

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-42-000618

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 II

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1 BY MR. DEAL:

2 Q. Alright, after that, uh, Dean, what else, what did you do
3 at at the site?

4 A. Well the plumber volunteered to me that the house had a
5 pressure regulator, that's something I needed to know, most
6 houses do not, and that he had already tested the regulator
7 with a pressure gauge on the output side, pressure gauge read
8 100 PSI and that the output pressure from the regulator had as
9 in in his words "pegged the gauge." In other words, the
10 regulator was passing water pressure through it greater than
11 100 PSI.

12 Q. Alright, and, uh, to be clear if I may is this
13 (indicating) that regulator?

14 A. Yes, sir, it looks like the regulator after we extracted
15 it from the ground.

16 Q. And and an, uh, which way would the water come from and
17 which way would be going to in this, in this (indicating)
18 diagram?

19 A. In this diagram the 1 -- the PVC you see on the right
20 would be the input, the supply line comin' in, and the dark
21 pipe on the left is Pex feeding into the house I believe and
22 that would be the output, I also believe you can see the
23 directional arrows on the regulator showing the direction of
24 flow.

25 Q. Oh, I got ya, okay. In any case and and and, you know,

1 for the jury's sake, Your Honor, if I just approach there.

2 THE COURT: (Nodded in the affirmative.)

3 Q. Just note, ladies and gentlemen, this is little arrows
4 here (indicating) on the thing that said water goes that way,
5 okay. Now when -- to your understanding what you were told
6 where did the gau -- where was the gauge placed on this
7 regulator?

8 A. Well the gauge wasn't placed on the regulator when he did
9 the test, this regulator's out at the road, but the water
10 supply goes from this regulator under ground into the house
11 into a utility room and he put the gauge on the outlet at the
12 utility room.

13 Q. Would there have been anything between this (indicating)
14 regulator and the where it was tested that would have caused
15 the crack, would have added any water pressure to that system
16 between the two?

17 A. No, sir, it would either be the same or it be slightly
18 lower at at that location if water was flowing. If water's
19 not flowing, they'd be exactly the same.

20 Q. Okay. Uh, so at that point in time did you do any
21 testing of that regulator?

22 A. No, sir, not any testing, what I did is when the plumber
23 had identified the fact that there was a regulator and had
24 told me that he had already tested it, regardless once I knew
25 there was a regulator we would have collected it for evidence.

1 I asked the plumber to go ahead and remove the regulator from
2 the line so that I could take possession of it to test.

3 Q. Okay. And if I may approach again here.

4 THE COURT: Yes, sir.

5 MR. DEAL: Well we've talked about this (indicating) one.

6 MR. IMHOFF: I don't have an objection, Your Honor, I
7 think it's in.

8 (Photograph marked Plaintiff's Exhibit No. 8 for
9 identification.)

10 BY MR. DEAL:

11 Q. You recognize this, uh, what's depicted in this
12 (indicating) picture?

13 A. Yes, sir, this is the outside of the Wennerstrom house in
14 where whoever took the photo was standing right on the street
15 pointing at the house.

16 Q. Okay, and to your understanding where was this regulator
17 buried at the time that it was, uh, ---

18 A. It's in one of these holes that we see in the ground. I
19 think it's one that is just the hole because of where the
20 valve box has been removed but I'm not positive now 'cause
21 it's been dug up compared to when I was there.

22 Q. Okay. So the time that you were -- that this is, this
23 actually doesn't depict what you saw when you were there but
24 it's just what happened after that.

25 A. That's correct. This is the same spot. Somebody's been

1 doin' some digging, three valve boxes have been removed from
2 the ground now.

3 Q. Okay, when you got there these these boxes were in the --
4 on the ground.

5 A. They were buried in the ground, yes.

6 Q. Okay.

7 THE COURT: So that's ---

8 Q. Okay.

9 THE COURT: --- admitted as Plaintiff's 8?

10 MR. DEAL: Yeah, I'm sorry, Your Honor.

11 THE COURT: Alright, ---

12 MR. DEAL: Yeah, we'll move ---

13 THE COURT: --- without objection.

14 MR. DEAL: --- that into evidence officially. Sorry
15 'bout that.

16 MR. IMHOFF: Without objection, Your Honor.

17 THE COURT: Thank you.

18 (Plaintiff's Exhibit No. 8, photograph, admitted into
19 evidence.)

20 BY MR. DEAL:

21 Q. Alright. Now, uh, you asked the plumber to remove it,
22 did you in fact take possession of it?

23 A. I did.

24 Q. Okay. Now at that point in time -- well what -- did ya
25 do anything else before ya left that day?

1 A. Examined and photographed the site, I talked to
2 Mr. Wennerstrom, I took notes, I spoke to the plumber, we
3 collected the valve and I collected the, uh, the regulator, I
4 think that was pretty well the extent of it.

5 Q. Alright, at that time point in time, did you make any
6 preliminary conclusions as to what might have happened here?

7 A. Certainly, I had a theory as to what had happened here.

8 Q. Did you make -- but but did you have a final opinion as
9 to what had gone on here?

10 A. No, sir, there was still testing that needed to be
11 done.

12 Q. Okay. Uh, and if I may, Dean, you've got a box a stuff
13 here. This should be interesting.

14 A. That envelope has the valve in it.

15 Q. This (indicating) one?

16 A. Yes, sir.

17 Q. Oops. At least it'll be a, it's a little more fun than
18 the pictures I hope anyway. Dean, tell me what's in this box,
19 please.

20 A. What's in this box are the disassembled components of the
21 pressure regulator plus a film canister holding some debris
22 that we found inside the regulator.

23 Q. Hang on one second, let me show this thing. . . Alright,
24 Your Honor, uh, I guess the best way to do this is maybe tag
25 what's in this box. I'd like to tag, uh, mark it now as, uh,

1 Plaintiff's 9.

2 THE COURT: Lawyers approach a moment.

3 MR. DEAL: Um-hum.

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

5 Q. Alright, Dean, what what is that (indicating)?

6 A. That looks like the supply pipe.

7 THE COURT: Mr. Imhoff.

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

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

10 (Supply pipe marked Plaintiff's Exhibit No. 9, bell
11 housing on regulator marked Plaintiff's Exhibit No. 10, main
12 body of regulator marked Plaintiff's Exhibit No. 11, pipe
13 fitting marked Plaintiff's Exhibit No. 12, threaded bushing
14 marked Plaintiff's Exhibit No. 13, piece of debris marked
15 Plaintiff's Exhibit No. 14, piece of debris marked Plaintiff's
16 Exhibit No. 15, valve assembly marked Plaintiff's Exhibit
17 No. 16, small washer to top of spring marked Plaintiff's
18 Exhibit No. 17, diaphragm of regulator marked Plaintiff's
19 Exhibit No. 18, sealing ring marked Plaintiff's Exhibit
20 No. 19, name tag marked Plaintiff's Exhibit No. 20 and spring
21 marked Plaintiff's Exhibit No. 21 for identification.)

22 BY MR. DEAL:

23 Q. Okay. Where's 11? There it is. What's this, this is
24 the No. 11, what's that?

25 A. That would be the main body of the regulator.

1 Q. Alright. What's -- this is 12, what is that, Dean?

2 A. This is just another pipe fitting, it's the union that
3 connects the system, uh, but it's got a rubber seal in it so
4 this may be a part of the regulator, I'd have to see it
5 actually assembled to the regulator, may be the exit to the
6 regulator.

7 Q. Okay.

8 A. As a matter of fact, yes, that's the outlet and this
9 (indicating) would be where it was plugged into.

10 Q. And when you say it was "plugged into", where it plug
11 into?

12 A. Meaning this (indicating) would thread onto the threads
13 on the body and then that (indicating) would thread into this
14 (indicating).

15 Q. Okay, so then you say "that", uh, ---

16 A. This (indicating) piece is part of the regulator, that
17 (indicating) is not.

18 Q. Okay, so this piece that's No. what?

19 A. This is No. 12, it's part of the, part of this is part of
20 the regulator, there's a bushing threaded into here
21 (indicating) that's just a pipe fitting.

22 Q. Okay, and then 13. . .

23 A. Is just another threaded bushing with a section of
24 the Pex supply pipe to the house, that's the ---

25 Q. So ---

1 A. --- outlet.

2 Q. --- goin' to the, to the house from here

3 (indicating), ---

4 A. That's correct, ---

5 Q. --- that's No. 13.

6 A. --- they're using Pex which is a a plastic tubing for the
7 supply line.

8 Q. Right, and I'm gonna -- what's what's No. 14 here, Dean?

9 A. No. 14 is a small piece of debris that we found inside
10 the regulator.

11 Q. Okay. And how 'about No. 15?

12 A. No. 15 is more debris and it's separated because this was
13 different. This was larger and, uh, looked more like ordinary
14 calcium-based, uh, water deposits.

15 Q. Okay. And how 'bout 16, what's that?

16 A. Sixteen is, the valve manufacture would call this the,
17 uh, "valve assembly" or the "puppet assembly", it basically is
18 the plug that this piece right here's (indicating) a disk on
19 the bottom, it's the plug that seals the valve at the seat and
20 the rest of this just is just a mechanism that allows it to
21 move ---

22 Q. Got ya.

23 A. --- and there's a looks like a strainer screen installed
24 as part of it.

25 Q. Okay. And which one was that, what number was that?

1 16?

2 A. Yes, sir, it's 16.

3 Q. This is 17 I'm I'm kinda tryin' to tape up 'cause the
4 sticker wouldn't stick.

5 A. Uh, this is simply a small washer that is -- goes on the
6 top of the spring, the operating spring in the device.

7 Q. Okay. And what what number was that one?

8 A. The spring is No. ---

9 Q. That that's not this ---

10 A. --- 11, this one is No. 17.

11 Q. Alright. Where's 18? Aah, there's two there, and No. 18
12 what's that?

13 A. No. 18 is what's called the "diaphragm." This
14 (indicating) is the heart of the regulator, this is what
15 allows regulator to move.

16 Q. Okay, and 19?

17 A. Is nothing but a sealing ring that helps seal the, uh,
18 diaphragm when it's, when the body's clamped together.

19 Q. Okay, 20?

20 A. Twenty is the name tag that was removed from the
21 regulator, manufactures name plate.

22 Q. And then finally 21.

23 A. Twenty-one is the spring. This is what drives the
24 regulator. The spring and this (indicating) diaphragm balance
25 against water pressure to allow the regulator to function so

1 this spring is the, this plus the diaphragm are the working
2 guts of the regulator.

3 MR. DEAL: I'd like to move 9 through 21 into evidence,
4 Your Honor.

5 MR. IMHOFF: No objection, Your Honor.

6 THE COURT: Without objection it'll be 9 through 21 as
7 stated by the witness.

8 (Plaintiff's Exhibit Nos. 9 through 21 admitted into
9 evidence.)

10 BY MR. DEAL:

11 Q. Alright, and, Dean, ---

12 MR. IMHOFF: Your Honor, I object to this, I haven't seen
13 this until just this morning.

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

15 THE COURT: Alright, ladies and gentlemen, uh, this a
16 time when I have to take up one a those matters of law with
17 the lawyers so if you would please retire to the jury
18 deliberation room and do not have any discussions among
19 yourselves about anything, we'll get ya back just shortly.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Alright, yes, sirs.

23 MR. IMHOFF: Your Honor, I sent subpoenas a year ago, we
24 talked about it on the phone last week, we had a hearing
25 before this trial, there was a document presented to me, uh,

1 before the trial, another document presented after you got off
2 the bench, we talked about the fact that I hadn't provi --
3 been provided with documents by Mr. Harris and they were
4 slowly trickling in, uh, and now we're on day two of trial and
5 again I get another document that I have not seen. I object
6 to it, it's way too late and I don't know why it's sprung now
7 when we're talkin' about his production for the last week at
8 least.

9 MR. DEAL: Your Honor, I specifically listed a diagram
10 that Dean was going to draw as as and and and look it's just
11 demonstrative evidence, I'm not gonna -- it -- I will not
12 have -- I'll not move it in, he just sum -- he's gonna, so he
13 can just show the jury what he's gonna, ya know, where where,
14 ya know, what happens but I listed a diagram of a an exemplar
15 regulator as my trial exhibits. I didn't show him this, I
16 didn't think it was necessary, it's just a diagram, it just
17 shows how these things would go when they're put together.

18 MR. IMHOFF: Is it in Mr. Mr. Harris's file?

19 MR. DEAL: It is now. He didn't ma -- he -- as I recall
20 I don't think he made it 'til the weekend.

21 THE COURT: Why didn't you show it to Mr. Imhoff before?

22 MR. DEAL: Like I said, Your Honor, he -- we, when we
23 discussed it never came up in motion, I'd already provided the
24 evidence or had indicated I was gonna be usin' this di -- it's
25 fine, I don't need to use it, I'm I'm just ---

1 THE COURT: Do you have anything else that that he hasn't
2 seen?

3 MR. DEAL: No.

4 THE COURT: Do you have any other items that you're gonna
5 introduce into evidence that the court reporter could go ahead
6 and mark now, you know, premark the ---

7 MR. DEAL: Yeah.

8 THE COURT: --- exhibits and stuff?

9 MR. DEAL: Yeah, I just like to do 'em in order, that's
10 the only reason I hadn't done it all at one time. I've
11 already showed all these pictures to Mr. Imhoff.

12 THE COURT: Okay.

13 MR. DEAL: And and by the way those are all produced
14 documents and I listed those as potential trial exhibits.
15 Every single one that was produced in -- from from me or him
16 plus what, ---

17 THE COURT: Okay.

18 MR. DEAL: --- uh, was discussed in deposition.

19 THE COURT: Okay. Why don't you go ahead and give 'em to
20 her while the jury's out, let her go ahead and be markin' 'em
21 and then that way we've got that much done without them in
22 here we go little bit faster. The lawyers approach a moment.

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

24 THE COURT: Mr. Imhoff, if you've got any, at the next
25 break if you've got any exhibits you intend to present if you

1 could give those to the court reporter as well she could.
2 pre -- go ahead and have them marked at least.

3 MR. IMHOFF: Yes, Your Honor.

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

5 THE COURT: What are ya'll looking for?

6 MR. DEAL: Can't find that document, Your Honor, that was
7 in, that was in Mr. Harris's file.

8 THE COURT: Okay.

9 MR. DEAL: It was prod -- here's Mr. Harris's file was
10 produced, he just can't find it.

11 MR. IMHOFF: I'm not sure how to handle that exactly. I
12 can't say that they didn't give it to me but I don't, I don't
13 have it and I don't remember and I'm lookin' at at his
14 deposition to see if it was attached to his deposition 'cause
15 I I'm thinkin' I probly woulda asked him about it but it's not
16 attached there so I'm not sure how to handle it. I'm I'm
17 definitely not saying they didn't give it to me, I just don't
18 know.

19 THE COURT: Lay a foundation for it before ya introduce
20 the document and I'll handle any objections at that point.

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

22 THE COURT: Lawyers approach a moment.

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

24 (Photographs marked Plaintiff's Exhibit Nos. 22, 23, 24
25 and 25 for identification.)

1 THE COURT: Alright, let's bring the jury back.

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

3 THE COURT: Yes, sir.

4 MR. DEAL: Thank Your Honor.

5 BY MR. DEAL:

6 Q. Uh, Dean, after, uh, you took that evidence there, uh,
7 did you ever do any research as to what that model was?

8 A. Yes, sir. The, um, name tags some of the information on
9 this name tag which is Exhibit 20 is not legible. We had
10 enough on it to identify the manufacturer and model but not
11 the, uh, spring range and this pressure setting so we went to
12 the manufacture and pulled literature from the manufacture
13 Wilkins.

14 Q. May I approach?

15 THE COURT: (No verbal response.)

16 (Plaintiff's Exhibit No. 26, Wilkins Valve document,
17 marked for identification.)

18 Q. Does that (indicating) look familiar to you?

19 A. Yes, sir, this is one of the documents that I obtained
20 from the Wilkins Valve Company.

21 Q. Okay. And what did -- does does that document re -- uh,
22 pertain specifically to the -- this regulator here that's in
23 question?

24 A. Yes, sir, this is for all Model 70 regulators and they
25 offer them in 1/2 inch, 3/4 inch and 1 inch, this is the

1 1 inch model..

2 Q. And so that piece a paper directly corresponds to this
3 regulator.

4 A. That's correct.

5 Q. And you got that from the manufacture?

6 A. Yes, sir.

7 MR. DEAL: I'd like to enter into evidence, Your Honor,
8 as, uh, Plaintiff's 26?

9 THE COURT: Two.

10 COURT REPORTER: Twenty-six.

11 THE COURT: Twenty-six.

12 MR. DEAL: Twenty-six.

13 THE COURT: Any objection?

14 MR. IMHOFF: No objection, Your Honor.

15 THE COURT: Without objection be Plaintiff's 26.

16 (Wilkins Valve Company document marked Plaintiff's
17 Exhibit No. 26 and admitted into evidence.)

18 BY MR. DEAL:

19 Q. Now after you, uh, left the home, you gathered this
20 evidence did you conduct any additional testing at the home?

21 A. At the home no, sir.

22 Q. Did you gather any data about the water pressure?

23 A. Oh you talkin' about me and myself, no, I didn't but I
24 sent a lab technician out to the house.

25 Q. Okay. And what did that lab technician do?

1 A. Well we needed, we, all we knew was that the water
2 pressure out at the road was apparently greater than 100 PSI
3 but I didn't know how much greater. We wanted to find out
4 what it actually was so we had the lab tech install a pressure
5 record on the supply line to Mr. Wennerstrom's house and we
6 left it there for about a week.

7 Q. Okay, and did you then collect that data?

8 A. Uh, Mr. Windom (phonetic) my lab technician did go up and
9 collect the data, he provided the data to me.

10 Q. And have you now looked at, excuse me, that's the
11 exhibit, uh, excuse me, may I approach, see if it's here?
12 Where is that? It's defendants' exhibit with the, with the
13 pressure, did that go somewhere?

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

15 Q. Alright, Dean, did you in fact at some point in time get,
16 collate that data?

17 A. We had it, we printed the data, it's su -- it's a
18 straight column or printout of numbers.

19 Q. Okay, and I'm not gonna bore the jury, what did that data
20 tell you?

21 A. It told me that the water system supplying the homes in
22 this area routinely runs about a hundred fifty PSI and we
23 measured the peak, we measured was 179.1 PSI.

24 Q. Okay. And that's the same thing that Mr. Searcy
25 testified to as well, is that correct?

1 A. Yes, I believe he was reading from my document at the
2 time.

3 Q. Alright. Okay, after that did, uh, did did you do any
4 examination of the the the e -- regulator itself?

5 A. Well we examined both the valve and the regulator.

6 Q. Okay, let's talk about the valve, wha'd ya do to look at
7 that?

8 A. We looked at the valve to see, I mean, there's various
9 reasons a valve come off, the most common reason is that the
10 valve itself has been damaged. Most of the time when we see a
11 leak like this the problem is with the tightening of the valve
12 so we examine the valve, see if there's any evidence that it
13 either been overtightened or undertightened. The evidence
14 suggests the valve was tightened appropriately, there's no
15 damage to the valve.

16 Q. Okay.

17 A. The plastic tubing is deformed where the ferrule, the
18 sealed device was embedded into the tubing, that tells me he
19 had tightened it down fully and the linear scratch marks on it
20 tells me that it was pulled off under a large amount of force
21 so so from this we concluded the valve had been properly
22 installed and had been forced off by a pressure beyond its
23 pressure rating is what the valves evidence seems to indicate.

24 Q. Alright, is that -- is this (indicating) the valve?

25 A. It is. The plastic piece that was deformed I referred to

1 is right here (indicating).

2 Q. And what's this (indicating) piece?

3 A. That's just a decorative sleeve that hides the fact that
4 it's plastic tubing, makes it looks like ya have chrome pipe.

5 Q. And this particular piece here (indicating), that's
6 the ---

7 (Indiscernible cross-talk.)

8 A. That is the valve so. . .

9 Q. And so lookin' at this thing in the lab and lookin' at it
10 today is there anything to indicate that anybody hit it with a
11 broom or anything like that that would cause it to come off?

12 A. There is no evidence of any type of what I'll call
13 physical trauma to the valve. There's no dents, no dings,
14 there are no wrench marks on it indicating somebody pulled it
15 so hard with a wrench it slipped, there's just nothing about
16 this valve to indicate it's been abused.

17 Q. Okay. And this (indicating) is the the the white tube?

18 A. This is the piece that was inside the valve ---

19 Q. Okay.

20 A. --- and I don't know if the jury can see it from here but
21 in this (indicating) area the the tubing had been compressed,
22 it's reduced in diameter, that means that the valve had
23 clamped down on that tubing hard enough to deform it but it
24 hasn't been buckled which tells me that it was tightened down
25 fully and properly.

1 Q. Okay. And, uh, do you have an opinion as to w -- to what
2 caused this valve to come loose?

3 A. Yes, sir.

4 Q. You hold that opinion to reasonable degree of engineering
5 certainty?

6 A. I do.

7 Q. What's what is that opinion?

8 A. Well the valve's pressure rating like most tubing
9 pressure ratings on any home is only 125 PSI and the system
10 pressure this, uh, water supply normally runs 150 and as high
11 as nearly 180. If this valve ever experienced the supply
12 pressure, I would expect it to blow off which is what
13 happened. When the regulator failed, the valve was then
14 subjected to the full line pressure of nearly 200 PSI.

15 Q. Alright. Alright, now did you then examine the regular
16 as well?

17 A. Yes, sir, we had arranged for a joint test and
18 examination of the regulator, meaning other parties were
19 present when we disassembled and tested it.

20 Q. You recall who was there?

21 A. There is a sign up sheet in my, uh, file, I don't recall
22 other than there would have been a probly representative of
23 manufacture, I would expect a representative of the plumber,
24 possible representatives to the builder but I don't recall the
25 names of the persons.

1 Q. Okay. Now, uh, alright, you specifically remembered, uh,
2 Mr. Cortright bein' there?

3 A. I'm not that good at the name, sir, if you show me his
4 face, I might remember it.

5 Q. Okay. To your understanding would those parties have
6 been put on notice?

7 A. Yes, sir, that would be normal. The the legal department
8 would take care of that, I would tell them who, what parties
9 were involved: the manufactures, etc. if I know that but I
10 don't put people on notice.

11 Q. Were you pointin' the finger at anybody for to to blame
12 this point in time?

13 A. No, sir, I wouldn't use those terms. I would recommend
14 parties that were interest, have an interest in this and might
15 should be named but I don't blame anyone, that's not my
16 call.

17 Q. Alright. Okay. But you would, you -- it would be your
18 call to tell, to to make an opinion or to assess who might be
19 an interested party based on the evidence you had.

20 A. I could tell you who based on either standards or
21 contracts or normal engineering practice what party would be
22 responsible for a particular action.

23 Q. Got ya. Alright, now, uh, after ex -- wha'd ya do to
24 examine this this part?

25 A. Well the first thing we did was test it. We haven't

1 taken it apart or anything, we wanna see, basically duplicate
2 the test that the plumber did in the field so we connected it
3 to a water line and we pressured it up with a gauge on either
4 side of the pressure, uh, the regulator. Uh, if it's
5 functioning properly, the output side should be lower than the
6 input side but what our test showed was no matter what
7 pressure you put on the inlet you'll get exactly that same
8 pressure on the outlet and we tested it all the way up to 180
9 PSI so the regulator was not functioning, it was not
10 regulating pressure.

11 Q. Okay. Alright, now after you tested it did ya do
12 anything else?

13 A. Yes, sir, as you see it's in its component part so we
14 took it apart to see if we could find out why it was not
15 functioning.

16 Q. Alright, what did you do, what did you examine to
17 determine if it would -- why it didn't function?

18 A. Well we took it apart and primary thing we were looking
19 for is to look at that rubber diaphragm, this piece right here
20 (indicating). This (indicating) is rubber so the most common
21 means for a regulator failing is this rubber diaphragm splits
22 or you lose the seal around the edge of the diaphragm, usually
23 it's split, that makes it pretty obvious what's happened. Uh,
24 in order to understand why, we need to understand how a
25 regulator functions.

1 Q. Okay, how does a regulator function?

2 A. I'm going to try and do this with my hands. This
3 (indicating) diaphragm is backed up by this (indicating)
4 spring and you control the output pressure by turning a nut
5 down on the spring to put pressure on it. The incoming water
6 pressure let's say it's 200 PSI or a hundred and fifty PSI, it
7 can't get past the valve port, the valve port's closed. If
8 you set your pressure regulator at say 50, you will set that
9 spring to a certain pressure, the pressure of the water comes
10 around to the other side and it can on -- and it start to lift
11 this (indicating) diaphragm. We got a hundred and fifty
12 pounds but when it lifts this diaphragm as soon as it matches
13 the balance that you have that you've set for the spring,
14 let's say you set it at 50, the diaphragm will stop moving and
15 it'll hold the valve in that part open position just enough to
16 maintain 50 pounds on the other side. If you increase your
17 flow in the house, well it'll have to open a little bit more
18 to keep you at 50. If you shut the house completely off, it's
19 got to close and seal completely to keep that 200 pounds from
20 makin' it into your house, so it's a, some people refer to
21 these as pressure reducing valves, that's a generic term for
22 any valve we use to reduce pressure, it can be anything from a
23 little valve you turn by hand to a sophisticated
24 electronically controlled device on a steam generating
25 station. A regulator is one type of pressure reducing device

1 that is automatic and it's mechanical and it's run by a
2 spring, a spring and a rubber diaphragm.

3 Q. If I may approach. Oops. Now we've -- you've talked
4 about the the spring, ---

5 A. Yes, sir.

6 Q. --- now are there settings on it?

7 A. Yes, sir. Some regulators according to which one you're
8 buying from different people use regulators on all kinds of
9 gasses and fluids, not just water. If you have a, uh, gas
10 grill at home, that little round aluminum thing hangin' on,
11 looks like a flying saucer is a pressure regulator for the
12 propane, works exactly the same way this does, so most people
13 have seen them. Propane regulators come set by the factory
14 to specific setting, this type of regulator can be adjusted
15 over the range. The particular regulator was able to adjust
16 between 25 and 75 PSI output and that adjustment's done with
17 the nut on top of the bonnet.

18 Q. Alright, where is the bonnet? Which one is that?

19 A. This (indicating) is the bonnet.

20 Q. Okay. And there was some discussion earlier about the
21 the the screw being down on the bell or bonnet or sumtin' like
22 that.

23 A. There was some discussion, all I see is that this one has
24 been adjusted to its max range, it was putting out 75 PSI.

25 Q. Right, and and the adjustment that's present there is

1 that in violation of your understanding what the the the
2 instructions were as they were described earlier?

3 A. Well they say not to bottom it out, I'm not sure what
4 they mean by not bottoming it out but it has simply been
5 adjusted to its maximum range. I see nothing, no evidence
6 where the screw on the inside has impacted anything so it's
7 simply been adjusted from the ma -- up to the max which is 75
8 PSI, that's as much as it could put out unless it failed.

9 Q. Alright. Now in your examination of that regulator and
10 after taking it apart did you come to an opinion as to, as to
11 whether or not there was some sort of a design flaw in this
12 particular regulator?

13 A. Yes, sir, I came to an opinion.

14 Q. Alright, do you, do you hold that opinion to reasonable
15 degree of engineering certainty?

16 A. I do.

17 Q. What is that opinion?

18 A. The regulator's designed just like any other regulator
19 like this, I do not see any fault in the design of the
20 regulator, it's exactly what I anticipated finding.

21 Q. Alright, so design is fine.

22 A. Yes, sir, there's no damage to any of the parts, all the
23 materials appear to be appropriate construction, Wilkins has
24 been around for a long time, the Model 70's been around for a
25 long time. I didn't expect find a design defect and but there

1 coulda been manufacture defect and I did not find one.

2 Q. Okay, let me back up then. So did you come to any
3 conclusions about any manufacturing defect in this
4 regulator?

5 A. There are no manufacturing defects in the regulator that
6 I can detect.

7 Q. Alright. So as far as you can tell and you made an
8 opinion to a reason degree scientific or engineering
9 certainty, is that correct?

10 A. Yes, sir.

11 Q. There was nothin' wrong with the the design, there's
12 nothing wrong with the manufacture of that unit.

13 A. Not that I can find no, sir. The regulator seems to be
14 designed and should have functioned properly.

15 Q. But it didn't.

16 A. It didn't but all machines fail at some point,
17 particularly machine that have moving parts and they're
18 depending on a flexible piece of rubber in order to
19 function.

20 Q. Okay. Uh, and I'll refer to you what we've previously
21 admitted as Exhibit 26, ---

22 A. Yes, sir.

23 Q. --- down at the bottom does it discuss how long that that
24 regulator is warrantied for?

25 A. Yes, sir, it does.

1 Q. Can you read that to the jury, please.

2 A. "If any recommended service, a defect develops due to
3 material or workmanship and the device and returned freight
4 prepaid to Wilkins within twelve months from date of purchase,
5 it will be repaired or replaced free of charge."

6 Q. That's the warranty?

7 A. The warranty?

8 Q. Yeah.

9 A. Yes, sir.

10 Q. How long was that?

11 A. Twelve months, that's typical.

12 Q. Okay. Now there's nothing wrong with the regulator that
13 you could find after examining it, design or manufacturer,
14 otherwise ---

15 A. That's correct.

16 Q. --- but it failed?

17 A. It failed to function, yes.

18 Q. Okay.

19 A. We didn't ---

20 Q. How long ---

21 A. --- find a failure in the regulator but the regulator did
22 fail to function.

23 Q. That's right. Is that consi -- alright. Like it's
24 sittin' here today how long is that regulator warrantied
25 for?

1 A. One year.

2 Q. How long was it installed for?

3 A. Uh, 'bout five or six years I think.

4 Q. Okay. And in your opinion in in in ex -- in examining
5 moving parts of this kind and nature, do you, do you actually
6 have the opportunity to work with regulators on a regular
7 basis?

8 A. Yes, sir, I've rebuilt regulators, they are rebuildable.
9 They come with -- in fact, you can buy repair kits rebuilt
10 regulators, replace the spring and this diaphragm primarily.

11 Q. Okay. And, uh, do -- how long do you expect a regulator
12 to last?

13 A. Well depends on the service conditions. I've never seen
14 one fail short of the twelve months, I don't recall ever
15 seeing one fail in short of twelve months. I've seen 'em fail
16 in as little as two or three years and I've seen some
17 regulators that's still in service after twenty years.

18 Q. Alright. You talked about in service, uh, does the the
19 use it's put to, uh, play any role in how long it's gonna
20 last?

21 A. Yes, sir, it does and since it's got moving parts the
22 amount the parts move and that particular service is gonna
23 have some role in how long it lasts.

24 Q. And in in the case that this -- of this regulator where
25 it was installed from the evidence that you gathered, can you

1 say whether or not that had any impact.

2 A. Yes, sir, the sys -- the water pressure on this system is
3 fairly high, uh, so this regulator is going to have to flex
4 over its full range more than one that was on a lower pressure
5 system for example.

6 Q. Thank you. Now that would have caused it to wear
7 quicker?

8 A. It will cause it to wear quicker, yes.

9 Q. Alright. Now so let me just get this straight, did you
10 hear testimony of Mr. Searcy that said he'd never seen a
11 regulator fail except for this one?

12 A. I heard that, yes.

13 Q. You did. Alright, now you don't have any reason to
14 dis -- to doubt what he's sayin', do ya?

15 A. If he says he's never seen one fail then I have to accept
16 his word that he has personally never seen one fail.

17 Q. Right, but is it reasonable to expect that it will ne --
18 that one will never -- that won't fail?

19 MR. IMHOFF: Objection, Your Honor. He can't testify to
20 reasonableness of Mr. Searcy's expectations, he just
21 said that ---

22 MR. DEAL: Okay, right.

23 MR. IMHOFF: --- he never saw one ---

24 THE COURT: You wanna ---

25 MR. IMHOFF: --- fail.

1 THE COURT: --- rephrase the question.

2 MR. DEAL: Yeah.

3 BY MR. DEAL:

4 Q. Is it reason -- or do regulators last forever?

5 A. No, sir, uh, nothing lasts forever. Regulators got
6 moving parts and it comes with repair parts and repair
7 instructions that tells you that they don't last forever and
8 you could expect to have to repair one.

9 Q. Alright, so given the si -- circumstances where this was
10 installed di -- does it surprise you as a mechanical engineer
11 and someone who does mechanical failure analysis does it
12 surprise you at all this failed?

13 A. No, sir, it doesn't pr -- surprise me that it failed in
14 service, eventually it's going to fail in service, the only
15 question is how long.

16 Q. Right. So at this point in time, let me back up, how
17 high was the pressure goin' into the house again?

18 A. The pressure in the supply lines out at the street is
19 running between a hundred and fifty and nearly a hundred
20 eighty PSI. The pressure regulator was set from the factory
21 to reduce pressure at the house to fifty, someone has adjusted
22 to where it was putting seventy-five in the house.

23 Q. Okay. And that testimony about maybe Mr. Wennerstrom or
24 anybody else that might have tampered with this thing and
25 screwed it down would that affect how much pressure the

1 regulator would allow into the house past seventy-five?

2 A. No, sir, once the regulator's, uh, once the screw is at
3 its full tightness, that's as high as it can go. Seventy-five
4 PSI is as much as this regulator will pass unless the
5 regulator fails in service.

6 Q. In your examination of this regulator, did you see
7 anything, any evidence to indicate that anything had been done
8 to the regulator to alter it or to abuse it or misuse it in
9 any way that woulda caused this thing to fail?

10 A. No, sir, the only alteration that's been done is somebody
11 adjusted the pressure setting which the regulator allow so
12 that it was within what the regulator's supposed to be able to
13 do.

14 Q. Okay. Now this regulator failed ---

15 A. Yes, sir, they're, all gonna fail in service at one point
16 or another.

17 Q. Alright, when that happened based on what you heard from
18 the plumber and and what you in your testing when this thing
19 failed, how did it fail?

20 A. Well we were looking for a slit diaphragm, we didn't find
21 one, that means that one of two things has to have happened:
22 Either there was a water leak passed the edge where it wasn't
23 wasn't sealed as well as it could be, that could come from
24 movement or there was a good bitta debris in the system and
25 it's possible that the valve plug got jammed partially opened.

1 If that plug can't move then you're gonna pass full pressure
2 through the house particularly if the water's off in the house
3 and since this was a vacation home the water was off more
4 often than it was on.

5 Q. Alright, and and to your understanding of testimony wa --
6 was anyone home the time this failed?

7 A. No, sir, no one was home.

8 Q. Alright, so at the time this house was built and M -- and
9 you heard Mr. Searcy testify that he got the CO and he built
10 this house and gave it to Mr. Wennerstrom, ---

11 A. Yes, sir.

12 Q. --- the time this house was built were the conditions of
13 this regulator and its installation, where it was in this
14 house, was this -- was -- do you have opinion as to whether or
15 not this regulator was gonna c -- was was, could could cause a
16 loss of this kind?

17 A. Yes, it was inevitable. If you've got a water system, a
18 supply system that is higher than the ratings of all the
19 plumbing fittings in the house then when the regulator fails,
20 not if, when it fails you're going to have a leak in the
21 house. I heard testimony that there are other houses up there
22 in the mountain the same way, every last one of them is gonna
23 have a blow out if they don't change or, uh, maintain those
24 regulators.

25 Q. Alright. Now let's talk about the the installation, uh,

1 did you examine, uh, it was your -- is your understanding
2 that, uh, either Mr. Searcy or B&B selected this particular,
3 uh, regulator for installation in the home?

4 A. It was my understanding that one of them did, I assume it
5 was the plumber.

6 Q. Okay. Now did you find anything wrong with selection
7 of that particular unit to serve in its role as the pressure
8 regulator?

9 A. No, sir, we were pushing the limits of it, uh, pushing
10 the limits of any regulator when you're trying to come down
11 from 200 pounds, in fact, the instructions well this one tell
12 you that you can't get but a four to one turn down ratio.

13 MR. IMHOFF: Objection, Your Honor, he's testifying about
14 things that aren't in the record. He keeps referring to 200
15 pounds, there is absolutely no basis for that testimony at
16 all.

17 THE COURT: Alright, you can cross-examine him on it,
18 I'll let him. Go ahead.

19 MR. DEAL: Alright.

20 BY MR. DEAL:

21 Q. Uh, let me ba -- okay, let me back up then. Dean, did
22 you read the test -- the deposition testimony of Mr. Blythe?

23 A. Yes, sir.

24 Q. And Mr. Hafner?

25 A. Yes, sir.

1 Q. And in their testimony did you, well, did you read what
2 their estimate of the, of the pressure in the regulator was
3 the day they tested it?

4 A. Yes, sir.

5 Q. What was that number?

6 A. He said that it was over 100 pounds, could be as high as
7 200.

8 Q. Okay. Now back to what I was going towards. To your
9 knowledge in reading deposition testimony Mr. He -- Hafner and
10 Mr. Blythe, was the water pressure from the street comin' in
11 in the house ever tested prior to this loss?

12 A. No, sir, it was not, ---

13 Q. Okay.

14 A. --- not based on their testimony.

15 Q. Alright, and when you were on on the site, uh, as far as
16 the installation of regulator, did you come to an any opinion
17 as to the, uh, the actual physical installation of this
18 regulator?

19 A. Yes, sir, I expressed that opinion to Mr. Wennerstrom
20 when I was at the site.

21 Q. What was that opinion?

22 A. And that is this is a an extremely poor location for a
23 device that needs to be maintained and needs to be inspected.
24 It was literally buried in the ground, we had to dig it up.

25 Q. Okay. Now at the time that you testified, Dean, uh,

1 earlier on, did you have any -- what what were the basis for
2 that opinion that you -- it needed to be somewhere else?

3 A. This is a device that first of all you need to know that
4 you even have one, most homeowners, most homes don't have a
5 pressure regulator valve 'cause most water systems aren't over
6 80 PSI and the only time the code requires a regulator is if
7 your water system's gonna produce pressure so they so most
8 people don't even know if they have one, they probably don't,
9 so it needs to be out where you can see it, it also needs to
10 be out where it could be maintained and repaired. It would be
11 very difficult to repair this, uh, regulator in place buried
12 in the ground like that without getting dirt into the system.
13 I would have chosen to dig it up outta the ground to maintain
14 it rather than trying to maintain it in the hole in the
15 ground.

16 Q. Now you said, you here Mr. Searcy's testimony about it
17 bein' common sense this regulator's out there versus in the
18 home?

19 A. I heard that, yes.

20 Q. Do you agree with that, uh, testimony?

21 A. No, sir, his only basis was where the irrigation take
22 offs are. You can just make your irrigation take offs at the
23 same location as the regulator. In my home the irrigation
24 take offs are where where the system enters the house.

25 Q. And that would have solved any issue with any over

1 pressure in the, in the irrigation system, correct?

2 A. Yes, sir, as long as you're on the downstream side of the
3 regulator, you're gonna get house pressure.

4 Q. When this house was built back, where was that regulator
5 put?

6 A. I understand that he hung it on the wall of the garage or
7 the utility room as I suggested.

8 Q. Now I'm gonna show you what was previously marked as
9 Defendants' I think it's this one did come in, where do we
10 have that? Defendants 2 I'm gonna look at Page 2 specifically
11 and startin' right there, Dean, can you read that for me,
12 please.

13 A. Yes, sir, the paragraph is titled "Typical installation?"

14 Q. Yes.

15 A. "Local codes shall govern installation requirements.
16 Unless otherwise specified the assembly shall be mounted in
17 accordance with the manufacture's instructions and the latest
18 edition of the Uniform Plumbing Code. The assembly shall be
19 installed with sufficient side clearance for testing and
20 maintenance. The Model 70 may be installed in any position.
21 If installed in a pit, vault, or indoors, specify the, quote,
22 SC, unquote, sealed cage option. Multiple installations are
23 recommended for a wide demand variations or where the desired
24 pressure reduction is more than four to one, parenthesis,
25 i.e., 200 PSI inlet reduced to 50 PSI outlet," that's what I

1 was talkin' about a moment ago. "Caution: Any time a reducing
2 valve is adjusted a pressure gauge must be used downstream to
3 verify correct pressure setting. Do not bottom the adjustment
4 knot bolt on the bell housing."

5 Q. Okay. Now as far as where -- how this -- how -- where
6 this was located, do you have an opinion as to whether or not
7 it was, it wa -- it was in accordance with the manufacture's
8 instructions?

9 A. Yes, sir, I do.

10 Q. Did you hold that opinion in a reasonable degree of
11 scientific cert -- of engineering certainty?

12 A. I did.

13 Q. What is that opinion?

14 A. That opinion is it was not installed accordance with
15 these instructions.

16 Q. Why not?

17 A. Because it doesn't have good sufficient side clearance
18 for testing and maintenance.

19 Q. In fact, so you'd say it had insufficient side clearance.

20 A. Yes, sir, that's -- you notice that in the photograph
21 here Exhibit 8 it looks like they had to dig up the valve
22 boxes to make any modifications, I mean, there's just not
23 enough room to work.

24 Q. Okay. Alright, now let's talk about code. Dean, are you
25 familiar, and you ca -- it's already been stated in here that

1 the, that the 2000 International Plumbing Code would've been
2 in effect at this house the time this construction was goin'
3 on, do you agree with that statement?

4 A. Yes, sir, there are a good many building codes. In fact,
5 the one referenced in here was different from that. This
6 references the Uniform Plumbing Code but I'm familiar with the
7 International Building Code which was previously the Standard
8 Building Code.

9 Q. Okay, and in, uh, and and you also, would you also agree
10 that the, that that code is now law in the State of South
11 Carolina as testified to by Mr. Searcy?

12 A. Yes, sir, it's my understanding that the state
13 legislature of South Carolina has enacted the Uniform, excuse,
14 me, the International Building Code as our state building
15 code.

16 Q. Alright. Uh, now you don't know, you don't have all
17 these building codes memorized, do ya?

18 A. No, sir, I I go to them to look up specific paragraphs
19 when I have a specific issue. I've never read one 'em from
20 cover to cover.

21 Q. Okay. Are you familiar with Section 101.1 of the
22 International Plumbing Code 2000 version?

23 A. I have become recently familiar with it.

24 Q. It's just right there (indicating), can you read that for
25 me, please.

1 A. I can and now which one did you -- which paragraph?

2 Q. 101 -- 108.1.

3 A. 108.1.

4 Q. Okay.

5 A. Alright, 108.1 is "Entitled unlawful acts". "It shall be
6 unlawful for any person, firm, or corporation to erect,
7 construct, alter, repair, remove, demolish or utilize any
8 plumbing system or cause same to be done in conflict or in
9 violation of any of the provisions of this code."

10 Q. Alright, and now let me ask ya this: Are you also
11 familiar with, uh, the I believe it's 302.2 we'll make ---

12 A. There's one -- there's paragraph on here entitled
13 "303.2".

14 Q. Okay. Now wait, let me back up. Now you're readin' that
15 off of a document I gave you, is that your understanding of a,
16 of the language of that particular code 1 -- 101 -- 108.1?

17 A. There's one word in this ---

18 Q. No, no, no ---

19 A. (Indiscernible cross-talk.)

20 Q. --- 10 -- 108.1.

21 A. 108.1 yes, that is word for word what I read in the code
22 myself.

23 Q. Okay. How 'bout the next paragraph, what section is
24 that?

25 A. This is Section 303.2.

1 Q. Right, and can you read it as edited.

2 A. Yes, sir, I'll read it as I edit it. It says, "All
3 material used must be installed in strict accordance with the
4 standards under which the materials are accepted and approved.
5 In the absence of su -- such installation procedures, the
6 manufactures ins -- instructions shall be followed. Where the
7 requirements of referenced standards or manufacture's
8 installation instructions do not conform to minimum provisions
9 of this code, the provisions of this code shall apply.

10 Q. Alright. What does the first, what does 108.1 say,
11 what's ---

12 A. 108.1 just says do it in accordance with the code 'cause
13 that's the law.

14 Q. Alright, now what does 302.2 I guess what it it say?

15 A. 303.2.

16 Q. 303. excuse me.

17 A. It says three things; first, that you have to install it
18 under conditions that the piece was designed for, that's what
19 they mean by the conditions under which the materials are
20 accepted and approved. You wouldn't put steel into something
21 that would eat steel for example. The second sentence says
22 that ---

23 Q. Oh, ---

24 A. --- if you don't ---

25 Q. --- let me stop you there. Did -- was that particular

1 part a the provision, uh, complied with?

2 A. Yes, sir, I mean, this is a bronze system and bronze is
3 perfectly acceptable for use in potable water.

4 Q. Alright. Second one?

5 A. The second one says, If you you don't have that issue
6 then you put it in in accordance with the manufacturer of the
7 device's installation instructions.

8 Q. Okay, and the third part.

9 A. The third part says, If there's a conflict between the
10 manufacture's instruction and the code, the code is gonna
11 win.

12 Q. Alright. Now to your knowledge there a conflict with the
13 code in that third part that woulda s -- it it obviated the
14 following the manufacture's instructions?

15 A. There's no conflict, it just says follow the
16 manufacturer's instructions unless they conflict with the
17 code. I see no conflict with the code in the manufacture's
18 instructions.

19 Q. So in you opinion what should have happened here?

20 A. They should have followed the manufacture's instructions.

21 Q. And did they?

22 A. No, sir, not in accordance with the, uh, side clearance
23 and maintenance issue, no.

24 Q. Okay. Now there's been all this talk about this relief
25 valve, ---

1 A. Yes, sir.

2 Q. --- okay, and specifically they've tried to make a lotta
3 hey outta the fact that there's not been any, this this relief
4 valve was never installed thereafter, is that your
5 understanding what happened here, there's no relief valve on
6 this house?

7 A. I'm aware there's no relief valve it's 'cause there's
8 something considerably more expensive and better than a relief
9 valve.

10 Q. Which is what what?

11 A. Mr., uh, Wennerstrom had installed whole house electronic
12 leak detection system. This will detect a leak from anything
13 whether or not it's caused by an over pressurization so that
14 eliminates the need for relief valve. I suggested a relief
15 valve because it is the cheapest and simplest way to protect
16 the house from an over pressurization from a regulator
17 failure. All my relief valve will do would protect him from a
18 regulator failure, his system protects him from any form of
19 leak, he doesn't need a relief valve.

20 Q. Got it, okay. And so in summary, did you hear Mr. Searcy
21 testify today that he would expect that B&B follow code when
22 they're, uh, in performing work on this house?

23 A. I heard him say that, yes.

24 Q. And did you also hear him say that if they didn't follow
25 code then that be breakin' the law?

1 A. I heard him say that, yes.

2 Q. Now do you agree what Mr. Searcy said?

3 A. I agree. My experience has been that since the code is
4 enacted by law that if you violate the code then you have
5 broken the law.

6 Q. Alright. Was B&B's installation of this device in
7 concurrence with code?

8 A. Not for the maintenance and side clearance issue of the
9 code, no.

10 Q. Okay. Now -- nothing further, Your Honor.

11 THE COURT: Alright, ladies and gentlemen, uh, we're
12 going to take a break for lunch right now. Um, looking at the
13 clock on the wall I'm gonna ask if you would be back in the
14 jury deliberation room by 2:30. I need to, uh, remind you
15 that you cannot have any discussions among yourselves or
16 anyone else 'bout anything involving the case as well as do
17 not do any type of independent research or investigation in
18 into the case by looking up anything but, uh, we'll see ya
19 back just shortly, you may go with the bailiff.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Alright, Mr. Harris, I just need to remind
23 you that you're in the process of giving your testimony so you
24 cannot have any discussions with anyone about the substance of
25 your testimony, okay, ---

1 THE WITNESS: Yes, sir.

2 THE COURT: --- but you may step down.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness left the stand.)

5 THE COURT: We will step down and see you shortly.

6 MR. IMHOFF: What time did you say, Your Honor?

7 THE COURT: 2:30.

8 (Whereupon, a recess was taken.)

9 (E-mail from Elizabeth Gast marked Defendants' Exhibit
10 No. 4, ED&T opening folder marked Defendants' Exhibit No. 5,
11 invoice dated 3/31/09 marked Defendants' Exhibit No. 6,
12 invoice dated 1/30/10 marked Defendants' Exhibit No. 7,
13 subpoena marked Defendants' Exhibit No. 8, letter dated
14 10/4/12 marked Defendants' Exhibit No. 9, letter dated
15 12/10/12 marked Defendants' Exhibit No. 10, letter dated
16 3/19/13 marked Defendants' Exhibit No. 11, photograph marked
17 Defendants' Exhibit No. 12, e-mail dated 4/24/09 marked
18 Defendants' Exhibit No. 13, letter dated 10/15/09 marked
19 Defendants' Exhibit No. 14, e-mail dated 9/16/09 marked
20 Defendants' Exhibit No. 15, letter dated 11/25/09 marked
21 Defendants' Exhibit No. 17 and e-mail dated 9/27/13 marked
22 Defendants' Exhibit No. 18 for identification.)

23 THE COURT: Anything before we bring the jury in?

24 MR. IMHOFF: Nothing, Your Honor.

25 THE COURT: Alright, let's ---

1 MR. DEAL: No, Your Honor.

2 THE COURT: --- let's bring 'em in Mr. Seay.

3 THE WITNESS: Should I ---

4 THE COURT: Yeah, yeah, yes, I'm sorry just c'mon up.

5 Need to remind you you remain understand oath.

6 THE WITNESS: Yes, sir.

7 (Whereupon, the witness returned to the stand.)

8 (The following takes place in front of the jury.)

9 THE COURT: Yes, sir, Mr. Imhoff.

10 MR. IMHOFF: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. IMHOFF:

12 Q. Alright, Mr. Harris, good afternoon.

13 A. Good afternoon.

14 Q. Let's let's talk about, let's start right away at the
15 beginning, when were you first contacted about this case?

16 A. Our case opening form shows we opened the file on the
17 9th, I believe I was contacted three or four days earlier by
18 telephone.

19 Q. Okay, I gotta get perfect in here. Alright, I'm gonna
20 hand you defense Exhibit No. 4, go ahead and take a look at
21 that Mr. Harris. Is that an e-mail on February 5th 2009 at
22 9:50 p.m. from Elizabeth Gast at Cozen & O'Connor to you?

