

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2015-CP-10-00955

Appellate Case No. 2019-001790

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Feb 03 2021

SC Court of Appeals

Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. And Jack Love,
Individually, and on behalf of all others similarly situated,.....Plaintiffs,

vs.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc;
American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Andersen Windows,
Inc; Atlantic Building Construction Services, Inc., n/k/a Atlantic Construction Services, Inc.;
Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc., f/k/a SGM
Architects, Inc.; Tallent and Sons, Inc; W C Services, Inc.; CRG Engineering, Inc; CertainTeed
Corporation; Kelly Flooring Products, Inc, d/b/a Carpet Baggers; Cornerstone Construction and
Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a
Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a
John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company,
Inc; Mosely Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction,
LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC
Construction, Inc; JMC Construction, LLC; John Doe 1—15, ... Defendants,

of which Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. and
Jack Love, individually, and on behalf of all others similarly situated are the Respondents,

and

Tri-County Roofing, Inc..... Appellant.

RECORD ON APPEAL (FINAL)

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1 Q. Read that to me -- read it to us again to make sure I got
2 it right.

3 A. Sprinklers -- excuse me, sprinklers shall not be required
4 in attics, crawl spaces and other concealed spaces that are
5 not used or intended for living purposes.

6 Q. Okay. Are these attics intended for living purposes in
7 your opinion?

8 A. No, sir.

9 Q. Okay. That's all I have for you. Thank you, sir. I
10 appreciate your time.

11 THE COURT: All right. Any redirect?

12 MR. BUCKLEY: None, Your Honor.

13 THE COURT: All right.

14 Mr. Williams, is there a question you wanted to ask? Did
15 you stand up? Okay, just checking.

16 All right. Mr. Smits, you can step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 The plaintiffs may call their next witness.

20 MR. LUCEY: Mark Alan Poyner, Your Honor.

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: For the record will you please state your
23 full name and then spell your last name.

24 THE WITNESS: Mark Alan Poyner. P-O-Y-N-E-R.

25 **DIRECT EXAMINATION BY MR. LUCEY OF MARK POYNER:**

1 Q. Mr. Poyner, Justin Lucey. You and I have never formally
2 met, correct?

3 A. That is correct.

4 Q. We are just going to be a couple of minutes. I just need
5 to help you -- to get your help to identify a couple of the
6 subcontractors on this job. And if you will bear with me for
7 just one or two minutes I want to first ask you just a couple
8 of background questions, okay, or just get you to confirm some
9 background information for the jury.

10 Your original entry, you personally -- you are with
11 Tri-County Roofing, right?

12 A. That is correct, TCR.

13 Q. And your original entry into any sort of even
14 construction related business, as I understand it, was in
15 approximately the year 2000 in Myrtle Beach with AmeriSweep;
16 is that correct?

17 A. Not entirely, no, sir.

18 Q. Okay. Was it before that?

19 A. Yes, sir.

20 Q. But it was AmeriSweep in Myrtle Beach?

21 A. Actually it was before that as well.

22 Q. Okay. And AmeriSweep was more or less a cleaning and
23 maintenance company of some sort?

24 A. Basically, yes.

25 Q. And around 2003 or so you came down to Charleston to join

1 Tri-County, correct?

2 A. That is correct.

3 Q. And if I misstate or accidentally state TCR, that would
4 still be Tri-County Roofing; correct?

5 A. Yes, sir.

6 Q. And you started with Tri-County Roofing as an estimator,
7 correct?

8 A. Yes, sir.

9 Q. And as of -- or a year or two ago and maybe to still
10 today you were the operations manager, correct?

11 A. Yes, sir.

12 Q. But staying -- let's go back in time though. You came to
13 Tri-County in 2003 and the Palmetto Pointe job was 2006; do
14 you recall that?

15 A. Yes, sir.

16 Q. And at that time you were still estimating for
17 Tri-County, correct?

18 A. Yes, sir.

19 Q. And at that time, sir, as I understand it, most of the
20 work that you had done with Tri-County for that first two or
21 three years was either small like single-family residential or
22 small or light commercial; correct?

23 A. We did some large residential as well.

24 Q. Okay. But when you did -- when y'all eventually did
25 Palmetto Pointe that was your largest job to date, correct?

1 A. It was the largest as far as timeframe and dollar amount.

2 Q. And it was also the largest siding job you all had done
3 with you involved, correct?

4 A. Regarding the timeframe and the dollar amount, yes, sir.

5 Q. Okay. And then going to the Palmetto Pointe job which is
6 where I said we would get to, with just the subs here for a
7 second, going to that job, as I understand it Tri-County
8 Roofing did not what is called self-perform any work on that
9 job?

10 A. That is correct.

11 Q. You just contracted with the general contractor, Complete
12 Building, to do certain portions of their work on the job;
13 correct?

14 A. Yes, sir.

15 Q. And then you -- or Tri-County actually in turn turned
16 around and you contracted with other people to do what you had
17 agreed to do for Complete Building, correct?

18 A. That is correct.

19 Q. So stated differently, when you say somebody doesn't
20 self-perform any work, basically what we are saying is TCR
21 never lifted a hammer on this job; correct?

22 A. No, sir.

23 Q. They were a middleman between Complete Building and
24 Tri-County subs, correct?

25 A. Yes, sir.

1 Q. But they did still have responsibility to supervise the
2 scope of work that they had agreed to have performed on behalf
3 of Complete Building, correct?

4 A. Yes, sir.

5 Q. And with regards to that scope of work I did ask your
6 attorney to show you earlier today to see if you remembered
7 it, the contract -- you had a written contract with Complete
8 Building that we have already put into evidence. Do you
9 recall that?

10 A. Yes, sir.

11 Q. And that contract incorporated what is called a master
12 contract as most construction contracts do, which is the
13 contract between the builder, CBC, and the owner; do you
14 recall that?

15 A. Yes, sir.

16 Q. And you looked at that earlier today too, correct?

17 A. I did not see that verbiage, but I understand from
18 explanation that that is what it was supposed to be.

19 Q. Okay. And then your contract has as its scope it refers
20 to two or three sections in the project manual and it says you
21 are responsible for those particular sections, correct?

22 A. Yes, sir.

23 Q. Like some of it says waterproofing or some of it says
24 thermal and plastic or whatever those sections say, right?

25 A. Yes, sir.

1 Q. And then you would go to the project manual and whatever
2 is listed out and described in that project manual is what you
3 would be supposed to be performing on the job, correct?

4 A. That is correct.

5 Q. And within that area there was at least three principal
6 areas of work that y'all agree to perform, if I'm not
7 mistaken, the roofing, the decking and the siding; correct?

8 A. That is correct.

9 Q. And the siding actually maybe is slightly a misnomer
10 because it is a little broader than that; it includes the trim
11 around the siding, correct?

12 A. That is correct.

13 Q. And like the Hardie trim that we might see on the post or
14 on the base of the post it makes it look decorative, correct?

15 A. Yes, sir.

16 Q. Or like trim around a window, correct?

17 A. Yes, sir.

18 Q. But those are the three main areas; it was roofing,
19 siding, and decks; correct?

20 A. That is correct.

21 Q. And now you in turn, as I understand it, contracted with
22 a company called Miracle Siding to do all the siding and trim
23 work; correct?

24 A. That is correct.

25 Q. And like the name says, Miracle Siding, as I understand

1 it they were a siding company; correct?

2 A. That is correct.

3 Q. And that was actually a person named Sales, correct;
4 Lucas Sales?

5 A. I believe it was Wilson Sales.

6 Q. Wilson Sales. Wilson Sales, d/b/a Miracle Siding, and
7 sometimes d/b/a Miracle Siding, LLC; do you recall that?

8 A. Yes, sir.

9 Q. All right. And so he is the one -- his company is the
10 one that went on to Palmetto Pointe and did all of the siding
11 and all of the trim work, correct?

12 A. Yes, sir.

13 Q. And there was actually another subcontractor -- this is
14 just to be clear with the jury just so we are as clear as we
15 can be, there was another subcontractor that did some of the
16 other siding and on the first one or two or three units at
17 part of this process; correct?

18 A. There was somebody that did some other siding, yes, sir.

19 Q. Cornerstone, does that ring a bell?

20 A. Yes, sir.

21 Q. But the vast, vast, vast majority of this was Sales,
22 Miracle Siding; correct?

23 A. Yes, sir.

24 Q. And then going to the other two major scopes that your
25 company performed on this job, the decking and the roofing,

1 that was performed by a gentleman named Vasquez, correct?

2 A. That is correct.

3 Q. And I spelled it earlier as V-A-S-Q-U-E-Z. Does that
4 sound right?

5 A. As far as I know.

6 Q. Okay. And he performed both the shingled roofing that
7 the jury has seen pictures of and the decking where the
8 Sealoflex or the HydroStop was applied, correct?

9 A. Yes, sir.

10 Q. And as I may understand it, not only do you know that
11 because you know it but this individual, Vasquez, had actually
12 done other jobs previously for Tri-County Roofing; correct?

13 A. That is correct.

14 Q. So y'all had an informal relationship of some kind,
15 correct?

16 A. Yes, sir.

17 Q. And you know that -- not only you do you know that you
18 did -- that he did this for you, but I understand it you
19 actually went to the job site and looked at the initial
20 applications; correct?

21 A. Yes, sir.

22 Q. And you continued going to the job site but not quite as
23 often once y'all had gotten into a pattern, correct?

24 A. That is correct.

25 Q. So you not only arranged to have him do this work for

1 you, but you personally were on the site watching this guy
2 doing the work?

3 A. That is correct.

4 Q. And you all from time to time checked some of the -- or
5 looked at some of the shingle applications that he was doing
6 on the job, correct?

7 A. Yes, sir.

8 Q. And these two subcontractors you and I were just talking
9 about, they are the two defendants that have been in the room
10 for the last couple of days with us, correct? Well, Lucas --
11 Lucas -- Wilson Sales was here for jury selection on Monday.
12 Did you see him?

13 A. No, sir, I did not.

14 Q. Were you here?

15 A. Yes, sir.

16 Q. Okay. Let me also just show you what has been marked for
17 plaintiff's exhibit -- for identification purposes only,
18 Plaintiff's Exhibit 55.

19 Is this an email that you and your wife prepared?

20 A. It is an email that I prepared yes, sir.

21 Q. And did your wife assist you with it?

22 A. No, sir.

23 Q. Okay. I saw the fancy writing. Is that your -- that is
24 your custom email signature down at the bottom marked
25 employer?

1 A. Yes, sir.

2 Q. Okay. And you prepared this on or about November 12th,
3 2007, the date that is on it?

4 A. Yes, sir.

5 Q. And you transmitted this to C. Poyner with a copy to
6 Buddy Hilton, correct?

7 A. That is correct.

8 Q. And who is C. Poyner; is that your wife, Christie?

9 A. It is.

10 Q. All right. And so you actually sent a copy of this
11 letter to Mr. Hilton?

12 A. I did.

13 Q. And that is your electronic signature at the bottom?

14 A. Yes, sir.

15 Q. We are not going to actually use it right now. We just
16 needed you to identify it for us in case we do need to use it
17 later. And we thank you, sir.

18 Now are you able to indentify for the jury anybody
19 besides Mr. Vasquez that did any of the decking, the coating,
20 HydroStop and Sealoflex of the decks at Palmetto Pointe?

21 A. No, sir, not that I recall.

22 Q. And are you able to identify for the jury anybody besides
23 Mr. Vasquez that did any of the shingled roofing at Palmetto
24 Pointe?

25 A. Not that I recall.

1 Q. Okay. And are you able to identify for the jury anybody
2 besides Mr. Lucas Sales, Miracle Siding, who did all of that
3 trim and siding work at Palmetto Pointe besides those two or
4 three houses that got done by Cornerstone?

5 A. With the exception of what was in that email.

6 Q. Okay. Thank you, sir.

7 MR. BOYD: No questions, Your Honor.

8 THE COURT: All right.

9 MR. COLE: Your Honor, I am going to reserve for my case
10 in chief.

11 THE COURT: Okay.

12 MR. REESER: Your Honor, no questions. But we would also
13 reserve our right to cross if called by another party or to
14 call in our case in chief.

15 THE COURT: All right. Thank you very much.

16 Mr. Adkins, anything?

17 MR. ADKINS: I have not.

18 THE COURT: All right. Thank you very much. Sir, you
19 can step down.

20 Plaintiffs can call their next witness.

21 MR. BUCKLEY: Plaintiffs call J. Handegan.

22 MR. KENDALL: Your Honor, there is a matter of law I
23 would like to take up in that regard.

24 THE COURT: Okay. All right. Ladies and gentlemen, once
25 again we will take a short break. There is a matter of law I

1 need to discuss with these attorneys outside of your presence.
2 So I will excuse you to the jury room. Thank you very much.
3 Please do not discuss the case.

4 (WHEREUPON, jury exits courtroom 5/8/19, 4:28 p.m.)

5 THE COURT: Mr. Kendall, what do you need to discuss?

6 MR. KENDALL: Your Honor, we were handed -- when I got
7 back from lunch today we were handed an updated estimate
8 adjustments that is Mr. Handegan's repair estimate. The last
9 one we received is what was dated here today 12/21/17. And
10 this document purports to deduct items that are related to the
11 issue-precluded matters.

12 THE COURT: Okay.

13 MR. KENDALL: We are not -- heretofore been given
14 anything of this nature to go review.

15 THE COURT: Okay.

16 MR. KENDALL: So I have not had a chance because I have
17 been sitting right here, as you can imagine, with a lot going
18 on. And then furthermore in addition to that there is --
19 there is an additional -- there are additional items added to
20 this estimate that have not previously been disclosed in any
21 manner to us.

22 They include estimates for repair of fire separation
23 walls, which we have heard a lot about today; and for the
24 first time I am getting an estimate related to that.

25 THE COURT: Okay.

1 MR. KENDALL: And it also includes an item that says a 10
2 percent contingency added due to recent findings. And I don't
3 know whether that means recent since December 17 or the stuff
4 that we got Monday.

5 THE COURT: Okay.

6 MR. KENDALL: But I don't think it is fair for us to have
7 to be -- to cross-examine on this estimate when we got it just
8 two hours and fifteen minutes ago.

9 THE COURT: All right. Plaintiffs want to respond?

10 MR. LUCEY: Yes, Your Honor, the only new item is the
11 ten-percent contingency which was testified about that a
12 contingency was needed by Al Schweickhardt on day one of the
13 trial. There was no prior contingency in there.

14 The other four items, Your Honor, were already in here.
15 He increased their amount because of the fire evidence that
16 has come up in 2019. The only other change is, is that he has
17 deleted at our instruction any item that has issue preclusion.
18 And he crossed it out and he just recapped it on the last page
19 to show all of the deductions he made, the fire separation
20 increase, and the contingency.

21 THE COURT: Okay.

22 MR. LUCEY: If counsel needs overnight to look at it and
23 we call the witness in the morning, we don't object; but ---

24 THE COURT: That would have been my proposal. I just
25 want -- I mean you don't -- you don't contest the fact that

1 you handed him this new estimate at lunchtime today?

2 MR. LUCEY: Correct, Your Honor.

3 THE COURT: Okay. If that is the case is there another
4 witness you can call next?

5 MR. LUCEY: This is the 2017 estimate. I just would hand
6 him the changes here.

7 (WHEREUPON, document provided to Mr. Kendall.)

8 THE COURT: Nobody else ready? Nobody else ready?

9 MR. LUCEY: No.

10 THE COURT: No?

11 (WHEREUPON, counselors confer.)

12 THE COURT: I will come back in a couple of minutes.
13 Just let me know.

14 MR. LUCEY: Thank you.

15 THE COURT: Okay.

16 (WHEREUPON, break 5/8/19 4:32 p.m.)

17 (WHEREUPON, resume trial 5/8/19, 4:37 p.m.)

18 THE COURT: Are they ready; are they here?

19 MR. BUCKLEY: Yes, we are ready, Your Honor.

20 THE COURT: All right. Bring the jury back in.

21 (WHEREUPON, jury enters 5/8/19, 4:39 p.m.)

22 THE COURT: Plaintiffs call their next witness.

23 MR. BUCKLEY: Your Honor, we would call Jack Love.

24 THE COURT: All right.

25 (WHEREUPON, the witness was duly sworn.)

1 THE CLERK: For the record would you please state your
2 full name and spell your last name.

3 THE WITNESS: Jack Love. L-O-V-E.

4 **DIRECT EXAMINATION BY MR. BUCKLEY OF JACK LOVE:**

5 Q. Where do you live, Mr. Love?

6 A. 1651 Folly Creek Way.

7 Q. And we looked at an aerial photograph of the development
8 the other day. Is that one of the units farther down toward
9 the end of the road?

10 A. Toward the end of the road and by the cul-de-sac, yes.

11 Q. And would you be on the right-hand side of the road?

12 A. I am on the right-hand side of the road.

13 Q. And how long have you lived at Palmetto Pointe?

14 A. Since November of 2008.

15 Q. All right. And before you lived in Palmetto Pointe where
16 did you live?

17 A. I was in Northern Virginia.

18 Q. You moved here in 2008, and have you lived here
19 continuously?

20 A. Yes.

21 Q. Is that your home?

22 A. It is.

23 Q. Is that your only home?

24 A. It is.

25 Q. Are you on the board at Palmetto Pointe?

1 A. I am on the board.

2 Q. And when did you get on the board?

3 A. January 2015.

4 Q. Okay. And who did you replace?

5 A. A gentleman named Kevin Koontz.

6 Q. And where did Mr. Koontz live?

7 A. He lived in 1603, I believe.

8 Q. Okay. All the way back down at the end of the road?

9 A. At the entrance ---

10 Q. Toward the entrance?

11 A. Yes.

12 Q. Have you experienced any problems with your unit at
13 Palmetto Pointe?

14 A. Yes.

15 Q. And what problems have you experienced, describe it for
16 the jury.

17 A. I have had shingle loss. I have had flashing problems.
18 I have corrosion of the aluminum wrap that they have talked
19 about. I have -- one of my -- they talk about how the gypsum
20 board that the drywall in your home is pretty rigid and
21 brittle. And I had a crack at one of my doorways on the
22 upstairs, and they suspected that was a support problem with
23 that at that point.

24 In my kitchen my sink was not mounted properly. When you
25 mount a sink there should be clips underneath connected to the

1 whatever substance it is, Formica, granite, whatever. And
2 they didn't put clips in the front. They just used plywood.
3 And over time that plywood got damp under the sink. It
4 rotted.

5 The sink -- and the first thing I noticed was when you
6 have your sink, between you and the sink there's a thin strip
7 of your countertop; and that started to crack, and I didn't
8 know why. And then at one point the sink just dropped. And
9 what happened was that board rotted and the sink failed. And
10 that had to be replaced.

11 Q. When did you notice you had problems with shingles
12 blowing off of your roof?

13 A. The first time I noticed that -- I noticed them blowing
14 off during one of the first tropical -- named tropical storms.
15 I noticed them having problems in the fall of 2014 when there
16 was a storm that came through with winds and rain and the
17 shingles were flapping in the wind.

18 Q. Was that a named storm or just a wind storm ---

19 A. I don't believe it was a named storm.

20 Q. Okay. When you noticed that did you make any effort to
21 contact the roofer, Tri-County Roofing?

22 A. Yes. And I want to mention that that was -- there was
23 about a four by six foot section. It was big. That was
24 flying off. I did try to call Tri-County Roofing.

25 Q. Did you actually call Tri-County Roofing?

1 A. I did call Tri-County Roofing.

2 Q. And tell the jury what happened.

3 A. We talked yesterday about when you bought your homes that
4 there was a booklet that came with it of the builders and
5 suppliers and things. And when I saw roofing problems I
6 looked in the book to see who supplied the roofs. I thought
7 that makes the most sense to call them.

8 I called Tri-County Roofing. I told them where I was. I
9 told them what my problem was. And they put me on hold. I
10 don't remember how long. It wasn't long. Came back and I was
11 told they wouldn't step foot on that site again. And that was
12 the end of the call. I was stunned.

13 Q. Had you ever heard from Tri-County Roofing since then?

14 A. No, sir.

15 Q. That was in 2014, and you were aware that this suit was
16 filed in February 2015?

17 A. Yes, I am.

18 Q. Okay. So it was before any lawsuit was ever filed?

19 A. That is correct. Before I was on the board.

20 Q. Do you have an opinion, Dr. Love, as to the fair rental
21 value of your unit?

22 A. I do. I have done some research, and the fair rental
23 value of these properties in this location is about 3,000,
24 3,500 per month.

25 Q. And are you requesting as a board member and as an owner

1 that the jury award damages to you in this case?

2 A. Absolutely.

3 Q. And why do you hope to recover damages through this case
4 as opposed to paying for it yourself?

5 A. As you can tell from the long list of defects and
6 problems and code violations we had, that is an extensive
7 amount of money which I don't have to -- myself.

8 Q. Is this -- is this just a matter of nails, shingles,
9 coatings, dry walls, fire stopping, to you?

10 A. No, those are things. And that is what -- we have talked
11 about things since it started. I am a class representative
12 for the community. I represent all of the residents in there.
13 To us this is not about things. This is about our homes.
14 These are homes. These are -- we are people. We are the
15 people who live in these homes.

16 Imagine yourselves living in these homes. A home -- a
17 home is where you eat, you sleep, you laugh, you cry, you have
18 friends over, you raise your kids. A home has a soul. That's
19 -- that is what these mean to us.

20 And to my wife and I, we spent our whole -- we spent our
21 whole lives dreaming on a site like this and a place like
22 this. And excuse me, I am nervous. But we never thought we
23 would make it. And we did finally.

24 Q. Have you had problems with your guardrails cracking?

25 A. Yes.

1 Q. Guardrail brackets?

2 A. Yes.

3 Q. When you have people over -- do you have a son who is in
4 his 20's?

5 A. Not any longer. But I have a son, an adult son.

6 Q. How old is he now?

7 A. He is 34.

8 Q. I'm sorry.

9 A. That's okay.

10 Q. I've got one 32. Does your son come over on occasion?

11 A. Yes.

12 Q. When your son or other people come over do you advise him
13 anything about leaning on your guardrails at the balconies and
14 decks?

15 A. Not until we learned about the life safety issues in the
16 last couple of years.

17 Q. Okay. And after that ---

18 A. And now absolutely.

19 Q. Do you ever lean against the railings yourself?

20 A. I do not. I don't want to fall one or two stories to
21 serious injury or worse.

22 Q. Answer any questions that any of the defense attorneys
23 may have for you.

24 A. Okay.

25 **CROSS-EXAMINATION BY MR. BOYD OF JACK LOVE:**

1 Q. Mr. Love.

2 A. Yes.

3 Q. It is good to see you.

4 A. Dr. Love.

5 Q. Dr. Love.

6 A. Thank you.

7 Q. Sure. Glad to do it. Are you okay; are you ready to get
8 started?

9 A. Sure.

10 Q. Okay. No reason to be nervous. As I understand it, you
11 purchased your residence back in 2008; is that correct, sir?

12 A. Purchased it in 2007.

13 Q. Purchased it in 2007.

14 A. Moved in in 2008.

15 Q. Moved out -- moved in in 2008. And at the time that you
16 purchased your residence was the neighborhood at that time,
17 was the HOA at that time, controlled by the developer;
18 correct?

19 A. Yes.

20 Q. And the developers were Mr. Thomas Brown and Christopher
21 Union, correct?

22 A. Yes.

23 Q. Did either one of those gentlemen own some townhouses in
24 the neighborhood?

25 A. I purchased Mr. Brown's home.

1 Q. Okay. And did Mr. Brown ever disclose any issues to you
2 when you and your wife purchased your home that are -- that
3 are involved in this lawsuit here today?

4 A. No.

5 Q. And you just didn't take Mr. Brown's word for it, I
6 assume; isn't it correct that you and your wife also had your
7 residence inspected by an independent home inspector; correct?

8 A. Yes.

9 Q. As I understand it, you hired a company called Antebellum
10 Home Inspections; is that correct?

11 A. That's correct.

12 Q. And I think we have had previously a chance to talk to
13 you about that. Isn't it correct that Antebellum didn't find
14 any structural issues or leaks in the attic of your home; is
15 that correct?

16 A. They didn't -- we passed their inspections.

17 Q. Okay. And they didn't advise you of any siding issues
18 with your home?

19 A. They didn't pick up any of the latent deficiencies.

20 Q. Okay. And did they advise you of any roofing or shingle
21 issues?

22 A. They didn't go on the roof, to the best of my knowledge.

23 Q. Did the home inspector advise you of any fire proofing
24 issues?

25 A. It has been a while since I have read the report.

1 Q. Do you think it is a thing you would have recalled?

2 A. I would have -- I would have -- I don't imagine he had
3 anything in there.

4 Q. Okay. And also when you purchased you indicated that the
5 developer was in charge of the Homeowner's Association at that
6 time, correct?

7 A. Yes, I believe so; yes.

8 Q. And under the master deed the HOA is responsible for
9 maintenance and repair of the exterior elements of the
10 buildings or the homes out at Palmetto Pointe, correct?

11 A. Yes.

12 Q. And so during the time the developer was in charge of the
13 neighborhood they would have been responsible for any
14 maintenance -- maintenance and repair of the exteriors of your
15 home, correct?

16 A. In conjunction with the board, yes.

17 Q. Yes, sir. And did the developer -- one of the developers
18 actually sat on the board, did he not?

19 A. Yes.

20 Q. And during the time -- and when did the property actually
21 transition to the homeowners to run the HOA board yourself?

22 A. I believe it was some time in 2014.

23 Q. Okay. Okay. I think -- I think that is what I recall as
24 well. From 2007 to 2014 did the developer ever advise the
25 homeowners of any issues involving the shingles that we have

1 seen in this lawsuit?

2 A. Not that I recall. Doesn't mean they weren't there.

3 Q. Did the developer -- and I am not suggesting they
4 weren't. Did the developer advise the homeowners of any
5 issues with the siding?

6 A. No.

7 Q. Did the developer advise the homeowners of any issues
8 with fire proofing?

9 A. No.

10 Q. Did the developer do any maintenance or repair to address
11 any of these problems that you and the other homeowners have
12 experienced and have talked to us about during this trial?

13 A. The developer himself, no.

14 Q. Yes, sir.

15 A. No.

16 Q. Okay. You said that you joined the board in January of
17 2015; is that correct?

18 A. Yes.

19 Q. And do you recall that the issue that in your mind
20 started this whole thing or started the process of the lawsuit
21 was the pump jack issue with the roofs; is that correct?

22 A. That was the Pandora's box, yes.

23 Q. And prior to that time did you have any -- were you on
24 notice of any issues that would have led you to believe that
25 you had a lawsuit or should bring a lawsuit?

1 yourselves or with anyone else. And please don't do any
2 independent research overnight either. Thank you very much.

3 (WHEREUPON, jury exits 5/8/19, 5:06 p.m.)

4 THE COURT: All right. See everybody at 9:00 a.m.

5 (WHEREUPON, adjourn for the evening 5/8/19, 5:07 p.m.)

6 (WHEREUPON, resume trial 5/9/19, 9:05 a.m.)

7 THE COURT: The jury is all present and accounted for; is
8 that right?

9 THE BAILIFF: Yes, ma'am.

10 THE COURT: All right. Is plaintiff ready to proceed?

11 MR. LUCEY: Yes, Your Honor.

12 THE COURT: All right, we can bring the jury in.

13 MR. KENDALL: Your Honor, I had that ---

14 THE COURT: Oh, I'm sorry. Give me one minute
15 (addressing bailiff).

16 That is right, Mr. Kendall. Go ahead. Happy to hear
17 from you.

18 MR. KENDALL: Your Honor, I wanted to move at this time
19 to exclude the repair estimate updated that we received
20 yesterday. We advised the court this document was handed to
21 us when we returned from lunch, so about 2:15 or 2:30
22 yesterday afternoon. That would be May 8th. The document
23 itself is dated or has a handwritten notation of May 7th as
24 the date it was prepared.

25 This document it purports to be a revision to Mr.

1 Handegan's prior estimate of December 21st, 2017. The
2 estimate does several things. It first purports to indicate
3 items to be removed from the estimate that are part of the
4 issue of preclusion. However, it is -- they are -- it is not
5 clear to me who made the assessment of which items within the
6 report should fall into that category.

7 In other words, we know the issues that are precluded;
8 but what we see translated onto this document is Mr.
9 Handegan's representation of which items -- we think that that
10 is what it is, but we don't know how he decided which of the
11 line items apply to that issue-precluded recovery.

12 THE COURT: Okay.

13 MR. KENDALL: It also contains evidence that is new and
14 information that is new. And particularly on the final page
15 of the document there are -- there's a lot of calculations.
16 But it includes some adds under the category of add. And they
17 all relate to fire separation and attic repairs and other
18 things that we heard about yesterday from the witness stand.

19 There is -- there was already a line item in this report
20 for fire separation wall repairs. That item is not being
21 removed and this one added; this is just added. We, again,
22 don't know the basis because we had two experts tell us
23 yesterday they have not specified an engineered scope of
24 repair. So this information is new and we would like to know
25 the basis for it.

1 The third item in here that is new is a line item for
2 contingency ten percent added due to recent finding. Again,
3 we don't know what exactly these recent findings are. Does it
4 relate to findings that have occurred since December 21st,
5 2017, when the estimate was first written? Does it relate to
6 the findings that occurred that we got photographs for on
7 Monday night of photographs that were taken the morning of the
8 beginning of this trial May 6th?

9 So within this estimate there are a number of items that
10 are not -- that are new.

11 THE COURT: Okay.

12 MR. KENDALL: And so, Your Honor, I believe it would be
13 highly prejudicial to allow this witness to introduce this
14 document today as part of his testimony. We simply have not
15 had fair notice and opportunity to resolve it.

16 THE COURT: Okay. Do you have a copy, just for the
17 record to protect your record, of the previous one and the new
18 one?

19 MR. KENDALL: Okay, we were only given the one copy of
20 the new, and I couldn't make photocopies ---

21 THE COURT: I am sure during discovery at some point in
22 time you had a copy of the 2017 ---

23 MR. KENDALL: I have the early one, yes, Your Honor.

24 THE COURT: You do have that as well?

25 MR. KENDALL: Yes, Your Honor, but I only have the one

1 copy today.

2 THE COURT: With you today ---

3 MR. KENDALL: With me today.

4 THE COURT: --- of the new?

5 MR. KENDALL: I was just given ---

6 THE COURT: Right.

7 MR. KENDALL: This is all I have because I don't have
8 access to photocopiers.

9 MR. LUCEY: He can have my copy, Your Honor.

10 THE COURT: Do you have a copy of the previous one, ---

11 MR. LUCEY: Certainly.

12 THE COURT: --- Mr. Lucey?

13 MR. KENDALL: There is one in the -- the previous one is
14 in the notebook; so, Your Honor, I can ---

15 THE COURT: Okay. I just think it is good to have a ---

16 MR. LUCEY: The previous one is 677, Your Honor.

17 THE COURT: The previous one is 677.

18 MR. LUCEY: Six-seven-seven. And I am going to hand the
19 court reporter the handwritten revisions for her to mark as a
20 court exhibit per the court's instruction.

21 THE COURT: What will that be -- what are we up to,
22 Phyllis?

23 THE COURT REPORTER: Court's Number 5.

24 (WHEREUPON, Court's Exhibit 4, jury note marked; Court's
25 Exhibit 5, report, marked for identification.)

1 THE COURT: Five. That will be Court's 5, the previous
2 one. And if anyone has an extra copy of the new one, that
3 would be great.

4 Mr. Lucey, do you have ---

5 MR. LUCEY: That was the new one.

6 THE COURT: Oh, that was the new one.

7 MR. LUCEY: Yes, ma'am.

8 THE COURT: Okay. We are looking for the old one.

9 MR. KENDALL: Court's Exhibit 5 is new; 677 is old.

10 THE COURT: Thank you. Okay.

11 MR. KENDALL: And, Your Honor, just one more thing just
12 to add that sort of in terms of understanding the magnitude of
13 the change. The change on -- the increased item for the
14 drywall repairs increased the investment by \$344,820.

15 THE COURT: Okay.

16 MR. KENDALL: To -- that is as a subtotal to which
17 multiple multipliers get added, which have netted out
18 generally about 40 percent. So that would push it well into
19 the mid -- probably close to five -- a half a million dollars.

20 In addition to that the contingency being ten percent of
21 \$12.2 million the contingency alone is a one point -- is
22 \$1,220,802.

23 THE COURT: Okay.

24 MR. KENDALL: So these are not immaterial changes that
25 have occurred. These are -- result -- it is about a total of

1 the ten percent, twelve percent, increase in the total
2 estimate. Even after the deducts.

3 THE COURT: If anyone would like to join. So let me get
4 that on the record.

5 Anything else, Mr. Cole?

6 MR. COLE: Yes, Your Honor, and this goes to -- if -- if
7 this -- I join in the opposition to this. But also if it
8 happens to come in, the way that they redacted this you will
9 notice -- I don't know if you have a copy but ---

10 MR. EVANS: We are not putting it in, Your Honor.

11 MR. COLE: Okay. Well, but even if they use it as a
12 demonstrative exhibit and put it up on the board ---

13 MR. EVANS: We won't.

14 MR. COLE: --- the redaction has just a line through it.

15 MR. EVANS: We won't.

16 MR. COLE: Okay. All right. As long as they are not
17 going to show it to the jury that is ---

18 THE COURT: You have got to state it on the record now,
19 Mr. Cole.

20 MR. COLE: All right.

21 THE COURT: All right. But I note that you join in the
22 motion, for the record.

23 Mr. Reeser stood up.

24 MR. REESER: Your Honor, I would also join in the motion.

25 THE COURT: Okay.

1 Mr. Atkins?

2 MR. ATKINS: Similarly, Your Honor.

3 THE COURT: Mr. Williams?

4 MR. WILLIAMS: Also join in.

5 THE COURT: All right.

6 MR. COLE: Let me just make sure that I was clear. It is
7 not just the document itself. It is the testimony ---

8 THE COURT: Oh, I absolutely ---

9 MR. COLE: --- from the document.

10 THE COURT: Yeah, no doubt. I agree with that.

11 MR. COLE: Okay. Thank you, Your Honor.

12 THE COURT: Yeah, we haven't even, yeah, gotten that far.
13 All right. I am going to let the plaintiffs respond.

14 MR. EVANS: Your Honor, it is ironic that they -- when
15 they ask us to make deletions we make deletions, and then they
16 object to the introduction of the evidence. And we gave them
17 a break overnight to take a look at it.

18 But, significantly, the additional money to the existing
19 fire -- is additional dollars to existing firewall line items.
20 He may not have put it on the -- on the firewall line item
21 number, but it is just more money added to an existing issue.

22 THE COURT: Okay.

23 MR. EVANS: And the reason he did that is because -- I
24 think a week ago today we took the deposition of Mr.
25 Schweickhardt. I think it was Thursday of last week, and Mr.

1 Schweickhardt testified to additional firewall penetrations
2 that we were unaware of. So the additional money is in
3 response to that testimony.

4 On Monday we heard from Mr. Schweickhardt -- excuse me,
5 Tuesday we heard from Mr. Schweickhardt testify that it was
6 necessary to have a contingency line item in the estimate
7 because of all of the unknowns, because of the way this has
8 progressively gotten worse and more and more things have come
9 up.

10 He added a ten percent contingency. That is consistent
11 with the industry. And in fact I believe we will hear from
12 Mr. Watkins that it is consistent with the ten percent that he
13 has in his estimate.

14 THE COURT: Okay.

15 MR. EVANS: And as a point of clarification, I think I
16 heard counsel for CBC say that this was a net increase. It is
17 actually a net reduction.

18 MR. KENDALL: It is.

19 MR. EVANS: Prior is 15.2, and we are down to 13.4.

20 MR. KENDALL: I misspoke. There isn't -- to document ---

21 THE COURT: All right. Well, that's relevance.

22 Okay. I am going to allow it in at this point in time.
23 Obviously you will be able to cross-examine him and all these
24 versions of this document thoroughly, as thoroughly as you
25 would like. And we will certainly give you great latitude in

1 that. So understanding that, your motion to exclude it is
2 denied.

3 And, otherwise, is plaintiff ready to proceed?

4 MR. EVANS: We are, Your Honor.

5 THE COURT: All right. Thank you very much. You can
6 bring the jury in now.

7 Thank you gentlemen.

8 (WHEREUPON, pause awaiting jury.)

9 THE COURT: I have received a typewritten letter from a
10 juror. This is a first for me. We are marking it as a
11 court's exhibit.

12 (WHEREUPON, Court's Exhibit Number 6, jury note from Juror
13 262, was marked for identification.)

14 All right. May 9th, 2019. Dear, Your Honor, I am
15 writing to request that I be excused from jury duty next week
16 due to a Seventh Episcopal District African -- Episcopal
17 church clergy retreat/conference that is scheduled for next
18 week May 13th through the 16th, 2019.

19 This meeting has been on my calendar since November of
20 2018. I have paid my registration fee and hope that I do not
21 have to cancel my reservation and lose my \$150 registration
22 fee. I am so sorry that I exercised poor judgment when making
23 a decision as to whether or not I should request to be excused
24 from jury duty when the opportunity was presented by you. I
25 really wanted to serve but was hoping I would not get selected

1 THE COURT: All right. Any exceptions or objections from
2 the plaintiff on the removal of that juror?

3 MR. LUCEY: No, Your Honor.

4 THE COURT: Any from the defense?

5 MR. COLE: No, Your Honor.

6 MR. KENDALL: No, Your Honor.

7 THE COURT: Okay. I believe we are ready to go.
8 Mr. Evans, will you be calling the next witness?

9 MR. EVANS: I am. The plaintiffs call Jay Handegan.

10 THE COURT: Okay.

11 MR. KENDALL: Your Honor, may we approach just
12 briefly ---

13 THE COURT: Okay.

14 MR. KENDALL: --- as he is making his way in?

15 THE COURT: Sure.

16 (WHEREUPON, bench conference 5/9/19, 9:21 a.m.)
17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: For the record please state your full name
19 and spell your last name.

20 THE WITNESS: My name is Jerry Handegan.
21 H-A-N-D-E-G-A-N. I go by Jay.

22 **DIRECT EXAMINATION BY MR. EVANS OF JERRY "JAY" HANDEGAN:**
23 Q. Good morning, Mr. Handegan. Before we start talking
24 about Palmetto Pointe specifically I want to get a little bit
25 of background about yourself, okay?

1 A. Okay.

2 Q. All right. Tell us about yourself individually. Where
3 are you from?

4 A. I grew up in Rock Hill in the Upstate and moved down here
5 after college in '95 from Clemson.

6 Q. And let's talk about that. Where did go to school,
7 Clemson?

8 A. I went to Clemson for undergrad.

9 Q. And what was your degree in?

10 A. Construction science and management.

11 Q. What sort of profession do people with that degree get
12 into?

13 A. It is pretty limited. Construction is typically. I
14 would say 90 percent go into construction.

15 Q. Okay. And I think I heard you say you finished in '95?

16 A. '95.

17 Q. Did you do any postgraduate education?

18 A. I did. Back in 2001 I went back to grad school at the
19 University of South Carolina for their -- it was called the
20 MIBS program at the time. Master's in International Business
21 Studies.

22 Q. Did you finish?

23 A. I did it.

24 Q. And what year did you get your master's?

25 A. 2003.

1 Q. All right. Let's talk about your professional
2 experience. After 2003 tell us what you have been doing.

3 A. Since 2003 I have joined with Palmetto Construction
4 Group. John Kendall had a company. He was the owner at the
5 time and he asked me to come work for him to run the office
6 side and project management side.

7 So from 2003 until '18 last year I worked at Palmetto
8 Construction Group. Currently I work for Trident
9 Construction.

10 Q. And at Palmetto tell us what your responsibilities were.

11 A. Well, they kind of varied a lot. And it was anywhere
12 from -- well, I ran the office and then I was also -- I
13 oversaw the project managers that we had and the office staff.
14 I also ran projects. I estimated probably 90 percent of all
15 of the projects we ever priced.

16 Q. How many estimates for jobs do you think you have created
17 either in your career or on a yearly basis?

18 A. Let's see. Twenty years, forty estimates a year or so.
19 So probably over 750 estimates I would say.

20 Q. In part of performing estimates do you use takeoffs?

21 A. Yes.

22 Q. Tell the jury what a takeoff is.

23 A. A takeoff is when you get the actual quantity of
24 materials. So there is a process. We have a standard process
25 we've set up. It is called divisions. And we use 16 of them.

1 And during that process you might have some categories, like
2 electrical where you will send out for sub-quotes. You will
3 send it out to three or four, five, electrical contractors to
4 get sub-quotes.

5 There's also area where we take off; for example, it
6 might be masonry. So we get the linear foot, square foot of
7 masonry so we can get the quantities.

8 But the idea is to get the pieces and parts so you can
9 figure out the exact number.

10 Q. The divisions might be broken up into siding, roofing,
11 electrical, HVAC; those are the divisions ---

12 A. Those are the renovations, correct.

13 Q. And why do you prepare estimates?

14 A. To figure out the cost of the project so that you can --
15 once you have tabulated all of the costs you can add in your
16 profit to do the job.

17 Q. Give us some examples of some of the jobs that you have
18 estimated and then done either with Palmetto Construction or
19 Trident.

20 A. How far back do you want me to go -- or just ---

21 Q. Well -- well, am I correct that you have done some work
22 for 911 centers and Sheriff's Offices and MUSC?

23 A. Correct.

24 Q. You have also done some work in terms of residential
25 renovations as well, correct?

1 A. That is correct. It was a wide variety of work.

2 Q. Tell us about some of the residential renovations.

3 A. So there -- one of them was the Hamlin Park Townhomes.
4 We did a -- back from about two thousand I think it was
5 thirteen to about two thousand eighteen.

6 For DR Horton we did multiple projects a year for them.
7 Any tough issues they had on a house for a warranty they
8 brought us in to fix. Like whether it was a window leak. We
9 did -- we went into some homes and where we had to -- you
10 know, rip out the whole floor or replace all the floor joists.
11 Whenever they had a difficult one they seemed to bring us on
12 to repair them.

13 We also did the Hamlin Park which was a townhome project
14 they had. So that one involved some stucco repairs, some
15 siding and flashing repair.

16 Q. Have you been out to Palmetto Pointe?

17 A. I have.

18 Q. How many times?

19 A. I believe four. Maybe five. I am not exactly sure. It
20 has been a while.

21 Q. Why did you go out there?

22 A. To take a look at the -- you know, I have gotten the
23 repair -- or excuse me, the -- from Mease, you know, the ---

24 Q. The reports?

25 A. The reports. Excuse me. So to go out there and look

1 at -- to put eyes. I had the plans. I had the report. To
2 kind of go out there and just verify what I am seeing on the
3 plans and in reports.

4 Q. Did you prepare an estimate for Palmetto Pointe?

5 A. I did.

6 Q. Did you personally do the takeoff?

7 A. Yes.

8 Q. Did you use the same methodology, estimating methodology,
9 you regularly use in your line of work for Palmetto Pointe?

10 A. I did.

11 Q. Did you use the same line-item prices for Palmetto Pointe
12 as you have used for prior jobs?

13 A. Yes.

14 Q. And tell the jury what a line-item price is.

15 A. A line-item can vary. But so, for example, if you had
16 replacing trim it might be -- if it was a six-inch piece of
17 exterior trim you might have -- I don't know, I am just going
18 to -- one thousand feet and then you get the material cost and
19 we will estimate the labor cost to install. So then that line
20 item will have a total cost to it at the end.

21 Q. And, for example, instead of a thousand feet you are
22 doing two thousand feet, the unit cost portion of it remains
23 the same and that is just a multiplier; correct?

24 A. Most of the time, yes.

25 MR. EVANS: The plaintiffs tender Mr. Handegan as an

1 expert in construction and construction estimating.

2 MR. COLE: No objection, Your Honor.

3 THE COURT: All right. This witness will be qualified in
4 the areas of construction and construction estimating. To
5 give opinion testimony in that area that does not mean you
6 must accept his opinion but it is evidence for you to use in
7 any way that you see fit. Thank you very much.

8 Q. Mr. Handegan, let's talk about your estimate for Palmetto
9 Pointe. I take it you have reviewed reports from Mr. Mease
10 and Mr. Smits, correct?

11 A. Correct.

12 Q. Have you also had conversation with those individuals?

13 A. I have had a couple, yes.

14 Q. Have you prepared an estimate based on the documentation,
15 conversations, reports, as well as your on-site visits for
16 Palmetto Pointe?

17 A. Yes.

18 Q. I am going to hand you what I have marked for
19 identification purposes only as Plaintiff's Exhibit 1049.
20 What is 1049, Mr. Handegan?

21 A. 1049 is the estimate that I submitted on 12/21/2017. And
22 then I made a couple of adjustments just recently this week.

23 Q. Okay. You removed a few items and added a few items?

24 A. That is correct.

25 Q. And why do you do that, because things change as the

1 progress progress -- as the project progresses?

2 A. Correct, as new information is presented the price is
3 adjusted.

4 Q. And those changes are they reflected in the total dollar
5 amount that you have calculated on the last page of
6 Plaintiff's 1049?

7 A. Yes.

8 Q. What have you determined to be the cost to make repairs
9 at Palmetto Pointe based on the reports and conversations and
10 takeoff you have done?

11 A. The current total that I have here is \$13,428,826.

12 Q. All right. Let's make sure we get that -- I heard the
13 cough there. Let's make sure we get that clear ---

14 A. Oh.

15 Q. --- for the jury for everyone to hear. \$13,428,826,
16 correct?

17 A. That is correct.

18 Q. Roughly how much of the 13 million and change on a
19 percentage basis is attributable to siding and trim-related
20 work?

21 A. You have -- there is a lot to an estimate, and there is a
22 lot of things intertwined. But I would say probably in the 35
23 percent neighborhood.

24 Q. Roughly how much is attributable to roofs and deck
25 coatings, decks and deck coatings, and the damage to them?

1 A. I would say in the 25 to 30 percent range.

2 Q. And roughly how much is attributable to firewall-related
3 issues?

4 A. Does that exclude sprinklers?

5 Q. Well, let's break it up. Tell me about the firewall
6 issues themselves and then tell me about the sprinklers,
7 please.

8 A. I would say the firewalls are in the 10 percent ---

9 Q. Okay.

10 A. --- neighborhood. And probably the sprinklers are in the
11 15 percent.

12 Q. And you mentioned in your first answer regarding my
13 question about siding and trim you said something to the
14 effect of there is a lot of overlap in an estimate. Is that
15 because of the integration that the jury has seen between
16 decks and roofs and siding and trim and flashings all coming
17 together?

18 A. Correct, that is part of it. And then you have as a
19 project on whole you have all of, you know, your general
20 conditions, your site management, your scaffolding, different
21 factors that might be used in multiple areas. So those have
22 to be allocated.

23 Q. Gotcha. How much of the estimate is attributable to the
24 clubhouse at the project?

25 A. I think that was only like about 25, \$26,000.

1 Q. Does your estimate contemplate that the residences are
2 empty, vacant, nobody living there, while you are doing the
3 work?

4 A. It does.

5 Q. And why do you believe that to be necessary?

6 A. Well, with the amount of work that we are doing we are
7 going to need in my opinion to scaffold the entire outside of
8 the building. And then for replacing windows. And if we are
9 doing work inside. And even if we are not doing work inside
10 the amount of noise and disruption and safety, personally as a
11 company we would not want them to be occupied.

12 Q. You mentioned the scaffolding. The scaffolding is going
13 to actually impede people getting in and out of their homes?

14 A. It could, yes.

15 Q. It could also present a safety risk from stuff dropping
16 from above, correct?

17 A. Correct. We would do our best to protect any openings,
18 but there is always a chance.

19 Q. How long does your estimate anticipate that the homes
20 will be vacant?

21 A. In the -- with the deleted scope or with the ---

22 Q. With the deleted items.

23 A. Deleted items, a couple of months.

24 Q. About two months?

25 A. About two months, yes.

1 Q. Would the length and expense of construction be adversely
2 affected if you had to work around the homeowners, if they
3 were to stay in their homes?

4 A. Possibly, yes.

5 Q. How so?

6 A. Well, I mean, you know, if they are not feeling well one
7 day and -- you know, we want to be sympathetic to their needs.
8 We don't want to be banging on the house. So it could -- you
9 could lose days potentially to that effect.

10 Q. Does the -- do you have to make accommodations in terms
11 of scaffolding and safety if people are actually going to be
12 residing in their homes?

13 A. Oh, absolutely. If they are going to want to get in and
14 out of the garage. I mean there's multiple things that could
15 be going on.

16 Q. And changes to the work naturally might have changes to
17 the price as well?

18 A. Correct.

19 Q. Mr. Handegan, are you willing to do the work necessary at
20 Palmetto Pointe for the price set forth in Plaintiff's Exhibit
21 1049?

22 A. Yes.

23 Q. Have your opinions been given to a reasonable degree of
24 certainty in your field of expertise?

25 A. Yes.

1 Q. Thank you, Mr. Handegan.

2 A. Okay.

3 MR. KENDALL: Thank you, Your Honor. May it please the
4 court.

5 THE COURT: Yes.

6 **CROSS-EXAMINATION BY MR. KENDALL OF JERRY "JAY" HANDEGAN:**

7 Q. Good morning, Mr. Handegan.

8 A. Good morning.

9 Q. I have got some papers I want to just have in front of
10 me. So bear with me while I pull everything together.

11 (WHEREUPON, confer with court reporter for exhibit. All
12 exhibits that have been provided are accessible to attorneys
13 in binders that are on and under the exhibit table.)

14 THE COURT: We can give you time to pull it out. That is
15 no problem.

16 MR. KENDALL: Okay. Thank you. I misunderstood where it
17 was located.

18 THE COURT: Mr. Lucey, when you pulled out 677 earlier do
19 you know where you put it back?

20 MR. LUCEY: No, ma'am, I did not pull it out because
21 it's -- I did not ---

22 THE COURT: I was just in that -- in a notebook. Okay.

23 MR. EVANS: I did not find it in the notebook.

24 THE COURT: Oh, okay.

25 MR. KENDALL: Okay. We have another version of it.

1 THE COURT: Oh, good. Perfect.

2 THE COURT REPORTER: That is a copy of it?

3 MR. KENDALL: We will use this one until we find the
4 other one.

5 Q. I want to put in front of you Exhibit 677.

6 A. Okay.

7 Q. Mr. Handegan, I am Rhett Kendall. I represent Complete
8 Building Corporation. You prepared this estimate that I have
9 just handed you, on December 21st 2017; correct?

10 A. That is correct.

11 Q. And I think it has already been indicated that as part of
12 your preparation for today you became aware that there were
13 certain items that needed to come out of that estimate,
14 correct?

15 A. Yes, sir.

16 Q. And then you were advised that there were certain items
17 that needed to be added back to your estimate, correct?

18 A. Correct.

19 Q. And that is how you arrived at the \$13 million figure,
20 correct?

21 A. That is correct.

22 Q. And now in general you don't make decisions about what
23 needs to be done, you just price what you are told should be
24 priced; is that correct?

25 A. That is correct.

1 Q. And you don't necessarily -- you don't know whether or
2 not tearing off a roof or tearing off siding or anything of
3 that nature is necessary do you?

4 A. I do not. I do not give an opinion on that.

5 Q. That is information that was given to you by Mr. Mease as
6 to what to do?

7 A. Yes, the scope of work from

8 Q. Smits?

9 A. Smits. Excuse me.

10 Q. Okay. Now the -- you do have some line items in there
11 related to the fire stopping. But we heard yesterday Mr.
12 Mease and Mr. Smits say that they had not developed a scope of
13 repair for that, that they -- needed to be done engineering
14 and approved before they would price it; are you aware of
15 that?

