

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2011-CP-42 -00618

Fireman's Fund Insurance
Company, a/s/o Stig
Wennerstrom,

Appellant

v.

Searcy Custom Homes, LLC
and B&B Plumbing, Inc.,

Respondents.

RECORD ON APPEAL

Volume I

Svend H. Deal
COZEN O'CONNOR
301 South College Street
Suite 2100
Charlotte, NC 28202
Telephone: (704) 376-3400
Attorneys for Appellant

Jason Michael Imhoff
THE WARD LAW FIRM, P.A.
P.O. Box 5663
Spartanburg, SC 29304
Telephone: (864) 582-3075
Attorneys for Respondents

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SC Court of Appeals

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Tiffany Pruitt

From: Jason Imhoff

Sent: Wednesday, September 25, 2013 5:18 PM

To: Tiffany Pruitt

Subject: FW: Fireman's Fund Ins. Co. v. Search Custom Homes and B&B Plumbing, Inc.--motion for SJ
File under "orders"

From: Cole, J. Derham Law Clerk (William A. Horton Jr.) [mailto:JColeLC@sccourts.org]

Sent: Wednesday, September 25, 2013 12:48 PM

To: sdeal@cozen.com; Jason Imhoff; Reed Teague

Cc: Hayes, J. Mark; Hayes, J. Mark Law Clerk (Brad Maxwell); Cole, J. Derham

Subject: Fireman's Fund Ins. Co. v. Search Custom Homes and B&B Plumbing, Inc.--motion for SJ

Good afternoon everyone,

After reviewing the pleadings, memoranda, and arguments made at the hearing, Judge Cole has ruled as follows:

1) Defendants' motion for summary judgment/motion to dismiss based on **equitable estoppel, waiver, and the voluntary payment doctrine** is **DENIED**. Plaintiff's right to subrogation remains intact and the suit may go forward. There is no evidence showing Wennerstrom or Fireman's Fund knew all the facts about the causes of the leak before using the proceeds of the claim to re-hire Defendants to do the necessary repair work. In fact there is some evidence showing that Defendants began some repair work prior to the payment of proceeds. Further, there is no evidence of concealment on Plaintiff's part—i.e., that Plaintiff knew it was going to sue and then paid proceeds, knowing it would later seek the return of those funds.

2) Defendants' motion for summary judgment as to the **breach of contract** cause of action is **GRANTED**. There is no evidence that Searcy did anything but comply with the contract. Plaintiff's expert's deposition testimony indicates that Defendants followed industry standards and applicable building codes in the construction of the house and water supply system, as provided for in the contract. As to B&B, Plaintiff's breach of contract claim fails because there is no privity with Plaintiff. Even if there was privity, there is no evidence of any breach of the contract with Searcy by B&B. Plaintiff did not address Defendant's motion as to this cause of action in its memorandum in opposition or at the hearing.

3) Defendants' motion for summary judgment as to the **negligence** cause of action is **DENIED**. While there is no evidence that Defendant failed to comply with industry standards or applicable building codes when constructing the house and the water system, there is at least a scintilla of evidence such that a jury could find Defendants were negligent under the third prong of the Kennedy grounds: that the builder has constructed a home that he knows or should know will pose a serious risk of physical harm. Plaintiff's expert testified that the defendants should have known that the change in elevation between the main water supply and the house required an unusual amount of force to transport the water into the house. Thus, it is foreseeable that such force could pose a serious risk of harm unless reasonable action is taken to avoid or mitigate the harm.

4) Defendants' motion for summary judgment as to the **breach of implied warranty** is **GRANTED**. There is no evidence that Searcy failed to construct the home in accordance with applicable national, state, and/or local building code, law, regulation, ordinance, or industry standard, as alleged by Plaintiff. Plaintiff's expert confirmed that the water system was installed and configured according to industry standards and applicable building codes, and there is no evidence that any installed product used was defective in any way.

Thank you for your patience in receiving this ruling,

W. Drew Horton, Jr.

Law Clerk to the Honorable J. Derham Cole

Post Office Box 1744

Spartanburg, South Carolina 29304-1744

Phone: (864) 596-2685

Fax: (864) 596-3592

Amended Complaint

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF
THE COMMON PLEAS

FIREMAN'S FUND INSURANCE)
COMPANY A/S/O STIG)
WENNERSTROM,)

Plaintiff,)

v.)

SEARCY CUSTOM HOMES, LLC)
and B&B PLUMBING, INC.)

Defendants.)

CASE NO: 2011-CP-42-00618

AMENDED COMPLAINT

Plaintiff, Fireman's Fund Insurance Company a/s/o Stig Wennerstrom, by and through its counsel, hereby files this Complaint against Defendants, B&B Plumbing, Inc., and SEARCY Custom Homes, LLC, alleging the following:

I. PARTIES

1. Plaintiff, Fireman's Fund Insurance Company (hereinafter referred to as "Plaintiff" or "FFIC") is and has been at all material times a foreign corporation that writes policies of insurance throughout the United States, including the State of South Carolina, specifically writing a policy of property insurance for Stig Wennerstrom (hereinafter referred to as "Wennerstrom"), who is and has been at all material times a resident of the State of South Carolina, having an residential address of 45 Fallingstar Way, Landrum, South Carolina 29356.

2. Defendant Searcy Custom Homes, LLC. (hereinafter referred to as "SEARCY") is and has been at all material times a North Carolina corporation conducting business as a custom homes builder with a principal address of 2526 Bobs Creek Road, Zirconia, NC 28790 and, according to filings made with the North Carolina Secretary of State's office, may be served

process through its registered agent, Mark R. Searcy, at 2526 Bobs Creek Road, Zirconia, NC 28790.

3. Defendant B&B Plumbing, Inc. (hereinafter referred to as “B&B”) is and has been at all material times a North Carolina corporation conducting business as a plumbing contractor with a principal address of 2260 Hendersonville Way, Pisgah Forest, NC 28766 and, according to filings made with the North Carolina Secretary of State’s office, may be served process through its registered agent, Randall Blythe, at 2260 Hendersonville Way, Pisgah Forest, NC 28766.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction and venue of this action in that the property that is the subject of the action is located in Spartanburg County, SC, the acts and/or omissions giving rise to this action occurred in Spartanburg County, SC, and the plaintiff’s damages are in excess of \$15,000.00.

III. BASIS OF SUBROGATION RIGHTS

5. On January 24, 2009, a water leak occurred within the property owned by Wennerstrom located at 45 Fallingstar Way, Landrum, South Carolina 29356 (hereinafter referred to as the “Home”), causing severe water damage to the Home and its contents. (The January 24, 2009 water leak and its resulting damage is hereinafter referred to as “Water Leak”).

6. Prior to January 24, 2009, FFIC issued a property insurance policy bearing number NZC 03665887 to Wennerstrom providing certain insurance coverage for, *inter alia*, the Home and its contents. (Hereinafter “Policy”). The Policy was in effect on January 24, 2009.

Amended Complaint

7. As a result of the Water Leak, Wennerstrom submitted a claim under the Policy with FFIC and, pursuant to the terms and conditions of the Policy, Plaintiff did pay to Wennerstrom monies in excess of \$15,000.00.

8. Plaintiff did not make the payment as a volunteer but did so only after Wennerstrom presented a valid claim under the Policy.

9. Plaintiff is not primarily liable for the damages incurred by Wennerstrom as a result of the Water Leak -- rather the primarily liable parties is that/are those who created the conditions leading to or causing the Water Leak.

10. Plaintiff paid to Wennerstrom the entire amount owed to Wennerstrom under the Policy.

11. In consideration and to the extent of the payments made to Wennerstrom for the damages caused by the Water Leak, Wennerstrom has subrogated and/or assigned to FFIC all of his rights, claims, and interests against those parties responsible for the Water Leak.

12. The pursuit by FFIC of its subrogation rights and remedies will not work any injustice to the rights of any person or entities.

13. Having paid Wennerstrom for the above damages pursuant to the Policy, FFIC is now both contractually and equitably subrogated to Wennerstrom's right to bring this action against those responsible for the damages to the extent of said payments.

IV. BACKGROUND FACTS

14. At all times material hereto, Defendant SEARCY held itself out to the general public and to Wennerstrom as having knowledge and skill regarding the custom home building industry and having the ability and experience to complete and perform building services to include, but not limited to, the design and installation of home plumbing systems.

Amended Complaint

15. At all times material hereto, Defendant B&B held itself out to the general public and to Wennerstrom as having knowledge and skill regarding the plumbing services industry and having the ability and experience to perform plumbing services to include, but not limited to, the installation of home plumbing systems.

16. It is well known in the building industry, and thus to SEARCY and B&B, that water pressure regulators incorporated into home plumbing systems will inevitably fail.

17. A properly designed and installed plumbing system will incorporate a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator.

18. On a date prior to January 24, 2009, Defendants designed and/or installed the plumbing system for the Home, including as part of that system a water pressure regulator. (Hereinafter "System").

19. On January 24, 2009, the water pressure regulator installed by SEARCY and B&B failed.

20. Due to the fact the System failed to incorporate a mechanism for shunting water away from the home in the event of a water pressure regulator failure, the Water Leak and its resultant damage occurred.

COUNT I **BREACH OF CONTRACT** **(As to SEARCY)**

21. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in all paragraphs 1-20 as if each were set forth at length herein.

22. Upon information and belief, prior to January 24, 2009, SEARCY and Wennerstrom entered into a legally binding contract wherein SEARCY, in return for fair consideration duly paid by Wennerstrom, did agree to and then did design and/or build the

Amended Complaint

Home, including the System. (Hereinafter "Contract"). FFIC is not in possession of the Contract and therefore is unable to attach a copy of same hereto, but believes Defendant is in possession of a copy of the Contract.

23. Having contracted to perform the work described above, in addition to any express duties set forth therein, SEARCY had an implicit duty to design and/or build the Home, including the System, in compliance with the terms of the contract, in a workmanlike manner, and in accordance with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards.

24. Upon information and belief, SEARCY breached the contractual obligations in that it:

- (a) Failed to properly design, install and/or otherwise ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator;
- (b) Failed to properly instruct all sub-contractors, agents, servants, and/or workers regarding the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards related to the design and installation of the System;
- (c) Failed to properly supervise all sub-contractors, agents, servants, and/or workers to ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator.
- (d) Failed to otherwise comply with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards in ways that may be disclosed during discovery.

25. Each of the above breaches, alone or in combination, constituted a breach of contract on the part of SEARCY.

26. As a direct result of the above alleged breaches, the Home was severely damaged by the Water Leak, and above referenced damages occurred.

WHEREFORE, Plaintiff respectfully requests judgment against SEARCY in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as the Contract allows and the Court deems just and proper.

COUNT II
BREACH OF IMPLIED WARRANTY OF GOOD WORKMANSHIP
(As to SEARCY)

27. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in paragraphs 1-20 as if each were set forth at length herein.

28. In every General Contract involving the construction of a residence there is an implied warranty that all work will be performed in a workmanlike manner.

29. Wennerstrom reasonably relied upon such an implied warranty when contracting with SEARCY to provide the design and building of the Home, including the System.

30. The contracting services performed by SEARCY at the Home were not performed in a workmanlike manner and the work caused the Home to be susceptible to damage by water incursion in that, among other things, the work was not performed in accordance with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards.

31. SEARCY breached the referenced implied warranty by installing and/or permitting the installation of the System in violation of applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards.

32. As a direct and proximate result of SEARCY's breach of its implied warranty of workmanlike construction, the Water Leak occurred and the Home and its contents were severely damaged.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant SEARCY in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as this Court deems just and proper.

COUNT III
BREACH OF IMPLIED WARRANTY OF HABITABILITY
(As to SEARCY)

33. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in paragraphs 1-20 as if each were set forth at length herein.

34. When a custom home builder is a party to the transaction that places a new home in the stream of commerce that custom home builder impliedly warrants that the home is habitable.

35. At all times material hereto, SEARCY contracted to build the Home, up to and including securing certification from the appropriate governmental authorities that the Home was suitable for occupancy as a permanent residential dwelling.

36. When the Home was substantially completed, Searcy applied for, and was granted, a Certificate of Occupancy (hereinafter the "C.O.") for the Home.

37. Upon issuance of the C.O., the Home was new and marketable as a permanent residential dwelling.

38. Prior to the issuance of the C.O., the Home was not legally habitable as a permanent residential dwelling.

39. As a custom home builder who was directly responsible for constructing the Home, making it marketable, and placing same into the stream of commerce, SEARCY impliedly warranted that the Home was habitable.

40. SEARCY breached its implied warranty of habitability because the Home as built could not withstand the water pressure supplied to the Home.

41. As a direct and proximate result of SEARCY's breach of its implied warranty of habitability, the Water Leak occurred and the Home and its contents were severely damaged.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant SEARCY in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as this Court deems just and proper.

COUNT IV
NEGLIGENCE
(SEARCY)

42. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in all paragraphs 1-20 as if each were set forth at length herein.

43. Defendant SEARCY, having undertaken to build the Home and System, owed Wennerstrom a common law duty to act as a reasonable prudent general contractor in that regard.

44. A reasonable prudent general contractor would have built the Home and the System in accordance with the applicable national, state, and/or local building codes, laws, regulations, ordinances and industry standards.

45. Defendant SEARCY owed Wennerstrom the additional common law duty to perform all work at the Home in a manner that would ensure that, in the event of a water pump regulator failure, the Home would not become susceptible to a water leak.

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46. The Water Leak and the resulting damage was caused by the negligence and/or negligent acts and/or negligent omissions of Defendant SEARCY, its agents, servants and/or employees, in that SEARCY:

- (a) Failed to properly design, install and/or otherwise ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator;
- (b) Failed to properly instruct all sub-contractors, agents, servants, and/or workers regarding the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards related to the design and installation of the System;
- (c) Failed to properly supervise all sub-contractors, agents, servants, and/or workers to ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator.
- (d) Failed to otherwise comply with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards in ways that may be disclosed during discovery.
- (e) Failed to act in a safe and proper manner with due regard for the safety and welfare of the Wennerstrom and the Home; and
- (f) Such other and further negligent acts and/or omissions that may be disclosed during discovery.

47. As a general contractor, SEARCY knew or should have known that the System required the incorporation of a mechanism for shunting water away from the home in the event of the failure of the water pressure regulator to prevent water damage from occurring to the Home.

48. It was reasonably foreseeable to SEARCY that water damage could occur to the Home if it failed to incorporate a mechanism in the System for shunting water away from the Home in the event of a water pressure regulator failure.

49. As a direct and proximate result of SEARCY's aforesaid negligence and/or negligent acts and/or negligent omissions, the Home was severely damaged by water, and Plaintiff sustained the damages alleged above.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as this Court deems just and proper.

COUNT V
NEGLIGENCE
(as to B&B)

50. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in all paragraphs 1-20 as if each were set forth at length herein.

51. Defendant B&B having undertaken to install the System, owed Wennerstrom a common law duty to act as a reasonable prudent plumbing contactor in that regard.

52. A reasonable prudent plumbing contactor would have built and installed the System in accordance with the applicable national, state, and/or local building codes, laws, regulations, ordinances and industry standards.

53. Defendant B&B owed Wennerstrom the additional common law duty to perform all work upon the System in a manner that would ensure that, in the event of a water pump regulator failure, the Home would not become susceptible to a water leak.

54. The Water Leak and the resulting damage was caused by the negligence and/or negligent acts and/or negligent omissions of Defendant B&B, its agents, servants and/or employees, in that it:

- (a) Failed to properly design, install and/or otherwise ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator;
- (b) Failed to properly instruct its employees, agents, servants, and/or workers regarding the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards related to the design and installation of the System;
- (c) Failed to properly supervise its employees, agents, servants, and/or workers to ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator.
- (d) Failed to otherwise comply with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards in ways that may be disclosed during discovery.
- (e) Failed to exercise that level of care that would be reasonable for a plumbing contractor to exercise under the same or similar circumstances.
- (f) Failed to act in a safe and proper manner with due regard for the safety and welfare of the Wennerstrom and the Home; and
- (g) Such other and further negligent acts and/or omissions that may be disclosed during discovery.

55. As a plumbing subcontractor, B&B knew or should have known that to prevent water damage from occurring to the Home, the System required the incorporation of a mechanism for shunting water away from the home in the event of the failure of the water pressure regulator.

56. It was reasonably foreseeable to B&B that water damage could occur to the Home if it failed to incorporate a mechanism in the System for shunting water away from the Home in the event of a water pressure regulator failure.

57. As a direct and proximate result of B&B aforesaid negligence and/or negligent acts and/or negligent omissions, the Home was severely damaged by water, and Plaintiff sustained the damages alleged above.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as this Court deems just and proper.

COUNT VI
BREACH OF CONTRACT
(As to B&B)

58. Plaintiff incorporates and re-alleges, as if fully set forth herein, the allegations contained in all paragraphs 1-20 as if each were set forth at length herein.

59. Upon information and belief, prior to January 24, 2009, SEARCY and B&B entered into a legally binding contract wherein B&B, in return for fair consideration duly paid by SEARCY or others, did agree to and then did design and/or install the System. (Hereinafter "Subcontract"). FFIC is not in possession of the Subcontract and therefore is unable to attach a copy of same hereto, but believes Defendant B&B is in possession of a copy of the Contract.

60. Upon information and belief, the Subcontract was not incidentally intended to provide a benefit to Wennerstrom, but was intended to and did provide a direct and substantial benefit to Wennerstrom.

61. Upon further information and belief, Defendant B&B was directly aware of the fact that Wennerstrom was an intended beneficiary of the Subcontract.

Amended Complaint

62. Wennerstrom was an intended third party beneficiary to the Subcontract, as a result of which Defendant B&B became legally obligated to Wennerstrom to perform any and all duties and obligations called for under the Subcontract.

63. In addition to any express duties set forth in the Subcontract, B&B owed an implicit duty to Wennerstrom to design and/or install the System in a workmanlike manner, and in accordance with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards.

64. Upon information and belief, B&B breached its contractual obligations owed to Wennerstrom in that it:

- (a) Failed to properly design, install and/or otherwise ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator;
- (b) Failed to properly instruct its employees, sub-subcontractors, agents, servants, and/or workers regarding the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards related to the design and installation of the System;
- (c) Failed to properly supervise its employees, sub-subcontractors, agents, servants, and/or workers to ensure that the System incorporated a mechanism for shunting water away from the home in the event of the inevitable failure of the water pressure regulator.
- (d) Failed to otherwise comply with the applicable national, state, and/or local building codes, laws, regulations, ordinances, and industry standards in ways that may be disclosed during discovery.

65. Each of the above breaches, alone or in combination, constituted a breach of contract on the part of B&B and the duties owed Wennerstrom, the Subcontracts third-party beneficiary.

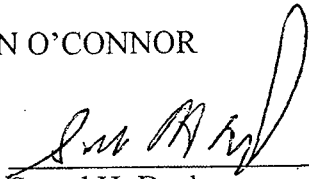
Amended Complaint

66. As a direct result of the above alleged breaches, the Home was severely damaged by the Water Leak, and above referenced damages occurred.

WHEREFORE, Plaintiff respectfully requests judgment against B&B in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), together with interest, reasonable attorney fees, the costs of this action, and such other relief as the Contract allows and the Court deems just and proper.

Respectfully submitted, this the 18th day of September, 2013.

COZEN O'CONNOR

By: 

Svend H. Deal
SC Bar No. 80241
One Wells Fargo Center, Suite 2100
301 South College Street
Charlotte, NC 28202
Telephone: (704) 376-3400
Facsimile: (704) 334-3351
sdeal@cozen.com
ATTORNEYS FOR PLAINTIFF

LEGAL\17254484\1 00024.0002.000/231920.000

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Fireman's Fund Insurance Company)
a/s/o Stig Wennerstrom,)
)
Plaintiff,)
)
v.)
)
Searcy Custom Homes, LLC and)
B&B Plumbing, Inc.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CA#: 2011-CP-42-00618

**MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Defendants, Searcy Custom Homes, LLC and B&B Plumbing, Inc (hereinafter "Searcy", "B&B" or collectively referred to as "Defendants") filed a Motion for Summary Judgment before this Court on September 13, 2012 seeking dismissal of Plaintiff Fireman's Fund Insurance Company a/s/o Stig Wennerstrom's (hereinafter "Fireman's Fund" or "Plaintiff") Complaint. Defendants submit this Memorandum to the Court in support of their Motion for Summary Judgment requesting that the Motion be granted and the case summarily dismissed.

FACTS

On February 9, 2011, Plaintiff filed a Complaint against Defendants alleging construction related defects which caused damages to a home insured by Plaintiff. This is a subrogation action brought by Fireman's Fund. Fireman's Fund insured the home of Stig Wennerstrom (hereinafter "Wennerstrom") and paid a claim to Wennerstrom due to water damage which allegedly occurred at Wennerstrom's home located in the Cliffs of Glassy housing development on January 24, 2009.

The case arises out of a water leak which occurred in the upstairs bathroom of Wennerstrom's home. A properly installed Wilkins water pressure reducing valve (see: Exhibit

"1", Wilkins Water Pressure Reducing Valve) failed causing an upstairs plumbing fixture to leak and flood the home while unoccupied.¹

Six years earlier, in September 2002, Searcy entered into a contract with Wennerstrom to build a house located at 45 Fallinger Way, Landrum, SC 29356 (hereinafter "subject property") (see: Construction Contract, Exhibit "2"). As the builder, Searcy subcontracted with B&B to perform the plumbing related services at subject property. Searcy and B&B completed the construction of the home with no complaints from the owner or county officials. As stated above, on January 24, 2009, approximately six years after original construction, a plumbing fixture located in a bathroom in the upstairs of the home failed. The plumbing system was designed properly and included a pressure reducing valve, attached to a pipe to prevent excess water pressure. The pressure reducing valve was located in a plumbing box in the front yard of subject property. Subsequent investigation revealed that the properly installed Wilkins Pressure Reducing Valve malfunctioned which in turn allowed water pressure to build in the homes' plumbing system causing a leak which led to damage to the interior of subject property.

Once the incident was reported, both representatives of Searcy and B&B were contacted. Representatives of both companies visited the site and assisted with the repair. Also present were representatives of Plaintiff. The failed pressure reducing valve was removed and replaced. Plaintiff's expert witness Dean Harris retained possession of the failed pressure reducing valve. The failed pressure reducing valve caused pressure to build in the interior of the home and caused extensive damage warranting repairs.

On February 9, 2009, Plaintiff's expert visited the site and in his opinion determined that the Defendants were at fault for the leak and damage.

¹ Wennerstrom's primary residence is located in Florida.

Q: But let me ask you, did you arrive at any conclusions or opinions on February 9th, 2009?

A: I did arrive at opinions. They would not have been contained in the email.

Q: What were those opinions?

A: The opinion I had on February 9th after I completed my examination and had the information from Mr. Hafner was I had already concluded that the valve had been properly installed. I saw no evidence to suggest it had not been, and indications suggest it had been. We were aware that the regulator had failed in an open position and had most probably admitted greater than 125-PSI pressure to the residence. And that excess pressure had caused the fitting on this valve to lose its seal and fail.

Q: Let me make sure that I understand your opinions on February 9th. Were you of the opinion on February 9th that the valve to the bidet was appropriate and also appropriately installed?

A: That was the opinion I had on site. I did more work to confirm that opinion. But I had already pretty well formed that opinion on site.

Q: And is that your opinion today?

A: It is.

Q: And is it also your opinion that the pressure regulator valve was appropriate for the installation on this home and also appropriately or correctly installed on this home?

A: Yes and no. That was two questions.

Q: Yes, it was.

A: I believe the regulator is the appropriate regulator for this service. I do not approve of its installation location or the installation configuration of the piping.

(Dean Harris Dep. 54:8 – 55:17.)

Thus, on February 9, 2009, Plaintiff and its expert had already attributed the fault of the damage to Defendants. However, after February 9, 2009, when Fireman's Fund and Wennerstrom were on notice that its expert was deeming Defendants at fault for the damages, Fireman's Fund and Wennerstrom hired Searcy to perform the repair work on the home, paying

Searcy approximately \$79,000. However, at no time during its work did Wennerstrom nor Fireman's Fund inform Searcy that it would later file suit, after completion of the repair work, and seek damages against Searcy and B&B for the original damage.

Additionally, Plaintiff's expert opined that Searcy and B&B did not breach a code, ordinance, regulation or industry standard in performing their construction related services concerning the installation and design of the plumbing and pressure reducing valve at issue in this lawsuit. Instead, Harris opines that the location of the valve was improper and the failure to include an additional backup pressure releasing valve was improper. But Harris admits that there is no code or regulation requiring that Defendants perform the functions which he believes they performed improperly.

Q: Is there any code, statute, regulation, industry standard or other publication which directs or recommends the location of a pressure relief valve?

A: The only code or standard or regulation, the building code in South Carolina requires that there be a pressure relief device on -- I mean, excuse me, a regulator on the house. They do not mention a pressure relief device with it.

Q: And so is the answer to my question that there is not anything that I or a builder or a plumber can go look at to determine what their obligation is and the location of the installation of a pressure regulator valve?

A: The only location information is that it must be on the supply line to the house. That's all the code requires. The code doesn't give you the details of your design. It simply says where in the system it must be.

Q: And is there any industry publication that would help or direct a plumber in identifying the appropriate location of the installation of the regulator?

A: I don't know such a code or standard.

(Harris Dep. 85:3 – 86:1.)

Q: And as we've already --- well, we've already determined this one could have been maintained in its location by a licensed plumber in South Carolina?

A: Yes, Sir; it could have been maintained in that location.

(Harris Dep. 86:7-12.)

Thus, the only evidence in the record of any fault attributable to Searcy and B&B in this case is from Harris' opinion that neither Defendant breached a code or violated an industry standard, but that in his opinion they should have installed the system differently and included an additional device not required under the code, the plans and specifications or by industry standard.

Fireman's Fund 30(b)(6) deponent, Scott Klaben, most knowledgeable with the subrogation claim at issue in this litigation, testified that he had no information to attribute fault for the damage to Searcy or B&B.

Q: Let's go back to the question. Is it fair to say that you cannot provide testimony why Searcy Custom Homes or B&B Plumbing are responsible for the damage in this case?

A: Yes, I'm not an expert in the plumbing field. Yeah, that is correct.

(Scott Klaben Dep. 75:17-22.)

Thus, Plaintiff seeks to create an issue of material fact solely on the expert opinions which have admittedly stated that no code, regulation or industry standard was violated.

STANDARD OF REVIEW

Summary judgment shall be granted when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. The movant must first demonstrate that there is no genuine dispute of material fact. See Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (citing McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004)). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the

pleadings. See Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). Rather, to defeat the motion, the party opposing summary judgment must present evidence of specific facts from which the finder of fact could reasonably find for him, thereby showing that there is a genuine issue for trial. See Miller, 365 S.C. at 220, 225, 616 S.E.2d at 730, 732.

In considering a motion for summary judgment, a court must view the facts in the light most favorable to the non-moving party. While a non-moving party need only submit a scintilla of evidence to avoid summary judgment, the evidence submitted must be material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror. See Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (S.C. 2009); Taylor v. Atlantic Coast Line R. Co., 78 S.C. 552, 59 S.E. 641 (1907). When only one reasonable inference can be deduced from the evidence, it becomes a question of law for the court, and not a question of fact for a jury. See National Bank of Honea Path v. Thomas J. Barrett, Jr., & Co., 173 S.C. 1, 174 S.E. 581 (1934). Moreover, “a court ‘cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be *reasonably* possible under the facts.’” Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citing Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)) (emphasis added).

LAW/ANALYSIS

Plaintiff's Complaint sets forth allegations for breach of contract and negligence against both Defendants. Plaintiff further alleges a claim for breach of the implied warranty of workmanlike service against Searcy. As this is a subrogation action, the laws controlling

subrogation actions warrant in equity that the Complaint be dismissed. Additionally, Defendants assert that summary judgment is appropriate based upon the voluntary payment doctrine.

I. SUBROGATION

Based upon South Carolina law governing subrogation actions, in equity, Fireman's Fund should be estopped from asserting its claims against Defendants. Further, Fireman's Fund waived its rights to subrogation against Defendants by making voluntary payment, through Wennerstrom, for the repairs of the defective work to Defendants.

"Legal subrogation is not dependent upon contract. The doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationship of the parties." Calvert Fire Ins. Co. v. James, 236 S.C. 431, 435, 114 S.E.2d 832, 834 (1960).

"Where the tortious conduct of a third person is the cause of a loss covered by an insurance policy, the insurer, upon payment of the loss, becomes subrogated pro tanto by operation of law to whatever rights the insured may have against the wrongdoer." Calvert Fire Ins. Co. v. James, 236 S.C. 431, 435, 114 S.E.2d 832, 835 (1960) (internal citations omitted).

"This right of subrogation is based upon principles of equity and natural justice. We recognize at once the fairness of the proposition that an insurer, who has been compelled by his contract to pay to or in behalf of the insured claims for damages, ought to be reimbursed by the party whose fault has caused such damages, and the principle of subrogation ought to be liberally applied for the protection of those who are its natural beneficiaries." Calvert Fire Ins. Co. v. James, 236 S.C. 431, 438, 114 S.E.2d 832, 836 (1960). **"An insurer which becomes**

subrogated to the rights of its insured has no greater rights with respect to a claim against a third party than did the insured.” W. M. Kirkland, Inc. v. Providence Washington Ins. Co., 264 S.C. 573, 216 S.E.2d 518 (1975). Based upon the holding in W. M. Kirkland, Inc., Fireman’s Fund obtains no greater rights than its insured Wennerstrom, and thus, the insurer should be subject to any and all defenses which would apply to the insured. Thus, any defense Defendants have against Wennerstrom, they also have against Fireman’s Fund.

“The right to subrogation may be waived either by contract or conduct. Powers v. Calvert Fire Insurance Company, 216 S.C. 309, 57 S.E.2d 638 (1950). “The Court holds that the parties mutually agreed to waive subrogation because of fire. Therefore, the insurer of the Plaintiff, the South Carolina Insurance Fund could not bring a claim for subrogation because the insurer gained no rights superior to that of its insured with respect to this third party claim against the Defendant.” Lancaster County Sch. Dist. v. Se. Serv. Corp., 3:95-1793-17, 1996 WL 33413881 (D.S.C. May 7, 1996) aff’d, 120 F.3d 261 (4th Cir. 1997); Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471 (Ct. App. 1994) (“When an insurer pays its insured for a loss resulting from the tortious conduct of a third party, the insurer is subrogated to the rights of its insured against the third party.”)

Since subrogation rights are equitable, there are certain defenses which may bar an insurer’s right to subrogation (such as waiver discussed above in Lancaster County Sch. Dist. v. Se. Serv. Corp.). Calvert Fire Ins. Co., 236 S.C. at 439 (“For the insurer’s right of subrogation, being founded in equity, may be forfeited by inequitable conduct on its part; it may be lost by laches, or by conduct giving rise to waiver or estoppel”).

A. ESTOPPEL

It is undisputed that Fireman's Fund and its expert witness Harris were aware of the claims against the Defendants on February 9, 2009 (less than a month after the damage at issue in this case) (see: Harris Dep. 54:8–55:17). With this knowledge, Wennerstrom and Fireman's Fund authorized Searcy to perform repair work to subject property. Thus, Searcy performed repair work for payment with no knowledge that Fireman's Fund/Wennerstrom would in turn sue Searcy for the return of the monies expended in performing the repairs. This conduct was inequitable; thus Plaintiff should be estopped from asserting claims against Searcy.

Under South Carolina law, the essential elements of estoppel are divided between the estopped party and the party claiming estoppel. *Southern Dev. Land and Golf Co. v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993), *aff'g in part and rev'g in part* 305 S.C. 507, 409 S.E.2d 428 (Ct.App.1991). As to the estopped party, the essential elements are: (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions; (2) intention or expectation that such conduct be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Id.* As to the party claiming estoppel, the essential elements are: (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. *Id.* Unlike waiver, the estopped party need not intend to relinquish or change any existing right for estoppel to arise. *Janasik v. Fairway Oaks Villas*, 307 S.C. 339, 415 S.E.2d 384 (1992). The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. *Southern Dev.*, *supra*; *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584 (1942).

Estoppel by silence arises when the estopped party owes a duty to speak to the other party but refrains from doing so, thereby leading the other party to believe in an erroneous state of facts. *Southern Dev.*, 426 S.E.2d at 751. A “manifest intent” to mislead is not required for estoppel by silence; it arises when the silence is intended or has the effect of misleading the other party, provided the other party acts reasonably. *Id.* Estoppel may also arise when the estopped party fails to act at the “first proper and opportune moment.” *Metromont Materials Corp. v. Pennell*, 270 S.C. 9, 239 S.E.2d 753 (1977).

Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 477-78, 451 S.E.2d 924, 928 (Ct. App. 1994).

Fireman's Fund was aware of its construction defect claims against Searcy prior to Searcy being retained to perform the repair work; thus, Fireman's Fund concealed material facts, induced and did have Searcy make the repairs when Fireman's Fund had knowledge that it intended to sue Searcy for the amounts paid to it to make the repairs. Had Searcy known that it would be sued for the amounts paid to it to make the repairs to subject property, it would not have performed the repairs and could have found or performed other work, which may have garnered Searcy monies in excess of the amounts paid pursuant to the repair work performed on Wennerstrom's home. Since subrogation actions are in equity, one who seeks equity must do equity, and Fireman's fund's concealment of its intentions to sue Searcy and B&B was not equitable and its claims must be dismissed.

B. WAIVER

Wennerstrom, by paying the insurance proceeds to Searcy and B&B to perform the repairs, effectively waived Wennerstrom and Fireman's Funds' rights to pursue Searcy and B&B for the original alleged defective work. Further, Fireman's Fund was fully aware that the parties it intended to sue were performing the repair work and being paid from the insurance proceeds for said work; thus, as Fireman's Fund has no greater rights than Wennerstrom and is subject to the same defenses, Fireman's Fund waived its right to subrogation against Defendants.

Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. Waiver, like estoppel, is an affirmative defense and the burden of proof is upon the party who asserts it. *Frady v. Smith*, 247 S.C. 353, 147 S.E.2d 412 (1966).

Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Ct. App. 1994).

C. VOLUNTARY PAYMENT DOCTRINE

In this case, Fireman's Fund is garnered only the rights of Wennerstrom and is subject to the same defenses. W. M. Kirkland, Inc. v. Providence Washington Ins. Co., 264 S.C. 573, 216 S.E.2d 518 (1975). Fireman's Fund voluntarily paid Wennerstrom monies which were paid to Searcy to perform the repair related services associated with the damage to the home. This payment was performed with full knowledge that Fireman's Fund was going to sue Searcy and B&B for damages associated with the water damage claim. Said voluntary payment of monies, with knowledge of its intentions to turn around and seek repayment of said monies from Searcy and B&B, is inequitable and barred due to the voluntary payment doctrine.

"If a party pay money voluntarily, with a full knowledge of all the facts, he cannot afterwards recover it back, although he was not bound to pay the money, and, at the time he paid it, was ignorant of his rights." Robinson v. City Council of Charleston, 1846 WL 2371 (Jan. 1846); see Goodlett v. Goodlett, 100 S.C. 84, 84 S.E. 414, 415 (1915) ("In the first place, the payments were voluntarily made with full knowledge of the facts, and could not therefore be recovered"); Town of Bennettsville v. Bledsoe, 226 S.C. 214, 218, 84 S.E.2d 554, 556 (1954) ("It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts."); see also Shuck v. Interstate Bldg. & Loan Ass'n, 63 S.C. 134, 41 S.E. 28 (1902) ("Where a party borrows money of a building association, and executes a bond stipulating as to how the payment shall be made and how applied, that stock should be assigned and become canceled, and that the debt should be due when the stock reached par value, and pays before maturity an amount demanded as the balance, he cannot be relieved of such payment where no mistake or fraud or duress is shown."); Moody v. Stem, et al., 51 S.E.2d 163, 169 (1948); Kenneth & Gibson v. South Carolina Railroad Co., 49 S.C.L. 284 (Ct. App. 1868).

“Payment under protest will protect payer from charge of having made voluntary payment and permit suit for money had and received.” Sutton v. Town of Fort Mill, 171 S.C. 291, 172 S.E. 119 (1933) (West Headnote 2).

Fireman's Fund, through its subrogation claim, is placed in the shoes of Wennerstrom, with the ability to only assert claims held by Wennerstrom and subject to all defenses against Wennerstrom. W. M. Kirkland, Inc. v. Providence Washington Ins. Co., 264 S.C. 573, 216 S.E.2d 518 (1975). As testified to by Plaintiff's expert Harris, Plaintiff believed Defendants were at fault for the damage on February 9, 2009, well before Searcy was hired to perform the repairs to the home (see: Dean Harris Dep. 54:8 – 55:17.) Thus, Fireman's Fund did not act in good faith; the insurer effectively fraudulently induced Defendant to perform the repairs to the house under the false pretense that Defendants would be paid for the work, with no indication that they would be sued to return the monies paid to them as compensation for performing the repairs. It would be unjust for a court to find that an insurance company was acting in good faith if they believed a party was at-fault for the damage, but withheld that information from the party which it was paying to perform repairs (to the benefit of the insurance company and its insured).

As subrogation is an equitable action, the fact that Fireman's Fund voluntarily paid the monies to Wennerstrom, which were ultimately paid to Searcy and B&B for the contractual repair work performed, with knowledge that it believed Searcy and B&B were at fault for the damage, provides sufficient evidence that Fireman's Fund voluntarily paid the monies and acted in bad faith. As Defendants can assert all defenses against Fireman's Fund which they had against Wennerstrom, the action should be dismissed due to Wennerstrom/Fireman's Fund's voluntary payment of monies in bad faith.

II. BREACH OF CONTRACT

Plaintiff has failed to establish evidence that Defendants breached the contract. First and foremost, B&B and Wennerstrom never entered into a contract. In subrogation, the insurance company can only claim the rights that the insured had, and Wennerstrom had no contract with B&B; thus, neither Wennerstrom nor Fireman's Fund have a claim against B&B for breach of contract. W. M. Kirkland, Inc. v. Providence Washington Ins. Co., 264 S.C. 573, 216 S.E.2d 518 (1975).

As to Searcy², the record reflects no evidence that Searcy breached the construction contract entered into with Wennerstrom (see: Construction Contract, Exhibit "2").

Plaintiffs must prove three elements to establish a claim for breach of contract: (1) binding contract entered into by parties; (2) breach or unjustified failure to perform contract; and (3) damages to Plaintiff[s] directly and proximately caused by breach. Fuller v. Eastern Fire & Casualty Ins. Co., 240 S.C. 75, 124 S.E. 2d 602, 610 (1962); See also: Taylor v. Cummins Atlantic, Inc., 852 F.Supp. 1279, 1286 (D.S.C. 1994).

Plaintiff cannot provide proof that Searcy failed to perform the contract or that the damages were a direct or proximate cause of Searcy's breach. Plaintiff has provided no evidence that Searcy failed to perform any of its obligations required under the terms of the construction contract. The only evidence presented is that of an expert stating that the plumbing was improperly designed and that Searcy failed to install a pressure releasing valve. However, the expert could not set forth one standard, code, regulation or even article which would establish that Searcy should have designed the plumbing system differently and/or that Searcy should have installed a pressure releasing valve. Further, the expert pointed to no terms of the contract which required that Defendants install the plumbing fixtures differently or install a pressure relief valve.

² If a contractual claim is deemed appropriate against B&B, the same arguments refuting the breach of contract claim asserted against Searcy would apply to B&B.

The contract specifically states that: "Contractor shall promptly commence, and diligently pursue, the construction of the residence in strict compliance with such plans and specifications." (see: Construction Contract ¶ 3, Exhibit "2".) Defendants met their duties under the contract and code by installing the plumbing fixtures as installed and in accordance with the plans and specifications.

Q: Is the installation of this pressure --- of this pressure regulator compliant with the applicable code in effect at the time of its construction?

A: Yes, sir; it's applicable because the code simply requires that you put an appropriate pressure regulator on the house. Code doesn't tell you how to design your piping.

(Harris Dep. 86:16-22.)

Q: So I guess my question is to you, understanding that anything can be improved, has the builder and plumber in --- Mr. Wennerstrom's home complied with the standards that were in effect during the construction of this home?

A: They have complied with the building code.

(Harris Dep. 87:19-24.)

Thus, Plaintiff has provided no evidence that Searcy failed to comply with the construction contract entered into between Searcy and Wennerstrom.

III. NEGLIGENCE

Plaintiff has provided no evidence that Defendants breached a duty of care owed to Wennerstrom. Plaintiff has further failed to provide evidence that Defendants' conduct was the direct and/or proximate cause of the damages.

"In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." Magnolia N. Prop. Owners' Ass'n, Inc. v.

Heritage Communities, Inc., 397 S.C. 348, 725 S.E.2d 112, (Ct. App. 2012), reh'g denied (Apr. 20, 2012).

The Court in Kennedy v. Columbia Lumber and Manf. Co., Inc., 299 SC 335, 345-346 (1989), set forth violations of certain duties which create negligent/tort liability:

1. the builder has violated an applicable building code;
2. the builder has deviated from industry standards; or
3. the builder has constructed housing that he knows or should know will pose serious risks of physical harm.

As stated earlier, the only evidence presented by Plaintiff in this action attributing fault to the Defendants is the expert testimony of Dean Harris. However, Harris' testimony provides no evidence of a breached duty.

Harris testified to the following inadequate work related to the plumbing fixtures/configuration:

Q: And will you explain to me please your opinions regarding the inadequate or inappropriate configuration of the plumbing system?

A: The configuration I was referring to the addition of a pressure relief device on the outlet line from the regulator.

(Harris Dep. 93:3-8.)

After testifying to the failure to install a pressure relief device, Harris admitted that said device was not required by the code and admitted that at the time of the construction of the home at issue in this litigation, use of a pressure relief device was not typical in the industry.

Q: Now, that pressure relief valve, is that required by the code?

A: No, sir. The code does not require one on the regulators.

(Harris Dep. 94:18-21.)

Q: And at the time this home was constructed was it typical in the industry, and I'm talking about residential construction, to install a pressure relief device?

A: No, sir; it's not. It has only recently become common to put on regulators at all.

(Harris Dep. 95:5-10.)

Q: Now, will you agree with me that the creator, designer, or manufacturer of a product including a home should be judged by the standards in place at the time of that creation in a general sense?

A: In the general sense, yes. And in my opinion they have violated the standards of good design and engineering practice here.

Q: But the standards in effect at the time this home was constructed was not to install a pressure relief device; correct?

A: If you mean by written code [or] standard, there was no such standard in either direction. It was not the general practice in the industry to install them.

(Harris Dep. 96:2-15.)

Harris further testified that the design/location of the pressure reduction valve was inappropriate which he in turn attributes fault to the Defendants (see: Harris Dep. 83:17 – 84:21.) However, he admits that the design violated no code or industry standard and that there was no regulation, code or standard qualifying how the plumbing system should have been installed.

Q: Is there any code, statute, regulation, industry standard or other publication which directs or recommends the location of a pressure relief valve?

A: The only code or standard or regulation, the building code in South Carolina requires that there be a pressure relief device on --- I mean, excuse me, a regulator on the house. They do not mention a pressure relief device with it.

Q: And so is the answer to my question that there is not anything that a builder or a plumber can go look at to determine what their obligation is and the location of the installation of a pressure regulator valve?

A: The only location information is that it must be on the supply line to the house. That's all the code requires. The code doesn't give you the details of your design. It simply says where in the system it must be.

Q: And is there any industry publication that would help or direct a plumber or builder in identifying the appropriate location of the installation of the regulator?

A: I don't know of such a code or standard.

(Harris Dep. 85:3 – 86:1.)

Q: And as we've already --- well, we've already determined this one could have been maintained in its location by a licensed plumber in South Carolina?

A: Yes, Sir; it could have been maintained in that location.

(Harris Dep. 86:7-12.)

Thus, Plaintiff's expert cannot point to one code, journal or regulation which states that Defendants should have installed the plumbing system in the way that he believes it should have been installed. In fact, Harris states that Defendants installed it properly and violated no standards. As admitted by Plaintiff's expert, his company is the only source he can point to in the United States as a validation of his opinion.

Q: And that's what I'm asking you is, other than the opinion that you're giving here today, can you point us to anything published, a video, anything that supports your position that when this home was built it needed to have a pressure relief device?

A: I have not seen where anyone else has expressed this specific opinion except other people from my company in similar situations.

(Harris Dep. 99:5-12.)

Mr. Harris has provided testimony that it is not the standard in the construction industry to install a pressure relief device. Defendants failing to follow a standard which was not standard practice in the construction industry at the time of this construction cannot provide evidence of a breached duty on part of the Defendants.

Further, Harris admits that the direct/proximate cause of the water damage to the house was the failure of the pressure reduction valve, which he admits was not Defendants' fault.

Q: But the failure of that pressure reduction valve was not my client's fault; is that fair?

A: I would not say that the failure was his fault.

(Harris Dep. 120:8-10.)

Q: But if the regulator had performed its function on that day, the house would not have flooded; is that fair?

A: That is correct.

(Harris Dep. 120:14-17.)

Thus, Plaintiff's expert admits that Defendants were not the direct or proximate cause of the damage; the failure of the properly installed pressure reducing valve caused the damage.

Lastly, as admitted by Harris, he has testified in other cases that a residential builder and plumber satisfied their obligations by complying with the code in effect at the time of construction just as the Defendants have in this case.

Q: Have you ever testified that either a residential builder or a residential plumber has satisfied their obligation by complying with the code in effect at the time of the construction and the industry standard at the time of construction, and/or?

A: I will tell you that almost certainly I have.

(Harris Dep. 147:15-21.)

Q: And isn't it fair to say that in this case both of my clients have complied with both the code at the time of construction and the industry standard prevalent at the time of construction?

A: I would agree with you that [they] complied with the building code, because the building code does not address the issue at present here. And if you interpret the fact that most companies are not doing this to represent an industry standard, then yes, they did it the same way most people were currently doing it at that time.

(Harris Dep. 147:24 – 148:9.)

Thus, Plaintiff's only evidence that Defendants are at fault for the damages to subject property is based upon Harris's expert testimony, and his testimony fails to establish any evidence that Defendants breached a standard of care and or failed to follow a standard that reasonably prudent builders and plumbers in the construction industry were following at the time of construction. Further, Harris provides no testimony that Searcy failed to follow the plans and specifications as required under the construction contract (see: Construction Contract, Exhibit "2"). Additionally, Harris admits that the failure of the pressure reducing valve caused the water leak which led to the damage. Defendants installed the pressure reducing valve properly; thus, the failure of the plumbing fixture caused the damage, not Defendants negligent installation and/or design. Plaintiff's cause of action for negligence against Defendants should be dismissed because no evidence exists tending to indicate that Defendants breached a standard of care or that Defendants' actions were the cause of the damage.

IV. BREACH OF IMPLIED WARRANTY

The claim for breach of implied warranty was pled solely against Searcy. Plaintiff asserts that Searcy breached an implied warranty of good workmanship. Based upon the same arguments and deposition excerpts set forth in Defendants' discussion of negligence hereinabove, summary judgment is proper.

"To establish a claim for breach of the implied warranty of workmanlike services, the plaintiff must show that the builder failed to perform its work in a careful, diligent, and workmanlike manner." Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725 S.E.2d 112, (Ct. App. 2012), reh'g denied (Apr. 20, 2012); Smith v. Breedlove, 377 S.C. 415, 422 (2008) (holding that a builder who contracts to construct a

dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, and workmanlike manner.)

Further, the South Carolina Supreme Court in Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 561 (2008), held that a general contractor is not automatically responsible for the negligence of a subcontractor; however, the Court imposed a duty on a general contractor to use due care in supervising a subcontractor.

The Magnolia Court discussed specifically the General Contractor's level of responsibility for the work performed by subcontractors, holding that when a "builder undertakes to supervise the construction of a building he has a duty to exercise reasonable care." Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725 S.E.2d 112, (Ct. App. 2012), reh'g denied (Apr. 20, 2012). The Court in Auto Owners Insurance Co. v. Newman, 385 S.C. 187, 194 (2009), held that the general contractor was liable for property damage caused by the subcontractor's work: "we hold that the subcontractor's negligence resulted in an "occurrence" falling within the CGL policy's initial grant of coverage for the resulting property damage to the homes framing and exterior sheathing."

Thus, Plaintiff must establish some evidence that Searcy failed to perform its work in a workmanlike manner and/or that Searcy failed to properly supervise its subcontractor B&B. Plaintiff has submitted no evidence that Searcy failed to properly supervise B&B. Plaintiff produced no evidence that Searcy failed to follow the plans and specifications required pursuant to the terms of the Construction Contract (see: Exhibit "2"). Further, as set forth in the negligence section of this Memorandum, Plaintiff has failed to establish that Searcy failed to perform its work in a workmanlike manner. Searcy and its subcontractor followed the code and

industry standards, as admitted by Plaintiff's expert; thus, Searcy performed its duties in a careful, diligent, and workmanlike manner; thus, summary judgment is appropriate.