23 A. I'm sorry, repeat the date.

24 Q. On the bottom February ---

25 A. At the ---

1 Q. --- 5th.

2 A. --- bottom? Yes, sir, it's at February 5th.

3 Q. Alright, and that's Elizabeth Gast is with who?

4 A. She was an attorney with Cozen O'Connor at the time.

5 Q. Okay. And is she assigning this this job to you?

6 A. She had asked me to do this investigation, yes.

7 Q. Alright, so is the earliest date that you can recall that
8 you were contacted by Cozen & O'Connor on February 5th 2009?

9 A. Yes.

10 Q. Alright. How long after this flooding was that?

11 A. I don't remember the exact date of the flood, I know that
12 the house had been partially, uh, demolished when I got there,
13 they cleaned up.

14 Q. Does January 27th sound about right to you?

15 A. I don't recall the date.

16 Q. Alright, you've worked for Cozen & O'Connor as an expert
17 for over twenty-five years, is that right?

18 A. No, sir, not quite. Probly the first case I did with
19 Cozen O'Connor would be about twenty years ago.

20 Q. Might as well do this now, Mr. Harris, do you recall that
21 I took your -- Your Honor, may I open this?

22 THE COURT: Yes, sir.

23 (Whereupon, counsel opened the deposition.)

24 Q. You recall that I took your deposition in this case,
25 Mr. Harris, ---

1 A. I do.

2 Q. --- uh, October 18th 2012.

3 A. I don't remember the date of the deposition.

4 Q. Do you see that your deposition transcript says October
5 18th 2012?

6 A. I see that.

7 Q. Okay, do you disagree with that?

8 A. No, sir, I just didn't remember it.

9 Q. Were you sworn in at that deposition, Mr. Harris?

10 A. Yes, sir.

11 Q. Okay. Did you swear to tell the truth, the whole
12 truth?

13 A. I did.

14 Q. Did you, did you tell the whole truth and the whole truth
15 during that deposition?

16 A. The best a my knowledge yes, sir.

17 Q. Alright, and are you also under oath here today to tell
18 the truth and the whole truth?

19 A. Yes, sir, I am.

20 Q. I'm just gonna set that next to you. Let me, let let me
21 change track a little bit. Have you been testifying as a
22 forensic expert for twenty-five years?

23 A. No, sir, I've been an employee of ED&T for twenty-five
24 years. I told you earlier in direct that I ran the design
25 division for the first two years, I've only been consulting

1 about twenty-three.

2 Q. You told, you told Mr. Deal that?

3 A. That's what I testified to a few moments ago, yes.

4 Q. Alright. Go ahead and look at Page 145 of your
5 deposition if you will.

6 A. I have it open.

7 Q. Alright, and I'm gonna go down to Page or Nu -- Line
8 Number 7 where I ask my question, "Do you know how many times
9 you worked for Cozen & O'Connor," go ahead and read the answer
10 if you would, please?

11 A. "Exactly no but a good many. Cozen O'Connor is a major
12 insurance subrogation law firm. I had been doing what I do
13 for twenty-five years so I probably done tens of cases for
14 Cozen O'Connor."

15 Q. Okay, and by that you didn't mean that you'd been working
16 for Cozen O'Connor twenty-five years or that you've been doing
17 forensic investigation for twenty-five years, you meant
18 something different?

19 A. I meant I've been employed by ED&T for twenty-five years
20 and that I encountered Cozen during that employment but
21 Cozen's a rather large subrogation firm, I probably would not
22 have worked for them in my first three or four years at the
23 company.

24 Q. Okay. Alright, but you've done tens of cases for Cozen.

25 A. I would say at least, yes, over twenty-five years.

1 Q. And for twenty years did you say earlier?

2 A. Twenty, I've been with ED&T over twenty-five years, I've
3 been working as a consultant with ED&T for a little over
4 twenty-three years.

5 Q. Okay. I'm just speaking as to the attorneys Cozen &
6 O'Connor.

7 A. I don't recall the first time I did a case for them, it
8 almost certainly was not in my first two or three years.

9 Q. Okay, could it have been twenty years?

10 A. Yes, sir.

11 Q. Do you remember if it's been twenty years?

12 A. No, sir, I can't recall the first case I did for Cozen
13 O'Connor.

14 Q. Okay, but you've been providing Cozen & O'Connor, the law
15 firm, opinions tens of dozens I believe you said for a very
16 long time, is that fair?

17 A. Them and dozens of other law firms cross this country.

18 Q. Right, and they pay you \$250 an hour provide that
19 opinion, that right?

20 A. No, sir, the Cozen's client ultimately plays my company
21 \$250 an hour not for my opinion but for my engineering
22 services.

23 Q. Okay. Well you don't design anything do you,
24 Mr. Harris?

25 A. I can, still do occasionally.

1 Q. Okay. Believe your testimony this morning was that you
2 do forensic evaluation now, you very rarely design anything.

3 A. Yes, sir.

4 Q. Okay. Has Cozen & O'Connor ever hired you to design
5 anything?

6 A. Only in the cases when in my work I've had to offer
7 alternate designs for what was present, just as I've offered
8 here alternate design that includes a pressure relief
9 device.

10 Q. Okay. So what happens first is you find somethin' has
11 failed or somethin' wrong and then you provide an alternate
12 opinion of what shoulda been done.

13 A. Yes, sir, that would be one way of doing it.

14 Q. Okay. So number one is find somebody that did somethin'
15 wrong.

16 A. No, sir. One, number one is find out what happened.
17 Many times it doesn't mean anything did anybody wrong, I'm
18 simply finding out what happened.

19 Q. Well what business is Cozen & O'Connor in, Mr. Harris?

20 A. They are a law firm.

21 Q. Okay, that mean they file lawsuits?

22 A. That's one of the things they do yes, sir.

23 Q. Okay, is it your understanding that when they hire you
24 they're hiring you to develop an opinion so that they can file
25 a lawsuit?

1 A. No, sir, that is not my understanding. My understanding
2 is that they hire me to find the root cause of the incident.
3 and then if that root cause they think is something actionable
4 they can choose to file suit. . .

5 Q. You just said "root cause," is that right?

6 A. Yes, sir.

7 Q. We're gonna come back to that. What does root cause
8 mean, Mr. Harris?

9 A. Root cause in my opinion is that one item or in some
10 cases more than one item without which the incident cannot
11 occur.

12 Q. Okay. We will come back to that. Alright, so you
13 understand that Cozen & O'Connor is a law firm and the law
14 firm files suits on be -- on behalf of insurance companies.

15 A. I understand one of the things they do is file suit on
16 behalf of the insurance companies, they also conduct
17 investigations on behalf of insurance companies.

18 Q. And that's exactly what happened in this case is you were
19 hired by Cozen & O'Connor to conduct an investigation.

20 A. That is correct. Cozen O'Connor asked me to conduct an
21 investigation as to what caused the leak in the Wennerstrom
22 house.

23 Q. Okay, and you took this job like you take any other job
24 to make a fee, is that right, Mr. Harris?

25 A. I'm sorry, to make what?

1 Q. To make a fee, to make a living.

2 A. I took this job like I do anything else, yes, sir. I'm
3 paid to be an engineer just like you're paid to be an
4 attorney.

5 Q. And and you're actually paid through your firm based on
6 the amount of money you bring in.

7 A. I'm paid by the hour yes, sir.

8 Q. Okay. And the more hours you bill the more money you
9 personally make.

10 A. Sure just like anybody else who's working by the hour.

11 Q. Alright. And you've had your deposition taken over a
12 hundred times, that right?

13 A. I would say probably over twenty, twenty-five years it's
14 been a hundred times.

15 Q. Alright, and so does that mean that you've given at least
16 a hundred opinions?

17 A. If you consider them the same opinion offered more than
18 once to be different opinions then, yes. I issue an opinion
19 every time I issue an engineering report and I handle as many
20 as fifteen or twenty cases at a time.

21 Q. And you've billed on this case over \$10,000, that
22 right?

23 A. I don't know the exact amount but I would say it's
24 probably been over \$10,000, yes.

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

1 MR. IMHOFF: Alright, Defense Exhibit No. 4 I will, I
2 will ask to move that into evidence.

3 MR. DEAL: Yep, ---

4 MR. IMHOFF: I'm gonna hand you just ---

5 MR. DEAL: --- no objection.

6 THE COURT: Without objection be Defense 4. Can you
7 identify what Defense 4 is.

8 MR. IMHOFF: Uh, Your Honor, it was the, uh, e-mail from
9 Elizabeth Gast ---

10 THE COURT: Thank you.

11 MR. IMHOFF: --- pertaining ED&T.

12 (Defendants' Exhibit No. 4, letter from Elizabeth Gast,
13 admitted into evidence.)

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

15 BY MR. IMHOFF:

16 Q. Alright, let me hand you what I've marked as defense
17 Exhibit No. 5, do you recognize that as, uh, your ED&T opening
18 file?

19 A. Yes, sir.

20 Q. Does that reflect that you're paid \$250 an hour?

21 A. It reflects that my company is billing \$250 an hour for
22 my services, yes.

23 Q. And what is the date on that opening folder?

24 A. February 9th 2009.

25 MR. IMHOFF: I would ask to move De -- Defense Exhibit

1 No. 5 into evidence.

2 MR. DEAL: No objection.

3 THE COURT: Without objection be Defense 5.

4 (Defendants' Exhibit No. 5, ED&T opening folder, admitted
5 into evidence.)

6 BY MR. IMHOFF:

7 Q. Alright, Mr. Harris, I'm gonna hand you Defense Nos.,
8 Defense Exhibit No. 6, is that your March 31st 2009 invoice to
9 Cozen & O'Connor?

10 A. This is an invoice from my company to Cozen O'Connor
11 dated March 31st 2009 for our services in this investigation.

12 Q. Okay, and you billed them \$3,977.56?

13 A. Yes, sir, that's my time, some technician time, mileage,
14 etc.

15 MR. IMHOFF: Okay. I would ask to move Exhibit No. 6
16 into evidence.

17 MR. DEAL: No objection, Your Honor.

18 THE COURT: Without objection be Defendants' 6.

19 (Defendants' Exhibit No. 6, invoice dated 3/31/09,
20 admitted into evidence.)

21 BY MR. IMHOFF:

22 Q. Mr. Harris, I'm gonna hand you a January 30th 2010
23 invoice to Cozen & O'Connor, do you recognize this as a copy
24 of your January 30th 2010 invoice?

25 A. Yes, sir, this is a copy of the invoice we sent on

1 January 30th 2010 for our services in this file.

2 Q. Alright, and you bill another \$4,090.80.

3 A. Yes, sir, for my services, the technician to go to the
4 field and do the, uh, testing and for some admin. services.

5 Q. Alright, let's go ahead and look at the second page if
6 you would and go down to November 18th 2009, so now we're nine
7 months after your visit, is that right?

8 A. Yes, sir, that be about right.

9 Q. Okay. And read that please, read that entry to the jury.
10 What were you ---

11 A. On ---

12 Q. --- doin' that day?

13 A. --- on 11/18?

14 Q. Yes, please.

15 A. "On 11/18 I spent fifteen minutes reading and responding
16 to e-mails from Ms. Gast on the subject of the water utility
17 involvement."

18 Q. What was the water utilities involvement, Mr. Harris?

19 A. She wanted to know what water utility was present and
20 what involvement they had here. I determined it was a private
21 water system, it wasn't a city utility.

22 Q. She wanted to sue the water utility.

23 A. I don't know what her reason for asking about it was, she
24 asked me to identify the water service utility.

25 Q. You did some investigation looking into what water

1 utility was responsible for at some point, didn't you?

2 A. No, sir, I gave Mrs. Gast a description of how such a
3 development prob -- project would typically take place and
4 what persons might be involved but I did not do any research
5 on that subject.

6 Q. Okay. You didn't do any research on whether or not you
7 could sue the water utility, Mr. Harris?

8 A. I don't do research on whether or not you can sue
9 anyone.

10 Q. That's right. I'm sorry, you were looking to find out
11 who the responsible party is who ---

12 A. No, sir, I'm looking to find out what happened.

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

14 Q. Alright. Now you do a a majority of your work on behalf
15 of insurance company, is that right?

16 A. Our company's work majority of it is on behalf of
17 insurance companies, that's our biggest client base.

18 Q. And attached to the back a your deposition is actually
19 your CV, your curriculum vitae where you have done a a
20 presentation on subrogation, is that right?

21 A. That's correct, I teach about evidence collection.

22 Q. Alright. Are you a mechanical engineer?

23 A. Yes, sir.

24 Q. You are not a licensed general contractor.

25 A. No, sir, I'm a licensed mechanical engineer.

1 Q. Alright, you're not a licensed general contractor.

2 A. That's correct. I've had occasions where I have used my
3 license in place of a licensed general contractor's license
4 but I do not hold a contractor's license, I hold an
5 engineer's license.

6 Q. You also don't hold a plumber's license, that right,
7 Mr. Harris.

8 A. That's correct.

9 Q. Right. And you do not build residential homes in the
10 State of South Carolina, ---

11 A. Only from ---

12 Q. --- correct?

13 A. --- my own occupation I have built three.

14 Q. Okay. And you do not build homes at the Cliff at Glassy,
15 is that right, Mr. Harris?

16 A. No, sir, I do not build homes in that, uh, development.

17 Q. And you've never installed a plumbing system in any
18 residential home other than your own.

19 A. That would be correct. Personally installed, the only
20 ones I've ever personally installed were in my own home as far
21 as residence are concerned.

22 Q. Your specialty is in machinery, equipment and materials.

23 A. Yes, sir, which includes piping and piping systems.

24 Q. But it's, your specialty is not in plumbing.

25 A. Plumbing is a machine.

1 Q. Mr. Harris, your specialty is not in plumbing.

2 A. Plumbing includes the specialty fields of a mechanical
3 engineer, is the natural province of a mechanical engineer.

4 Q. Okay. You ever been paid or have you ever been paid to
5 design a residential plumbing system, Mr. Harris?

6 A. No, sir, I don't think so.

7 Q. Now you have been paid to critique the work of people
8 that install residential plumbing systems.

9 A. I have been paid to critique the design and installation
10 of plumbing systems not the people, just the design and the
11 installation of the system.

12 Q. And you -- well, I sent you a subpoena, it was discussed
13 earlier, I asked you for your file and a list a cases which I
14 I believe you testified to earlier, ---

15 A. We've given you what we could.

16 Q. --- okay, for the last ten year -- actually back to 1997.

17 A. '97 is how long we had it available so that's how far we
18 went back.

19 Q. And in my review of that am I correct that you have only
20 evaluated two residential plumbing systems since 1997 and
21 testified about them?

22 A. When you throw in testified about them, you're probably
23 correct. I've probably examined dozens of plumbing systems,
24 most of our systems don't go to court, most of our work
25 doesn't go to court.

1 Q. Let's get back to this root cause. What is your opinion
2 as to the root cause of this flood in Mr. Wennerstrom's
3 home?

4 A. The the lack of a provision for an over-protection or
5 over-pressurization protection on this house when the
6 regulator failed.

7 Q. Okay. The root cause is not the regulator failure?

8 A. The regulator failure is going to happen, it is
9 inevitable. The root cause was a lack of a way to prevent it
10 from occur.

11 Q. Okay. That's a good regulator the Wilkins 70, right?

12 A. Yes, sir.

13 Q. It's used a lot.

14 A. It's a very common water pressure regulator.

15 Q. Zurn is a good company, is that right?

16 A. I can't speak to good or bad. Zurn is a known
17 manufacturer of plumbing fittings.

18 Q. A big company, isn't it?

19 A. I don't know the size of the company, I know they
20 distribute parts nationwide.

21 Q. The Zurn the, the Zurn plumbing products are used in the
22 bathrooms in this building aren't they, Mr. Harris?

23 A. They are, they're also under class action suit.

24 Q. But that particular regulator was there was the correct
25 regulator for installation on Mr. Wennerstrom's house.

1 A. That was one of many regulators that could have been
2 selected, that regulator met the requirements for the house.

3 Q. So these (indicating) folks when they picked that
4 regulator they picked the right regulator.

5 A. They picked the right regulator, it will reduce the
6 pressure from the line pressure down to the house pressure.
7 Thee problem is the line pressure is well above anything that
8 the house can withstand so when the regulator fails the house
9 is gonna leak.

10 Q. Okay. They didn't design that regulator, did they?

11 A. No, sir.

12 Q. They didn't manufacturer that regulator.

13 A. No, sir.

14 Q. They installed that regulator on the line correctly,
15 right?

16 A. They installed it so that it would function correctly,
17 they did not install it in accordance with the manufacture's
18 installation instructions.

19 Q. They did not cause that regulator to fail.

20 A. No, sir, they did not.

21 Q. Okay. The root cause of that flood in that house is that
22 regulators failure, isn't it?

23 A. No, sir, I've already told you what in my opinion the
24 root cause is.

25 Q. Okay. Alright, what about this location issue that we

1 heard about this morning?

2 A. Yes, sir.

3 Q. What is your opinion about the installation of the
4 regulator at the side of the road 'cause I'm not sure I got it
5 and it's the first time I heard it ---

6 A. Right.

7 Q. --- so what is your opinion, Mr. Harris?

8 A. First of all, we discussed this in my deposition so it's
9 not the first time you've heard it but my opinion is not just
10 that it's located in the road, it's located at the corner of
11 the road, it's under ground, there's no marking to tell you
12 what it is, Mr. Wennerstrom was totally unaware that he even
13 owned a pressure regulator.

14 Q. Alright, that's based or on your discussion with him is
15 that right?

16 A. The fact that he says he didn't know it, yes, that's
17 based on my discussions with ---

18 Q. Okay.

19 A. --- him, the rest of it's based on my observation of the
20 location of the regulator.

21 Q. I think Mr. Deal has already put this photograph into
22 evidence, that's Plaintiff's Exhibit No. 8, where is the
23 pressure regulator valve box, Mr. Harris?

24 A. I've already answered this question earlier, I can't tell
25 you which one of those holes in the ground was the pressure

1 regulator ground box without comparing it to the photos I took
2 at the time but it's in one of these three or four holes
3 that's dug in ground at this location.

4 Q. Why don't you know where it was, Mr. Harris?

5 A. Because I don't have my photograph in front of me to
6 compare it to these other valve boxes to tell which is which.

7 Q. Did you bring your photographs with ya today, Mr. Harris?

8 A. They're in my file.

9 Q. Alright, would you like to look at your photographs so
10 that you can determine which one of these valve boxes was the
11 one that the regulator was in?

12 A. Only if that's important to you.

13 Q. Well, Mr. Harris, I think it's probly important to this
14 jury, let's go head and get those photographs. Where are
15 they, Mr. Harris, I'll bring 'em to you?

16 A. They're in that accordion folder.

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

18 MR. DEAL: Which one, Dean?

19 THE WITNESS: The one that's on the ground in front of
20 ya.

21 MR. DEAL: This (indicating)?

22 THE WITNESS: Your Honor, may I go get my file?

23 THE COURT: Yes, sir, that might speed things along.

24 (Whereupon the witness left the stand.)

25 (Whereupon, the witness returned to the stand.)

1 BY MR. IMHOFF:

2 Q. I'll let ya go ahead and look through your photographs,
3 Mr. Harris, and see if you can identify the photograph that
4 shows the valve box you've testified to this jury about this
5 morning.

6 (Pause.)

7 A. Now actually according to my photographs they had already
8 dug up the valve box at the time the regulator's sittin' in
9 the ground and that photograph is actually one of mine but I
10 can't tell you which hole in the ground from this perspective
11 is the regulator hole.

12 Q. Did you take the picture, Mr. Harris?

13 A. Yes, I did.

14 Q. You personally take ---

15 A. Took this ---

16 Q. --- the picture?

17 A. --- picture 'bout four years ago.

18 Q. You took it?

19 A. Yes.

20 Q. Are you sure, are you sure it wasn't your assistant after
21 you left?

22 A. My assistant did not visit the home for photography, they
23 only came to do the, uh, installation of the recording
24 pressure logger.

25 Q. Okay. Well there's Plaintiff's No. 8, which valve box is

1 the one that you testified about this morning, Mr. Harris?

2 A. First of all, the valve box has already been removed,
3 there's three valve boxes laying on the ground. I can't tell
4 ya which one of them at one time had the regulator. The photo
5 that I took the regulator shows that there's no box around it
6 in the ground.

7 Q. Okay. Mr. Harris, do you see the valve box sitting on
8 the driveway there?

9 A. I see three valve boxes sitting on the driveway there
10 so. . .

11 Q. And those are all irrigation valve boxes, aren't they?

12 A. They could be. They're valve boxes, I don't know what
13 they came off of.

14 Q. And the regulator valve box is right there (indicating).

15 A. The square one?

16 Q. Well I would call it a rectangle, Mr. Harris, but yes,
17 the one you ---

18 A. I ---

19 Q. --- testified about this morning.

20 A. --- the photograph I'm looking at doesn't show the walls
21 of a box, it just shows a hole in the ground.

22 Q. How big is the box the valve was in, Mr. Harris?

23 A. I don't recall the exact dimensions.

24 Q. Didn't you testify this morning to the jury that that
25 these (indicating) folks violated the code because the box

1 wasn't big enough?

2 A. They had to dig the box up remove the, uh, regulator.

3 Q. Mr. Harris, can you testify with any reasonable degree of
4 certainty that that is not the valve box that holds the
5 regulator?

6 A. No, sir, I can simply look at this photograph I have of
7 a, of the regulator that's half buried in the ground.

8 Q. Okay, so it's possible that that valve box right there
9 (indicating) is the valve box that holds the regulator.

10 A. It could be yes, sir.

11 Q. How big was it?

12 A. I told you that I don't know the exact dimensions.

13 Q. Did you take a measurement of it?

14 A. No, sir.

15 Q. Did ya take a picture of it with a ruler next to it?

16 A. No, sir, I just took a picture of the valve in the
17 ground.

18 Q. Am I correct that you testified earlier that these
19 (indicating) folks violated the code because there was not
20 enough space around the, uh, okay, I'll I'll read it, There
21 was not enough space around the valve, it shall be installed
22 with sufficient side clearance for testing and maintenance.
23 That was your testimony, was it, this morning, Mr. Harris?

24 A. That plus the fact that it's in the ground. I mentioned
25 the fact that if you tried to maintain it in the ground you're

1 gonna get it full of dirt.

2 Q. Did you testify this morning that the basis for your
3 opinion of these (indicating) folks violating the code was
4 that there was not sufficient space to maintain and prepare
5 the regulator?

6 A. It was on the basis of the installation did not follow
7 the manufacture's instructions and that was one of those
8 instructions.

9 Q. Okay. That was one of those instructions ---

10 A. Correct.

11 Q. --- and it's your opinion that these (indicating) folks
12 violated the code because there wasn't sufficient space to
13 repair and maintain the regulator, right? yes?

14 A. That's one of the reasons why that they had violated the
15 instructions.

16 Q. And you don't know, you can't point in that picture where
17 the valve box is, right?

18 A. I can point that it is one of these holes in the ground,
19 exactly which one I can't tell you, it was four years ago.

20 Q. And you can't tell this jury how big the valve box was.

21 A. No, but you can take a look at this picture and see the
22 valve sitting in a hole in the ground.

23 Q. We'll want that picture just a minute but you can't tell
24 this jury how big the valve box was.

25 A. Exactly how big no.

1 Q. And ya didn't take a picture of the valve box with the
2 ruler next to it or anything else that can tell us how big it
3 was.

4 A. No, sir, I did not take a picture of it with a ruler next
5 to it.

6 Q. How do you repair that valve?

7 A. You take the bonding off, you disassemble it and you
8 replace the cartridge, you replace the diaphragm, you replace
9 the sealants.

10 Q. Is that (indicating) the bonnet?

11 A. It is.

12 Q. And you put your wrench right there (indicating) on that
13 nut and turn it?

14 A. Yes, sir, I would assume so.

15 Q. And it's threaded so that turns, right?

16 A. That's correct.

17 Q. So if you wanna repair this what ya have to do put a
18 wrench on it, turn it and pull it out, ---

19 A. Or what you have to do ---

20 Q. --- right?

21 A. --- in this case is dig it up then put a wrench on it,
22 turn it.

23 Q. Mr. Harris, assuming that you don't know which one a
24 these is the valve box which you've testified to, if that's
25 (indicating) the valve box, it doesn't need to be dug up, does

1 it?

2 A. The valve in this picture is half buried in the dirt, it
3 had to be dug up.

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

5 MR. IMHOFF: I apologize, Your Honor, I'm outta order.
6 Can I change the number on it, can I submit it outta order?

7 COURT REPORTER: Yeah.

8 BY MR. IMHOFF:

9 Q. Okay, I'm gonna hand you Defense Exhibit No. 12, do you
10 that as a picture you took of the regulator valve?

11 A. Yes, sir, I do.

12 Q. Or someone took.

13 A. I took this one I believe.

14 Q. Is that the picture you keep referring to?

15 A. It's one of the two.

16 Q. I would move Exhibit No. twe -- 12 in evidence.

17 MR. DEAL: No objection.

18 THE COURT: Without objection be Defendants' 12.

19 (Defendants' Exhibit No. 12, photograph, admitted into
20 evidence.)

21 BY MR. IMHOFF:

22 Q. Now ya had to take the valve box cover off to look at
23 that didn't you, Mr. Harris?

24 A. Think the valve box cover was already off but, yes, it
25 had to be removed to look at that.

1 Q. Somebody took it off, right? Somebody took the valve box
2 cover off.

3 A. Yes.

4 Q. Okay. And that's the valve, right?

5 A. That is the pressure regulator in question.

6 Q. And is that -- are those little nuts right there
7 (indicating) the same nuts as that right there (indicating)?

8 A. They are.

9 Q. So you could put your wrench on that, on that little nut
10 right there (indicating), turn the bottle cap, take it off,
11 replace the spring and replace the diaphragm, ---

12 Q. And if you do it ---

13 Q. --- correct?

14 A. --- just like that right there (indicating) since you
15 take the nut off interior's gonna be full a dirt.

16 Q. Well, that's right. Now, did it look like that 2003 when
17 it was installed?

18 A. I don't know what it looked like when it was installed.

19 Q. You don't, do you? So do you know that the plumber after
20 he installed this plumbing here (indicating) scooped up some
21 dirt and threw it on his plumbing fixture?

22 A. No, sir, I don't know that.

23 Q. That your testimony here today?

24 A. I haven't testified to anything remotely resembling that,
25 I just said that the valve was buried in the dirt.

1 Q. Does it make common sense that the plumber after he
2 installed his valve would cover it with dirt and then put the
3 valve cover back on?

4 A. No, sir, I suspect the dirt came into the valve box after
5 he had done it, it happens with valve boxes when you use under
6 ground boxes.

7 Q. Over six years, right?

8 A. Over a length of time.

9 Q. Okay, so their installation didn't put that, half a that
10 valve under the dirt, it just happens over time, ---

11 A. If you ---

12 Q. --- right?

13 A. --- put a valve in the valve box, it's going to get
14 buried in dirt.

15 Q. Right, and that's the reason that Wilkins the Zurn
16 Company requires you to maintain the valve.

17 A. And they ma -- they require you to maintain the valve
18 because the valve will fail in service.

19 Q. I'm gonna ask ya again, Mr. Harris, do you still believe
20 that my clients violated the code because you couldn't get in
21 and repair that valve?

22 A. For me as a maintenance engineer yes, that's not the way
23 I would put something in for maintenance, it's not a good
24 installation for maintenance.

25 Q. I just wanna stick with the one question, Mr. Harris.

1 Can a qualified engineer if ya like but let's say plumber also
2 take the cover off the valve box, put a wrench in the valve
3 box, take the bonnet off the valve and replace the spring, uh,
4 and this (indicating) rubber piece, the diaphragm the way it
5 was installed?

6 A. Just like it is no, ---

7 Q. Sure.

8 A. --- because when he does it's gonna be full a dirt.

9 Q. Okay. Well let me change my question. He goes in there
10 with a little shovel, a little broom and moves the dirt back
11 and then he stick both of his hands into the valve box with a
12 wrench, turn the bonnet, pull it up and put a spring and a
13 diaphragm in and fix that relief re -- re -- reduction valve.

14 A. He could. Without a pressure gauge on the other side of
15 it he wouldn't no whether it needs fixin' or not.

16 Q. So my clients did not violate the code, Mr. Harris, in
17 installation of that valve box and that valve in the box.

18 A. That's your testimony. I've testified that he violated
19 the code and that the code requires him to follow the
20 manufacture's installation instructions and he didn't. He not
21 only didn't have clearance, he didn't put in the strainer that
22 the manufacture recommends, he didn't put in the pressure
23 gauge the manufacture recommends.

24 Q. Let's talk about the location of the valve box.

25 A. Alright.

1 Q. You asked this man Mr. Hafner to move the reduction valve
2 into the garage, correct?

3 A. No, sir, I told Mr. Wennerstrom that's what I would do if
4 I was the house owner.

5 Q. Okay. You don't remember directin' Mr. Hafner to do
6 that?

7 A. I can't direct Mr. Hafner to do anything, I could suggest
8 he do something but I don't have the authority to direct him
9 to do anything.

10 Q. And so once you put that valve into the garage everything
11 between the reduction valve and the street is at the mercy of
12 whatever utility's water pressure is, ---

13 A. If you ---

14 Q. --- correct?

15 A. --- left that connection alone, you would also tie your
16 irrigation system downstream of the relief of the, uh,
17 regulator.

18 Q. Where's the ear investigation irrigation system tied in,
19 Mr. Harris?

20 A. Somebody chose to put it out at the street.

21 Q. So when you moved the pressure reduction valve into the
22 garage, you left Mr. Wennerstrom's entire irrigation system at
23 the mercy of whatever the pressure is.

24 A. No, sir, you simply run a supply line from the regulator
25 back out to the irrigation lines, that's all you would have to

1 do, one single short line.

2 Q. Tell anybody that?

3 A. No, sir, I didn't even realize he had an irrigation
4 system.

5 Q. Even with all these irrigation valve ---

6 A. I didn't ---

7 Q. --- covers?

8 A. --- open the boxes to see what was in them.

9 Q. You didn't think Mr. Wennerstrom's \$3 million house had
10 an irrigation system?

11 A. At that particular time there wasn't much yard at the
12 house, it was mostly rock if I remember correctly. I don't
13 recall the landscaping, I was there to investigate a leaking
14 plumbing fitting.

15 Q. How many connections, tees, turns are there between the
16 street and where you determined that the pressure reduction
17 valve should go?

18 A. Without looking at the house plans for the, uh, plumbing
19 I couldn't tell you exactly how many.

20 Q. Alright. If there are any, they're at the mercy of the
21 water pressure now because you moved that valve into the
22 garage, correct?

23 A. The line, supply line to the house is probably good for a
24 couple thousand PSI. They set the rate for the same type of
25 pressure that the, uh, main line is so yes, it would cease

1 full supply line pressure 'til it reached the house.

2 Q. Let's talk about one cut in specifically, Mr. Harris.

3 You put a pressure reading valve on the plumbing system, is
4 that right?

5 A. I recommend that when you have a part that if it fails
6 will over pressure your house that you put a protection device
7 called a "pressure relief valve," your, uh, water has one
8 similar to it on it.

9 Q. Okay. I didn't ask you for a pressure relief valve, I
10 asked you about pressure reading device so that you could
11 determine ---

12 A. Oh.

13 Q. --- what the pressure is at the street.

14 A. Yes, sir, there's supposed to be a pressure gauge on the
15 downstream side of the regulator, that's not the street
16 pressure that would show the regulated pressure.

17 Q. Alright. Mr. Harris, let me be a little bit more
18 specific. You have a lotta documents telling us what the
19 pressure is coming from the water utility, right?

20 A. I have a read-out from the, uh, data logger, yes.

21 Q. Okay. So there was a data logger put on this system at
22 some point, is that right?

23 A. That is correct.

24 Q. And that data logger was put in front of the pressure
25 reduction valve so you could determine what the pressure was

1 at the street.

2 A. There was no pressure reduction valve between this and
3 the street, that's correct, we were checking line pressure.

4 Q. That's right. And where you directed that to be put is
5 in the garage right underneath the pressure regulator.

6 A. That's why I directed the pressure regulator I
7 recommended it be installed, if that's where my technician
8 made the connection then that's fine. I told him it had to be
9 on the upstream side of any regulator.

10 Q. So you directed Mr. Wennerstrom's plumbing line to be cut
11 into and installed a pressure reading device.

12 A. I don't think he had to cut into the line, he just had to
13 disconnect a fitting.

14 Q. And then put your pressure reading device in and then
15 connect it back to the line.

16 A. That is correct.

17 Q. Okay. What are those connections rated for
18 pressure-wise, Mr. Harris?

19 A. Typically a hundred fifty pounds.

20 Q. You found a hundred and eighty pounds pressure out there,
21 is that right, Mr. Harris, ---

22 A. Yes, that's ---

23 Q. --- least for twenty minutes.

24 A. --- what we found.

25 Q. I'm sorry?

1 A. Which connections are you asking me about? the data
2 logger?

3 Q. Yes.

4 A. The instrument?

5 Q. Yes.

6 A. I don't know what those are. Since the instruments can
7 be used on almost any type of system, it's probly rated for
8 several hundred pounds, I didn't check. The fittings on the
9 line itself were rated a hundred fifty pounds.

10 Q. Right, and so when you took your device off and you
11 closed his system back up, now ya have two cuts on his line
12 that are ra -- rated for a hundred and fifty pounds which
13 based on your own evaluation will experience pressures of
14 hundred and eighty pounds occasionally.

15 A. There was a plumber available to make these connections
16 as far as I know, ---

17 Q. You put ---

18 A. --- did not leave ---

19 Q. --- his ---

20 A. --- his system in a case were it would be ruptured.

21 Q. Your direction put Mr. Wennerstrom's line, his irrigation
22 system, all of his connections all of his cut-ins from the
23 street to the regulator at risk, didn't they, Mr. Harris?

24 A. No, sir, it did not.

25 Q. And that's why you put the regulator out at the street to

1 protect the home plumbing system, correct?

2 A. The -- no, sir. The only thing the regulator out at the
3 street will protect would be the supply line underground
4 coming to the house, it -- the putting it at the house you
5 protect everything in the house, the only thing you gain by
6 putting it out at the street is you've got some pressure
7 protection on the main line to the house, the main line to the
8 house is typically good for couple thousand PSI unless.

9 Q. Unless it has cut-ins.

10 A. Excuse me?

11 Q. Unless it has cut-ins, right?

12 A. Unless it has what?

13 Q. Unless it has cut-ins for irrigation, for your device,
14 whatever else ---

15 A. Cuttings?

16 Q. You don't ta -- Mr. Harris, is there one piece of pipe
17 that has never been cut in that comes from the street all the
18 way to pressure regulator valve?

19 A. From the street to the pressure regulator valve likely,
20 yes.

21 Q. And there's no tie-ins of anything else between those
22 two.

23 A. Between the street and the pressure regula -- regulator
24 valve unlikely.

25 Q. What about the irrigation system we're talking about?

1 A. It would be test -- it would be tied in on the downstream
2 side of the regulator valve, not the upstream side.

3 Q. Is it?

4 A. I don't know, I did not investigate the irrigation
5 system.

6 Q. So it's possible that it's in front of the pressure
7 regulator that you moved to the garage and exposed to hundred
8 and fifty to a hundred eighty pounds of pressure.

9 A. If, I didn't, first of all, I did not move the pressure
10 regulator to the garage, I recommended the pressure regulator
11 be moved to the garage. I the pressure regulator is moved to
12 the garage then the upstream or the connection for the
13 irrigation system needs to be moved with it, if it was not
14 then the irrigation system we'll see -- be seeing full supply
15 pressure and you'll probly blow some sprinkler heads out in
16 the yard.

17 Q. Yeah, you make a heck of a hole in the yard, won't ya?

18 A. No, sir, not a very big hole. I've had many sprinkler
19 heads blow, it's something that one does every year with a
20 sprinkler system.

21 Q. Ya ever have one blow at a hundred and fifty PSI?

22 A. No, sir, my well system's limited out at about 90.

23 Q. When I took your deposition, uh, October what was it 18th
24 2002, did you tell me that the plumber and the general
25 contractor complied with the South Carolina building code?

1 A. We were discussing about the provision requiring a
2 regulator and I said they complied with that part a the code.

3 Q. You also testified that they complied with the part of
4 the code that doesn't require a pressure relief valve.

5 A. There is no part of the code that doesn't require
6 pressure relief valve, there's simply not a requirement for it
7 in a section require regulator but there's no place in the
8 code that says, Do not install pressure relief valve.

9 Q. Okay. Let's go through 'em so this jury can understand.
10 Got an opinion about a pressure relief valve, does the code,
11 the plumbing code or the building code, this International
12 Building Code, does it require the general contractor or the
13 builder to install a pressure relief valve?

14 A. No, sir, it does not.

15 Q. Okay. Same question: Does the code, the International
16 Building Code or the Plumbing Code require these plumbers or
17 the general contractor to move the pressure regulating valve
18 into the garage?

19 A. It does not say where it should be located, it simply
20 says install accordance with the manufacture's directions.

21 Q. Okay. And the code you cited early earlier states that
22 you have to comply with the manufacture's installation
23 instructions, that right?

24 A. Correct.

25 Q. Okay. And you looked at the manufacture's installation

1 instructions and they said that you have to have sufficient
2 side clearance for testing and maintenance, that's your third
3 opinion, is that right?

4 A. Not, I've already told ya there was more to it than
5 that.

6 Q. What's what ---

7 A. This installation also shows the regulator mounted at the
8 house, not at the street, and it shows a strainer installed
9 with the regulator.

10 Q. Okay. Now, have you talked to any other plumbers that
11 build at the Cliffs of Glassy to determine whether or not
12 they're putting pressure relief valves on homes?

13 A. Not in that development. I've talked to other plumbers
14 in other developments, I don't know what plumbers might be
15 working in that area, I've talked to other plumbers and what
16 their procedure is with pressure regulators.

17 Q. Okay. Have you gone to the neighbor's house for Mr.
18 Wennerstrom and asked him if he has a pressure relief device
19 on his system?

20 A. No, sir, I have not, that's not part of my
21 investigation.

22 Q. Did you go to the other neighbor's house and ask him?

23 A. No, sir.

24 Q. Did you go to one single house in the Cliffs of Glassy
25 subdivision to determine whether or not other builders and

1 plumbers were putting on pressure relief devices onto the
2 plumbing system?

3 A. No, sir, because whether or not they're doing it in that
4 area or not doing in that area is irrelevant to my opinion.
5 The code requires it and the piping system, the water supply
6 system at this place would require it.

7 Q. The code requires a pressure relief device, Mr. Harris?

8 A. Code requires the regulator and it requires you to
9 install it accordance with the manufacture's instructions.

10 Q. Okay. I'm tryin' real hard to stay on one thing at a
11 time. Did you go to any home in the Cliffs of Glassy
12 subdivision to determine if any other home in that big
13 subdivision has a pressure relief device?

14 A. No, sir, I did not, it would still be irrelevant if none
15 of them had one then I would say we have all of them are
16 fixing to get flooded.

17 Q. Have you written a letter to every owner out in the
18 Cla -- in the Cliffs of Glassy subdivision to tell them that
19 their homes are at risk?

20 A. No, sir, 'cause it doesn't, uh, risk life and limb.

21 Q. Okay. Have you written a letter to the IBC or the
22 plumbing code, this international group a builders and
23 plumbers telling them that they should put pressure relief
24 valves into the code?

25 A. Not on this case, no. I've written various code people

1 and told them when I thought there was an error that
2 endangered human life, this does not endanger human life.

3 Q. Okay. So did you put a, did you put a video on YouTube
4 tellin' all the plumbers and builders in the State a South
5 Carolina that they should install a pressure relief device?

6 A. No, sir, the plumber that I know in my neighborhood knows
7 he's supposed to put one in.

8 Q. Did you publish anything that says residential homes in
9 the State of South Carolina should have a pressure relief
10 device?

11 A. Nothing but any report that I put the -- in the past.

12 Q. Is there report that you put that in?

13 A. Yes, sir, I have put that in reports in the past.

14 Q. Did ya bring it in that stack a reports there
15 (indicating)?

16 A. The report on the case in California is in here, it may
17 have a recommendation for a, uh, relief valve, I don't recall,
18 that was many, many, many years ago.

19 Q. Okay, we're gonna go over that one. You don't recall if
20 it recommends that you put a pressure relief value on a
21 home?

22 A. I don't recall. First of all, I think that was a
23 commercial building not a home and no, I don't recall whether
24 I did or didn't recommend a relief valve.

25 Q. So the question to you again have you ever written

1 anything, published anything that recommends that a pressure
2 relief valve be put on a home?

3 A. I have recommended in many cases a pressure relief valve
4 be put on homes, publishing would only be in the form of a
5 report to a client.

6 Q. Okay. Well in 2003 when these folks were buildin' this
7 home or Mr. or Mr. Searcy and his son, they couldn't have
8 known that they should put a pressure relief valve on the home
9 because Mr. Harris didn't publish it, didn't recommend it,
10 didn't have a video and didn't tell 'em, is that fair?

11 A. No, sir, it's not. They're plumbers, they're builders,
12 they should know how a regulator works and should know -- they
13 should know what the supply pressure is and they should know
14 when this regulator fails this house is gonna flood.

15 Q. Okay. There isn't a single piece of evidence that you
16 can show us or this jury that those folks shoulda known that
17 that pressure reducing valve should have failed is there?

18 A. I would think it's common sense that anything with moving
19 parts and a rubber diaphragm's gonna fail. The other plumbers
20 I've spoken to know that regulators fail, they have
21 recommended service intervals for the regulators.

22 Q. Mr. Harris, is there anything that you brought today with
23 you with you that you could show this jury that those
24 (indicating) two gentlemen and Mr. Searcy should have known
25 that this great Zurn Wilkins pressure regulator was going to

1 fail?

2 A. Yes.

3 Q. What is it?

4 A. I have a document that I downloaded from an internet site
5 of, uh, another plumbing company which tells us about
6 regulators, it tells us that they're going to fail and it
7 recommends inspection and change-out intervals.

8 Q. Okay, and that was readily available to these gentlemen
9 in 2003.

10 A. I don't know if it was available 2003 but tells me that
11 another professional plumber knows this and publishes this
12 information on his website.

13 Q. Alright. Mr. Harris, do you have anything to show this
14 jury from 2003 or 2002 that they should, that these plumbers
15 should have put a pressure relief valve on this house?

16 A. No, sir, I don't have a time machine, I can't go back and
17 find out what was available in 2003.

18 Q. And in fact when I took your deposition you testified
19 that your firm is the only firm in the entire world that has
20 that opinion, correct?

21 A. No, sir, that's also a mischaracterization. What I said
22 is to my knowledge I did not know of anyone else who had
23 expressed the opinion that I've expressed in here. Since then
24 I've asked several people that are knowledgeable in industry
25 and they have agreed with me that you -- the regulator will

1 fail and that the easiest and cheapest way to protect a house
2 from a regulator failure would be to put in a pressure relief
3 device 'cause they're inexpensive.

4 Q. Please pick up your deposition again and look at, flip to
5 Page 99 if you would.

6 A. Yes, sir.

7 Q. I'm gonna start at 5 and if you would answer at 10,
8 "That's what I'm asking you is other than the opinion that
9 you're giving here today can you point to anything published
10 or video, anything that supports your position that when this
11 home was built it needed to have a pressure relief device?"

12 A. "My response is just what I told you a moment ago I have
13 not seen where anyone else has expressed the specific opinion
14 except other people from my company in similar situations,"
15 that's a far cry from saying that no one else in the whole
16 world holds that opinion ---

17 Q. You didn't know that anybody else held that opinion when
18 you gave your ---

19 A. --- 'cause I have never ---

20 Q. --- deposition.

21 A. --- asked anybody else that question until then.

22 Q. Did ya ever ask Mr. Wenner -- Wennerstrom if he modified
23 his plumbing system?

24 A. No, sir, since he didn't even know he had a pressure
25 regulator he didn't strike me as the type that would be

1 modifying the system.

2 Q. Do ya know if he made any modifications to his plumbing
3 system that woulda caused that regulator to fail?

4 A. I can't think of a modification one could make to a
5 plumbing system that would cause a regulator to fail.

6 Q. You were here earlier for all of the testimony, someone
7 opened that pressure regulator all the way, is that right?

8 A. Yes, sir, it has been set at about 75 pounds.

9 Q. Okay. The nut was screwed all the way down to the
10 bonnet.

11 A. It's at its highest pressure setting which is 75 PSI.

12 Q. And whoever did that violated the manufacture's
13 instructions, correct?

14 A. No, sir, it's within the range of what is allowed to be
15 done. You can adjust it to 75 pounds, it comes adjusted at
16 50.

17 Q. This is Exhibit, well it's gotten all torn up but I
18 believe it goes with this, I believe this is Exhibit No. 2 if
19 you will look at that first paragraph last sentence and read
20 along with me, "Do not bottom adjustment bolt on bell
21 housing," ---

22 A. Yes, sir.

23 Q. --- that's what that, that's what the manufacture's
24 directions say.

25 A. It says not to bottom the adjustment bolt.

1 Q. Okay. And is this the adjustment bolt here (indicating).

2 A. It is.

3 Q. And is it bottomed on the bell housing?

4 A. Except to its lowest setting. I don't see on the inside
5 where it has bottomed out on anything which is what bottomed
6 out typically means that the tip of a screw has made
7 contact.

8 Q. And if it's bottomed out that violates the manufacture's
9 instructions, correct?

10 A. If it had bottomed out on inside of the bell housing, it
11 would but all I see is a regulator that's been adjusted to it
12 maxi setting.

13 Q. And so if these (indicating) folks didn't do it someone
14 opened that valve box, reached their hands and their wrench
15 into the valve box and turned that nut all the way down,
16 right?

17 A. Well they had to do more than that. If somebody did do
18 this adjustment, they had to loosen the lock nuts, had to take
19 in two wrenches, they had to know how to adjust the regulator
20 and then they adjusted it to its maximum pressure setting.

21 Q. So someone now was able to open the valve box and stick
22 in two wrenches, two, correct?

23 A. Yes, sir.

24 Q. Sounds like a lotta room to me, Mr. Harris, doesn't
25 it ---

1 A. Not with ---

2 Q. --- to you?

3 A. --- that nut sticking up at the very top, doesn't take
4 much room for about a 3 or 8ths or 7/16ths nut.

5 Q. Okay. Do you know if Mr. We -- Wennerstrom maintained
6 his valve?

7 A. I would say that he did not 'cause he didn't even know he
8 had it.

9 Q. Do you know if anybody did it on his behalf?

10 A. No, sir, Wennerstrom would have had to tell them to,
11 since he didn't know he had one he can't very well have
12 instructed 'em to.

13 Q. Well he mighta told someone to go open it all the way
14 'cause that what he wanted more pressure, right?

15 A. I understood from testimony that he was asking for more
16 pressure and that could be how this got adjusted to 75.

17 Q. Do you know if he was having extremely high pressure in
18 his house before this flood event?

19 A. To my knowledge he was no, he certainly didn't have
20 anything that exceeded the pressure rating of the fittings in
21 the house.

22 Q. Did you ask him, Mr. Harris, if he was having extremely
23 high water pressure in his house before this flood?

24 A. No, sir, I did not.

25 Q. That would be very important to your investigation into

1 the root cause analysis, wouldn't it?

2 A. No, sir, it would just mean when the pressure occurred,
3 it wouldn't say what caused it.

4 Q. Well if he had knowledge that he was -- the regulator was
5 failing 'cause he had high pressure, he should go out and
6 maintain it or hire someone to do that, shouldn't he?

7 A. Regulators don't fail partially, they either work or
8 don't. If it had failed then it woulda started blowing
9 fittings in the house shortly after it fails.

10 Q. Did ya talk to the cleaning lady, Mr. Harris?

11 A. Don't even know that he had a cleaning lady.

12 Q. Did you talk to the Terminex man, Mr. Harris?

13 A. No, sir, none a those would be people that I would
14 normally consult in a root cause investigation of a plumbing
15 fitting.

16 Q. Your opinion is that the, that the bidet fitting flew
17 off.

18 A. That's correct.

19 Q. Isn't it just as possible that it was pulled off?

20 A. Not given that we had, uh, nearly 200 pounds of pressure
21 on the house no, that was more than sufficient to blow the
22 fitting off.

23 Q. You don't know what what the PSI was when this flood
24 occurred, do ya, Mr. Harris?

25 A. I believe it was between a hundred and fifty and a

1 hundred and eighty PSI based on the measurements that we've
2 taken.

3 Q. And there's only one fitting that failed on the house,
4 not multiple, correct?

5 A. That's correct. Once that one blew the pressure in the
6 house would be relieved and none of the others would be
7 overpressured, that was the weakest fitting in the house.

8 Q. But all of the fixtures in the house for some period a
9 time would experience hundred and fifty to a hundred and
10 eighty PSI, wouldn't they, Mr. Harris?

11 A. It may have only been a couple of seconds.

12 Q. Right, but only one failed, right, Mr. Harris?.

13 A. The first one to fail relieve the pressure, the others
14 would no longer see pressure at that point.

15 Q. So again, it's just as possible that that was pulled off,
16 correct?

17 A. No, sir, I don't think it's just as possible not when we
18 had between a hundred and fifty, two hundred pounds of
19 pressure on it. If there was no excessive pressure, then I
20 would be looking for other reasons why it might have come off.

21 Q. Now you've testified that it was between a hundred and
22 fifty to two hundred pounds of pressure.

23 A. I think I just said a hundred and fifty to a hundred and
24 eighty based on my measurements.

25 Q. Okay. There are two pressure relief valves in that

1 house, aren't there Mr. Harris?

2 A. There's one for certain that will be on the, uh, hot
3 water tanks, ---

4 Q. There's two, ---

5 A. --- combination thermal and pressure relief device.

6 Q. --- there's two hot water tanks, aren't there,
7 Mr. Harris?

8 A. I wouldn't know.

9 Q. Well that's sort of important to your investigation also
10 isn't it, Mr. Harris?

11 A. No, sir, I'm not investigating the hot water tank and I'm
12 familiar with the function of the relief valves on hot water
13 tanks, I'm aware that they will not relieve the whole house.

14 Q. Okay. Well your're testifying to this jury that a
15 hundred and fifty to a hundred eighty pounds pressure blew
16 this valve off of a bidet.

17 A. Correct.

18 Q. You also know that water pressure, I'm sorry, water
19 heater relief valves are set at a hundred and fifty PSI,
20 correct?