16 A. I am now.

17 Q. Okay. So but they had already told you what they wanted
18 done for purposes of your estimate?

19 A. Yes.

20 Q. Okay. Now you broke your estimate just now into five
21 categories to -- that you described the percentage that was
22 involved in that that estimate, correct?

23 A. Correct.

24 Q. You were asked about siding and trim, and you gave that
25 35 percent; you were asked about roof and decks and you gave

1 that 25 to 30 percent; firewall or fire stopping in the attic,
2 in the garage, and you gave that 10 percent; and then the
3 sprinklers you gave 15 percent. That is four. And then the
4 clubhouse about \$26,000, ---

5 A. Correct.

6 Q. --- not a big percentage.

7 A. Yes.

8 Q. So if I add those numbers up you gave me -- and I will
9 use the high side of the bracket. I get 35 plus 30 is 65.
10 And I am not a mathematician so bear with me; 65 plus 10 is
11 75, plus 15 is 90. So there is 10 percent which would kind of
12 be miscellaneous stuff?

13 A. Correct, and I am kind of doing this ---

14 Q. I understand.

15 A. --- because I want to put exact numbers to it so.

16 Q. But -- but in terms of the components that you have
17 included in the 13 million those are the components of it,
18 correct?

19 A. Correct.

20 Q. Right. And that is after you have taken out items that
21 need to be taken out of it, correct?

22 A. That is correct.

23 Q. All right. Now I want to -- the line items that you --
24 when you get -- when you do a repair estimate you start -- let
25 me show the jury -- before I do, let me ask the court.

1 MR. KENDALL: I would like to move 67 -- 60 -- 667 --

2 Q. Am I saying the number right?

3 A. 677.

4 MR. KENDALL: --- 677 into evidence at this time.

5 THE COURT: All right. Which version was that?

6 MR. KENDALL: It was previously a court exhibit, but it
7 is the -- oh, it is the December 21st, 2017, ---

8 THE COURT: Okay.

9 MR. KENDALL: --- estimate.

10 THE COURT: Okay. Let's just be real clear for the
11 record.

12 MR. KENDALL: Thank you, Judge.

13 THE COURT: All right. Any objection to that being
14 admitted?

15 MR. EVANS: No objection, Your Honor.

16 THE COURT: All right. It will be admitted.

17 MR. EVANS: Hold on a second, Your Honor.

18 (WHEREUPON, plaintiff counselors confer.)

19 THE COURT: And it will be -- it is currently marked as
20 Exhibit 667, Mr. Kendall, or 677?

21 MR. KENDALL: Six-seven-seven, Your Honor.

22 THE COURT: Six-seven-seven.

23 MR. KENDALL: And if I may get the screen turned on up
24 above, please.

25 (WHEREUPON, Plaintiff's Exhibit 677 admitted into evidence.)

1 Q. All right. Now I don't have a cord long enough to let me
2 stand up there. Are you able to see on your monitor what is
3 up there?

4 A. I am.

5 Q. All right. Is this the estimate that you prepared in
6 December 2017?

7 A. Yes, it is.

8 Q. And we are going to work from both the new estimate and
9 the old one just to see how they may have changed over time.
10 But I want to go to the end of the document first. And I
11 would like if you will for you to look at this item with me.

12 So after you have done all of your line items you bring
13 down a subtotal for what the cost of the various line items
14 are, correct?

15 A. That is correct.

16 Q. And then there are add-ons to that cost that you believe
17 is the basic cost, correct?

18 A. Correct.

19 Q. And the line items include materials, labor, or
20 subcontractors that you think you are going to need to hire to
21 do the work?

22 A. And equipment.

23 Q. And the equipment that you may need to rent, correct?

24 A. Correct.

25 Q. Now after -- so after you have gotten to that line item

1 you then go through and add a number of components to it. So
2 the first things are basically taxes, and that gets added and
3 increases your total. And in this case it was -- it added --
4 the base item -- the baseline item was ten million five
5 ninety, and you added about a million dollars for taxes;
6 correct?

7 A. Well, added -- it depends on how you define taxes.

8 Q. Well, I know you have also -- sales tax -- tax on -- tax
9 and insurance. I'm sorry.

10 A. Okay.

11 Q. They are sort of personnel and tax-related items?

12 A. Correct.

13 Q. That added a total of about a million dollars to the
14 total?

15 A. That is correct.

16 Q. And then after you do that you add those two numbers
17 together, so now you are going to be at about \$11,600,000;
18 then you add engineering fees at nine percent; correct?

19 A. Correct.

20 Q. Now your estimate is based on engineering advice already,
21 isn't it?

22 A. Yes.

23 Q. Okay.

24 A. The estimate is.

25 Q. The estimate is. But you have added another nine percent

1 for fees. And then you -- and that is another million
2 forty-three, correct?

3 A. That is correct, yes.

4 Q. ... forty-three thousand?

5 A. Uh-huh.

6 Q. So then you add those two numbers -- you add that to the
7 total and now you are going to apply seven percent overhead.
8 Tell us -- overhead is basically your cost for your office and
9 your business, correct?

10 A. That is correct.

11 Q. And then on top of that you are also going to charge a
12 profit of ten percent, correct?

13 A. That is correct.

14 Q. So you expect you are going to make \$1.35 million for
15 doing this work on this project based on your original
16 December estimate?

17 A. That is correct.

18 Q. All right. After you have done that you add all those
19 numbers together and you add additional percentage-based
20 expenses which are about eight-and-a-half percent and it
21 brings us up to the \$15 million, correct?

22 A. The other percent -- .85 percent those total up to.

23 Q. It is eight-and-a-half percent -- oh, it is point --
24 okay, I see.

25 A. .85 percent.

1 Q. I am missing where the decimal is. Okay, so .85 percent
2 gets added and then it gets us our total. So if you take
3 items as you add items or you add a dollar into the base it
4 gets multiplied multiple times and increases all of these
5 things including the profit that you are going to make from
6 the job?

7 A. That is correct.

8 Q. All right. Now let's go back to the beginning of the
9 estimate and look at some of the general conditions that you
10 added in there -- that you put in.

11 So this is the section -- this section of the report
12 contains what we call your general conditions, right?

13 A. That is correct.

14 Q. That is just the cost for showing up?

15 A. Correct.

16 Q. And it depends on things like how much supervision you
17 are going to need and how much -- how long it is going to
18 take, correct?

19 A. That is correct.

20 Q. Now you built this general condition on an assumption
21 that this project would take 110 weeks; is that correct?

22 A. That is correct.

23 Q. That would be -- that was based on four units at a time
24 for about three months per unit, correct?

25 A. Correct. Staggered starts, so, yes.

1 Q. Staggered starts. So that was when you thought you were
2 going to need three months per unit to do the work that was
3 part of the estimate, correct?

4 A. That is -- I believe that is correct.

5 Q. And you just told us you think it -- now because of the
6 changes it will take just less than two months to do the work
7 on each unit, correct?

8 A. Well, I said ---

9 MR. EVANS: Objection, Your Honor.

10 A. --- two months for them to move out. I didn't clarify --
11 I haven't analyzed it that close if it is two months to do the
12 work on each unit.

13 Q. But the deal was the scaffolding rental -- I mean you are
14 not going to move those scaffoldings, but you have got three
15 months of each scaffolding for each unit on this -- in these
16 general conditions, don't you?

17 A. I believe that is correct. I will ---

18 Q. Right.

19 A. --- have to check that.

20 Q. But now you are not going to let them move in when
21 scaffolding is there so -- but so now that is down to two
22 months per unit, correct?

23 A. Correct.

24 Q. And the amount of -- length of time that you have got to
25 pay ---

1 A. Let me -- let me think about that real quick. Because
2 these adjustments were, you know, just made at the last
3 minute.

4 Q. I know.

5 A. So let me think about that. I am ready. I am sorry.

6 Q. All right. So this is based on, again, three months per
7 unit; and so your scaffolding, your supervising -- your
8 supervision charges, all of that is based on one hundred and
9 ten weeks, correct?

10 A. That is correct.

11 Q. But if it takes only two months then we can reduce all of
12 that, can't we?

13 A. Well, I don't think I was looking at that correctly.
14 None -- we have it in the work that has been deleted in the
15 estimate that was adjusted we didn't delete any of the
16 exterior items. That was mechanical. It was electrical. So
17 it didn't reduce the duration of the scaffolding.

18 Q. All right. So you are changing your testimony, it is not
19 going to take a hundred and -- it is not going to take two
20 months -- it is three months or is it two months?

21 A. I think I am going to have to go back to the three
22 months. Because I was -- the three months were based on the
23 exterior work, and really all we deleted out was some interior
24 work.

25 Q. All right. And just so we can see where it is in your

1 item, for example your superintendents that you are charging
2 are based on 110 weeks ---

3 A. Right.

4 Q. --- but that is because we still -- you still have in the
5 estimate some work that isn't going to be performed, correct;
6 I mean that has been resolved and it shouldn't be included as
7 part of what is chargeable to the trim, roof, deck, and fire
8 stopping?

9 A. Can you restate that? I lost you there during the
10 question.

11 Q. You said you went back up to 110 weeks because there are
12 items in your estimate such as mechanical that are going to
13 require that additional time?

14 A. Correct. I have never changed the 110 weeks between the
15 two estimates.

16 Q. Okay. Until we heard today that it was two months, not
17 three weeks?

18 A. Yeah, it is about the time to move out.

19 Q. Okay. Now the next -- another item that you have in your
20 estimate there, are things like you have two employees you are
21 going to -- you have two trucks that you are giving your
22 employees; correct?

23 A. Correct.

24 Q. And you are charging that to the job?

25 A. Correct.

1 Q. At a price of \$17,000 each; round number is 16,900;
2 correct?

3 A. Correct.

4 Q. And again to each of these items we are adding that
5 additional 40 percent at the back end, correct?

6 A. That is correct.

7 Q. So on -- so the profit item and the markups that you
8 apply, the overhead expense that you apply, is being applied
9 to whatever you put up here (pointing)?

10 A. That is correct. Whatever is in the front part of the
11 estimate flows back to the ---

12 Q. And you have got ---

13 A. --- back page.

14 Q. You have got \$450 for each truck per month for gas?

15 A. That is correct.

16 Q. All right. I calculated that at \$2.50 a gallon, 15 miles
17 to the gallon, it is about 2,700 miles a month. Are you
18 expecting to drive that much right around Palmetto Peas?

19 A. Well, a lot of them -- let's see, we provide trucks for
20 them ---

21 Q. So it includes ---

22 A. --- full-time.

23 Q. It is being charged for their personal use as well?

24 A. No, well, it's -- I don't know how Trident breaks it out
25 exactly; but their personal use they are supposed to pay for

1 their gas on their own time.

2 Q. All right. Now let's talk about what items you actually
3 removed in your new estimate. And how did you know what to
4 remove?

5 A. These were items that it was my understanding that were I
6 guess resolved and didn't need to be included anymore.

7 Q. So the attorneys told you there were certain items that
8 needed to be resolved and to take them out. Okay. Well, the
9 first one -- the first place I see the word remove is in
10 reference to the finished floors, correct?

11 A. That's correct.

12 Q. All right. So that line item has been subtracted from
13 your new estimate?

14 A. That is correct.

15 Q. The next one I see is in relation to some concrete. And
16 that has been removed, correct?

17 A. That is correct.

18 Q. And when you remove an item it may -- just because it has
19 its own section -- it may actually have impacts in other
20 places; that is what you meant when you said these things are
21 complicated; because the cost associated with any one thing --
22 for example, it may be in the demolition aspect of things, it
23 may be in your general conditions, and it may, you know, as a
24 line item; correct?

25 A. Correct.

1 Q. So taking it out of one place in the estimate doesn't
2 necessarily clean it out of the whole system?

3 A. It depends on the scope of work.

4 Q. Correct. Well, for an example, the item of -- one --
5 another one of the items is the 6160.01 subfloors; correct?

6 A. Correct.

7 Q. And so that is an item that has been taken out there.
8 Another one would be you have taken out anything to do with
9 some stair rails. That got resolved.

10 But let's look at 8550, the windows. You were told to
11 remove windows from the scope of this repair, were you not?

12 A. No.

13 Q. But now you were told, were you not, that -- when -- when
14 you testified, that the windows you were taking out were due
15 to manufacturing defects in those windows; correct?

16 A. That is my understanding, yes.

17 Q. All right. Now the manufacturing defect issue has been
18 resolved, so if the issue is resolved you don't need to take
19 those windows out based on trim, siding, flooring -- I mean
20 decks, roofs; the only reason you were taking those windows
21 out is because there was a concern about the window
22 manufacturing; correct?

23 A. Well, I think when we go into -- if we are taking off all
24 of the siding and re-flashing, the windows might need to be
25 removed in order to re-flash them.

1 Q. But that is not what you told us in your deposition when
2 we took your deposition a while back. You told us the only
3 reason you were taking the windows out was because of the
4 manu- -- you were going to replace them due to manufacturing
5 defects; do you recall that?

6 A. I do. And I just said in mine. It depends on how the
7 window is flashed. I am not saying take it out completely.
8 You might have to just remove a little bit to get the flashing
9 in right, correct.

10 Q. Now we have also had testimony that there are no window
11 leaks associated with this building. Are you aware of that?

12 A. No.

13 Q. Okay. We heard that yesterday. So if there are no
14 window leaks there is no reason to disturb that installation
15 other than to replace the window because of defects in the
16 manufacture, correct?

17 A. Correct.

18 Q. So that is a line item that should come out of your
19 report that actually shows up in several places in your
20 report. So on Item 8550 you have got \$539,923 for replacement
21 windows, correct?

22 A. That is correct.

23 Q. And back in the demolition section you have got on 17838
24 you have got \$45,000 for taking out the windows, correct?

25 A. The windows and the window trim.

1 Q. Right, but -- right, when you take the windows out the
2 trim comes with it; but that is related to removing the
3 windows?

4 A. Well, you can take the trim off without removing the
5 windows.

6 Q. Sure. I understand. But when you take the window out
7 you have got to take ---

8 A. Right.

9 Q. --- the trim out; so the removal of that trim, that
10 interior trim or exterior trim I guess, is associated with
11 replacing windows that aren't part of this case; right?

12 A. That is part of the -- yeah, part of -- that line item
13 has the removing of the windows.

14 Q. Okay. And then you have also got in Line Item 6450 --
15 excuse me, 6452, you have got the architectural woodwork to
16 put the interior trim back in place of \$63,297, correct?

17 A. Which item are you on again?

18 Q. 6452.

19 A. That is correct. That is for interior trim.

20 Q. So that is tied to removing and replacing the windows?

21 A. That is correct.

22 Q. All right. So all of the items that I just read off to
23 you should have come out of your new estimate but didn't,
24 correct?

25 A. I don't know if it should or should not. I mean ---

1 Q. But if ---

2 A. --- I just removed ---

3 Q. --- it was supposed to come out, if the windows shouldn't
4 be in your estimate, those are the line items that should also
5 be removed?

6 A. I agree with that.

7 Q. And as it -- when it flows through, again, the 40 percent
8 markups and all that stuff also come out?

9 A. Correct. That is correct.

10 Q. You have included also in your estimate something we
11 haven't heard anything about in this case having to do with
12 some site work, \$142,000; that should come out, shouldn't it,
13 if it is not part of the case?

14 A. If it is not part of the case ---

15 Q. Okay.

16 A. --- I guess.

17 Q. So you will agree with me that there are a number of
18 items in your most recent estimate which don't belong?

19 A. I mean that is for y'all to determine.

20 Q. Okay.

21 A. I am pricing the scope of work that was given to me.

22 Q. There are -- just one other item that I noticed in your
23 estimate was some -- a line item associated with removing some
24 ceilings in the garages so you could access duct work; do you
25 remember that?

1 A. Yes.

2 Q. And that is -- you understood because you took out -- you
3 took out the mechanical stuff from one part. But that is one
4 of those sort of residual items that is showing up in a
5 different place that you really need to take out as well;
6 correct?

7 A. Well, my understanding was that item needed to stay.

8 Q. But if we are not doing -- if the mechanical work
9 including the duct work and electrical work is not included in
10 this job all the items associated with it should come out?

11 A. Which -- which item are you talking about specifically?

12 Q. Okay. Excuse me. If you will look at the -- look at
13 9133. Item -- the first item says replace existing sheetrock
14 ceilings for duct work?

15 A. Correct.

16 Q. The next item says patch interior sheetrock for window
17 replacements? That has to do ---

18 A. Correct.

19 Q. --- with the other issues. So there are -- there are
20 lingering issues inside of your report that weren't accounted
21 for when you prepared your most recent estimate that you told
22 the jury about this morning, correct?

23 A. Well, I mean it is an accounted for on the base of scope
24 that was told to me.

25 Q. Right. Okay. So you just -- again, you ---

1 A. Yeah.

2 Q. You are pricing. But you recognize with me that it is
3 not just a single line item that comes out, it may have
4 branches in other places?

5 A. It could. It is possible.

6 Q. And you haven't -- you haven't accounted for all of those
7 when you went through in your redactions, correct?

8 A. Well, I accounted -- I tried to account for the ones that
9 were told for me to remove. I was not told to remove windows.

10 Q. Okay. Now one of the things that you have in here is to
11 -- in order to do the work in the attics to put some sheetrock
12 patches up and to do some -- the mudding and taping and
13 ceiling that needs to -- sealant that needs to be applied you
14 have actually contemplated taking -- going in through the
15 roof, correct?

16 A. Correct.

17 Q. Rather than taking sheetrock and cutting it in half and
18 carrying it up the stairs from the inside, correct?

19 A. Correct.

20 Q. And we are only talking about maybe six sheets total that
21 you have estimated for each unit, correct?

22 A. I believe that is correct.

23 Q. And so if you -- and if you need to do the math. I
24 estimated it based on what you put in your takeoff. But the
25 idea is that there is a -- the sheetrock we were told

1 yesterday these attics have good access to them, as the
2 concern about being able to store things they can get up and
3 down. So you can carry half sheets of sheetrock up those
4 stairs to use them, could you not?

5 A. Half sheet of what size? I mean ---

6 Q. Four by eight.

7 A. Well, typically four by twelve we deal with a lot. So
8 four by eight potentially if you cut it in the -- two foot --
9 two foot direction it might be possible.

10 Q. Okay. Certainly a lot easier than taking off a roof to
11 get to the attic, isn't it?

12 A. Well, it depends. If the roof is exposed when you are
13 replacing it, if you needed to take off a couple of sheets to
14 get the -- take off a couple of sheets of the roof sheathing
15 to get the sheetrock in. It is a means and methods ---

16 Q. Right.

17 A. --- of how to get your material in.

18 Q. But in ordinary circumstances you would just take it up
19 the stairs?

20 A. Correct.

21 Q. Okay. And so if we went back and fixed all of the errors
22 and some of the lingering things that are contained in your
23 report it would bring that number down -- but we will have to
24 do the math. We don't want to do the math sitting in front
25 of -- I am not that quick.

1 A. If you remove items ---

2 Q. If you remove items it would bring it down?

3 A. --- the general number will come down, yes.

4 Q. And you were told to add ten percent additional
5 contingency on top of the rest of the work; is that correct?

6 A. Well, we discussed it. And I thought after seeing some
7 photos of some -- you know, some water -- additional water
8 damage, seeing notes about in Schweickhardt's deposition last
9 week about deflection, about not being to access all of the
10 areas where there is supposed to be -- may or may not be fire
11 caulking I thought that was probably a good idea that we
12 should carry a contingency.

13 Q. There was nothing scientific or normal about the way you
14 approached it, you just rounded -- make it a round number, we
15 will just add ten percent to that?

16 A. Well, ten percent is used a lot in the industry.

17 Q. In fact you have contingencies built into a number of
18 places in your estimate, do you not, for example ---

19 A. There are some line item contingencies, yes.

20 Q. Right, for example, when you are repairing water damaged
21 area of where the decks and the roofs come together and all of
22 that you have already built in a contingency for unknown
23 damage that might be found under -- in the plywoods, correct?

24 A. I would have to look at that exact ---

25 Q. That would be ---

1 A. --- specific.

2 Q. --- pretty normal, wouldn't it?

3 A. Well, there is going to be -- well, it depends. I mean
4 if you are just pricing the deck or are you pricing in placing
5 in repairing underneath. So ---

6 Q. Well, you ---

7 A. --- I think ---

8 Q. And I am talking about the deck materials. I am talking
9 about the plywood as you pull it up, as you pull shingles back
10 or as you remove decking and you see areas; you have built in
11 a factor for that, have you not?

12 A. Yes, for the Sealoflex specifically I did -- we do have
13 some money included for repair work to the porch frame.

14 Q. Okay. So there is already a contingency built in for
15 unknown conditions that might be encountered but you added
16 another ten percent on top of that?

17 A. Well, in that case they had had a couple of I believe
18 decks that they had already discovered back then that had
19 damage underneath, so there was a good assumption I believe
20 for me that all of them would have damage. So in that case it
21 was included to repair all of them.

22 Q. And now you have got -- so if you repair all you don't
23 need a contingency?

24 A. For the decks.

25 Q. Right, if you repair all you don't need a contingency

1 because you are repairing all?

2 A. Do you mean a contingency on the deck number?

3 Q. Yes.

4 A. Possible. But, you know, you never know what you might
5 find.

6 Q. So now when you -- you said -- this is -- this is the
7 largest repair project like this that you have estimated,
8 correct?

9 A. For me personally, yes.

10 Q. And the prior closest that you dealt with was the Hamlin
11 Park project?

12 A. As far as the repair, specific repairs, yes.

13 Q. And that was a repair to that -- to like a 50-unit
14 project?

15 A. I think it is more than that, yes.

16 Q. Okay. What would you say it is?

17 A. I think it's around 100.

18 Q. Okay. And you were brought in as the estimator to fix
19 the cladding and water damage and a lot of other issues
20 associated with that project, correct?

21 A. Correct. We were the contractor.

22 Q. And that had been a case that had been in litigation
23 also, had it not?

24 A. I don't -- they -- the homeowners had -- some of the
25 homeowners I think had contacted an attorney, but DR Horton

1 came in and took the report - I think it was from ABS - that
2 the homeowners had done and they agreed to repair everything
3 in the report.

4 A. And you had -- you did that work for about \$800,000,
5 didn't you?

6 A. I believe that is correct.

7 Q. Thank you. Nothing further.

8 **CROSS-EXAMINATION BY MR. COLE OF JERRY HANDEGAN:**

9 Q. Are you ready to keep going?

10 A. Yeah.

11 Q. Mr. Handegan, you don't know who any of the original
12 contractors that worked on this project were, correct?

13 A. I know some of the names.

14 Q. You know the names, but you don't know what they did and
15 that wasn't your job to come in and say what anybody did or
16 anything like that; correct?

17 A. That is correct.

18 Q. Because your job was to just estimate what was given to
19 you by Mr. Mease?

20 A. That is correct.

21 Q. And you have already testified that if Mr. Mease changes
22 his scope or I guess Mr. Smits changes his scope your scope
23 can change as well?

24 A. That is correct.

25 Q. Okay. And so your concern is taking whatever he has and

1 then turning it into basically a budget is what you are trying
2 to put together?

3 A. We put together an estimate; that is correct.

4 Q. And when you did the estimate or created the estimate
5 what company were you working for?

6 A. Palmetto Construction Group.

7 Q. Okay. But you don't work for Palmetto anymore?

8 A. I do not.

9 Q. Okay. And I think that was a recent transition, right?

10 A. Last June.

11 Q. Okay. And who was -- were you a partner in Palmetto?

12 A. Very minority ---

13 Q. Okay.

14 A. --- partner.

15 Q. But the main partner was John Kendall, right?

16 A. That is correct.

17 Q. And John was the qualifier for the company, right?

18 A. No, I was.

19 Q. Oh, you were. Okay. Did Mr. Kendall have a ---

20 A. I think ---

21 Q. --- contractor's license?

22 A. I think we both were. I think we were both a qualifying
23 party.

24 Q. I am going to show you this just to -- does that look
25 like something that you have seen before?

1 A. Yes, that is correct.

2 Q. Okay. And does this look like a printout from the Labor
3 Licensing and -- well, South Carolina LLR for South -- let me
4 start over here. It is too many letters. South Carolina
5 Labor Licensing and Review Board, and that is where if you are
6 a contractor or an architect you are supposed to be licensed
7 through them; correct?

8 A. That is correct.

9 Q. Okay. And your partner whose name is under Palmetto
10 Construction and he was -- had his license suspended?

11 A. That is correct. And we let the company ---

12 Q. Okay.

13 A. Let the company go.

14 Q. You spoke with Mr. Mease you said several times about his
15 scopes and you could refine your estimate, correct?

16 A. Correct.

17 Q. Are you aware that Mr. Mease is not going to be around in
18 the future if any repairs are performed on the project?

19 A. That is correct.

20 Q. Okay. And you didn't talk with anybody else that might
21 take over his position?

22 A. No.

23 Q. You were asked about the clubhouse as one of the line
24 items that you took out of the case. And up here you tried to
25 estimate around \$26,000 I think?

1 A. That is correct.

2 Q. And I will help you out on this. When you have your
3 estimate here you actually made it easy for us, because you
4 have brackets after some of the line items where you actually
5 say the clubhouse?

6 A. Right.

7 Q. Okay. Do I understand that when you have a bracket on it
8 saying clubhouse that is for the clubhouse?

9 A. That is correct.

10 Q. Okay. So when I added up the line items I came up with
11 \$62,448.14.

12 A. Okay.

13 Q. So that is just the math. Hopefully I am not that bad at
14 math. It has been a while since high school. And then when
15 we add your markup that is over \$90,000 for the clubhouse, so
16 assuming my math is right you will agree that that would come
17 out as well?

18 A. That's correct, yes.

19 Q. Okay.

20 MR. COLE: That is all I have. Thank you.

21 **CROSS-EXAMINATION BY MR. ATKINS OF JERRY "JAY" HANDEGAN:**

22 Q. Good morning.

23 A. Good morning.

24 Q. Mr. Handegan you remember -- I am Jim Atkins. I met you
25 at your deposition. I was there briefly for the second

1 portion of your deposition.

2 A. Okay.

3 Q. So I didn't spend a lot of time with you. But I was
4 there. Good to see you again.

5 I want to make sure I understand something. I was
6 looking through your two estimates to what I am calling the
7 original December 2017 and then this one that is recently
8 revised that we got yesterday. And I want to first establish
9 that in so far as I can tell on line-item 13 whatever it is on
10 sprinklers, fire sprinklers, that that figure has not changed.

11 A. That is correct.

12 Q. Okay. You are still relying on the quotes you got from
13 VCS, is that who it was?

14 A. I believe it is VSC.

15 Q. VSC Sprinklers Fire Protection Company?

16 A. Correct. That is correct.

17 Q. Okay. But the patching or repairing firewalls -- and I
18 am talking -- when we are talking about firewalls we are
19 talking about the attic, right?

20 A. The -- yes.

21 Q. Is that -- so we understand each other, that is what we
22 are talking about?

23 A. Correct.

24 Q. Okay.

25 A. The firewall would actually run all the way through ---

1 Q. It should, but ---

2 A. Correct.

3 Q. --- when we use it we are talking about the attic space;
4 correct? As far as --

5 A. You can.

6 Q. Okay. All right. Let get squared on that. I was
7 looking at your original estimate which was -- let's see. The
8 original estimate which is 677. And it is also contained in
9 1049, your reviewed estimate. You have still got those
10 original numbers in there?

11 A. Correct.

12 Q. Correct. So in looking at the firewall repair which was
13 the 9,000, line item somewhere in there, just firewall repair,
14 not fixing the roofs, redoing shingles and all of that stuff
15 that are adjacent to firewalls, but just the firewall repair
16 and patch kind of -- which is basically what your language is
17 there I guess, that was about \$21,000?

18 A. That is correct. That is for under the sheetrock. There
19 is also under 7840 we have some -- the fire caulking, fire
20 spring- ---

21 Q. Okay. And that's ---

22 A. --- in the attic.

23 Q. And how much was that?

24 A. That was \$62,075.

25 Q. So it is about 80,000 just over \$80,000 in your original?

1 A. Correct.

2 Q. Okay. And now it has gone to about 180,000 in the
3 revised; is that correct?

4 A. Well, I think it is a little more than that.

5 Q. Okay. But I am just looking at the items on the Exhibit
6 1049, the handwritten additions. And you can tell me if I am
7 misreading it. It says fire separation, install sealant at
8 separation walls, 40 units; and the line items are labor
9 \$120,000 and \$60,000 in material. Is that not the same thing?

10 A. Correct. But we had there are two other items. The very
11 first item is fire separation attic wall, 26 penetrations per
12 unit.

13 Q. Okay.

14 A. And then you have the fire separation, install sealant at
15 garage penetrations.

16 Q. Okay.

17 A. And then the third one down there is fire separation,
18 install ceiling at separation walls.

19 Q. Okay. So when we are talking about your new number to
20 patch and seal the attic penetrations is there one of those
21 three that we should be looking at?

22 A. For the attic, the very first one.

23 Q. Okay. So it has now gone from about \$80,000 to \$225,000
24 in labor and \$48,000 in material; is that correct?

25 A. That is correct. Yes, sir.

1 Q. And you have gotten -- you have not gotten another scope
2 of work from Doug Smits; is that correct?

3 A. No, that was added from the -- from reading Al
4 Schweickhardt's.

5 Q. You added that from Al Schweickert's deposition
6 testimony?

7 A. Deposition testimony, because that was far and above what
8 we had ---

9 Q. Right, but ---

10 A. --- anticipated.

11 Q. But your original estimate was based on reports and
12 conversations that you had with the plaintiff's defect expert,
13 Mr. Mease; correct?

14 A. Correct.

15 Q. And you also had the report I think it was March 31,
16 2016, or so report of Doug Smits; is that correct?

17 A. That is correct.

18 Q. Okay. And so you were relying on input from the folks
19 that have hired you to go out and make the pricing of that
20 repair, correct?

21 A. That is correct.

22 Q. But this time around you have picked up on the deposition
23 testimony of the expert for Complete Building Corporation and
24 that is where you have increased these numbers dramatically;
25 is that correct?

1 A. That is correct, yes.

2 Q. And the attic separations and penetrations that your new
3 number comes from is strictly from the testimony of Al
4 Schweickhardt?

5 A. That is correct and some photos that were sent to me
6 from -- I think the homeowners had an inspector come ---

7 Q. Right.

8 A. --- into the attic.

9 Q. Which showed one or two or three or four pipes maybe
10 penetrating in a couple of ducks and things of that nature?

11 A. And wood.

12 Q. Right -- well, the wood has always been there; you had
13 that in the original estimate, didn't you? Didn't you know
14 the wood was penetrating the firewalls and attic ---

15 A. Well, I didn't pick it up.

16 Q. You didn't pick it up?

17 A. No, we had the two -- you told me to pick up ceilings and
18 miscellaneous penetration.

19 Q. Okay. So your original estimate you are telling me that
20 he did in this lawsuit on behalf of the attorney that retained
21 you the repairs in the attic penetrations -- and you had seen
22 pictures of the attics when you did that estimate, correct?

23 A. That is correct.

24 Q. You had had the reports of the various people that we
25 have talked about, Mr. Smits and Mr. Mease; correct?

1 A. Correct.

2 Q. And you said you had been over there what, four or five
3 times?

4 A. Correct.

5 Q. Okay. And you failed to include in that estimate all of
6 those two by four's that go through those firewalls in the
7 attic, that wasn't accounted for in your original estimate?

8 A. That was not. No, it was not.

9 Q. Wow. Okay. So as far as the sprinkler is concerned, as
10 you said you referenced VSC Fire and Security. They gave you
11 a proposal for what they would charge to put the sprinklers in
12 the attics of the residential buildings only, correct?

13 A. That is correct.

14 Q. They did not in that quote give you any quote for the
15 clubhouse?

16 A. I believe that is correct, yes.

17 Q. And do you realize that there are sprinklers in the
18 clubhouse attic?

19 A. No.

20 Q. Okay. There is an assembly building therefore it is
21 required to be sprinkled? You don't know that?

22 A. I don't know anything about the clubhouse.

23 Q. So and he gave you or VCS gave you the proposal dated
24 June 14, 2016; correct?

25 A. Correct.

1 Q. And they came up with their number and you had to adjust
2 it a little bit because they missed a couple of buildings. It
3 is 378 -- \$378,920 to put the sprinklers in the attic, just
4 the sprinklers themselves?

5 A. Okay.

6 Q. Right?

7 A. I am not looking at the quote. I am assuming I will ---

8 Q. We will get this marked.

9 A. Okay.

10 (WHEREUPON, Defendant Exhibit Number 1, VCS proposal, was
11 marked for identification.)

12 THE COURT: What is that? Could you identify that for
13 the record?

14 MR. ATKINS: Yes, Your Honor.

15 Q. Mr. Handegan, will you take a look at this and confirm
16 that that is a copy of the VCS Fire and Security proposal that
17 you incorporated into your estimate for fire sprinkler
18 installations -- or fire sprinklers in the attics?

19 A. That is correct.

20 Q. Okay. In looking at that, as I said, the amount is the
21 same; it is still on your line item for just the sprinklers
22 themselves, correct?

23 A. That is correct.

24 Q. And you have not updated that proposal, not sought any
25 update from VCS or anybody else?

1 A. I have not, no.

2 Q. And the proposal itself says it is only good for 30 days?

3 A. Yeah, most proposals say that.

4 Q. Well, that one does for sure; doesn't it?

5 A. Uh-huh. Yes.

6 Q. Okay. So right now you really don't have a current
7 number that someone has provided you even in your revised
8 estimate of what sprinkler installation in those attics would
9 cost and what they would be willing to do it for, correct?

10 A. Correct.

11 Q. Okay. You have yourself as the contractor worked with
12 fire code officials, fire marshals?

13 A. Some, yes.

14 Q. Okay. And it has been your experience that when it comes
15 to issues of fire code application, interpretation,
16 enforcement, that sort of thing, the resident fire marshal,
17 the authority having jurisdiction, is the person you go to?

18 A. Or the engineer on the project.

19 Q. Or the engineer who sealed those plans for that type of
20 work?

21 A. That is correct.

22 Q. Okay. And it would be an obvious source if you have as a
23 contractor an issue or problem of ambiguity to seek out that
24 person or someone with that office and say, hey, clarify this
25 for me?

1 A. Right, usually you would start with the engineer.

2 Q. Okay.

3 A. And the engineer would contact the fire marshal?

4 Q. Okay. Have you ever actually worked with a fire marshal
5 or his office on a project yourself or sprinklers?

6 A. I have dealt with the fire marshal before. I mean we
7 have to on final inspections.

8 Q. Okay.

9 A. I mean that is typically when you are involved.

10 Q. Right. As a matter of fact if they said -- until the
11 fire marshal and the building code official sign off on the
12 plans for the structure, the building, you can't get your
13 permit?

14 A. That is typically the process, yes.

15 Q. Okay. You have been in these attics. You have seen
16 photographs. These attics in your estimation are not intended
17 for human occupancy, are they?

18 A. No, I would not think; so no.

19 Q. Okay. You have never received any information from any
20 source to suggest of what the parameters or the extent of any
21 issues or problems are with the fire sprinklers; like I said,
22 you are relying on Doug Smits basically?

23 A. That is correct.

24 Q. Now when you were deposed -- I want some clarification on
25 this one. When you were deposed back October, November 2016,

1 I think it was that far back, I thought you testified at your
2 deposition -- and we will pull out a copy here of it if we
3 need to to refresh us. But I thought you testified then that
4 the clubhouse on your original estimate was not included. Did
5 you misspeak back then if you said that?

6 A. There's been a lot of estimates done over the years.

7 Q. I know. I know. I know.

8 A. So you would have to get some specific dates.

9 Q. Okay. Let me just -- yeah. This is all your
10 depositions. Yeah, here. Do you recall being asked by me
11 this question. I was asking: In this number, being the
12 number from VFC Fire Protection, I think you were asked the
13 last time the last day you were being deposed you testified
14 that it did not include the clubhouse; is that correct? And
15 that was your testimony was that you had no proposal for the
16 clubhouse?

17 MR. EVANS: Objection, Your Honor. Mr. Handegan doesn't
18 have a copy of the deposition.

19 THE COURT: I was going to -- you might want to give
20 him -- do you have ---

21 (WHEREUPON, pause to look for duplicate of deposition.)

22 Q. If that is Volume II, turn to Page 304.

23 THE COURT: If you could just reference the date of the
24 deposition.

25 Q. Oh, I'm sorry. What was the date of that one -- hold on.

1 MR. ATKINS: This is the deposition taken of Mr.
2 Handegan. It looks like this is Volume 2 which is taken on
3 November the 6th of 2017. I'm sorry. I misspoke. It is
4 2017.

5 THE COURT: Okay.

6 MR. ATKINS: October and November 2017.

7 THE COURT: Since the witness is holding a copy we will
8 mark that as a court's exhibit.

9 MR. ATKINS: Okay.

10 THE COURT: His copy.

11 Q. Turn to Page 304 for me, Mr. Handegan.

12 THE COURT REPORTER: Let me mark that first, please.

13 (WHEREUPON, Court's Exhibit Number 7, Handegan deposition, was
14 marked for identification.)

15 THE COURT: One more time, Mr. Atkins.

16 MR. ATKINS: Okay.

17 Q. It is Page 304. Have you got it?

18 A. Yes.

19 Q. Down at line item -- hold on. Down at -- oh, man -- down
20 at the bottom of the page -- mine has got -- it doesn't have
21 the -- down at the bottom it says -- it begins with a
22 question. And this number, referring to VFC Fire and
23 Protection. Do you see that sentence at the very bottom?

24 A. Yes.

25 Q. Okay. And this number is VFC the Fire and Protections

1 quote, correct, proposal?

2 A. Correct.

3 Q. I think you are asked the last time, the last day you
4 were being deposed, that that quote that you did not include
5 the clubhouse; is that correct. And you said that is correct?

6 A. Correct.

7 Q. All right. So your provision for fire sprinkling, you
8 have never been in the clubhouse attic, it doesn't provide for
9 a quote to sprinkle that, you don't know that they are there,
10 and you didn't -- you didn't provide for it?

11 A. I don't have -- no, there is no quote provided for the
12 clubhouse.

13 Q. But you did have some -- you don't -- I thought you had
14 25 or 30 ---

15 A. No, no, quote for -- we are talking about sprinklers?

16 Q. Right, I -- that is what we are talking about.

17 A. Yeah, so there is no quote for the sprinklers regarding
18 the clubhouse.

19 Q. All right. So your quote for the clubhouse is siding and
20 things of that -- decking and that sort of stuff?

21 A. I believe that is correct, yes.

22 Q. Okay. So nothing to do with sprinklers?

23 A. I believe so, yes.

24 Q. And nothing to do with firewall penetrations in the
25 clubhouse attic or anything like that?

1 A. I don't believe I have any line items for that.

2 Q. Okay. All right. All right. I just wanted to make
3 sure. As I recall, to place -- back when you were deposed --
4 to replace the sprinklers -- or install the sprinklers in the
5 attics would not require -- you don't believe that would
6 require in itself to displace occupants to do that work?

7 A. I don't know if that would or not. It would depend on
8 how getting the water supply line and riser up to the attic.

9 Q. Right. And when you were deposed you weren't sure. You
10 said you didn't think so but you would have to ---

11 A. Yeah, I don't think so but.

12 Q. You don't think so. And you have not explored that
13 further?

14 A. I have not.

15 Q. Okay.

16 A. No.

17 Q. All right. That is good enough. Thank you, Mr.
18 Handegan. I am going to close up and get out of your way.

19 A. Okay.

20 **CROSS-EXAMINATION BY MR. REESER OF JERRY "JAY" HANDEGAN:**

21 Q. Mr. Handegan, Brandon Reeser. It is a pleasure to see
22 you. I will be brief. I understand that based on your
23 testimony today there have been several estimates in this
24 case, correct?

25 A. That is correct.

1 Q. In your first estimate was the clubhouse included in any
2 estimate at all?

3 A. The very first one I don't believe so.

4 Q. Do you know who asked you to add that to your estimate?

5 A. I believe that came up on the documents -- it has been a
6 long time -- from the documents and talking with the --
7 Mrs. -- Ms. Dougherty.

8 Q. Ms. who?

9 A. Ms. Dougherty.

10 Q. And who is that?

11 A. The attorney for the plaintiff's side.

12 Q. Okay. And at that point that is when you decided to add
13 the clubhouse?

14 A. That is correct.

15 Q. Tell the jury real quick what is a CO or a certificate of
16 occupancy.

17 A. Certificate of occupancy is usually they are issued by
18 the City so that the tenant or the building can be used.

19 Q. And that means that someone from the City or the
20 regulating authority has been out and inspected these
21 properties and said someone can live there, correct?

22 A. That is correct. You go through a series of inspections.

23 Q. And I believe you said previously that if you wanted to
24 do a building permit for anything that is going to be
25 inspected by a local municipality you would have to have the

1 stamped plans and everything like that to prep the building
2 official and say, hey, this is what is going up; correct?

3 A. That is correct, but I don't believe I -- I don't know if
4 I provided testimony on that.

5 Q. Sure. I am just asking in your experience ---

6 A. Okay.

7 Q. --- in construction. Have you taken those steps to
8 obtain a building permit if you wanted to?

9 A. For this project?

10 Q. Yes, sir.

11 A. No.

12 Q. All right. So at this point this is not a project that
13 you could engage in, correct?

14 A. No, you would have to -- they would have to have plans
15 developed. You would have to hire an architect and engineer.
16 And they would have to -- and they would have to be submitted
17 to the town for approval.

18 Q. I understand. I am going to hand you what has been
19 marked for identification as Plaintiff's Exhibit 789. Mr.
20 Handegan, have you seen what a certificate of occupancy looks
21 like? And please take time to flip through that exhibit if
22 you would like.

23 A. I have seen these before.

24 Q. And these appear to be certificates of occupancy?

25 A. And they appear to be.

1 Q. And would these be certificates of occupancy for the
2 units at Palmetto Pointe?

3 A. I mean I would assume so.

4 Q. Do you have any reason to dispute that those are the
5 certificates of occupancy for Palmetto Pointe issued by the
6 City of Folly Beach?

7 A. I do not. This is the first time I have ever seen them.

8 MR. REESER: Your Honor, at this time I would like to
9 move Plaintiff's Exhibit 789 into evidence.

10 MR. EVANS: No objection, Your Honor.

11 THE COURT: All right, 789 will be admitted without
12 objection.

13 (WHEREUPON, Plaintiff's Exhibit 789, certificate of occupancy,
14 was admitted into evidence.)

15 Q. Mr. Handegan, thank you so much. Those are all the
16 questions I have.

17 A. Thank you.

18 MR. ATKINS: Your Honor, I don't know that I moved
19 Exhibit 1, the proposal that when we were examining Mr.
20 Handegan, into evidence. But I would like to do so. It was
21 marked for ID. VCS Fire and Protection.

22 MR. EVANS: No objection.

23 THE COURT: All right. Defense 1 will be admitted
24 without objection.

25 (WHEREUPON, Defendant's Exhibit Number 1 admitted into

1 evidence.)

2 MR. REESER: And thank you, Your Honor.

3 THE COURT: Okay.

4 MR. EVANS: Redirect?

5 THE COURT: Please.

6 **REDIRECT EXAMINATION BY MR. EVANS OF JERRY "JAY" HANDEGAN:**

7 Q. Mr. Handegan, do you have a construction license?

8 A. I do.

9 Q. Is it valid?

10 A. Yes.

11 Q. Are you and Trident qualified to do the job?

12 A. Yes.

13 Q. Are you still willing to do the job for \$13,000,428 --
14 excuse me, \$13,428,000 -- I am going to try that one more
15 time, \$13,428,826?

16 A. Yes, we are.

17 Q. You were asked about some deleted items, some items that
18 were struck through on your estimate. Do you recall that?

19 A. I do.

20 Q. You are not saying the deleted items don't need to be
21 fixed, they have just been removed from your estimate;
22 correct?

23 A. That is correct.

24 Q. You were asked questions about certificates of occupancy
25 a moment ago. Do you recall that?

1 A. Yes.

2 Q. And you understand that to get a CO you have to go
3 through a series of inspections, correct?

4 A. Absolutely, yes.

5 Q. Are deck coatings inspected?

6 A. No, I do not believe so.

7 Q. Are the roofs inspected?

8 A. No.

9 Q. Is siding inspected?

10 A. No.

11 Q. Thank you, Mr. Handegan.

12 THE COURT: Anybody else in cross?

13 All right. Mr. Handegan, you can step down from the
14 stand. Thank you very much, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Any objection to this witness being released
17 from the subpoena at this point in time?

18 MR. EVANS: No, Your Honor.

19 MR. REESER: No, Your Honor.

20 THE COURT: All right. You are released. Thank you.

21 MR. LUCEY: Your Honor, plaintiff rests.

22 THE COURT: All right. Thank you very much. Ladies and
23 gentlemen, this is going to be our morning break time. We
24 will let you go take a break and stretch for about 10 or 15
25 minutes and we will see you after that. Thank you very much.

1 Please do not discuss the case.

2 (WHEREUPON, break 5/9/19 10:33 a.m.)

3 (WHEREUPON, resume from break 5/9/19, 10:49 a.m.)

4 THE COURT: All right. Are we ready to proceed?

5 MR. LUCEY: Yes, Your Honor.

6 THE COURT: Okay. Plaintiffs have rested. I am happy to
7 entertain any motions at this point in time.

8 MR. KENDALL: Your Honor, Rhett Kendall, on behalf of
9 Complete Building Corp. At this time I would like to first
10 renew our motion for a new trial on the grounds of the events
11 that occurred yesterday.

12 If you would like me to restate them for the record, I
13 can; but I can just incorporate my prior arguments and all of
14 the information we put in at that time.

15 THE COURT: Okay. We can take these piecemeal. If you
16 want to respond, hop up. If not, you don't have to. But I
17 will give you the opportunity.

18 MR. LUCEY: Yes, Your Honor, the plaintiff opposed that
19 motion as stated on the record yesterday.

20 THE COURT: Okay. All right. Your renewed motion is
21 again denied for the same reason stated yesterday. I don't
22 believe that any potential prejudice that was overheard by the
23 jury as a result of counsel's comments would have any sort of
24 probable difference in their verdict. So for that reason
25 under South Carolina case law I denied your motion for a

1 mistrial and again deny your renewed motion.

2 MR. COLE: So you don't have to repeat yourself, unless
3 we say otherwise I am joining in what he is saying.

4 THE COURT: Thank you, Mr. Cole. I appreciate that.
5 Mr. Reeser and Mr. Atkins?

6 MR. REESER: Same thing, Your Honor.

7 MR. ATKINS: Yes, Your Honor.

8 THE COURT: Thank you.

9 MR. WILLIAMS: Same thing.

10 THE COURT: Mr. Williams, thank you.

11 All right. Yes, sir.

12 MR. KENDALL: Thank you, Your Honor. At this time I
13 would also like to move for a directed verdict on the claim of
14 negligence against my client, Complete Building Corporation,
15 on the grounds that the plaintiffs have failed to prove the
16 standard of care.

17 They have proved -- they have offered evidence regarding
18 the defects that have been found in the property. They have
19 not offered any evidence as to what acts or omissions on the
20 part of the general contractor caused or contributed to those
21 defects.

22 The general contractor, as the court is well aware, is
23 not -- did not perform these functions. The -- they delegated
24 the duties to carry out those functions to the subcontractors,
25 which they are entitled to do. These are not non-delegable

1 duties. And then -- and so -- what they have not come back
2 and said is there was a failure to supervise, there was a
3 failure to hire competent subcontractors, there was a failure
4 to coordinate activities correctly.

5 So the -- there has just been a lack of evidence on the
6 duties owed and the breaches of those duties on the part of
7 the general contractor.

8 THE COURT: All right. Okay. I do recall some testimony
9 for that.

10 Mr. Lucey, what would you like to say?

11 MR. LUCEY: Yes, Your Honor, we oppose that motion
12 obviously. Actually there has been extensive testimony that
13 the building code is the minimum standard of care, that you
14 must comply with manufacturer instructions and industry
15 standards and that that was not done here.

16 And in fact there was expressed testimony that many of
17 the failures at the site were due to the general contractor's
18 failure to coordinate the intersections between trades. Even
19 their own expert admitted that many of those leaks are at
20 locations where the general contractor failed to coordinate
21 the trades and that they in fact have violated the building
22 code which was the minimum standard of care numerous numerous
23 times.

24 Everybody conceded that CBC was the general contractor on
25 this job site. There is no dispute whatsoever about that. In

1 fact, the CBC contract to do this work is in evidence as are
2 the plans. The contract incorporates the plans and the
3 project manual by reference. It is all in. This was their
4 job. It was not properly performed.

5 And, yes, while they did delegate some of the work the
6 issue of whether they can delegate the responsibility is a
7 legal issue.

8 And as testified by everybody so far everybody on the job
9 site has to comply with that building code, the general
10 contractor all the way down to the laborer. None did. We
11 have shown absolute -- it is overwhelming evidence, most of it
12 put in through their own expert, overwhelming evidence that
13 they did not comply, that they were negligent and they
14 breached all warranties of workmanship.

15 THE COURT: Okay. Do you want to respond?

16 MR. KENDALL: No, Your Honor.

17 THE COURT: Okay.

18 MR. KENDALL: The record is before you. Except I will
19 just incorporate the same statements with respect to implied
20 warranties -- implied warranties of workmanlike -- work ---

21 THE COURT: Breach of implied warranty?

22 MR. KENDALL: The breach of implied warranties.

23 THE COURT: Okay.

24 MR. KENDALL: And just incorporate. And I think you
25 already addressed that as well.

1 THE COURT: Okay.

2 MR. KENDALL: But I just -- to save the court time.

3 THE COURT: All right. I do appreciate that. I do
4 recall some evidence -- oh, I'm sorry. Mr. Cole?

5 MR. COLE: To do it -- I am in a pseudo-same situation
6 here. So the same thing. And like I said for Mr. Lucey's
7 response to what I would -- just said.

8 THE COURT: Okay. And Mr. Reeser?

9 MR. REESER: Your Honor, I would have similar arguments
10 in that motion. I have separate arguments we can address
11 later ---

12 THE COURT: Okay.

13 MR. REESER: --- on these motions. But I would join in
14 those comments from Rhett and of course ---

15 THE COURT: Okay.

16 MR. REESER: --- understand your decision.

17 THE COURT: All right. I appreciate that. Motion for
18 directed verdict at this point in time of course is denied
19 based on the standard I must consider, which is viewing all
20 facts in the light most favorable to the non-moving party.

21 And I do recall specific testimony on several of these
22 issues. I believe there were several references. And I do
23 off of the top of my head I even remember one of the witnesses
24 referencing the fact that it is the GC is responsible for spot
25 checking after all these subs go through and do their work.

1 So that is just one example that came to mind.

2 But so I respectfully deny your motion at this point in
3 time. But I am happy to hear any other motions from any of
4 the defendants at this time.

5 MR. COLE: Your Honor, although it is not specifically
6 stated in the title of the cause of action when the plaintiffs
7 listed their second cause of action, they used the term
8 implied and they also said expressed warranty.

