IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2014-001685

Horry Electric Cooperative, Inc. ..... Appellant

vs.

South Carolina Public Service Authority and Southern Electric International, Inc., Defendants,

Of whom South Carolina Public Service Authority is the ..... Respondent

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RECORD ON APPEAL
Volume I

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MAR 02 2015
SC Court of Appeals

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TUESDAY 10/1/13
13 & 14

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2600488

PLAINTIFF(S)	**DEFENDANT(S)**
Horry Electric Cooperative Inc	**Public Service Authority South Carolina** **Southern Electric International Inc**
Submitted by: CLERK OF COURT	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
HORRY COUNTY
13 OCT -3 AM 10:46
MELANIE HUGGINS-HARDEE
CLERK OF COURT

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

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

THE UNDERSIGNED, THE HONORABLE LARRY B. HYMAN, JR., DOES HEREBY RECUSE HIMSELF IN THE ABOVE CAPTIONED CASE.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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

Circuit Court Judge LARRY B. HYMAN, JR.	**2152**	10/1/2013
	Judge Code	**Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Pope D. Johnson III PO Drawer 11209 Columbia, SC 29211	**William Coleman Hubbard** PO Box 11070 Columbia, SC 29211 **Benjamin Rush Smith III** Meridian/17Th Floor 1320 Main Street Columbia, SC 29201
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
Court Reporter NATALIE DAHL	**Melanie Huggins-Ward - Clerk of Court**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2600488

PLAINTIFF(S)	DEFENDANT(S)	
Horry Electric Cooperative Inc	**Public Service Authority South Carolina**	**Southern Electric International Inc**

Submitted by: | **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

MOTIONS ON ROSTER TODAY CONTINUED AND CLERK TO SCHEDULE FOR THE TERM OF MARCH 10, 2014 BEFORE JUDGE DEADRA JEFFERSON. THE UNDERSIGNED WAS ASKED TO RECUSE HIMSELF BY THE PLAINTIFF AND THE REQUEST WAS GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CLERK OF COURT	**N/A**	**N/A**
N/A		

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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

Circuit Court Judge STEVEN H. JOHN	**2129**	12/4/2013
	Judge Code	**Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Pope D. Johnson III PO Drawer 11209 Columbia, SC 29211	**William Coleman Hubbard** PO Box 11070 Columbia, SC 29211 **Benjamin Rush Smith III** Meridian/17Th Floor 1320 Main Street Columbia, SC 29201
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
Court Reporter KAY H. RICHARDSON	**Melanie Huggins-Ward - Clerk of Court**

RECEIVED MAR 1 8 2014

STATE OF SOUTH CAROLINA,	)	IN THE CIRCUIT COURT
	)	
COUNTY OF HORRY	)	**MOTION AND ORDER FOR CASE ASSIGNMENT TO THE BUSINESS COURT PILOT PROGRAM**
Horry Electric Cooperative Inc,	)	
Plaintiff	)	
vs.	)	
S.C. Public Service Authority, Southern Electric International,	)	
Defendant.	)	CASE NO. 2013-CP-26-488

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We do not certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties who have appeared have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit. *See Exhibit A for the description and Exhibit B for the Amended Complaint*).

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
- ☐ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☒ Other Appropriate Matter determined by the Chief Justice.

HORRY COUNTY
14 MAR 11 PM 1:41
MELANIE HUGGINS-WARD
CLERK OF COURT

3. Insert name and contact information of moving party or parties:

Party:	S.C. Public Service Authority		Party:		
Name:	B. Rush Smith Iii		Name:		
Address:	Nelson Mullins		Address:		
	1320 Main Street				
Phone:	8032559492	Fax: 803255	Phone:	Fax:	
Email:	rush.smith@nelsonmullins.com		Email:		
Signature:	Rush Smith by FWC		Signature:		
Date:	1/30/14		Date:		

4. Indicate whether the non-moving party or parties ☒ consents, ☐ does not oppose, ☒ opposes; ☐ position on assignment is unknown.

Recommendation of the Business Court Judge: ☒ **Recommends** ☐ **Declines to Recommend**

Signature of Business Court Judge **Date**

Assignment to the Business Court Pilot Program for Horry County is hereby ☒ **ORDERED** ☐ **DENIED.**

It is further ☒ **ORDERED** ☐ **DENIED** that exclusive jurisdiction over this case be assigned to the Honorable Roger Young to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Jean Hoefer Toal, Chief Justice

This 9th day of Mar., 2014
Columbia, South Carolina

SCCA BC Form 101 (Rev. 4/2012)

STATE OF SOUTH CAROLINA	)	**BUSINESS COURT CASE**
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-0488
Plaintiff,	)	
vs.	)	**ORDER GRANTING PUBLIC SERVICE AUTHORITY'S MOTION TO DISMISS** (Ending case as to all parties)
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendant.	)	

FILED
HORRY COUNTY
2014 JUN 13 PM 4:13
MELANIE LOCKLAIR-WARD
CLERK OF COURT

This matter comes before this Court on Defendant South Carolina Public Service Authority's ("Santee Cooper") Motion to Dismiss the Amended Complaint pursuant to Rule 12(b)(6), SCRCP. A hearing on the motion was held at 10:00 a.m. on Tuesday, May 27, 2014, at the Horry County Courthouse. Defendant Santee Cooper appeared through counsel and Horry Electric Cooperative's ("HEC") counsel attended via teleconference. Defendant Southern Electric International, Inc., did not appear, having never been served the Summons and Complaint by HEC, and thus this Court will dismiss the claims against that defendant, without prejudice, for lack of prosecution.

HEC's Amended Complaint asserts the following causes of action against Santee Cooper: (1) equitable indemnification; (2) negligence; (3) breach of the covenant of good faith and fair dealing; (4) breach of warranty; and (5) civil conspiracy. Pursuant to each of these theories, HEC seeks reimbursement from Santee Cooper in connection with a class action styled *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Ferrell* action"). In the underlying *Ferrell* action, the plaintiffs were customers of HEC and claimed that HEC's

requirements for participation in its "Good Cents Program"—an energy efficiency program through which the plaintiffs would modify their homes and in return receive a lower electric rate—incorporated a design specification for a vapor barrier that led to subsequent moisture problems in the plaintiffs' homes. HEC now sues Santee Cooper, alleging that responsibility for any damages arising from the vapor barrier requirement lies with Santee Cooper.

Santee Cooper moved for dismissal of the Amended Complaint on the following grounds:

- The claims are barred by the statute of repose because the underlying action is based on construction completed in the 1980s and 1990s;
- The claims other than equitable indemnity are barred by the applicable statute of limitations; and
- HEC failed to state facts sufficient to constitute a cause of action against Santee Cooper.

As required by Rule 12(b)(6), SCRCP, the Court confined its decision to the amended Complaint, attachments thereto, matters of which the Court may take judicial notice, and the arguments of the parties at the hearing. All arguments of the parties were carefully considered. After considering all arguments, the Court **GRANTS** Santee Cooper's motion for the reasons set forth below and dismisses this case in its entirety. The claim for equitable indemnification is dismissed *without prejudice,* as the Court finds it is not yet ripe. All other claims are dismissed *with prejudice.*

1. **Equitable Indemnification.** As stated above, the claim for equitable indemnification is not yet ripe for adjudication. The parties in the *Ferrell* action have entered into a Settlement Agreement, which will require Court approval, but as of the date of the hearing in this matter, that approval had not yet occurred. Pursuant to the Settlement Agreement, HEC and/or its insurer will pay class members to settle their

damages claims and will pay class counsel their attorneys' fees and costs. In the action at bar, HEC is seeking indemnification for such payments. Counsel for HEC reported that while some class members had submitted claims and class counsel had petitioned for attorneys' fees pursuant to the Settlement Agreement, court approval of the settlement had not been granted as of the date of this hearing.[1] More importantly, no payments had been made pursuant to the Settlement Agreement. Accordingly, this Court finds that HEC's claims for indemnification are not yet ripe. The Court makes this finding after carefully considering and rejecting all of HEC's arguments relevant to the question of ripeness, regardless of whether such arguments are expressly enumerated herein. Finding that dismissal with prejudice would be premature, this Court dismisses the claim for equitable indemnification *without prejudice*.[2]

2. **Statute of Repose.** The Court finds that the statute of repose bars the remaining claims. These claims are predicated on letters written by a Santee Cooper employee in 1986 concerning, among other things, the vapor barrier design specifications for the Good Cents program. These specifications were then incorporated into construction completed as early as 1988 or, accepting for the sake of argument HEC's position asserted during the hearing, in 1991. (At the hearing, counsel for HEC stated that while the letters were written in 1986, the vapor barrier design specification was not implemented until 1991). HEC further argues that HEC did not discover the existence of these Santee Cooper letters until the *Ferrell* suit was being litigated. HEC further argues

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[1] This settlement approval was pending before another Court. Approval was subsequently granted on May 30, 2014.

[2] The Court does not reach Santee Cooper's other arguments for dismissal of the equitable indemnification claim and, therefore, this ruling is without prejudice to Santee Cooper's raising those arguments in a subsequent action, if any.

that the 1986 letters demonstrate that Santee Cooper had knowledge about the vapor barrier design specification that it should have disclosed to HEC in 1986 (or 1991). Santee Cooper disputes these arguments. Reading the Amended Complaint and drawing all inferences in the light most favorable to HEC, the Court concludes that these claims are based on the theory that if HEC had been informed of the contents of the letters when they were written, HEC would not have adopted the vapor barrier design specifications and, consequently, these design specifications would not have been incorporated into the homes of its customers. As noted above, counsel for HEC argued that the operative date for incorporation of the design standards into customers' homes was 1991, rather than 1986 (the date of the letter) or 1988 (the date construction commenced according to the underlying complaint). Even if 1991 were the operative date on which the design specifications were incorporated into the construction of class members' homes, the statute of repose would bar the claims for negligence, breach of the covenant of good faith and fair dealing,[3] breach of warranty, and civil conspiracy.

In candor, HEC concedes that the statute of repose applies but contests the period asserted by Santee Cooper. The statute of repose currently states that "no actions to recover damages based upon or arising out of the defective . . . condition of an improvement to real property may be brought more than eight (8) years after substantial completion of the improvement." S.C. Code Ann. § 15-3-640. Prior to July 1, 2005, the statute of repose cut off all claims after thirteen (13) years. HEC argues that the 13-year

[3] The Court recognizes that this is not a freestanding claim under South Carolina law. "[T]he implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract." *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). HEC does not assert a breach of contract claim. Consequently, there is no basis for the claim for breach of the covenant of good faith and fair dealing.

statute and not the 8-year statute applies. *See* S.C. Code Ann. § 15-3-640, Editor's Notes. Again construing the matter in the light most favorable to HEC, without deciding the issue, this Court applies the 13-year statute of repose.

According to the Amended Complaint and attachments, HEC adopted the Good Cents program and offered the program to customers in 1987. Complaint ¶¶ 4-7. Construction of Good Cents homes began in 1988. *Id.*, Exhibit D. Even if the design specification were not included in homes until 1991, as argued by counsel for HEC, homes constructed in 1991 would be far outside the period allowed by the statute of repose for a suit filed in 2013. The statute of repose creates an absolute, substantive right to be free from suit after a period of time set by the General Assembly. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). "[S]tatutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants, struck by determining a time limit beyond which liability no longer exists." *Id.* at 404, 438 S.E.2d at 244. "A statute of repose . . . is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (internal citations omitted). Because the time limit is absolute, a statute of repose may extinguish a claim before it is discovered or even arises. *Id.* Based on the pleadings, HEC is seeking damages related to construction completed as early as 1988, arguing that it would not have adopted the vapor barrier design specifications of the Good Cents program if it had been informed of the information contained in the 1986 letters. Even if the 13-year period from the former statute of

repose is used and even if, as HEC argues, the design specifications were incorporated into Good Cents homes in 1991, the statute of repose bars HEC's claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of repose, regardless of whether such arguments are expressly enumerated herein. Accordingly, these claims are dismissed *with prejudice.*

3. **Statute of Limitations.** The Court notes that Santee Cooper also moved for dismissal of HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy on the basis of the two-year statute of limitations contained in the Tort Claims Act ("TCA"). See S.C. *Code Ann. § 15-78-110; see also Hodges v. Rainey, 341 S.C. 79, 91-92, 533 S.E.2d 578,* 584 (2000) (recognizing TCA applies to Santee Cooper). The Court finds that the statute of limitations provides an additional reason for dismissal of these claims.

In oral argument, HEC asserted that actions brought under the TCA are subject to the discovery rule, *Joubert v. S.C. Dep't. of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000), and that it did not have knowledge of the 1986 letters until discovery began in the underlying *Ferrell* case. "According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Id. See also Anonymous Taxpayer v. S.C. Dep't. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) ("The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist."). "The date on which discovery should have been made is an objective rather than subjective question." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct.

App. 1998). "The critical inquiry, then, is whether [HEC] *could* have discovered its claim against the defendant." *See Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998) (emphasis added).

On their face, argues Santee Cooper, the 1986 letters show that HEC could have discovered the information that HEC alleges Santee Cooper should have divulged to HEC, because the letters show that this information was contained in engineering standards and a trade publication, and was the subject of some discussion in the local building community. According to this argument, the statute of limitations began to run in 1986. The Court agrees. Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of limitations, regardless of whether such arguments are expressly enumerated herein.

Finally, as to both defenses upon which this Court is dismissing this lawsuit, HEC argues that the issues raised by Santee Cooper are affirmative defenses, and in a 12(b)(6) motion, the Court cannot reach beyond the Complaint and consider evidence of affirmative defenses. Even though this motion has not been converted to a summary judgment motion under Rule 56, SCRCP, this Court is unpersuaded by this argument. "Most courts allow such [affirmative] defenses to be raised in a motion to dismiss under

Rule 12(b) 'when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense.'" *Spence v. Spence*, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (citations omitted). *See also Goodman v. PraxAir*, 494 F.3d 458, 464 (4th Cir. 2007) ("[I]n the relatively rare circumstances where facts sufficient to rule on an affirmative defense are alleged in the complaint, the [statute of limitations] defense may be reached by a motion to dismiss filed under Rule 12(b)(6)."). This is clearly such a case.

CONCLUSION

For the foregoing reasons, this Court **dismisses** the claim for equitable indemnification **without prejudice**, and **dismisses** all other claims asserted in the Amended Complaint, **with prejudice.**

IT IS SO ORDERED.

Roger M. Young, Sr.
Presiding Judge of the Business Court
State of South Carolina

JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134

Charleston, South Carolina

June 11, 2014

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CASE NO. 2011-CP-26-1266**
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	**FINAL APPROVAL ORDER**
Horry Electric Cooperative,	)	
Defendant.	)	

14 MAY 30 AM 10:20
CLERK OF COURT

WHEREAS the Court held a final approval hearing on May 30, 2014 to determine whether (i) whether the terms and conditions of the settlement agreement ("Agreement") preliminarily approved on March 3, 2014 are fair, reasonable and adequate for the settlement of all claims released by Plaintiffs against Defendant in this litigation; (ii) whether judgment should be entered dismissing the Defendant with prejudice; (iii) whether and in what amount to award incentive payments to some or all of the class representatives; and (iv) whether and in what amounts attorneys' fees and expenses will be awarded to Class Counsel.

WHEREAS the Court, having considered all matters submitted to it at the hearing and otherwise; and having previously certified the Class pursuant to S.C.R.C.P. 23, HEREBY FINDS that:

a. The Court has jurisdiction over the parties and has subject matter jurisdiction to approve the Agreement;

b. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Agreement;

1
MHC

c. There were no objections to the Agreement;

d. The Settlement is the result of arm's length negotiations, taken in good faith, between counsel for Plaintiffs and Defendant; and

e. The terms of the Agreement is in all respects fair, reasonable and adequate -- in light of the risks of the litigation -- and in the best interests of the class.

ACCORDINGLY, the Agreement is hereby fully and finally APPROVED and it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Court grants final approval to the Agreement as fair, reasonable and adequate.

2. Notice to the Class including, but not limited to, the forms of notice and methods of identifying and notifying members of the Class, has been given in an adequate and sufficient manner, constituting the best notice practicable, satisfying and complying in all respects with S.C.R.C.P. 23 and due process.

3. The parties are directed to implement and consummate the Agreement according to its terms and conditions.

4. The persons identified on Exhibit A of this Order of Final Judgment have timely and validly requested exclusion from the Class, and are excluded from the Class. Such persons are not included in, or bound by, this Order of Final Judgment, nor are they entitled to any recovery provided for by the Agreement.

5. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection therewith, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the litigation, or of any liability, fault or wrongdoing of any kind.

6. Class representatives David Montorio and Tammy Vance will each receive an award of $5000 each as compensation for their time and effort in this litigation.

7. An award of attorneys' fees and reimbursement of costs is warranted in this case under the South Carolina common law, which holds that attorneys' fees may be awarded from a common fund created by counsel. *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) ("[A] court exercising equitable jurisdiction may make an allowance of a reasonable fee out of the common fund or property created or preserved, for an attorney representing a party who, at his own expense, has maintained a suit for the recovery, preservation, protection, or increase of a common fund or common property, or has created or brought into the Court a fund in which others are entitled to share."); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Laymen v. State*, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008). "The justification for awarding attorneys' fees in this manner is based on the principle that 'one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses.'" *Laymen*, 376 S.C. at 452, 658 S.E.2d at 329 (2008) (quoting *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941)).

8. Before attorneys' fees can be charged to a fund in which others are entitled to share, the following elements much be met: (1) the attorney must preserve or protect a common fund; (2) the attorney's services much have aided in creating, preserving, or protecting the fund, and the services must prove fruitful to the general class; and (3) there must be a "principle of representation or agency *as in a class suit*, that is, before one may be allowed compensation out of the common fund belonging to others for services rendered on behalf of the common interest there must be a contract of employment, either expressly made or superinduced by the law upon

the facts." *First Union Nat'l Bank*, 333 S.C. at 573-74, 511 S.E.2d at 382 (emphasis added) (citations omitted).

9. In this case, Class Counsel has met each of the elements set forth by the Court of Appeals in *First Union Nat'l Bank*. First, Class Counsel has created a common fund represented by the monies paid by the Defendant in accordance with the terms of the Agreement. Second, Class Counsel's services clearly aided in creating and preserving that fund, and their services have proved fruitful to the general class. Each qualifying Class member will derive a benefit from the settlement achieved by Class Counsel. Third, this is a class suit and the Named Plaintiffs and Class Counsel, by virtue of Rule 23 and by order of this Court, have been appointed representatives of the class. Moreover, the contingency fee agreement between the named Plaintiff and Class Counsel provides for the payment of an attorneys' fee of one-third of any recovery in this case. Accordingly, based upon the common law of this state, Class Counsel is entitled to a reasonable award of attorneys' fees. In further support of an award of attorneys' fees and litigation expenses from the common fund, the Court finds that the prosecution of this matter was an immense and highly risky undertaking for Class Counsel given the complexity of the issues presented and the defense mounted by Defendant, as the discussions below clearly support.

10. **Analysis of Pertinent Factors.** In *Jackson v. Speed*, 326 S.C. 289, 308, 486, S.E.2d 750, 760 (1997), the South Carolina Supreme Court set forth factors for courts in South Carolina to consider when deciding whether to award attorneys' fees. While these factors were not issued in the context of a class action suit, this Court chooses to analyze those factors in this case. In doing so the Court has determined that the amount of attorneys' fees and costs requested is more than reasonable.

i. *The nature, extent, and difficulty of the case.* The case involved numerous complex factual and legal issues. The breadth and scope of fact and expert discovery, coupled with the complex legal issues, demonstrates that the requested fee is justified by the nature, extent, and difficulty of the case.

ii. *The time necessarily devoted to the case.* Class Counsel expended significant time on the litigation and settlement of this case over a period of three years and will continue to expend significant time while the settlement is implemented. The case could only be settled on the eve of trial.

iii. *Professional standing of counsel.* Class Counsel are experienced in civil litigation and have particular expertise in class actions. Further, Class Counsel enjoy excellent reputations in the legal community. Finally, Class Counsel have consistently demonstrated their competence, preparedness, tenacity, skill, and perseverance to the Court over the course of this litigation.

iv. *Contingency of compensation.* As previously noted, the contingency fee agreements between the named Plaintiffs and Class Counsel provide for a contingency fee of one-third of the recovery, if any. The Court is well aware of the risk inherent in contingency fee litigation, where neither recovery for the plaintiff nor compensation for the attorneys who undertake the risk is guaranteed. Additionally, Class Counsel advanced expenses with no assurance of reimbursement.

v. *Beneficial results obtained.* Class Counsel have secured a real, valuable benefit for the Class totaling $6 million (including the award of attorneys' fees and costs), and all Class members are entitled to receive a cash payment.

vi. *Customary legal fees for similar services.* The attorneys' fee request is consistent

with the fees customarily awarded in similar cases. "When awarding attorneys' fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.'" *Laymen*, 376 S.C. at 453, 658 S.E.2d at 330 (2008). Consequently, courts customarily base the award of attorneys' fees on a percentage of the common fund created. *Id.* The South Carolina Supreme Court has acknowledged that this percentage-of-the-recovery approach "may be appropriate under circumstances in which a court is given jurisdiction over a common fund from which it must allocate attorneys' fees among a benefited group of litigants." *Id.* at 453-54, 658 S.E.2d at 330; *see also Ex parte Condon*, 354 S.C. 634, 636-37, 583 S.E.2d 430, 431 (2003) (approving a circuit court's award of attorneys' fees based on a percentage-of-the-recovery approach where the parties' agreement stipulating that the circuit court would calculate and award attorneys' fees clearly contemplated an award based on a percentage of the common fund recovered).

11. The attorneys' fees requested here are only 16% of the total common fund. This percentage is well within the range of reasonableness for attorneys' fees in class actions. *See Fairey v. Exxon Corp.*, No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs representing 40% of recovery); Alba Conte & Herbert Newberg, Newberg on Class Actions § 14:6 (4th ed. 2002) ("Empirical studies show that . . . fee awards in class actions average around one-third of the recovery."). It is also well below what federal district courts within the Fourth Circuit have previously awarded in the percentage of the fund context. See, e.g., *In re: The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D.Va. 2009) (chart outlining fee awards).

12. The Agreement calls for an award of attorneys' fees and costs in the total amount of Nine Hundred Ninety Thousand and no/100 ($990,000.00) dollars. Class Counsel already

incurred over $40,000 in out-of-pocket expenses. Defendant set forth in the Agreement, and has advised the Court, that it has no opposition to an award in that amount, and agrees to the payment of such amount.

13. After consideration of the factors noted above, Class Counsel are awarded attorneys' fees and reimbursement of reasonable expenses incurred in connection with the Action in the total amount of $990,000.00, which sum the Court finds to be fair and reasonable, and which shall be paid from the common fund as set forth in the Agreement.

14. Final approval operates as a release to Defendant and its present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, that they shall forever be released and discharged from any and all claims by the Class members and their assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge will discharge the common liability of any joint tortfeasors and will be binding on any subsequent purchasers of the subject homes.

15. The Action is hereby dismissed with prejudice as to the Defendant and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Agreement, without costs.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Agreement.

IT IS SO ORDERED.

DATE: May 30, 2014

BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

EXHIBIT

A

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BHC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FIFTEENTH JUDICIAL CIRCUIT
	CASE NO: 2011.CP.26.1266
Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	
Plaintiffs,	SETTLEMENT CLASS NOTICE OF OPT OUTS
vs.	
Horry Electric Cooperative,	
Defendant.	

The following persons provided notice by mail postmarked by May 1, 2014 of their intention to opt out of the Class Action Settlement:

1. James R. Blackmon, Sr. and Mary Lou Blackmon
   7211 Old Reaves Ferry Road
   Conway, SC 29526

2. Donald Wayne Anderson
   4011 Bakers Chapel Road
   Aynor, SC 29511

3. Leonard D. Rodwell
   329 Cloverbrook Circle
   Conway, SC 29526

4. Carol A. Hinkle
   106 Fox Haven Bl.
   Myrtle Beach, SC 29588

5. Craig Larry Booth
   3879 Bakers Chapel Road
   Aynor, SC 29511

FILED
HORRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS-WARD
CLERK OF COURT

10
BHC

Respectfully submitted,

Nate Fata, Esq.
Nate Fata, P.A.
Post Office Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
(843) 238-2676

T. Christopher Tuck, Esq.
James L. Ward, Jr., Esq.
Catherine H. McElveen, Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
1037 Chuck Dawley Blvd., Bldg. A
Mount Pleasant, SC 29464
(843) 727-6500

Class Counsel

May 14, 2014

2 11

RECEIVED JUL 2 4 2014

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority and Southern Electric International, Inc., Defendant.	)	Civil Action No. 2013-CP-26-0488 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

This matter originally came before this Court on Defendant South Carolina Public Service Authority's Motion to Dismiss the Amended Complaint pursuant to Rule 12(b)(6), SCRCP. A hearing on the motion was held on Tuesday, May 27, 2014, at the Horry County Courthouse, and this Court granted Defendant's Motion to Dismiss and issued an Order on June 11, 2014. Now comes Plaintiff Horry Electric Cooperative's Motion to Reconsider.

I have thoroughly considered Plaintiff's motion, supporting material, evidence produced at trial, and arguments and based on the same deny Plaintiff's Motion to Reconsider.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider this Court's June 11, 2014 Order is DENIED.

IT IS SO ORDERED!

FILED
HORRY COUNTY
2014 JUL 14 PM 3:08
MELANIE HUGGINS-WARD
CLERK OF COURT

July 10, 2014
Horry, South Carolina

Roger M. Young, Sr.
Circuit Court Judge

JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority, Defendant.	)	Civil Action No. 2013-CP-26-488 **COMPLAINT** **(Non-Jury)**

FILED
HORRY COUNTY
2013 OCT -7 PM 3:06
MELANIE HUGGINS-WARD
CLERK OF COURT

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.

3. That in 1987, Santee Cooper offered the Good Cents program to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract.

4. That Horry Electric adopted the program developed and/or offered by Santee Cooper including all of the design and design standards provided with the program.

5. That Santee Cooper represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

6. That, prior to Horry Electric's entry into the said Agreement, Santee Cooper knew the use of vapor barriers which were required by the Good Cents Program may cause moisture problems in the coastal areas.

7. That Santee Cooper failed to disclose the potential moisture problem issue to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather

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than a requirement.

8. That Santee Cooper did not disclose to Horry Electric any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

9. That Horry Electric was sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266.

10. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

11. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program and Horry Electric was personally negligent with respect to the claims asserted in Civil Action No. 2011-CP-26-1266.

12. That a special relationship existed between Horry Electric and Santee Cooper, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits Santee Cooper only.

13. That Horry Electric is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 but has settled the action, which settlement has been approved by the Court.

14. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which Santee Cooper is liable and Santee Cooper is liable to Horry Electric for the amounts paid to the class members, the class representatives and their attorneys.

15. Horry Electric is informed and believes that Santee Cooper is liable to it for the expenses including Horry Electric's attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

16. That Horry Electric is informed and believes that the defendants are liable to Horry Electric for all fees, expenses and expenditures incurred by Horry Electric in protecting its interests in Civil Action No. 2011-CP-26-1266.

WHEREFORE, Horry Electric prays for judgment by way of indemnification against Santee Cooper in the amount of its fees, expenses and expenditures and the costs in defending and settling

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in Civil Action No. 2011-CP-26-1266 and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Plaintiff

Columbia, South Carolina
October 3, 2014

#3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-488
Plaintiff,	)	
vs.	)	**AMENDED COMPLAINT**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	**(Jury Trial Demanded)**
Defendants.	)	

FILED
HORRY COUNTY
2013 JUL 30 PM 2:43
MELANIE HUGGINS-WARD
CLERK OF COURT

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.

3. That, upon information and belief, Defendant Southern Electric International, Inc. ("Southern Electric") is a Georgia corporation which developed and marketed the Good Cents Program and sold and/or licensed it to Santee Cooper.

4. That in 1987, Santee Cooper offered the Good Cents program which had been developed, marketed and sold by Southern Electric to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.

5. That, upon information and belief, Santee Cooper entered into an agreement with Southern Electric in which Santee Cooper acquired the right to use Southern Electric's Good Cents Program and Horry Electric signed a licensing agreement with Southern Electric, as required by the Agreement marked Exhibit A.

6. That Horry Electric adopted the program developed and/or offered by the defendants including all of the design and design standards provided with the program and passed along a Good

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Cents savings rate provided by Santee Cooper to its members.

7. That Horry Electric received no direct benefit or financial benefit for offering the Good Cents Program to its members and incurred substantial costs in offering and administering the program and all benefits, financial or otherwise, went to the defendants.

8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.

10. That the defendants failed to disclose the information contained in Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

12. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit D.

13. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

14. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program.

15. That a special relationship existed between Horry Electric and the defendants, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits the defendants only.

16. That the plaintiff is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 and upon information and belief, the plaintiff will be exonerated from any liability for those damages.

17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which the defendants are liable.

18. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

FOR A FIRST CAUSE OF ACTION

(Negligence)

19. That the allegations of paragraphs 1 through 18 hereof are realleged and incorporated herein by reference.

20. That, upon information and belief, the defendants, who were offering and promoting participation in the Good Cents Program owed a duty of due care to disclose any problems and/or potential problems with the requirements of the program, including those related to the vapor barrier.

21. That the defendants breached their duty of due care and were negligent by failing to disclose to the plaintiff the information contained in Exhibits B-C.

22. That as a direct and proximate result thereof, the plaintiff has incurred attorney's fees and expenses and may suffer other damages.

23. That as a result thereof, the plaintiff is entitled to a judgment against the defendants for all actual damages suffered as a result of the negligence of the defendants, plus punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Duty of Good Faith and Fair Dealing)

24. That the allegations of paragraphs 1 through 23 hereof are realleged and incorporated herein by reference.

25. That the defendants, by failing to disclose the information in Exhibits B and C,

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breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from the defendants its actual damages and punitive damages as a result thereof.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty)

26. That the allegations of paragraphs 1 through 25 hereof are realleged and incorporated herein by reference.

27. That, upon information and belief, the defendants, by offering and promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C.

28. That the defendants breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which the defendants are liable.

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

29. That the allegations of paragraphs 1 through 28 hereof are realleged and incorporated herein by reference.

30. That, upon information and belief, the defendants, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to suffer actual and special damages for which the defendants are liable.

FOR A FIFTH CAUSE OF ACTION

(Equitable Indemnity)

31. That the allegations of paragraphs 1 through 30 hereof are realleged and incorporated herein by reference.

32. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests.

WHEREFORE, Horry Electric prays for judgment as set forth above in the First, Second, Third and Fourth Causes of Action and for its expenses in Civil Action No. 2011-CP-26-1266 as set

forth in the Fifth Cause of Action and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

#5

Exhibit 6

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper'" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor."

WHEREAS, Santee Cooper has acquired the rights to use the Good Cents Programs which presently consist of three (3) Programs as follows:

(1) Good Cents Home Program (New Residential)

(2) Good Cents Improved Home Program (Retrofit Residential)

(3) Good Cents Commercial Program

PLAINTIFF'S EXHIBIT
2 10/12/11

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Cents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,

EXHIBIT A
PENGAD 800-631-6989

Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good Cents Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good Cents Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good Cents Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

SANTEE COOPER

ATTEST: _____ By: _____
Title

ATTEST: _____ By: _____
Title Manager

FILE:

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3198 (803) 448-1503

October 8, 1986

OCT 15 1986

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Cents Program.

Santee Cooper agreed to accept the State of South Carolina's standards in our contract with SEI; however, it was our understanding with SEI that we would have some input into what the standards should be. This is the first time I have had any word from SEI on the standards. Obviously, we cannot comply with the proposed timetable for review of the technical standards; it was to be October 1, 1986.

As we discussed, I have some concerns with some minor details in the standards. Following is an outline of some questions that I feel sure we can resolve next week:

1. We are getting different results on RIGHT J and RESCALC. Also, we seek approval for our company's load calculation procedure to be used in the Good Cents program.

2. Hybrid Good Cents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. EXT BUILDG. TO WAIVE / SET TO GIVE CREDIT OF

3. Prescriptive Standards - We are opposed to qualifying any home using prescriptive standards. UP TO 5% OF LESS THAN PRESCRIPTIVE?, ½ AT

4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention.

5. Attic Ventilation - Use a 1 to 150 ratio and don't mention vapor barrier, or simply say HUD/MPS. 1 SQ. IN / SF

6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps REQUIRE OUR OPTION

EXHIBIT B

PENGAD 800-631-6989

SEND SPECS TO SEI

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.

8. Hybrid Heat Pumps - Only if the heat pump is the primary source of heating.

9. Radon Gas - Should not be mentioned.

10. House "A" - I do not agree that the values given for the base-line home "generally represents conventional insulation and construction practices within the South Carolina service area." (Neither do the other utilities.) A realistic "baseline" would be R-19, R-11, R-11 with a builder's model heat pump, and probably with insulated glass. For this reason, we cannot support a promotional standard up to 50% savings.

I look forward to meeting with you and the other SEI people next week. SCE&G, Santee Cooper and the participating co-ops are very excited about the Good Cents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Carmon
Energy Programs Supervisor

GSC/nm

cc: Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

bcc: Mr. Robert Eggleston
S. C. Electric & Gas Co.

4 FOOT / 3F TRIP WIRE WATER HEATER
WATER TANK
ADD LATER

Santee Cooper 2507

FILE: Good Cents - SE-2

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 500
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Cents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Cents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

Could we consider not mentioning vapor barriers and simply say to follow manufacturers' recommendations? I would rather customers use Tyvek or a similar product if they want to. Again, the concern is being required to require.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company

Santee Cooper 2501

One of Am... ...ric utilities.

EXHIBIT C

PENGAD 800-631-6989

Santee Cooper 000148
Montorio v. Foxworth

STATE OF SOUTH CAROLINA COUNTY OF HORRY Ronnie Ferrell, Tammy Vance and David Montorio on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2011-CP-26-12616 COMPLAINT (Jury Trial Demanded)

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

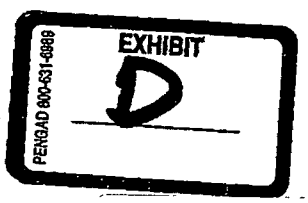
1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.

5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

(i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.

(ii) properly installed friction fit batts.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

(i) properly installed Kraft or foil-faced insulation batts.

(ii) taped and painted gypsum board installed on the inside of the exterior wall.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars ($100.00). The cost of removal of the inappropriate materials is more than $100.00 ($100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

(a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;

(b) in specifying and requiring inappropriate design or materials for a coastal county;

(c) in specifying and requiring inappropriate materials in violation of industry standards;

(d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

(a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;

(b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;

(c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;

(d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

a. Actual damages;

b. Punitive damages; and

c. Any costs of this action.

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Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-488
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendants.	)	

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 26th day of July, 2013.

COUNSEL SERVED:
B. Rush Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:
Amended Summons and Amended Complaint

FILED
HORRY COUNTY
2013 JUL 30 PM 2:43
MELANIE HUGGINS-WARD
CLERK OF COURT

Sherry W. Wise

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF HORRY) Case No. 2013-CP-26-0488
)
HORRY ELECTRIC)
COOPERATIVE, INC.)
)
Plaintiff,)
)
vs.) Transcript of Record
)
SOUTH CAROLINA PUBLIC)
SERVICE AUTHORITY AND)
SOUTHERN ELECTRIC)
INTERNATIONAL, INC.,)
)
Defendants.)
) DATE: May 27, 2014

B E F O R E:

The Honorable Roger M. Young, Sr.

A P P E A R A N C E:

Pope D. Johnson, III (via telephone)
Attorney for the Plaintiff

B. Rush Smith, III
Attorney for the South Carolina Public Service Authority

J. Michael Baxley and Elizabeth Henry Warner
Attorneys for Santee Cooper

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

MR. JOHNSON: I apologize for being in Charleston while you are in Horry County.

THE COURT: That happens. All right. Well, we've got -- this is Horry Electric Cooperative vs. South Carolina Public Service Authority and Southern Electric International, 2013-CP-26-488.

This case got assigned to me, and we are here today on the defendant, South Carolina Public Service Authority's, motion to dismiss. And then I think the plaintiffs have filed a motion for summary judgment as well; is that right?

MR. JOHNSON: That's correct; correct.

THE COURT: Now, what about Southern Electrical International, have they filed anything to join in with your motion?

MR. JOHNSON: No, we have not gotten service.

MR. SMITH: I don't know if they've been served, Your Honor. Have they been served?

MR. JOHNSON: No.

THE COURT: Well, they must not have any money.

MR. JOHNSON: I think that's correct.

THE COURT: All right. Well, I know that you had -- the plaintiffs had filed a motion to stay this case.

MR. JOHNSON: Yes, Your Honor. We had asked you to either continue the hearing today or stay a decision until a determination is made Friday as well. The court will

approve -- Judge Culbertson will approve the settlement that's been reached. There's been no opposition to -- they will require -- anybody who opposes it would be required to pay the filing. None of that has occurred. We expect his order to be, on the settlement agreement, to be approved by him Friday. And we think it would be important that you at least not make any decision until after his decision and that -- because it may impact your decision. And we would ask you to stay it until then and take judicial notice of whatever he does Friday.

THE COURT: Well, it's a class action in which you are basically claiming, as I understand it, that you can be indemnified for some of the costs that you have paid out or will pay out, if that's approved.

MR. JOHNSON: That's correct.

THE COURT: Well, they've raised some defenses here, as I understand it, that I'm not sure how they would be impacted regardless of whether or not lawsuit is approved or not approved, namely, that statute of repose and the statute of limitations, which I think, in any event, we could hear regardless of what that outcome is today.

MR. JOHNSON: Since we are having a hearing, I understood it won't be continued. I'm just asking that no decision be made by the Court until after Friday and the Court acknowledge it will take judicial notice of whatever

Judge Culbertson does. One of the things they've argued in their papers is that we are only making a claim for attorney/clients fees and costs, which is not what we've alleged. And they say they aren't recoverable on several of these causes of action. What we are seeking to recover is what we've had to pay in settlement, plus fees and costs. And it will establish what those actual damages are, which is the reason we want you to withhold ruling until after he renders his order.

THE COURT: Well, I guess -- I'm having a little bit of trouble getting around my head how that would be impacted at all if the statute of repose in particular applies.

MR. JOHNSON: I don't think it does.

THE COURT: In no event would they be responsible for those costs.

MR. JOHNSON: Your Honor, I would agree with you as to those two positions. The reason I'm asking you to stay it is that if you don't rule in their favor on those two issues, it becomes relevant to the other issues.

THE COURT: Well, let's go forward on their motion to dismiss until I've concluded it doesn't make any sense to me otherwise; how about let's go that route?

MR. JOHNSON: That's fine with me, Your Honor.

THE COURT: Now, Mr. Rush Smith is here. Mike

Baxley, who is making his first -- I think first post-judicial appearance. And Elizabeth Warner is also present for Santee Cooper. So I have got the great privilege of putting Mr. Baxley on the spot, but I assume that Mr. Smith is going to do all the argument unless and until I can drag Mr. Baxley in on a relevant question. Is that how y'all propose to do this, or are you going to actually enlighten me in some respects on this?

MR. BAXLEY: This is Mike Baxley. What we would ask you to do, Your Honor, is Rush will argue our main motion. And then we assume Mr. Johnson will respond. And then I would ask the privilege of a reply.

THE COURT: All right. Mr. Smith, because you led with it, it's your best argument, it's certainly the one I think we need to discuss first, is the statute of repose, the statute of limitations.

MR. SMITH: Yes.

THE COURT: I usually have a brief metaphysical moment in time where I understand the application of the statute of repose as opposed to statute of limitations. So I read a little bit on it again in anticipation of this, so let's go with that before I forget what I know.

MR. SMITH: Yes, sir. Those two are the ones that we had planned to lead with, because we do believe that they dispose of the case.

On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with the plaintiff and find that the 13-year period applied, then the complaint would be dismissed in part.

Looking back from the filing date of January 23, 2013, the 13-year cutoff, if you will, is January 23, 2000. So all claims based on construction completed before then would be barred.

And if the 8-year cutoff applies, the cutoff date is January 23, 2005. And that would bar all of the claims for indemnification. The complaint for indemnification is -- and the other claims in the amended complaint -- seek indemnification for the underlying complaint in Ferrell vs. Horry Electric case. The complaint in that case alleges defects for construction begun as early as 1988. The class period in that case concludes in 2003. I believe the class has been defined as people who became members of the Good Cents Program in the period 1998 through 2003. So with that 8-year cutoff, the entire complaint is barred. If you adopt Horry Electric's reading of the statute of repose, we believe a substantial portion of the complaint is barred.

We've argued, Your Honor, for application of the 8-year statute of repose based on a couple of cases that have applied the statute of repose that was in existence as of the time of the filing of the complaint. One of those is Hollywoods Association vs. Hiller, 392 S.C. 172. I believe it's cited in our motion. Also, In Re: Building Materials Corporation, it's a case from the Federal District Court, Judge Childs, 2013 Westlaw 1316562. In both of those cases --

THE COURT: 131 what?

MR. SMITH: 1316562. Now, in that case, the judge found that the 8-year -- analyzed the case with the 8-year statute, found in the end that the statute of repose was not available to the defendant in that case. Likewise, in Hollywoods Association, the court applied the 8-year statute in its analysis, but held in the end that because the construction had continued, the statute of repose was not available there.

But we have cited the 8-year period based on those cases that applied the 8-year period. And as we say, even if Horry Electric's reading of the statute is correct, then the complaint should be dismissed in part pursuant to the statute of repose.

Now, the statute of limitations we believe takes care of everything. The statute of repose -- the statute of

limitations is in the Tort Claims Act. It's Code Section 15-78-110. As I said, the complaint was filed January 23, 2013. And the claims in the complaint -- that's a two-year statute of limitations, by the way. And the claims that are in the complaint clearly arose far, far in advance of two years prior to the filing date of the complaint.

Under this code section, the court applies the discovery rule. As Your Honor knows, the standard is objective, not subjective. The question is not what Horry Electric actually knew, but whether it could have discovered the cause of action through the exercise of reasonable diligence.

As disclosed on the face of the Horry Electric's complaint, the cause of action adheres in the alleged failure on Santee Cooper's part to disclose the contents of a couple of letters written in 1986. Now, they sort of cry out for the application of the statute of limitations. We cited one of the seminal cases on the purpose of the statute of limitations. And it is to ensure litigation is brought within a reasonable time in order that evidence be reasonably available to the parties to try the case. And when we are talking about a 1986 letter, Your Honor, we think this case really calls out for the application of the statute.

If we look at the discovery rule and how it would

be applied in this case, there are a couple of reasons that the statute began to run and ran far sooner than two years prior to the commencement of the action. One of the reasons it's disclosed on the face of the letter is in question. They are attached to Horry Electric's complaint. They were written in 1986 by a gentleman who worked for Santee Cooper named Glen Cannon. And the contents, the subject matter of the letter, comprise references to a publication called Energy Design Update, discussions in the building community, and something called Ashraye 85 Fundamentals, 21.17. That is a citation to an engineering standard.

So on the face of the letter, the contents, the subject matter that Horry Electric claims should have been disclosed, were available in the public domain. As of 1986, Horry Electric, Your Honor, sophisticated business, it is an electrical co-op, it purchases electricity from Santee Cooper and sells electricity to its customers. It bills its customers. It interacts with its customers. It deals with its customers.

And in the process of employing the Good Cents Program -- just by way of background, the Good Cents Program was an energy efficiency program. Customers could build their homes to certain standards or specifications and qualify for a special rate. And in the course of that, Horry Electric would administer the program. And that

included inspecting customers' homes.

Now, as I said, there are two reasons that the statute ran far sooner than two years prior to the commencement of the complaint. On the face of the letters, they referred to information in the public domain. Now, could Horry Electric have learned that through the exercise of reasonable diligence? Obviously, they could have, because these are matters in the public domain.

What we have here is an interesting situation in the way the case is presented to this Court. In the underlying case, the Ferrell plaintiffs alleged that Horry Electric implemented the Good Cents Program without conducting any investigation of the program itself. The plaintiff alleged Horry Electric adopted the program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements. Defendant never performed any research regarding the program specifications and requirements.

Now, as the case cited in our briefing points out, unanswered allegations of the underlying complaint might not be dispositive of anything. But in Horry Electric's answer, Your Honor, they admitted that allegation. And that is dispositive. We ask Your Honor to take judicial notice of that answer. Taking judicial notice of a court record does

not convert this motion to dismiss to a motion for summary judgment. The case -- most recent case on that is Doe vs. Bishop of Charleston, 407 S.C. 128. By looking at the court record, the Court is not converting this motion to dismiss to a motion for summary judgment.

What do we find in the answer? Well, at Paragraph 9, Horry Electric admits that it offered to its members the Good Cents Program that was offered through the South Carolina Public Service Authority without having performed any research regarding the specifications and requirements. In other words, Horry Electric admitted no due diligence. With due diligence, it could have discovered what's on the face of the letters. And the statute began to run in 1986.

Alternatively, Your Honor, based on the pleadings, the Court can find the statute began to run in 2003, barring any complaints filed after 2005. And the reason for that lies, once again, in the allegations of the underlying complaint and in Horry Electric's answer.

At Paragraph 16 of Horry Electric's answer, the defendant admitted that in 2003, the vapor barrier requirement that is at issue in the underlying case was changed. So, based on the pleadings in the underlying case, we know that there's an allegation that the Good Cents Program at one point included a vapor barrier requirement, requiring the installation of a vapor barrier on the

interior side of the exterior walls. And we know that in 2003, that standard changed.

At that point, Your Honor, Horry Electric was on notice of the subject matter of the letters. And that is, there is an issue about vapor barriers in the walls of homes in this part of the country. And they were on notice at that point to investigate the claims. They did nothing. And we are now faced with a complaint filed some 27 1/2 -- 26 1/2 years after these letters were written. So the two-year statute of limitations, Your Honor, bars the claims that Horry Electric has asserted in this case.

Those are the first two reasons we sought dismissal, Your Honor. We are asking for dismissal of complaint with prejudice. I will say that I will take issue with Mr. Johnson's contention that this Court should delay hearing anything or delay deciding anything on the rest of our motion to dismiss because it needs the settlement agreement to establish that he's going to have what would essentially be damages in this case.

Of course, our motion to dismiss requires the Court to take as true all the allegations of the complaint. And he's alleged he's got damages. So the fact of the settlement agreement is not going to make a difference one way or another.

There's also a suggestion in his motion that the

settlement agreement would establish that Horry Electric had been exonerated of any liability. But, Your Honor, based on my understanding of what the dictionary definition of exonerated is and what a settlement agreement does, settlement agreements by definition don't define whether anybody is at fault or not. They, in fact, stop short of it.

So with your permission, I will go ahead with the other parts of our argument.

THE COURT: Let me have -- is that all of your argument on the statute of limitations and statute of repose?

MR. SMITH: Unless Your Honor has some questions, yes.

THE COURT: Let's stop on those issues and hear from Mr. Johnson.

MR. JOHNSON: Your Honor, thank you. On the statute of repose, I concede that 13-year statute of repose applies. I did not concede the 8-year statute of repose applies that was enacted in 2005. As we submitted with our memorandum in opposition to the motion, the editor's notes state: Section 2 amending this action dated July 1st, 2005 applies to improvements to real property for which certificates of occupancy are issued by the county, municipality, or completion of the final inspection by local

business official after that date.

So it's our position applies only to improvements that occurred after 2005. We are not seeking to recover anything from improvements after 2005. And so we think the amended statute doesn't apply.

As to the statute of limitations --

THE COURT: Does that mean you are only looking for damages from, what, 2003?

MR. JOHNSON: In the underlying action, our exposure was for claims from 1998 to 2003. I've agree the 13-year statute would apply here, anything prior to that. So let's see, we brought --

THE COURT: It would be 2000 to 2003, wouldn't it?

MR. JOHNSON: That's correct.

THE COURT: So that would be the limit on your damages, is 2000 to 2003?

MR. JOHNSON: Correct.

THE COURT: Not '98 to 2003?

MR. JOHNSON: That's correct.

THE COURT: Y'all didn't raise this issue in your underlying case?

MR. JOHNSON: We did. They started earlier.

THE COURT: Okay.

MR. JOHNSON: The period was 13 years after '98.

THE COURT: All right.

MR. JOHNSON: The judge applied the statute to anything before that; Judge Culbertson did.

THE COURT: So you agree then that your damages, if you are allowed to prevail, are limited to 2000 to 2003?

MR. JOHNSON: Correct.

THE COURT: Okay.

MR. JOHNSON: As to the statute of limitations, I've always understood that the statute does not run until all of the elements of the claim are in existence. There was no damage incurred at any time until after the underlying action was initiated. So we would have had no damage to seek indemnification for or damage for any of the other claims we are making prior to starting to incur damages at that time. So that would be my first position.

THE COURT: Say that again. Say that again. You are saying your cause of action didn't arise until --

MR. JOHNSON: Until we had damage.

THE COURT: Until you got sued?

MR. JOHNSON: Until we got sued.

THE COURT: Well, then by definition, you didn't have any damages in 2000 and 2003. You are arguing a theory of liability on one hand with damages on the other. If your damages are a result of an act, and that act did not occur until you got sued, that seems inconsistent with the argument of statute of repose.

MR. JOHNSON: I don't think so, because until those plaintiffs brought a claim for damages for that period of time, we had nothing to sue over. Until we became exposed to damages which we are seeking indemnification, we would have had no claim for indemnification. In other words, in 2000 or 2001, 2002, 2003, there would be no -- until somebody asserts a claim against us for damages for which they say we are liable, we have no claim over to be indemnified. That didn't occur until this suit was brought, the underlying suit was brought.

THE COURT: Yeah, but, I mean, that might -- there's an argument I can see that you are trying to make, is that you didn't have -- you didn't need to be indemnified until then. But I'm not sure that the theory behind indemnification is necessarily not ripen for statute of limitations purposes until the time that you got sued. You are basically saying, we had to stand and respond to this lawsuit and it's only fair that these people reimbursed us for that, but --

MR. JOHNSON: Your Honor, isn't it a little bit like the --

THE COURT: Well, let me give you an example, maybe to make it clearer. If you had gotten sued by these -- in this class action lawsuit, and the judge would have thrown the case out because of statute of limitations or statute of

repose, or any theory, is it your position that you would still be entitled to indemnification for your attorney's fees simply because you had to stand -- that you got sued and you had to defend yourself? Even though you would have been successful in defending it and not had to pay out any damages, you would still be entitled to indemnification for attorney's fees, which is what you seem to be asking for as your damages, is attorney's fees.

MR. JOHNSON: Well, not really. I'm asking for what we are having to pay in settlement of the case plus attorney's fees and costs, which are, I believe, recognized damages for which -- recovering claim for indemnification.

THE COURT: How much are you all purporting to -- what's the settlement for?

MR. JOHNSON: The settlement agreement has actually been submitted with our motion to continue or motion to stay. And the settlement agreement establishes two funds from which class members can apply for benefits. One fund is, they can apply to -- if they're not going to remediate the damage to the house, they can apply and receive $2,000.

The other fund provides for, if they remediate the damage, they can recover up to 13,000, I believe it is. And so there's one fund that's established for $4 million and one for 2. They can't claim out of both of them.

THE COURT: So $6 million.

MR. JOHNSON: $6 million, but what is not claimed is returned to us. And, frankly, the class members, we've been amazed how few have made claims. I think there are like 130 plus who have made claims against the $2,000 fund. And then one or two that have made claims against the $13,000 fund. So the exposure will be certainly less than the money put up.

THE COURT: So you are asking for whatever the math is that just totaled up on what you asked for there, plus attorney's fees?

MR. JOHNSON: And costs.

THE COURT: And costs. And how much are you estimating you got in attorney's fees that you are asking for? Have you got that number together yet?

MR. JOHNSON: Judge, I think it's 100- to 120,000, something in that range. Now, I will tell you, the $6 million funds being put up, plaintiff's attorneys are making a claim for a fee and costs of $1 million. And, of course, the judge has got to decide what he's going to award.

THE COURT: So, all right, do the math real quick for me. On the two funds, class members have so far submitted claims totaling what out of those two funds combined?

MR. JOHNSON: Give me just a second. I think -- don't hold me to this, but I think it's around $300,000.

THE COURT: Okay. So you are basically looking at asking Santee Cooper in the end, if the settlement plays out the way that you anticipate it will right now, you want to get 120 back in attorney's fees that you've had to pay, a million dollars that the plaintiffs are going to get in your class suit, and 300,000 in damages, so roughly about 1.5 million?

MR. JOHNSON: That's correct. But they have until Friday to submit claims.

THE COURT: I understand. These numbers are subject to change. I'm just trying to get a ballpark figure as to what we are talking about.

MR. JOHNSON: We are hoping Judge Culbertson doesn't give them a million dollars in fees, but we are not going to oppose a request.

THE COURT: Okay. All right. So your theory, as I understand it, is your cause of action did not arise until you got sued and --

MR. JOHNSON: My theory is until all the elements of the claim are present, you can't sue. One of the elements is damage.

THE COURT: Well, that would be for equitable indemnification, but you've sued on other theories.

MR. JOHNSON: I think the same would apply to the other theories as well with statute of limitations. And

you've got to have all the elements.

THE COURT: Yeah, but you've got negligence. You've got civil conspiracy. You've got unfair trade practices, I'm sure. I mean, you've got a kitchen sink worth of stuff, all of which are subject to discovery rules that are in the more traditional -- well, that's why I certainly see a statute of repose being -- perhaps governing the outcome of this case, more so than the statute of limitations. And then -- so, the only other thing that does not ripen until you get this case resolved would be equitable indemnification, because I understand there's no express or indemnification agreement. Correct?

MR. JOHNSON: Correct.

THE COURT: So you might have just -- you might have jumped the gun a little bit early on equitable indemnification, because you haven't paid out anything that you are entitled to get back yet on equitable indemnification. If that's your theory, is, our damages are not complete yet because we don't know how much we've gotten paid out, then that's almost, by definition, equitable indemnification that's not ripe.

MR. JOHNSON: Your Honor, I would respectfully differ. I think we are entitled to -- if we have a valid claim for equitable indemnification, then we can recover our attorney's fees and costs even if we had no other expense.

But since we have other expenses, all three --

THE COURT: I don't think maybe you understood what I said. You don't have a final number yet that you've had to pay out. And until you get a number that you have had to stroke a check for, I don't think you have a valid claim for equitable indemnification. Because equitable indemnification says, look, it's only fair that they pay us back because we had to pay this out. Well, you haven't had to pay it out yet. You are real close, but you are not there yet.

MR. JOHNSON: Well, Your Honor, when I first filed this lawsuit, I had a claim for equitable indemnification. We got a motion to dismiss that said we haven't paid out any money, therefore, you don't have a claim.

THE COURT: Well, I think that's what I just said.

MR. JOHNSON: They admitted it and, of course, Mr. Smith said earlier in his argument, they admit I have damages. The fact that all of my damages as alleged in the complaint has to be accepted as true for the purposes of a motion to dismiss, and he said it doesn't matter what the judge says, we've already met that element on equitable indemnification. And we obviously incurred and we are entitled to recover attorney's fees and costs. We are entitled to get that. And I don't think the fact that our damages aren't finalized close the claim. Because we were

speaking about the statute of limitations, and I told you my first position on that.

I would further point out to the Court that the statute of limitations is an affirmative defense. It has to be proved and -- pled and proved. They have not filed an answer. I would take the position that until they do and raise the defense that's not before the Court, but on a 12b -- on a motion to dismiss, the Court -- or the party submits material in addition to the complaint, the Court can convert it to a motion for summary judgment.

We have submitted as part of our motion for summary judgment and part of -- and we would ask their motion be converted that essentially makes up elements of our claim. They have not allowed us to take discovery in this case by filing a motion for protective order, but we took discovery in the underlying action.

And in that discovery, we took a 30(b)(6) deposition from Santee Cooper. And Santee Cooper's witness testified and admitted that the claim was -- that Santee Cooper knew about this problem with the vapor barrier causing a moisture problem in 1988.

THE COURT: I thought it was '86. Are you sure it's not '86?

MR. JOHNSON: Her testimony -- the letters are written in -- you are right, '86. They knew of the problem

in 1986. She admitted that Santee Cooper did not disclose the ventilation to the co-op, so that co-ops could make their determination as to what to do. Of course, the co-ops are, as far as I know, the only customers of Santee Cooper, and they've been customers for decades, and that Santee Cooper never came forward and told them.

The other thing she said was that it was the kind of information that Santee Cooper should have given. And it was a federal right and fair thing to do for Santee Cooper to have told the co-ops about this at the time.

So, you've got Mr. Smith arguing that the letters showed that we could have figured it out ourselves. You've got her testimony and the testimony of Horry Electric 30(b)(6) who said that they relied upon Santee Cooper with respect to the requirements of the program. So at a minimum, between the two, you have a lawyer arguing they should have known. You've got witnesses who have given sworn testimony saying to the contrary. We would say it is premature to -- if you convert it to amounts outside of the complaint, you should deny the motion.

THE COURT: Well, let me ask you this. Is the letter written in 1986 the basis for the bad act behind all of your other causes of action?

MR. JOHNSON: The letters written in 1986 are the basis for our claim. They never disclosed that information.

They have a responsibility to disclose it.

THE COURT: Okay. And they didn't. I think everybody admits or -- admits that; they didn't. So that's an undisputed fact. And if that's the basis of your liability, then I think you are out because of the statute of repose. Because, basically, as I understand the statute of repose, the theory behind it, the defendants will say, well, it's not fair for us to have to come in and defend something that's so old. The plaintiffs will say that you got away with it, a bad act.

But bottom line, if that's the bad act, and it occurred in 1986, and all of your theory of liability for all of your other causes of action flows from that, then you are out because of the statute of repose no matter when you discovered it. Because the theory behind the statute of repose is there's just got to be some cutoff on this. And even if you didn't discover it until yesterday, the fact that that bad act took place in 1986 is just -- the legislature said 8 years, 13 years, that's just so long ago that we are not going to allow you to sue them over it.

MR. JOHNSON: Your Honor, respectfully, I believe the statute of repose relates -- or applicable 13-year statute relates to improvements to real estate, not bad acts.

THE COURT: Well, we are talking about improvements

to real estate that you should have known -- they should have told you not to install vapor barriers, presumably, and they knew that back as early as 1986.

MR. JOHNSON: Your Honor, I don't think 1986 -- I don't think a bad act then has to do with construction that took place in '98 for a 2003. It has to do with improvements to real estate in this 13 years after, within 13 years of the suit being filed. So I don't think you reach back before that to look at a program. You are looking at improvements to real estate, would be my response.

THE COURT: Okay.

MR. JOHNSON: But, Your Honor, as to the statute of limitations, we think if you convert it, it becomes obvious disputes between the plaintiff's and the defendant's position.

THE COURT: Stop. The court reporter couldn't understand what you were just saying.

MR. SMITH: I think I've addressed the statute of limitations and given you my position as set out in my memorandum.

THE COURT: Okay. Well, who is responding now, you or Mr. Baxley? I don't know what etiquette is, because it seemed to me it would be appropriate to call you Judge Baxley, because that's an earned title. But, you know, if I

were in front of a jury, I would definitely call you Mr. Baxley, because I think that might give them an unfair -- but, Judge Baxley, would you like to respond?

MR. BAXLEY: I'm just a lowly lawyer and I would prefer Mike Baxley.

And may I step and speak to Mr. Smith a moment, Mr. Johnson, and then we will be right back with you? Just one moment.

MR. JOHNSON: Sure. Sure.

(Whereupon, a brief recess is taken.)

MR. BAXLEY: Thank you for that courtesy, Your Honor. And, Mr. Johnson, let me ask, can you hear me?

MR. JOHNSON: I can hear you fine.

MR. BAXLEY: Our court reporter, Ms. Andersen, your back is towards me, ma'am, but can you hear me?

THE COURT REPORTER: Yes, I can. Thank you.

MR. BAXLEY: Judge, what I would like to do is speak briefly, if I may. And, first of all, I want to pose an objection. We did not break into Mr. Johnson's comments, because, number one, the acoustics are somewhat difficult on all of us, but, secondly, we let him finish his argument. But we have not made a motion for summary judgment. This is a motion to dismiss under Rule 12B. We have not converted it to a summary judgment issue.

Mr. Johnson went into some length on some evidence

which was apparently adduced in the case below. And we would respectfully object to that being part of this determination because we have asked for a judgment on the pleadings.

And what I respectfully believe has happened here is that Mr. Johnson has jumbled his claims for negligence and breach of good -- duty of good faith and fair dealing, his claim for breach of warranty, civil conspiracy, with his claim for equitable indemnity. And we respectfully stand on Mr. Smith's arguments that the statute of limitation and repose would prevent all of those other claims, other than the equitable indemnity claim which may evolve as a result of damages accruing and the equitable indemnity claim accruing as of the settlement in this case. But all the other claims we respectfully believe have long ago lost any vitality due to the repose and limitation statutes.

And so if you let me, I would just like to briefly discuss the equitable indemnity claim, if I may. First of all, I should say, should have begun by saying, this is a privilege. This is the first time in 15 years I've stood on this side of the bench. I count it an honor to be back in the courtroom, and your courtroom specifically, Judge Young. And thank you for hearing us today.

We are in business court here. And we've all heard the chief justice say it a dozen times, that the business

court was established because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation. And, respectfully, I will submit to you this case, and again specifically equitable indemnity claim here, we believe cries out for an early conclusion for some of the reasons that were just argued so we can all move forward.

THE COURT: Whatever you are doing over there, it's rattling and sounds like rattling papers. You must be on speaker phone.

MR. JOHNSON: I apologize. I will take my hands off. I didn't realize.

THE COURT: That's okay.

MR. BAXLEY: Paragraph 12 of the complaint in the underlying case, which the complaint in the underlying case is attached to the pleadings in this specific case we are here before today as Attachment D. And Paragraph 12 is instructive. And this, again, on the issue of equitable indemnity -- I should say, actually, the complaint below is instructive. That litigation was brought by Nate Fata, who is a well-respected attorney here in the 15th Circuit who specializes in class actions and class actions against governmental entities, which Santee Cooper is. And you will

note in that complaint that Santee Cooper was not a party to the underlying action. And there's a reason for that. There's no need to get into the specifics of that. I will just point out that we are not a party.

And, of course, plaintiff's counsel would have a fiduciary duty, an advocacy duty, and a representative duty to name a culpable party. And Santee Cooper was not named in the case below. So we are here today on what really essentially is a subrogation claim.

And when you talk about equitable indemnity, it's appropriate to look at who are the parties in interest under Rule 17? Mr. Johnson referred earlier to the settlement agreement which is going to be heard by Judge Culbertson this Friday. And in that settlement agreement, there is a paragraph, and I believe it's Paragraph 4, which states that Federated Insurance Company, which is the carrier for Horry Electric Cooperative, has funded the settlement. So I will just point out with regard to equitable damages, Horry Electric Cooperative may not yet have any skin in the game, and that Federated may be the Rule 17 party in interest.

Paragraph 9 of the plaintiff's complaint in this case refers to the two letters we referred to from October 1986, as what I will call smoking guns in this case, that they were hidden by Santee Cooper, they were not disclosed. And I just simply would say to you that to go back 28 years

and to allege liability on some document of that antiquity violates every tenet of fairness and due process in these courts, Your Honor.

And, specifically, as Mr. Johnson noted, we have not answered, but when we answer, we will also raise a defense of laches. Because it's almost impossible to defend on an equitable indemnity claim something that happened 30 years ago.

And there's precedent for this. Mr. Johnson argued that you have to first file your answer, assert an affirmative defense, and then raise a dispute that affirmative defense. So you can't win or have a case dismissed on affirmative defense on a 12(b)(6) motion. And I had a copy here for Mr. Johnson. I've given a copy to our court reporter of some precedent right on point, which is from the Fourth Circuit. There's no state case. But it's Goodman vs. Praxair, Inc. And I have a copy for the Court, which may be found at 494F 3rd, 458, a 2007 case.

THE COURT: 458?

MR. BAXLEY: Yes, sir, 494F 3rd 458. That was a suit over $627,000 on a breach of contract where the plaintiff put in his complaint that the money had been due and owing since December 19th of 2000, but he filed a suit over three years later. And the court dismissed it because in the face of the complaint was an affirmative defense that

could appropriately be discerned, and granted the affirmative defense and granted the 12(b)(6) motion.

And what the court says is that where facts sufficient to rule on an affirmative defense are alleged in the complaint, the defense may be reached by a motion to dismiss filed under Rule 12(b)(6).

And, respectfully, when he alleges a 28-year-old document is the basis for all of this later litigation against Santee Cooper, then the doctrine of laches would apply and prevent that case from going forward.

And then finally, Your Honor, I would just simply -- if you will just permit me. We are here today -- go back to where I started. We are here in business court. And this court does not occur in a vacuum. Santee Cooper has substantial business interests, as does Horry Electric Cooperative, I'm sure. The newspapers are full of the fact that we are in the business of building nuclear plants at this time. It's highly capital intensive. It's highly leveraged. That's why we are in the business court, for one example.

In order to build a nuclear plant, you borrow money. The way the state agency borrowers money is by the issuance of bonds. When the bond council comes and take a look at what's going on with Santee Cooper, they look to see whether there may be pending litigation, contingent

liabilities, and other things that may bear upon Santee Cooper's fiscal responsibility. And if the bonds are downgraded, then the two million ratepayers for Santee Cooper, the thousands who hold those bonds, the 1,700 employees, and all of those here today, are held hostage by what's really an unfair and inappropriate, I would respectfully say, due process violation to go forward on this theory of liability.

So for these reasons, Your Honor, we ask you to dismiss this case, including the equitable indemnity claim, with prejudice, and end this matter now out of fairness to the parties.

And thank you, Your Honor. I will be glad to answer any questions that you may have.

THE COURT: Well, let me ask you this. If I were to agree that all except the equitable indemnity are ripe for ruling and that statute of repose applies that bars them from going forward, wouldn't the dismissal of the equitable indemnity claim with prejudice be improper? Wouldn't it need to be without prejudice so that then if they have to pay out, they could revive that claim after they've paid out money, whether or not they would be entitled to be reimbursed by you because of, say, problems with -- for instance, they weren't exonerated and the application of the principle would not allow them to recover?

But to dismiss an equitable indemnification with prejudice, I'm not sure that would be the right thing to do, simply because they haven't had -- they haven't fully funded a settlement yet.

There's a certain amount of discomfort that any court has where one party settles a lawsuit and then says to somebody else, you've got to pay. And I agree that you've got some issues about why weren't we brought into that, and if we were -- if we are going to be responsible, maybe we should have been in there. Because, again, they don't really have any skin in the game, one, because of insurance, but, two, on the fundamental principle of you settle a claim and ask somebody else to pay for it. I think that ought to be raised on another day. Dismissal without prejudice would be, I think, more appropriate.

MR. BAXLEY: Well, we respect your decision, Your Honor. And we, of course, will respond appropriately. And thank you for hearing us today.

MR. JOHNSON: Your Honor, can I make just one brief point on the statute of repose?

THE COURT: Sure.

MR. JOHNSON: The motion to dismiss based upon the statute of repose is to dismiss based upon the 8-year statute. There's no motion to dismiss addressing the 13-year statute. As I said, the statute itself, the

comments, the editorial comments, that only applies after constriction after 2005. My position would be that they have not raised in their motion the application of a 13-year statute. And you would be -- even if you -- I certainly hope you don't grant them any relief, but to the extent you will grant relief upon the 13-year statute, that's not a matter that's been raised by the defendant.

If you look on Page 4 of their motion, that's where that's addressed.

THE COURT: What about that?

MR. SMITH: Your Honor, the statute is the statute. It's 15-3-640. I believe the argument I'm hearing is one of lack of notice. The plaintiff actually asserted that the 13-year statute applies. Therefore, there's no surprise. He's not caught off guard. And if the 13-year statute applies, it's rooted in the same code section. That's simply a matter of whether you apply the statute as amended in July of 2005 or as it existed before. It's not like there are two separate statutes and two parts of the code that Horry Electric had no notice of the 13-year statute. We've raised the issue.

THE COURT: All right.

MR. JOHNSON: Your Honor, I would just ask you to read Page 4 and 5 of the memo. I think it's clear what they move for.

THE COURT: Well, it's an argument in a memo that's not in the pleadings, correct?

MR. JOHNSON: It's not in the motion, correct.

THE COURT: Okay. But it's not in their -- all right -- in their motion. The body of the motion doesn't say the 8-year one applies. It just says statute of repose?

MR. JOHNSON: No. Actually, Judge, I believe it does. Statute of repose bars claims arising over eight years prior to commencement of the action. That's what their motion on Page -- their motion listed to the amended complaint on Page 4 and 5 --

THE COURT: Well, in any event, you would amend that, I'm sure?

MR. SMITH: We hereby do so, to the extent necessary, move in open court that the motion be amended to assert the statute as argued by Horry Electric, yes, sir.

THE COURT: Ms. Warner, we haven't heard from you. Would you like to say anything?

MS. WARNER: Your Honor, I appreciate your time and consideration. I will not belabor, but it's always an honor to appear before you.

THE COURT: Thank you. Well, I think that the issue, as I understand your argument, is that this all arose because of actions that occurred prior to the 13-year statute of limitations, which is what our rule applies, well

in excess of it. And it all arises out of their knowledge of a condition or -- what would be the exact phrase I'm looking for? Santee Cooper's knowledge that there may be problems with a particular form of -- of a requirement to put a vapor barrier in place. And it all flows from there.

No matter when the house got constructed, the bad act, as I understand the theory of the plaintiff's case, the bad act took place back in 1986. And so all of the claims, other than equitable indemnity, are barred by the statute of repose.

I might also note that there is no cause of action for breach of a good faith duty to deal -- that's implied in a breach of contract. And there is no breach of contract placed here. So that would be dismissed on those grounds as well. But as far as the negligence and all the others, those are all arising out of that bad act of not disclosing, as I understand the arguments, theories and things I've read.

So the statute of repose, the 13-year statute of repose would bar the plaintiff's claims except for equitable indemnity, which I find it's premature for you to have brought that claim at this time, because you haven't paid out anything that you are entitled to be reimbursed for. So I will dismiss that, the equitable indemnity without prejudice. But all the other ones are dismissed with

prejudice. I heard you rattling papers and you started to speak, I think.

MR. JOHNSON: I did, but I didn't want to cut you off.

THE COURT: That's okay.

MR. JOHNSON: Judge, were you considering matters outside of the pleadings in doing this?

THE COURT: I don't think so.

MR. JOHNSON: Matters outside of the pleadings reflect the affidavit or the testimony of the Horry -- excuse me, the Santee Cooper 30(b)(6) that the vapor barrier was not put in initially as a requirement for construction. And they did not occur and did not become a requirement until 19 -- I will look and see if I can find what she said. Give me a moment, if you can.

If you are considering matters outside of the pleadings, it would move the date up, I believe.

THE COURT: I'm only considering what you told me your theory of liability was, and that it flows from the bad act of not disclosing when they had a duty to disclose; for instance, on negligence, conspiring with another party to not tell them about this knowledge that they had. All of those things are what you've told me. At least that's what my questioning was, to get to what exactly your theory of liability was. And it all seemed to go back to this 1986

bad act.

MR. JOHNSON: And, Your Honor, I think I found what I was looking for, and I don't think it matters. I withdraw my argument. They didn't make it a requirement until 1991, but it would still be under your ruling.

THE COURT: It would still be covered by the statute of repose?

MR. JOHNSON: Right, under your ruling.

THE COURT: No matter what your -- no matter when these acts or the particular act took place, your theory is they should have told you because they knew. And the only two dates that I'm hearing that they knew that they should have told you, would have been '86 when they had knowledge of it through these letters, or '91 when they made it a requirement, which was a continuing, presumably, bad act every day. But that's when the bad act took place that triggered liability, would be the date of the discovery or this letter in 1986 or the requirement that they implement this in 1991. From that point on, their liability was established, and is well passed the statute of repose.

So those are all dismissed with prejudice. But your equitable indemnification, if you have any theory which you can recover, it would be that one. But that will just have to be decided another day, and you can refile. It's dismissed without prejudice.

