

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2019-000797

RECEIVED
NOV 20 2019
SC Court of Appeals

James E. Carroll, Jr., ... Appellant,

v.

Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix
Service, Inc., ... Defendants,

Of which Isle of Palms Pest Control, Inc. and SPM Management Company, Inc. are, ...
..... Respondents.

RECORD ON APPEAL
Volume 2 of 3

Robert T. Lyles, Jr. (SC Bar # 10299)
Rose Beth G. Smith (SC Bar # 100623)
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
843.577.7730
rtl@lylesfirm.com / rbgs@lylesfirm.com
-and

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McKnight Law Firm
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Mt. Pleasant, SC 29464
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Attorneys for Respondent
SPM Management Company, Inc.

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STATE OF SOUTH CAROLINA	)	BEFORE THE STATE CROP PEST
	)	COMMISSION
COUNTY OF ANDERSON	)	
Department of Pesticide	)	
Regulation	)	
	)	
Complainant	)	
	)	
Vs.	)	NOTICE OF HEARING
	)	
Vincent N. Sottile, Jr., d/b/a	)	
C&S Pest Management	)	
	)	
Respondent	)	

1. On May 09, 2013, Complainant's agent, Cecil Hernandez, conducted a structural pest inspection. The results of that inspection, contained in the August 22, 2013 Report of Structural Pest Inspection, concerning Steve Peek, located at 670 Hobcaw Bluff Drive, Mt. Pleasant, SC, 29464, previously delivered to Vincent Sottile, Jr. of C&S Pest Management, disclosed a violation of the South Carolina Pesticide Control Act. (*Case File No. 050913-10-01*)
2. In accordance with standard departmental policy, a consent agreement is enclosed for your consideration. If you wish to adhere to this consent agreement, please return the consent agreement along with full payment. This offer is valid until August 29, 2014. If the Complainant has not received your payment by the close of business August 29, 2014, the formal hearing as described below will be held.
3. Complainant has scheduled a formal hearing into the matter for September 12, 2014 at 9:00 AM. The hearing will be held in the conference room at the Center for Applied Technology, 511 Westinghouse Road, Pendleton, South Carolina 29670. Directions are as follows:

From I-85, take Highway 76 toward Pendleton and Clemson. After passing through the intersection of Highway 76 and Highway 187 (Milliken & Co. Plant will be on your left), continue for approximately 200 yards. Turn right onto Westinghouse Road. Cross the railroad tracks. The Center for Applied Technology (CAT) is the second building on your left. Parking for visitors is available in front of the building.

4. The hearing will be held under the authority of the Pesticide Control Act, Section 46-13-90 and Section 46-13-180, and will be conducted in accordance with the Administrative Procedures Act, (Chapter 23 of Title 1, SC Code of Laws (1976) as amended.) At this formal hearing you have, among other rights, the right to be represented by counsel, the right to cross-examine witnesses against you, and the right to present evidence on your behalf. The proceedings will be recorded by a certified court reporter.

Vincent Sottile, Notice of Hearing
Page 2

5. It is alleged that Respondent violated the following section of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act (SCRR 27-1085):

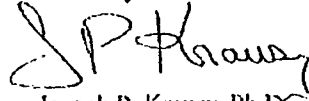
Section 46-13-90 (1) B *"Made a pesticide application inconsistent with the labeling."*

Vincent Sottile, Jr. or his representative did violate Section 46-13-90 (1) B in that on or about March 1, 2007 the pesticide Termidor 80 WG (EPA Reg. # 7969-209) was applied in a manner which is inconsistent with the labeling for this pesticide product.

This One (1) violation carries a maximum penalty of a fine of up to One Thousand (\$1,000.00) Dollars.

6. If you choose to be represented by counsel, please have them contact Dr. Michael Weyman, Deputy Director, Clemson University - PSA, 511 Westinghouse Rd, Pendleton, South Carolina, 29670 or telephone number: 864-646-2150. Should you have any questions, please feel free to contact me.

Sincerely,



Joseph P. Krausz, Ph.D.
Department Head
Dept. of Pesticide Regulation

Pendleton, South Carolina

July 8, 2014
(Date)

"Certified Mail"

Receipt # 7011 1570 0001 7879 8019

Case File No. 050913-10-01

cc: Lee Galloway
Cecil Hernandez
Dr. Joseph Krausz
Dr. Michael Weyman
Melonie Molloseau
Connie Kelley

Structural
050913-10-01

7011 1570 0001 7679 7614

Vincent N. Sottile, Jr.
C&S Pest Management
1440 Ben Sawyer Blvd., Suite 1101 #211
Mt. Pleasant, SC 29464

*Mailed, signed
consent order*

FEMXETON PRO
PENDLETON, South Carolina
295709998
4518030570 -C008
02/27/2014 (854)646-3756 02:21:26 PM

Product Description	Sales Receipt Qty Unit Price	Final Price
MOUNT PLEASANT SC 29464 Zone-3 First-Class Mail Letter 0.00 oz. Expected Delivery: Sat 03/01/14 Return Rept (Green Card) Certified USPS Certified Mail #: 7011157000176797814	SC 29464 Zone-3	\$0.40
Issue PVI:		\$6.40
NORTH CHARLESTON SC 29419 Zone-2 First-Class Mail Letter 2.00 oz. Expected Delivery: Sat 03/01/14 Return Rept (Green Card) Certified USPS Certified Mail #: 70111570000178797835	SC 29419 Zone-2	\$0.70
Issue PVI:		\$6.70
NORTH CHARLESTON SC 29419 Zone-3 First-Class Mail Letter 2.00 oz. Expected Delivery: Sat 03/01/14 Return Rept (Green Card) Certified USPS Certified Mail #: 70111570000178797821	SC 29419 Zone-3	\$0.70
Issue PVI:		\$6.70
Total:		\$19.80

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Vincent N. Sottile, Jr.
C&S Pest Management
1440 Ben Sawyer Blvd., Suite 1101 #211
Mt. Pleasant, SC 29464

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Andrew S. Wells

C. Date of Delivery
3/3/14

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Printed) ☐ Yes ☒ No

1. XXXXXXXXXXXXXXX26
2. 007416
3. 858
4. King or recipient go to
call 1-800-222-1811.
5. at usps.com/shop or call
24. Go to usps.com/clickship
dapping labels with postage. For
nation call 1-800-ASK-USPS.

2. Article Number
(Transfer from service label)

7011 1570 0001 7679 7614

7494 7879 0001 1570

Vincent N. Sottile, Jr.
C&S Pest Management
1440 Ben Sawyer Blvd., Suite 1101 #211
Mt. Pleasant, SC 29464

*voided permanent
order*

PENNINGTON HPO
PENNINGTON, South Carolina
296709990
4518036570 -0090
1/10/2013 (864)646-3756 03:10:48 PM

Product Description	Sale Qty	Unit Price	Final Price
PARLANBURG SC 29302 Zone-1 First-Class Mail Letter 1.20 oz Scheduled Delivery Day: Wed 12/11/13 Return Rcpt (Green Card) US Certified Label #: 70111570000178797493			\$0.66 \$2.55 \$3.10
Issue PVI:			\$5.21
MOUNT PLEASANT SC 29464 Zone-3 First-Class Mail Letter 1.10 oz Scheduled Delivery Day: Thu 12/12/13 Return Rcpt (Green Card) US Certified Label #: 70111570000178797494			\$0.66 \$2.55 \$3.10
Issue PVI:			\$6.31
Total:			\$12.62
Paid by: VISA			\$12.62
Account #:	XXXXXXXXXXXX7043		
Approval #:	014125		
Transaction #:	515		
22 902932900			

For tracking or inquiries go to:
USPS.com or call 1-800-222-1811.
Order stamps at usps.com/stamp or call
1-800-Stamp24. Go to usps.com/clickship
for postage. For
DD-ASK-USPS

FOR COMPLETE THIS SECTION Complete items 1, 2, and 3. Also complete 4 if Restricted Delivery is desired. If your name and address on the reverse do not match we can return this card to you. Attach this card to the back of the mailpiece, in the first flat space permits. Be Approved for: Vincent N. Sottile, Jr. C&S Pest Management 1440 Ben Sawyer Blvd., Suite 1101 #211 Mt. Pleasant, SC 29464	COMPLETE THIS SECTION ON DELIVERY A. Signature ☒ Agent ☐ Addressee X <i>[Signature]</i> B. Received By (Printed Name) ☐ Date of Delivery <i>[Signature]</i> <i>[Signature]</i> C. To delivery address different from item 1? ☐ Yes ☒ No D. If YES, enter delivery address below: ☐ No 3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

Zip Number 7011 1570 0001 7879 7494
Order from service label 10415700011550
Jan 3811, February 2004 Domestic Return Receipt

JW 074

CLEMSON
UNIVERSITY

"CERTIFIED MAIL"

(Consent Order Cover Letter)

Receipt # 70111570000178797494

December 9, 2013

Vincent N. Sottile, Jr.
C & S Pest Management
1440 Ben Sawyer Blvd., Suite 1101#211
Mt. Pleasant, SC 29464

RE: COMMERCIAL APPLICATOR LICENSE CONSENT ORDER

Dear Mr. Sottile:

Reference your March 1, 2007 subterranean termite treatment (when you were operating Isle of Palms Pest Control), and our August 22, 2013 Structural Pest Inspection Report on the structure in reference to Steve Peck, located at 670 Hobcaw Bluff Dr., Mt. Pleasant, S.C. 29464.

Our investigation found that this treatment was made with *Termidor 80WG* (EPA Reg. # 7969-209) using the "Exterior Perimeter/Localized Interior" directions of the label. That section of the label directions requires that exterior concrete structures adjoining the foundation be drilled & treated to complete the exterior perimeter treatment zone. Our inspection found that three "attached slab" elements had not been drilled & treated where they meet the main foundation: 1) front earth filled porch, 2) rear earth filled porch, and 3) garage.

It is a violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act to use any pesticide in a manner inconsistent with the product labeling. This investigation has revealed a violation of the South Carolina Pesticide Control Act. The maximum allowable penalty is one thousand dollars (\$1,000.00) per violation. The Department of Pesticide Regulation is willing to settle this case upon the payment of a civil penalty of **Two Hundred & Fifty Dollars (\$250.00)** which is being levied against your certified applicator license. Please understand this is a settlement agreement that the Department is willing to accept at this time. This proposed enforcement action has been reviewed by the Pest Control Operator Review Committee. The Committee accepts the Department of Pesticide Regulation's findings.

Upon payment of this civil penalty, the Department will consider this matter closed. You have fifteen (15) days in which to sign and return the enclosed consent order at which time the Director will sign and begin the thirty (30) day period during which you must remit your penalty.

Case File # 050913-10-01

License # CA004985



DEPARTMENT OF PESTICIDE REGULATION

511 Westinghouse Road, P.O. Box 20670, Columbia, SC 29206-0670, TEL: 803/645-2150, FAX: 803/645-2170

Regulatory & Public Service Programs, Public Service Division

JW 075

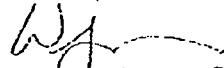
0499

Vincent N. Sottile, Jr.
Consent Order
Page 2

If you fail to remit said civil penalty within the allotted thirty (30) day period, Section 46-9-90 B of the South Carolina Code of Laws authorizes the Department to suspend your South Carolina Certified Applicator License. You have the right to a formal hearing should you so desire.

If you have any questions regarding this or other matters, please feel free to contact me or my staff anytime.

Sincerely,



Michael Weyman, Ed.D
Assistant Department Head
Department of Pesticide Regulation

Enclosure: Consent Order

cc: Cecil Hernandez - DPR
Leo Galloway - DPR
Regulatory Coordinator - DPR

Case File # 050913-10-01
License # CA004985

JW 076

0500

**Regulatory and Public Service Programs
Clemson University**

Review Committee Processing Form

Docket Number 1291 Case File Number 050913-10-01

Date December 3, 2013

Signature [Signature]

This form can be mailed or faxed to the Pendleton DPR Office. Send it Attention to Pamela Latham.

Fax: 864-646-2179

Mail: 511 Westinghouse Road
Pendleton, SC 29670

Agree with assessment of Regulatory Supervisor as presented in case file

Disagree with assessment of Regulatory Supervisor as presented in case file

Factual disagreement

Disagreement with conclusion

Misplaced in enforcement scenario

Misplaced in Penalty level

Other (please specify below)

JW 077

0501

Regulatory and Public Service Programs Clemson University

Review Committee Processing Form

Docket Number 1201 Case File Number 050913-10-01

Date December 3, 2013

Signature JPH

This form can be mailed or faxed to the Pendleton DPR office. Send it Attention to Pamela Latham.

Fax: 864-646-2179

Mail: 511 Westinghouse Road
Pendleton, SC 29670

Agree with assessment of Regulatory Supervisor as presented in case file ✓

Disagree with assessment of Regulatory Supervisor as presented in case file _____

Factual disagreement _____

Disagreement with conclusion _____

Misplaced in enforcement scheme _____

Misplaced in Penalty level _____

Other (please specify below) _____

JW 078

0502

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

BEFORE THE DIVISION REGULATORY
AND PUBLIC SERVICE PROGRAMS OF
CLEMSON UNIVERSITY

APPLICATOR CONSENT ORDER

IN RE: Vincent N. Sottile, Jr.
C & S Pest Management
1440 Ben Sawyer Blvd., Suite 1101#211
Mt. Pleasant, SC 29464 Robert Dennis

Vincent N. Sottile, Jr. is a licensed applicator, formerly with Isle of Palms Pest Control, subsequently with Sottile Pest Management, and now with C & S Pest Management of Mt. Pleasant, South Carolina. Investigations by personnel of the Division indicate a violation of the South Carolina Pesticide Control Act. Prior to a hearing on this matter, discussions were held at which time the terms of the order were agreed upon based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That Vincent N. Sottile, Jr. has been issued Pesticide Applicator License # CA004985 by the Division.
2. That on May 9, 2013, an investigation conducted by the Division indicated that on or about March 1, 2007 an application of the pesticide product Termidor 80WG (EPA Reg. # 7969-209) was made by Vincent N. Sottile, Jr., Isle of Palms Pest Control, to the structure in reference to Steve Peek, located at 670 Hobcaw Bluff Dr., Mt. Pleasant, S.C. 29464.
3. That this application by Vincent N. Sottile, Jr. or his representative, was made in violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act in that the above-mentioned pesticide product (under the "Exterior Perimeter/Localized Interior" section of the label) requires that exterior concrete structures adjoining the foundation be drilled & treated to complete the exterior perimeter treatment zone. The inspection by the Division found that the front earth filled porch, rear earth filled porch, and garage were not treated where those elements meet the main foundation.

CONCLUSIONS OF LAW

1. That Vincent N. Sottile, Jr. or his representative, did violate Section 46-13-90 (1) B of the South Carolina Pesticide Control Act in that on or about March 1, 2007 the pesticide Termidor 80 WG (EPA Reg. # 7969-209) was applied in a manner which is inconsistent with the labeling for this pesticide product.

Case File # 050913-10-01
License # CA004985

JW 079

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

BEFORE THE DIVISION REGULATORY
AND PUBLIC SERVICE PROGRAMS OF
CLEMSON UNIVERSITY

APPLICATOR CONSENT ORDER

IN RE: Vincent N. Sottile, Jr.
C & S Pest Management
1440 Ben Sawyer Blvd., Suite 1101#211
Mt. Pleasant, SC 29464 Robert Dennis

Vincent N. Sottile, Jr. is a licensed applicator, formerly with Isle of Palms Pest Control, subsequently with Sottile Pest Management, and now with C & S Pest Management of Mt. Pleasant, South Carolina. Investigations by personnel of the Division indicate a violation of the South Carolina Pesticide Control Act. Prior to a hearing on this matter, discussions were held at which time the terms of the order were agreed upon based on the following Findings of Fact and Conclusions of Law:

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2. That on May 9, 2013, an investigation conducted by the Division indicated that on or about March 1, 2007 an application of the pesticide product Termidor 80 WG (EPA Reg. # 7969-209) was made by Vincent N. Sottile, Jr., Isle of Palms Pest Control, to the structure in reference to Steve Peek, located at 670 Hobcaw Bluff Dr., Mt. Pleasant, S.C. 29464.
3. That this application by Vincent N. Sottile, Jr. or his representative was made in violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act in that the above-mentioned pesticide product (under the "Exterior Perimeter/Localized Interior" section of the label) requires that exterior concrete structures adjoining the foundation be drilled & treated to complete the exterior perimeter treatment zone. The inspection by the Division found that the front earth filled porch, rear earth filled porch, and garage were not treated where those elements meet the main foundation.

CONCLUSIONS OF LAW

1. That Vincent N. Sottile, Jr. or his representative did violate Section 46-13-90 (1) B of the South Carolina Pesticide Control Act in that on or about March 1, 2007 the pesticide Termidor 80 WG (EPA Reg. # 7969-209) was applied in a manner which is inconsistent with the labeling for this pesticide product.

Case File # 050913-10-01
License # CA004985

JW 080

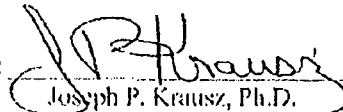
Applicator Consent Order
Page 2

2. That applicators who violate the provisions of the South Carolina Pesticide Control Act may be assessed a civil penalty by the Director of not more than one thousand dollars for each offense. THEREFORE, IT IS SO ORDERED AND AGREED, that not later than thirty days from the date of this Order:

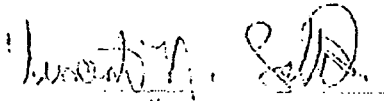
Vincent N. Sottile, Jr. shall pay to the Division a civil penalty of **Two Hundred & Fifty Dollars (\$250.00)**. Make check payable to: Clemson University (mail to Department of Pesticide Regulation, 511 Westinghouse Rd., Pendleton, S.C. 29670).

DEPARTMENT OF PESTICIDE
REGULATION

BY:


Joseph P. Krausz, Ph.D.
Department Head

December 9, 2013
Pendleton, South Carolina

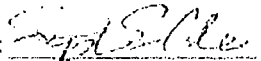

Signature
Vincent N. Sottile, Jr.

1-15-2014
Date

IT IS SO ORDERED

DIVISION OF REGULATORY AND
PUBLIC SERVICE PROGRAMS

BY:


Stephen E. Cole, Ed.D.
Interim Director

2/14, 2014
Pendleton, South Carolina

cc: Cecil Hernandez - DPR
Lee Galloway - DPR
Regulatory Coordinator - DPR

Case File # 050913-10-01
License # CA004985

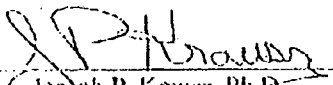
JW 081

0505

2. That applicators who violate the provisions of the South Carolina Pesticide Control Act may be assessed a civil penalty by the Director of not more than one thousand dollars for each offense. THEREFORE, IT IS SO ORDERED AND AGREED, that not later than thirty days from the date of this Order:

Vincent N. Sottile, Jr. shall pay to the Division a civil penalty of **Two Hundred & Fifty Dollars (\$250.00)**. Make check payable to: Clemson University (mail to Department of Pesticide Regulation, 511 Westinghouse Rd., Pendleton, S.C. 29670).

DEPARTMENT OF PESTICIDE
REGULATION

BY: 
Joseph P. Krausz, Ph.D.
Department Head

December 9, 2013
Pendleton, South Carolina

Signature
Vincent N. Sottile, Jr.

Date

IT IS SO ORDERED

DIVISION OF REGULATORY AND
PUBLIC SERVICE PROGRAMS

BY: _____
Stephen E. Cole, Ed.D.
Interim Director

_____, 2013
Pendleton, South Carolina

cc: Cecil Hernandez - DPR
Lee Galloway - DPR
Regulatory Coordinator - DPR

Case File # 050913-10-01
License # CA004985

JW 082

0506

Memo:

To: Mike Weyman, Ed.D
Assistant Department Head

From: Melonie Molloseau
Regulatory, Grants and Enforcement Coordinator

Date: November 25, 2013

Subject: PCO Review Committee Meeting – December 3, 2013

The following information delineates the two (2) cases which are to be reviewed Tuesday, December 3, 2013 at 1:00 pm via conference call for the PCO Review Meeting. The next PCO Review Committee meeting is scheduled for January 7, 2013.

<u>Docket Number</u>	<u>Case Number</u>	<u>Complainant</u>	<u>Case Type</u>	<u>Pest Control Company</u>
1201	050913-10-01	Steve Peck	STR	C&S Pest Management (Vincent Sottile, Jr.)
1202	083013-31-01	Israel Robinson	UNG	Affordable Pest Control (Israel J Robinson)

JW 083

0507

Lee,

Turn around on this report was
36 Days. This was due to the fact a
problem catching the PCC. Soluble since
he sold his business and was leaving.

Curt



"CERTIFIED MAIL"
(Consent Order Cover Letter)
Receipt #

Vincent N. Sottile, Jr.
C & S Pest Management
1440 Ben Sawyer Blvd., Suite 1101#211
Mt. Pleasant, SC 29464

RE: COMMERCIAL APPLICATOR LICENSE CONSENT ORDER

DEPARTMENT OF PESTICIDE
REGULATION

Dear Mr. Sottile:

Clemson University
511 Westinghouse Road
Piedmont, SC
29670

P 864-646-2160
F 864-646-2179

Reference your March 1, 2007 subterranean termite treatment (when you were operating Isle of Palms Pest Control), and our August 22, 2013 Structural Pest Inspection Report on the structure in reference to Steve Peek, located at 670 Hobcaw Bluff Dr., Mt. Pleasant, S.C. 29464.

Our investigation found that this treatment was made with *Termidor* 80WG (EPA Reg. # 7969-209) using the "Exterior Perimeter/Localized Interior" directions of the label. That section of the label directions requires that exterior concrete structures adjoining the foundation be drilled & treated to complete the exterior perimeter treatment zone. Our inspection found that three "attached slab" elements had not been drilled & treated where they meet the main foundation: 1) front earth filled porch, 2) rear earth filled porch, and 3) garage.

It is a violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act to use any pesticide in a manner inconsistent with the product labeling. This investigation has revealed a violation of the South Carolina Pesticide Control Act. The maximum allowable penalty is one thousand dollars (\$1,000.00) per violation. The Department of Pesticide Regulation is willing to settle this case upon the payment of a civil penalty of **Two Hundred & Fifty Dollars (\$250.00)** which is being levied against your certified applicator license. Please understand this is a settlement agreement that the Department is willing to accept at this time. This proposed enforcement action has been reviewed by the Pest Control Operator Review Committee. The Committee accepts the Department of Pesticide Regulation's findings.

Upon payment of this civil penalty, the Department will consider this matter closed. You have fifteen (15) days in which to sign and return the enclosed consent order at which time the Director will sign and begin the thirty (30) day

Case File # 050913-10-01
License # CA004985

nclemson.sottile

JW 085

0509

Vincent N. Sottile, Jr.
Consent Order
Page 2

period during which you must remit your penalty. If you fail to remit said civil penalty within the allotted thirty (30) day period, Section 46-9-90 B of the South Carolina Code of Laws authorizes the Department to suspend your South Carolina Certified Applicator License. You have the right to a formal hearing should you so desire.

If you have any questions regarding this or other matters, please feel free to contact me or my staff anytime.

Sincerely,

Michael Weyman, Ed.D
Assistant Department Head
Department of Pesticide Regulation

Enclosure: Consent Order

cc: Cecil Hernandez - DPR
Lee Galloway - DPR
Regulatory Coordinator - DPR

Case File # 050913-10-01
License # CA004985

JW 086

0510

Case File Number: _____

**Report of Structural Pest Inspection**

Department of Pesticide Regulation
511 Westinghouse Road
Pendleton, SC 29670
864.646.2150
<http://dpr.clemson.edu>

Date Issued: August 22, 2013

Inspector: Cecil Hernandez

Homeowner: Steve Peek

CORRECTION TO THE REPORT OF STRUCTURAL PEST INSPECTION DATED JULY 23, 2013

On May 09, 2013 Cecil Hernandez, Pesticide Regulatory Specialist, Department of Pesticide Regulation, inspected property in reference to Steve Peek located at 670 Hobcaw Bluff Drive, Mt. Pleasant, SC 29464. This report details those findings as they relate to wood destroying organisms, their damage, and standard procedure required to control and report the presence of those organisms.

This inspection is based upon visible evidence in readily accessible areas only, and does not attempt to reveal or address all damages which may be present. All references to direction in this report are given from and facing the front of the structure. This inspection addresses only the accessible portions of the crawlspace of the main structure (see attached graph). Please note that portions of the attached slab garage had the sheet rock removed from the side walls as well as the ceiling, leaving the wooden supports visible for inspection.

This inspection revealed subterranean termite damage and intact or partial (broken) subterranean termite shelter tubes scattered throughout the main portion of the crawlspace (in the subfloor, joists, girder, and sill) and scattered throughout the attached slab garage (in the studs, ceiling, ceiling joists, top plate, sheathing, and door frame) (see attached graph). Although no live subterranean termites were observed, the presence of intact subterranean termite shelter tubes is generally accepted as presumptive evidence of activity. The possibility of an active infestation of subterranean termites cannot be conclusively dismissed. It would be prudent to have the structure treated by a South Carolina licensed Pest Control company and put under a contract (being sure that contract includes Formosan termite coverage, since the structure is in an area known to have a strong Formosan termite presence).

This structure was treated for subterranean termites by Isle of Palms Pest Control, Inc (IOPPC) on or about March 26, 2002 with both the Exterra Termite Interception and Baiting System (being the primary termite treatment) and a supplement liquid termiticide treatment of Termidor 80WG being used. The baiting system was removed on or about March 1, 2007 and a liquid termiticide treatment was performed with Termidor 80WG, doing a post-construction exterior perimeter/localized interior

JW 087

Page two

(EP/LI structural termite treatment). During this treatment the following Section of the South Carolina Pesticide Control Act was violated:

- 1) Section 46-13-90 (1) B: " Made a pesticide...application inconsistent with the labeling...for that pesticide ..."

The label for Termidor WG (under the EP/LI portion) states " Termidor 80 WG must be applied in a manner to provide a continuous treatment zone...drilling and sub-slab treatment is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone..." The following areas were required to complete the continuous treatment zone and were not treated:

- * Did not drill and treat the soil in the expansion joint area of the front earth filled porch.
- * Did not drill and treat the soil in the expansion joint area of the back earth filled porch.
- * Did not drill and treat the soil in the expansion joint area of the right side of the attached slab garage.

IOPPC changed their name to SPM Pest Management on July 1, 2011. The contract expired on this structure in March of 2012. SPM Pest Management was called out to treat for termites on November 9, 2012, which they did using the termiticide Prothor WP. The structure sold on December 4, 2012, with the contract not being extended to the new owners. SPM Pest Management was sold to Terminix Services on May 14, 2013.

At the time of this inspection wood moisture-content readings in the substructure generally ranged from 14% to 15% with readings below 20% considered not excessive. Decay damage and wood moisture-content readings of 14% to 15% were observed in the main crawlspace scattered throughout. While moisture readings below 20% are not considered excessive, the presence of decay damage there indicates that active decay fungi have been present for significant periods of time in the past.

Questions have arisen regarding the accuracy of an Official South Carolina Wood Infestation Report (OSCWIR) in reference to this structure issued by Delano M. Francis of Buzz Off Termite & Pest Control, LLC. on November 06, 2012. This OSCWIR appears to have met the requirements of Section 27-1085 K of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act.

Because this investigation may provide the basis for enforcement action against the Designated Certified Applicator and/or the Business License, and if there is additional information not contained herein or not previously provided which the regulated person wishes this Department to consider in determining its enforcement response, it should be sent, in writing, to the below named Regulatory Specialist. To be considered it must be postmarked ten days of the issuance of this report.

CASE FILE NUMBER: 050913-10-01

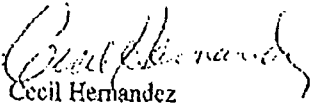
JW 088

0512

Page three

It is beyond the scope of this report and agent to assess the need for repairs. Such evaluation should be made by a qualified contractor, building expert, or structural engineer.

Submitted by


Cecil Hernandez

cc:'s Lee Galloway
DPR Pendleton Office
Steve Peck.
Vincent Sottile, C & S Pest Management.
Delano Francis, Buzz Off Termite & Pest Control.
Tom Nolan, Nolan and Associates.

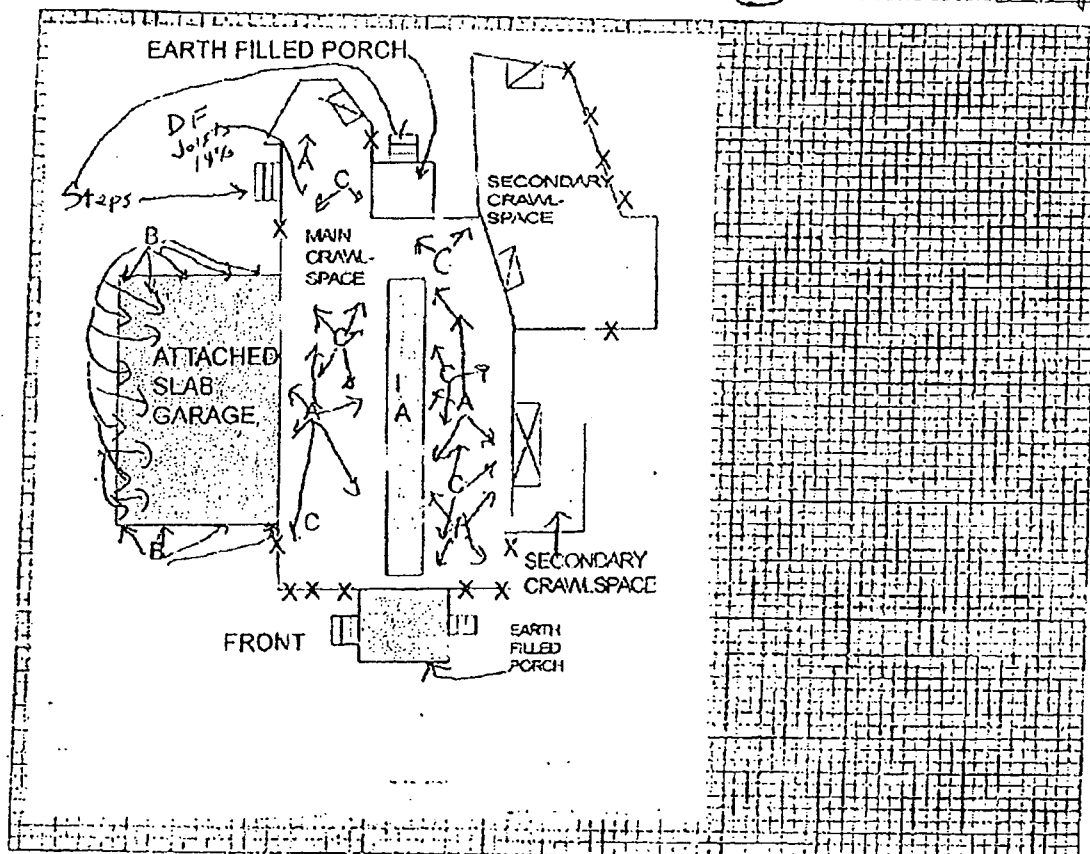
CASE FILE NUMBER: 050913-10-01

JW 089

0513

DEPARTMENT OF PESTICIDE REGULATION
Wood Destroying Organisms Activity And/Or Damage Graph

OWNER'S NAME Steve Perik DATE May 9, 2013
ADDRESS OF STRUCTURE 670 Hobem Bluff Drive Mt. Pleasant SC 29661
HOME PHONE [REDACTED] BUSINESS PHONE [REDACTED] INSPECTED BY HERNANDEZ
VAPOR BARRIER PRESENT? (YES) NO SUBSTRUCTURE INSULATED? (NO) AGE OF STRUCTURE 10 yrs



NOTE: DRAWING NOT TO SCALE

DAMAGE AND OTHER SYMBOLS KEY

WOOD DESTROYING INSECTS	FUNGI/MOISTURE RELATED	STRUCTURAL	OTHER SYMBOLS
CA = carpenter ant	☉ = damage area delineated	☐ = chimney	A=DST scattered throughout Subfloor/joists/ Girder/sill
CB = carpenter bee	F = fungi	☐ = crawlspace access	B=DST scattered Throughout Studs/ceiling/ Joists/ top Plate/sheathing Door frame
DW = drywood termite	% = percentage wood moisture content	⊕ = earth filled	C= DF 15% in joists/ (Scattered)
OHB = old house borer	SMM = surface molds & mildews	✕ = foundation vent	
OWB = other wood borers	SW = standing water	LA = inaccessible area	
FPB = powder post beetle		• = plumbing leak	
ST = subterranean termite		RPRS = repairs	
		☒ = well vents	
		WTG = wood to ground contact	

A "D" placed before an activity symbol indicates damage from that pest exists.

This inspection graph is based on visible evidence of readily accessible areas and does not make any attempt to remove insulation, carpeting, paneling, etc., to search for hidden damage. If hidden damage is found, hidden damage is likely to exist.

JW 090

Case File Number: _____

CLEMSON

U N I V E R S I T Y

Report of Structural Pest Inspection

Department of Pesticide Regulation
511 Westinghouse Road
Pendleton, SC 29670
864.646.2150
<http://dpr.clemson.edu>

Date Issued: July 23, 2013

Inspector: Cecil Hernandez

Homeowner: Steve Peek

On May 09, 2013 Cecil Hernandez, Pesticide Regulatory Specialist, Department of Pesticide Regulation, inspected property in reference to Steve Peek located at 670 Hobcaw Bluff Drive, Mt. Pleasant, SC 29464. This report details those findings as they relate to wood destroying organisms, their damage, and standard procedure required to control and report the presence of those organisms.

This inspection is based upon visible evidence in readily accessible areas only, and does not attempt to reveal or address all damages which may be present. All references to direction in this report are given from and facing the front of the structure. This inspection addresses only the accessible portions of the crawlspace of the main structure (see attached graph). Please note that portions of the attached slab garage had the sheet rock removed from the side walls as well as the ceiling, leaving the wooden supports visible for inspection.

This inspection revealed subterranean termite damage and intact or partial (broken) subterranean termite shelter tubes scattered throughout the main portion of the crawlspace (in the subfloor, joists, girder, and sill) and scattered throughout the attached slab garage (in the studs, ceiling, ceiling joists, top plate, sheathing, and door frame) (see attached graph). Although no live subterranean termites were observed, the presence of intact subterranean termite shelter tubes is generally accepted as presumptive evidence of activity. The possibility of an active infestation of subterranean termites cannot be conclusively dismissed. It would be prudent to have the structure treated by a South Carolina licensed Pest Control company and put under a contract (being sure that contract includes Formosan termite coverage, since the structure is in an area known to have a strong Formosan termite presence).

This structure was treated for subterranean termites by Isle of Palms Pest Control, Inc (IOPPC) on or about March 26, 2002 with both the Exterra Termite Interception and Baiting System (being the primary termite treatment) and a supplement liquid termiticide treatment of Termidor 80WG being used. The baiting system was removed on or about March 1, 2007 and a liquid termiticide treatment was performed with Termidor 80WG, doing a post-construction exterior perimeter/localized interior

JW 091

0515

(EP/LI structural termite treatment). During this treatment the following Section of the South Carolina Pesticide Control Act was violated:

- 1) Section 46-13-90 (1) B: "Made a pesticide...application inconsistent with the labeling...for that pesticide ..."

The label for Termidor WG (under the EP/LI portion) states "Termidor 80 WG must be applied in a manner to provide a continuous treatment zone...drilling and sub-slab treatment is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone..." The following areas were required to complete the continuous treatment zone and were not treated:

- * The void between the front earth filled porch and the foundation wall was not drilled and treated.
- * The void between the back earth filled porch and the foundation wall was not drilled and treated.
- * The void between the left back brick steps and the brick foundation wall was not drilled and treated.
- * The void between the back of the attached slab garage and the foundation wall was not drilled and treated.

change to attached slab
IOPPC changed their name to SPM Pest Management on July 1, 2011. The contract expired on this structure in March of 2012. SPM Pest Management was called out to treat for termites on November 9, 2012, which they did using the termiticide Prothor WP. The structure sold on December 4, 2012, with the contract not being extended to the new owners. SPM Pest Management was sold to Terminix Services on May 14, 2013.

At the time of this inspection wood moisture-content readings in the substructure generally ranged from 14% to 15% with readings below 20% considered not excessive. Decay damage and wood moisture-content readings of 14% to 15% were observed in the main crawlspace scattered throughout. While moisture readings below 20% are not considered excessive, the presence of decay damage there indicates that active decay fungi have been present for significant periods of time in the past.

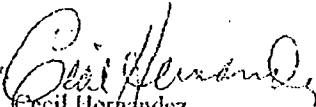
Questions have arisen regarding the accuracy of an Official South Carolina Wood Infestation Report (OSCWIR) in reference to this structure issued by Delano M. Francis of Buzz Off Termite & Pest Control, LLC. on November 06, 2012. This OSCWIR appears to have met the requirements of Section 27-1085 K of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act.

Because this Investigation may provide the basis for enforcement action against the Designated Certified Applicator and/or the Business License, and if there is additional information not contained herein or not previously provided which the regulated person wishes this Department to consider in determining its enforcement response, it should be sent, in writing, to the below named Regulatory Specialist. To be considered it must be postmarked ten days of the issuance of this report.

Page three

It is beyond the scope of this report and agent to assess the need for repairs. Such evaluation should be made by a qualified contractor, building expert, or structural engineer.

Submitted by


Cecil Hernandez

cc's Lee Galloway
DPR Pendleton Office
Steve Peck.
Vincent Sottile, C & S Pest Management.
Delano Francis, Buzz Off Termite & Pest Control.
Tom Nolan, Nolan and Associates.

CASE FILE NUMBER: 050913-10-01

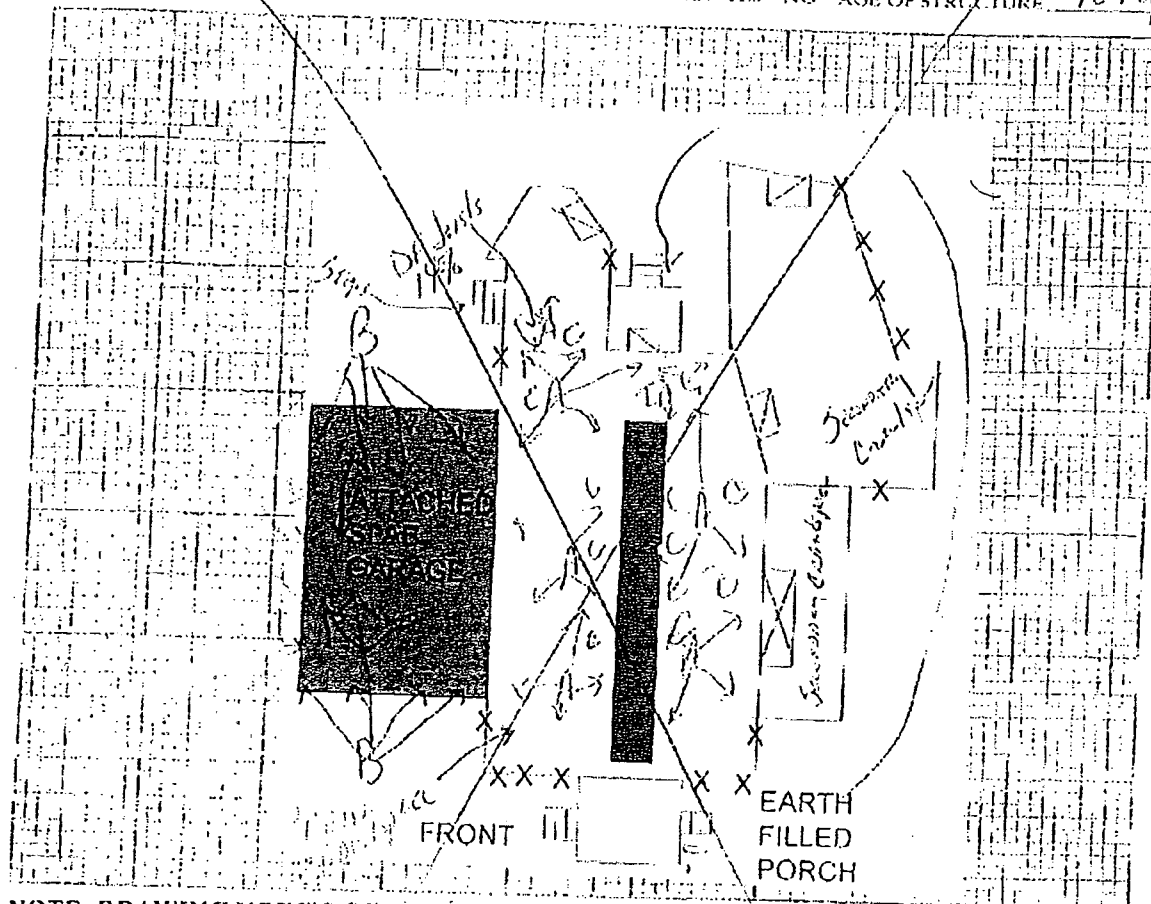
JW 093

0517

DEPARTMENT OF PESTICIDE REGULATION

Wood Destroying Organisms Activity And/Or Damage Graph

OWNER'S NAME Steve Beck DATE May 9, 2013
 ADDRESS OF STRUCTURE 676 Hickory Bluff Drive Madison SC 29104
 HOME PHONE [REDACTED] BUSINESS PHONE [REDACTED] INSPECTED BY Neyland
 VAPOR BARRIER PRESENT? YES NO SUBSTRUCTURE INSULATED? YES NO AGE OF STRUCTURE 10 years



NOTE: DRAWING NOT TO SCALE

DAMAGE AND OTHER SYMBOLS KEY

WOOD DESTROYING INSECTS	FUNGUS/MOISTURE RELATED	STRUCTURAL	OTHER SYMBOLS
CA = carpenter ant	= damage area delineated	= chimney	A = DST SCATTERED THROUGHOUT SUBFLOOR/JOISTS/GIRDER/SILL
CB = carpenter bee	F = fungi	= crawl space access	B = DST SCATTERED THROUGHOUT STUDS/CEILING/ROOF/PLATE/SHEATHING
DW = drywood termite	% = percentage wood moisture content	= earth filled	
HB = old house borer	SMM = surface molds & mildews	= foundation vent	
NB = other wood borers	SW = standing water	IA = inaccessible area	
PB = powder post beetle		• = plumbing leak	
ST = subterranean termite		RPR = repairs	
		= well vents	
		WTG = wood to ground contact	

placed before an activity symbol indicates damage from that pest exists.

Inspection graph is based on visible evidence of readily accessible areas and does not make any attempt to remove insulation, carpeting, paneling, etc., to search for hidden damage and, hidden damage is likely to exist.

JW 094

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Ernesto Rodriguez

3rd

Regional Sales Manager - West at PROTEGO (USA), Inc.
Seattle, Washington | Business Supplies and Equipment

Previous LESER US, Alliant Techsystems (ATK) - Lake City Ammunition Plant, Lake City MO

Education Missouri University of Science and Technology

[Send Ernesto InMail](#)

123
connections

<https://www.linkedin.com/in/ernesto-rodriguez-b740712b>

Background



Experience

Regional Sales Manager - West

PROTEGO (USA), Inc.

April 2016 – Present (8 months) | Greater Seattle Area

Regional Sales Manager - West US (Mountain and Pacific states)

LESER US

October 2011 – March 2016 (4 years 6 months) | Greater Seattle Area

- Regional management coverage as new Representative companies established by LESER in West.
- Sales growth over responsible periods: West Canada \$721K in 2010 to \$1.35M in 2013; Latin Amer. \$409K in 2010 to \$1.45M in 2012; West US: \$30K in 2010 to \$1.08M 2014 and \$1.50M 2015
- Established and managed cooperatively internal LESER planning strategies with Representatives companies customized to the strengths, weaknesses and capabilities of their organizations.

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Inside Sales manager

LESER US

January 2007 – October 2011 (4 years 10 months) | Charlotte, North Carolina Area

- Hired and trained four sales staff.
- Created training program and work instructions for Inside Sales staff.
- Installed weekly, monthly and quarterly reports to monitor production, sales work metrics, customer growth by industry classifications and Sales Representative company.
- Managed and improved program for inventory to keep inventory up with sales growth and also to match market demands.
- Trained replacing Inside Sales Manager and Operations Manager (new position) to take over work.

Inside Sales Engineer

LESER US

October 2005 – December 2006 (1 year 3 months) | Greater St. Louis Area

- First domestic US employee hired in LESER US.
- Provided quotation and technical clarification for large-scale project inquiries – the largest at \$250,000, remaining the record for several years.
- Created quotation and order handling processes used until SAP was installed in May 2007.
- Marketing assistance with: email campaigns, price list mailings, industry specific advertisements and product literature corrections, including grammar.
- General accounting, book-keeping and assistance with end-of-year tax reporting.

Manufacturing Engineering Intern

Alliant Techsystems (ATK) - Lake City Ammunition Plant, Lake City MO

June 2004 – August 2004 (3 months) | Kansas City, Missouri Area

- Provided troubleshooting for quality concerns with non-conforming material.
- Enabled distributed control system for TNR reactor to output data in file form and then performed energy balance on the TNR reactor.
- Worked around high explosives requiring thorough compliance with safety procedures.
- Assisted in qualifying two new vendors at plant.



Skills

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Radian Alberto Ruiz marmolejo
ASESOR INDUSTRIAL en TUVACOL S.A.

Robinson Orozco Tuvacol
ASESOR COMERCIAL en TUVACOL S.A.

Eudy Santos
Estudiante en Universidad Dominicana O&M

Gustavo Yacaman
gerente en tuvacol

Kim Kern
Retired

How You're Connected

You



Leah Moody

Leah can introduce you to
someone who knows Ernesto



x

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7 Project Management



7 Management



6 Key Account Management



5 Technical Product Sales



5 International Sales



4 Process Control



4 Strategic Planning



3 Fluid Power



3 Industrial Distribution



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2 Control Valves 2 Sales 2 Manufacturing 1 Actuators

1 Customer Satisfaction 1 Negotiation 1 Engineering

1 Customer Communication 1 Product Development 1 Sales Management

SAP Implementation



Education

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Western Regional Sales Manager at ReTrans ...
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Recommendations

Given (1)

**Doug Sheridan**

Owner

“ I believe it is easy to work with Mr. Sheridan. He supplied me good equipment at reasonable cost. When installing a tankless water heater they took extra time to reorganize/shorten piping and installed a wall outlet in a good position without additional cost. The work they performed was clean and of quality.

March 16, 2011, Ernesto was Doug's client

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$DFW = 308 \times \frac{4}{70} = 173 \text{ g/dm}^3$
 $P_{\text{air}} = 70 \times 1.09 \text{ g/dm}^3 = 76.3 \text{ g/dm}^3$
 $\hline 155 \text{ g/dm}^3$

CLEMSON UNIVERSITY DEPARTMENT OF PESTICIDE REGULATION
VOLUNTARY AFFIDAVIT

DATE 6-13-13 NAME Michael J. Gault
ADDRESS 2073 W. 1st Ave. Oakland CITY Wash.
STATE SC ZIP 29492 COUNTY Durham

Before me, an employee of Clemson University Department of Pesticide Regulation, pursuant to the authority under the South Carolina Pesticide Control Act Section 46-13-220, South Carolina Code of Laws, 1976, the aforesaid individual deposes under oath and says:

[illegible]

I understand that this statement is admissible in a court of law, in my behalf, should it need be. I have read and understand this statement and to the best of my knowledge, it is the truth, the whole truth and nothing but the truth. I have been provided a copy of this statement.

Michael A. B. B.
SIGNATURE OF PERSON GIVING STATEMENT

Beate Menger

Subscribed and sworn before me at Walla Walla, WA

this 13th day of June 1943 City and State NY

[Signature]
Notary Public

My commission expires 12/31/2007
Date

WFO 10 01

PAGE 1 of 1

CLEMSON UNIVERSITY DEPARTMENT OF PESTICIDE REGULATION
VOLUNTARY AFFIDAVIT

DATE 5-16-13 NAME Francis M. Delano
ADDRESS 418 King St CITY Mt Pleasant
STATE SC ZIP 29464 COUNTY Charleston

I, the undersigned, an employee of Clemson University Department of Pesticide Regulation, pursuant to the authority under the South Carolina Pesticide Control Act Section 46-13-220, South Carolina Code of Laws, 1926, the aforesaid individual deposes under oath and says:

I did an official SC Wood Infestation Report on 6-10-11 on
off in Mt. Pleasant SC. On the report, I noted some
white saws to work on the front, back and
in section of landscape. I was not including
the addition on the right side and addition on the
left side. Since they are additions with separate
plans. When had no damage to them.

I understand that this statement is admissible in a court of law, in my behalf, should it need be. I have read and understand this statement
to the best of my knowledge, it is the truth, the whole truth and nothing but the truth. I have been provided a copy of this statement.

Francis M. Delano Insect
SIGNATURE OF PERSON GIVING STATEMENT TITLE

Subscribed and sworn before me at Mt. Pleasant SC
City and State

16th day of May 2013
Ed J. Hernandez My commission expires 12/13/20
Notary Public Date

GPFS-33-2820-0111 (6/13)

JW 098

0527

TERMITE SERVICE AGREEMENT

SOTTILE PEST MANAGEMENT

P.O. Box 448
ISLE OF PALMS, S.C. 29451
vsottilejr@comcast.net
Phone (843) 218-1749
Fax (843) 849-0172

050913 10 01

Paul Dominick	670 Hobcaw Bluff Dr
670 Hobcaw Bluff Dr.	Mt Pleasant, SC
Mt Pleasant, SC	Same
Residential home	
03/01/2007	03/01/2012
SE	☐ MONTHLY ☐ QUARTERLY ☒ ANNUAL

Scottile Pest Management guarantees, for a period of one year effective 03/01/2007 through 03/01/2008 for the sum of \$ \$250.00 to protect the identified property against new eastern subterranean termite damage (hereinafter called "New Damage" and defined below). Scottile Pest Management will reinspect annually, for a fee of \$ \$250.00 to guarantee bond. Due to the short term life of chemicals on the market today the guarantee of the bond will expire in 03/2012

After expiration date of the bond, Scottile Pest Management reserves the right to re-evaluate the property and give the owner an estimate on retreating the property to guarantee against new damage.

If new damage to the structure or contents occurs during the contract terms, Scottile Pest Management will, upon notification and inspection, arrange for necessary repairs and pay the cost of labor and materials thereof. New damage is that damage done by eastern subterranean termites over and above existing damage at the time this contract was originally entered into with live eastern subterranean termites being found in the damaged area. Scottile Pest Management liability for repair to the protected structure shall not exceed \$500,000.00.

Purchaser agrees to arrange with Scottile Pest Management for additional service and adjustment to the annual extension charge in the event of additions or alteration to the property.

Upon transfer of ownership of the identified property, protection against eastern subterranean termite damage can be continued upon the request of the new owner. In the event the new owner fails to request continued coverage, this Termite Protection Plan will terminate automatically as of the date of change of ownership.

ANY ADDITIONAL PROVISIONS ATTACHED HERETO INCLUDING GENERAL CONDITIONS ARE PART OF THIS AGREEMENT.

SERVICE GUARANTEE. We agree to apply chemicals to control above named pests in accordance with terms and conditions of this Service Agreement. All labor and materials will be furnished to provide the most efficient pest control and maximum safety required by federal, state and city regulations.

ANNUAL AGREEMENT CHARGE \$ \$250.00

INITIAL SERVICE CHARGE \$ \$250.00

MONTHLY/QUARTERLY PAYMENTS \$ _____

BY COMPANY [Signature] DATE 03/2007

FOR CUSTOMER _____ DATE _____

JW-099

0528

TERMS AND CONDITIONS

1. **SCOPE OF SERVICE.** The term "SCOPE OF SERVICE" shall mean the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement. The term "SCOPE OF SERVICE" shall include the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement.

2. **WARRANTY.** Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement. Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement. Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement.

3. **WATER LEAKAGE AND ACIDAL VERMIN.** Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement. Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement. Seattle Pest Management, Inc. ("Seattle Pest Management") warrants that the work to be performed by Seattle Pest Management, Inc. ("Seattle Pest Management") under this Agreement will be performed in accordance with the terms of this Agreement.

4. **EXCESS DIRT BUILD-UP.** It is possible for the exterior of buildings to have excess dirt build-up, e.g. wind-blown sand; landscaped dirt in yards and flower beds, etc. against lattice work and siding above the treated areas. If termite damage in this area is detected then it is the responsibility of the owner to correct the defects and for repairing any damage which was caused from the build-up condition. Seattle Pest Management will, upon completion of repairs necessary to correct said defects, provide additional treatment to control infestation in this area. The cost of said additional treatment will be paid by the Purchaser.

5. **ENTIRE AGREEMENT.** This Guarantee, the Agreement signed at time of purchase constitutes the entire agreement between the parties and no other representations or statements will be binding upon the parties.

6. **NOTICE OF CLAIMS, ACCESS TO PROPERTY.** A claim for breach of this Agreement will be made immediately in writing to any Seattle Pest Management office. Seattle Pest Management is only obligated to perform under this Agreement provided the Purchaser allows full access to the identified property for any purpose contemplated by this Agreement, including but not limited to re-inspection, whether the inspection was requested by the Purchaser or considered necessary by Seattle Pest Management.

7. **DISCLAIMER.**

A. Seattle Pest Management's liability under this Agreement will be terminated if Seattle Pest Management is prevented from fulfilling its responsibilities under the terms of this Agreement by reason of delays in transportation, shortages of fuel and/or materials, strikes, embargoes, fires, floods, quarantine restrictions, or any other act of God or circumstance or cause beyond the control of Seattle Pest Management.

B. This Agreement does not cover and Isle of Palms Pest Control will not be responsible for:

- (1) Damage resulting from malice, conflict, including but not limited to fungus damage, and/or
- (2) Damage resulting from masonry failure or inadequate drainage.
- (3) Any new addition to the property that was not treated for eastern subterranean termites by Seattle Pest Management will not be protected by this bond and will render, immediately, this Agreement null and void.

C. SEATTLE PEST MANAGEMENT DISCLAIMS ANY LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE WARRANTIES STATED IN THIS AGREEMENT ARE GIVEN IN LIEU OF ANY OTHER GUARANTEE OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **NON-PAYMENT.** In the event of non-payment by the Purchaser, reasonable attorney's fees and cost of collection shall be paid by the Purchaser, whether or not the debt is collected.

ANNUAL REINSPECTION REPORT

4/17/07 ACCOUNT #: 5824

ISLE OF PALMS PEST CONTROL, INC.
P.O. BOX 448
ISLE OF PALMS, SC 29451

CUSTOMER: SHARON DOMINICK
MAILING ADDRESS: 670 HOBCAW BLUFF DR.
CITY STATE-ZIP: MT. PLEASANT, SC 29466
WORK PHONE: [REDACTED]
HOME PHONE: [REDACTED]
SUBDIVISION:

OFFICE PHONE: (843) 886-5858
OFFICE FAX: (843) 216-1749

ADDRESS OF PROPERTY: 670 HOBCAW BLUFF RD.
ANNUAL INSPECTION FEE: \$ 250.00
PERIOD COVERED: MAR 2007 THRU MAR 2008

NOTES

DESCRIPTION OF PROPERTY:

RESIDENTIAL HOME

CONDITIONS OF PROPERTY DURING INSPECTION:

ACTIVE TERMITES None
INACTIVE INFESTATION YES-
WOOD TO GROUND CONTACT YES-
EXCESSIVE MOISTURE CONDITIONS None
FUNGUS DAMAGE SOME OLD PRESENT
CRAWLSPACE OK - DRY -

IF YES, EXPLAIN: THERE IS A OLD TERMITES DAMAGE TO SOME FLOOR JOIST, + SUBFLOORING IN SEVERAL AREAS UNDER THE HOUSE. THIS GOES BACK TO THE INITIAL TIME OF THE TREATMENT OF THE HOUSE WHEN THERE WERE ACTIVE TERMITES FROM THE FRONT OF THE HOUSE TO THE BACK TO THE GARAGE.

ABNORMAL CONDITIONS CONDUCTIVE TO A NEW TERMITE INFESTATION None

IF YES, WHERE?

COMMENTS

SOME OF THE TERMITES DAMAGED WOOD WAS LEFT IN PLACE DURING REMEDIATIONS + RECONSTRUCTION OF THE HOUSE. SPECIAL ATTENTION WILL ALWAYS BE TO THE AREA OF PREVIOUS INFESTATION.

Charles S. H. [Signature]
Inspector

050013 10 01 Tx

ANNUAL REINSPECTION REPORT

5/7/08 ACCOUNT #: 5824

ISLE OF PALMS PEST CONTROL, INC.
P.O. BOX 448
ISLE OF PALMS, SC 29451

CUSTOMER: SHARON DOMINICK
MAILING ADDRESS: 670 HOBCAW BLUFF DR.
CITY-STATE-ZIP: MT. PLEASANT, SC 29466-
WORK PHONE: [REDACTED]
HOME PHONE: [REDACTED]
SUBDIVISION:

OFFICE PHONE: (843) 886-5858
OFFICE FAX: (843) 216-1749

ADDRESS OF PROPERTY: 670 HOBCAW BLUFF RD.
ANNUAL INSPECTION FEE: \$ 250.00
PERIOD COVERED: MAR 2008 Thru MAR 2009

NOTES

DESCRIPTION OF PROPERTY:

RESIDENTIAL HOME

CONDITIONS OF PROPERTY DURING INSPECTION:

ACTIVE TERMITES None
INACTIVE INFESTATION YES-
WOOD TO GROUND CONTACT YES-
EXCESSIVE MOISTURE CONDITIONS None
FUNGUS DAMAGE None
CRAWLSPACE NEEDS TO BE CLEANED OUT.

IF YES, EXPLAIN: I SPOKE WITH MR DOMINICK ABOUT THE CONDITION OF THE CRAWLSPACE. A LOT OF WOOD DEBRIS WAS LEFT IN THE CRAWLSPACE AFTER REPAIRS TO THE SUB-FLOORING & FLOORING. THERE TOO, IS STILL OLD AND TUBES ON FLOOR JOIST & SOME SILLS-

ABNORMAL CONDITIONS CONDUCTIVE TO A NEW TERMITE INFESTATION None
IF YES, WHERE? _____

COMMENTS

ALL IN ALL I FEEL THAT THERE IS NO ACTIVE TERMITES IN THE HOUSE. THE ONLY BEING IN THE AREA ARE IN THE FLOORING UNDER THE RUG IN THE DOOR- ALTHOUGH THERE ARE OLD TUBES PRESENT ON JOIST & SILLS, NONE ARE ACTIVE- WE WILL CONTINUE TO MONITOR ALL AREAS-

Inspector

JW 102

0531

050317 10 01

ANNUAL INSPECTION REPORT

5/16/11 ACCOUNT #: 5824

SOTTILE PEST MANAGEMENT
P.O. BOX 448
ISLE OF PALMS, SC 29451

CUSTOMER: PAUL DOMINICK
MAILING ADDRESS: PO BOX 1149
CITY STATE ZIP: MT. PLEASANT, SC 29465
WORK PHONE: [REDACTED]
HOME PHONE: [REDACTED]
SUBDIVISION: MRS. SUSAN

OFFICE PHONE: (843) 216-1749
OFFICE FAX: (843) 216-1750
sottilepm@comcast.net

ADDRESS OF PROPERTY: 670 HOBRAW BLUFF RD.
ANNUAL INSPECTION FEE: \$ 250.00
PERIOD COVERED: MAR 2011 Thru MAR 2012

NOTES

DESCRIPTION OF PROPERTY:

RESIDENTIAL HOME

CONDITIONS OF PROPERTY DURING INSPECTION:

ACTIVE TERMITES None
INACTIVE INFESTATION YES
WOOD TO GROUND CONTACT None
EXCESSIVE MOISTURE CONDITIONS None
FUNGUS DAMAGE OLD
CRAWLSPACE OK

IF YES, EXPLAIN: OLD TERMITE INFESTATION WITH PREVIOUS TERMITE DAMAGE IS IN MANY AREAS UNDER THE HOUSE ALL OF THIS GOES BACK TO WHEN THE HOUSE WAS BOUGHT FROM THE PREVIOUS OWNER - SWS, FLOOR JOIST & SUB FLOORING IS DAMAGED THROUGHOUT THE CRAWLSPACE

ABNORMAL CONDITIONS CONDUCTIVE TO A NEW TERMITE INFESTATION None
IF YES, WHERE? _____

COMMENTS

THESE CONDITIONS HAVE GOTTEN NO BETTER NOR WORSE OVER THE YEARS

Inspector

JW 103

0532

050913 10 01/14

SOTTILE PEST MANAGEMENT
P.O. BOX 448
ISLE OF PALMS, SC 29451

(843)216 1749 FAX (843)216 1759

TCI

PAUL DOMINICK
PO BOX 1149
MT. PLEASANT, SC 29465-

Invoice No:15889
ACCOUNT #5824

Reference:670 HOBCAW BLUFF RD

Payment Amount: _____

Please remit top portion for proper credit.

Reference:670 HOBCAW BLUFF RD.

Date	Description	Amount
05/16/2011	ANNUAL REINSPECTION & RENEWAL/MARCH-'11	\$ 250.00

Total Amount: \$ 250.00

(PLEASE PAY BY THIS INVOICE - NO STATEMENT WILL BE RENDERED.
THANK YOU FOR YOUR BUSINESS.

JW 104

0533

Search LicNo: ☒ dcat

BNUM: XD 12/31/2013 ED 5/10/1983 Type CA

Categories: See Employees: See Bus Employees:

Lnum: CA004985 San: Bnum: B0001553 Cell:

Fn: VINCENT N Ln: SOTTILE JR Tot: (843) 216-1749

Co: C & S PEST MANAGEMENT Category: Home Tel:

Street: 1440 BEN SAWYER BLVD STE 1101#21 DOB:

City: MT PLEASANT SL: SC Zip: 25454 City: 10

Notes: NAME CHANGED FROM SPM PEST MANAGEMENT TO C & S PEST MANAGEMENT 04/09/13
OWNER CHANGED TO COLVIN COCHRANE AND THE INSURANCE CO CHANGED. SEE FILES FOR C & S

Deleted Applicator Info: Deleted Date:

Reason:

Bus #: B0001553

Business

XD 12/31/2013 ED 5/23/1991 Complete: y

Fn: COLVIN R Ln: COCHRANE Bus Tel: (843) 216-1749

Co: C & S PEST MANAGEMENT Cell:

Street: 1440 BEN SAWYER BLVD STE 1101#211 ☒ Treatment

City: MT PLEASANT St: SC Zip: 25454 City: 10 Deleted Date:

DCA Info: VINCENT N SOTTILE JR CA004985 Reason:

Notes: NAME WAS ISIE OF PALMS PEST CONTROL CHANGED NAME TO SPM PEST 07/01/11

Street 2:

Check Returned Date: Comments: Reason:

Fax: (843) 216-1759 Email Address: SOTTILEPM@COMCAST.NET

Rep: N

St:

Training: ☒

Reg Tech's

for this business search a reg tech

Bait

for this business Search all Bait

Quit

Check Returned Date: Comments: Reason:

In-house Sprayer:

0534
JW 105

Search Name: _____ SSN: _____
 Search Co: BUZZ OFF TERMITE & Complete: ☒
 Search Lic No: _____
☒ deal BNUM: _____ XD 12/31/2013 ED 4/22/2005 Type CA

Applicators		Exams	Dealers	Reports
Categories	See Employees	See Bus Employees		
View Business	Lic Ins	Now Ins		
Locals	Save			

Lnum: CA01525 Ssn: _____ Bnum: B0002851 Cell: _____
 Fm: DELANO M Ln FRANCIS Tel: (843) 216-1819
 Co: BUZZ OFF TERMITE & PEST CNL LLC Category: _____ Home Tel: _____
 Street: 418 KING ST DOB: _____
 City: MT PLEASANT St: SC Zip: 29464 Cty: 10

Notes: RECEIVED REINSTATEMENT NOTICE NO BREAK IN COVERAGE
 RECEIVED REINSTATEMENT NOTICE 12/2/11 NO BREAK IN COVERAGE
 RECEIVED NOTICE OF CANCELLATION ON 11/28/11 EFFECTIVE 12/3/11

Deleted Applicator Info:
 Deleted Date: _____
 Reason: _____

Bus #: B0002851

Business		Ins Info
XD 12/31/2013 ED 5/27/2005	Complete: ☒	Location Info
Fm: DELANO M Ln FRANCIS	Bus Tel: (843) 216-1819	
Co: BUZZ OFF TERMITE & PEST CNL LLC	Cell: _____	
Street: 418 KING ST	Treatment	Deleted Business Info:
City: MT PLEASANT St: SC Zip: 29464 Cty: 10	Deleted Date: _____	
DCA Info: DELANO M FRANCIS CA01525	Reason: _____	
Notes: RECEIVED REINSTATEMENT NO BREAK IN COVERAGE 9/10/12 RECEIVED CANCELLATION NOTICE ON 8/31/12 EFFECTIVE 8/31/12		
Street 2: _____		
Check Returned Date: _____	Comments: _____	Reason: _____
Fax: _____	Email Address: _____	

Check Returned Date: _____ Comments: _____ Reason: _____
 In-house Sprayer: _____

Rep: ☒ N
 St: ☒
 Training: ☒ M
 Reg Tech's
☒ for this business ☒ search a reg tech
 Bait
☒ for this business ☒ Search all Bait
 Quit

050913 10 09

050913 10 09

050013 10 0198

TERMIDOR[®] 80 WG
TERMITICIDE/
INSECTICIDE
in Water Soluble Packs

For sale to, use and storage only by individuals/firms licensed or registered by the state to apply termiticide and/or general pest control products.

ACTIVE INGREDIENT:

liperonil: 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-((1R,S)-(trifluoromethyl)sulfinyl)

-1-H-pyrazole-3-carbonitrile 80%

OTHER INGREDIENTS: 20%

Total: 100%

EPA Reg. No. 7969-209

EPA Est. No. 65387-AR-002

KEEP OUT OF REACH OF CHILDREN.
WARNING/AVISO

Si usted no entiende la etiqueta, busque a alguien con quien se le explique en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

See inside for additional First Aid, Precautionary Statements and Directions for Use.

For Product Use Information, Call 1-877-TERMIDOR

**FOR MEDICAL AND TRANSPORTATION
EMERGENCIES ONLY CALL 24 HOURS A DAY
1-800-832-HELP (4357).**

NET CONTENTS: 4x2.61 ounces

Product of France.

81047712

NVA 2010-05-221-0273



TERMIDOR[®]

© 2010 BASF Corporation

Produced for:

BASF Corporation

26 Davis Drive

Research Triangle Park, NC 27709

BASF

The Chemical Company

JW 107

0536

050013 10 01D

TERMIDOR® 80 WG
TERMITICIDE/
INSECTICIDE
in Water Soluble Packs

For sale to, use and storage only by individuals/firms licensed or registered by the state to apply termiticide and/or general pest control products.

ACTIVE INGREDIENT:

fenopronil: 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-(1,1,1-trifluoro-2-methylsulfonyl)

-1-H-pyrazole-3-carbonitrile 80%

OTHER INGREDIENTS: 20%

Total: 100%

EPA Reg. No. 7969-209

EPA Est. No. 65387-AR-002

KEEP OUT OF REACH OF CHILDREN.
WARNING/AVISO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

See inside for additional First Aid, Precautionary Statements and Directions for Use.

For Product Use Information, Call 1-877-TERMIDOR

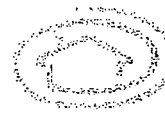
**FOR MEDICAL AND TRANSPORTATION
EMERGENCIES ONLY CALL 24 HOURS A DAY
1-800-832-HELP (4357).**

NET CONTENTS: 4x2.61 ounces

Product of France

81047712

NVA 2010-05-221-0273



TERMIDOR®

© 2010 BASF Corporation

Produced for:

BASF Corporation

26 Davis Drive

Research Triangle Park, NC 27709

BASF

The Chemical Company

JW 108

0537

In general, "foam only" treatment under slabs is appropriate when attempting to maximize horizontal coverage in areas where there is no deep foundation or footing (e.g., around punching entries, and near settlement cracks in concrete slabs). In areas where both lateral spread and deeper vertical penetration of the termiticide is needed both foam and conventional liquid should be used (e.g., adjacent to foundation walls). Foam and liquid applications must be consistent with volume and active ingredient instructions in order to ensure proper application has been made. The volume and amount of active ingredient are essential to an effective treatment. At least 75% of the gallons of the 0.06%, 0.09% or 0.125% **Termidor® 80 WG** termiticide/insecticide finished dilution must be applied as a typical liquid treatment. The remaining 25% or less gallons should be delivered to appropriate locations using a foam application. The total amount of product applied with the combination of foam and liquid finished dilution should be equivalent to that of an application of liquid finished dilution only. Foam applications are generally a good supplement to liquid treatments and they can be helpful in treating difficult areas.

FOAM MIXING INSTRUCTIONS AND APPLICATION

Prepare the finished dilution of **Termidor 80 WG** and mix it with manufacturer's recommended volume of foaming agent in foaming equipment. Apply a sufficient volume of **Termidor 80 WG** foam formulation to provide a continuous treated zone at the recommended rate for specific applications (these various rates are provided in the text of this label). If sufficient foam volume cannot be applied to achieve the recommended rate of **Termidor 80 WG**, apply additional finished dilution of **Termidor 80 WG** as liquid to assure proper treatment volume and concentration in the treated area.

MIXING TABLE FOR TERMIDOR 80 WG FOAM

Termidor 80 WG Use Dilution	Gallons of Finished Dilution	Foam Expansion Ratio**	Finished Foam (gallons)
0.06% 0.09% or 0.125% a.i.*	1.0	25:1	25
	1.66	15:1	
	2.5	10:1	
	5.0	5:1	

* Percentage weight of active ingredient to weight of spray dilution.

Add the manufacturer's recommended quantity of foam agent to the **Termidor 80 WG dilution.

POST-CONSTRUCTION EXTERIOR PERIMETER/LOCALIZED INTERIOR (EP/LI) STRUCTURAL TERMITE TREATMENT*

*Not approved for use in Louisiana.

GENERAL INFORMATION

For post construction applications after the final grade is installed for the purpose of protecting the structure from termite infestation and/or for controlling existing termite populations, **Termidor 80 WG** can be used to protect structures by using the Conventional structural treatment or the Exterior Perimeter/Localized Interior structural treatment. Structural termite protection is achieved by first establishing a continuous treated zone along the exterior foundation of the structure. Localized interior treatments are then made to areas where known termite activity is observed. If no termite activity is observed inside the structure at treatment time, then interior local treatments are not required.

This treatment method is designed to be non-invasive to the interior of the structure by applying a continuous treatment along the exterior foundation and only treating the interior areas that show termite activity. It may not be a conventional complete treatment. If you have questions regarding this treatment consult your lead state agency. **Termidor 80 WG**, when used as recommended in this label, provides effective subterranean termite control.

Termite activity is defined as one or more of the following infestation conditions: either slates (winged termites) have swarmed inside the structure or live termites are found to be active within the structure, or there is clear evidence of termite activity on or in the structure (nest tubes, galleries in wood) and live termites.

DO NOT apply **Termidor 80 WG** as an Exterior Perimeter/Localized Interior treatment at a finished dilution concentration lower than 0.06% or an application volume less than that specified in the APPLICATION VOLUME use directions section of this label.

A. EXTERIOR PERIMETER TREATMENT

When conducting an exterior perimeter application, **Termidor 80 WG** must be applied in a manner to provide a continuous treatment zone to prevent termites from infesting the structure. Read and follow APPLICATION VOLUME use directions on this label if situations are encountered where the soil will not accept the full application volume recommended in the following use directions.