9 THE COURT: Okay.

10 MR. COLE: And I would like to specifically move to
11 dismiss any claims of expressed warranty because there has
12 been no testimony from anyone here. And we had two homeowners
13 that one homeowner bought long after the buildings were
14 started ---

15 MR. LUCEY: If I could shorten this up, we are making no
16 expressed warranty claims, Your Honor.

17 MR. COLE: All right. Thank you. That will make it a
18 lot easier. All right.

19 THE COURT: All right.

20 MR. COLE: And then I think you already removed the
21 strict liability. I would just reference that at this point
22 although I am not sure I need to raise it I just want to
23 clarify that there is an unfair trade practices claim and the
24 way I read the complaint it is only against Island Pointe,
25 LLC, so I don't need to move or you are not ---

1 MR. LUCEY: Correct.

2 MR. COLE: --- going to go after me on that.

3 MR. LUCEY: That is correct.

4 MR. COLE: And then he already removed the declaratory
5 judgment. So those are the ---

6 THE COURT: So we are moving forward on two causes of
7 actions at this point; is that correct -- well, for negligence
8 and gross negligence and then implied warranty?

9 MR. LUCEY: We still have stuff in as to Island Pointe
10 who is not participating.

11 THE COURT: Okay.

12 MR. LUCEY: We may make a strategy decision on that
13 before we go to the jury.

14 THE COURT: I see. Okay. Thank you.

15 MR. COLE: And then, Your Honor, I would move next that
16 based off of the statutory law the statute of repose for the
17 buildings that were constructed here would have been eight
18 years. And we have in evidence right now the certificates of
19 occupancy. And Unit Numbers 1653, 1655, 1637, 1639, and 1641
20 all received certificates of occupancy more than eight years
21 before the lawsuit was originally filed on February 13, 2015.

22 So I would move that based off of the statute that
23 basically it is math that those five units are barred from
24 pursuing any of their claims because they are barred by the
25 statute of repose.

1 THE COURT: Okay. I know we addressed this in some
2 motions earlier on in the case, but anyway ---

3 MR. KENDALL: And I would just join.

4 THE COURT: Okay. Sure.

5 Happy to hear from the plaintiffs.

6 MR. LUCEY: Yes, Your Honor. There has been overwhelming
7 evidence of gross deviations for the standard of care by these
8 defendants.

9 The statute of repose is not a claimed specific statute;
10 it is a person specific, a claimant specific, or a defendant
11 specific statute. And a defendant who exhibits reckless
12 conduct may not avail themselves of the statute of repose in
13 any cause of action. It doesn't have to be a gross negligence
14 cause of action. Even the implied warranty.

15 Here we have shown extreme recklessness. We have shown
16 deviations in the standard of care. We have shown trades
17 people that knew to wrap their cloth up the post but stopped
18 halfway and just didn't finish it. Trades people that left
19 gaps.

20 We have shown over three dozen violations of the building
21 code. That is three dozen different violations. We have
22 shown thousands of actual violations of the building code
23 relating to for instance fire penetrations from the failure to
24 seal those penetrations.

25 So there has been overwhelming evidence. And if the

1 court would allow plaintiff to incorporate by reference their
2 jury charges that they have previously submitted to the court
3 among the other charges. The charges confirm South Carolina
4 law that violation of the building code is evidence of
5 recklessness or gross negligence that the jury, the finder of
6 fact, can consider.

7 So at best, Your Honor, at absolute best, they can go to
8 the jury on the issue of whether or not there is gross
9 negligence or not, to try to avail themselves of that; but the
10 evidence is in to sustained plaintiffs going forward
11 notwithstanding the statute of repose.

12 THE COURT: Okay. Anyone else from anybody on that?

13 MR. ADKINS: Yes, ma'am. At this time I am going to
14 again renew the statute of repose. I made a motion for
15 summary judgment on that. I briefed it. And for the reasons
16 that were stated in that. And I am not going to repeat them
17 now, but I want to renew that because I want to maintain that.

18 The other -- at this time I would make a directed
19 verdict. But first I want to renew my motion for partial
20 summary judgment as to the cross-claims of CBC as a whole.
21 But I want to make a directed verdict motion specific to
22 equitable indemnity.

23 I think that what we have got is we have got evidence of
24 code violations. My understanding is evidence of code
25 violations are prima facie negligence and evidence of gross

1 content. They have still got to make a determination of gross
2 conduct. But if you have got a violation of a code, a
3 building code, that is prima facie evidence of negligence.

4 And so my contention is on the equitable indemnity
5 cross-claim, that cause of action which is the only one that
6 remains other than contractual indemnity for CBC, they have
7 unclean hands.

8 I mean that is just as a matter of fact they can't come
9 to this court, can't go to a court of equity, can't go
10 anywhere because they simply are -- they -- you know, their
11 hands are dirty. That is just the way it is.

12 THE COURT: Okay.

13 MR. ATKINS: So on that basis I move for a directed
14 verdict on the equitable indemnity cause of action, the
15 cross-claim, and also I think I joined - but I will say it
16 again - the previous motion that was made from this trial ---

17 THE COURT: Okay.

18 MR. ATKINS: --- that was discussed yesterday.

19 THE COURT: I will hear equitable indemnity motion at
20 this point in time. I will allow Mr. Kendall to respond. I
21 am inclined to deny it until we have heard all of the
22 evidence. I will let you renew it at that point in time as
23 well.

24 MR. COLE: I didn't know we were moving on. So just to
25 clear it up I want to renew my -- Andrew Cole again. I'm

1 sorry. I want to review my motion to dismiss the cross-claims
2 for the equitable and the contractual indemnity and

3 THE COURT: Okay.

4 MR. LUCEY: May I be heard before the court rules?

5 THE COURT: Of course.

6 MR. LUCEY: We had had a concern that maybe Mr. Atkins's
7 motion wasn't being made at the right time either. But I
8 would point out to the court though it might be reasonable to
9 ask the general contractor to make a proffer as to any
10 evidence it is going to try and offer that it has clean hands.
11 Because the overwhelming evidence is that it has unclean
12 hands. And until we know whether or not there is going to be
13 any other evidence otherwise those subcontractors can't settle
14 out of this case.

15 So as a practical matter it would be good for everybody
16 in the courtroom to know whether the general contractor is
17 going to try and show it has clean hands.

18 THE COURT: Okay. If it is trial strategy I am not going
19 to force Mr. Kendall to disclose at this point in time, but of
20 course if ---

21 MR. KENDALL: Thank you, Your Honor.

22 THE COURT: I am sure he will do whatever is in the best
23 interest of his client.

24 MR. KENDALL: I think the -- since the court assists as
25 the trier of fact on the equitable issues that we should just

1 wait and hear the evidence.

2 THE COURT: Yeah.

3 MR. KENDALL: On the contractual claims you have already
4 ruled to deny those on -- as a matter -- you have denied those
5 based on the documents -- or and the arguments that we made
6 previously. The evidence is in.

7 We haven't -- we haven't made our case in chief yet, and
8 so it is not time for the contractual issues to come up again.

9 THE COURT: Okay. And in terms of the -- anyone else
10 want to be heard on the statute of repose renewals? I think,
11 Mr. Reeser, we discussed it at length as I recall a few months
12 ago.

13 MR. REESER: Yes. Yes, Your Honor. At this point I
14 would like to renew my motion for partial summary judgment as
15 to plaintiff's negligence and breach of warranty claims.

16 I understand that the breach of expressed warranty claims
17 are being withdrawn. But I still think my motions stands as
18 to the negligence and breach of implied warranty claims.

19 Mr. Lucey has described the statute of repose, but as
20 Your Honor knows the text in the statute actually says for the
21 gross negligence exception that any person found guilty of
22 gross negligence cannot claim the statute of repose.

23 We are not there yet. The jury is still hearing the
24 evidence. They have made no determination and there has been
25 no verdict. That exception does not apply.

1 If it did apply then we would have an election of
2 remedies issue. Because then Mr. Lucey is saying that, well,
3 if there is gross negligence I get to bring all my claims.
4 All of his claims are for -- are damages essentially for the
5 same thing.

6 As to the other two exceptions I know that Your Honor
7 heard earlier, there has been no evidence as to the -- the
8 toxic substance exception or any others that were discussed in
9 that hearing that had been proffered before this jury or
10 before this court. And, Your Honor, that is why we believe
11 our motion would be properly granted at this time. But I
12 would of course also incorporate and rely on the arguments
13 made before Your Honor at a hearing in January on that.

14 THE COURT: Okay.

15 MR. REESER: I have a few other directed verdict motions,
16 but we can wait in case Your Honor would like to rule on one
17 at a time.

18 MR. LUCEY: That is a complete misreading of the statute
19 by counselor. It is very clear no person may avail themselves
20 of the statute of repose if they are guilty of gross
21 negligence or reckless conduct. It is not claim specific. It
22 is personnel specific.

23 And with regards to the toxic tort exemption, while
24 people like to categorize it that way so that they can try and
25 avoid it, it is not in fact a toxic tort exemption. It is an

1 exemption for damage that is slow and continuing and is
2 latent. And we have shown all of those things here.

3 So under both, Your Honor, we -- at a minimum create an
4 issue of fact as to the gross negligence.

5 THE COURT: Okay. I want everybody to say what they want
6 to say on this argument and then we will move on.

7 MR. COLE: On that particular argument, Your Honor, if
8 Mr. Lucey is suggesting that he is going to rewrite the
9 statute to explain what a toxic tort is I will respectfully
10 say that we shouldn't do that.

11 The language says what it says. And trying to force a
12 definition from the experts that testified in this case as to
13 what they say a latent defect is and try to shoehorn that into
14 an exception of the standard of repose sounds to me that they
15 are trying to use Your Honor to basically void the whole
16 statute of repose which, respectively, you are not allowed to
17 do under the separation of the powers that you have to apply
18 the law as stated.

19 THE COURT: Okay.

20 MR. REESER: Your Honor, if I may very briefly in
21 response. Just using the evidence that we have heard today,
22 particularly the toxic exception to the statute of repose, it
23 certainly has been referred to that in the past, as I am sure
24 Your Honor is aware.

25 But the first part of that is of course the

1 discoverability of an issue by ordinary means. And, Your
2 Honor, heard Russ Mease say the first day I drove up there I
3 didn't even have to get out of the car, I looked at the siding
4 and said it has got to come down.

5 THE COURT: Yeah.

6 MR. REESER: This is not statute of limitation standard.
7 This is can I discover the injury, not can a layman discover
8 the injury or can an engineer discover an injury or an
9 architect. That language is not in the statute.

10 Then you get to the toxic portion of it. And of course I
11 know we have discussed this, but of all the things that the
12 legislature could have chosen they picked radiation as the one
13 example they want to put in there.

14 This is clearly not directed to something like water.
15 And there is seriously -- there has been no real testimony as
16 to the nature of water as a toxic or radiation-like substance.

17 But, Your Honor, again, I think for the reasons in Mr.
18 Mease's testimony, his ability to recognize all of these
19 issues, to lift up a shingle and count the nails, to look at
20 the siding without even getting out of the car, I don't think
21 that Mr. Mease has testified that without a reasonable inquiry
22 I cannot find it, I cannot find these issues that are before
23 the jury in this case.

24 THE COURT: Okay. Well, respectfully I disagree. I
25 think there is a lot of testimony from people saying my house

1 looked great, I had no idea this was going on.

2 But and I appreciate Mr. Lucey bringing up the
3 photographs. I think we have all seen the damage the water
4 has caused.

5 Listen, this is an interesting argument by all -- I
6 mean -- that is why I want you all to get it out on the record
7 and we can flush this out. Because water in itself is not a
8 toxic substance. Water over time can cause toxic substances
9 to exist such as mold and mildew and so forth. We all know
10 that. So maybe my interpretation is wrong. Very well may be.

11 In no means am I trying to create law. So please don't
12 think that. But my job I think -- I think it is to interpret
13 the law as I see fit. And my interpretation at this point in
14 time is that the water can become toxic substances over time
15 and so therefore it would be incorporated into that exception.

16 You know, I might get overturned. And that is fine. We
17 will get some interesting law on that hopefully. But that is
18 one reason I wanted you -- so respectfully these motions as
19 renewed are denied for the same reasons they were denied back
20 in January.

21 What else would you like to say, Mr. Atkins?

22 MR. ATKINS: Just on the statute of repose I just wanted
23 to make clear that I am reasserting what I briefed ---

24 THE COURT: Yes.

25 MR. ATKINS: --- including the opinion ---

1 THE COURT: Okay.

2 MR. ATKINS: --- by Judge Gergel.

3 THE COURT: Yes.

4 MR. ATKINS: And that is -- Judge Gergel and his
5 analysis ---

6 THE COURT: Yes.

7 MR. ATKINS: --- of the statute of repose ---

8 THE COURT: Right.

9 MR. ATKINS: --- as being something more than just
10 another statute of limitations.

11 THE COURT: Right.

12 MR. ATKINS: And so I want that clearly in the record.
13 And I join the argument that has been made by Mr. Reeser about
14 what has transpired and come out in this trial ---

15 THE COURT: Okay.

16 MR. ATKINS: --- because that is pertinent to that issue.

17 THE COURT: Sure.

18 MR. REESER: And thank you for your ruling. Oh, Mr.
19 Kendall, I'm sorry.

20 MR. KENDALL: I just simply want to incorporate by
21 reference to everything that has been said.

22 THE COURT: Okay. And is it safe to say all defendants
23 join in on this?

24 MR. KENDALL: Yes.

25 THE COURT: Thank you.

1 MR. KENDALL: Thank you. That will be ---

2 THE COURT: We will make that clear for the record.

3 MR. REESER: And thank you for your ruling, Your Honor.
4 I do not know if I made clear that I would like to for the
5 record for the benefit of my clients join Mr. Kendall's motion
6 for a directed verdict as to negligence based on the standard.

7 THE COURT: Okay.

8 MR. REESER: I understand that Your Honor has already
9 ruled as to that motion and will accept the court's ruling on
10 that motion as to my clients. I just want to make it clear
11 that that motion is being made for the record.

12 And I would also move for a directed verdict as to
13 Tri-County Roofing's equitable cross-claims on the same
14 grounds that Mr. Atkins brought as to unclean hands as to
15 CBC's equitable cross-claims which I also understand the court
16 has ruled on.

17 THE COURT: Yes. Thank you.

18 MR. REESER: Thank you, Your Honor.

19 THE COURT: And I will take that -- we can renew those
20 motions at the close of the next phase of trial.

21 MR. KENDALL: Thank you, Your Honor.

22 THE COURT: All right. Mr. Williams.

23 MR. WILLIAMS: Your Honor, Jamie Williams for JMC
24 Construction, Inc., and JMC Construction, LLC. While we are
25 doing the negligence, breach of implied warranty, and directed

1 verdicts I would move for the same on different grounds than
2 the other defendants.

3 THE COURT: Okay.

4 MR. WILLIAMS: My client there has been no evidence
5 presented at all during trial that my client did any work at
6 Palmetto Pointe at all. And if you can't prove that my client
7 was ever there you can't prove that they were negligent or
8 their work was negligent or they breached any warranties.

9 The only mention of my client was in opening statements.
10 And, as we know, that is not evidence. So there is no
11 evidence. My client's name wasn't even mentioned. And it is
12 not in any of the documents that were put into evidence
13 either.

14 THE COURT: It is not in any contract or subcontracts --
15 well, I will hear from the plaintiffs. This is JMC?

16 MR. WILLIAMS: Yes, ma'am.

17 THE COURT: JMC. Haven't heard a word from JMC. What is
18 going on?

19 MR. LUCEY: Your Honor, Mr. Poyner, Exhibit 55, that
20 exhibit was regarding the siding work that they did, that JMC
21 did. We haven't moved 55 into evidence, but Mr. Poyner did
22 talk about that little bit of siding that the other contractor
23 did.

24 And I think through their own cross-examination -- or
25 their statements during opening they themselves said they put

1 the same siding back up ---

2 THE COURT: Of course that is not evidence.

3 MR. WILLIAMS: And we -- I didn't -- that is not what I
4 said either.

5 THE COURT: It is not evidence anyway.

6 MR. LUCEY: Opening is an admission by counsel within the
7 scope of his employment. But we would suggest to the court,
8 Your Honor ---

9 THE COURT: Well, I am more concerned with the evidence
10 of negligence on -- from his client so.

11 MR. WILLIAMS: The email talks about Atlantic. It does
12 not talk about JMC. Atlantic was the company that hired us.
13 As you remember, we were a sub-tier. We had not worked for
14 CBC. We worked for Atlantic. That email it only talks about
15 Atlantic.

16 And if -- as you remember, Mr. Poyner was asked who did
17 siding out there, name everybody you know that did siding.
18 And he said Cornerstone and he said Miracle Siding. He did
19 not say JMC. JMC was not mentioned.

20 So we don't -- you don't get to wait for him to come back
21 up on direct or when apparently the defense makes their case.
22 He had his chance to question to be able to say JMC, and he
23 did not.

24 MR. LUCEY: Your Honor, that was regarding JMC. And in
25 JMC counsel made an admission. They put the siding right back

1 up. The overwhelming evidence in the case is the siding was
2 illegal. It is illegal the first time he put it up. It is
3 illegal every time he put it up.

4 They have an admission by a party opponent that they took
5 the siding down and put the same siding right back up. In
6 fact, he told the jury -- excuse me, yes, the jury about five
7 times there's two things I want you to remember ---

8 THE COURT: The attorney is not a party opponent, first
9 of all.

10 MR. LUCEY: I'm sorry?

11 THE COURT: I disagree with your assertion there. I
12 don't think that the attorney can be a party opponent.

13 MR. LUCEY: An agent ---

14 THE COURT: I disagree. He is not giving testimony. You
15 are referencing rules of evidence and -- or contemplating
16 people testifying from the witness stand which obviously Mr.
17 Williams is not ---

18 MR. LUCEY: If the court will give me till lunch I will
19 pull a case for the court that says an admission by a ---

20 THE COURT: An attorney ---

21 MR. LUCEY: --- an attorney ---

22 THE COURT: --- in opening statements?

23 MR. LUCEY: --- during opening statement or closing,
24 admission by an attorney, that it constitutes an admission.

25 MR. WILLIAMS: Your Honor, as far as I know the rules say

1 a directed verdict goes to evidence. Opening statement is not
2 evidence.

3 THE COURT: Correct.

4 MR. LUCEY: And just finishing what I was saying. I
5 understand the court has concerns about my legal basis, but
6 factually just reminding the court they describe their siding
7 work and they said there is one thing I want you to remember
8 and they said it five times, \$12,000 worth of work, one-tenth
9 of one percent, \$12,000, one-tenth of one percent, that is the
10 siding work we did.

11 The overwhelming testimony is that all the siding on this
12 property is illegal.

13 THE COURT: Okay.

14 MR. WILLIAMS: There was no testimony about what scope my
15 client did by any witness. And there is no -- so, therefore,
16 there is no testimony that the siding they personally
17 installed was defective.

18 Mr. Mease could have pointed out multiple locations where
19 it was at and where he tested it. And if there was any more
20 reason to relate that to JMC's work maybe that works, but none
21 of that is in the record.

22 THE COURT: You are -- you have claims against you from
23 both the plaintiff and the GC or just the plaintiff?

24 MR. WILLIAMS: No, ma'am, just the plaintiff now.

25 THE COURT: The plaintiff. At this point in time I am

1 inclined to a direct verdict in your favor. I don't have -- I
2 don't have any evidence in the record that I can recall. It
3 is my position that your opening statements are not evidence
4 to be considered at the directed verdict stage certainly.

5 So viewing the facts in the light most favorable to the
6 non-moving party direct verdict in your favor.

7 MR. WILLIAMS: Thank you.

8 THE COURT: All right. Do we need any other break or are
9 we ready for the jury to come back in? Are you ready -- have
10 you got your first witness ready?

11 MR. KENDALL: I do, Your Honor. Thank you.

12 THE COURT: Okay. So what I -- how I suspect this going
13 is that we will go for about an hour, take a lunch break. I
14 have got another conference I have got to chime in on until I
15 return about 2:15 so.

16 MR. KENDALL: Can I just get a quick AV check?

17 THE COURT: Yes. Take your time.

18 (WHEREUPON, pause for audio video.)

19 MR. KENDALL: Your Honor, thank you. I am good to go.

20 THE COURT: You are ready. Okay. I think we can bring
21 the jury back in.

22 THE BAILIFF: Yes, ma'am.

23 THE COURT: Thank you.

24 (WHEREUPON, jury enters 5/9/19, 11:17 a.m.)

25 THE BAILIFF: All jurors are present, Your Honor.

1 THE COURT: Thank you so much. Please be seated,
2 everyone. All right.

3 Mr. Kendall, you can call your first witness.

4 MR. KENDALL: Thank you, Your Honor. If it please the
5 court I will call Mr. Larry Elkin.

6 (WHEREUPON, the witness was duly sworn.)

7 THE DEPUTY CLERK: For the record will you please state
8 your full name and spell your last name?

9 THE WITNESS: James Lawrence Elkin. E-L-K-I-N.

10 **DIRECT EXAMINATION BY MR. KENDALL OF JAMES LAWRENCE ELKIN:**

11 Q. Are you ready?

12 A. Yes, that is fine.

13 Q. Okay. Good. You have said your name, but will you let
14 the jury know a little bit about what you do and who you are?

15 A. Sure. Everybody calls me Larry. And you may as well.

16 I am -- I am an engineer. I do mechanical and structural
17 engineering. I have my own engineering firm. I have been
18 working in the field of building diagnostics since -- I
19 brought my resume so I wouldn't forget. Since 1995 was when I
20 got into this business.

21 So my company occasionally we get called by people who
22 are building a new building. But you wouldn't come to me and
23 say I need a new mall, I need a new school. But somebody who
24 is building a new mall or a new school might say, hey, we need
25 help with parts of this design because you are pretty good at

1 figuring out problems and we just want you to help us figure
2 out these problems, these areas that are tricky for us. Those
3 generally include water intrusion locations or places where
4 you might have condensation that might form because the
5 insulation isn't right or the air-conditioning isn't right.

6 We also just we will go evaluate buildings and help
7 people just design repairs. So kind of like this property we
8 are actually doing something similar at a project in Raleigh
9 called Briar Creek that has exact wall interface problems and
10 roof wall interface problems, and we are out there designing
11 the repairs and we are interfacing with the contractor and
12 doing the construction administration. So putting out permit
13 sets and progress sets of plans. You know, all the things
14 that normally happen with respect to repair projects.

15 I think earlier they were talking about before this gets
16 worked on that somebody is going to have to put together those
17 plans. We could do that.

18 Q. All right. And but you told us what you do. Tell us how
19 you got there and what -- tell us just your education
20 background.

21 A. Sure. So I have a bachelor's degree and a master's
22 degree in mechanical engineering from the Rose-Hulman
23 Institute of Technology. It is in Terre Haute, Indiana. It
24 is a private engineering, math, and science school. And when
25 I went there is was all male.

1 My very first job I was designing specialty scientific
2 equipment at a small firm in Columbia. It was pretty
3 interesting.

4 I will be honest, I wasn't making any money doing it and
5 so I decided I wanted to get into buildings. And so I went to
6 work for a large consulting firm called Law Engineering, a big
7 international firm. And that is the very first time that I
8 really worked on buildings. It was 1745 I Street in
9 Washington D.C. was the very first roof I ever went on way
10 back in 1995.

11 Since then I eventually came to Charleston to work for
12 Alan Campbell who is the principle of Applied Building
13 Sciences. And I think that they are another expert in this
14 firm. Just how things have worked out I was able to step out
15 on my own, start my own firm in 2013. I have two other
16 engineers working for me now. Actually I just hired another
17 kid that just graduated from the Citadel with his degree in
18 mechanical engineering. And I have an engineering technician
19 as well.

20 Q. We heard about a little bit from Mease yesterday about
21 the processes required to become an engineer, so I am not
22 going to ask you to repeat it. But you have been through
23 those same steps, correct?

24 A. Correct.

25 Q. And you have -- are you now a P.E.?

1 A. I am a P.E. And I guess the last little bit that I left
2 off is I am actually working on a second master's degree in
3 engineering right now. I am actually just finishing up my
4 graduate research, which of all things happens to be in
5 cladding attachments. So if you were to come into my office
6 today you would see all these wall panels built all over. And
7 we are getting to break them to see how much strength it takes
8 to pull them apart.

9 Q. Okay. Now and your -- your license allows you to
10 practice in what areas of engineering?

11 A. So when you take the P.E. exam it is -- it is specific
12 to -- to a discipline, if you will. So when I took the P.E.
13 exam back in 1998 I took it as a mechanical engineer. Once
14 you are an engineer you are able to practice in any areas in
15 which you can demonstrate competency, either through practice
16 like working underneath another P.E. or through additional
17 education.

18 So while -- when I was training as a mechanical
19 engineer -- if you want me to design an air-conditioning
20 system I can do that for you. That is not what we do every
21 day. What we do is we figure out why buildings don't work and
22 figure out how to fix them.

23 And so moisture damage results in structural damage; and
24 that is what led me into learning about wood and concrete and
25 things like that, how do those materials deteriorate and then

1 what is required to fix them.

2 And then I got into this whole interest in this whole
3 cladding attachment thing. Because it comes up over and over
4 and over again. And that has kind of led me into this second
5 master's degree specific to structural engineering.

6 Q. So the kinds of work you do now is somewhat more
7 interdisciplinary within engineering; it might involve
8 materials, it might involve structure, it might involve civil
9 issues; so you are qualified to work in all of those areas, is
10 that correct?

11 A. Yeah, correct. So civil engineers might talk about
12 things like the strength of soil. And I don't do that. Civil
13 engineers might talk about open channel to like how much water
14 can go through ditches. I don't do that.

15 There is a branch of civil engineering that deals with
16 the strength of structures; I do do that. There are other
17 parts of mechanical engineering that I don't do, for example.
18 But there are parts that I do do.

19 But I feel like as a result of -- what is it now, twenty
20 something years of practice and almost three engineering
21 degrees I feel pretty good about what I do.

22 Q. And you have been doing building diagnostics now for how
23 long?

24 A. Twenty-four years.

25 Q. And you have had -- have you had prior opportunities to

1 testify before courts?

2 A. I have.

3 Q. And have you testified in courts other than in state
4 courts?

5 A. Yeah, I have been qualified in federal court and state
6 courts. I don't know what you call local courts. I was
7 qualified in chancellery court in Franklin, Tennessee. I
8 don't even know what that is.

9 And then in Chatham County -- it is a little bit
10 different. I was actually hired as the -- as an expert on
11 behalf of the judge in a case about cladding actually.

12 MR. KENDALL: Your Honor, at this --

13 Q. And have you done investigative work out at Palmetto
14 Pointe?

15 A. Yes.

16 Q. All right.

17 MR. KENDALL: Your Honor, at this time I would like to
18 offer Mr. Elkin as an expert in areas of engineering and
19 building diagnostics.

20 MR. LUCEY: No objection, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, once again,
22 this witness will be qualified in the areas of engineering and
23 building diagnostics. Again, opinion testimony in these
24 areas. That doesn't mean that you must accept his opinion,
25 but it is evidence for you to use in any way that you see fit.

1 MR. LUCEY: Objection. Leading and lack of foundation.

2 THE COURT: Okay. I will ---

3 Q. Tell us what do you observe in terms of what is in this
4 photograph ---

5 THE COURT: Thank you.

6 Q. --- in terms of the attachment -- or the enhancements
7 that you saw?

8 A. Sure. So the decks were originally built open. And in
9 this photograph you can see that there is a supplemental
10 system installed in-board of the railings. That appears to be
11 a -- that allowed for screenings or like a sunroom
12 application. It was something added after construction.

13 Q. By the way, there is a pointer to your right. And if you
14 need to stand up and point feel free to do that.

15 A. Okay.

16 Q. All right. I am going to continue to scroll through. If
17 there are -- and don't let me get past anything that you think
18 is important to say. But you mentioned before that you did
19 some analysis of the slopes of the decks. Is this -- is this
20 some photographs that indicate that?

21 A. So this is an example of a level -- it is a digital level
22 that was used. I will be honest, the SSS I am not sure what
23 that designation means. I think if you go to maybe a few ---

24 Q. Have you got another picture?

25 A. Yeah. I think if you maybe look at

1 Q. How about this one (displaying)?

2 A. Can you turn that?

3 Q. Yep.

4 A. Correct. So that is showing that there is a two percent
5 slope. That would be -- let me use your pointer. So that
6 little number right there (pointing) is showing that there is
7 a -- there is a two percent slope. It is not -- it is not
8 flat.

9 Q. And which direction is it sloping?

10 A. It is down on the -- it is down on the left.

11 Q. Okay. So that from the building it is sloping which
12 direction to the outside?

13 A. Do you have a photograph right before this or a wider
14 view?

15 Q. Let me see. I don't know if I have one of that. Maybe
16 where there are others where we can see both the direction and
17 the slope. I don't know if this one shows (displaying.)

18 A. That is showing a two-point-four percent slope.

19 Q. If you ---

20 A. And I will just interrupt you here. Here (pointing) you
21 can actually see the building corner. And then you can see
22 the building corner again. So that slope is going down and
23 away from the building.

24 Q. And as you evaluated the slopes on the decks did you
25 generally find that they were sloping to the outside?

1 A. Yes, sir.

2 Q. Did you also again spend some time looking at the
3 intersections of the posts and roofs and decks?

4 A. Yes, there is -- obviously there's example of it there.

5 Q. And when you observe -- what -- what were you looking for
6 and at when you were looking in those areas?

7 A. So my initial takeaway was that some of these were some
8 pretty challenging intersections. Having -- any time you
9 have -- any time you have two different materials interface it
10 gets to be -- it is a hard -- it can be a hard transition to
11 make to keep it watertight.

12 In this instance when you have three different coming
13 together in different planes it becomes that much harder to
14 make sure it is constructed in a watertight matter.

15 Q. All right. And when you were observing them did you
16 immediately observe that there were problems; or was it
17 something that needed to be more follow-up, or what was the
18 walkaway on that?

19 A. When I look at these interfaces these are things that I
20 would think -- so I obviously have the benefit of hindsight
21 where some of these things were opened up and subsequently
22 found some localized damage around them.

23 But these are the kind of places if you called and said,
24 hey, I need an evaluation of a building, these are the kind of
25 places that we might do some moisture probe testing or we

1 A. I do.

2 Q. And just -- and 669 is not the document you had in your
3 file, is it?

4 A. No.

5 Q. And so we have now marked your actual file document
6 which -- or 1050. Is that the document that you actually
7 pulled out of your file?

8 A. It is. Can I see that one?

9 (WHEREUPON, pause for witness to review document.)

10 A. Okay. Thank you.

11 Q. And just to confirm, they are from two different years
12 aren't they?

13 A. They are two different years.

14 Q. Okay. You can hold on -- thank you for letting me
15 correct my mistake.

16 A. Yep. Thanks.

17 THE COURT: Yeah. Sure. All right. Any other questions
18 for this witness, Mr. Kendall?

19 MR. KENDALL: I have no more questions.

20 THE COURT: All right. Thank you very much.

21 Mr. Cole.

22 MR. COLE: Thank you, Your Honor.

23 **DIRECT EXAMINATION BY MR. COLE OF LARRY ELKIN:**

24 Q. Hi, Larry. How is it going?

25 A. I am all right. How are you today?

1 Q. I am doing all right. I am going to be probably running
2 back and forth to the -- let me get this this set up.

3 (WHEREUPON, pause to turn on ELMO.)

4 Q. Over there so the jury can see some of the stuff since I
5 have got one copy here of some of these things I want to go
6 over with you. You were retained in this case to look at
7 issues that were out at Palmetto Pointe, correct?

8 A. Correct.

9 Q. And you were not asked to opine about the original people
10 doing the work; you were looking at today this is what it
11 looks like?

12 MR. LUCEY: Objection, Your Honor. Counsel is leading
13 this witness. There has been no showing of adversity. In
14 fact the same firm is working for a number of defendants. We
15 would ask ---

16 MR. COLE: I will -- I will rephrase, Your Honor.

17 THE COURT: Thank you.

18 MR. COLE: We let the plaintiffs lead, but we will -- I
19 will rephrase.

20 Q. So, briefly, what did you do out there to assess the
21 property?

22 A. Okay ---

23 MR. LUCEY: Objection. Cumulative. That has been
24 covered in direct.

25 THE COURT: I will allow it. Go ahead.

1 A. So I was there to evaluate the work of Miracle Siding
2 and Eloy Vasquez. They were labor only subcontractors to
3 Tri-County Roofing.

4 So we made site inspections. I reviewed invoices. I
5 reviewed those depositions. I don't know that I have been
6 through every document in this file, but I have been through a
7 good many of the documents in this file.

8 Q. And, you know, we have already got a lot of exhibits. So
9 I don't know that anybody has read through all of the
10 documents in this file.

11 The -- you testified earlier that you do some
12 construction administration services, correct?

13 A. We do.

14 Q. And could you describe a little bit more of that. Is
15 that you are sitting in an office reading through tables all
16 the time?

17 A. No. No, no.

18 Q. What do you do when you do that?

19 A. So in construction administration that part of our
20 function is we will make periodic site visits to
21 progressing -- or to construction that is in progress.

22 What happens at those site visits kind of is a function
23 of what we agreed to with the owner contractually. Sometimes
24 it is very hands-on actually inspecting work. Sometimes it is
25 simply reviewing to see how much work has been put in place,

1 is it okay to write a check for 10 percent of the work or 20
2 percent of the work. You know, just a third-party to evaluate
3 that.

4 Part of the CA sometimes is to clarify construction
5 documents. So if a contractor has a question about that they
6 may issue a request for more information and we will provide
7 another sketch or provide some sort of a response so they
8 understand better how the construction is supposed to proceed.

9 Q. And when you go out and do that type of work do you use
10 any type of documentation to help you evaluate your
11 inspections?

12 A. Sure. The -- I guess the first -- the first and foremost
13 would be the plans and specifications. And then we might use
14 manufacturer's instructions. Obviously the building code as
15 well.

16 Q. And you read the specifications for Palmetto Pointe,
17 right?

18 A. I read some of them.

19 Q. Okay. There are a lot. That is what these are here.
20 And just so everybody can see it I was going to put the
21 specifications for the siding up here so that you can see it
22 on the board and so the jury can see it as well.

23 All right. There we go. Does that look like part of the
24 specifications that were issued -- and I realize there were a
25 lot of pages. But does that look like part of it that were

1 issued in this case?

2 A. Yes, so if you will slide it down just a bit.

3 Q. All right.

4 THE COURT: Does this have a number associated with it?

5 MR. COLE: Yes, ma'am, I will give you the -- this is
6 part of Exhibit Number 340.

7 THE COURT: Okay.

8 MR. COLE: And if it will help, it is page -- well, the
9 Bates number on it is 915.

10 THE COURT: Okay.

11 Q. All right.

12 A. Right, so up here it specifies the allowable
13 manufacturers. One of them is a company called James Hardie
14 that makes cement fiber products. The next one is Certain
15 Teed, and that is the product we have been talking about.

16 Q. Okay.

17 A. And then you get ---

18 Q. Before you go on, is there much difference between Hardie
19 and Certain Teed?

20 A. A little bit. If -- we could hold up their
21 specifications side by side and try to figure it out. But
22 from a lay perspective they are both fiber cement siding.

23 Q. And I heard sometimes colloquial people call the siding
24 we see they are describing as Hardie siding. Is that kind of
25 like when somebody calls something a Kleenex?

1 A. Kleenex, Xerox. It is the most common incidence of that
2 type of a product.

3 Q. Okay. All right. Please continue.

4 A. Yeah. Sure. So the next down talks about the actual
5 product that is supposed to be put in place. It says fiber
6 cement siding, asbestos free. Getting down here it says
7 horizontal lap siding, boards 9 1/4 inch wide, plain style,
8 8-inch exposure, wood-grain texture.

9 Q. And is that what is installed out there?

10 A. Correct, that is what that example is.

11 Q. Okay. And you probably saw the plans as well, correct?

12 A. I have.

13 Q. And the plans actually call for a different type of
14 exposure on the siding, correct?

15 A. Like six or six-and-a-quarter.

16 Q. Okay. But it is the same basic product, right?

17 A. That is correct.

18 Q. And I am not going to try to get you to tell me that you
19 can install them the same way; because they have slightly
20 different properties being wider or narrower, correct?

21 A. Correct.

22 Q. Okay. But this is -- the architect is the one who
23 produces the specifications, right?

24 A. That is correct.

25 Q. Okay. And so that is a choice for the architect of what

1 they want out there on the project?

2 A. Correct. Can I just add something to that?

3 Q. Please.

4 A. So also as part of construction administration there is a
5 thing called submittal process. So the general contractor and
6 sometimes its subs will say this is the product we are
7 thinking about installing and they will take the product cut
8 sheets, so basically the marketing literature or the
9 engineering data from the manufacturer, and they will send
10 it -- the subcontractor will send it to the general contractor
11 for review and approval, and then it gets sent to the
12 architect for review and approval, and then that information
13 gets sent back downstream so that everybody knows that the
14 general contractor and the architect have reviewed it and
15 approved it.

16 There is actually approved submittal for Certain Teed
17 cement fiber siding.

18 Q. So you are saying the stuff that is out there right now
19 there is a submittal that was sent to the architect that they
20 stamped and said this is approved?

21 MR. LUCEY: Objection. Best evidence.

22 THE COURT: Can the attorneys approach briefly so I can
23 understand.

24 (WHEREUPON, bench conference 5/9/19, 2:47 p.m.)

25 THE COURT: All right. Thank you.

1 Q. All right. And would you be able to tell the difference
2 between siding that is the 8-inch exposure and the narrower
3 exposure? Like you could tell ---

4 A. Like in the package or on the wall or ---

5 Q. On the wall when it is installed you can tell the
6 difference between the 8-inch and the skinnier, right?

7 A. Oh, yeah.

8 Q. Okay. And how many buildings are out there that we are
9 talking about?

10 A. It is 20 buildings, 40 homes.

11 Q. Right. And these didn't go up over night, right?

12 A. Typically a little over a year.

13 Q. Okay. And so clearly the architect who specified the
14 siding saw that the wide siding was on the first building, on
15 the second building, etc., through the last building; right?

16 MR. LUCEY: Objection. Counsel is leading his witness
17 again.

18 THE COURT: He is. But we -- there was great latitude
19 afforded to the plaintiff so in the interest of time I will
20 allow it to an extent. But do try to not lead as much. Thank
21 you.

22 MR. COLE: All right.

23 Q. And you have already testified that you are a trained
24 engineer, and you have done this for how many years did you
25 say?

1 A. Almost 25.

2 Q. Okay, 25. And you look at documents like 669 which is
3 the ICC report that has already been put in; you have looked
4 at documents like that before, correct?

5 A. Yes.

6 Q. And when you were testifying before, you were referencing
7 that, you know, generally how this document is put together is
8 we had a lot of language here and the tables after it;
9 correct?

10 A. That's right.

11 Q. And when you are trying to figure out what the document
12 means how do you go about figuring that out?

13 (WHEREUPON, pause.)

14 Q. If you need me to clarify the question I will try ---

15 A. Yeah, you can clar- --

16 Q. I am trying not to lead you.

17 A. I understand.

18 Q. So that is what I am trying to do. This isn't something
19 you read like a novel from first page to last page and it is
20 easy to understand?

21 A. Most people wouldn't, no.

22 Q. Okay. And that is because you have a lot of people that
23 love to crunch numbers like you do to read these things,
24 right?

25 A. Yeah, I would say that this is definitely -- the way this

1 is written is more for a design professional, somebody who has
2 training in understanding wind pressures and things like that.

3 Q. Okay. One of the clients that you were working for dealt
4 with the siding installation. We were talking about that.

5 Another claim you dealt with did roof and waterproofing,
6 correct?

7 A. Correct.

8 Q. Okay. And I think I asked you before that you have used
9 like submittals and other documents like that to help evaluate
10 your time when you are out on a job site?

11 A. That is right.

12 Q. Okay. Exhibit 853 was a document that was put in that
13 is -- do you recognize this document?

14 A. I know what it is.

15 Q. Okay. And what is it?

16 A. It is a detail from HydroStop. They are a manufacturer
17 of deck waterproofing -- or some of the deck waterproofing
18 that is out there.

19 Q. Okay. And what can you tell me about the drawing that we
20 see in this detail from 1999? And if you want me to focus it
21 a little more -- what I am asking you about is this part here
22 (pointing) doesn't look like it is straight.

23 A. I see what you are saying. At the outboard edge it shows
24 a double two-by laid flat.

25 Q. Okay.

1 A. Where it looks like there is a tapered -- a roof -- well,
2 it actually says tapered insulation over roof decking. And
3 then it has got -- yeah, it is a double two-by laid flat. The
4 little rectangles on the end -- it had little x's on the end.
5 That is how we draw the edge of like a 2x4 or 2x6.

6 Q. And for those of us that aren't as familiar with sort of
7 construction terms, what you are saying an X is a 2x6, 2x4 --
8 like walk me through -- if I walk into Lowe's what am I
9 looking at?

10 A. Sure. So wood gets cut into dimensional lumber. And if
11 you have driven by some place where they are building homes
12 you will see -- sometimes this is called a stick framing when
13 you see the sticks going up to hold the walls. Those are
14 generally going to be 2x4's and 2x6's.

15 So they are not exactly; they are nominally two inches
16 wide and four inches deep or two inches wide and six inches
17 deep. They are actually a little bit less than that because
18 those numbers refer to the rough sawn dimensions and then they
19 go through a planing process to make them more square and
20 true. It gives them the dressed dimensions that are a little
21 smaller.

22 Q. Okay. And in this drawing you said this shows that it
23 angles down and then flattens out near the edge, correct?

24 A. That is what that shows, yes.

25 Q. Okay. And this is a document based -- or produced by

1 who, what company?

2 A. HydroStops.

3 Q. And HydroStop does what kind of work?

4 A. They manufacture the deck waterproofing.

5 Q. And how does the deck waterproofing go on?

6 A. So there's two different products that were out there.
7 And actually both I think are referenced in the project manual
8 as well. One is Sealoflex and one is HydroStop.

9 Kind of the same thing as the HardiePlank versus Certain
10 Teed, it is just two manufacturers of the same kind of stuff.
11 But they come out of different plants.

12 So generally -- there is a base coat that is mopped onto
13 the substrate material like plywood or concrete or, you know,
14 whatever it is. And then they lay in a fabric that provides
15 some reinforcing so that if there are stresses applied to the
16 waterproofing it won't tear. And then they mop on a second
17 layer of that base coat materials so that the reinforcing is
18 fully embedded. And then there is a topcoat that was on top
19 of it. But so it is a traffic coat or a wear coat so when you
20 walk on it eventually it wears out and has to be replaced.

21 In this case the architect specified that there were two
22 layers of topcoat that were supposed to be applied before this
23 project was turned over.

24 Q. Okay. And I put up here to assist -- hopefully. This
25 says traffic coating. What does that mean?

1 A. Traffic coat, that is the topcoat.

2 Q. Okay. And that is what you walk on when you go out
3 there?

4 A. That is what you see.

5 Q. When we see the photographs from Palmetto Pointe when we
6 are talking about the top coating what color is it; do you
7 remember?

8 A. It is kind of gray. It usually -- I think they have some
9 sand cast into it to make it slip-resistance.

10 Q. And does that last forever?

11 A. No. You can buy different grades. Typically it needs to
12 be replaced or refreshed about every five years.

13 Q. Okay. And these are the specifications that I pulled out
14 again, the same exhibit that we were referring to before, and
15 it says the first manufacturer is HydroStop and the next one
16 is Sealoflex under A and D. Are those in some respects just
17 considered alternatives of similar types of products?

18 A. Correct. It was like -- just like the difference between
19 Hardie and Certain Teed. It is a little peculiar that they
20 didn't put Sealoflex up here (pointing) on your manufacturers
21 and give you a choice between the two.

22 Here they are almost -- it is almost like it is written
23 so in saying, hey, when you waterproof it use a HydroStop and
24 when you do the topcoat use Sealoflex. That is ---

25 Q. Okay.

1 A. It is a little sloppy the way it was written.

2 Q. Do Sealoflex and HydroStop offer warranties?

3 A. Yes.

4 Q. And do you know whether or not somebody would investigate
5 like from the companies to check on the deck after it has been
6 completed before the warranty is issued?

7 A. I have seen that they have. I don't know that it always
8 happens, but I have seen that they do that.

9 Q. And do you think that a company like SealoFlex or
10 HydroStop would issue a warranty if it wasn't all their
11 product on that deck?

12 A. Obviously they would need to be convinced that it was
13 their product on the deck. I don't know how they would
14 evaluate for sure that it was their product on the deck.

15 Q. Okay. And I am going to show you another exhibit,
16 Exhibit 853. And what does this appear to be?

17 A. It looks like the same detail we just looked at.

18 Q. All right. But is this a different year?

19 A. I thought -- I think the previous one was 1999 as well.

20 Q. You are right, it is. I shuffled it around like a
21 magician. Okay. Here we go. Here we go, 854. Let me zoom
22 it in for you. Does this appear to be another HydroStop
23 detail?

24 A. It does. The date is underneath to where it says 201.

25 Q. All right.

1 A. This is December 15 of 2016.

2 Q. Okay. And what does the slope look like here?

3 A. Can you slide it down so I can read ---

4 Q. Yeah.

5 A. --- the text on the leader lines?

6 (WHEREUPON, complied.)

7 A. It doesn't -- I don't see the word tapered like we saw
8 before. Like here it says insulation. Before it said tapered
9 insulation. Graphically those two lines look closer together
10 here (pointing) than they do on the other side. But out here
11 where we have the two-by's at the end it still shows the very
12 end as being flat.

13 Q. So with these two details we were looking at from
14 HydroStop that have already been put in the record it appears
15 that at the ends when you are on the outside part of it it
16 sort of flattens out?

17 A. The underlayment does.

18 Q. Yes.

19 A. Right.

20 Q. And is that what you saw when you were out there with the
21 shape of the decks?

22 A. Can you put that back up?

23 MR. LUCEY: Objection. Leading.

24 THE COURT: I will allow it.

25 ((WHEREUPON, photo displayed.))

1 A. No, that is the wrong one again.

2 Q. Oh, you want the other one?

3 A. Yes.

4 (WHEREUPON, photo displayed.)

5 A. All right. Can you blow it up so we are looking right at
6 that little detail right there (pointing)?

7 (WHEREUPON, complied.)

8 A. And then slide it down.

9 Q. All right.

10 A. Yeah, so that looks pretty similar to what we actually
11 observed at the site. So you see there is a drip edge metal.
12 I don't know if you recall seeing that from the photographs at
13 the edges of the decks. And then the deck membrane actually
14 sandwiches this piece of edge metal.

15 So the idea is you run some waterproofing out to the edge
16 of the deck, you will lay on the edge metal, and then you
17 strip in another piece of waterproofing on top so it is fully
18 encapsulated in waterproofing above and below.

19 And you can actually see here it is actually a little bit
20 thicker because you have multiple layers of waterproofing and
21 then a layer of metal embedded between the layers of
22 waterproofing.

23 And I think it gives you a dimension?

24 (WHEREUPON, permission granted for the witness to step closer
25 to the display screen.)

1 Q. Just tell me if you need me to manipulate it.

2 A. So this 12-inch dimension coming back is showing
3 foundation fabric and foundation components. That is what we
4 were talking about, the base coat, the fabric in here
5 (pointing). And that is underneath (pointing). And on top it
6 is just showing a -- it looks like a six-inch wide foundation
7 coat on top. So it is -- that is just showing the multiple
8 layers.

9 Q. So under this detail it is a little built up on the edge?

10 A. Correct.

11 Q. Thank you.

12 A. And that is just the nature of the product.

13 Q. That is all the questions I have. Thank you.

14 A. Okay.

15 **DIRECT EXAMINATION BY MR. REESER OF LARRY ELKIN:**

16 Q. Mr. Elkin, good afternoon. I understand when Mr. Kendall
17 was asking you questions you had brought up -- you had brought
18 up a comment that you sometimes look at complicated areas or
19 areas of concern; is that fair?

20 A. That is true.

21 Q. What -- in your experience what makes an area an area of
22 concern or something you want to look at?

23 A. Well, earlier I think the way I characterized it was when
24 you have multiple different materials and different trades
25 that are applying the different materials and where they are

1 interfacing together that seems to be where the troubles
2 normally lie.

3 Q. And did you observe any of those complicated areas at
4 Palmetto Pointe?

5 A. There's many such areas at Palmetto Pointe.

6 Q. Well, tell the jury about that if you don't mind.

7 A. Sure. You wanted a little bit I think about the front
8 decks. And the front decks and the rear decks although they
9 are built a little different they kind of have the same sort
10 of overarching issue in that there are decks and roofs and
11 then they have these structural support posts that extend down
12 through them. But sometimes the posts are just inside of
13 where the roof is. Sometimes the posts are kind of halfway
14 into where the roof is. And that -- that makes flashing very
15 challenging.

16 Q. And when you mean challenging could you describe that
17 what you mean by using that term.

18 A. Right. So if -- if I had -- you know, if I have a roof
19 that is sloping down and I stick a column that is intersecting
20 that roof slope the water that is running downhill is going to
21 run into that post. And so the base of that post needs to be
22 flashed to protect it from the water that is going in.

23 That's -- that is hard enough to do all by itself just to
24 make sure that where the thing penetrates the roof that it
25 doesn't leak. But then imagine if you have that post kind of

1 halfway on the edge of the roof. And so now you are trying to
2 protect it from this down slope of water coming down and
3 hitting the post but then simultaneously you have got a
4 waterproof deck and the post is penetrating the waterproof
5 deck.

6 So we have to flash it down here (pointing) and have to
7 flash it up here (pointing), and then somehow or another I am
8 supposed to maintain continuity of that flashing between the
9 upper plane and the lower plane.

10 That happened a lot. And that is -- that is just a hard
11 thing to do. Someone needs to think that through.

12 Q. Mr. Elkin, let me show you some photos that have been
13 marked as Plaintiff's Exhibit 893.

14 MR. LUCEY: We couldn't hear that. Did you say 93?

15 MR. REESER: Eight ninety-three.

16 MR. LUCEY: Eight ninety-three.

17 Q. Do those photos look familiar to you?

18 A. Yes, these are photos that were taken by John Pennington.
19 He is an engineer that works for me.

20 Q. Do you recall the date of those photos?

21 A. August 22nd, 2018.

22 Q. And do you recall the purpose of that visit that day?

23 A. We were observing somebody else's destructive testing.
24 And it looks like -- like we talked about before, that they
25 were opening, the ceilings under some porches. We were

1 looking for the presence of and the extent of water
2 penetration. And it looks like it was primarily at these deck
3 interfaces. Yes, sir.

4 MR. REESER: Your Honor, at this time I would like to
5 move Plaintiff's Exhibit 893 into evidence.

6 THE COURT: Any objection?

7 MR. LUCEY: No objection, Your Honor.

8 THE COURT: Admitted without objection, 893.

9 (WHEREUPON, Plaintiff's Exhibit Number 893 was admitted into
10 evidence.)

11 Q. Now I know that there have been discussions about
12 roof-wall-column intersections. What do you mean by
13 intersection?

14 A. Intersection, interface, any time two things come
15 together there is an interface or where they meet.

16 Q. So for example let's take a look at this photo, lower
17 right-hand corner it is numbered P8225562?

18 A. Yes.

19 Q. Could you describe what is in that picture, please?

20 A. Yeah, may I step through again?

21 THE COURT: Uh-huh.

22 A. So I think this is on one of the side decks on one of the
23 units. So there is -- there is a roof slope that is coming
24 down. It looks like it changes slope. You can see how it is
25 a little steeper here (pointing) and a little less steep here

1 (pointing).

