

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

RECORD ON APPEAL
Volume II

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF HORRY) Case No. 2013-CP-26-0488
)
 3 HORRY ELECTRIC)
 COOPERATIVE, INC.)
 4)
 Plaintiff,)
 5)
 vs.) Transcript of Record
 6)
 SOUTH CAROLINA PUBLIC)
 7 SERVICE AUTHORITY AND)
 SOUTHERN ELECTRIC)
 8 INTERNATIONAL, INC.,)
)
 9 Defendants.)
)
) DATE: May 27, 2014
 10

11 B E F O R E:

12 The Honorable Roger M. Young, Sr.

13

A P P E A R A N C E:

14

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 Attorneys for Santee Cooper

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 Circuit Court Reporter

21

22

23

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25

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

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

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

11 MR. JOHNSON: That's correct; correct.

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

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

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

18 MR. JOHNSON: No.

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

20 MR. JOHNSON: I think that's correct.

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

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

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

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

15 MR. JOHNSON: That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 MR. SMITH: Yes.

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

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

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

9 Looking back from the filing date of January 23,
10 2013, the 13-year cutoff, if you will, is January 23, 2000.
11 So all claims based on construction completed before then
12 would be barred.

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

1 We've argued, Your Honor, for application of the
2 8-year statute of repose based on a couple of cases that
3 have applied the statute of repose that was in existence as
4 of the time of the filing of the complaint. One of those is
5 Hollywoods Association vs. Hiller, 392 S.C. 172. I believe
6 it's cited in our motion. Also, In Re: Building Materials
7 Corporation, it's a case from the Federal District Court,
8 Judge Childs, 2013 Westlaw 1316562. In both of those
9 cases --

10 THE COURT: 131 what?

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

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

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

1 limitations is in the Tort Claims Act. It's Code Section
2 15-78-110.. As I said, the complaint was filed January 23,
3 2013. And the claims in the complaint.-- that's a two-year
4 statute of limitations, by the way. And the claims that are
5 in the complaint clearly arose far, far in advance of two
6 years prior to the filing date of the complaint.

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

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

25 If we look at the discovery rule and how it would

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

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

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

1 included inspecting customers' homes.

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

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

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

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

6 What do we find in the answer? Well, at Paragraph
7 9, Horry Electric admits that it offered to its members the
8 Good Cents Program that was offered through the South
9 Carolina Public Service Authority without having performed
10 any research regarding the specifications and requirements.
11 In other words, Horry Electric admitted no due diligence.
12 With due diligence, it could have discovered what's on the
13 face of the letters. And the statute began to run in 1986.

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

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

1 interior side of the exterior walls. And we know that in
2 2003, that standard changed.

3 At that point, Your Honor, Horry Electric was on
4 notice of the subject matter of the letters. And that is,
5 there is an issue about vapor barriers in the walls of homes
6 in this part of the country. And they were on notice at
7 that point to investigate the claims. They did nothing.
8 And we are now faced with a complaint filed some 27 1/2 --
9 26 1/2 years after these letters were written. So the
10 two-year statute of limitations, Your Honor, bars the claims
11 that Horry Electric has asserted in this case.

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

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

25 There's also a suggestion in his motion that the

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

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

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

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

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

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

1 business official after that date.

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

6 As to the statute of limitations --

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

9 MR. JOHNSON: In the underlying action, our
10 exposure was for claims from 1998 to 2003. I've agree the
11 13-year statute would apply here, anything prior to that.
12 So let's see, we brought --

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

14 MR. JOHNSON: That's correct.

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

17 MR. JOHNSON: Correct.

18 THE COURT: Not '98 to 2003?

19 MR. JOHNSON: That's correct.

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

22 MR. JOHNSON: We did. They started earlier.

23 THE COURT: Okay.

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

25 THE COURT: All right.

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

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

5 MR. JOHNSON: Correct.

6 THE COURT: Okay.

7 MR. JOHNSON: As to the statute of limitations,
8 I've always understood that the statute does not run until
9 all of the elements of the claim are in existence. There
10 was no damage incurred at any time until after the
11 underlying action was initiated. So we would have had no
12 damage to seek indemnification for or damage for any of the

13 other claims we are making prior to starting to incur
14 damages at that time. So that would be my first position.

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

17 MR. JOHNSON: Until we had damage.

18 THE COURT: Until you got sued?

19 MR. JOHNSON: Until we got sued.

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

1 MR. JOHNSON: I don't think so, because until those
2 plaintiffs brought a claim for damages for that period of
3 time, we had nothing to sue over. Until we became exposed
4 to damages which we are seeking indemnification, we would
5 have had no claim for indemnification. In other words, in
6 2000 or 2001, 2002, 2003, there would be no -- until
7 somebody asserts a claim against us for damages for which
8 they say we are liable, we have no claim over to be
9 indemnified. That didn't occur until this suit was brought,
10 the underlying suit was brought.

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

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

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

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

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

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

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

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

25 THE COURT: So \$6 million.

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

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

11 MR. JOHNSON: And costs.

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

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

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

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

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

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

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

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

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

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

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

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

1 you've got to have all the elements.

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

13 MR. JOHNSON: Correct.

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

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

1 But since we have other expenses, all three --

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

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

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

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

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

3 I would further point out to the Court that the
4 statute of limitations is an affirmative defense. It has to
5 be proved and -- pled and proved. They have not filed an
6 answer. I would take the position that until they do and
7 raise the defense that's not before the Court, but on a
8 12b -- on a motion to dismiss, the Court -- or the party
9 submits material in addition to the complaint, the Court can
10 convert it to a motion for summary judgment.

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

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

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

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

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

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

11 So, you've got Mr. Smith arguing that the letters
12 showed that we could have figured it out ourselves. You've
13 got her testimony and the testimony of Horry Electric
14 30(b)(6) who said that they relied upon Santee Cooper with
15 respect to the requirements of the program. So at a
16 minimum, between the two, you have a lawyer arguing they
17 should have known. You've got witnesses who have given
18 sworn testimony saying to the contrary. We would say it is
19 premature to -- if you convert it to amounts outside of the
20 complaint, you should deny the motion.

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

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

1 They have a responsibility to disclose it.

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

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

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

25 THE COURT: Well, we are talking about improvements

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

4 MR. JOHNSON: Your Honor, I don't think 1986 -- I
5 don't think a bad act then has to do with construction that
6 took place in '98 for a 2003. It has to do with
7 improvements to real estate in this 13 years after, within
8 13 years of the suit being filed. So I don't think you
9 reach back before that to look at a program. You are
10 looking at improvements to real estate, would be my
11 response.

12 THE COURT: Okay.

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

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

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

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

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

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

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

9 MR. JOHNSON: Sure. Sure.

10 (Whereupon, a brief recess is taken.)

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

13 MR. JOHNSON: I can hear you fine.

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

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

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

25 Mr. Johnson went into some length on some evidence

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

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

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

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

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

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

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

15 THE COURT: That's okay.

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

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

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

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

21 Paragraph 9 of the plaintiff's complaint in this
22 case refers to the two letters we referred to from October
23 1986, as what I will call smoking guns in this case, that
24 they were hidden by Santee Cooper, they were not disclosed.
25 And I just simply would say to you that to go back 28 years

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

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

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

19 THE COURT: 458?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 THE COURT: Sure.

22 MR. JOHNSON: The motion to dismiss based upon the
23 statute of repose is to dismiss based upon the 8-year
24 statute. There's no motion to dismiss addressing the
25 13-year statute. As I said, the statute itself, the

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

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

10 THE COURT: What about that?

11 MR. SMITH: Your Honor, the statute is the statute.
12 It's 15-3-640. I believe the argument I'm hearing is one of
13 lack of notice. The plaintiff actually asserted that the
14 13-year statute applies. Therefore, there's no surprise.
15 He's not caught off guard. And if the 13-year statute
16 applies, it's rooted in the same code section. That's
17 simply a matter of whether you apply the statute as amended
18 in July of 2005 or as it existed before. It's not like
19 there are two separate statutes and two parts of the code
20 that Horry Electric had no notice of the 13-year statute.
21 We've raised the issue.

22 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: That's okay.

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

8 THE COURT: I don't think so.

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

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

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

1 bad act.

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

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

8 MR. JOHNSON: Right, under your ruling.

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

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

1 MR. JOHNSON: Yes.

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

4 MR. JOHNSON: Correct.

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

7 MR. JOHNSON: I may.

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

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

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

16 MR. SMITH: Yes.

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

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

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

25 MR. SMITH: Thank you.

1 MR. BAXLEY: Thank you, Mr. Johnson.

2 MR. JOHNSON: Okay. Thank you.

3 (Proceedings are concluded.)

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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

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2013-CP-26-0488

RECEIVED

OCT 17 2014

SC Court of Appeals

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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5 Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> §1192 at 42 (2d ed. 1990)	7

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, SCORE 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

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), SCRPC DOES NOT PROVIDE FOR A MOTION TO DISMISS FOR LACK OF RIPENESS?

Rule 12(b), SCRPC, 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

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justiciable 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 be based upon matters outside of the four corners of the Amended Complaint. Although the letters attached to the Amended Complaint refer to ASHRAE 85¹ 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.

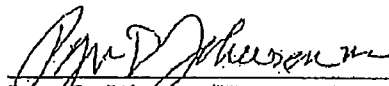
CONCLUSION

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.*

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.



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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.

~18~

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 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

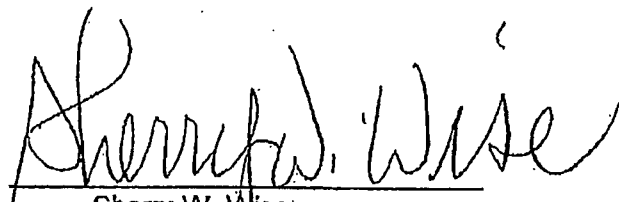

Sherry W. Wise

Exhibit I

Montorio Deed

65699

Prepared By and Return to:
N. David DuRant & Associates, P.A.
1801 Glens 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 I, 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.

Grantee(s)' Address: 303 WORTHINGTON CIRCLE, MYRTLE BEACH, SC 29577

STATE 24670 COUNTY 103.93
YES
EXEMPT
ASSESSOR

BOOK 2009 PAGE 476

476

Exhibit J

Montorio Mortgage

Record and return to:
N. David DuRant & Associates, PA
1801 Glenns Bay Road
Surfside Beach, SC 29575
98-8806NDD

972419711

656699
FILED
HURRY COUNTY

98 FEB -2 PM 3:48

R.M.C.

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MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on January 30, 1998
David E. Montorio and Holly S. Montorio.

The mortgagor is

DEM HSM
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
address is 2411 North Oak Street, Myrtle Beach, SC 29577

, and whose

("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
DEM HSM

VOL 2239 805

which has the address of 303 Worthington Circle, Myrtle Beach
South Carolina 29577

[Zip Code] ("Property Address");

[Street, City]

SOUTH CAROLINA-Single Family-FNMA/FHLMC
UNIFORM INSTRUMENT Form 3041.9/90
Amended 10/94

VMP -6R(SC) (9612)
VMP MORTGAGE FORMS - (800)621-7291
Page 1 of 1 1556540

Initials: _____



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.

VOL 2239 P# 809

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
☐ Graduated Payment Rider
☐ Balloon Rider
☐ VA Rider

- ☐ Condominium Rider
☒ Planned Unit Development Rider
☐ Rate Improvement Rider
☐ Other(s) [specify]

- ☐ 1-4 Family Rider
☐ Biweekly Payment Rider
☐ Second Home Rider

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:

Jim Jullow

Witness

Debra E. Hermann

Witness

David E. Montorio

David E. Montorio

(Seal)

-Borrower

David E. Montorio

(Seal)

-Borrower

(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.

Jim Jullow

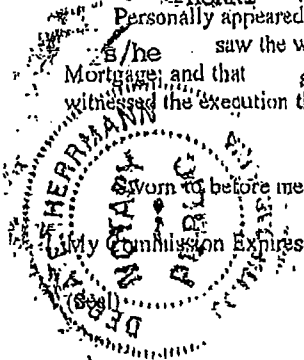
Sworn to before me this 30th

day of

January, 1998

Debra E. Hermann

Notary Public for South Carolina



VOL 2239 PAGE 810

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.

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:

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 9/90

Page 1 of 3

U2MP -7U (8808).01

VMP MORTGAGE FORMS - (800)521-7291

Initials: *DMH*



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.

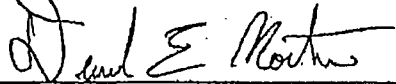
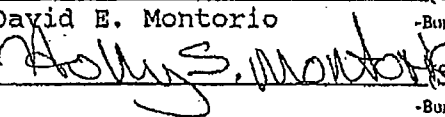
	(Seal)	_____	(Seal)
David E. Montorio	-Borrower		-Borrower
	(Seal)	_____	(Seal)
	-Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

Exhibit K

Vance Deed

271023

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 Bk Parcel 11-3-97

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) WARRANTY DEED

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

BOOK 1987 PAGE 791
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

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 J. A. Fox, Inc.
IN THE PRESENCE OF:

Debra E. Hermann (L.S.)
1st Witness
Allen B. Foxworth
By Allen B. Foxworth
Its President
Debra E. Hermann
Notary

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

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..

Debra E. Hermann
1st Witness

Sworn to before me this 31st
day of October, 1997.

Debra E. Hermann (L.S.)
Notary Public for South Carolina..

My Commission Expires 11/23/04

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

A F F I D A V I T

PERSONALLY appeared before me, 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.

BOOK 1987 PAGE 794

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

271023

FILED
Horry County, S.C.
97 OCT 31 PM 1:54
R.M.C.

1096

[Space Above This Line For Recording Date]

MORTGAGE

0060879095

THIS MORTGAGE ("Security Instrument") is given on OCTOBER 31, 1997
GARY A. VANCE AND TAMMY R. VANCE,

The mortgagor is

("Borrower"). This Security Instrument is given to INVESTORS MORTGAGE COMPANY

which is organized and existing under the laws of SOUTH CAROLINA
address is 4603 OLEANDOR DR STE 7, MYRTLE BEACH SC 29577

, and whose

("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.

which has the address of
South Carolina 29577

326 WORTHINGTON CIR, MYRTLE BEACH
[Zip Code] ("Property Address");

[Street, City].

SOUTH CAROLINA - Single Family - FNMA/FHLMC
UNIFORM INSTRUMENT Form 3041 9/90

AMENDED 10/94
VMP MORTGAGE FORM 48 - (800) 521-7201
Page 1 of 8



Handwritten initials: JAW, TRV

598

2002214 598

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 seized 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, instrumentally, 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.

2001-08(SC)(0112)

Page 2 of 6

Form 3011, 9/90

Initials: JRV

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.

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
☐ Graduated Payment Rider
☐ Balloon Rider
☐ VA Rider

- ☐ Condominium Rider
☒ Planned Unit Development Rider
☐ Rate Improvement Rider
☐ Other(s) [specify]

- ☐ 1-4 Family Rider
☐ Biweekly Payment Rider
☐ Second Home Rider

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:

Debi Jullwood
 Witness

Debra E. Herrmann
 Witness

Garry A. Vance (Seal)
 GARY A. VANCE -Borrower

Tammy R. Vance (Seal)
 TAMMY R. VANCE -Borrower

____ (Seal) _____ (Seal)
 -Borrower -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

(Seal)

Debi Jullwood
Debra E. Herrmann
 Notary Public for South Carolina

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 WORTHINGTON 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.

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 9/90

Page 1 of 2

UMP-7 (010b)

VMP MORTGAGE FORMS - (313)292-8100 - (800)521-7291

Initials: *San*
TRV

BOOK 2214 PAGE 604

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 1987 at Page 791.

BOOK 2214 PAGE 606

Exhibit M

Montorio Answer

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-1266

DEFENDANT'S ANSWER

Defendant.

FOR A FIRST DEFENSE

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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.

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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-40-0268 IR.

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

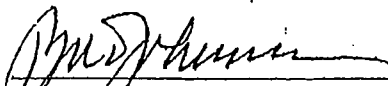
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was greater than any negligence of the defendant and the plaintiffs are not entitled to recover and/or their recovery should be reduced in proportion to their negligence and recklessness.

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)

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

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF SERVICE

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2011 MAY 11 AM 10:52
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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

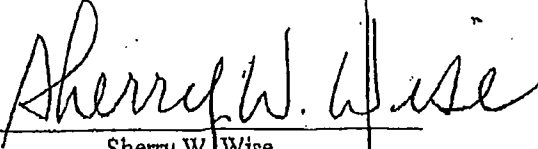

Sherry W. Wise

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,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

vs.)

Horry Electric Cooperative,)

Defendant.)

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 of 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

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KELANIE HUGHES-WARD
CLERK OF COURT

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,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

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KELANIE 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.

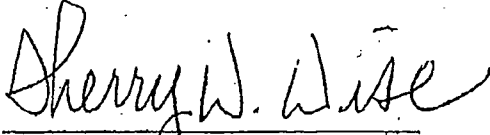
COUNSEL SERVED:

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

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**

FILED
CLERK OF COURT
2011 APR 27 PM 3:01
Horry County

name, SC Bar no. and address of Plaintiffs 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:

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:

name, SC Bar no. and address of Defendant Atty:

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:	<u>H 25⁰⁰</u>	5/27/11
☐ MOTION FEE COLLECTED: _____		
☐ CONTESTED - AMOUNT DUE: _____		

Exhibit O

9/10/11 Form 4 Order

FORM 4

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

RECEIVED SEP 14 2011
JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-1266

Ronnie Ferrell et al

Horry Electric Cooperative

MELANIE HUGGINS-WARD
CLERK OF COURTS.

PLAINTIFF(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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.

Margaret 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

Pope D Johnson III

(not present)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

vs.)

Horry Electric Cooperative,)

Defendant.)

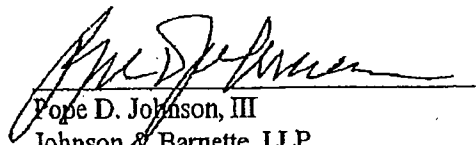
TO: THE PLAINTIFFS and their attorneys, NATE FATA and MARK A. BRUNTY

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
[Signature]

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

2

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
11 SEP 28 PM 4:00
JANELA 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

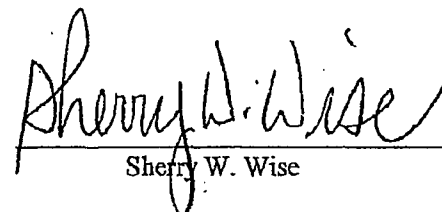

Sherry W. Wise

Exhibit Q

8/21/12 Form 4 Order

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-26-1266

Ronnie Ferrell et al

12 AUG 21 PM 2:27

Horry Electric Cooperative

PLAINTIFF(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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 reflects a real or personal property lien. If any amount should be enrolled, indicate the amount in the box 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

August 13, 2012

Date

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)
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

Civil Action No. 2011-CP-26-1266

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

PAID

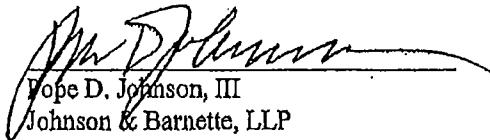
HORRY COUNTY
CLERK OF COURT
12 AUG 17 PM 3:20
KELANIE HIGGINS-WARD

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,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

HORRY COUNTY
12 AUG 17 PM 3:20
HELANE 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.

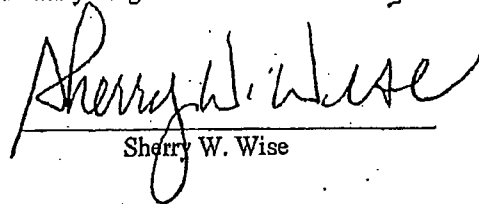
COUNSEL SERVED:

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 ☒ 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

PAID

name, SC Bar no. and address of Plaintiffs 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:

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:

name, SC Bar no. and address of Defendant Atty:

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:

☒ 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

☒ 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, SCRPC)

[] 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:

HORRY COUNTY
12 AUG 17 PM 3:20
HELAINE HOGGINS-WARD
CLERK OF COURT

CLERK'S VERIFICATION		DATE FILED
Collected by:	<u>Jaab</u>	<u>8/17/12</u>
☐ MOTION FEE COLLECTED:	<u>25</u>	
☐ CONTESTED - AMOUNT DUE:		

Exhibit S

11/26/12 Form 4 Order

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

FORM 4

JUDGMENT IN A CIVIL CASE

FILE NO. 2011-CP-26-1266

Horry County

Ronnie Ferrell et al.

Horry Electric Cooperative

12 NOV 26 AM 10:17

PLAINTIFF(S)

MELANIE HUBERMAN(S)

CLERK OF COURT

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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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 to follow was 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:

Judgment in Favor of (Last name(s) below)	Judgment Against (Last name(s) below)	Judgment Amount to be Enrolled (Last 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.

Margaret Cullison

Circuit Court Judge

2148

Judge Code

November
7th, 2012

Date

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

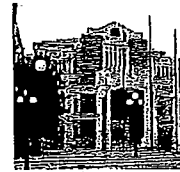
Court Reporter: Henry Young

Exhibit T

Public Index



Horry County Fifteenth Judicial Circuit Public Index



Horry County Home Page South Carolina Judicial Department Home Page SC.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		

383

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 support 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 next 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
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
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
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/exhibits	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	Plaintiff'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 appearance/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				

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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	
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	
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 Plaintiff'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 thlrd 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	
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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
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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
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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

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,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

DEFENDANT'S MOTION TO FILE
THIRD PARTY COMPLAINT

vs.)

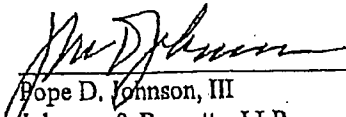
Horry Electric Cooperative,)

Defendant.)

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), SCRPC, 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)

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.)

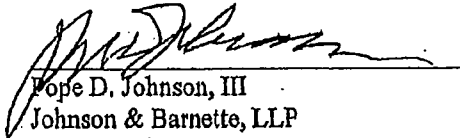
IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF COUNSEL

HORRY COUNTY
17 SEP 20 PM 2:21
MELANIE HUGGINS-MANR
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)

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

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF SERVICE

HORRY COUNTY
12 SEP 20 12 21
MELANIE HUGGINS
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.

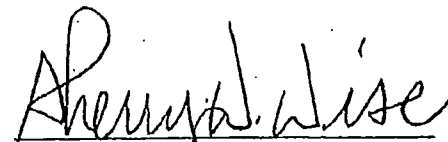
COUNSEL SERVED:

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

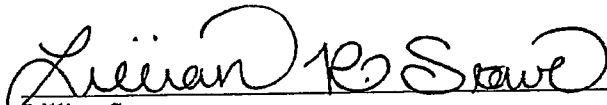
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, 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 Stowe
Administrative Assistant

December 17, 2014

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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.	)	
	)	<u>MOTION TO DISMISS</u>
South Carolina Public Service Authority	)	<u>AMENDED COMPLAINT</u>
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 Cooper¹ 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

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

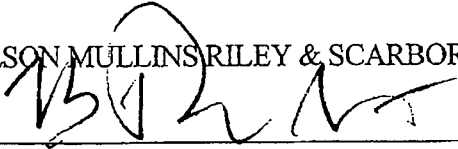
Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986))

("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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Columbia, South Carolina
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

Counsel Served:

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Columbia, SC 29201



Jessica Trautman
Administrative Assistant

August 21, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
)
Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

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

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT SOUTH
CAROLINA PUBLIC SERVICE
AUTHORITY'S MOTION TO DISMISS**

HORRY COUNTY
13 SEP 27 PM 1:44
CLERK OF COURTS
JESSICA S. WARD

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

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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

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

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

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 real 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), SCRPC, 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

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

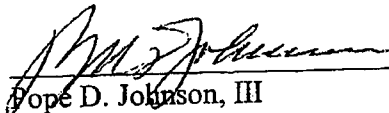
promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C.”

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)

COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-26-48

CERTIFICATE OF SERVICE

HORRY COUNTY
13 SEP 27 PM 1:44
MELANIE JENNINGS-WARD
CLERK OF COURT

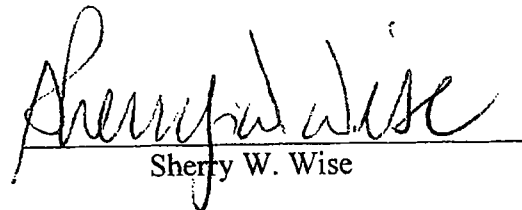
I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by emailing and mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following 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.	)	<u>DEFENDANT'S REPLY</u>
	)	<u>IN SUPPORT OF ITS</u>
South Carolina Public Service Authority	)	<u>MOTION TO DISMISS</u>
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).

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 years³ 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 action⁴ 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,

⁴Allegations 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.

⁵As noted elsewhere, Santée 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.

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 Inglesse 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).

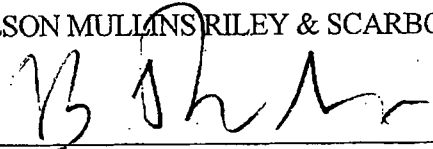
Whether a duty exists is a matter of law for the Court to decide. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). In its Amended Complaint, HEC makes a general allegation that Santee Cooper owed HEC a duty of care to disclose any problems. (Am. Compl. ¶ 20.) This is a conclusory 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.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for South Carolina Public Service Authority

Columbia, South Carolina
September 30, 2013

CERTIFICATE OF SERVICE

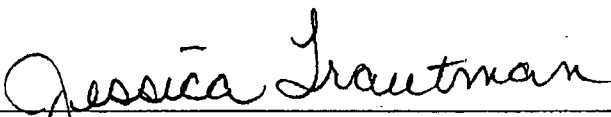
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Service Authority, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the 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:

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



Jessica Trautman
Administrative Assistant

Sept. 30, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

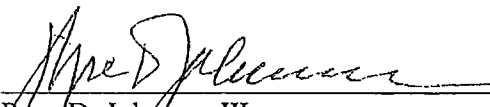
Civil Action No. 2013-CP-26-488

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

Deposition of Eddy Blackburn

1
2 STATE OF SOUTH CAROLINA :
3 COUNTY OF HORRY : SS:
4
5 IN THE COURT OF COMMON PLEAS
6
7 RONNIE FERRELL, TAMMY VANCE and :
8 DAVID MONTORIO, on behalf of :
9 themselves and all others :
10 similarly situated, :
11 Plaintiffs, :
12 vs. : Case Number
13 HORRY ELECTRIC COOPERATIVE, : 2011-CP-26-1266
14 Defendant. :
15
16 Deposition of EDWARD J. BLACKBURN, the Witness
17 herein, called for the purpose of Discovery
18 Examination by Plaintiffs, pursuant to the South
19 Carolina Rules of Civil Procedure, taken before
20 James C. Grady, a Notary Public for South Carolina,
21 at the offices of Horry Electric Cooperative, 2774
22 Cultra Road, Conway, South Carolina, on Wednesday,
23 October 12th, 2011, commencing at 9:30 a.m..
24
25

1
2 APPEARANCES:
3 ON BEHALF OF THE PLAINTIFFS:
4 NATE FATA, Esq. and
5 Suite 215 The Courtyard
6 1500 Highway 17 North
7 Surfside Beach, SC 29575
8 and
9 MARK A. BRUNTY, Esq.
10 The Brunty Law Firm
11 Post Office Box 70907
12 Myrtle Beach, SC 29577
13 ON BEHALF OF THE DEFENDANT:
14 POPE D. JOHNSON, Esq.
15 Johnson & Barnette
16 P. O. Drawer 11209
17 Columbia, SC 29211-1200
18
19 STIPULATIONS
20 This deposition was taken pursuant to proper
21 Notice and pursuant to Circuit Rule 30, to be
22 used for the purpose of discovery and/or
23 evidence at trial, or for any other purpose
24 permitted by Circuit Rule 30; all objections
25 except as to the form of the question were
reserved until the time of trial.