21 A. Typically.

22 Q. Okay. So you could simply walk into wherever the water
23 heater was and look at the water heater to see if the pressure
24 relief valve opened indicating that the pressure in the house
25 was over a hundred and fifty PSI, correct?

1 A. Well first of all, it wouldn't necessarily indicate that,
2 those are thermal as well as pressure relief devices, they can
3 go off from heat and they can go off from the pressure; number
4 two, most relief valves reset, you can't tell after they've,
5 uh, popped whether or not they had flipped; number three,
6 water heaters are isolated, there's a lot of plumbing to get
7 to them, they do not see the full system pressure typically
8 until it's too late. We've had many cases where water heater
9 relief valves did not serve protect the house, their only
10 purpose is to protect the water heater and they're required
11 because the water heater itself is a pressure vessel.

12 Q. If the pressure in the house was a hundred and fifty to a
13 hundred PSI, the pressure at the pressure relief valve on the
14 water heater would be a hundred and fifty to a hundred eighty
15 PSI, is that right?

16 A. After a certain amount of time, yes.

17 Q. Okay. And you didn't even go look, right?

18 A. No, sir, I did not see the point.

19 Q. We talk about this International Building Code a good
20 bit, let's talk about the building inspector. That's the
21 building inspector's job, Mr. Harris?

22 A. Well it will vary according to what the county building
23 commissioner has assigned him to do but as a general rule the
24 building inspectors check the construction for specific code
25 compliance.

1 Q. Do you have any indication that this home failed its
2 inspection with the county building inspector?

3 A. No, sir, they had a certificate of occupancy which would
4 tell me the building inspector passed the home.

5 Q. You call Zurn to determine how often their regulators
6 fail?

7 A. No, sir, I did not contact Zurn, they were potentially a
8 party to the case.

9 Q. They're not a party to the case today, are they?

10 A. No, sir, they're not but they were potentially a party
11 when I was doing my research. I contacted Wilkins to get
12 information but I did not ask them about the frequency of
13 regulator failures.

14 Q. Yeah.

15 A. I did contact a couple of plumbing companies and asked
16 them for their experience on regulator failures.

17 Q. Now the rate at which regulators have failed, is the
18 entire basis of your opinion that these folks shoulda known
19 that was gonna fail, isn't it?

20 A. Not the rate at which they failed, the inevitability of
21 one eventually failing in service, it will not last forever,
22 it's got a rubber diaphragm, the rubber's gonna split'
23 eventually.

24 Q. Do you expect it to last six years, Mr. Harris?

25 A. I would typically expect one to last six years but

1 they're only warrantied for one and I've seen them fail in as
2 short as two or three.

3 Q. Alright, so your opinion that all regulators fail, ---

4 A. It's not ---

5 Q. --- it's not that they, um, excuse me, it's not that they
6 fail within six years but at some point down the road it will
7 need to be replaced.

8 A. Yes, sir, the Propane Manufacture's Association, for
9 example, has recently enacted standards where they're
10 recommending replacing propane regulators every fifteen years,
11 that's a result of having a group of them fail in service and
12 fail others.

13 Q. Alright. So it was not reasonable for these plumbers to
14 expect that valve to fail within six years?

15 A. Within six years no, eventually yes, it was going to fail
16 and there was nothing to stop the house from flooding.

17 Q. Well it's also supposed to be maintained and replaced by
18 a homeowner, isn't it, Mr. Harris?

19 A. If the homeowner knows he's got one. I understand he did
20 not get the instruction manual for the regulator along with
21 the other appliances in the house, he didn't know he had
22 one.

23 Q. He's the best person to testify about what he knows,
24 isn't he?

25 A. I can only testify about what he told me he knows.

1 Q. Do you know if he's coming, Mr. Harris?

2 A. I do not believe he is coming, I think I heard people
3 tell me he would not be here.

4 Q. Alright. Going back to of how often these regulators
5 fail which is your testimony, you didn't go to the source and
6 ask the manufacturer to provide you with documentation of how
7 often those regulators fail.

8 A. No, sir, I did not. I went to plumbing companies and
9 asked them what their experience with regulator failures in
10 general were not just Wilkins regulators.

11 Q. But certainly the manufacturer of that valve would know
12 how often they failed.

13 A. Probably not. Unless people report failures to them,
14 unless they track failures they probably wouldn't know.

15 Q. You don't think they did any quality control acceptable
16 analysis of that regulator ---

17 A. That ---

18 Q. --- to determine how often it failed, Mr. Harris?

19 A. --- I think they did puttin' up quality control to give
20 it a 1-year warranty and I think that's as far as the
21 manufacture will tell you that it will run, it's as far as he
22 is willing to guarantee that it will work.

23 Q. You don't know what they have 'cause ya didn't ask,
24 that ---

25 A. That's ---

1 Q. --- right?

2 A. --- correct, Zurn could possibly have been a party to
3 this suit, I do not contact people that may possibly be a
4 party to the suit.

5 Q. Okay. And again, you didn't ask any of the builders or
6 any of the plumbers at the Cliffs of Glassy whether they had
7 regulator failures up there.

8 A. No, sir, I asked general plumbing companies about this in
9 general, I wasn't looking at Glassy, I was looking public
10 plumbing practice, there's -- only thing special about this
11 place is it has an unusually high water pressure.

12 Q. Alright. I sent you a subpoena for all your files and
13 we've stacked 'em up over there and we'll talk about 'em but
14 in all the testimony and all the reports that you've provided
15 me since 1997 you've only identified two, this (indicating)
16 one and one in California in 2000, right?

17 A. That involved pressure regulators for potable water
18 systems on a house or commercial building, yes, and it went to
19 trial or de -- te -- testimony, that's correct, I've
20 identified two, wasn't my case but while I was conducting this
21 investigation another engineer in my company had an identical
22 case in a nearby community, we did the pressure testing at the
23 same time.

24 Q. Can you tell by looking at a pressure regulator whether
25 or not it's failing?

1 A. By looking at it no, if you have a pressure gauge on the
2 output as required by the installation instructions, yes.

3 Q. Well, this one doesn't look like it's been maintained at
4 all, does it, Mr. ---

5 A. No, sir, ---

6 Q. --- Harris?

7 A. --- I don't think anybody has touched that regulator
8 since it was put in the ground.

9 Q. Exhibit No. 12 nobody's touched it, right?

10 A. I don't think anybody had touched it until we
11 investigated this incident.

12 Q. Except one person who turned it all the way over,
13 right?

14 A. Yes, sir, somebody turned it up. I don't know if that
15 was done at installation or was done after installation but
16 the factory comes at a 50 pound setting smack in the middle of
17 its range and someone adjusted it to the upper end of its
18 range.

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

20 MR. IMHOFF: Can I keep goin' or should we take a break
21 now?

22 THE COURT: Yeah, lawyers wanna approach.

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

24 THE COURT: Alright, ladies and gentlemen, e're gonna
25 take a short recess, I need to remind you not to have any

1 discussions amount yourselves about anything involving the
2 case, please go with the bailiff.

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

5 THE COURT: Mr. Harris, I'll remind you that you remain
6 under, uh, uh, in the process of giving your testimony so
7 please do not have any discussions with anyone about anything
8 involving the case.

9 THE WITNESS: Yes, sir.

10 THE COURT: We'll step down.

11 THE WITNESS: Thank you.

12 (Whereupon, the witness left the stand.)

13 (Whereupon, a recess was taken.)

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

15 THE COURT: May I see the lawyers for a moment.

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

17 THE COURT: Alright, C'mon around sir, Mr. Harris.

18 (Whereupon the witness returned to the stand.)

19 THE COURT: Need to remind you you remain under oath,
20 you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Let's bring the jury in.

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

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

25 BY MR. IMHOFF:

1 Q. Mr. Harris, did you testify in your deposition under oath
2 in October of 2012 that my clients installation of pressure
3 regulator valve was compliant with the code?

4 A. I did say that it was compliant with the sections of the
5 code that we were discussing at that particular time, as I
6 mentioned earlier I have not read, memorized the entire
7 code.

8 Q. So it was your opinion in October of 2012 that my clients
9 complied with the code.

10 A. It was my opinion that he complied with the specific
11 section of the code that we were discussing.

12 Q. Now you didn't say the specific section or qualify your
13 answer in any way October 2012, did ya?

14 A. I may not have but we were discussing a particular
15 section of the code and that's all we had discussed in my
16 deposition.

17 Q. So the opinion that you're giving today to this jury is a
18 new opinion.

19 A. Yes, sir, it is because I was not aware of the
20 requirement in the code for following instructions until
21 relative recently.

22 Q. Now there's not a pressure relief valve on this house
23 today, is there?

24 A. There's not a pressure relief device on the incoming
25 supply line like I'm recommending, instead they have a rather

1 sophisticated leak detection system.

2 Q. And but the leak detection system doesn't operate as a
3 pressure relief valve at all, does it?

4 A. No, sir, what it does is it doesn't care whether the leak
5 was for pressure or from corrosion or whatever, it stops, it
6 shuts the water off in the event of a leak.

7 Q. Well what it does is it determines how much water's going
8 into the house, is that right?

9 A. I don't know the operating principle of this system, the
10 ones that I'm familiar with do operate that way, they operate
11 on the function of excess flow, if there's too much water flow
12 that soon there's a leak.

13 Q. That's gallons per minute?

14 A. Most of the time you can measure it in gallons per
15 minute, gallons per hour, you can measure it in cubic
16 centimeters per second if you wish.

17 Q. Thought I heard you testify earlier may mis -- Mr. Klaben
18 but that you could actually set it, if you have guests over,
19 you could turn it up to allow more gallons per minute or you
20 could turn it off, is that right?

21 A. Talkin' about hi -- the system that he has now?

22 Q. The leak detention system.

23 A. I understand it has a motorized valve that will
24 automatically turn the water off.

25 Q. Okay, but it can be, it can be regulated: You can turn it

1 up, you can turn it down, you can turn it off.

2 A. Well this is gonna be an on/off valve, it's either gonna
3 be on or off.

4 Q. Right, and it, and it determines if there are too many
5 gallons per minute coming into the house it turns all of the
6 water off to the house, that right?

7 A. That is the way some such systems work, I have not
8 examined his.

9 Q. Okay. Well if that's the type a system here and the
10 bidet cracks, instead of blowing off, it cracks and so it
11 allows while Mr. Wennerstrom is down sunning himself on the
12 beach in Miami it allows water to drip outta that hose or
13 spray outta that hose this house will still flood, right?

14 A. I -- you would if you're talking about a dripping, you
15 will get some water damage, you're not going to get a flood.

16 Q. Well it depends on how wa -- how much water's comin' in
17 and how long Mr. Wennerstrom's gonna be ---

18 A. You're ---

19 Q. --- gone.

20 A. --- describing a a crack with a small drip, that's all I
21 can go by is your description. This crack with a small drip
22 is not gonna cause a flood, it will cause water damage.

23 Q. The system requires one other thing also doesn't it,
24 Mr. Harris, ya have to turn it on.

25 A. I would assume so. Again, I haven't studied his system,

1 I just understand from testimony here yesterday that he has a
2 system that was recommended by his insurer.

3 Q. Okay. You don't, so you don't know how his system works.

4 A. How that one works, no. I know there's a such thing as
5 an excess flood check system, I do not know that that's what
6 he has.

7 Q. Despite the fact you don't know how this system works
8 you've testified to this jury that it's sufficient to replace
9 the pressure relief valve you thought these folks should put
10 on a home, is that right?

11 A. It does a different job, I said it is sufficient but not
12 to replace it but to do something different.

13 Q. Okay.

14 A. It will detect any form of leak whether it came from a
15 r -- uh, overpressure or not. The relief device I'm talkin'
16 about will only protect you against an overpressure.

17 Q. Alright. And this device won't protect you over
18 overpressure?

19 A. It will if the overpressure causes a leak, it will not if
20 the overpressure does not cause a leak.

21 Q. It won't tell you if your pressure regulator valve is
22 working or not, will it?

23 A. I don't know, it may have a pressure reporting
24 function.

25 Q. You don't know?

1 A. No, sir, I don't, I said that.

2 Q. And you had -- did you, did you explain to Fireman's Fund
3 that you believe there should have been a pressure relief
4 valve on this home?

5 A. I explained to it to my client Cozen, they, assumed they
6 would have explained it to Fireman's Fund.

7 Q. Alright. Now, your root cause investigation how many
8 parties did that involve, Mr. Harris?

9 A. I don't understand your question.

10 Q. Well how many potentially responsible parties did you
11 believe there could be when you began your root cause
12 investigation?

13 A. I -- part of -- I'm not charged with determining
14 responsible parties, I'm only charged with finding out the
15 root cause and my clients will sometimes ask me the names of
16 parties that were responsible for certain actions in the case
17 but I don't determine responsible parties, that's a legal
18 term.

19 Q. Well you contend your your investigation as to the root
20 cause in 2009 to 2010, 2011, 2012 and 2013, isn't that
21 right?

22 A. I'm not sure what you're asking, me sir.

23 Q. Well let me hand you Defendants' Exhibit No. 13 which is
24 a, uh, April 24th 2009 e-mail to Mr. Higgins of Cozen &
25 O'Connor. Do you recognize that as an e-mail between you and

1 Mr. Higgin with Cozen & O'Connor?

2 A. Yes, sir.

3 Q. What is the date of that e-mail?

4 A. The first one, the one that I sent him?

5 Q. Yes, Your Honor, I mean, yes, Mr. Harris.

6 A. April 24th 2009.

7 Q. Okay. What's the topic of that e-mail, Mr. Harris?

8 A. The subject is just a claim number Wennerstrom, has his
9 name and that it was a water loss.

10 Q. Well this is where you're talking about doing the
11 analysis, the lab analysis of the regulator, isn't it?

12 A. It's when we're talking about doing the test of the
13 regulator, yes.

14 Q. And you invited the valve manufacture to that test,
15 didn't you?

16 A. I didn't invite anyone to that test. There's nothing in
17 here about who to invite for the test, that would not be my
18 call.

19 MR. IMHOFF: We would ask that 7 -- Defense Exhibit 17 be
20 moved into evidence?

21 THE COURT: That the one he just had testified from?

22 MR. IMHOFF: Yes. Sorry, is that 13?

23 THE COURT: Thought he said 13.

24 MR. IMHOFF: Thirteen, Your Honor, I'm sorry.

25 MR. DEAL: No objection.

1 THE COURT: Without objection be Defendants' 13.

2 (Defendants' Exhibit No. 13, email dated 4/24/09,
3 admitted into evidence.)

4 BY MR. IMHOFF:

5 Q. Mr. Harris, I'm gonna hand you what's Defense Exhibit
6 No. 14, do you recognize that as an October 15th 2009 letter
7 from Cozen & O'Connor to Searcy Custom Homes Chuck Hafner, the
8 Cliffs Community and Wilkins Water Control Products, the Zurn
9 Company?

10 A. Yes, that's what this is.

11 Q. Did you receive this letter?

12 A. I may have received a copy of it, it's not addressed to
13 me.

14 Q. Okay. Now if you look at the wo -- the, if you look at
15 the last sentence on the first page it says, "The purpose of
16 our retention ---

17 MR. DEAL: Objection, Your Honor, no foundation for
18 anything that's in this document.

19 THE COURT: I'll have to sustain the objection.

20 (E-mail dated 11/19/09 marked Defendants' Exhibit No. 16
21 for identification.)

22 BY MR. IMHOFF:

23 Q. I'm gonna hand you what's now marked as Defendants'
24 Exhibit Number 16, do you recognize this as an e-mail between
25 yourself and Elizabeth Gast Cozen & O'Connor November 2009?

1 A. Yes, it's a series of e-mails.

2 Q. And do you understand that Ms. Gast is asking you how many
3 potentially responsible parties there are?

4 A. And she was asking me if a particular party could be
5 responsible, my response was that I did not know.

6 Q. Okay. What particular party was that, Mr. Harris?

7 A. A party called Blue Ridge Water.

8 Q. And what what what responsibility could Blue Ridge Water
9 have had for this ---

10 A. Uh, ---

11 Q. --- flood?

12 A. --- my response is that I don't know for certain where
13 their responsibility ends and the developers system takes
14 over, I did not know. I just knew that they were an entity
15 that was associated with the water supply.

16 Q. Well what possible responsibility could they have?

17 A. They coulda been the people that designed the water
18 system, they coulda been the people that installed the
19 regulator.

20 Q. Have you ever testified that a water system had too high
21 a water pressure?

22 A. Yes, sir, I think I've done so in this case.

23 Q. Do you believe that Blue Ridge Water Utility's water
24 pressure is too high for a residential development?

25 A. In my opinion it's higher than it needs to be for

1 residential developer.

2 Q. Have you testified previously or written a report that a
3 utilities high water pressure caused the failure of a
4 regulator valve?

5 A. No, sir, and I didn't say the high water pressure caused
6 the failure in this case.

7 Q. Let me ask my question again, Mr. Harris. Have you ever
8 written a report in which you had the opinion that high water
9 pressure caused a pressure regulator to fail?

10 A. I said no, sir, and I did not do that in this case
11 either.

12 Q. Okay. I sent you see three subpoenas, Mr. Harris, and I
13 believe in October, November and December of 2012, at that
14 right?

15 A. I don't recall how many you've sent.

16 Q. I'm gonna hand you defense Exhibit No. 8, do you
17 recognize that as a copy of a letter from me to you with
18 enclosing a subpoena on O -- I'm sorry, in September of
19 2012?

20 A. I see that that's what it is, do I recognize it, I don't
21 recall specifically but it's not uncommon.

22 Q. Okay. And what did I ask you for in that subpoena,
23 Mr. Harris ---

24 MR. DEAL: Objecti ---

25 (Indiscernible cross-talk.)

1 MR. DEAL: --- objection, Your Honor, I think the Court's
2 been heard on this particular matter and the scope of this
3 subpoena.

4 MR. IMHOFF: I'm not sure what the objection is, Your
5 Honor.

6 THE COURT: Alright, I'm gonna a -- allow him so far
7 'cause I'm not knowing what he's doing ---

8 MR. DEAL: Your Honor, I think ---

9 THE COURT: --- with it yet.

10 MR. DEAL: --- that that that that we argued over what
11 the s -- whether or not the scope of the subpoena was valid.

12 THE COURT: Alright, well I'm gonna let him proceed right
13 now.

14 MR. DEAL: Alright, thank you.

15 BY MR. IMHOFF:

16 Q. And I asked you for an exact legible copy, legible copy
17 of your entire file or files, notes, reports, documents, etc.,
18 etc., do you see that.

19 A. Yes, sir, concerning this specific case yes, sir.

20 Q. I would ask that -- what's the exhibit number,
21 Mr. Harris?

22 A. This Exhibit No. is Exhibit No. 8.

23 MR. IMHOFF: I would ask that No. 8 be moved into
24 evidence.

25 MR. DEAL: I've already made my objection, Your Honor.

1 THE COURT: Alright, let me see what 8 is.

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

3 THE COURT: Alright 8's without objection.

4 (Defendants' Exhibit No. 8, subpoena, admitted into
5 evidence.)

6 (Pause.)

7 THE COURT: Alright, counselor, if you're gonna have a
8 lot more documents, I'm gonna ask you do same thing that
9 plaintiff's counsel did before, bring 'em all up, let the
10 court reporter go ahead and mark 'em now.

11 MR. IMHOFF: She she has 'em.

12 THE COURT: Do ya have anymore that you're gonna bring
13 up?

14 MR. IMHOFF: Uh, yes, I'll do it now, Your Honor.

15 THE COURT: Do it now. We need to get the case moving.

16 MR. IMHOFF: Did you move these (indicating) in?

17 MR. DEAL: I did not.

18 (Pause.)

19 BY MR. IMHOFF:

20 Q. Alright, Mr. Harris, did you provide me all of the
21 reports and testimony, uh, that you have done on regulator
22 failures in the last ten years?

23 A. As far as I know yes. I wasn't asked specifically to
24 provide you things on regulator failures, I thought I was
25 asked to provide you things on whether codes and standards had

1 been implied.

2 Q. Did you receive my my January 7th 2012 subpoena?

3 I'm sorry, that exhibit No. 10.

4 A. I have three or four subpoenas from your office in my
5 file, I don't recall which one came when.

6 Q. Well if you'll look at the subpoena, I asked you for
7 documents on behalf of any case in which you work on regarding
8 a pressure regulator failure.

9 A. Yes.

10 Q. Have you provided all of your documents to me regarding a
11 pressure regulator failure?

12 A. No, sir, I have not because this would have included
13 propane failure, regulator failures, natural gas regulator
14 failures there's been a lot of those, no, I did not include
15 that.

16 Q. Alright. Have you provided me with all of your testimony
17 or reports on a residential water pressure regulator
18 failure?

19 A. Since 1997 yes and it was involved with litigation.

20 Q. Okay. Did you provide me with a December 8, 2000 re --
21 December 8, 2000 report that you did for Liberty Mutual?

22 A. Until I see the report I can't answer that question.

23 (Report dated 12/8/2000 marked Defendants' Exhibit No. 19
24 for identification.)

25 Q. I'm gonna hand you Exhibit No. 19, Mr. Harris, you

1 recognize that as December 8, 2000 report that you did for
2 Liberty Mutual Insurance Company?

3 A. Yes, sir, I do.

4 MR. IMHOFF: I would ask that that report be moved into
5 evidence, Your Honor.

6 MR. DEAL: Hang on, Your Honor, may I get my copies
7 and -- no objection, Your Honor.

8 THE COURT: Without objection be Defendants' 9?

9 COURT REPORTER: 19.

10 THE COURT: 19.

11 MR. IMHOFF: 19.

12 (Defendants' Exhibit No. 19, report dated 12/8/2000,
13 admitted into evidence.)

14 BY MR. IMHOFF:

15 Q. Did this have to do with the failure of a pressure
16 regulator?

17 A. I've had to be -- case was the leak in a reverse osmosis
18 water system but I concluded that the leak was caused by a
19 failed pressure regulator to the building.

20 Q. Look all the way to last page if you would, Mr. Harris,
21 look at Number 4 if you would. Read that first sentence to
22 the jury if you would.

23 A. "It is concluded that the leak under investigation was
24 caused by excessive water pressure in the building water
25 system."

1 Q. Read the next sentence if you would to the jury.

2 A. "The excessive pressure was caused, was caused by failure
3 of the pressure regulator to maintain the building water
4 system pressure at or below 75 PSIG under low or zero water
5 flow conditions due to a damaged valve seat."

6 Q. Wasn't it your opinion, Mr. Harris, that that valve
7 failed because of high water pressure over 70 PSIG.

8 A. No, sir, my opinion was that the high water pressure in
9 the building was caused by the failure of the valve not the
10 other around.

11 Q. Oh, Mr. Harris, go back to Number 1 if you would please,
12 opening paragraphs.

13 A. Opening paragraph. Shall I read the opening paragraph?

14 Q. Please, the first sentence if you would.

15 A. "Engineering Design & Testing, ED&T Corp., has
16 previously ---

17 Q. I'm sorry, Number Number 1 on your four conclusions, "In
18 summary it is concluded that..." Did ya read it?

19 A. Yes.

20 Q. Please read it to the jury, first sentence of Number 1.

21 A. "The water filter leak occurred due to a crack in the top
22 cap of the pre-filter housing."

23 Q. "The observed crack was caused by internal water
24 pressure greater than the prayer -- pressure capability of
25 pre-filter housing."

1 A. Yes, sir, this is a pre-filter not a regulator. The
2 pre-filter was caused by excessive pre -- crack was caused by
3 excessive pressure in the house, not the regulator failure.
4 This was a filter that was in the house that failed due to the
5 excess pressure.

6 Q. Alright. Is that the only other pressure regulator
7 failure that you provided to me, Mr. Harris?

8 A. When you say "pressure regulator failure" in restricted
9 plumbing systems, yes, I believe it was. I've done a good
10 many regulator failures but most of them ha -- have been on
11 gas systems.

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

13 (Pause.)

14 THE COURT: Alright, ladies and gentlemen, I'm gonna ask
15 if you would retire back to the jury, uh, deliberation room,
16 we're gonna get ya back just shortly. Please don't have any
17 discussions with anyone about anything involving the case.

18 (The following takes place outside the presence of the
19 jury.)

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

21 MR. IMHOFF: I'm sorry, Your Honor, I had 'em all in
22 order.

23 THE COURT Alright, I am gonna step down let you get a
24 chance to get organized. Uh, lawyers I'm surprised that they
25 don't listen to me more. I've got a jury over there

1 squimpering in their seats. They're looking at the clock
2 behind the wall, they're getting, they're giving me all the
3 physical signs of that I am not paying that much attention, I
4 wanna get this thing over with, I've shared that with ya'll,
5 please listen to me.

6 MR. IMHOFF: I'm tryin', Your Honor, I promise I am.

7 THE COURT: Alright. Uh, be selective in what you ask or
8 don't ask and what you object to and don't object to but we've
9 got to get this case movin' on because I'm just fearing that
10 for ya'lls sakes the jury's not paying attention to what the
11 points your trying to make and they're becoming more concerned
12 over how much longer is this agony gonna take place.

13 MR. IMHOFF: I agree, sorry.

14 THE COURT: So if you wanna make your points, let's get
15 to those points. I'm gonna step down, give ya'll a chance to
16 get your documents organized so that you flow a lot better,
17 okay?

18 MR. IMHOFF: Uh, they they were, thank you, Your Honor, I
19 appreciate ---

20 THE COURT: Alright.

21 MR. IMHOFF: --- the time.

22 (Whereupon, a recess was taken.)

23 (Report dated 2/4/08 marked Defendants' Exhibit No. 20,
24 report dated 4/24/09 marked Defendants' Exhibit No. 21 and
25 report dated 10/21/10 marked Defendants' Exhibit No. 22 for

1 identification.)

2 THE COURT: Alright, Mr. Harris, I need to remind you
3 that you remain under oath, you understand that?

4 THE WITNESS: Yes, sir, I do, thank you.

5 THE COURT: Alright, let's look at the clock.

6 MR. IMHOFF: Got it, Your Honor, this is the last part.

7 THE COURT: Alright.

8 MR. IMHOFF: Okay.

9 THE COURT: Don't cut it short if you don't need it but
10 I'm not, I don't feel like I can justifiably keep the jury
11 late today, ---

12 MR. IMHOFF: Understood.

13 THE COURT: --- okay.

14 MR. IMHOFF: I don't, I don't like my ---

15 THE COURT: Bring 'em back in.

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

17 THE COURT: Yes, sir, Mr. Imhoff.

18 MR. IMHOFF: Thank Your Honor.

19 BY MR. IMHOFF:

20 Q. Alright, to speed this along because it's gettin' late in
21 the day I'm gonna actually hand you three. I'm gonna hand you
22 a February 4th 2008 report that you sent to me Exhibit No. 20,
23 and April 24th, 2009 report Exhibit No. 21 and an October 21st
24 2010 report Exhibit No. 22, are all of those reports that you
25 provided to me on last Friday afternoon in response to my

1 subpoena, Mr. Harris?

2 A. They're reports that I asked my secretary to dig up and
3 provide, I didn't do this personally.

4 Q. But you sent them to me in response to my subpoena to you
5 asking you about regulator failures or the standard of a
6 general contractor or a plumber, that right?

7 A. I sent these in response to your subpoenas after
8 discussing it with my client, it was my understanding and I
9 told him in the e-mail where I transmitted it that I was gonna
10 err on the side of caution and provide you anything that where
11 codes or standards had been an issue in the case.

12 Q. Right, codes or standards, that's right, that's what I
13 asked for and you thankfully after I sent to you in December
14 of 2012 you sent it to me on Friday afternoon, is that right,
15 Mr. Harris?

16 A. Yes, sir, I usually leave it up to the legal counsel to
17 deal with the subpoenas, I'm not an expert in that field.

18 Q. Alright, let's go ahead and look at February 4th 2008.

19 A. Yes, sir.

20 Q. You were hired by who, Mr. Harris?

21 A. In this particular case I believe I was originally
22 brought in by the insurer but I was eventually turned over to
23 legal counsel.

24 Q. McDowell and McKay?

25 A. Yes, sir, Mr. McKay.

1 Q. To investigate a leak in a cooling system?

2 A. Yes, sir.

3 Q. Okay, specifically a water leak from a cooling line?

4 A. Yes, sir, this was from the heating and air conditioning
5 system, was a public building and they used water as their
6 part a their cooling.

7 Q. Who was your client?

8 A. My client would have been the McKay Law Firm but then he
9 had a client.

10 Q. Who was that client?

11 A. I don't recall.

12 Q. It says insured Deloitte & Touche.

13 A. That's the owners of the building or the people, they
14 were the insured ---

15 Q. Okay.

16 A. --- not the insurance company.

17 Q. Alright, so if the folks at Deloitte & Touche suffered
18 damage, their insurance company hired the lawyers and you to
19 determine where the damage came from.

20 A. Yes, sir, what caused the damage.

21 Q. Okay, lookin' for somebody to chase potentially, is that
22 right?

23 A. Yes, sir, that's one of the reasons. Sometimes the
24 reason we do the root cause is so the insurance company can
25 determine if they have coverage, other times it's so they can

1 see if they have a potential recovery.

2 Q. And isn't it true, Mr. Harris, that you used the ASME
3 Beat 828 in a Copper Tube Handbook to determine that someone
4 had improperly installed the coolant line?

5 A. Yes, sir, what I did in this case is I'd already
6 determined that it was improperly installed, the, uh,
7 soldering was very poor, I used the documents that you've
8 described to illustrate my opinion.

9 Q. Okay. The documents that I describe are the standards by
10 which the folks that installed that copper tubing are judged
11 by, is that right?

12 A. They are amongst them, yes.

13 Q. Okay. And that's what you cited to tell the insurance
14 company that they had someone to blame, a standard.

15 A. A standard or a in this case it was a handbook of copper
16 fittings.

17 Q. Somethin' that was published, correct?

18 A. Excuse me?

19 Q. Something that was published.

20 A. Yes, sir, it was available, it was from a manufacture but
21 it was available online, that's how I got it.

22 MR. IMHOFF: I would ask that actually all three of them
23 but specifically, uh, that exhibit be moved into evidence,
24 Your Honor, Exhibit No. 20, 21 and 22.

25 MR. DEAL: No objection.

1 THE COURT: Without objection be Defendants' 20, 21 and
2 22.

3 (Defendants' Exhibit Nos. 20, 21 and 22, reports,
4 admitted into evidence.)

5 BY MR. IMHOFF:

6 Q. Alright, you also sent me an April 24th 2009 report, ---

7 A. Yes, sir.

8 Q. --- okay, what exhibit is that, Mr. Harris?

9 A. This is Exhibit 21.

10 Q. Okay, and that was again for Elizabeth Gast Cozen &
11 O'Connor.

12 A. Yes, sir, this case originated with another engineer, he
13 did the investigation, determined that the damage in the house
14 came from a ruptured copper line, I then came over to do the
15 laboratory work on the rup -- ruptured copper line.

16 Q. And you determined, if you look at Page 6 in the middle,
17 Paragraph 305.6 of the North Carolina Plumbing Code states
18 that, Water piping in an unconditioned attic or unconditioned
19 utility room shall be insulated with an insulation having
20 minimum R factor of. . . etc., etc., etc., right?

21 A. Yes.

22 Q. You've you found that whoever put that pipe in had
23 violated the North Carolina Building Code, correct?

24 A. Hold on. Yes, sir, the North Carolina building code
25 required certain amount of insulation and this copper line was

1 uninsulated.

2 Q. And you found someone for your client to blame,
3 correct?

4 A. No, sir, I found that it was an uninsulated line, my
5 client then chose to blame someone for that.

6 Q. Okay. Well, in fact, it wasn't the people that installed
7 it was it, it was the HVAC servicing company should have
8 noticed it wasn't insulated, correct, Mr. Harris?

9 A. Yes, sir, that was one a the questions they asked is
10 should someone servicing it had noted that the line was
11 uninsulated, my response was yes, they should have.

12 Q. And again you cited of code for the basis of your
13 opinion.

14 A. In this particular case yes, there was a building code
15 requirement for a specific amount of insulation, that means
16 that I didn't have to calculate the amount required myself
17 which an engineer would do, I had a code that told 'em what
18 they should be doing.

19 Q. And that opinion benefited your client Cozen & O'Connor,
20 correct?

21 A. I would assume it did, I don't care whether it benefits
22 'em or not.

23 Q. Okay. Let's look at the last one here the October 21st
24 2010, ---

25 A. Yes, sir.

1 Q. --- what Exhibit No. is that?

2 A. This is Exhibit No. 22, I can remember this one well,
3 went to trial about a year ago.

4 Q. Okay. Now who was your client, Mr. Harris?

5 A. My client was Alkar Brands or Alkar Manufacture
6 equipment.

7 Q. What does Alkar do?

8 A. They make commercial cooking ovens.

9 Q. This is some kind of a big cooking plant where they're
10 cookin' chicken nuggets and that type thing?

11 A. Yes, sir but my co -- my client made the over, Advance
12 Brands was the company that was making chick nuggets is
13 actually exactly what this machine was making.

14 Q. And the allegation against your client was that there
15 should be a pressure relief valve on the oven, is that
16 right?

17 A. No, sir, my client was Alkar, they were being accused of
18 not manufacturing the oven properly. One a the things that
19 was suggested is they they could have or should have put a
20 pressure relief device on the oven, it wasn't the only thing
21 that was suggested.

22 Q. You were testifying in defense of this particular client,
23 is that right?

24 A. Yes, sir, my client the or the lawyer was defending
25 Alkar, he was their normal corporate counsel.

1 Q. Alright, and if you look at Page 2 of your report, ---

2 A. Yes, sir.

3 Q. --- you have a whole section under (E) that says Codes
4 and standards, correct?

5 A. Yes, sir, in this particular case, there was both a
6 question of whether or not the piping had been put in per code
7 and there was also question of a mistake in the NFPA 86:
8 Standard, codes aren't always, perfect, there's a mistake in
9 that standard.

10 Q. And you used the codes and standards, we can go through
11 them if you'd like to, I don't think the jury's particularly
12 interested in what they were, but you used those codes and
13 standards to determine that your client wasn't at fault,
14 correct, Mr. Harris?

15 A. No, sir, I used dec -- used those codes and standards to
16 demonstrate that the piping system was required to have a
17 pressure relief valve, not the oven.

18 Q. Well, Mr. Harris, look at Page 29 if you would ---

19 A. Alright.

20 Q. --- and the second paragraph here where I've highlighted
21 says, Eugene 125 states that the required pressure relief
22 device need not be provided by the vessel manufacturer.

23 Mr. Harris, you cited a an applicable code and standard to
24 defend your client, correct?

25 A. I cited an applicable and code and standard to make my

1 point.

2 Q. Right, it's the ASME Boiler & Pressure Vessel Code,
3 right?

4 A. Yes, sir, that is an engineering code not a building
5 code.

6 Q. And in fact, Mr. Harris, you went on from that didn't you
7 and you determined that custom and standard in the industry
8 also supported your point that your client wasn't responsible,
9 is that right?

10 A. I didn't have to go there, I had come from the industry
11 and I knew that the custom and practice in the industry is you
12 do not provide the relief valve with the pressure vessel.

13 Q. That's right, you relied on the custom and practice in
14 the industry to determine that your client was not responsible
15 for the fire in Iowa, correct?

16 A. No, sir, I determined the custom and practice along with
17 the anti-piping code and ASME Boiler and Pressure Vessel Code
18 and a whole buncha other reasons and it wasn't that my client
19 was not responsible, it was what did cause the fire. I don't
20 care whether my client is or is not responsible, all I care
21 about from a technical viewpoint is what caused the fire.

22 Q. Right, and it wasn't them (indicating) 'cause they
23 complied with the code and they complied with the industry
24 standard what everyone else was doing, correct?

25 A. Well they did their best to comply with it. NFPA 86

1 contains a contradiction, it's impossible to fully comply with
2 NFPA 86.

3 Q. Talked about root cause all day, please ---

4 A. Cause is something we do routinely.

5 Q. --- please go ahead and look at Page 33 of your own
6 report from ten years ago -- from three years.

7 A. Yes, sir.

8 Q. Okay. You state, "In conducting a root cause
9 investigation it is necessary to consider all available facts
10 and information before forming a theory of the case, that
11 theory is then tested for validity against all available
12 evidence. If the theory does not fit all of the facts then
13 the theory is incorrect and must be re-evaluated. This is a
14 description of what's often called the "scientific method of
15 investigation". In order for a scientific method to produce
16 accurate results, it must include a review of all available
17 facts and information, not just those that support a
18 predetermined theory," did you write that, Mr. Harris?

19 A. I did.

20 Q. Is that true, Mr. Harris?

21 A. It is.

22 Q. And we've talked all afternoon probably too long 'bout
23 all the things that you didn't do to investigate the cause of
24 this flood, right?

25 A. You suggested things that I should have done, I never

1 agreed with you that they needed to be done. I think I did
2 everything necessary to investigate this cause or I wouldn't
3 be issuing an opinion.

4 Q. And you determined or at least developed a theory on the
5 first day that you went to Mr. Wennerstrom's home that a
6 pressure relief device shoulda been installed on this home,
7 right?

8 A. No, sir, I had the opinion that a pressure relief device
9 should be installed with a regulator long before I conducted
10 this case.

11 Q. Okay. Right, so the day that you went up there without
12 any investigation, without analysis of all the facts, you
13 determined that a pressure relief valve should have been on
14 that house, right?

15 A. I knew one shoulda been on there, I did not know it was
16 the root cause of the failure yet. We did not know that for
17 certain 'til after we had gotten our pressure readings, we
18 verified what the pressure of the supply system was, until
19 after we had examined the regulator I had not formed all of my
20 opinions, I had a theory, ---

21 Q. Okay.

22 A. --- the theory was that the regulator had failed in
23 service.

24 Q. Okay. And, Mr. Harris, you've already testified twice,
25 once in October and once here today, that there is no code

1 requirement for a pressure relief valve, correct?

2 A. That's correct, there is no code requirement for a
3 pressure relief device on this system.

4 Q. And you've also testified once in October and once today
5 that no plumber puts a pressure relief valve on a residential
6 system in the State of South Carolina.

7 A. No, sir, I don't recall testifying to that at all.

8 Q. Is it the custom and practice in the industry as you used
9 in your defense of Alkar to install a pressure relief device
10 on a residential plumbing system?

11 A. No, sir, because most residential plumbing systems do not
12 even have a pressure regulator so there is no need for
13 pressure relief device.

14 Q. So it's not to code ---

15 A. It's not.

16 Q. --- and it's not the custom and standard.

17 A. It's not the custom and standard because custom and
18 standard does not include 200-pound water systems. You have a
19 200-pound water system, you need a pressure relief valve.

20 Q. And it's not code and it's not the standard and that's
21 exactly what you used to defend your client Alkar, correct?

22 A. I used the codes and standards to demonstrate what should
23 and should not have been done with that piping system. That
24 same code if they follow it requires them to put isolation
25 valves on the system, there's a piping spec spec by that code

1 says you can't put isolation valves on the system so codes are
2 not perfect.

3 Q. In every single, every single report that you gave me,
4 Mr. Harris, your opinion helped your client, didn't it?

5 A. Most of the time yes or else I wouldn't have been named
6 as a testifying expert. When my opinion does not suit my
7 client then I never -- then the case doesn't go to trial or
8 I'm not named as an expert.

9 Q. And despite the facts that my folks put the regulator in
10 the right place and didn't install a pressure relief valve
11 'cause it's not required by custom, standard in the industry
12 or by code you're here testifying in support of your client
13 again, right, Mr. Harris?

14 A. No, sir, that's an incorrect statement. First of all,
15 I've not agreed with the correct installation at the location,
16 I believe it shoulda been next to the house, I've already
17 testified to that.

18 Q. Okay. Code didn't require that either, does it?

19 A. The code doesn't require. The code doesn't require a lot
20 of things but anything that violates good practice or good
21 engineering practice shouldn't be done.

22 Q. One last thing, Mr. Harris, how much money have you, have
23 you -- I'm sorry, how high is your bill today?

24 A. I haven't billed anything on this case in months so the
25 total that you told us while ago was complete until the past

1 couple a days.

2 Q. Is it over \$15,000, Mr. Harris?

3 A. It may be by today, yes.

4 Q. Thank you, Mr. Harris.

5 THE COURT: Any redirect limited to what he went into?

6 MR. DEAL: I I promise to be brief, Your Honor. Uh, may
7 I approach?

8 THE COURT: The witness?

9 MR. DEAL: No, ---

10 THE COURT: Me, ---

11 MR. DEAL: --- Your ---

12 THE COURT: Yes.

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

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

15 (InspectAPedia document marked Plaintiff's Exhibit No. 27
16 and blowup of diaphragm excerpt marked Plaintiff's Exhibit No.
17 28 for identification.)

18 REDIRECT EXAMINATION BY MR. DEAL:

19 Q. Now Dean, first of all, let me ask you about those
20 reports.

21 A. Yes, sir.

22 Q. Everyone a those reports that you you submitted by
23 definition included some way, some involvement of codes and
24 standards, correct?

25 A. Yes, sir, in every case you have to check the codes and

1 standards if they apply, they aren't necessarily the be-all
2 and end-all of everything but you must check 'em.

3 Q. But but everyone a those ha -- is -- were involved,
4 right?

5 A. Yes, sir, I was asked to find cases that involved codes
6 and standards.

7 Q. Did you include any that didn't?

8 A. No, sir, I don't think so.

9 Q. Why because it was that was the scope of it was that
10 anything that involved standards, correct?

11 A. That was my understanding is I was picking things that
12 involved codes and standards and I included OSHA regulations
13 in my definition of codes and standards just to make sure I
14 complied.

15 Q. So were there other cases that you didn't include that
16 you would have made opinions that didn't involve codes and
17 standards?

18 MR. IMHOFF: Your Honor, objection, that -- he he's he's
19 testifying about something that isn't true. There's a
20 subpoena that asks him for a particular thing, it says what I
21 I asked for ---

22 THE COURT: Alright, well I'm gonna let him go into this.
23 You asked him about codes and standards ---

24 MR. DEAL: Right.

25 THE COURT: --- you hadn't brought in the subpoenas ---

1 MR. DEAL: Right.

2 THE COURT: --- but I've made rulings on this ---

3 MR. DEAL: Okay, that's ---

4 THE COURT: --- issue.

5 MR. DEAL: --- fine.

6 BY MR. DEAL:

7 Q. Alright, in any case have you, have you made opinions in
8 any other cases at any other time with the co -- last
9 twenty-five years that did not involve standards and codes?

10 A. Yes, sir, many.

11 Q. Okay, that's not a prerequisite you make an opinion in a
12 case.

13 A. No, sir, I have to find out if there's a standard or a
14 code that is applicable.

15 Q. Alright. Now in this case, in fact, Mr. um, Imhoff asked
16 that that that was there any other documentation that you know
17 of that or industry standard, at least anybody else that you
18 talked to in this industry that would have just talked about
19 usin' a pressure relief valve?

20 MR. IMHOFF: I don't believe I asked that, Your Honor.

21 THE COURT: Ask the question one more time.

22 Q. Mr. Imhoff just now asked you it is not an industry
23 standard, no other plumber would require or recommend the use
24 of a pressure relief valve in this situation.

25 MR. IMHOFF: Your Honor, that is not what I asked

1 him, ---

2 THE COURT: I'm ---

3 MR. IMHOFF: --- I asked him ---

4 THE COURT: --- I'm gonna let him ask ask that
5 question.

6 BY MR. DEAL:

7 Q. Did he ask you whether or not there was any that there's
8 anybo -- any -- no, he's -- let let me ask ya this, try to be
9 clear here. He's he he said that it was your opinion, weren't
10 anybody else that held that opinion out there, is that
11 correct?

12 MR. IMHOFF: Your Honor, again that's not what I asked
13 him. I asked him if it ---

14 THE COURT: Alright, he's asked ---

15 (Indiscernible cross-talk.)

16 THE COURT: --- he he's asked several different
17 questions, why don't you ask him a question and let him
18 answer.

19 MR. IMHOFF: Alright.

20 THE COURT: If he wants, Mr. Imhoff wants to object, he
21 can object, hold the arguments, I'll rule on the objection.

22 MR. IMHOFF: Alright, thank, Your Honor, sorry.

23 BY MR. DEAL:

24 Q. Mr. Imhoff asked you, he, well he pointed out that you at
25 the time that you made your deposition there there wasn't

1 anybody out there that you knew of that held the opinion,
2 either a plumber or anybody else except outside a your firm,
3 held the opinion that a relief valve was necessary in a
4 situation like this here.

5 A. I believe that was the question, I believe my answer was
6 that no at that time I had never asked anybody else that
7 question so I did not know of anyone else who had expressed a
8 similar opinion.

9 Q. Is that true now?

10 A. No, ---

11 MR. IMHOFF: Your Honor, ---

12 THE COURT: Alright, I'm gonna let, you went into that so
13 I'm gonna let him go into it a little bit.

14 MR. IMHOFF: I ---

15 BY MR. DEAL:

16 Q. I'd like to hand you what's been previously marked as as
17 Plaintiff's 27, ---

18 A. Yes, sir.

19 Q. --- now, Mr. Harris, where did you get that document?

20 A. I downloaded it from the internet.

21 Q. Okay, and where does it come from?

22 A. This comes form it's called the In -- "InspectAPedia",
23 it's it's a free encyclopedia of building and environmental
24 inspection, testing, diagnosis and repair.

25 Q. Okay. And, uh, have you reviewed that document?

1 A. I have. This was among was several documents I
2 downloaded that they're on the subject of pressure regulation
3 for houses, these are instructions for a home inspector.

4 Q. Okay, don't tell me anything about what it says on there
5 now, I'll just caution ya, alright. Now, you've testified
6 that you thought and we've gone back and forth on this was
7 your opinion based on the the s -- the situation and and the
8 evidence that you gathered at the scene, your observations
9 that you made that a re -- pressure relief valve wa -- was
10 necessary in this situation, is that right?

11 A. That is correct.

12 Q. Does that document change or alter that opinion in any
13 way?

14 A. It supports that opinion.

15 Q. Okay. Now, Mr. Harris, in that document what does it
16 tell you about when it's, when it's prudent to have a pressure
17 relief valve in in a home system?

18 MR. IMHOFF: Objection, Your Honor. Again, there's no
19 foundation for this document at all, it's from a website
20 called ---

21 THE COURT: Alright, I will ---

22 MR. IMHOFF: --- InspectAPedia ---

23 THE COURT: --- allow him to ask about this because it
24 was went into on cross-examination.

25 BY MR. DEAL:

1 Q. What's it say?

2 A. It shows two thing, first of all, it says for pressure
3 regulated required residential systems with static pressures
4 in excess of 80 PSI usually have a pressure regulator, it
5 shows the pressure regulator on the supply line to the house,
6 shows the water meter, it also shows a pressure relief device,
7 it says typical setting of 150 PSI, it shows a pressure relief
8 discharge pipe to floor drain and just makes a statement that
9 the pressure relief device may be required.

10 MR. DEAL: Alright, I'd like to move that into e -- this
11 document into evidence, Your Honor.

12 MR. IMHOFF: Your Honor, with my full objection.

13 THE COURT: Alright, I'll allow it as tve ---

14 MR. DEAL: Your Honor, ---

15 THE COURT: --- 27?

16 MR. DEAL: That's right, Your Honor.

17 THE COURT: Alright.

18 (Plaintiff's Exhibit No. 27, InspectAPedia document,
19 admitted into evidence.)

20 MR. DEAL: I've got what's marked as 28 and that's this
21 is directly off of that, in fact, it's been redacted to to
22 clear off some of the ---

23 MR. IMHOFF: With the same objection, ---

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

25 MR. IMHOFF: --- Your Honor.

1 THE COURT: I haven't heard him s-- I haven't heard the
2 witness identify ---

3 MR. DEAL: Got ya.

4 THE COURT: --- it in any way.

5 BY MR. DEAL:

6 Q. I'm just te -- showin' ya. You recognize this particular
7 diagram, Dean?

8 A. Yes, sir, that is an excerpt from the diaphragm that is
9 on this document.

10 MR DEAL: Alright, and it's marked as Plaintiff's 28, I'd
11 like to have it admitted, Your Honor, publish to the jury.

12 THE COURT: You gonna have it admitted into evidence or
13 just show it to the ---

14 MR. DEAL: Tell you what, ---

15 THE COURT: ---jury?

16 MR. DEAL: --- I'll pu -- I'll just publish to the jury,
17 Your Honor, I'm gonna take it, take 28 off, that's fine.

18 THE COURT: Alright.

19 (Plaintiff's Exhibit No. 28, blowup of diaphragm excerpt,
20 withdrawn.)

21 THE COURT: I think it's blowing up would probly assist
22 the jury in seeing what it is.

23 BY MR. DEAL:

24 Q. Alright. Now do does this configuration conform with
25 your your original testimony that you gave to Mr., uh, Imhoff

1 in your deposition back when back I think it was in October?

2 A. Yes, sir, and including routing the pressure relief to a
3 appropriate discharge area.

4 Q. Alright, te -- explain to the jury what all or how all
5 that's configured and why it's configured in the way it is.

6 A. Okay. Well this (indicating) is the incoming water line,
7 this (indicating) one shows it coming underneath the
8 foundation wall and not coming up 'til it's under the house,
9 so this (indicating) is comin' up in either under a house or
10 in a basement. There's (indicating) the shut off valve,
11 here's (indicating) the pressure regulator. This is the
12 device that's just like this one here (indicating), the bonnet
13 adjusting nut itself, it says that it's a maximum of 80 PSI.
14 You don't even put one a these on here if your house, if your
15 supply pressure's below 80, you only need one if your supply
16 pressure's above 80. Now down stream of the regulator where
17 you'll see full pressure if this regulator fails they've
18 installed a pressure relief valve. They say a typical setting
19 is 150 PSI and they have that relief valve discharging into a
20 floor drain so if the pressure gets too high in this system,
21 if this (indicating) regulator fails and this valve sees a
22 hundred and fifty pounds, it will relieve that excess pressure
23 to the floor drain, you -- if it keeps runnin', you get a big
24 water bills but you won't get any damage in your house.

25 Q. Alright, and you testified earlier how much would it cost

1 to have installed a system similar to this in Mr.
2 Wennerstrom's home?