A.1 CONCRETE SLAB ON GROUND (INCLUDING MONOLITHIC, FLOATING AND SUPPORTED CONCRETE SLABS)

Apply along the exterior foundation perimeter by trenching and rodding into the trench or trenching at the rate of 4 gallons finished dilution (0.06%, 0.09% or 0.125% Termidor® 80 WG termiticide/insecticide) per 10 linear feet per foot of depth. Trenches must be a minimum of 6 inches deep, or to the bottom of the footing, and need not be wider than 6 inches. The finished dilution must be mixed with the soil as it is replaced in the trench. Rod holes must be spaced so as to achieve a continuous treatment zone but in no case more than 12 inches apart. However, in no case should the structure be treated below the footing.

Where physical obstructions, such as concrete walkways adjacent to foundation elements, prevent trenching, treatment may be made by rodding alone. When soil type and/or conditions make trenching prohibitive, rodding may be used with rod holes no more than 12 inches apart. Drilling and sub-slab treatment of sub-soil is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone. For driveways, exterior drilling is necessary only around building supports or wall elements that are permanently and physically located at driveway joints. In no case should the structure be treated below the footing.

A.2 BASEMENT AND INACCESSIBLE CRAWL SPACE CONSTRUCTION

Apply along the exterior foundation perimeter by trenching and rodding into the trench or trenching at the rate of 4 gallons finished dilution (0.06%, 0.09% or 0.125% Termidor 80 WG) per 10 linear feet per foot of depth from grade to the top of the footing, or if the footing is more than 4 feet below grade, to a minimum depth of 4 feet. Trenches must be a minimum of 6 inches deep or to the bottom of the footing and need not be wider than 6 inches. When trenching in sloping or tiered soil, the trench must be stepped to ensure adequate distribution and to prevent Termidor 80 WG from running out of the trench. The finished dilution must be mixed with the soil as it is replaced in the trench. Rod holes must be spaced so as to achieve a continuous treatment zone but in no case more than 12 inches apart. However, in no case should the structure be treated below the footing.

Where physical obstructions, such as concrete walkways adjacent to foundation elements, prevent trenching, treatment may be made by rodding alone. When soil type and/or conditions make trenching prohibitive, rodding may be used with rod holes no more than 12 inches apart. Drilling and sub-slab injection treatment of sub-soil is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone. For driveways, exterior drilling is necessary only around building supports or wall elements that are permanently and physically located at driveway joints. In no case should the structure be treated below the footing.

If termite activity is found inside an inaccessible crawl space, the area with termite activity must be treated. A localized interior treatment must be made at the site of the termite activity and at least 2 feet in both directions from the termite activity. Choose the appropriate application technique for treating **INACCESSIBLE CRAWL SPACE CONSTRUCTION** from the Conventional treatment section of this label.

A.3 ACCESSIBLE CRAWL SPACES

BEFORE TREATMENT: Turn off any air circulation system that moves air from area to be treated to an untreated interior space of the structure until application has been completed and all Termidor 80 WG has been absorbed by the soil.

For crawl spaces, apply vertical termiticide treatment at the rate of 4 gallons of 0.06%, 0.09% or 0.125% Termidor 80 WG per 10 linear feet per foot of depth from grade to the top of the footing, or if the footing is more than 4 feet below grade, to a minimum depth of 4 feet. Apply by trenching and rodding into the trench, or trenching. Treat outside the foundation and around all piers and pipes. Where physical obstructions, such as concrete walkways adjacent to foundation elements, prevent trenching, treatment may be made by rodding alone. When soil type and/or conditions make trenching prohibitive, rodding may be used. When the top of the footing is exposed, the applicator must treat the soil adjacent to the footing to a depth not to exceed the bottom of the footing. Drilling and sub-slab injection treatment of sub-soil is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone.

Read and follow mixing and use directions on this label if situations are encountered where the soil will not accept the full application volume.

- Rod holes and trenches must not extend below the bottom of the footing.
- Rod holes must be spaced so as to achieve a continuous treated zone but in no case more than 12 inches apart.
- Trenches must be a minimum of 6 inches deep or to the bottom of the footing, whichever is less, and need not be wider than 6 inches. When trenching in sloping (tiered) soil, the trench must be stepped to ensure adequate distribution and to prevent termiticide from running off. The 0.06%, 0.09% or 0.125% Termidor 80 WG dilution must be mixed with the soil as it is replaced in the trench.

A.4 GARAGES: Attached garage floors should be treated in structures.

SUB-SLAB INJECTION

Sub-slab injection treatments can be made from inside the garage or in cases where this is not possible, by drilling through the foundation from the outside as directed below. Prior to making any treatments, locate all heating/air conditioning ducts, vents, water/sewer lines, and electrical lines/conduits.

Vertical Drilling/Injection: To treat under the slab, drill vertically through the slab along the interior perimeter of the garage foundation. Drill holes along all concrete expansion joints, cracks, plumbing, and utility services penetrating the slab. If it may be necessary to drill holes along one side of the slab adjacent to an interior partition wall if there is clear evidence of termite activity or damage in the wall. All drill holes through the slab should be spaced so as to achieve a continuous treatment zone but in no case be more than 12 inches apart. Inject a 0.06%, 0.09% or 0.125% dilution of **Termidor® 80 WG termiticide/insecticide** into the drilled holes at the rate of 4 gallons per 10 linear feet per foot of depth. For best results, application should be made with a lateral dispersal nozzle. All holes in commonly occupied areas into which material has been applied must be plugged. Plugs must be of a non-cellulose material or covered by an impervious, non-cellulose material such as Portland cement.

Horizontal Drilling/Rodding/Sub-slab Injection from the Exterior of the Garage Foundation: This technique should be used to treat underneath the slab only when interior design does not allow for vertical drilling. Care must be exercised not to run into heating ducts, water/sewer lines, and electrical lines/conduits. Horizontal short-rod drilling practices can be used to establish a continuous treatment zone along the interior perimeter of the foundation. Holes should be drilled from outside the foundation at an angle which allows a finished dilution (0.06%, 0.09% or 0.125%) of **Termidor 80 WG** to be deposited below heating ducts, water/sewer lines, and electrical conduits if present. Horizontal long-rod drilling practices may only be employed to treat areas underneath the slab that are not accessible by vertical rodding or horizontal short-rod drilling. Long rods exceeding 20 feet should not be used. For all horizontal rodding applications, all drill holes through the foundation should be spaced so as to achieve a continuous treatment zone but in no case be more than 12 inches apart. Inject a 0.06%, 0.09% or 0.125% dilution of **Termidor 80 WG** into the drilled holes at the rate of 4 gallons per 10 linear feet per foot of depth. For best results, make applications with a lateral dispersal nozzle. All holes must be plugged. Plugs must be of a non-cellulose material or covered by an impervious, non-cellulose material such as Portland cement.

B. LOCALIZED INTERIOR TREATMENT:

Targeted interior applications may be made to vulnerable areas such as around plumbing/utility lines penetrating floors, bath and/or shower traps, or along expansion joints or settlement cracks as part of a complete treatment. However, if known termite activity exists (as described above) in the structure, on general information, or in areas inside the living spaces (occupied areas of the structure) or non-living spaces (such as crawl spaces, attics, etc.) of the structure, a localized interior treatment must be made in the immediate vicinity (at least 2 feet in two or more directions radiating from the site of the termite activity).

B.1 INTERIOR CONCRETE FLOOR

If termite activity occurs in an interior wall or structural member, the area under the floor and behind the wall adjacent to the evidence must be treated with **Termidor 80 WG** at 0.06%, 0.09% or 0.125% finished dilution at a rate equal to 4 gallons per 10 linear feet. The localized interior treatment must be made at the site of the termite activity and at least 2 feet in two or more directions radiating from the site. Foam can be used to maximize dispersion. Drilled holes in commonly occupied areas must be plugged with a non-cellulose material or covered by an impervious, non-cellulose material such as Portland cement.

B.2 HOLLOW BLOCK FOUNDATIONS / VOIDS

If termite activity occurs in or in the vicinity (within 2 feet) of hollow block foundations or voids in masonry resting on the footing, the wall adjacent to the evidence must be drilled, if not openly accessible, and **Termidor 80 WG** at 0.06%, 0.09% or 0.125% finished dilution must be injected into the void at a rate equal to 2 gallons per 10 linear feet of footing using a nozzle of 25 or less. This localized interior treatment to hollow block must be made at the site of the termite activity and to areas above the termite activity. Treatment must be made at least 2 feet in two or more directions radiating from the site of termite activity or along the wall pier or support post. Foam can be used to maximize dispersion. When using this treatment, access holes should be drilled below the sill plate and should be as close to the footing as is practical. Treatment of voids in block or rubble foundation walls must be closely examined. Applicators must inspect areas of possible runoff as a precaution against application leakage in the treated areas. Some areas may not be treatable or may require mechanical alteration prior to treatment. All leaks resulting in the deposition of **Termidor 80 WG** in locations other than those prescribed on this label must be cleaned up prior to leaving the application site. **DO NOT** allow people or pets to contact contaminated areas or to reoccupy the contaminated areas of the structure until the clean up is completed. The drilled holes in commonly occupied areas must be plugged with a non-cellulose material or covered by an impervious, non-cellulose material such as Portland cement.

B.3 Bath Traps: If termite activity is observed within 2 feet of the bath trap, then exposed soil or soil covered with tar or similar sealant around plumbing and/or drip/slope entry areas must be treated. Tar or sealant may have to be removed to allow for adequate soil treatment. An access door or inspection ports should be installed if one is not already present. After inspection and removal of all wood/cellulose debris, the soil can be treated by rodding or drenching the soil with a 0.06%, 0.09% or 0.125% dilution of **Termidor 80 WG**. Treat with a minimum of 1 gallon to a maximum of 4 gallons of finished dilution per square foot.

B.4 Shower Drains: If termite activity is observed within two feet of the shower drains, then soil beneath and adjacent to shower drains must be treated. Drill through each adjacent to shower drain and apply 0.06%, 0.09% or 0.125% finished dilution of **Termidor® 80 WG termiticide/insecticide** by sub-slab injection to the soil below. Foam can be used to maximize dispersion. Multiple access points may be drilled adjacent to the drain. A directional dispersion tip may be used to enhance treatment of the soil below the drain. Treat soil with a minimum of 1 gallon but no more than 4 gallons finished spray dilution per shower drain. Horizontal riddling can be used to access and treat the soil associated with the shower drain.

RETREATMENT INSTRUCTIONS

Retreatment for subterranean termites can only be performed if there is clear evidence of reinfestation or disruption of the treated zone due to construction, excavation, or landscaping and/or evidence of the breakdown of the termiticide treated zone in the soil. These various re-infested areas may be retreated using a spot, partial or complete treatment(s) in accordance with application techniques described on this label. The timing and type of these retreatments will vary depending on factors such as termite pressure, soil types, soil conditions and other factors which may reduce the effectiveness of the treated zone. Annual re-treatment of the structure is prohibited unless there is clear evidence that reinfestation, treatment zone disruption and/or evidence of breakdown has occurred.

USE WITH OTHER PRODUCTS

When a borate-based termite control product is used as the primary pre-construction treatment for subterranean termites and is applied in accordance to label directions, for use **Termidor 80 WG** may be applied as an exterior perimeter pre-construction treatment using 0.06%, 0.09% or 0.125% dilution. If the exterior perimeter pre-construction treatment option is selected, **Termidor 80 WG** must be applied to provide a continuous treated zone along the exterior foundation of the structure. A complete and thorough horizontal pre-construction treatment with **Termidor 80 WG** under the concrete slab is optional. **Termidor 80 WG** may also be applied to critical areas of the interior of the structure. These areas include plumbing and utility entry slots, bath traps, shower drain penetrations, expansion joints, foundation cracks, and areas of known or suspected termite activity.

For applications to the exterior perimeter and critical areas follow the instructions in the POST-CONSTRUCTION EXTERIOR PERIMETER/LOCALIZED INTERIOR (EP/LI) STRUCTURAL TERMITE TREATMENT section of this label.

POSTS, POLES, WOOD LANDSCAPE ORNAMENTATION

DO NOT contaminate wells or cisterns.

Preventative Treatment: Create a continuous treatment zone in the soil around wooden posts, poles, fence posts, signs or landscape ornamentation. Apply a 0.06%, 0.09% or 0.125% dilution of **Termidor 80 WG** at the rate of 4 gallons per 10 linear feet per foot of depth. For treatments made during installation, the finished dilution may be applied to soil as it is replaced around the post or pole. The finished application should place termiticide to a depth of six inches below the bottom of the posts, poles, or other wooden items in contact with the soil.

Curative Treatment: Previously installed poles, posts, and landscape ornamentation, or signs may be treated with a 0.06%, 0.09% or 0.125% finished dilution of **Termidor 80 WG** by sub-surface injection or treated by gravity flow through holes made from the bottom of a trench around the pole or post. When trenching, the trench need not be wider than 6 inches wide and 6 inches deep. When sub-surface injecting, treat all sides to create a continuous treatment zone. Apply to a depth of six inches below the bottom of the wood.

TERMITES ABOVE GROUND

For control of termite aerial colonies or drywood termites, in localized areas of wood structures, apply at a 0.06%, 0.09% or 0.125% dilution of **Termidor 80 WG** to areas of wooden members/voids. Application may be made to inaccessible areas by drilling, and then injecting the finished dilution with a crack and crevice injector into the damaged wood or void spaces.

Termidor 80 WG foam applications may be made to void spaces.

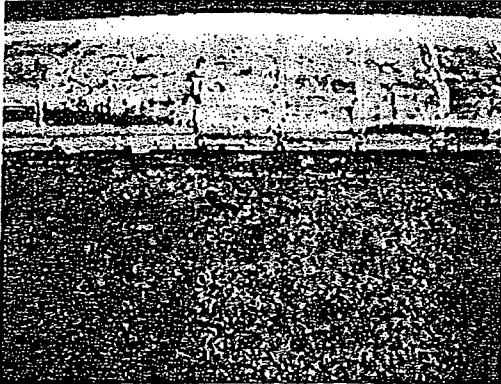
Termite carton nests in holes or building voids may be injected with 0.06%, 0.09% or 0.125% dilution using pointed injection tool. Multiple injection points to varying depths may be necessary. It is desirable to physically remove carton nest material from building voids when such nests are found.

After application, the applicator is required to check for leaks resulting in deposition of treatment dilution in locations other than those presented on this label. When found, the material must be cleaned up prior to leaving the application site. **DO NOT** allow people or pets to contact contaminated areas or to occupy contaminated areas of the structure until the clean up is completed.

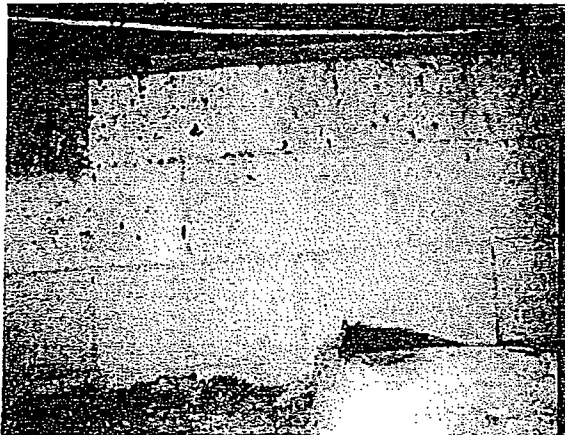
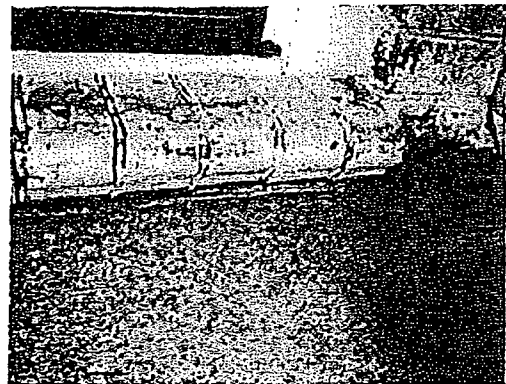
DO NOT TREAT FRUIT OR NUT-BEARING TREES.

DEPARTMENT OF PESTICIDE REGULATION
INVESTIGATIVE PHOTOGRAPHS

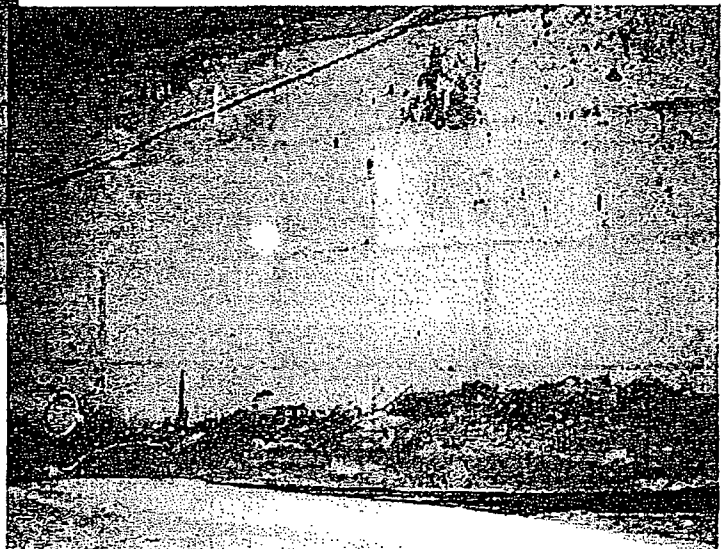
INVESTIGATOR: Cecil Hernandez DATE: May 9, 2013 CFN#: 050913-10-01
LOCATION: Steve Peck 670 Hobeaw Bluff Drive, Mt. Pleasant, SC 29464



<<<<<FRONT
EARTH FILLED
PORCH NOT
DRILLED FROM THE
TOP>>>>>>>



<WALL BEHIND THE FRONT EARTH FILLED
PORCH NOT DRILLED FROM CRAWLSPACE SIDE.



WALL BEHIND ATTACHED SLAB>>>>
GARAGE NOT DRILLED AND TREATED
FROM CRAWLSPACE SIDE.

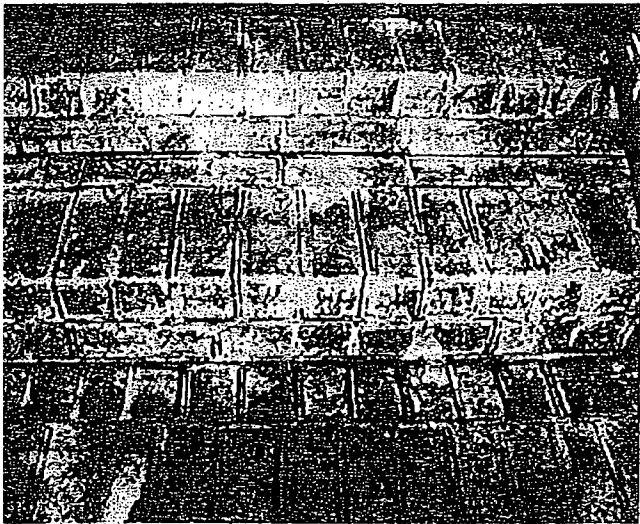


<ATTACHED SLAB GARAGE NOT DRILLED FROM
INSIDE GARAGE

JW 113

DEPARTMENT OF PESTICIDE REGULATION
INVESTIGATIVE PHOTOGRAPHS

INVESTIGATOR: Cecil Hernandez DATE: May 9, 2013 CFN#: 050913-10-01
LOCATION: Steve Peek 670 Hobcaw Bluff Drive, Mt. Pleasant, SC 29464



<LEFT SIDE STEPS NOT DRILLED AND TREATED.



<LEFT SIDE STEPS NOT DRILLED AND TREATED>



<FRONT LEFT WALL OF ATTACHED SLAB GARAGE DRILLED EVERY 33 INCHES AND DRILLED TOO HI (3RD ROW BRICKS)

<FRONT LEFT WALL OF ATTACHED SLAB GARAGE DRILLED TOO HI (3RD ROW OF BRICKS)>

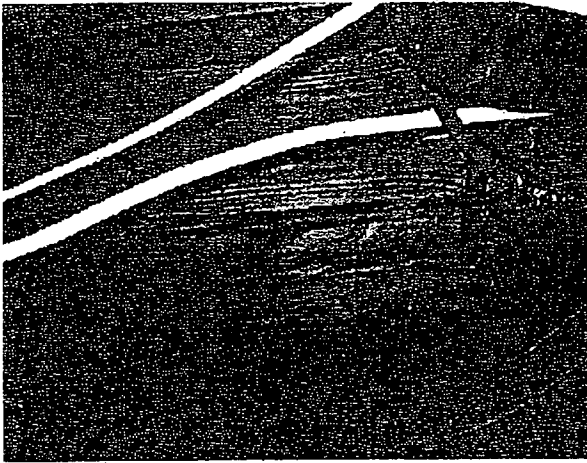


<FRONT LEFT WALL OF ATTACHED SLAB GARAGE DRILLED EVERY 33 INCHES AND DRILLED TOO HI (3RD ROW BRICKS)

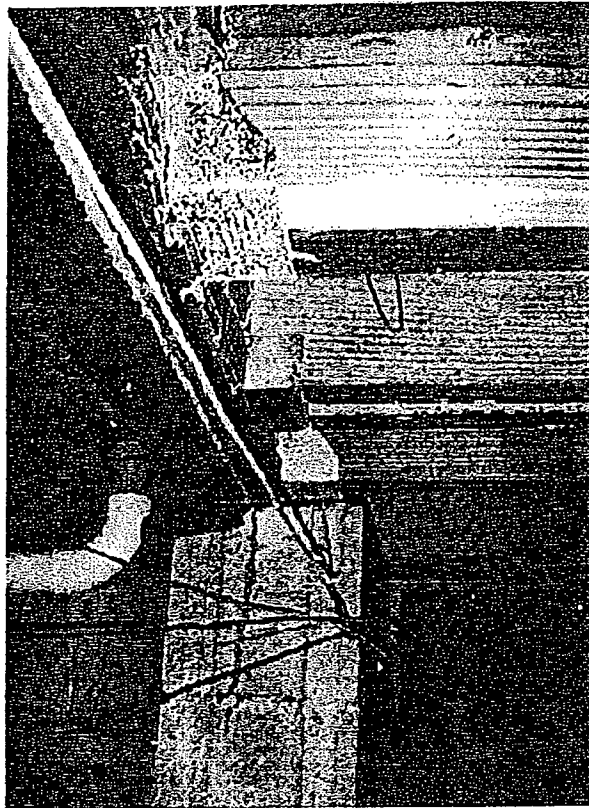
JW 114

DEPARTMENT OF PESTICIDE REGULATION
INVESTIGATIVE PHOTOGRAPHS

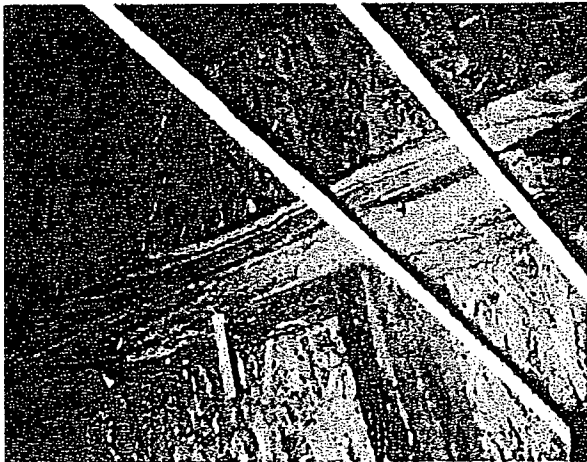
INVESTIGATOR: Cecil Hernandez DATE: May 9, 2013 CFN#: 050913-10-01
LOCATION: Steve Peek 670 Hobcaw Bluff Drive, Mt. Pleasant, SC 29464



<RT. MIDDLE AREA WITH JOISTS (15%)-
DST ALSO PRESENT SCATTERED IN
SUBFLOOR/JOISTS/GIRDER/SILL.

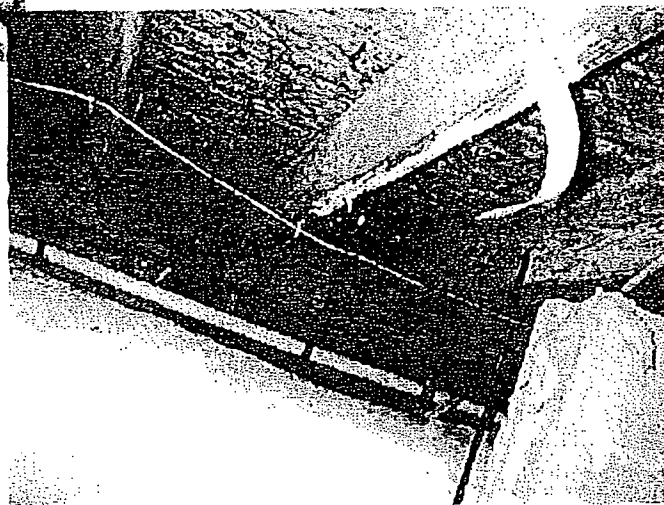


DST/DF BACK AREA IN JOISTS AND SILL (15%)>



DST IN JOISTS AND SUBFLOOR SCATTERED
AND DF 14% IN THE JOISTS.

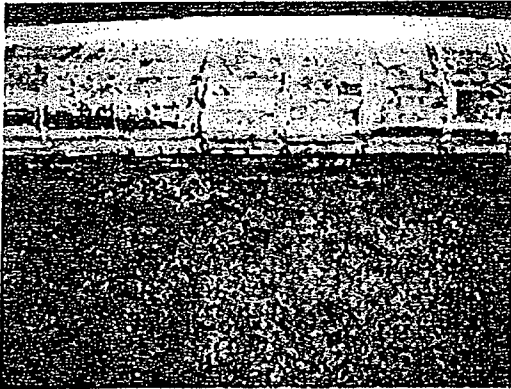
MIDDLE OF CRAWLSPACE-DST SCATTERED
THROUGHOUT SUBFLOOR/JOISTS/GIRDER->



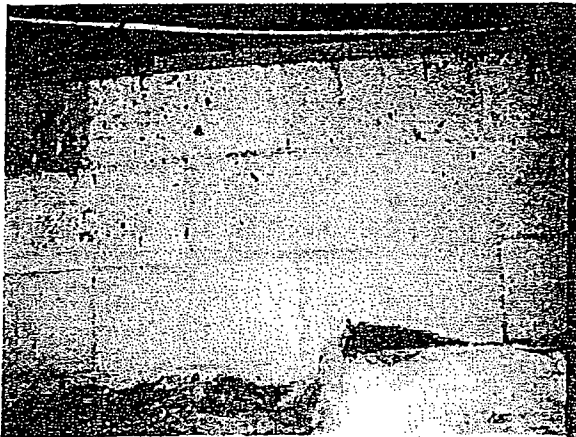
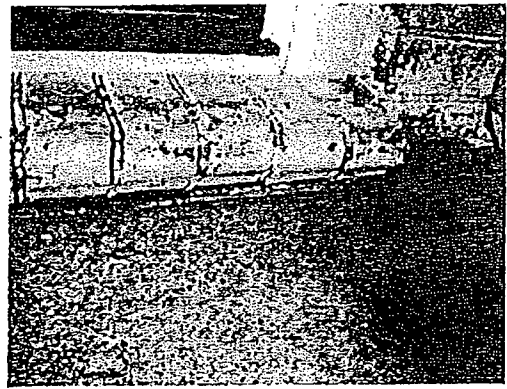
JW 115

DEPARTMENT OF PESTICIDE REGULATION
INVESTIGATIVE PHOTOGRAPHS

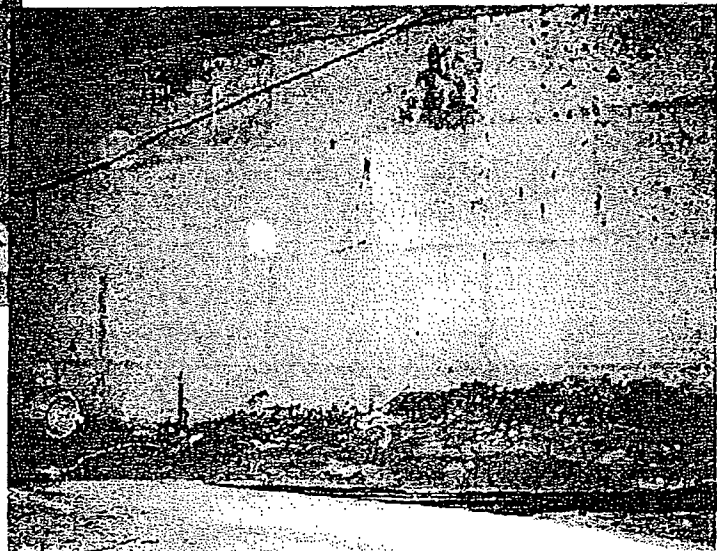
INVESTIGATOR: Cecil Hernandez DATE: May 9, 2013 CFNR: 050913-10-01
LOCATION: Steve Peek 670 Hobcaw Bluff Drive, Mt. Pleasant, SC 29464



<<<<<FRONT
EARTH FILLED
PORCH NOT
DRILLED FROM THE
TOP>>>>>>>



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PORCH NOT DRILLED FROM CRAWLSPACE SIDE.



WALL BEHIND ATTACHED SLAB>>>>
GARAGE NOT DRILLED AND TREATED
FROM CRAWLSPACE SIDE.



<ATTACHED SLAB GARAGE NOT DRILLED FROM
INSIDE GARAGE

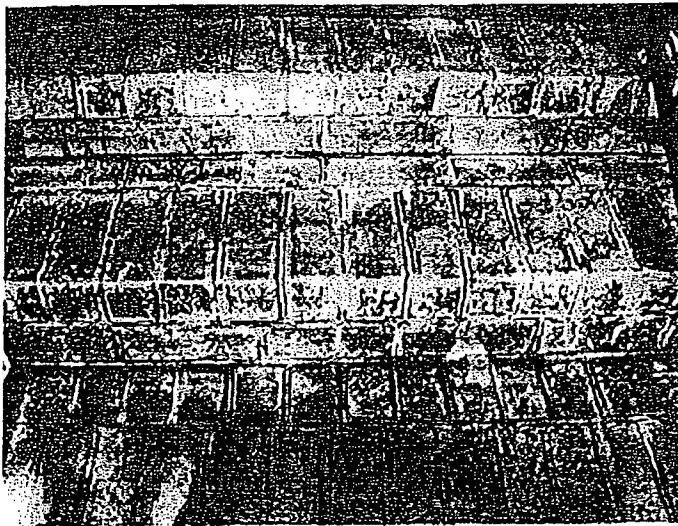
JW 116

DEPARTMENT OF PESTICIDE REGULATION
INVESTIGATIVE PHOTOGRAPHS

INVESTIGATOR: Cecil Hernandez

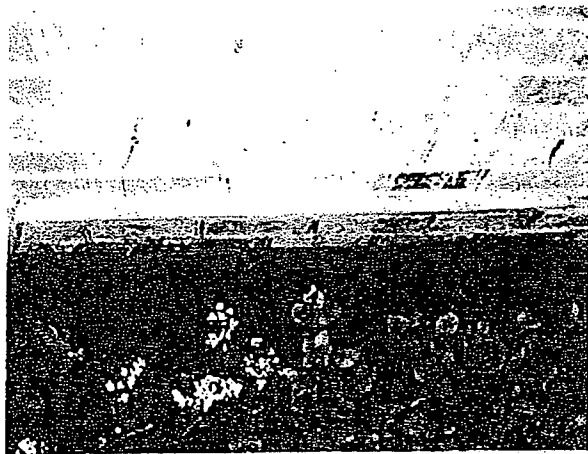
DATE: May 9, 2015 (FNI# 050913-10-01)

LOCATION: Steve Peck 670 Hobeaw Bluff Drive, Mt. Pleasant, SC 29464



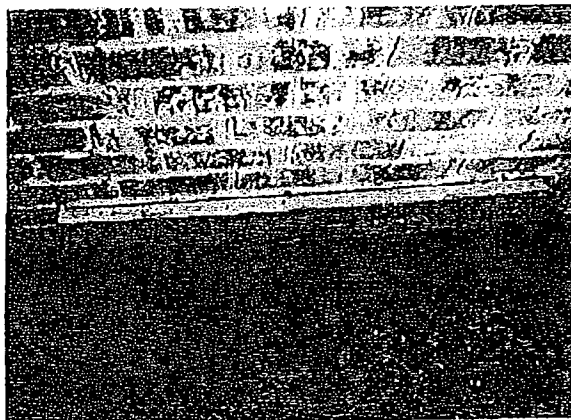
SIDE OF LEFT SIDE STEPS NOT DRILLED AND TREATED>

<LEFT SIDE STEPS NOT DRILLED AND TREATED.



<FRONT LEFT WALL OF ATTACHED SLAB GARAGE DRILLED EVERY 33 INCHES AND DRILLED TOO HI (3RD ROW BRICKS)

GARAGE DRILLED TOO HI (3RD ROW OF BRICKS)>>>



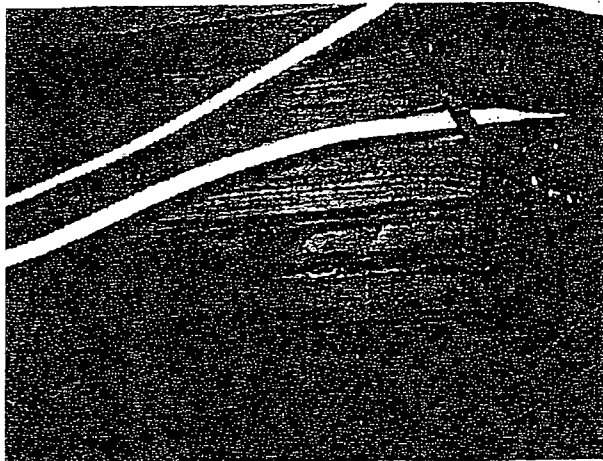
<FRONT LEFT WALL OF ATTACHED SLAB GARAGE DRILLED EVERY 33 INCHES AND DRILLED TOO HI (3RD ROW BRICKS)

JW 117

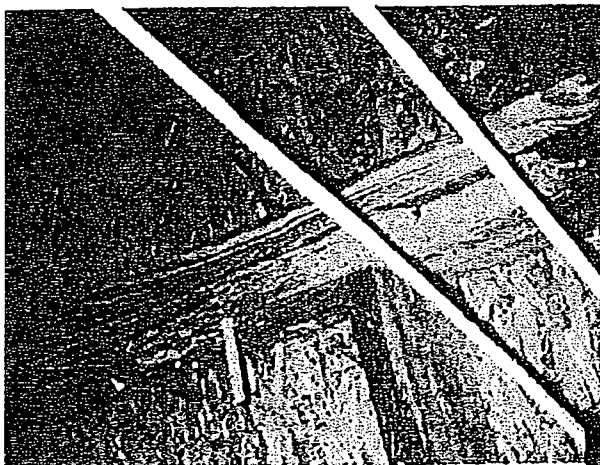
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INVESTIGATIVE PHOTOGRAPHS

INVESTIGATOR: Cecil Hernandez DATE: May 9, 2013 CFN#: 050913-10-01
LOCATION: Steve Peck 670 Hobeau Bluff Drive, Mt. Pleasant, SC 29464

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DST ALSO PRESENT SCATTERED IN
SUBFLOOR/JOISTS/GIRDER/SILL.

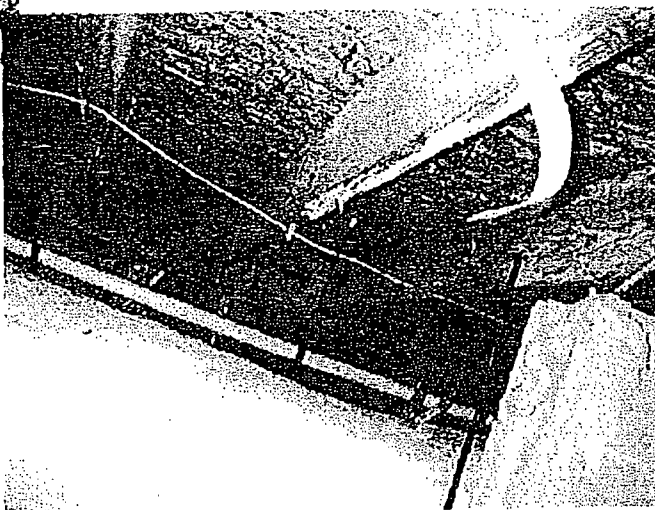


DST/DF BACK AREA IN JOISTS AND SILL (15%)->



DST IN JOISTS AND SUBFLOOR SCATTERED
AND DF 14% IN THE JOISTS.

MIDDLE OF CRAWLSPACE -DST SCATTERED
THROUGHOUT SUBFLOOR/JOISTS/GIRDER->>



JW 118

061410-10-01 6/14/2010 Complaint VINCENT N SOTTILE JR CA004985	27-1085M(1) perform a structural pest control activity without a valid Business License	Structural [REDACTED]	11/5/2010 Applicator <i>See next page</i>
	Commercial Applicator Warning letter No deviation from the matrix. 27-1085H(2) fail to properly treat slab or outer perimeter during pretreat 27-1085H(3) fail to properly treat crawl space during pretreat	Structural [REDACTED]	
101810-10-01 10/18/2010 Complaint THOMAS C SOTTILE C0014822	Commercial Applicator Warning letter deviation from the matrix. Part of the items were corrected. Father (licensed person cited) had told licensed son to retreat/remove debris. Son did not complete job. Son asked that his license be cited since he did not do what father wanted him to do. He is Thomas C. Sottile (C0014822). 27-1085F fail to correct discrepancies in treatment standards within 30 days 27-1085H(2) fail to properly treat slab or outer perimeter during pretreat 27-1085H(3) fail to properly treat crawl space during pretreat	Structural [REDACTED]	1/27/2011 Applicator <i>TPAS</i>
111510-24-07 11/15/2010 Routine THOMAS C SOTTILE C0014822	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	Structural [REDACTED]	11/21/2010 Applicator <i>TPAS</i>
111510-24-08 11/15/2010 Routine THOMAS C SOTTILE C0014822	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	Structural [REDACTED]	11/21/2010 Applicator <i>TPAS</i>
111510-24-09 11/15/2010 Routine THOMAS C SOTTILE C0014822	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	Structural [REDACTED]	11/21/2010 Applicator <i>TPAS</i>
111510-24-10 11/15/2010 Routine THOMAS C SOTTILE C0014822	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	Structural [REDACTED]	11/21/2010 Applicator <i>TPAS</i>

*clean
11/21/12*

BUSINESS ENFORCEMENT HISTORY

Action Date Since January 1, 1998

Isle Of Palms Pest Cntr Svcs B0001553

PO Box 448

Isle of Palms SC 29451

CA004985

Name and License #	Inspection Date	Reason	Inspection Type	Action Type	Action Date	Fines	License Type
011399-10-01 Vincent N Sottile Jr CA004985	1/13/1999	Complaint	Structural	Category II letter 27-1025K	2/17/1999		Applicator
092605-10-01 Vincent N Sottile Jr CA004985	9/26/2006	Complaint	Structural	Commercial Applicator Warning letter No citation from the matrix. 27-1065L(1)(g) fail to maintain proper records of termicide use	11/3/2006		Applicator
091107-10-01 Vincent N. Sottile, Jr. CA004985	9/11/2007	Complaint	Structural	Category III letter Too major for no enforcement and too minor for a Warning letter 45-13-902(1)(R) use a pesticide product inconsistent with labeling	12/10/2007		Applicator
073108-24-06 VINCENT N SOTTILE JR CA004985	7/31/2008	Routine	Structural	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	8/10/2008		Applicator
073108-24-07 VINCENT N SOTTILE JR CA004985	7/31/2008	Routine	Structural	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	8/10/2008		Applicator
073108-24-08 VINCENT N SOTTILE JR CA004985	7/31/2008	Routine	Structural	Thirty Day letter 27-1085G(2)(b) fail to break wood-to-ground contact	8/10/2008		Applicator
020409-10-02 Vincent N Sottile Jr CA004985	2/4/2009	Complaint	Non-Agricultural	Civil Complaint issued Working without a license. Warrants a CC. 27-1085L(1) performed structural pest control activity without a Category 7A license	5/5/2009	\$250	Applicator

0509131010

Vag 300
Vag 300
Vag 300
Vag 300

SPM PEST MANAGEMENT CO INC B0001553

SPM PEST MANAGEMENT CO INC B0001553

PO BOX 448

ISLE OF PALMS SC 29451

Case File #

Name and License # Insp Date Reason

071311-10-01 7/18/2011 Complaint

VINCENT N SOTTILE JR CA004935

102411-10-01 10/24/2011 Complaint

VINCENT N SOTTILE JR CA004935

120611-10-02 12/5/2011 Complaint

VINCENT N SOTTILE JR CA004935

VINCENT N SOTTILE JR CA004935

Inspection Type Action Type

and Violations

Site Name

Action Date

Fines

License Type

Structural

Commercial Applicator Warning letter

Had waiver filled out but not signed. Only violation, PCO in the matrix but the circumstances of this violation do not justify a civil penalty (LQ)

27-1025G(2)(h) fail to provide sufficient clearance between crawl space soil and the wooden substructure

Structural

Civil Complaint issued

No deviation from the matrix. Did not remove dirt from house in 44 days (given 30 days)-still is not removed.

27-1085F fail to correct discrepancies in treatment standards within 30 days

Structural

Commercial Applicator Warning letter

Removed some of the soil but did not remove all of the soil that was less than 8 inches from the wood portion of the substructure.

46-13-50(1)(O) violated any provision of this chapter or of any rule or regulation or of any lawful order

Commercial Applicator Warning letter

Removed some of the soil but did not remove all of the soil that was less than 8 inches from the wood portion of the substructure

46-13-50(1)(O) violated any provision of this chapter or of any rule or regulation or of any lawful order

Total Number of Actions since January 1, 1998: 17

Action Type Breakdown:

Administrative Hearing conducted: 0
Business License Warning letter: 0
Category III letter: 2
Commercial Applicator Warning letter: 0
Civil Complaint issued: 2
Criminal Action referred: 0
Cases forwarded to EPA: 0
License/Certification Modification: 0

License/Certification Revocation: 0
License/Certification Suspension: 0
Private Applicator Warning letter: 0
Stop Sale: 0
Thirty Day letter: 7
Vehicle Ticket: 0
Verbal Warning: 0
Warning letter: 0
Retreatment Notification Letter: 0

Vincent Sottile 3 - 30 Day WLT (B-100)

3 - WLT
Total Fines: \$750.00
2 CP's @ 250

1 WLT (B-100)

30 Day WLT (B-100)

Thursday June 27, 2013

Page 3

0550

JW 121

050918 10 01

OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

Date: 11/06/12

File #: 670 Hobcaw Bluff

THIS REPORT IS VALID FOR 30 DAYS ONLY. THIS REPORT IS NOT A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION THAT THE PURCHASER OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAINS THIS WOOD INFESTATION REPORT.

This is to report that a qualified inspector employed by the below named firm has carefully inspected accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying organisms, and wood-destroying fungi. The inspection for the presence of wood-destroying fungi is only required to the level below the first main floor as defined in Section 27-1085 K(3)(f) of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act. This report specifically excludes hidden areas, areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspections of such hidden areas or of such not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying organisms. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying organisms or fungi, it must be assumed that there is some damage to the building caused by this infestation; however, any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer, licensed contractor, or expert in the building trade to provide their opinion as to whether there is structural damage to this property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 670 Hobcaw Bluff, Mount Pleasant, SC 29466

If any of the following items are checked YES, please provide details on the reverse side of this report.

Were any areas of the property obstructed or inaccessible?

Infestation:

1. There is visible evidence of:

- a. Subterranean termites
- b. Drywood termites
- c. Old house borers
- d. Powder post beetles
- e. Other wood-destroying insects

2. There is visible evidence of prior subterranean termite treatment

3. There is evidence below the first main floor of the presence of

- a. Active wood-destroying fungi (wood moisture content $\geq 28\%$)
- b. Non-active wood-destroying fungi (wood moisture content $< 28\%$)

4. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.) YES ☒ NO ☐

Wood moisture content of the wooden substructure ranged from 10 % to 12 %

Damage: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined in 27-1085 K(3)(f) SCRR.)

At the time of our inspection, there were visibly damaged wooden members (e.g. insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor) YES ☒ NO ☐

If the answer is YES, specify the extent and location of damage on the reverse side.

Damage Observed: Damage must be disclosed even if repairs are deemed unnecessary. If visible evidence of active or previous infestation caused by any wood-destroying organism is reported, it must be assumed that some degree of damage is present. Said damage and location(s) must be described on the reverse side of this report. It is recommended that evaluation of damage and any corrections be performed by a licensed contractor or structural engineer approved by the purchaser.

Treatment:

1. The property described was treated by us for the prevention or control of

wood-destroying organism for which treatment was made

date of treatment

2. An Official Waiver of Standards Form (subterranean termite treatment) has been issued. (NOTE: a signed copy must be attached to this report)

3. The property is covered by a warranty associated with the above treatment. The purchaser should contact the company regarding information required to transfer the warranty.

4. The property described has not been treated by us for any wood-destroying organisms.

Check appropriate box

☐
☐
☐
☒

See other side of this report for additional conditions governing this report. C1-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of Regulatory and Public Service Programs of Clemson University. Revised 7/12 (supersedes earlier versions)

JW 122

0551

CONDITIONS GOVERNING THIS REPORT

Please read carefully.

This report is based on the observations and opinions of our inspector. It must be noted that all buildings have some wood members which are not visible or accessible for inspection. It is not always possible to determine the presence of infestation without extensive probing and in some cases actual dismantling of parts of the structure being inspected.

All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible, areas concealed by wall coverings, floor coverings, insulation, furniture, equipment, stored articles, or any portions of the structure in which inspection would necessitate tearing out or marred finished work. We do not move furniture, appliances, equipment, etc. Plumbing leaks may not be apparent at the time of inspection. If evidence of such leaks is discovered, liability for the correction of such leaks is specifically denied. No opinion can be rendered as to infestation or damage to that portion of sheathing, siding, or other susceptible material which continues below and grade.

The areas of the substructure and attic that are accessible and open for inspection have been inspected. The substructure is defined as that portion of the building below the first main floor living space.

Detached garages, sheds, lean-to's, fences, or other buildings on the property are not included in this inspection report unless specifically noted.

The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon.

This property was not inspected for the presence or absence of health related molds or fungi. This inspection was conducted solely for visible evidence of wood destroying organisms and their damage and was limited to the visible and accessible areas of the structure(s) only. Inspection for the presence of wood destroying fungi is only required to the level below the first main floor. We are not qualified to and do not render an opinion concerning mold related air quality or any other health related issues relating to this structure. Questions concerning the presence or absence of health related molds or fungi or other health related issues, which may be associated with this property, should be addressed to a properly trained Industrial Hygienist, Physician or Public Health Official.

REMARKS

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION. CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED.

Additional pages are attached. YES ☒ NO ☐

Inaccessible or obstructed areas are the following:

Attic-Due to insulation,hvac and nature of construction.Walls-Due to cabinets,appliances, stored items and furniture.

1A)Seen as active termites with damage to the right interior side of the garage(above the garage entry door), active termites with damage to wood members in the left center section of the crawlspace(under the kitchen),and active termite tubes along a pier in the rear left section of the crawlspace(under the sunroom).

1)Seen as termite damage to wood members throughout the front, mid and rear section of the crawlspace. there are areas that have damage wood members that have new wood attached to them in the right section and rear section of the home. (see third page for more remarks).

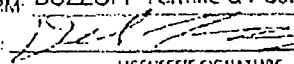
Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS
CA00015251

(MUST BE CERTIFIED IN CATEGORY 7A)
BUSINESS LICENSE NUMBER: EG002661

ACKNOWLEDGMENT:

FIRM: BUZZOFF Termite & Pest Control

BY: 

LICENSEE'S SIGNATURE
ADDRESS: 418 King Street

Mount Pleasant, SC, 29464

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

This report and the issuing license are regulated by Clemson University's Department of Pesticide Regulation.

000000 10 01 1985

File #: 670 Hobcaw Bluff

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This property was not inspected for the presence or absence of health related molds or fungi. This inspection was conducted solely for visible evidence of wood destroying organisms and their damage and was limited to the visible and accessible areas of the structure(s) only. Inspection for the presence of wood destroying fungi is required to the level below the first main floor. We are not qualified to and do not render an opinion concerning mold related air quality or any other health related issues relating to this structure. Questions concerning the presence or absence of health related molds or fungi or other health related issues, which may be associated with this property, should be addressed to a properly trained Industrial Hygienist, Physician or Public Health Official.

REMARKS

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION. CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED.

Additional pages are attached. YES ☒ NO ☐

termite scarring along the rafters and in the insulation foam board in the left side closet in the room over the garage.

broken termite shelter tubes exit holes on the right side of the garage. damaged exterior trim to the left and right of the garage doors. Termite damage to the left interior garage door trim.

3b) Seen as fungal growth to several areas throughout the crawlspace and moisture damage to several areas in the left rear section of the crawlspace some of the moisture damage wood members have new wood attached to them.

4) Seen as standing water along the left rear interior foundation wall (Just under the kitchen).

Damage- As seen in 1a and 3b. Also there is moisture damage to the exterior trim of the entry door to the room over the garage.

Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS

CA00015251

(MUST BE CERTIFIED IN CATEGORY 2A)

BUSINESS LICENSE NUMBER: 00003661

ACKNOWLEDGMENT:

FIRM: BUZZOFF Termite & Pest Control

BY:

LICENSEE'S SIGNATURE

ADDRESS: 418 King Street

Mount Pleasant, SC, 29464

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

This report and the issuing license are regulated by Clemson University's Department of Pesticide Regulation

JW 124

0553

<1050913 10 01

Sottile Pest Management, Inc.

PO Box 448

Isle of Palms, SC 29451

sottilepm@coarcast.net (843) 514-1338

Paul Dominick
670 Hobcaw Bluff Dr.
Mt Pleasant, SC 29464

RE: CL100 @ 670 Hobcaw Bluff Dr.
Dated 11/06/12

Mr. Dominick,

This letter is in reference to a CL100 performed on your home On 11/06/12 by Buzzoff Termite and Pest Control. At the time of the inspection they noted many things at the house concerning termites to wood destroying fungi. Here I will address these items.

I received the cl100 somewhere around the 7th or 8th of November and on Friday, the 9th of November I went to the house to visually inspect for myself the items addressed on the cl100 by Buzzoff Termite and Pest Control. On the front/ first page of the cl100, it was noted that there was an active termite infestation in three locations of the house. On the first comment page, as page two of the cl100, (Item 1A). One being in the crawlspace below the kitchen, the second on a concrete support pier under the sunroom, and the third being inside the garage above the right garage door.

1A. One, the active termites in the crawlspace below the kitchen was actually below the kitchen sink area in a double banded floor joist. The termites had made a carton, (nest), between the double banded floor joists and were confined to an area of the double banded floor joist in a space of about three feet. I scraped and removed the carton of termites (nest) and sprayed the infected area with a termiticide and eliminated any and all of the termites.

1A. Two, the second spot with the live termites were on a concrete support pier in an area under the sun porch. At the ground level of the concrete support pier I also saw an unbroken termite shelter tube that was on the base of the pier, going up the pier approximately two to three inches. The pier itself is six blocks high from the ground level and again approximately 50 inches high with the tube with the live termites 1 to 2

JW 125

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inches at the base of the pier. Here I also sprayed the ground around the base of this pier to kill the live termites and sprayed around the base of several of the piers close to this pier with the live termites.

1A. Third, the third area as being inside the garage above the right garage door. Here I also sprayed the infected spot with the same termiticide. By all accounts from what I read on the CI100 about this third spot, Buzzoff says, "Seen as active termites with damage" I did not seen live termites in this spot but like I said, I sprayed this area with the termiticide.

1. Termite damage to wooden members attached to new wood. There were no live termites in any of the termite damaged wood attached to new wood.

Third page of comments

Termite scarring along rafters and in the insulation board in the left closet in the room over the garage. These were inactive termite shelter tubes with no damage to the wood. Strictly foraging tubes.

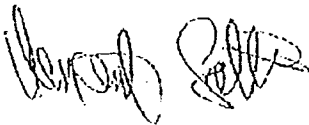
3B -- fungal growth to several areas throughout the crawlspace and moisture damage wood members have new wood attached to them. 3B, on the front page marked as being non-active wood destroying fungi with their readings being 10 - 12% moisture content, well below active fungi growth.

4 -- Standing water along left rear interior foundation wall. Common occurrence especially after rain had been in the area that day.

Last being small spot of wood rot at the bottom of the exterior door to the FROG, at the top of the circular exterior staircase.

Hopefully I've address all issues that were noted on the CI100. If I can be of further assistance to you on this or any other matter, please don't hesitate to contact me.

Sincerely,



Vincent N. Sottile, Jr.

JW 126

0555

040913 12 21 547

Record of Termiteicide Use in South Carolina

Pondicherry, SC 29270

Telephone: 254-446-2130 Fax: 254-446-2130

PLEASE PRINT

DCA Name VINCENT N. SOTILE Lic # 4985Supervising Commercial Applicator Name THOMAS C. SOTILE Lic # 4985Structure Treated by THOMAS C. SOTILEProperty Owner Name and Mailing Address PAUL DOMINICK670 HOBBS BLUFF DRMT. PLEASANT, SC 29464Treatment Site Name and Address 670 HOBBS BLUFF DRMT. PLEASANT, SC 29464Type Foundation X crawl X - GARAGE slab other ()Type Treatment X pre-treat X existing X JawsDate(s) of Treatment(s) 11/9/2012Square Footage of Structure 800 - GARAGE ONLY sq. ft.Total Outside Linear Footage of Foundation Walls 84 ft.Brand Name of Termiteicide Used PROTHOR WPTotal Number of Gallons Termiteicide Concentrate Used 2 SOLUBLE PACKETS gal.Total Number of Diluted Gallons Used 50 GALS gal.Percentage Dilution Rate (e.g., 1%, 5%, 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90%, 100%) 0.5% %

Application Technique Used on Outside Foundation Wall (check one)

Rod X Trench X Trench and Rod

NOTE: A copy of this record must be kept for two years after the date of the treatment. It must be submitted to the Department of Agriculture, South Carolina Department of Agriculture, upon request by a Department of Agriculture regulation inspector.

SFA-11-2527-02A (10/7)

JW 127

0556



PURCHASER Paul Dominick

MAIL ADDRESS 666 Hobcaw Bluff Drive CITY Mt. Pleasant

STATE SC ZIP 29466 - PHONE () -

COVERED PROPERTY - (☒) RESIDENCE (☐) OTHER

PROPERTY ADDRESS same CITY

STATE ZIP - PROPERTY PHONE () -

COMMENTS

Future Termites Damage. Significant periods of time can be expected to elapse between the installation date and the time after which efforts on any termite colony are completed, including effects upon termite colonies infesting the structure on the installation date (if any). During these periods, termites infesting the covered property may continue to attack and cause new damage to the covered property over and above that

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existing in the covered property on the installation date.

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Water Leakage and Aerial Termite Colonies. Structural and Mechanical defects, which result in water leakage in interior areas, through the roof or windows or interior walls can produce unusual conditions acromatically conducive to new infestations such as aerial termite colonies. These areas have excessively high moisture contents that the termites don't need to forage to the ground for food, water, or shelter. Their is enough life sustaining conditions to keep them alive, to create a new colony above ground without any ground contact that will do damage and go undetected. If such a condition is discovered, it is agreed that the purchaser will be responsible for making such repairs as are necessary to correct said defects and for repairing any damage which was caused by said water leakage and/or termite aerial infestation allowed to continue as a consequence of such a leakage.

Supplemental Treatments. If the covered property is infested with termites on the installation date, supplemental treatments may shorten the period of time that the covered property continues to be infested with termites, however such treatments will not suppress or eliminate termite colonies. Operator will perform additional supplemental treatments in addition to installing Exterra only if Purchaser pays a separate charge for such treatments.

COVERED PROPERTY. This plan applies to and covers only the structure(s) identified herein as covered property.

COVERAGE LIABILITY. If new damage occurs to the structure during the contract term, the operator will, upon notification and inspection, arrange for necessary repairs and pay the cost for the materials and the labor. New damage is that damage done by Eastern Subterranean and Formosan Termites after the contract date/installation date of the Exterra program. Liability for repairs shall not exceed \$200,000 dollars.

COVERAGE PERIOD. This plan is effective only during the coverage period. The coverage period shall begin on the date Exterra was initially installed at the covered property (installation date) and shall continue until the ____ 1 ST ____ anniversary of the date the Purchaser signed this plan (anniversary date). Operator will extend the coverage period annually thereafter upon payment to Operator of an annual coverage period extension charge payable on or before each successive anniversary date. The coverage period shall end upon nonpayment of any extension charge.

ACCESS TO PROPERTY. Purchaser consents to Operator visits to the covered property on a regular, periodic basis without prior notification to the Purchaser for any purpose contemplated by or made necessary by this plan including but not limited to inspecting and monitoring stations. Failure by the Purchaser to allow Operator access deemed necessary by Operator shall terminate this plan without further notice.

DISCLAIMER. Operator disclaims any liability for and the Purchaser expressly waives any claim for and discharges and releases Operator from responsibility for termite, special, incidental, exemplary, punitive or consequential damages regardless of whether Operator knew of, was advised of or should have been aware of the possibility of such damages. The obligations of Operator as specifically stated in this plan are given in lieu of any other obligation or responsibility, expressed or implied, including any representation or warranty of merchantability or fitness for a particular purpose. Operator's liability under this plan shall be terminated if Operator is prevented from fulfilling its responsibilities under the terms of this plan by reason of delays in transportation, shortages or unavailability of fuel, material and/or pesticides including termite bait, strikes, explosions, riots, embargoes, fires, floods, quarantine restrictions, earthquakes, hurricanes, acts of God or any other circumstances or causes beyond the control of Operator.

TYPES OF TERMITES COVERED. This plan provides coverage for the covered property only against subterranean termites of the genus Reticulitermes, Coptotermes and Heterotermes, such as Eastern Subterranean and Formosan Termites. It does not cover either drywood or dampwood termites.

CHANGE IN LAW. Operator reserves the right to terminate this plan in the event of a change in existing law as it pertains to the coverages provided for in this plan.

NONPAYMENT, DEFAULT. In case of nonpayment or default by the Purchaser, Operator has the right to terminate this plan. Purchaser shall pay all costs of collection including reasonable attorney's fees to Operator, whether suit is filed or not. In addition, interest at the rate of 1 1/2% per month will be assessed on any past due amounts owed by Purchaser until paid. This plan and any extension of the coverage period will be effective only upon payment of the charges as provided herein.

NO ASSIGNABILITY. This plan is not assignable or transferable without the expressed written consent of the Operator. If Operator consents to a transfer of rights under this plan, a transfer fee may be required to be paid to Operator by assignee.

TERMINATION OF EXTERRA AUTHORIZED OPERATOR LICENSE. If for any reason, Operator's authorization to use Exterra is terminated, Operator reserves the right to either terminate this plan, replace Exterra with another termite baiting system or substitute another type of termite control product for Exterra. If Operator terminates this plan prior to an anniversary date, Operator will refund to Purchaser any unearned portion of payments made by Purchaser to Operator.

OWNERSHIP OF COMPONENTS. Purchaser acknowledges that any components installed at the covered property by Operator for any purpose contemplated by this plan are and shall at all times remain the property of Ensyslex, Inc. and that ownership of the components will at no time pass to the Purchaser. Purchaser authorizes Operator or its authorized representatives to retrieve any and all components from the covered property at any time, whether during the coverage period or after the coverage period expires.

SEVERABILITY. If any part of this plan is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this plan shall remain in full force and effect.

020719 10 01 01

ENTIRE AGREEMENT. This plan and the inspection graph (if any) constitutes the entire agreement between Operator and Purchaser and no other representations or statements will be binding upon the Purchaser or Operator. The terms and conditions of this plan may not be altered or amended unless both parties execute such changes in writing.

ACCEPTANCE. The Purchaser agrees to pay Operator an initial charge of \$_____ for coverage of the covered property from the installation date to the anniversary date. For an annual coverage period extension charge of \$_____, payable by Purchaser to Operator on or before each successive anniversary date thereafter, Operator agrees to extend the coverage period annually on a year to year basis for as long as the Purchaser owns the covered property. Operator reserves the right to revise the annual coverage period extension charge for any coverage period extension term, which constitutes the third or later year of this plan.

NOTICE: YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

Acknowledgment: I have read this plan, understand its terms and conditions and agree to them and have received a copy of this plan.

CUSTOMER _____ DATE _____

COMPANY REP. Vernon S. Little DATE 3-28-82

*Trademark of Ensyslex, Inc.

JW 130

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Termiticide Bait Use Disclosure Form

South Carolina Department of Pesticide Regulation
 257 Pesticide Agricultural Center, Box 34294
 Clemson University, Clemson, SC 29634-0394

Company: Isle of Palms Pest Control Date: 3-26-02
 Address: #15-20th Ave. Business License Number: 0001553
Isle of Palms, SC 29451

by: Vincent M. Scola, M.S.

Treatment Site Information		Name of	Date
Owner:	<u>Paul Dominick</u>	Bait Used:	<u>Lobby and Paved</u>
Mailing Address:	<u>666 Hobcaw Bluff</u>	Location:	<u>same</u>
	<u>Mt. Pleasant, SC 29464</u>		<u>same</u>

The Department of Pesticide Regulation requires that the pest control operator must disclose the following items to the property owner before beginning any termite baiting program:

	Yes	No
1) Is there any pre-existing visible damage? (If yes it must be shown on a attached graph)	☒	☐
2) If activity is present, has the risk of new damage (that may occur before the bait begins to take effect) been discussed with the structure owner or customer?	☒	☐
3) Have the details of a monitoring program been discussed, including the frequency of scheduled site visits?	☒	☐
4) Has the customer been informed that bait offers no residual protection, and that reinfestation may occur without continued monitoring and bait replacement?	☒	☐
If a liquid termiticide is also to be used:		
5) a. Have the reasons for this been explained?	☒	☐
b. Has the customer been informed that any such treatment must meet state standards unless a waiver is issued?	☒	☐
c. Was a waiver issued?	☒	☐
6) a. Will a warranty be issued?	☒	☐
b. If so, has a copy of this warranty been attached to the contract?	☒	☐

The property owner must be provided copies of this information.

Company representative: Vincent M. Scola

Customer Acknowledgement:

Original: Pest Control Operator Copy: Customer

Figure 26. Termiticide Bait Use Disclosure Form

OPR-03-001 (09/01)

JW 131

0560

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**SOUTH CAROLINA DIVISION OF REGULATORY & PUBLIC SERVICE PROGRAMS
OFFICIAL WAIVER OF STANDARDS
FOR THE CONTROL OF SUBTERRANEAN TERMITES IN STRUCTURES**

ISLE OF PALMS PEST CONTROL, INC.
COMPANY NAME

VINCENT N. SOTTILE, JR.
NAME OF PEST CONTROL OPERATOR

P.O. BOX 448
STREET OR P.O. BOX

03/26/02
CONTRACT DATE

ISLE OF PALMS, SC 29451
CITY AND STATE ZIP

Location of Property 866 HOBCAW BLUFF DR., MT. PLEASANT, SC 29464-

Type of Construction: Basement ☐ Crawl Space ☒ Slab ☒ Combination ☐

Type of Treatment: Existing Structure ☒ Pretreatment ☐

Standards for the treatment of existing structures for prevention or control of subterranean termites, Extracted from Rules and Regulations of the South Carolina Pesticide Control Act (Sec. 45-13-30 of 1976 code, as amended, 27-1065).

This form is to be used when a standard(s) for prevention or control of subterranean termites is not performed. A check in one of the boxes below indicates which standard treatment procedure will not be performed.

- ☐ 1. Cellulose debris removed from crawl space. G(2)(a)
- ☐ 2. Form boards within 8 inches of crawl space soil removed. G(2)(a)
- ☐ 3. Wood in direct contact with soil placed on concrete base, treated or removed. G(2)(b)
- ☐ 4. All visible and accessible termite shelter tubes scraped off. G(2)(c)
- ☒ 5. Foundation walls, piers, pillars, supports, and pipes rodged or trenched and treated. G(2)(c) and H(1)
- ☒ 6. Cavities in hollow pillars, tile, brick, block, chimneys or other construction features likely to be penetrated by termites, treated. G(2)(e)
- ☒ 7. Soil beneath attached slabs (porches, patios, carports, garages, walkways, etc.) which are less than 18 inches below sill treated. G(2)(g)
- ☐ 8. Adequate ventilation provided. G(2)(g)
- ☐ 9. Crawl space soil removed to provide at least 8 inches clearance. G(2)(h)
- ☒ 10. Soil beneath concrete slab floor construction treated. G(2)(i) and H(2)

Reason for not performing standard treatment procedures (explain why standards checked above are being waived):

THIS TYPE TREATMENT DOES NOT

REQUIRE THE USE OF A LIQUID TERMITICIDE.

It is my understanding that this structure will be treated according to the standards of the South Carolina Division of Regulatory and Public Service Programs except for those items checked above, and I authorize the above-named company to proceed with treatment on that basis.

Property Owner
or
Authorized Agent

SIGNATURE

DATE

STREET OR P.O. BOX

CITY & STATE

Contact the Department of Fertilizer and Pesticide Control with any questions or field office locations at (803)658-3171.

JW 132

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0507 3 10 013/

Isle of Palms Pest Control, Inc.
PO Box 448
Isle of Palms, South Carolina 29451

At the time of the treatment there was visible active and inactive termite activity. Prior to this treatment some time back before the Dominicks owned the house I was called upon to inspect this house by the previous owners the Darbys. In the crawlspace there were several areas that had active termites and water damage. One area was at the front door/foyer and the other area was at the back of the house, and on in particular was the left garage door and the left corner of the house up to a closet above the garage that had termite activity. There were many windows at the back of the house that had water damage in need of repair. Also, under the house from the front door area back towards the rear of the house many of the floor joist have termite activity including a 2x6 board attached to the bottom of the joist. The garage door was covered in confederate jasmine to the point that the door had to be replaced. Since this house has been bought, numerous repairs and additions to this house have been made. In the crawlspace, where the addition has been made some of the termite damaged wood remained, that still has structural integrity. At the time of the termite treatment we did use ~~X~~ Termidor 80wg in addition to the Exterra baiting system. There was too much termite activity to wait for the baiting system to take effect. Also, lots of vines from the confederate jasmine is in the crawlspace alive and dead with some termites in the dead vines.

Signed Monty Sells

Date 3-26-02

JW 133

0562

050913 : 0 0124

U.S. 236 400000 0-0024

NO. OF PAGES: 1200
NO. OF PAGES: 1200

CUSTOMER: PAUL J. JONINCE
PROPERTY ADDRESS: 670 HOBKAW BLUFF DR.
CITY: ST. LOUIS, MO 63106
WORK PHONE: [REDACTED]
HOME PHONE: [REDACTED]
SUPERVISOR:

NO. OF PAGES: 1200
NO. OF PAGES: 1200

SUBJECT OF PROPERTY: 1670 HOBKAW BLUFF DR.
ANNUAL INSPECTION FEE: \$ 250.00
TERMS COVERED: MAR 2006 THRU MAR 2007

NOTE:

CONDITIONS OF PROPERTY:

NO. OF PAGES: 1200

CONDITIONS OF PROPERTY: NO. OF PAGES: 1200

NO. OF PAGES: 1200

NO. OF PAGES: 1200

NO. OF PAGES: 1200

NO. OF PAGES: 1200

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NO. OF PAGES: 1200

NO. OF PAGES: 1200

ADDITIONAL CONDITIONS: NO. OF PAGES: 1200

NO. OF PAGES: 1200

COMMENTS:

NO. OF PAGES: 1200

NO. OF PAGES: 1200

JW 134

0563

To: RON SUTHERS

050913 10 01

FAX

Date: 11/21/2012

Pages including cover sheet: 3

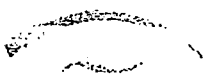
To:	+18432161759	From:	SAV BGI
Phone		Phone	(888) 500-9967 * 10713
Fax Number	+18432161759	Fax Number	(912) 691-0713

NOTE:

RON,
ALL THIS GOES BACK TO 2002.
I HAD A NAME CHANGE OF THE COMPANY
TO SOTTLE PEST MANAGEMENT (SPM)
FROM ISLE OF PALMS PEST CONTROL -
I'M MISSING SOME REPORTS WHICH ARE IN A FILE
TO BE FILED - I'LL FIND THEM + PAY THEM
TO YOU - IN THE MEANTIME - ORIGINALLY IT
WAS A BAITING SYSTEM - LATER CHANGED TO
LIQUID TREATMENT -
Went: *[Signature]*

THE ORIGINAL ADDRESS WAS 666 - THEY WERE
ABLE TO CHANGE THE NUMBER TO 670

JW 135



BRIDGEWATER GROUP, INC.

P.O. Box 1876

Beaufort, NC 28501

Phone: (843) 321-9888

Fax: (843) 321-9888

E-mail: r.sellers@bridgewatergroup.net

050913 10 01

FACSIMILE MEMORANDUM

Total Pages: 2

DATE: 11/21/2012

TO: Vincent Sohne
SPM Pest Mgt. Inc.

← FROM

FROM: Ron Sellers
Manager/Adjuster

← TO

FAX: (843) 216-1759

Re: Claim # : 00017732
Policy # : CIP115335
Insured : SPM Pest Mgt. Inc.
Claimant : Paul Dominick
EXCL. : 1/13/2012
Our File# : BHH001416

Mr. Sohne:

This follows our phone conversation of yesterday. Sorry for delay in getting this to you, but had a crisis and was called out of office to handle. Attached is the Non Waiver Agreement we discussed. Please sign and fax back to me. Please also fax me copy of the contract and any inspection reports and/or documentation concerning damages and reports of damage, etc. This also confirms my appointment with you and Mr. Dominick for Friday 11/23/12 at 1:00 pm to inspect the damages. Should you have any questions please call me. My Cell phone is (912) 272-8556.

Sincerely,

Ron Sellers, Adjuster

CORPORATE OFFICE: FIVE LUNNODDY PARK SUITE 100, ATLANTA, GA 30330
TEL: (770) 392-4440 FAX: (770) 392-4343

GEORGIA • NEW JERSEY • NORTH CAROLINA • PENNSYLVANIA • SOUTH CAROLINA • TENNESSEE

JW 136

0565

050913 10 01

NON-WAIVER AGREEMENT

Whereas SPIM Pest Management, Inc. of Mt. Pleasant, SC, hereinafter called the Insured(s), holds policy number CIP115435 issued by Atain Specialty Insurance Company and/or its affiliated companies hereinafter called the Company and whereas the Insured(s) is claiming benefits under said policy; and whereas the Company may have no obligation to defend or indemnify the Insured(s) for claims arising out of an accident or occurrence on or about November 13, 2012, at or near 670 Hobcaw Bluff Dr. Mt. Pleasant, SC.

Now therefore, the Company advises the Insured(s) of the following reason(s) for executing this agreement: your policy contains certain limitations and exclusions that may affect your coverage that include, but are not limited to, your work and damages occurring before or after effective dates of your policy. The Insured(s) request(s) and authorize(s) the Company or its representative to investigate, negotiate, settle, or defend any claim arising out of such accident or occurrence as it deems expedient. It is the intention of this agreement to provide for an investigation of the said accident or occurrence and a determination of damages resulting therefrom without in any way affecting, impairing, or adding to the liability of the Company or otherwise prejudicing the rights of either party under said policy or under any statutes or the common law. It is expressly agreed that no act heretofore or hereafter taken by the Company hereunder shall be construed as an admission of the Company's liability for coverage. Nor shall any acts of the Company as to such accident or occurrence, as to this agreement, and/or as to the question of coverage be construed as a waiver of any defenses the Company has or may have, nor shall such acts of the Company create an estoppel against the Company regardless of time of knowledge or notice of any breach.

Any action of the Company shall not waive any right it may have to deny any obligation under this policy contract and shall not waive any rights of the Insured(s).

For your protection, California law requires the following to appear on this form: *Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.*

Dated this 21 day of NOVEMBER 20 12, at 11:00 AM

COMPANY

INSURED

On behalf of Atain Specialty Insurance Co.