MR. JOHNSON: Yes.

THE COURT: And then a court can flesh out whether or not you are entitled to it.

MR. JOHNSON: Correct.

THE COURT: And if you want me back to hear that one, well, then just file a new lawsuit.

MR. JOHNSON: I may.

THE COURT: You probably want it in front of any other judge at this point.

MR. JOHNSON: Do what you think is right. Pleased to appear before you any time.

THE COURT: I'm going to ask Mr. Smith to prepare an order for me; send it to you. Make sure that -- I know you don't agree with it -- but that you think it's in proper form, and then forward it on to me in Charleston, because --

MR. SMITH: Yes.

THE COURT: After Friday, I'm not traveling the rest of the year at this point. So thank you so much. And I'm sorry you made the wrong trip. Although, you know, Charleston is a nice place to have to spend the day.

MR. JOHNSON: Well, I apologize again for that. Thank you for doing this with me by phone.

THE COURT: Okay. Good luck. Have a safe trip back.

MR. SMITH: Thank you.

MR. BAXLEY: Thank you, Mr. Johnson.

MR. JOHNSON: Okay. Thank you.

(Proceedings are concluded.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 12th day of August, 2014, at Charleston, Charleston County, South Carolina.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2014-CP-26-6571
Plaintiff,	)	
vs.	)	
South Carolina Public Service Authority,	)	**MOTION TO DISMISS COMPLAINT**
Defendant.	)	

DEC 19 AM 8:18
CLERK OF COURT

Defendant, South Carolina Public Service Authority ("Santee Cooper"), moves to dismiss the Complaint of Plaintiff, Horry Electric Cooperative, Inc. ("HEC"), pursuant to Rule 12(b)(6), SCRCP, on the grounds that (a) the statute of repose bars the Complaint, regardless of whether the 8-year or 13-year period of repose applies; (b) the doctrine of laches bars the Complaint; and (c) HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper. This motion is based on the pleadings and the attached exhibits, of which the Court may take judicial notice. HEC has failed to state a cause of action and the Complaint should be dismissed for the reasons stated herein.

Background

HEC is suing Santee Cooper because HEC was sued by some of its customers in *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Montorio* action"), and HEC thereafter settled the case as a putative class action pursuant to an agreement entered into by and among HEC, its insurer, and plaintiffs Tammy Vance and David Montorio. (Compl. ¶¶ 9, 13, 14, and 15.) The *Montorio* complaint against HEC alleged, among other things, that the plaintiffs built new homes in accordance with the "Good Cents" standards in HEC's

"New Good Cents Program." (*See* Exhibit A, *Montorio* Compl. ¶ 7.) The *Montorio* complaint did not name Santee Cooper as a defendant[1] or otherwise attempt to impose liability on HEC because of the conduct or acts of Santee Cooper.

HEC's settlement of the *Montorio* action is embodied in a court-approved settlement agreement, attached hereto as Exhibit B, of which this Court may take judicial notice. (Exhibit B, Final Approval Order.) The parties to the agreement were plaintiffs Tammy Vance and David Montorio, HEC, and HEC's insurance carrier, Federated Rural Electric Insurance Exchange ("Federated"). (*See* Exhibit C, *Montorio* Settlement Agreement at 1.) Ronnie Ferrell, identified as a plaintiff in the caption of the underlying case, was not party to the settlement agreement, having been found unsuitable as a class representative. (*See* Exhibit D, Order Granting Class Certification at 7.)

This action was filed on October 7, 2014. This is the second action for indemnification filed by HEC against Santee Cooper. The first, Civil Action No. 2013-CP-26-0488, filed on January 23, 2013, is currently on appeal after having been dismissed upon Santee Cooper's Rule 12(b)(6) motion. (*See* Exhibits E and F, Compl. and Amended Compl., Civil Action No. 2013-CP-26-0488.)

HEC has conceded that its claim for indemnification is barred by the statute of repose for homes built before January 2000. (Exhibit G, Mot. Dismiss Tr. at 14:7-19, Civil Action No. 2013-CP-26-0488; Exhibit H, Initial Brief of Appellant at 12.)

The homes of David Montorio and Tammy Vance, with whom HEC elected to enter into the class-action settlement agreement, were substantially completed prior to

[1] The *Montorio* plaintiffs did allege that Horry Electric "adopted the [Good Cents] Program from another electrical service provider without performing any of its own due diligence or research" regarding program requirements and specifications. (Exhibit A, *Montorio* Compl. ¶ 12.)

January 2000. Public records of which this Court may take judicial notice disclose that the deed and mortgage for the David Montorio property, located at 303 Worthington Circle, Myrtle Beach, South Carolina, were recorded on February 8, 1998, and that the deed and mortgage for the Tammy Vance property, located at 326 Worthington Circle, Myrtle Beach, South Carolina, were recorded on October 31, 1997. (*See* Exhibits I-L, Deeds and Mortgages for the Montorio and Vance properties.)

Rule 12(b)(6) Standard

Santee Cooper denies the material allegations of the Complaint, including but not limited to the contentions that it wrongfully concealed information from HEC and breached a duty to or injured HEC, as well with the suggestion that the vapor barrier standards of the Good Cents program were defective. A motion to dismiss pursuant to Rule 12(b)(6), however, is based on the law and the allegations set forth in the complaint, and for purposes of the motion, the court accepts all well-pled facts as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). Additionally, in ruling on a motion to dismiss, the court may take judicial notice of facts which may be verified by reference to the public record, *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256-57, 321 S.E.2d 194, 197 (Ct. App. 1984), facts established in its own records, files, and proceedings, *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011), and statements in former opinions in a prior action of the same case. *Id.* Doing so will not convert the motion to dismiss to a motion for summary judgment. *See, e.g., Doe v. Bishop of Charleston*, 407 S.C. 128, 135, 754 S.E.2d 494, 498 n.2 (2014), *reh'g denied* (Mar. 6, 2014) ("The trial court's reliance on transcripts and court orders in the underlying class action did not convert the motion to one for summary judgment.").

Grounds for Dismissal of Complaint

1. HEC's Complaint is barred by the statute of repose.

The construction statute of repose bars claims arising from allegedly defective construction substantially completed more than a certain, specified period of years prior to commencement of the action. S.C. Code Ann. § 15-3-640. HEC has conceded that, pursuant to the statute of repose, Santee Cooper has no liability for construction that was substantially completed before the year 2000. (Exhibit G, Mot. Dismiss Tr. 14:7-19, Civil Action No. 2013-CP-26-0488.) Both of the settling plaintiffs in the underlying action, David Montorio and Tammy Vance, completed construction of their new homes before 2000, as evidenced by deeds and mortgages filed in 1998 and 1997. (Exhibits I-L, Deeds and Mortgages for the Montorio and Vance properties.) Accordingly, HEC's claim for equitable indemnification is barred by the statute of repose, regardless of whether the 8-year or 13-year period of repose applies.

Since 2005, the statute of repose has specified an 8-year period of repose, barring actions filed more than eight years after substantial completion of construction. *See* S.C. Code Ann. §§ 15-3-640 (barring "actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property" if brought more than 8 years "after substantial completion of the improvement"); 15-3-640(4) (including within scope of statute actions "to recover damages for economic or monetary loss"); and 15-3-640(6) (including within scope of statute actions for "indemnification for damages sustained on account of an action described in this section"); *see also Posey v. Bldg. Materials Corp. of Am. (In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.)*, MDL No. 8:11-mn-02000-JMC, CA No.: 3:11-cv-02784-JMC, 2013

U.S. Dist. LEXIS 44137, at *12 (D.S.C. Mar. 27, 2013) (finding complaint filed in 2011 based on shingle replacement in 1999 was "well beyond the eight-year statute of repose," but allowing claim to proceed because plaintiff showed repose period had been extended by certain warranties); *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993), *quoted in Florence Cty. Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Ct. App. 2002) ("[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.").

Prior to its amendment in 2005, the statute specified a 13-year period of repose. S.C. Code Ann. § 15-3-640 (1986); *see also* 2005 S.C. Acts 27 (H.B. 3008) (implementing the eight-year statute of repose).

Regardless of which period applies, the statute of repose bars HEC's Complaint, which was not filed until October 7, 2014, because construction of the homes of David Montorio and Tammy Vance, the class representatives who were parties to the settlement agreement that allegedly gives rise to the indemnification claim, was substantially completed more than thirteen years prior to the filing of the Complaint. Mr. Montorio's new-home construction was substantially completed by February 2, 1998, when the deed and mortgage for his property were recorded—more than 16 years prior to the filing of Complaint in this action. (*See* Exs. I-J, Montorio Deed and Mortgage.) Ms. Vance's new-home construction was substantially completed by October 31, 1997, when the deed and mortgage for her property were recorded—almost 17 years prior to the filing of the Complaint in this action. (*See* Exs. K-L, Vance Deed and Mortgage.) Accordingly, HEC's Complaint is barred, regardless of whether the 8-year period or the 13-year period

applies. *See, e.g., Florence County School Dist. No. 2 v. Interkal, Inc.*, 348 S.C. 446, 559 S.E.2d 866 (Ct. App. 2002) (statute of repose barred contribution action filed more than 13 years after substantial completion of allegedly defective construction).[2]

2. **HEC's Complaint is barred by the doctrine of laches.**

Apart from the statute of repose, the action is barred by the doctrine of laches. "'Laches' is defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.' . . . Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must show prejudice." *Gordon v. Drews*, 358 S.C. 598, 612, 595 S.E.2d 864, 871 (Ct. App. 2004) (internal citations omitted).

HEC premises its action on conduct that occurred in the mid-1980s (Compl. ¶¶ 3-8) and on construction that occurred as early as 1988. (*Id.* ¶¶ 11 and 13 (referring to the *Montorio* action)). Because Santee Cooper is prejudiced by the various delays and omissions associated with HEC's claim for indemnification, the doctrine of laches bars the action.

First, Santee Cooper is prejudiced insofar as HEC attempts to premise its claims on evidence of what parties knew or did not know, and communicated or failed to communicate, in the mid-1980s—so long ago that access to relevant documents, witnesses, and reliable recollections makes the fair adjudication of the claims impossible. HEC alleges that it adopted the Good Cents Program offered by Santee Cooper in 1987. (Compl. ¶¶ 3-4.) HEC alleges that Santee Cooper knew of issues with the use of vapor

[2] The same result would obtain even if the January 2013 filing date of HEC's previously filed action for indemnification were used in the analysis. Moreover, as the complaint in the *Montorio* action was not filed until February 9, 2011, it appears that HEC could have successfully asserted the statute of repose in that action as well. *See infra* pp. 7-10.

barriers in coastal areas and failed to inform HEC. (*Id.* at ¶¶ 6-7.) These allegations are based on letters written by a Santee Cooper representative in October 1986, as evidenced by the complaint in HEC's prior action against Santee Cooper, Civil Action No. 2013-CP-26-0488. (*See* Exhibit E, Compl. filed January 23, 2013, Civil Action No. 2013-CP-26-0488, ¶ 6 and Exhibits C and D thereto; *see also* Exhibit F, Am. Compl. with Exhibits.) HEC admitted in the *Montorio* action that it offered the Good Cents program to its customers "without having performed any research regarding the specifications and requirements of the Good Cents Program as offered by the South Carolina Public Service Authority." (Exhibit M, *Montorio* Answer ¶ 9.) Presumably, HEC never conducted any research on the Good Cents specifications in the 24 years between adoption of the program and the filing of the *Montorio* complaint. Had it done so, it could have located the articles and concerns contained in the 1986 Santee Cooper letters. This extremely long delay prejudices Santee Cooper's ability to defend itself. *See Richey v. Dickinson*, 359 S.C. 609, 613, 598 S.E.2d 307, 310 (Ct. App. 2004) (applying laches to dismiss a claim arising out of an incident that occurred eleven years prior to the assertion of the claim because the defendant would be materially prejudiced by the lack of evidence still in existence).

Second, Santee Cooper is prejudiced because HEC failed to advance effectively the statute of repose in the *Montorio* action. The Court may take judicial notice of the record in the *Montorio* action, which shows that HEC failed to prosecute the statute of repose, twice failing to appear for a hearing, and then, after finally litigating the issue, HEC failed to reduce the statute of repose issue to judgment:

- On May 27, 2011, HEC filed a motion for summary judgment based on the statute of repose. (*See* Exhibit N, 5/27/11 Mot. Summ. J.)

- On August 29, 2011, the court entered a Form 4 Order (filed September 1, 2011) denying the May 27, 2011 motion without prejudice because HEC failed to appear for the hearing. (Exhibit O, 9/01/11 Form 4 Order.)

- On September 28, 2011, HEC filed a motion seeking summary judgment on the grounds that the statute of repose barred the action and a prior class action settlement included a release of claims that prevented some class members from obtaining relief. (*See* Exhibit P, 9/28/11 Mot. Summ. J.)

- The September 28, 2011 motion was denied by order dated August 13, 2012, for failure to prosecute, because HEC failed to appear for the hearing after having received notice. (Exhibit Q, 8/21/12 Form 4 Order.)

- On August 17, 2012, HEC filed yet another summary judgment motion, this one duplicating the motion filed on September 28, 2011, seeking summary judgment on the basis of the statute of repose and the prior class action settlement. (Exhibit R, 8/17/12 Mot. Summ. J.)

- On August 21, 2012, the court in the *Montorio* action entered an order (filed August 28, 2012) granting class certification. (Exhibit D, Order Granting Class Certification.) The class certification order provided that HEC could assert the statute of repose against certain class members. (*Id.* at 8.)

- A Form 4 Order entered November 7, 2012, and filed November 26, 2012, indicates that HEC's August 17, 2012 motion for summary judgment was granted in part and denied in part, with a formal order to follow by Attorney Pope Johnson. (Exhibit S, 11/26/12 Form 4 Order.) The public index does not reflect entry of a subsequent formal order. (*See* Exhibit T, Public Index, Civil Action No. 2011-CP-26-01266.)

It appears that HEC reacted to the class certification order by opting to pursue its purported indemnification claim against Santee Cooper rather than pursue the statute of repose defense against the plaintiffs. On September 20, 2012, HEC moved for leave to file a third-party complaint against Santee Cooper. (*See* Exhibit U, Mot. for Leave to File Third Party Compl.) From the public index, it appears that HEC never addressed, either in a formal order or by subsequent motion, the effect of the statute of repose on the class representatives—even though the Form 4 Order granting HEC's August 17, 2012 motion for summary judgment indicates that a formal order was to be prepared by HEC's

counsel, and even though the class certification order allowed for the assertion of the statute of repose. Whatever the reason, HEC's failure to pursue the statute of repose effectively in the *Montorio* action prejudices Santee Cooper now.

Third, Santee Cooper is prejudiced because it appears that HEC entered into a settlement agreement with persons whose homes were substantially completed more than 13 years prior to the commencement of the *Montorio* action. As detailed above, the public record indicates the dates upon which the homes of Tammy Vance and David Montorio were substantially completed. Tammy Vance's deed and mortgage were recorded on October 31, 1997, which is more than 13 years and 3 months prior to the filing of the *Montorio* action; and David Montorio's deed and mortgage were recorded on February 2, 1998, which is 13 years and 1 week prior to the filing of the *Montorio* action. Therefore, it appears that the statute of repose barred the *Montorio* action against HEC—yet HEC nevertheless chose to enter into a settlement agreement with Mr. Montorio and Ms. Vance.

A putative class representative whose claims are barred by a statute of repose or statute of limitations is not an adequate class representative, and his or her claims are subject to typicality challenges also insofar as such a defense applies. *See Doe v. Chao*, 306 F.3d 170, 184 (4th Cir. 2002) (finding that denial of class certification was appropriate where class was drafted without regard to statute of limitations, so claims of named representatives would be atypical of those of potentially time-barred class members); *see also Hill v. W. Elec. Co.*, 672 F.2d 381, 389 (4th Cir. 1982) (discussing effects on outcome and adequacy of representation if class representative's claim is demonstrated to be meritless). HEC appears not to have raised any objection to the

adequacy of representation by Mr. Montorio and Ms. Vance. (*See* Exhibit D, Order Granting Class Certification at 8 ("Here, there is no argument that Plaintiffs Vance and Montorio will not fairly and adequately protect the interests of the class . . . .").) Santee Cooper is prejudiced by HEC's various delays and its failure to effectively assert the statute of repose.

Now HEC turns to Santee Cooper to seek indemnification for attorneys' fees and other costs and expenses incurred in the settlement of the action. Under the circumstances of this case, however, HEC's various delays and omissions greatly prejudice Santee Cooper, calling for application of the doctrine of laches.

3. **HEC's Complaint fails to allege facts sufficient to constitute a cause of action for equitable indemnity.**

While HEC makes the conclusory assertion that it is without fault and was sued only on a theory of imputed liability, this is not a well-pled factual allegation but is instead an unsupported legal conclusion. Consequently, the Court need not accept it as true. *See Morrow Crane Co. v. T.R. Tucker Const. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988) (stating that, in ruling upon a motion to dismiss, the trial court only must accept "all *well pled facts* to be true." (emphasis added)). Because HEC has failed to plead facts showing that it is free from liability and its admissions establish that it was in fact guilty of the omissions of that afford the basis for liability in the underlying suit, HEC cannot state facts sufficient to constitute a cause of action for indemnification against Santee Cooper.

The pleadings and exhibits show that the *Montorio* plaintiffs do not premise their claims on imputed liability; the *Montorio* complaint makes no claims or allegations about Santee Cooper's conduct but is instead predicated on HEC's alleged wrongdoing. "In

order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). In addition to a special relationship, the party seeking indemnity must establish the following elements: (1) the first party (indemnitor) was liable for causing the plaintiff's damages in the suit against the second party (indemnitee); (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it, which were eventually proven to be the fault of the indemnitor. *Fowler v. Hunter*, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010). "The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999); *see also Atlantic Coast Line R.R. Co. v Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) ("Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury." (internal quotations omitted)).

HEC's Complaint reveals an absence of factual allegations to support the essential elements of the claim for equitable indemnification. For example, it alleges no facts showing that HEC was or could be exonerated of fault. In its answer to the *Montorio* complaint, HEC admitted that it did not research or investigate the Good Cents standards before offering the program to its customers. (Exhibit M, *Montorio* Answer ¶ 9.) Under

the circumstances, HEC cannot show that it is an innocent party. *See Vermeer Carolina's, Inc.*, 336 S.C. at 61, 518 S.E.2d at 305 (stating that equitable indemnity is intended to protect an *innocent party* from being subjected to damages on the basis of another party's conduct); *see also Atlantic Coast Line R.R. Co. v Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) (holding that equitable indemnity is not available to alleged joint tortfeasors).

Conclusion

This motion is based on the pleadings, the exhibits attached hereto, the law of South Carolina, and on such further briefing, authorities, and argument as may be submitted to the Court prior to or at the time of the hearing on this motion. For the reasons stated herein and as may be more fully explained in subsequent briefing and argument, Santee Cooper respectfully requests that HEC's Complaint be dismissed for failure to state facts sufficient to constitute a cause of action against Santee Cooper.

[signature page attached]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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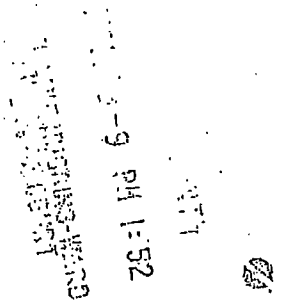
Columbia, South Carolina

12/17, 2014

Exhibit A

Montorio Complaint

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO: 2011-CP-26-12616
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated	
Plaintiffs,	SUMMONS
vs.	
Horry Electric Cooperative,	
Defendant.	



TO THE DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscribers, at the addresses shown below, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
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Surfside Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO: 2011-CP-26-1266
Ronnie Ferrell, Tammy Vance)	
and David Montorio on behalf of themselves)	
and all others similarly situated,)	
)	
Plaintiffs,)	
)	COMPLAINT
vs.)	(Jury Trial Demanded)
)	
Horry Electric Cooperative,)	
)	
Defendant.)	

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.

5. This is a matter within the jurisdiction of this Court.

FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

(i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.

(ii) properly installed friction fit batts.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

(i) properly installed Kraft or foil-faced insulation batts.

(ii) taped and painted gypsum board installed on the inside of the exterior wall.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars ($100.00). The cost of removal of the inappropriate materials is more than $100.00 ($100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

(a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;

(b) in specifying and requiring inappropriate design or materials for a coastal county;

(c) in specifying and requiring inappropriate materials in violation of industry standards;

(d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

(a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;

(b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;

(c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;

(d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

a. Actual damages;

b. Punitive damages; and

c. Any costs of this action.

Nate Fata SC Bar #9866
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Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

Exhibit B

Final Approval Order

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CASE NO. 2011-CP-26-1266**
	)	
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	**FINAL APPROVAL ORDER**
vs.	)	
	)	
Horry Electric Cooperative,	)	
	)	
Defendant.	)	

HORRY COUNTY
14 MAY 30 AM 10:20
MELANIE HUSSEY-WARD
CLERK OF COURT

WHEREAS the Court held a final approval hearing on May 30, 2014 to determine whether (i) whether the terms and conditions of the settlement agreement ("Agreement") preliminarily approved on March 3, 2014 are fair, reasonable and adequate for the settlement of all claims released by Plaintiffs against Defendant in this litigation; (ii) whether judgment should be entered dismissing the Defendant with prejudice; (iii) whether and in what amount to award incentive payments to some or all of the class representatives; and (iv) whether and in what amounts attorneys' fees and expenses will be awarded to Class Counsel.

WHEREAS the Court, having considered all matters submitted to it at the hearing and otherwise; and having previously certified the Class pursuant to S.C.R.C.P. 23, HEREBY FINDS that:

a. The Court has jurisdiction over the parties and has subject matter jurisdiction to approve the Agreement;

b. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Agreement;

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c. There were no objections to the Agreement;

d. The Settlement is the result of arm's length negotiations, taken in good faith, between counsel for Plaintiffs and Defendant; and

e. The terms of the Agreement is in all respects fair, reasonable and adequate -- in light of the risks of the litigation -- and in the best interests of the class.

ACCORDINGLY, the Agreement is hereby fully and finally APPROVED and it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Court grants final approval to the Agreement as fair, reasonable and adequate.

2. Notice to the Class including, but not limited to, the forms of notice and methods of identifying and notifying members of the Class, has been given in an adequate and sufficient manner, constituting the best notice practicable, satisfying and complying in all respects with S.C.R.C.P. 23 and due process.

3. The parties are directed to implement and consummate the Agreement according to its terms and conditions.

4. The persons identified on Exhibit A of this Order of Final Judgment have timely and validly requested exclusion from the Class, and are excluded from the Class. Such persons are not included in, or bound by, this Order of Final Judgment, nor are they entitled to any recovery provided for by the Agreement.

5. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection therewith, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the litigation, or of any liability, fault or wrongdoing of any kind.

6. Class representatives David Montorio and Tammy Vance will each receive an award of $5000 each as compensation for their time and effort in this litigation.

7. An award of attorneys' fees and reimbursement of costs is warranted in this case under the South Carolina common law, which holds that attorneys' fees may be awarded from a common fund created by counsel. *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) ("[A] court exercising equitable jurisdiction may make an allowance of a reasonable fee out of the common fund or property created or preserved, for an attorney representing a party who, at his own expense, has maintained a suit for the recovery, preservation, protection, or increase of a common fund or common property, or has created or brought into the Court a fund in which others are entitled to share."); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Laymen v. State*, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008). "The justification for awarding attorneys' fees in this manner is based on the principle that 'one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses.'" *Laymen*, 376 S.C. at 452, 658 S.E.2d at 329 (2008) (quoting *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941)).

8. Before attorneys' fees can be charged to a fund in which others are entitled to share, the following elements much be met: (1) the attorney must preserve or protect a common fund; (2) the attorney's services much have aided in creating, preserving, or protecting the fund, and the services must prove fruitful to the general class; and (3) there must be a "principle of representation or agency *as in a class suit*, that is, before one may be allowed compensation out of the common fund belonging to others for services rendered on behalf of the common interest there must be a contract of employment, either expressly made or superinduced by the law upon

the facts." *First Union Nat'l Bank*, 333 S.C. at 573-74, 511 S.E.2d at 382 (emphasis added) (citations omitted).

9. In this case, Class Counsel has met each of the elements set forth by the Court of Appeals in *First Union Nat'l Bank*. First, Class Counsel has created a common fund represented by the monies paid by the Defendant in accordance with the terms of the Agreement. Second, Class Counsel's services clearly aided in creating and preserving that fund, and their services have proved fruitful to the general class. Each qualifying Class member will derive a benefit from the settlement achieved by Class Counsel. Third, this is a class suit and the Named Plaintiffs and Class Counsel, by virtue of Rule 23 and by order of this Court, have been appointed representatives of the class. Moreover, the contingency fee agreement between the named Plaintiff and Class Counsel provides for the payment of an attorneys' fee of one-third of any recovery in this case. Accordingly, based upon the common law of this state, Class Counsel is entitled to a reasonable award of attorneys' fees. In further support of an award of attorneys' fees and litigation expenses from the common fund, the Court finds that the prosecution of this matter was an immense and highly risky undertaking for Class Counsel given the complexity of the issues presented and the defense mounted by Defendant, as the discussions below clearly support.

10. **Analysis of Pertinent Factors.** In *Jackson v. Speed*, 326 S.C. 289, 308, 486, S.E.2d 750, 760 (1997), the South Carolina Supreme Court set forth factors for courts in South Carolina to consider when deciding whether to award attorneys' fees. While these factors were not issued in the context of a class action suit, this Court chooses to analyze those factors in this case. In doing so the Court has determined that the amount of attorneys' fees and costs requested is more than reasonable.

i. *The nature, extent, and difficulty of the case.* The case involved numerous complex factual and legal issues. The breadth and scope of fact and expert discovery, coupled with the complex legal issues, demonstrates that the requested fee is justified by the nature, extent, and difficulty of the case.

ii. *The time necessarily devoted to the case.* Class Counsel expended significant time on the litigation and settlement of this case over a period of three years and will continue to expend significant time while the settlement is implemented. The case could only be settled on the eve of trial.

iii. *Professional standing of counsel.* Class Counsel are experienced in civil litigation and have particular expertise in class actions. Further, Class Counsel enjoy excellent reputations in the legal community. Finally, Class Counsel have consistently demonstrated their competence, preparedness, tenacity, skill, and perseverance to the Court over the course of this litigation.

iv. *Contingency of compensation.* As previously noted, the contingency fee agreements between the named Plaintiffs and Class Counsel provide for a contingency fee of one-third of the recovery, if any. The Court is well aware of the risk inherent in contingency fee litigation, where neither recovery for the plaintiff nor compensation for the attorneys who undertake the risk is guaranteed. Additionally, Class Counsel advanced expenses with no assurance of reimbursement.

v. *Beneficial results obtained.* Class Counsel have secured a real, valuable benefit for the Class totaling $6 million (including the award of attorneys' fees and costs), and all Class members are entitled to receive a cash payment.

vi. *Customary legal fees for similar services.* The attorneys' fee request is consistent

with the fees customarily awarded in similar cases. "When awarding attorneys' fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.'" *Laymen*, 376 S.C. at 453, 658 S.E.2d at 330 (2008). Consequently, courts customarily base the award of attorneys' fees on a percentage of the common fund created. *Id.* The South Carolina Supreme Court has acknowledged that this percentage-of-the-recovery approach "may be appropriate under circumstances in which a court is given jurisdiction over a common fund from which it must allocate attorneys' fees among a benefited group of litigants." *Id.* at 453-54, 658 S.E.2d at 330; *see also Ex parte Condon*, 354 S.C. 634, 636-37, 583 S.E.2d 430, 431 (2003) (approving a circuit court's award of attorneys' fees based on a percentage-of-the-recovery approach where the parties' agreement stipulating that the circuit court would calculate and award attorneys' fees clearly contemplated an award based on a percentage of the common fund recovered).

11. The attorneys' fees requested here are only 16% of the total common fund. This percentage is well within the range of reasonableness for attorneys' fees in class actions. *See Fairey v. Exxon Corp.*, No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs representing 40% of recovery); Alba Conte & Herbert Newberg, Newberg on Class Actions § 14:6 (4th ed. 2002) ("Empirical studies show that . . . fee awards in class actions average around one-third of the recovery."). It is also well below what federal district courts within the Fourth Circuit have previously awarded in the percentage of the fund context. See, e.g., *In re: The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D.Va. 2009) (chart outlining fee awards).

12. The Agreement calls for an award of attorneys' fees and costs in the total amount of Nine Hundred Ninety Thousand and no/100 ($990,000.00) dollars. Class Counsel already

incurred over $40,000 in out-of-pocket expenses. Defendant set forth in the Agreement, and has advised the Court, that it has no opposition to an award in that amount, and agrees to the payment of such amount.

13. After consideration of the factors noted above, Class Counsel are awarded attorneys' fees and reimbursement of reasonable expenses incurred in connection with the Action in the total amount of $990,000.00, which sum the Court finds to be fair and reasonable, and which shall be paid from the common fund as set forth in the Agreement.

14. Final approval operates as a release to Defendant and its present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, that they shall forever be released and discharged from any and all claims by the Class members and their assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge will discharge the common liability of any joint tortfeasors and will be binding on any subsequent purchasers of the subject homes.

15. The Action is hereby dismissed with prejudice as to the Defendant and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Agreement, without costs.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Agreement.

IT IS SO ORDERED.

DATE: May 30, 2014

BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

EXHIBIT

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO: 2011.CP.26.1266
	)	
Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	)	
	)	SETTLEMENT CLASS
Plaintiffs,	)	NOTICE OF OPT OUTS
	)	
vs.	)	
	)	
Horry Electric Cooperative,	)	
	)	
Defendant.	)	

The following persons provided notice by mail postmarked by May 1, 2014 of their intention to opt out of the Class Action Settlement:

1. James R. Blackmon, Sr. and Mary Lou Blackmon
   7211 Old Reaves Ferry Road
   Conway, SC 29526

2. Donald Wayne Anderson
   4011 Bakers Chapel Road
   Aynor, SC 29511

3. Leonard D. Rodwell
   329 Cloverbrook Circle
   Conway, SC 29526

4. Carol A. Hinkle
   106 Fox Haven Bl.
   Myrtle Beach, SC 29588

5. Craig Larry Booth
   3879 Bakers Chapel Road
   Aynor, SC 29511

FILED
HORRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS-WARD
CLERK OF COURT

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Respectfully submitted,

Nate Fata, Esq.
Nate Fata, P.A.
Post Office Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
(843) 238-2676

T. Christopher Tuck, Esq.
James L. Ward, Jr., Esq.
Catherine H. McElveen, Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
1037 Chuck Dawley Blvd., Bldg. A
Mount Pleasant, SC 29464
(843) 727-6500

Class Counsel

May 14, 2014

2 11 Date

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO: 2011-CP-26-1266
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	
Plaintiffs,	CERTIFICATE OF SERVICE
vs.	
Horry Electric Cooperative,	
Defendant.	

I, Sally J. Huffman, legal assistant to Nate Fata, do hereby certify that a copy of Settlement Class Notice of Opt Outs was served upon counsel via United States mail, proper postage affixed thereto, on May 15, 2014:

Pope D. Johnson, Esq.
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201

James L. Ward, Jr., Esquire
T. Christopher Tuck, Esquire
Catherine McElveen, Esquire
Richardson, Patrick, Westbrook & Brickman, LLC
P.O. Box 1007
Mt. Pleasant, SC 29465

FILED
HORRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS WARD
CLERK OF COURT

Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

Exhibit C

Settlement Agreement

STATE OF SOUTH CAROLINA **COUNTY OF HORRY** **Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,** **Plaintiffs,** **vs.** **Horry Electric Cooperative,** **Defendant.**	**IN THE COURT OF COMMON PLEAS** **FIFTEENTH JUDICIAL CIRCUIT** **CASE NO: 2011-CP-26-1266**

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 28 day of February, 2014, by and between Plaintiffs Tammy Vance, and David Montorio, on behalf of themselves and all others similarly situated("Plaintiffs") and Defendant Horry Electric Cooperative ("HEC") and Carrier Federated Rural Electric Insurance Exchange ("Federated") (collectively the "Parties");

WHEREAS; Plaintiffs are the named class representatives in a class action against HEC (the "Litigation") pending in Horry County, South Carolina (the "Court"), which was filed in February 2011;

WHEREAS, HEC denies the material allegations in the Complaint and denies any wrongdoing of any kind and Federated is HEC's liability carrier which has insurance coverage applicable to the claim of the Class,

WHEREAS, on August 28, 2012 and modified thereafter, the Court certified a class action pursuant to S.C.R.C.P. 23;

WHEREAS, the Parties, having engaged in discovery and having conducted independent investigations and analyses of the facts and legal issues, recognize the uncertainties of the outcome in the Litigation, and appreciate the likelihood that any final result would require further significant efforts at considerable time and expense to advance this class action to conclusion;

WHEREAS, Class Counsel, on behalf of the Class, believe that settlement at this time as provided in this Settlement Agreement will be in the best interests of the Class as defined herein;

WHEREAS, Class Counsel and Class Representatives agree that the settlement as set forth herein which requires the establishment of two funds totaling $6,000,000, is a fair, reasonable, and adequate resolution of the Litigation and HEC and Federated are willing to buy their peace and to settle the claim of the Class;

WHEREAS, the Parties desire to compromise and settle in the Litigation all issues and claim which have been brought, or which could have been brought, by or on behalf of persons who are included in the Class;

WHEREAS, the Parties desire and intend to seek preliminary approval of the settlement of the Litigation as set forth in this Settlement Agreement and, upon preliminary approval, the Parties intend thereafter to seek a Final Order and Judgment from the Court dismissing the claim of all members of the Class with prejudice;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the entry by the Court of a Final Order and Judgment dismissing with prejudice the claim asserted in this Litigation by all members of the Class and approving the terms and conditions of the settlement as set forth in this Settlement Agreement, as required by applicable law, the Litigation shall be settled and compromised under the terms and conditions contained herein.

DEFINITIONS

1. As used in this Settlement Agreement, in addition to any definitions elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

a) **"Claim Form"** means the form attached hereto in Exhibit C.

b) **"Claim Period"** means the period from the date of mailing of the Class Notice to Class members up to and including ninety (90) days after the date that Class Notice is disseminated. This period excludes the additional time made available to claim Reimbursable Remediation Expenses pursuant to paragraph 4.

c) **"Class"** means each person on the HEC list attached hereto as Exhibit A, but excluding those persons who previously opted out of the Class as indicated on Exhibit B.

d) **"Class Counsel"** shall mean Nate Fata, T. Christopher Tuck and James L. Ward, Jr.

e) **"Class Notice"** means the form attached hereto as Exhibit C.

f) **"Documented"** shall mean, with respect to remediation expenses eligible for reimbursement, costs incurred by a Class member for removal of the entire vapor barrier which are evidenced by contemporaneous copies of cancelled checks, credit or debit card receipts, receipts for materials used for repairs, credit card statements, affidavits, declarations and/or repair invoices or repair orders, which documents, singly or cumulatively, show Reimbursable Remediation Expenses. In addition, photographs of the remediated exterior wall space without the vapor barrier shall be included as proof of remediation.

g) **"Effective Date of Settlement"** means the later of (i) the thirty-first day after the Final Order and Judgment is entered if notice of appeal is not filed or (ii) if any appeal is

filed, on the day following the date on which the Final Order and Judgment is not subject to further judicial review or appeal either by reason of affirmance by a court of last resort or by reason of lapse of time or otherwise, provided that the Final Order and Judgment are not reversed or substantially modified by the Court or an appellate court.

h) "Final Order and Judgment" means the Final Order and Judgment when entered of record if notice of appeal is not filed or if any appeal is filed on the day following the date the Final Order and Judgment is no longer subject to further judicial review.

i) **"Good Cents Program"** means Defendant's marketing of its Good Cents Program for New Homes which required a vapor barrier on the inside of exterior walls via a licensing program by the South Carolina Public Service Authority.

j) **"Reimbursable Remediation Expenses"** means Documented expenses incurred by a Class member for repairs associated with the vapor barrier removal, including, without limitation, moisture accumulation, mold growth, remediation of mold and mildew, repainting or sheetrocking of walls, re-insulating of walls, moving of furniture, storage of personal items and furniture during remediation, and any relocation expenses incurred during the remediation. This amount shall not exceed $12,000 per Class Member.

k) **"Request for Exclusion"** shall mean the opt-out form attached hereto as Exhibit D.

SETTLEMENT CONSIDERATION

2. The Class has asserted a claim against HEC for breach of warranty, negligence/gross negligence and breach of contract/covenant of good faith and fair dealing. This claim is related to property damage arising out of the Good Cents program for new homes which required a vapor barrier on the inside of the exterior walls. The Class Counsel and Class Representatives maintain

that the vapor barrier has caused property damage. The Good Cents program which HEC offered to its members was a program which South Carolina Public Service Authority and Southern Electric International, Inc. developed and licensed. The evidence established that South Carolina Public Service Authority and Southern Electric International, Inc. had knowledge that the vapor barrier requirement could cause mold and mildew problems in the homes prior to the program being licensed of HEC, as indicated in its two 1986 letters to Southern Electric. The evidence has also indicated that the South Carolina Public Service Authority did not provide those two letters or that information to HEC, before HEC offered the Good Cents program to the Class Members. HEC offered the Good Cents program for new homes to its members that the South Carolina Public Service Authority offered to it. HEC contends it learned of the knowledge the South Carolina Public Service Authority had about the vapor barrier causing mold and mildew problems through discovery in this action.

3. Class Counsel and Defendant shall present this Settlement Agreement to the Court as soon as practicable and shall take all appropriate steps to obtain an Order (a) finding the settlement sufficiently fair, reasonable, and adequate; and (b) scheduling a final hearing on the fairness of the proposed settlement.

4. In consideration for dismissal of the Litigation with prejudice under the terms of this Settlement Agreement, Defendant's insurance carrier, Federated, will pay the claim from the two settlement funds. Class members may participate in one fund, but not both, by selecting a fund preference on the Claim Form that is postmarked no later than ninety (90) days from the issuance of Class Notice.

a) The Automatic Payment Fund: Defendant and Federated shall establish a fund of $2,400,000. In no event will Defendant and/or Federated be required to increase the

amount to be funded. Class members may claim an automatic payment of $2,000 by submission of a Claim Form and declaration under penalties of perjury of current home ownership. If the Automatic Payment Fund is insufficient to pay all qualifying Class members at $2000 per claim, then the payments shall be made with a pro rata reduction. Defendant shall make payments to the Class members selecting the Automatic Payment fund within the later of 60 days after the Effective Date of Settlement or 60 days after the Claim Period, whichever is later, provided, however, no payments are due until HEC has all Automatic Payment claim forms necessary to determine the amount due on each Automatic Payment claim..

b) The Remediation Fund: Defendant shall establish a fund of $3,600,000. In no event will HEC or Federated be required to increase the amount to be funded. Class members may claim reimbursement for Reimbursable Remediation Expenses by removing the vapor barrier from the home and by submission of a Claim Form and Documented proof. The Documented proof shall be due no later than 180 days from the Effective Date of Settlement and each claim shall be capped at $12,000. Class members who elect the Remediation Fund shall be mailed a Notice advising them of the Effective Date of Settlement and the 180 day deadline to submit documentation for reimbursement. If the Remediation Fund is insufficient to pay all qualifying Class members their actual Reimbursable Remediation Expenses at an amount up to $12,000 per claim, then the payments shall be made with a pro rata reduction. If less than 250 Class Members select the Remediation Fund preference on the Claim Form, then Defendant shall make payment within thirty days of Defendant's receipt of the Class member's Documented Reimbursable Remediation Expenses. Otherwise, Defendant

shall make payment within the later of thirty days of the expiration of the period to submit Documented Reimbursable Remediation Expenses or thirty days after the last decision by the arbitrator of all claim submitted in arbitration, whichever is later, provided, however, no Remediation payments are due until HEC has all Remediation claim forms necessary to determine the amount due on each Remediation claim. .

c) Within thirty (30) days of its receipt of a Class Member's documentation for reimbursement and if the claim is to be denied in whole or in part, Defendant shall send to the Class Member in writing an explanation of the reasons for any denial of the claim, in whole or in part. In the event of any disputes regarding Reimbursable Remediation Expenses, the Parties shall meet and confer and use their best efforts to resolve the claim for the Class member. If the parties cannot reach agreement, the dispute shall be resolved by final, binding arbitration. The Class Member shall have fifteen (15) days from the receipt of Defendant's partial or complete denial of the claim to request Arbitration in writing by stating "I hereby request arbitration." Such request must be mailed to Class Counsel and Defendant's Counsel. The arbitrator shall be a South Carolina licensed attorney practicing in Horry County as agreed upon by Class Counsel and Defendant. Unless the arbitrator requests additional matters, the arbitration shall be limited to a paper review only of the Class member's claim submission and Defendant's response. The Arbitrator shall render a decision within 45 days of the Class member's request for arbitration. Defendant is responsible for the arbitrator's fees.

d) As compensation for services as class representatives, and subject to approval by the Court, Defendant agrees to pay $5000 to Class Representative Vance and Class

Representative Montorio. Such payment shall be made pro rata from the two funds within ten days of the Effective Date of Settlement such payment shall be paid prior to payment of any claim.

e) Any amounts not claimed in the funds by Class Members shall, at the expiration of all claim periods, be retained by Federated.

EFFECT OF SETTLEMENT

5. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute or be construed or cited in any context or manner whatever as any admission of the validity of any claim or any fact alleged by Plaintiff in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any admission by Defendant of any claim or allegation made in any action or proceeding against Defendant. This Settlement Agreement shall not be offered or be admissible in evidence against Defendant or cited or referred to in any action or proceeding, except in any action or proceeding brought by or against the named Plaintiff, the Class, or Defendant to enforce its terms, or by Defendant in defense of any claim brought by the Class or by Defendant in any action against any other joint tortfeasor or any other person or entity which is or may be liable to Defendant by way of indemnification or otherwise.

NOTICE

6. Notice of this settlement shall be provided to Class members. The Parties will request that the Court determine that the proposed procedures for notice set forth below constitute the best practicable notice to the Class.

7. Defendant shall be responsible for preparing, printing, and mailing to all Class members the Class Notice, as directed and approved by the Court in its Preliminary Approval Order.

Defendant shall discharge this responsibility by mailing the Court-approved Class Notice to all Class members, which shall provide instructions and information concerning the settlement and their right to receive a share of the funds, as well as their objection rights and opt-out rights within ten (10) business days after the Court has entered the Preliminary Approval Order. Any Class Notice returned to the Defendant as non-delivered before the deadline for opting-out of the settlement shall be sent to the forwarding address affixed thereto. The Parties will update addresses based on any forwarding address received and/or requests to do so received from Class members. Other than as set forth in Par. 4(b) regarding the Remediation Fund, Defendant shall have no further or other responsibility for preparing, printing or mailing the Class Notice to the Class Members. It shall be the responsibility of Class Counsel or their designees to respond to all inquiries from Class members as appropriate, with the exception of correspondence and other communications with the Defendant as necessary for administration and payment of settlement funds.

REQUESTS FOR EXCLUSION

8. Any Class member shall be allowed to make a Request for Exclusion from the settlement by mailing or delivering such Request for Exclusion to Class Counsel and Defendant's Counsel at the addresses set out in the Class Notice. Any Request for Exclusion must be in writing and postmarked or delivered no later than the date specified in the Court's Preliminary Approval Order. The Request for Exclusion shall state (i) the Class member's full name and current address and (ii) in express and clear terms the Class member's desire to be excluded from the settlement and from the Class. Failure to comply with these requirements and to timely submit the Request for Exclusion shall result in the Class member being bound by the terms of the Settlement.

9. Any Class Member who submits a timely Request for Exclusion may not file an objection

to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

10. The Parties shall jointly report the names of all individuals who have submitted a Request for Exclusion to the Court no less than ten (10) days prior to the final fairness hearing.

11. For up to five (5) days following the Request for Exclusion deadline, Defendant has the option to terminate the Settlement Agreement if more than ten percent (10%) of the Class Members timely opt out of the action. If Defendant elects to terminate, it must file a Notice of Intent to Terminate within five (5) days following the opt out deadline

OBJECTIONS

12. Subject to Court approval, any Class member who intends to object to the fairness of any aspect of the proposed settlement must mail any such objection to the Court postmarked no later than fifteen (15) days prior to the date of the final fairness hearing and must serve any objections to the settlement, in writing, upon counsel no later than fifteen (15) days prior to the date of the final fairness hearing. Objectors to the settlement must set forth their full name and current address and must state in writing all specific objections and the reasons in support thereof, and include any and all supporting papers, including proof of a home address designated for the Good Cents Program and, if applicable, the objector's statement of intent to appear at the final fairness hearing. If the objector intends to appear though counsel, the objector's counsel shall append to the statement of intent to appear a list of all prior objections previously filed by such counsel in state and federal courts.

13. Any Class member who does not properly file and serve timely written objections to the settlement and notice of his or her intent to appear at the final fairness hearing shall not be

permitted to object to the settlement at the final fairness hearing, and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

FINAL JUDGMENT

14. Following final approval by the Court to this Settlement Agreement and the settlement contemplated hereby, the parties shall seek entry of a Final Order and Judgment dismissing the action with prejudice and without further costs.

15. If (i) the preliminary or final approval of this Settlement Agreement and the settlement described herein is not obtained or is reversed on appeal or (ii) the effective date of settlement as defined herein does not occur for any reason or (iii) entry of the Final Order and Judgment is finally reversed or (iv) the judgment is substantially modified by the Court, or on appeal, and either Plaintiff or Defendant so elects, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation

RELEASE AND DISCHARGE

16. Upon the effective date of settlement, HEC and Federated, their present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, shall forever be released and discharged from any and all claims by the Class members and their heirs, successors and assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge discharges common liability of any joint tortfeasors and will be binding on any subsequent purchasers of any homes of a Class Members.

COSTS AND ATTORNEYS' FEES

17. At least twenty-five (25) days prior to the Final Fairness Hearing, Class Counsel shall file a Motion for Attorneys' Fees and Expenses in an amount not to exceed $990,000.00 to be paid pro rata from the Automatic Payment Fund and the Remediation Fund.

Defendant shall not object or assist or encourage any objection to Class Counsels' request for attorneys' fees and expenses to be paid out of the total settlement fund of Six Million Dollars ($6,000,000) Counsel's fees and costs shall be made prior to any payment of any claim. These amounts will compensate Class Counsel for more than three years of contentious litigation work already performed in this case and all of the work remaining to be performed in this case, including but not limited to documenting the settlement, securing Court approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal of the Litigation. Within ten business days after the Effective Date of Settlement, Defendant shall deduct approved fees and costs from the Automatic Payment Fund and the Remediation Fund and pay those amounts to Class Counsel.

COSTS OF ADMINISTRATION

18. Defendant shall bear all costs associated with administration of the settlement. The Parties agree to cooperate in the settlement administration process. Defendant shall provide to Class Counsel a copy of any correspondence it receives from Class members concerning settlement administration.

BEST EFFORTS

19. The Parties will use their best efforts to effectuate this Settlement Agreement and secure its approval by the Court and shall confer and consult with each other as appropriate to implement such best efforts. The Parties shall not encourage Class members to exclude themselves from the

settlement or object to any portion of this Settlement Agreement.

MISCELLANEOUS

20. This Settlement Agreement and its attachments shall constitute the entire Settlement Agreement of the parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all parties to this Settlement Agreement.

21. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors, and assigns.

22. Time is of the essence.

23. This Settlement Agreement, and all terms and provisions thereof, shall be construed under and governed exclusively by the laws of the State of South Carolina, without application of any choice of law principles.

24. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendant and Plaintiff's Counsel, on behalf of the parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

25. The Court shall retain continuing and exclusive jurisdiction over the parties hereto, including all members of the Class, and over the enforcement of the settlement and the benefits to the Class hereunder. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the settlement must be made by motion to the Court except the Remediation Reimbursement claim disputes to be arbitrated as set forth above.

26. This Settlement Agreement may be executed in counterparts by the parties hereto, and a facsimile signature shall be deemed an original signature for purposes of this Settlement Agreement.

27. None of the Parties, or their respective counsel, will be deemed the drafter of this Settlement Agreement for purposes of construing the provisions thereof. The language in all parts of this Settlement Agreement will be interpreted according to its fair meaning, and will not be interpreted for or against any of the parties as the drafter thereof.

28. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Settlement Agreement.

Dated this 28 day of February, 2014.