3 A. Including the labor maybe 2, \$300, the relief valve for
4 about 50 bucks.

5 Q. Did you hear how much this house was worth?

6 A. Yes, sir, I did.

7 Q. How much was that?

8 A. I heard 2 to 3 million dollars.

9 Q. Okay. This was how much?

10 A. Two to three million dollars.

11 Q. How much was this this particular little figure?

12 A. The valve is worth about 50 bucks, it take 2 or \$300 to
13 install it with the plumber's labor.

14 Q. Alright. Now you you said that your neighbor was a
15 plumber and he would have have, uh, installed a relief valve,
16 is that right?

17 A. My p -- neighbor is an engineer who works for a big
18 plumbing company in Sumter, South Carolina.

19 Q. And did you, had you know any other, uh, plumbing
20 companies that would recommend the same?

21 A. I do.

22 Q. Who would that be?

23 A. Atlantic plumbing out of Atlanta.

24 Q. And how do you know about them?

25 A. I found them on a website but I called 'em.

1 Q. And and who'd you talk to down there?

2 A. I asked to speak to one of their engineering staff which
3 would mean one of their technical staff to most people, he may
4 or may not be get degree in engineer.

5 Q. Alright, and what did he tell ya?

6 A. Well I wanted to ask him about the content of a web
7 page ---

8 MR. IMHOFF: I mean, I I I'm gonna continue to object,
9 Your Honor, this this ---

10 THE COURT: Alright, I would, ---

11 MR. IMHOFF: (Indiscernible cross-talk.)

12 THE COURT: --- I would sustain that objection, the
13 person's ---

14 MR. DEAL: Never mind.

15 THE COURT: --- not here ---

16 MR. DEAL: Okay.

17 THE COURT: --- to testify.

18 MR. DEAL: Okay, I'm sorry.

19 BY MR. DEAL:

20 Q. Do you do you con -- do you regularly consult with other
21 engineers, uh, regarding matters that you, that that come
22 before you?

23 A. Yes, sir, I consult with other engineers in my company,
24 with engineers in other companies, I particularly consult with
25 the engineers that are with the manufactures of the

1 equipment.

2 Q. Okay, and would the engineer that you spoke to at this
3 plumbing company would he be with the -- of the type type and
4 kind that you would consult with ordinarily and and, uh,
5 gather information about, um, these claims that you were said
6 to analyze?

7 A. Yes, sir, that's why I called him and asked to speak to
8 him.

9 Q. S -- and did you find in his opinion or and and, uh, to
10 be reliable?

11 MR. IMHOFF: Same objection, Your Honor, he's still
12 asking the same questions about the same expert you just said
13 he couldn't he or ---

14 MR. DEAL: Well I'm sorry, ---

15 MR. IMHOFF: (Indiscernible cross-talk.)

16 MR. DEAL: --- maybe I misunderstood, I thought he'd laid
17 the foundation, Your Honor, I'm trying to get ---

18 THE COURT: I would, I I think you've made your point,
19 I'll let ya ask ---

20 MR. DEAL: Alright, ---

21 THE COURT: --- ask a couple more questions and let's
22 move on ---

23 MR. DEAL: --- that's ---

24 THE COURT: --- to ---

25 MR. DEAL: --- that's fine.

1 BY MR. DEAL:

2 Q. Alright, and then one last thing then, uh, both in that
3 diagram that I showed you and also in the one here
4 (indicating), that's the that's been previously marked I
5 believe that was Defendants' 2 or 3, where are those, but it's
6 been previously admitted, there's a diagram there and you've
7 already pointed out, where is the the regulator in in regard
8 to the house in that, in that particular diagram.

9 A. It's mounted on the outside wall of the house at the
10 entrance to the house.

11 Q. And you've you've already testified that you you thought
12 it was important to where it be visible to the homeowner,
13 correct?

14 A. Visible to the homeowner, be aware that you have such a
15 device and that you have to maintain it and/or repair it as
16 needed.

17 Q. Okay, and it's your testimony today that wasn't done
18 here.

19 A. That is correct.

20 Q. And what is the importance of that maintenance?

21 A. If you maintain it, if you maintain it according to the
22 manufacture's recommendations then hopefully it'll never fail
23 in service, you can rebuild it before it has a failure 'cause
24 you can choose an in time interval say every "x" number of
25 years I'm rebuild this regulator.

1 Q. Alright, nothing further.

2 THE COURT: Limited to just those items.

3 MR. IMHOFF: Just those two, Your Honor. Your Honor, I I
4 appreciate that.

5 RECROSS-EXAMINATION BY MR. IMHOFF:

6 Q. Mr. Harris, you've been an engineer for over twenty-five
7 years?

8 A. Yes, sir.

9 Q. And you expect this jury to to listen to what you're
10 saying and respect your opinions and believe what you're
11 telling them, that right?

12 A. I do.

13 Q. Okay. And the only thing you could come up with to to
14 back up your opinion is from a website called "InspectAPedia"?

15 A. No, sir, I've already listed several other items but you
16 objected to my discussing them.

17 Q. Do you regularly rely as an engineer with a master's
18 degree on InspectAPedia?

19 A. I rely on things that I download from the Internet, I
20 have to determine the source of that. I checked out what
21 InspectAPedia was, I also checked out that plumbing company.

22 Q. Now InspectAPedia, let's see, this article's actually
23 about the need to install a pressure regulator, isn't it?

24 A. That is correct, that's an instruction to a home
25 inspector on what he should be looking for when he's

1 inspecting a home.

2 Q. Matter a fact, the article itself doesn't stay one word
3 about a pressure relief device, does it?

4 A. No, sir, fact, I searched for regulators, I didn't search
5 for relief devices, it was just that this article about a
6 regulator showed a relief device.

7 Q. The article doesn't say one word about a pressure relief
8 device, does it, Mr. Harris?

9 A. Let me see the article, please.

10 Q. It's, the exhibit's in front of you I believe.

11 A. The one that says InspectAPedia? It says says "Pressure
12 relief valve may be required, typical setting 150 PSI," that's
13 more than one word.

14 Q. Mr. Harris, there's a diagram at the top. By the way,
15 what's the date on the diagram?

16 A. 2012 looks like, I'm not sure, can't read it.

17 Q. Well I'm gonna help ya a little bit, I think it's 2010.

18 A. May be 2010.

19 Q. Certainly ain't 2003, right?

20 A. No, sir.

21 Q. But regardless of that, okay, so there's a diagram. The
22 article, the body of the article not one word 'bout a pressure
23 relief device, correct?

24 A. No, the title of the article is, "What is a pressure
25 regulator or pressure reducing valve, where are they installed

1 and why," ---

2 Q. Okay.

3 A. --- this is an article describing how they function.

4 MR. IMHOFF: Your Honor, in the interest of time it's
5 getting late, I would ask that the Court direct Mr. Harris
6 today to answer my question. He can certainly provide an
7 explanation for it but I'm -- I'll ask it again, Your Honor,
8 if you'd like me to ask a yes, no question and I would ask
9 Mr. Harris to answer that question with the Court's help,
10 please.

11 THE COURT: Well ask your question 'cause I'm not
12 sure I've heard anything that I need to respond to.

13 MR. IMHOFF: Okay.

14 BY MR. HARRIS:

15 Q. Mr. Harris, in the body of the article it does not say
16 one word about pressure relief device, does it?

17 A. It doesn't because that's not the subject of the article.
18 The subject of the article is how does a pressure regulator
19 work.

20 Q. Right, and so you still haven't prevented -- presented
21 this jury with anything published that supports your opinion.

22 A. I disagree with you. There's a drawing right here the
23 typical installation that shows a relief device, it happens to
24 be installed exactly like I had described in my deposition.

25 Q. But after your research and your inspection and now it's

1 been four years, the only thing you can come up with is an
2 article which has a diagram and we don't know why that's on
3 that diagram, do we?

4 A. Oh, yes, sir, I know exactly why it's on here, it says it
5 may be required.

6 Q. The article doesn't tell us why it's on there, does it?

7 A. The diagram is self-explanatory, it shows its picture and
8 it has a note saying that the pressure relief valve may be
9 required and again this is not the only thing, there are
10 several items, there's been objections to my speaking to all
11 of them.

12 Q. But re -- regardless of that diagram that you got off
13 Wikipedia, it was not standard in the plumbing industry to
14 install a pressure relief valve in 2003, ---

15 A. It's not ---

16 Q. --- correct?

17 A. --- stan -- it is not because it's not standard in the
18 plumbing industry even to install a regulator. Most homes
19 don't have a regulator. The only ta -- time you need the
20 pressure relief device is when your home also require
21 regulator and then only when your supply pressure's gonna be
22 over about 125.

23 Q. Last thing, Mr. Harris, I don't know what exhibit that
24 came from, you've torn it apart a little bit up here, but go
25 ahead and look at that -- Your Honor, I don't know what

1 exhibit that came from 'cause ---

2 THE COURT: That was fro ---

3 A. The second page of one of the exhibits.

4 THE COURT: --- it was from the second page of Defense
5 Exhibit try, uh, ---

6 MR. DEAL: It's 2 or 3 I think, Your Honor.

7 THE COURT: Yeah.

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

9 THE COURT: Need to st -- at the break we need to staple
10 that together.

11 MR. IMHOFF: Alright.

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

13 BY MR. IMHOFF:

14 Q. Two, Exhibit No. 2. You just testified at the end of a
15 very, very long day, Mr. Harris, that it was these (indicating
16 the defendants) folks error not to put the pressure regulator
17 valve inside or on the side of the house, that right?

18 A. Yes, sir, those are two locations it could have gone,
19 they also suggested a utility room as an appropriate location.

20 Q. Have you looked No. 2, Exhibit No. 2 where it says
21 typical installation, ---

22 A. Yes.

23 Q. --- note it says, "If installed in a pit, vault, or
24 indoors," doesn't it, Mr. Harris?

25 A. Yes, sir, it could be installed in a pit, it can be

1 called [sic] in a vault or indoors and if it's in those
2 plea -- three locations they specify in a special trim.

3 Q. Thank you, Mr. Harris.

4 THE COURT: Re -- any redirect limited to just those
5 items?

6 MR. DEAL: Nothing, Your Honor, jury's ---

7 THE COURT: A ---

8 MR. DEAL: --- heard enough a this I think.

9 THE COURT: --- alright, thank you, sir, you may step
10 down.

11 (Whereupon, the witness left the stand.)

12 THE COURT: See the lawyers for a moment.

13 MR. IMHOFF: Yes.

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

15 THE COURT: Yes, sir.

16 MR. DEAL: Your Honor, plaintiff rests.

17 THE COURT: Alright, thank you, sir. Ladies and
18 gentlemen, uh, thank you for your work today, I'm going to
19 allow you to go home for the evening. Uh, I've got some
20 matters of law that I have to take up with the lawyers outside
21 of your presence so, uh, uh, I need to remind you do not have
22 any discussions about anything involving the case among
23 yourselves or with anyone else, also, uh, I know that you've,
24 uh, received a lotta testimony, maybe subject matters that you
25 might not be that familiar with remind you to not go and do

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1 any type of independent research or investigation, uh, allow
2 me and allow the lawyers, uh, the opportunity through this
3 court to be able to educate you about the things that you need
4 to know in making your decision, um, again I wanna thank you
5 for your time, your patience. Uh, I've got, at this juncture
6 I've got several matters of law to take up with the lawyers so
7 if you would I'm gonna ask that you be back in the jury room
8 deliberation room, uh, ten o'clock tomorrow morning and I'll
9 be able to rule on some of the matters that I have to rule on
10 so, uh, again, thank you very much, you may go with, uh, the
11 bailiff, he'll show you out.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Since you were kind enough to, uh, tailor
15 your cross-examination, I'll give you an option: I can either
16 receive the, uh, do ya ha -- ce -- receive any motions you
17 wanna make at this juncture, I'll let ya do 'em at 9:30.

18 MR. IMHOFF: Uh, are you giving me the option of now or
19 at 9:30?

20 THE COURT: Hm.

21 MR. IMHOFF: Uh, I'm I'm happy to do it now, Your
22 Honor, ---

23 THE COURT: Okay.

24 MR. IMHOFF: --- if you don't want a brief on it.

25 THE COURT: Okay.

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1 MR. IMHOFF: You want a brief on it?

2 THE COURT: Well I don't think I need a brief.

3 MR. IMHOFF: I don't think you do either but I I never
4 know.

5 THE COURT: Yes, sir.

6 MR. IMHOFF: Your Honor, again we we would, uh, we would
7 ask for a direct verdict at this time based on the same
8 grounds as our motion for summary judgment, uh, again, there
9 is no violation of code here, there's no violation of industry
10 standard, uh, we talked at good length, very long length about
11 the reasonableness of my clients and I specifically tailored
12 my questions to Mr. Harris about what they could have possibly
13 known back in 2003 about the failure of that valve and the
14 failure of that valve was not something that Mr. Harris could
15 testify that they knew or should have known and I think the
16 standard is something that, uh, the defendant should know or
17 should know as reasonably dangerous and there has been no
18 evidence and no testimony that in 2003 when they installed
19 this that the valve was going to fail and it was unreasonably
20 dangerous so on those grounds, Your Honor, we would say again,
21 there's three ways that you can be liable as a builder: You
22 can violate the code, you can violate the industry standard or
23 you knew or should have known, uh, that that that there was a
24 product or an installation or a construction defect that was
25 you knew or should have known is reasonably dangerous.

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1 There's been no testimony, no evidence, no submission that in
2 2003 these folks knew.

3 Your Honor, secondarily I think and I hope it's clear to
4 the jury but I think it's clear to everybody else in this room
5 what the cause of this flood was and it was a -- the failure
6 of that valve, Your Honor. As a matter of law I believe that
7 that c -- that is the proximate cause but for cause and I
8 asked Mr. Harris that specifically and I asked Mr. Searcy that
9 specifically but for the failure of that valve this flood
10 would not have happened. What Mr. Harris is submitting to the
11 jury and to the Court is that there should have been some
12 secondary safety valve which he admits was not the custom in
13 the industry, was not required by code, was not requested by
14 engineers and architects that worked on this building, it is
15 his opinion in 2009 so those are the two bases, Your Honor,
16 again for directed verdict, again, I I don't, I don't -- well
17 the the two reasons are these -- there isn't any evidence that
18 the -- they should have known, they knew or should have known
19 it was unreasonably dangerous and also the proximate cause
20 argument, Your Honor, is that that valve is what caused this
21 house to flood. Thank you.

22 THE COURT: Thank you.

23 MR. DEAL: May I, ---

24 THE COURT: Um-hum.

25 MR. DEAL: --- Your Honor? Uh, first of all, I just

1 kinda throw out there this is, uh, there's more than
 2 scintilla of evidence to support our case, well well more and
 3 and I'd I would first point out the warranty of habitability
 4 issue and by the way it was addressed, uh, earlier in in in
 5 proceedings that there was some issue with B&B being
 6 responsible, we've never alleged that, B&B is not responsible
 7 for the habitability of the home, only Mr. Searcy is, so let
 8 me address that first. Mr. Searcy argued or or stood up here
 9 and admitted what what the legal standards were which is he
 10 was responsible for turning this nothing into a home, he was
 11 responsible for making it habitable. He said ---

12 THE COURT: Now you're you're arguing the issue of
 13 habitability as it relates to the builder.

14 MR. DEAL: That's right.

15 THE COURT: Okay.

16 MR. DEAL: I'm just sayin' for as to B&B I just wanna be
 17 clear we're not talking about them when ---

18 THE COURT: Alright.

19 MR. DEAL: --- when that comes up. Mr. Searcy said he
 20 put this home in the stream commerce, he built it and he was
 21 the one that turned it into a house, he's the one that got the
 22 CO, that's his testimony. Now as far as if the house was or
 23 wasn't affected, Mr. Harris said absolutely this house was
 24 gonna fail because this this house, this this this loss was
 25 going to happen the day it was built because that was gonna

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1 fail and everybody in this courtroom knows tho -- those things
2 aren't gonna last forever, I mean, it's common sense but
3 Mr. Harris testified to it, uh, and so as far as that goes I
4 don't think there's any argument whatsoever there, Your Honor,
5 'bout whether or not that particular, uh, he didn't actually,
6 Mr., uh, Imhoff didn't actually argue this particular the
7 warranty to habitability and I say that we we, ya know, it's
8 it's still active in any case.

9 Now we talk about proximate cause, it's fairly clear
10 Mist -- Mr. Har ---

11 THE COURT: Now you're back to B&B and Searcy or just
12 Sear ---

13 MR. DEAL: Well proximate cause in general that if if if
14 there's an issue at all there the proximate cause is is, Look,
15 this thing's gonna fail and and when it fails, gonna fail well
16 then that's exactly what happened here, we all know that, so
17 from a habitability standpoint that's aside.

18 Now as far as the total proximate cause, testimony was
19 thi -- the -- thi both sides have agreed this thing shoulda
20 been maintained after after it was installed but both sides
21 but but the testimony has been that Mr. Wennerstrom was never
22 told that by anybody but Mr. Searcy said, Yeah, it would be
23 important for for Mr. Wennerstrom to have the warranty
24 information and the, all the owners manuals and everything for
25 anything that was installed in his home we wanted to make sure

1 that he knew how to operate it and it would be operated safely
2 so Mr. Searcy testified to that but the te -- but but the
3 evidence indicates that never happened with this particular
4 item and so it was never maintained or installed, that's on
5 them, okay, so from a negligent standpoint neither Mr., uh,
6 Wenner -- Mr. Searcy or Mr. or the folks from B&B ever told
7 Mr. Wennerstrom this thing existed, much less here's the
8 documentation that's necessary for you to understand what
9 needs to happen to this thing, Mr. Searcy admitted that was
10 necessary for him to have, so from a straight up negligent
11 standpoint the maintenance on this thing was -- is is in the
12 code, it's it says it needs to be maintained and that was we
13 don't, we don't, we don't even, yet I didn't even have to make
14 an argument about that, everybody agrees, so, Your Honor, I'd
15 like to move for directed verdict on on the issue of of of
16 that particular bit of negligence. They admitted it was
17 necessary, Mr. Searcy admitted it was necessary to have that
18 to to, that Mr., uh, Wennerstrom have this information, it was
19 not provided to Mr. Wennerstrom, he didn't even know the the
20 the valve was there, as a result this loss occurred, period,
21 end of story, he wasn't, uh, even even given the knowledge it
22 woulda taken to maintain this view.

23 THE COURT: Searcy wasn't give that knowledge?

24 MR. DEAL: Smi -- Mis -- Mr. Wennerstrom was never given
25 any documentation, he didn't even know this thing was there

1 and yet Mr. Searcy testified that it would be, that he would
2 expect and it would be his expectation that that it would be
3 necessary for Mr. Wennerstrom to have all the documentation
4 for everything that was installed in his home by any of the
5 subs and they've had a policy about that and they pu -- and
6 they were -- they would put those documents into a drawer,
7 that's their policy, not mine, that's their standard, not mine
8 and they didn't follow it, that's what the evidence dictates.
9 Now it's circumstantial but the only evidence is is Mr. Se --
10 Mr. Wennerstrom had no knowledge of this we -- regulator,
11 that's the only evidence in in in this case.

12 Now as far as the negligence of Mr. Searcy, Mr. Searcy,
13 we've already discussed that this issue here but as far as
14 it -- that they still failed to address the fact this --
15 they -- no one ever tested this pipe to see how much water's
16 comin' in, they said they said they squirted with a finger,
17 what's that tell anybody? At that point in time he thought
18 the water pressure was low but we know it wasn't, it was a
19 hundred and fifty to tw -- to a hundred and eighty PSI, that's
20 almost not even contested. Now that's also circumstantial
21 that the pressure was there at the beginning as it was at the
22 end but as more houses would be built, Your Honor, the the
23 water system, the same logic will tell ya that the pressure
24 would only go down as the -- as more houses were built not up,
25 so in any ca -- more demand, less pressure.

1 Now there's well more than a scintilla of evidence to
2 show that there was a need for this relief valve and the
3 failure for for for Mr., for B&B to to to not realize under
4 the circumstances that the pressure was high comin' in here,
5 fail -- failure to know that there's any any issue with the
6 pressure at all is enough to to to ca -- cause them to be
7 negligent or to show that they were negligent because had they
8 known then they would at least had the ability to act on that
9 but since they didn't even know and Mr. Searcy stood up there
10 and said it's important for him, for all his his, uh, uh,
11 subcontractors to gather as much information as they can 'bout
12 what they need to do with the house and to, and act
13 appropriately and they didn't gather that information and,
14 therefore, they didn't even address the need, the potential
15 need for this relief valve which Mr., uh, Harris has testified
16 at length it was necessary under the circumstances, thanks,
17 Your Honor.

18 THE COURT: Might entertain some questions?

19 MR. DEAL: Absolutely, Your Honor. Uh, with a directed
20 verdict motion that's made by the defense at this juncture in
21 the trial, I have to view the evidence in light that's most
22 favorably to your client and draw inferences, uh, from that
23 evidence that's most favorable to your clients, okay, uh, so
24 tell me you've got two cause of action that you're asserting
25 against the, uh, builder, one is, that this, uh, warranty

1 claim and the other is the negligence claims ---

2 MR. DEAL: That's right.

3 THE COURT: --- but yet all the testimony indicates to me
4 that the plumbing was done by, uh, done by the plumbers ---

5 MR. DEAL: Yes.

6 THE COURT: --- and and that Mr. and that the builder,
7 the contractor had nothing to do with the plumbing ---

8 MR. DEAL: That's right.

9 THE COURT: --- so in a theory of negligence how do I get
10 the contractor responsible for the plumber when the testimony
11 that I recall is that he had nothing to do with the plumbing
12 and, uh, he just let the plumbers go do their thing?

13 MR. DEAL: That's, uh, that's ---

14 THE COURT: How ---

15 MR. DEAL: --- right, Your Honor.

16 THE COURT: What theory is it that if the plumber was
17 negligent, what theory imputes that negligence to the
18 builder, ---

19 MR. DEAL: Well there's ---

20 THE COURT: --- to the contractor?

21 MR. DEAL: --- direct negligence, Your Honor, 'cause the
22 builder has, builder said it was, it was he should be
23 providing the warranty information and the information that in
24 the, in in all the manuals and everything for anything that
25 was installed in the home he should be providing that to the

1 homeowner.

2 THE COURT: The builder.

3 MR. DEAL: The builder should, ---

4 THE COURT: Okay but ---

5 MR. DEAL: --- that's and he said it was his policy to do
6 that to, and to take all that documentation and put it in one
7 place. He was responsible for that, he was responsible
8 frit -- thereafter for giving that information to the
9 homeowner and he didn't in this case, he did not give that
10 document to Mr. Wennerstrom, that's ---

11 THE COURT: So ---

12 MR. DEAL: --- their testimony, not anything that
13 we're ---

14 THE COURT: --- so tell me what, define that duty to
15 me ---

16 MR. DEAL: He, he ---

17 THE COURT: --- 'cause in ---

18 MR. DEAL: --- it was necessary ---

19 THE COURT: --- in torts theory we deal with duties
20 and ---

21 MR. DEAL: Yes, sir.

22 THE COURT: --- breaches of duties.

23 MR. DEAL: His duty was to provide Mr. Wennerstrom the
24 necessary information it took so that he could main --
25 properly main, ya know, use and maintain his home safely and

1 he breached that duty by not providing the documentation for
 2 and you can make the inference at the very least that he
 3 didn't, that the document was not provided to Mr. Wennerstrom
 4 so that he would know that this thing even existed, much less
 5 that it needed to be maintained on a regular basis which the
 6 testimony is uniform that it was necessary and but for that
 7 and Mr. Harris testified that it need, it needed to be
 8 maintained. The code requires it be maintained because that's
 9 what the manufacture's instructions dictate and that's also
 10 not in in doubt or in question.

11 THE COURT: So your duty, so your case against the
 12 homeowner when we're dealing with ---

13 MR. DEAL: The builder rather, Your Honor.

14 THE COURT: --- the builder, uh, you're not imputing the
 15 negligence of the plumber, you're having just direct evidence
 16 of failure to warn and advise the homeowner of the need for
 17 the maintenance of that contraption.

18 MR. DEAL: That's correct and he said that, not me, Your
 19 Honor.

20 THE COURT: So you're not, so so you're not going to have
 21 me submit or or have me make a decision do we impute any
 22 negligence on the part of a plumber to the contractor.

23 MR. DEAL: It's not necessary, Your Honor.

24 THE COURT: Okay.

25 MR. IMHOFF: Can I weigh in on that, Hon -- Your Honor?

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1 THE COURT: Uh-huh.

2 MR. IMHOFF: I love it. I I love his stipulation that
3 the only thing that Searcy Homes did wrong was not give the
4 warranty information, okay, so that's correct.

5 MR. DEAL: Well that's not all I said, Your Honor.

6 THE COURT: Alright.

7 MR. IMHOFF: But but well I thought it was, I mean,
8 we're -- we'll we're sort of making it up as we go so I I
9 gotta get the argument when I can, uh, but there's no, even if
10 that's true even, if there is a duty, which I don't think
11 there is, I've never seen a case where you have to provide the
12 manufacture maintenance instructions for a regulator to so I
13 don't think there's a duty, I I don't think that exists. Even
14 if it did, there's -- that's not the cause a this failure.
15 There's no testimony or evidence that that regulator failed
16 because of the lack of maintenance, in fact, Mr. Harris
17 couldn't testify why the regulator failed so even if that's
18 true, even if there's a duty it certainly isn't approximate
19 cause so I I I would argue, Your Honor, that that's gone and
20 and you're you're absolutely right, I was gonna say that,
21 there was no evidence, ---

22 THE COURT: Write that down.

23 (Laughter.)

24 MR. IMHOFF: --- there's no ev -- Your Honor, that the
25 sta -- you you got the standard, uh, for a builder to be

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1 liable for its subcontractors, there actually has to be some
2 showing that he failed to reasonably supervise the
3 subcontractors. You're right on, there wasn't any testimony,
4 there wasn't any evidence, I'm I'm glad that they admitted
5 that's gone so I would, I would say, uh, that the only thing
6 left I think against Searcy if I'm hearing that correctly is
7 this failure to provide the warranty and maintenance
8 information and there's no duty and there's no proximate
9 cause.

10 Uh, a couple other ones, Your Honor, as to, uh,
11 maintenance, Your Honor, there is evidence, there is evidence
12 about Wennerstrom knowing and this is one of the problems that
13 I ran into and one of the problems that we had that we
14 discussed with Judge Cole is the fact that they don't have to
15 bring Wennerstrom to trial and I can't, he's in Florida and
16 now they wanna say Mr. Wennerstrom wasn't provided these
17 things but I don't, I don't have Mr. Wennerstrom here to
18 testify about that. He's telling you things that the person
19 who knows those things aren't here to say so I, ya know, Your
20 Honor, it's, it is a very, very, very long, long stretch to
21 try to get Mr. Searcy and Searcy Custom Homes liable for; one,
22 something that the guy who knows whether it happened or not
23 isn't here; two, there's no duty for and; three, is certainly
24 not the proximate cause, Your Honor.

25 MR. DEAL: I would merely say, Your Honor, as to, as to

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1 Mr. Wennerstrom, believe this was an issue that was in fact
2 addressed with Mr. Co -- Judge Cole. We offered defendants
3 the opportunity, we would get a subpoena and we have an office
4 in Miami and we would produce him in in for deposition in
5 Miami. We would produce him for a video deposition. If they
6 wanted to be in our office in Nor -- North Carolina, they
7 would -- and Mr. Wennerstrom would be in our office in Miami
8 and we would have videotape, we also do it by telephone. We
9 gathered the information that we needed for Mr. Wennerstrom
10 from our, uh, expert who is allowed to talk about what he was
11 told and rely on that information by the law, it's not
12 hearsay, it's what an expert can do and that's what we can
13 bring in. The evidence is he didn't know anything about the
14 regulator, much less that he needed to main -- maintain it.
15 How can he he doesn't know about the regulator how you even
16 know -- how can he ever know he needed to maintain it?

17 THE COURT: Well address what Mr. Imhoff argued about
18 what you're admitting with this argument or how you're
19 limiting your ---

20 MR. DEAL: Oh, ---

21 THE COURT: --- negligence case ---

22 MR. DEAL: --- Your Honor, look, but we we we don't have
23 any problem with the way Mr. Searcy supervised his his his his
24 sub in this situation. Now as far as the other, any other I
25 I I wanna clarify one thing, Mr. Searcy admitted on the stand

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1 it was it's his standard a care, he expected to be reasonably
2 prudent, he would have to gather all the neg -- all the
3 necessary information to make a leg, uh, assessment of how the
4 house need to be built, he never once tested this water. Once
5 again this is a huge issue in the case. Obviously if this
6 house had been built in Spartanburg and this regulator had
7 failed, we wouldn't be here, you know why, we'd never know it
8 failed, that's the whole point here is this is an unusual
9 situation. Now under the circumstances what would a
10 reasonably per -- prudent person do? He comes out there and
11 he's got this massive slab and there's all kinds a things
12 going on out there, he didn't once think to test the water,
13 fact he made a false assumption about what the water was gonna
14 be like, no provision was made for that.

15 MR. IMHOFF: Uh, can can I, can I argue one more thing,
16 Your Honor?

17 THE COURT: Um-hum.

18 MR. IMHOFF: Uh, I keep hearing that this house was
19 destined to fail, so is mine if I don't maintain it, there's
20 no evidence. Matter of fact, Mr. Harris testified that he
21 would expect that regulator to last at least six years but it
22 needs to be maintained and sometimes it needs to be replaced.
23 There's no allegation or defense by the defendants that
24 everything we put in the home has to last forever, that's
25 absurd and that certainly isn't what Mr. Harris said. You've

1 gotta replace the shingles on your roof, you've gotta replace
2 most of the components in your home so the argument that this
3 home was destined to fail is true if you're you're judging
4 someone by a hundred year standard. This is six years. The
5 testimony from their expert is it shouldn't a failed in six
6 years, because it failed in six -- and these folks should not
7 have thought that it would fail in six years and that's the
8 standard, that it is what a person knew or reasonably should
9 have known about the dangerous propensities and he,
10 Mr. Harris, their only expert that could testify about this
11 admitted these folks shouldn't a thought this thing was gonna
12 fail in six years and that's that's the case, Your Honor, so I
13 think and and and and one one other thing, if the negligence
14 is gone, it's not imputed, I think the warranty a habitability
15 is gone for Mr. Searcy also because if he didn't do anything
16 defective then there isn't a warranty of habitability either
17 and I don't think there is a defect here 'cause again, it was
18 installed and not expected to fail. I I think, I think Searcy
19 Homes is outta the case, Your Honor, unless we're gonna take
20 'em on this warranty cause of action, well not providing a
21 warranty cause of action, the new one.

22 MR. DEAL: Your Honor, we all know that there's somethin'
23 called statute a repose in the State a South Carolina for
24 construction of real property. They don't guarantee the whole
25 thing forever, they guarantee it for as long as the statute of

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1 repose is in existence and if this house and this regulator
2 had lasted, uh, well I think at the time the the statute then
3 was thirteen years, Your Honor, if this thing had lasted
4 thirteen years and two days, days we wouldn't be sittin' here
5 right now so it's not, you don't make an unlimited guarantee,
6 the law sets how long that guarantee is, that that guarantee
7 is thirteen years for this particular cause of action and any
8 other cause of action as to a builder or anybody else that
9 builds a house.

10 MR. IMHOFF: I I mi -- I would love to see Mis --
11 Mr. Deal show me where a builder is responsible for every
12 component of a home for thirteen or eight years depending on
13 the statute a repose, that that is, that's not the law in the
14 State of South Carolina, not even close to the law in the
15 State of South Carolina. If that were true, I would buy a new
16 house every eight years 'cause I knew my ice maker would get
17 fixed.

18 THE COURT: You can afford that.

19 (Laughter.)

20 MR. IMHOFF: I would buy a small house, Your Honor.

21 THE COURT: Okay.

22 MR. DEAL: it, Your Honor, it goes to the habitability.
23 If it floods it's not habitable, it doesn't goes to the if if
24 for an ice maker's gonna break or not, right, we all know
25 that, it goes to fault.

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1 THE COURT: Okay.

2 MR. DEAL: There is no fault in warranty of habitability,
3 that is what the law is.

4 THE COURT: Okay, I think I've got the arguments down. I
5 will, uh, let's get get back together 'bout 9:30. Uh, thank
6 ya'll very much.

7 MR. IMHOFF: Thank you, Your Honor.

8 THE COURT: Yes, Your Honor. See the lawyers in the back
9 for a moment.

10 MR. DEAL: Yep.

11 MR. IMHOFF: Back?

12 (Whereupon, a discussion in chambers was held off the
13 record.)

14 (Proceedings October 2, 2013)

15 THE BAILIFF: Thank you, be seated.

16 THE COURT: Alright, we'll go on, we'll go on the record.
17 Uh, I had a brief, uh, conference in chambers with the
18 attorneys, I informed the the attorneys that in regards to the
19 directed verdict motion that I would not be granting them at
20 this time. Uh, due to, uh, due to the a standard that I have
21 to apply in viewing the evidence in the light most favorably
22 to the non-moving party as well as the inferences that I draw
23 therefrom and that we had a brief discussion that I also would
24 like hopefully will receive some information concerning the
25 law applicable to warranties at, uh, while the re -- rest a

1 the case is ongoing. Uh, the plaintiff also made a motion for
2 directed verdict and I will deny that as well at at at this
3 time. Ya'll ready to proceed?

4 MR. IMHOFF: We are, Your Honor.

5 THE COURT: Alright, let's bring the jury in. Still have
6 the three witness you anticipate?

7 MR. IMHOFF: Potential three yes, could be less.

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

9 THE COURT: Yes, sir, Mr. Imhoff.

10 MR. IMHOFF: Thank you, Your Honor. Uh, at this time we
11 call Randall Blythe with B&B plumbing.

12 THE COURT: Sir, just come right up here (indicating) and
13 allow the clerk the opportunity to swear you in.

14 RANDALL WADE BLYTHE, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. IMHOFF:

17 Q. Morning, Mr. Blythe.

18 A. Morning.

19 Q. Will you state your full name for the jury, please.

20 A. Randall Wade Blythe.

21 Q. And are you an owner or the owner of B&B Plumbing?

22 A. I am.

23 Q. Okay, as a defendant or one of the defendants in the
24 lawsuit that Fireman's Fund has brought? Are you a defendant
25 in this case?

1 A. Yes, I'm sorry.

2 Q. Okay. Uh, I -- you are the plumbing company for Mr.
3 Wennerstrom's home, is that right?

4 A. That's correct.

5 Q. Okay. How long have you been plumbing, Mr. Blythe?

6 A. Since 1986.

7 Q. Uh, what kind of plumbing do ya do?

8 A. Uh, we do any and everything, I have a complete unlimited
9 license in North Carolina and South Carolina. We have plumbed
10 anything from, I'll make a joke that we plumb anything from a
11 dog house to a 50-room hotel, anything in between.

12 Q. You ever have any idea how many homes you've plumbed in
13 those workin' on almost thirty years?

14 A. I I got a rough idea that we've plumbed permitted jobs
15 about twelve hundred or more.

16 Q. Twelve hundred jobs.

17 A. Twelve hundred permitted jobs. I've done a lot more than
18 that but permitted jobs is jobs that require, uh, an
19 inspection.

20 Q. Have you done any multi-million dollar homes?

21 A. I have done several multi- million dollar homes. Matter
22 a fact, as far as the scale of the multi-million dollar home
23 we've done, Mr. Wennerstrom's would be on the low end of that
24 scale.

25 Q. Did you tell Mr. Wennerstrom that?

1 A. No, sir.

2 (Laughter.)

3 Q. Okay, alright, so, uh, what what, give give the jurors an
4 example of some a the homes the people that you ---

5 A. Okay, ---

6 Q. --- plum for.

7 A. --- um, I I don't wanna divulge names because my
8 clientele is some of 'em are pretty special. I have plumbed
9 the, uh, house for the CEO Coca-Cola beer, plumbed a house for
10 CEO of McDonald's, I've plumbed the house for a man that owns
11 one of the largest, uh, insurance companies in the State of
12 Tennessee, I plumbed the house for a man that owns one of the
13 largest concrete companies in Florida, uh, plumbed, uh,
14 several clubhouses, one of those clubhouses we do was, in
15 fact, was at the Biltmore, uh, Forest where the Biltmore house
16 is at, I plumbed six or eight houses in that area also where
17 the Biltmore house is located. I've plumbed for congressmen,
18 we've done dentist offices, I've done, uh, the mayor of
19 Brevard, I've done some plumbing for him, I've done plumbing
20 for a guy that's got one a the largest construction companies
21 in the world, I plumbed a house for a guy that's got one of
22 the largest construction companies in the State of North
23 Carolina.

24 Q. Okay, alright.

25 A. Uh, ---

1 Q. You've done a lotta big houses.

2 A. Yes, sir, we've done a lotta big houses.

3 Q. Alright, how many countries have you built in?

4 A. Uh, three.

5 Q. Three. United States.

6 A. United States.

7 Q. Where else?

8 A. Honduras and Mexico.

9 Q. Okay. What were you doin' in Honduras?

10 A. I was down on a mission trip with, uh, Mark Searcy and I
11 replumbed a, uh, water tank storage system for a village that,
12 uh, had no water.

13 Q. That was in Honduras?

14 A. Yes, sir.

15 Q. You got a village water in in Honduras.

16 A. Yes, we did. We put in a pump system that I was
17 surprised it worked but it, Mark assured us that it worked and
18 they had some guy Indiana I believe that engineered the thing
19 and, uh, we designed and put this pump in, it pumped water
20 approximately a hundred feet up a hill with no electricity ---

21 Q. Okay, ---

22 A. --- and it worked.

23 Q. --- where else have you done, uh, plumbing?

24 A. Did a, uh, pressure tank pump system in Mexico for
25 another missionary that I went there with with my wife and,

1 uh, did some plumbing down there for a mission house that they
2 were building and I did all the plumbing on their well system
3 down there for.

4 MR. IMHOFF: This time, Your Honor, we would offer
5 Mr. Blythe as an expert in plumbing.

6 MR. DEAL: No objection.

7 THE COURT: Alright, ladies and gentlemen, uh, normally a
8 person cannot give opinion testimony and normally when I
9 person testifies they must do as to either what they saw,
10 heard or sensed by smell or something of that nature; however
11 there, is an exception when someone is qualified because of
12 education or experience they are permitted to give their
13 opinion in certain areas if the Court qualifies them that way.
14 This witness will be qualified in the area of plumbing to give
15 opinion testimony in that area, that does not mean that you
16 must accept the opinion but it is evidence for you to use any
17 way that you see fit.

18 BY MR. IMHOFF:

19 Q. Mr. Blythe, have you also done commercial work?

20 A. Yes, sir, I've ---

21 Q. --- done, uh, us -- we've done two or three clubhouses,
22 I've done to motels, we're in the process right now of doin'
23 plumbing on remodeling of a building that used to be a motel
24 turned into low in -- income houses, I've done I don't know
25 how many restaurants we've done, daycare centers, churches,

1 rest, uh, rest homes, we did a rest home in Tryon, uh, I --
2 tremendous amounta commercial work.

3 Q. Just a lotta work.

4 A. Yes, dentist offices, doctor's offices, you you name it,
5 we have, we have plumbed it.

6 Q. Alright. Alright, and you did Mr. Wennerstrom's house.

7 A. Yes, sir.

8 Q. Okay, and you were hired by Searcy homes to do that.

9 A. That's correct.

10 Q. And you didn't sell Mr. Wennerstrom him home, did you?

11 A. No, sir.

12 Q. Okay. Alright, and you were also called back by
13 Mr. Searcy and Mr. Wennerstrom after this flooding happened,
14 is that right?

15 A. That's correct.

16 Q. Okay. Is he still calling you?

17 A. Yes, sir, he called me, uh, we went back and did all the
18 repair work for him, uh, and I think we have been back to
19 there once before and then he called me one time after that
20 and I was nervous about goin' again so I contacted you and you
21 advised us not to go.

22 Q. Alright, uh, let's talk about, let's talk about this
23 case. Alright, you were served with the lawsuit in 2011?

24 A. That's correct.

25 Q. Okay. Uh, do you recognize this (indicating) as a copy a

1 the lawsuit, Mr. Blythe.

2 A. Uh, yes, sir, I do.

3 Q. Alright, and what was your understanding based on the
4 lawsuit that you were being accused of back in 2011?

5 A. It was my understanding we're being accused of not
6 putting a shunting device on the, uh, water system and at that
7 time I had no idea what a shunting device was.

8 Q. Okay, what have you learned a shunting device is ---

9 A. I have ---

10 Q. --- since then?

11 A. --- learned since then that the shunting device is device
12 that deters the water from the house in case of a flood or
13 something, a pipe bursts or something to that effect in into
14 the house.

15 Q. Okay, pressure relief valve?

16 A. Absolutely.

17 Q. You've you've learned that through this litigation?

18 A. I've learned that through this litigation.

19 Q. Alright. As far as you understand, is that the only
20 allegation against you in 2011?

21 A. Uh, that's what I thought until yesterday then it seemed
22 like the world exploded yesterday and here I am bein' accused
23 of not installin' a pressure reducin' valve in a correct and
24 proper location ---

25 Q. Okay.

1 A. --- when in fact that location passed plumbin'
2 inspection.

3 Q. Let's talk about the allegations that that we learned
4 yesterday, okay. Uh, you were hear for Mr. Harris's
5 testimony?

6 A. Yes, sir.

7 Q. Okay. He testified that that B&B should have tested the
8 water pressure at Mr. Wennerstrom's house, I gu -- I'm not
9 sure if it was before or after installation of pressure re --
10 reducing valve, do you have an opinion as to whether or not
11 you should have tested the water pressure to determine that it
12 was a hundred and fifty or two hundred and forty PSI?

13 A. No, sir, my experience tells me that, uh, just from
14 experience that I know that the water pressure was was around
15 60 to 80 pounds which is normal. We put a pressure reducin'
16 valve on the house just in case the water pressure sometime in
17 the future was going to be increased for future development,
18 that is very common practice and, uh, you're kinda, if you're
19 a plumbing contract doin' good work for good clientele you'd
20 be downright stupid not to put a pressure reducin' valve on a
21 house like that.

22 Q. Right. What is, what is 200, 240 PSI look like in a
23 hose?

24 A. Well if you had, uh, if you had 200-pound water pressure
25 goin' through a 3/4 inch hose, it would blast a hole in that

1 wall right there (indicating).

2 Q. Okay.

3 A. Just picture me by the fire truck, fireman, ---

4 Q. Okay.

5 A. --- those fire truck hoses are are 2 inches in diameter
6 and they probly got maybe be what, hundred and twenty to two
7 hundred pounds a pressure on, it takes two firemen to hold
8 that hose.

9 Q. That's I guess a cartoon, a movie or whatever where the
10 firemen are climbing up on ---

11 (Indiscernible cross-talk.)

12 A. Oh, yeah, and and if you got 200 pounds a water pressure
13 on a water hose, that thing starts floppin' all over the
14 place, somebody's gonna get hurt.

15 Q. Okay. Real obvious when there's 200, ---

16 A. Absolutely, ---

17 Q. --- 250 pounds ---

18 A. --- there's no doubt about it and plus if you got a, if
19 you're out there working and you're layin' rock or something
20 or brick or doin' masonry work or whatever and you got this
21 water hose layin' out there in the hot sun, they probly bought
22 the hose from Dollar General 'cause they're tryin' to get out
23 the job as cheap as they can on their materials that they're
24 buying to work with and this, and this hose is layin' out
25 there in the sun all of a sudden it's got 200 pounds a water

1 pressure on it, it's gonna swell up and burst.

2 Q. Let's talk about that a minute. Alright, so during
3 construction of the house, do the other trades have to use
4 water?

5 A. Yes, sir.

6 Q. Alright, so what, what do -- do you provide water for
7 them?

8 A. A lotta times we do.

9 Q. Okay. How do ya do that?

10 A. Uh, we go out when the meter's installed at the street,
11 we put a temporary water source for construction purposes,
12 sometimes dependin' on where the job's at in the, uh, if it's
13 in the wintertime or not we may put a yard hydrant in which
14 doesn't freeze or we may just come out with a piece a pipe
15 pipe and put a valve on it, everybody attaches their water
16 hoses to that and the painters use it, masons use it, uh, the
17 laborers use it to drink water durin' a hot day so the water
18 was on that job from I'm gonna assume day one, day five or
19 somewhere somewheres early in the job they got to have water
20 on to build this house.

21 Q. Alright, so I I'm picturing the hydrant that you see on
22 the side a the road but it's something similar to that sittin'
23 on ---

24 A. No, ---

25 Q. --- the grass?

1 A. --- not not what you see on the side a the road, it's
2 it's about this (indicating) big around and it comes up outta
3 the ground, it's got a handle, you lift the handle up, more
4 like you might see at a campground.

5 Q. Alright, and but that you can put hoses on?

6 A. You can put a hose on it.

7 Q. It's just the same hoses that we have 'layin' in our
8 yard, ---

9 A. Sure, ---

10 Q. --- sprinkler?

11 A. --- yeah, yeah.

12 Q. Okay. Can those hoses handle 200 PSI?

13 A. Absolutely not.

14 Q. Okay. Would you know immediately as ---

15 A. Absolutely, ---

16 Q. --- to ---

17 A. --- I know for a fact 'cause I seen one explode one
18 time.

19 Q. Alright. You've seen, you've seen a hose explode?

20 A. Yes, sir.

21 Q. With with hot pr -- water pressure?

22 A. Yes, sir.

23 Q. Okay, that didn't happen on this job.

24 A. No, sir.

25 Q. Alright. So based on your experience and just common

1 sense with these hoses out there, did you think you needed to
2 put a pressure it, uh, gauge on the pressure Mr. ---

3 A. No, sir.

4 Q. --- Wennerstrom?

5 A. No.

6 Q. Alright, and and de -- and despite doin' that it didn't
7 matter because you were puttin' a pressure regulator ---

8 A. We were gonna put a pressure reducin' valve on there
9 regardless.

10 Q. Alright. Now, uh, I I I I I'll admit I got a little bit
11 confused Mr. Harris yesterday I think he might have accused
12 you of burying the pressure reduction valve, did ya bury the
13 pre -- pressure reduction ---

14 A. No, sir.

15 Q. --- valve? What ---

16 A. May read, may I read the instructions?

17 Q. Well, let -- we'll get to that in just a ---

18 A. Okay.

19 Q. --- second but can you -- what did ya do with it?

20 A. We put the pressure reducin' valve at the street outside
21 the meter in the ground in a pit in a valve box, that box is
22 close the size a that (indicating) table.

23 Q. Okay, and that valve box was it surrounded by any other
24 valve boxes?

25 A. Oh, yeah, there's irrigation boxes there, the meter box

1 was there, there were several boxes there ---

2 Q. Okay.

3 A. --- and some a those irrigation boxes where there's
4 around the green ones.

5 Q. Okay, so the irrigation company put their valves in a, in
6 a valve box underground also?

7 A. That's correct.

8 Q. And the water company puts ---

9 A. Yes, sir.

10 Q. --- their shut off valves ---

11 A. Yes, sir, their ---

12 Q. --- and meter ---

13 A. --- meter, their meters in a box similar to ours and
14 right beside ours.

15 Q. Okay, all right together.

16 A. All right together, right at the, right where the
17 driveway begins.

18 Q. Okay. Is there anything wrong with puttin' a pressure
19 regulator valve in a valve box buried?

20 A. No, sir, ---

21 Q. Okay.

22 A. --- we do it all time.

23 Q. Alright. Now the size of the box how big is that box?

24 A. Uh, it's, for just description purposes it's close to the
25 size a that (indicating) table, real close and and it's

1 tapered. It it starts out smaller and it gets bigger as you
2 go down so it gives you more room to work inside the box to
3 access the, uh, pressure reducin' valve.

4 Q. I'm I'm holding up now Defense Exhibit No. 1, is that the
5 the valve box that you put a pressure reduction valve in?

6 A. Yes, sir, I see the valve boxes for the irrigation
7 system, I see the valve box for the, uh, water meter and I see
8 the valve box, uh, location where we had it for our pressure
9 reducin' valve.

10 Q. Okay. Mr. Harris ---

11 A. Any anybody wo -- could tell that's done any kind of
12 experience, uh, the expert witness should have known this
13 without any problem.

14 Q. Right. Mr. Harris also accused you of violating code
15 because there wasn't sufficient room to get in there and
16 repair that valve, ---

17 A. Yes, sir.

18 Q. --- does it hold any water so to speak?

19 A. No, sir. Are we talkin' about sufficient room for a man
20 that weighs 600 pounds or sufficient room for a man that
21 weighs a hundred and seventy-five pounds?

22 Q. Alright.

23 A. Nowhere nowhere in the installation instructions does it
24 tell you how much room is sufficient room and and that the
25 expert witness yesterday and admitted that there was room to

1 get in there with two wrenches, two ---

2 Q. Okay, ---

3 A. --- wrenches.

4 Q. --- that's the bell ---

5 A. That's correct.

6 Q. --- housing. Okay. And that is the only piece that you
7 need ---

8 A. That's correct.

9 Q. --- to take off ---

10 A. Yes, sir, you take this (indicating) off to replace that
11 diaphragm you was talkin' about the spring and you've rebuilt
12 it.

13 Q. Okay, let me finish my questions if you don't mind, ---

14 A. I'm sorry, ---

15 Q. --- I know you're, ---

16 A. --- I'm ---

17 Q. --- excited, ---

18 A. I am.

19 Q. --- okay, but that's (indicating) the only thing that you
20 need to replace or repair that thing?

21 A. That's correct.

22 Q. Okay, and so if the box is about this (indicating)
23 big, that's it, sittin' in that ri -- is there enough room for
24 you to work in there?

25 A. Oh, absolutely, there's enough room for Chuck and I both

1 to be workin' on that thing.

2 Q. Well, let's be honest, Chuck's gonna do the work right?

3 A. Oh,, it depends on, uh, yeah.

4 (Laughter.)

5 Q. Alright, so, alright, so I guess the size a the box we
6 heard yesterday, by the way had ya ever heard that before?

7 A. No, sir.

8 Q. That was new to you yesterday?

9 A. That was new to me yesterday. I did not know I was being
10 sued for wrong size box.

11 Q. Okay. Uh, let's see, location. I think he he alleged
12 that you put it in the wrong location.

13 A. Yes, sir, he did.

14 Q. Okay, did you believe that to be true?

15 A. No, sir, do not.

16 Q. Okay. Why do you put it out at the read?

17 A. I put it out at the road to protect the whole entire
18 water system from from the street to the house and throughout
19 the house, all the irrigation, everything's protected.

