not there was a duty. I find that the Defendant -- I'm
25 sorry; that the Plaintiff did establish evidence relating

1 to a duty. And that through the testimony of the
2 witnesses they established that there would have been a
3 breach of the duty. I think then and only then do I
4 consider the Tort Claims Act immunities.

5 I find that provisions of Subsections One and Two of
6 15-78-60 do not apply. I don't think there was evidence
7 in which there was any specific legislative authority or
8 consideration in determining what functions and what
9 actions to take or not take. So I don't find that either
10 one of those exceptions applies.

11 I find that the section relating to -- Subsection
12 Four relating to the adoption, enforcement or compliance
13 with any law or failure to adopt or comply I find that
14 that also does not apply in this particular situation.
15 There is not been a claim that there has been any
16 violation of a specific ordinance or regulations,
17 particularly D.H.E.C. regulations. And so I don't find
18 that that particular exception applies.

19 I considered Subsection Five, "Exercise of Discretion
20 or Judgment by the Governmental Entity." And while I
21 believe that there has been some exercise of discretion or
22 judgment I think it becomes a jury question to determine
23 whether or not there would have been a breach of duty in
24 failing to take action. The way I view the evidence is
25 that there were basically four competing choices in

1 addition to the underlying dispute as to whether or not
2 there is a leak or not.

3 But if the considerations by the Town would -- there
4 would have been four options. The three that were
5 discussed was move the line, put a sleeve on it or I think
6 put some glue or whatever in it or whatever the
7 appropriate terminology is or to do nothing. While I
8 understand that they weighed those options I still believe
9 that the jury could make the decision. I understand that
10 they weighed the options, and their option was to do the
11 fourth; that was to do nothing.

12 And I understand that that was primarily because they
13 did not believe that there was a leak in the line. So I
14 think it becomes a question for the jury to decide, first
15 of all, whether or not there was a leak; and second of
16 all, whether exercising that particular option would have
17 been a breach of the duty. And the duty is to maintain
18 the system and the maintain the lines. And so I think
19 that becomes a jury question.

20 It is not strictly a question of law for me to apply
21 at this particular point, and there seems to be some
22 support sending that to the jury pursuant to the Steinke,
23 S-T-E-I-N-K-E v. South Carolina Department of Labor,
24 Licensing and Regulation. Although in that particular
25 case the Court said that there was not -- there was scant

1 evidence as to the exercise of discretion. It went to the
2 jury, and the jury make the decision. And I think that's
3 appropriate under the circumstances.

4 While I think that both sides agree that there were
5 options that were available and there is evidence about
6 those options whether or not there still would have been a
7 breach of the duty by failing to exercise of those options
8 is still a jury question.

9 And on the exception, Number 13, relating to the
10 regulatory inspection powers or functions, I think that
11 that particular section applies when the Town exercises
12 its authority regulating other entities or businesses
13 within the county. I mean within the Town. It is not the
14 situation in which D.H.E.C. is exercising its authority
15 over the Town and it is performing inspections in
16 conjunction with D.H.E.C's authority.

17 I think that would more clearly fall under Subsection
18 Four which would be the compliance with any regs, and so I
19 don't find that 13 applies in this particular matter.

20 As it relates to the personal property of the
21 plaintiffs I think that the testimony revealed that they
22 were instances that occurred after September the 5th and
23 6th. In particular there was testimony about an event on
24 September the 13th and other instances. And the testimony
25 was that the tools had been in a shed and that it was not

1 checked until later. And so I think that there is
2 evidence from which the jury could determine whether or
3 not the damages arose as a result of the instances
4 occurring after September 5th and 6th. And so I will deny
5 the motion as it relates to the personal property damages
6 on the personal property.

7 I think I covered everything. If there is something
8 I left out please let me know. I think I've covered all
9 the arguments that were made.

10 MR. WILLIAMS: I don't have anything else, Your
11 Honor. It's their motion not mine so I'll give them the
12 chance to speak first.

13 THE COURT: Yes, sir.

14 MR. WREN: And, Judge, nothing other than I just want
15 to make sure I understand your ruling as to duty, breach;
16 that I understood Your Honor is using being common law
17 reasonable person standard as opposed to expert?

18 THE COURT: Yes.

19 MR. WREN: Okay, Judge. For the record we take
20 action to what we understand that to be.

21 THE COURT: I don't think they're required to bring
22 in an expert to say how the system has to be operated. I
23 think that in the light most favorable to the Plaintiff
24 D.H.E.C. employee, Ms. Watson, comes in and says they have
25 a duty to maintain their sewer lines and they have a duty

1 to operate the system.

2 Mr. Davis comes in and says there was infiltration --
3 there were breaches in the system and that they failed to
4 properly keep up the system. And he was an expert, and I
5 think that was sufficient me to raise these issues. And
6 just leave it at that.

7 MR. WREN: Very well, Your Honor. Thank you.

8 THE COURT: Anything else?

9 MR. PLYLER: Nothing from the Defendant. Well,
10 actually, I'm sorry, Your Honor. Not on this motion.

11 THE COURT: Well, before -- is it another motion?

12 MR. PLYLER: No, Your Honor. It has to do with
13 something from yesterday about exhibits based on your
14 previous ruling.

15 THE COURT: Yeah. What my plan was was to send the
16 jury out, send the jury to lunch so we can talk about
17 charges and any other little issues. And then when they
18 come back we can be ready to close and charge.

19 MR. PLYLER: Thank you, Your Honor.

20 THE COURT: Is that sufficient cause they've been
21 sitting back there for a while. That's part of my issue.
22 Ask the jury to come in.

23 (WHEREUPON, the jury panel enters the courtroom at
24 12:24 p.m.)

25 THE COURT: One more time. Ladies and gentlemen, I

1 instructions not to discuss this matter among yourselves
2 even though you've heard all the evidence. You still have
3 not heard my instructions on the law so you don't know how
4 you're going to apply the law to the facts when you
5 determine them.

6 I ask you to remember not to allow anyone to approach
7 you to discuss this matter with you. Please do not listen
8 to conversations that you may hear in the hallways. Again
9 for the reasons that now you have heard the evidence so
10 you shouldn't be swayed by other information that you may
11 hear as you come and go. And again I'll see you back at
12 the same jury room at two o'clock. Thank you all very
13 much.

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 12:27 p.m.)

16 THE COURT: Yes, sir, Mr. Plyler.

17 MR. PLYLER: Your Honor, briefly, and if you wouldn't
18 mind, for scheduling purposes, probably needs to go
19 outside and make a phone call about 3:30 to at least be
20 with my wife on the telephone and any courtesy you can
21 give to me I consent will be very appreciated.

22 THE COURT: Hopefully by 3:30 the jury will be
23 deliberating.

24 MR. PLYLER: I imagine they will. I don't think it
25 will cause a scheduling problem. I just wanted to bring

1 it up. Thank you. The issue we raised yesterday had to
2 do with I believe Plaintiff's Exhibit Number One which is
3 photographs that have been testified to were taken on
4 September 6th 2008 by either Vickie or Claude Graham
5 showing the results of the flood waters that were caused
6 by Tropical Storm Hanna.

7 Based on Your Honor's ruling as to with any claims
8 stemming from that particular event it would be our
9 position that these exhibits are now irrelevant, and
10 therefore, should not be allowed to go back to the jury
11 for their consideration. That was sure position we raised
12 I Understand you had taken it under advisement. Thank
13 you, Your Honor.

14 THE COURT: And, again, any response to that from the
15 Defense? I'm sorry, from the Plaintiffs?

16 MR. WILLIAMS: Your Honor, I said what I said
17 yesterday. I didn't think that's the background.
18 That's -- those show that, Mr. Graham, what events he
19 witnessed. Those same events gave the Town notice of an
20 issue that lets the jury analyze whether there was --
21 whether there was or was not an issue with the Town should
22 have been recognized that it needed to take action.

23 THE COURT: And on that basis I'll allow the photos
24 to go back on that basis. Not to show that he's entitled
25 to any recovery for any damages that arose out of that

1 particular event but to show the conditions that lead to
2 the Town having notice and investigated further along with
3 other instances which are in the record from testimony in
4 the record. So I allow those to go back.

5 MR. PLYLER: Thank you, Your Honor.

6 THE COURT: Anything further as it relates to motions
7 or any other legal issues? Let's talk about charge.

8 MR. WILLIAMS: Your Honor, first on the pleadings, I
9 understand, but I've got a few more charge requests. I
10 did turn in three this morning.

11 THE COURT: Yes, sir, I received them. I've received
12 three from the Plaintiff. I received a number from the
13 Defendant. Admittedly, several of them are no longer
14 applicable. I find it easier for me to tell you what I
15 will charge. And then we can talk about the specifics. I
16 will charge the jury to determine the facts based upon the
17 evidence. In doing that they have to judge the
18 credibility of the witnesses. I'll instruct how to do
19 that. I'll instruct them on -- I'm charge them on expert
20 witnesses.

21 I'll charge them on the burden of proof. I'll charge
22 them on the elements of the negligence claim. On the
23 elements of the negligence claim I'll charge them that
24 this Plaintiff has to prove that there was a duty of care
25 owed by the Defendant to the Plaintiff; that the Defendant

1 breached that duty. And that there were damages
2 resulting. I'll charge them that the duty of care is that
3 standard of conduct the law requires of an actor in order
4 to protect others against the risk of harm from his
5 actions. It's the principle that the Plaintiff should not
6 be called to suffer a harm to his personal property which
7 is foreseeable and which could be avoided by the
8 Defendant's exercise of reasonable care.

9 I'll define for them the -- further that negligence
10 could be the failure to act or it could be the acting in a
11 manner that a reasonably prudent person would not do under
12 the same or similar circumstances. To judge whether a
13 particular act is negligent they have to judge that act in
14 the manner in which a reasonably prudent person would have
15 acted under the same or similar circumstances.

16 I will charge them on proximate cause; that the
17 Plaintiff has to show that the injury would not occurred
18 but for the Defendant's negligence. The Plaintiff also
19 has to prove legal cause which is showing that the injury
20 was foreseeable; that is that the injury occurred as a
21 natural and probable consequence of the Defendant's
22 conduct.

23 While some injury from the Defendant's conduct or
24 negligence must be foreseeable it doesn't mean that the
25 Plaintiff has to prove that the precise incident that

1 occurred was foreseeable. Proximate cause does not mean
2 the only cause. The Defendant's act -- there can be more
3 than one cause of an injury and more than one -- the
4 Defendant's act can be a proximate cause of the injury if
5 it is at least one of the direct and concurrent causes of
6 the injury.

7 I will charge them on what damages which would
8 include personal injury damages; that's physical or mental
9 pain and suffering, expenses incurred for necessary
10 medical treatments, and any other losses that are
11 reflected by the character of the injury; that the damages
12 don't have to be proven to a mathematical certainty.

13 I will also charge them about damages to a building
14 or other property. The measure of damages which the
15 Plaintiff would be entitled to recover is the difference
16 between the value of the building and other property of
17 the Plaintiff's before the damage and the value in it's
18 condition after the damage.

19 The preparing the building would put it back in the
20 same condition as before the damage to the measure that it
21 would be the cost to repair it plus any amount for the
22 value of the building's decreased due to the damage. The
23 damage to the real property. The measures the difference
24 between the value of the entire premises before and after
25 the injury.

1 The value of the property -- the value of property on
2 undamaged real estate such as buildings, fences and other
3 property. Personal property is measured according to that
4 value of the property actually destroyed or damaged.

5 The owner of the property damaged by another's
6 negligence must use every reasonable effort to minimize
7 that damage. If the Plaintiff did not do this then the
8 Plaintiff may not recover full amount of the damages.

9 I will also charge them that with respect to the note
10 taking that their notes are their own to be used for their
11 own specific, individual purposes. They should not share
12 their notes with other jurors. They are to use them only
13 for purposes of refreshing their own recollection and jury
14 notes are not to be given any greater weight of the
15 recollections of other jurors. And the recollections of
16 individual jurors should be considered just as reliable as
17 notes taken by any other juror.

18 On the -- there were -- in conjunction with that I
19 would also charge them relating to the tort claims
20 immunity. And while I haven't craft the language it would
21 be something to the extent that the governmental entity is
22 not liable for a loss resulting from the exercise of
23 discretion or judgment by the governmental entity or its
24 employees or the failure to perform any act or service
25 which is in the discretion or judgment of the governmental

1 entity or its employees.

2 In considering -- in determining whether or not the
3 governmental entity is liable for the loss as described by
4 the exercise of discretion they may consider whether the
5 governmental entity was faced with alternatives and
6 actually weighed competing considerations and made a
7 conscious choice using accepted professional standards.
8 And that the burden is on the governmental entity to
9 accomplish that it meets that criteria.

10 And then I'll tell them their verdict must be
11 unanimous; that there are two choices for verdict: We
12 find for the Plaintiff actual damages or we find for the
13 Defendant. Is there anything additionally that the
14 parties wish me to charge? Start with the Plaintiff?

15 MR. WILLIAMS: From the Plaintiff, Your Honor, I note
16 that your summary of the charges didn't incorporate our
17 Request to Charge Number Two, but neither Number One or
18 Number Three and I would request those.

19 THE COURT: And if you could explain to me the
20 rational behind.

21 MR. WILLIAMS: Well, with respect to Charge Number
22 One, the City -- there has been testimony from the City
23 that they had a map or a plat of the sewer system that the
24 engineer used in preparing the documents with the
25 satellite documents. They didn't produce that. They had

1 records from the smoke test and they attempted to camera
2 the line. None of those records were presented to the
3 Court, and those -- if those had been supportive of their
4 position about the results of the smoke test,
5 particularly, and the location of the manhole covers I
6 would think that is a fact for the jury to take into
7 account in determining whether that is or is not -- they
8 be permitted to draw an inference those documents would be
9 available but not required to draw an inference. Those
10 documents are uniquely in the possession and control of
11 the City.

12 THE COURT: Any response to that from the Defense?

13 MR. WREN: Yes, Judge. We, of course, don't agree
14 and object to that. Also as to the results of the smoke
15 test I don't have to state my position on it. The
16 evidence and testimony from Mike Hanna, he had them in his
17 possession. He's not the Town. He's the contracted
18 engineer. The Town does not have them. He testified that
19 he pulled them together and overlaid the information on a
20 map that was created and produced and contemporaneously to
21 Plaintiff's counsel last week.

22 So I don't see any results of smoke tests; that there
23 is no such document. And importantly, Judge, for his
24 exfoliation argument, there is no evidence or testimony or
25 it's not the case that these things have been destroyed.

1 That's where exfoliation comes in. The analogy that the,
2 for instance, the Plaintiffs testified about the damages
3 to their vehicles. Extensively, there is documentation
4 there. We have asserted that that has been destroyed.
5 There is no need for an exfoliation charge.

6 And then as to the Town's sewer map, again, Mike.
7 Hanna spoke on that was that there was some document
8 there. It's not what he was using to identify all this
9 information. Rather, it's just a document there that
10 pertains to these things. Again, nobody has testified to
11 the fact that they have been destroyed. It hasn't been
12 requested, and so for a number of reasons, Judge, we argue
13 this is not an exfoliation case issue.

14 THE COURT: The charge that you submitted says, "When
15 they failed to preserve the material and evidence for
16 trial." And I think that's more incumbent upon -- that's
17 more an exfoliation issue. I think the testimony was that
18 those documents were utilized in preparing the information
19 that was testified to by Mr. Hanna.

20 And I think you can argue that to the jury that
21 somebody got them and they weren't presented. But I think
22 that's a choice of whether to produce them as opposed to
23 they weren't preserved. Certainly, if you had subpoenaed
24 them or requested them and they weren't produced then that
25 would be another issue, but I don't think that's an

1 appropriate charge.

2 MR. WILLIAMS: Thank you, Your Honor. I understand.

3 THE COURT: Number Three.

4 MR. WILLIAMS: Number Three. Over our objections
5 Your Honor ruled that the Town of Latta has a prescriptive
6 easement over the Plaintiff's property. That being so I
7 think it's appropriate to charge the jury that ordinarily
8 the owner of an easement has a duty to keep it in repair.

9 THE COURT: Any response?

10 MR. WREN: Your Honor, yeah. A couple of questions.
11 One of them I think is jury confusion. Of course, as a
12 matter of law that was a determination made by the Court
13 expressed to counsel and the parties here. Jury doesn't
14 know that at this time, and I think that unless there is
15 an explanatory instruction that the Town of Latta has a
16 prescriptive easement on the Graham's property this does
17 nothing but create confusion in the presence of the jury.
18 I don't see where it helps the jury at all in their fact
19 finding endeavor.

20 MR. WILLIAMS: Your Honor, I would consent to an
21 amendment of the request. Since Your Honor knows that to
22 be the case. It would be -- I would urge the Court
23 similarly to instruct the jury that ordinarily the Town of
24 Latta has a duty to keep the sewer lines -- I think that's
25 what I said, Judge. My initial -- my instruction would be

1 to establish that this is what they want to say that the
2 Town of Latta has a prescriptive easement upon the
3 property, and then you can add that the law is they have a
4 right to keep it in repair.

5 MR. WREN: Your Honor, if it helps, the reason the
6 jury hasn't heard that is because this was all under the
7 trespass. Trespass is not going before the jury. I don't
8 see where this would have any bearing on anything other
9 than to confuse the jury in total.

10 MR. WILLIAMS: Your Honor, I thought it was at the
11 Defendant's motion that the Court declared the existence
12 of prescriptive easement.

13 THE COURT: It was done in conjunction with the
14 trespass issue..

15 MR. WREN: Correct.

16 MR. WILLIAMS: Be that as it may now that that
17 easement exists, and I think it would be appropriate to
18 charge the duty -- that to charge the jury what duties are
19 inherent in ponds and easements. I'm not wedded to any
20 particular wording. I think that wording, that according
21 to the cases, is correct. But there hasn't been any
22 testimony that there is an easement. So evidence, just as
23 a matter of law, now, an easement.

24 I think that the jury should be instructed that the
25 Town has a duty to keep in repair. However that's worded

1 or whatever, but I, think that is an accurate statement of
2 the law that ordinarily, Latta has a duty to keep that
3 sewer line in repair.