1
2 EDWARD J. BLACKBURN,
3 of lawful age, the Witness herein,
4 called for Discovery Examination by the
5 Plaintiffs, being by me first duly sworn,
6 as hereinafter certified, deposed and said
7 as follows:
8 EXAMINATION
9 BY MR. FATA:
10 Q. Good morning Mr. Blackburn. We just met. My
11 name is Nate Fata. I represent the Plaintiffs
12 in this case along with Mark Brunty here to my
13 right. I'm here to take your deposition. You
14 apparently are the 30(b)(6) designee for
15 matters that we have set forth in our Notice of
16 Deposition. I don't believe there is anyone
17 else.
18 MR. POPE. No. It's just Eddy.
19 And Nate, do you mind if we put on the
20 record that we had objections to several of the
21 areas and we are going ahead and taking the
22 deposition today. You can ask him what you
23 want and if he can answer, great. If he can't
24 we will stand by the motion and try to figure
25 it out.
MR. FATA: I understand. That's

1 fine.
2
3 (Thereupon, Plaintiff's Exhibit
4 Number 1 was marked)
5
6 Q. Let me see if we can get through this. I'll
7 hand you what has been marked as Plaintiff's
8 Exhibit 1. And just so you have a reference
9 point, that's the amended 30(b)(6) notice of
10 deposition and the matters that I just
11 referenced are set forth in that two three page
12 document, Item 1 through 8. What I would like
13 to do is we will go through that probably
14 matter by matter and you can give me your
15 response to my questions.
16 But I need to let you know that during the
17 deposition and like any other deposition you
18 have given before it's important for me to ask
19 you a question that you understand. If you
20 don't understand any question you should ask me
21 to rephrase it so you do understand it. My job
22 is to ask a decent question that you can at
23 least understand.
24 The court reporter is going to take
25 everything down that we say so it's important

Deposition of Eddy Blackburn

5

1 for only one of us to speak at a time so that
2 we don't double talk or go over each other. If
3 you need to take a break to use the facilities,
4 that's fine. Usually conversations with
5 counsel or anyone else about the deposition
6 testimony during the break are subject to me
7 asking you questions about what you talked
8 about, so your lawyer knows that.

9 So moving forward, Mr. Blackburn, can you
10 please tell me your full name, your address
11 where you live?

12 A. Yes. Edward -- full name is Edward J.
13 Blackburn, Edward Joseph Blackburn. Address is
14 25544 Eds Road. E-D-S Road and that's Loris,
15 South Carolina 29569.

16 Q. How long have you lived at that address?

17 A. Since 2000.

18 Q. Do you live in a Good Cents home?

19 A. Yes, sir.

20 Q. Did you build the Good Cents home?

21 A. Yes, sir.

22 Q. Who was your contractor?

23 A. My brother-in-law at the time. His
24 construction company. Wait a minute. It's
25 either Sun Built or -- I'll have to look back.

6

1 It's my brother-in-law. His name is Eddy
2 Barnhill.

3 Q. Eddy Barnhill?

4 A. That's his name. I apologize. I'm not sure of
5 the company name.

6 Q. That's okay. Mr. Blackburn, have you ever had
7 your deposition taken before?

8 A. No, sir.

9 Q. Where do you work?

10 A. Horry Electric Cooperative.

11 Q. How long have you worked here?

12 A. Since June of '87. That would be 24 years.

13 Q. You don't want to count at this point.

14 A. Yes, sir.

15 Q. Were you ever involved in the Good Cents
16 Program?

17 A. Yes, sir.

18 Q. And what capacity? I'm kind of going back
19 through your Horry Electric tenure remember and
20 maybe different titles you may have held and
21 your involvement in the Good Cents Program.
22 This case involves the Good Cents Program so
23 I'm going to try to keep us on that.

24 A. Originally in June of '87 when I was hired I
25 was an energy advisor and basically, you know,

7

1 I was hired to work with another fellow named
2 Horace Jordan who hired me as we began to
3 implement the Good Cents Program. Like I say,
4 I served as an energy advisor and I served in
5 that role from '87 through '97. That was my
6 title and I worked with the Good Cents Program.

7 Q. After '97 what was your title?

8 A. I continued to work with the Good Cents Program
9 but my title in '97 was Coordinator of Energy
10 Management. Excuse me. Director of Energy
11 Management.

12 Q. How long were you Director?

13 A. That was through 2001.

14 Q. Then in 2001?

15 A. Yeah. It changed to Marketing Analyst/Key
16 Accounts to present.

17 Q. As energy advisor what were your job functions
18 from 1987 to 1997?

19 A. One would be Good Cents Program, calculating
20 house plans, inspections, Basically certifying
21 homes for the Good Cents Program along with
22 some other duties as far as audits and high
23 bill complaints, et cetera, as far as energy
24 management area.

25 Q. From 1987 to 1997 were you the point person for

8

1 the Good Cents Program?

2 A. I was from June of '87 January of '88 and
3 another guy was hired. The program boomed and
4 we had to hire another person. We were of
5 equal, Energy Advisors.

6 Q. What was that person?

7 A. Ricky Lowder.

8 Q. Where is Ricky Lowder today, does he work for
9 Horry Electric?

10 A. Yes.

11 Q. What's his role today?

12 A. He is Senior Marketing Representative.

13 Q. Your background prior to coming to work for
14 Horry Electric, what was it in?

15 A. Straight from college, you know.

16 Q. That's a dangerous question if I ask you what
17 your background in college was.

18 A. Yes, sir.

19 Q. Where did you go to college?

20 A. At the University of South Carolina.

21 Q. What did you study?

22 A. Marketing, finance.

23 Q. Did you get a degree?

24 A. Yes, sir. A bachelor, BS degree in -- I double
25 majored. It was marketing --

Deposition of Eddy Blackburn

9

1 Q. And finance.
2 A. And finance. Yes, sir. I apologize.
3 Q. Any engineering classes?
4 A. No, sir.
5 Q. Have you ever taken any engineering classes?
6 A. No, sir.
7 Q. Are you the person most familiar with the Good
8 Cents Program at Horry Electric?
9 A. I will not say I'm necessarily more familiar
10 with it than my counterpart, as my counterpart
11 Ricky. We are equal.
12 Q. Do you know anyone that has more familiarity
13 than you at Horry Electric today on the Good
14 Cents Program?
15 A. No, sir.
16 Q. So you probably have as much if not more
17 experience than any other Horry Electric
18 employee when it comes to the Good Cents
19 Program?
20 A. Yes, sir.
21 Q. And Horace Jordan at one point was your
22 supervisor?
23 A. Yes, sir.
24 Q. He is no longer with Horry Electric?
25 A. No, sir.

10

1 Q. Where is he now?
2 A. Retired.
3 Q. And the Good Cents Program was designed or was
4 to decrease the amount of energy demand that
5 was going to be occasioned by the new homes?
6 MR. POPE: Object to the form.
7 Q. What was the purpose of the Good Cents Program
8 in your experience?
9 A. Based on what, you know, we were in association
10 along with Santee Cooper the primary purpose of
11 the program initially was demand reduction, KW
12 demand reduction from a system along with
13 energy savings per each homeowner. KW,
14 Kilowatt hours.
15 Q. But the program was designed to reduce kilowatt
16 hours demand?
17 MR. POPE: Object to the form.
18 A. We were hold that the primary purpose initially
19 was to reduce demand to delay the building of
20 power plants.
21 Q. And who told you that?
22 A. Santee Cooper.
23 Q. And was there someone at Santee Cooper that
24 was --
25 A. At the time this all kicked off the director --

11

1 I'm not exactly sure of his actual title but
2 the guy in charge of the Good Cents Program
3 was Glenn Cannon.
4 Q. Glenn Cannon?
5 A. Yes, sir. Cannon.
6 Q. Cannon like you shoot?
7 A. C-A-N-N-O-N.
8 Q. Okay. Was the Good Cents Program something
9 Horry Electric was required to do?
10 A. I'm not sure.
11 Q. So you don't know if there was ever an option
12 of whether Horry Electric could choose between
13 not doing Good Cents or doing the Good Cents
14 Program
15 A. I don't think it was a mandatory thing for the
16 co-ops that buy power from Santee Cooper to
17 necessarily have to, no.
18 Q. Okay. I think at some point probably in the
19 last couple of weeks, and I think it was you
20 filled out an affidavit concerning the
21 documents.
22 A. Yes, sir.
23 Q. At some point we just may want to take five or
24 ten minutes. I think there might be a room in
25 this building that has the documents.

12

1 A. Yes.
2 Q. Maybe we could just take a look at it. I would
3 just like to get a scope or point of reference.
4 We can of kind of move through that or
5 incorporate that into a break, or whatever.
6 Let's go to matter 1. For the years 1988
7 through 2003, the identify of all documents
8 known by you to relate or in anyway pertain to
9 your performance, in whole or in part, of the
10 requirements and recommendations of the Good
11 Cents New Home Plan including all vapor barrier
12 specifications. So we can talk about the
13 identity of the documents that pertain to Horry
14 Electric's performance with the requirements
15 and recommendations of the Good Cents New Home
16 Plan.
17 A. All homes are in files upstairs.
18 Q. Okay.
19 A. As far as documents pertaining -- the actual
20 files are upstairs.
21 Q. Did all the homes go through the same type of
22 procedure when it came to inspections?
23 A. Standard procedure on inspections would have
24 been to visually inspect the insulation in the
25 exterior walls before sheetrock was hung.

Deposition of Eddy Blackburn

13

1 Q. And that was standard and that was to confirm
2 the existence of the vapor barrier?
3 A. That was to, yes, yes.
4 Q. And what were there, just two types of vapor
5 barriers?
6 A. Up to 2003 it was faced insulation or bat faced
7 insulation or unfaced with four on six mil
8 polyethylene, either/or, yes.
9 Q. So in your experience then each of the homes
10 that were accepted by Horry Electric into the
11 Good Cents Program would have had either of
12 those two types of vapor barriers up to 2003?
13 A. Yes, sir.
14 Q. And were you ever involved personally in
15 inspecting homes?
16 A. Yes.
17 Q. So you yourself saw homes that had that type of
18 vapor barrier, either/or?
19 A. Yes, sir.
20 Q. Okay. Would you think you saw more than 50
21 homes with that type of vapor barrier?
22 A. Yes, sir.
23 Q. What would you estimate as far as the number of
24 homes that you may have seen, the new homes in
25 the Good Cents Program in 2003 that you

14

1 actually visually inspected and said okay,
2 check, there is a vapor barrier that's in
3 accordance with the Good Cents Program, and
4 I'll give you an estimating guide, more than
5 500, more than 1,000, more than 10,000,
6 somewhere in the middle?
7 A. I would say 1,000 minimum.
8 Q. For the new homes?
9 A. Yes, sir.
10 Q. Were you in charge of the, new home inspections
11 for the Good Cents Program?
12 A. Not in charge, no, sir.
13 Q. Were you one of the persons who was in charge,
14 there might have been more than one, but you
15 and Mr. Ricky Lowder?
16 A. May I ask, when you say in charge you mean of
17 the program or just performing the inspection?
18 Q. Both.
19 A. I was not in charge of it.
20 Q. Of the program?
21 A. No, sir.
22 Q. Who was in charge of the Good Cents Program?
23 A. Horace Jordan.
24 Q. But then he left?
25 A. Yes, sir.

15

1 Q. After he left were you in charge?
2 A. Then I was.
3 Q. And you were --
4 A. It was brief from '97 through 2001. During
5 that period of time, yes, sir.
6 Q. And then as far as being in charge of
7 inspections for the Good Cents New Home
8 Program, were you in charge of that?
9 A. I would have been in charge during that four
10 year period.
11 Q. 1997 through 2001?
12 A. 2001, yes, sir.
13 Q. Prior to '97 you would have been intimately
14 involved in the inspection process?
15 A. Yes, sir.
16 Q. From 2001 to 2003 who was in charge of the Good
17 Cents New Home Program?
18 A. Penelope Hinson.
19 Q. Does Penelope Hinson still work for Horry
20 Electric?
21 A. Yes, sir.
22 Q. Did Penelope Hinson become the director of
23 energy management?
24 A. She's manager of Public Relations slash
25 Marketing. It falls under her department.

16

1 Q. Going back to matter 1, the identity of all
2 documents known by you to relate to or in any
3 way pertain to Horry Electric's performance in
4 whole or part of the requirements and
5 recommendations of the Good Cents New Home
6 Plan, including all vapor barrier
7 specifications, I'm going to show to you --
8 - - - - -
9 (Thereupon, Plaintiff's Exhibits
10 2 and 3 were marked)
11 - - - - -
12 Q. Let me show as you what's been marked as
13 Exhibit 2 and Exhibit 3. These documents have
14 been produced by Horry Electric's counsel in
15 the discovery, and Exhibit 2, it's been
16 referred to as the agreement between Horry
17 Electric and Santee Cooper concerning the Good
18 Cents Program; are you familiar with that?
19 A. As far as familiar I know that there was
20 originally a contract signed. I knew Mr.
21 Jordan had -- there was some type of agreement,
22 yes, I am aware of that. I've never saw it or
23 anything but I know, yes, sir.
24 Q. Did you see Mr. Jordan's signature on there?
25 A. Yes, sir.

Deposition of Eddy Blackburn

17

1 Q. And that's on Page 2 of Exhibit 2?
2 A. Yes, sir.
3 Q. Okay. And then as far as the program of the
4 Good Cents New home requirements, kind of
5 laying it all out, I'm going to show to you
6 what's marked as Plaintiff's Exhibit 3, again
7 this document was produced by Horry Electric's
8 counsel, and I want you to kind of go through
9 that, take your time, and just tell me if that
10 is and contains the program specifications that
11 you operate under?
12 A. This was the manual of Santee Cooper with
13 guidelines passed through to the co-ops. Of
14 course, their letterhead and their logos we
15 basically duplicated.
16 Q. I understand.
17 A. But yes, sir to answer your question.
18 Q. So Exhibit 3 was the manual that Horry Electric
19 was given by Santee Cooper to implement the
20 Good Cents Program?
21 A. Yes, sir.
22 Q. And that was probably done in the early 1990's,
23 maybe 1991?
24 A. Not that can recall exactly what it looked like
25 but I would assume that there would have been

18

1 an original manual in '87. I know there was
2 maybe a possible new version they may have sent
3 in 1990 or '91, which I see the date is '91 but
4 this is the one I recognize.
5 Q. Was that manual ever changed or modified during
6 the period 1991 to 2003 from your recollection?
7 A. I'm not 100 percent on exactly when it may have
8 been but certain things such as the SEER rating
9 or the efficiency rating of the heating and
10 cooling would go up maybe every two years,
11 three years. But the basic thermal quality
12 qualification methods, et cetera, that part
13 didn't except in '03, the vapor barrier.
14 Q. So the vapor barrier specifications that are
15 referenced in Exhibit 3 were consistent until
16 2003 when they changed?
17 A. Yes, sir.
18 Q. Prior to 2003 in all of your experience were
19 the vapor barrier specifications for the new
20 homes in the Good Cents Program, were they
21 always the same until 2003?
22 A. Yes, sir.
23 Q. So 2003 was the first time in your experience
24 with Horry Electric that a vapor barrier change
25 ever occurred with the Good Cents Program?

19

1 A. Yes, sir.
2 Q. And all homes up through 2003 had to have
3 either one of two type of vapor barriers,
4 right, the four to six mil?
5 A. Yes. Faced or unfaced with poly, yes, sir.
6 Q. And that is set forth on what page in Exhibit 3
7 A. It is set forth Page 3.
8 Q. Page 3 of Exhibit 3?
9 A. Yes, sir.
10 Q. It's document Horry Electric 160 on the bottom
11 right?
12 A. Under D.
13 Q. Do you know why that is important for Horry
14 Electric that there was a vapor barrier?
15 MR. POPE: Object to the form.
16 Q. You can answer to the best of your ability.
17 MR. POPE: I think it's outside the
18 scope of the 30(b)(6), but you can answer.
19 A. My recollection is a vapor barrier involves
20 just what it says, as a moisture or being able
21 to inhibit moisture, you know. That's my
22 personal --
23 Q. Other than what we have shown to you as
24 Exhibits 2 and 3 can you identify any other
25 documents that would set forth the requirements

20

1 or specifications or recommendations of the
2 Good Cents New Home plan at any time during
3 1988 through 2003?
4 MR. POPE: Do you mean other than
5 what he's already told you that there were some
6 changes for SEER ratings and whatnot?
7 MR. FATA: Right.
8 A. I'm not aware of any other.
9 Q. And I'll ask it this way: If I were to ask you
10 what was your playbook, your handbook on the
11 New Home Good Cents Program for '99 through
12 2003 what document would you say here they are,
13 this is our internal policy procedure
14 documents?
15 A. Exhibit 3.
16 Q. Exhibit 3, okay. And Exhibit 2 would just be
17 the contract that kind of was the platform from
18 which Exhibit 3 was given to Horry Electric by
19 Santee Cooper?
20 A. I've not read that.
21 MR. POPE: When you say that, you
22 mean Exhibit 2?
23 A. Exhibit 2, I've not read it. I never was aware
24 -- I mean I knew there was a contract but I
25 never seen it through the years until --

Deposition of Eddy Blackburn

21

1 Q. But as far as you know Exhibit 3 pretty much
2 constitutes the procedures book, the internal
3 manual if you will for Horry Electric for the
4 Good Cents Program for years 1988 through 2003
5 and then there may have been some adjustments
6 as to SEER ratings during the years but the
7 vapor barrier requirement is encapsulated on
8 Page 3 for those years and that was consistent
9 throughout those years?
10 A. Yes, sir.
11 Q. Would you as part of the inspection process
12 have to document each home on a piece of paper
13 as to whether it met the requirements for the
14 Good Cents Program as set forth in Exhibit 3?
15 A. Did you say inspection?
16 Q. Yes.
17 A. Yes, sir, there were inspection forms. As far
18 as procedure, that was the original procedure,
19 yes, sir.
20 Q. Did that procedure ever change?
21 A. The procedure -- I wouldn't say the procedure
22 changed. I would say there may be isolated
23 cases, I can't put a number on it, where we
24 were approving 120 homes a month. I know we
25 got guidance from Santee Cooper at times from

22

1 the over abundance of homes and there probably
2 were isolated cases where that same home was
3 built over and over and over, the same floor
4 plan. They failed to call or we were behind
5 and I can't say each file, necessarily every
6 complete file has that inspection procedure
7 form in.
8 Q. But you would expect at least 99 percent of the
9 files would have that inspection?
10 A. It was the normal procedure, yes, sir.
11 Q. All right. And that inspection from procedure
12 really never changed from '88 to 2003?
13 A. No, sir.
14 Q. It did not change?
15 A. No, sir, it did not.
16 Q. Going to Item 2: For the years 1988 to 2003,
17 identify and content of all licenses, contracts
18 or other agreements between you and any other
19 entity regarding your adoption of and the use
20 of and ability to use the Good Cents name and
21 program information, are you aware of any
22 contract other than Exhibit 2, which you just
23 saw today for the first time, I understand
24 that, that deals with the Good Cents Program
25 and Horry Electric's ability to use it under

23

1 some type of license or agreement?
2 A. No, sir.
3 Q. And I didn't see any other agreements in the
4 discovery so I'm assuming that's it.
5 MR. POPE: We got that from Santee
6 Cooper and they told us Horry Electric did not
7 have it, so as far as I know that's all there
8 is.
9 Q. Okay. Item 3, for the years 1988 through 2003
10 any specifications or internal discussions,
11 studies or documentation concerning vapor
12 barriers by you or by you and a third party who
13 is not a homeowner. During that period of time
14 were you ever involved or aware or made aware
15 of any conversations Horry Electric was having
16 concerning the requirement of a vapor barriers
17 in the Good Cents Homes?
18 A. No, sir.
19 Q. Did anyone ever voice to you any concerns about
20 the vapor barrier requirement in the Good Cents
21 Program during that time period?
22 A. No, sir.
23 Q. Did you ever have any complaints from any
24 person concerning the vapor barrier requirement
25 in that time period for the Good Cents Program?

24

1 A. No, sir.
2 Q. Did you ever have any conversation with any
3 engineers concerning the vapor barrier
4 requirement?
5 A. No, sir.
6 Q. Did Horry Electric have any engineers on staff
7 from 1988 to 2003?
8 A. On staff?
9 Q. Yes.
10 A. Yes, sir.
11 Q. And who were they and were they ever involved
12 in the Good Cents Program?
13 A. The engineer that would have been -- the head
14 engineer was Terry William. He was never
15 involved with the Good Cents, no, sir.
16 Q. Was there ever any engineer involved with the
17 Good Cents Program?
18 A. No, sir.
19 Q. Did Horry Electric simply rely on whatever
20 Santee Cooper told it as far as the Good Cents
21 Program as far as specifications and
22 requirements?
23 A. Yes, sir. We basically followed their
24 guidelines and their manual. If there was a
25 question there was a phone call, communication

Deposition of Eddy Blackburn

25

1 made with some of their marketing folks running
2 their program.
3 Q. And you said Horry Electric buys its energy
4 from Santee Cooper?
5 A. Through Central Electric, yes, sir. Central
6 Electric Cooperative is our GNT. I you want to
7 call it that. There are 20 co-ops that buy
8 power from Santee Cooper in the State of South
9 Carolina through Central Electric Power
10 Cooperative, Incorporated.
11 Q. So Central Electric is kind of a hub --
12 A. Was formed to negotiate the power, the buying
13 of the power, power supply. They do a lot of
14 engineering, et cetera.
15 Q. Does Central Electric provides electricity to
16 homeowners?
17 A. The cooperative. They're a distribution coop,
18 if that makes sense.
19 Q. It might to you. From what your are telling me
20 Central --
21 A. All coops, we are basically tied into Santee
22 Cooper's transmission lines through our
23 substations and we directly serve the
24 customers, the coop does, yes, sir, to my
25 knowledge.

26

1 Q. Central Electric doesn't directly serve
2 customers?
3 A. Not directly to my knowledge, no, sir.
4 Q. So it's kind of an organization that the co-ops
5 use to buy power from Santee Cooper at maybe a
6 volume discount, if you will?
7 A. Somewhat, yes, sir. It was formed -- the
8 cooperatives and Santee Cooper, I mean, we all
9 formed and went together from my understanding
10 back then and formed Central Electric Coop in
11 '40 or '42 or '43, I'm not sure of the year,
12 for that purpose, yes, sir.
13 Q. Getting back to Item 3 on the notice, though,
14 you have never had any internal discussions or
15 seen any studies concerning vapor barriers and
16 their issues or concerns concerning vapor
17 barriers?
18 A. No, sir.
19 Q. When you did your inspection of the vapor
20 barriers --
21 A. Yes, sir.
22 Q. There are two types of vapor barriers that
23 could be used for the Good Cents Program;
24 right?
25 A. Yes, sir.

27

1 Q. And one was the plastic 4 to 6 mil?
2 A. Yes, sir.
3 Q. And the other was the --
4 A. Faced.
5 Q. Faces paper?
6 A. Faced Batt.
7 Q. Were about an equal number of homes built with
8 the plastic and the faced batts or was it more
9 predominantly plastic, 4 to 6 mil?
10 A. I cannot accurately say.
11 Q. What would you estimate, I mean, was it pretty
12 close?
13 A. I don't know if it was exactly 50/50 but it was
14 a good mix, yes, sir, of both.
15 Q. Good mix. So it wasn't the 90/10 or 10/90?
16 A. No. It was not a lopsided number, no sir.
17 Q. Item 4: List the date Horry Electric no longer
18 specified or required a vapor barrier for homes
19 in the Good Cents Program and the reasons for
20 such discontinuance. Do you know the answer --
21 let me ask you a question. What's date the
22 company no longer specified or recommend a
23 vapor barrier for homes in the Good Cents
24 Program?
25 A. If I recall correctly, any correspondence that

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1 I saw of that was I think June of 2003.
2 Q. And what did you see? You said correspondence?
3 A. Actually what we saw at that time was -- it was
4 not a letter from Santee Cooper or a
5 correspondence from Santee Cooper. It was a
6 memo, correspondence from one of the
7 contractors, Good Cents contractors in the
8 program at the time, an insulation contractor,
9 Singleton Insulation, and it stated Santee
10 Cooper has become aware of the local building
11 code no longer requiring vapor barriers in
12 exterior -- on the interior of exterior walls,
13 so therefore Santee Cooper, you know, from this
14 date will follow the local building code. In
15 other words they -- that's the first awareness.
16 - - - - -
17 (Thereupon, Plaintiff's Exhibits
18 4 and 5 were marked)
19 - - - - -
20 Q. Let me hand to you what's been marked as
21 Plaintiff's Exhibits 4 and 5. I don't know if
22 this is the correspondence or communication
23 that you referred to. These were produced in
24 the discovery by Horry Electric's counsel.
25 - - - - -

Deposition of Eddy Blackburn

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1 (Thereupon, discussion was had
2 off the record)
3 - - - - -
4 A. I'm not aware of this. I've never seen that.
5 MR. POPE: I'm sorry. I didn't print
6 that out before.
7 MR. FATA: Print what on out?
8 MR. POPE: I think we sent you
9 something that showed it was a 2003 change. I
10 got communication showing the change. Do you
11 have it?
12 THE WITNESS: On my desk.
13 MR. FATA: We will short circuit the
14 questions. Can you make a copy, please?
15 - - - - -
16 (Thereupon, Plaintiff's Exhibit
17 Number 6 was marked)
18 - - - - -
19 Q. Let me show you what's been marked as
20 Plaintiff's Exhibit 6. Have you seen that
21 before?
22 A. Yes, sir.
23 Q. I believe that is also document Horry Electric
24 184 in the discovery responses. That document,
25 did you see that in 2003, Exhibit 6?

30

1 A. Yes, sir.
2 Q. And who did you talk to, if anyone, concerning
3 the content of this document?
4 A. I can't give you an exact quote but my
5 recollection, the best I can recall is I'm sure
6 it was discussed here, Number 1, among Ricky
7 and myself and at this time there was another
8 employee on board by that time participating in
9 the program.
10 Q. And that was?
11 A. Garrett Gasque, G-A-S-Q-U-E. First name
12 G-A-R-R-E-T. We would have discussed that
13 and I feel sure phone calls made to Santee
14 Cooper but I can't recall exactly.
15 Q. This has a fax header on it of June 4th, 2003.
16 Does that sound about the time you received it,
17 early summer of 2003?
18 A. Yes, sir.
19 Q. What local building code?
20 A. With me reading this, it's saying it recently
21 came to our attention that local building code
22 no longer requires a vapor barrier on the
23 interior of exterior walls, and a lot of this
24 we will revert to the local code on this. Are
25 you asking -- could you repeat that?

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1 Q. Yes. What is or was the local building code?
2 A. I'm not sure on that exactly. We didn't get
3 involved in that. The way this reads it says
4 that the local building the county required.
5 It says recently it has come to our attention
6 the local building code no longer requires the
7 vapor barrier on the interior of exterior
8 walls. In light of this Santee Cooper will
9 revert to the local code and no longer require
10 it.
11 I'm assuming that the county had a vapor
12 barrier on the local building code by reading
13 this but that was the county building
14 department, which is a separate section from
15 ours on the new homes.
16 Q. When you were implementing the Good Cents
17 Program or involved in the implementation of
18 the Good Cents Program in the years 1998 to
19 2003 did you believe that there was a building
20 code or local Horry County building code that
21 required vapor barriers?
22 A. I don't know. I know Santee Cooper required a
23 vapor barrier. If I'm -- I'm not exactly sure
24 what the local building code was at the time on
25 the exterior wall -- interior of exterior wall..

32

1 Q. Were you ever familiarized with the Horry
2 County building code when it came to vapor
3 barriers or did you simply understand that
4 Santee Cooper wanted a vapor barrier, therefore
5 we are going to require a vapor barrier from
6 our customers who want to be enrolled in the
7 Good Cents Program?
8 A. I would say it's more of we are going to follow
9 Santee Cooper's guidelines that that vapor
10 barrier had to be there.
11 Q. What was your understanding as to the building
12 code that was used by the Good Cents Program,
13 in other words was it the International
14 Building Code that was kind of the basis for
15 which a lot of these specifications or
16 requirements were included, the Southern
17 Building Code? Are you familiar with the
18 building codes?
19 MR. POPE: Object to the form.
20 Outside of the scope of the notice.
21 A. I don't know what code they used as far as
22 setting their guidelines or what they followed.
23 I do not know.
24 Q. But you recall that in June of 2003 sometime
25 you did review this Plaintiff's Exhibit 6 and

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1 that's when the vapor barrier was no longer
2 required by Horry Electric at that point?
3 A. Yes, sir.
4 Q. Was it an immediate no longer have to worry
5 about vapor barriers?
6 A. I can't recall the exact date but knowing what
7 we did when this came through, yes, sir, it
8 would have been an immediate change.
9 Q. You talked about the approved builders for the
10 Good Cents Program or you used some type of --
11 A. Good Cents contractors?
12 Q. Yes. What's a Good Cents contractor?
13 MR. POPE: Object to the form.
14 Outside the notice. But you can answer.
15 A. When the Good Cents Program was implemented us
16 and Santee Cooper as well as other co-ops had
17 loan programs for existing homes, but we had a
18 loan program where we loaned money to our
19 members at a cheaper interest rate than normal
20 to upgrade their homes, heating and cooling
21 insulation. To participate in that program we
22 required a list of certified contractors to do
23 that work. That kind of evolved I would say
24 moreover to having a Good Cents certified list
25 of contractors also.