By: _____

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LINDA A HOLLISTER
330 WORTHINGTON CIR
MYRTLE BEACH SC 29588

ISAAC JENERETTE
2164 EASTWOODS DR
CONWAY SC 29526

JANICE E MOORE
506 KEYSTONE LN #9
MYRTLE BEACH SC 29588

WILLIAM STANLEY BARCHAK
4815 RUSHMORE DR LOT 66
CONWAY SC 29526

STEVEN E WILSON
698 RIVERWALK DR #301
MYRTLE BEACH SC 29579

DELBERT D LARRIMORE
6559 SHAWN LN
CONWAY SC 29527

NANCY LEE BENEROSKI
8099 BARK CT
MURRELLS INLET SC 29576

LLOYD COX
710 HELENA DR
LORIS SC 29569

KAREN JACKSON
810 SIOUX SWAMP DR
CONWAY SC 29527

JAMES W SCHUESSLER
6035 PEE DEE HWY
CONWAY SC 29527

GILBERT D WASHAM
PO BOX 674
AYNOR SC 29511

BENIKA SMITH
691 RIVERWALK DR #302
MYRTLE BEACH SC 29579

SONYA A WHITE
1208 CHESAPEAK DR
AYNOR SC 29511

MARY LOU MAJKA
9608 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

FRED CAPLAN
3590 CEDAR CREEK RUN #37
LITTLE RIVER SC 29566

ROSE MARIE DERREBERRY
PO BOX 13
DRYBRANCH 25061

JOEY D PARROTT
1762 BRIDGEWATER DR
CONWAY SC 29526

LINDA A TEMPLETON
3676 KATES BAY HWY
CONWAY SC 29527

BRYAN K TYLER
781 APPLE VALLEY RD
LORIS SC 29569

CARL R MOGILKA
9193 HIGHWAY 90
LONGS SC 29568

PEGGY H SABATINO
8659 LAUREL WOODS DR
MYRTLE BEACH SC 29588

RAY REALTY
2678 HIGH BRASS TRL
MYRTLE BEACH SC 29588

DANIEL C YEARWOOD
186 OLD WILSON RD
LONGS SC 29568

ROBERT W FORSON
209 LONGRIDGE DR LT 7
MURRELLS INLET SC 29576

CLARENCE POPE
702 RIVERWALK DR #203
MYRTLE BEACH SC 29579

KIMBERLY L HARPER
5303 KATES BAY HWY
CONWAY SC 29527

DOROTHY BROWN
8065 YOUNGWOOD TURN
MYRTLE BEACH SC 29588

KENNETH G HALLSWORTH
1050 PALM DR #272
CONWAY SC 29526

MILKENIA A RUIZ SUJAT
6448 SWEET GUM TRL #10
MYRTLE BEACH SC 29588

STEFANI A HUTCHISON
3720 FAITH DR
CONWAY SC 29527

JEFF RANDALL RICHARDSON
1412 RICHARDSON RD
GALIVANTS FERRY SC 29544

JAMES HUGH GERRALD
4141 NICHOLS HWY
GALIVANTS FERRY SC 29544

PATRICIA MAGGI
9034 TEAL DR #28
MURRELLS INLET SC 29576

WANDA A FAIRCLOTH
422 FAULK LANDING RD
CONWAY SC 29526

LAUREN DAVIS
3803 PALMETTO DR
MYRTLE BEACH SC 29577

ADAM PRACK
PO BOX 30515
MYRTLE BEACH SC 29588

GINA M MOORE
8081 RESIN RD
MURRELLS INLET SC 29576

JACQUELINE LUMLEY
371 HAMILTON BLVD
WARSAW VA 22572

JAMES B PASCOCELLO
1034 PALM DR
CONWAY SC 29526

DIANNE L SKINNER
1039 LEEBURY LN
CONWAY SC 29526

DENNIS W MCELVEEN
3382 WOODSTOCK LN
MURRELLS INLET SC 29576

JOANN E NASH
23 GOLDENROD AVE
NORTHPORT NY 11768

REBEKAH BARNES
2201 DELAINE PT
HIGH POINT NC 27265

ROBERT SMITH
8460 IDLEWOOD DR
MYRTLE BEACH SC 29588

ELIZABETH R NIXON
404 ALABASTER CT
LITTLE RIVER SC 29566

CHRISTOPHER L HARSHAW
1473 GRASSY LN MH L E25
CONWAY SC 29526

ISADORA MACK
9586 SCIPIO LN
MYRTLE BEACH SC 29588

DONALD E ANDERSON
880 OLD MAGNOLIA DR #10
CONWAY SC 29526

MICHAEL T GROWLEY
694 RIVERWALK DR #304
MYRTLE BEACH SC 29579

THOMAS H SUTTON
4374 PARKLAND DR
MYRTLE BEACH SC 29579

MARK J DURST
1951 COATS RD
LORIS SC 29569

DAVE W HENDRICKS
702 RIVERWALK DR #302
MYRTLE BEACH SC 29579

SPECHELLE MAZYCK
3941 HALYARD WAY #D5
MYRTLE BEACH SC 29579

SUZANNE E DART
1747 BRIDGEWATER DR
CONWAY SC 29526

ALLEN COOKE
6337 ADRIAN HWY
CONWAY SC 29526

ALICIA J SHELLEY
2770 HIGHWAY 984
GALIVANTS FERRY SC 29544

SHIRLEY H MILLER
2108 HIDDEN OAK DR
CONWAY SC 29527

KRISTA DEMBY
PO BOX 551
CHESTERFIELD SC 29709

GARY HAMM
302 KANAWHA TRL
LONGS SC 29568

ALEXIS W CALDER
3772 LONG AVENUE EXT
CONWAY SC 29526

CHASITY HERRING
1203 LEES LANDING CIR
CONWAY SC 29526

ROBERT J FEDORTION
1024 HIGHWAY 348 #2
LORIS SC 29569

JUDITH A KERCHER
631 LINKSVIEW DR #6
LONGS SC 29568

WILLIAM A BOOKER
1046 PALM DR
CONWAY SC 29526

DANIEL E REEVES
1337 MICHIGAN BLVD
SANFORD NC 27332

JOSEPH T CLANCY
300 KANAWHA TRL #31
LONGS SC 29568

CAROLYN E. MILES
9962 CONIFER LN
MURRELLS INLET SC 29576

SALLY K HOWARD
402 CEDAR RUN
MYRTLE BEACH SC 29588

FRANCES B TARR
480 APONTE DR
CONWAY SC 29527

RICHARD D JORDAN
112 TOMOKA TRL
LONGS SC 29568

JAMES PITT
357 VALLEY STREAM RD
SEVERNA PARK MD 21146

KATHY GARNES
4409 DUDDEN FORK RD
KENNA WV 25248

WILLIAM H FUNDERBURKE
129 COLD STREAM COVE LOOP #1404
MURRELLS INLET SC 29576

SONYA CATOE
8026 CONE CT
MURRELLS INLET SC 29576

SANDRA L LEAMAN
8041 LONG NEEDLE CT
MURRELLS INLET SC 29576

RONALD CLUTTER
3902 HANLIN WAY
WEIRTON WV 26062

MICHAEL PERROTTO
8009 CONE CT #20
MURRELLS INLET SC 29576

BRIAN CRISP
8015 CONE CT
MURRELLS INLET SC 29576

WILMA J BUEGER
9965 CONIFER LN #23
MURRELLS INLET SC 29576

BARBARA J BARNWELL
8038 LONG NEEDLE CT
MURRELLS INLET SC 29576

THOMAS ADAM BRYCHIK
8040 LONG NEEDLE CT
MURRELLS INLET SC 29576

GRISELDA RUIZ-VELEZ
9953 CONIFER LN
MURRELLS INLET SC 29576

DAVID MCLEAN
CT 8042 BOX CT
MURRELLS INLET SC 29576

MARGARET FARLEY
CT 8046 BOX CT
MURRELLS INLET SC 29576

WILLIAM J MULDOON
7965 SPRUCE LN
MURRELLS INLET SC 29576

TODD E CARY
7967 SPRUCE LN #L-118
MURRELLS INLET SC 29576

ROBYN L WILCOX
7998 SHORT NEEDLE CT
MURRELLS INLET SC 29576

ANALLY BOWSER
266 SOUTHERN BREEZES CIR
MURRELLS INLET SC 29576

JIM MAIORANA
7990 SHORT NEEDLE CR LOT 140
MURRELLS INLET SC 29576

PHILLIP S THOMPSON
7958 SPRUCE LN #124
MURRELLS INLET SC 29576

OLA JACKSON
7960 SPRUCE LN #L-125
MURRELLS INLET SC 29576

RONDA G NORRIS
7962 SPRUCE LN
MURRELLS INLET SC 29576

DAVID A WASLICKI
7970 SPRUCE LN
MURRELLS INLET SC 29576

RUSSELL GUERRERO PASCUA
1933 LAKE LN
SURFSIDE BEACH SC 29575

LARRY R WADE
9958 CONIFER LN
MURRELLS INLET SC 29576

NANCY GUNDICH
103 OXFORD PL
MYRTLE BEACH SC 29588

KYLE T HINSON
7963 SPRUCE LN
MURRELLS INLET SC 29576

REBEKAH TRASK KILBOURNE
9929 CONIFER LN
MURRELLS INLET SC 29576

CURRENT RESIDENT
625 KINLAW LN
CONWAY SC 29527

CELESTINE YOUNG
694 RIVERWALK DR #303
MYRTLE BEACH SC 29579

LEON P GRAHAM
471 FREEDOM CIR #97
MYRTLE BEACH SC 29588

GERALD JEAN SUTTERFIELD
316 KANAWHA TRL
LONGS SC 29568

A J MARTIN
326 OLD TODD FERRY RD
LORIS SC 29569

JOHN H. ZIMMER
8012 CONE CT
MURRELLS INLET SC 29576

PAUL J BROOKS
1203 MATAOKA TRL
LONGS SC 29568

PAUL A MAGGENTI
2772 KING FARM RD
AYNOR SC 29511

ROMEO DOZIER
5938 HIGHWAY 905
CONWAY SC 29526

WILLIAM E STARK
4371 WINGED FOOT CT
MYRTLE BEACH SC 29579

LYNNDALE LEWIS
791 BRANCH RD S
LORIS SC 29569

OSWOOD JORDAN
149 BLUE JACKET DR
GALIVANTS FERRY SC 29544

JUDY OVERHOLT
513 SUMMER DR
CONWAY SC 29526

LEISTER B BUTLER
6560 SHAWN LN
CONWAY SC 29527

DEBBIE F LYDIA
345 WORTHINGTON CIR
MYRTLE BEACH SC 29588

ASTRID P OTTER
8030 RESIN RD
MURRELLS INLET SC 29576

FELICIA ANN JOHNSON
5735 NEW DAWN RD
CONWAY SC 29526

JUSTIN AMMONS
719 KNOTTY BRANCH RD
CONWAY SC 29527

RICHARD C BOZZUTO
2117 GOODSON DR
LONGS SC 29568

WALTER C JOHNSON
684 COX FERRY RD W
CONWAY SC 29526

JERRY W ALLEN
3048 HIGHWAY 90
CONWAY SC 29526

JANET HARDWICK CANNON
5460 TWEETY AVE
CONWAY SC 29527

DOUGLAS R FLOYD
6429 GRAINGER RD
NICHOLS SC 29581

SIMS DEAN
302 34TH ST W
LUMBERTON NC 28358

DANIEL GIBSON
686 RIVERWALK DR #304
MYRTLE BEACH SC 29579

MARY L HILL
109 DIFF AVE
LORIS SC 29569

CHRISTOPHER C. LEE
PO BOX 2598
MURRELLS INLET SC 29576

SHIRLEY E LOWE
319 KANAWHA TRL #327
LONGS SC 29568

JAMES K HYMAN
915 HOPE CIR
CONWAY SC 29527

J ERIC GRAHAM
1005 AIRPORT RD
LORIS SC 29569

EDITH M GERELL
2301 ZEEK DR
LORIS SC 29569

CTH CASTLEWOOD
250 VICTORY LN
CONWAY SC 29526

FELISHEA COX FRINKS
1999 HIGHWAY 746
LORIS SC 29569

ROCHELL C CRAWFORD
1106 OSCAR RD
LITTLE RIVER SC 29566

DONNA E SMITH
277 IROQUIS TRL
LONGS SC 29568

ANSLEY M GARCIA
8072 RESIN RD
MURRELLS INLET SC 29576

GREGORY J CAPITELLI
8664 LAUREL WOODS DR #192
MYRTLE BEACH SC 29588

CARL W KRUGER
301 NOTTINGHAM DR
BROOKLYN MI 49230

PAUL HARRY KLEIN
958 GRACE DR
CONWAY SC 29527

PATRIC D CRIST
2975 ROOSEVELT DR
CHAMBERSBURG PA 17201

ANN BEATRICE ROSCHY
7723 MULE TRACE DR #4
CONWAY SC 29526

JAMES ALLEN
150 SHANDA LN
AYNOR SC 29511

GLORIA LILLY
2323 HARVEY RD
LORIS SC 29569

PHYLLIS F FLOYD
2837 FOWLER RD
LORIS SC 29569

GEORGE L SMITH
9741 SMALLS DR
MYRTLE BEACH SC 29588

RUSSELL W EDGE
5626 HIGHWAY 65
CONWAY SC 29526

EDUARDO L CHAVIANO
7183 MARSH DR
CONWAY SC 29527

GARY/ALICE PRATT
5596 HIGHWAY 668
CONWAY SC 29526

DEBORAH K PAUL
1850 NATHAN DR
LORIS SC 29569

JOHNNY C ALLEN
2132 HIDDEN OAK DR
CONWAY SC 29527

DEAN O JAMES
1976 JORDANVILLE RD
GALIVANTS FERRY SC 29544

ROBERT KEGEL
1905 MEADOWOOD LN
LONGS SC 29568

JOSEPH A CHUCCI
8019 RESIN RD
MURRELLS INLET SC 29576

TAMERA H HOLT
4986 LUMBERJACK LN
CONWAY SC 29526

REGINA D WILLIS
1115 LANCELOT LN
CONWAY SC 29526

MICHAEL ALEXANDER WEDDING
1283 CANE BRANCH RD
LORIS SC 29569

MARY LYNN HORN
5450 TWEETY AVE
CONWAY SC 29527

TAMARA W HUDSON
6954 ANTONIO LN
MYRTLE BEACH SC 29588

GREGORY T GASQUE
3153 HUGHES GASQUE RD
AYNOR SC 29511

ENOCH THOMAS LILLY
1725 KNOTTY BRANCH RD
CONWAY SC 29527

WILLIAM P SKARZYNSKI
1210 WALTHAM LN
BARTLETT IL 60103

JUSTIN D WOLOSHEN
691 RIVERWALK DR #102
MYRTLE BEACH SC 29579

PHILLIP VARLEY
22 OLD ST JOHN'S RD ST HELIER
JERSEY
CHANNEL ISLANDS UK JE2 3LG

RONALD M WALTON
2780 NEIL BRANCH RD
LORIS SC 29569

ARTHUR D WILLMS
619 BUCKS TRL
LONGS SC 29568

TONYA T TODD
1018 ACADEMY DR
CONWAY SC 29526

LYNETTE J SINGLETON
2430 CORNWALL CIR
CONWAY SC 29526

MERRY J SHELLEY
1488 HIGHWAY 129
GALIVANTS FERRY SC 29544

JACK M BENSON
4136 SEASIDE DR
CONWAY SC 29526

MONTE LEE UHRIG
2629 BRICK DR
LONGS SC 29568

RICHARD A RABON
472 WILLARD RD
CONWAY SC 29526

ROBERT SIMON
1207 3RD AVE S #H
MYRTLE BEACH SC 29577

LINDA H BARCZAK
698 RIVERWALK DR UN 103
MYRTLE BEACH SC 29579

HELEN J MURANO
2421 BITTAR SPAR RD
LITTLE RIVER SC 29566

JERD POSTON
3392 WOODSTOCK LN
MURRELLS INLET SC 29576

PEREZ A MANUEL
1037 TIGGER LOOP #10
CONWAY SC 29527

DELBERT J CONWAY
8060 RESIN RD
MURRELLS INLET SC 29576

HENRY P FRANKLIN
560 FLOYD PAGE RD
GALIVANTS FERRY SC 29544

JOHNNIE RAY BLANTON
11065 HIGHWAY 19 W
LORIS SC 29569

NICOLE S YOUNG
334 WORTHINGTON CIR #17
MYRTLE BEACH SC 29588

HUGH STRICKLAND
3025 POPLAR CHURCH RD
AYNOR SC 29511

DANIEL/ DEBRA GODWIN
373 EDISON CIR
CONWAY SC 29526

D E FULMER
1160 HIGHWAY 90
CONWAY SC 29526

LEROY EDWARDS
6252 DEBORAH CIR
CONWAY SC 29527

RUSSELL G STRICKLAND
3496 BEVERLY RD
CONWAY SC 29527

WILLIE JOE MARTIN
435 SUMMER DR
CONWAY SC 29526

LORI HAGERUD
5801 REBA RD
CONWAY SC 29527

RANDY DURANT
4075 BAKERS CHAPEL RD
AYNOR SC 29511

MIRIAM E SILK
1131 MEHER LN HOUSE
LITTLE RIVER SC 29566

STARR L UNWIN
7 MONARCH RD
DANBURY CT 06811

KATHRYN CHRISTINE HART
2769 CANVASBACK TRL
MYRTLE BEACH SC 29588

KENNETH ROBERTS
2843 PECAN LN
CONWAY SC 29526

RICHARD C SCHWARZ
PO BOX 898
AYNOR SC 29511

PETER SPECIAL
15 BEDFORD ST
HOLLIDAYSBURG PA 16648

JOSEPH R BARBE
346 WORTHINGTON CIR #L-14
MYRTLE BEACH SC 29588

VIRGINIA R EVANS
2590 DOWS RD
LORIS SC 29569

THOMAS R BARBER
8017 TAG CT #70
MURRELLS INLET SC 29576

MELISSA A STRICKLAND
9945 CONIFER LN
MURRELLS INLET SC 29576

STEPHEN HAJBA
6297 DEBORAH CIR
CONWAY SC 29527

SHARON J SIMMONS
282 LAMBERT RD
CONWAY SC 29526

CLAYTON H TEMPLE
1093 PALM DR #196
CONWAY SC 29526

TRACY ALLEY
121 HIGHWAY 471
CONWAY SC 29526

CURRENT RESIDENT
500 KEYSTONE LN #6
MYRTLE BEACH SC 29588

MAUREEN T WHITWORTH
674 RIVERWALK DR #201
MYRTLE BEACH SC 29579

RENATE BAERNCOPF
1946 GEMINI CIR
CONWAY SC 29527

TRACY CHEATHAM
6525 ADRIAN HWY
CONWAY SC 29526

MABLE BEATY
812 ESTHER CT #3
CONWAY SC 29526

WINFORD LEE GORE
843 WHITE FAWN DR
HOPKINS SC 29061

CRYSTAL D GOINGS
2624 DOWS RD
LORIS SC 29569

TOMMY W JOHNSON
PO BOX 131
GREEN SEA SC 29545

DEBORAH HOUSE
113 POPLAR DR
FREDERICKSBURG VA 22401

JANET MCKAY
325 KANAWHA TRL
LONGS SC 29568

SHAWN W FLINN
6788 J AND T CIR
CONWAY SC 29527

TEAL BRITTON
PO BOX 1544
CONWAY SC 29528

TIMOTHY M PATTON
2395 HUNTERS TRL
MYRTLE BEACH SC 29588

LISA WOODLE
5731 PAULEY SWAMP RD
CONWAY SC 29527

HEATHER M LEWIS
3334 HENRY LEWIS RD
LORIS SC 29569

THERESA SHIPWASH
708 GOLF HOUSE RD W
WHITSETT NC 27377

JAMES W MAJOR
3096 WILDHORSE DR
CONWAY SC 29526

AUBREY APPERSON
162 PINFEATHER TRL
MYRTLE BEACH SC 29588

RENATO M NUNES
8021 RESIN RD #84
MURRELLS INLET SC 29576

JOHN WALKLIN
1066 BEAR LAKE DR
LONGS SC 29568

JOSEPH W MURRAY
6950 ANTONIO LN
MYRTLE BEACH SC 29588

PATSY C RAY
3019 INHERITANCE RD
CONWAY SC 29527

SCOTT WACHTER
919 LONNIE ST
MYRTLE BEACH SC 29588

EUGENE HARRIOTT
11006 FREEWOODS RD
MYRTLE BEACH SC 29588

MARY L BOYD
826 HUCKS RD
AYNOR SC 29511

GEORGE F MOLNER
1218 GAILARD DR
CONWAY SC 29526

SAM T GIBSON
185 CUPOLA DR #376
LONGS SC 29568

WILLIAM F FLOYD
5873 PAULEY SWAMP RD
CONWAY SC 29527

BOBBY A GOWANS
3729 LOVE LN
CONWAY SC 29527

CHRIS A SAENZ
3704 FAITH DR
CONWAY SC 29527

DOUGLAS RAY HYMAN
1142 CARLEITA CIR
CONWAY SC 29527

AMBER C FICKLIN
9739 SMALLS DR
MYRTLE BEACH SC 29588

CHERYL TYREE
3921 SOCASTEE BLVD MH
MYRTLE BEACH SC 29588

BEN C DEWITT
2359 BARNEY RD
LONGS SC 29568

ROY ROGERS
PO BOX 468
ASCUTNEY VT 05030

JIMMY E POORE
1448 FORESTBROOK RD
MYRTLE BEACH SC 29579

HAZEL M ADAMS
2184 MEADOWOOD LN
LONGS SC 29568

HARRY GRAHAM
721 MONFORD CON HAR LN
LONGS SC 29568

JAMES THOMPKINS
2112 HIDDEN OAK DR
CONWAY SC 29527

KATHLEEN STRUNCIUS
970 LOOP CIR
LONGS SC 29568

PATRICK KERR
32731 SPRING WATER DR
MILLSBORO DE 19966

JAMES V GROSE
214 FOX CATCHER DR
MYRTLE BEACH SC 29588

MICHAEL WAYNE JORDAN
6718 HIGHWAY 981
CONWAY SC 29527

SCOTTY D ANDERSON
255 DUKES RD
CONWAY SC 29526

PATRICK P MARTTINE
86 SAW CREEK EST
BUSHKILL PA 18324

LILLIAN S HENDRICK
6223 PEE DEE HWY
CONWAY SC 29527

MALCOLM DILL
8416 BLOOMWOOD DR LT143
MYRTLE BEACH SC 29588

TIMOTHY E PAUL
PO BOX 1721
CONWAY SC 29528

RICHARD ALFIERI
175 BUCK DOVE TRAIL
AUGUSTA ME 04330

BOBBY F BUCHANAN
8053 RESIN RD #L-67
MURRELLS INLET SC 29576

GENNIE SUE BOOTH
8267 MORGAN LN
AYNOR SC 29511

STEPHANIE JENKINS
8057 RESIN RD
MURRELLS INLET SC 29576

ESTHER GOFF
3150 MOUNT OLIVE RD
LORIS SC 29569

LAURIN CROCKER
8014 TAG CT
MURRELLS INLET SC 29576

CHARLES D FRYE
2936 PEE DEE HWY
CONWAY SC 29527

THOMAS C COOK
7079 WILDLIFE RIDGE
OXFORD NC 27565

MARION DEMAYO
6919 ASHLEY COVE DR
MYRTLE BEACH SC 29588

JOSEPHINE KROMMINGA
829 ESTHER CT
CONWAY SC 29526

CHUCK W JACOBS
406 HULLS ISLAND RD
LORIS SC 29569

JOHN KELLEY STROUD
9735 HIGHWAY 917
NICHOLS SC 29581

TAMMY V HOLMES
811 ESTHER CT
CONWAY SC 29526

VALERIE DALTON
255 CANADA DR
STJOHNS NEWFOUNDLAND A1E5L2

MIRIAM SHERMAN
8861 CLOISTER DR APT E
SURFSIDE BEACH SC 29575

DANIEL C HENSLEY
4263 HIGHWAY 90
CONWAY SC 29526

MAURICE C STEPHENS
963 CHATEAU DR
CONWAY SC 29526

ALLEN MORRELL
3 PINE VALLEY RD
NEWTON NJ 07860

W HORACE JORDAN
3764 WILLOW SPRINGS RD
CONWAY SC 29527

JEANNE C NORRIS
5397 HIGHWAY 712
GALIVANTS FERRY SC 29544

HUBERT W MARTIN
2112 KARA DR
CONWAY SC 29527

CARL F OLNICK
606 GARFIELD DR
ELIZABETHTOWN PA 17022

ANGELA E WHITESIDES
8097 BARK CT
MURRELLS INLET SC 29576

JOAN CAHILL
PO BOX 75
GLYNDON MD 21071

JOHN P HAGY
PO BOX 30033
MYRTLE BEACH SC 29588

SHERYL DAVENPORT
2440 HUNTERS TRL
MYRTLE BEACH SC 29588

MARSHALL JORDAN
3739 FAITH DR
CONWAY SC 29527

RICHARD NATALE
PO BOX 298
PEMBROKE MA 02359

PATRICIA TRAPP
6801 PINEHAVEN LN
CONWAY SC 29526

JAMES DERRICK HOLMES
831 ESTHER CT #13
CONWAY SC 29526

DANIEL BOYLE
308 FOXRIDGE DR
MYRTLE BEACH SC 29588

BRANDIE HAGER
8073 RESIN RD
MURRELLS INLET SC 29576

CHRISTINE A WINNS
8040 RESIN RD #93
MURRELLS INLET SC 29576

ELAINE COATES
601 FRENCH COLLINS RD
CONWAY SC 29526

LORRIANNE HOLLIDAY
825 ESTHER CT #16
CONWAY SC 29526

TERRY BUFFKIN
4485 RED BLUFF RD
LORIS SC 29569

THOMAS DUKE
1109 BUSY CORNER RD
CONWAY SC 29527

REMAX SOUTHERN SHORES
2339 HIGHWAY 17 S
MURRELLS INLET SC 29576

BRUNO DELUCA
3557 BALZAC
BOISBRIAND QUEBEC J7H1P4

TRAEANNAH CHISOLM
813 ESTHER CT #22
CONWAY SC 29526

THOMAS M RIDLEY
1047 MARTIN LN
CONWAY SC 29526

RYAN E ROLLINGS
310 FOXRIDGE DR #L-123
MYRTLE BEACH SC 29588

JEFFREY S MORTENSON
3377 SHADOWMOSS LN
MURRELLS INLET SC 29576

BRIAN PAUL BARLOW
6446 KINFOLK RD
CONWAY SC 29527

MICHAEL KROKOWSKI
6932 BAY RD
MYRTLE BEACH SC 29588

RONALD POUGNAUD
2892 MCNAIR LN
CONWAY SC 29526

ELSIE S GEORGE
3811 MAYPOP CIR #B
MYRTLE BEACH SC 29588

PAUL HOLT
2902 HIGHWAY 905
CONWAY SC 29526

THOMAS SEIVERLING
135 DANUBE DR
PITTSBURGH PA 15209

MICHAEL SMITH
602 FRENCH COLLINS RD
CONWAY SC 29526

DAVID V JOHNSON
819 ESTHER CT #19
CONWAY SC 29526

JANCY L DORMAN
104 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

JUAN HOLMES
4122 BEAGLE TRL
CONWAY SC 29526

NATHAN ALFORD
3035 COOPER COLLINS RD
AYNOR SC 29511

DONALD F CUNHA
25 KING ST
GROVELAND MA 01834

PAULA C BAIN
2174 MEADOWOOD LN
LONGS SC 29568

DAVID QUANTE
907 FOLLY RD
MYRTLE BEACH SC 29588

CHRISTINE CASELLA
211 FOX CATCHER DR
MYRTLE BEACH SC 29588

SANDRA J COOK
4487 WILLOW SPRINGS RD
CONWAY SC 29527

ROBERT GESCHLECHT
3770 CHARITY LN
CONWAY SC 29527

SONJA WHITE
116 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

JEREMY H PRINCE
3181 HIGHWAY 348
LORIS SC 29569

TRUDY LYNN FAIRCLOTH
1960 BEAR GRASS RD W
LONGS SC 29568

FRED BOYLES
124 HIGH TIDE DR
WILMINGTON NC 28411

J ROBERT KENNEY
635 BUCKS TRL #41
LONGS SC 29568

ADAM VICK
6828 OLD REAVES FERRY RD
CONWAY SC 29526

PATRICIA H KINDZIA
806 CAROLINA FARMS BLVD
MYRTLE BEACH SC 29579

JUSTIN R BOWDEN
4373 PARKLAND DR #7
MYRTLE BEACH SC 29579

ROBERT STANKELIS
111 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

CHERYL DEPIERO HULL
1824 SARVIS DR
LORIS SC 29569

DEBERA TERPENING
523 SIX LAKES DR
MYRTLE BEACH SC 29588

ARTHUR F PROSS
122 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

NORMA F WRIGHT
1684 COX RD
GALIVANTS FERRY SC 29544

CAROLE A STEARNS
PO BOX 576
HERKIMER NY 13350

TODD JACKSON
686 RIVERWALK DR #102
MYRTLE BEACH SC 29579

WILLIAM JR EDWARDS
6609 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

CHRISTOPHER TODD
5820 HIGHWAY 905
CONWAY SC 29526

JOHN S BROWN
1975 GEMINI CIR
CONWAY SC 29527

LINDA L BOYD
216 FOX CATCHER DR
MYRTLE BEACH SC 29588

DARREN OTTO COOK
4499 WILLOW SPRINGS RD
CONWAY SC 29527

JOHN J SMITH
3732 LOVE LN
CONWAY SC 29527

JOEY E DOYLE
1160 DOYLE RD
AYNOR SC 29511

MELISSA D ROBERTS
117 FOX HAVEN BLVD #118
MYRTLE BEACH SC 29588

JULIE GOLOMB
670 RIVERWALK DR #303
MYRTLE BEACH SC 29579

CONSTANCE S REDDINGTON
670 RIVERWALK DR #302
MYRTLE BEACH SC 29579

PETER THIELMANN
670 RIVERWALK DR #104
MYRTLE BEACH SC 29579

JIMMIE C TAYLOR
3607 BRAMPTON DR
MYRTLE BEACH SC 29588

JERRY G SKIPPER
3263 HUGHES GASQUE RD
AYNOR SC 29511

COLLEEN MCKEE
280 CENTER CHURCH RD
CANONSBURG PA 15317

MARK E TILGHMAN
1104 TAP ROOT CT
MURRELLS INLET SC 29576

BRUCE A BOLK
288 LAMBERT RD
CONWAY SC 29526

PATRICIA L WILLIS
1785 GREENPOND RD
LORIS SC 29569

BRYAN H ELLIOTT
583 SUNDOWN TRL
MYRTLE BEACH SC 29588

JOESPH KLINEFELTER
8042 LONG NEEDLE CT #30
MURRELLS INLET SC 29576

EARL BIBBEE
120 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

KENNETH THOMPSON
985 BROWN SWAMP RD
CONWAY SC 29527

JOYCE F WISSMAN
6903 GINA CT
MYRTLE BEACH SC 29588

THOMAS F SULLIVAN
8011 TAG CT
MURRELLS INLET SC 29576

JULIE BENSON
150 BELLETERRE LN
LORIS SC 29569

MARK J GRAY
899 COX FERRY RD W
CONWAY SC 29526

JAMES D HEWETT
3259 HUGHES GASQUE RD
AYNOR SC 29511

MARC DIPIETRO
971 GRACE DR
CONWAY SC 29527

JESSY D FISHER
1100 TAP ROOT CT #L-155
MURRELLS INLET SC 29576

ANGELA W GRAINGER
5665 HIGHWAY 905
CONWAY SC 29526

ROBERT MEEK
2068 MARTIN ST
LORIS SC 29569

ROBERT J SMITH
6901 GINA CT
MYRTLE BEACH SC 29588

WILLIAM HEUSTESS
4137 HIGHWAY 813
CONWAY SC 29526

TODD HEINRICH
3012 HERDSMAN WAY
RALEIGH NC 27614

ROBERT BUTLER
PO BOX 859
CONWAY SC 29528

PHILLIP L HENDRICK
5868 JUNIPER BAY RD
CONWAY SC 29527

BRYAN S TODD
3193 GAUSE RD
LORIS SC 29569

NYRA N SCOTT
1750 BRIDGEWATER DR #40
CONWAY SC 29526

DAMIEN DAVISON
8026 CLEARFIELD DR
MYRTLE BEACH SC 29588

LORRAINE E DELANEY
951 GRACE DR
CONWAY SC 29527

JERRY ERNEST JAMES
5300 TWEETY AVE
CONWAY SC 29527

JAMES SAMUEL CROSS
105 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

EDWARD J WELSH
6905 GINA CT
MYRTLE BEACH SC 29588

KENNETH PORTER
1828 OAK DALE RD
LORIS SC 29569

LARRY A HINCHER
1560 GREEN SEA RD S
LORIS SC 29569

HARMON D GRAHAM
916 JACKSON BLUFF RD
CONWAY SC 29526

CARLIS L GASQUE
3748 VALLEY FORGE RD
AYNOR SC 29511

MICHAEL B WILLIAMSON
3584 GOOD LUCK RD
AYNOR SC 29511

MICHAEL GILLAND
314 FOXRIDGE DR
MYRTLE BEACH SC 29588

ROXANA J BEAULIEU
823 ESTHER CT #18
CONWAY SC 29526

JERALLYN A GRASSIE
1279 POLLEN LOOP #189
MURRELLS INLET SC 29576

JIMMY TODD
2279 CHERRY HILL RD
LORIS SC 29569

DENNIS GENE COATS
3311 BROAD ST
LORIS SC 29569

DAVID KEVIN BULLOCK
5960 GRACE LN
MYRTLE BEACH SC 29588

LAURIE KNAPP
104 BAY BERRY LANE
EASTON CT 06612

JOHNATHAN B BLACK
2411 MEMORY LN
LORIS SC 29569

PATRICIA R HULIT
1103 TAP ROOT CT #L-160
MURRELLS INLET SC 29576

MARTHA E GUTHRIE
9737 SMALLS DR
MYRTLE BEACH SC 29588

ZORAN ASANIN
1514 LANTERNS REST RD #303
MYRTLE BEACH SC 29579

EDWARD W HARROP
1285 AUTUMN DR LOT 188
MURRELLS INLET SC 29576

JULIE A ALLABACH
210 FOX CATCHER DR
MYRTLE BEACH SC 29588

WILLIAM STEWART DERR
1020 AUTUMN DR
MURRELLS INLET SC 29576

KAREN S ROGERS
1030 AUTUMN DR
MURRELLS INLET SC 29576

HEATH R LAMBERT
1707 COX RD
GALIVANTS FERRY SC 29544

HANNELORE MCRAY
2497 HUNTERS TRL LT58
MYRTLE BEACH SC 29588

TERRI K SELLERS
1043 CAUSEY RD
CONWAY SC 29526

STEPHEN KOCOT
8069 RESIN ROAD PINES OF ST
MURRELLS INLET SC 29576

RONALD HARRIS ROGERS
1514 LANTERNS REST RD B3 301
MYRTLE BEACH SC 29579

RICHARD DONOVON GRAINGER
839 SISTERS RD
LORIS SC 29569

LAYNE R HOLLAND
218 FOX CATCHER DR
MYRTLE BEACH SC 29588

JEFFREY F TODD
4701 COUNTRY TRL
AYNOR SC 29511

PATRICIA WADE
6302 ADRIAN HWY
CONWAY SC 29526

HEATHER L PRITCHARD
1033 AUTUMN DR
MURRELLS INLET SC 29576

NANCY HALE
1028 AUTUMN DR
MURRELLS INLET SC 29576

WILLIAM L SCHUMAN
522 SAINT CHARLES CIR
MYRTLE BEACH SC 29588

MICHELLE L JENNINGS
338 WORTHINGTON CIR
MYRTLE BEACH SC 29588

DAVID D FELDER
2659 HIGH BRASS TRL
MYRTLE BEACH SC 29588

AMANDA G SPRINGS
6088 KATES BAY HWY
CONWAY SC 29527

MICHELLE LIVINGSTON
737 HIGHWAY 66
CONWAY SC 29526

MELITA WALDEN
PO BOX 50361
MYRTLE BEACH SC 29579

RONALD H ADCOCK
5419 WOOD RIDGE RD
WILMINGTON NC 28409

CHARLOTTE BAFILE
980 GRACE DR #35
CONWAY SC 29527

MICHAEL CHRISTPHER ELLIOTT
974 GRACE DR
CONWAY SC 29527

MICHAEL T SPIRES
4971 BETHEL RD
AYNOR SC 29511

ELIZABETH T LESTER
8068 RESIN RD
MURRELLS INLET SC 29576

SLOAN INC
3007 A CHURCH ST
MYRTLE BEACH SC 29577

BOBBY E HAZELTON
4413 OLD BUCK CREEK RD
LONGS SC 29568

RANDALL JORDAN
3100 WAYSIDE RD
CONWAY SC 29527

DAVID H EDWARDS
2527 BEAR STAND TRL
MYRTLE BEACH SC 29588

KARL NEMETH
1026 LINDA DR
CONWAY SC 29526

ALMON WHITMAN
8064 RESIN RD
MURRELLS INLET SC 29576

MATTHEW TRUDEAU
1276 POLLEN LOOP
MURRELLS INLET SC 29576

MICHAEL BRIDE
1274 POLLEN LOOP #L-260
MURRELLS INLET SC 29576

RALPH FISHER
8088 BARK CT
MURRELLS INLET SC 29576

JEFFREY COLE
1032 AUTUMN DR
MURRELLS INLET SC 29576

JENNY KEARNS
1264 POLLEN LOOP #255
MURRELLS INLET SC 29576

DARLA MOREHEAD
8013 TAG CT
MURRELLS INLET SC 29576

JUNE ROSE VEACH
1265 POLLEN LOOP
MURRELLS INLET SC 29576

JAMES E ROBERTS
480 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

WINIFRED M BROWN
967 GRACE DR
CONWAY SC 29527

TIMOTHY TROXELL
1420 FOUR MILE RD
CONWAY SC 29526

HINSON RABON
11172 HIGHWAY 905 N
LONGS SC 29568

WOODY MCDOWELL
2981 DUSTY RD
LORIS SC 29569

ROBERT W HOUSE
828 ESTHER CT LOT 11
CONWAY SC 29526

NICOLET KIM RYAN
216 DEER TRACE CIR LOTB8
MYRTLE BEACH SC 29588

LOUIS J MOLNAR
6931 ANTONIO LN
MYRTLE BEACH SC 29588

GARY RAUCH
625 TIDAL POINT LN
MYRTLE BEACH SC 29579

WILLIAM HOLT
3305 HIGHWAY 905
CONWAY SC 29526

ELENA DIAZ
1006 AUTUMN DR
MURRELLS INLET SC 29576

JAMES E HOLMES
207 BEATY ST
CONWAY SC 29526

ROBERT R RUSH
5417 PRIVETTS RD
CONWAY SC 29526

JAMES THEN
975 GRACE DR
CONWAY SC 29527

JASPER W STOCKS
4948 RED BLUFF RD
LORIS SC 29569

BILL KUNKLE
7249 HIGHWAY 134
CONWAY SC 29527

BARBARA W SMALL
3221 SHETLAND LN
MYRTLE BEACH SC 29577

SHANNON WELCH
5437 DEERE DR
CONWAY SC 29527

CHRISTIE LONG
2769 COATS RD
LORIS SC 29569

JOSEPH W. HOWELL
2346 LITTLE LAMB RD
CONWAY SC 29527

ANGELA KNIGHT
1003 AUTUMN DR
MURRELLS INLET SC 29576

JACQUELINE M. MORRIS
1042 AUTUMN DR
MURRELLS INLET SC 29576

JOHN TARMEY
1516 HIGHWAY 129
GALIVANTS FERRY SC 29544

JULIE J KANNIARD
1018 MARTIN LN #16
CONWAY SC 29526

STEPHEN SUMPTER
3791 GREEN SEA RD
GREEN SEA SC 29545

JAMES A BARGIOL
198 SHAMROCK DR
CONWAY SC 29526

MICHAEL A MCCLELLAN
1021 MARTIN LN
CONWAY SC 29526

CLARENCE W YOUNG
9640 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

JANIS M SECKMAN
876 MCNABB SHORTCUT RD
LORIS SC 29569

DANIEL S STALVEY
330 FOUR MILE RD
CONWAY SC 29526

EDWARD LEE COFFEY
9601 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

RODERICK R TROSTLE
1001 AUTUMN DR
MURRELLS INLET SC 29576

DEBORAH L GAROFALO
1130 CARLEITA CIR
CONWAY SC 29527

KAREN S PRICE
4251 ENOCH RD
AYNOR SC 29511

EDWARD W WALKER
1013 AUTUMN DR
MURRELLS INLET SC 29576

EUGENIA COOPER MERCHANT
214 SUGAR TREE DR
MYRTLE BEACH SC 29588

RAYMOND G FORCIER
1699 HILLY LN
CONWAY SC 29527

DAVID H PRINCE
4613 RED BLUFF RD
LORIS SC 29569

SIMON GARY
9563 INDIGO CREEK BLVD #54
MURRELLS INLET SC 29576

TOMMY N COX
1490 LAWNDALE DR
LORIS SC 29569

RONALD S CUMMINGS
1960 MEADOWOOD LN
LONGS SC 29568

EDWARD W WALKER
1011 AUTUMN DR
MURRELLS INLET SC 29576

CONSTANCE R DAVID
2391 HUNTERS TRL
MYRTLE BEACH SC 29588

JOHN C REGAN
950 GRACE DR #52
CONWAY SC 29527

JOHN K HERRINGTON
2216 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

HAYDEE SALVATO
8036 RESIN RD #92
MURRELLS INLET SC 29576

MICHAEL L HUCKS
1036 MARTIN LN
CONWAY SC 29526

CHRIS CANNON
6730 KATES BAY HWY
CONWAY SC 29527

KAREN B GORE
3058 HUGHES GASQUE RD
AYNOR SC 29511

KEVIN S HEARL
4387 PARTY PINES RD
CONWAY SC 29526

JUANITA MEY
175 MOUNTAIN ASH DR.
BLUEFIELD WV 24701

SANDRA C TAYLOR
309 FOXRIDGE DR #5
MYRTLE BEACH SC 29588

RICHARD JAKELL
1040 MARTIN LN
CONWAY SC 29526

CORY B RICHARDSON
5686 SPRING BEAUTY DR
CONWAY SC 29527

ANDREW J FEDEROVITCH
2402 HUNTERS TRL #41
MYRTLE BEACH SC 29588

KARL D FLEMING
1209 CHESAPEAK DR
AYNOR SC 29511

LOUISE MANGIONE FLOWERS
3113 CLEMMONS RD
LORIS SC 29569

CARRIE HANNO
1283 POLLEN LOOP RD
MURRELLS INLET SC 29576

DONNA RAE RUTHERFORD
4149 HIGHWAY 813
CONWAY SC 29526

NORMAN MCCULLOCH
5637 HIGHWAY 905
CONWAY SC 29526

SCOTTY W CANNON
1541 COATS RD
LORIS SC 29569

DIANA L BRADSHAW
7956 SPRUCE LN
MURRELLS INLET SC 29576

JOHN ALLEN BROWNE
PO BOX 1192
CONWAY SC 29528

GLENDA P KEEL
3806 MAYPOP CIR #C
MYRTLE BEACH SC 29588

CHRISTOPHER R COLLINS
14007 HIGHWAY 19
NICHOLS SC 29581

JAMARIS E YOUNG
1007 AUTUMN DR #183
MURRELLS INLET SC 29576

WILLIAM CROSS
3427 HIGH HILL DR
LITTLE RIVER SC 29566

DOUGLAS M. PATTON
2216 KIRKLAND DR
CONWAY SC 29526

FRANKIE HARRELSON
4467 BOTTLE BRANCH RD
CONWAY SC 29527

CAROL L SMALL
2217 KIRKLAND DR
CONWAY SC 29526

JAMES L CARROLL
439 NIGHT OWL LN
CONWAY SC 29527

ROSEMOND AMUSTEN
1004 AUTUMN DR #148
MURRELLS INLET SC 29576

ROBERT MCCURLEY
2025 KEEVER RD
LEBANON OH 45036

HEATH S ALLEN
2807 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

JANET SORCE
3806 MAYPOP CIR #A
MYRTLE BEACH SC 29588

DARLENE A LUCIDO
6911 ASHLEY COVE DR
MYRTLE BEACH SC 29588

DOROTHY G TYSON
4461 WILLOW SPRINGS RD
CONWAY SC 29527

JOHN LEHOTSKY
3151 CHERRY CIR
LONGS SC 29568

LEE ANNA WILLIAMS
120 BLUE RIDGE CIR
LONGS SC 29568

LISA R SOLES
520 HIGHWAY 348
LORIS SC 29569

ARRON B MILLER
PO BOX 30392
MYRTLE BEACH SC 29588

HAL M HEIDT
3454 WILDERNESS LN
MURRELLS INLET SC 29576

GARY D ROSE
6943 ANTONIO LN
MYRTLE BEACH SC 29588

WANDA R JORDAN
1023 MARTIN LN #22
CONWAY SC 29526

TERESA A ZELLER
1280 POLLEN LOOP #263
MURRELLS INLET SC 29576

RICKY/JACKIE NORRIS
522 GUMTREE RD
GALIVANTS FERRY SC 29544

HILDA CORUM SPRINKLE
3084 WAYSIDE RD
CONWAY SC 29527

RANDOLPH W EMERY
PO BOX 666
AYNOR SC 29511

SAM KLEIN
218 DEER TRACE CIR
MYRTLE BEACH SC 29588

BARRY M HALPERN
1156 POLLEN LOOP #22
MURRELLS INLET SC 29576

MICHAEL HAL NOBLES
4155 LIBERTY LN
CONWAY SC 29527

KIM MASSIE
818 ESTHER CT
CONWAY SC 29526

DEBORAH H MCCRACKEN
3379 HIGHWAY 19
CONWAY SC 29526

LANCE D POE
5609 BLACKMOOR DR S
MURRELLS INLET SC 29576

JULIAN JEFFERY STANLEY
3722 PEACE CT
CONWAY SC 29527

TALMADGE COLLINS
9915 CONIFER LN
MURRELLS INLET SC 29576

JANET C BURKE
1034 AUTUMN DR #16
MURRELLS INLET SC 29576

KISHA LILLY ROBERTS
223 RABON RD
AYNOR SC 29511

JAMES MCDOWELL
425 AMANDA WAY
CONWAY SC 29526

GERALD BAXTER
1165 POLLEN LOOP
MURRELLS INLET SC 29576

WANDA GAIL JENKINS
8027 RESIN RD
MURRELLS INLET SC 29576

DANIELLE TAYLOR
1908 BELLAMY RD
CONWAY SC 29526

J FLINT MINCEY
735 DOGWOOD RD W
LORIS SC 29569

MARY LOU BLACKMON
7211 OLD REAVES FERRY RD
CONWAY SC 29526

JANICE J WEST
9275 PEE DEE HWY
CONWAY SC 29527

AUDRA BARNETT
1024 AUTUMN DR
MURRELLS INLET SC 29576

JUANITA MOREHOUSE
821 ESTHER CT
CONWAY SC 29526

MARTIN L CLINE
6161 INMAN CIR
CONWAY SC 29526

DAVID JOHNSON
4107 BARNHILL RD
GALIVANTS FERRY SC 29544

KENNY TINDALL
1046 DUNN SHORT CUT RD
CONWAY SC 29527

DAVID G ALLEN
1027 AUTUMN DR
MURRELLS INLET SC 29576

PHILLIP ROSS CAWTHON
8091 BARK CT
MURRELLS INLET SC 29576

WILLIAM E ISBLE
524 BASHORE DR
MARTINSBURG WV 25404

KAREN MAGUIRE
4267 CONGRESSIONAL DR
MYRTLE BEACH SC 29579

ALLEN R RENSTROM
157 HUMMINGBIRD CT
MYRTLE BEACH SC 29579

SUSAN NOLAN
1106 TAP ROOT CT
MURRELLS INLET SC 29576

ROBERT J SMITH
3021 SABAL CT #224
MURRELLS INLET SC 29576

LILLIE B DAVIS
7954 SPRUCE LN
MURRELLS INLET SC 29576

JONATHAN SIMMONS
1284 POLLEN LOOP
MURRELLS INLET SC 29576

ANNETTE HANLEY
1282 POLLEN LOOP #264
MURRELLS INLET SC 29576

WICKY PRETRICK
1192 POLLEN LOOP #237
MURRELLS INLET SC 29576

LONNIE J SIMMONS
1191 POLLEN LOOP #206
MURRELLS INLET SC 29576

BRETT A ALLEN
4035 J AND S COUNTRYSIDE RD
CONWAY SC 29527

TRENT HARDEE
2529 HIGHWAY 129
GALIVANTS FERRY SC 29544

KENNETH PAVKOVIC
126 HAWTHORNE CIR
ALLENTOWN PA 18104

CAROL S REDAR
2205 SPRINGWOOD PL
LONGS SC 29568

LUCILLE C SKIPPER
13466 PEE DEE RD S
GALIVANTS FERRY SC 29544

JESSICA RAE GERLACH
822 ESTHER CT
CONWAY SC 29526

JOSHUA LEE TRUETT
5050 HAMPTON RD
CONWAY SC 29527

SAMMY T CARROLL
6215 HUNTING SWAMP RD
CONWAY SC 29527

ROBERTA LIPMAN
318 FOXRIDGE DR #131
MYRTLE BEACH SC 29588

DAVID P GORE
4144 LONG AVENUE EXT
CONWAY SC 29526

JACKSON L COBB
1126 PINE CROFT DR
WEST COLUMBIA SC 29170

DAVID ALAN FECTEAU
956 NOTTINGHAM COURT
CONWAY SC 29526

JIMMY SIMMONS
2004 ACACIA LN
MURRELLS INLET SC 29576

WENDY LEVESQUE
7969 SPRUCE LN #117
MURRELLS INLET SC 29576

NEW HOMES REALTY INC
101 ASCOT DR
MYRTLE BEACH SC 29588

THOMAS KOST
3001 SABAL CT
MURRELLS INLET SC 29576

BRADLEY K NEUHART
2545 COUNTY ROAD 24
CARDINGTON OH 43315

VICTOR GRBICH
CT 8045 BOX CT
MURRELLS INLET SC 29576

ARTHUR HYATT
3000 SABAL CT #L-213
MURRELLS INLET SC 29576

LINDA LIENHOP
3006 SABAL CT
MURRELLS INLET SC 29576

TIMOTHY M SUGGS
PO BOX 855
LORIS SC 29569

GARY L BRYANT
2166 MEADOWOOD LN
LONGS SC 29568

DAVID WILLIAMSON
311 FOXRIDGE DR #6
MYRTLE BEACH SC 29588

JOSEPH E MILEY
5621 BLACKMOOR DR S
MURRELLS INLET SC 29576

ERIK O GRANT
1168 POLLEN LOOP
MURRELLS INLET SC 29576

JASON HARPER
1009 AUTUMN DR #182
MURRELLS INLET SC 29576

JOSEPH L JOHNSON
1528 BUSY CORNER RD
CONWAY SC 29527

PATRICK A PARKER
488 HUCKS RD
AYNOR SC 29511

CRAIG LARRY BOOTH
3879 BAKERS CHAPEL RD
AYNOR SC 29511

GREGORY W HILL
2464 HUNTERS TRL
MYRTLE BEACH SC 29588

DONNA T CAUSEY
2208 STAR BLUFF RD
LONGS SC 29568

SHARON L SPRINGER
220 7TH ST #220
OAKMONT PA 15139

JEANNE L ATKINSON
3915 GOFF RD
AYNOR SC 29511

H LUNDY BOOTH
3946 LONG AVENUE EXT
CONWAY SC 29526

MASSOUD RAHNAVARD
455 SUNNEHANNA DRIVE BOX 179
ISL
MYRTLE BEACH SC 29588

GEORGE CANTRELL
3011 SABAL CT
MURRELLS INLET SC 29576

HAROLD WAYNE RABON
3869 HORSE PEN BAY RD
AYNOR SC 29511

JULIE G BOSTIAN
413 COCO PLUM CT
LONGS SC 29568

JAMES GARY SMITH
4407 ENOCH RD
AYNOR SC 29511

PATRICIA BATEN
740 BUCKSVILLE DR
CONWAY SC 29527

JAMES S HALL
4185 LONG AVENUE EXT
CONWAY SC 29526

JOSEPH T COONS
895 OLD MAGNOLIA DR
CONWAY SC 29526

NICOLETTE C ROBEY
2006 ACACIA LN #20
MURRELLS INLET SC 29576

DANIEL ARROWOOD
5000 HAMPTON RD
CONWAY SC 29527

LADAIN POPE
605 LOOP CIR
LONGS SC 29568

LENORE HASLER
1256 POLLEN LOOP #253
MURRELLS INLET SC 29576

JEREMY T LEACH
190 HILL DR
PAWLEYS ISLAND SC 29585

DAWN M BURR
5605 HIGHWAY 378
CONWAY SC 29527

VIVISTINE M. GOUDE
9180 PEE DEE HWY
CONWAY SC 29527

JOSHUA DALE NORTON
3799 ASBURY RD
AYNOR SC 29511

ROBERT MONTHIE
303 BLENHEIM CT #350
CONWAY SC 29526

DEBBIE SINCLAIR
815 ESTHER CT
CONWAY SC 29526

JOYCE OVERHOLT
751 JUNGLE RD
CONWAY SC 29526

MARY BETH CARROLL
3652 GOOD LUCK RD
AYNOR SC 29511

PHILLIP H EDWARDS
1258 KNOTTY BRANCH RD
CONWAY SC 29527

REGINALD BOB GROOMS
466 MAPLEWOOD CIR
CONWAY SC 29526

RICHARD W DICKINSON
3849 PALMETTO ST
MYRTLE BEACH SC 29579

DAVID LEE TROUT
2777 HIGHWAY 545
CONWAY SC 29526

BELVA G PATTON
208 FOX CATCHER DR #L86
MYRTLE BEACH SC 29588

MARLENE GIELAROWSKI
6904 GINA CT
MYRTLE BEACH SC 29588

STANLEY W CASTOR
1852 HERITAGE RD
LORIS SC 29569

RANDOLPH ELVINGTON
1290 CAINES LANDING RD
CONWAY SC 29526

STEPHANIE M ELLIOTT
8012 TAG CT
MURRELLS INLET SC 29576

BURROUGHS NOBLES
993 WILLIAM NOBLES RD
AYNOR SC 29511

ROBERT A PERRINE
2003 ACACIA LN
MURRELLS INLET SC 29576

CHRISTINE A MCSWEENEY
212 FOX CATCHER DR
MYRTLE BEACH SC 29588

WILLIAM LAMBERT
4115 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

TERRY BROWN
6046 RENATA LN
MYRTLE BEACH SC 29588

JAMES CORDELL HUCKS
2946 LUCAS BAY RD
CONWAY SC 29527

DANIEL DIETRICH
545 CRUSADE CIR
CONWAY SC 29526

CAROLYN AMOS
2416 HUNTERS TRL
MYRTLE BEACH SC 29588

CAROL D MABEN
6444 J AND T CIR
CONWAY SC 29527

CHRISTINA FINN
312 FOXRIDGE DR
MYRTLE BEACH SC 29588

JERRY PHILLIPS
2875 OLD REAVES FERRY RD
CONWAY SC 29526

DONNA LYNN JOHNSON
1151 POLLEN LOOP
MURRELLS INLET SC 29576

JULIA C BAURLE
1149 POLLEN LOOP PINES OF ST
MURRELLS INLET SC 29576

JAMES PROSSER
4988 PROSSERS SHORTCUT RD
AYNOR SC 29511

CRAIG T SQUIRES
6201 HENDRICKS SHORT CUT RD
CONWAY SC 29527

APRIL J HARDWICK
4091 HIGHLAND DR
AYNOR SC 29511

RICHARD DIETRICH
543 CRUSADE CIR #358
CONWAY SC 29526

GARY A BAUM
2002 ACACIA LN
MURRELLS INLET SC 29576

JAMIE WILLIAMS
5 AUDUBON CT
MURRELLS INLET SC 29576

ERNEST BAYLOR
1105 TAP ROOT CT #159
MURRELLS INLET SC 29576

RYAN LAMBERT
3781 QUAIL DR
GALIVANTS FERRY SC 29544

BETTY SHELLEY
152 MCNEIL CHAPEL RD
LONGS SC 29568

GARY ARMSTRONG
PO BOX 30505
KNOXVILLE TN 37930

KAREN CARPENTER
118 FOX HAVEN BLVD #113
MYRTLE BEACH SC 29588

JAMES L MOLYNEAUX
1448 WILDERNESS LN
LORIS SC 29569

ELLA S CHADMON
827 ESTHER CT
CONWAY SC 29526

TRACEY W ABERCROMBIE
1037 MARTIN LN
CONWAY SC 29526

JAMES R REINER
3023 SABAL CT
MURRELLS INLET SC 29576

HAROLD STALVEY
3554 JORDANVILLE RD
GALIVANTS FERRY SC 29544

MATTHEW W BRATCHER
5055 OLD REAVES FERRY RD
CONWAY SC 29526

CHRISTOPHER M WALLER
1304 FOUR MILE RD
CONWAY SC 29526

DARREN J KRESS
406 COCO PLUM CT #78
LONGS SC 29568

LINDA HARRELSON
2301 WILDERNESS RD
CONWAY SC 29526

JEFFREY T SPIVEY
978 WILLIAM NOBLES RD
AYNOR SC 29511

ADAM M JORDAN
309 CLOVERBROOK CIR
CONWAY SC 29526

PHYLLIS A CAUSEY
2021 KIRKLAND DR
CONWAY SC 29526

KATHY MANGERS
4883 BEAR BLUFF RD
CONWAY SC 29526

VICTORIA LYNN HUCKS
3012 SABAL CT
MURRELLS INLET SC 29576

CHRISTOPHER J STUBBS
1216 POLLEN LOOP #243
MURRELLS INLET SC 29576

GAIL M CIAMPOLI
1208 POLLEN LOOP #241
MURRELLS INLET SC 29576

GEORGE COLLINS
PO BOX 10471
HAMILTON NJ 08650

TAMALA BUCKNER
3005 SABAL COURT PINES OF ST
MURRELLS INLET SC 29576

BETH CHRISTINE CHARLETTE
1233 POLLEN LOOP
MURRELLS INLET SC 29576

TIFFANY WALTERS
1260 POLLEN LOOP
MURRELLS INLET SC 29576

VICKY J TINDALL
5305 BOTTLE BRANCH RD
CONWAY SC 29527

NICHOLAS B CLEM
1718 HOLLY RIDGE DR
LONGS SC 29568

CURRENT RESIDENT
5253 KATES BAY HWY
CONWAY SC 29527

RUTH H CARROLL
1047 ACADEMY DR
CONWAY SC 29526

ABDELGHANI RAHMOUNDI
PO BOX 16115
SURFSIDE BEACH SC 29587

DONNA S SMITH
8975 POLO CIR #F
MURRELLS INLET SC 29576

DEBORAH CARROLL
1145 POLLEN LOOP
MURRELLS INLET SC 29576

RANDOLPH GRAHAM
PO BOX 87
LONGS SC 29568

JOHN W. MOSLEY
4286 MILL HILL RD
CONWAY SC 29526

WILLIAM DECKER
3321 CEDAR CREEK RUN
LITTLE RIVER SC 29566

JODY L LEWIS
992 GRACE DR
CONWAY SC 29527

MARGIE M LEE
115 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

PAULA SCHEIDERER
13331 PEE DEE RD S
GALIVANTS FERRY SC 29544

JOHN S BALDEA
202 FOX CATCHER DR
MYRTLE BEACH SC 29588

RICHARD H HINKLE
106 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

JOHN BISHOP
6909 ASHLEY COVE DR
MYRTLE BEACH SC 29588

WILLIAM L ISHMAEL
826 ESTHER CT #10
CONWAY SC 29526

AMY L WISDO
317 FOXRIDGE DR #9
MYRTLE BEACH SC 29588

BARBARA LUESCHER
406 CALLIE DR #77
MYRTLE BEACH SC 29588

CHAD M MARKULICS
4038 DEWITT RD
LONGS SC 29568

LAMAR BOULWARE
2502 SMILEY LN
CONWAY SC 29526

TARA S CHESTNUT
2985 OLD REAVES FERRY RD
CONWAY SC 29526

DAVID SCHMECK
111 CROSS CREEK DR
POTTSVILLE PA 17901

ROGER TEETS
1538 LANTERNS REST RD #203
MYRTLE BEACH SC 29579

DANIEL ROCHE
334 TRESTLE WAY
CONWAY SC 29526

LAWANDA HICKMAN
2449 FARMWOOD CIR #6
CONWAY SC 29527

SHERRI L WALKER
1019 AUTUMN DR
MURRELLS INLET SC 29576

SAUNDRA L RHODES
2451 FARMWOOD CIR
CONWAY SC 29527

EDWARD WOLANIK
PO BOX 2281
CONWAY SC 29528

WILLIAM DEREK MARTIN
6906 MAR CAP RD
GALIVANTS FERRY SC 29544

PATRICIA A DELANEY
957 GRACE DR
CONWAY SC 29527

JAMES VANDERGAAG
4173 HIGHWAY 66
LORIS SC 29569

KERRY A COOK
302 TROON LN
MYRTLE BEACH SC 29588

MIKE L SMITH
1237 POLLEN LOOP PINES OF ST
MURRELLS INLET SC 29576

SEAN P CARROLL
3026 SABAL COURT PINES OF ST
MURRELLS INLET SC 29576

SIGRID HARPER
3022 SABAL CT #217
MURRELLS INLET SC 29576

CLAUDINE BARD
3031 SABAL CT #222
MURRELLS INLET SC 29576

KELLI GELWICKS
3030 SABAL CT #219
MURRELLS INLET SC 29576

JIMMY DEAN RABON
1665 HEMINGWAY CHAPEL RD
CONWAY SC 29527

BRADLEY S TUNNELL
11826 HIGHWAY 19 W
LORIS SC 29569

DWAYNE PATRICK
472 MCNEIL CHAPEL RD
LONGS SC 29568

WYNNETTE F SMITH
319 FOXRIDGE DR
MYRTLE BEACH SC 29588

JAY KELLY CARTER
3545 ROENA DR
CONWAY SC 29527

WUYI ZHANG
320 FOXRIDGE DR
MYRTLE BEACH SC 29588

HELEN JACOBSON
1301 GRASSY HILL CT
HANAHAN SC 29410

LENORA HARRELSON
2303 WILDERNESS RD
CONWAY SC 29526

JOHN R FOWLER
327 KEYSFIELD CIR
CONWAY SC 29527

SANDY PETERSON
3036 SABAL CT
MURRELLS INLET SC 29576

SHAWNA E TECCO
1236 POLLEN LOOP
MURRELLS INLET SC 29576

STAN H SARVIS
2481 FOWLER SCHOOL RD WELL
LORIS SC 29569

DUANE BROWN
581 KNOTTY BRANCH RD
CONWAY SC 29527

RAMONA KAY MARTINET
3700 TRAVIANA RD
CONWAY SC 29526

LONNIE R MARTIN
841 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

WILLIAM F LAVOIE
184 LONG RIDGE DR
MURRELLS INLET SC 29576

FRANK E KING
4101 CARLISLE RD
DOVER PA 17315

DEVAN DORA SHELLEY
2904 MOORES MILL RD
AYNOR SC 29511

TARA HOLMES
6020 OLD PLACE RD
LORIS SC 29569

ROBERT CASEY ALTMAN
1020 WHITE CEDAR LN
MURRELLS INLET SC 29576

ALEX MURZSA
1061 MARIE CT
CONWAY SC 29526

JOHN HEATON
4147 HAGWOOD CIR
CONWAY SC 29526

WILLIE E ROBERTS
3631 JUNIPER BAY RD
CONWAY SC 29527

STARLA RENEE LITTLE
1117 PANTHEON DR
CONWAY SC 29526

ROSCOE N JONES
6908 ASHLEY COVE DR
MYRTLE BEACH SC 29588

CARL SWANSON
1138 CARLEITA CIR #14
CONWAY SC 29527

HENRY J HETU
3093 LONG AVENUE EXT
CONWAY SC 29526

S BRAD DAWSEY
339 FRYE RD
GALIVANTS FERRY SC 29544

VICKI J CROFT
57 SMITH BLVD
MYRTLE BEACH SC 29588

JOHN A LINTECUM
3053 AIRPORT RD
HILLSVILLE VA 24343

KARIN TEAGUE
501 CLOVERFIELD LN #43
CONWAY SC 29526

CURTIS MELTON
PO BOX 634
ROCKINGHAM NC 28380

TODD A COOKE
505 KEYSTONE LN #88
MYRTLE BEACH SC 29588

RALPH N WILCOX
1015 AUTUMN DR #179
MURRELLS INLET SC 29576

WILLIAM DALLAS
124 DEER TRACE CIR
MYRTLE BEACH SC 29588

WILLIAM F JOHNSON
5664 NEW DAWN RD
CONWAY SC 29526

2410 BLAKE ST
CONWAY SC 29526

GLENN W HUGHES
7150 PEE DEE HWY
CONWAY SC 29527

MATTHEW V LANZER
6930 ANTONIO LN
MYRTLE BEACH SC 29588

VAN BUREN DUNCAN
2570 HIGHWAY 348
LORIS SC 29569

JANET SPENCER
259 FOX CATCHER DR #92
MYRTLE BEACH SC 29588

LARRY D SMITH
1820 PITCH LANDING RD
CONWAY SC 29527

GARRETT GASQUE
3197 HUGHES GASQUE RD
AYNOR SC 29511

CHRIS M MCMURRAY
6269 SALEM RD
MYRTLE BEACH SC 29588

RICHARD W BOYD
1651 HIGHWAY 66
CONWAY SC 29526

ANNETTE STANLEY
1124 ELKFORD DR #39
CONWAY SC 29526

CHARLES W GOSNELL
9673 CONIFER LN
MURRELLS INLET SC 29576

MARY D WINEGLASS
7650 ENTERPRISE RD #F1
MYRTLE BEACH SC 29588

MARK TODD
500 HUCKS RD
AYNOR SC 29511

BETH SEMENTELLI
3018 SABAL CT
MURRELLS INLET SC 29576

MATT WINBURN
2142 WINBURN RD
CONWAY SC 29527

FRANK D BOWE
3755 CHARITY LN
CONWAY SC 29527

JAMIE L BESS
9727 CONIFER LN #316
MURRELLS INLET SC 29576

JESSIE NORRIS
3698 STILL POND RD
CONWAY SC 29526

JOSE MIRELES
510 SIX LAKES DR
MYRTLE BEACH SC 29588

HELEN T WACK
1501 HOLLY HILL RD
LORIS SC 29569

JAMES R. MEW
6250 JUNIPER BAY RD
CONWAY SC 29527

DONALD W ANDERSON
4011 BAKERS CHAPEL RD
AYNOR SC 29511

ROBERT PUORRO
1209 FOXBORO DR
NORWALK CT 06851

KEVIN MCCANN
505 CLOVERFIELD LN #42
CONWAY SC 29526

STEVEN E MATHISON
1021 AUTUMN DR
MURRELLS INLET SC 29576

FRANKLIN DEAN ROBERTS
6536 GUNTERS ISLAND RD
GALIVANTS FERRY SC 29544

SCOTT BEERS
1220 POLLEN LOOP
MURRELLS INLET SC 29576

DANIEL SKUCHKO
9685 CONIFER LN
MURRELLS INLET SC 29576

JUDY M. TURNER
6230 CHINABERRY DR
CONWAY SC 29527

KELLI CARROLL
1605 OAK LAWN DR #12
AYNOR SC 29511

STEVEN LANE
113 CORAL CREST DR
CONWAY SC 29527

DANIELLE PAESE
2704 WOODCREEK LN
CONWAY SC 29527

JAMEY SCHEUCH
1212 POLLEN LOOP
MURRELLS INLET SC 29576

CHARMAINE TOMCZYK
11025 HIGHWAY 19 W
LORIS SC 29569

MICHAEL J LOFLAND
1196 POLLEN LOOP
MURRELLS INLET SC 29576

TARA JOSEY
3602 FARMINGTON PL #20
MYRTLE BEACH SC 29579

ERIC GASQUE
5545 ENOCH RD
CONWAY SC 29526

BETH ANN VITALE
1036 AUTUMN DR
MURRELLS INLET SC 29576

JAMES W METTS
1252 POLLEN LOOP
MURRELLS INLET SC 29576

DENNIS A WILLIAMS
1041 MARTIN LN
CONWAY SC 29526

MATTHEW L JOHNSON
1559 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

DUSTIN L RICHARDSON
1560 BETSY LN
GALIVANTS FERRY SC 29544

JAMES BRYAN SUGGS
6000 BROWNS WAY SHORTCUT RD
CONWAY SC 29527

CYNTHIA D TANNER
108 ADRIANNA CIR
CONWAY SC 29526

PEARLINE R PARKER
1123 CARLEITA CIR
CONWAY SC 29527

ERMA JOHNSON
7339 JOHNSON SHORTCUT RD
CONWAY SC 29527

DAVID FULLWOOD
2708 FORK OF SWAMP RD
GALIVANTS FERRY SC 29544

GERALDINE SHEEHAN
9684 CONIFER LN #381
MURRELLS INLET SC 29576

MARK D COYNER
9681 CONIFER LN LT 279
MURRELLS INLET SC 29576

L T ROGERS
1232 POLLEN LOOP
MURRELLS INLET SC 29576

ANTHONY P BRAYBOY
1240 POLLEN LOOP #249
MURRELLS INLET SC 29576

SHEILA MCCAULEY
9899 CONIFER LN
MURRELLS INLET SC 29576

THEODRIC WILLIAMS
PO BOX 1236
MYRTLE BEACH SC 29578

KRISTEN DOWLING
1188 POLLEN LOOP ROAD
MURRELLS INLET SC 29576

MICHELLE L KOLB
1207 POLLEN LOOP
MURRELLS INLET SC 29576

GAIL MARCHESA
1172 POLLEN LOOP
MURRELLS INLET SC 29576

LANNY H WHITE
9887 CONIFER LN
MURRELLS INLET SC 29576

CARMELLA A HUGHES
4003 DOUGLAS FIR LN
MURRELLS INLET SC 29576

WALTER W LAWRENCE
6926 ASHLEY COVE DR
MYRTLE BEACH SC 29588

MITCHELL FLOYD
4023 CAROLINA RD
GREEN SEA SC 29545

JODY L NOBLES
4083 HIGHLAND DR
AYNOR SC 29511

KENNETH H. DIXON
2085 DIXON RD
AYNOR SC 29511

HARRY E CHRISTIAN
125 WHITE ROSE LN
CONWAY SC 29527

SUSAN M BOTHWELL
604 CUTLIP CT
CONWAY SC 29527

JOYCE JONES
3786 VALLEY FORGE RD
AYNOR SC 29511

TRENA ELLIS
4024 DOUGLAS FIR LN
MURRELLS INLET SC 29576

HENRY BROOKS LEWIS
936 HIGHWAY 67 W
LORIS SC 29569

JOHN S BALDEA
6928 ASHLEY COVE DR
MYRTLE BEACH SC 29588

SHARON KERRIGAN
32 OAK ST E
WEST HAZLETON PA 18202

CINDY M CUPPS
1134 CARLEITA CIR
CONWAY SC 29527

WILLIAM E CUTTS
1231 DUNN SHORT CUT RD
CONWAY SC 29527

ANTHONY RANDALL EDWARDS
PO BOX 2136
CONWAY SC 29528

COSMO PITTARELLI
145 UNION RD
CONWAY SC 29527

JOSEPH M LEIGH
525 COX FERRY RD W
CONWAY SC 29526

MARSHALL VAN DABBS
7106 HIGHWAY 134
CONWAY SC 29527

BERNIE KIRK HARDWICK
426 BRIARWOOD LN
CONWAY SC 29526

JAMES LEONARD
1003 WHITE CEDAR LN
MURRELLS INLET SC 29576

ELLEN GREENWALD
1000 WHITE CEDAR LN
MURRELLS INLET SC 29576

MICHAEL A LOWE
9677 CONIFER LN
MURRELLS INLET SC 29576

MARK ERIC JACKSON
9883 CONIFER LN
MURRELLS INLET SC 29576

DAVID L CORNETT
9708 CONIFER LN
MURRELLS INLET SC 29576

ANGELA GILLIANS
4028 DOUGLAS FIR LN LT309
MURRELLS INLET SC 29576

BONNIE L ADKINS
1204 POLLEN LOOP
MURRELLS INLET SC 29576

JOHN T ANDERSON
313 CORINNE LN
CONWAY SC 29526

DEBBIE DREW
4160 RED BLUFF RD
LORIS SC 29569

LISA G BEVERLY
4031 GOFF RD
AYNOR SC 29511

BRADLEY COX
2787 COATS RD
LORIS SC 29569

JOHN A KENDRICK
9696 CONIFER LN
MURRELLS INLET SC 29576

WENDELL A. GRAINGER
9251 HIGHWAY 701 S
CONWAY SC 29527

TERRY LUNDSFORD
2995 OLD ALTMAN RD
CONWAY SC 29526

LINDA S SHELLEY
4736 SHELL RD
CONWAY SC 29526

JAMES M NUZZI
6798 PINEHAVEN LN
CONWAY SC 29526

JOHN L MINNICH
616 BUCKS TRL
LONGS SC 29568

LEE H MCCORMICK
6203 HIGHWAY 19 E
LORIS SC 29569

JAMES REUTER
141 NEWBURG AVE
CATONSVILLE MD 21228

JAMES LEE THOMAS
190 DUCK BLIND TRL
MYRTLE BEACH SC 29588

PETER F BARFIELD
997 GRACE DR
CONWAY SC 29527

TIMOTHY W HUCKS
2685 DAWSEY RD
AYNOR SC 29511

JAMES MCLAIN
113 KINGSTON OAKS DR
CONWAY SC 29526

MARY AMY MARTIN
7588 ENTERPRISE RD
MYRTLE BEACH SC 29588

CHRIS BUFFKIN
4033 CAROLINA RD
GREEN SEA SC 29545

JAMES B LUCKETT
571 BUCKS TRL
LONGS SC 29568

LEONARD RODWELL
329 CLOVERBROOK CIR
CONWAY SC 29526

AMANDA SIEFERS
2005 ACACIA LN
MURRELLS INLET SC 29576

MELSIA CARTER
4027 DOUGLAS FIR LN LT305
MURRELLS INLET SC 29576

JILL M WARREN
2353 OLD CLEARPOND RD
CONWAY SC 29526

CHRISTOPHER R COLLINS
14007 HIGHWAY 19
NICHOLS SC 29581

DAYNA H LEWIS
940 BROWN SWAMP RD
CONWAY SC 29527

JOHNNY REED COOPER
1261 KNOTTY BRANCH RD
CONWAY SC 29527

KAREN L BELL
475 AMANDA WAY
CONWAY SC 29526

ALYSSA GOODMAN
9692 CONIFER LN
MURRELLS INLET SC 29576

JOHN E STROUD
1387 HIGHWAY 67 W
LORIS SC 29569

BARBARA R MILLER
4020 DOUGLAS FIR LN
MURRELLS INLET SC 29576

TIM M LEE
923 GRACE DR
CONWAY SC 29527

BILLY BRYANT
PO BOX 1051
CONWAY SC 29528

GLORIA WILSON
110 ADRIANNA CIR
CONWAY SC 29526

EDWARD DEAN FLOYD
152 LONG RIDGE DR
MURRELLS INLET SC 29576

MICHELE L TURNER
2054 HAWKSMOOR DR
CONWAY SC 29526

KATHLEEN E. HODUM
3602 EAGLE TRACE DR #5
MYRTLE BEACH SC 29579

DOROTHY J GRAHAM
460 KNOTTY BRANCH RD
CONWAY SC 29527

FRANCIS C PARKER
1529 LANTERNS REST RD #201
MYRTLE BEACH SC 29579

BARBARA WILLARD
6066 BEAR BLUFF RD
CONWAY SC 29526

HENRY DUBIEL
4560 HIGHWAY 472
CONWAY SC 29526

TIMOTHY CARTER
452 BEAR GRASS RD E
LONGS SC 29568

BARBARA A STARK
208 LONG RIDGE DR #34
MURRELLS INLET SC 29576

NEIL CAMPBELL
9900 CONIFER LN LT268
MURRELLS INLET SC 29576

KELLY R NOVAK
9700 CONIFER LN LT 377
MURRELLS INLET SC 29576

LORENZO WILSON
9724 CONIFER LN #372
MURRELLS INLET SC 29576

LORRAINE ORELLANO
9688 CONIFER LN
MURRELLS INLET SC 29576

ANGIE R CARLSON
3341 LUPINE DR
FLORENCE SC 29501

BRIAN CARROLL
200 ZION RD
GALIVANTS FERRY SC 29544

PAMELA M BELLAMY
3679 EAGLE TRACE DR
MYRTLE BEACH SC 29579

CURTIS FIKE
3595 HIGHWAY 777
LORIS SC 29569

SEIVAL M GOINGS
3726 RAINBOW DR
LONGS SC 29568

SILVIA RIVERS
900 SHEM CREEK CIR
MYRTLE BEACH SC 29588

KIMBERLY OWENS PRYOR
1337 EAGLE TERRACE CT
MYRTLE BEACH SC 29579

KAREN GREENE
1377 EAGLE CREST DR
MYRTLE BEACH SC 29579

CRISTY DUDLEY
1262 PINETUCKY DR
GALIVANTS FERRY SC 29544

JACK L BROUGHMAN
168 CAT TAIL BAY DR LT17
CONWAY SC 29527

CHRISTINE M WANDALL
9864 CONIFER LN
MURRELLS INLET SC 29576

ELAINE SHIELLS
142 PINFEATHER TRL
MYRTLE BEACH SC 29588

EXHIBIT

B

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

Ronnie Ferrell, et al.
☒ Plaintiff

v.

Horry Electric Cooperative,
☐ Defendant

CASE NO.
2011-CP-26-1266

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Nate Fata, Esq., Bar No. 09866 Address: P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:	Pope D. Johnson, III, Bar No. Address: P.O. Drawer 11209 Columbia, SC 29211-1209 phone: 803-799-9791 fax: 803-253-6084 e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — March 20, 2013 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☒ Other: Notice of Opt Outs

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

HORRY COUNTY
13 MAR 21 PM 4:08
MELANIE WEBBER-WARD
CLERK OF COURT

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF HORRY Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated Plaintiffs, vs. Horry Electric Cooperative, Defendant.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2011.CP.26.1266 PLAINTIFFS AND PLAINTIFF CLASS NOTICE OF OPT OUTS

The following persons provided notice by mail postmarked by February 15, 2013 of their intention to opt out of the Class Action:

1. Adkins, Bonnie L.
2. Adams, Hazel M.
3. Allen, Johnny C.
4. Apperson, Aubrey Lee
5. Booth, H. Lundy
6. Bowden, Callie Y.
7. Brown, Hugh A.
8. Bullock, David K.
9. Cannon, Scotty W.
10. Cantrell, George
11. Clem, Kathryn & Nicholas
12. Collins, Alethia W.
13. Cooper, Johnny Reed
14. Cox, Timothy Bradley
15. Currey, Wanda Virginia
16. Dozier, Romeo (Estate Representative Phyllis Dezer)
17. Durant, Randy G.
18. Durst, Mark J.
19. Edwards, David H.
20. Gasque, Garrett
21. Gore, David P.
22. Hardee, Trent B.

HORRY COUNTY
13 MAR 21 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

23. Harper, Kimberly L.
24. Harriett, Eugene
25. Hallsworth, Kenneth (Estate Representative Stephanie H. Folker)
26. Holmes, Etta Juan
27. Johnson, Matthew Levon
28. King, Frank & Sherry
29. Lilly, Enoch Thomas
30. Martinet-Olson, Ramona
31. Miley, Joseph E.
32. Nobels, Michael Hal
33. Norris, III, Jesse R.
34. Proffitt, Richard A.
35. Redfield, Anne C.
36. Reiner, James R.
37. Renstom, Allen
38. Roberts, Kisha Lilly
39. Sawyer, Zack S.
40. Schuessler, James W.
41. Simmons, James L.
42. Small, Barbara W.
43. Stearns, Carole A.
44. Sutton, Thomas, Harlin
46. Tellier, Sylvain
47. Whitesides, Angela

Respectfully submitted:

Nate Fata, Esquire
NATE FATA, P.A.
Post Office Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel.(843) 238.2676
Fax (843) 238.0240

Class Counsel

Surfside Beach, South Carolina
March 20, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011-CP-26-1266
Ronnie Ferrell, Tammy Vance)
and David Montorio, on behalf of)
themselves and all others similarly)
situated,)
) CERTIFICATE OF SERVICE
Plaintiffs,)
)
vs.)
)
Horry Electric Cooperative,)
)
Defendant.)

I, Sally Huffman, legal assistant for Nate Fata, counsel for Plaintiff and Plaintiff Class, do hereby certify that a copy of Plaintiffs and Plaintiff Class Notice of Opt Outs was served upon Pope Johnson, counsel for Defendant, via U.S. Mail on March 20th, 2013, postage prepaid as follows:

Pope D. Johnson, Esq.
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211 1209

Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

HORRY COUNTY
13 MAR 21 PM 1:00
MELANIE HUGGINS-WARD
CLERK OF COURT

EXHIBIT

C

EXHIBIT C FORM OF SETTLEMENT NOTICE TO CLASS MEMBERS

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO: 2011-CP-26-1266
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
vs.	
Horry Electric Cooperative,	
Defendant.	

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

You are NOT being sued. You MUST submit a claim to be eligible for payment.

This notice informs you of a proposed settlement of certain class action claims against Horry Electric Cooperative ("Horry Electric") concerning Horry Electric's Good Cents Program and the vapor barrier specifications. **This notice advises you of your rights with respect to the settlement, including the possible right to make a claim for payment, as well as your right to opt out of the settlement or object to the settlement.** This notice is being sent to you because you have been identified as a member of a class of persons who may be entitled to the benefits provided by the Settlement Agreement.

This Notice affects your legal rights -- Please read this Notice carefully.

READ THIS FIRST

WHY DID I RECEIVE THIS NOTICE? You were sent this notice because you are in the Class certified by the Court, and you previously were mailed a Class Action Notice in January 2013. You may be entitled to receive benefits under a settlement of legal claims relating to the vapor barrier required by Horry Electric's Good Cents Program for New Homes.

DO I HAVE TO DO ANYTHING? If the court approves the settlement and it becomes effective, you will be entitled to file a claim form together with proper supporting documentation showing your entitlement to a payment under the Automatic Payment Fund or the Remediation Fund. You may object to the proposed settlement during the Objection Period if you wish, and you may exclude yourself from the class, in which case you will have the right to file any claim you may have against Horry Electric on your own at your own expense.

WHAT IF MY ADDRESS HAS CHANGED? To assure correct delivery, if your address is different from the one on this envelope, or if you are moving, please notify Class Counsel at 843-238-2676 or by email at nfata@fatalaw.com.

The Basis of the Claims Against Horry Electric. This matter is before the Court because the Class Representatives have alleged that the Horry Electric Good Cents Program's vapor barrier requirement for the interior side of the exterior walls was inappropriate and a design defect, which caused property damage to the homes. The Plaintiffs have asserted claims for breach of warranty, gross negligence, breach of contract, and breach of the covenant of good faith and fair dealing. The Defendant has denied the allegations and has asserted several defenses. The parties engaged in discovery and multiple mediations of the claims, resulting in the proposed settlement here.

Reasons for Settlement. The settlement is between the Class on the one hand and the Defendant on the other, and it includes a release and dismissal with prejudice of the claims of the Class against the Defendant. Class Counsel view this settlement's benefits as advantageous to the Class in light of risks to recovery if litigation continues. The Defendant, while denying that it is liable to anyone and denying that it has committed any wrongdoing, wishes to avoid further lengthy, costly, and time-consuming litigation, to obtain total and final settlement of the Class claims, and to extinguish any liability of the Defendant with respect to the Class claims, as well as the common liability of any joint tortfeasors.

Who is In the Class and What is the Settlement. The "Class" consists of all persons whose homes were enrolled in the Horry Electric Good Cents Program for New Homes who were mailed a Notice of Class Action in January 2013. Under the settlement, you are entitled to file the Claim Form, which is included in this Notice, for either an automatic payment of Two Thousand Dollars ($2,000.00) **OR** a reimbursement claim of up to Twelve Thousand Dollars ($12,000.00) if you remove the vapor barrier, subject to the terms of the Settlement Agreement.

You have received this Notice because you were previously determined to be a member of the Class.

Binding Effect. In completing the settlement approval process, Plaintiffs and the Defendant will petition the Court for a Final Order dismissing this Action as to the Class Members with prejudice, and any person in the Class who does not request exclusion from ("opt out of") the settlement will be bound by it.

Attorneys' Fees and Costs. Class Counsel will petition the Court for a class representative incentive award for plaintiffs Tammy Vance and David Montorio of Five Thousand Dollars ($5,000.00) each for their work on behalf of the Class and for an award of attorneys' fees and costs of Nine Hundred Ninety Thousand Dollars ($990,000.00) out of the Six Million Dollar ($6,000,000.00) settlement fund as more fully described in the Settlement Agreement.

Obtaining Benefits Under the Settlement. If you are a Class Member as reflected in Defendant's records, you will be entitled to elect between the Automatic Payment Fund or The Remediation Fund by timely submitting the enclosed Claim Form. If the proposed settlement is finally approved, settlement benefits will be administered in accordance with the Settlement Agreement.

Exclusion Requests – "Opting Out." You have the right to request exclusion from ("opt out of") this settlement by advising Class Counsel and Defendant's Counsel in writing at the addresses given below. If you elect to opt out, then you will not receive a payment or receive any other benefits of the settlement. If you elect to opt out, you must mail a request for exclusion on or before _____, 2014 (*a date certain forty five (45)days after the first mailing of this Notice to Class Members*). Opt-out requests received after such date shall be of no force or effect. If you elect to opt out, you must fill out, sign, and date the enclosed Opt-Out Form and mail it to Class Counsel and Defendant's Counsel on or before ____, 2014.

Objections. If you are a member of the Class, you have the right to object in writing to any part of the proposed settlement. To object, you must both file with the Court and mail to Class Counsel and Defendant's Counsel, no later than _____ *(a date certain fifteen (15) days prior to the final fairness hearing, or such other date as the Court may order]*, a written objection referring specifically to the Vance vs. Horry Electric Class Action pending before the Court of Common Pleas for Horry County, Civil Action No. 2011-CP-26-1266, that includes: (a) your full name and address sufficient to identify your membership in the Class; (b) a notice of intention to appear; (c) the specific grounds for the objection, as well as all documents or writings that you desire the Court to consider; and (d) identification of any previously filed objections in state or federal courts by the Class member and any attorney representing the Class Member. Except for good cause shown, an objector who has not timely filed and served written objections with the requisite information will not be allowed to be heard at the hearing. Any person who fails to appear at the hearing will be deemed to have waived any such objections. To file the objection with the Court, you must mail or personally deliver the original of the written objection by the date specified in this Paragraph to:

Horry County Clerk of Court
Horry County Government & Justice Center
Conway, South Carolina, 29526

PLEASE DO NOT CALL THE COURT.

You must also mail copies of your written objections by the same date specified in the paragraph above to these attorneys' offices:

Class Counsel:
Nate Fata, Esq.
Nate Fata, P.A.
P. O. Box 16620
Surfside Beach, SC 29587

Class Counsel:
T. Christopher Tuck, Esq.
James L. Ward, Jr., Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
P.O. Box 1007
Mount Pleasant, SC 29465

Defendant's Counsel
Pope Johnson, Esq.
Johnson and Barnette, LLC
P.O. Drawer 11209
Columbia, SC 29211

Hearing on the Settlement. The Court will hold a hearing to consider the fairness and adequacy of this proposed settlement and to consider Class Counsel's petition for fees and costs on _____, at _____, *(a date certain within 85 days after the mailing of this Notice to Class Members)* at the **Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina 29526.**

Release. The proposed settlement is intended to resolve and terminate all claims that were raised by or on behalf of the Class members concerning the vapor barrier required by Horry Electric's specifications. The proposed settlement, if finally approved by the Court, will result in the release by

each Class member of all such claims, as more specifically provided in the Settlement Agreement. The claims against the Defendant alleged in the Complaint will be dismissed with prejudice as to all Class members.

Further Information. The descriptions in this Notice of the claims and settlement documents in this case are only summaries. The Settlement Agreement and all papers filed in the lawsuit may be inspected at the Office of the Clerk of Court for Horry County, Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina 29526. If you have any questions with respect to this Notice or the lawsuit generally, please call Class Counsel at the Law Offices of Nate Fata, Esquire, Nate Fata, P.A., P. O. Box 16620, Surfside Beach, SC 29587 www.fatalaw.com (843) 238-2676 or T. Christopher Tuck, Esquire, Richardson, Patrick, Westbrook & Brickman, LLC, P.O. Box 1007, Mount Pleasant, SC 29465. In addition you may view the settlement documents at www.rpwb.com.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

Date of Notice: _____, 2014

_____
Presiding Judge, Court of Common Pleas
FOR HORRY COUNTY

OPT-OUT FORM

I, _____, am an owner of a Good Cents
*Print Full Name

Home and do hereby opt out of the Class Action lawsuit entitled Vance, et al v. Horry Electric, 2011-CP-26-1266. I understand that by opting out I will receive no benefits or compensation from the lawsuit.

*Date: _____

_____
*Signature of Home Owner

*Street Address: _____
*City, State and Zip Code: _____
*Area Code and Phone Number: _____

MUST BE POSTMARKED BY _____, 2014

TO BE RETURNED TO:

Class Counsel
Nate Fata, Esquire
Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
and a copy to

Defendant's Counsel

Pope Johnson, Esq.
Johnson and Barnette, LLC
P.O. Drawer 11209
Columbia, SC 29211

******PLEASE COMPLETE ENTIRE FORM******

CLAIM FORM

VANCE VS. HORRY ELECTRIC

I, _____, hereby declare under penalties of perjury
Print Full Name

pursuant to 28 U.S.C.A. 1746 that I am a current homeowner of a home located at:

_____ _____ _____
Street Address City Zip Code

_____ _____
Signature of homeowner Date

I hereby elect to obtain one of the following benefits (check one):

_____ (1) Automatic Payment Fund with automatic payment of Two Thousand Dollars ($2,000.00)

OR

_____ (2) Remediation Fund with reimbursement of incurred Expenses up to Twelve Thousand Dollars ($12,000.00) after vapor barrier is removed

This CLAIM FORM must be mailed and postmarked no later than _____, 2014 to the following address: _____, South Carolina

I understand I may only elect either the Automatic Payment Fund benefit **OR** the Remediation Fund benefit and **NOT BOTH**.

Please see next page for an explanation of each Fund.

AUTOMATIC PAYMENT FUND EXPLANATION

Class members may claim an automatic payment of $2,000 by timely submitting the properly completed Claim Form. If the Automatic Payment Fund is insufficient to pay all qualifying Class members at $2000 per claim, then the payments shall be made with a pro rata reduction. Payments to the Class members electing the Automatic Payment Fund shall be made within the later of 60 days after the Effective Date of the Settlement or 60 days after the Claims Period.

REMEDIATION FUND EXPLANATION

Class members may claim reimbursement for **Reimbursable Remediation Expenses** by submission of a Claims Form and Documented proof. The Documented proof shall be submitted to [address] no later than _____ [180 days from the Effective Date of Settlement], and the claim shall not exceed $12,000. If the Remediation Fund is insufficient to pay all qualifying Class members their actual Reimbursable Remediation Expenses at an amount up to $12,000 per claim, then the payments shall be made with a pro rata reduction.

Documented Proof, with respect to remediation expenses eligible for reimbursement, means costs incurred by a Class member for removing the vapor barrier. Some examples of common documentation are copies of cancelled checks, credit or debit card receipts, receipts for materials used for repairs, credit card statements, affidavits, declarations and/or repair invoices or repair orders, which documents, singly or cumulatively, show Reimbursable Remediation Expenses. **In addition, photographs of the remediated exterior wall space without the vapor barrier shall be included as proof that the vapor barrier was removed.**

Payments to Class members electing the Remediation Fund shall be made within 30 days of Defendant's receipt of the Class Member's Documented Reimbursable Remediation Expenses. If more than 250 Class members select the Remediation Fund, the Defendant shall make payment within the later of thirty days of the expiration of the period to submit Documented Reimbursement Remediation Expenses or thirty days after the last decision by the arbitrator of all claims submitted in arbitration.

Reimbursable Remediation Expenses means Documented expenses incurred by a Class member for repairs associated with the vapor barrier removal, including, without limitation, moisture accumulation, mold growth, remediation of mold and mildew, repainting or sheet rocking of walls, re-insulating of walls, moving of furniture, storage of personal items and furniture during remediation, and any relocation expenses incurred during the remediation.

You should not undertake any remediation until after the Effective Date of Settlement, as defined in the Settlement Agreement.

If you elect the Remediation Fund, you must remove the vapor barrier in the exterior walls and submit the reverse side of this Form with documentation for reimbursement to: _____[HEC address]_____ within (180 days from Effective Date of Settlement).

REIMBURSEMENT REQUEST FORM

I submit the following documents in support of my reimbursement claim:

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

I also submit the _____ photographs as evidence that I removed the vapor barrier.
Number

I am requesting a total of $_____ for reimbursement.

_____
Sign here Date

_____
Print Name

_____
Physical address of home

This Reimbursement Form with documentation must be submitted NO LATER than One Hundred Eighty (180) days from the Effective Date of Settlement, as defined in the Settlement Agreement to _____ [HEC address].

Exhibit D

Order Granting Class Certification

STATE OF SOUTH CAROLINA COUNTY OF HORRY Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2011-CP-26-1266 ORDER GRANTING CLASS CERTIFICATION

HORRY CO. S.C.
12 AUG 28 PM 1:39
MELANIE [illegible]-WARD
CLERK OF COURT

STATEMENT OF THE CASE

This matter came before the Court on July 25, 2012 pursuant to Plaintiffs' Motion for Class Certification. Present at the hearing were Nate Fata and Mark Brunty, on behalf of the Plaintiffs, and Pope Johnson on behalf of the Defendant. The Plaintiffs seek class certification for several causes of action including negligence, breach of contract, breach of warranty and breach of covenant of good faith and fair dealing. The Defendant answered the Complaint with a general denial of the claim and asserted several defenses. The Court reviewed the Plaintiffs' and Defendant's briefs and submissions including, *inter alia*, deposition excerpts of the Defendant's 30(b)(6) designee and Plaintiffs' expert, expert affidavits, Horry Electric records, letters to and from Santee Cooper concerning the vapor barrier, and counsel's affidavit.

This action concerns Horry Electric's "Good Cents Program" for new homes ("Program") and allegedly defective design specifications and requirements. Horry Electric implemented the Program in 1988 and, for the issues involved in this action, continued with the same specifications and requirements until 2003. Horry Electric licensed the Good Sense

MHC

Program from Santee Cooper, which was implementing the Program with many electric cooperatives across the state.

Integral to this action is Horry Electric's Program requirement that all homes built under the Program have a vapor barrier installed on the heated side of the exterior walls. According to the Plaintiffs, the installation of the vapor barrier in this location does cause, and was known at the time of the adoption of the Program, to cause condensation, moisture, and mildew in the wall cavities of structures in warm humid climates such as Horry County. Plaintiffs contend Horry Electric traded off long-term moisture and mold problems in Class Member homes in exchange for the short-term benefit of reducing peak demand so that Horry Electric or its power providers would not have to spend money to build new power plants. Set forth below are the findings of fact and conclusions of law in favor of class certification.