Wendy K. Kelly
Signature

By:

Signature

Signature

JW 137

0566

CFN 050913-10-01 Steve Peek spi vs Vincent Sottile

Cecil Hernandez

Sent: Wednesday, September 04, 2013 8:16 AM

To: Tilden Galloway

Lee--Vince Sottile called me last night via cellphone at 5:30 to say he had just gotten the corrected spi on 050913-10-01. He said he had a signed waiver from 2002. I told him to send it asap (he has been saying he had a copy the entire case but has not been able to produce it).

background...Sottile sold to Terminix. I went thru this file from Terminix--2 times...ripping the file apart...there was a waiver but not signed by HO...you have a copy in the file...we discussed this since I chose not to mention it since, not being signed..it is dead--nonexisting..

I spoke to the Insurance adjuster, Tom Nolan, who has a copy of the entire case file...Nolan said there was a wavier but not signed by the HO...We discussed why I didn't site for nonsigned waiver..I said it was dead..did not exist since never signed...he understood...

we can talk about this..

Just wanted to send email in case you are sending out enforcement..

I told sottile to get it to me ASAP....

Cecil

Cecil Hernandez
Pesticide Regulatory Specialist
Clemson University
Dept. of Pesticide Regulation

JW 138

0567

SPM Pest Management Company, Inc.

Vincent N. Sottile, Jr.

Ph. 843-216-1749

Fax 843-216-1759

* CECIL HERNANDEZ - 9-4-2013

* To: TOM NOELAN

Date: 8-19-2013

- Fax: 851-8780

From: VINCENT SOTTILE

#Pgs: 2

Reference: DOMINICK

Notes: FOUND THIS LETTER IN THE
COMPUTER - IT IS DATED IN THE
COMPUTER 3/26/2002 @ 4:14 PM
AS A MICROSOFT WORD DOCUMENT.

Unred

Isle of Palms Pest Control, Inc.
PO Box 448
Isle of Palms, South Carolina 29451

At the time of the treatment there was visible active and inactive termite activity. Prior to this treatment some time back before the Dominicks owned the house I was called upon to inspect this house by the previous owners the Darbys. In the crawlspace there were several areas that had active termites and water damage. One area was at the front door/foyer and the other area was at the back of the house, and on in particular was the left garage door and the left corner of the house up to a closet above the garage that had termite activity. There were many windows at the back of the house that had water damage in need of repair. Also, under the house from the front door area back towards the rear of the house many of the floor joist have termite activity including a 2x6 board attached to the bottom of the joist. The garage door was covered in confederate jasmine to the point that the door had to be replaced. Since this house has been bought, numerous repairs and additions to this house have been made. In the crawlspace, where the addition has been made some of the termite damaged wood remained, that still has structural integrity. At the time of the termite treatment we did use Termidor 80wg in addition to the Exterra baiting system. There was too much termite activity to wait for the baiting system to take effect. Also, lots of vines from the confederate jasmine is in the crawlspace alive and dead with some termites in the dead vines.

Signed _____

(X)

Date 3-26-2002

THIS IS IN ~~MS~~ MICROSOFT WORD & SAVED
IN THE COMPUTER - I CANNOT PRINT THE DATA
FROM THE COMPUTER - YOU'D HAVE TO COME
HERE & SEE THE DATA IN THE COMPUTER -

Wm. C. Smith

JW-140

EXHIBIT 9

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF MAXCY P. NOLAN, III, PH.D.

JAMES E. CARROLL, JR.,

Plaintiff,

vs. CASE NO. 2015-CP-10-5944

ISLE OF PALMS PEST CONTROL, INC., SPM PEST
MANAGEMENT COMPANY, INC., AND TERMINIX
SERVICES, INC.,

Defendants.

DEPONENT: MAXCY P. NOLAN, III, PH.D.

DATE: NOVEMBER 29, 2016

TIME: 10:01 A.M.

LOCATION: GALLIVAN, WHITE & BOYD
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com



1 A P P E A R A N C E S

2

3 ON BEHALF OF PLAINTIFF:

4 MCKNIGHT LAW FIRM
5 BY: JODY MCKNIGHT
6 1240 Winnowing Way, Suite 102
Mount Pleasant, SC 29466

7 ON BEHALF OF ISLE OF PALMS PEST CONTROL, INC.:

8 KERNODLE COLEMAN
9 BY: MATTHEW D. HAMRICK
10 914 Folly Road, Suite 2
Charleston, SC 29412

11 ON BEHALF OF SPM PEST MANAGEMENT COMPANY, INC.:

12 CARLOCK COPELAND
13 BY: NICK STEWART
14 40 Calhoun Street, Suite 400
Charleston, SC 29401

15 ON BEHALF OF TERMINIX SERVICES, INC.:

16 BELSER & BELSER
17 BY: CLINCH H. BELSER, JR.
PO Box 96
Columbia, SC 29202

18 ALSO PRESENT: JAMES E. CARROLL, JR.

19 - - -

20

21

22

23

24

25

I N D E X

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- - -

1 MAXCY P. NOLAN, III, PH.D.,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HAMRICK:

5 Q. Mr. Nolan, I know I just reintroduced myself
6 a few minutes ago, but my name is Matt Hamrick. I
7 represent Isle of Palms Pest Control, Inc., in this
8 case, and we're here to talk about Mr. Carroll's
9 house at 11 Tabby Lane today, and I understand
10 you've been retained by Mr. Carroll as an expert in
11 this case; is that correct?

12 A. Yes.

13 Q. Okay. And I know you've had your deposition
14 taken before, so I'm not going to waste a bunch of
15 time with the rules and so forth; but if I do have
16 to remind you to give verbal responses, it's just
17 for the benefit of the court reporter and the
18 record. Don't take any offense. Everybody does it
19 now and then just with a nod of the head or
20 something and we have to remind them. But if I ask
21 you a question and you answer me, I'm going to
22 assume that you understood me and answered
23 completely; is that fair?

24 A. Yes, sir.

25 Q. And the rules in South Carolina regarding

1 depositions are that once a deposition has begun,
2 which it has begun now, that you're not allowed to
3 consult with, for example, Plaintiff's attorney or
4 your own attorney. I know you don't have an
5 attorney here, correct?

6 A. I don't think so.

7 Q. All right. But, in other words, it's
8 supposed to just be a question and answer format
9 where I ask you questions and you answer me if you
10 understand me; but if you don't understand me, just
11 let me know, and I'll be happy to rephrase a
12 question or restate a question or something like
13 that if you need me to.

14 Did you bring any file materials with you
15 here today?

16 A. No, sir.

17 Q. Okay. I did get an email yesterday from Mr.
18 Carroll's attorney, Jody McKnight, and it I believe
19 included, he said, all of your file materials. It
20 was a forwarded email with a zip file of
21 photographs and a report and so forth. Are you
22 familiar with that email that you sent to Jody?

23 A. Yes, sir.

24 Q. And did that email, the attachment to that
25 email include your complete file?

1 A. Yes, sir.

2 Q. Okay.

3 A. With the exception of -- and I think Jody
4 said he talked to you guys about this -- he sent me
5 some of the depositions of like Jim Wright, Mr.
6 Carroll, Vince, the two gentlemen, the technicians
7 for Terminix. That's pretty much, I think, the
8 gist of it; but I think he made you aware of those.

9 MR. MCKNIGHT: Whatever the list was he
10 got.

11 Q. Sure, sure, I got that.

12 A. I reviewed that over the last day or two
13 just because I wasn't familiar with it, Stoney
14 Bachman I think was one of them.

15 Q. You reviewed all of those depositions?

16 A. I don't know them verbatim, but I did look
17 through them. There's a lot of paper there that's
18 going into a couple days, so for me to say I have
19 totally digested it and am ready for an examination
20 on such matters, I wouldn't go there; but I have
21 tried to get the -- you know, I perused them and
22 got the idea of what they thought, I hope.

23 Q. Okay. One thing I did not see in your file
24 that was forwarded was a CV or resume. Do you have
25 a CV or resume?

1 A. You know, I forget that every single time.
2 Yes, I -- let me get Brett to send us one. How do
3 you get on here?

4 (Discussion held off the record.)

5 Q. While he does that, I'm going to go ahead
6 and ask you some questions. I've got a copy of a
7 CV, and this may obviate the need to have one sent,
8 but let me just hand you -- and I've only got two
9 copies and I'm sorry.

10 A. It's the same one that it was three months
11 ago, or whenever we did the other thing that all of
12 us were here -- I think everybody's here, right,
13 that was here for that, except for you; and you had
14 your girlfriend did that one, right?

15 Q. Okay.

16 A. Dyer?

17 Q. Okay, right, Suzanne, I think.

18 A. I'm just playing with you.

19 So it would have been the same one as -- it
20 hasn't changed since then.

21 Q. What I just handed you is marked as an
22 exhibit, Exhibit No. 2, with a date of May 25th,
23 2010, so that's from a deposition a few years ago
24 that you gave, I believe. Can you look over that
25 for me and let me know if that is a copy of your --

1 it says personal resume at the top.

2 A. It is, it's a copy of it, and I think the
3 body of it is fine. The only thing that would
4 change would be, of course, I have done a few
5 hundred, probably, cases -- maybe more than that.
6 This is 2010, if that's -- Exhibit 2 up on the top
7 right corner says that. I've probably done a lot
8 more, you know, cases or whatever since then. But
9 as far as my education and my work experience, that
10 hasn't changed. I would say this is a good
11 representation of who I am.

12 Q. Okay. Let me just go ahead and ask you
13 about something in the second paragraph on the
14 first page there. I'm just going to read this into
15 the record. It says -- this is the entire
16 paragraph there. It says, Dr. Nolan has been
17 involved in many investigations concerning the
18 presence and damage associated with wood destroying
19 organisms, parentheses, termites, fungi, etc. By
20 determining the level of infestation, age of damage
21 and other environmental factors Dr. Nolan has
22 proven that the number of years termites have been
23 present in a structure can be determined. This
24 coupled with Dr. Nolan's additional entomological
25 experience has resulted in a significant

1 improvement of diagnosing causes and duration of
2 wood destruction.

3 Did I read that paragraph accurately?

4 A. Yes.

5 Q. Okay. We're going to get into more
6 specifics here in just a few minutes about the
7 Carroll residence at 11 Tabby Lane, but in general
8 are you able to determine the number of years
9 termites have been present in a structure?

10 A. Well, at that time that was -- that was
11 referring to eastern subterranean termites, and
12 that statement came from a case I did in Florida
13 where we did 4,500 different buildings throughout
14 the State of Florida. We knew the date the
15 building was put up, we knew the date that we did
16 the inspections, and we learned very early on in
17 the case that none of the buildings had been
18 properly treated or had been treated at all, okay;
19 so with a blank sheet, a blank slate, going in and
20 doing a really, really inclusive mapping of the
21 buildings, we were -- we had a formula that we had
22 developed, and it was really, really close to
23 telling how long the infestation had been present
24 in the house.

25 I have not done such an exercise with

1 Formosan termites, and that's what we're -- at
2 least the specimens that I examined in this
3 particular case. I don't have that exact or
4 specific of a idea. How does that sound?

5 I do have ideas on how long it takes for
6 damage to occur, but not with near the accuracy
7 that I would feel like with subterranean termites,
8 with eastern subterranean termites, *Reticulitermes*
9 *flavipes*, not *Coptotermes formosanus*.

10 Q. So you are not able to determine the number
11 of years Formosan termites have been present in a
12 structure?

13 A. Have never done that exercise, that's
14 correct, not with the precision that I feel like we
15 can do with eastern subterranean termites because
16 of the biology and the different --

17 Those properties were all the way from
18 Charleston, South Carolina, all the way down to
19 Miami, Florida; and we mapped each and every one of
20 the properties, and we had a huge database to be
21 able to go with that. So I felt pretty comfortable
22 that I could tell you, knowing the amount of
23 damage -- and that's important. You've got to know
24 how much wood's been consumed. With eastern subs
25 we can get pretty doggone close on that.

1 Formosans, there's a lot of good ideas. We
2 know how much a termite colony eats, like it takes
3 39 days for a mature Formosan termite colony to
4 consume one board foot of wood. We know some
5 numbers. We know this particular case, for
6 example, another variable we can throw out, we know
7 that it's a mature colony because it swarmed. So
8 we know a mature colony eats this amount of wood.
9 We can come up with a lot better than just saying,
10 I have no earthly idea how long it took for this to
11 happen. We have some parameters that we can at
12 least use.

13 Q. So let me make sure I understand you. Are
14 you now saying that in this case involving 11 Tabby
15 Lane you can estimate the number of years the
16 termites were present in that home?

17 A. I can give you an estimate, but it's not as
18 precise an estimate as I could give you from the
19 eastern subterranean termite aspect of it.

20 Q. How precise would it be? Would it be within
21 a range of years or months or weeks or what?

22 A. Years, a couple of years.

23 Q. So you think you could pinpoint within a
24 couple of years when the Formosan termites first
25 infested 11 Tabby Lane?

1 A. Yes.

2 Q. All right. I'm going to come back to that.
3 Let me ask you first, and I don't know if I asked
4 to mark that, but let me mark what I handed you,
5 your resume.

6 (Exhibit No. 05 marked for
7 identification.)

8 Q. We just marked the resume that I handed you
9 as Exhibit 5 to your deposition, and I believe
10 that's going to be the first exhibit to your
11 deposition. We've got a continuation of numbers
12 from another deposition. That's why we're starting
13 with 5, just so you know. But you don't need to
14 worry about that. You look confused.

15 A. You're trying to confuse me already.

16 Q. All right.

17 A. So 5 is 1.

18 Q. Well, now that would make it even more
19 confusing. 5 is 5, all right?

20 A. I'm good.

21 Q. And, actually, I probably should have marked
22 this first, but it doesn't matter. I'm going to
23 ask the court reporter to mark as Exhibit 6 a copy
24 of the subpoena duces tecum and notice of your
25 deposition here today.

1 (Exhibit No. 06 marked for
2 identification.)

3 Q. And I'm going to ask you to turn to page --
4 it's the fourth page in that group of documents,
5 and this is attachment A to the subpoena where I
6 asked you to produce certain things. Can you just
7 take a look at that list and tell me if all of
8 these things have been produced in that email that
9 we talked about earlier that you sent to Jody
10 McKnight and he forwarded to us.

11 A. To the best of my knowledge, yes.

12 Q. All right. Tell me a little bit about your
13 background and your expertise.

14 A. I'm an entomologist. I started in my
15 endeavor, 14 or 15 years of age, somewhere in
16 there. My father was getting his Ph.D. at the
17 University of Georgia, and I sort of got
18 volunteered or drafted to help him collect data and
19 do field work on his Ph.D. work, which was housefly
20 control for confined poultry; and so I did that for
21 a couple -- I helped him during school and a couple
22 of summers, and he gave me some 4H funding money to
23 be able to help him, and I went on investigations
24 with him. My father was the extension entomologist
25 at the University of Georgia in charge of similar

1 things that I do, the insects that affect man and
2 their animals, and he started there in 1965; so
3 when I got to be that age, I sort of took a
4 hankering to it, and I helped him do his Ph.D.
5 work. He was working and getting his Ph.D. at the
6 same time. They let you sort of do that then. And
7 he had responsibility for termites and warehouses.
8 And so when he'd go somewhere, if I could, I'd go
9 with him, sort of tagged along.

10 And so I decided that's what I wanted to do,
11 and I went to Georgia and I got my undergraduate in
12 entomology, still working for him that whole time.
13 I also worked for a couple PCO's in the area,
14 helping them put out termiticides, Mr. Lavender and
15 Mr. Bonding, Mr. Boland Bonding -- his name's
16 Boland. Boland Bonding was the name of the
17 company. Anyway, I just did that because that's
18 what I wanted to do.

19 And after I got through with Georgia, I
20 turned my grades around enough to where Clemson
21 would at least accept me conditionally for my
22 master's program, so they gave me a chance; and so
23 I got my master's and Ph.D. at Clemson. My major
24 professor was Dr. Ben Kissam. I worked with Dr.
25 Pat Zungoli a lot, and she's a researcher in

1 termites and this stuff. She's still at Clemson
2 right now. And Dr. Kissam was the extension guy
3 that had similar position as my dad, so it sort of
4 was a continuation, but I got to go to Clemson to
5 do that.

6 I got my degree, and I was going to go to
7 Clemson to work; and there was some money problems,
8 and I just didn't like the bureaucracy part. So I
9 had always -- all my education had been, can
10 somebody do it privately, what I do today, and so I
11 did it. I went home one night, and I told my wife,
12 I said, we don't have anything, we live almost hand
13 to mouth, why don't we try it. So I did. So in
14 1987, just after I got my Ph.D. at Clemson, I
15 started private consulting.

16 And really the focus of the business hadn't
17 changed a whole lot. We still do work with --
18 consulting type work with insects that affect man
19 and their animals, still have a large poultry base
20 that I do work with. I do a pretty good bit of
21 termite litigation, wood destroying organism work
22 still. We sell some chemicals now. I've got a
23 sales -- we do a little bit of sales. People that
24 need stuff call in, and we ship it to them. My son
25 started working with me back in May. He got his

1 Ph.D. at Georgia. So hopefully that's going to
2 take a little bit of the load off me, and he's
3 going to be able to start getting some experience
4 and do more of that type of thing. But that's
5 where I am 30 years later -- I guess it's 30 years
6 now, isn't it.

7 Q. All right. How long ago was it that you
8 worked for those two pest control companies that
9 you said you worked for?

10 A. That was about when I was in high school. I
11 may have worked with one of them when I was early
12 on in college. I'm not exactly sure.

13 Q. Okay. How old are you now?

14 A. I was born in 1959.

15 Q. And have you ever actually worked as a pest
16 control technician?

17 A. Yes, that's what that was.

18 Q. When you were in high school?

19 A. Right.

20 Q. All right. But since then you have never
21 done any of that type of work?

22 A. Well, I've done the work; but I haven't ever
23 done it for hire. I don't have insurance to cover
24 that right now in South Carolina, but I am
25 registered pest -- I'm a 7A. I can do that. I've

1 always thought it was a conflict of interest, since
2 I've chosen this sort of line to go into, the
3 forensic end of it and the expert witnessing, I
4 thought it would be a conflict of interest if I
5 testified for or against pest control operators and
6 be one of them; and I made that conscious decision
7 a long time ago that I wasn't going to be a
8 competing force in that deal, so that's -- I've
9 been more of the consulting role than I did the
10 actual application roles.

11 Q. All right. And in terms of termite
12 operations, is your consulting work limited to
13 being an expert witness in lawsuits like this one?

14 A. Yes. Like I said, we don't do applications,
15 no.

16 Q. You mentioned you sell some chemicals now,
17 distribute some chemicals. Is any of that
18 termiticide chemicals?

19 A. It can be.

20 Q. But do you actually sell termiticide?

21 A. Yes.

22 Q. Do you have -- you said you were a 7A. Is
23 that referring to a South Carolina license
24 category?

25 A. Yes, that's structural, pest control

1 operator, everything except for fumigation.

2 Q. All right. Do you have your license on you
3 now?

4 A. Sure I do.

5 Q. Okay. Can I see it?

6 A. Matter of fact, I just got the renewal a
7 week or so ago. That's how I know I have it.
8 Pretty sure I put it in here. There's Ohio.
9 There's South Carolina. Do you want all the
10 states?

11 Q. No, just South Carolina.

12 A. Okay. Here you go, there's the 1B7A
13 consultant license there (indicating).

14 Q. All right. And I think you said a second
15 ago, but to make sure -- here you go. Thank you.
16 To make sure that I understand you, you do not
17 have, I guess, general liability insurance as an
18 applicator or a termite chemical applicator?

19 A. My insurance does cover that, but I don't
20 practice it. We do in South Carolina a pretty good
21 bit of spraying, commercial application spraying
22 for some poultry operations up around Clemson and
23 Newberry areas, so we do have to have insurance for
24 that, and I think it would probably bridge over,
25 but we don't practice in that. That's what I'm

1 trying to -- I don't mean to be -- I'm not sure.
2 I'd have to double check that, but as I mentioned
3 earlier, we don't practice as a pest control
4 operating firm for the reasons I mentioned earlier.

5 Q. All right. Have you ever gone through any
6 training to be a termite technician in South
7 Carolina?

8 A. Only hands-on stuff, and then I did teach
9 with Dr. Kissam, you know, when I was at Clemson;
10 so I don't know if teaching counts as training, but
11 we -- I trained, you know, in the termite
12 technicians course they have. I helped him for
13 three or four years do the school they have every
14 year, when they train the technicians. So I guess
15 I didn't really take the course. I taught the
16 course.

17 Q. Did you teach the entire course?

18 A. I'm sorry, I didn't understand you.

19 Q. Did you teach the entire course?

20 A. Oh, no, I taught parts of it. Mine was
21 identification, I think, of termites is the part I
22 really focused on when we did it. It was just --
23 you know, it's a team type effort.

24 Q. And you've never attended the course or
25 received any certification of passing the course,

1 though, correct?

2 A. That's correct.

3 Q. Now, I think you described yourself as an
4 entomologist. What does that entail in terms of
5 your expertise to give opinions in this case; what
6 are you going to give opinions about, in other
7 words?

8 A. I feel like I have a pretty good handle on
9 the law. I think I do, you know, I know -- because
10 I have a license. I know what's required there.
11 Identification of the pest, extent of the damage
12 that was present, and then what I think should have
13 been done in the course of the time in this
14 particular matter. I guess that's what I take -- I
15 document what's there, I can talk about what I
16 think should have been done, and then the law. Not
17 the regulations as much as just what the law -- you
18 know, what the requirements are. The standard of
19 care I guess is the right way to put that, standard
20 of care.

21 Q. Are you qualified to talk about the law, the
22 actual South Carolina law that pertains to pest
23 control operators in South Carolina?

24 A. I don't think so. I think that would be
25 better by an administrator or someone higher up in

1 the Clemson group than for me to do that. That's
2 their job.

3 Q. So when you say you're qualified to talk
4 about the standards of care in --

5 A. The --

6 Q. Go ahead.

7 A. The labeling, you know, there's a label,
8 there's what other people do in the industry.
9 That's what I mean by the standard of care. The
10 label's the law. On any pesticide that you apply,
11 you know, that's the law. And then the standard is
12 what do most guys do when they do their job
13 day-to-day, so I think I'm pretty -- I think I'm
14 pretty good on that. But as far as an
15 interpretation of -- I don't have it right here in
16 front of me, the 40 -- this thing here. You know
17 what I'm talking about. As far as this, I have --
18 this is the law. As far as the rules and
19 regulations for the enforcement of the South
20 Carolina Pesticide Control Act, I don't claim -- I
21 think we need to let that be part of an
22 administrator's job at the university or somewhere,
23 at Clemson, whoever does that.

24 Q. Okay.

25 A. Is that fair?

1 Q. I think I understand you. So let me just
2 make sure I didn't miss any of those categories.
3 You believe you can give expert opinions in this
4 case with regard to the identification of the
5 pests, the extent of the damage, what should have
6 been done by the termite technicians, and the
7 standards of care in the industry. Did I leave any
8 out?

9 A. I think that's pretty close.

10 Q. All right. And let me ask you, do you know
11 how many cases you have been engaged as an expert
12 witness in?

13 A. It's a lot.

14 Q. Okay.

15 A. I think one time it was a thousand and
16 something, and I don't really know for sure.

17 Q. All right.

18 A. I haven't kept up with that or have an
19 update of it lately. I know I had to do one a few
20 years back, a federal one, and I think it was close
21 to a thousand then, so it's probably over a
22 thousand cases over the years. Been a long time
23 though.

24 Q. Out of those thousand or more than a
25 thousand cases have you ever been qualified to

1 testify in court?

2 A. Yes.

3 Q. Like in a trial?

4 A. Yes.

5 Q. Do you know how many times?

6 A. I don't know. Probably 30. I'd have to go
7 back and look. 25, 30 times. They don't -- most
8 of the cases don't go to trial. You know, one --
9 you know, one out of a hundred maybe; and then on
10 top of that -- it seems like one out of a hundred,
11 and then on top of that, you don't even get to this
12 stage maybe 50 percent of the time, to a
13 deposition. I don't even know if 50 percent's a
14 good term; and then the investigation a lot of
15 times, you answer enough questions where people
16 decide one way or another on what they're going to
17 do with where they follow, so usually it doesn't go
18 to court.

19 Q. Have you ever, have you ever been
20 nonqualified or held by a judge to not be qualified
21 to render any opinions in court?

22 A. No.

23 Q. Have you ever had any particular opinion of
24 yours excluded by a judge in court?

25 A. Not that I'm aware of.

1 Q. Okay.

2 A. The one time I did have trouble, I have a --
3 there's a lawyer in Atlanta. His name's Winston
4 Briggs, and him and I have done a lot of cases
5 together in Georgia; and he came up with some deal
6 one day that I wasn't qualified on one aspect, and
7 I really, to be honest with you, I don't know the
8 legal part of the whole deal. But anyway, he came
9 back with that, and at that time the judge held
10 part of my testimony back; wouldn't let part of it
11 be done. And then they went to appeal with it, and
12 the appeal -- appellate court came and said that I
13 was more than qualified for that particular deal,
14 so I've always held that one case into the fact
15 that if it went all the way to appeals to the court
16 above, and they all came back and said what I was
17 doing was okay, I felt like that was probably
18 qualification that I was an expert, and I haven't
19 really changed my scope of what I do since that
20 time.

21 Q. Do you know the name of that case?

22 A. No. It was in Chatham County. Winston
23 Briggs was one side of the case and Gene -- I
24 forgot Gene's last name -- Brooks, Eugene Brooks
25 was on the other side.

1 Q. All right.

2 A. He's the guy that hired me, Gene Brooks did.

3 Q. Let me show you what I'm going to ask the
4 court reporter to mark as the next exhibit, which I
5 believe is Exhibit No. 7.

6 (Exhibit No. 07 marked for
7 identification.)

8 Q. This is Mr. Carroll's letter, I think we're
9 all familiar with it, of November 9th to you. Is
10 that the letter whereby Mr. Carroll engaged you to
11 be a consultant expert in this case?

12 A. Yes.

13 Q. And he sent you a retainer check, is that
14 right?

15 A. Yes.

16 Q. \$1,000, is that right?

17 A. Yes.

18 Q. Okay. And how much do you charge for your
19 expert witness services?

20 A. \$200 an hour.

21 Q. Okay. Has that gone up during the course of
22 this case from a lower amount?

23 A. I think so. Jimmy got in before I had my
24 rate increase.

25 Q. Yes. We were provided an invoice, I

1 believe, at some point from you and it looked like
2 it -- here, I'll ask the court reporter to mark it
3 as the next exhibit.

4 (Exhibit No. 08 marked for
5 identification.)

6 Q. Is that one of your invoices in this case?

7 A. Yes, sir.

8 Q. All right. It looks like the rate at that
9 time was \$175 an hour.

10 A. Right.

11 Q. So that's gone up to 200?

12 A. Yes.

13 Q. Okay. Back to the letter, the last exhibit
14 I showed you, there's a -- Mr. Carroll mentions on
15 the last part there, he says something about a
16 great, or in my case terrible, article in the paper
17 this weekend, but you sounded great. Do you know
18 what that refers to?

19 A. Yes, the -- and I don't remember her name.
20 I talked to her for about 30 minutes at the airport
21 one day while I was waiting on a plane, from the --
22 what's the paper in Charleston, Courier.

23 MR. CARROLL: The newsless Courier.

24 THE WITNESS: Yes, the Courier. She
25 called me one day. She was doing a report because

1 it was near spring, I think, about Formosan
2 termites; and I talked to her for 30 minutes about
3 general information of what I find, you know, what
4 I'm finding out there, how much damage there is,
5 how much money, that kind of stuff at the time is
6 what I remember. I think she pulled a lot of her
7 information from Bert Snyder with Palmetto, if I
8 remember correctly, I think a lot of it. He was
9 sort of her lead pest control guy there. So that's
10 what that was about.

11 Q. Okay. So you were quoted in that newspaper
12 article?

13 A. I think she did.

14 Q. Now let me hand you what I'm going to ask
15 the court reporter to mark as the next exhibit
16 which is No. 9.

17 (Exhibit No. 09 marked for
18 identification.)

19 Q. That's your inspection report of January
20 3rd, 2016, prepared for this case?

21 A. That's the cover letter, yes.

22 Q. Okay. So this is a cover letter, and you
23 refer to some attached photos, and let's just go
24 through it. What had you done before you generated
25 this cover letter?

1 A. I did an inspection of the property.

2 Q. All right. How long was that inspection, if
3 you know, approximately?

4 A. Three or four hours. It was this bill,
5 right? Looks like it was probably three or four
6 hours because I think I came out of Murrells Inlet
7 that day, so that would be about right, three or
8 four hours, somewhere in there.

9 Q. The bill actually says quantity, six. Does
10 that mean six hours?

11 A. That's how long it took me to drive down,
12 drive back. You asked me how long I was on site, I
13 think. Am I wrong about that?

14 Q. No, you're right. I understand.

15 A. So that's about three and a half hours,
16 something like that.

17 Q. Okay. I understand your method for
18 determining that.

19 A. I don't charge that \$200 or \$175 an hour
20 when I go to sleep and all that. I only charge it
21 when I'm actually moving or doing stuff. I'm not
22 quite that bad. There are a lot of experts, I
23 understand, that do that. I'm considering it.
24 They charge from the time they leave to the time
25 they get home; don't matter, sleeping, eating. I

1 couldn't quite sleep at night if I did that.

2 That's not fair.

3 Q. All right. Back to your report cover
4 letter, so you inspected the property back in
5 November 2015, correct?

6 A. Yes, sir.

7 Q. That's what your invoice says. All right.
8 And then generated this inspection report letter,
9 and it says general findings, No. 1, I discovered
10 live Formosan termites and collected specimens,
11 correct?

12 A. Correct.

13 Q. Do you still have the specimens?

14 A. Probably. I didn't bring them with me
15 today, but I probably have them in my office.

16 Q. I'm glad you didn't bring them. How do you
17 contain them?

18 A. Put them in alcohol. They're in vials
19 with -- in alcohol.

20 Q. And you have those marked somehow that they
21 were from 11 Tabby Lane?

22 A. You know, I don't really know if they're
23 necessary. There's been so many people that have
24 been out there and looked and -- Cecil and
25 everybody. I think that's probably pretty much a

1 moot point at this point. They are Formosan
2 termites. I don't think -- if there's any doubt
3 about that, I can always bring them out as a
4 voucher specimen or something. We could probably
5 find some there today if we went and looked hard
6 enough.

7 Q. Live ones?

8 A. Probably.

9 Q. Do you think that the only termites that
10 infested this home were Formosans?

11 A. Yes.

12 Q. And what is that belief or opinion based on?

13 A. Oh, the damages I saw on the house was
14 apparent of Formosan termite damage, the amount of
15 damage there and how it was -- how it proceeded
16 was, it just -- it looked like termite, Formosan
17 damage to me.

18 Q. Okay. Now, the second thing says, I have
19 observed wood-to-ground in several areas of the
20 residence; and it says, see attached photos. And I
21 would like to look at some photos in a little
22 while, but right now I'm not going to pull them out
23 yet. What does that mean when you say I observed
24 wood-to-ground in several areas?

25 A. Well, one of the conditions conducive to

1 infestations of termites, there is a no-no for all
2 pest control operators, is to make sure that you
3 don't have wooden objects that go from the ground
4 to the structure of the building. That's what I
5 meant.

6 Q. Okay.

7 A. There's latticework all the way around the
8 property, there's pilings around the property,
9 there's a lot of places on that house where there's
10 wood-to-ground contact, so that's part of what I
11 was talking about.

12 Q. All right. And are you saying it's a big
13 no-no to have any wood touching the ground?

14 A. Yes. It's supposed to be reported by pest
15 control operator on each and every inspection and
16 visit wherever wood-to-ground contact is found.

17 Q. All right. So those are two different
18 things, though. I asked you is it a no-no to have
19 wood touching the ground, and then you responded,
20 yes, you're supposed to report that there's wood to
21 ground contact. Is it a no-no to have it or not to
22 report it?

23 A. Both.

24 Q. All right. How would you have a piling that
25 holds a house up that doesn't touch the ground if

1 it's made of wood?

2 A. You wouldn't.

3 Q. Okay.

4 A. It's supposed to be treated in a proper
5 manner. That's the way that happens.

6 Q. Okay. So got to be clear here. It's okay
7 to have wood-to-ground contact as long as you do
8 something and report it; is that your opinion?

9 A. That's correct.

10 Q. All right. What about the latticework
11 around the house, you say you observed the
12 latticework touching the ground?

13 A. Yes.

14 Q. Is that something you can do something
15 about, like treat it?

16 A. You could trench and treat the area under
17 it, but usually what is recommended is that they --
18 that you keep it away from being able to touch the
19 ground. And over time in sandy soil, particularly
20 on the coast down here, every lattice just about
21 that's ever been put up around there gets -- gets
22 sand and dirt around it, so you need to make sure
23 that that's a -- that that's mentioned, whenever
24 you see it, and whenever -- you just need to make
25 people aware of the fact that you don't want to

1 have those touch. And sometimes you can tell that
2 the lattice is pressure treated, but that still
3 doesn't preclude the mention of it; people should
4 know that, be aware of it, that's the right term.

5 Q. All right. And the third thing on your
6 inspection report, which I think is Exhibit No. 9,
7 this cover letter we've been looking at, it says,
8 there is extensive termite damage throughout the
9 home, see attached photos. And it says, of note,
10 the flooring support in the laundry room is
11 completely destroyed. First of all, let me ask
12 you, when you say there is extensive termite damage
13 throughout the home, what did you mean by that?

14 A. That there was termite damage throughout the
15 house.

16 Q. Okay. Well, my question is does that mean
17 there were areas of termite damage in various areas
18 of the house, or the entire wood structures of the
19 house were infested with termites? Do you
20 understand my question and the difference?

21 A. Yes, I do. Throughout the house in my
22 vernacular here meant in most every part of the
23 building there was termite damage. Not that every
24 single square millimeter was damaged by termites
25 but that the termites were in general throughout

1 the building in different locations in the house.

2 Q. All right.

3 A. The evidence of and the damage caused by.

4 Q. Was there termite damage in every room in
5 the house?

6 A. Pretty close.

7 Q. What rooms were there was there not termite
8 damage in, if you know?

9 A. You know, I don't remember one.

10 Q. You don't remember any room?

11 A. That didn't have some damage to it. The
12 more I look back and remember, I can't really --

13 It's so hard to call that exactly because of
14 walls. You know, is the wall in this room or is it
15 in that room, that's what I'm -- pretty much every
16 room had some sort of damage to it.

17 Q. All right. Now, I don't see any mention in
18 this Exhibit 9 of any moisture damage. Did you
19 also see any moisture damage in the home?

20 A. There was a little bit of old moisture
21 damage to the left side of the chimney, up at the
22 top in the attic. There was that one small place
23 that I don't think anybody's agreed 100 percent on
24 what it is on the right side of the house, looking
25 at it from the road, there's a small area probably

1 12 inches wide that looks like there was some
2 moisture damage there in the past, but there also
3 looks like there was some termite damage in that
4 area. Some of the area above the back window, the
5 big back window, had a little bit of moisture
6 damage on it. I didn't get the extent of that.
7 It's been changed two or three times since I
8 happened to be there. The day I was there it was
9 covered with Tyvek, and I went back and they had
10 done some stuff to it, but it had a little bit of
11 moisture damage around it. But other than that
12 most of it was not excessive from that, and I
13 didn't write any down -- the reason I was taking a
14 while is I went back and looked at my notes, and I
15 didn't -- I usually do if there's moisture damage.
16 I didn't see any much. So that's what I found.

17 Q. What about in the ground floor room that Mr.
18 Carroll had constructed down there, turned into a
19 bedroom and bathroom, are you familiar with the
20 area I'm talking about?

21 A. Yes.

22 Q. Did you find any evidence of any moisture
23 problems in that room?

24 A. I didn't write anything down. I don't
25 remember anything that stands out that way.

1 Q. Did you take any moisture readings during
2 your inspection?

3 A. No.

4 Q. All right. Is there some type of commonly
5 used technology to take moisture readings?

6 A. Yes.

7 Q. Do you have a moisture reading tool like
8 that?

9 A. Yes.

10 Q. And is there any reason why you did not use
11 it in your inspection of this home?

12 A. No, just didn't feel like it was necessary.

13 Q. All right. Now, you say you've been
14 referring to your notes. Let me just show you, is
15 this what you're referring to?

16 A. Yes, and then the pictures that go along
17 with them. Each one of the bullet points there or
18 each one of the numbers on the left side of your
19 page, that goes along with a picture.

20 Q. Okay.

21 A. And they all have circles on the front
22 diagram, so there's a picture that goes along with
23 each one of those numbers.

24 Q. All right. I'm going to get to that in a
25 little while, but I'm going to put that aside.

1 A. That's just where I've been -- you know,
2 I've been there a few times, but for me to tell you
3 I remember every place that there was moisture
4 damage or something, you've got to sort of look
5 back to remember specifics; so I'm sorry if I'm
6 dragging my feet, but I didn't want to misspeak.

7 Q. Why is moisture significant in terms of
8 termite infestation?

9 A. There's two types of moisture. One is a
10 flooding event, where if you used a traditional
11 trench and treat chemical application where you
12 trench to a certain depth, if a flood comes in like
13 what happened during Hurricane Hugo or what may
14 have happened on some of the beach front properties
15 here, you can take all the soil that was treated
16 and physically remove it, there's a possibility
17 that can happen. Or it can get covered up with
18 enough sand and dirt -- if you look at pictures
19 this week or last month or so, you saw all the
20 beach stuff that all the sand got moved, right? So
21 that means all that dirt that wasn't there is there
22 now on top of that. Well, if that happens, you can
23 have a zone where the termiticide is not present
24 and the termites can get through there and get to
25 the building. That's a flooding event. That only

1 happens, like I said, inundation or the dirt
2 actually moving.

3 The second way that termites, and Formosans
4 are notorious for this, is you can get moisture
5 into the building that is a persistent water leak.
6 Normally what I find is there's -- the condensate
7 lines for air conditionings is an example. A roof
8 leak. Some windows from time to time can hold
9 enough moisture, headers and that type of thing.
10 Termites, Formosans can come in, they fly in in the
11 spring normally, Memorial Day weekend's a good
12 weekend for them, and if they find the right spot
13 and the moisture's high enough, a male and female
14 termite can get in there and actually build a
15 carton, you've heard that term carton, that will
16 hold the moisture because it leaks enough in that
17 area, hold enough moisture there for the termites
18 to be able to live above ground and not have to go
19 down to the ground. Remember, *Coptotermes*
20 *formosanus*, the Formosan termite, is a subterranean
21 termite. It prefers to go underground. But it
22 can, under extreme situations, survive above ground
23 if one of those types of scenarios happens.

24 They also can use the carton to not only go
25 back to the ground but to be an intermediate point,

1 and I think in this particular case we had that
2 happening after they had cut through at the
3 chimney. The termites were there on the chimney
4 level. I think after they had cut through there,
5 they built a carton to get any moisture that may be
6 coming off the side of that chase, coming off the
7 chimney, so I think there was a carton in that
8 area.

9 So those are the two ways that termites, and
10 Formosan termites in particular, can use moisture.
11 As far as it being a concern, if the termites
12 aren't there to start with, which is the job of the
13 pest control operator, he gets hired to control the
14 termites so they don't get in the building, then
15 the moisture may cause wood-decay fungi, and it may
16 bring the house down eventually, but the termites
17 don't. So that's the differences between water and
18 termites.

19 Q. All right. So termites need moisture to
20 survive, correct?

21 A. Yes.

22 Q. All right. And if they find wood that is
23 moist because of the leaks like you've described,
24 then they can just live in that area where the wood
25 is moist and not have to go back to the ground for

1 moisture, correct?

2 A. Correct.

3 Q. And I think you described that as an above
4 ground colony when that happens, correct?

5 A. Yes.

6 Q. And that type of colony can either become
7 established in the first place, either by an aerial
8 infestation, as I think you also described a moment
9 ago, correct?

10 A. Yes.

11 Q. Or a ground-borne infestation, correct?

12 A. Yes.

13 Q. Okay. And so you do believe that there was
14 an aerial infestation in one part of the house at
15 11 Tabby Lane?

16 A. I believe there was a ground infestation
17 that, when it got to the level of that small water
18 leak or water leak around the chimney there on the
19 left side, found enough moisture to have a
20 sub-filling station, if you want to call it that,
21 for the termites that were in the rest of the
22 building.

23 Q. Okay.

24 A. Or in that part of the building, in the
25 chimney part.

1 Q. So you believe that the termites were ground
2 borne at first, found a place with moisture near
3 the chimney, established an above-ground colony
4 there?

5 A. Established a carton there that would hold
6 extra moisture so they wouldn't have to go as
7 frequently back to the ground to be able to
8 continue their consumption of the building.

9 Q. So you think the moisture around the chimney
10 did contribute to the termite damage that continued
11 after that to other parts of the house from that
12 area?

13 A. It made it easier for the termites, yes.
14 Not that they wouldn't have gotten to the other
15 parts or could get to the other parts, but it made
16 it easier for them because they didn't all have to
17 go back to the ground.

18 Q. All right.

19 A. Or they didn't have to go back to the
20 ground.

21 Q. Did you find any moisture damage around any
22 windows?

23 A. I didn't notice anything that stood out to
24 me, and I think I would have said that if I did.
25 Like I said, I looked through my notes. I didn't

1 see anything above what I see in other houses in
2 this part of the country as far as moisture around
3 the bottoms of windows.

4 Q. Did you see any termite damage around
5 windows?

6 A. The back one we talked about, yes.

7 Q. I'll just go ahead and ask you now. I'm
8 going to get more into this in a moment, but do you
9 believe that any of the defendants in this case
10 were responsible for the fact that the termites
11 colonized that moist area around the chimney?

12 A. Sure, I do.

13 Q. Okay. Explain why.

14 A. They're both completely -- because the
15 termites had to get there. The only time I ever
16 say anything about termite infestations in
17 buildings, because of the above-ground, aerial,
18 these things we hear all the time, all I want the
19 pest control guy to do is his job. And his job is
20 to provide a barrier or other way for the termites
21 to get started and get into the building from the
22 ground. No one expects a pest control operator to
23 be able to control flying termites that cause an
24 aerial infestation without coming from the ground,
25 okay. That's not at all what we're here -- we saw

1 everywhere that I saw termites above ground, even
2 where they might have formed a carton, they came
3 from the ground originally. You can find the tubes
4 that go up from the ground all the way up into the
5 top of the building. It's the pest control
6 operator's job to keep the termites from coming out
7 of the ground into the structure.

8 Q. So you do not believe there's an aerial
9 infestation in this house at all?

10 A. Correct.

11 Q. Okay.

12 A. I believe they still are going back down to
13 the ground, or they were going back to the ground
14 until this last treatment, and I hope the last
15 treatment we did, or that Terminix did, from
16 looking at the records, you know, hopefully that's
17 going to be enough of a protection so the termites
18 can't come out of the yard, crawl up the post,
19 piers, whatever you want to call them, get in the
20 building.

21 Q. Are termites attracted to the moisture; do
22 they go to the areas in the home where there is
23 moisture present?

24 A. Yes.

25 Q. All right.

1 A. But that doesn't mean that they -- it's just
2 where it's more moist, you know. You're looking at
3 15 to 18 percent compared to 9 to 12 or something.
4 It's not like -- the termites would still do damage
5 to the building whether or not there was moisture
6 or not. They're using the moisture to their
7 advantage. That, I guess, is the best way to put
8 that. The termites still eat the same rate, they
9 still do the same amount of damage, whether it's
10 moist or not. It's just easier for them to be able
11 to do their job.

12 Q. Do you believe a homeowner has any
13 responsibility in making sure they don't have leaks
14 and things like that in the home?

15 A. Everybody has responsibility to take care of
16 their house because if they didn't take care of
17 their house, other things would bring it down. My
18 point is they shouldn't have to worry about
19 termites causing the problem. Let's let the
20 moisture and the wood-decay fungi take care of the
21 problem if the moisture's that bad, and in South
22 Carolina on the coast it will. If they allow the
23 thing to stay wet and moist all the time, the
24 wood-decay fungi will break it down.

25 Mr. Carroll didn't pay the pest control

1 operators to take care of the wood-decay fungi or
2 excessive moisture, but he did pay them, every year
3 that I can tell, money to make sure that they
4 didn't have any termites. That's all he asked them
5 to do. The rest of the problem would be his
6 problem, but there's termites with it. How did the
7 termites get there? They came from the ground.
8 It's one of those indications where one plus one,
9 water and termites, equals five. So if he had just
10 wood-decay fungi, maybe, and just had Formosan
11 termites or termites on the other side, it wouldn't
12 be as bad as it is. It all goes together and makes
13 it exacerbate the problem. That's the way I feel
14 about that.

15 That's the pest control operator's job, do
16 not allow termites to get into the building from
17 the ground. We do know we have a risk down here,
18 and that's why for years pest control operators
19 here -- and that came up in a deposition I read.
20 You know, when did you start -- I think it was
21 Cecil, Cecil Barber's deposition. They didn't
22 take -- and it was years before we knew we had
23 Formosan termites bad down here that any companies
24 were willing enough to take Formosans on. But they
25 found out, if they do a good job of treating the

1 ground and inspection, that they can do it. So
2 that's where that -- that's my soapbox two cents
3 thing on what I think the pest control operator's
4 responsibility is.

5 Q. Is it possible in your opinion for a pest
6 control operator to do everything they're supposed
7 to do and do it correctly and still have a home
8 infested with termites?

9 A. Yes, and that's why we have bonds and
10 insurance and those types of things to take care of
11 an anomaly or a problem that may happen. And I
12 don't think that the pest control company is
13 responsible for aboveground fly-ins. If we don't
14 have any dirt, nothing like that, that's different,
15 and that's a possibility. He can do a perfect
16 treatment, and that could happen; and that's not on
17 his watch, and I'm not going to -- I mean, but this
18 is just so obviously not. That's another reason, I
19 mean, it's like termite tubes coming right up all
20 the posts and pillars in front of the house and...

21 Q. Could a termite technician do everything
22 he's supposed to do and there still be a
23 ground-borne infestation?

24 A. Yes. You can never say never. I've
25 learned, in 30-something years of this, there's

1 always something stupid that could happen and he
2 could do the best job, follow the label and the
3 law. And that's another thing, you know, what's
4 the label? What's he supposed to do as far as the
5 label goes? How often do you inspect the little --
6 the bait stations? How close do you put them
7 together? There's all these things that are done
8 because people do research to find out, what does
9 it take to prevent the termites from infesting the
10 building. So if you do all those things properly,
11 it's very unlikely that you're going to get
12 termites into a building; but, yes, there's a
13 possibility that can happen.

14 Q. Okay.

15 A. It's very small, but there is a possibility.

16 Q. But you don't think that that happened in
17 this case.

18 A. No, sir.

19 Q. Okay. And we'll get more into that in a few
20 minutes too.

21 (Recess held.)

22 Q. All right. Before we took a break, we were
23 looking at your inspection report cover letter,
24 Exhibit No. 9 to your deposition, and you say in
25 No. 4, it appears the slab was drilled/retreated.

1 What does that mean?

2 A. That is a critical part of this entire talk
3 today.

4 Q. Okay.

5 A. Finally, after all these years, somebody
6 drilled around the pillars where concrete had been
7 poured in the basement of that house. When that
8 happened, I'm hoping that the termites will no
9 longer have an avenue to come out of the ground
10 under that slab or through the cracks going into
11 the slab to get up into the building. That was
12 huge to me because I'm always trying to figure out,
13 how can we solve -- you know, how can we stop this
14 problem.

15 Q. Do you know who did that?

16 A. The records I read said Terminix did.

17 Q. Okay. All right. And then back to your
18 letter, on No. 5 it says, I concur with Clemson's
19 findings via their report of structural pest
20 inspection, parentheses, 15 October 2015. What
21 does that mean?

22 A. I think their findings were just -- were
23 correct.

24 Q. Okay. Let me show you a copy. We've all
25 got several copies of this Clemson report. Is that

1 what --

2 Actually, I'm going to ask the court
3 reporter to mark it as No. 10 first.

4 (Exhibit No. 10 marked for
5 identification.)

6 Q. Is that the report that you were referring
7 to on No. 5 of your inspection report cover letter?

8 A. Yes.

9 Q. Just for the record, this is a report by a
10 pest control regulator named Cecil Hernandez,
11 correct?

12 A. Yes.

13 Q. Do you know Mr. Hernandez?

14 A. Yes.

15 Q. And he works for the Clemson University
16 Department of Pesticide Regulation; is that right?

17 A. I think that's the correct term.

18 Q. All right. And is that the regulatory
19 agency in South Carolina that regulates pest
20 control operators?

21 A. Yes.

22 Q. Now, on this report on the second page, if
23 you'll look with me right where I'm pointing, it
24 says, all standards for the prevention or control
25 of wood destroying organisms applicable to this

1 treatment appear to have been met. Do you see
2 that?

3 A. Yes.

4 Q. Do you know what that means?

5 A. That means that the April 3rd, 2015
6 treatment performed by Terminix followed the label,
7 it was done in a proper manner, and it met the law;
8 in other words, the things we talked about earlier,
9 the conditions conducive to infestation were
10 removed, the things of that manner, that's what it
11 says.

12 Q. All right. And just before the sentence you
13 just read about Terminix treating the structure on
14 April 3rd, the remainder of that paragraph,
15 beginning with the beginning of that paragraph,
16 first sentence says, this structure was treated for
17 subterranean termites according to Mr. Carroll with
18 the Exterra termite control bait stations being
19 installed around this property by Isle of Palms
20 Pest Control on February 19th, 2003. And it says,
21 Mr. Carroll provided a copy of the original
22 contract for this treatment, correct?

23 A. Yes.

24 Q. All right. And then it says, Isle of Palms
25 Pest Control changed heir name several years later

1 to SPM Pest Management. Do you see that?

2 A. Yes.

3 Q. And then it says SPM Pest Management was
4 sold to Terminix services on or about May of 2013
5 with all the records of the treatments being
6 included as part of the sale. Do you see that?

7 A. Yes.

8 Q. And then it says Terminix indicated that the
9 Exterra system was not a product they support and
10 that, when they inspected the property, no
11 Exterra -- it says, as present, but I believe maybe
12 that's a typo and meant to say, was present. Do
13 you see that?

14 A. Yes, I do.

15 Q. Okay. And then it says Terminix indicated
16 there were no Exterra records in the documents that
17 were received from SPM Pest Management. And then
18 after that it says, Terminix treated the structure
19 on April 3rd, 2015, and is presently under contract
20 with them. Do you see that?

21 A. Yes, sir.

22 Q. All right. And then the sentence that I
23 first read that says, all standards for the
24 prevention or control of wood destroying organisms
25 applicable to this treatment appear to have been

1 met. Correct?

2 A. Yes.

3 Q. Why do you think that last sentence that
4 says, all standards for the prevention or control
5 of wood destroying organisms have been met, why do
6 you think that sentence only refers to the
7 treatment that's discussed in the sentence before
8 that and not the rest of that paragraph that talks
9 about the other treatment that had been done?

10 A. Because he was talking about the termite
11 treatment from Terminix in the sentence above it.

12 Q. All right. So just because --

13 A. He doesn't have any indication in this. All
14 he had was Mr. Carroll -- I mean, Cecil couldn't
15 have said that. All he had in here was Mr.
16 Carroll's contract. He had no documents, no
17 records, or anything about anything that was done
18 regarding that contract from 2003 until ever. At
19 the time he did his inspection, he didn't know
20 that. He just got the thing that day from Mr.
21 Carroll. That's the way I read it. I don't think
22 there's a doubt in my mind there that he was
23 talking about the last treatment that was done.
24 But Mr. Hernandez can answer that question.

25 Q. Right. We'll ask him. But does Mr.

1 Hernandez say anything in this October 15th letter
2 that indicates that Isle of Palms Pest Control, or
3 SPM for that matter, did anything wrong or anything
4 in violation of the pest control regulations?

5 A. No, not that I can read there.

6 Q. And is Mr. Hernandez, as far as you know, an
7 agent of the pesticide regulation agency that can
8 make findings about violations of the pest control
9 standards?

10 A. Yes.

11 Q. And does he regularly do that in his job?

12 A. Yes.

13 Q. And what does he typically do in your
14 experience when he finds some violation of the pest
15 control standards?

16 A. He sends a letter, a warning letter, or they
17 meet about it, and tells the person that's at
18 fault.

19 Q. Did he do either of those things in this
20 case?

21 A. I don't know.

22 Q. Are you aware of any such warning letter or
23 discussion with an at-fault person that he has had
24 in this case?

25 A. No.

1 Q. All right. And I'm going back to your
2 inspection report now, Exhibit 9. The last
3 numbered sentence says that the enclosed graphs and
4 photos represent only the amount of damage
5 determined with minimally destructive/invasive
6 testing. They are in no way indicative of the
7 total extent of damage to this property. There is
8 potentially more significant damage present. Do
9 you see that?

10 A. Yes.

11 Q. On the first part of that it says that the
12 graphs and photos that you've produced represent
13 only the amount of damage determined with minimally
14 destructive/invasive testing. What do you mean by
15 that?

16 A. I didn't go in there with a sledge hammer
17 and pry bar and a crew and rip the building from
18 one end to the other. All I did was observe what
19 was visibly there the day I was there. And
20 normally that's a good thing because that means I
21 see pretty much what a pest control operator should
22 have seen, and I do that on purpose that way. Of
23 course this house is a little bit different because
24 of the state that it was in when I did my first
25 inspection. And I have been back two other times

1 and looked at it at different stages. I may not
2 have done the testing or the invasive -- the
3 destructive or invasive testing, but I think that a
4 lot of this property's been opened and exposed so,
5 you know, I didn't do it, but other people have.

6 Q. Yes, and I think we all know, everybody in
7 this room knows that the house has been
8 deconstructed basically down to the studs, correct,
9 pilings and studs?

10 A. Pretty close, yes.

11 Q. Has that been done on your recommendation?

12 A. My recommendation was that, as long as they
13 found damage, to go 10 feet past that to make sure
14 we didn't have other places that termites popped
15 up, that was my recommendation and has been that
16 way for a while.

17 Q. When you say, go 10 feet past that, what do
18 you mean by that?

19 A. Well, if you find damage right here in the
20 middle of this room, go 10 feet to make sure we
21 don't have any termites anywhere else within 10
22 feet of that spot.

23 Q. So when you say go 10 feet, are you saying
24 that your recommendation is to deconstruct
25 everything within 10 feet of that spot, as opposed

1 to go 10 feet away from that spot in every
2 direction and use some less invasive or less
3 destructive method to determine if there is damage
4 in those areas?

5 A. I don't know of a less invasive way to do it
6 other than looking at the structure, so you have to
7 get down to the structure, so I think you have to
8 open it up. You have to take the stuff off to be
9 able to see.

10 Q. All right, well, let me make sure I'm clear.
11 Are you talking about then, from a spot where there
12 is termite damage, deconstructing, destroying in
13 other words, everything within 10 feet of that; as
14 opposed to going 10 feet away and deconstructing
15 that area if, as you say, you don't know of any
16 less invasive way to find out?

17 A. You have to follow the damage, yes, just
18 follow the damage 10 feet from that until it ends.
19 You have to take everything off.

20 Q. All right.

21 A. Open the wall up, open the floor up. If
22 it's a floor system, you may be able to see it from
23 the bottom. If it's a wall system, you may have --
24 can only take one side of the wall up, but you want
25 to be sure that you know what the structure -- are

1 there termites in the structure. And the biggest
2 problem with the Formosan termites, and I have
3 testified to this before, is there's many times
4 where they go between double or triple pieces of
5 wood 10 or 15 feet; and all of a sudden, pop, there
6 they come out because of who knows why. Maybe they
7 thought there was moisture there or there was a
8 little more moisture there. I've learned you have
9 to be very cautious when you're determining where
10 you have infestations of Formosan termites or not,
11 how far does the damage go, because you want to get
12 them all out of there. You don't want to have a
13 chance there's a nucleus place where the termites
14 can start back again and go somewhere else. That's
15 how invasive they are. So, yes, I do, I think that
16 you should be able to inspect the structural
17 components, particularly where the wood comes
18 together, to make sure you don't have termites
19 tracking a distance and then all of a sudden find
20 an area and go -- and if you look at the building,
21 you can see that. I don't think there's any doubt
22 in anybody's mind, if you go look at where we've
23 talked about in this house, there's a lot of places
24 where they went down through a triple; and all of a
25 sudden, boom, they found something that they

1 thought was better than where they were, and they
2 bloomed up. That happens a lot, and I have had
3 that happen to me probably five times, where we
4 thought we had gone to the end of damage, and six
5 months to a year later they had Formosan termites
6 15 or 20 feet away. And I just don't want that to
7 happen to my clients ever again. And my -- for me
8 to sleep good at night, I tell them, you need to
9 find out, get -- until you run out of damage, you
10 go 10 feet, and then we'll feel pretty good about
11 the fact that you don't have any more live termites
12 in here. Because you don't kill the termites.
13 Don't ever forget that. There's very few
14 treatments that are done that they actually kill
15 the termites. If they find them, they can kill
16 them; but if those termites are hidden somewhere in
17 that structure, what's going to kill them? We
18 don't do a chemical treatment to the termites. We
19 have to have everything perfect where it dries out,
20 maybe they won't be able to survive; but that's a
21 big risk to make, so that's why I say what I do.

22 Q. And you don't know of any less invasive or
23 less destructive method to search for termite
24 infestations in a home?

25 A. No, I don't. I've tried borescopes. We've

1 tried the infrared cameras to try to find moisture
2 or not, but it could be such a small pocket
3 somewhere that could come back and I don't -- if I
4 did, I would say that.

5 Q. You mentioned a couple just now, borescopes?

6 A. But you can't just see just a small part.
7 For example, borescopes only do an area about a
8 foot, maybe a foot square, even -- if you don't
9 have insulation, maybe a little bit bigger. With
10 insulation you can't see anything unless you're
11 right next to a stud. By the time you spend the
12 time, effort and money to start drilling all these
13 holes and going around and looking and hiring
14 somebody qualified to do, normally it's not that
15 expensive just to take the structure off.

16 Q. Well, it's a lot more expensive to take the
17 structure off and have to rebuild the structure
18 than to make holes and go along with a borescope,
19 correct?

20 A. But if you're finding damage as you go -- if
21 you're finding damage as you go along, it needs to
22 be repaired as you do it anyway. That's stuff that
23 should have been fixed.

24 Q. But what if you don't find damage as you go?

25 A. You stop in 10 feet.

1 Q. What if within a 10 foot section you use a
2 borescope and don't find damage for the first 9
3 feet that you're, you know, looking, but then you
4 find it on the 10th foot away?

5 A. A borescope cannot find termite damage
6 inside a triple 2-by-10. I don't know of anything
7 that can do that. That's the reason.

8 Q. Do you know of any listening devices that
9 are used?

10 A. There's things but they just don't work.
11 I've tried those things for years and years. I
12 don't have any confidence in the -- I want to see
13 it.

14 Q. All right. Is there any authority in the
15 industry or in any treatises that talk about your
16 10 foot recommendation?

17 A. Not that I'm aware of.

18 Q. All right.

19 A. It's what I tell my clients because I want
20 to be sure that they don't have termites. And if
21 that's on me, then that's on me. I'm not going to
22 lose sleep at night thinking that we missed damage
23 in the building somewhere. I told him to do that.
24 Now, whether they did 10 feet or they went other
25 ways, that's something for somebody else to

1 determine that. But I told them to go 10 feet from
2 the last time they found damage to make sure that
3 we got all the termites out of the building.

4 Q. Just so I'm clear, you told them to
5 deconstruct everything within 10 feet in every
6 direction of any spot where they found damage?

7 A. I told them to open it up.

8 Q. Which means deconstruct it?

9 A. Well, to a point, yes. I mean, I think you
10 can be -- how do you say it? You can be wise with
11 it or you can't, and I don't know the -- how to say
12 that any other way. But I wanted them to take -- I
13 wanted them to open it up, make sure there were no
14 termites there.

15 Q. What you were just trying to come up with a
16 second ago, I want to understand it. Do you mean,
17 when you say you can be wise with it or not, do you
18 mean you can either open it up in a way that you
19 can salvage what you deconstruct and then reuse it
20 to put it back together, as opposed to just
21 destroying it?

22 A. Yes.

23 Q. Okay. That's what you meant by that?

24 A. Yes.

25 Q. All right.

1 A. There's sometimes you can do that. You
2 don't have to -- not everything in every place
3 probably. I just want to make sure we inspect and
4 see all the visible damage anywhere that we can
5 make it visible, that's what I want to do.

6 Q. I've heard your 10 foot recommendation
7 referred to as a 10 foot rule. Do you call it a 10
8 foot rule?

9 A. That's my rule. That's me.

10 Q. That's what you call it?

11 A. I call it my 10 foot rule. I've done it for
12 years, and that's what I say.

13 Q. So that's not a rule in the law anywhere?

14 A. No.

15 Q. And is it a rule in the industry in terms
16 of -- when I say the industry --

17 A. Well, no, because --

18 (Simultaneous discussion interrupted by
19 the court reporter.)

20 Q. Is it a rule in the industry, and when I say
21 industry, I mean in either the termite inspection
22 industry or your industry as a termite consultant,
23 so to speak? Do you understand my question?

24 A. I do know what you mean, and let me try to
25 clear it up.

1 Q. Okay.

2 A. For some reason people want to go and find
3 areas where termites may be congregating en masse
4 and say, that's where the damage is; under a
5 header, under a window, the fireplace area over
6 there. But what about if we had just done that,
7 and let's talk about what the industry would say.
8 And I've read all these depositions. They're all
9 focused on those focal point areas. You would find
10 the carton; you would find the window sill that was
11 damaged. And that's the cheapest way to do that.
12 You go and you hit the big shot, and I'm all for
13 that; but I still have seen too many cases where
14 they would have missed significant number of
15 termites, in this particular house, if they had not
16 extended their search to other areas. Because the
17 termites keep moving. Even as you're doing this,
18 the termites are moving to survive. They're trying
19 to find a place to go.

20 So what does the industry want? They don't
21 want to open up any more than they have to because
22 if you find the damage, or if you keep finding it,
23 it costs money. I do understand that totally. So,
24 no, the pest control operator, he's going to do as
25 little as he possibly can in as minimal amount of

1 area as he can and say, we'll fix this, and put a
2 circle around it.

3 In my business my job is to try to help
4 people find the extent of the damage. It's a
5 different way of looking at life. So I tell people
6 to go to the extent of the damage, and I think most
7 consultants would tell you that.

8 Q. Well, I mean, do you know of any other
9 termite consultant that does recommend a 10 foot
10 rule?

11 A. To be honest with you, I don't know a lot
12 about what other people say on that matter. I
13 would be telling a -- I don't know.

14 Q. So you don't know of any other experts --

15 A. I don't know what their testimony would be.

16 Q. But you don't know of any other termite
17 expert who recommends that 10 feet in every
18 direction from any damage be removed?

19 A. For Formosan termites, no.

20 Q. Okay. Do you know of some other experts
21 that recommend it for other types of termites?

22 A. No.

23 Q. Okay.

24 A. I don't know that testimony.

25 Q. And, again, just to make sure I understand,

1 you don't know of any authority or book or academic
2 treatise that recommends the 10 foot destruction to
3 look for termites, do you?

4 A. I think anything you read -- or I know
5 this -- anything you read will say continue
6 removing until you don't find damage anymore.
7 That's what people tell you to do. You get the
8 damaged wood out. Now, if you don't inspect it,
9 after you know you've got a damaged area, how far
10 does that go? And I don't know if I've ever seen
11 anything in writing that said, that's the end of
12 it. Okay. The 10 foot was something that I -- is
13 something that I strongly believe in as a necessity
14 to make sure that you don't have pockets of
15 termites in a structure that get missed; but I did
16 answer your question, I think, in that other
17 discourse. Okay.

18 Q. When did you first determine that 10 feet
19 was the correct amount in your opinion?

20 A. It's been at least ten years, eight to ten
21 years, we've been doing that for. I had a couple
22 of cases that -- and I'd have to go back and look
23 at the names of them. For an example -- is it all
24 right to do this? I want you to understand why I
25 strongly believe what I believe. It was above a

1 window in a garage, okay. The termites had come
2 out of the ground. They were above a window in the
3 garage bad. And I did an inspection, and the
4 soffits went down, and I could see on either side
5 of that; and I went to about two or three feet on
6 either side, and I said, okay, guys I think this is
7 okay. Go to here, repair it, and we'll be all
8 right. Three months later the termites had found
9 their way all the way around and were infesting the
10 front porch of the building, which was almost 30
11 feet away. If we had gone five or six more feet
12 when we did that original deal, we would have found
13 it. That's just one example. There's others. I
14 just think it takes that long to make sure that you
15 don't find another place where the termites are
16 tracking and come up.

17 Q. Well, why 10 feet, why not --

18 A. That seems to be the right amount of damage
19 for me to feel comfortable that there's nowhere
20 else that they're going to come up. That's me
21 working.

22 Q. Why is it -- explain that.

23 A. That's just how far I think you need to go
24 to be sure that you run out of damage. That's my
25 opinion.

1 Q. Well, but based on what you told me, I mean,
2 couldn't a termite colony have extended further
3 than 10 feet, and if you only go 10 feet, you
4 wouldn't find the extent of the damage?

5 A. You would find out if they're still active
6 and still going there; in 10 feet you would find
7 that out.

8 Q. Why wouldn't you just look, for example, one
9 or two feet past to see if there's damage there
10 first --

11 A. You do.

12 Q. -- and then if there is, go another couple
13 feet?

14 A. I never said you just go 10 -- I never said
15 that that's the end of the world, 10 feet. It's
16 not that black and white, right? You start at the
17 damage and you go out.

18 Q. But why do you go out 10 feet; in other
19 words, why don't you just --

20 A. Because of what I just mentioned. There's
21 always construction within that amount of time, in
22 my experience, there's always going to be some
23 construction -- what do you call them?

24 Q. Sistered boards or something like that, is
25 that what you're talking about?

1 A. -- piece or the way the house is put
2 together, there's always going to be some of those
3 where there's boards on top of boards or there's
4 going to be crosses or there's going to be
5 somewhere in that period of space where they could
6 be hiding and they'll show theirselves and come out.
7 That's the reason for that. It's my -- it just is
8 what it is.

9 Q. All right. And just to make sure I
10 understand, you did not recommend to anyone in this
11 case about 11 Tabby Lane that the material that was
12 removed in the effort to follow your 10 foot rule
13 was destroyed as opposed to reused?

14 A. I never say one way or the other. All I
15 want to make sure is there were no termites from
16 the end of it 10 feet out. What they did with the
17 lumber, I have no idea. I just thought that
18 they -- I didn't know where it went. I didn't know
19 that.

20 Q. Was there termite damage or pathway
21 evidence, so to speak, along every area of this
22 house where it was deconstructed for the
23 inspection?

24 A. Yes. I went with the builder that day, and
25 I said, couple times, I said why did you take this

1 up? Asked him that, and he showed me. He showed
2 areas, and I think they did a pretty good job of
3 that. I mean that. I asked the question that
4 you're thinking in your head right now is why did
5 they have to do all that, and I think that's -- I
6 think he went that distance.

7 Q. So is it your opinion in this case that the
8 termites traveled through every foot of the house?

9 A. Within 10 feet of every foot of the house
10 because of the way that they travel. That was his
11 interpretation of how to do what he did.

12 Q. Well, I mean, if a termite goes from point X
13 to 10 feet away from point X, then did the termite
14 travel that entire 10 feet?

15 A. Yes.

16 Q. So then is it your testimony that the
17 termites traveled through every foot of this house,
18 since they did the 10 foot rule inspection and
19 continued to go another 10 feet and another 10 feet
20 to the point where the entire house was removed
21 down to the studs and the pilings and the roof?

22 MR. MCKNIGHT: Objection to the form.
23 You can answer.

24 THE WITNESS: I think what I said was
25 where I wanted it. Within 10 feet, okay. That's

1 what I'm sticking with. Within 10 feet of that
2 inspection area, which basically was a lot of the
3 house, most of the house; you would have found
4 termites within 10 feet of that area.

5 Q. In other words, within every 10 foot span of
6 this house that anyone could point to you believe
7 that there were termites.

8 A. Yes.

9 MR. MCKNIGHT: Can we go off the
10 record?

11 (Discussion off the record.)

12 (Exhibit No. 11 marked for
13 identification.)

14 Q. Let me show you what I've asked the court
15 reporter to mark as the next exhibit which is
16 Exhibit 11, appears to be three pages including a
17 drawing or a graph type drawing and then a numbered
18 list. Is this your group of notes from this case?

19 A. Yes.

20 Q. All right. And you made this on that
21 initial inspection that you did at the house --

22 A. Yes.

23 Q. -- back in November 2015?

24 A. Yes.

25 Q. And you were explaining this a few minutes

1 ago, I think; but on the first page, the drawing,
2 what does that represent, that drawing?

3 A. It's the footprint of the house.

4 Q. Okay. And the circles that don't have
5 numbers in them, what do those represent, the
6 pilings?

7 A. Yes.

8 Q. And the house is multilevel, correct?

9 A. Yes.

10 Q. In other words, it's got the ground floor,
11 what I think you referred to earlier as the
12 basement, and then it's got the first floor, but
13 that's above the ground, correct?

14 A. Yes.

15 Q. And then a second floor, right? What I'm
16 trying to find out is on this drawing do you make
17 any notes -- I have sort of a hard time reading it,
18 but do you make any notes --

19 A. There's a lot of damage is why. I ran out
20 of spaces to put X's.

21 Q. Well, do you determine or do you note on
22 here where, like which floor these X's are on?

23 A. You see the -- on the left side of the
24 diagram, see the X's that go outside the lines?

25 Q. Yes.

1 A. Those are vertical. If you were to stand
2 those up, each one of those represents a vertical
3 off of the bottom.

4 Q. I'm sorry.

5 A. By the time I was there.

6 Q. I'm sorry. I didn't understand that.

7 A. These X's on the left-hand side come outside
8 of the box.

9 Q. Okay.

10 A. If you would stand those up, that's vertical
11 off of the bottom.

12 Q. Okay.

13 A. So in other words that's, what, about 8, 10
14 feet up the front of the house; and that is the
15 front, by the way.

16 Q. Right. So whenever there are X's in a line
17 or in a row like that --

18 A. That's the height of the damage outside, so
19 all that damage goes up as well as it goes across.

20 Q. All right. And then you've got the circles
21 with numbers in them, and do those numbers
22 correspond to the second and third page list?

23 A. Yes.

24 Q. And on the second page that you're looking
25 at right now it says, collected specimens all

1 Formosan, right?

2 A. Right.

3 Q. And then the list begins. Does that mean
4 that you collected specimens of Formosan termites
5 in all the places that you listed here?

6 A. No. I just collected Formosan termites from
7 a couple places inside where we're doing the
8 inspection.

9 Q. Okay. And then list that's numbered just
10 refers to where you found damage?

11 A. Those are the pictures I took.

12 Q. Okay. I gotcha. And so the numbers
13 correspond to the pictures?

14 A. Correct.

15 Q. Okay. And so the pictures, which we can
16 look at in a little while if we need to, but the
17 pictures that you took were of termite damage,
18 correct?

19 A. Or concerns that are mentioned in the
20 description of them (indicating).

21 Q. Okay. Down where it says -- I just want to
22 make sure I get you to tell me the ones I can't
23 read.

24 A. It's pretty straightforward, I think. I
25 mean, it's just it is what it is kind of thing,

1 right?

2 Q. Yes, except for when I can't read it.

3 A. And that's my hand scratching, so we can
4 talk about that for sure.

5 Q. What does No. 12 say?

6 A. Above stairwell all gone. In other words,
7 if you remember in the house, all that above the
8 stairwell was completely out of there, so I
9 couldn't do much with it. And then, Terminix just
10 retreated/drilled the slab, and there's a picture,
11 I think of that.

12 Q. What does No. 14 say?

13 A. Back of house damage width of stairwell to
14 above the window we talked about that's shaped like
15 that (indicating), that window, rainbow window, how
16 about that, arched window.