4 MR. WREN: Your Honor, again, I think this is going
5 to do nothing but confuse our jury. It's on a matter
6 that's been disposed of. It's not before the jury. It's
7 not something their going to be charged with.

8 MR. WILLIAMS: We can stipulate that the Town of
9 Latta has a duty to keep it in repair?

10 MR. WREN: Judge, I'm not willing to stipulate to
11 that.

12 MR. WILLIAMS: Your Honor, if it's going to be a
13 factual issue it has to be resolved by the jury. The jury
14 is allowed to know the applicable law.

15 MR. WREN: For a cause of action that's not before
16 the jury, Judge.

17 THE COURT: Well, what your claim is now that they
18 had duty to maintain the system, to operate the sewer line
19 in such a way as not to damage the property. That's what
20 you told me was the duty.

21 MR. WILLIAMS: Yes, Your Honor.

22 MR. PLYLER: Your Honor, may I briefly. I just tried
23 skimmed through these cases very quickly. One is from
24 1836, and appears to be dealing with a logging road. The
25 other one had to do with a permit. I believe in a

1 driveway or something over the surface of the land. And
2 the question was going to be, especially in the later
3 case, the one that is more recent, whether or not the cost
4 of maintaining the surface of the land should be
5 apportioned between the person claiming the easement and
6 the actual property owner. That is completely different
7 than what we have here.

8 All the testimony has been this particular pipe is
9 underground. This is not the same as an easement by
10 prescription where a utility company. I think it is
11 confusing. The cases are distinguishable from the facts
12 we have in this particular incident.

13 And although this hasn't been specifically argued,
14 there might be a judicial estoppel issue. The entire
15 litigation for over four years the Plaintiffs have been
16 maintaining that the City -- the Town of Latta does not
17 have an easement. Now, they want to flip the script on
18 something that we haven't been able to develop factually
19 about this issue of maintaining the property if we have an
20 easement.

21 I just agree with Mr. Wren, and I only speak because
22 I was trying to read these cases briefly. So thank you,
23 Your Honor.

24 THE COURT: I'm -- I'll consider that one. I'll have
25 to come back to that one.

1 MR. WILLIAMS: Thank you, Your Honor. As to what
2 Your Honor stated you would be charging I have no
3 objection to any of them. Thank you.

4 THE COURT: Anything further from the Defendant?

5 MR. WREN: Your Honor, just some housekeeping, and I
6 want to make sure and I appreciate you including all -- I
7 know I left you that packet which includes numerous
8 charges that we thought were applicable. Did we have in
9 the language I think came from the Snow case about the
10 inference of negligence arises from the mere act or
11 incident incurs? And I apologize. I missed that; your
12 negligence charge.

13 THE COURT: I think it might have been in your
14 request. I'm not so sure I pulled it out.

15 MR. WREN: And just respectfully, Judge, we ask for
16 it to be included. If it helps to, Judge, it's located in
17 Snow; that proposition.

18 THE COURT: Okay. That's usually in -- somewhere in
19 my proximate cause charge. And so I don't have a problem
20 getting that language or some variation of that language.

21 MR. WREN: That will be fine, Your Honor. And then
22 additionally, Your Honor, the Tort Claims Act immunity as
23 you identified. Of course, Subsection Five, the
24 discretionary. I heard Your Honor speak to that. The
25 Defendant would still request the other immunity

1 subsections we had asserted at directed verdict that will
2 be charged, and beyond that.---

3 THE COURT: I'm sorry; that the other?

4 MR. WREN: That the other subsections of immunity
5 will be charged to the jury beyond -- I heard you. I
6 certainly heard your explanation as to discretionary, Your
7 Honor.

8 THE COURT: Right. And that was the only one that I
9 said survived your directed verdict motion.

10 MR. WREN: All right. I just want to make sure I
11 understand the Defendant's position. We would for the
12 record we would ask now that it be charged, but I
13 understand the Court's ruling at this time. And beyond
14 that, Judge, as to your discretionary ruling I understood
15 you to include language that the burden is on the
16 Defendant to show; is that correct?

17 THE COURT: To show that you're entitled to that
18 immunity, yes.

19 MR. WREN: Okay. And just we would take objection
20 to -- exception to that. We just simply ask that the
21 immunity charge be charged as the law reads.

22 THE COURT: Well, but the case law clearly says that
23 the Defendant has to prove immunity.

24 MR. WREN: And I'm not asserting that's the perfect
25 defense, Your Honor. And, finally, as to the damages

1 charge I know that's pretty standard. I heard Your Honor
2 included no speculative -- speculation that kind of
3 language. That's what we had included as well. The only
4 question I had, Judge, in practices I'm not as familiar
5 with this particular charge; the one referencing either
6 real property or buildings.

7 I heard it to say that, basically, that for damages
8 purposes where there is evidence that a building or
9 property needs to be reconstructed something to that
10 effect, and my hesitation there, Judge, is there is no
11 evidence of that in this case. There was entire witness
12 put up to establish what it would cost to build the
13 Graham's residence to the tune of almost half a million
14 dollars. But there is clearly no evidence, no witness or
15 testimony to establish that needed to be done.

16 THE COURT: Well, what I said as to the bidding is
17 that the difference between the value of the building
18 being and other property in the condition before the
19 damage and the value after the damage. If repairing the
20 building would put it in as good a condition as before the
21 damages then the measure of damages would be the cost of
22 any repair plus the decrease -- plus any amount by which
23 the value of the building decreased due to the damage.

24 And then I talked about real property, and it's a
25 charge I really hadn't read until this morning.

1 MR. WREN: Your Honor, if I may inquire, Ervin or
 2 King charged?
 3 THE COURT: No.
 4 MR. WREN: Judge Anderson's charge. Excuse me.
 5 THE COURT: It could very well be in Judge
 6 Anderson's. I don't know.
 7 MR. WILLIAMS: All right. I think the language
 8 you're talking about -- I said, "The value of the property
 9 on the damaged real estate such as buildings, fences is
 10 measured according to the independent and separate value
 11 of the property actually destroyed or damaged."
 12 MR. WREN: I guess, Judge, that's where I think we
 13 have objection. I take exception because of the lack of
 14 evidence in this case. Whether in terms of value or a
 15 need to replace or rebuild the Plaintiff's, they have not
 16 put any evidence of that in, Judge.
 17 THE COURT: Then it goes on to say that, "This injury
 18 is measured by the difference between the value of the
 19 entire premises before and after the loss."
 20 MR. WREN: Yeah, I guess our objection, Judge, would
 21 just be to be entirely of that for lack of establishing
 22 that's what the damages are. That's what's needed.
 23 THE COURT: I will -- I know that I'm going to revise
 24 the charge. So I will not charge it as it's written. And
 25 I will -- I think what that sentence is trying to say is

1 when it comes to real estate building or other things
2 attached to the real property then that measure of damages
3 is the value of the entire premises before and after the
4 loss.

5 But if there are things not attached to the property
6 then their measure is by their independent value, and I
7 think that's what that is trying to say the more I read
8 it.

9 MR. WREN: Would it be helpful ---

10 THE COURT: And so what I'll probably end up doing is
11 just going back to the general that -- to the extent that
12 where real property has been damaged the measure of the
13 damages is the difference between the value of the entire
14 premises before and after the injury and let's leave it at
15 that and not even talk about the building.

16 MR. WREN: Thank you, Judge. I think that would
17 resolve if there is any question or the anticipated charge
18 is different. Otherwise, I think that would be
19 acceptable. And, Judge, the final thing just for
20 housekeeping. I did -- we had mitigation charge, correct?

21 THE COURT: Yes. And I put in there mitigation.

22 MR. WREN: Yes, Your Honor. All right. Judge, I
23 think that's all we had as far as the charge goes. Thank
24 you.

25 THE COURT: Okay. All right. I assume that your

1 closing arguments will not be terribly lengthy. And when
2 you come back from lunch I'll have the verdict form for
3 you to look at. And like I said it's a simple verdict
4 form. It will just say, "We find for the Plaintiff actual
5 damages. We find for the Defendant," and since I'm only
6 charging negligence that will be the only issue for them
7 to consider. Anything else?

8 MR. WILLIAMS: May it please the Court. May I
9 address. I know Your Honor is going to be considering --
10 reconsidering part of the charge.

11 THE COURT: The only one I'm really considering is
12 the easement.

13 MR. WILLIAMS: Thank you. Okay. I thought I
14 understood you to say that you were considering
15 incorporating what I thought was the res ipsa loquitur
16 into the standard charge.

17 THE COURT: Well ---

18 MR. WILLIAMS: Only thing I want to say is that if
19 you are in fact reconsidering that portion of it I ask you
20 to do it in the light of O'Leary at the same time. O'Leary
21 was the one that talked about.

22 THE COURT: Right. And I'm not charging a res ipsa.
23 What I would -- the language that will be charged would be
24 the mere fact that problems occurred after an incident is
25 not sufficient by itself to show that the incident was

1 caused by the physical problems. The incident caused the
2 physical problems. The Plaintiff must establish a natural
3 an obvious relationship between the incident and the
4 physical problems in that the injuries resulted from the
5 incident.

6 The Plaintiff has to prove that the Defendant's
7 negligence proximately caused the injuries. That's proven
8 by showing a causation and fact that the injury would not
9 have occurred but for the negligence.

10 The Plaintiff also has to prove legal cause proving
11 by showing that the injury was foreseeable. So that would
12 be the language that I use.

13 MR. WILLIAMS: I have no objections to that, Your
14 Honor.

15 MR. WREN: And, Your Honor, since we're going to wrap
16 this up just to clarify. There was a question as to the
17 damages charge and the property issue and to the value
18 comes in. Just we site the Court's attention to Jackson
19 Britt. It's a 2000 South Carolina ---

20 THE COURT: I'm familiar with it. I've seen what the
21 case law says.

22 MR. WREN: Yes, Judge. And that is the speculative
23 nature of it is what concerns us.

24 THE COURT: Speculative nature of what?

25 MR. WREN: Of deciding that there is no evidence --

1 objective finding and that doesn't exist mere.

2 THE COURT: All I can do is charge them with what the
3 elements of damages are, and it's up to them to determine
4 the damages. You want to make that argument to them then
5 you can make that argument to them.

6 MR. WREN: No, Judge. But that's our one issue we
7 have with that particular charge.

8 THE COURT: I'm just charging the law the measure of
9 damages.

10 MR. WREN: Fair enough. Thank you, Judge.

11 THE COURT: Anything else?

12 MR. WILLIAMS: Nothing, Your Honor.

13 THE COURT: Okay. Then we'll see you back at 2:00.

14 MR. WREN: Thank you, Judge.

15 (WHEREUPON, Court is in recess at 1:07 p.m. and
16 reconvened at 2:05 p.m.)

17 THE COURT: Is there anything we need to take up
18 before we bring the jury in? Oh, yes, I decided not to
19 charge on the easement. I think that there is -- that
20 there is a duty as it relates to the sewer system and the
21 waste water treatment system. And I think that everyone
22 agrees to that. I think there is evidence that shows that
23 there is a duty to maintain that system including the
24 lines. And so I'm not going to charge them about the duty
25 to maintain the easement.

1 MR. WILLIAMS: Very well, Your Honor. I guess bring
2 up one other thing. I don't like to interrupt.

3 THE COURT: That's all right.

4 MR. WILLIAMS: Maybe we can clarify this issue. Now,
5 based on some of the questioning and some of the arguments
6 I infer that the Defense might be arguing that the
7 plaintiffs are in some way at fault in connection with
8 this burden comparative negligence and contributive
9 negligence and substrative risk. All that were not pled.
10 So I don't think it would be appropriate argument to
11 criticize the conduct of the Plaintiffs with respect to
12 those issues.

13 THE COURT: I think that the only way that I know
14 that it might come up other than what they should have
15 done before they purchased the home or whatever would have
16 been as it relates to the damages.

17 MR. WREN: Mitigation.

18 THE COURT: Mitigation, but that was the only thing
19 that I heard of, Mr. Wren.

20 MR. WREN: Yes, Your Honor, Mr. Plyler is going to be
21 doing our closing to that point, but, not, that's what we
22 contended. We have not asserted it and we didn't raise as
23 far as comparative negligence. And I'll let Mr. Plyler
24 address specifically as to closing, but that has not been
25 our contention.

1 MR. PLYLER: And I apologize. I'm a little behind
2 the eight ball here. I didn't get to hear all the
3 information.

4 THE COURT: Oh, it was just the one Mr. Williams was
5 trying to anticipate what may be mentioned in closing. I
6 didn't want to object during the closing. He said to the
7 extent that you -- that there would be any arguments that
8 in some way the Plaintiffs were at fault in causing or
9 contributing to the problems; that he didn't -- that the
10 comparative wasn't pled along those lines.

11 And I said that as far as I knew with the exception
12 of any arguments that were made before they purchased the
13 property that they should have done and there has been
14 testimony about that. Need to determine where the lines
15 were, whatever. I did not believe that there would be any
16 arguments.

17 MR. WREN: So I can go into that fact that they
18 didn't do pre-purchase inspections?

19 THE COURT: I don't know what you're argument is
20 going to be, but I just know that there was evidence and
21 there were questions about, you know, what they did in
22 terms of determining, you know, where the line was located
23 and if there was a line or things along those lines.

24 MR. WILLIAMS: Your Honor, that's what I was
25 concerned about. Pre-purchase inspections would go to

1 either on assumption of the risk defense or a comparative
2 negligence or contributory negligence defense. So I don't
3 think that it would be proper argument under the posture
4 of the case.

5 MR. WREN: Your Honor, just to address the legal
6 arguments then exclusive of the closing arguments in a
7 moment. What the issues that Mr. Williams is raised,
8 clearly, that's the evidence in this case. That's the
9 testimony that's elicited from Claude and Vickie Graham
10 and others relative to this property. And to the extent
11 that is -- the Plaintiffs contend that that's an issue or
12 problem here I think this is exactly what Rule 15 is
13 designed for. To conform to the evidence. That is
14 exactly what this case -- the evidence has been set forth.

15 I've never seen a case over this couple of days, you
16 know, a few days of trial evolve as much as this one has,
17 Judge. And, certainly, to that extent I think it should
18 be addressed in closing. The underlying foundational
19 issue here we would move to have the pleadings amended to
20 reflect exactly what the evidence has shown which was
21 there are issues about what the Grahams did or did not do
22 both preceding and subsequent to the purchase.

23 THE COURT: Now, there is there a question as to
24 whether or not -- I guess it may have been relevant,
25 issues relating to easement or trespass or is it -- does

1 it really relate to whether or not the Town maintained or
2 inspected or any of those allegations as it relates to
3 what duty was of the Town as it relates to the sewer line.
4 Certainly, it would be relevant to mention to the extent
5 that there is an argument that we wouldn't have purchased
6 the property had we known about it or we wouldn't have
7 moved on the property. I think if those arguments were
8 certainly fair to be able to say, you know, what the
9 evidence is whatever it shows.

10 And so I guess it really depends on what he talks
11 about in his closing. But I'm not so sure in terms of
12 being able to say that they somehow contributed to it or
13 they assumed the risk of having these events occur would
14 be any -- that would be inappropriate argument to make.

15 MR. WILLIAMS: I anticipate I won't say anything that
16 will open that door. If I do then, obviously, I have
17 messed up and I will open the door. I don't plan to open
18 that door.

19 MR. WREN: Your Honor, I don't want to confuse the
20 issue, but one of the things that has come up is this
21 thing about flood plains. And one of the things that
22 they're claiming in their damages is related to flooding.

23 THE COURT: I think that's a fair issue. I mean I
24 think that's fair game, you know, to say that it's not all
25 the Town's fault. They moved into a flood plain, and you

1 know, they could have ascertained that before. And I
2 think that is fair game. To me that's not a shifting of
3 the responsibility. That's just an existence of you had
4 the opportunity to discover that and had you known those
5 features about your property maybe you wouldn't have
6 bought the property. Maybe you wouldn't have lived there,
7 but because it's flooded and it's in the flood zone is not
8 necessarily the Town's fault because of that.

9 MR. PLYLER: And it would also go to damages we
10 believe because part of the damages argument here is
11 they're entitled to the difference in value between the
12 property before the events and after. And, obviously,
13 all -- there has been no change in condition to the
14 property is one of the things we would be mentioning here.

15 THE COURT: To the extent you can make an argument
16 about -- because of damages then, you know, I think the
17 bottom line is I'm going to have to hear what the argue is
18 before I can -- and you're just going to have to object.

19 Now, you love to object during the closing, but I
20 think if it's a fair characterization of what the evidence
21 is and it applies to the cause of action and the defenses
22 that are raised in this particular cause of action
23 negligence claim then it would be -- there could be
24 arguments made.

25 MR. PLYLER: Your Honor, there is one matter that I'd

1 like to take up for the record, and I know we spent a lot
2 of time talking about directed verdict. But I do feel
3 this needs to be raised to make sure it's clear what our
4 position would be. And the issue is, one, in Claude
5 Graham's complaint, in Paragraph Five, he specifically
6 says -- I want to make sure I get this right. I don't
7 want to misquote anybody.

8 "On the night of September 5th 2008 and the morning
9 of September 6th 2008 the municipal waste water system
10 operated by the City backed up overflowed flooded the
11 residence of the Plaintiff and his wife. Flooding the two
12 vehicles and effectually destroying them or seriously
13 damaging them to the point that they have no residual
14 value." The reason I mention this is as pled he has
15 related his damages and from what I remember of his
16 testimony he related to his damages only to the Tropical
17 Storm Hanna, September 6th 2008 event. But Your Honor had
18 already ruled on.

19 They have no claims that survive D.V. for the
20 September 5th and 6th 2008 storm event. So, therefore,
21 his claims he has not shown any evidence in the record
22 that his damages that survive are proximately caused by
23 anything that happened after September 5th or 6th 2008.

24 Additionally, Your Honor, and all this is
25 specifically mentioned earlier, I believe there is an

1 argument the same thing would apply to Miss Graham's
2 claims. There has been no evidence put in the record,
3 none, that the damages that they are alleging to the
4 residence are any different whatsoever and have been
5 proximately caused by any subsequent events.