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1 Santee Cooper's loan program, their loan
2 program for existing, not new, they had quote a
3 list of certified Good Cents contractors. For
4 our program we basically adopted their list for
5 awhile. Our program went away. Our loan
6 program was taken away.
7 The Good Cents contractors, there were
8 meetings and updates that they invited the
9 contractors to. They had a quarterly meeting
10 to my recollection. I'm not sure of the quote
11 "Training" they did. I don't know stuff like
12 that, but I know there is a Good Cents list.
13 Q. The Good Cents contractors we will call them,
14 were they required to follow the Good Cents New
15 Home Program requirements?
16 A. Yes, sir.
17 Q. Was anyone allowed to deviate from the Good
18 Cents New Home requirement of vapor barriers?
19 A. Not here, no, sir.
20 Q. Not in Horry County?
21 A. No, sir.
22 Q. So it is what it is. So Exhibit 3 has the
23 requirements and you had to follow those if you
24 wanted to participate in the Good Cents
25 Program?

35

1 A. Yes, sir.
2 Q. Now, what was the average savings for the home,
3 an average home, say 2000 square feet --
4 MR. POPE: Object to the form.
5 Q. -- in the Good Cents Program?
6 MR. POPE: Object to the form.
7 Outside the scope.
8 A. If I can recall accurately, you know, I know
9 the program was sold originally on
10 approximately 20 percent on a new home in
11 kilowatt hour savings.
12 Q. So if you have \$100 a month bill it might be
13 down to 80, about 20 percent reduction?
14 A. Yes, sir.
15 Q. Was there any study ever done by Horry Electric
16 to see in fact what the saving actually was or
17 reduction actually was?
18 A. I wouldn't say there was an official study.
19 Q. How about unofficial study?
20 A. We looked at a few.
21 Q. And what was did you come up with, what was
22 your range?
23 MR. POPE: Same objection. Outside
24 the scope of the notice.
25 Q. Was it 10 percent, 15 percent?

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1 A. Fairly close to that, 15, 20 percent, if I had
2 to put a number on it.
3 Can I make one point on that?
4 Q. Sure.
5 A. As time went by and progressed and I think
6 building codes changed and they required more
7 insulation et cetera in homes, the Good Cents
8 home, naturally the value of that home would go
9 down and that savings would be less, but lesser
10 over a typical home over time.
11 Q. Because you might have better insulation in
12 2002 versus 1990?
13 A. Yes, sir.
14 Q. Or better windows?
15 A. Yes.
16 Q. Or all of the above?
17 A. Yes.
18 Q. I don't know if they make better windows.
19 MR. POPE: Supposed to.
20 Q. We will go to Number 5 and maybe this might be
21 a good time to start a question and maybe take
22 a little break and maybe go to the room.
23 For each year beginning 1988 to 2003 the
24 number of new homes you accepted into your Good
25 Cents Home Program plan and the new homes that

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1 had a vapor barrier installed and that did not
2 have a vapor barrier installed. So --
3 A. The number of new homes accepted into your Good
4 Cents Program from '88 through 2003? I don't
5 know the exact number.
6 Q. Do you know, was it at least 1,000?
7 A. I would say so, yes, sir.
8 Q. At least 1500? Between 1,000 and 2,000
9 somewhere?
10 A. I would say somewhere between there roughly.
11 I'm not sure exactly.
12 Q. And so as far as you know all of those new
13 homes that were accepted into the Good Cents
14 Program had a vapor barrier installed?
15 A. Yes, sir.
16 Q. And that was a requirement. And each of the --
17 you mentioned there is a room with some files
18 in it?
19 A. Yes, sir.
20 Q. Is there going to be a common document that
21 should be in each of those files that you could
22 identify that shows that a home was inspected?
23 I'm just looking for an example that you would
24 say Nate, this would be the document that
25 should be in each of the files that would show

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1 that we inspected and that there was a vapor
2 barrier, otherwise we wouldn't have signed it.
3 Let's take a little break and kind of leaf
4 through these documents and tell me if you see
5 any. Let's take a little break.
6 A. There was a Good Cents letter such as here that
7 listed the requirements, yes, sir.
8 -----
9 (Thereupon, Plaintiff's Exhibit
10 Number 7 was marked)
11 -----
12 Q. Let me show you what's been marked as
13 Plaintiff's Exhibit 7. For new Good Cents
14 homes for the years 1988 to 2003 would each
15 homeowner have in its file a letter similar to
16 that of Plaintiff's Exhibit 7 that you are
17 looking at?
18 A. I couldn't say every single home would. I
19 mean, I haven't been through all the files but
20 the procedure was yes, there is a letter that
21 should have been in each home that gives the
22 requirements for that home qualifying for Good
23 Cents.
24 Q. And that letter would be similar in content to
25 Exhibit 7?

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1 A. Yes, sir.
2 Q. And although you can't guarantee each file has
3 one of those letters because there might be a
4 mistake or human error, the procedure was that
5 each file for each homeowner have a letter in
6 the file that's similar to Exhibit 7?
7 A. Correct. Yes, sir.
8 Q. And that applies for new homes?
9 A. Yes, sir.
10 Q. Was there any difference between the letters
11 for new homes versus the letters for
12 retrofitted existing homes?
13 A. Well naturally the letter on existing homes,
14 the letter would not state anything about a
15 vapor barrier because it's an existing wall.
16 It would be different from the standpoint of
17 that. I mean, you wouldn't be inspecting it.
18 Basically the improved Good Cents letter would
19 be if some insulation would have to be added or
20 storm windows, what size heat pump but not
21 anything pertaining to the initial inspection.
22 -----
23 (Thereupon, Plaintiff's Exhibit
24 Number 8 was marked)
25 -----

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1 Q. Let me show you what's been marked as Exhibit
2 8. It's a document apparently prepared by
3 Ricky Lowder, Member Services/Energy
4 Management. I believe it's similar to Exhibit
5 7.
6 A. The question, it's a new --
7 Q. New Home?
8 A. It's the qualification for a new home.
9 Q. What was the purpose of Exhibit 8?
10 A. This is requirements for the homeowner, what
11 needed to be done.
12 Q. Okay.
13 A. As well as this is to the contractor, this is
14 to a homeowner.
15 MR. POPE: Which is to a contractor
16 and which is to a homeowner?
17 A. Exhibit 8 is to an actual homeowner it appears.
18 Q. Okay.
19 A. Exhibit 7 is to the actual builder or
20 contractor.
21 Q. So Exhibit 8 is kind of the form letter that
22 was sent to homeowners telling them what the
23 requirements of the Good Cents Program for new
24 homes were?
25 A. Yes, sir.

Deposition of Eddy Blackburn

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1 Q. And then Exhibit 7 would be sent to the
2 contractor also kind of laying out the Good
3 Cents requirements?
4 A. Exhibit 7 and 8 are somewhat the same. There
5 were times that a builder took care of the
6 initial set up and the homeowner would do it.
7 Different people dropped different floors plans
8 off. It could go to either/or, the letter.
9 - - - - -
10 (Thereupon, Plaintiff's Exhibit
11 Number 9 was marked)
12 - - - - -
13 Q. I'll show you what's been marked at Exhibit 9.
14 What was the purpose of exhibit 9? It looks
15 like an agreement.
16 A. That was the actual agreement that was given
17 out along with the letter when this information
18 was given to a homeowner or a contractor. This
19 agreement was enclosed in that information.
20 Q. So Exhibit 9 is the agreement that accompanies
21 the requirements and specifications set forth
22 in Exhibit 7 or 8?
23 A. Yes, sir. And it stated we had the right to
24 inspect at certain stages, and I cannot recall
25 the exact year but at one time the State

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1 mechanical license was a requirement added by
2 Santee Cooper, so we asked for that initially
3 on this agreement.
4 Q. And was that agreement, Exhibit 9 and then the
5 content of that agreement fairly consistent
6 throughout the 1988 to 2003 period?
7 A. Yes, sir.
8 Q. And the same thing with Exhibit 7 and 8, the
9 content generally was about the seem during
10 1988 to 2003 as far as the specifications and
11 requirements of vapor barriers?
12 A. Yes, sir.
13 Q. And you would expect or the procedure was to
14 have an Exhibit 9 form and either an Exhibit 7
15 or Exhibit 8 form in each of the files for the
16 new homes in the Good Cents Program; correct?
17 A. Correct.
18 Q. Let's that a short break and maybe we could
19 walk up to that office and take a look.
20 - - - - -
21 (Thereupon, a recess was had)
22 - - - - -
23 Q. Mr. Blackburn, we are back on the record. We
24 just went upstairs and you showed us the files
25 that you have for the Good Cents Program, Horry

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1 Electric's Good Cents Program homes and there
2 are about 22 banker boxes more or less upstairs
3 in the second floor; right? Is that a yes? .
4 A. Yes, sir.
5 Q. And that would have all the files for the Good
6 Cents Program?
7 A. Yes.
8 Q. That would include all files relating to the
9 new homes Good Cents Programs and retrofitted
10 homes and mobile homes; correct?
11 A. Yes.
12 Q. How many members are in Horry Electric?
13 A. Approximately number is 60,000.
14 Q. All right. And what percentage was on the Good
15 Cents Program or is on the Good Cents Program?
16 A. Seven, eight percent.
17 Q. Let me show you this document.
18 - - - - -
19 (Thereupon, Plaintiff's Exhibit
20 Number 10 was marked)
21 - - - - -
22 Q. The documents that should be in a file upstairs
23 in those 22 banker boxes if it was a new home
24 file, would the documents include or should
25 they include a document similar to Exhibit 9,

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1 the contract or the agreement to comply with
2 Horry Electric's Good Cents Home Program?
3 A. Yes, sir.
4 Q. Would the file also include or should it also
5 include a document similar to Exhibit 7 or 8?
6 A. Yes, sir.
7 Q. And would the file also include a document
8 called inspection form similar to Exhibit 10?
9 A. Yes.
10 Q. And these documents, are these kind of the core
11 documents that should be in the file for the
12 years 1988 to 2003 is the for new homes?
13 A. Yes.
14 Q. And these documents really didn't change during
15 that time period?
16 A. No.
17 Q. And the document, Exhibit 10 has exterior walls
18 checked, that was part of the check of the
19 vapor barrier?
20 A. Yes. It maybe checked and may not be, yes, but
21 that indicated --
22 Q. Vapor barrier?
23 A. Yes, sir.
24 Q. And that's on Exhibit 10.
25 Are there any other core documents that

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1 should be in each file that you can describe
2 for me that we haven't talked about or marked
3 at an exhibit?
4 A. Normally there was an actual calculation of the
5 Manual J calculation as well as a take off
6 normally. I would say take off of square
7 footage of walls from the floor plan.
8 Q. I'm going to hand to you this stapled set of
9 documents and leaf through it and maybe you can
10 show me what you are referring to if it's in
11 there that would constitute a take off and I'll
12 rip it out of that cluster.
13 A. That.
14 - - - - -
15 (Thereupon, Plaintiff's Exhibit
16 Number 11 was marked)
17 - - - - -
18 Q. Exhibit 11 would be the manual take off?
19 A. Correct, yes, sir.
20 Q. That would have been done by the inspector such
21 as yourself or Ricky Lowder?
22 A. Yes, sir. From the floor plans, uh-huh, or on
23 occasion a home is roughed in, dried in,
24 nothing done, no wiring, it could have been
25 measured on the lot.

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1 - - - - -
2 (Thereupon, Plaintiff's Exhibit
3 Number 12 was marked)
4 - - - - -
5 Q. Okay. Then the computer calculations would be
6 included in the file as well or should be
7 included in the file?
8 A. Yes, sir.
9 Q. And that would be Exhibit 12?
10 A. Yes, sir.
11 Q. So we would have, just to summarize, each file
12 should have under the program for years 1988
13 through 2003 a document or letter similar to
14 Exhibit I believe it was 7 or 8, and that's
15 telling the homeowner or the contractor what
16 the requirements are for the Good Cents
17 Program?
18 A. Correct.
19 Q. File should also have Exhibit 9, which is the
20 agreement for the Good Cents Program?
21 A. Yes, sir. Correct.
22 Q. And in order to get the Good Cents rate you had
23 to have a signature from Horry Electric on it;
24 right?
25 A. Should have been a signature on it, yes, sir.

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1 Q. That means that Horry Electric has approved
2 everything, inspected everything and everything
3 is done in accordance with the plan?
4 A. If I may? This signature on this agreement was
5 before. This was given along with the
6 requirements initially but it was signed at
7 that point. Doesn't mean the inspection was
8 done. Just at that point.
9 Q. So 7 and 8 were the letters to the homeowner or
10 contractor with enclosing the contract or the
11 agreement for the Good Cents Program, which was
12 Exhibit 9; right?
13 A. Yes, sir.
14 Q. Then there was also the inspection form which
15 was Exhibit 10?
16 A. Correct.
17 Q. And that should be in the file?
18 A. Yes.
19 Q. Then there would be some manual calculations
20 that were probably done by the Horry Electric
21 inspector, which might have been you or Ricky
22 Lowder or somebody else?
23 A. Correct.
24 Q. That would be Exhibit 11.
25 And then there would be some computerized

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1 take offs probably confirming everything?
2 A. Yes.
3 Q. And that would be Exhibit 12?
4 A. Yes, sir.
5 Q. But these documents Exhibit 7 through 12
6 constitute the core documents that should be in
7 each of the files for the new home programs
8 accepted to the Good Cents Plan?
9 A. And there was normally a data based we called
10 it sheet where once all of this done it was a
11 data take off sheet to give to billing to enter
12 that home on the rate.
13 Q. What document signified that the vapor barrier
14 was installed in accordance with the --
15 A. The inspection form.
16 Q. So inspection form --
17 A. Verified that.
18 Q. Exhibit 10 would verify that Horry Electric was
19 satisfied in the exterior wall section that the
20 appropriate vapor barrier was installed?
21 A. Correct.
22 Q. That was Exhibit 10.
23 And we already talked about this: From
24 1988 to 2003 for the Good Cents Program for New
25 Homes Horry Electric required vapor barriers on

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1 the inside of all exterior walls; right?
2 A. Correct.
3 Q. That requirement changed in 2003 and we talked
4 about that letter from Santee Cooper, which was
5 Exhibit 6; right?
6 A. Yes, sir. Correct.
7 Q. Now, going to Item 8, have you ever seen or
8 heard of or been aware of any report or
9 analysis, internal documents regarding the use
10 of vapor barriers at any time from 1985 to
11 present, anything to the effect that using the
12 vapor barrier in Horry County causes mold or
13 moisture or is not in accordance with the
14 building code or standards or specifications?
15 A. Not any documents or anything, no, sir.
16 Q. Have you ever heard anyone talking about that
17 in any discussions?
18 A. You know, I can't pinpoint but I'm sure there
19 has been discussions just probably before this
20 change. I can't recall the exact specifics or
21 -- not discussions necessarily here but you
22 hear it in the field and then, you know, do we
23 need vapor barriers, do we not need vapor
24 barriers, I mean in general but no specific
25 documents that I can recall, no, sir.

1 STATE OF SOUTH CAROLINA :
2 COUNTY OF HORRY : SS: CERTIFICATE
3 I, James C. Grady, a Notary Public for South
4 Carolina, do hereby certify that the within named
5 witness, Edward J. Blackburn, was by me first duly
6 sworn to testify the truth, the whole truth and
7 nothing but the truth in the cause aforesaid:
8 That the testimony then given was reduced by
9 me to stenotype in the presence of said witness,
10 subsequently transcribed onto a computer under my
11 direction, and that the foregoing is a true and
12 correct transcript of the testimony so given as
13 aforesaid.
14 I do further certify that this deposition was
15 taken at the time and place as specified in the
16 foregoing caption, and that I am not a relative,
17 counsel or attorney of either party, or otherwise
18 interested in the outcome of this action.
19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my seal of office at Surfside
21 Beach, South Carolina this ___ day of November, 2011.
22 James C. Grady, Notary Public
23 for South Carolina.
24 My Commission expires May 13th, 2019.
25 - - - - -

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1 Q. Did you ever have any conversations with any
2 contractors or any persons concerning not
3 needing vapor barriers before 2003?
4 A. Not that I can remember. That was not my -- I
5 follow guidelines.
6 MR. FATA: Let me take a short break
7 and talk to Mark and see if we can wrap it up.
8 - - - - -
9 (Thereupon, discussion was had
10 off the record)
11 - - - - -
12 Q. Mr. Blackburn, do you know of any code, local
13 or otherwise, any building code that required a
14 vapor barrier during the years 1988 to 2003?
15 MR. POPE: Objection. Outside the
16 scope of the notice,
17 A. I don't, no.
18 Q. So the vapor barrier requirement for the Good
19 Cents Program, your understanding was that
20 that's what Santee Cooper required so that's
21 why it was in the Horry Electric Good Cents
22 Home Program?
23 A. Yes, sir. Correct.
24 Q. I don't think I have any more.
25 MR. POPE: All right.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) NINTH JUDICIAL CIRCUIT
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
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Myrtle Beach, SC 29577

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1 (Witness sworn.)
2 JUAN HOLMES,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 EXAMINATION
6 BY MR. TUCK:
7 Q Just to reintroduce myself, my name is Chris
8 Tuck. I represent the plaintiffs in this action. I'm
9 one of the attorneys for the plaintiffs. And you
10 understand you have been offered as a corporate
11 designee for Santee Cooper?
12 A Yes.
13 Q Do you have an understanding of what that
14 means?
15 A Yes.
16 Q What does it mean to you?
17 A That I'm a representative for the company. I
18 may not have, I guess, firsthand knowledge of all the
19 of the details, but have enough experience to fully
20 represent the company.
21 Q Have you given a deposition before?
22 A Yes.
23 Q When is the last time you gave one?
24 A It's probably been eight to ten years ago.
25 Q Was it in your capacity as an employee of

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1 Santee?
2 A Yes.
3 Q Do you remember what case it was in?
4 A It was a disability case.
5 Q Were you testifying there as a corporate
6 designee?
7 A I was the employee's supervisor's supervisor.
8 Q Other than that matter, have you been deposed
9 on any other occasions?
10 A I did go through a divorce, so whatever legal
11 procedures would be involved there.
12 Q Other than that, anything else you can recall
13 in terms of a deposition?
14 A (Witness shaking head.)
15 Q You have to answer out loud.
16 A Oh, no.
17 Q Have you ever testified in court other than
18 in possibly the divorce action?
19 A That's the only time.
20 Q I'll just ask if you have any confusion about
21 the questions I ask or need clarification, please ask
22 me, and I will do my best to rephrase them for you. Is
23 that okay?
24 A That is okay.
25 Q What is your current occupation?

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1 A My title is manager conservation and energy 2 efficiency at Santee Cooper. 3 Q Would you repeat that one more time for me? 4 A Sure, manager conservation and energy 5 efficiency at Santee Cooper. 6 Q Would you walk me backwards through your job 7 history at Santee just by year? 8 A Backwards? 9 Q If it's easier to go the other direction, 10 whatever is best for you. 11 A I will go chronological. I was hired in May 12 of '87 in what was then the energy management 13 department. Worked there till the fall of '89 when I 14 went into distribution planning. Of course, all of 15 this is at Santee Cooper. 16 I left there in '95 to work at what we 17 call the tech building. It was the substation 18 maintenance, the substation groups that handle the 19 relaying of equipment in substations. I was there till 20 2006 when I came over to be the supervisor -- I guess 21 it was the manager of commercial services. Then we had 22 a couple of re-org's. I stayed in that department, but 23 I took over more responsibility, and then became the 24 manager of conservation and energy efficiency. 25 Q How long have you had that title?	1 work or to maintain my P.E. license. 2 Q Let's talk about that. What professional 3 licenses do you have? 4 A My professional engineering license. 5 Q What types of continuing education do you do? 6 A You can get credit for attending conferences, 7 which I've done. Most of those are sponsored through 8 APPA, American Public Power Association. I have taken 9 some classes through Trident Tech, some classes 10 provided through Santee Cooper. 11 Q In your current position with the 12 construction at energy efficiency, could you describe 13 your job duties? 14 A I can do that. Of course, a lot of what I do 15 is managing personnel, handling any personnel related 16 issues, managing the budget. So I guess in the latter 17 part of my career I have gotten more into managing 18 people than doing the hands-on visits with customers. 19 Q Who do you report to within the corporate 20 hierarchy at Santee? 21 A The senior vice president of customer 22 service. 23 Q And who is that? 24 A His name is Marc Tye. 25 Q How do you spell the last name?
Page 7	Page 9
1 A Let's see. Maybe five years. 2 Q So it's manager of conservation and energy 3 efficiency? 4 A Yes. 5 Q Before I get into your work there, can you 6 give me an idea of what your educational background is 7 beyond high school? 8 A I have a B.A. in mathematical sciences, a 9 B.S. in mechanical engineering, and an M.B.A. I also 10 have an M.S. in management, but it was a step in 11 getting the M.B.A. 12 Q Can you tell me when those degrees were 13 obtained and where? 14 A I went to Clemson for the undergrad, 15 mathematical sciences, '82. Mechanical engineering, 16 '84. Then the M.S. and M.B.A. in '93. May have been 17 late '92 for the M.S., but I believe it was January of 18 '93 for the M.B.A. 19 Q Was that Clemson as well? 20 A That was at Webster. 21 Q What year did you say you got that degree? 22 Was it '93? 23 A The M.B.A., yes. 24 Q Any additional education beyond that date? 25 A Just continuing education type things for	1 A T-Y-E, and his first name is with a "C". 2 Q Do you know who Mr. Tye reports to? 3 A Lonnie Carter. He's the president. 4 Q Are there other senior vice presidents there 5 right now besides Mr. Tye? 6 A I don't know all of them exactly by title. 7 There are other vice presidents, yes. 8 Q Can you think of anyone there who is a senior 9 vice president besides Mr. Tye? 10 A Again, I'm not sure who is senior. At his 11 level reporting to Lonnie, Jeff Armfield, R.M. 12 Singletary, Jim Brogden, Laura Varn. But like I say, 13 I'm not sure -- they're vice presidents at some level. 14 I don't know if they are senior. 15 Q When you say you're the manager of 16 construction and energy efficiency, is that the name of 17 a department there? 18 A Yes, it's actually conservation and energy 19 efficiency. And it's a department, and I work directly 20 for Marc. 21 Q Do you know how many departments there are? 22 A At Santee Cooper? 23 Q Yes. 24 A I do not. 25 Q When you were preparing for the deposition

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1 today, did you have an opportunity to look at the 2 notices of deposition that were served by the 3 plaintiffs and by Horry County? 4 A Yes, I did. 5 Q Did you do anything to prepare for the 6 deposition today other than meeting with your lawyers? 7 A I did not. 8 Q So you didn't have any other conversations 9 with people at Santee, other employees, to prepare for 10 the deposition? 11 A Well, as part of just doing some general 12 discussion, yes, I have talked with some other 13 employees. 14 Q Who did you talk to to prepare for it? 15 A I have spoken with Glenn Cannon, who hired me 16 back in '87. I spoke with Herman Holmes, who is the 17 supervisor of our residential programs, and had a brief 18 sit-down with several other people who had worked in 19 the department either with me or after I left, Sherry 20 Coleman, Sam Livingston, Ken Sandiford. 21 Q How do you spell that last name for Ken? 22 A S-A-N-D-I-F-O-R-D. There were some others in 23 there. Susie McCaskill. There may have been a couple 24 of others. 25 Q Do you have an estimate of how much time you	1 A Yes. 2 Q Who is that? 3 A At one time she worked in residential 4 programs. Now she is on the commercial energy services 5 side. That also reports to me. That unit department 6 reports to me. 7 Q You mentioned, was it a Sam? 8 A Sam Livingston. 9 Q Who is that? 10 A He is currently the office manager at Garden 11 City. 12 Q Do you know what he does in that position? 13 A I never worked in that position, but he would 14 oversee that office, oversee the customer service reps. 15 So you would handle walk-in traffic from customers, 16 collecting bills, meeting with customers. 17 Q When you say customers, do you mean 18 cooperatives, for example? 19 A Santee Cooper customers. 20 Q You mentioned Ken Sandiford? 21 A Uh-huh. 22 Q Who is that? 23 A He is currently, I think it's the manager 24 over our customer care center, our call center, and at 25 one time worked in the department.
Page 11	Page 13
1 spent preparing for the deposition today? 2 A Maybe with time speaking with Rush, maybe 3 eight to ten hours. 4 Q Did you understand the documents were also 5 produced to the lawyers in this case for this 6 deposition today? 7 A I have seen some documents that I think are 8 for this because they have Exhibit letters on them. 9 Q What is Mr. Cannon's current position? 10 A He's retired. 11 Q Do you know when he retired? 12 A I do not. 13 Q You mentioned Herman Holmes; is that right? 14 A Yes. 15 Q And you said he is the manager of residential 16 programs? 17 A He is the supervisor. I think officially 18 it's residential energy services. 19 Q Is residential energy services, is that a 20 department within Santee? 21 A I'd say it's a unit. It's in my department. 22 It is under conservation and energy efficiency. 23 Q Does he report to you? 24 A He does. 25 Q You mentioned a Sherry Coleman.	1 Q In the customer care center, would they 2 handle contacts with both the residential and 3 commercial customers? 4 A Yes. 5 Q Then you mentioned, was it Susie. . . 6 A McCaskill. 7 Q McCaskill. Who is that? 8 A Again, she's been in the department, gosh, 9 over 20-something years. She's currently what we call 10 an energy advisor. And in her capacity in the 11 department, the unit she works in, which is energy 12 support services, they handle our loan program. So 13 she's one of our primary contacts for customers and 14 trade allies on our loan program. 15 Q Do you have a general understanding of why 16 you are here today? 17 A I think that I have a general understanding. 18 Q What is your understanding of what this case 19 is about? 20 A Okay. I think you-all represent some Good 21 Cents customers with concerns about the vapor barrier. 22 Q When is the first time that at Santee you 23 ever heard of the Good Cents program? 24 A 1987 when I was hired. 25 Q When you were hired in 1987, were you

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1 hands-on with respect to the Good Cents program? 2 A Yes, I was. 3 Q What were you doing with that program at that 4 time? 5 A My responsibility was to educate the co-ops 6 and any of their customers or HVAC contractors on the 7 program. Builders, as well. 8 Q Do you remember how many co-ops there were at 9 the time? 10 A Santee Cooper served 15 at the time. 11 Q Who hired you into Santee in 1987? 12 A It was Glenn Cannon. 13 Q Do you recall what his position was at that 14 time? 15 A I think by title he might have been manager. 16 We were called energy management. 17 Q Did you report to him in 1987? 18 A Uh-huh. 19 Q You have to answer out loud. 20 A Yes, I did. 21 Q So you were in the energy management 22 department in 1987, right? 23 A That's correct. 24 Q And what was your title at that time? 25 A Supervisor of wholesale programs.	1 A Yes. 2 Q At that time was Mr. Cannon, did he have what 3 I would call final supervisory authority over the Good 4 Cents program for Santee? 5 MR. SMITH: Object to the form of the 6 question. 7 Also this has all been background. 8 That's fine. But I want to make it clear the points on 9 which she's speaking for Santee Cooper are only those 10 which you have identified in the deposition notice. 11 MR. TUCK: I understand completely. 12 BY MR. TUCK: 13 Q I'm just trying to get an idea if you happen 14 to know personally at the time you joined in 1987 what 15 Mr. Cannon's responsibilities were with respect to the 16 Good Cents program. 17 A He would have been responsible for -- we had 18 our own team of residential -- I don't know what their 19 title was, I'll call them advisors, at that time who 20 would assist customers and builders with the Good Cents 21 program. So he would have been over that. I don't 22 remember -- at that time we did have a loan program. I 23 can't remember if that was under him at that point or 24 not. 25 Q What was the loan program for?
Page 15	Page 17
1 Q Other than -- at that time in 1987, other 2 than having responsibility with the co-ops and 3 educating the co-ops, were there any other job 4 responsibilities you had at that time? 5 A That was my primary. Certainly, as part of 6 my own learning curve, I studied house plans and did 7 calculations so that I could do my -- do the same thing 8 with the co-ops. 9 Q And at that time do you recall dealing with 10 Horry Electric? 11 A Yes. 12 Q How so? 13 A I worked with Eddie Blackburn and Horace 14 Jordan, again training them on the program, Manual J 15 calculations, meeting with any builders or contractors 16 that they needed help with. 17 Q You said Manual J calculations? 18 A That's correct. 19 Q How would you describe that to a layperson? 20 A It's a method to determine the heat gain on a 21 home primarily for sizing a heat pump. 22 Q At the time that you joined Santee in 1987, 23 was the Good Cents program already underway? 24 A I think it had just started. 25 Q Did you say it just started?	1 A The loan program is a program where Santee 2 Cooper loans money to people at a low interest rate to 3 encourage customers to upgrade to more energy efficient 4 features, such as upgrading a heat pump. 5 Q At the time you joined in 1987, would there 6 have been multiple departments' responsibility for the 7 Good Cents program? 8 A Well, you had asked me my title. Of course 9 being wholesale, that meant the co-op piece. There was 10 also a residential piece and later more involvement 11 with commercial. So Glenn would have been over those. 12 But I don't even remember if we had separate unit 13 numbers at the time. 14 Q Would any part of your responsibilities at 15 the time you joined in 1987 have involved marketing to 16 co-ops for the Good Cents program? 17 A What do you mean by marketing? 18 Q To engage or recruit co-ops into the Good 19 Cents program. 20 A I went to the ones who were participating. 21 Q You mentioned a couple of names from Horry 22 Electric at that time were Mr. Blackburn and 23 Mr. Jordan; is that correct? 24 A That's correct. 25 Q Do you recall what the nature was of your