20 Q. Alright. Now I think Mr. Searcy said that
21 yesterday, ---

22 A. He did.

23 Q. --- what are the, what are the things that can happen if
24 you put it in the garage where Mr. Harris wanted it?

25 A. If you put it in the garage where Mr. Harris wanted it,

1 uh, number one, the the water line from the street to the
2 house is unprotected and if Mr. Wennerstrom sometime in the
3 future decided he wanted to cut a, uh, another line into that
4 water line, say he's gonna add a water feature, he wants to
5 add a waterfall out there, he wants water for his waterfall or
6 he wants to add a yard Hunter and wash his car at the street
7 or somethin' so he cuts that line then he's got full water
8 pressure from whatever it is at that time comes from the
9 street, somebody could get hurt.

10 Q. Okay. Does the code require you to put in the garage?

11 A. No, sir.

12 Q. Okay. Does common sense dictate that you put it out at
13 the road?

14 A. It does.

15 Q. Okay. Now I think he might -- I think you said he
16 actually showed a diagram that that he got off the Internet
17 but it shows the the pressure reduction valve right up on the
18 side a the house ---

19 A. It does.

20 Q. --- right like here (indicating), ---

21 A. That was stated as typical installation.

22 Q. Okay. You do that at ---

23 A. No, ---

24 Q. --- Cliffs a Glassy?

25 A. --- if I did that at Cliffs a Glassy, two things would

1 happen; number one, the plumbin' inspector would call me an
2 idiot and; number two, Mark Searcy would never let me plumb no
3 house for him ever again.

4 Q. Why, Mr. Blythe?

5 A. The thing would freeze.

6 Q. It get cold in the mountains?

7 A. Absolutely.

8 Q. Can you push pipes above ground in the mountains?

9 A. No, sir, you gotta have a minimum 12 inches a top the
10 pipe and below the ground.

11 Q. Is that why ya buried the valve ---

12 A. That's ---

13 Q. --- and the piping?

14 A. --- that's that is one reason why we buried the pipe,
15 yes, sir.

16 Q. Let me finish.

17 A. I'm sorry.

18 Q. No, I know you're, I know you're -- alright.

19 A. I'm I'm just irritated ---

20 Q. I, well and I understand ---

21 A. --- 'bout the whole thing.

22 Q. Okay. Alright, so you can't put it where Mr. Harris said
23 to put it.

24 A. I can't put it where Mr. Harris said to put it and I
25 can't put it where the typical installation instructions and

1 their, and their own literature from Wilkins' website said to
2 do it because you gotta understand that's just a typical way
3 that they show for an easy diagram of the basis principles of
4 a pressure reducin' valve.

5 Q. When you're in the field, do you actually have to make
6 decisions for the best way to put in the plumbing system?

7 A. Absolutely, every day.

8 Q. Every day? Alright, the relief valve. You ever heard of
9 a relief valve?

10 A. Relief valves come in factory installed water heaters and
11 also in certain type a boiler applications which we're not
12 licensed to do but I'm fully aware of a relief valve in those
13 situations, I've never heard of putting relief valve on an
14 incoming water system or the pressure reducin' valve and I'd
15 like to go on if I may, uh, to illiterate [sic] little bit
16 about that. Every single job I have done since 1986,
17 commercial jobs, has had an engineer just specifically for the
18 plumbing, one engineer for plumbing, one or two architects
19 design these buildings, never, never, ever, ever never have I
20 been instructed by any engineer through his drawings, his
21 specs, anything to put a pressure relief valve on a pressure
22 reducin' valve on a commercial job never.

23 Q. Ever?

24 A. Ever. Can I say that again? Never ever, ever, never.

25 Q. Okay.

1 A. Never.

2 Q. That's commercial jobs ---

3 A. Commercial.

4 Q. --- with engineers and architects.

5 A. Engineers, architects that are licensed throughout many
6 states in this country.

7 Q. Okay. Is the pressure relief valve, not the reduction
8 valve, the relief valve that Mr. Harris originally accused you
9 of not installing in 2011, ---

10 A. That's correct.

11 Q. --- okay, is that the safety device recommended by the
12 plumbing code ---

13 A. No.

14 Q. --- for high water pressure?

15 A. No.

16 Q. What is?

17 A. Pressure reducin' valve.

18 Q. Did ya put a pressure reducing valve on?

19 A. Absolutely.

20 Q. Okay. Is that the safety device, pressure relief valve,
21 that's required by the State a South Carolina?

22 A. There is no s -- there's no code, international building
23 code that requires a pressure relief valve put on any type a
24 water system.

25 Q. The man that came up to look at your plumbing ---

1 A. Yes, sir.

2 Q. --- had a badge on said "County building inspector", did
3 he look at your plumbing?

4 A. Yes, sir.

5 Q. Okay. Did he require you or even suggest you put a
6 pressure relief valve on?

7 A. No, sir.

8 Q. Did you pass his inspection?

9 A. I want to say that I'm very proud of B&B plumbing
10 employees because we passed that inspection every time the
11 first time, we did not get turned down on that job for
12 anything, not once. not once.

13 Q. Do you know any other plumbers architects, engineers
14 other than Mr. Harris that have recommended or suggested a
15 pressure relief valve on any residential system?

16 A. No, sir.

17 Q. Do you know if there are any pressure relief valves on
18 any house at the Cliffs a Glassy?

19 A. No, sir.

20 Q. Do you know of any pressure relief valves in the
21 mountains of North Carolina any residential ---

22 (Indiscernible cross-talk.)

23 A. No, sir, not any a the multi-million dollar houses I've
24 done in west North Carolina are ---

25 Q. Is it, ---

1 A. --- there any.

2 Q. --- is it the standard and the custom in the industry to
3 install a pressure relief valve?

4 A. No, sir.

5 Q. Was it needed on this house?

6 A. No, sir.

7 Q. What was needed on this house?

8 A. A pressure reducing valve.

9 Q. And if that pressure reducing valve had worked, would
10 this house flood?

11 A. No, sir.

12 Q. Did you design that pressure reducing valve?

13 A. No, sir.

14 Q. Did you manufacturer it?

15 A. No, sir.

16 Q. Is it the right one for the house?

17 A. Yes, sir.

18 Q. Was it gonna last forever?

19 A. No, sir.

20 Q. Did it have to be maintained?

21 A. It's suggested but there's no documentation to tell you
22 how many times you have to main it, how many times it has to
23 be serviced or anything to that effect.

24 Q. Okay. Alright, does it have to be replaced sooner or
25 later?

1 A. Sooner or later, we've replaced several of 'em.

2 Q. Would ya expect it to fail in six years?

3 A. No, sir.

4 Q. Okay. Ya ever, have you ever un -- have ya ever seen
5 another one fail?

6 A. We have not seen one fail on high pressure side, I had
7 some problems with 'em on low pressure side and that was not a
8 failure. The people would call me complainin' 'bout havin'
9 low water pressure, we would go out to the house investigate
10 why there's low water pressure and we would determine that the
11 pressure reducing' valve was stopped up with debris and he had
12 debris there yesterday that that's very common, calcium,
13 things that's in your water's gonna stop 'em up so I advised
14 my employees we do not rebuild 'em, we replace 'em.

15 Q. Let's talk about that a minute. Did you get a call from
16 Mr. Wennerstrom complaining about low water pressure in his
17 house?

18 A. I got, I got a call from, uh, Mr. Mark Searcy's, uh, guy
19 Scott that Mr. Wennerstrom had complained about low water
20 pressure in his house.

21 Q. Alright. And he wanted you to turn the pressure up in
22 his house.

23 A. Yes, sir, he did.

24 Q. And how did you turn the pressure up in his house?

25 A. You take this (indicating) bolt that somebody had done

1 right there (indicating), you bottom it out.

2 Q. Did ya do it?

3 A. No, sir.

4 Q. Would ya do it?

5 A. No, sir.

6 Q. Did ya as a matter of fact put in a letter that you
7 weren't ---

8 A. I did.

9 Q. --- gonna?

10 A. I wrote a letter, to, uh, and faxed it to, uh, Mark
11 Searcy's office and stated in the letter that I would not
12 agree to turn his water pressure up because I didn't wanna be
13 responsible for damaging his plumbing system and that's
14 exactly what happened. Somebody turned it up, the thing
15 failed and it damaged his plumbing system.

16 Q. Well now you wrote that letter in 2003?

17 A. Uh, yes, sir, I believe that's the date.

18 Q. Sent it over to Mr. Searcy.

19 A. My secretary, uh, I typed it, signed it, she faxed it on
20 October the 15th 2003 at 9:35 a.m.

21 Q. You never turned it up.

22 A. No, sir.

23 Q. Somebody turned it up.

24 A. Somebody did absolutely. I mean, there, right there's
25 evidence that somebody did.

1 Q. That against the manufacture's warnings for that?

2 A. Manufacture says you're not to bottom that bolt out and
3 that's exactly what somebody did, they bottomed that bolt out.

4 Q. How many years have you been plumbing?

5 A. I've been plumbin' since 1986, I've been in construction
6 my whole entire life, my dad built houses, his dad built
7 houses.

8 Q. Do you know not to do that?

9 A. Absolutely.

10 Q. Can can can you say with absolute certainly that your
11 company didn't do that?

12 A. Absolutely.

13 Q. Now ya did actually do something for Mr. Wennerstrom,
14 didn't you?

15 A. Yes, sir.

16 Q. Wha'd ya do?

17 A. Uh, and I had forgot about this 'til Chuck remembered it
18 yesterday because there's so much allegations flyin' around
19 yesterday we started thinkin' about everything else that we
20 thought we might be sued for 'cause who knows after yesterday
21 what's gonna happen but, uh, Chuck went down there and removed
22 the, uh, water strictures out of his showerheads which did not
23 give him more pressure, gave him more volume, more flow in his
24 showers ---

25 Q. Are those those awful ---

1 A. --- and ---

2 Q. --- low flow showerheads where ya have to run around to
3 get your hair wet?

4 A. Um-hum.

5 Q. You put those in Mr. Wennerstrom's house?

6 A. It's code. Yeah, that's ---

7 Q. It -- that's part of a code?

8 A. Um-hum.

9 Q. Oh. Alright, so but you ha -- Mr. Wennerstrom didn't
10 wanna comply with that, right?

11 A. No, sir.

12 Q. He likes to do what he wants to do.

13 A. That's, yeah, that's correct.

14 Q. Okay, I don't know. So again you sent Chuck out to do
15 the work ---

16 A. Yes, sir.

17 Q. --- 'cause he does all the work?

18 A. Sometimes.

19 (Laughter.)

20 Q. Alright, so anyway so you tried to make Mr. Wennerstrom
21 happy ---

22 A. Yes.

23 Q. --- and I guess wa -- was his complaint the the low flow
24 in the showers ---

25 A. He just said low ---

1 Q. --- best ---

2 A. --- water pressure.

3 Q. Okay, best you could remember is that ---

4 A. That's correct.

5 Q. --- is that generally the complaint ya get about water
6 pressure?

7 A. That is and that and the biggest complaint we get is, uh,
8 sorry shower heads.

9 Q. Alright.

10 A. I'm sure that you folks have had sorry shower heads in
11 your house, especially women. How hard is it to get the
12 shampoo outta your hair when you don't have no water flow to
13 do it?

14 Q. You came back and, uh, repaired after the flooding?

15 A. Yes, sir.

16 Q. Okay. Do you know if you were specifically requested by
17 Mr. Wennerstrom?

18 A. I do.

19 Q. Were ya?

20 A. Yes, sir.

21 Q. Did he ever tell you he was gonna sue ya?

22 A. No, sir.

23 Q. Did he ever accuse you a doing anything wrong?

24 A. No, sir.

25 Q. Anybody tell ya to put a pressure relief valve in?

1 A. No, sir.

2 Q. Nobody?

3 A. No.

4 Q. Let's talk about this leak detection system and I I just
5 wanna make sure the jury understands what it is.

6 A. Okay.

7 Q. How does this leak detection system work?

8 A. I'm not exactly exactly sure how his works because I
9 haven't seen it, I I think Chuck has and he will elaborate
10 more with ya about how his actual one works but the ones that
11 we've installed for people they monitor, you can, it's got an
12 an indicator on that you can set the indicator for so many
13 gallons per minute to go through the thing so if ya have a
14 burst water line and the valve it, uh, reads that it's it will
15 say 50 gallons per minute goin' through it, well it knows that
16 that's too much water by what you set it as so it shuts down,
17 it shuts the water off to the house, but if you have a little
18 trickle of a leak somewhere and you're gone for two or three
19 weeks, you could do considerable damage to your house so
20 they're not fail proof and there also, uh, can be, uh, human
21 error on 'em too.

22 Q. Ya have to turn it on.

23 A. Ya have to turn it on, it's not an automatic, you --
24 somebody's gotta be able to turn the thing on and then
25 whenever they get home they gotta turn it off. If they want

1 to, say if they got a lotta company comin' and gonna be usin'
2 the whirlpools and four or five guests are takin' a shower
3 same time and washin' clothes and they wanna have a lotta
4 water flow through the house, they don't this thing shut off
5 with their, uh, son's girlfriend's in the shower, whatever,
6 they gonna turn the thing off ---

7 Q. Alright, so ---

8 A. --- and if they don't remember turn it back on they
9 leave ---

10 Q. Or if they set it too high, too low ---

11 A. Yes, sir.

12 Q. --- don't ---

13 A. Okay.

14 Q. --- it doesn't, it doesn't have anything to do with water
15 pressure.

16 A. No, sir, it reads, it reads, uh, water volume, gallons
17 per minute or whatever you wanna set it on.

18 Q. Right, okay. So well you weren't, you weren't sued for
19 not installing a leak device.

20 A. No, sir.

21 Q. Okay. You were sued specifically for not installing a
22 pressure relief device.

23 A. I was sued by one man's opinion and it was one opinion,
24 it wasn't a code, it wasn't, uh, required by any architect or
25 by any engineer, I was being, I'm being sued because one man

1 in his opinion said I shoulda put a pressure relief valve on
2 that house.

3 Q. Lots ---

4 A. Twelve hundred jobs I've done, never put one on.

5 Q. And there's no pressure relief valve on the house today.

6 A. There's not one right now and his house is more dangerous
7 right now to be flooded than it was before all this
8 happened.

9 Q. Why is it more dangerous?

10 A. Because his pressure reducin' valve is inside his
11 garage.

12 Q. And again Mr. Harris.

13 A. Mr. Harris and I think Chuck's gonna testify to to more
14 of that of why that's that way, I wasn't there involved in
15 that issue of it but his sprinkler system now is exposed to
16 water water pressure to be 200 pounds, we we we know somethin'
17 happened that to malfunction his pressure reducin' valve so
18 his system is exposed to considerable danger right now. You
19 notice in the photographs he's got real nice brick, there
20 (indicating) it is, brick driveway, if that water line bust
21 right there and he's got 200 pounds a water pressure, what's
22 on that brick driveway? it'll bury his car.

23 Q. Well, is it gonna slide down the mountain?

24 A. Well it's quite possible 'cause it's, I mean, it's --
25 yeah. Imagine comin' home and you're car is. . .

1 Q. Alright. Well, Mr. Blythe, I don't have any further
2 questions for ya right now, answer any questions that Mr. Deal
3 has for ya, please.

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

5 (Pause)

6 CROSS-EXAMINATION BY MR. DEAL:

7 Q. Just bear with me, Mr. Blythe, I gotta find somethin'
8 real quick.

9 A. I don't know where else to go, sir.

10 Q. Good. Alright. Alright, Mr. Blythe, uh, in that
11 complaint that you've talked about did it also reference that
12 you might have failed to properly, uh, uh, comply with
13 building codes?

14 A. I did not, I did not violate any building codes.

15 Q. I'm asking did it -- was it -- did it allege that you had
16 had ---

17 A. It ---

18 Q. --- had violated ---

19 A. --- possibly alleged it but I'm stating again I did not
20 violate any building codes.

21 Q. If you can just answer my question ---

22 A. I did answer your ---

23 Q. --- Mr. ---

24 A. --- question, you wanna ask it again I'll tell you exact
25 same thing again, I did not violate any building codes, ---

1 Q. I didn't ask, ---

2 A. --- not one, ---

3 Q. --- didn't ask ---

4 A. --- not one.

5 Q. I didn't ---

6 A. Not one.

7 THE COURT: Sir, let him ask the questions, you answer
8 the question.

9 THE WITNESS: I thought I was.

10 THE COURT: And, sir, the lady beside me ---

11 THE WITNESS: Yes, sir.

12 THE COURT: She has to take down everything ---

13 THE WITNESS: Okay.

14 THE COURT: --- that's said.

15 THE WITNESS: Alright.

16 THE COURT: She cannot take down what's said when two
17 people are talking at the same time, you understand that?

18 A. Yes, sir I'm sorry I'm just kinds of ear at a timed about
19 this whole thing I'm sorry Your Honor.

20 THE COURT: Let him ask the question questions.

21 THE WITNESS: Yes, sir, I'm sorry, I'm just, I'm just
22 kinda irritated 'bout this whole thing. I'm sorry, Your
23 Honor.

24 THE COURT: Let him ask the ---

25 THE WITNESS: Yes ---

1 THE COURT: --- questions.

2 MR. DEAL: Gonna ask it again 'cause I don't think the
3 jury got a yes or no answer, Your Honor.

4 BY MR. DEAL:

5 Q. Did the complaint that was sent to you allege that you
6 failed to properly comply with local building codes, laws,
7 regulations, ordinances in any way and in ways that may be
8 disclosed during discovery?

9 A. The account did say that allegedly, yes, sir.

10 Q. Okay, that's all I'm askin', thank you. It also allege
11 that you may have failed to exercise that level of care that
12 would be reasonable for a plumbing contractor to exercise
13 under the same or similar circumstances.

14 A. It did allege that.

15 Q. Okay, so it didn't just allege that you did this one
16 thing, it alleged some other things, is that right?

17 A. That is correct.

18 Q. Okay. Did it also allege you may have failed to act in a
19 safe and proper manner with due regard for the safety and
20 welfare of the Wennerstrom home? Did it allege that?

21 A. It alleged that but I don't understand that.

22 Q. Okay, just askin' the questions. And did it also allege
23 that that there's such an up -- and other further negligent ---
24 negligent acts or omissions that may be discovered during
25 discovery, ---

1 A. It alleged ---

2 Q. --- did it also ---

3 A. --- that.

4 Q. --- allege that? Okay. Now you testified earlier that
5 you've installed regulators in all kinds other places, ---

6 A. That is correct.

7 Q. How many a those those regulators right there have you
8 installed?

9 A. I have no idea. Hundreds.

10 Q. Hundreds of 'em.

11 A. Hundreds.

12 Q. And do you con -- do you also continue to do work for
13 those folks that you've installed these regulators for?

14 A. Oh, absolutely.

15 Q. And how many a those regulators have you serviced out of
16 those hundreds that you installed?

17 A. None.

18 Q. Zilch.

19 A. Well, like I said before we got some calls from low water
20 pressure, we'd gone and replaced 'em.

21 Q. But you've never done any regular service on any a
22 those ---

23 A. No, sir.

24 Q. --- even though you're the, still the plumber for those
25 those those people?

1 A. That's correct.

2 Q. Alright. I'd like you do me a favor and read right here
3 (indicating), this is Plaintiff's 26, if you can read where it
4 says, "Notice" right there (indicating), just that paragraph
5 that's in bold after it says "Notice," please.

6 A. Says "Notice: Annual inspection and maintenance is
7 required of all plumbing system components to ensure proper
8 performance of maximum life. This product must be subject to
9 regular inspection, testing and cleaning."

10 Q. Does that pertain to this particular, uh, regulator right
11 here (indicating)?

12 A. Yes, sir.

13 Q. And you said to me today for all your customers that
14 you've installed hundred these people you installed and this
15 this particular regulator you have done not one maintenance
16 for any a those customers, ---

17 A. That is correct, yeah, ---

18 Q. --- the hundreds of 'em.

19 A. --- unless they've called with low water pressure ---

20 Q. Okay.

21 A. --- we'd gone out work on 'em.

22 Q. I'm just gonna put this in front of the jury now, you're
23 gonna see this later, ladies and gentlemen, 'cause there
24 (indicating) it is, there's the notice right there
25 (indicating). Every year this thing's supposed to be

1 maintained, is that right?

2 A. That is correct.

3 Q. And you've not never done that for any of your
4 clients, ---

5 A. No, sir.

6 Q. --- not one.

7 A. Not one.

8 Q. Okay. And that's a manufacture's instructions, isn't
9 it?

10 A. That is correct.

11 Q. And that you're required to follow the code and that's
12 part of the manufacturer instructions, isn't it?

13 MR. IMHOFF: Objection, Your Honor, he's testifying about
14 what the homeowner's supposed to do, not what ---

15 THE COURT: Alright, ---

16 MR. IMHOFF: --- the plumber ---

17 THE COURT: --- he is on cross-examination, you may
18 redirect him.

19 MR. DEAL: Okay.

20 BY MR. DEAL:

21 Q. Mr. Blythe, you perform regular work for these folks,
22 don't ya?

23 A. Yes, sir.

24 Q. You ever told any of your clients, the hundreds of people
25 that you've installed in that home that that needs to be

1 installed every year ---

2 A. Yes, sir.

3 Q. --- or rather maintained, cleaned and tested every
4 year?

5 A. No, sir.

6 Q. Not once?

7 A. Not once.

8 Q. You tell Mr. Wennerstrom?

9 A. No, sir.

10 Q. So he'd have no reason to know he needed to do that,
11 would he?

12 A. No, sir.

13 Q. Now you testified a minute ago somethin' cause that had
14 regulator to fail, is that right?

15 A. That's correct.

16 Q. But you don't know what that was, do ya?

17 A. Yes, sir, I have a good idea what it was.

18 Q. What was it?

19 A. High water pressure.

20 Q. Okay. Now you testified today that you didn't see
21 there's any any high water pressure, you didn't notice any
22 high water pressure when you guys were doin' work out
23 there, ---

24 A. That is correct.

25 Q. --- but didn't ya tell me earlier that you thought it was

1 well above 80 PSI, far more than any PSI, your testimony ---

2 A. I ---

3 Q. --- before?

4 A. --- I think I stated 60 to 80 pounds.

5 Q. Um, if you can do me a favor, fact, let me grab your
6 official copy. Your Honor, may I open this (indicating)?

7 THE COURT: Yes, sir.

8 (Whereupon, counsel opened the deposition.)

9 Q. Page 55. Alright, there's your, right there
10 (indicating). I just want, want you to look at I'm gonna
11 direct your attention, Mr. Blythe, question on Pa -- on Line
12 22, I'm gonna ask the question, like you to answer starting at
13 Line 25, "Okay, at the time that this valve or any time prior
14 to this valve being installed was the pressure coming into the
15 home tested", what's your answer?

16 A. I said, No, but we knew it could be far more than 80
17 pounds.

18 Q. Excuse me?

19 A. I said, "No, sir, but we knew it was far more than 80
20 pounds."

21 Q. That's right and you knew it was far more than 80 pounds,
22 didn't ya?

23 A. We assumed that it could be at that time.

24 Q. Wait a minute, did ya assume or did ya know?

25 A. We didn't put a gauge on it so I did not know.

1 Q. Well, I'm sorry, did you not testify that you knew it was
2 far more than 80 pounds?

3 A. Yes.

4 Q. Okay. So under those circumstances you said you think it
5 was this, the high water pressure that caused this to fail, is
6 that right?

7 A. Yes, sir.

8 Q. And you knew it was well far more than 80 pounds when you
9 installed it, didn't ya?

10 A. I said we assumed that. Okay, I understand, I'm sorry.

11 Q. No, I think we're gonna have to go over this again.
12 Please do me a favor and read the answer to that question
13 again for the jury.

14 A. "No, but we knew it was far more than 80 pounds."

15 Q. You knew it was far more than 80 pounds, is that right?

16 A. Okay, yes.

17 MR. DEAL: Nothing further, Your Honor.

18 THE COURT: Any redirect limited to what he went into?

19 MR. IMHOFF: Just as to what he went into, correct, Your
20 Honor?

21 THE COURT: Um-hum, yes.

22 REDIRECT EXAMINATION BY MR. IMHOFF:

23 Q. Is the only specific allegation in the complaint against
24 you the failure to to install the pressure relief valve?

25 A. That's what I thought until yesterday.

1 Q. Okay, I'm talkin' about in the complaint ---

2 A. Yes.

3 Q. --- in 2011.

4 A. Yes, sir.

5 Q. The only specific allegation is failure to install the
6 pressure relief valve.

7 A. That's correct.

8 Q. Then there's a bunch a stuff that you did everything in
9 the world wrong: codes, regulations, reasonable people, plum
10 right, all that stuff's in there?

11 A. Correct.

12 Q. Right, and they -- and what does -- what did Mr. -- what
13 Mr. Deal just tell you when they were gonna tell us about
14 that? When they figured it out?

15 A. Yes, sir, it all came out yesterday.

16 Q. How long have they been investigating this loss?

17 A. Uh, I don't know, years, two years.

18 Q. Two -- 2009 'til ---

19 A. Today, yesterday.

20 Q. What was yesterday October 1st ---

21 A. Yeah.

22 Q. --- 2013? Alright, now Mr. Mr. Deal was just asking you
23 about the requirements for maintaining that regulator, ---

24 A. That's correct.

25 Q. Okay. When you are the plumber for a house that's

1 constructed, do you continue to be the homeowner's plumber for
2 the rest of the life a that house?

3 A. Only if he asks. Only if the own -- the owner calls us
4 with if they wanna change a faucet or if they got a stopped up
5 toilet or somethin' to that effect, yes.

6 Q. And do you have, I know you're upset, do you have a
7 regular procedure at your company to show a homeowner where
8 his valves, where his shut off is and how his plumbing system
9 works?

10 A. No, sir.

11 Q. Okay, maybe that's, Mr. Mr. Hafner does that?

12 A. No, sir.

13 Q. Okay. You don't walk them out to their valves?

14 A. Well a lotta times if if the builder asks us to come do a
15 walk-through if the house is done we do.

16 Q. Okay. Alright, so if you're called to replace pressure
17 regulator valve you would?

18 A. Yes, sir.

19 Q. And it's your policy not to fix it but to replace it.

20 A. That's correct.

21 Q. Okay, and that's in the homeowner's house.

22 A. That is correct.

23 Q. Now Mr. Deal asked you why that valve failed, ---

24 A. That valve failed 'cause of excessive water pressure.

25 Q. Well, Mr. Blythe, you don't really know why that valve

1 failed, do you?

2 A. We know it failed.

3 MR. DEAL: Objection, Your Honor, he already answered
4 that question.

5 THE COURT: I'll sustain the objection.

6 Q. Do you know why that valve failed, Mr. Hafner [sic]?

7 MR. DEAL: Asked and answered, Your Honor.

8 THE COURT: I'll sustain the objection.

9 Q. What does the code require if you believe that the water
10 pressure in a house is above 80 PSI?

11 A. Yes, sir, if the pre -- if the water pressure tests above
12 80 pounds, you're required to put a pressure reducin' ---

13 MR. DEAL: Your Honor, ---

14 THE COURT: --- valve on.

15 MR. DEAL: --- is this probative to anything that I
16 brought in in cross? I object, it's not -- is -- I don't
17 think it is.

18 MR. IMHOFF: He just asked the ---

19 THE COURT: Alright, ---

20 MR. IMHOFF: --- Court to ---

21 THE COURT: --- I'll I'll allow it.

22 MR. DEAL: Okay.

23 BY MR. IMHOFF:

24 Q. What does the code require if you either believe or know
25 that water pressure is above 80?

1 A. Put a pressure reducin' valve on.

2 Q. Okay. Why did you say 80 pounds of pressure when
3 Mr. Deal asked you his question in that ---

4 (Indiscernible cross-talk.)

5 A. Because that's that's that's in the code. Anything about
6 80 pounds requires a pressure reducin' valve.

7 Q. Okay, the code requires a pressure reducing valve ---

8 A. Yes, sir.

9 Q. --- at 80 pounds?

10 A. Eighty pounds or greater.

11 Q. And you either knew or assumed it was above that.

12 A. That's correct.

13 Q. Okay. What are you required to do?

14 A. Put a pressure reducin' valve on.

15 Q. Okay. Did ya do that?

16 A. Yes, sir.

17 Q. Okay, and after that did you leave the job to go do
18 another job?

19 A. Yes, sir.

20 Q. Okay. Did ya leave the home in the hands of the
21 homeowner Mr. Wennerstrom?

22 A. Yes, sir.

23 Q. And is he required to maintain and repair his valve if
24 necessary? I mean, if if ---

25 A. Oh, yeah, necessary, yeah.

1 Q. Alright, ---

2 A. --- yeah.

3 Q. --- and if he calls you and you asks you to do that,
4 would you have done that?

5 A. Absolutely.

6 Q. If he called any plumber and asked them did -- would they
7 do that?

8 A. Absolutely.

9 Q. Do you know whether or not the failure of that valve was
10 due to lack of maintenance?

11 A. I would be very confident to say that the valve failed,
12 uh, because the high water pressure, not due to lack of
13 maintenance.

14 Q. Thank you, Mr. Blythe, I have no further questions.

15 MR. DEAL: Nothing, Your Honor, thank you.

16 THE COURT: Thank you, sir, you may step down.

17 (Whereupon, the witness left the stand.)

18 THE COURT: Lawyers approach for a moment.

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

20 THE COURT: Defendant ready to call their next witness?

21 MR. IMHOFF: Yes, Your Honor, we we call, uh, Mr. Chuck
22 Hafner.

23 THE COURT: Sir, just come right up here (indicating) and
24 let the clerk a court swear you in.

25 CHARLES RICHARD HAFNER, having

1 been first duly sworn, testified as follows:

2 THE COURT: Sir, have a seat in the chair and pull the
3 chair up to the microphone if you would.

4 THE WITNESS: Yes.

5 DIRECT EXAMINATION BY MR. IMHOFF:

6 Q. Mr. Hafner, will you please tell the jury your full name.

7 A. Charles Richard Hafner.

8 Q. Okay. Mr. Hafner, where do you work?

9 A. Uh, B&B plumbing.

10 Q. Okay, and as we heard earlier you do the work, that
11 right?

12 A. I do, yeah, a lotta work.

13 Q. You got the, you got the dirty hands?

14 A. I do.

15 Q. Okay, and Mr. Blythe owns owns the company?

16 A. He does.

17 Q. Okay, and did you spend more time out at Mr., uh, at Mr.
18 Wennerstrom's house than anybody else in the company you
19 think?

20 A. No.

21 Q. Okay. Who else with the company was out there?

22 A. Uh, we had a plumber out there, uh, Ray Halleck
23 (phonetic) ---

24 Q. Okay.

25 A. --- and a helper that was workin' with him.

1 Q. Alright. What is your experience in plumbing,
2 Mr. Hafner?

3 A. I started plumbing in 1978.

4 Q. Where have you plumbed?

5 A. Uh, I started out plumbing in Maryland, uh, and I plumbed
6 Virginia; Washing [sic] D.C.; Colorado; Dallas, Texas; South
7 Carolina; North Carolina, uh, Pennsylvania, uh, a lotta
8 states.

9 Q. Have you plumbed residential homes?

10 A. Yes.

11 Q. Have you plumbed commercial buildings?

12 A. Yes.

13 Q. How many homes and buildings do you think you've plumbed
14 over the years?

15 A. When I started out in my career I did a lotta residential
16 homes and, uh, I was actually a "piece worker" what they call
17 it so I got paid per house so while I was in Maryland I would
18 say I did somewhere between four to six hundred homes
19 myself.

20 Q. Alright. And you said Colorado I believe, is that
21 right?

22 A. I did.

23 Q. They have mountains in Colorado?

24 A. Yes.

25 Q. Okay. Did you do any plumbing in Colorado for

1 residential homes or buildings that had water systems similar
2 to Cliffs a Glassy?

3 A. Sure.

4 Q. Alright. Uh, alright, so you -- so B&B plumbing was
5 hired to complete Mr. Wennerstrom's mansion I guess, that
6 right?

7 A. Yes.

8 Q. Okay. Alright, and I asked -- and you're also called to
9 repair the home?

10 A. Correct. You mean after the damage?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. Alright, and do you understand who recommended B&B
14 plumbing?

15 A. I believe Steve Wennerstrom recommended us through Mark
16 Searcy.

17 Q. Alright, let's go, again, let's go through these
18 allegations again, ---

19 A. Alright.

20 Q. --- okay, and and I think the jury wants to hear your
21 opinion on this also.

22 A. Um-hum.

23 Q. Did you understand that when B&B Plumbing was sued in
24 2011, uh, what the allegation was against B&B Plumbing?

25 A. Basically it said that we failed to install pressure

1 relief valve on the incoming water system.

2 Q. Okay. When you heard Mr. Deal ask Mr. Blythe about all
3 these, all this other language, what did you understand that
4 to mean?

5 A. Uh, uh, you mean stuff that he talked about yesterday for
6 Mr. Harris or ---

7 Q. Well ---

8 A. I'm just a little ---

9 Q. --- I think ---

10 A. --- confused by ---

11 Q. --- there's a, ---

12 A. --- the question.

13 Q. --- there's a lotta language in the complaint that says
14 that they're gonna tell us what the allegations against us are
15 when they figure it out.

16 A. Yeah, it just seemed like, yeah, that they were talking
17 about us violating code and then kinda left the door open to
18 whatever else could be found in discovery, yes.

19 Q. Like what happened yesterday.

20 A. Sure.

21 Q. Okay.

22 A. Yeah.

23 Q. Alright, but there there was only one specific allegation
24 in 2011, ---

25 A. Correct.

1 Q. --- that was the pressure relief valve.

2 A. It was.

3 MR. IMHOFF: Alright. Uh, at this time, Your Honor, I
4 would ask to, uh, submit Mr., uh, Hafner as an expert in
5 plumbing.

6 MR. DEAL: No objection, Your Honor.

7 THE COURT: Alright.

8 BY MR. IMHOFF:

9 Q. Let's talk about those allegations, let's talk about the
10 first one testing the water pressure.

11 A. Okay.

12 Q. 1978 to 2013 have you ever dealt with water pressure at
13 all?

14 A. Yes.

15 Q. Okay. And do you understand or can you tell the
16 difference between a low pressure system, a high pressure
17 system and a very high pressure system system?

18 A. Yes, I can.

19 Q. How?

20 A. Uh, flow, I mean it's just just experience, I mean, you
21 just know when you -- I can probly get within 20 or 30 pounds
22 of most readings of flow out of a valve, you just know when
23 it's low, when it's medium, when it's high.

24 Q. Okay. Alright, Mr. Blythe talked about a water hydrant
25 for the, for the construction workers out there, ---

1 A. Right.

2 Q. --- okay, what is that?

3 A. Uh, basically every time you start a job you like Randall
4 said you're required or you need water on the site do masonry
5 work, stucco work, concrete work, paint, whatever and
6 typically right at the meter we just put a connection in that
7 they can hook hose to and they run hoses out to wherever they
8 need them or use the water right there at that point, uh, but
9 there is not a pressure reducing valve installed that time.

10 Q. Okay, so whatever the water pressure is in in the system
11 at the street is where the water pressure is the highest.

12 A. Correct.

13 Q. Okay, and there's hoses attached to it by whatever,
14 whoever's out there workin'.

15 A. Yes.

16 Q. Alright. Mr. Blythe right about what would happen to
17 those hoses if the water pressure was very high?

18 A. Absolutely, I mean, they would, yeah, they would burst, I
19 mean, you're talkin' about even the, even at a hundred and
20 twenty-five, hundred fifty PSI you'd have issues.

21 Q. Okay, so but again, I I I just, I don't know why in my
22 head I ha -- keep havin' this picture of the fireman
23 gettin' ---

24 A. Absolutely, ---

25 Q. --- thrown around with the hose.

1 A. --- I mean, ya know, you're under the water even when
2 you were a kid, I mean, that's what these things will do, I
3 mean, it's just ---

4 Q. That's the, ---

5 A. --- they ---

6 Q. --- that's thing exposed with the hose ---

7 (Indiscernible cross-talk.)

8 A. --- underneath it and so forth but yeah, I mean, it would
9 just, hose would be flop around it, yeah.

10 Q. Did ya ever see that out there?

11 A. No.

12 Q. Did any a, did any a the trades out there ever complain
13 that their hoses were bursting?

14 A. Not that I know, we certainly woulda been called to go
15 out and remedy the situation that's for sure.

16 Q. Or that they were blasting the skin off each other or
17 blowin' holes in the wall?

18 A. No, none a that stuff.

19 Q. Alright, but would all that happen if there was water
20 pressure over 200 PSI?

21 A. Yes.

22 Q. Okay, and that never happened?

23 A. No, not as far as I know.

24 Q. Alright. Now is it your company's, Mr. Blythe's
25 company's policy to put a pressure regulator on whether or not

1 it's over 80 or not?

2 A. Yeah, we always put them in.

3 Q. Okay, it's it's just an additional safety device that you
4 do?

5 A. Absolutely.

6 Q. Okay. Alright, and so you put one on this house in case
7 it was a hundred and fifty, a hundred and eighty as Mr. Harris
8 found.

9 A. Yes, I mean, we just, we put them on, uh, we just do
10 it.

11 Q. Okay. Alright, and now let's talk about the other
12 allegation think we heard yesterday, uh, that you buried the
13 pressure regulator, is that true?

14 A. No, it's not true, we put it inside of a meter vault or a
15 valve box.

16 Q. A valve box, ---

17 A. Um-hum.

18 Q. --- okay. You -- similar to where your irrigation
19 controls are, water meter, water shut off?

20 A. Yeah, the irrigation control typically just little round
21 boxes with green lids on 'em, um, whatever box we put in is a
22 substantial plastic box with a removable lid.

23 Q. I'm gonna show you again Exhibit No. 1, ---

24 A. Um-hum.

25 Q. --- can you identify the valve box from that picture?

1 A. Yeah, I can see it.

2 Q. Okay. Alright, and is it right next to driveway?

3 A. It is.

4 Q. Is it covered by dirt and grass?

5 A. Uh, no, looks like there's a little bitta leaves from I
6 guess it was probably fall or winter.

7 Q. Okay, how big is it?

8 A. Um, like Randall said earlier it's tapered so the top of
9 it, the lid is probly actually 18 by 12, you know, rectangular
10 and as the box goes down it tapers, it gets larger as it goes
11 down, not only does it give anyone access when you get down
12 further but because of the taper once you backfill it with
13 dirt it actually stays in place, if it was straight would be
14 able be pulled outta the ground then.

15 Q. Okay, those that aren't in the construction industry,
16 backfill doesn't mean taking dirt and throwing it in the
17 valve ---

18 A. No, ---

19 Q. --- box ---

20 A. --- no, I'm sorry, that's around the outside a the box.

21 Q. Okay, just put the dirt back on the outside a the box,
22 put grass on it, put your lid back on?

23 A. Right.

24 Q. Okay, alright. Alright, and and so is that appropriate
25 way in your experience in all those states and since 1978 to

1 put a pressure reducing valve on a home line?

2 A. Absolutely.

3 Q. Okay. Is it a prudent way, is it a smart way to do it?

4 A. It is.

5 Q. Okay. Let's talk about burying it versus putting it on
6 the side a the house.

7 A. Okay.

8 Q. Can you put in on the side a the house in Cliffs a
9 Glassy?

10 A. Uh, no, ya can't.

11 Q. Why not?

12 A. 'cause it's gonna freeze and break.

13 Q. Mr. Harris's opinion make any sense at all?

14 A. Uh, no.

15 Q. Alright. So has to be buried?

16 A. It needs to be in the ground so it doesn't freeze,
17 correct.

18 Q. And it's appropriate to put it in a valve box?

19 A. Absolutely.

20 Q. And it's appropriate to put the valve box next to the
21 water meter and the irrigation controls?

22 A. It is.

23 Q. And those are right next to the driveway?

24 A. They are.

25 Q. I missed one, size a the box. Can ya get in the box to

1 to fix the valve?

2 A. Oh, yeah, absolutely to service a valve, yes.

3 Q. Okay, assuming that you know it needs to be serviced?

4 A. Um-huh.

5 Q. Okay. We just heard I believe a new allegation, are you
6 the plumber for a building you construct for the rest of that
7 building's history?

8 A. No.

9 Q. Alright. If you're called back to a building or to a
10 house to do something for plumbing, is your company willing to
11 go?

12 A. Absolutely.

13 Q. Happy to go?

14 A. Looking forward to it, ---

15 Q. Right. Are you gonna bill, ---

16 A. --- sure.

17 Q. --- are you gonna bill that person for that service?

18 A. Absolutely, that that's, yeah, it's how we do business.

19 Q. Right, ---

20 A. Um-hum.

21 Q. --- that's how you make your money.

22 A. Absolute is.

23 Q. You do plumbing, ---

24 A. Yes.

25 Q. --- right?

1 A. Yes.

2 Q. And you're willing to do plumbing.

3 A. At all time.

4 Q. Okay. Did Mr. Wennerstrom ever call you back to
5 maintain, that you know of, to maintain his his regulator or
6 to even determine if it needed to be maintained?

7 A. Not that I know of.

8 Q. Do you know if any -- if he called anybody else to do it?

9 A. I have no idea.

10 Q. When you put that pressure regulator in the ground, do
11 you twist it all the way down to the bell housing?

12 A. No, we do not.

13 Q. Is that company policy?

14 A. Absolutely.

15 Q. Why?

16 A. Because it's not the right thing to do, for one thing you
17 would, you would bottom out the valve which is not not
18 prudent, it's in the instructions not to do it, and the other
19 thing is you would raise the pressure to the full 75 PSI, the
20 valve has nowhere to go.

21 Q. When you put that screw all the way down, what does ---

22 A. Um-hum.

23 Q. --- it do to that spring?

24 A. It compresses it.

25 Q. Compresses as far as it will be allowed compress,

1 right?

2 A. Correct.

3 Q. Okay. Did Mr. Wennerstrom complain to B&B Plumbing or
4 Mark Searcy's company about low water pressure?

5 A. He did.

6 Q. And did you and Mr. Hafner, I'm sorry, Mr. Blythe
7 have a discussion about that?

8 A. Yes, we talked about it.

9 Q. Okay, and were you willing to do what was done to that
10 valve?

11 A. No, absolutely not.

12 Q. Did ya do what was done to that valve?

13 A. No, I did not.

14 Q. Did ya go out there?

15 A. You mean to adjust the valve?

16 Q. Did you go out to Mr. Wennerstrom's house to help him?

17 A. I went out and increased the flow in his showerheads ---

18 Q. Okay.

19 A. --- what I did.

20 Q. Alright, so he's got, he's below flow EPA showerheads,
21 right?

22 A. Yeah, he's got the, you know, he's got high-end fixtures
23 in the house so typically I've had they're some of 'em are
24 rain heads, you know, there's different things that work, hand
25 held showers and so forth, and they have springs and washers

1 and so forth so, yeah, I removed some a those things that
2 restricted flow to help him out get a little more flow through
3 his showerheads.

4 Q. Okay, so he called you to do something for him and you
5 went ---

6 A. Absolutely.

7 Q. --- but you wouldn't screw that screw all the way down.

8 A. No, I would not.

9 Q. And ya didn't.

10 A. I did not.

11 Q. Okay, somebody did.

12 A. Absolutely somebody did and, ya know, and they didn't do
13 it properly that's for sure.

14 Q. Okay. Is the manner in which this plumbing system
15 installed compliant, complies with the code in the State of
16 South Carolina?

17 A. Yes.

18 Q. Okay. Is it also installed with a lot of experience and
19 common sense?

20 A. Absolutely yes, it is.

21 Q. Mr. Harris I believe yesterday also testified that
22 the pressure reduction valve needed to be moved into the
23 garage, ---

24 A. Yes, that was his suggestion, that -- well I think it ---

25 Q. --- that was ---

1 A. --- was, yes.

2 Q. --- his, that was his suggestion to you the man that was
3 getting his hands dirty.

4 A. No, it was suggested, I I did it, I moved it to the
5 garage.

6 Q. Okay. You complain?

7 A. Yes, I did, I said I didn't think it was the right thing
8 to do.

9 Q. You tell him why?

10 A. Uh, I can't remember the exact conversation but I do
11 remember saying that we shouldn't do it and I told Scott
12 Randall, Mark Mark Searcy that it probly wasn't a good idea
13 also.

14 Q. Why isn't it a good idea?

15 A. Well because it leaves the main valve, the main line
16 coming into the house unprotected like Randall said and at his
17 house the irrigation was tied onto it at, ya know, just down
18 stream of where the pressure reducing valve used to be so all
19 that stuff now is exposed to whatever the street pressure is
20 there.

21 Q. His entire irrigation system?

22 A. Yes, as far as I, far as I know, yeah, there is nothin'
23 else tied on on the house side so, yeah.

24 Q. 'cause when the irrigation system turns on it opens the
25 valve and let's water run in?

1 A. It does, it's typically controlled by electrical solenoid
2 valve.

3 Q. Okay. And does the water pressure at the street then go
4 into his entire irrigation system?

5 A. It does.

6 Q. And so from the street all the way back into the garage
7 and everything in between now what pressure is that getting?

8 A. Uh, according to the, uh, expert's testimony yesterday
9 and the and all the brass that I saw anywhere from a hundred
10 and forty seven pounds to a hundred and eighty pounds.

11 Q. Okay. Are those pipes in that system designed to
12 withstand that pressure?

13 A. Ya know, I hadn't seen the rating for the PVC pipe but I
14 would be surprised if it was, no, I'm I'm thinkin' it's probly
15 not.

16 Q. And if it fails because of Mr., where Mr. Harris told you
17 to put that pressure relief valve, what's it gonna do?

18 A. It's gonna blow pipes outta the ground and create a,
19 create quite a mess, there'd be a lotta water flowin' around
20 especially, uh, Stig is not there a whole lot so, uh, it's
21 hard to say how long it would flow before somebody noticed
22 it.

23 Q. Alright, now have ya ever seen a pressure regulator
24 fail?

25 A. No.

1 Q. Since 1978 never seen one fail?

2 A. No.

3 Q. Washington D.C., Colorado, Texas, North Carolina, South
4 Carolina you've never seen one fail?

5 A. No, sir.

6 Q. Alright. Now, the pressure regulator is that the safety
7 device that is required by the International Group of Plumbers
8 and Builders that put out IBC?

9 A. Yes.

10 Q. Okay. Is that the correct model?

11 A. Yes, it is, ---

12 Q. Uh, ---

13 A. --- there's several you can choose from but, yeah, this
14 one is approved.

15 Q. Was it installed correctly.

16 A. It was.

17 Q. Okay. Did you build it?

18 A. I did not.

19 Q. Did you design it?

20 A. I did not.

21 Q. Okay. Do you know why it failed?

22 A. I don't know why it failed, uh, I ---

23 Q. You ---

24 A. --- have some opinions as to why it failed, okay.

25 Q. Alright, is is that the safety device that's required by

1 the State a South Carolina?

2 A. Yes.

3 Q. Okay. Is that the safety device that's required by the
4 man that came up to the house with the authority to
5 investigate and inspect your plumbing?

6 A. Yes.

7 Q. How many times was your plumbing inspected?

8 A. Typically we have a slab inspection with some plumbing.
9 that's below the concrete in the house and then a rough-in
10 inspection was the plumbing inside the walls and through the
11 roof, uh, and then usually a water and a sewer inspection.

12 Q. Okay.

13 A. And the rough-in inspection may take a couple different
14 times depending on the size a the house, I'm not quite sure
15 how many Stig's took.

16 Q. Did your plumbing work pass the State of South Carolina's
17 plumbing inspection?

18 A. Every time we called one in it passed.

19 Q. Now do you know any other plumbers that install pressure
20 relief valves?

21 A. No, I've never heard of one.

22 Q. On a residential house?

23 A. No.

24 Q. What about the Cliffs a Glassy?

25 A. No, I've never heard there.

1 Q. In any a the states you've worked you've never heard of a
2 pressure relief valve installed on a residential mountain
3 system.

4 A. Not on the water service no, just just typically like
5 Randall said on water heaters and vessels that usually heat
6 water.

7 Q. There's this theory, I I I meant to ask Mr. Blythe about
8 that, there's this theory that this high water pressure blew
9 the bidet off hose off and had to be over a hundred and fifty
10 PSI, will the pressure relief valves that are on your your
11 water heaters go off at a hundred and fifty PSI?

12 A. They're supposed to go off at a hundred fifty PSI hundred
13 or 210 degrees.

14 Q. Okay. And how many water heaters are in the house?

15 A. There's two water heaters, I believe they're 75 gallon
16 gas water heater.

17 Q. Okay, did either of them go off?

18 A. Uh, no, they didn't.

19 Q. Okay. Did any of the other fixtures in the house fail?

20 A. No.

21 Q. So the only fixture that failed in the house was a hose
22 that's about this high (indicating) behind the bidet?

23 A. Yes, where the shut-off valve is behind the bidet, yes,
24 that's what blew apart.

25 Q. Alright. Alright, now after Mr. Harris directed you to

1 put the pressure reduction valve into the garage ---

2 A. Um-hum.

3 Q. --- did he tell ya to put a pressure relief system, ---

4 A. He did not.

5 Q. --- pressure relief valve on the house?

6 A. He did not. No, when when when I was asked to do, move
7 the PRV into into the garage there was actually kind of a
8 access panel, they created an access panel for us. When a
9 line comes through the slab which is the main line from the
10 street comes through the slab in the garage, there's a
11 shut-off valve, he asked them install a tee above that valve,
12 uh, so he could hook up a piece of equipment to it, uh, and
13 outta that half a that valve there's several lines that go up
14 to the PRV and then above the PRV that I installed, that is
15 where I installed the electronic shut-off valve which I'm sure
16 you're gonna get to.