17 Q. All right. Now, I think you're aware, we
18 referred to Cecil Hernandez's letter a little while
19 ago, and he mentioned it, but that Isle of Palms
20 Pest Control was the termite technician company
21 with the contract on this home for a period of
22 time, and then SPM was the termite technician
23 company with the contract on this home, and then
24 after a period of time Terminix became the termite
25 technician company with the contract on this home.

1 Is that your understanding?

2 A. Yes.

3 Q. Okay. Are you able to give an opinion about
4 when the termite infestation in this home first
5 occurred?

6 A. No.

7 Q. So does that mean that you are not able to
8 say which of those three companies, Isle of Palms
9 Pest, SPM, and Terminix, had the contract on the
10 home when the damage first began?

11 A. When did the --

12 Q. That's fine. You can ask me. If I can help
13 you, I'll help you.

14 A. When did the transition -- and I'm losing --
15 there's so many dates I've got in my head right
16 now. When did the transition from Isle of Palms to
17 Sottile Pest Management take place?

18 Q. In February 2013, I'll represent to you that
19 in February 2013, that that was the first time that
20 SPM inspected the property. In other words, that
21 Isle of Palms Pest Control did the annual
22 inspections from February 2013 to February 2012,
23 and then on the next year's inspection in 2013 it
24 was SPM at that point. Does that help you? Is
25 that what you're asking?

1 A. I just saw a lot of different things in
2 there. When did Vincent change from one to the
3 other? I think that's important because as close
4 as it sounds to me, I think everybody had -- I
5 mean, we're only talking about a year and a half,
6 so I don't think there's any problem, you know --
7 you said '13, right?

8 Q. Right.

9 A. So, I mean, I don't think there's any doubt
10 that there were termites in that house through all
11 three entities.

12 Q. That's what I'm trying to get at.

13 A. Yes. I don't know the exact amount of time
14 for sure, but I do know there were termites at
15 least that far back. Okay. You want me to tell
16 you exactly the date -- you know, there's
17 different, whatever you want to call it, tittles or
18 whatever about that but I'm -- legal, the legal
19 tittle. But I don't know exactly how long, but in
20 my professional opinion, there were termites
21 present before Isle of Palms changed to Sottile
22 Pest Management.

23 Q. All right. How do you know that?

24 A. Because we had swarming termites, first of
25 all. It takes three years for Formosans to swarm.

1 Just that, that's enough right there to get us back
2 to it.

3 Q. Explain that to me. When was the swarm?

4 A. We had swarming termites in the house in
5 2015, and you just told me in 2013 they were --
6 that's less than three years so that's enough,
7 right?

8 Q. Well, wait. Where are you getting your
9 information about the swarm in 2015?

10 A. Deposition, I think.

11 Q. So you believe that there was a termite
12 swarm -- swarmers that came to this house in 2015?

13 A. Came out of the house, yes.

14 Q. Okay. You don't know where that comes from?
15 You don't know why you think that?

16 A. I think it was a deposition.

17 Q. You don't know who?

18 A. They came back and they did the treatment
19 after they found the swarmers that time. That was
20 what brought Terminix back.

21 Q. Explain to me why -- if there were swarmers
22 that came out of the house as opposed to towards
23 the house from elsewhere in 2015, what's the
24 significance of that? You said something about
25 three years.

1 A. Biologically, that's how long it takes for a
2 Formosan termite colony to reach sexual maturity
3 and to be able to swarm.

4 Q. All right.

5 A. Do you understand that? That's what I'm
6 going by. And I think that's going to be within
7 that window. And I'm pretty sure that's why they
8 came back out and did that treatment was because
9 one of the guys said there were swarmers.

10 Q. If swarmers are seen at a residence, how do
11 you determine that the swarmers came from that
12 residence as opposed to from elsewhere to the
13 residence?

14 A. Well, you have to observe it. I mean, the
15 technician has to see -- you know, you can see
16 where the termites come out of the walls. Termite
17 swarm's pretty evident when it comes out of your
18 house.

19 Q. Is the swarm that you're talking about the
20 swarm that was found down in the ground floor when
21 Terminix first inspected, is that what you're
22 referring to?

23 A. I think, yes, right.

24 Q. Okay.

25 A. That's exactly what I'm talking about.

1 Q. Let me ask you about that for a second, and
2 I'm going to go back to this termite infestation
3 dating subject. You read the deposition, I think,
4 by the Terminix technician that was out there and
5 saw termites coming out of an area in the ground
6 floor, right?

7 A. Correct.

8 Q. All right.

9 A. Swarming. That was the term that was used
10 in the deposition.

11 Q. Okay. Let me ask you about that. Do you
12 know where he saw that?

13 A. My understanding was from reading, and of
14 course I wasn't -- it was in the area underneath
15 the stairwell around the three or four pillars down
16 there, they had the termites coming straight out of
17 them. Under the laundry room, is that a good
18 enough area?

19 Q. That's where there was a room built under --
20 in that ground floor, correct?

21 A. There was a room down there, yes.

22 Q. Is that where you believe the infestation in
23 this house started?

24 A. Started in the front of the house there,
25 yes, I do.

1 Q. On the ground floor towards the front of the
2 house?

3 A. Mm-hmm.

4 Q. Is that a yes?

5 A. Yes.

6 Q. All right. Are you referring to the area
7 where there was an enclosed room built on the
8 ground floor?

9 A. The exterior wall there, yes. The wall
10 underneath the stairwell that goes down from the
11 porch.

12 Q. Now, back to the dating of the infestation,
13 so to make sure I understand, you believe that
14 since -- that was in January 2015 I'll represent to
15 you that that Terminix --

16 A. Correct.

17 Q. -- technician --

18 A. That's what I thought.

19 Q. So I believe that because of that you can
20 give the opinion that there were termites in that
21 house since at least when?

22 A. Three years previous to that, so that would
23 be January of '12, at least that long back. Is
24 that right? Three years. That's three years,
25 right? And that's not doing any calculations or

1 any of that stuff. We just know that's how long it
2 takes for -- you know, it takes that long for
3 Formosan termites to swarm, so go back three years,
4 and that's where we'd be.

5 Q. And is it, I mean --

6 A. You can read it. It's literature.

7 Q. All right. Is it exactly three years, is it
8 occasionally three years, is it sometimes two,
9 sometimes four? What is the literature you're
10 getting this from?

11 A. Any pest -- any book you want to read. The
12 range is -- depends on the latitude. In our
13 latitude, once you get this far, it's about three
14 years. It's any way from 18 months way south,
15 Miami, that kind of stuff; up to about four years
16 on the very northern edge of where Formosan
17 termites are found. And you've got to remember,
18 we're on the very northern edge of where Formosan
19 termites are found, maybe about as far north as you
20 can go with Formosan termites, if you start looking
21 at where they're found. Isle of Palms is pretty
22 darn close. We don't have any now just up a little
23 bit, that's about it, so it's --

24 Q. What are the books you're referring to?

25 A. The Mallis pest control book, the Scientific

1 Guide to Pest Control, all those have it. The
2 USDA's put out a -- they just got done doing a
3 really big study on all the stuff in New Orleans.

4 Q. Can you show me in Mallis?

5 A. Sure, I can. Is that a new one?

6 Q. Look and see what edition it is.

7 A. Yes.

8 Q. For the record, I just handed you a copy of
9 the book that you referred to called Mallis, and is
10 that the author of that book?

11 A. He was. This was sort of like the first
12 book for pest control operators, and it's been used
13 for a long time.

14 Q. And that's a book that you rely on in your
15 work as a termite expert?

16 A. Well, not as much as I used to, but it was a
17 textbook, you know, this one and the Scientific
18 Guide to Pest Control both. I think Scientific
19 Guide to Pest Control even may have a table in
20 there. And to be honest with you, I don't know if
21 I've ever seen this version. This is a newer one.
22 I don't have the money to buy one of these.

23 I think they have taken the reference out
24 here, the literature cited parts of it, and I don't
25 have those right here.

1 Q. So you're not finding anything in the Mallis
2 treatise about --

3 A. Well, I'm finding the --

4 Q. Hold on. Let me finish my question, and
5 then you can answer. If I'm not asking the right
6 question, you can tell me.

7 As you've reviewed the Mallis treatise for
8 the last few minutes, you have not found anything
9 that says that a swarm occurs within some certain
10 amount of time after the first presence of a
11 colony?

12 A. Not where I first looked. And I would have
13 to...

14 Okay. This is the statement that I -- just
15 a statement, and I'd have to go through and go back
16 to look at all the literature. I mean, I'm being
17 honest with you, this thing's changed a little bit
18 since the last time I read it. This is a new
19 editor. He's a guy out of Hawaii that I'd have to
20 go back -- he said some things that I don't know if
21 I would have.

22 (Reading): The age and size of termite
23 colonies when swarmers are first produced is
24 unclear. A minimum of three to four years probably
25 is required in native subterranean species, but the

1 time required for initial production of alates
2 maybe much longer or never if conditions within the
3 colony are unfavorable. If swarmers appear in a
4 relatively new building, the structure was probably
5 built over or near an existing mature colony. The
6 number of swarmers produced will be proportionate
7 to the age, size and nutrition of the colony.

8 But I know that one of these books -- and
9 I'm sorry to not know the exact one -- I know that
10 one of these treatises has the amount --

11 MR. BELSER: What page was that?

12 THE WITNESS: This was page 224 and 225
13 of the Handbook of Pest Control by Mallis but --

14 Q. Which edition?

15 A. This is the ninth edition, and that's a
16 pretty new one, I think. I think the one I had
17 when I went to school was three or four or
18 something like that.

19 Q. Been a while.

20 A. And the one that you have there that you're
21 referencing, it did have -- and I haven't reviewed
22 it since the newer editions -- it did have a list
23 of the number of individuals, the time it took to
24 consume, where I was talking earlier.

25 Q. I opened that to a page that I just saw in

1 the index. What I just handed you is the Truman's
2 Scientific Guide to Pest Management Operations,
3 correct?

4 A. Yes, this is.

5 Q. What edition is that?

6 A. Sixth edition.

7 Q. Sixth edition of that book. And I looked in
8 the index in the end and looked for swarmers, and
9 it led me to this page, which I think is 156, is
10 that right?

11 A. Yes.

12 Q. Okay. And I found, down near where your
13 pinkie is down there, excuse my reach, does it say
14 right around in here something about 12 months,
15 requires 12 months? Can you read that for us?

16 A. This particular thing says, all four wings
17 are the same length and extend more than the length
18 of the body beyond the tip of the abdomen.
19 Although functional workers develop in a few
20 months, it usually requires 12 months of
21 progressive colony growth for swarmer termites to
22 occur.

23 Q. So does that book indicate that swarmers can
24 begin to take place and swarm in 12 months?

25 A. Yes, that statement does, but I don't know

1 where we're talking -- what kind of termites we're
2 talking about there. That's what I was going back
3 to look.

4 Q. Do you believe that Formosans swarm in a
5 different amount of time than other types of
6 termites?

7 A. Yes. It takes about three years for
8 Formosan termites to swarm and about five years for
9 eastern subterranean termites.

10 Q. What type of termites is this book referring
11 to that says 12 months?

12 A. I can't tell. That's what I'm looking for.

13 I really don't know. It doesn't tell us
14 there. It just talks about life history in general
15 of termites, and I'm sure -- and I know that
16 there's got to be termites that would swarm within
17 a year, but the Formosans are about three years
18 here, and it's five years for eastern subs.

19 Q. Is this book that you're looking at now that
20 we were just referring to a reliable source to you
21 in your --

22 A. In general, yes, yes. I would have to go
23 back to review the scientific literature to see
24 what they pulled for some of this information.
25 That's where I always go back to, the person that

1 wrote the scientific part and put it in here. I've
2 never heard a year in my life, to be honest with
3 you, talking about subterranean termites. I don't
4 know that one.

5 On page 159, for your information, it helps
6 a lot if you want to look at the different amount
7 of times it takes. That was the table I was
8 talking about earlier on how long it takes -- it's
9 Table 7.1 and 7.2. That's the amount of time it
10 takes for termites to eat a board foot of wood.

11 Q. Okay. So now we're on a different subject,
12 not swarm --

13 A. I just happened to -- we talked -- one of
14 our earlier questions was about consumption.

15 Q. Right. And so Table 7.1 talks about
16 feeding, on 11 different species of wood, by the
17 Formosan termite, correct?

18 A. Correct. It's got both, one's C.
19 Formosanus, and one's Reticuli flavipes, and that
20 shows you the difference in the speed with which
21 Formosan termites consume wood compared to eastern
22 subterranean termites.

23 Q. And what's the significance of this table to
24 you?

25 A. Well, you asked earlier how long did it

1 take, or if we could determine how long it took,
2 and that's another way is to determine how much
3 wood was consumed, and you can see -- board feet of
4 wood, and you can see there how long it takes for
5 the termites to eat a certain amount. And I
6 haven't done that exercise, but it is possible.

7 Q. Well, actually, let me show it to you again.
8 It doesn't talk about board feet, does it?

9 A. I thought it did.

10 No, it doesn't. It's milligrams in eight
11 weeks. And I'd have to go figure -- I'd have to
12 figure that one out. Haven't done that. That's a
13 little different table too they put in the new
14 edition.

15 Q. Are you planning in this case to give an
16 opinion about the rate of consumption of the
17 termites at 11 Tabby Lane?

18 A. No. All I was doing is giving you a general
19 idea of how long I thought the termites had been
20 there, and I think the three years there -- minimum
21 of three years is fair.

22 Q. And that opinion is solely based on what you
23 believe is the time when a Formosan colony will
24 begin to send out swarmers?

25 A. Right, and the amount of wood that we know

1 has been consumed. Both of those have come into
2 play.

3 Q. Wait. So you think that you can tell when
4 this infestation first began based on not only the
5 amount of time that you believe it takes for
6 Formosan colonies to begin sending out swarmers,
7 but also because of the amount of wood that was
8 consumed at 11 Tabby Lane?

9 A. No.

10 Q. I'm confused.

11 A. I am too because you asked a different
12 question. You have to ask the right -- the
13 question is not when the damage started. That's
14 not the question I answered.

15 Q. Okay.

16 A. You just asked that question, though. The
17 deal is how long did it take for the damage to
18 occur, and I think we can get pretty close by
19 knowing how many board feet of wood, by going back
20 and finding that out. A lot of consumption, a lot
21 of pounds, a lot of board feet of wood have been
22 consumed. If you take that amount of wood, you
23 knew how long it took for the damage to occur.

24 Now, the next question that I can't totally
25 tell you right now is how long -- from the date

1 that we had the swarm, did all that damage occur
2 from the date we had the swarm back three years.
3 And I think that I can tell you, because of the
4 biology of the termites, how long it takes for them
5 to swarm. Did all that damage happen then? I
6 can't tell you that because it could have happened
7 at different periods of time. The building's what,
8 30 years old, 20 -- when was it built it, '80?

9 MR. CARROLL: '90.

10 THE WITNESS: '90. So the building's
11 26 years old. Well, they could have had termites a
12 couple of times through that period of time that I
13 don't know about. I'm just thinking it could have.
14 So I don't know if all the damage occurred
15 progressively, from the time the swarm happened,
16 going backwards in a straight line. There could
17 have been other periods of time that the building
18 could have had termites, they were controlled, they
19 died off. It's not very likely, but that could
20 have happened.

21 Q. Okay. So you don't know if all of the
22 damage that was found after the deconstruction
23 happened even since 2003?

24 A. Correct.

25 Q. Some of it could have happened before then.

1 A. Could have.

2 Q. All right.

3 A. Some of it wasn't active at the time. Some
4 of it was older damage. That's a possibility but
5 not a very high probability.

6 Q. And we do know when the termite infestation
7 stopped, correct? I mean, do you think it has
8 stopped as of today, or do you think there's still
9 active infestation going on out there?

10 A. I don't know. I haven't been out there long
11 enough to know for sure. I think it's probably --
12 it's been opened up like it has, it's probably
13 dried out, I think, and they did a treatment. It's
14 probably gone, but I'm not 100 percent sure of
15 that. I would say pretty much.

16 Q. If we assume, just for the purposes of this
17 question, if we assume that the infestation
18 stopped, the termites died, in other words, as
19 of -- I'm just going to pick this date for a
20 hypothetical, okay -- as of January of this year,
21 sometime in January 2016, if we assume that.

22 A. Okay.

23 Q. Then are you prepared to give some opinion
24 or would you be able to give some opinion, rather,
25 on when the infestation began?

1 A. The termite infestation that resulted in the
2 swarm, I would be prepared to say that that much
3 happened three years ago. That was my testimony
4 earlier. Do I have the total extent of the all the
5 damage and think that was three years, in my humble
6 opinion, there's a whole lot more damage there than
7 three years; but the minimum time, I think it was
8 three years, okay. And I think that's where I need
9 to be to tell you the truth, the whole truth in my
10 humble -- in my opinion, three years is how long it
11 takes for Formosan termites to swarm, so I know for
12 a fact biologically that at least three years ago
13 there were termites in the building. I haven't
14 done the calculations or tried to put together
15 other stuff to come up with how long it would have
16 taken. We may be able to do some of that because
17 we know a pretty good bit about how much wood was
18 eaten. By using the figures that we have in the
19 book we could probably get some dates. I haven't
20 done that.

21 Q. Are you planning to do it in this case?

22 A. I haven't, no.

23 Q. Are you planning to?

24 A. No, haven't been asked to do it.

25 Q. All right. And when you say three years

1 ago, do you mean three years ago from today or from
2 the time the swarm was found?

3 A. From the time the swarm was found. That was
4 January of 2015, right?

5 Q. I think I misspoke, or you did, one of us
6 did. We got on 2015, when actually I believe, I'll
7 just represent to you, I believe that was January
8 2014.

9 A. Okay. So three years before -- three years
10 prior to the swarm is what I think the minimum --
11 you know, at least that long.

12 Q. So at least as of January 2011 you believe
13 there were active termites in the house?

14 A. Yes.

15 MR. MCKNIGHT: I think, for the record,
16 we'll probably ask him to do that; so I'll just put
17 for the record, if we do that and he comes up with
18 different opinions, you have the right to reopen
19 the deposition to ask him questions about that. We
20 may have him go back in there and look, since it's
21 opened up, and I'll let you know if we do that.

22 MR. HAMRICK: All right.

23 MR. MCKNIGHT: That's going to be up to
24 Mr. Carroll, whether he wants that done.

25 Q. But you believe that based on that, the

1 information in that table that we just looked at in
2 the Truman's Scientific Guidebook, that you could
3 determine based on the consumption rate when the
4 termite infestation first began?

5 A. No. That's what I don't want you guys to
6 think we can do. Clinch, how am I going to get
7 this -- we've been here before. How do I tell you
8 this?

9 I don't know when it started. I can't tell
10 you that. I know how long it took or pretty close
11 to how long it took for that much damage to occur.
12 I don't know the piece of the pie. Say it's five
13 years. Did all the damage happen -- we know they
14 had some damage in 2014, right? We know that. But
15 say I do the calculations, it comes out there's
16 enough board feet consumed, for a large Formosan
17 termites colony it would take them five years to
18 eat that much wood. What I can't for sure tell you
19 is which five-year period it may be. I'm pretty
20 confident it's the last five years because we had
21 live termites, but I'm not 100 percent sure on
22 that. I can tell you how long it took for it to
23 happen. Right? We don't know. The building's
24 older. We don't know exactly.

25 Q. Okay.

1 A. And we know that we had treatments. You
2 know, Mr. Sottile had done something in the past
3 years. You know, so there may be -- there may be
4 some part of it -- but there's a lot of damage
5 there. If we started with those big, huge timbers
6 that are gone up above the laundry room, it doesn't
7 take very long to think about it. You know, you've
8 got 12 or 14 feet of triple 2-by-12s. It takes a
9 pretty good bit of time for even Formosan termites
10 to eat that much wood. It's the mass. And I don't
11 know where that thing came from. It's 29 days to
12 eat a board foot of wood. So that's what I'm
13 talking about, you can get back pretty quick.

14 Q. Yes, I mean, how much damage can a mature,
15 established Formosan colony in the Charleston area
16 do in, for example, six months?

17 A. They can eat -- six months. About five
18 board feet of wood, that's what it takes. It takes
19 29 to 30 days to do a board foot of wood, so that's
20 five to 6 feet, which is a 2-by-4, 1 foot long, is
21 a board foot. Now, what you have to remember too
22 is they don't eat all the wood. You've seen that.
23 They eat pieces of it. So you take a percentage.
24 I usually double it at least, as far as board feet.

25 Q. So there's a lot of factors in there, right?

1 I mean, there's type of wood, correct?

2 A. Right. And this is all southern yellow
3 pine. And I know that figure just because of
4 30-something years, I know what it takes for
5 southern yellow pine, and that's what this house
6 is.

7 Q. All right. So it's the type of wood and
8 it's also the -- is it the moisture content of the
9 wood?

10 A. No.

11 Q. That has nothing to do with it?

12 A. No. Once the colony reaches maturity, it's
13 pretty stable, it's a pretty flat line.

14 Q. Does the environment in, for example the
15 Charleston area, have anything to do with it; is it
16 a factor in how much would be consumed?

17 A. Inside the house like this, probably not.
18 Outside colonies it would make more of a difference
19 because of environmental temperature; but inside
20 the building it wouldn't make that much difference.
21 It would be pretty stable, pretty flat line.

22 Q. Part of this infestation was in the ground
23 floor, though, correct? It was open air.

24 A. It was up underneath that ceiling. And, you
25 know, the movement up and down the pillars inside

1 the underneath part, I think it's pretty warm, it
2 would be pretty -- I'd think about that in my -- in
3 my determination.

4 Q. So let me just review here for a second.
5 Are you able to tell us how much of the termite
6 damage at 11 Tabby Lane began before January 2014?

7 A. No, I haven't tried to do that.

8 Q. And are you able to tell us how much of the
9 termite damage at 11 Tabby Lane began before
10 February 2013?

11 A. No, I haven't done that yet. We talked
12 about, all I've done is -- because of the biology
13 and the swarming, that's why I'm giving that. I
14 haven't done measurements or, you know, hadn't
15 looked at that yet; didn't think it was necessary.

16 Q. And are you able to tell us, just for the
17 record, are you able to tell us how much of the
18 termite damage at 11 Tabby Lane began before
19 February 2012?

20 A. No.

21 Q. And just to make sure I understand you, when
22 you looked to Clinch a few minutes ago and asked,
23 you know, how am I going to explain this, do you
24 remember when you did that?

25 A. Yes.

1 Q. And you talked about the difference between
2 being able to say how much wood is consumed by
3 Formosan termites versus when that amount of wood
4 was consumed, is that what you were trying to
5 explain to me?

6 A. Yes.

7 Q. All right. So even if you do this
8 consumption rate calculation, you still will not be
9 able to tell us when any particular amount of wood
10 was consumed, correct?

11 A. We can tell you that there was live termites
12 there January of 2014 because we had a swarm.

13 Q. Right.

14 A. Okay. And then we can back that down, when
15 we know consumption, we can back that -- we can
16 back that out and get a pretty good idea of when it
17 started. Now, the only thing that I don't know
18 is -- there were two areas, I believe, that we
19 didn't find active termites but found damage, the
20 one we talked about on the right side of the
21 garage, and then there was one in the back, right
22 corner -- that's not a good way to say that. The
23 back, right portion of the house, there was a small
24 area in there, and I don't -- those two would be in
25 addition to what we find when we know we have

1 active termites right now, so that's where that
2 would come in to play somewhere, but it would be
3 pretty close. It would be within reason. I don't
4 want to be black and white because there's some
5 places that we know we had some damage that we
6 didn't find live termites.

7 Q. Well, the part in the treatise -- oh, did
8 you ever find anything in Mallis about consumption
9 rates, when you were looking a few minutes ago?

10 A. Didn't look for that. Sorry.

11 Q. Okay.

12 A. I looked at the reproductive thing.

13 Q. The swarming?

14 A. Yes. Sorry.

15 Q. That's all right. Do you know, just from
16 your past experience with the Mallis treatise,
17 whether there's anything in here about how to
18 actually date termite damage?

19 A. No. I don't think anybody knows it, no.

20 Q. And so in the Truman --

21 A. Neither one.

22 Q. In the Truman guide there's nothing about
23 how to date the damage?

24 A. No.

25 Q. All right. Let me show you what I'm going

1 to ask the court reporter to mark as Exhibit 12.

2 (Exhibit No. 12 marked for
3 identification.)

4 Q. This is the Exterra contract on 11 Tabby
5 Lane that Isle of Palms Pest Control, Inc., entered
6 into with Mr. Carroll back in 2003. Have you seen
7 this before?

8 A. Yes, sir.

9 Q. All right. Are you familiar with these
10 types of contracts, just from your experience and
11 your work?

12 A. Yes, sir.

13 Q. Now, earlier in your testimony today you
14 said something about -- I'm paraphrasing, but tell
15 me if I'm not saying it right, but you said
16 something along the lines of -- I asked you about
17 if a termite operator technician company does
18 everything right, if there can still be an
19 infestation, and I think you testified you agreed
20 that could happen, right?

21 A. Yes.

22 Q. And then I think you said something along
23 the lines of, that's the reason we have bonds and
24 insurance; do you remember saying that?

25 A. Yes, I did.

1 Q. All right. And am I remembering correctly
2 that your mention of bonds and insurance was in
3 relation to that question about that a termite
4 operator can do everything right and there still be
5 an infestation?

6 A. That's why we have insurance, right, for
7 mistakes and things that might not happen right.
8 You don't know everything, so you have insurance
9 policies to take care of that. You don't intend to
10 have a wreck, but sometimes we get out of a lane
11 and we hit something, so we have insurance to
12 protect us for that.

13 Q. Right. And in the insurance example, when
14 you purchase insurance, you purchase a certain
15 amount of insurance, correct, a certain amount of
16 coverage?

17 A. Yes.

18 Q. All right. Now, you referred to a bond.
19 What did you mean by bond?

20 A. I guess it's the same as a contract. You
21 know, some people call them termite bonds, some
22 people call them termite contracts. It's just
23 different names.

24 Q. All right. Whichever name you put on it, do
25 you agree that, similarly to the insurance example

1 you gave a moment ago, that there can be
2 limitations on amounts of coverage or amounts of
3 repair costs?

4 A. You mean a limit of liability?

5 Q. Sure.

6 A. Yes, I've heard that term before.

7 Q. Is that common in termite contracts?

8 A. Yes.

9 Q. I think you're looking with me on the second
10 page of this exhibit, aren't you, where it says
11 coverage liability; do you see that about a quarter
12 of the way down?

13 A. Yes, sir, I see it. Right.

14 Q. Do you see where it says liability for
15 repairs shall not exceed \$250,000?

16 A. Correct.

17 Q. Is that a common limitation in termite
18 contracts in your experience?

19 A. Yes, and that usually comes back to a lot of
20 cases, is that per incident, and then the incident
21 usually comes back to per year; so every year when
22 you get a new contract, you get another \$250,000
23 worth of insurance.

24 Q. Does this contract say that?

25 A. No, but I think that's what normally

1 happens, every year you get a new contract and they
2 keep building.

3 Q. So your opinion, your expert opinion is that
4 this contract provides for \$250,000 in repair
5 liability for every year of the contract, and it
6 just keeps accumulating; 250 first year, and then
7 as of the second year you have 500, and as of the
8 third year you have 750 and as of the fourth year?

9 A. 250,000 per year.

10 Q. Okay. But what does that mean, \$250,000 if
11 termite damage is found and has to be repaired in
12 any given year?

13 A. Yes.

14 Q. So you're not saying that you think that the
15 \$250,000 per year accumulates such that, if you
16 have a contract for four years, you have a million
17 dollars in coverage; you're not saying that, are
18 you?

19 A. I said that the contract period is \$250,000,
20 that's what I said, right?

21 Q. I'm not sure. I'm trying to find out what
22 you said.

23 A. That's what I said, for the period of the
24 contract it's a \$250,000 policy.

25 Q. But you made some reference to -- I can't

1 remember the term you used, but you said something
2 about another \$250,000 or something like that,
3 didn't you?

4 A. Well, what triggers the coverage for each
5 year is if there were termites there that year,
6 right? Is that wrong? That's my understanding.
7 And I may be wrong on that. It's like an
8 occurrence. It occurs. If you had damage every
9 year, then you would be covered for that year,
10 right, at that rate. That's what I thought.

11 Q. And maybe we are getting crossed up between
12 an insurance contract and a termite contract. I
13 mean, you're talking about occurrences and things
14 that come from insurance contracts, and I'm asking
15 you about this termite contract. Are they the same
16 in your mind?

17 A. Yes, I think they are.

18 Q. So you think this is an insurance contract,
19 this Exhibit No. 12?

20 A. If you get down to brass tacks, it's an
21 insurance policy for him, for whoever owns the
22 house, you know, you're covered with \$250,000 of
23 damages if we have termites on the property for
24 that year.

25 Q. So in your mind --

1 A. And each occurrence -- each occurrence or
2 each year you have termites you've got an
3 occurrence.

4 Q. So, okay, so it's your expert opinion that a
5 termite contract, such as what's been marked as
6 Exhibit 12 to your deposition, is actually an
7 insurance contract?

8 A. Yes.

9 Q. And that the South Carolina laws, as they
10 apply to insurance contracts, apply to this
11 contract?

12 MR. MCKNIGHT: Objection to the form.

13 THE WITNESS: I just think it's an
14 insurance policy. I don't know all the laws and
15 everything, but that's just the way I always take
16 it, you've got \$250,000 for each occurrence for
17 every time you pay a premium.

18 Q. Is it your opinion that Isle of Palms Pest
19 Control was an insurance company?

20 A. No, that there's an insurance company that
21 allowed them to write this policy. This is backed
22 by an insurance company.

23 Q. Does it say that anywhere in here?

24 A. Well, every one I've ever seen, there was an
25 insurance company that had the --

1 Q. You're not saying Isle of Palms Pest Control
2 is an insurer, are you?

3 A. I don't understand that term. Explain to me
4 insurer.

5 Q. A company that is regulated by the South
6 Carolina Department of Insurance as opposed to a
7 company that's regulated by the South Carolina pest
8 control regulatory agency?

9 A. No, the insurer would be the person that
10 sold him the policy to be able to give it to people
11 to go out and do it. To be able to give this
12 policy there's an insurance company that has to --
13 that has to underwrite -- back that \$250,000. Mr.
14 Sottile doesn't have to pay that money.

15 Q. How do you know that?

16 A. That's how they normally work. I don't
17 know. Maybe it does. But I've seen Tom Nolan out
18 there. He's an insurance adjuster. I've seen two
19 or three other representatives here -- or at least
20 Tom Nolan. Every other case I've ever done, Tom
21 Nolan was the guy for the insurance company that's
22 going to ultimately pay the check at the end of the
23 day if there is -- if Mr. Sottile or whoever else
24 is found liable. Same way, I think Terminix is
25 self-insured. I may be wrong on that, but at the

1 end of the day they still have an insurance --
2 maybe that's the bond I'm thinking about. And I
3 may be wrong. This is what I always thought. I
4 thought there was a bond out there that Terminix
5 has some money set aside, so if something like that
6 was to happen, they're self-insured. They cover
7 that. That's my understanding.

8 Whoever wrote the Exterra contract -- that's
9 why he went with this deal. He has a contract he
10 can give his people and say, if you get termites,
11 you're backed. And I guarantee you Vince Sottile
12 ain't going to back that. He had a company that
13 sold him Exterra or an insurance company somewhere
14 that was an insurance policy. That's what I
15 believe. That's what it is with the Sentricon
16 System, Exterra, you put out -- you go out in the
17 business of a pest control operator, you have
18 insurance that covers mistakes. And I look at this
19 as sort of like the policy. The contract is like
20 an insurance policy. If I'm wrong -- hey, I'm not
21 a lawyer either. I know that. But that's just
22 what I thought happened.

23 Q. You mentioned mistakes. What mistakes do
24 you think that Isle of Palms Pest Control made?

25 A. He didn't go inspect the stations.

1 Q. How do you know that?

2 A. I don't know that he did. They had termites
3 in the building. All those things happened.

4 Q. Well, hold on. All right. I asked you what
5 you believe he did wrong, and you said he didn't go
6 and inspect the stations. You mean the bait
7 stations?

8 A. Yes.

9 Q. How do you know he didn't do that?

10 A. I don't have any records that say he did.

11 Q. All right. How do you know that he --

12 A. On any case, on any of them. I have another
13 case with him and this, and he never -- he doesn't
14 have any documents that he did any of it. He sent
15 an annual bill.

16 Q. So you believe that because you haven't seen
17 any documents that show bait station inspections,
18 you believe therefore he did not do any bait
19 station inspections?

20 A. I have no indication that he did.

21 Q. Didn't you say you read his deposition
22 before today?

23 A. Yes.

24 Q. Did you see in his deposition where he says
25 he did?

1 A. He did not give a timeline on there. He
2 said, I did inspections. And he did an annual
3 inspection, I agree with that, but that's not what
4 this -- you have to do these quarterly, and you
5 have to keep records, and you have to show where
6 you had hits, and you have to go back. I mean,
7 there's a lot to a bait station monitoring.

8 Q. Did you actually read his whole deposition?

9 A. Yes.

10 Q. Mr. Sottile's?

11 A. Yes.

12 Q. And it's your opinion that he didn't testify
13 that he did the bait station inspections properly?

14 A. He said that he did inspections. I did not
15 get a feel in his deposition that he did them the
16 way that he was supposed to have done them. That's
17 my recollection of the deposition.

18 Q. Do you recall whether or not he testified
19 that he also did liquid termiticide treatments in
20 addition to the bait stations?

21 A. I do.

22 Q. All right. Do you have any opinion about
23 whether he did that properly or not?

24 A. I don't have any records he ever did them.

25 Q. So because there's no records, I mean, is it

1 your opinion he was lying under oath in his
2 deposition when he said he did it?

3 A. I don't know what he did.

4 Q. Is it your opinion that he did not do it?

5 A. It's my opinion that, if he did it, he did
6 not do it properly because he did not document it.
7 He did not follow the law. That's my opinion. I
8 have no record, have seen no record, where he did
9 any liquid treatments.

10 Q. How does a lack of record keeping result in
11 termite infestation?

12 A. I think the proof's in the pudding.

13 Q. What does that mean?

14 A. If he had done the treatment properly and
15 had done his inspections properly, the house would
16 not be consumed with termites.

17 Q. So your opinion is because the house was
18 consumed with termites, therefore Vince Sottile did
19 something wrong.

20 A. Correct.

21 Q. So your opinion is that the thing speaks for
22 itself.

23 A. Correct.

24 Q. Okay. And that's what you base your opinion
25 on as far as your opinion that Isle of Palms Pest

1 Control did something improperly, that's based on
2 that the house was infested with termites and that
3 speaks for itself.

4 MR. MCKNIGHT: Object to the form.

5 THE WITNESS: But I agree with that. I
6 think if he had done his job properly, and he'd
7 followed through, he'd done the job right, there's
8 no reason that house shouldn't be protected like
9 other houses everywhere else.

10 Q. And so it's your opinion that because the
11 house had termite infestation that that is the
12 basis for your opinion that Isle of Palms Pest
13 Control did something wrong.

14 MR. MCKNIGHT: Objection to the form.

15 THE WITNESS: Say that again.

16 Q. All right. Let me see if I can -- I'm not
17 sure what was wrong with the form of it but --

18 A. I don't either, I just -- I couldn't quite
19 grasp it. Go ahead.

20 Q. Is your opinion that Isle of Palms Pest
21 Control did something improper based on the fact
22 that 11 Tabby Lane had termite infestation in it?

23 MR. MCKNIGHT: Same objection.

24 THE WITNESS: I think we need to break
25 the question down. There's parts of it that are

1 yes and parts of it that are no.

2 Q. Explain.

3 A. Part of the Exterra agreement is that you
4 inspect the property quarterly for termites. If
5 you did a thorough inspection of the property for
6 termites, you would have found damage or found
7 infestation along the way. If -- up to the period
8 of time where the Exterra contract somehow
9 disappeared. Then the next part of the problem
10 would have been he changed from a liquid treatment
11 from the bait stations, that's the next step that
12 we did. The retreatment that he did on that
13 particular day did not totally retreat the
14 property. The property was treated properly
15 January 15, is that right?

16 Q. 2014?

17 A. When did Terminix do their treatment?

18 Q. Not until July of 2014, I believe.

19 A. Well, the final treatment that was done met
20 the specifications of Clemson, and at that time,
21 with the drilling around the piers and the other --
22 the other things that we know are appropriate.
23 Therefore, it wasn't treated properly or inspected
24 properly, so the termites had a chance to get up
25 into the property and do a lot of damage. The

1 termites were there, there was damage there, and we
2 know that it wasn't treated properly because he
3 didn't drill the slabs, and I didn't have time
4 to -- I didn't get a chance before Terminix was
5 there because I wasn't there. Evidently he had not
6 trenched and treated around the perimeter of the
7 building properly, and the inspections were not
8 done. If he had done the right inspection, he
9 would have found the damage before somebody else
10 found it.

11 Q. All right. I'm going to take the last part
12 of that first and ask you, why do you believe he
13 would have found it before Terminix first found it
14 when there was a swarm in January 2014, why do you
15 think Vince Sottile would have found it earlier if
16 he had inspected in some other way?

17 A. There were obvious -- when the Terminix
18 person came out there, he found termites.

19 Q. Swarming.

20 A. That was his first inspection of the
21 property.

22 Q. And he found them because they were
23 swarming, correct?

24 A. He found termites that day because they were
25 swarming, but he found the infestation where it

1 came in. He found the infestation of the front
2 porch. He found the damage in the building. That
3 was the first time he'd ever been there.

4 Q. Let me stop you there and ask you, is it
5 your understanding that the first indication that
6 there were termites there was because there was a
7 swarm visible?

8 A. Yes.

9 Q. All right. And from that destructive
10 testing had to be done to find damage, correct?

11 A. No. I think the person just did the
12 inspection, found where the termites were, the big
13 as your forearm tube. All they did was look up
14 into the suspended ceiling in the basement. That
15 was my recollection of the testimony. All they did
16 was pick up the dang ceiling tile and look back,
17 and there it was.

18 Q. So you believe Mr. Sottile should have been
19 looking in the ceiling tiles on his inspections?

20 A. Sure.

21 Q. That would be a normal part of his
22 inspections?

23 A. In an annual inspection that is for sure,
24 yes.

25 Q. All right. If I represent to you that

1 that's not where the Terminix technician saw
2 evidence of infestation, but rather, after the
3 swarm was observed, that the next area where that
4 led to was the enclosed room on the ground floor,
5 does that ring a bell to you in your reading of the
6 testimony?

7 A. Yes. And then he found the place on the
8 outside where the termites had actually come up
9 under the cardboard and up into the building from
10 his investigation as well.

11 Q. It required destructive testing, didn't it,
12 to find that?

13 A. No I don't think so. I think my
14 understanding was he just was out there looking,
15 pulled the cardboard back, and it was there in the
16 crack.

17 Q. That was the swarm that you're talking
18 about, correct?

19 A. No, I think I'm talking about the inspection
20 on the bottom floor outside where the stuff leaned
21 up against the wall.

22 Q. That's not the swarm that you're talking
23 about?

24 A. That's just that day.

25 Q. Where was the swarm that you were talking

1 about earlier? I thought that's what you were
2 talking about when you said that the Terminix
3 inspector found a swarm.

4 A. The swarm was in the area where we're
5 talking about, up in the front part of the house,
6 was inside on that front wall, that was my
7 understanding of where the swarm was.

8 Q. All right.

9 A. Are we in a totally different area?

10 Q. All right.

11 (Discussion held off the record.)

12 (Lunch recess held.)

13 Q. Mr. Nolan, we're back on the record. Are
14 you ready?

15 A. Yes, sir.

16 Q. Okay. I want to make sure I understand
17 something. You believe that a swarm was observed
18 at 11 Tabby Lane in 2014, correct?

19 A. Yes. The date I'm not 100 percent sure of,
20 but I do think it was '14.

21 Q. And is it correct that swarming termites
22 have wings?

23 A. Yes.

24 Q. Is that how you can tell they're swarmers,
25 because they're flying?

1 A. Yes.

2 Q. Okay. As opposed to, for example, an active
3 infestation that is observed where you can see live
4 termites but none of them are flying; is that a
5 good distinction to make? Does that make sense?

6 A. Yes. You don't usually see live termites.
7 You see evidence of live termites. You see the
8 termite tubes. Because if termites are exposed,
9 they dry out.

10 Q. Okay.

11 A. So you have to learn to look for evidence of
12 tubing is the main way, and that's -- they come
13 from the ground up into the building, so you
14 wouldn't hardly normally see just -- they dry out
15 and die. They desiccate quickly, that's why.

16 Q. How quickly?

17 A. Very quickly, within a day.

18 Q. Okay.

19 A. Or less in the hot summer weather.

20 Q. So if someone does see termites, you know,
21 visibly, does that always mean that what they are
22 seeing are swarmers?

23 A. No. I think a lot of times people see the
24 tubes, particularly trained people, and that's what
25 I was taking -- the statement I said earlier was

1 somebody that was a termite guy. I figured he
2 knows what a termite tube looks like. That's what
3 I was saying. A termite guy, when he says I saw
4 termites, it can be a tube just as good as it can
5 be a real termite. I don't think that would be
6 anything to not expect for him to say.

7 Q. Okay. And your opinion that there were
8 termites present at this home during the term of
9 each of the three defendants' contract periods on
10 the home is based on swarmers being observed at the
11 home in January 2014?

12 A. Yes.

13 Q. When Isle of Palms Pest Control first got
14 the contract on this home back in 2003, and we were
15 looking at it just a few minutes ago, I see it's
16 right in front of you still, that was a bait
17 station called Exterra contract, correct?

18 A. Yes.

19 Q. In other words, what I'm trying to find out
20 is is it your understanding that at that time what
21 Isle of Palms Pest Control was contracting to do
22 was to install and maintain an Exterra bait station
23 system, correct?

24 A. Correct.

25 Q. Okay. Now, under that agreement was there

1 any duty for Isle of Palms Pest Control to drill
2 around the pilings in the slab area?

3 A. No.

4 Q. Okay. Because earlier I thought you said --
5 I think you did say that one thing Isle of Palms
6 Pest Control should have done that it did not do
7 was drill in the slab. Did you say that?

8 A. Yes, I did.

9 Q. Okay. Why do you think Isle of Palms Pest
10 Control should have drilled in the slab if what
11 they had was a bait station contract?

12 A. Well, my understanding was Mr. Sottile
13 became disinterested or had lost faith in Exterra.
14 This is from reading his deposition. And other --
15 I have another case or two that he told a similar
16 story. So as a result of that, he decided that he
17 was going to go to a liquid treatment; and at that
18 time the treatment was Termidor, that's what he
19 said he used. And if he had done a total retreat
20 of the property to bring it up to standards and for
21 him to be able to protect it, that's part of that
22 deal is to drill -- you trench and treat the whole
23 perimeter, the whole property, and then you drill
24 slab penetrations. That's where that came from.
25 If that's what -- if that's the contract that he

1 thought he was going to, or if that's what he was
2 going to do to protect the property, that's what --
3 if he used Termidor, okay, that's what he would
4 have had to do because that's what the label says
5 on Termidor.

6 Q. All right. If you would, turn to the last
7 page of the Exterra contract, Exhibit No. 12 there.
8 That's right. What is this document?

9 A. This is a form that the Department of
10 Pesticide Regulation required when bait stations
11 first came out, and it says that we're not going to
12 do the typical trench and treat because you're
13 using a bait station, okay. It was an information
14 thing for the customer.

15 Q. Do you refer to this as a waiver form?

16 A. Yes.

17 Q. Is that what it's typically called?

18 A. Yes.

19 Q. Isn't it true that the waiver form, under
20 the South Carolina regulations, is only required to
21 be issued at the time of the first treatment?

22 A. Yes.

23 Q. And over on the right-hand side do you see
24 where the box is checked or the bubble is checked
25 where it says, No. 5, that foundation walls, piers,

1 pillars, supports, and pipes rodded or trenched and
2 treated, that's checked, and that means that would
3 not be done, right, that that service is being
4 waived?

5 A. Correct.

6 Q. All right. And then on down, No. 6, it says
7 cavities in hollow pillars, tile, brick, block,
8 chimneys, or other construction features likely to
9 be penetrated by termites being treated is not
10 going to be done, and that service is going to be
11 waived, correct?

12 A. Yes.

13 Q. And it says, No. 7, the next one, soil
14 beneath attached slabs, porches, patios, carports,
15 garages, walkways, etc., which are less than 18
16 inches below the sill treated, and that that
17 service was not going to be done and that that
18 would be waived, correct?

19 A. That's correct.

20 Q. And then No. 10, it says soil beneath
21 concrete slab floor construction treated, and that
22 bubble is also checked, meaning that that service
23 was not going to be done and that that was going to
24 be waived.

25 A. That's correct.

1 Q. So why do you believe he should have done
2 those things if he had a waiver form and it was
3 disclosed that he was not going to do those things?

4 A. He changed the type of treatment. He
5 stated, or he's told us that he went away from --
6 he wasn't monitoring or taking care of these
7 stations anymore. He went on and did the treatment
8 with Termidor. He changed the product. Bait
9 stations you don't have to do that, but when you
10 are going to use a termiticide, you have to do
11 that. And that's why I'm so confounded and
12 confused in this whole case. How did he not change
13 from an Exterra contract to a normal, what
14 everybody sees everyday, liquid contract. That's
15 what I keep talking about. If he really did that,
16 this -- this should have changed. If he's not
17 going to do the bait stations anymore, he needs to
18 give him another contract. Now we're going, Mr.
19 Carroll, instead of you doing the Exterra bait
20 station, we're going to now enter into a contract
21 where now we're going to start doing Termidor
22 station, and that would have required that he
23 trenched and treated and applied the liquid
24 termiticide.

25 Q. Are you sure that Mr. Sottile didn't begin

1 using liquid termiticide even at the beginning of
2 the time of the Exterra contract?

3 A. Well, that would matter that he's supposed
4 to have a pesticide usage form for that, okay. I'm
5 good -- I would be okay with that part maybe. But
6 if he's not using Exterra, he's got the wrong
7 contract.

8 Q. What if he were using both the Exterra bait
9 station system and a liquid termiticide?

10 A. I don't think he did. I don't think he --
11 if he was using both, I'm confounded. I would be
12 honest with you, I think that would be a legal
13 question we'd have to ask Clemson. If you're using
14 both at the same time, I'm not 100 percent sure on
15 that one because that isn't what I read in his
16 deposition. He said he went away from the bait and
17 went back to the liquid treatment. He lost faith
18 in those. And when he went back to liquid, that
19 would have been fine; but he should have brought
20 them up to standard, treated them, and given people
21 contracts or given his customers contracts for the
22 liquid. That's my understanding of what is
23 required.

24 Q. Are you aware that the regulations in South
25 Carolina only require a written contract to be

1 issued when there's the pretreat, the
2 preconstruction foundation treatment?

3 A. The requirement.

4 Q. Right.

5 A. Yes, but he told Mr. Carroll, gave him --
6 every year he gave him a sheet of paper and said
7 that he's doing it. I mean, he had a contract
8 every year. I think everybody agreed that they had
9 a contract. If he changed what he did, though, he
10 needs to tell him that he did something different
11 and give him another contract. That's my
12 interpretation of it.

13 Q. Well, you mentioned a piece of paper every
14 year. I'm just going to show you one from one year
15 and ask if that's what you're talking about. This
16 is what I'll ask the court reporter to mark as
17 Exhibit 13.

18 (Exhibit No. 13 marked for
19 identification.)

20 Q. It's dated February 6, 2013, and at the top
21 it says, annual reinspection report. Do you see
22 that?

23 A. Yes.

24 Q. All right. So you just mentioned something
25 about he's giving him a piece of paper every year,

1 and I think you referred to it as a contract every
2 year; but isn't it true that what he gave him every
3 year was an annual reinspection report?

4 A. Yes, that's what it says. It says annual
5 inspection report.

6 Q. All right. And, I mean, in the termite
7 technician part of the pest control industry is it
8 common or typical for some companies to just do
9 inspections each year; in other words, just to do
10 inspections annually and not to -- to either bait
11 or do liquid treatments?

12 A. No, I don't think it's a standard.

13 Q. Okay. With regard to this particular annual
14 reinspection report that's been marked as Exhibit
15 13, and this was SPM Pest Management Company's
16 annual reinspection report as of that date,
17 correct?

18 A. Say that one more time.

19 Q. As of this date, February 6, 2013, this was
20 SPM Pest Management Company, Inc., doing the
21 inspection because by that point in time that's who
22 had the contract on the house, correct?

23 A. Yes.

24 Q. Okay. And it does make note here of
25 wood-to-ground contact, and it says stairs,

1 interior walls and garage, correct?

2 A. Yes.

3 Q. And is it your understanding that what that
4 refers to, the interior walls in the garage are the
5 ground floor room that Mr. Carroll had built under
6 there?

7 A. Yes.

8 Q. Okay. And then at the bottom it says,
9 conditions conducive to new termite infestation, it
10 says yes, and it talks about only that the rooms
11 with the walls in the garage are closed up and I
12 can't see in the walls if you were to have a
13 ground-borne termite infestation, do you see that,
14 where Mr. Sottile wrote that?

15 A. Yes, I do.

16 Q. What do you think he was -- what's your
17 opinion of what he was trying to tell Mr. Carroll
18 in this report?

19 A. That he can't see behind the walls in the
20 basement.

21 Q. All right. And he also tells him that if he
22 were to have a ground-borne termite infestation he
23 wouldn't be able to see that, correct?

24 A. Correct, in that area.

25 Q. And then almost a year later in January of

1 2014 a termite infestation was found in that area,
2 correct?

3 A. That's correct.

4 Q. So Mr. Sottile warned him almost a year
5 before -- warned Mr. Carroll that that could
6 happen.

7 A. Yes.

8 Q. And are you familiar with that area of the
9 house, that ground floor room area that was
10 enclosed sometime after Mr. Carroll bought the
11 house?

12 A. Yes.

13 Q. And isn't it true that it had pilings that
14 were covered up in the process of enclosing that
15 room, making a room under there?

16 A. That's my understanding. I never saw them
17 that way, but they say that they were covered. I
18 don't know what that looked like. I wish I did,
19 but I didn't see it that way. When I saw it, all
20 the pilings were open.

21 Q. Because the destructive testing had been
22 started, correct?

23 A. Yes. I didn't get to see it the way it was
24 originally.

25 Q. All right. And the way it was when it was

1 closed and the pilings were not visible in that
2 area, isn't that where the termites traveled up the
3 piling that was enclosed, one of the pilings that
4 was enclosed in that room?

5 A. Yes, that's one of the ways.

6 Q. All right. And would Mr. Sottile, whether
7 during the time when his company was SPM or when he
8 was Isle of Palms Pest Control, would he have ever
9 been able to see termite activity going up that
10 piling in that enclosed room?

11 MR. MCKNIGHT: Objection to form.

12 THE WITNESS: I don't know because I
13 didn't see how the bottom of it was. Like I
14 mentioned earlier, they could have taken the
15 ceiling -- you could go to the ceiling tiles there,
16 get above and see the damage; but for me to tell
17 you exactly what he could have seen, I can't say
18 that because I wasn't there. And I'm sorry about
19 that, but I don't know exactly what that looked
20 like. There's a lot of different ways -- I don't
21 know if they had -- you know, they could have had
22 an inspection window at the bottom. They could
23 have had three pieces of baseboard nailed to them
24 for all I know. I don't know that because it had
25 been modified when I was there.

1 Q. On annual inspections that Isle of Palms
2 Pest Control did and then later SPM did what do
3 you, what in your opinion should have been done on
4 those inspections? Just walk me through what the
5 inspection would have consisted of if it were done
6 properly in your opinion.

7 A. Go around the whole outside exterior of the
8 building carefully with a flashlight and making
9 sure we don't have those wood-to-ground contact
10 things we talked about earlier, no tubes or
11 anything going up any of the latticework or any of
12 the pi -- piers on the perimeter; and then, because
13 of the structure here, to go around and check each
14 piling. And I did it again. Let's call them
15 pilings. Can we do that? Each piling. I keep
16 calling them piers, pilings. I don't want
17 everybody to get confused. We'll call them
18 pilings, okay. Then each and every piling that
19 comes out of the ground, you need to inspect those.
20 And then the stairs on this house, you would want
21 to inspect all the stairwell to make sure there's
22 no wood to ground contact there that's causing
23 termites to come up. That's what I would expect,
24 you know.

25 Q. Anything else?

1 A. Anything that was easily visible, if there
2 was the suspended ceiling we talked about, that's
3 something in a basement area. As slow as it was,
4 you could have easily looked at that; but, you
5 know, that's about the extent of the -- that should
6 have been about the extent of the inspection, a
7 ground-floor up to the first floor, if that's the
8 right way to call it, visible inspection.

9 Q. And is it your opinion that Mr. Sottile,
10 during the time that he was Isle of Palms Pest
11 Control, failed to do some of what you just
12 described?

13 A. Yes.

14 (Brief interruption.)

15 (Recess held.)

16 Q. Which part of the annual inspection
17 procedure that you described do you believe Mr.
18 Sottile failed to do?

19 A. I think the question was inspections in
20 general, and if he was doing the Exterra contract,
21 he should have made four inspections in a year
22 rather than one.

23 Q. All right.

24 A. Of the same caliber or higher because of the
25 bait system than of just a normal annual

1 inspection.

2 Q. So you're referring to the time when he was
3 using the Exterra bait system?

4 A. Well, we can't have our cake and eat it too
5 here. Either he was doing the Exterra bait system
6 or he wasn't. I can't mix two in my mind, okay?
7 If he's supposed to be -- if he's doing the Exterra
8 contract, he's got to do the Exterra rules, so
9 we've got -- one way or the other we've got to get
10 across there, and I don't think we've done that
11 yet. Either he's giving the guy an Exterra
12 contract or he's not. If he's giving an Exterra
13 contract, he's supposed to make quarterly
14 inspections, barcoding each and every one as he
15 goes around, and having a report showing we've got
16 hits here or we don't have hits. With the activity
17 we found in the house, surely he had a lot of hits,
18 particularly if he had them right out there in the
19 front of the house. So that had to be quarterly,
20 okay, to change the system and to do those
21 requirements, which in my view now is a totally
22 different inspection process than this annual
23 inspection that he did here when he gave Mr.
24 Carroll a document.

25 Q. All right. Let me try to ask you a couple

1 questions about that. During the time when he was
2 using the bait station system, and just assume for
3 the purposes of this question for me that he --
4 that he was using the Exterra bait station system,
5 okay?

6 A. Okay.

7 Q. Would he have been required to do anything
8 other than checking the bait stations and doing all
9 the things that you just described that related to
10 the Exterra system?

11 A. Yes. He should do all of the above.

12 Q. Okay. Well, wait a second. He should do
13 the checking of the bait stations and he should
14 check the pilings and check up under the ceiling
15 tiles and go around and do all the same things you
16 would do, if you were just using a liquid treatment
17 method, he should do that also?

18 A. Yes.

19 Q. Okay. Now, you said you read his
20 deposition, correct, Mr. Sottile's?

21 A. Right.

22 Q. Do you recall that he said that he did check
23 the bait stations and enter the findings into the
24 computer and all of that, do you remember any of
25 that testimony?

1 A. I remember the testimony, but I don't see
2 any of the evidence of it.

3 Q. So you think he was lying under oath?

4 A. I think he may have been misspeaking about
5 the frequency.

6 Q. What makes you believe that?

7 A. Because we don't have any documents that say
8 he did it. That's what I'm going on. He should
9 have those documents that show when he did his
10 inspections.

11 Q. Do you recall when he said that he entered
12 those into a computer?

13 A. Yes.

14 Q. But you just don't believe it because you
15 haven't seen the computer printouts?

16 A. I haven't seen the records, that's correct.

17 Q. So until you see the records or unless you
18 see the records, you don't believe he did it.

19 A. I don't know what he did. I didn't say I
20 don't believe it. I don't know what he did, that's
21 how I'm going to have to leave it.

22 Q. Do you know what he didn't do?

23 A. He did not protect this house against the
24 invasion of Formosan termites.

25 Q. Earlier you testified that he could have

1 done everything he was supposed to do and the house
2 still could have been infested with termites,
3 didn't you?

4 A. Yes.

5 Q. Then why do you conclude that he didn't do
6 what he was supposed to do just because the house
7 was infested by termites?

8 MR. MCKNIGHT: Objection to form.

9 THE WITNESS: I think I stated earlier
10 that I don't -- I don't think he kept his standard
11 the same when he changed from the liquid treatment
12 to the bait system. He didn't do the -- he didn't
13 do the liquid treatment to standard. If there's no
14 documents, that's the standard. I mean, you have
15 to have -- in this world today, if you don't have
16 the records that you did something, you didn't do
17 it. But the point is we know he didn't do a liquid
18 treatment to standard because there was no drills,
19 so if he changed to the liquid treatment, he did
20 not drill the slab; so we know that's one thing
21 that he didn't do properly. So like I said
22 earlier, if he did a perfect treatment, he may
23 not -- you know, there's a way that you could have
24 an infestation, but that is indicative to me of him
25 not doing a perfect treatment or a proper

1 treatment, a labeled treatment.

2 Q. Are you aware that he has testified that he
3 gave all the records to Terminix when he sold his
4 business to Terminix, when he sold SPM to Terminix,
5 that he gave all the Isle of Palms Pest Control
6 records and the SPM records to Terminix?

7 A. His records, yes.

8 Q. Right. So why do you conclude that he
9 didn't keep records?

10 A. I never said that. I said he didn't keep
11 all the records or records -- he kept -- he has an
12 annual inspection.

13 Q. Well, he gave all of his records, his
14 originals, to Terminix; are you aware of that?

15 MR. BELSER: Object to the form of that
16 question.

17 Q. He has testified that he gave all of his
18 original records to Terminix; are you aware of
19 that?

20 MR. BELSER: Same objection.

21 THE WITNESS: Yes, I remember him
22 saying that; but my point is, what were all of his
23 records, was it an inclusive population of records.

24 Q. Right, and so --

25 A. How it should have been.

1 Q. How do you know he didn't keep an inclusive
2 population of records? Just because you haven't
3 seen them?

4 A. Yes.

5 Q. Okay. So if you haven't seen something, you
6 conclude it wasn't done.

7 A. I hate to call somebody -- that they didn't
8 do it, and I stated earlier where I want my
9 statement to be. My statement is, if he did it, he
10 didn't maintain his records properly, he didn't
11 save them properly, and he didn't give the
12 information properly. That's a state requirement
13 that you -- that you keep those records.

14 Q. How do you know he didn't keep the records?

15 A. They're not here to look at.

16 Q. Even though you know that in between the
17 time that he had the contracts on these houses
18 under Isle of Palms Pest Control and SPM -- I
19 misspoke. I meant on this house. Even though you
20 know that he later sold his business and
21 transferred his records, according to him, to
22 Terminix.

23 MR. BELSER: Objection.

24 Q. You still conclude that since you don't have
25 the records here to see, that therefore he didn't

1 make the records and he didn't keep the records.

2 MR. MCKNIGHT: Object to the form.

3 MR. BELSER: Object to the form as
4 well.

5 Q. Do you understand my question?

6 A. I don't know how to answer other than what
7 I've said. I think if he had had the records, he
8 would have produced the records.

9 Q. Even though he's testified that he gave the
10 records to someone else when he sold his business,
11 you still think he should have the records and he
12 should have produced records --

13 A. Yes.

14 Q. -- in this lawsuit. So you fault him for
15 not keeping copies of the records when he sold his
16 business?

17 A. For not documenting the inspections of the
18 treatments and the inspections.

19 Q. How do you know he didn't document them?

20 A. There's no records in the -- Clemson doesn't
21 have records of it. Nobody has records of the
22 South Carolina pesticide usage forms when he
23 supposedly did his liquid termiticide treatments.
24 I don't see any evidence that he ever did those.

25 Q. So even if he said he did it, you don't

1 believe him because you don't see the records.

2 A. Yes.

3 Q. All right. And is that based on what you
4 said a second ago, that in this day and age if
5 there's not a record of it, it didn't happen?

6 A. He should have the records.

7 Q. How long is he required to keep records
8 under the regulations in South Carolina?

9 A. Treatments, you're supposed to keep them
10 forever. These inspections, he wasn't required to
11 keep them but for three years, I think.

12 Q. So and then what about when a termite
13 company sells its company, the owner of a company,
14 rather, sells his company to another company, is it
15 your opinion that he should have kept copies of all
16 of his records at that point instead of transferred
17 them to the buyer?

18 A. The treatment records, yes.

19 Q. You think he should have kept copies?

20 A. The treatment records, right, yes.

21 Q. Referring back to on the last page of what I
22 think was marked as Exhibit 13, the
23 Exterra contract, or 12 rather, in that waiver form
24 we were talking about on the last page.

25 A. Yes.

1 Q. And you mentioned I think that this waiver
2 form or this version of it was put out by the
3 pesticide regulation department when bait systems
4 began to be used, right?

5 A. Yes.

6 Q. Okay. And is that the reason that the
7 portion over on the left deals with the bait
8 stations and just, for example, it talks about, has
9 the customer been informed that baits offer no
10 residual protection and thus reinfestation may
11 occur unless they're monitored and replaced as
12 necessary, and it talks about the details of the
13 bait monitoring program and so forth; that the
14 portion on the left deals with the bait stations
15 and the portion on the right deals with waiver of
16 things that don't relate to the bait stations, I
17 mean, is that accurate?

18 A. I still think 1 through 4 they had to do,
19 and that would have mattered either way only. You
20 know, that wasn't really designed with not bait
21 stations in mind; but you're right, most of those
22 on that side would deal more with a liquid
23 treatment. But you don't -- you still don't leave
24 cellulose debris in the crawl space, you know, form
25 boards within eight inches of the crawl, but

1 normally what you're -- the actual treatment is on
2 the right side.

3 Q. Okay. So in other words if --

4 A. That's why he didn't check those.

5 Q. Okay. So the waiver list, the list of
6 things on the right-hand side of this form, those
7 would all be on a waiver form in a liquid
8 termiticide treatment context, non-bait station
9 context?

10 A. Yes.

11 Q. So if someone was going to do just a liquid
12 termiticide treatment, not bait stations, they
13 would use a waiver form that essentially looked
14 like the right-hand side of this form, correct?

15 A. I understand your question now, yes, yes.

16 Q. Okay.

17 A. In other words, that was the old form on the
18 right, and they added the stuff on the left as the
19 new form when they did bait stations.

20 Q. Okay. Did you read Mr. Carroll's
21 deposition?

22 A. Perused it. I did not read it in detail.

23 Q. Okay. Do you recall a portion in there
24 where he admitted that he had the room on the
25 ground floor built without a permit?

1 A. I knew that, yes.

2 Q. Are you aware that he knew at the time that
3 he did that that that was against the law?

4 A. Yes.

5 Q. Do you have any opinion of whether having
6 the ground floor room in existence there had any
7 bearing on the ability to see termite infestation
8 in the house?

9 A. It would have hindered it.

10 Q. All right. Do you have any opinion about
11 Stoney Bachman, who's an expert similar to
12 yourself, I believe, who's testified in this case?

13 A. I don't know a lot about Stoney other than
14 his background.

15 Q. Okay. Does that mean you don't have any
16 opinion one way or the other about him?

17 A. Yes.

18 Q. Okay. I believe we discussed earlier, and I
19 know you've reviewed testimony and documents in
20 this case, but we discussed how Terminix first
21 inspected this house in January 2014. Are you
22 aware of that?

23 A. That's my understanding, yes.

24 Q. Okay. Is it your understanding that
25 Terminix found live termites at that time?

1 A. Yes.

2 Q. All right. Is it your understanding that
3 Terminix first treated for termites at the house
4 several months later in I believe around the July
5 2014 time frame; is that what you understand?

6 A. Yes.

7 Q. Do you have an opinion about, whether or not
8 it's in board feet or volume or just in a general
9 sense, do you have any opinion about how much
10 damage the Formosan termites did to the house
11 during that time period between January and July of
12 2014?

13 A. At least 7 board feet. Seven months, right?
14 Six and a half, 7 board feet.

15 Q. And I don't really understand what that
16 means yet but --

17 A. A board.

18 Q. Go ahead.

19 A. A board foot is a piece of 2 by 4, one foot
20 long.

21 Q. And when you say the termites would eat a
22 board foot, you're saying they would eat that whole
23 piece of wood?

24 A. In a month.

25 Q. You said earlier something about that

1 termites don't eat the whole piece of wood, they
2 damage it?

3 A. Correct, so you usually double it. And the
4 reason I say that, you take away the before and
5 after feeding, it's about 50/50.

6 Q. So if you're saying 7 feet --

7 A. 14.

8 Q. -- then does that mean a length of lineal,
9 you know, what we can actually look down and see if
10 we look at the wood, are you saying that's only
11 three and a half feet long?

12 A. 14 feet because they only consume half of
13 it.

14 Q. They're consuming half of it, but you're
15 saying they consume 7 board feet over the span of
16 14 feet of that wood?

17 A. Correct, because they eat the whole thing up
18 and only leave half of it, that's about how far
19 that would be.

20 Q. Okay. Now, when a termite inspector finds
21 active termite infestation, do you have an opinion
22 about whether that person's duties change in terms
23 of what to do next?

24 A. You do more intensive investigation, that's
25 for sure. You go find -- see if you can find the

1 extent, and then you schedule a treatment for
2 wherever -- you know, you reevaluate the property.
3 But I think we have to realize, this was Terminix's
4 first -- you know, in January, the January time was
5 even before they would have done their normal
6 annual renewal in February, so it was a little bit
7 ahead of their schedule for that regard. I think
8 we have to remember that. Which I don't know if
9 that's good or bad, but that's what had happened
10 there. But they should have, you know,
11 aggressively -- aggressively treated the property,
12 and I don't know the reasons behind that other than
13 there's a lot of finger pointing, I'm sure.

14 Q. So do you have an opinion in terms of any
15 criticism about Terminix from the time they
16 initially found termites there in January 2014 and
17 what they did or didn't do after that?

18 A. Somebody should have made a decision
19 quickly, you know, I think a couple or three months
20 at the most, about what to do. I think six months
21 is a little excessive on that, you know. I know
22 they had to get their feet under them and know what
23 was going on, but they should have been out there
24 and retreated the property if they in fact owned
25 it.

1 Q. What do you mean by that?

2 A. I don't know who knows what owns what. That
3 was -- that's between them. I don't know if
4 everybody knows -- I think they know. They knew
5 that it was theirs, but I think that, from looking
6 at some of the documents, the sale agreement -- I
7 don't know. You know, that sort of said that --
8 from my layman's looking at it, it looked like it
9 said that any termites that were found quickly
10 would be responsibility of Vince; so I think they
11 were trying to get Vince to follow through on that
12 part of the buy-sell agreement. Is that what you
13 call that?

14 Q. Are you offering an opinion, though, about
15 the interpretation of that buy-sell agreement?

16 A. No. I didn't say that. I just said that's
17 what I read in there. I don't know legally who's
18 responsible for that, but that's what the thing
19 said; so I can imagine that that would be something
20 that came up.

21 Q. And the reason I ask that, whether that's
22 your opinion, is because, I mean, that's what we're
23 here to do today is to get your opinions as an
24 expert in this case.

25 A. I don't know if I should -- I'm not a

1 contract kind of -- you know, that's not what I do.
2 Who is really responsible for that, I don't know
3 that answer. That will probably be another person
4 to have to tell you that.

5 Q. Are you able to put a percentage, for
6 example, on how much of this house was infested
7 with termites?

8 A. I haven't done that, no.

9 Q. Okay. Would you be able to?

10 A. I could try, but I don't know how accurate
11 it would be, to be honest with you, rafters and
12 ceiling, and it would be hard to come up with a --
13 it's really a bunch to -- it would be a bunch to
14 calculate and figure. I don't know how accurate
15 I'd be. I'd hate to tell you I could.

16 Q. Well, and let me ask you this: Were all of
17 the parts of the house that were removed after
18 termites were found, were all of those parts -- and
19 when I say parts, I mean pieces of wood and pieces
20 of sheetrock and pieces of, you know, housing
21 material, were all of those parts infested with
22 termites?

23 A. No.

24 Q. Okay. Would you be able to put a percentage
25 on how much of those materials were termite

1 infested?

2 A. No.

3 Q. I think I'm almost done. Just give me a
4 minute to look at these notes.

5 A. You're good. There's a lot here. It's a
6 very confusing case for even me.

7 Q. Why is that?

8 A. It's just so much. Who all's what, when,
9 where and how. Normally you can follow and -- all
10 I'm trying to do here, boss, is go to the biology
11 of the termites. That's all I know to do. The
12 rest of this stuff you guys are going to have to
13 sort of -- I'm not trying to talk out of school.
14 That's just the way I see this. There's a lot
15 here. The termites are there. The damage is
16 there.

17 Q. So when you say who owns what, I mean, I
18 think I understand what you mean; but just for the
19 record, are you talking about who's got the
20 contract in which particular time and that sort
21 of --

22 A. Yes, there's a lot of things that's I can
23 see legally and insurance coverage and all the
24 different things to go through, it's -- it's hard
25 to know what to do. And the contract in general,

1 there's a lot of things that, I don't know, it's
2 pretty -- pretty reckless in some regards here as
3 how he just didn't ever -- you know, what do we
4 have here? That's what I want to know at the end
5 of the day. What was he really trying to do?

6 Q. Who's he?

7 A. Mr. Sottile. I'm sorry.

8 Q. Okay.

9 A. Over this whole period of time what was he
10 trying to do for Mr. Carroll? I can't quite figure
11 it out. I've tried a lot of times. I just can't
12 put my --

13 Q. Well, okay, let me ask you this, I mean, do
14 you think that he was just trying to take Mr.
15 Carroll's money and then not actually prevent
16 termites? I mean, do you think he was trying to
17 defraud Mr. Carroll?

18 A. I almost don't think he knew what he was
19 doing, for him to have changed and done what he
20 said he did and the way he's done it. You know,
21 I'm not so sure he ever used a Termidor. I've done
22 a couple of other jobs with sampling and stuff, and
23 we didn't find much Termidor in the samples in some
24 of the other places that we sampled. I didn't get
25 to do that here because -- I didn't get to do that

1 here because of obvious reasons; but I just, I
2 don't know what he was doing on those periods of
3 time. I don't know if he really did it. I think
4 he relied a lot on his son, at least the last --
5 there was a period of time in there, and I don't
6 think his son had a lot of interest in the
7 business; and I just don't -- I don't know if he
8 actually knew what happened on some of this stuff,
9 and I'm not 100 percent sure on that. That's just
10 the feel I get from looking and being around, and
11 that's my -- that's my observations because, I
12 mean, he just left things. You wouldn't do that.

13 Q. Wouldn't do what?

14 A. He was a good operator, Vince was, been
15 around for a long time. He would have kept his
16 records if he did the treatments. I just have that
17 much faith in what he did. We would have that
18 information, and I don't understand where it is.

19 Q. Well, just a minute ago you said you think
20 maybe he didn't know what he was doing; and then I
21 think within the same answer you said he was a good
22 operator and been doing it a long time.

23 A. At one time he was, yes, that's right; but
24 I'm not so sure that the last -- something
25 happened, and I don't know if it was Vince or

1 something else happened, but the last few years
2 there things just sort of fell off the wagon.

3 Q. But, again, that's based on your not having
4 records to look at and therefore concluding that
5 the records weren't ever even prepared?

6 A. That's correct.

7 Q. Okay.

8 A. There's a lot -- I mean, and you go back
9 further than this, you know, '80s and '90s, early
10 '90s, I think you'd find different. You go back
11 and look at stuff -- you've got it, I guess. You
12 all are his attorney. Go back and look at records
13 from -- I mean, Vince and I have had cases together
14 since I started doing this, just about; and there's
15 been some times where things weren't exactly right,
16 but I think he had -- he had done things, can I say
17 different?

18 Q. And you did read his deposition testimony in
19 this case where he testified under oath that he
20 gave all those paper records to Terminix when he
21 sold his business.