5 (Pages 14 to 17)

Page 18 1 communications with Mr. Blackburn at that time? 2 A Well, they were practically in my backyard. 3 I could go meet them face-to-face any time. 4 Q What would have been the purpose of the 5 meetings? 6 A They might call with -- maybe they had a 7 builder that had questions, and they wanted me to meet 8 with them. We had a lot of meetings, so I might see 9 them at a meeting. I mean, I knew them, so I mean they 10 could call me up, I could call them up. 11 Q In terms of co-op education, looking at the 12 1987 time frame, would there have been educational 13 materials you would have provided to Horry Electric for 14 the Good Cents program? 15 A There would have been a set of standards that 16 they would have. 17 Q Do you recall if those standards changed over 18 time? 19 A They would change over time. 20 Q What was the process for modifying the 21 standards? 22 A Well, certainly when Santee Cooper started 23 the Good Cents program, that was an established program 24 by a company called SEI. So SEI had worked with South 25 Carolina Electric & Gas. We had a statewide standard.	Page 20 1 BY MR. TUCK: 2 Q So at the time you joined in 1987, did you 3 come into the company with an existing set of standards 4 of the Good Cents program that would have been provided 5 to co-ops? 6 A When I started, they would have given them to 7 me, as well as the co-ops. 8 Q At the time you joined were the standards 9 considered requirements for your co-ops? 10 A The requirements were statewide. As a 11 participant in Good Cents, there were statewide 12 requirements that were established with SEI, South 13 Carolina Electric & Gas, us, and the co-ops. To use 14 the name of the program you would have to abide by 15 those standards. 16 Q Did Santee ever impose conditions in addition 17 to what State law may have required for participation 18 in the Good Cents program? 19 MR. SMITH: Objection. Outside the scope. 20 THE WITNESS: All right. Read it back. 21 (Whereupon, the record was read as 22 requested.) 23 THE WITNESS: Well, I mean Good Cents is not 24 a State law, but to use the program name there were 25 program standards that had to be followed. We did not
Page 19 1 So to make changes, we just couldn't make changes 2 without some back and forth with us and the co-ops, 3 with Electric and Gas, with SEI. 4 Q Let me back up a moment. What was the 5 purpose of the Good Cents program? 6 A The Good Cents program -- certainly, you have 7 a certain level of structural requirements in the 8 building code. The Good Cents program also built in 9 energy efficient measures so that you would have maybe 10 a higher level of insulation in the walls, the ceiling, 11 floor than what was required by code. So it was to 12 give you a more energy efficient home. 13 Q Again, as a result of the effort to get 14 energy efficient homes, would that have ultimately 15 helped Santee and the co-ops save money on their energy 16 costs as well? 17 MR. SMITH: Object to the form of the 18 question. Also this is outside the scope. 19 BY MR. TUCK: 20 Q You can answer. 21 A Ask me again. 22 MR. TUCK: Can you read that back. 23 (Whereupon, the record was read as 24 requested.) 25 THE WITNESS: It could.	Page 21 1 impose them. We followed them as agreed upon by the 2 participating utilities with SEI. 3 BY MR. TUCK: 4 Q When you had these standards, again, going 5 back to the 1987 time frame, were there any variations 6 in those standards for co-ops throughout the state of 7 South Carolina? 8 A Not to my knowledge. 9 Q So the standards couldn't be different for 10 Horry Electric, as opposed to some other co-op? 11 A Not another participating co-op, no. 12 Q When you had standards for a co-op, you would 13 not -- they wouldn't have the authority to vary from 14 those requirements or those standards -- strike that. 15 Let me try this again. Would you refer to the 16 standards as a requirement? 17 MR. SMITH: Objection. Asked and answered. 18 BY MR. TUCK: 19 Q Let me try to clarify it. If you have 20 standards that you give to Horry Electric for the Good 21 Cents program, is Horry Electric allowed to deviate at 22 all from those standards? 23 MR. SMITH: Object to the form of the 24 question. 25 THE WITNESS: Do I need to answer?

Page 22 1 BY MR. TUCK: 2 Q Yeah. 3 A Horry Electric should not deviate from what 4 the standards had. 5 Q At the time you joined Santee in 1987, did 6 you have an understanding of how the Good Cents 7 standards were put together, the process for it? 8 A No, I had no background in that. 9 Q Did you ever later come to any understanding 10 of how those standards were put together? 11 A How do you mean? 12 Q Who comes up with them? 13 A Well, the program was from a company called 14 SEI, so they have some standards, certainly -- they 15 would not know building codes in any particular area, 16 and I wouldn't do anything to violate local building 17 codes. But they would have provided the general 18 framework in South Carolina. South Carolina Electric & 19 Gas was on board as well and Santee Cooper, Central, 20 the co-ops, all met with SEI to get this understanding 21 of how the program might work here. 22 Q And SEI, just to clarify, is that Southern 23 Electric? 24 A I believe that's correct, yes. 25 Q That process you just described, do you have	Page 24 1 much. 2 BY MR. TUCK: 3 Q Okay, let's go ahead. I'm going to move into 4 topics on the notice, and I want to get into vapor 5 barrier issues. 6 MR. SMITH: I want to say something. If you 7 want to excuse the witness while I say it, that's fine. 8 It has to do with our preparation. As I've told both 9 of you, this stuff happened a real long time ago. 10 There are going to be places where the witness -- where 11 we will have been unable to get more than the witness 12 is able to give. So you-all, I just want to give 13 notice of that. And there are certainly -- before the 14 deposition I sent you my objections to your notices, 15 and we have discussed those separately. But I just 16 wanted to let you-all be aware of that. 17 BY MR. TUCK: 18 Q Let me just ask you one follow-up question. 19 You mentioned earlier that to your knowledge the 20 standards for the Good Cents program would not have 21 varied from one co-op to another; is that right? 22 A That's correct. 23 MR. SMITH: I object to the characterization 24 of the testimony, but whatever. 25
Page 23 1 any understanding as to whether that process has 2 changed over the years or whether it's been the same? 3 A What are you calling the process? 4 Q What you just described to me, the input that 5 goes into the adopting the standards. 6 MR. SMITH: Objection. Beyond the scope. 7 THE WITNESS: I mean to use SEI's program, 8 there would have to be a set of standards. You know, 9 Santee Cooper, South Carolina Electric & Gas, the 10 cooperatives, there was always this exchange of 11 information. If anybody had concerns, then the 12 standards could be reviewed, but I don't think we could 13 make changes without SEI's okay. 14 MR. JOHNSON: Chris, are we still on 15 background personal knowledge information, or have we 16 moved to the list of designated matters? I don't care. 17 I just don't want to waive an objection by -- I think 18 much of this is personal knowledge not related to the 19 notice. 20 MR. TUCK: I'm going to get into the vapor 21 barriers issues. 22 MR. JOHNSON: Can we agree you will tell us 23 when you do? 24 MR. SMITH: That will make my life easier. 25 Yours too. I won't be interrupting your questions as	Page 25 1 BY MR. TUCK: 2 Q So a participating co-op in Greenville, South 3 Carolina would have had the same Good Cents standards 4 as Horry Electric in Horry County, correct? 5 MR. SMITH: Object to the form of the 6 question. 7 THE WITNESS: If they were participating -- 8 if they were Santee Cooper -- I mentioned 15 co-ops. 9 And I think 14 of the 15 ultimately signed up. Of 10 those 14, they should stick with the statewide 11 standard. 12 BY MR. TUCK: 13 Q In terms of the deposition preparation for 14 today do you specifically recall any documents that you 15 looked at to prepare for the deposition? 16 A I have looked at some documents that were 17 shown to me as exhibits with A, B, C or whatever. 18 Q Right. And we had some documents that were 19 attached to the deposition notice that I had served and 20 that were marked A, B, and C. 21 A Okay. 22 Q Other than those documents, do you recall any 23 others that you reviewed in preparation for the 24 deposition? 25 A I'd have to look. I've looked at some

7 (Pages 22 to 25)

Page 26	Page 28
1 standards. If there is something in particular you 2 want me to look at, I will. 3 Q Do you know that Horry Electric has sued 4 Santee out of matters that arose in the case where I'm 5 counsel? 6 A Yes. 7 Q Have you seen the Complaint in that case? 8 A I think that I have, yes. 9 MR. SMITH: This deposition, by the way, is 10 not noticed in either -- in that case. This deposition 11 is noticed in you-all's case. We're not a party to 12 your case. 13 BY MR. TUCK: 14 Q Let's talk a little bit about the vapor 15 barrier issues. When you began working at Santee in 16 1987, did you -- were you involved at all in discussion 17 of vapor barrier requirements at that time? 18 A When we started, it was a new program, so I 19 would have been learning the standards along with 20 everybody else. So you call it a requirement. I don't 21 remember whether that was a requirement. 22 Q What do you understand a vapor barrier to be? 23 A Well, it is confusing. I think sometimes we 24 use vapor barrier and air barrier interchangeably. But 25 the vapor barrier is to control moisture.	1 A Well, it would come from SEI. And then if 2 there were any edits from us or the co-ops, I don't 3 know if it had to go back to SEI. I think we might 4 have just been able to submit it for their okay. 5 Q Would you have seen a standards book right 6 after joining Santee in 1987? 7 A Yes. 8 Q And how often would that standards book have 9 been changed? 10 MR. SMITH: Object to the form of the 11 question. 12 THE WITNESS: I don't know. 13 BY MR. TUCK: 14 Q So Santee could recommend a change to the 15 standards book if it wished; is that correct? 16 A We could recommend a change. 17 Q And then what would be the process after you 18 recommend that change? Would it then go back to SEI 19 for review? 20 MR. SMITH: Again, this is outside the scope. 21 MR. TUCK: I think this is within the scope 22 in terms of the recommendations and requirements of the 23 vapor barriers for the Good Cents program. 24 BY MR. TUCK: 25 Q But the objection being stated, go ahead.
Page 27	Page 29
1 Q You mentioned an air barrier. Is an air 2 barrier different than the vapor barrier? 3 A To me it is, yes. 4 Q How so? 5 A When we talk about the tightness of a house, 6 that's typically an infiltration issue where air may 7 come into your house, areas not sealed, gasketed, that 8 kind of thing. 9 Q Is an air barrier used to control moisture? 10 A It should not be. 11 Q And do you have an understanding that there 12 are different types of vapor barriers? 13 A There are different materials used, yes. 14 Q So when you joined Santee in 1987 and you 15 were learning about vapor barriers, what was the 16 process for educating employees at Santee about vapor 17 barriers? 18 MR. SMITH: Object to the form of the 19 question. 20 THE WITNESS: Again, we would have a 21 standards book that would tell you what a proper vapor 22 barrier might look like. 23 BY MR. TUCK: 24 Q Do you know who was responsible for putting 25 that standards book together?	1 A We typically would go back to the co-ops, get 2 their feedback. Or we could go right to SEI and get 3 their take on it. But any change, we'd run by the 4 co-op. 5 Q I just want to make sure I understand the 6 process. If it's a -- when you get that standards 7 book. And let's just take any time you've been at 8 Santee, if there is a standard in there with respect to 9 vapor barriers, you're allowed to suggest a 10 modification to that, to SEI; is that right? 11 A Well, I was in the department a couple of 12 years, so I've been out of it until recently in the 13 last five or so. Then I've gotten back in it. So I do 14 not know the process at Santee Cooper. But certainly 15 we had good dialogue with SEI, with the co-ops, with 16 Electric and Gas about -- again, it was a statewide 17 standard, to my understanding, so any changes would 18 have to be discussed. 19 Q Were you ever a part of any discussion at 20 Santee about suggested changes to vapor barrier 21 standards in the standards book? 22 A I do not know. 23 Q Were you ever a part of any discussions at 24 Santee involving changes to standards other than to 25 vapor barriers?

Page 30 1 A I don't know that, but it's possible. 2 Q Do you have any understanding as to whether 3 if suggestions were made to changes in the standards 4 book whether those suggested changes would then have to 5 go to the co-ops for review? 6 A Well, I mean, some of the changes could have 7 come at the request of the co-op. 8 Q Is there someone at Santee who might be in a 9 better position to discuss the process for suggesting 10 changes to the standards book, like Mr. Cannon? 11 MR. SMITH: Object to the form of the 12 question. Also what time are you talking about? 13 MR. TUCK: Starting in 1987. If we were 14 looking at 1987 -- 15 MR. SMITH: To the present? 16 MR. TUCK: Well, I'll ask the question. 17 BY MR. TUCK: 18 Q I will try to clarify this. During the time 19 that you have been at Santee -- let's go all the way 20 back to 1987 -- who is the person at Santee who is best 21 equipped to answer the question of how suggested 22 changes to the standards book would have been handled? 23 MR. SMITH: Object to the form of the 24 question. Also outside the scope of the deposition 25 notice.	Page 32 1 beginning in 1989? 2 A What kind of communication are you talking 3 about? 4 Q Anything. 5 A Yes. 6 Q Like what? 7 A Well, I mean I still know Eddie, I still know 8 Horace. In my current capacity some of those co-op 9 folks that are still around participate in the Green 10 Power program. I have been to Green Power meetings 11 with them. 12 Q You mentioned earlier the standards, vapor 13 barrier standards. Let's go back to 1987. Those would 14 have come from SEI; is that right? 15 MR. SMITH: Object to the form of the 16 question. 17 THE WITNESS: All the standards would have 18 originated at SEI. 19 BY MR. TUCK: 20 Q Do you know if Clemson University was 21 involved at all in establishing Good Cents standards? 22 A I do not know. 23 Q Do you know if anyone other than SEI was 24 involved in setting Good Cents standards? 25 A I believe it was a Gulf Power program also,
Page 31 1 THE WITNESS: In '87 Glenn was the one who 2 started it. He would be your -- he would have the most 3 knowledge; however, he is not at Santee Cooper. 4 BY MR. TUCK: 5 Q Do you know when he retired? 6 A I do not. 7 Q Do you know if he still lives in this area? 8 A He is in North Carolina, so he is close. 9 Q I'm not sure if you answered this question 10 earlier. Were you ever a part of any process where 11 suggesting changes to the standards book would have 12 been communicated to co-ops for their comments? 13 A I don't remember. I could have been, since I 14 did work closely with them. 15 Q You mentioned in 1987 you had a 16 responsibility for educating co-ops; is that right? 17 A That's correct. 18 Q How long did you have that particular job 19 responsibility? 20 A Probably two years, give or take. 21 Q So in roughly 1989 would you have -- starting 22 in that period, would you still have had any 23 responsibility for educating co-ops? 24 A No. 25 Q Did you have any communication with co-ops	Page 33 1 so I don't know if those two entities worked together. 2 Q At any point from 1987 to the present have 3 you personally been involved in the process for 4 suggesting changes to Good Cents standards? 5 MR. SMITH: Objection. Asked and answered. 6 THE WITNESS: I don't know. Again, I would 7 have been doing that work from about mid '87 to late 8 '89. I don't -- 9 BY MR. TUCK: 10 Q Do you have any -- in the 1987 to 1989 time 11 frame, do you have any recollection of providing 12 standard books to co-ops for their review and comments? 13 A I do not have personal recollection, but they 14 would have had to have the books. 15 Q Did you have any recollection as to whether 16 Horry Electric ever made any comments with respect to 17 the standards books? 18 A They may have. 19 Q But you don't have a specific recollection of 20 it? 21 A I do not. 22 Q Again, in the 1987-1989 time frame, if a 23 co-op were to make suggestions with respect to vapor 24 barriers or anything else in the standards book, would 25 that have been for the matter of procedure passed along

Page 34 1 verbatim to SEI for their review? 2 A I don't know about verbatim to SEI. 3 Certainly, we had many channels of communication. 4 There was me as sort of a conduit. They could write us 5 a letter. We had meetings. So there were 6 opportunities for them to speak directly to us. 7 Q I want to make sure I understand the protocol 8 for the 1987 to 1989 time frame with respect to the 9 vapor barrier standards. So going back to 1987 to 10 1989, just in that time frame, you would get a 11 standards book that would include vapor barrier 12 requirements from SEI; is that right? 13 MR. SMITH: Who is you? 14 MR. TUCK: Santee. 15 THE WITNESS: Yeah. 16 BY MR. TUCK: 17 Q And then when you got, or when Santee 18 received the standards book, would there be any process 19 for review of that standards book within Santee? 20 A I don't know the process, but we would have 21 to look them over. 22 Q When you say look it over, what do you mean? 23 A To look at its applicability to our 24 customers. 25 Q When you say applicability to customers, what	Page 36 1 BY MR. TUCK: 2 Q Do you have a Good Cents home? 3 A I do. 4 Q How long have you had it? 5 A About 14 years. 6 Q Is your home located in Horry County? 7 A Yes, I am a Horry Electric customer. It was 8 built under the Good Cents program there. 9 Q As part of -- strike that. 10 Do you have an understanding as to 11 whether you are a class member in the case that you are 12 here for today? 13 A I opted out. 14 Q Did you have any discussions at Santee about 15 this case other than with your attorneys? 16 A No. 17 MR. SMITH: I object to that. She told you 18 already that she talked about this case, so I don't 19 want you to try to pit her against herself. I object 20 to the form of that question. I'm sorry I didn't get 21 it out fast enough. 22 BY MR. TUCK: 23 Q So, you know, I want to make sure I 24 understand as best I can. What would happen when the 25 standards book would come from SEI in the 1987 to 1989
Page 35 1 do you mean? 2 A Well, I mean one of the big pieces of the 3 Good Cents program is proper sizing of the heat pump. 4 So that was an area you would want to look real closely 5 at, because especially back then it was sort of a new 6 concept for some. A lot of us would just go, oh, you 7 have a ton for every 500 square feet. But with Manual 8 J, you can actually do the calculation to come up with 9 an exact size. So there would be sections in there 10 that just may warrant discussion for how builders, heat 11 pump contractors, and customers might or might not 12 participate. 13 Q When you say customers, do you mean 14 residential customers? 15 A Yes. This would have been for residential. 16 Q So if you use the term, the generic term 17 customer, you would not put a co-op into that basket; 18 is that right? 19 MR. SMITH: Object to the form of the 20 question. 21 THE WITNESS: Well, I mean the co-op is our 22 customer, so in a sense co-op customers are our 23 customers. I'm a co-op customer. So a customer is 24 anyone who uses your product, so. . . 25	Page 37 1 time frame? When you received that book were there 2 certain people within Santee whose responsibility it 3 was to review that standards book? 4 A Probably. I'm not sure. 5 Q Did you regard yourself as having a job 6 responsibility at that time to review the standards 7 book? 8 A Well, I should certainly need to be familiar 9 with it. I don't think I had responsibility for 10 review. 11 Q Do you know who else would have had any 12 responsibility with respect to the review of the 13 standards book in that 1987 to 1989 time frame? 14 MR. SMITH: Object to the form of the 15 question. Also it's beyond the scope. 16 THE WITNESS: Glenn would have primary. And 17 again we would share it with the co-ops for their 18 review as well. 19 BY MR. TUCK: 20 Q Would the normal procedure in that 1987 to 21 1989 time frame have been to take that standards book 22 upon receipt from SEI and send that to the co-ops for 23 their review? 24 MR. SMITH: Object to the form of the 25 question.

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1 THE WITNESS: I don't know the normal 2 procedure, but the co-ops would have had a chance to 3 review it. 4 BY MR. TUCK: 5 Q Again, looking in the '87 to '89 time frame, 6 do you recall whether any co-ops actually suggested 7 changes to Santee for anything listed in that standards 8 book? 9 A I don't have a personal recollection, but 10 they had opportunity to respond, yes. 11 Q When you would transmit the standards book to 12 co-ops, was it done with the invitation for those 13 co-ops to review and suggest any changes to the 14 standards? 15 A Yes. 16 Q When you were involved in administering the 17 Good Cents program, did you believe that the Good Cents 18 standards complied with the applicable local building 19 codes? 20 A Yes. 21 Q What made you believe that? 22 A Because you can't violate the local building 23 code. 24 Q Yeah, I understand that. I'm trying to get a 25 sense of -- you understand that the -- you get a	1 requirement, but I don't know. 2 BY MR. TUCK: 3 Q So just you personally, do you personally 4 have the expectation that building codes will not vary 5 from municipality to municipality in this state? 6 MR. SMITH: Object to the form. 7 THE WITNESS: I don't know the building 8 codes. I don't know if I should give an example, but 9 after Hurricane Hugo my understanding was that building 10 codes got more strict for structural reasons. So 11 coastal counties may have a different code than inland. 12 I'm not sure. 13 BY MR. TUCK: 14 Q That's something you would not have 15 personally looked at? 16 A Not personally, no. 17 Q Do you know of anyone at Santee whose job it 18 was to know local building code requirements? 19 MR. SMITH: Object to the form of the 20 question. Also object as beyond the scope. 21 THE WITNESS: I don't know if it was anyone's 22 job responsibility to study local building codes. 23 BY MR. TUCK: 24 Q In the late 1980s was there an in-house legal 25 department at Santee?
Page 39	Page 41
1 standards book from SEI that I believe you said is a 2 set of standards for the entire state; is that right? 3 A Correct. 4 Q Do you know -- was it your understanding that 5 that standards book would have complied with the local 6 building codes throughout the state of South Carolina? 7 MR. SMITH: Objection. That's beyond the 8 scope. She can testify based on her knowledge if she 9 has any. 10 THE WITNESS: I don't know the building codes 11 across the state, but we couldn't do anything in the 12 program that would be a violation. 13 BY MR. TUCK: 14 Q Did you ever have any communication -- strike 15 that. During the time you have been at Santee, have 16 you ever communicated directly with SEI with respect to 17 the Good Cents program? 18 A I don't remember, but probably I had met 19 them. 20 Q Do you have an understanding of whether local 21 building codes can vary from municipality to 22 municipality throughout the state? 23 MR. SMITH: Objection. Beyond the scope. 24 THE WITNESS: I don't know building codes, 25 but I would think there would be a statewide	1 A I think. I'm not sure. I was a new 2 employee. 3 Q Just in the late 1980s when you first joined 4 Santee, were you aware of any communication with 5 in-house lawyers with respect to vapor barrier 6 requirements for your co-ops? 7 A No. 8 MR. SMITH: Object to anything that gets into 9 Santee Cooper's communication with its attorneys in 10 house or outside. 11 BY MR. TUCK: 12 Q When you get that standards book from SEI and 13 going back to late 1980s, was it Santee's position that 14 SEI would have been responsible for making sure that 15 the standards would not violate local building code 16 requirements? 17 MR. SMITH: Object to the form of the 18 question. 19 THE WITNESS: I don't know that they -- I 20 don't know that SEI would know our building codes. 21 BY MR. TUCK: 22 Q So Santee would not have had the expectation 23 that the standards book would have accounted for 24 variations of local building code requirements across 25 the state of South Carolina?

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1 MR. SMITH: Object to the form of the 2 question. Also object as beyond the scope. 3 THE WITNESS: Run that by my again. 4 MR. TUCK: Could you repeat the question. 5 (Whereupon, the record was read as 6 requested.) 7 THE WITNESS: I don't think that SEI would 8 know necessarily the State building code. 9 BY MR. TUCK: 10 Q Let's take the next step. When you get that 11 standards book, when Santee receives that, what does 12 Santee do, if anything, to make certain that the 13 standards in that guide are not -- are going to account 14 for variations of local building code requirements? 15 MR. SMITH: Same objection to the form and to 16 the scope. 17 THE WITNESS: I don't know what we would do, 18 but as I have mentioned, there was a lot of discussion 19 with our cooperatives, with builders, with SEI, and 20 South Carolina Electric & Gas. But the builders would 21 certainly know the building code and would have been 22 able to point out anything there. But I don't know 23 what our expectation was. 24 BY MR. TUCK: 25 Q When you passed that standards guide to the	1 Q So when Santee passes that book to the 2 co-ops, was it Santee's understanding that the co-ops 3 would then have the ability to vary those terms or vary 4 from the prescribed standards in the standards book 5 with respect to vapor barrier requirements? 6 MR. SMITH: Object to the form. And object 7 it's beyond the scope. 8 THE WITNESS: As part of the agreement to use 9 the Good Cents name, you can't vary. So if there were 10 concerns, they would need to be shared with SEI to get 11 any of that squared away. Their program, they 12 wouldn't -- like I say, you wouldn't be able to violate 13 local building code with their program. 14 BY MR. TUCK: 15 Q So would Santee then put the burden on the 16 co-ops to account for local building code requirements? 17 Is that right? 18 MR. SMITH: Object to the form of the 19 question. 20 THE WITNESS: I'm not sure what you mean by 21 burden. Again, we would have an exchange. I mean, I 22 don't know the building code, in your example before, 23 in Greenville. So certainly if there were a 24 participating co-op there, they would have to bring it 25 to our attention. But there shouldn't be anything in
Page 43	Page 45
1 co-ops, is it Santee's understanding that the standards 2 guide is then provided to the builders as well? Is 3 that right? 4 MR. SMITH: Object to the form of the 5 question. 6 THE WITNESS: I don't know who we -- what 7 builders we gave it to, but certainly in dealing with 8 the co-ops and if we were trying to educate people 9 about the program, then builders would have a chance to 10 review the standards then and could do that. 11 BY MR. TUCK: 12 Q Would Santee have permitted co-ops to vary 13 from the standards for vapor barriers in the standards 14 book if they so wished to do so? 15 MR. SMITH: Object to the form of the 16 question. 17 THE WITNESS: The Good Cents Program was 18 SEI's program, so we all had to abide by the same 19 statewide standard, whether it be Santee Cooper, the 20 co-ops, or Electric and Gas. 21 BY MR. TUCK: 22 Q You said you did not have an understanding 23 that SEI's standards book would account for variations 24 of local building code requirements, right? 25 A Correct.	1 the standard to go against local building code. 2 BY MR. TUCK: 3 Q So the standards that Santee passed along to 4 co-ops, it is your expectation that those standards 5 will, if done as prescribed by the standards, will meet 6 local building code requirements; is that right? 7 MR. SMITH: Object to the form of the 8 question. And object, it's beyond the scope. 9 THE WITNESS: My understanding of the Good 10 Cents program would be that if you followed the 11 program, you would not violate the building code. 12 BY MR. TUCK: 13 Q So if you pass a standards book to Horry 14 Electric, you don't expect Horry Electric is going to 15 have a problem with local building code requirements if 16 it implements the program as set forth in the standards 17 book that you have? 18 MR. SMITH: Object to the form of the 19 question. Also object it's beyond the scope. 20 THE WITNESS: Tell it to me again. 21 MR. SMITH: Can you read back the question. 22 (Whereupon, the record was read as 23 requested.) 24 THE WITNESS: I would expect if Horry had a 25 concern that they would have let us know. Otherwise,

Page 46 1 the standard shouldn't be in violation of the building 2 code. 3 BY MR. TUCK: 4 Q The question, though, if it's a question of 5 whose responsibility is it to determine if the 6 standards book violates the local building codes, it's 7 Santee's position that that burden falls on Horry 8 Electric; is that right? 9 MR. SMITH: Object to the form of the 10 question. Object as to beyond the scope. 11 THE WITNESS: I don't know our position on 12 who should do that. 13 BY MR. TUCK: 14 Q You've been involved in the Good Cents 15 program now for well over a decade, right? 16 A I worked in the program for two years. Then 17 I left to go to distribution planning. Now I'm back on 18 the energy efficiency side, but I have not done Good 19 Cents. 20 Q If there is a violation of local building 21 code requirements from the implementation of Good Cents 22 standards, who bears the blame for that? 23 MR. SMITH: Object to the form of the 24 question. Object as way beyond the scope. 25 THE WITNESS: I don't know.	Page 48 1 suggested or required of your co-ops that they review 2 the standards book with an eye toward making sure those 3 standards are consistent with local building code 4 requirements? 5 MR. SMITH: Object to the form. Object as 6 beyond the scope. 7 THE WITNESS: I have not seen a request for 8 them to look at building codes. 9 BY MR. TUCK: 10 Q Are you aware, are you personally aware of 11 any conversations with Horry Electric where Santee 12 solicited input on whether the Good Cents standards 13 were consistent with local building code requirements? 14 A I am not personally aware. 15 Q If Santee had concerns about Good Cents 16 standards and whether they were consistent with local 17 building code requirements, would it have been Santee's 18 responsibility to share those concerns with the co-ops? 19 MR. SMITH: Object to the form. Object 20 that's beyond the scope. 21 THE WITNESS: We shared the standards with 22 the co-ops. Again, I don't know that we specifically 23 said look for a problem. I think we said review it and 24 get back to us. 25
Page 47 1 BY MR. TUCK: 2 Q I am trying to figure out is this a co-op -- 3 strike that. 4 When you get the standards from SEI, it 5 is your understanding that those standards meet local 6 building code requirements unless the co-op tells you 7 differently; is that right? 8 MR. SMITH: Objection. Asked and answered. 9 THE WITNESS: I mean the co-op had the 10 opportunity to share any concerns with us. We should 11 all review the standards. 12 BY MR. TUCK: 13 Q Did you send -- strike that. Did Santee send 14 out communications to Horry Electric and other co-ops 15 specifically telling the co-ops that they need to 16 review those standards to make sure they're compliant 17 with local building code requirements? 18 MR. SMITH: Object to the form. Object as to 19 beyond the scope. 20 THE WITNESS: We would communicate regularly 21 with them on the standard. I don't know that we said 22 look at the vapor barrier, look at the building code. 23 We probably just said review and provide comments. 24 BY MR. TUCK: 25 Q Have you seen any document that has ever	Page 49 1 BY MR. TUCK: 2 Q Did Santee regard co-ops as being partners in 3 the implementation of the Good Cents program? 4 MR. SMITH: Object to the form. Also object 5 as beyond the scope. 6 THE WITNESS: I can only speak for myself. I 7 considered them partners. 8 BY MR. TUCK: 9 Q So if Santee learned of any information that 10 might indicate that the standards, as Santee obtained 11 the Good Cents standards, were inconsistent with local 12 building code practices, would it have been Santee's 13 obligation to share that information with its business 14 partners? 15 MR. SMITH: Object to the form of the 16 question. Object as beyond scope. Object because it 17 calls for a legal conclusion. 18 THE WITNESS: I do not know what our 19 obligation would be. 20 BY MR. TUCK: 21 Q Does Santee have an obligation to be fair in 22 its business dealings with its co-ops? 23 MR. SMITH: Same objections. 24 THE WITNESS: I mean, personally speaking, we 25 should be fair.