CLASS FACTS

To receive the Good Cents Home approval as being energy efficient, the new home builder was required to follow Horry Electric's design instructions. The Program design instructions did not change during the years 1988-2003. One critical requirement was that a specified vapor barrier be installed on the heated side of the studs. From 1988-2008 Horry Electric's two specified methods to meet its vapor barrier requirement in new homes were: -

(a) Method One

(i) 4 or 6 mil. Polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings

(ii) properly installed friction fit batts

(iii) properly installed house wrap (such as Tyvek) as an air barrier

2/mtc

(b) Method Two

(i) properly installed Kraft or foil-faced insulation

(ii) taped and painted gypsum board installed on the inside of the exterior wall

(iii) properly installed house wrap (such as Tyvek) as an air barrier

Through 2003 all homes were required to have one of the two vapor barriers installed on the interior side of the exterior wall. The specifications did not change during the class period, 1988-2003. All new homes enrolled in the program were inspected by Horry Electric and were certified as having met the vapor barrier specifications. More than one thousand new homes, 1434, were built according to Horry Electric's vapor barrier specification.

Horry Electric required the same documentation for each home and used a systematic or classwide approach for approving the new homes and documenting the same. Horry Electric would use an inspection form to verify the required vapor barrier was installed. All homes have the same required Horry Electric documentation.

Although it knew of no building code that required a vapor barrier during 1988 to 2003, Horry Electric required one because Santee Cooper required it. Horry Electric did not permit homeowners or contractors to deviate from the Good Cents New Home requirement of vapor barriers installed on the inside of the exterior walls.

ANALYSIS

In South Carolina, the class action rule is more expansive than its federal counterpart, Rule 23 of the Federal Rules of Civil Procedure, and it is appropriately used to effectuate class wide resolution of claims. In *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 703 S.E.2d 197, 198 (2010) the Supreme Court again held that class actions are favored in this State, and that we have a more expansive view of class actions than our federal counterparts.

3 / MHC

CLASS DEFINITION

The class is defined as each and every Horry County homeowner of a new Good Cents Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the new Good Cents Program Home upon its construction during years 1988 through 2003. All persons within the Class who do not elect to exclude themselves from ("opt out of") the Class are referred to as class members.

RULE 23 REQUIREMENTS ARE MET

The prerequisites of South Carolina Rules of Civil Procedure Rule 23 are met in this action and are set forth below:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the class;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) the representative parties will fairly and adequately protect the interests of the class; and

(e) . . . the amount in controversy exceeds one hundred dollars for each member of the class.

In ruling on a motion for class certification, the merits of the case are not to be considered by the trial court. *Tilley v. Paceseller Corp.*, 333 S.C. 33, 508 S.E.2d 16 (1988). Rather, the appropriate inquiry is whether or not the case is suitable for treatment as a class action. Plaintiffs bear the burden of proving all five requirements for class certification. *Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (S.C. 2003).

4 /mk

A. **Numerosity**

The class is so numerous that joinder of all members of the class as petitioners herein is impracticable. No definite standard exists as to what size class satisfies the requirements of Rule 23(a)(1). *Haywood v. Barnes*, 109 F.R.D. 568, 576 (E.D.N.C. 1986). However, where the class numbers at least 40, joinder is usually impracticable, and where the class numbers in the hundreds, joinder is clearly impracticable. *See, e.g., Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th Cir. 1969) (reversing denial of class certification in a securities case involving 151 class members). Here, the 30 (b)(6) designee of Horry Electric clearly states that more than 1000 new homes with vapor barriers were accepted into the Good Cents Program by Horry Electric from 1988-2003. Horry Electric later stated that 1434 new homes were included in the Good Cents Program. As a result, the numerosity test has been met and, accordingly, the first prong of Rule 23, SCRCP is met.[1]

B. **Commonality**

Common questions of law and fact exist as to all members of the class. The commonality requirement is liberally construed and given permissive application so that common questions have been found to exist in a wide range of contexts. *Haywood v. Barnes*, 109 F.R.D. 568, 577 (E.D.N.C. 1986). See also *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157-58 (Ct.App. 1986) holding:

> It is important to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class. **In fact, a single common issue will suffice if it is important enough.** (Emphasis added).

In this case, common issues abound as to all homeowners: the alleged vapor barrier design defect and the improper requirement of a vapor barrier in the warm humid climate of

[1] A class action may proceed upon estimates as to the size of the proposed class. *In re Alcoholic Beverages Litigation*, 95 F.R.D. 321 (E.D.N.Y. 1982); *Leisl v. Shawano Cty*, 91 F.R.D. 64 (D. Wis. 1981); *Amswiss Int.l Corp. V. Heublein, Inc.*, 69 F.R.D. 663 (N.D. Ga. 1975).

5/BHC

Horry County. Under well-established South Carolina law, a defendant may be liable in negligence and under implied warranty for furnishing plans and specifications, even where no contractual privity exists between the furnisher and the home buyer. *Beachwalk Villas v. Martin*, 305 S.C. 144, 406 S.E.2d 372 (S.C. 1991); *APAC Carolina Inc. v. Town of Allendale, S.C.*, 41 F.3d 157 (D.S.C. 1994). Common issues of fact and law easily exceed the threshold of commonality required by SCRCP 23(a).

All Class Members live in Horry County and are subject to the same warm humid climate and suffer from the same alleged design defect. Horry Electric used the same uniform documents and inspections for each class member. The common design defect, uniform documents and warm humid climate all favor class certification. To summarize, the commonality requirement of Rule 23, SCRCP has been satisfied.

Defendant contends that individual issues exist for damages and causation issues. However, the action centers on the alleged design defect which all Class Members have in common. The existence of some possible individual issues does not defeat class certification. Moreover, our courts have refused to deny certification on that ground. *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct. App. 1986). In *McGann* residents and owners of improved residential property in a subdivision near Columbia filed a class action concerning negligent design and construction of streets and drainage. The defendants argued each class member's damages prevented class certification. In rendering its decision, the South Carolina Court of Appeals stated, "The mere fact that the Plaintiffs may be entitled to different amounts of damages does not prevent them from banding together and asserting their rights jointly in one action." *McGann*, 340 S.E.2d at 158. *McGann* has been cited consistently by the South Carolina appellate courts and on many occasions by the South Carolina Supreme Court in ruling on class certification issues.

6 / MK

As the Supreme Court has previously recognized, this type of case is ideal for class certification because there is one main issue of law, i.e., was the Defendant's vapor barrier requirement a design defect in the warm humid climate of Horry County? Answering this common issue alone justifies class certification.

C. Typicality

The tenets of commonality and typicality most often are dealt with as one in terms of class certification. *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147, 158 (1982) (The commonality and typicality requirements of Rule 23(a) tend to merge.). The "typicality" requirement of Rule 23(a)(3), SCRCP requires that the claims or defenses of the class be typical. To satisfy the typicality requirement, the named representatives' claims must be similar enough to those of the class to assure that the class' interests are vigorously prosecuted. 7A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, 1764 (2d. Ed. 1986).

Here, the claims and defenses of the representative parties are typical of the claims and defenses of the class. Plaintiffs Vance and Montorio are each in the Good Cents Program per Horry Electric's billing and Good Cents records. The Defendant documented their homes and inspections. Their claims are typical of the Class claims. Mr. Ferrell, on the other hand, appears to not be in the Program and, therefore, he is not a suitable Class Representative.

D. Adequacy of Representation

South Carolina Rule of Civil Procedure 23(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. That protection involves two factors: (1) counsel must be qualified, experienced and generally able to conduct the proposed litigation; and (2) plaintiffs' claims must be sufficiently interrelated and not antagonistic to the class claims. *Lott v.*

7/MK

Westinghouse Savannah River Co., 200 F.R.D. 539 561 (D.S.C. 2000); *Waller v. Seabrook Island Property Owner's Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (S.C. 1990).

Here, there is no argument that Plaintiffs Vance and Montorio will not fairly and adequately protect the interest of the class or that their interests conflict with the economic interests of the Class. Vance and Montorio's claims are typical of the class. They and the other class members were subjected to the same allegedly defective vapor barrier requirement. In addition, they have been involved and have participated in the litigation. Vance and Montorio have opened their homes to inspection and investigation by not only the Plaintiffs' expert but also the Defendant's experts. Their interests do not conflict with those of the Class. See *Waller v. Seabrook Island Property Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (S.C. 1990).

Vance and Montorio have and will continue to fairly and adequately protect the interests of the Class and are appointed as Class Representatives. They have engaged counsel with over a decade of experience in class actions as class counsel and complex litigation. The Court has reviewed the Affidavit of Nate Fata and concluded that he and Mr. Brunty are qualified, experienced and generally able to conduct the proposed litigation. Accordingly, Mr. Fata and Mr. Brunty are hereby appointed as Class Counsel.

E. Amount in Controversy

The final prong of Rule 23, SCRCP requires that each class member have a claim in excess of One Hundred Dollars ($100.00). Here, according to the Affidavit of Larry Elkin, Plaintiffs' expert, each class member will suffer at least $100 of damages due to the removal of the vapor barrier. As a result, the final prong of Rule 23, SCRCP has been easily met.

IT IS HEREBY ORDERED that:

1. The Class is hereby certified on all causes of action; provided however, (BHC) the defendant may assert the Statute of Repose as a defense to certain members of the class;

8 /BHC

2. Tammy Vance and David Montorio are found to be representative Plaintiffs who will adequately protect the interests of the Class;

3. Nate Fata and Mark Brunty are designated as Class Counsel; and

4. Defendants shall provide the names and addresses of all Class Members to Class Counsel within 30 days of the filing of this Order so that Class Counsel can send Class Notice with an opt out deadline to Class Members within 30 days of Class Counsels' receipt of the Class Member names and addresses.

AND IT IS SO ORDERED.

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

Georgetown, SC
The 21st day of August, 2012

It is further Ordered that the defendant's requests for further arguments and another hearing on this motion are DENIED.

Benjamin H. Culbertson

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

COPIES MAILED

CASE NO.
2011-CP-26-1266

Ronnie Ferrell, et al.
☒ Plaintiff

v.

Horry Electric Cooperative
☐ Defendant.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Nate Fata, Esq., Bar No. 09866 Address: Nate Fata, P.A. P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:	Pope D. Johnson, III, Bar No. Address: P.O. Drawer 11209 Columbia, SC 29211 1209 phone: 803-799-9791 fax: 803-253-6083 e-mail: other:

12 AUG 28 PM 1:39
HORRY COUNTY
CLERK OF COURT

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — August 27, 2012 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

COPIES MAILED

Ronnie Ferrell, et al,) CASE NO.
☒ Plaintiff) 2011-CP-26-1266

v.) MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Horry Electric Cooperative)
☐ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Nate Fata, Esq., Bar No. 09866 Address: Nate Fata, P.A. P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:	Pope D. Johnson, III, Bar No. Address: P.O. Drawer 11209 Columbia, SC 29211 1209 phone: 803-799-9791 fax: 803-253-6085 e-mail: other:

FILED IN THE COUNTY
12 AUG 28 PM 1:39
HELEN C. WARD
CLERK OF COURT

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — August 27, 2012 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

SCCA/233 (11-03)

Exhibit E

Complaint

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 13 488

Horry Electric Cooperative, Inc.,

Plaintiff,

vs.

South Carolina Public Service Authority,

Defendant.

SUMMONS

(Jury Trial Demanded)

FILED
HORRY COUNTY
2013 JAN 23 PM 3:05
MELANIE HUGGINS-WARD
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
January 18, 2013

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc.,)) Plaintiff,)) vs.)) South Carolina Public Service Authority,)) Defendant.)	Civil Action No. 13 488 **COMPLAINT** **(Jury Trial Demanded)**

FILED
HORRY COUNTY
2013 JAN 23 PM 3:05
MELANIE HUGGINS-WARD
CLERK OF COURT

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and the electric cooperatives including Horry Electric.

3. That in 1987, Santee Cooper offered the Good Cents program to the electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.

4. That Horry Electric adopted the program offered by Santee Cooper including all of the design and design standards provided with the program and passed along a Good Cents savings rate provided by Santee Cooper to its members.

5. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit B.

6. That, prior to the entry into the said Agreement, Santee Cooper knew use of vapor barrier may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit C and Exhibit D respectively, and failed to disclose that information to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

7. That Santee Cooper, by failing to disclose this information to Horry Electric, breached its duty of good faith and fair dealing owed to Horry Electric.

8. That, to the extent Horry Electric is liable to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Cooper is or may be liable to it for all or part of the plaintiffs' claims against Horry Electric and that Horry Electric is entitled to indemnification from Santee Cooper for all or part of the plaintiffs' claims against Horry Electric in Civil Action No. 2011-CP-26-1266.

WHEREFORE, Horry Electric prays for judgment by way of indemnification against Santee Cooper for any amount which the plaintiffs in Civil Action No. 2011-CP-26-1266 recover against Horry Electric and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
January 18, 2013

#2

Exhibit 6

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor."

WHEREAS, Santee Cooper has acquired the rights to use the Good Cents Programs which presently consist of three (3) Programs as follows:

(1) Good Cents Home Program (New Residential)
(2) Good Cents Improved Home Program (Retrofit Residential)
(3) Good Cents Commercial Program

PLAINTIFF'S EXHIBIT 2 10/12/11

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Cents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,

EXHIBIT A PENGAD 800-631-6989

Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good ¢ents Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good ¢ents Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good ¢ents Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

SANTEE COOPER

ATTEST: _____ By: _____
Title

ATTEST: _____ By: _____
Title Manager

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2011-CP-26-1266
Ronnie Ferrell, Tammy Vance and David Montorio on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	COMPLAINT (Jury Trial Demanded)

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

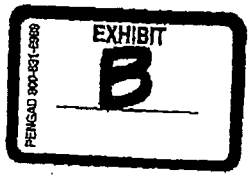
1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.

5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

(i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.

(ii) properly installed friction fit batts.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

(i) properly installed Kraft or foil-faced insulation batts.

(ii) taped and painted gypsum board installed on the inside of the exterior wall.

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars ($100.00). The cost of removal of the inappropriate materials is more than $100.00 ($100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

(a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;

(b) in specifying and requiring inappropriate design or materials for a coastal county;

(c) in specifying and requiring inappropriate materials in violation of industry standards;

(d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

(a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;

(b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;

(c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;

(d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

a. Actual damages;

b. Punitive damages; and

c. Any costs of this action.

Nate Fata SC Bar #9866
NATE FATA, P.A.
1500 US Highway 17 North, Suite 215
Post Office Box 16620
Surfside Beach, SC 29587
Tel.: (843) 238-2676
Fax: (843) 238-0240

Mark A. Brunty, Esquire
Brunty Law Firm
SC Bar No. 68295
Post Office Box 70907
Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

FILE: Good Cents - SEI

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 500
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Cents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Cents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

Could we consider not mentioning vapor barriers and simply say to follow manufacturers' recommendations? I would rather customers use Tyvek or a similar product if they want to. Again, the concern is being required to require.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc: Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company

Santee Cooper 2301

One of An ectric utilities.

EXHIBIT C

PENGAD 800-631-6989

Santee Cooper 000148
Montorio v. Foxworth

FILE:

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 8, 1986

OCT 15 1986

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Cents Program.

Santee Cooper agreed to accept the State of South Carolina's standards in our contract with SEI; however, it was our understanding with SEI that we would have some input into what the standards should be. This is the first time I have had any word from SEI on the standards. Obviously, we cannot comply with the proposed timetable for review of the technical standards; it was to be October 1, 1986.

As we discussed, I have some concerns with some minor details in the standards. Following is an outline of some questions that I feel sure we can resolve next week:

1. We are getting different results on RIGHT J and RESCALC. Also, we seek approval for our company's load calculation procedure to be used in the Good Cents program.

2. Hybrid Good Cents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. GET BUILDER TO WAIVE | SAVE TO GIVE BUYER OF THEM

3. Prescriptive Standards - We are opposed to qualifying any home using prescriptive standards. CUP TO 5% OR LESS THAN PRESCRIPTIVE? ½ AT

4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention.

5. Attic Ventilation - Use a 1 to 150 ratio and don't mention vapor barrier, or simply say HUD/MPS. 1 SQ. IN / SF

6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps OUR OPTION

REQUIRE

Santee Cooper 000141
Monforio v. Forworth

EXHIBIT D

SEND SPECS TO SEI

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.

8. Hybrid Heat Pumps - Only if the heat pump is the primary source of heating.

9. Radon Gas - Should not be mentioned.

10. House "A" - I do not agree that the values given for the baseline home "generally represents conventional insulation and construction practices within the South Carolina service area." (Neither do the other utilities.) A realistic "baseline" would be R-19, R-11, R-11 with a builder's model heat pump, and probably with insulated glass. For this reason, we cannot support a promotional standard up to 50% savings.

I look forward to meeting with you and the other SEI people next week. SCE&G, Santee Cooper and the participating co-ops are very excited about the Good Cents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/mm

cc Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

bcc Mr. Robert Eggleston
S. C. Electric & Gas Co.

4 KW SH / 3F TANK WATER HEATER
WATER TANK
ADD LATER

Santee Cooper 2507

Exhibit F

Amended Complaint

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority and Southern Electric International, Inc., Defendants.	Civil Action No. 2013-CP-26-488 **AMENDED SUMMONS** **(Jury Trial Demanded)**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action. A copy of the Amended Complaint is attached to this Amended Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Amended Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority and Southern Electric International, Inc., Defendants.	Civil Action No. 2013-CP-26-488 **AMENDED COMPLAINT** **(Jury Trial Demanded)**

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.

3. That, upon information and belief, Defendant Southern Electric International, Inc. ("Southern Electric") is a Georgia corporation which developed and marketed the Good Cents Program and sold and/or licensed it to Santee Cooper.

4. That in 1987, Santee Cooper offered the Good Cents program which had been developed, marketed and sold by Southern Electric to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.

5. That, upon information and belief, Santee Cooper entered into an agreement with Southern Electric in which Santee Cooper acquired the right to use Southern Electric's Good Cents Program and Horry Electric signed a licensing agreement with Southern Electric, as required by the Agreement marked Exhibit A.

6. That Horry Electric adopted the program developed and/or offered by the defendants including all of the design and design standards provided with the program and passed along a Good

#1

Cents savings rate provided by Santee Cooper to its members.

7. That Horry Electric received no direct benefit or financial benefit for offering the Good Cents Program to its members and incurred substantial costs in offering and administering the program and all benefits, financial or otherwise, went to the defendants.

8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.

10. That the defendants failed to disclose the information contained in Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

12. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit D.

13. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

14. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program.

15. That a special relationship existed between Horry Electric and the defendants, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits the defendants only.

16. That the plaintiff is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 and upon information and belief, the plaintiff will be exonerated from any liability for those damages.

17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which the defendants are liable.

18. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

FOR A FIRST CAUSE OF ACTION

(Negligence)

19. That the allegations of paragraphs 1 through 18 hereof are realleged and incorporated herein by reference.

20. That, upon information and belief, the defendants, who were offering and promoting participation in the Good Cents Program owed a duty of due care to disclose any problems and/or potential problems with the requirements of the program, including those related to the vapor barrier.

21. That the defendants breached their duty of due care and were negligent by failing to disclose to the plaintiff the information contained in Exhibits B-C.

22. That as a direct and proximate result thereof, the plaintiff has incurred attorney's fees and expenses and may suffer other damages.

23. That as a result thereof, the plaintiff is entitled to a judgment against the defendants for all actual damages suffered as a result of the negligence of the defendants, plus punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Duty of Good Faith and Fair Dealing)

24. That the allegations of paragraphs 1 through 23 hereof are realleged and incorporated herein by reference.

25. That the defendants, by failing to disclose the information in Exhibits B and C,

#3

breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from the defendants its actual damages and punitive damages as a result thereof.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty)

26. That the allegations of paragraphs 1 through 25 hereof are realleged and incorporated herein by reference.

27. That, upon information and belief, the defendants, by offering and promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C.

28. That the defendants breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which the defendants are liable.

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

29. That the allegations of paragraphs 1 through 28 hereof are realleged and incorporated herein by reference.

30. That, upon information and belief, the defendants, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to suffer actual and special damages for which the defendants are liable.

FOR A FIFTH CAUSE OF ACTION

(Equitable Indemnity)

31. That the allegations of paragraphs 1 through 30 hereof are realleged and incorporated herein by reference.

32. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests.

WHEREFORE, Horry Electric prays for judgment as set forth above in the First, Second, Third and Fourth Causes of Action and for its expenses in Civil Action No. 2011-CP-26-1266 as set

forth in the Fifth Cause of Action and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

#5

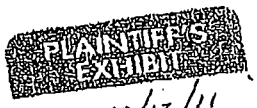
Exhibit 6

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper'" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor."

WHEREAS, Santee Cooper has acquired the rights to use the Good Cents Programs which presently consist of three (3) Programs as follows:

(1) Good Cents Home Program (New Residential)
(2) Good Cents Improved Home Program (Retrofit Residential)
(3) Good Cents Commercial Program



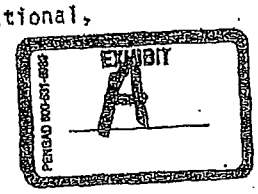
2 10/12/11

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Cents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,



Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good Cents Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good Cents Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good Cents Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

SANTEE COOPER

ATTEST: _____ By: _____
Title

ATTEST: _____ By: _____
Title Manager

FILE:

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3198 (803) 448-1503

October 8, 1986

OCT 15 1986

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Cents Program.

Santee Cooper agreed to accept the State of South Carolina's standards in our contract with SEI; however, it was our understanding with SEI that we would have some input into what the standards should be. This is the first time I have had any word from SEI on the standards. Obviously, we cannot comply with the proposed timetable for review of the technical standards; it was to be October 1, 1986.

As we discussed, I have some concerns with some minor details in the standards. Following is an outline of some questions that I feel sure we can resolve next week:

1. We are getting different results on RIGHT J and RESCALC. Also, we seek approval for our company's load calculation procedure to be used in the Good Cents program.

2. Hybrid Good Cents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. GAS BUILDER TO WAIVE / SEE TO GIVE RIGHT OF THEM

3. Prescriptive Standards - We are opposed to qualifying any home using prescriptive standards.

4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention.

5. Attic Ventilation - Use a 1 to 150 ratio and don't mention vapor barrier, or simply say HUD/MPS.

6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps

REQUIRE

EXHIBIT B

FENGAD 800-631-6989

SEND SPECS TO SEE

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.

8. Hybrid Heat Pumps - Only if the heat pump is the primary source of heating.

9. Radon Gas - Should not be mentioned.

10. House "A" - I do not agree that the values given for the base-line home "generally represents conventional insulation and construction practices within the South Carolina service area." (Neither do the other utilities.) A realistic "baseline" would be R-19, R-11, R-11 with a builder's model heat pump, and probably with insulated glass. For this reason, we cannot support a promotional standard up to 50% savings.

I look forward to meeting with you and the other SEE people next week. SCE&G, Santee Cooper and the participating co-ops are very excited about the Good Cents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Carmon
Energy Programs Supervisor

GSC/mm

cc: Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

Robert Eggleston
Electric & Gas Co.

SF TANK WITH WATER HEATER
WATER TANK
ADD LATER

Santee Cooper 2507
Santee Cooper 000142
Montorio v. Foxworth

FILE: Good Cents - SE-2

Santee Cooper

Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 600
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Cents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Cents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

Could we consider not mentioning vapor barriers and simply say to follow manufacturers' recommendations? I would rather customers use Tyvek or a similar product if they want to. Again, the concern is being required to require.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc: Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company

Santee Cooper 2501

One of An[illegible]ric utilities.

EXHIBIT C

PENGAD 800-631-6989

Santee Cooper 000148
Montorio v. Foxworth

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2011-CP-26-12666
Ronnie Ferrell, Tammy Vance and David Montorio on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	COMPLAINT (Jury Trial Demanded)

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

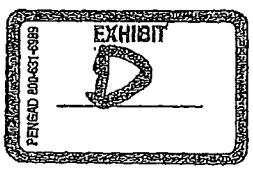
1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.

5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a.

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

(i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings;

(ii) properly installed friction fit batts;

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

(i) properly installed Kraft or foil-faced insulation batts;

(ii) taped and painted gypsum board installed on the inside of the exterior wall;

(iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writing's and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars ($100.00). The cost of removal of the inappropriate materials is more than $100.00 ($100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

(a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;

(b) in specifying and requiring inappropriate design or materials for a coastal county;

(c) in specifying and requiring inappropriate materials in violation of industry standards;

(d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

(a) In requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;

(b) In failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;

(c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;

(d) In failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

a. Actual damages;

b. Punitive damages; and

c. Any costs of this action.

Nate Fata SC Bar #9866
NATE FATA, P.A.
1500 US Highway 17 North, Suite 215
Post Office Box 14620
Surfside Beach, SC 29587
Tel.: (843) 238-2676
Fax: (843) 238-0240

Mark A. Brunty, Esquire
Brunty Law Firm
SC Bar No. 68295
Post Office Box 70907
Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority and Southern Electric International, Inc., Defendants.	)	Civil Action No. 2013-CP-26-488 **CERTIFICATE OF SERVICE**

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 26th day of July, 2013.

COUNSEL SERVED:
B. Rush Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:
Amended Summons and Amended Complaint

Sherry W. Wise

Exhibit G

Motion to Dismiss Transcript

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF HORRY) Case No. 2013-CP-26-0488
)
HORRY ELECTRIC)
COOPERATIVE, INC.)
)
Plaintiff,)
)
vs.) Transcript of Record
)
SOUTH CAROLINA PUBLIC)
SERVICE AUTHORITY AND)
SOUTHERN ELECTRIC)
INTERNATIONAL, INC.,)
)
Defendants.)
) DATE: May 27, 2014

B E F O R E:

The Honorable Roger M. Young, Sr.

A P P E A R A N C E:

Pope D. Johnson, III (via telephone)
Attorney for the Plaintiff

B. Rush Smith, III
Attorney for the South Carolina Public Service Authority

J. Michael Baxley and Elizabeth Henry Warner
Attorneys for Santee Cooper

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

MR. JOHNSON: I apologize for being in Charleston while you are in Horry County.

THE COURT: That happens. All right. Well, we've got -- this is Horry Electric Cooperative vs. South Carolina Public Service Authority and Southern Electric International, 2013-CP-26-488.

This case got assigned to me, and we are here today on the defendant, South Carolina Public Service Authority's, motion to dismiss. And then I think the plaintiffs have filed a motion for summary judgment as well; is that right?

MR. JOHNSON: That's correct; correct.

THE COURT: Now, what about Southern Electrical International, have they filed anything to join in with your motion?

MR. JOHNSON: No, we have not gotten service.

MR. SMITH: I don't know if they've been served, Your Honor. Have they been served?

MR. JOHNSON: No.

THE COURT: Well, they must not have any money.

MR. JOHNSON: I think that's correct.

THE COURT: All right. Well, I know that you had -- the plaintiffs had filed a motion to stay this case.

MR. JOHNSON: Yes, Your Honor. We had asked you to either continue the hearing today or stay a decision until a determination is made Friday as well. The court will

approve -- Judge Culbertson will approve the settlement that's been reached. There's been no opposition to -- they will require -- anybody who opposes it would be required to pay the filing. None of that has occurred. We expect his order to be, on the settlement agreement, to be approved by him Friday. And we think it would be important that you at least not make any decision until after his decision and that -- because it may impact your decision. And we would ask you to stay it until then and take judicial notice of whatever he does Friday.

THE COURT: Well, it's a class action in which you are basically claiming, as I understand it, that you can be indemnified for some of the costs that you have paid out or will pay out, if that's approved.

MR. JOHNSON: That's correct.

THE COURT: Well, they've raised some defenses here, as I understand it, that I'm not sure how they would be impacted regardless of whether or not lawsuit is approved or not approved, namely, that statute of repose and the statute of limitations, which I think, in any event, we could hear regardless of what that outcome is today.

MR. JOHNSON: Since we are having a hearing, I understood it won't be continued. I'm just asking that no decision be made by the Court until after Friday and the Court acknowledge it will take judicial notice of whatever

Judge Culbertson does. One of the things they've argued in their papers is that we are only making a claim for attorney/clients fees and costs, which is not what we've alleged. And they say they aren't recoverable on several of these causes of action. What we are seeking to recover is what we've had to pay in settlement, plus fees and costs. And it will establish what those actual damages are, which is the reason we want you to withhold ruling until after he renders his order.

THE COURT: Well, I guess -- I'm having a little bit of trouble getting around my head how that would be impacted at all if the statute of repose in particular applies.

MR. JOHNSON: I don't think it does.

THE COURT: In no event would they be responsible for those costs.

MR. JOHNSON: Your Honor, I would agree with you as to those two positions. The reason I'm asking you to stay it is that if you don't rule in their favor on those two issues, it becomes relevant to the other issues.

THE COURT: Well, let's go forward on their motion to dismiss until I've concluded it doesn't make any sense to me otherwise; how about let's go that route?

MR. JOHNSON: That's fine with me, Your Honor.

THE COURT: Now, Mr. Rush Smith is here. Mike

Baxley, who is making his first -- I think first post-judicial appearance. And Elizabeth Warner is also present for Santee Cooper. So I have got the great privilege of putting Mr. Baxley on the spot, but I assume that Mr. Smith is going to do all the argument unless and until I can drag Mr. Baxley in on a relevant question. Is that how y'all propose to do this, or are you going to actually enlighten me in some respects on this?

MR. BAXLEY: This is Mike Baxley. What we would ask you to do, Your Honor, is Rush will argue our main motion. And then we assume Mr. Johnson will respond. And then I would ask the privilege of a reply.

THE COURT: All right. Mr. Smith, because you led with it, it's your best argument, it's certainly the one I think we need to discuss first, is the statute of repose, the statute of limitations.

MR. SMITH: Yes.

THE COURT: I usually have a brief metaphysical moment in time where I understand the application of the statute of repose as opposed to statute of limitations. So I read a little bit on it again in anticipation of this, so let's go with that before I forget what I know.

MR. SMITH: Yes, sir. Those two are the ones that we had planned to lead with, because we do believe that they dispose of the case.

On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with the plaintiff and find that the 13-year period applied, then the complaint would be dismissed in part.

Looking back from the filing date of January 23, 2013, the 13-year cutoff, if you will, is January 23, 2000. So all claims based on construction completed before then would be barred.

And if the 8-year cutoff applies, the cutoff date is January 23, 2005. And that would bar all of the claims for indemnification. The complaint for indemnification is -- and the other claims in the amended complaint -- seek indemnification for the underlying complaint in Ferrell vs. Horry Electric case. The complaint in that case alleges defects for construction begun as early as 1988. The class period in that case concludes in 2003. I believe the class has been defined as people who became members of the Good Cents Program in the period 1998 through 2003. So with that 8-year cutoff, the entire complaint is barred. If you adopt Horry Electric's reading of the statute of repose, we believe a substantial portion of the complaint is barred.

We've argued, Your Honor, for application of the 8-year statute of repose based on a couple of cases that have applied the statute of repose that was in existence as of the time of the filing of the complaint. One of those is Hollywoods Association vs. Hiller, 392 S.C. 172. I believe it's cited in our motion. Also, In Re: Building Materials Corporation, it's a case from the Federal District Court, Judge Childs, 2013 Westlaw 1316562. In both of those cases --

THE COURT: 131 what?

MR. SMITH: 1316562. Now, in that case, the judge found that the 8-year -- analyzed the case with the 8-year statute, found in the end that the statute of repose was not available to the defendant in that case. Likewise, in Hollywoods Association, the court applied the 8-year statute in its analysis, but held in the end that because the construction had continued, the statute of repose was not available there.

But we have cited the 8-year period based on those cases that applied the 8-year period. And as we say, even if Horry Electric's reading of the statute is correct, then the complaint should be dismissed in part pursuant to the statute of repose.

Now, the statute of limitations we believe takes care of everything. The statute of repose -- the statute of

limitations is in the Tort Claims Act. It's Code Section 15-78-110. As I said, the complaint was filed January 23, 2013. And the claims in the complaint -- that's a two-year statute of limitations, by the way. And the claims that are in the complaint clearly arose far, far in advance of two years prior to the filing date of the complaint.

Under this code section, the court applies the discovery rule. As Your Honor knows, the standard is objective, not subjective. The question is not what Horry Electric actually knew, but whether it could have discovered the cause of action through the exercise of reasonable diligence.

As disclosed on the face of the Horry Electric's complaint, the cause of action adheres in the alleged failure on Santee Cooper's part to disclose the contents of a couple of letters written in 1986. Now, they sort of cry out for the application of the statute of limitations. We cited one of the seminal cases on the purpose of the statute of limitations. And it is to ensure litigation is brought within a reasonable time in order that evidence be reasonably available to the parties to try the case. And when we are talking about a 1986 letter, Your Honor, we think this case really calls out for the application of the statute.

If we look at the discovery rule and how it would

be applied in this case, there are a couple of reasons that the statute began to run and ran far sooner than two years prior to the commencement of the action. One of the reasons it's disclosed on the face of the letter is in question. They are attached to Horry Electric's complaint. They were written in 1986 by a gentleman who worked for Santee Cooper named Glen Cannon. And the contents, the subject matter of the letter, comprise references to a publication called Energy Design Update, discussions in the building community, and something called Ashraye 85 Fundamentals, 21.17. That is a citation to an engineering standard.

So on the face of the letter, the contents, the subject matter that Horry Electric claims should have been disclosed, were available in the public domain. As of 1986, Horry Electric, Your Honor, sophisticated business, it is an electrical co-op, it purchases electricity from Santee Cooper and sells electricity to its customers. It bills its customers. It interacts with its customers. It deals with its customers.

And in the process of employing the Good Cents Program -- just by way of background, the Good Cents Program was an energy efficiency program. Customers could build their homes to certain standards or specifications and qualify for a special rate. And in the course of that, Horry Electric would administer the program. And that

included inspecting customers' homes.

Now, as I said, there are two reasons that the statute ran far sooner than two years prior to the commencement of the complaint. On the face of the letters, they referred to information in the public domain. Now, could Horry Electric have learned that through the exercise of reasonable diligence? Obviously, they could have, because these are matters in the public domain.

What we have here is an interesting situation in the way the case is presented to this Court. In the underlying case, the Ferrell plaintiffs alleged that Horry Electric implemented the Good Cents Program without conducting any investigation of the program itself. The plaintiff alleged Horry Electric adopted the program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements. Defendant never performed any research regarding the program specifications and requirements.

Now, as the case cited in our briefing points out, unanswered allegations of the underlying complaint might not be dispositive of anything. But in Horry Electric's answer, Your Honor, they admitted that allegation. And that is dispositive. We ask Your Honor to take judicial notice of that answer. Taking judicial notice of a court record does

not convert this motion to dismiss to a motion for summary judgment. The case -- most recent case on that is Doe vs. Bishop of Charleston, 407 S.C. 128. By looking at the court record, the Court is not converting this motion to dismiss to a motion for summary judgment.

What do we find in the answer? Well, at Paragraph 9, Horry Electric admits that it offered to its members the Good Cents Program that was offered through the South Carolina Public Service Authority without having performed any research regarding the specifications and requirements. In other words, Horry Electric admitted no due diligence. With due diligence, it could have discovered what's on the face of the letters. And the statute began to run in 1986.

Alternatively, Your Honor, based on the pleadings, the Court can find the statute began to run in 2003, barring any complaints filed after 2005. And the reason for that lies, once again, in the allegations of the underlying complaint and in Horry Electric's answer.

At Paragraph 16 of Horry Electric's answer, the defendant admitted that in 2003, the vapor barrier requirement that is at issue in the underlying case was changed. So, based on the pleadings in the underlying case, we know that there's an allegation that the Good Cents Program at one point included a vapor barrier requirement, requiring the installation of a vapor barrier on the

interior side of the exterior walls. And we know that in 2003, that standard changed.

At that point, Your Honor, Horry Electric was on notice of the subject matter of the letters. And that is, there is an issue about vapor barriers in the walls of homes in this part of the country. And they were on notice at that point to investigate the claims. They did nothing. And we are now faced with a complaint filed some 27 1/2 -- 26 1/2 years after these letters were written. So the two-year statute of limitations, Your Honor, bars the claims that Horry Electric has asserted in this case.

Those are the first two reasons we sought dismissal, Your Honor. We are asking for dismissal of complaint with prejudice. I will say that I will take issue with Mr. Johnson's contention that this Court should delay hearing anything or delay deciding anything on the rest of our motion to dismiss because it needs the settlement agreement to establish that he's going to have what would essentially be damages in this case.

Of course, our motion to dismiss requires the Court to take as true all the allegations of the complaint. And he's alleged he's got damages. So the fact of the settlement agreement is not going to make a difference one way or another.

There's also a suggestion in his motion that the

settlement agreement would establish that Horry Electric had been exonerated of any liability. But, Your Honor, based on my understanding of what the dictionary definition of exonerated is and what a settlement agreement does, settlement agreements by definition don't define whether anybody is at fault or not. They, in fact, stop short of it.

So with your permission, I will go ahead with the other parts of our argument.

THE COURT: Let me have -- is that all of your argument on the statute of limitations and statute of repose?

MR. SMITH: Unless Your Honor has some questions, yes.

THE COURT: Let's stop on those issues and hear from Mr. Johnson.

MR. JOHNSON: Your Honor, thank you. On the statute of repose, I concede that 13-year statute of repose applies. I did not concede the 8-year statute of repose applies that was enacted in 2005. As we submitted with our memorandum in opposition to the motion, the editor's notes state: Section 2 amending this action dated July 1st, 2005 applies to improvements to real property for which certificates of occupancy are issued by the county, municipality, or completion of the final inspection by local

business official after that date.

So it's our position applies only to improvements that occurred after 2005. We are not seeking to recover anything from improvements after 2005. And so we think the amended statute doesn't apply.

As to the statute of limitations --

THE COURT: Does that mean you are only looking for damages from, what, 2003?

MR. JOHNSON: In the underlying action, our exposure was for claims from 1998 to 2003. I've agree the 13-year statute would apply here, anything prior to that. So let's see, we brought --

THE COURT: It would be 2000 to 2003, wouldn't it?

MR. JOHNSON: That's correct.

THE COURT: So that would be the limit on your damages, is 2000 to 2003?

MR. JOHNSON: Correct.

THE COURT: Not '98 to 2003?

MR. JOHNSON: That's correct.

THE COURT: Y'all didn't raise this issue in your underlying case?

MR. JOHNSON: We did. They started earlier.

THE COURT: Okay.

MR. JOHNSON: The period was 13 years after '98.

THE COURT: All right.

MR. JOHNSON: The judge applied the statute to anything before that; Judge Culbertson did.

THE COURT: So you agree then that your damages, if you are allowed to prevail, are limited to 2000 to 2003?

MR. JOHNSON: Correct.

THE COURT: Okay.

MR. JOHNSON: As to the statute of limitations, I've always understood that the statute does not run until all of the elements of the claim are in existence. There was no damage incurred at any time until after the underlying action was initiated. So we would have had no damage to seek indemnification for or damage for any of the other claims we are making prior to starting to incur damages at that time. So that would be my first position.

THE COURT: Say that again. Say that again. You are saying your cause of action didn't arise until --

MR. JOHNSON: Until we had damage.

THE COURT: Until you got sued?

MR. JOHNSON: Until we got sued.

THE COURT: Well, then by definition, you didn't have any damages in 2000 and 2003. You are arguing a theory of liability on one hand with damages on the other. If your damages are a result of an act, and that act did not occur until you got sued, that seems inconsistent with the argument of statute of repose.

MR. JOHNSON: I don't think so, because until those plaintiffs brought a claim for damages for that period of time, we had nothing to sue over. Until we became exposed to damages which we are seeking indemnification, we would have had no claim for indemnification. In other words, in 2000 or 2001, 2002, 2003, there would be no -- until somebody asserts a claim against us for damages for which they say we are liable, we have no claim over to be indemnified. That didn't occur until this suit was brought, the underlying suit was brought.

THE COURT: Yeah, but, I mean, that might -- there's an argument I can see that you are trying to make, is that you didn't have -- you didn't need to be indemnified until then. But I'm not sure that the theory behind indemnification is necessarily not ripen for statute of limitations purposes until the time that you got sued. You are basically saying, we had to stand and respond to this lawsuit and it's only fair that these people reimbursed us for that, but --

MR. JOHNSON: Your Honor, isn't it a little bit like the --

THE COURT: Well, let me give you an example, maybe to make it clearer. If you had gotten sued by these -- in this class action lawsuit, and the judge would have thrown the case out because of statute of limitations or statute of

repose, or any theory, is it your position that you would still be entitled to indemnification for your attorney's fees simply because you had to stand -- that you got sued and you had to defend yourself? Even though you would have been successful in defending it and not had to pay out any damages, you would still be entitled to indemnification for attorney's fees, which is what you seem to be asking for as your damages, is attorney's fees.

MR. JOHNSON: Well, not really. I'm asking for what we are having to pay in settlement of the case plus attorney's fees and costs, which are, I believe, recognized damages for which -- recovering claim for indemnification.

THE COURT: How much are you all purporting to -- what's the settlement for?

MR. JOHNSON: The settlement agreement has actually been submitted with our motion to continue or motion to stay. And the settlement agreement establishes two funds from which class members can apply for benefits. One fund is, they can apply to -- if they're not going to remediate the damage to the house, they can apply and receive $2,000.

The other fund provides for, if they remediate the damage, they can recover up to 13,000, I believe it is. And so there's one fund that's established for $4 million and one for 2. They can't claim out of both of them.

THE COURT: So $6 million.

MR. JOHNSON: $6 million, but what is not claimed is returned to us. And, frankly, the class members, we've been amazed how few have made claims. I think there are like 130 plus who have made claims against the $2,000 fund. And then one or two that have made claims against the $13,000 fund. So the exposure will be certainly less than the money put up.

THE COURT: So you are asking for whatever the math is that just totaled up on what you asked for there, plus attorney's fees?

MR. JOHNSON: And costs.

THE COURT: And costs. And how much are you estimating you got in attorney's fees that you are asking for? Have you got that number together yet?

MR. JOHNSON: Judge, I think it's 100- to 120,000, something in that range. Now, I will tell you, the $6 million funds being put up, plaintiff's attorneys are making a claim for a fee and costs of $1 million. And, of course, the judge has got to decide what he's going to award.

THE COURT: So, all right, do the math real quick for me. On the two funds, class members have so far submitted claims totaling what out of those two funds combined?

MR. JOHNSON: Give me just a second. I think -- don't hold me to this, but I think it's around $300,000.

THE COURT: Okay. So you are basically looking at asking Santee Cooper in the end, if the settlement plays out the way that you anticipate it will right now, you want to get 120 back in attorney's fees that you've had to pay, a million dollars that the plaintiffs are going to get in your class suit, and 300,000 in damages, so roughly about 1.5 million?

MR. JOHNSON: That's correct. But they have until Friday to submit claims.

THE COURT: I understand. These numbers are subject to change. I'm just trying to get a ballpark figure as to what we are talking about.

MR. JOHNSON: We are hoping Judge Culbertson doesn't give them a million dollars in fees, but we are not going to oppose a request.

THE COURT: Okay. All right. So your theory, as I understand it, is your cause of action did not arise until you got sued and --

MR. JOHNSON: My theory is until all the elements of the claim are present, you can't sue. One of the elements is damage.

THE COURT: Well, that would be for equitable indemnification, but you've sued on other theories.

MR. JOHNSON: I think the same would apply to the other theories as well with statute of limitations. And

you've got to have all the elements.

THE COURT: Yeah, but you've got negligence. You've got civil conspiracy. You've got unfair trade practices, I'm sure. I mean, you've got a kitchen sink worth of stuff, all of which are subject to discovery rules that are in the more traditional -- well, that's why I certainly see a statute of repose being -- perhaps governing the outcome of this case, more so than the statute of limitations. And then -- so, the only other thing that does not ripen until you get this case resolved would be equitable indemnification, because I understand there's no express or indemnification agreement. Correct?

MR. JOHNSON: Correct.

THE COURT: So you might have just -- you might have jumped the gun a little bit early on equitable indemnification, because you haven't paid out anything that you are entitled to get back yet on equitable indemnification. If that's your theory, is, our damages are not complete yet because we don't know how much we've gotten paid out, then that's almost, by definition, equitable indemnification that's not ripe.

MR. JOHNSON: Your Honor, I would respectfully differ. I think we are entitled to -- if we have a valid claim for equitable indemnification, then we can recover our attorney's fees and costs even if we had no other expense.

But since we have other expenses, all three --

THE COURT: I don't think maybe you understood what I said. You don't have a final number yet that you've had to pay out. And until you get a number that you have had to stroke a check for, I don't think you have a valid claim for equitable indemnification. Because equitable indemnification says, look, it's only fair that they pay us back because we had to pay this out. Well, you haven't had to pay it out yet. You are real close, but you are not there yet.

MR. JOHNSON: Well, Your Honor, when I first filed this lawsuit, I had a claim for equitable indemnification. We got a motion to dismiss that said we haven't paid out any money, therefore, you don't have a claim.

THE COURT: Well, I think that's what I just said.

MR. JOHNSON: They admitted it and, of course, Mr. Smith said earlier in his argument, they admit I have damages. The fact that all of my damages as alleged in the complaint has to be accepted as true for the purposes of a motion to dismiss, and he said it doesn't matter what the judge says, we've already met that element on equitable indemnification. And we obviously incurred and we are entitled to recover attorney's fees and costs. We are entitled to get that. And I don't think the fact that our damages aren't finalized close the claim. Because we were

speaking about the statute of limitations, and I told you my first position on that.

I would further point out to the Court that the statute of limitations is an affirmative defense. It has to be proved and -- pled and proved. They have not filed an answer. I would take the position that until they do and raise the defense that's not before the Court, but on a 12b -- on a motion to dismiss, the Court -- or the party submits material in addition to the complaint, the Court can convert it to a motion for summary judgment.

We have submitted as part of our motion for summary judgment and part of -- and we would ask their motion be converted that essentially makes up elements of our claim. They have not allowed us to take discovery in this case by filing a motion for protective order, but we took discovery in the underlying action.

And in that discovery, we took a 30(b)(6) deposition from Santee Cooper. And Santee Cooper's witness testified and admitted that the claim was -- that Santee Cooper knew about this problem with the vapor barrier causing a moisture problem in 1988.

THE COURT: I thought it was '86. Are you sure it's not '86?

MR. JOHNSON: Her testimony -- the letters are written in -- you are right, '86. They knew of the problem

in 1986. She admitted that Santee Cooper did not disclose the ventilation to the co-op, so that co-ops could make their determination as to what to do. Of course, the co-ops are, as far as I know, the only customers of Santee Cooper, and they've been customers for decades, and that Santee Cooper never came forward and told them.

The other thing she said was that it was the kind of information that Santee Cooper should have given. And it was a federal right and fair thing to do for Santee Cooper to have told the co-ops about this at the time.

So, you've got Mr. Smith arguing that the letters showed that we could have figured it out ourselves. You've got her testimony and the testimony of Horry Electric 30(b)(6) who said that they relied upon Santee Cooper with respect to the requirements of the program. So at a minimum, between the two, you have a lawyer arguing they should have known. You've got witnesses who have given sworn testimony saying to the contrary. We would say it is premature to -- if you convert it to amounts outside of the complaint, you should deny the motion.

THE COURT: Well, let me ask you this. Is the letter written in 1986 the basis for the bad act behind all of your other causes of action?

MR. JOHNSON: The letters written in 1986 are the basis for our claim. They never disclosed that information.

They have a responsibility to disclose it.

THE COURT: Okay. And they didn't. I think everybody admits or -- admits that; they didn't. So that's an undisputed fact. And if that's the basis of your liability, then I think you are out because of the statute of repose. Because, basically, as I understand the statute of repose, the theory behind it, the defendants will say, well, it's not fair for us to have to come in and defend something that's so old. The plaintiffs will say that you got away with it, a bad act.

But bottom line, if that's the bad act, and it occurred in 1986, and all of your theory of liability for all of your other causes of action flows from that, then you are out because of the statute of repose no matter when you discovered it. Because the theory behind the statute of repose is there's just got to be some cutoff on this. And even if you didn't discover it until yesterday, the fact that that bad act took place in 1986 is just -- the legislature said 8 years, 13 years, that's just so long ago that we are not going to allow you to sue them over it.

MR. JOHNSON: Your Honor, respectfully, I believe the statute of repose relates -- or applicable 13-year statute relates to improvements to real estate, not bad acts.

THE COURT: Well, we are talking about improvements

to real estate that you should have known -- they should have told you not to install vapor barriers, presumably, and they knew that back as early as 1986.

MR. JOHNSON: Your Honor, I don't think 1986 -- I don't think a bad act then has to do with construction that took place in '98 for a 2003. It has to do with improvements to real estate in this 13 years after, within 13 years of the suit being filed. So I don't think you reach back before that to look at a program. You are looking at improvements to real estate, would be my response.

THE COURT: Okay.

MR. JOHNSON: But, Your Honor, as to the statute of limitations, we think if you convert it, it becomes obvious disputes between the plaintiff's and the defendant's position.

THE COURT: Stop. The court reporter couldn't understand what you were just saying.

MR. SMITH: I think I've addressed the statute of limitations and given you my position as set out in my memorandum.

THE COURT: Okay. Well, who is responding now, you or Mr. Baxley? I don't know what etiquette is, because it seemed to me it would be appropriate to call you Judge Baxley, because that's an earned title. But, you know, if I

were in front of a jury, I would definitely call you Mr. Baxley, because I think that might give them an unfair -- but, Judge Baxley, would you like to respond?

MR. BAXLEY: I'm just a lowly lawyer and I would prefer Mike Baxley.

And may I step and speak to Mr. Smith a moment, Mr. Johnson, and then we will be right back with you? Just one moment.

MR. JOHNSON: Sure. Sure.

(Whereupon, a brief recess is taken.)

MR. BAXLEY: Thank you for that courtesy, Your Honor. And, Mr. Johnson, let me ask, can you hear me?

MR. JOHNSON: I can hear you fine.

MR. BAXLEY: Our court reporter, Ms. Andersen, your back is towards me, ma'am, but can you hear me?

THE COURT REPORTER: Yes, I can. Thank you.

MR. BAXLEY: Judge, what I would like to do is speak briefly, if I may. And, first of all, I want to pose an objection. We did not break into Mr. Johnson's comments, because, number one, the acoustics are somewhat difficult on all of us, but, secondly, we let him finish his argument. But we have not made a motion for summary judgment. This is a motion to dismiss under Rule 12B. We have not converted it to a summary judgment issue.

Mr. Johnson went into some length on some evidence

which was apparently adduced in the case below. And we would respectfully object to that being part of this determination because we have asked for a judgment on the pleadings.

And what I respectfully believe has happened here is that Mr. Johnson has jumbled his claims for negligence and breach of good -- duty of good faith and fair dealing, his claim for breach of warranty, civil conspiracy, with his claim for equitable indemnity. And we respectfully stand on Mr. Smith's arguments that the statute of limitation and repose would prevent all of those other claims, other than the equitable indemnity claim which may evolve as a result of damages accruing and the equitable indemnity claim accruing as of the settlement in this case. But all the other claims we respectfully believe have long ago lost any vitality due to the repose and limitation statutes.

And so if you let me, I would just like to briefly discuss the equitable indemnity claim, if I may. First of all, I should say, should have begun by saying, this is a privilege. This is the first time in 15 years I've stood on this side of the bench. I count it an honor to be back in the courtroom, and your courtroom specifically, Judge Young. And thank you for hearing us today.

We are in business court here. And we've all heard the chief justice say it a dozen times, that the business

court was established because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation. And, respectfully, I will submit to you this case, and again specifically equitable indemnity claim here, we believe cries out for an early conclusion for some of the reasons that were just argued so we can all move forward.

THE COURT: Whatever you are doing over there, it's rattling and sounds like rattling papers. You must be on speaker phone.

MR. JOHNSON: I apologize. I will take my hands off. I didn't realize.

THE COURT: That's okay.

MR. BAXLEY: Paragraph 12 of the complaint in the underlying case, which the complaint in the underlying case is attached to the pleadings in this specific case we are here before today as Attachment D. And Paragraph 12 is instructive. And this, again, on the issue of equitable indemnity -- I should say, actually, the complaint below is instructive. That litigation was brought by Nate Fata, who is a well-respected attorney here in the 15th Circuit who specializes in class actions and class actions against governmental entities, which Santee Cooper is. And you will

note in that complaint that Santee Cooper was not a party to the underlying action. And there's a reason for that. There's no need to get into the specifics of that. I will just point out that we are not a party.

And, of course, plaintiff's counsel would have a fiduciary duty, an advocacy duty, and a representative duty to name a culpable party. And Santee Cooper was not named in the case below. So we are here today on what really essentially is a subrogation claim.

And when you talk about equitable indemnity, it's appropriate to look at who are the parties in interest under Rule 17? Mr. Johnson referred earlier to the settlement agreement which is going to be heard by Judge Culbertson this Friday. And in that settlement agreement, there is a paragraph, and I believe it's Paragraph 4, which states that Federated Insurance Company, which is the carrier for Horry Electric Cooperative, has funded the settlement. So I will just point out with regard to equitable damages, Horry Electric Cooperative may not yet have any skin in the game, and that Federated may be the Rule 17 party in interest.

Paragraph 9 of the plaintiff's complaint in this case refers to the two letters we referred to from October 1986, as what I will call smoking guns in this case, that they were hidden by Santee Cooper, they were not disclosed. And I just simply would say to you that to go back 28 years

and to allege liability on some document of that antiquity violates every tenet of fairness and due process in these courts, Your Honor.

And, specifically, as Mr. Johnson noted, we have not answered, but when we answer, we will also raise a defense of laches. Because it's almost impossible to defend on an equitable indemnity claim something that happened 30 years ago.

And there's precedent for this. Mr. Johnson argued that you have to first file your answer, assert an affirmative defense, and then raise a dispute that affirmative defense. So you can't win or have a case dismissed on affirmative defense on a 12(b)(6) motion. And I had a copy here for Mr. Johnson. I've given a copy to our court reporter of some precedent right on point, which is from the Fourth Circuit. There's no state case. But it's Goodman vs. Praxair, Inc. And I have a copy for the Court, which may be found at 494F 3rd, 458, a 2007 case.

THE COURT: 458?

MR. BAXLEY: Yes, sir, 494F 3rd 458. That was a suit over $627,000 on a breach of contract where the plaintiff put in his complaint that the money had been due and owing since December 19th of 2000, but he filed a suit over three years later. And the court dismissed it because in the face of the complaint was an affirmative defense that

could appropriately be discerned, and granted the affirmative defense and granted the 12(b)(6) motion.

And what the court says is that where facts sufficient to rule on an affirmative defense are alleged in the complaint, the defense may be reached by a motion to dismiss filed under Rule 12(b)(6).

And, respectfully, when he alleges a 28-year-old document is the basis for all of this later litigation against Santee Cooper, then the doctrine of laches would apply and prevent that case from going forward.

And then finally, Your Honor, I would just simply -- if you will just permit me. We are here today -- go back to where I started. We are here in business court. And this court does not occur in a vacuum. Santee Cooper has substantial business interests, as does Horry Electric Cooperative, I'm sure. The newspapers are full of the fact that we are in the business of building nuclear plants at this time. It's highly capital intensive. It's highly leveraged. That's why we are in the business court, for one example.

In order to build a nuclear plant, you borrow money. The way the state agency borrowers money is by the issuance of bonds. When the bond council comes and take a look at what's going on with Santee Cooper, they look to see whether there may be pending litigation, contingent

liabilities, and other things that may bear upon Santee Cooper's fiscal responsibility. And if the bonds are downgraded, then the two million ratepayers for Santee Cooper, the thousands who hold those bonds, the 1,700 employees, and all of those here today, are held hostage by what's really an unfair and inappropriate, I would respectfully say, due process violation to go forward on this theory of liability.

So for these reasons, Your Honor, we ask you to dismiss this case, including the equitable indemnity claim, with prejudice, and end this matter now out of fairness to the parties.

And thank you, Your Honor. I will be glad to answer any questions that you may have.

THE COURT: Well, let me ask you this. If I were to agree that all except the equitable indemnity are ripe for ruling and that statute of repose applies that bars them from going forward, wouldn't the dismissal of the equitable indemnity claim with prejudice be improper? Wouldn't it need to be without prejudice so that then if they have to pay out, they could revive that claim after they've paid out money, whether or not they would be entitled to be reimbursed by you because of, say, problems with -- for instance, they weren't exonerated and the application of the principle would not allow them to recover?

But to dismiss an equitable indemnification with prejudice, I'm not sure that would be the right thing to do, simply because they haven't had -- they haven't fully funded a settlement yet.

There's a certain amount of discomfort that any court has where one party settles a lawsuit and then says to somebody else, you've got to pay. And I agree that you've got some issues about why weren't we brought into that, and if we were -- if we are going to be responsible, maybe we should have been in there. Because, again, they don't really have any skin in the game, one, because of insurance, but, two, on the fundamental principle of you settle a claim and ask somebody else to pay for it. I think that ought to be raised on another day. Dismissal without prejudice would be, I think, more appropriate.

MR. BAXLEY: Well, we respect your decision, Your Honor. And we, of course, will respond appropriately. And thank you for hearing us today.

MR. JOHNSON: Your Honor, can I make just one brief point on the statute of repose?

THE COURT: Sure.

MR. JOHNSON: The motion to dismiss based upon the statute of repose is to dismiss based upon the 8-year statute. There's no motion to dismiss addressing the 13-year statute. As I said, the statute itself, the

comments, the editorial comments, that only applies after constriction after 2005. My position would be that they have not raised in their motion the application of a 13-year statute. And you would be -- even if you -- I certainly hope you don't grant them any relief, but to the extent you will grant relief upon the 13-year statute, that's not a matter that's been raised by the defendant.

If you look on Page 4 of their motion, that's where that's addressed.

THE COURT: What about that?

MR. SMITH: Your Honor, the statute is the statute. It's 15-3-640. I believe the argument I'm hearing is one of lack of notice. The plaintiff actually asserted that the 13-year statute applies. Therefore, there's no surprise. He's not caught off guard. And if the 13-year statute applies, it's rooted in the same code section. That's simply a matter of whether you apply the statute as amended in July of 2005 or as it existed before. It's not like there are two separate statutes and two parts of the code that Horry Electric had no notice of the 13-year statute. We've raised the issue.

THE COURT: All right.

MR. JOHNSON: Your Honor, I would just ask you to read Page 4 and 5 of the memo. I think it's clear what they move for.

THE COURT: Well, it's an argument in a memo that's not in the pleadings, correct?

MR. JOHNSON: It's not in the motion, correct.

THE COURT: Okay. But it's not in their -- all right -- in their motion. The body of the motion doesn't say the 8-year one applies. It just says statute of repose?

MR. JOHNSON: No. Actually, Judge, I believe it does. Statute of repose bars claims arising over eight years prior to commencement of the action. That's what their motion on Page -- their motion listed to the amended complaint on Page 4 and 5 --

THE COURT: Well, in any event, you would amend that, I'm sure?

MR. SMITH: We hereby do so, to the extent necessary, move in open court that the motion be amended to assert the statute as argued by Horry Electric, yes, sir.

THE COURT: Ms. Warner, we haven't heard from you. Would you like to say anything?

MS. WARNER: Your Honor, I appreciate your time and consideration. I will not belabor, but it's always an honor to appear before you.

THE COURT: Thank you. Well, I think that the issue, as I understand your argument, is that this all arose because of actions that occurred prior to the 13-year statute of limitations, which is what our rule applies, well

in excess of it. And it all arises out of their knowledge of a condition or -- what would be the exact phrase I'm looking for? Santee Cooper's knowledge that there may be problems with a particular form of -- of a requirement to put a vapor barrier in place. And it all flows from there.

No matter when the house got constructed, the bad act, as I understand the theory of the plaintiff's case, the bad act took place back in 1986. And so all of the claims, other than equitable indemnity, are barred by the statute of repose.

I might also note that there is no cause of action for breach of a good faith duty to deal -- that's implied in a breach of contract. And there is no breach of contract placed here. So that would be dismissed on those grounds as well. But as far as the negligence and all the others, those are all arising out of that bad act of not disclosing, as I understand the arguments, theories and things I've read.

So the statute of repose, the 13-year statute of repose would bar the plaintiff's claims except for equitable indemnity, which I find it's premature for you to have brought that claim at this time, because you haven't paid out anything that you are entitled to be reimbursed for. So I will dismiss that, the equitable indemnity without prejudice. But all the other ones are dismissed with

prejudice. I heard you rattling papers and you started to speak, I think.

MR. JOHNSON: I did, but I didn't want to cut you off.

THE COURT: That's okay.

MR. JOHNSON: Judge, were you considering matters outside of the pleadings in doing this?

THE COURT: I don't think so.

MR. JOHNSON: Matters outside of the pleadings reflect the affidavit or the testimony of the Horry -- excuse me, the Santee Cooper 30(b)(6) that the vapor barrier was not put in initially as a requirement for construction. And they did not occur and did not become a requirement until 19 -- I will look and see if I can find what she said. Give me a moment, if you can.

If you are considering matters outside of the pleadings, it would move the date up, I believe.

THE COURT: I'm only considering what you told me your theory of liability was, and that it flows from the bad act of not disclosing when they had a duty to disclose; for instance, on negligence, conspiring with another party to not tell them about this knowledge that they had. All of those things are what you've told me. At least that's what my questioning was, to get to what exactly your theory of liability was. And it all seemed to go back to this 1986

bad act.

MR. JOHNSON: And, Your Honor, I think I found what I was looking for, and I don't think it matters. I withdraw my argument. They didn't make it a requirement until 1991, but it would still be under your ruling.

THE COURT: It would still be covered by the statute of repose?

MR. JOHNSON: Right, under your ruling.

THE COURT: No matter what your -- no matter when these acts or the particular act took place, your theory is they should have told you because they knew. And the only two dates that I'm hearing that they knew that they should have told you, would have been '86 when they had knowledge of it through these letters, or '91 when they made it a requirement, which was a continuing, presumably, bad act every day. But that's when the bad act took place that triggered liability, would be the date of the discovery or this letter in 1986 or the requirement that they implement this in 1991. From that point on, their liability was established, and is well passed the statute of repose.

So those are all dismissed with prejudice. But your equitable indemnification, if you have any theory which you can recover, it would be that one. But that will just have to be decided another day, and you can refile. It's dismissed without prejudice.

MR. JOHNSON: Yes.

THE COURT: And then a court can flesh out whether or not you are entitled to it.

MR. JOHNSON: Correct.

THE COURT: And if you want me back to hear that one, well, then just file a new lawsuit.

MR. JOHNSON: I may.

THE COURT: You probably want it in front of any other judge at this point.

MR. JOHNSON: Do what you think is right. Pleased to appear before you any time.

THE COURT: I'm going to ask Mr. Smith to prepare an order for me; send it to you. Make sure that -- I know you don't agree with it -- but that you think it's in proper form, and then forward it on to me in Charleston, because --

MR. SMITH: Yes.

THE COURT: After Friday, I'm not traveling the rest of the year at this point. So thank you so much. And I'm sorry you made the wrong trip. Although, you know, Charleston is a nice place to have to spend the day.

MR. JOHNSON: Well, I apologize again for that. Thank you for doing this with me by phone.

THE COURT: Okay. Good luck. Have a safe trip back.

MR. SMITH: Thank you.

MR. BAXLEY: Thank you, Mr. Johnson.

MR. JOHNSON: Okay. Thank you.

(Proceedings are concluded.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 12th day of August, 2014, at Charleston, Charleston County, South Carolina.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

Concordance

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Exhibit H

Initial Brief of Appellant

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 17 2014
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2013-CP-26-0488

Horry Electric Cooperative, Inc. ..... Appellant

vs.

South Carolina Public Service Authority and Southern Electric International, Inc., Defendants,

Of whom South Carolina Public Service Authority is the ..... Respondent

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

This action arises out of an underlying class action against Horry Electric Cooperative, Inc. ("HEC") titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266. [Amended Complaint R.p.__] In the underlying action, the plaintiffs alleged that HEC offered a Good Cents program under which members could receive a favorable electric rate provided they complied with the requirements of the Good Cents program regarding insulation and other energy saving matters. One of the requirements for participation in the Good Cents program was installation of a vapor barrier on the interior of the exterior walls. The class representatives alleged that the vapor barrier requirement was a design defect that caused moisture to accumulate inside the walls which in turn caused mold, mildew and moisture damage to the structure. The plaintiffs alleged three causes of action against HEC: (1) design defect/breach of warranty; (2) negligence/gross negligence; and (3) breach of contract/covenant of good faith and fair dealing. [Amended Complaint R.p.__] The underlying action was filed on or about February 9, 2011. [Complaint R.p.__] A settlement was reached in the underlying action which was preliminarily approved by an Order dated March 3, 2014. [Settlement Agreement and Order R.p.__] A final approval hearing was set on May 30, 2014. [Order R.p.__]

On January 23, 2013, HEC filed this action against the South Carolina Public Service Authority ("Santee Cooper"). Santee Cooper was a developer and promoter of the Good Cents program. HEC's initial complaint sought damages by way of equitable indemnification. [Complaint R.p.__] On July 5, 2013, Santee Cooper moved to dismiss the complaint. [Motion to Dismiss R.p.__] On July 30, 2013, HEC filed and served an Amended Complaint asserting causes of action

for negligence, breach of warranty, civil conspiracy and equitable indemnification. [Amended Complaint R.p.__]

By an Order dated March 5, 2014 issued by the Chief Justice, this action was transferred to the business court and assigned to the Honorable Roger M. Young, Sr. [Order R.p.__]

On August 21, 2013, Santee Cooper moved to dismiss the Amended Complaint upon the following grounds:

> "(a) the claim for equitable indemnity is barred by the statute of repose because the Complaint was filed on January 18, 2013, more than 8 years after the homes involved in the underlying action were constructed;
> (b) the other purported claims are barred by the applicable statute(s) of limitation; and
> (c) HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper."[1] [Santee Cooper's Motion to Dismiss R.p.__]

No discovery took place in this action because Santee Cooper moved for a protective order but HEC was able to take a 30(b)(6) deposition of Santee Cooper in the underlying action. The 30(b)(6) deposition established that Santee Cooper knew of the vapor barrier problem before offering the Good Cents program to HEC and failed to disclose the potential problem to HEC. [Santee Cooper's 30(b)(6) Deposition R.p.__] On October 2, 2013, HEC filed a Motion for Partial Summary Judgment supported by the 30(b)(6) deposition. [HEC's motion for summary judgment R.p.__]

On May 16, 2014, HEC filed a motion to continue and/or stay any decision on Santee Cooper's motions on the following grounds:

> "1. Upon information and belief, Santee Cooper will argue that the equitable indemnity claim should be dismissed because the claim for equitable indemnity requires proof that the party seeking indemnity have no personal negligence of his own. Santee Cooper may also argue that the above-captioned

1 Judge Young, in his order filed June 13, 2014, failed to state correctly the motion which Santee Cooper made. He changed subparagraph (a) to the following: "The claims are barred by the statute of repose because the underlying action is based on construction completed in the 1980s and 1990s."

action is premature and should be dismissed since Horry Electric has not yet suffered any damages in Civil Action No. 2011-CP-26-1266.

2. The proposed Settlement Agreement, attached hereto as Exhibit A, contains certain allegations regarding absence of personal negligence on the part of Horry Electric and Settlement Agreement, if approved, will establish the damage incurred by Horry Electric and absence of fault on the part of Horry Electric.

3. Upon information and belief, the Settlement Agreement dated February 28, 2014 will be approved by the Court on May 30, 2014 and if so, Horry Electric will ask that the Court take judicial notice of the approval of the Settlement Agreement and consider it in connection with the motion to dismiss." [Motion to Continue R.p.__]

On May 27, 2014, Judge Young heard the above-referenced motions. By an Order filed June 13, 2014, Judge Young dismissed the claim for equitable indemnification without prejudice finding that the class action settlement had not been approved and no payments had been made pursuant to the purported settlement and, as a result thereof, the action was not ripe. Judge Young granted Santee Cooper's motion to dismiss all other claims with prejudice. Judge Young found that these claims were barred by the statute of repose and statute of limitations. (Order filed 6/13/14)

On July 2, 2014, HEC filed its Rule 59(e) Motion to Reconsider, Alter and/or Amend the Order filed June 13, 2014. [HEC's Rule 59(e) Motion R.p.__] Judge Young summarily denied HEC's motion to reconsider by an Order dated July 14, 2014. [Order R.p.__]

HEC filed its Notice of Appeal of the Order filed June 13, 2014 and the Order filed July 14, 2014. [Notice of Appeal R.p.__]

I.

DID JUDGE YOUNG ERR IN FAILING TO DELAY THE HEARING AND/OR ANY RULING ON SANTEE COOPER'S MOTIONS UNTIL AFTER MAY 30, 2014 WHEN COURT APPROVAL OF THE SETTLEMENT OF THE CLASS ACTION WAS HEARD?

Judge Young held a hearing on the motions before him on May 27, 2014. A hearing before

Judge Culbertson to approve the class action settlement was scheduled for three days later on May 30, 2014.

Judge Young did not sign his written order until June 11, 2014. His order was not filed until June 13, 2014.

Judge Young's Order filed June 13, 2014 stated:

> "1. Equitable Indemnification. As stated above, the claim for equitable indemnification is not yet ripe for adjudication. The parties in the *Ferrell* action have entered into a Settlement Agreement, which will require Court approval, but as of the date of the hearing in this matter, that approval had not yet occurred. Pursuant to the Settlement Agreement, HEC and/or its insurer will pay class members to settle their damages claims and will pay class counsel their attorneys' fees and costs. In the action at bar, HEC is seeking indemnification for such payments. Counsel for HEC reported that while some class members had submitted claims and class counsel had petitioned for attorneys' fees pursuant to the Settlement Agreement, court approval of the settlement had not been granted as of the date of this hearing. More importantly, no payments had been made pursuant to the Settlement Agreement. Accordingly, this Court finds that HEC's claims for indemnification are not yet ripe. The Court makes this finding after carefully considering and rejecting all of HEC's arguments relevant to the question of ripeness, regardless of whether such arguments are expressly enumerated herein. Finding that dismissal with prejudice would be premature, this Court dismisses the claim for equitable indemnification *without prejudice*." [Order filed June 13, 2014 R.p.__]

Judge Young dismissed the equitable indemnification claim on the ground that the class action settlement had not been approved and payments had not been made. However, he knew before he issued his order that Judge Culbertson had already approved the class action settlement on May 30, 2014. This is undisputed. This is proved by a footnote in Judge Young's Order.

> "This settlement approval was pending before another Court. Approval was subsequently granted on May 30, 2014." [Order filed June 13, 2014 R.p.__]

Judge Young erred in issuing an order finding that the settlement had not been approved when, by the time he signed his order, the settlement had been approved and he knew it. His order is

prejudicial to HEC. If his order is affirmed, HEC will have to re-file its action, pay a second filing fee, and arrange for service. The Clerk of Court will have to set up a new file. Disposition of the action will unnecessarily be delayed. Obviously, delay and duplication is not what is needed in our judicial system. Other significant prejudice to HEC is set forth below. His order should be reversed.

II.

DID JUDGE YOUNG ERR IN ISSUING AN ORDER DISMISSING THE CAUSE OF ACTION FOR EQUITABLE INDEMNIFICATION BASED ON A FALSE PREMISE?

Judge Young granted Santee Cooper's motion to dismiss the equitable indemnity claim on the basis that the class action settlement had not been approved and no payments had been made pursuant to the Settlement Agreement. Yet at the time he signed his order, he knew this was not correct.

The hearing before Judge Young was on May 27, 2014. The approval hearing of the class action settlement was scheduled for hearing just three days later on May 30, 2014. Judge Young's order was not signed until June 11, 2014 and was not filed until June 13, 2014. The footnote in his order proves that Judge Young knew of the approval of the class action settlement prior to issuing his order on June 13, 2014, but he dismissed the equitable indemnity claim anyway. All Judge Young had to do was to take judicial notice of Judge Culbertson's order. His order states that he had "confined his decision to the amended Complaint, attachments thereto, matters of which the Court may take judicial notice, and the arguments of the parties at the hearing." Rule 201, SCRE provides that judicial notice "may be taken at any stage of the proceeding". His order dismissing the equitable indemnification claim was based on a false premise and should be reversed.