22 A. I'm not saying that he doesn't have some of
23 the paper records here. I think we've seen some of
24 them. But if that's what he kept, that's not
25 everything that he should have. You understand

1 that part, right? He can call, and let's just take
2 for example Document Exhibit 13. I think he
3 believes that that's the paperwork. I think that's
4 what he thinks, an annual inspection report was the
5 paperwork; but my understanding is Mr. Carroll --
6 he didn't even have the Exterra contract for Mr.
7 Carroll in the records, right?

8 Q. No, Terminix didn't have those in their
9 records because they're the ones who produced all
10 the records in this case because Mr. Sottile didn't
11 have them anymore because he sold his business and
12 gave his records to Terminix. You do understand
13 that, right?

14 A. Exactly. I do understand that.

15 Q. Okay. You kept saying he didn't have the
16 records, he hasn't produced the records, but by the
17 time this case came up you understand that it's
18 been his testimony that he didn't have possession
19 of those records anymore; so you're assuming that
20 all the records Terminix produced in this case
21 includes the universe of records that Mr. Sottile
22 ever kept or ever produced and kept, right? Aren't
23 you making that assumption?

24 A. I guess so, yes.

25 Q. Okay. Why are you making that assumption?

1 What is that based on?

2 A. Why would he have done it any other way, I
3 guess is what I'm thinking in my mind. Why would
4 he have not given all the documents to Terminix?
5 What would he have gained or lost from doing that?

6 Q. That's my point. Are you assuming he didn't
7 give all his records to Terminix? I'm asking you
8 to assume that what he testified to under oath was
9 true, which was that he did produce the records; in
10 other words, that he made records like he was
11 supposed to, that he kept the records like he was
12 supposed to, that he then transferred all of those
13 records when he sold his business. I'm asking you,
14 if you take him at face value on those things, then
15 why do you then assume that if we don't have the
16 records now, it's because he didn't ever make the
17 records or didn't ever keep the records?

18 MR. BELSER: Objection to the form of
19 the question.

20 THE WITNESS: My understanding is he's
21 testified that he couldn't find the records. The
22 records for all the bait station monitoring, he
23 couldn't find those records. He said that they
24 wasn't available. He tried to do the computer. He
25 couldn't find the records. I don't think that

1 there was ever any records that he ever had. Am I
2 reading that wrong? If I am, then I need to be --
3 my understanding of his testimony was that he lost
4 the program and all the electronic documents that
5 were in that program that were part of the Exterra
6 bait station monitoring. That was my understanding
7 of his testimony, that he didn't have any of that.
8 So that did not get transferred to Terminix because
9 he had already lost those.

10 And then I also heard -- then I'm also
11 looking for the requirement that anytime he did a
12 liquid treatment that he should have that in the
13 records, and Clemson should have a copy of that in
14 their records. You have to have a pesticide usage
15 report when you turn them in. So we don't have
16 that either. Somebody should have copies of that,
17 particularly. That's the reach I'm trying to make,
18 and that's why I don't think -- either they weren't
19 done properly, or they weren't done at all is the
20 only way that I can go with it because they're not
21 here and they should be.

22 Q. And I don't know that you're characterizing
23 his testimony correctly, but I'll just say that on
24 the record, when you say you believe he said he
25 lost the Exterra bait station monitoring records.

1 I don't think that's what he testified to, but in
2 any event, we can go and look at his testimony.

3 A. And that's fair. Maybe I'm seeing it wrong,
4 but my understanding was that he had them on the
5 computer, he couldn't find it, I mean, that was
6 what I remember reading; and if I'm wrong, that's
7 fine too.

8 Q. All right. And even if he failed to keep
9 the records or make the records or both, making the
10 record, retaining the record, even if he failed to
11 do those things, does that have anything to do with
12 causing termite damage?

13 A. It has a lot to do at the end of the day
14 with there being termites at the property. Without
15 protection the house became infested with termites.

16 Q. That's not what I asked you. I asked you
17 about making records and keeping records, not about
18 whether or not he did the inspections of the bait
19 stations. Let's just take bait stations first, all
20 right? If he did inspect the bait stations but
21 didn't make a record or didn't keep a record, and
22 I'm saying just for the sake of argument if we
23 assume that, how does that relate to termite
24 infestation?

25 A. I don't know.

1 Q. It really just comes down to a matter of
2 proof at that point, right?

3 A. That's what I'm sort of going on. The house
4 was eaten up with termites.

5 Q. So at the end of the day that's what your
6 opinion that Mr. Sottile did something wrong is
7 based on, the fact that the house was eaten up with
8 termites.

9 MR. MCKNIGHT: Objection to the form,
10 asked and answered.

11 Q. Isn't that what you just said?

12 A. Mr. Sottile was hired to protect Mr.
13 Carroll's house from termites. The house now has a
14 severe or had a severe termite infestation. I
15 think Mr. Sottile is responsible for that.

16 Q. What about Terminix, do you think they're
17 responsible too?

18 A. Well, they're going to be responsible for
19 the part they had, sure. They had the last piece.
20 At the end of the day that's what I'm looking at.
21 And for me to go through here and try to pick out
22 all the other -- the things that may have caused it
23 to happen, maybe we're reaching a little bit -- not
24 reaching, but maybe we don't even need to go there.

25 You know, like I said earlier, he was

1 supposed to keep the termites out of his house, Mr.
2 Sottile's company was, whether it be SPM or Isle of
3 Palms, or whatever; and there's termites there, so
4 that responsibility has to go back to the person
5 that was contracted, in my opinion, to keep the
6 termites out.

7 Q. When you say that responsibility has to go
8 back, do you mean that means you believe they did
9 something wrong?

10 A. Yes. I believe that -- I have faith -- I
11 have faith in the termiticide that he said he used,
12 and I have faith in baiting systems when applied,
13 maintained and monitored properly. There's
14 thousands and thousands of houses all over that use
15 one or both -- one or the other or both of those
16 systems that don't get termites in them. And I do
17 agree with your statement that there is a potential
18 that you could do everything right and you might
19 could get an infestation, but I don't think -- but
20 at the end of the day, even if you did, you're
21 still responsible for the termites in my opinion.

22 Q. Few more. Are you a member of the South
23 Carolina Pest Control Association?

24 A. No.

25 Q. The Georgia Pest Control Association?

1 A. No.

2 Q. The National Pest Control Association?

3 A. No. I go to all their meetings, all of
4 them, but I'm not a member of any of them. Costs
5 too much money.

6 Q. And you've never held any office in any of
7 those organizations as an officer, in other words?

8 A. No.

9 Q. Have you ever written a peer reviewed
10 article on termite control?

11 A. No.

12 Q. Have you ever been asked to give any
13 presentations on termite control for any of those
14 organizations I just mentioned?

15 A. No, but I did do the school I talked to you
16 about earlier.

17 Q. You taught --

18 A. At the school for the termite technician
19 when I was at Clemson.

20 Q. When you were in your graduate program?

21 A. Yes, probably '85, '86, something like that.

22 Q. You say you taught a portion of that
23 program?

24 A. Right.

25 Q. Do you have any certificates or any kind of

1 recognized credentials regarding the control of
2 termites?

3 A. No.

4 Q. Would you defer to the Clemson pest control
5 regulatory authorities for the interpretation of
6 the South Carolina rules and regulations about
7 pesticide use and termite control?

8 A. Yes, I stated that earlier.

9 MR. HAMRICK: All right. I believe
10 those are all the questions I have for you at this
11 time. Thank you.

12 BY MR. STEWART:

13 Q. Mr. Nolan, my name's Nick Stewart. We met
14 before. I represent SPM Pest Management. Are you
15 okay to keep going? Do you need a break or
16 anything?

17 A. I'm fine right now.

18 Q. I want to talk to you a little bit about
19 record keeping regulations in South Carolina. Are
20 you familiar with the pest control record keeping
21 regulations in South Carolina?

22 A. Somewhat, yes.

23 Q. Do you know about how long a pest control
24 operator is required under the regulations to keep
25 records?

1 A. If my memory's correct, which I think it is,
2 as I mentioned earlier, I think it's three years
3 for baiting-type stuff, and then it's forever for
4 treatment, the original graphing and that kind of
5 stuff.

6 Q. Do you know if those regulations change from
7 time to time?

8 A. I'm sure they have.

9 Q. Do you know if they changed around the early
10 2000's?

11 A. Yes, they did, and I don't remember all
12 those details, to be honest with you.

13 Q. I don't know what they say either, but is
14 there a chance those regulations, the earlier
15 regulations could have required a less stringent
16 record keeping requirement?

17 A. Yes.

18 Q. Okay. We discussed a little bit about Mr.
19 Sottile's bait station system and how he monitored
20 it and kept those files on a computer. Are you
21 familiar with that discussion, or how he may have
22 kept them on a computer?

23 A. Yes, I am.

24 Q. What would you say the average life of a
25 computer is in your opinion?

1 A. Depends on if it's a Windows based machine
2 or an Apple based machine. The Windows that we've
3 got, we get about 18 months out of a laptop.
4 Apples last about six or seven years. That's been
5 my business's experience with them.

6 Q. Okay. So --

7 A. But, you know, they have memory; and when
8 you keep records, you keep backups and computer --
9 you know, you do that kind of stuff.

10 Q. But you would agree with me that computers
11 typically last let's just say three to five years?

12 A. That sounds like a reasonable amount of time
13 to me.

14 Q. So some of these records may have been on an
15 older computer system, since this treatment
16 contract dates back to the early 2000's; would you
17 agree with me on that?

18 A. Yes.

19 Q. Would you agree with me that it's reasonable
20 for a computer from the early 2000's to fail,
21 generally?

22 A. Yes.

23 Q. Okay. Would you agree with me that Mr.
24 Sottile's computer with these records could have
25 failed and lost these records?

1 A. Let's break that down into two parts. The
2 failure part I agree with. The lost the records
3 part, that's horse crap. Anybody that runs a
4 computer system knows that you back the system up
5 regularly. I can tell you in that early 1980
6 period I was writing a doctoral dissertation, and I
7 learned the hard way that you back up your data.
8 So if he had a computer system, the first thing you
9 should learn is you put it on a floppy disc. At
10 that time I guess it would have been an old-timey
11 five-and-a-half-inch floppy, or you put it on a
12 server somewhere, you do something other than keep
13 it on that computer because you have to -- because
14 it's a mechanical thing, and it will fail. That's
15 my opinion on backing up data.

16 Q. So do you maintain records in that
17 procedure?

18 A. Yes.

19 Q. So you --

20 A. Three different places now.

21 Q. Do you maintain records to the early 2000's?

22 A. Yes.

23 Q. Is it your belief that pest control
24 operators in South Carolina will maintain records,
25 electronic records, back to the early 2000's?

1 A. I don't know about electronic. I'm not
2 familiar -- I wouldn't be familiar enough to say
3 that. 2000's, probably, but I'm not sure. The
4 important stuff you keep on 8-by-11 sheets of
5 paper, and they go in a file called Mr. Carroll.

6 Q. But you would agree with me that some of the
7 earlier regulations may have not required keeping
8 those records?

9 A. Yes. Well, see, bait stations didn't come
10 out -- that's why they had to rewrite it the law.
11 They weren't even available a lot earlier than
12 that. That's why the form that we looked at was a
13 hybrid kind of deal. You know, everybody was
14 wondering -- borates and bait came in just about
15 the period of time we're talking about, when they
16 got accepted.

17 Q. Would you agree with me that Mr. Sottile's
18 bait station records could exist on a failed hard
19 drive?

20 A. Yes.

21 Q. Would you agree -- you mentioned earlier
22 that Mr. Sottile had good records in the '80s and
23 '90s and then something happened and it kind of
24 fell off. That was your testimony. Would you
25 agree with me with that?

1 A. That was from other cases. I can sort of
2 remember it wasn't the paperwork part, it was some
3 other things; but things changed somewhere. You
4 know, we've been there already.

5 Q. Right.

6 A. And I'm not sure about Exterra. I'll make a
7 statement about that. Exterra was late in the
8 game. If you remember the Sentricon system, it was
9 first; and Sentricon -- and I don't know if they
10 still have it or not -- Sentricon you had to send
11 the data. When you read the barcode, that
12 information had to be downloaded to them at Dow, I
13 believe it was monthly at the time. I can't
14 imagine the people that did the Exterra wouldn't
15 have required the same thing. I'm not as familiar
16 with the procedural part of Exterra as I am with
17 the procedural part for Sentricon, but see, they
18 were paranoid when they first put out the system
19 that people would just -- they wouldn't check them,
20 you know, they wouldn't go out. That's why they
21 had the barcodes on them, and they made you send
22 that information back. It was a really big -- it
23 was the way that the companies convinced regulatory
24 people that they could actually keep up with when
25 the people did the monitoring or not. So I don't

1 know, Exterra may have had that requirement, at
2 least initially, so they may have some data.

3 Now, where the big problem came is I had a
4 case where we were going to go back to Dow and get
5 the data, right? We thought we had a great idea.
6 Dow lost the data. So I don't know who would have
7 that now, but there was a period of time when
8 Sentricon first came out where the pest control
9 operators were required to send in, and then they
10 couldn't pull it up. So I don't know the answer to
11 that question, but there is a probability that he
12 may have had to download the stuff or send the
13 floppies in or whatever, periodically, and get them
14 put in their system.

15 Q. So what you're telling me is Dow lost the
16 data, so it occurs in this industry where people
17 are losing their data and their paperwork?

18 A. Yes.

19 Q. Okay. And would you agree with me, you said
20 his record keeping was good '80s and '90s, and then
21 something happened. Would you agree with me around
22 mid '90s was when computers became more widespread?

23 A. I'd have to go back and look. That sounds
24 probably about right, mid '90s, early 2000s, when
25 people started really -- mid '90's would be pushing

1 it probably.

2 Q. Pushing it late or early?

3 A. Early. I think probably 2000 for pest
4 control operators for sure.

5 Q. What I'm trying to get at is the
6 implementation of a computer and then Mr. Sottile's
7 computer failing could have been the result of his
8 change in record keeping; the reason we don't have
9 it here today is because it could have been this
10 failed computer hard drive.

11 A. That could have happened.

12 Q. Okay.

13 A. I don't remember him saying that, but that
14 could have happened.

15 Q. I'm going to change gears to some of the
16 demolition stuff that was done. Earlier we talked
17 about a borescope, and I'm not completely familiar
18 with the procedures of a borescope. Can you
19 generally explain to me how that procedure works?

20 A. A borescope is a fiberoptic cable, or it can
21 be just a -- the original borescope was about a one
22 and a half to two foot metal piece with a
23 fiberoptic in it. And you drill a hole in the
24 wall, and you stick it in there, and then it shows
25 what's in that cavity.

1 Q. How much ground --

2 A. Not much.

3 Q. Not much.

4 A. And if you hit insulation in an exterior
5 wall, it's almost nothing. You get lucky when you
6 find something, and I have in the past -- I've got
7 a couple of the ones, you know, that you turn and
8 you move, and it's just not very dependable; and
9 particularly when a lot of termite damage occurs
10 like this (indicating), two flat surfaces together.
11 I wish I had one. We could go look in a wall, and
12 you'd see what I'm talking about. You can see
13 about -- really good because you're looking for
14 termite tubes, you could probably see a foot and a
15 half up and maybe a foot and a half down, and then
16 you can only see 16 inches, remember, because
17 you've got studs. And you can only see one side of
18 the stud then, and you never can see -- very hardly
19 ever get a good acuity where the termites usually
20 are. You can't see on the stud-sheetrock interface
21 because when you start to pull it out and you get
22 right to that edge, you just can't see it over
23 there. But so that's what a borescope is. It's
24 like a fiberoptic cable that you can stick it with
25 a magnifying glass or a lens on the end of it, sort

1 of like they use for surgery, you see these --
2 that's the same kind of thing.

3 Q. Okay. Would you agree with me that a
4 borescope is more effective in a wall cavity than a
5 floor cavity in locating termites.

6 A. You find more termites normally in walls
7 than you do floors, but I think the floors would be
8 easier because there's usually not insulation. If
9 it's insulated between them, it's almost
10 impossible. The only way you can do it is sort of
11 stick something in inside your hole and pull the
12 insulation back, try to, and then stick it in there
13 finally -- it's not very practical if there's
14 insulation, it's really -- mine's in the back of my
15 truck, and I probably use it twice a year. It's
16 just so hard to get them to do right. It's a pain.

17 Q. Do you know if Mr. Carroll had insulation in
18 his walls at his residence?

19 A. I'm sure he did, yes. Yes, there was
20 insulation in the outside walls. I remember that.

21 Q. What about interior walls?

22 A. Don't remember.

23 Q. Could a borescope have been used in interior
24 walls to attempt to mitigate the demolition that
25 was done?

1 A. Sure, you could have tried it; but it's not
2 very effective, as I said earlier. I just don't
3 think it's very practical.

4 Q. Effective in what --

5 A. You can't see everything you want to see.
6 It's just not -- I just don't think it's the way to
7 go.

8 Q. But it can be used, folks in the industry do
9 use a borescope to locate termite damage.

10 A. For spot -- for like a spot infestation,
11 you've got a really -- you've got a really bad
12 infestation, one little spot to go to, you drill a
13 hole and look, you can use it for that. But to
14 think it's practical to do every stud, every board,
15 you can't find all the damage, when you're trying
16 to find the extent of the damage, with a borescope.
17 It's just not practical. Practicality out, it's
18 not good enough.

19 Q. Not good enough in locating damage.

20 A. To see it. Yes, you just can't see the
21 damage you're trying to find. It's not easy to see
22 it even when you take the thing apart sometimes.
23 We're talking about a little 1/64th of an inch tube
24 going between three 2-by-4's, you know, it's hard
25 to see that.

1 Q. But if you've got a wall, you don't have
2 that issue, right, an interior wall; you've just
3 got open boards.

4 A. Right.

5 Q. So you don't have that issue, so it would be
6 easier with an interior wall to use a borescope to
7 find damage.

8 A. Yes, yes, it would be.

9 Q. In regards to the 10 foot rule, how many
10 instances, cases, have you been involved in where
11 you've used the 10 foot rule where the home has
12 resulted in a complete stripping to the studs like
13 Mr. Carroll's?

14 A. Never the whole inside of the house. I've
15 had it where we've had to do just about the entire
16 exterior, but I've never had one where we had to do
17 the whole inside.

18 Q. Did you supervise the demolition that was
19 going on at Mr. Carroll's house?

20 A. No.

21 Q. Would you agree with me that it may have
22 gone a little too far?

23 A. Probably.

24 Q. Earlier we were talking about just subs and
25 Formosans. Which one is the particularly faster

1 wood boring termite?

2 A. Formosans, no doubt.

3 Q. And your study you did that found, I believe
4 it was new construction down in Florida, that
5 eastern subs could do about a foot per 39 days; is
6 that correct?

7 A. That's Formosan.

8 Q. That's Formosans. Okay.

9 A. It's 129 days for --

10 Q. Eastern subs?

11 A. -- eastern subs, about four times -- it's
12 about four times more.

13 Q. We talked about the latticework creating
14 wood-to-ground contact. Do you know when that
15 latticework was installed on Mr. Carroll's home?

16 A. No.

17 Q. There's the aerial spot, the aerial colony
18 or elevated colony on, if you're looking at the
19 house on the left side, on the second elevation,
20 are you familiar with that?

21 A. Going around the fireplace.

22 Q. Mm-hmm.

23 A. Yes.

24 Q. Did you see any tracks from that colony
25 around the fireplace down to the base of the home?

1 A. Yes.

2 Q. Earlier I believe you talked about the
3 homeowner's responsibility to remove sources of
4 moisture, and you said it all goes together, one
5 plus one equals five. Are you stating that Mr.
6 Carroll shares some of the burden here for failure
7 to remove moisture sources?

8 A. I think it's the termite guy's job all the
9 way, and the reason is we wouldn't have the
10 discussion if there was no termites there. That's
11 my opinion on that.

12 Q. So you think Mr. Carroll doesn't share any
13 responsibility in contributing to the termite
14 damage?

15 A. Right.

16 Q. What about the room that's underneath the
17 home, you don't think that contributed to the
18 termite damage?

19 A. It was where the termite -- a lot of termite
20 damage was. I don't see why the construction had
21 anything to do with termites.

22 Q. I don't know this for sure, but what if I
23 would represent to you that that room contained
24 untreated wood?

25 A. It shouldn't have gone through the slab.

1 See, my whole contention is if the slab had been
2 treated and these termites couldn't get out of the
3 dirt, it doesn't matter what he put. That's why
4 I'm saying that I think it was a -- it wasn't a
5 proper treatment if we were using the liquid
6 treatment.

7 Q. So you don't think the room underneath
8 contributed to the aggravation of the condition of
9 the termites?

10 A. Well, it allowed, if it was as has been
11 described, it was covered, it would have allowed
12 for it to go without easily being seen, not that it
13 couldn't have been seen, and that would allow for
14 more damage. But as far as the way the thing was
15 built, if that slab had been treated properly -- I
16 mean, you know, there's buildings like that all the
17 time. That's just a slab on grade with pilings. I
18 mean, that's an easy fix, an easy treatment. There
19 shouldn't have been any problems with how that was
20 done. The only reason that I can think of that
21 we're concerned about that room is if they wrapped
22 the pilings up -- if they wrapped the pilings, it
23 may not have been easy to see the damage, the
24 termite tubes going up the outside of the piling.

25 Q. Did you know that there was a shower in that

1 room?

2 A. Yes.

3 Q. Could leaks from that shower, leaking
4 plumbing, create an attractive environment for
5 termite colonies?

6 A. I don't remember enough about the details on
7 that to be able to comment. If it had washed away
8 the soil, which I don't -- it's on slab, and it had
9 plumbing, so no, it wouldn't have done that.

10 Q. It wouldn't have done it.

11 A. No.

12 Q. How quickly should a homeowner remediate
13 sources of moisture within the home?

14 A. When they're informed.

15 Q. I mean, once they're aware of the issue, how
16 quickly should that moisture be remediated?

17 A. In a couple of months, three months.

18 Q. Okay.

19 A. After they're told.

20 Q. One more question. If we were to have,
21 hypothetically, Mr. Sottile's documents of
22 quarterly monitoring the bait stations, his yearly
23 readings, if we had all the documentation that you
24 think he should have, what issues would you have
25 with his treatment of Mr. Carroll's home?

1 A. With his treatment?

2 Q. Yes.

3 A. I have a really hard time answering that on
4 this grounds: When I was there and I inspected
5 Exterra bait stations, they were not there, they
6 weren't in the right place. So if it was in that
7 shape when he quit -- horrible. You know, there
8 weren't -- you know, they weren't in the right
9 spacing. They just weren't there. A lot of the
10 stations weren't even where they should have been,
11 so that's all I know to go by, where I found them,
12 that would not have been good, so I guess that's
13 how I'd answer that question.

14 Q. So if you had all the paperwork, as required
15 by the regulations and required by the products,
16 your only criticism of him would be the spacing of
17 bait stations around the home?

18 A. And the -- yes, if he'd done all the
19 inspections, but if he had done all that, he'd have
20 had all the bait stations in place because his
21 documents would have said, I don't have a bait
22 station here, I need to put another down. Are you
23 with me? That's why the documents -- you use the
24 records. Every time he goes out he's supposed to
25 have the records of the pattern where they are,

1 puts one up, takes one down. It's not something
2 that they just throw out there. That's why they go
3 check them every quarter. Dogs get in them,
4 raccoons get in them, the lawn mower eats them up.
5 There's all types of things that can happen, so you
6 have to do it frequently enough to where you
7 maintain the stations close enough together to
8 where termites can't bridge the gap, go through the
9 middle of them, and hit a home run and go to the
10 house.

11 Q. When you first went out to Mr. Carroll's
12 house, just because the bait stations were in the
13 places that they were doesn't mean that's where
14 they were when Mr. Carroll treated, would you agree
15 with me there?

16 A. You mean Mr. Sottile.

17 Q. Mr. Sottile, sorry, excuse me.

18 A. Who's maintained the system though? His job
19 is to maintain it. Every three months he's
20 supposed to go check it.

21 Q. The system was abandoned at some point,
22 you'll agree with me there?

23 A. Yes.

24 Q. And so --

25 A. That's my information, it was abandoned,

1 okay.

2 Q. Right. And since it was abandoned, that
3 means that on your first site visit in November
4 2015 the bait stations wouldn't have been in the
5 correct places because that system had been
6 abandoned for a number of years.

7 A. That's right.

8 Q. And those bait stations could have been
9 picked up by Mr. Sottile or picked up by Mr.
10 Carroll or anybody; you know, a maintenance guy can
11 be like, I don't need this. Those could have been
12 ripped out of the ground.

13 A. I agree with it.

14 Q. All right.

15 A. So what were we doing to protect Mr.
16 Carroll's house, since we don't have any bait
17 stations around the house? That's what I'm getting
18 back to for the whole deal. They can't have their
19 cake and eat it too. If they're not going to
20 maintain the dang bait stations, then they've got
21 to do something to protect the man's house; and
22 that protection, in my understanding was a Termidor
23 treatment. If that's what they were going to do,
24 they should have trenched and treated the whole
25 house -- I'll say this for the 14th time -- they

1 should have drilled down every one of the pillars,
2 and they should have drilled the concrete all over
3 the whole property and set it to standard for a
4 liquid treatment. They can't have their cake and
5 eat it too. You either got a bait station, or
6 you've got a liquid treatment station I don't think
7 it's hard for you guys, you all know that.
8 Everybody's just trying to jack this around here.
9 That's what happened. What did he have? What was
10 he doing? Nobody knows. He said he did it, but
11 we've got termites all over the building. Now, how
12 in the world am I supposed to be able to sit here
13 and say his treatment was adequate when termites
14 have eaten it up? Somebody dropped the ball from
15 sometime when he changed from using the bait, in
16 his mind he just quit using bait, to going to the
17 liquid treatment something fell apart. Either he
18 didn't ever do the liquid treatment, they didn't do
19 a proper liquid treatment or a complete treatment
20 or -- the house was left unprotected, so as a
21 result of that it got termites.

22 You don't leave a house on the Isle of
23 Palms, South Carolina, without some type of a
24 termite treatment, or it's going to termites. It's
25 not if it's just when. It's that pervasive of a

1 problem. You do not have an untreated house in
2 the -- that is what we call an extreme zone. You
3 know, that's super double red. The barrier islands
4 of the South Carolina/Georgia coast and on up, it's
5 as bad as it gets for termites. If you don't have
6 it protected, you're going to get termites.

7 So that's what I'm talking about, they left
8 the -- somebody did not maintain the treatment.
9 Now, either he treated it wrong when he did the
10 liquid treatment, or he dropped off doing his bait
11 treatments during that period of time. I mean, I
12 just -- that's the way I see this, and if I'm --
13 I've looked at a lot of houses with similar type
14 situations, and that's just what I think happened.

15 Q. But you would agree with me that just
16 because there's bait stations there in November 19,
17 2015, that doesn't necessarily mean that's where
18 they were when Mr. Sottile was originally doing his
19 bait station treatment?

20 A. I keep forgetting your part of this. Yes,
21 they could have changed it, yes, they could have.
22 I'm sorry. I remember now. You were there just
23 when he put out the bait stations. I thought he
24 had changed during your watch, though.

25 Q. Yes.

1 A. He did in your watch. So I just think that
2 somebody didn't do something for a period of time.
3 Either they didn't do the bait station, or they
4 didn't treat it properly with liquid. And for me
5 to know exactly, I don't know.

6 Q. All I'm trying to get at with the bait
7 stations is, when I asked you if we had all the
8 appropriate paperwork, what would your issues be,
9 and you said the spacing of the bait stations. So
10 I'm just trying to say, well, the bait stations, as
11 they are November 19th, 2015, may not be indicative
12 of how they were during the use of that treatment.

13 A. I agree with that statement. I don't think
14 they were. I think he had abandoned them, so some
15 did get lost and moved; but that's even more of an
16 indication that he decided in his mind if that's
17 what happened, that he was going to go to a liquid
18 treatment. And if he did the liquid treatment,
19 particularly as far down the line as that was, we
20 know there had to have been a South Carolina
21 termiticide usage form. He had to bring up the
22 standards. He didn't do that.

23 Q. One last time, if we had all the paperwork
24 here today, can you just provide me with what you
25 think he did wrong if we had the paperwork?

1 MR. MCKNIGHT: Objection.

2 THE WITNESS: I don't know, and the
3 reason I don't know is I don't know when he
4 abandoned the bait stations. That's the reason I
5 can't answer that question. For sure we don't know
6 that day. If we knew that, then maybe we could go
7 back and start piecing together this liquid
8 treatment and the other things; but I just don't
9 see where we can do that because we don't know -- I
10 mean, he said sort of a time frame in his
11 deposition, but he just needs to treat it.

12 MR. STEWART: That's all I've got.
13 Thank you.

14 BY MR. BELSER:

15 Q. For the record, my name is Clinch Belser.
16 In this case I represent Terminix. I have just a
17 few questions compared to the last number of
18 questions you've already been asked, but I do have
19 a few questions.

20 Just to go back, you said that preparing for
21 the deposition today, your deposition, you read the
22 deposition transcript from Mr. Jim Wright, Vincent
23 Sottile, which I guess is in this case, Mr. Carroll
24 in this case and the two Terminix technicians who
25 treated the house; is that correct?

1 A. That's correct. And Cecil.

2 Q. Stoney Bachman and Cecil Barber; is that
3 correct?

4 A. Yes, sir.

5 Q. Okay. And you made reference to the
6 agreement for the purchase and sale of assets which
7 was signed in the year 2013 by SPM and Terminix
8 Service. You made some reference to the legal
9 relation between those two companies as relates to
10 this house; is that correct?

11 A. Yes.

12 Q. By any chance did you read Mr. Sottile's
13 deposition in the other case of Robert Graf against
14 these same defendants?

15 A. Yes.

16 Q. Now, do you remember the testimony of the
17 termite technicians who said that when they
18 found -- Mr. Shane Briggs is the termite technician
19 who found the live termites when he made the first
20 Terminix inspection on January the 22nd of 2014.
21 Do you remember his deposition?

22 A. Yes.

23 Q. Do you remember when he said that he
24 immediately notified Mr. Sottile that they found
25 them?

1 A. Yes.

2 Q. And do you remember when he testified that
3 when he was told, Mr. Sottile said, I'll take care
4 of it, this is my lifelong friend, I'll take care
5 of it?

6 A. That's my understanding.

7 Q. And that, based upon the provisions of this
8 agreement for the purchase and sale of assets,
9 depending on when the termites were found, it would
10 be perhaps Mr. Sottile's responsibility, or his
11 company, to take care of it; do you remember that?

12 A. Yes.

13 Q. Now, do you remember the testimony also of
14 Mr. Briggs and also Mr. Barber that Terminix gave
15 Mr. Sottile a reasonable period of time to do what
16 he said he would do, that is, take care of the
17 termites which were discovered?

18 A. Yes.

19 Q. And that that was part of the reason why it
20 was not until July of 2014, the same year, that
21 Terminix went back and treated the house in July of
22 the 14th of 2014.

23 A. That's what they said, yes.

24 Q. The passage of time was resulting of the
25 fact that Mr. Sottile had said he would take care

1 of it in accordance with the contract between the
2 two companies.

3 A. That's what I read.

4 Q. And you are familiar with the fact that
5 Terminix, from the records and also from the
6 testimony in the deposition, that Terminix did
7 respond on multiple occasions and go out and give
8 this particular house a series of treatments
9 whenever there was a problem.

10 A. Yes.

11 Q. And you're aware that Cecil Hernandez of
12 Clemson did give thumbs up approval to the
13 treatment done by Terminix in April of 2015 saying
14 it met all of the regulatory requirements for such
15 a treatment?

16 A. Yes, but I think that same concern comes
17 because it was a year and a half later so that's
18 another...

19 Q. Well, it was between July of 2014 --

20 A. I just know what happened, it was a finger
21 pointing deal there.

22 Q. Well, the treatment which Terminix gave on
23 April the 3rd of 2015 did comply with all the
24 requirements for such a treatment; is that correct?
25 That's what Mr. Cecil Hernandez said.

1 A. Correct.

2 Q. Now, is it your testimony that that is the
3 first time that anybody had done any drilling at
4 the house?

5 A. Yes.

6 Q. And is that part of your opinion that Mr.
7 Sottile and his companies did not do what they
8 should have done if in fact Mr. Sottile had used a
9 liquid treatment after he lost faith in bait
10 stations?

11 A. No doubt.

12 Q. Because at that time, sometime after he lost
13 faith in the bait station five years after he began
14 with it in 2003 to 2008, he should have drilled the
15 foundation, he should have done the trenching and
16 treating at that time.

17 A. That's my opinion.

18 Q. And in your opinion, based upon your years
19 of experience and reading the rules, at that time
20 he would have been required to fill out an official
21 document called a record of termiticide use in
22 South Carolina?

23 A. Yes, sir.

24 Q. And his failure to do that is one of the
25 bases of your opinion that Isle of Palms Pest

1 Control did not comply with its duties to its
2 customer.

3 A. That's correct.

4 Q. You say you read the deposition of Mr.
5 Sottile in these two cases. Do you remember in the
6 deposition of Mr. Sottile in the Graf case that he
7 said that he'd given all of his records and his
8 computer on which he kept whatever records he had
9 of the bait station monitoring to Terminix?

10 A. Yes.

11 Q. And in his deposition in this case just a
12 few months later he said again under oath that he
13 had not done that, he still had them.

14 A. Yes, sir. That was part of my concern.
15 When I mentioned earlier about the other case, I
16 knew how he had testified there; and that's why I'm
17 not exactly clear about what's really happened.
18 All I can do is go with what I know. The soil
19 samples -- the soil samples at the Grafs was
20 another example of that kind of a thing so we've
21 got...

22 Q. Near the end of the questions by my
23 colleague, Mr. Stewart, you said that if you did
24 have all of Vincent Sottile's records, you would
25 nonetheless criticize his performance for the bait

1 stations not being appropriately placed around the
2 building.

3 A. Yes, sir.

4 Q. Wouldn't it also depend upon what the
5 records showed, if he had the records, whether you
6 had any further criticisms?

7 A. That's correct. All I know is what I saw.
8 What I was trying to answer that question was how I
9 saw the bait station placement on the time I was
10 there, and they were just scattered. I guess you
11 guys didn't take them up too. There were still a
12 few around. So I just don't know how they were
13 positioned.

14 Q. I understand the point about the placement
15 of the bait stations and how that could have
16 changed from 2008 when Mr. Sottile quit, fast
17 forward to 2015, seven years, anything could have
18 happened to them. But in addition to that
19 criticism that they were not fair enough apart as
20 far as you can tell, wouldn't you possibly have
21 other criticisms of what he was doing in his
22 monitoring if you saw the records because the
23 record might be incomplete or they might show some
24 problems?

25 A. That could be a possibility, yes.

1 Q. Let's talk about the room which was changed
2 from a storage room to a son's bedroom or man cave
3 in the basement floor or the ground floor of Mr.
4 Carroll's house. Do you know what I'm talking
5 about?

6 On the ground floor there was a room which
7 was originally storage which Mr. Carroll enclosed
8 and made larger for his son's use after he bought
9 the house in 2002. Do you know which room I'm
10 talking about?

11 A. I know where you're talking about. I didn't
12 know it was a man cave, but anyway, whatever.

13 Q. That's not my term. That was the term used.

14 A. I think a read that and I was like --

15 Q. What is that --

16 A. That was the first of a man cave if I ever
17 saw it. That was a sure enough cave down there.

18 Q. My question is not about what is a man cave.

19 A. I'm with you. Under the stairwell, right?
20 In front of the house underneath the stairwell.

21 Q. Underneath the stairwell.

22 A. The laundry room and all that.

23 Q. Below the laundry room and sort of in the
24 middle of the house, I guess more towards the front
25 if you look from the street.

1 A. I'm with you.

2 Q. If that was built by Mr. Carroll in 2002 or
3 thereabouts after he bought the house, when should
4 that room have been commented on by the pest
5 control operator to the homeowner if in fact it was
6 a problem in terms of visibility of termite
7 infestation?

8 A. First inspection after it was put up.

9 Q. So it should have been on the 2003
10 inspection report from Mr. Sottile?

11 A. Yes.

12 Q. Doing business as Isle of Palms?

13 A. Yes.

14 Q. And should have been there again in the next
15 year, 2004?

16 A. Yes.

17 Q. Should have been there in 2005 too?

18 A. Yes.

19 Q. 2006?

20 A. Yes.

21 Q. 2007?

22 A. Yes.

23 Q. 2008?

24 A. Yes.

25 Q. 2009?

1 A. Yes.

2 Q. 2010?

3 A. Yes.

4 Q. 2011?

5 A. Yes.

6 Q. It was okay that it was there in 2013, which
7 is the first time it actually appears in the
8 records; is that correct?

9 A. Yes.

10 MR. BELSER: One of the most popular
11 words I can say is I have no further questions,
12 thank you, now.

13 BY MR. MCKNIGHT:

14 Q. Going back to this records issue on the bait
15 stations, I'm going to show you what's marked
16 JW011, and this is a voluntary affidavit dated
17 9/26/06 as part of a complaint on an unrelated
18 case. And this is an affidavit that is signed by
19 Vince Sottile, and I'm going to read this to you.
20 It says, we did not realize -- well, before I go to
21 that, this is a February 2003 Exterra baiting
22 agreement, correct?

23 A. Yes, 2/19/03.

24 Q. And Vince Sottile testified that after the
25 period of five years which would go up to 2008,

1 that he discontinued the use of the bait stations,
2 correct?

3 A. Yes.

4 Q. Okay. Now, this affidavit of 2006, let me
5 read this to you. It says, we did not realize that
6 we needed to keep records on the quarterly checks
7 on Exterra bait stations. We, to keep the
8 initial -- or, excuse me, or to keep the --

9 Let me rephrase it. It says, we did not
10 realize that we needed to keep records on the
11 quarterly checks on Exterra bait stations.
12 Something's illegible. It says, we thought,
13 something to the effect, we thought to keep the
14 installation records. It says, we will begin to
15 keep records. If this was in 2006, September 2006,
16 and this had been going on for over three years,
17 what does this tell you about Sottile's state of
18 mind as to whether or not he would have kept
19 quarterly records on this 2003 agreement?

20 MR. HAMRICK: Objection to form.

21 THE WITNESS: I don't think he
22 understood the bait station deal. That's what I
23 said earlier. I don't think he understood what he
24 was getting into, what the system was, how to
25 maintain it, how to monitor it.

1 Q. Here he is saying that I didn't even know I
2 was supposed to keep records, right?

3 MR. HAMRICK: Objection to the form.

4 THE WITNESS: Right.

5 Q. That was in 2006. Does that make you
6 believe that perhaps he didn't keep records as to
7 this 2003 agreement with Mr. Carroll, the quarterly
8 records?

9 A. Well, he said he didn't do it at least until
10 2006, so maybe there had been a year -- two years,
11 I guess it would have been, maybe two years worth
12 of records somewhere.

13 Q. Yes, maybe. Now, there were certain
14 documents that Terminix acknowledges getting upon
15 the sale and one of those -- and I'm going by
16 TSI005 through TSI020. Those are those annual
17 inspection sheets. It says annual -- TSI005,
18 annual reinspection and renewal, TSI 006, address
19 of property under bond. Now, renewal of what?
20 What's your interpretation of what -- would that
21 have to be a renewal of -- if you were, as a
22 professional pest control operator, if you were
23 looking at these records, would that give you
24 reason to think that perhaps this wasn't just an
25 inspection only type contract, that maybe there was

1 an underlying bond to deal with?

2 A. Yes, I think it's this one (indicating).

3 Q. Yes, it's acknowledged that --

4 A. Exterra contract.

5 Q. Now, do you remember reading Mr. Carroll's
6 deposition where he said that when, in January
7 2014, when they came out, he gave Mike Brandt
8 that -- he pulled his file and gave him that
9 Exterra document.

10 A. Right.

11 Q. Because Brandt said he didn't have it in his
12 records.

13 A. That's correct.

14 Q. Okay. And Brandt also testified that the
15 reason that they did not go forward with extra
16 treatment expeditiously was twofold: Number one,
17 they had a sales agreement with Sottile acts or
18 omissions occurring prior and the damage, that kind
19 of language that's in the sale agreement; but,
20 also, the that they felt it was an inspection only
21 contract based on the records they have. With
22 words like renewal, words like bond, would that be
23 a reasonable assumption to make?

24 A. I never heard of that one in my life. I was
25 telling you that earlier. I never heard of an

1 inspection only. I don't know that -- not in pest
2 control. I don't know that term. I guess you
3 could hire somebody just to come out and do an
4 inspection every year but not with a bond.

5 Q. But even with the records without seeing a
6 bond, if you're seeing terms like renewal, if
7 you're seeing bond, shouldn't that raise, for a
8 pest control operator, raise a red flag that, hey,
9 maybe this is more than just inspection I'm dealing
10 with, renewal?

11 A. Maybe that testimony came out, but I felt
12 like Terminix knew they had a bond on the property.

13 Q. Okay.

14 A. Or at least they thought they had a bond. I
15 don't know that detail.

16 Q. So if Sottile -- I think we heard, if you
17 recall, Sottile's testimony was that even when he
18 did the Exterra bait station, he also beaded
19 Termidor around the property. Do you remember
20 that?

21 A. Yes.

22 Q. Is beading a little bit of Termidor around
23 the property to standard for using Termidor per the
24 label?

25 A. I don't think I've ever seen it on the label

1 that I'm aware of.

2 Q. Just beading.

3 A. I don't know what that meant.

4 Q. But certainly we know that, when he said he
5 quit doing it in 2008 and he allegedly gave the
6 property some -- he allegedly treated with Termidor
7 after concluding his bait station regimen, that he
8 didn't treat to standards, we know that.

9 A. That's my opinion.

10 Q. Yes. And you heard about the testimony of
11 the technician who -- Shane Briggs I think his name
12 is -- said he went in and saw shelter tubes as big
13 as a forearm. What's the significance of a shelter
14 tube being as big as somebody's forearm?

15 A. A lot of termites going through it.

16 Q. For a long time?

17 A. Yes.

18 Q. Do you often, when you're dealing with cases
19 like this in particular, have you seen -- you've
20 referenced this Graf case, Robert Graf case.

21 A. Right.

22 Q. There have been some similarities in Graf
23 and in this, and one of those similarities is an
24 alleged termiticide treatment with no records,
25 correct?

1 A. Correct.

2 Q. An alleged termiticide treatment where
3 there's no drilling, no evidence that it was
4 actually done, correct?

5 A. Correct.

6 Q. Okay. And also, now, the Robert Graf house
7 on Waterway Boulevard is a little bit different
8 insofar as, when you got onto that property,
9 Terminix, or nobody had -- had got in there to give
10 it -- to hit it with any termiticide. Did you do a
11 soil sample in the Robert Graf case to determine
12 whether Vince Sottile had put any termiticide in
13 the ground?

14 A. Yes, we did.

15 Q. And what was your finding?

16 A. Didn't find any.

17 Q. No termiticide, even though he had claimed
18 that he had treated with termiticide?

19 A. Correct.

20 Q. And so do you often -- are you seeing a
21 pattern between these two cases?

22 A. Yes. I mentioned that, I think, already.
23 We have similar stuff.

24 Q. Does your work in both cases involving these
25 same three defendants and some of the same

1 allegations assist you in forming your opinions
2 kind of cross-wise on both cases?

3 A. I think I'm only fair to try to keep it
4 separate, you know. I think this case is on
5 that -- I think that you have those allegations,
6 and I think that's come out. The computer deal, I
7 think this particular document -- and I don't think
8 we ever numbered it -- the one that showed that he
9 had not taken samples, sort of plays the same sheet
10 music.

11 Q. But doesn't that make you think that in this
12 case -- because you didn't find any -- we didn't
13 have the luxury of a clean ground to look at in
14 this case because Terminix had already gone and
15 done a treatment, but does that make you suspect,
16 the fact that you did a soil sample after he had
17 alleged that he had done termiticide in the Graf
18 case and found nothing, does that make you suspect
19 that perhaps he had done nothing in this case,
20 different than his allegation?

21 A. Well, I think the proof is, like I said
22 earlier, it's in the amount of termites over there.
23 If he'd done a proper treatment, I don't think --
24 just to answer your question, yes, I think that
25 showed that. Like I said, there's a lot of holes

1 here that I don't know how to fill up. I wish I
2 could, but I can't. I can't do it.

3 Q. Right. And you said that they probably
4 went -- you didn't supervise the destructive
5 testing by Brown Glaws with Irish and Steve
6 Nicholls?

7 A. No.

8 Q. But you gave Steve Nicholls broad
9 guidelines, right?

10 A. I told him 10 feet.

11 Q. Your home is up in where?

12 A. Seneca.

13 Q. You couldn't be down there daily monitoring
14 this situation, correct?

15 A. Correct.

16 Q. So would you defer over to Steve Nicholls as
17 to how he followed your instructions room by room
18 and his findings that he made and the decisions he
19 made to follow that 10 foot rule?

20 A. I think Irish was pretty emphatic about what
21 he found. I was out there one other time, and he
22 was like, no, no, no this was termites; and I was
23 like, okay, and that's all I knew to say.

24 Q. But you're not sure that he went too far.
25 We need to wait and talk to him --

1 A. Yes.

2 Q. -- to let him explain that kind of thing,
3 correct?

4 A. Yes, that's correct; but I still think they
5 probably removed a few things they probably didn't
6 have to remove. He did a pretty thorough job
7 removing stuff. There was probably a piece of
8 sheetrock or two, there's probably a few things he
9 could have left that he took out but that's part of
10 him doing his job the way he thought it should be
11 done. If I was sitting down there for every little
12 deal, maybe it would have made a difference; maybe
13 there would have been some areas that he could have
14 left in there but...

15 Q. How much would that have cost Jimmy Carroll
16 for you to be there for three months?

17 A. I'm not going there. I wish I had been
18 there. That would have been a good job.

19 MR. MCKNIGHT: I think that's all I
20 have.

21 MR. HAMRICK: I've only got a couple
22 more.

23 BY MR. HAMRICK:

24 Q. You were asked some questions by Mr. Stewart
25 about the bait stations, both the location and the

1 here because of obvious reasons, but I just, I
2 don't know what he was doing on those periods of
3 time. I don't know if he really did it. I think
4 he relied a lot on his son, at least the last --
5 there was a period of time in there, and I don't
6 think his son had a lot of interest in the
7 business; and I just don't -- I don't know if he
8 actually knew what happened on some of this stuff,
9 and I'm not 100 percent sure on that. That's just
10 the feel I get from looking and being around, and
11 that's my -- that's my observations because, I
12 mean, he just left things. You wouldn't do that.

13 Q. Wouldn't do what?

14 A. He was a good operator, Vince was, been
15 around for a long time. He would have kept his
16 records if he did the treatments. I just have that
17 much faith in what he did. We would have that
18 information, and I don't understand where it is.

19 Q. Well, just a minute ago you said you think
20 maybe he didn't know what he was doing; and then I
21 think within the same answer you said he was a good
22 operator and been doing it a long time.

23 A. At one time he was, yes, that's right; but
24 I'm not so sure that the last -- something
25 happened, and I don't know if it was Vince or

1 something else happened, but the last few years
2 there things just sort of fell off the wagon.

3 Q. But, again, that's based on your not having
4 records to look at and therefore concluding that
5 the records weren't ever even prepared?

6 A. That's correct.

7 Q. Okay.

8 A. There's a lot -- I mean, and you go back
9 further than this, you know, '80s and '90s, early
10 '90s, I think you'd find different. You go back
11 and look at stuff -- you've got it, I guess. You
12 all are his attorney. Go back and look at records
13 from -- I mean, Vince and I have had cases together
14 since I started doing this, just about; and there's
15 been some times where things weren't exactly right,
16 but I think he had -- he had done things, can I say
17 different?

18 Q. And you did read his deposition testimony in
19 this case where he testified under oath that he
20 gave all those paper records to Terminix when he
21 sold his business.

22 A. I'm not saying that he doesn't have some of
23 the paper records here. I think we've seen some of
24 them. But if that's what he kept, that's not
25 everything that he should have. You understand

1 that part, right? He can call, and let's just take
2 for example Document Exhibit 13. I think he
3 believes that that's the paperwork. I think that's
4 what he thinks, an annual inspection report was the
5 paperwork; but my understanding is Mr. Carroll --
6 he didn't even have the Exterra contract for Mr.
7 Carroll in the records, right?

8 Q. No, Terminix didn't have those in their
9 records because they're the ones who produced all
10 the records in this case because Mr. Sottile didn't
11 have them anymore because he sold his business and
12 gave his records to Terminix. You do understand
13 that, right?

14 A. Exactly. I do understand that.

15 Q. Okay. You kept saying he didn't have the
16 records, he hasn't produced the records, but by the
17 time this case came up you understand that it's
18 been his testimony that he didn't have possession
19 of those records anymore; so you're assuming that
20 all the records Terminix produced in this case
21 includes the universe of records that Mr. Sottile
22 ever kept or ever produced and kept, right? Aren't
23 you making that assumption?

24 A. I guess so, yes.

25 Q. Okay. Why are you making that assumption?

1 What is that based on?

2 A. Why would he have done it any other way, I
3 guess is what I'm thinking in my mind. Why would
4 he have not given all the documents to Terminix?
5 What would he have gained or lost from doing that?

6 Q. That's my point. Are you assuming he didn't
7 give all his records to Terminix? I'm asking you
8 to assume that what he testified to under oath was
9 true, which was that he did produce the records; in
10 other words, that he made records like he was
11 supposed to, that he kept the records like he was
12 supposed to, that he then transferred all of those
13 records when he sold his business. I'm asking you,
14 if you take him at face value on those things, then
15 why do you then assume that if we don't have the
16 records now, it's because he didn't ever make the
17 records or didn't ever keep the records?

18 MR. BELSER: Objection to the form of
19 the question.

20 THE WITNESS: My understanding is he's
21 testified that he couldn't find the records. The
22 records for all the bait station monitoring, he
23 couldn't find those records. He said that they
24 wasn't available. He tried to do the computer. He
25 couldn't find the records. I don't think that

1 there was ever any records that he ever had. Am I
2 reading that wrong? If I am, then I need to be --
3 my understanding of his testimony was that he lost
4 the program and all the electronic documents that
5 were in that program that were part of the Exterra
6 bait station monitoring. That was my understanding
7 of his testimony, that he didn't have any of that.
8 So that did not get transferred to Terminix because
9 he had already lost those.

10 And then I also heard -- then I'm also
11 looking for the requirement that anytime he did a
12 liquid treatment that he should have that in the
13 records, and Clemson should have a copy of that in
14 their records. You have to have a pesticide usage
15 report when you turn them in. So we don't have
16 that either. Somebody should have copies of that,
17 particularly. That's the reach I'm trying to make,
18 and that's why I don't think -- either they weren't
19 done properly, or they weren't done at all is the
20 only way that I can go with it because they're not
21 here and they should be.

22 Q. And I don't know that you're characterizing
23 his testimony correctly, but I'll just say that on
24 the record, when you say you believe he said he
25 lost the Exterra bait station monitoring records.

1 I don't think that's what he testified to, but in
2 any event, we can go and look at his testimony.

3 A. And that's fair. Maybe I'm seeing it wrong,
4 but my understanding was that he had them on the
5 computer, he couldn't find it, I mean, that was
6 what I remember reading; and if I'm wrong, that's
7 fine too.

8 Q. All right. And even if he failed to keep
9 the records or make the records or both, making the
10 record, retaining the record, even if he failed to
11 do those things, does that have anything to do with
12 causing termite damage?

13 A. It has a lot to do at the end of the day
14 with there being termites at the property. Without
15 protection the house became infested with termites.

16 Q. That's not what I asked you. I asked you
17 about making records and keeping records, not about
18 whether or not he did the inspections of the bait
19 stations. Let's just take bait stations first, all
20 right? If he did inspect the bait stations but
21 didn't make a record or didn't keep a record, and
22 I'm saying just for the sake of argument if we
23 assume that, how does that relate to termite
24 infestation?

25 A. I don't know.

1 Q. It really just comes down to a matter of
2 proof at that point, right?

3 A. That's what I'm sort of going on. The house
4 was eaten up with termites.

5 Q. So at the end of the day that's what your
6 opinion that Mr. Sottile did something wrong is
7 based on, the fact that the house was eaten up with
8 termites.

9 MR. MCKNIGHT: Objection to the form,
10 asked and answered.

11 Q. Isn't that what you just said?

12 A. Mr. Sottile was hired to protect Mr.
13 Carroll's house from termites. The house now has a
14 severe or had a severe termite infestation. I
15 think Mr. Sottile is responsible for that.

16 Q. What about Terminix, do you think they're
17 responsible too?

18 A. Well, they're going to be responsible for
19 the part they had, sure. They had the last piece.
20 At the end of the day that's what I'm looking at.
21 And for me to go through here and try to pick out
22 all the other -- the things that may have caused it
23 to happen, maybe we're reaching a little bit -- not
24 reaching, but maybe we don't even need to go there.

25 You know, like I said earlier, he was

1 supposed to keep the termites out of his house, Mr.
2 Sottile's company was, whether it be SPM or Isle of
3 Palms, or whatever; and there's termites there, so
4 that responsibility has to go back to the person
5 that was contracted, in my opinion, to keep the
6 termites out.

7 Q. When you say that responsibility has to go
8 back, do you mean that means you believe they did
9 something wrong?

10 A. Yes. I believe that -- I have faith -- I
11 have faith in the termiticide that he said he used,
12 and I have faith in baiting systems when applied,
13 maintained and monitored properly. There's
14 thousands and thousands of houses all over that use
15 one or both -- one or the other or both of those
16 systems that don't get termites in them. And I do
17 agree with your statement that there is a potential
18 that you could do everything right and you might
19 could get an infestation, but I don't think -- but
20 at the end of the day, even if you did, you're
21 still responsible for the termites in my opinion.

22 Q. Few more. Are you a member of the South
23 Carolina Pest Control Association?

24 A. No.

25 Q. The Georgia Pest Control Association?

1 A. No.

2 Q. The National Pest Control Association?

3 A. No. I go to all their meetings, all of
4 them, but I'm not a member of any of them. Costs
5 too much money.

6 Q. And you've never held any office in any of
7 those organizations as an officer, in other words?

8 A. No.

9 Q. Have you ever written a peer reviewed
10 article on termite control?

11 A. No.

12 Q. Have you ever been asked to give any
13 presentations on termite control for any of those
14 organizations I just mentioned?

15 A. No, but I did do the school I talked to you
16 about earlier.

17 Q. You taught --

18 A. At the school for the termite technician
19 when I was at Clemson.

20 Q. When you were in your graduate program?

21 A. Yes, probably '85, '86, something like that.

22 Q. You say you taught a portion of that
23 program?

24 A. Right.

25 Q. Do you have any certificates or any kind of

1 recognized credentials regarding the control of
2 termites?

3 A. No.

4 Q. Would you defer to the Clemson pest control
5 regulatory authorities for the interpretation of
6 the South Carolina rules and regulations about
7 pesticide use and termite control?

8 A. Yes, I stated that earlier.

9 MR. HAMRICK: All right. I believe
10 those are all the questions I have for you at this
11 time. Thank you.

12 BY MR. STEWART:

13 Q. Mr. Nolan, my name's Nick Stewart. We met
14 before. I represent SPM Pest Management. Are you
15 okay to keep going? Do you need a break or
16 anything?

17 A. I'm fine right now.

18 Q. I want to talk to you a little bit about
19 record keeping regulations in South Carolina. Are
20 you familiar with the pest control record keeping
21 regulations in South Carolina?

22 A. Somewhat, yes.

23 Q. Do you know about how long a pest control
24 operator is required under the regulations to keep
25 records?

1 A. If my memory's correct, which I think it is,
2 as I mentioned earlier, I think it's three years
3 for baiting-type stuff, and then it's forever for
4 treatment, the original graphing and that kind of
5 stuff.

6 Q. Do you know if those regulations change from
7 time to time?

8 A. I'm sure they have.

9 Q. Do you know if they changed around the early
10 2000's?

11 A. Yes, they did, and I don't remember all
12 those details, to be honest with you.

13 Q. I don't know what they say either, but is
14 there a chance those regulations, the earlier
15 regulations could have required a less stringent
16 record keeping requirement?

17 A. Yes.

18 Q. Okay. We discussed a little bit about Mr.
19 Sottile's bait station system and how he monitored
20 it and kept those files on a computer. Are you
21 familiar with that discussion, or how he may have
22 kept them on a computer?

23 A. Yes, I am.

24 Q. What would you say the average life of a
25 computer is in your opinion?

1 A. Depends on if it's a Windows based machine
2 or an Apple based machine. The Windows that we've
3 got, we get about 18 months out of a laptop.
4 Apples last about six or seven years. That's been
5 my business's experience with them.

6 Q. Okay. So --

7 A. But, you know, they have memory; and when
8 you keep records, you keep backups and computer --
9 you know, you do that kind of stuff.

10 Q. But you would agree with me that computers
11 typically last let's just say three to five years?

12 A. That sounds like a reasonable amount of time
13 to me.

14 Q. So some of these records may have been on an
15 older computer system, since this treatment
16 contract dates back to the early 2000's; would you
17 agree with me on that?

18 A. Yes.

19 Q. Would you agree with me that it's reasonable
20 for a computer from the early 2000's to fail,
21 generally?

22 A. Yes.

23 Q. Okay. Would you agree with me that Mr.
24 Sottile's computer with these records could have
25 failed and lost these records?

1 A. Let's break that down into two parts. The
2 failure part I agree with. The lost the records
3 part, that's horse crap. Anybody that runs a
4 computer system knows that you back the system up
5 regularly. I can tell you in that early 1980
6 period I was writing a doctoral dissertation, and I
7 learned the hard way that you back up your data.
8 So if he had a computer system, the first thing you
9 should learn is you put it on a floppy disc. At
10 that time I guess it would have been an old-timey
11 five-and-a-half-inch floppy, or you put it on a
12 server somewhere, you do something other than keep
13 it on that computer because you have to -- because
14 it's a mechanical thing, and it will fail. That's
15 my opinion on backing up data.

16 Q. So do you maintain records in that
17 procedure?

18 A. Yes.

19 Q. So you --

20 A. Three different places now.

21 Q. Do you maintain records to the early 2000's?

22 A. Yes.

23 Q. Is it your belief that pest control
24 operators in South Carolina will maintain records,
25 electronic records, back to the early 2000's?

1 A. I don't know about electronic, I'm not
2 familiar -- I wouldn't be familiar enough to say
3 that. 2000's, probably, but I'm not sure. The
4 important stuff you keep on 8-by-11 sheets of
5 paper, and they go in a file called Mr. Carroll.

6 Q. But you would agree with me that some of the
7 earlier regulations may have not required keeping
8 those records?

9 A. Yes. Well, see, bait stations didn't come
10 out -- that's why they had to rewrite it the law.
11 They weren't even available a lot earlier than
12 that. That's why the form that we looked at was a
13 hybrid kind of deal. You know, everybody was
14 wondering -- borates and bait came in just about
15 the period of time we're talking about, when they
16 got accepted.

17 Q. Would you agree with me that Mr. Sottile's
18 bait station records could exist on a failed hard
19 drive?

20 A. Yes.

21 Q. Would you agree -- you mentioned earlier
22 that Mr. Sottile had good records in the '80s and
23 '90s and then something happened and it kind of
24 fell off. That was your testimony. Would you
25 agree with me with that?

1 A. That was from other cases. I can sort of
2 remember it wasn't the paperwork part, it was some
3 other things; but things changed somewhere. You
4 know, we've been there already.

5 Q. Right.

6 A. And I'm not sure about Exterra. I'll make a
7 statement about that. Exterra was late in the
8 game. If you remember the Sentricon system, it was
9 first; and Sentricon -- and I don't know if they
10 still have it or not -- Sentricon you had to send
11 the data. When you read the barcode, that
12 information had to be downloaded to them at Dow, I
13 believe it was monthly at the time. I can't
14 imagine the people that did the Exterra wouldn't
15 have required the same thing. I'm not as familiar
16 with the procedural part of Exterra as I am with
17 the procedural part for Sentricon, but see, they
18 were paranoid when they first put out the system
19 that people would just -- they wouldn't check them,
20 you know, they wouldn't go out. That's why they
21 had the barcodes on them, and they made you send
22 that information back. It was a really big -- it
23 was the way that the companies convinced regulatory
24 people that they could actually keep up with when
25 the people did the monitoring or not. So I don't

1 know, Exterra may have had that requirement, at
2 least initially, so they may have some data.

3 Now, where the big problem came is I had a
4 case where we were going to go back to Dow and get
5 the data, right? We thought we had a great idea.
6 Dow lost the data. So I don't know who would have
7 that now, but there was a period of time when
8 Sentricon first came out where the pest control
9 operators were required to send in, and then they
10 couldn't pull it up. So I don't know the answer to
11 that question, but there is a probability that he
12 may have had to download the stuff or send the
13 floppies in or whatever, periodically, and get them
14 put in their system.

15 Q. So what you're telling me is Dow lost the
16 data, so it occurs in this industry where people
17 are losing their data and their paperwork?

18 A. Yes.

19 Q. Okay. And would you agree with me, you said
20 his record keeping was good '80s and '90s, and then
21 something happened. Would you agree with me around
22 mid '90s was when computers became more widespread?

23 A. I'd have to go back and look. That sounds
24 probably about right, mid '90s, early 2000s, when
25 people started really -- mid '90's would be pushing

1 it probably.

2 Q. Pushing it late or early?

3 A. Early. I think probably 2000 for pest
4 control operators for sure.

5 Q. What I'm trying to get at is the
6 implementation of a computer and then Mr. Sottile's
7 computer failing could have been the result of his
8 change in record keeping; the reason we don't have
9 it here today is because it could have been this
10 failed computer hard drive.

11 A. That could have happened.

12 Q. Okay.

13 A. I don't remember him saying that, but that
14 could have happened.

15 Q. I'm going to change gears to some of the
16 demolition stuff that was done. Earlier we talked
17 about a borescope, and I'm not completely familiar
18 with the procedures of a borescope. Can you
19 generally explain to me how that procedure works?

20 A. A borescope is a fiberoptic cable, or it can
21 be just a -- the original borescope was about a one
22 and a half to two foot metal piece with a
23 fiberoptic in it. And you drill a hole in the
24 wall, and you stick it in there, and then it shows
25 what's in that cavity.

1 Q. How much ground --

2 A. Not much.

3 Q. Not much.

4 A. And if you hit insulation in an exterior
5 wall, it's almost nothing. You get lucky when you
6 find something, and I have in the past -- I've got
7 a couple of the ones, you know, that you turn and
8 you move, and it's just not very dependable; and
9 particularly when a lot of termite damage occurs
10 like this (indicating), two flat surfaces together.
11 I wish I had one. We could go look in a wall, and
12 you'd see what I'm talking about. You can see
13 about -- really good because you're looking for
14 termite tubes, you could probably see a foot and a
15 half up and maybe a foot and a half down, and then
16 you can only see 16 inches, remember, because
17 you've got studs. And you can only see one side of
18 the stud then, and you never can see -- very hardly
19 ever get a good acuity where the termites usually
20 are. You can't see on the stud-sheetrock interface
21 because when you start to pull it out and you get
22 right to that edge, you just can't see it over
23 there. But so that's what a borescope is. It's
24 like a fiberoptic cable that you can stick it with
25 a magnifying glass or a lens on the end of it, sort

1 of like they use for surgery, you see these --
2 that's the same kind of thing.

3 Q. Okay. Would you agree with me that a
4 borescope is more effective in a wall cavity than a
5 floor cavity in locating termites.

6 A. You find more termites normally in walls
7 than you do floors, but I think the floors would be
8 easier because there's usually not insulation. If
9 it's insulated between them, it's almost
10 impossible. The only way you can do it is sort of
11 stick something in inside your hole and pull the
12 insulation back, try to, and then stick it in there
13 finally -- it's not very practical if there's
14 insulation, it's really -- mine's in the back of my
15 truck, and I probably use it twice a year. It's
16 just so hard to get them to do right. It's a pain.

17 Q. Do you know if Mr. Carroll had insulation in
18 his walls at his residence?

19 A. I'm sure he did, yes. Yes, there was
20 insulation in the outside walls. I remember that.

21 Q. What about interior walls?

22 A. Don't remember.

23 Q. Could a borescope have been used in interior
24 walls to attempt to mitigate the demolition that
25 was done?

1 A. Sure, you could have tried it; but it's not
2 very effective, as I said earlier. I just don't
3 think it's very practical.

4 Q. Effective in what --

5 A. You can't see everything you want to see.
6 It's just not -- I just don't think it's the way to
7 go.

8 Q. But it can be used, folks in the industry do
9 use a borescope to locate termite damage.

10 A. For spot -- for like a spot infestation,
11 you've got a really -- you've got a really bad
12 infestation, one little spot to go to, you drill a
13 hole and look, you can use it for that. But to
14 think it's practical to do every stud, every board,
15 you can't find all the damage, when you're trying
16 to find the extent of the damage, with a borescope.
17 It's just not practical. Practicality out, it's
18 not good enough.

19 Q. Not good enough in locating damage.

20 A. To see it. Yes, you just can't see the
21 damage you're trying to find. It's not easy to see
22 it even when you take the thing apart sometimes.
23 We're talking about a little 1/64th of an inch tube
24 going between three 2-by-4's, you know, it's hard
25 to see that.

1 Q. But if you've got a wall, you don't have
2 that issue, right, an interior wall; you've just
3 got open boards.

4 A. Right.

5 Q. So you don't have that issue, so it would be
6 easier with an interior wall to use a borescope to
7 find damage.

8 A. Yes, yes, it would be.

9 Q. In regards to the 10 foot rule, how many
10 instances, cases, have you been involved in where
11 you've used the 10 foot rule where the home has
12 resulted in a complete stripping to the studs like
13 Mr. Carroll's?

14 A. Never the whole inside of the house. I've
15 had it where we've had to do just about the entire
16 exterior, but I've never had one where we had to do
17 the whole inside.

18 Q. Did you supervise the demolition that was
19 going on at Mr. Carroll's house?

20 A. No.

21 Q. Would you agree with me that it may have
22 gone a little too far?

23 A. Probably.

24 Q. Earlier we were talking about just subs and
25 Formosans. Which one is the particularly faster

1 wood boring termite?

2 A. Formosans, no doubt.

3 Q. And your study you did that found, I believe
4 it was new construction down in Florida, that
5 eastern subs could do about a foot per 39 days; is
6 that correct?

7 A. That's Formosan.

8 Q. That's Formosans. Okay.

9 A. It's 129 days for --

10 Q. Eastern subs?

11 A. -- eastern subs, about four times -- it's
12 about four times more.

13 Q. We talked about the latticework creating
14 wood-to-ground contact. Do you know when that
15 latticework was installed on Mr. Carroll's home?

16 A. No.

17 Q. There's the aerial spot, the aerial colony
18 or elevated colony on, if you're looking at the
19 house on the left side, on the second elevation,
20 are you familiar with that?

21 A. Going around the fireplace.

22 Q. Mm-hmm.

23 A. Yes.

24 Q. Did you see any tracks from that colony
25 around the fireplace down to the base of the home?

1 A. Yes.

2 Q. Earlier I believe you talked about the
3 homeowner's responsibility to remove sources of
4 moisture, and you said it all goes together, one
5 plus one equals five. Are you stating that Mr.
6 Carroll shares some of the burden here for failure
7 to remove moisture sources?

8 A. I think it's the termite guy's job all the
9 way, and the reason is we wouldn't have the
10 discussion if there was no termites there. That's
11 my opinion on that.

12 Q. So you think Mr. Carroll doesn't share any
13 responsibility in contributing to the termite
14 damage?

15 A. Right.

16 Q. What about the room that's underneath the
17 home, you don't think that contributed to the
18 termite damage?

19 A. It was where the termite -- a lot of termite
20 damage was. I don't see why the construction had
21 anything to do with termites.

22 Q. I don't know this for sure, but what if I
23 would represent to you that that room contained
24 untreated wood?

25 A. It shouldn't have gone through the slab.

1 See, my whole contention is if the slab had been
2 treated and these termites couldn't get out of the
3 dirt, it doesn't matter what he put. That's why
4 I'm saying that I think it was a -- it wasn't a
5 proper treatment if we were using the liquid
6 treatment.

7 Q. So you don't think the room underneath
8 contributed to the aggravation of the condition of
9 the termites?

10 A. Well, it allowed, if it was as has been
11 described, it was covered, it would have allowed
12 for it to go without easily being seen, not that it
13 couldn't have been seen, and that would allow for
14 more damage. But as far as the way the thing was
15 built, if that slab had been treated properly -- I
16 mean, you know, there's buildings like that all the
17 time. That's just a slab on grade with pilings. I
18 mean, that's an easy fix, an easy treatment. There
19 shouldn't have been any problems with how that was
20 done. The only reason that I can think of that
21 we're concerned about that room is if they wrapped
22 the pilings up -- if they wrapped the pilings, it
23 may not have been easy to see the damage, the
24 termite tubes going up the outside of the piling.

25 Q. Did you know that there was a shower in that

1 room?

2 A. Yes.

3 Q. Could leaks from that shower, leaking
4 plumbing, create an attractive environment for
5 termite colonies?

6 A. I don't remember enough about the details on
7 that to be able to comment. If it had washed away
8 the soil, which I don't -- it's on slab, and it had
9 plumbing, so no, it wouldn't have done that.

10 Q. It wouldn't have done it.

11 A. No.

12 Q. How quickly should a homeowner remediate
13 sources of moisture within the home?

14 A. When they're informed.

15 Q. I mean, once they're aware of the issue, how
16 quickly should that moisture be remediated?

17 A. In a couple of months, three months.

18 Q. Okay.

19 A. After they're told.

20 Q. One more question. If we were to have,
21 hypothetically, Mr. Sottile's documents of
22 quarterly monitoring the bait stations, his yearly
23 readings, if we had all the documentation that you
24 think he should have, what issues would you have
25 with his treatment of Mr. Carroll's home?

1 A. With his treatment?

2 Q. Yes.

3 A. I have a really hard time answering that on
4 this grounds: When I was there and I inspected
5 Exterra bait stations, they were not there, they
6 weren't in the right place. So if it was in that
7 shape when he quit -- horrible. You know, there
8 weren't -- you know, they weren't in the right
9 spacing. They just weren't there. A lot of the
10 stations weren't even where they should have been,
11 so that's all I know to go by, where I found them,
12 that would not have been good, so I guess that's
13 how I'd answer that question.

14 Q. So if you had all the paperwork, as required
15 by the regulations and required by the products,
16 your only criticism of him would be the spacing of
17 bait stations around the home?

18 A. And the -- yes, if he'd done all the
19 inspections, but if he had done all that, he'd have
20 had all the bait stations in place because his
21 documents would have said, I don't have a bait
22 station here, I need to put another down. Are you
23 with me? That's why the documents -- you use the
24 records. Every time he goes out he's supposed to
25 have the records of the pattern where they are,

1 puts one up, takes one down. It's not something
2 that they just throw out there. That's why they go
3 check them every quarter. Dogs get in them,
4 raccoons get in them, the lawn mower eats them up.
5 There's all types of things that can happen, so you
6 have to do it frequently enough to where you
7 maintain the stations close enough together to
8 where termites can't bridge the gap, go through the
9 middle of them, and hit a home run and go to the
10 house.

11 Q. When you first went out to Mr. Carroll's
12 house, just because the bait stations were in the
13 places that they were doesn't mean that's where
14 they were when Mr. Carroll treated, would you agree
15 with me there?

16 A. You mean Mr. Sottile.

17 Q. Mr. Sottile, sorry, excuse me.

18 A. Who's maintained the system though? His job
19 is to maintain it. Every three months he's
20 supposed to go check it.

21 Q. The system was abandoned at some point,
22 you'll agree with me there?

23 A. Yes.

24 Q. And so --

25 A. That's my information, it was abandoned,

1 okay.

2 Q. Right. And since it was abandoned, that
3 means that on your first site visit in November
4 2015 the bait stations wouldn't have been in the
5 correct places because that system had been
6 abandoned for a number of years.