V. PLAINTIFF'S EXPERT'S TESTIMONY IS INADMISSIBLE

Plaintiff's attempt to create a genuine issue of material fact relies solely on the baseless expert testimony provided by Harris. However, in addition to said testimony failing to create any evidence to support Plaintiff's claims against the Defendants, said testimony is unreliable and thus inadmissible at trial.

"A person may be qualified as an expert in a particular area based on knowledge, skill, experience, training or education." Rule 702, S.C.R.E. Expert testimony is different from lay witness testimony in that an expert is allowed to proffer opinions based upon facts not within the expert's firsthand knowledge. Watson v. Ford Motor Co., 389 S.C. 434, 445 (2010). Due to the expert's ability to provide opinion testimony concerning facts outside of his firsthand knowledge, the court has expended scrutiny in examining an expert's testimony. Id. at 446.

The trial court is considered the gatekeeper for evidence and testimony. In performing this duty, the court must make three findings in determining whether an expert witness's testimony should be admitted at trial. Id. "First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." Id. Second, "while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." Id. Lastly, **"the trial court must evaluate the substance of the testimony and determine whether it is reliable."** Thus, "[e]xpert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability." Id.

Thus, in order for Harris's expert testimony to be admissible in this case, the Court must find not only that Harris is an expert based upon his own knowledge, skill, experience, training or education in the field of plumbing design and installation, but also that the substance of his testimony is reliable. Id. at 449. In determining whether or not expert testimony meets the reliability standard, South Carolina courts consider several factors:

(1) The publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in this case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

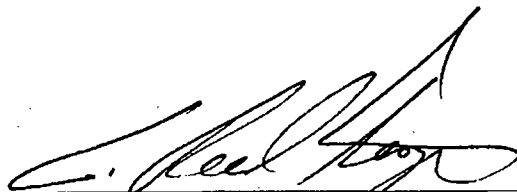
Id. at 450.

As noted in the numerous citations from Harris' deposition set forth hereinabove, Harris failed to cite any publications or peer reviews addressing his opinions. Further, Harris failed to set forth another case in the United States where his opinions were rendered. Harris states that his company is the only source that he can point to that follows his opinions in this case. Thus, there are no publications, documented methods or prior cases which the Court can weigh concerning the reliability of Harris' opinion. Therefore, Harris' testimony is inadmissible because it fails to meet the reliability standards set forth in Watson v. Ford.

In performing its gatekeeping role, the Court must not allow an expert to provide unreliable testimony. Harris admits that the Defendants met the requirements set forth in the applicable codes, regulations and industry standards in place at the time of construction. If Harris could point to just one publication or peer review addressing his opinions, Plaintiff would have an argument that at least there was something for the Court to review in order to determine if his opinions were reliable; however, by citing nothing, the Court has no way of determining the reliability of Harris' opinions. Thus, the Court must exclude Harris' testimony. Once excluded, Plaintiff has nothing to present at trial; thus, the case should be summarily dismissed.

CONCLUSION

Plaintiff has failed to establish a genuine issue of material fact; thus, summary judgment is appropriate in this matter.



Jason M. Imhoff (SC Bar #69355)
C. Reed Teague (SC Bar #: 79933)
The Ward Law Firm, PA
PO Box 5663
Spartanburg, SC 29304
(864) 582-3075
(864) 585-3075
jimhoff@wardfirm.com

*Attorney for Defendants Searcy Custom
Homes, LLC and B&B Plumbing, Inc.*

April 7, 2013

EXHIBIT 1

WILKINS

a ZURN company

Model 70

Water Pressure Reducing Valve

**SPECIFICATION SUBMITTAL SHEET****FEATURES**

- Sizes: ☐ 3/4" ☐ 1"
 Maximum working water pressure 300 psi
 Maximum working water temperature 140°F
 Reduced pressure range 25 psi to 75 psi
 Factory preset 50 psi
 Threaded connections (FNPT) ANSI B1.20.1
 Copper connections (FC) ANSI B16.22
 CPVC tailpiece: Max. hot water temp. 140°F @ 100 psi
 Cold water rated temp. 73.4°F @ 400 psi

OPTIONS(Suffixes can be combined)

- ☐ - standard with single union FNPT connection and 20 mesh strainer screen
☐ C - with FC (copper sweat) union connection
☐ CH - chrome plated cartridge (3/4" & 1")
☐ DM - double male meter thread connection, 1" National Hose Thread fits 5/8" x 3/4" and 3/4" water meters (less union; #34-70DM)
☐ DU - with double union FNPT connection
☐ DUCM - with double union male copper sweat (3/4"-1)
☐ LU - less union assembly, female x female NPT
☐ P - tapped & plugged for gauge
☐ SC - sealed cage bell housing and stainless steel adjusting screw
☐ SS - sealed cage bell housing with stainless steel adjusting screw and spring
☐ CPVC - CPVC tailpiece connection (3/4"-1)
☐ LP - low pressure outlet 10-35 psi available in 1/2" & 3/4" single union, & 3/4" double union

ACCESSORIES

- ☐ Repair kit
☐ Water thermal expansion tank (Model XT)
☐ Special in-line spacer nipple (34-70DUSPC & 1-70DUSPC)
☐ In-line strainer screen for DUSPC (SCR)
☐ Water hammer arrester (Model 1250)
☐ Tailpiece kit (TPK)

DIMENSIONS & WEIGHTS (do not include pkg.)

DIMENSIONS & WEIGHTS (do not include plug)

SIZE		CONNECTIONS	DIMENSIONS (approximate)								WEIGHT	
			A		B		C		D			
in.	mm		in.	mm	in.	mm	in.	mm	in.	mm	lbs.	kg.
1/2	15	SINGLE UNION	4 1/2	114	5 1/4	133	3/4	19	2 3/4	70	2.5	1.1
1/2	15	LESS UNION	3 3/8	86	5 1/4	133	3/4	19	2 3/4	70	2.3	1.0
1/2	15	DOUBLE UNION	5 7/8	149	6	152	1	25	2 3/4	70	3.0	1.4
3/4	20	SINGLE UNION	4 5/8	117	6	152	1	25	2 3/4	70	2.9	1.3
3/4	20	DOUBLE UNION	6	152	6	152	1 1/8	29	2 3/4	70	3.0	1.4
1	25	SINGLE UNION	5	127	6 11/16	170	1	25	3 3/8	86	4.1	1.9
1	25	DOUBLE UNION	5 7/8	149	6 11/16	170	1 1/8	29	3 3/8	86	4.5	2.0

APPLICATION

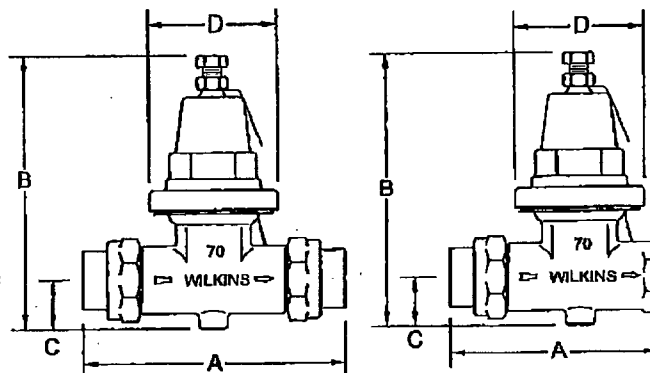
Designed for installation on potable water lines to reduce high inlet pressure to a lower outlet pressure. The unitized replaceable cartridge reduces time involved with cleaning and maintenance. The direct acting integral bypass design prevents buildup of excessive system pressure caused by thermal expansion. The balanced piston design enables the regulator to react in a smooth and responsive manner to changes in system flow demand, while at the same time, providing protection from inlet pressure changes.

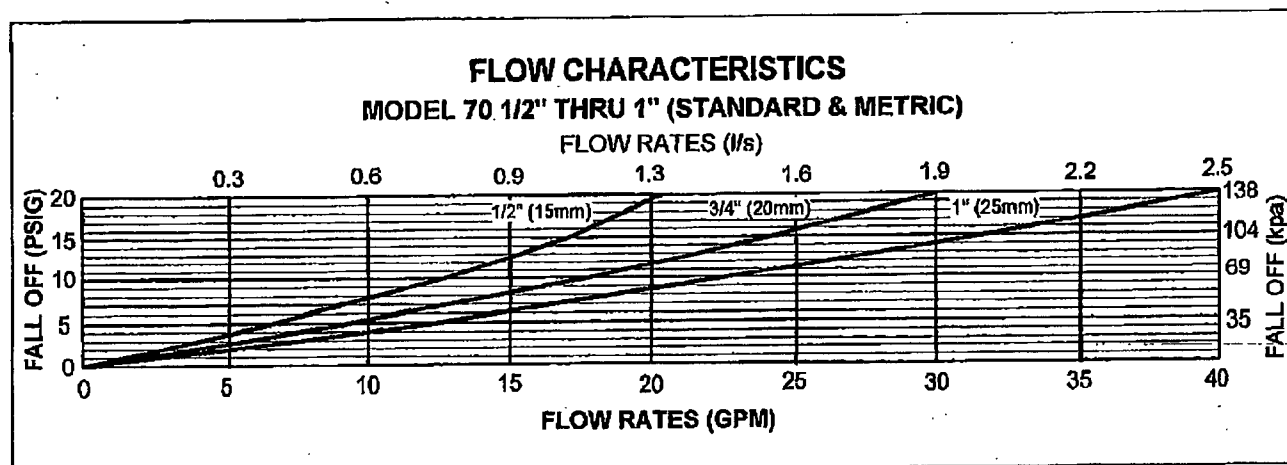
STANDARDS COMPLIANCE

- ASSE® Listed 1003
- IAPMO® Listed
- CSA® Certified
- City of Los Angeles Approved

MATERIALS

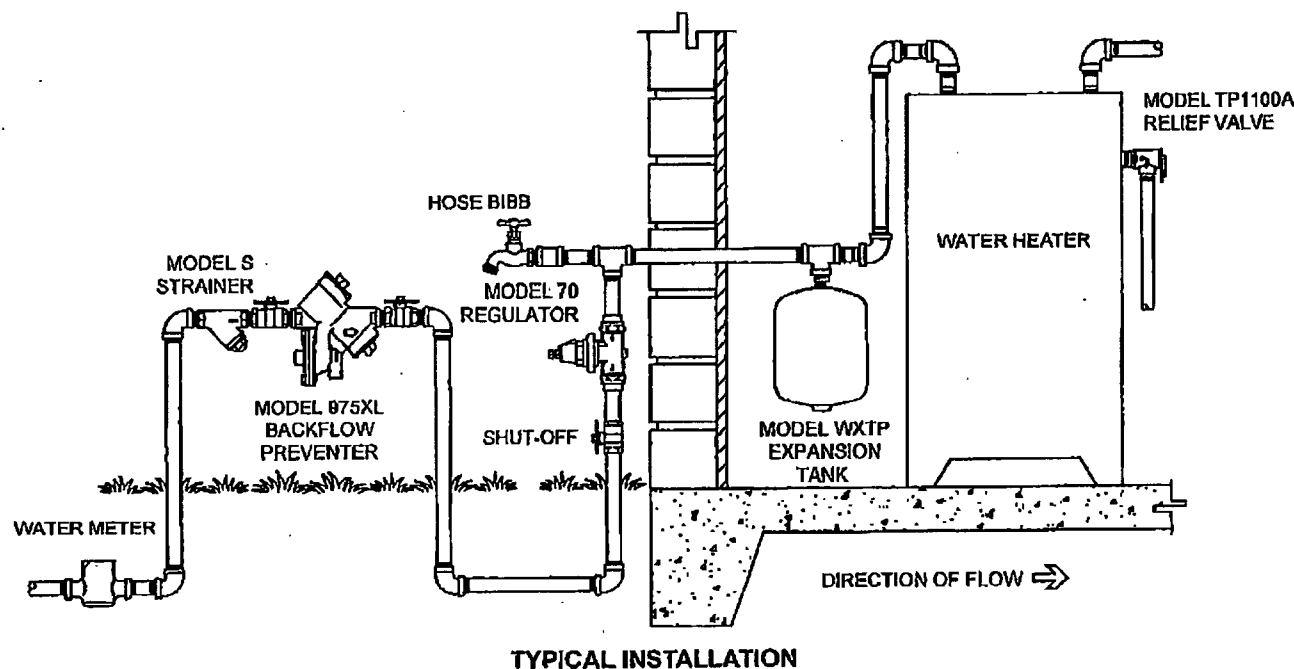
- Body and bell Cast bronze, ASTM B 584
 Seat Stainless Steel, 300 series
 Stem & sleeve Brass ASTM B 16
 Elastomers Buna nitrile, FDA (CFR) 21, 177.2600
 EPDM, FDA (CFR) 21, 177.2600
 Strainer screen Stainless Steel, 300 series

DOCUMENT #:
REG-70REVISION:
10/10



TYPICAL INSTALLATION

Local codes shall govern installation requirements. Unless otherwise specified, the assembly shall be mounted in accordance with the manufacturer's instructions and the latest edition of the Uniform Plumbing Code. The assembly shall be installed with sufficient side clearance for testing and maintenance. The Model 70 may be installed in any position. If installed in a pit, vault or indoors, specify the "SC" sealed cage option. Multiple installations are recommended for wide demand variations or where the desired pressure reduction is more than 4 to 1 (i.e.: 200 psi inlet reduced to 50 psi outlet). **CAUTION:** Anytime a reducing valve is adjusted, a pressure gauge must be used downstream to verify correct pressure setting. Do not bottom adjustment bolt on bell housing.



SPECIFICATIONS

The Pressure Reducing Valve shall be, of the direct-acting type and ASSE® 1003 Listed. The integral bypass check valve main body and bell housing shall be cast bronze (ASTM B 584). The pressure reducing valve shall be of the balanced piston design and shall reduce pressure in both flow and no-flow conditions using an adjusting bolt. All internal parts shall be corrosion resistant and included in a replaceable cartridge. The bronze bell housing shall be threaded to the body and shall not require the use of ferrous screws. The Pressure Reducing Valve shall be a WILKINS Model 70.

EXHIBIT 2

GENERAL AGREEMENT

This agreement made this 3rd day of September 2002 by and between Mark R. Searcy, (Contractor), and Stig Wennerstrom (Owner).

45

SUNSET POINTE

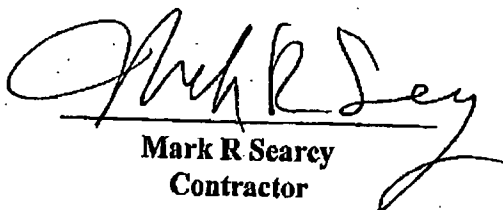
1. The Contractor will provide all labor and materials for construction of a residence at Cliffs at Glassy—Falling Star Way, Lot #22, Greenville County, South Carolina in accordance with plans and specifications which have been reviewed by both parties.
2. Contractor has prepared a detailed estimate of the cost of constructing such residence which estimate is attached hereto. Contractor assumes no obligation as to the accuracy of such estimate, only that it is his considered judgment as to the approximate cost.
3. Contractor shall promptly commence, and diligently pursue, the construction of the residence in strict compliance with such plans and specifications. The work shall at all times be adequately manned and the workmanship shall be of superior quality.
Contractor shall use his best efforts to obtain the lowest feasible cost of material, workers, and sub-contractors. Workers employed by Contractor shall be compensated on the basis of hours actually worked on the job.
4. Owner or Owner's architect or representative may from time to time inspect all work and materials going into construction of the residence. Any defective work or material shall immediately be removed at the expense of responsible party upon request of the Owner.
5. The sum to be paid by Owner for performance of this contract shall be a fee of \$185,000 (One Hundred Eighty-five thousand dollars) plus actual COSTS paid by Contractor to or for:
 - a. Any worker in the employ of Contractor for hours worked on the residence including overhead factor.
 - b. Any sub-contractor for work done on the residence.
 - c. Material delivered to, and incorporated into the construction of the residence.
8. Payment of such Cost and fee shall be as follows:
 - a. Prompt payment upon presentation of bills itemizing the above items of cost (issued approximately once a month).
 - b. The fee shall be paid in installments as follows:
 - \$30,000 deposit upon signing of this Agreement
 - When foundation completed--\$35,000
 - When structure erected to tarpaper on roof--\$30,000
 - When exterior doors, and windows installed--\$15,000
 - When soffit, fascia, & roofing installed--\$15,000

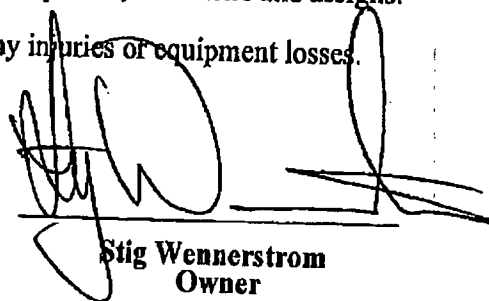
Initials

[Handwritten Signature]

When stucco and exterior finish complete-inc. patios--\$15,000
When drywall finished ready for paint--\$15,000
When cabinets & hard surface floors installed--\$15,000
Final payment of \$15,000 due within 30 days from issuance of
Certificate of Occupancy and initial punch list complete.

9. Owner shall maintain adequate builders risk insurance on the construction work and Builder shall maintain general liability insurance.
10. In case of any dispute between the parties on account of any of the provisions of this agreement or in case the parties cannot agree as to the application thereof, such dispute shall be resolved by a Board consisting of three parties: one to be appointed by each of the parties and the third to be selected by the two so appointed and a decision of any two of the Board shall be final and binding on both parties. Cost of such Board shall be borne equally between the parties.
11. Upon ten (10) days' written notice to Contractor, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall agree to pay Contractor the following:
 1. All Work executed and cost or expense in connection with the Work.
 2. The reasonable costs and expenses attributed to such termination, including demobilization costs and amounts due in settlement of terminated contracts with material suppliers, subcontractors and Design Consultants. Contractor shall make its best effort and cooperate with Owner in transferring contractual obligations with subcontractors and material suppliers so as to minimize excessive settlement costs.
 3. The fee is to be paid prorata as to total actual billings agreed upon compared to the budget cost.
12. This Agreement shall be binding upon the parties, their heirs and assigns.
13. Owner assumes no responsibility for any injuries or equipment losses.


Mark R Searcy
Contractor

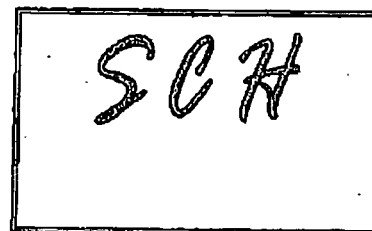

Stig Wennerstrom
Owner

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Searcy Custom Homes

828 692 3172

p. 3



Searcy Custom Homes

Mark R. Searcy
 Licensed General Contractor
 Route 1, Box 264-A
 Zirconia, NC 28790

Telephone (828) 697-0603
 Fax (828) 692-3172
 Cellular (828) 696-5877
 E-Mail: Homes@biline.com

August 28, 2002

Proposal For: Mr. & Mrs. Stig Wennerstrom
 Catexor, Inc.
 2730 S.W., Third Avenue
 Suite 800
 Miami, FL 33129

Phone: (305) 856-8500
 c/o Vivian Monte
 vmonte@vamosoil.com

6,141 Total Heated Square Feet
 1,427 Square Feet Upper Floor
 926 Square Feet Patio
 66 Square Feet Mechanical

4,714 Square Feet First Floor
 552 Square Feet Porte-Co-Chere
 84 Square Feet Balconies
 854 Square Feet Garage

Total Price Estimate For Turn-Key Home:

\$1,489,900.00

SCH Labor & Materials:

Design Detail Drawings	\$5,000.00
Project Supervision, Labor & General Conditions	\$59,000.00
Concrete {labor & material}	\$25,200.00
Driveway & Sidewalks {concrete with accent stamping}	\$27,400.00
Block {inc. French drain, stucco, etc.}	\$29,900.00
Electrical	\$16,500.00
Plumbing	\$12,700.00
Framing Complete	\$134,000.00
Exterior Finish {soffit, fascia, trim, molding brackets}	\$21,100.00
Exterior Finish—stucco & cast stone	\$96,500.00
Exterior Steps, Patios, Decks & Railing	\$63,000.00
Interior Finish, Lam. Beams, Stairs & Railing	\$96,800.00
Doors	\$17,200.00
Closets	\$11,000.00
Insulation	\$11,900.00
Sheetrock	\$28,200.00
Roofing {90 squares of clay tile}	\$75,000.00
Miscellaneous {building permit, porta-jon, etc.}	\$13,300.00

Initials MS

Defendants' Memorandum in Support of Summary Judgment

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Searcy Custom Homes

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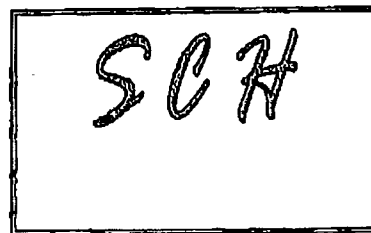
p. 1

Wennerstrom -2-

Guttering	\$8,100.00
Grading	\$12,200.00
Exterior Doors, Windows, and Overhead Doors (inc. \$5,000 front door)	\$90,000.00
Door Hardware	\$6,000.00
Fireplaces (3 boxes & 2 chimneys)	\$17,500.00
Water Line	\$1,000.00
Septic	\$1,000.00
Heating & A/C	\$21,000.00
Gas tank buried & copper line	\$5,500.00
Cabinets	\$80,000.00
Appliances	\$30,000.00
Floor Finish—wood	\$40,000.00
Floor Finish—tile	\$25,000.00
Painting	\$27,600.00
Electrical Fixtures & Decorative Lighting	\$40,000.00
Plumbing Fixtures	\$30,000.00
Bath Accessories & Mirrors	\$4,000.00
Sauna	\$15,000.00
Landscaping & Irrigation	\$85,000.00
Central Vacuum	\$2,300.00
Security System, Smart Wiring, Sound, etc.	\$20,000.00
Subtotal	\$1,304,900.00
SCH Contracting Fee	\$185,000.00
Grand Total	\$1,489,900.00

Initials





Searcy Custom Homes

Mark R. Searcy
Licensed General Contractor
Route 1, Box 264-A
Zirconia, NC 28790

Telephone (828) 697-0603
Fax (828) 692-3172
Cellular (828) 696-5877
E-Mail: Homes@brnel.com

SAMPLE CUSTOMER LABOR 1/12/00 - 2/1/00

Joel Beach	63.00 hours	\$630.00
Stephen Garren	79.50 hours	\$1,033.50
Kenneth Hadley	18.00 hours	\$306.00
Brad Hutchinson	76.00 hours	\$1,368.00
Brian Merrill	82.75 hours	\$910.25
Scott Pressley	21.50 hours	\$343.00
Howard Randall	55.25 hours	607.75
Mark Searcy	10.00 hours	\$250.00
Greg Watkins	39.00 hours	\$214.50
Geoffrey Woodside	15.00 hours	<u>\$135.00</u>

Subtotal	\$5,798.00
+68% Overhead	<u>\$3,942.64</u>

Grand Total	<u>\$9,740.64</u>

68% Overhead Breakdown:

24%	Insurance {General Liability, Workers Compensation, Medical, Benefits, etc.}
8%	Matching Company FICA & Medicaid; FUTA & SUINC
11%	Office Expense {Labor, Printing, Professional Fees, Postage, Subscriptions, Equipment}
10%	Tools & Machinery & Repairs
1%	SCH Licenses & Permits
9%	Communication {cellular, long distance, etc.}
4%	Transportation
1%	Advertising

Initials

Mark - Seems high?

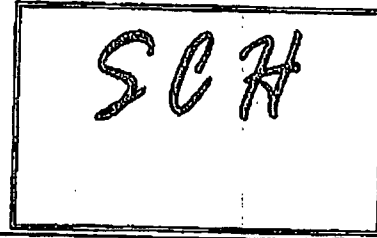
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Searcy Custom Homes

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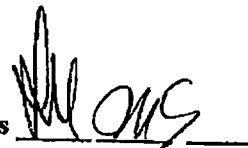
Searcy Custom Homes

Mark R. Searcy
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Route 1, Box 264-A
Zirconia, NC 28790

Telephone (828) 697-0603
Fax (828) 692-3172
Cellular (828) 696-5877
E-Mail: Homes@bri.net

SAMPLE CUSTOMER MILEAGE 1/12/00 - 2/1/00

Joel Beach	120.5 miles	\$30.13
Stephen Garren	130.0 miles	\$32.50
Kenneth Hadley	90.0 miles	\$22.50
Brad Hutchinson	140.5 miles	\$35.13
Brian Merrill	140.5 miles	\$35.13
Scott Pressley	75.0 miles	\$18.75
Howard Randall	150.0 miles	\$37.50
Greg Watkins	100.0 miles	\$25.00
Geoffrey Woodside	75.0 miles	<u>\$18.75</u>
Total		\$255.39

Initials 

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Searcy Custom Homes

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Searcy Custom Homes

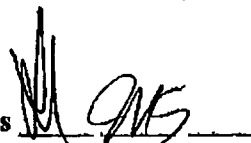
Mark R. Searcy
 Licensed General Contractor
 Route 1, Box 264-A
 Zirconia, NC 28790

Telephone (828) 697-0603
 Fax (828) 692-3172
 Cellular (828) 696-5877
 E-Mail: Homes@brinet.com

**SAMPLE CUSTOMER
 INVOICE 2/1/00**

AAAAA Services	Invoice #642	\$58.30
All Aluminum	Invoice #709	\$85.21
Builders First Source	Invoice #967	\$123.12
Builders First Source	Invoice #969	-\$123.12
Henderson County Inspections		\$560.00
Harold Galloway Masonry		\$4,735.00
Kingsway	Invoice #140	\$2,163.33
Lowe's	Invoice #030	\$110.97
Lowe's	Invoice #140	\$75.77
Lowe's	Invoice #147	\$42.18
Lowe's	Invoice #259	\$292.65
Lowe's	Invoice #452	\$195.65
Lowe's	Invoice #524	\$21.74
Lowe's	Invoice #646	\$366.01
Lowe's	Invoice #757	\$54.70
Lowe's	Invoice #763	-\$16.31
Lowe's	Invoice #794	\$208.84
Lowe's	Invoice #836	-\$290.80
Lowe's	Invoice #850	\$106.85
Lowe's	Invoice #853	66.74
Lowe's	Invoice #930	\$635.23
Wood Tectonics	Invoice #313	\$5,044.50
Mileage—SCH		\$255.39
Labor		<u>\$9,740.64</u>
Total Material & Labor		\$24,512.59

Initials



**ROGER “DEAN” HARRIS
DEPOSTION CITATIONS**

ROGER "DEAN" HARRIS

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1 documents?

2 A. I actually do not recall if Mr. Hafner gave these
3 to me or if they were provided to my client.

4 Q. Have you reviewed these two documents?

5 A. I have.

6 Q. I don't have your February 9th email.

7 A. Yes, sir.

8 Q. But let me ask you, did you arrive at any
9 conclusions or opinions on February 9th, 2009?

10 A. I did arrive at opinions. They would not have been
11 contained in the email.

12 Q. What were those opinions?

13 A. The opinion I had on February 9th after I completed
14 my examination and had the information from Mr.
15 Hafner was I had already concluded that the valve
16 had been properly installed. I saw no evidence to
17 suggest it had not been, and indications suggest it
18 had been. We were aware that the regulator had
19 failed. It was my opinion the regulator had failed
20 in an open position and had most probably admitted
21 greater than 125 PSI pressure to the residence.
22 And that excess pressure had caused the fitting on
23 this valve to lose its seal and fail.

24 Q. Let me make sure that I understand your opinions on
25 February 9th. Were you of the opinion on February

ROGER "DEAN" HARRIS

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1 9th that the valve to the bidet was appropriate and
2 also appropriately installed?

3 A. That was the opinion I had on site. I did more
4 work to confirm that opinion. But I had already
5 pretty well formed that opinion on site.

6 Q. And is that your opinion today?

7 A. It is.

8 Q. And is it also your opinion that the pressure
9 regulator valve was appropriate for the
10 installation on this home and also appropriately or
11 correctly installed on this home?

12 A. Yes and no. That was two questions.

13 Q. Yes, it was.

14 A. I believe the regulator is the appropriate
15 regulator for this service. I do not approve of
16 its installation location or the installation
17 configuration of the piping.

18 Q. Let me clarify a little bit. Removing the location
19 and configuration, was installed onto the pipes
20 correctly?

21 A. It was installed onto the pipes correctly in that
22 it was attached by its thready connections, and I
23 saw nothing wrong with the connections.

24 Q. Did you have an opinion on February 9th that its
25 installation location was incorrect?

1 printed out of my file. Without going through the
2 photo disc I could not assure you that this is all
3 the photos.

4 Q. And it looks to me like the last page is a little
5 bit different layout than the first four?

6 A. Yes, sir.

7 Q. Do you know the reason for that?

8 A. Yes, sir. The first four were my site photos. The
9 last page are the laboratory examination of the
10 regulator.

11 Q. Your laboratory?

12 A. Yes, sir.

13 (OFF THE RECORD).

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. Let's talk about the location of the pressure
16 reduction valve. I believe you testified earlier
17 that the location was incorrect. And would you
18 please again, sir, tell me why you believe the
19 location of the pressure reduction valve was
20 incorrect?

21 A. Because where it's located is a place where you may
22 not notice it or may not even know it exists. All
23 the homeowner may know is there's a manhole there.
24 A lot of times it's nothing but a valve to control
25 the -- shut the water off to your house. In my

ROGER "DEAN" HARRIS

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1 opinion the regulator, since it's a machine, a
2 mechanical device that will ultimately require
3 maintenance, it should have been in a more
4 accessible location. My suggestion would be
5 hanging on the wall of the garage.

6 Q. And so is your complaint regarding the location
7 simply out of sight out of mind?

8 A. Well, not completely. It would be very difficult
9 to put a pressure relief line into it with it in an
10 underground location. You would have to run a
11 complete relief line underground back to wherever
12 you were going to dump it. It would be expensive.
13 You could do it, but it's not a very good design.

14 Q. So there's two parts to the location which is --
15 the first is sort of if you don't see it or know
16 it's there then you don't maintain it?

17 A. Correct.

18 Q. And then your second criticism of its location is
19 the pressure relief line would be difficult to
20 install there?

21 A. That is correct.

22 Q. Now, is there anything either in the code or in any
23 other publication or industry standard that
24 directs ---

25 (PHONE RINGING).

ROGER "DEAN" HARRIS

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1 (OFF THE RECORD).

2 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

3 Q. Let me start that over again. Is there any code,
4 statute, regulation, industry standard or other
5 publication which directs or recommends the
6 location of a pressure relief valve?

7 A. The only code or standard or regulation, the
8 building code in South Carolina requires that there
9 be a pressure relief device on -- I mean, excuse
10 me, a regulator on the house. They do not mention
11 a pressure relief device with it.

12 Q. And so is the answer to my question that there is
13 not anything that I or a builder or a plumber can
14 go look at to determine what their obligation is
15 and the location of the installation of a pressure
16 regulator valve?

17 A. The only location information is that it must be on
18 the supply line to the house. That's all the code
19 requires. The code doesn't give you the details of
20 your design. It simply says where in the system it
21 must be.

22 Q. And is there any industry publication that would
23 help or direct a plumber or builder in identifying
24 the appropriate location of the installation of the
25 regulator?

ROGER "DEAN" HARRIS

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1 A. I don't know such a code or standard. But just
2 simply good plumbing and engineering practice would
3 tell you the things that I'm describing. It's a
4 device that needs to be maintained. You put
5 devices that need to be maintained where they can
6 be maintained.

7 Q. And as we've already -- well, we've already
8 determined this one could have been maintained in
9 its location by a licensed plumber in South
10 Carolina?

11 A. Yes, sir; it could have been maintained in that
12 location. But again, you could not very easily
13 have put a relief device on there. And if you did
14 put a relief device in this underground environment
15 it would probably malfunction eventually.

16 Q. Is the installation if this pressure -- of this
17 pressure regulator compliant with the applicable
18 code in effect at the time of its construction?

19 A. Yes, sir; it's applicable because the code simply
20 requires that you put an appropriate pressure
21 regulator on the house. Code doesn't tell you how
22 to design your piping. It doesn't tell you where
23 to locate it other than you have to have one on the
24 supply line. It's not the code's job, if you will,
25 to provide the detailed design. That's going to

ROGER "DEAN" HARRIS

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1 depend very much on the circumstances of the
2 installation.

3 Q. But is it fair to say that the State of South
4 Carolina has determined the appropriate standards
5 for the construction of residential houses in South
6 Carolina and codified them in the code in effect at
7 the construction?

8 A. The South Carolina Building Code is just like any
9 other building code in any other state. It tells
10 you how the state wants you to build your house.
11 And it is a minimum code. All codes are minimum
12 design standards. They are not Cadillacs. They
13 are the bare minimum standard.

14 Q. Well, is it fair to say that any product could be
15 designed and manufactured to be better?

16 A. I wouldn't say that necessarily about anything.
17 But almost anything can be improved. The question
18 is utility for the cost of the improvement.

19 Q. So I guess my question is to you, understanding
20 that anything can be improved, has the builder and
21 plumber in -- of Mr. Wennerstrom's home complied
22 with the standards that were in effect during the
23 construction of this home?

24 A. They have complied with the building code. The
25 building code does not cover all situations. But

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1 Q. And then the second one was configuration.

2 A. Correct.

3 Q. And will you explain to me please your opinions
4 regarding the inadequate or inappropriate
5 configuration of the plumbing system?

6 A. The configuration I was referring to the addition
7 of a pressure relief device on the outlet line from
8 the regulator.

9 Q. Would that be considered the upstream or downstream
10 side?

11 A. That would be downstream.

12 Q. Downstream. So toward the house?

13 A. Toward the house.

14 Q. And you called it a -- tell me again, pressure
15 what?

16 A. Pressure relief device. Normally just a relief
17 valve.

18 Q. And tell me what that would look like, or describe
19 it if you can.

20 A. Pressure relief valves are typically angle valves,
21 which means the inlet will be in one direction and
22 the outlet will be turned 90 degrees from that
23 direction. In fact, almost every home I know has
24 one in it because there is such a device on your
25 water heater. So this is identical to the device

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1 that would be on a water heater. It contains a
2 spring loaded valve seat. The spring is set such
3 that the valve will trip or open at whatever the
4 set pressure you set for relief is. And if the
5 pressure in the system reaches or exceeds that
6 setting, the relief valve will open and will vent
7 the pressure.

8 Q. Presumably outside or away from the house?

9 A. Yes, sir. My comment earlier was that I would put
10 a vent line through the garage wall, either to
11 atmosphere, to ground, or to a sewer, whatever was
12 most appropriate.

13 Q. How is that different than the pressure reduction
14 valve?

15 A. The pressure reduction valve controls the pressure
16 downstream. A pressure relief valves relieves
17 excess pressure.

18 Q. Now, that pressure relief valve, is that required
19 by the code?

20 A. No, sir. The code does not require one on the
21 regulators. It does require one on water heaters.
22 But regulators have just recently been introduced
23 to the code. We didn't require regulators on
24 our -- excuse me, pressure relief valves on hot
25 water heaters until experience had indicated they

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1 needed it. I expect that experience will
2 eventually indicate the need for a pressure relief
3 device and it will make it into the building code,
4 but it has not done so yet.

5 Q. And at the time this home was constructed was it
6 typical in the industry, and I'm talking about
7 residential construction, to install a pressure
8 relief device?

9 A. No, sir; it's not. It has only recently become
10 common to put on regulators at all. And whoever
11 decided regulators should go on did not consider
12 the consequences of a regulator failure.

13 Q. Following up with that, if it is not in the code
14 and it was not regular or routine practice in the
15 residential home building industry, do you still
16 believe that that was a failure by my clients in
17 this particular house?

18 A. Yes, sir.

19 Q. Why?

20 A. Because of the reasons I've stated. The fact that
21 the code doesn't require it doesn't mean it
22 shouldn't be done. The regulators are known to
23 fail. They will fail. That's an absolute given.
24 The only question is when. And without a relief
25 device on the line, if the regulator fails the

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1 house will flood. It's inevitable.

2 Q. Now, will you agree with me that the creator,
3 designer, or manufacturer of a product including a
4 home should be judged by the standards in place at
5 the time of that creation in a general sense?

6 A. In the general sense, yes. And in my opinion they
7 have violated the standards of good design and
8 engineering practice here.

9 Q. But the standards in effect at the time this home
10 was constructed was not to install a pressure
11 relief device; correct?

12 A. If you mean by written code of standard, there was
13 no such standard in either direction. It was not
14 the general practice in the industry to install
15 them.

16 Q. And that's what I'm saying. If there is no code
17 requirement, if it is not the general industry
18 standard, if it is not the general practice at the
19 time the home was constructed, why do you believe
20 that this particular builder on this particular
21 home should have been required to install this
22 device?

23 A. Required would imply that someone else made him do
24 it. I think he was required to do it in order to
25 provide a proper product. The -- I will repeat,

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1 term. There are many industry publications. There
2 were probably a good many that would recommend
3 relief devices, but they may not be applicable to a
4 residence.

5 Q. And that's what I'm asking you is, other than the
6 opinion that you're giving here today, can you
7 point us to anything published, a video, anything
8 that supports your position that when this home was
9 built it needed to have a pressure relief device?

10 A. I have not seen where anyone else has expressed
11 this specific opinion except other people from my
12 company in similar situations.

13 Q. The pressure relief device that you are suggesting,
14 does it cut off water to the home?

15 A. No, sir; it diverts the water away from the home.

16 Q. Does water continue to the home?

17 A. There would still be some water continuing to the
18 home, but the water that continued to the home
19 would be below the pressure setting of the relief
20 valve.

21 Q. Would it be enough to get water out of the home?

22 A. No, sir. What it does is prevents the leak from
23 ever happening.

24 Q. Well, I understand that. Presuming that the
25 pressure relief valve is triggered and is now

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1 intended function and it was not performing its
2 intended function on the day I examined it in the
3 lab.

4 Q. So you just can't find why; is that fair?

5 A. That's correct. We do not know exactly why. We
6 did not find the classic failure modes of either a
7 fractured spring or a ruptured diaphragm.

8 Q. But the failure of that pressure reduction valve
9 was not my client's fault; is that correct?

10 A. I would not say that the failure was his fault.
11 His fault was failure to put in preventative
12 measures for when the regulator inevitably did
13 fail, but he did not cause the regulator failure.

14 Q. But if the regulator had performed its function on
15 that day, the house would not have flooded; is that
16 fair?

17 A. That is correct. That house would not have flooded
18 until the day that regulator failed open.

19 Q. And you cannot testify that the regulator does not
20 have a defect. You just opine that you can't find
21 a defect?

22 A. That is correct. I can tell you that as an
23 engineer I know regulators and I do not see a
24 defect in this regulator. I cannot tell you that
25 there's not one in there. I can tell you that I

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1 either for or against a residential plumber or a
2 residential builder?

3 A. Yes, I could tell you what some of the issues were.

4 Q. Okay.

5 A. For example, I have an active case right now, I
6 don't remember the names of the parties, and the
7 issue is a leak in a copper water line. And in
8 this particular case the leak was caused by a screw
9 being driven into it, so the plumber will not be
10 found at fault. It's possible that the carpenter
11 or the electrician who drove the screw will be.

12 BY MR. IMHOFF:

13 I'll ask him about that off the record.

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. Have you ever testified that either a residential
16 builder or a residential plumber has satisfied
17 their obligation by complying with the code in
18 effect at the time of the construction and the
19 industry standard at the time of construction,
20 and/or?

21 A. I will tell you that almost certainly I have. I
22 would have a hard time telling you about a specific
23 example.

24 Q. And isn't it fair to say that in this case both of
25 my clients have complied with both the code at the

ROGER "DEAN" HARRIS

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1 time of construction and the industry standard
2 prevalent at the time of construction?

3 A. I would agree with you that complied with the
4 building code, because the building code does not
5 address the issue at present here. And if you
6 interpret the fact that most companies are not
7 doing this to represent an industry standard, then
8 yes, they did it the same way most people were
9 currently doing it at that time.

10 BY MR. IMHOFF:

11 I don't think I have anymore questions for you. I
12 would kind of like to see what you have when you go
13 back and check your files for invoices, emails and
14 that kind of thing.

15 BY THE WITNESS:

16 Can you give us those two -- if somebody's got a
17 record of those two specific ones we think are
18 missing, I will make certain we look for those.
19 And I will also ask my secretary to search and make
20 sure there is nothing else missing.

21 BY MR. IMHOFF:

22 I think you, sir. Answer any questions that your
23 attorney has. I'm going to reserve the right to
24 come back and ask him about that stuff, is what I'm
25 saying.

SCOTT D. KLABEN DEPOSITION CITATIONS

1 for this loss is being concurrently produced with
2 these answers." Will you agree with me that the
3 complete claim file has not been produced because
4 there are redacted portions of that file?

5 A. In regards to the first party portion of it I
6 believe we've submitted all the claims portions of
7 the damages for the file. With the other part we
8 redacted I'm not 100 percent knowledgeable of
9 what -- you know, with the claim file you're
10 referring to, I guess. I'm not sure if any of the
11 redacted portions of it would make the file
12 incomplete. Again, I'm -- can't say if that's true
13 or correct.

14 Q. Well, you will agree with me that your entire log
15 notes have not been produced?

16 A. That is correct.

17 Q. Let's go back to the question. Is it fair to say
18 that you cannot provide testimony why Searcy Custom
19 Homes or B&B Plumbing are responsible for the
20 damages in this case?

21 A. Yeah, I'm not an expert in the plumbing field.
22 Yeah, that is correct.

23 Q. And is it also fair to say you do not know who will
24 provide that testimony?

25 A. Yeah. I do not know who will provide that

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG)
4 Fireman's Fund Insurance)
5 Company,) TRANSCRIPT OF RECORD
6) 2011-CP-42-00618
7 Plaintiff,)
8 -vs-)
9)
10 Searcy Custom Homes, LLC,)
11 et al.) September 30, October 1
12) and 2, 2013
13 Defendants.) Spartanburg, South Carolina
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B E F O R E:

HONORABLE J. MARK HAYES II, JUDGE; and a jury.

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

SVEND HEWITT DEAL, ESQUIRE
Attorney for the Plaintiff

JASON MICHAEL IMHOFF, ESQUIRE
Attorney for the Defendants

Margaret A. Woods
Circuit Court Reporter

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MOTIONS AND MATTERS

1 THE COURT: Um, couple questions about your voir dire.
2 Um, you're gonna have to convince me that I need to instruct
3 the jury on subrogation, uh, insurance issues and monetary
4 damages. To me those are things that the lawyers need to be
5 arguing as opposed to me up front being asking the jury
6 questions about those.

7 MR. DEAL: Well, Your Honor, uh, let's just start with
8 subrogation. Um, there's there' an underlying prejudice that
9 I think we can all agree that this big insurance company's
10 here wantin' to sue some some couple a local folks and in
11 order for the jury to actually apprehend what that prejudice
12 might be they're gonna need to know why the insurance
13 company's here on the front end and that the law is in support
14 a that particular activity and then they can there thereafter,
15 Your Honor, and you ask 'em, Hey that's how it is, that just
16 goes the same for the, for the insurance company, ya know,
17 that why are they here, why why isn't Mr. Wennerstrom suing?
18 You know, I'll I'll obviously I wanna address that in in in my
19 arguments but those prejudices exist, Your Honor, and we see
20 'em every day and because Mr. Imhoff and I were discussing
21 this is not, these are not new things that come up, uh, and
22 I've actually spoken with, uh, the jurors after trial and
23 they've said, you know, why wasn't so and so here, what -- you
24 know, we we didn't think that, uh, that they were, they were
25 damaged, why aren't they here, you weren't damaged, it was so

MOTIONS AND MATTERS

1 and so, so that's that's the insurance company and the
2 subrogation, Your Honor, and and let's face it and \$400,000 on
3 a millionaire's home is a lotta money to to me or anybody else
4 that I know and if that that doesn't, uh, strike you as being
5 potentially prejudicial, I don't know what would, it's, you
6 know, it's a lotta money and a lot lotta people under these
7 circumstances are gonna go, Why would they, why would anybody
8 get to have that kinda money, so I just think we oughta clear
9 up that i -- that issue on the front end and that's why we
10 have included those instructions, Your Honor, or the, excuse
11 me, voir dire.

12 MR. IMHOFF: Your Your Honor, I I agree with you. I
13 mean, I I believe that that is something for Mr. Deal, sorry,
14 Deal but but to talk to the jury about and I was thinking just
15 the opposite, I think it's prejudicial if you tell the jury
16 this is all okay, the subrogation is great, insurance
17 company's a good guy, also ask them, ya know, do you have that
18 prejudice and I -- we may knock out the entire jury if if you
19 ask that. As to a specific sit -- set a questions, there's a
20 specific set a questions, Your Honor, on, uh, Page 3, 15 and
21 16 it asks about a new dishwasher leaking, those aren't the
22 facts of this case. He asks if, you know, the if the
23 insurance company can sue the plumber if he did it wrong, I
24 think those are also very prejudicial and it doesn't represent
25 what the facts of this case are at all but otherwise I agree

MOTIONS AND MATTERS

1 with your analysis. I, as I stated early earlier, I don't, I
2 don't think those are appropriate, I don't, I don't agree to
3 those along voir dire about subrogation.

4 MR. DEAL: Well, Your Honor, the only thing I'd add is,
5 uh, they're -- on the fr -- on the back end I would be asking
6 for a charge on subrogation as you might imagine but the
7 damage will be done if people are up there on the stand as
8 we're discussing this, uh, goin' forward why are they here,
9 what's goin' on that before that law is told to them and
10 that's what we're trying to avoid is prejudice.

11 THE COURT: Okay, alright. I'm not persuaded. Uh, I
12 just, I I've checked the pleadings, it's pled, uh, the
13 insurance policies, the payments, subrogation are pled so I,
14 you know, they're they're part of this case but I just, uh,
15 for the questions that I have to, uh, decide to ask the jury,
16 I think those are things that that ya'll can argue to them,
17 ya'll can present to them, it's left up to you as to a
18 strategy to, uh, as it is with any case case, a lawyer who
19 feels there's a fact or something about their case that they
20 feel is unusual to them or maybe prejudicial to them to decide
21 how strategically you wanna get that in front of them, how you
22 deal with it, that's what ya'll do. I I just, uh, do not see
23 that in voir dire that me asking that -- those questions, uh,
24 would be the right thing to do at this juncture, uh, and
25 whe -- whether or not I charge, uh, subrogation at the end, I

MOTIONS AND MATTERS

1 will be more than happy take a look at your your law and and
2 if it's appropriate I'll charge it, you know, but I just, I'm
3 prob -- I'm I'm not gonna ask those types of of questions to
4 the jury, uh, so let's see.

5 MR. DEAL: Well, Your Honor, just wanna lodge my official
6 objection just in case that ever comes ---

7 (Indiscernible cross-talk.)

8 THE COURT: Certainly.

9 MR. DEAL: --- in fronta -- thank Your Honor.

10 THE COURT: Uh, one, two, three, four, five six, I've got
11 total of six witnesses: Mark Searcy; Randall Blythe; Roger
12 Dean Harris; Charles Hefner? Hefner?

13 MR. DEAL: Hef ---

14 MR. HAFNER: Yes, Your Honor, Hafner, Chuck.

15 THE COURT: Hafner?

16 MR. HAFNER: Yes.

17 THE COURT: Hafner; Scott ---

18 MR. KLABEN: Klaben.

19 THE COURT: Klaben and Devon Cortright.

20 MR. IMHOFF: Yes, Your Honor.

21 THE COURT: Cortright. Anybody else?

22 MR. DEAL: I I think his name is Devon, Your Honor,
23 but ---

24 THE COURT: Devon you think.

25 MR. IMHOFF: No, no, Your Honor, it's Devon ---

MOTIONS AND MATTERS

1 THE COURT: Devon.

2 MR. IMHOFF: --- he's corrected me.

3 MR. DEAL: Oh, I'm sorry.

4 THE COURT: Anybody ---

5 MR. DEAL: (Indiscernible cross-talk.)

6 THE COURT: --- an -- anybody else potential?

7 (No response.)