III.

WAS THE DISMISSAL OF THE EQUITABLE INDEMNIFICATION ACTION INCONSISTENT WITH THE PURPOSES OF THE BUSINESS COURT?

When Judge Young dismissed the cause of action for equitable indemnification, he found that since the class action settlement had not been approved and no payments had been made, HEC had no damage. [Order filed June 13, 2014 R.p.__]

This action had been transferred to the business court. Santee Cooper's counsel made the following argument regarding the purpose of the business court:

> "because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation." [Transcript p.28, line 2-5, R.p.__]

Granting a motion to dismiss the cause of action for equitable indemnification without prejudice does nothing to facilitate "a speedy, fair and final resolution" of the dispute. Dismissing the equitable indemnification claim will have the opposite effect and will unnecessarily delay the trial and will waste judicial time and resources. Judge Young's order dismissing HEC's action for equitable indemnification should be reversed.

IV.

DID JUDGE YOUNG ERR IN DISMISSING THE EQUITABLE INDEMNITY CLAIM BASED UPON A GROUND NOT RAISED BY SANTEE COOPER'S MOTION?

Judge Young dismissed the claim for equitable indemnification on a ground not raised by Santee Cooper in its motion. Santee Cooper's motion did not mention ripeness. Santee Cooper's counsel did not argue "ripeness" at the hearing. HEC had no notice that "ripeness" would be

considered by Judge Young and no opportunity to meet and be prepared to address the issue of ripeness.

According to Rule 7(b)(1), SCRCP:

> "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, **shall state with particularity the grounds therefore, and shall set forth the relief or order sought.** The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Emphasis supplied.

The particularity requirement of Rule 7(b)(1) was discussed by the Supreme Court in *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010).

> "Rule 7(b)(1), SCRCP required that motions 'shall state with particularity the ground therefore, and shall set forth the relief or order sought.' The particularity requirement 'is to be read flexibly in 'recognition of the peculiar circumstances of the case.'' *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir. 1996) (quoting *Registration Control Sys., Inc. v. Compusystems, Inc.*, 922 F.2d 805, 808 (Fed. Cir. 1990)). **'By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that 'the court can comprehend the basis of the motion and deal with it fairly.''** *Calderon v. Kansas Dept. of Soc. And Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* Section 1192 at 42 (2d ed. 1990))." Therefore, when a motion is challenged for a lack of particularity, the court should ask 'whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'' *Registration Control*, 922 F.2d at 807-08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* Section 1192 at 42). 'The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized.' *Andreas v. Volkswagen of Am., Inc.*, 336 F.3d 789, 793 (8th Cir. 2003) (citations omitted). Emphasis supplied.

Santee Cooper moved to dismiss the claim for equitable indemnification and stated the single ground of its motion with particularity. Santee Cooper sought to have the claim for equitable indemnification dismissed upon the following ground:

> "(a) the claim for equitable indemnity is barred by the statute of repose because the

> Complaint was filed on January 18, 2013, more than 8 years after the homes involved in the underlying action were constructed;" [Santee Cooper's Motion to Dismiss R.p.__]

Santee Cooper did not move to dismiss based upon the 13 year statute of repose. At the hearing, Santee Cooper's counsel admitted that if the thirteen year statute of repose was the applicable statute rather than the 8 year statute, then HEC had claims that were not barred by the statute. Santee Cooper's counsel argued:

> "On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part." [Transcript p.__, line __., R.p.__]

Judge Young found that the 8 year statute of repose did not apply. Once he ruled on the 8 year statute of repose, he should have stopped and denied Santee Cooper's motion on that cause of action. Instead, Judge Young, on his own, came up with a new ground for dismissal of the equitable indemnification claim. Judge Young's new ground was that the claim was not "ripe" since, according to Judge Young, the class action settlement has not been approved and no payments had been made pursuant to the settlement agreement. This was clear error.

A circuit court judge is not and should not become an advocate for one side or the other. Instead, a circuit court judge should sit as a referee to rule on the matters that are brought before him. Had Judge Young done that, he would have denied Santee Cooper's motion that was made based on the 8 year statute of repose and stopped there. HEC had no notice that an issue of ripeness would be raised. HEC had no time to prepare for an argument on ripeness. Arguing against some new theory the judge has raised is usually a hopeless task.

It was clear error for Judge Young to grant the motion on a ground not raised by the moving party. In *State v. Dicapua*, 383 S.C. 394, 680 S.E.2d 292 (2009), the Supreme Court stated:

> "We now turn to the legal issue which resolves this case – may a trial court in a criminal case *sua sponte* order a new trial on a ground not raised by a party? We answered this question 'no' in the context of a civil proceeding in *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736 (1985) ('The sole issue is whether a trial judge *ex mero moto* can grant a new trial on a ground not raised by a party. We hold he cannot'). We hold the same result must follow in a criminal case. Moreover, to affirm the grant of a new trial on a waived issue in a criminal case would lend this Court's imprimatur to a trial court's impromptu grant of post conviction relief."

In *Standard Roofing Co., Inc. v. Dean Construction Co., Inc.*, 284 S.C. 40, 324 S.E.2d 334 (Ct. App. 1984), the Court of Appeals stated:

> "As noted, Dean asked for relief based on reformation and indemnification; it did not seek relief under the contract documents or restitution. Therefore, the trial court erred by going beyond the scope of the pleadings and granting relief on theories not pleaded. Judgements 'not supported by the theor[ies] of action on which the pleadings [are] framed [are] fatally defective.' *Crocker v. Crocker*, 281 S.C. 154, 314 S.E.2d 343, 346 (Ct. App. 1984); *Bryan v. Bryan*, 282 S.C. 506, 319 S.E.2d 360 (Ct. App. 1984); *Glass v. Glass*, 276 S.C. 625, 281 S.E.2d 221, 222 (1981)." At page 295 of 680 S.E.2d.

These holdings should apply with equal force to a circuit court judge considering a motion to dismiss. Judge Young's order granting the motion to dismiss the cause of action for equitable indemnification should be reversed.

V.

DID JUDGE YOUNG ERR IN GRANTING THE MOTION TO DISMISS BY FAILING TO ACCEPT THE ALLEGATIONS OF THE AMENDED COMPLAINT AS BEING TRUE?

The law is clear that a judge, in considering and deciding a motion to dismiss, must accept the well pled allegations of the complaint as being true. *Gressette v. South Carolina Electric & Gas Co.*,

370 S.C. 377, 635 S.E.2d 538 (2006). Santee Cooper conceded as much in its motion:

> "A motion to dismiss pursuant to Rule 12(b)(6), however, is based solely on the allegations set forth in the complaint, and for purposes of the motion, the court accepts well-pled facts as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005)."

It is clear that Judge Young failed to do so. Judge Young dismissed the claim for equitable indemnification, finding that since the class action settlement had not yet been approved and no payments made pursuant to the settlement agreement, the action was not ripe. In essence, Judge Young found that HEC had no damages as of the time of the hearing and as a result, the action was not ripe for determination.

Judge Young made this finding even though HEC had pled that it had damages. Actually, the Amended Complaint contained allegation after allegation of damages. These allegations of damages are as follows:

> "17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which Santee Coopers are liable.
>
> 18. That, to the extent Horry Electric is exonerated from liability to HECs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Coopers are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.
>
> 22. That as a direct and proximate result thereof, HEC has incurred attorney's fees and expenses and may suffer other damages.
>
> 25. That Santee Coopers, by failing to disclose the information in Exhibits B and C, breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from Santee Coopers its actual damages and punitive damages as a result thereof.
>
> 28. That Santee Coopers breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which Santee Coopers are liable.
>
> 30. That, upon information and belief, Santee Cooper, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to

"10"

suffer actual and special damages for which Santee Coopers are liable.

32. That, to the extent Horry Electric is exonerated from liability to HECs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Coopers are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests." [Amended Complaint R.p.__]

Obviously, if the foregoing allegations are accepted as being true, as required by law on a motion to dismiss, HEC had suffered damages and the action could not be dismissed on the ground that the action was not ripe because HEC had no damages. Since Judge Young failed to follow the law by failing to accept HEC's allegations as true, his Order dismissing the cause of action for equitable indemnification should be reversed.

VI.

DID JUDGE YOUNG ERR IN DISMISSING THE CLAIM FOR EQUITABLE INDEMNIFICATION BASED UPON LACK OF RIPENESS WHEN RULE 12(b), SCRCP DOES NOT PROVIDE FOR A MOTION TO DISMISS FOR LACK OF RIPENESS?

Rule 12(b), SCRCP, provides:

"Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim."

Rule 12(b) provides for a limited number of defenses which can be asserted by way of a motion to dismiss. Rule 12(b) does not provide for or authorize a motion to dismiss based upon lack of ripeness. The ripeness is frequently raised in declaratory judgment actions where there is a question involving whether there is a controversy.

"Appellants' constitutional claim is not ripe for determination at this time. 'A

justiciible controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.' *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) (see also *Hitter v. McLeod*, 274 S.C. 616, 266 S.E.2d 418 (1980)."

Here, if the plaintiff did not have or allege any damages, the proper motion would be a Rule 12(b)(6) motion. A circuit court judge should not be allowed to grant a motion to dismiss for lack of ripeness when such is not permitted by Rule 12(b). Judge Young's order should be reversed.

VII.

WAS THE DISMISSAL OF THE CLAIM FOR EQUITABLE INDEMNIFICATION PREJUDICIAL TO HEC?

HEC's claim against Santee Cooper for equitable indemnification was subject to a defense of the 13 year statute of repose. Since the action was filed on January 23, 2013, HEC acknowledged that the statute of repose would bar all claims for residences that were substantially complete more than 13 years prior to this action being commenced. Santee Cooper's counsel, in argument, admitted that if the 13 year statute of repose applied, there were claims asserted that would not be barred. Counsel argued:

> "On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part." [Transcript p.__, line __, R.p.__]

> "because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation." [Transcript p.28, line 2-5, R.p.__]

This argument was binding on Santee Cooper. *Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479,

482 (1947) (a party is bound by statements of its counsel).

This action was filed on January 23, 2013. Claims in the underlying action based on substantial completion dates prior to January 23, 2000 would be barred by the 13 year statute of repose. If this action is dismissed and then has to be re-filed, then claims for residences with substantial completion dates between January 23, 2000 and whenever suit is re-filed will be barred. Obviously, dismissing this action and having to re-file it would be financially prejudicial to HEC in addition to the prejudice to HEC in having to re-file and pay another filing fee and have a delayed trial date as set forth above. Judge Young's order should be reversed.

VIII.

DID JUDGE YOUNG ERR IN GRANTING HEC's OTHER CAUSES OF ACTION BASED ON THE STATUTE OF REPOSE WHICH WAS NOT RAISED AS A GROUND FOR DISMISSAL BY SANTEE COOPER'S MOTION?

Judge Young dismissed HEC's other causes of action on the ground that they were barred by the statute of repose. However, this ground was not raised in Santee Cooper's motion to dismiss the other causes of action. See Argument IV above and the authority referenced therein. For the reasons stated in HEC's Argument IV, Judge Young's order should be reversed as to the other causes of action.

IX.

DID JUDGE YOUNG MISINTERPRET AND MISAPPLY THE STATUTE OF REPOSE IN FINDING THAT THE STATUTE OF REPOSE BEGAN TO RUN BASED UPON THE OCCURRENCE RATHER THAN OF CERTAIN EARLIER ACTS WHEN SUBSTANTIAL IMPROVEMENT OCCURRED?

Judge Young found that the other claims asserted by HEC were barred by the statute of repose,

finding as follows:

> "2. Statute of Repose. The Court finds that the statute of repose bars the remaining claims. These claims are predicated on letters written by a Santee Cooper employee in 1986 concerning, among other things, the vapor barrier design specifications for the Good Cents program. These specifications were then incorporated into construction completed as early as 1988 or, accepting for the sake of argument HEC's position asserted during the hearing, in 1991. (At the hearing, counsel for HEC stated that while the letters were written in 1986, the vapor barrier design specifications was not implemented until 1991). HEC further argues that HEC did not discover the existence of these Santee Cooper letters until the *Ferrell* suit was being litigated. HEC further argues that the 1986 letters demonstrate that Santee Cooper had knowledge about the vapor barrier design specification that it should have disclosed to HEC in 1986 (or 1991). Santee Cooper disputes these arguments. Reading the Amended Complaint and drawing all inferences in the light most favorable to HEC, the Court concludes that these claims are based on the theory that if HEC had been informed of the contents of the letters when they were written, HEC would not have adopted the vapor barrier design specifications and, consequently, these design specifications would not have been incorporated into the homes of its customers. As noted above, counsel for HEC argued that the operative date for incorporation of the design standards into customers' homes was 1991, rather than 1986 (the date of the letter) or 1988 (the date construction commenced according to the underlying complaint). Even if 1991 were the operative date on which the design specifications were incorporated into the construction of class members' homes, the statute of repose would bar the claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy." [Order filed June 13, 2014 R.p.__]

The 13 year statute of repose is clear and unambiguous. A reading of the plain language of the 13 year statute of repose readily establishes that Judge Young misinterpreted and misapplied the statute of repose. The plain and unambiguous language of the statute of repose is that it begins to run "after substantial completion" of the improvement.

Section 15-3-640 provides in part as follows:

> "No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than thirteen years after **substantial completion** of such an improvement." Emphasis supplied.

Section 15-3-640 also states:

"This section describes an outside limitation of thirteen years after the **substantial completion** of the improvement, within which normal statutes of limitations continue to run." Emphasis supplied.

As Santee Cooper's counsel conceded, the class action consisted of claims involving homes in which substantial completion occurred within thirteen years of the commencement of the class action. Santee Cooper's counsel conceded that those claims were not barred by the 13 year statute of repose.

"On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part." [Transcript p.__, line __., R.p.__]

Judge Young disregarded this concession and ruled that all claims were barred. This Court should find that the circuit court judge misinterpreted the statute of repose as written and reverse his order dismissing the other causes of action based upon the 13 year statute of repose.

X.

DID THE CIRCUIT COURT JUDGE ERR IN FINDING THAT ALL OTHER CLAIMS WERE BARRED BY THE STATUTE OF LIMITATIONS?

Judge Young stated in his order that he was not converting the motion to dismiss to a motion for summary judgment. He found that HEC's other claims were barred by the two year statute of limitations in Tort Claims Act. He found:

"3. Statute of Limitations. The Court notes that Santee Cooper also moved for dismissal of HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy on the basis of the two-year statute of limitations contained in the Tort Claims Act ('TCA'). See S.C. Code Ann. §15-78-110; *see also Hodges v. Rainey*, 341 S.C. 79, 91-92, 533 S.E.2d 578, 584 (2000) (recognizing TCA applies to Santee Cooper). The Court finds that the statute of limitations provides an additional reason for

dismissal of these claims.2

> In oral argument, HEC asserted that actions brought under the TCA are subject to the discovery rule, *Joubert v. S.C. Dep't of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000), and that it did not have knowledge of the 1986 letters until discovery began in the underlying *Ferrell* case. 'According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.' *Id. See also Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) ('The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.'). 'The date on which discovery should have been made is an objective rather than subjective question.' *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998). 'The critical inquiry, then, is whether [HEC] could have discovered its claim against Santee Cooper.' *See Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998) (emphasis added).
>
> On their face, argues Santee Cooper, the 1986 letters show that HEC could have discovered the information that HEC alleges Santee Cooper should have divulged to HEC, because the letters show that this information was contained in engineering standards and a trade publication, and was the subject of some discussion in the local building community. According to this argument, the statute of limitations began to run in 1986. The Court agrees. Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of limitations, regardless of whether such arguments are expressly enumerated herein."

Judge Young, in so ruling, made findings that had to based upon matters outside of the four corners of the Amended Complaint. Although the letters attached to the Amended Complaint refer to ASHRAE 85' Fundamental – 21.17 and Energy Design Update, there is nothing in the Amended Complaint that shows that letters contained information regarding "engineering standards and a trade publication". Even if there were, there is simply nothing to show how, when and why the information should have

2 It should be noted that the cause of action for breach of the duty of good faith and fair dealing and breach

been discovered by HEC. While it is true that Santee Cooper's attorney argued that the ASHRAE '85 Fundamental -21.17 set forth "engineering standards" and that Energy Design Update is a "trade publication", but argument of counsel is not evidence. There is also nothing to show that the vapor barrier issue was the subject of some discussion in the local building community. However, even if there were, there is nothing to show what the "some discussion" consisted of and how HEC could have learned of the discussion.

Even if HEC should have learned of the vapor barrier problem in 1986 or 1991, mere knowledge of the vapor barrier problem would not start the statute of limitations begin to run.

> "The statute of limitations begins to run at the time the cause of action accrues. *Harvey v. S.C. Dep't of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000) (citing *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct. App. 1991)). In analyzing a limitations defense, '[t]he fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it.' *Id.* (quoting *Matthews*, 305 S.C. at 269, 407 S.E.2d at 669). Thus, a particular cause of action accrues 'at the moment when the plaintiff has a legal right to sue on it.' *Id.*"

HEC had no legal right to sue until it had damage. HEC had no damage until it was sued in the underlying action. Damages are an essential element of each of the causes of action asserted in this action.3 Judge Young's order dismissing this cause of action based upon the statute of limitations should be reversed.

CONCLUSION

As then Chief Judge Alex Sanders so aptly stated "[A]ppellate courts like well behaved children do not speak unless spoken to and do not answer questions they were not asked." *State v.*

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of express and implied warranties are not torts which are subject to the Tort Claims Act.

3 Judge Young dismissed the cause of action for equitable indemnification because he found that there were no damages, but in the same order found that the statute of limitations had run on the other causes of action. While HEC denies that Judge Young was correct in his ruling on the cause of action for equitable

Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1990). This principle applies with equal force to the circuit court judge. Judge Young, who enjoys an excellent reputation, somehow went astray in this case. He answered questions which were not asked and he answered them incorrectly. He misinterpreted the clear language of the statute of repose. He dismissed causes of action based on the statute of limitations while, in the same order, he dismissed the equitable indemnification claim finding that HEC had not yet suffered any damage. His order is flawed for multiple reasons. This Court should reverse Judge Young's order.

Pope D. Johnson, III
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803-253-6084 (Fax)
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Attorney for Appellant

Columbia, South Carolina
October 16, 2014

indemnification, this demonstrates one of the glaring inconsistencies in Judge Young's order.

RECEIVED
OCT 17 2014
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2013-CP-26-0488

Horry Electric Cooperative, Inc., ...Appellant

vs.

South Carolina Public Service Authority and Southern Electrical International, Inc., Defendants

Of whom South Carolina Public Service Authority is the .....Respondent

---

PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served B. Rush Smith, III, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 17th day of October, 2014.

COUNSEL SERVED:
B. Rush Smith, III, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

PLEADINGS:
Appellant's Initial Brief

Sherry W. Wise

Exhibit I

Montorio Deed

656695

Prepared By and Return to:
N. David DuRant & Associates, P.A.
1801 Glenns Bay Road
Surfside Beach, SC 29575
98-8806NDD

FILED
HORRY COUNTY
98 FEB -2 PM 3:47
R.M.C.

HORRY COUNTY ASSESSOR
Parcel ID# 179-12-01-113
Map Blk Parcel 2-3-98 jc

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that it, J. A. FOX, INC., in the State aforesaid, for and in consideration of the sum of Ninety-four Thousand Four Hundred and no/100 ($94,400.00) Dollars to it paid by ***DAVID E. MONTORIO and HOLLY S. MONTORIO,*** *in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said* ***DAVID E. MONTORIO and HOLLY S. MONTORIO,*** *as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:*

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as ***LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES*** *on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.*

This is the identical property conveyed to the Grantor herein by Deed of Foxworth Porter Development, LLC, dated October 20, 1997, and recorded in the Office of the RMC for Horry County, South Carolina on October 20, 1997, in Deed Book 1984 at Page 508.

STATE 345.70 COUNTY 172.85
EXEMPT YES (NO)
ASSESSOR

Grantee(s)' Address: 303 WORTHINGTON CIRCLE, MYRTLE BEACH, SC 29577

BOOK 2009 PAGE 476

476

Exhibit J

Montorio Mortgage

656699

Record and return to:
N. David DuRant & Associates, PA
1801 Glenns Bay Road
Surfside Beach, SC 29575
98-8806NDD

972419711

FILED
HORRY COUNTY
98 FEB -2 PM 3:48
R.M.C.

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on January 30, 1998 . The mortgagor is David E. Montorio and Holly S. Montorio

DEM HSM

("Borrower"). This Security Instrument is given to American Home Funding, Inc.

which is organized and existing under the laws of the State of New York , and whose address is 2411 North Oak Street, Myrtle Beach, SC 29577 ("Lender"). Borrower owes Lender the principal sum of Eighty Nine Thousand Six Hundred and 00/100 Dollars (U.S. $89,600.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on February 1, 2028 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in Horry County, South Carolina:

LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES as is more fully described on Exhibit "A" attached hereto and made a part hereof

SUBJECT TO COVENANTS OF RECORD.

DEM HSM

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which has the address of 303 Worthington Circle, Myrtle Beach [Street, City]
South Carolina 29577 [Zip Code] ("Property Address");

805

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve

payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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22. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ 1-4 Family Rider
☐ Graduated Payment Rider	☒ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ Balloon Rider	☐ Rate Improvement Rider	☐ Second Home Rider
☐ VA Rider	☐ Other(s) [specify]	

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Signed, sealed and delivered in the presence of:

David E. Montorio (Seal) -Borrower

Witness

Holly Montorio (Seal) -Borrower

Witness

(Seal) -Borrower

(Seal) -Borrower

STATE OF SOUTH CAROLINA,
County of HORRY

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage; and that s/he with the other subscribing witness above, witnessed the execution thereof.

Sworn to before me this 30th day of January, 1998

My Commission Expires: 11/23/04

Notary Public for South Carolina

(Seal)

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EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as **LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES** on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

This being the identical property conveyed to the Mortgagor herein by Deed of J. A. Fox, Inc., dated January 30, 1998, and recorded February 2, 1998, in the Office of the RMC for Horry County, South Carolina, in Deed Book 2009 at Page 476.

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PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 30th day of January ,1998 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to American Home Funding, Inc.

(the "Lender")
of the same date and covering the Property described in the Security Instrument and located at:

303 Worthington Circle
Myrtle Beach, SC 29577

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Worthington Estate Declaration of Covenants, Restrictions and Easements recorded January 27, 1997, in Horry County Deed Book 1916 at page 753 (the "Declaration"). The Property is a part of a planned unit development known as Worthington Estates

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

1556555

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:

(i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and

(ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 10.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

David E Montorio (Seal) -Borrower

David E. Montorio

Holly S. Montorio (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

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814

Exhibit K

Vance Deed

271023

HORRY FILED
HORRY COUNTY, S.C.
97 OCT 31 PM 1:54
R.M.C.

Prepared by and return to:
Law Offices of N. David DuRant
and Associates, P.A.
1801 Glenns Bay Road
Surfside Beach, SC 29575
97-8599NDD

HORRY COUNTY ASSESSOR
Parcel ID# 179-12-01-105
179-12-01-105
Map Blk Parcel 11-3-97 JH

STATE OF SOUTH CAROLINA)
) WARRANTY DEED
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, that J. A. FOX, INC., in the State aforesaid, for and in consideration of the sum of Eighty-nine Thousand Five Hundred Twenty-seven and no/100 Dollars ($89,527.00) to It paid by GARY A. VANCE and TAMMY R. VANCE, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, its heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property to wit:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as Lot Nineteen (19) of Worthington Estates on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

STATE 234.00 COUNTY 99.00

EXEMPT YES NO

ASSESSOR _____

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791

This is the identical property conveyed to the Grantor herein by Deed of Foxworth Porter Development, LLC dated July 17, 1997 and recorded July 17, 1997 in Deed Book 1958 at Page 256.

Grantee(s)' Address: 326 WORTHINGTON CIRCLE
MYRTLE BEACH SC 29575

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

And Grantor does hereby bind Itself and Its successors, administrators and assigns, to warrant and forever defend all and singular the said premises unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against It and Its successors, administrators and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused Its corporate hand and seal to be set hereunto by Its duly authorized officer, this 31st day of October in the year of our Lord one thousand

BOOK 1987 PAGE 792

nine hundred and ninety-seven and in the two hundred and twenty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

J. A. Fox, Inc.

Irene Tillwood
1st Witness

Allen B Foxworth (L.S.)
By Allen B. Foxworth
Its President

Debra E Herrmann
Notary

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

Personally appeared before me, the undersigned witness and made oath that he/she saw the within named Grantor, J. A. FOX, INC., by Allen B. Foxworth, Its President and duly authorized officer, Sign, Seal and as Its Act and Deed, deliver the within written Deed for the uses and purposes herein mentioned; and that he/she with the other witness subscribed above witnessed the execution thereof.

Irene Tillwood
1st Witness

Sworn to before me this 31st
day of October, 1997.

Debra E Herrmann (L.S.)
Notary Public for South Carolina

My Commission Expires 11/23/04

STATE OF SOUTH CAROLINA)
) A F F I D A V I T
COUNTY OF HORRY)

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. Property located at Lot 19, Worthington Estates, bearing HORRY County Tax Map Number 179-12-01-105 was transferred by J. A. FOX, INC. to GARY A. VANCE and TAMMY R. VANCE this 31st day of October, 1997. The transaction was:

XXX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $89,527.00.

___ not an arm's length real property transaction and the fair market value of the property is $_____*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq. because the deed is _____.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as purchaser, legal representative or other responsible party connected with the transaction.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than $1,000 or imprisoned not more than one year or both.

Gary A. Vance

SWORN to before me this 31st day of October, 1997.

Debra E. Herrmann
Notary Public for South Carolina

My Commission Expires 11/23/04

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

4

BOOK 1987 PAGE 794

Exhibit L

Vance Mortgage

Record and return to:
Law Offices of N. David DuRant
1801 Glenns Bay Road
Surfside Beach, SC 29575
97-8599NDD

27023

FILED
HORRY COUNTY, S.C.
97 OCT 31 PM 1:54
R.M.C.

[Space Above This Line For Recording Data]

1096

MORTGAGE

0060879095

THIS MORTGAGE ("Security Instrument") is given on OCTOBER 31, 1997 . The mortgagor is

GARY A. VANCE AND TAMMY R. VANCE,

("Borrower"). This Security Instrument is given to INVESTORS MORTGAGE COMPANY

which is organized and existing under the laws of SOUTH CAROLINA , and whose address is 4603 OLEANDOR DR STE 7, MYRTLE BEACH SC 29577 ("Lender"). Borrower owes Lender the principal sum of EIGHTY FIVE THOUSAND FIFTY & 00/100 Dollars (U.S. $ 85,050.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER FIRST, 2027 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in HORRY County, South Carolina:

Lot 19 Worthington Estates as is more fully described in Exhibit "A" attached hereto and made a part hereof by reference.

DAV
For Loan - R 8997 0214 PG 607 10-31-97

which has the address of 326 WORTHINGTON CIR, MYRTLE BEACH [Street, City],
South Carolina 29577 [Zip Code] ("Property Address");

DAV
T.R.V.

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TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve

payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

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23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150 %) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.
[Check applicable box(es)]

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ 1-4 Family Rider
☐ Graduated Payment Rider	☒ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ Balloon Rider	☐ Rate Improvement Rider	☐ Second Home Rider
☐ VA Rider	☐ Other(s) [specify]	

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Signed, sealed and delivered in the presence of:

Witness

GARY A. VANCE (Seal) -Borrower

Witness

TAMMY R. VANCE (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

STATE OF SOUTH CAROLINA, County ss:

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage, and that s/he with the other subscribing witness hereon, witnessed the execution thereof.

Sworn to before me this 31st day of October, 1997

My Commission Expires: 11/23/04

Notary Public for South Carolina

(Seal)

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PLANNED UNIT DEVELOPMENT RIDER

467 0060879095

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 31 day of OCTOBER, 1997, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

INVESTORS MORTGAGE COMPANY

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

326 NORTHINGTON CIR, MYRTLE BEACH, SOUTH CAROLINA 29577

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration").

The Property is a part of a planned unit development known as

WORTHINGTON ESTATE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:

(i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and

(ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 10.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Gary A Vance (Seal)
GARY A. VANCE -Borrower

Tammy R Vance (Seal)
TAMMY R. VANCE -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Exhibit "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as Lot Nineteen (19) of Worthington Estates on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

This is the identical property conveyed to the Mortgagors herein by Deed of J. A. Fox, Inc., dated October 31, 1997 and recorded in the Office of the RMC for Horry County, South Carolina on 10-31, 1997 in Deed Book 1989 at Page 791.

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Exhibit M

Montorio Answer

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **DEFENDANT'S ANSWER**

FILED
HORRY COUNTY
2011 MAY 11 AM 10:52
MELANIE HUGGINS-WARD
CLERK OF COURT

The defendant answers the Complaint herein as follows:

FOR A FIRST DEFENSE

1. That the defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. That, in response to the allegations of paragraphs 1, 2 and 3, the defendant admits only that the individual plaintiffs are citizens and residents of Horry County, South Carolina and denies the remaining allegations.

3. That, in response to the allegations of paragraph 4, this defendant admits only that it is a member owned, non-profit electric cooperative formed under the law of the State of South Carolina and the defendant does business in Horry County.

4. That the allegations of paragraphs 5 are admitted upon information and belief.

5. That, in response to the allegations of paragraph 6, the defendant admits only that each of the plaintiffs reside in Horry County and are members of the defendant Cooperative and receive electricity from the defendant.

6. That the allegations of paragraph 7 are denied.

7. That, in response to the allegations of paragraph 8, the defendant admits only that the Good Cents Program was developed and offered to the cooperatives for offering to the members by the South Carolina Public Service Authority which set the requirements for a home to qualify for the

program.

8. That the allegations of paragraphs 9, 10 and 11 are denied.

9. That, with respect to the allegations of paragraph 12, the defendant admits only that it offered to its members the Good Cents Program that was offered through the South Carolina Public Service Authority without having performed any research regarding the specifications and requirements of the Good Cents Program as offered by the South Carolina Public Service Authority.

10. That the allegations of paragraph 13 are denied but the defendant would show that members who qualified for the Good Cents received a special rate.

11. That the allegations of paragraph 14 and 15 are denied.

12. That, in response to the allegations of paragraph 16, the defendant admits only that it identified certain stipulations which had to be met for a home to be accepted into the Good Cents Program.

13. That the allegations of paragraph 17 are denied.

14. That, in response to the allegations of paragraph 18, the defendant admits only that it conducted inspections to determine whether the construction complied with the stipulations for qualification for the Good Cents program.

15. That the allegations of paragraphs 19, 20, 21, 22 and 23 are denied.

16. That, in response to the allegations of paragraphs 24, the defendant admits only that it discontinued stipulating installation of the alternative of insulation of vapor barriers, once it learned that the South Carolina Public Service Authority was no longer including that stipulation in the Good Cents Program.

17. That the allegations of paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 are denied.

18. That the allegations of paragraphs 1 through 17 hereof are realleged in response to the allegations of paragraph 35.

19. That the allegations of paragraphs 36, 37, 38, 39, 40 and 41 are denied.

20. That the allegations of paragraphs 1 through 19 hereof are realleged in response to the allegations of paragraph 42.

21. That the allegations of paragraphs 43, 44, 45 and 46 are denied.

22. That the allegations of paragraphs 1 through 21 hereof are realleged in response to the allegations of paragraph 47.

#2

23. That the allegations of paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 and the remaining allegations of the Complaint are denied.

FOR A SECOND DEFENSE

24. That the Complaint should be dismissed for failure to state facts sufficient to constitute a cause of action on the grounds that this action is barred by the release in the Class Action Settlement Agreement in Civil Action No. 95-CP-40-0991 and 00-CP-40-02681R.

FOR A THIRD DEFENSE

25. That the defendant pleads the thirteen year, Section 15-3-640 (1976), statute of repose, as a defense to this action.

FOR A FOURTH DEFENSE

26. That the defendant pleads the eight year statute of repose, Section 15-3-640 (2009 Supp.) as a defense to this action.

FOR A FIFTH DEFENSE

27. That the Complaint fails to state facts sufficient to constitute a cause of action against the defendant and therefore should be dismissed as the stipulations set by the defendant for qualification in the Good Cents Program allowed the member applicant to select alternatives for insulation of the walls and, to the extent the homeowner selected a method that has caused damage, such would be the responsibility of the homeowner who made the selection and the defendant would have no liability for the selection that was made.

FOR A SIXTH DEFENSE

28. That the defendant pleads the three year statute of limitations as a complete bar and defense to this action.

FOR A SEVENTH DEFENSE

29. That there is no privity of contract between the plaintiffs and the defendant and therefore the cause of action for breach of contract/covenant of good faith and fair dealing must be dismissed.

FOR A EIGHTH DEFENSE

30. That if the plaintiffs or their predecessor in title and interest choose an improper method for insulation of the walls, then they were negligent and reckless for failing to properly investigate the insulation of the walls and/or for selecting an improper method and their negligence

#3

was greater than any negligence of the defendant and the plaintiffs are not entitled to recover and/or their recovery should be reduced in proportion to their negligence and recklessness.

FOR A NINTH DEFENSE

31. That upon information and belief, Plaintiff Ferrell did not construct his home to meet the requirements of the Good Cents Program and his house was not accepted for the Good Cents rate and as a result thereof, his claims against the defendant must be denied.

WHEREFORE, having answered, the defendant demands that the Complaint against it be dismissed and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
May 10, 2011

#4

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF SERVICE

FILED
HORRY COUNTY
2011 MAY 11 AM 10:52
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 10th day of May, 2011.

COUNSEL SERVED:
Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:
Defendant's Answer

Sherry W. Wise

Sherry W. Wise

Exhibit N

5/27/11 Motion for Summary Judgment

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

FILED
2011 MAY 27 PM 3:07
MELANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

TO: THE PLAINTIFFS and their attorneys

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
March 8, 2011

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **CERTIFICATE OF SERVICE**

FILED
COUNTY
2011 MAY 27 PM 3:07
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 26th day of May, 2011.

COUNSEL SERVED:
Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:
Defendant's Notice of Motion and Motion for Partial Summary Judgment

Sherry W. Wise

Sherry W. Wise

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

PAID

IN THE [X] COURT OF COMMON PLEAS
[ ] FAMILY COURT

Ronnie Ferrell, Tammy Vance, and David Montorio, on behalf of themselves and all other similarly situated,
[ ] Plaintiff,

vs.

Horry Electric Cooperative,
[X] Defendant
check box above indicating submitting party

Civil Action No. 2011-CP-26-1266

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

2011 MAY 27 PM 3:07
STEPHANIE HUGGINS-HARRIS
CLERK OF COURT
FILED
HORRY COUNTY

name, SC Bar no. and address of Plaintiffs Atty:	name, SC Bar no. and address of Defendant Atty:
Nate Fata P.O. Box 16620, Surfside Beach, SC 29587 telephone: 843-238-2676 fax: 843-238-0240 e-mail: natefata@sccoast.net other: Mark A. Brunty P.O. Box 70907, Myrtle Beach, SC 29577 telephone: 843-449-1500 fax: 843-492-5675 e-mail: mbrunty@bruntylaw.com other:	Pope D. Johnson, III P.O. Drawer 11209, Columbia, SC 29211-1209 telephone: 803-799-9791 fax: 803-253-6084 e-mail: pdjohnson@johnsonbarnette.com other:

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[ ] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[ ] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: **Defendant's Notice of Motion and Motion for Partial Summary Judgment**
Estimated Time Needed: **15 minutes** Court Reporter Needed: No

SECTION II: Motion Type

[ ] Written Motion Attached
[ ] Form Motion / Order - -
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiffs [ ] Defendants DATE SUBMITTED:

SECTION III: Motion Fee

[X] PAID - AMOUNT: $25.00
[ ] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
[ ] Indigent Status [ ] State Agency v. Indigent Part
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or,
reduced to writing form motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other

JUDGE'S SECTION	
[ ] Motion Fee to be paid upon filing of the attached order. [ ] Other:	JUDGE CODE: DATE:

CLERK'S VERIFICATION	DATE FILED
Collected by: #25.00	5/27/11
[ ] MOTION FEE COLLECTED: _____	
[ ] CONTESTED - AMOUNT DUE: _____	

Exhibit O

9/10/11 Form 4 Order

FORM 4

RECEIVED SEP 14 2011

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

FILED
HORRY COUNTY
11 SEP -1 AM 9:02
MELANIE HUGGINS-WARD
CLERK OF COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-1266

Ronnie Ferrell et al
PLAINTIFF(S)

VS.

Horry Electric Cooperative
DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues Have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify Arbitration award; ☐ other;

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Defendant's Motion for Summary Judgment is Dismiss without prejudice.
Defendant failed to appear for hearing

Dated at Conway, South Carolina, this 29th day of August, 2011.

Benjamin H Culbertson
PRESIDING JUDGE

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

Nate Fata
ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope D Johnson III
(not present)
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRCP Form 4 (Revised 06/2008)

Exhibit P

9/28/11 Motion for Summary Judgment

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

FILED
HORRY COUNTY
11 SEP 28 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE PLAINTIFFS and their attorneys, NATE FATA and MARK A. BRUNTY

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement. This motion is made upon the grounds that there is no genuine issues of material fact regarding whether the plaintiff is entitled to summary judgment that the 13 year statute of repose, Section 15-3-640 (1976) bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of improvement and the motion presents a pure question of law for which the defendant is entitled to judgment in its favor.

YOU WILL TAKE FURTHER NOTICE that the defendant will move for an order for partial summary judgment that the claims of any potential class members who were class members in Civil

#1

Action Nos. 95-CP-40-0991 and 00-CP-40-02681R, who did not opt out of that class are barred from participating as class members in this action. This motion is based upon the attached Class Action Settlement Agreement and Final Order approving the same in Civil Action No. 00-CP-40-02681R. This Court is asked to take judicial notice of the public record in Civil Action No. 00-CP-40-02681R.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 27, 2011

#2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	)	Civil Action No. 2011-CP-26-1266
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
vs.	)	
Horry Electric Cooperative,	)	
Defendant.	)	

HORRY COUNTY
11 SEP 28 PM 4:00
ELAINE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 27th day of September, 2011.

COUNSEL SERVED:
Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:
Defendant's Notice of Motion and Motion For Partial Summary Judgment

Sherry W. Wise

Sherry W. Wise

Exhibit Q

8/21/12 Form 4 Order

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-26-1268

FILED
HORRY COUNTY
12 AUG 21 PM 2:57
CLERK OF COURT

SEP 12 2012

Ronnie Ferrell et al — PLAINTIFF(S)

Horry Electric Cooperative — DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment and Motion for Protective Order are Dismissed for failure to prosecute. Proper notification was given and no one appeared for the hearing.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

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

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

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

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

Circuit Court Judge — Judge Code: 252 — Date: August 13, 2012

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Nate Fata	Pope D Johnson III
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

Exhibit R

8/17/12 Motion for Summary Judgment

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,)	Civil Action No. 2011-CP-26-1266
Plaintiffs,)	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**
vs.)	
Horry Electric Cooperative,)	
Defendant.)	

PAID

HORRY COUNTY
12 AUG 17 PM 3:20
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE PLAINTIFFS and their attorneys, NATE FATA and MARK A. BRUNTY.

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement. This motion is made upon the grounds that there is no genuine issues of material fact regarding whether the plaintiff is entitled to summary judgment that the 13 year statute of repose, Section 15-3-640 (1976) bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of improvement and the motion presents a pure question of law for which the defendant is entitled to judgment in its favor.

YOU WILL TAKE FURTHER NOTICE that the defendant will move for an order for partial summary judgment that the claims of any potential class members who were class members in Civil

Action Nos. 95-CP-40-0991 and 00-CP-40-02681R, who did not opt out of that class are barred from participating as class members in this action. This motion is based upon the attached Class Action Settlement Agreement and Final Order approving the same in Civil Action No. 00-CP-40-02681R. This Court is asked to take judicial notice of the public record in Civil Action No. 00-CP-40-02681R.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
August 16, 2012

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **CERTIFICATE OF SERVICE**

HORRY COUNTY
12 AUG 17 PM 3:20
MELANIE HIGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 16th day of August, 2012.

COUNSEL SERVED:
Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29572

PLEADINGS:
Defendant's Notice of Motion and Motion For Partial Summary Judgment

Sherry W. Wise

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE [X] COURT OF COMMON PLEAS
[ ] FAMILY COURT

PAID

Ronnie Ferrell, Tammy Vance, and David Montorio, on behalf of themselves and all other similarly situated,
[ ] Plaintiff,
vs.
Horry Electric Cooperative,
[X] Defendant
check box above indicating submitting party

Civil Action No. 2011-CP-26-1266

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of Plaintiffs Atty:	name, SC Bar no. and address of Defendant Atty:
Nate Fata P.O. Box 16620, Surfside Beach, SC 29587 telephone: 843-238-2676 fax: 843-238-0240 e-mail: natefata@secoast.net other:	Pope D. Johnson, III P.O. Drawer 11209, Columbia, SC 29211-1209 telephone: 803-799-9791 fax: 803-253-6084 e-mail: pdjohnson@johnsonbarnette.com other:
Mark A. Brunty P.O. Box 70907, Myrtle Beach, SC 29577 telephone: 843-449-1500 fax: 843-492-5675 e-mail: mbrunty@bruntylaw.com other:	

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[ ] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[ ] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Defendant's Notice of Motion and Motion for Partial Summary Judgment
Estimated Time Needed: 15 minutes Court Reporter Needed: No

SECTION II: Motion Type

[ ] Written Motion Attached
[ ] Form Motion / Order - -
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiffs [ ] Defendants DATE SUBMITTED:

HORRY COUNTY
12 AUG 17 PM 3:20
MELANIE HUGGINS-WARD
CLERK OF COURT

SECTION III: Motion Fee

[X] PAID - AMOUNT: $25.00
[ ] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
[ ] Indigent Status [ ] State Agency v. Indigent Part
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or,
reduced to writing form motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE

CODE: DATE:

CLERK'S VERIFICATION	DATE FILED
Collected by: Jacob	8/17/12
[ ] MOTION FEE COLLECTED: 25	
[ ] CONTESTED - AMOUNT DUE:	

Exhibit S

11/26/12 Form 4 Order

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-1266

FILED
HORRY COUNTY
12 NOV 26 AM 10:17
MELANIE HUDSON
CLERK OF COURT

Ronnie Ferrell et al
PLAINTIFF(S)

Horry Electric Cooperative
DEFENDANT(S)

Submitted By: Clerk of Court

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment

by the Court: Plaintiff's (Ronnie Ferrell) Motion to compel is withdrawn. Defendant's Motion for Summary Judgment was heard, a formal order is followed by Atty. Pope D. Johnson III. partially granting & partially denying motion

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.
Additional Information for the Clerk:

DISBURSEMENT INSTRUCTIONS

Complete only if funds are to be disbursed. If funds are to be held pending appeal, leave blank. Note: Any funds held by the clerk pending appeal will not earn interest. Any funds disbursed will earn interest from the date of disbursement.

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

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

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

Benjamin H. Culbertson
Circuit Court Judge

2148
Judge Code

November 7th, 2012
Date

SCRCP Form 4C (10/2011)

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Nate Fata

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope D Johnson III

ATTORNEY(S) FOR THE DEFENDANT(S)

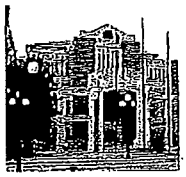
CLERK OF COURT

Court Reporter: Henry Young

Exhibit T

Public Index

Horry County
Fifteenth Judicial Circuit
Public Index



Horry County Home Page South Carolina Judicial Department Home PageSC.GOV Home Page

Switch View

Ronnie Ferrell , plaintiff, et al VS Horry Electric Cooperative

Case Number:	2011CP2601266	Court Agency:	Common Pleas	Filed Date:	02/09/2011
Case Type:	Common Pleas	Case Sub Type:	Contract/Other 199	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	05/30/2014	Disposition Judge:	Culbertson, Benjamin H.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Ferrell, Ronnie	Form 4 issued	Filing		11/14/2014 -15:21		
Vance, Tammy	Form 4 issued	Filing		11/14/2014 -15:21		
Montorio, David	Form 4 issued	Filing		11/14/2014 -15:21		
Ferrell, Ronnie	Filing/Filing Of supplemental aff. of Eaddy Blackburn	Filing		11/13/2014 -08:44		
Ferrell, Ronnie	Affidavit/Affidavit of suzy bussel	Filing		11/10/2014 -14:23		
Ferrell, Ronnie	Affidavit/Affidavit of Giorgina welsh	Filing		11/07/2014 -12:47		
Ferrell, Ronnie	Affidavit/Affidavit of Malcolm K. Dill/cert. of svc	Filing		10/31/2014 -13:08		
Ferrell, Ronnie	Affidavit/Affidavit of James T. Phillips/cert of svc	Filing		10/31/2014 -13:01		
Ferrell, Ronnie	Motion/Strike/cert. of svc	Motion		10/30/2014 -14:40		
Ferrell, Ronnie	Plaintiff's Memorandum in Opposition To Defendant's Motion	Filing		10/28/2014 -13:00		
Ferrell, Ronnie	Filing/Filing Of returned mail	Filing		10/27/2014 -10:14		
Ferrell, Ronnie	Affidavit of Roberta Lipman, Certificate of Service	Filing		10/24/2014 -13:28		
Ferrell, Ronnie	Service/Certificate Of Service-2	Filing		10/09/2014 -14:32		
Ferrell, Ronnie	Affidavit/Affidavit of David Montorio	Filing		10/07/2014 -09:38		
Ferrell, Ronnie	Affidavit/Affidavit of Dayna Lewis	Filing		10/07/2014 -09:38		

Ferrell, Ronnie	Motion/Enforce Final Order (Judge Culbertson)	Motion		09/25/2014 -13:14		
Horry Electric Cooperative	Motion For order confirming (Judge Culbertson)	Motion		08/20/2014 -15:06		
Ferrell, Ronnie	Service/Certificate Of Service	Filing		06/02/2014 -14:55		
Ferrell, Ronnie	COC Mailing Copies of Order/Granting Motion filed 5-30-14	Action		06/02/2014 -10:55		
Ferrell, Ronnie	Form 4 issued Motion to intervene by Santee Cooper granted.	Filing		05/30/2014 -10:40	05/30/2014 -10:46	
Ferrell, Ronnie	Order/Order granting motion to intervene for limited	Order		05/30/2014 -10:21		
Ferrell, Ronnie	Final Order/Approval	Order		05/30/2014 -10:20		
Ferrell, Ronnie	Supplemental Affidavit of Pope D. Johnson, III, Notice of	Filing		05/29/2014 -16:31		
Ferrell, Ronnie	Filing/Filing Of supplemental affidavit of Nate Fata/cert of	Filing		05/22/2014 -13:57	05/30/2014 -08:12	
Smith, Benjamin Rush III	Motion/Intervene for limited purpose/cert. of svc	Motion		05/20/2014 -08:31	05/30/2014 -08:31	
Ferrell, Ronnie	Filing/Filing Of settlement class notice of opt outs/	Filing		05/16/2014 -14:50	05/30/2014 -16:00	
Ferrell, Ronnie	Affidavit/Affidavit of Christopher Tuck	Filing		05/07/2014 -13:57	05/30/2014 -09:55	
Ferrell, Ronnie	Affidavit/Affidavit of Gene Connell in suppor of atty fee	Filing		05/02/2014 -11:42	05/30/2014 -15:27	
Ferrell, Ronnie	Motion/Motion For final approval of class action settlement/	Motion		05/02/2014 -11:41	05/30/2014 -11:41	
Ferrell, Ronnie	Form 4 issued MOTION/APPROVAL SETTLEMENT CON'T	Filing		04/25/2014 -11:34	05/30/2014 -13:08	
Ferrell, Ronnie	Mediation/Mediation Report/Agreement	Filing		03/21/2014 -14:54	05/30/2014 -09:45	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		03/20/2014 -11:19	03/21/2014 -11:19	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		03/20/2014 -11:19	03/21/2014 -11:19	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		03/20/2014 -11:19	03/21/2014 -11:19	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		03/20/2014 -11:19	03/21/2014 -11:19	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		03/20/2014 -11:19	03/21/2014 -11:19	
Ferrell, Ronnie	Affidavit/Affidavit of Pope D. Johnson, III, Notice of	Filing		03/17/2014 -15:00	03/21/2014 -10:41	
Ferrell, Ronnie	COC Mailing Copies of Court Orders/Preliminary Approval	Action		03/06/2014 -11:32	03/21/2014 -11:32	
Ferrell, Ronnie	Form 4 issued/ Preliminary approval of class action	Filing		03/05/2014 -14:16	03/21/2014 -10:05	
Ferrell, Ronnie	Certificate/Certificate of Service	Action		03/05/2014 -13:50	03/21/2014 -09:33	
Ferrell, Ronnie	Order/Order- preliminary approval order	Order		03/03/2014 -10:34	03/21/2014 -08:17	
Vance, Tammy	Motion/Motion For approval of settlement, Settlement	Motion		03/03/2014 -09:21	03/21/2014 -09:21	
		Motion				

Ferrell, Ronnie	Motion/Continuance(ORDER), Certificate of Service			02/26/2014 -12:13	02/28/2014 -12:13	
Ferrell, Ronnie	COC Mailing Copies of Order/Continuance filed 2-10-14 mailed	Action		02/10/2014 -12:40	03/21/2014 -12:40	
Ferrell, Ronnie	Order/Order for continuance of trial	Order		02/10/2014 -12:32	03/21/2014 -11:09	
Fata, Natale	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41	
Graves, Sanford Cox	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41	
Tuck, Thomas Christopher	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41	
Ward, James L. Jr.	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41	
Johnson, Pope D. III	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41	
Ferrell, Ronnie	Order/Form 4- trial cont. beyond 1/27/14 to nest avail term	Order		02/06/2014 -16:35	03/21/2014 -16:35	
Ferrell, Ronnie	Form 4 issued	Filing		01/16/2014 -10:05	03/21/2014 -10:14	
Ferrell, Ronnie	Motion/Continuance/Certificate of Service	Motion		01/14/2014 -15:12	02/10/2014 -15:12	
Fata, Natale	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23	
Johnson, Pope D. III	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23	
Tuck, Thomas Christopher	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23	
Graves, Sanford Cox	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23	
Ward, James L. Jr.	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23	
Ferrell, Ronnie	Form 4 issued MOTION TO QUASH RESOLVED. OTHER MOTIONS CON'T	Filing		11/22/2013 -12:01	03/21/2014 -12:41	
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion for partial summary	Filing		11/12/2013 -14:01	03/21/2014 -10:49	
Ferrell, Ronnie	Motion/Protective Order/cert. of svc.	Motion		10/17/2013 -14:41	01/13/2014 -14:41	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	

Tuck, Thomas Christopher						
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	

Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17	
Horry Electric Cooperative	Motion/Protective Order/Cert of Counsel/Plaintiffs'	Motion		10/02/2013 -14:10	01/13/2014 -14:10	
Ferrell, Ronnie	Filing of Plff's Supplemental Memorandum in Support of	Filing		10/01/2013 -13:35	03/21/2014 -14:00	
Horry Electric Cooperative	Motion/Compel/cert. of svc/exhiblts	Motion		09/27/2013 -14:16	01/13/2014 -14:16	
Horry Electric Cooperative	Motion/Compel/exhibits	Motion		09/27/2013 -14:15	01/13/2014 -14:15	
Ferrell, Ronnie	Filing/Filing Of deposition of David Montorio	Filing		09/27/2013 -13:46	03/21/2014 -16:32	
Ferrell, Ronnie	Memo/Memo in response to motions to quash subpoenas &	Filing		09/27/2013 -13:46	03/21/2014 -16:32	
Graves, Sanford Cox	Motion/Quash/protective order	Motion		09/23/2013 -12:55	11/15/2013 -12:55	
Vance, Tammy	Motion/Quash/cert. of svc	Motion		09/20/2013 -13:51	01/13/2014 -13:51	
Ferrell, Ronnie	COC Mailing Copies of Amend Sched Order filed 9-3-13 mailed	Action		09/03/2013 -10:17	03/21/2014 -10:17	
Ferrell, Ronnie	Order/Consent Scheduling Order	Order		09/03/2013 -09:45	03/21/2014 -12:14	
Vance, Tammy	Motion/Amended scheduling (ORDER) consent	Motion		08/16/2013 -15:47	09/03/2013 -15:47	
Ferrell, Ronnie	Form 4 issued MOTION FOR APPOINT ADDITIONAL CLASS COUNSEL	Filing		08/15/2013 -09:12	03/21/2014 -12:33	
Ferrell, Ronnie	Affidavit/Affidavit of Bradley Neuhart/cert. of svc	Filing		08/14/2013 -14:57	03/21/2014 -16:40	
Ferrell, Ronnie	Motion/Protective Order/Pantiffs' Memorandum in Support	Motion		08/08/2013 -12:12	01/13/2014 -12:11	
Horry Electric Cooperative	Motion/Summary Judgment partial/Cert of Ser/see scanned docs	Motion		07/30/2013 -15:13	01/13/2014 -15:13	
Ferrell, Ronnie	COC Mailing Copies of Order/Adding Co-Counsel filed 7-22-13	Action		07/22/2013 -13:50	03/21/2014 -10:55	
Ferrell, Ronnie	Consent Order Adding T. Christopher Tuck and James L. Ward-	Order		07/22/2013 -13:48	03/21/2014 -12:13	
Horry Electric Cooperative	Amended Answer/Cert of Service	Filing		07/11/2013 -09:30	03/21/2014 -16:01	
Horry Electric Cooperative	Motion/Alter and/or Amend/Cert of counsel	Motion		07/11/2013 -09:29	01/13/2014 -09:29	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Fata, Natale		Action				

	Roster/Notice of Motions Roster Publication Sent			07/11/2013 -08:30	03/21/2014 -08:30	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ferrell, Ronnie	Plantiff's Memo in Opposition to Defendant's motion for	Filing		06/20/2013 -14:27	03/21/2014 -13:23	
Ferrell, Ronnie	Filing/Filing Of Plaintiffs' Memorandum in support of their	Filing		06/14/2013 -09:26	03/21/2014 -15:35	
Ferrell, Ronnie	Defendant's Memorandum in Opposition to Plaintiffs' Pending	Filing		06/07/2013 -13:35	03/21/2014 -09:24	
Horry Electric Cooperative	Response/Cert of Service	Filing		06/06/2013 -15:16	03/21/2014 -10:47	
Ferrell, Ronnie	Affidavit/Affidavit of J. Lawrence Elkin , P.E./Exhibits	Filing		06/03/2013 -14:16	03/21/2014 -09:09	
Ferrell, Ronnie	Motion/Compel/Cert of Service (see scanned documents)	Motion		05/28/2013 -09:53	08/13/2013 -09:54	
Ferrell, Ronnie	Motion/Motion For appoint additional class counsel	Motion		05/23/2013 -12:39	07/22/2013 -12:39	
Ferrell, Ronnie	Notice/Notice of apperance/T. Christopher/James Ward Jr/	Filing		05/15/2013 -14:04	03/21/2014 -09:42	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Fata, Natale		Action				

	Roster/Notice of Motions Roster Publication Sent			05/10/2013 -10:48	03/21/2014 -10:48	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:47	03/21/2014 -10:47	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:47	03/21/2014 -10:47	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:47	03/21/2014 -10:47	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:47	03/21/2014 -10:47	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	

Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
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Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		04/23/2013 -16:08	03/21/2014 -16:08	
Horry Electric Cooperative	Reply/Motion to Compel/Cert of Service	Filing		04/23/2013 -13:51	03/21/2014 -14:52	
Ferrell, Ronnie	Filing/Filing Of Plantiff's memorandum in response to def's	Filing		04/16/2013 -11:18	03/21/2014 -12:09	
Ferrell, Ronnie	Filing/Filing Of class notice of non-deliverable opt out	Filing		04/09/2013 -08:58	03/21/2014 -11:02	
Ferrell, Ronnie	Memo/Memo in Support of motion to compel discovery/	Filing		04/04/2013 -14:05	03/21/2014 -13:29	
Ferrell, Ronnie	Motion/Reconsider/Cert of Service/See Scanned Documents	Motion		04/01/2013 -16:45	06/03/2013 -16:45	
Ferrell, Ronnie	Motion/Add Party/Cert of Service/See Scanned Documents	Motion		03/21/2013 -14:54	06/03/2013 -14:54	
Ferrell, Ronnie	Motion/Compel/cert of ser/see scanned docs	Motion		03/20/2013 -13:54	06/03/2013 -13:54	
Ferrell, Ronnie	Form 4 issued 3 RULINGS ON ORDER. MOTION TO AMEND SCH ORD	Filing		03/06/2013 -15:20	03/21/2014 -15:44	
Ferrell, Ronnie	Motion/Add Party/cert. of svc.	Motion		03/05/2013 -09:27	06/03/2013 -09:27	
Horry Electric Cooperative	Motion/Compel/cert. of counsel/exhibits/cert. of svc.	Motion		03/05/2013 -08:54	06/03/2013 -08:54	
Ferrell, Ronnie	Motion/Protective Order/exhibits/cert. of svc.	Motion		02/27/2013 -14:32	06/03/2013 -14:33	
Horry Electric Cooperative	Motion/Protective Order/Cert of counsel	Motion		02/21/2013 -13:54	06/03/2013 -13:54	
Ferrell, Ronnie	Motion/Protective Order/exhibit/cert of svc.	Motion		02/19/2013 -16:02	06/03/2013 -16:02	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies form 4 1/25/13	Action		02/12/2013 -14:08	03/21/2014 -14:08	
Ferrell, Ronnie	COC Mailing Copies of Order/Denying Reconsideration filed	Action		02/06/2013 -16:16	03/21/2014 -16:16	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Reconsideration	Order		02/06/2013 -15:18	03/21/2014 -15:44	
Ferrell, Ronnie	COC Mailing Copies of Order/Denying Motion to File 3rd Party	Action		02/06/2013 -10:20	03/21/2014 -10:20	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Leave to file	Order		02/06/2013 -10:13	03/21/2014 -15:45	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Summary Judgment	Order		02/06/2013 -10:13	03/21/2014 -15:47	
	Response/Cert of Service	Filing				

Ferrell, Ronnie				01/31/2013 -08:58	03/21/2014 -09:27	
Vance, Tammy	Response/Cert of Service	Filing		01/31/2013 -08:58	03/21/2014 -09:27	
Montorio, David	Response/Cert of Service	Filing		01/31/2013 -08:58	03/21/2014 -09:27	
Ferrell, Ronnie	Motion/Compel/Cert of Service	Motion		01/25/2013 -15:07	06/03/2013 -15:07	
Ferrell, Ronnie	Certificate/Certificate of Service	Action		01/25/2013 -13:50	03/21/2014 -14:33	
Ferrell, Ronnie	Notice/Notice of Mediation	Filing		01/25/2013 -13:50	03/21/2014 -13:12	
Ferrell, Ronnie	Form 4 issued	Filing		01/25/2013 -11:51	03/21/2014 -13:30	
Horry Electric Cooperative	Motion/Motion of motion of notice/Cert of Counsel/	Motion		01/25/2013 -08:55	03/06/2013 -08:55	
Ferrell, Ronnie	Service/Certificate Of Service-3	Filing		01/23/2013 -16:23	03/21/2014 -09:09	
Ferrell, Ronnie	Motion/Protective Order/Cert of Service	Motion		01/16/2013 -13:46	06/03/2013 -13:46	
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion to file a third	Filing		01/16/2013 -13:46	03/21/2014 -10:29	
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion for Summary Jmt.	Filing		01/16/2013 -13:46	03/21/2014 -10:31	
Ferrell, Ronnie	Motion/Compel discovery/cert. of counsel/cert. of svc.	Motion		01/16/2013 -13:45	06/03/2013 -13:45	
Ferrell, Ronnie	Service/Affidavit Of Service of class action notice by nate	Filing		01/16/2013 -13:45	03/21/2014 -13:24	
Horry Electric Cooperative	Motion/Compel/Cert of Service	Motion		01/16/2013 -13:45	06/03/2013 -13:22	
Ferrell, Ronnie	Affidavit/Affidavit of Eddy Blackburn	Filing		01/16/2013 -13:27	03/21/2014 -10:30	
Horry Electric Cooperative	Motion/Reconsider/cert. of svc.	Motion		01/16/2013 -13:26	02/06/2013 -13:26	
Horry Electric Cooperative	Motion/Summary Judgment/cert. of svc.	Motion		01/16/2013 -13:24	06/03/2013 -13:24	
Ferrell, Ronnie	Return Mail	Filing		01/15/2013 -08:09	03/21/2014 -11:36	
Ferrell, Ronnie	COC Mailing Copies of Scheduling Order filed 1-3-13 mailed	Action		01/03/2013 -15:35	03/21/2014 -15:35	
Fata, Natale	Order/Scheduling Order	Action		01/03/2013 -15:29	03/21/2014 -16:40	
Horry Electric Cooperative	Motion/Compel/Cert of Counsel/Cert of Service	Motion		01/03/2013 -13:30	06/03/2013 -13:30	
Ferrell, Ronnie	ADR/Mediation Results Report	Filing		12/18/2012 -14:45	12/13/2012 -14:45	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		12/18/2012 -08:25	03/21/2014 -08:25	
Ferrell, Ronnie	Order/Order	Order		12/17/2012 -16:42	03/21/2014 -08:26	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	

Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:25	03/21/2014 -15:25	
Ferrell, Ronnie	Motion/Motion For status conference/Cert of Service	Motion		12/05/2012 -14:27	01/03/2013 -14:27	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies Form 4 11/26/12	Action		12/04/2012 -12:22	03/21/2014 -12:58	
Ferrell, Ronnie	Form 4 issued	Filing		11/26/2012 -10:17	03/21/2014 -10:45	
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service/See Scanned Document	Motion		11/16/2012 -09:27	01/16/2013 -09:26	
Ferrell, Ronnie	Affidavit/Affidavit(2) of J Lawrence Elkin and L Sidney	Filing		11/07/2012 -13:47	03/21/2014 -11:46	
Ferrell, Ronnie	Memorandum in Opposition to Defendant's Motion for Partial	Filing		11/07/2012 -13:46	03/21/2014 -11:35	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/04/2012 -13:06	03/21/2014 -13:06	
Horry Electric Cooperative	Motion/Alter and/or Amend/cert. of svc.	Motion		09/20/2012 -14:49	01/16/2013 -14:49	
Horry Electric Cooperative	Motion/Motion Filing Fee to file third party complaint/cert.	Filing		09/20/2012 -14:20	01/16/2013 -14:20	
		Action				

Ferrell, Ronnie	COC Mailing Copies of Order/Motion Denied filed 9-19 -12			09/19/2012 -15:41	03/21/2014 -15:41	
Ferrell, Ronnie	Form 4 issued Motion for Reconsideration is Denied/Letter	Filing		09/19/2012 -15:36	03/21/2014 -13:56	
Horry Electric Cooperative	Motion/Reconsider/cert. of svc.	Motion		09/07/2012 -14:13	09/19/2012 -14:13	
Ferrell, Ronnie	Order/Order Granting Class Certification	Order		08/28/2012 -13:39	03/21/2014 -11:19	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders/Granting	Action		08/28/2012 -13:39	03/21/2014 -11:24	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		08/22/2012 -09:15	03/21/2014 -09:15	
Ferrell, Ronnie	Form4/Def's Motion for Summary Judgment and Motion for	Filing		08/21/2012 -14:27	03/21/2014 -09:16	
Ferrell, Ronnie	Motion/Compel/Cert of Service	Motion		08/17/2012 -15:33	11/07/2012 -15:33	
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service	Motion		08/17/2012 -15:18	11/07/2012 -15:18	
Ferrell, Ronnie	Letter/Letter	Filing		08/15/2012 -13:45	03/21/2014 -12:43	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		08/02/2012 -16:09	03/21/2014 -16:09	
Ferrell, Ronnie	Order/Plt's Motion Class Certification granted and Motion to	Order		07/31/2012 -14:44	03/21/2014 -16:11	
Ferrell, Ronnie	Certificate Of Service	Filing		07/30/2012 -13:17	03/21/2014 -08:50	
Ferrell, Ronnie	Affidavit of/Nate Fata	Filing		07/25/2012 -09:13	03/21/2014 -15:50	
Ferrell, Ronnie	Letter/Affidavit of Eddy Blackburn/Deposition-2/Defendant's	Filing		07/25/2012 -08:32	03/21/2014 -15:19	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		07/09/2012 -10:59	03/21/2014 -10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	

Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		06/18/2012 -14:31	03/21/2014 -14:31	
Ferrell, Ronnie	Motion/Compel/Cert of Service/Exh	Motion		05/04/2012 -14:18	07/25/2012 -14:21	
Horry Electric Cooperative	Motion/Protective Order/cert. of counsel/cert. of svc.	Motion		04/26/2012 -15:37	08/13/2012 -15:37	
Ferrell, Ronnie	Affidavit/Affidavit of penelope hinson	Filing		04/18/2012 -08:28	03/21/2014 -12:41	
Ferrell, Ronnie	Affidavit/Affidavit of eddy blackburn	Filing		04/18/2012 -08:28	03/21/2014 -12:42	
Ferrell, Ronnie	Affidavit/Affidavit of ricky lowder	Filing		04/18/2012 -08:27	03/21/2014 -12:40	
Horry Electric Cooperative	Motion/Protective Order/cert. of counsel/cert of svc.	Motion		04/16/2012 -15:23	07/25/2012 -15:23	
Ferrell, Ronnie	COC Mailing Copies of Scheduling Order (filed 3-1-12)	Action		03/01/2012 -10:15	03/21/2014 -10:15	
Ferrell, Ronnie	Order/Scheduling Order	Action		03/01/2012 -09:22	03/21/2014 -10:16	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		01/09/2012 -18:31	03/21/2014 -18:31	
Ferrell, Ronnie	Motion/Complex Case Designation (Set during week of 07-23-12	Motion		12/13/2011 -15:25	07/25/2012 -15:25	
Fata, Natale	NOTICE ADR SANCTION ROSTER PUBLICATION	Action		12/12/2011 -16:12	03/21/2014 -16:12	
Johnson, Pope D. III	NOTICE ADR SANCTION ROSTER PUBLICATION	Action		12/12/2011 -16:12	03/21/2014 -16:12	
King, Robert Thomas	NOTICE ADR SANCTION ROSTER PUBLICATION	Action		12/12/2011 -16:12	03/21/2014 -16:12	
Ferrell, Ronnie	Motion/Class Certification (Set during week of 07-23-2012)	Motion		11/15/2011 -14:08	07/25/2012 -14:08	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		10/20/2011 -13:39	03/21/2014 -13:39	
		Order				

Ferrell, Ronnie	Order/Consent Protective [Confidential --Sealed]			10/20/2011 -13:18	03/21/2014 -08:10	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Beard, Grady Larry	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Beard, Grady Larry	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39	
Ferrell, Ronnie	Affidavit/Affidavit of Eddy Blackburn/Cert of Service	Filing		10/12/2011 -15:42	03/21/2014 -08:50	
Horry Electric Cooperative	Motion/Protective Order & Cert of Counsel , Affid of	Motion		10/06/2011 -16:45	10/20/2011 -16:45	
Horry Electric Cooperative	Motion/Summary Judgment	Motion		09/28/2011 -16:00	08/13/2012 -16:00	
Ferrell, Ronnie	Motion/Protective Order	Motion		09/27/2011 -13:40	10/20/2011 -13:40	
Ferrell, Ronnie	ADR/Notice of ADR	Filing		09/09/2011 -15:33	03/01/2012 -15:33	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		09/01/2011 -14:29	03/21/2014 -14:29	
Ferrell, Ronnie	Form 4 issued	Filing		09/01/2011 -09:02	03/21/2014 -14:29	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/26/2011 -13:54	03/21/2014 -13:54	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/26/2011 -13:54	03/21/2014 -13:54	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies consent order 5/12/11	Action		06/27/2011 -08:06	03/21/2014 -08:53	
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service	Motion		05/27/2011 -15:07	08/29/2011 -15:08	
Horry Electric Cooperative	Motion/Motion For Consent Order	Motion		05/12/2011 -15:43	05/12/2011 -15:43	
Ferrell, Ronnie	Consent Order	Order		05/12/2011 -15:44	03/21/2014 -10:23	
Horry Electric Cooperative	Answer/Cert of Service	Filing		05/11/2011 -10:52	03/21/2014 -15:53	
Horry Electric Cooperative	Motion/Dismiss/Cert of Service/Exh	Motion		03/10/2011 -10:49	05/12/2011 -10:47	
	Verified	Filing		02/14/2011 -14:14	03/21/2014 -14:14	
Ferrell, Ronnie	ADR/Alternative Dispute Resolution (Workflow)	Filing		02/09/2011 -13:52	09/09/2011 -13:52	
Ferrell, Ronnie	Summons & Complaint	Filing		02/09/2011 -13:52	03/21/2014 -13:50	

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Exhibit U

Motion for Leave to File Third Party Complaint

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 **DEFENDANT'S MOTION TO FILE THIRD PARTY COMPLAINT**

HORRY COUNTY
12 SEP 20 PM 2:21
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE PLAINTIFFS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the defendant hereby moves pursuant to Rule 14(a), SCRCP, for an order authorizing it to file and serve the attached Third Party Complaint and join the South Carolina Public Service Authority as a party to this action. Joinder will promote judicial economy and eliminate the risk of inconsistent rulings and findings.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 18, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated,	)	Civil Action No. 2011-CP-26-1266
Plaintiffs;	)	**CERTIFICATE OF COUNSEL**
vs.	)	
Horry Electric Cooperative,	)	
Defendant.	)	

HORRY COUNTY
2012 SEP 20 PM 2:21
MELANIE HUGGINS-WARD
CLERK OF COURT

The undersigned attorney hereby certifies that prior to filing this motion, he has communicated or attempted to communicate with opposing counsel in order to resolve this matter by agreement and such has been unavailing.

Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 18, 2012

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Horry Electric Cooperative, Defendant.	)	Civil Action No. 2011-CP-26-1266 CERTIFICATE OF SERVICE

HORRY COUNTY
12 SEP 20 PM 2:21
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 18th day of September, 2012.

COUNSEL SERVED:
Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29572

PLEADINGS:
Defendant's Motion to File Third Party Complaint

Sherry W. Wise

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss Re-Filed Action

Counsel Served:

Pope D. Johnson, III, Esquire
PO Drawer 11209,
Columbia, SC 29211

Lillian R. Stowe

Lillian Stowe
Administrative Assistant

December 17, 2014

14 DEC 19 AM 8:18
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-0488
Plaintiff,	)	
vs.	)	
	)	**MOTION TO DISMISS AMENDED COMPLAINT**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendants.	)	

Defendant, South Carolina Public Service Authority ("Santee Cooper") moves to dismiss the Amended Complaint of Plaintiff, Horry Electric Cooperative, Inc. ("HEC") pursuant to Rule 12(b)(6), SCRCP, on the grounds that (a) the claim for equitable indemnity is barred by the statute of repose because the Complaint was filed on January 18, 2013, more than 8 years after the homes involved in the underlying action were constructed; (b) the other purported claims are barred by the applicable statute(s) of limitation; and (c) HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper. More particularly, this motion is based on the grounds stated herein.

The Allegations of the Amended Complaint

HEC is suing Santee Cooper because HEC was sued by some of its customers in *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Ferrell* action"). (Am. Compl. ¶ 12.) The complaint in the *Ferrell* action asserts claims arising from alleged construction defects in

homes built pursuant to HEC's Good Cents Program. (Am. Compl. Ex. B.) The *Ferrell* complaint asserts claims for breach of warranty, negligence/gross negligence, and breach of contract and the covenant of good faith and fair dealing against HEC. (*Id.*) The *Ferrell* complaint does not name Santee Cooper[1] or otherwise attempt to impose liability on HEC because of the conduct or acts of Santee Cooper. Instead, HEC's alleged liability is predicated on its own negligence in accepting and implementing the Good Cents program without researching and investigating the program's vapor barrier standards. In particular, the *Ferrell* complaint alleges the following:

- HEC "adopted the Program from another electrical service provider without performing any of its own due diligence" (*Ferrell* complaint, ¶ 12, emphasis added);
- HEC "never performed any research regarding the Program specifications or requirements (*id.*, emphasis added);
- HEC "knew or should have known about the likelihood of condensation problems" (*id*, ¶ 25);
- The alleged defect "was well known or should have been obviously known" to HEC (*id.*, ¶30);
- HEC failed "to adequately research, design, and specify an air infiltration reduction system (*id.*, ¶39(e));
- HEC failed "to research and determine the effect of the specifications and requirements of the Program" (*id.* ¶ 44(b);
- HEC failed to disclose "obvious design defects and design flaws" (*id.*, ¶ 52).