2 And then the roof is above the deck out to about here
3 (pointing). And then the deck is above the roof out here
4 (pointing). And then there is an intersection roof coming
5 down this way (pointing). And there is a structural post that
6 is partially into the roof, partially into the deck. So,
7 yeah, this has a lot of challenging interfaces.

8 Q. How many -- how many intersections are in that photo on
9 that one deck?

10 A. On just the deck?

11 Q. Yes, sir.

12 A. So on the -- so there is -- it is on the corner of a
13 building. It is on -- there is one across the back wall here
14 (pointing). There is one across the back wall here
15 (pointing). There is the post. So we have got four sides of
16 the post. You have the outside edge here (pointing). And
17 then you have the inside edge of this roof (pointing) and the
18 inside edge of this roof (pointing). So that is -- that is --
19 nine?

20 Q. So nine intersections on one porch, correct?

21 A. On that one deck.

22 Q. Are there anymore intersections in that photo that aren't
23 isolated to that deck?

24 A. So there is a roof-wall intersection here (pointing),
25 here (pointing). There is a roof-wall -- or I guess a

1 soffit-roof intersection there (pointing). And then these are
2 the roof edges. It is the eaves of the roof. These are slopes
3 or the rakes. And the horizontal parts are the eaves.

4 Q. And as I understand it you have reviewed the design
5 documents from Palmetto Pointe?

6 A. I looked at them, yes, sir.

7 Q. Are there any other documents from original construction
8 that you reviewed as part of your investigation?

9 A. I looked at the architectural plans. I looked at the
10 structural plan. I looked at parts of the specification
11 manual.

12 Q. What about any meeting notes or minutes or things like
13 that?

14 A. I have seen lots of correspondence. I saw the
15 architect's site inspection reports, the structural engineer's
16 site inspection reports. There was another engineer, Curry,
17 that was out there. I don't even know who they were working
18 for, but I read their reports as well.

19 Q. Is it fair for me to say there were a lot of people
20 working on this project?

21 A. That would be fair.

22 Q. And in your experience as a design professional is that
23 what you expect on projects you worked on?

24 A. That a lot of people will look at them or ...?

25 Q. That a lot of people will be involved.

1 A. Well, sure, in any construction -- I mean that is why we
2 have specialty trades. Some people specialize in just putting
3 on siding. Some people specialize in just putting on roofs.
4 That kind of thing. And then there is the designers. And
5 then the general contractor is kind of over the top of all of
6 the construction.

7 Q. Let's take a look at one more photo as part of that
8 Exhibit 893. This is P8225630. Mr. Elkin, could you describe
9 what is present in this photo?

10 A. So another -- another deck with the structural columns
11 supporting the roof area above. This deck there is a full
12 height wall that ends here (pointing). And then there is a
13 slope of a roof that comes out this direction (pointing). And
14 the primary is coming down this direction (pointing). And so
15 where these two roofs -- there is actually a valley that
16 actually directs water into the back side of this column
17 (pointing).

18 And then this is the same condition we talked about
19 before where here the deck is outboard of the roof and then it
20 transitions back behind the roof.

21 Q. How many intersections are in that photo?

22 A. Nine or ten.

23 Q. Nine or ten in that photo, and how many was it in the
24 previous?

25 A. I think we had nine on the other one.

1 Q. Nine on the other. So nineteen intersections in two
2 photos on two decks, correct?

3 A. Correct.

4 Q. Do you know how many decks are at Palmetto Pointe?

5 A. I don't have that total in my head, no, sir.

6 Q. Is it fair to say there is a lot?

7 A. Every unit has some on the front and the rear is my
8 recollection.

9 Q. Do you recall if there are any decks on the side
10 elevation of these buildings?

11 A. Some of them have side elevation decks. I don't know if
12 they all do or not.

13 Q. So you would consider all of these intersections to be
14 areas of concern, correct?

15 A. There's definitely areas that need special attention in
16 the construction process.

17 Q. Okay. As part of your investigation where did you
18 observe water intrusion with these units?

19 A. I recall seeing water intrusion -- whether it -- whether
20 I saw it firsthand or whether I saw it on people's
21 photographs, around these posts (pointing).

22 At some of the decks -- some of the upper decks have
23 the -- like a PVC hand-railing system. So underneath was
24 where some of those posts were attached at some outboard
25 edges.

1 And then I think there are a handful of units that have
2 some roof on the rear elevations that the slope is a little
3 inadequate and that there was a little bit of water damage
4 beneath those improperly sloped roofs.

5 Q. Did you observe either through your own personal
6 observations or the photos that you had reviewed as part of
7 your investigation any water damage on any other elevations?

8 A. Not that I recall.

9 Q. Now I know looking at this roof line in particular is it
10 fair to say there is a lot going on here?

11 A. There is a lot going on there.

12 Q. Now are they designed this way; are these buildings
13 designed to look like this?

14 A. Yes.

15 Q. And if you are a designer designing something to look
16 like this and you see areas of concern should you be on the
17 lookout for those?

18 A. Yes.

19 Q. And do you recall from your review if anyone was looking
20 out for these particular areas of concern?

21 A. I recall seeing some supplemental sketches from the
22 architect that dealt with maybe some of these issues. But I
23 don't recall a sort of comprehensive program where things were
24 -- flashing was detailed out or things were -- another way
25 that we will deal with these conditions is through what is

1 called a mockup process, so actually build a sample of it or
2 we will use the first building as sort of a prototype and we
3 will be on-site with the contractor and figuring out how to
4 flash these things and then we will just water test them, we
5 will spray test them and see does that work. And if it does
6 we will say build the rest of them like this, this is to go
7 by.

8 And usually then we will go back and we will make details
9 for how we -- how we mock that up, and that becomes a
10 supplemental sketch that is issued.

11 Q. What is the purpose of that mockup process?

12 A. So that you don't have problems like this.

13 Q. Do you recall if a mockup was performed?

14 A. I don't recall seeing documentation about mock-ups.

15 There were requirements in the specifications to do some flood
16 testing on decks, but I don't recall seeing documents about
17 that ever having taken place.

18 Q. So who is making these decisions about how to put these
19 buildings together?

20 A. Well, it should have been thought out in the design
21 process initially. Then the next people in the chain would be
22 the general contractor. And then the general contractor can
23 assign some of -- part of the construction to a subcontractor.
24 So primarily the designer and then the general contractor.

25 Q. Let's look at Plaintiff 895. Would you take a look at

1 these photos for a minute?

2 (WHEREUPON, pause for witness to review photos.)

3 A. Okay.

4 Q. Do you recognize those photos, Mr. Elkin?

5 A. These are photos that we took on October 5, 2018.

6 MR. REESER: Your Honor, at this time I would move to
7 admit Plaintiff's 895 into evidence.

8 MR. LUCEY: No objection, Your Honor.

9 THE COURT: Admitted without objection, 895.

10 (WHEREUPON, Plaintiff's Exhibit Number 895 was admitted into
11 evidence.)

12 Q. Mr. Elkin, do you recall the purpose of that visit?

13 A. As I recall that was just another opportunity to observe
14 the site and -- if you hand them back to me I can tell you if
15 there was destructive testing.

16 Q. Sure.

17 (WHEREUPON, pause for witness to review photographs.)

18 A. This looks like just visual only. I don't see
19 destructive testing. It looks like there was some interior
20 photos as well.

21 Q. Thank you, sir. So as part of your investigation you
22 also went on the inside as well?

23 A. Yes.

24 Q. What was the purpose of your visit on the inside and the
25 outside of the buildings?

1 A. Well, sometimes we are just going through the inside to
2 get to some of the upper level decks. There are several
3 units. And I don't know off of the top of my head if I can
4 tell you which ones they were, but some of them actually had
5 some damage showing up I guess below like a roof-post
6 intersection as I recall.

7 Q. Below a roof-post intersection?

8 A. Correct.

9 Q. Like what is up here in this photo?

10 A. Like that, yeah.

11 Q. Did you observe any damage to interior units that wasn't
12 a result of a condition like this?

13 A. Not that I recall.

14 Q. I am going to show you Photo PA057077, Plaintiff's
15 Exhibit 895. Mr. Elkin, what are we looking at in this photo?

16 A. So here is the edge of a deck (pointing). There is a
17 sidewall roof, if you will. I can't read the level to see if
18 that is one of those low-sloped roofs or not. It appears --
19 just visually it appears to have adequate slope. But the
20 level will tell us.

21 So you can see the -- I think this is a front elevation
22 given the fact that there is some trim wrap on the post there.
23 You see the railing attachment -- or there is a mid-span rail
24 attachment that is -- or a place where it is bearing on the
25 deck surface.

1 So this would be the interface that we haven't been able
2 to see really yet before where it is the inside back up
3 against the wall. There is an interface here (pointing). And
4 then out here (pointing) we have got post and roof and deck
5 all coming together at that same location.

6 Q. It was interesting how you said you recognized this being
7 a front porch because of that trim. Is there something unique
8 about the trim that helps you figure out where you are on the
9 building?

10 A. For whatever reason trim got put on the front posts but
11 there is no trim on the rear posts.

12 Q. Do you know why?

13 A. I think it was a cost decision made by the developer is
14 what I recall reading.

15 Q. So how many intersections or areas of concern do we have
16 in this photograph from a design perspective?

17 A. Well, on the deck there is one, two -- if you call the
18 post -- it has three sides. So there is one, two -- five for
19 the deck. And then the roof has one, two, three -- so eight.

20 Q. Eight in one photo on one side, one deck?

21 A. Yes.

22 Q. And the buildings were designed this way, correct?

23 A. Correct.

24 Q. So tell me if you can, looking at this right-hand corner
25 deck with the trim you said here we have waterproofing, a

1 column, and the roof on the other side of it; correct?

2 A. Here (pointing).

3 Q. Yes, sir. So what did you observe as to what was going
4 on in that location?

5 A. Are there close-up pictures? I can tell you generally
6 what I remember about these types of locations.

7 Q. If you would, and then I will look for a close-up.

8 A. Yeah. Sure. So generally the waterproofing there was an
9 attempt made to turn it up, the columns at the base, to create
10 some sort of a flashing. Sometimes that was appropriately
11 saturated in waterproofing. Sometimes the membrane was not
12 fully -- fully embedded.

13 How the -- if you remember the picture we talked about
14 where the edge metal is supposed to get sandwiched in between
15 the waterproofing at the edges, that gets pretty complicated
16 out here (pointing) where the deck edge ends at a column and
17 then it transitions right up into a roof.

18 So somehow or another this sandwiching in effect is
19 supposed to end and then the waterproofing membrane is
20 supposed to then extend out beyond the deck and then turn up
21 the edge of this roof. So it is just a really difficult
22 intersection.

23 Q. What is the point of the design document whenever it is
24 laying out something like this?

25 A. So the architectural plans generally show the layout and

1 use of space; where everything is supposed to go, what it is
2 supposed to look like when it is finished.

3 But then there are other detailed sheets further back in
4 the plan. Sometimes there is like a section through the
5 building so it is like somebody took a big knife and cut
6 through the whole building. You are looking at, you know, how
7 the structure is supposed to go together.

8 And then if you then further look at the plans sometimes
9 the architect or the engineer will draw little special bubbles
10 around areas that need additional detailing and they will have
11 a whole separate series of sheets that provide detailed
12 information about how these types of elements are supposed to
13 go together.

14 Q. Were those details present when you reviewed this case?

15 A. I don't recall. I am not an architect, so I can't
16 testify about the standard of care of an architect. I don't
17 recall there being a sufficient amount of details for all of
18 these interfaces.

19 Q. So an instruction booklet for something like this with no
20 instructions?

21 A. Right.

22 Q. Now I know we talked about the waterproofing of these
23 columns; but I also understand there is roofing on the other
24 side of that column, correct?

25 A. Yes.

1 Q. So did the two ever come together?

2 A. In terms of the way it was actually built? No, it is --
3 if you were at one of the site visits when we were sort of
4 dissecting one of these interfaces it was pretty clear that
5 the waterproofing guy took his work up to a certain point.
6 The deck waterproofing guy took his work up to a certain point
7 and then stopped, that he didn't really know what else was
8 supposed to happen beyond that. And the roofer put his
9 materials on and came up to a certain place and stopped
10 because there wasn't information about what he was to do back
11 the other direction.

12 And if you add in places where say a column was supposed
13 to extend through and there is trim that was supposed to wrap
14 around it there wasn't sufficient details explaining how that
15 was supposed to interface with those either.

16 So there just wasn't enough information to convey.
17 Somebody should have been -- somebody should have been
18 watching these interfacing and making -- and deciding who was
19 responsible for integrating with who.

20 Q. Speaking of the roofing, are you aware of any -- any
21 allegations of issues with the shingled roofs?

22 A. So as I understand it, there's -- there's issues with the
23 attachment of the roof. So the number and the placement of
24 the nails for the shingles. And then there's some issues
25 about the drip edge or the starter course, if you will, about

1 A. If you angle-drive a nail, for example, what you are
2 supposed to do is pull that nail out, seal the hole with the
3 sealant I just talked to you about that comes out of a caulk
4 gun, and then put another nail in it.

5 Q. Are there any other issues that you are aware of as far
6 as the shingle installation?

7 A. That is all I remember.

8 Q. And I know you have already talked about the siding with
9 Mr. Kendall today and you also talked about the siding a bit
10 with Mr. Cole as far as your review of the specifications. Do
11 you recall that?

12 A. I do.

13 Q. Have you performed any review of any materials concerning
14 the fasteners that were used on the siding, the original
15 fasteners?

16 A. Well, I saw Mr. Mease's photographs and his measurements
17 showing the diameter of the heads being about .20, .22;
18 something like that. And then earlier today I talked about
19 the Maize nails and how they complied with the 2006 ESR.

20 Q. And it would be your opinion that face nailing would be
21 an appropriate fix for that issue?

22 MR. LUCEY: Objection. Leading the witness again.

23 THE COURT: Rephrase.

24 Q. What would be the appropriate repair for the siding issue
25 that was identified and talked about be?

1 A. Sure. So it is a two-step process. The first step is
2 the sheathing, underlying sheathing, appropriately nailed to
3 the structure.

4 So and there are -- there were requirements about a
5 nailing pattern for that. That could be evaluated using
6 engineering principles. Then assuming that the sheathing is
7 adequately attached it would be possible to face nail the
8 siding to the sheathing and into the studs and have it work.

9 Q. Okay. So ---

10 MR. LUCEY: Objection. Move to strike. Expert opinions
11 must be given to a reasonable degree of certainty in field of
12 expertise. He is assuming that the siding -- excuse me that
13 the sub -- that the sheathing is property fastened in his
14 recommendation about how to then fasten the siding on top of
15 it.

16 THE COURT: All right. I am sure Mr. Reeser will get to
17 the qualification of his opinion. But thank you.

18 MR. REESER: Yes, Your Honor.

19 Q. As part of your review of the siding do you just look at
20 the siding itself and how it is installed or how it is
21 designed to be installed?

22 A. So when I am evaluating siding on an existing building
23 how do I go about that, is that what you asked?

24 Q. Yes.

25 A. So in this instance I reviewed the test cuts that were

1 performed by Mr. Mease that showed the fasteners that were
2 used. I saw that there was variability in the spacing of the
3 fastening that was used. And then I went and compared that to
4 the ESR's at the time and then found the product information
5 for the nails that were referenced in the ESR.

6 Q. So why do you bring up a shear wall as part of that
7 analysis in the repair?

8 A. So the -- there's actually two factors associated with
9 the shear walls. The first is I told you a little bit about
10 the nailing schedule and whether or not the wall is going to
11 deflect and how it is going to -- is it going to have enough
12 capacity to resist suction pressures and is the sheathing
13 going to stay on even if the siding stays on. That is one
14 aspect of it.

15 The other aspect that is unique to this property is that
16 during or -- it is actually after people had already moved
17 into some of their homes the -- a question arose as to whether
18 or not the shear walls on several buildings were adequately
19 nailed. So the underlying structure was it properly nailed.

20 And on a certain number of homes some of the siding was
21 removed on the end of walls. And I can figure out which ones
22 they were for you. I have documentation that it was at Unit
23 1601, 1603, 1609, 1606, 1625, 6020 and 1643. I am pretty sure
24 that they took siding off of those units.

25 But I haven't found a record -- even the structural

1 engineer testified that he didn't know exactly how many total
2 homes where they took the siding off the end walls to examine
3 the underlying structure.

4 Then nails were installed -- additional nails were
5 installed if it was necessary to attach the sheathing to the
6 structure properly. And then new building paper was put on.

7 And I think there is a question as to whether the siding
8 was re-used or if new siding was put on. But it was certainly
9 somebody else nailed it back on. And that was per I think
10 Atlantic Construction was the framer. There was -- that was
11 the entity that coordinated all of that.

12 Q. So did that work have anything to do with the siding?

13 A. All that work was done after the siding was gone.

14 Q. And that wasn't to review the sider's work?

15 A. No, that was to look at the structural attachment of the
16 sheathing.

17 Q. So there are buildings out there that don't have the
18 original siding on them?

19 A. That is correct -- or at least have areas of not original
20 siding.

21 Q. Okay.

22 MR. REESER: Pardon me, Your Honor. I am just looking
23 through these pictures.

24 A. Can I put a fine point on that?

25 Q. Of course.

1 A. So their -- one of the entities that I was hired to
2 evaluate their work was Wilson Sales, Miracle Siding. There
3 are 20 buildings out there. I went and looked through all of
4 the invoices. I had heard another entity Corner Stone ---

5 MR. LUCEY: Can we approach, Your Honor?

6 A. --- put siding on some of the buildings.

7 THE COURT: Yes. Absolutely.

8 (WHEREUPON, bench conference, 5/9/19, 3:42 p.m.)

9 Q. Mr. Elkin, let me -- let's leave that point for now.

10 As part of your investigation have you reached any
11 conclusions about the cause of any of the issues that you have
12 identified to a reasonable degree of certainty in your field
13 of expertise and your experience as a practicing engineer?

14 A. Are you asking have I reached any opinions to a
15 reasonable degree of engineering certainty about the causes of
16 damage ---

17 Q. Yes.

18 A. --- as to the exhibited properties?

19 Q. Yes, sir.

20 A. So the damages I have observed were around decks and
21 posts and roofs. And so the lack of coordination between the
22 deck waterproofing, how it was terminated, how the roofs were
23 terminated, and how the structural posts were finished, that
24 is -- that is -- that as a cause of water intrusion, nobody
25 managed that interface.

1 Q. Do you have any other opinions as to water intrusion? Or
2 have we already discussed those today?

3 A. I am trying to think of what we haven't already talked
4 about. In terms of causation the deck waterproofing just
5 wasn't finished where it terminated up against other issues.
6 The roof just wasn't finished. And then we have got these
7 posts I mean that intersect and just complicated the matter
8 even more.

9 Q. Kind of like my picture (displaying)?

10 A. Like those, yes.

11 Q. And should that work have been supervised?

12 A. Sure.

13 Q. Should it have been coordinated?

14 A. Yes.

15 Q. Should it have been checked?

16 A. It should have been tested according to the
17 specification.

18 Q. It should have been tested?

19 A. Yes.

20 Q. Do you know if it was?

21 A. I haven't seen any document that the hose testing that
22 was specified by the architect was completed.

23 Q. Mr. Elkin, thank you. Those are all the questions I have
24 for you.

25 THE COURT: Any other questions?

1 Q. And he is a partner of yours if -- no, he is a former
2 partner, former associate?

3 A. He was an associate, yeah. I ---

4 Q. Y'all worked together at ABS but you were a partner and
5 he was not?

6 A. Correct.

7 Q. Okay. So that we can all get this organized now, Al
8 Schweickhardt was here for the general contractor?

9 A. I think that is right, yes, sir.

10 Q. Mr. Polk has been sitting here I think for Tri-County
11 represented by Mr. Cole?

12 A. That is my understanding.

13 Q. And he still works with Al Schweickhardt, right?

14 A. Yes.

15 Q. All right. And you were hired by Mr. Brandon Reeser,
16 with the green tie, on behalf of two what we call second-tier
17 subs; right?

18 A. Labor-only subcontractors, yes, sir.

19 Q. Okay. Well, second -- they are second-tier subs, right?

20 A. Correct.

21 Q. Okay. But that is not who called you to testify today,
22 is it?

23 A. No, sir.

24 Q. The general contractor had you get up and testify on
25 their behalf, didn't they?

1 A. Yes, sir.

2 Q. Okay. So you are almost subbing in for Al today?

3 A. I don't believe I would say that. I

4 Q. Well, let's go back to -- I want you to help me explain
5 something that Al and I already explained to the jury. But I
6 didn't do a good enough job because I used an acronym. And I
7 realized it when I went home that night that that is not a
8 good thing.

9 Now what Al and I talked to the jury about is this: When
10 there is a missing detail on the plans there is a process, an
11 ancient, ancient, ancient instruction process, for how to deal
12 with that; correct?

13 A. Are you referring to an RFI?

14 Q. Yes. Request for information, correct?

15 A. Yes, sir.

16 Q. Standard procedure, SOP, standard operating procedure, on
17 every construction site is supposed to be the RFI process;
18 right?

19 A. You have a duty -- if you don't know what is going, you
20 have a duty to ask.

21 Q. Right. And that applies everywhere down the line; it
22 could be the second-tier sub way down here, they can say I
23 don't know how to flash; they say it to their employer, Tri,
24 the what I call the master sub; and then the master sub sends
25 it up to the GC; and if the GC doesn't have the answer he

1 sends it up to the architect; correct?

2 A. That is exactly correct.

3 Q. And it goes back down the other way all the way back down
4 through all of those parties, correct?

5 A. That is exactly -- that is exactly what I talked about
6 earlier.

7 Q. Exactly. And it is the general contractor's
8 responsibility on every job site to manage the RFI process,
9 correct?

10 A. Right.

11 Q. He is the one who is supposed to get the RFI's to the
12 architect and he is supposed to get that answer back, correct?

13 A. That is correct.

14 Q. And he is supposed to be on the site checking everything
15 so he knows what needs an RFI, correct?

16 A. He is supposed to be on site supervising his work.
17 Whether or not he knows if there's an RFI required or not, I
18 don't know but.

19 Q. Well, you were talking about that intersection that
20 nobody managed. Do you recall that?

21 A. I do.

22 Q. All right. And those are your two clients that met at
23 that intersection, correct?

24 MR. REESER: Object. There is no foundation.

25 THE COURT: I'm sorry, no -- lack of foundation is that

1 up the line; correct?

2 A. I agree.

3 Q. But you have looked at the same construction documents
4 that I have, haven't you?

5 A. I think so.

6 Q. There is no flashing RFI in the construction documents,
7 is there?

8 A. I have not seen that.

9 Q. And we have kind of jumped into the middle of this RFI
10 conversation. Let's just back up. Before a job starts it
11 gets designed, right?

12 A. Yes.

13 Q. And after it gets designed it gets bid, right?

14 A. Correct.

15 Q. And subcontractors don't just walk in and say pay me a
16 million dollars and I will go and do everything, do they?

17 A. Not normally.

18 Q. No, they look at the plans; correct?

19 A. That is right.

20 Q. So Tri-County had an opportunity to look at those nine
21 flashing locations before they bid the job, correct?

22 A. That is true.

23 Q. Presumably they bid the nine flashing locations, correct?

24 A. That is true.

25 Q. So there are no surprises going on out here, correct?

1 A. I think a reasonable person in construction would have
2 anticipated those were challenging locations.

3 Q. There is a bid set of drawings. You get a final set of
4 drawings. You have got to bid. That contractor would have
5 done a takeoff for materials and labor before he did --
6 submitted his bid. Even then you can sleep on it a couple
7 weeks; it doesn't get accepted right away. So he has got a
8 couple of weeks to decide did I put enough money in for my
9 flashing before the GC ever even accepts his contract. I mean
10 this is a slow, deliberative, knowing process; correct?

11 A. Usually.

12 Q. Now this process -- let's put this flashing -- this
13 flashing challenge into prospective. This process took place
14 regarding Peas Island. It started in 2005 with design,
15 correct?

16 A. Yes.

17 Q. And construction was 2006, 2007; correct?

18 A. That is correct.

19 Q. 2005 was eight years, eight years after all the eaves
20 problems hit the United States; correct?

21 A. It was many years after, yes, sir.

22 Q. Actually the first lawsuit, the first class action, was
23 filed in North Carolina in 1995; correct?

24 A. I knew it was in the 90's in North Carolina.

25 Q. And once the eaves crisis hit the United States a lot of

1 A. Yes, sir.

2 Q. All right. At this location the roofing, the shingled
3 roof, the deck, and the trim on the base of the column are all
4 coming together at the same location; correct?

5 A. Yes, sir.

6 Q. And did you conduct an investigation of the propensity of
7 this location to leaks at Peas Island?

8 A. So I didn't spray test this location. But I have seen
9 where ceilings were removed -- and I think we saw some of
10 those photographs earlier. We took some ceilings loose below.
11 And below those -- generally kind of below those intersections
12 is what we were talking about this morning was where we saw
13 water intrusion.

14 Q. So you have seen enough to realize this is a problematic
15 location that is leaking at Peas Island?

16 A. Oh, yes, sir.

17 Q. This is one of the locations where there is inadequate
18 protection or flashing, correct?

19 A. Correct.

20 Q. Now there are some engineers and architects that ascribe
21 to a school of thought that trim placed over flashing can
22 actually be an intentional form of counter-flashing. Do you
23 agree with that? Maybe not a preferred alternative but they
24 say that sometimes it acts in that function?

25 A. It can act as a flashing.

1 Q. Did you see this trim at the base of the columns at Peas
2 Island acting as counter-flashing? I am not saying it was. I
3 am just asking.

4 A. I am saying -- I would agree with you that sometimes it
5 sort of maybe unintentionally, you know, performed that
6 function. But on the rear decks there is no trim. So that is
7 the only reason I was like sort of hesitating on my answer is
8 because the trim is only on one side of the buildings.

9 Q. If you don't know it already, I am a simple person. I am
10 only asking you about the posts that have trim. I am not
11 asking you about any posts that don't have trim.

12 A. Okay.

13 Q. Now do you ascribe to trim being a counter-flashing?

14 A. It is not how I would design it ---

15 Q. Do you have any belief that there was any architectural
16 intent on this job for the column and base trim to perform a
17 counter-flashing function?

18 A. Whether or not it was intended to or not, I mean it is in
19 some instances it is sort of defacto performing as counter-
20 flashing.

21 Q. Okay. So you don't know whether it was intended?

22 A. No, sir.

23 Q. Let me ask you to go to Exhibit -- excuse me, Photo 9792.
24 And we are still in Plaintiff's Exhibit 889. Sir, this is a
25 location where it is not just the base trim that is

1 interacting at this gap, it is -- it is actually the Hardie
2 Siding; correct?

3 A. The cement siding, yes, sir.

4 Q. You are right; it is not Hardie. It is Certain Teed.
5 Thank you. It has been cut around the flashing, correct; it
6 has been notched out?

7 A. It had to. The siding goes on after the roof.

8 Q. Right. And an inappropriate, inexcusable, unacceptable,
9 gap has been left by the siding subcontractor between his
10 siding and the existing -- the pre-existing flashing, correct?

11 A. Are you talking about here (pointing) or here (pointing)?

12 Q. I am talking about -- yes, the lower portion, sir. I
13 mean the jury can see the gap. Are you going to tell the jury
14 that that gap is okay?

15 A. I am just trying to see what the gray material is up
16 underneath it. It looks like it has been coated in asphalt.

17 Q. I am sorry if the picture is not good enough for you to
18 tell. They are not my pictures. I think they came from your
19 firm.

20 A. I understand.

21 Q. Sir, we can move on.

22 A. Okay.

23 Q. Let's look at Photo 5, please. It is the same exhibit.
24 (WHEREUPON, confers with assistant on ELMO.)

25 Q. This is in that -- I am going in the same order you all

1 went with the exhibits. Are you with me?

2 A. Yes, sir.

3 Q. So this was the first set of photographs you all went
4 through; you went through two sets of photographs with the
5 first attorney and I think two sets with the last attorney?

6 A. Yes, sir.

7 Q. All right. So this is in one of the homes where y'all
8 were documenting; and that is water staining under the house
9 at the top of the column in the beam, correct?

10 A. Yes, sir.

11 MR. LUCEY: And if we go to Photo 36, please.

12 Q. Now the portion of this roof to the right - in other
13 words between 2:00 and three o'clock - is not properly
14 applied, correct?

15 A. Are you referring to the slope?

16 Q. Yes, sir.

17 A. There is not -- there is not a level on there. I mean to
18 the eye it doesn't appear to have a lot of slope.

19 Q. Right. So to the eye it appears that this is a location
20 where the building code prohibits the use of shingles,
21 correct?

22 A. Yes, sir.

23 Q. And even if we were wrong and even if it got to a --
24 above a two-and-twelve slope it is still a building code
25 violation because there was no double underlayment on those

1 slopes anywhere on the property, correct?

2 A. That is my understanding, yes, sir.

3 Q. And these locations occur throughout the complex,
4 correct; a slightly different variation but you have got the
5 low slope from one to two-and-twelve and then the almost low
6 slope from two to four-and-twelve, correct?

7 A. I don't -- I think there's only a few locations like
8 this.

9 Q. You are not aware of a lot of these on the back of the
10 residences --

11 MR. LUCEY: Photo 40, please.

12 Q. This cracked rail attachment plate is a common condition
13 that you and your staff witnesses at my client's properties,
14 correct?

15 A. Yes.

16 Q. And did you have the opportunity to observe the 3/4 inch
17 or 5/8's inch screw that they tried to attach these base
18 plates with?

19 A. I didn't know that we -- we -- I don't know they we paid
20 that much attention to them. We just documented that they
21 were cracked.

22 Q. You would agree that it is a building code violation to
23 attach a handrail to trim, correct?

24 A. The handrail needs to be attached to something that is
25 structural. So it can go through trim, but it needs to attach

1 to something structural.

2 Q. Right. I'm sorry, I thought my question was really
3 clear.

4 A. Yeah.

5 Q. You agree with me that it is a building code violation to
6 attach a handrail plate, support plate, to trim; correct?

7 A. If it is only attached to trim that would be a problem.

8 Q. I'm sorry, I didn't use the word problem. I said
9 building code violation. Are you with me?

10 A. I understand.

11 Q. You agree, correct?

12 A. Yes, sir.

13 MR. LUCEY: Let's go to Photo 96, please.

14 Q. This is a location documented by your firm where the
15 siding was either improperly attached or blown off or both,
16 correct?

17 A. It is loose. Why it is loose I am not sure. But it is
18 loose. You are correct.

19 MR. LUCEY: Photo 192, please.

20 Q. Another water intrusion location in that first set of
21 photos that y'all didn't show the jury, correct?

22 A. I don't recall if this is one we showed the jury or not,
23 but it is water intrusion.

24 Q. No, the one y'all showed the jury was the one with the
25 very tiny water spots where you said you can cut out one

1 little piece of plywood and put it in and fix it; do you
2 recall that?

3 A. I remember us talking about how you would fix it, yes,
4 sir.

5 MR. LUCEY: And if we go to Photo 349, please.

6 Q. Another water intrusion stain, correct?

7 A. Yes, sir.

8 MR. LUCEY: Photo 361, please.

9 Q. Is that OSB we see where the shingle is lifted?

10 A. Brown spot?

11 Q. Yes, sir.

12 A. Yes, it is the edge of the

13 Q. We are not supposed to be able to see that, are we, sir?

14 A. Well, the roofing material is lifted up so.

15 Q. The felt is not lifted up. Show us where the felt is in
16 that picture.

17 A. I don't see felt right there, no, sir.

18 Q. There is building code violation right there, isn't
19 there? You are supposed to have felt on all roof decking,
20 aren't you?

21 A. You are supposed to have felt on all roof decking right
22 there, but I can't tell if that is the edge of the underlying
23 trim support or if that is the edge of the roof deck.

24 MR. LUCEY: Let's go to Photo 375.

25 Q. Now this is still in your first set of photos. And for

1 the court record's benefit it is 889. And this is the attic
2 of your final in the building. Do you see that?

3 A. I do.

4 Q. And this is what the terminology we have used earlier in
5 the week is a fire assembly with traverse trusses. Does that
6 sound reasonable to you?

7 A. It does. And just to be fair, I haven't done any
8 analysis on this fire code issue. So ---

9 Q. The questions I am going to ask you, you don't need to.

10 A. Okay. Good.

11 Q. I am just asking you about your picture.

12 A. All right.

13 Q. Now do you see that the firewall is penetrated by wood,
14 correct?

15 A. I see that the wood extends beyond the gypsum. Whether
16 or not that is supposed to be a firewall I don't know because
17 I have not analyzed that.

18 Q. Assuming it is supposed to be a firewall ---

19 A. Okay.

20 Q. --- you don't typically see wood trusses extending
21 through a firewall like that, do you?

22 A. Typically no.

23 Q. And when you see firewalls, fire assemblies, you usually
24 see that the drywall is taped and mudded to eliminate all the
25 joints, correct?

1 A. Yeah, it needs to be sealed to prevent the passage of
2 high gasses.

3 Q. And you don't see one inch of tape or mud anywhere on
4 this -- on this firewall?

5 A. I don't see it.

6 Q. I mean it is not like they did it and just didn't do a
7 good job; they didn't do it, right?

8 A. It is none there.

9 Q. Let's go to -- I think the second set of photos that
10 y'all looked at were Mr. Pennington's photos from Exhibit 891.
11 And let's take a look at Photo 35, please. More water
12 staining, correct?

13 A. Correct.

14 Q. Coming right through the strap hole?

15 A. Yes.

16 Q. Do you see that strap?

17 A. I do.

18 Q. I want you to remember it.

19 MR. LUCEY: And let's go to Photo 46, please.

20 Q. Same strap, same water staining. Not a nail in that
21 strap in that joist, is there?

22 A. Not in that photo. I can't remember -- I wasn't looking
23 at that in the previous photo.

24 Q. You don't need to look at it before. You know. You are
25 an engineer. That is a building code violation?

1 A. They are supposed to be sufficiently nailed.

2 Q. In using my words, that is a building code violation;
3 correct?

4 A. So you see where the -- you see where the strap wraps
5 underneath and it is nailed?

6 Q. Yes, sir.

7 A. I would have to do more analysis to tell you whether or
8 not that -- that condition is a building code violation.

9 Q. Okay. You don't know?

10 A. Not as I sit here today. Because it is fastened.
11 Whether or not it is sufficiently fastened I don't know.

12 Q. You would agree with me that it is unworkmanlike,
13 correct?

14 A. The fact that there is water penetration would suggest
15 that.

16 Q. The strap itself is also unworkmanlike, correct?

17 A. So can you tell me your definition of workmanlike. I
18 just want to make sure that I am answering this question with
19 full knowledge.

20 Q. So you are the engineer. I am just an attorney.

21 A. So ---

22 Q. You can use whatever definition you want.

23 A. Right.

24 Q. If you would do me a favor, please; either tell the jury
25 you believe that is workmanlike or unworkmanlike.

1 A. That's right.

2 Q. I could too if I put my glasses on. I thought it was a
3 bad picture. And you see the felt, the roof felt; correct?

4 A. Yes.

5 Q. So the problem here was not difficult flashing, it was no
6 flashing. Am I missing something?

7 A. There is no flashing in that, correct.

8 Q. There is no flashing at this location?

9 A. That is correct.

10 Q. So it wasn't like they tried to do a good job and it just
11 didn't work out; they just didn't do it?

12 A. At this location.

13 Q. Did you do any sort of survey like I opened up twenty
14 posts and ten of them had no flashing and three had some
15 flashing and seven were flashed well so therefore thirty
16 percent of the posts might be okay; do you have any
17 information like that to share with us?

18 A. I didn't do that, no, sir.

19 Q. Let me show you another photo that y'all did share with
20 the jury earlier, Photo 582.

21 THE COURT: Mr. Lucey, while he is pulling that next
22 photo up could I see you and -- briefly. I don't mean to
23 interrupt your train of thought.

24 (WHEREUPON, bench conference regarding scheduling.)

25 THE COURT: All right. Ladies and gentlemen, given the

1 hour and the need of some of you that have been expressed to
2 me earlier in the day we are going to break. We are going to
3 have a long weekend, as we discussed earlier. And we will see
4 you back here Monday morning. 9:30 should be fine Monday
5 morning, okay. All right.

6 Thank y'all very much. It is very imperative that you
7 understand over this long break - I am going to emphasize it a
8 little bit more - do not discuss the case. Don't discuss it
9 with your friends, your family, anybody. Certainly not each
10 other.

11 And, again, please don't conduct any kind of independent
12 research. Don't try to look up any of these terms. Don't try
13 to look up any of the parties or the attorneys. You will hear
14 all the evidence you need to consider your verdict from that
15 witness stand or they will be introduced through these
16 exhibits.

17 So thank you so much, and we will see you Monday. Take
18 care.

19 (WHEREUPON, jury exits 5/9/19, 4:30 p.m.)

20 (WHEREUPON, Court's Exhibit Number 9, affidavit of attorney's
21 fees, marked for identification.)

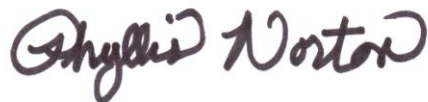
22 (WHEREUPON, adjourn 5/9/19, 4:30 p.m.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on 5/6/19 to 5/9/19 (1st Week of Trial).

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: October 24, 2019

In The Court of Common Pleas
Ninth Judicial Circuit
2015-CO-10-0955

May 13, 14, 15, 16, 2019
Charleston, South Carolina

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1 A. I would, I would love that.

2 Q. Great. Great. Now, when we were wrapping up last
3 time on Thursday afternoon, we were talking about the RFI
4 process. Do you recall that?

5 A. I do.

6 Q. And it's standard protocol on almost any job. Is that
7 correct?

8 A. Most bigger ones, yes, sir.

9 Q. And, and we -- I'm not sure we completed that
10 discussion. The alternative is if you fail to issue an RFI
11 and you adopted your own means and methods, you become
12 responsible for the means and methods you adopt, correct?

13 A. So, that's generally true.

14 Q. Okay.

15 A. Depending on the formality of how the construction is
16 regulated at the site. Obviously some are very formal
17 where there is a form to fill out in each, in each step
18 along the way. Some less formal construction sites, it's,
19 it's, it's a verbal communication between the people on the
20 site.

21 Q. Just keeping it simple, if you do it your way, you're
22 responsible for it, correct?

23 A. Correct.

24 Q. Although we did see some of those pictures, there is
25 no flashing. So, it's not like they adopted the wrong

1 A. That one right there appears to simply -- we, we have
2 photographs in other places where there's black flashing
3 just extending up the column.

4 Q. Now, sir, this blue book is called the *International*
5 *Residential Code*?

6 A. 2003 edition.

7 Q. Yes, sir, and that, that code book is applicable to
8 the construction of Peas Island, correct?

9 A. Yes, sir.

10 Q. You believe that, correct?

11 A. That's my understanding.

12 Q. Okay. Now if you would, please open the code book up
13 and show the jury what provision that code book says that a
14 second-tier sub such as Mr. Brandon's clients, Mr. Brandon
15 Reeser's clients, don't have to comply with the building
16 code.

17 A. You know that's not in there.

18 Q. Well, then show them where there's a provision that
19 says Mr. Cole's client, the master sub, doesn't have to
20 comply with the building code.

21 A. That's not in there either.

22 Q. Show them where in there it permits the, quote,
23 localized water intrusion standing, end quote, that you
24 referred to so often in your direct.

25 A. Localized water damage shouldn't be there.

1 Q. And if localized water damage is not discovered, it
2 progresses into more serious damage, correct?

3 A. It can.

4 Q. In fact, you've seen where that has occurred on this
5 complex, correct?

6 A. Well, any water damage starts at a, at a point and
7 gets larger over time.

8 Q. And you agree, sir, that the failure to install the
9 sealant joint around the windows, the quarter inch sealant
10 joint required by Anderson is an additional building code
11 violation, correct?

12 A. That one's tricky.

13 Q. I can make this easy. Do you deny telling my
14 associate Josh Evans under oath on December 12, 2018, that
15 the failure to install the manufacturer's required sealant
16 joint, quarter inch sealant joint around the window is a
17 code violation?

18 A. I don't dispute that with you.

19 Q. Okay, and we can move on. Now, I want to go back to
20 your original comment to the jury several days ago that you
21 and I briefly revisited. You worked for Toll Brothers.
22 You with me?

23 A. Yes, sir.

24 Q. You're now working for their developer, correct?

25 A. Yes, sir.

1 MR. COLE: Nothing from me, Your Honor.

2 THE COURT: All right. Thank you, Mr. Cole.

3 MR. REESER: No.

4 THE COURT: Thank you, Mr. Reeser.

5 All right, you may step down.

6 WITNESS: Am I free to go?

7 THE COURT: Can he be released from his subpoena? Any
8 objection to this witness being released from his subpoena?

9 MR. LUCEY: No, Your Honor.

10 THE COURT: Yes. You are free to go.

11 WITNESS: Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Defense may call its next witness.

14 MR. KENDALL: Thank you, Your Honor. We call Al
15 Schweickhardt to the stand.

16 THE COURT: All right.

17 (A PAUSE.)

18 ALAN SCHWEICKHARDT, BEING DULY
19 SWORN, TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please take a seat. State your full
21 name and spell your last name.

22 WITNESS: Alan John Schweickhardt,
23 S-c-h-w-e-i-c-k-h-a-r-d-t.

24 VOIR DIRE EXAMINATION BY MR. KENDALL:

25 Q. You good?

1 A. Yes, sir.

2 Q. All right. Great. Mr. Schweickhardt, you were here
3 before but the jury didn't get to hear sort of a full
4 explanation of your background. So, I'm going to take some
5 time and just get you to introduce yourself again to the
6 jury and let them know a little bit about who you are, what
7 you do. So, tell us. Where are you currently employed?

8 A. I'm employed at Applied Building Sciences, an
9 architectural and engineering firm.

10 Q. And ---

11 A. Here in town.

12 Q. Here in town, and how long have you been with -- we're
13 going to call it ABS. Is that what you often go by?

14 A. Right. Yes.

15 Q. How long have you been with ABS?

16 A. ABS has been in existence since 2004-5 timeframe.

17 It's a company that's derived from the same personnel I've
18 been with since 1996.

19 Q. And what is the general nature of the work of ABS and
20 your work particularly?

21 A. Investigate buildings and other structures, except
22 typically for highway structures, and repair design.

23 Q. And is that the kind of work that you've been involved
24 with at Palmetto Pointe?

25 A. Yes.

1 Q. What, what is your license that you, you hold?

2 A. I'm a professional engineer in South Carolina and
3 multiple states and also a licensed structural engineer in
4 Illinois, which is a follow-up license. So, I'm qualified
5 for the model law structural engineer for various states if
6 I would apply to those states, but Illinois is the one
7 state.

8 Q. Okay, but you, do you function as a structural
9 engineer primarily?

10 A. Yes.

11 Q. All right, and let's step back and find out. How did
12 you get to obtain that license? What -- tell us about, a
13 little bit about your education and, and work background.

14 A. My education is at the United States Naval Academy.
15 My major was ocean engineering, which is the civil
16 engineering for the Navy, where I studied coastal
17 structures and offshore structures. Then served in the
18 Navy in submarines, so I was a nuclear engineer in
19 submarines until approximately 1994.

20 Went back to school at Clemson. Got my master's in
21 structural engineering. Worked for Davis and Floyd, a
22 local engineering firm. Went up to Maryland. Worked for
23 Ocean Engineering as a mechanical structural engineer.
24 They're the company that savaged the Huntley. Worked
25 offshore there on offshore structures, and then came back

1 to Charleston in 1996 because my wife is essentially from
2 here, and have been working with various iterations of
3 Applied Building Science since 1996 investigating
4 buildings, investigating structures, except for highway
5 structures, and designing repairs.

6 Q. Are you able to estimate how many projects of the --
7 of this sort of variety? I know these are duplexes and
8 some are different, but these sort of neighborhood
9 condominium water intrusion cases. How many have you been
10 involved with in the last fifteen years or so?

11 A. Every project's different. So, off the top of my
12 head, I can't tell you one that has forty duplex buildings
13 on piles. But townhouse style, condominium style, yeah, I
14 -- involved in probably four or five litigation cases a
15 year and the same amount of repair designs a year.

16 Q. And do you do work other than within the context of
17 litigation?

18 A. Right. We've got several ongoing repair projects on
19 -- they're condo style or apartment style. I've got a
20 repair design of a duplex similar to this except for it's
21 slab on grade. Two, two-family dwelling going on over in
22 Mount Pleasant because of fire damages. We've got to
23 repair from the ground up, as well as a neighboring
24 building with partial damages, but we're involved in quite
25 a bit of these townhouse repairs. Couple out in Goose

1 Creek, couple James Island, downtown several condos, and
2 then some historic repairs in the past.

3 Q. And when you are approaching the investigation of a
4 project like this, what is -- how do you go about
5 approaching this investigation?

6 A. Well, I mean, a litigation-type investigation, it's
7 reviewing the background documents to the extent possible
8 and then performing follow-up investigations to verify
9 items that I can't quite confirm. And the, the owners'
10 engineer in this case, Russ Mease's information, he had a
11 lot of photos, so in some of the photos I could confirm his
12 issues, and some I couldn't quite confirm it. So, we had a
13 follow-up investigation, but -- so, that's -- we try to be
14 responsive and follow up on the owners' engineer or
15 architect. In some cases reports, photos, and we do our
16 own investigation to the extent possible and practical.

17 Q. Okay, and do you -- let's talk specifically about this
18 job. Did you obtain photos and reports from Mr. Mease at
19 some point?

20 A. Yes. Obtained photos, a report and scope of repair.
21 So, reviewed those. Concurrently we did walk-throughs of
22 -- I think it was thirty-eight of the forty units looking
23 for evidence of damage that's visible without doing
24 destructive testing. And then following that, in 2018 did
25 our own investigation in August 21st and 22nd, I believe.

1 And prior to that for a few months and following that,
2 there was some follow-up investigations while repairs were
3 ongoing or that we were notified of a damage situation
4 where we went out and observed those conditions.

5 Q. Approximately how many times have you -- or how many
6 days have you spent on this site?

7 A. I'd say -- how many?

8 Q. Some were back-to-back days?

9 A. Right.

10 Q. I didn't know how you'd respond to that.

11 A. So, at least ten.

12 Q. And when you would -- when you were on site, were
13 there others there as well?

14 A. Yes. Mr. Mease was there occasionally. I think he
15 was there for most of August 21st and 22nd. He was there
16 for some of the damage investigation. Other engineers were
17 there working for defendants, and that's all I can recall.

18 Q. All right, and is that sort of a customary practice
19 for multiple investigators to follow along with each other
20 as you conduct an investigation like this?

21 A. Yes.

22 Q. During the course the investigations, did you
23 ultimately have opportunities to take parts of the building
24 or open up parts of the building so you could see what was
25 going on inside?

1 A. Yes. Essentially on August 21st and 22nd of 2018,
2 opened up below front decks and front second lower decks
3 and second-floor side decks, opened up below those to look
4 for damages.

5 Q. And have you had other occasions where you've seen
6 things that other people have opened up?

7 A. Right. There's a condition of an offset wall on three
8 of the units where the wall was moved during the
9 construction process for a reason I'm not sure of, but it
10 exposed the top and created some damages below that. There
11 was a follow-up site visit at some point -- I think it was
12 2018 -- led by Mr. Mease where he uncovered some siding,
13 and we saw those conditions. And then there was a repair
14 in a -- again that affects, I think, four or five units
15 where you've got a low sloped intersection on the rear
16 second floor, a roof-to-deck intersection that had damages
17 below it. So, there were definitely damages below it, so
18 we took those damages, that evidence, and extrapolated it
19 to each unit that has that condition.

20 Q. All right.

21 A. To do similar repairs.

22 Q. And we're, we're going to come up -- we're going to
23 talk in just a minutes about the repair side of the
24 conversation. I'm just getting the feel for the work
25 you've done on site. So, in, in doing your site visits,

1 you, did you record your observations in any way?

2 A. Photos and field notes, yes.

3 Q. Okay, and we've had a chance to see a lot of your
4 photos when you testified for Mr. Lucey earlier and so
5 we'll, we'll revisit some of that, but let's -- but in
6 terms of your work here, what was the purpose of the work
7 that you've engaged in at Palmetto Pointe?

8 A. The ultimate purpose is to come up with a scope of
9 repair and send it to a contractor to get estimated.

10 Q. Have you done as much as -- have you attempted to
11 understand what the scope of the problems are?

12 A. Yes.

13 Q. And, and have you developed some opinions regarding
14 the scope and methods of repair that will restore these
15 buildings?

16 A. Yes. The issues that have been found, I believe our
17 scope of repair will cover those issues.

18 MR. KENDALL: Your Honor, at this time I'd like to
19 offer Mr. Schweickhardt as an expert for the engineering
20 and scope of repair.

21 MR. LUCEY: No questions, Your Honor.

22 THE COURT: All right, ladies and gentlemen, witness
23 will be qualified in the areas of engineering and the scope
24 of repair to give opinion testimony in these areas. Once
25 again, that doesn't mean you have to accept his opinions,

1 but it's information for you to use in any way that you see
2 fit. Thank you very much.

3 (A PAUSE.)

4 THE COURT: All right. Thank you.

5 MR. KENDALL: Thank you.

6 DIRECT EXAMINATION BY MR. KENDALL:

7 Q. And just to finish that out before, before we go to
8 your slides, after you have done all your -- or as you were
9 doing -- you said you developed what's called a scope of
10 repair?

11 A. Right.

12 Q. Just briefly explain what a scope of repair is.

13 A. A scope of repair in this context is a general scope
14 of repair with enough specificity so that a contractor can
15 estimate it. It certainly can't be used for permitting.
16 In my general scope of repair outline I put in a quantity,
17 7 and a half percent, for engineering and architectural
18 drawings that will have to be developed and submitted for a
19 permit.

20 Q. Okay. So, you, after you've done your investigation
21 and, and you're developing that scope of repair, have you
22 communicated to a general contractor what you believe needs
23 to be done?

24 A. Yes. The estimator was Watkins Services.

25 Q. Okay, and, and so you have -- you've gone beyond just

1 simply observing. You've done some calculations and, and
2 quantifications of what, what will it take to address the
3 issues?

4 A. Right. I provided Rob Ayers, the estimator with
5 Watkins, the drawings, my photos, and notes, and then we
6 generally -- either phone conversations or emails going
7 back and forth. He's an estimator with the contractors and
8 knows how to review drawings but occasionally has questions
9 on stuff and I'll say, well, provide allowance for this
10 amount of linear foot. Provide this amount of square foot.
11 At this location, each of these defects, remove X square
12 feet of shingles. Replace X-Y square feet of roof deck
13 sheathing or deck sheathing. So, at some points we have an
14 interaction where we go back and forth and, and I try to
15 help him with some of the quantities or the exact
16 locations.

17 Q. Okay. Now let's, let's then talk about these in terms
18 of the types of things that you have communicated and/or
19 you've communicated and observed. Have you -- let's talk
20 about the shingle installation issue. Have you developed a
21 -- did you develop a scope of repair for the shingle
22 installations?