17 Q. Uh, are you talkin' about the water relief detection
18 system?

19 A. I am.

20 Q. Did you put that in?

21 A. I installed it.

22 Q. Oh, great. How does, how did -- I did -- okay, how's
23 that work? How's ---

24 A. Uh, ---

25 Q. --- that system work?

1 A. --- the way his is set up it just detects flow, uh, as
2 water comes through this valve, uh, it senses like Randall
3 said how many gallons per minute are goin' through it. Uh,
4 his house has he has humidifiers on his heating and air
5 conditioning units so you can't set it to zero, you have to
6 determine what the GPM is required to maintain whatever's
7 goin' on in the house ---

8 Q. The GPM gallons ---

9 A. Gallons per ---

10 Q. --- per minute?

11 A. --- minute, I'm sorry. Uh, so his humidifiers come on,
12 you know, and they, and they need to have water to make the
13 air moist on the air conditioner. Uh, ice makers make ice,
14 uh, there's different things throughout the house that are
15 automatic, that ---

16 Q. I ---

17 A. --- happen.

18 Q. --- I notice his electric bill was like ---

19 A. Right.

20 Q. --- based on Mr. Klaben's testimony like 800, \$900 a
21 month.

22 A. Right, it's a, yeah, I can imagine. Uh, the, so the
23 valve senses the water so you have to set it at whatever, you
24 try to get as close to that number and keep maintenance on the
25 house so that the house, the water won't shut off. Uh, I

1 can't, ya know, it was, it was years ago, I can't remember
2 what Stig's gallon per minute was set buy anyway you set it at
3 whatever as close you can get to what's needed, uh, and then
4 anything that comes through there faster or more volume it
5 more water use than is typical this valve is supposed to sense
6 it and shut off.

7 Q. Okay. What's a typical stetting?

8 A. Uh, I think it's fairly low, uh, typically 6 to 8 gallons
9 a minute possibly, ma -- sometimes it's lower depending on
10 what's in the house.

11 Q. Okay, and do you know if Mr. Wennerstrom uses this
12 system?

13 A. Uh, I've been there since I've in -- after I installed it
14 and yeah, I think he does use it.

15 Q. Okay. What have you been doin' there after you installed
16 it?

17 A. Uh, I'm tryin' to remember what I went back for the last
18 time, I've been there several times for different little
19 things. I think the, I think the one I went for was the
20 kitchen sink, I replaced the kitchen sink cartridge or
21 something or, you know, in the, in the, in the faucet so it
22 was shortly after we got done with repairs.

23 Q. He still calls you.

24 A. Oh, yeah.

25 Q. Alright. So if if there's, if it's set at 6 to 8, let's

1 say it's set at 6 ---

2 A. Um-hum.

3 Q. --- and 5 gallons of water are going in the house ---

4 A. Um-hum.

5 Q. --- and leaking out of a bidet pipe crack, does it shut
6 the water off?

7 A. No.

8 Q. Does it shut the water off if it's not turned on?

9 A. I don't understand your question.

10 Q. Can ya turn the system on and off?

11 A. Absolutely. Oh, I apologize, I thought you met the
12 bidet. Uh, no, if if the system is not turned on, it will not
13 shut the valve off.

14 Q. Does the system ---

15 A. Now you have to understand another thing too 'bout this
16 valve, if you turn it, if it loses power or whatever, it's a
17 normally closed valve so electricity goes out, uh, the valve's
18 gonna close automatically so ya have to manually go in and you
19 can manually there's a valve on the side you can actually
20 override the valve manually if you lose power to get water so
21 it's, it requires electricity keep it open, let's put it that
22 way, at all times.

23 Q. Okay. Alright, so but does that device detect pressure
24 in the water system?

25 A. No, as we like to say it -- on some things it pro -- it

1 doesn't know, it just, it doesn't know.

2 Q. Okay. Alright, so if there was a pressure problem in
3 this water system ---

4 A. Um-hum.

5 Q. --- that let enough water into the house and it was
6 leaking somewhere this would still happen.

7 A. Absolutely.

8 Q. Okay. And again, the first allegation against you in
9 2011, against this company, is failure to put a pressure
10 relief valve on.

11 A. Yes.

12 Q. Is a pressure relief valve on the house today?

13 A. It is not, ---

14 Q. Okay.

15 A. --- not to my knowledge.

16 Q. Thank you, Mr. Hafner, answer any questions Mr. Deal has.

17 A. Absolutely.

18 CROSS-EXAMINATION BY MR. DEAL:

19 Q. Hey, Mr. Hafner, uh, real quick. You said that Stig uses
20 the system, this, uh, system to cut the water off?

21 A. Yeah, I'm a -- I'm assumin' he does.

22 Q. Well you said he did, ---

23 A. Well, yeah, I mean, ---

24 Q. --- are you assumin' it?

25 A. --- I mean, he and I went over how to use the system so

1 yeah, I mean, I never actually marched up to p board and
2 punched in and so forth.

3 Q. And we were out there the last time, we're all out
4 there ---

5 A. He told me, the reason I say that is he told me he does
6 turn it off when he leaves, that's that's my knowledge is that
7 he decided actually used it.

8 Q. Right..

9 A. Um-hum.

10 Q. Okay, so he does use it. Alright, now you said, you
11 testified a minute ago that if, uh, there's some minor leak in
12 that or let me, let me back up. There's, you testified that
13 there's some leak in the house this system might not find that
14 leak.

15 A. Yeah, at -- yeah, a small leak, correct.

16 Q. The system's being used by -- Mr. Wennerstrom is using
17 it ---

18 A. Um-hum.

19 Q. --- according to what you know, right, ---

20 A. Um-hum.

21 Q. --- and this this same exact thing happened, ---

22 A. Um-hum.

23 Q. --- this this thing popped off, would this system detect
24 that if it was suddenly ---

25 A. Oh, yes, yes, it would.

1 Q. Every time wouldn't it?

2 A. Yeah, if it's workin' correctly, yes.

3 Q. And it would pop off, that when that thing popped off it
4 would, it would cut the water off.

5 A. It would certainly shut the water to the house.

6 Q. Right, so there would be some water in the house but it
7 wouldn't be a waterfall comin' down the stairs, would it?

8 A. Yeah, there's a, there's a, there's a time, I can't
9 remember what the time is on it, a amounta time has to go by
10 too, not just gallons per minute so it may be 30 seconds, 45
11 seconds, so there would be, there would be a release of water
12 and then it would sense it and shut it off, yeah.

13 Q. Right, but it wouldn't be a waterfall comin' downstairs.

14 A. It would change it from bein' catastrophic to, yeah, some
15 some amounta repair probly but not not what he went through
16 right.

17 Q. Okay. So in fact that unit would detect the home from
18 this what happened here today that that we're talkin' about
19 today. This type of a -- this type of thing that happened
20 today, that we're talking about today ---

21 A. Yes.

22 Q. --- this unit woulda protected from that, okay.

23 A. Yeah, it woulda turned the water off.

24 Q. Right. Alright, now, uh, the the testimony was that the
25 hot water heaters, no, let me back up. You testified earlier

1 in deposition that you never did any additional research or
2 investigation in this loss after you went out and took a look
3 at this pressure regulator, is that right? I can get into
4 your deposition if you need ---

5 A. Yeah, I mean, oh, yeah, after after I screwed the gauge
6 on, that day you're talkin' about ---

7 Q. Right.

8 A. --- when I put the original gauge on then, yeah, I didn't
9 do anymore, guess I was, guess I was involved secondhanded by
10 it hooking up all his test equipment but no, I wasn't, ---

11 Q. You didn't, you didn't ---

12 A. --- I wasn't privy ---

13 Q. --- you didn't ---

14 A. --- to anything about that.

15 Q. And you didn't make any any additional inspection to the
16 home at at that time either or any other time after that.

17 A. No.

18 Q. Right. Now how do you know the hot water heaters didn't
19 go off?

20 A. I don't know.

21 Q. But you just testified that you said they didn't.

22 A. How do you ---

23 Q. How -- didn't you just testify, you told Mr. Imhoff
24 here ---

25 A. Um-hum.

1 Q. --- that that, uh, that he asked you would -- did those
2 hot water heater go off and you said no they didn't, now
3 you're testifying now you don't know if they did or not, do
4 you?

5 A. He didn't ask me when the water heaters went off or
6 not, ---

7 Q. And ---

8 A. --- he asked me what the pressure settings were on
9 relief valves.

10 Q. Right. Pressure setting on relief valves were were a
11 hundred and fifty PSI, is that right?

12 A. And 210 degrees, yeah.

13 Q. Okay, and jury knows what you said whether or not you --
14 okay, let me back up.

15 A. Okay.

16 Q. Did those hot water heaters go off? The pressure did you
17 test it, do you know what -- whether or not those hot water
18 heaters released or did not release.

19 A. No, I don't know, I don't know.

20 Q. Have no idea ---

21 A. No, I don't.

22 Q. --- 'cause you didn't look.

23 A. No.

24 Q. That's right, okay. Now for the sake of argument, uh,
25 those go off at a hundred and fifty PSI, right?

1 A. They do.

2 Q. And what is that, what was the the testimony of Mr., uh,
3 Harris? You were sittin' here, ---

4 A. Um-hum.

5 Q. --- wasn't his testimony the, that the the fixture that
6 failed in the bidet was only rated a hundred and twenty-five
7 PSI?

8 A. Yeah, along with the fittings in the house is what he ---

9 Q. That's right ---

10 A. --- said, um-hum.

11 Q. --- so that's and I think Mr. Searcy said that's just the
12 the first thing that came loose, right, ---

13 A. Yes, I guess that ---

14 Q. --- at a hundred ---

15 A. --- a weak, a weak spot, I guess maybe the weakest spot
16 in the system.

17 Q. Right. Now we never said you guys did anything wrong
18 installin' that piece, did we?

19 A. No, you didn't.

20 Q. Right, so so you wouldn't expect it to fail under under a
21 hundred twenty-five PSI.

22 A. No, not really, no.

23 Q. But it would fail above hundred and twenty-five PSI.

24 A. I, som -- most 'em didn't so, yeah, ---

25 Q. Well ---

1 A. --- I mean, yeah, I mean, typically I would expect those
2 to hold at a hundred and twenty-fi -- up to hundred and
3 twenty-five pounds, yes.

4 Q. Right, so it's possible, ya know, and once again you
5 don't know what happened to the hot water heaters but but it's
6 very possible that the, that that this pressure it, ya know,
7 in in the system was building up, gets over a hundred and
8 twenty-five, once it gets over a hundred twive -- some --
9 twenty-five at some point the weakest link in this thing is
10 which you ju -- heard testify is that's gonna blow loose,
11 right?

12 A. It's possible, yes.

13 Q. Well, isn't that what happened here?

14 A. We don't know what the pressure was when it ---

15 Q. I didn't ask that, I said once it gets over a hundred and
16 twenty-five at some point that fit -- that fitting is gonna
17 fail, is that right?

18 A. It has the possibility a hundred twenty-five pounds a
19 blowin' off, yes, ---

20 Q. And that's ---

21 A. --- that's that's what it's rated at.

22 Q. It went north, at some point in time pressure in this
23 house went over over whatever it was rated, that piece was
24 rated to and that's when it failed, correct?

25 A. Correct.

1 Q. At that point in time just let me be clear here at that
2 point in time the pressure in that system is relieved,
3 correct, ---

4 A. Absolute.

5 Q. --- 'cause water's flowing into the house rather than
6 building up pressure in the home.

7 A. Yeah, the pressure would definitely drop. There'd still
8 be some pressure on the system but obviously it be
9 tremendously lower, yes.

10 Q. Okay, so even if you had tested the hot water heaters and
11 they they're at a hundred and fifty and and the fitting is
12 down there at one twenty-five doesn't mean anything would
13 happen up here at this hundred and fifty pressure because
14 system pressure builds up, it's gonna have to get, it's gonna
15 have to, it's gonna go to that weakest link, now the weakest
16 link in here is a hundred and twenty-five or under, correct,
17 not a hundred ---

18 A. Correct.

19 Q. --- and fifty and above.

20 A. Correct.

21 Q. Okay, so you'd expect a hundred and twenty-five to fail
22 before these hot water heaters ever released any pressure,
23 right?

24 A. Yes, if it's gonna fail at one twenty-five a course.

25 Q. And that's what this fitting was rated to.

1 A. Correct.

2 Q. So in this situation you wouldn't have expected the hot
3 water heater to fail, would you?

4 A. No, I wouldn't.

5 Q. Okay. Thank you. Alright, now last thing, this, you
6 testified a minute ago, ---

7 A. Um-hum.

8 Q. --- what would be the effect of of screwing screwing this
9 (indicating) thing down to the, to the bottom?

10 A. Well there's a, there's a washer fits inside that sits on
11 top a that spring, as you crank it in it compresses the
12 spring.

13 Q. And and then how much pressure would then be introduced
14 into the home if that valve was functioning properly?

15 A. If it was completely ---

16 Q. Screwed down.

17 A. At the highest can let out is 75 PSI.

18 Q. 75 PI. That cause this this failure to happen here
19 today?

20 A. Uh, no, it wouldn't.

21 Q. Okay. Nothing further.

22 THE COURT: Any redirect limited to what he went into?

23 MR. IMHOFF: Um-hum.

24 REDIRECT EXAMINATION BY MR. IMHOFF:

25 Q. Did this valve fail because of wear?

1 A. No, he said -- no, the expert said the diaphragm was
2 still in good shape, everything was still in good shape, a
3 little bit a debris inside the valve, he wasn't sure why it
4 failed.

5 Q. Did that fail, that valve there (indicating) ---

6 A. Um-hum.

7 Q. --- fail because it wasn't maintained?

8 A. Not from what everything I can see on it, no.

9 Q. Thank you, Mr. Hafner.

10 THE COURT: Thank you, sir, you may step down.

11 THE WITNESS: Thank you.

12 (Whereupon, the witness left the stand.)

13 THE COURT: Ladies and -- ladies and gentlemen, we're
14 gonna take a short, uh, break, I need to remind you not to
15 have any discussions among yourselves about anything involving
16 the case but you may go with the bailiff. Thank you.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Anything before we step down?

20 MR. DEAL: Not from me, Your Honor.

21 THE COURT: Alright, we'll step down and be right back
22 shortly.

23 MR. IMHOFF: Did you, I'm just having a -- you say what
24 time, Your Honor?

25 THE COURT: I didn't, just shortly: ten, fifteen minute.

1 MR. IMHOFF: Okay.

2 (Whereupon, a recess was taken.)

3 THE COURT: Alright, let's bring the jury back.

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

5 THE COURT: Alright, Mr. Seay, if you will bring the jury
6 in, thank you.

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

8 THE COURT: Is, uh, Mr. Imhoff ready to call his next
9 witness?

10 MR. IMHOFF: Yes, Your Honor. Your Honor, we call Mark
11 Searcy, please.

12 THE COURT: Sir, if you will please -- I I tell you what,
13 sir, just need to remind you you remain under oath, you
14 understand that?

15 THE WITNESS: Yes, sir.

16 DIRECT EXAMINATION BY MR. IMHOFF:

17 Q. How's your son, Mr. Searcy?

18 A. Uh, he is back at home and and okay.

19 Q. Alright. Alright, that's good to hear. Put an IV in
20 him?

21 A. Yes, and, uh, determined not kidney failure issue, no no
22 major problem so. . .

23 Q. Alright. Well I'm sorry to call you back up here for
24 just for a couple a things, okay. Did Mr. Wennerstrom know he
25 had a pressure reduction valve?

1 A. Without any question he knew.

2 Q. How did he know?

3 A. We had several kinda heated discussions concernin' it
4 that led up to, uh, my letter or my request to getting me to
5 up his pressure, the letter that I think that's in evidence
6 somewhere. There was a major, in fact, his original
7 discussions was with Scott my foreman and Scott finally called
8 and said, Look, I can't, he he's he's pushin' me to do this
9 and I said, You know we're not touchin' that thing, we're not
10 touching it, so finally I went personally walked up with with
11 Stig and explained is that this is a intricate thing that I'm
12 I'm not willin' to tinker with, I can't mess with it and it's
13 what determines how much pressure comes through and he
14 understood how it worked, where it was, how it was and we --
15 there's no question.

16 Q. You're standin' in his driveway with Stig Wennerstrom.

17 A. Say that again.

18 Q. You were standin' in his driveway with Stig Wennerstrom.

19 A. Well started in his, uh, grand room, he doesn't have a
20 great room, has a grand room, we started in the grand room and
21 it, and it continued across the foyer and, uh, up the driveway
22 and to the reducin' valve and I I had the distinct feeling
23 that he intended to refuse my directions when we went up there
24 and I said, Here it is, here it is, here's how it works,
25 opened the lid, took at me and looked in the box right there

1 but I told him if we start messin' with it there's all kinda
2 warranty issues and, uh, and my carpenters are not gonna touch
3 that and you shouldn't either.

4 Q. Plumbers? You said ---

5 A. Yeah, yeah, well I said, my carpenters are not gonna
6 touch it ---

7 Q. Aah.

8 A. --- so so and and I said, And you shouldn't either, we
9 gotta call the plumber. The result from a plumber we got in a
10 letter here somewhere where they said no, you can't, you can't
11 push that so. . .

12 Q. Now separate issue, did you sell Mr. Wennerstrom his
13 house?

14 A. No.

15 Q. What were you hired to do?

16 A. We we had a contract that allowed me to, uh, to to to
17 oversee, to manage the subs as they come and went and it's a
18 little little bit of unique relationship because of his in my
19 opinion over-involvement ---

20 Q. Okay.

21 A. --- but he he all of the, all the critical subs, all the
22 major subs I hired and managed those guys but, uh, no, in no
23 way you could ever construe that I sold to him, I didn't know
24 really until, uh, Klaben's, some of Klaben's testimony how
25 much a lot of it cost, I didn't even know so. . .

1 Q. A lot of it was done by subcontractors that he hired.

2 A. Right.

3 Q. Okay. Uh, did -- alright, Mr. Wennerstrom knew he had a
4 pressure reduction valve.

5 A. Without question.

6 Q. Okay. That's all, Mr. Searcy.

7 A. Okay.

8 Q. That's all. Thank you.

9 CROSS-EXAMINATION BY MR. DEAL:

10 Q. Mr. Searcy, uh, if you hadn't built this house somebody
11 else woulda had to come along get the, uh, to pull the
12 permits, right?

13 A. Right.

14 Q. Somebody else woulda had to come along and do the, when
15 you get the certificate of occupancy, right?

16 A. Right.

17 Q. Okay, but you did that in this situation, right?

18 A. Well, remember I didn't actually pull the permit,
19 somebody else had pulled it, we transferred it to my name, I
20 took responsibility for it.

21 Q. And, right, and corr -- I'm sorry, I apologize, you're
22 you're exactly right. Had you not done that somebody else
23 would have had to come along and do that ---

24 A. (Nodded in the affirmative.)

25 Q. --- and and and and took over what was the little bit

1 that was in in -- on -- in the ground there they would
2 somebody else woulda had to come along and do, and and take
3 take over that ---

4 A. If it, ---

5 Q. --- permit ---

6 A. --- if it got done, somebody else woulda had to do it.

7 Q. Yeah, but in fact you did the work, ---

8 A. Yes, I did.

9 Q. --- you're the one that got the CO.

10 A. Yes.

11 MR. DEAL: Alright, nothing further, Your Honor.

12 THE WITNESS: Do I step down?

13 THE COURT: Until I tell you to do so, sir, no. Do ya
14 have anything further?

15 MR. IMHOFF: Nothing further.

16 THE COURT: Thank you, sir, you may step down.

17 (Whereupon, the witness left the stand.)

18 THE COURT: That it?

19 MR. IMHOFF: Your Honor, defense rests.

20 THE COURT: Alright, any redirect, ---

21 MR. DEAL: No, Your Honor.

22 THE COURT: --- I mean, any calling any other witnesses?

23 MR. DEAL: No, Your Honor.

24 THE COURT: Alright, ladies ge -- ladies and gentlemen,
25 at this time I'm going to let you have your lunch break

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1 because there are some issues that I have to take up with the
2 lawyers outside of your presence and, uh, need to remind you
3 that you cannot have any discussions with anyone about
4 anything that involves your case, uh, that involves this case,
5 uh, especially now at this juncture where all of the evidence
6 has been presented to you. Uh, do not, uh, undertake, uh, to
7 try to answer any unresolved questions that you might have,
8 allow that, allow those questions to be resolved in your jury
9 deliberations but we will get together, looking at that clock
10 on the wall, I'm gonna ask if you would to be back here at
11 1:30, that will give us the time to continue to work here in
12 the courtroom to resolve any outstanding issues and at that
13 time at 1:30 we'll receive the closing arguments of the
14 attorneys, I then will instruct you on the law applicable to
15 the case and then you will begin your deliberations so I thank
16 you for your work this morning, you may go with the bailiff
17 and we'll see ya back at 1:30.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Any motions at this time?

21 MR. IMHOFF: Your Honor, I would again move for directed
22 verdict and and I guess I should do it by cause of action.
23 Uh, my first would be that there is no basis for a warranty of
24 habitability cause of action against B&B Plumbing.

25 MR. DEAL: Once again, Your Honor, we have ---

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1 THE COURT: Go ahead, ---

2 MR. DEAL: --- never ---

3 THE COURT: --- let let me know what they are, ---

4 MR. IMHOFF: Okay.

5 THE COURT: --- you'll get a chance to ---

6 MR. DEAL: Okay.

7 THE COURT: --- respond.

8 MR. IMHOFF: Just wanna make sure, Your Honor, I wanna
9 get it clear what we're gonna argue here, ---

10 THE COURT: Um-hum.

11 MR. IMHOFF: --- uh, we also move for directed verdict on
12 a warranty of habitability cause of action as to Searcy Homes
13 and we've handed up more case law and actually, uh, I think a
14 South Carolina law review, Your Honor, which all support
15 unanimously the test for the warranty of habitability and the
16 test for a warranty of habitability cause of action springs
17 from the sale of the home and I just put Mr. Searcy up just
18 for that purpose, he did not sell this home, he was the second
19 general contractor, there were two architects, there were
20 engineers, there were other trades hired by Mr. Wennerstrom,
21 supervised by Mr. Wennerstrom. The basis for the implied
22 warranty of habitability if you look back in the case law is
23 because there are homes sold, speculative homes, called "spec
24 homes" where where the owner does not have the ability to
25 supervise the construction, oversee the construction, see the

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1 the foundation, footings, the lumber, the framing, the plu --
2 the all of those things, that's not true in this case.
3 Mr. Wennerstrom was involved in this project so much so that
4 he fired his first general contractor ---

5 THE COURT: Now where is that in the evidence ---

6 MR. IMHOFF: Mr. Searcy ---

7 THE COURT: --- that he fired his first contractor?

8 MR. IMHOFF: Mr. Searcy just testified that ---

9 MR. SEARCY: Was in my ---

10 MR. IMHOFF: --- twice.

11 MR. SEARCY: --- that was in my testimony.

12 THE COURT: Sir, ---

13 MR. IMHOFF: I'm sorry, he didn't know, I'm sorry, Your
14 Honor. Mr. Searcy was the second general contractor.

15 THE COURT: But the law in South Carolina based on my
16 reading establishes that builders can be sued in warranty.

17 MR. IMHOFF: Yes, Your Honor, there's two different
18 kinds, yes, Your Honor, habitability and workmanlike service.

19 THE COURT: Okay.

20 MR. IMHOFF: He can absolutely be sued, both these folks
21 can, for the work that they did and that was presented to
22 Judge Cole and Judge Cole dismissed the warranty of workman
23 like services cause of action.

24 THE COURT: Alright, now Judge Cole has not issued, he's
25 issued a Form 4 ruling, Form 4 rulings are not technically

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1 final especially when they resolve issues on the merit, the
2 judge has to do something as far as issue some type of formal
3 order. Let's assume that it's a fr -- final order. Judge
4 Cole made a ruling based upon the facts, he did not make a
5 ruling based on some issue of law, he he based on facts that
6 he said there was no evidence that was presented before him
7 that supported that there had been a violation of any of the
8 codes, rules, standards, those type things, this is a
9 different case that's been presented to me. When the directed
10 verdict has to be viewed in the light that most favorable to
11 the non-moving party and I have to view the facts and I have
12 to view the facts and inferences therefrom in a light most
13 favorably to them.

14 MR. IMHOFF: Well again, Your Honor, I've talked about
15 warranty of habitability and the warranty of habitability
16 requires a sale and so there's no sale based on testimony that
17 was just presented. I think that is the keystone, I think
18 that's the cornerstone, matter of fact, I think they used
19 those words "keystone" and "cornerstone" if I'm not
20 misremembering that and there wasn't a sale of this house,
21 Your Honor, ---

22 THE COURT: Okay.

23 MR. IMHOFF: --- so we would ask that the directed
24 verdict be granted as to the warranty of habitability cause of
25 action as to Searcy Custom Homes.

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1 THE COURT: And as to B&B.

2 MR. IMHOFF: Well I think they've stipulated that but
3 yes, Your Honor, ---

4 THE COURT: Yeah, alright.

5 MR. IMHOFF: --- for for that, for that part of my
6 motion.

7 THE COURT: Okay.

8 MR. IMHOFF: Would you like me to continue, Your Honor?

9 THE COURT: Um-hum, ---

10 MR. IMHOFF: Okay.

11 THE COURT: --- yes.

12 MR. IMHOFF: Uh, and again, we're, I believe that the
13 negligence cause of action if I'm interpreting what the other
14 cause of action are and that's the third Kennedy test: know or
15 should have known, uh, that he put a dangerous product into
16 the house. Again, Your Honor, there has not been evidence and
17 testimony that they knew or should have known that that valve
18 was going to fail after six years and that's the key to the
19 case that they had to prove that these folks knew or should
20 have known that that valve was going to fail after six years,
21 that's the whole case and their expert testified that they --
22 he had no basis to assume, testify or have an opinion that
23 these (indicating) gentlemen, the three of them had any
24 knowledge that that valve was going to fail and so that's the
25 first part of it. The second part of it is the valve is

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1 clearly the proximate cause of this failure, Your Honor. That
2 valve failed, uh, but for that valve failing there is no flood
3 and so as to a proximate cause argument and again, that was
4 the testimony of Mr. Harris and every one of the witnesses in
5 the case, if that valve had not failed, the flood wouldn't
6 have happened and every witness in the case testified that the
7 valve's failure was not the fault of these (indicating) three
8 gentlemen and so that would be the second part, Your Honor. I
9 think they failed to show us a breach of the standard, I
10 believe they've failed to show proximate cause. They didn't
11 breach the standard and they didn't show proximate cause and
12 there's no testimony that the failure maintain the cau -- the
13 the regulator was the cause, uh, of its failure.

14 Your Honor, there's one other thing, uh, there's also,
15 there's some suggestion and I, maybe I'll let Mr. Deal handle
16 this but there's some suggestion that he's still arguing
17 contract cause of action and I guess are you still arguing
18 contract cause of action?

19 MR. DEAL: Uh, well ---

20 MR. IMHOFF: Alright.

21 MR. DEAL: --- I'll address that when the time comes. If
22 if you'd like to talk to him about it, go ahead.

23 MR. IMHOFF: I don't wanna talk ---

24 MR. DEAL: Now ---

25 MR. IMHOFF: --- about it, I wanna know ---

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1 MR. DEAL: Well ---

2 MR. IMHOFF: --- if you're you're asking for it or not.

3 MR. DEAL: If I may?

4 THE COURT: Well why don't you answer that in reply.

5 MR. DEAL: That's kinda what I was tryin' to get at.

6 THE COURT: Alright, so let let him go then if he's

7 going ---

8 MR. DEAL: Okay.

9 THE COURT: --- to address that then.

10 MR. IMHOFF: Alright.

11 MR. DEAL: Thank Your Honor. Let's talk about the
12 warranty of habitability first. I know there is no contract,
13 uh, that says on the top a contract for sale, not arguing that
14 point.

15 THE COURT: Alright, let me direct you to the *Kennedy*
16 case. How do you get by the language in the *Kennedy* case
17 where the Supreme Court took painstakingly in my opinion
18 effort to go through the different situations where you can
19 sue a builder under warranty ---

20 MR. DEAL: Right.

21 THE COURT: --- and they come to the part and they say,
22 Oh sure, the Court of Appeals even though whatever opinions
23 the Court of Appeals had been issued they were critical of the
24 Court of Appeals and they said but we wanna set this record
25 straight, here in South Carolina you are going to be able to

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1 sue builders ---

2 MR. DEAL: That's right.

3 THE COURT: --- and they set forth, in warranty that is,
4 you're gonna be able to sue builders in warranty, and then
5 they make that distinction, they say that you're going to be
6 for those situations where the builders are not the sellers of
7 the home, they're gonna be liable in in the workmanship area
8 but not in the habitability area, how do you get around such
9 clear language as what's in *Kennedy*?

10 MR. DEAL: Uh, well, Your Honor, it and if you go back to
11 Dodenhoff which I think it's relevant, the guy's called
12 Dodenhoff 'cause it's a little different but the first case
13 that I gave you it talks about the the builder/seller,
14 okay, ---

15 THE COURT: Um-hum.

16 MR. DEAL: --- and and what what the difference in what
17 they -- all the cases that they cited in *Kennedy* as far as the
18 the the delineation between who you can sue for havin' for for
19 workmanlike service and who you can sue for warranty of
20 habitability there's always been a seller, official seller
21 bein' a deve -- and most the time it's a developer.

22 THE COURT: Most, I'm sorry?

23 MR. DEAL: Most a the time it's a developer in those, ---

24 THE COURT: Okay.

25 MR. DEAL: --- in every one a those cases there's a third

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1 party that takes over that that representation. Like here is
2 your house, we are selling you this house. In the *Rutledge*
3 case, that was not the case, there was just one person
4 standing there and that warranty of habitability applied to
5 that one person who is the builder. Now he built that house
6 as a spec home, alright, and the, a Court of Appeals in the
7 *Arvai v. Shaw* case said, Well since it was a spec home this
8 warranty of habitability doesn't apply, that's what the Court
9 of Appeals said. The Supreme Court came back and said, No,
10 no, no, no, no, no, no, that's not determinative: custom
11 homes, spec homes, it doesn't matter, that's what the Supreme
12 Court overruled the the the Appellate Court and said it
13 doesn't matter it's a custom home or or or a or a spec home if
14 you are involved in the sale of the home as the builder you're
15 you're you're responsible. Now in *Arvai* that in the Supreme
16 Court they say, Oh, by the way this wasn't a new home, okay,
17 that's why we have warranty of habitability, the the builder
18 actually lived in the house before he s -- he sold it, he put
19 into the stream a commerce and down the road she went and they
20 say it wasn't a new home, that was the ruling; in fact, if you
21 look at the *Kirkland* case, Your Honor, it's the last one I
22 gave you, it specifically says the holding in the *Kirkland*
23 case is the warranty of habitability o -- is doesn't go to a
24 new -- only goes to a new home, that was the holding, that's
25 not my, what I say it was, that's what the *Kirkland* case says,

1 it's at the very first paragraph and it starts with, "To make
2 a legal analysis," and it says in parenthesis "holding that
3 warranty of habitability doesn't go to a new home." So why
4 does it apply here and that it wouldn't apply in all those
5 other cases? It's instructive to read what the *Kirkland* and
6 and and other cases say about lenders. If a, if if a lender
7 is -- becomes amalgamated with the the builder and/or the
8 seller to such an extent they're a a joint venture, they're
9 also gonna be held to be, uh, responsible for that warranty of
10 habitability. In this case the builder is the, is the seller,
11 he's the only person that puts it in the stream of commerce,
12 that goes back to what I was talking about in *Kennedy* and and,
13 uh, *Arvai* and all the cases through there they say if a
14 builder puts a home in the stream a commerce then he warrants
15 it for habitability, that's what the, that's the holding in
16 the *Lane* case, Your Honor, and and that's that's what, that's
17 what they said in *Arvai* and I highlighted that particular
18 passage for you. Then later on well well who -- who's -- who
19 -- how do you define who's puttin' this house in the stream a
20 commerce to and such that it's a sale? If you build a home
21 and you know somewhere down the road it's gonna be sold to
22 somebody else, knew or should know it's gonna be sold to
23 somebody else, then you're -- you have put that home in the
24 stream a commerce. This home according to Mr. Searcy was
25 gonna be built so, you know, to last 'til the end a time,

1 that's just, that's what his testimony's been and, Your Honor,
 2 if I'm wrong, you you know, I guess the inference is here
 3 clear and I can certainly argue to the jury some -- that
 4 somewhere down the road
 5 that's the house gonna be sold to somebody else, that's just a
 6 fact, 'cause somebody's gonna die before this house wears out
 7 built like a bank so that's that's my argument there and and
 8 to be honest, Your Honor, and I hate even to do this but
 9 because you're al -- you're always told this is your your, you
 10 know, kind of last refuge of a, of a a desperate lawyer, I
 11 don't think I'm in that situation but public policy's gonna
 12 tell you if if you read what they're -- they say is the law in
 13 this, in this state, when somebody else, innocent purchaser,
 14 once again they -- that's discussed in every single case, an
 15 innocent purchaser later on come on down the road and and and
 16 and and buys this house, they have no warranty of habitability
 17 under what they're sayin' ---

18 THE COURT: What's ---

19 MR. DEAL: --- 'cause there is no, there is no sale of a
 20 new home.

21 THE COURT: Well what what is the distinction or can you
 22 make a distinction between the warranty of habitability and
 23 the warranty of workman, uh, ship?

24 MR. DEAL: Uh, warranty of habitability, Your Honor, is a
 25 no fault claim, you read that in all case but specifically in

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1 the *Kirkland* case, it's not a fault. Either the house was or
2 was not defective at the time it was built, that has to be
3 late, it can't be, you know, pu -- and and and the whole point
4 is is and back to it originally. At at some level ---

5 THE COURT: Alright, now tell me what your definition of
6 the ha -- uh, the warranty of workmanship.

7 MR. DEAL: If you you have a duty of, uh, uh, to and and
8 to do wor -- do what everybody else woulda done in the same
9 situation, Your Honor, do work, do in a workmanlike manner and
10 that warranty also extends in perpetuity, well obviously we
11 know it's eight years now in South Carolina that you can't sue
12 sue the builder but that's a, that's a negligence type iss --
13 you have a -- there's a, there's a, there's a duty and a
14 breach versus a a habitability over here is completely is is
15 that is you are making this, you are, you are certifying this
16 home, it's certified to be a home versus we made best efforts
17 to make sure this home's -- was was, uh, safe to live, to --
18 two totally different standards of of evidence and two
19 completely separate levels of liability and in this case, Your
20 Honor, the evidence is snap clear because, and can -- I'll get
21 into the negligence part of this in a little while, but
22 because, uh, uh, Mr., uh, that Mr. or B&B never said anything
23 to anybody that this thing need to be maintained, at the very
24 -- and and he knew and and I'll, I guess I'll just ---

25 THE COURT: No, fer -- let's stay on the warranty ---

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1 MR. DEAL: Uh, ---

2 THE COURT: --- issues if ---

3 MR. DEAL: --- alright.

4 THE COURT: --- you don't mind 'cause I'm ---

5 MR. DEAL: And ---

6 THE COURT: --- I'm struggling with those.

7 MR. DEAL: --- and I get it, Your Honor.

8 THE COURT: Alright, what ---

9 MR. DEAL: and I.

10 THE COURT: --- see if you can educate me on this, ---

11 MR. DEAL: Alright.

12 THE COURT: --- go back to the warranty of habitability.

13 MR. DEAL: Sure.

14 THE COURT: Case law seems seems to me clearly suggest
15 that where that one of the linchpin, one of the things,
16 dominos that have to fall for you to be successful is there
17 has to be a sale or or somehow the person has to put it into
18 the stream of commerce if you wanna ---

19 MR. DEAL: That's right.

20 THE COURT: --- say it, well what facts is there to to
21 say that that Searcy put it into the stream a commerce?

22 MR. DEAL: Okay, Your Honor. I di -- did ask Mr. Searcy
23 this is yesterday or the day before, I can't remember when
24 I -- I called him yesterday morning and asked him, I said,
25 Mr. Searcy, but and I asked him again today the only, and it's

1 not a home until it's got a CO, it cannot be used as a home,
 2 it cannot operate as a home, uh, and that was his opinion.
 3 Now and it also you can't get power and the, and s -- and and
 4 and he said well ya know some people kinda fudge and they move
 5 into the house before it has a CO, they're not supposed to,
 6 that's not good with the law, I, and I asked him on the stand,
 7 Well, Mr. Searcy, did you -- is that how you operate, he said,
 8 No, so until it has a CO you can't move in it, can't be a
 9 house legally, that's their testimony and a, and a CO is what
 10 governs that. You can't get a, get a mortgage, you can't get
 11 power, nothing because it's not a house legally until it has
 12 that and the only person and he's testified to it twice now
 13 that had the ability to get that CO and or that actually did
 14 do that, got the CO was him, he just said it just ten minutes
 15 ago.

16 THE COURT: Okay, let's say I believe you ---

17 MR. DEAL: Okay.

18 THE COURT: --- on the CO issue, ---

19 MR. DEAL: Yep.

20 THE COURT: --- so your test for placing it into commerce
 21 for purposes of application of the warranty of habi -- of
 22 habitability is the CO test, certificate of occupancy?

23 MR. DEAL: No, Your Honor, actually the test is did you
 24 build the house, that's the test that I gave you the case law
 25 for, it says, We are persuaded that a a builder who puts the

1 home, who builds a home who knew or should know that it's
 2 going to -- that it can be purchased by a subsequent purchaser
 3 can be placed that that house in the stream a commerce, that's
 4 specific what the, what case law says, We are persuaded,
 5 that's what the the and I, and I believe that's in the *Kennedy*
 6 case, Your Honor, but I highlighted that particular passage
 7 for you and I I asked your clerk if he had that that case ---

8 THE COURT: Hum.

9 MR. DEAL: --- and it's -- it says exactly that. If you
 10 could show that to him, I'd appreciate it, it's it's
 11 highlighted. No, no, no, he's got it in his hand, Your Honor,
 12 just just read that sentence.

13 (Pause.)

14 THE COURT: He is, the Court is talking or speaking when
 15 they write that in the section under Liability and Tort,
 16 they're not, that's not contained in the section that deals
 17 with warranty liability.

18 MR. DEAL: I I understand that, Your Honor, but does I,
 19 does it -- this is this case was handled, disposed of all
 20 these issues and and that, I mean, the law is the law, Your
 21 Honor, and they say specifically, We are persuaded that a
 22 person who sells, builds a home, places in the stream of c --
 23 and that might be thereafter be sold, knew or shoulda known it
 24 might be sold to a some subsequent purchaser that he puts it
 25 in the stream a commerce.

1 THE COURT: Alright, let me read you this section of the
2 case.

3 MR. DEAL: Okay, I -- yes, sir.

4 THE COURT: "However, a builder may not escape warranty
5 liability by refraining from selling the building. As
6 recognized by the Court of Appeals in *Winds*, a builder who
7 contracts to construct a dwelling impliedly warrants that the
8 work undertaken will be performed in a careful, diligent and
9 workman workmanlike manner. This is an implied warranty of
10 workmanlike service and is distinct from the implied warranty
11 of habitability."

12 MR. DEAL: Absolutely, Your Honor, and that case and the
13 *Kennedy* case the reason they said that they didn't get a
14 warranty of habitability is because they weren't the seller,
15 the builder wasn't the seller or they were actually in this
16 case, that that was *Colo* -- that was the *Kennedy* case I
17 believe, Your Honor, and that that was a situation where a
18 house was repossessed during construction because the
19 materials that they had provided to build a home were not paid
20 for and the builder went bankrupt and my point to that is is
21 in in that situation that when they contemplated these two
22 separate rights, the cases they cite to are just like here
23 situation was a third party, a developer or somebody like that
24 as in *Carolina Winds*.

25 THE COURT: Okay, ---

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1 MR. DEAL: Your Honor, ---

2 THE COURT: --- you you wanna go to your, uh, his to
3 respond to his argument on the, uh, tort theories?

4 MR. DEAL: Uh, well one last thing on the, on the sale,
5 Your Honor, let me just pause at this: ---

6 THE COURT: Um-hum.

7 MR. DEAL: --- If in fact you, there's some confusion
8 that it, uh, and as far as whether there was a sale or not a
9 sale in this situation, if we were to put that, uh, to the
10 jury and ask them was there a sale, that's a, that's a a just
11 a way to handle that and and that way there's, I mean, as a
12 matter of law let the jury decide.

13 THE COURT: So how would I instruct the jury on is there
14 a sale or not?

15 MR. DEAL: Did did in fact, if you think that this house
16 was was placed in the stream a commerce by, uh, Mr. and we
17 could obviously have a discussion about the wording of
18 that ---

19 THE COURT: We would need that.

20 MR. DEAL: I agree. If you, if if -- did Mr. -- did did
21 Searcy Custom Homes place this home in the stream a
22 commerce, ---

23 THE COURT: Um-hum.

24 MR. DEAL: --- if if, you know, if if that, if if if you
25 believe that he we have it's check yes, if if, you know, you

1 say yes then follow the next one, if not go, ya know,
2 whatever. Then you'd say after that, If in -- if he, if he
3 did place this home in the stream a commerce, did he breach
4 the warranty of habitability and but and you'll in -- instruct
5 it accordingly as I already indicated and submitted, uh, last
6 night, Your Honor, that's, ya ya know, anybody that will puts
7 or places a home in the stream a commerce, ya know, warrants
8 that the house is safe and fit for use as a home, if if, ya
9 know, and that, uh, if if some hidden condition causes some
10 hidden condition that exists at the time the home was
11 constructed and that home and that that hidden condition later
12 causes some damage to the home, the builder is responsible and
13 that that's even true if the builder, uh, uh, and I forget
14 exactly how I worded it, Your Honor, but even, that's even
15 true if the builder, uh, had no fault in in the creation of
16 the existence of that hidden condition, something to that
17 effect, and like I say, Your Honor, I provided the language
18 there to the, to the Court last night and and and if that's
19 the burden, that that, uh, I'm I'm willin' to bear that
20 burden, Your Honor, I think it's only fair if there's some
21 doubt as to whether or not there was a sale, the facts are the
22 facts, either they support the idea there was one or not.

23 THE COURT: So you say that the the issue of sale for
24 purposes of breach of warranty for habitability is a jury
25 question.

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1 MR. DEAL: No, Your Honor, I believe it's a question of
2 law and I believe the law has spoken specifically that if if
3 if you put the, if you build a house and you knew or should
4 know it's gonna be, uh, could be purchased down the road by an
5 innocent purchaser then then you've placed it in the stream a
6 commerce.

7 THE COURT: Then why are you asking me to have the jury
8 make that determination be ---

9 MR. DEAL: I ---

10 THE COURT: --- placed in the stream ---

11 MR. DEAL: --- I'm ---

12 THE COURT: --- a comm ---

13 MR. DEAL: --- I'm not, I'm saying as an alternative,
14 Your Honor, that's all.

15 THE COURT: Uh, okay, alright. You wanna move on to
16 your, uh, ---

17 MR. DEAL: Yes, Your Honor.

18 THE COURT: --- tort theory?

19 MR. DEAL: Negligence, proximate cause. Mr., uh, Blythe
20 got on the stand and said this, uh, failure was caused, this
21 this, they failed because a hot water and then he said ---

22 THE COURT: Alright, may may I interrupt you?

23 MR. DEAL: Yes.

24 THE COURT: Uh, let me save you some time. I I believe
25 there's evidence when viewed in a light most favorably to you,

1 which I have to do at this point, that would support the the
2 negligence theories, okay.

3 MR. DEAL: Okay.

4 THE COURT: Uh, now tell me about this issue of contract.

5 MR. DEAL: Well, Your Honor, uh, you know, and and I, to
6 be honest with you the Court has instructed that that that
7 this this particular ruling that was made by Judge Cole is not
8 official this time, it's not been, uh, in the, in the law,
9 he -- and I made the argument at at that motion for summary
10 judgment, Your Honor, that it was inappropriate at the time
11 because discovery hadn't been finished yet, we hadn't de
12 --deposed folks so there was additional information that would
13 be coming before the the Court and and, ya know, even in light
14 a that the judge, ya know, advised what his opinions were, how
15 that's I, ya know, uh, called, represented to the Court as far
16 as the weight of its its, uh, efficacy to do whatever it needs
17 to do here to dispense with those claims to the extent that it
18 doesn't, I would just point out, Your Honor, that there is
19 evidence out there that they didn't. I mean, Mr. Searcy said
20 in his testimony he would expect the -- him and all his subs
21 to have gathered all the appropriate information and then act
22 appropriately in in unusual circumstances. Testimony was
23 clear that, uh, this water pressure was way above 80 PSI,
24 that's that's what it said, way above, and, uh, and then
25 thereafter nothing was done and then after that they didn't

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1 even tell, uh, Mr. Wennerstrom that anything coulda gone
2 wrong, uh, ---

3 THE COURT: Okay, ---

4 MR. DEAL: --- is that a work -- is that a workmanlike
5 way, is that a prudent builder, does that -- did he, did they
6 go -- they do their job in worklike way. When I say
7 workmanlike, did they take the time to to analyze the problems
8 that were, that were unique to this particular structure?

9 THE COURT: Alright, let me, I I'm not hearing, uh, my
10 question is apparently Mr. Imhoff has some concern there's
11 gonna be a contract issue, what is ---

12 MR. DEAL: Oh, ---

13 THE COURT: --- the contract issue?

14 MR. DEAL: --- well my point is they, when they -- when
15 you build a home, the contract requires you to to perform the
16 work in a workmanlike manner to do the job as as allegedly
17 claimed so to the extent that those contract claims are not
18 dispensed with by Mi -- uh, Judge Cole's order, I would seek
19 the Court to to to reinstate or to consider including in the
20 charges.

21 THE COURT: Oh, maybe I've missed 'em, I haven't
22 be -- received any requests to put any contract issue before
23 the jury.

24 MR. DEAL: It was on the jury, the verdict form, Your
25 Honor, that was just because I was - I I I prepared it in in

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1 advance 'cause I -- as your ruling wasn't for -- uh,
2 forthcoming, I didn't make a change any any any changes from
3 way back in the day. At the time I didn't have your ruling as
4 to what and still really don't in what what, uh, you're gonna
5 allow to be charged, it was the verd -- verdict form for that
6 reason just ---

7 THE COURT: Okay.

8 MR. DEAL: --- because of edits that's all.

9 THE COURT: Okay, alright.

10 MR. IMHOFF: I would just say that that nothing has
11 changed since Judge Cole's ruling. What contract? There's
12 no, it's never been introduced, uh, so that the -- he says
13 that the contract requires them to do it workmanlike, this and
14 that, the other, the contract in its terms speak for
15 themselves. If we submit a contract cause of action to the
16 jury, what are they gonna look at to determine whether we
17 breached the contract or not so I would say that there there
18 is no breach a contract cause of action now due to Judge
19 Cole's ruling and I don't think that one is supported by the
20 evidence because there was no evidence on the contract but I
21 don't know. I don't believe Mr. Klaben did it, I don't
22 believe Mr. Harris did it so they're ---

23 THE COURT: Alright, I'm not seein' what this contract
24 issue is. Judge Cole's ruling did not say there was not a
25 contract, his ruling said that based on what was presented to

1 him there was no breach of a contract, that it looked like,
2 uh, Searcy, uh, complied with the contract and that B&B was
3 not in privity with the contract so I'm a -- I'm not seein'
4 that there's any contract issue that I need to charge the
5 jury, I'm not saying that you can't, I'm preventing you from
6 arguing s -- a a particular fact but as far as a law that I'm
7 gonna charge, I don't, I don't envision me charging a
8 contract, uh, theory. Um, I will step down, um, I told the
9 jury be back at 1:30, I'm not sure I will be ready at 1:30,
10 uh, because this warranty issue has, uh, has me perplexed.
11 Uh, the rules that I have to apply, uh, is that I have to view
12 things in a light most favorably to the plaintiff at this
13 juncture and also the inferences from those facts that I have
14 to glean from the testimony have to be, uh, viewed by me in
15 light most favorably to the plaintiff, uh, and also understand
16 that if I am requested to charge something and it -- that, uh,
17 particular piece of law and that law is supported by the
18 evidence that's presented, it's reversible error for me not to
19 charge it so we would end up back here again so let me take
20 another look at this issue of warranty and I'll try to let
21 ya'll know as soon as we can. Uh, I'm I'm not gonna ask that
22 ya'll sit in the courtroom and be held hostage though.

23 MR. DEAL: And ---

24 THE COURT: Yes, sir.

25 MR. DEAL: --- and, Your Honor, before you step down just

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1 wanted to to, ---

2 THE COURT: Um-hum.

3 MR. DEAL: --- uh, we move in directed verdict on our
4 behalf as well, ---

5 THE COURT: Oh, ---

6 MR. DEAL: --- I believe the arguments are the same ---

7 THE COURT: --- okay.

8 MR. IMHOFF: And and may I, may I speak to the warranty
9 issue ---

10 MR. DEAL: --- just for the record.

11 MR. IMHOFF: --- for a little bit, Your Honor?

12 THE COURT: Um-hum.

13 MR. IMHOFF: Uh, it is, I I believe it is a question of
14 law for you based upon the facts as you said in the light most
15 favorable to the plaintiffs, there is no evidence that there
16 was a sale, Your Honor and so under under that analysis, uh, I
17 would say that even if you view it in the light most favorable
18 to them, there still isn't a sale, sale is required and so
19 there's no breach of a warranty of habitability.

20 Your Honor, I have another, uh, request to charge, would
21 you like to discuss those now or do you wanna just kinda wait
22 'til we come back?

23 THE COURT: Well if if I exclude the warranty then we're
24 gonna reduce the amount of discussions we have to have s ---

25 MR. IMHOFF: I think that's a great plan, Your Honor, and

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1 I like it a lot, not that you need my approval for sure but
2 I ---

3 THE COURT: I always like having.

4 (Laughter.)

5 MR. IMHOFF: You wouldn't charge the whole thing, Your
6 Honor, two, the second two paragraphs I think are just for
7 your, uh, your review of the law and basis for it.

8 (Whereupon, counsel handed the document to the Court.)

9 THE COURT: Alright. Okay, I'll step down. We'll
10 reconvene maybe 'bout 1:15.

11 MR. IMHOFF: 1:15, Your Honor?

12 MR. DEAL: Thank Your Honor.

13 MR. IMHOFF: Thank you.

14 (Whereupon, a recess was taken.)

15 THE COURT: Alright, uh, before we start I will, don't
16 know how long this conversation's gonna take that we are going
17 to have, I will -- would want you to know that if we get to be
18 three o'clock and we have not charged and we have not started
19 the arguments yet with the juries, we will, we will dismiss
20 the jury for the day and return in the morning, okay.