8 THE COURT: Okay, alright. When I get to the part where,
9 uh, we're dealing with the lawyers, I'll have the plaintiff
10 first stand up and introduce himself and the firm to the
11 ladies and gentlemen of the jury, then Mr. Imhoff will go
12 next, introduce himself, uh, so so I'm really not askin' that
13 question because ya ya'll have to participate, uh, in the
14 presentation of that question. Stig Wennerstrom? Win ---

15 MR. DEAL: Wennerstrom.

16 THE COURT: Wennerstrom, okay.

17 (Pause.)

18 THE COURT: They're ready? Alright, let me, uh, just for
19 clarity purposes, uh, you're on Page 2 of your voir dire?

20 MR. DEAL: Yes, Your Honor.

21 THE COURT: Alright, I would intend to introduce the case
22 using your paragraph that you've got as your introduction
23 paragraph before your Question 13 ---

24 MR. DEAL: Um-hum.

25 THE COURT: --- but I will take out instead of saying

JURY QUALIFICATION

1 "pursuant to his insurance policy", I will just read,
2 "Fireman's Fund paid Mr. Wennerstrom's claim and ultimately
3 paid Mr. Wennerstrom for his covered damages" and then end it
4 there and then say, "This lawsuit seeks, uh, payment of those
5 damages from the defendants".

6 MR. DEAL: Other ris -- objections I was saying, Your
7 Honor, that sounds fine by me.

8 THE COURT: Alright.

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: But, again, I'm not intending get -- to go in
11 any of those questions nor about insurance, nor about money
12 damages but, I mean, but if you present a witness, I'm not
13 saying, I I would imagine those would be proper questions you
14 could ask your witness but, uh, I'm not gonna be charging, I
15 mean, announcing those to the jury at this juncture.

16 Anything else before we bring the jury in do the
17 qualification process?

18 MR. IMHOFF: Nothing, Your Honor.

19 THE COURT: Okay.

20 MR. DEAL: No, Your Honor.

21 THE COURT: You'll tell him to go ahead and bring 'em in?
22 Alright, I'll step back down and I'll come back in when the
23 jury's back I'll come in.

24 (The following takes place in the presence of the jury.)

25 THE COURT: Alright, ladies and gentlemen, we are now

JURY QUALIFICATION

1 going to proceed with the selection of our first jury for the
2 week. Um, I'm going to have some questions to ask you but
3 before I ask you these questions I need you to once again be
4 sworn in by the clerk of court, so please stand and raise your
5 right hand.

6 (Whereupon, the jury pool was sworn.)

7 THE COURT: Thank you, ladies and gentlemen. We are now
8 going to begin with the jury selection in the case of
9 Fireman's Fund Insurance Company, Aso Stig Wennerstrom
10 plaintiff vs. Searcy Custom Homes, LLC and B&B Plumbing, Inc.
11 Uh, ladies and gentlemen, this particular lawsuit rises out of
12 a January 24, 2009 water leak that the occurred at the home of
13 Stig Wennerstrom which is located at 45 Falling Star Way here
14 in Spartanburg County, uh, this water leak allegedly damaging
15 certain property and equipment. Pursuant to an insurance
16 policy with the plaintiff Mr. Wennerstrom submitted a claim to
17 Fireman's Fund for damages to his home caused by the water
18 leak. Fireman's Fund paid Mr. Wennerstrom's claim and
19 ultimately, uh, and ultimately paid to Mr. Wennerstrom for his
20 covered damages. Fireman Fund is now subrogated to the rights
21 and remedies of Mr. Wennerstrom to the extent of his payment
22 of the insured and this lawsuit seeks the damages claimed by
23 the plaintiff in this particular litigation. Ladies and
24 gentlemen, uh, I'm going to, uh, ask the, uh, let me find my
25 pen here, I'm gonna ask, ladies and gentlemen, if you would

JURY QUALIFICATION

1 please stand if you have or presently an insured or have fi --
2 ever filed a claim with Fireman's Fund Insurance Company or if
3 you have, uh, ever had type, any type of business
4 arrangements, uh, or done any other type of business with
5 Searcy Custom Homes, LLC or B&B Plumbing, Incorporated, please
6 stand.

7 (No response.)

8 THE COURT: Alright, thank you very much. Ladies and
9 gentlemen, I'm now going to read, uh, to you a list of
10 potential witnesses who may be called during the course of
11 this trial, uh, I need for you to please listen to these names
12 'cause at the end of this list of witnesses, potential
13 witnesses, I'm gonna ask if you would to please stand if you
14 are related by blood or marriage to any of these people, if
15 you have a close personal or social relationship with any of
16 these people or if you've ever had any type of business
17 dealings with any of these individuals I'm also going to ask
18 that as I call these names that if the individuals whose names
19 I called are present in the courtroom I'm gonna ask if they
20 would to please stand and face you. We have Mark Searcy,
21 Randall Blythe (stood), Roger Dean Harris of Engineer Design &
22 testing, Charles Hafner (stood), Scott Klaben (stood), Devon
23 Cortright of H2L Consulting Engineers. Ladies and gentlemen,
24 if you ever, uh, if if you are related by blood or marriage to
25 any of these individuals or if you have a close personal or

JURY QUALIFICATION

1 social relationship with any of these individuals or if you've
2 ever had any business dealings with any of these individuals I
3 need for you to please stand at this time.

4 (No response.)

5 THE COURT: Ladies and gentlemen, I'm now going to ask
6 the lawyers who will be participating in the trial of this
7 case to please stand and introduce themselves and their firms
8 to you.

9 MR. DEAL: My name is Svend Deal and I work for Cozen
10 O'Connor.

11 MR. IMHOFF: My name is Jason Imhoff and I work for the
12 Ward Law Firm here in Spartanburg.

13 THE COURT: Thank you, gentlemen. Ladies and gentlemen,
14 I need for you to please stand if you are related by blood or
15 marriage to any of these lawyers or if you have a close
16 personal or social relationship with any of these lawyers or
17 if you've ever been represented by any of these lawyers or
18 their firms or if you've ever been on the, uh, opposing side
19 of any of these lawyers or a member of their firm, please
20 stand at this time.

21 (No response.)

22 THE COURT: I need for you to please stand, ladies and
23 gentlemen, if you have heard any information or you have any
24 personal knowledge regarding the, uh, the alleged water leak
25 and any of the damages allegedly that occurred to

JURY QUALIFICATION

1 Mr. Wennerstrom's home, uh, as a result of the January 24,
2 2009 event, please stand at this time.

3 (No response.)

4 THE COURT: Ladies and gentlemen, I need for you to
5 please stand if you or a member of your immediate family has
6 any special skills or education as it, uh, relates to the
7 construction industry, plumbing industry, building city or
8 building codes inspectors or any special knowledge in regards
9 to hydraulics or physics please stand at this time.

10 THE COURT: Alright. Yes, ma'am, your juror number?

11 JUROR NUMBER 29: Twenty-nine.

12 THE COURT: Now you're Ms. Cooper?

13 JUROR NUMBER 29: Yes, sir.

14 THE COURT: Ma'am, you wanna approach. Lawyers.

15 (Whereupon, Juror Number 29 and counsel came forward.)

16 JUROR NUMBER 29: My husband worked in fire protection
17 industry for fifteen years, that's a lotta pipin', he knows a
18 lot about plumbing, a lot about the code so ---

19 THE COURT: Okay.

20 JUROR NUMBER 29: --- I don't know if that would count.

21 THE COURT: Alright. And the fact that your husband
22 worked in that capacity would that in any way affect your
23 ability to give both the plaintiff and defendant a fair
24 impartial trial in the event you're selected as ---

25 JUROR NUMBER 29: I don't think so.

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1 THE COURT: --- member of the jury? Okay.

2 JUROR NUMBER 29: I just kinda know a little bit about it
3 just from listenin' to him.

4 THE COURT: Certainly ---

5 JUROR NUMBER 29: (Indiscernible cross-talk.)

6 THE COURT: Thank you.

7 THE BAILIFF: Quiet please, quiet.

8 THE BAILIFF: Number 155.

9 (Whereupon, Juror Number 155 came forward.)

10 THE COURT: You're Ms. Williams?

11 JUROR NUMBER 155: Yes, sir.

12 THE COURT: Yes, ma'am, what is it, uh, who is it ---

13 JUROR NUMBER 155: My husband, uh, has his electrical
14 license ---

15 THE COURT: Okay.

16 JUROR NUMBER 155: --- engineer license, ---

17 THE COURT: Okay.

18 JUROR NUMBER 155: --- yes.

19 THE COURT: And the fact that your husband has that, uh,
20 is that -- would that in any way affect your ability to give
21 both the plaintiff and the defendant a fair and impartial
22 trial in the event you're selected as a member of the jury?

23 JUROR NUMBER 155: I wouldn't think so.

24 THE COURT: Thank you, ma'am.

25 JUROR NUMBER 155: Um-hum.

JURY QUALIFICATION

1 THE BAILIFF: Number 67.

2 (Whereupon, Juror Number 67 came forward.)

3 THE COURT: Give me one second. You're Mr. Hinkle?

4 JUROR NUMBER 67: Hinkle.

5 THE COURT: Hinkle, yes, sir.

6 JUROR NUMBER 67: I'm a pipefitter, I'm in

7 construction ---

8 THE COURT: Okay.

9 JUROR NUMBER 67: I work with much different, mostly rely
10 on for different companies so . . .

11 THE COURT: And the fact that, uh, you do that would that
12 in any way affect your ability to give both the plaintiff and
13 the defendant a fair and impartial trial in the event you're
14 selected as a member of the jury?

15 JUROR NUMBER 67: No, sir.

16 THE COURT: Thank you, sir.

17 JUROR NUMBER 67: Okay.

18 THE BAILIFF: Number 137.

19 (Whereupon, juror number 137 came forward.)

20 THE COURT: You're Mr. Sisk?

21 JUROR NUMBER 137: Yes, sir.

22 THE COURT: Yes, sir, what is that you or a member of
23 your immediate family knows?

24 JUROR NUMBER 137: Well I've been involved in the
25 cleaning/heating industry for over fifty years so I'm retired

JURY QUALIFICATION

1 now but, uh, I was involved in it.

2 THE COURT: And the fact that you were involved in that,
3 uh, would that in any way affect your ability to give both the
4 plaintiff and the defendant a fair and impartial trial?

5 JUROR NUMBER 137: No, sir.

6 THE COURT: Thank you, sir.

7 JUROR NUMBER 137: Um-hum.

8 THE BAILIFF: Number 39.

9 (Whereupon, Juror Number 39 came forward.)

10 THE COURT: You're Ms. Donas [sic]?

11 JUROR NUMBER 39: Yes.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 39: Yes, I work for heating, air
14 conditioning, plumbing; before came here I was outta state so
15 I ---

16 THE COURT: And what did you do for them?

17 JUROR NUMBER 39: Executive assistant ---

18 THE COURT: Okay, ---

19 JUROR NUMBER 39: --- so . . .

20 THE COURT: --- and the fact that you held that
21 position, ---

22 JUROR NUMBER 39: Um-hum.

23 THE COURT: --- uh, would that in any way affect your
24 ability to give both the plaintiff and the defendant a fair
25 and impartial trial in the event you're selected as a member

JURY QUALIFICATION

1 of the jury?

2 JUROR NUMBER 39: Um, I don't think it should.

3 THE COURT: Okay.

4 JUROR NUMBER 39: I'm not really sure, depends on the the
5 questions.

6 THE COURT: Okay. Alright.

7 JUROR NUMBER 39: I work for the actual owners, the two a
8 the owners so . . .

9 THE COURT: Okay. Alright, thank you very much.

10 THE BAILIFF: Number 21.

11 (Whereupon, Juror Number 21 came forward.)

12 THE COURT: Yes, ma'am, Ms. Carson.

13 JUROR NUMBER 21: Yes, um, our, uh, family business
14 Carson's Nut Bolt & Tool we have based out of ---

15 THE COURT: Right.

16 JUROR NUMBER 21: --- Spartanburg, one in Greenville and
17 Anderson ---

18 THE COURT: Okay.

19 JUROR NUMBER 21: --- and, uh, considering the custom
20 tools that we sell they might have been a customer of ours ---

21 THE COURT: Alright, ---.

22 JUROR NUMBER 21: --- so ---

23 THE COURT: --- and the fact, ---

24 JUROR NUMBER 21: --- as far as their supplies, what they
25 would pick up.

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1 THE COURT: --- and the fact that, uh, you or your family
2 were in that business would that in any way affect your
3 ability to give both the plaintiff and the defendant fair and
4 impartial trial in the event ---

5 JUROR NUMBER 21: No, ---

6 THE COURT: --- you're selected member of the jury?

7 JUROR NUMBER 21: --- I'd be non-bias.

8 THE COURT: Okay. Thank you, ma'am.

9 THE BAILIFF: Number 6.

10 (Whereupon, Juror Number 6 came forward.)

11 THE COURT: Number 6, you're Mr. Belcher?

12 JUROR NUMBER 6: Beheler.

13 THE COURT: Yes, sir.

14 JUROR NUMBER 6: Hi, I work for a manufacture of
15 plumbingware.

16 THE COURT: Okay. The fact that that you, uh, do that
17 would that in any way affect your ability to give both the
18 plaintiff and the defendant a fair and impartial trial?

19 JUROR NUMBER 6: It would not.

20 THE COURT: Thank you, sir.

21 THE BAILIFF: Number 164.

22 (Whereupon, Juror Number 164 came forward.)

23 JUROR NUMBER 164: Cash.

24 THE COURT: Yes, ma'am, Ms. Cash.

25 JUROR NUMBER 164: (Indaudible.)

JURY QUALIFICATION

1 THE COURT: And and the fact that your ex-husband does
2 that and and you do that would that in any way affect your
3 ability to give both the plaintiff and the defendant a fair
4 and impartial trial?

5 JUROR NUMBER 164: No, no.

6 THE COURT: Thank you, ma'am.

7 THE BAILIFF: Number 7.

8 (Whereupon, Juror Number 7 came forward.)

9 POLICE OFFICER: Take your hands outta your pockets,
10 thank you.

11 THE COURT: Yes, sir, Mr. Benstead.

12 JUROR NUMBER 7: I work for Carey Moving & Storage, we
13 done a good bitta work with water damage and stuff like that.

14 THE COURT: Okay. And the fact that that you, uh, do
15 that if you're selected as a member of the jury, would that
16 any way affect your ability give, your ability give both the
17 plaintiff and the defendant a fair and impartial trial?

18 JUROR NUMBER 7: No, I just have a good working knowledge
19 of.

20 THE COURT: Okay. Thank you, sir.

21 Does any member of the jury panel or a member of your
22 immediate family know, uh, this Mr. Stig Wennerstrom, if so
23 please stand at this time.

24 (No response.)

25 THE COURT: Has any member of the jury panel or a member

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1 of their immediate family, uh, ever been a party to whether a
2 plaintiff or the -- or a defendant to a construction
3 litigation, if so please stand at this time.

4 (No response.)

5 THE COURT: Has any member of the jury panel formed or
6 expressed an opinion about any issue or matter that may be
7 involved in this case, if so please stand at this time.

8 (No response.)

9 THE COURT: Is any member of the jury panel aware of any
10 bias or prejudice towards either the plaintiff or the
11 defendant in this case, if so please stand at this time.

12 (No response.)

13 THE COURT: Is there any member of the jury panel who is
14 a member of or contributor to any group which has as its
15 primary concern the promotion of law enforcement or victim's
16 rights, now these groups would certainly include but not, but
17 not lim -- but not be limited to such groups as MADD, SADD,
18 C.A.V.C., Citizens Against Violent Crime, if so please stand
19 at this time.

20 (No response.)

21 THE COURT: Does any member of the jury panel know of any
22 reason whatsoever why he or she should not serve as a juror in
23 this case with particular emphasis being placed on your
24 ability to be fair and impartial to both the plaintiff and the
25 defendant in this case, if so please stand at this time.

JURY QUALIFICATION

1 THE BAILIFF: Got one standing.

2 THE COURT: Yes, ma'am, your juror number?

3 JUROR NUMBER 46: Uh, Forty-six.

4 THE COURT: You wanna come forward?

5 JUROR NUMBER 46: Um-hum.

6 (Whereupon, Juror Number 46 came forward.)

7 POLICE OFFICER: Take your hands down to the side.

8 THE COURT: You're 46, you're Ms. Gamble?

9 JUROR NUMBER 46: Ms. Gamble.

10 THE COURT: Yes, ma'am.

11 JUROR NUMBER 46: Um, I am a party to a lawsuit, I just
12 wanted to let you know that, that's coming ---

13 THE COURT: Okay.

14 JUROR NUMBER 46: --- up in probly a few weeks.

15 THE COURT: Okay. Uh, is it a construction case?

16 JUROR NUMBER 46: No, it is not.

17 THE COURT: The fact that you are a party to that, uh,
18 litigation, would that in any way affect your ability give ---

19 JUROR NUMBER 46: No.

20 THE COURT: --- both the plaintiff and defendant ---

21 JUROR NUMBER 46: No, I just ---

22 THE COURT: --- a fair ---

23 JUROR NUMBER 46: --- wanted to ---

24 THE COURT: --- and impartial trial? Are you re -- uh,
25 in in in your lawsuit, are are you being represented by any of

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1 the lawyers that are involved in this case ---

2 JUROR NUMBER 46: Yeah.

3 THE COURT: --- or members of their firm?

4 JUROR NUMBER 46: Yeah.

5 THE COURT: Are are the lawyers that are involved in this
6 case are they of opposing side your lawsuit?

7 JUROR NUMBER 46: Uh, no, I did -- I do -- I own the
8 Bowen Center, ---

9 THE COURT: Okay.

10 JUROR NUMBER 46: --- there is, I do have one lawsuit
11 that was pending where a guy fell out there and if I'm not
12 mistaken, uh, he was, the guy's just he passed away but he was
13 bein' represented by the Ward Law Firm but I don't know who it
14 was.

15 THE COURT: Okay. And the the fact that that that ha --
16 has occurred would that in any way affect your ability to give
17 both the plaintiff and defendant ---

18 JUROR NUMBER 46: No, ---

19 THE COURT: --- an impartial trial?

20 JUROR NUMBER 46: --- I mean, it's, it doesn't, I just
21 wanted to be ---

22 THE COURT: Sure.

23 JUROR NUMBER 46: --- upfront.

24 THE COURT: Thank you very much.

25 JUROR NUMBER 46: Okay, thank you.

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1 THE COURT: Any additional questions from the plaintiff?

2 MR. DEAL: If I may approach, Your Honor. Mr. Imhoff.

3 (Whereupon, a bench conference was held off the record.)

4 THE COURT: Okay. Any additional questions from the
5 plaintiff?

6 MR. DEAL: Uh, no, Your Honor, not, uh, withstanding the
7 that we had asked to some additional questions.

8 THE COURT: Alright, and any other from the defendant
9 other than what had previously been asked as well with voir
10 dire?

11 MR. IMHOFF: Nothing, Your Honor.

12 THE COURT: Alright. Any, uh, any for cause issues, if
13 so approach.

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: Ladies and gentlemen, what we're doing now,
16 uh, in just a few moments we're going to, uh, what we're doing
17 now is the clerk of court, this lady who's sitting over here
18 (indicating) to my left, she is, uh, drawing a list of names
19 out from a word processor, uh, um, wanna tell you that because
20 not that many years ago back when I was in private practice,
21 uh, which is unfortunately getting really longer than what I
22 like to think, there was a, we used to bring in a barrel,
23 we've actually still have the barrel sitting back here in the
24 hallway, it's a wooden barrel and we would put everybody's
25 name in a capsule and then we'd spin the capsule and we'd

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1 bring in a person from the School For the Deaf and Blind who's
2 visually, uh, challenged and that person would sit and would
3 put their hand in the barrel, take one name out. The reason I
4 tell you that because this process used to take hours to do,
5 uh, 'cause we'd actually, you draw the names out, made a map,
6 put it on the board and so it it took quite some time. Now if
7 the word processing and the computer does well, it should only
8 take a matter of minutes but the ca -- the clerk of of court
9 is now making a list of your names or made a list of the names
10 and this list is gonna be shared with both the plaintiff and
11 the defendant, they're going to be given a sh -- a short
12 opportunity to review these lists and review all the notes
13 they have on you and then we're going to get back together and
14 go through what's called a "striking process", uh, and then
15 from that list and from the lawyers making those strikes we
16 then will come up with twelve jurors and one alternate to
17 serve on this first jury, I tell you that 'cause you get to
18 have another little break because the lawyers have to have a
19 chance to review the list so take a look at that (indicating)
20 clock on the wall and I'm gonna ask if you would to be back in
21 your seats by five minutes 'til noon and then we will start
22 with the striking process to pick the first jury for the week
23 but I wanna thank you for your time and your patience while we
24 went through this process, we will stand down and be at, be at
25 ease until 'bout fifteen minutes.

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1 (Whereupon, a recess was taken.)

2 THE BAILIFF: Thank you, be seated.

3 THE COURT: Alright, ladies and gentlemen, the clerk of
4 court is now going to be dealing with the lawyers and they're
5 going to announce their strikes. Uh, gentlemen I need to
6 remind you that when you're calling out the number of the
7 juror you wish to strike please use the column on the
8 left-hand side not the right-hand side.

9 THE CLERK: We'll begin with the striking process with
10 the plaintiff striking first and alternating with the
11 defendant usin' the numbers to the left. Plaintiff.

12 MR. DEAL: Uh, thank you. Plaintiff strikes Number 2.

13 THE CLERK: Defense.

14 MR. IMHOFF: Defendant strikes Number 8.

15 MR. DEAL: Plaintiff strikes Number 7.

16 MR. IMHOFF: Defendant strikes Number 9.

17 MR. DEAL: Plaintiff strikes Number 15.

18 MR. IMHOFF: Defendant strikes Number 11.

19 MR. DEAL: Uh, plaintiff strikes Number 20.

20 MR. IMHOFF: Your Honor, defendant strikes Number 6 --

21 I'm sorry, Number 3.

22 THE CLERK: And fort the alternate?

23 MR. DEAL: Uh, defendant strikes Number 16.

24 THE COURT: No, it has to be ---

25 THE CLERK: Using Number ---

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1 THE COURT: --- 21, 22 or 23.

2 MR. DEAL: Oh, I'm sorry. Uh, Number 21, Your Honor..

3 MR. IMHOFF: Number 22, Your Honor.

4 THE CLERK: Okay, plaintiff strikes Number 2, Number 7,
5 Number 15, Number 20 and alternate 21. Defense strikes Number
6 3, Number 8, Number 9, Number 11, and alternate Number 22.

7 THE COURT: That correct, gentlemen?

8 MR. DEAL: Yes, Your Honor.

9 MR. IMHOFF: Yes, Your Honor.

10 THE CLERK: Ladies and gentlemen, as I call out your name
11 and your jury number, please come forward with your personal
12 belongings and have a seat in the jury box. Juror Number 6,
13 William D. Beheler.

14 (William D. Beheler, a white male came forward.)

15 THE CLERK: Juror Number 16, Patricia A. Brown.

16 (Patricia A. Brown, a white female came forward.)

17 (Whereupon, a discussion was held off the record.)

18 THE CLERK: Juror Number 103, Kimberli Messer.

19 (Kimberly Messer, a white female came forward.)

20 THE CLERK: Juror Number 127 Joy N. Rinehart.

21 (Joy N. Rinehart, a white female came forward.)

22 THE CLERK: Juror Number 162, Melodie G. Mason.

23 (Melodie G. Mason, a white female came forward.)

24 THE CLERK: Juror Number 29, Melissa D. Cooper.

25 (Melissa D. Cooper, a white female, came forward.)

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1 THE CLERK: Juror Number 22, Nancy J. Carver.

2 (Nancy J. Carver, a white female came forward.)

3 THE CLERK: Juror Number 155, Tracey S. Williams.

4 (Tracy S. Williams, a white male came forward)

5 THE CLERK: Juror Number 95, James P. McClain.

6 (James P. McClain, a white male came forward.)

7 THE CLERK: Juror Number 82, Britney A. Kennedy.

8 (Britney A. Kennedy, a black female came forward.)

9 THE CLERK: Juror Number 124, Justin B. Raines.

10 (Justin B. Raines, a white male came forward.)

11 THE CLERK: Juror Number 13, Justin C. Brandon.

12 (Justin C. Brandon, a black male came forward.)

13 THE CLERK: And Juror Number 117, Latarsha R. Pearson.)

14 (Latarsha R. Pearson, a black female came forward.)

15 THE COURT: Anything concerning the manner and method of
16 selection of the jury from the plaintiff?

17 MR. DEAL: Nothing, Your Honor.

18 THE COURT: Any from the defendant?

19 MR. IMHOFF: Nothing, Your Honor.

20 THE COURT: Thank you, ladies and gentlemen, you may be
21 seated. I see the lawyers just for a moment.

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Alright, ladies and gentlemen, uh, that got
24 selected give me just one moment, I need to speak to those
25 people out there in the audience.

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1 (Whereupon, the jury pool was released.)

2 THE COURT: Ladies and gentlemen, Uh, congratulations on
3 being selected to be our first jury for the week. I need to
4 let you know that you have been selected to be part of this
5 jury but and I've talked with the lawyers as to scheduling and
6 what we're going to do is we're going to go ahead and take our
7 lunch now. Uh, I'm -- I've got some matters that I have to
8 take up with the lawyers that have to be done so outside of
9 your presence and so I'm gonna ask if you would taking a look
10 at the clock on the wall for ya'll to be back in the jury
11 deliberation room that the bailiff's gonna show you in just a
12 minute at two o'clock, that should give us enough time to take
13 care of the matters that need to, that need to be taken care
14 of outside your presence and then we can begin with actual
15 presentation of the trial.

16 I need to instruct you at this time that you cannot have
17 any discussions with anyone including your fellow jurors about
18 anything that involves this case, I know you haven't heard any
19 testimony but we have actually started the trial, this case
20 has now started. You can't have any discussions with anyone
21 including your fellow jurors about anything that involves this
22 case until you begin your deliberations which occurs at the
23 end of this trial, I tell you that because now you're gonna go
24 and leave the courthouse, they might go home or go back to
25 work for a little bit, Oh, you got selected on jury, what

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1 kinda case i -- what what's it about? Very politely tell
2 anybody that asks, The judge has instructed me and ordered me
3 not to have any discussions with anyone about anything
4 involving the case. Also, I need to let you a -- know and
5 instruct you that don't do any type of independent research or
6 investigation, that would include let's say, uh, you wanna go
7 on Facebook or on the internet maybe look up my name or one of
8 the lawyers name's or the party's names or or maybe I've said
9 the location of a piece a property, don't go Google it to
10 figure out where it is because the reason that I instruct you
11 that is because thi -- thi -- this trial should not be a
12 burden outside of this courthouse, this should not be a burden
13 to you outside of what you on in here but more importantly is
14 you need to allow the lawyers and me the opportunity to
15 educate you what the facts are of the case, what the law is of
16 this case and for you to base your decision solely on what we
17 present to you here, so even if I've used a word today that
18 you don't might not seem to quite understand and wanna pull
19 down Webster's Dictionary to look it up, don't do that 'cause
20 then you would be violating my instruction to you, but with
21 that I will give you further instructions later. The bailiff
22 is gonna take you to the jury deliberation room, uh, if you
23 would I need for you to again, be back, uh, by two o'clock
24 and, uh, let's see, uh, Mr. Mr. Raines, uh, I'm gonna ask if
25 you would to please serve as the foreperson of this jury when

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1 we return but, uh, if you would please go with the bailiff and
2 he will, uh, show ya'll how to get in and outta the
3 courthouse, thank you very much.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Anything before I step down?

7 MR. IMHOFF: Nothing, Your Honor.

8 THE COURT: Alright, we'll ---

9 MR. DEAL: No, Your Honor.

10 THE COURT: --- see ya'll 'bout 1:30.

11 MR. DEAL: Sounds good, Your Honor.

12 MR. IMHOFF: Thank Your Honor.

13 (Whereupon, a recess was taken.)

14 THE COURT: Alright, I've got the, uh, a motion for
15 summary judgment filed by Mr. Imhoff on September the
16 25th, ---

17 MR. IMHOFF: Yes, Your Honor.

18 THE COURT: --- rather nondescript motion for summary
19 judgment.

20 MR. IMHOFF: It was the, it was the motion that we talked
21 about, Your Honor, it's the the warranty of habitability you
22 allowed plaintiff to amend last week to bring ---

23 THE COURT: Right.

24 MR. IMHOFF: --- cause of action for a warranty of
25 habitability so, ---

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1 THE COURT: I did.

2 MR. IMHOFF: --- uh, that's what the motion is, it's it's
3 to, as Judge Cole did, uh, to dismiss -- to dismiss the
4 warranty cause of action and I'm ready to argue that if you'd
5 like to hear it, Your Honor.

6 THE COURT: I would.

7 MR. IMHOFF: Alright. Your Honor, the first, the the
8 first part of that is is what I just said, Judge Cole has
9 already ruled on this, uh, plaintiff has made an allegation
10 for a warranty claim under the warranty, uh, workman like
11 service which a -- actually arises out of the work, uh, and
12 the Kennedy cases and some of the other warranty cases in the
13 State of South Carolina state that the warranty of
14 habitability is separate and distinct from the warranty of
15 workman like service and they go on to state that the warranty
16 of habitability arises out of the sale and and there's no
17 question that the warranty of habitability arises out of the
18 sale of the home and as we've already discussed and as the
19 evidence has has proven this home was never sold to Stig
20 Wennerstrom. This was a home that he he hired two different
21 general contractors, my client Mark Searcy was the second, two
22 different architects and had built custom for himself so there
23 was no sale, uh, that's one, there's no sale so there can be
24 no warranty of habitability; two, there can be no warranty of
25 habitability especially as to B&B Plumbing. There is no

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1 warranty or habitability claim against B&B Plumbing because
2 there is no sale by B&B Plumbing. I understand Mr. Deal will
3 argue that maybe Searcy Custom Homes, quote, unquote, sold the
4 home, uh, to Mr., uh, Wennerstrom but certainly B&B did not.
5 Uh, I think the third and probly the most important part is
6 that Judge Cole has already looked at and ruled on this and I
7 think it's Number 4 in his Order where he determines that
8 there is no, quote, unquote, defect with the house that arises
9 out of warranty and he specifically cites the code and
10 industry standard, the plans, all of those things in Number 4
11 and there is evidence that there's a defect in this home which
12 is necessary for a warranty cause of action whether it's the
13 habitability of workmanlike service. It's my understanding
14 that plaintiffs are gonna argue this third way to get
15 construction liability which is he knew or should have known,
16 uh, that you put a product in or created a condition that's
17 unreasonably dangerous, that is a completely different
18 standard as you've already indicated than the warranty causes
19 of action. Warranty causes of action arise from a defect as
20 determined by the code in the industry standard: there's no
21 violation of code, there's no violation industry standard, so
22 going back ov -- over those three things again, Your Honor,
23 uh, there cannot be warranty of habitability cause of action
24 in this case because there was no sale, the case law is very,
25 very clear that the warranty of habitability arises out of a

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1 sale of the home, there certainly wasn't a sale of the home by
2 B&B Plumbing. Uh, Judge Cole's order has already found that
3 there's no warranty cause of action whether it's habitability
4 or workmanlike service and so I think it's excluded for that
5 and then the last part is there's just no defect here, Your
6 Honor. We're talking about a's -- completely different
7 standard under the negligence so to speak cause of action, so
8 we would ask that although it's been allowed to be amended,
9 uh, that the courts strike and dismiss the cause of action for
10 warranty, Your Honor.

11 THE COURT: Yes, sir.

12 MR. DEAL: Thank, Your Honor, uh, if I may approach and
13 and I'm gonna also hand, uh, I didn't have the as you did
14 neither the actual specific grounds for what the the the
15 motion was for. I've got some case law, I didn't have any,
16 attempt any ability to specifically but now I've taken the
17 liberty, Your Honor, of how I knew I would discuss
18 specifically in order of the cases that that are applicable to
19 this warranty of habitability claim.

20 Now first and foremost, Your Honor, uh, I would first
21 point out that the warranty of habitability and the warranty
22 of workmanlike service are separate and distinct, that was
23 what what Mr. Imhoff said. We agree with that, Your Honor,
24 and to the extent that, uh, Judge Cole did anything with
25 regard to the warranty of workmanlike service, that that that

1 count was not before him and it's completely in --
2 inapplicable to this particular, uh, proceeding.

3 Now as far as the sale is concerned, this is what's
4 important, I'm gonna back up and talk about why the courts and
5 and the history of these courts, Your Honor, I believe you're
6 familiar at least in some level of these cases, starting off
7 with *Dodenhoff* which the cour -- which which all these courts
8 agree was the kinda first case where South Carolina said yes,
9 there's this warranty of habitability and and the the the
10 reasoning behind it is fairly simple but real quick, at the
11 very top of where where I've highlighted, "The forgoing
12 annotation soundly points out ---

13 MR. IMHOFF: Where have ---

14 MR. DEAL: --- that ---

15 MR. IMHOFF: --- you highlighted if you don't mind?

16 MR. DEAL: I'm sorry, uh, I'm sorry, it's Page 4 of the
17 hearing and I I forgot didn't get yours, right here
18 (indicating) certainly, okay. Sorry 'bout that. "Foregoing
19 annotation soundly points out that the primary purpose of the
20 transaction is to provide the purchaser with a habitable
21 dwelling and the transfer of the land is secondary," so that's
22 not what's important, the transfer of land is not what what
23 they're looking at here, it's the actual pro -- provision of
24 the, of a habitable dwelling, that's the first thing, Your
25 Honor, I'd like to point out and then it talks about the

1 pu -- public policy reasons behind that. Now, um, and I'm,
2 uh, and you can, you know, read up into this what, you you
3 know, as far as down as you'd like in there, Your Honor.

4 Now the next thing I'd like to point out is what the
5 cases then say and you -- the next case that I I discuss is
6 Arvai, okay, that's the next one in the series and I've I've
7 once again if if you'd look on Page 2 of the Arvai case,
8 that's the next one in the series and you can flip here
9 through here now ---

10 MR. IMHOFF: Oh, where?

11 MR. DEAL: Right here (indicating) and we're -- but when
12 now so they talk about selling the house as a product that
13 should be governed by the same rules which apply to sales of
14 personalty, okay, and then in Lane which is referenced here,
15 so that's two cases now they're holding this, we held that a
16 transaction between an innocent purchaser and the vendor who
17 places the new home in the stream of commerce should be
18 governed by the doctrine of caveat vendor, right, so in in
19 Lane which talked about the warranty of habitability and in
20 this case which also talk about the warranty of habitability
21 the analysis is if you place a home in the stream a commerce
22 as that's then you are saying that it's habitable, that's what
23 the case law says, so what what constitutes placing a home
24 into the stream of commerce and that's the important thing,
25 Your Honor, then we go so what you're gonna flip to is the the

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1 the third case that I've provided Page 6 at the very bottom
2 that's the Kennedy case, "We are persuaded that building a
3 house which one knows or should know will later be sold by a
4 party to an innocent buyer is an act adequate to constitute
5 placing that house into the stream of commerce," so there's no
6 doubt that that Mr. Searcy built this home and he's, so under
7 the law, Your Honor, the black letter of what this says he
8 placed in the stream a commerce. Now you can call it a
9 contract to build and call a contract of sale, the law doesn't
10 doesn't make any any any exception to that, um, and if you go
11 back to the very original, uh, case here *Dodenhoff* it talks
12 about how it's a vendor seller -- builder and vendor, excuse
13 me, buil -- builder and vendor. All the cases that have, that
14 it -- that have occurred that don't that that step away from
15 causing a a builder to be responsible have found that there's
16 a actual seller, a person that takes on that role of
17 representation to the, to the buyer versus the builder doing
18 that directly which is what happened here and specifically,
19 Your Honor, in the *Arvai* case they say, No, no, no, no,
20 doesn't matter if it's a spec home or custom home, both of
21 those houses have warranties of habitability and in the *Arvai*
22 case the only reason they they didn't find habitability
23 warranty there is 'cause the builder lived in the home and
24 then sold it and put it on the, put it out out on the market
25 so it wasn't a new house which is once again there's -- that's

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1 not an issue here, this is still a new, this was a new house.
2 When Mr. Searcy went and got the the certificate of occupancy
3 and he he he
4 he --- that caused that house to become marketable 'cause as
5 we all know, Your Honor, that doesn't happen without that CO,
6 you can't sell the house, you can't get a mortgage on it, any
7 a that stuff and so finally, I just wanted to point out that
8 that, uh, there's a a a a whole list of other ways that that
9 some folks could be considered to be even if they weren't a
10 builder or they weren't the seller, if they -- the the case
11 law states that, uh, even for a lender if they become a
12 amalgamated with the builder, they they such that they are,
13 you know, it's a joint venture, etc., etc., so if anything,
14 Your Honor, the law expands on the fact of the builder can
15 reach in and grab other parties, it never excludes that
16 builder as as far as that goes. If they place these house in
17 the stream a commerce, and the way you do that is by building
18 it, then they're a seller under the law and so I think we can,
19 you you know, I I'm winning up up against Bob McKenzie over
20 in, uh, Aiken a couple years back and, uh, fronta Judge Early
21 and Mr. McKenzie made an, made an argument, he said, Look,
22 Your Honor, if it it walks like a duck and quacks like a duck
23 and has a bill like a duck, it's a duck, you can call it a a a
24 a chicken all you want to but it's still a duck and that's the
25 same thing here. You can call it a contract to build, you --

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1 or whatever you want to but if you're placin' this thing in
2 the stream of commerce it's a sale, um, and I think that's
3 what the law dictates in this case.

4 Uh, as far as the defect is concerned, Your Honor, I have
5 provided deposition testimony in my motion to amend that that
6 describes what those, that what the evidence is that says this
7 house was defective, that evidence most of it was not
8 available at the time Mr., uh, of M -- of Judge Cole's
9 hearing, that a lotta that testimony was developed and
10 evidence was developed after the, after that hearing so to the
11 extent that any of these issues may or may not have been in
12 front of M -- Judge Cole, they're in front of this court and and
13 there is more, certainly more than a scintilla of evidence
14 that this house was gonna fail when the day it was built and
15 so I think that covers all his arguments, Your Honor, and I
16 would strongly, uh, ask this court to to to deny their motion.

17 THE COURT: Reply?

18 MR. IMHOFF: Your Honor, I I think Judge Cole's ruling is
19 determinative on the issue and and there isn't new evidence
20 that changes the fact that my clients installed this plumbing
21 system in compliance with the plans, two sets of them, in
22 compliance with the international code in compliance with
23 industry standard, this is all testimony from their own
24 expert, there isn't any new evidence on that. The question is
25 that's gonna be submitted to the jury as I understand it is

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1 whether or not these folks who had no idea that Mr. Harris
2 would come and give this opinion, no way to go look and
3 determine that any code or industry standard or anything else
4 required them to do this whether or not it was reasonable
5 under the third prong of the *Kennedy* test but there is no
6 evidence even based on my client's depositions that they
7 didn't comply with industry standards of code not -- and
8 that's why Judge Cole ruled the way he di -- he did and that's
9 why we'd ask the Court for that same ruling here on the
10 implied warranty of habitability, there just will not be any
11 evidence in this case that they deviated from any standard.
12 The question that I understand is gonna go to the jury is
13 going to be whether they were reasonable in not putting this
14 relief valve in that nobody knew about or required in 2003.

15 THE COURT: Alright, I'm gonna have to deny the motion.
16 Uh, this is framed to -- and presented to the Court as a
17 motion for summary judgment. While Judge Cole's ruling is
18 it's definitely shed some light to this court, I don't know
19 anything about the facts of this case. Ya'll have not
20 presented to me in proper form the the deposition testimony,
21 affidavits about the case, so I can't make a ruling on a
22 summary judgment motion. Uh, I s -- I share that with ya'll
23 because I'm not ruling that this cause of action will in fact
24 make it to a jury, it may be that after I sit and listen to
25 the testimony that I agree completely with Mr. Imhoff but I

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1 can't throw out a cause of action, uh, with no more
2 information than I have about the case right now. What else?

3 MR. IMHOFF: The next two motions, Your Honor?

4 THE COURT: Um-hum.

5 MR. IMHOFF: Your Honor, my next two motions I I just
6 wanna renew my motion in limine to prevent the testimony of
7 Mr. Harris and as Your Honor is aware I think we have filed a
8 brief and some supplemental cases on that, we discussed it on
9 the phone, uh, the other day and I would like to renew that
10 motion again, uh, based upon the case law of *Watson, Risher*
11 (phonetic) and some a the other cases, *Austin vs. Stokes*. Uh,
12 the Court is the gatekeeper, uh, the Court is to, uh, look at
13 reliability before you get to determination of weight and in
14 this case I would ask the Court to look at reliability, again,
15 the testimony as in that's in the brief I believe that that I
16 presented to you is that Mr. Harris will testify that my
17 clients complied with the building code, the plumbing code,
18 the industry standard and what every other plumber was doing,
19 uh, not only in South Carolina but at the Cliffs a Glassy in
20 2003, that was the testimony that we sent to you, uh, and
21 because Mr., uh, Harris's testimony was not based on any
22 scientific method or investigation it was determined I believe
23 he will testify and did testify on the day that he went up
24 there, uh, there's no reliability to look at, it can't be
25 evaluated by anyone else so there is no scientific method.

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1 Uh, and and finally I was citing *Bourne* (phonetic) vs. *Dupont*,
2 Your Honor, that states that expert witnesses have the
3 potential to be both powerful and quite misleading, uh, where
4 the expert proffer has a great potential to mislead rather
5 than enlighten, the evidence may be properly excluded we
6 believe that's the case here. Again, Your Honor, uh, I think
7 I briefed it, there is not evidence that they violated a code
8 or industry standard of any any other plumber was doing it
9 this way and so we believe, uh, that it would be prejudicial
10 and damaging and also is without proper basis. Thank you.

11 MR. DEAL: Your Honor, in brief I'd just like to point
12 out that, uh, there's no evidence, fact, the evidence is in --
13 is to the contrary with regard to what, uh, the qualifications
14 are as far as what the experience and the knowledge and the
15 education that Mr. Harris has. Outta the gate I don't think
16 anybody here can say that he's not qualified to to, uh, you
17 know, he doesn't, he's not knowledgeable and can and has
18 something to tell the jury as far as the subject matter of
19 what's going on here number one; number two, uh, there was
20 extensive, Mr. Harris as as we've already discussed, Your
21 Honor, has had taken extended -- extensive investigation into
22 this case, did he cost -- potentially was his testimony if you
23 take it what what Mr. Imhoff says was his testimony that, uh,
24 that he made some conclusions at the site, absolutely, did he
25 stop his investigation there, absolutely not and so under

1 those circumstances, Your Honor, he he he went and gathered
2 all the evidence that was available, he analyzed all the
3 plumbing parts, all all of this investigation and it was
4 multiple days over over a course of months that he did this,
5 the that both defendants were invited to attend and and, you
6 know, approve, disapprove and/or bring an expert in here to
7 tell him that his his methods weren't good or bad or whatever,
8 uh, but I can tell ya this, uh, Your Honor, when when I went
9 to the scene, obviously the the other side has an opportunity
10 to say, Well, I don't like way you're doin' this or I don't
11 like the way you're doin' that didn't happen at the, at that
12 investigation, that's not really before the Court and I get
13 that but if that's the case they can bring Mr. Cartright in
14 court right in here to say, I didn't like the way things were
15 done or whatever, that methodology was bad, uh, but that's
16 not, that evidence isn't before the Court, it ca -- maybe, and
17 once again, if you decided down the road that that is not the
18 case, Your Honor, that's fine. Uh, once again, uh, you know,
19 it -- he's allowed to make an opinion, that's what opinions
20 are, and he's he bases his opinions and his experience and the
21 science and the underlying principles behind it and, Your
22 Honor, that deposition was taken way back when and, uh, we're
23 gonna talk about some additional documentation that Mr., uh,
24 Harris developed just this past week that I provided to the
25 the other party, I think that's what we're gonna be taking up

1 next, but we've already discussed this, I just wanna be on the
2 record sayin' he's more than qualified, he can offer his
3 opinion because it's set, founded in scientific principles and
4 his his actually lengthy investigation. Thank Your Honor.

5 MR. IMHOFF: If I may, Your Honor, I I just wanna clarify
6 anything and and Mr. Harris is gonna get up testify maybe this
7 afternoon, maybe tomorrow morning, he didn't do any
8 investigation as to his opinions about what these folks did
9 wrong. It's true that he went and looked in the water utility
10 company to see if he could sue them, he went looked at the
11 valve manufacture to see if they could sue them, took the
12 valve apart, called the water utility, tested the water
13 pressure, all of those things were done to try to establish
14 liability on a different potential defendant. He came up with
15 this opinion that a pressure relief valve should have been
16 installed the day he went to this man's house on the first day
17 and then he did additional testing to see if they could sue
18 anybody else and and and, Your Honor, I think that's that's
19 very important. Uh, what *Austin vs. Stokes-Craven Holding*
20 *Comp -- Corporation* says is that an expert testimony is to be
21 allowed where his knowledge is beyond the jury's good judgment
22 and knowledge, he has to add something to the trial, Your
23 Honor, and in this case he doesn't add anything to the trial
24 because he didn't do anything and there isn't any support for
25 his position. Hi -- it's his own opinion, he testified that

1 his company is the only one in the entire world that holds
2 this opinion and the opinion is based on nothing scientific,
3 no investigation, no document, no code, no industry standard,
4 there's nothing that it's based upon except for Mr. Harris's
5 opinion and that's what's concerning to these folks. They're
6 gonna be judged by twelve people based on opinion that's hold
7 -- held by one person in the entire world for which there is
8 no basis, there's just nothing, no, again no code, no plan, no
9 instruction and that's why we'd move to exclude it because I
10 don't know, I mean, maybe an expert does just get to come up
11 with his own opinion of his own mind that's not based on then
12 get up testify in front of twelve people about it but I don't
13 believe that's the standard, Your Honor.

14 THE COURT: Alright. I'll have to deny the motion, uh,
15 we've had a rather extensive discussions about this expert and
16 his opinion that have been off the record, uh, you know, I'm
17 just ruling on the initial admissibility, uh, of it, it sounds
18 like that he's going to be able to testify. You you've argued
19 prejudicial and damaging, I assume you meant prejudicial
20 effect versus probative value, uh, of that testimony, I can't
21 make that decision till I've actually heard the testimony in
22 the case so, uh, I have not made, not addressing that part but
23 it does seem like based on the information that I have at this
24 point that the expert would be allowed to testify and and
25 issue opinions. Alright, what else?

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1 MR. IMHOFF: Your Honor, the, uh, well it's not the final
2 one but the the third ---

3 THE COURT: How much more do you have?

4 MR. IMHOFF: I'm sorry?

5 THE COURT: How many more do you have?

6 MR. IMHOFF: Just two, they're relevant, they're short.
7 Your Honor, and we we e-mailed you on Friday, I got
8 plaintiff's second supplemental answers to defendants'
9 interrogatories and disclosure of trial exhibits Friday
10 afternoon, that's after I think we'd been on the phone twice
11 last week, uh, after we argued, after we briefed and and, Your
12 Honor, they intend to, and I know Mr. Deal has brought a
13 blow-up of it, to introduce a diagram and it's a diagram of a
14 plumbing system that has a pressure relief valve on it and
15 it's taken off the internet, Your Honor, and the article is
16 about a pressure reduction valve but there's a diagram at the
17 top of it has a pressure relief valve. We don't know why
18 that's there, we don't know that was intended to be there, we
19 don't know who published it, there's absolutely no foundation
20 where it came from, uh, it is extremely late, uh, I certainly
21 would have liked to ask Mr. Harris about that either during
22 his deposition, received it in responses to my subpoena,
23 subpoenas from last year, uh, received it in time to re-notice
24 his deposition which I clearly could not do Friday at 4:30,
25 uh, or over the weekend. Uh, again, it's not stamped, it

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1 doesn't come from a code, it doesn't come from industry
2 standard. I actually did some research where it came from, it
3 came from a home inspection. Your Honor, I have a copy, would
4 you like it?

5 THE COURT: (Nodded in the affirmative.)

6 MR. IMHOFF: It came from a home inspection company who
7 will not I believe be allowed to testify at the trial of this
8 case about what the standard is for a plumber or general
9 contractor. Uh, Your Honor, it's extremely prejudicial,
10 especially at this late time in the case and how late I got it
11 and ---

12 THE COURT: Well te -- why is it prejudicial other than
13 it being late, I mean, why it is prejudicial?

14 MR. IMHOFF: Well that; one, that but; two, it appears to
15 show that there is some consensus or someone else in the world
16 that believes that there's a pressure relief valve required on
17 a residential plumbing system and that is not what the article
18 says and Mr. Deal's exhibit which he showed me earlier does
19 not have the entire article that talks about a pressure
20 reduction valve being needed, he's just lifted that diagram
21 outta the article and intends to prent -- present it to the
22 jury, uh, for I guess proof that somebody else thinks it needs
23 to be installed but that's not what the art -- article says.