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Page 50 1 BY MR. TUCK: 2 Q Santee should be honest with its co-ops about 3 problems that it may learn of with respect to the Good 4 Cents program, right? 5 MR. SMITH: Object to the form and it's 6 beyond the scope. 7 THE WITNESS: I think so. 8 BY MR. TUCK: 9 Q In fact, you know that the co-ops are really 10 relying upon Santee to provide proper guidance with 11 respect to the implementation of the Good Cents 12 program, correct? 13 MR. SMITH: Object to the form of the 14 question. 15 THE WITNESS: Certainly, we worked with them 16 on the program, but they had -- they were willing 17 participants as well. 18 BY MR. TUCK: 19 Q With respect to the Good Cents program, 20 Santee is in a superior position when it comes to the 21 standards and requirements for that program, right? 22 MR. SMITH: Object to the form of the 23 question. 24 THE WITNESS: I don't think we're in the 25 superior position.	Page 52 1 dialogue with them to share information back and forth. 2 BY MR. TUCK: 3 Q Do you believe Santee has an obligation to 4 share information it develops with its cooperatives if 5 it determines that certain design specifications in the 6 Good Cents program may be problematic? 7 MR. SMITH: Object to the form of the 8 question. Calls for a legal conclusion. 9 THE WITNESS: I mean any problems I would 10 think we would want to work on together. 11 BY MR. TUCK: 12 Q It's the fair thing to do, right? 13 MR. SMITH: Object to the form of the 14 question. 15 THE WITNESS: It would seem to be the right 16 thing to do. 17 BY MR. TUCK: 18 Q Did Santee ever share concerns with Horry 19 Electric about implementing the Good Cents program in 20 Horry County? 21 A Did we share information about the program? 22 Q Concerns. Concerns about the program. 23 MR. SMITH: Object to the form. 24 THE WITNESS: I don't know. 25
Page 51 1 BY MR. TUCK: 2 Q So is it Santee's view that Horry Electric 3 has an equal obligation with Santee in terms of knowing 4 the requirements or standards with local building 5 requirements as it relates to the Good Cents program? 6 MR. SMITH: Object to the form of the 7 question. 8 THE WITNESS: We should both be responsible 9 for knowing the codes. 10 BY MR. TUCK: 11 Q If Horry Electric learns something about the 12 Good Cents program that impacted the design 13 specifications for it, you would expect Horry Electric 14 to share that information with Santee, wouldn't you? 15 MR. SMITH: Object to the form of the 16 question. 17 THE WITNESS: I would hope they would share 18 any concern that they had. 19 BY MR. TUCK: 20 Q And at the same time if Santee had a concern 21 about design specifications in the Good Cents program, 22 your co-ops could expect you to share that information 23 with them too, right? 24 MR. SMITH: Object to the form. 25 THE WITNESS: Again, I think we had open	Page 53 1 BY MR. TUCK: 2 Q During the 1987 to 1989 time frame, would you 3 have been the person who had responsibility for 4 communicating with Horry Electric if there were any 5 concerns about implementation of the Good Cents 6 program? 7 A Again, we had open dialogue. It could have 8 been me talking to them, them talking to us, Glenn 9 talking to them. We had meetings, and I met with them 10 personally. 11 Q After your job responsibilities changed in 12 1989, who would have had the -- or which individuals at 13 Santee would have been responsible for coordinating 14 with Horry Electric with respect to the Good Cents 15 program? 16 A I do not know. 17 Q In the course of preparing for your 18 deposition have you come to learn of the identities of 19 any such people? 20 A No, when I got out of it, I had my hands full 21 with a new job, so . . . 22 MR. JOHNSON: I'm not sure she understood the 23 question. 24 BY MR. TUCK: 25 Q What I am trying to get at is in 1989 when

Page 54	Page 56
1 you changed roles at that time, have you ever come to 2 learn of any individuals at Santee who would have been 3 responsible for serving as a liaison with Horry 4 Electric with respect to the Good Cents program? 5 MR. SMITH: Objection, asked and answered. 6 Also beyond the scope. 7 THE WITNESS: Again, I knew some of the 8 people working there, but I do not know who had that 9 responsibility after I left. 10 BY MR. TUCK: 11 Q When you say you knew some of the people, 12 those were just the people who were doing it in the 13 1987 to 1989 time frame with you? 14 A Yes. I know of a few that worked in that 15 department since. 16 Q Who were those people? 17 A Some of the people I named earlier. 18 Q At the time you joined Santee in 1987, did 19 you come to learn whether there were any concerns at 20 Santee about the vapor barrier requirements for your 21 co-ops? 22 MR. SMITH: Object to the form of the 23 question. 24 THE WITNESS: The only thing I know about 25 vapor barriers is, again like we talked about, it's	1 should be placed within the homes? 2 MR. SMITH: Objection. This is again beyond 3 the scope. Object to the form. 4 THE WITNESS: I remember vaguely some 5 discussions about where they go in the wall. But those 6 were just general conversations. I don't remember a 7 specific time. 8 BY MR. TUCK: 9 Q Do you recall who was a part of those 10 conversations? 11 A I do not. 12 Q Would Mr. Cannon by necessity have been one 13 of the people who was involved in the conversations? 14 MR. SMITH: Object to the form of the 15 question. Calls for speculation. 16 THE WITNESS: I don't know. 17 BY MR. TUCK: 18 Q Do you have any recollection of any 19 discussions with Mr. Cannon about vapor barrier 20 requirements? 21 A I do not. 22 Q You said you vaguely recall discussion about 23 where a vapor barrier should be placed. Is that a fair 24 characterization? 25 A There were discussions in general.
Page 55	Page 57
1 kind of confusing. You know, discussions about where 2 they should go, whether you have them. But I mean a 3 bigger concern at the time I was there had to do with 4 heat pump sizing. But, you know, at any time a co-op 5 had a question, any of that would have been brought to 6 our attention. 7 BY MR. TUCK: 8 Q You mentioned the standards are confusing. 9 Now, when you had the standards book -- 10 MR. SMITH: Object to the form of the 11 question. 12 BY MR. TUCK: 13 Q When you had the standards book that went to 14 co-ops, that standards book outlined the prescribed 15 vapor barrier requirements; is that right? 16 A That's correct. 17 Q So at least within the standards book, it 18 wasn't supposed to be confusing, right? 19 A That is correct. 20 Q Santee was very clear about what it wanted 21 from the co-ops with respect to the vapor barriers? 22 A We were clear what the statewide standard was 23 as outlined in the standards. 24 Q Were you a part of any discussion with Santee 25 about where a vapor barrier should go, where they	1 Q Did those discussions occur in the context of 2 concern about whether the vapor barriers as suggested 3 in the standards book might have been improper? 4 MR. SMITH: Object to the form of the 5 question. 6 THE WITNESS: Again, I don't remember 7 specific conversations. You know, I think opinions 8 vary where one should go in the wall. 9 BY MR. TUCK: 10 Q When you say opinions vary, what do you mean 11 by that? 12 A That at that time if you talked to people, if 13 you looked at articles, there were just different 14 schools of thought on the vapor barrier. 15 Q You are saying at that time. You mean back 16 in 1987? 17 A Uh-huh. 18 Q You have to answer out loud. 19 A That's correct. 20 Q And what was your understanding of those 21 competing viewpoints? 22 MR. SMITH: Object to the form of the 23 question. 24 THE WITNESS: That they were that, competing 25 viewpoints.

15 (Pages 54 to 57)

Page 58 1 BY MR. TUCK: 2 Q What were the competing viewpoints? 3 MR. SMITH: Object to the form of the 4 question. 5 THE WITNESS: Whether you should have a vapor 6 barrier; if you have one, should it go on the inside of 7 the exterior wall or at another location; what would be 8 a proper vapor barrier. Discussions like that, but you 9 know... 10 BY MR. TUCK: 11 Q Where did Santee fall in that spectrum of 12 opinion? 13 MR. SMITH: Object to the form of the 14 question. 15 THE WITNESS: We would go with -- I mean, I 16 don't remember, but it would either be what the 17 standard said or what the building code said. 18 BY MR. TUCK: 19 Q And for Santee, what takes precedence, the 20 building code or the standard? 21 A Well, as we've discussed, we would have tried 22 to work that out with the building code. We can't go 23 in violation of the building code. 24 Q Did the standards as passed along to co-ops 25 provide any opening for the co-ops to vary from those	Page 60 1 THE WITNESS: Again, it was a statewide 2 standard that we had all reviewed and agreed upon. 3 BY MR. TUCK: 4 Q So you would not have expected Horry to 5 tinker with that vapor barrier requirement; is that 6 right? 7 MR. SMITH: Object to the form. 8 THE WITNESS: Horry should not vary from it 9 in order to comply. 10 BY MR. TUCK: 11 Q And what would have happened had they varied 12 that requirement? 13 MR. SMITH: Object to the form of the 14 question. Go ahead. 15 THE WITNESS: They'd be in violation of the 16 program. 17 BY MR. TUCK: 18 Q You mentioned in 1987 there were some 19 differences of opinion with respect to vapor barriers. 20 Was any of that information shared with Horry Electric 21 or other co-ops? 22 A I don't know. 23 Q Do you have any information to indicate it 24 was shared with Horry Electric or other co-ops? 25 A I do not.
Page 59 1 vapor barrier requirements? 2 A Again, the standard, use the Good Cents name, 3 you had the standards to go by. So to be in compliance 4 with the program, you went with whatever was in the 5 standards at that time. So you should not vary, in 6 order to be in compliance. 7 Q Should not vary from the standard, or from 8 the local building code requirement? 9 MR. SMITH: Object to the form of the 10 question. 11 THE WITNESS: The building code and our 12 standards should not be in disagreement. 13 BY MR. TUCK: 14 Q And if they are in disagreement, is that a 15 Santee problem? 16 MR. SMITH: Object to the form of the 17 question. Beyond the scope. 18 THE WITNESS: Any concerns with the building 19 code should have already been worked out with SEI. 20 BY MR. TUCK: 21 Q So since it should have been worked out with 22 SEI, it would not have been Santee's expectation that 23 the co-ops then need to vary from those standards, 24 correct? 25 MR. SMITH: Object to the form.	Page 61 1 Q Have you seen any documents to indicate that 2 Santee shared concerns about vapor barrier requirements 3 with Horry Electric or other co-ops? 4 A I have not. 5 Q Do you recall any specific conversations you 6 would have had with Horry Electric where there would 7 have been discussion about vapor barrier requirements? 8 MR. SMITH: Objection. Asked and answered. 9 THE WITNESS: I don't remember a specific 10 conversation. 11 BY MR. TUCK: 12 Q Do you remember generally any conversations 13 about that with Horry Electric? 14 MR. SMITH: Same objection. 15 THE WITNESS: I don't remember general 16 conversations. 17 BY MR. TUCK: 18 Q During the 1987-1989 time frame, do you 19 remember -- strike that. 20 When you joined Santee in 1987, were 21 there any committees at Santee that would discuss the 22 standards book and the requirements therein? 23 MR. SMITH: Objection. Asked and answered. 24 THE WITNESS: Well, I'm not sure what you 25 mean by committee, but we had regular meetings with the

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1 co-ops to discuss standards and other issues. 2 BY MR. TUCK: 3 Q I mean an internal committee within Santee. 4 So when the standards book was passed from SEI to 5 Santee, would there have been a committee of employees 6 within Santee whose job it was to review the standards 7 book? 8 MR. SMITH: Same objection. 9 THE WITNESS: Not that I know of. 10 BY MR. TUCK: 11 Q During the time you have been at Santee, have 12 you come to -- strike that. 13 You mentioned that there was some 14 different opinions in 1987 on vapor barrier 15 requirements. How did Santee arrive at the proper 16 approach for vapor barrier requirements for its co-ops? 17 A I don't know. 18 Q Do you know whether Santee suggested any 19 changes to the vapor barrier requirement language in 20 the standards book to SEI? 21 A I did see a letter where Glenn discussed that 22 and several other things with, I think it was Geoff 23 Hartman. 24 Q Who is Geoff Hartman? 25 A He was at SEI, and I think was our main	1 A There was just a reference in the letter. 2 Q There was a what? 3 A A reference in the letter about the builders. 4 Q If a vapor barrier doesn't perform properly 5 in a home, what happens? 6 MR. SMITH: Object to the form of the 7 question. I think that's beyond the scope. 8 THE WITNESS: I think there could be 9 condensation in the walls. 10 BY MR. TUCK: 11 Q That's a bad thing for homes, correct? 12 A It could have bad results, yes. 13 Q You understand that -- you personally 14 understand that a home is for many people the biggest 15 investment they're going to make in their lives? 16 MR. SMITH: Object to the form of the 17 question. That's certainly beyond the scope. 18 THE WITNESS: For me it was a big investment. 19 BY MR. TUCK: 20 Q So whatever Santee is going to do with 21 respect to vapor barrier requirements, you got to make 22 sure you get it right, correct? 23 MR. SMITH: Object to the form of the 24 question. It's argumentative. 25 THE WITNESS: When you say you got to get it
Page 63	Page 65
1 contact at that time. 2 Q What do you recall about that letter? 3 A Do you want to look at it? 4 Q I'll have a chance to look at it. Obviously, 5 I just want to ask what you recall about that 6 communication first. 7 A I think there were several items listed, just 8 areas of concern that Glenn wanted to get some feedback 9 from SEI before establishing what the standard would 10 be. 11 Q Do you recall how that scenario resolved? 12 A I think Geoff wrote him a letter back 13 addressing some of those issues. There was a draft of 14 the standards. 15 Q During the discussion and those first couple 16 of years you were at Santee, did Santee regard some of 17 the conflicting opinions about vapor barrier 18 requirements to be an important issue for homeowners? 19 MR. SMITH: Object to the form of the 20 question. 21 THE WITNESS: I think the primary concern was 22 from the building community. 23 BY MR. TUCK: 24 Q What was the concern, as you understood it, 25 from the building community?	1 right, who are you talking about? 2 BY MR. TUCK: 3 Q I'm talking about Santee needs to make sure 4 that its recommendations with respect to vapor barriers 5 are the correct recommendations, given the significance 6 of what happens if that vapor barrier fails. 7 MR. SMITH: Object to the form of the 8 question. Also it's beyond the scope. 9 THE WITNESS: I mean all of the Good Cents 10 requirements are important. 11 BY MR. TUCK: 12 Q The vapor barrier requirements from Santee's 13 perspective are no more or less important than anything 14 else? 15 A I don't know about Santee's perspective. If 16 it's part of the standard, it needs to be followed, 17 just as the others do. 18 (Holmes Deposition Exhibit No. 1 19 was marked for identification.) 20 Q Okay. I'm showing you what's been marked as 21 Exhibit 1. You will see a letter on there. It had a 22 "B" sticker from the deposition notice. But it's a 23 letter from Mr. Cannon to Mr. Hartman dated October 8, 24 1986. Have you seen this letter before? 25 A Yes.

17 (Pages 62 to 65)

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1 Q Did you see it in preparation for the 2 deposition today? 3 A Yes. 4 MR. SMITH: Excuse me. I don't know that we 5 saw the one with the J & B Law, 199. What's that? 6 MR. FATA: Johnson & Burnett. 7 BY MR. TUCK: 8 Q We've seen this letter in different forms 9 with different stamps on it as it's been produced to 10 us, so you may not have seen some of the markings for 11 the Bates stamps on here. But I'd like to ask you, 12 this communication, I'd like to know if you would have 13 seen this during the initial two years you were at 14 Santee, this particular communication? 15 A I don't know. It was written before I got 16 there. But I mean I don't know whether I saw it or 17 not. 18 Q When did you join Santee? In 1987? 19 A Correct, May. 20 Q At the end of the letter, you are going to 21 see a cc. to Buddy Clark at SCE&G. Do you see that? 22 A I do. 23 Q Did you ever communicate with Buddy Clark? 24 A I can't remember that. 25 Q There is a blind copy to Robert Eggleston.	1 Q Do you have an understanding of what that 2 refers to? 3 A ASHRAE is a technical society that provides 4 research on different construction topics, you know, 5 HVAC, refrigeration, that kind of thing. 6 Q Does it have any importance to you as an 7 engineer? 8 A Yes. 9 Q How so? 10 A Because their standards apply to equipment, 11 water heaters, other building features. 12 Q So it's not something you would just ignore, 13 correct? 14 MR. SMITH: Objection. Beyond the scope. 15 That's a personal question, right? 16 MR. TUCK: Yes. 17 THE WITNESS: They are a respected technical 18 group. 19 BY MR. TUCK: 20 Q So if that group raised concerns about vapor 21 barrier requirements at the coastal areas, you 22 personally would not have just disregarded that, 23 correct? 24 A I do not know what they recommended. 25 Q When was the first time you saw this letter?
Page 67	Page 69
1 Do you see that? 2 A I do. 3 Q Did you ever deal with Mr. Eggleston? 4 A Not that I recall. 5 Q You will see on the front page, under number 6 four, under vapor barriers, you will see it says, 7 quote, This is a touchy subject in coastal areas. See 8 ASHRAE 85 Fundamentals 21.17. It may be best not to 9 mention, closed quote. 10 Do you see that? 11 A I see that. 12 Q When you joined Santee in May of 1987, was 13 there a debate within Santee at the time with respect 14 to vapor barrier requirements in coastal areas? 15 MR. SMITH: Object to the form of the 16 question. 17 THE WITNESS: I don't recall a debate. 18 BY MR. TUCK: 19 Q Do you recall discussion about vapor barrier 20 requirements in coastal areas at that time? 21 A In general I know that some of us discussed 22 it. I don't remember the time frame. 23 Q In that reference in Paragraph 4 to ASHRAE, 24 do you see that? 25 A I do.	1 A I mean, to my knowledge, just in preparation 2 for this. 3 Q Did it make you want to -- or strike that. 4 When you saw this letter, did you ask 5 about what those ASHRAE requirements were in 21.17? 6 A Yes. 7 Q Did you ask about it, other than 8 communications with your attorneys? 9 A I mentioned to you earlier that I talked with 10 Glenn, and, you know, asked him about any research he 11 had done, and this ASHRAE information came up. 12 Q What did he say about it? 13 A That he, of course, had looked at ASHRAE, 14 that he had looked at other articles at that time and 15 that was why he brought it to Geoff's attention. 16 Q Did he say what articles he had looked at? 17 A There was an energy something update, a 18 publication, that he said was readily available at that 19 time. 20 Q Did you understand Mr. Cannon's discussion of 21 that Energy Update to raise concerns about vapor 22 barrier requirements in coastal areas? 23 A I believe that article did have concerns in 24 it. 25 Q Did Mr. Cannon tell you what the -- how he

Page 70 1 proceeded at that time with that information? 2 A I just asked him about the research. Like I 3 say, it appears he just went to Geoff with it to see if 4 we could not include the vapor barriers in the 5 standard. 6 Q You understood Mr. Cannon to be saying maybe 7 we shouldn't even have this vapor barrier requirement 8 in coastal areas; is that right? 9 A That's what I'm looking at here. Like I say, 10 I just asked him about the research. 11 Q And did Mr. Cannon, in your discussion with 12 him, tell you how he then proceeded from there? 13 A I don't think I specifically asked him that. 14 But I mean it looks like he dealt with Geoff to get 15 clarification. 16 Q Do you have an understanding of what 17 Mr. Cannon meant when he said it's a touchy subject in 18 coastal areas? 19 A What's the question? 20 Q Do you have an understanding of what 21 Mr. Cannon meant when he said that this is a touchy 22 subject in coastal areas? 23 A I don't know what Mr. Cannon meant. 24 Q When you talked to him recently, did you ask 25 him about that?	Page 72 1 BY MR. TUCK: 2 Q You personally would not have any 3 reservations about people getting the same vapor 4 barrier requirement that were used for the Good Cents 5 homes in Horry County? 6 A I can only speak for my house, where it was 7 required, and I have no problems. 8 Q You have heard of other people who have had 9 problems with their homes from the vapor barrier? 10 A Not at Santee Cooper. Only with your stuff. 11 Q At what point did Santee Cooper learn that 12 there were allegations of mold with respect to Good 13 Cents homes arising from vapor barriers? 14 MR. SMITH: Object to the form of the 15 question. I think that's beyond the scope too. 16 THE WITNESS: I don't know when we were 17 advised of problems. But, again, I don't know that 18 they would be attributed to the vapor barrier because 19 I'm not aware of any vapor barrier problems. 20 BY MR. TUCK: 21 Q What is it about a coastal county that makes 22 vapor barriers even an issue here? 23 A Has to do with the humidity. 24 Q How does that play into the vapor barrier 25 problems?
Page 71 1 A Again, I just asked him about what research 2 he had done on the vapor barrier. 3 Q Are vapor barrier requirements a touchy 4 subject in coastal areas? 5 MR. SMITH: Object to the form of the 6 question. 7 THE WITNESS: I mean I can only give you my 8 opinion. I'm not aware of any problems. As I 9 mentioned, I have a Good Cents house. I built it and 10 been in it, so one was required in my house. I didn't 11 inspect it, but I'm not having any problems. I know 12 there have been discussions, you know, do you, don't 13 you, where should it go. I don't want to put words in 14 Glenn's mouth, but for me that would be why it would be 15 touchy. 16 BY MR. TUCK: 17 Q Does Santee have an opinion as to whether 18 vapor barriers as prescribed in the Good Cents 19 standards are still appropriate vapor barrier 20 standards? 21 MR. SMITH: Object to the form of the 22 question. 23 THE WITNESS: We don't have this program 24 anymore. You know, again, whatever the building code 25 would require is what we would want to do.	Page 73 1 MR. SMITH: Object to the form of the 2 question. That's beyond the scope of the deposition. 3 THE WITNESS: That is not -- I'm not an 4 expert on this. But, you know, it would have to do 5 with how moisture would travel and whether it would 6 condense on this vapor barrier. Again, there are 7 differing opinions. 8 BY MR. TUCK: 9 Q If there are differing opinions on vapor 10 barrier requirements in the coastal areas, is it 11 important to share that information with your co-ops? 12 MR. SMITH: Object to the form of the 13 question. Repeatedly asked and answered. 14 THE WITNESS: Again, I don't remember 15 specific conversations. It's information that's out 16 there, whether from us, from ASHRAE, from other 17 publications. 18 BY MR. TUCK: 19 Q Horry relied on Santee for information it 20 received with respect to the Good Cents program; is 21 that right? 22 MR. SMITH: Object to the form of the 23 question. That's beyond the scope. That's also 24 repeatedly asked and answered. 25 THE WITNESS: Again, we had me as a personal

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1 liaison. There were open lines of communication. 2 Certainly they had opportunities for any feedback. 3 BY MR. TUCK: 4 Q But you weren't going to suggest -- you 5 weren't going to raise the issue of the vapor barrier 6 requirements with the co-ops in the coastal areas, were 7 you? 8 MR. SMITH: Object to the form of the 9 question. That's also beyond the scope. 10 THE WITNESS: It would be my responsibility 11 to go over the standards with them. The vapor barrier 12 would be a section of the standard. 13 BY MR. TUCK: 14 Q You acknowledge -- Santee would acknowledge 15 that there has been some controversy about whether 16 vapor barrier requirements -- what vapor barrier 17 requirements should be in coastal areas, correct? 18 MR. SMITH: Object to the form of the 19 question. 20 THE WITNESS: I would acknowledge it. 21 BY MR. TUCK: 22 Q Do you know people at Santee who would not 23 acknowledge it? 24 A When I spoke with Herman, I asked him if he 25 knew of any problems with vapor barriers, and he did	1 Q Before you saw this in preparation for your 2 deposition, had you ever seen a letter prior to that? 3 A I do not think so. 4 Q The first paragraph mentions, it says, "At 5 our meeting in Atlanta, you stated SEL's position on 6 requiring a vapor barrier on the interior of all 7 exterior walls." Do you see that? 8 A I see that. 9 Q SEL, that's Southern Electric, right? 10 A Yes, Southern Electric International. 11 Q In the second paragraph, the last sentence it 12 says, quote, "Lately we are getting a lot of concern 13 expressed from the building community on this 14 requirement." 15 Do you see that? 16 A I see that. 17 Q At the time you joined Santee in May of 1987, 18 were you still hearing any concern from the building 19 community on requiring vapor barriers? 20 A I don't remember. 21 Q In the third paragraph it says, quote, Our 22 concern is future liability. We don't want to create 23 any situations that would hurt us or the Good Cents 24 program. Enclosed in a recent article on the subject 25 from Energy Design Update. Summarized they state in
Page 75	Page 77
1 not. 2 Q What was his position back in 1987? 3 A I'm not even sure he was at Santee Cooper, 4 but he had a background in residential construction. 5 Q When was the first time you met him at Santee 6 Cooper? 7 A I don't remember. 8 Q What position does he have right now? 9 A He is the supervisor of residential programs. 10 Q Do you know of any other positions he's held 11 at Santee? 12 A At one point he was what we call an energy 13 advisor, and he would have worked directly in the field 14 with customers. 15 Q Is he an engineer by training? 16 A No. 17 Q Was Mr. Cannon an engineer? 18 A I'm not sure of his background. 19 (Holmes Deposition Exhibit No. 2 20 was marked for identification.) 21 Q I'm showing you what's been marked as Exhibit 22 No. 2. It's dated October 22, 1986 from Mr. Cannon to 23 Mr. Hartman. I want to ask you did you review this 24 letter in preparation for your deposition? 25 A I have seen this letter.	1 warm climates interior vapor barriers may, in fact, 2 create moisture condensation problems, closed quote. 3 Do you see that paragraph? 4 A I see it. 5 Q What do you understand Energy Update to be? 6 A I'm not familiar with it. It sounds like 7 just that publication available at that time. 8 Q Let me ask you, that quote at the end of that 9 paragraph where it says, "In warm climates, interior 10 vapor barriers may, in fact, create moisture 11 condensation problems," do you agree with that 12 sentence? 13 MR. SMITH: Object to the form. Also beyond 14 the scope. 15 THE WITNESS: I disagree. As I said, I've 16 got a vapor barrier, and don't have any problems. 17 BY MR. TUCK: 18 Q Well, the experience of one person -- do you 19 have an understanding as to whether your experience may 20 be anecdotal? 21 MR. SMITH: Object to the form of the 22 question. 23 THE WITNESS: Again, in speaking with Herman, 24 I'm not aware of any Santee Cooper customers with any 25 problems.