21 MR. IMHOFF: Would not -- to charge the jury, Your Honor?

22 THE COURT: If we have not, if we have not reached the
23 point to where we're arguing and charging at three o'clock,
24 we -- I'll send the jury home 'cause then I would have kept
25 them back there for an hour and a half holding -- holding them

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1 hostage.

2 MR. IMHOFF: Okay.

3 THE COURT: Uh, alright.

4 THE BAILIFF: They're all here.

5 THE COURT: Thank ya. I am not going to be charging the
6 jury on the warranty issues, I have searched those cases,
7 looked at 'em in a magnify -- with a magnifying glass through
8 my eyes, I just believe that the warranty of habitability
9 there has to be some type of sale involved, uh, and I am not
10 perceiving this case as through the evidence has been, that
11 I've viewed that this falls in that warranty of habitability.
12 Uh, I think it is a warranty case but Judge Cole's ruled, uh,
13 so I I won't be charging warranty. Uh, I might consider that
14 in the event plaintiff is not successful that might be an
15 issue for appeal that you get straightened out, uh, on appeal
16 but I am, but as far as this trial this, I'm not seeing that
17 the warranty of habitability will go to the jury, uh, based
18 upon the evidence that that I've heard.

19 Now with the request for charges, uh, and I, and the
20 other, any out, other outstanding directed verdict motions,
21 uh, would be denied based on the standard that I have to
22 apply, legal standard in reviewing the evidence and my
23 consideration of the evidence that, uh, that any and all the
24 other directed verdict motions would be denied, okay.

25 Request to charge. I will go a little bit slower since

1 you've never tried a case in front of me and so that maybe you
2 understand, I think Mr. Imhoff's heard most of this before.
3 I'll, uh, before you'll actually argue I will start with the
4 closing, tell the jury what the closing arguments are, that
5 they are not, uh, to be considered facts, uh, but that does
6 give counsel an opportunity to explain to the, to the jury
7 what they believe the facts have shown and what the issues
8 are, I then will do the duties of the judge and the jury,
9 again, reminding them I'm the judge of the law, they're the
10 judge of the facts and that they're required to, uh, accept
11 the law as I tell them.

12 Ponderance of the evidence. Explain to them that the
13 burden of proof in this case is a preponderance of the
14 evidence, simply means that, uh, it is evidence which as a
15 whole shows that the facts sought to be proved is more likely
16 true than not true. Uh, I do use the example of the scales of
17 justice tipping ever so slightly in one side or the other so
18 if you'll have that incorporated in your closings I'll say it
19 too, then go into direct and circumstantial evidence, explain
20 them what that is.

21 Credibility of witnesses. Tell them that it's their job
22 to simplify -- to -- credibility simply means believability,
23 becomes your duty as jurors to evaluate the evidence,
24 determine which evidence convinces you it is true.

25 Expert witnesses. Charge them as to what expert witness

1 is. Corporation as a person. In our courts no distinction's
2 made between corporations and individuals. A corporation is a
3 person in the eyes of the law, corporation's entitled to the
4 same fair and impartial consideration and justice by the same
5 legal standards as an individual.

6 I am going to instruct them that, uh, this particular
7 action is a action based on the theory of subrogation.
8 Subrogation is the substitution of one person in the place of
9 another with reference to a lawful claim or right. A
10 subrogated party is entitle to the same rights and remedies as
11 the person for whom it succeeds and is subject to the same
12 defenses as its insureds. Where a property insurance carrier
13 compensates an insured for damages sustained, it may then step
14 into the shoes of its insured to seek restitution from the
15 responsible party. In this instance Fireman's Fund Insurance
16 Company is entitled to assert any claim that that it's ensured
17 Sig Warnerstrom [sic] may have had against the defendant for
18 their legally recoverable damages arising out of the January
19 21, 2009 water leak at the home of Sigs Winnerstrom [sic]
20 located at 45 Falling Star Way, Landrum, South Carolina.
21 Negligence. The plaintiff claims that the defendants were
22 negligent and should compensate the plaintiff for injuries
23 that the plaintiff suffered as a result of the defendants'
24 negligence. In order to prove that the defendants were
25 negligent, the plaintiff must prove by preponderance or

1 greater weight of the evidence the following things: First,
2 the plaintiff must prove by a preponderance or greater weight
3 of the evidence that the defendants owed the plaintiff a duty
4 of care, that is a question of law which I will decide. The
5 plaintiff alleges and contends that construction, that a
6 construction or building work was undertaken by the defendants
7 under an agreement, under an arrangement and agreement with
8 the owner the property at that time, I charge you that one who
9 undertakes and agrees to construct buildings is liable for any
10 damage proximately resulting from the negligence or unskillful
11 manner in which the construction in in which he constructs the
12 building. In this regard the defendants owed the duty to
13 exercise and use due care in the construction of the house and
14 in the work undertaken by the defendants. To establish
15 negligent construction, the plaintiff must prove four
16 essential elements; one, that there was an undertaking to
17 construct a building by the defendants; two, that the
18 defendant -- defendants were negligent, careless or reckless,
19 wilful or wanton in the performance of the construction work
20 or stated another way that the defendants did not perform the
21 work in a good workmanlike manner; three, that the negligence
22 or carelessness or recklessness, wilfulness or wantonness of
23 the defendants in performing the -- that construction work was
24 a proximate cause of any damages sustained by the plaintiff
25 and for the resulting damage must be cer -- and the resulting

1 damage must be shown. Is incumbent upon the plaintiff to
2 prove the defendant was negligent or careless or reckless or
3 wilful, uh, or wanton in some aspect of the di -- of the
4 construction work which they agreed to do so otherwise you
5 would be required to find for the plaintiffs. The degree of
6 care which the defendants are called upon to exercise in this
7 case is the degree of care which a person or entity of
8 ordinary reason and prudence would exercise under similar
9 circumstances and conditions in the construction -- in
10 constructing the house or building of the kind in question.
11 Any failure to exercise due care on the part of the
12 defendants, his agents, servants or employees acting in the
13 scour -- course and scope of their employment in the
14 construction of the house or building would constitute
15 negligence or carelessness. If such negligence or
16 carelessness on the part of the defendants did exist and and
17 that fact is, uh, and that -- and did exist and that fact is
18 is totally for you, the jury, to determine, your next question
19 would be is the negligence or carelessness of the defendants a
20 proximate result of the damages sustained by the plaintiffs.
21 Negligence is not actionable unless it proximately causes the
22 plaintiff's injuries. Proximate cause is the eff -- is the
23 efficient or direct cause of an injury. Proximate cause
24 requires proof of both causation in fact and legal cause.
25 Causation of fact is proved by establishing the plaintiff's

1 injuries would not have occurred but for the defendants'
2 negligence. Legal cause is proved by establishing
3 foreseeability. The touchstone of proximate in South Carolina
4 is foreseeability, that is, foreseeability of some injury from
5 a negligent act or a -- or omission is a per -- prerequisite
6 to its being a proximate cause of the injury for which
7 recovery is sought. The test of foreseeability is whether
8 some injury to another is the natural and probable consequence
9 of the com -- of the complained of act. The defendants may be
10 held liable for anything which appears to have been a natural
11 and probable consequence of their negligence.

12 For an act to be a proximate cause of it -- of the
13 injury, the injury must be foreseeable, must be a foreseeable
14 consequence of the act. Foreseeability is not determined from
15 hindsight but rather from the defendants' perspective at the
16 time of the complained of act, law requires only reasonable
17 foresight. When the injury complained of is not reasonably
18 foreseeable in the exercise of due care, there is no
19 liability. It is not necessary for a plaintiff to demonstrate
20 the defendant should have foreseen the particular event which
21 occurred but merely that the defendant should have foreseen
22 his or her negligence which probably caused the injury to
23 someone. Negligent conduct is the proximate of the injury if
24 the jury is within the scope of the foreseeable risk of
25 negligence. While it is not necessary that the defendants

1 must have contemplated or could have anticipated the
2 particular event which occurred, liability cannot rest on mere
3 possibilities. The defendant cannot be charged with that
4 which is unpredictable or which would not be expected to
5 happen, a plaintiff therefore proves legal cause by
6 establishing the injury in question occurred as a natural and
7 probable consequence of the defendants' negligence. In
8 determining whether consequence is one that is natural and
9 probable the defendants' conduct must be viewed in the light
10 of the attendant circumstances. Proximate cause does not mean
11 the sole cause. The defendants' conduct can be the proximate
12 cause if it was one of the direct concurring causes of the
13 injury. The law defines proximate cause of an injury to be
14 something that produces a natural chain of events which in the
15 end brings about the injury; in other words, proximate cause
16 is the direct cause without which the injury would not have
17 occurred. If the accident would not -- if the accident would
18 have happened as a natural and probable consequence even in
19 the absence of the alleged breach of duty then the plaintiff
20 have failed to demonstrate proximate cause; further, where
21 there was -- where the cause of the plaintiff's injuries may
22 be reasonably attributable to an act for which the defendant
23 is not liable as to one which he is liable, the plaintiff has
24 failed to carry the burden of establishing that his injuries
25 were prox. -- were the proximate result of the defendants'

1 negligence.

2 For a contractor to be liable for negligence, it must be
3 negligent; it it must be, the contractor must be negligent in
4 its own capacity. The negligence of a subcontractor is not
5 automatically imputed to the general contractor; in other
6 words, it is not sufficient for the plaintiff to merely show
7 that a subcontractor that worked for their home was negligent
8 for the general contractor to be liable. The plaintiff must
9 show that the general contractor's own negligence operated to
10 cause the alleged harm.

11 If you find the work performed by the defendants in this
12 case failed to comply with any part of the manufacture's
13 installation instructions and/or the International Plumbing
14 Code and the part of the International Plumbing Code and/or
15 manufacture's installation instructions that the defendant did
16 not follow was meant to prevent this type of loss and the
17 damages -- and the damage that occurred then you must find the
18 defendants are negligence are negligent per se. If one or
19 other of the defendants is found to be negligent per se, they
20 are legally liable for the damages proximately caused
21 therefrom. Where two or more causes combined to bring about
22 an injury or damage, a person is not released from liability
23 because he is responsible for only one of the causes, it is
24 sufficient that his negligence is a proximate concurring
25 cause. When several causes producing an injury are concurrent

1 and each is an efficient cause without which the injury would
2 not have happened, the injury may be attributable to all or
3 any of the causes and recovery may be had against either or
4 all of the responsible persons although one of them was more
5 responsible and the duty owed by them to the injured person is
6 not the same. There may be more than one cause of injury and
7 more than one person held responsible for the plaintiff's
8 injuries when the negligence of two or more persons combined
9 to cause injury each person involved may be held responsible
10 as if he or she alone caused the result. Causes are
11 concurrent if they act contemporaneously to produce a given
12 result; in other words, the individual acts of negligence must
13 combine to cause the jury. If the acts happen one after the
14 other and were unrelated to each other then only the person
15 whose negligence actually caused the injury would be liable.
16 If an injury occurs through the concurrent negligence of two
17 persons and would not have happened in the absence of either,
18 the negligence of both is the proximate cause of the accident
19 and both persons are answerable.

20 Then I tell them that they are, uh, or I don't, hold on.
21 If you decide that the plaintiff is entitled to a verdict,
22 your next step would be to decide how much money the
23 defendants, uh, should pay. Actual damages are to compensate
24 the plaintiff for the plaintiff's injuries or losses and to
25 put the plaintiff as near as possible in the same position

1 that the plaintiff was in before the incident occurred; in
2 other words, actual damages would be the actual losses and
3 expenses which the plaintiff has suffered 'cause of the
4 defendants' negligence. If the f -- if the fact of damages is
5 established, the law does not require the amount of damages to
6 be proved with absolute mathematical certainty. Damages may
7 be recovered if if there is evidence upon which a reasonable
8 assessment of the loss can be made. The estimation of
9 damages, however, cannot be based on conjecture or
10 speculation, it must pass the realm of opinion not founded on
11 facts and must rest on evidence from which a reasonable,
12 accurate conclusion regarding the amount of loss can be
13 logically and rationally drawn. There must be a certain,
14 there must be a certain standard or fixed method by which the
15 loss may be estimated with a fair degree of accuracy.

16 Then I tell them that there are are, that I have prepared
17 a verdict form for their use, uh, and I -- they should take
18 no, uh, find no significance in the fact that I have asked
19 these first two questions in this order because I have to ask
20 one question before I ask the other. Uh, I tell them all
21 twelve them must agree on their verdict, their verdict must be
22 unanimous, cannot be based on sympathy, passion, prejudice,
23 emotion or any other consideration that's not in the evidence
24 then will explain to them the verdict form. The verdict form,
25 I'll let you take a look at it. It says (1) Do you find that

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1 the defendant Searcy Custom Homes, LLC was negligent and that
2 such negligence proximately caused FFIC's damages, answer yes
3 or, (2) Do you find that the defendants B&B Plumbings, Inc.
4 was negligent and that such negligence proximately caused
5 FFIC's damages yes or no, if you answer yes to any of the
6 previous questions go to the next question, if ya answer no to
7 all the previous questions, stop your deliberations and go no
8 further and question (3) Please state the amount of damages,
9 if any, that that was, (inaudible whisper), proximately caused
10 by the above found negligence and I ask 'em, uh, what was the,
11 uh, dollar amount, signed foreperson Spartanburg, South
12 Carolina and dated. Anybody?

13 MR. IMHOFF: Your Honor, I have, I just have a a couple,
14 the first one I think is just helpful. Uh, you have general
15 contractor supervision charge in there, I don't, I don't think
16 that there's a cause of action for for that against us.

17 THE COURT: Well you gave that one to me.

18 MR. IMHOFF: Daggone it, Reed.

19 (Laughter.)

20 THE COURT: Damn it, Reed.

21 MR. IMHOFF: Okay, well that was probly done before I
22 think Mr. ---

23 THE COURT: Okay.

24 MR. IMHOFF: --- Mr. Deal agreed that that the cause of
25 action against him is failing to give.

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1 THE COURT: So you wanna take that one out?

2 MR. IMHOFF: Well I think it will just shorten it at
3 least.

4 MR. DEAL: Yeah, you -- yeah, Your ---

5 THE COURT: Okay.

6 MR. DEAL: --- Honor, I I mean, I I I I I was just
7 listenin' to ya and I thought it kinda was like his his duty
8 is not to be, I don't know, I -- if you could read that
9 again, I not exactly sure ---

10 THE COURT: Well if you didn't give it to me, why do, why
11 do you want it in there?

12 MR. DEAL: I don't.

13 THE COURT: Okay, well then I'll take it out, Mr. Imhoff
14 don't want in there. I mean, I I ---

15 MR. DEAL: But it does have language in there I think
16 that's that's applicable is my point to this situation, it
17 it's I thought it was kind of encompassing to what his duty
18 was totally and, you know, not, it I think says something to
19 the effect of, you know, he's not, whatever it the the
20 subconter [sic] did he's not responsible for, he's responsible
21 for stuff he he has to have his own negligence ---

22 THE COURT: Alright.

23 MR. DEAL: --- and that's what the charge says, it's that
24 you can't impute it, thought that's what that was.

25 THE COURT: It wa -- is okay, this is the-- this, let's

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1 be sure we're clear that this is the one that we're looking
2 at.

3 MR. DEAL: Yeah.

4 THE COURT: I I have down for a general contractor to be
5 liable for negligence, it must be negligent in its own capacity
6 [sic]. The negligence of a subcontractor is not act -- is not
7 automatically imputed to the general conta -- tractor; in
8 other words, it is not sufficient for the plaintiff to merely
9 show that a subcontractor that worked on their home was
10 negligent for the, was negligent for the general contractor to
11 be liable, the plaintiff must show that the general
12 contractor's own negligence operated to cause the alleged
13 harm.

14 MR. DEAL: I I like that charge, Your Honor, I I think it
15 says, way the way I read that one is it's his own negligence,
16 it's not that he he was, had failed to follow, you know,
17 Mr. Blythe around and make sure he was doin' his job.

18 MR. IMHOFF: Hey.

19 MR. DEAL: Alright, got ya. You you can take it out,
20 Your Honor, that's fine.

21 THE COURT: I mean, I mean, I think it's a correct
22 statement of law but if it doesn't apply to the case the
23 charges are already relatively long and I'm concerned about
24 putting them to sleep but it is a correct statement of law, if
25 either of you wants it in there, I can keep it in or I can

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1 take it out.

2 MR. IMHOFF: It's ---

3 THE COURT: He wants ---

4 MR. IMHOFF: --- it's just ---

5 THE COURT: --- it out.

6 MR. IMHOFF: --- not necessary, ---

7 THE COURT: Do you want ---

8 MR. IMHOFF: --- it's mine, ---

9 THE COURT: --- it in or out?

10 MR. IMHOFF: --- it's it's ---

11 MR. DEAL: I want it in, Your Honor, but I'm not gonna
12 fight him over it.

13 THE COURT: Alright, I'll leave it in since you want it.
14 Alright, anything else?

15 MR. IMHOFF: I've got a couple more, I'm sorry, Your ---

16 THE COURT: Um-hum.

17 MR. IMHOFF: --- Honor. Did you see the last charge that
18 we submitted to that, make in front of you about the possibility
19 of other causes and the fact that there's, yeah, there's a
20 water system here, there's a valve manufacturer here, did you
21 look at that, Your Honor?

22 THE COURT: I did.

23 MR. IMHOFF: You not like it, Your Honor?

24 THE COURT: Did not. Well I I felt like the general tone
25 of I think what you're getting to is covered in the other

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1 charges or other parts of my charge with proximate cause, uh,
2 concurring negligence, uh, and those issues, I felt like
3 you're covered on what you're trying say.

4 MR. IMHOFF: Uh, well I was gonna, I was gonna argue
5 against the concurring negligence one also, Your Honor, so I
6 would say it's exactly different or they're precisely
7 different because concurring says several people can all be
8 liable for the same thing and you could hit 'em all and that
9 one says, Wait a minute, if there's somebody else that's not
10 here who could be responsible, jury, you could decide they're
11 responsible and find the defendant was not and so I would say
12 they're exactly opposite of each each other and and if
13 Mr. Deal gets in his concurrent where we're we're responsible
14 for the valve manufacturer and we're responsible for the water
15 folks and our own then I would also like the opposite of that
16 that is the jury hears that they can decide that the water
17 company or the valve manufacturer could be liable and not us.

18 THE COURT: Alright, give me one second, please. Alright
19 then what if I after I do the mult -- Mr. Deals multiple and
20 concurring acts of negligent charge then I read the paragraph,
21 I charge you also that more than one party can be liable, your
22 job is to decide if Searcy Custom Homes and B&B Plumbings are
23 li -- Plumbing are liable. You may consider and determine,
24 and determine that an absent contributing tort feasor is li --
25 is is the liable party and not either of these defendants.

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1 MR. IMHOFF: But is it possible we can put their names
2 in: the valve manufacturer or no?

3 THE COURT: I I think then I go into discussion of the
4 facts because I, see, I was not even, I was thinking you were
5 gonna try to say someone else had done it as opposed to your
6 statement to me indicates you're gonna argue that the thing
7 was defective itself?

8 MR. IMHOFF: Yeah, and they can find that the thing was
9 defective and rule ---

10 THE COURT: I think that's a factual argument you need
11 to make and that I should not comment on.

12 MR. IMHOFF: Okay, but you will put that charge in ---

13 THE COURT: Yes, sir, ---

14 MR. IMHOFF: --- Your Honor?

15 THE COURT: --- I will, I'll put that in there.

16 MR. IMHOFF: Alright, last one. I am familiar with the
17 case law, and I'm sorry but I I didn't see this and and
18 Mr. Deal just said it the negligence per se, I'm familiar with
19 the case law that says that the violation of a code, uh, can
20 be negligence per se. I I just haven't had a chance to look
21 at it, Your Honor, 'cause it just came while we were at lunch,
22 I don't know that violation of manufacture's installation
23 instructions are negligence per se especially when you have
24 here the manufacture who has a diagram putting it on a wall
25 and clearly it can't be put on a wall in the mountains of

1 North Carolina and that is, that I think that is very
 2 misleading to the jury 'cause they can look at it and say,
 3 Well the judge says it's negligence per se to not follow that
 4 diagram put it on the wall and I just, I I don't know, I
 5 haven't had a chance to look at it but I don't, I don't, I
 6 think it's misleading and I don't know that that's the law
 7 that vi -- that failing to follow a manufacture's installation
 8 instructions is negligent per se.

9 MR. DEAL: Your Honor, if we could just read you, if you
 10 wanna read what the the actual code requirement is into --
 11 to -- into into the instruction, that would solve his problem
 12 'cause that's what it says specifically.

13 THE COURT: I do not, I'm giving you the charge but I do
 14 not feel comfortable me reading the code.

15 MR. DEAL: And I I was only suggesting if that was a
 16 problem with what the code says then that would be a way to
 17 resolve the issue, Your Honor.

18 THE COURT: I'm not go -- I I just, unless Mr. Imhoff
 19 agrees which I don't think he will, I'm not gonna read the
 20 code.

21 MR. IMHOFF: Well I don't ---

22 THE COURT: He he's suggesting that that that I actually
 23 read the code and and announce that that is, that that's the
 24 standard, I'm not gonna, I'm not inclined to do that.

25 MR. IMHOFF: No, and that wasn't what my request wa -- my

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1 request was just to take out the part that negligence per se
2 is a violation of the manufacture's installation instructions.
3 Is that lifted from some statute or case that ---

4 MR. DEAL: That's ---

5 MR. IMHOFF: --- precise language?

6 MR. DEAL: --- the case that I cited, Your Honor, it
7 says -- now if you wanna, if you wanna take out if if you find
8 that the the, uh, I'd be more than happy to take out the part
9 about manufacture's, If you find they have violated the
10 International Plumbing Code, that's ---

11 MR. IMHOFF: I ---

12 MR. DEAL: --- that's okay with that.

13 MR. IMHOFF: And I'm fine with that.

14 THE COURT: Okay, so I'll take out the manufacture's
15 installation part a that.

16 MR. IMHOFF: Thank you. Yeah, that that was all, that
17 was all my concern, Your Honor, thank you, plenty a time.
18 I gotta get some sleep at some point.

19 THE COURT: You have been staying awake over this?

20 MR. IMHOFF: Yes, Mr. Deal is driving me crazy, Your
21 Honor.

22 THE COURT: Now that I can probably understand.

23 (Laughter.)

24 THE COURT: Okay, ya'll wanna take a look at the verdict
25 form ---

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1 MR. DEAL: Yes.

2 THE COURT: --- be sure. . .

3 MR. DEAL: And the the only thing I would say, Your
4 Honor, is, uh, I've had this specific issue come up in federal
5 court where the "if any" causes problems for the jury.

6 THE COURT: You put it in there.

7 MR. DEAL: Uh, no, I I that's probly the addition that I
8 sent prior and I I sent a re -- revised one that I took that
9 part of it out.

10 THE COURT: You, but you sent it to me?

11 MR. DEAL: That's right, Your Honor, and I, and that was
12 the first copy and I realize that that particular little bit
13 was in there and I took it out, that was what I sent to you
14 last night the the the final copy and I apologize for any
15 confusion in that regard or actually no, I think I sent it
16 today.

17 THE COURT: I don't think it's any, I don't -- I -- if if
18 if they get confused and they award zero, I know what I'm
19 supposed to is supposed to send them back out ---

20 MR. DEAL: Alright.

21 THE COURT: --- okay.

22 MR. DEAL: Alright, that's, and that's exactly what
23 happened in the case I had down in ---

24 THE COURT: Yeah.

25 MR. DEAL: --- Greenville so.

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1 THE COURT: We will -- I I will take care of that.

2 MR. DEAL: And there's bad case law that talks about this
3 "if any" quote specifically.

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

5 THE COURT: Alright, I'm gonna take out the words "if
6 any."

7 MR. DEAL: Thank you.

8 MR. IMHOFF: You are taking that out, Your Honor?

9 THE COURT: I am gonna take it out. My luck they would
10 come out they'd find zero and then I -- we'd have to go
11 through this and ---

12 MR. IMHOFF: I think that would be great my luck.

13 MR. DEAL: Alright.

14 THE COURT: --- then we'd have to do the whole trial
15 over.

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

17 THE COURT: Okay, let's bring the jury back.

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

19 THE COURT: Alright, ladies and gentlemen, thank you for
20 ta -- patience while we concluded those last matters of law
21 had to be resolved outside of your presence. Uh, ladies and
22 gentlemen, the parties have now presented all of their
23 evidence that's gonna be presented as part of this case and it
24 is now time for the attorneys to present to you what is called
25 their "closing arguments." I need to inform you that the

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1 arguments of the attorneys they are not evidence in this case,
2 their statements and arguments to you they are meant to help
3 you understand the evidence and apply the law to that
4 evidence. You should disregard and remark, statement or
5 argument which is not supported by the evidence presented
6 during the trial or the law that I will explain to you after
7 you receive the arguments, this time we will receive the
8 closing arguments.

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

10 THE COURT: (No verbal response.)

11 MR. DEAL: We're almost done, ladies and gentlemen, and I
12 bet ya'll are happier than I am about that. I do appreciate
13 your attention so far, it's been good to see ya'll have been
14 engage in the process. Uh, we came out here on Monday mornin'
15 and I told ya'll you're gonna need your common sense and I'm
16 gonna ask you once again to use that common sense again today
17 once I've finished speaking, Mr. Imhoff has finish -- finished
18 speaking to ya and one the things I told you they were gonna
19 start talkin' about how FIC was this or that or the other and
20 I wanna tell you somethin' that one a my bosses told me one
21 time, he said, You know people always try to talk about red
22 herrings and I didn't even know what, I mean, everybody said,
23 Oh, that's a red herring, I don't know what that means. What
24 that came from, that that term "red herring" came from is if
25 someone's trying to evade capture by by bein' sniffed around

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1 by a blood hand, they drag a red herring behind their trail so
2 they will confuse the scent 'cause it's a stinky fish and and
3 talkin' about FFIC's bein' a bully and everything else that's
4 exactly what this is it's a red herring and it has not bearing
5 whatsoever on what the law is in this case and what happened
6 here. Who the parties are doesn't matter, it's what happened,
7 that's all that matters and you have a good idea, I hope you
8 have what happened, uh, but I'm gonna talk about why these red
9 herrings don't matter. Uh, the first one they talked about
10 they wan -- they wanna bring up all this evidence about
11 tampering with the regulator, tampering with the regulator,
12 somebody tampered with the regulator as if that would have
13 caused this loss, right, but we know it didn't because
14 Mr. Hafner got up on the stand, I asked him what would happen,
15 what what was the result of that thing bein' tightened down
16 there and you know what he said, not my expert, not Mr. Klaben
17 but their guy, their plumber, you know what he said, Oh, he
18 shoulda put the pressure at 75 PSI and they once again
19 testified it woulda taken 125 to to cause this this problem.
20 Now I I'm not that great at math but 50 PSI difference that
21 means somethin' to me and I would imagine it means somethin'
22 to the folks on this jury, uh, that Kohler setting, that
23 Kohler fitting was down there was gonna fail at 125 was only
24 set -- certified, that 75 would not have caused this thing to
25 fail, nobody said anything about that, let's talk about Kohler

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1 the case, Kohler situation. They s -- they have come out here
2 and told you that FFIC is on a witch hunt, uh, whoever they
3 could sue as far as what caused this loss as if IC did and and
4 to be honest with you I take that personally 'cause at the end
5 a the day a lawyer has to sign those pleadings, that's to say
6 these are people that we think are responsible legally. I
7 have to sign that paper. If I sign a paper that I don't think
8 is right, that's on me, so what they're sayin' is I, me was on
9 a witch hunt, that's just not what happened here, I'm offended
10 by that and and let me tell ya somethin', we didn't sue the
11 the people that manufactured and and and and we didn't say
12 that they did anything wrong that installation of that that
13 bidet, that part was good, it did exactly what it was supposed
14 to do and the evidence shows what's supposed to. They had
15 tried to impute some idea that the maid had come in there and,
16 you know, hit it with a broom or anything else and if if you
17 look at this thing and I'm gonna go grab it real quick, I'm
18 sorry, I meant to, the maid was gonna he hit this with a broom
19 and I didn't put this into evidence, I think it's necessary,
20 this thing is pristine, there's not a mark on it, look at it
21 but yet they're gonna try to say that was oh but the -- may --
22 maybe the maid whacked it a couple times, red herring.

23 They might come out here and they've tried to imply and
24 there's another red herring is well this this, uh, valve it
25 was defective, they kinda reference to that several times.

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1 Now mind you nobody on their side that looked at this
2 regulator that was there when it was taken apart or anything
3 was done to it has come to talk to you about what they found,
4 you know why, because there wasn't anything wrong with it, it
5 just got old and worn out and that's exactly oddly enough
6 what, not my expert said, not what Mr. Harris said, that's
7 what Mr. Blythe said, the pre -- the high pressure in the
8 system is what caused this thing to fail, it wasn't a
9 manufacture's defect, that's what the evidence says. Any idea
10 that there's any evidence whatsoever that this thing was
11 manufactured, de -- the defect was, uh, in design or in its
12 manufacturer, there's no evidence, the evidence is actually
13 opposite and the only person that even ever looked at this
14 thing inside and out that you talked to was Mr. Harris. Now
15 even if hadn't said what he said, you already from their
16 testimony that what caused this thing to fail wasn't the
17 regulator's fault, period, so that's that's another red
18 herring, well it, don't sniff onto that trail, please, stay
19 off it, follow the facts not these stinky fish.

20 Then they're gonna talk about and they've brought this up
21 several times that Mr. Wennerstrom had a duty to inspect this
22 regulator and to maintain it. Now there there was a duty to
23 do that and it's in the installation instructions, I don't
24 think that's by luck, right, but if that's the case wouldn't
25 you think it would be incumbent upon somebody tell

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1 Mr. Wennerstrom that he was required to maintain it once a
2 year; in fact, that's exactly what this -- the the -- and this
3 is an epcert [sic] and you can take a look at this this, uh,
4 exhibit that's in into evidence, this is just a blowup of it
5 and it says, "Annual inspection and maintenance is required of
6 all plumbing system components. To ensure proper performance
7 and maximum life, this product must be subject to regular
8 inspection, testing and cleaning only once a year." Now I
9 found it interesting Mr. Blythe testified he's installed
10 hundreds of these things, hundreds, he hasn't maintained one,
11 nor has he ever told anybody it was necessary and he didn't
12 certainly tell Mr. Wennerstrom so how would he have been
13 responsible for anything that happened as a result of the fact
14 this thing wasn't maintained properly. The only person that
15 knew that was, that had a duty to do something about it was
16 Mr. Blythe and he's admitted that he didn't say a daggone
17 thing about it.

18 Now you heard Mr. Searcy say on the stand, once again
19 this wasn't Mr. Harris said, it was Mr. Searcy said, uh, he
20 would expect that it and it was, it was necessary for all of
21 the plan, all the specifications and all the installation
22 instructions and the maintenance instructions for all the
23 products that were installed in this home by the electrician
24 or the plumber or even him if he did any a that, it was
25 necessary, they had a plan in place to to make that happen so

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1 that Mr. Wennerstrom would know what to do with the house once
2 he took possession of it, once he got the keys, but he's
3 admitted that never happened in this situation, so for them to
4 blame Mr. Wennerstrom, how can they do that, it's there fault
5 he knew nothing about it and they are the ones that said it
6 was necessary for them to tell him about. Don't follow that
7 red herring, please, that that red herring as you follow
8 around it's gonna go be back over here (indicating) where the
9 facts are.

10 Now don't don't the, ya know, Mr. Wennerstrom's a rich
11 guy, that brought, was brought up all over the place, I even
12 talked about it on the front end because I wanted everybody
13 understand we get a lotta money if it's a big house and I've
14 never lived like Mr. Wennerstrom lives and I'm not sayin' what
15 ya'lls lifestyles are but, uh, if you are livin' like
16 Mr. Wennerstrom then good for ya'll, I certainly don't live
17 that way, but, uh, what I'll say to you is what difference
18 does that make? The facts are the facts. Don't follow around
19 the fact that Mr. Wennerstrom had a bunch a money and he flew
20 up a private jet, nothing wrong with that, who cares, has
21 nothin' to do with what happened here, not one thing. If
22 anything, think about it in these terms, Mr. Mr. Wennerstrom
23 had been properly warned and told about what what needed to be
24 done to this regulator, he had plenty a money to handle this,
25 Mr. Blythe or anybody else get over here and take care of it

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1 but yet he never knew so he never did, okay.

2 The last one, they were surprised by the allegations.
3 Well, you found out they really weren't surprised 'cause I
4 kinda had to ask 'em what exactly did we say when we were
5 sayin' all that, we said ya'll didn't follow the code,
6 manufacture's instructions, that's what we said in our
7 allegations. Fact that they say it's a surprise well, uh,
8 first of all who cares, doesn't change what the facts are not
9 one single way that what happened is what happened regardless
10 of who said what, when, where and how. What you're here to
11 decide is what happened and who's responsible so don't pay
12 attention to all that fluff, that red herring.

13 Alright, let's go back to common sense. From the get-go,
14 and Mr. Searcy testified to this fact, it was incumbent upon
15 him and anybody else came to his job to gather as much
16 information as they could about project that was they're gonna
17 undertake and what should happen as a result of that and this
18 is where this house was built on this big hill with with a
19 golf course all the way at the top. I'd like you guys to use
20 your common sense to understand there's a water system that's
21 gonna bring water all the way to the top here for this golf
22 course, there's gonna be a lotta pressure, it's gonna be ne --
23 necessary to make that happen? You and I can understand that
24 and we're not experts in plumbing, that's the first thing I
25 thought of when I, when I saw one like, Good Lord, that that's

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1 way up the hill there so it makes complete sense that that
2 they would need, there's gonna be a lotta water pressure to
3 get this and water all this, all over this huge system and yet
4 Mr. Searcy never tested it, fact, his assumption was it was
5 kinda a low pressure system and then he tried to say on the
6 stand, Well I test it with my thumb and it was kinda low, ya
7 know, he's not an expert in plumbing and if ya listen to that
8 testimony, I would like you compare it to what Mr. Blythe said
9 and he tried to to tell you that that's not what he said and I
10 had to ask him I think I remember three times, he tried to run
11 away from it as fast as he could but it was way above 80 PSI,
12 way above, that's were his words, not mine, and he never did
13 actually test it but his opinion was it was way above 80 PSI.
14 Now when they tested the gauge, tested the water the day after
15 the loss or around around the time that the loss occurred, it
16 -- they put a meter on there and it busted, a hundred PSI
17 meter busted. never worked again 'cause the pressure was so
18 high goin' through there. Now they've talked about all this,
19 Well if if the water pressure had been that high, this, that
20 and the other then woulda busted this or it busted that or the
21 cement well bottom line is we know what the facts are as to
22 what they, their suppositions are as to what they thought
23 might happen didn't, we just have to deal with what the facts
24 are here and facts dictate that they knew this pressure was
25 high and they're tryin' to run away from that fact but but

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1 they couldn't.

2 Now under those circumstances Mr. Harris sat up here and
3 told you that this regulator needed some help. Now he came up
4 with a pretty, you know, and he testified to it, you know,
5 pretty simple solution woulda cost about \$300, there's no
6 testimony in this case that denies that fact there was gonna
7 be about \$300 in a \$3 million house. Now you ask yourself
8 Mr. Searcy's or Mr. Wennerstrom's gonna be able to fly up from
9 Florida for \$9,000 dollars on his jet is he gonna balk at
10 payin' \$300, use your common sense on that. Would he balk for
11 a second? no, use your common sense.

12 Now in a little while the the folks are gonna, the judge
13 is gonna tell you what the law is in this case, alright, now
14 he's gonna say that in general there's a duty and I think the
15 duty is pretty clear here and I didn't tell you what the duty
16 was and Mr. Harris didn't tell you what the duty was, two
17 things gonna tell you what the duty is: your common sense and
18 what Mr. Searcy said sittin' right here (indicating) on the
19 stand and what he said was, I would expect that I would gather
20 the appropriate intorma -- information and act appropriately,
21 if there's any unique situations that identify anything
22 unusual, I, my electrician and my plumber would all, every
23 last one of us would need to act appropriately to address that
24 situation if necessary. Now what happened here, that's the
25 duty, okay, I didn't say what duty was, Mr. Searcy did, okay.

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1 Now Mr. Searcy he didn't follow through with that duty, that's
2 a duty.

3 Now the next thing we gotta show is there's a breach.
4 They failed to follow through with that duty, okay. Now
5 they -- the the duty was to find, to gather the information
6 and act appropriately and what we know is they didn't gather
7 any information, how could they have acted appropriately?
8 they couldn't have 'cause they didn't know, this water was
9 never tested but the opinion of Mr. Blythe was it was well
10 over 80 PSI. Maybe if he'd a known that he should come tested
11 it, maybe it wouldn't fail at a hundred and fifty and realize,
12 Whoa, we we might wanna do some different. Now what they're
13 gonna say, what they have said is, Well this thing was good to
14 300, this regulator is, it was good to 300, that's exactly
15 right if you maintain it properly and it's not gettin' beat up
16 by all this high pressure and by the way Mr. Harris didn't say
17 that or he did but you don't have to believe Mr. Harris 'cause
18 you only have to hear Mr. Blythe's testimony 'cause that's
19 what he said, it was high pressure that caused this thing to
20 fail, so did he know or should he have known, right, he
21 absolutely knew is his problem and he didn't do anything about
22 it, not one thing, he put the regulator on 'cause that's what
23 co -- minimum code requirements were.. Now Mr. Harris did
24 testify. Notice I had to revert most what he said 'cause it
25 wasn't necessary. What he said was the code is a minimum

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1 requirement and it only addresses the basic element and I, and
2 and what I I said, Oh, use your common sense. If we, if we
3 all lived in mountaintop, to me at least, with g -- with golf
4 courses on top, we all need the, the code would probly have to
5 address this issue of high pressure, we don't though and we
6 live some off a well systems which Mr. Harris said well his
7 well won't even go up to 90, it maxes out, city water doesn't
8 get that high either which is why the code gonna have to
9 address it, it's a, it's a unique situation. What did
10 Mr., uh, Searcy say about unique or unusual situations? they
11 should assess 'em and address 'em and that didn't happen here,
12 so as far as the code is concerned let's go back to the duty
13 under the code. Code says follow manufacture's installation
14 instructions, installation instructions. Notice every year
15 this thing's gotta be inspected and maintained. Now there's
16 folks out there that are nurses and in the restaurant
17 business, I've been in the restaurant business a long time, I
18 started out when I was 14-years-old washin' dishes, well then
19 soon after that when I started cookin', ya know, there's ten
20 ingredients in a soup, you leave one ingredient out, it's not
21 gonna taste right, I can't sell that soup. You shouldn't be
22 able to sell a house when you don't follow all the directions,
23 that's not what -- that's what happened here, all the
24 directions weren't followed and if they were we wouldn't be
25 standin' here that comes to proximate cause, so the next

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1 thing's gonna be breach, then duty, then proximate cause. Why
2 are we standin' here? because nothing was done to make sure
3 that this, when, not if, when this regulator failed, okay.
4 They've testified all along they, that they they never seen
5 one a these regulators fail; in fact, Mr. Searcy testified
6 that he's never ever seen a regulator fail, I had to correct
7 him on that too didn't I? I said wait a minute, this one
8 failed and you don't have to guess why, we all know why it
9 failed. Mr. Harris didn't
10 test -- did testify to it, you wanna believe him or you gonna
11 believe Mr. Blythe?

12 Now proximate cause that mea -- basically means did what
13 they did wrong result in what happened. I think we all know
14 that's exactly what happened here is they failed to to
15 properly assess and address a an unusual situation and as a
16 result this this this thing was put in and you can call it
17 buried or whatever, let's put out in the yard, put in a, in a
18 pod and it's forgotten about at least as far as the
19 maintenance was concerned, that's for sure, okay. And as a
20 result it's basically a time bomb sittin' in that hole. The
21 fact that they've never had one break or or fail is like
22 sayin' they can look into this courtroom and see everybody
23 here and say, None a these people are dead so then none of 'em
24 are gonna die and we all know we're gonna, that we're all
25 gonna die, every last one of us is God willin' not any time

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1 soon and that regulator there was gonna die too, it's
2 man-made, it's not perfect, it's got moving parts and it's
3 gonna fail and under the conditions that Mr. Blythe knew, not
4 and should have known but knew, that it was gonna be subjected
5 to, he said that's why it failed, that's proximate cause,
6 okay.

7 The last thing is damages. We talked about the damages
8 and un -- we talked a little bit earlier about Mr. Wennerstrom
9 and all, he's got all this money, what the judge is gonna tell
10 ya is the law is seeks to put Mr. Wennerstrom and in this case
11 because we paid, FIC paid, for those damages we get that, we
12 we stand his shoes, since we paid for it we're owed whatever
13 the damages are, those damage are whatever would put
14 Mr. Wennerstrom back how he was before the flood. Now you and
15 I can all agree and I think Mr. Searcy testified to early on
16 it, Man, that's not right, you know, man, we, you know, went
17 through this rugs and, yeah, it got wet and everything else
18 and it looks fine to me, well an expert was called in, third
19 party to say, to make an assessment about these rugs and the
20 the fact of the matter is they weren't worth as much as they
21 were the day before as they were worth worth the day after and
22 that that number after some negotiation by Mr. Klaben was
23 agreed upon, those are the damages. Now we can talk about the
24 building, I don't think there's any, there's any testimony
25 here, I don't think that Mr. Searcy ever got up and said,

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1 Yeah, I would charge for the repairs, that didn't happen
2 either so here's the numbers and this is what you're gonna
3 have to go back into the back and and and and figure out your
4 fill in the blank basically 'cause you know who's responsible
5 for this loss now. Here's the numbers: Building damages
6 undisputed \$300,504.34; contents \$101,712.83 and those were,
7 that all that was contents, there was, there was stuff that
8 was damaged by the water, that was -- it was electronics, that
9 sorta thing and then then he had to take some a that stuff had
10 to be carefully cared for, it was sent to dry cleanin' so it
11 it would be used again rather than replaced which would have
12 been a lot more expensive as we all know using your common
13 sense and then there's ALE and ALE is additional living
14 expenses. Basically Mr. Wennerstrom is due having the house
15 in a mountaintop community in, uh, here in Spartanburg County,
16 that's what he's due under the law, put him back where he was
17 before this loss occurred. Well we didn't actually pay him
18 for that because he was good about staying at his friends'
19 house and buyin' them dinner and flyin' up up and back and
20 whatever, he had -- and we paid him a little bitta money for
21 the flying back because he wouldn't a been comin' up as much
22 because he was havin' to supervise, make sure everything was
23 goin' okay with the house as it was repaired, so that's the
24 money and there's a spreadsheet there, you can go over and
25 look at, there's all kinds of fun stacks of of details but

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1 none a this stuff is even a doubt but I I -- you can take a
2 look at it, I I encourage you to do so if there's is any doubt
3 in your mind at all. Those numbers are in there and
4 Mr. Klaben told ya where they went to and let me be clear, I
5 think I was pretty good that I didn't go through every one of
6 'em line by line, that woulda taken forever and I didn't think
7 that was necessary, if it wa -- it is necessary for you now,
8 you have it for yourself to look at, alright, so in any case
9 what I can tell you is I will again will chance to talk to you
10 a little bit later but we got all the facts out here, don't
11 pay attention to these red herrings. When you go back in the
12 jury room, you're gonna find the the appropriate checks:
13 Searcy was negligent for not following his own standard of
14 care of hi -- what what his duty was, B&B same thing, that's
15 what caused this loss, we know it, nothing else could have.
16 Thank you, ladies and gentlemen.

17 MR. IMHOFF: Thank ---

18 THE COURT: Yes, ---

19 MR. IMHOFF: --- Your Honor.

20 THE COURT: --- yes, sir.

21 MR. IMHOFF: It's too bad there isn't a seventh inning
22 stretch in in the courtroom, I'm sure you're about done with
23 those chairs. The other courtroom over I think on the other
24 side actually has, this oughta make you laugh, it has head
25 marks behind all of the back seats.

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1 (Laughter.)

2 MR. IMHOFF: I'm not sure what evidence is up there that
3 these folks are lookin' at but I know, I apologize, we're
4 long, we're boring, uh, nobody got kidnapped in this case,
5 there aren't any international spies, I know you're board.
6 Construction believe it or not I do a lot of it is boring to
7 me so I know ya'll are sittin' here in those chairs bored to
8 death. I appreciate ya not leaving marks when you get out on
9 the, on the back wall, we'll see just a little bit. I get to
10 talk to you one time, Mr. Deal gets to come up, he gets to
11 talk to you again so I'm gonna go a little bit longer knowing
12 that he has more that he's gonna come up and tell ya, okay.
13 He calls 'em red herrings, I call it the Wizard of Oz, it's
14 called the man behind the curtain. Don't look at the man
15 behind the curtain, we don't want you to look back at but
16 that's what the whole case is about, that's what I told ya at
17 the beginning, this isn't about this valve and this
18 (indicating) stuff and all this (indicating) stuff that he put
19 into evidence, it's that company. That company wants these
20 folks to pay \$400,000, that's what ya'll are here for, that's
21 what they've done. They've spent \$15,000, hired a lawyer
22 within ten days. Let me look at it, I gotta make sure that I
23 get this right. Alright, I got it, five hours, first day five
24 hours, they're lookin' for somebody to blame. Five hours,
25 that's part a their policy, they're gonna go get their money

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1 back. I wonder if they refund Mr. Wennerstrom's premiums and
2 I'll bet they're a lot. He's got an \$800 electric bill, I
3 wonder if they're gonna give his premiums back for that, I
4 doubt it. Ten days. Within ten days they hired a lawyer,
5 they hired an expert. They hired an expert they've been usin'
6 for twenty years, they didn't hire an expert through the
7 insurance company, they hired an expert through their lawyers,
8 their lawyers were going to look for somebody to blame and to
9 sue and they can make all the arguments in the world that that
10 wasn't their intention, they didn't, they wouldn't look for
11 somebody to sue, they just wanted to get to the truth. C'mon,
12 lawyers, we don't need lawyers to find the truth, right, I
13 hate to say that, you don't hire lawyers for that, you hire to
14 sue.

15 File a compliant 2011, it had what I called a kitchen
16 sink or the spaghetti theory and we're gonna talk about the
17 spaghetti theory here in a minute but I'll call it the kitchen
18 sink for now, they threw everything in there but they only
19 said that these folks in 2011 did one specific thing wrong,
20 that's that they didn't install a pressure relief valve,
21 didn't hear a whole lot about that in the trial, we thought
22 that's all we were gonna hear. We heard all kinds of other
23 allegations and accusations, those types a things and the
24 reason you didn't hear about the pressure relief valve very
25 much is because I took Mr. Harris's deposition testimony, same

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1 thing: him and a Bible, swear to the tell the truth, the whole
2 truth so help me God, ya know what he said, ya heard him admit
3 it on the stand, it wasn't the standard at the time, it wasn't
4 the code, the code didn't require it and he didn't know anyone
5 in the world that held that same opinion, no one. Uh-oh,
6 uh-oh, we got experts and lawyers to pay, we've got to find
7 someone to blame, right, and that's what they did, we heard
8 all kinds of new things. So he testified October 2012 didn't
9 violate the code, didn't construct the home in any manner
10 different than any other plumber in the entire State a South
11 Carolina, potentially the world, installation of the valve was
12 correct. I hope you got that part, I know I was long
13 yesterday with them, I couldn't pin that man down but I hope
14 you got that part. In October 2012 he testified that these
15 gentlemen (indicating), well this (indicating) gentleman,
16 well, right, dirty hands, installed the valve correctly,
17 right, 2012 that was his opinion. Uh-oh, we're goin' to
18 trial, we're in trouble if that's my opinion in trial. He had
19 to come up with whole new theories and so yesterday here comes
20 the spaghetti theory. You heard of spaghetti? What do ya do
21 with spaghetti? you chuck it against the wall see what sticks,
22 right, chuck it against the wall, let's see what sticks, so he
23 threw all kinds of opinions out yesterday, you mighta heard me
24 talk about a little bit, you know what else I did October a
25 last year? I sent three subpoenas: Give me your whole file,

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1 your notes, your opinions, your theories, give it all to me.
2 I sent him another one: Give me all of your opinions where
3 you've testified to the standard of a general contractor and a
4 plumber and give me all of your documents where you've ever
5 testified about a pressure regulator valve. You know when I
6 got 'em? Did ya hear that part? Friday, last Friday. I
7 wonder why he waited so long, we're gonna talk about that in a
8 minute because what I got I think will enlighten you to what
9 this case is about beyond anything that I can say, so
10 yesterday this is my favorite so I'm gonna start with it, The
11 box is too small, they violated the code. Mr. Deal just
12 showed you the code installation instructions, you gotta have
13 sufficient room get your elbows in there and change this
14 thing. He sat on the stand, put his hand on the Bible and
15 testified they violated the code, the box was too small.

16 Well, Mr. Harris, what size was the box?

17 I don't know.

18 Here's the picture, where's the box?

19 I don't know.

20 I sent you a subpoena, show us the picture of the box.

21 I don't have one.

22 Ya know what he did admit, suddenly got two inches in
23 there at some point. He also admitted yesterday that you
24 could repair or look at that valve in that box, that was one
25 of his opinions he came up with yesterday. I hope you don't

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1 like that one, I thought it was, although I didn't think it
2 was funny so maybe it was funny, I thought it was ridiculous.