24 THE COURT: Are you looking for the article or are you
25 looking at law?

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1 MR. DEAL: Uh, Your -- oh, I'm sorry, Your Honor, no.
2 What what and and, you know, this is, I just pulled this
3 document for you. Now I wanna show you and I showed it to
4 Mr. Imhoff, uh, ---

5 THE COURT: That was nice.

6 MR. DEAL: --- today. I took out anything that says
7 anything about requirements or anything like that. This is a
8 diagram that just shows the configuration of this
9 particular ---

10 THE COURT: Well what are you gonna use it for?

11 MR. DEAL: To show -- okay, and what I was looking for is
12 the testimony in Mr. Harris's transcri -- uh, deposition that
13 says, I think this should have been done in this situation.
14 He said that the preffur -- pressure relief valve and and he
15 testifies it was, it cost about three hundred dollars (\$300).
16 more for them to have gone out and done this, that woulda made
17 that house safe and habitable, that was his testimony in in
18 deposition, I can find that for you and, ---

19 THE COURT: Well ---

20 MR. DEAL: --- you know, so ---

21 THE COURT: --- well why are you using that diagram if
22 that's gonna be his testimony?

23 MR. DEAL: Because then he can show the di -- he can show
24 the, show the jury this is what I think should have happened,
25 shoul da been here. Doesn't say anything this needs to be

1 done, that needs to be done, it's just basically it says this
2 is how it would look, that's all, this is how simple what what
3 what it would be in order for me to do what I think was the my
4 in my opinion and what my engineering background tells me
5 shoulda been done in this situation. I took out anything that
6 says and, you know, if you look at the what was offered, Your
7 Honor, well and and well I'll address that in a second, says
8 pressure regulator required, then it says pressure relief
9 valve and then it says may be required, I took that out, I was
10 tryin' not and as far as this (indicating) is concerned.

11 Now, uh, when it comes to being prejudicial, Your Honor,
12 first of all, I I don't understand how it's preshudi --
13 prejudicial. Mr. Harris's opinion on the record said this is
14 what he -- how this thing shoulda been configured day one,
15 their argument on all this time has been Mr. Harris didn't
16 have any other, anything out there that said that that any
17 industry standard, any other documentation that backs up his
18 opinion. I didn't tell Mr. Harris this until the other day
19 because it was my understanding of the law that he was gonna
20 be allowed to testify, I didn't think he needed to submit any
21 additional affidavits 'cause assumin' his his testimony was
22 gonna be admissible.

23 Now I -- you'll you'll note at the top a these doc --
24 these these documents all of 'em 9/26/13 at 5:35 -- 3 p.m.
25 that's when Mr. Har -- Harris downloaded this information. He

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1 sent it to me thereafter and I provided to to Mr. Imhoff the
2 next day. I'm under a, an ongoing duty to supplement any
3 discovery as it comes in to me, Your Honor, and I gave this to
4 him in timely fashion. There's no way that Mr. Harris is
5 required to sit on his hands and re -- and is is long, you
6 know, up until the day a trial once he's -- his his testimony
7 can't be locked in. If if new things happen, something
8 brought to his attention, he's certainly allowed to use that
9 to make his own opinion and if if the Court does not want
10 Mr. Harris to refer to any a these documents in his testimony,
11 what I would request, Your Honor, is how he would, uh, uh, or
12 a solution to how he would testify if Mr. Imhoff says to him,
13 You don't have any other, you don't know of any other person
14 that ever made any such an opinion out there about why, how
15 this shoulda been and what's he gonna answer? he's gonna have
16 to tell the truth and say, Yeah, actually I do or he should
17 lie in in as far him not being able to talk about this stuff.
18 Uh, I, to be honest with ya I I called my -- an old law,
19 evidence law professor and I said, Did I mess this up, how, I
20 mean, I feel bad I didn't get this to him 'til late date, I
21 get that, but what else could I have done and the answer is,
22 Your Honor, nothin'. I, when I got it, I got it to Mr. Imhoff
23 in a timely fashion, that's all I can do, I'm I'm I'm I'm
24 required to supplement and that's all I'm gonna do, that's
25 that's exactly what I did, uh, so as far as it being

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1 prejudicial, I don't see how it can be. He testified to this
2 exact configuration back in April or no December I think of
3 2012, so that's that's our our take on it, Your Honor, and I I
4 I would just ask the Court, you you know, if in fact we're
5 gonna exclude this this this information that Mr., uh, Harris
6 has developed, how how we're gonna do it because you're either
7 gonna put him up on the stand and make him lie which I can't
8 recommend him to do or he gets to talk about it. And as far
9 as any, as any wrongdoing on my part, guess the i - the the
10 implication could be that I was sandbag and holdin' this stuff
11 back from Mr. Imhoff, what I was doin' that's pretty good
12 gamble considering is his opinion that Mr. Harris couldn't
13 testify without a -- with any such documentation. Now, you
14 know, I I would certainly wouldn't do -- wouldn't taken that,
15 wouldn't a taken that risk and had I, you know, had, you know,
16 been sittin' in in Mr. Imhoff's shoes and and thought that I
17 couldn't, Mr. Harris wasn't gonna be able to testify without
18 this documentation. I've done what I was supposed to do,
19 Mr. Harris has done what he's supposed to do and there's, I
20 can't see any reason why this court could penalize us for
21 doin' what we're supposed to do.

22 THE COURT: Alright. Any reply?

23 MR. IMHOFF: Your Honor, my my answer to that if if I ask
24 Mr. Harris does he know of anyone else who has this opinion
25 that he can still answer no. This is a diagram and an article

1 that talks about a pressure regulator valve, not pressure
2 relief valve and so when I say, Do you know of anyone else who
3 has the same opinion as you that you need a pressure relief
4 valve, he still doesn't. The only thing he can say is, Well I
5 was on the internet the other day and I found an article that
6 said that it requires a pressure regulator valve and then
7 there was a diagram above it that said pressure relief valve
8 but he doesn't know why that's there and he's gonna testify
9 that someone else has the sa -- has an opinion that it needs
10 to be there? He doesn't, he doesn't know that, there's no
11 foundation for that and I understand I can ask him but that's
12 why it's so prejudicial; one, it's extremely late and I, and I
13 don't blame Mr. Deal for doin' it, I understand his expert was
14 workin' on his testimony but it's extremely late and I would
15 like to have that in in in a deposition, I'd like to go find
16 out from these people who they are, why that's included in
17 there, I I can't do any a that now and so if he gets to put it
18 up in front the jury now I didn't have any way through the
19 discovery process over two years to look at that. He's had a
20 subpoena since September, October, December last year, this
21 just showed up on Friday and we -- and there's no foundation
22 for it.

23 THE COURT: And you have another motion?

24 MR. DEAL: Well, i -- if I may, Your Honor. If I don't
25 have foundation at the time this is offered then then he can

1 make the the objection there, it has nothin' to do with the
2 issue that we have before us, that -- wouldn't that be your
3 understanding, Your Honor?

4 THE COURT: I'm gonna ask what his next motion is.

5 MR. DEAL: Okay.

6 THE COURT: What's your, what's your last motion?

7 MR. IMHOFF: Your Honor, it's it's, uh, I guess it's a
8 motion but I've never done a motion in limine to allow me to
9 ask something, it's odd, it's very odd. Uh, what I would like
10 to be able to ask or what part of my defense is going to be is
11 Firemun -- Fireman's Fund Policy and how they evaluate claims,
12 how they investigate claims and what their policy is
13 subrogation, suing, those types of things and one of the
14 things that I would like to get into because of the timing at
15 the very, very beginning of this case and how this went into
16 subrogation and how it went to the lawyers, uh, is ask them
17 how Cozen O'Connor is paid and I know that's bizarre 'cause
18 you don't usually get to ask how lawyers are paid but I think
19 it's, I think it's generally the defense's right to object to
20 the plaintiffs talking about their contingency fee so that
21 they keep the damages down.

22 THE COURT: You think I would allow that this were a
23 personal injury case and this was a plaintiff that had
24 retained counsel based on a contingency that I would allow you
25 to go into and ask, uh, how much is your lawyer gonna get of

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1 this verdict?

2 MR. IMHOFF: Absolutely not, absolutely not, that's why
3 it's unusual.

4 THE COURT: You you think that's their their, I mean, I
5 don't know what their, how they pay their lawyers but you
6 think that's that's what you're gonna elicit?

7 MR. IMHOFF: Yes, Your Honor, and maybe what we should, I
8 don't know how to do it exactly but if you ---

9 THE COURT: I'm not gonna let you do that.

10 MR. IMHOFF: --- it -- I'm sorry?

11 THE COURT: I'm not gonna let you do that.

12 MR. IMHOFF: Ever under any circumstances?

13 THE COURT: I I I don't -- you haven't presented to me a
14 reason why I should deviate from what I, what -- from from
15 what I usually see which is the Court it it takes great, uh,
16 recognizes that the attorney/client relationship and those
17 types of arrangements with attorney/client relationships you
18 don't go there lightly, ---

19 MR. IMHOFF: That's right, that's right.

20 THE COURT: --- you gotta have a really, really
21 compelling, substantial, material reason, ---

22 MR. IMHOFF: It -- well I don't know really -- might I?

23 THE COURT: --- otherwise you run into the Constitution
24 where then you're taking away a person's right to counsel and
25 you're allowing them that jury to make a determination as to

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1 who the lawyers are and that to me is not a factor that should
2 be in this case unless you want to convince me otherwise.

3 MR. IMHOFF: Well, I can try. I I I'm I'm I'm weighing
4 whether or not I wanna just to go ahead and and and start down
5 that path and then we can talk about it later and disclose
6 where I'm goin' with this ---

7 THE COURT: Uh, Mr. Imhoff, ---

8 MR. IMHOFF: I'm not gonna ask that question.

9 THE COURT: --- you know what my -- be -- by my
10 statements where my predisposition is. I would not advise any
11 lawyer to go down a path in a direction that I have already
12 let it be known on record where my predisposition is unless
13 you want me to convince me otherwise and fr -- I will caution
14 counsel do not do that in front of a jury.

15 MR. IMHOFF: Your Honor, that's why I asked, I wouldn't
16 do that. What I'm saying is that it appears to me, well I
17 know Fireman's Fund sent this to subrogation within six hours,
18 they sent it to a lawyer within ten days ---

19 THE COURT: Um-hum.

20 MR. IMHOFF: --- and then they spent four years looking
21 at any possible culpable claim and so the the path is all of
22 that without that question but that was the additional
23 question that I wanted to make but I wanted to show that it
24 was Fireman's Fund policy to go chase anybody they could, uh,
25 and I will go into that but if I can't ask the question about

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1 the attorney's fees I understood that, I knew it ---

2 THE COURT: Oh.

3 MR. IMHOFF: --- was a long shot, that's why I brought it
4 up to the Court before I asked it, Your Honor.

5 THE COURT: And I appreciate your bringing it up to it
6 before because I don't think you would have enjoyed my
7 reception if it had been presented in front of a jury and you
8 poison that jury by asking the question.

9 MR. IMHOFF: Again, Your Honor, always at the risk of
10 angering the Court which is why ---

11 THE COURT: But you never seen me anger, not one day of
12 my life. You wish to respond?

13 MR. DEAL: Well, Your Honor, ---

14 THE COURT: You don't need to ---

15 MR. DEAL: --- I think it ---

16 THE COURT: --- 'cause ---

17 MR. DEAL: --- I ---

18 THE COURT: --- I've ruled in your favor, ---

19 MR. DEAL: --- I d ---

20 THE COURT: --- let you make an argument.

21 MR. DEAL: --- I'll defer, no, uh, you're right, ---

22 THE COURT: Alright.

23 MR. DEAL: --- I'll defer to your expertise here.

24 THE COURT: Thank you, be the first time. Alright, uh,
25 alright. Let me talk to counsel at the bench for a moment.

1 (Whereupon, a bench conference was held off the record.)

2 THE COURT: Alright, we'll go back up, we'll go back on
3 the record. I've had extensive, uh, bench conference with the
4 attorneys. Alright, I'm not excluding the new documents, uh,
5 I do believe that, uh, plaintiff's counsel presentation of his
6 expert, uh, needs to be forewarned that he should not use
7 those documents in the presentation direct e -- testimony of
8 his expert to somehow bolster or to supplement his expert
9 testimony beyond that which his expert's testimony was already
10 known by defense counsel as of, I don't know, middle of last
11 week, uh, when I started getting involved in this where
12 Mr. Imhoff started raising concerns about, uh, 'bout the
13 expert's testimony, uh, but I also agree with plaintiff's
14 counsel that, uh, the witness, I I could not instruct a
15 witness whether it be this expert or a, or a fact witness to
16 testify as to something that is not accurate truthful simply
17 because a piece of information, uh, surfaced late in
18 litigation' however, I do think defense counsel has a right
19 to, uh, in trying to discredit whatever, uh, the expert
20 witness is gonna testify to has a right that if he chooses to
21 point out with the time frame of the disclosure of the
22 information and to go into anything that he wishes to, uh, and
23 he can rely upon those documents in doing so, I think I've
24 spoken with the attorneys also about opening the door that
25 once defense counsel opens the door, plaintiff's counsel has a

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1 right to pursue it on on redirect, uh, but his, but redirect
2 in front of this judge is limited to only those issues that
3 are presented on cross-examination and redirect is not to be
4 used as a time to open, uh, new issues through a witness.

5 Uh, jury is present, I've been advised that they're all
6 back there, they've been back there now for almost at least
7 twenty minutes. Uh, I'm gonna step down, if ya'll wanna do
8 some talking with each other, uh, please feel free to. We're
9 gonna come back, I will start with giving my opening
10 instruction. How long you think your opening statement will
11 be?

12 MR. DEAL: Twenty minutes, Your Honor.

13 THE COURT: How long do you think yours be?

14 MR. IMHOFF: Fifteen minutes, Your Honor.

15 MR. DEAL: And, Your Honor, I say that 'cause I was
16 makin' sure I wasn't, you know, I I'll probly more like
17 fifteen or even ten but I'd just like to ---

18 THE COURT: Um, ---

19 MR. DEAL: --- make su ---

20 THE COURT: --- do what you want. The only time I've
21 reprimanded a lawyer either during opening or closing
22 statements was in a products liability case I had where Toyota
23 was the, uh, product and Toyota's counsel in their closing
24 argument assured me he would argue for one hour and we planned
25 on one hour, it's -- I watched the jury worked with him for

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1 one hour, at at at an hour and thirty minutes I started
2 coughing, hour forty-five I started really coughing and at two
3 hours I sat him down, that's the only time I've gotten a
4 lawyer about his argument so just, I'd just like to have a
5 feel as to how much time we've got. Okay, we'll come back in
6 a few minutes.

7 (Whereupon, a discussion was held off the record.)

8 (Whereupon, a recess was taken.)

9 THE COURT: Anything else before we bring the jury back?

10 (No response.)

11 THE COURT: Alright, um, ---

12 MR. DEAL: Your Honor, ---

13 THE BAILIFF: (Indiscernible cross-talk.)

14 THE COURT: --- the jury's gonna come right through there
15 (indicating), can you slide over some more? Yeah, there you
16 go, thank you.

17 MR. DEAL: How many more, Your Honor? I don't think the
18 jury's, uh, been asked about Mr. Searcy is he, uh, he wasn't
19 here the first time around and ---

20 MR. IMHOFF: We asked.

21 THE COURT: I think I called his name out.

22 MR. DEAL: Okay, but he didn't stand if that's makes ---

23 THE COURT: Oh, that ---

24 MR. DEAL: --- a difference.

25 THE COURT: --- it doesn't make a difference.

1 MR. DEAL: Alright.

2 (The following takes place in the presence of the jury.)

3 THE COURT: Uh,, ladies and gentlemen, uh, I apologize
4 for the delay in in bringing you out but as I mentioned there
5 are, uh, things I have to do outside your presence. We have
6 been working, we came back a lot earlier than you did and
7 we've been working constantly on trying to get all these
8 issues done so I think we've reached a point now to where we
9 can actually begin the trial of this case. Now before we
10 begin trial of this case it's necessary for the clerk a court
11 to administer an oath so I need for you to please stand, raise
12 your right hand and respond out loud when she asks you to do
13 so.

14 (Whereupon, the jury was sworn.)

15 THE CLERK: Thank you, be seated.

16 THE COURT: Thank you, ladies and gentlemen. We're now,
17 uh, going to begin the trial of the case of Fireman's Fund
18 Insurance Company, Aso Stig Wennerstrom Plaintiff vs. Searcy
19 Construction Homes, LLC and B&B Plumbing, Inc. Now before we
20 begin the actual trial of this case I want to tell you that
21 this trial probly will be different from what you might
22 expect. Many people do not have the chance to attend an
23 actual court session as you're doing now and may think from
24 watching television or movies or reading books that trials are
25 always full of high drama, intense action and riveting

1 circumstances, now while all of these things maybe true this
 2 trial is not for entertainment, it is a fundamental part of
 3 our democracy, a search for the truth and an effort to make
 4 sure that justice is done between the parties that are
 5 presently before the Court and searching for the truth and
 6 making sure that justice is done is often slow, deliberate and
 7 repetitive, just the opposite of what you may have seen on
 8 television or in movies or read about in books. This
 9 courtroom is a place of honor dedicated to the protection and
 10 preservation of citizen's rights through what many have called
 11 the greatest justice system ever created. The attorneys
 12 appearing before you they are advocates for the parties that
 13 they represent but first and foremost they are officers of the
 14 Court sworn to uphold the integrity and the fairness of our
 15 judicial system and to help you in the search for the truth.
 16 You should expect them to be professional, you should expect
 17 them to be professional, competent and ethical in the
 18 representation of their client's interest but remember that
 19 you have taken an oath to try this case and reach a fair and
 20 just verdict and you are also expected to be professional,
 21 reasonable and ethical. I wanna thank you for accepting the
 22 important responsibility of jury service and for your
 23 contribution today to our justice system.

24 Now what I will now say to you is meant to serve as
 25 introduction to the trial of this case, my remarks are not to

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1 be considered a charge on the law of this case, I'll instruct
2 you on the law at the end of this trial before you retire to
3 decide the case. Before the trial begins I want to explain
4 the procedures that we will follow so that you may better
5 understand what is happening. You have been selected as fair
6 and impartial jurors whose purpose is to find and determine
7 the facts. You are the sole judge of the facts. If at any
8 time I make any comment regarding the facts, you must
9 disregard my comments. You are to determine the facts from
10 the testimony you hear and any other evidence that is
11 presented during the course of this trial. You should not be
12 influenced by any opinions or statements you may have heard
13 outside of this courtroom, it is especially important that you
14 perform your duty of determining the facts diligently and
15 conscientiously because ordinarily there is no way to correct
16 an erroneous determination of facts that is made by a jury.
17 When you comply with your oath to impartially determine the
18 facts of this case, you will have fulfilled your duty as
19 jurors and no one will have the right to criticize your
20 verdict but now; on the other hand, the same and the same and
21 equal emphasis the law, the same law that makes you the judge
22 of the facts of a case makes me the judge of the law of this
23 case. The law as given by the Court is the only law you may
24 consider, you must accept it and follow it even though you may
25 disagree with it. I cannot tell you what the facts are and

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1 you cannot disagree with me what the law is or what the law
2 should be, your job is to take the law as I give it to you and
3 apply it to the facts as you find them from the testimony of
4 the witnesses and the other evidence that is presented, after
5 doing that you will render what's called a "verdict", a true
6 and just verdict under the solemn oath that you just took as
7 jurors.

8 Now until I, uh, advise you to begin your deliberations
9 you must not discuss this case with anyone including your
10 fellow jurors, friends, family members or anyone involved in
11 this case, now this includes my instruction to you and my
12 prohibition that you can't have any discussions, uh, with
13 anyone includes face-to-face discussion, includes, uh, use of
14 the internet, includes use of texting, telephones, uh, a --
15 any type of communication devices you cannot use to assist in
16 having any type of communications with anyone involving the
17 case, now that also includes that I previously told you you
18 cannot do any type of independent research or investigation
19 into this case. If at ever during this time of this trial one
20 of the lawyers say says a phrase or or one of the witnesses
21 says a word that you don't understand or i.e., say something
22 that you don't understand, you cannot even pull a Webster's
23 Dictionary off the shelf and look up that word, allow your
24 decision that you have make in this case be based solely on
25 the facts and information as presented to you during the

1 course of this trial and the law as I will give it to you at
2 the end of this trial. I do not anticipate that there'll be
3 any type of media coverage but during the course of this trial
4 if there is do not read, listen to or watch any type of, uh,
5 of, uh, news report that might be the newspaper, the radio or
6 the television.

7 Now after the trial, after the case is submitted to you,
8 you must discuss it only in the jury room with your fellow
9 jurors, as I've told you that that that you cannot have any
10 discussions with or communications with anyone involved with
11 this case so the attorneys and the parties they all know that
12 my instructions are that they cannot have any contact with you
13 as well, I tell you that because if ever during the course of
14 this trial over the next day if you see one of these people
15 outside of the courtroom or in the parking lot and they do not
16 even say hello to you, they're not being rude, they're simply
17 following my instructions that they ha -- that they cannot
18 have any co -- uh, conversations with you as well.

19 Ladies and gentlemen, it's important that you keep an
20 open mind and not decide any issue in the case until all of
21 the evidence has been presented, the parties have made their
22 closing arguments and I have had the opportunity to instruct
23 you on the law. Now in just a few moments the attorneys for,
24 the attorney for the plaintiff will make what's called an
25 "opening statement". The attorney will explain to you the

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1 issues in the case or at least what he believes the issues are
2 in this case, the attorney for the defendants he will also
3 make an opening statement. I need to let you know that what
4 the attorneys say during their opening statements is not
5 evidence in the case but it is an opportunity for them to
6 explain to you what they believe the issues are in the case.
7 The evidence in the case will be presented to you by testimony
8 of sworn witnesses from this witness stand right here
9 (indicating) and any exhibits that the lawyers will present
10 during the course of this trial. Now from time to time you
11 may hear one of the lawyers say something like, Your Honor, I
12 believe I have a question of law or a matter of law to discuss
13 with you or they might say, Your Honor, may we approach the
14 bench or sometimes during the course of this trial I, myself,
15 may find it necessary to excuse you from the courtroom for a
16 short while so that the attorneys and I can discuss what's
17 called "matters of law", now the reason for this is because
18 you are the judges of the facts of the case and sometimes when
19 discussing matters of law that I must rule on it becomes
20 necessary for me to make comments about the facts of the case
21 so that you will not be influenced by anything that I say in
22 ruling, in making rulings on matter of law, I will briefly
23 have you removed from the courtroom so that, uh, I will -- I
24 do not improperly, uh, step into your area of determining the
25 facts but in advance I apologize when when we have those type

1 a discussions outside of your presence.

2 Now in determining what the true facts are, you must
3 decide whether or not a witness is believable. It will be my
4 responsibility to rule as a matter of law whether or not
5 certain testimony is admissible but -- or not but once the
6 testimony is admitted, whether or not you believe it, is
7 solely up to you. In deciding whether to believe a witness,
8 you have the right to consider whether the witness has an
9 interest in the result of the trial, whether the witness is
10 prejudiced towards either the plaintiff or the defendant, the
11 opportunity the witness, uh, may have to seen the matters
12 about which the witness may testify and the way the witness
13 acts on the witness stand. You have the right to consider
14 anything that is in the record that will help you evaluate the
15 testimony of the witness, that means that it is your duty to
16 pay close attention to these witnesses, to observe the
17 witnesses, to listen to the witnesses, and pay close attention
18 to the attorneys and to the Court, do not let your thoughts
19 wander but pay attention to the testimony so that at the end
20 of the trial you will be able to determine what the true facts
21 are, apply the law to those facts and render a true and just
22 verdict.

23 Now, Mr. Foreman, it will be your added duty to preside
24 in the jury room and also be your duty to write the verdict of
25 the jury, you will also serve as as the jury spokesperson here

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1 in this court in the event that that becomes necessary but I
2 will give you further instructions, uh, towards the end a the
3 trial on those matters.

4 Now in order to preserve everyone's rights I will give
5 the parties an opportunity to object to anything that I have
6 just said during my opening, uh, comments. Any objection from
7 the plaintiff?

8 MR. DEAL: No, Your Honor.

9 THE COURT: Any from the defense?

10 MR. IMHOFF: Nothing, Your Honor.

11 THE COURT: At this time we'll receive the opening
12 statements of counsel.

13 MR. DEAL: May it please the Court, Your Honor.

14 THE COURT: Um-hum.

15 MR. DEAL: Ladies and gentlemen, thanks for comin' out
16 today, uh, probly felt that your folks that were out there
17 kinda dodged a bullet and ya'll got kinda left holdin' the bag
18 but ya'lls job, my job's pretty important, Mr. Imhoff over
19 here's (indicating) job pretty important, your jobs the most
20 important job here, judge's job pretty important but once
21 again, you are still the most important people here so we
22 appreciate you comin' out, this is what makes our justice
23 system work and we appreciate it and and and what I wanna tell
24 ya is, uh, when when I've had the opportunity to talk to
25 juries after this that, you know, you -- they always sit there

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1 at the beginning, Oh, God, I got, I got stuck doin' this but
2 afterwards they're like, Ya know, that was kinda of
3 enlightening, I appreciate bein' here and, uh, ya know, kind
4 of bein' part of the process and I hope that's what we are
5 able to do for you here today as well.

6 Uh, once again my name is Sven Deal, uh, I'm I work for
7 the law firm of Cozen O'Connor, our office are up in
8 Charlotte, the one that I work out of, we have offices around
9 the country, we're a big law firm, uh, and as a big law firm
10 we also have, uh, big customers, uh, and one of our big
11 clients is Fireman's Fund Insurance Company. The gentleman
12 that's sitting over there (indicating) is man named Scott
13 Klaben, he is an employee of of Fireman's Fund and you're
14 gonna talk to him here in a little bit but, uh, one thing you
15 might wonder is, ya know, this, ya know, outta the blue, ya
16 know, why are we here, well I'll I'll I'll describe how that
17 happened, uh, and I'll tell you why we're here in general,
18 okay. Uh, this issue, the the the case here, the facts of of
19 exactly what happened really are in doubt and here's exactly
20 what happened: Uh, Mr. Wennerstrom who once again is not here
21 and I'll get to that, he wanted a, he he was, uh, he lives
22 down in Florida and he's got some money and he found this
23 beautiful lot up, uh, in the Cliffs a Glassy which is up in
24 the north part of South Carolina, right right right up towards
25 the state line and, uh, he wanted to build a nice house there

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1 and this is just just kinda give you an idea, this
2 (indicating) is the view from his house right off the porch,
3 it's kinda nice, uh, it's kinda like the the lifestyle that I
4 think a lot of us would dream of having and, uh, so when he
5 got the the idea to build that lot he hired a builder and an
6 architect and all that stuff and when the the right outta the
7 gate the first, you know, f -- parts of the work that were
8 done weren't done up to what he thought would be right as he
9 was comin' back and forth from Florida and what the evidence
10 is gonna show is is, uh, Searcy Construction was called out to
11 say, Hey, can you take over buildin' this house and turn it
12 in, ya know, takin' what's here which is from my recollection
13 I think what Mr. Searcy's gonna testify to is that, ya know,
14 is there's a little bitta foundation in and there's some
15 special circumstances 'cause this thing was built on a sla --
16 a slab a rock, just hangin' off this mountain here so in any
17 case, uh, and Mr. Searcy agreed to build the house and, ya
18 know, this house and I think the evidence is gonna show it was
19 built like a bank vault, I mean, it was redundant and
20 0:54:02.6 (4) and it was opulent and everything else and
21 that's what Mr. Searcy, uh, Searcy said he was gonna do. He
22 said fact that m -- that my client asked for, uh, ya know, a
23 house that's gonna last the end a the world and that's what
24 we're gonna build, that's what his testimony was, I'm guessin'
25 he'll con -- ya know, confirm that today or whenever he gets

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1 to testify and as a result the house was was built and that's
2 the house right there (indicating), that's the best picture
3 'cause it, ya know, that that it kinda comes on a slant and we
4 weren't able to get really kind of a way back view, there's
5 trees and whatnot but you can kinda tell it's pretty nice. If
6 you look out, that's where the, this (indicating) is co --
7 coming from the road when you look back and over the big view
8 that's that view that I showed you a little while ago.

9 Alright, now, down the road after the house was finished
10 and the keys were handed over to Mr. Wennerstrom he's he's at
11 visits from time to time and he's u -- you know, he he's comes
12 up and at some point in time and once again I don't think
13 anybody's gonna dispute this and I may be surprised by some
14 testimony we get, uh, in the case but at some point in time
15 water came floodin' into this house and and as I recall, uh,
16 one a the folks that that may testify today or tomorrow said
17 it was like a waterfall comin' down the stairs 'cause what
18 happened was, and this where it gets a little funny, there was
19 a bidet and I've never used one a these things but it
20 evidently it's it go -- it's it's somethin' that goes along
21 with next to the toilet that cleans ya up when you're done
22 usin' the toilet and it looks kinda like that (indicating),
23 that's that's that's the bidet right there (indicating) and if
24 you'll notice this (indicating) picture there's just, ya know,
25 a little disconnection between where the water comes in and

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1 where the water comes outta the wall and once again no one's
2 gonna deny. I don't think and the evidence gonna show you that,
3 uh, this (indicating) thing blew off, in fact, I think
4 somebody said was ripped off, ripped off a there and you're
5 gonna talk to some folks that that'll discuss why that
6 happened and and, you know, just to give ya a little better
7 picture you're kind of on the top, this (indicating) is, ya
8 know, lookin' down on it, okay. Now and this (indicating) is
9 the fitting that was inside the house that failed, it's just a
10 little piece. You can see there is a little ruler on it, it's
11 just a little teeny piece, that's what failed, alright.
12 Now I don't think anybody that I've heard is gonna testify
13 that there's anything wrong with that connection and the
14 connection and as as I think you're gonna hear later on
15 tomorrow or today was, that connection was made by B&B
16 Plumbing, the folks that came out there to work and do the job
17 out there and I don't know of anybody that's that's said so
18 far that there's anything wrong with the way that thing was
19 connected, that's not the problem. Now once again no one's
20 de -- saying this didn't happen this way it happened and then
21 once they, the folks got up there, in fact, what what I think
22 the evidence is gonna show you is once this thing was
23 discovered I believe the maid came to clean the house up and
24 she opened the door and there's just water everywhere coming
25 down the stairs and all that sorta thing and immediately, uh,

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1 both the builder, Mr. Searcy, and the plumber, B&B, were
2 called because there's a problem and they came out, to their
3 credit they came right out and, you know, took a look and they
4 found where the separation occurred, was able to figure out
5 where the water had come from, obviously it was fairly easy to
6 figure out. Eventually they figured out well, it was a, this,
7 there's a regulator on the house, alright, this (indicating)
8 is the, this is the piece that that, uh, we're talking about
9 here, okay, it failed. Now what this thing is gonna, what the
10 evidence gonna show you what the the the folks are gonna tell
11 you is is there's a water, a water system out here at the, at
12 the Cliffs which is where this house is up in the mountains
13 and and just for ya'lls reference, that's that's South
14 Carolina 9 and downtown Landrum is kinda over this
15 (indicating) way and then, uh, I-26 is over here (indicating),
16 Spartanburg's probly down this (indicating) way somewhere, uh,
17 so this (indicating) all is built up on the side of the hill
18 and at the very top is a, is a golf course, you can see it
19 it's got the golf course up there, all the way up here
20 (indicating) at the top, so this this water system that's the
21 the the the system supplies water this entire thing, including
22 this golf course at the very top a the hill, supplies water
23 this (indicating) whole thing and and, uh, because a that
24 what, what you're gonna hear is the pressure that was comin'
25 out to this house out here (indicating) all the way, this is

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1 where that Mr., uh, Wennerstrom's house is all the way out
2 here (indicating) and once again it, ya know, it's hard to
3 tell, it's not contoured map but, uh, I think what what, uh,
4 the evidence is gonna show you is down here's (indicating)
5 about, what, 1200 hundred feet, up here's (indicating) about
6 3000 feet so 1800 feet between here (indicating) and here
7 (indicating) give or take and out here's (indicating) about
8 25, 2600 feet so there's a pretty big difference in in in in
9 the elevation, well as a result of that the pressure that came
10 out to this house after it was tested the first time was ever
11 tested was when, uh, this loss occurred and B&B came out there
12 and test it and what they're, what the evidence is gonna, uh,
13 show you is that, uh, they tested, they put a a meter, a gauge
14 on there to test that, what that pressure was, went out there
15 and it busted the first gauge, bent it, it never worked again,
16 they had to get a bigger gauge to test it. At that point in
17 time, they estimated what what I believe they've testified to
18 and then and I would assume they will do again is that, uh, it
19 was about 200 PSI, pounds per square inch, out there. Now
20 what also was testified to is the ideal, uh, PSI goin' to a
21 house would be about, goin' into the house from the street
22 would be about 60 PSI, so they estimated it was more than
23 three times as high as it should be, okay, and as a result,
24 uh, when this thing, when this regulator failed it and I think
25 the testimony was it ripped that that fixture right off the

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1 wall to the bidet, popped it off and a course ignited that
2 much pressure, there's just water shootin' out I would think,
3 I I -- no one was there, I think that is what would be be
4 happening.

5 So the regulator let's talk about that. The regulator
6 and I think this is normal it's installed between where the
7 water supply is and where, ya know, the plumbing in and where
8 the plumbing fissure on, between there and that line, between
9 there it's installed there and for this particular house
10 lookin' from the road it was, it was buried in this little,
11 one a those little things like you'd see and I think
12 everybody, pretty much everybody here that's in our around
13 town, if you got, if you're on the town system there they they
14 got the little thing they lift up, look in there, it's similar
15 to that, it was buried underneath these (indicating) little,
16 this little hole right here (indicating), that's where that
17 regulator was. Now, uh, none a that seems outta the ordinary
18 or is weird or strange and everything else being equal, uh,
19 that's all okay but the problem here is everything else wasn't
20 equal because there were, ya know, by some estimates 200 PSI,
21 our our expert's gonna testify, Mr. Harris you're gonna meet
22 him later on, he testified that they went out and tested the
23 water system after the loss occurred, it fluctuated from about
24 a hundred and fifty and a hundred and eighty almost PSI,
25 hundred and seventy-nine I think is the, is the number and as

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1 you've already heard what what, uh, the folks at B&B would
2 would like to see is 60, so in normal circumstance when
3 pressure varies they put those regulators on there in order to
4 keep that pressure going into the house 60 PSI, right, and
5 you're still probly sittin' there wondering why, what's wrong,
6 what happened, what's what's what did -- what do we say they
7 did bad? What's the evidence gonna show you is the following:
8 that they made an assumption that they could rely on this
9 valve and I'm not talkin' about a valve like this, I'm talkin'
10 about this (indicating) valve itself, you're gonna take a look
11 at this valve, I'd show it to you now but it's in pieces but
12 you're gonna get a chance to look at the actual thing, that
13 they thought this valve was fair enough to keep this house
14 safe and I guess I ask you from a common sense standpoint you
15 don't know anything about these valves but it's man-made,
16 right, would it last forever? Think that, ask that question
17 of yourself, should it last forever because that's more or
18 less what they've gotta say is this is gonna last forever,
19 otherwise the house is a -- is gonna fail 'cause what we do
20 know is the water pressure's super high comin' into it, this
21 regulator here (indicating) is supposed to make sure that that
22 that water pressure doesn't get into the house and the only
23 thing that's stopping it, that's what the testimony's gonna be
24 from everybody, not just me and not my expert, not Mr. Searcy,
25 not not folks from B&B, everybody here is gonna say the only

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1 thing that kept whatever pressure was comin' from the street
2 into the house is this this this piece of machinery right here
3 (indicating). Now from a strictly common sense standpoint I
4 want you guys to think about whether or not you think that was
5 reasonable to think this is going to last forever or if it was
6 eventually gonna fail. Now the testimony is gonna show and
7 well it has been and I'm assumin' they're gonna testify
8 consistently what they said in in the past is that they never
9 had any of these other ones fail so they they just assumed
10 this wouldn't either. Once again I ask you to think about
11 whether or not that's a reasonable assumption to make given
12 this is a man-made item, and Mr. Harris that our expert's
13 gonna take one, ya know, show you pieces, it's -- they've got
14 moving parts so it's made of plastic and metal, okay, but this
15 is gonna last forever, that's more or less what they've gotta
16 say. Now in support of that idea also what they're gonna also
17 say, what they've been saying all along is that, Well code
18 didn't require us do anything else but that, we followed the
19 rules were so we did whatever we were supposed to do so it's
20 not our fault, ju -- stuff just happens and if, and if the law
21 didn't didn't make the universe do any different then it's not
22 our fault, that's what they're sayin'. Now that goes against
23 what I think we all agree is our common sense about this thing
24 lasting forever but I think there's gonna be some evidence
25 that's gonna be introduced that'll show ya, Well just 'cause

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1 the code says one thing or the other doesn't you're right
2 first of all and second of all, you should just by common
3 sense understand this is gonna fail, period, it's man-made.

4 Alright, now, after all this occurs Mr., uh,
5 Mr. Wennerstrom he's got an insurance policy with FF --
6 Fireman's Fund, I might refer to 'em as FFIC, it's quicker,
7 Fireman's Fund Insurance Company, FFIC, and because he pays
8 his premiums and I don't imagine, I can't, I don't know what
9 it is but I'm sure he pays a decent premium for a house that
10 nice, he pays those premiums and what's Fireman's Funds job to
11 do is to come out there and pay for whatever the damage are as
12 according to what his policy says, whatever's cover -- covered
13 under the policy. Mr. Klaben went out, took a look at this
14 and he's gonna tell you that he paid for the damage as he saw
15 them to to pay for in the policy.

16 Now why aint Mr. Wennerstrom here? I'll tell you why
17 he's not here 'cause he was taken care of. He had -- he's not
18 a party to this lawsuit because he didn't, he's not injured in
19 this matter because he didn't pay anything. He -- we, uh,
20 Fireman's Fund took care of of the damages, they took care of
21 whatever damage to the contents there were and from time to
22 time when Mr. Wennerstrom would ordinarily have come up to to
23 stay in his house that wasn't available 'cause it was, you
24 know, being repaired, they put him up as part of the policy,
25 as you would expect them to do 'cause fair enough he's was

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1 without a house. Now Mr. Wennerstrom aint here because
2 Fireman's Fund stroked a check and a lotta that check was
3 stroked to Searcy Custom Homes because they did the repair,
4 okay, and that was at the request of Mr. Wennerstrom 'cause at
5 that point in time nobody's pointing the finger at anybody as
6 to who did what, when and how, in fact, it's it's my
7 recollection and I think B&B will testify to this at some
8 point in time they actually did some work on the home
9 afterwards as well, alright. Now the point here being very
10 simple: under those circumstances since Mr. Wennerstrom's not
11 injured, he, you know, somebody or he was completely taken
12 care of the person's out of pocket for this damage is
13 Fireman's Fund and under the law Fireman's Fund takes over se
14 -- you you heard me -- the the judge talk about subrogation,
15 what subrogation is is when the f -- insurance company pays
16 for somebody's damages, they take whatever rights it would be
17 to sue that other party. If in fact they find out that
18 somebody else is responsible, they have the right to recover
19 that money 'cause they're the ones that paid it and that's why
20 Fireman's Fund sittin' here instead a Mr. Wennerstrom.

21 Now I wanna very strip, uh, ya know, cau -- caution you
22 Mr. Imhoff's gonna get up here and talk to you here in a
23 little bit, talk to ya'll a little bit, he's gonna talk about
24 the insurance company this, the insurance company that,
25 insurance company this, I want you to pay attention. I want

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1 want you guys every time that he mentions the insurance
2 company I want you to ask yourself why he's doing that because
3 it doesn't matter what the law is and who's responsible, has
4 no bearing whatsoever on who it was that's getting paid, you
5 guys have already agreed that you would do whatever the law
6 directs you to do, any suggestion that you should consider
7 some other factor that has nothing to do with what the law
8 suggests is an effort on their part to get you to think about
9 something other than the law and you've agreed to do and
10 follow the law, so think about that every time he's talking
11 about insurance company this, insurance company that, that's
12 somethin' to think about, alright.

13 So in any case, uh, Mr. Harris gonna come talk to you and
14 he's gonna give you all the technical details why he doesn't
15 think, uh, what what what happened at the house, uh, was
16 appropriate and I'm gonna leave that to him, what I'll leave
17 to you is the following: We are trusting you, I mean we, I'm
18 talking about everybody in this courtroom trusting you to do
19 the right thing and at the end a this we keep tryin', if if we
20 haven't shown you by a preponderance of the evidence, and
21 they're gonna tell tell you what that means, we haven't shown
22 you that these folks weren't responsible for the, for the
23 damage to the house and you have to use your common sense to
24 realize well maybe this, uh, this thing could have lasted
25 forever, then you should rule for them, if you don't, if you

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1 have -- if if if we've shown you that they're responsible for
2 this damage, I fully expect you to rule in our favor in the
3 damages that you think were were actually caused by these
4 defendants, if in fact that's what you, what what you
5 determine, so I thank you for that, ladies and gentlemen, and
6 I and I'm gonna now just be asking questions from here on out
7 until the very end and I'm gonna have another chance to talk
8 to you so I appreciate your help and I'm glad you've done real
9 well with paying attention to my sp -- my boring speeches
10 today but anyway I look forward talking to you again. Thank
11 you.

12 THE COURT: Yes, sir.

13 MR. IMHOFF: Thank Your Honor. Mr. Foreman and ladies
14 and gentlemen of the jury, I've always wondered if you put a
15 C-SPAN feed up right there (indicating) if you would ever
16 listen to anything that goes on in this courtroom.

17 (Laughter.)

18 MR. IMHOFF: We think we're riveting, I'm certain that you
19 don't and I'm certain most juries don't but my name's Jason
20 Imhoff, I introduced myself earlier, I work here in
21 Spartanburg at the Ward Law firm. I have the pleasure and I
22 truly mean that of representing these folks over here
23 (indicating). This (indicating) is Mark Searcy, he builds
24 custom homes, that you've met, Searcy Custom Homes and these
25 (indicating) two folks are Randall Blythe and Chuck Hafner,

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1 Mr., uh, for B&B Plumbing, I think Randall does all the work
2 and you do all the golfing I think, somethin' along those,
3 split work.

4 Let's talk about the case just a, just a little bit and
5 because I'm not that riveting I will try not to be here very,
6 very long but I am gonna correct some a the things, uh, that
7 Mr. Deal said and we do think the fact that Fireman's
8 Insurance Company is the plaintiff in this case is important
9 and let me tell ya what you're gonna hear from this witness
10 stand right here (indicating) and what you're going to decide.
11 You heard him say that these folks when they built this house
12 back in 2002 and 2003 did something wrong, that's what you're
13 here to determine, that they did something wrong that caused
14 this huge amount of flooding up at Mr. Wennerstrom's home.
15 They told ya that you're gonna hear their expert Mr. Harris
16 over there (indicating) he's gonna testify that in addition to
17 the safety measure that's required by the State of South
18 Carolina based on an international building code these folks
19 should have done more. You're gonna hear him say that in
20 addition to the pressure regulator valve which takes the
21 pressure from a hundred and fifty PSI down to sixty, fifty
22 PSI, they should have put a pressure relief valve on and what
23 that means is if pressure reducing valve fails and the
24 pressure goes up in the house, water goes in this reduction
25 value or this relief valve which blows open and then there's

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1 water spraying in the yard or in the basement, I don't, I
2 don't know what here he's talkin' talking about, that's one.
3 The second thing we're not gonna talk about very much 'cause
4 it's nonsense and that's somehow that they put their pressure
5 reducing valve somewhere where Mr. Wennerstrom couldn't find
6 it. I assume that everyone has a valve just like the one that
7 Mr. Deal showed you, it's a valve box. You have a irrigation
8 system, if you have water running into your house it's a valve
9 box, it sat right next to Mr. Deal's [sic] driveway, we'll
10 show you pictures of it in the back, every time he blessed us
11 with our presence up here in South Carolina from Florida,
12 drove by it on the way in, drove by it on the way out. We're
13 we're not gonna address that very much, there's no question
14 that he knew where it was, coulda changed, could've could've
15 fixed it, replaced it, maintained it, any of those things and
16 you'll hear that testimony. Obviously we don't expect
17 anything to last forever, it's his home, if there was
18 something wrong with it, he shoulda went replace it or called
19 these (indicating) folks like he still does so let me back
20 into it.

21 You just heard the the argument that we -- they did
22 something wrong, the question that's going to be asked of you
23 at the end of this case is are these (indicating) folks are
24 reasonable? Did they do anything wrong? Are they reasonable
25 people? When they in -- when they built this house, a Sherman

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1 tank I think as Mr. Deal called it, were they reasonable, and
2 the way I believe the judge is going to ask you to determine
3 and evaluate these folks in whether or not they were
4 reasonable is what did the State a South Carolina ask them
5 for, what was every plumber in the State a South Carolina
6 doing at the time, what was every plumber in the Cliffs at
7 Glassy Subdivision doing at the same time, what was everybody
8 in the United States doing at the same time and the answer to
9 that is exactly what they did, exactly what they did. The
10 IBC is an International Building Code, you'll hear testimony
11 about IBC, it's an international group of builders and
12 plumbers that get together and decide how structures should be
13 built, there was one in 2002, you'll hear there was another
14 one in 2009, they both tell these (indicating) folks that they
15 did it correctly so the international building code.

16 Let's talk about plumber, plumbers in the State of South
17 Carolina. Plumbers in the Cliffs at Glassy did exactly the
18 same way, exactly the same way. You're gonna hear plaintiff's
19 expert get up here and accuse these (indicating) folks of
20 wrongdoing but you'll also hear him admit they went by the
21 building code and they did exactly what every other plumber
22 was doing in 2002 and 2009. From that (indicating) stand with
23 his hand on the Bible he'll say they did everything right and
24 then he'll say but I still think they're wrong, I still think
25 they're wrong, so the building code they complied with that,

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1 they did exactly as other plumbers were doing. What about
2 other experts? We call 'em experts, that's lawyer speaking,
3 they're the folks that we hire to tell us whether we're right
4 or we're wrong in a case, okay. Mr. Harris I believe is a
5 mechanical engineer, he's with a firm called Engineering
6 Design & Testing, all he does is forensic evaluation, he goes
7 and determines how things happen, hired by folks like
8 Fireman's Fund Insurance Company to go do that type of
9 investigation. Well what about other folks? We've got one
10 too. You'll only hear one. You'll only hear one that has the
11 opinion that those (indicating) three gentlemen did anything
12 wrong, one, and the reason you'll only hear one is because Mr.
13 Harris has admitted and I assume will admit on the stand he's
14 the only one in the world that has that opinion. His firm
15 Engineering Design Testing is the only firm he knows of in the
16 world that has an opinion that these three gentlemen should
17 have put an additional safety measure on this house after the
18 safety measure they installed, so it's not the code, it's not
19 what other plumbers are doing and there aren't any other
20 experts so what else do ya do? Their expert has also
21 testified, Mr. Harris, they complied with what Mr. Wennerstrom
22 wanted, there were two architects that did plans for this
23 house, two, three gentlemen complied with what two architects
24 wanted them to do on the house, South Carolina Building Code
25 2002, 2009, every other plumber in the world.

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1 Why are we here, that's what Mr. Deal didn't want you to
2 hear and doesn't want you to listen to me about, the reason
3 we're here is because Fireman Fund Insurance Company had a
4 \$400,000 claim and they don't wanna pay it and you'll hear
5 testimony that they sent it to their subrogation unit,
6 subrogation, lookin' for somebody to blame, in six hours, the
7 day Mr. Wennerstrom called to submit a claim to his insurance
8 company that he paid, six hours later they sent it to the
9 subrogation unit to find someone to blame. Four years later
10 four different parties they've tried to blame: B&B Plumbing,
11 Searcy Homes, guess who else they've tried to blame, the water
12 company but the water company, you'll here Mr. Klaben who will
13 sit here (indicating) with Fireman Fund Insurance Company,
14 he's gonna sit right there (indicating), they tried to blame
15 the water company, pressure's way, way too high. Obviously
16 you probly already guessed this they blame the man -- the
17 valve manufacturer, it's called Wilkins, it's a Zurn Company,
18 Your your regulator failed, it let all this pressure into the
19 house. Four years, four different parties they've tried to
20 blame it on 'cause Fireman's Fund doesn't want to pay
21 \$400,000, that's why we're here, so there's no basis for
22 finding that these gentlemen did anything wrong, they did it
23 exactly as they were supposed to, exactly as they were
24 supposed to, exactly as every other plumber did. We're gonna
25 ask you for a defense verdict in this case, it'll will be a

1 couple of days, we're we're movin' slow and we like to talk
2 and I apologize for that but we're gonna ask you for a defense
3 verdict and we're we're gonna ask you at the end a this case
4 to tell Fireman's Fund to stop bullying our small businesses
5 and we're gonna ask you to come back and tell Fireman's Fund
6 these folks didn't do anything wrong. Thank you, thank for
7 listening.