6 All their damages could have just as well, and there
7 hasn't been evidence to suggest otherwise, been caused by
8 the flooding event. In fact I think Ms. Graham actually
9 said on the stand that it's never been that bad. Its
10 happened again since, but it's never been that bad. So I
11 think there is an issue here of proximate cause.

12 Any evidence into the record that shows the damages
13 that their alleging would not have been caused by this
14 September 5th and 6th 2008 event which Your Honor has
15 already correctly ruled the Town is not responsible for.

16 THE COURT: Well, I think there is evidence, and I
17 understand that you're looking at the pleadings. I heard
18 the evidence from the witness stand as well that there
19 were instances -- that there were instances subsequent to
20 September 5th and 6th, and while the characterization that
21 you've made was that the flooding was not as bad. But
22 there was still flooding on the property which would have
23 been under the house which would have created the issues.

24 And so to the extent, and perhaps the value of the
25 cars may end up going if the cars weren't flooded on

1 September 5th or 6th. But there is other evidence in the
2 record they shows that it was not that one particular
3 event but that there were subsequent events. And I think
4 there is evidence in the report to support that there were
5 subsequent flooding events and subsequent events in which
6 there was sewage. And so that all those things together
7 caused the damage.

8 I understand that, and in particular I'm thinking
9 about the fact that at one time the ducts were redone,
10 H.V.A.C. system under the house; that there was subsequent
11 flooding and it happened again. And subsequently, they
12 have not repaired it which I think goes to your discussion
13 about mitigation of dangers. I think there is evidence in
14 the record to support that there were continuing events.

15 To the extent that the flooding of the vehicles only
16 occurred on that particular event, and that the evidence
17 supports only that it occurred at that time then, you
18 know, I'll be happy to direct as to the value of the
19 vehicles.

20 MR. WREN: I believe that was the evidence, Your
21 Honor; that the vehicles were only flooded in the Hanna
22 storm event. In fact I remember specifically him talking
23 about it got up in my carport and had like eight inches of
24 water in my cars. And I heard nothing that they flooded
25 subsequent to that. And it had to be flooded subsequent

1 to that.

2 THE COURT: I do recall the testimony that there was
3 about 8 to 10 inches of water in the vehicles. 10 to 12
4 inches in the -- well, the September the 13th there was 10
5 to 12 inches under the house, but there was nothing
6 mentioned about the vehicles at that time.

7 MR. PLYLER: In fact he said that his yard didn't
8 even flood at that time, Your Honor. Cause that was one
9 of the reasons they went to the leaking pipe. This wasn't
10 an incident where the yard flooded. Only under the house.
11 Cause I think that also goes to this issue of his other
12 personal property. There has been no evidence put in the
13 record that the flooding occurred that damaged his other
14 personal property subsequent to the Hanna event.

15 And that also leads us to our directed verdict issue
16 that I think we need to take up. We're going to need two
17 verdict forms. We have two separate and distinct claims
18 made by two separate and distinct individuals.

19 THE COURT: I have no problem with that. One is to
20 her and one is to him. I have no problem because there
21 are two separate cases that were consolidated together.

22 MR. PLYLER: Obviously, we're going to need a pretty
23 clear explanation to the jury that as to the house and the
24 real property that only Vickie Graham is made a claim
25 versus as the personal property that is only Claude

1 As I said we submit to you that the real meat in this
2 coconut is that Mr. Benton testified to what you would
3 have to pay to build a house like this on another piece of
4 property. Why is that an important question. Because it
5 wouldn't do you any good to rebuild this house on this
6 piece of property. It wouldn't do you any good to fix it
7 up as I said and clean this house on this piece of
8 property. This piece of property the City of Latta has
9 decided that it is in their interest to use the Graham's
10 home to help them operate their sewer system as they'd
11 rather just use it and not fix it and let it go like it is
12 and let the Grahams bear the expense and the burden of the
13 Town of Latta's sewer system.

14 Again, I don't want to go on and on. I think I've
15 made my point and I'm trying to answer any points Mr.
16 Plyler made. Thank you very much.

17 THE COURT: Could I see the attorneys for just a
18 moment, please.

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

22 CHARGE OF THE COURT

23 THE COURT: During this trial, ladies and gentlemen,
24 you and I have certain duties to perform. As the trial
25 Judge it's my responsibility to preside over the trial of

1 this case and to rule upon or pass upon the admissibility
2 of evidence that has been presented throughout the course
3 of this trial and you are to accept only the evidence
4 which is before you. To any objections to which -- to any
5 evidence to which there was an objection sustained you
6 must not speculate as to what the evidence might have been
7 or the reasons for the objection.

8 Again, you should also consider any stipulations of
9 counsel that have been made a part of the record in this
10 case. Again, you need to consider the testimony along
11 with the exhibits and the stipulations that have been
12 presented throughout the course of this trial. Now, I
13 have the additional duty and responsibility to instruct
14 you on the law that applies. And as the trial Judge I'm
15 the sole Judge of the law that applies. If you have any
16 preconceived ideas as to what the law is or your
17 interpretation of the law or what you think the law should
18 be or what you want the law to be, you must set all of
19 that aside. Under your oath as jurors you are sworn to
20 accept the law as I charge it to you.

21 Now, if by chance I make some error in my charge then
22 there is another court at another time that can correct
23 those errors of law. But for the purposes of this trial,
24 right now, this moment, you must accept the law as I
25 charge it to you as being the correct statement of law.

1 Now, every case tried before a jury, you the jurors
2 become the sole and exclusive judges of the facts of this
3 case. No one can tell you what the facts of this case
4 are. And if I have done anything throughout the course of
5 this trial that has given you any impression that I am
6 commenting on the facts, or I'm telling you what facts to
7 find or making suggestions about the facts, I ask you to
8 set all that aside as well. I assure you that under --
9 that I don't have any opinion about the facts of this
10 case. That's not my job here. That's not what I am
11 supposed to do. That's not my role. That's your duty,
12 your responsibility to determine the facts of this case.

13 Now, in order to do that you have to analyze and
14 evaluate the evidence and determine what evidence
15 convinces you of this truth. In order to do that you have
16 to judge the credibility and believability of the
17 witnesses that have testified. In judging the
18 believability of the witnesses, you may consider the
19 following factors: What was the manner and appearance of
20 the witness who testified? Was he or she hesitate or
21 straight forward in answering the questions? Was the
22 testimony of a witness consistent or inconsistent? How
23 did the witness come to know the facts that he or she
24 testified to? What was his or her ability to know these
25 facts? Did a witness give testimony that would help or

1 hurt one side or the other? Was the witnesses testimony
2 biased or prejudiced in some how? As was the testimony of
3 a witness strengthened or weakened by other testimony or
4 other evidence.

5 Now. In determining the believability of the
6 witnesses, you can believe one witness against several
7 witnesses or you can believe several witnesses against one
8 witness. You can believe a portion of a witness'
9 testimony and disregard other portions of the witness'
10 testimony. You may also consider whether or not a
11 witness' testimony has been impeached or challenged by
12 prior inconsistent statements. And if a witness'
13 testimony has been impeached then you may give any or all
14 of that witness' present or prior testimony the weight
15 that you think it deserves.

16 Ladies and gentlemen, these factors you should not
17 exercise arbitrarily, but if in your good judgment there
18 is reason for you to consider these factors then you
19 should do so. Your objective it to seek the truth, and
20 whether it comes from a witness or witnesses for the
21 Plaintiff or a witness or witnesses for the Defendant you
22 don't determine the truthfulness of the testimony or the
23 evidence by counting the number of witnesses who testified
24 from one side or the other. The truth isn't determined by
25 counting witnesses. What the law simply requires is that

1 when you exercise your mental processes and coming up with
2 what you consider to be truthful evidence you should use
3 your good common sense. Use your sense of logic and
4 reasoning. Use your experiences in life. You then apply
5 these attributes to the evidence to determine what you the
6 jury consider to be truthful evidence. And then to those
7 true statements of facts as determined by you, you apply
8 the law as I will charge it to you. Then you will be able
9 to arrive at your verdict.

10 Ladies and gentlemen, your verdict should not be based
11 upon sympathy or passion or prejudice. While your verdict
12 has no friends to reward and you have no enemies to
13 punish. Your verdict should simply speak the truth.

14 Now, ordinarily our rules don't allow for witnesses
15 to testify as to opinions or conclusions. An exception
16 exists for those individuals who would be called expert
17 witnesses. Those are witnesses who because of some
18 education or training they profess to be an expert in
19 certain areas. And they can state opinions in the area in
20 which they profess to be an expert. You should consider
21 any expert opinion that has been offered in this case and
22 give it the weight that you think it deserves. If you
23 should find that the opinion is not based upon sufficient
24 education or training or the opinion is outweighed by
25 other testimony or other evidence then you are not

1 required to accept that expert's opinion.

2 Additionally, an expert's opinion is to be given no
3 greater weight than that of any other witness simply
4 because that person professes to be an expert. and you are
5 not required to accept an expert's opinion even though it
6 may not be uncontradicted. Now, when an expert gives an
7 opinion as to the cause of an injury or incident that
8 witness must state to a reasonable degree of professional
9 certainty that the event in question most likely -- the
10 injury in question was most likely caused by a certain
11 event.

12 And, now, ladies and gentlemen, each and every time
13 that a case is filed in court and we come before trial the
14 Plaintiff has the burden of proving each and every element
15 of the their claim by what we call the greater weight or
16 the preponderance of the evidence. The greater weight or
17 the preponderance of the evidence is traditionally viewed
18 by a set of old fashion scales where at that beginning of
19 the trial the scales are even. But throughout the course
20 of the trial the evidence that was presented the scales
21 may tip back and forth.

22 If after all of the evidence has been presented the
23 scales remain even or they tip ever so slightly in favor
24 of the Defendant then that means that the Plaintiff has
25 not satisfied the burden of proof and your verdict must be

1. for the Defendant.

2. If on the other hand after all the evidence has been
3. presented the scales should tip ever so slightly in the
4. favor of the Plaintiff then that means that the Plaintiff
5. has satisfied the burden of proof and your verdict must be
6. for the Plaintiff.

7. Now, of course, there is no way to physically weigh
8. the evidence. It's entirely a mental process and the
9. evidence to which you assign the most weight should be the
10. evidence that convinces you of its truth regardless of
11. from whom or from what source it comes.

12. Now, this case is what we call a negligence claim.
13. And in this case the Plaintiff has burden of proof of
14. proving four essential elements by the greater weight or
15. the preponderance of the evidence. First, the Plaintiff
16. has to prove that a duty of care was owed by the Defendant
17. to the Plaintiff.

18. Second, the Plaintiff has to prove that the Defendant
19. breached that duty by a negligent act or omission.

20. Third, the Plaintiff has to prove that they were
21. injured.

22. And, fourth, the Plaintiff has to prove their
23. injuries were proximately caused by the Defendant's
24. negligent conduct.

25. So, let me define some of these terms for you. Duty

1 of care: Duty of care is that standard of conduct that the
2 law requires of the Defendant in order to protect others
3 against the risk of harm from the Defendant's actions. It
4 is the principle that the Plaintiff should not be called
5 to suffer harm to either his person or to his property
6 which is foreseeable and which can be avoided by the
7 Defendant's exercise of reasonable care.

8 Secondly, the Plaintiff has to prove that the
9 Defendant breached that duty of care by a negligent act or
10 omission. That is that the Defendant failed to exercise
11 due care. Negligence means that a person did not use the
12 same amount of care that a person of ordinary reason and
13 prudence would have used under the same or similar
14 circumstances. The word, 'careless' means the same thing.
15 It can be said that a negligent person has done something
16 that a reasonable person would not have done if faced with
17 the same situation or perhaps that a negligent person did
18 something -- did I say that right? Failed to do something
19 that a reasonably prudent person would not have done or
20 would have done or did something that a reasonably prudent
21 person would not have done under the same or similar
22 circumstances or perhaps a combination of the two.

23 To determine whether a particular act is negligent
24 you have to judge that act in the matter in which an
25 ordinary person would have acted under the same or similar

1 circumstances. If you determine that the Defendant owed a
2 duty of care to the Plaintiff and that the defendant
3 breached that duty then you would go on to consider
4 proximate cause. Proximate -- and the question there is
5 did -- were the injuries that were suffered by the
6 Plaintiff proximately caused by the defendant's
7 negligence?

8 Proximate cause is something that produces a chain of
9 events which in the end brings about the injury. It is
10 the direct cause of an injury. The mere fact that
11 problems occurred after the incident is not sufficient by
12 itself to show that the incident caused the problems. The
13 Plaintiff must establish a natural and obvious
14 relationship between the incident and the injuries or the
15 problems and that the injuries resulted from the incident
16 itself.

17 The Plaintiff has to prove that the defendant's
18 negligence proximately caused the Plaintiff's damages or
19 injuries. In order to do this the Plaintiff first has to
20 prove the causation of the fact. Causation of the fact is
21 proven by showing that the injury or the damages would not
22 have occurred but for the Defendant's negligence.

23 The Plaintiff also has to prove legal cause. Legal
24 cause is proven by showing that the injuries or the
25 damages were foreseeable. That means that the injury or

1 damage occurred as a natural and probable consequence of
2 the Defendant's conduct. Now, while the Plaintiff has to
3 show that the injuries were foreseeable the Plaintiff
4 doesn't have to prove that the precise injury or the
5 precise damage that occurred were foreseeable. It is
6 sufficient that the Plaintiff prove that the Defendant
7 should have foreseen that its negligence would cause
8 injury to someone or to something.

9 Now, proximate cause does not mean the only cause.
10 There can be more than one cause of injuries or damages.
11 The Defendant's act can be a proximate cause of the
12 Plaintiff's injury if it is at least one of the direct
13 concurring causes of the injury.

14 Now, once you've considered these particular -- if
15 you find that the Plaintiff failed to prove that there was
16 a duty of care owed by the Defendants or if you find that
17 the Plaintiff failed to prove that there was a breach of
18 that duty of care; that is that the Defendants were
19 negligent then your verdict would be for the Defendant.
20 If, however, you find that the Plaintiff has proven that
21 the Defendant owed a duty of care and that the Defendant
22 breached that duty of care and that you also find that the
23 breach of that duty of care was the proximate cause of the
24 damages then you would go on to consider one of the
25 defenses that has been put up by the defendants.

1 The Defendant has put up one defense what we call a
2 general denial. By that the defendant is denying that
3 they've done anything improper or incorrect, and they're
4 denying all of the allegations and claims that are made by
5 the Plaintiff. You can consider that defense in making
6 your decision?

7 Another defense is that the Defendant claims that he
8 is entitled to immunity from liability based upon the
9 statute. Now, under this statute a governmental entity is
10 not liable for a loss resulting from the exercise of
11 discretion or judgment by the governmental entity or by
12 its employees or the performance or failure to perform any
13 act or service which is in the discretion or judgment of
14 the governmental entity or employee.

15 The governmental entity has the burden to establish
16 that it's entitled to immunity. Immunity is established
17 by proof that the governmental entity is faced with
18 alternatives and actually weighed competing considerations
19 and made a conscious decision or a conscious choice using
20 accepted governmental -- I'm sorry. Accepted professional
21 standards.

22 Once you have considered all that evidence, ladies
23 and gentlemen, if you determine that the Defendants have
24 established that they are entitled to immunity then your
25 verdict would be for the Defendants. If you find that the

1 defendants have not established that and that the
2 Plaintiff had proven that there was a duty; that there was
3 a breach of duty and that it was damaged because of that
4 breach of the duty then you would go on to consider the
5 damages in this case.

6 The damages that -- what we are talking about are
7 actual damages, and there are two separate plaintiffs in
8 this case. Everything that we have talked about up to
9 this to this point is exactly the same. When we get to
10 damages there are going to be a few differences, and I
11 will explain those to you. Damages in this case would
12 include, for someone who has been physically injured; that
13 is they have suffered physical injuries as a result of the
14 incident, there would be damages for pain and suffering as
15 well as mental anguish, impairment of health or physical
16 condition as well as any reasonable or necessary medical
17 expenses.

18 You can take into account the past and present
19 aspects of that injury, the physical injury that would
20 again include physical mental and pain and suffering,
21 expenses incurred for necessary medical treatment and any
22 other losses that are reflected by the character of the
23 injury itself. Now, the damages are designed to put the
24 Plaintiff in the same position they would have been in
25 before the incident occurred in so far that can be done

1 with money.

2 For pain and suffering the law does not prescribe an
3 amount by which to make to an award for pain and
4 suffering. You have that authority, and you alone have
5 that authority. The same with mental suffering. Mental
6 suffering would include apprehension, anxiety, fright,
7 shock and any kind of mental suffering as well as pain and
8 suffering. You are entitled to make a decision about what
9 to award for that. The law simply requires that when you
10 decide to make an award for pain and suffering and mental
11 suffering that you should do so with calm and rational
12 judgment. And that any award that you make for mental and
13 physical pain and suffering must be reasonable in light of
14 all the evidence that's been presented in the case.

15 The Plaintiff can also recover for medical expenses.
16 That would be expenses to cover medical, hospital, health
17 or other health care expenses. The Plaintiff has to
18 demonstrate that the medical treatment that they received
19 was reasonable, was necessary for the proper treatment of
20 their injuries and that the amount that was charged was
21 reasonable. You may only award those amounts that you
22 determine are both reasonable and necessary to treat those
23 injuries.

24 Now, evidence of the amount that's charged for
25 hospital or health care costs is not in of itself is not

1 evidence of the reasonableness of those expenses.
2 Additionally, ladies and gentlemen, this is where there is
3 a little bit of a divergence. Mr. Claude Graham is
4 claiming injury to personal property. For personal
5 property any damages that you would award for personal
6 property would include the difference between the value of
7 the property before the damage and the value of the
8 property after the damage.

9 As it relates to Ms. Vickie Graham, she was the owner
10 of the real estate and the home. She was the title owner
11 so she is also seeking damages for damages to the real
12 estate and the building. Where real estate has been
13 damaged the measure of damages is the difference between
14 the value of the entire premises before and after the
15 injury. If the only the -- if damages to the building
16 only then the measure of damages would be the difference
17 between the value of the building in the condition before
18 it was damaged and the value of the condition after the
19 damage.