3 Now, heard now and I don't even know if Mr. Harris said
4 it but it wasn't maintained, it wore out. That valve didn't
5 wear out, Mr. Wennerstrom doesn't even go there but in the
6 summer. There's no testimony that that valve wore out or had
7 anything to do with maintenance, that's not a legitimate
8 theory, he came up with that while he was sittin' on the stand
9 I think or Mr. Deal came up with it argue -- arguin' it to ya
10 right now . Here's the other one they came up: Mark Searcy, I
11 didn't tell him he had a pressure relief valve. That's a good
12 man right there (indicating), that's a good man. He has a son
13 who was in the hospital the last two days, he's been building
14 all over the world for years, been to and I think Honduras, I
15 think he said Burma, all over the world, he doesn't get a dime
16 for that and Mr. Harris who's making \$250 an hour sat there
17 (indicating) and one of his opinions that these gentlemen did
18 something wrong, they didn't tell him he had a pressure relief
19 valve, nonsense, that's why I had to put this (indicating) man
20 back on the stand because it was more nonsense. Mr. Searcy
21 sat there and said not only did he know it, I argued with the
22 man. I hope you've gotten the impression that Stig
23 Wennerstrom is a very difficult man 'cause he was the
24 differ -- he gets his way and he wants the pressure up,
25 Mr. Searcy had to go out there, stood next to the valve in the

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1 driveway, took the valve box cover off and they looked at it,
2 that's another theory, notice another another spaghetti
3 theory, up against the wall, see if it sticks, it's just not
4 true. Mr. Deal just stood here, Well who cares, that's a
5 quote from Mr. Deal, who cares that he came up with new
6 opinions on Thursday and Friday and over the weekend and while
7 he was sittin' here on the stand? these gentlemen do. They've
8 built their careers, I can't remember the numbers, 35, 28, 35,
9 I don't know, 30 years let's say built their careers plumbing
10 2,000 thousand homes I think Mr. Blythe said. Who cares,
11 that's what Mr. Deal said, who cares? they care. they care a
12 lot. It does matter that they're new theories, it does matter
13 that the reason they're new theories is because that insurance
14 company wants their money back in spite of what the truth is
15 or what these gentlemen did.

16 Alright, installation instructions. Mr. Mr. Deal didn't
17 tell ya what code exactly they violated installation
18 instructions, they're there for you to look at, they were dug
19 into a ditch, into into a valve box this big (demonstrating),
20 you can get your hands in there, ya can't -- well all of us
21 know, I mean, we're close enough to get snow here, it's like
22 once maybe a year, right, it freezes. You can't put that
23 valve in that piping on the side of a house, you ca -- you
24 just can't, two thousand homes up in the mountains of North
25 and South Carolina, or these guys, these guys would be either

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1 here a lot more or they'd be outta business. They know you
2 can't do that so what installation instructions didn't they
3 follow? there aren't any installations instructions they
4 didn't follow, again, it's it's nonsense, relief valve,
5 already told 'em nobody in the world, nobody in the world,
6 that was his testimony in October 2004. He doesn't know
7 anybody else that has the same opinion, his firm is the only
8 one with the opinion, he can't direct us to anything else in
9 the world that these (indicating) gentlemen in 2002, 2003
10 should have known that they should put a relief valve on,
11 nothing, that's his testimony October 2012. You saw me sweat,
12 get a little angry yesterday afternoon and let me tell ya why.
13 The man is a professional engineer with twenty-five years of
14 experience, he's got a master's degree in engineering, he
15 designed for a couple years and then has critiqued the work of
16 other people for twenty-five years but he's got a degree and
17 he's got the credentials and the license and he sat on that
18 (indicating) stand yesterday and you know what the only thing
19 he brought you was to support his opinion a relief valve
20 should be on that house? InspectAPedia. InspectAPedia? You
21 heard object to it obviously, right, but InspectAPedia that's
22 what the man's gonna use to tell you folks that these
23 (indicating) three gentlemen owe that insurance company
24 \$400,000? I hope you saw that 'cause I'm telling you what,
25 that looked like graspin' for straws but it did make me mad

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1 'cause I like these (indicating) guys and that is just, uh,
2 one of the worst the things I've seen, InspectAPedia. Look
3 what I got off the Internet, yeah, by the way, I think it's in
4 evidence. Look what he pulled off Thursday. Thursday, you
5 know why? uh-oh, we're in trouble goin' to trial, these guys
6 didn't violate the code, they didn't violate industry
7 standard, okay, so that's that's that's them, how do you know
8 what to do? How do you know what to do when you go back in
9 that jury room? How do you know how you judge those three
10 gentlemen? How do you evaluate anybody and their conduct,
11 right? Well Judge Hayes is going to read you the law, okay,
12 and he's told us what he's going to read to you and I already
13 know what he's going to read to you because it's the way that
14 we've tried this case, the way that we judge people is by the
15 standard and the custom of what we do. There's a speed limit,
16 go the speed; build a house, do it by the code, do it by the
17 industry standard. The degree of care which defendant is
18 called upon to exercise in this case is that degree of care
19 which a person or entity of ordinary reason and prudence would
20 exercise under similar circumstances and conditions in
21 constructing the house or building of that kind in question,
22 he's gonna read that, it's, uh, it's miserable. When he, when
23 he charges the law, it's like an hour long, uh, but but please
24 look for this part, I mean, it it is, it is a lotta law and if
25 your heads don't make marks on the walls I applaud you but

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1 this is one of the things he's gonna say and it's important
2 because that's how we're all judged, all of us, these
3 (indicating) gentlemen, "Degree of care which a person or
4 entity of ordinary reason and prudence would exercise," all
5 the testimony including Mr. Harris, That's how everybody did
6 it, everybody in 2002, 2003 and today, you even heard him say
7 most homes don't have pressure regulators, no homes have
8 pressure relief devices, so that's how you judge these these
9 gentlemen. What did they do different than any other
10 reasonable plumber, any other plumber or builder in their is
11 -- industry and the fact is they didn't do anything different,
12 they did exactly what they were supposed to do, what they were
13 told to do by the code, what they were told to do by the
14 manufacturer and what every other plumber on that mountain
15 did, it's important, it's the whole case.

16 Alright, there was some, I'm trying to keep up here and
17 keep up, there's some allegation that these (indicating)
18 gentlemen should have known that that valve was gonna fail,
19 that is an allegation. You heard the judge direct you that
20 whatever Mr. Deal says is not evidence, the evidence was
21 evidence. Not a person sat on this (indicating) stand that
22 said these (indicating) gentlemen should know that that valve
23 was gonna fail in six years, even Mr. Harris I asked him, I
24 said, What is the basis? do you believe these guys knew that
25 that valve was gonna fail in six years, hope you weren't

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1 sleepin' during that part, his answer, No, they shouldn't
2 expect that valve to fail in six years, that's what he said.
3 There's no evidence that these (indicating) gentlemen knew or
4 should have known, you'll hear foreseeability, there's
5 foreseeability in the law, that they could foresee that that
6 valve was gonna fail within six years, there's no evidence of
7 that at all. Alright, so the evidence is based on one man,
8 right. We have poor Mr. Klaben who's sent over here by some
9 person sitting behind a desk direct from this location, we'll
10 talk about in a minute, but their only other witness is
11 Mr. Harris, right. Excuse me a minute. Mr. Harris has been
12 working for that law firm for twenty years, think he said he's
13 provided over a hundred opinions for that law firm. One of
14 the things, one of the other things that the judge is going to
15 charge you on, he's gonna charge the law again and it's it's
16 long, it's longer than me standin' up here talkin', I
17 apologize for that, one a the things he's gonna say is ya'll
18 get to decide credibility, that's one thing that the jury
19 really gets to do. You get to evaluate the honesty of every
20 person that gets on that stand and the credibility of
21 everything they say. I've already told you a lot of the
22 things that Mr. Harris said just absolutely weren't credible,
23 they weren't based on fact at all, didn't even know that the
24 thing was in a vat or where it was despite the fact that he
25 was out there, okay, think about Mr. Harris's credibility,

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1 what's his motivation. Not like an actor motivation but
2 what's his motivation coming? He likes Cozen & O'Connor a
3 lot. He likes insurance companies a lot. He's done programs
4 for them, he's put on seminars for them. Cozen & O'Connor has
5 been a firm he's done work for for twenty years, he likes it
6 when they call him, right? He has a motivation to find
7 someone to blame, credibility, motivation. He gets paid to do
8 it, they hire him over and over again. Big client. How 'bout
9 this: Spaghetti. He changed his opinion. He was a moving
10 target. He kept, Well, it it's not the relief valve then it's
11 maintenance, well if it's not maintenance it's the size of the
12 box, if it's not the size a the box, well you shouldn't bury
13 it, you shoulda put it on the side a the home. Credibility.
14 Remember this was an investigation was started in 2009, 2011
15 they decided that we didn't have a pressure or these folks
16 didn't have a pressure relief valve. I took his deposition,
17 hand him the Bible, I got him, he knew he was in trouble and
18 he had to come up with other theories. Mr. Deal, So what? it
19 goes to credibility. Credibility.

20 So now I bored you yesterday, I bored you a lot, I got in
21 too many fights with Mr. Harris, he was driving me nuts with
22 the spaghetti. I kept spreading spaghetti off the wall, he
23 kept throwin' more back up there, he's driving me nuts. At
24 the end a the day I had to do one thing and I had to put it in
25 front of you, okay, and it was based on credibility and I did

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1 it for a reason, again, on Friday afternoon I finally got my
2 response almost almost a year later for his files. Look at
3 'em, you don't have to look at 'em for very long, look at 'em
4 here in, here in evidence somewhere I believe his reports.
5 You know how many times he testified against the people that
6 hired him? none. Not once. Not one time in those reports did
7 he say, You know what, Fireman's Fund, you're flat wrong, you
8 can't sue anybody, not one time, it goes to credibility,
9 that's for to you decide. Look at his reports, you know what
10 else he did in this report he had a client that caused a fire
11 and in huge plant in Iowa and the reason that fire happened
12 'cause there wasn't a pressure relief device on the oven, it's
13 a commercial oven. Look at it, just briefly if you want to.
14 He said they're not responsible for the fire, that doesn't
15 need a pressure relief device because they followed the code
16 and they did what everybody else in the industry was doing so
17 they're not responsible, it's credibility and their entire
18 case hinges on Mr. Harris drivin' these (indicating) three
19 guys nuts that you can go pay a guy \$15,000, end up in a
20 courtroom. Their entire case hinges on the credibility of
21 Mr. Harris. So why are we here? Fireman's Fund doesn't like
22 taking losses, I think that's very obvious to ya, should be
23 obvious to ya based on their first, not their first, their
24 first six hours, their action within their first six hours,
25 their action within the first ten days, they don't like takin'

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1 losses, their gonna find somebody, that's why we're here, so
2 this is one other thing that, uh, just briefly, where's the,
3 where's the person who's behind this lawsuit? Three days
4 you've sat here, three days, I don't know if you're supposed
5 to be workin', at school, with your family, I don't know where
6 you're supposed to be, where you'd like to be today, where's
7 the person that brought the lawsuit? It's not Mr. Klaben, he
8 told ya that. It's somebody else. They don't even have the
9 respect for this courtroom and these (indicating) people and
10 ya'll to sit there with us. The person that's decided to file
11 this lawsuit and to put us through three days of this doesn't
12 even have the respect and courtesy to be here herself. Maybe
13 it doesn't bother you, bothers me.

14 Alright, couple other things. Remember this: Fireman's
15 Fund what's the motivation? let's get our money back.
16 Remember part a that \$15,000 that Mr. Harris has, they pay
17 Mr. Harris, you know how much they've spent on these
18 (indicating) folks? 'bout half, the rest of it was chasing
19 water company and chasing the valve manufacture and I, and I
20 think Mr. Deal said Kohler, I will not blame Kohler for this,
21 it's a Zurn company, okay, chase both. Pull this thing apart,
22 talk to the water company, they're chasing anybody they can,
23 spaghetti theory, right, anybody we can get. Four years, four
24 different targets, I told you that at the beginning.

25 Ready about the damages? I don't think I've ever laughed

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1 that hard in my life when Mr. Searcy told me -- told told
2 Mr. Deal, Mr. Deal, I'm sorry, Mr. Searcy, you didn't pay for
3 those rugs, did ya? What Mr. Searcy say? I'm fixin' to if you
4 win. The rugs are still in Mr. Wennerstrom's house. This
5 (indicating) man, this (indicating) man and this (indicating)
6 man they gotta pay \$60,000, \$40,000 for rugs that are still in
7 Mr. Wennerstrom's house because Fireman's Fund decided to give
8 'em money and then leave the rugs with them, oh, please don't
9 do that to them, those rugs are just fine. I'll take 'em
10 Mr. Wennerstrom doesn't want 'em, they won't fit in my house,
11 I don't have a great room but I'll take anyway, I'll put 'em
12 in the garage, uh. so they clearly overpaid his claim, was
13 another fifty thousand dollar, I'm sorry, \$5,000 for lodging,
14 I would ask the same as Mr. Deal did, look at it, it's absurd.
15 I understand it's a big house, \$60,000 for rugs and furniture
16 and I don't know what else is in there. One of the, one of
17 the other things that is is troubling where's Mr. Wennerstrom?
18 Remember, the only claim they have is on Mr. Wennerstrom, it's
19 this weird legal thing where you step into the shoes of
20 another person. The insurance company can actually put
21 Mr. Wennerstrom's shoes on, nice shoes I assume, and then come
22 in here and pretend they're Mr. Wennerstrom. Guess what,
23 they're not Mr. Wennerstrom. Mr. Wennerstrom's not coming.
24 Mr. Wennerstrom doesn't think these (indicating) folks did
25 anything wrong. Mr. Wennerstrom still calls them, still has

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1 them doing work. It's his house, was his damage, he did not
2 file a lawsuit, he has not as you can tell helped Fireman's
3 Fund. Called these (indicating) folks to come out there.

4 Let's talk about the last thing and this is it, it's sort
5 of an elephant in the room but we all know it, everybody in
6 the courtroom knows it, this (indicating) is the safety device
7 that's required by International Building Code, this is what's
8 required, it's required in the State of South Carolina, I
9 assume it's required in the State a North Carolina, this
10 (indicating) is the safety device, this is what the code tells
11 you to do, this is what their experience tells you to do, you
12 put it on a house when you suspect there's going to be an
13 excess of 80 PSI. They suspected it was in excess of 80 PSI,
14 they were right. They put it on, it's intent, the use of this
15 is supposed to stop the pressure from getting in the house.
16 This (indicating), folks, is not a red herring, this is the
17 cause of this flood. These (indicating) gentlemen did not
18 design it, they did not manufacturer it. Testimony is that
19 they chose the right one, they installed it correctly and it
20 worked for six years, that is the elephant in the room.

21 Maybe one more if I can. More law that Judge Hayes will
22 tell you. He will say, I charge you that where the cause of
23 plaintiff's damages may be as reasonably attributed to an act
24 for which the defendant is not liable as to one for which he
25 is liable, the plaintiff has failed to carry their burden of

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1 establishing that his damages were the proximate result of the
2 defendants' negligence an act for which they are not liable.
3 Testimony was they could not have foreseen, they could not
4 have known, they could not have expected that valve to fail in
5 six years, common sense. Why in the world would the
6 International Building Code an international group of plumbers
7 specify a valve that fails, if it didn't, it's not supposed to
8 fail. This is the law, this is the problem, this (indicating)
9 valve failed, this valve failed, that's the cause of the
10 flood. Fireman's Fund doesn't want you to hear that, do not
11 look behind the curtain, do not see what the motivations are,
12 do not look at credibility of their sole paid expert because
13 we need our money back. Ladies and gentlemen, I'll submit
14 to you that's not right, that's not fair, these (indicating)
15 gentlemen did exactly what they were supposed to do in 2003
16 where an international group of plumbers or international
17 group of builders and what every other plumber did in 2003,
18 every, but they want \$400,000. We're gonna ask you for a
19 defense verdict, ladies and gentlemen, we're gonna ask you for
20 a defense verdict. These (indicating) folks didn't do
21 anything wrong, the only thing they did wrong maybe was
22 trusted this wrong company or they got a bad valve but that
23 doesn't mean you should give that insurance company \$60,000 of
24 that (indicating) man's money for rugs that are still that
25 house. Thank you. Thank you for your patience, we're all

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1 gonna go home by five today I hope. Thank you.

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

3 THE COURT: Yes, sir.

4 MR. DEAL: Alright, talked about me again today Cozen
5 O'Connor so I'm gonna talk about me again too, not about me
6 but I'm gonna talk about it. When these cases Mr. Klaben
7 testified when things happen like these big losses, it's a
8 fluid situation: repairs need to occur, evidence needs to be
9 preserved, etc. We tell, we ha -- this is my fault if we --
10 if they call us six hours later, we hammer our clients. If
11 somethin' happens get us involved immediately so we can hire
12 the experts, make sure 'cause we have experience with what
13 needs to happen to gather the evidence so yeah, yeah, the did
14 they did exactly what -- blame me, they did exactly what we
15 would have told them to do in the situation because if the, if
16 the plumber and everybody else, all the remediation folks come
17 out there and ServiceMaster comes and cleans the house up and
18 it it all gets wrecked and no -- there's nothin' left, in that
19 situation how is the the law gonna operate, do its job if the
20 evidence is destroyed, that's why we do this, that's why we
21 got involved day one and let me tell you somethin' Mr. Harris
22 testified and I can tell ya this from from personal experience
23 that with, ya know, it -- did Mr. Harris write any opinions
24 that went to to to a court that he said wr -- said somethin'
25 against his client course not, what he testified to was if if

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1 it was somethin', if it was the fault of the insured or just a
2 lightening strike or an act of God, he told us that on the
3 front end that that's what happens most the time, that's what
4 he testified to. When when he call, when I, when I
5 get -- when insurance company calls and there's somethin' that
6 I I, somethin' that happens I call Mr. Harris and say,
7 Mr. Harris, can you go take a look at this for me, tell me
8 what happened. I s -- I don't go out there and say,
9 Mr. Harris, go find somebody to sue and by the way we're
10 talkin' about goin' to find somebody to sue, we were talkin'
11 about this this part right here (indicating), Zurn
12 manufactures that regulator, Kohl -- Kohler manufactures this
13 (indicating) part, the part that actually separated and we did
14 not actual, after Mr. Harris did his investigation we invited
15 -- he immediately determined these guys weren't even involved
16 'cause he knew it had been popped off by this excessive
17 pressure so we didn't even put them on notice, we didn't think
18 they were an interested party, so we weren't on some witch
19 hunt. If we'd been on a witch hunt, we'd put them on notice
20 too and they'd be talkin' about how come we put them on notice
21 and they were out there, they were -- at first they blame this
22 guy, first they blame that guy but we didn't blame these these
23 guys, we never blamed anybody except for people we blamed in
24 the lawsuit, they're sittin' here, this not a witch hunt. I
25 take that personally because I I I just, that's not the way I

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1 would do business. With that said there's a water company we
2 put on notice and a manufacturer we put on notice. Did we sue
3 them? no. Do you know why? 'cause we didn't have any evidence
4 that showed they were responsible, end a story. Now, as far
5 as the kitchen sink, yeah, that's exactly right. I do
6 wilderness medicine, I I I worked at summer camp up in, uh,
7 in, uh, up in, uh, Tuxedo, North Carolina, if ya'll know where
8 that is, it's it's in, uh, Henderson County and I have to be
9 certified as a, as a wilderness first responder and what they
10 tell you is don't throw, you wanna just cast this wide net of
11 a theory, you're gonna figure out somethin's wrong with
12 somebody they'll ask ya unless the guy, unless it's a person
13 is a, is a m -- there's he fell or somebody that's that's hurt
14 or injured or seems to be in some sorta distress, it's a
15 woman, ask 'em they're pregnant first, can't throw that in
16 'cause that's that's a, that's a fact you need to know, it
17 could be they a -- they're bleeding outta their big toe but
18 you gotta ask 'em that question, you just cast a wide net to
19 make sure you gather all the facts just like Mr. Searcy said
20 to do here, that's what we do as well, that's why we put all
21 those people on notice, it's not a witch hunt, we're doing our
22 job.

23 Now the basis of Mr. Harris's opinions, well let me talk
24 about the the allegations, the only, the only specific
25 allegation made as to what they shoulda done differently is is

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1 based on Mr. Harris's opinion from day one they shoulda put a
2 relief valve in. Okay, we also allege that we're go -- that
3 there were code, there could be code violations, we also
4 allege that they didn't act prudently, that's what we're
5 sayin' here today, those are not new claims, that lawsuit was
6 filed way back 2011 and its lists all this, they say there's
7 only one allegation, one, right, but in fact there A, B, C, D,
8 E, F and G. I don't know if all ya'll can count, I I I'm
9 pretty good at countin', that's not one.

10 Alright, let's talk about these subpoenas. I don't think
11 it was appropriate for him to mention it but since he did he
12 mentioned what the. what that issue was there's no evidence in
13 this case to dictate this, okay, but what I can tell you is
14 when subpoenas are are issued they have to be legal, they have
15 to, they have to have certain, there certain criteria that
16 have to be followed and we disputed verbally that the the
17 scope of of what they were asking for originally was too broad
18 and too big and we don't think we should give it to 'em and
19 and and that's what Mr. Harris told me, I agree with him,
20 eventually the judge made a ruling on that and when the judge
21 made a ruling, we had to give it -- we gave them what they
22 were asking for according to what the Court told us to do,
23 period, that was the day after that ruling came down, that's
24 when we game the information so so that's a little dishonest I
25 think to stand up here and say, ya know, he he came up with

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1 this outta the, you know, the very last minute, we weren't
2 required to do anything until then anyway, once again,
3 that's. . .

4 Now as far as this this they should expect the the the
5 the, uh, valve to last more than, last six years or more, no
6 evidence that say they shouldn't, there's a warranty right
7 here (indicating), twelve months from date of purchase, mind
8 you it's not twelve months when they put it in the ground,
9 twelve months from date of purchase, that's how long this is
10 warrantied for, that's all, that's all your evidence you need
11 to know. Now Mr. Harris did testify he seen 'em fail as as as
12 short as two years but that's really just not important,
13 what's important is it's gonna fail and if if nothing else we
14 know it failed, alright.

15 Now I'm not gonna get into Mr. Harris, Mr. Harris, uh,
16 did his job, he came out here, I asked him what was, what what
17 happened here. I'm the one that determines who's legally
18 re -- who I think is legally responsible and I advise my
19 client as to what that is. Mr. Harris tells me what happened
20 and he if if he can identifies the parties that were
21 responsible for any actions that that caused that to happen
22 and then I determine, me, who gets sued because it has to have
23 some legal basis which is why we are here today, so don't, the
24 fact that Mr. Harris did what he did and he gets paid to do
25 it, yeah, he did his job, he does get paid, he gets paid

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1 nicely you know why 'cause he's experienced and he's go --
2 he's educated and I think he's honest because if I call him
3 and he goes out to a site and says, Well it's this or that, I
4 expect him to tell me what he thinks the truth is, in those
5 situations it it happens to be the insurer or lightening
6 strike just let it go, doesn't anymore, nothin' happens after
7 that, that's what he testified to. He didn't change his
8 opinion. His opinion day one was that that we need a relief
9 valve, right, day one and the reasoning behind that and that
10 and and also that in his te -- in his deposition he testified
11 that this thing needed to be, the the regulator needed to be
12 where it could be seen, why is that? so it could be maintained
13 proper. The code requires you install a regulator if it's 80
14 PSI or higher, it's silent as to anything above that; in fact,
15 the water pre -- now think about this a minute: A regulator
16 needs to be installed if it's over 80 PSI, okay, what if the
17 water pressure in the system was 400 PSI, this regulator
18 wouldn't do the job and if they installed this regulator a 400
19 PSI system it'd fail immediately but that be the code, code
20 doesn't doesn't contemplate unusual situations and we've
21 talked about it all day long about that, we -- this is an
22 unusual situation and this unusual situation need to take
23 it -- do do more work, assess the information and address the
24 issues accordingly, that didn't happen here and that's why
25 when you go back in the room you'll find out that both

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1 Mr. Searcy and B&B responsible for what happened here, it was
2 inevitable this thing was gonna blow under the circumstances,
3 we all agree on that. Nothing more, thank you. And look
4 we're done now, judge is gonna talk to you and you don't have
5 to listen to us ever again hopefully, no offense to that
6 though so down the road you ever have to come into court again
7 and ya'll get selected that hope that doesn't happen to ya'll,
8 that's all for me, I appreciate ya'lls help, thanks.

9 THE COURT: Alright, Mr. Foreman, ladies and gentlemen,
10 if you'd like to stand and stretch your legs and arms just a
11 moment, I will charge you the law after that and I promise you
12 it will not be an hour or longer.

13 (Laughter.)

14 MR. IMHOFF: Your Honor, if it's an hour do we get
15 anything?

16 THE COURT: Um-hum. Alright, alright, ladies and
17 gentlemen. Ladies and gentlemen, I remind you that during
18 this trial you and I have had certain duties to perform. As
19 the trial judge it is my responsibility to preside over the
20 trial of this case and all -- and I also have the duty to rule
21 on the admissibility, uh, of evidence that was presented
22 during this trial. You are to consider only the evidence that
23 has been a -- that has been presented before you. Now I have
24 the additional duty to charge you the law that's applicable to
25 this case, it is your duty as jurors to accept and apply the

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1 law as I now state it to you. If you think you have any idea
2 as to what the law is or what the law ought to be and it does
3 not now agree with what I tell you the law is, you must forget
4 that idea because you are sworn to accept the law and apply it
5 exactly as I now state it to you. In every case that is tried
6 before this court, a, uh, the jury becomes the sole and
7 exclusive judge of the facts, a trial judge cannot comment on
8 or make any statements about the facts in a case. Since you
9 are the sole judges of the facts please do not think that I
10 ha -- uh, from anything that I've said during the conduct of
11 this trial that I have any opinions about the facts in this
12 case, the law does not allow me to have any opinions about the
13 facts.

14 Ladies and gentlemen, the burden of proof in this case is
15 is by what is called the "preponderance of the evidence." A
16 preponderance of the evidence simply means the greater weight
17 of the evidence, it is evidence which as a whole shows that
18 the fact sought to be proved is more likely true than not
19 true, this can be illustrated by imagining a set of scales.
20 When the case begins the scales between these parties are
21 even, after all of the evidence has been presented if the
22 scales remain even or if they tip slightly in favor of the
23 defendants then the plaintiff has failed to meet the burden of
24 proof and would not be entitled to recover in this case. If,
25 on the other hand, the scales tip even slightly in favor of

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1 the plaintiff then the plaintiff will have met the burden a
2 proof and you should return a verdict in favor of the
3 plaintiff. The preponderance of the evidence is not
4 determined by the number of witnesses, instead it must be
5 determined by the greater weight of all of the evidence that
6 has been presented. There two types of evidence generally
7 presented during a trial: direct evidence and circumstantial
8 evidence. Now direct evidence is the testimony of a person
9 who claims to have actual knowledge of a fact such as an
10 eyewitness, it is evidence which immediately establishes the
11 facts sought to be proved. Circumstantial evidence it is
12 proof of a chain of facts and circumstances indicating the
13 existence of a fact, it is evidence which immediately
14 establishes collateral facts from which the main facts me --
15 may be inferred. Circumstantial evidence is based on
16 inference and not on personal knowledge or observation, it is
17 proof that does not actually establish the fact in question
18 but that asserts or describes something else from which you
19 may reasonably infer the truth of the fact or at least
20 reasonably infer an increase in the probability that the fact
21 is true. From circum -- for circumstantial evidence to be
22 sufficient to warrant a finding of fact, the circumstances
23 must lead to that fact with reasonable certainty. The facts
24 and circumstances should be considered in light of ordinary
25 experience and common sense. Existence of a fact cannot be

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1 based on speculation, surmise or conde -- or conjecture. The
2 law makes absolutely no distinction between the weight or
3 value to be given either direct or circumstantial evidence nor
4 is a greater degree of certainty required of circumstantial
5 evidence than that of direct evidence.

6 Necessarily you must decide the credibility of witnesses
7 who have testified. Credibility simply means believability.
8 It becomes your duty as jurors to evaluate the evidence and
9 determine which evidence convinces you it is true. In
10 determining the believability of witnesses who have testified,
11 you may believe one witness over several witnesses or several
12 witnesses over one witness, you may believe a part the
13 testimony of a witness and reject the remaining part of the
14 testimony of that same witness, you may believe the testimony
15 of a witness in its entirety or reject the testimony of a
16 witness in its entirety, you may consider whether the witness
17 has an interest in the result of the trial, whether the
18 witness is prejudiced towards either the plaintiff or the
19 defendants, the opportunity for the witness to have seen the
20 matters and things about which the witness may testify and the
21 way the witness acts on the witness stand.

22 The rules of evidence ordinarily do not permit witnesses
23 to testify to opinions or conclusions, an exception to this
24 rule exists for witnesses we call "expert witnesses." A
25 witness who by education and experience has become an expert

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1 in some art, science or profession may give an opinion as to
2 the subject the witness claims to be an expert in and may also
3 give the reasons for that opinion. You should consider any
4 expert opinion given by a witness and like any other evidence
5 that's been presented give it the weight you think that it
6 deserves. If you decide that an expert witness's opinion is
7 not based on sufficient education and experience or if you
8 decide that the reason given in support of the opinion are not
9 sound or that the opinion is outweighed by other evidence, you
10 may disregard the opinion entirely. An expert witness's
11 testimony is not -- is to be given no greater weight than that
12 of other witnesses simply because the witness is an expert and
13 you do not have to accept the expert's opinion even though it
14 is uncontradicted.

15 In our courts there is no distinction made between
16 corporation and individuals. A corporation is a person in the
17 eyes of the law. A corporation is entitled to the same fair
18 and impartial consideration and to justice by the same legal
19 standards as an individual. This case is cons -- is a
20 subrogation case. Subrogation is the substitution of one
21 person in the place of another with reference to a lawful
22 claim or right. A subrogated party is entitled to the same
23 rights and remedies as the person for whom it succeeds and is
24 subject to the same defenses as its insured. Where a property
25 insurance carrier compensates and insured for damages

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1 sustained, it may then step into the shoes of its insured to
2 seek restitution from the responsible party. In this instance
3 Fireman's Fund Insurance Company is entitled to assert any
4 claims that its insured Sig [sic] Wennerstrom may have had
5 against the defendants for their legally recoverable damages
6 arising out of the January 24, 2009 water leak at the home of
7 Stig Wennerstrom located at 45 Falling Star Way in Landrum,
8 South Carolina.

9 The plaintiff claims that the defendants were negligent
10 and should compensate the plaintiff for the injuries the
11 plaintiff suffered as a result of the defendants' negligence.
12 In order to prove that the defendants were negligent, the
13 plaintiff must prove by preponderance or greater weight of the
14 evidence the following things: First the plaintiff must prove
15 by a preponderance or greater weight of the evidence that the
16 defendants owed the plaintiff a duty of care, that is a
17 question question of law. The plaintiff alleges and contends
18 that the construction or building work was undertaken by the
19 defendants under an arrangement and agreement with the owner
20 of the property at the time. I charge you that one who
21 undertakes and agrees to construct buildings is liable for any
22 damages proximately resulting from the negligence or
23 unskillful manner in which, uh, he constructs the building.
24 In this regard the defendants owed the duty to exercise and
25 use due care in the construction of a house and in the work

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1 undertaken by the defendants. To establish negligence
2 construction, the plaintiff must prove four essential
3 elements; one, that there was an undertaking to construct a
4 building by the defendants; two, the defendant was negligent
5 or careless or reckless or wilful or wanton in the performance
6 of that construction work or stated another way that they did
7 not perform the work in a good workmanlike manner; three, the
8 negligence or carelessness or recklessness or willfulness or
9 wantonness of the defendants in performing the construction
10 work was a proximate cause of any damages sustained by the
11 plaintiff and; four, the resulting damages must be shown. It
12 is incumbent upon the plaintiff to prove the defendants were
13 negligent or careless or reckless or wilful or wanton in some
14 aspect of the construction work which they agreed to do,
15 otherwise you would be required to find against the
16 plaintiffs. The degree of care which the defendants are
17 called upon to exercise in this case is that degree of care
18 which a person or entity of ordinary reason and prudence would
19 exercise under similar circumstances and condition in
20 constructing the house or building of the kind in question.
21 Any failure to exercise due care on the parts of the
22 defendants, their agents, servants or employees acting in the
23 course and scope of their employment in the construction of
24 the house or building would constitute negligence or
25 carelessness. If such negligence or carelessness on the part

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1 of the defendants did exist, and that fact is totally up for
2 you, the jury, to determine, your next question would be is
3 the negligence or carelessness of the defendants a proximate
4 result of the damages sustained by the plaintiff.

5 Now negligence is not actionable unless it proximately
6 causes the plaintiff's injuries. Proximate proximate cause is
7 the efficient or direct cause of an injury. Proximate cause
8 requires proof for both causation in fact and legal cause.
9 Causation in fact is proved by establishing the plaintiff's
10 injuries would not have occurred but for the defendants'
11 negligence. Legal cause is proved by establishing
12 foreseeability. The touchstone of proximate cause in South
13 Carolina is foreseeability, that is foreseeability of some
14 injury from the negligent act or omission is a prerequisite to
15 it being a proximate cause of the injury for which recovery is
16 sought. The test of foreseeability is whether some injury to
17 another is the natural and probable consequence of the
18 complained of fact. The defendant may be liable for any, for
19 anything which appears to have been a natural and probable
20 consequence of the negligence. For an act to be a proximate
21 cause of the injury, the injury must fores -- must be a
22 foreseeable consequence of the act. Foreseeability is not
23 determined from hindsight but rather from the depe --
24 defendants perspective at the time of the complained of act.
25 The law requires only reasonable foresight. When the injury

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1 complained of is not reasonably in the exercise of due care,
2 there is no liability. It is not necessary for the plaintiff
3 to demonstrate the defendant should have foreseen the
4 particular event which occurred but merely that that the
5 defendants should have foreseen their negligence would
6 probably cause injury to someone. Negligent conduct is the
7 proximate cause of the injury if the injury is within the
8 scope of foreseeable risk of negligence. While it is not
9 necessary that the defendant must have contemplated or have
10 anticipated the particular events which occurred liability
11 cannot rest on their possibility. The defendant cannot be
12 charged with that which is unpredictable or that which could
13 not be expected to happen, a plaintiff therefore proves legal
14 cause by establishing the injury in in question occurred as a
15 natural and probable consequence of the defendants'
16 negligence. Determining whether a consequence is one that is
17 natural and probable the defendants conduct must be viewed in
18 the light of the intended circumstances. Proximate cause does
19 not mean the sole cause. The defendants' conduct can be a
20 proximate cause if it was at least one of the direct
21 concurring causes of the jury. The law defines proximate
22 cause of an injury to be something that produces a natural
23 chain of events in the end bringing about the injury; in other
24 words, proximate cause is the direct cause without which the
25 injury would not have occurred. If the accident would have

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1 happened as a natural and probable consequence even in absence
2 of the alleged breach then the plaintiff has failed to
3 demonstrate proximate cause. Further, were the cause of the
4 plaintiff's injuries may be a as reasonably attributable to an
5 act for which the defendant is not liable as to one which he
6 is liable the plaintiff has failed to carry the burden of
7 establishing that his injuries were the proximate result of
8 the defendants' negligence.

9 For a general contractor to be liable, to be liable for
10 negligence, it must be negligent in his own capacity. The
11 negligence of a subcontractor is not automatically imputed to
12 the general contractor; in other words, it is not sufficient
13 for the plaintiff to merely show that a subcontractor that
14 worked on their home was negligent for the general contractor
15 to be also liable. The plaintiff must show that the general
16 contractor's own negligence operated to cause the alleged
17 harm. If you find that the work performed by the defendants
18 in this case failed to comply with any part of the
19 International Plumbing Code and the part of the International
20 Plumbing Code in -- instructions and the defendant did, uh,
21 did not follow, and that the defendant did not follow the
22 International Plumbing Code was meant to prevent this type of
23 loss and the damage that occurred then you must find the
24 defendants' negligence per se. If one or either of the
25 defendants is found to be negligent per se, they are legally

JURY CHARGE

1 liable for the damages proximately caused there from. Where
2 two or more causes combined to bring about an injury or
3 damage, a person is not released from liability because he is
4 responsible for only one of the causes, it is sufficient that
5 his negligence is a proximate concurring cause. Where several
6 causes prozu -- producing an injury are concurrent and each is
7 an efficient cause without which the injury would not have
8 happened, injury may be attributable to all or any of the
9 causes and recovery may be had against either or all of the
10 responsible persons although one or them was more responsible
11 in the duty owed by them to the injured person is not the
12 same, there may be more than one cause of an injury and more
13 than one person be held responsible for the plaintiff's
14 injuries. When negligence of two or more persons combine to
15 cause an injury, each person involved may be held responsible
16 as if he or she alone caused the result. Causes are
17 concurrent if they act contemporaneously to produce a given
18 result; in other words, the individual acts of negligence must
19 combine to cause the jury. If the acts happen one after the
20 other and were unrelated to each then only that person whose
21 negligence actually caused the jury would be liable. If an
22 injury occurs through the concurrent negligence of two persons
23 and would not have happened in the absence of either, the
24 negligence of both is the proximate cause of the accident and
25 both are answerable.

JURY CHARGE

1 I charge you that more than one party can be liable.
2 Your job is to decide if Searcy Homes, Searcy Custom Homes and
3 B B&B Plumbing reliable. You may consider in determining that
4 an absent contributing tort feisor is liable, is the liable
5 party and not either of these defendants. If you decide that
6 the plaintiff's entitle -- that the plaintiff is entitled to a
7 verdict, your next step would be to decide how much money the
8 defendants should be required to pay. Actual damages are to
9 compensate the plaintiff for the plaintiff's actual injuries
10 or losses and to put the plaintiff as near as possible in the
11 same position that the plaintiff was in before the incident
12 occurred; in other words, actual damages would be the actual
13 losses and expenses which the plaintiff has suffered because
14 of the defendants' negligence. If the fact of damages is
15 established, the law does not require the amount of damages to
16 be proved to an absolute mathematical certainty, damages may
17 be recovered if there is evidence upon which a reasonable
18 assessment of the loss can be made. The estimation of
19 damages, however, cannot be based on conjecture or
20 speculation, it must pass the realm of opinion not found on
21 fact and must rest on evidence from which a reasonably
22 accurate conclusion regarding the amount of loss can logically
23 and rationally be made. There must be a certain standard or
24 fixed method by which the loss may be est -- estimated with a
25 fair degree of accuracy.

JURY CHARGE

1 Mr. Foreman, ladies and gentlemen, your verdict in this
2 case has to be unanimous. I have prepared for your use in the
3 jury deliberation room a verdict form, uh, I had to ask
4 certain questions, the fir -- I've I've had to ask the first
5 two questions one before the other but I do not want you to
6 read anything into the fact that I've asked one question, uh,
7 in front of the other question with any type of importance
8 because the decisions that you make as to each of these
9 defendants is to be made, uh, as to each of these defendants
10 just that I have to put one before the other on the, on the
11 document. Again, La -- Mr. Foreman, once you answer the first
12 two questions I need for you to follow the instructions on the
13 form and you will only, if you follow instructions to the
14 form and you found one of the, one or more of the defendants
15 liable then would you go to third question's that's on on the,
16 uh, second page but again, Mr. Foreman, I need for you to be
17 sure that the jury's verdict is unanimous. Uh, the jury
18 verdict cannot be based on sympathy, passion, prejudice,
19 emotion or on any consideration that is not in evidence in
20 this case. Mr. Foreman, once the jury has reached their
21 verdict I need for to you complete the form, uh, as instructed
22 on the form and please do not forget this part of my
23 instructions: Knock on the door and let the bailiff know when
24 you're finished. I actually had a case one time where the
25 jury sat back there for hours on what I thought would be a

JURY CHARGE

1 relatively simple case and finally I sent the foreman back and
2 the foreman announced to the bailiff, Well you didn't tell me
3 what to do after we reached a verdict, so please knock on the
4 door and let the bailiff know once you have in fact reached a
5 verdict.

6 Ladies and gentlemen, I am gonna ask that you please
7 return to the jury deliberation room but do not begin your
8 deliberations because there's a couple a matters I have to
9 take up with the attorneys but, uh, we you should ha -- you
10 should be able to begin just shortly, please return.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Any exceptions to the charge for the
14 plaintiff or the defendant?

15 MR. DEAL: None, that we haven't discussed already, Your
16 Honor.

17 THE COURT: Alright.

18 MR. IMHOFF: None that we haven't discussed, Your Honor.

19 THE COURT: Okay, uh, there were couple things, what do
20 you wanna do about the alternate.

21 MR. DEAL: I'm sorry?

22 THE COURT: Alternate. I can either have her removed,
23 well I've gotta have her removed but I can either have her
24 dismissed or I can have her held in some other location in the
25 event that we, uh, come up with a juror that has an emergency

MOTIONS AND MATTERS

1 and has to be used early.

2 MR. IMHOFF: I'll I'll follow your advice on that, I
3 really -- does it happen very often?

4 THE COURT: It not often but it does happen. Uh, I've
5 had lawyers to agree that that in the event that we sent the
6 alternate home they would agree to go with eleven if one of
7 the twelve had an emergency.

8 MR. IMHOFF: Yeah, Your Honor, ---

9 MR. DEAL: That sounds fine by me, ---

10 MR. IMHOFF: --- that's ---

11 MR. DEAL: --- Your Honor.

12 MR. IMHOFF: --- fine by me also.

13 THE COURT: Okay. Alright, then let let's do that, we'll
14 send her on her way. The other thing, take a look and be sure
15 we have the proper exhibits cause ya'll marked some exhibits
16 that did not get admitted into evidence so be sure that that
17 whatever we have over there is the proper exhibits.

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

19 (Whereupon, the jury began deliberations at 3:22 p.m.)

20 (Whereupon, the alternate juror entered the courtroom.)

21 THE COURT: Alright, Ms. Ms. Pearson, uh, I wanna thank
22 you for participating during this trial serving as our
23 alternate, uh, we didn't have any emergencies did not occur
24 with the other twelve members so, uh, they have started their
25 deliberations. You're more than welcome, you're more than

MOTIONS AND MATTERS

1 welcome to stay with us if you'd like but you do are not
2 required to do so 'cause your service, uh, to the county and
3 to the community has now terminated so you're free to leave as
4 well.

5 ALTERNATE JUROR: I'm going home now.

6 THE COURT: But thank you very much for coming.

7 ALTERNATE JUROR: Thank you.

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

9 THE COURT: Alright, we'll stand at ease. Thank you,
10 ma'am.

11 ALTERNATE JUROR: Thank you.

12 (Whereupon, the alternate juror exited the courtroom.)

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

14 (Whereupon, the Court received a note from the jury.)

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

16 THE COURT: Uh, Mr. Foreman, we received your your
17 question, uh, the question, uh, is can we hold the plaintiff
18 responsible for the defendants' legal fees, uh, that is not an
19 issue in this case for ya'll to to decide, that's the only way
20 I know how to answer it for you, ---

21 JURY FOREMAN: Oh.

22 THE COURT: --- okay, but you can ret -- where's Mr.
23 Seay? Uh, a bailiff needs, why don't you go through that door
24 and your door is right in there, just go back in there and
25 ya'll can continue your deliberations, okay.

VERDICT

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

3 THE COURT: We'll make the, uh, question a Court's
4 Exhibit. Alright, we'll step down.

5 MR. IMHOFF: Thank, Your Honor.

6 (Note from the jury marked Court's Exhibit No. 1 for
7 identification.)

8 (Whereupon, a recess was taken.)

9 (Whereupon, the jury reached a verdict at 3:49 p.m.)

10 THE COURT: Thank you, may be seated. Anything before we
11 bring the jury back?

12 (No verbal response.)

13 THE COURT: Alright, let's bring 'em back.

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

15 THE COURT: Mr. Foreman, the bailiff and, uh, tells me
16 that the jury's reached a verdict, is that corr -- true?

17 JURY FOREMAN: Yes.

18 THE COURT: Alright, sir, if you will please give the
19 verdict form to the bailiff.

20 (Whereupon, the jury foreman complied.)

21 THE COURT: Madam clerk, if you would please publish the,
22 uh, hang on one second, please publish the verdict.

23 THE CLERK: State of South Carolina County of Spartanburg
24 in the court of common pleas Case Number 2011-CP-42-00618
25 Fireman's Fund Insurance Company, Aso -- S, uh, Stig

MOTIONS AND MATTERS

1 Wennerstrom vs. Searcy Custom Homes, LLC and BB Plumbing,
2 Incorporated. Question Number 1, Do you find that the
3 defendant Searcy Custom Homes, LLC was neg -- neglect and that
4 such negligence proximately caused FFIC's damages, the answer
5 is no. Question Number 2, Do you find that the defendant BB
6 Plumbing Incorporation was negligent and that such negligence
7 proxima -- proximately caused FFIC's damages, the answer is
8 no, it is signed by the foreperson and dated today's date.
9 Ladies and gentlemen of the jury, if this is your verdict and
10 still your verdict, please raise your right hand.

11 (Whereupon, all responded affirmatively.)

12 THE CLERK: So say you all.

13 THE COURT: Anything from either the plaintiff or the
14 defendant before I dismiss the jury?

15 MR. DEAL: No, Your Honor.

16 MR. IMHOFF: Nothing, Your Honor.

17 THE COURT: Ladies and gentlemen, uh, I wanna thank you
18 for your service to the community, uh, uh, while you worked
19 through this trial. Um, as you may recall when we first
20 started this case and I gave you that introductory charge to
21 where I informed you that, uh, you're now serving as a juror
22 and I thanked you for your contribution to our democracy and
23 to the, and to the justice system we have in our country,
24 those words that I spoke to ya I I don't want ya to think that
25 they were just flowers or just, uh, blowin' smoke at you, I

MOTIONS AND MATTERS

1 sincerely believe those words. It has been frequently said
2 that we have the greatest justice system that's ever been
3 created and I truly believe that and your service as jurors,
4 not only your particular service this -- for the last few days
5 but any time a juror serves his country by sitting as a juror
6 that is frequently called outside of military service where

7 THE COURT: You're fighting in a war zone, the hardest
8 sacrifice that a citizen will do for their country. It was a
9 great design of our Founding Fathers when they decided that we
10 would have this great democracy that we have, that we will
11 resolve disputes between citizens in this fashion, we would
12 not have to resort to anarchy out on the streets. I freq -- I
13 served one time as associate justice on the Supreme Court of
14 South Carolina and we had judges that were visiting us from
15 one of the countries that just recently had come out of, uh,
16 Soviet Union's control and they were amazed that people like
17 you, citizens from the community, can actually sit in judgment
18 of their own government and not have to face reprise or not
19 have to be fearful that if they tell the government you have
20 done wrong, you can't do this, that that somehow that that's
21 okay, that citizens know that they can do that here in
22 America. I only wanna mention that to you because when I
23 thank you for your service I'm just not thanking you for just
24 the few hours you sat in here last couple days, I'm thanking
25 you for playing that very, very vital role to our democracy

MOTIONS AND MATTERS

1 and to making our justice system in America the best that has
2 ever been created so thank you f -- you're free to go, we
3 don't have anymore trials this week, so, uh, you know, the
4 bailiff is gonna feel free to show you out of the courthouse
5 and, uh, and just be sure that you leave your badge with him
6 'cause if ya don't you won't get that huge paycheck that the
7 clerk a court will send to you but again, thank you very much
8 for you service and you're free to talk to anybody as much as
9 you want to, if anybody does approach you and you feel like
10 that they're harassing you about your service, contact the
11 clerk's office or the sheriff's office and we'll see that that
12 harassmt stops but thank you very much.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Anything before I step down?

16 MR. DEAL: Your Honor, we move for a a judgment
17 notwithstanding the verdict.

18 THE COURT: Okay.

19 MR. IMHOFF: Your Honor, I I think the jury has spoken.
20 The evidence was submitted to this jury, the jur -- the the
21 the verdict is absolutely consistent with all of the evidence
22 or the lack of evidence that was submitted and we believe that
23 the verdict should stand.

24 THE COURT: Alright, uh, based on the standards that I
25 have to reply at this juncture I could not grant that motion

MOTIONS AND MATTERS

1 but you are protected, uh, on the record for having made your
2 post-trial motions so anything else 'fore I step down?

3 MR. DEAL: No, Your Honor.

4 THE COURT: Thank ya'll very much.

5 MR. DEAL: Thank you, Your Honor.

6 THE COURT: Yes, sir.
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on September 30, October 1 and 2, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 8 through 612, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

July 11, 2014

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

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

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO.

IMPLIED WARRANTY OF HABITABILITY

When a builder places a new home into the stream of commerce, that builder warrants that the home will be safe to live in and fit for use as a home. If a new home is not safe to live in or fit for use as a home due to some unknown condition in the home, and that unknown condition existed at the time the home was completed, the builder of the home is responsible for any damage that later occurs as a result of that unknown condition. The builder is responsible for such damage even if the builder had nothing to do with the creation of that unknown condition.

B&B Plumbing Inc

2349 New Hendersonville Hwy
Pisgah Forest NC 28768

Phone: 828-884-2030
FAX: 828-884-2451
email: RBlythe@citcom.net

Wednesday, October 15th, 2003

Searcy Homes
Zirconia NC

To Whom It May Concern

I have a concern about the excessive water pressure on Stig Wennerstrom house. It is of our opinion that he should contact the manu factors of his washing machine & dishwasher to make sure the excessive water pressure will not void the warranty , or cause damage to the solenoid valves in each unit, also the ballcocks in all the toilets are not rated to handle that kind of pressure, so there is the possibility of leakage and water damage in the house. I would like to remove the water savers in the shower heads first to see if this will help alleviate the problem, if that is unsatis factory with the owner then we can change the pressure reducing valve and increase the water pressure to 90 lbs . Please respond and let me know how to proceed.

Thank You

R. Blythe

Randall Blythe

President B&B Plumbing Inc

*Sandy Fox to
Searcy Homes that
file away in
Wennerstrom*

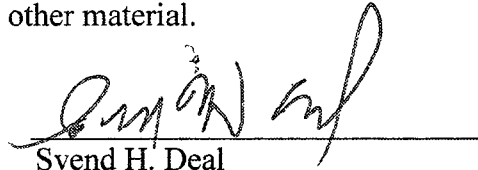
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: 2/17/14



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JAN 07 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Tribunal Case No.: 2011-CP-42-000618

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

Appellant,

v.

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

Respondents.

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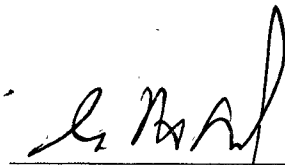
JAN 30 2015

SC Court of Appeals

**CERTIFICATE OF SERVICE OF REPLY BRIEF
AND FINAL BRIEF OF APPELLANT FIREMAN'S
FUND INSURANCE COMPANY**

Appellant, Fireman's Fund Insurance Company, by and through counsel, certifies that it served a true and correct copy of the foregoing Record on Appeal, Reply Brief and Final Brief of Appellant on Respondents via Electronic Mail and UPS in the manner below described, on the **6th day of January, 2015** (as follows:

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Cozen O'Connor