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1 BY MR. TUCK: 2 Q You understand there is a lawsuit that's been 3 certified as a class action that involves the vapor 4 barriers in Horry County, correct? 5 A I believe that's the one that you're doing. 6 Q Would that indicate to you there is a 7 problem? 8 MR. SMITH: Object to the form. 9 THE WITNESS: A problem with what? 10 BY MR. TUCK: 11 Q Moisture condensation. 12 MR. SMITH: Same objection. 13 THE WITNESS: These people may be having 14 moisture condensation problems. Whether that's 15 attributed to the vapor barrier, I don't think so. 16 BY MR. TUCK: 17 Q You testified earlier you were aware of a 18 debate about whether vapor barriers can cause moisture 19 condensation, right? 20 MR. SMITH: Object to the form of the 21 question. 22 BY MR. TUCK: 23 Q Is that's correct? 24 A That's correct. 25 MR. JOHNSON: Chris, when you get to a	1 A I don't recall. 2 Q Do you know whether Santee had discussions 3 with the building community about vapor barrier 4 requirements? 5 A If I can go by what is in this letter, it 6 sounds like we have. 7 Q Do you acknowledge that a vapor barrier 8 requirement -- strike that. 9 Have you done any investigation into the 10 question of whether vapor barriers in coastal areas can 11 cause moisture condensation? 12 A I have not. 13 Q Do you know if anyone at Santee Cooper is 14 looking into that issue? 15 A I do not know. 16 Q In your opinion is there still discussion 17 about whether vapor barrier requirements in coastal 18 areas are problematic? 19 MR. SMITH: Object to the form of the 20 question. 21 THE WITNESS: I don't know. 22 BY MR. TUCK: 23 Q So when you state you don't believe vapor 24 barriers are a problem in coastal areas, you have never 25 looked into that; is that right?
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1 stopping point, we've been going for a while. 2 MR. TUCK: Okay. 3 BY MR. SMITH: 4 Q The fact that there is a debate means there 5 is more than one side to an issue, right? 6 MR. SMITH: Object to the form of the 7 question. 8 THE WITNESS: I don't think I used the word 9 debate. I think I said there have been discussions. 10 But, again, I mentioned there have been discussions how 11 to size heat pumps, so there are lots of discussions. 12 BY MR. TUCK: 13 Q Mr. Cannon, he was expressing his concerns to 14 Mr. Hartman that the vapor barrier requirement in 15 coastal areas can be a problem; is that right? 16 A He is expressing that they have gotten 17 concern from the building community and that he has 18 done research with this article and is sharing that. 19 Q The building community, they are the ones who 20 were seeing the vapor barrier requirement play out on 21 the ground, so to speak; is that right? 22 A They would be the ones responsible for 23 installing it. 24 Q Did you have any discussions with the 25 building community about vapor barrier requirements?	1 A I said it's not a problem at my house. 2 Q You never looked into the broader issue of 3 the vapor barrier requirement on the entirety of the 4 Good Cents homes in Horry County; is that right? 5 A I have not. 6 Q Do you know if anybody at Santee has looked 7 into that? 8 A I do not know. 9 Q Did you have any discussion with Mr. Cannon 10 about this letter, October 22? 11 A Again, this Energy Design Update, which is 12 part of his research into vapor barriers. 13 MR. TUCK: Could you repeat her answer. 14 MR. SMITH: Could you repeat the question 15 too, please. 16 (Whereupon, the record was read as 17 requested.) 18 MR. TUCK: We can take a break here. 19 (Recess taken.) 20 BY MR. TUCK: 21 Q You mentioned you've got a Good Cents home? 22 A That's correct. 23 Q What kind of vapor barrier do you have? 24 A I do not know. My paperwork just says one 25 was required.

21 (Pages 78 to 81)

Page 82 1 Q Have you ever had a piece of your wall torn 2 open to see what's -- if there's been any impact? 3 MR. SMITH: By the way, this is outside the 4 scope of the 30(b). 5 THE WITNESS: I have not. 6 BY MR. TUCK: 7 Q I want to go back to your conversations with 8 Mr. Cannon when you met with him recently. When did 9 you meet with Mr. Cannon? 10 A Just called him on the phone. I think it was 11 one day last week. 12 Q Was there anyone else involved in the 13 conversation? 14 A Rush was there. 15 Q Did Mr. Cannon, did he indicate to you 16 whether he had had -- did he indicate whether he has 17 any concerns about vapor barrier requirements in 18 coastal areas. 19 A What I asked him about was just the research 20 he did in preparing the letter. 21 Q He didn't volunteer to you what he believes 22 about whether the vapor barriers should be used in 23 Horry County? 24 A He did not. 25 Q And you didn't ask him about that?	Page 84 1 Q You see, the first paragraph, it states in 2 the second sentence, "SEI's position is that we do not 3 require the use of vapor barriers except to conform 4 with applicable building codes," close quote. Do you 5 see that? 6 A I see it. 7 Q Is that consistent with your understanding? 8 A Yes. 9 Q How did that -- is that consistent with 10 Santee Cooper's understanding? 11 MR. SMITH: Object to the form of the 12 question. 13 THE WITNESS: Well, this letter is in 14 response to the question. You know, Glenn says he 15 stated that they require a vapor barrier. So he is 16 responding that they do not unless that's what the 17 building code requires. 18 BY MR. TUCK: 19 Q So is it Santee's position that vapor 20 barriers are not required except to conform with 21 applicable building codes? 22 MR. SMITH: Object to the form of the 23 question. 24 THE WITNESS: It looks like from our 25 discussion with SEI that we would not have to require
Page 83 1 A I did not. 2 Q Just going back to your own home, your Good 3 Cents home for a second, who built your home? 4 A It was Modern American Homes. 5 Q What year was it built? 6 A It was built in '99. 7 (Holmes Deposition Exhibit No. 3 8 was marked for identification.) 9 Q I'm showing you what's been marked as 10 Exhibit 3. It has an Exhibit C sticker on there from 11 another, that was previously placed on there. But this 12 is a letter from Mr. Hartman to Mr. Cannon dated 13 October 29, 1986. Did you see this letter in 14 preparation for your deposition? 15 A I did. 16 Q Do you recall seeing it at any time prior to 17 your preparation for the deposition? 18 A I do not. 19 Q Did you discuss this letter with Mr. Cannon? 20 A Again, I just asked him what research he did. 21 I don't know that I referenced -- I think this is 22 Geoff's letter -- Geoff's letter specifically. 23 Q Had you seen this letter at the time you 24 spoke to Mr. Cannon? 25 A Yes, I think so.	Page 85 1 it based on their standard. We being Santee Cooper. 2 BY MR. TUCK: 3 Q You testified earlier that the standards book 4 that you passed along to co-ops, that you intended for 5 co-ops to follow those requirements, correct? 6 A They get the book to review; of course, make 7 any comments and changes. And then once we've agreed 8 upon the -- again, it's a statewide standard we would 9 follow to be in compliance with the Good Cents program. 10 Q If the Good Cents program required vapor 11 barriers in Horry County and if Horry County did not 12 have that requirement in its building code -- strike 13 that. 14 The standards guide that was provided to 15 Horry Electric did not state that vapor barriers were 16 not required except to conform to applicable building 17 codes; is that right? 18 MR. SMITH: Object to the form of the 19 question. 20 THE WITNESS: There are a lot of notes in 21 there. Can you restate it? 22 BY MR. TUCK: 23 Q What did the standards guide tell Horry 24 Electric it had to do with respect to vapor barriers in 25 Good Cents homes?

Page 86 1 MR. SMITH: Object to the form of the 2 question. 3 BY MR. TUCK: 4 Q Did it require it? 5 A I believe that the set of standards that came 6 out after this discussion did not require it. It was 7 recommended. 8 Q At some point did it transition from a 9 recommendation to a requirement? 10 A From a set of standards that I saw later, 11 yes, it did. 12 Q When did that occur? 13 A I don't know exactly when it occurred. I 14 believe the date on the standard was '91. 15 Q Now, at that point, you were not -- 16 MR. JOHNSON: In '91 it's now required? 17 BY MR. TUCK: 18 Q 1991 is when you say it transitioned from a 19 recommendation to a requirement; is that right? 20 A I believe I saw a standard dated 1991 where 21 it was required. 22 Q Now at that time were you involved at all in 23 the review of the standard guides as it would come out 24 from SEI? 25 A I was not.	Page 88 1 A I did not. 2 Q Have you read any documents that indicate why 3 it changed? 4 A I don't know of any documents. 5 Q And, in fact, you don't even know the people 6 who would have been dealing with that change in 1991, 7 right? 8 A As I said, I know some people that through 9 the years have been involved, but I don't know who was 10 involved in '91, '89, or any of the folks specifically 11 after I left. 12 Q I want to be clear. You did not make any 13 efforts to educate yourself on the process for that 14 transition in 1991 from a recommendation to a 15 requirement? 16 A No, I haven't done anything. 17 (Holmes Deposition Exhibit No. 4 18 was marked for identification.) 19 MR. SMITH: We'll take a break. I didn't get 20 this before the deposition. Okay? 21 (Recess taken.) 22 BY MR. TUCK: 23 Q Just before I get to the exhibit, let me ask 24 you one question. Right before we took a break, you 25 mentioned you looked at -- or there was a document
Page 87 1 Q You would not have been involved with that 2 since 1989; is that right? 3 A That's correct. 4 Q Do you know who at Santee would have been 5 involved with reviewing those guides in 1991? 6 A I do not. 7 Q Who took over your position when you moved to 8 a different job responsibility in 1989? 9 MR. SMITH: Objection. Asked and answered. 10 THE WITNESS: I don't know. 11 BY MR. TUCK: 12 Q So are you prepared today on behalf of Santee 13 Cooper to testify as to the process for transitioning 14 from a recommendation to a requirement in 1991? 15 A Today I am representing Santee Cooper, but I 16 do not know when any changes to standards were made. 17 Q Did you do anything to prepare for that 18 subject today? 19 A The changing of standards -- 20 Q Yes. 21 A -- is that the question? I have had the 22 standards to look at. I do not know what precipitated 23 the change. 24 Q Did you in your preparation for the 25 deposition ask anyone at Santee why it changed?	Page 89 1 around 1991 that had the transition from the vapor 2 barrier recommendation to a requirement. Do you 3 remember that? 4 A Yes. 5 Q What was that document? 6 A What I saw was a set of standards. You know, 7 the new standard for the program. 8 Q It just would have been -- would it just have 9 been labeled Good Cents? Would it just have been 10 labeled as a Good Cents manual? Do you recall? 11 A I don't remember the title of the document. 12 But it was similar to the ones I had seen earlier. 13 Q Do you recall if it came from SEI? 14 A Like we talked about, the whole program was 15 set up by them for the state, so I do not know what -- 16 if it had their logo somewhere or not, I'm not sure. 17 Q This document you saw for the 1991 18 transition, would that have been a document that was 19 then passed along to the co-ops? 20 A Yeah. And I saw it in a notebook. I just 21 don't remember what label was on the cover. But, yeah, 22 I mean any of the standards should be shared with the 23 co-ops. 24 Q Do you know whether, in fact, it was shared 25 with the co-ops?

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1 A I do not know. 2 Q Let me ask you about the exhibit you have in 3 front of you. Marked as Exhibit 4 is a letter dated 4 May 18, 1992 from a Lonnie Carter to a Christian 5 Holland. Did you see this document in preparation for 6 your deposition? 7 A I just saw it. This is the first time. 8 Q Do you know who Lonnie Carter is? 9 A I do. 10 Q Is Lonnie Carter employed right now at 11 Santee? 12 A He is. 13 Q And what is his current position? 14 A He is our president. 15 Q Has Mr. Carter been at Santee as long as you 16 have been there? 17 A I do not know when he was hired. But if he 18 was there in '92, it's a comparable amount of time. 19 Q There is some blind copies listed on the 20 second page of it. Let me ask you, do you know who 21 Curtis Williamson is? 22 A I do. 23 Q Who is that? 24 A At the time he was over -- when I started he 25 was over the Myrtle Beach office.	1 Q The letter is addressed to Christian Holland. 2 Do you know who that is? 3 A I do. 4 Q Have you ever worked with Christian Holland? 5 A What do you mean by worked with him? He is 6 not an employee. 7 Q Right. Have you ever -- is he a business 8 parter? Have you ever talked to him? What's the 9 nature of your relationship with him? 10 A I know him from the customer advisory 11 counsel. 12 Q What is the customer advisory counsel? 13 A It's a group of customers we meet with 14 quarterly to just go over what's going on, topics of 15 interest. 16 Q In the letter I want to direct your attention 17 to the third paragraph, the first page where it says, 18 "In your second point you indicated the Good Cents 19 vapor barrier requirement is in direct conflict with 20 recommendations by Clemson University and the National 21 Home Builders Association." Do you see that? 22 A I see it. 23 Q Do you know what Mr. Carter is referring to 24 there? 25 A I do not.
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1 Q When you say over the Myrtle Beach office, 2 was he at an office in Myrtle Beach, or did he have 3 supervisory control over what happened at Myrtle Beach? 4 A He was physically at the Myrtle Beach office. 5 Q Do you know what his job responsibilities 6 were at this time in 1992? 7 A He was over -- I believe he was over customer 8 service, engineering, us. 9 Q When you say us, what do you mean? 10 A The energy management group. 11 Q There is a name there, J.D. Steedly. 12 S-T-E-E-D-L-Y, for the record. 13 A Yes. 14 Q Who is Mr. Steedly? 15 A J.D. currently is the director of program 16 development, which is in my department. And he worked 17 in energy management. They called it marketing later. 18 Q Who is Rickie Thomas? 19 A He at one time was in North Myrtle Beach as 20 what we'd now call an energy advisor. 21 Q Have you ever been in the marketing 22 department? 23 A I have never worked in it when it was called 24 the marketing department. Some of those same functions 25 were derived from energy management.	1 Q Have you ever seen any recommendations from 2 Clemson University at all with respect to vapor 3 barriers? 4 A I have not. 5 Q Have you seen any recommendations from the 6 National Home Builders Association with respect to 7 vapor barriers? 8 A I have not. 9 Q It states in that second sentence, Mr. Carter 10 writes, "When I inquired about this concern, I found 11 that Santee Cooper's Good Cents program, when 12 developed, was in agreement with Clemson's vapor 13 barrier recommendations. We are not aware that they 14 have changed their recommendations for vapor barriers. 15 I have asked J.D. Steedly to follow up with Clemson and 16 the National Home Builders Association to get their 17 latest recommended vapor barrier requirement and 18 determine if Santee Cooper's Good Cents program should 19 be modified." 20 Did I read that correctly? 21 A Yes. 22 Q Are you familiar at all with anything 23 Mr. Steedly did to follow up with Clemson or the 24 National Home Builders Association to get their vapor 25 barrier requirements?

Page 94 1 A No. 2 Q I assume that this letter postdates the 1991 3 transition from the vapor barrier as a recommendation 4 to a requirement? 5 MR. SMITH: We'll stipulate 1992 follows 6 1991. 7 MR. TUCK: Thank you. 8 THE WITNESS: Okay. Ask me again, please. 9 BY MR. TUCK: 10 Q I just want to make sure that when you say 11 the 1991 transition, I want to make sure that it's a 12 different event than what's being referred to in this 13 letter. So what I'm trying to establish is you're 14 saying in 1991 there was a transition of the vapor 15 barrier from a recommendation to a requirement; is that 16 right? 17 A I saw a standard dated 1991 that indicated 18 the change, but I don't know when the change took 19 place. 20 Q Do you know if the information, the 21 discussion at Paragraph 3 here is in any way connected 22 to the 1991 manual you saw? 23 A I don't know. 24 Q Have you ever heard anyone at Santee 25 reference recommendations by Clemson or by the National	Page 96 1 Santee Cooper designate a person to testify about those 2 matters? I understand you didn't know of the letter, 3 but they are covered by Items One and Two of the 4 plaintiff's notice. 5 MR. FATA: He produced the letter. 6 MR. TUCK: This was produced yesterday. 7 MR. JOHNSON: It was produced yesterday. 8 Hadn't gone over it with the witness. Aren't we 9 entitled to have a witness who is knowledgeable about 10 it? 11 MR. SMITH: As I said at the outset of the 12 deposition -- and if you want to excuse her for this, 13 that's fine. There have been a number -- 14 MR. JOHNSON: I want her excused. 15 THE WITNESS: I'm excused, right? 16 MR. SMITH: Just temporarily. 17 (Whereupon, the witness exited the 18 deposition suite.) 19 MR. SMITH: This is a 1992 letter. I don't 20 think you will find anybody who has any recollection of 21 it. The 1991 change that she is talking about, the 22 documents she is referring to, are the standards that 23 had November 1991 on the bottom of them? 24 MR. FATA: The manual? 25 MR. SMITH: Yeah, she didn't know what it was
Page 95 1 Home Builders Association with respect to vapor 2 barriers? 3 A I do not know of any. 4 Q Do you know of what the outcome might have 5 been to Mr. Steedly's follow-up on that issue? 6 A I do not know the outcome. 7 Q Do you know whether Santee Cooper's Good 8 Cents program was modified after May 18, 1992? 9 A I do not know. 10 Q In fact, you would not have been in a 11 position to know, just based on your job 12 responsibilities; is that right? 13 A I was not in that department. 14 Q So if there was a change in the vapor barrier 15 requirements, you would not have known about it in that 16 time frame; is that right? 17 A I don't think so. 18 Q It would not have been your job to know? 19 A My job was not related to Good Cents, no. 20 Q And it wasn't related to Good Cents after 21 1989, right? 22 A That's correct. 23 MR. JOHNSON: May I ask this question? 24 MR. SMITH: Uh-huh. 25 MR. JOHNSON: Aren't we entitled to have	Page 97 1 called. It has different names. 2 MR. FATA: You can put that on the record. 3 Okay? 4 MR. SMITH: And you can show it to her. I 5 have it. I can put it in front of her, and she could 6 say this is what I was talking about. 7 MR. FATA: That would be great. 8 MR. SMITH: But the point is that happened in 9 1991, and nobody remembers. 10 MR. JOHNSON: Lonnie Carter doesn't remember 11 writing the letter? 12 MR. SMITH: Lonnie Carter does not, so far as 13 I know. 14 MR. JOHNSON: You asked him about the letter, 15 given it to him? 16 MR. SMITH: We have inquired. We talked to 17 J.D., and he has no recollection of it. 18 MR. JOHNSON: Do we have the letter of 19 April 20th? 20 MR. SMITH: What letter of April 20? 21 MR. JOHNSON: That's referred to -- 22 MR. SMITH: No, I don't have it. 23 MS. WARNER: It's a long time ago. Some of 24 these records aren't around. 25 MR. SMITH: A surprise. Babs found it. This

25 (Pages 94 to 97)

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1 was one of the letters and one of the documents in 2 three or four things that Babs recently located. But 3 this has been a dead end, and the reason for the change 4 in 1991 has been a dead end. You-all can pick on the 5 witness all you want, but that's a fact. 6 MR. FATA: How about Glenn Cannon? Does he 7 remember it? 8 MR. SMITH: He was gone by 1991. 9 MR. FATA: He was involved in the late '80s, 10 and he was gone by 1991? 11 MR. SMITH: Yeah. 12 MR. JOHNSON: So you're saying you've 13 investigated and you can find no one with any knowledge 14 about this letter? 15 MR. SMITH: Yes. Send me a notice, that's 16 what I'll say. 17 MR. FATA: Who took over Glenn Cannon's role? 18 MR. SMITH: The program changed a lot over 19 the years. 20 MR. FATA: Right after he left? 21 MR. SMITH: I don't know. Because not only 22 did they change -- as she said, they changed the 23 designation of the departments. They reorganized. 24 There were changes. I couldn't tell you off the top of 25 my head who would have -- I don't know that there was a	1 who were there we've talked to, including the retired 2 people, nobody has a recollection. 3 MR. JOHNSON: And Herman Holmes? 4 MR. SMITH: Nope. Except that the notion was 5 just what's in those documents, that the code required 6 it. So pick on her if you want to, but we've hit dead 7 ends at these places. That's why I didn't bother 8 showing her this document. She doesn't know anything 9 about it. They don't know anything about it. 10 You don't need to put this on the 11 record. 12 (Discussion off the record.) 13 (Whereupon, the witness re-entered 14 the deposition suite.) 15 BY MR. TUCK: 16 Q Lonnie Carter, do you know who Mr. Carter -- 17 I don't recall if I asked you this, do you know who he 18 worked for in 1992? 19 A I do not. 20 Q Do you know -- it's mentioned in that letter 21 he's the manager of corporate forecasting, rates, and 22 marketing in 1992. Would that indicate he was in the 23 marketing department? 24 A He was in corporate forecasting, rates, and 25 marketing.
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1 person doing exactly what he was doing. And I don't 2 know who would have been similar. You'll see -- 3 I mean, you've seen the documents, you can -- 4 MR. JOHNSON: Is Santee Cooper saying that 5 there was a requirement of the vapor barrier in 1991 in 6 the manual? 7 MR. SMITH: The 1991 manual says required. 8 The original one said recommended. 9 MR. JOHNSON: And there's no one who knows 10 why it changed? 11 MR. SMITH: Right. We haven't found anybody. 12 I'm not giving up yet. 13 MR. JOHNSON: And it remained a requirement 14 through 2003? 15 MR. SMITH: Yes. And the 2003 memo is also 16 something of a mystery. 17 MR. FATA: You mean that little piece of 18 paper that has the -- 19 MR. SMITH: 2002 document. 20 MS. WARNER: Yeah. 21 MR. FATA: The due to local code changes, 22 we're no longer going to require a vapor barrier? 23 MR. SMITH: Right, 2002. 24 MR. JOHNSON: Nobody knows? 25 MR. SMITH: (Shaking head.) And the people	1 Q Do you know if that was part of the marketing 2 department? 3 A I think marketing would be part of that 4 department. 5 Q Do you know who headed up the marketing 6 department at that time? 7 A I don't know if it references any of that in 8 the letter. It says J.D. Steedly heads up our 9 marketing program. 10 Q Other than that reference, do you have any 11 recollection as to whether Mr. Steedly would have 12 headed up marketing at that time? 13 A Other than what's there, no. 14 MR. TUCK: I just want to mark the 30(b)(6) 15 notice. 16 (Holmes Deposition Exhibit No. 5 17 was marked for identification.) 18 BY MR. TUCK: 19 Q Just for the record I am identifying -- 20 that's yours. 21 A That's me? 22 Q Yeah. I am marking for the record the 23 subpoena, deposition topics that you got in this case. 24 Do you recognize that? You would have received one 25 from Pope's office as well.

Page 102 1 A I have seen -- I'm not sure if this is what I 2 saw or not. I have seen a couple. 3 MR. SMITH: I don't think she ever saw the 4 subpoena. 5 MR. TUCK: Okay. I will turn it over to 6 Pope. 7 EXAMINATION 8 BY MR. JOHNSON: 9 Q I'm not sure we've met. I'm Pope Johnson. 10 A I'm Juan Holmes. 11 Q Okay, Ms. Holmes. I represent Horry 12 Electric. I have some questions to ask you. What I'll 13 try to do to save Rush some trouble, I'll ask you 14 personal questions to start with, and I'm going to 15 announce when I go to 30(b)(6) and he can -- so you'll 16 understand what I'm doing. 17 (Holmes Deposition Exhibit No. 6 18 was marked for identification.) 19 Q First of all, I just marked a document as an 20 exhibit, Exhibit 6. That was my subpoena and list of 21 documents to be produced as well as at the end, the 22 matters that I wanted to discuss with you. Do you 23 recall seeing that in the exhibits? 24 A This looks familiar, yes, sir. 25 Q And you prepared, the eight hours you	Page 104 1 up. 2 Q In Moncks Corner or here? 3 A It was around here. It might have been over 4 the North Carolina line. He may be back here. 5 Q Who took over the Good Cents program after he 6 left? 7 A I'm not sure. 8 Q Who would know that? 9 MR. SMITH: Object to the form. 10 THE WITNESS: I've given some names of people 11 that we talked to. Some of them may recall. 12 BY MR. JOHNSON: 13 Q If you wanted to find out for yourself, what 14 would you do? Where would you go to get the 15 information? 16 Let me tell you what I'm trying to find 17 out. You were involved in the program for two or three 18 years in the '80s, and there have been people who were 19 involved right on up to 2003. I assume there was 20 somebody in charge as late as 2003 who would have been 21 hands-on direct involvement with the program. 22 For some reason Santee Cooper has 23 produced you rather than someone who was actually 24 involved with the program in those important years. So 25 I want to find out who was the person. If we wanted to
Page 103 1 estimated you spent included preparation to address the 2 issues I raised? 3 A Yes, sir. 4 MR. SMITH: Subject to the objections I made. 5 If I need to, I can make those for the record. You-all 6 tell me. 7 MR. JOHNSON: No, you don't. We understood 8 you have objections. 9 BY MR. JOHNSON: 10 Q Did I understand you correctly that when you 11 came to work for Santee Cooper, Glenn Cannon was the 12 person who was in charge of the day-to-day operation of 13 the Good Cents program? 14 A Yes, sir. 15 Q And who took his place? 16 A They hired Bobby Johnson at some point. I 17 don't remember when that was. 18 Q Bobby Johnson would have been the next person 19 in charge of the Good Cents program? 20 A Yes, sir. 21 Q Does he still work for Santee Cooper? 22 A He does not. 23 Q Do you know where he is? 24 A I am not sure. He went to work with like a 25 heat pump contractor, and I'm not sure where he ended	Page 105 1 start deposing people who were actually involved, how 2 would we find the guy who -- male or female -- who 3 headed up the responsibility for the program. Can you 4 help me? 5 A Well, I would just start asking the people 6 that I know that at any time were involved. If I 7 needed to give you a time line, I'd try to put together 8 a time line. 9 Q Is there a corporate person who keeps up with 10 information like that, a person employed by Santee 11 Cooper who would keep up with personnel and who is 12 responsible for the program? 13 MR. SMITH: Object to the form. 14 THE WITNESS: We have an HR department that 15 knows your career steps. But I don't know that they 16 would be able to say, ooh, this was the Good Cents 17 program. 18 BY MR. JOHNSON: 19 Q Who is head of HR? 20 A Our VP of HR now is Laura Varn. 21 Q She would have records to show who had the 22 responsibility for the program -- 23 MR. SMITH: Objection. Lack of foundation. 24 BY MR. JOHNSON: 25 Q -- for particular dates, wouldn't she?