7 A. That's right.

8 Q. And those bait stations could have been
9 picked up by Mr. Sottile or picked up by Mr.
10 Carroll or anybody; you know, a maintenance guy can
11 be like, I don't need this. Those could have been
12 ripped out of the ground.

13 A. I agree with it.

14 Q. All right.

15 A. So what were we doing to protect Mr.
16 Carroll's house, since we don't have any bait
17 stations around the house? That's what I'm getting
18 back to for the whole deal. They can't have their
19 cake and eat it too. If they're not going to
20 maintain the dang bait stations, then they've got
21 to do something to protect the man's house; and
22 that protection, in my understanding was a Termidor
23 treatment. If that's what they were going to do,
24 they should have trenched and treated the whole
25 house -- I'll say this for the 14th time -- they

1 should have drilled down every one of the pillars,
2 and they should have drilled the concrete all over
3 the whole property and set it to standard for a
4 liquid treatment. They can't have their cake and
5 eat it too. You either got a bait station, or
6 you've got a liquid treatment station I don't think
7 it's hard for you guys, you all know that.
8 Everybody's just trying to jack this around here.
9 That's what happened. What did he have? What was
10 he doing? Nobody knows. He said he did it, but
11 we've got termites all over the building. Now, how
12 in the world am I supposed to be able to sit here
13 and say his treatment was adequate when termites
14 have eaten it up? Somebody dropped the ball from
15 sometime when he changed from using the bait, in
16 his mind he just quit using bait, to going to the
17 liquid treatment something fell apart. Either he
18 didn't ever do the liquid treatment, they didn't do
19 a proper liquid treatment or a complete treatment
20 or -- the house was left unprotected, so as a
21 result of that it got termites.

22 You don't leave a house on the Isle of
23 Palms, South Carolina, without some type of a
24 termite treatment, or it's going to termites. It's
25 not if it's just when. It's that pervasive of a

1 problem. You do not have an untreated house in
2 the -- that is what we call an extreme zone. You
3 know, that's super double red. The barrier islands
4 of the South Carolina/Georgia coast and on up, it's
5 as bad as it gets for termites. If you don't have
6 it protected, you're going to get termites.

7 So that's what I'm talking about, they left
8 the -- somebody did not maintain the treatment.
9 Now, either he treated it wrong when he did the
10 liquid treatment, or he dropped off doing his bait
11 treatments during that period of time. I mean, I
12 just -- that's the way I see this, and if I'm --
13 I've looked at a lot of houses with similar type
14 situations, and that's just what I think happened.

15 Q. But you would agree with me that just
16 because there's bait stations there in November 19,
17 2015, that doesn't necessarily mean that's where
18 they were when Mr. Sottile was originally doing his
19 bait station treatment?

20 A. I keep forgetting your part of this. Yes,
21 they could have changed it, yes, they could have.
22 I'm sorry. I remember now. You were there just
23 when he put out the bait stations. I thought he
24 had changed during your watch, though.

25 Q. Yes.

1 A. He did in your watch. So I just think that
2 somebody didn't do something for a period of time.
3 Either they didn't do the bait station, or they
4 didn't treat it properly with liquid. And for me
5 to know exactly, I don't know.

6 Q. All I'm trying to get at with the bait
7 stations is, when I asked you if we had all the
8 appropriate paperwork, what would your issues be,
9 and you said the spacing of the bait stations. So
10 I'm just trying to say, well, the bait stations, as
11 they are November 19th, 2015, may not be indicative
12 of how they were during the use of that treatment.

13 A. I agree with that statement. I don't think
14 they were. I think he had abandoned them, so some
15 did get lost and moved; but that's even more of an
16 indication that he decided in his mind if that's
17 what happened, that he was going to go to a liquid
18 treatment. And if he did the liquid treatment,
19 particularly as far down the line as that was, we
20 know there had to have been a South Carolina
21 termiticide usage form. He had to bring up the
22 standards. He didn't do that.

23 Q. One last time, if we had all the paperwork
24 here today, can you just provide me with what you
25 think he did wrong if we had the paperwork?

1 MR. MCKNIGHT: Objection.

2 THE WITNESS: I don't know, and the
3 reason I don't know is I don't know when he
4 abandoned the bait stations. That's the reason I
5 can't answer that question. For sure we don't know
6 that day. If we knew that, then maybe we could go
7 back and start piecing together this liquid
8 treatment and the other things; but I just don't
9 see where we can do that because we don't know -- I
10 mean, he said sort of a time frame in his
11 deposition, but he just needs to treat it.

12 MR. STEWART: That's all I've got.
13 Thank you.

14 BY MR. BELSER:

15 Q. For the record, my name is Clinch Belser.
16 In this case I represent Terminix. I have just a
17 few questions compared to the last number of
18 questions you've already been asked, but I do have
19 a few questions.

20 Just to go back, you said that preparing for
21 the deposition today, your deposition, you read the
22 deposition transcript from Mr. Jim Wright, Vincent
23 Sottile, which I guess is in this case, Mr. Carroll
24 in this case and the two Terminix technicians who
25 treated the house; is that correct?

1 A. That's correct. And Cecil.

2 Q. Stoney Bachman and Cecil Barber; is that
3 correct?

4 A. Yes, sir.

5 Q. Okay. And you made reference to the
6 agreement for the purchase and sale of assets which
7 was signed in the year 2013 by SPM and Terminix
8 Service. You made some reference to the legal
9 relation between those two companies as relates to
10 this house; is that correct?

11 A. Yes.

12 Q. By any chance did you read Mr. Sottile's
13 deposition in the other case of Robert Graf against
14 these same defendants?

15 A. Yes.

16 Q. Now, do you remember the testimony of the
17 termite technicians who said that when they
18 found -- Mr. Shane Briggs is the termite technician
19 who found the live termites when he made the first
20 Terminix inspection on January the 22nd of 2014.
21 Do you remember his deposition?

22 A. Yes.

23 Q. Do you remember when he said that he
24 immediately notified Mr. Sottile that they found
25 them?

1 A. Yes.

2 Q. And do you remember when he testified that
3 when he was told, Mr. Sottile said, I'll take care
4 of it, this is my lifelong friend, I'll take care
5 of it?

6 A. That's my understanding.

7 Q. And that, based upon the provisions of this
8 agreement for the purchase and sale of assets,
9 depending on when the termites were found, it would
10 be perhaps Mr. Sottile's responsibility, or his
11 company, to take care of it; do you remember that?

12 A. Yes.

13 Q. Now, do you remember the testimony also of
14 Mr. Briggs and also Mr. Barber that Terminix gave
15 Mr. Sottile a reasonable period of time to do what
16 he said he would do, that is, take care of the
17 termites which were discovered?

18 A. Yes.

19 Q. And that that was part of the reason why it
20 was not until July of 2014, the same year, that
21 Terminix went back and treated the house in July of
22 the 14th of 2014.

23 A. That's what they said, yes.

24 Q. The passage of time was resulting of the
25 fact that Mr. Sottile had said he would take care

1 of it in accordance with the contract between the
2 two companies.

3 A. That's what I read.

4 Q. And you are familiar with the fact that
5 Terminix, from the records and also from the
6 testimony in the deposition, that Terminix did
7 respond on multiple occasions and go out and give
8 this particular house a series of treatments
9 whenever there was a problem.

10 A. Yes.

11 Q. And you're aware that Cecil Hernandez of
12 Clemson did give thumbs up approval to the
13 treatment done by Terminix in April of 2015 saying
14 it met all of the regulatory requirements for such
15 a treatment?

16 A. Yes, but I think that same concern comes
17 because it was a year and a half later so that's
18 another...

19 Q. Well, it was between July of 2014 --

20 A. I just know what happened, it was a finger
21 pointing deal there.

22 Q. Well, the treatment which Terminix gave on
23 April the 3rd of 2015 did comply with all the
24 requirements for such a treatment; is that correct?
25 That's what Mr. Cecil Hernandez said.

1 A. Correct.

2 Q. Now, is it your testimony that that is the
3 first time that anybody had done any drilling at
4 the house?

5 A. Yes.

6 Q. And is that part of your opinion that Mr.
7 Sottile and his companies did not do what they
8 should have done if in fact Mr. Sottile had used a
9 liquid treatment after he lost faith in bait
10 stations?

11 A. No doubt.

12 Q. Because at that time, sometime after he lost
13 faith in the bait station five years after he began
14 with it in 2003 to 2008, he should have drilled the
15 foundation, he should have done the trenching and
16 treating at that time.

17 A. That's my opinion.

18 Q. And in your opinion, based upon your years
19 of experience and reading the rules, at that time
20 he would have been required to fill out an official
21 document called a record of termiticide use in
22 South Carolina?

23 A. Yes, sir.

24 Q. And his failure to do that is one of the
25 bases of your opinion that Isle of Palms Pest

1 Control did not comply with its duties to its
2 customer.

3 A. That's correct.

4 Q. You say you read the deposition of Mr.
5 Sottile in these two cases. Do you remember in the
6 deposition of Mr. Sottile in the Graf case that he
7 said that he'd given all of his records and his
8 computer on which he kept whatever records he had
9 of the bait station monitoring to Terminix?

10 A. Yes.

11 Q. And in his deposition in this case just a
12 few months later he said again under oath that he
13 had not done that, he still had them.

14 A. Yes, sir. That was part of my concern.
15 When I mentioned earlier about the other case, I
16 knew how he had testified there; and that's why I'm
17 not exactly clear about what's really happened.
18 All I can do is go with what I know. The soil
19 samples -- the soil samples at the Grafs was
20 another example of that kind of a thing so we've
21 got...

22 Q. Near the end of the questions by my
23 colleague, Mr. Stewart, you said that if you did
24 have all of Vincent Sottile's records, you would
25 nonetheless criticize his performance for the bait

1 stations not being appropriately placed around the
2 building.

3 A. Yes, sir.

4 Q. Wouldn't it also depend upon what the
5 records showed, if he had the records, whether you
6 had any further criticisms?

7 A. That's correct. All I know is what I saw.
8 What I was trying to answer that question was how I
9 saw the bait station placement on the time I was
10 there, and they were just scattered. I guess you
11 guys didn't take them up too. There were still a
12 few around. So I just don't know how they were
13 positioned.

14 Q. I understand the point about the placement
15 of the bait stations and how that could have
16 changed from 2008 when Mr. Sottile quit, fast
17 forward to 2015, seven years, anything could have
18 happened to them. But in addition to that
19 criticism that they were not fair enough apart as
20 far as you can tell, wouldn't you possibly have
21 other criticisms of what he was doing in his
22 monitoring if you saw the records because the
23 record might be incomplete or they might show some
24 problems?

25 A. That could be a possibility, yes.

1 Q. Let's talk about the room which was changed
2 from a storage room to a son's bedroom or man cave
3 in the basement floor or the ground floor of Mr.
4 Carroll's house. Do you know what I'm talking
5 about?

6 On the ground floor there was a room which
7 was originally storage which Mr. Carroll enclosed
8 and made larger for his son's use after he bought
9 the house in 2002. Do you know which room I'm
10 talking about?

11 A. I know where you're talking about. I didn't
12 know it was a man cave, but anyway, whatever.

13 Q. That's not my term. That was the term used.

14 A. I think a read that and I was like --

15 Q. What is that --

16 A. That was the first of a man cave if I ever
17 saw it. That was a sure enough cave down there.

18 Q. My question is not about what is a man cave.

19 A. I'm with you. Under the stairwell, right?
20 In front of the house underneath the stairwell.

21 Q. Underneath the stairwell.

22 A. The laundry room and all that.

23 Q. Below the laundry room and sort of in the
24 middle of the house, I guess more towards the front
25 if you look from the street.

1 A. I'm with you.

2 Q. If that was built by Mr. Carroll in 2002 or
3 thereabouts after he bought the house, when should
4 that room have been commented on by the pest
5 control operator to the homeowner if in fact it was
6 a problem in terms of visibility of termite
7 infestation?

8 A. First inspection after it was put up.

9 Q. So it should have been on the 2003
10 inspection report from Mr. Sottile?

11 A. Yes.

12 Q. Doing business as Isle of Palms?

13 A. Yes.

14 Q. And should have been there again in the next
15 year, 2004?

16 A. Yes.

17 Q. Should have been there in 2005 too?

18 A. Yes.

19 Q. 2006?

20 A. Yes.

21 Q. 2007?

22 A. Yes.

23 Q. 2008?

24 A. Yes.

25 Q. 2009?

1 A. Yes.

2 Q. 2010?

3 A. Yes.

4 Q. 2011?

5 A. Yes.

6 Q. It was okay that it was there in 2013, which
7 is the first time it actually appears in the
8 records; is that correct?

9 A. Yes.

10 MR. BELSER: One of the most popular
11 words I can say is I have no further questions,
12 thank you, now.

13 BY MR. MCKNIGHT:

14 Q. Going back to this records issue on the bait
15 stations, I'm going to show you what's marked
16 JW011, and this is a voluntary affidavit dated
17 9/26/06 as part of a complaint on an unrelated
18 case. And this is an affidavit that is signed by
19 Vince Sottile, and I'm going to read this to you.
20 It says, we did not realize -- well, before I go to
21 that, this is a February 2003 Exterra baiting
22 agreement, correct?

23 A. Yes, 2/19/03.

24 Q. And Vince Sottile testified that after the
25 period of five years which would go up to 2008,

1 that he discontinued the use of the bait stations,
2 correct?

3 A. Yes.

4 Q. Okay. Now, this affidavit of 2006, let me
5 read this to you. It says, we did not realize that
6 we needed to keep records on the quarterly checks
7 on Exterra bait stations. We, to keep the
8 initial -- or, excuse me, or to keep the --

9 Let me rephrase it. It says, we did not
10 realize that we needed to keep records on the
11 quarterly checks on Exterra bait stations.
12 Something's illegible. It says, we thought,
13 something to the effect, we thought to keep the
14 installation records. It says, we will begin to
15 keep records. If this was in 2006, September 2006,
16 and this had been going on for over three years,
17 what does this tell you about Sottile's state of
18 mind as to whether or not he would have kept
19 quarterly records on this 2003 agreement?

20 MR. HAMRICK: Objection to form.

21 THE WITNESS: I don't think he
22 understood the bait station deal. That's what I
23 said earlier. I don't think he understood what he
24 was getting into, what the system was, how to
25 maintain it, how to monitor it.

1 Q. Here he is saying that I didn't even know I
2 was supposed to keep records, right?

3 MR. HAMRICK: Objection to the form.

4 THE WITNESS: Right.

5 Q. That was in 2006. Does that make you
6 believe that perhaps he didn't keep records as to
7 this 2003 agreement with Mr. Carroll, the quarterly
8 records?

9 A. Well, he said he didn't do it at least until
10 2006, so maybe there had been a year -- two years,
11 I guess it would have been, maybe two years worth
12 of records somewhere.

13 Q. Yes, maybe. Now, there were certain
14 documents that Terminix acknowledges getting upon
15 the sale and one of those -- and I'm going by
16 TSI005 through TSI020. Those are those annual
17 inspection sheets. It says annual -- TSI005,
18 annual reinspection and renewal, TSI 006, address
19 of property under bond. Now, renewal of what?
20 What's your interpretation of what -- would that
21 have to be a renewal of -- if you were, as a
22 professional pest control operator, if you were
23 looking at these records, would that give you
24 reason to think that perhaps this wasn't just an
25 inspection only type contract, that maybe there was

1 an underlying bond to deal with?

2 A. Yes, I think it's this one (indicating).

3 Q. Yes, it's acknowledged that --

4 A. Exterra contract.

5 Q. Now, do you remember reading Mr. Carroll's
6 deposition where he said that when, in January
7 2014, when they came out, he gave Mike Brandt
8 that -- he pulled his file and gave him that
9 Exterra document.

10 A. Right.

11 Q. Because Brandt said he didn't have it in his
12 records.

13 A. That's correct.

14 Q. Okay. And Brandt also testified that the
15 reason that they did not go forward with extra
16 treatment expeditiously was twofold: Number one,
17 they had a sales agreement with Sottile acts or
18 omissions occurring prior and the damage, that kind
19 of language that's in the sale agreement; but,
20 also, the that they felt it was an inspection only
21 contract based on the records they have. With
22 words like renewal, words like bond, would that be
23 a reasonable assumption to make?

24 A. I never heard of that one in my life. I was
25 telling you that earlier. I never heard of an

1 inspection only. I don't know that -- not in pest
2 control. I don't know that term. I guess you
3 could hire somebody just to come out and do an
4 inspection every year but not with a bond.

5 Q. But even with the records without seeing a
6 bond, if you're seeing terms like renewal, if
7 you're seeing bond, shouldn't that raise, for a
8 pest control operator, raise a red flag that, hey,
9 maybe this is more than just inspection I'm dealing
10 with, renewal?

11 A. Maybe that testimony came out, but I felt
12 like Terminix knew they had a bond on the property.

13 Q. Okay.

14 A. Or at least they thought they had a bond. I
15 don't know that detail.

16 Q. So if Sottile -- I think we heard, if you
17 recall, Sottile's testimony was that even when he
18 did the Exterra bait station, he also beaded
19 Termidor around the property. Do you remember
20 that?

21 A. Yes.

22 Q. Is beading a little bit of Termidor around
23 the property to standard for using Termidor per the
24 label?

25 A. I don't think I've ever seen it on the label

1 that I'm aware of.

2 Q. Just beading.

3 A. I don't know what that meant.

4 Q. But certainly we know that, when he said he
5 quit doing it in 2008 and he allegedly gave the
6 property some -- he allegedly treated with Termidor
7 after concluding his bait station regimen, that he
8 didn't treat to standards, we know that.

9 A. That's my opinion.

10 Q. Yes. And you heard about the testimony of
11 the technician who -- Shane Briggs I think his name
12 is -- said he went in and saw shelter tubes as big
13 as a forearm. What's the significance of a shelter
14 tube being as big as somebody's forearm?

15 A. A lot of termites going through it.

16 Q. For a long time?

17 A. Yes.

18 Q. Do you often, when you're dealing with cases
19 like this in particular, have you seen -- you've
20 referenced this Graf case, Robert Graf case.

21 A. Right.

22 Q. There have been some similarities in Graf
23 and in this, and one of those similarities is an
24 alleged termiticide treatment with no records,
25 correct?

1 A. Correct.

2 Q. An alleged termiticide treatment where
3 there's no drilling, no evidence that it was
4 actually done, correct?

5 A. Correct.

6 Q. Okay. And also, now, the Robert Graf house
7 on Waterway Boulevard is a little bit different
8 insofar as, when you got onto that property,
9 Terminix, or nobody had -- had got in there to give
10 it -- to hit it with any termiticide. Did you do a
11 soil sample in the Robert Graf case to determine
12 whether Vince Sottile had put any termiticide in
13 the ground?

14 A. Yes, we did.

15 Q. And what was your finding?

16 A. Didn't find any.

17 Q. No termiticide, even though he had claimed
18 that he had treated with termiticide?

19 A. Correct.

20 Q. And so do you often -- are you seeing a
21 pattern between these two cases?

22 A. Yes. I mentioned that, I think, already.
23 We have similar stuff.

24 Q. Does your work in both cases involving these
25 same three defendants and some of the same

1 allegations assist you in forming your opinions
2 kind of cross-wise on both cases?

3 A. I think I'm only fair to try to keep it
4 separate, you know. I think this case is on
5 that -- I think that you have those allegations,
6 and I think that's come out. The computer deal, I
7 think this particular document -- and I don't think
8 we ever numbered it -- the one that showed that he
9 had not taken samples, sort of plays the same sheet
10 music.

11 Q. But doesn't that make you think that in this
12 case -- because you didn't find any -- we didn't
13 have the luxury of a clean ground to look at in
14 this case because Terminix had already gone and
15 done a treatment, but does that make you suspect,
16 the fact that you did a soil sample after he had
17 alleged that he had done termiticide in the Graf
18 case and found nothing, does that make you suspect
19 that perhaps he had done nothing in this case,
20 different than his allegation?

21 A. Well, I think the proof is, like I said
22 earlier, it's in the amount of termites over there.
23 If he'd done a proper treatment, I don't think --
24 just to answer your question, yes, I think that
25 showed that. Like I said, there's a lot of holes

1 here that I don't know how to fill up. I wish I
2 could, but I can't. I can't do it.

3 Q. Right. And you said that they probably
4 went -- you didn't supervise the destructive
5 testing by Brown Glaws with Irish and Steve
6 Nicholls?

7 A. No.

8 Q. But you gave Steve Nicholls broad
9 guidelines, right?

10 A. I told him 10 feet.

11 Q. Your home is up in where?

12 A. Seneca.

13 Q. You couldn't be down there daily monitoring
14 this situation, correct?

15 A. Correct.

16 Q. So would you defer over to Steve Nicholls as
17 to how he followed your instructions room by room
18 and his findings that he made and the decisions he
19 made to follow that 10 foot rule?

20 A. I think Irish was pretty emphatic about what
21 he found. I was out there one other time, and he
22 was like, no, no, no this was termites; and I was
23 like, okay, and that's all I knew to say.

24 Q. But you're not sure that he went too far.
25 We need to wait and talk to him --

1 A. Yes.

2 Q. -- to let him explain that kind of thing,
3 correct?

4 A. Yes, that's correct; but I still think they
5 probably removed a few things they probably didn't
6 have to remove. He did a pretty thorough job
7 removing stuff. There was probably a piece of
8 sheetrock or two, there's probably a few things he
9 could have left that he took out but that's part of
10 him doing his job the way he thought it should be
11 done. If I was sitting down there for every little
12 deal, maybe it would have made a difference; maybe
13 there would have been some areas that he could have
14 left in there but...

15 Q. How much would that have cost Jimmy Carroll
16 for you to be there for three months?

17 A. I'm not going there. I wish I had been
18 there. That would have been a good job.

19 MR. MCKNIGHT: I think that's all I
20 have.

21 MR. HAMRICK: I've only got a couple
22 more.

23 BY MR. HAMRICK:

24 Q. You were asked some questions by Mr. Stewart
25 about the bait stations, both the location and the

1 existence of bait stations, when you first
2 inspected the house in 2015, correct?

3 A. Yes. Yes, '15.

4 Q. Do you believe that whatever you found in
5 terms of bait stations in 2015 is evidence of
6 whatever Mr. Sottile did with the bait stations
7 beginning back in 2003?

8 A. I hope not, and I'm going to leave it at
9 that. I hope not because it was very few --
10 there's -- I don't know, Cecil was talking -- Cecil
11 Barber, the day -- one of the days when he was
12 there, we were doing the inspections, him and I
13 talked about the fact that you guys probably ought
14 to go and get some of those up. There was just a
15 few left around the perimeter of the building, and
16 I'm sure it was just a scabbed together -- if
17 that's the way they were, it was really horrific
18 because there was just a very few bait stations
19 around, widely scattered, not been serviced of
20 course in years, and you don't want people to get
21 confused about what you think you're doing and what
22 you are doing.

23 Q. That goes to the heart of my question. Have
24 you made assumptions or drawn any conclusions about
25 what Mr. Sottile did and his companies did with the

1 bait stations based on what you observed in 2015
2 with regard to the bait stations?

3 A. No.

4 Q. Okay.

5 A. No, I know better. I'm not going to go
6 there. That's not fair to Mr. Sottile or anybody
7 else, the way that the bait station system looked.
8 Things can happen, and Mr. Belser hit it. Those
9 bait stations can mess up in no time. So I'm not
10 going to say one way or the other on that. I don't
11 think that's fair.

12 Q. And in fact, I mean, they can be pulled up
13 and removed --

14 A. Oh, sure, in a week. And the guys had been
15 around the house doing construction work. No. But
16 if they had been maintained and somebody said they
17 were maintained, no matter what had happened, they
18 still should have been sitting there. But we know
19 it had been changed at least, what, a year and a
20 half -- yes, a year and a half, so I'm not...

21 MR. HAMRICK: Okay. Those are all the
22 questions I have.

23 (Deposition concluded at 3:22 p.m.)

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CERTIFICATE OF REPORTER

I, Ruth L. Mott, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

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

Witness my hand, I have hereunto affixed my official seal on December 15, 2016 at Charleston, Charleston County, South Carolina.

Ruth L. Mott,
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public
My Commission expires
February 23, 2025

EXHIBIT 10

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES E. CARROLL, JR.

Plaintiff,

vs.

ISLE OF PALMS PEST CONTROL, INC.;
SPM PEST MANAGEMENT COMPANY
INC.

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICAL CIRCUIT

C/A: 2015-CP-10-5944

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO SPM PEST
MANAGEMENT COMPANY INC'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiff, James E. Carroll, Jr. (hereinafter the "Plaintiff"), by and through undersigned counsel, respectfully submits this Memorandum in Opposition to the Motion for Partial Summary Judgment filed by SPM Pest Management Company, Inc. (hereinafter the "SPM"). For the reasons set forth below, the Motion for Partial Summary Judgment should be denied.

SUMMARY OF THE FACTS

Plaintiff purchased his Isle of Palms home at 11 Tabby Lane, in late 2002. Several months later, in February 2003, Defendant Isle of Palms Pest Management, Inc. (hereinafter "IOP") entered into an Exterra bait station Agreement (attached hereto as "Exhibit A." The bait station agreement contained "waiver" language, explaining to the Plaintiff that the services of the bait station agreement *specifically did not include the application of chemical termiticide* on the Plaintiff's property (see Exterra Bond and Waiver of chemical/termiticide use attached hereto as "Exhibit B" hereinafter, "Exterra waiver"). Mr. Carroll never signed either the Agreement or the Waiver.



Defendant IOP and the Plaintiff renewed the bait station agreement yearly for \$250.00 in February of every year from 2004 through 2010, which involved a yearly inspection of the Plaintiff's property. However, there is no evidence that Mr. Sottile did anything on the property in 2006.

In 2011, IOP merged its assets into SPM, a new company created by Vince Sottile, the same owner/principal. IOP was dissolved. The organizational structure as to employee(s) and ownership/management remained the same.

In May 14, 2013, Defendant Terminix Services, Inc. (hereinafter "Terminix") purchased SPM by way of a Purchase Agreement, attached hereto as "Exhibit C". *(note, there is a typo on the agreement dating it as March 14, 2013...not the correct date)*. That agreement contained indemnification language, shifting liability back to Defendant SPM for any termites or termite damages discovered by Terminix after the sale of the business, which related to acts or omissions by SPM (See section 2.2).

Terminix discovered substantial live termites and termite damage at the Plaintiff's property on January 22, 2014. Terminix treated the property with termiticide several months later, following unsuccessful attempts to have Vince Sottile take responsibility per the terms of the Purchase Agreement between SPM and Terminix.

During the course of this litigation, Vince Sottile has testified that without notifying the Plaintiff, he decided to stop monitoring and protecting the Plaintiff's property with the Exterra Bait Stations; and instead, on or about 2008, applied Termidor termiticide in the ground around the home; a chemical termite barrier comprising an entirely different technology for preventing termite intrusion into the Plaintiff's home (see August 8, 2016 30(b)(6) Deposition of Vincent Sottile, pages 23-24, lines 9-4 attached hereto as "Exhibit D" and page 56, lines 16-18 attached

hereto as "Exhibit E") :

Q: Were you ever doing a combination of termiticide and baiting?

A: "Yes."

Q: "Do you know—"

A: "But the record doesn't reflect that. I've already looked over all this. The record doesn't reflect it. And the reason I did it, when I did the baiting system...to me, you know, be comfortable with it, I did it a little different...called Termidor."

He also testified that at the outset of the agreement, in February, 2003, he "beaded" termiticide around the property, without telling anyone, or filing the appropriate Termiticide Disclosure Form.

He testified that he personally continued to conduct yearly inspections of the Plaintiff's property from January of 2008 to January of 2013, just prior to selling SPM to Defendant Terminix. However, there is no evidence that he visited the property in 2012, although the Plaintiff paid for the renewal amount. Vincent Sottile testified that there was never a lapse in coverage under the Exterra bait station agreement for the Property from 2003 up to his last inspection prior to the sale of SPM in 2013 and that at the time of sale, all Exterra Bond Bait Contracts had in fact lapsed (August 8, 2016 30(b)(6) Deposition of Vincent Sottile, pages 31, lines 1-10 attached hereto as "Exhibit F") He says he decided to simply stop doing it.

Vincent Sottile also testified that while there *should have been* a new contract for 11 Tabby Lane specifying treatment with termiticide in lieu of the Exterra bait station agreement, no such contract was offered to the Plaintiff and no termite bond specific to the use of termiticide treatment in lieu of and after abandonment of the bait station monitoring in 2008 was ever offered (August 8, 2016 30(b)(6) Deposition of Vincent Sottile, pages 30, lines 18-25 attached hereto as "Exhibit G").

As previously noted, Vincent Sottile did not notify the Plaintiff that he used any

chemicals on the Plaintiff's property (August 8, 2016 30(b)(6) Deposition of Vincent Sottile, pages 26-27, lines 14-2 attached hereto as "Exhibit H"). The Plaintiff, Jimmy Carroll, testified that he was aware that the company had changed names, but was never told that the bait stations were discontinued; nor was he told that termiticide was applied to his property in 2008, as alleged by Vince Sotile in his prior testimony (August 8, 2016 30(b)(6) Deposition of Vincent Sottile, 55-56, lines 12-4 attached hereto as "Exhibit I").

Regulations promulgated by the S.C. Department of Pesticide Regulation, require that a termite prevention company/applicator maintain records for 2 years, or for the duration of the contract, whichever is longer. SCDPR 27-1083(C)(3)(b). Furthermore, SCDPR regulations require that all chemicals used on a property must be used according to the label instructions (SCDPR 27-1085(D), and documented with a special Termiticide Disclosure Form specified by the SCDPR (SCPR 27-1085(D)(6).

In the present case, not only did Mr. Sottile never tell Plaintiff about the use of termiticide; he did not document it's use, per regulations. The only documents Terminix received, was annual reinspection invoices and report for the years 2004, 2005, 2007, 2008, 2009, 2010, 2011, and 2013. They reasonably thought this was an "inspections only" account they had purchased from SPM.

STANDARD OF REVIEW

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." McMaster v. Dewitt, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Cl.App.2014), *cert denied*. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." Moriarty v.

Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), holding modified on other grounds by State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Id. (quoting Rule 56(c), SCRCP). “Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law.” Id. “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” Id. “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” Id.

ARGUMENT

I. THE MOTION FOR PARTIAL SUMMARY JUDGEMENT SHOULD BE DENIED BECAUSE THE DEFENDANT VIOLATED REGULATIONS GOVERNING PEST MANAGEMENT.

South Carolina Courts have held that where a defective product harms other property or causes physical injury, the losses are more than merely economic, the economic loss rule is inapplicable, and a remedy lies in either tort or contract. Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc., 379 S.C. 181, 187–88, 666 S.E.2d 247, 250 (2008), overruled on different grounds by Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47 (2009). See Also Kershaw County Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 393, 396 S.E.2d 369, 371 (1990) (finding the economic loss doctrine did not bar recovery in an asbestos case because the defective product caused harm to “other property,” including the rest of the building). If a

builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. If he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort. Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 345–46, 384 S.E.2d 730, 737 (1989). Where the builder's actions are grossly negligent, of course, punitive damages may be sought. Id. The Court of Appeals itself correctly recognized in Kincaid v. Landing Dev. Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct.App.1986) that a violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses. Terlinde, 275 S.C. at 399, 271 S.E.2d at 770, imposes a legal duty on builders to undertake construction commensurate with industry standards. Kennedy, 299 S.C. 335.

Here, not only did IOP, and its successor corporation SPM not fulfill its obligations under the termite bond, the Defendants failed to meet industry regulations and standards. This is evidenced in part by the testimony in Vincent Sottile's August 8, 2016 30(b)(6) Deposition (attached hereto as "Exhibit J" page 56, lines 4-23):

Q: So you were giving away Terindor?

A: Yes.

Q: You weren't charging customers; you were just doing it?

A: I was doing it to protect them and protect myself.

Q: And you weren't keeping records of it?

A: No. Not when I put – because of the form of what I, you know –

Q: I mean, if you were providing extra protection, how would it have hurt to comply with the regulation and fill out the proper paperwork?

A: Yeah. But I didn't.

IOP and SPM had a duty within the termite bond and had a separate duty to conform to industry standards. In SPM's Motion for Partial Summary Judgment, in its attempts to bind Plaintiff under the "Economic Loss Rule" to the \$250,000 per the bait station agreement. Additionally, the economic loss rule would not apply in this case. As noted above, the economic loss rule does not apply to instances where there is additional damage. Here, the damage to the

entire structure would be sufficient to get past the economic loss rule because the entire house was damaged due to the negligence of SPM. To hold that the resulting damage to the Plaintiff's home would be barred by the economic loss rule would result in any property damage resulting from the negligence of a third-party be barred as well. This would change almost every construction cause of action in tort to be barred.

In this case, Cecil Hernandez has testified that on the 11 Tabby Lane structure, that this method (if he even did what he said he would do), would not be a termiticide treatment according to industry standards. (See Cecil Hernandez Deposition, P 32-33, lines 21-1 attached hereto as "Exhibit K") Further, it is expected that James Wright Regulatory/entomology expert, and Maxcy Nolan, III Ph.D., entomology expert, will testify to this at trial as well.

Vince Sottile's trial testimony will admit that absent trenching, drilling concrete slabs etc., and forming a continuous barrier, that this was not an application according to labeled instructions, which is a violation of the SCPR regulations (cite)

The Plaintiff plead specific cause of action for negligence against both IOP and SPM, and allege the failure to (a) use other acceptable means of termite treatment other than bait stations, which viewing the pleadings in a broad manner in the light most favorable to the non-moving party, Mr. Carroll, would include the negligent termiticide use was not in compliance with the label and in violation of the SCDPR regulations, which require that pest control operators use chemicals in accordance with labels.

II. UNDER RULE 15(B), SCRCF, A PARTY MAY MOVE TO AMEND PLEADINGS TO CONFORM TO THE EVIDENCE.

Under Rule 15(b) SCRCF, a party may move to Amend Pleadings to Conform to the Evidence. Should the court be inclined to grant SPM's Motion for Partial Summary Judgment,

limiting Plaintiff to the contract amount, Plaintiff would respectfully request that this Court to hold the Summary Judgment decision in abeyance, pending the Plaintiffs evidence being presented. In its SPM's Motion for Partial Summary Judgment, SPM did not allege any genuine issues of material fact precluding partial summary judgment. Rather, the central claim in the Motion is that the Plaintiff's Second Amended Complaint, adding SMP as a party, does not allege any duty beyond duties that would arise out of the Contract between IOP, and it's successor corporation, SPM.

Since filing the Second Amended Complaint (attached hereto as "Exhibit L"), further discovery has uncovered facts which Plaintiff could not have otherwise known, such as (1) that termiticide had been used on the property; and (2) that Sottile had unilaterally abandoned the bait station activities in 2008. Therefore, it would be manifestly unjust to allow SPM, on the eve of trial, to prevail in its Motion for Partial Summary Judgment based solely on alleged limitations in the pleadings.

Plaintiff would respectfully request that the court allow his undersigned legal counsel to make a Motion to Amend the pleadings to conform to the evidence, considering already known testimony from Sottile that he "beaded termiticide" around the home in violation of label instructions for Termidor, which experts will confirm and already have in the May 9, 2015 Deposition of Cecil Hernandez, Pages 15-16, lines 12-2 (attached hereto as "Exhibit M") and the November 29, 2016 Deposition of Maxcy P. Nolan, III, Ph.D. Pages 152-153, lines 20-21. (attached hereto as "Exhibit N") and the May 3, 2017 Deposition of Maxcy P. Nolan, III, Ph.D. (attached hereto as "Exhibit O" and Deposition Exhibit 29 referenced therein attached hereto as "Exhibit P") does not comply with the labeled use, which in turn, violates the regulations. As the court held in Kincaid, violation of regulations can result in liability in tort. Id. at 344.

Therefore, considering known testimony already set forth in depositions related to these violations; and further anticipated testimony at trial, viewing the facts in the light most favorable to the Plaintiff, the Motion for Partial Summary Judgment should not be decided until the court rules on Plaintiff's anticipated Motion under Rule 15(b) for an amendment of the pleadings to conform to the evidence. This last-minute motion for partial summary judgement is manifestly unfair to the Plaintiff, a last-minute ambush on the pleadings, which Rule 15(b) provides protection for through allowing a Motion to Amend the pleadings to conform to the evidence.

III. ASSUMING *ARGUENDO* THAT THE PLAINTIFF WAS CONTRACTUALLY BOUND, IT WOULD AMOUNT TO \$250,000.00 PER YEAR, EACH TIME THE CONTRACT WAS RENEWED.

If the Court were to consider binding Plaintiff to the contract, because of SPM's successor liability to IOP, viewing the evidence most favorable to the non-moving party, per Rule 56 SCRCp, there is direct evidence that in 2004, 2005, 2007, 2008, 2009, 2010, 2011 and 2012, and 2013, that Plaintiff paid a renewal premium for the February, 2003 bait station agreement (show reinspection invoices and reports of IOP and SPM attached hereto as "Exhibit Q").

Each of those years would be a separate and distinct year, occurrences occurring during each, for \$250,000 coverage. As such, there is evidence that termites were on the property as early as 2003. In Thomas Sottile's May 11, 2017 deposition testimony (page 11, lines 21-25 attached hereto as "Exhibit R") he admits to saying he intercepted termites in the stations during the first 6 months but did not tell the Plaintiff.

Further, Maxcy P. Nolan, III Ph.D., has done calculations in sworn deposition testimony that the termites were in the property for several years prior to their discovery (Deposition of

Maxcy P. Nolan, III, Ph.D. Pages 80-81, lines 19-4 attached hereto as "Exhibit S")

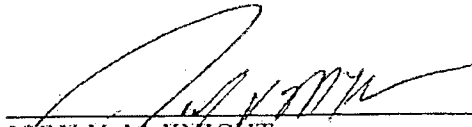
Given Vince Sottile's own admission that he headed termiticide onto the property without forming a continuous barrier, and that there were no records produced other than annual reinspection invoices, and no records of bait station monitoring by the admission of Vince and his son. (May 11, 2017 Thomas Sottile Deposition pages 51-52, lines 7-3 attached hereto as "Exhibit T", a jury could find that negligence began in 2003 and continued up through 2013 through direct actionable negligence on the part of IOP, attributable to SPM as it's successor.

A jury could find that damages of \$250,000 per year, from 2003 to 2013 are attributable, jointly and severally to IOP and SPM. Therefore, limiting contractual damages to presumably one year at \$250,000 would be inconsistent with the evidence, even if one did not consider open ended damages available in tort.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court deny Defendant's Motion for Partial Summary Judgment. based on a view of the existing pleadings in the light most favorable to the Plaintiff, and the facts already established and noted in deposition, in the light most favorable to the Plaintiff; or, consider the Motion only after the Plaintiff has had the right to present evidence and Make a Motion to Amend the Pleadings to Conform to the Evidence per Rule 15(b), SCRPC. To do otherwise would be manifestly unjust to the Plaintiff and would amount to a last minute "gotcha" ambush type motion on the eve of trial, when the Plaintiff lacks the time to make a formal Motion to Amend, if we were to assume we were bound as a matter of law by pleadings, which Plaintiff denies, as set forth above.

McKNIGHT LAW FIRM



JODY V. MCKNIGHT

Attorney for the Plaintiff

1156 Bowman Road, Suite 200

Mount Pleasant, SC 29464

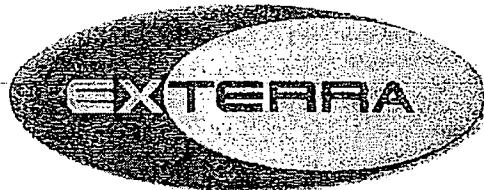
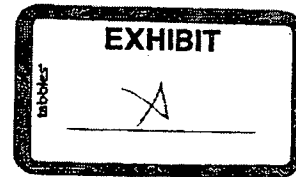
SC Bar # 66354

Telephone: (843) 577-6040

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Jody.McknightLawFirm@gmail.com

February 18, 2019



Isle of Palms Pest Control, Inc.
PO Box 448 / 15- 30th Avenue
Isle of Palms, South Carolina 29451-
Vincent N. Sottile, Jr. - 973-9555 (pager)
843.886.5858 (w) / 800.642.9594 (toll free) / 843.886.0940 (fax)

PURCHASER JIM CARROLL
MAIL ADDRESS 11 TARRY LN CITY IOP
STATE SC ZIP 29451 - PHONE (843) 886 - 9600 -
COVERED PROPERTY - (☒) RESIDENCE (☐) OTHER _____
PROPERTY ADDRESS SAME CITY _____
STATE _____ ZIP _____ - PROPERTY PHONE (☐) _____ - _____
COMMENTS _____

SERVICES. During the coverage period, Operator will install and maintain the Exterra® Termite Interception and Baiting System (Exterra) for the purpose of controlling subterranean termite infestations of the covered property. Exterra installation and maintenance shall consist of the installation of stations, periodic station monitoring and baiting of stations within which termite activity is established. The installation and maintenance of Exterra shall be in compliance with the manufacturer's recommendations and all applicable laws or regulations.

ACKNOWLEDGMENTS. Purchaser acknowledges the following limitations concerning Operator liability and Exterra operation.

Mode Of Operation. The use of Exterra is a multistep process that involves station installation, monitoring and baiting. Termite bait is installed in a station only after termite activity has been established in the station. Exterra does not exclude termites from the covered property. Instead, Exterra controls termites by suppressing or eliminating termite colonies.

Time To Activity. Variations can be expected in the extent of termite activity and number of termite colonies present in the ground around different structures. For this reason, there is no defined period of time after the date of installation within which it can be guaranteed that termite activity will be established in the stations. Establishment of activity in stations can occur in as little as one month but may take considerably longer.

Time for Effects. Completion of the effects of Exterra on a colony may occur within six to twenty four months of the onset of colony bait consumption, however this may take longer. For this reason, there is no defined period of time after the date of the onset of bait consumption within which it can be guaranteed that the effects of the bait on a colony will be completed. Multiple termite colonies are normally present in the ground in the vicinity of a structure. In order to protect a structure against termite attack, all such colonies must all be intercepted and baited.

Need To Continue Usage. Territory around the covered property previously inhabited by an affected colony may be invaded by a new or nearby unaffected colony. Therefore, Exterra must be continuously maintained at the structure to protect against future termite attack.

Future Termite Damage. Significant periods of time can be expected to elapse between the installation date and the time after which effects on any termite colony are completed, including effects upon termite colonies infesting the structure on the installation date (if any). During these periods, termites infesting the covered property may continue to attack and cause new damage to the covered property over and above that

existing in the covered property on the installation date.

Water Leakage and Aerial Termite Colonies. Structural and Mechanical defects, which result in water leakage in interior areas, through the roof or windows or interior walls can produce unusual conditions abnormally conducive to new infestations such as aerial termite colonies. These areas have excessively high moisture contents that the termites don't need to forage to the ground for food, water, or shelter. Their is enough life sustaining conditions to keeps them alive, to create a new colony above ground without any ground contact that will do damage and go undetected. If such a condition is discovered, it is agreed that the purchaser will be responsible for making such repairs as are necessary to correct said defects and for repairing any damage which was caused by said water leakage and/or termite aerial infestation allowed to continue as a consequence of such a leakage.

Supplemental Treatments. If the covered property is infested with termites on the installation date, supplemental treatments may shorten the period of time that the covered property continues to be infested with termites, however such treatments will not suppress or eliminate termite colonies. Operator will perform additional supplemental treatments in addition to installing Exterra only if Purchaser pays a separate charge for such treatments.

COVERED PROPERTY. This plan applies to and covers only the structure(s) identified herein as covered property.

COVERAGE LIABILITY. If new damage occurs to the structure during the contract terms, the operator will, upon notification and inspection, arrange for necessary repairs and pay the cost for the materials and the labor. New damage is that damage done by Eastern Subterranean and Formosan Termites after the contract date/ installation date of the Exterra program. Liability for repairs shall not exceed \$250,000 dollars.

COVERAGE PERIOD. This plan is effective only during the coverage period. The coverage period shall begin on the date Exterra was initially installed at the covered property (installation date) and shall continue until the ____1 ST____ anniversary of the date the Purchaser signed this plan (anniversary date). Operator will extend the coverage period annually thereafter upon payment to Operator of an annual coverage period extension charge payable on or before each successive anniversary date. The coverage period shall end upon nonpayment of any extension charge.

ACCESS TO PROPERTY. Purchaser consents to Operator visits to the covered property on a regular, periodic basis without prior notification to the Purchaser for any purpose contemplated by or made necessary by this plan including but not limited to inspecting and monitoring stations. Failure by the Purchaser to allow Operator access deemed necessary by Operator shall terminate this plan without further notice.

DISCLAIMER. Operator disclaims any liability for and the Purchaser expressly waives any claim for and discharges and releases Operator from responsibility for termite, special, incidental, exemplary, punitive or consequential damages regardless of whether Operator knew of, was advised of or should have been aware of the possibility of such damages. The obligations of Operator as specifically stated in this plan are given in lieu of any other obligation or responsibility, expressed or implied, including any representation or warranty of merchantability or fitness for a particular purpose. Operator's liability under this plan shall be terminated if Operator is prevented from fulfilling its responsibilities under the terms of this plan by reason of delays in transportation, shortages or unavailability of fuel, material and/or pesticides including termite bait, strikes, explosions, riots, embargoes, fires, floods, quarantine restrictions, earthquakes, hurricanes, acts of God or any other circumstances or causes beyond the control of Operator.

TYPES OF TERMITES COVERED. This plan provides coverage for the covered property only against subterranean termites of the genus Reticulitermes, Coptotermes and Heterotermes, such as Eastern Subterranean and Formosan Termites. It does not cover either drywood or dampwood termites.

CHANGE IN LAW. Operator reserves the right to terminate this plan in the event of a change in existing law as it pertains to the coverages provided for in this plan.

NONPAYMENT, DEFAULT. In case of nonpayment or default by the Purchaser, Operator has the right to terminate this plan. Purchaser shall pay all costs of collection including reasonable attorney's fees to Operator, whether suit is filed or not. In addition, interest at the rate of 1 1/2% per month will be assessed on any past due amounts owed by Purchaser until paid. This plan and any extension of the coverage period will be effective only upon payment of the charges as provided herein.

NO ASSIGNABILITY. This plan is not assignable or transferable without the expressed written consent of the Operator. If Operator consents to a transfer of rights under this plan, a transfer fee may be required to be paid to Operator by assignee.

TERMINATION OF EXTERRA AUTHORIZED OPERATOR LICENSE. If for any reason, Operator's authorization to use Exterra is terminated, Operator reserves the right to either terminate this plan, replace Exterra with another termite baiting system or substitute another type of termite control product for Exterra. If Operator terminates this plan prior to an anniversary date, Operator will refund to Purchaser any unearned portion of payments made by Purchaser to Operator.

OWNERSHIP OF COMPONENTS. Purchaser acknowledges that any components installed at the covered property by Operator for any purpose contemplated by this plan are and shall at all times remain the property of Ensysstex, Inc. and that ownership of the components will at no time pass to the Purchaser. Purchaser authorizes Operator or its authorized representatives to retrieve any and all components from the covered property at any time, whether during the coverage period or after the coverage period expires.

SEVERABILITY. If any part of this plan is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this plan shall remain in full force and effect.

ENTIRE AGREEMENT. This plan and the inspection graph (if any) constitutes the entire agreement between Operator and Purchaser and no other representations or statements will be binding upon the Purchaser or Operator. The terms and conditions of this plan may not be altered or amended unless both parties execute such changes in writing.

ACCEPTANCE. The Purchaser agrees to pay Operator an initial charge of \$ 1250 for coverage of the covered property from the installation date to the anniversary date. For an annual coverage period extension charge of \$ 250, payable by Purchaser to Operator on or before each successive anniversary date thereafter, Operator agrees to extend the coverage period annually on a year to year basis for as long as the Purchaser owns the covered property. Operator reserves the right to revise the annual coverage period extension charge for any coverage period extension term, which constitutes the third or later year of this plan.

NOTICE: YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

Acknowledgment: I have read this plan, understand its terms and conditions and agree to them and have received a copy of this plan.

CUSTOMER _____ DATE _____

COMPANY REP. _____

DATE 2-19-03

*Trademark of Ensystex, Inc.

Alternative Treatment And Waiver of Minimum Treatment Standards Disclosure Form

Department of Pesticide Regulation
511 Westinghouse Road, Pendleton, SC 29670 Phone 864.646.2150 Fax 864.646.2179

EXHIBIT

B

Company: ISLE OF PALMS PEST CONTROL Business License #: B1552 Date Treated: 2-19-03
Applicator: VINCENT SOTTILE JR Treatment: Borate ☒ Bait ☐ Other (describe) _____
Site owner and address: JIM CARROLL - 11 TARRY LN., ISLE OF PALMS, SC 29451

Nature and location of treatment: _____

Section A: Alternative Treatment Disclosure. The Department of Pesticide Regulation requires that the pest control operator disclose the following items to the property owner and provide them with a copy of this form before beginning any alternative treatment program.

	YES	NO
1. Is there any pre-existing visible damage? (If yes, it must be shown on an attached graph.)	☐	☒
2. Has the customer been informed that: a. If termite activity is present, some new damage may occur before treatment takes effect? b. Baits offer no residual protection and thus reinfestation may occur unless they are monitored and replaced as necessary?	☒ ☒	☐ ☐
3. Have the details of the bait monitoring program and the frequency of site visits been disclosed?	☒	☐
4. Has the customer been informed that: a. Borate treatment does not exclude termites from the structure? b. Borate treatment does not prevent termites from tubing on non-wood parts of the foundation? c. Some termite feeding on borate-treated wood may occur?	☒ ☒ ☒	☒ ☒ ☒
5. If a partial treatment with a soil-applied termiticide is also to be performed: a. Have the reasons for this supplemental treatment been explained to the customer? b. Has the need for a waiver been explained, and a waiver (Section B) issued?	☒ ☒ ☒	☒ ☒ ☒
6. Will a Warranty be issued? (This form must be attached.)	☒	☐

Section B: Official Waiver of Minimum Treatment Standards. All applicable Standards must be completed or waived during any subterranean termite treatment. Standards may not be waived for pre-construction treatment (except for alternative-technology treatments) without the written permission of the Dept. of Pesticide Regulation. The Standards checked below will not be completed during this treatment.

- ☐ 1. Cellulose debris removed from crawl space. G (2)(a)
- ☐ 2. Form boards within 8 inches of crawl space soil removed. G (2)(a)
- ☐ 3. Wood in direct contact with soil placed on concrete base, treated or removed. G (2)(b)
- ☐ 4. All visible and accessible termite shelter tubes scraped off. G (2)(c)
- ☒ 5. Foundation walls, piers, pillars, supports, and pipes rodged or trenched and treated. G (2)(d) and H (1)
- ☒ 6. Cavities in hollow pillars, tile, brick, block, chimneys, or other construction features likely to be penetrated by termites, treated. G (2)(e)
- ☒ 7. Soil beneath attached slabs (porches, patios, carports, garages, walkways, etc.) which are less than 18 inches below sill treated. G (2)(f)
- ☐ 8. Adequate ventilation provided. G(2)(g)
- ☐ 9. Crawl space soil removed to provide at least 8 inches clearance. G(2)(h)
- ☒ 10. Soil beneath concrete slab floor construction treated. G (2)(i) and H (2)

Reason for not performing standard termite treatment procedures (explain why the standards checked above are being waived):

THIS TYPE TREATMENT DOES NOT REQUIRE THE USE OF A LIQUID TERMITICIDE.

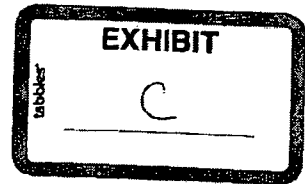
I understand that this structure will be treated according to the standards of the South Carolina Division of Regulatory and Public Service Programs except for those items checked above, and my signature below authorizes the above-named company to proceed with treatment on that basis.

Acknowledgement (Property Owner or Authorized Agent): _____

Issue Date: 2-19-03

Original: Pest Control Operator Copy: Customer

Contact the Department of Pesticide Regulation at 864.646.2150 for any questions or field locations.



AGREEMENT FOR THE
PURCHASE AND SALE OF ASSETS

Agreement made March 14, 2013, by and between TERMINIX SERVICE, INC., a South Carolina corporation, (the "Buyer"), and SPM Pest Management Company, Inc., (the "Seller"), and Vincent N. Sottile, Jr. who is the principal shareholder and operator of the SPM Management Company, Inc. (the Principal).

WITNESSETH:

WHEREAS, the Buyer desires to acquire, and the Seller desires to sell to the Buyer, certain assets of the Seller (as set forth herein) for the consideration set forth herein upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the respective mutual agreements hereinafter set forth and the mutual benefits to be derived herefrom, the parties hereto do represent, warrant, covenant and agree as follows:

1. THE EFFECTIVE DATE and hour of this transaction shall be May 14th, 2013, at 11:00 A.M.
2. TRANSFER OF ASSETS (ONLY).

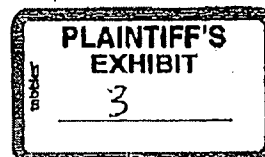
On the terms and subject to the conditions set forth in this Agreement.

2.1 Assets. Seller, for and in consideration of the sums hereinafter set forth, by these presents does hereby grant, bargain, sell, transfer, assign, deliver and set over unto Buyer, its successors and assigns forever, the following assets of Seller pertaining to the Seller's termite and pest control business in and around Mt. Pleasant, South Carolina, known as SPM Pest Management Company, Inc.: Seller's rights under active customer termite and pest control contracts and all the records and files relating to such contracts; records of inactive customer termite and pest control contracts and accounts; the name "SPM Pest Management Company, Inc." alone or in combination with other names; together with all copyrights, trademarks, labels, and other advertising media or devices adopted or used by Seller, as well as non compete.

This transfer shall be effective at the time stated above. The Seller shall utilize the subject assets until said hour and date and shall be entitled to and responsible for the profits, losses, rights, and liabilities arising therefrom until said date and hour.

Seller agrees to execute and deliver, from time to time after the Closing Date at the request of Buyer, such other and further documents and instruments of transfer as Buyer may hereafter reasonably request in order to complete, consummate and perfect the conveyance and transfer to Buyer of any and all said property and assets transferred or intended to be transferred hereby.

2.2 Liabilities Not Assumed. This is an ASSETS ONLY PURCHASE. Buyer does not assume and will not be obligated to pay or discharge any liability or obligation of Seller or Seller's business whatsoever, except (1) Buyer will carry out the retreatment portion only of the service agreements as to servicing active termite and pest control accounts of the SPM Pest Management Company, Inc. business in existence at closing, it being understood that Terminix does not accept any liabilities related thereto beyond the treatment called for by the contract between the customer and the SPM Pest Management Company, Inc. business.



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Buyer will assume current contract in yellow pages. Buyer will assume current contract for telephone number. It is agreed by the Seller that if Terminix is required by government authorities to bring any of the property covered by said active accounts up to state minimum standards, then Terminix shall be indemnified and held harmless against all such expenses or lost, by the Seller. Terminix shall, however, give Seller prompt notice of any regulatory action and a reasonable opportunity to cure any discrepancy. It is also expressly understood that Terminix does not assume any liability for damage repair under any of Seller's contracts with its customer unless and until Terminix receives and deposits the first annual renewal payment on any such customer's contract. Seller jointly and severally agree to hold Buyer harmless from any liability or claims which may be made by any customer for any act or omission of Seller prior to the date of this purchase and sale, and any cost and expenses, including attorney's fees, associated therewith.

2.3 Purchase Price. In payment for the assets and property of the Seller described in Paragraph 2.1 hereof, Two Hundred, Fifty Thousand (\$250,000.00) Dollars as follows: Seventy-Five Thousand (\$75,000.00) Dollars to be paid at closing, with the remaining balance payable at Three Thousand, Seven Hundred, Twenty and 75/100 (3,720.75) Dollars per month commencing on the 1st day of June, 2013 and ending with a final payment of Three Thousand, Seven Hundred, Twenty and 97/100 (\$3,720.97) Dollars on May 1, 2017. In the event of the death of Mr. Sottiles prior to May 1, 2017, the remaining payments required hereunder shall be paid to the estate of the decedent. All such payments shall be reported to the Internal Revenue Service as ordinary income. Seller acknowledges the receipt and sufficiency of the aforementioned sums. The above-recited consideration constitutes payment in full for the assets and property of the seller described in Paragraph 2.1 hereof.

3. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF SELLER AND PRINCIPAL.

Seller and the Principal represent and warrants to Buyer that, except as noted on the Bill of Sale delivered herewith:

3.1 Ownership of Assets. The Seller has good and merchantable title to all the property and assets intended to be transferred to Buyer pursuant to this Agreement and said property and assets are owned by Seller free and clear of all mortgages, liens, pledges, claims, encumbrances, conditional sale or other title retention agreements, leases or charges. Seller has the right, power and authority to transfer and deliver such assets to the Buyer and, upon the delivery of such assets to the Buyer pursuant to the Agreement, the Buyer will acquire good and marketable title to all of such assets, free and clear of all liens, pledges, charges and encumbrances and not subject to an adverse claim.

3.2 Equipment. All equipment and machinery to be transferred to Buyer is fit for the ordinary purposes for which such goods are used, is in good operating condition and repair, and conforms with all presently applicable ordinances, regulations, and other laws.

3.3 Contracts and Agreements. Neither the execution of the Agreement nor the consummation of the transactions contemplated hereby will terminate any customer pest contracts or customer termite control contracts, Seller's right under which are being assigned to Buyer hereunder.

- 3.4 Customers. The Seller and the Principal have no knowledge of any actual or threatened termination, cancellation, limitation, modification, or change in the business relationship of the Seller with any customer or group of customers whose purchases individually or in the aggregate constitute more than five (5%) percent of the sales of the Seller for the year ended December 31, 2012.
- 3.5 Tax Matters. The Seller has prepared and filed with the appropriate federal, state, local and foreign governmental agencies all tax returns required to be filed and has paid or made provisions for payment of all taxes shown on such returns to be payable or which have or may become due pursuant to any assessment received by it. All taxes due or to become due as of the Closing Date have been paid or adequate provision has been made therefor. Taxes on personal property shall be prorated as of the date of closing. The Seller has not executed nor filed with the Internal Revenue Service or any other domestic or foreign taxing authority any agreement extending the period for assessment or collection of any income or other taxes. The Seller is not a party to any pending action for assessment of taxes being asserted against it.
- 3.6 Litigation. There is no claim action, suit, proceeding or investigation pending before any federal, state or municipal or other court of governmental body or, to the best of Seller's knowledge, threatened, relating to or affecting the business or assets being transferred by Seller to Buyer hereunder or the transactions contemplated by this Agreement.
- 3.7 Compliance with Law. The Seller has complied with all laws, regulations, and ordinances applicable to the conduct of the business of the Seller.
- 3.8 Company Name. Seller has the exclusive right to use the name SPM Pest Management Company, Inc. in the state of South Carolina; after the Closing Date; Buyer shall be entitled to use said name. Seller will be allowed to collect AR as the previous owner of said accounts until outstanding AR is collected. The Seller has received no notice of conflict with respect to the use of the Seller's name. Seller agrees that they will not, after the date of Closing, use the said name either alone or in combination with any other name, in connection with engaging in the business heretofore conducted by Seller.
- 3.9 Payment of Taxes. Seller will pay all taxes which are by law payable by Seller arising or resulting from this Agreement of whatever nature payable to federal, state, municipal, and other governmental authorities, such payments to be made on or before Closing Date or at such time thereafter as such taxes may become due and payable.
- 3.10 Books and Records. The books of account and other records of the Seller are in all material respects complete and correct and have been maintained in accordance with good business practices.
- 3.11 Inventory. The inventories of the Seller to be sold to the Buyer hereunder consist solely of items and supplies of merchantable quality, salable at regular prices in the ordinary course of Seller's business.
- 3.12 Disclosure. No representation or warranty by the Seller in this Agreement and no statement, document, certificate, or other instrument or Exhibit furnished or to be furnished to Buyer in connection herewith or with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary in order to make the statement contained therein not misleading.

4. REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE BUYER.

4.1 Access to Records. In the event there is a claim against Seller arising out of the operation of Seller's business, Buyer shall allow Seller or designated representatives reasonable access to the records which are transferred to Buyer, upon reasonable notice. Buyer shall have no duty to maintain the records received from Seller, but shall offer Seller the right of first refusal before destroying or disposing of Seller's records within three (3) years from the date hereof.

5. SURVIVAL.

All covenants, agreements, representations, and warranties made hereunder and in any certificates delivered at the closing pursuant hereto shall be deemed to be material and to have been relied upon by the Buyer and the Seller, notwithstanding any investigation heretofore and hereby made by the Buyer or the Seller, or on their respective behalves, and shall survive the Closing.

6. INDEMNIFICATION BY THE SELLER AND PRINCIPAL STOCKHOLDERS.

Seller and the Principals agree to indemnify, keep indemnified and hold harmless Buyer, its shareholders, officers, agents and employees from, against and in relation to:

6.1 Any and all liabilities of or claims against the Buyer of any nature, including but not limited to Seller's taxes, salaries and accounts payable, and termite and pest control claims, whether accrued, absolute, contingent or otherwise, existing on the Closing Date;

6.2 Any and all liability, damage, loss, costs, or expenses to Buyer resulting from any misrepresentations, breach of any warranty, or non-fulfillment of any agreement on the part of the Seller contained in this Agreement or contained in any statement, certificate or other instrument furnished or to be furnished to the Buyer pursuant hereto or in connection with the transactions contemplated hereby; and

6.3 Any other matters set forth in Exhibit A.

6.4 Any and all accounts, suits, proceedings, demands, assessments or judgments, costs, and expenses including attorneys' fees, incident to any of the foregoing Paragraphs 6.1, 6.2, and 6.3 regardless of the outcome. Provided, however, Buyer will give Seller prompt written notice of any claims incident to paragraphs 6.1, 6.2, and 6.3, and a reasonable opportunity to settle the claims before Buyer pays the claims, or incurs any reasonably avoidable expenses, and demands reimbursement from the Seller and the Principal pursuant to paragraph 6.5.

6.5 Seller shall, on demand of 30 days written notice, reimburse Buyer for any payment made by Buyer at any time after the Closing Date with respect to any liability, obligation, or claim to which the foregoing indemnity by Seller relates.

6.6 All indemnification shall be effected by payment of cash or delivery of a certified or official bank check for the amount of the indemnification. Buyer shall also have the right to offset against or deduct from, any sums Buyer owes Seller or the Principal, the amounts due from Seller or the Principal as per this right to indemnification.

6.7 The provisions of this Section 6 shall be in addition to any other rights which Buyer may otherwise have in connection with this transaction.

7. COVENANT TO COOPERATE AND COVENANT NOT TO COMPETE.

The Principals agree to execute and abide by the terms of that COVENANT NOT TO COMPETE attached hereto as Exhibit "B", and acknowledges the consideration to be paid for such, and agrees to cooperate with Buyer in all respects in the take-over of the assets being transferred so as to avoid, to the extent possible any disruption of the business operation during the course of the change of hands of the assets and immediately thereafter. Seller will continue to do business selling CL-100 Inspections only in the name of SPM Pest Management Company, Inc.

8. EXPENSES.

The Seller and the Buyer shall each pay their own expenses incidental to the preparation and carrying out of this Agreement.

9. MISCELLANEOUS

9.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Except as otherwise specifically provided herein, no change, modifications or addition shall be valid unless in writing and signed by or on behalf of all the parties hereto.

9.2 Successors, etc. This Agreement shall be binding upon and inure to the benefit of the respective corporate successors (whether by dissolution, merger, or consolidation), heirs, executors, administrators, and assigns of the parties hereto.

9.3 Notices. Any notice, request, instruction, or other document given hereunder by any party hereto shall be in writing and delivered personally or sent by registered mail, postage prepaid, if to the Buyer, addressed to Terminix Service, Inc., Post Office Box 2627, Columbia, South Carolina 29202, Attention of Mr. M. A. Knox, Jr., and if to the Seller, addressed to Vincent N. Sottile, Jr., PO Box 448, Isle of Palms, SC 29451.

9.4 Headings, etc. All section headings are inserted for convenience only. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and which together will constitute one and the same instrument.

9.5 Notwithstanding the effective date of the transfer of subject assets generally, all customer checks and payments to Seller received after Closing Date shall be for the account of Buyer and Buyer shall have the right to endorse the name of Seller on any such checks; excluding accounts receivable at time of closing; which shall be the property of Seller.

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Agreement on the date first above written.

Witness

TERMINIX SERVICE, INC., as Buyer

BY: Chhl

ITS: Protects Men

SPM PEST MANAGEMENT COMPANY,
INC., as Seller

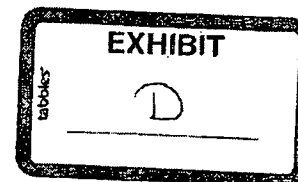
BY: Vincent N. Sotile

ITS: PRESIDENT

Witness

Witness

Vincent N. Sotile
VINCENT N. SOTILE, JR., INDIVIDUALLY
AS PRINCIPAL



19 gosh. I can't remember the name. We had Exterra and
20 then there's -- I can't remember another one.

21 Anyway, so those were the two termite baiting
22 systems. There were some others, but there were more
23 of a one time -- you put this here. They didn't have
24 continuing records and continuing inspections.

25 But at that point in time when I decided to get

0023

1 into the baiting system, I chose Exterra. And I don't
2 know, you know, how soon that I got into Exterra that
3 Jimmy had it.

4 But by that time, I had the Exterra. And I was,
5 you know, doing the Exterra. And then when Jimmy
6 called me and said: Hey, I want you to treat this
7 house also, then at that point in time then I was
8 doing the Exterra treatments.

9 Q. Were you ever doing a combination of
10 termiticide and baiting?

11 A. Yes.

12 Q. Do you know --

13 A. But the record doesn't reflect that. I've
14 already looked over all this. The record doesn't
15 reflect it.

16 And the reason I did it, when I did the baiting
17 system, to me at the time it was all new. And you
18 space the baiting system every 15 feet.

19 Well, my problem was I wasn't -- you know, mine
20 was, you know, learn as you go because, you know, we
21 had all the data from what the, you know, what the
22 Exterra people and Ensysstex people were telling us.

23 You know, do this and that. But until I did it,
24 you know -- and to me, you know, be comfortable with
25 it, I did it a little different.

0024

1 So what I did was when I put the baiting system
2 in at the time, I put a bead of termiticide around the
3 outer perimeter of the dwelling. The product that I
4 used at the time was called Termidor.

5 Q. Okay.

6 A. And my reason and my logic and I still -- you
7 know, was a couple of things. Number one, I wasn't
8 exactly convinced on the baiting system so I wanted to
9 see how well it worked.

10 Number two, since I had doubts, I knew Termidor
11 worked very well. So what it did was -- Termidor
12 lasted five years.

13 So I put the baiting system in and then right
14 along the perimeter or the edge of the concrete, I
15 rodded Termidor around the perimeter of the structure
16 knowing that in the end of five years, it would be
17 like a passing of the guard.

18 Hopefully the Exterra baiting system would be
19 picking up. And as the Termidor broke down, then one
20 would take over from the other.

21 Because it would take a while for the termites to
22 find a station, to feed on it, time for me to put --
23 the name of the product that killed the termites was
24 called Hexaflumuron.

25 So I would -- you know, whenever you would look
0025

1 in there and there was pieces of wood in these round
2 stations that were in the ground, you would take the
3 cap off and look down there and look for termites in
4 the wood.

5 If you find it, then you take this medium --
6 looked like shredded paper with the Hexaflumuron in
7 it. Which way it works was they would take it -- they
8 would ingest it and take it back to the colony and
9 then they would infect the colony -- or infect the
10 colony with this product and kill the colony.

11 So but I had questions about it. I had doubts
12 about it. So at the time I did the initial treatment,
13 I used the Termidor around the perimeter of the
14 building. And then not just on Jimmy's house but on
15 many others.

16 Q. Is that from your own independent
17 recollection?

18 A. Yes. That's exactly what I did.

19 Q. Because I don't see any record --

20 A. There's no record -- and that's true.

21 MS. PATON: Looking for Exhibit 4?

22 A. I think I'm looking for Exhibit 6. The
23 Exterra contact, Exhibit 6. Well, part of this
24 contract, Exhibit 6, is Exhibit 7.

25 Q. Right.

0026

1 A. Which is the Alternative Treatment and Waiver
2 of Minimum Treatment Standard Disclosure Form.

3 And in here, on this, the State says -- well,
4 they hadn't really changed the laws yet in the state.
5 Everything about termite treatment was based on liquid
6 treatment.

7 This was all new and everything, okay, until they
8 changed their laws to include baiting system. So at
9 the time that we were doing this, they said: Look,
10 you've got to put on here that you're using the
11 baiting system but you're not using any liquid
12 treatment.

13 I said: Okay, but I am. And I explained the
14 fact why I did. And they said: Well, you've still
15 got to put on here -- the only thing I didn't do and
16 maybe I should have had another page saying: Well,
17 the State says I have to put on here that this type
18 treatment does not require the use of a liquid
19 termiticide.

20 But what I should have done, I should have put it
21 on another page and explained why I did and what I
22 just explained to you why I did.

25 Q. Termidor kills them right away.
0056
1 A. It's amazing what it does.
2 Q. Yeah.
3 A. And I could go in volumes with that.
4 Q. So were you giving away the Termidor?
5 A. Yes.
6 Q. You weren't charging customers; you were just
7 doing it?
8 A. I was doing it to protect them and protect
9 myself.
10 Q. And you weren't keeping any records of it?
11 A. No.
12 MS. PATON: Object to the form.
13 A. Not when I put -- because of the form of what
14 I, you know --
15 Q. I mean, if you were providing extra
16 protection, how would it have hurt to comply with the
17 regulations and fill out the proper paperwork?
18 A. Yeah. But I didn't.
19 Q. Okay. Tell me about your course of dealing
20 to-date with Terminex over this issue. Let's go back
21 to the point at which you all met with Terminex. Did
22 they ask you to be responsible for anything?
23 A. No, they didn't.
24 Q. To this day, have you been asked to be --
25 your company, either IOP or SPM been asked to be
0057
1 responsible for the damages to Mr. Carroll's home?
2 MS. PATON: Object to the form.
3 A. No. But once Mr. Carroll turned it over to
4 his attorney, then at that point in time, you know,
5 everybody that was involved was brought in. So in
6 essence, you know, we are here to protect him
7 whatever, you know, form and through the insurance.
8 Q. Okay.
9 A. If that answers your question.
10 Q. Yes, sir. Were you out there on any
11 occasions that the Terminex company in 2015 -- in
12 April of 2015 was inspecting the property?
13 A. No.
14 Q. Or also I think I see in Exhibit 4-Q, the
15 record of termiticide use on 4/3/15, and you weren't
16 out there at that time?
17 A. No.
18 Q. Do you know a person named George Borst?
19 A. No.
20 Q. Somehow George Borst's name ended up
21 connected with 11 Tabby Lane if you can see Exhibit
22 4-R.
23 A. All right. Hold on.
24 MS. PATON: I have 4-Q.
25 MR. MCKNIGHT: Behind that is 4-R, the next
0058

1 Q. And that would be under regulations?

2 A. Yeah. But there was no lapse in coverage.

3 It was just paperwork that wasn't done or lost or

4 whatever.

5 Q. Okay.

6 A. But there was never any lapse in coverage
7 from the time I started in 2003 to when I did the last
8 inspection, February of right before I sold the
9 business.

10 I sold the business in 2013. So February -- I
11 think this was February. So somewhere -- so I'm sure
12 I did an inspection February of 2013. And I'll have
13 to look into -- it's probably a copy.

14 Q. Well, the termiticide, if you quit using it
15 five years after you began -- I mean the Exterra. You
16 began Exterra approximately 2000, 2001; is that right?

17 A. No. Well --

18 Q. I think I've seen an e-mail --

19 A. See, I started Exterra at his house in 2003.

20 Q. Right. But overall --

21 A. So five years later, 2008, was when I stopped
22 using Exterra.

23 Q. Okay. I'm asking you -- so you used Exterra.
24 I know you did on the Graf property in 2001, you had
25 the Exterra.