In HEC's Amended Complaint, HEC alleges that in 1987 it entered into a contract with Santee Cooper, whereby HEC would implement the Good Cents Program in its

[1] The *Ferrell* plaintiffs do allege that Horry Electric "adopted the [Good Cents] Program from another electrical service provider without performing any of its own due diligence or research" regarding Program requirements. (*Ferrell* Compl. ¶ 12.)

retail service area, and that it did in fact offer the Good Cents Program to its customers, according to standards developed by the Defendants. (Am. Compl. ¶¶ 4-6, Ex. A.) HEC alleges that "to the extent Horry Electric is exonerated from liability to the plaintiffs . . . the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric. . . ." (Am. Compl. ¶ 18.)

HEC attempts to assert claims for negligence, breach of the duty of good faith and fair dealing, breach of warranty, civil conspiracy, and equitable indemnity. (Am. Compl. ¶¶ 19-32.) HEC seeks attorneys' fees and the expenses of litigation, including any settlement costs it may incur, plus punitive damages. (Am. Compl. ¶¶ 18, 23, 25, 28, 30, and 32.)

The claim for equitable indemnity relates to the Good Cents program standards promulgated at the time HEC adopted the program. (Am. Compl. ¶¶ 6, 11, 32.) The other claims are grounded on the alleged concealment by Santee Cooper of the contents of two letters written in 1986 by Glenn Cannon, a Santee Cooper employee, to Southern Electric International, the company that licensed the program to Santee Cooper. (Am. Compl. ¶¶ 10, 19-28.) Specifically, the letters ask about the inclusion of vapor barriers as a requirement of the program, and include references to publications that raised questions about the use of vapor barriers and to "a lot of concern . . .from the building community" about the requirement. (Am. Compl., Exhibits B and C.) HEC alleges that Santee Cooper had a duty and failed to disclose "the information in Exhibits B-C." (Am. Compl. ¶¶ 21, 25, 27, & 30.)

The homes at issue were built between 1988 and 2003. (*Ferrell* Compl. ¶ 34 (stating that "[e]ach residence owned by the Plaintiffs and Plaintiff Class was constructed

between 1988 and 2003"); *see also* ¶ 23 (stating that "[i]n 2003 Defendant finally stopped requiring the installation of vapor barriers") and ¶ 34 (defining class period as 1988 through 2003)).

Rule 12(b)(6) Standard

Santee Cooper denies the material allegations of the Amended Complaint, including but not limited to the contentions that it wrongfully concealed information from HEC and breached a duty to or injured HEC, as well with the suggestion that the vapor barrier standards of the Good Cents program were defective. A motion to dismiss pursuant to Rule 12(b)(6), however, is based solely on the allegations set forth in the complaint, and for purposes of the motion, the court accepts all well-pled facts as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005).

Grounds for Dismissal of Complaint

1. HEC's Amended Complaint is barred by the statute of repose. Based on HEC's Amended Complaint and the documents attached to it, the homes at issue were built from 1988 through 2003. The statute of repose bars claims arising more than 8 years prior to commencement of the action. *See* S.C. Code Ann. §§ 15-3-640 (barring "actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property" if brought more than 8 years "after substantial completion of the improvement"); 15-3-640(4) (including within scope of statute actions "to recover damages for economic or monetary loss"); and 15-3-640(6) (including within scope of statute actions for "indemnification for damages sustained on account of an action described in this section"). *See also Posey v. Bldg. Materials Corp. of Am. (In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.)*,

MDL No. 8:11-mn-02000-JMC, CA No.: 3:11-cv-02784-JMC, 2013 U.S. Dist. LEXIS 44137, at *12 (D.S.C. Mar. 27, 2013) (finding complaint filed in 2011 based on shingle replacement in 1999 was "well beyond the eight-year statute of repose," but allowing claim to proceed because plaintiff showed repose period had been extended by certain warranties), and *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993), *quoted in Florence Cty. Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Ct. App. 2002) ("[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.") The Complaint was not filed until January 23, 2013, well after the 8-year statute of repose period. HEC's claim for equitable indemnity is thus barred by the statute of repose.

2. HEC's Amended Complaint is barred by the applicable statute(s) of limitation. HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy are predicated on Santee Cooper's alleged failure to disclose "the information in Exhibits B-C." (Am. Compl. ¶¶ 21, 25, 27, and 30.) The two-year statute of limitations contained in the Tort Claims Act ("TCA") applies to these claims. *See* S.C. Code Ann. § 15-78-110; *see also Hodges v. Rainey*, 341 S.C. 79, 91-92, 533 S.E.2d 578, 584 (2000) (recognizing TCA applies to Santee Cooper). Even if a three-year statute of limitation applied, the claims would be barred.[2] Because the discovery rule applies to these claims, the statute of

[2] But for the Tort Claims Act, the breach of the duty of good faith and fair dealing and breach of warranty claims would be subject to section 15-3-530(1). *See* S.C. Code Ann. § 15-3-530(1) (applying 3-year statute of limitations to "an action upon a contract, obligation, or liability, express or implied"). Similarly, the negligence and civil

limitation runs from the date when HEC knew or should have known, by the exercise of reasonable diligence, that HEC had a cause of action. *See Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993). Exhibits B and C on their face show that the "information in Exhibits B-C" was actually the subject of publications then in circulation and was discussed among the building community—it was not a secret. (*See* Am. Compl. Exhibits B and C.) "The critical inquiry, then, is whether [HEC] *could have discovered* its claim against" the defendant, and the date on which discovery of the cause of action should have been made is an objective question. *Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998). Because HEC's own pleadings, together with the exhibits, show that "the information in Exhibits B-C" could have been discovered by HEC in October 1986, if not sooner, all claims other than the claim for equitable indemnity are barred.

3. HEC's Amended Complaint fails to allege facts sufficient to constitute a cause of action for equitable indemnity. While HEC makes the conclusory assertion that it is without fault and is being sued only on a theory of imputed liability, this is not a well-pled factual allegation but is instead an unsupported legal conclusion. The pleadings and exhibits show that the *Ferrell* plaintiffs do not premise their claims on imputed liability; the *Ferrell* complaint makes no claims or allegations about Santee Cooper's conduct but is instead predicated on HEC's alleged wrongdoing. "In order to

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conspiracy claims would be subject to section 15-3-530(5). *See* S.C. Code Ann. § 15-3-535 (requiring discovery rule applies to any causes of action brought under section 15-3-530(5), which applies to, among other claims, "any injury to the person or rights of another, not arising on contract and not enumerated by law"); *see also Dorman v. Campbell*, 331 S.C. 179, 500 S.E.2d 786 (Ct. App. 1998) (applying -530(5) and discovery rule to civil conspiracy claim).

sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). In addition to a special relationship, the party seeking indemnity must establish the following elements: (1) the first party (indemnitor) was liable for causing the plaintiff's damages in the suit against the second party (indemnitee); (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it, which were eventually proven to be the fault of the indemnitor. *Fowler v. Hunter*, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010). "The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999); *see also Atlantic Coast Line R.R. Co. v Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) (quoting *N.C. Elec. Power Co. v. French Broad Mfg. Co.*, 180 N.C. 597, 105 S.E. 394 (1920)) ("Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury.") (internal quotations omitted).

HEC's Amended Complaint, read together with the exhibits thereto, reveals an absence of factual allegations to support the requirement that HEC be without fault. Under the circumstances, HEC cannot assert a claim for equitable indemnity. *See Vermeer Carolina's, Inc.*, 336 S.C. at 61, 518 S.E.2d at 305 (stating that equitable

indemnity is intended to protect an *innocent party* from being subjected to damages on the basis of another party's conduct); *see also Atlantic Coast Line R.R. Co. v Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) (holding that equitable indemnity is not available to alleged joint tortfeasors).

4. HEC's claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy must be dismissed because attorneys' fees and litigation costs are not recoverable except by contract or statute, neither of which exists in this case. HEC's claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy are predicated on actual damages in the form of attorneys' fees and the costs and expenses of litigation. HEC, however, has alleged no basis for an award of attorneys' fees. *See Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978) ("As a general rule, attorney's fees are not recoverable unless authorized by contract or statute."). Accordingly, these claims must be dismissed.

5. HEC's negligence, breach of the duty of good faith and fair dealing, and civil conspiracy claims fail because Santee Cooper had no duty to disclose "the information contained in Exhibits B-C," which also was contained in generally accessible publications. As noted above, each of the claims, other than the claim for equitable indemnity, is predicated on a failure to disclose "the information contained in Exhibits B-C." These claims presuppose a duty to disclose this information. As outlined above, "the information contained in Exhibits B-C" was, according to the exhibits themselves, published in at least two separate publications and discussed in the building community. Accordingly, there was no duty to disclose "the information contained in Exhibits B-C."

See Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 251, 734 S.E.2d 161, 163-64 (2012) (finding, on the grounds that a duty generally does not exist for one party to disclose information to another party when that information is available to the other party, that a bank had no duty to disclose information to borrower that was included in his loan documents); *see also Wright v. Craft*, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006) (analyzing whether duty to disclose existed in context of violation of S.C. Unfair Trade Practices Act); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) (finding that whether a duty exists is a matter of law for the court to decide). HEC has alleged no facts that give rise to a duty to disclose, and the pleadings, together with the exhibits, show that "the information contained in Exhibits B-C" was the subject of certain publications and otherwise discussed; consequently, the pleadings establish that Santee Cooper had no duty to disclose this information.

6. HEC's negligence claim fails because HEC has failed to allege the requisite causal connection between the alleged failure to disclose "the information contained in Exhibits B-C" and HEC's alleged damages. In addition to the absence of the "duty" element of the negligence claim, HEC has failed to allege a causal connection between the alleged failure to disclose "the information contained in Exhibits B-C" and the attorney's fees and expenses HEC seeks as damages. HEC never alleges that if Santee Cooper had provided it copies of the letters, for instance, that it would not have suffered the attorney's fees and expenses. *See Rush v. Blanchard*, 310 S.C. 375, 378, 426 S.E.2d 802, 804 (1993). Based on the Amended Complaint, HEC has not shown that Santee Cooper's alleged action was the but-for cause of HEC's legal fees and costs.

7. Breach of duty of good faith and fair dealing is not an independent claim. HEC alleges that Santee Cooper breached the implied covenant of good faith and fair dealing when Santee Cooper failed to disclose the information in the two letters attached as Exhibits B and C to the Amended Complaint. HEC has not alleged and cannot allege a breach of contract, so this claim must be dismissed. *See RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (stating that "the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract").

8. HEC's claims for punitive damages must be dismissed. The TCA, which applies to Santee Cooper, bars the recovery of punitive damages. S.C. Code Ann. 15-78-120(b). Apart from the Tort Claims Act, HEC's claim for punitive damages for breach of the implied covenant of good faith and fair dealing fails because punitive damages are not available in breach of contract actions. *See Williams v. Riedman*, 339 S.C. 251, 273, 529 S.E.2d 28, 40 (Ct. App. 2000) (finding, with respect to a claim for breach of the implied covenant of good faith and fair dealing, that "[u]nder a breach of contract claim, a party's damages are limited to those under the contract, and no tort remedies are available, including punitive damages").

9. HEC failed to allege either an express warranty or any facts giving rise to an implied warranty. HEC alleges that Santee Cooper breached express and implied warranties that the Good Cents program "was appropriate for use by Horry Electric and its members." (Am. Compl. ¶ 27.) First, the agreement attached as Exhibit A to the Amended Complaint contains no express warranty of any kind, and HEC alleges nothing that can be construed as an express warranty, so the claim for breach of an express

warranty fails. Second, HEC has failed to allege facts giving rise to an implied warranty, so HEC's claim on this basis also fails. While the Uniform Commercial Code, Article 2, provides for certain implied warranties under certain circumstances, HEC has not alleged that the agreement between HEC and Santee Cooper is a contract for the sale of goods or another contract subject to the Uniform Commercial Code. *See* S.C. Code Ann. § 36-2-102 (Chapter 2 applies to "transactions in goods"), -105 (defining "goods" as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale"), & -106(1) (defining a "sale" as "the passing of title from the seller to the buyer for a price"). Nor is there any other basis for an implied warranty apparent on the face of the Amended Complaint. The Good Cents Program standards comprise a set of general standards for any of HEC's customers who chose to participate in the program offered by HEC. While these general standards were to be satisfied by builders who constructed homes according to whatever designs, plans, and specifications may have been developed by architects or building contractors for a given residence, the Good Cents program standards were not specifications for a particular building or product. As reflected in the *Ferrell* complaint, there were several different methods by which a builder could satisfy the Good Cents standards, depending on the designs, plans, and specifications for the particular home. There is no authority that general standards like the Good Cents Program standards give rise to an implied warranty of any kind. Because HEC has alleged no facts giving rise to an implied warranty related to the Good Cents Program, this claim must be dismissed.

10. HEC has not alleged facts to establish the essential elements of a civil conspiracy claim. HEC makes only conclusory, summary allegations of a civil

conspiracy. A civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct.App.1987). First, HEC has not alleged special damages to support a claim for civil conspiracy. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Further, HEC has alleged no covert or clandestine act. *See Island Car Wash, Inc. v. Norris*, 292 S.C. at 601, 358 S.E.2d at 153 ("Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. . . ."). It has not alleged facts showing a joint assent by the defendants to prosecute an unlawful enterprise. *See First Union Nat'l Bank of South Carolina v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998) ("In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise."). It has not alleged any acts in furtherance of the alleged conspiracy. *See Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875 ("In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim."). Finally, HEC has not alleged facts showing that Santee Cooper's purpose or object was to injure HEC. *See Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 545, 735 S.E.2d 518, 522 (Ct. App. 2012) (quoting

Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986)) ("To be actionable . . . a conspiracy's 'primary purpose or object' must be 'to injure the plaintiff.'"). For these reasons, the claim for civil conspiracy must be dismissed.

Conclusion

This motion is based on the pleadings, the law of South Carolina, and on such further briefing, authorities, and argument as may be submitted to the Court prior to or at the time of the hearing on this motion. For the reasons stated herein and as may be more fully explained in subsequent briefing and argument, Santee Cooper respectfully requests that HEC's Complaint be dismissed.

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August 21, 2013

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Service Authority, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss Amended Complaint

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Jessica Trautman
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August 21, 2013

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
Horry Electric Cooperative, Inc., Plaintiff, vs. South Carolina Public Service Authority and Southern Electric International, Inc., Defendants.	)	Civil Action No. 2013-CP-26-488

HORRY COUNTY
13 SEP 27 PM 1:44
MELANIE HUGGINS-WARD
CLERK OF COURT

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT SOUTH CAROLINA PUBLIC SERVICE AUTHORITY'S MOTION TO DISMISS

Plaintiff Horry Electric Cooperative, Inc. ("HEC") submits this Memorandum in opposition to the Motion to Dismiss filed by Defendant South Carolina Public Service Authority ("Santee Cooper").

BACKGROUND

This action arises out of an underlying class action against HEC titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266. In the underlying action, the class representatives have alleged that HEC offered a Good Cents program under which members could receive a favorable electric rate provided they complied with the requirements of the Good Cents program regarding insulation and other energy saving matters. The Good Cents program required that a vapor barrier be installed on the interior of the exterior walls. The class representatives have alleged that the vapor barrier was a design defect that causes moisture to accumulate which in turn causes mold and mildew and damage to the structure. The class representatives have alleged the following causes of action against HEC: (1) design defect/breach of warranty; (2) negligence/gross negligence; and (3) breach of contract/covenant of good faith and fair dealing.

This is an action by HEC against Santee Cooper and Southern Electric International, Inc. which developed the Good Cents program and offered it to the cooperatives including HEC. HEC has alleged that the defendants knew of the moisture issue with the vapor barrier requirement and

failed to disclose that information to HEC and instead promoted the Good Cents program as being an environmentally friendly program and win-win situation for the participating Good Cents members. HEC has alleged the following causes of action: (1) negligence; (2) breach of duty of good faith and fair dealing; (3) breach of warranty; (4) civil conspiracy; and (5) equitable indemnity.

HEC served discovery requests on Santee Cooper. However, Santee Cooper has thus far frustrated HEC's attempt to conduct discovery by the filing of a motion for protective order. HEC has been able to participate in a 30(b)(6) deposition of Santee Cooper in the underlying class action, which deposition was more than revealing regarding what Santee Cooper has done or failed to do. Additionally, the 30(b)(6) deposition of HEC has been taken. HEC will ask the Court to consider these and other matters outside of the pleadings in determining Santee Cooper's motion to dismiss.

Santee Cooper's 30(b)(6) witness in essence affirmed and verified the allegations of HEC's complaint against the defendants in this action. This witness acknowledged that Santee Cooper and Southern Electric International, Inc. knew about the issue of potential moisture problems with the use of the vapor barrier prior to offering the program to HEC. This witness confirmed that there was no evidence that any of this information was disclosed to HEC at any time. This witness confirmed that although the Good Cents program was initially offered with the vapor barrier as a recommendation and not a requirement, this changed in 1991 when the installation of a vapor barrier became a requirement for participation in the Good Cents program. Although the witness took some questioning to get the answer, the witness admitted that Glenn S. Cannon of Santee Cooper and Geoff Hartman of Southern Electric International, Inc. in their 1986 correspondence discussed the information that in a coastal area the vapor barrier may create moisture problems and may create liability if it was a requirement of the plan. The witness testified regarding the correspondence as follows:

> "Q See if you agree with this, Ms. Holmes. Isn't he really saying that they have information that a vapor barrier in a coastal area may create moisture problems if it's put in a home, and if we have a requirement like that in our Good Cents plan, it may create liability for us if the vapor barrier creates a moisture problem. And he is raising the question to Southern Electric International to try and revolve this question. Would you agree that's what he is talking about?
>
> A They're having this discussion about the requirement for the vapor barrier. In the second paragraph he talks about the infiltration, the manufacturer's recommendations. He does say this concern about future liability. I don't know specifically what he's saying regarding vapor barrier because then he goes into this

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article, and it says where they may create moisture problems.

Q Well, we know at least at this point Santee Cooper's man who is in charge of getting the program up and going knows that the vapor barrier in a coastal area may create moisture problems. And he has concern about liability for Santee Cooper and the program, and he is raising the question with SEI as to what should be done about it.

Q Correct?

A Going from the letter, I can't speak to what he means, but that's how the letter reads." p.136, L.14 to p.137, L.22.

Also, the witness finally admitted that the information should have been provided to the cooperatives, including HEC. The witness testified as follows:

"Q All right. Now, you were asked some questions about if Santee Cooper and you had concerns about the program, wouldn't it be fair and proper for Santee Cooper to share those concerns with the cooperatives, and I think you said it would be the right thing to do. Can you identify for me anywhere where Santee Cooper shared these concerns with Horry Electric?

A We've talked about these particular documents before. There were no copies to the co-op on these letters. It was in the first draft of the Good Cents standards.

Q As a recommendation?

A That's correct.

Q Wouldn't you think the cooperatives in the coastal areas would have wanted to know the specifics of this matter that is being discussed between the two entities that are putting the plan, offering – making the plan, the Good Cents program, available to them –

Q -- before they put the Good Cents program in place?

A I don't know that they didn't know.

Q That wasn't my question. Don't you think they would want to know?

A I would want to know.

Q If you were in their shoes, you would want to know it so that you could get your own information and make an informed decision, wouldn't you?

A I would.

Q And you would want to know so that you could decide whether you wanted to keep it as a requirement or whether you wanted to even recommend it?

Q I mean, if it's going to cause moisture problems in these people's homes, you may decide you don't even want to recommend it.

A I don't know that it causes moisture problems in the homes.

Q But if it did, you might not want to recommend it, correct?

A If I knew that it did.

Q In other words, wouldn't the fair and right thing for Santee Cooper to have done would have been to send all this to the co-ops in the coastal areas and say, look, guys, red flag, we got a problem here. We want to alert you to it. We

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want your input, and we want you to know about it.

A But we did ask for input when we did our first draft.

Q But you didn't tell them the issue, did you?

A What issue?

Q The issue of the vapor barrier creating a moisture problem. You didn't tell them that. All you did was say here's our proposed standards and the standard for a vapor barrier, here's a recommendation, correct? In Exhibit 8.

Q Page 2.

Q It's down at the bottom.

A I had mentioned to you before that there was a letter. And it says it went to all the managers. It says, 'Here enclosed in the first draft, need your comments as soon as possible.' So we didn't specify any particular area of the document, but the vapor barrier recommendation is in here, as you pointed out, on Page 2.

Q In other words, that communication didn't include any of this correspondence that would call their attention to that issue at all, did it?

A It did not call their attention – to any area of the standard." p.139, L.15 to p.143, L.25.

The witness also testified that Santee Cooper made installation of a vapor barrier a requirement of the Good Cents program in 1991. The witness testified as follows:

"Q But if this is all there, it would indicate that November of '91 it became a requirement, a vapor barrier became a requirement for qualification in the Good Cents program and was a requirement till at least 2002?

A That's the date on that fax, yes, sir.

Q You don't have any idea why you changed the requirement?

A I do not.

Q If Horry Electric was going to remain in good standing with Santee Cooper regarding the Good Cents program, Horry Electric would have had to have complied with the requirements including the vapor barrier requirement that's contained in the marketing program's handbook of November of 1991?

A If Horry Electric wanted to be in the program, they would have to comply with the Good Cents requirements.

Q Including the requirement of requiring its new home members to install a vapor barrier?

A That was the standard, yes." p.149, L.18 to p.150, L.13.

HEC's 30(b)(6) witness testified that HEC was not aware of any problem with the vapor barrier at the time it began offering the Good Cents program and until 2003 which is roughly the class period. The witness testified as follows:

"Q Okay. Item 3, for the years 1988 through 2003 any specifications or internal discussions, studies or documentation concerning vapor barriers by you or

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by you and a third party who is not a homeowner. During that period of time were you ever involved or aware or made aware of any conversations Horry Electric was having concerning the requirement of a vapor barrier in the Good Cents Homes?

A No, sir.

Q Did anyone ever voice to you any concerns about the vapor barrier requirement in the Good Cents Program during that time period?

A No, sir.

Q Did you ever have any complaints from any person concerning the vapor barrier requirement in that time period for the Good Cents program?

A No, sir.

Q Did you ever have any conversation with any engineers concerning the vapor barrier requirement?

A No, sir.

Q Did Horry Electric have any engineers on staff from 1988 to 2003?

A On staff?

Q Yes.

A Yes, sir.

Q And who were they and were they ever involved in the Good Cents program?

A The engineer that would have been – the head engineer was Terry William. He was never involved with the Good Cents, no, sir.

Q Was there ever any engineer involved with the Good Cents Program?

A No, sir.

Q Did Horry Electric simply rely on whatever Santee Cooper told it as far as the Good Cents Program as far as specifications and requirements?

A Yes, sir. We basically followed their guidelines and their manual. If there was a question there was a phone call, communication made with some of their marketing folks running their program." p.23, L.9 to p.25, L.2.

STANDARD FOR MOTION TO DISMISS

A motion to dismiss pursuant to Rule 12(b)(6), SCRCP, is normally addressed to the four corners of the complaint. The well pled facts of the complaint are to be taken as true. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved on the plaintiff's behalf, the complaint states any valid claim for relief. A complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Plyler v. Burns,* 373 S.C. 637, 647 S.E.2d 188 (2007). When considering a motion to dismiss, the complaint must be considered liberally in favor of the pleader and sustained if the facts alleged, in the inferences reasonably deductible therefrom but entitle the plaintiff to relief on any theory of the case. *Springfield v. Williams Plumbing Supply Co.,* 249 S.C. 130, 153 S.E.2d 184 (1967).

CONVERSION TO MOTION FOR SUMMARY JUDGMENT

Under Rule 12(b)(6), SCRCP, if a party, on a motion to dismiss, submits matters outside of the pleadings which are not excluded by the court, the court may treat the motion as one for summary judgment and dispose of the motion as provided in Rule 56. HEC asks that the Court consider the following matters outside of the pleadings and asks the Court not exclude any of the following matters:

1. The file and its contents in the underlying class action lawsuit, Civil Action No. 2011-CP-26-1266;
2. The entire contents of the file in a declaratory judgment action which is related to the class action litigation titled *Federated Rural Electric Insurance Exchange v. Horry Electric Cooperative, Tammy Vance and David Montorio, on behalf of themselves and others similarly situated,* Civil Action No. 2013-CP-26-3985;
3. The deposition of Juan Holmes, the Santee Cooper 30(b)(6) witness;
4. The 30(b)(6) deposition of HEC; and
5. The Affidavit of Pope D. Johnson, III filed in this action.

ARGUMENT

Whether the Court simply rules on the motion to dismiss or converts the motion to a motion for summary judgment and disposes of the motion pursuant to Rule 56, Santee Cooper's motion should be denied for the following reasons:

1. Contrary to Santee Cooper's argument, HEC's action is not barred by the eight year statute of repose. The eight year statute of repose, Section 15-3-640, was enacted in 2005. The Editor's Notes to Section 15-3-640, provides as follows:

> "Section 2 (amending this action) takes effect on July 1, 2005 and applies to improvements to rule property for which certificates of occupancy are issued by county or municipality or completion of a final inspection by the responsible local business official after the effective date;"

The improvements to the real property and the class occurred between 1998 and 2003 and did not occur after the effective date of the eight year statute of repose. Therefore, the eight year statute of repose is inapplicable to this case.

In addition thereto, the statute of repose, like the statute of limitations, is a defense of

avoidance. Thus, it is an affirmative defense which must be raised and pled in an answer and if not is waived. Rule 8(c), SCRCP, provides as follows:

> "(c) Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there has been a proper designation. A party may file a reply to any of the foregoing affirmative defenses."

Since the eight year statute of repose has not been pled as a defense in an answer, its applicability is not properly before the court.

2. Contrary to Santee Cooper's argument, HEC's Amended Complaint is not barred by the statute of limitations. As stated above, the statute of limitations is an affirmative defense, which must be pled in an answer. No answer has been filed and the defense is not properly before the Court. Furthermore, there must be evidence to support to prove the defense, none of which is before the Court. If the Court limits its determination to the four corners of the complaint, there is nothing in the four corners of the complaint to establish that HEC knew of the vapor barrier issue. If the Court considers matters outside the pleading, then the sworn testimony from the Santee Cooper 30(b)(6) witness and the HEC 30(b)(6) witness confirm that Santee Cooper did not disclose the issue and that HEC had no knowledge of the vapor barrier issue.

3. Contrary to Santee Cooper's argument, HEC's Amended Complaint does not fail to allege facts sufficient to constitute a cause of action for equitable indemnity. HEC's Amended Complaint alleges that it is without fault and is being sued only on a theory of imputed liability. HEC's Amended Complaint alleges the following:

> "9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.
>
> 10. That the defendants failed to disclose the information contained in

Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

12. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative,* Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit D.

13. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

14. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program.

15. That a special relationship existed between Horry Electric and the defendants, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits the defendants only.

16. That the plaintiff is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 and upon information and belief, the plaintiff will be exonerated from any liability for those damages."

These allegations, for purposes of the motion to dismiss, must be taken to be true. To the extent they are deemed to be true, they establish that HEC is without fault and that Santee Cooper is at fault. *Vemeer Carolinas, Inc. v. Wood-Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999) (the most important requirement for finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one with fault.) If the Court considers matters outside the pleadings, those matters establish that HEC is without fault and Santee Cooper is the one at fault, since Santee Cooper required the use of a vapor barrier after 1991, without disclosure to HEC of any problems or potential problems related to the use of a vapor barrier in the coastal areas.

4. Contrary to Santee Cooper's argument, the claims for negligence, breach of covenant of good faith and fair dealing, breach of warranty and civil conspiracy should not be dismissed because attorney's fees and litigation costs are not recoverable except by contract or statute. The amended complaint, in paragraphs 17 and 18, does contain the allegation in its factual background

that the plaintiff has incurred attorney's fees and expenses in defending the underlying class action are recoverable in the claim for equitable indemnification.

Attorney's fees and costs are recoverable as special damages in the civil conspiracy claim. In *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 735 S.E.2d 518 (Ct. App. 2012), the Court of Appeals confirmed such attorney's fees and expenses can constitute special damages in a civil conspiracy claim. In *Benedict*, the Court of Appeals stated:

> "NCS argues the circuit court erred in finding the costs and attorney's fees sought under the civil conspiracy claim were not special damages. NCS contends these items did not overlap with the damages sought under its breach of contract claim against the College and are otherwise special damages. We agree.
>
> Unlike other torts, an action for civil conspiracy requires the tortious conduct in question to cause the plaintiff special damage. *Hackworth*, 385 S.C. at 115, 682 S.E.2d at 874. While general damages 'are the immediate, direct and proximate result of the' tortfeasor's conduct, special damages 'are the natural, but not the necessary or usual, consequence of the' tortfeasor's conduct. *Id.* at 116-17, 682 S.E.2d at 875. Moreover, dismissal of a claim for civil conspiracy is appropriate when 'a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim.' *Id.* at 117, 682 S.E.2d at 875.
>
> Here, the damages NCS sought under the civil conspiracy claim did not overlap with the damages sought under its breach of contract claim against the College. Under its civil conspiracy claim, NCS sought to recover 'the costs and attorney's fees associated with the defense of [the College]'s allegations.' In its breach of contract claim, NCS sought consequential damages that were 'a direct and proximate result of th[e College's] breaches of the Collection Agreement.' The contract claim further enumerated the College's breaches of the Collection Agreement, and the breaches did not relate to Williams and Ford's conspiracy. Thus, while the contract [400 S.C. 547] claim could be construed to seek the costs and attorney's fees NCS incurred to prosecute the College's alleged breaches of the Collection Agreement, it could not be construed to seek the costs and fees NCS incurred in defending against the College's claims. Accordingly, the circuit court erred in finding NCS's civil conspiracy claim sought the same damages as its breach of contract claim."

The Court held as follows:

> "Thus, the conspiracy would not have necessarily or usually resulted in the College's lawsuit, and the costs and fees sought by NCS would be special damages caused by Williams and Ford's combination."

Attorney's fees and costs can be recovered in an action for equitable indemnification. In

Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 709 (1971), the Supreme Court stated:

> "Here, the lossors seek to recover from the contractor the attorneys' fees incurred by them in defending themselves against the claim asserted by the tenants. The weight of authority sustains their right of recovery, either on the theory of an implied contract to indemnify, or because they were put to the necessity of defending themselves against the lessees' claim by the tortious conduct of the contractor, or by his breach of contract."

The Supreme Court held:

> "Based upon the foregoing authorities we conclude that in actions of indemnity, brought where the duty to indemnify is either implied by law or arises under contract, and no personal fault of the indemnitee has joined in causing the injury, reasonable attorneys' fees incurred in resisting the claim indemnified against may be recovered as part of the damages and expenses."

The amended complaint also contains the usual damage allegations as part of the negligence claim. The negligence cause of action contains the following:

> "23. That as a result thereof, the plaintiff is entitled to a judgment against the defendants for all actual damages suffered as a result of the negligence of the defendants, plus punitive damages."

The same is true for the claim of breach of duty of good faith and fair dealing. HEC has alleged that it is entitled to recover from the defendants its actual and punitive damages as a result of the breach of implied duty. In its claim for breach of warranty, HEC alleges that it has "suffered actual damages for which the defendants are liable". In its civil conspiracy claim, HEC has alleged that it has suffered "actual and special damages for which the defendants are liable". The pleading contains nothing more than standard allegations related to the request for actual, punitive and special damages.

5. Contrary to Santee Cooper's argument, HEC's negligence, breach of duty of good faith and fair dealing and civil conspiracy claims do not fail because Santee Cooper was under no duty to disclose the information contained in Exhibits B-C which contain references alleged to be generally accessible publications. Santee Cooper's argument necessarily requires the Court to assume facts not before the Court, that being that the publications are generally accessible. However, even if they are generally accessible publications, a factual question would exist as to whether HEC was or should have known of them or whether there was a duty to disclose them given

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the concerns over liability if the vapor barrier was made a requirement for participation in the Good Cents program.

6. Contrary to Santee Cooper's argument, HEC's negligence claim does not fail for HEC's alleged failure to allege the requisite casual connection between the alleged failure to disclose the information contained in Exhibits B-C and HEC's damages. A fair reading of HEC's Amended Complaint is that HEC has been sued as a result of its failure to advise the class members that the vapor barrier may cause moisture problems and as a result of it being a requirement of the Good Cents program, this information was unknown to HEC but known to Santee Cooper. As a result, HEC has been embroiled in a class action lawsuit and has suffered actual damages. The allegations of the Amended Complaint must be accepted as true and sufficiently show a causal connection between the failure to disclose the information and damage to HEC.

7. HEC withdraws its claim against Santee Cooper for punitive damages. Contrary to Santee Cooper's argument, HEC has not failed to allege in an express warranty or any facts giving rise to implied warranty.

8. Contrary to Santee Cooper's argument, HEC has alleged the facts that are the basis of its express and implied warranty claim. The amended complaint alleges the following:

> "8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.
>
> 9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.
>
> 10. That the defendants failed to disclose the information contained in Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.
>
> 11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.
>
> 27. That, upon information and belief, the defendants, by offering and

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promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C."

9. Contrary to Santee Cooper's argument, HEC has properly alleged a civil conspiracy claim. The amended complaint contains the following:

> "30. That, upon information and belief, the defendants, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to suffer actual and special damages for which the defendants are liable."

A civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *Island Car Wash, Inc. v. Norris,* 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct. App. 1987). Each element is alleged in paragraph 30. Furthermore, HEC has not merely requested the damages from earlier claim. Instead, HEC has alleged that it has suffered special damages.

10. HEC does not concede that its amended complaint is deficient in any respect. However, if the Court concludes there are any deficiencies, HEC requests that it be given the opportunity to cure any such deficiency by amending its complaint. Further, discovery should be compelled so that the facts can be developed.

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Attorney for the Plaintiff

Columbia, South Carolina
September 26, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	
Horry Electric Cooperative, Inc.,)	Civil Action No. 2013-CP-26-4[illegible]
)	
Plaintiff,)	
)	
vs.)	**CERTIFICATE OF SERVICE**
)	
South Carolina Public Service)	
Authority and Southern Electric)	
International, Inc.,)	
)	
Defendants.)	
)	

HORRY COUNTY
13 SEP 27 PM 1:44
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by emailing and mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 26th day of September, 2013.

COUNSEL SERVED:
B. Rush Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:
Plaintiff's Memorandum in Opposition to Defendant South Carolina Public Service Authority's Motion to Dismiss

Sherry W. Wise

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-0488
Plaintiff,	)	
vs.	)	**DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendant.	)	

INTRODUCTION

Defendant, South Carolina Public Service Authority ("Santee Cooper"), submits this memorandum supporting Defendant's Motion to Dismiss the Amended Complaint of Plaintiff, Horry Electric Cooperative, Inc. ("HEC") pursuant to Rule 12(b)(6), SCRCP, and in reply to HEC's memorandum dated September 26, 2013.

The Amended Complaint alleges the following material facts:

- HEC sells electricity to its members. (Am. Compl., ¶ 1.)
- Santee Cooper sells electricity to HEC. (Am. Compl., ¶ 2.)
- HEC contracted with Santee Cooper and SEI to implement the Good Cents program in its retail service area. (Am. Compl., ¶¶ 4-6 and Ex. A.)
- HEC adopted the Good Cents program, including the program's design standards. (Am. Compl., ¶ 6.)
- HEC offered the Good Cents program to its customers. (Am. Compl., ¶¶ 6, 7, 14.)
- HEC has been sued in the *Ferrell* case based on the vapor barrier included among the Good Cents standards. (Am. Compl., ¶ 12 and Ex. D.)
- In 1986, a representative of Santee Cooper wrote a letter to South Electric International, Inc., supposedly reflecting knowledge that the "use of vapor

barrier[s] . . . may cause moisture problems in coastal areas."[1] (Am. Compl., ¶ 9 and Exs. B and C.)

- Santee Cooper did not disclose the contents of the 1986 letters to HEC before HEC entered into the 1987 contract to implement the Good Cents program. (Am. Compl., ¶¶ 9-11.)

The Amended Complaint is grounded on the contention that Santee Cooper "knew of the moisture issue with the vapor barrier requirement and failed to disclose that information to HEC . . . ." (Pl. Memo. Opp., pp. 1-2.) For purposes of the motion to dismiss, the well-pled allegations of a plaintiff's complaint are taken as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). Thus, without admitting but assuming *arguendo* the truth of the allegations of the Amended Complaint, Santee Cooper seeks dismissal of the action, for the following reasons:

I. The claims are barred by the statute of repose because the underlying action is based on construction completed outside the limits of the statutory period;

II. The purported claims other than for equitable indemnity are barred by the applicable statutes of limitation;

III. HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper because there is no claim for indemnity based on the allegations showing that HEC joined in the conduct for which it has been sued, and Santee Cooper had no duty to disclose to HEC the facts that Santee Cooper allegedly concealed prior to HEC's entering into a contract with Santee Cooper.

Because the well-pled facts alleged and inferences reasonably deducible from those facts do not entitle the plaintiff to relief under any theory, the motion to dismiss should be granted. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

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[1] Santee Cooper does not concede that vapor barriers caused "moisture problems" or that there is any "problem with the vapor barrier requirements of the Good Cents Program," but for the limited purposes of this motion, the allegations of the Amended Complaint are treated as if they were true.

Contrary to HEC's argument in opposition to the motion,[2] nothing prevents this court from granting a motion to dismiss based on an affirmative defense, such as the expiration of the statute of limitations, because the allegations necessary to support the affirmative defense are clear on the face of the complaint. *See Flateau v. Harrelson*, 355 S.C. 197, 209, 584 S.E.2d 413, 419 (Ct. App. 2003) (affirming a grant of a motion to dismiss because the claims, even if as alleged on the complaint, would be barred by the statute of limitations). Furthermore, when deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the trial court may consider only the allegations set forth on the face of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

ARGUMENT

I. The Amended Complaint is barred by the statute of repose.

HEC's action against Santee Cooper stems from *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Ferrell* action"). In the *Ferrell* action, on behalf of themselves and others, the class representatives alleged that the vapor barrier that was included among the standards for HEC's Good Cents program constitutes a design defect. (Pl. Memo. Opp, p. 1.) The class representatives' claims arise from residential construction that was substantially completed as early as **1988**. (Am. Compl., Ex. D - *Ferrell* Compl. ¶ 34 (stating that "[e]ach residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003")).

The statute of repose states that "no actions to recover damages based upon or arising out of the defective . . . condition of an improvement to real property may be

[2] *See* Plaintiff's Memorandum in Opposition to Defendant South Carolina Public Service Authority's Motion to Dismiss (Pl. Memo. Opp.), pp. 6-7.

brought more than eight years[3] after substantial completion of the improvement." S.C. Code Ann. § 15-3-640. The statute of repose expressly encompasses actions to recover damages for economic or monetary loss, *id.* § 15-3-640(4), and indemnification, *id.* § 15-3-640(6).

The statute of repose creates an absolute, substantive right to be free from suit after a period of time set by the General Assembly. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). "[S]tatutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists." *Id.* at 404, 438 S.E.2d at 244. "A statute of repose . . . is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (internal citations omitted). Because the time limit is absolute, a statute of repose may extinguish a claim before it is discovered or even arises. *Id.*

HEC is seeking indemnification for claims arising from construction completed as early as 1988. HEC adopted the Good Cents standards in 1987, and these standards were incorporated into residential construction beginning the next year. Thus, even if the 13-year period from the former statute of repose is used, as HEC argues, HEC's Amended Complaint is barred.

HEC's original Complaint was filed on January 23, 2013. Under the 13-year statute of repose that HEC urges the Court to apply, Santee Cooper is absolutely

[3] Prior to July 1, 2005, the statute of repose cut off claims after 13 years. S.C. Code Ann. § 15-3-640, notes. HEC argues that the 13-year statute and not the 8-year statute applies.

protected from liability arising from construction that predates January 23, 2000. Under the 8-year statute, the cutoff is January 23, 2005. HEC seeks indemnification (and monetary damages in the form of its attorneys' fees) based on construction completed as early as 1988. Accordingly, the Amended Complaint should be dismissed.

II. The Amended Complaint is barred by the applicable statutes of limitation.

The tort claims asserted in the Amended Complaint arise from letters written almost 27 years ago. (Am. Compl., Exs. B and C.) Such claims are precisely the type for which statutes of limitation are designed:

> "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." [*Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)] (citation omitted). Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights. *See McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct. App. 1989). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.' " *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008) (quoting *City of North Myrtle Beach v. Lewis–Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct. App. 2004)).

Trans. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010).

The two-year statute of limitations contained in the Tort Claims Act applies to HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy. *See* S.C. Code Ann. § 15-78-110; *see also Hodges v. Rainey*, 341 S.C. 79, 91-92, 533 S.E.2d 578, 584 (2000) (recognizing TCA applies to Santee Cooper). Actions brought under the Tort Claims Act are subject to the discovery rule. *Joubert v. S.C. Dep't. of Soc. Services*, 341 S.C. 176, 190, 534

S.E.2d 1, 8 (Ct. App. 2000). "According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Id. See also Anonymous Taxpayer v. S.C. Dep't. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) ("The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist."). "The date on which discovery should have been made is an objective rather than subjective question." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998). "The critical inquiry, then, is whether [HEC] *could have discovered* its claim against" the defendant. *See Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998) (emphasis added).

In answer to the *Ferrell* complaint, HEC admitted that it adopted the Good Cents program and offered the program to its customers "without having performed any research regarding the specifications and requirements of the Good Cents Program as offered by the South Carolina Public Service Authority." (Ferrell Answer, ¶ 9.) Thus the pleadings in the underlying action[4] establish that HEC did not exercise reasonable diligence before agreeing to adopt the program in 1987.

In light of the foregoing admission, the only question is whether, objectively speaking, HEC could have known of the alleged "problem with vapor barrier requirements"[5] if it *had* exercised reasonable diligence. From the Amended Complaint,

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[4]Allegations of a complaint that are denied are not determinative of a claim for indemnification. *See Griffin v. Van Norman*, 302 S.C. 520, 522, 397 S.E.2d 378, 379 (Ct.App.1990) ("The Complaint serves merely as a background to this [indemnification] litigation. Allegations in a Complaint denied in answer are evidence of nothing."). The same cannot be said for allegations of a complaint that are admitted.

[5] As noted elsewhere, Santee Cooper does not concede that there were any such problems but must assume the truth of the allegations of the Amended Complaint for purposes of

including the Exhibits attached thereto, the only inference is, *yes*, HEC could and most certainly would have learned about the so-called "problem with vapor barrier requirements" if it had tried.

Three sources available to the public—any one of which would have sufficed to inform HEC of the so-called "problem with vapor barrier requirements"—are cited in Glenn Cannon's 1986 correspondence to SEI that was attached to the Amended Complaint. First, in his October 8, 1986 letter, Mr. Cannon referred to "ASHRAE '85 Fundamentals - 21.17."[6] (Am. Compl. Ex. B.) Second, in his October 22, 1986 letter, Mr. Cannon referred to an article from Energy Design Update.[7] (*Id.*) Finally, in the same letter he referred to "a lot of concern expressed from the building community." (*Id.*) These attachments to the Amended Complaint establish that the allegedly concealed facts actually were the subject of at least two publications and discussions in the building community on the South Carolina coast. Thus, from the face of the pleadings (including the attachments thereto), it is plain that HEC could have learned of the allegedly concealed facts.

The Supreme Court's decision in *Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008), is instructive. A taxpayer complained that the State breached a contract to afford him certain tax exemptions upon his retirement.

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this motion. Nothing herein is intended as or should be construed as an admission of any such problem.

[6] ASHRAE is the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Its resources and publications are readily available. *See* https://www.ashrae.org/home/ (last visited Sept. 30, 2013).

[7] Energy Design Update is a publication available to the public from Aspen Publishing. *See* Wolters Kluwer, Energy Design Update, *available at* http://www.aspenpublishers.com/Product.asp?catalog_name=Aspen&product_id=SS07413629 (last visited Sept. 30, 2013).

The Court held that the taxpayer knew or should have known that his retirement benefits would no longer be exempt from state income tax when the statute affecting such exemptions was changed in 1989, even though he did not begin receiving retirement income (and thus the alleged contract was not breached) until 1997. Just as the statute passed in 1989 was accessible to the public and contained the information necessary to inform the taxpayer of the alleged cause of action, so were the publications and discussions in the local building community that Mr. Cannon cited available to HEC. HEC, however, admittedly never performed any research or investigation before adopting the standards and implementing them. Had it done so, it would have known of the so-called "problem with vapor barrier requirements" in 1986—just as the taxpayer would have known of the alteration of his rights to tax exemptions in 1989. Accordingly, the two-year statute of limitations began to run and expired long ago. HEC should not be allowed to sue Santee Cooper on the basis of claims arising from letters written almost 27 years ago.

III. HEC cannot state a cause of action for equitable indemnity because the pleadings establish that it joined in the conduct that subjected it to suit.

HEC does not have a cause of action for equitable indemnity because it has been subjected to suit based on its own conduct or, at a minimum, conduct in which it joined. While South Carolina recognizes equitable indemnity in cases of imputed fault or where a special relationship exists, *e.g.*, *Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), our appellate courts have made it clear that a party seeking indemnity cannot have joined in the conduct that led to the suit against it:

> [A] right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to

> indemnify the other, as where one person is exposed to liability by the wrongful act of another *in which he does not join.*

Id. (emphasis added) (quoting *Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983)); *see also Inglese v. Beal*, 403 S.C. 290, 299, 742 S.E.2d 687, 691 (Ct. App. 2013) (same); *Toomer v. Norfolk Southern Ry. Co.*, 344 S.C. 486, 491, 544 S.E.2d 634, 636 (Ct. App. 2001) (same); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999) (same). One is not entitled to indemnity if his own conduct joined in causing the injury that is the subject of the suit against him. *See, e.g., Addy v. Bolton*, 257 S.C. 28, 34, 183 S.E.2d 708, 709 (1971) (noting that one's right to maintain an action for indemnity is "subject to the proviso that no personal negligence of his own has joined in causing the injury"). The proviso applies in both special relationship and imputed fault cases. *Id.*; *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 398 S.E.2d 500 (Ct.App.1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992). Thus, "[t]he most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." *Vermeer Carolina's, Inc.*, 336 S.C. at 63, 518 S.E.2d at 307.

In this case, HEC does not have a cause of action for equitable indemnity because the allegations of the Amended Complaint show that HEC joined in the conduct that is the basis of the underlying suit against it and HEC has not been adjudged to be without fault. Specifically, HEC has alleged that it adopted the program, including the design standards, and implemented the program in its retail service area, and that it has been sued based on the "vapor barrier" requirement that was among the program standards. (Am. Compl., ¶¶ 5, 6, 7, 12, 14.) Because HEC *adopted* the Good Cents standards and

implemented them in its dealings with its customers, HEC can never establish that it has been "exposed to liability by the wrongful act of another *in which [it] does not join.*" Based on the allegations of HEC's Amended Complaint, it is clear that it did join in the conduct that gave rise to the suit against it. Accordingly, the cause of action for equitable indemnity must be dismissed.[8]

IV. HEC has failed to state a claim for negligence, breach of the duty of good faith and fair dealing, breach of warranty, or civil conspiracy, because Santee Cooper had no duty to disclose to HEC the contents of the letters attached to the Amended Complaint.

As a matter of law, Santee Cooper had no duty to disclose to HEC the allegedly concealed information prior to HEC's entering into the contract to adopt and implement the Good Cents program. HEC is a sophisticated entity, an electric cooperative that serves thousands of customers, and Santee Cooper had no duty to disclose the contents of Exhibits B and C to HEC. Under South Carolina law, there is no duty to disclose facts except in three classes of cases:

> (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002), citing *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). Courts interpret these categories narrowly. *Armstrong v. Collins*, 366 S.C. 204, 221, 621 S.E.2d

[8] It is also evident from the face of the Amended Complaint that HEC has not been adjudged to be without fault.

368, 376 (Ct. App. 2005). Notably, in situations where a party uses no precautions to safeguard its interests; courts will not imply a duty to protect them retrospectively. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003).

HEC does not allege a preexisting fiduciary relation between it and Santee Cooper. It does not allege that it reposed special trust and confidence in Santee Cooper with reference to the Good Cents program or its purchase of electricity from Santee Cooper. It does not allege that the contract attached as Exhibit A to the Amended Complaint was intrinsically fiduciary. The allegations of the Amended Complaint support no inference of the conditions necessary to create a duty to disclose. Nor could HEC make any such allegations; it is well established that South Carolina courts will not find a fiduciary relationship in a situation where two sophisticated parties dealing at arms' length enter into a contract. *See Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 23 S.E.2d 372, 377 (1942) (finding no fiduciary relationship between parties dealing at arms' length).

Whether a duty exists is a matter of law for the Court to decide. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). In its Amended Complaint, HEC makes a general allegation that Santee Cooper owed HEC a duty of care to disclose any problems. (Am. Compl. ¶ 20.) This is a conclusory legal statement, not a well-pled allegation, and HEC has alleged no facts that give rise to a duty to disclose. Moreover, HEC has admitted that it did not investigate the standards that it adopted, and as explained above, HEC could have discovered for itself the so-called "problem with the vapor barrier requirement." A duty generally does not exist for one party to disclose information to another party when that information is available to the other party. *See*

Savannah Bank, 400 S.C. at 251, 734 S.E.2d at 164 (finding no duty on bank to disclose information to borrower that was included in his loan documents); *see also Regions Bank v. Schmauch*, 354 S.C. at 668-70, 582 S.E.2d at 442-44 (upholding a dismissal of a negligence claim because the appellant failed to exercise reasonable diligence in protecting her own interests). Accordingly, HEC's claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy—all of which are predicated on a supposed duty to disclose—must be dismissed.

CONCLUSION

For the foregoing reasons, and for such reasons as appear in its motion and as may be argued at the hearing on the motion, Santee Cooper respectfully requests that the Court dismiss HEC's Amended Complaint.

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Columbia, South Carolina
September 30, 2013

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Service Authority, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Defendant's Reply In Support of Its Motion to Dismiss

Counsel Served:

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Jessica Trautman
Jessica Trautman
Administrative Assistant

Sept. 30, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-488
Plaintiff,	)	
vs.	)	**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendants.	)	

Plaintiff Horry Electric Cooperative, Inc. hereby moves for partial summary judgment as to the liability of the South Carolina Public Service Authority with respect to cause of action for negligence and breach of the implied duty of good faith and fair dealing upon the grounds that there are no genuine issues of material fact as to the South Carolina Public Service Authority's liability as to these causes of action and the plaintiff is entitled to judgment as a matter of law. The depositions of the plaintiff's 30(b)(6) witness and the 30(b)(6) witness of the South Carolina Public Service Authority in Civil Action No. 2011-CP-26-1266 are submitted in support of this motion and the Court will be asked to take judicial notice of the file in Civil Action No. 2011-CP-26-1266.

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Columbia, South Carolina
October 2, 2013

STATE OF SOUTH CAROLINA :
: SS:
COUNTY OF HORRY :

- - - - -

IN THE COURT OF COMMON PLEAS

- - - - -

RONNIE FERRELL, TAMMY VANCE and DAVID MONTORIO, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HORRY ELECTRIC COOPERATIVE,

Defendant.

: Case Number 2011-CP-26-1266

- - - - -

Deposition of EDWARD J. BLACKBURN, the Witness herein, called for the purpose of Discovery Examination by Plaintiffs, pursuant to the South Carolina Rules of Civil Procedure, taken before James C. Grady, a Notary Public for South Carolina, at the offices of Horry Electric Cooperative, 2774 Cultra Road, Conway, South Carolina, on Wednesday, October 12th, 2011, commencing at 9:30 a.m..

- - - - -

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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- - - - -

STIPULATIONS

This deposition was taken pursuant to proper Notice and pursuant to Circuit Rule 30, to be used for the purpose of discovery and/or evidence at trial, or for any other purpose permitted by Circuit Rule 30; all objections except as to the form of the question were reserved until the time of trial.

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EDWARD J. BLACKBURN,
of lawful age, the Witness herein, called for Discovery Examination by the Plaintiffs, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION

BY MR. FATA:

Q. Good morning Mr. Blackburn. We just met. My name is Nate Fata. I represent tne Plaintiffs in this case along with Mark Brunty here to my right. I'm here to take your deposition. You apparently are the 30(b)(6) designee for matters that we have set forth in our Notice of Deposition. I don't believe there is anyone else.

MR. POPE. No. It's just Eddy.

And Nate, do you mind if we put on the record that we had objections to several of the areas and we are going ahead and taking the deposition today. You can ask him what you want and if he can answer, great. If he can't we will stand by the motion and try to figure it out.

MR. FATA: I understand. That's

fine.

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(Thereupon, Plaintiff's Exhibit Number 1 was marked)

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Q. Let me see if we can get through this. I'll hand you what has been marked as Plaintiff's Exhibit 1. And just so you have a reference point, that's the amended 30(b)(6) notice of deposition and the matters that I just referenced are set forth in that two three page document, Item 1 through 8. What I would like to do is we will go through that probably matter by matter and you can give me your response to my questions.

But I need to let you know that during the deposition and like any other deposition you have given before it's important for me to ask you a question that you understand. If you don't understand any question you should ask me to rephrase it so you do understand it. My job is to ask a decent question that you can at least understand.

The court reporter is going to take everything down that we say so it's important

for only one of us to speak at a time so that we don't double talk or go over each other. If you need to take a break to use the facilities, that's fine. Usually conversations with counsel or anyone else about the deposition testimony during the break are subject to me asking you questions about what you talked about, so your lawyer knows that.

So moving forward, Mr. Blackburn, can you please tell my your full name, your address where you live?

A. Yes. Edward -- full name is Edward J. Blackburn, Edward Joseph Blackburn. Address is 25544 Eds Road. E-D-S Road and that's Loris, South Carolina 29569.

Q. How long have you lived at that address?

A. Since 2000.

Q. Do you live in a Good Cents home?

A. Yes, sir.

Q. Did you build the Good Cents home?

A. Yes, sir.

Q. Who was your contractor?

A. My brother-in-law at the time. His construction company. Wait a minute. It's either Sun Built or -- I'll have to look back.

It's my brother-in-law. His name is Eddy Barnhill.

Q. Eddy Barnhill?

A. That's his name. I apologize. I'm not sure of the company name.

Q. That's okay. Mr. Blackburn, have you ever had your deposition taken before?

A. No, sir.

Q. Where do you work?

A. Horry Electric Cooperative.

Q. How long have you worked here?

A. Since June of '87. That would be 24 years.

Q. You don't want to count at this point.

A. Yes, sir.

Q. Were you ever involved in the Good Cents Program?

A. Yes,sir.

Q. And what capacity? I'm kind of going back through your Horry Electric tenure remember and maybe different titles you may have held and your involvement in the Good Cents Program. This case involves the Good Cents Program so I'm going to try to keep us on that.

A. Originally in June of '87 when I was hired I was an energy advisor and basically, you know,

I was hired to work with another fellow named Horace Jordan who hired me as we began do implement the Good Cents Program. Like I say, I served as an energy advisor and I served in that role from '87 through '97. That was my title and I worked with the Good Cents Program.

Q. After '97 what was your title?

A. I continued to work with the Good Cents Program but my title in '97 was Coordinator of Energy Management. Excuse me. Director of Energy Management.

Q. How long were you Director?

A. That was through 2001.

Q. Then in 2001?

A. Yeah. It changed to Marketing Analyst/Key Accounts to present.

Q. As energy advisor what were your job functions from 1987 to 1997?

A. One would be Good Cents Program, calculating house plans, inspections, Basically certifying homes for the Good Cents Program along with some other duties as far as audits and high bill complaints, et cetera, as far as energy management area.

Q. From 1987 to 1997 were you the point person for

the Good Cents Program?

A. I was from June of '87 January of '88 and another guy was hired. The program boomed and we had to hire another person. We were of equal, Energy Advisors.

Q. What was that person?

A. Ricky Lowder.

Q. Where is Ricky Lowder today, does he work for Horry Electric?

A. Yes.

Q. What's his role today?

A. He is Senior Marketing Representative.

Q. Your background prior to coming to work for Horry Electric, what was it in?

A. Straight from college, you know.

Q. That's a dangerous question if I ask you what your background in college was.

A. Yes, sir.

Q. Where did you go to college?

A. At the University of South Carolina.

Q. What did you study?

A. Marketing, finance.

Q. Did you get a degree?

A. Yes, sir. A bachelor, BS degree in -- I double majored. It was marketing --

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Q. And finance.
A. And finance. Yes, sir. I apologize.
Q. Any engineering classes?
A. No, sir.
Q. Have you ever taken any engineering classes?
A. No, sir.
Q. Are you the person most familiar with the Good Cents Program at Horry Electric?
A. I will not say I'm necessarily more familiar with it than my counterpart, as my counterpart Ricky. We are equal.
Q. Do you know anyone that has more familiarity than you at Horry Electric today on the Good Cents Program?
A. No, sir.
Q. So you probably have as much if not more experience than any other Horry Electric employee when it comes to the Good Cents Program?
A. Yes, sir.
Q. And Horace Jordan at one point was your supervisor?
A. Yes, sir.
Q. He is no longer with Horry Electric?
A. No, sir.

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Q. Where is he now?
A. Retired.
Q. And the Good Cents Program was designed or was to decrease the amount of energy demand that was going to be occasioned by the new homes?
MR. POPE: Object to the form.
Q. What was the purpose of the Good Cents Program in your experience?
A. Based on what, you know, we were in association along with Santee Cooper the primary purpose of the program initially was demand reduction, KW demand reduction from a system along with energy savings per each homeowner. KW, Kilowatt hours.
Q. But the program was designed to reduce kilowatt hours demand?
MR. POPE: Object to the form.
A. We were hold that the primary purpose initially was to reduce demand to delay the building of power plants.
Q. And who told you that?
A. Santee Cooper.
Q. And was there someone at Santee Cooper that was --
A. At the time this all kicked off the director --

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I'm not exactly sure of his actual title but the guy in charge of the Good Cents Program was Glenn Cannon.
Q. Glenn Cannon?
A. Yes, sir. Cannon.
Q. Cannon like you shoot?
A. C-A-N-N-O-N.
Q. Okay. Was the Good Cents Program something Horry Electric was required to do?
A. I'm not sure.
Q. So you don't know if there was ever an option of whether Horry Electric could choose between not doing Good Cents or doing the Good Cents Program
A. I don't think it was a mandatory thing for the co-ops that buy power from Santee Cooper to necessarily have to, no.
Q. Okay. I think at some point probably in the last couple of weeks, and I think it was you filled out an affidavit concerning the documents.
A. Yes, sir.
Q. At some point we just may want to take five or ten minutes. I think there might be a room in this building that has the documents.

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A. Yes.
Q. Maybe we could just take a look at it. I would just like to get a scope or point of reference. We can of kind of move through that or incorporate that into a break, or whatever.
Let's go to matter 1. For the years 1988 through 2003, the identify of all documents known by you to relate or in anyway pertain to your performance, in whole or in part, of the requirements and recommendations of the Good Cents New Home Plan including all vapor barrier specifications. So we can talk about the identity of the documents that pertain to Horry Electric's performance with the requirements and recommendations of the Good Cents New Home Plan.
A. All homes are in files upstairs.
Q. Okay.
A. As far as documents pertaining -- the actual files are upstairs.
Q. Did all the homes go through the same type of procedure when it came to inspections?
A. Standard procedure on inspections would have been to visually inspect the insulation in the exterior walls before sheetrock was hung.

Q. And that was standard and that was to confirm the existence of the vapor barrier?
A. That was to, yes, yes.
Q. And what were there, just two types of vapor barriers?
A. Up to 2003 it was faced insulation or bat faced insulation or unfaced with four on six mil polyethylene, either/or, yes.
Q. So in your experience then each of the homes that were accepted by Horry Electric into the Good Cents Program would have had either of those two types of vapor barriers up to 2003?
A. Yes, sir.
Q. And were you ever involved personally in inspecting homes?
A. Yes.
Q. So you yourself saw homes that had that type of vapor barrier, either/or?
A. Yes, sir.
Q. Okay. Would you think you saw more than 50 homes with that type of vapor barrier?
A. Yes, sir.
Q. What would you estimate as far as the number of homes that you may have seen, the new homes in the Good Cents Program in 2003 that you

actually visually inspected and said okay, check, there is a vapor barrier that's in accordance with the Good Cents Program, and I'll give you an estimating guide, more than 500, more than 1,000, more than 10,000, somewhere in the middle?
A. I would say 1,000 minimum.
Q. For the new homes?
A. Yes, sir.
Q. Were you in charge of the, new home inspections for the Good Cents Program?
A. Not in charge, no, sir.
Q. Were you one of the persons who was in charge, there might have been more than one, but you and Mr. Ricky Lowder?
A. May I ask, when you say in charge you mean of the program or just performing the inspection?
Q. Both.
A. I was not in charge of it.
Q. Of the program?
A. No, sir.
Q. Who was in charge of the Good Cents Program?
A. Horace Jordan.
Q. But then he left?
A. Yes, sir.

Q. After he left were you in charge?
A. Then I was.
Q. And you were --
A. It was brief from '97 through 2001. During that period of time, yes, sir.
Q. And then as far as being in charge of inspections for the Good Cents New Home Program, were you in charge of that?
A. I would have been in charge during that four year period.
Q. 1997 through 2001?
A. 2001, yes, sir.
Q. Prior to '97 you would have been intimately involved in the inspection process?
A. Yes, sir.
Q. From 2001 to 2003 who was in charge of the Good Cents New Home Program?
A. Penelope Hinson.
Q. Does Penelope Hinson still work for Horry Electric?
A. Yes, sir.
Q. Did Penelope Hinson become the director of energy management?
A. She's manager of Public Relations slash Marketing. It falls under her department.

Q. Going back to matter 1, the identity of all documents known by you to relate to or in any way pertain to Horry Electric's performance in whole or part of the requirements and recommendations of the Good Cents New Home Plan, including all vapor barrier specifications, I'm going to show to you --

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(Thereupon, Plaintiff's Exhibits 2 and 3 were marked)

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Q. Let me show as you what's been marked as Exhibit 2 and Exhibit 3. These documents have been produced by Horry Electric's counsel in the discovery, and Exhibit 2, it's been referred to as the agreement between Horry Electric and Santee Cooper concerning the Good Cents Program; are you familiar with that?
A. As far as familiar I know that there was originally a contract signed. I knew Mr. Jordan had -- there was some type of agreement, yes, I am aware of that. I've never saw it or anything but I know, yes, sir.
Q. Did you see Mr. JOrdan's signature on there?
A. Yes, sir.

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Q. And that's on Page 2 of Exhibit 2?
A. Yes, sir.
Q. Okay. And then as far as the program of the Good Cents New home requirements, kind of laying it all out, I'm going to show to you what's marked as Plaintiff's Exhibit 3, again this document was produced my Horry Electric's counsel, and I want you to kind of go through that, take your time, and just tell me if that is and contains the program specifications that you operate under?
A. This was the manual of Santee Cooper with guidelines passed through to the co-ops. Of course, their letterhead and their logos we basically duplicated.
Q. I understand.
A. But yes, sir to answer your question.
Q. So Exhibit 3 was the manual that Horry Electric was given by Santee Cooper to implement the Good Cents Program?
A. Yes, sir.
Q. And that was probably done in the early 1990's, maybe 1991?
A. Not that can recall exactly what it looked like but I would assume that there would have been

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an original manual in '87. I know there was maybe a possible new version they may have sent in 1990 or '91, which I see the date is '91 but this is the one I recognize.
Q. Was that manual ever changed or modified during the period 1991 to 2003 from your recollection?
A. I'm not 100 percent on exactly when it may have been but certain things such as the SEER rating or the efficiency rating of the heating and cooling would go up maybe every two years, three years. But the basic thermal quality qualification methods, et cetera, that part didn't except in '03, the vapor barrier.
Q. So the vapor barrier specifications that are referenced in Exhibit 3 were consistent until 2003 when they changed?
A. Yes, sir.
Q. Prior to 2003 in all of your experience were the vapor barrier specifications for the new homes in the Good Cents Program, were they always the same until 2003?
A. Yes, sir.
Q. So 2003 was the first time in your experience with Horry Electric that a vapor barrier change ever occurred with the Good Cents Program?

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A. Yes, sir.
Q. And all homes up through 2003 had to have either one of two type of vapor barriers, right, the four to six mil?
A. Yes. Faced or unfaced with poly, yes, sir.
Q. And that is set forth on what page in Exhibit 3
A. It is set forth Page 3.
Q. Page 3 of Exhibit 3?
A. Yes, sir.
Q. It's document Horry Electric 160 on the bottom right?
A. Under D.
Q. Do you know why that is important for Horry Electric that there was a vapor barrier?
MR. POPE: Object to the form.
Q. You can answer to the best of your ability.
MR. POPE: I think it's outside the scope of the 30(b)(6), but you can answer.
A. My recollection is a vapor barrier involves just what it says, as a moisture or being able to inhibit moisture, you know. That's my personal --
Q. Other than what we have shown to you as Exhibits 2 and 3 can you identify any other documents that would set forth the requirements

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or specifications or recommendations of the Good Cents New Home plan at any time during 1988 through 2003?
MR. POPE: Do you mean other than what he's already told you that there were some changes for SEER ratings and whatnot?
MR. FATA: Right.
A. I'm not aware of any other.
Q. And I'll ask it this way: If I were to ask you what was your playbook, your handbook on the New Home Good Cents Program for '99 through 2003 what document would you say here they are, this is our internal policy procedure documents?
A. Exhibit 3.
Q. Exhibit 3, okay. And Exhibit 2 would just be the contract that kind of was the platform from which Exhibit 3 was given to Horry Electric by Santee Cooper?
A. I've not read that.
MR. POPE: When you say that, you mean Exhibit 2?
A. Exhibit 2, I've not read it. I never was aware -- I mean I knew there was a contract but I never seen it through the years until --

Q. But as far as you know Exhibit 3 pretty much constitutes the procedures book, the internal manual if you will for Horry Electric for the Good Cents Program for years 1988 through 2003 and then there may have been some adjustments as to SEER ratings during the years but the vapor barrier requirement is encapsulated on Page 3 for those years and that was consistent throughout those years?

A. Yes, sir.

Q. Would you as part of the inspection process have to document each home on a piece of paper as to whether it met the requirements for the Good Cents Program as set forth in Exhibit 3?

A. Did you say inspection?

Q. Yes.

A. Yes, sir, there were inspection forms. As far as procedure, that was the original procedure, yes, sir.

Q. Did that procedure ever change?

A. The procedure -- I wouldn't say the procedure changed. I would say there may be isolated cases, I can't put a number on it, where we were approving 120 homes a month. I know we got guidance from Santee Cooper at times from

the over abundance of homes and there probably were isolated cases where that same home was built over and over and over, the same floor plan. They failed to call or we were behind and I can't say each file, necessarily every complete file has that inspection procedure form in.

Q. But you would expect at least 99 percent of the files would have that inspection?

A. It was the normal procedure, yes, sir.

Q. All right. And that inspection from procedure really never changed from '88 to 2003?

A. No, sir.

Q. It did not change?

A. No, sir, it did not.

Q. Going to Item 2: For the years 1988 to 2003, identify and content of all licenses, contracts or other agreements between you and any other entity regarding your adoption of and the use of and ability to use the Good Cents name and program information, are you aware of any contract other than Exhibit 2, which you just saw today for the first time, I understand that, that deals with the Good Cents Program and Horry Electric's ability to use it under

some type of license or agreement?

A. No, sir.

Q. And I didn't see any other agreements in the discovery so I'm assuming that's it.

MR. POPE: We got that from Santee Cooper and they told us Horry Electric did not have it, so as far as I know that's all there is.

Q. Okay. Item 3, for the years 1988 through 2003 any specifications or internal discussions, studies or documentation concerning vapor barriers by you or by you and a third party who is not a homeowner. During that period of time were you ever involved or aware or made aware of any conversations Horry Electric was having concerning the requirement of a vapor barriers in the Good Cents Homes?

A. No, sir.

Q. Did anyone ever voice to you any concerns about the vapor barrier requirement in the Good Cents Program during that time period?

A. No, sir.

Q. Did you ever have any complaints from any person concerning the vapor barrier requirement in that time period for the Good Cents Program?

A. No, sir.

Q. Did you ever have any conversation with any engineers concerning the vapor barrier requirement?

A. No, sir.

Q. Did Horry Electric have any engineers on staff from 1988 to 2003?

A. On staff?

Q. Yes.

A. Yes, sir.

Q. And Who were they and were they ever involved in the Good Cents Program?

A. The engineer that would have been -- the head engineer was Terry William. He was never involved with the Good Cents, no, sir.

Q. Was there ever any engineer involved with the Good Cents Program?

A. No, sir.

Q. Did Horry Electric simply rely on whatever Santee Cooper told it as far as the Good Cents Program as far as specifications and requirements?

A. Yes, sir. We basically followed their guidelines and their manual. If there was a question there was a phone call, communication

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made with some of their marketing folks running their program.
Q. And you said Horry Electric buys its energy from Santee Cooper?
A. Through Central Electric, yes, sir. Central Electric Cooperative is our GNT. I you want to call it that. There are 20 co-ops that buy power from Santee Cooper in the State of South Carolina through Central Electric Power Cooperative, Incorporated.
Q. So Central Electric is kind of a hub --
A. Was formed to negotiate the power, the buying of the power, power supply. They do a lot of engineering, et cetera.
Q. Does Central Electric provides electricity to homeowners?
A. The cooperative. They're a distribution coop, if that makes sense.
Q. It might to you. From what your are telling me Central --
A. All coops, we are basically tied into Santee Cooper's transmission lines through our substations and we directly serve the customers, the coop does, yes, sir, to my knowledge.

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Q. Central Electric doesn't directly serve customers?
A. Not directly to my knowledge, no, sir.
Q. So it's kind of an organization that the co-ops use to buy power from Santee Cooper at maybe a volume discount, if you will?
A. Somewhat, yes, sir. It was formed -- the cooperatives and Santee Cooper, I mean, we all formed and went together from my understanding back then and formed Central Electric Coop in '40 or '42 or '43, I'm not sure of the year, for that purpose, yes, sir.
Q. Getting back to Item 3 on the notice, though, you have never had any internal discussions or seen any studies concerning vapor barriers and their issues or concerns concerning vapor barriers?
A. No, sir.
Q. When you did your inspection of the vapor barriers --
A. Yes, sir.
Q. There are two types of vapor barriers that could be used for the Good Cents Program; right?
A. Yes, sir.

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Q. And one was the plastic 4 to 6 mil?
A. Yes, sir.
Q. And the other was the --
A. Faced.
Q. Faces paper?
A. Faced Batt.
Q. Were about an equal number of homes built with the plastic and the faced batts or was it more predominantly plastic, 4 to 6 mil?
A. I cannot accurately say.
Q. What would you estimate, I mean, was it pretty close?
A. I don't know if it was exactly 50/50 but it was a good mix, yes, sir, of both.
Q. Good mix. So it wasn't the 90/10 or 10/90?
A. No. It was not a lopsided number, no sir.
Q. Item 4: List the date Horry Electric no longer specified or required a vapor barrier for homes in the Good Cents Program and the reasons for such discontinuance. Do you know the answer -- let me ask you a question. What's date the company no longer specified or recommend a vapor barrier for homes in the Good Cents Program?
A. If I recall correctly, any correspondence that

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I saw of that was I think June of 2003.
Q. And what did you see? You said correspondence?
A. Actually what we saw at that time was -- it was not a letter from Santee Cooper or a correspondence from Santee Cooper. It was a memo, correspondence from one of the contractors, Good Cents contractors in the program at the time, an insulation contractor, Singleton Insulation, and it stated Santee Cooper has become aware of the local building code no longer requiring vapor barriers in exterior -- on the interior of exterior walls, so therefore Santee Cooper, you know, from this date will follow the local building code. In other words they -- that's the first awareness.