23 A. I asked Eddie Polk, a registered roof consultant with
24 our firm, to assist me in that regard. So, during the site
25 visits, Mr. Polk would go and specifically look at the

1 shingles. So, he provided the scope of repair for the
2 shingles, and I incorporated that into my scope of repair.

3 Q. All right. So, you're not separately stating a
4 shingle installation methodology or scope?

5 A. A shingle repair methodology, no, is -- I've
6 incorporated Mr. Polk's.

7 Q. Okay, and so we'll let Mr. Polk explain what that is.
8 Let's go to the next item. You've got a list here. Fiber
9 cement siding installation. Now, we've seen, like we've
10 said, we've seen a number of pictures, and so if we can --
11 I don't want -- just tell us enough to give us context for
12 -- remind us what the, what the concern is with the siding
13 installation.

14 A. Well, Mr. Mease has numerous photos of this fiber
15 cement siding manufactured reportedly by CertainTeed, the
16 nailing installation, and the nailing, you can see down the
17 bottom left corner 21 inches. It's not supposed to be.
18 That's in excess of the 16 inches into the stud. He found
19 locations where the nails didn't hit the studs. This is a
20 8 inch exposure siding, meaning it's 9 and a quarter total
21 width. The 9 and a quarter total width with a 1 and a
22 quarter inch overlap leaves a 8 inch exposure. You can see
23 they -- there's no nails visible in the upper right. That
24 means the nail's under the overlap, which means it's a
25 blind nailed configuration, blind nailed.

1 These are the two types of configuration. I think you
2 might have seen these before. On the right is blind nail.
3 So, you can see how the nail is under the overlap. And
4 when you come into the code compliance reports for
5 CertainTeed siding, the blind nail configuration doesn't
6 work for the environmental conditions, namely the wind
7 load. At this site, for the 8 inch exposure you need, you
8 need a narrower board for the blind nailing to work.

9 Q. All right.

10 A. So, we came up with a face nail repair.

11 Q. You had some pictures that we went past of sort of the
12 profiles of some of these buildings, and I just want to --
13 can you give us a picture? Do you have a picture that
14 shows the side of the building, of a building?

15 (A PAUSE.)

16 Q. All right. So as we're looking at this, we're seeing
17 that there's a -- we've talked a lot about front and back
18 decks and things that will go on there, but a lot of this
19 siding is also located on the sides of the buildings away
20 from the deck, correct?

21 A. Correct.

22 Q. Now, you've said, I think you indicated two concerns
23 about the siding. One is the use of the size of siding
24 with blind nailing, but also the nails, the use -- or the
25 frequency of nailing itself has been raised as an issue.

1 A. Right. Mr. Mease's photos and measurements were
2 pretty clear that the nailing did not hit the studs, and
3 the studs would be generally at 16 inches on center.

4 Q. Have you developed a methodology for repairing or
5 making sure that that siding becomes compliant with the
6 manufacturer's instructions?

7 A. Yes, I have. Originally back when this was
8 constructed for this type of siding, a face nail
9 methodology would have worked in accordance with the code
10 compliance report at the time of construction if those
11 nails went into the, into the studs. So, I went through
12 the methodology in those code compliance reports. I go
13 through the tables. The tables have you determine the wind
14 pressures on the siding at the time of construction. You
15 determine the, the force on each nail, and you make sure
16 that the configuration you choose meets those pressures and
17 meets that nail force. And finally, in the table in the
18 code compliance report has allowable capacity for that nail
19 into the studs, and with a face nailed approach it works.

20 However, I wanted to make sure it worked for the
21 current code. So, I went through the same methodology
22 using current wind loads, current pressures, and then, and
23 then a stainless steel ring shank nail, which is not in the
24 code compliance report to the best of my knowledge. Ring
25 shank nail has further -- better pull out. So, I came up

1 with a belt and suspenders approach to face nail the siding
2 into the studs and at 8 inches on center between into the
3 sheathing. So, I believe my calculations show that the
4 face nail approach works for the current wind loads.

5 Q. That was a lot of information. I want to make sure
6 that, that I understood you. So, the starting point in the
7 analysis is -- you mentioned a code compliance report.
8 We've been hearing letters like ESR. Is that the same
9 thing?

10 A. Yes. I believe the -- I used the ESR-1668 in 2006 for
11 my initial analysis. Then Mr. Mease used, I believe, an
12 ESR-1668 from 2013 to '15, so I used that in my analysis.
13 It was pretty much the same as the 2006 version. So using
14 that methodology, went and did my own calculations for the
15 current wind loads.

16 Q. All right, and what is it -- you used several words.
17 You talked about wind loads. Just quickly remind us what
18 wind load is.

19 A. Well, the worst-case scenario for this siding -- winds
20 are random, but as an engineer, you just simplify it and
21 the codes simplify it. So, you look at the worst-case
22 scenario is when the winds are blowing down the side of
23 these buildings like a sail or a wing. It tries to suck
24 the siding off. So, perpendicular to the wall. It just
25 pulls it off. So, that's worst-case scenario. That's not

1 happening every time. When wind's blowing up against it,
2 it's pushing the siding in, but worst-case scenario is,
3 conservatively, is the approach that I took. And then
4 there's the safety factors involved in those calculations.
5 So, safety factor of 3, which accounts for some
6 variability.

7 Q. Okay, and the wind load is based on -- or what creates
8 wind load? Is it wind speed?

9 A. Right, wind speed. The code prescribed wind speed at
10 the location currently is 150 mile an hour gust. Back when
11 it was being constructed, it was 130.

12 Q. All right. So, as the -- if the wind blows at that,
13 the -- you want to know how much pressure that's putting on
14 the trim -- or, excuse me, on the siding so that you can
15 ensure what criteria? Or what, what's the -- what are you
16 trying to get to?

17 A. That the, that the nail that's holding the siding does
18 not pull out of the wood framing or sheathing.

19 Q. Okay, and so are those -- you mentioned the tables and
20 the formulas. The information that you used comes from
21 that ESR, that 2006 ESR? Is that correct?

22 A. The 2006 ESR-1668 and the 2013 to '15 ESR-1668.

23 Q. Does that ESR provide you a manner by which these
24 things are calculated, or formulas and methodologies?

25 A. It tells you the methodology definitely. It says to

1 calculate the wind pressures by this table or code. So, I
2 -- one aspect for how it was constructed, I used a table
3 and then for current wind loads, I used the code.

4 Q. Is it, is it uncommon for you as an engineer that,
5 from time to time, you have to do engineering calculations
6 to determine whether something can be built appropriately?

7 A. It's very common. The building code and
8 manufacturer's instructions do not cover every condition
9 out on a typical construction site. So, we have to do
10 custom designs, calculations all the time, every project.

11 Q. And what happens when, when you've done -- when the
12 code doesn't speak to an issue and the manufacturer's
13 specifications don't speak to an issue and you've done
14 calculations? Then what do you have to do with that?

15 A. Well, we put the -- we, we -- eventually you do
16 drawings. Could be a sketch. It could be full-blown
17 drawings. You have notes on the drawings. The codes tell
18 you what's required on the drawings now. You put your,
19 your environmental factors.

20 And on something like this nature, you would probably
21 direct the building official to what you're doing with
22 respect to the siding nails, and then the building official
23 reviews it, and he might have questions. He might reject
24 it; he might approve it. Most often if it follows a
25 logical manner, they're going to approve it.

1 Q. And have you had that experience in the past?

2 A. Yes. I'm always getting calls from building officials
3 to clarify drawings in Dorchester County, Charleston County
4 on various aspects, and you usually say yes sir, yes ma'am
5 and, you know, put some notes on the drawings and resubmit
6 it.

7 Q. Okay. So in this situation, have you had the
8 opportunity to submit your calculations to a building
9 official?

10 A. No. It hasn't come to that yet.

11 Q. All right. Does that -- when in a real construction
12 or repair project where you've been the engineer, when,
13 when is an appropriate time to do that?

14 A. That would be during the permit phase.

15 Q. Okay. So, until you have all that, you're at that
16 place, there's no consulting? You don't normally consult
17 on an advisory basis with ---

18 A. Not on a siding nailing at this stage. That would be
19 during the permit.

20 Q. Okay. Now, so you -- let's -- again, we've got some
21 terms defined and processes. Going back, you started with
22 the 2003 -- '6 edition because it was what was embraced at
23 the time. Is that correct.

24 A. Yes, I believe so.

25 Q. And based on that, what did you determine regarding

1 the use of face nailing for this siding?

2 A. Face nailing with a box nail, 8-penny box nail which
3 is 2 and a half inch long face nail, in this siding would
4 have met, met the wind load criteria.

5 Q. All right, and -- but the wind load criteria has
6 changed. Is that right?

7 A. In a way. They, they -- yes and no, but they've gone
8 to a different reference for the wind speeds now. It's,
9 it's ultimate wind speed versus a different type of wind
10 speed now. So, it's -- the scientists have come up with
11 different wind -- they, they change it all the time, but
12 oftentimes you get back to the same pressures.

13 Q. And so what was the use of the 2013 ESR?

14 A. In 2013, my understanding was that was what Mr. Mease
15 used.

16 Q. Okay, and then you said something about a more recent
17 addition or change.

18 A. Right. So, to make sure it met the current ultimate
19 wind speeds, I used two references: ASCE-7, which is the
20 building code referenced standard for wind calculations,
21 and I used the international residential code, both
22 methods.

23 Q. And based on having done calculations for that, just
24 what is the recommendation that you have for how to secure
25 the siding?

1 A. To, to take a stainless steel 8-penny ring shank
2 roofing nail, face nail it at 16 inches on center. These
3 are the face nails. A stainless steel ring shank nail
4 which has even more pullout resistance. It will not
5 corrode. At 16 inches on center into the studs, that will
6 work. I've added another ring shank nail in between so it
7 would make the effective nail spacing 8 inches on center
8 just to be conservative.

9 Q. And based on the engineering you've applied, do you
10 believe that that will meet the code requirements for this
11 siding?

12 A. Yes.

13 Q. All right, and how much of the siding have you told
14 the contractor to do this for?

15 A. All the siding.

16 Q. Is there anything -- there was one question that came
17 up in -- it's, it's part of this in the estimate that we're
18 going to see with Mr. Watkins, but I still want to address
19 it now, or maybe it comes up in your presentation. Just
20 the base of the wall flashing with the z-flashing, is that
21 a separate component of your, your presentation?

22 A. Right.

23 Q. Okay. Then we'll get to it; we'll come back to that.

24 A. Well, I guess I did approach it at this point.

25 Q. You did approach it at this point? Okay. Well, what

1 are your recommending with respect to the z-flashing at the
2 base of the walls?

3 A. Well, z-flashing at the base of the walls, again Mr.
4 Mease had several investigations at the base of the wall.
5 He found a certain percentage had reverse lapped,
6 water-resistant barrier to base flashing. Example here on
7 the left, 1621, the Tyvek goes behind the flashing. On
8 1608, it goes properly out board of the flashing.

9 He found that that condition of deficient -- 1621
10 condition was on 37 and a half -- I forget the actual
11 number of units, but it was 37 and a half percent of the
12 forty units. So, I -- my direction to Watkins was
13 estimate, remove the bottom siding on all the units and
14 investigate further reverse lap, and provide an allowance
15 for fifteen of the units, which is the extrapolated 37 and
16 a half to remove and replace the bottom one or two courses
17 of siding, and properly weather lap the flashing.

18 Q. So, you, you have developed that method of repair for
19 this? Remove the base and fix what's behind it?

20 A. Yes.

21 Q. Let's go to item 4 in your, in your chart. Now, this
22 is the deck.

23 MR. LUCEY: Objection. Can they identify what exhibit
24 and which picture numbers we're looking at so we can follow
25 along?

1 THE COURT: That would be helpful. If you don't mind
2 doing that as we flip through.

3 BY MR. KENDALL:

4 Q. These, are these from whose report, whose photos?

5 A. They are from my site visit photos.

6 Q. Okay, and ---

7 THE COURT: Is it associated with a number?

8 MR. KENDALL: I, I don't know that they have photo
9 numbers on them, but those photos were marked as exhibits
10 in the prior ---

11 THE COURT: Okay.

12 MR. KENDALL: In his first round of testimony.

13 THE COURT: Okay. If maybe you could show the title,
14 that would be fine.

15 MR. KENDALL: I'll have to look at my notes and see
16 which exhibits.

17 THE COURT: That's good for now. Maybe by the title.
18 Look at the top of the page.

19 MR. KENDALL: All right, 8, 12, 13, 14, and 15 were
20 the exhibit numbers.

21 THE COURT: Perfect. Thank you.

22 MR. KENDALL: But we -- there's a lot of photos we did
23 not put the photo numbers on the slides.

24 THE COURT: That's okay. Like I said, just maybe you
25 could say condition number 4 deck coating, for example, or

1 something.

2 MR. KENDALL: Okay.

3 THE COURT: That would help.

4 MR. KENDALL: Okay.

5 THE COURT: Thank you so much.

6 BY MR. KENDALL:

7 Q. So, looking at this slide that you prepared for your
8 demonstrative here is condition number 4 deck coating, and
9 just, just remind us of the issue here and what you
10 observed.

11 A. The primary issue is that the front, second-floor deck
12 of 1611, Mr. Mease did wind damage below a middle, mid post
13 for the rail. The rail was rotting, 1611. That's in --
14 shown in this photo right here, and there ---

15 Q. Can you enlarge that photo?

16 A. I'll give it a try.

17 (A PAUSE.)

18 A. So that mid post, mid rail post was rubbing the deck
19 coating, resulting in damage that you'll see in the upper
20 right corner photo.

21 Q. All right, and what about the reference to 1637?

22 A. It's to show a typical deck coating. The deck coating
23 in general appeared to be functional. The front rear decks
24 had good slope on them, positive to the outside. There's
25 some wear and tear, as you see. Some of the edges are

1 coming up.

2 Q. That edge right there, what, what's -- where are you
3 standing when you look at that edge?

4 A. You're standing off the deck and looking onto the
5 deck. I think this is at the stairs.

6 Q. So, that's at the top of the staircase?

7 A. Yes.

8 Q. And so that's where, that's where a foot would land?

9 A. Yes.

10 Q. Okay, and, and so let's talk about 1611. What do you
11 -- what have you specified as the repairs for 1611?

12 A. 1611, this is the front. So, it's a Holly. So, let
13 me back out of here.

14 (A PAUSE.)

15 A. So, that's this deck. This is an example. This isn't
16 1611 but it's a Holly, similar. So at this location, we
17 essentially have an allowance for framing repairs,
18 sheathing repairs, and to redo that second-floor front deck
19 of 1611. And following, you'll see again we've got repairs
20 for somewhat overlap that repair that deal with the side
21 posts.

22 Q. The scope of repair is, is to -- you're going to
23 remove the, remove -- do you have to access it from the
24 bottom?

25 A. You're going to do, redo that entire deck. Remove and

1 replace any damage, framing and sheathing, for that front
2 second-floor deck. So, when you take up the sheathing,
3 you're taking up all that deck coating. So, there's going
4 to be ancillary work there that's related to other items
5 where you're going to remove the rails. You're going to
6 have to remove siding at the base of the wall. That's been
7 communicated to Watkins. Watkins had done numerous deck
8 recoating projects. So, essentially you're removing and
9 replacing the deck sheathing and deck coating for that
10 second-floor front deck of the Holly.

11 MR. LUCEY: Your Honor.

12 A. Of 1611.

13 MR. LUCEY: If I may object, Your Honor? I've heard
14 the testimony about 1611, photos from 1611. The Al
15 Schweickhardt photos of 1611 are not in evidence. That's
16 why we wanted to know what exhibit they're using so we
17 could follow along. What's in evidence is 8, 12, 13, 14,
18 and 15, and they do not concern unit 1611.

19 BY MR. KENDALL:

20 Q. Do you have, do you have photos in your book of 1611?
21 I'll, I'll...

22 A. I don't have photos printed out, but that was from my
23 February 19, 2016, site visit.

24 Q. Okay. We'll move past that and skip the photos since
25 I can't put my finger on the reference, but your scope of

1 repair for that is to completely remove the deck and to
2 repair any damages that are observed, including framing?

3 A. Yes, on the front second-floor deck of 1611.

4 Q. All right. Let's go to -- what's the next item?

5 A. The rails.

6 Q. All right, and have you specified a repair for the
7 rails?

8 A. I have not because from the beginning of my site
9 visits, I saw the HOA board was removing and replacing
10 portions of the rails, and I just assumed that they were
11 going to be requesting reimbursement. I had no issues with
12 that methodology. I would agree that the, the rail
13 brackets needed to be removed and replaced.

14 Q. Okay. What's the next one? We've talked about the
15 base of the sheathing. All right, number -- condition
16 number 10, corrosion of bolts in the timber pile
17 foundation.

18 A. This is a fairly isolated condition found at a few
19 locations, and I tried to estimate the -- well, I, I put
20 the locations that I observed of these nonhoptive or
21 galvanized bolts, or they're a bolt, and nut and washer
22 possibly with some galvanizing defect, but they had
23 corrosion on them. So, I state to remove and replace those
24 bolts, nuts, and washers where corroded at the four units I
25 observed it, and then to provide an allowance for four

1 additional units, two piles of bolts and washers each of
2 those four additional units.

3 Q. Okay, and how about, was there anything else on the
4 corroded metals?

5 A. We'll get to the aluminum wrap ---

6 Q. Now, but there ---

7 A. --- around the trim.

8 Q. --- any -- we heard some talk about, I think we heard
9 talk about shims.

10 A. Oh, right. Shims is at -- only observed that
11 condition at one unit: 1635, left rear. Or -- excuse me
12 1635 had shim plates, which is between the top of the pile
13 and the girder, the beams that were corroded. So, yes, my
14 scope of repair outlines to remove and replace those.

15 Q. Okay. What's, what's next?

16 A. The rear deck post flashing.

17 Q. All right, let's, let's take a step back and remind
18 the jury where these are located on the map. We, we've
19 seen this map a couple of times, and just to remind us,
20 this is Exhibit 827. And the -- these -- have you tried to
21 count and identify where these -- this condition is
22 located?

23 A. I have and this -- the troublesome, problematic
24 condition is where you've got a deck post, there's no
25 cladding. It's a bare timber post. Intersects the deck

1 and the roof, creating that complex condition that has
2 resulted in water intrusion and damage at six of the units.

3 This photo here is 622. This was a location of damage
4 that was typical when one of those posts was leaking due to
5 lack of proper flashing at the post. This was opened up
6 during one of the site visits and, yes, there was damaged
7 gypsum board. There was damaged insulation. The framing
8 had stains on it, the sheathing had stains on it, but there
9 was no damage.

10 I've provided allowance. I've talked -- I talked to
11 Watkins to provide an allowance for removal and replacement
12 of all that sheathing, removal and replacement of that
13 framing in that location under the stair, of course removal
14 and replacement of the gypsum board, and the installation
15 under those six units.

16 And then at the other posts that are deck-to-roof
17 posts, at each of those locations to remove sufficient
18 shingles. Say, for example, at this location remove
19 shingles for a 3 x 3 square foot area around it, remove the
20 building paper, of course remove the shingles, and properly
21 reflash that with metal flashing and peel and stick, and
22 then recoat the entire deck to make sure that the deck
23 coating was integrated with that post repair.

24 Q. You might have gotten a step ahead of me, but let, let
25 me just say. I just want to first ask -- I was asking does

1 this tape -- does this chart represent the count of all of
2 the locations that you've -- you're addressing in the rear
3 deck post flashing sections?

4 A. Yeah. To the best of my knowledge and count, the, the
5 posts that look like the upper left or similar that
6 intersect both the shingles and the deck. It's a complex
7 intersection. Yes, those are the counts on rear decks,
8 second-floor decks.

9 Q. So, some of them have one? Some of them have more
10 than one?

11 A. Some have up to five.

12 Q. Okay, and that depends on what?

13 A. The type of model it is.

14 Q. Okay. So, different designs have different, have
15 different numbers of this incident. And so your, your
16 broad -- in broad terms, the scope of your repair addresses
17 every place that we know of where this post, wall, and ---

18 A. Roof shingle.

19 Q. --- come together?

20 A. Yes. Yes, sir.

21 Q. And just, again, we've seen the pictures and you've
22 described what you saw, but just again summarize how you
23 approach repairing this.

24 A. To -- I've discussed the interior repairs and, and
25 that's an exterior wall. But on the other -- at all those

1 locations, you remove 9 square feet of shingles, which is 3
2 x 3. Remove that paper. You repair any damage to the deck
3 sheathing, roofing, and then you -- again, that's a detail
4 to come up with, but it's just the deck coating. The
5 reinforced deck coating, peel and stick type membrane
6 flashing is a combination of those. You make sure it's
7 continuous and protected, and then you recoat the decks,
8 reinstall new building or roofing paper, new shingles at
9 that location.

10 Q. And there are -- are there six of these units that are
11 different from the others that require more interior
12 attention?

13 A. Six of the units have shown, yes, that they've got the
14 damage below the one post that seems to be the most
15 problematic. It's showing staining to the gypsum board
16 below it.

17 Q. And on those, you said you're also addressing all of
18 the interior stuff?

19 A. At that location, basically 54 square feet -- which is
20 9 times 6 -- 54 square feet of sheetrock, installation,
21 framing if it's damaged, sheathing if it's damaged.

22 Q. When this condition number 12, scope of repair, is
23 completed, will it have addressed every instance on this
24 table?

25 A. Yes. That's the intent.

1 Q. Okay. Regardless of whether it has shown a leak or
2 not?

3 A. Right. Yes.

4 Q. All right. Let's go to the next item.

5 A. The corrosion of the aluminum trim on the exterior
6 framing. So, the scope of repair is to remove and replace
7 that aluminum trim.

8 Q. On the whole project?

9 A. On the whole project where that's located, to wrap the
10 pressure treated lumber that's in contact with the aluminum
11 trim with a membrane such as Vycor that's approved for that
12 use and then put new painted aluminum trim back.

13 Q. Okay. What's the next item?

14 A. The corroded screws and decayed wood trim at the post
15 caps, to remove and replace those screws and trim where
16 found the entire -- at the entire location is where they
17 are.

18 Q. Okay. What is the next item?

19 A. Corroded fasteners in exterior post base -- post base
20 trim, at those. The initial repair scope is to prime and
21 set those fasteners, and then new stainless steel
22 fasteners. However, most of those locations are going to
23 be affected by the repairs that we'll discuss -- that we
24 discussed with the -- that we will discuss with -- that
25 will be condition 24, I believe. They're -- those, those

1 rails, those trim are going to have to be removed so that
2 those locations are properly flashed. So, that, that trim
3 is going to be replaced. And I think Watkins has in their
4 estimate to put back the stainless steel fasteners for
5 condition 20.

6 Q. Okay. So when this is done, all of the base -- all of
7 the trim base fasteners will have been replaced or ---

8 A. Yes.

9 Q. Or it might be ---

10 A. Or, or ---

11 Q. --- you could do trim?

12 A. --- they'll be neutralized with rust neutralizer.

13 Most of them will be replaced. I can't think of one off
14 the top of my head where they'll remain at this stage based
15 on the following repairs, but there will be stainless steel
16 fasteners and properly installed trim.

17 Q. All right. What's next?

18 A. Well, this was one location, condition 20, where a
19 truss member had pulled away from a truss plate for some
20 reason. Mr. Mease found it; I also saw it. It will
21 require an engineered repair of plywood gusset plates.
22 That's -- this web member's pulled partially from this cord
23 member right here. So, an engineered repair, pretty common
24 type repair to fix that.

25 Q. All right. What's next?

1 A. So, this is condition 22. This is an example of a
2 condition we were made aware of where -- a low sloped rear
3 roof on Palmetto B units. So, it occurs on five units.
4 Low sloped area, again improper flashing. You can see
5 again it's at a deck post intersection that also probably
6 overlaps into our repair item number 12. But at the -- I
7 called out specifically at these five locations, we've got
8 an allowance for two sheets of replacement, 23
9 thirty-seconds plywood, 40 linear feet framing replacement,
10 and then again to re, re -- or install new deck coating on
11 those decks, new flashing at the posts, proper ice and
12 water, ice and water shield underlayment where you got the
13 lower sloped roofs. So at those six locations, we've got
14 an allowance to repair that condition.

15 Q. All right, and once -- and these, these are the roofs
16 -- are these the roofs that require the ice and water
17 shield throughout because they're so flat, the really,
18 really flat ones?

19 A. Well, they're below 4 and 12 pitch.

20 Q. Okay. So ---

21 A. Right.

22 Q. And these are -- and, and this, does this address all
23 of the incidents of this event?

24 A. Of this specific condition, yes.

25 Q. All right. What's next?

1 A. Condition 23 is at three of the units, and that's --
2 this is an old view. This condition, I think, has been
3 repaired, but you can see at three of the units -- this is
4 the Palmetto A. Again, next to the low sloped area I
5 previously talked about is right here. This is actually a
6 separate condition where this privacy wall for some reason
7 I'm not sure of was shifted down slope, and you can see the
8 top of the wall was exposed and incurred damages. In
9 addition, it created a very low slope condition. It caused
10 damage, and a very low slope condition adjacent to that
11 wall that even shingles won't work.

12 So, I have scoped, as part of my scope of repair, a
13 repair to these three units -- 1608, 1624, and 1651 -- to
14 remove and replace those first and second-floor rear
15 privacy walls and the associated framing, rebuild it again
16 with -- if, if the lower slope less than 2 and 12 pitch
17 remains. That will be -- a modified Bitumen roof membrane
18 is in the spec. If the -- I believe the wall was actually
19 moved back up slope, so that low slope condition does not
20 exist. If, if this condition hasn't been repaired on the
21 two other units and the low slope condition remains, a
22 membrane can be put back in, in place where we got the low
23 slope issue. But again this issue occurs on three units,
24 and I understand on 1624, I think it's been, it's been
25 repaired and the wall moved back underneath the deck roof.

1 Q. Is your scope of repair consistent with what was done
2 at the unit that the homeowner repaired?

3 A. That's, that's our option: rebuild the second-floor
4 rear privacy wall in line with the deck edge as originally
5 designed. Yes, I believe that's what was done.

6 Q. And -- but your scope that you gave to Mr. Watkins
7 includes all three anyway?

8 A. Those three units with that condition, yes.

9 Q. Okay. What's next?

10 A. This is the condition that I went through with Mr.
11 Lucey. I believe the front -- and this is one of the
12 exhibits. This is the 24.A, B, and C. I think it's one of
13 those exhibits that show the -- right down there to the
14 right. Not that one but the next one.

15 Q. So this one, this one is tabulated on this thing?

16 A. Right.

17 Q. Okay. So, let's, let's -- you've got a A, B, and C
18 versions. Is that correct?

19 A. Yes.

20 Q. Which one is A?

21 A. 24.A is every -- or twenty of the units, when you look
22 at the front, have this condition where you've got the
23 second floor front deck post intersect the roof, and again
24 they weren't flashed properly. You have damage below them.
25 So, at those forty locations, twenty units both left and

1 right side, it's to remove a 4 x 4 location of shingles,
2 remove and replace the portion of the deck edge 32 inches
3 from each post 2 feet inward, 32 in from the right post 2
4 feet inward, which would entail redoing the deck coating on
5 those decks. So at those locations, again the allowance I
6 provided to Watkins to estimate was remove at each of those
7 posts. So, 4 x 4 shingles and paper, replace OSB roof
8 sheathing 24 inches up by 32 inches over, replace the
9 plywood deck 24 inches x 32 inches, and the band sheathing,
10 which is the band sheathing has been shown to be damaged
11 behind the trim. So, those -- that band sheathing will be
12 replaced as outlined on my scope of repair.

13 Q. On this chart, which of the little markings indicate
14 that situation with the two posts?

15 A. The yellow.

16 Q. All right. So, this one is marked 1653. So, this
17 situation exists at 1653, correct?

18 A. Yeah, specific -- yes, it does, and as shown in the
19 photo, this is 1615 Dogwood. All the way back over to the
20 left is where that is.

21 Q. Okay.

22 A. But, yeah, there's -- those are examples.

23 Q. And so are you -- does your scope of repair include
24 every post in that, in that particular configuration?

25 A. Yes.

1 Q. And that's how many?

2 A. That's forty.

3 Q. Twenty units, forty posts?

4 A. Yes.

5 Q. All right. What's 24.B?

6 A. Again showing the condition. 24.B is at seven of
7 those locations, and that's in the blue, where there's
8 built-up wall columns. Again, Mr. Mease had a location for
9 one of the units. He showed damage. We followed up with
10 destructive testing at another unit and found damage to the
11 framing. So at those seven units, both left and right
12 side, the build-up column is scoped to be repaired.

13 Q. And is that ---

14 A. Removed and replaced essentially.

15 Q. That's the, that's the condition we've seen in some of
16 those other photos as well, right?

17 A. Yes.

18 Q. And so how many times on the project does this
19 configuration occur where you have the built-up column?

20 A. I believe it's fourteen: seven units, a left and a
21 right side.

22 Q. And those are marked with the blue tags on your chart?

23 A. Yes.

24 Q. All right, and again that depends on which model is
25 used?

1 A. Yes.

2 Q. Okay.

3 A. Those are, I believe, Oak A and Palmetto A.

4 Q. Does your scope of repair address -- make -- call for
5 corrections even if no water damage has been observed?

6 A. Right. Watkins should provide an allowance for
7 replacement of that framing. So, if it's not found, that
8 allowance in construction procedure is either used
9 elsewhere or deducted.

10 Q. Right, but you've given him the scope to address all
11 fourteen?

12 A. Yes.

13 Q. Okay, and then what's C?

14 A. C is at the six locations with this second floor side
15 deck, again all six units that have this condition. I
16 think we've already seen the photos. The upper right there
17 photo is where -- one of the three locations that I removed
18 shingles and paper from around the post intersection and
19 around where the deck intersects roof shingles, and at two
20 of the locations evidence of staining and damage to roof
21 sheathing but not roof decking. So, at all six locations,
22 again at each of those locations I've outlined, again an
23 allowance for 4 x 4 shingle remove, 24 x 30 roof sheathing
24 removal and replacement, 24 x 32 deck sheathing removal and
25 replacement, and any band sheathing. That doesn't occur at

1 this location, but -- and then to recoat those decks at
2 those six locations.

3 Q. Okay, and these are indicated on this map in the --
4 with the green bubble-looking thing, cloud shape?

5 A. There should be six of them, yes.

6 Q. Okay, and that will address all of them on the
7 project, whether or not there's been water intrusion found?

8 A. Yes. That's my intent.

9 Q. And that's what you communicated to the contractor?

10 A. Yes.

11 Q. All right, and what's the next item?

12 A. Condition 25 was in our investigation, we removed some
13 soffit from the -- below two of the second floor side
14 decks, and tried to observe for any evidence of water
15 intrusion damage because these second floor side decks are
16 where the slope -- there's some flat areas of the decks, to
17 see if that flat slope caused damage. It didn't but we
18 uncovered another building code defect there where the rail
19 posts have lag screws, and they only go through the deck
20 sheathing.

21 Q. So, what's the method for repairing that?

22 A. Remove the soffits, provide allowance at the ten units
23 that I believe have this possible configuration, which is
24 again this type of configuration with the two deck posts,
25 rail posts that, that we saw at each of those units. There

1 was two that typically had lag screws, framing and
2 sheathing at those locations. Remove the soffits, install
3 blocking, put new lag screws in from up above, and seal
4 holes through into the blocking.

5 Q. Is that the last of the items on your chart?

6 A. Yes, that's the last of the items.

7 Q. All right, and again all this was communicated to Mr.
8 Watkins for him to develop a price?

9 A. Yes.

10 Q. One of the conditions that we talked about in the case
11 that wasn't on this list was firestopping and sprinklers.
12 Are you recommending a scope of repair on that?

13 A. At this time, no. I understand Mr. Smits testified,
14 he testified to some conditions I was not aware of. So,
15 no, I'm not -- I withdraw my opinion on the fire rate
16 assembly conditions.

17 Q. Based on what you've heard about his recommended
18 methodology, is that ---

19 A. Yes. Mr. Smits's methodology appears to be
20 reasonable.

21 Q. Okay. Based on all the work that you've done and
22 within the scopes that you've outlined here, do you believe
23 that that will provide the plaintiffs the durability that
24 was intended from -- for these structures?

25 A. I believe so, yes.

1 Q. Do you believe it will prevent further water
2 infiltration at these locations that are repaired?

3 A. At the locations that are repaired due to the
4 deficient construction conditions and building code
5 violations, yes.

6 Q. Do, do you purport to know everything about these
7 buildings?

8 A. No, I don't. There's a lot of unknowns. We provided
9 a 10 percent contingency scope for the contractor to
10 provide 10 percent of his total as contingency, and also I
11 believe some of my repair scope overlaps. I believe I
12 provided a conservative repair allowances for framing and
13 sheathing, that I don't think that will all be used up, but
14 hopefully we've guided Watkins in providing sufficient
15 evidence to cover the unknowns or sufficient scope to cover
16 the unknowns.

17 Q. Okay.

18 MR. KENDALL: One moment, Your Honor.

19 (A PAUSE.)

20 MR. KENDALL: Your Honor, we've located that exhibit
21 that was being asked about, so I'm just going to -- if we
22 need to move those into evidence, we'll do that at this
23 time, but bear with me.

24 (A PAUSE.)

25 BY MR. KENDALL

1 Q. I'm going to show you a document that's been marked as
2 Exhibit 710, and are those your photos from unit 611 that
3 we were talking about earlier?

4 A. 1611.

5 Q. 1611?

6 A. Yes.

7 Q. Excuse me.

8 A. Yes.

9 Q. Okay, and those were ones you took?

10 A. Yes.

11 MR. KENDALL: Your Honor, move those into evidence at
12 this time.

13 THE COURT: Any objection?

14 MR. LUCEY: No objection, Your Honor.

15 THE COURT: Admitted without objection, 710.

16 (INSPECTION PHOTOGRAPHS MARKED INTO EVIDENCE AS
17 PLAINTIFF'S EXHIBIT NUMBER 710.)

18 MR. KENDALL: Thank you, Your Honor. I have no
19 further questions at this time, but I did get a request
20 that maybe we take a comfort break.

21 THE COURT: That's not a problem at all. We'll take a
22 break at this time.

23 Ladies and gentlemen, we'll take our morning break at
24 this time. We'll be at ease for about five minutes, and
25 we'll see you back in a few minutes. Thank you very much.

1 own notebook? All right, no one is indicating that they do
2 not have their own notebook for the record.

3 All right, we're ready to proceed, Mr. Cole.

4 I think we're good, April. He's the same witness. He
5 can have a seat. Thank you.

6 DIRECT EXAMINATION BY MR. COLE:

7 Q. Good morning, Al. How are you doing?

8 A. Good morning, Andrew.

9 Q. All right. You know my client is Tri-County Roofing,
10 right?

11 A. Yes.

12 Q. All right. I just have a couple of questions for you,
13 and I'll have the opportunity to ask Eddie about his
14 roofing opinions that you said you were deferring to him
15 on.

16 First, Applied Building Sciences, you've already said,
17 has been around for a while, correct?

18 A. Yes.

19 Q. Have you all done cases in litigation both for
20 plaintiffs and for defendants?

21 A. Yes.

22 Q. And when you do that, you're concerned with the
23 engineering of the case, not who you're working for,
24 correct?

25 A. Yes.

1 Q. There are couple of terms you use that I just want to
2 make sure that I understand the definitions of those. One,
3 you used the term peel and stick. Could you describe to me
4 what that is?

5 A. That's a slang term for a membrane that has an
6 adhesive on it, and there's numerous different types. I
7 might have referred to it also as a self-adhered membrane
8 or a self-adhered flashing.

9 Q. And I know it's not this, but it's basically like a
10 stronger form of tape?

11 A. Yes. It's just a membrane with different types of
12 adhesives, depending on the product.

13 Q. And where might you use that in construction?

14 A. Self-adhered membrane or sticky back or peel and stick
15 is used on low, low, low slope roofs, at intersections of
16 deck and walls, intersection with decks and roofs, at
17 intersections that are difficult to flash with just a
18 standard piece of metal.

19 Q. And that just makes it so it's more resistant to water
20 or water intrusion?

21 A. Yes.

22 Q. And then you used the term roof paper, and I just want
23 the definition of what you're talking about with roof
24 paper.

25 A. Roof paper is commonly called roofing felt. You know,

1 the 15 pound or 30 pound black paper you'll see go up
2 underneath shingles.

3 Q. And you use the term paper. Is it actually -- you
4 know, they have notebooks. Is it actually paper, or what
5 makes it so that you put it on a roof and it's helpful?

6 A. It's a reinforced type of paper, commonly -- it's no
7 longer felt. It's, I think it's, again, a reinforced type
8 of paper. You can still rip it, typical roofing paper.
9 It's not like notebook paper. It's -- they call it number
10 15 because it used to be 30 pounds per certain amount, 15
11 pounds per certain amount and 30 pounds, but it's called
12 number 15 and number 30.

13 Q. Okay. When I'm having my roof redone, is that the
14 stuff that's underneath the shingles?

15 A. Yes.

16 Q. And then you used the term z-flashing, and you kind
17 of, I think, discussed that with Mr. Lucey as to what its
18 purpose was, but I wasn't quite sure exactly what it was.

19 A. Z-flashing is a metal flashing piece shaped like an L
20 with a turndown. So, that's why it's called Z. It has the
21 vertical leg, the horizontal leg, and then a trap which
22 makes it a Z apparently.

23 Q. And you talked about the board that goes around the
24 bottom of the building. What is that called?

25 A. I'll call that the band board.

1 Q. And that's just the wide board that's underneath where
2 all the siding is?

3 A. Yes.

4 Q. And on these buildings, that's basically like when
5 you're walking into the garage, it's that last piece of
6 wood that goes around before you start the siding?

7 A. Yes.

8 Q. And you had some testimony about the -- I guess you've
9 got up there the location. You're saying that you're
10 removing part of the siding around the band board to fix
11 the z-flashing. What are we doing there?

12 A. Remove one or two courses of this siding at the base
13 of the wall to investigate for the reverse lap of the
14 building paper, or the house wrap with the z-flashing.

15 Q. And you showed a picture that showed it correct and
16 incorrect. What was correct and incorrect?

17 A. Correct is when the house wrap -- in this case
18 the Tyveck -- was outboard of the vertical leg of the
19 z-flashing. If you imagine a drip of water drains down
20 from -- on the outside of the building paper, our Tyveck,
21 onto the Z-flashing, and then out. Reverse lap, which is
22 incorrect, is when that house wrap is tucked inside the
23 vertical leg. So you can imagine, you know, if you've got
24 hunting pants, if you tuck those into your boots, that's
25 probably the wrong way because it's going to run into your

1 boots.

2 Q. And then you used the term allowance when you were
3 describing the work you put in your scope. What is an
4 allowance?

5 A. An allowance is an estimated quantity typical of
6 repair. You can put an allowance for engineering and
7 architectural fees, or you can put an allowance for
8 contingency, but it's an amount that a contractor will
9 estimate or bid and add to their, their estimate or bid.
10 And then if that situation comes up, they typically put in
11 a change order and an addition bid or an additive -- excuse
12 me -- an additive allowance with an add to it, but the
13 owners are expecting it. If it doesn't happen, it's a
14 deductive allowance. So, the change order goes in and if
15 that allowance is not used, it's deducted.

16 Q. All right. So, you're saying that in this case, the
17 allowance is you are expecting to have to do all of the,
18 for example, sheathing work around some of the posts you're
19 talking about. But if you get into there and it's not as
20 bad, then they're not going to have to pay that money?

21 A. Right.

22 Q. And in your scope, you have -- and we went through or
23 when you went through it, that you counted up the number of
24 columns, for example, of a particular condition that you
25 are saying need to be addressed?

1 A. Yes.

2 Q. And each of those columns has an allowance associated
3 with it, saying we don't just take the column. We also go
4 so many square feet around the column to make sure there
5 are no problems?

6 A. Yes.

7 Q. And it could either be there's no issue around this
8 and you just address the flashing, or it could be that
9 you've got damage that you're including inside your
10 allowance area?

11 A. Yes.

12 Q. And then you also mentioned contingency. What is
13 that?

14 A. Contingency is an extra amount; it could be seen as an
15 allowance. It is in this case 10 percent because of the
16 unknowns. I, I told Watkins to estimate 10 percent. He
17 figured out his total costs, including the estimated
18 architectural engineering fee allowance, adds it all up,
19 and then adds 10 percent to it to cover unknowns.

20 Q. With the siding, there's one thing that you had that
21 is not an allowance, and that was after you face nail the
22 siding, you're painting it, correct?

23 A. Yes, preparing and painting with two coats of paint.

24 Q. Okay, and why, why is two coats significant?

25 A. Two coats will better conceal the face nails.

1 Q. And you're not advocating that you just go out there
2 and put nails up that leak, right?

3 A. Correct.

4 Q. And that's because you need to still seal around the,
5 the nails and paint the nails afterwards?

6 A. Well, you, you prepare and paint with two coats, and
7 that seals the nails.

8 Q. And doing the face nailing is something that is
9 allowed and provided in the ---

10 MR. LUCEY: Objection. Leading his own witness, Your
11 Honor.

12 MR. COLE: All right.

13 THE COURT: Just try to rephrase it.

14 MR. COLE: All right. I'll rephrase.

15 BY MR. COLE:

16 Q. Is face nailing allowed under CertainTeed
17 instructions?

18 A. Yes.

19 Q. All right. Thank you.

20 MR. REESER: No questions, Your Honor.

21 THE COURT: Thank you, Mr. Reeser.

22 MR. REESER: Yes, Your Honor.

23 THE COURT: Yes, sir, Mr. Atkins.

24 DIRECT EXAMINATION BY MR. ATKINS:

25 Q. Good morning.

1 A. Good morning.

2 Q. Let me just clarify something, Mr. Schweickhardt.

3 Towards the end of the questioning by Mr. Kendall, in kind
4 of a passing fashion you were asked about firestopping and
5 fire sprinklers. You remember that last question there
6 practically at the end of your examination by Mr. Kendall?

7 A. Yes.

8 Q. And you told him you had no opinions on those. Is
9 that correct?

10 A. Right. No longer, right.

11 Q. No longer. You used to have some pretty strong
12 opinions about ---

13 MR. KENDALL: Your Honor.

14 Q. --- the firestopping, did you not?

15 MR. KENDALL: Your Honor, we withdrew this defendant.
16 He's attempting to cross-examine him on a subject he's not
17 talking about.

18 MR. ATKINS: He suddenly is -- a lack of ---

19 THE COURT: You, you asked him specifically if he had
20 prior opinions.

21 MR. KENDALL: I understand your instructions.

22 THE COURT: Okay.

23 MR. KENDALL: Note my objection ---

24 THE COURT: Thank you so much.

25 MR. KENDALL: --- to withdrawing his opinion.

1 MR. ATKINS: Thank you, Your Honor. It's
2 cross-examination.

3 THE COURT: Over your objection, I'll allow it.
4 Go ahead.

5 MR. ATKINS: Thank you.

6 BY MR. ATKINS:

7 Q. As a matter of fact, back earlier this month, May the
8 2nd, you were deposed extensively about your protocol to
9 repair the roof frame. You recall that, don't you?

10 A. Repair the roof truss and blocking penetrations to the
11 -- through the fire rated assembly, yeah.

12 Q. And that was the last time you were deposed in this
13 case?

14 A. Yes.

15 Q. Okay, and, in fact, I believe, I believe I saw in some
16 of your scopes actual repairs for the penetrations of
17 firewalls.

18 A. Yes.

19 Q. Isn't that accurate?

20 A. Yes.

21 Q. I mean, it's important if those, those penetrations be
22 sealed to maintain the integrity of that firewall in the
23 attic.

24 A. Yes.

25 Q. Okay. So, you do have any opinion on there: it needs

1 to be repaired.

2 A. Yes.

3 Q. It's just recently you're abandoning what your
4 recommendations are for those repairs?

5 A. Yes. I've agreed with Mr. Smits's methodology.

6 Q. Okay. So, you backed off of your recommendation about
7 what you were deposed extensively on May the 2nd, and
8 you're now saying, well, I think Mr. Smits's methodology
9 for fixing those penetrations is acceptable?

10 A. Yes. I find it essentially equivalent.

11 Q. Okay. With regard to the penetrations, when we, when
12 we look at the magnitude of those roof tenders and we look
13 at the 2 x 4s that both penetrate and then parallel,
14 creating breaches within the firewalls, as I recall in
15 those photographs, I didn't see any evidence of any fire
16 sealant that had been applied in those area. Is that
17 correct? Is that your recollection?

18 A. My recollection in the attic, that's correct, no
19 colored fire sealant. You'll typically see that to be a
20 reddish color.

21 Q. In fact, there was -- I don't think I saw any of the
22 fire sealant for plumbing pipes, correct?

23 A. Correct.

24 Q. I didn't see any fire sealant for the -- any
25 electrical penetrations through the firewalls.

1 A. Correct.

2 Q. Correct? And there were a few fire sprinkler pipes,
3 and there was no sealant around those either, was there?

4 A. Correct.

5 Q. So, this isn't like a, a case that, that someone made
6 an attempt at one or all these. It's fair to say there was
7 no attempt at all to seal any of these penetrations, was
8 there?

9 A. Not with fire sealant. There are some that have
10 better, better joint compound and tape around them than
11 others.

12 Q. Okay. Would that be the 2 x 4s?

13 A. That would typically be the cross blocking pieces,
14 yes.

15 Q. Part of the frame, roof frame?

16 A. Right, where the -- on the fourteen buildings where
17 the trusses run parallel to the tenant separation wall you
18 have blocking, cross blocking that crosses the tenant
19 separation wall.

20 Q. Now, what you have, I believe you've given -- you've
21 written several reports, three or four, I believe, in the
22 course of this lawsuit. Is that correct?

23 A. Yes.

24 Q. You've offered three or four with scopes of repairs
25 addressing various issues.

1 A. Yes.

2 Q. You talk about ---

3 A. Might be six. Yeah, it might be.

4 Q. Okay. All right, and you've addressed some of the
5 areas you addressed today: decks, roofs, siding. We've
6 heard a lot of that, and that's what you basically have in
7 these reports, correct?

8 A. Yes.

9 Q. You also throughout the time that you had available to
10 you, one of the items you had was the March 31, 2016,
11 report of Doug Smits, right?

12 A. Yes.

13 Q. And you had that throughout the time that you've made
14 these drafts of your reports and changes in your reports,
15 correct?

16 A. Yes.

17 Q. At no time have you adopted in any of your reports the
18 installation of fire sprinklers in attics of the
19 residential buildings, correct?

20 A. Correct.

21 Q. You've also had an occasion in September of 2017 to
22 speak over the phone with George Tittle. Is that correct?

23 A. Yes.

24 Q. And you understand George Tittle to have been the fire
25 marshal, City of Folly Beach, on this project?

1 A. Yes.

2 Q. Okay, and despite that information, again through six
3 iterations of your report, you have never expressed an
4 opinion ---

5 MR. LUCEY: Objection, Your Honor. He's implying the
6 hearsay testimony of a phone conversation in the question
7 that follows, the two questions regarding the phone call
8 and regarding the deck, and it's improper.

9 THE COURT: All right, I'll allow him testify as to
10 his understanding of the conversation.

11 Please don't ask him question which would require him
12 quote ---

13 MR. ATKINS: Your Honor, I'm not asking him to tell us
14 what George Tittle said.

15 THE COURT: Thank you.

16 BY MR. ATKINS:

17 Q. Based on what you had before you -- your report, the
18 information of Mr. Smits, all the things you've talked
19 about, your conversations with the fire marshal, all these
20 things -- you have still not recommended the fire
21 sprinklers be installed.

22 MR. LUCEY: Objection. Foundation, Your Honor.
23 There's been no showing that he performed any investigation
24 as to the sprinkler system.

25 MR. ATKINS: He just testified ---

1 MR. LUCEY: Or the ---

2 THE COURT: Overruled. Thank you.

3 Go ahead.

4 MR. ATKINS: Thank you, Your Honor.

5 BY MR. ATKINS:

6 Q. Let me, let me repeat that. Based on the things you
7 testified to here today, okay, Doug Smits's report, okay,
8 your various six reports that you've done, your
9 conversation in September with the fire marshal, you still
10 have not in any of those reports made a recommendation that
11 fire sprinklers be installed in the attics of the forty
12 residential units.

13 A. That's ---

14 Q. Is that correct?

15 A. That's correct. My, my scope does not -- the intent
16 of my scope is not to cover the fire sprinkler because I
17 knew Mark Lazo, Mr. Lazo was the expert in the fire
18 sprinklers. So, I was looking to Mark Lazo for his -- and
19 I defer to Mark Lazo on the fire sprinkler installation in
20 the attic.

21 Q. Okay, and Mark Lazo is the man who is assisting me
22 representing W.C. Services, correct?

23 A. Yes.

24 Q. Okay. Didn't you say at one time in your deposition
25 that you don't take any issue? in fact, you would not

1 characterize the absence of fire sprinklers in the attics
2 as a code violation.

3 MR. LUCEY: Objection. Improper use of deposition.

4 A. I can't remember.

5 Q. Okay.

6 THE COURT: Overruled. Continue.

7 MR. ATKINS: Okay.

8 BY MR. ATKINS:

9 Q. And you have not recommended that Mr. Watkins, who's
10 preparing an estimate in this case on behalf of Complete
11 Building Corporation, you've not instructed him to place
12 sprinklers in the attics of these buildings, have you?

13 A. I have not.

14 MR. ATKINS: Thank you, sir. Nothing else.

15 THE COURT: All right, any cross-examination?

16 MR. LUCEY: Your Honor.

17 CROSS-EXAMINATION BY MR. LUCEY:

18 Q. Mr. Schweickhardt, good morning. How are you doing?

19 A. Good morning. How are you?

20 Q. I'm good. Jury have had the benefit of hearing from
21 you, I guess it was Tuesday morning?

22 A. Yes, sir.

23 Q. And I called you as a witness.

24 A. Yes, sir.

25 Q. And, what, we spent about an hour and fifteen or

1 twenty minutes describing the defects to the jury?

2 A. Yes, sir.

3 Q. Your opinions haven't changed at all since then,
4 correct?

5 A. Correct.

6 Q. And you remember us going over Plaintiff's Exhibit 826
7 marked for purposes of identification only?

8 A. Yes, sir.

9 Q. Which had your handwriting on it?

10 A. Yes, sir.

11 Q. Now as I understand it, you brought your file with you
12 today in that laptop. Is that correct?

13 A. It's on my note -- iPad, yes.

14 Q. All right, and your iPad has documentation regarding
15 this case at least the size of all these binders sitting up
16 here on this table if it was all printed out, correct?

17 A. Yes, sir.

18 Q. I mean, half of that would just be Mease's photos. At
19 least another third or so would be yours, correct?

20 A. That's -- would be a large part of it, yes.

21 Q. And we're talking -- I mean, so the court reporter has
22 something to put in her record, you and I are looking at
23 three and a half, four and a half feet of binders sitting
24 here, right?

25 A. Yes.

1 Q. So, what Exhibit 826 does, it's a, it's a compilation,
2 a summary, if you will, of defects that you have agreed
3 actually exist at the property, be they code reports or a
4 violation of industry standards or a violation the
5 manufacturers' instructions, correct?

6 A. Right.

7 Q. There may be one or two defects missing off of this,
8 but for the most part it's a pretty good compilation of the
9 defects that you've observed and documented with your
10 photographs, correct?