Page 106 1 A We'd be able to track job titles and I think 2 unit numbers by date. 3 Q Right. Do you know who was in charge of the 4 program from 1998 to 2003? 5 A I do not. 6 Q Let me ask you a little bit about the purpose 7 of the program. You were asked some questions about 8 that. Is it correct that the program was designed to 9 conserve energy consumption, which in theory would 10 enable Santee Cooper to delay having to build 11 additional generating power? 12 MR. SMITH: Object to the form of the 13 question. 14 You can answer. 15 THE WITNESS: That would be one purpose of 16 program. Of course, it was for the -- you would build 17 in these energy efficiency features into homes. 18 BY MR. JOHNSON: 19 Q And they would use less power, which would 20 mean that there would be less need for capacity, or the 21 need for capacity additions would be delayed? 22 A If a customer doesn't change their living 23 habits to where they would use more electricity, if 24 they lived the same lifestyle, then making the energy 25 efficient improvement should lower --	Page 108 1 A Yes, there were meetings. 2 Q And then after they agreed to participate and 3 entered into agreements with Santee Cooper, Santee 4 Cooper offered training programs and other programs to 5 keep them updated with the Good Cents program, correct? 6 A Yeah, it was for an exchange of information 7 for training, yes. 8 Q Santee Cooper also offered training sessions 9 for contractors and builders in order to promote 10 interest in the program, correct? 11 A That's correct. 12 MR. SMITH: Object to the form. 13 BY MR. JOHNSON: 14 Q Is it also correct that Santee Cooper -- to 15 advertise the Good Cents program, cooperatives had to 16 use standardized advertising material that was offered 17 through Santee Cooper as a means of -- for advertising 18 purposes? 19 MR. SMITH: Object to the form. Also lack of 20 foundation. 21 THE WITNESS: I don't know about requiring 22 them to do it. But I mean if you were to use the Good 23 Cents logo, then there would be -- you're in agreement 24 involved with that. 25
Page 107 1 Q Demand? 2 A -- energy consumption. 3 Q And Santee Cooper, in order to get people to 4 try and do that, consumers to do that, had a Good Cents 5 rate that they offered that was less than the ordinary 6 residential rate -- they would give a credit to the 7 co-op for those members who would qualify? 8 MR. SMITH: Object to the form of the 9 question. 10 THE WITNESS: At that time when I started, 11 Santee Cooper had a rate, and the co-ops would be 12 credited, that's correct. 13 BY MR. JOHNSON: 14 Q And Santee Cooper contracted with the 15 Southern Company or -- 16 A Southern Electric International. 17 Q Whatever it is, the name, to use the program 18 for its members as well as to offer it to cooperatives 19 for use by cooperative members? 20 A Yes, and Electric and Gas was using it as 21 well. 22 Q And one of the things Santee Cooper did was 23 hold programs that cooperatives sent representatives to 24 learn about the program so they could make a decision 25 as to whether to participate?	Page 109 1 BY MR. JOHNSON: 2 Q I'm not suggesting they required the co-op to 3 advertise, but if the co-op was going to advertise, 4 Santee Cooper had standard type ads that could be, you 5 know, the name changed, so it would be Horry County 6 advertising it rather than Santee Cooper? 7 A I'm not sure. 8 Q You don't recall that one way or the other? 9 A No. But I mean that makes sense, but I don't 10 recall. 11 Q Now, the cooperatives were given by Santee 12 Cooper standard books, right, or manuals? They were 13 called different things at different times. But there 14 was a booklet that contained the forms that were to be 15 used for the program? It was a booklet that had the 16 program requirements and other information? 17 A I believe that is correct, yes. 18 Q And would those be handed out at these 19 training sessions, or would they be mailed to them, or 20 how did you-all get them to the co-op members; do you 21 know? 22 A I don't know. There would be probably times 23 where we would do either. Depending if a quarterly 24 meeting was coming up, they may hand something out at 25 the meeting or mail out ahead of time.

Page 110 1 Q If it was in the manual or standards book, it 2 was something that any of the cooperatives were 3 supposed to follow? I mean, that's what it was, it was 4 a manual for implementing the Good Cents program, 5 correct? 6 A If they wanted to be in compliance with the 7 standards, they would have followed it. 8 Q Didn't Santee Cooper have the right to audit 9 the cooperatives? 10 A Yes. 11 Q And, in fact, audited cooperatives? 12 A Yes. 13 Q To make sure that the cooperatives were 14 following the requirements of the Good Cents standard 15 book or manual book? 16 A Yes. 17 Q Now, does Santee Cooper offer cooperatives 18 other programs? You mentioned a loan program. I don't 19 know whether that was just for your members or others. 20 Periodically does Santee Cooper offer programs that the 21 cooperatives can offer to their members? 22 A I don't believe there are any programs now 23 that the co-ops participate in with us. 24 Q Have there been any besides the Good Cents 25 program?	Page 112 1 THE WITNESS: I don't know. 2 BY MR. JOHNSON: 3 Q As far as you know, was it a completely 4 pass-through program, where the cooperatives, where the 5 credit was given by Santee Cooper and passed directly 6 to the members who participated in the program? 7 MR. SMITH: Objection to the form. Assumes 8 facts not in evidence. 9 THE WITNESS: As far as I know it was a 10 pass-through. 11 BY MR. JOHNSON: 12 Q Do you know what the standard book or manual, 13 the original standard book or manual required that 14 Santee Cooper handed out to cooperatives require 15 regarding vapor barriers? 16 A No. I have seen the standard books. I would 17 have to look at it, and you would have to tell me this 18 is what was handed to them. 19 Q Is there somewhere at Santee Cooper that the 20 standard books that were actually issued are available 21 to be looked at? In other words, year 1987. If it 22 changed in 1991, that change. And if it changed again, 23 any other changes. 24 MR. SMITH: Objection. Lack of foundation. 25 THE WITNESS: Since I left in '89, I was not
Page 111 1 A They did not participate in the loan program. 2 I'm not aware of -- I think there was a water heater 3 program. But that's outside of my time frame. 4 Q You don't know whether the cooperatives 5 participated in that program through Santee Cooper? 6 A Correct. They have one, but I'm not sure if 7 it's through Santee Cooper. 8 Q Now, tell me -- I think you said in your 9 earlier testimony some way you thought the cooperative 10 benefited by participation in Good Cents program. Were 11 you aware of any benefit to the cooperative in 12 participating in the Good Cents program? 13 A I mean, for me, their participation, it was a 14 way of having energy efficient features built into a 15 home that, again, should lower the customer's bill. So 16 in that sense, it's a good customer service. 17 Q Right, it would be good for the customer, and 18 it would be nice for the cooperative to do it. But in 19 terms of any benefit to the cooperative? Actually, the 20 cooperatives are nonprofit, aren't they? 21 A Yes. 22 Q So whatever benefit, I mean it's not like 23 they would make a profit on the Good Cents program and 24 profit somebody by that, would they? 25 MR. SMITH: Object to the form.	Page 113 1 aware of a collection of books, so I do not know if 2 that has been maintained. 3 BY MR. JOHNSON: 4 Q But in preparing for the deposition, you've 5 obviously looked at some of the books? 6 A I have seen a handful, yes. 7 Q Where did you see those? 8 A Rush provided those. 9 Q He brought them? 10 A Yeah. 11 Q Did you see them at Santee Cooper, or did you 12 see them at his office? 13 A No, it was at our office. 14 Q How many standard books did you look at? 15 A I believe I have seen -- 16 MR. SMITH: Object to the form of the 17 question. 18 A -- a draft, at least one draft. And the '91 19 set that I've referred to, I've seen that one. There 20 may have been another one in between there. 21 Q Did you see any after '91? 22 A I don't believe I have, no, sir. 23 Q Did the '91 version of the manual require an 24 installation of the vapor barrier? 25 A Yes.

Page 114 1 Q To your knowledge and based on the 2 investigation you've done, did that requirement of the 3 Good Cents program change in any way prior to 2003? 4 A The other thing you-all provided was a 5 document saying -- alluding to the vapor barrier 6 requirement. I don't remember the date on that. 7 Q I'm sorry, 2002. 8 A There is a document that I believe is dated 9 in that time frame that talks about the vapor barrier. 10 Q In your testimony earlier you said that when 11 the books or manuals or standard manuals were sent out, 12 they were sent with invitations to the cooperative to 13 make changes. 14 A They would be able to suggest changes, yes. 15 Q Tell me what you recall specifically about 16 that. Do you recall a letter that went out that 17 invited changes or invited comment, that occurring? 18 A I believe there were a couple of letters. 19 Like I said, I was there for personal contact. I 20 believe there is a letter from a couple of -- there are 21 letters from a couple of co-ops about suggestions for 22 changes. 23 Q Did Santee Cooper invite the letters? I 24 guess what I'm having trouble understanding is how you 25 would remember some letters this long time ago.	Page 116 1 Q What did Glenn say? 2 A He referred to the ASHRAE, that Energy Update 3 we had talked about earlier. 4 Q When he referred to ASHRAE, what did he say 5 about it? 6 A Just that he had looked over that. He, of 7 course, questioned Geoff about it. 8 Q Did he say what Geoff told him? 9 A Well, I had the letter, so... 10 Q I understand. But what I'm trying to get you 11 to do is not say he told me about ASHRAE, but tell me 12 everything that you can recall that was said about it. 13 In the conversation did he state what Geoff and he 14 discussed? 15 A All I can recall is the discussion about the 16 vapor barrier, the ASHRAE reference in the letter, the 17 energy update reference in the letter. I think he 18 talked about different materials, the different 19 methods. 20 Q What different methods? Different methods 21 for putting in the vapor barrier? 22 A I believe so. 23 Q Did he say anything about any -- provide any 24 details about the ASHRAE standard? 25 A No.
Page 115 1 A Well, when we would send the stuff out, I 2 have seen the cover letter that went with the -- 3 Q What did you send out that you saw 4 accompanied with a cover letter? 5 A It would say enclosed are the draft of the 6 standards. We'll be meeting next week, make comments 7 or let us know your comments, something to that -- 8 Q When did you see that? Is this something you 9 recall from when it occurred or in preparation? 10 A In preparation. 11 Q Okay. So you've seen something that 12 transmits, but you can't tell me specifically what it 13 would be? 14 A Correct. 15 Q You were asked about the conversations you've 16 had recently with Glenn Cannon. Could you tell me in 17 as much detail exactly what you recall about the 18 conversation, who participated, and what was said? 19 A Rush and I called Glenn. The main question I 20 had was about the research he had done on vapor 21 barriers. 22 Q So you asked him, Glenn, did you do any 23 research on the vapor barriers? 24 A I don't remember the exact question, but what 25 research did you do, something to that effect.	Page 117 1 Q He just said I looked at the ASHRAE 2 standards, and I looked at this other document, and 3 that's what I did? 4 A Yes, sir. 5 Q And that's the extent of the conversation? 6 A It was brief, yes. 7 Q And did Rush ask him anything? 8 MR. SMITH: I object to what I said in that 9 conversation, questions about what I said. If you want 10 to ask what she said and what Glenn said, that's fine. 11 I will instruct her not to say what I said in the 12 meeting. 13 BY MR. JOHNSON: 14 Q Was Glenn on the phone? 15 A Yes. 16 Q And so the three of you-all, what, you were 17 on the speaker phone, or something of that nature? 18 You-all were together? You and Rush were together, 19 Glenn was in North Carolina? 20 A That's correct. 21 Q And did you-all have Glenn on the speaker, or 22 did you have him -- where you were using a hand set? 23 A Speaker. 24 Q So would you tell me what you recall Rush 25 asking and what Glenn said in response to it?

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1 A Like I said, the only thing I remember is the 2 part where I asked him about what he had researched. 3 Q You don't remember what Rush asked him? 4 A I don't. 5 Q When was the conversation? How long ago? 6 A I think it was last week. 7 Q You can't recall anything about what the two 8 of them might have said? 9 A No, sir. 10 Q You were asked some questions about your Good 11 Cents home. When was it built, Ms. Holmes? 12 A '99. 13 Q Did you build it yourself, contract with the 14 contractor to do the work, or did you buy it after it 15 was built? 16 A I had a contractor build it. 17 Q You said your home included a requirement of 18 a vapor barrier? 19 A That's correct. 20 Q Who was the builder again? 21 A It was a guy named Mike Amonds. 22 Q Mike? 23 A Amonds, Modern American Homes. 24 Q Is he still in business? 25 A I believe he died.	1 A Okay. I mentioned earlier that, you know, I 2 had these -- I knew these folks. We had talked about 3 this particular thing. 4 Q What is Exhibit B? 5 A It appears to be a memo from a Santee Cooper 6 office at the south end at Murrells Inlet. 7 Q What does it deal with? 8 A It says it's a notice of change in the Good 9 Cents requirements for Horry Georgetown area. 10 Q What are the changes described? What does 11 the document say in terms of the change? 12 A It says that Santee Cooper has found out that 13 the local building code doesn't require a vapor barrier 14 anymore, so that we will not require one. 15 Q Santee Cooper will not require one? 16 A Yes. 17 Q And what have you learned, if anything, about 18 who issued that, when the decision was made, why, et 19 cetera? 20 A It's not signed, so I don't know who sent it. 21 This fax information at the top, I don't know who that 22 is. 23 Q Let me ask you, have you checked fax numbers 24 to try to track it down? 25 A I did not check fax numbers. There is no fax
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1 Q We're running up against all these barriers 2 of time and events. 3 I will move to the notice. Do you have 4 it there with you? 5 A Which item is that exhibit number? 6 Q Exhibit number -- I have the original 7 exhibits. You may not have a copy. 8 Looking at Matter No. 1, I will come 9 back to this in terms of your other documents that have 10 been produced. But do you have any other information 11 about what is marked as Exhibits A, B, and C to the 12 notice other than what you have now told us? 13 MR. SMITH: A consists of Santee Cooper 2506, 14 2507. I'm referring to Bates numbers. Santee Cooper 15 2501 is the third page, and 2497 and 2498 are the 16 fourth and fifth pages. That's Exhibit A. 17 BY MR. JOHNSON: 18 Q Then we have Exhibit B and Exhibit C. 19 MR. SMITH: Exhibit B and Exhibit C. 20 BY MR. JOHNSON: 21 Q You've testified about those documents to 22 some extent already. 23 A I think A, but not B and C. 24 Q Let me look here. What can you tell me about 25 Exhibit B and who issued it and why it was issued?	1 number on here. 2 Q I thought you said it had a fax. 3 A It appears to be a fax across the top, but I 4 don't know who Singleton is. 5 Q What office, what letterhead or office 6 description is it on? 7 A It says it's from the Murrells Inlet. Garden 8 City office is what we call it. 9 Q Have you talk with anyone at Murrells Inlet 10 or Garden City to find out if they know anything about 11 it? 12 A I talked to Sam Livingston, which is the name 13 I gave you earlier. He is currently the office manager 14 down there. At one time he was in the Good Cents 15 program. He did not know. And there were others that 16 I asked, yes. 17 Q In that office? 18 A I don't know where they were located, but 19 some of the names I gave you earlier were people 20 involved with the program. 21 Q Let me ask you this: If you identified the 22 people who were involved in charge the Good Cents 23 program or either involved in administering it and sent 24 an e-mail to all of them and said what information do 25 you have about this memo, would that be a way to track

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1 down somebody with knowledge of it? 2 MR. SMITH: Object to the form of the 3 question. 4 THE WITNESS: I did not send an e-mail. 5 BY MR. JOHNSON: 6 Q No, I understand you didn't. But would that 7 be a reasonable way, if you really wanted to find out, 8 got everybody who was involved who was still there and 9 sent them an e-mail and said what can you tell me? 10 A Yeah, that would be a way. A lot of the 11 folks I have talked to personally. 12 Q How many did you talk to? 13 A Maybe there were eight to ten. 14 Q Have you talk with anyone who has -- let me 15 ask you this. We've talked about the standard book and 16 we've talked about -- you gave testimony about changing 17 it. Did you find any change in the standard book that 18 would have been consistent with that memo, Exhibit B? 19 A The latest standard book I saw was the '91. 20 This is dated '02. So I don't know of anything in 21 between. 22 Q Not in between, but as a result of. I mean 23 that suggests the book should be changed, doesn't it? 24 A Yes. 25 Q If you wanted to find out whether the book	1 MR. SMITH: What's this Horry Electric 184? 2 Is that your Bates number from production? 3 MR. JOHNSON: I'm sure. 4 BY MR. JOHNSON: 5 Q Let me ask you about Exhibit C. 6 A Okay. 7 Q What have you done to gain information and 8 knowledge about the circumstances of Exhibit C? 9 A I asked Herman about this house. 10 Q Have you met with Herman? 11 A Yes. 12 Q Did you have that with you? 13 A Yes, I think I did. 14 Q Did you show it to him? 15 A I did not. 16 Q What did you ask him? 17 A To tell me about the Spadoni house. 18 Q What did he tell you? 19 A He said that there were moisture problems 20 related to improper flashing around the chimney and 21 duct leakage. 22 Q And did he tell you how was that resolved? 23 A I do not know how it was resolved. 24 Q Was there a claim made against Santee Cooper? 25 A I do not know -- I mean not to my knowledge.
Page 123	Page 125
1 was changed, how would you go about doing that? 2 A You could look for a new book. 3 Q Have you done that? 4 A I have not. 5 Q I gather you could, to that same group of 6 people, you could ask them that in an e-mail, couldn't 7 you? 8 MR. SMITH: Object to the form of the 9 question. 10 BY MR. JOHNSON: 11 Q People who were involved in that? 12 A I could ask them through e-mail or other 13 means. 14 Q Or other means. But as I understand it, you 15 don't have any knowledge based upon talking to that 16 person you mentioned in the office and talking with six 17 or eight other people? 18 A I have not been able to find anyone that 19 knows anything about this. 20 Q Have you found any record that that 21 information was shared with cooperatives? 22 A I have not looked for any. I do not know. 23 Q Is there anything else you can tell me about 24 Exhibit B other than what you have now told me? 25 A I don't think so.	1 He told me there were no Santee Cooper problems. 2 Q Could I see that, please, ma'am. Did you ask 3 him anything else about it? Did you ask him about 4 local code enforcement having waived the vapor barrier 5 or requirements in the wall? 6 A He had been in building construction. 7 Q Let me get you there. I don't want to cut 8 you off, but just keep you focused. Did you ask him 9 about that? 10 MR. SMITH: Can the witness answer your 11 question? 12 MR. JOHNSON: Yeah, she can, but she missed 13 it. 14 MR. SMITH: How about let her answer the 15 question. 16 MR. JOHNSON: I'm just trying to get through, 17 Rush. I'm not trying to cut the lady off. She can 18 answer any way she wants to. She's trying and I'm 19 trying. 20 MR. SMITH: Yes. 21 THE WITNESS: In looking at the document, 22 Eddie says that Santee required the vapor barrier 23 because the County had required it. So then Herman 24 brings this particular house in and says after that is 25 when the local code waived the vapor barrier.

Page 126 1 BY MR. JOHNSON: 2 Q Did you talk to him about that portion of his 3 memo? 4 A I was asking him about -- I had heard -- 5 well, you see this Spadoni Zalunka house, so I wanted 6 to know what the nature of the problems were in that 7 house because it has nothing to do, from what he told 8 me, with the vapor barrier. So I wanted to know what 9 the problems were. He said there was mildew around the 10 windows. He said it was due to problems with the duct 11 work, they had actually cut a hole in the plenum, and 12 problems with flashing. I believe he said there were 13 three chimneys for direct introduction of water into 14 the walls. 15 Q Anything else? 16 A Not that I recall. 17 Q My question was did you ask him about where 18 it says, "Local code enforcement waive of vapor barrier 19 in the walls," did you talk with him about that portion 20 of his memo? 21 A Not specifically I don't think. 22 Q Did he tell you anything about local code 23 enforcement waiving the vapor barrier requirement? 24 A Let's see what he said. I can't remember if 25 he told me it was required or not.	Page 128 1 Q Have you looked at anything else? 2 A Of course, we have talked about these 3 (indicating). There may be some other. I saw the 4 letters, I think, from a couple of co-ops. 5 Q How many documents would you say you have 6 looked at? 100, 200 pages? 50? 7 A I don't know. 8 Q The reason I asked, did you look at four 9 banker boxes of records? 10 A I did not. 11 Q Did you look at the 1400 -- 12 MR. SMITH: Did you see the boxes? 13 THE WITNESS: Sorry? 14 BY MR. JOHNSON: 15 Q Did you look at 1400 documents? 16 A No, sir. 17 Q On the Matter Number 2 on the notice, let me 18 show it to you. Read what Number 2 says. 19 A "Notice, if any, you gave to Horry Electric 20 Cooperative directly or indirectly of the issues and/or 21 problems related to the use of a vapor barrier as set 22 forth in Exhibit A." 23 Q To refresh your recollection, Exhibit A is 24 the correspondence of '86 between Mr. Cannon and 25 Mr. Hartman.
Page 127 1 Q When was this fiasco or this dispute that's 2 referred to as a fiasco in Exhibit C? Did he tell you 3 when it occurred? 4 A I saw the file. I don't remember the date. 5 Q You-all have a file on that customer? 6 MR. SMITH: We have it, yeah, I found out. 7 It doesn't have anything about this, but it tells you 8 when the house was built. We can get you-all a copy of 9 that. 10 (Tendering.) 11 MR. JOHNSON: Want to mark it as an exhibit, 12 Rush? 13 MR. SMITH: Let's get a copy made. That will 14 be fine. 15 (Brief recess taken.) 16 BY MR. JOHNSON: 17 Q What documents besides the exhibits that have 18 been marked did you review or look at prior to your 19 deposition in preparation for your deposition? I think 20 you told me you saw a 1991 manual? 21 A Yeah, I saw some standards from the '80s. 22 Q Were those a manual book, or were those 23 drafts? 24 A One was referred to as a draft. Both of 25 these were given to me by Rush.	Page 129 1 A Uh-huh. 2 Q Did you find any evidence that Santee Cooper 3 gave Horry Electric notice of those communications or 4 the matters discussed in those letters? 5 A What I have seen, of course, was the 6 standards, which would have included the vapor barrier 7 piece. 8 Q What standards? 9 A The Good Cents standards. 10 Q Which year? 11 A The first ones that were a draft, so that was 12 probably '86, '87, somewhere in there. 13 Q Do you know whether any of those were given 14 to Horry Electric? Have you found any evidence that 15 Horry Electric received that draft set of standards? 16 A What I saw was a letter addressed to the 17 co-op managers with standards included. 18 Q And they were draft standards or standards? 19 Adopted standards? 20 A I don't recall if they were draft or the 21 standards. But in any case, they would be open to 22 comment. 23 Q What year were those sent? 24 A Again, I think it must have been '86, '87. 25 Q Can you refer me or give me the date, help me

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1 find the letter you're referring to, so you and I know
 2 we're talking about the same thing?
 3 MR. SMITH: What are you looking for, the
 4 transmission to the co-ops?
 5 MR. JOHNSON: Yes.
 6 MR. SMITH: That's being copied right now.
 7 Do you want me to get it?
 8 MR. JOHNSON: Yeah, if you would.
 9 (Brief recess taken.)
 10 MR. SMITH: I think this is what she was
 11 talking about.
 12 THE WITNESS: Yeah, that looks familiar.
 13 MR. SMITH: Here is another thing from about
 14 the same time.
 15 MR. JOHNSON: Why don't we take a little
 16 lunch break. We'll start back up in a jiffy.
 17 (Luncheon recess taken.)
 18 BY MR. JOHNSON:
 19 Q Before we took a break, I was handed this
 20 document dated November 4, 1986 and this document dated
 21 October 31, 1986. Let's mark those.
 22 (Holmes Deposition Exhibit No. 7 and
 23 No. 8 were marked for identification.)
 24 Q Ms. Holmes, I think we got to the discussions
 25 of Exhibit 7 and Exhibit 8. When I was asking you a

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1 question about Matter Number 2 on the deposition
 2 notice, I think you said when I was asking you about
 3 that matter, you said you looked at these two documents
 4 as part of preparing for your deposition?
 5 A That's correct.
 6 Q That really wasn't what I was asking you
 7 about Matter Number 2. What I'm asking you about
 8 Matter Number 2 is, any notice Horry Electric gave
 9 directly or indirectly related to the issues of
 10 problems related to the use of a vapor barrier as set
 11 forth in Exhibit A. What I'm asking is were you able
 12 to determine any information that Santee Cooper
 13 disclosed the correspondence that makes up Exhibit A to
 14 Horry Electric or any electric cooperative?
 15 A I don't know that this letter was
 16 specifically shared with them.
 17 Q Exhibit A is your -- it's several letters.
 18 A Is it several letters?
 19 Q Yes, ma'am.
 20 A Okay.
 21 Q You did not find any evidence that that
 22 correspondence was ever shared with the co-ops,
 23 including Horry Electric?
 24 A I do not know that these documents were
 25 shared with them.

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1 Q Let me ask you about this. These documents
 2 that make up Exhibit A, this set of correspondence
 3 involves what is a real potential problem with the use
 4 of a vapor barrier, don't they?
 5 MR. SMITH: Object to the form of the
 6 question.
 7 THE WITNESS: I mean Glenn refers to it as --
 8 he calls it a touchy subject.
 9 BY MR. JOHNSON:
 10 Q What he says is a touchy subject in coastal
 11 areas, like where Horry Electric is. Right?
 12 A Horry Electric does serve in coastal areas,
 13 yes.
 14 Q He refers to the literature that deals with
 15 vapor barriers and why it's, I guess, a touchy subject
 16 in coastal areas?
 17 A That's one of the references he looked at,
 18 yes, the ASHRAE.
 19 Q What do you understand he means by, "It is a
 20 touch subject in coastal areas"?
 21 A I'm not sure what he means. As I've talked
 22 about for me --
 23 Q I'm asking what Santee Cooper understands he
 24 means.
 25 A That there would be some discussion about it.

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1 One of these referred to the building community. Of
 2 course, I talked to you about feedback from the co-ops,
 3 if we had any, the articles he had looked at, ASHRAE
 4 and this Energy Update article.
 5 Q And then in the second letter he says, "Our
 6 concern is future liability. We don't want to create
 7 situations that will hurt us or the Good Cents
 8 program." What does Santee Cooper understand he means
 9 by saying our concern is future liability?
 10 MR. SMITH: Objection, asked and answered.
 11 THE WITNESS: Glenn wrote the letter. I
 12 don't know what he means.
 13 BY MR. JOHNSON:
 14 Q Isn't it true what he is meaning is he is
 15 concerned that this vapor barrier requirement might
 16 expose Santee Cooper to liability relating to a vapor
 17 barrier requirement?
 18 MR. SMITH: Objection, asked and answered.
 19 THE WITNESS: I really don't know what Glenn
 20 specifically meant.
 21 BY MR. JOHNSON:
 22 Q Do you know what liability means, the word?
 23 A Yes, sir.
 24 Q Tell me what it means.
 25 A Responsibility.

Page 134 1 Q May have to pay if you're liable? 2 MR. SMITH: Object to the form. 3 THE WITNESS: I don't know the legal meaning. 4 MR. SMITH: Objection. Lack of foundation 5 too. 6 BY MR. JOHNSON: 7 Q But, Ms. Holmes, you're an educated lady. 8 Surely, you know what he's talking about here. He's 9 expressing concern to Jeffrey Hartman that if vapor 10 barriers are required, it may create liability for 11 Santee Cooper or anybody who required them because he 12 talks about this Energy Design Update, which states in 13 warm climates interior vapor barriers may, in fact, 14 create moisture condensation problems? 15 MR. SMITH: Objection. Asked and answered. 16 Also lack of foundation. 17 BY MR. JOHNSON: 18 Q Isn't that what he's saying? 19 A What he is saying is indicated here in this 20 letter. 21 Q Do you disagree with my characterization of 22 what he is saying, and if so why? 23 MR. SMITH: Same objection. 24 THE WITNESS: What I'm saying is I just don't 25 know specifically what he means. He does refer to this	Page 136 1 THE WITNESS: Would you ask it again, please. 2 BY MR. JOHNSON: 3 Q Yes, ma'am. What do you understand he is 4 saying when he expresses concern about future liability 5 in his letter of October 22, 1986? 6 A He says we don't want to create any 7 situations that would hurt us or the Good Cents 8 program. 9 Q I can read what he said. I'm asking what you 10 understand he is referring to? 11 MR. SMITH: Objection. Asked and answered. 12 THE WITNESS: Let's see. 13 BY MR. JOHNSON: 14 Q See if you agree with this, Ms. Holmes. 15 Isn't he really saying that they have information that 16 a vapor barrier in a coastal area may create moisture 17 problems if it's put in a home, and if we have a 18 requirement like that in our Good Cents plan, it may 19 create liability for us if the vapor barrier creates a 20 moisture problem. And he is raising the question to 21 Southern Electric International to try and revolve this 22 question. Would you agree that's what he is talking 23 about? 24 MR. SMITH: Object to the form of the 25 question.
Page 135 1 article. But, you know, even it doesn't appear to be 2 definitive. 3 BY MR. JOHNSON: 4 Q I understand it's not definitive. But what 5 he's raising a concern over is there may be liability 6 if we require vapor barriers in these warm climates or, 7 as he said in the earlier letter, coastal areas. 8 A I mean ultimately what he says is to follow 9 manufacturer's recommendations. 10 Q I'm not asking what he says ultimately. I'm 11 asking about the concern he's expressing. 12 A Then you'll have to ask him his specific 13 concern. I mean I know what it says. 14 Q Well, you see, you're here to speak for 15 Santee Cooper, how Santee Cooper understands the 16 correspondence. And so I'm entitled to know how you 17 read what he's saying, how Santee Cooper, if it was a 18 person, would say, well, yeah I understand; no, that's 19 not what he's saying at all. 20 MR. SMITH: Objection. If you've got a 21 question, ask a question. Don't fuss at my witness. 22 She's answered your question. 23 MR. JOHNSON: I sure hope I hadn't fussed, 24 but I need an answer to the question. 25 MR. SMITH: She's given it.	Page 137 1 THE WITNESS: They're having this discussion 2 about the requirement for the vapor barrier. In the 3 second paragraph he talks about the infiltration, the 4 manufacturer's recommendations. He does say this 5 concern about future liability. I don't know 6 specifically what he's saying regarding vapor barrier 7 because then he goes into this article, and it says 8 where they may create moisture problems. 9 BY MR. JOHNSON: 10 Q Well, we know at least at this point Santee 11 Cooper's man who is in charge of getting the program up 12 and going knows that the vapor barrier in a coastal 13 area may create moisture problems. And he has concern 14 about liability for Santee Cooper and the program, and 15 he is raising the question with SEI as to what should 16 be done about it. 17 MR. SMITH: Object to the form of the 18 question. 19 BY MR. JOHNSON: 20 Q Correct? 21 A Going from the letter, I can't speak to what 22 he means, but that's how the letter reads. 23 Q Thank you. And then the gentleman at SEI 24 writes back, and he says -- do you have that letter in 25 front of you? It's the letter dated October 29, 1986.