20 If repairing the building would put it in as good a
21 condition as before the damage then the measure of damages
22 would be the cost of the repair plus any amount by which
23 the building has been decreased due to the damages.

24 Now, ladies and gentlemen, the Plaintiff has the
25 burden of proving each and every element of their claim

1 including damages by the greater weight or the
2 preponderance of the evidence, but that doesn't mean that
3 the Plaintiff has to prove those damages to a precise
4 amount of certainty. What the law requires is that they
5 have to put up enough evidence that will enable you the
6 jury to determine an amount that's fair and just and
7 reasonable. Any amount that you award must not be on the
8 basis of speculation or conjecture or guess. You must
9 only award those damages that have been established by the
10 greater weight or the preponderance of the evidence.

11 Now, finally, ladies and gentlemen, when you have
12 considered all these factors then you will arrive at your
13 verdict. And at that time it will be time for your
14 foreperson to complete the verdict form. There are two
15 separate verdict forms. They're both exactly the same
16 except for the name that's on them. So there's a verdict
17 for Claude Graham, and there is a verdict form for Vickie
18 Graham. And the form says, "We the jury unanimously find
19 for," there is a place for the Plaintiff. And there is a
20 line for actual damages with dollar sign parentheses or we
21 find for the Defendant.

22 In completing this form, your thought process should
23 be this: Did the Plaintiff prove by a greater weight or
24 the preponderance of the evidence that the Defendants
25 breached that duty of care? If you find that the

1 Plaintiff failed to do that, prove that, then you check
2 for the Defendant. If you find that the Plaintiff did
3 prove that then you would ask yourself did the Plaintiff
4 prove by a greater weight or the preponderance of the
5 evidence that the defendants breached that duty of care?

6 If you find that the Plaintiff failed to do that, to
7 prove that, then you would find for the Defendant. If you
8 find that the Plaintiff did prove that then you would go
9 on and ask yourself: Did the Plaintiff prove by a greater
10 weight or the preponderance of the evidence that the
11 breach of the duty of care, the negligence by the
12 Defendant, was the proximate cause of the injuries? If
13 you find that it was not the proximate cause, they didn't
14 prove that, then your verdict will be for the Defendant.

15 If you find that they did prove proximate cause then
16 you would ask yourself: Did the Defendant prove by a
17 greater weight or preponderance of the evidence that it is
18 entitled to immunity in what we call discretionary
19 immunity for exercising its discretion. If you find that
20 the Defendant did prove that by a greater weight or
21 preponderance of the evidence then you would check for
22 Defendant. If you find that the Defendant failed to prove
23 discretion immunity then you would go on to consider
24 damages.

25 Again, for Claude Graham it would relate to the

1 physical injuries, the physical pain and suffering as well
2 as medical expenses as I've described to you as well as
3 the personal property. Whatever amount you determine you
4 would check for the Plaintiff, and you write this like you
5 would a check. Words on the line with numbers behind the
6 dollar sign. No matter what you complete sign your name
7 and place today's date and foreperson.

8 Then as to Vickie Graham, exact same procedure. As
9 to Vickie Graham, her damages that she is alleging would
10 be the physical injuries. That would include pain and
11 suffering, mental suffering and reasonable and necessary
12 medical expenses. She is also claiming damages to the
13 real estate and the building. You have to determine that.
14 If you go through the same process, if you determine that
15 she is entitled to damages, then you would again complete
16 this like you would a check.

17 You check for the Plaintiff and whatever damages you
18 find associated with that and then sign your name and
19 place today's date. And, of course, if you find that she
20 failed to prove those again check for the Defendant.

21 Ladies and gentlemen, your verdict must be unanimous.
22 It must be the verdict of all 12 of you. You have been
23 sworn as fair and impartial jurors to determine the facts
24 of the case based upon the evidence that's been presented
25 and based upon the law as I charged it to you. When you

1 have done that you will be able to arrive at your verdict
2 and then no one can complain about the verdict that you
3 have reached and you would have fully discharged your duty
4 and your responsibility as jurors.

5 Now, let me talk to you just a moment about notes. I
6 know some of you took notes throughout the course of the
7 trial. Your notes are your own personal aides. Some
8 people take great notes and some people don't take good
9 notes at all. But you should use your notes only to
10 assist you with remembering and recalling incidents based
11 upon whatever you have written down and what you recall.

12 Your notes should not be shared with others. Your
13 notes do not take precedence over someone else's
14 individual recollection of what occurred. You are all
15 competent to recall what happened throughout the course of
16 this trial and what you recall in the form of testimony
17 and what someone may remember and recall is just as good
18 as what somebody has written down. And so you should not
19 use your notes to compete against someone's individual
20 recollection..

21 Any -- the recollections of all of the jurors,
22 whether it's being written by notes or it's by your own
23 individual recollection, are considered reliable. And you
24 must use that throughout the course of your deliberations
25 in this particular matter.

1 Now, ladies and gentlemen, I'm going to ask that you
2 retire to the jury room, but before I do that let me tell
3 you one last thing is that arriving at your verdict, again
4 your verdict should not be based upon sympathy, passion or
5 prejudice. Again, your verdict should simply speak the
6 truth in this matter. I'm going to ask that you retire to
7 your jury room and just wait a few minutes before you
8 begin your deliberations. All of the exhibits that have
9 been admitted into evidence will be sent to you along with
10 the verdict forms.

11 Madam Foreperson, if during the course of your
12 deliberations you have any questions, if you will write
13 the question on a sheet of paper, sign your name, knock on
14 the door and give it to the bailiff and we'll try to
15 answer it. If you have no questions and you arrive at
16 your verdict then when you have completed both forms knock
17 on the door at that time and tell him that you have a
18 verdict and we will receive you back into Court to the
19 receive your verdict. So I'm going to ask that you retire
20 to the jury room and await further instructions until the
21 exhibits and forms come into you.

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at 3:44 p.m.)

24 THE COURT: All right. Are there any exceptions to
25 the charge by the Plaintiff?

1 MR. WILLIAMS: Nothing, Your Honor.

2 THE COURT: Anything from ---

3 MR. WREN: Your Honor, I just have a question. I
4 could have missed it. Did we get the mitigation of
5 damages charge in? I was listening, but ---

6 THE COURT: No. Thank you.

7 MR. WREN: I didn't hear it.

8 THE COURT: I'm sorry.

9 MR. WREN: That's okay. Otherwise, we don't take any
10 exception. I just noted that one charge missing, Your
11 Honor. And we would just note for the record our same
12 request and objections to our previous conversation.

13 THE COURT: All right. Thank you.

14 MR. WREN: Thank you, Judge.

15 THE COURT: Now, would you ask the jury to come back
16 in, please. When I rewrote the dangers I forget to put
17 the mitigation in.

18 (WHEREUPON, the jury panel enters the courtroom at
19 3:45 p.m.)

20 THE COURT: I really just want y'all to get some
21 exercise. All right, ladies and gentlemen, it's been
22 pointed out to me that I failed to charge you one
23 provision of the law that I need to instruct you on, and
24 that's one of the reasons why we wait for you to before
25 you start to begin you deliberations.

1 With respect to damages for property, the owner of
2 any property that's been damaged by another person's
3 negligence has to use reasonable efforts to minimize that
4 damage. And so if you find that the Plaintiff has not
5 done this, hasn't tried to minimize those damages as it
6 relates to the personal property and the real property
7 then the plaintiff may not recover the full amount of the
8 loss.

9 In other words, if you would need to reduce the
10 damages by any amount that you think that the Plaintiff
11 should have or effort that the plaintiff should have used
12 in order to mitigate those damages. And so I ask that you
13 consider that in conjunction with any award for damages as
14 it relates to the personal property or the real property
15 should you determine that the Plaintiff is entitled to a
16 verdict for those items.

17 And so with that I ask that you retire to the jury
18 room and just give us one more second to make sure there
19 is nothing else. And then the evidence and the verdict
20 forms will be brought to you.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 3:48 p.m.)

23 THE COURT: Is there anything further?

24 MR. WILLIAMS: Not the Plaintiff, Your Honor.

25 MR. WREN: Not from the Defendant, Your Honor. Thank

1 you.

2 THE COURT: If you will come and look at the exhibits
3 that have been made a part of the record. And the court
4 reporter and I have gone over the list that we have
5 together.

6 THE WITNESS: Can we take a quick break to look this
7 over and then get back on the record?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a short break was taken.)

10 MR. WILLIAMS: Do we have the verdict form?

11 THE COURT: Yes, that was done. Do you need to make
12 any changes to the verdict forms?

13 MR. WILLIAMS: None from the Plaintiffs.

14 MR. WREN: No exception from the Defendant, Judge.
15 Only other housekeeping matter, since we're doing this and
16 on the record before we confirm the exhibits, we have the
17 written stipulation. We did that as a Court's exhibit,
18 correct?

19 THE COURT: That's a Court's exhibit.

20 THE WITNESS: Okay. That was the one I forgot to
21 write down. I just want to make sure.

22 THE COURT: It's Court's Exhibit Number Two. I think
23 the first one was the deposition. There was a deposition
24 used to impeach somebody's answer. That was Exhibit One,
25 and Exhibit Two is the stipulation.

1 THE WITNESS: Thank you, Judge.

2 THE COURT: Cause I always make transcripts a Court's
3 exhibit. You need to confirm the trial exhibits? You
4 have all agreed -- reviewed and agreed to them?

5 MR. WREN: Accurate.

6 MR. WILLIAMS: Yes, Your Honor.

7 THE COURT: Then it can go back to the jury, and they
8 can begin their deliberations.

9 (WHEREUPON, the jury panel begins deliberations at
10 3:51 p.m.)

11 THE COURT: And we'll just stand in recess until we
12 hear from them.

13 (WHEREUPON, Court was in recess at 3:51 p.m. and
14 reconvened at 4:37 p.m.)

15 QUESTION FROM THE JURY

16 THE COURT: Counsel, I have a note from the jury. It
17 says, "We need a breakdown of the prices on the house and
18 cars," and it's signed Latoya Plowden, I guess is her last
19 name. So that's the note from the jury. I don't know if
20 they were specifically told not to consider the cars. So
21 I'm happy to instruct them on that part. But I'm looking
22 for your guidance on that.

23 MR. WREN: Yes, Your Honor. As to the other
24 vehicles, I think perhaps that needs to be clarified as to
25 the issue with the -- they want a breakdown of the?

1 THE COURT: It says, "We need a breakdown of the
2 prices on the house and cars."

3 MR. WILLIAMS: Your Honor, I know this would be the
4 accurate way to answer the question if Your Honor is
5 inclined to do so would be \$578,000 on the house and
6 you're not to consider anything on the cars.

7 THE COURT: It was \$478,000.

8 MR. WILLIAMS: \$478,000. I misspoke. I'm sorry.
9 \$478 on the house, and you're not to consider the cars.

10 MR. WREN: Certainly, Judge, there is no exhibit or
11 anything that they have that has that on it.

12 THE COURT: No, there is not. It's just the
13 testimony of the witness.

14 MR. WREN: My preference, Judge, in those kinds of
15 circumstances where there is a question on something that
16 is not on an exhibit in front of them. They have been
17 presented everything. I don't know what further there is
18 to do.

19 MR. WILLIAMS: My alternate suggestion would be to
20 read back that portion of the testimony. It would be more
21 efficient for everybody if we say the figure is not
22 disputed or \$478 rounds it down.

23 MR. WREN: Yeah, I understand what the jury is
24 saying. They want a breakdown. I don't know how you do
25 that.

1 THE COURT: Well, what I could do is to tell them
2 that they're not to consider -- that the cars are no longer
3 an issue for them to consider in this particular case.
4 And what information do they need relating to the house
5 and see what they tell me. I mean they may say they want
6 the cost or they may -- I know you talked about ...

7 MR. WILLIAMS: He didn't really break it down other
8 than to state the one figure.

9 MR. WREN: Your Honor, Mr. Greene has mentioned a
10 good point to me, too. Part of the evidence in the record
11 was the cost of the house when they purchased it. That's
12 in the record as well; \$60,000.

13 MR. WILLIAMS: That's true. Your idea of asking what
14 it is they're looking for probably covers everything.

15 MR. WREN: I have a problem trying to interpret what
16 the jury may question or think.

17 MR. WILLIAMS: That's a good point, yeah. Valid
18 point. Not a good point.

19 MR. WREN: See, you're on the record now. Judge, do
20 you keep all these as Court's exhibits?

21 THE COURT: Yes.

22 MR. WREN: Thank you.

23 (WHEREUPON, the jury panel enters the courtroom at
24 4:50 p.m.)

25 THE COURT: Pursuant to legal decisions by the Court

1 the cars are no longer issue for your consideration.
2 Please explain what information you are requesting about
3 the house. Is there anything else I need to add?

4 MR. WREN: I think that's fair enough, Judge.

5 THE COURT: And I'm going to ask that the bailiff
6 provide it to them and have the foreperson read it and to
7 save the note, and when it comes back it will be marked as
8 a Court's exhibit.

9 MR. WREN: Thank you, Judge.

10 THE COURT: And we'll just wait to hear from them
11 further.

12 (WHEREUPON, Court's Exhibit No. 3 was marked for
13 identification and received into evidence.)

14 (WHEREUPON, the jury panel was excused from the
15 courtroom to continue deliberations at 4:55 p.m.)

16 (WHEREUPON, Court was in recess at 4:55 p.m. and
17 reconvened at 5:39 p.m.)

18 VERDICT OF THE JURY

19 THE COURT: I heard that the jury has reached a
20 verdict. Is there anything we need to take up before we
21 bring them in?

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

24 MR. WREN: Nothing from the Defendant, Judge.

25 THE COURT: You may ask them to come in, please.

1 (WHEREUPON, the jury panel enters the courtroom at
2 5:39 p.m.)

3 THE COURT: Madam Foreperson, I understand that
4 you've reached a verdict; is that correct?

5 JURY FOREPERSON: Yes.

6 THE COURT: Would you please pass them to the
7 bailiff, please. Thank you. Thank you, sir. Madam
8 Clerk, for you. Please publish the verdicts.

9 CLERK OF COURT: On Your Honor's docket, State of
10 South Carolina, County of Dillon. Claude W. Graham,
11 Plaintiff, v. the Town of Latta, South Carolina,
12 Defendant. 2008-CP-17-376. We the jury unanimously find
13 the Plaintiff \$100,000. Signed by Foreperson, Latoya
14 Plowden, 10/11/2012.

15 On Your Honor's docket, State of South Carolina,
16 County of Dillon. Vickie B. Graham, Plaintiff, v. the
17 Town of Latta, South Carolina. 2008-CP-17-377. We the
18 jury unanimously find for the Plaintiff for \$225,000.
19 Signed by Foreperson, Latoya Plowden, October 11th 2012.

20 THE COURT: Do the parties wish to poll the jurors?

21 MR. WILLIAMS: Not the Plaintiff, Your Honor.

22 MR. WREN: Yes, Your Honor, please, on behalf of the
23 Defendants.

24 POLLING OF THE JURY

25 THE COURT: Ladies and gentlemen, the Clerk will call

1 your name. She will ask you two questions. Those
2 questions will be, "Was this your verdict and is it still
3 your verdict." And I ask that you answer according to
4 your conscious.

5 THE CLERK: Joseph Padillo, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Latoya Plowden, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Chyrellé Grooms, was this your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Gregory Seals. I'm sorry. That's one
18 that we excused. Richard Smith, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes..

22 THE CLERK: Kelly Bridgers, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes..

1 THE CLERK: Daniel Lee, was this your verdict?
2 JUROR: Yes.
3 THE CLERK: Is it still your verdict?
4 JUROR: Yes.
5 THE CLERK: Dorothy Vanderhall, was this your
6 verdict?
7 JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 JUROR: Yes.
10 THE CLERK: Amanda Ward, was this your verdict?
11 JUROR: Yes.
12 THE CLERK: Is it still your verdict?
13 JUROR: Yes.
14 THE CLERK: Ernest Manuel, was this your verdict?
15 JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 JUROR: Yes.
18 THE CLERK: Sharon Cadell, was this your verdict?
19 JUROR: Yes.
20 THE CLERK: Is it still your verdict?
21 JUROR: Yes.
22 THE CLERK: Ronnie Williams, was this your verdict?
23 JUROR: Yes.
24 THE CLERK: Is it still your verdict?
25 JUROR: Yes.

1 THE CLERK: That's it, Your Honor.

2 THE COURT: You missed one.

3 CLERK OF COURT: I did? . . .

4 THE COURT: Yes, ma'am.

5 CLERK OF COURT: Which one?

6 THE COURT: McCrae.

7 CLERK OF COURT: Miss McCrae.

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Thank you.

14 THE COURT: Thank you.

15 CLERK OF COURT: Sorry, Judge. I missed one.

16 COLLOQUY

17 THE COURT: That's all right as long as we got them
18 all. Ladies and gentlemen, the Court is not concerned
19 with the verdict you reached so much as I'm concerned with
20 the process by which you reach a verdict. You listened to
21 the evidence as it was presented throughout the course of
22 this trial. You also listened to my instructions to you as
23 to the law. You determined the facts in accordance with
24 your view what that evidence showed, and you applied the
25 law as I charged it to you. And then you arrived at your

1 verdict. And having done so no one can complain about the
2 verdict that you reached, and you've fully discharged your
3 duty and responsibility as jurors in this particular
4 matter.

5 On behalf of the State and Dillon County thank you
6 very much for your service this week as jurors.
7 Miss Hyatt has your checks, and so if you will step back
8 into the jury room and she will pass them out to you. But
9 I'd like to thank you very much for your service and make
10 sure that you pick up any personal items on your way out.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 5:45 p.m.)

13 THE COURT: Are there any post-trial motions at this
14 time?

15 MR. WILLIAMS: None from the Plaintiff, Your Honor.

16 THE WITNESS: Yes. On behalf of the Defendants, Your
17 Honor, if we may, we'd like to have ten days for
18 post-trial motions.

19 THE COURT: Yes, sir. I'll give you ten days. Can
20 you give me a brief overview what they will relate to? I
21 won't hold you exactly to them. Give me a brief overview
22 and you can supplement.