11 A. Right, at the time of the -- when we produced that,
12 right.

13 MR. LUCEY: Plaintiffs move 826 into evidence under
14 Rule 1006.

15 MR. KENDALL: Your Honor, may we approach?

16 THE COURT: You can.

17 (OFF-THE-RECORD BENCH CONFERENCE.)

18 THE COURT: All right, please continue, Mr. Lucey.

19 MR. LUCEY: Thank you, Your Honor.

20 BY MR. LUCEY:

21 Q. Now, there were a couple of things missing on here
22 that we covered, a couple code defects. The loose and
23 unnailed hurricane strap, you recall those?

24 A. Yes, sir.

25 Q. Okay. So, we would add that to this list?

1 A. Yes.

2 Q. That would be a code violation and bad workmanship?

3 A. Yes.

4 Q. And you, you went and investigated four or five houses
5 for deflections in the main floor you have in the foyer,
6 correct?

7 A. Floor slopes, yes.

8 Q. And that's, that's since you issued your report on
9 September 5th of 2018, correct?

10 A. Yes, sir.

11 Q. And the floors deflect in essentially the front
12 hallway between the front door and, what, the bathroom and
13 the kitchen?

14 A. Yes, that's my recollection.

15 Q. It's about a, almost a 20-foot span of trusses that
16 are deflected?

17 A. Right.

18 Q. And that's not on here either, is it?

19 A. Correct.

20 Q. Now, how many posts, how many deck posts do you think
21 there are at Palmetto Pointe?

22 A. Gosh, hundreds. I didn't add them all up.

23 Q. Hundreds?

24 A. Right.

25 Q. So, would it be fair to say that there is, is -- forty

1 residences, right?

2 A. Right.

3 Q. So, it'd be fair to say that there is a hundred or
4 more by the backside of these residences?

5 A. Total you're saying?

6 Q. Total.

7 A. Sure. Yes.

8 Q. A hundred or more on the front side of the residences?

9 A. Total, yes.

10 Q. And so over 700 posts, and every one of those posts
11 require some sort of flashing or integration where it meets
12 the next component of the structure, correct?

13 A. Yes, they require that.

14 Q. And perhaps they require two, two integrations,
15 flashing and the Hydro-Stop, to properly wrap around the
16 post, correct?

17 A. The deck coating to wrap up, yes.

18 Q. And how many of these post bases have you cut open?

19 A. On the front, probably eight.

20 Q. And you've never cut open the rear, have you?

21 A. No, not -- we didn't direct it, but through the course
22 of the repairs on 1622, we saw one and then ---

23 Q. You never ---

24 A. And then below on the inside -- was it of 1622? We,
25 we saw the results.

1 Q. You never cut open a single post, a single post until
2 you realized you had missed Mr. Mease's, engineer Mease's
3 March 23, 2016, log showing all the damage, correct?

4 A. That's correct.

5 Q. And that was when -- you made that realization the day
6 before I deposed you in approximately June of 2018,
7 correct?

8 A. Yes.

9 Q. Let's come back to those several hundred posts. Now
10 this, this test here, when you finally did some test cuts
11 2018, August 21st and 22nd, they included this blue
12 building that we've marked as 1623, correct?

13 A. Yes.

14 Q. Okay. Let me hand you what's been marked for purposes
15 of identification only at this point in time as Plaintiff's
16 Exhibit 713. These are your December 2016 photographs,
17 correct?

18 A. Yes.

19 Q. And there's about a quarter inch of them or so?

20 A. Yes, it is.

21 MR. LUCEY: Plaintiff moves Exhibit 713 into evidence
22 so that I may use them on the board.

23 THE COURT: Any objection to 713 being admitted?

24 MR. KENDALL: No objection.

25 (INSPECTION PHOTOGRAPHS MARKED INTO EVIDENCE AS

1 PLAINTIFF'S EXHIBIT NUMBER 713.)

2 BY MR. LUCEY:

3 Q. 713, please, photo, first photo.

4 A. Right, 1307?

5 Q. 1307. This is a picture of the residence?

6 A. Yes, the front ---

7 Q. This is ---

8 A. --- of the residence.

9 Q. There's a number missing there. What, what number is
10 this residence?

11 A. 1623.

12 Q. Okay, and this next photo, please, photo 1257, you're
13 what, on a front porch or back porch?

14 A. Front porch.

15 Q. Okay. Would this be the mid-level or the upper front
16 porch?

17 A. This is the first floor.

18 Q. Okay, and you took this photo on December 2, 2016?

19 A. Yes.

20 Q. And the next photo, 1258, tell us what you're looking
21 at.

22 A. This is the base of the built-up column that
23 subsequently showed damage to it, showing the deck coating
24 going up the trim's nominal distance above the deck.

25 Q. 1259 is the base?

1 A. 1258.

2 Q. 1258, and you said it subsequently showed damage,
3 1258?

4 A. On, on the outside, yes.

5 Q. What, are you talking about later in the day?

6 A. No. During the August 2018 site visit.

7 Q. Eighteen months later, you discovered the damage on
8 the deck you were standing on on December 2, 2016?

9 A. Yes.

10 Q. You missed that damage in 2016?

11 A. Yes.

12 Q. And if you'd never cut it open, you'd never have known
13 it as there, would you?

14 A. Not in 2016, no.

15 Q. Have you gone back through your photos to see what
16 other damage you missed in 2016?

17 A. No. I mean, I've gone through my photos, right, but
18 based on Mr. Mease's photos and our investigation, I think
19 I've identified those locations that have damage and ---

20 Q. You've used ---

21 A. --- and specified a repair to them.

22 Q. You've used Mr. Mease's name on a lot of your
23 testimony with Mr. Kendall, Kendall, didn't you?

24 A. Yes.

25 Q. His investigation has been vindicated, hasn't it?

1 A. It has in a lot of areas, yes.

2 Q. And when you sat for your deposition the first time,
3 you didn't believe that. You didn't think there was any
4 front damage, did you?

5 A. No, I didn't. The first time around, I, I said it, it
6 hasn't been proven, I guess.

7 Q. You said Mr. Mease hadn't proven it well enough?

8 A. Right.

9 Q. That's changed, hadn't it?

10 A. Right. It was there under -- and I wish I'd looked at
11 those photos that he did prior to it. There's a lot of
12 information and I just missed it, but, but went back and,
13 and looked at those locations and expanded on Mr. Mease's
14 investigation. Looked at other locations.

15 Q. In fact, when I took your deposition the first time in
16 June, June 27, 2018, you thought that only three types of
17 townhouses were leaking: Palmetto B, Holly B, and Magnolia
18 B. Correct?

19 A. Yes.

20 Q. And halfway through that deposition, you then admitted
21 to me that it was not just those three, Palmetto B, Holly
22 B, and Magnolia B. Palmetto A, Holly A, Dogwood, and that
23 you had to go back out to check the fronts of the porches
24 because you hadn't looked at them, correct?

25 A. Correct. Hadn't looked at -- hadn't done a

1 destructive test cut to confirm Mr. Mease's findings. I
2 wanted to make sure this wasn't at one location, so I
3 opened up others.

4 Q. The scope of the damage that you have learned about at
5 Palmetto Pointe has expanded every time you've set foot on
6 that property, hasn't it?

7 A. Yes, because we've been made aware of new conditions
8 or recently uncovered conditions.

9 Q. Now, back to these posts. Let's take a look at
10 Exhibit 827. This residence here, 1605, says that you're
11 repairing -- you're having the contractor repair one post
12 on the rear elevation of 1605. Am I reading that
13 correctly?

14 A. Right, because 1605 has one second floor rear post
15 that intersects with roof shingles and deck at the same
16 location.

17 Q. How many posts does 1605 have?

18 A. I can't recall. It might have two; it might have
19 four.

20 Q. How many posts are you not repairing on 1605?

21 A. The remaining how many it has. We can look at --
22 what's 1605? Let's look at the rear.

23 Q. Sir, I'm going to keep going. Tell me about 1613 on
24 your chart here. You've got one post being repaired. How
25 many posts are not being repaired on 6013?

1 A. 1613 shows how many?

2 Q. Shows one being repaired. How many are not being
3 repaired?

4 A. So, three or four, and just to clarify again, the
5 posts that are being repaired are the posts that showed
6 issues below them, as evidenced by the test cuts. That's
7 where the shingles and the deck all intersect, and it makes
8 a complicated intersection. So, my repair covers all those
9 types of intersections. The other post intersections are
10 just where a post lands on a deck and there's been no
11 indication that there's a systemic problem where those
12 posts just sit on a deck with no roof intersections. Yes,
13 I'm not repairing the multitude of those, but the
14 contingency is there. Issues are found below some of those
15 locations, they should be repaired.

16 Q. Sir, my questions are really a lot more focused. I'm
17 trying to get you up and down as quick as I can.

18 A. Yes, sir.

19 Q. Okay, and I'm looking at Plaintiff's Exhibit 828. You
20 with me?

21 A. Yes, sir.

22 Q. Now, the yellow stands for where the front is getting
23 repaired with two posts, correct?

24 A. Yes, sir.

25 Q. And you have the deck coating being repaired and

1 replaced for 30 inches on each side of each post being
2 repaired, correct?

3 A. Well, the deck coating is going to be repaired on the
4 entire deck because the deck sheathing has to come up
5 because we have allowed for a certain amount of deck
6 sheathing to come up. At each post, 24 inches in x 32
7 inches so it covers -- crosses three joists. Some thing
8 about sheathing. So, necessitates that the deck coating be
9 replaced on those decks.

10 Q. You're coming in 24 inches from each side, correct?

11 A. 32 inches in from each side, 24 inches inward.

12 Q. 2 and a half in from each side, correct?

13 A. Yes.

14 Q. 5 feet total from the sides, correct?

15 A. Correct.

16 Q. On a deck that's 10 feet wide?

17 A. Yes, because looking underneath them, they didn't show
18 evidence of damage more than that away from the posts.

19 Q. Speaking of posts, in those photos you showed the
20 jury, did you bring a properly flashed post to look at from
21 Peas Island?

22 A. I've brought, again, a repaired -- it was repaired at
23 1622. I have not evaluated whether it's properly flashed.

24 Q. Okay. So, that would be a no, correct?

25 A. Correct.

1 Q. And those six posts that you did open, were any of the
2 post locations simply missing the flashing instead of just
3 having bad flashing?

4 A. Some were missing metal flashing, and some the deck
5 coating did not go up properly around it. It were -- it
6 was, it was varied condition. That's why I specified for
7 all those locations to be repaired.

8 Q. And is that why you did a test cut to figure out
9 whether the flashing was back there or not?

10 A. That's why we did a test cut: because the gaps, in my
11 opinion, was not evidence that it was deficient.

12 Q. You couldn't tell until you did a test cut whether or
13 not the flashing was back there or not, correct?

14 A. Correct.

15 Q. And you've checked six posts?

16 A. Six posts and extrapolated it to all those types.

17 Q. Check six posts and extrapolated to hundreds of posts,
18 correct?

19 A. Extrapolated it to the amount that's shown on those
20 exhibits, yes.

21 Q. Now ---

22 A. Which is all of those type -- types of conditions.

23 Q. You've withdrawn your opinion as to how to fix the
24 fire violations, but you still believe that they occurred,
25 correct?

1 A. Yes.

2 Q. And, in fact, you believe that transverse truss
3 attics, of which there are twenty, have at least 2000
4 building code violations in the fire separation wall,
5 correct?

6 A. Yes. My previous testimony before I counted, it was
7 there was twenty. I assume there -- and this is in our
8 repair estimate -- there are twenty units with transverse,
9 which is transverse roof trusses, which is by far the worst
10 condition. I've, I've told Watkins to allow for twenty of
11 those units, but in hindsight, I've looked back and
12 recalculated. Only six of the buildings have the
13 transverse condition.

14 Q. So, you gave me a deposition four days ago and told me
15 there was ten transverse attics, and now you're telling me
16 there are six?

17 A. Right. I went back and looked at it and further
18 evaluated it because ten would be conservative, and that's
19 what I provided to Watkins. And since gone back again. As
20 an example, I think my, my scope is conservative.

21 Q. And you believe the traverse truss attics have 104
22 building code violations per residence, correct?

23 A. No, not 104. I said twenty-six truss penetrations per
24 unit, and then there's, I think, 104 linear feet. You got
25 to take the triangle of the roof. So, I've estimated a

1 certain amount of linear feet, twenty-six truss
2 penetrations per unit, and then I allowed for ten other
3 miscellaneous openings. I don't -- if I testified there
4 was 104 different locations per unit, then I was incorrect
5 there.

6 Q. Now, sir, you and Mr. Polk had been coordinating in
7 this matter, correct?

8 A. Yes, sir.

9 Q. And Mr. Polk is with your firm, correct?

10 A. Yes, sir.

11 Q. But in this matter, in this suit, he's the expert for
12 Tri-County, the master sub, correct?

13 A. Yes, sir.

14 Q. And you've actually subbed in for each other on some
15 site inspections, correct?

16 A. Yes, sir.

17 Q. You've actually had meetings with Mr. Polk's client,
18 Mr. Cole, without your client being present, correct?

19 A. Yes.

20 Q. Your role here is to represent the general contractor,
21 CBC, correct?

22 A. I'd say represent it in an engineering and building
23 consultant fashion, which is objective to me. I provide an
24 objective opinion.

25 Q. The, the general contractor, you would agree with me,

1 messed these houses up pretty badly, correct?

2 A. As I've testified in others, the general contractor's
3 responsible and for the -- partly for the building code
4 violations and constructions deficiencies, yes.

5 Q. The general contractor who messed these houses up is
6 proffering you to tell the jury how general contractors'
7 mess ups should be repaired. Is that correct?

8 A. Yes.

9 Q. Now, did Mr. Polk share with you the result of his
10 site inspection that occurred Friday when we were out of
11 court?

12 A. Yes.

13 Q. He shared with you his visits to 6 -- 1618?

14 A. Yes, sir.

15 Q. And did he share with you his photographs?

16 A. Yes.

17 Q. Which have been marked -- I've marked a set of similar
18 photographs as 1048. Does this look like the photos you
19 saw from the site visit?

20 A. Yes. I believe these are Mr. Mease's.

21 Q. These were produced before trial started, correct?

22 A. That's my understanding, yes.

23 Q. Mr. Polk took photographs for you all Friday of what
24 he saw, correct?

25 A. Correct. They were very similar.

1 Q. And there's about a dozen in this exhibit?

2 A. Yes.

3 Q. And his were similar to what you see here in Exhibit
4 1048, correct?

5 A. Yes.

6 MR. LUCEY: Plaintiff moves 1048 into evidence.

7 MR. KENDALL: No objection.

8 THE COURT: All right, admitted without objection,
9 1048.

10 (COLLECTION OF PHOTOGRAPHS MARKED INTO EVIDENCE AS
11 PLAINTIFF'S EXHIBIT NUMBER 1048.)

12 (A PAUSE.)

13 BY MR. LUCEY:

14 Q. And the first photograph is just identifying the
15 residence, correct?

16 A. Yes.

17 Q. And then we go to the second photograph is the
18 staining under the entry door on the first level of the
19 residence, correct?

20 A. Yes.

21 Q. And ---

22 A. It's not, well, it's not, say, under the entry door.
23 No, it's at the -- where you go up the steps and you take a
24 right to go on the front deck. It's not under the entry
25 door. It's under a post at the corner where the top of the

1 steps are.

2 Q. It's about 5 feet from the entry door?

3 A. Yes, approximately.

4 Q. And is the jury seeing water damage in this photo,
5 too?

6 A. Yes.

7 Q. Okay, and they're seeing it -- excuse me, not only in
8 the middle truss base but also over on the part -- double
9 dimensional lumber joist?

10 A. They're seeing staining of the joist and the joists
11 are typically pressure-treated, but there is damage to the
12 plywood deck sheathing.

13 Q. And the next photograph, number 3, is more of the
14 same?

15 A. Yes.

16 Q. And next photograph 4 is more of the same?

17 A. Close up, yes.

18 Q. And you, I take it, you weren't aware of this
19 particular damage until the site visit occurred Friday?

20 A. Yes. I went back and looked at my photos from
21 December 1, 2016, and that damage did not exist. It is
22 noticeably absent.

23 Q. So, you're not saying you didn't notice it in
24 December. You're saying that that front porch damage did
25 not exist period?

1 A. Right.

2 Q. You believe you looked at that spot?

3 A. Yes.

4 Q. So, you believe that that water, that particular water
5 intrusion location has started since you were there in
6 December of 2016?

7 A. Yes.

8 Q. And moving further back in this collection of
9 photographs, there's a photo of hardwood damage in the rear
10 in the living room in front of the sliding glass door. Am
11 I describing that accurately?

12 A. Yes. It looks like termite damage.

13 Q. And the hardwood had lost some integrity and buckled
14 up a bit?

15 A. Yes.

16 Q. And there in number 17, there's a knife showing that
17 it's lost its integrity?

18 A. Yes. That's hardwood flooring, so, yeah, that's
19 damaged. It's not structural but it's, it's damaged.

20 Q. You weren't aware of this termite damage either,
21 correct?

22 A. Right. It was not there when I -- it wasn't visible
23 when I went there on December 1, 2016.

24 Q. Okay, and looking at photo 18, this is the underside
25 of where the termite infestation was on the hardwood

1 flooring, correct?

2 A. Correct.

3 Q. Now, he's looking at the side of the beam under the
4 termite damage looking back towards the stairs. Do you see
5 that?

6 A. Right, but where the photographer's standing would be
7 under the exterior deck looking interior.

8 Q. Now, did he show you any pictures from the other side
9 where you could look up between the components and see the,
10 the cracks and the source?

11 A. He has photos. This is photos that I've seen from
12 underneath. No close-up photos, no, no soffit, no gypsum
13 board removed, but these close ups, I don't know if I've
14 seen these before. So, these are new to me.

15 Q. Okay.

16 A. And, yeah, I see them now. One's a photo of the
17 interior, close-up photo of termites, and one's looking up
18 into the --- trying to look up into the gap between that
19 Parallam girder -- or, excuse me, glue-in girder.

20 Q. And first of all, there shouldn't have been a gap to
21 look up and see, correct?

22 A. Right. It should be sealed.

23 Q. The entire ceiling under their house is supposed to be
24 separated from -- separate the carport from the residential
25 structure, correct?

1 A. Yes.

2 Q. No caps allowed?

3 A. No unsealed gaps allowed, correct.

4 Q. There's gaps in 1618, correct?

5 A. Yes, it would appear so.

6 Q. And now once you look into those gaps, you see the
7 termite traces, correct?

8 A. I can't see those in those photos, but I can imagine
9 you can see those termite dirt tubes.

10 Q. And you can tell the jury that the hardwood floor
11 damage wasn't in 1618 when you were there in 2016, but you
12 can't tell them that the termites weren't already in the
13 structure, can you?

14 A. I cannot say that.

15 Q. Now, you and I have been on the opposite side of this
16 table for ten or fifteen years now haven't we, Al?

17 A. Yes, sir.

18 Q. And you can't identify for me a single client of mine
19 who has ever received a double nail siding, face nail
20 siding residence, new residence from a builder, can you?

21 A. You mean from new construction? Has a ---

22 Q. Yes, sir.

23 A. --- double nail face nail? I can't identify one
24 specific instance, no.

25 Q. And there's a reason for that, isn't there?

1 A. No. I imagine most architectures and owners don't
2 like it. We've designed it for a, for a oceanfront
3 structure, too, but I can't identify one of your clients.

4 Q. And what did I just hear you tell the jury? Most
5 architects don't like it?

6 A. Most architects and owners do not like the face nail.

7 Q. You agree with me that water intrusion is a generally
8 harmful condition in a wood frame structure, correct?

9 A. Yes.

10 Q. And you would agree with me that it leads to the
11 degradation of wood and formation of growth which can
12 result in harmful or toxic substances, correct?

13 A. I'm a structural engineer and I can testify as to the
14 strength properties and that it grows fungus that destroys
15 it. I'm not a indoor environmental, so I can't identify
16 the toxicity or harmfulness in that regard.

17 Q. Now, in every case you and I have ever had together,
18 sir, you have always recommended the piecemeal repair,
19 correct?

20 A. If I've always recommended a repair that covers the
21 damaged areas, I wouldn't call it piecemeal.

22 Q. Some condominium complexes have tried piecemeal
23 repairs previously, correct?

24 A. They've tried localized repairs. Each complex or
25 building is different. Some have been repaired locally,

1 and some have moved on to wider repairs, right.

2 Q. And when you say that some have moved on, for some of
3 these condominium complexes, localized repairs did not
4 work, correct?

5 A. I've known of some that have not worked. I don't know
6 of ours that we've designed that have not worked.

7 Q. You're unaware of a single condominium complex that
8 ABS has been involved in, the repair of that was not a
9 piecemeal repair -- that was a piecemeal repair where it
10 did not work?

11 A. I know that ABS was involved trying to assist
12 developers and general contractors in complexes that had
13 since gone on to litigation, but each one of those is
14 different. And I don't know that our repairs -- in fact, I
15 don't know of a single one where the repairs done by ABS
16 did not work, though that could happen.

17 Q. And you're aware, of course, that almost all the TCR
18 condominium complexes on Daniel Island tried piecemeal
19 repairs first, correct?

20 A. They tried localized repairs, yes.

21 Q. And it didn't work. They're all getting completely,
22 completely reclad, correct?

23 A. I'm not familiar, but I know there's widespread
24 repairs on those. Those are different. Again, different
25 type of multifamily condominiums: different conditions,

1 different issues.

2 Q. You would agree with us that the locations where we've
3 documented there's no flashing at all is not the exercise
4 of slight care. It's the lack of any care at all, correct?

5 A. Where there's no flashing?

6 Q. Yes, sir.

7 A. It's, it's, it's a lack of flashing, so there was no
8 care to install the flashing where it's missing.

9 Q. It's a gross deviation from building standards,
10 correct?

11 A. I'll just say it's a deviation from building code and
12 industry standards.

13 Q. Sir, I'm going to just show you my copy to save time.
14 You're no doubt familiar with the CBC contract to construct
15 this residence which is in evidence as Exhibit 5.A?

16 A. Yes, sir.

17 Q. If you go to paragraph 8, it has the documents that
18 constitute the contract, correct?

19 A. Yes.

20 Q. And that includes a document called AIA Document
21 201-1997 version, correct?

22 A. Yes. That's the general conditions.

23 Q. All right, and I'm going to hand you those general
24 conditions, sir. Exhibit 583, correct?

25 A. Yes.

1 Q. Same thing we just read in the contract, correct?

2 A. Right.

3 Q. And let me ask you if you would, please, to confirm
4 for the jury general conditions is, is simply a further
5 delineation of responsibilities for the proper construction
6 of a project, correct?

7 A. Right. Clarification, yes.

8 Q. And so, for instance, there's a section in the general
9 conditions that says what the architect is supposed to do,
10 correct?

11 A. Yes.

12 Q. There's another section that says what the owner is
13 supposed to do, correct?

14 A. Yes.

15 Q. And then there's the contractor's section, section 3,
16 correct?

17 A. I believe so, yes.

18 Q. If you would, please read to the jury what paragraph
19 3.13 provides.

20 A. The contractor shall not be relieved of
21 obligations to perform the work in
22 accordance with the contract documents,
23 either by activities or duties of the
24 architect in the architect's administration
25 of the contract, or by tests, inspections,

1 or approvals required or performed by
2 persons other than the contractor.

3 Q. Okay. Seems pretty clear, correct?

4 A. I think so, yes.

5 Q. And why don't we just read to the jury paragraph 3.3.2
6 in the general conditions?

7 A. The contractor shall be responsible to the
8 owner for acts and omissions of the
9 contractor's employees, subcontractors and
10 their agents and employees, and other
11 persons and entities performing portions of
12 the work for or on behalf of the contractor
13 or any of its subcontractors.

14 Q. Thank you, sir. So, when that contract paragraph
15 refers to contractor, it was referring to Mr. Kendall's
16 client, Complete Building Corporation, or CBC, correct?

17 A. Yes.

18 Q. And that term said that CBC is completely responsible
19 for everything that Mr. Cole's client did. That
20 Tri-County, a subcontractor, is completely responsible.
21 The contractor has complete responsibility for the
22 subcontractor's acts and omissions, correct?

23 A. I believe that's what it says.

24 Q. And that holds true for the second tier
25 subcontractors, the siding installers, Miracle Siding, and

1 the roofers, correct?

2 A. Yes.

3 Q. General contractor, under what we just read to the
4 jury, is responsible for everything they did and didn't do,
5 correct?

6 A. Yes.

7 Q. And, sir, all of the damage pictures we've looked at
8 in this case from the bottom of decks, that's the underside
9 of where the water intrusion is actually occurring,
10 correct?

11 A. Yes.

12 Q. You would expect that the wood would be darker and
13 more damaged on the top side that's hidden by the Hydro-
14 Stop, correct?

15 A. That's likely, yes.

16 Q. And, sir, with the addition of 1618, is that the two
17 residences -- is two of the forty residences that have now
18 resulted in termite damage and infestation?

19 A. Say that question again?

20 Q. With the addition of 1618 from Friday's inspection, is
21 that now two Palmetto Pointe residences that you're aware
22 of that have suffered termite infestation and damage, or is
23 there more?

24 A. I recall 1618. You'll have to refresh my memory on
25 the others.

1 Q. You don't, you don't recall ---

2 A. Oh, wait. No, yeah, on the 1622 on the rear, right.
3 Is that what you're talking about?

4 Q. Yes, sir.

5 A. Yes. Yeah, termite damage is there on that exterior
6 wall.

7 Q. And that's 5 percent of the residences, correct?

8 A. Two out of 45 percent, yes.

9 Q. And water intrusion facilitates termite infestation,
10 correct?

11 A. It can. It can, yes.

12 MR. LUCEY: Thank you, sir.

13 THE COURT: Redirect?

14 MR. KENDALL: Thank you, Your Honor.

15 REDIRECT EXAMINATION BY MR. KENDALL:

16 Q. You were asked about -- I'm going to kind of take
17 these in the order that they came up -- new information
18 that came up regarding Mr. Smits. Were you aware in --
19 that, that at the trial, or did you become aware there was
20 new discussion about issues related to his recommendations
21 or his observations at the time of the trial?

22 A. Right, additional conditions up in the attics, yes.

23 Q. Your prior investigation, had you been aware that he
24 issued reports in 2016?

25 A. Yes.

1 Q. And had you used those reports to guide your
2 methodology?

3 A. Yes.

4 Q. Okay, and you were aware he had been deposed in 20 --
5 in January of 2018?

6 A. Yes.

7 Q. Okay, and had that formed part of your understanding
8 of the issue and the methodologies you were testifying to?

9 A. Yes. I reviewed his findings and didn't find -- in
10 his deposition, I didn't find anything different from mine
11 regarding penetrations.

12 Q. All right. So, when new information came in on
13 Wednesday of this -- of last week, and you weren't here in
14 the courtroom but were you able to, to review what, what
15 his -- what he added on Wednesday?

16 MR. LUCEY: Objection. Counsel is leading his own
17 witness.

18 BY MR. KENDALL:

19 Q. Have you been able to review his findings and the
20 information he brought to this court on Wednesday?

21 A. Yes, I have. He found additional penetrations,
22 including vents, which -- and then the wiring and the
23 plumbing, PVC. I knew about the fire sprinklers but some
24 of the plumbing waste vents I didn't know about, and ducts
25 in three of the units penetrating the sheetrock I didn't

1 know about.

2 Q. Okay, but when -- and that resulted in your deferring
3 to him on the scope, methodology of repairs?

4 A. For the penetrations, the fire assembly, right.

5 Q. Okay. Very good. You've seen Mr. Mease's reports in
6 this case?

7 A. I know Mr. Mease has one report and then numerous
8 photo logs, yes.

9 Q. Have you also seen Mr. Handegan's repair estimates?

10 A. I have, but I have not reviewed it.

11 Q. Okay. Are you aware of any protocol that's been --
12 anybody has suggested for -- or, first of all, on the floor
13 deflections that were discussed, have you seen anybody
14 who's written anything up as to whether that's a building
15 defect or a natural event that occurs with time?

16 A. Right. No, I have not seen any analysis by Mr. Mease
17 or other engineer as to what's causing those floor slopes.
18 So, I know that trusses, broken web trusses spanning 18
19 feet will deflect over time.

20 Q. And is that, is that fairly normal?

21 MR. LUCEY: Objection. Leading.

22 BY MR. KENDALL:

23 Q. Does that imply that there's a -- does the use -- does
24 the deflection in an 18 to 20 foot truss necessarily lead
25 to a conclusion that there's something defective?

1 MR. LUCEY: Objection. Leading.

2 THE COURT: I'll allow it.

3 BY MR. KENDALL:

4 A. No. 18 foot long open web truss will deflect and it
5 increases its deflection over time due to creep. Materials
6 simply start creeping is what it's called. It doesn't mean
7 it's unsafe. It just increases the deflection.

8 Q. And have you seen anybody put any price estimate on,
9 on repairing that?

10 A. No.

11 Q. You were asked questions, questions about posts that
12 are in your repair and posts that are not in your repair.
13 The posts -- we, we talked about posts where there's
14 configurations that have -- that are problematic, correct?

15 A. Right. They're a complex intersection of roof, deck,
16 and sometimes walls.

17 Q. All right, and does your scope of repair include all
18 of those complex intersections?

19 A. Yes.

20 Q. And does it, does it -- have you removed any because
21 no damage has yet occurred there?

22 A. No. It -- there's allowances for each one of those
23 locations for damage.

24 Q. All right. So in addition to fixing the -- correcting
25 the flashing itself, you, you -- the allowance is there for

1 if there's any damage that's discoverable?

2 MR. LUCEY: Objection. Leading.

3 Q. Is there ---

4 THE COURT: Sustained.

5 BY MR. KENDALL:

6 Q. Is there an allowance -- or what is the purpose of the
7 allowance around each of them?

8 A. In my opinion, it would be worst-case scenario. Some
9 of the locations, we observed damage from underneath. It
10 was limited, but I tried to provide allowance for an
11 expanded area of damage.

12 Q. Will there -- do you anticipate that some will have
13 more damage than others and others have less?

14 A. Yes.

15 Q. Okay, and the posts that are not included in your
16 repair, do they -- what's different about those?

17 A. Those don't intersect a roof or a wall. They're just
18 a post that sits on a deck with the exception -- well, 1611
19 is even different, but we -- with the exception of this one
20 at 1618, we haven't observed systemic damage underneath
21 those locations. And even at 1618, the condition's changed
22 from when we looked at it back in December 1, 2016.

23 Q. Do you have access to your photos from December 2016?

24 A. Yes.

25 Q. Could you call that up on the screen or are they ---

1 A. I can't call it up ---

2 Q. Do you have them ---

3 A. --- on my screen.

4 Q. --- on paper?

5 A. I've got them on paper.

6 Q. All right, I'll put them on the...

7 (A PAUSE.)

8 Q. And do you know what is the date these were -- oh,
9 these were taken?

10 A. December 1, 2016.

11 Q. Okay, and I don't have the exhibit book in front of
12 me.

13 MR. LUCEY: 715.

14 MR. KENDALL: Okay. Thank you.

15 BY MR. KENDALL:

16 Q. Just to orient, these are the -- this is the same unit
17 that we just looked at, and that unit is what?

18 A. The left unit, 1618, and the issue is at the top of
19 those stairs that go up to the front door.

20 Q. On the -- on this side?

21 A. Yes.

22 Q. Okay, and so the pictures we're going to look at were
23 taken from this area looking that direction?

24 A. Correct.

25 Q. Tell us what we're looking at there.

1 A. So, if you slide it maybe to the left, I think, maybe
2 the right part of it's where the current damage is and the
3 boxes. There's knots on the -- if you identify knots, this
4 is the location of a knot that's identified. But this is
5 the location of the damages that, reviewing those photos,
6 there's no stain or evidence of damage at those locations.

7 Q. All right, point to -- do you see a stair tread in
8 that picture?

9 A. Yes, a stair tread is right there.

10 Q. Okay, and I want to show the picture that was taken on
11 Monday. Do you see that same stair tread?

12 A. Yes.

13 Q. Okay, and where is the damage there?

14 A. Right in those -- these bays, and there's something
15 maybe in that fourth -- that closes ---

16 Q. And so in ---

17 A. --- in that corner.

18 Q. Other than the stair tread -- I mean, other than the
19 water leak, is there anything else different that you
20 observed between these two photos?

21 A. There are some termite bait boxes.

22 Q. Okay. Now, have you -- when you were there in 2016,
23 did you observe the condition of the, of the deck edge
24 flashing?

25 A. Yes. The deck edge flashing at the stairs had some

1 delamination at the top of the steps between the deck
2 coating and the drip edge.

3 Q. Okay, that's -- I'm sorry, when -- you observed that
4 in 20 -- in these photos, is that what you're referring to?

5 A. When I was there in December 1, 2016, there was some
6 delamination. Not to that extent.

7 Q. Okay, and why does delamination occur?

8 A. Delamination occurs when you have a loss of adhesion
9 between two substances, in this case between the deck
10 coating and the metal.

11 Q. Is it usual?

12 A. No. It's wear and tear.

13 Q. And where, where is -- have you, based on your review
14 of these photos, developed an opinion as to what's most
15 likely the source of the water staining that you observed
16 in the other photos?

17 A. Most likely Mr. Mease stuck his knife into that gap
18 between the deck coating and the drip edge, and at this
19 point in time that would be my most likely source of water
20 intrusion.

21 Q. And where is that drip edge located?

22 A. The drip edge is located at the edge of the deck.

23 Q. Okay. Is it also at -- is it near stairs?

24 A. Yes. This, this is the stair tread and it turns the
25 corner on the deck.

1 Q. Okay. So, this is at the top of the stairs?

2 A. Yes.

3 Q. All right. Was there anything that you saw in these
4 pictures that shows an installation defect?

5 A. No.

6 Q. You were asked about the termite infestation. Does,
7 does termite infestation require water intrusion?

8 A. No, it doesn't. Termites, they can send out their
9 scouts. They can identify soft wood, and they can create
10 their tubes that bring up groundwater. So, water intrusion
11 often facilitates it, but it's not always the case.
12 Sometimes you find damage at locations where they bring up
13 their own water.

14 Q. And have you, in the photographs that you've seen,
15 have you observed any specific -- have you observed that
16 there is even water in that area of those hardwood floors?

17 A. There was no evidence of stains to the sheetrock below
18 that location. That location is well protected by the
19 second floor deck up above. I didn't, at this stage,
20 didn't see any evidence of water intrusion at that
21 location, though when it's opened up, further investigation
22 can occur at that time.

23 Q. Okay, but based on the information that has been
24 provided to you thus far, are you aware of any building
25 deficiency, construction deficiency that has led to this?

1 A. No.

2 MR. KENDALL: Thank you. That's all I have.

3 WITNESS: Sure.

4 THE COURT: Anything further?

5 MR. KENDALL: None, Your Honor.

6 THE COURT: Okay.

7 MR. ATKINS: Just a few, Your Honor.

8 REDIRECT EXAMINATION BY MR. ATKINS:

9 Q. Mr. Schweickhardt, you just testified -- I assume you
10 had an opportunity to review trial testimony of Doug Smits
11 given in this trial?

12 A. No.

13 Q. You were not present when he testified?

14 A. Right. Right.

15 Q. Okay.

16 Q. So, you weren't present when Mr. Handegan testified?

17 A. Correct.

18 Q. And you've not been provided his trial testimony?

19 A. That's correct.

20 Q. So, you're not aware he made revisions to his estimate
21 on May the 7, 2019? You're not aware of that?

22 MR. LUCEY: Objection.

23 A. Not at ---

24 MR. LUCEY: No foundation. He's already testified he
25 wasn't here.

1 THE COURT: I'll allow it. He can answer.

2 Go ahead. Next time there's an objection is to wait
3 until I ---

4 WITNESS: Yes, ma'am.

5 THE COURT: --- rule for you. Thanks so much.

6 Go ahead.

7 MR. ATKINS: Okay.

8 BY MR. ATKINS:

9 Q. And you're not aware, you have no knowledge, it hadn't
10 been provided to you with a transcript or anything that
11 those revisions were made based upon your protocol to fix
12 the roof trusses?

13 MR. LUCEY: Objection. Misstates prior testimony.

14 Assumes facts not in evidence.

15 MR. ATKINS: I think I just ---

16 THE COURT: Can you rephrase it?

17 MR. ATKINS: Sure.

18 THE COURT: Thank you.

19 BY MR. ATKINS:

20 Q. So, you're not aware, you had no knowledge that, that
21 revisions made by Mr. Handegan to his estimate were based
22 upon your protocols to repair roof trusses?

23 MR. LUCEY: Objection, Your Honor. Misstates
24 testimony.

25 THE COURT: I'll allow it.

1 Go ahead. You may answer.

2 BY MR. ATKINS:

3 A. No, I'm not aware of Mr. Handegan's changes based on
4 my scope.

5 Q. But you draw on that scope?

6 A. Yes.

7 Q. Okay.

8 MR. ATKINS: Thank you very much.

9 RECROSS-EXAMINATION BY MR. LUCEY:

10 Q. You don't know whether what Mr. Atkins just
11 represented to you about prior testimony is true or not
12 because you weren't here.

13 A. Right.

14 MR. LUCEY: Thank you, sir.

15 THE COURT: All right, thank you very much. You can
16 step down from the witness stand.

17 Any objection to him being released from subpoena from
18 the plaintiff?

19 MR. LUCEY: Yes, ma'am. No objection.

20 THE COURT: Defense?

21 MR. KENDALL: None, Your Honor.

22 THE COURT: You are released. Thank you, Mr.
23 Schweickhardt.

24 WITNESS: Yes, ma'am. Can we take down the computer?

25 THE COURT: We're actually going to take our lunch

1 break now, so we'll have an opportunity for you to do so,
2 yes.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: All right, ladies and gentlemen, it's
5 12:15. It is time for our lunch break, as I just stated.
6 I would ask that you be back by 1:30, if you could, and
7 we'll resume at that time. Once again, please don't
8 discuss the case amongst yourself or with anybody else.
9 We'll see you back at 1:30.

10 (THE JURY EXITS AT 12:16 P.M.)

11 THE COURT: We will be at ease until 1:30. Is there
12 anything I need to do for you gentlemen before we break?

13 MR. KENDALL: Your Honor, just housekeeping more or
14 less. I at some point will need to submit evidence on
15 attorney fees and costs in support of my cross-claim. I
16 had intended that that would be by affidavit to the court.
17 Is that what you anticipated?

18 THE COURT: That is what I anticipated as well, yes.

19 MR. KENDALL: And I have a draft. I don't have it
20 notarized and signed. Does the timing of that matter a
21 whole lot for you? Do I need to do it before I close my
22 case in chief, or can I just submit it to the court?

23 THE COURT: You can, you can submit it afterwards if
24 you need to.

25 MR. KENDALL: Okay. I did ---

1 THE COURT: But it would be better if you did it
2 beforehand.

3 MR. KENDALL: I'll find a, I'll find a notary.

4 THE COURT: Tell me just while we're talking about
5 scheduling, how many more witnesses do you anticipate
6 calling?

7 MR. KENDALL: Just one, Mr. Watkins. He'll be here at
8 1:30.

9 THE COURT: Okay, at 1:30, and how many other
10 witnesses?

11 MR. COLE: Mr. Polk is here. He'll be my first
12 witness.

13 THE COURT: Okay.

14 MR. COLE: And I have probably two more.

15 THE COURT: Okay. Okay.

16 MR. ATKINS: I can start mine, I guess, in the morning
17 tomorrow some time.

18 THE COURT: How many do you anticipate?

19 MR. ATKINS: Four.

20 THE COURT: Four altogether?

21 MR. ATKINS: Yes, ma'am.

22 THE COURT: All right, Mr. Reeser, how many witnesses
23 do you anticipate calling?

24 MR. REESER: I may have one.

25 THE COURT: May have one. Okay.

1 All right, thank you very much. I'll see you at 1:30.

2 (OFF THE RECORD.)

3 THE COURT: Ready to call your next witness, Mr.

4 Kendall?

5 MR. KENDALL: Yes, Your Honor.

6 THE COURT: Bring the jury back in.

7 (THE JURY ENTERS AT 1:37 P.M.)

8 THE COURT: Please be seated, everybody.

9 Mr. Kendall, are you ready to call your next witness?

10 MR. KENDALL: I am, Your Honor. Thank you. Call JR
11 Watkins, please.

12 STEVE W. WATKINS, II, BEING DULY
13 SWORN, TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Please take a seat. Please state
15 your full name and spell your last name for the record.

16 WITNESS: My name is Steve Wayne Watkins, II,
17 W-a-t-k-i-n-s.

18 VOIR DIRE EXAMINATION BY MR. KENDALL:

19 Q. And, Mr. Watkins, you go by JR?

20 A. Yes, sir.

21 Q. And that's, that's -- if you don't mind, I'll probably
22 refer to you as JR.

23 A. Sure. Yes, sir.

24 Q. And thank you. Mr. JR, tell us what the name of your
25 company is and what you do.

1 A. My company is Watkins Services, Incorporated, and we
2 specialize in severe damage repair. We, we take buildings
3 apart and we put them back together, and we fix any defects
4 that we find.

5 Q. And what kind of -- or how long have your -- have you
6 been in that business?

7 A. Watkins Services is -- we're going on our twentieth
8 year, but that morphed. We basically combined two
9 companies that were formed in the late '70s, Watkins
10 Commercial Roofing and Watkins Waterproofing.

11 Q. All right. So, those, those businesses are now known
12 as?

13 A. Watkins Services.

14 Q. Watkins Services, and so how long have you've been
15 involved in these -- this work?

16 A. Since the mid-80s.

17 Q. All right. Now, you said you're the second. You go
18 by JR, so your father was Steve Watkins?

19 A. He was.

20 Q. And what -- was he involved in the business?

21 A. He was.

22 Q. And what was his role?

23 A. He was the founder and president. In fact, he and my
24 grandfather founded the business in the late '80s. My dad
25 passed away six years ago.

1 Q. All right, and what is your role? What has your role
2 been over the last six or ten years?

3 A. In the -- probably about 2001 I started running all
4 the field operations, and after my dad passed away -- I
5 used to run all the field operations, and my dad did this
6 work. He did the expert witness testimony, and -- but
7 after he passed, I had to take that over. So, I'm actually
8 doing both now.

9 Q. And are you involved in -- also in any of the
10 estimating and bidding parts of your company?

11 A. Yes, sir, I am.

12 Q. And, and sort of what is your role there?

13 A. I've been -- probably in the last seventeen years, I
14 participated very heavily in bidding projects. My dad and
15 our estimator, Robert Ayers, they would do the expert
16 witness construction litigation estimates. But my role was
17 actually putting the real numbers together to go and bid
18 projects. So, my dad and Rob would use the numbers that I
19 would put together with my subcontractors in the estimate
20 because that's how we'd put our estimates together. We'd
21 put them together as if they're a bid.

22 Q. All right, and you, have you put together a bid on
23 this project?

24 A. Yes, sir.

25 Q. Now, what sort of license do you hold?

1 A. I'm a unlimited general contractor in North and South
2 Carolina.

3 Q. And what does that allow you to do? What does
4 unlimited mean?

5 A. Last time I checked, I could do anything I wanted to
6 do construction-wise.

7 Q. Okay, and so unlimited refers to the scale of the
8 project?

9 A. Yes, sir.

10 Q. Okay, and how long have you had a contractor license?

11 A. Nineteen years.

12 Q. And have you -- did you -- tell me just a little bit
13 about your education.

14 A. I graduated Myrtle Beach High School in 1988. I
15 attended Coastal Carolina University. I didn't finish. I
16 attended Horry County Technical College. I did not finish,
17 but through that whole time I was working for my father out
18 in the field. So, I was trying to work and go to school at
19 the same time, but I wasn't mature enough to see it
20 through.

21 Q. And did -- how does one go about acquiring an
22 unlimited general contractor's license?

23 A. You have to have -- there's financial requirements
24 that enable you to, to have the unlimited level of the
25 license, but we have to pass a contractor's licensing test.

1 Q. And does that have to be renewed from time to time?

2 A. We have to pay to renew it, yes, sir.

3 Q. Okay, and so -- and any time -- and so let's talk
4 about this. You're familiar with the Palmetto Pointe at
5 Peas Island project?

6 A. Yes, sir.

7 Q. Have you had experience working on similar kinds of
8 structures with similar kinds of problems that you've seen
9 there?

10 A. Yes, sir.

11 Q. Give us an idea of some of the work that, that -- the
12 actual work that you've done on -- in repairing and
13 reconstructing buildings.

14 A. Well, we, we perform work. We do hard coat stucco,
15 remove it. We reinstall it with all the necessary
16 waterproofing involved. We take windows and doors out. We
17 -- sometimes we're able to install the same windows and
18 doors. Some -- you know, routinely we reinstall new
19 windows and doors. Vinyl siding, all types of lap siding.
20 Mainly HardiePlank. We used to do a lot of cedar but not
21 much of that in the last fifteen years.

22 We've done some EIFS. I think EIFS, it's, it's a
23 better product now than it used to be. So, we have done
24 some of that. I prefer hard coat stucco but, you know, I
25 have a background in -- actually with my own two hands,

1 even though I don't look like it right now even though I'm
2 sweating because I had to run in here. I'm sorry, but
3 installing shingles, EPDM roofs. All kinds of, you know,
4 horizontal commercial roofing, you know, slope roofs like
5 standing seam, asphalt shingle roofs, all those type of
6 things.

7 Q. Have, have you done other projects of similar size and
8 scope to Palmetto Pointe?

9 A. Yes, sir.

10 Q. And can you estimate over the last ten years how many
11 projects of that scale that you've been involved in?

12 A. I would, I would say dozens. We, we, we normally
13 gross between 4 to \$6 million in this type of work. So,
14 we, we're set up to do one, two, three projects of this
15 size a year.

16 Q. Okay, and do you do work outside the construction -- I
17 mean, outside the litigation context as well anymore? I
18 mean, other than testifying, you actually do these repairs
19 I guess is ---

20 A. Yes, sir, and, and I joke all the time when I testify.
21 The reason why I suffer through this -- because I'm not
22 comfortable doing this y'all can probably tell -- is that
23 this is part of the service that we provide as a company.
24 We're trying to get this work. I hope that the folks at
25 Palmetto Pointe will, will hire us or at least give us an

1 opportunity to bid the work once the case is over. So,
2 that's why we do this service: because we're trying to get
3 leads on projects so we can actually perform the work.

4 Q. And over, over time, do you feel like you have built
5 up a special expertise in this kind of work?

6 A. Yes, sir.

7 Q. And you, have you done work that's involved -- you
8 mentioned HardiePlank. Is that similar to CertainTeed?

9 A. Yes. Cementitious lap siding, it, it -- I think the
10 installation requirements now have -- they're, they're very
11 similar if not the same product, you know, based on -- it
12 doesn't matter the type of product you put on.

13 Q. And have you prepared an estimate for this project?

14 A. Yes, sir.

15 Q. And how did you, how did you go about, about obtaining
16 the information for the estimate that you prepared for
17 Palmetto Pointe?

18 A. Well, for, for Palmetto Pointe and for all the
19 estimates that we put together, like I said before, we
20 approach this as a bid. So, we're given a scope of work
21 which we consider bidding instructions, and they're a list
22 of items that the -- either the design professional or the
23 owner would like for us to price.

24 And so in, in this case and in -- which is typical of
25 all the, the cases that we do construction litigation work

1 on, is we get a scope of work. We hope that there are --
2 and, and usually if the project is a, is a newer project in
3 the last ten years, there's plans available that we can
4 pull take offs off plans. If not, we'll go in the field
5 and pull those take offs. In this case, we, we assisted in
6 a destructive test. So, we're able to get on-site and take
7 a look and see what the existing conditions are to help us
8 better put our numbers together.

9 But, but typically this work is -- every project that
10 we bid on and every project that we actually go and perform
11 the work, they're very similar but there's always unique
12 things that you have to, you to use your expertise and your
13 knowledge that you've built up over the years to, to
14 handle, you know, different types of waterproofing
15 applications and things like that. But most of the
16 applications at Palmetto Pointe are pretty, pretty routine
17 for us.

18 Q. Okay, and so have you had access to the plans for this
19 project?

20 A. Yes, sir.

21 Q. And have you seen photographs of the project?

22 A. Yes, sir.

23 Q. And you've been on-site as well, you said?

24 A. Yes, sir.

25 Q. Okay, and who, who was the design professional that

1 you worked with?

2 A. Al Schweickhardt with ABS.

3 Q. And what was his role in terms of directing you in
4 your preparation and proposal?

5 A. He provided us with a scope of work, and also there
6 were -- which happens in these cases. There, there's
7 follow-up questions and there's emails where we receive
8 additional information or bidding instructions or, or, or
9 scope item adjustments to make throughout the case. So, we
10 had our -- I think it was one scope. It may have been two,
11 and then we had emails with follow-up questions that helped
12 us put our final scope together so we could prepare our
13 final estimate.

14 Q. All right, and so then after you've been given a
15 scope, who, who determines the means and methods by which
16 the work will be accomplished?

17 A. We, we try to -- we always do best practices. We
18 always stay within code. We try to follow to the letter
19 the -- what the design professional asks us to do. A lot
20 of times when we get on-site, we're asked to do things a
21 certain way, and there's always little adjustments that you
22 have to make in the different applications. But we try to,
23 every chance we can in, in every case, follow the design
24 professional's instructions.

25 Q. All right, and then you also determine what it will

1 cost to do that?

2 A. Yes.

3 Q. In terms of the particular items that are going to be
4 worked on, do you do that evaluation, or is that given to
5 you?

6 A. I'm sorry. Repeat the question.

7 Q. We're going to go through in a few moments a list of
8 things that you've priced. I'm asking you how does that
9 list develop? Do you develop the list, or does someone
10 else give you that list?

11 A. No, no. Someone else gives us that.

12 Q. Okay. So, you're pricing what you've been asked to
13 price?

14 A. That's correct.

15 Q. Okay.

16 MR. KENDALL: Your Honor, at this time I'd like to
17 offer Mr. Watkins as an expert in estimating and building
18 repair and construction.

19 THE COURT: Okay. Any questions ---

20 MR. LUCEY: No questions ---

21 THE COURT: --- from the plaintiff?

22 MR. LUCEY: --- or objections, Your Honor.

23 THE COURT: All right, ladies and gentlemen, this
24 witness will be qualified in the areas of estimating,
25 building repair, and reconstruction. Once again, he can

1 give opinion testimony in these areas, but that does not
2 mean you must accept these opinions. It will be evidence
3 for you to use in any way that you see fit. Thank you very
4 much.

5 DIRECT EXAMINATION BY MR. KENDALL:

6 Q. I'm going to show you a document was premarked Exhibit
7 931. Watch out. There's some water right there.

8 A. Oh. I'm sorry about that.

9 Q. That's all right.

10 A. I won't mess it up. Justin will get mad at me.

11 Q. Is that the estimate that you prepared in this matter?

12 A. Yes, sir.

13 MR. KENDALL: Your Honor, I'd like to have that moved
14 into evidence.

15 MR. LUCEY: Objection, Your Honor. Hearsay.

16 THE COURT: Lay a little bit more foundation. Have
17 him identify it, the author of it, so forth.

18 MR. KENDALL: Okay.

19 BY MR. KENDALL:

20 Q. Is that an estimate that, that you prepared?

21 A. Yes, I helped prepare this, yes, sir. My estimator
22 and I put this together, yes, sir.

23 Q. And is that the routine and customary way by which you
24 prepare repair estimates?

25 A. Yes, sir.

1 Q. And you -- does it incorporate and encapsulate the
2 opinions that you have regarding the costs for repairing
3 this repair?