8 THE COURT: Plaintiff ready to call its first witness?

9 MR. DEAL: We are, Your Honor. Your Honor, I'd like to
10 call Scott Klaben.

11 THE COURT: Sir, c'mon around up here, let the clerk a
12 court swear you in, sir.

13 (Whereupon, the witness came forward.)

14 THE CLERK: Place your left hand on the Bible, raise your
15 right.

16 THE WITNESS: Okay.

17 SCOTT KLABEN, having been first
18 duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION BY MR. DEAL:

21 Q. Tell your name to the jury, Scott.

22 A. My name is Scott Klaben.

23 Q. And, uh, where you from, Scott?

24 A. I'm from Sarasota, Florida.

25 Q. And, uh, I guess I have to ask this that how long ago was

1 that you were born?

2 A. Excuse me again?

3 Q. How long ago was it that you were born?

4 A. I was born in 1966.

5 Q. Okay, so you're you're not quite 50 I guess.

6 A. Not yet.

7 Q. Are you married?

8 A. Yes.

9 Q. Do ya have any kids?

10 A. Two, two kids.

11 Q. Alright. Uh, and where do you work?

12 A. I work at Fireman's Fund Insurance.

13 Q. Okay, and when'd you start workin' for those folks?

14 A. In April of 2005.

15 Q. Alright, what'd ya do before then?

16 A. I worked for another insurance company.

17 Q. Okay, and and before that?

18 A. I was in college.

19 Q. Okay, so, uh, after you got outta college pretty much
20 thereafter you've been workin' for insurance companies.

21 A. Right, I did, uh, some construction work and worked for a
22 a a government program for little while.

23 Q. Okay, alright, and once again when'd you start working
24 with Fireman's Fund?

25 A. In April of 2005.

1 Q. And when you started workin' then wha'd ya do?

2 A. I was hired as a call a regional general adjuster,
3 someone handles large losses.

4 Q. Okay, what qualified you to do that?

5 A. Uh, my experience with the prior insurance company, my
6 education, lot of, uh, continuing education credits, a lot of,
7 uh, seminars and continued knowledge of in the field.

8 Q. Okay, uh, so you talk about your education, uh, where'd
9 you go to college?

10 A. Uh, Le Moyne College in Syracuse, New York.

11 Q. Wha'd ya study there?

12 A. Uh, business administration and accounting.

13 Q. Okay. And, uh, after you got outta school you, uh, got
14 this, when you got this job with the, uh, insurance, the first
15 insurance company who was that?

16 A. Uh, Nationwide Insurance.

17 Q. Okay, and then you took some continuing education durin'
18 that time?

19 A. Yes, they had a a lot of in-house training as well as
20 seminars and other programs to further educate me.

21 Q. Alright. A minute ago you heard, uh, Mr. Imhoff say
22 that, uh, Fireman's Fund blamed four different people for this
23 this, uh, uh, this loss, uh, did did you know any, of any such
24 effort to blame anybody, uh, in this matter?

25 A. No, I think blame would be too harsh of a word, it would

1 be more of look into it and investigate, open up all avenues
2 both to, uh, make sure that no had, uh, we're ruling every
3 aspect, the claim is looked at, ya know, you look at all of
4 it, that way you know you try to be impartial to everything.
5 Uh, if you don't look into anything then you can be held
6 as, you know, you have tunnel vision to look at the easiest and
7 a person to go after. We looked at everything, you know, to
8 keep our mind wide open in the beginning of to gather all the
9 evidence.

10 Q. Okay. And, you know, you also said that, uh, Fireman's
11 Fund it it contacted, quote, unquote, subro and I guess that
12 be the subro department at Fireman's Fund, is that right?

13 A. Correct.

14 Q. And that happened six hours after the claim was, uh, was
15 filed, was called in by Mr. Wennerstrom?

16 A. Uh, per some the notes, I wasn't handling it at that
17 point, but that's what it seemed to be yes.

18 Q. Alright, does that sound unusual to you?

19 A. No, that's, it's called just a standard procedure on a
20 claim that any claim that would see a hundred thousand dollars
21 regardless of the reason or why, it is automatically called in
22 to the subrogation department.

23 Q. Okay, and is that because -- well well tell me why that
24 is.

25 A. Uh, many reasons but the most one is that, uh, evidence

1 and other issues quickly deteriorate without proper, uh,
2 handling of it, you have another set of eyes and ears on it
3 to, uh, capture the information, evidence gets thrown out, uh
4 people need to be contacted to help with the investigation of
5 it and that amounta money what may be cost, uh, could be
6 costly to get more people involved, ya know, with that amounta
7 money it's usually cost effective to help out, ya know, with
8 that.

9 Q. And if Fireman's Fund hadn't taken those steps to
10 preserve the evidence, place those parties on notice, do you
11 know of any, what what would happen potentially down the
12 road?

13 A. Yeah, either the evidence including this claim the
14 pressure regulator could have been, uh, not handled correctly
15 or even discarded by an innocent person not knowing that it's
16 an important piece of, uh, opportunity here to try to find out
17 what happened.

18 Q. Right, okay. Now how did you get involved personally in
19 this loss, Scott?

20 A. I was the, uh, originally we had a another adjustor
21 nearby who was first called in immediately for this loss and
22 upon his first review and inspection and discussion he noted
23 that it was gonna exceed median 200,000 so with my experience
24 level and, uh, they thought would be a better opportunity for
25 me to step in and help out.

1 Q. Okay. Uh, and I guess now let's back up to that, so when
2 you first started working in 2005, what was your job again?

3 A. It was our a regional general adjuster which also large
4 loss. They hired me 'cause I had the experience from a, the
5 prior carrier as well as my work track record, uh, they need,
6 ya know, bring me on as a a high capacity adjuster.

7 Q. And then was that, that the same job that you had when
8 this loss came in?

9 A. Yes.

10 Q. Alright, so you handled large losses ---

11 A. Yes, sir.

12 Q. --- which is why you were called in this case?

13 A. Correct.

14 Q. Alright. And at some point in time did you actually
15 travel up to Mr. Wennerstrom's home?

16 A. Yes, I did.

17 Q. What, to do what?

18 A. Uh, originally to meet with Mr. Wennerstrom as well as
19 with Seary [sic] builders, uh, ServiceMaster was also there,
20 still continued to dry out the house and to look at the loss,
21 you know, first eye knowledge, you know, it's very important
22 to get on site to collect all the information first hands
23 versus what somebody tells you or through pictures.

24 Q. Got ya. So so did you in fact inspected the home?

25 A. Yes.

1 Q. And what did you find?

2 A. Uh, my initial inspection out there was the house was
3 being dried out by ServiceMaster and a lotta the building
4 materials were being torn out to preserve the property to, you
5 know, try to reduce the mold as well as, um, some
6 investigation was bein' done which I was not involved with of
7 what caused the water leak.

8 Q. Okay. Uh, and so who's ServiceMaster?

9 A. ServiceMaster's a company that specializes in helping,
10 uh, people after they have a large catastrophe whether it be
11 fire or water or other calamities to their house. They have
12 special drying equipment, training to help reduce the damages
13 to a house especially after a loss like this.

14 Q. Okay. Uh, and down the road then did you develop a an
15 idea of what the da -- the scope a the damages was?

16 A. Uh, yeah, after my first initial visit I was figuring it
17 between 2 to \$300,000 for the building and the contents.

18 Q. Okay, and how did you come to that number, ballpark?

19 A. Uh, most that I talked to, you know, the contractors, uh,
20 Mr. Wennerstrom himself, uh, my general knowledge and
21 experience doing this of, you know, what kinda construction
22 would be needed to rebuild it, uh, damages to the contents,
23 the finishes of the house, uh, that avenue.

24 Q. Was this a normal house when it come to the finishes and
25 the construction materials?

1 A. It was very high-end.

2 Q. Okay. And was that assessed, did you assess that when
3 you did made your, uh, and you developed the scope of what the
4 damages were?

5 A. Right, I usually start like top down to what's what kinda
6 paint finishes are on there, wallpaper, trim work in the
7 house, uh, what kind of, uh, decor, lighting fixtures, granite
8 countertops, hardwood floors, very high-end, uh, fixtures and
9 cabinetry as well as the contents and they're very high-end, a
10 lotta of it was custom as well as designer-type, uh, materials
11 and design.

12 Q. Okay. And did you consult with anybody else about the
13 scope a the damages?

14 A. Uh, numerous, numerous, uh, contractors and vendors,
15 yes.

16 Q. Okay, did you consult with Searcy?

17 A. Yes.

18 Q. And now when I say Searcy I meant Searcy Custom Homes.

19 A. Yeah, on numerous occasions.

20 Q. Alright. And did you use what Mr., uh, what what Searcy
21 Custom Homes told you in in assessing the the scope and value
22 of the damages?

23 A. I would phrase it more as to be I work with them, it
24 wasn't per se them just tellin' me what it was. We we talked,
25 we reviewed together, they were, uh, uh, over invoices in

1 their cost and their using of subcontractors and invoices for
2 materials and and labor all put together very, uh, precise
3 into detailed format to try to capture the proper cost to
4 rebuild the house as it was prior to the loss.

5 Q. Okay. Alright, uh, and at some point in time did you
6 come to a final, uh, understanding of how much the damages
7 were you were gonna pay under the policy?

8 A. Yes.

9 Q. And do you know what that number is?

10 A. Uh, not offhand but I did have a very, uh, detailed, uh,
11 spread sheet that I used to calculate the cost.

12 MR. DEAL: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. DEAL:

15 Q. Is that that document you were just discussing?

16 A. Yes.

17 Q. Okay. Uh, and did you actually prepare that document?

18 A. Yes, I did.

19 Q. And does it actually -- accurately reflect what Fireman's
20 Fund, what the scope of the damages and what Fireman's Fund
21 paid as re -- as a result of the the water leak?

22 A. Yes.

23 MR. DEAL: I'd like to move that, uh, spreadsheet into
24 evidence, Your Honor. Oh, you got it?

25 MR. IMHOFF: No, objection, Your Honor.

1 THE COURT: Without objection Plaintiff's 1.

2 (Spreadsheet marked Plaintiff's Exhibit No. 1 for
3 identification and admitted into evidence.)

4 BY MR. DEAL:

5 Q. Alright. So what's -- this is now, we we marked that now
6 as Exhibit 1, Plaintiff's 1, uh, and and I'd like just just
7 basically walk through, what what what, uh, the -- are there
8 as I recall there were three main categories a damages, what
9 are those?

10 A. Uh, yeah, the policy is is broken down into three main
11 components, one is we call the building, anything to do with
12 the building whether it's the flooring, the drapes, anything
13 that permanently attached to the building and it's damaged it
14 would be under that category.

15 Q. Okay.

16 A. Uh, second category would be the contents, obviously
17 anything that, uh, that is moveable or taken out if you sell
18 the house including, uh, furniture, clothing, electronics,
19 that would be all under -- underneath the contents and the
20 third category is what we call ALE or it's called "Additional
21 Living Expenses", it's those costs that you incur on a a
22 non-physical basis, uh, because of the loss that you wouldn't
23 have incurred otherwise. Uh, for Mr. Wennerstrom, uh, he
24 would not have, he didn't have a place to stay, uh, to come
25 up, uh, 'cause the house was in, uh, disarray, it be under

1 construction so he wasn't able to stay there as well as he
2 came up additional time than he normally would have to inspect
3 the house and meet with contractors to work out his loss.

4 Q. Okay. Now let's, uh, let's just start with contents, uh,
5 and and if I may approach, Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. DEAL:

8 Q. And I wanna show you that and I've already produced these
9 documents, Your Honor. Uh, I'm gonna I hand you this, ---

10 A. Sure.

11 Q. --- what's it say there on the front?

12 A. Uh, contents.

13 Q. And and did you make, in fact do -- write that in your,
14 in your file?

15 A. Yes.

16 Q. Okay. Now can you, uh, just take a quick review a that.

17 A. Okay, I recall this.

18 Q. Alright, and did you in fact collate and prepare that
19 document?

20 A. Yes.

21 Q. And and with regard to the damages that occurred to the
22 the contents of this house?

23 A. Yes.

24 Q. Okay, and I'd like to move that into evidence.

25 MR. IMHOFF: May I see it?

1 MR. DEAL: Sure.

2 (Whereupon, a discussion was held off the record.)

3 THE COURT: Any objection?

4 MR. IMHOFF: No, Your Honor.

5 THE COURT: Without objection be Plaintiff's 2.

6 (Contents bundle marked Plaintiff's Exhibit No. 2 for
7 identification and admitted into evidence.)

8 MR. IMHOFF: Alright.

9 THE COURT: And tell me, uh, uh, if I'm saying what
10 Plaintiff's 2 is, tell me the name of it.

11 MR. DEAL: Contents, Your Honor.

12 THE COURT: Okay, thank ---

13 MR. DEAL: It's the, it's the contents bundle.

14 BY MR. DEAL:

15 Q. Um, alright, Scott, what what it's in that, what's in
16 that document?

17 A. Uh, this contains how we came to settle upon the damages
18 to the contents, it includes, uh, everything from, uh, reports
19 from the insured's, uh, people that he hired to work on his
20 furniture, his rugs, uh, his electronics, his, uh, clothing,
21 uh, his drapes and such so it's basically a a variety of
22 vendors that I worked with to arrive at the amount of damages
23 for items that were damaged or destroyed by the water.

24 Q. Okay. And in your spreadsheet does it break down what
25 those those big numbers are that you got, you -- that are

1 derived from that particular document that is -- does one
2 summarize what was in document in Plaintiff's 2 I guess is the
3 question?

4 A. Yes, yeah, for how it was broken down there's probly
5 eight or nine different categories under the contents, uh, for
6 items.

7 Q. What were those con -- what were the -- what were those
8 i -- if you just tell me what those, the -- just tell me what
9 the first one is.

10 A. Well the first one would say the the rugs and furniture
11 recovery and cleaning costs and the storage and return by a
12 contractor, uh, of high-end, uh, furniture and rug, uh, vendor
13 by the name of Ama -- Amatullo [sic], I worked with him, uh,
14 quite often, uh, how to capture the cost for a lotta damage,
15 rugs and furniture. He had a lot of custom, uh, furniture and
16 rugs that needed special attention in detail to, uh, fit his
17 house.

18 Q. Okay, so what would have happened with those those rugs
19 and in in that first line ---

20 (Indiscernible cross-talk.)

21 A. Yeah, we had him go out there immediately to try to clean
22 and save so they didn't get moldy or or damaged as well as,
23 uh, store them, uh, in environment where they could be safe
24 and also the cost to return them and set 'em back up and also
25 some repairs to them.

1 Q. Okay, and in in those invoices for that work was then
2 submitted to you, correct?

3 A. Correct.

4 Q. And after that, uh did Fireman's Fund pay that?

5 A. Yeah, we we went back and forth, it wasn't what he turned
6 in exactly, went back and forth to make sure there is a proper
7 amount, uh, negotiation, make sure that was the right amount
8 to be for those invoices.

9 Q. And do you feel like those -- that that that the amount
10 paid by Fireman's Fund was a fair amount based on the damages
11 and and what needed to be done to those rugs and and other
12 items in that list?

13 A. Yes.

14 Q. Okay.

15 THE COURT: Excuse me. Sir, put that away. Put it away.

16 MR. SEARCY: I have.

17 THE COURT: Mr. Bailiff, take it.

18 (Whereupon, the bailiff complied.)

19 MR. DEAL: In defense of Searcy, I had my phone ---

20 THE COURT: Go ahead.

21 MR. DEAL: --- taken way by Mr. Cole, uh, Judge Cole in
22 his chambers here while back so it happens. In any case ---

23 THE COURT: And Judge Cole puts people in jail for that.

24 MR. DEAL: (Laughs.) Fortunately that wasn't -- that
25 didn't happen to me, Your Honor.

1 THE COURT: I don't think it's funny, okay.

2 MR. DEAL: Right.

3 THE COURT: There's an order issued by the Chief Justice
4 of the Supreme Court that says you're not supposed to have
5 those items in the courtroom.

6 MR. DEAL: I understand.

7 THE COURT: Go ahead.

8 MR. DEAL: I I wasn't making light of that, Your Honor.

9 THE COURT: Go ahead.

10 THE WITNESS: Could we we go back a a step like.

11 BY MR. DEAL

12 Q. Okay, well just to review where we were so you -- it --
13 Fireman's Fund eventually paid for tho -- the damages in that
14 line item to Amatulli, correct?

15 A. Correct. We actually, we always paid, uh,
16 Mr. Wennerstrom directly and he would pay the -- these people
17 directly. I, Fireman's Fund didn't pay anybody directly, we
18 would pay Mr. Wennerstrom and then he paid, uh, these people.

19 Q. Got ya. So you paid 'em -- you -- Mr. Wennerstrom got
20 paid these damages and then your assumption would be I guess
21 that he paid Amatulli.

22 A. Right, correct.

23 Q. Alright, but in any case Fireman's Fund did in fact pay
24 for the amount of those damages ---

25 A. Correct.

1 Q. --- and you felt like those damages were were reasonable,
2 the payments that you made were reasonable under the
3 circumstances.

4 A. Yes.

5 Q. And what was the amount that was paid for the rugs and
6 that sorta thing in that first line item?

7 A. That would be \$10,118.50.

8 Q. Okay. Say that one again 10,000 ---

9 A. \$10,118.50.

10 Q. Okay.

11 A. Now that's for just the first item inder -- under the
12 contents, not the entire contents.

13 Q. Alright, I understand that, so what's the next line item
14 on that content list?

15 A. Uh, the cost to re -- repair and replace the electronics
16 for \$13,560.93.

17 Q. Alright, and then, and what what electronics were
18 replaced?

19 A. Oh, there's a whole list.

20 Q. Again, just give us an idea, the document has ---

21 A. Oh, ---

22 Q. --- has been entered ---

23 A. --- T ---

24 Q. --- into evidence.

25 A. --- TVs, hi -- he had high-end stereo equipment, uh, I

1 think computerized system, printer, uh, fax machines, uh, the
2 majority of what it was.

3 Q. And how did you come to the value that you -- that of
4 those items and and and how much ended up payin'?

5 A. I worked with, uh, the person who originally installed
6 them, uh, Mr. Wennerstrom gave me his name and we discussed it
7 and met on site and reviewed 'em and, uh, arrived at that
8 number.

9 Q. Alright, and you, and y -- at that point in time did you
10 feel like though that that was the figure that you came to was
11 a fair price for ---

12 A. Correct.

13 Q. --- the damage that was done to these items?

14 A. Yeah, originally if I recall correctly which are in here
15 was he applied for about \$20,000 wortha damage for those items
16 but during my review with him and some testing that we did we
17 were able to conclude that 13,000 was more fair and
18 reasonable.

19 Q. Alright, so that's what you paid as a fair and reasonable
20 amount thirteen thousand five sixty-nine three?

21 A. Correct.

22 Q. Okay, what's the next item on that list?

23 A. Uh, replacement of the -- some Oriental rugs that were
24 totally destroyed by the water that couldn't be salvaged or
25 repaired or restored.

1 Q. Who made the determination that they could be salvage or
2 repaired?

3 A. Oh, I looked at 'em as well as the original, uh, seller
4 of them, uh, it was very evident the colors had run, they're
5 high-end rugs made a wool and other high-end fabrics that just
6 would, you know, once the colors run it's impossible to to
7 remove them, it stains the entire rug as well as the fabrics
8 have worn and, uh, they start to sh -- uh, the proper almost
9 like delaminate, they shrink the the wools and that's shrink
10 as well as start to unweave.

11 Q. Got ya. Alright, and, uh, in that line item how much
12 did, uh, uh, how much was, uh, the amount that was paid under
13 that line item?

14 A. Uh, \$46,675.

15 Q. And and, uh, on review review that, the documentation
16 that's in there, did you feel like that \$46,675 was a fair
17 price for those rugs?

18 A. Yes.

19 Q. Alright.

20 A. We have a full summary report very detailed talking about
21 the fifteen Oriental rugs and our attempt to initially try to
22 clean them and save them which we did. We saved quite a bit a
23 the rugs as well, uh, in that first line item we talk about
24 for the 10,018, there's, you know, substantial savings of some
25 other rugs that were damaged by water but we're able to, uh,

1 clean and restore them.

2 Q. Okay. What's the next line item?

3 A. That would be for the, uh, repair of the furniture,
4 cleaning of the drapes, the curtains and the linens and that
5 was for \$9,795.66.

6 Q. Okay. What would that have, uh, and what what was --
7 what went into it, went into development a that number?

8 A. A that was mostly for just a cleaning heat of a, a lotta
9 the clothes and draperies and linens that the water came down
10 and indated, you know, all said like large portion a the house
11 so a lotta stuff is water stained, uh, but we're able to, you
12 know, get it professionally dry cleaned and laundry to to get
13 the stains out, uh, and then, ya know, return 'em especially
14 some heavy draperies that were pretty tall and they were heavy
15 and very expensive, it just isn't something you can send down
16 to local dry cleaner, they had to shipped out, you know,
17 cleaned, repleted and then re - rehung professionally, uh, so
18 they weren't damaged.

19 Q. Got ya. And, uh, was that a fair price in your
20 assessment for the the da -- the having those items handled?

21 A. Yes.

22 Q. Okay. What's the next line item?

23 A. Uh, there was a a supplemental for the electronics, uh,
24 2,114. Some electronics that we originally thought would be
25 okay, uh, and Mr. Wennerstrom had accepted back, started

1 giving him almost immediate problems so revisited it and added
2 on, uh, those items that were, that were found had corroded
3 and suffered damages from the water.

4 Q. Alright, and and, uh, did you feel like that was a fair
5 price for those electronics?

6 A. Yes.

7 Q. What was that number again?

8 A. \$2,114.

9 Q. Okay.

10 A. There's some other additional items that were, think it
11 was part of for, uh, that weren't originally noted to be in
12 the claim that was also part a that item.

13 Q. They were determined to be damaged, need to be
14 replaced?

15 A. Right.

16 Q. Okay. Alright, and what, uh, don't give me the number,
17 what's the next subheading there, what's what what what list
18 of items is there?

19 A. It was just a dry cleaning by the policy holder directly,
20 he just dropped off some clothes that he -- for \$83.74 for dry
21 cleaning that were a part of the -- that he got there, took
22 'em out himself to do that so had it all sent out.

23 Q. Got ya. Alright, and did you feel like that \$83 was fair
24 for what he had ---

25 A. Yes.

1 Q. --- done? Okay. And what's the next?

2 A. And the last item was, uh, final cleaning of some area
3 rugs and upstairs drapes up on the second floor, it was just
4 for some, ya know, a couple sets a drapes and some area rug
5 that we were able to save but they had to be cleaned, stored
6 and returned for 7 ---

7 Q. Is ---

8 A. --- for \$750.

9 Q. --- is there a reason that wasn't included in that first,
10 uh, list?

11 A. Uh, it was, I'm not sure exact reason but it was kinda
12 just separate but these are more like, uh, area rugs versus
13 Oriental rugs so a a different, uh, review process and and
14 handling so we kept it separated for easier to be review.

15 Q. Alright, so those are all the the li -- the the items
16 that were paid for under the contents portion the claim?

17 A. Yes.

18 Q. And how much was the total of that?

19 A. The total for all those items was \$101,712.83.

20 Q. Okay. Bulk a that seems like it was the replacement
21 those rugs, that right?

22 A. Uh, yes, it was for forty-six thousand outta the hundred
23 and one thousand which were the high-end Oriental rugs.

24 Q. Got ya. Okay, and, uh, let let's talk now -- may I
25 approach?

1 THE COURT: Yes, sir.

2 BY MR. DEAL:

3 Q. What's it say on the top a that?

4 A. A-L-E.

5 Q. What's that stand for again?

6 A. Additional Living Expenses.

7 Q. Okay. And, uh, what what is actually in that document,
8 you take a quick look at it.

9 A. It was the cost for Mr. and Mrs. Wennerstrom's, uh, cost
10 to -- this happened in the winter so obviously they were down
11 at their home in, uh, Florida so they had to make several
12 unplanned trips up here, uh, to see the damages, oversee the
13 damages, talk to contractors so these costs they really would
14 not have had occurred if this loss hadn't happened, therefore
15 under the terms a the policy, uh, we pay for their additional
16 living expenses that they incurred because of this loss.

17 Q. Alright, uh, and well first of all, Your Honor, I'd like
18 to move, uh, that as in into evidence, that's the ALE as a,
19 uh, Plaintiff's 3.

20 MR. IMHOFF: No objection, Your Honor.

21 THE COURT: Without objection be Plaintiff's 3.

22 (ALE marked Plaintiff's Exhibit No. 3 for identification
23 and admitted into evidence.)

24 BY MR. DEAL:

25 Q. Alright, in that document did, uh, Mr. Wennerstrom at

1 some point in time ask for, uh, air fare?

2 A. Yes.

3 Q. How much did he originally ask for?

4 A. Uh, over \$9,000.

5 Q. Why?

6 A. Uh, he he came up on a private jet.

7 Q. Okay, and did you pay for him to fly up on that private
8 jet?

9 A. No.

10 Q. Uh, what did you pay for?

11 A. I paid for what would be the, uh, commercial regular
12 flight which woulda been, uh, a round trip at that time woulda
13 been about \$600 per person so ---

14 Q. Okay, ---

15 A. --- I paid ---

16 Q. --- how'd you -- oh, I'm sorry.

17 A. --- I, therefore I, him and his wife came up so I paid
18 \$1200 round trip.

19 Q. Okay. How'd you come to that \$600 figure?

20 A. Uh, basically looking on the internet, you know, for, you
21 know, Pri -- not Priceline but what one a those services that
22 we use to check pricings from Miami up to I think or nearby
23 airport here, it was, ya know, for that fee.

24 Q. Alright, and and and without going too far into it there
25 were besides the air fare were there any hotel expenses?

1 A. Yeah, there were some hotel expenses that he he actually
2 stayed with some people that we worked out of a cost and fee
3 that he, for the meals that he would have incurred, uh,
4 expenses otherwise, we used that for to compensate him for the
5 the cost of it. Reiterating that means that he didn't stay at
6 hotel but he stayed with some friends, associates up here and
7 and to compensate for their hospitality we allowed them to, ya
8 know, for for their meals and stuff take care which worked out
9 actually less than what it if he woulda stayed at a hotel or
10 the living quarters that, ya know, equal to his, uh, house.

11 Q. Okay, and let me just break that out. You say "living
12 quarters equal to his house", why does that matter?

13 A. Uh, the policy conditions and such that we owe them of a
14 house of like kind and quality so theoretically he coulda
15 pushed it for us to rent him a house nearby, a a \$3 million
16 house that he wanted to stay up here for the week or two when
17 he was up here for that and that woulda been theoretically it
18 coulda been 5, \$10,000, the average rent of a house, ya know,
19 a \$3 million house is not unheard of to go for \$5,000 a week
20 where Mr. Wennerstrom, uh, was educated enough to help us out
21 with well this \$300 sum, you know, we worked it out for \$300
22 instead of the 5,000 \$5,000 and we were fine with that of
23 course.

24 Q. Okay, so he was due 5,000 give or take but you said got
25 it worked out with him, didn't you, 3.

1 A. Right, he coulda pushed for a house of equal, like and
2 kinda quality to stay at per his policy conditions but he he
3 was comfortable enough and happy enough to, ya know, stay
4 another quarters that's greatly reduced the cost, right.

5 Q. Okay, so besides the the the that, you know, cost to stay
6 and the flights were there anything else in that ALE?

7 A. Uh, we paid for additional mileage that he incurred, you
8 know, to drive around, uh, from the airport to here, uh, with,
9 you know, from back at home to drive to the airport as well as
10 there's increased in his utility cost in February, March and
11 April, uh, because of the equipment to dry out the house as
12 well as the contractors bein' there havin' the lights on and
13 power equipment, we only pay the increase of those costs, not
14 all the costs, uh, case in point let's say it cost \$400 a
15 month on average in the winter to heat that house, now it cost
16 \$900 because, you know, people are in and out the doors, power
17 could be coming on, uh, it cost 900 so the difference we would
18 owe would be \$500, not the full \$900 of the energy bill.

19 Q. Alright, how much additional energy cost did you pay
20 for?

21 A. Uh, probly about \$1400 over three months.

22 Q. Got ya. Alright, so for the, for the ALE, the additional
23 living expense, what was the total on that?

24 A. Uh, we paid \$5,582.41.

25 Q. And the last one I think's the biggest one. If I may

1 approach, Your Honor, ---

2 THE COURT: Yes, sir.

3 Q. --- I've allowed Mr. Imhoff to look at this, already
4 produced it. What's it say there (indicating) on that?

5 A. Uh, building.

6 Q. Okay. Can you qui -- take a quick look at it?

7 A. Sure.

8 (Whereupon, the witness complied.)

9 Q. Are you familiar with that document?

10 A. Yes.

11 Q. Did you in fact prepare that document?

12 A. Yes.

13 Q. Alright. I'd like to move, uh, building into as
14 Plaintiff's 4, Your Honor.

15 MR. IMHOFF: No objection.

16 THE COURT: Without objection be Plaintiff's 4.

17 (Building document marked Plaintiff's Exhibit No. 4 for
18 identification and admitted into evidence.)

19 BY MR. DEAL:

20 Q. Alright. Uh, now tell me what is included in as a
21 summary for the jury in that, uh, document there.

22 A. Uh, this document consists of all the estimates,
23 invoices, uh, how he came about with the damages to the
24 building.

25 Q. Okay. And how did you arrive at those numbers in that

1 book?

2 A. Uh, there's numerous, uh, contractors and vendors that i
3 work with to arrive at a fair price to rebuild and repair and
4 dry out the house, there's numerous categories, uh, as
5 described in my list here of how we arrived at. There's
6 about, I think about twenty different segments to it that each
7 describe a portion of the repairs or dry out for the, uh,
8 building process.

9 Q. Alright. And at the expense of boring the jury any
10 further can you give me -- I tell you what, let's go through
11 the top five a those things, ---

12 A. Sure.

13 Q. --- the to -- as far as the money's concerned. What's
14 the thi -- the full line item called to start with, ---

15 A. Alright.

16 Q. --- top top five, let's just start with Number 1 line
17 item.

18 A. The biggest one which starts off as as the emergency dry
19 out, clean up and demo, uh, by, uh, ServiceMaster and also,
20 uh, the cont -- uh, Seary the contractor for \$79,725 and that
21 was to a lot of drying equipment needed to be brought in,
22 floors had to be ripped up, sheetrock had to be taken off, uh,
23 furniture moved, a lotta water clean up, monitoring, it took a
24 long time to remove all the water damage co -- uh, parts a the
25 house as well as get it dried down properly so; one, there'd

1 be no mold and; two, they'd be able to properly rebuild the
2 house to pre-existing conditions.

3 Q. Okay, and was -- did there e -- was was mold ever an
4 issue in the house?

5 A. No.

6 Q. Okay, and to back up I I I I I, uh, I and I can correct
7 myself here but I believe you said that it was ServiceMaster
8 and and Seary that did this?

9 A. Yes..

10 Q. But it -- at -- and as I recall actually I think it's
11 pronounced Searcy.

12 A. Searcy, I'm sorry.

13 Q. It -- and maybe Mr. Searcy will and I've said Searcy a
14 thousand times and maybe he'll correct me when I get to talk
15 to him some point in time down the road here but in any case
16 they helped out in in in this phase of the, of the game, is
17 that right?

18 A. Correct.

19 Q. Okay. Now what's the second biggest line that was
20 79,000?

21 A. \$79,724.95.

22 Q. What's the next, the second biggest one?

23 A. Um, Seary [sic] Homes with the cost for the new
24 insulation, drywall, uh, I don't have the exact breakdown but
25 that the the notes fr -- on my spreadsheet here say for that

1 cost was \$27,206.51 and that was basically built on invoices
2 in here to equal that amount.

3 Q. And where -- who had, who had developed those invoices?

4 A. Uh, Searcy.

5 Q. Searcy?

6 A. Searcy, I'm sorry.

7 Q. And, ---

8 A. Searcy.

9 Q. --- uh, uh, that's alright. Okay, and and, uh, and and
10 they would have actually actually performed that work,
11 right?

12 A. Correct.

13 Q. Okay. Alright, and then what's the ne -- and how much
14 was that one? 26,000 thousand somethin'?

15 A. \$27,206.51.

16 Q. Got ya. What's the next biggest one?

17 A. Uh, ---

18 Q. Third biggest one.

19 A. --- well I see replacement of the cabinets and, uh, trim
20 work that was through, uh, Searcy as well through Banner
21 Cabinet Company, ---

22 Q. Okay.

23 A. --- that was for actually \$48,965.

24 Q. Okay, so that's, uh, just is that just cabinetry?

25 A. Yeah, it was also the installation of it and trim work

1 involved with it, it just was, ya know, there was, uh, well
2 let me me double check that, that mighta just been the the
3 value a the cabinetry and trim. I apologize, the file's very
4 thick and very organ -- or very detailed so . . . there it is.
5 I apologize, I know it's in here.

6 Q. Alright, well, Scott, I mean, in ----

7 A. Okay.

8 Q. --- in the interest of time here, ---

9 A. Sure.

10 Q. --- do you recall reviewing how much it was gonna cost to
11 take care a that line item ---

12 A. Yes.

13 Q. --- but independent of that document you have there?

14 A. Yeah, yes.

15 Q. Alright, and was it your understanding at that time that
16 the the pricing for that was fair and reasonable?

17 A. Yes.

18 Q. And thereafter you paid Mr. Wennerstrom that amount so he
19 could then take care a whoever else he need to take care of
20 down the road?

21 A. Correct.

22 Q. Alright. And let's go just do one more, what's the next
23 biggest one down the line?

24 A. Uh, hardwood floor replacement in the house.

25 Q. Okay, and, uh, who woulda done that work to your

1 knowledge?

2 A. Uh, Searcy ---

3 Q. Okay.

4 A. --- or their subcontractor they work with to do it I
5 should say.

6 Q. Okay, but did, uh, did you get the the pricing a that
7 from Searcy?

8 A. Yes.

9 Q. Okay, and how much was that?

10 A. Uh, \$12,795.76.

11 Q. Alright, and when when -- you, did you review the
12 invoicing and the work that need to be done?

13 A. Yes.

14 Q. And was that a fair and reasonable price based on what
15 you reviewed?

16 A. Yes.

17 Q. Okay, and that was paid by Fireman's Fund.

18 A. Yes.

19 Q. Okay. Now I'm not gonna bore this jury by goin' through
20 it by line, by line item, the total amount, what was the total
21 amount that was paid for the repairs to this building and and
22 mediation by Fireman's Fund?

23 A. \$300,504.34.

24 Q. 300 ---

25 A. \$300,504.34.

1 Q. Okay. I seem to recall somewhere in all these numbers
2 that you got some salvage on some some things, is is is that
3 your recollection as well?

4 A. Correct.

5 Q. What was the salvage on?

6 A. Uh, we recovered \$1,387.40 for the, uh, sale of the
7 electronics. We, once we paid for all the electronics its
8 becomes our property, therefore we have the right to sell it
9 as salvage which we did but for Mr. Wennerstrom everything we
10 paid for his electronics he handed over to us and then we sold
11 them as to a salvage dealer for the metals and stuff like that
12 in 'em especially back then with plasma TVs and some of his
13 other components had some metals as well as some other parts
14 that they may be able to reuse.

15 Q. Got ya. Alright, so review: For the contents there's
16 101,712.85, is that your recollection? Is that what ---

17 A. Correct.

18 Q. And then for the ALE how much was that?

19 A. Five thousand five -- \$5,582.41.

20 Q. And then for the building how much was it?

21 A. \$300,504.34.

22 Q. And all those in total how much is that in total?

23 A. \$407,800.58.

24 Q. Now some -- and you got a credit back for the salvage,
25 right?

1 A. Correct, there was a credit for \$1,387.40.

2 Q. Alright, so how much net like total in, all in on out did
3 Fireman's Fund pay as a result of the damage to the house?

4 A. Uh, \$406,413.18 ---

5 Q. Okay.

6 A. --- but I'd like to also add that we also per the policy,
7 uh, we offer a system that in the future would automatically
8 shut off the water in the house if it detected a leak and that
9 cost to that option a computer module was \$2,142.18.

10 Q. Now would that be included in that that 406,413?

11 A. It is included in that amount.

12 Q. Okay, so that that wasn't done as a result of the the
13 damage, that was some additional thing that ya'll offered to
14 Mr. Wennerstrom thereafter.

15 A. Correct.

16 Q. Okay. So if you to -- if you back that out, can you do
17 the math for me on that?

18 A. Yeah, it be, it be approximately \$404,325 ballpark.

19 Q. Okay, we'll get a better number for that later on if we
20 need to. Uh, alright, so did, uh, you have a, at some point
21 in time, did you have a conversation with Mr. Wennerstrom
22 about the total the the the final damages?

23 A. Yes.

24 Q. And did you there -- thereafter come to some agreement as
25 to what those damages were gonna be?

1 A. Yes, we we used this spreadsheet, uh, Exhibit 1 as a
2 growing basis of the capturin' his cost, it wasn't just at the
3 final we talk about, we talked about it numerous times during
4 the rebuilding and repair process and the contents and
5 additional living expenses so we had numerous con --
6 conversations during these whole claims process.

7 Q. But at the end a the day did you go tell -- did you agree
8 on this last number?

9 A. Yes.

10 Q. And Mr. Mr. Wennerstrom di -- was satisfied to your
11 understanding?

12 A. Very satisfied, yes.

13 Q. Okay. Did he pay anything as far as a deductible in this
14 matter?

15 A. No, under our policy once the loss exceeds, uh, 50,000 I
16 think he has a \$10,000 deductible that deductible is waived as
17 soon as the loss surpasses 50,000 part of a policy condition.

18 Q. So in in reality Mr., uh, Wennerstrom was not out of
19 pocket any money at all for this, for the damage that occurred
20 to his house.

21 A. No.

22 Q. Okay. Uh, nothing further, Your Honor.

23 THE COURT: Alright, ladies and gentlemen, let's take a
24 short break. At this time I need to instruct you not to have
25 any discussions among yourselves about anything involving the

1 case. Uh, I'll let you go with the bailiff to the jury
2 deliberation room and we'll get you back just shortly.

3 (The following takes place outside the presence of the
4 jurors.)

5 THE COURT: Alright, sir, I'm gonna let you step down, I
6 just need to remind you that you are under oath so you can't
7 have any discussions with anyone about the substance of your
8 testimony but you may step down.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Lawyers approach a moment.

11 (Whereupon, a bench conference was held off the record.)

12 (Whereupon, a recess was taken.)

13 (Whereupon, the witness returned to the stand.)

14 THE COURT: Anything before we bring the jury back in?

15 MR. DEAL: No, Your Honor.

16 MR. IMHOFF: Nothing, Your Honor.

17 THE COURT: Alright, Mr. Seay, you wanna bring 'em in.

18 THE BAILIFF: Yes, sir.

19 THE COURT: Sir, I need to remind you that you remain
20 under oath, do you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Good.

23 (The following takes place in the presence of the jury.)

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

25 MR. IMHOFF: Thank Your Honor.

1 CROSS-EXAMINATION BY MR. IMHOFF:

2 Q. Mr. Klaben, welcome back to Spartanburg.

3 A. Thank you.

4 Q. Is there any chance Mr. Wennerstrom flew ya up on his
5 private jet?

6 A. No, sir.

7 Q. Did ya ever see his private jet?

8 A. I did not.

9 Q. Uh, we were talkin' or you were talkin to Mr. Deal a
10 little about, uh, about when this claim was reported ---

11 A. Yes, sir.

12 Q. --- and I know you were sittin' in here earlier, am I
13 correct that this claim was reported within six hours to your
14 subrogation unit? I'm gonna hand you what are, what I think
15 are your computer notes from, uh, the "chief system?"

16 A. Yeah, we usually call it the "chief sys.", that is
17 correct.

18 Q. Let me make sure I understand, so I think ya actually go
19 backwards, is that right, these are ---

20 A. Right, the last pages were ---

21 Q. The last page is the first ---

22 A. --- is the, is the earliest page, correct.

23 Q. Alright, so am I correct that on January 26, 2009, 9:12
24 a -- 9:12 a.m. somebody called this claim in Fireman's Fund?

25 A. Correct.

1 Q. Okay. And if you go up let's say, five, six, somethin'
2 like that to same day 1/26/2009 at 2:30 p.m. Elizabeth
3 MacWilliams under category Recovery stated, Assigned portion
4 of claim filed at FFIC subrogation specialist Kevin Miller
5 Miller for review, is that right?

6 A. That is correct.

7 Q. Alright, so between 9:12 a.m. and 2:30 p.m. in that span
8 less than six hours I guess, right, ---

9 A. Correct.

10 Q. --- it's referred over to subrogation, that right?

11 A. Correct.

12 Q. Okay. And it's Fireman's Fund policy to refer a claim
13 over a hundred thousand dollars over to subrogation.

14 A. That is correct.

15 Q. Alright, and a subrogation right means you get to step
16 into the shoes basically of your insured and sue someone, is
17 that right?

18 A. We we cover the damages, correct.

19 Q. You're lookin' for somebody to blame, is that right,
20 Mr. Klaben?

21 A. We're looking for the responsible party for the reason
22 why something was damaged or destroyed.

23 Q. Will you agree with me that no investigation had been
24 done to determine the cause a this loss in those six hours?

25 A. There -- we originally had, uh, Robert Parris who was

1 original adjuster he was, uh, already had been, uh, speaking
2 with someone that there was a water damage there that I don't
3 know what his exact investigation details but it is automatic
4 response that if a loss is assumed to be over a hundred
5 thousand it is automatically referred to our subrogation
6 department, that is correct.

7 Q. Okay. And if you look further into your notes, look at
8 the February 3rd 2009.

9 (Whereupon, the witness complied.)

10 A. There's several entries at that date. Um . . .

11 Q. Okay. Uh, tve -- Page 12 of 16.

12 A. Okay.

13 Q. Under Subrogation, you see that Subrogation?

14 A. I do.

15 Q. Last sentence, "I spoke to FFIC subro adjuster Kevin
16 Miller and we discussed the need to hire an expert."

17 A. I see that.

18 Q. Okay. What was the need to hire an expert for?

19 A. To help out with the investigation of the exact cause a
20 the loss.

21 Q. Okay. So February 3rd 2009 Fireman's Fund was still
22 intending to subrogate but had not hired an expert at that
23 point, is that right?

24 A. Uh, that seems correct.

25 Q. You didn't know what the cause of the loss was at that

1 time, is that right?

2 A. Uh, at that -- on February 3rd 2009 we knew that there's
3 a plumbing failure water loss, the exact cause of why that
4 crack and all that was I don't believe we knew at that time.

5 Q. Has Fireman's Fund ever hired an expert to determine the
6 cause of this loss?

7 A. You repeat the question.

8 Q. Has Fireman's Fund Insurance Company ever hired an expert
9 to determine the cause of this loss?

10 A. I believe so, yes.

11 Q. Who?

12 A. Uh, I don't i -- I, unfortunately I don't get involved in
13 that exact portion of it besides talking to the subro
14 department but I believe Mr. Dean in the room hired as our
15 expert.

16 Q. Do ya know if Fireman's Fund Insurance Company hired
17 Mr. Harris?

18 A. Uh, I don't believe we did directly, no.

19 Q. Who hired Mr. Harris?

20 A. I I don't know exactly. I now the su -- or the subro
21 department they worked with Cozen to determine that, I wasn't
22 privy to that exactly.

23 Q. Cozen O'Connor your lawyers?

24 A. Yes, sir.

25 Q. Do you know if Cozen & O'Connor hired Mr. Harris?

1 A. I don't know that directly but I a -- I'm assuming so,
2 yes.

3 Q. Do you know when Mr. Harris was hired?

4 A. I do not.

5 Q. Do you know if he was retained on February 5th 2009 ---

6 A. I don't, I don't know.

7 Q. --- by your lawyers?

8 A. I don't know if that, I don't know the exact dates a
9 that.

10 Q. We make -- let me make sure. I I understand that's fi --
11 but the file's in fronta you, okay, and I welcomed you to look
12 at the adjuster's notes, Mr. Miller's notes are on there also,
13 right?

14 A. Uh, correct.

15 Q. Okay. Fireman's Fund Insurance Company did not hire
16 Mr. Harris, right?

17 A. I assume that's correct, I don't know that's a hundred
18 percent correct but I assume so.

19 Q. Fireman's Fund Insurance Company hired Cozen & O'Connor,
20 right?

21 A. Uh, yes.

22 Q. Okay. So if Mr. Harris was retained on February 5th 2009
23 within ten days of this claim, that means Fireman's Fund
24 Insurance Company hired a lawyer within ten days a this claim
25 and had not hired an expert, is that right?

1 A. I don't really know was I privy to that but it it could
2 be.

3 Q. Okay. Well go ahead and look at February 5th 2009.

4 A. I -- February ---

5 Q. Right here (indicating) it it says 11:08 a.m.

6 A. Uh, I don't have -- let's see, mine goes from February
7 4th 2009 to February 11th 2009..

8 Q. February 5th ---

9 A. Oh, thank ---

10 Q. --- 2009 11:08 a.m., ---

11 A. Yes, sir.

12 Q. --- see that?

13 A. Yes, sir.

14 Q. Says Subrogation update, correct?

15 A. Correct.

16 Q. What's the category?

17 A. Uh, the file note says, Subrogation update, category
18 Recovery.

19 Q. What does recovery mean?

20 A. Uh, recovery the monies, subrogation.

21 Q. Trying, tryin' to find someone to to get the money from.

22 A. Trying to recover the money, correct, that we've paid
23 out.

24 Q. Alright. Date's February 5th 2009, right?

25 A. Correct.

1 Q. Fireman's Fund has never hired an expert to identify the
2 cause of this claim, is that right, February 5th 2009?

3 A. We have not hired an expert, doesn't believe on our own
4 behalf, that is correct.

5 Q. Okay, but Mr. Harris was hired on that day by Cozen &
6 O'Connor, ya did hire a lawyer that day.

7 A. Well we -- on that -- and again, I assume so, again, I
8 wasn't involved directly with subrogation.

9 Q. So instead of calling a plumber or an engineer or these
10 gentlemen (indicating defendants) to determine the cause a the
11 loss, Fireman Fund policy was to hire a lawyer, that right?

12 A. I don't know if it's our policy but on this one retained
13 help with experts including Cozen to help us try to figure out
14 the reason for the loss.

15 Q. Alright, do you know what Mr. Harris's opinions are
16 regarding these gentlemen here (indicating the defendants)?

17 A. I don't, wouldn't be an expert or knowledgeable enough to
18 give his opinion, no.

19 Q. Well, do you know why Fireman's Fund Insurance Company is
20 suing Searcy Custom Homes and B&B Plumbing?

21 A. Not enough to properly comment on it, no, I'm not really
22 involved with the, uh, expert's, uh, opinion of it, more mine
23 was to collect the damages and, uh, pay it, I wasn't involved
24 as much as I think Cozen O'Connor and inside subro adjusters
25 are.

1 Q. Who who is, who is handling this litigation for Fireman's
2 Fund Insurance Company ---

3 A. Uh, ---

4 Q. --- if not you?

5 A. --- well Cozen O'Connor's on our behalf.

6 Q. Who who has -- who directed Cozen & O'Connor to file a
7 lawsuit?

8 A. Uh, well to file it I assume the subrogation department
9 for the most part.

10 Q. Who in the subrogation department?

11 A. Well Mark Miller originally, uh, at this point I'm not
12 really a hundred percent sure privy of of that was. I I I
13 know I wasn't doing exactly the whole entire lawsuit at that
14 point.

15 Q. Is there someone else at Fireman's Fund Insurance Company
16 that has decided to file this lawsuit and come to trial today
17 other than you?

18 A. Yes.

19 Q. Who is that person, Mr. Klaben?

20 A. Uh, we have directors and managers at that point, I
21 don't, you know, understand I was involved with some of the
22 talking of it but not directly involved with making the the
23 financial decision.

24 Q. Do you know where that person is today?

25 A. I do -- I don't know exactly there's just one person who

1 made it, I'm not sure.

2 Q. Do you know if they're here in Spartanburg County
3 today?

4 A. I I don't believe so. I believe they'd be in one a the
5 main offices either in St. Louis or in Atlanta.

6 Q. Okay. So the people that decided to file a lawsuit and
7 come to trial here today are not here in Spartanburg County,
8 South Carolina today, is that right?