23 MR. WREN: Yes, Judge, and respectfully we reserve in
24 our -- and I appreciate the additional time. Anything
25 that may arise as we look back at the record again after a

1 long week. Particularly, we would have potentially issues
2 or draw the Court's attention in regards to the
3 discretionary immunity ruling that I expressed earlier.
4 Your Honor, as to the -- going back to the initial
5 directed verdict ruling as well as the subsequent one we
6 renew our motion for directed verdict on the grounds that
7 were addressed there with the remaining negligence for
8 which it was asserted.

9 The underlying -- one underlying position, Judge, is
10 that we still contend, of course, that nowhere in the
11 record or evidence in the case upon review there was an
12 established breach of the duty which proximately caused
13 the damages as well as the duty issue itself, Judge.

14 So if those immunities that we addressed and the --
15 with particular attention to the discretionary. Of
16 course, the elements of negligence, Judge.

17 THE COURT: I will give you ten days in order to file
18 those. Please remember that pursuant to the rules you
19 must file a copy here in Dillon County and send me a copy
20 to my office.

21 THE WITNESS: We will, Your Honor.

22 THE COURT: Because otherwise I would never know if
23 they've been filed. And then I will give the Plaintiffs
24 five days to respond. And then, thereafter, I will review
25 the information. Anything further at this point? Then

1 with that I will. I will file the verdicts with the
2 Clerk's office. I will note on the Form Four that the
3 post-trial motions were briefly made and to be
4 supplemented within ten days. So that the case is not yet
5 closed. The exhibit -- the note from the jury will be
6 marked as a Court's exhibit. Court's Number Three, I
7 believe.

8 And if there is nothing further we are adjourned from
9 this matter. Thank y'all very much.

10 MR. WILLIAMS: Thank you, Your Honor.

11 MR. WREN: Thank you, Your Honor.

12 MR. PLYLER: Thank you, Your Honor.

13 END OF TRANSCRIPT OF RECORD

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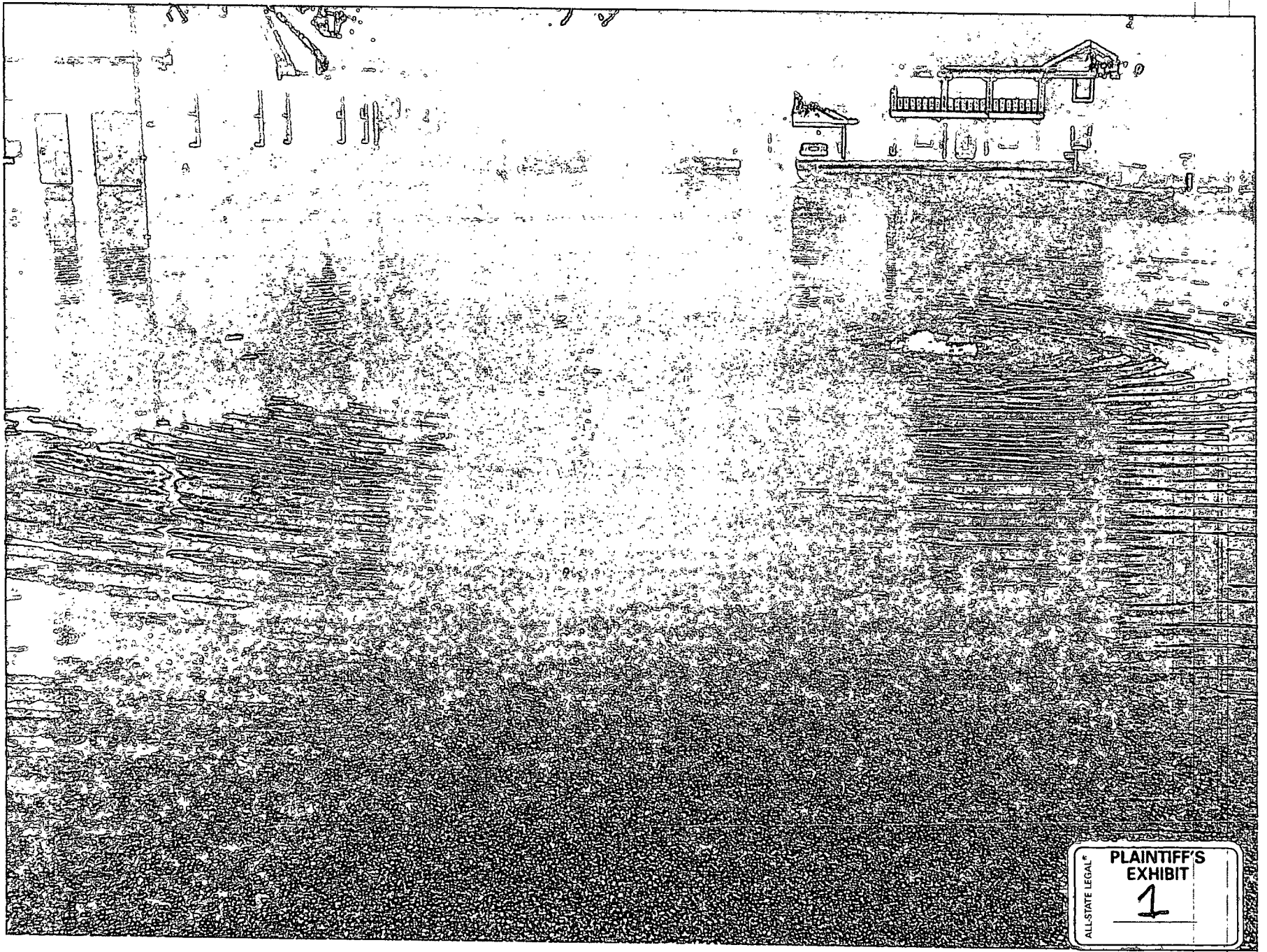
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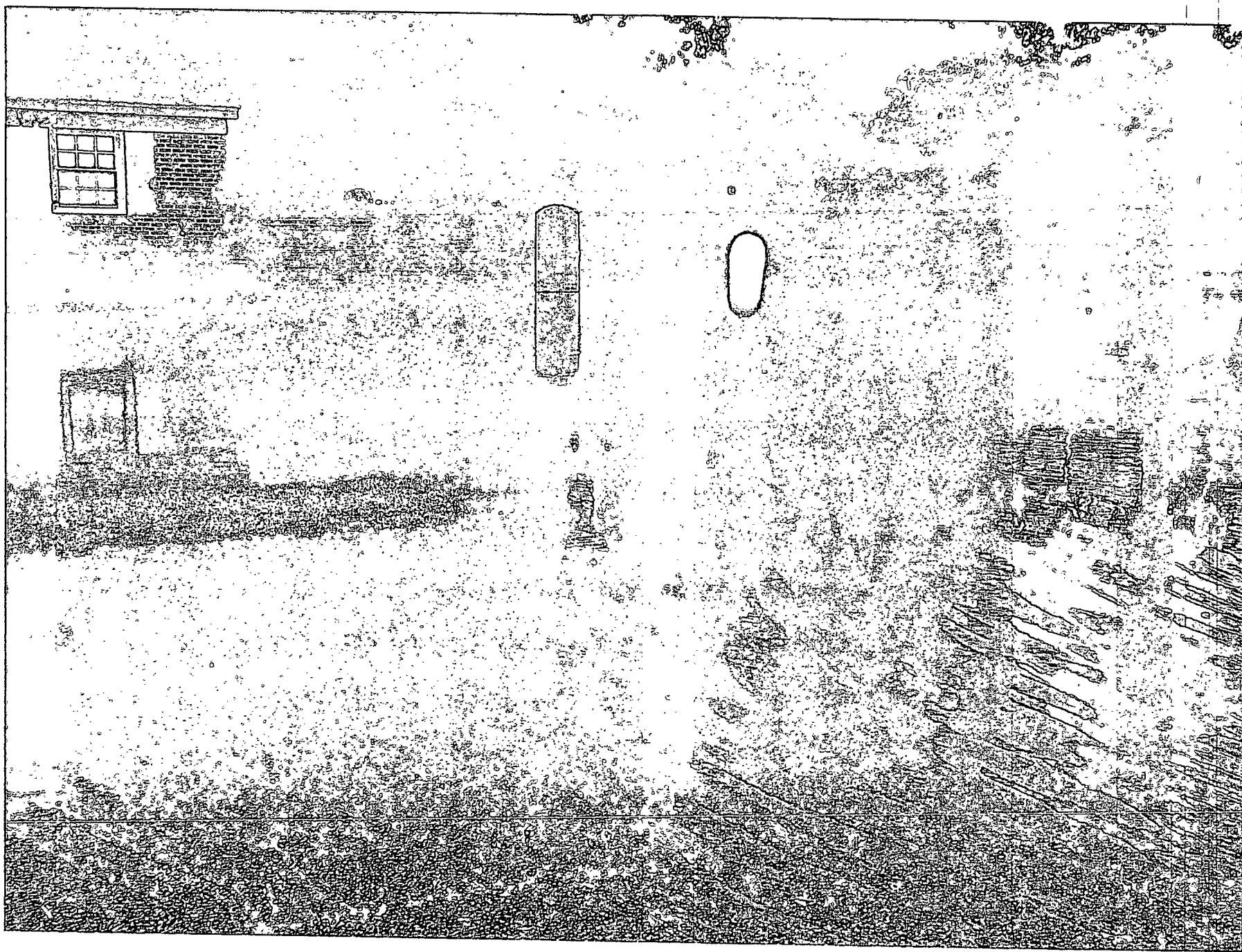
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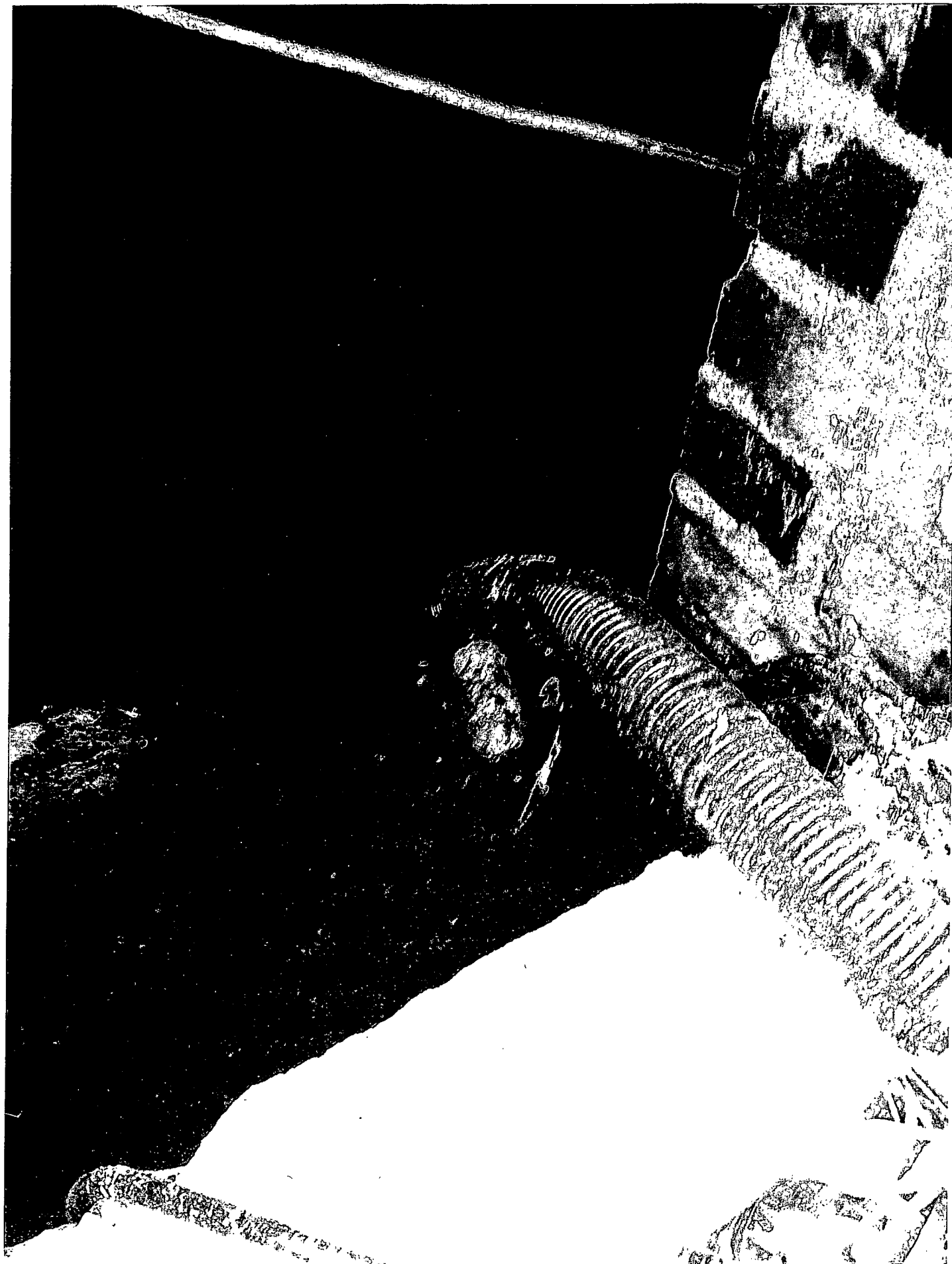
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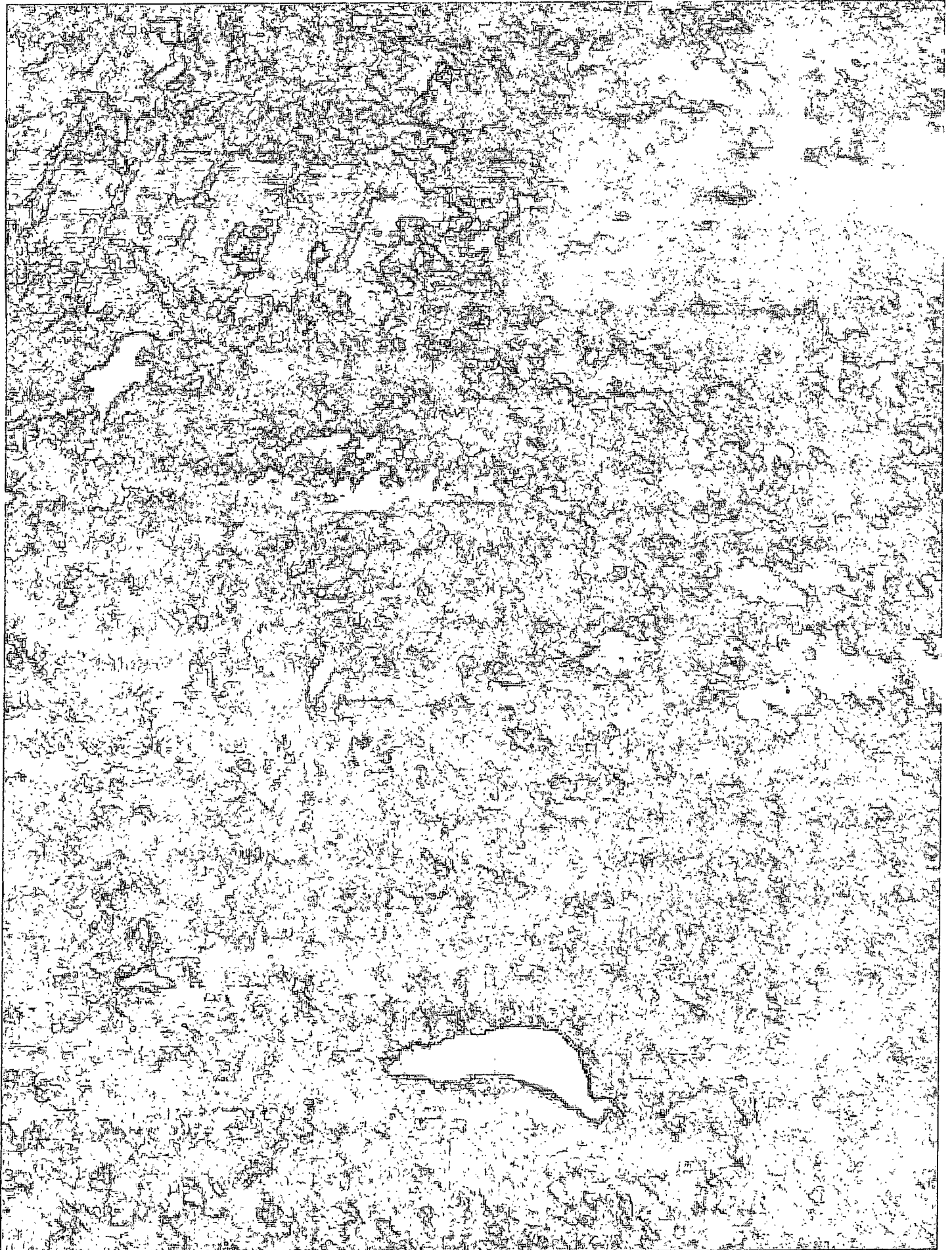