4 A. Yes, sir.

5 Q. Okay.

6 MR. KENDALL: Your Honor, again I'll move it into
7 evidence.

8 MR. LUCEY: Your Honor, plaintiff objects. It is an
9 out-of-court something that's being offered for the truth
10 of the matter asserted. Otherwise, there'd be no reason to
11 offer it. It was actually prepared mostly by his
12 assistant, Robert Ayers, not him, and reports by experts
13 typically don't come into evidence.

14 THE COURT: He did state that he did help author this
15 particular document, so I will admit it over plaintiff's
16 objection.

17 MR. KENDALL: Thank you, Your Honor.

18 THE COURT: Let's get a number.

19 MR. KENDALL: It was 931, I believe.

20 THE COURT: Exhibit 931. Thank you very much.

21 (PRELIMINARY DRAFT ESTIMATE BY WATKINS SERVICES MARKED
22 INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NUMBER 931.)
23 BY MR. KENDALL:

24 Q. JR, I'm going to put that on the overhead, and it will
25 show up on your screen.

1 A. Okay.

2 Q. So that the jury can see it at the same time. And
3 I'll zoom in in just a moment, but I just want to
4 familiarize with the -- are you able to see that, Mr.
5 Watkins? Is it still a little fuzzy? Can you see it on
6 your screen?

7 A. This is blank.

8 Q. Is that screen operable? I thought that worked in
9 front of you. I've seen other people look at it. Let's
10 just read through it ourselves.

11 A. Okay.

12 Q. I'm going to go through the various items that you,
13 you've included in your estimate, but first of all, will
14 you tell the jury what your total is for the repair that
15 has been specified, the parts of the repair that have been
16 -- you've been asked to price?

17 A. Yes. The, the total on my estimate pricing, the ABS
18 scope of repair is -- this is a little fuzzy, I'm sorry --
19 1.8 -- 9 -- 8 million \$163.27.

20 Q. Okay. I'm sorry. The copies have degraded over time.

21 A. I, I apologize.

22 Q. And if you have trouble reading, let me know and we'll
23 see if we can ---

24 A. Yes, sir.

25 Q. --- work that out. The first and -- the first section

1 of this repair is called general requirements. What are
2 general requirements?

3 A. There are thing that -- basic things that we need to
4 have on the project usually before we begin like
5 containers, dumpsters to remove our materials, if we need
6 any equipment. That's what I put in this category. You
7 know, if we're renting a office, storage, anything like
8 that. Scaffolding, pump jacks, anything we need access.

9 Q. And, and when you're setting up your general
10 requirements, do you have to make some determination of how
11 many -- how much time the project is going to take?

12 A. Yes, sir.

13 Q. And what did you determine would be the length of time
14 that you would be on this jobsite?

15 A. Eighteen months.

16 Q. Now, when you're anticipating doing the repairs, are
17 you working all at once, in sequence? How did you
18 anticipate it would roll out?

19 A. As far as how many buildings?

20 Q. Yeah. One building at a time? Three at a time?

21 A. We, we try to go three at a time. That usually works
22 best for us. These are town -- these are two-unit
23 townhomes, so we may be able to do the four at a time. We
24 may be finishing up the first building and beginning the
25 fourth building.

1 Q. Okay, and -- but you have estimated the overall
2 project will take about eighteen months?

3 A. Yes, sir.

4 Q. All right, and let's -- so, what was the total for the
5 general conditions or general requirements that you've
6 allocated to this job?

7 A. \$278,056.

8 Q. Let's go down after general conditions. There is a
9 line item there for shingle installation.

10 A. Yes, sir.

11 Q. And what is, what is your understanding about shingle,
12 the shingle installation part that you have at number 1.0?

13 A. The scope of work for ---

14 Q. Yeah.

15 A. --- that section? Al Schweickhardt asked us to -- on
16 the ramps or on the triangle edges of the roof, if the
17 shingles are hanging too far, to trim those back. So, I
18 have money in there to do that. And also on the eave or
19 the, the bottom part of the roof, he asked us to -- there's
20 a, there's a starter strip of -- it's a, it's a layer of
21 an, of an asphalt shingle. That's a starter strip, and
22 then the first course of the actual laminated shingle is
23 installed overtop of that. And he wanted us to go through
24 and dab some roof cement all along that eave to adhere
25 those better.

1 Q. Okay.

2 A. Those two, those two layers.

3 Q. If the trimming of the shingles also needed to be
4 done, the eve, because it hangs into the gutter, is that
5 accommodated within your scope?

6 A. It is not.

7 Q. Okay, and would it be similar in, in unit price to
8 what you have already?

9 A. Yes, sir.

10 Q. Okay. Now, when you -- then the next -- but there are
11 other sections where you're going to be addressing shingle
12 issues, are there not?

13 A. It -- where it's part of a, of a, of a different scope
14 of repair.

15 Q. Okay. So, item 1.0 is not the only place where you're
16 addressing issues related to shingles, correct?

17 A. That's correct.

18 Q. Okay. Let's, let's look at item 2 and the total.
19 Will you just tell us what, what that section covers?

20 A. This is the, the face nailing of the, the existing
21 HardiePlank that's installed on the, on the buildings at
22 the project. So, we're going to be installing nails in the
23 face of that siding and where -- there's some -- on, I
24 think fifteen units we're doing some base of wall remedial
25 work where we're removing two layers of siding and we're

1 reworking, basically relapping the WRB that runs behind the
2 lap siding.

3 Q. All right, let's pause there.

4 A. Sorry.

5 Q. New word for us. WRB is what?

6 A. The, the building paper.

7 Q. The Tyvek?

8 A. Tyvek, yes, sir.

9 Q. And so some of this includes addressing that issue?

10 A. Yes. If I'm remembering correctly, there's a reverse
11 lap where the paper was installed and then the flashing was
12 installed overtop of the paper. That's an incorrect
13 installation. So, we're going to cut that, insert another
14 piece, and lap it under the existing -- the new piece --
15 under the existing building paper and layer that overtop of
16 the existing base wall flashing.

17 Q. All right, and you've been given a, a linear foot
18 estimate of how much that is? Is that how you came up with
19 that? How do you know how much, how do you know how much
20 of that you need to do?

21 A. Oh. We were -- Al, Al Schweickhardt, or ABS, asked us
22 to price that for fifteen units.

23 Q. Okay.

24 A. So, we figured the, the total of, of all of the base
25 wall flashing that was installed on fifteen units, and

1 that's where we have our linear footage.

2 Q. Okay. So, you actually took the plans out and figured
3 out the, the math?

4 A. My estimator did, yes, sir.

5 Q. All right. Let's talk about what you, in pricing
6 this, what you anticipated you would have to do in terms of
7 the means and methods for the, for the -- you said
8 HardiePlank. Are you using that in the generic sense?

9 A. I'm sorry. The --- I'm not sure what's -- the
10 cementitious lap siding that's there, yes.

11 Q. Okay. We've heard -- we're hearing a lot of both
12 words. I just want to ---

13 A. I apologize.

14 Q. That's okay. Now. So, walk us through that, that
15 process of what you, what -- when you price this, what,
16 what it is you're expecting you're going to do.

17 A. For the entire section?

18 Q. For that section, yes. Just talk, walk us through the
19 process.

20 A. The -- there are 78,000 square feet of lap siding
21 that's installed on the buildings at Palmetto Pointe, and
22 we're going to add a face nail every 8 inches into that
23 siding. We have to pop lines so -- and the existing
24 siding, the existing paint has -- it's oxidized. It's
25 gotten chalky. So after we do that work, we're going to

1 wash the paint off, wash the oxydatin off the paint, and
2 we're going to install two coats of paint.

3 Q. All right, and when you go to nail -- put the nails
4 into the wall -- and, and I guess, did an engineer tell you
5 what kind of nails to use?

6 A. Yes.

7 Q. Okay. So, when you go to nail it in, where on the
8 wall are you going to be nailing it?

9 A. We're going to nail -- the studs are on 16 inch
10 centers presumably. So, we're going to install a nail into
11 a stud, install a nail intermittent between studs, and then
12 a nail in a stud. So, it's going to be a nail in a stud in
13 the field and a nail in a stud.

14 Q. And how are you going to locate those studs?

15 A. On fifteen of the buildings, we're pulling the siding
16 off of the bottom. So, it's going to be really quick for
17 us to identify where the, the studs are because the, the,
18 the wall sheathing behind the lap siding is nailed into the
19 studs, and we have -- they've got really good nail finders
20 now where you can find nails on the inside and on the
21 outside. So, we're going to use a stud finder to locate
22 the studs on the outside.

23 Q. Okay. What about the other five buildings that have
24 -- don't -- that -- where you're not removing the outside?
25 Do you have a way to locate the studs that ---

1 A. Oh, yes. There's a device like -- we, we're using a
2 Bosch that cost us almost \$100 and it has -- it's got four
3 settings on it that it has a deep setting where you can use
4 that, right. It'll go through cementitious siding. It'll
5 go through, you know, OSV or, or, or plywood wall
6 sheathing. So, you can locate the studs on the outside.
7 If we have any trouble with that -- we haven't had any
8 trouble with this device, but if we do have trouble with
9 that, we can use that device on the inside to, to mark
10 where the studs are.

11 Q. So, have you had to -- have you been involved in
12 repair projects where you've had to nail siding into studs
13 after -- in, in a, in a repair context? And maybe my
14 question wasn't clear.

15 A. I think I understand your question. We've done
16 pinning on siding. We have face nailed lap siding, but we
17 have not face nailed lap siding after it was installed.

18 Q. Okay, but you, you've, you've done it on original
19 construction?

20 A. Correct.

21 Q. To, to face nail?

22 A. Correct.

23 Q. And have you -- is there a -- can you recall a project
24 where you've face nailed lap siding?

25 A. Yeah, we did a project. Actually, Al Schweickhardt

1 was involved in that project. I think it was over ten
2 years ago, around ten years, maybe a little older than
3 that, the Windjammer up in Sunset Beach. Big, huge,
4 L-shaped building. I can't remember. It was thousands of
5 square feet and we had to -- his scope, because it was
6 right on the ocean, his scope was to face nail the siding
7 instead of blind nailing it.

8 Q. Okay, and have you -- had -- have there been any
9 complaints or, or problems that have arisen as a result of
10 face nailing that building?

11 A. Not that I ---

12 MR. LUCEY: Objection, Your Honor. Relevance. That
13 has only one set of the bottom nails. He just said it was
14 not ---

15 MR. KENDALL: It ---

16 MR. LUCEY: --- a repair job.

17 THE COURT: I think, think maybe just clarify a little
18 bit.

19 BY MR. KENDALL:

20 Q. As far as the face nailing, the appearance of the face
21 nailing and, and how it has held up over time, have you had
22 any observations or any, any -- have heard anything back on
23 that?

24 A. Not that I'm aware of. The, the owners seemed
25 satisfied with it when we finished, and we didn't have it

1 -- we didn't have a call back on that.

2 Q. So, after you have done -- completed that section of
3 work, just sort of describe what, what it will look like.

4 A. We're putting face nails in the siding. We're not
5 breaking the skin of the siding with the head of the nail.
6 So, that nail's going to be flush. It's going to have two
7 coats of paint on it. So, I think I'm answering your
8 question. If -- walking by the building at a glance, you
9 won't notice it. If you study the building, if you get up
10 close, you will notice the nails.

11 Q. Okay, and, and the buildings are painted now, but this
12 is -- this will protect. This is additional coats of paint
13 that will be added because they'll endure for a while?

14 A. Yes, sir.

15 Q. All right. What do you have as the, as the cost for
16 all of the -- what is this line item, allowance for
17 interior paint where needed?

18 A. When you're doing work on a wall, especially remedial
19 work, you're going to vibrate that wall. And nailing the,
20 the -- face nailing nails into the siding is going to
21 vibrate the wall, so we could have nail pops on the inside.
22 So, I have an allowance to go inside the unit on the
23 interior of the exterior walls and fix the nail pops that
24 we find.

25 Bless you.

1 And put a coat of paint.

2 Q. What is the total that you have estimated for the
3 restoration of the fiber cement siding?

4 A. The total of -- the entire section 2?

5 Q. Number 2.

6 A. \$434,520.

7 Q. Let's go to item number 4. What is that item?

8 A. This is -- there's a -- at unit 1611, there is a -- Al
9 wants us to redo the deck coating at a deck at that unit,
10 and the coating is liquid applied, so we have to remove the
11 actual deck that's underneath. We have to remove that. We
12 have to remove -- there's a, there's a bedroom entry door
13 there. We have to remove that door so we can hide it under
14 the threshold of the door. We've got to remove perimeter
15 siding. There's a lot of work that's involved in that, so
16 we're basically taking all of that off, adding new -- a new
17 deck underneath the coating, and reapplying the coating.

18 Q. And that's at -- what, what unit is that?

19 A. At unit 1611.

20 Q. All right, and what's the, what's the total? What's
21 the total cost for rebuilding that deck?

22 A. \$5,891.30.

23 Q. We'll skip to item 9, and I'm skipping 6 because it's
24 an, it's an issue that's been resolved.

25 A. Okay.

1 Q. But going back to item, let's see, 8. Do you have an
2 item for 8 that says slope at flashing at base of
3 serpentine siding? Is that incorporated in number 2? Do
4 you have no, no breakout on that?

5 A. I...

6 Q. When you fix the z-flashing at the bottom of the
7 bases, will you address the sloping of it?

8 A. I need to see Al's scope, but I think Al said that
9 there was no repair required there.

10 Q. Okay.

11 A. Yeah. Normally, normally if we were take -- if we
12 take -- if there's a redundant instruction on the -- in our
13 scope of repair, we'll put a note on that. But this says
14 NA, so I'm thinking that -- there were several items that
15 he listed and he said that there was no repair required.

16 Q. Okay.

17 A. So, I think this was one of them.

18 Q. All right, number 9, this has to do with repair of
19 firewalls?

20 A. Yes, sir.

21 Q. And when you priced this, what was it based on?

22 A. Al Schweickhardt's scope of work.

23 Q. Okay, and Mr. Schweickhardt testified earlier today
24 that because of new information, he was withdrawing his
25 scope of repair. So, I'm going to just take that off and

1 we'll make adjustments as needed. So, let me just ---

2 MR. LUCEY: Objection. Move to strike counsel's
3 comment. This has already been moved into evidence; it
4 cannot be stricken from the evidence.

5 THE COURT: Ladies and gentlemen, disregard the last
6 statement made by the attorney.

7 MR. KENDALL: Very good.

8 THE COURT: And just go on to your next question.

9 MR. KENDALL: Thank you.

10 BY MR. KENDALL:

11 Q. Number 10, what do you understand what number 10 is?

12 A. There's a -- I think there's four, there's four or
13 five -- these buildings were constructed on piles. It's on
14 a, on a island on a mud flat, I guess, and this is typical.
15 We do a lot of this work at, at -- we're based out of
16 Myrtle Beach. We do a lot of this work in Myrtle Beach.
17 You'll have corrosion or there'll be, there'll be defects
18 on the bolts that attack the cross braces of the piles that
19 were driven to support the building. So, we have -- we are
20 changing some -- we're changing out the, the -- some nuts,
21 some bolts. There's some shims that when you, when you
22 install these piles, they try to cut them properly, but
23 they never can get them perfect because they're a material.
24 So, they have shims on top of the piles that receive the
25 floor framing for the next level above. So, we're

1 replacing those shims.

2 Q. Okay. Item 12, what is -- you've got that titled Rear
3 Deck Post Flashing. What's your understanding of that
4 work?

5 A. This is -- this section is similar to, I think, two,
6 maybe three other sections where there's a -- in Al
7 Schweickhardt's scope of repair, he has a chart or a list
8 of, of posts that are at or on various decks at the
9 project. And where they intersect the asphalt shingles,
10 he's having us do repair where we're taking the shingles
11 off. We'll have to remove the rails. Sometimes there's a
12 new wall involved where we have to take the siding off a
13 new wall. We may have to repair the -- totally repair the
14 new wall or replace it.

15 Basically we're taking everything off that's touching
16 or associated with these posts. We are flashing. We're
17 putting a liquid membrane on the post to stop any water
18 from going past the post through the roof deck and dripping
19 down below. Then we're putting membranes, putting the
20 paper back, putting the shingles back, and putting the
21 counter flash over top.

22 Q. And in terms of the -- when you -- once you've taken
23 it apart and you find that there's any rotted or
24 deteriorated wood, what do you do?

25 A. We, we will fix that. Al has allowed 9 square feet

1 per locations as an allowance. So, if we take the shingles
2 away from the post, we have at every location, whether it's
3 damaged or not, we have money in there to replace 9 square
4 feet of sheathing if we find it damaged.

5 Q. And what about other structural pieces and parts?

6 A. In this section, yeah, we've got -- and these square
7 footages were given to us, these allowance square footages
8 were given to us by ABS, and they have -- he's got 54
9 square feet per location for sheathing, 54 square feet per
10 location for framing. So, the plywood OSB that's there and
11 the framing that supports it, we have allowances to fix the
12 54 square feet per location per post.

13 Q. All right, and so, so, if it -- if you are -- if you
14 open it up and you find a problem with rotten wood, tell me
15 how you -- what you do as you work through that, what you
16 expect to do.

17 A. If we find rotten plywood decking or, you know, roof
18 decking or the framing, we replace it.

19 Q. And the allowances, it might be used, it might be
20 exceeded, and is that -- if you, you're -- just because you
21 get to 9 feet, are you going to stop?

22 A. No. We, we will follow it. We will chase it to the
23 end.

24 Q. And do you have also some -- do you have any, any cost
25 built into this particular item for interior work?

1 A. I think there was another section that we were doing
2 the ---

3 Q. I just saw ---

4 A. --- ceiling.

5 Q. --- line 12.05: remove, replace gyp, interior gyp.

6 A. Yes. That's correct.

7 Q. What is that? Just, just so that your ---

8 A. If there's -- I'm assuming what A1 is prescribing us
9 to do if there's damage associated with this post leak and
10 if it impacts the interior gypsum, we have 54 square feet
11 per location to repair.

12 Q. And how many locations did you, did you base this on?
13 Can you back that out or...

14 A. Ninety-eight.

15 Q. Of the, of the flash of the posts?

16 A. Yes, sir.

17 Q. And how many interiors?

18 A. I didn't think my eyesight was getting this bad. I
19 guess it's the lighting. Looks like maybe six.

20 Q. Okay. You said there's some other similar areas.

21 What are those other similar areas or, or items? I guess I
22 should say it that way.

23 A. Oh, work that's similar to this?

24 Q. Yes.

25 A. Section, section 24.A is titled Second Floor Front

1 Deck Shingle Post.

2 Q. Okay.

3 A. Section 24.C, second floor front side deck. That has
4 post flashing work in that section.

5 Q. All right. How about 24.B? What is -- how -- what is
6 that? What is the nature of that work?

7 A. That's a, a front deck a, a built-up column. It's a,
8 it's a -- it's almost like a...

9 Q. We can -- going to offer -- see if, see if somebody --
10 see if those will help at all.

11 A. I don't know if those will work or not.

12 Q. Yeah. I don't either, but -- they might be too strong
13 or not.

14 A. If my son saw me, he would -- this would not be good.

15 Q. Does that help at all?

16 A. A little bit.

17 Q. Okay.

18 A. I'm sorry, what was the question?

19 Q. I was asking about 24.B.

20 A. 24.B, that's a -- that, that is also working on a
21 component of a deck, that it's a built-up. It's like a, a
22 built-up column, but it's like a short wall that we are --
23 that we're reframing.

24 Q. All right.

25 A. And repairing the waterproofing.

1 Q. All right. We skipped over some items, so let's just
2 make sure we've covered some things. Item, let's go to 13,
3 corrosion of aluminum trim. What is your understanding of
4 what you're going to do there?

5 A. There are -- there's, there's beams over openings,
6 especially at porches that are wrapped in what we call coil
7 stock. It's very thin, decorative aluminum, and if I
8 remember the scope correctly, the aluminum is in contact
9 with pressure-treated lumber and it causes it to corrode.
10 So, we're removing that. We're going to put a membrane to,
11 to waterproof and protect that beam, and then we're going
12 to reinstall the coil stock decorative flashing.

13 Q. And do that for the entire project?

14 A. Yes, sir.

15 Q. And what's the -- what was the line item cost for
16 that?

17 A. That was 13?

18 Q. Yes.

19 A. Let me make sure I'm correct here. Sorry. \$106,500.

20 Q. Okay. Number 18, what is that?

21 A. That's a line item for corroded post cap screws.

22 Q. Okay.

23 A. The best I can recall, the, the, the scope was that
24 the railing posts, the caps are attached with screws and
25 they're corroding. So, Al wants us to replace the screws.

1 Q. All right, and how much do you have for that?

2 A. \$6,400.

3 Q. And that's throughout the whole complex?

4 A. Yes, sir.

5 Q. And then similar -- or another item is 20, corroded
6 fasteners in exterior post base trim?

7 A. Yes, sir.

8 Q. Now, what, what does that involve?

9 A. The, the best I can recall the, the scope item is that
10 we're going to treat the heads. I, I hate to assume in, in
11 a, in a trial. I know I'll get in trouble, but I'm
12 assuming that the, the fasteners that were installed were
13 not resistant to weather. So, we're going to coat the
14 fasteners that are there. We're going to add fasteners.
15 That either the existing screw was either -- or nail was
16 either too corroded to do its job or it's missing, and then
17 we're going to paint the post or the column.

18 Q. Are some of these posts going to be -- are they
19 included also in the flashing post -- the post flashing
20 parts of the job?

21 A. I can't recall that.

22 Q. All right.

23 A. Most of these stand alone, so they may or may not be.
24 Most of the other posts, they're intersecting sections of
25 roof.

1 Q. Okay. On those, you're completely redoing all the
2 trim, the ones that intersect the roof?

3 A. Yes, sir. We're, we're doing a full repair on those,
4 yes, sir.

5 Q. All right. Item 22, rear lower slope roof -- rear
6 lower roof slope, roof slope, what, what is -- what's the
7 condition there?

8 A. I'm not sure about the condition.

9 Q. All right. What are you doing?

10 A. There's five locations on the Palmetto B style
11 townhomes, and at those five locations we're taking
12 shingles off. We've got an allowance in there of 64 square
13 feet to replace rotten roof decking that we find. When we
14 take the shingles off, when we take the deck off to
15 waterproof those areas properly, we have to take the
16 surrounding siding off so we can turn the waterproofing up.
17 So, we're putting a -- and I want to make sure I don't have
18 this confused with a -- there's another section that's
19 similar to this. Yes, we're, we're installing liquid
20 applied membrane in these areas because they're low slope.
21 Then we're putting the, the building paper or roofing felt
22 back, and then we're installing the asphalt shingles, and
23 then we're reinstalling the siding that was removed to do
24 the, do the proper flashing.

25 Q. Okay, and what do you, what -- for those five

1 locations where that's being done, what was the price for
2 that?

3 A. \$19,120.

4 Q. All right. Item 23.

5 A. There's three locations at the Palmetto A and Oak A
6 rear deck privacy wall, and we are -- the privacy walls I'm
7 assuming are rotting or there's other issues, but we're,
8 we're basically rebuilding those privacy walls.

9 Q. Okay, and what's associated with rebuilding the
10 privacy walls?

11 A. We've got to, we've got to take the siding off,
12 repair. Take the sheathing off, repair any framing that we
13 find that's damaged. We're installing liquid applied
14 membranes surrounding that, reinstalling the membrane,
15 Bituthene membrane, and, and shingles.

16 Q. And for those three locations, what, what is the
17 total, total estimate?

18 A. \$35,175.

19 Q. And we've discussed 24.A, B, and C. Let's just go
20 down to 25. What is item 25?

21 A. The, the best I can recall and the way this reads is
22 that -- and this is very typical to a lot of projects that,
23 that, that we make repairs on is that the, the intermittent
24 posts on the, the deck rails or the deck railings are not
25 attached, probably because there's not enough dimensional

1 lumber to get a proper lag bolt or screw to secure there
2 those intermittent posts. So, we're adding a block to the
3 framing underneath. Taking the ceiling out, adding a
4 block, reinstalling lag screws to reinforce the attachment
5 of the intermittent posts.

6 Q. And as a result of the work you do, are you -- will
7 you be correcting the problem that we see in this picture?

8 MR. LUCEY: Objection. Foundation.

9 Q. Have you, have you seen this area of these houses?

10 THE COURT: Does that have a label by any chance?

11 MR. KENDALL: Well, it was, it was an excerpt from --
12 Mr. Boyd referred to a number of times, unit number 629.

13 THE COURT: Okay, perhaps we could mark it, at least
14 for ID purposes.

15 MR. KENDALL: Well, I'll, I'll need to just ask the
16 questions.

17 THE COURT: I'll be happy to ---

18 Q. As a result ---

19 MR. KENDALL: I'll just ask it differently. That's
20 fine.

21 BY MR. KENDALL:

22 Q. The, the areas where -- the intersection of the post,
23 the deck, and the roof, and you observed those areas
24 yourself?

25 A. I don't recall seeing that area, the damage on that

1 area.

2 Q. On that particular building?

3 A. But that picture ---

4 MR. LUCEY: Objection. Move to strike commentary.

5 That's not what the witness says.

6 MR. KENDALL: I'm sorry. He was pointing with his

7 hand.

8 Go ahead.

9 THE COURT: Objection overruled at this point in time.

10 Go ahead and finish the question.

11 BY MR. KENDALL:

12 Q. You said you had seen -- you'd been involved in some
13 destructive testing?

14 A. Correct.

15 Q. And is the scope of repair that you are -- have priced
16 include doing that repair throughout the project?

17 A. Well, we have several locations where we are totally
18 rebuilding that built-out column.

19 Q. Okay, and other, other locations where there's the
20 deck roof ---

21 MR. LUCEY: Objection. Counsel's leading his witness.

22 Q. In other ---

23 THE COURT: I'll allow it.

24 MR. KENDALL: Let me finish the question.

25 THE COURT: Go ahead and finish the question.

1 BY MR. KENDALL:

2 Q. In other locations where you have the deck roof wall
3 or post intersections and -- will your -- what does your --
4 how does your repair resolve those issues?

5 A. The best way I can answer that is we were given a
6 count of areas to repair. So, if, if the damaged area is
7 in one of those counts, we will totally take care of that.
8 We will make that repair because that's what we did.

9 Q. Okay.

10 A. I don't know if -- the counts I was provided by Al
11 Schweickhardt, I don't know if that's all the areas.

12 Q. You just know the count you were given?

13 A. That's correct.

14 Q. Okay, and within the matters that you have priced, is
15 you -- is it your opinion that this work can do done for
16 that amount?

17 A. Oh, absolutely. I -- yes. I want to do this work.
18 That's why I'm here.

19 Q. Okay.

20 A. Yes, sir.

21 Q. And to the line -- and, of course, to the line items
22 at the bottom, you've added some markups, correct?

23 A. Correct.

24 Q. And those are standard type of markups that you apply
25 to jobs like this?

1 A. Yes, sir.

2 Q. Okay, and if you had the opportunity today, would you
3 start this work?

4 A. Absolutely.

5 Q. Okay.

6 MR. KENDALL: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. COLE:

8 Q. Hey, JR.

9 A. Mr. Cole, how are you?

10 Q. I'm doing all right. Just have a couple questions for
11 you. You provided some testimony over how long you believe
12 that the repairs would take at Palmetto Pointe, correct?

13 A. Correct.

14 Q. Have you been involved in repairs on property before
15 where people stayed in their units?

16 A. Yes.

17 Q. Do you believe that the people of Palmetto Pointe can
18 stay in their units when you do your repairs?

19 A. Yes.

20 Q. You've been out there before, correct?

21 A. Correct.

22 Q. There is a main access that comes from the street to
23 the front door, correct?

24 A. Correct.

25 Q. Is there another way to get into the buildings?

1 A. Andrew, I don't recall that.

2 Q. What about the stairs?

3 A. I'll take your word for it there is, yes.

4 Q. Are there stairs in the garage to get up to the
5 inside? You remember that?

6 A. I'd have to see a picture.

7 Q. Okay.

8 A. I'll take your word for it. I'm assuming there's two
9 ways to get into that building, yes, sir.

10 Q. All right. If you can access the garage from the
11 inside, then whatever work is being done -- for example,
12 recoating any of the, the walkways -- they can access
13 without having to go in the front door, correct?

14 A. If what you're saying is correct, that is correct.

15 Q. Okay. With the face nailing that you're describing,
16 face nailing is allowed under the CertainTeed installation
17 instructions?

18 MR. LUCEY: Objection to leading, Your Honor. He has
19 adopted this witness as his expert witness in the formal
20 papers ---

21 MR. COLE: I'll rephrase, Your Honor.

22 THE COURT: He'll rephrase it.

23 Q. The CertainTeed ---

24 THE COURT: Thank you so much.

25 BY MR. COLE:

1 Q. Does CertainTeed allow face nailing?

2 A. I'm not sure about CertainTeed.

3 Q. Okay. The ---

4 A. And, and that's because mainly when we are doing --
5 when I'm looking at documentation on these cases about face
6 nailing, it's usually HardiePlank.

7 Q. Okay, and you said the Hardie and CertainTeed are
8 similar?

9 A. They -- it's been my experience fifteen years ago,
10 they were kind of far apart as far as installation
11 instruction, but they, they kind of mirror each other now.

12 Q. Okay. The -- you mentioned Tyvek. You said that was
13 building wrap?

14 A. Yes, sir.

15 Q. Okay. Can you describe to me what Tyvek is?

16 A. It's a, it's a, a weather resistant. That's why I was
17 calling it WRB before. It's, it's actually the building
18 paper. It's the white paper you see. When you're seeing
19 houses being built, that's installed behind whatever
20 cladding that is going to be installed.

21 Q. Is that the same kind of material that the -- you get
22 a letter from the post office that's in kind of that
23 plasticky type material? Is that similar?

24 A. Similar.

25 Q. All right.

1 MR. COLE: Thank you.

2 WITNESS: You're welcome.

3 DIRECT EXAMINATION BY MR. ATKINS:

4 Q. Good afternoon. Let me ask you something. You got
5 Exhibit 931 that's in evidence, and you got section 9 on
6 there, line 9, which is basically repairs to fire
7 separation walls, fire-rated separations, including the
8 firewalls up in the attics, right?

9 A. That's correct.

10 Q. And that was based on what Al Schweickhardt told you
11 he wanted you to do for scope of work?

12 A. That is correct.

13 Q. Has Al Schweickhardt ever come back to you and told
14 you never mind, take that out. I've got a different scope.
15 I've got something else in mind.

16 A. Not to my knowledge.

17 Q. Okay. Fine.

18 MR. ATKINS: That's all I've got. Thanks.

19 MR. REESER: No questions, Your Honor.

20 THE COURT: All right. Thank you, Mr. Reeser.

21 Cross-Examination.

22 CROSS-EXAMINATION BY MR. LUCEY:

23 Q. Mr. Watkins, how are you doing?

24 A. Mr. Lucey, how are you, sir?

25 Q. Good, sir. Thank you for joining us.

1 A. Yes, sir.

2 Q. Now, Mr. Watkins, you've done complete reclads of
3 condominium apartment complexes in South Carolina, correct?

4 A. That's correct.

5 Q. You've done piecemeal reclads where you didn't do
6 everything. You left some original part of the envelope in
7 place, correct?

8 A. Correct. We call it targeted repairs, but you are
9 correct.

10 Q. Okay, and some targeted repairs work out and some
11 don't, correct?

12 A. Are you asking me the work we do?

13 Q. Well, let's take 200 River Landing Drive, for
14 instance. The rip in the parapet wasn't repaired in that
15 reclad, was it?

16 A. It was not.

17 Q. Water travels from the top down, doesn't it?

18 A. Yes, it does.

19 Q. What has water done at 200 River Landing Drive since
20 the, quote, targeted, unquote, repairs occurred?

21 A. From what I've been told, it, it is getting in up in
22 the parapets.

23 Q. So, they're going to go through a second round of
24 repairs, correct?

25 A. Yes, sir.

1 Q. Not yet. When the litigation's done?

2 A. Yes, sir.

3 Q. Let's come back to that.

4 A. Okay.

5 Q. You with me? Remember that spot for me?

6 A. Yes.

7 Q. Okay.

8 A. It is Monday, so go easy on me.

9 Q. Now, you used the word we a lot when you're talking on
10 the witness stand. Do you recall that? We. We do this.
11 We do that. We this, we that.

12 A. Yes, sir.

13 Q. Let's tell the jury just a little bit more about your
14 firm as it currently exist. You've got two departments,
15 right, essentially?

16 A. As far as the physical work we do.

17 Q. You've got your destructive test department and
18 litigation support department on the one side. You've got
19 your construction department on the other side, correct?

20 A. Oh. Yes, sir, you are correct.

21 Q. And the last time, last time I had the pleasure of
22 deposing you, which is One Bell Hall. Remember that?

23 A. I do, yes, sir.

24 Q. Okay. Three years ago, four?

25 A. I think so, yes, sir.

1 Q. At that point in time, the only actual construction
2 workers -- I'm not talking about superintendents. I'm
3 talking about workers. The only actual workers that worked
4 for your firm were in the litigation support testing
5 department, correct?

6 A. Yes, but they do crossover.

7 Q. They do crossover?

8 A. Yes, sir.

9 Q. But they're assigned to the litigation support
10 department?

11 A. Yeah, they do. They help with our destructive
12 testing, yes, sir.

13 Q. So, Watkins Services is kind of a little bit like Mr.
14 Kendall's client, Complete Building Services. They don't
15 do the work. They sub it all out, right?

16 A. We sub out.

17 Q. So, when you say we are going to do this, we does not
18 necessarily really include Watkins Services. Watkins might
19 have one guy on-site, a guy called a superintendent. All
20 the workers will be subcontractors, different companies,
21 correct?

22 A. That's correct.

23 Q. In fact, you use one subcontractor principally, AC or
24 AL something or other?

25 A. Yes, sir.

1 Q. They recently underwent a name change about four years
2 ago?

3 A. They were A.C. -- they were ACR for a long time. I
4 think it was about a year ago that they went to a name
5 change, about two years ago because there, there was a
6 partnership and they split.

7 Q. And they're the ones that supply the site
8 superintendents for their crews on Watkins jobs, correct?

9 A. Correct. Now we have a full-time dedicated to the
10 project, years and years of experience doing it our way on
11 that site the entire time the project is being performed.

12 Q. You have a project manager?

13 A. Yes, sir.

14 Q. He's ---

15 A. Well, it's a field superintendent.

16 Q. But the superintendent supervising the crews belongs
17 to the unrelated subcontractor called AC or AL or whoever
18 they are?

19 A. Yeah. They do, they do supply their crew bosses, yes,
20 sir.

21 Q. And you don't even vet them ahead of time. You got
22 them on the job. You do not vet these crew bosses ahead of
23 time.

24 A. Well, we've used them and know them for years and
25 years.

1 Q. But when they put a new crew boss on, you don't vet
2 them ahead of time. You, you watch them on the job,
3 correct?

4 A. Well, they, they have -- I mean, to be fair, we -- the
5 subcontractors that we use, we use those repeatedly.
6 That's the only way we can stay in business because we
7 teach them the way we want the work to be done. They
8 perform it the way that we need it and want it to be done,
9 and we keep hiring them to do our work so there's, there's
10 continuity there.

11 We don't -- when we get a project, I don't bid it out
12 to subcontractors and give it to the lowest sub,
13 subcontractor bidder. We use the same folks over and over
14 again just like we use the same suppliers over and over
15 again.

16 Q. And used those same people at 200 River Landing Drive,
17 too, correct?

18 A. Yes, sir.

19 Q. Now, the jury has received one repair estimate from an
20 employee of Trident Construction last week. Are you
21 familiar with the company Trident Construction?

22 A. I'm not familiar with it; I've heard of that name, but
23 I'm not familiar with them.

24 Q. You're not aware they do new construction and your
25 type of work?

1 A. I do not know that. The reason why I say that, I
2 haven't -- as far as I know, I have not competed against
3 them with bids before.

4 Q. They just built the high school up by the East Cooper
5 Airport, the specialty high school. Are you familiar with
6 that project?

7 A. I'm aware of it, yes, sir.

8 Q. Now, talking about the deck post rot, you've seen the
9 deck post rot like Peas Island in some of your jobs before,
10 haven't you?

11 A. Yeah, but, I mean, yeah, I see a lot of rot,
12 absolutely.

13 Q. You've been repairing deck post rot, rear deck rot up
14 at Colonial Villas for a good bit of time, haven't you?

15 A. Yes, sir. It's -- yeah, that's a typical place where
16 water comes in, yes, sir.

17 Q. And that was -- and there was enough water coming in
18 that y'all decided to completely rebuild those decks,
19 correct?

20 A. Yes, sir.

21 Q. Because that's what they needed, right?

22 A. Well, the, the water was coming in at the, the deck
23 posts and the intermittent railing posts, and it was
24 getting to the beams that were untreated and they were
25 rotting the beams out. So, there was -- they were, they

1 were on the verge of collapse, so we did have to -- we had
2 to, we had to shore them up and rebuild. We didn't rebuild
3 the entire deck, but we shored them up and we replaced
4 those beams and the, and the decking, yes, sir.

5 Q. The water was getting in at Colonial Villas the same
6 places it's coming in at Palmetto Pointe?

7 A. That's correct.

8 Q. Now, your firm did some destructive testing for Al
9 Schweickhardt, those six post cuts you made on -- I believe
10 it was August 21st and August 22, 2018, correct?

11 A. That seems about right, yes, sir.

12 Q. And as I understand it, on August 21st you arrived in
13 the morning to make sure your test crew showed up and was
14 in place and they had the equipment they needed. Then you
15 left them to do their thing, and you went on to some of
16 your other jobs, correct?

17 A. Yes, sir.

18 Q. Including Mira Vista?

19 A. Yes, sir.

20 Q. Which we'll come back to.

21 A. Okay.

22 Q. And as I understand it, you were there about an hour
23 on the first morning setting up?

24 A. Probably a little over two hours.

25 Q. Two hours?

1 A. Yes, sir, because I think Rett came and we talked for
2 a while. Maybe longer than that

3 Q. Were you there long enough to see the completion of
4 the first test cut?

5 A. No.

6 Q. Did you stop back to see the second or third test cut?

7 A. No, sir.

8 Q. Did you stop back to see the fourth and fifth test
9 cut?

10 A. No, sir.

11 Q. Did you see anything like residence 1623 with the
12 rotten wood behind the building paper while you were on
13 site?

14 A. No, sir.

15 Q. Is it fair to say that that's probably the one visit
16 you made to Palmetto Pointe, that one-hour crew setup on
17 October 21st, 2018?

18 A. That's correct.

19 Q. Excuse me, August 21st. I misstated. Okay.

20 So, so, that's why when you say to the jury you don't
21 know if the rot on the first-floor porch of 1623 is in your
22 repair estimate or not, because you really don't know what
23 it is that Al -- that, that Mr. Schweickhardt has scoped.
24 You can't tell us whether it's a Palmetto A or B or whether
25 it's the first five buildings or the last ten buildings.

1 Let's give them an example of that. Let's give them a
2 good example. Mr. Schweickhardt, as I understand it, told
3 you that you should count on repairing part of the z-
4 flashing on fifteen of the forty residences, correct?

5 A. Correct.

6 Q. Which fifteen?

7 A. He didn't tell us.

8 Q. What's the only way you can find out?

9 A. Well, if we, if we get the project, I would, I would
10 assume that there would be -- Al or another design
11 professional would tell us, or we would have some type of
12 protocol to identify those areas.

13 Q. The protocol is you'd have to take the siding off of
14 all forty on the bottom to see which ones have the
15 condition that need fixing and which ones don't, right?
16 That's the only way to know.

17 A. Justin, I don't know that; I don't know. I don't know
18 if there's -- if Al has -- I mean, that's something that Al
19 would have to testify about.

20 Q. Well, let's do this. Help me out. Maybe you can help
21 me out this way. Let's look at your repair estimate in
22 evidence as 931. Let's go to section 12. Let's go to line
23 1205, and this is repair interior gypsum, and there's an
24 allowance of 54 square feet per location by ABS in your
25 notes. You see that?

1 A. I do.

2 Q. And the total square footage, if I'm reading this
3 right, is 324?

4 A. This -- it just popped up.

5 Q. Okay.

6 WITNESS: Is that you doing that? Don't know who's
7 doing it.

8 Q. Yeah, me. Look at me.

9 A. Sorry. I'm sorry.

10 Q. The total ---

11 WITNESS: I didn't know you -- I don't know if you
12 were trying to help me over here.

13 Q. No. We can lose that.

14 WITNESS: Is that Josh back there?

15 Q. It's hard to read. We'll be okay. I don't want to
16 distract you, Mr. Watkins.

17 A. I'm sorry.

18 Q. So, the total square footage is 324 feet, correct?

19 A. Correct.

20 Q. So, if we divide the 324 by the 54 per location, we
21 get six locations, correct?

22 A. Correct.

23 Q. Am I correct that item 12, paragraphs 12.1 through
24 12.12, address six decks?

25 A. What we did was whatever -- we, we asked for

1 clarifications. We asked Al Schweickhardt for
2 clarification about how much of what line items that we
3 should bid, if there were allowances. He told us how much
4 square foot to bid. So, that's what we did.

5 Q. I'm with you, but I'm trying ---

6 A. Yes, sir.

7 Q. I'm right here ---

8 A. I know.

9 Q. I didn't do this.

10 A. I ---

11 Q. I'm trying ---

12 A. I know.

13 Q. --- to go through with you.

14 A. I know. I know.

15 Q. I got six locations. Using that reserve math, I've
16 got this section 12. Those were six locations. Am I right
17 or am I wrong?

18 A. That's correct.

19 Q. Okay. So in section 12, you're going to fix six decks
20 for \$110,000?

21 A. No. We have -- those are the, the six locations are
22 for those items 12.05 through 12.09. Those are allowances
23 that Al Schweickhardt used to put in our scope of repair.

24 Q. Right.

25 A. We've got ninety-six locations of post flashing that

1 we're -- for posts that we're repairing.

2 Q. Okay. Well, that begs the question for me because I
3 don't know how many posts per deck. So, if you have
4 ninety-six posts, how many decks are you fixing in section
5 12?

6 A. I do not know.

7 Q. I don't either.

8 A. To clear this up, ABS asked us to, to, to repair
9 ninety-six locations for the posts, and that's what we do,
10 and that's what we priced.

11 Q. Ninety-six post locations?

12 A. Yes, sir.

13 Q. But you don't know how many decks that is?

14 A. I don't.

15 Q. Okay. Do you know how many posts per deck?

16 A. I do not know.

17 Q. And you don't know if I'm right or wrong about this
18 being six decks and six interior leaks?

19 A. I know that's six locations for those allowances.

20 Q. For the leaks?

21 A. Yes, sir.

22 Q. But you don't know if that relates to six decks?

23 A. I do not.

24 Q. Going then to section 12, how many decks is this?

25 A. That's where we were.

1 Q. Okay.

2 A. Right?

3 Q. You're right. We'll move on.

4 A. It is, it is Monday.

5 Q. How about -- section 4 is just one deck?

6 A. Yes, sir.

7 Q. Okay. How many decks are you -- how many deck repairs
8 are in this estimate?

9 A. I don't off -- I don't know off the top of my head.

10 Q. Do you have any information to share with us that it's
11 closer to twenty or closer to thirty? Do you know the
12 average size of any of the decks out there?

13 A. I think I recall going through the takeoffs. So,
14 they were -- a lot of the decks were 4 x 8 sections -- I
15 mean, 5 x 8.

16 Q. Well, the rear first floor deck, or the rear first
17 floor living floor deck is huge. Isn't that closer to 15 x
18 20?

19 A. I, I don't know.

20 Q. Okay. Without knowing the number of decks, without
21 knowing the square footage, without knowing all that, we
22 have no idea what percentage of decks at Palmetto Pointe
23 this repair estimate covers, correct?

24 A. Off the top of my head, I don't know. What I did is I
25 priced specifically what Al Schweickhardt asked me to

1 price.

2 Q. And, by the way, while we're on this estimate, I saw
3 and I heard you talk about the 8 inches on center for the,
4 the siding fastening.

5 A. Yes, sir.

6 Q. Let's talk about Windjammer first. Just to be
7 absolutely clear, Windjammer was a new installation where
8 the owner voluntarily of his own accord chose to have the
9 siding face nailed, correct?

10 A. That's what I recall, yes, sir.

11 Q. So, when you, when you face nailed it at Windjammer,
12 you did it at the homeowner's request, not against the
13 homeowner's wishes, correct?

14 A. Yes. Al Schweickhardt put that scope together, and it
15 was approved by the association board, yes, sir.

16 Q. At the Windjammer?

17 A. At Windjammer, yes, sir.

18 Q. So, you and Mr. Schweickhardt both have two jobs,
19 right?

20 A. Yes, sir.

21 Q. But that's different than what you're proposing to do
22 here, right? I'm using this wall over here because this is
23 the only thing I know my Post-It note will stick to. Now,
24 you're familiar with CertainTeed installation instructions?

25 A. I think I am but it's -- we normally put on

1 HardiePlank, but it's the -- very, very similar materials.

2 Q. That Post-It note, I measured before I came up here.

3 It's an inch and a half wide, right?

4 A. I'll take your word for it.

5 Q. That's what a stud is in a wall, right, inch and a
6 half wide?

7 A. Yes, sir.

8 Q. And you know the building code requires you to nail in
9 the studs, correct?

10 A. That's correct.

11 Q. And if you do it properly and if you blind nail it,
12 you're going to blind nail it in the very center of the
13 stud three-quarters of an inch down from the top edge of
14 the HardiePlank or the cementitious siding, correct?

15 A. Yes, sir.

16 Q. Now, if you -- and that's -- that nail is a quarter
17 inch wide at top, it's a building code violation. So,
18 hopefully it's more than a quarter inch, right?

19 A. I'm sorry, say that ---

20 Q. The nail head.

21 A. --- again?

22 Q. The nail head.

23 A. The nail head, the width of the nail head?

24 Q. Right. It's at least a quarter inch wide?

25 A. It's an 8 penny, two and a half inch ---

1 Q. Hopefully it's a roofing nail.

2 A. It is a roofing nail, yes, sir.

3 Q. And a roofing nail would be closer to a third of an
4 inch. Well, let's just assume it's a quarter inch. When
5 -- since we have an inch and a half wide, we now have --
6 you correct me if I'm wrong -- we got five-eighths inch of
7 clearance on either side, right, and a quarter inch nail in
8 the middle?

9 A. Correct.

10 Q. Now, if we decide to blind nail that same spot from
11 the top, we're instructed to blind nail the top 1 and an
12 eighth inches of the board, correct?

13 A. Correct.

14 Q. And you're going to blind nail it right in the middle
15 of the stud, correct?

16 A. Correct.

17 Q. And you're going to nail it right on top of the
18 existing nail with your face nail, correct?

19 A. We hope not.

20 Q. That's if you do it right, that's where the nail head
21 goes, correct? Have you seen any studies regarding how
22 cementitious siding splits if two fasteners go through it
23 in close proximity?

24 A. I have not seen that.

25 Q. So, you all testify, and you have here in your

1 estimate that you're going to do 8 inches on center,
2 correct?

3 A. Correct.

4 Q. You've never seen a building code or a cementitious
5 manufacturer siding instruction that says don't nail in the
6 studs, have you?

7 A. It says do not nail in the studs?

8 Q. Do not, correct.

9 A. I've never seen siding instructions that said do not
10 nail in the studs if that's what you're asking me.

11 Q. In the ---

12 A. That's correct.

13 Q. --- center of the middle nail won't be into the stud,
14 would it?

15 A. No, but I think -- and this, this is a -- that's a
16 better question for Al Schweickhardt, but they do allow for
17 field nailing on some siding installations, I do know that,
18 but I've never seen it where they said do not nail into a
19 stud.

20 Q. Now, when you freshly paint a face nail siding
21 application, you will still see the silhouette of the heads
22 of the fasteners through the fresh paint, won't you?

23 A. If, if you look closely, you can see it.

24 Q. And after a year or two thermal expansion of that
25 siding working back and forth in attempting to withstand

1 the winds, you'll see more of the heads, won't you?

2 A. I'm not sure.

3 Q. I'm holding in my hand Plaintiff's Exhibit 704, which
4 is called UL-341, which was the design fire assembly for
5 the attic separation walls in this complex. Are you
6 familiar with UL assemblies?

7 A. I am.

8 Q. Okay.

9 A. Well, I know what they are. I couldn't -- yeah.

10 Q. Okay, and you ---

11 A. I couldn't draw one out for you.

12 Q. This has been marked for identification purposes only
13 at this time. Let me hand it to you, and there's a little
14 drawing on page 2. My first question is, sir, is simply
15 whether you're familiar with this UL, if you've ever seen
16 this particular UL assembly before.

17 A. Yeah, I've seen a lot of different types of separation
18 firewalls, things like that, yes, sir.

19 Q. Do you believe you've likely seen 341 previously? I
20 mean, it's a typical attic wall, isn't it?

21 A. I mean, it seems typical, I mean, without studying it,
22 yes, sir.

23 Q. Do you believe you've seen it before?

24 A. I would think so.

25 MR. LUCEY: Plaintiffs' move Exhibit 704 into

1 evidence.

2 MR. KENDALL: Objection. I don't think that he
3 actually identified he'd seen it before.

4 THE COURT: I would agree. I think he stated he has
5 not seen it before. I'm not sure for what purposes you
6 need to admit it at this time.

7 BY MR. LUCEY:

8 A. To clarify, I have seen -- there's, there's different
9 types of UL assemblies for tenant separation wall,
10 fireproofing, things like that. They all look very similar
11 to each other. I don't know if I've seen this exact or
12 these two exact drawings. I'm not sure of that, but I've
13 seen similar to this.

14 Q. Okay, and you're familiar with the fact that UL
15 assemblies in multifamily dwellings -- you've prepared
16 some. You had a repair project a couple of months ago with
17 a fire assembly, didn't you?

18 A. We, we do that routine, Justin. I mean, there's ---

19 Q. You do it a lot?

20 A. Right. There, there's -- right. There's different
21 types of defects in the tenant separation walls, yeah.

22 Q. So, you're familiar with the fact that the UL fire
23 assemblies generally prohibit the fire separation wall from
24 being penetrated by wood members, correct?

25 MR. KENDALL: Objection, Your Honor. He's not offered

1 as an expert in this area.

2 A. Right. I, I can't answer that for sure.

3 Q. That's okay. Then we'll ---

4 A. Yeah.

5 Q. We'll move on.

6 A. Okay.

7 Q. Now, back to that litigation department, sir. Your,
8 your firm typically does three test cuts a month on the
9 average month, correct?

10 A. Two to three, yes, sir. It, it -- yeah, destructive
11 testing yes, sir.

12 Q. That could be one lawsuit or three lawsuits, correct?

13 A. Correct. Yes, sir.

14 Q. And you yourself personally, you typically give a
15 deposition a month in litigation support, correct?

16 A. That sounds about right, yes, sir.

17 Q. And you advertise on a webpage, right?

18 A. Yes, sir.

19 Q. And the first choice in the webpage is attorney
20 support, isn't it?

21 A. I hadn't looked at it in a long time. I'll take your
22 word for it.

23 Q. Because that's, that's half -- that's one of your two
24 departments, correct?

25 A. Yeah. We do provide construction litigation services,

1 yes, sir.