9 A. I believe so, yes.

10 Q. They sent you here instead?

11 A. Yes, sir.

12 Q. Okay. You know why they're not here?

13 A. Um, I don't, I mean, I I know the file for the damages
14 and the, uh, what we paid and the handling of the claim, I
15 guess I have the most knowledge of the the claim itself so
16 they, that's why they would send me.

17 Q. But you can't answer why Fireman's Fund Insurance Company
18 has sued these folks, is that fair?

19 A. The exact expertise evaluation of it I -- that would be
20 correct.

21 Q. Okay, that's someone else in Fireman's Fund who's in St.
22 Louis or where?

23 A. Uh, Atlanta.

24 Q. Or Atlanta?

25 A. Right.

1 Q. Okay, and although we're all here today, Mr. Searcy,
2 Mr. Blythe, Mr. Hafner all least are, everybody's here, that
3 person isn't here today.

4 A. That is correct.

5 Q. And you understand there's something called a "pressure
6 relief valve", not not the pressure regulator valve, not the
7 one that that slows the pressure down but this relief valve,
8 you heard that?

9 A. Yes.

10 Q. Generally familiar with that concept.

11 A. Yes.

12 Q. You can -- you generally understand what that is.

13 A. I generally do, yes.

14 Q. Okay. And it was your job to oversee the repair of this
15 house, is that right?

16 A. Correct.

17 Q. And when Mr. Wennerstrom would say I think that carpet's
18 bad or that wall needs to be fixed it was your job to oversee
19 the construction.

20 A. Not to oversee the construction but to help evaluate and
21 negotiate the amount of money needed to do that work.

22 Q. Okay. And you would write Mr. Wennerstrom's checks,
23 that right?

24 A. That is correct.

25 Q. Who'd you communicate with what what had to be done at

1 the house to repair it?

2 A. Uh, numerous vendors including Mr. Searcy, a lotta the
3 original people who helped construct and decorate and, uh,
4 work on the house.

5 Q. This man right here (indicating) ---

6 A. Uh, ---

7 Q. --- Mark Searcy?

8 A. --- I, also I think his son Scott I worked with a lot
9 too.

10 Q. Okay. And who decided to hire Searcy Custom Homes to do
11 the repair?

12 A. I believe Mr. Wennerstrom.

13 Q. Okay, so you've sent the case to an attorney to sue
14 someone at Fireman's Fund fund in February of 2009, that
15 right?

16 A. Our company did, correct.

17 Q. Okay, and then your insured Mr. Wennerstrom hired the
18 people who are you -- you were seeking to sue to come back and
19 do the repair work.

20 A. Well at that time in February of 2009 the investigation
21 was just beginning to see what was the actual cause the
22 loss.

23 Q. Wasn't there intent in April of 2009, Mr. Klaben, to file
24 suit? Go ahead and look at, uh, April 7th 2009 3:45.

25 (Whereupon, the witness complied.)

1 (Whereupon, a discussion was held off the record.)

2 A. I see that.

3 Q. Okay. I'm gonna read it if you don't mind, tell me if
4 I'm wrong. "We can still bring an act -- an action for
5 negligent workmanship and product defense -- product defect
6 against both the valve manufacturer and B&B plumbing, the
7 contractor who installed the line and we are presently looking
8 at both entities for recovery," that, is that what it says?

9 A. It does.

10 Q. "Demands have been sent to both with no responses. I
11 have authorized attorney David Higgins of Cozen to file suit,"
12 that what it says?

13 A. That is correct.

14 Q. Did you have access to this program and that entry in
15 April of 2009?

16 A. Um, it woulda been in there, correct, I had access to
17 it.

18 Q. Okay, so at that time Fireman's Fund Insurance Company
19 intended to file a suit at least against B&B, is that right?

20 A. At least to name them, correct.

21 Q. Okay, and you knew that, is that right, Mr. Klaben?

22 A. Um, I knew that we were seeking recovery, I can't say I
23 knew the exact -- it was a, it was there for me to see,
24 whether I fully understood involved where they were going with
25 I c -- I don't think I can say I did.

1 Q. Did you ever tell these gentlemen (indicating the
2 defendants) that Fireman's Fund Insurance Company intended to
3 sue them while you were discussing the repairs with them?

4 A. I don't think I mentioned it quite like that but I said
5 we were looking at all avenues of why the water damage
6 occurred.

7 Q. Okay. And did Mr. Wennerstrom hire Searcy and B&B to do
8 the repairs?

9 A. I believe so, yes.

10 Q. Is Mr. Wennerstrom coming to trial?

11 A. Uh, no.

12 Q. Okay, but he had enough faith in these gentlemen to hire
13 them to do the repairs, is that fair?

14 A. I would say it's a fair statement.

15 Q. Now when you're overseeing the work, did you determine
16 what what repairs would be done and what repairs you wouldn't
17 do?

18 A. Uh, yeah, I wouldn't oversee the work, I would help, I
19 would negotiate and review the work that needed to be done, I
20 would, you know, look at the requested estimates, invoices of
21 work to be done and we'd either approve, have more questions,
22 negotiate and then agree with that.

23 Q. Okay. And you knew that Cozen & O'Connor, your lawyers,
24 had hired an expert Mr. Harris and gave an opinion that a
25 pressure relief valve shoulda been put on the house, that

1 right?

2 A. At that point during this, I did not know of of where
3 this was going to tell you the truth, I did not know. I did
4 not know they hired Mr. Harris at that point, I had no, uh, I
5 was not really involved with with the subrogation aspect was
6 goin', was kinda my process and work was really involved with
7 just the rebuilding, repairs to the house. I discussed it
8 somewhat on a level of gathering the damages for them and and
9 talking about what my initial view of the property looked like
10 but I wasn't, that's why we have subrogation department,
11 that's more their expertise in, uh, work that they do.

12 Q. Okay. You understand that that the allegations against
13 these folks is that they didn't put this pressure relief valve
14 on?

15 A. I understand that, yes.

16 Q. As we sit here in what, September, October, I don't even
17 know what day it is, Mr. Klaben, long weekend, as we sit here
18 at 4:25 p.m. today is there a pressure relief valve on the
19 house?

20 A. I don't believe there is. I don't, I don't know, I
21 wasn't involved with the repair or any other, uh, changes to
22 the house besides the original instruction.

23 Q. Mr. Klaben, the whole basis for the lawsuit is that these
24 folks didn't put a pressure relief valve on that house and
25 that's why we're here and that's why Fireman's Fund is

1 enshoeing -- is suing them and there's still still no pressure
2 relief valve on the house, correct?

3 A. I assume that's correct, I, again, our policy pays for
4 what they had and my job as well as what we try to do is pay
5 for what they had there, not what they're gonna do or change,
6 it's kind of we call "Chinese Wall", it's not to overstep my
7 my cons -- my job.

8 Q. As you sit here do you know if anybody told these folks
9 that you were gonna sue 'em 'cause there wasn't a pressure
10 relief valve, told Mr. Wennerstrom that he needed a pressure
11 release -- relief valve, suggested to anyone that a pressure
12 relief valve be put on that house?

13 A. I'm not sure I fully understand the question, can you
14 repeat it.

15 Q. Did anybody try to put a pressure relief valve on the
16 house or tell the folks that were repairing the house to put a
17 pressure relief valve on the house?

18 A. Well initial repairs the -- was done almost immediately
19 to the taking off the pressure relief valve, put another one
20 on was beginning of the claim and I think at that point no one
21 was under what was goin' on exactly with the house with why
22 what had failed and what had occurred.

23 Q. You oversaw the construction, Mr. Wennerstrom oversaw the
24 construction, he owns the home, right?

25 A. Mr. Wennerstrom owns the home, correct.

1 Q. There's no pressure relief valve on the home, ---

2 A. Okay.

3 Q. --- is that right?

4 A. I assume so. Again, I I have no, I did not oversee the
5 construction, that's not part a the thing I -- I paid for what
6 was there before and the cost of such, I don't actually
7 oversee the construction of the house.

8 Q. What about reviewing your policies for Fireman's Fund,
9 have you done any investigation to determine whether other
10 houses don't have pressure relief valves on them?

11 A. That's part of the underwriting and, uh, inspection
12 services portions of our company. My job is usually to come
13 in after the loss so I don't have privy to the the aspects a
14 that.

15 Q. So as you sit here today they're not here either,
16 underwriting's not here either right, Mr. Klaben?

17 A. Correct.

18 Q. Okay.

19 A. Right.

20 Q. So we don't know if Fireman's Fund has done anything to
21 put all of their homeowner policy holders on notice that
22 Fireman's Fund thinks at least for this trial that a pressure
23 relief valve needs to be on a house, right, you don't know.

24 A. I don't know.

25 Q. Okay. There could be hundreds, if not thousands of homes

1 without pressure relief valves and Fireman's Fund has done
2 nothing as far as you know to tell those people that you think
3 this is incredibly dangerous enough to file a lawsuit, that
4 right?

5 A. Yeah, I would have no knowledge whether that was being
6 done or not.

7 Q. Did you ever have discussions with Ms. -- Mr. Wennerstrom
8 about a pressure relief valve?

9 A. I don't recall I did.

10 Q. Mr. Wennerstrom doesn't think his house needs a pressure
11 relief valve does he, Mr. Klaben?

12 A. I didn't talk to him about it so I can't say yes or no to
13 that.

14 Q. Is he comin'?

15 A. Mr. Wennerstrom?

16 Q. Yes.

17 A. I don't believe so, no.

18 Q. Why not?

19 A. Uh, we paid him in full for his damages, therefore, uh,
20 we subroga -- subrogated the rights over to us and we're,
21 quote, unquote, stepping into some shoes for this this suit.

22 Q. You're steppin' in his shoes and Mr. Wennerstrom doesn't
23 think he needs a pressure relief valve then these folks didn't
24 do anything wrong, did they?

25 MR. DEAL: Objection, Your Honor.

1 THE COURT: He's on cross-examination, he's got a lotta
2 leeway, you can redirect.

3 MR. DEAL: Okay.

4 THE WITNESS: Can you repeat the question.

5 BY MR. IMHOFF:

6 Q. If you step into Mr. Wennerstrom's shoes and he's the one
7 that contracted with these (indicating the defendants) folks
8 to build his home, hired two architects, had the home built it
9 presumably expected and he doesn't think that he needs a
10 pressure relief valve on his house then Fireman's Fund
11 Insurance Company doesn't have any claim, do they, Mr. Klaben?

12 A. I I believe we do.

13 Q. Why?

14 A. I believe that there -- the statement that he doesn't
15 need it is still being sought out whether or not he does or
16 not. I think him just not having it doesn't mean that he
17 doesn't need it.

18 Q. Well he could put one on his house, couldn't he?

19 A. He could, he can do anything he'd like.

20 Q. He knows about this litigation, doesn't he?

21 A. I couldn't privy to that because I don't know how
22 involved he is in with this.

23 Q. How much is his house worth?

24 A. We insured the house back in 2009 for a building value,
25 not the land or other land improvements for \$2,703,000.

1 Q. Okay. And you also covered the contents for \$1,892,000,
2 right?

3 A. That seems to be correct.

4 Q. Pretty sizeable investment.

5 A. Yes, sir.

6 Q. That's that's a big house.

7 A. Yes, sir.

8 Q. Probly doesn't want it to flood.

9 A. Correct.

10 Q. We can assume Mr. Wennerstrom doesn't want his house to
11 flood.

12 A. I would agree with that.

13 Q. So he would have a motivation to put anything on his
14 house that would stop that, that fair?

15 A. He could put anything on there if he'd like to try to
16 stop that.

17 Q. How much Mis ---

18 A. Mis -- go ahead, I'm sorry.

19 Q. --- how much did Mr. Wennerstrom pay in premiums?

20 A. I don't know.

21 Q. You have any idea how much a premium is on a, on a \$4
22 million policy?

23 A. I could look at some, uh, uh, I think we have a certified
24 policy over there which I think would include the premium per
25 year in there.

1 Q. In your file, you got a lot of information in front of
2 you, do you know if an -- if Fireman's Fund or anyone on
3 behalf of Fireman's Fund did any investigation into whether or
4 not Mr. Wennerstrom modified his plumbing system after the
5 home was turned over to him in 2003?

6 A. I don't have any record or or knowledge if that was done
7 or not.

8 Q. Do you know if an irrigation system was put on the system
9 after 2003?

10 A. I don't know.

11 Q. Know if he put a hot tub in or a new appliance that
12 required water?

13 A. I I don't know.

14 Q. Okay. Did ya ask Mr. Wennerstrom if he modified the
15 plumbing system after my clients left?

16 A. I asked him any major improvements or changes, uh, I
17 don't recall the that, uh, discuss -- discussion we had but I
18 believe so he did not.

19 Q. Is that somewhere in your notes, Mr. Klaben?

20 A. Uh, no, it's more just a a verbal discussion if he
21 had -- it was more of I guess a standard question I ask if any
22 recent changes, improvements or additions to the house prior
23 to, ya know, the policy we took it over, more for an
24 underwriting question.

25 Q. Now there's the reduction valve, the reducing valve,

1 right, and that's the one that my folks, the safety measure my
2 folks actually did install.

3 A. Right.

4 Q. --- and it's outside and it's in a valve box out by his
5 driveway, you f -- are you generally familiar with that?

6 A. Yes.

7 Q. Okay. You went to the house?

8 A. Yes, sir.

9 Q. Did you look at the valve box?

10 A. Um, at that point I do recall they were working on it and
11 I I think I just stayed away just for safety concerns and let
12 the experts handle.

13 Q. Did ya know where it was?

14 A. I knew it was in the front, uh, front yard on the right
15 side of the driveway if I recall right.

16 Q. Right next to the driveway?

17 A. Uh, tell me what you mean by right next to the driveway.
18 I I I remember it was close by I guess would be a better
19 term.

20 MR. IMHOFF: May I, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. IMHOFF:

23 Q. Do you recognize that (indicating) as Mr. Wennerstrom's
24 home?

25 A. Yes, sir.

1 Q. Okay. Do you recognize that (indicating) as a a valve
2 box and a water meter box?

3 A. Yeah, I recall this this, uh, this scene.

4 Q. Does this accurately represent where Mr. Wennerstrom's
5 valve wa -- valve box was located?

6 A. Yes.

7 MR. IMHOFF: May I mark that?

8 (Photograph marked Defendants' Exhibit No. 1 for
9 identification.)

10 Q. We've now marked that as Defense Exhibit No. 1. Mr.
11 Klaben, can you tell me is that valve box right next to his
12 driveway?

13 A. I assume ya mean by, there's several boxes here and I'm
14 assuming you mean the one that's dug open to the right side of
15 the driveway?

16 Q. You think it's dug open?

17 A. Well I think there was some dirt on top of if I recall
18 that during the discussion with, uh, uh, forgot who but they
19 had, there was dirt covering I think the top of of the layers
20 of the, of the box, oh, there's there's a dirt pile behind it
21 that we kinda somebody with a shovel to kinda show that there
22 was some digging involved to to get there.

23 Q. Okay. What are those three little round boxes next to
24 it?

25 A. Those are I believe are controls for the irrigation

1 system.

2 Q. Do you know when that irrigation system was installed?

3 A. I do not.

4 Q. Did you ask Mr. Wennerstrom?

5 A. No.

6 Q. Did you ever ask him if his irrigation contractors messed
7 with this pressure valve?

8 A. I did not.

9 Q. Do ya know if Mr. Wennerstrom or someone on his behalf
10 opened his pressure regulator valve all the way open?

11 A. I don't know.

12 Q. You ever heard that before, Mr. Klaben?

13 A. Uh, no.

14 Q. Anybody do any investigation on behalf of Fireman's Fund
15 to determine if the be -- the bidet connection was just yanked
16 off the bidet?

17 A. I think by looking at it speaking with, uh, how how the
18 loss was occurred I found that would be highly unlikely. Mr.
19 Wennerstrom was in Florida I believe at the time and he had a
20 cleaning lady come, let in a termites man in to do some
21 spraying and they found the water there.

22 Q. Has anyone talked to that Termex -- Terminix man?

23 A. I don't believe so.

24 Q. Anybody ask him if he pulled the valve off the bidet?

25 A. I don't believe that, I don't know if anybody did or

1 not.

2 Q. Did anybody talk to Mr. Wennerstrom on behalf of
3 Fireman's Fund to determine whether or not he maintained his
4 regulator valve?

5 A. I don't know if they did or not, I did not.

6 Q. You have a regulator valve on your house, don't you,
7 Mr. Klaben?

8 A. I, ac -- actually I do.

9 Q. How many times a year is it maintained?

10 A. Once a year it's -- they, uh, or it's, uh, county code
11 that they, uh, plumbing company's required to come out and put
12 a tag on it every year.

13 Q. The plumbing company or the the the water company?

14 A. It's actually a plumbing company but they, it's put on
15 your tax bill basically by a different plumbing company.

16 Q. So you actually have to pay ---

17 A. Yes.

18 Q. --- to have your regulator looked at every year.

19 A. Yes.

20 Q. Do you know if Mr. Wennerstrom ever had his his regulator
21 looked at between 2003 and 2009 when it failed?

22 A. I don't know if he did or not.

23 Q. That's sort of important to your investigation isn't it,
24 Mr. Klaben?

25 A. Uh, if you wanna say my inv -- with Fireman's Fund

1 investigation, um, I do believe that would be a question that
2 that could be asked.

3 Q. Of who?

4 A. I'm sorry, sir?

5 Q. Uh, who do I ask that question to?

6 A. Uh, ---

7 Q. St. Louis or Atlanta?

8 A. The subrogation department I guess you're correct.

9 Q. They're not comin' are they?

10 A. No, sir.

11 Q. You're you're a large loss water specialist, that right?

12 A. A large loss, damage house, uh, ya know, construction
13 specialist would be whether it's fire, wind, storm, tree hit,
14 car hit, those kinda things.

15 Q. Well you do a lot of, uh, you do a lot of water losses,
16 that right?

17 A. That is correct.

18 Q. And you couldn't recall any other time that you adjusted
19 a large loss where a regulator failed, could ya?

20 A. I had numerous losses where there was some sort of
21 plumbing device failure, um, I've had, I can't recall, ya
22 know, the exact loss of every one I've done but I don't --
23 can't specifically say that on this loss was due to regulator
24 failure.

25 Q. How many years have you been doin' this?

1 A. Twenty-three I think.

2 Q. And you can't remember when another regulator failed?

3 A. A regulator failed, not specifically. Uh, ya know,
4 there's been so many plumbing losses to say. I usually don't
5 get involved this deeply of what happens, why the thing fails
6 and usually just turn it over to subrogation department and I,
7 quote, unquote, move on, so can't say I'm not involved with
8 one but I don't usually get, ya know, heavily involved with
9 the subrogation aspect of it.

10 Q. You know if Mr. Wennerstrom was having extremely high
11 water pressure in his home before the failure, before the
12 flood?

13 A. Uh, I don't know if he had high pressure but he did have
14 another water loss before this one inside the house, the
15 dishwasher believe.

16 Q. Do ya know if you had anybody to go look at his pressure
17 regulator?

18 A. I don't, I don't -- I did not handle that came, uh, so I
19 don't recall if that was part a the portion of the claim to
20 have it looked at.

21 Q. Did anyone at Fireman's Fund ask him?

22 A. I don't recall if they did or not.

23 Q. If he was having high water pressure at his house because
24 his regulator was failing and he didn't tell anyone or do
25 anything about that, do you think that's important to your, to

1 your investigation in your lawsuit against these folks?

2 A. Could be an issue that may have been, should've been
3 brought up if he -- but we're not s -- I think -- I don't
4 recall the other one that could also been involved with a non-
5 water pressure issue with a pipe wearing out in the
6 dishwasher, I'm not sure the exact cause a that.

7 Q. And if the water pressure regulator or reducing valve, if
8 it worked you wouldn't be adjusting this claim, would you?

9 A. There would be no loss I believe.

10 Q. That's right and that's why Fireman's Fund intended to
11 sue the valve manufacture originally, right?

12 A. I don't know if we attempted to sue them but it was part
13 of investigation to look at it.

14 Q. Well on April of 2009 you were talking about suing the
15 valve manufacture.

16 A. We were talking about sending them I think a a letter
17 notifying them that they were part of our investigation, I
18 think that's a little different than suing them per se, is is
19 an initial, uh, investigation portion of it.

20 Q. Okay. It says, "We can still bring an action for
21 negligent workmanship and product defect against the valve
22 manufacturer," ---

23 A. Yeah.

24 Q. --- that's not an investigation is it, Mr. Klaben?

25 A. Well it is, it it's talking about we can, it didn't say

1 we will or have justification to do so, it says we can, it
2 talks about more about preserving our rights to figure out
3 once we figure out exactly what's going on of where this, you
4 know, the outer -- all the, uh, parties it involved.

5 Q. That's what I was asking you, Mr. Klaben, is it was your
6 intention to file a lawsuit against the valve manufacturer.

7 A. If they are believed, if we had -- our investigation had
8 revealed that they were actually at fault. Again, m -- our
9 premise I assume is when I, my job is to capture all parties
10 involved and just by noting in our file that they're involved
11 doesn't mean that we're going to go ahead and sue them, that
12 means that they could be part of the loss, they have their
13 their equipment is involved in it, they may not be at fault
14 for it but they're a party to what may have happened. I, what
15 I read that about, let me get back to that. I'm sorry, what
16 was the date a that again?

17 Q. That be 4/7/2009 entry, is that what you're talkin'
18 about?

19 A. Uh, what was the date again? I'm sorry.

20 Q. Four -- uh, April 7th 2009.

21 A. He's talking about the state of repose, ya know, it's
22 thirteen years for bringin' to, we can still bring an action
23 which means we're concerned about time frame and and how long
24 someone could be liable for something negligent workmanship,
25 it doesn't say we actually believe that they've done so, it's

1 just that they coulda been part a this, so that's -- we're
2 just looking at all entities, it's it's tryin' to capture
3 everybody as soon as possible because of evidence has got a
4 short time life so you wanna try to capture what's goin' on
5 over there and get everybody involved as soon as possible.

6 Q. What's the regulators job?

7 A. To reduce the amounta pressure from, quote, unquote,
8 street level pressure down to a acceptable amounta pressure to
9 adhere to 60 pounds or under into the house.

10 Q. Did the regulator that my clients installed on this home
11 do its job?

12 A. I'm not an expert to comment on that, I don't have the
13 expertise to say yes or no.

14 Q. Okay. Did it stop the water pressure from raise -- from
15 rising in the house?

16 A. Uh, initially I believe so, yes, ---

17 Q. Okay.

18 A. --- I mean, must have the first four, three or four years
19 I assume.

20 Q. Do you know if it ever stopped keeping the water pressure
21 low in the house?

22 A. Again, I wasn't part or privy to testing of that but from
23 what I initially read that we believe that hearing the further
24 test -- earlier testimony or testimony, the earlier comments
25 that it went from hundred and fifty to the street down to

1 sixty to the house and then that for reason let go what caused
2 the water pressure to skyrocket house causing the plumbing
3 fixture to bidet to crack.

4 Q. So if the pressure regulator's job is to lower the
5 pressure of the water in the house and the water in the house
6 was not lowered, it was a hundred or a hundred and fifty or
7 whatever, that regulator didn't do it's job, did it?

8 A. It sounds correct, again, I'm not an expert but it sounds
9 correct.

10 Q. Okay. And these (indicating the defendants) folks didn't
11 build that regulator, did they?

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

13 Q. And there's nothin' wrong with the type a regulator they
14 installed, is there?

15 A. Again, I I didn't do the break down or expert opinion of
16 that but there's some sort of failure there but I don't know
17 why.

18 Q. So that product didn't fail, you wouldn't be suing these
19 (indicating the defendants) folks, that right?

20 A. That is correct.

21 Q. And they didn't make the product, right?

22 A. I don't believe so, you're correct.

23 Q. Mr. Wennerstrom tried to submit and \$11,000 bill for a
24 charter flight?

25 A. Yes, sir.

1 Q. Is, was it his plane or is it ---

2 A. I think it, I'm not sure but I think it was parta like a
3 a jet card thing. I'm not sure if it's his plane or is o --
4 part ownership, I didn't ask him.

5 Q. Okay. And you only paid him \$600 a flight.

6 A. Correct.

7 Q. Uh, how long it take you to adjust this claim?

8 A. I received my initial, uh, involvement on or about early
9 January of 2009 and I believe my final checks and payments
10 somewhere July of 2009.

11 Q. Okay. I have on Exhibit No. 1 a date of August 31st
12 2009, was the claim still open then?

13 A. Uh, yeah I think I made my final opinions the end a July
14 and then we just kept it open to see, make sure everything, he
15 got the check and any other supplements popped up and are any
16 other issues that he had with the claim.

17 Q. Paid him a lotta money.

18 A. Yes, sir.

19 Q. You paid him if my math is correct \$60,000 for rugs.

20 A. Correct. Well let's see, yeah, some a that includes, ya
21 know, repair, restoring, cleaning and, uh, ---

22 Q. Well go ahead and look down under your Suffix No. 1, five
23 up from the bottom, it's a \$10,000 line item. Are you with
24 me?

25 A. No. Under Contents or under Building?

1 Q. Uh, Building.

2 A. Okay.

3 Q. Do you see the the Amatulli?

4 A. Um-hum.

5 Q. Okay, \$10,600 for replacement of carpet.

6 A. The carpet, correct, it's different than the rugs I
7 think.

8 Q. Okay, \$3,800 for replacement of carpet, ---

9 A. Um-hum.

10 Q. --- alright, and then you go down under Contents and it
11 said let's see, ---

12 A. It was the forty-six thou -- third one down, 46,000 for
13 replacement of Oriental rugs.

14 Q. Forty-six thou -- and then there's one under that, isn't
15 there?

16 A. Yeah, that's replacement of the furniture.

17 Q. I'm sorry, you're right, so \$46,000 for the rugs, \$14,000
18 for the carpet and ya also have a \$10,000 rug, furniture,
19 covery, cleaning, storing, return Amatulli also, right?

20 A. Correct.

21 Q. So it's \$70,000 for his carpet and his rugs.

22 A. That's correct.

23 Q. Where are his rugs?

24 A. Uh, the -- well a lot of 'em were returned, you know, we
25 were able to clean, restore, uh, Or -- Oriental rugs, uh, ya

1 know, the special process for the weaving, trying take out
2 some the dyes so a lot of 'em were returned, yeah, ya know
3 there's a whole, in the evidence here there's a whole list
4 very detailed of, uh, how we arrived at those figures.

5 Q. You know if some of those rugs that you paid to replace
6 are still in the home?

7 A. Yeah, the water damaged that, you know, that they had a
8 value that we actually gave 'em back 'cause they were the
9 value, salvage value to them.

10 Q. So you paid him \$46,675 for for the Oriental rugs that he
11 put back in his house?

12 A. Yeah, they're -- they -- the value was not close to that
13 anymore 'cause the wool has completely, uh, come apart, a
14 lotta the areas as well as the, uh, colors had run the, quote,
15 unquote, if he tried to sell them he would get a very low
16 value to them based on the expert Mr. Atulli [sic] supposedly
17 took those pictures and our own people look at 'em and it was
18 a, I believe it was a full fair value for that.

19 Q. Who hired ---

20 A. We actual ---

21 Q. Who hired, who hired -- I'm sorry, go ahead.

22 A. Yeah, we actually took off the price, there's a salvage
23 value for those rugs, we actually took that off his amount but
24 he, 'cause he wanted to keep the rugs.

25 Q. Where's that salvage value, ---

1 A. Uh, sure.

2 Q. --- I don't see it?

3 A. Okay. On -- under under the Contents exhibit the
4 original value of them was 52,220, the salvage value for him
5 to keep 'em was \$5,545, therefore the value of the rugs, uh,
6 after deducting the salvage off those was \$46,675 and that's
7 the amount that's on the Contents.

8 Q. Who hired Mr. Amatulli to provide you that estimate?

9 A. Uh, I did.

10 Q. You hired Mr. Amatulli?

11 A. Yeah, I cle -- he he also had a a service fee of \$1500
12 for this, I also met him several times, checked his
13 credentials. I also had his stuff verified through, uh, we
14 call a service called, uh, I forgot the name of it at that
15 time but they felt full and comfortable that it was fair.

16 Q. Okay. And so Mr. Wennerstrom who has a \$3 million house
17 and \$55,000 of Oriental rugs and charters flights from Miami
18 to his \$3 million summer home put \$5,000 Oriental rugs back in
19 his house, Mr. Klaben?

20 A. Now he he explained to me which lotta these were were
21 captured or or bought during his travels and they had more of
22 a sentimental value plus also the styles and color. You're
23 basically put back his house almost exactly the way that he,
24 that it was originally, uh, with his furniture and his decor
25 and those colors and still matched. Ya know he had it

1 professionally decorated so they went back the same way and he
2 explained to me they they be very hard to match the same color
3 decor of the Oriental rugs. They were soaked for quite a long
4 time, I'm, ya know, they suffered a lotta damage, I actually
5 saw them so I can attest to that as well.

6 Q. You still -- does Firemans Fund still insure
7 Mr. Wennerstrom's home?

8 A. Uh, at this very point right now I don't know if that's
9 true. I know we did for a year afterwards. Again, I kinda
10 lost track of whether he's insured with us or not.

11 Q. Would Fireman's Fund still insure Mr. Wennerstrom's home
12 although there's no pressure relief value on the home?

13 A. Yeah, we had paid for what we call a a "computerized
14 water leak detection system" which was put into the house that
15 would can, uh, actually capture and detect a a water leak
16 inside a the house.

17 Q. You know how that water leak detection system works?

18 A. Somewhat.

19 Q. Now, has there ever been any allegation against my client
20 that they're liable to Fireman's Fund because they didn't put
21 a leak detection system in the home?

22 A. Uh, I don't believe so, no.

23 Q. Okay. The allegation against my client while we're
24 a -- why we're all here today is because Fireman's Fund
25 allegation that they didn't put a pressure relief valve in the

1 home, right?

2 A. I I re -- I assume that's correct, yes.

3 Q. Okay. And despite the fact that that was clear to
4 Fireman's Fund way back in 2009 and you did and you hired
5 lawyers to investigate it and an expert there's still no
6 pressure relief valve in that home, is there, Mr. Klaben?

7 A. Again, I believe there's not.

8 Q. Thank you, sir.

9 THE COURT: Any redirect limited to what he went into?

10 MR. DEAL: Yes, Your Honor.

11 REDIRECT EXAMINATION BY MR. DEAL:

12 Q. Alright, Mr. Klaben, are you an expert plumbing?

13 A. Uh, no.

14 Q. Alright, but do you know what this pressure relief valve
15 we're talking about supposed to do?

16 A. In layman's term, yes.

17 Q. What would that be?

18 A. When the pressure coming up to it would exceed what you
19 wanna go past it, it reduces it -- or pressure relief valve,
20 I'm sorry?

21 Q. Relief valve, yeah..

22 A. Would would would relieve the pressure of a system if
23 it's too high to for that system.

24 Q. Right, so in other words it's a safety mechanism if the
25 pressure gets too high diverts the water away, just protect

1 the house, right?

2 A. Correct.

3 Q. What -- do do you know what this -- how, let me back up.
4 How much was that system that was install -- installed, the
5 thing now?

6 A. The leak protection system?

7 Q. Yeah, how much was that?

8 A. Uh, \$2,142.18.

9 Q. Okay, why did Fireman's Fund pay for that again?

10 A. It is an underwriting decision made back that we try to
11 not, quote, unquote, relive these past losses so we offer this
12 part of our policy conditions to our insureds so, uh, that if
13 they have a water loss like this they can get this
14 computerized system in their house which can detect a leak
15 system and will shut down the water so it greatly reduces or
16 eliminates any water loss.

17 Q. So basically does the same thing that the pressure relief
18 valve woulda done but it costs 2,000 some odd dollars.

19 A. Right, it it's able to be, yeah, ex -- the -- it's able
20 to be controlled the ---

21 MR. IMHOFF: Object to the form, Your Honor.

22 THE COURT: I'll allow ---

23 MR. IMHOFF: I'm sorry, objection here.

24 THE COURT: I'll allow it, go ahead.

25 BY MR. DEAL:

1 Q. And ---

2 A. You repeat the question.

3 Q. --- so this this \$2,000 thing it does the same thing in
4 your mind that the other one did, that the pressure relief
5 valve did.

6 A. I think it's somewhat, it's very similar, there's
7 there's -- you can change it man -- or electronically versus I
8 think a pressure relief valve is once it's set mechanically it
9 pretty much stays the same where this one you can change a
10 little bit by your actions though if you're having more
11 whatever, you have more guests the house, it will be able to,
12 you know, recognize that, other than that I think I believe
13 it's the same, correct.

14 Q. Alright, so it's there protect the house, stop the house
15 from leaking.

16 A. Yeah, protect the house from a large water loss,
17 correct.

18 Q. Okay. Alright, now you're -- what department do you work
19 for for Fireman's Fund?

20 A. I work in the claims department.

21 Q. Do you work for subrogation?

22 A. No.

23 Q. Is it your, uh, job to do, to make any assessments as to
24 who anybody should be put -- sued in any a these, any -- in
25 any time that Fireman's Fund out there doin' subrogation?

1 A. Uh, no actually they try to what we call put a "Chinese
2 wall" up so my claims decisions of what we pay, what we don't
3 pay aren't influenced by the fact whether we get money or not
4 from a claim.

5 Q. Right. Now that said as we sit here today is it your
6 understanding that Fireman's Fund is suing a valve
7 manufacturer?

8 A. I don't believe we are.

9 Q. Okay. And were you involved in decision to to sue or not
10 to sue the valve manufacturer?

11 A. Uh, no.

12 Q. And how 'bout B&B ---

13 A. No.

14 Q. --- or Searcy?

15 A. No.

16 Q. That wasn't your job?

17 A. That, yeah, again, like I said we try to keep a a wall up
18 so it doesn't affect my decision of how much we pay or don't
19 pay ---

20 Q. Uh, ---

21 A. --- regarding how much we get, that way it doesn't, you
22 know, professionally would never let it affect my decision if
23 we're gonna get back our own money or not but it's just a
24 safety consideration that my decision isn't based on whether
25 we get our money back or not on a loss.

1 Q. So you're gonna pay for it regardless.

2 A. Correct.

3 Q. Alright, now as far as, uh, the underwriting's
4 concerned you talk about that, are you a underwriter?

5 A. No.

6 Q. And does a -- I think when you were talking to to
7 Mr. Imhoff a little bit ago you, he asked you about, uh,
8 whether or not Fireman's Fund requires pressure relief
9 valves ---

10 A. I recall that, yes.

11 Q. --- and you said as I recall that that woulda been in in
12 underwriting ---

13 A. Correct.

14 Q. --- and then he asked ya to your knowledge, as far as you
15 know, uh, there aren't any houses at all that Fireman's Fund
16 insures that have pressure relief valves in 'em ---

17 A. I recall that, yes.

18 Q. --- and you said you didn't know ---

19 A. I didn't know, no.

20 Q. --- and it would be equally, would would it also be true
21 then that you wouldn't know if every, every single house that
22 Fireman's Fund h -- insures is required to have these pressure
23 relief valves?

24 A. Yeah, I would not know, again, that would be
25 underwriting.

1 Q. You wouldn't know either way.

2 A. Correct.

3 Q. Right. Now let's go back and just real quick when when
4 you are adjusting a claim, when you first the claim, one a the
5 criteria that the the claim is referred to subrogation?

6 A. Yeah, it's a a standard practice that as soon as any
7 claim in the business or or commercial or homeowner any kind
8 of claim exceeds likely to exceed a hundred thousand it is
9 automatically directed over to our subrogation subrogation
10 department automatically.

11 Q. And do they automatically then sue somebody after that?

12 A. No. We do put, there are some parameters that we put --
13 I, part of my job is to capture all involved parties in a loss
14 to have names and phone numbers to the subrogation department
15 but it kinda quickly ends there.

16 Q. Now in in your job do you or do you interact with
17 attorneys or is that more of the subrogation department?

18 A. It's almost entirely subrogation department. Again, I
19 try to step away from the subrogation department to ask their
20 expertise as well as there's no involvement with, well you're
21 gonna get back all your money so ma -- you can, you know, let
22 'em go with a higher claim, that's, you know, that's not how
23 we operate.

24 Q. Right. And as far as, uh, being involved in subrogation
25 is it your job, uh, once subrogation's involved to to hire an

1 expert?

2 A. Generally not, no.

3 Q. Okay. Nothin' further.

4 THE COURT: Alright. Thank you, sir, you may step down.
5 Uh, before witness steps down lawyers approach a moment.

6 (Whereupon, a bench conference was held off the record.)

7 THE COURT: Thank you, sir, you may step -- yes, sir,
8 ju -- just leave all of those right there so the court
9 reporter can get it.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Alright, ladies and gentlemen, uh, thank you
12 for your work today, uh, we are going to conclude for the
13 evening and I'm going to ask would you please be back in the
14 jury deliberation room by 9:30 in the morning. It's now even
15 more important that you remember my charge and my instruction
16 to you that you cannot have any discussions with anyone about
17 anything involving the case, very politely tell your family,
18 your friends that that, Gosh, tell me what kinda case it, very
19 politely tell them I can't, judge is ordered me that I can't
20 have any discussions with you, you can also let them know that
21 after the case is over you'll talk with 'em until they're blue
22 in the face so, ya know, you're hide anything from them. Uh,
23 we've also started the process of taking testimony, again,
24 possibly you've heard words that you might not understand, uh,
25 again, do not do any type of independent investigation or

1 research, uh, into anyone. Uh, if your curiosity has arisen
2 as to any of these parties that that you've heard, do not do
3 any, go on the Internet and try to look them up to figure out
4 anything because you can do that after the case is over but
5 until, uh, the case is given to you and you've made your
6 decision do not do any type of independent
7 investigation, research into anything involving the case as
8 well but again, thank you very much, you may go with the
9 bailiff, we'll see ya by 9:30 in the mornin'.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Lawyers approach. We'll stand at ease.

13 (Whereupon, a bench conference was held off the record.)

14 (Proceedings October 1, 2013)

15 THE COURT: I'm told our last juror finally arrived so,
16 uh, they're bringing them around then we'll get ready to
17 start. Anything before we bring the jury back in?

18 MR. DEAL: Nothing, Your Honor.

19 MR. IMHOFF: Nothing, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Are they ready?

23 THE BAILIFF: Yes.

24 THE COURT: Let's bring 'em on in.

25 (The following takes place in the presence of the jury.)

1 THE COURT: Alright, ladies and gentlemen, we're now, all
2 of the jurors are now present. I need to remind you that when
3 I ask you to be here at a certain time I need for you to be
4 here at a certain time, uh, that is the last warning that I
5 will give the jurors, uh, after that, ya you know, I'm charged
6 with being sure that this trial is conducted in in the, uh,
7 processes of the Court are honored so then I have to fine
8 people in in contempt, alright. Plaintiff ready to proceed?

9 MR. DEAL: We are, Your Honor.

10 THE COURT: Alright. Call your next witness.

11 MR. DEAL: We call Mark Searcy, Your Honor.

12 THE COURT: C'mon around, sir. Come right up here and
13 place your, uh, left hand on the Bible and raise your right
14 hand.

15 (Whereupon, the defendant came forward.)

16 MARK SEARCY, having been
17 first duly sworn, testified as follows:

18 THE COURT: Sir, please have a seat in the chair and, uh,
19 pull the chair up to the microphone.

20 DIRECT EXAMINATION BY MR. DEAL:

21 Q. Can you state your name for the record, please.

22 A. Mark Searcy.

23 Q. And it's Searcy, is that right?

24 A. Searcy.

25 Q. We've been ---

1 (Indiscernible cross-talk.)

2 A. Clearcy, Searcy, I hear a lot of things, ---

3 Q. I'm sure you do.

4 A. --- I'm I'm happy anyway.

5 Q. I get the same thing with my first name. Anyway, uh, and
6 Mr. Searcy, where are you from?

7 A. North Carolina.

8 Q. Whereabouts?

9 A. Hendersonville.

10 Q. Okay, and you born there?

11 A. Yes, sir.

12 Q. Ya live there now?

13 A. Yes, sir.

14 Q. Alright, and, uh, where'd ya go to school?

15 A. Abbeville, that's a little high school don't even exist
16 anymore.

17 Q. Uh, as I recall between Brevard and Hendersonville?

18 A. Uh, actually between Hendersonville and Bat Cave, ---

19 Q. Oh, the other way, I'm sorry, ---

20 A. --- opposite way.

21 Q. --- my fault. Alright, anyway, uh, so and, Mr. Searcy,
22 what do you da for a livin'?

23 A. Build homes.

24 Q. Okay. And when did you start doin' that?

25 A. In, uh, '81, 1981.

1 Q. Okay, and you've been buildin' homes since straight
2 through since then?

3 A. No, uh, several stints where I was outta the country for
4 a year or two at a time.

5 Q. Okay. And, uh, what were you doin' outta the country?

6 A. Uh, in in Haiti I got involved with a church mission
7 there then later because a that experience my church staffed
8 me to launch a mission in Honduras.

9 Q. And so how long were you -- so then you went to
10 Honduras?

11 A. Uh, in in, uh, in, uh, the mid-80s and then we still work
12 in Honduras so have all these years so. . . .

13 Q. But you, but you lived in Honduras for some period a
14 time?

15 A. Yeah, well '87 through '89 we lived there continuously
16 and then we've been been there all of 'em.

17 Q. And when you came back did you go back to buildin'
18 houses?

19 A. Yes, uh, actually kinda way I got into construction grew
20 up farmin' but you can't dip in and out of farmin' you gotta
21 be there during the no pay months, you can't, you can't do
22 that to your brother so I got into construction as a result of
23 bein' in -- outta the country really.

24 Q. Okay. Alright, and and who do ya work for now?

25 A. Uh, myself.

1 Q. Alright, and what company is that?

2 A. Searcy Custom Homes.

3 Q. And when did that company start?

4 A. Uh, it was, we had an apostrophe S on it for a while,
5 Searcy's Custom Homes, and that's really a tongue twister so
6 somewhere over the years but, uh, oh, '80, so it's probly '83
7 before we called it Searcy's Custom Homes and gradually it
8 became Searcy Custom Homes so same thing.

9 Q. And and you're currently buildin' homes now.

10 A. Building home, one, ---

11 Q. Okay.

12 A. --- things are pretty lean.

13 Q. Alright. Uh, and is your family's from Henderson
14 County?

15 A. Yes.

16 Q. Do you got, have to ask this 'cause I've been curious
17 about it, now do you know who Nick Searcy is?

18 A. I do.

19 Q. Is he your kin?

20 A. I hear he is.

21 Q. Alright, that's good and and, uh, do ---

22 A. He's ---

23 Q. --- you know what he does for a livin' ---

24 (Indiscernible cross-talk.)

25 A. --- he's the famous family member really.

1 Q. Okay, what what's he do for a livin' I, you know, I just
2 wanna know?

3 A. Yeah, he he's a, he's an actor and so he's, uh, in been
4 in a lotta big time movies. When I was teenage boy, we went
5 up to his house and in Nick was 34-years-old, had really cool
6 Mustang that was in the garage, I said, Where's Nick, and they
7 say he left, went to Holly, went to Hollywood, so how'd he get
8 there, said, left hitchhikin', left his car here, he's gonna
9 go be a movie star, he did it so. . .

10 Q. Oh, it's been burnin' me up, I couldn't remember, okay
11 that's good, thank you. Completely irrelevant, I apologize.
12 Anyway, alright, uh, let's get down to the, to the the
13 business at hand, uh, the way I understand you got involved in
14 this situation at some point in time a guy from the Cliffs
15 called ya, is that right?

16 A. That's right, the ---

17 Q. And it was a Saturday?

18 A. It was.

19 Q. And and he called ya and said, Hey, we got this house
20 that, uh, just get, startin' to get outta the ground and then
21 we don't like who's doin' the work and can you come up here
22 and take a look.

23 A. That's right.

24 Q. Okay. And, uh, was that house actually the house at 4545
25 Falling Star Way?

1 A. I believe that's right.

2 Q. Okay, Mr. Wennerstrom's house?

3 A. Yeah, when I got there it wasn't, there wasn't even an
4 address out there, it was a dirt road when I got there but
5 yes, that's that's the right place.

6 Q. And at that time there wasn't anything there sp -- there
7 more than just a beginning of the foundation, is that right?

8 A. Right, some some footings was in, most of the grading had
9 been done but nothin', nothin' vertical had started up so. . .

10 Q. Right. Uh, and, uh, there there wasn't anything there at
11 that time you could call a house.

12 A. No.

13 Q. Okay. And, uh, once you got up there you took a lay of
14 the land, looked around, saw where kinda everything was, that
15 right?

16 A. That's right.

17 Q. And let me, if I may approach, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. DEAL:

20 Q. Just wanted to point and let ya take a look at this
21 picture. You know what that (indicating) picture is?

22 A. Yes, I do.

23 Q. What is that?

24 A. That's a, that's actually a view back over towards
25 Highway 25, out to the mountain view off the back patio of

1 Stig's, uh, house.

2 Q. This, this is, so this is a -- the back -- the view outta
3 the back patio a his house? Does this accurately represent
4 that view?

5 A. Very well.

6 Q. Okay, I'd like to move into evidence as ---

7 MR. IMHOFF: No, objection, Your Honor.

8 THE COURT: Without objection be Plaintiff's 5.

9 MR. DEAL: Thank Your Honor.

10 (Photographed marked Plaintiff's Exhibit No. 5 for
11 identification and admitted into evidence.)

12 (Whereupon, a discussion was held off the record.)

13 BY MR. DEAL:

14 Q. Alright. Okay, uh, so that was the view you saw out
15 there, you didn't see, there wasn't any houses, there wasn't a
16 house or anything out there at all.

17 A. Nothin'.

18 Q. Okay. Alright, now after you went out there and took a
19 lay of the land I think you met Mr. Wennerstrom, right, and
20 you went home and you spent what I think you've said is around
21 the clock tryin' to get a lotta information together about how
22 this house, how would you put the house together and all that
23 sorta thing, is that right?

24 A. Absolutely. This was a major opportunity for me. I I
25 started out buildin' \$80,000 homes and, uh, the the foy, his

1 foyer cost more than that so it was a major improv --
2 opportunity for me as a builder so we focused all our
3 attention on it, pulled in some numbers to get it.

4 Q. And and so you talked to sub-contractors?

5 A. Absolutely.

6 Q. Pulled the, looked at -- reviewed the plans?

7 A. Right, memorized 'em.

8 Q. Gather any specs that you could about anything that was
9 gonna good on there, right, ---

10 A. Absolutely.

11 Q. --- all all that together and, uh, some point in time you
12 just figured out how long it was gonna take you to build the
13 house.

14 A. Right.

15 Q. And then you met with Stig after that, right?

16 A. Yes.

17 Q. After you taken all this time to make sure you got all
18 the information you could have so you could present that to
19 him?

20 A. That's right.

21 Q. Okay, and you'd expect anyone in your same situation to
22 have done exactly that is to gather all the information
23 together, make sure you've got as much information you can and
24 make a good decision and present to the client, ---

25 A. Absolutely.

1 Q. --- that right? Okay. Alright, and if if you hadn't
2 done that, would you feel like you're bein' reasonably prudent
3 and and doin' your job for Mr. Wennerstrom?

4 A. Well it, um, or for my kids 'cause if you, if ya fly in
5 there and your bids too high or you, or you left sumtin' out,
6 either way somebody's gonna, somebody's gonna, uh, not be
7 happy about, whether it's the client because, uh, or or you
8 don't get the job 'cause you just might bid too much so
9 there's that pressure to keep it low enough 'til you get it,
10 high enough 'til you make a profit that at the same time
11 taking into account all of the scope of the property, yes.

12 Q. And that's necessary in order to make sure you're doin' a
13 good job?

14 A. Mandatory.

15 Q. Okay. Alright, now after you, uh, after all that went
16 through you went and met with Mr. Wennerstrom again, is that
17 right?

18 A. That's correct.

19 Q. And at that point in time you guys at some point agreed
20 that you were gonna build a house for him?

21 A. Right. I got a, I got a little page and a half, just I
22 always call it sort of a handshake on paper that if, uh, if if
23 they, if they need one a them 20-page contracts I figure I'm
24 not the builder for them if we can't trust each other so I had
25 that little contract ready, he signed it, wrote me a little

1 deposit check and that's what started this.

2 Q. And in that, in that that your understanding that
3 contract that 1-page kinda summary of what was goin' on you
4 were expecting to build him a house that he could live in.

5 A. That's right.

6 Q. Okay. And, uh, as part a that contr -- the agreement,
7 you were responsible for gettin' the the permits, the the
8 perpy -- permit building permits and that sorta thing,
9 correct?