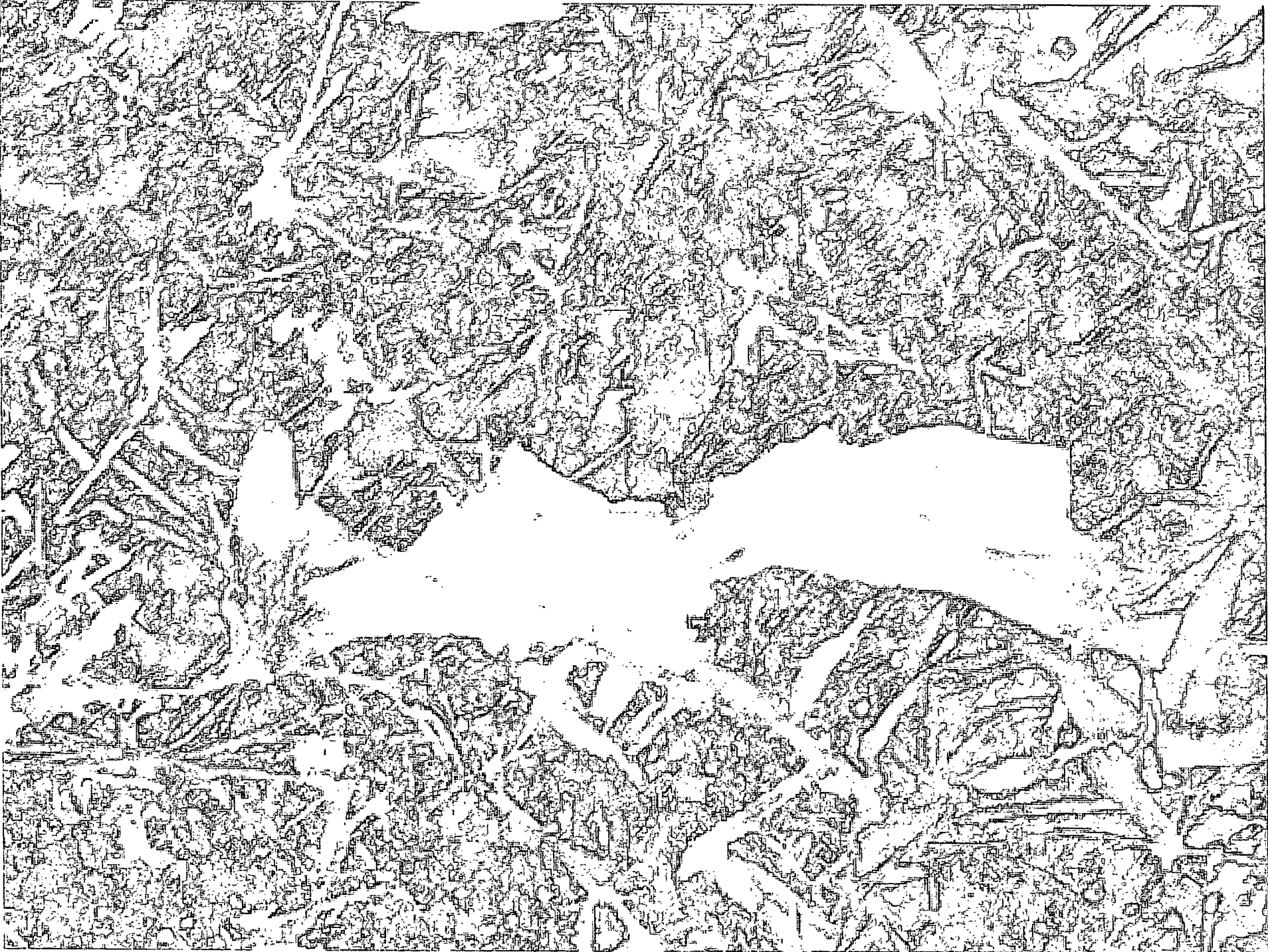




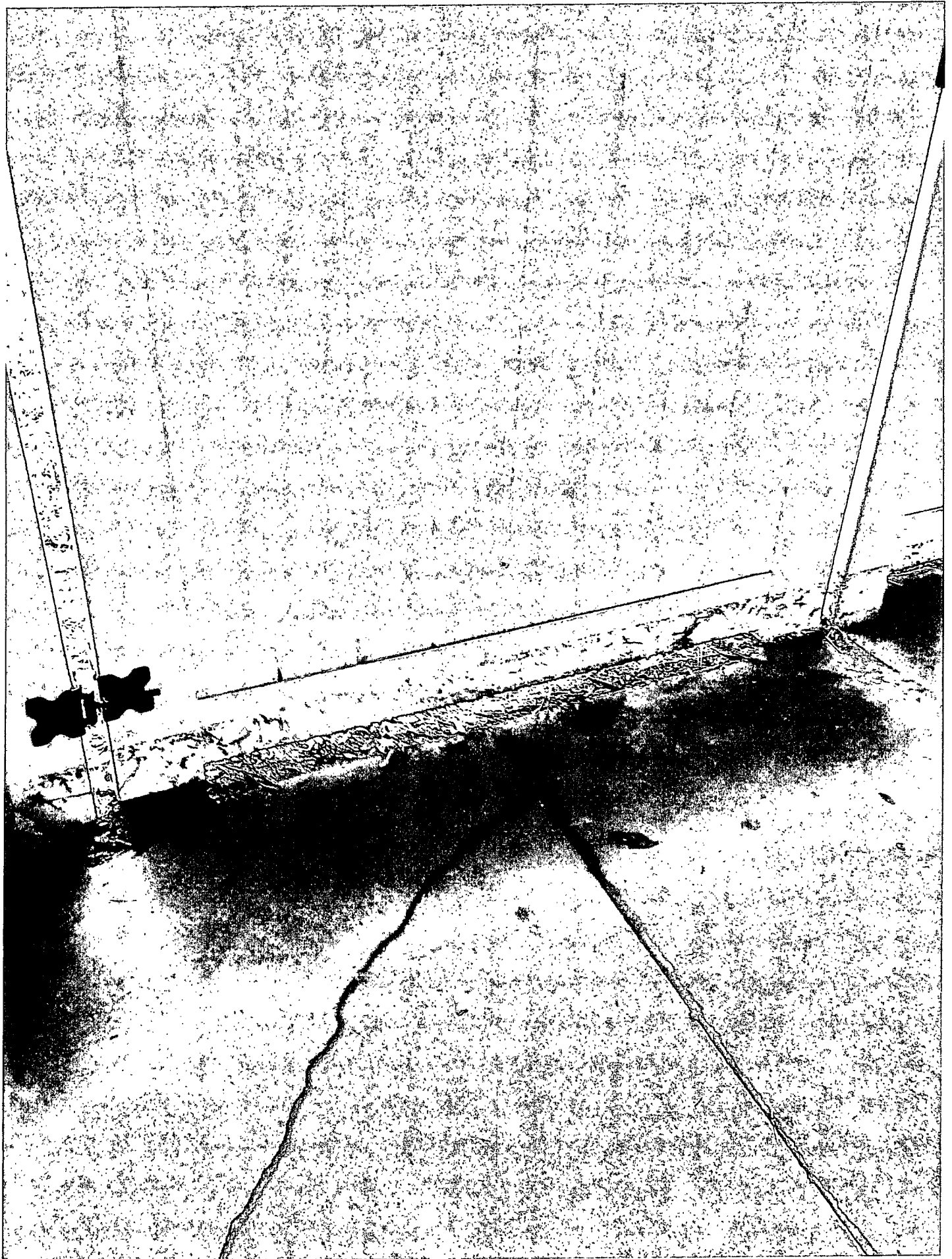












Pay to:

Palmetto Internal Medicine of Florence PC
 305 E. Cheves, Suite 120
 Florence, SC 29506
 (843) 656-2122

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
\$124.20	\$217.30

Claude W Graham
 220 E Rice St
 Latta, SC 29565

Date	Description	Check #	Ref	Units	Insurance	Patient
Claude W Graham(577)/David M Culpepper MD/067460						
08/05/2008	Office or other outpatient visit for an established patient			\$67.00	1.0	\$67.00 ✓ \$0.00
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			(\$12.00)	\$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			(\$60.00)	\$0.00
10/08/2008	Transfer from Insurance	0827800585			(\$25.00)	\$25.00
10/24/2008	Payment from Graham, Claude W	2240			\$0.00	(\$25.00)
Balance:					\$0.00	\$0.00
Claude W Graham(577)/David M Culpepper MD/067818						
09/10/2008	Office visit for established patient			\$62.00	1.0	\$62.00 ✓ \$0.00
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			(\$18.00)	\$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			(\$19.20)	\$0.00
10/08/2008	Transfer from Insurance	0827800585			(\$14.80)	\$14.80
10/24/2008	Payment from Graham, Claude W	2240			\$0.00	(\$14.80)
Balance:					\$0.00	\$0.00
Claude W Graham(577)/David M Culpepper MD/068117						
10/03/2008	Office or other outpatient visit for an established patient			\$67.00	1.0	\$67.00 ✓ \$0.00
10/20/2008	Disallowed Adjustment from BCBS State Employee	0828900529			(\$11.00)	\$0.00
10/20/2008	Payment from BCBS State Employee	0828900529			(\$36.80)	\$0.00
10/20/2008	Transfer from Insurance	0828900529			(\$19.20)	\$19.20
10/30/2008	Payment from Graham, Claude W	2243			\$0.00	(\$39.80)
05/29/2009	Payment from Graham, Claude W				\$0.00	\$20.60
Balance:					\$0.00	\$0.00
Claude W Graham(577)/David M Culpepper MD/069821						
10/20/2008	Office or other outpatient visit for an established patient			\$67.00	1.0	\$67.00 ✓ \$0.00
12/17/2008	Disallowed Adjustment from BCBS State Employee	0833800620			(\$11.00)	\$0.00
12/17/2008	Payment from BCBS State Employee	0833800620			(\$36.80)	\$0.00
12/17/2008	Transfer from Insurance	0833800620			(\$19.20)	\$19.20
01/06/2009	Payment from Graham, Claude W	2280			\$0.00	(\$137.70)
05/29/2009	Payment from Graham, Claude W				\$0.00	\$25.40
Balance:					\$0.00	(\$93.10)
Claude W Graham(577)/David M Culpepper MD/071913						
01/26/2009	Office or other outpatient visit for an established patient			\$67.00	1.0	\$67.00 ✓ \$0.00
02/27/2009	Disallowed Adjustment from BCBS State Employee	0904200597			(\$21.00)	\$0.00
02/27/2009	Payment from BCBS State Employee	0904200597			\$0.00	\$0.00
02/27/2009	Transfer from Insurance	0904200597			(\$46.00)	\$46.00
YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.						
05/29/2009	Payment from Graham, Claude W				\$0.00	(\$20.60)
05/29/2009	Payment from Graham, Claude W				\$0.00	(\$25.40)
Balance:					\$0.00	\$0.00

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins Balance	Pat Balance
\$201.90	\$295.00	-\$93.10

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

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12:39 MAY 29, 2009

FAX NO: 656-2126

#28162 PAGE: 12/25

Claude W Graham(577)/David M Culpepper MD/071239				
~~06/07/2009~~	~~Office or other outpatient visit for an established patient~~	~~\$155.00~~	~~1.0~~	~~\$155.00~~ ~~\$0.00~~
05/07/2009	Urinalysis w/ alb/creat ratio	\$14.00	1.0	\$14.00 \$0.00
05/07/2009	Electrocardiogram, routine ECG	\$74.00	1.0	\$74.00 \$0.00
Balance:				\$243.00 \$0.00
Claude W Graham(577)/David M Culpepper MD/074314				
~~05/14/2009~~	~~Office visit for established patient~~	~~\$52.00~~	~~1.0~~	~~\$52.00~~ ~~\$0.00~~
Balance:				\$52.00 \$0.00

Your next appointment is on Friday, June 19, 2009 9:00AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
\$201.90	\$295.00	-\$93.10