- - - - -

(Thereupon, Plaintiff's Exhibits 4 and 5 were marked)

- - - - -

Q. Let me hand to you what's been marked as Plaintiff's Exhibits 4 and 5. I don't know if this is the correspondence or communication that you referred to. These were produced in the discovery by Horry Electric's counsel.

- - - - -

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(Thereupon, discussion was had off the record)

- - - - -

A. I'm not aware of this. I've never seen that.

MR. POPE: I'm sorry. I didn't print that out before.

MR. FATA: Print what on out?

MR. POPE: I think we sent you something that showed it was a 2003 change. I got communication showing the change. Do you have it?

THE WITNESS: On my desk.

MR. FATA: We will short circuit the questions. Can you make a copy, please?

- - - - -

(Thereupon, Plaintiff's Exhibit Number 6 was marked)

- - - - -

Q. Let me show you what's been marked as Plaintiff's Exhibit 6. Have you seen that before?

A. Yes, sir.

Q. I believe that is also document Horry Electric 184 in the discovery responses. That document, did you see that in 2003, Exhibit 6?

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A. Yes, sir.

Q. And who did you talk to, if anyone, concerning the content of this document?

A. I can't give you an exact quote but my recollection, the best I can recall is I'm sure it was discussed here, Number 1, among Ricky and myself and at this time there was another employee on board by that time participating in the program.

Q. And that was?

A. Garrett Gasque, G-A-S-Q-U-E. First name G-A-R-R-E-T-T. We would have discussed that and I feel sure phone calls made to Santee Cooper but I can't recall exactly.

Q. This has a fax header on it of June 4th, 2003. Does that sound about the time you received it, early summer of 2003?

A. Yes, sir.

Q. What local building code?

A. With me reading this, it's saying it recently came to our attention that local building code no longer requires a vapor barrier on the interior of exterior walls, and a lot of this we will revert to the local code on this. Are you asking -- could you repeat that?

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Q. Yes. What is or was the local building code?

A. I'm not sure on that exactly. We didn't get involved in that. The way this reads it says that the local building the county required. It says recently it has come to our attention the local building code no longer requires the vapor barrier on the interior of exterior walls. In light of this Santee Cooper will revert to the local code and no longer require it.

I'm assuming that the county had a vapor barrier on the local building code by reading this but that was the county building department, which is a separate section from ours on the new homes.

Q. When you were implementing the Good Cents Program or involved in the implementation of the Good Cents Program in the years 1998 to 2003 did you believe that there was a building code or local Horry County building code that required vapor barriers?

A. I don't know. I know Santee Cooper required a vapor barrier. If I'm -- I'm not exactly sure what the local building code was at the time on the exterior wall -- interior of exterior wall.

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Q. Were you ever familiarized with the Horry County building code when it came to vapor barriers or did you simply understand that Santee Cooper wanted a vapor barrier, therefore we are going to require a vapor barrier from our customers who want to be enrolled in the Good Cents Program?

A. I would say it's more of we are going to follow Santee Cooper's guidelines that that vapor barrier had to be there.

Q. What was your understanding as to the building code that was used by the Good Cents Program, in other words was it the International Building Code that was kind of the basis for which a lot of these specifications or requirements were included, the Southern Building Code? Are you familiar with the building codes?

MR. POPE: Object to the form. Outside of the scope of the notice.

A. I don't know what code they used as far as setting their guidelines or what they followed. I do not know.

Q. But you recall that in June of 2003 sometime you did review this Plaintiff's Exhibit 6 and

that's when the vapor barrier was no longer required by Horry Electric at that point?
A. Yes, sir.
Q. Was it an immediate no longer have to worry about vapor barriers?
A. I can't recall the exact date but knowing what we did when this came through, yes, sir, it would have been an immediate change.
Q. You talked about the approved builders for the Good Cents Program or you used some type of --
A. Good Cents contractors?
Q. Yes. What's a Good Cents contractor?
MR. POPE: Object to the form. Outside the notice. But you can answer.
A. When the Good Cents Program was implemented us and Santee Cooper as well as other co-ops had loan programs for existing homes, but we had a loan program where we loaned money to our members at a cheaper interest rate than normal to upgrade their homes, heating and cooling insulation. To participate in that program we required a list of certified contractors to do that work. That kind of evolved I would say moreover to having a Good Cents certified list of contractors also.

Santee Cooper's loan program, their loan program for existing, not new, they had quote a list of certified Good Cents contractors. For our program we basically adopted their list for awhile. Our program went away. Our loan program was taken away.
The Good Cents contractors, there were meetings and updates that they invited the contractors to. They had a quarterly meeting to my recollection. I'm not sure of the quote "Training" they did. I don't know stuff like that, but I know there is a Good Cents list.
Q. The Good Cents contractors we will call them, were they required to follow the Good Cents New Home Program requirements?
A. Yes, sir.
Q. Was anyone allowed to deviate from the Good Cents New Home requirement of vapor barriers?
A. Not here, no, sir.
Q. Not in Horry County?
A. No, sir.
Q. So it is what it is. So Exhibit 3 has the requirements and you had to follow those if you wanted to participate in the Good Cents Program?

A. Yes, sir.
Q. Now, what was the average savings for the home, an average home, say 2000 square feet --
MR. POPE: Object to the form.
Q. -- in the Good Cents Program?
MR. POPE: Object to the form. Outside the scope.
A. If I can recall accurately, you know, I know the program was sold originally on approximately 20 percent on a new home in kilowatt hour savings.
Q. So if you have $100 a month bill it might be down to 80, about 20 percent reduction?
A. Yes, sir.
Q. Was there any study ever done by Horry Electric to see in fact what the saving actually was or reduction actually was?
A. I wouldn't say there was an official study.
Q. How about unofficial study?
A. We looked at a few.
Q. And what was did you come up with, what was your range?
MR. POPE: Same objection. Outside the scope of the notice.
Q. Was it 10 percent, 15 percent?

A. Fairly close to that, 15, 20 percent, if I had to put a number on it.
Can I make one point on that?
Q. Sure.
A. As time went by and progressed and I think building codes changed and they required more insulation et cetera in homes, the Good Cents home, naturally the value of that home would go down and that savings would be less, but lesser over a typical home over time.
Q. Because you might have better insulation in 2002 versus 1990?
A. Yes, sir.
Q. Or better windows?
A. Yes.
Q. Or all of the above?
A. Yes.
Q. I don't know if they make better windows.
MR. POPE: Supposed to.
Q. We will go to Number 5 and maybe this might be a good time to start a question and maybe take a little break and maybe go to the room.
For each year beginning 1988 to 2003 the number of new homes you accepted into your Good Cents Home Program plan and the new homes that

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had a vapor barrier installed and that did not have a vapor barrier installed. So --

A. The number of new homes accepted into your Good Cents Program from '88 through 2003? I don't know the exact number.

Q. Do you know, was it at least 1,000?

A. I would say so, yes, sir.

Q. At least 1500? Between 1,000 and 2,000 somewhere?

A. I would say somewhere between there roughly. I'm not sure exactly.

Q. And so as far as you know all of those new homes that were accepted into the Good Cents Program had a vapor barrier installed?

A. Yes, sir.

Q. And that was a requirement. And each of the -- you mentioned there is a room with some files in it?

A. Yes, sir.

Q. Is there going to be a common document that should be in each of those files that you could identify that shows that a home was inspected? I'm just looking for an example that you would say Nate, this would be the document that should be in each of the files that would show

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that we inspected and that there was a vapor barrier, otherwise we wouldn't have signed it. Let's take a little break and kind of leaf through these documents and tell me if you see any. Let's take a little break.

A. There was a Good Cents letter such as here that listed the requirements, yes, sir.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 7 was marked)

- - - - -

Q. Let me show you what's been marked as Plaintiff's Exhibit 7. For new Good Cents homes for the years 1988 to 2003 would each homeowner have in its file a letter similar to that of Plaintiff's Exhibit 7 that you are looking at?

A. I couldn't say every single home would. I mean, I haven't been through all the files but the procedure was yes, there is a letter that should have been in each home that gives the requirements for that home qualifying for Good Cents.

Q. And that letter would be similar in content to Exhibit 7?

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A. Yes, sir.

Q. And although you can't guarantee each file has one of those letters because there might be a mistake or human error, the procedure was that each file for each homeowner have a letter in the file that's similar to Exhibit 7?

A. Correct. Yes, sir.

Q. And that applies for new homes?

A. Yes, sir.

Q. Was there any difference between the letters for new homes versus the letters for retrofitted existing homes?

A. Well naturally the letter on existing homes, the letter would not state anything about a vapor barrier because it's an existing wall. It would be different from the standpoint of that. I mean, you wouldn't be inspecting it. Basically the improved Good Cents letter would be if some insulation would have to be added or storm windows, what size heat pump but not anything pertaining to the initial inspection.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 8 was marked)

- - - - -

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Q. Let me show you what's been marked as Exhibit 8. It's a document apparently prepared by Ricky Lowder, Member Services/Energy Management. I believe it's similar to Exhibit 7.

A. The question, it's a new --

Q. New Home?

A. It's the qualification for a new home.

Q. What was the purpose of Exhibit 8?

A. This is requirements for the homeowner, what needed to be done.

Q. Okay.

A. As well as this is to the contractor, this is to a homeowner.

MR. POPE: Which is to a contractor and which is to a homeowner?

A. Exhibit 8 is to an actual homeowner it appears.

Q. Okay.

A. Exhibit 7 is to the actual builder or contractor.

Q. So Exhibit 8 is kind of the form letter that was sent to homeowners telling them what the requirements of the Good Cents Program for new homes were?

A. Yes, sir.

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Q. And then Exhibit 7 would be sent to the contractor also kind of laying out the Good Cents requirements?
A. Exhibit 7 and 8 are somewhat the same. There were times that a builder took care of the initial set up and the homeowner would do it. Different people dropped different floors plans off. It could go to either/or, the letter.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 9 was marked)

- - - - -

Q. I'll show you what's been marked at Exhibit 9. What was the purpose of exhibit 9? It looks like an agreement.
A. That was the actual agreement that was given out along with the letter when this information was given to a homeowner or a contractor. This agreement was enclosed in that information.
Q. So Exhibit 9 is the agreement that accompanies the requirements and specifications set forth in Exhibit 7 or 8?
A. Yes, sir. And it stated we had the right to inspect at certain stages, and I cannot recall the exact year but at one time the State

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mechanical license was a requirement added by Santee Cooper, so we asked for that initially on this agreement.
Q. And was that agreement, Exhibit 9 and than the content of that agreement fairly consistent throughout the 1988 to 203 period?
A. Yes, sir.
Q. And the same thing with Exhibit 7 and 8, the content generally was about the seem during 1988 to 2003 as far as the specifications and requirements of vapor barriers?
A. Yes, sir.
Q. And you would expect or the procedure was to have an Exhibit 9 form and either an Exhibit 7 or Exhibit 8 form in each of the files for the new homes in the Good Cents Program; correct?
A. Correct.
Q. Let's that a short break and maybe we could walk up to that office and take a look.

- - - - -

(Thereupon, a recess was had)

- - - - -

Q. Mr. Blackburn, we are back on the record. We just went upstairs and you showed us the files that you have for the Good Cents Program, Horry

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Electric's Good Cents Program homes and there are about 22 banker boxes more or less upstairs in the second floor; right? Is that a yes? .
A. Yes, sir.
Q. And that would have all the files for the Good Cents Program?
A. Yes.
Q. That would include all files relating to the new homes Good Cents Programs and retrofitted homes and mobile homes; correct?
A. Yes.
Q. How many members are in Horry Electric?
A. Approximately number is 60,000.
Q. All right. And what percentage was on the Good Cents Program or is on the Good Cents Program?
A. Seven, eight percent.
Q. Let me show you this document.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 10 was marked)

- - - - -

Q. The documents that should be in a file upstairs in those 22 banker boxes if it was a new home file, would the documents include or should they include a document similar to Exhibit 9,

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the contract or the agreement to comply with Horry Electric's Good Cents Home Program?
A. Yes, sir.
Q. Would the file also include or should it also include a document similar to Exhibit 7 or 8?
A. Yes, sir.
Q. And would the file also include a document called inspection form similar to Exhibit 10?
A. Yes.
Q. And these documents, are these kind of the core documents that should be in the file for the years 1988 to 2003 is the for new homes?
A. Yes.
Q. And these documents really didn't change during that time period?
A. No.
Q. And the document, Exhibit 10 has exterior walls checked, that was part of the check of the vapor barrier?
A. Yes. It maybe checked and may not be, yes, but that indicated --
Q. Vapor barrier?
A. Yes, sir.
Q. And that's on Exhibit 10.
Are there any other core documents that

should be in each file that you can describe for me that we haven't talked about or marked at an exhibit?

A. Normally there was an actual calculation of the Manual J calculation as well as a take off normally. I would say take off of square footage of walls from the floor plan.

Q. I'm going to hand to you this stapled set of documents and leaf through it and maybe you can show me what you are referring to if it's in there that would constitute a take off and I'll rip it out of that cluster.

A. That.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 11 was marked)

- - - - -

Q. Exhibit 11 would be the manual take off?

A. Correct, yes, sir.

Q. That would have been done by the inspector such as yourself or Ricky Lowder?

A. Yes, sir. From the floor plans, uh-huh, or on occasion a home is roughed in, dried in, nothing done, no wiring, it could have been measured on the lot.

- - - - -

(Thereupon, Plaintiff's Exhibit Number 12 was marked)

- - - - -

Q. Okay. Then the computer calculations would be included in the file as well or should be included in the file?

A. Yes, sir.

Q. And that would be Exhibit 12?

A. Yes, sir.

Q. So we would have, just to summarize, each file should have under the program for years 1988 through 2003 a document or letter similar to Exhibit I believe it was 7 or 8, and that's telling the homeowner or the contractor what the requirements are for the Good Cents Program?

A. Correct.

Q. File should also have Exhibit 9, which is the agreement for the Good Cents Program?

A. Yes, sir. Correct.

Q. And in order to get the Good Cents rate you had to have a signature from Horry Electric on it; right?

A. Should have been a signature on it, yes, sir.

Q. That means that Horry Electric has approved everything, inspected everything and everything is done in accordance with the plan?

A. If I may? This signature on this agreement was before. This was given along with the requirements initially but it was signed at that point. Doesn't mean the inspection was done. Just at that point.

Q. So 7 and 8 were the letters to the homeowner or contractor with enclosing the contact or the agreement for the Good Cents Program, which was Exhibit 9; right?

A. Yes, sir.

Q. Then there was also the inspection form which was Exhibit 10?

A. Correct.

Q. And that should be in the file?

A. Yes.

Q. Then there would be some manual calculations that were probably done by the Horry Electric inspector, which might have been you or Ricky Lowder or somebody else?

A. Correct.

Q. That would be Exhibit 11.

And then there would be some computerized

take offs probably confirming everything?

A. Yes.

Q. And that would be Exhibit 12?

A. Yes, sir.

Q. But these documents Exhibit 7 through 12 constitute the core documents that should be in each of the files for the new home programs accepted to the Good Cents Plan?

A. And there was normally a data based we called it sheet where once all of this done it was a data take off sheet to give to billing to enter that home on the rate.

Q. What document signified that the vapor barrier was installed in accordance with the --

A. The inspection form.

Q. So inspection form --

A. Verified that.

Q. Exhibit 10 would verify that Horry Electric was satisfied in the exterior wall section that the appropriate vapor barrier was installed?

A. Correct.

Q. That was Exhibit 10.

And we already talked about this: From 1988 to 2003 for the Good Cents Program for New Homes Horry Electric required vapor barriers on

the inside of all exterior walls; right?
A. Correct.
Q. That requirement changed in 2003 and we talked about that letter from Santee Cooper, which was Exhibit 6; right?
A. Yes, sir. Correct.
Q. Now, going to Item 8, have you ever seen or heard of or been aware of any report or analysis, internal documents regarding the use of vapor barriers at any time from 1985 to present, anything to the effect that using the vapor barrier in Horry County causes mold or moisture or is not in accordance with the building code or standards or specifications?
A. Not any documents or anything, no, sir.
Q. Have you ever heard anyone talking about that in any discussions?
A. You know, I can't pinpoint but I'm sure there has been discussions just probably before this change. I can't recall the exact specifics or -- not discussions necessarily here but you hear it in the field and then, you know, do we need vapor barriers, do we not need vapor barriers, I mean in general but no specific documents that I can recall, no, sir.

Q. Did you ever have any conversations with any contractors or any persons concerning not needing vapor barriers before 2003?
A. Not that I can remember. That was not my -- I follow guidelines.
MR. FATA: Let me take a short break and talk to Mark and see if we can wrap it up.
- - - - -
(Thereupon, discussion was had off the record)
- - - - -
Q. Mr. Blackburn, do you know of any code, local or otherwise, any building code that required a vapor barrier during the years 1988 to 2003?
MR. POPE: Objection. Outside the scope of the notice,
A. I don't, no.
Q. So the vapor barrier requirement for the Good Cents Program, your understanding was that that's what Santee Cooper required so that's why it was in the Horry Electric Good Cents Home Program?
A. Yes, sir. Correct.
Q. I don't think I have any more.
MR. POPE: All right.

STATE OF SOUTH CAROLINA :
COUNTY OF HORRY : SS: CERTIFICATE

I, James C. Grady, a Notary Public for South Carolina, do hereby certify that the within named witness, Edward J. Blackburn, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid:

That the testimony then given was reduced by me to stenotype in the presence of said witness, subsequently transcribed onto a computer under my direction, and that the foregoing is a true and correct transcript of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel or attorney of either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Surfside Beach, South Carolina this____day of November, 2011.

James C. Grady, Notary Public for South Carolina.

My Commission expires May 13th, 2019.

- - - - -

STATE OF SOUTH CAROLINA)IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF HORRY)CASE NO.: 2011-CP-26-1266

RONNIE FERRELL, et al.,
Plaintiff,
vs.
HORRY ELECTRIC COOPERATIVE,
Defendant.

DEPOSITION OF: JUAN HOLMES

DATE TAKEN: September 5, 2013

TIME: 9:00 a.m.

LOCATION: NELSON MULLINS RILEY & SCARBOROUGH, LLP
BNC Bank Corporate Center,
Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577

REPORTED BY: Helen L. Rose, CSR, RPR
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public

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(Witness sworn.)

JUAN HOLMES,

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

EXAMINATION

BY MR. TUCK:

Q Just to reintroduce myself, my name is Chris Tuck. I represent the plaintiffs in this action. I'm one of the attorneys for the plaintiffs. And you understand you have been offered as a corporate designee for Santee Cooper?

A Yes.

Q Do you have an understanding of what that means?

A Yes.

Q What does it mean to you?

A That I'm a representative for the company. I may not have, I guess, firsthand knowledge of all the of the details, but have enough experience to fully represent the company.

Q Have you given a deposition before?

A Yes.

Q When is the last time you gave one?

A It's probably been eight to ten years ago.

Q Was it in your capacity as an employee of

Santee?

A Yes.

Q Do you remember what case it was in?

A It was a disability case.

Q Were you testifying there as a corporate designee?

A I was the employee's supervisor's supervisor.

Q Other than that matter, have you been deposed on any other occasions?

A I did go through a divorce, so whatever legal procedures would be involved there.

Q Other than that, anything else you can recall in terms of a deposition?

A (Witness shaking head.)

Q You have to answer out loud.

A Oh, no.

Q Have you ever testified in court other than in possibly the divorce action?

A That's the only time.

Q I'll just ask if you have any confusion about the questions I ask or need clarification, please ask me, and I will do my best to rephrase them for you. Is that okay?

A That is okay.

Q What is your current occupation?

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A My title is manager conservation and energy efficiency at Santee Cooper.
Q Would you repeat that one more time for me?
A Sure, manager conservation and energy efficiency at Santee Cooper.
Q Would you walk me backwards through your job history at Santee just by year?
A Backwards?
Q If it's easier to go the other direction, whatever is best for you.
A I will go chronological. I was hired in May of '87 in what was then the energy management department. Worked there till the fall of '89 when I went into distribution planning. Of course, all of this is at Santee Cooper.
I left there in '95 to work at what we call the tech building. It was the substation maintenance, the substation groups that handle the relaying of equipment in substations. I was there till 2006 when I came over to be the supervisor -- I guess it was the manager of commercial services. Then we had a couple of re-org's. I stayed in that department, but I took over more responsibility, and then became the manager of conservation and energy efficiency.
Q How long have you had that title?

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A Let's see. Maybe five years.
Q So it's manager of conservation and energy efficiency?
A Yes.
Q Before I get into your work there, can you give me an idea of what your educational background is beyond high school?
A I have a B.A. in mathematical sciences, a B.S. in mechanical engineering, and an M.B.A. I also have an M.S. in management, but it was a step in getting the M.B.A.
Q Can you tell me when those degrees were obtained and where?
A I went to Clemson for the undergrad, mathematical sciences, '82. Mechanical engineering, '84. Then the M.S. and M.B.A. in '93. May have been late '92 for the M.S., but I believe it was January of '93 for the M.B.A.
Q Was that Clemson as well?
A That was at Webster.
Q What year did you say you got that degree? Was it '93?
A The M.B.A., yes.
Q Any additional education beyond that date?
A Just continuing education type things for work or to maintain my P.E. license.

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Q Let's talk about that. What professional licenses do you have?
A My professional engineering license.
Q What types of continuing education do you do?
A You can get credit for attending conferences, which I've done. Most of those are sponsored through APPA, American Public Power Association. I have taken some classes through Trident Tech, some classes provided through Santee Cooper.
Q In your current position with the construction at energy efficiency, could you describe your job duties?
A I can do that. Of course, a lot of what I do is managing personnel, handling any personnel related issues, managing the budget. So I guess in the latter part of my career I have gotten more into managing people than doing the hands-on visits with customers.
Q Who do you report to within the corporate hierarchy at Santee?
A The senior vice president of customer service.
Q And who is that?
A His name is Marc Tye.
Q How do you spell the last name?

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A T-Y-E, and his first name is with a "C".
Q Do you know who Mr. Tye reports to?
A Lonnie Carter. He's the president.
Q Are there other senior vice presidents there right now besides Mr. Tye?
A I don't know all of them exactly by title. There are other vice presidents, yes.
Q Can you think of anyone there who is a senior vice president besides Mr. Tye?
A Again, I'm not sure who is senior. At his level reporting to Lonnie, Jeff Armfield, R.M. Singletary, Jim Brogden, Laura Varn. But like I say, I'm not sure -- they're vice presidents at some level. I don't know if they are senior.
Q When you say you're the manager of construction and energy efficiency, is that the name of a department there?
A Yes, it's actually conservation and energy efficiency. And it's a department, and I work directly for Marc.
Q Do you know how many departments there are?
A At Santee Cooper?
Q Yes.
A I do not.
Q When you were preparing for the deposition

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today, did you have an opportunity to look at the notices of deposition that were served by the plaintiffs and by Horry County?
A Yes, I did.
Q Did you do anything to prepare for the deposition today other than meeting with your lawyers?
A I did not.
Q So you didn't have any other conversations with people at Santee, other employees, to prepare for the deposition?
A Well, as part of just doing some general discussion, yes, I have talked with some other employees.
Q Who did you talk to to prepare for it?
A I have spoken with Glenn Cannon, who hired me back in '87. I spoke with Herman Holmes, who is the supervisor of our residential programs, and had a brief sit-down with several other people who had worked in the department either with me or after I left, Sherry Coleman, Sam Livingston, Ken Sandiford.
Q How do you spell that last name for Ken?
A S-A-N-D-I-F-O-R-D. There were some others in there. Susie McCaskill. There may have been a couple of others.
Q Do you have an estimate of how much time you

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spent preparing for the deposition today?
A Maybe with time speaking with Rush, maybe eight to ten hours.
Q Did you understand the documents were also produced to the lawyers in this case for this deposition today?
A I have seen some documents that I think are for this because they have Exhibit letters on them.
Q What is Mr. Cannon's current position?
A He's retired.
Q Do you know when he retired?
A I do not.
Q You mentioned Herman Holmes; is that right?
A Yes.
Q And you said he is the manager of residential programs?
A He is the supervisor. I think officially it's residential energy services.
Q Is residential energy services, is that a department within Santee?
A I'd say it's a unit. It's in my department. It is under conservation and energy efficiency.
Q Does he report to you?
A He does.
Q You mentioned a Sherry Coleman.

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A Yes.
Q Who is that?
A At one time she worked in residential programs. Now she is on the commercial energy services side. That also reports to me. That unit department reports to me.
Q You mentioned, was it a Sam?
A Sam Livingston.
Q Who is that?
A He is currently the office manager at Garden City.
Q Do you know what he does in that position?
A I never worked in that position, but he would oversee that office, oversee the customer service reps. So you would handle walk-in traffic from customers, collecting bills, meeting with customers.
Q When you say customers, do you mean cooperatives, for example?
A Santee Cooper customers.
Q You mentioned Ken Sandiford?
A Uh-huh.
Q Who is that?
A He is currently, I think it's the manager over our customer care center, our call center, and at one time worked in the department.

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Q In the customer care center, would they handle contacts with both the residential and commercial customers?
A Yes.
Q Then you mentioned, was it Susie. . .
A McCaskill.
Q McCaskill. Who is that?
A Again, she's been in the department, gosh, over 20-something years. She's currently what we call an energy advisor. And in her capacity in the department, the unit she works in, which is energy support services, they handle our loan program. So she's one of our primary contacts for customers and trade allies on our loan program.
Q Do you have a general understanding of why you are here today?
A I think that I have a general understanding.
Q What is your understanding of what this case is about?
A Okay. I think you-all represent some Good Cents customers with concerns about the vapor barrier.
Q When is the first time that at Santee you ever heard of the Good Cents program?
A 1987 when I was hired.
Q When you were hired in 1987, were you

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hands-on with respect to the Good Cents program?
A Yes, I was.
Q What were you doing with that program at that time?
A My responsibility was to educate the co-ops and any of their customers or HVAC contractors on the program. Builders, as well.
Q Do you remember how many co-ops there were at the time?
A Santee Cooper served 15 at the time.
Q Who hired you into Santee in 1987?
A It was Glenn Cannon.
Q Do you recall what his position was at that time?
A I think by title he might have been manager. We were called energy management.
Q Did you report to him in 1987?
A Uh-huh.
Q You have to answer out loud.
A Yes, I did.
Q So you were in the energy management department in 1987, right?
A That's correct.
Q And what was your title at that time?
A Supervisor of wholesale programs.

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Q Other than -- at that time in 1987, other than having responsibility with the co-ops and educating the co-ops, were there any other job responsibilities you had at that time?
A That was my primary. Certainly, as part of my own learning curve, I studied house plans and did calculations so that I could do my -- do the same thing with the co-ops.
Q And at that time do you recall dealing with Horry Electric?
A Yes.
Q How so?
A I worked with Eddie Blackburn and Horace Jordan, again training them on the program, Manual J calculations, meeting with any builders or contractors that they needed help with.
Q You said Manual J calculations?
A That's correct.
Q How would you describe that to a layperson?
A It's a method to determine the heat gain on a home primarily for sizing a heat pump.
Q At the time that you joined Santee in 1987, was the Good Cents program already underway?
A I think it had just started.
Q Did you say it just started?

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A Yes.
Q At that time was Mr. Cannon, did he have what I would call final supervisory authority over the Good Cents program for Santee?
MR. SMITH: Object to the form of the question.
Also this has all been background. That's fine. But I want to make it clear the points on which she's speaking for Santee Cooper are only those which you have identified in the deposition notice.
MR. TUCK: I understand completely.
BY MR. TUCK:
Q I'm just trying to get an idea if you happen to know personally at the time you joined in 1987 what Mr. Cannon's responsibilities were with respect to the Good Cents program.
A He would have been responsible for -- we had our own team of residential -- I don't know what their title was, I'll call them advisors, at that time who would assist customers and builders with the Good Cents program. So he would have been over that. I don't remember -- at that time we did have a loan program. I can't remember if that was under him at that point or not.
Q What was the loan program for?

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A The loan program is a program where Santee Cooper loans money to people at a low interest rate to encourage customers to upgrade to more energy efficient features, such as upgrading a heat pump.
Q At the time you joined in 1987, would there have been multiple departments' responsibility for the Good Cents program?
A Well, you had asked me my title. Of course being wholesale, that meant the co-op piece. There was also a residential piece and later more involvement with commercial. So Glenn would have been over those. But I don't even remember if we had separate unit numbers at the time.
Q Would any part of your responsibilities at the time you joined in 1987 have involved marketing to co-ops for the Good Cents program?
A What do you mean by marketing?
Q To engage or recruit co-ops into the Good Cents program.
A I went to the ones who were participating.
Q You mentioned a couple of names from Horry Electric at that time were Mr. Blackburn and Mr. Jordan; is that correct?
A That's correct.
Q Do you recall what the nature was of your

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communications with Mr. Blackburn at that time?
A Well, they were practically in my backyard. I could go meet them face-to-face any time.
Q What would have been the purpose of the meetings?
A They might call with -- maybe they had a builder that had questions, and they wanted me to meet with them. We had a lot of meetings, so I might see them at a meeting. I mean, I knew them, so I mean they could call me up, I could call them up.
Q In terms of co-op education, looking at the 1987 time frame, would there have been educational materials you would have provided to Horry Electric for the Good Cents program?
A There would have been a set of standards that they would have.
Q Do you recall if those standards changed over time?
A They would change over time.
Q What was the process for modifying the standards?
A Well, certainly when Santee Cooper started the Good Cents program, that was an established program by a company called SEI. So SEI had worked with South Carolina Electric & Gas. We had a statewide standard.

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So to make changes, we just couldn't make changes without some back and forth with us and the co-ops, with Electric and Gas, with SEI.
Q Let me back up a moment. What was the purpose of the Good Cents program?
A The Good Cents program -- certainly, you have a certain level of structural requirements in the building code. The Good Cents program also built in energy efficient measures so that you would have maybe a higher level of insulation in the walls, the ceiling, floor than what was required by code. So it was to give you a more energy efficient home.
Q Again, as a result of the effort to get energy efficient homes, would that have ultimately helped Santee and the co-ops save money on their energy costs as well?
MR. SMITH: Object to the form of the question. Also this is outside the scope.
BY MR. TUCK:
Q You can answer.
A Ask me again.
MR. TUCK: Can you read that back.
(Whereupon, the record was read as requested.)
THE WITNESS: It could.

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BY MR. TUCK:
Q So at the time you joined in 1987, did you come into the company with an existing set of standards of the Good Cents program that would have been provided to co-ops?
A When I started, they would have given them to me, as well as the co-ops.
Q At the time you joined were the standards considered requirements for your co-ops?
A The requirements were statewide. As a participant in Good Cents, there were statewide requirements that were established with SEI, South Carolina Electric & Gas, us, and the co-ops. To use the name of the program you would have to abide by those standards.
Q Did Santee ever impose conditions in addition to what State law may have required for participation in the Good Cents program?
MR. SMITH: Objection. Outside the scope.
THE WITNESS: All right. Read it back.
(Whereupon, the record was read as requested.)
THE WITNESS: Well, I mean Good Cents is not a State law, but to use the program name there were program standards that had to be followed. We did not

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impose them. We followed them as agreed upon by the participating utilities with SEI.
BY MR. TUCK:
Q When you had these standards, again, going back to the 1987 time frame, were there any variations in those standards for co-ops throughout the state of South Carolina?
A Not to my knowledge.
Q So the standards couldn't be different for Horry Electric, as opposed to some other co-op?
A Not another participating co-op, no.
Q When you had standards for a co-op, you would not -- they wouldn't have the authority to vary from those requirements or those standards -- strike that. Let me try this again. Would you refer to the standards as a requirement?
MR. SMITH: Objection. Asked and answered.
BY MR. TUCK:
Q Let me try to clarify it. If you have standards that you give to Horry Electric for the Good Cents program, is Horry Electric allowed to deviate at all from those standards?
MR. SMITH: Object to the form of the question.
THE WITNESS: Do I need to answer?

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BY MR. TUCK:
Q Yeah.
A Horry Electric should not deviate from what the standards had.
Q At the time you joined Santee in 1987, did you have an understanding of how the Good Cents standards were put together, the process for it?
A No, I had no background in that.
Q Did you ever later come to any understanding of how those standards were put together?
A How do you mean?
Q Who comes up with them?
A Well, the program was from a company called SEI, so they have some standards, certainly -- they would not know building codes in any particular area, and I wouldn't do anything to violate local building codes. But they would have provided the general framework in South Carolina. South Carolina Electric & Gas was on board as well and Santee Cooper, Central, the co-ops, all met with SEI to get this understanding of how the program might work here.
Q And SEI, just to clarify, is that Southern Electric?
A I believe that's correct, yes.
Q That process you just described, do you have

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any understanding as to whether that process has changed over the years or whether it's been the same?
A What are you calling the process?
Q What you just described to me, the input that goes into the adopting the standards.
MR. SMITH: Objection. Beyond the scope.
THE WITNESS: I mean to use SEI's program, there would have to be a set of standards. You know, Santee Cooper, South Carolina Electric & Gas, the cooperatives, there was always this exchange of information. If anybody had concerns, then the standards could be reviewed, but I don't think we could make changes without SEI's okay.
MR. JOHNSON: Chris, are we still on background personal knowledge information, or have we moved to the list of designated matters? I don't care. I just don't want to waive an objection by -- I think much of this is personal knowledge not related to the notice.
MR. TUCK: I'm going to get into the vapor barriers issues.
MR. JOHNSON: Can we agree you will tell us when you do?
MR. SMITH: That will make my life easier. Yours too. I won't be interrupting your questions as

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much.
BY MR. TUCK:
Q Okay, let's go ahead. I'm going to move into topics on the notice, and I want to get into vapor barrier issues.
MR. SMITH: I want to say something. If you want to excuse the witness while I say it, that's fine. It has to do with our preparation. As I've told both of you, this stuff happened a real long time ago. There are going to be places where the witness -- where we will have been unable to get more than the witness is able to give. So you-all, I just want to give notice of that. And there are certainly -- before the deposition I sent you my objections to your notices, and we have discussed those separately. But I just wanted to let you-all be aware of that.
BY MR. TUCK:
Q Let me just ask you one follow-up question. You mentioned earlier that to your knowledge the standards for the Good Cents program would not have varied from one co-op to another; is that right?
A That's correct.
MR. SMITH: I object to the characterization of the testimony, but whatever.

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BY MR. TUCK:
Q So a participating co-op in Greenville, South Carolina would have had the same Good Cents standards as Horry Electric in Horry County, correct?
MR. SMITH: Object to the form of the question.
THE WITNESS: If they were participating -- if they were Santee Cooper -- I mentioned 15 co-ops. And I think 14 of the 15 ultimately signed up. Of those 14, they should stick with the statewide standard.
BY MR. TUCK:
Q In terms of the deposition preparation for today do you specifically recall any documents that you looked at to prepare for the deposition?
A I have looked at some documents that were shown to me as exhibits with A, B, C or whatever.
Q Right. And we had some documents that were attached to the deposition notice that I had served and that were marked A, B, and C.
A Okay.
Q Other than those documents, do you recall any others that you reviewed in preparation for the deposition?
A I'd have to look. I've looked at some

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standards. If there is something in particular you want me to look at, I will.
Q Do you know that Horry Electric has sued Santee out of matters that arose in the case where I'm counsel?
A Yes.
Q Have you seen the Complaint in that case?
A I think that I have, yes.
MR. SMITH: This deposition, by the way, is not noticed in either -- in that case. This deposition is noticed in you-all's case. We're not a party to your case.
BY MR. TUCK:
Q Let's talk a little bit about the vapor barrier issues. When you began working at Santee in 1987, did you -- were you involved at all in discussion of vapor barrier requirements at that time?
A When we started, it was a new program, so I would have been learning the standards along with everybody else. So you call it a requirement. I don't remember whether that was a requirement.
Q What do you understand a vapor barrier to be?
A Well, it is confusing. I think sometimes we use vapor barrier and air barrier interchangeably. But the vapor barrier is to control moisture.

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Q You mentioned an air barrier. Is an air barrier different than the vapor barrier?
A To me it is, yes.
Q How so?
A When we talk about the tightness of a house, that's typically an infiltration issue where air may come into your house, areas not sealed, gasketed, that kind of thing.
Q Is an air barrier used to control moisture?
A It should not be.
Q And do you have an understanding that there are different types of vapor barriers?
A There are different materials used, yes.
Q So when you joined Santee in 1987 and you were learning about vapor barriers, what was the process for educating employees at Santee about vapor barriers?
MR. SMITH: Object to the form of the question.
THE WITNESS: Again, we would have a standards book that would tell you what a proper vapor barrier might look like.
BY MR. TUCK:
Q Do you know who was responsible for putting that standards book together?

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A Well, it would come from SEI. And then if there were any edits from us or the co-ops, I don't know if it had to go back to SEI. I think we might have just been able to submit it for their okay.
Q Would you have seen a standards book right after joining Santee in 1987?
A Yes.
Q And how often would that standards book have been changed?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't know.
BY MR. TUCK:
Q So Santee could recommend a change to the standards book if it wished; is that correct?
A We could recommend a change.
Q And then what would be the process after you recommend that change? Would it then go back to SEI for review?
MR. SMITH: Again, this is outside the scope.
MR. TUCK: I think this is within the scope in terms of the recommendations and requirements of the vapor barriers for the Good Cents program.
BY MR. TUCK:
Q But the objection being stated, go ahead.

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A We typically would go back to the co-ops, get their feedback. Or we could go right to SEI and get their take on it. But any change, we'd run by the co-op.
Q I just want to make sure I understand the process. If it's a -- when you get that standards book. And let's just take any time you've been at Santee, if there is a standard in there with respect to vapor barriers, you're allowed to suggest a modification to that, to SEI; is that right?
A Well, I was in the department a couple of years, so I've been out of it until recently in the last five or so. Then I've gotten back in it. So I do not know the process at Santee Cooper. But certainly we had good dialogue with SEI, with the co-ops, with Electric and Gas about -- again, it was a statewide standard, to my understanding, so any changes would have to be discussed.
Q Were you ever a part of any discussion at Santee about suggested changes to vapor barrier standards in the standards book?
A I do not know.
Q Were you ever a part of any discussions at Santee involving changes to standards other than to vapor barriers?

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A I don't know that, but it's possible.
Q Do you have any understanding as to whether if suggestions were made to changes in the standards book whether those suggested changes would then have to go to the co-ops for review?
A Well, I mean, some of the changes could have come at the request of the co-op.
Q Is there someone at Santee who might be in a better position to discuss the process for suggesting changes to the standards book, like Mr. Cannon?
MR. SMITH: Object to the form of the question. Also what time are you talking about?
MR. TUCK: Starting in 1987. If we were looking at 1987 --
MR. SMITH: To the present?
MR. TUCK: Well, I'll ask the question.
BY MR. TUCK:
Q I will try to clarify this. During the time that you have been at Santee -- let's go all the way back to 1987 -- who is the person at Santee who is best equipped to answer the question of how suggested changes to the standards book would have been handled?
MR. SMITH: Object to the form of the question. Also outside the scope of the deposition notice.

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THE WITNESS: In '87 Glenn was the one who started it. He would be your -- he would have the most knowledge; however, he is not at Santee Cooper.
BY MR. TUCK:
Q Do you know when he retired?
A I do not.
Q Do you know if he still lives in this area?
A He is in North Carolina, so he is close.
Q I'm not sure if you answered this question earlier. Were you ever a part of any process where suggesting changes to the standards book would have been communicated to co-ops for their comments?
A I don't remember. I could have been, since I did work closely with them.
Q You mentioned in 1987 you had a responsibility for educating co-ops; is that right?
A That's correct.
Q How long did you have that particular job responsibility?
A Probably two years, give or take.
Q So in roughly 1989 would you have -- starting in that period, would you still have had any responsibility for educating co-ops?
A No.
Q Did you have any communication with co-ops

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beginning in 1989?
A What kind of communication are you talking about?
Q Anything.
A Yes.
Q Like what?
A Well, I mean I still know Eddie, I still know Horace. In my current capacity some of those co-op folks that are still around participate in the Green Power program. I have been to Green Power meetings with them.
Q You mentioned earlier the standards, vapor barrier standards. Let's go back to 1987. Those would have come from SEI; is that right?
MR. SMITH: Object to the form of the question.
THE WITNESS: All the standards would have originated at SEI.
BY MR. TUCK:
Q Do you know if Clemson University was involved at all in establishing Good Cents standards?
A I do not know.
Q Do you know if anyone other than SEI was involved in setting Good Cents standards?
A I believe it was a Gulf Power program also,

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so I don't know if those two entities worked together.
Q At any point from 1987 to the present have you personally been involved in the process for suggesting changes to Good Cents standards?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: I don't know. Again, I would have been doing that work from about mid '87 to late '89. I don't --
BY MR. TUCK:
Q Do you have any -- in the 1987 to 1989 time frame, do you have any recollection of providing standard books to co-ops for their review and comments?
A I do not have personal recollection, but they would have had to have the books.
Q Did you have any recollection as to whether Horry Electric ever made any comments with respect to the standards books?
A They may have.
Q But you don't have a specific recollection of it?
A I do not.
Q Again, in the 1987-1989 time frame, if a co-op were to make suggestions with respect to vapor barriers or anything else in the standards book, would that have been for the matter of procedure passed along

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verbatim to SEI for their review?
A I don't know about verbatim to SEI. Certainly, we had many channels of communication. There was me as sort of a conduit. They could write us a letter. We had meetings. So there were opportunities for them to speak directly to us.
Q I want to make sure I understand the protocol for the 1987 to 1989 time frame with respect to the vapor barrier standards. So going back to 1987 to 1989, just in that time frame, you would get a standards book that would include vapor barrier requirements from SEI; is that right?
MR. SMITH: Who is you?
MR. TUCK: Santee.
THE WITNESS: Yeah.
BY MR. TUCK:
Q And then when you got, or when Santee received the standards book, would there be any process for review of that standards book within Santee?
A I don't know the process, but we would have to look them over.
Q When you say look it over, what do you mean?
A To look at its applicability to our customers.
Q When you say applicability to customers, what

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do you mean?
A Well, I mean one of the big pieces of the Good Cents program is proper sizing of the heat pump. So that was an area you would want to look real closely at, because especially back then it was sort of a new concept for some. A lot of us would just go, oh, you have a ton for every 500 square feet. But with Manual J, you can actually do the calculation to come up with an exact size. So there would be sections in there that just may warrant discussion for how builders, heat pump contractors, and customers might or might not participate.
Q When you say customers, do you mean residential customers?
A Yes. This would have been for residential.
Q So if you use the term, the generic term customer, you would not put a co-op into that basket; is that right?
MR. SMITH: Object to the form of the question.
THE WITNESS: Well, I mean the co-op is our customer, so in a sense co-op customers are our customers. I'm a co-op customer. So a customer is anyone who uses your product, so. . .

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BY MR. TUCK:
Q Do you have a Good Cents home?
A I do.
Q How long have you had it?
A About 14 years.
Q Is your home located in Horry County?
A Yes, I am a Horry Electric customer. It was built under the Good Cents program there.
Q As part of -- strike that.
Do you have an understanding as to whether you are a class member in the case that you are here for today?
A I opted out.
Q Did you have any discussions at Santee about this case other than with your attorneys?
A No.
MR. SMITH: I object to that. She told you already that she talked about this case, so I don't want you to try to pit her against herself. I object to the form of that question. I'm sorry I didn't get it out fast enough.
BY MR. TUCK:
Q So, you know, I want to make sure I understand as best I can. What would happen when the standards book would come from SEI in the 1987 to 1989

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time frame? When you received that book were there certain people within Santee whose responsibility it was to review that standards book?
A Probably. I'm not sure.
Q Did you regard yourself as having a job responsibility at that time to review the standards book?
A Well, I should certainly need to be familiar with it. I don't think I had responsibility for review.
Q Do you know who else would have had any responsibility with respect to the review of the standards book in that 1987 to 1989 time frame?
MR. SMITH: Object to the form of the question. Also it's beyond the scope.
THE WITNESS: Glenn would have primary. And again we would share it with the co-ops for their review as well.
BY MR. TUCK:
Q Would the normal procedure in that 1987 to 1989 time frame have been to take that standards book upon receipt from SEI and send that to the co-ops for their review?
MR. SMITH: Object to the form of the question.

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THE WITNESS: I don't know the normal procedure, but the co-ops would have had a chance to review it.
BY MR. TUCK:
Q Again, looking in the '87 to '89 time frame, do you recall whether any co-ops actually suggested changes to Santee for anything listed in that standards book?
A I don't have a personal recollection, but they had opportunity to respond, yes.
Q When you would transmit the standards book to co-ops, was it done with the invitation for those co-ops to review and suggest any changes to the standards?
A Yes.
Q When you were involved in administering the Good Cents program, did you believe that the Good Cents standards complied with the applicable local building codes?
A Yes.
Q What made you believe that?
A Because you can't violate the local building code.
Q Yeah, I understand that. I'm trying to get a sense of -- you understand that the -- you get a

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standards book from SEI that I believe you said is a set of standards for the entire state; is that right?
A Correct.
Q Do you know -- was it your understanding that that standards book would have complied with the local building codes throughout the state of South Carolina?
MR. SMITH: Objection. That's beyond the scope. She can testify based on her knowledge if she has any.
THE WITNESS: I don't know the building codes across the state, but we couldn't do anything in the program that would be a violation.
BY MR. TUCK:
Q Did you ever have any communication -- strike that. During the time you have been at Santee, have you ever communicated directly with SEI with respect to the Good Cents program?
A I don't remember, but probably I had met them.
Q Do you have an understanding of whether local building codes can vary from municipality to municipality throughout the state?
MR. SMITH: Objection. Beyond the scope.
THE WITNESS: I don't know building codes, but I would think there would be a statewide

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requirement, but I don't know.
BY MR. TUCK:
Q So just you personally, do you personally have the expectation that building codes will not vary from municipality to municipality in this state?
MR. SMITH: Object to the form.
THE WITNESS: I don't know the building codes. I don't know if I should give an example, but after Hurricane Hugo my understanding was that building codes got more strict for structural reasons. So coastal counties may have a different code than inland. I'm not sure.
BY MR. TUCK:
Q That's something you would not have personally looked at?
A Not personally, no.
Q Do you know of anyone at Santee whose job it was to know local building code requirements?
MR. SMITH: Object to the form of the question. Also object as beyond the scope.
THE WITNESS: I don't know if it was anyone's job responsibility to study local building codes.
BY MR. TUCK:
Q In the late 1980s was there an in-house legal department at Santee?

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A I think. I'm not sure. I was a new employee.
Q Just in the late 1980s when you first joined Santee, were you aware of any communication with in-house lawyers with respect to vapor barrier requirements for your co-ops?
A No.
MR. SMITH: Object to anything that gets into Santee Cooper's communication with its attorneys in house or outside.
BY MR. TUCK:
Q When you get that standards book from SEI and going back to late 1980s, was it Santee's position that SEI would have been responsible for making sure that the standards would not violate local building code requirements?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't know that they -- I don't know that SEI would know our building codes.
BY MR. TUCK:
Q So Santee would not have had the expectation that the standards book would have accounted for variations of local building code requirements across the state of South Carolina?

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MR. SMITH: Object to the form of the question. Also object as beyond the scope.
THE WITNESS: Run that by my again.
MR. TUCK: Could you repeat the question.
(Whereupon, the record was read as requested.)
THE WITNESS: I don't think that SEI would know necessarily the State building code.
BY MR. TUCK:
Q Let's take the next step. When you get that standards book, when Santee receives that, what does Santee do, if anything, to make certain that the standards in that guide are not -- are going to account for variations of local building code requirements?
MR. SMITH: Same objection to the form and to the scope.
THE WITNESS: I don't know what we would do, but as I have mentioned, there was a lot of discussion with our cooperatives, with builders, with SEI, and South Carolina Electric & Gas. But the builders would certainly know the building code and would have been able to point out anything there. But I don't know what our expectation was.
BY MR. TUCK:
Q When you passed that standards guide to the

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co-ops, is it Santee's understanding that the standards guide is then provided to the builders as well? Is that right?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't know who we -- what builders we gave it to, but certainly in dealing with the co-ops and if we were trying to educate people about the program, then builders would have a chance to review the standards then and could do that.
BY MR. TUCK:
Q Would Santee have permitted co-ops to vary from the standards for vapor barriers in the standards book if they so wished to do so?
MR. SMITH: Object to the form of the question.
THE WITNESS: The Good Cents Program was SEI's program, so we all had to abide by the same statewide standard, whether it be Santee Cooper, the co-ops, or Electric and Gas.
BY MR. TUCK:
Q You said you did not have an understanding that SEI's standards book would account for variations of local building code requirements, right?
A Correct.

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Q So when Santee passes that book to the co-ops, was it Santee's understanding that the co-ops would then have the ability to vary those terms or vary from the prescribed standards in the standards book with respect to vapor barrier requirements?
MR. SMITH: Object to the form. And object it's beyond the scope.
THE WITNESS: As part of the agreement to use the Good Cents name, you can't vary. So if there were concerns, they would need to be shared with SEI to get any of that squared away. Their program, they wouldn't -- like I say, you wouldn't be able to violate local building code with their program.
BY MR. TUCK:
Q So would Santee then put the burden on the co-ops to account for local building code requirements? Is that right?
MR. SMITH: Object to the form of the question.
THE WITNESS: I'm not sure what you mean by burden. Again, we would have an exchange. I mean, I don't know the building code, in your example before, in Greenville. So certainly if there were a participating co-op there, they would have to bring it to our attention. But there shouldn't be anything in

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the standard to go against local building code.
BY MR. TUCK:
Q So the standards that Santee passed along to co-ops, it is your expectation that those standards will, if done as prescribed by the standards, will meet local building code requirements; is that right?
MR. SMITH: Object to the form of the question. And object, it's beyond the scope.
THE WITNESS: My understanding of the Good Cents program would be that if you followed the program, you would not violate the building code.
BY MR. TUCK:
Q So if you pass a standards book to Horry Electric, you don't expect Horry Electric is going to have a problem with local building code requirements if it implements the program as set forth in the standards book that you have?
MR. SMITH: Object to the form of the question. Also object it's beyond the scope.
THE WITNESS: Tell it to me again.
MR. SMITH: Can you read back the question.
(Whereupon, the record was read as requested.)
THE WITNESS: I would expect if Horry had a concern that they would have let us know. Otherwise,

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the standard shouldn't be in violation of the building code.
BY MR. TUCK:
Q The question, though, if it's a question of whose responsibility is it to determine if the standards book violates the local building codes, it's Santee's position that that burden falls on Horry Electric; is that right?
MR. SMITH: Object to the form of the question. Object as to beyond the scope.
THE WITNESS: I don't know our position on who should do that.
BY MR. TUCK:
Q You've been involved in the Good Cents program now for well over a decade, right?
A I worked in the program for two years. Then I left to go to distribution planning. Now I'm back on the energy efficiency side, but I have not done Good Cents.
Q If there is a violation of local building code requirements from the implementation of Good Cents standards, who bears the blame for that?
MR. SMITH: Object to the form of the question. Object as way beyond the scope.
THE WITNESS: I don't know.

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BY MR. TUCK:
Q I am trying to figure out is this a co-op -- strike that.
When you get the standards from SEI, it is your understanding that those standards meet local building code requirements unless the co-op tells you differently; is that right?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: I mean the co-op had the opportunity to share any concerns with us. We should all review the standards.
BY MR. TUCK:
Q Did you send -- strike that. Did Santee send out communications to Horry Electric and other co-ops specifically telling the co-ops that they need to review those standards to make sure they're compliant with local building code requirements?
MR. SMITH: Object to the form. Object as to beyond the scope.
THE WITNESS: We would communicate regularly with them on the standard. I don't know that we said look at the vapor barrier, look at the building code. We probably just said review and provide comments.
BY MR. TUCK:
Q Have you seen any document that has ever

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suggested or required of your co-ops that they review the standards book with an eye toward making sure those standards are consistent with local building code requirements?
MR. SMITH: Object to the form. Object as beyond the scope.
THE WITNESS: I have not seen a request for them to look at building codes.
BY MR. TUCK:
Q Are you aware, are you personally aware of any conversations with Horry Electric where Santee solicited input on whether the Good Cents standards were consistent with local building code requirements?
A I am not personally aware.
Q If Santee had concerns about Good Cents standards and whether they were consistent with local building code requirements, would it have been Santee's responsibility to share those concerns with the co-ops?
MR. SMITH: Object to the form. Object that's beyond the scope.
THE WITNESS: We shared the standards with the co-ops. Again, I don't know that we specifically said look for a problem. I think we said review it and get back to us.

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BY MR. TUCK:
Q Did Santee regard co-ops as being partners in the implementation of the Good Cents program?
MR. SMITH: Object to the form. Also object as beyond the scope.
THE WITNESS: I can only speak for myself. I considered them partners.
BY MR. TUCK:
Q So if Santee learned of any information that might indicate that the standards, as Santee obtained the Good Cents standards, were inconsistent with local building code practices, would it have been Santee's obligation to share that information with its business partners?
MR. SMITH: Object to the form of the question. Object as beyond scope. Object because it calls for a legal conclusion.
THE WITNESS: I do not know what our obligation would be.
BY MR. TUCK:
Q Does Santee have an obligation to be fair in its business dealings with its co-ops?
MR. SMITH: Same objections.
THE WITNESS: I mean, personally speaking, we should be fair.

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BY MR. TUCK:
Q Santee should be honest with its co-ops about problems that it may learn of with respect to the Good Cents program, right?
MR. SMITH: Object to the form and it's beyond the scope.
THE WITNESS: I think so.
BY MR. TUCK:
Q In fact, you know that the co-ops are really relying upon Santee to provide proper guidance with respect to the implementation of the Good Cents program, correct?
MR. SMITH: Object to the form of the question.
THE WITNESS: Certainly, we worked with them on the program, but they had -- they were willing participants as well.
BY MR. TUCK:
Q With respect to the Good Cents program, Santee is in a superior position when it comes to the standards and requirements for that program, right?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't think we're in the superior position.

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BY MR. TUCK:
Q So is it Santee's view that Horry Electric has an equal obligation with Santee in terms of knowing the requirements or standards with local building requirements as it relates to the Good Cents program?
MR. SMITH: Object to the form of the question.
THE WITNESS: We should both be responsible for knowing the codes.
BY MR. TUCK:
Q If Horry Electric learns something about the Good Cents program that impacted the design specifications for it, you would expect Horry Electric to share that information with Santee, wouldn't you?
MR. SMITH: Object to the form of the question.
THE WITNESS: I would hope they would share any concern that they had.
BY MR. TUCK:
Q And at the same time if Santee had a concern about design specifications in the Good Cents program, your co-ops could expect you to share that information with them too, right?
MR. SMITH: Object to the form.
THE WITNESS: Again, I think we had open

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dialogue with them to share information back and forth.
BY MR. TUCK:
Q Do you believe Santee has an obligation to share information it develops with its cooperatives if it determines that certain design specifications in the Good Cents program may be problematic?
MR. SMITH: Object to the form of the question. Calls for a legal conclusion.
THE WITNESS: I mean any problems I would think we would want to work on together.
BY MR. TUCK:
Q It's the fair thing to do, right?
MR. SMITH: Object to the form of the question.
THE WITNESS: It would seem to be the right thing to do.
BY MR. TUCK:
Q Did Santee ever share concerns with Horry Electric about implementing the Good Cents program in Horry County?
A Did we share information about the program?
Q Concerns. Concerns about the program.
MR. SMITH: Object to the form.
THE WITNESS: I don't know.

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BY MR. TUCK:
Q During the 1987 to 1989 time frame, would you have been the person who had responsibility for communicating with Horry Electric if there were any concerns about implementation of the Good Cents program?
A Again, we had open dialogue. It could have been me talking to them, them talking to us, Glenn talking to them. We had meetings, and I met with them personally.
Q After your job responsibilities changed in 1989, who would have had the -- or which individuals at Santee would have been responsible for coordinating with Horry Electric with respect to the Good Cents program?
A I do not know.
Q In the course of preparing for your deposition have you come to learn of the identities of any such people?
A No, when I got out of it, I had my hands full with a new job, so. . .
MR. JOHNSON: I'm not sure she understood the question.
BY MR. TUCK:
Q What I am trying to get at is in 1989 when

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you changed roles at that time, have you ever come to learn of any individuals at Santee who would have been responsible for serving as a liaison with Horry Electric with respect to the Good Cents program?

MR. SMITH: Objection, asked and answered. Also beyond the scope.

THE WITNESS: Again, I knew some of the people working there, but I do not know who had that responsibility after I left.

BY MR. TUCK:

Q When you say you knew some of the people, those were just the people who were doing it in the 1987 to 1989 time frame with you?

A Yes. I know of a few that worked in that department since.

Q Who were those people?

A Some of the people I named earlier.

Q At the time you joined Santee in 1987, did you come to learn whether there were any concerns at Santee about the vapor barrier requirements for your co-ops?

MR. SMITH: Object to the form of the question.

THE WITNESS: The only thing I know about vapor barriers is, again like we talked about, it's

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kind of confusing. You know, discussions about where they should go, whether you have them. But I mean a bigger concern at the time I was there had to do with heat pump sizing. But, you know, at any time a co-op had a question, any of that would have been brought to our attention.

BY MR. TUCK:

Q You mentioned the standards are confusing. Now, when you had the standards book --

MR. SMITH: Object to the form of the question.

BY MR. TUCK:

Q When you had the standards book that went to co-ops, that standards book outlined the prescribed vapor barrier requirements; is that right?

A That's correct.

Q So at least within the standards book, it wasn't supposed to be confusing, right?

A That is correct.

Q Santee was very clear about what it wanted from the co-ops with respect to the vapor barriers?

A We were clear what the statewide standard was as outlined in the standards.

Q Were you a part of any discussion with Santee about where a vapor barrier should go, where they

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should be placed within the homes?

MR. SMITH: Objection. This is again beyond the scope. Object to the form.

THE WITNESS: I remember vaguely some discussions about where they go in the wall. But those were just general conversations. I don't remember a specific time.

BY MR. TUCK:

Q Do you recall who was a part of those conversations?

A I do not.

Q Would Mr. Cannon by necessity have been one of the people who was involved in the conversations?

MR. SMITH: Object to the form of the question. Calls for speculation.

THE WITNESS: I don't know.

BY MR. TUCK:

Q Do you have any recollection of any discussions with Mr. Cannon about vapor barrier requirements?

A I do not.

Q You said you vaguely recall discussion about where a vapor barrier should be placed. Is that a fair characterization?

A There were discussions in general.

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Q Did those discussions occur in the context of concern about whether the vapor barriers as suggested in the standards book might have been improper?

MR. SMITH: Object to the form of the question.

THE WITNESS: Again, I don't remember specific conversations. You know, I think opinions vary where one should go in the wall.

BY MR. TUCK:

Q When you say opinions vary, what do you mean by that?

A That at that time if you talked to people, if you looked at articles, there were just different schools of thought on the vapor barrier.

Q You are saying at that time. You mean back in 1987?

A Uh-huh.

Q You have to answer out loud.

A That's correct.

Q And what was your understanding of those competing viewpoints?

MR. SMITH: Object to the form of the question.

THE WITNESS: That they were that, competing viewpoints.

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BY MR. TUCK:
Q What were the competing viewpoints?
MR. SMITH: Object to the form of the question.
THE WITNESS: Whether you should have a vapor barrier; if you have one, should it go on the inside of the exterior wall or at another location; what would be a proper vapor barrier. Discussions like that, but you know. . .
BY MR. TUCK:
Q Where did Santee fall in that spectrum of opinion?
MR. SMITH: Object to the form of the question.
THE WITNESS: We would go with -- I mean, I don't remember, but it would either be what the standard said or what the building code said.
BY MR. TUCK:
Q And for Santee, what takes precedence, the building code or the standard?
A Well, as we've discussed, we would have tried to work that out with the building code. We can't go in violation of the building code.
Q Did the standards as passed along to co-ops provide any opening for the co-ops to vary from those

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vapor barrier requirements?
A Again, the standard, use the Good Cents name, you had the standards to go by. So to be in compliance with the program, you went with whatever was in the standards at that time. So you should not vary, in order to be in compliance.
Q Should not vary from the standard, or from the local building code requirement?
MR. SMITH: Object to the form of the question.
THE WITNESS: The building code and our standards should not be in disagreement.
BY MR. TUCK:
Q And if they are in disagreement, is that a Santee problem?
MR. SMITH: Object to the form of the question. Beyond the scope.
THE WITNESS: Any concerns with the building code should have already been worked out with SEI.
BY MR. TUCK:
Q So since it should have been worked out with SEI, it would not have been Santee's expectation that the co-ops then need to vary from those standards, correct?
MR. SMITH: Object to the form.

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THE WITNESS: Again, it was a statewide standard that we had all reviewed and agreed upon.
BY MR. TUCK:
Q So you would not have expected Horry to tinker with that vapor barrier requirement; is that right?
MR. SMITH: Object to the form.
THE WITNESS: Horry should not vary from it in order to comply.
BY MR. TUCK:
Q And what would have happened had they varied that requirement?
MR. SMITH: Object to the form of the question. Go ahead.
THE WITNESS: They'd be in violation of the program.
BY MR. TUCK:
Q You mentioned in 1987 there were some differences of opinion with respect to vapor barriers. Was any of that information shared with Horry Electric or other co-ops?
A I don't know.
Q Do you have any information to indicate it was shared with Horry Electric or other co-ops?
A I do not.

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Q Have you seen any documents to indicate that Santee shared concerns about vapor barrier requirements with Horry Electric or other co-ops?
A I have not.
Q Do you recall any specific conversations you would have had with Horry Electric where there would have been discussion about vapor barrier requirements?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: I don't remember a specific conversation.
BY MR. TUCK:
Q Do you remember generally any conversations about that with Horry Electric?
MR. SMITH: Same objection.
THE WITNESS: I don't remember general conversations.
BY MR. TUCK:
Q During the 1987-1989 time frame, do you remember -- strike that.
When you joined Santee in 1987, were there any committees at Santee that would discuss the standards book and the requirements therein?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: Well, I'm not sure what you mean by committee, but we had regular meetings with the

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co-ops to discuss standards and other issues.
BY MR. TUCK:
Q I mean an internal committee within Santee. So when the standards book was passed from SEI to Santee, would there have been a committee of employees within Santee whose job it was to review the standards book?
MR. SMITH: Same objection.
THE WITNESS: Not that I know of.
BY MR. TUCK:
Q During the time you have been at Santee, have you come to -- strike that.
You mentioned that there was some different opinions in 1987 on vapor barrier requirements. How did Santee arrive at the proper approach for vapor barrier requirements for its co-ops?
A I don't know.
Q Do you know whether Santee suggested any changes to the vapor barrier requirement language in the standards book to SEI?
A I did see a letter where Glenn discussed that and several other things with, I think it was Geoff Hartman.
Q Who is Geoff Hartman?
A He was at SEI, and I think was our main

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contact at that time.
Q What do you recall about that letter?
A Do you want to look at it?
Q I'll have a chance to look at it. Obviously, I just want to ask what you recall about that communication first.
A I think there were several items listed, just areas of concern that Glenn wanted to get some feedback from SEI before establishing what the standard would be.
Q Do you recall how that scenario resolved?
A I think Geoff wrote him a letter back addressing some of those issues. There was a draft of the standards.
Q During the discussion and those first couple of years you were at Santee, did Santee regard some of the conflicting opinions about vapor barrier requirements to be an important issue for homeowners?
MR. SMITH: Object to the form of the question.
THE WITNESS: I think the primary concern was from the building community.
BY MR. TUCK:
Q What was the concern, as you understood it, from the building community?

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A There was just a reference in the letter.
Q There was a what?
A A reference in the letter about the builders.
Q If a vapor barrier doesn't perform properly in a home, what happens?
MR. SMITH: Object to the form of the question. I think that's beyond the scope.
THE WITNESS: I think there could be condensation in the walls.
BY MR. TUCK:
Q That's a bad thing for homes, correct?
A It could have bad results, yes.
Q You understand that -- you personally understand that a home is for many people the biggest investment they're going to make in their lives?
MR. SMITH: Object to the form of the question. That's certainly beyond the scope.
THE WITNESS: For me it was a big investment.
BY MR. TUCK:
Q So whatever Santee is going to do with respect to vapor barrier requirements, you got to make sure you get it right, correct?
MR. SMITH: Object to the form of the question. It's argumentative.
THE WITNESS: When you say you got to get it

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right, who are you talking about?
BY MR. TUCK:
Q I'm talking about Santee needs to make sure that its recommendations with respect to vapor barriers are the correct recommendations, given the significance of what happens if that vapor barrier fails.
MR. SMITH: Object to the form of the question. Also it's beyond the scope.
THE WITNESS: I mean all of the Good Cents requirements are important.
BY MR. TUCK:
Q The vapor barrier requirements from Santee's perspective are no more or less important than anything else?
A I don't know about Santee's perspective. If it's part of the standard, it needs to be followed, just as the others do.
(Holmes Deposition Exhibit No. 1 was marked for identification.)
Q Okay. I'm showing you what's been marked as Exhibit 1. You will see a letter on there. It had a "B" sticker from the deposition notice. But it's a letter from Mr. Cannon to Mr. Hartman dated October 8, 1986. Have you seen this letter before?
A Yes.

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Q Did you see it in preparation for the deposition today?
A Yes.
MR. SMITH: Excuse me. I don't know that we saw the one with the J & B Law, 199. What's that?
MR. FATA: Johnson & Burnett.
BY MR. TUCK:
Q We've seen this letter in different forms with different stamps on it as it's been produced to us, so you may not have seen some of the markings for the Bates stamps on here. But I'd like to ask you, this communication, I'd like to know if you would have seen this during the initial two years you were at Santee, this particular communication?
A I don't know. It was written before I got there. But I mean I don't know whether I saw it or not.
Q When did you join Santee? In 1987?
A Correct, May.
Q At the end of the letter, you are going to see a cc. to Buddy Clark at SCE&G. Do you see that?
A I do.
Q Did you ever communicate with Buddy Clark?
A I can't remember that.
Q There is a blind copy to Robert Eggleston.

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Do you see that?
A I do.
Q Did you ever deal with Mr. Eggleston?
A Not that I recall.
Q You will see on the front page, under number four, under vapor barriers, you will see it says, quote, This is a touchy subject in coastal areas. See ASHRAE 85 Fundamentals 21.17. It may be best not to mention, closed quote.
Do you see that?
A I see that.
Q When you joined Santee in May of 1987, was there a debate within Santee at the time with respect to vapor barrier requirements in coastal areas?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't recall a debate.
BY MR. TUCK:
Q Do you recall discussion about vapor barrier requirements in coastal areas at that time?
A In general I know that some of us discussed it. I don't remember the time frame.
Q In that reference in Paragraph 4 to ASHRAE, do you see that?
A I do.

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Q Do you have an understanding of what that refers to?
A ASHRAE is a technical society that provides research on different construction topics, you know, HVAC, refrigeration, that kind of thing.
Q Does it have any importance to you as an engineer?
A Yes.
Q How so?
A Because their standards apply to equipment, water heaters, other building features.
Q So it's not something you would just ignore, correct?
MR. SMITH: Objection. Beyond the scope. That's a personal question, right?
MR. TUCK: Yes.
THE WITNESS: They are a respected technical group.
BY MR. TUCK:
Q So if that group raised concerns about vapor barrier requirements at the coastal areas, you personally would not have just disregarded that, correct?
A I do not know what they recommended.
Q When was the first time you saw this letter?

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A I mean, to my knowledge, just in preparation for this.
Q Did it make you want to -- or strike that.
When you saw this letter, did you ask about what those ASHRAE requirements were in 21.17?
A Yes.
Q Did you ask about it, other than communications with your attorneys?
A I mentioned to you earlier that I talked with Glenn, and, you know, asked him about any research he had done, and this ASHRAE information came up.
Q What did he say about it?
A That he, of course, had looked at ASHRAE, that he had looked at other articles at that time and that was why he brought it to Geoff's attention.
Q Did he say what articles he had looked at?
A There was an energy something update, a publication, that he said was readily available at that time.
Q Did you understand Mr. Cannon's discussion of that Energy Update to raise concerns about vapor barrier requirements in coastal areas?
A I believe that article did have concerns in it.
Q Did Mr. Cannon tell you what the -- how he

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proceeded at that time with that information?
A I just asked him about the research. Like I say, it appears he just went to Geoff with it to see if we could not include the vapor barriers in the standard.
Q You understood Mr. Cannon to be saying maybe we shouldn't even have this vapor barrier requirement in coastal areas; is that right?
A That's what I'm looking at here. Like I say, I just asked him about the research.
Q And did Mr. Cannon, in your discussion with him, tell you how he then proceeded from there?
A I don't think I specifically asked him that. But I mean it looks like he dealt with Geoff to get clarification.
Q Do you have an understanding of what Mr. Cannon meant when he said it's a touchy subject in coastal areas?
A What's the question?
Q Do you have an understanding of what Mr. Cannon meant when he said that this is a touchy subject in coastal areas?
A I don't know what Mr. Cannon meant.
Q When you talked to him recently, did you ask him about that?

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A Again, I just asked him about what research he had done on the vapor barrier.
Q Are vapor barrier requirements a touchy subject in coastal areas?
MR. SMITH: Object to the form of the question.
THE WITNESS: I mean I can only give you my opinion. I'm not aware of any problems. As I mentioned, I have a Good Cents house. I built it and been in it, so one was required in my house. I didn't inspect it, but I'm not having any problems. I know there have been discussions, you know, do you, don't you, where should it go. I don't want to put words in Glenn's mouth, but for me that would be why it would be touchy.
BY MR. TUCK:
Q Does Santee have an opinion as to whether vapor barriers as prescribed in the Good Cents standards are still appropriate vapor barrier standards?
MR. SMITH: Object to the form of the question.
THE WITNESS: We don't have this program anymore. You know, again, whatever the building code would require is what we would want to do.

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BY MR. TUCK:
Q You personally would not have any reservations about people getting the same vapor barrier requirement that were used for the Good Cents homes in Horry County?
A I can only speak for my house, where it was required, and I have no problems.
Q You have heard of other people who have had problems with their homes from the vapor barrier?
A Not at Santee Cooper. Only with your stuff.
Q At what point did Santee Cooper learn that there were allegations of mold with respect to Good Cents homes arising from vapor barriers?
MR. SMITH: Object to the form of the question. I think that's beyond the scope too.
THE WITNESS: I don't know when we were advised of problems. But, again, I don't know that they would be attributed to the vapor barrier because I'm not aware of any vapor barrier problems.
BY MR. TUCK:
Q What is it about a coastal county that makes vapor barriers even an issue here?
A Has to do with the humidity.
Q How does that play into the vapor barrier problems?

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MR. SMITH: Object to the form of the question. That's beyond the scope of the deposition.
THE WITNESS: That is not -- I'm not an expert on this. But, you know, it would have to do with how moisture would travel and whether it would condense on this vapor barrier. Again, there are differing opinions.
BY MR. TUCK:
Q If there are differing opinions on vapor barrier requirements in the coastal areas, is it important to share that information with your co-ops?
MR. SMITH: Object to the form of the question. Repeatedly asked and answered.
THE WITNESS: Again, I don't remember specific conversations. It's information that's out there, whether from us, from ASHRAE, from other publications.
BY MR. TUCK:
Q Horry relied on Santee for information it received with respect to the Good Cents program; is that right?
MR. SMITH: Object to the form of the question. That's beyond the scope. That's also repeatedly asked and answered.
THE WITNESS: Again, we had me as a personal

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liaison. There were open lines of communication. Certainly they had opportunities for any feedback.
BY MR. TUCK:
Q But you weren't going to suggest -- you weren't going to raise the issue of the vapor barrier requirements with the co-ops in the coastal areas, were you?
MR. SMITH: Object to the form of the question. That's also beyond the scope.
THE WITNESS: It would be my responsibility to go over the standards with them. The vapor barrier would be a section of the standard.
BY MR. TUCK:
Q You acknowledge -- Santee would acknowledge that there has been some controversy about whether vapor barrier requirements -- what vapor barrier requirements should be in coastal areas, correct?
MR. SMITH: Object to the form of the question.
THE WITNESS: I would acknowledge it.
BY MR. TUCK:
Q Do you know people at Santee who would not acknowledge it?
A When I spoke with Herman, I asked him if he knew of any problems with vapor barriers, and he did

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not.
Q What was his position back in 1987?
A I'm not even sure he was at Santee Cooper, but he had a background in residential construction.
Q When was the first time you met him at Santee Cooper?
A I don't remember.
Q What position does he have right now?
A He is the supervisor of residential programs.
Q Do you know of any other positions he's held at Santee?
A At one point he was what we call an energy advisor, and he would have worked directly in the field with customers.
Q Is he an engineer by training?
A No.
Q Was Mr. Cannon an engineer?
A I'm not sure of his background.
(Holmes Deposition Exhibit No. 2 was marked for identification.)
Q I'm showing you what's been marked as Exhibit No. 2. It's dated October 22, 1986 from Mr. Cannon to Mr. Hartman. I want to ask you did you review this letter in preparation for your deposition?
A I have seen this letter.