10 A. Well they they already pulled the permit but I had to go
11 get it changed into my name 'cause the other builder whatever
12 had happened there didn't work out so. . .

13 Q. Right, so then you assumed responsibility for buildin' a
14 house according to those ---

15 A. Right.

16 Q. --- that permit that you pulled, right?

17 A. Even responsibility for the work had already been done.

18 Q. Right. You were satisfied that was the work, the
19 previous work that they'd okay you -- or you could ---

20 A. No, ---

21 Q. --- live with it.

22 A. --- part of it had to be tore out but not much ---

23 Q. Right.

24 A. --- and and redone.

25 Q. Okay. And, uh, as part of making sure that you basically

1 had, you know, pulled this permit, you had to make sure that
2 the -- that you had to follow the appropriate buildin' code,
3 that's al -- is that right?

4 A. That's correct.

5 Q. Okay. Now how long do you -- as you recall did it take
6 you to s -- from start to finish to build this house?

7 A. I I I I probly told Stig it would take twelve months and
8 then it probly took about sixteen so. . .

9 Q. And is that's that's -- is that unusual to you four
10 additional months ---

11 A. No, this was ---

12 Q. (Indiscernible cross-talk.)

13 A. --- this, Stig was very involved in the house and, uh,
14 there's a lotta stuff. There's -- there was, uh, architects
15 and engineers workin' on this thing way late in the house in
16 in changin' design and expandin' things and, uh, was a very,
17 uh, very custom.

18 Q. Right. Now as far as Stig's involvement and I think you
19 told me earlier but correct if I'm wrong here anytime you and
20 him kinda had a disagreement 'bout how things were gonna go
21 you got your way, is that right?

22 A. No, sir. On occasion I got my way but, uh, uh, he he --
23 there there was a time or two when I dug in and I knew he
24 would do hisself a disservice if he didn't go the way I said
25 so I wouldn't budge but he's used to gettin' his way so

1 there's a lotta things we did that that we did it Stig's way
2 in spite of me but, uh, not without, uh, strong protest but
3 nothin' of, uh, consequence. I I didn't let him do anything
4 that would be unsafe or that kinda thing so. . .

5 Q. Okay, we might go back to that but, uh, let me, let me,
6 uh, move on here. I -- uh, but but at the end a the day
7 though you were satisfied with the way the house was built.

8 A. Absolutely.

9 Q. And if had he come to you with anything wanted changed
10 around that wouldn't, uh, ply, ya know, comply with code or
11 anything like that you woulda said no, can't do it.

12 A. No, sir, that's right.

13 Q. Okay. At some point in time down the road, you got a
14 certificate of occupancy for the house?

15 A. That's right.

16 Q. And how does that process work, you go and apply for it
17 and they come out and take a look?

18 A. Well when you, when you get your permit, they give ya a
19 whole list of the inspections they require. There certain
20 places all through the house that they have to inspect it
21 because the next day you're not gonna be able to see it no
22 more so before you close up a wall, electrical, plumbin', the
23 rough-ins has to be inspected, before ya pour a slab that's
24 gotta be inspected and then then there's re-inspections and CO
25 what we call it, it's certificate of occupancy, that's when

1 all the inspections come together, they do a final walk
2 through, make sure everything meets code and they issue a
3 certificate of occupancy.

4 Q. And that certificate of occupancy basically makes it a
5 house that point in time.

6 A. That's right.

7 Q. And the day before it had that, di -- when it didn't have
8 that CO it's not a house, is that right?

9 A. Well I don't know, it sure looked like a house the day
10 before, I don't know what ya mean ---

11 Q. Okay, but ---

12 A. --- but it ---

13 Q. --- from, but ---

14 A. --- it's ---

15 Q. --- from a legal standpoint ---

16 A. --- it's not legal to occupy it.

17 Q. Right, and you couldn't live there and you, and you
18 couldn't get power could ya ---

19 A. Well, ---

20 Q. --- permanently?

21 A. --- a lotta that happens an awful lot, you're not
22 supposed to ---

23 Q. Right.

24 A. --- so that the the legal order is get the certificate
25 then move in, then get power, then go forward but there's an

1 awful lotta stuff happens in the construction industry.

2 Q. Right, I get that but but that wouldn't be what you would
3 expect to ---

4 A. No, ---

5 Q. --- happen.

6 A. --- no, that's right. Yeah, we followed it.

7 Q. So according to you it wouldn't a be, it wouldn't be a
8 home, you wouldn't be able to live in it before you got the CO

9 A. That's correct.

10 Q. But you would be, you would be able to live in it, it
11 would be a home after you get the CO

12 A. That's correct.

13 Q. You're responsible for gettin' the CO

14 A. Yes, yeah.

15 Q. Okay. Alright, now now at some point in time then then,
16 you, you know, well let me back up. You did this on a cost
17 plus fee basis, is that right?

18 A. That's right, cost plus fixed fee.

19 Q. Right, and what that means if I'm, correct if I'm wrong
20 here, is that you, uh, built a house or whatever it was,
21 whatever took anybody else do the work on the house and then
22 on top a that you just got a flat fee no matter what happened.

23 A. That's right..

24 Q. Okay. Do you remember how much that was?

25 A. No, I don't.

1 Q. Okay. How how -- all in all out do you have an idea of
2 how much it cost to build the house including your fee?

3 A. Well, I know, I know that the total cost the house probly
4 exceeded \$3 million or I suspected it did. All of the
5 cabinetry, a lot, a lot of, an awful lot of fine finishes,
6 the, all the stone columns and all the stuff Stig just bought
7 'em, they showed up on the job so all a that stuff I don't
8 even know what the cost is but I could surmise and I, so I
9 could go brag, I believe I just built an over \$3 million home,
10 I handled less than 2 million of it.

11 Q. Okay. And as far as that stuff that Stig, ya know, had
12 delivered up there, you know, uh, you reviewed it, I would
13 imagine make sure it was okay to be installed in the house and
14 made the ultimate call whether or not it was goin' or not
15 goin' in?

16 A. Absolutely.

17 Q. Okay. Now you actually, uh, you didn't build the house
18 yourself everything on it, right?

19 A. Well I'm a odd ball. For for the kinda contractor that
20 builds these kinda homes, most those guys can wear a suit and
21 tie to work every day because every, I call "paper
22 contractors". 'cause they got a paper agreement with this guy
23 and that guy and that guy and all those papers add up to a
24 house but I wear a tool belt and, uh, so all during the
25 foundation work and the actual structural part I'm I'm

1 literally in on it drivin' nails.

2 Q. But you didn't do electrical work ---

3 A. Right.

4 Q. --- or plumbing, you didn't do all the ---

5 A. (Indiscernible cross-talk.)

6 Q. Searcy didn't all the actual work ---

7 A. Yeah, ---

8 Q. --- build the house, there's ---

9 A. --- he -- it -- I I have some paper in my contract, it's,
10 uh, I feel like I'm not a paper contractor 'cause I do so much
11 of it myself but to hire quality subs is as important as
12 anything the contractor does, it's -- and that's my
13 responsibility to show up with an electrician and a plumber
14 and people that are competent and do good work, yes, that's a
15 part of bein' a contractor.

16 Q. Okay. And but eventually the house was finished and you
17 did get paid.

18 A. Yes.

19 Q. Okay. Now at the end a that whole project, uh, and as I
20 recall from Mr. Klaben's testimony there was a lot of
21 appliances and that sorta thing in the house, alarm systems
22 and septic and all this other stuff, did you in fact provide
23 Mr. Wennerstrom with a warranty information of all those items
24 and appliances, fixtures, etc.

25 A. Yeah, quite a bitta a that stuff is stuff he would have

1 all but still warranties woulda showed up to me and I would
2 pass him a package in the end with all the warranty stuff
3 but ---

4 Q. So and ---

5 A. --- appliances, some a that's some really unique stuff,
6 not your normal, uh, GE, ya know, special stuff and so a lotta
7 that, he he found or his people found and a lotta times I'd
8 just get a call from him say that the refrigerator will be
9 there today, we would receive it, check it out, make sure
10 installed right and the warranties are put in the warranty
11 drawer.

12 Q. Right, so you you can hand those warranties and put 'em
13 in certain place ---

14 A. (Nodded in the affirmative.)

15 Q. --- and as far as anything that you provided if there was
16 anything that had any warranties or anything like that, you'd
17 also put that in the ---

18 A. (Nodded in the affirmative.) Yeah, that that's what we
19 would commonly do, me or my guy, ya know, I mean a lotta times
20 I wasn't there every day especially in the finishin' stages
21 that we just typ -- typically pick a drawer somewhere and make
22 sure all the warranties and all stack up in that drawer.

23 Q. And and you you you feel like it's your responsibility to
24 make sure all the warranties you had went in that drawer.

25 A. Yeah, well, uh, they -- there some stuff, ya know, uh,

1 warranties on treated lumber or some other kinda things where
2 the -- that, you know, I mean, there's -- we don't take, we
3 don't track 'em down or whatever, they're not, they're
4 inconsequential ---

5 Q. So but some ---

6 A. --- but ---

7 Q. --- a the, ---

8 A. --- the key things ---

9 Q. --- some a the ---

10 A. --- key ---

11 Q. I'm sorry, go ahead.

12 A. Yeah, key things that are, that the warranty you may
13 wanna have that warranty some day in order to have it honored
14 then we we make sure we don't let them get away.

15 Q. And as far as any instructions that might need to
16 accompany those, you know, any anything, any documentation
17 you'd also wanna provide them to Mr. Wennerstrom as well, is
18 that right?

19 A. Yeah, not go over it maybe like we should but at least
20 it's all there ---

21 Q. Right.

22 A. --- and then, and then a lotta times when they're durin'
23 that CO process you go through the house and and talk about
24 here's how this thermostat works and some a that stuff you
25 know.

1 Q. Okay. But for anything important you'd wanna provide
2 that information to him at ---

3 A. Right.

4 Q. --- in paper if not talkin' it.

5 A. Right.

6 Q. Okay. Now you talk about subcontractors, uh, you you
7 know you, was your responsible for hirin', that right?

8 A. Right.

9 Q. Uh, but did Mr. Wennerstrom hire any of these
10 subcontractors?

11 A. Well like I know yesterday we were talkin' about, uh,
12 Banner Cabinet company. Uh, I I brought three different
13 cabinet companies I had great confidence in and Stig went up
14 to Banner, I don't know how, I'm not sure he -- how he even
15 found 'em but they're near Banner Elk way up in the mountains
16 and so I figured the name probly tied together but they did
17 some high-end cabinet work. I never, I had no contractor
18 relationship with them whatever. Now when they showed up with
19 cabinets I helped 'em unload 'em and helped 'em know where to
20 install 'em just like they were my sub but I didn't, I had no,
21 I I don't even know for sure what we paid 'em, I suspect that
22 it was a lot and, uh, yeah.

23 Q. I think we talked, that Mr. Klaben talked about the
24 cabinets pretty pretty big line item in those repairs,
25 right?

1 A. Yes.

2 Q. Would those have been those same cabinets?

3 A. Yes.

4 Q. Okay. And they, ya know, to your mind they were, that
5 the quality of 'em justified a pretty big payment, that's how
6 you made them stay.

7 A. Yes, they did some amazin' stuff around that where the
8 whole doors in one piece of wood round. We spent more on
9 those cabinets than most of the houses I build cost.

10 Q. Okay, right on. Okay, now, had those cabinets come in
11 and they weren't up to par or standard you would have told 'em
12 that they're not comin' into this house 'cause you're
13 responsible as the builder make sure they're up to stuff,
14 right?

15 A. That is correct.

16 Q. Okay. Now, uh, you, uh, you didn't do any electrical
17 work on the house, did ya?

18 A. No.

19 Q. Okay. Well you pause there, is there somethin' that you
20 mighta ---

21 A. Well I'm I'm pretty bad to make up a temporary panel
22 because on a job that size and we get electricians, plumbers
23 and heat people and, uh, uh, roofers and everybody there's not
24 enough places to plug your drop cord and I might be known to
25 cross that line a little bit and, uh, and get a a panel that

1 everybody can use and course when building inspector gets
2 there he gives me this look goin' that that looks like
3 hillbilly wirin' right there so but as far as anything part of
4 the house no, sir, not nothin'.

5 Q. So anything would be in the house the day after you got
6 the CO that wouldn't be anything you did.

7 A. Yeah, yeah, anything I did got loaded up in my tool shed
8 and hauled off, ---

9 Q. Okay, ---

10 A. --- nothin', ---

11 Q. --- got ya.

12 A. --- nothin' there.

13 Q. Alright, and so when you talk about you you have to, you
14 didn't do this electric wiring work and and you're not ele --
15 or you're not electrician are ya?

16 A. No.

17 Q. So at some point in time and and let me back up. You you
18 would have still at least tried to do what you could to
19 supervise what any of these trades and the electricians for
20 instance was doin' ---

21 A. Right.

22 Q. --- to an extent ya can.

23 A. Right.

24 Q. But at some point in time you gotta kind of trust they're
25 gonna do what they're supposed to do?

1 A. Yeah, but, I mean, I've been around it so long now to
2 most a the trades I know I I could I could be an assistant
3 electrician or an assistant plumber with a little bitta
4 direction any day, ya know, from bein' around it all my
5 life.

6 Q. But on this house or for like I say for instance the
7 electrician you didn't follow him around every day and make
8 sure that every little wire was twisted, every little
9 appliance was attached in the right way, I mean, di -- or did
10 ya?

11 A. Sometimes it felt like it, ya know, but the details of
12 gettin' -- wealthy people that build these ultra-custom homes
13 you can put an outlet next to the sink and you you can go back
14 and move it a quarter inch and then you can go back later and
15 move it another three eighths of an inch to get it just right.
16 You would just be amazed how involved it gets so, uh, but a --
17 there's, are there many outlets in that house that the
18 electrician wired I never even looked at yes, I mean, other
19 than just ---

20 Q. You had to, ---

21 A. --- walkin' by ---

22 Q. --- you had to make, you had to take ---

23 A. --- but ---

24 Q. --- or take it on faith he's gonna do his job.

25 A. Yeah, on on a, on a, on a perfect day you don't have to,

1 you don't have to look over the electrician or the plumber or
2 anybody else's shoulder but, uh, not all that many perfect
3 days.

4 Q. Alright, so let me ask ya this then, when the electrician
5 come out, came out to the job would you expect him do the same
6 thing you did, take a lay of the land, look around, see what,
7 ya know, review the plans, that sorta thing in order to make
8 sure he knows what his job scope is?

9 A. Well even even before they get there, I mean, you you you
10 get a, I mean, you get a price from subs before they show up
11 so they've either got a, they got a copy, a full copy a the
12 plans or at least all the pages that apply to their portion of
13 the work.

14 Q. No if he wasn't, he didn't take a look at these plans or
15 review the -- that document you wouldn't think that be very
16 prudent, would ya?

17 A. No.

18 Q. Okay. And as far as, uh, any other documentation that
19 was provided to 'em you expect him to gather that and look at
20 it.

21 A. Right.

22 Q. And that would include specification for any appliances.

23 A. Well not for a plumber but, uh, ---

24 Q. I'm talkin' about for the electrician right now.

25 A. Yeah, uh, see, a lotta times electrician will have, will

1 actually have to talk to some other people, it's not always
2 all in a plan. They may have to call the HVAC guy and say,
3 What's the amps on that thing and just so they're some a that
4 gathering information happens ---

5 Q. And you ---

6 A. --- so. . .

7 Q. --- but you'd expect him to did that, right?

8 A. Absolutely.

9 Q. Okay, and and you want him to be familiar or or or at
10 least be able to review any applicable electrical codes as
11 well.

12 A. Right.

13 Q. And after that all, you know, he got all the information
14 on the front end, you like you just like you did you expected
15 to make a general assessment of what's gonna take to do the
16 job, ---

17 A. Right.

18 Q. --- Right?

19 A. Can I get a cup a water, I must be nervous.

20 Q. You got it. Here's a cup. Uh, and then given -- dealin'
21 with information you gathered in that assessment you made you
22 essentially go out and do that job based on all the
23 information you gathered.

24 A. Right.

25 Q. Okay. And par -- as part that you expect him to follow

1 the plans ---

2 A. Thank you, sir.

3 Q. --- for the house?

4 A. Well, we do an awful lot of making it up as you go
5 because of the kinda custom work we do, I mean, there there
6 has to be documentation when we decide we're gonna add more
7 outlets here or that kinda thing so especially we're talkin'
8 about electrician right now, especially electrician. I mean,
9 we we that our techs got four can lights and when I'm through
10 there's thirty-four in that room because of kinda, this kinda
11 client so but it's either follow the plan or follow the
12 specific, uh, communication about changes about the plan
13 so. . .

14 Q. So you're -- so plan would be altered then they with
15 follow that to an extent.

16 A. Theoretically.

17 Q. Okay. Alright, and you don't certainly expect the
18 electrician to follow any instructions that would come with
19 any a the appliances or anything else that you installed in
20 the home, is that right?

21 A. Yeah.

22 Q. Alright. And you're required to follow electrical code
23 once if, ya know, ---

24 A. Right.

25 Q. --- even if he didn't know, he still has has to foll ---

1 follow it, correct?

2 A. Right.

3 Q. Now if the electrician and I think we've already kinda
4 talked about this a little bit but the electrician never came
5 across any any unusual circumstances, somethin' that kinda
6 struck him as different and, ya know, you expected at that
7 point in time to address to decide whether or not that
8 somethin' else needed to be done to address that particular
9 circumstance, right?

10 A. Right.

11 Q. And if in fact he decided it needed to be addressed in
12 some different way, you'd expect him either; one, you you
13 expect him to think of a way to address that situation,
14 right?

15 A. Right.

16 Q. And if he couldn't figure out the way that address that
17 situation, you'd expect him to find out from somebody else,
18 you or somebody else.

19 A. Either that or bump it back to the architect and the
20 engineers that are -- see, we had two architects and we had
21 multiple engineers supportin' their stuff so. . .

22 Q. Right. Alright, and if if the electrician had gone into
23 this house or any other house that you worked on and had gone
24 out there and gathered, you know, any inf -- that the
25 requisite information it would take to do job and didn't

1 review the codes or anything like that, he wouldn't be doin'
2 his job in in your li -- in your mind, right?

3 A. Right.

4 Q. Okay. And that would include if he didn't review the
5 plan ---

6 A. Correct.

7 Q. --- and he didn't follow manufacture instructions he
8 wouldn't be doin' his job and if he failed to recognize some
9 unique situation that he should have, he'd be failin' do his
10 job as well.

11 A. Right.

12 Q. Okay. And if he didn't either wha -- if he wasn't either
13 familiar with or or or review the the electrical codes, he
14 still wouldn't, he wouldn't be doing his job, would he?

15 A. Well one thing that happens on the architectural plans
16 they do a lot of what they call "typicals", it makes it look
17 like they work hard to their client but they got all these
18 cross-sections of walls and footings and sections and i's all
19 this typical stuff and so the plans are full of all that
20 typical and a lot of it don't apply to this particular plan so
21 so there's a sift through issue and a lotta times you kinda
22 gotta come back and say, Look, you're you're showin' this
23 wall's 8 inches thick but there's only room for six so we're
24 buil -- you know, and so architects are fallible too so. . .

25 Q. Right, but but in that situation you expect the

1 electrician to go, Oh, this now isn't so good, I need to talk
2 to somebody 'bout gettin' this sorted out.

3 A. Yeah, uh, sometimes, you you find stuff in a, in a
4 typical somewhere and, I mean, them, you you understand these
5 plans are thick and wide and so in a typical there's somethin'
6 that you could construe apply in multiple places when it only
7 applies to one or you -- that kinda thing and so it's a little
8 bit subjective and that's the reason you just need subs with
9 good integrity that are not, they're not lookin' to, that
10 they're they're tryin' to do it right.

11 Q. Got ya. Alright. Now we talk about all these things, ya
12 know, gather information, lookin' at the plans, following the
13 plans, following manufacture's instructions, all those things,
14 if the electrician had failed to do any a that stuff and go
15 through the job he's doin', you wouldn't consider him to be
16 acting reasonably prudent, would ya?

17 A. No.

18 Q. Okay. Now aside from electricians that you had out
19 there, you know, you had other subs, you had in fact a
20 plumbing contractor, is that right?

21 A. That's correct.

22 Q. And that was B&B, defendants here?

23 A. That's right.

24 Q. Now would you've he -- you know, you've already said you
25 held yourself out that you're supposed to gather as much

1 information as you can, follow your your plans, do all that
2 and you held yourself to that standard and seems like to me
3 you just now held the electrician to that same standard, would
4 you also hold the plumber to that same standard?

5 A. Absolutely.

6 Q. So in a situation, uh, so if that that's true then, uh,
7 it -- well now you've -- we talked about, uh, did you follow
8 B&B around when they were out there at the site makin' sure
9 they were doin' their job?

10 A. No.

11 Q. Okay. But when B&B came out first time well at to the
12 site you guys walked it together, didn't ya, ---

13 A. Yes.

14 Q. --- kinda take a lay a the land, see where everything was
15 and kind of rough out where you thought things might go?

16 A. Right, there's a, there's under slab plumbin' stuff that
17 happens and then there's pretty big columns 'cause basically
18 that's -- there's nothin' there but gravel, they put in that
19 plumbin', once that slab or we build a house and once when
20 they come back there's a house to work in so there's really
21 two, three, then there's the finish up but two major phases of
22 plumbin', okay.

23 A. Right, and at the time, as I recall the time that, uh,
24 that you took over and that B&B came out did their job some a
25 that under slab stuff was already done.

1 A. No, just just some messed up footings, uh, they hadn't
2 actually started the actual, some a that is under the slab but
3 none a the plumbin', uh, none a that, we had HVAC under the
4 slab in this house also but none a, none a that was done when
5 I took over.

6 Q. Did B&B do any a that HVAC work?

7 A. No.

8 Q. Alright, but back to what we're talkin' about, as far as
9 as B&B was concerned just like you and just like the
10 electrician you expect to follow any plans that were
11 applicable unless sumtin' weird came up, right?

12 A. Right.

13 Q. And you expect, you you expecting of of research and
14 found out any pla -- any sub -- specifications for any
15 manufacture, for any of the items they might have installed in
16 the house as ri -- as well, correct?

17 A. Yeah. I mean, in order to know where to put a pipe or
18 whatever, you gotta know what you're gonna attach to it or at
19 least what category, you know, you don't have to know the
20 brand necessarily but yeah, there's there's gotta be some
21 information exchanged in order to do it right.

22 Q. Okay, so you expect them to to review any any specific
23 instructions as to anything they put into the home ---.

24 A. (Nodded in the affirmative.)

25 Q. --- and follow those instructions.

1 A. Right...

2 Q. Okay. Now if B&B had gone out to the job and hadn't
3 either done the researches, got the information necessary as
4 far as the plans, specifications of any appliances, any
5 manufacture instructions, they hadn't got that information
6 together, they wouldn't be doin' their job, would they?

7 A. Not long or anybody else's really.

8 Q. That's right but I'm talkin' about as far as in your mind
9 if they had come out to this house, they had done gone out and
10 found out the information they needed: plans and
11 specifications, manufactures instructions, any a that
12 information, they hadn't gone out and found that stuff they
13 wouldn't be doin' their job in your mind, is that right?

14 A. Well there's only a a few, you know, there's not a lotta
15 place that applies. For the most part you you give a set a
16 plans that shows 'em how the plumbing goes and and that's what
17 you're gonna do but as but they'll -- they're just naturally
18 gonna so that they don't have to come and redo stuff, they're
19 gonna say, Now wait, is that, what what is this appliance,
20 what is this, uh, fixture here, ho -- which way is this tub
21 gonna drain, that kinda stuff so a lotta that stuff is found
22 out right on the job site, sometimes there's a whole list of
23 the plumbin' fixtures all stacked up together and you try to
24 give a copy to the plumber, they'll -- they appreciate when
25 they know were put in right place the first time, saves a

1 lotta time.

2 Q. But but some point in time before they were to install
3 anything in the house you'd expect them to get the information
4 for that, the insulation of those items, whatever it happens
5 to be.

6 A. Well not before anything but before the final ---

7 Q. Before they ---

8 A. --- stuff.

9 Q. --- install whatever it is you want them to have that
10 information handy ---

11 A. Right.

12 Q. --- and thereafter you know you're gonna wa -- expect
13 them to follow those instructions ---

14 A. Yes.

15 Q. --- and if they weren't to follow those instructions they
16 wouldn't be doin' bein' reasonably in your mind ,would they?

17 A. Well, some instructions are stupid. . .

18 Q. So don't -- so ---

19 A. --- but ---

20 Q. --- so I ---

21 A. --- but generally speakin' we bought, we buy good quality
22 stuff and if we don't agree with the the prescribed way to
23 install it, we'll get sumtin' that we do so I'll say yes to
24 your question, yes.

25 Q. Okay. So to clarify you expect that B&B would follow

1 manufactures instructions for the insulation of anything they
2 put in this house.

3 A. Generally speaking yes.

4 Q. Well now is it yes or generally speaking yes?

5 A. It's it's complicated li -- I mean, if what from
6 architect's point of view life is perfect but in real life out
7 there you gotta figure out what works and, uh, so I don't, I
8 don't know of any exception in this particular house and job,
9 I'm not not holdin' that in my mind, uh, it's just that you --
10 it -- I got, we we jokingly say sometimes, Hey, we actually
11 built that by the plan so and and it's just the nature
12 especially of my kinda clientele that wanna build these big
13 fancy homes, they are always pushin' the envelope and tryin'
14 to get ya to do sumtin's never been done before ---

15 Q. Okay.

16 A. --- so. . .

17 Q. But let me ask ya this: If if if the electrician was to
18 decide he's gonna put in certain fixture in the home via an
19 outlet or an electrical panel, sumtin' like that and and that
20 electrician selected that particular item put in the house,
21 you expect him to follow the manufactures instructions in it,
22 in its installation, is that right?

23 A. Yes.

24 Q. Okay, likewise, the same for the plumber. If a plumber
25 picks somethin' out in that -- and to put into to install in a

1 house, you'd expect him to follow the manufactures
2 instructions for that item at as well.

3 A. Yes.

4 Q. Okay. And if they didn't they wouldn't be doin' a
5 reasonably prudent job on your house, is that ---

6 A. I will, ---

7 Q. --- right?

8 A. --- I will say yes.

9 Q. Alright, and let me back up, I wanna talk about some
10 unusual circumstances. If if any of your subs ever came to
11 you and said, Well there's this weird circumstances here and I
12 figured out when you do, uh, but it's gonna cost little bitta
13 m -- bitta money, Mr. Wennerstrom never balked at payin' that
14 money make -- to make sure that somethin' was properly done,
15 is that right?

16 A. Well, he might say, Yeah, do it the right way but I'm
17 still gonna pay the old way sometimes but, ya know, but he one
18 way or another he wanted it done right ---

19 Q. Right, and and ---

20 A. --- and yet he was not, he was, he was keen at guardin'
21 them pennies in spite a spendin' millions, he didn't wanna pay
22 extra for nothin'.

23 Q. Right. But as, but as for for instance like on the
24 septic tank didn't you just tell me some point in time that
25 there was, uh, some some issues, some unusual circumstance

1 came with the septic tank so he installed some redundant
2 systems ---

3 A. Right.

4 Q. --- and he had alarm system on it as well, didn't he?

5 A. Right, but but that that wasn't his decision, that, I
6 mean, that's just kind of, that's just kind of industry
7 standard. Uh, if the the nature of that thing it's an
8 actua -- it's actually a pump system so when you're pumpin'
9 that stuff it's gotta work so it's got a what we call a
10 "redundant pump", if one pump stops workin', it actually
11 alternates pumps, but if at some point one pump stops workin',
12 the thing don't fill up with that stuff and you have to dig in
13 it, you've got, you've got a warning so there's a redundant
14 pump on that and that's what he's referrin' to.

15 Q. And there's a, and also an alarm as well ---

16 A. Right.

17 Q. --- and again shuts the system off if in fact somethin's
18 goin' on.

19 A. Well ya can't -- the point is don't shut the system off
20 'cause if ya do and every -- by the time they flush the toilet
21 then everything is submerged so the whole point of the alarm
22 is so that you could fix it before it stops working ---

23 Q. Got ya.

24 A. --- so. . .

25 Q. In that situation Mr. Wennerstrom didn't balk at at

1 puttin' that system in, did he?

2 A. No, nor nor did he really have any input. We just told
3 him if we're gonna use a a pump system, we gotta push it up
4 over that ridge so we're gonna do a double take here and
5 you'll have two pumps and this is what it'll be and this is
6 what it cost.

7 Q. Right, 'cause it was necessary.

8 A. Right.

9 Q. Okay. Alright, let's talk about damages real quick. You
10 heard Mr. Klaben testify yesterday?

11 A. Yes.

12 Q. And I think one a the things that, one a the things that
13 came up was the cabinets, we've talked about that already, did
14 you view the the cabinets that were had to be replaced?

15 A. Right.

16 Q. Uh, and you've heard, uh, Mr. Klaben testify as to how
17 much those cabinets were paid for, now did you have a problem
18 with how much the the FIC paid for those cabinets?

19 A. I I don't know what you mean by problem, uh, I mean,
20 it ---

21 Q. Now, the ---

22 A. --- they really, they really did cost that much so. . .

23 Q. Right, and and they were, you testified earlier just now
24 they were pretty high-end and some amazing work provided as I
25 recall, correct?

1 A. That's right.

2 Q. Alright. And, uh, as far as the work that your company
3 did via, you you know, you or anybody else that you hired as
4 subs to fit to to repair the house, did you feel like that you
5 would, uh, charge a fair price for the work that you performed
6 out there?

7 A. Yes.

8 Q. So you wouldn't have any, you didn't have any problem
9 with FIC payin' for that part of it, did ya?

10 A. Say that again.

11 Q. You have any problems FI -- how much FFIC paid to have
12 those those repairs done?

13 A. No.

14 Q. Okay. And, uh, let's talk a little bit about this leak.
15 Uh, as I recall, uh, the the maid or somebody walking in the
16 house found this leak, I mean, is it your understanding the
17 maid found the, found found this leak?

18 A. That's right.

19 Q. Okay, and some point in time you got a call and you
20 went ---

21 A. Well ---

22 Q. --- out ---

23 A. --- at almost immediately. She called her husband in
24 tears goin', Water everywhere, called me the next call and,
25 uh, I beat hi -- uh, actually he beat me up there by just a,

1 just a few minute, we went straight, straight there see what
2 wo -- could be ---

3 Q. So ---

4 A. --- done.

5 Q. --- you say he, was her hu -- her husband?

6 A. Yes.

7 Q. And as I understand he shut the water off to the whole
8 house ---

9 A. Right.

10 Q. --- so wa -- and that's what stopped the water coming?

11 A. Right, so by the time I got there it was still rainin',
12 drippin', what have ya but the water was shut off.

13 Q. Right, but and but looked to you that there'd been a
14 waterfall comin' down the stairs, ---

15 A. Right.

16 Q. --- that right?

17 A. Right.

18 Q. So the amount of damage that was done is not surprising.

19 A. Well, some a, some a the stuff, you know, we -- there
20 was, there was quite a bit of high-end furniture that the
21 water didn't actually touch but the floor under it got wet and
22 so you got this fancy piece furniture settin' on the floor and
23 there's this little slight bitta discoloration just where it
24 touches the floor and when I found out all that furniture had
25 to be sent away or paid for and all, I was like, Gah, that's

1 that's amazin', uh, I mean, I I've been on those rugs, they're
2 beautiful, I can't tell any difference than before we paid 'em
3 \$40,000 to keep walkin' on these same rugs so some a this
4 stuff I I just felt like it seemed im -- imprudent in the way
5 it was handled.

6 Q. Alright, let me ask ya you just said, We paid for those
7 rugs, did you pay for those rugs?

8 A. No, but the, but but if, uh, if you succeed I'm fixin'
9 to.

10 (Laughter.)

11 Q. Well we'll get to that later now won't we. Bitta
12 foreshadowing there. Alright, now it's your and and and I
13 think we oughta, for the jury's sake, I think we oughta walk
14 through this, I don't think we really ever walked through
15 this, so so when you got there and it's your understanding
16 that there was the the -- that a a connection between the
17 bidet and the wall, this water supply had failed ---

18 A. Right.

19 Q. --- and I think your testimony was somebody told you that
20 it been ri -- the that the pressure ripped it outta the wall.

21 A. No, I I I theorized on that very first visit there I
22 said, You know maybe it's been hit by a mop so many times over
23 what we're talkin' like, uh, se -- six, seven years, I said
24 maybe, maybe they hit that with a mop, why in the world would
25 that thing break because it it just didn't look, it didn't

1 look normal to me when I first saw it, that's before I knew
2 about what we discovered later was very high pressure in the
3 house.

4 Q. So it, so it wasn't your testimony that somebody said
5 that the high pressure had ripped the -- this plu -- this
6 connection loose.

7 A. Yes. Yeah, my initial, my initial look at it it looked
8 like what in the world happened here, I didn't know there was
9 high pressure initially you understand. We got up there he
10 shut the water off, there's a leak and and I didn't know, I
11 didn't know why that thing had come loose so my initial look
12 at it was was puzzling, once we knew about the high pressure
13 then you go back look at it and it's obvious that literally
14 just tore it open.

15 Q. Alright, and and as I said, somebody there from B&B said,
16 told you it looked like the high pressure had ripped it loose.

17 A. Right, ---

18 Q. So it wasn't ---

19 A. --- I ---

20 Q. --- a mop. It wasn't a mop or sumtin' hittin' it ---

21 A. No, no, ---

22 Q. --- after all.

23 A. --- I agree, right. No, that's just an an original
24 supposition when you're goin' how did this happen, ---

25 Q. Right, ---

1 A. --- you know.

2 Q. --- but in fact, in fact, in reality you now know it was
3 the high pressure that caused this thing to come come loose.

4 A. No other plausible answer.

5 Q. Okay. And then you, once you figured out there was high
6 pressure at some point in time you guys, you and B&B got in
7 there at that point in time, correct, somebody ---

8 A. I ---

9 Q. --- from B&B?

10 A. --- I don't remember the exact timeline, I know it was,
11 it was cold outside and we were in a hurry to get the water
12 outta there. My my my initial fear was somebody'll say the
13 world "mold" and mold is a bulldozer and so I immediately
14 before we had anybo -- had -- didn't even know who the
15 insurance company was, we started gettin' water outta that
16 house. We, uh, we went to moppin' and cleanin' and blowers
17 and did everything we could to minimize the damage.

18 Q. Right, and and and 'cause like you said it's mold, you
19 don't wanna get involved any mold issues.

20 A. No, no.

21 Q. And and thereafter as I recall or a -- the -- a specialty
22 company was called in to to he -- to assist and to to to take
23 over that that ---

24 A. Right.

25 Q. --- keepin' that, gettin' that water outta the house

1 'cause it's important mold down, is that right?

2 A. Right.

3 Q. And you'd say that their job out there was pretty
4 important was necessary.

5 A. Right.

6 Q. So the fact that FFIC gotten those folks to come out was
7 probly a good thing, wasn't it?

8 A. Absolutely.

9 Q. Okay. Now some point in time did y -- uh, were you
10 informed as I recall B&B went and and tested the the water
11 that was comin' in from the supply?

12 A. Right.

13 Q. And at that point in time it was that they put a gauge on
14 it, right?

15 A. I I was not present when it happened, correct.

16 Q. But you were, you were told ---

17 A. Yes.

18 Q. --- that somebody from B&B had put a a pressure gauge on
19 that, on the, on the water supply and it bro -- that that
20 first gauge wouldn't -- wasn't sufficient to even measure the
21 pressure.

22 A. Right, it actually destroyed the gauge as I understand.

23 Q. Right, that gauge was -- would would function up to a
24 hundred PSI.

25 A. I don't remember the number, sir.

1 Q. Okay, but it broke the gauge.

2 A. That that's what I heard.

3 Q. Okay. And thereafter it's -- is it -- it is your
4 understanding the fact that, uh, that the the pressure
5 regulator in this house failed and that's what allowed the
6 water pressure high to get to the bidet where where the thing
7 got ripped loose?

8 A. Right, the pressure reducer I think's what we'll call it,
9 right, think that's accurate, uh, ---

10 Q. Regulator reducer?

11 A. Right.

12 Q. And now's a good, is a good a time as any if I may
13 approach, Your Honor.

14 THE COURT: Yes.

15 Q. Is that (indicating) what we're talkin' about, we call it
16 what we wanna call it, is that what we're talkin' about?

17 A. Yes.

18 Q. And s -- and and this is the pressure reducer, pressure
19 regulator, uh, that was actually installed in the home?

20 A. That's correct.

21 Q. Alright. And that's a picture of it and it's an accurate
22 picture?

23 A. I believe that's right.

24 MR. DEAL: I'd move it into evidence, Your Honor, think
25 that be Plaintiff's 6.

1 MR. IMHOFF: No objection, Your Honor.

2 THE COURT: Without objection be Plaintiff's 6.

3 (Photograph marked Plaintiff's Exhibit No. 6 for
4 identification and admitted into evidence.)

5 BY MR. DEAL:

6 Q. So in summary really no no issues far as what happened
7 here to cause the water to come downstairs. There's high
8 pressure in the system, regulator failed, that same high
9 pressure got to the house ---

10 A. Right.

11 Q. --- and specifically this bidet, boom, popped it loose.

12 A. Right, co -- in in my opinion it could've picked
13 somewhere else, ya know, I mean, it just, it it needed s --
14 pressure fully pressurized that house, somethin' had to give
15 somewhere and that's just musta been the weakest point so. . .

16 Q. Right. Alright, now and and let me, let em back up here.
17 When you were first makin' assessment of the, of the house and
18 walkin' around, it was your understanding the water supply
19 comin' into the ho -- comin' to the home was very low
20 pressure, is that right, was your your feeling that it was low
21 pressure?

22 A. No, you mean, you mean, inside the home or out at ---

23 Q. No, no, no, ---

24 A. --- the street?

25 Q. --- I'm talkin' about the water system.

1 A. Okay, but you got the wa -- the water that comes to the
2 lot out at the street ---

3 Q. That's right?

4 A. --- when it accesses this valve (indicating), ---

5 Q. Yeah.

6 A. --- there's a certain amounta pressure on this
7 (indicating) side and there's certain amounta pressure on this
8 (indicating).

9 Q. Yes, sir.

10 A. On the home side Stig Stig always felt like he didn't
11 have enough pressure.

12 Q. And and I'm not asking you that, I'm talkin' about before
13 the house was built you previously testified, did you not,
14 that it was your impression the pressure in that system c --
15 on the street was very low.

16 A. Yeah. I I think that when we've, you understand when
17 when Stig bought this lot that that has that wonderful view
18 you're showin', there still wasn't really a road out there,
19 you had to ride out there in a jeep, uh, the owner a Cliffs
20 used the money from this lot to build that whole section of
21 the place so we're out there before it gets there. When we
22 first got water out there, seems to me like there there was a
23 question of of why we had such low pressure but we didn't have
24 a reducin' valve, that's just on water hose for masons and
25 that kinda thing, that's before, that's before we ever put a

1 reducin' valve on or it's just during construction.

2 Q. Alright, but your impression was it was a a low pressure
3 system at the time that you were buildin' the house, that was
4 your impression ---

5 A. At a point ---

6 Q. --- you testified.

7 A. Yeah, at a point early in the project, yes, sir.

8 Q. Okay, but you never tested that water pressure, did ya?

9 A. With my thumb. I mean, you're goin', Hey, that's that's
10 not, that stream not much pressure that -- but not not put a
11 gauge on it and that kinda thing.

12 Q. So you didn't test the pressure.

13 A. No, sir.

14 Q. Now as I understand it the water that when you go to turn
15 the water on the home that's one a the last things you do
16 before you you -- the -- they move in.

17 A. Well all durin' tile settin', paintin' and all that stuff
18 we go ahead and let the water in.

19 Q. Okay. And and and that's so -- when would that happen?
20 When when would the water be turned on?

21 A. Uh, see, in a, if an -- if you built a house, you can't
22 turn the power on till you get CO but on houses like this we
23 always get a var -- variance and and inspector let's us turn
24 the power 'cause there's months of work of this intricate work
25 inside. I bet that water was on inside the house three or

1 four months before CO probably, I, yeah, and I'm just
2 guessin', I don't remember exact scenario but, uh, we, that
3 entire main floor was tiled with heat in the tile, the entire
4 floor. We actually had to have, the electrician had to add an
5 extra 200 amp service which normally do a whole house just for
6 the floor heat in that house so all a that tile work he had to
7 have water to work with through all this so there's a lot of
8 three or four months.

9 Q. Now with the the -- would there -- the -- would all the,
10 everything be installed, the plumbing lines in the house at
11 that point in time?

12 A. Not ev -- not everything 'cause see once he puts in tile
13 then you can put in a toilet, that kinda thing so you got it
14 developing.

15 Q. Okay. Well let me ask ya this: At some point in time you
16 guys did test it, that was the day after this loss or
17 thereabouts that the water was tested, to your understanding
18 how high was that pressure that day?

19 A. You mean after the leak?

20 Q. That's right.

21 A. Uh, I don't know, I'm -- I got some friends here can tell
22 ya I think within a pound or two.

23 Q. Okay. Alright, nothin' further.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION BY MR. IMHOFF:

1 Q. Mr. Searcy, how many homes have you built?

2 A. Over 200. I used to keep a list and we changed houses I
3 lost my list and now I don't know.

4 Q. How many countries have you built in?

5 A. Four.

6 Q. What countries are those?

7 A. Uh, Burma very little, uh, Haiti did some construction,
8 that's actually where I learned construction, that's before I
9 was really a builder when I was in Haiti but then in Honduras
10 extensively. We built a lotta water systems and bridges and
11 that kinda stuff.

12 Q. And here, ---

13 A. Uh, ---

14 Q. --- is that the fourth one?

15 A. Huh?

16 Q. Is is the United States ---

17 A. Yeah, ---

18 Q. --- the ---

19 A. --- yeah, ---

20 Q. --- fourth one?

21 A. --- U -- U.S. be the fourth one and and I'm licensed in
22 North and South Carolina, early years of almost exclusively
23 North Carolina but the last fifteen years been mostly South
24 Carolina.

25 Q. Alright, so you you build a lotta homes in the Asheville

1 area or up in the mountains?

2 A. Yes.

3 Q. Good deal. Do you build homes up in mountains similar to
4 Mr. Wennerstrom's home?

5 A. Yes, we we build, we build cliff hangers a lotta times
6 so people people with money want that view and that it's
7 necess -- it necessitates bein' in some tough places to build.

8 Q. Okay. Uh, with similar water systems.

9 A. Yes.

10 Q. Now why why do you go to other countries to build,
11 Mr. Searcy?

12 A. Uh, my -- I'm Christian, I believe that more important
13 than anything we'll talk about here today is Jesus Christ. I
14 believe that the the church today has done so much talkin'
15 about it and so little doing and I believe it it's the most
16 important thing in my life but there's no fish on my business
17 card 'cause I feel like unless you can do somethin' that makes
18 'em think you're a Christian they show you, you don't want 'em
19 to know and I think that the best way to share the Gospel in a
20 third world country I show up in your village and say, You
21 need Jesus, well who are you, but if I show up in a village
22 and say, What do you need, and they say, We need runnin'
23 water, I give you runnin' water then I might have openin' to
24 tell ya about the more important thing so what I do for third
25 world countries is just meet real needs: build a bridge, build

1 a water system, give a lady that's an old woman that's never
2 turned on a tap in her life, let her turn that tap on that's
3 both rewarding and it's effective.

4 Q. And are you still doin' that type a work?

5 A. Yes, sir.

6 Q. Where you goin' next?

7 A. I, if if my wife don't hog tie me, I'm goin' to South
8 Sudan in January.

9 Q. Okay. What are you gonna build there?

10 A. We're gonna build a parsonage for a young couple that's
11 there workin' now, we're gonna build a a church that doubles
12 as a school, the back rooms will be a school, we'll we'll
13 teach trades to people that are just village people but we'll
14 teach 'em the women how to sew, the men how to weld and that
15 kinda thing and teach the kids English because English gets
16 'em a better job.

17 Q. And in all a those places that you visited where's the
18 toughest place to build, the most strict place to build?

19 A. There's there's actually nothin' nothing close to North
20 and South Carolina.

21 Q. What do you have to follow when you build in North Car --
22 in South Carolina? How do you know what what you're doin' is
23 right?

24 A. Well that there's a, there's an international code and
25 code book that's that's accepted by both states, uh, and it's

1 it's been revised month by month and year by year as new
2 things are invented and discovered or problems they have and,
3 uh, we're continually in school, we trained to follow what the
4 code changes are or sometimes just an interpretation of the
5 code, more often than not it's a new interpretation, not new
6 wording but, uh, to do what the, if you can do it like the
7 inspector wants it before he gets there, sure goes a lot
8 better.

9 Q. Alright. You call that an international building code,
10 is that right?

11 A. Yes.

12 Q. Okay. And there's also international plumbing code?

13 A. Yeah, I I don't know and, I mean, the fact is as I go,
14 when I'm in Honduras, when I'm in Haiti, when I go to South
15 Sudan when I'm in Burma, there is no inspector of any sort,
16 nobody inspects. We still go do a really good job but but but
17 a lotta times you hear the joke, Alright, now call inspector
18 'fore we can move on but, uh, in in in spite a callin' it
19 international my assumption is that applies to industrialized
20 probly European countries that have also adopted that same
21 covenant.

22 Q. Well who who are these folks that come up with this
23 international building code?

24 A. Well, it's a, it's an accumulation for, ya know, there
25 was times when a lotta states had different codes and it

1 gradually congealed into a more of an overall, uh, engineers,
2 architects, plumbers and electricians and even material
3 suppliers as they input what is believed to be the best way to
4 do somethin'.

5 Q. Could you call them up and suggest a change or a, or a
6 modification or to do somethin' different?

7 A. Did I?

8 Q. Could you?

9 A. I guess. I, I mean, normally it's there's so much red
10 tape involved I guess it would be, uh, I I me -- I'm sure
11 there's a process for it, that's the reason that book keeps
12 gettin' thicker but but I don't, I don't know what that
13 process is.

14 Q. Alright, and when you built Mr. Wennerstrom's home, let's
15 make this clear, were you required to follow the international
16 building code?

17 A. Right.

18 Q. And who requires you to follow the international building
19 code?

20 A. Well the the State of South Carolina licensed me and then
21 that in order that license clearly requires me to work with
22 the local code enforcement officials, buildin' code
23 enforcement, and so you -- they come out, look, see it at
24 various stages, they tell you when you buy the permit to do it
25 you you pay them for the privilege of them come tell you what

1 to do and, uh, they they love the job, they come out and see
2 the details, uh, and and try look at the critical points,
3 lookin' at every every wire and pipe and ever structural
4 member to see that it's both both the material you're usin'
5 and the workmanship meets the standard.

6 Q. Okay. And so the State a South Carolina decided that
7 that they want their builders to build per the international
8 building code?

9 A. Well, by, yeah, by the I'll I I call it the code book and
10 I believe that it's considered be international, it it it's a,
11 it's an accepted code over this, really this whole region
12 so. ...

13 Q. And then they send an inspector up there and he looks at
14 talkin' about with Mr. Deal earlier your electrical and your
15 structural and your plumbing and all those things, right?

16 A. Right.

17 Q. And as you build he comes up and he does, he does his
18 electrical plumbing and his structural investigation and he
19 checks those off and says, Okay, and signs it, that right?

20 A. Right. Now if if he, and he finds somethin'
21 non-compliant he's gonna write up a a sticker and stick it
22 right there to wherever wherever that is, uh, and it's a red
23 tag and so red tag means you gotta stop, back up, fix this,
24 gotta let him come back out, take another look at it, if if in
25 fact anything's non-compliant.

1 Q. Alright, did inspector come to Mr. Wennerstrom's house?

2 A. Many times.

3 Q. Okay. Did he do a plumbing inspection?

4 A. Several.

5 Q. Okay. Did he ever red tag the plumbing on
6 Mr. Wennerstrom's house?

7 A. Nope. We had a, we had a, to to be as involved within a
8 house and have zero red tags, it was a good job.

9 Q. Good.

10 A. Zero red tags on plumbing. I can't say zero red tags on
11 anything but the plumbers got no red tags so. . .

12 Q. Alright. Did you build Mr. Wennerstrom's plumbing system
13 in compliance with the international building code?

14 MR. DEAL: Objection, Your Honor, can't testify if he
15 he -- what the law says.

16 THE COURT: I'm gon -- I'm gonna allow the question, he's
17 on cross-examination.

18 A. Well, it it is my responsibility to know that it is built
19 by that code and and yes, we built it by that code.

20 Q. Have you looked at the international building code to
21 determine if it requires the installation of a pressure
22 reducing valve?