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

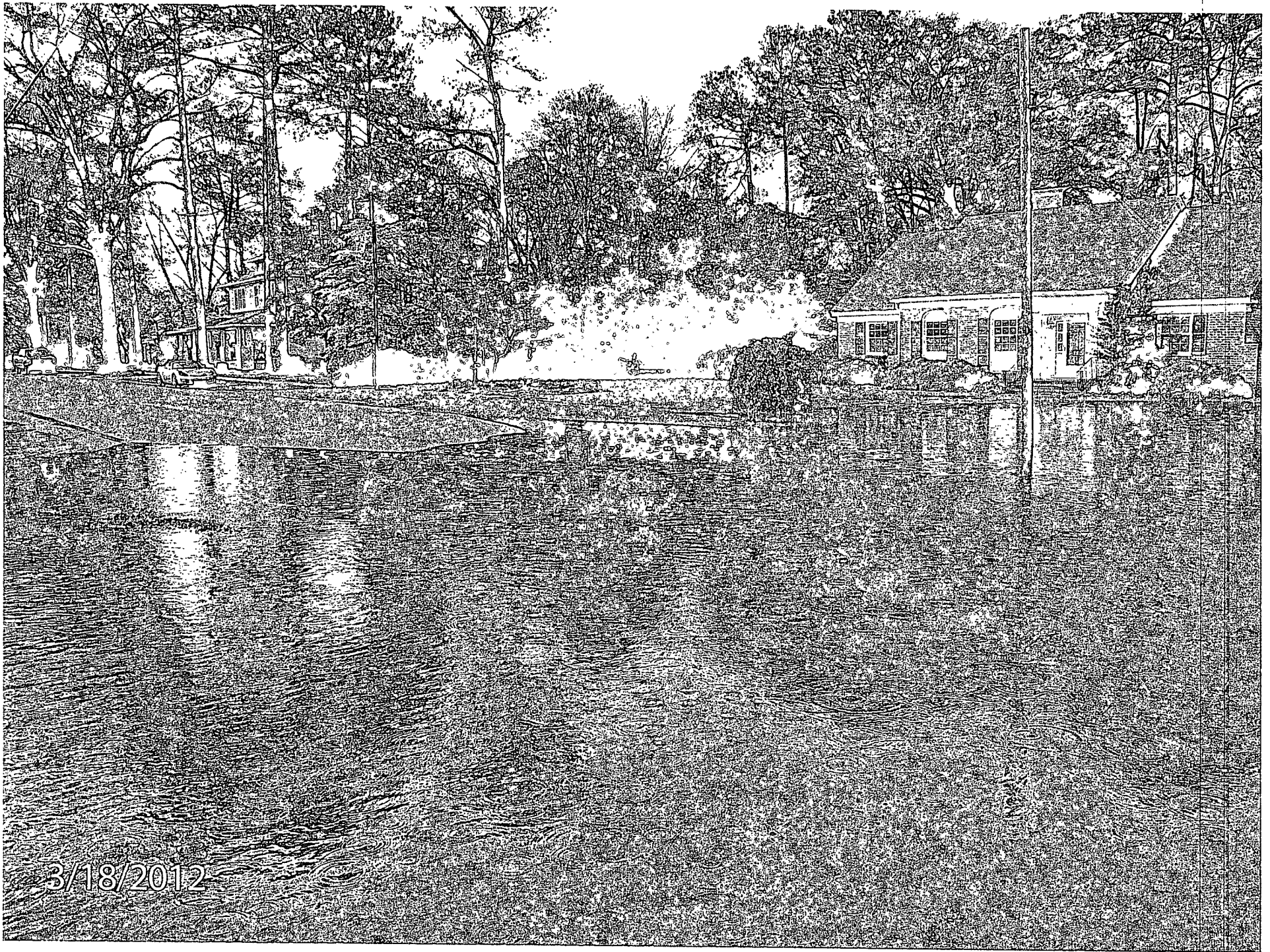
Plaintiffs' Trial Exhibit #6

**(CD -- To Be Transferred
from the Dillon County
Court of Common Pleas)**

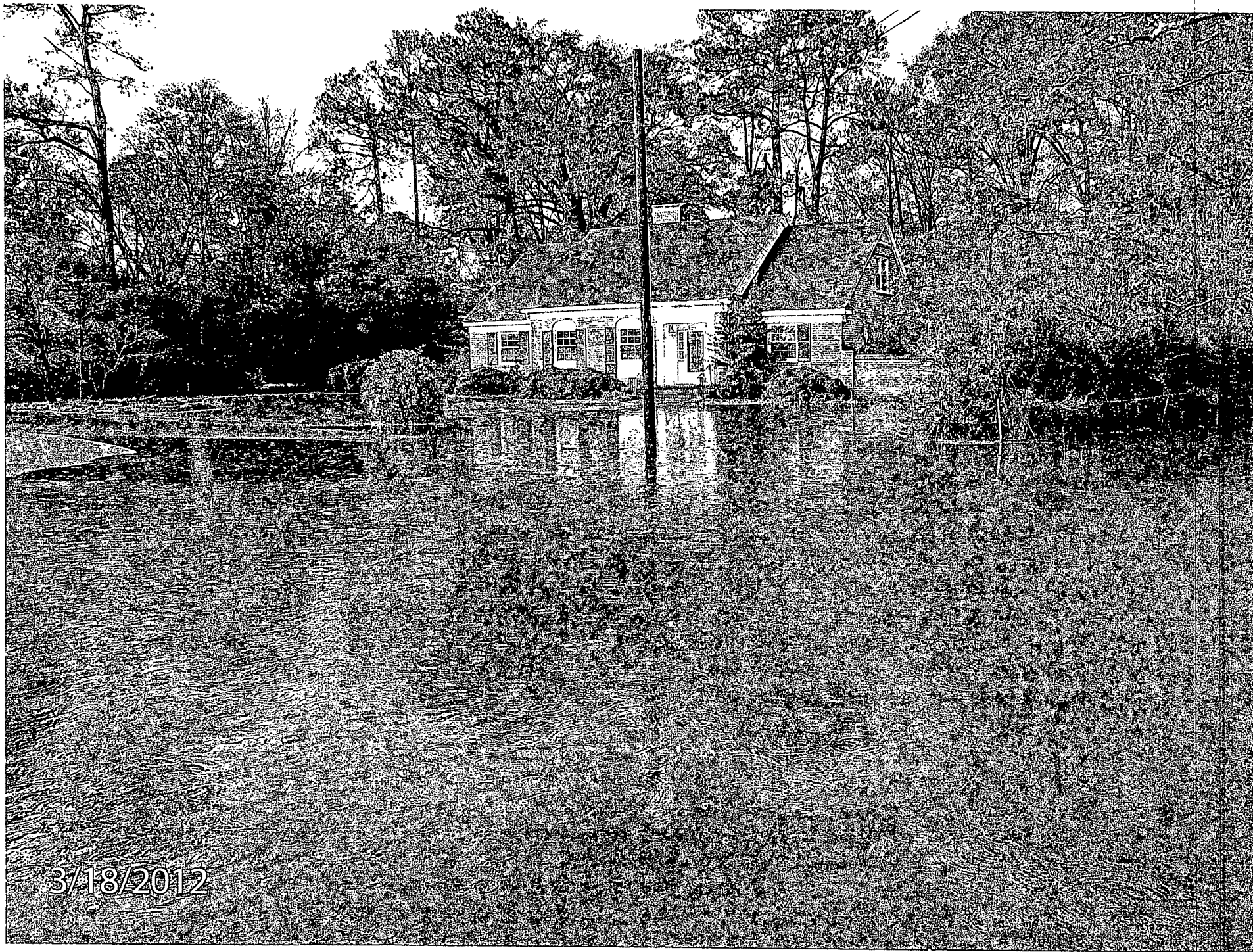


3/18/2012





3/18/2012



3/18/2012



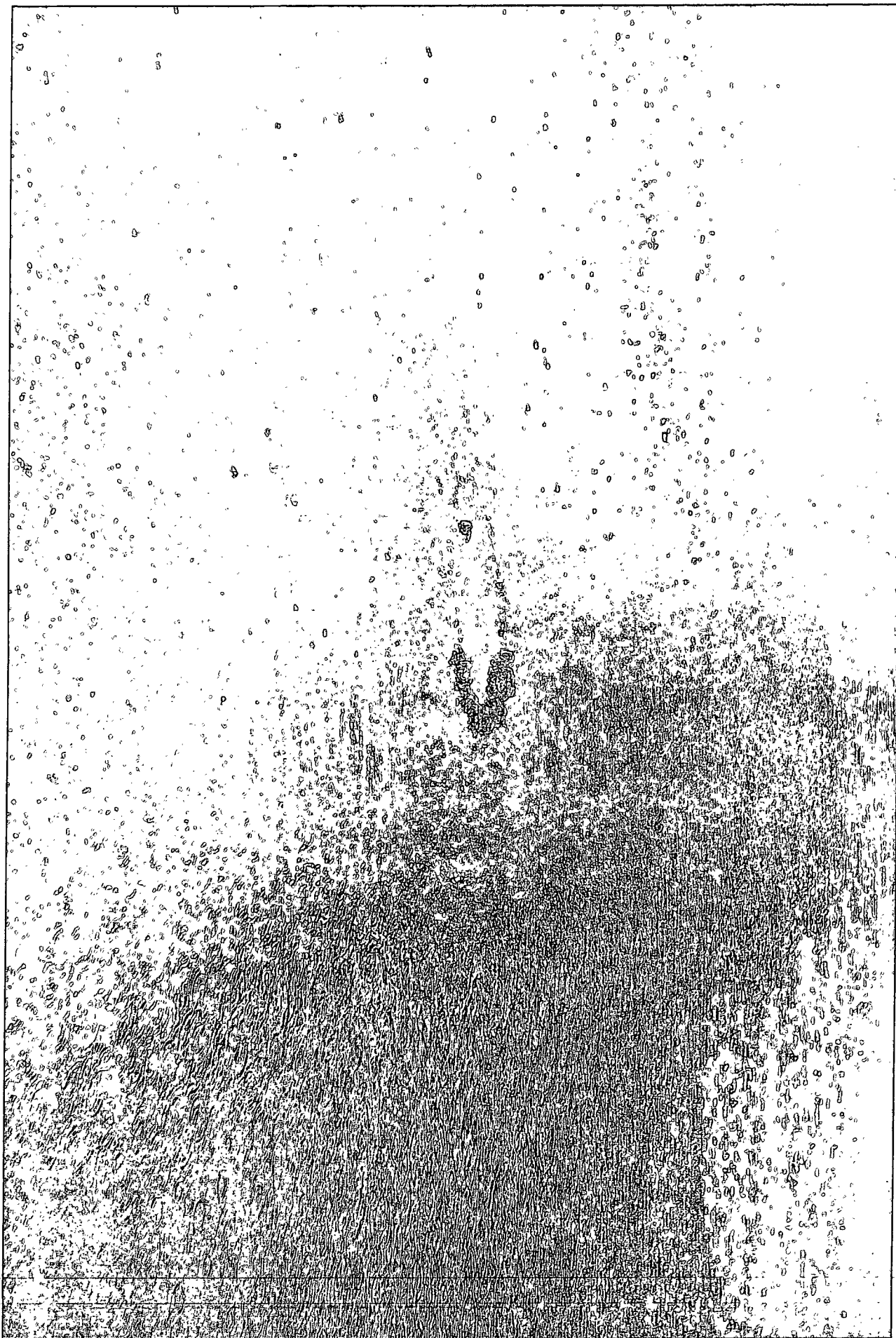
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12:33 MAY 29, 2009

FAX NO: 656-2126

#28162 PAGE: 2/25

Pay to:

Palmetto Internal Medicine of Florence PC
 305 E. Cheves, Suite 120
 Florence, SC 29506
 (843) 656-2122

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
\$161.40	\$161.40

Vickie B Graham
 220 East Rice St
 Latta, SC 29565

Date	Description	Check #	Fee	Units	Insurance	Pat. Balance
Vickie B Graham(593)/David M Culpepper MD/070081						
12/01/2008	Office or other outpatient visit for an established patient		\$97.00	1.0	\$97.00	\$0.00
12/17/2008	Disallowed Adjustment from BCBS State Employee	0834500623			(\$12.00)	\$0.00
12/17/2008	Payment from BCBS State Employee	0834500623			(\$60.00)	\$0.00
12/17/2008	Transfer from Insurance	0834500623			(\$25.00)	\$25.00
01/27/2009	Payment from Graham, Vickie B	5742			\$0.00	(\$25.00)
	Balance:				\$0.00	\$0.00
Vickie B Graham(593)/David M Culpepper MD/070246						
12/16/2008	Office or other outpatient visit for an established patient		\$97.00	1.0	\$97.00	\$0.00
01/19/2009	Disallowed Adjustment from BCBS State Employee	0901000578			(\$12.00)	\$0.00
01/19/2009	Payment from BCBS State Employee	0901000578			(\$60.00)	\$0.00
01/19/2009	Transfer from Insurance	0901000578			(\$25.00)	\$25.00
01/27/2009	Payment from Graham, Vickie B	5689			\$0.00	(\$25.00)
	Balance:				\$0.00	\$0.00
Vickie B Graham(593)/David M Culpepper MD/071581						
12/29/2008	Office or other outpatient visit for an established patient		\$97.00	1.0	\$97.00	\$0.00
12/29/2008	Aerosol treatment		\$35.00	1.0	\$35.00	\$0.00
01/19/2009	Disallowed Adjustment from BCBS State Employee	0901000578			(\$35.00)	\$0.00
01/19/2009	Payment from BCBS State Employee	0901000578			(\$77.60)	\$0.00
01/19/2009	Transfer from Insurance	0901000578			(\$19.40)	\$19.40
03/04/2009	Payment from Graham, Vickie B	5772			\$0.00	(\$19.40)
	Balance:				\$0.00	\$0.00
Vickie B Graham(593)/David M Culpepper MD/071606						
01/06/2009	Office or other outpatient visit for an established patient		\$67.00	1.0	\$67.00	\$0.00
02/03/2009	Disallowed Adjustment from BCBS State Employee	0901700618			(\$21.00)	\$0.00
02/03/2009	Payment from BCBS State Employee	0901700618			\$0.00	\$0.00
02/03/2009	Transfer from Insurance	0901700618			(\$46.00)	\$46.00
03/04/2009	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU. Payment from Graham, Vickie B	5772			\$0.00	(\$46.00)
	Balance:				\$0.00	\$0.00
Vickie B Graham(593)/David M Culpepper MD/071748						
01/19/2009	Office or other outpatient visit for an established patient		\$67.00	1.0	\$67.00	\$0.00
01/29/2009	Disallowed Adjustment from BCBS State Employee	0902800592			(\$21.00)	\$0.00
01/29/2009	Payment from BCBS State Employee	0902800592			\$0.00	\$0.00
01/29/2009	Transfer from Insurance	0902800592			(\$46.00)	\$46.00
03/04/2009	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU. Payment from Graham, Vickie B	5772			\$0.00	(\$46.00)
	Balance:				\$0.00	\$0.00

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
\$676.00	\$676.00	\$0.00

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12:34 MAY 29, 2009

FAX NO: 656-2126

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Vickie B Graham(593)/David M Culpepper MD/071210

~~04/30/2009~~	~~Office or other outpatient visit for an established patient~~	~~\$87.00~~	~~1.0~~	~~\$87.00~~	~~\$0.00~~
04/30/2009	Electrocardiogram, routine ECG	\$74.00	1.0	\$74.00	\$0.00
04/30/2009	Urinalysis w/ alb/creat ratio	\$14.00	1.0	\$14.00	\$0.00

Balance:

\$185.00 \$0.00

Vickie B Graham(593)/David M Culpepper MD/074368

~~05/19/2009~~	~~Office or other outpatient visit for an established patient~~	~~\$87.00~~	~~1.0~~	~~\$87.00~~	~~\$0.00~~
05/19/2009	Cardiovascular stress test	\$424.00	1.0	\$424.00	\$0.00

Balance:

\$491.00 \$0.00

Your next appointment is on Monday, October 19, 2009 9:30AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
\$676.00	\$676.00	\$0.00

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122



1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

EXPERTISE UNLIMITED, INC.

2304 TIMBERLANE DR

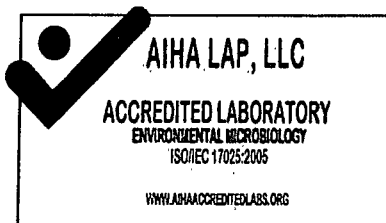
FLORENCE, SC 29506

Certificate of Analysis

Prepared for: EXPERTISE UNLIMITED, INC.
Phone Number: (843) 669-2916
Fax Number: (843) 669-2940
Email Address: expertise_unlimited@msn.com
Project Name: C. GRAHAM %J. RUSHTON
Test Location: 220 EAST RICE STREET
LATTA, SC 29565
Chain of Custody #: 404428
Received Date: June 4, 2010
Report Date: June 7, 2010

John D. Shane Ph.D., QA Manager

Currently there are no Federal regulations for evaluating potential health effects of fungal contamination and remediation. This information is subject to change as more information regarding fungal contaminants becomes available. For more information visit <http://www.epa.gov/mold> or www.nyc.gov/html/doh/html/epi/mold.shtml. This document was designed to follow currently known industry guidelines for the interpretation of microbial sampling, analysis, and remediation. Since interpretation of mold analysis reports is a scientific work in progress, it may as such be changed at any time without notice. The client is solely responsible for the use or interpretation. PRO-LAB/SSPTM Inc. makes no express or implied warranties as to health of a property from only the samples sent to their laboratory for analysis. The Client is hereby notified that due to the subjective nature of fungal analysis and the mold growth process, laboratory samples can and do change over time relative to the originally sampled material. PRO-LAB/SSPTM Inc. reserves the right to properly dispose of all samples after the testing of such samples are sufficiently completed or after a 7 day period, whichever is greater.



LAB # 163230

For more information please contact PRO-LAB at (954) 384-4446 or email info@prolabinc.com



Page 1 of 5



1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

Prepared for : EXPERTISE UNLIMITED, INC.

Test Address : C. GRAHAM %J. RUSHTON

220 EAST RICE STREET

LATTA, SC 29565

ANALYSIS METHOD	Direct Microscopic Exam			Direct Microscopic Exam			Spore trap analysis			Spore trap analysis		
LOCATION	Hvac Return Air Duct			Hvac Supply Duct			Inside Air			Outside Air		
COC / LINE #	404428-3			404428-4			404428-5			404428-6		
SAMPLE TYPE & VOLUME	SWAB			SWAB			Z5 - 25L			Z5 25L		
SERIAL NUMBER							Z463493			Z463502		
COLLECTION DATE	Jun 3, 2010			Jun 3, 2010			Jun 3, 2010			Jun 3, 2010		
ANALYSIS DATE	Jun 7, 2010			Jun 7, 2010			Jun 7, 2010			Jun 7, 2010		
RESULT	UNUSUAL			UNUSUAL			ELEVATED			CONTROL		
IDENTIFICATION		Mold Present			Mold Present		Raw Count	Spores per m ³	Percent of Total	Raw Count	Spores per m ³	Percent of Total
Alternaria							2	80	<1			
Bipolaris/Drechslera										1	40	<1
Cladosporium		X			X		433	17,320	31	287	11,480	29
Curvularia							2	80	<1	1	40	<1
Epicoccum							1	40	<1			
Ganoderma										1	40	<1
Hyphae		X			X							
Other Ascospores							1	40	<1	220	8,800	22
Other Basidiospores							3	120	<1	480	19,200	48
Penicillium					X							
Penicillium/Aspergillus		X					940	37,600	68			
Smuts, myxomycetes							5	200	<1	4	160	<1
Spegazzinia							1	40	<1			
TOTAL SPORES							1,388	55,520	100	994	39,760	100
Minimum detection limit:								40			40	
BACKGROUND DEBRIS							Moderate			Light		
Cellulose Fiber							4	160				
Insect Fragments							1	40		1	40	
Pollen							1	40				
OBSERVATIONS & COMMENTS	Presence of current or former growth observed.			Presence of current or former growth observed.								

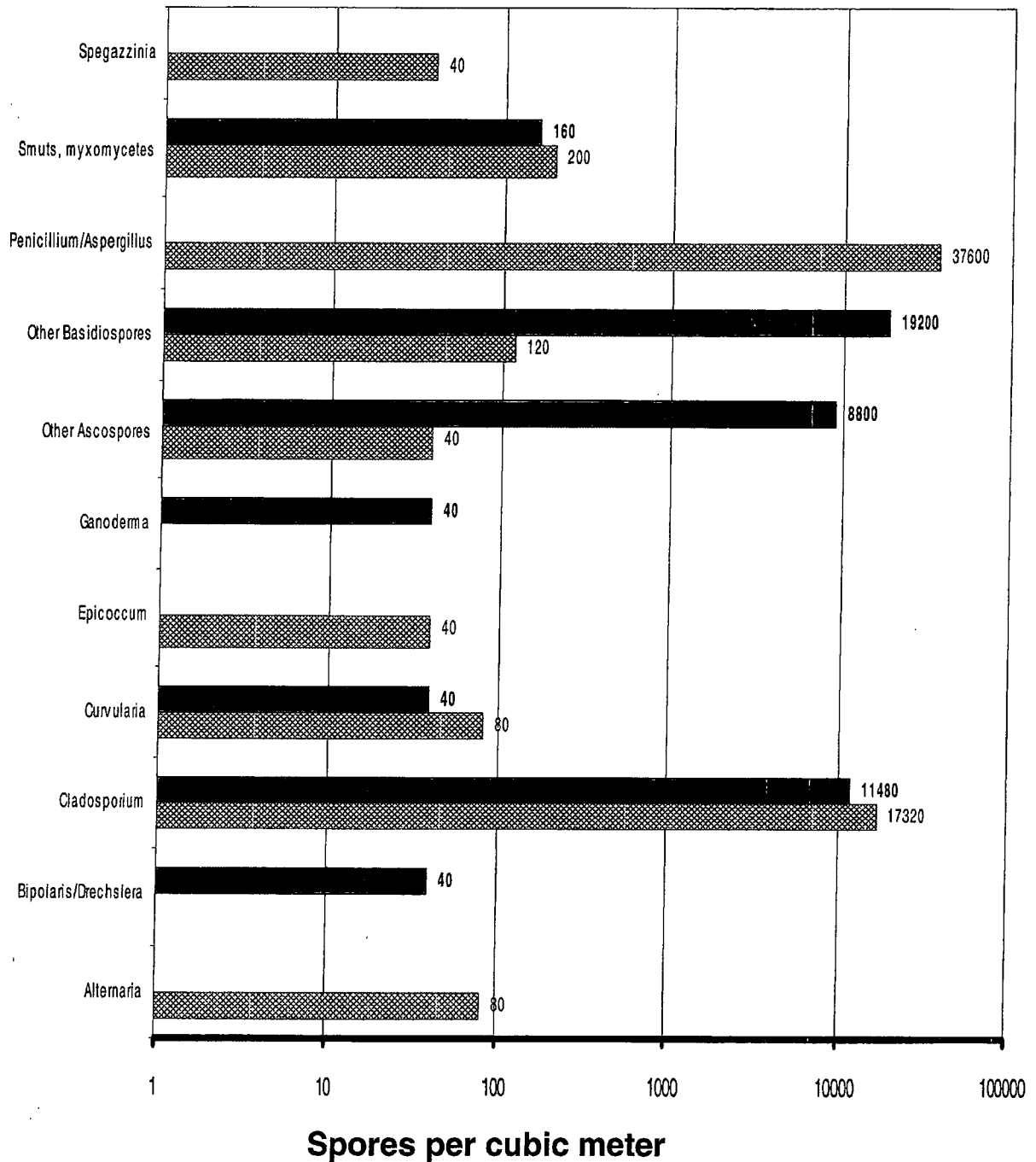
Background debris estimates the amount of particles that are not pollen or spores and directly affects the accuracy of the spore counts. The categories of Light, Moderate, Heavy and Too Heavy for Accurate Count, are used to indicate the amount of deposited debris. Increasing amounts of debris will obscure small spores and can prevent spores from impacting onto the slide. Spore counts that are included with Heavy or Too Heavy for Accurate Count are minimal counts and the actual numbers of spores are likely much higher. Total percent may not equal 100% due to rounding.