0032

1 A. Right.

2 Q. Did you keep it for -- did you use Exterra
3 for eight years?

4 A. Oh, total?

5 Q. Total.

6 A. Depends on when I did the last Exterra
7 treatment.

8 Q. When did you do your last --

9 A. I don't know.

10 Q. When did you do the termiticide after you --
11 when did you conclude Exterra at Jimmy's place?

12 A. 2008.

13 Q. And how do you know that?

14 A. It's not on here, but I just know that.

15 Q. Okay.

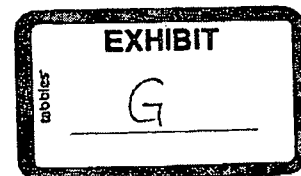
16 A. Just because of what I was doing at the
17 time -- the time was I'm stopping doing the Exterra.
18 I'm not doing any more within that certain perimeter
19 of what I was consistently doing.

20 With all of the customers, I knew that with the
21 initial contract, I knew that the Exterra contract was
22 for five years.

23 And at the end of five years with the liquid that
24 I was using in the ground -- it all was really based
25 not necessarily on the Exterra but it was based -- the

0033

1 five years was based on the liquid that I used when I
2 did the initial treatment.



25 A. Yes.

0029

1 Q. The latter was more expensive, correct?

2 A. Yes.

3 Q. Because the latter type treatment involved
4 more hands-on monitoring, correct?

5 A. Well, with the initial treatment, you had --
6 there was a lot of things involved. You had to put
7 all of these stations in the ground. And then you had
8 to, you know, fill out all the paperwork and get
9 everything in the computer about what you were doing.

10 And there was a lot more stuff involved versus if
11 I did a liquid treatment, you know, I pulled up with
12 the truck and the trailer with the 100-gallon
13 container in it and then just, you know, putting
14 liquid out.

15 So time and material and everything, it was more
16 involved in the Exterra versus just liquid treatment.
17 If I had done a liquid treatment on this house, it
18 probably would have cost somewhere around \$500.

19 Q. Right.

20 A. And the annual renewal would have been, you
21 know, 150, \$175 for a liquid treatment versus the
22 Exterra -- this system and everything, what did you
23 say? \$1200.

24 Q. It was 1250.

25 A. 1250 for the initial and then the annual

0030

1 renewal for this was \$250.

2 Q. Right. When did you stop using Exterra?

3 A. About five years after I started it.

4 Q. Okay.

5 A. Because that was my defining time. I knew
6 the Termidor was going to break down in about five
7 years, and I didn't want to have any lapse in
8 termiticide in the ground for the dwelling.

9 Q. Okay.

10 A. And not just Mr. Carroll. I discontinued the
11 Exterra across the board at the end of five years.

12 Q. And just to get -- okay. And so after that
13 five-year period at 11 Tabby Lane where you say -- we
14 don't have record of it -- you say you did this bead
15 of rodged --

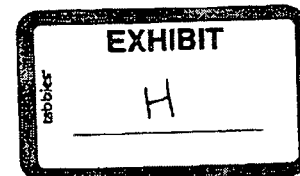
16 A. Right.

17 Q. -- termiticide, the Termidor, and you
18 discontinued the Exterra use and monitoring. What did
19 you do at 11 Tabby Lane after that fifth year?

20 A. Then I reintroduced more chemical around and
21 at the house. You have to retreat and that's what I
22 did.

23 And there should have been a new contract, and I
24 don't see it in here. But there should have been a
25 new contract. But nothing --

0031



21 Because it would take a while for the termites to
22 find a station, to feed on it, time for me to put --
23 the name of the product that killed the termites was
24 called Hexaflumuron.

25 So I would -- you know, whenever you would look

0025

1 in there and there was pieces of wood in these round
2 stations that were in the ground, you would take the
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20 A. There's no record -- and that's true.

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23 Exterra contact, Exhibit 6. Well, part of this
24 contract, Exhibit 6, is Exhibit 7.

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0026

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5 Everything about termite treatment was based on liquid
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7 This was all new and everything, okay, until they
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10 you've got to put on here that you're using the
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13 I said: Okay, but I am. And I explained the
14 fact why I did. And they said: Well, you've still
15 got to put on here -- the only thing I didn't do and
16 maybe I should have had another page saying: Well,
17 the State says I have to put on here that this type
18 treatment does not require the use of a liquid
19 termiticide.

20 But what I should have done, I should have put it
21 on another page and explained why I did and what I
22 just explained to you why I did.

23 Q. Right. Because that would have been
24 consistent with the regulations. Any time you used
25 termiticide or a termiticide-type baiting system,

0027
1 you're supposed to have a termiticide disclosure form.

2 A. Right.

3 Q. And --

4 A. And it was -- you know, it was all new. And
5 I was trying to do the best I could to protect my
6 customers because I sold them on a bit of goods of
7 Exterra.

8 Q. I'll show you Plaintiff's Exhibit 13. That's
9 the document that typically would be used in that
10 instance, correct?

11 A. Right. And there should have been one in
12 here. I don't know why it's not here. It was a
13 different one. This is -- I know this is a newer
14 version because I've seen this.

15 Q. Okay.

16 A. But there should have been a disclosure form
17 in here also, which I don't know why it's not here.

18 Q. And here's Plaintiff's Exhibit 12, which is
19 from the Graf case, which is a termiticide --

20 A. That's right. That's exactly right. And
21 this should have been in here. I don't know why it's
22 not here.

23 Q. Another thing that I noticed about the
24 Exterra contract and Plaintiff's Exhibit 6 and 7, and
25 we were just referring to the last one, the

0028
1 termiticide bait disclosure forms, Plaintiff's Exhibit
2 12.

3 But in regard to 6 and 7, those are filled out
4 but I don't see where you had Mr. Carroll sign on any
5 of those.

6 A. I have no idea why a signature is not on
7 here. It should have been.

8 Q. Did you independently tell him what you were
9 doing in terms of termiticide and all of that stuff?

10 A. Oh, yeah. I explained everything to him. He
11 wouldn't have entered the contract had I not done it.
12 You know what I mean?

13 Q. No.

14 A. Well, he would not have entered the contract
15 without understanding -- I mean, he paid for it. You
16 know what I mean?

17 Q. Right.

18 A. I don't know what the initial payment was,
19 but it wasn't 300.

20 Q. It was 1250.

21 A. \$1250.

22 Q. And that brings me to the next point. Was
23 there a difference in price between the termiticide
24 program and the Exterra baiting system program?

23 back and enter what you did, what you said in the
24 computer for that day.

25 Q. And I haven't seen any inspection forms in

0054

1 these records.

2 A. No, and you wouldn't.

3 Q. Why not?

4 A. Because the forms are in the computer. Those
5 inspection records --

6 Q. The inspection form from the site visit?

7 A. No. We tear those up and throw them away.

8 Q. Okay.

9 A. There's nothing -- only notes in there what
10 you see and what you did. Take that back.

11 Q. Got you. And so presumably, all of the bait
12 stations that you put around Jimmy's house are still
13 there?

14 A. Yes.

15 Q. And similar to a termiticide treatment, when
16 you apply the -- what is it called?

17 A. Hexaflumuron.

18 Q. Hexaflumuron, there's supposed to be a
19 termiticide disclosure form filled out at that point,
20 correct? Bait station termiticide disclosure?

21 A. Not when you're putting -- no, I don't think
22 so.

23 Q. I was looking at the regs yesterday and I saw

24 --

25 A. Every time you put it in there --

0055

1 Q. -- when you apply it --

2 A. We would go back and put it in the computer
3 if that answers that question.

4 Q. Right.

5 A. But I don't think you would necessarily have
6 to have a termiticide usage form when you were putting
7 the matrix -- the bait matrix in the box.

8 Q. Well, the bait matrix is wood. That's the
9 bait but the --

10 A. Well, true.

11 Q. And then the --

12 A. But the Hexaflumuron is the medium to kill
13 the termites.

14 Q. And it is a slow-acting termiticide because
15 termites, if you kill them right away, the colony will
16 discover that there's been death and they'll avoid it,
17 correct?

18 A. Correct.

19 Q. Termites are pretty smart?

20 A. Yeah.

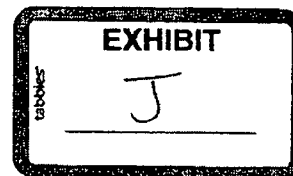
21 Q. And the Hexaflumuron is a slow-acting --

22 A. Right.

23 Q. -- thing?

24 A. Except with the Termidor.

25 Q. Termidor kills them right away.
0056
1 A. It's amazing what it does.
2 Q. Yeah.
3 A. And I could go in volumes with that.
4 Q. So were you giving away the Termidor?
5 A. Yes.
6 Q. You weren't charging customers; you were just
7 doing it?
8 A. I was doing it to protect them and protect
9 myself.
10 Q. And you weren't keeping any records of it?
11 A. No.
12 MS. PATON: Object to the form.
13 A. Not when I put -- because of the form of what
14 I, you know --
15 Q. I mean, if you were providing extra
16 protection, how would it have hurt to comply with the
17 regulations and fill out the proper paperwork?
18 A. Yeah. But I didn't.
19 Q. Okay. Tell me about your course of dealing
20 to-date with Terminex over this issue. Let's go back
21 to the point at which you all met with Terminex. Did
22 they ask you to be responsible for anything?
23 A. No, they didn't.
24 Q. To this day, have you been asked to be --
25 your company, either IOF or SPM been asked to be
0057
1 responsible for the damages to Mr. Carroll's home?
2 MS. PATON: Object to the form.
3 A. No. But once Mr. Carroll turned it over to
4 his attorney, then at that point in time, you know,
5 everybody that was involved was brought in. So in
6 essence, you know, we are here to protect him
7 whatever, you know, form and through the insurance.
8 Q. Okay.
9 A. If that answers your question.
10 Q. Yes, sir. Were you out there on any
11 occasions that the Terminex company in 2015 -- in
12 April of 2015 was inspecting the property?
13 A. No.
14 Q. Or also I think I see in Exhibit 4-Q, the
15 record of termiticide use on 4/3/15, and you weren't
16 out there at that time?
17 A. No.
18 Q. Do you know a person named George Borst?
19 A. No.
20 Q. Somehow George Borst's name ended up
21 connected with 11 Tabby Lane if you can see Exhibit
22 4-R.
23 A. All right. Hold on.
24 MS. PATON: I have 4-Q.
25 MR. MCKNIGHT: Behind that is 4-R, the next
0058



25 Q. Termidor kills them right away.
0056
1 A. It's amazing what it does.
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21 to the point at which you all met with Terminex. Did
22 they ask you to be responsible for anything?
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25 your company, either IOP or SPM been asked to be
0057
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21 connected with 11 Tabby Lane if you can see Exhibit
22 4-R.
23 A. All right. Hold on.
24 MS. PATON: I have 4-Q.
25 MR. MCKNIGHT: Behind that is 4-R, the next
0058

18 the extent of the damage to your home; is that
19 right?

20 A I would assume so.

21 Q Now, that's not based on any rules or
22 regulations within the pesticide regulations,
23 right?

24 A No, sir.

25 Q Do you intend to provide any opinions

0031

1 regarding SPM's treatment of the property?

2 A No.

3 Q Do you intend to provide any opinions
4 regarding SPM's recordkeeping at the Carroll
5 residence?

6 A No, sir.

7 Q In a professional context, strictly
8 professional, as you mentioned before, do you intend
9 to provide any opinions regarding Mr. Sottile or his
10 work as a pest control operator?

11 A No.

12 Q And your inspection, it was limited to a
13 visual inspection only, right?

14 A Correct.

15 Q And so if other entomologists or general
16 contractors or structural engineers performed a more
17 in-depth inspection, would you defer to their
18 conclusions regarding aerial infestation versus
19 ground-based infestation?

20 MR. MCKNIGHT: Objection to form.

21 A Everybody's got an opinion, I guess.

22 Q So if they went deeper into the home itself
23 and they found evidence that maybe you were not privy
24 to you, would you defer to their conclusion regarding
25 ground-based versus aerial infestation?

0032

1 MR. MCKNIGHT: Same objection.

2 A To the extent, yes.

3 MR. HEMMINGWAY: I don't believe I
4 have any further questions. I appreciate it.

5 EXAMINATION BY MR. MCKNIGHT:

6 Q Just a follow-up. This e-mail on 1-A that
7 you referenced --

8 A Yes, sir.

9 Q -- he just asked you earlier if -- let me
10 strike it. Strike that question. This e-mail where
11 he said: I only -- "I only used EXTERRA -- external
12 -- external for a couple of years." He didn't
13 mention any termiticide here?

14 A No, sir.

15 Q And you were a regulator asking him whether
16 or not -- you mentioned termiticide. You mentioned
17 all of those options and he did not mention it at
18 that time?

19 A Correct.

20 Q Assuming he went around this property at the
21 outset of the bond and in addition to doing bait
22 stations beaded "beaded" some termiticide into the
23 soil without drilling piers, without drilling slabs,
24 would that be a treatment to standard on a structure
25 of this nature?

0033

1 A At the time, no.
2 Q Would it be a treatment to the -- would it
3 be to the standard right now?
4 A Depending on the termiticide used. There
5 are some termiticides that are called EPLI, and it's
6 an exterior perimeter only treatments, where you
7 trench and treat the outer foundation wall.
8 Q But that would require trenching?
9 A Correct.
10 Q But not just beading?
11 A Not beading, yes.
12 Q Going to the -- so, theoretically, though,
13 if you were looking at -- if he admitted to you, just
14 theoretically, that he did that back in 2003 -- well,
15 let me strike that. I don't think we can go back
16 there.

17 Let's talk about, when you said that
18 Terminix, you found that their treatment was to
19 standards, they drilled the piers, they dealt with
20 the slabs and everything, you weren't commenting on
21 any kind of delays in treatment? Because they found,
22 as you understand, termites, live termites in January
23 of 2014, correct?

24 A Right. Yes.

25 Q And their treatment was what date, their

0034

1 first treatment?
2 A February 19 -- no. Wait a minute. Wait a
3 minute. April 3rd, 2015.
4 MR. BELSER: Object to the form.
5 Q Could you go and look through the report
6 where they first treated the property.
7 A Here's the records of termiticide.
8 Q And what's the first date that you see where
9 they actually went in and performed treatment?
10 A It looks like April 3rd, 2015. The contract
11 was written on February 1, 2015.
12 Q Give me one second. What are your opinions
13 regarding finding live termites in January of 2014
14 and then there being a delay in actually doing
15 something about it?
16 MR. BELSER: Objection to the form of
17 the question.
18 A I would assume if you have it under bond and
19 you found termites, you treat them.
20 MR. MCKNIGHT: I think that's all I
21 have.



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JAMES E. CARROLL, JR.)

Plaintiff)

vs.)

ISLE OF PALMS PEST CONTROL, INC.)
SPM PEST MANAGEMENT COMPANY)
INC., AND TERMINIX SERVICES)
INC.)

Defendants)

IN THE COURT OF COMMON PLEAS

IN THE NINTH JUDICIAL CIRCUIT

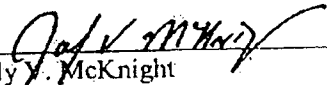
C/A: 2015-CP-10-5944

**SECOND AMENDED
SUMMONS**

FILED
2016 JUL 27 PM 2:03
JULIE J. ALMOND
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the subscriber at their offices, McKnight Law Firm, 1240 Winoing Way, Suite 102, Mount Pleasant, SC 29466, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer or otherwise plead within the time aforesaid, the Plaintiffs herein will apply to the Court for judgment by default for the relief demanded in the Complaint.


Jody V. McKnight
McKnight Law Firm
Attorney for Plaintiff
1240 Winoing Way, Suite 102
Mount Pleasant, SC 29466
SC Bar # 66354
(843) 323-4215
(843) 225-2657 fax
Jody.mcknightlawfirm@gmail.com

Mount Pleasant, SC

7-25, 2016

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

IN THE NINTH JUDICIAL CIRCUIT

JAMES E. CARROLL, JR.)

C/A: 2015-CP-10-5944

Plaintiff)

vs.)

**SECOND AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)**

ISLE OF PALMS PEST CONTROL, INC.)
SPM PEST MANAGEMENT COMPANY)
INC; AND TERMINIX SERVICES)
INC.)

Defendants)

FILED
2016 JUL 27 PM 2:03
JULIE J. ARMSTRONG
CLERK OF COURT

PLEASE TAKE NOTICE that the Plaintiff, through undersigned counsel alleges and says as follows:

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Charleston.
2. The Defendant Isle of Palms Pest Control, Inc, ("IOP") is a corporation, organized and existing in the State of South Carolina, which both owned property and conducted business in the State of South Carolina, County of Charleston.
3. The Defendant SPM Pest Management Services f/k/a Isle of Palms Pest Control ("SPM") is a corporation, organized and existing in the State of South Carolina, which both owned property and conducted business in the State of South Carolina, County of Charleston, in the name of Isle of Palms Pest Control, then later, as SPM Pest Management Company, Inc.

4. The Defendant Terminix Services, Inc. is a corporation, organized and existing pursuant to the laws of the State of South Carolina, which both owns property and conducts business in the State of South Carolina, County of Charleston.
5. All of the parties and matters alleged herein are within the jurisdiction of this Court.
6. Defendants IOP and SPM, through its owners, management, employees and agents, at all times pertinent, held itself out as an expert in the regulated field of Pest Management in the State of South Carolina; and did, in particular, engage in business throughout the City of Isle of Palms, SC.
7. On February 19, 2003, Defendant IOP (and Successor SPM), entered into a Termite Inspection and Repair Bond Agreement ("Termite Bond"), with the Plaintiff, on his home located at 11 Tabby Lane, Isle of Palms, South Carolina. Said Bond is attached hereto as Exhibit "A."
8. The terms of the Termite Bond required the Plaintiff to pay an initial sum of \$1250.00; and thereafter, pay annual installments to Defendant IOP, at that time referred to as Isle of Palms Pest Control, Inc., for annual inspections and treatment at the Plaintiff's home at 11 Tabby Lane. Defendant SPM was the successor corporation to Defendant IOP; and SPM also accepted the annual installments per the referenced bond; and presumably performed annual inspections and treatment per the bond.
9. Upon information and belief SPM sold some or all of its assets and liabilities to Defendant Terminix in 2013. The Plaintiff was never made aware of any business transactions that took place at any time. From the Plaintiff's perspective, he paid his bond premium of \$250.00 yearly, and the employees, agents and management of the respective Defendants, at times consistent with their ownership and responsibilities,

inspected and treated the Plaintiff's home located at 11 Tabby Lane, Isle of Palms. All records pertaining to the Plaintiff's home, including the termite bond referenced herein; and all other treatment records, were transferred to Terminix as part of the sale.

10. The Plaintiff paid said initial installments and installments annually on a timely basis, and relied on Defendants IOP, SPM, and Terminix, using their respective expertise, to fully inspect the 11 Tabby Lane property and structure for the presence of termites and /or termite activity, as well as any conditions conducive to termite activity; and to provide the appropriate preventative treatments to the property, in accordance with the laws and regulations in the State of South Carolina for pest control management.
11. Defendants IOP (and SPM as successor) represented that on February 19, 2003, at the outset of the relationship between Plaintiff and IOP (and Successor SPM), that there were no termites present, and no pre-existing visible damage from termites.
12. That on or about January, 2014, when Terminix inspected the Plaintiff's home, Terminix employees discovered active termites, and upon information and belief, advised the Plaintiff of the same and treated the home for termites.
13. At no time did IOP, SPM or Terminix notify the Plaintiff that his rights and remedies under the Termite Bond referenced herein changed in scope or substance; no Termite Bond modification or renunciation of rights by either party was ever agreed upon.
14. Upon information or belief, on or about January, 2015, when Terminix inspected the property again on its annual inspection, once again, it discovered active termites, and once again, treated the home for termites.
15. The Plaintiff subsequently inspected the property more thoroughly with professional contractors and discovered that virtually the entire home was and is inundated with

Subterranean termites that originated from the ground, clearly indicating that both named Defendants' treatments were not effective, for which both Defendants named herein are responsible to make repairs, pursuant to the Termite Bond, and pursuant to the Common Law of the State of South Carolina.

AS A FIRST CAUSE OF ACTION

NEGLIGENCE AS TO DEFENDANTS IOP AND SPM

16. That the Plaintiff incorporates by reference paragraphs 1 through 15 above as if stated fully verbatim herein.
17. That Defendants IOP and SPM were negligent, grossly negligent, willful and wonton in the following particulars to wit:
 - a. In failing to properly apply the "Exterra" treatment to the Plaintiff's home;
 - b. In failing to properly treat the Plaintiff's home through other liquid treatments or alternative treatments available in the marketplace to stop termites from entering the property.
 - c. In failing to properly inspect the Plaintiff's property on annual inspections;
 - d. In failing to discover active termites in the Plaintiff's property;
 - e. In failing to train it's employees and management in regards to pest control management;
 - f. In failing to comply with the laws and regulations promulgated by the State of South Carolina, pertaining to inspection for and treatment of termites.
 - g. In failing to use the degree of care and caution that a reasonable, similarly situated company in the field of termite pest management would use.

18. That as a result of Defendant IOP and SPM's negligence, gross negligence and willful wonton disregard for standards Plaintiff has suffered actual, direct, incidental, consequential, and special damages including but not limited to

(A) the Cost of Repair of for termite damages and return the home to it's prior condition of comfortable habitability; including all incidental construction labor and destructive testing expenses; or in the alternative, replacement of the 11 Tabby Lane Structure to include all supplies and construction labor;

(B) Loss of use damages for 11 Tabby Lane during the period the Plaintiff has been displaced from the home, calculated by the average rental value of 11 Tabby Lane per month, during months of displacement from 11 Tabby Lane;

(C) the Plaintiff's alternative home rental expenses by way of rental losses, due to relocation from 11 Tabby Lane;

(D) Laundry expenses due to relocation from 11 Tabby lane;

(E) Window World window replacement expenses, including parts and labor for installation;

(F) Hardi-Plank expenses for Hardi-Plank siding previously purchased by the Plaintiff; and

(G) Storage expenses.

(H) The depreciated fair market value of the home secondary to having to disclose to potential buyers a history of substantial termite infestation damages.

AS A SECOND CAUSE OF ACTION

BREACH OF CONTRACT/WARRANTY AS TO DEFENDANTS IOP AND SPM

19. The Plaintiff incorporates by reference paragraphs 1 through 18 above as if stated fully verbatim herein.
20. That Defendants IOP AND SPM warranted in the attached Termite Bond that it would apply appropriate treatments according to accepted treatment standards and properly inspect the Plaintiff's property.
21. That Defendants IOP AND SPM failed to abide by promises set forth in the bond, violated treatment and inspection standards; and is responsible for any and all actual and consequential damages suffered by the Plaintiff.
22. That as a direct and proximate result of the Defendant's breach of contract, the Plaintiff has suffered actual, direct, incidental, consequential, and special damages including but not limited to:

(A) the Cost of Repair of for termite damages and return the home to it's prior condition of comfortable habitability, including all incidental construction labor and destructive testing expenses; or in the alternative, replacement of the 11 Tabby Lane Structure to include all supplies and construction labor;

(B) Loss of use damages for 11 Tabby Lane during the period the Plaintiff has been displaced from the home, calculated by the average rental value of 11 Tabby Lane per month, during months of displacement from 11 Tabby Lane;

(C) the Plaintiff's alternative home rental expenses by way of rental losses, due to relocation from 11 Tabby Lane;

- (D) Laundry expenses due to relocation from 11 Tabby lane;
- (E) Window World window replacement expenses, including parts and labor for installation;
- (F) Hardi-Plank expenses for Hardi-Plank siding previously purchased by the Plaintiff;
- and
- (G) Storage expenses.
- (H) The depreciated fair market value of the home secondary to having to disclose to potential buyers a history of substantial termite infestation damages.

AS A THIRD CAUSE OF ACTION

NEGLIGENCE AS TO DEFENDANT TERMINIX

23. The Plaintiff incorporates by reference paragraphs 1 through 22 above as if stated fully verbatim herein.

24. That Defendant Terminix, through its business relationship and agreements on assumption of liabilities with Defendant SPM, and independently, was negligent, grossly negligent, willful and wonton in the following particulars to wit:

- a. In failing to properly apply the "Exterra" treatment to the Plaintiff's home;
- b. In failing to properly treat the Plaintiff's home through other liquid treatments or alternative treatments available in the marketplace to stop termites from entering the property.
- c. In failing to properly inspect the Plaintiff's property on annual inspections;
- d. In failing to discover the full extent of active termites in the Plaintiff's property;
- e. In failing to train it's employees and management in regards to pest control management;

f. In failing to comply with the laws and regulations promulgated by the State of South Carolina, pertaining to inspection for and treatment of termites.

g. In failing to use the degree of care and caution that a reasonable, similarly situated company in the field of termite pest management would use.

25. That as a direct and proximate result of the Defendant Terminix negligence, gross negligence and willful and wonton behavior through its relationship with SPM and upon information and belief, independently, the Plaintiff has suffered actual, direct, incidental, consequential, and special damages including but not limited to:

(A) the Cost of Repair of for termite damages and return the home to it's prior condition of comfortable habitability, including all incidental construction labor and destructive testing expenses; or in the alternative, replacement of the 11 Tabby Lane Structure to include all supplies and construction labor;

(B) Loss of use damages for 11 Tabby Lane during the period the Plaintiff has been displaced from the home, calculated by the average rental value of 11 Tabby Lane per month, during months of displacement from 11 Tabby Lane;

(C) the Plaintiff's alternative home rental expenses by way of rental losses, due to relocation from 11 Tabby Lane;

(D) Laundry expenses due to relocation from 11 Tabby lane;

(E) Window World window replacement expenses, including parts and labor for installation;

(F) Hardi-Plank expenses for Hardi-Plank siding previously purchased by the Plaintiff;
and

(G) Storage expenses.

(H) The depreciated fair market value of the home secondary to having to disclose to potential buyers a history of substantial termite infestation damages.

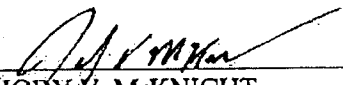
AS A FOURTH CAUSE OF ACTION

BREACH OF CONTRACT/WARRANTY AS TO DEFENDANT TERMINIX

26. The Plaintiff incorporates by reference paragraphs 1 through 25 above as if stated fully verbatim herein.
27. Defendant Terminix and SPM are liable on the Termite Bond to the Plaintiff, since neither Defendant renounced in writing any rights or remedies or duties; and Terminix accepted the Termite Bond premiums.
28. That Defendant SPM and Terminix via its relationship with SPM and the Plaintiff, and independently, warranted in the attached Termite Bond that it would apply appropriate treatments according to accepted treatment standards and properly inspect the Plaintiff's property.
29. That Defendant SPM and Terminix via SMP and independently, failed to abide by its promises set forth in the bond; and is responsible for any and all actual and consequential damages suffered by the Plaintiff.
30. That the failures of Defendants SPM and Terminix were in gross violation of the laws and regulations in the State of South Carolina related to Termite inspections and treatment; and therefore, the Plaintiff is not limited to damage limits set forth in said termite bond; rather, Defendants SPM and Terminix are both liable to the Plaintiff for any and all direct and consequential damages suffered by the Plaintiff.

WHEREFORE, the Plaintiff prays for actual damages and punitive damages to be determined by the trier of fact, and any such other relief the Court deems just and proper.

McKNIGHT LAW FIRM



JODY N. McKNIGHT
Attorney for the Plaintiff
1240 Winoing Way, Suite 102
Mount Pleasant, SC 29466
SC Bar # 66354
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Jody.McknightLawFirm@gmail.com

Mount Pleasant, South Carolina

2-25, 2016



McKnight Law Firm

Jody V. McKnight, Esq.
jody.mcknightlawfirm@gmail.com

July 25, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: James E. Carroll, Jr. vs. Isle of Palms Pest Control, Inc. et. al.
Consent Order Allowing Second Amended Complaint

Dear, Julie and Staff:

Enclosed please find the original and one copy of the Second Amended Summons and Complaint to be filed in the above matter. A Consent Order signed by all parties and by Judge Roger Young was filed on July 20, 2016, allowing this Second Amended Complaint.

Please return one filed copy to me in the stamped envelope I have provided for your convenience.

With kind regards, I am

Sincerely,

Jody V. McKnight

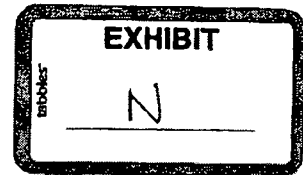
Enclosure

cc: Laura Paris Paton, Esq.
Matthew Hamrick, Esq.
Clinch Belser, Esq.

1240 Winnowing Way, Suite 102, Mount Pleasant SC 29466
Tel. 843-323-4215/ fax 843-225-2657/ direct 843-991-5639
Mount Pleasant and North Charleston, SC

2 A Yes, sir.
3 Q And that was on all sides of the property?
4 A To the best of my knowledge, yes.
5 Q Do you find, in your investigations, that
6 termites actually eat through wood and will actually
7 cause moisture problems?
8 A I have run into that before, yes.
9 Q Yeah. Of course, you didn't get up and
10 climb up on the roof or anything like that and do any
11 analysis?
12 A No, sir.
13 Q Yeah. Okay. And so what were your
14 recommendations to Mr. Carroll after you had done
15 your, after you had visited and done your report?
16 A I think, to the best of my knowledge, I
17 think it was to monitor the situation as far as the
18 treatment. There was some moisture on the front, and
19 I think I recommended some, that to be monitored, on
20 the last page.
21 Q And you said: It's beyond the scope of this
22 report and agent to assess the need for repairs.
23 Such evaluation should be made by a qualified
24 contractor, building expert, or structural engineer.
25 A Yes, sir.
0015
1 Q Yeah. And so was that your -- have you been
2 out to the property following the September 10th and
3 September 15th visit?
4 A No, sir.
5 Q So you weren't there during destructive
6 testing, all that?
7 A No, sir.
8 Q Does a property owner have a right to
9 discover the extent of damage to his property?
10 A As a layman, I would assume, yes, if it was
11 my house.
12 Q Yeah. Talk to me about the purpose behind
13 some of the regulations as a regulator. What's the
14 purpose behind recordkeeping, termiticide disclosure
15 forms, and that kind of stuff?
16 A Well, the record -- the purpose of the
17 record from my side is so we can tell exactly how
18 much chemical was made, was put down. We take
19 measurements and look at drill holes and make sure
20 that what was supposed to be done was done.
21 And by the record of termiticide being
22 there, we can look and see that, A, they mix it up
23 correctly, the correct amount was put out. And by
24 looking at drill holes, checking those, measuring
25 those, et cetera, we can tell that the proper, proper
0016
1 things there were done according to the label
2 directions.
3 Q It's all for the protection of the

4 consumer?
5 A Yes, sir.
6 Q The homeowner, correct?
7 A Yes, sir. That's right.
8 Q Talk to me about the waiver form. What's
9 the purpose of a waiver form?
10 A The waiver of standards was instituted so
11 that if somebody goes out to do a treatment and there
12 are certain things they can't do, they explain to the
13 homeowner the reason they can't do them. By the
14 homeowner signing it, that means that they are okay
15 that that's not being done.
16 And as far as the state is concerned, once
17 the homeowner understands that, we're okay with it,
18 as long as the homeowner knew certain things couldn't
19 be done.
20 Q Right. And that deals with areas of
21 inaccessibility?
22 A Exactly.
23 Q And so, for example, hypothetically, if a
24 homeowner were to build an area that created some
25 inaccessible spaces, the proper thing for a pest
0017 control operator to do would be to advise the
2 homeowner of the inaccessibility and to get a waiver
3 form signed telling the homeowner that he can't,
4 doesn't have access to those areas; is that
5 correct?
6 A Yes, sir.
7 Q And we didn't find any evidence of a waiver
8 form being signed here?
9 A Correct.
10 MR. MCKNIGHT: I think that's all I
11 have for now. If you want to answer some questions
12 from some other folks.
13 MR. BELSER: Well, my client's last on
14 the letterhead, I mean, last on the caption, but I'll
15 go first.
16 EXAMINATION BY MR. BELSER:
17 Q Mr. Hernandez, for the record, my name is
18 Clinch Belser. In this case, I represent Terminix.
19 A Okay.
20 Q I have just a few questions. You said that
21 you took the Affidavit from Mr. Michael Brandt
22 because his company, Terminix Service, Inc., was the
23 existing pest control company at the house?
24 A Yes, sir.
25 Q You did look at the treatment given by
0018 Terminix on or about April 3, 2015?
2 A Yes, sir.
3 Q And does your report correctly state your
4 conclusion that all standards for the treatment were
5 correctly done?



1 What is that based on?

2 A. Why would he have done it any other way, I

3 ~~guess is what I'm thinking in my mind. Why would~~

4 he have not given all the documents to Terminix?

5 What would he have gained or lost from doing that?

6 Q. That's my point. Are you assuming he didn't

7 give all his records to Terminix? I'm asking you

8 to assume that what he testified to under oath was

9 true, which was that he did produce the records; in

10 other words, that he made records like he was

11 supposed to, that he kept the records like he was

12 supposed to, that he then transferred all of those

13 records when he sold his business. I'm asking you,

14 if you take him at face value on those things, then

15 why do you then assume that if we don't have the

16 records now, it's because he didn't ever make the

17 records or didn't ever keep the records?

18 MR. BELSER: Objection to the form of

19 the question.

20 THE WITNESS: My understanding is he's

21 testified that he couldn't find the records. The

22 records for all the bait station monitoring, he

23 couldn't find those records. He said that they

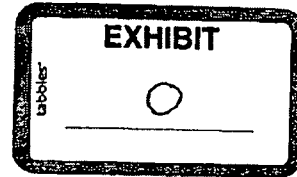
24 wasn't available. He tried to do the computer. He

25 couldn't find the records. I don't think that

1 there was ever any records that he ever had. Am I
2 reading that wrong? If I am, then I need to be --
3 my understanding of his testimony was that he lost
4 the program and all the electronic documents that
5 were in that program that were part of the Exterra
6 bait station monitoring. That was my understanding
7 of his testimony, that he didn't have any of that.
8 So that did not get transferred to Terminix because
9 he had already lost those.

10 And then I also heard -- then I'm also
11 looking for the requirement that anytime he did a
12 liquid treatment that he should have that in the
13 records, and Clemson should have a copy of that in
14 their records. You have to have a pesticide usage
15 report when you turn them in. So we don't have
16 that either. Somebody should have copies of that,
17 particularly. That's the reach I'm trying to make,
18 and that's why I don't think -- either they weren't
19 done properly, or they weren't done at all is the
20 only way that I can go with it because they're not
21 here and they should be.

22 Q. And I don't know that you're characterizing
23 his testimony correctly, but I'll just say that on
24 the record, when you say you believe he said he
25 lost the Exterra bait station monitoring records.



Deposition of Maxcy P. Nolan, III, PH.D. (Vol 2)

1

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 DEPOSITION OF MAXCY P. NOLAN, III, PH.D.
5 VOLUME II

6 JAMES E. CARROLL, JR.,

7 Plaintiff,

8 vs.

CASE NO. 2015-CP-10-5944

9 ISLE OF PALMS PEST CONTROL, INC., SPM PEST
10 MANAGEMENT COMPANY, INC., AND TERMINIX
11 SERVICES, INC.,

12 Defendants.

13 DEPONENT: MAXCY P. NOLAN, III, PH.D.

14 DATE: MAY 3, 2017

15 TIME: 10:10 A.M.

16 LOCATION: KERNODLE COLEMAN
17 CHARLESTON, SC

18
19 REPORTED BY: RUTH L. MOTT, RPR, CRR
20 CLARK & ASSOCIATES, INC.
21 P.O. Box 73129
22 Charleston, SC 29415
23 843-762-6294
24 WWW.CLARK-ASSOCIATES.COM
25

1 A P P E A R A N C E S

2

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5 BY: JODY MCKNIGHT
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8 ON BEHALF OF ISLE OF PALMS PEST CONTROL, INC.:

9 KERNODLE COLEMAN
10 BY: MATTHEW D. HAMRICK
11 914 Folly Road, Suite 2
12 Charleston, SC 29412

13 ON BEHALF OF SPM PEST MANAGEMENT COMPANY, INC.:

14 ETHRIDGE LAW GROUP
15 BY: MATTHEW T. HEMINGWAY
16 PO Box 20969
17 Charleston, SC 29413

18 ON BEHALF OF TERMINIX SERVICES, INC.:

19 BELSER & BELSER
20 BY: CLINCH H. BELSER, JR.
21 PO Box 96
22 Columbia, SC 29202

23 - - -

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1 I N D E X

2

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1 (Exhibit No. 29 marked for
2 identification.)

3 MAXCY P. NOLAN, III, PH.D.,
4 being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. HAMRICK:

7 Q. All right. Dr. Nolan, I know we've met
8 before. We took your deposition before and so this
9 is a follow-up to your deposition on some issues
10 that have arisen, I guess, since your deposition,
11 but as you know, my name is Matt Hamrick. I
12 represent Isle of Palms Pest Control in this case.

13 And so we're not going to go back through
14 everything, of course, this shouldn't be anywhere
15 near as long as your last deposition, you'll be
16 happy to know that, but we want to ask you some
17 questions about some calculations that I believe
18 you've done since your deposition in this case.
19 Are you familiar with the calculations that I'm
20 talking about?

21 A. Yes, sir.

22 Q. Okay. I'm going to hand you what's been
23 marked as Exhibit 29 in our continuing numbering
24 system for exhibits on these depositions and ask
25 you to take a look at it and tell me basically what

1 that exhibit consists of. It's four pages long.

2 A. It's an estimate of the wood consumption,
3 the time it would take for termites to eat certain
4 amount of wood and -- from this particular
5 residence with the supporting scientific literature
6 or page out of the book that we used to calculate
7 that.

8 Q. All right.

9 A. I believe that's what it is.

10 Q. Okay. And when you say the residence, you
11 mean 11 Tabby Lane, Mr. Carroll's house, correct?

12 A. Right.

13 Q. First of all, let me ask you, have you ever
14 in the past performed a calculation like this to
15 try to determine the amount of wood consumed in a
16 particular residence?

17 A. Yes.

18 Q. You have. All right. On how many
19 occasions, if you can recall?

20 A. Probably about a thousand times.

21 Q. Really? Okay. And those other times, were
22 you trying to determine by this calculation process
23 the amount of time that termites did damage in a
24 residence?

25 A. Yes.

1 Q. All right. And were you trying to determine
2 when infestation first began in a residence by
3 doing this calculation?

4 A. Not every time, but most times.

5 Q. All right. In this case about 11 Tabby
6 Lane, Mr. Carroll's residence, are you planning to
7 give an opinion about when the termite infestation
8 first began?

9 A. No.

10 Q. Okay. So this calculation about wood
11 consumption is not for the purpose of giving an
12 estimate of when the termite infestation first
13 began?

14 A. Correct.

15 Q. All right. And is that because -- and I
16 believe you discussed this in your previous
17 testimony, is that because even if you are able to
18 calculate the amount of wood consumed and therefore
19 damage done, you cannot say that it was all done
20 continuously and therefore you can't just go back
21 with the consumption rate to a date where the
22 termite infestation first began?

23 A. That's part of it, yes. That and then the
24 fact that you don't know modifications that could
25 have been made to the building. What this says is

1 what it says. We don't need to go any further than
2 the statement. It is a time to eat. That's
3 consumption, time to -- it takes that much time to
4 damage from the wood that we calculated was
5 consumed.

6 All this is is saying is that termites, from
7 us measuring board feet of wood, we know how much
8 wood they ate, because we've measured it, and we
9 know how long using the calculations of how many
10 days it takes to eat a board foot. It's just a
11 straight math equation from that point forward.

12 Q. Okay.

13 A. So we said there was 283.681 board feet that
14 we actually observed, okay? That's all I can do.
15 I don't know what was missing. This goes back to
16 your question, your thing. I don't know how much
17 was missing, what was in dumpsters. You understand
18 what I'm saying?

19 All I know is when we were there when the
20 house was there the day that we did this
21 inspection, that's where -- that's how much wood we
22 observed had been consumed by Formosan termites.
23 And if that was the total picture, that's how long
24 it would have taken for them to eat that much wood.

25 Q. Okay.

1 A. So that's what we know, and that's what I
2 think I described in my deposition that's what we
3 could find out, is how long, you know, using the
4 mathematical equation of how long -- it takes 19
5 days for one colony, a mature colony, for one
6 mature colony to eat a board foot of southern
7 yellow pine, and this house had southern yellow
8 pine as the framing.

9 So from that we took the number of board
10 feet, we measured the distance and the thickness,
11 depending on how much of -- say it was a 2-by-4 or
12 2-by-6 or 2-by-8. We measured how much of that was
13 consumed.

14 And our estimation is never over one half of
15 that amount of wood because they don't eat -- the
16 termites don't eat the wood in between. They just
17 eat the fat wood, soft wood. They eat the soft
18 wood out of the -- you've seen many termite
19 damages. You know what I'm talking about. It
20 looks like a string. They eat between the rings,
21 so that's what this is.

22 Q. Okay. And we'll go through it in a little
23 bit greater detail. First of all, when was the
24 inspection when you calculated these amounts of
25 wood and so forth?

1 A. 1/6/17.

2 Q. And so when you say it was based on the wood
3 that you observed on that date and not wood that
4 had been discarded, what do you mean? You only
5 based your calculations on the wood that was
6 remaining at the residence on January 6, 2017,
7 after all of the destructive testing?

8 A. Yes.

9 Q. Okay. Do you know whether or not wood had
10 been discarded?

11 A. Well, there's some places where there's not
12 some wood, so yes, but I don't -- you know, I don't
13 know the extent of that. I can't measure something
14 that's not there.

15 Q. All right. Well, let's go through it.
16 First of all, I'm going to turn to the second page
17 of this exhibit and ask you to explain what's on
18 this page. This is the page I'm looking at, so
19 it's the page that says 11 Tabby Lane, Isle of
20 Palms, Carroll residence, date, January 6, 2017.
21 It's got your company logo, NIPCAM Group and it
22 says time, 11:30 a.m. And if you would, go ahead
23 and explain what this shows or what the numbers
24 mean.

25 A. Okay. The number of feet is on the -- the

1 first -- the first column says measurements of
2 feet, okay. The next column is 2-by-4s. See that,
3 2-by-4? Going down there, that's how many lineal
4 feet of board feet -- that's how many lineal feet a
5 2-by-4 in that particular location in the house
6 where we found a 2-by-4 that was damaged, and Brent
7 and I did this, my oldest son.

8 So we went in and the first spot, 7 feet of
9 2-by-4 was damaged and 50 percent of it was
10 damaged, 50 percent of that 7 feet. In other
11 words, the termites had eaten half the wood. So
12 that's what we used for our calculation. Are you
13 with me? And then that's how it proceeds all the
14 way down.

15 So the first column is the size of the wood.
16 That's really not going to sound good on the thing.
17 It's really the second column. The first column
18 doesn't have really anything in it. It says
19 measurements.

20 The second column that says 2-by-4, you go
21 down there, that's the length of 2-by-4s we found.
22 The third column, percent damaged, and that's how
23 much of that 2-by-4 by measuring it vertically
24 across the board was damaged.

25 And then the next, the next column is the

1 number of 2-by-6s. There was 4 foot or 6 foot,
2 30 feet. There's that 30 feet of damage and the
3 percent damaged. It would be the fifth column,
4 okay.

5 Then we did 2-by-8s, which are bigger pieces
6 of wood again. And you go down, there was one
7 8 foot long, one 10 foot long, one 2 feet long and
8 one 6 foot long, and each of those was 25 percent
9 damaged, okay.

10 Then the next one was 50 -- I mean, then the
11 next one was 4 feet and it was 20 percent damaged.

12 Then we had 4, 6 and 8, if you see the next
13 line. Half of those were damaged.

14 Then we've got 30 feet, which is a lot,
15 30 feet of 2-by-8, and there was 20 percent of it
16 was damaged. 18 and 4, 25, so you've got that
17 column.

18 And then the next one are 2-by-12s, which is
19 the biggest pieces of -- or the biggest width of
20 the wood, and there was a 4-foot section 25 percent
21 damaged and then a 3-, 5- and 4-foot section
22 20 percent damaged.

23 Q. All right. Continue. There's a part on the
24 bottom there.

25 A. It says 60 feet of 2-by-4s were placed

1 around -- you know, we figured how much had been
2 replaced, but we didn't -- you know, we didn't know
3 about that part, so we couldn't do it.

4 Q. What does the next line say? It looks like
5 a 1 --

6 A. I took a picture of the top of the piling
7 from the second floor and left front side of house.

8 Q. Okay.

9 A. And I don't exact -- I think we were talking
10 about that other spot. And I don't remember the
11 picture. I'd have to go back and look. I'll be
12 honest, I didn't review that. I just saw that.

13 Q. Okay.

14 A. Then the bottom is there's a 8-by-12, 12
15 feet long, 50 percent damaged, and the 6-by-12,
16 which is 6 feet, inches wide, then 4-by-12 and
17 2-by-10's, that's the thing.

18 And then on the other page here are just the
19 calculations we made by taking all those different
20 pieces of wood, you know, and adding them all
21 together. That's where we got the amount of
22 damage. That's just the calculations.

23 And then the next page is, which you
24 requested, the place where in the Scientific Guide
25 to Pest Control, the table here that shows the

1 amount of wood eaten by different -- in different
2 types of wood by Formosan termites.

3 Q. All right. Let me back up, and I'm going to
4 ask you some questions about the second page of the
5 exhibit. First of all, on the percentages damaged,
6 how did you calculate those percentages? Are they
7 estimates?

8 A. Yes, it's an estimate.

9 Q. Are they estimates just based on visual
10 inspection?

11 A. With probing too. You know, I looked at the
12 wood and saw how much of it had been damaged and
13 that's the way I did it. Pretty easy to look at a
14 piece of 2-by-4 and know how far up or down it was.
15 That's the way we did it. It was a visual
16 estimate.

17 Q. All right. Because I notice, I mean,
18 they're all -- they're even numbers, like
19 50 percent, 10 percent, 30 percent, 25 percent once
20 or twice here. I mean, how accurate are these
21 estimates?

22 A. Pretty close.

23 Q. How do you know?

24 A. Because I did them.

25 Q. All right. Backing up, so on each of these

1 sections, the lengths of the boards where you have
2 the column that says, like, 7 feet, 6 feet, 3 feet,
3 the ones that say, like, 8, is that a comma 6?

4 A. Yes. It's two different pieces of wood that
5 long.

6 Q. Okay. Did you make any -- did you make
7 any --

8 A. Those are exact. The lengths are exact
9 because I took a tape measure and we measured the
10 pieces of wood, okay. That part's exact, but the
11 question you asked me was how did I know that --
12 and when you get to a 2-by-4, you know, I could
13 have been off a percent or two and I admit that.

14 Q. Okay.

15 A. As far as the width. I'm sorry.

16 Q. I understand the percentages that you're
17 talking about, but on the lengths, so each of these
18 lengths of boards were these exact lengths? I
19 mean, none of them were 7 feet 3 inches, for
20 example, 6 feet 4 inches? They were all exact to
21 the exact foot?

22 A. Yes, we took the calculations off of that
23 exact length. In other words, I took 7 feet. No
24 matter how long the board was, I took 7 feet. Of
25 that 7 feet, I got a percent off of it.

1 Q. All right. Why would you measure just an
2 even numbered length of a particular board?

3 A. It's easier to figure out the percentages
4 that way.

5 Q. But weren't you trying to figure out how
6 much wood was consumed in this house?

7 A. Yes.

8 Q. Okay. Then why wouldn't you have measured
9 whatever portion has been eaten by termites instead
10 of just picking some random 7-foot length?

11 A. Because it's harder to figure the
12 calculations like that. We did the estimate on
13 percentage damage of that particular piece of wood.
14 So 7 foot of damaged wood, whether it was -- you
15 know, whether it was completely consumed or not,
16 that was not relevant because then we figured a
17 percentage of that 7 feet.

18 Q. I'm totally confused. I mean, if you're
19 trying to figure out how long it took for the wood
20 that was consumed in this house to have been
21 consumed, why wouldn't one starting place be the
22 actual measurement of the actual wood that was
23 consumed in the house?

24 A. It is.

25 Q. But you're just picking random 7-foot

1 sections, 6-foot sections, 8-foot sections. I
2 mean, you're not -- you're not measuring the actual
3 parts in the house that were all consumed. I don't
4 understand.

5 A. If we're running a mile and you walk for a
6 quarter of a mile and I did the whole mile and we
7 want to know how far you did, I could always say,
8 well, I ran a mile and measure my mile and then I
9 go back and figure out that you only did a quarter
10 of it. That's what the percentages are.

11 Q. Okay.

12 A. In other words, I have an area -- if this
13 table was 100 percent damaged -- of the area that
14 I'm measuring, I take an exact measurement so I
15 know how much I have. Then I make an observation,
16 well, what percentage of that area that I just
17 measured is damaged. Doesn't matter if half of
18 it's not damaged. I get an estimate, and that's
19 why you have the 50 percent and you have the
20 percentages of that. I like to do even
21 measurements and then of that 7 feet, how much is
22 damaged.

23 Q. All right. Well, I'm still confused, but in
24 your example, if you did that on how long it would
25 take me to run a mile and you were trying to

1 calculate it in the way you've described, it would,
2 one, assume that I'm running at the same rate the
3 entire mile, correct, no variation in the amount of
4 my speed as I go the mile?

5 A. I did amount. We did the amount that you
6 ran. That's all I was saying was how far you went.
7 You did a quarter. And if a mile was our
8 measurement, we would know that you did a quarter.

9 Q. What if I ran the first quarter faster than
10 I ran the second quarter?

11 A. You didn't run but just a quarter. We're
12 using consumption as a level.

13 Q. But then you're extrapolating it out to say
14 if I know how fast you ran the quarter mile, then I
15 can tell you how fast you ran a mile. I mean,
16 isn't that what you're using an example?

17 A. No, no, no. I'm saying that you only ran a
18 quarter. Even though I measured a mile, from my
19 calculations, by looking at the whole piece of
20 this, well, he only ran a quarter of a mile because
21 I knew that you stopped at a quarter of a mile.

22 Q. All right. Well, I'm going to go back to
23 wood calculations since that's what we're talking
24 about because I think that might get confusing. I
25 don't understand it, talking about the quarter

1 mile.

2 But in any event, are you saying that you'd
3 be able to just take any given piece of wood that
4 was damaged, measure one part of it, not the entire
5 damaged piece --

6 A. No.

7 Q. Well, let me finish my question. And then
8 based on that little section that you observe and
9 your estimated percentage of the wood damaged, that
10 might be off by a couple percentage points as you
11 put it, then you'd be able to somehow calculate
12 how -- the rate of consumption of the wood in the
13 entire house?

14 A. No.

15 Q. Okay.

16 A. That's not what I'm saying at all.

17 Q. Okay. Well, I don't understand. I'm sorry.

18 A. You're looking at the rate that it takes for
19 the termites to damage and we're talking about how
20 long it took for the time.

21 Q. You've done this type of calculation
22 thousands of times?

23 A. Yes.

24 Q. In other cases where you've been an expert
25 witness?

1 A. Yes.

2 Q. Do you know of any other termite expert that
3 does this type of calculation and gives opinions
4 about consumption rates in termite cases?

5 A. I don't know everybody. There's a lot of
6 them out there I don't know, lot of people. This
7 is just straight out of the book.

8 Q. We're going to get to the book, but do you
9 know of any other experts that perform this type of
10 calculation?

11 A. I don't know very many other experts, to be
12 honest with you.

13 Q. Not my question. Do you know of any --

14 A. No.

15 Q. -- who have done this?

16 A. No.

17 Q. All right. I've got to go back because I do
18 not understand at all what you're saying here. Why
19 did you take some particular, let's just go with
20 the first line where it says 7 feet of a 2-by-4
21 50 percent damaged, all right? Those first two
22 columns or first line, second and third column
23 there on this page, why did you measure that
24 particular 7 feet of 2-by-4?

25 A. Because most of it was damaged.

1 Q. All right. Well, here it says 50 percent of
2 it was damaged, so is it most or is it half?

3 A. 50 percent was damaged.

4 Q. Okay. Well, a second ago you said most of
5 it was damaged, so I've got to ask you to be
6 precise. Is 50 percent most or is 50 percent
7 exactly half? These are mathematical calculations,
8 so I've got to ask you to be precise in your
9 answers, okay? These are your mathematical
10 calculations.

11 A. I understand.

12 Q. All right.

13 A. Of the 7 feet, the lineal 7 feet of damage,
14 if you looked at it from the top or just looked at
15 that piece of wood, you would say most of that was
16 damaged, okay. Of the entire amount of wood in the
17 7-foot piece, the 7-feet-long 2-by-4, 50 percent of
18 the wood in that 7-foot section was damaged by
19 termites, had been consumed by termites.

20 Q. All right. I'm confused. I mean, you've
21 said most of it was damaged, then you said
22 50 percent of it was damaged. Those are two
23 different things. How do you explain that?

24 A. I'm trying to think how to describe to you.

25 Q. Are you not able to answer the question? I

1 mean, if not, I'll move on and try to ask it a
2 different way or ask a different question if you're
3 not able to answer my question. I'm just trying to
4 understand. I don't understand.

5 A. I know you don't and I'm trying to think as
6 hard as I can just how to make you know how I do
7 it, how I do it or how I've made the calculation.

8 Q. Okay.

9 A. This house was made up of pieces of wood,
10 okay. And let's just say it's a 2-by-6, you
11 visually see termite damage on that. Have we said
12 how long it was? Did I say that yet? Did I say
13 how long the 2-by-6 was? I don't think I have.
14 Let's just say it's -- can we just do a -- let's do
15 the first one.

16 Q. The first 2-by-6?

17 A. It's 4 feet long.

18 Q. Okay.

19 A. Okay. It could have been a 40-foot piece of
20 2-by-6, okay? There's a lot of 2-by-6's in that
21 house, but this particular spot that was damaged
22 that we could visibly see damage, it was probably
23 3 feet, 9 inches of actually visibly damaged wood.

24 Q. Okay. Not 4 feet like you wrote down, but
25 3 feet, 9 inches?

1 A. But we're doing this all on percentages, of
2 the total piece of wood, okay? So I go make an
3 even measurement of four feet, okay? Now, knowing
4 that that piece is not damaged, we take -- that's
5 not in the calculation. That's not what you figure
6 out. You figure out a percentage that's left, so
7 that's where that number, 25 percent, comes from.

8 Q. Okay. But you are trying to give us a
9 calculation of feet of boards damaged in a
10 particular amount of time, correct?

11 A. Eventually, yes.

12 Q. Okay. So the only purpose in your noting
13 percentages damaged are just so that you don't
14 calculate, for example, for that 4 feet 2-by-6, if
15 it had been 4 feet and not 3 feet, 9 inches, but
16 let's just assume it was what you wrote down,
17 4 feet, your only -- your only purpose in saying
18 here -- in noting that there's 25 percent of that
19 damaged is just so that you don't then calculate
20 4 feet consumed over some period of time. You're
21 only going to calculate a fourth of that consumed
22 over that period of time, right, because that's the
23 purpose of you --

24 A. Yes.

25 Q. -- showing how much of it was damaged?

1 A. That's correct.

2 Q. Okay. But ultimately what you're trying to
3 show in these calculations is a total number of
4 board feet damaged in a particular amount of time,
5 correct?

6 A. That's correct.

7 Q. Okay. Well, first of all then, isn't it
8 important to calculate exact amounts of board feet,
9 not estimated or rounded down or up?

10 A. The percentage is included in the length.
11 That's the part -- you don't understand that part.

12 Q. I mean, we just went over that. The only
13 purpose of putting a percentage in is just so that,
14 for example, for any given piece of wood here that
15 you show on your chart, on your graph or chart --

16 A. If it had been 14 feet where your finger is
17 there, if it had been 14 feet, the calculation
18 would have been 25 percent damaged. If I had gone
19 past and I had run my tape measure out 14 feet
20 instead of stopping at 7, there would have been
21 25 percent damage, and all that that's left that we
22 just talked about wouldn't have been included in
23 the calculation. All that --

24 Q. Well, then --

25 A. I don't know why you don't -- I don't know

1 why that makes a difference to you.

2 Q. Well, all right. Let's just say there's a
3 14-foot piece of wood, okay, but only half of it's
4 damaged, all right? Now, that could be that
5 there's 50 percent damaged along the length of the
6 entire 14 feet or it could mean the first 7 feet or
7 it could mean 2 feet here, then no damage, then
8 2 feet here are damaged, then no damage and then
9 2 feet here. I mean, it could be any of those, but
10 what we need to know is, which was it?

11 I mean, are you saying that when you put
12 down 7 feet of a 2-by-4 at 50 percent damaged, does
13 that mean that there are actually -- that you
14 observed some 7-foot length of a board and there
15 was damage throughout that 7 feet and your
16 estimation is that it's about half of that 7-foot
17 piece is damaged?

18 A. Yes.

19 Q. Okay. Because I think what you just began
20 to describe and said this was the reason you
21 were -- you thought I was having trouble
22 understanding is because it may have been a 14-foot
23 piece of wood, but only half of it was damaged and,
24 therefore, you put 7 feet or something along those
25 lines.

1 I really don't understand. Were you trying
2 to actually go and calculate, measure, lengths of
3 boards that were actually termite damaged?

4 A. Yes.

5 Q. All right. First of all --

6 A. So that's totally different. That is a
7 totally different number than the length of boards
8 in the house because the boards could be eaten
9 7 feet and it's a 20-foot board, and then even of
10 that 7 feet, the termites didn't eat the whole
11 thing.

12 Q. Right.

13 A. So that's why.

14 Q. Okay.

15 A. That's the estimation.

16 Q. No, I understand that. I mean, it wouldn't
17 make any sense for you to be including particular
18 pieces of boards that had no termite damage in them
19 since the whole point here is to try to calculate
20 the amount of boards that were termite damaged in a
21 particular amount of time, correct?

22 A. That's what that was.

23 Q. So there would be no reason to include in
24 any of these any boards that had no termite damage?

25 A. That's correct.

1 Q. All right. Let's just take on this first
2 column where it says 7 feet of 2-by-4, did you make
3 any notation or do you have any -- do you know
4 where that particular 7 feet of 2-by-4 was in the
5 house?

6 A. No.

7 Q. Okay.

8 A. I mean, I know how it went through the
9 house. It went left to right and around, but no, I
10 didn't write which way they measured the pieces of
11 wood as we came to them in the house. I didn't --
12 every piece we took, there's a lot of wood there,
13 as you can see, we didn't, no.

14 Q. All right. On the third page of the
15 exhibit, what are these? It says 2-by-4 at the
16 top, and then it just starts listing some numbers.
17 Is that 3.5 or is that 3 comma 5, the first number
18 there?

19 A. That's the board feet when you take the
20 percentages.

21 Q. All right. So it comes right from this? So
22 it comes right from this, the second page?

23 A. I'm pretty sure, yes.

24 Q. So that 7 feet, 50 percent, then you just
25 say half of 7 feet is 3.5, and then you just go

1 right on down?

2 A. That's how we did it, yes.

3 Q. All right. How did you account for
4 differences in the widths of these boards? So, I
5 mean, you note 2-by-4, 2-by-6, 2-by-8, 6-by-12, you
6 know, and so on.

7 A. A 2-by-4 is the -- is the one -- it is a
8 standard. If it's a 4 by 4, it's two 2-by-4s
9 together, right.

10 Q. And is there somewhere in these calculations
11 where you, for example --

12 A. It's all made -- this all goes back to board
13 feet. A board foot is one foot of 2-by-4.

14 Q. All right. If a board foot is one foot of
15 2-by-4, then where in these calculations do you
16 account for, for example, a 6-by-12? Where do you
17 do the conversion of if there is, you know, some
18 particular length of 6-by-12, where is the
19 conversion into what that would equate to if it was
20 a 2-by-4 and not a 6-by-12?

21 A. Right. I think, is that at the bottom of
22 the page, 6-by-12, 4?

23 Q. I don't know.

24 A. Yes, 30 percent of 4 feet of 6-by-12.

25 Q. All right. But still, so at some point in

1 this calculation you are --

2 A. You convert the width and the thickness down
3 to 2-by-4s.

4 Q. Where is that conversion shown? That's what
5 I'm trying to --

6 A. It's just put on the sheet there. It's a --
7 where it says 6-by-12, that's just a calculation
8 using a calculator. That first four is that
9 number. That's how much. That's how many board
10 feet are in 30 percent damaged 4 feet of that wood.

11 Q. Let me ask you this: Let me go to the table
12 that you used, and this is out of Truman's
13 treatise, Truman's Scientific Guide; is that
14 correct?

15 A. Yes, sir.

16 Q. And this fifth edition that you used was
17 published in 1997; is that right?

18 I'm referring to the first page actually
19 now. The first page of this exhibit, that's what
20 you wrote down?

21 A. I think that's where we calculated where the
22 book was, yes.

23 Q. And it also says that that book was first
24 published, what, May of 1976; is that right?

25 A. Yes.

1 Q. All right. Let's look at the table. So
2 it's Table 7.3; is that correct? Do you know when
3 this table was first included in this book? In
4 other words, was this table included in the
5 May 1996 first edition or do you know?

6 A. I don't think so. I don't think this
7 research had been -- it had been done, but it
8 hadn't been sort of put into anything yet.

9 Q. All right. Do you know when this table was
10 first included in this book?

11 A. No.

12 Q. All right.

13 A. I know the research -- the research article
14 was done in Pest Control Magazine in May of 1976.
15 That's what it says in the table.

16 Q. Okay. So it says this table is based on
17 something that was in Pest Control Magazine in
18 1976?

19 A. Yes, this is a scientific reference, you
20 know, a refereed journal -- a refereed journal
21 article that had been performed, and that's when
22 these consumption -- that's when the consumption
23 data was done.

24 Q. Okay. So this consumption data is from
25 1976?

1 A. Yes, but it just wasn't put in the book that
2 you're talking about.

3 Q. Understood. So regardless of when this
4 table -- the information in this table was put in
5 the book, in the Truman's book, the information
6 that's in this table was produced from a study in
7 1976, correct?

8 A. That's correct.

9 Q. All right. So back in 1976, it was
10 estimated that the number of Formosans in a
11 Formosan colony was 350,000. That's what this
12 table says, correct?

13 A. Yes.

14 Q. Since 1976, isn't it true that it has been
15 determined that Formosan colonies typically have
16 many more termites in the colonies than 350,000?

17 A. Genetically, yes.

18 Q. Genetically? What does that mean?

19 A. There's a different way -- the scientific
20 literature today uses genetic markers and that type
21 of thing to determine the size of -- or the size of
22 colonies. And what it is, the focal points, they
23 can go back and trace termites from a larger area
24 and say that they're all related, but the data from
25 here is from a focal point like we had in this

1 house, different places.

2 So I think that the 350,000 is still pretty

3 accurate. It's the same thing for the other one,

4 R. Flavipes, the one that has 60,000, the new

5 literature says it's normally four spots. You

6 could do genetic markers on them and that makes

7 about 250,000 individuals.

8 So I think the data's still good on the wood

9 consumption. It's just the way that people define,

10 I think that's the best term, the way that people

11 define where the colony is now has changed from how

12 they defined a colony through observation rather

13 than through genetic marking. That's the

14 difference.

15 Q. All right. And first of all, so the second

16 column on this table, 7.3, regarding R. Flavipes,

17 that's eastern subterranean termites, correct?

18 A. That's correct.

19 Q. And that's not what we had in 11 Tabby Lane,

20 correct?

21 A. That's correct.

22 Q. We had Formosans in 11 Tabby Lane?

23 A. Yes.

24 Q. So the second column of this table just

25 doesn't apply to this case, correct?

1 A. Correct.

2 Q. Okay.

3 A. But your question, I think, it goes to show
4 you the way the science views, because of genetics,
5 genetic marking and DNA and that type of thing,
6 they can -- they can say more things are related
7 than what we did to what was done in 1976.

8 It's just that the Formosan colonies are
9 bigger than they thought, not that the focal points
10 were changed in numbers of individuals. The
11 cartons you hear about, you know about cartons and
12 you know about that type. That information is
13 still good, but what they're saying is it's a
14 more -- it can be a more far-branching number of
15 individuals that are genetically related. That's
16 what I'm trying -- that's the change in the
17 nomenclature.

18 Q. All right. Well, since we're trying to
19 determine or you're trying to determine or have
20 said you have determined the amount of board feet
21 eaten in this house by the termites that were in
22 this house in a particular amount of time, one
23 factor, one variable that you necessarily need to
24 know for that calculation to be accurate is the
25 number of termites in the house, correct?

1 A. That's correct.

2 Q. All right. How many termites were in this
3 house?

4 A. I don't know.

5 Q. Okay. Well, then how can you do this
6 calculation? I mean, that's the basis for it.

7 A. I did the calculation based on the
8 literature that's available.

9 Q. So you think there were 350,000 termites in
10 this house?

11 A. That's not what I said. I said based on
12 this information, this is the calculations that we
13 made, and that's -- that's what's been published in
14 the literature of a normal size Formosan termite
15 colony. Our focal point is this, and that's what I
16 did. That's what I told you I could do and that's
17 what I did. I'm not trying to make it any more or
18 any less than what's here.

19 Q. So you are giving the opinion here in
20 2017 --

21 A. No, I didn't say that. I said I made my
22 calculations off the board feet that we measured
23 and using these parameters.

24 Q. But do you agree with these parameters, that
25 there are 350,000 termites in a colony of

1 Formosans?

2 A. I tried to explain that and it's hard for me
3 to explain it to you because there's two different
4 things we're looking at. Whenever you go look for
5 termites in a building or anywhere, you find
6 localized areas that have termites there. This
7 research was done using those observations, that
8 type of an observation.

9 All the new literature that's come out since
10 you were born has been used by Nan-Yao Su and the
11 guys that have done their marking down in --
12 they've learned that they can take a genetic marker
13 and they can find how far termites may go out. So
14 now they have said, well, you know, they're all
15 related. They're not really the focal points that
16 we've all been looking for over the years, but
17 they're all related.

18 So that meant there could be 8 or 10 of
19 these things that we thought -- or these areas that
20 we thought back in the '70s and '80s that were a
21 whole colony of Formosan termites, when in fact
22 there's eight or ten of these things that are
23 related in a larger area.

24 So they say, well, now the size of the
25 colony has gone up because we can mark and find

1 similar DNA in different areas throughout an area,
2 different areas throughout a location.

3 Q. So you're saying that the more recent
4 literature that estimates the size of Formosan
5 colonies much higher than this table shows is based
6 on finding related termites in various spread out
7 areas?

8 A. Yes. There's secondary colonies, tertiary
9 colonies. They dig and trench and they mark the
10 termites and they find that visiting termites go
11 from a lot of different places out there. So
12 there's eight or ten that are connected now where
13 we used to think there was one or two.

14 Q. Okay. Well, since you're trying to give us
15 a calculation of how much board feet were eaten
16 over a certain period of time in this house at
17 11 Tabby Lane, isn't it necessary for us to at
18 least have an estimate of the number of termites in
19 the colony or colonies in this house without regard
20 to the cousins of those termites that might have
21 been somewhere else? Isn't it necessary to start
22 with that?

23 A. We did that. There's two -- we think that
24 there's two colonies in the house and each of the
25 colonies is an average size, 350,000 individuals.

1 Q. Why do you think the average size of the
2 colonies that were in the house were 350
3 individuals each?

4 A. Because that's what this research says is a
5 normal sized colony for this type of observation.
6 That's what they are.

7 Q. Where does it say that?

8 A. In the literature. You haven't read it.
9 You've just got the table here. You have to read
10 the paper.

11 Q. So it is your opinion as an expert that the
12 colonies in this house, and we'll get to how many
13 colonies you think there were in a minute, but if
14 there were more than one colony in the house, it is
15 your opinion that each of those colonies only had
16 350,000 termites in them?

17 A. I'd say that's the average size of a
18 Formosan termite, yes, a focal point.

19 Q. Do you know of any other termite expert
20 today that has testified that the average size of a
21 Formosan colony is 350,000 as opposed --

22 (Simultaneous discussion interrupted by
23 the court reporter.)

24 Q. Let me finish my question -- as opposed to,
25 for example, a million or more?

1 A. There's a foci that has 350,000. The colony
2 is what he's doing and what we just said. They
3 found -- the average of a colony is over a million
4 now, that's the way they say it, but not for the
5 focal points where we find the termites in these
6 areas. That's the point.

7 Q. All right. So this is the first time I've
8 ever heard about this about colony size of millions
9 of termites, including termites that are out in
10 these other places and related, but let's talk
11 about that for a minute.

12 If that was the situation here at 11 Tabby
13 Lane that there were these focal points as you're
14 calling them in the house --

15 A. Yes.

16 Q. -- and that there were other members of the
17 colony, because they're related outside the house,
18 and that if you added all those up, we'd be talking
19 about millions of termites?

20 A. That's correct.

21 Q. Well, are you saying that the other related
22 termites that are outside the house are not coming
23 in the house? I mean, I don't understand. You're
24 talking about a colony and certain members of the
25 colony are going in the house and the others are

1 never coming in. They're staying out?

2 A. Focal points are pretty stable is what
3 they're -- researchers are learning. Some may come
4 and some may go, but not many. That's about
5 350,000. That's what the estimate is.

6 Q. Well, that does bring me to a question:
7 Isn't it true that the size of colonies fluctuate
8 over time because of some coming in, some going
9 out?

10 A. Yes.

11 Q. Okay. Well, do they fluctuate or are they
12 pretty stable, the size of these focal points?

13 A. The termites coming in and coming out, the
14 level stays about the same of individuals.

15 Q. What literature says that? Where can we --
16 can you point us to some literature that describes
17 that phenomenon of termites -- all members of the
18 same colony coming in and out of a house to what
19 you've called focal points and the focal point
20 staying around the same size in terms of numbers of
21 termites in the focal point area regardless of how
22 many come and how many go? Can you point us to
23 some literature that talks about that?

24 A. I'd have to go back and review to get the
25 actual articles. I don't have that today with me.

1 You need to look at the work that Nan-Yao Su did at
2 Florida, and he's still doing some of that today,
3 on the movement between termites within these large
4 supercolonies.

5 MR. MCKNIGHT: Can we take a break?

6 (Recess held.)

7 Q. All right. I'm looking at this Table 7.3
8 from the Truman's Guide, which was, of course,
9 taken from that article in Pest Control Magazine in
10 May of 1976. Let's just look at this for a moment
11 and I'm going to stick with the first column since
12 that's what we're talking about, Formosan termites.

13 It says, "wood consumption rate (milligrams
14 of wood per gram of termite per day)," isn't that
15 what that says?

16 A. Yes.

17 Q. All right. And then at the bottom of the
18 this table it says -- and this is a reference from
19 the asterisk by the part that says, "one board foot
20 of pine," and then the asterisk takes you down to
21 explain. It says, "this calculation assumes that
22 pine weighs an average of 0.5G/cc, with
23 2359.7 cc/board foot or 1,179.9G/board foot."

24 What does that mean, what I just read, the
25 explanation by the asterisk that starts, "this

1 calculation assumes that pine weighs," and then it
2 goes on; what does that mean?

3 A. That the calculation -- one of the -- one of
4 the variables, or not variables, one of the
5 parameters they use is that they're saying wood has
6 that kind of weight.

7 Q. Is that what you based your calculation on?

8 A. I was straightforward with you. All we did
9 was say it took 19 days, the very far number. I'll
10 use that calculation that this gentleman came up
11 with, 19 days to consume one board foot. That's
12 what I'm using. And he used all these other
13 calculations to figure that out.

14 Q. Okay. And that's what I'm trying to ask
15 you. Do you understand the calculations that he
16 did that came -- that somehow came out to this
17 19 feet of a 2-by-4 per day?

18 A. Do I believe it? Is that what you're asking
19 me?

20 Q. Do you understand it? I mean, can you
21 explain it? You're basing your calculations on his
22 calculations, so I'm asking if you understand his
23 calculations.