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Q Before you saw this in preparation for your deposition, had you ever seen a letter prior to that?
A I do not think so.
Q The first paragraph mentions, it says, "At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls." Do you see that?
A I see that.
Q SEI, that's Southern Electric, right?
A Yes, Southern Electric International.
Q In the second paragraph, the last sentence it says, quote, "Lately we are getting a lot of concern expressed from the building community on this requirement."
Do you see that?
A I see that.
Q At the time you joined Santee in May of 1987, were you still hearing any concern from the building community on requiring vapor barriers?
A I don't remember.
Q In the third paragraph it says, quote, Our concern is future liability. We don't want to create any situations that would hurt us or the Good Cents program. Enclosed in a recent article on the subject from Energy Design Update. Summarized they state in

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warm climates interior vapor barriers may, in fact, create moisture condensation problems, closed quote.
Do you see that paragraph?
A I see it.
Q What do you understand Energy Update to be?
A I'm not familiar with it. It sounds like just that publication available at that time.
Q Let me ask you, that quote at the end of that paragraph where it says, "In warm climates, interior vapor barriers may, in fact, create moisture condensation problems," do you agree with that sentence?
MR. SMITH: Object to the form. Also beyond the scope.
THE WITNESS: I disagree. As I said, I've got a vapor barrier, and don't have any problems.
BY MR. TUCK:
Q Well, the experience of one person -- do you have an understanding as to whether your experience may be anecdotal?
MR. SMITH: Object to the form of the question.
THE WITNESS: Again, in speaking with Herman, I'm not aware of any Santee Cooper customers with any problems.

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BY MR. TUCK:
Q You understand there is a lawsuit that's been certified as a class action that involves the vapor barriers in Horry County, correct?
A I believe that's the one that you're doing.
Q Would that indicate to you there is a problem?
MR. SMITH: Object to the form.
THE WITNESS: A problem with what?
BY MR. TUCK:
Q Moisture condensation.
MR. SMITH: Same objection.
THE WITNESS: These people may be having moisture condensation problems. Whether that's attributed to the vapor barrier, I don't think so.
BY MR. TUCK:
Q You testified earlier you were aware of a debate about whether vapor barriers can cause moisture condensation, right?
MR. SMITH: Object to the form of the question.
BY MR. TUCK:
Q Is that's correct?
A That's correct.
MR. JOHNSON: Chris, when you get to a

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stopping point, we've been going for a while.
MR. TUCK: Okay.
BY MR. SMITH:
Q The fact that there is a debate means there is more than one side to an issue, right?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't think I used the word debate. I think I said there have been discussions. But, again, I mentioned there have been discussions how to size heat pumps, so there are lots of discussions.
BY MR. TUCK:
Q Mr. Cannon, he was expressing his concerns to Mr. Hartman that the vapor barrier requirement in coastal areas can be a problem; is that right?
A He is expressing that they have gotten concern from the building community and that he has done research with this article and is sharing that.
Q The building community, they are the ones who were seeing the vapor barrier requirement play out on the ground, so to speak; is that right?
A They would be the ones responsible for installing it.
Q Did you have any discussions with the building community about vapor barrier requirements?

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A I don't recall.
Q Do you know whether Santee had discussions with the building community about vapor barrier requirements?
A If I can go by what is in this letter, it sounds like we have.
Q Do you acknowledge that a vapor barrier requirement -- strike that.
Have you done any investigation into the question of whether vapor barriers in coastal areas can cause moisture condensation?
A I have not.
Q Do you know if anyone at Santee Cooper is looking into that issue?
A I do not know.
Q In your opinion is there still discussion about whether vapor barrier requirements in coastal areas are problematic?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't know.
BY MR. TUCK:
Q So when you state you don't believe vapor barriers are a problem in coastal areas, you have never looked into that; is that right?

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A I said it's not a problem at my house.
Q You never looked into the broader issue of the vapor barrier requirement on the entirety of the Good Cents homes in Horry County; is that right?
A I have not.
Q Do you know if anybody at Santee has looked into that?
A I do not know.
Q Did you have any discussion with Mr. Cannon about this letter, October 22?
A Again, this Energy Design Update, which is part of his research into vapor barriers.
MR. TUCK: Could you repeat her answer.
MR. SMITH: Could you repeat the question too, please.
(Whereupon, the record was read as requested.)
MR. TUCK: We can take a break here.
(Recess taken.)
BY MR. TUCK:
Q You mentioned you've got a Good Cents home?
A That's correct.
Q What kind of vapor barrier do you have?
A I do not know. My paperwork just says one was required.

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Q Have you ever had a piece of your wall torn open to see what's -- if there's been any impact?
MR. SMITH: By the way, this is outside the scope of the 30(b).
THE WITNESS: I have not.
BY MR. TUCK:
Q I want to go back to your conversations with Mr. Cannon when you met with him recently. When did you meet with Mr. Cannon?
A Just called him on the phone. I think it was one day last week.
Q Was there anyone else involved in the conversation?
A Rush was there.
Q Did Mr. Cannon, did he indicate to you whether he had had -- did he indicate whether he has any concerns about vapor barrier requirements in coastal areas.
A What I asked him about was just the research he did in preparing the letter.
Q He didn't volunteer to you what he believes about whether the vapor barriers should be used in Horry County?
A He did not.
Q And you didn't ask him about that?

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A I did not.
Q Just going back to your own home, your Good Cents home for a second, who built your home?
A It was Modern American Homes.
Q What year was it built?
A It was built in '99.
(Holmes Deposition Exhibit No. 3 was marked for identification.)
Q I'm showing you what's been marked as Exhibit 3. It has an Exhibit C sticker on there from another, that was previously placed on there. But this is a letter from Mr. Hartman to Mr. Cannon dated October 29, 1986. Did you see this letter in preparation for your deposition?
A I did.
Q Do you recall seeing it at any time prior to your preparation for the deposition?
A I do not.
Q Did you discuss this letter with Mr. Cannon?
A Again, I just asked him what research he did. I don't know that I referenced -- I think this is Geoff's letter -- Geoff's letter specifically.
Q Had you seen this letter at the time you spoke to Mr. Cannon?
A Yes, I think so.

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Q You see, the first paragraph, it states in the second sentence, "SEI's position is that we do not require the use of vapor barriers except to conform with applicable building codes," close quote. Do you see that?
A I see it.
Q Is that consistent with your understanding?
A Yes.
Q How did that -- is that consistent with Santee Cooper's understanding?
MR. SMITH: Object to the form of the question.
THE WITNESS: Well, this letter is in response to the question. You know, Glenn says he stated that they require a vapor barrier. So he is responding that they do not unless that's what the building code requires.
BY MR. TUCK:
Q So is it Santee's position that vapor barriers are not required except to conform with applicable building codes?
MR. SMITH: Object to the form of the question.
THE WITNESS: It looks like from our discussion with SEI that we would not have to require

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it based on their standard. We being Santee Cooper.
BY MR. TUCK:
Q You testified earlier that the standards book that you passed along to co-ops, that you intended for co-ops to follow those requirements, correct?
A They get the book to review; of course, make any comments and changes. And then once we've agreed upon the -- again, it's a statewide standard we would follow to be in compliance with the Good Cents program.
Q If the Good Cents program required vapor barriers in Horry County and if Horry County did not have that requirement in its building code -- strike that.
The standards guide that was provided to Horry Electric did not state that vapor barriers were not required except to conform to applicable building codes; is that right?
MR. SMITH: Object to the form of the question.
THE WITNESS: There are a lot of nots in there. Can you restate it?
BY MR. TUCK:
Q What did the standards guide tell Horry Electric it had to do with respect to vapor barriers in Good Cents homes?

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MR. SMITH: Object to the form of the question.
BY MR. TUCK:
Q Did it require it?
A I believe that the set of standards that came out after this discussion did not require it. It was recommended.
Q At some point did it transition from a recommendation to a requirement?
A From a set of standards that I saw later, yes, it did.
Q When did that occur?
A I don't know exactly when it occurred. I believe the date on the standard was '91.
Q Now, at that point, you were not --
MR. JOHNSON: In '91 it's now required?
BY MR. TUCK:
Q 1991 is when you say it transitioned from a recommendation to a requirement; is that right?
A I believe I saw a standard dated 1991 where it was required.
Q Now at that time were you involved at all in the review of the standard guides as it would come out from SEI?
A I was not.

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Q You would not have been involved with that since 1989; is that right?
A That's correct.
Q Do you know who at Santee would have been involved with reviewing those guides in 1991?
A I do not.
Q Who took over your position when you moved to a different job responsibility in 1989?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: I don't know.
BY MR. TUCK:
Q So are you prepared today on behalf of Santee Cooper to testify as to the process for transitioning from a recommendation to a requirement in 1991?
A Today I am representing Santee Cooper, but I do not know when any changes to standards were made.
Q Did you do anything to prepare for that subject today?
A The changing of standards --
Q Yes.
A -- is that the question? I have had the standards to look at. I do not know what precipitated the change.
Q Did you in your preparation for the deposition ask anyone at Santee why it changed?

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A I did not.
Q Have you read any documents that indicate why it changed?
A I don't know of any documents.
Q And, in fact, you don't even know the people who would have been dealing with that change in 1991, right?
A As I said, I know some people that through the years have been involved, but I don't know who was involved in '91, '89, or any of the folks specifically after I left.
Q I want to be clear. You did not make any efforts to educate yourself on the process for that transition in 1991 from a recommendation to a requirement?
A No, I haven't done anything.
(Holmes Deposition Exhibit No. 4 was marked for identification.)
MR. SMITH: We'll take a break. I didn't get this before the deposition. Okay?
(Recess taken.)
BY MR. TUCK:
Q Just before I get to the exhibit, let me ask you one question. Right before we took a break, you mentioned you looked at -- or there was a document

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around 1991 that had the transition from the vapor barrier recommendation to a requirement. Do you remember that?
A Yes.
Q What was that document?
A What I saw was a set of standards. You know, the new standard for the program.
Q It just would have been -- would it just have been labeled Good Cents? Would it just have been labeled as a Good Cents manual? Do you recall?
A I don't remember the title of the document. But it was similar to the ones I had seen earlier.
Q Do you recall if it came from SEI?
A Like we talked about, the whole program was set up by them for the state, so I do not know what -- if it had their logo somewhere or not, I'm not sure.
Q This document you saw for the 1991 transition, would that have been a document that was then passed along to the co-ops?
A Yeah. And I saw it in a notebook. I just don't remember what label was on the cover. But, yeah, I mean any of the standards should be shared with the co-ops.
Q Do you know whether, in fact, it was shared with the co-ops?

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A I do not know.
Q Let me ask you about the exhibit you have in front of you. Marked as Exhibit 4 is a letter dated May 18, 1992 from a Lonnie Carter to a Christian Holland. Did you see this document in preparation for your deposition?
A I just saw it. This is the first time.
Q Do you know who Lonnie Carter is?
A I do.
Q Is Lonnie Carter employed right now at Santee?
A He is.
Q And what is his current position?
A He is our president.
Q Has Mr. Carter been at Santee as long as you have been there?
A I do not know when he was hired. But if he was there in '92, it's a comparable amount of time.
Q There is some blind copies listed on the second page of it. Let me ask you, do you know who Curtis Williamson is?
A I do.
Q Who is that?
A At the time he was over -- when I started he was over the Myrtle Beach office.

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Q When you say over the Myrtle Beach office, was he at an office in Myrtle Beach, or did he have supervisory control over what happened at Myrtle Beach?
A He was physically at the Myrtle Beach office.
Q Do you know what his job responsibilities were at this time in 1992?
A He was over -- I believe he was over customer service, engineering, us.
Q When you say us, what do you mean?
A The energy management group.
Q There is a name there, J.D. Steedly. S-T-E-E-D-L-Y, for the record.
A Yes.
Q Who is Mr. Steedly?
A J.D. currently is the director of program development, which is in my department. And he worked in energy management. They called it marketing later.
Q Who is Rickie Thomas?
A He at one time was in North Myrtle Beach as what we'd now call an energy advisor.
Q Have you ever been in the marketing department?
A I have never worked in it when it was called the marketing department. Some of those same functions were derived from energy management.

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Q The letter is addressed to Christian Holland. Do you know who that is?
A I do.
Q Have you ever worked with Christian Holland?
A What do you mean by worked with him? He is not an employee.
Q Right. Have you ever -- is he a business partner? Have you ever talked to him? What's the nature of your relationship with him?
A I know him from the customer advisory counsel.
Q What is the customer advisory counsel?
A It's a group of customers we meet with quarterly to just go over what's going on, topics of interest.
Q In the letter I want to direct your attention to the third paragraph, the first page where it says, "In your second point you indicated the Good Cents vapor barrier requirement is in direct conflict with recommendations by Clemson University and the National Home Builders Association." Do you see that?
A I see it.
Q Do you know what Mr. Carter is referring to there?
A I do not.

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Q Have you ever seen any recommendations from Clemson University at all with respect to vapor barriers?
A I have not.
Q Have you seen any recommendations from the National Home Builders Association with respect to vapor barriers?
A I have not.
Q It states in that second sentence, Mr. Carter writes, "When I inquired about this concern, I found that Santee Cooper's Good Cents program, when developed, was in agreement with Clemson's vapor barrier recommendations. We are not aware that they have changed their recommendations for vapor barriers. I have asked J.D. Steedly to follow up with Clemson and the National Home Builders Association to get their latest recommended vapor barrier requirement and determine if Santee Cooper's Good Cents program should be modified."
Did I read that correctly?
A Yes.
Q Are you familiar at all with anything Mr. Steedly did to follow up with Clemson or the National Home Builders Association to get their vapor barrier requirements?

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A No.
Q I assume that this letter postdates the 1991 transition from the vapor barrier as a recommendation to a requirement?
MR. SMITH: We'll stipulate 1992 follows 1991.
MR. TUCK: Thank you.
THE WITNESS: Okay. Ask me again, please.
BY MR. TUCK:
Q I just want to make sure that when you say the 1991 transition, I want to make sure that it's a different event than what's being referred to in this letter. So what I'm trying to establish is you're saying in 1991 there was a transition of the vapor barrier from a recommendation to a requirement; is that right?
A I saw a standard dated 1991 that indicated the change, but I don't know when the change took place.
Q Do you know if the information, the discussion at Paragraph 3 here is in any way connected to the 1991 manual you saw?
A I don't know.
Q Have you ever heard anyone at Santee reference recommendations by Clemson or by the National

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Home Builders Association with respect to vapor barriers?
A I do not know of any.
Q Do you know of what the outcome might have been to Mr. Steedly's follow-up on that issue?
A I do not know the outcome.
Q Do you know whether Santee Cooper's Good Cents program was modified after May 18, 1992?
A I do not know.
Q In fact, you would not have been in a position to know, just based on your job responsibilities; is that right?
A I was not in that department.
Q So if there was a change in the vapor barrier requirements, you would not have known about it in that time frame; is that right?
A I don't think so.
Q It would not have been your job to know?
A My job was not related to Good Cents, no.
Q And it wasn't related to Good Cents after 1989, right?
A That's correct.
MR. JOHNSON: May I ask this question?
MR. SMITH: Uh-huh.
MR. JOHNSON: Aren't we entitled to have

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Santee Cooper designate a person to testify about those matters? I understand you didn't know of the letter, but they are covered by Items One and Two of the plaintiff's notice.
MR. FATA: He produced the letter.
MR. TUCK: This was produced yesterday.
MR. JOHNSON: It was produced yesterday. Hadn't gone over it with the witness. Aren't we entitled to have a witness who is knowledgeable about it?
MR. SMITH: As I said at the outset of the deposition -- and if you want to excuse her for this, that's fine. There have been a number --
MR. JOHNSON: I want her excused.
THE WITNESS: I'm excused, right?
MR. SMITH: Just temporarily.
(Whereupon, the witness exited the deposition suite.)
MR. SMITH: This is a 1992 letter. I don't think you will find anybody who has any recollection of it. The 1991 change that she is talking about, the documents she is referring to, are the standards that had November 1991 on the bottom of them?
MR. FATA: The manual?
MR. SMITH: Yeah, she didn't know what it was

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called. It has different names.
MR. FATA: You can put that on the record. Okay?
MR. SMITH: And you can show it to her. I have it. I can put it in front of her, and she could say this is what I was talking about.
MR. FATA: That would be great.
MR. SMITH: But the point is that happened in 1991, and nobody remembers.
MR. JOHNSON: Lonnie Carter doesn't remember writing the letter?
MR. SMITH: Lonnie Carter does not, so far as I know.
MR. JOHNSON: You asked him about the letter, given it to him?
MR. SMITH: We have inquired. We talked to J.D., and he has no recollection of it.
MR. JOHNSON: Do we have the letter of April 20th?
MR. SMITH: What letter of April 20?
MR. JOHNSON: That's referred to --
MR. SMITH: No, I don't have it.
MS. WARNER: It's a long time ago. Some of these records aren't around.
MR. SMITH: A surprise. Babs found it. This

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was one of the letters and one of the documents in three or four things that Babs recently located. But this has been a dead end, and the reason for the change in 1991 has been a dead end. You-all can pick on the witness all you want, but that's a fact.

MR. FATA: How about Glenn Cannon? Does he remember it?

MR. SMITH: He was gone by 1991.

MR. FATA: He was involved in the late '80s, and he was gone by 1991?

MR. SMITH: Yeah.

MR. JOHNSON: So you're saying you've investigated and you can find no one with any knowledge about this letter?

MR. SMITH: Yes. Send me a notice, that's what I'll say.

MR. FATA: Who took over Glenn Cannon's role?

MR. SMITH: The program changed a lot over the years.

MR. FATA: Right after he left?

MR. SMITH: I don't know. Because not only did they change -- as she said, they changed the designation of the departments. They reorganized. There were changes. I couldn't tell you off the top of my head who would have -- I don't know that there was a

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person doing exactly what he was doing. And I don't know who would have been similar. You'll see -- I mean, you've seen the documents, you can --

MR. JOHNSON: Is Santee Cooper saying that there was a requirement of the vapor barrier in 1991 in the manual?

MR. SMITH: The 1991 manual says required. The original one said recommended.

MR. JOHNSON: And there's no one who knows why it changed?

MR. SMITH: Right. We haven't found anybody. I'm not giving up yet.

MR. JOHNSON: And it remained a requirement through 2003?

MR. SMITH: Yes. And the 2003 memo is also something of a mystery.

MR. FATA: You mean that little piece of paper that has the --

MR. SMITH: 2002 document.

MS. WARNER: Yeah.

MR. FATA: The due to local code changes, we're no longer going to require a vapor barrier?

MR. SMITH: Right, 2002.

MR. JOHNSON: Nobody knows?

MR. SMITH: (Shaking head.) And the people

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who were there we've talked to, including the retired people, nobody has a recollection.

MR. JOHNSON: And Herman Holmes?

MR. SMITH: Nope. Except that the notion was just what's in those documents, that the code required it. So pick on her if you want to, but we've hit dead ends at these places. That's why I didn't bother showing her this document. She doesn't know anything about it. They don't know anything about it.

You don't need to put this on the record.

(Discussion off the record.)

(Whereupon, the witness re-entered the deposition suite.)

BY MR. TUCK:

Q Lonnie Carter, do you know who Mr. Carter -- I don't recall if I asked you this, do you know who he worked for in 1992?

A I do not.

Q Do you know -- it's mentioned in that letter he's the manager of corporate forecasting, rates, and marketing in 1992. Would that indicate he was in the marketing department?

A He was in corporate forecasting, rates, and marketing.

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Q Do you know if that was part of the marketing department?

A I think marketing would be part of that department.

Q Do you know who headed up the marketing department at that time?

A I don't know if it references any of that in the letter. It says J.D. Steedly heads up our marketing program.

Q Other than that reference, do you have any recollection as to whether Mr. Steedly would have headed up marketing at that time?

A Other than what's there, no.

MR. TUCK: I just want to mark the 30(b)(6) notice.

(Holmes Deposition Exhibit No. 5 was marked for identification.)

BY MR. TUCK:

Q Just for the record I am identifying -- that's yours.

A That's me?

Q Yeah. I am marking for the record the subpoena, deposition topics that you got in this case. Do you recognize that? You would have received one from Pope's office as well.

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A I have seen -- I'm not sure if this is what I saw or not. I have seen a couple.
MR. SMITH: I don't think she ever saw the subpoena.
MR. TUCK: Okay. I will turn it over to Pope.
EXAMINATION
BY MR. JOHNSON:
Q I'm not sure we've met. I'm Pope Johnson.
A I'm Juan Holmes.
Q Okay, Ms. Holmes. I represent Horry Electric. I have some questions to ask you. What I'll try to do to save Rush some trouble, I'll ask you personal questions to start with, and I'm going to announce when I go to 30(b)(6) and he can -- so you'll understand what I'm doing.
(Holmes Deposition Exhibit No. 6 was marked for identification.)
Q First of all, I just marked a document as an exhibit, Exhibit 6. That was my subpoena and list of documents to be produced as well as at the end, the matters that I wanted to discuss with you. Do you recall seeing that in the exhibits?
A This looks familiar, yes, sir.
Q And you prepared, the eight hours you

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estimated you spent included preparation to address the issues I raised?
A Yes, sir.
MR. SMITH: Subject to the objections I made. If I need to, I can make those for the record. You-all tell me.
MR. JOHNSON: No, you don't. We understood you have objections.
BY MR. JOHNSON:
Q Did I understand you correctly that when you came to work for Santee Cooper, Glenn Cannon was the person who was in charge of the day-to-day operation of the Good Cents program?
A Yes, sir.
Q And who took his place?
A They hired Bobby Johnson at some point. I don't remember when that was.
Q Bobby Johnson would have been the next person in charge of the Good Cents program?
A Yes, sir.
Q Does he still work for Santee Cooper?
A He does not.
Q Do you know where he is?
A I am not sure. He went to work with like a heat pump contractor, and I'm not sure where he ended

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up.
Q In Moncks Corner or here?
A It was around here. It might have been over the North Carolina line. He may be back here.
Q Who took over the Good Cents program after he left?
A I'm not sure.
Q Who would know that?
MR. SMITH: Object to the form.
THE WITNESS: I've given some names of people that we talked to. Some of them may recall.
BY MR. JOHNSON:
Q If you wanted to find out for yourself, what would you do? Where would you go to get the information?
Let me tell you what I'm trying to find out. You were involved in the program for two or three years in the '80s, and there have been people who were involved right on up to 2003. I assume there was somebody in charge as late as 2003 who would have been hands-on direct involvement with the program.
For some reason Santee Cooper has produced you rather than someone who was actually involved with the program in those important years. So I want to find out who was the person. If we wanted to

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start deposing people who were actually involved, how would we find the guy who -- male or female -- who headed up the responsibility for the program. Can you help me?
A Well, I would just start asking the people that I know that at any time were involved. If I needed to give you a time line, I'd try to put together a time line.
Q Is there a corporate person who keeps up with information like that, a person employed by Santee Cooper who would keep up with personnel and who is responsible for the program?
MR. SMITH: Object to the form.
THE WITNESS: We have an HR department that knows your career steps. But I don't know that they would be able to say, ooh, this was the Good Cents program.
BY MR. JOHNSON:
Q Who is head of HR?
A Our VP of HR now is Laura Varn.
Q She would have records to show who had the responsibility for the program --
MR. SMITH: Objection. Lack of foundation.
BY MR. JOHNSON:
Q -- for particular dates, wouldn't she?

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A We'd be able to track job titles and I think unit numbers by date.
Q Right. Do you know who was in charge of the program from 1998 to 2003?
A I do not.
Q Let me ask you a little bit about the purpose of the program. You were asked some questions about that. Is it correct that the program was designed to conserve energy consumption, which in theory would enable Santee Cooper to delay having to build additional generating power?
MR. SMITH: Object to the form of the question.
You can answer.
THE WITNESS: That would be one purpose of program. Of course, it was for the -- you would build in these energy efficiency features into homes.
BY MR. JOHNSON:
Q And they would use less power, which would mean that there would be less need for capacity, or the need for capacity additions would be delayed?
A If a customer doesn't change their living habits to where they would use more electricity, if they lived the same lifestyle, then making the energy efficient improvement should lower --

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Q Demand?
A -- energy consumption.
Q And Santee Cooper, in order to get people to try and do that, consumers to do that, had a Good Cents rate that they offered that was less than the ordinary residential rate -- they would give a credit to the co-op for those members who would qualify?
MR. SMITH: Object to the form of the question.
THE WITNESS: At that time when I started, Santee Cooper had a rate, and the co-ops would be credited, that's correct.
BY MR. JOHNSON:
Q And Santee Cooper contracted with the Southern Company or --
A Southern Electric International.
Q Whatever it is, the name, to use the program for its members as well as to offer it to cooperatives for use by cooperative members?
A Yes, and Electric and Gas was using it as well.
Q And one of the things Santee Cooper did was hold programs that cooperatives sent representatives to learn about the program so they could make a decision as to whether to participate?

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A Yes, there were meetings.
Q And then after they agreed to participate and entered into agreements with Santee Cooper, Santee Cooper offered training programs and other programs to keep them updated with the Good Cents program, correct?
A Yeah, it was for an exchange of information for training, yes.
Q Santee Cooper also offered training sessions for contractors and builders in order to promote interest in the program, correct?
A That's correct.
MR. SMITH: Object to the form.
BY MR. JOHNSON:
Q Is it also correct that Santee Cooper -- to advertise the Good Cents program, cooperatives had to use standardized advertising material that was offered through Santee Cooper as a means of -- for advertising purposes?
MR. SMITH: Object to the form. Also lack of foundation.
THE WITNESS: I don't know about requiring them to do it. But I mean if you were to use the Good Cents logo, then there would be -- you're in agreement involved with that.

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BY MR. JOHNSON:
Q I'm not suggesting they required the co-op to advertise, but if the co-op was going to advertise, Santee Cooper had standard type ads that could be, you know, the name changed, so it would be Horry County advertising it rather than Santee Cooper?
A I'm not sure.
Q You don't recall that one way or the other?
A No. But I mean that makes sense, but I don't recall.
Q Now, the cooperatives were given by Santee Cooper standard books, right, or manuals? They were called different things at different times. But there was a booklet that contained the forms that were to be used for the program? It was a booklet that had the program requirements and other information?
A I believe that is correct, yes.
Q And would those be handed out at these training sessions, or would they be mailed to them, or how did you-all get them to the co-op members; do you know?
A I don't know. There would be probably times where we would do either. Depending if a quarterly meeting was coming up, they may hand something out at the meeting or mail out ahead of time.

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Q If it was in the manual or standards book, it was something that any of the cooperatives were supposed to follow? I mean, that's what it was, it was a manual for implementing the Good Cents program, correct?
A If they wanted to be in compliance with the standards, they would have followed it.
Q Didn't Santee Cooper have the right to audit the cooperatives?
A Yes.
Q And, in fact, audited cooperatives?
A Yes.
Q To make sure that the cooperatives were following the requirements of the Good Cents standard book or manual book?
A Yes.
Q Now, does Santee Cooper offer cooperatives other programs? You mentioned a loan program. I don't know whether that was just for your members or others. Periodically does Santee Cooper offer programs that the cooperatives can offer to their members?
A I don't believe there are any programs now that the co-ops participate in with us.
Q Have there been any besides the Good Cents program?

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A They did not participate in the loan program. I'm not aware of -- I think there was a water heater program. But that's outside of my time frame.
Q You don't know whether the cooperatives participated in that program through Santee Cooper?
A Correct. They have one, but I'm not sure if it's through Santee Cooper.
Q Now, tell me -- I think you said in your earlier testimony some way you thought the cooperative benefited by participation in Good Cents program. Were you aware of any benefit to the cooperative in participating in the Good Cents program?
A I mean, for me, their participation, it was a way of having energy efficient features built into a home that, again, should lower the customer's bill. So in that sense, it's a good customer service.
Q Right, it would be good for the customer, and it would be nice for the cooperative to do it. But in terms of any benefit to the cooperative? Actually, the coopcratives are nonprofit, aren't they?
A Yes.
Q So whatever benefit, I mean it's not like they would make a profit on the Good Cents program and profit somebody by that, would they?
MR. SMITH: Object to the form.

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THE WITNESS: I don't know.
BY MR. JOHNSON:
Q As far as you know, was it a completely pass-through program, where the cooperatives, where the credit was given by Santee Cooper and passed directly to the members who participated in the program?
MR. SMITH: Objection to the form. Assumes facts not in evidence.
THE WITNESS: As far as I know it was a pass-through.
BY MR. JOHNSON:
Q Do you know what the standard book or manual, the original standard book or manual required that Santee Cooper handed out to cooperatives require regarding vapor barriers?
A No. I have seen the standard books. I would have to look at it, and you would have to tell me this is what was handed to them.
Q Is there somewhere at Santee Cooper that the standard books that were actually issued are available to be looked at? In other words, ycar 1987. If it changed in 1991, that change. And if it changed again, any other changes.
MR. SMITH: Objection. Lack of foundation.
THE WITNESS: Since I left in '89, I was not

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aware of a collection of books, so I do not know if that has been maintained.
BY MR. JOHNSON:
Q But in preparing for the deposition, you've obviously looked at some of the books?
A I have seen a handful, yes.
Q Where did you see those?
A Rush provided those.
Q He brought them?
A Yeah.
Q Did you see them at Santee Cooper, or did you see them at his office?
A No, it was at our office.
Q How many standard books did you look at?
A I believe I have seen --
MR. SMITH: Object to the form of the question.
A -- a draft, at least one draft. And the '91 set that I've referred to, I've seen that one. There may have been another one in between there.
Q Did you see any after '91?
A I don't believe I have, no, sir.
Q Did the '91 version of the manual require an installation of the vapor barrier?
A Yes.

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Q To your knowledge and based on the investigation you've done, did that requirement of the Good Cents program change in any way prior to 2003?
A The other thing you-all provided was a document saying -- alluding to the vapor barrier requirement. I don't remember the date on that.
Q I'm sorry, 2002.
A There is a document that I believe is dated in that time frame that talks about the vapor barrier.
Q In your testimony earlier you said that when the books or manuals or standard manuals were sent out, they were sent with invitations to the cooperative to make changes.
A They would be able to suggest changes, yes.
Q Tell me what you recall specifically about that. Do you recall a letter that went out that invited changes or invited comment, that occurring?
A I believe there were a couple of letters. Like I said, I was there for personal contact. I believe there is a letter from a couple of -- there are letters from a couple of co-ops about suggestions for changes.
Q Did Santee Cooper invite the letters? I guess what I'm having trouble understanding is how you would remember some letters this long time ago.

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A Well, when we would send the stuff out, I have seen the cover letter that went with the --
Q What did you send out that you saw accompanied with a cover letter?
A It would say enclosed are the draft of the standards. We'll be meeting next week, make comments or let us know your comments, something to that --
Q When did you see that? Is this something you recall from when it occurred or in preparation?
A In preparation.
Q Okay. So you've seen something that transmits, but you can't tell me specifically what it would be?
A Correct.
Q You were asked about the conversations you've had recently with Glenn Cannon. Could you tell me in as much detail exactly what you recall about the conversation, who participated, and what was said?
A Rush and I called Glenn. The main question I had was about the research he had done on vapor barriers.
Q So you asked him, Glenn, did you do any research on the vapor barriers?
A I don't remember the exact question, but what research did you do, something to that effect.

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Q What did Glenn say?
A He referred to the ASHRAE, that Energy Update we had talked about earlier.
Q When he referred to ASHRAE, what did he say about it?
A Just that he had looked over that. He, of course, questioned Geoff about it.
Q Did he say what Geoff told him?
A Well, I had the letter, so. . .
Q I understand. But what I'm trying to get you to do is not say he told me about ASHRAE, but tell me everything that you can recall that was said about it. In the conversation did he state what Geoff and he discussed?
A All I can recall is the discussion about the vapor barrier, the ASHRAE reference in the letter, the energy update reference in the letter. I think he talked about different materials, the different methods.
Q What different methods? Different methods for putting in the vapor barrier?
A I believe so.
Q Did he say anything about any -- provide any details about the ASHRAE standard?
A No.

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Q He just said I looked at the ASHRAE standards, and I looked at this other document, and that's what I did?
A Yes, sir.
Q And that's the extent of the conversation?
A It was brief, yes.
Q And did Rush ask him anything?
MR. SMITH: I object to what I said in that conversation, questions about what I said. If you want to ask what she said and what Glenn said, that's fine. I will instruct her not to say what I said in the meeting.
BY MR. JOHNSON:
Q Was Glenn on the phone?
A Yes.
Q And so the three of you-all, what, you were on the speaker phone, or something of that nature? You-all were together? You and Rush were together, Glenn was in North Carolina?
A That's correct.
Q And did you-all have Glenn on the speaker, or did you have him -- where you were using a hand set?
A Speaker.
Q So would you tell me what you recall Rush asking and what Glenn said in response to it?

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A Like I said, the only thing I remember is the part where I asked him about what he had researched.
Q You don't remember what Rush asked him?
A I don't.
Q When was the conversation? How long ago?
A I think it was last week.
Q You can't recall anything about what the two of them might have said?
A No, sir.
Q You were asked some questions about your Good Cents home. When was it built, Ms. Holmes?
A '99.
Q Did you build it yourself, contract with the contractor to do the work, or did you buy it after it was built?
A I had a contractor build it.
Q You said your home included a requirement of a vapor barrier?
A That's correct.
Q Who was the builder again?
A It was a guy named Mike Amonds.
Q Mike?
A Amonds, Modern American Homes.
Q Is he still in business?
A I believe he died.

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Q We're running up against all these barriers of time and events.
I will move to the notice. Do you have it there with you?
A Which item is that exhibit number?
Q Exhibit number -- I have the original exhibits. You may not have a copy.
Looking at Matter No. 1, I will come back to this in terms of your other documents that have been produced. But do you have any other information about what is marked as Exhibits A, B, and C to the notice other than what you have now told us?
MR. SMITH: A consists of Santee Cooper 2506, 2507. I'm referring to Bates numbers. Santee Cooper 2501 is the third page, and 2497 and 2498 are the fourth and fifth pages. That's Exhibit A.
BY MR. JOHNSON:
Q Then we have Exhibit B and Exhibit C.
MR. SMITH: Exhibit B and Exhibit C.
BY MR. JOHNSON:
Q You've testified about those documents to some extent already.
A I think A, but not B and C.
Q Let me look here. What can you tell me about Exhibit B and who issued it and why it was issued?

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A Okay. I mentioned earlier that, you know, I had these -- I knew these folks. We had talked about this particular thing.
Q What is Exhibit B?
A It appears to be a memo from a Santee Cooper office at the south end at Murrells Inlet.
Q What does it deal with?
A It says it's a notice of change in the Good Cents requirements for Horry Georgetown area.
Q What are the changes described? What does the document say in terms of the change?
A It says that Santee Cooper has found out that the local building code doesn't require a vapor barrier anymore, so that we will not require one.
Q Santee Cooper will not require one?
A Yes.
Q And what have you learned, if anything, about who issued that, when the decision was made, why, et cetera?
A It's not signed, so I don't know who sent it. This fax information at the top, I don't know who that is.
Q Let me ask you, have you checked fax numbers to try to track it down?
A I did not check fax numbers. There is no fax

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number on here.
Q I thought you said it had a fax.
A It appears to be a fax across the top, but I don't know who Singleton is.
Q What office, what letterhead or office description is it on?
A It says it's from the Murrells Inlet. Garden City office is what we call it.
Q Have you talk with anyone at Murrells Inlet or Garden City to find out if they know anything about it?
A I talked to Sam Livingston, which is the name I gave you earlier. He is currently the office manager down there. At one time he was in the Good Cents program. He did not know. And there were others that I asked, yes.
Q In that office?
A I don't know where they were located, but some of the names I gave you earlier were people involved with the program.
Q Let me ask you this: If you identified the people who were involved in charge the Good Cents program or either involved in administering it and sent an e-mail to all of them and said what information do you have about this memo, would that be a way to track

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down somebody with knowledge of it?
MR. SMITH: Object to the form of the question.
THE WITNESS: I did not send an e-mail.
BY MR. JOHNSON:
Q No, I understand you didn't. But would that be a reasonable way, if you really wanted to find out, got everybody who was involved who was still there and sent them an e-mail and said what can you tell me?
A Yeah, that would be a way. A lot of the folks I have talked to personally.
Q How many did you talk to?
A Maybe there were eight to ten.
Q Have you talk with anyone who has -- let me ask you this. We've talked about the standard book and we've talked about -- you gave testimony about changing it. Did you find any change in the standard book that would have been consistent with that memo, Exhibit B?
A The latest standard book I saw was the '91. This is dated '02. So I don't know of anything in between.
Q Not in between, but as a result of. I mean that suggests the book should be changed, doesn't it?
A Yes.
Q If you wanted to find out whether the book

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was changed, how would you go about doing that?
A You could look for a new book.
Q Have you done that?
A I have not.
Q I gather you could, to that same group of people, you could ask them that in an e-mail, couldn't you?
MR. SMITH: Object to the form of the question.
BY MR. JOHNSON:
Q People who were involved in that?
A I could ask them through e-mail or other means.
Q Or other means. But as I understand it, you don't have any knowledge based upon talking to that person you mentioned in the office and talking with six or eight other people?
A I have not been able to find anyone that knows anything about this.
Q Have you found any record that that information was shared with cooperatives?
A I have not looked for any. I do not know.
Q Is there anything else you can tell me about Exhibit B other than what you have now told me?
A I don't think so.

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MR. SMITH: What's this Horry Electric 184? Is that your Bates number from production?
MR. JOHNSON: I'm sure.
BY MR. JOHNSON:
Q Let me ask you about Exhibit C.
A Okay.
Q What have you done to gain information and knowledge about the circumstances of Exhibit C?
A I asked Herman about this house.
Q Have you met with Herman?
A Yes.
Q Did you have that with you?
A Yes, I think I did.
Q Did you show it to him?
A I did not.
Q What did you ask him?
A To tell me about the Spadoni house.
Q What did he tell you?
A He said that there were moisture problems related to improper flashing around the chimney and duct leakage.
Q And did he tell you how was that resolved?
A I do not know how it was resolved.
Q Was there a claim made against Santee Cooper?
A I do not know -- I mean not to my knowledge.

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He told me there were no Santee Cooper problems.
Q Could I see that, please, ma'am. Did you ask him anything else about it? Did you ask him about local code enforcement having waived the vapor barrier or requirements in the wall?
A He had been in building construction.
Q Let me get you there. I don't want to cut you off, but just keep you focused. Did you ask him about that?
MR. SMITH: Can the witness answer your question?
MR. JOHNSON: Yeah, she can, but she missed it.
MR. SMITH: How about let her answer the question.
MR. JOHNSON: I'm just trying to get through, Rush. I'm not trying to cut the lady off. She can answer any way she wants to. She's trying and I'm trying.
MR. SMITH: Yes.
THE WITNESS: In looking at the document, Eddie says that Santee required the vapor barrier because the County had required it. So then Herman brings this particular house in and says after that is when the local code waived the vapor barrier.

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BY MR. JOHNSON:
Q Did you talk to him about that portion of his memo?
A I was asking him about -- I had heard -- well, you see this Spadoni Zalunka house, so I wanted to know what the nature of the problems were in that house because it has nothing to do, from what he told me, with the vapor barrier. So I wanted to know what the problems were. He said there was mildew around the windows. He said it was due to problems with the duct work, they had actually cut a hole in the plenum, and problems with flashing. I believe he said there were three chimneys for direct introduction of water into the walls.
Q Anything else?
A Not that I recall.
Q My question was did you ask him about where it says, "Local code enforcement waive of vapor barrier in the walls," did you talk with him about that portion of his memo?
A Not specifically I don't think.
Q Did he tell you anything about local code enforcement waiving the vapor barrier requirement?
A Let's see what he said. I can't remember if he told me it was required or not.

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Q When was this fiasco or this dispute that's referred to as a fiasco in Exhibit C? Did he tell you when it occurred?
A I saw the file. I don't remember the date.
Q You-all have a file on that customer?
MR. SMITH: We have it, yeah, I found out. It doesn't have anything about this, but it tells you when the house was built. We can get you-all a copy of that.
(Tendering.)
MR. JOHNSON: Want to mark it as an exhibit, Rush?
MR. SMITH: Let's get a copy made. That will be fine.
(Brief recess taken.)
BY MR. JOHNSON:
Q What documents besides the exhibits that have been marked did you review or look at prior to your deposition in preparation for your deposition? I think you told me you saw a 1991 manual?
A Yeah, I saw some standards from the '80s.
Q Were those a manual book, or were those drafts?
A One was referred to as a draft. Both of these were given to me by Rush.

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Q Have you looked at anything else?
A Of course, we have talked about these (indicating). There may be some other. I saw the letters, I think, from a couple of co-ops.
Q How many documents would you say you have looked at? 100, 200 pages? 50?
A I don't know.
Q The reason I asked, did you look at four banker boxes of records?
A I did not.
Q Did you look at the 1400 --
MR. SMITH: Did you see the boxes?
THE WITNESS: Sorry?
BY MR. JOHNSON:
Q Did you look at 1400 documents?
A No, sir.
Q On the Matter Number 2 on the notice, let me show it to you. Read what Number 2 says.
A "Notice, if any, you gave to Horry Electric Cooperative directly or indirectly of the issues and/or problems related to the use of a vapor barrier as set forth in Exhibit A."
Q To refresh your recollection, Exhibit A is the correspondence of '86 between Mr. Cannon and Mr. Hartman.

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A Uh-huh.
Q Did you find any evidence that Santee Cooper gave Horry Electric notice of those communications or the matters discussed in those letters?
A What I have seen, of course, was the standards, which would have included the vapor barrier piece.
Q What standards?
A The Good Cents standards.
Q Which year?
A The first ones that were a draft, so that was probably '86, '87, somewhere in there.
Q Do you know whether any of those were given to Horry Electric? Have you found any evidence that Horry Electric received that draft set of standards?
A What I saw was a letter addressed to the co-op managers with standards included.
Q And they were draft standards or standards? Adopted standards?
A I don't recall if they were draft or the standards. But in any case, they would be open to comment.
Q What year were those sent?
A Again, I think it must have been '86, '87.
Q Can you refer me or give me the date, help me

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find the letter you're referring to, so you and I know we're talking about the same thing?
MR. SMITH: What are you looking for, the transmission to the co-ops?
MR. JOHNSON: Yes.
MR. SMITH: That's being copied right now. Do you want me to get it?
MR. JOHNSON: Yeah,if you would.
(Brief recess taken.)
MR. SMITH: I think this is what she was talking about.
THE WITNESS: Yeah, that looks familiar.
MR. SMITH: Here is another thing from about the same time.
MR. JOHNSON: Why don't we take a little lunch break. We'll start back up in a jiffy.
(Luncheon recess taken.)
BY MR. JOHNSON:
Q Before we took a break, I was handed this document dated November 4, 1986 and this document dated October 31, 1986. Let's mark those.
(Holmes Deposition Exhibit No. 7 and No. 8 were marked for identification.)
Q Ms. Holmes, I think we got to the discussions of Exhibit 7 and Exhibit 8. When I was asking you a

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question about Matter Number 2 on the deposition notice, I think you said when I was asking you about that matter, you said you looked at these two documents as part of preparing for your deposition?
A That's correct.
Q That really wasn't what I was asking you about Matter Number 2. What I'm asking you about Matter Number 2 is, any notice Horry Electric gave directly or indirectly related to the issues of problems related to the use of a vapor barrier as set forth in Exhibit A. What I'm asking is were you able to determine any information that Santee Cooper disclosed the correspondence that makes up Exhibit A to Horry Electric or any electric cooperative?
A I don't know that this letter was specifically shared with them.
Q Exhibit A is your -- it's several letters.
A Is it several letters?
Q Yes, ma'am.
A Okay.
Q You did not find any evidence that that correspondence was ever shared with the co-ops, including Horry Electric?
A I do not know that these documents were shared with them.

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Q Let me ask you about this. These documents that make up Exhibit A, this set of correspondence involves what is a real potential problem with the use of a vapor barrier, don't they?
MR. SMITH: Object to the form of the question.
THE WITNESS: I mean Glenn refers to it as -- he calls it a touchy subject.
BY MR. JOHNSON:
Q What he says is a touchy subject in coastal areas, like where Horry Electric is. Right?
A Horry Electric does serve in coastal areas, yes.
Q He refers to the literature that deals with vapor barriers and why it's, I guess, a touchy subject in coastal areas?
A That's one of the references he looked at, yes, the ASHRAE.
Q What do you understand he means by, "It is a touch subject in coastal areas"?
A I'm not sure what he means. As I've talked about for me --
Q I'm asking what Santee Cooper understands he means.
A That there would be some discussion about it.

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One of these referred to the building community. Of course, I talked to you about feedback from the co-ops, if we had any, the articles he had looked at, ASHRAE and this Energy Update article.
Q And then in the second letter he says, "Our concern is future liability. We don't want to create situations that will hurt us or the Good Cents program." What does Santee Cooper understand he means by saying our concern is future liability?
MR. SMITH: Objection, asked and answered.
THE WITNESS: Glenn wrote the letter. I don't know what he means.
BY MR. JOHNSON:
Q Isn't it true what he is meaning is he is concerned that this vapor barrier requirement might expose Santee Cooper to liability relating to a vapor barrier requirement?
MR. SMITH: Objection, asked and answered.
THE WITNESS: I really don't know what Glenn specifically meant.
BY MR. JOHNSON:
Q Do you know what liability means, the word?
A Yes, sir.
Q Tell me what it means.
A Responsibility.

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Q May have to pay if you're liable?
MR. SMITH: Object to the form.
THE WITNESS: I don't know the legal meaning.
MR. SMITH: Objection. Lack of foundation too.
BY MR. JOHNSON:
Q But, Ms. Holmes, you're an educated lady. Surely, you know what he's talking about here. He's expressing concern to Jeffrey Hartman that if vapor barriers are required, it may create liability for Santee Cooper or anybody who required them because he talks about this Energy Design Update, which states in warm climates interior vapor barriers may, in fact, create moisture condensation problems?
MR. SMITH: Objection. Asked and answered. Also lack of foundation.
BY MR. JOHNSON:
Q Isn't that what he's saying?
A What he is saying is indicated here in this letter.
Q Do you disagree with my characterization of what he is saying, and if so why?
MR. SMITH: Same objection.
THE WITNESS: What I'm saying is I just don't know specifically what he means. He does refer to this

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article. But, you know, even it doesn't appear to be definitive.
BY MR. JOHNSON:
Q I understand it's not definitive. But what he's raising a concern over is there may be liability if we require vapor barriers in these warm climates or, as he said in the earlier letter, coastal areas.
A I mean ultimately what he says is to follow manufacturer's recommendations.
Q I'm not asking what he says ultimately. I'm asking about the concern he's expressing.
A Then you'll have to ask him his specific concern. I mean I know what it says.
Q Well, you see, you're here to speak for Santee Cooper, how Santee Cooper understands the correspondence. And so I'm entitled to know how you read what he's saying, how Santee Cooper, if it was a person, would say, well, yeah I understand; no, that's not what he's saying at all.
MR. SMITH: Objection. If you've got a question, ask a question. Don't fuss at my witness. She's answered your question.
MR. JOHNSON: I sure hope I hadn't fussed, but I need an answer to the question.
MR. SMITH: She's given it.

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THE WITNESS: Would you ask it again, please.
BY MR. JOHNSON:
Q Yes, ma'am. What do you understand he is saying when he expresses concern about future liability in his letter of October 22, 1986?
A He says we don't want to create any situations that would hurt us or the Good Cents program.
Q I can read what he said. I'm asking what you understand he is referring to?
MR. SMITH: Objection. Asked and answered.
THE WITNESS: Let's see.
BY MR. JOHNSON:
Q See if you agree with this, Ms. Holmes. Isn't he really saying that they have information that a vapor barrier in a coastal area may create moisture problems if it's put in a home, and if we have a requirement like that in our Good Cents plan, it may create liability for us if the vapor barrier creates a moisture problem. And he is raising the question to Southern Electric International to try and revolve this question. Would you agree that's what he is talking about?
MR. SMITH: Object to the form of the question.

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THE WITNESS: They're having this discussion about the requirement for the vapor barrier. In the second paragraph he talks about the infiltration, the manufacturer's recommendations. He does say this concern about future liability. I don't know specifically what he's saying regarding vapor barrier because then he goes into this article, and it says where they may create moisture problems.
BY MR. JOHNSON:
Q Well, we know at least at this point Santee Cooper's man who is in charge of getting the program up and going knows that the vapor barrier in a coastal area may create moisture problems. And he has concern about liability for Santee Cooper and the program, and he is raising the question with SEI as to what should be done about it.
MR. SMITH: Object to the form of the question.
BY MR. JOHNSON:
Q Correct?
A Going from the letter, I can't speak to what he means, but that's how the letter reads.
Q Thank you. And then the gentleman at SEI writes back, and he says -- do you have that letter in front of you? It's the letter dated October 29, 1986.

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A I have it.
Q And he says, "It's SEI's recommendation that South Carolina Good Cents program include a recommended feature which addresses infiltration of vapor control."
A Okay.
Q And then he has language regarding proposed language that would be put in the plan regarding infiltration of vapor barrier?
A Okay.
Q And he's saying it as a recommendation, right?
A What is a recommendation?
Q This language that it would include a recommendation of infiltration, slash, vapor barrier?
A It says infiltration control measures in the first paragraph.
MR. SMITH: Show the witness where you're reading.
MR. JOHNSON: I'm reading here and here.
THE WITNESS: Okay.
BY MR. JOHNSON:
Q Read the last sentence in the second paragraph.
A "A vapor barrier is recommended on exterior walls, floors, and ceilings."

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Q So it starts out with the Santee Cooper employee, Mr. Cannon, saying -- pointing out problems that you can have with a vapor barrier in coastal areas. He then raises the question of liability or expresses a concern about liability. And what the SEI representative, Mr. Hartman, writes back, he says, "We won't make it a requirement of the plan. We're going to include language that a vapor barrier is recommended on the exterior walls, floors, and ceilings."
A That's correct.
Q So are they saying at this point that rather than it being a requirement of the plan for the home to qualify, we're going to call it a recommendation?
A Yes.
Q All right. Now, you were asked some questions about if Santee Cooper and you had concerns about the program, wouldn't it be fair and proper for Santee Cooper to share those concerns with the cooperatives, and I think you said it would be the right thing to do. Can you identify for me anywhere where Santee Cooper shared these concerns with Horry Electric?
A We've talked about these particular documents before. There were no copies to the co-op on these letters. It was in the first draft of the Good Cents

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standards.
Q As a recommendation?
A That's correct.
Q Wouldn't you think the cooperatives in the coastal areas would have wanted to know the specifics of this matter that is being discussed between the two entities that are putting the plan, offering -- making the plan, the Good Cents program, available to them --
MR. SMITH: Object to the form of the question.
BY MR. JOHNSON:
Q -- before they put the Good Cents program in place?
MR. SMITH: Object to the form of the question.
THE WITNESS: I don't know that they didn't know.
BY MR. JOHNSON:
Q That wasn't my question. Don't you think they would want to know?
MR. SMITH: Object to the form of the question.
THE WITNESS: I would want to know.
BY MR. JOHNSON:
Q If you were in their shoes, you would want to

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know it so that you could get your own information and make an informed decision, wouldn't you?
MR. SMITH: Object to the form of the question. Argumentative.
THE WITNESS: I would.
BY MR. JOHNSON:
Q And you would want to know so that you could decide whether you wanted to keep it as a requirement or whether you wanted to even recommend it?
MR. SMITH: Object to the form of the question. Calls for speculation.
BY MR. JOHNSON:
Q I mean, if it's going to cause moisture problems in these people's homes, you may decide you don't even want to recommend it.
A I don't know that it causes moisture problems in the homes.
Q But if it did, you might not want to recommend it, correct?
A If I knew that it did.
Q In other words, wouldn't the fair and right thing for Santee Cooper to have done would have been to send all this to the co-ops in the coastal areas and say, look, guys, red flag, we got a problem here. We want to alert you to it. We want your input, and we

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want you to know about it.
MR. SMITH: Object to the form of the question.
THE WITNESS: But we did ask for input when we did our first draft.
BY MR. JOHNSON:
Q But you didn't tell them the issue, did you?
A What issue?
MR. SMITH: Object to the form of the question.
BY MR. JOHNSON:
Q The issue of the vapor barrier creating a moisture problem. You didn't tell them that. All you did was say here's our proposed standards and the standard for a vapor barrier, here's a recommendation, correct? In Exhibit 8.
MR. SMITH: Show the witness Exhibit 8.
BY MR. JOHNSON:
Q Page 2.
MR. SMITH: Let her look at the whole thing. Don't tell her where to look. She can look at the whole thing, if you're going to ask her about it.
MR. JOHNSON: And, Rush, you don't need to tell her what to look at either.
MR. SMITH: I'm not. I'm going to tell the

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witness to look at the entire document that you're going to ask her about. And you shouldn't tell her to do differently.
MR. JOHNSON: I haven't told her to do anything. I said, here, look at Page 2. You said show her the language.
BY MR. JOHNSON:
Q It's down at the bottom.
MR. SMITH: I'm going to object to the question that says there's nothing in there.
THE WITNESS: I had mentioned to you before that there was a letter. And it says it went to all the managers. It says, "Here enclosed in the first draft, need your comments as soon as possible."
So we didn't specify any particular area of the document, but the vapor barrier recommendation is in here, as you pointed out, on Page 2.
BY MR. JOHNSON:
Q In other words, that communication didn't include any of this correspondence that would call their attention to that issue at all, did it?
A It did not call their attention --
MR. SMITH: Object to the form of the question.
THE WITNESS: -- to any area of the standard.

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BY MR. JOHNSON:
Q Do you know whether the manual that was adopted originally called for the vapor barrier as a requirement, as opposed to a recommendation?
A Is that the original?
Q I don't know. I don't think it is. I think they are sending that out as a --
A Yeah, this is the first draft, according to the letter where it says, "Vapor barrier is recommended."
Q The reason I ask that question is in the letter of October 22, 1986, Mr. Cannon to Mr. Hartman in the second paragraph he refers to, "Originally Santee Cooper required this under our Energy Efficient Home Awards Program similarly to help reduce infiltration and to coincide with manufacturer's recommendations for the same." He's referring to the vapor barrier. Was there an adoption of a plan or standards that predated his letter where it was treated as a requirement?
A The Energy Efficient Home Awards Program is before my time. I don't know what was in it.
Q Then after this correspondence with Mr. Hartman, apparently this Exhibit 8 was sent out that showed it as a recommendation, correct?

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A Correct.
Q But this is a draft set of standards; is it not?
A Yes, because we need their comments back before finalizing.
Q Have you seen what the initial manual says?
A I think there is a copy of that somewhere. Do we have it from '87?
MR. SMITH: You mean the one that went out -- the one that was used by the co-ops?
MR. JOHNSON: The one that was after November 4, '86, but before 1991.
MR. SMITH: Yeah. This is from the lawsuit you were in, that Central Electric produced this.
MR. FATA: What lawsuit is it from?
MR. SMITH: Good Cents. It was a Good Cents class action.
You are looking for Page 7 probably.
BY MR. JOHNSON:
Q Let's mark this. Let's mark your copy as an exhibit.
(Holmes Deposition Exhibit No. 9 was marked for identification.)
Q Have you seen what's been marked as Exhibit 9 as part of your preparation for your deposition? Take

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a look. I got my finger on the page I want to ask you about. Do you know whether you have seen those documents before?
A I may have.
Q Let me call your attention to Page 7, Paragraph 4-A, the last sentence.
A Yes, I have 4-A.
Q Would you read that last sentence?
A "A vapor barrier is recommended on the interior of all exterior walls and exterior floor and ceiling."
Q Do you know whether this was provided to the cooperatives?
A It appears, if all this goes together, that yes, because it says, "Attached is a three-month guidelines." Alternate equipment standard, I'll have to look to see what that was. It looks like it did.
Q I guess what refers -- in the transmittal letter to all electric cooperatives, does it refer to the standards for the Good Cents program?
A It says coordination agreement, and then it talks about guidelines with this alternate equipment standard. Let me try to find that then. Coordination agreement.
Q And then the coordination agreement appears

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to be a two-page document?
A Yeah.
Q Do you know what the alternate equipment standard is?
A That's what I was looking for because I believed it had to do with some of your more energy efficient equipment.
Q Let me ask you this: Have you been able to speak to Mr. Cannon or Jennifer Durant about trying to tie down what went with the transmittal letter dated August 1, 1990?
A I have not.
Q Are you able to determine what went with it by looking at the documents themselves?
A I mean this is -- there is a lot of stuff in here. I would have to go through it more carefully.
Q Have you made a determination that it goes with it or not? Have you done the review of it to try and tie what accompanied it or not?
A I'm just looking at what she says. We talked about the coordination agreement which was, like you pointed out, the two page. But then she refers to this alternate equipment standard, and I'm just having trouble finding it. Do you know where it is?
Q I do not.

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A Then attached is another set of standards. There is a second letter here, "Re: Good Cents program, please review attached." I'm not sure what the attachment is.
Q This is obviously not the set of standards you looked at that were dated 1991 --
A These do not have that on them.
Q -- that were made a requirement?
A Uhn-uh.
Q You looked at a separate set that was dated -- I believe we're going to get them now from my friend. That's Exhibit 10.
(Holmes Deposition Exhibit No. 10 was marked for identification.)
Q Is Exhibit 10 the marketing programs handbook that's dated November 1991?
A This looks like the one I have seen, yes.
Q Is this the one that makes the vapor barrier a requirement for qualification in the Good Cents program?
A Yes, it is.
Q And would this have been what would have been required regarding the vapor barrier from November of 1991 until that fax went out in 2002 of the notice of change?

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A I don't know what might have changed in between, but certainly this is required in here. And then indicates at this time in '02 it was required, but I don't know what happened in the middle.
Q It indicates in 2002 that you're no longer requiring it, actually, doesn't it?
A That the building code no longer requires it, and as a result we will not.
Q It would say they were requiring it up until that point, wouldn't it?
A At least right up to that point. Again, this is a 10-, 11-year span. I don't know what might have changed in between.
Q Are you talking about it going back to a recommendation, then going back to a requirement?
A I'm saying there is nothing I've seen between '91 and then, so I don't know exactly.
Q But if this is all there, it would indicate that November of '91 it became a requirement, a vapor barrier became a requirement for qualification in the Good Cents program and was a requirement till at least 2002?
A That's the date on that fax, yes, sir.
Q You don't have any idea why you changed the requirement?

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A I do not.
Q If Horry Electric was going to remain in good standing with Santee Cooper regarding the Good Cents program, Horry Electric would have had to have complied with the requirements including the vapor barrier requirement that's contained in the marketing program's handbook of November of 1991?
A If Horry Electric wanted to be in the program, they would have to comply with the Good Cents requirements.
Q Including the requirement of requiring its new home members to install a vapor barrier?
A That was the standard, yes.
Q Looking at Exhibit B in Matter Number 6 on the deposition notice, Matter Number 6.
A Do I have the right one?
MR. SMITH: What are you looking for?
MR. JOHNSON: I was referring her to Matter Number 6.
BY MR. JOHNSON:
Q Matter Number 6 asks Santee Cooper to produce a witness to testify as to whether the information on Exhibit B was true or false and the factual basis for the information on Exhibit B. Have you done any investigation to determine whether the information in

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Exhibit B is true or false?
A I have talked to some people, yes.
Q Did any of them have any information about it?
A They did not.
Q This is where you haven't e-mailed everybody who was in the program or communicated with anybody who was involved in administering --
MR. SMITH: Object to the form of the question.
THE WITNESS: I have spoken with them.
BY MR. JOHNSON:
Q Everybody who was involved in the administration of the program?
A I don't know that I have spoken with everybody.
Q But you are unable to determine whether the information contained in there is true or false based upon communication with people that had firsthand knowledge?
A The people that I have talked to that have been involved in the program did not recognize this document.
Q Matter No. 9 asks Santee Cooper to produce a witness to give us the number of new homes that

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qualified for your Good Cents program prior to the issuance of the attached notice of change in the Good Cents requirements for Horry, dash, Georgetown area.
Do you have the number? Or I believe Rush said he had, he mentioned. . .
MR. SMITH: We objected to this designation because it requires us to run data when we've got a number that would serve as an estimate. There was a Good Cents class action against Santee Cooper in which we have a count of how many people were in Good Cents homes during a certain period. And I've got an affidavit of a settlement administrator that the witness can look at and talk about. I can e-mail this to you-all.
MR. FATA: What was the period, Rush?
MR. SMITH: I'm not sure. I will have to look at it. I'm not sure I have the exact reading, to tell you the truth. I may have to go to a different document and get that, but I can get that to you. This is a ballpark. It was people who were customers as of a certain date, and I don't remember what it was, and continued to be customers through a certain date, and I don't remember what it was, who were better off. So it's not all of the customers.
Just read this and then this is an

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affidavit of Steve Tillman. Tillman is the settlement administrator in that case, and he mailed this many notices to the --
THE WITNESS: Do I need to read the whole section?
MR. SMITH: You can say this sentence right here, beginning, "Tillman & Company."
THE WITNESS: "Tillman & Company mailed 4,416 notices of a form approved by the Court to class members with first class postage on July 2, 2004."
MR. SMITH: That's reading from the document filed with the Court. It looks like August 2004.
BY MR. JOHNSON:
Q Then Matter Number 14, the addresses or last known addresses or telephone numbers of Glenn S. Cannon.
MR. SMITH: I gave you that.
MR. JOHNSON: You did?
MR. SMITH: Yeah. She doesn't know it. If you can't find it, I will give it to you again.
MR. JOHNSON: We'll take a break. One second.
(Recess taken.)
BY MR. JOHNSON:
Q One or two questions more. Ms. Holmes, the

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requirement of the vapor barrier appears to have been a recommendation for some period of time, and it was changed to a requirement in November of 1991 based on what we have here before us, correct?
A That's correct.
Q All right. Now, back in 1986 there was this correspondence between Mr. Cannon and Mr. Hartman talking about the fact that a vapor barrier can cause moisture problems in coastal areas, language about concerns about liability. Do you remember that from the correspondence?
A Yes, sir.
Q And you have Mr. Hartman saying we're not going to make it a requirement, we're going to make it a recommendation. Based on your investigation did you find any evidence that this change in the handbook in November of 1991 to make a vapor barrier a requirement was ever discussed with the cooperatives, including Horry Electric?
A I haven't found where anything was specifically discussed. There were regular meetings and correspondence with the co-ops.
Q But this was a marketing programs handbook that Santee Cooper generated and handed out to the co-ops for them to use in administration of the plans,

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correct, in November of '91?
A That's what it looks like.
MR. FATA: What exhibit is that?
MR. SMITH: It's Exhibit 10.
BY MR. JOHNSON:
Q You would agree with me that the fair thing to have done, at least at that point, and having gone from a recommendation to a requirement, would have been for Santee Cooper to have disclosed this information they had uncovered about it being a problem or a potential problem in the coastal areas?
MR. SMITH: Object to the form of the question.
THE WITNESS: What we have talked about is -- I don't know what contributed to the change. I don't know what was specifically talked to the co-ops about, but they've had the opportunities, from what I've seen, to review all the material, whether we specifically pointed it out or not.
BY MR. JOHNSON:
Q Do you find any information that you in 1991 called the cooperatives' attention to the correspondence of this Exhibit A back in 1986?
A I have not found anything to point specifically to those exhibits.

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Q Wouldn't the fair thing to have done, if they were going to change it back to a requirement, Santee Cooper knows that it's a potential problem or may cause a problem, the fair thing for Santee Cooper to have done would have been to tell the co-ops about it, right?
MR. SMITH: Object to the form of the question. Also beyond the scope. Calls for a legal conclusion.
THE WITNESS: I've said for me, I would have thought that was the right thing to do.
BY MR. JOHNSON:
Q Well, you're here today speaking for Santee Cooper. Does Santee Cooper try to do the right thing?
A Yes.
Q Would it be the right thing for Santee Cooper to do?
MR. SMITH: Same objection.
THE WITNESS: Yes.
BY MR. JOHNSON:
Q Thank you. All right, I'm done.
MR. TUCK: I'm going to go through some exhibits and make sure the witness testified today they were produced in the ordinary course of business. Do you want to stipulate to that?

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MR. SMITH: Let's just do that by stipulation.
MR. FATA: You want to put it on the record now?
MR. SMITH: Let's look at them one by one. Some of them came from a production, like the Central thing came from a production. There are other documents.
MR. FATA: Well, let's do it now in the deposition on the record. Let's figure out which ones we have issues over.
MR. SMITH: Okay.
MR. FATA: And the witness might know something about it.
MR. SMITH: What you're wanting is just a stipulation this is a document prepared in the ordinary course of business?
As to number one, yes, that came from Santee Cooper's records. Number two, same; Number 3, same; Number 4, same. Number 5 is a compilation of documents prepared in the ordinary course of business by Santee Cooper. So that's number one that would sort of be, I think. Number 7, yes, that's from our files. Number 8, yes. Number 9, I can stipulate that this document or one just like it is -- I mean, this one

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came to me from Central. But documents just like it exist, have been produced, are in subpoena responses to you-all, are in document responses, so yes.

MR. FATA: What about 6?

MR. TUCK: 6 was just a depo notice.

MR. SMITH: I've got a few questions.

EXAMINATION

BY MR. SMITH:

Q Ms. Holmes, Mr. Johnson asked you about whether if the Good Cents program was a pass-through program. In preparing for the deposition did you look at the contracts between Santee Cooper and the co-ops?

A Briefly.

Q Did you look at any contractual amendments effective in the 19 -- in the early 1990s?

A I don't know. Do you want for me to look at it now?

Q No, I don't.

MR. JOHNSON: Go ahead and testify.

MR. SMITH: You can do this off the record, but there was a change to the contract, and you know that. So you've got that document.

Let's take a short break.

(Recess taken.)

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(Holmes Deposition Exhibit No. 11 was marked for identification.)

BY MR. SMITH:

Q All right, Juan, a couple more questions. Mr. Johnson asked if there was any evidence that the standards had been distributed to the co-ops. I have handed you Exhibit 11. What is that document accomplishing?

A It's a letter announcing a meeting. It includes the manual for review. And then if they bring it to the meeting, they can discuss it, but write down any questions you may have.

Q Does that indicate that the document was, in fact, distributed to the co-ops?

MR. JOHNSON: Objection to the form of the question.

MR. SMITH: That's all right. It was leading.

THE WITNESS: So what's my question?

BY MR. SMITH:

Q The question is what does that tell you about whether or not the manual was mailed to the co-ops?

MR. JOHNSON: Object to the form of the question.

THE WITNESS: Am I to answer?

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MR. JOHNSON: Yes.

MR. SMITH: Yes.

THE WITNESS: The manual is enclosed for prior review.

BY MR. SMITH:

Q The letters that Mr. Cannon wrote, did he indicate whether the ASHRAE standards were something that he had exclusive control of and sole access to?

MR. JOHNSON: Object to the form.

THE WITNESS: He did not indicate anything in the letter.

BY MR. SMITH:

Q I'm talking about when you talked to him. When you asked him about the sources that he consulted, the ASHRAE, the conversation with the building community, and the Energy Design Update, did he indicate whether or not those were things that were accessible only by him or more generally accessible?

MR. JOHNSON: Object to the form of the question.

THE WITNESS: He did not indicate it, but ASHRAE is an industry recognized organization, building, HVAC, refrigeration type standards.

BY MR. SMITH:

Q And the discussions with the building

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community, did those occur in secret between Mr. Cannon and the building community or otherwise?

MR. JOHNSON: Object to the form.

THE WITNESS: In the letter he did not indicate they were in secret. It sounded like that there had been an open discussion.

BY MR. SMITH:

Q How frequently did Santee Cooper meet with the co-ops in the early days and further continuing into the '90s based on records you've looked at?

A From what I looked at, the meetings were quarterly.

Q At the meetings did the co-ops have an opportunity to raise any issues that they might have?

MR. JOHNSON: Object to the form.

THE WITNESS: I did see a sample agenda where Good Cents standards were part of the discussion.

MR. SMITH: I don't have any more questions.

MR. JOHNSON: I have one more.

FURTHER EXAMINATION

BY MR. JOHNSON:

Q This letter that was handed to you dated June 18, 1987, can you identify for me the manual that was sent out and accompanied that letter?

A I only have the letter.

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MR. SMITH: I believe it was the one that was the initial one. That was sent out to you and me in the production in the Good Cents case by Central Electric Cooperative that said "recommended". There were also documents that you looked at in my office from the co-op, or you could have looked at in my office from the co-op, that indicated they received that document too.

MR. JOHNSON: Which document went out in '87? That's later dated, Rush.

MR. SMITH: Right, but if the question is did the document have the language recommended or required in it, based on this. . .

MR. JOHNSON: Let me just ask her, and then you and I can talk.

BY MR. JOHNSON:

Q You can't tell me from looking at that letter, you can't identify, point to me the manual that went out with that letter?

A I cannot.

MR. JOHNSON: That's what I wanted to know.

MR. TUCK: One more question.

FURTHER EXAMINATION

BY MR. TUCK:

Q Do you know if the Good Cents program was a

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pass-through program in the late 1990s, early 2000s?

A In the same way we talked about before?

MR. SMITH: When you say pass-through, if you'll clarify that.

BY MR. TUCK:

Q Have you heard that term pass-through?

A You used it this morning or whatever time today.

MR. SMITH: Let me object to this as beyond the scope. She's not going to be prepared to answer that. You're not going to get a viable answer. If you ask her personally, that's fine. She's not speaking for Santee Cooper on that.

BY MR. TUCK:

Q Okay. You can answer.

A When I worked in the program, and I don't recall -- you're calling it a pass-through, but it was my understanding that we gave them a credit which was then passed on to their Good Cents customers. Since then we had a lawsuit with the rates, so I don't know how that is still done. It may be -- I don't know if it's the same type of credit.

MR. TUCK: Okay. Thanks.

(Holmes Deposition Exhibit No. 12 was marked for identification.)

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FURTHER DEPONENT SAITH NOT...

(The deposition was concluded at 3:30 p.m.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Helen L. Rose, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Further, that at the time of said deposition the witness elected to reserve signature.

Witness my hand, I have hereunto affixed my official seal this 18th day of September, 2013, at Charleston, Charleston County, South Carolina.

_____

Helen L. Rose
RPR #051505, CSR #084-003436 (IL)
My Commission expires
December 8, 2016.

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ERRATA
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ACKNOWLEDGMENT OF DEPONENT

I,_____, do hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____
JUAN HOLMES DATE

Subscribed and sworn to before me this
_____ day of _____, 20____.
My commission expires:_____

_____
Notary Public

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-488
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
South Carolina Public Service Authority and Southern Electric International, Inc.,	)	
Defendants.	)	

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, III, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 2nd day of October, 2013.

COUNSEL SERVED:
B. Rush Smith, III, Esquire
Nelson Mullins Riley & Scarborough, LLP
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PLEADINGS:
Plaintiff's Motion for Partial Summary Judgment

Sherry W. Wise