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1 A I have it. 2 Q And he says, "It's SEI's recommendation that 3 South Carolina Good Cents program include a recommended 4 feature which addresses infiltration of vapor control." 5 A Okay. 6 Q And then he has language regarding proposed 7 language that would be put in the plan regarding 8 infiltration of vapor barrier? 9 A Okay. 10 Q And he's saying it as a recommendation, 11 right? 12 A What is a recommendation? 13 Q This language that it would include a 14 recommendation of infiltration, slash, vapor barrier? 15 A It says infiltration control measures in the 16 first paragraph. 17 MR. SMITH: Show the witness where you're 18 reading. 19 MR. JOHNSON: I'm reading here and here. 20 THE WITNESS: Okay. 21 BY MR. JOHNSON: 22 Q Read the last sentence in the second 23 paragraph. 24 A "A vapor barrier is recommended on exterior 25 walls, floors, and ceilings."	1 standards. 2 Q As a recommendation? 3 A That's correct. 4 Q Wouldn't you think the cooperatives in the 5 coastal areas would have wanted to know the specifics 6 of this matter that is being discussed between the two 7 entities that are putting the plan, offering -- making 8 the plan, the Good Cents program, available to them -- 9 MR. SMITH: Object to the form of the 10 question. 11 BY MR. JOHNSON: 12 Q -- before they put the Good Cents program in 13 place? 14 MR. SMITH: Object to the form of the 15 question. 16 THE WITNESS: I don't know that they didn't 17 know. 18 BY MR. JOHNSON: 19 Q That wasn't my question. Don't you think 20 they would want to know? 21 MR. SMITH: Object to the form of the 22 question. 23 THE WITNESS: I would want to know. 24 BY MR. JOHNSON: 25 Q If you were in their shoes, you would want to
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1 Q So it starts out with the Santee Cooper 2 employee, Mr. Cannon, saying -- pointing out problems 3 that you can have with a vapor barrier in coastal 4 areas. He then raises the question of liability or 5 expresses a concern about liability. And what the SEI 6 representative, Mr. Hartman, writes back, he says, "We 7 won't make it a requirement of the plan. We're going 8 to include language that a vapor barrier is recommended 9 on the exterior walls, floors, and ceilings." 10 A That's correct. 11 Q So are they saying at this point that rather 12 than it being a requirement of the plan for the home to 13 qualify, we're going to call it a recommendation? 14 A Yes. 15 Q All right. Now, you were asked some 16 questions about if Santee Cooper and you had concerns 17 about the program, wouldn't it be fair and proper for 18 Santee Cooper to share those concerns with the 19 cooperatives, and I think you said it would be the 20 right thing to do. Can you identify for me anywhere 21 where Santee Cooper shared these concerns with Horry 22 Electric? 23 A We've talked about these particular documents 24 before. There were no copies to the co-op on these 25 letters. It was in the first draft of the Good Cents	1 know it so that you could get your own information and 2 make an informed decision, wouldn't you? 3 MR. SMITH: Object to the form of the 4 question. Argumentative. 5 THE WITNESS: I would. 6 BY MR. JOHNSON: 7 Q And you would want to know so that you could 8 decide whether you wanted to keep it as a requirement 9 or whether you wanted to even recommend it? 10 MR. SMITH: Object to the form of the 11 question. Calls for speculation. 12 BY MR. JOHNSON: 13 Q I mean, if it's going to cause moisture 14 problems in these people's homes, you may decide you 15 don't even want to recommend it. 16 A I don't know that it causes moisture problems 17 in the homes. 18 Q But if it did, you might not want to 19 recommend it, correct? 20 A If I knew that it did. 21 Q In other words, wouldn't the fair and right 22 thing for Santee Cooper to have done would have been to 23 send all this to the co-ops in the coastal areas and 24 say, look, guys, red flag, we got a problem here. We 25 want to alert you to it. We want your input, and we

Page 142 1 want you to know about it. 2 MR. SMITH: Object to the form of the 3 question. 4 THE WITNESS: But we did ask for input when 5 we did our first draft. 6 BY MR. JOHNSON: 7 Q But you didn't tell them the issue, did you? 8 A What issue? 9 MR. SMITH: Object to the form of the 10 question. 11 BY MR. JOHNSON: 12 Q The issue of the vapor barrier creating a 13 moisture problem. You didn't tell them that. All you 14 did was say here's our proposed standards and the 15 standard for a vapor barrier, here's a recommendation, 16 correct? In Exhibit 8. 17 MR. SMITH: Show the witness Exhibit 8. 18 BY MR. JOHNSON: 19 Q Page 2. 20 MR. SMITH: Let her look at the whole thing. 21 Don't tell her where to look. She can look at the 22 whole thing, if you're going to ask her about it. 23 MR. JOHNSON: And, Rush, you don't need to 24 tell her what to look at either. 25 MR. SMITH: I'm not. I'm going to tell the	Page 144 1 BY MR. JOHNSON: 2 Q Do you know whether the manual that was 3 adopted originally called for the vapor barrier as a 4 requirement, as opposed to a recommendation? 5 A Is that the original? 6 Q I don't know. I don't think it is. I think 7 they are sending that out as a -- 8 A Yeah, this is the first draft, according to 9 the letter where it says, "Vapor barrier is 10 recommended." 11 Q The reason I ask that question is in the 12 letter of October 22, 1986, Mr. Cannon to Mr. Hartman 13 in the second paragraph he refers to, "Originally 14 Santee Cooper required this under our Energy Efficient 15 Home Awards Program similarly to help reduce 16 infiltration and to coincide with manufacturer's 17 recommendations for the same." He's referring to the 18 vapor barrier. Was there an adoption of a plan or 19 standards that predated his letter where it was treated 20 as a requirement? 21 A The Energy Efficient Home Awards Program is 22 before my time. I don't know what was in it. 23 Q Then after this correspondence with 24 Mr. Hartman, apparently this Exhibit 8 was sent out 25 that showed it as a recommendation, correct?
Page 143 1 witness to look at the entire document that you're 2 going to ask her about. And you shouldn't tell her to 3 do differently. 4 MR. JOHNSON: I haven't told her to do 5 anything. I said, here, look at Page 2. You said show 6 her the language. 7 BY MR. JOHNSON: 8 Q It's down at the bottom. 9 MR. SMITH: I'm going to object to the 10 question that says there's nothing in there. 11 THE WITNESS: I had mentioned to you before 12 that there was a letter. And it says it went to all 13 the managers. It says, "Here enclosed in the first 14 draft, need your comments as soon as possible." 15 So we didn't specify any particular area 16 of the document, but the vapor barrier recommendation 17 is in here, as you pointed out, on Page 2. 18 BY MR. JOHNSON: 19 Q In other words, that communication didn't 20 include any of this correspondence that would call 21 their attention to that issue at all, did it? 22 A It did not call their attention -- 23 MR. SMITH: Object to the form of the 24 question. 25 THE WITNESS: -- to any area of the standard.	Page 145 1 A Correct. 2 Q But this is a draft set of standards; is it 3 not? 4 A Yes, because we need their comments back 5 before finalizing. 6 Q Have you seen what the initial manual says? 7 A I think there is a copy of that somewhere. 8 Do we have it from '87? 9 MR. SMITH: You mean the one that went out -- 10 the one that was used by the co-ops? 11 MR. JOHNSON: The one that was after 12 November 4, '86, but before 1991. 13 MR. SMITH: Yeah. This is from the lawsuit 14 you were in, that Central Electric produced this. 15 MR. FATA: What lawsuit is it from? 16 MR. SMITH: Good Cents. It was a Good Cents 17 class action. 18 You are looking for Page 7 probably. 19 BY MR. JOHNSON: 20 Q Let's mark this. Let's mark your copy as an 21 exhibit. 22 (Holmes Deposition Exhibit No. 9 23 was marked for identification.) 24 Q Have you seen what's been marked as Exhibit 9 25 as part of your preparation for your deposition? Take

Page 146 1 a look. I got my finger on the page I want to ask you 2 about. Do you know whether you have seen those 3 documents before? 4 A I may have. 5 Q Let me call your attention to Page 7, 6 Paragraph 4-A, the last sentence. 7 A Yes, I have 4-A. 8 Q Would you read that last sentence? 9 A "A vapor barrier is recommended on the 10 interior of all exterior walls and exterior floor and 11 ceiling." 12 Q Do you know whether this was provided to the 13 cooperatives? 14 A It appears, if all this goes together, that 15 yes, because it says, "Attached is a three-month 16 guidelines." Alternate equipment standard, I'll have 17 to look to see what that was. It looks like it did. 18 Q I guess what refers -- in the transmittal 19 letter to all electric cooperatives, does it refer to 20 the standards for the Good Cents program? 21 A It says coordination agreement, and then it 22 talks about guidelines with this alternate equipment 23 standard. Let me try to find that then. Coordination 24 agreement. 25 Q And then the coordination agreement appears	Page 148 1 A Then attached is another set of standards. 2 There is a second letter here, "Re: Good Cents 3 program, please review attached." I'm not sure what 4 the attachment is. 5 Q This is obviously not the set of standards 6 you looked at that were dated 1991 -- 7 A These do not have that on them. 8 Q -- that were made a requirement? 9 A Uhn-uh. 10 Q You looked at a separate set that was 11 dated -- I believe we're going to get them now from my 12 friend. That's Exhibit 10. 13 (Holmes Deposition Exhibit No. 10 14 was marked for identification.) 15 Q Is Exhibit 10 the marketing programs handbook 16 that's dated November 1991? 17 A This looks like the one I have seen, yes. 18 Q Is this the one that makes the vapor barrier 19 a requirement for qualification in the Good Cents 20 program? 21 A Yes, it is. 22 Q And would this have been what would have been 23 required regarding the vapor barrier from November of 24 1991 until that fax went out in 2002 of the notice of 25 change?
Page 147 1 to be a two-page document? 2 A Yeah. 3 Q Do you know what the alternate equipment 4 standard is? 5 A That's what I was looking for because I 6 believed it had to do with some of your more energy 7 efficient equipment. 8 Q Let me ask you this: Have you been able to 9 speak to Mr. Cannon or Jennifer Durant about trying to 10 tie down what went with the transmittal letter dated 11 August 1, 1990? 12 A I have not. 13 Q Are you able to determine what went with it 14 by looking at the documents themselves? 15 A I mean this is -- there is a lot of stuff in 16 here. I would have to go through it more carefully. 17 Q Have you made a determination that it goes 18 with it or not? Have you done the review of it to try 19 and tie what accompanied it or not? 20 A I'm just looking at what she says. We talked 21 about the coordination agreement which was, like you 22 pointed out, the two page. But then she refers to this 23 alternate equipment standard, and I'm just having 24 trouble finding it. Do you know where it is? 25 Q I do not.	Page 149 1 A I don't know what might have changed in 2 between, but certainly this is required in here. And 3 then indicates at this time in '02 it was required, but 4 I don't know what happened in the middle. 5 Q It indicates in 2002 that you're no longer 6 requiring it, actually, doesn't it? 7 A That the building code no longer requires it, 8 and as a result we will not. 9 Q It would say they were requiring it up until 10 that point, wouldn't it? 11 A At least right up to that point. Again, this 12 is a 10-, 11-year span. I don't know what might have 13 changed in between. 14 Q Are you talking about it going back to a 15 recommendation, then going back to a requirement? 16 A I'm saying there is nothing I've seen between 17 '91 and then, so I don't know exactly. 18 Q But if this is all there, it would indicate 19 that November of '91 it became a requirement, a vapor 20 barrier became a requirement for qualification in the 21 Good Cents program and was a requirement till at least 22 2002? 23 A That's the date on that fax, yes, sir. 24 Q You don't have any idea why you changed the 25 requirement?

Page 150	Page 152
1 A I do not. 2 Q If Horry Electric was going to remain in good 3 standing with Santee Cooper regarding the Good Cents 4 program, Horry Electric would have had to have complied 5 with the requirements including the vapor barrier 6 requirement that's contained in the marketing program's 7 handbook of November of 1991? 8 A If Horry Electric wanted to be in the 9 program, they would have to comply with the Good Cents 10 requirements. 11 Q Including the requirement of requiring its 12 new home members to install a vapor barrier? 13 A That was the standard, yes. 14 Q Looking at Exhibit B in Matter Number 6 on 15 the deposition notice, Matter Number 6. 16 A Do I have the right one? 17 MR. SMITH: What are you looking for? 18 MR. JOHNSON: I was referring her to Matter 19 Number 6. 20 BY MR. JOHNSON: 21 Q Matter Number 6 asks Santee Cooper to produce 22 a witness to testify as to whether the information on 23 Exhibit B was true or false and the factual basis for 24 the information on Exhibit B. Have you done any 25 investigation to determine whether the information in	1 qualified for your Good Cents program prior to the 2 issuance of the attached notice of change in the Good 3 Cents requirements for Horry, dash, Georgetown area. 4 Do you have the number? Or I believe 5 Rush said he had, he mentioned. . . 6 MR. SMITH: We objected to this designation 7 because it requires us to run data when we've got a 8 number that would serve as an estimate. There was a 9 Good Cents class action against Santee Cooper in which 10 we have a count of how many people were in Good Cents 11 homes during a certain period. And I've got an 12 affidavit of a settlement administrator that the 13 witness can look at and talk about. I can e-mail this 14 to you-all. 15 MR. FATA: What was the period, Rush? 16 MR. SMITH: I'm not sure. I will have to 17 look at it. I'm not sure I have the exact reading, to 18 tell you the truth. I may have to go to a different 19 document and get that, but I can get that to you. This 20 is a ballpark. It was people who were customers as of 21 a certain date, and I don't remember what it was, and 22 continued to be customers through a certain date, and I 23 don't remember what it was, who were better off. So 24 it's not all of the customers. 25 Just read this and then this is an
Page 151	Page 153
1 Exhibit B is true or false? 2 A I have talked to some people, yes. 3 Q Did any of them have any information about 4 it? 5 A They did not. 6 Q This is where you haven't e-mailed everybody 7 who was in the program or communicated with anybody who 8 was involved in administering -- 9 MR. SMITH: Object to the form of the 10 question. 11 THE WITNESS: I have spoken with them. 12 BY MR. JOHNSON: 13 Q Everybody who was involved in the 14 administration of the program? 15 A I don't know that I have spoken with 16 everybody. 17 Q But you are unable to determine whether the 18 information contained in there is true or false based 19 upon communication with people that had firsthand 20 knowledge? 21 A The people that I have talked to that have 22 been involved in the program did not recognize this 23 document. 24 Q Matter No. 9 asks Santee Cooper to produce a 25 witness to give us the number of new homes that	1 affidavit of Steve Tillman. Tillman is the settlement 2 administrator in that case, and he mailed this many 3 notices to the -- 4 THE WITNESS: Do I need to read the whole 5 section? 6 MR. SMITH: You can say this sentence right 7 here, beginning, "Tillman & Company." 8 THE WITNESS: "Tillman & Company mailed 4,416 9 notices of a form approved by the Court to class 10 members with first class postage on July 2, 2004." 11 MR. SMITH: That's reading from the document 12 filed with the Court. It looks like August 2004. 13 BY MR. JOHNSON: 14 Q Then Matter Number 14, the addresses or last 15 known addresses or telephone numbers of Glenn S. 16 Cannon. 17 MR. SMITH: I gave you that. 18 MR. JOHNSON: You did? 19 MR. SMITH: Yeah. She doesn't know it. If 20 you can't find it, I will give it to you again. 21 MR. JOHNSON: We'll take a break. One 22 second. 23 (Recess taken.) 24 BY MR. JOHNSON: 25 Q One or two questions more. Ms. Holmes, the

Page 154 1 requirement of the vapor barrier appears to have been a 2 recommendation for some period of time, and it was 3 changed to a requirement in November of 1991 based on 4 what we have here before us, correct? 5 A That's correct. 6 Q All right. Now, back in 1986 there was this 7 correspondence between Mr. Cannon and Mr. Hartman 8 talking about the fact that a vapor barrier can cause 9 moisture problems in coastal areas, language about 10 concerns about liability. Do you remember that from 11 the correspondence? 12 A Yes, sir. 13 Q And you have Mr. Hartman saying we're not 14 going to make it a requirement, we're going to make it 15 a recommendation. Based on your investigation did you 16 find any evidence that this change in the handbook in 17 November of 1991 to make a vapor barrier a requirement 18 was ever discussed with the cooperatives, including 19 Horry Electric? 20 A I haven't found where anything was 21 specifically discussed. There were regular meetings 22 and correspondence with the co-ops. 23 Q But this was a marketing programs handbook 24 that Santee Cooper generated and handed out to the 25 co-ops for them to use in administration of the plans,	Page 156 1 Q Wouldn't the fair thing to have done, if they 2 were going to change it back to a requirement, Santee 3 Cooper knows that it's a potential problem or may cause 4 a problem, the fair thing for Santee Cooper to have 5 done would have been to tell the co-ops about it, 6 right? 7 MR. SMITH: Object to the form of the 8 question. Also beyond the scope. Calls for a legal 9 conclusion. 10 THE WITNESS: I've said for me, I would have 11 thought that was the right thing to do. 12 BY MR. JOHNSON: 13 Q Well, you're here today speaking for Santee 14 Cooper. Does Santee Cooper try to do the right thing? 15 A Yes. 16 Q Would it be the right thing for Santee Cooper 17 to do? 18 MR. SMITH: Same objection. 19 THE WITNESS: Yes. 20 BY MR. JOHNSON: 21 Q Thank you. All right, I'm done. 22 MR. TUCK: I'm going to go through some 23 exhibits and make sure the witness testified today they 24 were produced in the ordinary course of business. Do 25 you want to stipulate to that?
Page 155 1 correct, in November of '91? 2 A That's what it looks like. 3 MR. FATA: What exhibit is that? 4 MR. SMITH: It's Exhibit 10. 5 BY MR. JOHNSON: 6 Q You would agree with me that the fair thing 7 to have done, at least at that point, and having gone 8 from a recommendation to a requirement, would have been 9 for Santee Cooper to have disclosed this information 10 they had uncovered about it being a problem or a 11 potential problem in the coastal areas? 12 MR. SMITH: Object to the form of the 13 question. 14 THE WITNESS: What we have talked about is -- 15 I don't know what contributed to the change. I don't 16 know what was specifically talked to the co-ops about, 17 but they've had the opportunities, from what I've seen, 18 to review all the material, whether we specifically 19 pointed it out or not. 20 BY MR. JOHNSON: 21 Q Do you find any information that you in 1991 22 called the cooperatives' attention to the 23 correspondence of this Exhibit A back in 1986? 24 A I have not found anything to point 25 specifically to those exhibits.	Page 157 1 MR. SMITH: Let's just do that by 2 stipulation. 3 MR. FATA: You want to put it on the record 4 now? 5 MR. SMITH: Let's look at them one by one. 6 Some of them came from a production, like the Central 7 thing came from a production. There are other 8 documents. 9 MR. FATA: Well, let's do it now in the 10 deposition on the record. Let's figure out which ones 11 we have issues over. 12 MR. SMITH: Okay. 13 MR. FATA: And the witness might know 14 something about it. 15 MR. SMITH: What you're wanting is just a 16 stipulation this is a document prepared in the ordinary 17 course of business? 18 As to number one, yes, that came from 19 Santee Cooper's records. Number two, same; Number 3, 20 same; Number 4, same. Number 5 is a compilation of 21 documents prepared in the ordinary course of business 22 by Santee Cooper. So that's number one that would sort 23 of be, I think. Number 7, yes, that's from our files. 24 Number 8, yes. Number 9, I can stipulate that this 25 document or one just like it is -- I mean, this one

Page 158 1 came to me from Central. But documents just like it 2 exist, have been produced, are in subpoena responses to 3 you-all, are in document responses, so yes. 4 MR. FATA: What about 6? 5 MR. TUCK: 6 was just a depo notice. 6 MR. SMITH: I've got a few questions. 7 EXAMINATION 8 BY MR. SMITH: 9 Q Ms. Holmes, Mr. Johnson asked you about 10 whether if the Good Cents program was a pass-through 11 program. In preparing for the deposition did you look 12 at the contracts between Santee Cooper and the co-ops? 13 A Briefly. 14 Q Did you look at any contractual amendments 15 effective in the 19 -- in the early 1990s? 16 A I don't know. Do you want for me to look at 17 it now? 18 Q No, I don't. 19 MR. JOHNSON: Go ahead and testify. 20 MR. SMITH: You can do this off the record, 21 but there was a change to the contract, and you know 22 that. So you've got that document. 23 Let's take a short break. 24 (Recess taken.) 25	Page 160 1 MR. JOHNSON: Yes. 2 MR. SMITH: Yes. 3 THE WITNESS: The manual is enclosed for 4 prior review. 5 BY MR. SMITH: 6 Q The letters that Mr. Cannon wrote, did he 7 indicate whether the ASHRAE standards were something 8 that he had exclusive control of and sole access to? 9 MR. JOHNSON: Object to the form. 10 THE WITNESS: He did not indicate anything in 11 the letter. 12 BY MR. SMITH: 13 Q I'm talking about when you talked to him. 14 When you asked him about the sources that he consulted, 15 the ASHRAE, the conversation with the building 16 community, and the Energy Design Update, did he 17 indicate whether or not those were things that were 18 accessible only by him or more generally accessible? 19 MR. JOHNSON: Object to the form of the 20 question. 21 THE WITNESS: He did not indicate it, but 22 ASHRAE is an industry recognized organization, 23 building, HVAC, refrigeration type standards. 24 BY MR. SMITH: 25 Q And the discussions with the building
Page 159 1 (Holmes Deposition Exhibit No. 11 2 was marked for identification.) 3 BY MR. SMITH: 4 Q All right, Juan, a couple more questions. 5 Mr. Johnson asked if there was any evidence that the 6 standards had been distributed to the co-ops. I have 7 handed you Exhibit 11. What is that document 8 accomplishing? 9 A It's a letter announcing a meeting. It 10 includes the manual for review. And then if they bring 11 it to the meeting, they can discuss it, but write down 12 any questions you may have. 13 Q Does that indicate that the document was, in 14 fact, distributed to the co-ops? 15 MR. JOHNSON: Objection to the form of the 16 question. 17 MR. SMITH: That's all right. It was 18 leading. 19 THE WITNESS: So what's my question? 20 BY MR. SMITH: 21 Q The question is what does that tell you about 22 whether or not the manual was mailed to the co-ops? 23 MR. JOHNSON: Object to the form of the 24 question. 25 THE WITNESS: Am I to answer?	Page 161 1 community, did those occur in secret between Mr. Cannon 2 and the building community or otherwise? 3 MR. JOHNSON: Object to the form. 4 THE WITNESS: In the letter he did not 5 indicate they were in secret. It sounded like that 6 there had been an open discussion. 7 BY MR. SMITH: 8 Q How frequently did Santee Cooper meet with 9 the co-ops in the early days and further continuing 10 into the '90s based on records you've looked at? 11 A From what I looked at, the meetings were 12 quarterly. 13 Q At the meetings did the co-ops have an 14 opportunity to raise any issues that they might have? 15 MR. JOHNSON: Object to the form. 16 THE WITNESS: I did see a sample agenda where 17 Good Cents standards were part of the discussion. 18 MR. SMITH: I don't have any more questions. 19 MR. JOHNSON: I have one more. 20 FURTHER EXAMINATION 21 BY MR. JOHNSON: 22 Q This letter that was handed to you dated 23 June 18, 1987, can you identify for me the manual that 24 was sent out and accompanied that letter? 25 A I only have the letter.

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1 MR. SMITH: I believe it was the one that was 2 the initial one. That was sent out to you and me in 3 the production in the Good Cents case by Central 4 Electric Cooperative that said "recommended". There 5 were also documents that you looked at in my office 6 from the co-op, or you could have looked at in my 7 office from the co-op, that indicated they received 8 that document too. 9 MR. JOHNSON: Which document went out in '87? 10 That's later dated, Rush. 11 MR. SMITH: Right, but if the question is did 12 the document have the language recommended or required 13 in it, based on this. . . 14 MR. JOHNSON: Let me just ask her, and then 15 you and I can talk. 16 BY MR. JOHNSON: 17 Q You can't tell me from looking at that 18 letter, you can't identify, point to me the manual that 19 went out with that letter? 20 A I cannot. 21 MR. JOHNSON: That's what I wanted to know. 22 MR. TUCK: One more question. 23 FURTHER EXAMINATION 24 BY MR. TUCK: 25 Q Do you know if the Good Cents program was a	1 FURTHER DEPONENT SAITH NOT... 2 (The deposition was concluded at 3:30 p.m.) 3 - - - 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 163	Page 165
1 pass-through program in the late 1990s, early 2000s? 2 A In the same way we talked about before? 3 MR. SMITH: When you say pass-through, if 4 you'll clarify that. 5 BY MR. TUCK: 6 Q Have you heard that term pass-through? 7 A You used it this morning or whatever time 8 today. 9 MR. SMITH: Let me object to this as beyond 10 the scope. She's not going to be prepared to answer 11 that. You're not going to get a viable answer. If you 12 ask her personally, that's fine. She's not speaking 13 for Santee Cooper on that. 14 BY MR. TUCK: 15 Q Okay. You can answer. 16 A When I worked in the program, and I don't 17 recall -- you're calling it a pass-through, but it was 18 my understanding that we gave them a credit which was 19 then passed on to their Good Cents customers. Since 20 then we had a lawsuit with the rates, so I don't know 21 how that is still done. It may be -- I don't know if 22 it's the same type of credit. 23 MR. TUCK: Okay. Thanks. 24 (Holmes Deposition Exhibit No. 12 25 was marked for identification.)	1 STATE OF SOUTH CAROLINA) 2) 3 COUNTY OF CHARLESTON) 4 5 I, Helen L. Rose, Certified Shorthand 6 Reporter, Registered Professional Reporter, and Notary 7 Public for the State of South Carolina at Large, do 8 hereby certify that the witness in the foregoing 9 deposition was by me duly sworn to testify to the 10 truth, the whole truth and nothing but the truth in the 11 within-entitled cause; that said deposition was taken 12 at the time and location therein stated; that the 13 testimony of the witness and all objections made at the 14 time of the examination were recorded stenographically 15 by me and were thereafter transcribed by computer-aided 16 transcription; that the foregoing is a full, complete 17 and true record of the testimony of the witness and of 18 all objections made at the time of the examination. 19 20 I further certify that I am neither 21 related to nor counsel for any party to the cause 22 pending or interested in the events thereof. 23 24 Further, that at the time of said deposition the 25 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. 20 21 Helen L. Rose 22 RPR #051505, CSR #084-003436 (IL) 23 My Commission expires 24 December 8, 2016. 25

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2 ERRATA
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2 ACKNOWLEDGMENT OF DEPONENT
3

4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, and that the same is
7 a correct transcription of the answers
8 given by me to the questions therein
9 propounded, except for the corrections or
10 changes in form or substance, if any,
11 noted in the attached Errata Sheet.
12
13
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15 JUAN HOLMES DATE

16
17
18 Subscribed and sworn
19 to before me this
20 _____ day of _____, 20____.
21 My commission expires: _____

22 _____
23 Notary Public
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-26-488

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SC Court of Appeals

CERTIFICATE OF SERVICE

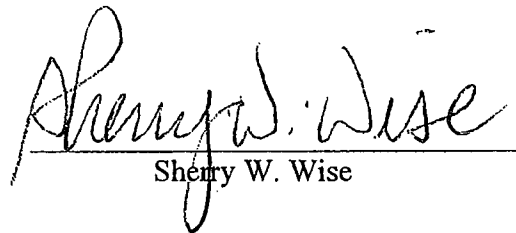
I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, III, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 2nd day of October, 2013.

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PLEADINGS:

Plaintiff's Motion for Partial Summary Judgment


Sherry W. Wise