24 A. Sure, yes. All he did was he measured how
25 much the termites ate, how much a termite weighed,

1 how much they consumed, how many individuals were
2 in the colony, and then he had to get the weight --
3 he had to determine how much the pine wood weighed.
4 The calculations all work out. It's a pretty good
5 article.

6 Q. Okay. Did the pine parts of the house at
7 11 Tabby Lane weigh the same as the pine weights
8 that are assumed in this calculation from this
9 table, and did you make any effort to compare?

10 A. No. I took southern yellow pine, and that's
11 a pretty standard process, you know, southern
12 yellow pine sold as southern yellow pine. The
13 forest service has it.

14 Q. Where does it say southern yellow pine in
15 this table, for one thing? It says pine. I don't
16 see anything about southern yellow.

17 A. It's in there somewhere.

18 Q. Well, show me. I'm looking at it. I don't
19 see it.

20 I see it says one board foot of pine and
21 then it talks about the calculation assumes what
22 pine weighs. Are there different types of pine?

23 Are you able to answer the question or
24 should I go on to a different question?

25 A. The research is from -- that calculation is

1 from southern yellow pine, and I thought it was
2 in -- I thought it was in the discourse, so that's
3 why I was reading this. We'd have to go back and
4 look at it, but that's what these are. It was off
5 of that.

6 Right over here it says pine. If we look at
7 118 days to consume a -- I'm looking on the left
8 column under beading at the bottom left, it would
9 take the eastern subterranean termite colony
10 approximately 108 days to consume a 1/5 length of
11 2-by-4 pine, but the Formosan colony consumed the
12 same board in 19 days.

13 That's where it's -- it's the type of wood
14 that was used in the house. That's all I know.

15 Q. Well, I mean, this -- right. So if we're
16 looking at Table 7.1 and 7.2, it talks about
17 loblolly pine, slash pine, ponderosa pine, and
18 you're talking about southern yellow pine. I
19 just -- I don't see any reference to southern
20 yellow pine in this scholarly journal, do you?

21 A. I didn't see the exact words to southern
22 yellow pine, no, sir. I read through it. I didn't
23 see it, but it is in the -- you have to go back and
24 look more at the article. That's all I can say
25 here.

1 Q. Well, I'm going to look at the article
2 because, like, where it says "feeding" on the
3 left-hand side of the page, all right, it says that
4 eastern subterranean termites prefer slash and
5 loblolly pine while the Formosan termite prefers
6 sugar maple and slash and loblolly pine. Do you
7 see that?

8 A. Yes, I did.

9 Q. First of all, so you're saying that all of
10 the wood that was consumed that your calculations
11 are based on were southern yellow pine?

12 A. That's my understanding.

13 Q. All right.

14 A. Had SYP on the wood.

15 Q. Okay. Do you know whether there were other
16 types of wood used in the construction of this
17 house, 11 Tabby Lane, other than southern yellow
18 pine?

19 A. I'm not sure.

20 Q. All right. I mean, when you were out there,
21 you saw particle board, correct?

22 A. I didn't calculate any particle board. This
23 is all wood, you know.

24 Q. All right. So are you now saying then that
25 your calculation is not a calculation of how much

1 wood was consumed in the house over a certain
2 amount of time, but it was how much southern yellow
3 pine was consumed in the house over a certain
4 amount of time?

5 A. I guess so, yes.

6 Q. Okay. All right. Going back to the feeding
7 portion of this article over on the left-hand side
8 of the last page of this exhibit, Exhibit 29, it
9 says, "the condition of the wood is also
10 important." It says, "decayed wood is eaten faster
11 and preferred over sound wood." Do you see where
12 it says that?

13 A. Yes.

14 Q. Do you agree with that, that to calculate --
15 to try to calculate how much wood was consumed over
16 a certain amount of time, that factor is important,
17 the condition of the wood?

18 A. Yes.

19 Q. All right. Did you make any attempt in your
20 calculation to factor in the condition of the wood?

21 A. No.

22 Q. And it also says -- it says, "factors
23 affecting consumption include the environmental
24 conditions, size of the termite and size of the
25 colony." Do you see that? It's right here. Do

1 you agree with that?

2 A. Yes.

3 Q. All right. In your calculations, did you
4 make any attempt to account for factors such as
5 environmental conditions, the size of the termites
6 or the size of the colony?

7 A. I used this -- I used this as my estimator
8 (indicating) on Table 7.3.

9 Q. So Table 7.3 says something about the
10 estimated size of the colony, which I'm going to
11 get to, get into more in a second, but that's that
12 350,000 number we were talking about, correct?

13 A. Yes.

14 Q. But that table does not include anything
15 about environmental conditions, does it?

16 A. I don't think so.

17 Q. Okay. And the very next sentence from where
18 I was reading says that the average mature colony
19 of eastern subterranean termites contains about
20 60,000 to 1 million workers, while a Formosan
21 termite colony contains 350,000 to 2 million
22 workers. Do you see that?

23 A. Yes.

24 Q. All right. And then the Table 7.3 just uses
25 estimates of the absolute low end of those ranges,

1 60,000 for eastern subterraneans and 350,000 for
2 Formosans, correct?

3 A. Yes.

4 Q. Even though the literature that discusses
5 this issue that the table is here to illustrate
6 something about says that an average Formosan
7 termite colony contains 350,000 to 2 million
8 workers, correct?

9 A. That's what this paper says right here in
10 the left-hand column.

11 Q. Okay. So why did you choose to calculate
12 your calculations based on a 350,000 termite colony
13 as opposed to some other number between 350,000 and
14 2 million?

15 A. I explained that earlier.

16 Q. Just because the table uses 350,000?

17 A. Because that's what this gentleman that did
18 this research, the foci is his estimate of how many
19 termites were in those colonies.

20 Q. No, no.

21 A. That's why I used that number.

22 Q. And I think we're really getting to the
23 heart of the problem with your calculation here.
24 If your calculation is based on numbers in the
25 first column of this Table 7.3, isn't it flawed

1 because 7.3's purpose is to show a comparison of
2 consumption rates for Formosans versus eastern
3 subterraneans?

4 So it just picks the lower end of the size
5 of the colonies for each of those two types of
6 termites and shows the comparison of what those two
7 colonies would have consumed if we just compare
8 those two. I mean, that's what this Table 7.3 is
9 to show, right?

10 A. It does show that, correct.

11 Q. Okay. But this Table 7.3 is not -- is not
12 for the purpose of making the claim that the
13 average number in a Formosan colony is 350,000,
14 right? Because, I mean, the literature right over
15 here that is on the same page says that it's
16 350,000 to 2 million. How do you explain that?

17 A. It's explained in the first sentence, I used
18 the following assumptions. That's the assumptions
19 that I used. Whether it's right or wrong, you're
20 going to have to -- you know, that's what -- that's
21 the assumptions that I used and what I did.

22 Q. Well, that's why I'm asking you. I mean,
23 where it says right here on the left-hand side of
24 the page that a Formosan termite colony contains
25 350,000 to 2 million workers and then you just jump

1 to the table that for comparison of Formosans and
2 eastern subs uses 350,000 for Formosans and a -- an
3 example colony of 60,000 for eastern subs and an
4 example colony of 350,000 for Formosans to compare
5 those, you're saying that you just went with
6 350,000, that that's the average size of a termite
7 colony, even though that's not what this page says,
8 correct?

9 A. I used 350,000.

10 Q. Okay. Well, what's your response to that
11 the literature right over here on the same page as
12 this table explains that a Formosan termite colony
13 contains 350,000 to 2 million?

14 A. I've already said it three times.

15 Q. Well, why did you use 350,000 if an
16 average --

17 A. Because that's a foci.

18 Q. Explain.

19 A. I did three times already. That's the area
20 where we found a big mass of termites. We found
21 two big places like that in the house.

22 Q. Okay. But if this says a Formosan termite
23 colony --

24 A. It's definition, young man. That's the only
25 thing that has changed. What is a termite colony

1 in 1976 is not the same thing as what scientists
2 call a termite colony today. This was written
3 later -- the textbook was written after the
4 research was done. The research is still on a
5 certain area. I don't know -- that's just my
6 belief. You can probably find somebody else that
7 tells you differently, but my belief is that the
8 places in that building where we had the cartons
9 and we had all the damage, that's what we call a
10 foci. We had the same thing with eastern subs.
11 One of the foci has 60,000 if it's an eastern sub,
12 about 350,000 for Formosans. That's my estimate,
13 and it's what it is. That's all I -- it's an
14 estimate.

15 Q. What's it based on? What's the estimate
16 based on? I mean, did you make any --

17 A. All these parameters right here.

18 Q. Did you make any attempt to calculate how
19 many termites were in these foci areas in this
20 house?

21 A. No.

22 Q. Well, so then, I mean, your calculations are
23 based on something that you never even attempted to
24 calculate, correct?

25 A. I took the literature -- I used this table.

1 That's what I used.

2 Q. Okay. Are you saying that this table, the
3 350,000 number presented in this table, are you
4 saying that you believe that that is presented as
5 the number of termites in the average foci?

6 A. Yes.

7 Q. Where does it say that? I mean, where does
8 it -- why? Why do you say that?

9 A. You've got to go back and read the paper.
10 I've tried to explain to you the two different
11 methods and you're not -- you're not getting it.

12 Q. What paper? From the termite --

13 A. This guy's paper, this paper right here.

14 Q. Do you have a copy of it?

15 A. Not with me.

16 Q. Well, can you send it to us after today? I
17 mean, you're basing your --

18 A. You can look it up on the Internet.

19 Q. You're basing your calculations on it, but
20 you don't have it here to show us. You don't --
21 you can't --

22 A. I'm basing my calculations on this paper, on
23 these numbers. That's what I did. It's just that
24 simple. You either believe it or you don't.
25 That's what I did.

1 Q. Look --

2 A. I'm not making anything up. We went and
3 measured the board feet of wood. This guy's
4 literature says it takes 19 days for -- the
5 literature's been published in the scientific
6 journal, says it takes 19 days for 350,000 Formosan
7 termites to eat that much wood. And that's all
8 I -- and I'm saying that that's what he did. I'm
9 not going to fault his research.

10 Q. But you've got to determine how many
11 termites were in this house to come up with a
12 number, and you're just saying, well, it was
13 350,000 in this example, so I'm going to go with
14 350,000? Why?

15 A. That was his -- because that's what he
16 believes is an average size of a colony.

17 Q. But right over here it says the average size
18 of a colony is 350,000 to 2 million.

19 A. We'll never get past this.

20 MR. MCKNIGHT: Can we go off the
21 record?

22 MR. HAMRICK: Sure, we can go off the
23 record.

24 (Discussion off the record.)

25 Q. Looking back at this left-hand side of this

1 page out of the Truman's book, after it says that a
2 Formosan termite colony contains 350,000 to
3 2 million workers, it says, "under ideal
4 conditions, an eastern subterranean termite colony
5 of 60,000 would consume about 5 grams or 1/5 ounce
6 of wood each day while a Formosan termite colony of
7 350,000 would consume 31 grams, just over one ounce
8 (see Table 7.3)." Do you see where I was reading
9 from?

10 A. Yes.

11 Q. Okay. So that explains that 7.3's purpose
12 is to compare theoretical or example colonies of
13 those two numbers: 350,000 in a Formosan and
14 60,000 in an eastern sub colony. It does not say
15 that those are the average numbers of a colony,
16 correct?

17 I mean, it explains over here on the left
18 what Table 7.3 is designed to do, which is to take
19 just two example colony sizes, which it says over
20 here on the left are the lowest number in the range
21 of those two types of termites, 60,000 to 1 million
22 for eastern subs; 350,000 to 2 million for
23 Formosans, and it's just taking -- well, let's take
24 the absolute lowest end of that range and compare
25 them. I mean, that's what it says 7.3, the table,

1 is designed to show. Don't you agree that that's
2 what it says?

3 A. That's what it says.

4 Q. Okay. So 7. -- Table 7.3 is not designed or
5 presented as some support for the assertion that an
6 average termite colony or even an average -- what
7 did you call them?

8 A. Foci.

9 Q. Foci has 350,000 termites in it, does it?

10 A. The research behind it, yes. The paper --
11 so he -- he picked 350,000 just out of the air.
12 No, he didn't. He knew that that's his opinion on
13 the average size of a termite colony at that time.

14 Q. Well, it's not what it says. I mean, I'm
15 just -- it says right over here 350,000 to
16 2 million.

17 A. You're taking a textual -- thing out of the
18 text and looking at the table and trying to use
19 that. You need to go back -- we need to go back to
20 the research there.

21 Q. Dude, the text refers to the table. It
22 explains what the table is about. It says see
23 Table 7.3.

24 A. That was for that point that he was trying
25 to make. That's not the whole paper. He had a

1 reason -- the researcher had a reason to pick
2 350,000 as the amount of individuals that he
3 picked. He didn't just pick that out of the air.
4 He didn't pick 60,000 for subterraneans out of the
5 air. At the time, that's what we considered was
6 one -- that's what we considered was the size of a
7 termite colony, and that's what the research was
8 done on.

9 Q. That's not what it says on the paper. It
10 says 350,000 to 2 million for a Formosan colony.

11 A. Because it was written later. This textbook
12 was written after the DNA that I've been trying to
13 explain to you, they found the different foci,
14 where we used to think they maybe were different
15 colonies, are now connected. That's the assumption
16 that I'm making, and that's what I'm making.
17 Either it is or it isn't. That's what I believe.

18 Q. Okay. The consumption rate is based on
19 several variables, correct? We've talked about --
20 we've talked about environmental factors, correct,
21 like temperature, the consumption rate?

22 A. Yes.

23 Q. Is affected by these other factors, correct?

24 A. Correct.

25 Q. All right. So it's affected by the number

1 of termites in the colony certainly.

2 A. Yes.

3 Q. Correct?

4 A. So we said the average there was 350.

5 That's the number that we use in our calculation.

6 Q. I understand that. The rate of consumption
7 is also affected by the temperature?

8 A. Correct.

9 Q. The rate of consumption is affected by the
10 type of -- particular type of wood, correct?

11 A. Yes.

12 Q. It's affected by the moisture in the wood,
13 correct?

14 A. Yes.

15 Q. It's affected by the state of decay of the
16 wood?

17 A. Yes.

18 Q. All right. Did you -- so where in your
19 calculations do you account for any of those
20 factors other than I know you picked 350,000 as a
21 number of termites in the colony, but what about
22 all those other factors, have you factored them
23 into your calculation at all?

24 A. No.

25 Q. All right. Won't those factors affect the

1 accuracy of the calculation?

2 A. Yes.

3 Q. All right. You've talked about two colonies
4 in the house I think, right? So if we look at the
5 first page of Exhibit 29 to your deposition there,
6 you say, our observations suggest at least two
7 colonies. So how many colonies were present at
8 11 Tabby Lane?

9 A. Well, active recently were two, one on the
10 front and then one on the left side around the
11 fireplace. Those two were active recently, and
12 Tom Nolan and Stoney and I were there one time
13 together and we all noticed a place over the back
14 of the garage, the right side of the garage, that
15 may have been some older damage in there that that
16 could have been a third one, but I think that that
17 was sort of insignificant.

18 And, again, like I talked about, when did it
19 happen and when did it not happen? We don't quite
20 know that information other than we know there was
21 a little bit of damage there.

22 Q. All right. And even for the two in --
23 the other two that you described, the colony that
24 you've said -- well, and I don't know. Are you
25 saying that those are two different colonies or

1 were these two foci of the same colony?

2 A. They were foci of the same colonies, but I
3 think people call those colonies. That's the rub
4 that you get. If you genetically mark those two,
5 they would probably be -- they would probably be
6 related. But from observing them and watching
7 their activity and their habits, it looked like
8 two, so we used two for our -- if I look at that
9 house, it had two focal points.

10 And genetically, we didn't -- I didn't have
11 genetic markers. I haven't done that, but a
12 graduate student would have went out -- would have
13 gone to that property or somebody trying to find
14 out the genetics, they may have found that they
15 were related, probably were.

16 Q. All right. So on your first page of
17 Exhibit 29 where you say colony, every time you use
18 the word colony, what you really mean is foci?

19 A. Yes. And I took the colonies from
20 Table 7.3. I used that terminology because that's
21 what we used in the table. He uses colony.

22 Q. Right.

23 A. That's why I did that.

24 Q. But you're asserting that in Table 7.3 what
25 he means is foci?

1 A. Yes.

2 Q. Even though he says colony?

3 A. Exactly.

4 Q. And you're testifying under oath that if we
5 go back and pull the article entitled Termites from
6 Pest Control Magazine in May of 1976, that that
7 will be explained in that article?

8 A. To the best of my memory. And I would have
9 to go back and read every -- you know, I don't want
10 to sit here and say 100 percent because I haven't
11 read it this week and I'm getting a little bit
12 older, so -- but to the best of my knowledge,
13 that's correct.

14 Q. All right. And so your calculation assumes
15 that the two most recently active foci in the
16 Carroll house are the exact same size.

17 A. That's exactly right, yes.

18 Q. Now, why would you make that assumption,
19 that they were the same size?

20 A. Because that's what the -- that's what we do
21 with the table.

22 Q. All right. So we know -- you know from
23 observation and from your work that termite colony
24 sizes vary, correct?

25 A. Yes.

1 Q. All right.

2 A. Or they can, yes, they can. Nothing is
3 exact.

4 Q. Okay. But you're assuming in this case that
5 those two foci areas contain the exact same number
6 of termites?

7 A. Right.

8 Q. Okay. And you're assuming in your
9 calculations that the infestations or the presence
10 of those two foci occurred at the same time,
11 correct?

12 A. Yes, they were there at the same time. I
13 visually observed that part.

14 Q. Well, and you're assuming that they had been
15 there for the same amount of time?

16 A. No.

17 Q. Okay. Well, how do you explain that because
18 you don't differentiate? I mean --

19 A. Doesn't matter. It's all on wood
20 consumption, if one had eaten more than the other.
21 There's two places where we had termites. I don't
22 know which one started first. It looks like the --
23 one in the middle of the house, it probably
24 consumed -- it consumed more wood than the one on
25 the left, so yes, I think it was there first.

1 Q. But you don't know when it started?

2 A. No, that was the first caveat we had in the
3 first deposition. I would not be able to tell you
4 when it started. I can sort of tell you when it
5 ended because the house has been opened up pretty
6 good now and I think it's done. We just know --

7 With these, this is all -- with these
8 assumptions that we made and that's all you can do.
9 It's an estimate. And that's what I told -- you
10 know, I think we're trying to paint a huge deal. I
11 told you this is an estimate.

12 Taking these parameters, the amount of wood
13 that we measured, that's how long it would take for
14 two -- you know, 7.35 years for two mature colonies
15 to eat that much wood if there's 350,000 termites
16 in it.

17 Q. And, I mean, just for the record, I mean,
18 but if -- if each of those foci areas had 700,000
19 termites in them, in each one of them, then each of
20 these estimates of numbers of years that you have
21 here would be cut in half, correct, twice the
22 number of termites?

23 A. That's correct.

24 Q. Half the number of time?

25 A. That's correct.

1 Q. And if each of those foci areas had
2 1.4 million termites in them, in other words, four
3 times 350,000, then each of these -- each of these
4 numbers of years that you have would be cut --
5 would be quartered, correct?

6 A. Yes.

7 Q. Okay. The big beam that you've described or
8 I think you described it as under the -- I could
9 show you the pictures. I think we probably know
10 which beam I'm talking about. It was a sistered
11 beam that was several pieces of wood put together
12 and it ran above the ground floor enclosed room.
13 It was damaged pretty badly. Do you know the beam
14 I'm talking about?

15 A. There's a lot of wood, remember, you'd asked
16 me -- yes, a lot of that wood is not there anymore.
17 I didn't measure it. I mean, this is just what was
18 there. I've already made that statement. There's
19 places there wasn't even wood in the house, big
20 holes. I don't know how much wood that was and
21 what was eaten. I told you I couldn't measure
22 stuff in dumpsters. This is just what we saw of
23 what's left after however many years of what's
24 going on.

25 I think we've got a different interpretation

1 of what I thought my -- of what I was going to do.
2 My job, I thought, was to give you -- for me to get
3 a reasonable estimation of what's there. This is
4 not -- I didn't do that.

5 I mean, I told you that it was not going to
6 be a precise, down-to-the-minute kind of estimate
7 and it can't be, but with these parameters, that's
8 how long it would have taken two colonies, two
9 350,000 focal -- I keep saying colonies. I need to
10 change that -- focal points to do that much damage.

11 Q. All right. So really your estimate is not
12 designed to tell us an estimate of how much time it
13 took to do the damage that was done in 11 Tabby
14 Lane?

15 A. Exactly. I couldn't. I don't have all the
16 wood. I told you from the wood that was there, I'd
17 be able to give you an estimate. That's what I've
18 done. Big huge portions of wood are gone where
19 you're talking about, the big beam there in the
20 middle.

21 MR. HAMRICK: Okay. I'm going to pass
22 the witness at this point. Those are all the
23 questions I have for you at this point. Please
24 answer any questions the other attorneys may have
25 for you.

1 BY MR. HEMINGWAY:

2 Q. Mr. Nolan, my name's Matthew Hemingway. I
3 represent SPM. I'll try not to replot old ground
4 because I know that you've gone round and round
5 with Matt, so I'll try to limit my questions as
6 much as I can.

7 Was any of the consumption that you viewed
8 at the property slowed by termite treatment after
9 the date of original infestation to the extent we
10 can determine that?

11 A. No.

12 Q. It was not?

13 A. I don't have any idea. All we did was
14 measure how much wood had been consumed that we
15 could visually see and made these calculations.

16 Q. Okay. Would it be --

17 A. Slowed, speeded up, none of that, have no
18 idea.

19 Q. Would it be reasonable to assume that a
20 treatment of the property killed termites?

21 A. Yes.

22 Q. Would it then be reasonable to assume that
23 if there are termites that are killed, the
24 consumption rate would then drop because there are
25 fewer termites at the property?

1 A. Yes.

2 Q. You said that you measured the length of the
3 damage to the boards themselves; is that right?

4 A. That's correct.

5 Q. Did you measure the boards themselves, the
6 length and the width of the boards, to confirm they
7 were in fact 2 inches by 4 inches or 2 inches by
8 6 inches or whatever it may have been?

9 A. That's a good question. Yes, but what we
10 did was, if you go back again and read the paper,
11 it's nominal 2-by-4s. I mean, he -- the article is
12 written using 2-by-4 -- what are they, one and a
13 half by 3 and a half or whatever. That's what
14 this -- that was his measurement. That's why he
15 did these calculations and talked about weights.

16 In other words, a 2-by-4 was not 2 inches by
17 4 inches. A 2-by-4 board foot is now a nominal --
18 I think aren't they 1-1/2 by 3-1/2 inches now?

19 Q. And that was my question --

20 A. I figure next year they'll probably drop
21 that a little bit just to make the wood smaller,
22 but yes.

23 Q. So all this assumes that it is, say, 1-1/2
24 by 3-1/2 or whatever the --

25 A. Nominal wood was still used -- was used in

1 the '70s, yes.

2 Q. Okay.

3 A. I think that's the correct term, nominal.

4 Q. It's either nominal versus milled, or
5 whatever it is, we're on the same page. I
6 understand what you're saying with that.

7 All right. The Table 7.3 that you've been
8 discussing here for a while, that assumes that the
9 colonies began consuming wood at 350,000 termites
10 in the colony itself from day one; is that right?

11 A. That's correct, and that's not a valid
12 assumption. We know that it takes time to ramp it
13 up.

14 Q. So you would agree with me, therefore, that
15 the number of days of consumption would be more
16 than your calculation because it takes time for the
17 termite colony to grow?

18 A. Yes.

19 Q. Okay. When do swarmers usually leave the
20 colony?

21 A. Around here, 18 months.

22 Q. Okay.

23 A. It takes 18 months for a colony to get to
24 maturity where we get a swarm.

25 Q. So a year and a half until swarmers begin to

1 leave the colony, the residence -- or the colony,
2 excuse me?

3 A. That's pretty typical, yes.

4 Q. What percentage of the colony will leave
5 when they become swarmers?

6 A. It's variable.

7 Q. Do you have a range?

8 A. No.

9 Q. Okay.

10 A. I don't remember that. I'll be honest with
11 you, I've never thought about that particular --
12 it's excess of that. I don't know how many
13 swarmers though.

14 Q. But it's reasonable to assume that if
15 swarmers left, therefore consumption rate would
16 slip; that makes sense, right?

17 A. No, because swarmers don't eat.

18 Q. Swarmers don't eat at all?

19 A. No.

20 Q. Do you know what percentage of a colony in
21 general is swarmers versus soldiers versus workers,
22 whatever terminology it is you use, what percentage
23 would make up swarmers?

24 A. About 25 percent.

25 Q. Okay.

1 A. Of the numbers when they do their huge
2 swarms, that's about what it is, but that's --
3 remember, termites have castes, so swarmers are
4 just excess individuals that bloom up at that time
5 and then they swarm out. Like drone honeybees,
6 they don't do any consumption or anything. They
7 just eat what the -- when the workers feed them,
8 that's how they grow. They don't eat wood.

9 Q. Okay. So they indirectly consume --

10 A. Right.

11 Q. -- wood, not directly?

12 A. The colony is pretty much going on and doing
13 other things the same way that it normally would.
14 Consumption rate's pretty similar. The consumption
15 rate would be the same regardless if there are
16 swarmers or not.

17 Q. So that number in Table 7.3, the 350,000 in
18 a colony, does that assume consuming termites or
19 does that assume consuming as well as swarming
20 termites?

21 A. Consuming.

22 Q. So that number should technically be higher,
23 I guess, 25 percent higher?

24 A. It would be some higher, yes, for the number
25 of -- well, it says workers. If you read the --

1 it's the number of workers is what this is on.

2 Q. Okay. When you reviewed the boards at the
3 project, and you say that a board of 2-by-4, or
4 2-by-4 inch board consumed, what does that actually
5 mean? Does that mean, say, a straight line through
6 the middle of the board was consumed and therefore
7 the entire board, or does that mean the entire
8 2-by-4, 2-by-4-by-12, all of that was consumed?

9 A. It's on percentages. If you look at the
10 table, it shows, like the first one, 7 feet was
11 50 percent damaged. That means that half of the
12 wood was consumed.

13 Q. Okay.

14 A. In that 7-foot piece.

15 Q. And what would that look like? Would that
16 be just a general hole or would that be a line
17 through the middle of the board at several
18 locations in the board? How did you calculate that
19 it was in fact 50 percent consumed?

20 A. I took my screwdriver and went through and
21 noticed how it flaked off. You know, the wood gets
22 the lines through it. That's the way I did it.

23 Q. Did you ever determine the volume of the
24 damage, because you could have done that in some
25 capacity, right, said length, width and height of

1 the damage and then extrapolate that out?

2 A. That's the estimate we did. It was -- say
3 it was a 2-by-4. It was 2 inches damaged all the
4 way across, and then you go down there and it
5 changed. That's why I picked the even amount of
6 board -- of length to go back to make the
7 calculation off of.

8 Q. Now, looking back at the literature on the
9 left-hand side of Table 7.3, the left column, what
10 does the final sentence say in that paragraph, the
11 bottom paragraph, starts with thus?

12 A. "Thus Formosan termites are usually more
13 destructive than native subterranean termites."

14 Q. So would you -- it's reasonable to assume
15 that the intent of everything before that was to
16 come to the conclusion that simply Formosan
17 termites are generally more destructive than
18 subterranean termites?

19 A. I think for the guy that wrote this, yes,
20 that's what he was trying to show you there.

21 Q. So for the guy that wrote this, but you're
22 somehow using that to differentiate --

23 A. No, that's what he said. That's what that
24 was about, to show people how serious Formosan
25 termites are. You've got to be careful. You know,

1 they eat a whole lot more wood. Here's what we're
2 learning. Isn't that neat. That's what he's
3 showing.

4 And the research shows -- even these guys
5 went out and did this research and they show you
6 how much more they eat, how short a time it takes
7 for that to happen.

8 Q. So then you would agree with me the author
9 of the article upon which you've based your
10 conclusions has assumed that Table 7.3 simply comes
11 to the conclusion that Formosan termites are
12 usually more destructive than native subterranean
13 termites?

14 A. I think that's a valid conclusion and that's
15 what he said, correct.

16 Q. All right. You also said that your
17 calculations are based solely on the wood that's
18 currently on the house, not the wood that has been
19 discarded, correct?

20 A. Correct.

21 Q. How much of the wood was remaining on the
22 house percentage-wise, to your best guess, when you
23 went out to review the house?

24 A. I have no idea.

25 Q. Okay.

1 A. There's a lot of subfloor and I don't know.
2 For me to tell you that, I wouldn't know.

3 Q. Would it be safe to assume that a
4 significant portion of the wood on the home had
5 been removed?

6 A. Yes.

7 Q. And would it be safe to assume that that
8 wood was damaged?

9 A. I think some was and some wasn't.

10 Q. Okay.

11 A. I think there's places where the damage --
12 you know, where it wasn't all damaged, but there's
13 some places where all of it's gone. I think it's
14 one linked all the way to the other.

15 Q. And if you would have included that in your
16 calculation, it would have necessarily slowed the
17 rate of consumption as well, right?

18 A. No.

19 Q. Okay. Then what would that do to the rate
20 of consumption?

21 A. Rate of consumption's stable. The amount of
22 wood consumed may have changed, but the rate's the
23 same.

24 Q. And that's a good point. So the amount of
25 wood consumed would have increased, assuming there

1 was additional damage based on the discarded wood,
2 correct?

3 A. That's correct.

4 Q. So therefore, the number of days to consume
5 that would have necessarily increased as well,
6 correct?

7 A. That's correct.

8 Q. Now, you also mentioned in your
9 calculations, I believe it is the sheet -- I don't
10 even know how we're labeling the individual sheets
11 within the exhibit, but you state that 60 feet of
12 2-by-4 was replaced around the window on the third
13 floor, right?

14 A. Correct.

15 Q. Okay. And why was that 60 feet of 2-by-4
16 replaced at the third floor window?

17 A. I'm not sure. I think it was termites. We
18 didn't include it. That's a point that we -- when
19 we went, we could tell that had been replaced.
20 That's all. It could have been replaced, could
21 have been totally destroyed, but that was the only
22 real place I think we noticed a lot of new stuff.

23 And that was something, you know, we were
24 looking for, is there new wood in there; and that
25 was a place that we remembered where we did notice

1 there was some new...

2 Q. Okay.

3 A. You know, a lot of times that's -- a lot of
4 cases that I'm in, that's a big part, you know, how
5 much of this has already been replaced or what was
6 replaced or whatever, but that was just something
7 we noticed.

8 Q. Okay. So assuming that that wood was in
9 fact termite damaged, just for the sake of our
10 discussion, assuming it was termite damaged, would
11 that have increased the number of days to consume
12 the wood at the property?

13 A. Yes.

14 Q. Going to your calculations page, the page
15 where you actually add up the individual numbers
16 where you have 2-by-4 then 2-by-6, 2-by-8, you're
17 basically just breaking down the results of your
18 calculations, not the actual calculations
19 themselves. Can you look with me at that page?

20 Yes, that page. Now, looking at that page,
21 your calculations for the 2-by-6, that middle
22 column at the top, how did you come to those
23 numbers specifically? I want to know what your
24 calculation was for that. And if you need a
25 calculator, we can pause and get one, I'm sure.

1 A. The first number, the 3.325 board feet --

2 Q. Mm-hmm.

3 A. -- it's four times -- it's a quarter of -- a
4 quarter of 25. I guess I can almost do that one by
5 hand. So it's 4 feet long and 25 percent of it's
6 damaged, so that's one foot damaged. And then we
7 know that it's a 2-by-6, so that's 1.25. That's
8 1., right? 1.25, right.

9 Q. And I think that's where my question lies:
10 Is it 1.25 or is it 1.5, because you're taking the
11 volume of the particular pieces of wood, right?

12 A. That would make it 1.5.

13 Q. So then those calculations would necessarily
14 change to become higher, right, if it's 1.5?

15 A. Board feet's not the same as that. Hang on.
16 3.125, is that what we've got? 3.325.

17 Q. And walk me through your calculation that
18 you just made right there. Did you assume that the
19 volume of a 2-by-6 is 125 percent of the volume of
20 a 2-by-4?

21 A. Right.

22 Q. Is that in fact correct?

23 A. That's what I calculated.

24 Q. Okay. Assuming -- okay. We have, what,
25 width and height is what a 2-by-4 is?

1 A. Yes.

2 Q. So width and height, assuming a length of
3 one, just to make things easier, so assuming width
4 and height, 2-by-4, that would be, what, 8 square
5 inches or 8 inches cubed if we're assuming a length
6 of one?

7 A. Say that again.

8 Q. Assuming a length of one for the sake of
9 argument.

10 A. Okay.

11 Q. The volume of a 2-by-4 would then be
12 8 inches cubed, right?

13 A. The volume would, yes.

14 Q. Yes. And then the volume of a 2-by-6 would
15 be 12 inches cubed under the same rationale, right?
16 So then to find out how much higher the volume is
17 for a 2-by-6 versus a 2-by-4, it would just be 12
18 divided by 8, right?

19 A. It's board feet.

20 Q. Right.

21 A. It's board feet, not...

22 Q. What I'm trying to figure out is if you take
23 the volume of a -- or board feet or whatever you
24 want to use of a 2-by-4, is that -- is a 2-by-6
25 25 percent bigger?

1 A. It's a -- it's not that. Is it -- it's
2 1 foot -- I'm not sure. Maybe you're right. I'm
3 not exactly sure. I just told you how I did it was
4 I just -- how I do it -- have always figured out
5 board feet is I just go back to the 2-by-4 and add
6 in that much more. If that's not the right
7 calculation -- I'm not a forester by the way. I'm
8 not exactly 100 percent sure, but that's the way
9 I've always figured board feet.

10 Q. Looking through your other calculations,
11 say, for the 2-by-8, you assumed it was twice as
12 big as a 2-by-4.

13 A. Right.

14 Q. Which is reasonable.

15 A. It's not though? That's not true?

16 Q. No, I'm saying that I agree with you on
17 that.

18 A. Oh, okay.

19 Q. And so I'm saying for the sake of our
20 discussion, that if it's a 2-by-6, would that not
21 necessarily fall directly in between? So if a
22 2-by-4 is one, a 2-by-8 is twice as big, then a
23 2-by-6 would be 1.5 times as big.

24 A. And I had it at 1.25?

25 Q. I think you actually had it at 1.33.

1 A. That's exactly what I had, a third. That's
2 what I was just looking at there. Those might be a
3 little low.

4 Q. So then --

5 A. I'd have to go back and -- I'd have to go
6 back and double check that.

7 Q. So if that number then increases, then the
8 days of consumption necessarily increase as well,
9 right?

10 A. Correct.

11 Q. Okay. And then looking at your conclusions,
12 the wood consumption over time to damage estimate
13 for 11 Tabby Lane.

14 A. Yes.

15 Q. Looking at the total of time to damage for
16 one colony, you have 14.7 years, right?

17 A. Right.

18 Q. Total time to damage for two colonies, you
19 have 7.35 years, right?

20 A. Correct.

21 Q. So that's just a simple 14.7 divided by 2,
22 right?

23 A. Yes.

24 Q. Wouldn't that necessarily assume that the
25 rate of consumption for the two colonies is exactly

1 the same?

2 A. We did that, right. I'm just doing the
3 350,000, 19 days, yes.

4 Q. Is it reasonable to assume that the rate of
5 consumption for two independent colonies are the
6 exact same, or two independent foci?

7 A. Foci, I think it's pretty close, yes.

8 Q. Okay. Then why is your estimate for total
9 time to damage for three colonies not exactly half
10 of 7.35 or a third of 14.7, or how did you get to
11 that number?

12 A. I guess I just divided again. I round up a
13 little bit.

14 Q. So what is 7.35 divided by 2 or 14.7 divided
15 by 3, however you get to it? I just want to know
16 for the sake of argument.

17 Is it 14.7 divided by 3? Is that how you
18 get to it?

19 A. I think so. Is that not right?

20 Q. Okay. Well, 14.7 divided by 3 is 4.9, so is
21 it reasonable to assume that --

22 A. That's what we did.

23 Q. -- three colonies can consume at the exact
24 same rate?

25 A. That's what I -- yes. Again, all the

1 assumptions are the same.

2 Q. Okay.

3 A. I always hate -- I always do math and I want
4 to make sure that it's right and I have people
5 check it and look at it, but -- and then you come
6 in and ask me. I want to make sure it's right
7 because math sometimes is -- like this kind of
8 stuff is hard to get 100 percent right every time.
9 You want to go back and -- so I'm glad we're
10 checking it.

11 MR. HEMINGWAY: I think those are all
12 the questions I have for now. I'll pass you on to
13 Clinch.

14 BY MR. BELSER:

15 Q. Dr. Nolan, my name is Clinch Belser. In
16 this case I represent Terminix. I have just a few
17 questions because most of this has been covered
18 already.

19 Just to touch base, if there was some wood
20 gone which had been damaged, that would increase
21 the amount of wood which had been consumed by the
22 termites; is that correct?

23 A. Yes, sir.

24 Q. And that would mean it would take longer for
25 these termites to have done the damage?

1 A. That's correct.

2 Q. When you assume that there were or your
3 observation suggested there were two termite
4 colonies, and that shows a figure of 7.35 years, is
5 that --

6 A. That's correct.

7 Q. That's your opinion based upon your
8 observation of the house, your study of the
9 treatises and your calculations, subject to this
10 last change?

11 A. Maybe a little bit different, yes.

12 Q. But essentially you're saying that based
13 upon the calculations at that time, you think it
14 was 7.35 years' worth of termite eating of the
15 wood?

16 A. From what I saw of the house, right, taking
17 the -- you know, taking all these parameters,
18 there's 350,000 colony -- individuals and that,
19 yes.

20 Q. And that was the amount of wood which was
21 gone as of January the --

22 A. 6th.

23 Q. -- 6th of this year?

24 A. Yes.

25 Q. Do you know whether the termites were still

1 eating the house as of that year or the termite
2 damage had been stopped by the extensive work on
3 the house and the treatment of the house?

4 A. Nothing that we -- this would be the best
5 way to answer it, I think: Nothing that we
6 measured was active.

7 Q. Okay.

8 A. So that's the best I know right now. There
9 could be places where the termites could, but we
10 didn't see any active termites.

11 Q. Do you have any idea when the termite
12 activity stopped at the house?

13 A. In between visits.

14 Q. In between your first visit and your last?

15 A. In between, yes. I'm trying to remember.
16 Sometime in there they'd removed the cartons and we
17 haven't seen any more active termites. During this
18 litigious process, whatever we call this, I believe
19 that the termites have stopped. Probably -- when
20 did we go back last year?

21 Q. Let's take it indirectly. When did you
22 first go?

23 A. That's what I don't remember. I don't have
24 all these dates in my head, Mr. Belser, I'm sorry,
25 today. I don't have the dates in my head.

1 Q. Was it sometime after February or April of
2 2015?

3 A. Yes.

4 Q. So --

5 A. It was April. It was April, I think, of
6 '15, and then we went back again probably about
7 January or February of '16. I really want to go
8 back and look for that.

9 When the last carton was removed and they
10 took the stuff out from around the chimney and all
11 that stuff is when I think most of it...

12 Q. So January or February of 2016 is when the
13 7.35 years would be ending?

14 A. I think we can say there's sometime in there
15 that we could see that it quit.

16 Q. You're running back 7.35 years based upon
17 your study and your treatises, etc., was the latest
18 time at which the termite damage could have begun?

19 A. No, sir, I don't think we can say that
20 because we don't know if it's active all the time.
21 I mean, all we know is it took that long from that
22 day for that much wood to be consumed. Could have
23 started and stopped, moved and gone. I don't think
24 I can say that.

25 Q. My question was -- I'll withdraw the last

1 question because I obviously didn't say it very
2 well, but if the termite damage had stopped as of
3 ~~January or February of 2016, you go backwards in~~
4 time to measure this 7.35 years.

5 A. Yes, sir.

6 Q. So how far -- that would take you to 2009?

7 A. Minimally that much because we don't know if
8 they -- you know, he asked the question about
9 treatments, could they have stopped it or started
10 it. All you know is that it took that many -- from
11 these calculations, all you know is it took that
12 many days, that many years for that damage to have
13 occurred. Did it start or stop over the time we --
14 I can't answer that.

15 Q. So if there had been some termite damaged
16 wood removed, that would push the date back
17 further?

18 A. That's correct.

19 Q. But you don't know what that is because you
20 don't have the wood which is gone?

21 A. That's why these get confounded sometimes
22 trying to do this, and I don't get a whole lot of
23 use out of it a lot of times because of that,
24 because people -- the first thing they do, start
25 putting stuff in dumpsters and leave, and you don't

1 even know what really got to...

2 Q. With reference to some of the dates in this
3 case, I think the record will show that
4 Mr. Sottile's company, Isle of Palms Pest Control,
5 put a bait system on the property in 2003 and it
6 stopped in 2008. Do you remember that from your
7 set of records?

8 A. Yes, sir.

9 Q. How does this calculation you've made relate
10 to those two dates, if it does?

11 A. Well, if we did what you said, just go
12 straight back, it's about -- it hits up pretty good
13 after that one. I didn't even think about it until
14 you mentioned it, but that does come pretty close
15 to when it was quit.

16 Q. Now, this was covered I think in the very
17 beginning and then there were more questions about
18 it, but if I understand your expert opinion about
19 this, the rate of consumption is covered by the
20 scientific calculation shown here in Table 7.3?

21 A. Yes, sir.

22 Q. And that's 19 days to consume one 2-by-4
23 board foot?

24 A. Yes, sir, one board foot.

25 Q. And so what you were doing was trying to

1 determine by your measurements with your son on
2 January the -- of this year, 2017, exactly how many
3 board feet of wood were gone; is that correct?

4 A. That's correct.

5 Q. And you were later going to use this
6 calculation of 19 days based upon what you
7 physically observed with your son and measured and
8 wrote down?

9 A. Yes, sir.

10 Q. And if you looked at a 7-foot piece of wood,
11 and you said it was 50 percent damaged, that's the
12 first of the items on your list on page 2.

13 A. Yes.

14 Q. You were determining what amount of wood was
15 gone and writing that down?

16 A. That's correct.

17 Q. And you would later apply the rate of
18 consumption to the total of all these figures?

19 A. Correct. We went back to the lab. We went
20 back and added this up.

21 Q. Okay.

22 A. After we wrote all these down.

23 Q. Now, at one point you said that termites eat
24 about 50 percent of the wood which is the soft wood
25 between the rings in the wood.

1 A. Correct.

2 Q. Is that related to the 50 percent you have
3 here in this chart?

4 A. Yes. In other words, that piece of wood was
5 just -- all that was left of that piece of wood
6 would just be the rings in the middle, and that
7 weighs about half. And that's in that article too.

8 Q. So the first piece of wood you've got here,
9 7 feet, 50 percent damaged, was 50 percent damaged
10 from the sake of how much wood would have been
11 eaten out, correct?

12 A. Yes.

13 Q. But in terms of being a structurally sound
14 piece of wood, it was completely gone?

15 A. 100 percent.

16 MR. BELSER: I have no further
17 questions. Thank you.

18 MR. HAMRICK: I've got a couple more.

19 BY MR. HAMRICK:

20 Q. In this exercise that you've done with your
21 calculations, you cannot use it to try to determine
22 the start point or date of the termite damage,
23 correct?

24 A. Unless you know how long the building's --
25 unless it hits up with how long the building's been

1 built, how long the buildings's been built.

2 Q. Meaning?

3 A. That was the original intent of some of this
4 work way back when we started doing this. We knew
5 how old some buildings were and that's why I did so
6 many of these.

7 We had a large lawsuit in the state of
8 Florida down there when termites are active all the
9 time and it was eastern subs. And we used this
10 calculation and the formulas that we talked about.
11 And to hit, you know, or we'd be reasonable to say
12 the houses were never treated at all and the
13 calculations came up really close on all those
14 different buildings that in fact the time to do
15 that much damage hit pretty doggone close to the
16 time when they finished the structures.

17 That's where this -- that's where this
18 information was used. Originally you asked me how
19 many buildings I'd done and that was a cardinal
20 case we did back a long time ago. Some of these
21 people that you know now helped do some of that
22 work.

23 So that's where those numbers in that --
24 that's when we used it mostly, was it ever treated;
25 and in those particular houses we got to take the

1 whole thing apart and basically know what was
2 there, so it was a pretty good piece of research.

3 So that's the time you know it. Nobody's
4 messed with the building. You get to go in and you
5 get to take everything apart and you can measure
6 and say, you know, this is how much wood's been
7 consumed. It's pretty close.

8 Q. Okay. You've been involved in this case
9 since when?

10 A. I think we said January of '15, is that
11 right? Or is it '16?

12 Q. Either way.

13 A. It's been a year and a half or two years,
14 something along that line.

15 Q. And in this case, actually this house has
16 been taken almost completely apart, correct?

17 A. Yes.

18 Q. And we do know when the house was built, I
19 think we learned that, 1990; is that your
20 recollection?

21 A. Yes.

22 Q. Okay. So what -- so I'm not really sure how
23 all that relates to my question, but what does that
24 give you the ability to do? You were talking about
25 the case in Florida where you were able to go and

1 take everything apart, look at everything in there,
2 which you've been able to do in this --

3 A. No.

4 Q. Okay.

5 A. A lot of wood's been removed here that I
6 didn't have anything to do with, a lot of visits --
7 I mean, there's been a lot done here. I don't know
8 the population of wood that I can't go to -- that's
9 why I haven't.

10 Q. Okay.

11 A. All I know is it took this long, in my
12 opinion (indicating), it took at least this long
13 for the amount of damage that's there today to have
14 happened.

15 Q. Okay.

16 A. Nothing any more than that. That's all I
17 can say, six, seven years if it's two colonies, and
18 14 -- just from what we saw.

19 Q. Okay. And that kind of gets me back to my
20 question, but you cannot determine in your
21 calculation or based on your calculation, even if
22 it's your opinion that it took 7.35 years for the
23 damage that you saw in January of this year to have
24 occurred, and that's based on your opinion there
25 were two not colonies, but --

1 A. Focal points.

2 Q. -- focal points, you still cannot, from your
3 work or from your calculations, you cannot
4 determine whether that was a constant 7.35 years or
5 if it started and stopped, right?

6 A. That's correct.

7 Q. So therefore, you cannot determine when the
8 damage first began to occur, correct?

9 A. That's correct, and I haven't tried to do
10 that.

11 Q. That's what I'm trying to establish.

12 A. Haven't said that, right, haven't said
13 anything along that line.

14 Q. Well, my question is, what's the purpose of
15 this calculation then?

16 A. I was asked to find out how long it took for
17 the amount of wood that I saw to get consumed, that
18 was the question. You know, we knew that sometime
19 over the structure that there was at least that
20 much damage done to the building.

21 Q. Okay.

22 A. The reason I did it, I was asked to do it.
23 This is what I do and I've done this before and I
24 went out and I was asked to give an estimate and
25 that's what I did from similar work that I had done

1 before. It is what it is.

2 MR. HAMRICK: Okay. No further
3 questions.

4 MR. HEMINGWAY: I have one follow-up to
5 what Matt had said.

6 BY MR. HEMINGWAY:

7 Q. Just to clarify that, so total time to
8 damage for two colonies, 7.35 years, give or take,
9 based on your calculations. 7.35 years of damage
10 could have taken place over 10 years or 15 years,
11 right?

12 A. Right. And you mentioned a couple of
13 variables. You know, they could have treated it.
14 They could have put bait stations in, as Mr. Belser
15 said, and taken them out. There's other things
16 that could have slowed it down, weather. I mean,
17 but the amount of wood, using these calculations,
18 that's how long it would take them to eat that much
19 wood.

20 Q. Could it have gone back as far as 20, 25
21 years?

22 A. The only thing that makes that a little bit
23 of a reach is because of the fact that we do know
24 that they were active when we started doing this.
25 You know, I think we've got to be careful about

1 going too far. Practically, I don't think. I
2 don't think.

3 Q. That's based on the assumption that the
4 CL-100 didn't catch it at the point of sale when
5 Mr. Carroll purchased the home in 2002, right?

6 A. That's part of it, but the real deal is, you
7 know, they were active when we started this. You
8 know, that means a lot, so I think that's part of
9 that reasoning.

10 Q. Okay.

11 A. There's a lot a wood that we don't know of.
12 I mean, I know that huge big part in the middle
13 where we were talking about above that stairwell
14 and it's not even there anymore. So I don't even
15 remember -- some things have been cut off and
16 moved, and so I didn't even -- no, I can't do that
17 because I don't know exactly what was there and how
18 much of that was damaged, but there's a lot of
19 wood --

20 Remember, weight, the size of the members
21 that are damaged, it doesn't take very many board
22 feet or length of foot of a 8-by-8 post, for
23 example, to be a lot of board feet quick if that's
24 what you missed. So we had those beams that went
25 across that were pretty big. There's a lot of wood

1 in there that was eaten that I didn't measure. I
2 didn't have it to measure.

3 Q. Okay. And building on that, so based on
4 your 7.35 years and stating that it could have
5 taken 10, could have taken 15 years, say this
6 calculation were to change to take into
7 consideration the boards that weren't there, that
8 would obviously increase the number of years it
9 took to consume the wood, right?

10 A. Correct.

11 Q. Okay. Say for example that number went up
12 to ten years, then would you be more comfortable
13 saying that it was ten years of damage over 15, 20
14 years?

15 A. I think I'd rather not opine as to that. I
16 think I've done what I said I was going to do.

17 BY MR. HAMRICK:

18 Q. All right. Sort of going the opposite
19 direction, though, if the -- you've written
20 colonies, but I know you've explained now today
21 that what you meant was focal points, correct?

22 A. Correct.

23 Q. All right. If the -- if each of the two
24 focal points that you've talked about were twice as
25 large, so 700,000 termites in each instead of

1 350,000, then the total time to consume the wood
2 that you're talking about here in your calculations
3 would be half of 7.35, correct, twice as many
4 termites, half as much time?

5 A. That's correct.

6 Q. So that would be 7.35 divided by 2, so if
7 the focal points are twice as large in terms of
8 numbers of termites in each, then the time it would
9 have taken would be half 7.35, which I just
10 calculated as 3.675. Do you agree with that?

11 A. Yes.

12 Q. All right. And if each of the colonies were
13 four times as large -- I'm sorry, each of the focal
14 points were four times as many termites in each,
15 that would be 1.4 million termites in each of those
16 focal points, and then the time would be a quarter
17 of 7.35, correct?

18 A. That's correct.

19 Q. So then if that were the case, then it would
20 have only taken 1.8375 years, 1.84 or so, correct?

21 A. Around two years, right.

22 MR. HAMRICK: Right. Little under two
23 years. Okay. I understand. Thanks.

24 BY MR. MCKNIGHT:

25 Q. Just one question: Has your testimony today

1 regarding the size of the foci colonies, the rate
2 of consumption, and the time it took to consume
3 based on board feet you personally observed damage
4 based on a reasonable degree of certainty within
5 the field of entomology guided by learned treatises
6 in this field and your specialized knowledge and
7 experience within the field of entomology?

8 MR. HAMRICK: Object to the form.

9 THE WITNESS: Has it changed anything?

10 Q. I don't think so.

11 A. No.

12 Q. Let me re-ask the question. Has your
13 testimony today regarding the size of the foci
14 colonies, their rate of consumption, and the time
15 it took to consume based on board feet you
16 personally observed damaged based on a reasonable
17 degree of certainty within the field of entomology
18 guided by learned treatises in the field and your
19 specialized knowledge and experience within the
20 field of entomology?

21 MR. HAMRICK: Object to the form.

22 THE WITNESS: That's what I used to do
23 my determination.

24 MR. MCKNIGHT: Thank you.

25 (Deposition concluded at 12:19 p.m.)

CERTIFICATE OF REPORTER

I, Ruth L. Mott, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

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

Witness my hand, I have hereunto affixed my official seal on May 18, 2017 at Charleston, Charleston County, South Carolina.

Ruth L. Mott,
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public
My Commission expires
February 23, 2025

1 DEPONENT CORRECTION SHEET
2 I, the undersigned, MAXCY P. NOLAN, III, Ph.D.,
3 do hereby certify that I have read the foregoing
4 deposition and wish to make the following
5 clarifications and/or corrections, if any.

6	PAGE	LINE	CHANGE	REASON

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MAXCY P. NOLAN, III, Ph.D.

Date

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backwards (1)	called (1)	Commission (1)	currently (1)
badly (1)	calling (1)	COMMON (1)	cut (3)
bait (2)	capacity (1)	COMPANY (4)	
base (1)	cardinal (1)	compare (5)	< D >
based (32)	careful (2)	comparison (3)	damage (45)
basically (3)	CAROLINA (3)	complete (1)	damaged (67)
basing (4)	CARROLL (4)	completely (3)	damages (1)
basis (1)	Carroll's (2)	computer-aided (1)	data (3)
beading (1)	carton (1)	concluded (1)	data's (1)
beam (5)	cartons (4)	conclusion (3)	DATE (8)
beams (1)	CASE (13)	conclusions (2)	dates (4)
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begun (1)	catch (1)	confirm (1)	deal (2)
BEHALF (4)	cause (2)	confounded (1)	decay (1)
belief (2)	caveat (1)	confused (3)	decayed (1)
believe (9)	cc (2)	confusing (1)	Defendants (1)
believes (1)	certain (7)	connected (2)	define (2)
BELSER (9)	certainly (1)	consideration (1)	defined (1)
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biggest (2)	certify (3)	construction (1)	DEPONENT (3)
bit (7)	change (6)	consume (14)	DEPOSITION (15)
bloom (1)	changed (6)	consumed (35)	depositions (1)
board (52)	CHARLESTON (7)	consuming (4)	describe (2)
boards (15)	chart (3)	consumption (36)	described (5)
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Box (3)	choose (1)	Continue (1)	destroyed (1)
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building (6)	CLARK (1)	convert (1)	determined (2)
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 direction (1)
 directly (2)
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 discussed (1)
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 discussing (1)
 discussion (4)
 distance (1)
 divided (8)
 DNA (3)
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 doing (9)
 double (1)
 down-to-the-minute (1)
 Dr (2)
 drone (1)
 drop (2)
 Dude (1)
 duly (2)
 dumpsters (3)

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 exercise (1)
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 follows (1)
 follow-up (2)
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 gram (1)
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 graph (1)
 greater (1)
 ground (2)
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 guy's (2)

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 Hang (1)
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 hard (3)
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 hate (1)
 head (2)
 hear (1)
 heard (1)
 heart (1)
 height (4)
 held (1)
 helped (1)

HEMINGWAY (8)	items (1)	little (10)	members (4)
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hits (2)	job (1)	locations (1)	met (1)
hole (1)	JODY (1)	logo (1)	methods (1)
holes (1)	journal (4)	long (31)	middle (7)
home (2)	JR (2)	longer (1)	mile (15)
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honeybees (1)	< K >	looked (5)	milligrams (1)
house (59)	keep (1)	looking (18)	million (17)
houses (2)	KERNODLE (2)	looks (3)	millions (2)
huge (4)	killed (2)	lot (23)	Minimally (1)
< I >	kind (4)	low (2)	minute (2)
idea (4)	knew (4)	lower (1)	missed (1)
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III (6)	< L >	making (4)	moisture (1)
illustrate (1)	lab (1)	man (1)	moment (1)
important (3)	labeling (1)	MANAGEMENT	months (2)
inch (1)	Lane (12)	(2)	MOTT (3)
inches (18)	large (5)	maple (1)	Mount (1)
include (4)	larger (2)	mark (3)	move (1)
included (6)	latest (1)	marked (2)	moved (2)
including (2)	LAW (2)	marker (1)	movement (1)
increase (3)	lawsuit (1)	markers (3)	< N >
increased (3)	learned (4)	marking (3)	name (2)
increases (1)	learning (2)	mass (1)	name's (1)
independent (2)	leave (4)	MATERIAL (1)	Nan-Yao (2)
indicating (2)	left (14)	math (3)	native (2)
indirectly (2)	left-hand (6)	mathematical (3)	near (1)
individual (2)	length (18)	Matt (3)	neat (1)
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infestation (5)	level (2)	MATTHEW (3)	necessary (2)
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information (6)	limit (1)	maturity (1)	neither (1)
insignificant (1)	line (9)	MAXCY (6)	never (6)
inspection (3)	lineal (3)	MCKNIGHT (7)	new (5)
intent (2)	lines (2)	mean (54)	NIPCAM (1)
interested (1)	linked (1)	Meaning (1)	Nobody's (1)
Internet (1)	list (1)	means (3)	NOLAN (10)
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involved (1)	literature's (1)	measured (15)	normal (2)
ISLE (5)	litigious (1)	measurement (5)	normally (2)
issue (1)		measurements (4)	Notary (2)
issues (1)		measuring (4)	notation (1)

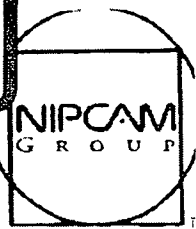
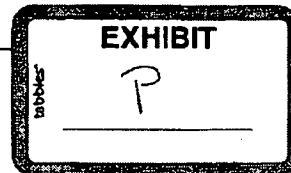
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noticed (4)	parameters (7)	post (1)	read (11)
noting (2)	part (12)	Practically (1)	reading (3)
number (39)	particle (2)	precise (3)	real (2)
numbered (1)	particular (19)	prefer (1)	Really (13)
numbering (1)	parts (2)	preferred (1)	Realtime (2)
numbers (16)	part's (1)	prefers (1)	re-ask (1)
	party (1)	presence (1)	reason (6)
< O >	pass (2)	present (1)	reasonable (11)
oath (1)	pause (1)	presented (3)	reasoning (1)
Object (2)	pending (1)	Pretty (20)	recall (1)
objections (2)	people (8)	previous (1)	Recess (1)
observation (7)	percent (50)	Probably (11)	recollection (1)
observations (2)	percentage (11)	probing (1)	record (6)
observe (1)	percentages (10)	problem (1)	recorded (1)
observed (8)	percentage-wise (1)	proceeds (1)	records (1)
observing (1)	perform (1)	process (3)	refereed (2)
obviously (2)	performed (2)	produced (1)	reference (4)
occasions (1)	period (3)	Professional (2)	referring (1)
occur (1)	personally (2)	project (1)	refers (1)
occurred (3)	PEST (11)	property (6)	regard (1)
official (1)	PH.D (6)	Public (2)	regarding (3)
Oh (1)	phenomenon (1)	published (4)	regardless (3)
Okay (102)	physically (1)	pull (1)	Registered (2)
old (2)	pick (3)	purchased (1)	relate (1)
older (2)	picked (4)	purpose (9)	related (14)
oldest (1)	picking (2)	push (1)	relates (1)
once (1)	picks (1)	put (10)	relevant (1)
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opened (1)	pictures (1)		remember (9)
opine (1)	piece (22)	< Q >	remembered (1)
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opportunity (2)	pine (29)	question (24)	replow (1)
opposed (3)	pine, (1)	questions (10)	REPORTED (1)
opposite (1)	place (6)	quick (1)	REPORTER (7)
original (2)	placed (1)	quit (2)	represent (3)
Originally (1)	places (11)	quite (1)	requested (1)
ounce (2)	Plaintiff (2)		research (16)
outside (2)	planning (1)	< R >	researcher (1)
	PLEAS (1)	ramp (1)	researchers (1)
< P >	Pleasant (1)	ran (9)	residence (9)
p.m (1)	Please (1)	random (2)	response (1)
P.O (1)	PO (2)	range (3)	results (1)
PAGE (33)	point (19)	ranges (1)	review (3)
pages (1)	points (18)	rate (22)	reviewed (1)
paint (1)	ponderosa (1)	rates (2)	right (132)
PALMS (5)	population (1)	rate's (2)	rings (3)

Road (1)	similar (3)	staying (2)	talking (19)
room (1)	simple (2)	stays (1)	talks (3)
round (3)	simply (2)	stenographically (1)	tape (2)
rounded (1)	Simultaneous (1)	stick (1)	technically (1)
RPR (1)	sir (10)	Stoney (1)	tell (7)
rub (1)	sistered (1)	stop (1)	tells (1)
run (3)	sit (1)	stopped (9)	temperature (2)
running (3)	situation (1)	stopping (1)	ten (4)
RUTH (3)	six (1)	straight (4)	term (2)
	size (30)	straightforward (1)	TERMINIX (3)
< S >	sized (1)	string (1)	terminology (2)
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sake (5)	slash (3)	structure (1)	termites (91)
sale (1)	slip (1)	structures (1)	terms (3)
saw (8)	slowed (4)	student (1)	tertiary (1)
saying (27)	smaller (1)	study (3)	testified (2)
says (60)	soft (3)	stuff (6)	testify (1)
SC (6)	sold (1)	Su (2)	testifying (1)
scholarly (1)	soldiers (1)	sub (2)	testimony (5)
science (1)	solely (1)	subfloor (1)	testing (1)
scientific (7)	somebody (2)	subject (1)	text (2)
scientists (1)	son (3)	subs (5)	textbook (2)
screwdriver (1)	sorry (4)	subscribe (1)	textual (1)
seal (1)	sort (4)	subterranean (8)	Thank (2)
second (12)	Sottile's (1)	subterraneans (3)	Thanks (1)
secondary (1)	sound (3)	sugar (1)	theoretical (1)
section (4)	SOUTH (3)	suggest (1)	thereof (1)
sections (4)	southern (14)	suggested (1)	thickness (2)
See (21)	specialized (2)	Suite (2)	thing (15)
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send (1)	speed (1)	support (1)	think (65)
sense (2)	speeded (1)	SUPPORTING (2)	third (8)
sentence (3)	SPM (3)	sure (12)	thought (9)
serious (1)	spot (3)	swarm (2)	thousand (1)
service (1)	spots (1)	swarmers (11)	thousands (1)
SERVICES (2)	spread (1)	swarming (1)	three (4)
set (1)	square (1)	swarms (1)	TIME (59)
seven (1)	stable (3)	sworn (2)	times (13)
SHEET (4)	stairwell (1)	SYP (1)	today (11)
sheets (1)	standard (2)	system (2)	told (7)
short (1)	start (4)		Tom (1)
show (14)	started (9)	< T >	top (4)
showing (2)	starting (1)	Tabby (12)	total (9)
shown (2)	starts (3)	table (55)	totally (4)
shows (7)	STATE (5)	take (26)	touch (1)
side (8)	stated (1)	taken (11)	trace (1)
sign (1)	statement (2)	takes (11)	transcribed (1)
signature (2)	stating (1)	talk (1)	transcription (1)
significant (1)	stations (1)	talked (8)	treated (3)

treatise (1)	< W >
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treatment (3)	walk (2)
treatments (1)	want (10)
trench (1)	watching (1)
tried (3)	Way (22)
trouble (1)	weather (1)
true (4)	week (1)
Truman's (5)	weigh (1)
truth (3)	weighed (2)
try (7)	weighs (3)
trying (29)	weighs, (1)
turn (1)	weight (3)
twice (7)	weights (2)
two (50)	Well (46)
type (11)	went (18)
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typically (1)	wide (1)
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ultimately (1)	widths (1)
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understanding (2)	wish (1)
Understood (1)	withdraw (1)
use (11)	within-entitled (1)
uses (5)	WITNESS (12)
usually (3)	wood (136)
< V >	wood's (2)
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variable (2)	words (8)
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vertically (1)	written (6)
viewed (1)	wrong (1)
views (1)	wrote (7)
visibly (2)	WWW.CLARK-ASS
visit (1)	OCIATES.COM (1)
visiting (1)	< Y >
visits (2)	year (8)
visual (2)	years (31)
visually (3)	yellow (14)
VOLUME (10)	young (1)
vs (1)	

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Wood Consumption/Time to Damage Estimate for 11 Tabby Lane

Using the following assumptions found in table 7.3, page 149 of, Truman's Scientific Guide to Pest Control Operations 5th Edition, 1997 from work published by M. I. Haverty, "Termites", Pest control, May 1976, 12-17, 46, 47, 49 we calculate the following:

Total board feet of wood eaten= 283.681

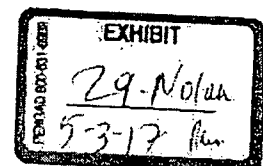
Number of days to consume a foot of pine 2x4 board= 19 days

Total time to damage for one colony= 14.7 years

Total time to damage for two colonies= 7.35 years

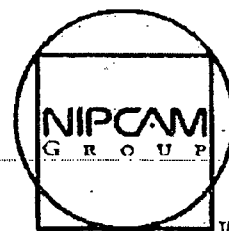
Total time to damage for three colonies= 4.9 years

Our observations suggest at least two colonies of Formosan termites were present.



LOCATION 11 Tabbby Lane, Isle of Palms DATE 7-6-17

PROJECT / CLIENT Carol Rosindance



Time: 11:30am -

Damage Estimate

Measurements	2x4	% damaged	2x6	% damaged	2x8	% damaged	2x12	% damaged
# of feet	7 feet	50%	4,6	25	8,10,2,6	25	4	25
↓	6 feet	50	30	50	4	20	3,5,4	20
	3 feet	20%	6	20	4,6,8	50		
	8,6	20			30	20		
	2	20			18,4	25		
	8,8	25			24	40		
	2,8	20						
	14	30						
	1,12	30						
	3	40						
	7,8	25						
	2,5	10						
	8,36	50						

60 feet of 2x4 was replaced around window on 2nd floor

* ① Picture - Top of piling from second floor on left front side of house

Measurements	8x12	% damaged	6x12	% damaged	4x12	% damaged	2x10	% damaged
# of feet	12	50	4,4	30	10	20	4,4	50
			6	25				

Feeding

Subterranean termites have preferences in the type of wood they will eat. The eastern subterranean termite prefers slash and loblolly pine, while the Formosan termite prefers sugar maple and slash and loblolly pine (see Table 7.1). The condition of the wood is also important. Decayed wood is eaten faster and preferred over sound wood (see Table 7.2). Termites working in the wood facilitate decay by increasing the moisture content. Thus, termite damage is usually associated with decaying wood.

The major species of subterranean termites in the United States consume wood at approximately the rate of 2 to 3 percent of their body weight each day. Factors affecting consumption include the environmental conditions, size of the termite, and size of the colony. The average, mature colony of eastern subterranean termites contains about 60,000 to 1 million workers, while a Formosan termite colony contains 350,000 to 2 million workers. Under ideal conditions, an eastern subterranean termite colony of 60,000 would consume about 5 grams, or 1/5 ounce, of wood each day, while a Formosan termite colony of 350,000 would consume 31 grams, just over 1 ounce (see Table 7.3). It would take the eastern subterranean termite colony approximately 118 days to consume a 1-foot length of 2 by 4 pine, while the Formosan colony could consume the same board in 19 days. Thus, Formosan termites are usually more destructive than native subterranean termites.

Communication in the Colony

For social insects, communication is needed to maintain efficient social integration and division of labor. The most basic means of communication among termites is via chemical (pheromone) communication. In fact, each colony develops its own characteristic odor. Any intruder, be it a termite

from another colony, an ant, or any other natural enemy, is instantly recognized as foreign when it enters the colony. An alarm pheromone is secreted by the colony, and this triggers the soldier termites to attack and kill the intruder. The intruder is then walled off from the colony with fecal matter. If a hole in the termite workings occurs, it is immediately patched by the workers.

Sound is another means of termite communication. Termite soldiers and workers bang their heads rapidly on the surface of their mud tunnels or wood galleries when the colony is disturbed. The vibration of the surrounding surface is perceived by others in the colony, and they too take

up the banging activity. This activity serves to mobilize the colony defenses just as do the alarm pheromones mentioned earlier.

One of the primary means of communication is via trophallaxis, which is the mutual exchange of nutrients and the transfer of food between colony members. Trophallaxis permits the efficient use of nutrients within the colony, enhances recognition of colony members, distributes chemicals involved

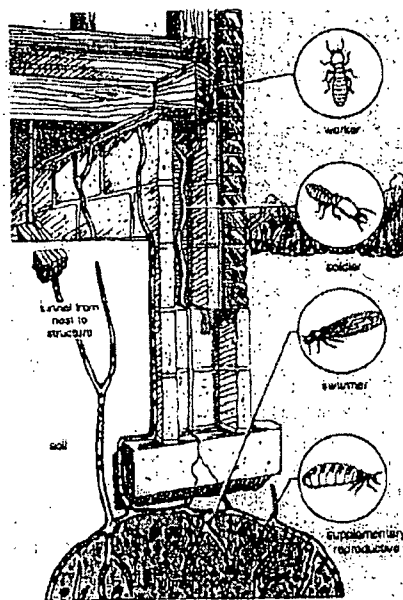


FIGURE 7.6: The environment of the subterranean termite.

TABLE 7.1. Feeding (mg/8 weeks) on eleven species of wood by the Formosan termite, *Coptotermes formosanus*, and the eastern subterranean termite, *Reticulitermes flavipes*. (From Smythe and Carter, 1970)

Wood	<i>C. formosanus</i>	<i>R. flavipes</i>
Loblolly pine	381	493
Slash pine	367	270
Sugar maple	455	113
Western larch	167	81
Black walnut	74	59
Redwood	43	37
White oak	22	20
Black cherry	12	18
Bald cypress	19	17
Douglas fir	107	14
Ponderosa pine	20	14

in caste regulation, and transfers cellulose-digesting protozoans. Termites exchange food from both the mouth and the hind gut. When termites shed their skin during moltings, they also lose their hind gut contents, including the protozoa they need for digesting wood. To get a new supply of protozoa, they must feed from the hind gut of other colony members. The feeding of the queens and soldiers by the workers is also a form of trophallaxis.

Worker termites forage continuously for new sources of food. They also forage randomly in many locations throughout their foraging territory, looking for food. When a foraging termite worker finds a source of food, it recruits others to the food source by laying a chemical (pheromone) trail. The more foragers that find the food and return with it to the colony, the more intense the pheromone trail becomes. As the food source is depleted and the foragers no longer deposit the pheromone, the trail deteriorates and eventually is abandoned.

TABLE 7.2. Feeding (mg/8 weeks) by the eastern subterranean termite, *Reticulitermes flavipes*, on five species of decayed and nondecayed wood. (From Smythe et al., 1971)

Wood	Decayed	Nondecayed
Sugar maple	726	438
Loblolly pine	706	436
Slash pine	701	608
Western larch	669	335
Ponderosa pine	660	333
Average	692	410

TABLE 7.3. Consumption of wood by theoretical colonies of the Formosan termite, *Coptotermes formosanus*, and the eastern subterranean termite, *Reticulitermes flavipes*. (From M. I. Haverty, "Termites," Pest Control, May 1976, 12-17, 46, 47, 49)

	<i>C. formosanus</i>	<i>R. flavipes</i>
Wood consumption rate (mg wood/gram of termite/day)	33.2	23.4
Weight of worker (mg)	3.78	2.50
Wood consumption/termite/day (mg)	0.89	0.083
Estimated number of workers/colony	350,000	60,000
Wood consumption/colony/day (g)	31.04	4.98
Days to consume 1 board foot of pine*	38	236
Days to consume 2 x 4 in. board, 1 ft. long	19	118

*This calculation assumes that pine weighs an average of 0.3 g/cc, with 2,359.7 cc/board foot or 1,179.9 g/board foot.

The proportion of the castes in the colony is also regulated chemically. For example, soldiers and reproductives produce chemicals that are distributed to other colony members by trophallaxis. These chemicals inhibit the production of additional soldiers and reproductives. Termites may react to a high level of soldier-produced chemical by killing some of the soldiers. Thus, the needs of the colony are met, and the proper balance of the different castes is maintained. In most subterranean termite colonies, nymphs can molt into workers, soldiers, or reproductives; workers can change into soldiers, nymphs, or supplementary reproductives; and nymphs that have begun developing wing buds may actually lose them with additional molts and return to the worker stage. All of these changes are chemically regulated within the colony, depending on its needs.

SUBTERRANEAN TERMITES OF NORTH AMERICA

The large majority of termite damage that occurs in the United States is caused by subterranean termites. However, in certain specific areas, nonsubterranean species may be the principal problem. Several species of the genus *Reticulitermes* com-