1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

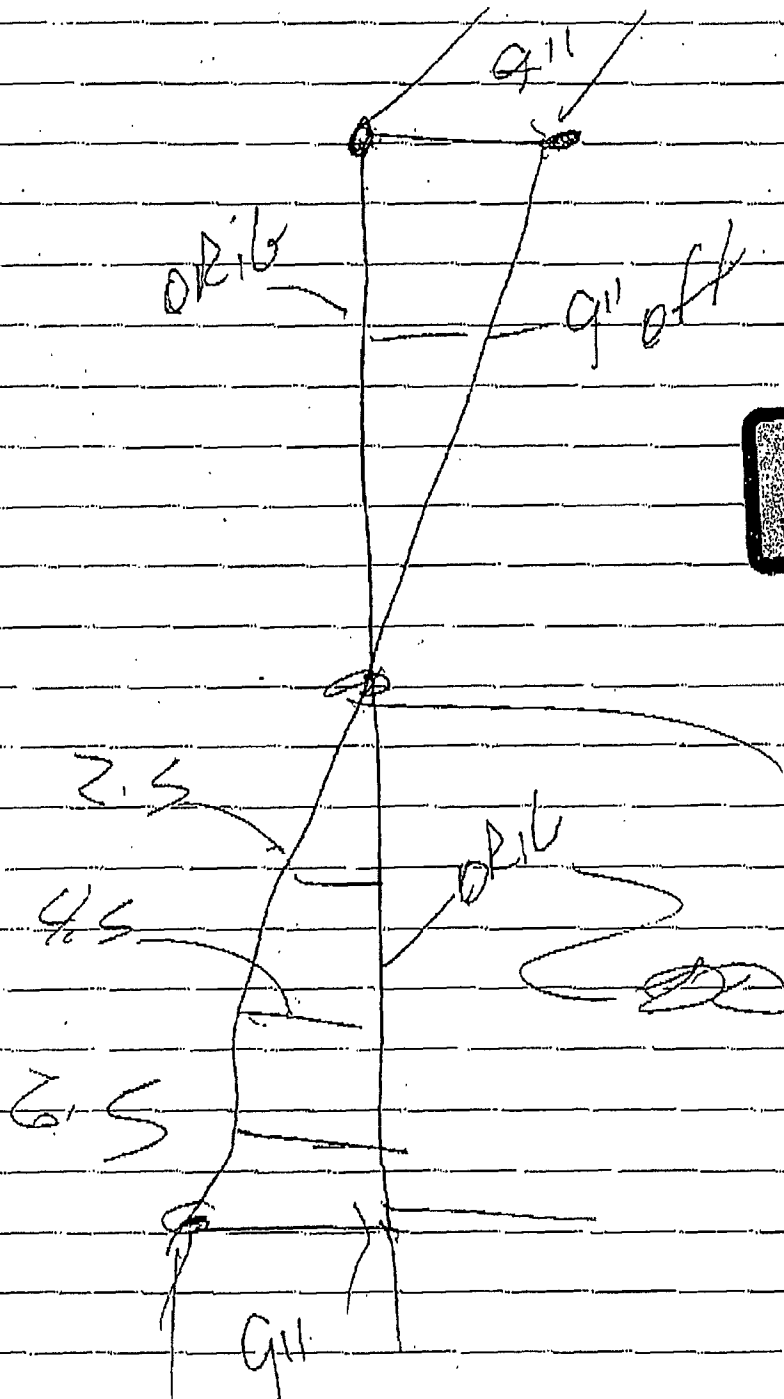
Chain of Custody # 404428

Inside Air
Outside Air



Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Alternaria	One of the most commonly reported airborne spores worldwide; Soil, dead or dying plants, foodstuffs, textiles	Wallboard paper backing, wood, other various cellulose-containing materials. Common in settled dust on carpets, drapes, textiles, etc.	Common allergen. Type I allergies (hay fever and asthma); Type III hypersensitivity pneumonitis. Common cause of extrinsic asthma.	Dextruxin B, alternariols, alternuene, altertoxins, tenuazonic acid	Alternaria is commonly found in elevated numbers on wet-intruded building materials and in higher spore numbers in the air with respect to the outside when growth on wet building materials occurs.
Bipolaris/Drechslera	Common everywhere. Frequently associated with grasses, but also found on plant material, decaying food, and soil.		Common Type I (hay fever and asthma), fungal sinusitis.	None known.	This is a group of like-looking spores that include Bipolaris, Drechslera, Exserohilum, and sometimes Helminosporium. They cannot be consistently separated by spore morphology and are thus grouped together. Must be cultured to consistently separate the genera.
Cladosporium	The most common spore type reported in the air worldwide. Found on dead and dying plant litter, and soil.	Commonly found on wood and wallboard. Commonly grows on window sills, textiles and foods.	Type I (hay fever and asthma), Type III (hypersensitivity pneumonitis) allergies.	Cladosporin, emodin.	A very common and important allergen source both outdoors and indoors.
Curvularia	Commonly found everywhere on soil and plant debris.	Capable of growing on many cellulytic substrates like wallboard and wood.	Type I (hay fever and asthma) and common cause of allergic sinusitis.	None known.	
Epicoccum	Commonly found everywhere. Grows on plant debris, insects and soil.	Capable of growing on several different substrates, notably wallboard and paper	Type I (hay fever and asthma) allergies.	Epicoraxine A&B, flavipin.	Very common in the summer, especially in the midwest and during harvest time.
Ganoderma	Common everywhere growing on hardwood trees.	None known.	None known.	None known.	
Hyphae	Common everywhere.	All substrates.	None known.	None known.	Hyphae are the "root-like" food absorption strands common to nearly all fungi. They sometimes can become airborne.
Ascospores	Common everywhere. Constitutes a large part of the airspora outside. Can reach very high numbers in the air outside during the spring and summer. Can increase in numbers during and after rainfalls.	Very few of this group grow inside. The notable exception is Chaetomium and Ascotricha.	Little known for most of this group of fungi. Dependent on the type (see Chaetomium and Ascotricha).	None known for most of the group (see Chaetomium)	
Basidiospores	Commonly found everywhere, especially in the late summer and fall.	Not normally found growing indoors. Can grow on wet lumber, especially in crawlspaces.	Some allergenicity reported. Type I (hay fever, asthma) and Type III (hypersensitivity pneumonitis).	None known.	Among this group are dry rot fungi Serpula and Poria that are particularly destructive to buildings.

Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Penicillium	Very common, growing on decaying plant material, soil, fruits and many other substrates.	Common indoor mold that grows on fruit, bread, textiles, leather and other substrates that are wetted.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis)	Many toxins known, e.g., verruculogen, nephrotoxin, viomellein, xanthocillin X, griseofulvin, ochratoxin, citrinin, penicillin, cyclopiazonic acid, etc.	Penicillium is one of the most commonly identified mold type worldwide. Spores of Penicillium and Aspergillus are usually too similar to separate and when seen without fruiting bodies will be identified as "Pen/Asp".
Penicillium/Aspergillus	Common everywhere. Normally found in the air in small amounts in outdoor air. Grows on nearly everything.	Wetted wallboard, wood, food, leather, etc. Able to grow on many substrates indoors.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis) allergies.	Toxin potential is dependant upon which species of Penicillium or Aspergillus is present.	This is a combination group of Penicillium and Aspergillus and is used when only the spores are seen. The spores are so similar that they cannot be reliably separated into their respective genera.
Smuts, myxomycetes	Commonly found everywhere, especially on logs, grasses and weeds.	Smuts don't normally grow indoors, but can occasionally be found on things brought from outside and stored in the house. Myxomycetes can occasionally grow indoors, but need lots of water to be established.	Type I (hay fever and asthma) allergies.	None known.	Smuts and myxomycetes are a combined group of organisms because their spores look so similar and cannot be reliably distinguished from each other.
Spiegazzinia	Not commonly observed, but widely distributed.	Not known to grow indoors.	None known.	None known.	Frequently seen especially in southern United States.











NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodway data have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Subwater Elevations labels contained within the Flood Insurance Study (FIS) report that accompanies this FIRI. Users should be aware that BFEs shown on the FIRI represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRI for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0.7' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRI should be aware that coastal flood elevations are also provided in the Summary of Subwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Subwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRI.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was South Carolina State Plane (FIPSZONE 3300). The horizontal datum was NAD83, GRS1980 spheroid. Differences in datum, spheroid, projection or State Plane zones used in the production of FIRIs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of the FIRI.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov> or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, NGS12
National Geodetic Survey
SSAID-3, 92022
1315 East-West Highway
Silver Spring, MD 20910-3282

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at <http://www.ngs.noaa.gov>.

Base map information shown on this FIRI was derived from 2007 U.S. Census Bureau TIGER data at 1:24000.

This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRI for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRI may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data labels in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map repository addresses; and a listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

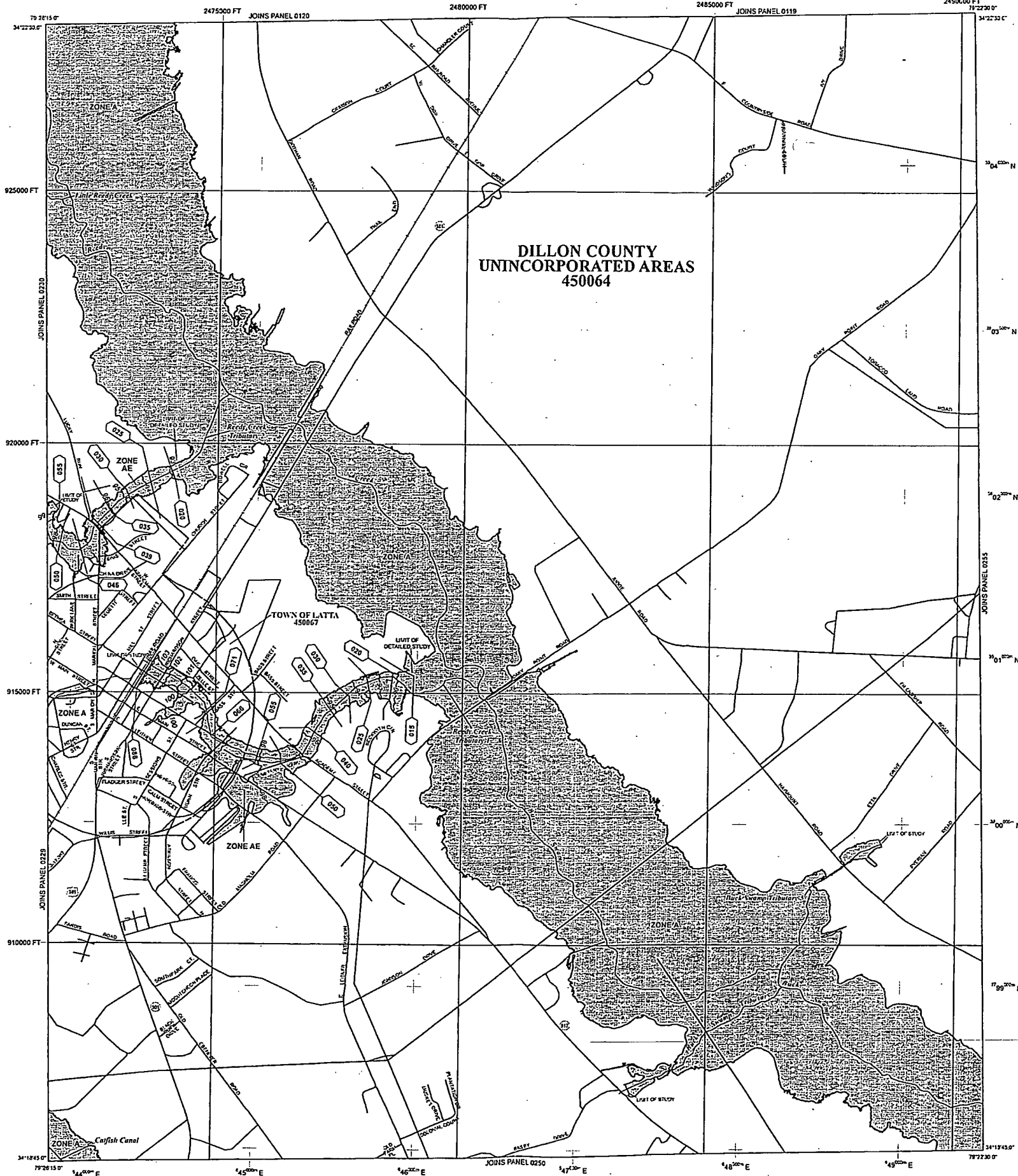
Contact the FEMA Map Service Center at 1-800-358-9618 for information on available products associated with this FIRI. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-358-9620 and its website at <http://www.msc.fema.gov>.

If you have questions about this map or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov>.

The "profile base lines" depicted on this map represent the hydraulic modeling baselines that match the flood profiles in the FIS report. As a result of improved topographic data, the "profile base line," in some cases, may deviate significantly from the channel centerline or appear outside of the SFHA.

This digital Flood Insurance Rate Map (FIRM) was produced through a unique cooperative partnership between the State of South Carolina and the Federal Emergency Management Agency (FEMA). The State of South Carolina has implemented a long term approach of floodplain management to decrease the costs associated with flooding. This is demonstrated by the State's commitment to map floodplain areas at the local level. As a part of this effort, the state of South Carolina has joined in a Cooperative Technical State agreement with FEMA to produce and maintain this digital FIRI.

<http://www.dnr.state.sc.us>



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water surface elevation of the 1% annual chance flood.

- ZONE A** No Base Flood Elevations determined
- ZONE AE** Base Flood Elevations determined
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of sheet flow, vehicles also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently determined to be inadequate. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazards (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE
The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS
ZONE X Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with average areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS
ZONE X Areas determined to be outside the 0.2% annual chance floodplain.
ZONE D Areas in which flood hazards are uncommon, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

- Floodplain boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary covering Special Flood Hazard Area Zones and Boundary Covering Special Flood Hazard Areas of 0.2% Annual Chance Flood, Flood depths, and flood velocities
- Base Flood Elevation line and value; elevation in feet (EL 987)
- Base Flood Elevation value where uniform within zone; elevation in feet

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

— Cross section line

— Turned line

Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

1000-meter Universal Transverse Mercator grid lines, zone 17

5000-foot grid values: South Carolina State Plane coordinate system, (FIPSZONE 3300), Lambert Conformal Conic

DX5510 Bench mark (see explanation in Notes to Users section of the FIRI panel)

141.5 River Mile

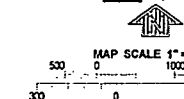
MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTRYWIDE FLOOD INSURANCE RATE MAP

EFFECTIVE DATES OF REVISION(S) TO THIS PANEL

For community map revision history prior to community mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6827



MAP SCALE 1" = 1000'

0 100 200 FEET

0 100 200 METERS

NFIP

PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

DILLON COUNTY,

SOUTH CAROLINA

AND INCORPORATED AREAS

PANEL 235 OF 350

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY

DILLON COUNTY

LATTA TOWN OF

NUMBER

450064

PANEL

0235

SUFFIX

C

MAP NUMBER

45033C0235C

EFFECTIVE DATE

MAY 24, 2011

Federal Emergency Management Agency

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South Carolina Department of Health
and Environmental Control

Pee Dee Environmental Quality Control District
145 E. Cheves Street
Florence, South Carolina 29506
(843) 661-4825 Fax (843) 661-4858

Serving
Chesterfield, Darlington, Dillon
Florence, Marion, and Marlboro Counties

RECOMMENDATIONS FOR SEWER CLEAN-UP IN RESIDENTIAL HOMES

1. All furnishings, especially rugs, should be discarded. All non-porous surfaces which haven't been damaged by water should be washed down with a disinfectant solution.
2. For areas where water has fully penetrated the floors, the underlying floor insulation should be replaced. Even though the interior floor surface could be treated with a disinfection solution, the saturated insulation materials could pose a mold/mildew problem as it is unlikely to dry out in this crawl space. Such a problem could adversely affect an individual's health.
3. Prior to doing any work within crawl spaces, it is suggested that the soil be treated with a disinfectant to reduce the risk of disease transmission to repairmen. The nature and extent of this treatment will depend on the amount of wastewater/fecal material that could have entered the crawl space through the floor above.
4. Clean-up of the HVAC is dependant on the specific heating unit within the house. In general, have the HVAC ducts checked for evidence of wastewater intrusion. If the house has floor registers, wastewater coming from the sewer intrusion may have entered the nearest register. If wastewater intrusion has occurred, it is suggested that these ventilation ducts be removed and replaced rather than try to have them disinfected. In addition, the entire duct system serving the first floor should be evaluated for evidence of wastewater. If necessary, they may need to be replaced. The coils under the home should also be checked to ensure that fecal matter has not gone down into this part of the heating unit. If found, the coils should be adequately disinfected.

The above guidelines are items that need to be done to ensure that disease will not be transmitted to the homeowner/occupant or any repairmen who work on the home. The recommendations are meant to address general problems associated with the intrusion of raw wastewater into a home. Should this office receive more information from the homeowner/occupant, the repairmen, or the public works personnel about the extent of fecal contamination in the home, there may be additional recommendations to make.

This office can be reached at (843) 661-4825. Our fax number is (843) 661-4858. You may ask for Danelle Watson or Gary Stowe.

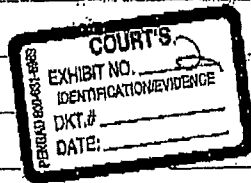
Δ's 14

Graham 321.7974

★ Stipulation:

The parties stipulate that the Town of Latta is unable to produce a written instrument conveying an easement for a portion of the Town's sewer system which crosses the property currently owned by Claude & Vickie Graham @ 220 E. Rice St. in Latta, SC

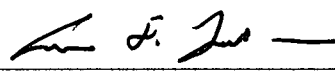
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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant/Respondent Town of Latta certifies that the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
MICHAEL B. WREN
DANIEL C. PLYLER
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant/Respondent Town of Latta

Columbia, South Carolina

April 23, 2014

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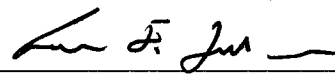
MAY 13 2014

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN

MICHAEL B. WREN

DANIEL C. PLYLER

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Counsel for Appellant/Respondent Town of Latta

Columbia, South Carolina

April 23, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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

RECEIVED

APR 25 2014

SC Court of Appeals

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

v.

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

AND

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

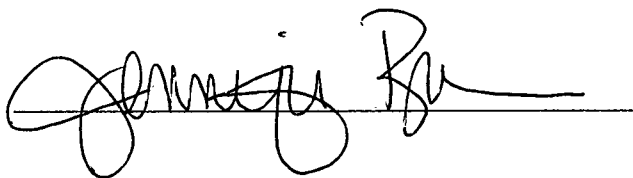
v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent Town of Latta, does hereby certify that service of the two volume **Record on Appeal** in the above-captioned matter was made upon all counsel of record by a placing copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 23rd day of April 2014:

Reynolds Williams, Esquire
Willcox, Buyck & Williams
Post Office Box 1909
Florence, South Carolina 29503-1909

A handwritten signature in black ink, appearing to read "Reynolds Williams", is written over a horizontal line.