23 A. Reducin' valve. Well I I I can't tell ya for sure if the
24 code book would require one but the code book will tell ya if
25 ya put one how it's to be installed and proper installation so

1 because if there's not excessive pressure at the street, you
2 would not have to have one so the code book don't say ya have
3 to have one and and I believe, I I'm not sure I got some guys
4 here with me that will be able to tell you exactly but just,
5 uh, to to deal with the problem of high pressure at the street
6 means you gotta have pressure reducin' valve so that high
7 pressure does not enter the the house.

8 Q. Okay. Does the international building code say anything
9 about a pressure relief valve on a, on a residential plumbing
10 system?

11 A. Nowhere. Doesn't tell ya ya oughta have one or you
12 shouldn't have one, it don't tell ya how to install one, as as
13 far as I know does not, it it is not addressed period in ---

14 Q. Okay.

15 A. --- that code.

16 Q. With one exception maybe on on a water heater?

17 A. Right, ---

18 Q. What ---

19 A. --- and and and in that case that comes from the
20 manufacture, the water heater has a relief valve which means
21 so the hot hot water heater couldn't build up steam and
22 explode and it's ---

23 Q. Right.

24 A. --- a ---

25 Q. It's dangerous if a water heater explodes.

1 A. Right, correct.

2 Q. Alright, but otherwise to shut off the water coming into
3 a house there's nothing in the code you're aware of that says
4 anything about pressure relief valve.

5 A. Nothing.

6 Q. Do you know any general contractors have installed
7 pressure relief valves?

8 A. None.

9 Q. Do you know any plumbers that install pressure relief
10 valves?

11 A. No.

12 Q. Okay. Do you know, uh, anyone in the Cliffs of Glassy
13 that has a pressure relief valve?

14 A. No.

15 Q. Do you know if Mr. Wennerstrom's neighbor to his right
16 has a pressure relief valve?

17 A. He does not.

18 Q. Do you know if Mr. Wennerson's -- Wennerstrom's neighbor
19 to his left has a pressure relief valve?

20 A. Well I haven't checked but but I guarantee ya no, they
21 don't have it, it's not done.

22 Q. Okay. Did the, did the engineers that were involved in
23 the design of Mr. Wennerstrom's house ever ask you or direct
24 you to put a pressure relief valve on the system?

25 A. No, sir.

1 Q. Did either of the two architects, the one in at Atlanta
2 or the one here, ever request or direct you to put a pressure
3 relief valve on?

4 A. No.

5 Q. Alright. Now prior to this home being issued a
6 certificate of occupancy so Mr. Wennerstrom could move in did
7 your plumbers install a pressure reduction valve?

8 A. Yes.

9 Q. Okay. What is the purpose of that?

10 A. It's it -- the the pressure in the street can can vary
11 and you don't want that happenin' in your house. By puttin'
12 that pressure reduction valve, uh, high pressure can come to
13 one side of the valve, comes in one side, what comes out the
14 other side is is appropriate amounta pressure for a house.

15 Q. Alright. And was that required because the pressure in
16 this house, uh, or at the street, I'm sorry, the pressure at
17 the street was high?

18 A. Yes.

19 Q. Okay. You know what kind of valve your plumbers
20 installed, Mr. Searcy?

21 A. I do not.

22 Q. Well let me ask when you built the house in 2003 ---

23 A. Two and three.

24 Q. Two thousand, okay, did you know of any other plumbers
25 that were puttin' pressure relief valves on a house?

1 A. Never heard of it before.

2 Q. Did did did ya, did ya see a -- do you get like General
3 Contractor Magazine or anything like that?

4 A. No, and ---

5 Q. You don't.

6 A. --- and all of the classes that we go to telling you new
7 industry ideas, new stuff, new ways to flash a chimney or
8 better ways to insulate, all that, never, the first time I
9 ever heard of it was, uh, I guess it was a, musta been nearly
10 two years after the leak was the first time I heard about the
11 pressure relief valve is -- I don't know, that timin' might
12 not be right but long after the leak was fixed and the repairs
13 was made then I heard about a relief valve, first time I'd
14 ever heard of it.

15 Q. Is it the only time you ever heard of it?

16 A. Well then and kinda continuously since then as you and I
17 in depositions and settin' here these couple days but that's
18 is the only place I've ever heard it. Can I, can I tell you
19 how I feel about that?

20 Q. Ma -- well, let me, let me ask ya a couple a questions.

21 A. Alright.

22 (Defendants' Exhibit No. 2, Wilkins valve specification
23 sheet, marked for identification.)

24 BY. MR. IMHOFF:

25 Q. Alright, I'm gonna hand you defense Exhibit No. 2 here.

1 Do you know what kind of re -- reducing valve was put on the
2 house?

3 A. Looks like a Wilkins Model 70.

4 Q. A wesh -- water pressure reducing valve.

5 A. Yes.

6 Q. Okay. Right up there at the top it says "Maximum working
7 water pressure," how much is that?

8 A. I am not seein that, sir.

9 Q. On the left in the first column.

10 A. Okay, "Maximum workin' water pressure 300 PSI."

11 Q. What does that mean?

12 A. That's, I I believe thats means the maximum amount that
13 comes to the high pressure from the street side.

14 Q. Okay. Alright, do you know that the water pressure at
15 the Cliffs a Glassy has ever gotten to 300 PSI?

16 A. I'm I'm I'm almost certain if it did they'd be a lotta
17 houses with a lotta problems ---

18 Q. Okay.

19 A. --- so. . .

20 Q. Is that a very very high pressure?

21 A. Yes, it is.

22 Q. What's the average pressure at the street?

23 A. Uh, you you know, they they'll be anywhere from like I
24 said low sometimes 'cause sometimes we have to instead a
25 putting a reducin' valve sometime we have to put a pump

1 increase the pressure 'cause it's just barely gettin' there on
2 up to a hundred, hundred and fifty or a hundred and eighty
3 some sometimes dependin' on because of the undulation of hills
4 they have to have enough pressure to push it over that next
5 hill so it varies a lot.

6 Q. Okay. And this you said a hundred and eighty PSI ---

7 A. Yeah, and I am not an expert and that that -- this --
8 that's what I think.

9 Q. Alright, and have you seen Mr. Harris's testing of the
10 water pressure at Mr. Wennerstrom's house?

11 A. I I didn't see it.

12 Q. Okay. Have you heard what Mr. Harris found that the
13 water pressures at at Mr. Harris's were when he did his
14 testing?

15 A. Uh, yeah, ---

16 MR. IMHOFF: Objection, Your Honor, hearsay.

17 THE COURT: I will I let him testify whether he knew or
18 not but not as to what he said.

19 MR. DEAL: Okay. Yeah,

20 A. Yeah, I I know there was a discussion that there's
21 excessi -- excessive high like we said a while ago ---

22 MR. DEAL: Objection, Your Honor.

23 THE COURT: I sustain.

24 BY MR. IMHOFF:

25 Q. Alright. Alright, do you recognize that as a summary of

1 Mr. Harris's testing of the water pressure at
2 Mr. Wennerstrom's house?

3 A. Yes, sir.

4 Q. And what was the highest testing result that Mr. Harris
5 found at Mr. Wennerstrom's house?

6 A. I believe it's this 179.1 PSI.

7 Q. Alright, and is a well below 300 PSI Wilkins 70 pressure
8 reducing valve?

9 A. It is.

10 Q. Alright, and that -- is that within the range that it
11 could handle?

12 A. It is certainly.

13 Q. Alright. Alright, and that -- why was that installed on
14 Mr. Wennerstrom's system?

15 A. Just to protect the house from the possibility of high
16 pressure causing some damage interior.

17 Q. Alright, and if it was set at 60 PSI when it was
18 installed, can that pressure regulator reducer handle under up
19 to a hundred and eighty PSI ---

20 MR. DEAL: Objection, Your Honor.

21 Q. --- based on their own installation instructions?

22 THE COURT: I believe ya -- I'll sustain the objection.

23 MR. DEAL: Thank Your Honor.

24 MR. IMHOFF: Alright.

25 (Whereupon, a discussion was held off the record.)

1 BY MR. IMHOFF:

2 Q. Have ya ever seen a pressure regulator fail?

3 A. No.

4 Q. How long have you been buildin' homes?

5 A. '81 and 2 I got started.

6 Q. That's 30 plus years, that right?

7 A. (Nodded in the affirmative.)

8 Q. Uh, and buildin' homes up in the mountains?

9 A. Uh, mountain stuff, yes.

10 Q. Did Mr. Wennerstrom have any complaints about the water
11 pressure at his house after you left?

12 A. He did. Uh, after after they moved in and even after
13 they moved in we continue to do trim work and finish up stuff,
14 there was some details happenin' so we were in and out and on
15 an occasion or two he commented he wanted more pressure in his
16 shower.

17 Q. The water pressure wasn't high enough.

18 A. That was his feelin'. It was normal.

19 Q. You went back and checked it and it was normal?

20 A. Yeah, I mean, all all you gotta do is turn it on just
21 say, Look, Stig that's normal, I don't know what they do in
22 Sweden but that's normal here.

23 Q. Do they do it differently in Sweden?

24 A. I re -- they must 'cause he really felt cheated that his
25 shower didn't feel like a sandblaster so. . .

1 Q. Alright. Did you, uh, did you, did you contact, uh, B&B
2 plumber, your plumbers or talk to them about that issue?

3 A. I think I think that was actually my, uh, uh, foreman
4 there Scott that that ma -- actually made that call. I don't
5 think I was in on that call, I was privy to it, and I knew
6 with -- we had, we needed to get an official answer for Stig
7 'cause no is not enough, a lotta times you need an official
8 answer to say no, that's good pressure, that's how it is
9 so. . .

10 Q. Alright. Did B&B plumbing tell you that they would not
11 turn up the water pressure into Mr. Wennerstrom's house?

12 A. Yes.

13 (Letter dated 10/15/08 marked Defendants' Exhibit No. 3
14 for identification.)

15 BY MR. IMHOFF:

16 Q. Alright, I'm gonna hand you what I've marked as No. 3, do
17 you recognize that as a letter to Mr. Blythe over here
18 (indicating) about that issue?

19 A. Yes.

20 Q. Okay. And where he has concerns about the excessive
21 water pressure on Mr. Wennerstrom's house?

22 A. Right.

23 Q. Okay. And that's a direct response to your or
24 Mr. Wennerstrom's request to turn up the water pressure in the
25 house?

1 A. Right.

2 Q. Okay. Now did ya ever turn up the water pressure in
3 Mr. Wennerstrom's house?

4 A. No, sir.

5 Q. Okay. Did ya ever manipulate the pressure reducing valve
6 to turn up the water pressure in the house?

7 A. No, sir.

8 Q. Okay. Do you know if B&B plumbing ever manipulated the
9 water pressure valve to turn up the water in the house?

10 A. To my knowledge they didn't and I and I, without bein'
11 there all the time but I know these guys and I can tell ya
12 they did not and and they they offer in this letter to change
13 to a different pressure reducin' valve which woulda been a a
14 safe method to increase that pressure, uh, like I say Stig
15 watches those pennies.

16 Q. Is that (indicating) a photo of the pressure reducing
17 valve?

18 A. It is.

19 Q. Okay. Is that, do you believe that's a photo of the
20 pressure reducing valve after it was taken out of the ground?

21 A. I believe so.

22 Q. How do you turn up the water pressure on a pressure
23 reducing valve, Mr. Searcy?

24 A. I don't know. I I would, I would guess turn that knob
25 but that would be a guess, I don't know.

1 Q. This this (indicating) nut up here?

2 A. Probably.

3 MR. DEAL: Objection, ---

4 Q. Page 2 ---

5 MR. DEAL: --- Your Honor, he said -- he answered, asked
6 and answered.

7 THE COURT: I'll sustain the objection.

8 BY MR. IMHOFF:

9 Q. Look at Page 2 on the Wilkins Model 70 specification
10 submittal sheet.

11 (Whereupon, the witness complied.)

12 Q. Now -- okay, do you see the first paragraph where it
13 says, "Typical installation?"

14 A. Yes.

15 Q. Look at the last sentence a that, read it to the jury
16 please.

17 A. "Caution: Any time reducin' valve is adjusted a pressure
18 gauge must be used to use downstream to verify correct
19 pressure setting. Do not bottom adjustment bolt -- do not
20 bottom adjustment bolt on metal housing."

21 Q. How do you turn up the water pressure?

22 A. Turn that, turn that bolt at the top, adjustment bolt.

23 Q. Alright, and that adjustment bolt bottomed on the bell
24 housin'?

25 A. It is.

1 Q. You did not do that, Mr. Searcy?

2 A. No.

3 Q. And you're not sure if these (indicating) folks did
4 that?

5 A. I'm -- I know they told me don't you dare do it and we're
6 not gonna do it and they instructed Stig not to do it and told
7 him an an alternate way to change change the reducin' valve
8 so, uh, I believe confidently that they did not and I am
9 certain that I didn't.

10 Q. Do you, uh, do you know if Mr. Wennerstrom modified his
11 plumbing system at all after you left?

12 A. Uh, I don't, I I can't remember if the -- he ha -- he's
13 got a hot tub out there now, I can't remember, it seems to me
14 like that was after we were, after, long after CO and all that
15 that thing was put in, I don't recall other modifications, uh,
16 so. . .

17 Q. Okay, but Mr. Wennerstrom asked you to turn up his water
18 pressure, right?

19 A. (Nodded in the affirmative.)

20 Q. You did not turn up his water pressure.

21 A. (Nodded in the affirmative.)

22 Q. Does it appear that someone turned up his water
23 pressure?

24 A. Well from what I heard what they found when they pulled
25 the valve out it was bottomed out, maxed out and I I just

1 assumed Stig hisself or his yard boy or somebody did as
2 instructed and bottomed that thing out and ---

3 Q. And does that violate what the manufacturer recommends
4 for that?

5 A. It does.

6 Q. Okay. In in your experience in reading this, if the
7 water pressure as found by Mr. Harris is a hundred and eighty
8 and the valve was set at a hundred and si -- or I mean 60, did
9 you install the Wilkins Model 70 water pressure reducing valve
10 forever?

11 A. If there's a hundred and eighty in the house it ---

12 Q. No, I I'm sorry and and and we we both have this mis --
13 miscommunication, if the water pressure at the street is a
14 hundred and eighty ---

15 A. Okay.

16 Q. --- and you want the water pressure in the house to be
17 sixty, did you according to these specifications ---

18 A. Yes.

19 Q. --- did you install the Wilkins Model 70 water pressure
20 reducing valve correctly?

21 A. Yes, and it ---

22 Q. Well ---

23 A. --- functioned properly.

24 Q. --- well did it function properly, Mr. Searcy?

25 A. It did for a long time.

1 Q. How long?

2 A. Nearly a decade.

3 Q. Well from 2003 to 2009?

4 A. Okay, six years.

5 Q. Okay. And then did it do its job in 2009?

6 A. Well at some point, uh, we don't know, it it coulda been
7 that way for a while but at some point it let excessive
8 pressure, I think all the pressure, I think it completely
9 opened and let all the street pressure into the house and at
10 some point after that that connection busted and caused all
11 this problem.

12 Q. Right, so it didn't do its job.

13 A. Didn't do it.

14 Q. You did your job, you put it on the house, that, is that
15 right?

16 A. Correct.

17 Q. Okay, but it failed, that right?

18 A. That's right.

19 Q. Failed to do its job.

20 A. That's correct.

21 Q. And you understand that you're being accused here in this
22 courtroom of not installing a pressure relief valve.

23 A. I do.

24 Q. Okay.

25 A. That ---

1 Q. Now now is there a pressure relief valve on that house
2 today, Mr. Searcy?

3 A. No, ---

4 Q. Okay.

5 A. --- and there wasn't one there, that whole never been one
6 there it's in all these years and the people that's suin' me
7 tellin' me I oughta have one there insured it for another year
8 without that valve on 'cause they didn't think it needed
9 one.

10 Q. Now you talked to Mr. Klaben a bunch, that right?

11 A. Ver -- yes.

12 Q. Did Mr. Klaben ever tell you to put a pressure relief
13 valve on that house?

14 A. He was like me, he'd never heard a one.

15 Q. Did he ever tell you to put one on the house?

16 A. No, sir.

17 Q. Did any, did Stig Wennerstrom tell you to put one on the
18 house?

19 A. No.

20 Q. Okay. Has anyone told you to put one on the house?

21 A. No, nor any other house.

22 Q. Okay.

23 A. I've got several other houses on that same mountain, on
24 that same water system, none of them have a pressure relief
25 valve.

1 Q. But that's what you're bein' sued her for.

2 A. Right, that I'm supposed to be nice and polite and make
3 the jury like me but this makes me so mad I could bust.

4 Q. Alright. Now you know you're also bein' accused of
5 puttin' the valve in the wrong place.

6 A. Yeah, I don't even follow that.

7 Q. Does the code state where you're supposed to put pressure
8 reduction valve?

9 A. The code doesn't say but common sense does.

10 Q. Well what does common sense say?

11 A. Common sense says put it on at the street so that all of
12 your irrigation, everything on the place is protected what
13 common sense says, that's not where it is now.

14 (Whereupon, a discussion was held off the record.)

15 (Photograph marked Defendants' Exhibit No. 1 for
16 identification.)

17 Q. I'm gonna hand you defense Exhibit No. 1. Now is that
18 box where where the pressure reduction valve was installed?

19 A. Yeah, in in this, in this picture there several, uh,
20 parts of the irrigation system had been dug up, I'm not clear
21 on why that's happened, uh, but the box that has the reducin'
22 valve in it here (indicating) is, uh, one of the, one of the
23 rectangular boxes, those round ones are irrigation related.

24 Q. Okay, alright. Is that right next to the driveway?

25 A. It is, uh, within within a foot and a half.

1 Q. Why do you put it so far out towards the street?

2 A. So that we -- the the very first pipe ---

3 MR. DEAL: Your Honor, ---

4 A. --- that ---

5 MR. DEAL: --- may I object? Does this respond to
6 anything that I asked Mr. Searcy?

7 THE COURT: Well he's on cross-examination, he's got a
8 lot more leeway on cross ---

9 MR. DEAL: Okay.

10 THE COURT: --- examination. Go ahead, sir.

11 THE WITNESS: Yeah, ---

12 BY MR. IMHOFF:

13 Q. My ---

14 A. --- well it ---

15 Q. --- my ---

16 A. --- it just makes sense to have as little system as
17 possible unprotected. If you, if you put, if you put that
18 valve a little closer to a house, you got more line with that
19 high pressure on it which means that a diggin' accident or
20 whatever can break that line and you get that massive amounta
21 so that the the valve oughta be as close to the street as
22 possible, just makes sense needs to be right where that one
23 was.

24 Q. Are the pipes bigger out in the street from the utility,
25 the water company?

1 A. The what?

2 Q. Are the pipes bigger, stronger in street?

3 A. Yes.

4 Q. Okay, and the pipes that go into the house, they're in
5 the house they're not as big or as strong?

6 A. Not nor -- not as big, not as strong, not designed for
7 near as much pressure.

8 Q. Alright, what about the irrigation system, is that very
9 strong?

10 A. No, it's a, it is a potentially fragile system as wells
11 that, uh, needs to be protected by a reducin' valve.

12 Q. Alright, so if you take the pressure reducing valve and
13 you move it up into the garage over here (indicating), is the
14 water pressure and all this irrigation system the same as it
15 is out in the street?

16 A. It is.

17 Q. Okay. Accordin' to Mr. Harris's testing that could be up
18 to a hundred and eighty PSI.

19 A. Right.

20 Q. Is that irrigation system designed to handle a hundred
21 and eighty pounds of square inch of pressure, water
22 pressure?

23 A. It is not and there will be a problem.

24 Q. And is that why you put the pressure reducin' valve way
25 out by the street ---

1 A. Yes, sir.

2 Q. --- so it doesn't damage any of the pipes on the
3 property?

4 A. Correct.

5 Q. Does it make any sense to you to put the pressure
6 reducing valve in the garage?

7 A. Not to me.

8 Q. Does Mr. Wennerstrom still call you?

9 A. He does, uh, under advice from counsel, sir. Uh, we have
10 not done any work up there during all this litigation but up
11 until then, uh, up up to the leak he was determined that I had
12 to be the one, my company had to be done do the repairs.
13 After all the water damage, uh, he wanted Brandon, his guys
14 back and if a door squeaks or somethin' rattles, my phone
15 rings up until this.

16 Q. He chose you to come back out and do his repairs.

17 A. Right.

18 Q. And he chose B&B plumbing to come back out and do his
19 repairs.

20 A. Right.

21 Q. And he still calls you to do work for him at his house.

22 A. That's correct.

23 Q. Okay.

24 A. I, unlike -- it's it's not easy done in this industry but
25 when I finish up a house if I'm not friends with who I built

1 for I feel like that's a failure, that that if ya can't do it
2 in such a way that where you can be friends when when you meet
3 outta town or whatever, you didn't do it right and Stig and I
4 we're still friends.

5 Q. Did you put the pressure reduction valve on
6 Mr. Wennerstrom's house that an international group of
7 builders decided should be on the house?

8 A. Well there's a variety to choose from but yes, it
9 qualified for the, for the standard set, it met and exceeded
10 any standard they have.

11 Q. And that valve was supposed to protect the home from
12 excess water pressure.

13 A. That's correct.

14 Q. And did you put an appropriate water reduction valve on
15 the house as required by the state?

16 A. Yes.

17 Q. And did you put the appropriate water reduction valve on
18 this house that all of the other general contractors and
19 plumbers that you talked install in similar houses?

20 A. Yes, sir.

21 Q. And did anyone ask you to put a pressure relief valve on
22 the house in 2003?

23 A. No.

24 Q. Did anyone ask you to put a pressure relief valve on the
25 house between 2009 and 2010 ---

1 A. I've never been requested to put a pressure relief valve
2 on anything in any country on any project I've ever built.

3 Q. --- but especially Mr. Wennerstrom's house?

4 A. Never.

5 Q. And it isn't there now.

6 A. Not there now.

7 Q. Thank you, Mr. Searcy.

8 THE COURT: Redirect limited to what he went into?

9 MR. DEAL: Yeah.

10 REDIRECT EXAMINATION BY MR. DEAL:

11 Q. Uh, Mr. Searcy, are you an engineer?

12 A. No.

13 Q. Did you spect this, uh, particular, uh, valve that went
14 on this pressure regulator?

15 A. No.

16 Q. Did you actually install it?

17 A. No.

18 Q. Did you have any part in deciding that that was gonna be
19 installed?

20 A. I don't think so.

21 Q. Do you have any qualifications to make that call?

22 A. Yeah, I mean, uh, if if somebody comes to me say, Which
23 one you gonna go with, I'd want to pick a good quality name
24 bland like this and say let's let's let's use this Wilkins
25 Model 70 but not because of particular knowledge but I know

1 you want a good, you just wanna use good quality stuff.

2 Q. Okay. And as you sit here today, you're testifying that
3 you've never seen a regular at any regulator fail.

4 A. No, never seen a reg -- or a reducing valve fail, seen
5 regulators fail but not a pressure reducin' valve.

6 Q. And this here that was installed in Mr. Wennerstrom's
7 house that was pressure reducing valve in your mind?

8 A. Right.

9 Q. Didn't it fail?

10 A. It did.

11 Q. So now tell me again one more time you've never seen one
12 a these fail?

13 A. Yes, I've seen this one fail.

14 Q. Okay, so you have seen one fail?

15 A. Yes. I I'm like, uh, your client there, we both seen one
16 fail even though he's been doin' water water damage for thirty
17 years he's seen one fail and me too, that makes one.

18 Q. Let me ask you a question, Mr. Searcy, uh, does the code
19 require you to put the regulator up at the road?

20 A. No.

21 Q. What does?

22 A. Common sense.

23 Q. That's right. Nothin' further.

24 THE COURT: Thank you, sir, you may step down.

25 (Whereupon, the witness left the stand.)

MOTIONS AND MATTERS

1 THE COURT: Alright, ladies and, ladies and gentlemen I'm
2 gonna take a, let you ha a short break. I need to remind you
3 not to have any discussions among yourselves about anything
4 involving the case but if you will go with the bailiff and he
5 will show you to the jury deliberation room, we'll get you
6 back just shortly. You can keep your seats. Mr. Imhoff.

7 MR. IMHOFF: Oh, okay.

8 THE COURT: Gentlemen, ---

9 MR. IMHOFF: Okay.

10 THE COURT: --- we don't do that.

11 MR. IMHOFF: Okay.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Standing sitting is a tradition, there's no
15 requirement of. I do not like it when lawyers stand when
16 jurors come in and out, either keep your seats or stand up all
17 the time. We started by sitting so we will remain seated and
18 don't get into breaking that tradition, ---

19 MR. DEAL: Yes, Your Honor.

20 THE COURT: --- alright. Anything else before I step
21 down?

22 MR. DEAL: No, Your Honor.

23 MR. IMHOFF: No, Your Honor.

24 THE COURT: Alright. Now, Mr. Imhoff, you're still using
25 documents that you're having marked and ya haven't asked the

MOTIONS AND MATTERS

1 Court to have them marked for identification or have and
2 asking the witnesses to publish things from the documents.
3 You need to do something with these documents and just don't
4 have pieces of paper floating around with court's exhibits,
5 uh, somehow might make it into a record that never got
6 admitted or not, okay?

7 MR. IMHOFF: I I apologize, Your Honor.

8 THE COURT: Alright.

9 MR. IMHOFF: Can we, can we move it into evidence now
10 while you're still on the bench, you wanna wait till the jury
11 comes back?

12 THE COURT: Well, ya know, that's, uh, ya have counsel on
13 the other side that has a right to review the documents, to
14 object to 'em, pay -- place those objections on the record and
15 ask me in a timely fashion to make rulings on that. You're
16 looking to the wrong person, you need to be asking counsel ---

17 MR. IMHOFF: Will you stipulate ---

18 THE COURT: --- what he wants to do.

19 MR. IMHOFF: --- to the admission ---

20 MR. DEAL: I ---

21 MR. IMHOFF: --- of a document?

22 MR. DEAL: --- I I'll use the ones that are, they're
23 before the Court at this time, Your Honor. I have no
24 objections to what he's presented to me.

25 THE COURT: Alright, then so we'll consider all of the

MOTIONS AND MATTERS

1 documents that have been admitted that, I mean, have been
2 presented to the witnesses that they're a defense exhibit
3 sticker as being admitted ---

4 MR. DEAL: To date, yes, Your Honor, ---

5 THE COURT: --- without objection.

6 MR. DEAL: --- that's correct.

7 THE COURT: Alright, good enough. We'll step down for a
8 few minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: You may be seated.

11 THE BAILIFF: Thank you, be seated.

12 THE COURT: Can I see the lawyers for a moment.

13 (Whereupon, a bench conference was held off the record.)

14 THE COURT: Anything else before we bring the jury back?

15 MR. IMHOFF: Nothing, Your Honor.

16 THE COURT: Alright, let's bring 'em back.

17 (Whereupon, a discussion was held off the record.)

18 (The following takes place in the presence of the jury.)

19 THE COURT: Yes, sir.

20 MR. IMHOFF: Your Honor, the defense at this time would
21 would seek to move the three documents, uh, that have been
22 previously marked as Defense Exhibits 1, 2 and 3 into
23 evidence.

24 THE COURT: Without objection?

25 MR. DEAL: No objection, Your Honor.

1 THE COURT: Without objection they'll be admitted.

2 (Defendants' Exhibit No. 1, photograph, Defendants'
3 Exhibit No. 2, Wilkins valve specification sheet, and
4 Defendants' Exhibit No. 3, letter dated 10/15/08, admitted
5 into evidence.)

6 THE COURT: Is, uh, the the plaintiff ready to call its
7 next witness?

8 MR. DEAL: Yes, Your Honor. Uh, prior to callin' the
9 witness, Your Honor, I'd like to just point that I had, uh,
10 subpoenaed, uh, Mr. Searcy to be in here in in trial today and
11 he had a family emergency, believe his son is not doing well
12 at home by himself and we have temporarily released him from
13 that subpoena just like to take that to Court's notice that
14 there is a legitimate reason for Mr. Searcy not to be here.

15 THE COURT: Alright, thank you, sir.

16 MR. DEAL: Uh, like to call Roger Dean Harris.

17 THE COURT: Mr. Harris come right up here, place your
18 right hand on the Bible, raise your right hand, let the clerk
19 of court swear you in.

20 (Whereupon, the witness came forward.)

21 ROGER DEAN HARRIS, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. DEAL:

24 Q. And, Mr. Harris, uh, what's your full name?

25 A. My full name is Roger Dean Harris.

1 Q. And you go by Dean, is that right?

2 A. Yes, sir, I use my middle name Dean.

3 Q. Okay. And Dean where are you from?

4 A. I live now on outside of Columbia, South Carolina, born
5 and raised in Clinton, South Carolina just down the road from
6 here.

7 Q. Where is that?

8 A. Clinton, South Carolina.

9 Q. Alright. And, uh, you're born in Clinton, how long did
10 ya live there?

11 A. I guess if consider when I went out of to college I moved
12 out 18 years.

13 Q. Okay. Now you went -- when -- where'd ya go to
14 college?

15 A. I went to college in Columbia at the University of South
16 Carolina.

17 Q. What was your major?

18 A. Mechanical engineering specialty in material science and
19 machine design.

20 Q. Okay, and did you get a degree there?

21 A. Yes, sir, I got a degree there in 1976 and I got another
22 degree there in 1992.

23 Q. Okay, well back up, so what was your degree in or your
24 understand graduate degree if I'm not wrong about that?

25 A. The same thing I just said. I have an undergraduate

1 degree in mechanical engineering with specialty fields in
2 material science and machine design.

3 Q. Okay. And after you got outta college wha'd ya do?

4 A. Went to work.

5 Q. Where?

6 A. I went to work at Union Carbide, uh, the tunnel -- the
7 Linde division up in Tonawanda, New York.

8 Q. And wha'd ya do up there?

9 A. Uh, we were developing a new process, this was in days of
10 alternate fuels in the late seventies and we were developing a
11 process to convert, well we call it a "municipal solid waste",
12 it's another word for "garbage", convert it into a fuel gas,
13 the fire boils. We built a reactor that could take garbage,
14 process the organic material and create a a fuel gas similar
15 to natural gas.

16 Q. Okay. And how long had you -- were you up in is it New
17 York?

18 A. I was up there about a year and a half.

19 Q. And then wha'd ya do?

20 A. Well it got real cold in Buffalo and I'm not used to that
21 so we came home. I went to work for Applied Engineering
22 Company in Orangeburg, South Carolina.

23 Q. And you say "we", who's we?

24 A. We would be my wife and I, ---

25 Q. Okay, so you made ---

1 A. --- dog and rest of the family at that time, just me the
2 wife and the dog.

3 Q. Okay, and speaking of your family, do ya, do ya have any
4 kids?

5 A. Yes, sir, I have three.

6 Q. And, uh, okay. Uh, so now you're back in Orangeburg, ---

7 A. Yes, sir.

8 Q. Wha'd ya do down there?

9 A. Applied Engineering Company was a steel, uh, fabrication
10 and an engineering design company. We do custom fabrication
11 of equipment for people to their specification, mostly
12 pressure vessels, tanks, piping systems, pumping systems.

13 Q. Okay. And how long were you there?

14 A. I was there about two and a half years.

15 Q. And then wha'd you do?

16 A. I left Applied Engineering, went to work for another
17 company in the same town, was called Ethyl Corporation and
18 they're a major chemical manufacturer.

19 Q. Wha'd ya do for them?

20 A. Uh, my title at Ethyl was the maintenance engineer.

21 Q. And so and under that title what was your, what were your
22 responsibilities?

23 A. Technical support for each and every single piece of
24 equipment, piece a piping, tank on the property, they were all
25 mine particularly if somethin' went wrong.

1 Q. Okay. Uh, and in that role there at Ethyl, did you ever,
2 uh, design any plumbing systems or anything like that?

3 A. Yes, sir, and I had designed them before that. Piping
4 systems were part of my work at Union Carbide and they were
5 part of my work at Applied Engineering.

6 Q. Alright, and those were commercial applications?

7 A. Mostly commercial and light industrial mostly.

8 Q. Okay.

9 A. Or excuse me, I'd have to include nuclear so I'd have to
10 call that heavy industrial.

11 Q. Okay. When you say "nuclear", where -- when did -- where
12 did that come in?

13 A. At Applied Engineering we built the piping and tanks for
14 nuclear plants. For example, the V.C. Summers plant in, uh,
15 outside of Columbia, I I have equipment on that site.

16 Q. When you say you have equipment, you mean stuff that you
17 designed, built was placed there?

18 A. That is correct.

19 Q. Okay. Uh, and so you were at Ethyl, wha'd ya do after
20 that?

21 A. I left Ethyl to do what I'm doing now: become a
22 consulting engineer.

23 Q. Alright, but some point in time did ya go to graduate
24 school?

25 A. Yes, sir, so, uh, you're asking about work history, ---

1 Q. Okay.

2 A. --- I graduated in 1976 with a bachelor's degree. I
3 immediately went started school part-time, one course a
4 semester and over a course of sixteen years I've managed to
5 earn master's degree.

6 Q. Oh, okay, and what was that master's degree in?

7 A. Exactly the same thing: master's degree in mechanical
8 engineering with specialty fields of, uh, machine design and
9 materials.

10 Q. Alright. So after Ethyl who'd you go to work for?

11 A. For my current company which is, uh, Engineering Design
12 and Testing Corporation.

13 Q. Okay, and what year would you have started there?

14 A. 1988 I believe.

15 Q. Okay. And correct my math here that's pushin' up on
16 twenty-five years?

17 A. No, yes, sir, I'm workin' on my twenty-sixth year.

18 Q. Okay. Alright, and, uh, so how did you, uh, what did you
19 do when you first started workin' at, uh, Engineering Design
20 and Testing?

21 A. When I first started there, I was the manager of the
22 custom design division. We took in, uh, specifications from
23 companies that needed a unique machine and we would design and
24 build that unique machine for them.

25 Q. Okay. And, when you say "build", you had -- how how did

1 that happen?

2 A. Well we ought -- don't have a fabrication facility but we
3 would take on the entire contract which would mean it be us to
4 hire the fabricator or machine shop to make our design, we
5 sold it as a package.

6 Q. Okay. And what kind of machines did you build in those
7 days?

8 A. Well, uh, for example, if you've ever seen the high power
9 lines over head, you'll notice that they're attached to the
10 poles by a device has a lot of looks like rings around it,
11 that's called a "watershed" and the device is an insulator and
12 we built a machine that would drill the holes in the end
13 fittings and another machine clamp crimp end fittings onto the
14 fiberglass rods and then a third machine that would test the
15 strength of that crimp, three different machine for the same
16 client.

17 Q. Okay. Uh, and in your work experience before you started
18 Engineering Design Testing, uh, or excuse, me after you
19 started Engineering Design Testing did you ever, uh, have the
20 opportunity to, uh, design plumbing systems?

21 A. With Engineering Design & Testings I've done a little bit
22 of piping design but it's mostly been analysis of existin'
23 pipin' designs as opposed to original new design.

24 Q. Okay. And as far as the, what the the the plumbing that
25 you you've done at, while you've been at Engineering Design'

1 Testing, what would that have, uh, entailed?

2 A. Are you restricting it to plumbing or piping?

3 Q. Plumbing and piping. Alright, well let me ask you a
4 question. What's the de -- I mean, as a lay man, I I kinda
5 think piping, plumbing it's the same thing, what's the
6 difference?

7 A. No, the difference is plumbing is going to be potable
8 water or sanitary sewer. Piping could be anything and
9 everything. I was a maintenance engineer on a chemical plant,
10 I'm used to piping which carry flammable materials and, uh,
11 high pressure materials, steam, all of that's in piping
12 design, plumbing is a small subset of piping design.

13 Q. Okay. And are the principles different for piping than
14 they are for plumbing?

15 A. They are more expansive for piping in general than they
16 are for plumbing, plumbing's got restrictive service
17 conditions.

18 Q. When you say "restrictive cer -- service conditions",
19 what are those?

20 A. Well plumbing is never going to be over a typically more
21 than 60 PSI, most plumbing fittings are only designed for a
22 hundred and twenty-five to a hundred and fifty PSI. Those are
23 very low pressures compared to say the pressures in a steam
24 plant.

25 Q. Okay, what what what would those pressures be?

1 A. Uh, they can be over 3,000 PSI at a high pressure steam
2 boil.

3 Q. Okay. Oh, wow. Alright, uh, now you you have an
4 engineering degree and you have an engineering master's are
5 you, uh, licensed in any way as an engineer?

6 A. Yes, sir, there is a professional licensure procedure for
7 renewing your chemical practice under their name own as
8 opposed to under a company's name.

9 Q. Okay, and what's that procedure called?

10 A. Well the license is called a Professional Engineering
11 License, the procedure is to take two exams four years apart
12 and to have a significant or certain amount of experience that
13 the board approves of in that four years in between, so you
14 have to take an exam, practice for four years, prove ya
15 practiced to the board and take another exam and pass it.

16 Q. And you've done that?

17 A. Yes, sir.

18 Q. When did that occur? When did you first get certified?

19 A. Oh, I took the first exam, you're allowed to take the
20 initial exam when you're still in college, I took it as a
21 senior in college. I took the next exam as soon as I was
22 allowed to four years later which woulda been about 1980 or
23 1981.

24 Q. So that woulda been based on your experience up in New
25 York and then when you got down to Orangeburg?

1 A. That's correct. You have to show that you have been an
2 engineer in what they describe as in responsible charge of
3 engineering projects.

4 Q. Alright, and do you still, uh, maintain that
5 certification?

6 A. Yes, sir, I'm now licensed in 15 to 20 states, I don't
7 recall list of everything at the moment.

8 Q. South Carolina one a those states?

9 A. Well South Carolina's my home state so that's my primary
10 licensure.

11 Q. Okay. Alright. Uh, now let's talk about so your -- what
12 was your first job at Engineering Design and Testing?

13 A. I was the manager of the design division, we built custom
14 machinery.

15 Q. Okay. And then after that wha'd ya do there?

16 A. I became a consultant. Less than two years after I
17 joined 'em they needed help in the consulting division so I
18 transferred over to the consulting division, we pretty well
19 abandoned the design work.

20 Q. Okay, let's stop there for a second, so what did you,
21 what what did the consulting division do at the time that you
22 started working and what were, what were -- what was that
23 job?

24 A. Well it's the same thing it is now. The consulting
25 division does engineering work for the world at large, whoever

1 calls and needs engineering services that we're able to
2 provide then can become a client and we would then do whatever
3 it was engineering-wise they needed us to do.

4 Q. Okay. And, uh, what, uh, what -- how -- so your, in your
5 job now what exactly do ya do, tell the jury what ya do and I
6 know consulting but ---

7 A. We could do almost any form of engineering we can be
8 asked to. The business that we are in, one that where most of
9 our clients come from means that I'm usually working on either
10 why did something happened or I'm looking working on what was
11 damaged by some event or I'm looking at the cost of that
12 damage, one of these three questions typically is what we're
13 answering.

14 Q. Okay. And what qualifies you to determine what somethin'
15 caused -- cause of some failure?

16 A. That I am a mechanical design engineer. When you are
17 looking at the failure of a mechanical device, what you
18 basically do is reverse the design process, you put yourself
19 in the shoes of the designer and look at the operating
20 conditions and determine whether or not the part should or
21 should not have been able to handle those conditions.

22 Q. Okay. And do you, uh, have any -- do you ever analyze
23 anything, any materials that are included in these parts?

24 A. Well that's part of the design process selection of the
25 right material either for its say its corrosion resistant

1 properties or for its strength or its stiffness is all part of
2 the design process.

3 Q. Okay, so so it -- what would qualify you to to analyze
4 those materials?

5 A. The fact that I have two degrees that include formal
6 training in material science and I run a metallurgical
7 laboratory.

8 Q. You say "run a metallurgical laboratory", what's that
9 entail?

10 A. That means I have a laboratory where we look at the
11 properties of materials. We'll take in a material and we'll
12 decide, we'll determine what its strength is, what its
13 chemistry is, uh, what the hardness is, what the
14 microstructure which is the think of it as the grain structure
15 of a metal, ya can't see it 'til you're at pretty high
16 magnification. All of these are things that affect the
17 properties of the material and when we do this we're looking
18 to see does the material meet certain specifications.

19 Q. Okay. Now so you started two years after you, uh,
20 started ED&T, Engineering Design Testing, you took to be a
21 consultant.

22 A. Yes, sir.

23 Q. And did you start right after that to to handle jobs in
24 in which you would analyze failures?

25 A. Yes, sir. The first case I did was a, uh, roof collapse

1 in Hickory, North Carolina.

2 Q. Okay. Now over the course of the next I believe now if
3 math is right 23 years have you ha -- had the opportunity to
4 analyze plumbing systems?

5 A. Yes, sir, on dozens of occasions.

6 Q. Okay, and how 'bout plumbing fixtures?

7 A. Yes, sir, plumbing fixtures, at at any given time, we got
8 a failed plumbing fixture in our laboratory.

9 Q. Okay. And, Mr. Harris, you were asked to to produce, uh,
10 some documents for the, uh, defendant with regard to times you
11 made opinions in certain case, is that right?

12 A. Yes, sir. We were recently asked for some information on
13 my history of legal cases involving, uh, codes and standards
14 was what I understood the question to be.

15 Q. And are those (indicating) -- what are those documents?
16 What do they represent? I don't need them to tell me what
17 they are, just what are they? Why did -- why are they there
18 in front of you? Are tho --- are those the documents that
19 were responsive their request?

20 A. Yes, sir, they are the documents that were responsive to
21 that request, in most cases it's our internal report or the
22 report we provided to our client.

23 Q. Okay. And how far back did that inquiry go?

24 A. Uh, we went back to 1997 which is as far back as we had
25 the record computerized.

1 Q. Okay. And did you provide them a list of all the cases
2 that you've testified to where some some, a code was, you
3 know, you know, im -- implied or, you know, applied in this --
4 in those cases?

5 A. Yes, sir, I have a list that we maintain for federal
6 court that shows every case we ever testified in and we have
7 historical lists that go back to 1997. I took printout of
8 those lists and I checked each one that to best of my
9 recollection codes and standards had some role at least in
10 that investigation and then we produced the documents we had
11 on those cases and in most cases it was our reports.

12 Q. And in that -- on that list of all those cases ballpark
13 how many a those cases have you either been deposed or
14 testified at trial in?

15 A. All but one I think had been, uh, trial cases 'cause we
16 were pulling it off of our testimony list. There a whole
17 bunch of other cases I've worked on that have nothing to do
18 with litigation but they would not appear on that list.

19 Q. So those are just cases that went, it went to either
20 deposition or trial.

21 A. That's correct. Uh, most of my cases do not involve
22 litigation.

23 Q. Okay. Alright, so you had occasion on more than, uh,
24 dozens of times to to opine for, uh, court purposes or for
25 litigation purposes on issues regarding code and code

1 application.

2 MR. IMHOFF: Objection, Your Honor, leading.

3 THE COURT: I'll allow it, he's still in qualification
4 process I'll assume.

5 MR. DEAL: That's right, Your Honor.

6 THE WITNESS: Then yes, sir, I have been qualified in
7 court on many occasions for those purposes.

8 MR. DEAL: Okay. Alright, Your Honor, we'd like to, uh,
9 proffer this Mr. Harris as an expert in mechanical
10 engineering, the design and installation of commercial,
11 residential piping and plumbing systems and the forensic
12 analysis of mechanical and materials failures.

13 THE COURT: Mechanical engineering design and
14 installation of residential what?

15 MR. DEAL: Commercial and residential plumbing and piping
16 systems.

17 THE COURT: And what was the third area?

18 MR. DEAL: Forensic analysis of mechanical and materials
19 failures.

20 THE COURT: Forensic analysis of mechanical failures?

21 MR. DEAL: That's right, Your Honor.

22 THE COURT: Any objection?

23 MR. IMHOFF: Yes, Your Honor, I'll renew any objection to
24 Mr. Harris's testimony, uh, especially I've already stated the
25 grounds for that but especially as to them too, Your Honor.

1 THE COURT: Alright, thank you very much. I'll overrule
2 the objection and, ladies and gentlemen, uh, normally a person
3 cannot give opinion testimony. Normally when I person
4 testifies they must testify as to what they either saw, heard
5 or sensed by smell or something of that nature; however, there
6 is an exception when someone is qualified because of education
7 or experience, they are permitted to give their opinion in
8 certain areas if the Court qualifies them in that way. This
9 witness will be qualified in the three areas requested by
10 plaintiff's counsel of mechanical engineering, design and
11 installation of commercial and residential plumbing and piping
12 and forensic analysis of mechanical failure to give opinion
13 testimony in those areas. Now that does not mean that you
14 must accept the opinion but it is evidence for you to use in
15 any way that you see fit. Yes, sir.

16 MR. DEAL: Thank Your Honor.

17 BY MR. DEAL:

18 Q. Dean, how did you get involved in this case?

19 A. I received a phone call from an attorney at Cozen
20 O'Connor.

21 Q. Okay, and what were you asked to do?

22 A. I was told there had been water leak in a residence and I
23 was asked to determine the root cause, the reason for the
24 water leak.

25 Q. Okay. And, uh, what did you do to start your

1 investigation?

2 A. If you're talking about at other than arrangements to go
3 visit the site, etc., I went to the building site would be the
4 first thing we would do, find out the location and we'll
5 examine the site.

6 Q. Okay, and did you in fact go up there?

7 A. Yes, sir, I believe the date was February 9th.

8 Q. Okay, and who did you talk to while you were up there?

9 A. There various people. Mr. Wennerstrom was there when I
10 was first. I spoke to him, I spoke to a person that I
11 understood to be a a representative of plumbing company, at
12 that time I didn't know his name or the name of the company
13 but he was a plumber, he was present, there may have been a
14 couple other people present but if they were I don't recall it
15 particularly.

16 Q. Okay, and in -- as part of your ordinary investigation of
17 of these types of things, do you often talk to eyewitnesses
18 and that sorta thing?

19 A. Certainly if there are witnesses available for me to
20 speak to I'll speak to them, if not I'll later get to read
21 their deposition testimony.

22 Q. Okay. And in in this particular case, uh, you in fact
23 talked to, talked to folks that were, that were there and had
24 facts about the case.

25 A. Yes, sir, the plumber in particular had some interesting

1 facts about the case, he wrote a statement for me.

2 Q. Okay. Uh, and as far as Mr. Wennerstrom's concerned you
3 talk to him, did you ask him any questions about what he knew
4 about what was goin' on at the house?

5 A. Yes, sir, I didn't speak to Mr. Wennerstrom 'til I was
6 leaving ---

7 Q. Okay.

8 A. --- and I spoke to him about the fact that his house had
9 a pressure regulator and the location of the pressure
10 regulator.

11 Q. Okay. Did ya ask him any questions about the regulator?

12 A. Oh, I I just didn't actually ask a question but he
13 volunteered that he didn't know what a pressure regulator was
14 or that he had such a device.

15 Q. Okay. Did you show him where it was when you were
16 there?

17 A. I did.

18 Q. Okay. Alright, as far as what you learned from the
19 plumber that was there, what did, what what did he tell you?

20 A. What I learned from the plumber was first the location of
21 the leak. The location of the leak was in a bathroom, a, uh,
22 water supply line to a bidet had separated, it had blown
23 loose.

24 Q. Okay, and did you, uh, make an analysis or any
25 observations about what mighta caused that ---

1 A. At that particular ---

2 Q. --- that scene?

3 A. --- moment no, I mean, all I did was see that we have a
4 valve that has come loose. I gave it a visual examination
5 that indicated to me it had been tightened down but I don't
6 have it in the lab yet so at this stage of the game I'm simply
7 collecting the valve as evidence.

8 Q. Did you in fact collect that valve?

9 A. I did.

10 Q. Alright. May I brief approach?

11 THE COURT: Yes, sir.

12 Q. Um, is that (indicating) that, is that the valve in
13 question?

14 A. It looks like a picture of the valve in question, yes.
15 The valve in question is in the box over there (indicating) in
16 the corner. Okay, you might take a look at that then. Uh,
17 gonna mark this as a, as a Plaintiff's Exhibit 7. Show this
18 to you.

19 (Whereupon, a discussion was held off the record.)

20 MR. IMHOFF: No, no objection.

21 THE COURT: Are you admitting it?

22 MR. DEAL: Like to move it into evidence, Your Honor.

23 THE COURT: Alright, be Plaintiff's 7 without objection.

24 (Photograph marked Plaintiff's Exhibit No. 7 for
25 identification and admitted into evidence.)