2 Q. And there's been some talk this, this week about some
3 of these different floor plans at Palmetto Pointe, Palmetto
4 Oak. I couldn't even begin to try and mention them all.
5 Do those mean anything to you?

6 A. The, the floor plans?

7 Q. The different floorplans, yes, sir.

8 A. The A and B where they're flipped? I mean, there's --
9 they're, yeah, they're -- the buildings are -- the
10 floorplans are reversed and they're cut up, yes, sir, but
11 they're -- that's not atypical for a townhomes.

12 Q. Okay. Now, most of this estimate was actually
13 prepared by a gentleman named Rob Ayers, A-y-e-r-s,
14 correct?

15 A. That is correct.

16 Q. And he lives and works in Boston, correct?

17 A. That's correct.

18 Q. He has never set foot on the property at Palmetto
19 Pointe in his life, correct?

20 A. That's correct.

21 Q. And your estimates in this matter have gone from 1.2
22 million in 2017 to 1.8 million in -- currently, correct?

23 A. I can't -- I'll take your word for that. I can't
24 remember what our original estimate was.

25 Q. And you're aware that there is a issue in this case

1 with the deck edge, the lip on the deck edge ponding?

2 A. I remember references of ponding water in -- I've read
3 something about this case, but as far as, like, project-
4 wide systematic, I don't recall that.

5 Q. Okay. Well, let me ask it this way. Does the Watkins
6 Services repair estimate for Palmetto Pointe repair any of
7 the ponding that exists on the Palmetto Pointe decks?

8 A. Only if it's a deck that we're, we are rebuilding, but
9 we don't have anything specific in our estimate.

10 Q. So, if you happen to be rebuilding something else, you
11 might fix or will fix the ponding at the same time?

12 A. Yeah. If it -- if we're replacing the sheathing on a
13 deck, we will make sure it has the proper slope, but we
14 weren't -- that wasn't part of our scope of repair to do
15 that work project wide.

16 Q. And if you do do that work and, and fix the ponding,
17 you will, as I understand it, crack the lipping that occurs
18 at the edge of the deck. You'll plane it down and make
19 sure it doesn't lip up?

20 A. Yeah. That's, that's a typical thing, especially if
21 fabric is involved with the coating application where you
22 have flashing and there's a fabric that strips that
23 flashing, and that kind of builds up the edge a little bit.
24 So, in a lot of our rehabs and rehabilitation deck
25 projects, that's something that we have to do.

1 Q. You have to plane down the edge?

2 A. Yeah. We have to take everything off and plane that
3 edge down unless -- sometimes, though, if we're adding
4 coating, we'll have to do that, but if we are -- it could
5 be a situation where we have to take all the deck up and
6 rework the framing underneath to provide the, the positive
7 slope. There's a lot of different ways that you can do it.
8 There's, there's, there's always a best application for,
9 for every defect that we find.

10 Q. And one of the ways is simply to plane it down?

11 A. On that, yes, sir.

12 Q. So ---

13 A. But you have to take the flashing off, yes, sir.

14 Q. And so you allow room for that material and flashing?

15 A. Correct.

16 Q. And then you integrate everything back in, correct?

17 A. Correct. Correct.

18 Q. And that's not, that's not unique to repair a
19 restoration. You can do that during original construction
20 to make it so your deck doesn't lip, correct?

21 A. I mean, yeah. I mean, you can, yes, sir.

22 Q. Now, the estimate where it says per location, for
23 instance you said in one section that you were doing
24 ninety-six posts. That, does that make that particular
25 section a fixed price for ninety-six posts no matter how

1 much sheathing damage there is?

2 A. No. To, to correct the, the waterproofing defect, it
3 is fixed. To fix the damaged sheathing, framing, whatever
4 we find, we have an allowance that was provided to us by
5 the design professional, and we will use the money allotted
6 to us in that allowance to make those repairs.

7 Q. Which section are you looking at?

8 A. Any, any section that we have ---

9 Q. Well, let's ---

10 A. --- framing and deck repairs.

11 Q. Let's look at section 12 where you have in the very
12 first one 9 square feet per location per ABS. To start
13 with, that's 9 square feet. That's 3 feet x 3 feet,
14 correct?

15 A. That's correct.

16 Q. And that's the removal and replacement of shingles,
17 correct?

18 A. That's correct.

19 Q. Now, if you remove the first 9 square feet, the first
20 3 feet of shingles and you see water damage sheathing
21 coming down from the ridge of the roof and you have to
22 remove more shingles to get into and find the leak, is the
23 rest of that shingle removal included? Is this a fixed
24 price, or do you add on square footage?

25 A. Correct. If, if -- the fairest way to answer your

1 question, if every area that we repair requires more than 9
2 square feet, then we will have to add money to that line
3 item. But we do have a 10 percent contingency at the
4 bottom of our estimate. I think it's around \$130,000 that
5 -- we can use that to take care of deficiencies like that
6 in our estimate.

7 Q. Let me come back to the contingency, sticking with the
8 line items for a second. So, when you say assume 9 square
9 feet per location, that's an allowance. If it's 120 square
10 feet at a particular location, you're going to charge for
11 that, correct?

12 A. That's correct.

13 Q. And when it says assume ninety-six posts, that's an
14 allowance. If it turns out you need to fix 101 posts,
15 you're going to charge for another nine posts?

16 A. That's correct.

17 Q. And where it says 152 lineal feet per ABS, that is an
18 allowance. If it's 190 feet, you're going to charge more
19 for it?

20 A. Correct.

21 Q. Now, going back to the contingency, you mentioned the
22 10 percent contingency. Did I hear you correctly?

23 A. That is correct, yes, sir.

24 Q. So if, in fact, you had done a \$10 million estimate
25 for this repair job, a \$1 million contingency would be

1 appropriate, correct?

2 A. That's what I would put down, yes, sir.

3 Q. And, in fact ---

4 A. Unless I was instructed differently.

5 Q. If it was a \$10 million repair job, you would then add
6 7 and a half million -- excuse me, 7 and a half percent for
7 the architect and engineering fees, correct?

8 A. Well, that money doesn't go to us. That's -- if we're
9 not told any fees, our standard is 7 and a half percent.
10 Sometimes we're told more; sometimes we're told less.
11 Sometimes we're told to leave it out, but that's not money
12 that goes to us. That's goes to a independent third party
13 like maybe ABS, whoever would oversee the project on the
14 design side.

15 Q. And, sir, this estimate does not have the rusting
16 fascia fastener replacement in it, does it?

17 A. Fascia on the end of the shingle roofs?

18 Q. On the edge of the shingle roofs, on the edge of the
19 porches, everywhere.

20 A. I don't recall seeing a specific line item, Justin.
21 I'm just making sure.

22 Q. We can get your deposition if you prefer.

23 A. I mean, I mean, I, I don't recall a specific line
24 number for that.

25 Q. And, in other words, you don't believe it, it -- you

1 don't recall seeing it in the estimate, right?

2 A. Correct.

3 Q. Okay, and you don't recall seeing the repair of the
4 vinyl railing in the estimate except for the fasteners that
5 are penetrating the porches, correct?

6 A. Correct, because I think Al put in his scope that the,
7 the wall mounts for the rails, that would be taken care of
8 by the manufacturer.

9 Q. And the lack of sealant joint gap and sealant between
10 the window frame and the siding is not being fixed in your
11 estimate, correct?

12 A. That's correct.

13 Q. No shingles in the field of the roof are being fixed
14 in your estimate, correct?

15 A. Correct.

16 Q. And, and so, in other words, if, in fact, the jury has
17 heard testimony that there are random nail holes in the
18 roof itself away from the edge, that's not something that
19 would be fixed in your repair, correct?

20 A. We did not price that. We did not.

21 Q. And you're only fixing the improper roof underlayment
22 installation in three locations at the rear of the
23 buildings, correct? Was it four?

24 A. Anywhere that we have to remove shingles, we will take
25 care of. We, we're going to put new felt under the

1 shingles, but we don't have a specific repair to correct
2 any felt deficiencies.

3 Q. The deflection in the foyer hallway in four or five of
4 the residences, the deflecting trusses, that's not in your
5 repair scope, is it?

6 A. Not that I recall, Justin.

7 Q. The reverse slope the on z-flashing at the base of the
8 walls is not in your repair scope, correct?

9 A. Correct.

10 Q. The jury has seen pictures this week of hurricane
11 straps that aren't fastened properly and hurricane straps
12 that are rusting because they're in contact with
13 pressure-treated posts. Repair of those two conditions is
14 not in the repair scope, is it?

15 A. Not specifically.

16 Q. Now, this is a three-story structure, correct?

17 A. Correct.

18 Q. And you're going to be working on the third story,
19 correct?

20 A. Yes.

21 Q. And there's no money in your repair scope that I saw
22 for a lift Lull or forklift, is there?

23 A. I don't think so. Let me check. No, sir.

24 Q. It should be there, correct?

25 A. I don't know. I'm trying to recall. I don't think we

1 have anything that we'd have to boom up that's that heavy.

2 Q. And you're going to be using pump jacks instead of
3 regular scaffolding?

4 A. We have that line item GR-8.

5 Q. Right.

6 A. We'll be using pump jacks in some locations,
7 scaffolding in other locations. We've got \$45,000 for a
8 combination of pump jacks and scaffold to be used on our
9 repair.

10 Q. It says, quote, pump jack scaffold, and you're telling
11 me that that is both?

12 A. Yeah. It should be pump jack comma scaffold, but
13 that's what that allowance means.

14 Q. And how much of the buildings will you be accessing
15 with pump jacks and how much scaffolding?

16 A. I don't know specifically.

17 Q. Well, this price, this item here, 45,000 for eighteen
18 months, 2,500 a month, how much of that is for pump jack
19 and how much of that is for scaffolding?

20 A. I don't recall.

21 Q. You would agree with me that it's a lot easier for a
22 superintendent to perform quality control when you use
23 scaffolding in lieu of pump jacks, correct?

24 A. It is, it is easier to access, it is, but the, the
25 areas that we're -- we will use pump jacks solely will be

1 the areas where we install the face nail. When we do, when
2 we have to do a robust repair, if we have to tear one of
3 these decks apart, put them back together, things like
4 that, we'll have our scaffolding in place.

5 Q. Now, sir, you're not going to warranty any part of the
6 property you don't touch, correct?

7 A. That's correct.

8 Q. So if, in fact, you only do that 3 foot x 3 foot
9 shingle repair, and the leak truly is a few feet further up
10 and you don't repair it and you get a call from the
11 homeowners, you're going to say sorry, guys. Not my
12 problem, right?

13 A. Yes. If, if there is -- if, if there is an area that
14 has -- that develops a problem later in the project that
15 has nothing to do with our work areas, then we will not --
16 we'll be happy to come and fix it, but we don't consider
17 that part of a warranty item.

18 Q. In fact, for the shingle work that you are going to do
19 on this property, the little bit of shingle work you're
20 going to do, the manufacturer will not issue a warranty
21 because it's piecemeal work.

22 A. Correct. It's not a system. That's right.

23 Q. They won't for even the new shingles. Not only will
24 they get a shingle that doesn't match, but it won't be
25 under warranty, manufacture warranty?

1 A. That's correct.

2 Q. Now, did you finally finish Mira Vista?

3 A. Almost. We're working on the interiors of the last
4 building.

5 Q. And that started ---

6 A. And finishing up the gutters.

7 Q. That started in 2011, didn't it?

8 A. The case?

9 Q. Yes, sir. Your daddy ---

10 A. You know, my dad worked on that. So, you may be
11 right.

12 Q. When you do a cut-and-paste job, sir, or what you call
13 targeted, targeted repairs, you're actually adding an
14 additional originally unplanned joint to every location you
15 cut and paste, correct, because now you've got to integrate
16 your new materials with the old materials wherever you
17 decide to do that.

18 A. I don't think I'd refer to it as a joint. I mean, on
19 some -- I mean, if it's stucco, right. Okay.

20 Q. Well, let's talk about it for a second. I'll take it
21 slower. When you're doing this piecemeal repair, you're
22 going to use some shingles and some new building paper and
23 new felt, correct?

24 A. Correct.

25 Q. And you're going to integrate it with some old

1 shingles and some old building felt, correct?

2 A. Correct.

3 Q. That integration of all the new material is a joint,
4 an integration, if you please, that was never planned to be
5 there, correct?

6 A. Right, but we will put it back, what was originally
7 intended, I would assume, by the original installer to be
8 there because we're correcting a defect. What I call a
9 joint is like if you have two dissimilar materials and
10 there's a clear line of demarcation that you can -- that's
11 open and obvious that you can see, this will be -- this is
12 a new area that's going to be repaired, but everything is
13 going to be integrated on the underlayment behind whatever
14 we install, whether it's asphalt shingles or the lap siding
15 or the actual shingles and lap siding itself.

16 Q. Now, you still planning on using intumescent paint in
17 the attic?

18 A. The estimate calls for it.

19 Q. So, you're still planning on it?

20 A. Yeah, if it's part of the scope. If we're hired to do
21 the project and it is part of the scope, yes, sir.

22 Q. You're unaware that the sprinkler pipes in the attic
23 are made out of C -- PVC and they are chemically
24 incompatible with intumescent paint?

25 A. I didn't know that, but we're not, we're not going to

1 spray those. We're going to spray the -- from what I
2 understand, we're spraying dimensional lumber, not the
3 actual sprinkler pipes.

4 Q. You've never seen a UL approved assembly for a fire
5 separation wall like this where you spray wood with
6 intumescent paint, correct?

7 A. I've never seen it, but I'm not -- that doesn't mean
8 it doesn't exist.

9 Q. You don't have more in your file to share with us, do
10 you?

11 A. No, sir.

12 Q. Mr. Schweickhardt didn't give you one, did he?

13 A. He did not.

14 Q. Now, you knew that you would never have to perform
15 this job at this price when you published this estimate,
16 correct?

17 A. I'm not following you.

18 Q. You knew you would never have to perform this job at
19 this price when you published this estimate. This was your
20 litigation support.

21 A. This is a bid. I'll sign a contract today to do this
22 scope for this price. That's why I do the construction
23 litigation side of my work.

24 Q. Sir, you've been testifying against my clients for
25 what, decade and a half, you and your dad?

1 A. Well, I don't see it as testifying against anybody.
2 I'm trying to -- all I want to do is sell work. So, I've,
3 I've given a bid, bid documents. I'm given a scope to
4 price, and that's what I do.

5 Q. You've been providing a lower price than my repair
6 contractors in construction litigation for fifteen years,
7 correct?

8 A. I don't know if it's lower or not. We provide a bid
9 and it's real numbers.

10 Q. And in fifteen years, Watkins Services has never
11 gotten a job, have they?

12 A. We -- I'm sorry. Well.

13 Q. In fifteen years, Watkins Services has never been
14 hired by my clients, have they?

15 A. No. I'd like to change that, though. You could help
16 me. I didn't know if that was a trick question. Yes, sir.

17 Q. Okay.

18 A. I told you that was my goal.

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. So, you were not told that the number of penetrations
22 in the attic firewalls number in the thousands?

23 A. I, I don't recall.

24 Q. You have nothing in your estimate for the repair of
25 the ceilings in the drive, driveunder except for the common

1 wall base?

2 A. Justin, I think that's correct. I think the only
3 ceiling work we were going to perform under the buildings
4 was that the -- below the firewall.

5 Q. And you have no money in your estimate to repair any
6 chase that was accidentally created in the common wall
7 between the two residential units?

8 A. No, I'm not aware of that condition, and I don't -- we
9 weren't asked to price that.

10 Q. Based upon your experience, if fire caulking is
11 missing where you can see it, you can reasonably expect
12 that it will be missing where you can't see it, correct?

13 A. I mean, it's possible. It's not a guarantee, but it's
14 possible.

15 Q. Now, there's been evidence presented this last week
16 that there's been four or five shingle blow-offs in the
17 last four or five years and four or five siding blow-offs
18 in the last four or five years. In other words, a little
19 over one a year. Are you with me?

20 A. So, you've had one shingle blow off ---

21 Q. No, sir.

22 A. --- at a location or it's a huge area?

23 Q. 3 or 4 feet x 5 or 8 feet, several different areas.

24 A. I was not aware of that. At, at Palmetto Pointe?

25 Q. At Palmetto Pointe.

1 A. I was not aware of that.

2 Q. Several buildings. So, I'm saying that there were
3 four or five storms resulting in blow-offs on four or five
4 buildings each time of shingles and siding.

5 A. Yeah.

6 Q. You with me?

7 A. Right.

8 Q. Can you identify for us one other property you're
9 aware of in Charleston, whether you're working on it or
10 not, that's had a similar experience of four to five sets
11 of siding blow-offs and four to five sets of shingle
12 blow-offs over the last five years? In other words, since,
13 since and including 2015.

14 A. Yeah, I've never put much thought into that. I don't
15 recall.

16 Q. You were certified as an expert in construction when
17 we started. Do you recall that?

18 A. Pricing expert, yes, sir.

19 Q. And would you agree with me, sir, that performance,
20 blow-off performance for example, is an excellent way to
21 evaluate the quality of installation?

22 A. For me, I would think that was a unfair question for
23 me because I -- it would, it would depend on the type of
24 wind event that happened. I mean, if the wind blew 30
25 miles per hour and the shingle came off, I would say

1 that's, that's a bad attachment. If it blew 130 miles per
2 hour, you would expect shingles to come off, in my
3 experience.

4 Q. Sure, and you've been in South Carolina the last five
5 years, correct?

6 A. Longer than that, yes, sir.

7 Q. Charleston's been barely touched by one named storm in
8 five years, correct? It maybe got to 79, perhaps 80
9 mile-per-hour gusts.

10 A. Well, I thought we had two CAT twos come over top of
11 us in the last couple years.

12 Q. Well, Myrtle Beach definitely got one.

13 A. Okay. Maybe. Okay.

14 Q. Okay. All right.

15 A. And the only reason I remember that is because, I
16 mean, time goes by so fast for me, but we've had that Mira
17 Vista project on James Island, we've had to take all our
18 scaffold boards down and, and really secure our scaffolding
19 because those hurricanes were coming.

20 Q. And how, how, how were your blow-offs at Mira, Mira
21 Vista?

22 A. We didn't have a one.

23 Q. Not one at Mira Vista. You've been working on that
24 jobsite on James Island 2015 through today, and you had no
25 blow-offs, correct?

1 A. Correct.

2 MR. LUCEY: Thank you, sir.

3 WITNESS: You're welcome.

4 THE COURT: Redirect?

5 MR. KENDALL: Thank you.

6 REDIRECT EXAMINATION BY MR. KENDALL:

7 Q. Just -- you were asked about things that aren't in
8 your estimate, but again you weren't -- you were asked to
9 price certain things?

10 A. That is correct.

11 Q. And you don't know why you were asked to price one
12 thing versus pricing other things?

13 A. That's correct. It's like it -- we consider this a
14 bid. So, we price what we're asked to price. We try to
15 use our experience and the numbers that we use on bids to
16 put together what we consider a bid.

17 Q. Okay.

18 A. But we don't -- I don't, I don't do the
19 investigations. I don't try to find out all the defects on
20 the building, whether they're there or not. I just --
21 because if I'm, if I'm bidding against other bidders and I
22 price things in my bid that weren't asked to be priced, I'm
23 not going to win any bids. So, I, I price specifically
24 what I'm asked to price.

25 Q. Okay, and to, to come up with your prices, you rely on

1 a fellow names Mr. Ayers, correct?

2 A. That's correct.

3 Q. Rob Ayers?

4 A. That's correct.

5 Q. And how long have you been using Mr. Ayers as part of
6 your pricing team?

7 A. Well, he and my dad worked together. He used to work
8 in the field for us, and I think about fifteen years ago or
9 so he used to be a residential contractor. So, real smart
10 with computers, really good with numbers. I used to help
11 my dad with the estimates fifteen, eighteen years ago, and
12 I got too busy in the field. I couldn't help him anymore,
13 so we brought Robert in to work with my dad. Didn't know
14 how it was going to go, but it worked out great.

15 And what Robert does is he gets the scope of repair
16 and he puts together a base estimate or a base bid, and at
17 that point he and I work together to make sure we have a
18 complete bid so our company can stand behind those numbers.
19 And if we're asked to perform the work for those numbers,
20 we feel comfortable in doing that.

21 Q. Do you have historical information from your own
22 company that is part of that process?

23 A. Oh, yes, sir. Here lately I've been putting out at
24 least one bid a week.

25 Q. And -- but when -- other than comparing -- do you

1 compare it against actual job costs as well to come up with
2 bids for future work?

3 A. Oh, yeah, we -- yeah. You mean make sure we're making
4 money? Yes, sir.

5 Q. Yeah, and --- because you've been ---

6 A. Yeah, we do that.

7 Q. --- able to stay ---

8 A. Yes, sir.

9 Q. --- in business for how long doing this, doing it this
10 way?

11 A. My dad and my grandpa started in the late '70s. They
12 built houses in North Carolina and moved to Myrtle Beach in
13 the late '70s, and I started working with them in the late
14 '80s, mid to late '80s.

15 Q. And there were a couple of items. You were asked
16 about engineering fees.

17 A. Correct.

18 Q. Is it -- why are engineering fees needed in a job like
19 this?

20 A. Well, this job in particular -- not on every project I
21 bid, but on most projects I bid, there's a design
22 professional that does an investigation, and they put
23 together the scope of repair, and then myself and my
24 competitors will bid on it. Whoever had the lowest bid
25 were awarded the project. After that, typically the design

1 professional that puts together the scope of repair, they
2 will assist in what we call CA work where they, they'll
3 administer contracts. They'll, they'll periodically
4 inspect the work that we do, and they sign off on the work
5 and they -- they're a third party, so they protect us and
6 they protect the owners. The owners know that they're
7 getting what they paid for, and they make sure that we get
8 paid for the work we perform.

9 Q. Does the -- does that engineering involvement during
10 the project assist with your ability to answer some of the
11 questions that may be unanswered at the estimate time?

12 A. Like specifics on how to do certain repairs?

13 Q. When you were asked about z-flashing, is that some --
14 is that something ---

15 A. Oh, oh, oh, yes, sir. Yeah, for us to perform this
16 with the -- just like Justin was saying, I don't know where
17 those fifteen units are that the base wall flashing needs
18 to have the building paper, you know, correctly lapped on
19 it. We're going to rely on to design professional to tell
20 us that.

21 Q. Okay, and at the end of the day, you also talked about
22 allowances and you were asked to talk about it in terms of
23 one at a time. For example, one location where you've got
24 more than 9 square feet that need to be removed. But what
25 about, what if there are locations where 4 square feet need

1 to be removed? Do, do you look at it as one at a time
2 thing or as a whole?

3 A. Well, now, with the shingles remove, we're going to,
4 we're going to remove 9 square feet of shingles. I mean
5 that's what's prescribed. We've got to take those shingles
6 out so we can see what's there. With the latent damage
7 part, we may come to two or three posts where there's no
8 damage. We may come to two or three posts where there is
9 really bad damage. I don't know.

10 Q. Right, but do you look at it as a whole number or as
11 each individual ---

12 A. Oh, yeah, as a whole number because it -- whether,
13 whether we pick that number or the design professional
14 picks that number, I mean, it's, it's a, it's a best
15 guesstimate.

16 Q. Right.

17 A. Based on, you know, the information that they or we
18 acquired, acquired, you know, doing investigative work on
19 the buildings.

20 Q. And you put in at the -- but at the end of the number,
21 you put in 10 percent as a catch-all for any cost overruns?

22 A. That's correct. If there's a, if there's a adjustment
23 in the scope, if there is work that was -- like, latent
24 damages is a great way to describe that. If there's, if
25 there's much more latent damage work that needs to be done

1 on that project based on the claddings and the finishes
2 that we remove, then we've got \$30,000 of extra money that
3 we can use to make those repairs.

4 Q. And, how, how -- why do you use the number 10 percent?

5 A. That's the standard number that we use unless we're
6 asked -- sometimes if the project is very small and it's
7 very targeted, we may use a higher number than that, but
8 typically 10 percent is what we use.

9 Q. And have -- and how -- has that turned out to be
10 pretty accurate over time? Pretty, pretty...

11 A. On average? Accurate, yes, sir.

12 MR. KENDALL: All right. Thank you.

13 WITNESS: You're welcome.

14 MR. COLE: May it please the court?

15 DIRECT EXAMINATION BY MR. COLE:

16 Q. If you'll indulge me, I wasn't able to see the stickie
17 note over here, so I wanted to look at what we have here
18 with the stuff for Mr. Lucey. Do -- could you see that
19 from where you were sitting? I actually have a question
20 about that.

21 When you're building something, you put up the 2 x 4s,
22 right, and that holds up the main structure. What do you
23 attach to the 2 x 4s?

24 A. Whatever sheathing is required.

25 Q. Okay, and is ---

1 A. That's part of the building diaphragm.

2 Q. Is the sheathing attached to the 2 x 4s or something?

3 A. Yes.

4 Q. With what?

5 A. Nails.

6 Q. Okay, and ---

7 A. Typically.

8 Q. And so the nails holding the sheathing are already in
9 those 2 x 4s, correct?

10 A. That's correct.

11 Q. So, when you're attaching siding to the outside of it,
12 you already have nails in those 2 x 4s that the same siding
13 is going against, correct?

14 A. Correct.

15 Q. Do you know the company Palmetto Construction?

16 A. Palmetto Construction?

17 Q. Yeah.

18 A. I don't know if I -- I'm not familiar with them.

19 Q. Do you know that Mr. Handegan said that that was the
20 company he actually created his repairs estimate from?

21 A. I, I'm not familiar with them.

22 Q. Okay, and it sounds to me that the name subcontractor
23 is a dirty word. Is that correct?

24 A. To me it's not because that's another layer of
25 protection for the owners because we require all our

1 subcontractors to have their own insurance. So, we have
2 insurance; they have insurance. So, it's -- you know, one
3 thing we don't do -- and like I, like I said before, we
4 don't, we don't go after the lowest bidder subcontractor.
5 We do -- we, we, we are very -- our suppliers are very
6 competitive for our business, and we try to work suppliers
7 one against the others to try to get the best price that we
8 can, but I typically don't work one sub against the other.

9 Q. And so you use subcontractors. You would not be
10 surprised if Trident used subcontractors either?

11 A. It's been my experience in my industry subcontractors
12 are very common.

13 Q. All right.

14 MR. COLE: Thank you.

15 WITNESS: You're welcome.

16 MR. ATKINS: No questions, Your Honor.

17 MR. REESER: None, Your Honor.

18 RECROSS-EXAMINATION BY MR. LUCEY:

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. Has it come to mind yet how many decks are actually
22 included in your repair scope?

23 A. It has not.

24 Q. Okay, and tell us if you would, please. Who, who
25 performed construction administration at River Landing

1 Drive? What firm?

2 A. There were multiple firms. Well, there were I know of
3 at least two firms, ABS and Miles Witt.

4 MR. LUCEY: Nothing further, Your Honor.

5 THE COURT: All right. Thank you very much. You may
6 step down from the witness stand.

7 WITNESS: Thank you.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Why don't we break an afternoon break at
10 this point in time, ladies and gentlemen? We'll be at ease
11 for about ten minutes. Then we'll reconvene. Thank you
12 very much. See you in about ten minutes. Do not discuss
13 the case.

14 (THE JURY EXITS AT 3:26 P.M.)

15 THE COURT: All right, thank you. Y'all can be
16 seated.

17 Ms. Campbell, tell me what that was about.

18 CLERK OF COURT: His notes. We had his notes from his
19 book.

20 THE COURT: You had his notes from his book? What do
21 you mean?

22 CLERK OF COURT: Right. His pad that he was writing
23 in, he was missing his notes. So, it fell out of his books
24 and was placed on my desk. So, I just gave his notes back
25 to him.

1 THE COURT: Okay.

2 CLERK OF COURT: The notes that he was writing from
3 last week fell out of his book, and someone placed those
4 notes on my desk. So, I just handed his notes back to him.

5 THE COURT: What do you mean they fell out of his
6 book?

7 CLERK OF COURT: I guess he might have ripped them.

8 THE COURT: Oh. Okay.

9 CLERK OF COURT: Out of his book.

10 THE COURT: And took them out of here.

11 CLERK OF COURT: No. They must've fell out this
12 morning when we were placing the evidence on the table, and
13 I think at least somebody put them on my desk this morning,
14 and we didn't realize that his notes was out of his book.

15 THE COURT: Okay.

16 CLERK OF COURT: And he was looking for it the whole
17 time. So, when I gave him back the book, the book did not
18 have the notes in it. So, I just gave him back his notes.

19 THE COURT: Okay.

20 CLERK OF COURT: His writing.

21 THE COURT: Okay. At any point in time, has anybody
22 else seen his notes?

23 BAILIFF: No, ma'am.

24 THE COURT: Okay, and they've now been placed back in
25 his notebook, right?

1 CLERK OF COURT: Yes. Yes, ma'am.

2 THE COURT: All right. Okay. All right.

3 I'm sorry, everybody here can be seated. I'm sorry if
4 I didn't say that already. Thank you. I'm sorry.

5 Anything else from the defense before we're at ease,
6 or from the plaintiff or the defense before we're on a
7 break?

8 MR. KENDALL: Your Honor, I just have the affidavit of
9 attorney's fees that I can submit to the court.

10 THE COURT: Okay.

11 MR. KENDALL: But I have no further witnesses.

12 THE COURT: Okay. All right.

13 Well, is your first witness ready, Mr. Cole? You
14 indicated he was here earlier.

15 MR. COLE: Yeah. He stepped out, but, yeah, he's
16 here.

17 THE COURT: But he's here?

18 MR. COLE: Yeah.

19 THE COURT: Okay. Great. We'll be at ease for about
20 ten minutes. Thank y'all.

21 (OFF THE RECORD.)

22 THE COURT: Thank you. Please be seated.

23 MR. KENDALL: Your Honor, as I -- I'm sorry.

24 THE COURT: No. Go ahead.

25 MR. KENDALL: As I indicated, I did -- have prepared

1 an affidavit of attorney fees. On reviewing it, I have all
2 the totals all here in hours and dollars and expenses, but
3 perhaps I should have listed more specifically all of the
4 activities. If that's something that you would ordinarily
5 want to know more about, I can supplement this.

6 THE COURT: Let's just see what ---

7 MR. KENDALL: Or I can give you ---

8 THE COURT: --- what the breakdown is.

9 MR. KENDALL: And I can either provide that orally or
10 by supplemental replacement, however you feel is -- haven't
11 had to do this, so I'm thinking as I go.

12 (A PAUSE.)

13 THE COURT: Okay. Anybody else reviewing the document
14 wish to be heard?

15 MR. COLE: Just about the document itself, Your Honor,
16 or?

17 THE COURT: Yeah or how, how you would -- whether it
18 be formatted or would you rather it be broken down any
19 more? What's your position on the matter?

20 MR. COLE: Well, my position is that none of this
21 should be recoverable, Your Honor.

22 THE COURT: I understand that's your position.

23 You know, I've seen these formatted different ways. I
24 don't take issue with the way you've formatters it or
25 anything like that, Mr. Kendall. You've got it broken

1 down, I guess, chronologically somewhat. You just have the
2 total ---

3 MR. KENDALL: I was just trying to provide the
4 context.

5 THE COURT: Yeah.

6 MR. KENDALL: Of multiple firms.

7 THE COURT: Pre, pretrial versus trial and all that,
8 yeah.

9 MR. KENDALL: Pretrial versus trial.

10 THE COURT: I mean, I don't, I don't have any problem
11 with it.

12 MR. KENDALL: I can just itemize the number of
13 depositions, the mediations we've been involved in, the
14 documents that have been produced, but all, we all know
15 what's been done in that regard. It didn't occur to me at
16 the time.

17 THE COURT: I mean, these numbers don't strike me as
18 unreasonable by any means, but, but be that as it may, what
19 specifically ---

20 MR. COLE: As a point of clarification so I
21 understand, you're submitting this to the judge, not to
22 the ---

23 MR. KENDALL: Correct.

24 MR. COLE: You're not intending this to go to the
25 jury?

1 THE COURT: Correct.

2 MR. KENDALL: Attorney fees are reviewed by the court.

3 MR. COLE: Right. Right.

4 MR. KENDALL: So, I just referred this to her.

5 MR. COLE: We'll, we'll have arguments about this,
6 Your Honor, but we don't need to, to waste the court's
7 time at this point, I don't, I don't think. As long as I'm
8 not ---

9 MR. KENDALL: I'm sure they're going to ---

10 MR. COLE: --- waiving any ---

11 MR. KENDALL: --- argue what I'm entitled to. I get
12 that.

13 MR. ATKINS: Well, yeah. I mean, I mean, I assume
14 this, this is incurred representing and defending the CBC
15 in this lawsuit, not any monies unexpended defending my
16 client.

17 THE COURT: No. It's says in here as part of the
18 representation of CBC.

19 MR. ATKINS: Right. This is strictly defending -- CBC
20 is the main defendant in this lawsuit.

21 THE COURT: Yeah. Okay. Okay, I'm fine with this,
22 Mr. Kendall.

23 MR. KENDALL: Thank you.

24 THE COURT: If you want to put it on the record, I'm
25 happy for you to do that with the court reporter, so ---

1 MR. KENDALL: You just want to mark this as a court's
2 exhibit?

3 THE COURT: I think that's fine for now.

4 What is the next Court's Exhibit?

5 COURT REPORTER: 9.

6 THE COURT: 9. We'll be at 9. We'll mark it now as
7 Court exhibit 9.

8 MR. KENDALL: Thank you, Your Honor.

9 (AFFIDAVIT OF ATTORNEY FEES MARKED INTO EVIDENCE AS
10 COURT'S EXHIBIT NUMBER 9.)

11 THE COURT: Put it in the care of the court reporter.

12 MR. KENDALL: And with that, we don't have any further
13 witnesses.

14 THE COURT: Okay. Y'all help out a little bit. At
15 this point in time, you close and then we go next, and ask
16 how does that work? Do you rest, in other words, and then
17 I just move on to the next defendant, or do y'all all rest
18 at once together?

19 MR. KENDALL: We've been kind of treated as a group,
20 and so I, I don't know how Your Honor prefers it, but ---

21 THE COURT: I'm just going to ask you in front of the
22 jury when they come back in if you have any other
23 witnesses, and you'll say no. Then I'll turn it over to
24 Mr. Cole, because that's apparently who's prepared to go
25 next, and then we'll go from there.

1 MR. KENDALL: Thank you, Your Honor.

2 THE COURT: And then we'll all collectively rest when
3 you all finish calling witnesses.

4 MR. KENDALL: Thank you. All right.

5 THE COURT: All right, anything else?

6 I think we can bring the jury back in.

7 BAILIFF: Yes, ma'am.

8 THE COURT: Thank you.

9 (THE JURY ENTERS AT 3:50 P.M.)

10 THE COURT: Please be seated.

11 Okay, Mr. Kendall, you can call your next witness.

12 MR. KENDALL: Your Honor, as I indicated, I have no
13 further witnesses.

14 THE COURT: All right. Thank you so much.

15 We'll move on to Mr. Cole. You can call your first
16 witness.

17 MR. COLE: All right. Thank you, Your Honor. Mr.
18 Eddie Polk.

19 THE COURT: Mr. Cole, we'll have to stop at or around
20 5:00.

21 MR. COLE: Yes. You might have to remind me.

22 THE COURT: Keep that in mind, sure. Yeah. Sure. No
23 problem.

24 L. EDWARD POLK, BEING DULY SWORN,
25 TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: Please state your full name, and
2 spell your last name for the record.

3 WITNESS: My name is Laurie Edward Polk, P-o-l-k.

4 MR. COLE: All right.

5 THE COURT: Please proceed. Just try to make sure all
6 the attorneys, that the court reporter, you're somewhat
7 facing the court reporter at all times. Don't totally turn
8 your back to her. Thank you so much.

9 VOIR DIRE EXAMINATION BY MR. COLE:

10 Q. All right, you ready to get going?

11 A. Yes.

12 Q. All right, Mr. Polk, can I call you Eddie?

13 A. Sure.

14 Q. Because that's what I usually call you, right?

15 A. That's correct.

16 Q. All right. Let's get some background about you.

17 Where do you currently work?

18 A. Applied Building Sciences.

19 Q. And what is your position at Applied Building
20 Sciences?

21 A. I am an engineering technician and a registered roof
22 consultant.

23 Q. Okay. What is a registered roof consultant?

24 A. Registered roofing consultant is, it's a consultant
25 that has -- pertains to any building -- I mean, any roof

1 coverings, and there's design analysis and installation,
2 anything pertaining to a roof covering on the building.

3 Q. And when you say covering, you're talking about the
4 very top of the building?

5 A. That's correct.

6 Q. So in this case, you -- we've had testimony about
7 shingles. That would be one of the things on there?

8 A. That is correct.

9 Q. There are other ---

10 A. That's one, that's one assembly, yes.

11 Q. Are there other types of roofing that you have been
12 involved in?

13 A. Yes. I've been involved with slate, wood shingles,
14 shakers, metal roofs, and low slope membranes consisting of
15 modified Bitumen, and single-ply membranes.

16 Q. And what did you go through in order to become a
17 roofing consultant?

18 A. A registered roof consultant, it's a certification
19 from what was previously RCI, Incorporated, which is now --
20 just went through a rebranding and it's Institute of
21 International Building Enclosure Consultants. And the
22 RICHLAND COUNTY requires to sit for the exam, and to become
23 a potential candidate for that is you have to have at least
24 four years' experience and/or education. And you have to
25 have, I think it's, like, seventy hours of seminars, and

1 then you fill out an application with different projects
2 with experience. And you also have to have some
3 references, five references from individuals. And then you
4 apply for -- to take the exam and then if everything goes
5 through, then you will sit for the exam. And when I did it
6 back in 2009, it was pretty much, like, a four-hour exam in
7 the morning for general knowledge and then, like, three or
8 four hours in the afternoon on standards and design and
9 analysis of different roof assemblies.

10 Q. And so that's all types of roof assemblies?

11 A. Correct.

12 Q. And you have another sort of series of letters after
13 your name, after the consultant. What is that?

14 A. That's registered roof observer. That is, it only
15 requires two years of experience, and basically you do more
16 of a, like, a Q/A for different roof types, roof systems on
17 projects.

18 Q. That was another one you had to do studying and
19 testing for?

20 A. That's correct. It's about a, I think, like, a four
21 hour exam on -- and then -- but it's, it's no design or any
22 analysis of that type.

23 Q. And do you still take classes dealing with roofs to
24 sort of -- to stay current with those types of -- I don't
25 know if we call it a degree. What do we call it?

1 A. Certification.

2 Q. Certification. Is that right?

3 A. Yeah. I do. It requires twelve hours of continuing
4 ed every year.

5 Q. And you've completed that?

6 A. Yes. I've already done it for this year.

7 Q. Congratulations. Prior to becoming the consultant and
8 observer, were you involved in any way in the construction
9 fields?

10 A. I -- very limited. I assisted my father-in-law with
11 some roofing on a -- like a part-time, very part-time
12 basis, and I also did some roof maintenance when I worked
13 at the medical university.

14 Q. That's here in town?

15 A. In Charleston, that's correct.

16 Q. So, that was actually hands on? You were up there in
17 the heat and the sun doing roofing work?

18 A. Actually, yeah. For the assistant, I mean, with
19 helping my father-in-law, yes, hands on there. And, and at
20 the medical university it was hands on as well, but it was
21 not a full installation. It was basically repairs.

22 Q. Okay. So, that was for MUSC you were helping to make
23 sure the roof maintained its lifespan?

24 A. That's correct,

25 Q. And with Applied Building Sciences, what kind of

1 support or work do you do?

2 A. We do, I do field investigations. Do the contract
3 administration during install of roofs of our projects that
4 we have going, and some, some design, and assist the
5 architects and the engineers with design documents.

6 MR. COLE: Your Honor, I would move right now to have
7 Mr. Polk determined a expert in roofing and general
8 construction practices.

9 MR. LUCEY: No questions or objections, Your Honor.

10 THE COURT: All right, ladies and gentlemen, once
11 again this witness is qualified in the area of roofing and
12 general construction practices to give opinion testimony in
13 those areas. Once again, this does not mean you must
14 accept his opinion. This information is to be used in any
15 way you see fit.

16 Thank you very much, Mr. Cole.

17 DIRECT EXAMINATION BY MR. COLE:

18 Q. All right, I'm going to hand you some documents, see
19 if you can help identify them. First I'm going to hand you
20 what's been premarked as Exhibit 722. Do these appear to
21 be photographs from a field observation that you did at
22 Palmetto Pointe September 1, 2016?

23 A. Yes, these look like my photos.

24 Q. All right. I'm going to hand you what's marked as
25 726. Do these appear to be notes or, or -- excuse me,

1 photographs that you took December 2, 2016?

2 A. Yes, sir. That's correct.

3 Q. All right, and the last set I'm going to hand you is
4 marked as Exhibit 852. Do those look like photographs that
5 were taken October 5, 2018?

6 A. Yes, they do.

7 Q. All right, and those are site visits that you attended
8 at Palmetto Pointe, just three of those right now, correct?

9 A. That's correct.

10 Q. Did you go to other site visits out there?

11 A. Yes, I did. I would say approximately ten to twelve
12 days on-site out there.

13 MR. COLE: I would move to put Exhibit 722, 726, and
14 852 in evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. LUCEY: All photographs?

17 MR. COLE: Yes, they're all photographs.

18 MR. LUCEY: No objection to photographs, Your Honor.

19 THE COURT: 722, 726, 852 all admitted without
20 objection.

21 (SITE VISIT PHOTOGRAPHS BY POLK MARKED INTO EVIDENCE
22 AS PLAINTIFF'S EXHIBIT NUMBER 722.)

23 (SITE VISIT PHOTOGRAPHS BY POLK MARKED INTO EVIDENCE
24 AS PLAINTIFF'S EXHIBIT NUMBER 726.)

25 (SITE VISIT PHOTOGRAPHS BY POLK MARKED INTO EVIDENCE

1 AS PLAINTIFF'S EXHIBIT NUMBER 852.)

2 BY MR. COLE:

3 Q. When you went out on -- can you get your glasses out?

4 A. I got my glasses, yeah. Go ahead. I'm listening.

5 Q. All right. When you went out on the site visits, sort
6 of give me a general overview of what you were doing.

7 A. Well, depending on the purpose of the site visit,
8 early on site visits consisted primarily just usual
9 observations of interior, exterior units. Some possible on
10 the roofs, and then some of the site visits involved
11 observations from the repairs being performed by, I
12 believe, the owners, and some as well were some destructive
13 testing that ABS performed.

14 Q. And when you were there, how did you document the time
15 that you were there?

16 A. Physical documentation of the observations or ---

17 Q. Correct.

18 A. --- the time?

19 Q. Just how did you ---

20 A. Just photo, primarily photographs and some written
21 documentation, field notes. However, some of them were
22 just, maybe just some photos.

23 Q. Okay, and who retained you for this case?

24 A. You did.

25 Q. On behalf of whom?

1 A. On behalf of Tri-County.

2 Q. And you understand what Tri-County's general scope of
3 work was?

4 A. I do.

5 Q. And what was that?

6 A. The roofing, siding, and trim primarily.

7 Q. And based -- with your background being the roofing
8 consultant and roofing observer, you focused a lot on
9 roofs, correct?

10 A. That's correct.

11 Q. And then did you also look at another component out
12 there that was in Tri-County's scope?

13 A. I did. The, the waterproofing of the decks.

14 Q. Okay. I want to talk about the waterproofing of the
15 decks first. I'm going to show you what has already been
16 marked -- and put it up here -- Exhibit 853, and that's as
17 wide as I can get it, but do you recognize what this ---

18 A. I do.

19 Q. --- is? Okay. What is ---

20 A. I do.

21 Q. --- this?

22 A. That is the Hydro-Stop detail from 1999.

23 Q. Okay.

24 A. For the edge, for edge, deck edge.

25 Q. And what are we looking at, or what's significant

1 about this drawing?

2 A. The -- at the detail, at the edge detail, it pretty
3 much levels off to flat or level, and for -- and it -- the
4 interior side of the deck or the field of the deck appears
5 to be sloped.

6 Q. All right, and you're talking about this area here?

7 A. That's correct, along the deck edge, yes.

8 Q. With orienting to this photograph, when you are out
9 there observing Palmetto Pointe, where would the living
10 space be and where would the outside be?

11 A. The outside would be where that -- the continuous
12 cleat mark is there, that'd be the outside of the deck.
13 And then end board of that would be the, the residence.

14 Q. And is there a slope shown on this drawing?

15 A. There appears to be, yes.

16 Q. And is that correct?

17 A. I don't know what the slope is, but it's showing a
18 slope. It should have a slope, yes.

19 Q. Going to show you what's been marked, and we've looked
20 at it before, Exhibit 854. Do you recognize what this is?

21 A. I do. That's a similar detail but a more current time
22 period, timeframe.

23 Q. And the questions I asked you before about the edge
24 and about the slope, are they consistent with this more
25 recent detail?

1 A. Yes. Very similar, yes.

2 Q. Is your understanding -- or what is your understanding
3 as to the types of water proofing that were installed out
4 at Palmetto Pointe?

5 A. They were Sealoflex and Hydro-Stop, which is an
6 acrylic fluid applied.

7 Q. Can ---

8 A. Reinforced, fluid applied.

9 Q. Can you describe to me as, as to how it would be
10 installed?

11 A. Typically the base or foundation coat is installed
12 over the deck, and then the fabric is installed in that,
13 and another coat of foundation or base is installed, and
14 then two coats of top coat are installed. And then if you
15 have a detail, like a edge detail there, that's installed
16 and then stripped in again with base, fabric base, and top
17 coat.

18 Q. And when you're saying the detail, you're talking
19 about the flashing on the outside?

20 A. That's correct, the drip edge flashing.

21 Q. Now, we've seen some photographs that have been
22 referenced in this case where they're just like a small
23 piece of metal that kind of sticks out the end. Is that
24 what we're talking about?

25 A. On the edge?

1 Q. Yes.

2 A. Yes, that is correct.

3 Q. And with the -- with that detail, does it create kind
4 of a small lip?

5 A. Yes. Due to that build up of those layers of fabric
6 and the stripped in plies of the fluid-applied coating.

7 Q. I understand that Hydro-Stop and Sealoflex are
8 different brand names. Are they installed generally the
9 same?

10 A. They are, to my knowledge, pretty similar, yeah, in
11 installation.

12 Q. During your observations during your site visits to
13 the project, how does the drawing that we see here that
14 we've been looking at compare to what you saw out on the
15 site?

16 A. Looks very similar. The decks appear to have fairly
17 good slope, and, and the majority of them appear to level
18 off at the edge, similar to this detail.

19 Q. There were some questions about -- was it 1611? Was
20 that ---

21 A. Yes.

22 Q. Okay, that's the deck that we heard Mr. Schweickhardt
23 testify about this morning, and then the one deck that is
24 completely being redone under the Watkins repair, correct?

25 A. Correct.

1 Q. What was significant about 1611's deck compared to the
2 other decks?

3 A. The 1611 deck, there's the railing, there's
4 intermediate supports that do not penetrate the membrane
5 but actually just support on the top of the membrane, and
6 it appears to have for some reason rubbed and breached the
7 fluid-applied membrane.

8 Q. You've looked at documentation that has been produced
9 in this -- or in this case, correct?

10 A. I have.

11 Q. Have you seen any documentation that suggests that the
12 original waterproofing membranes have been recoated?

13 A. I have. I've seen some invoices and some proposals,
14 yes.

15 Q. And based off of that, do you know when the
16 waterproofing membranes may have been recoated?

17 A. I believe it was 2014, '15-ish.

18 Q. Okay. We've heard some testimony about the various
19 slopes that have been discussed in this project. What was
20 the slope that was discussed for the, the deck slope?

21 A. Quarter inch per foot.

22 Q. What does that mean?

23 A. That it's for every, every 12 inches, there's a
24 quarter inch rise.

25 Q. And so for every 3 feet, it would be how much?

1 A. Three-quarter inches.

2 Q. All right. I got a demonstrative thing that I'm going
3 to pull out and see if this works. I'll explain this in a
4 second, but these are, these are what?

5 A. Those are just yardsticks.

6 Q. Okay, and then these are just?

7 A. Some blocking.

8 Q. Okay. What's the width of this piece right here?

9 A. That appears to be a nominal three-quarter inch.

10 Q. Okay. Do you need to measure it?

11 A. I can.

12 (A PAUSE.)

13 A. Three quarters.

14 Q. And this yardstick is 3 feet long?

15 A. Yes.

16 Q. All right. So, when you're talking about a quarter
17 inch per foot, basically that's what we're talking about
18 with the slope of decks, right?

19 A. That's correct. That'd be approximate. That's it.

20 Q. Okay, and then from the drawings we saw, you have this
21 slope and then it flattens out for that period where we
22 have all that additional stuff at the end, and then you've
23 got the flashing, et cetera, after that?

24 A. That's correct.

25 Q. We have also had some discussions about slopes with

1 the roofs, correct?

2 A. Yes.

3 Q. And I believe you've seen Exhibit Number 342 before,
4 which is the laminate shingles reference, correct?

5 A. That's correct. Yes, sir.

6 Q. And on the front page here, I think we might have seen
7 this before, but what is significant about this, this chart
8 that we have right here?

9 A. Its shingles do not -- you -- not -- should not be
10 applied in slopes less than 2/12, and then the low slope,
11 which would in accordance with the code, between 2 and 4
12 would, would be required to have special underlayment
13 enhancement. And then 4 and above, it only requires one
14 layer of underlayment.

15 Q. All right, what does 2/12 slope mean?

16 A. 2 inches. For every 12 inches of horizontal, there's
17 2 inches of rise.

18 Q. All right, now we get to use these things again. All
19 right. So, for 3 feet, how many inches would that be?

20 A. That'd be 6.

21 Q. All right. Would you mind measuring that?

22 A. It's, like, 6 inches.

23 Q. All right. So, if we've got what's called a low slope
24 roof out there, basically we're talking about that,
25 correct?

1 A. Correct.

2 Q. Okay, and then what is the 4/12 roof?

3 A. 4/12 is where the cutoff is for requirement for single
4 versus underlayment enhancement.

5 Q. All right, and so over 3 feet, how long would that be?

6 A. 3 feet would be 10 and a half -- oh, oh, of, 12
7 inches.

8 Q. 12 inches, all right.

9 A. 4 and 12.

10 Q. This is 12?

11 A. Yes.

12 Q. All right. So just for comparison that we have here,
13 we've got -- if this will stay up -- we have low slope roof
14 we have here on the jury's right, and then we have the
15 slope on the jury's left, and in between these two we're
16 supposed to have two layers of underlayment, you said?

17 A. Correct.

18 Q. What does that mean?

19 A. Just, just two layers of -- well, like, not
20 necessarily felt anymore, but just underlayment. There's
21 synthetic underlayments as well to provide -- it's
22 additional waterproofing or -- and also a temporary drying
23 window when the roof is being installed.

24 Q. Now the plans for this project, what types of roofs do
25 they -- what pitch roofs do they call for?

1 A. Typically it's 4 and above. There are a couple of
2 areas that are less than 4.

3 Q. And we've heard some testimony earlier that there's
4 one that was 3 and a half inches and 4. Is that correct?

5 A. I recall, yes.

6 Q. All right. I will concede that 3 and a half is less
7 than 4. We're not going to quibble about that.

8 A. Correct.

9 Q. Okay, but if we have 3 and a half inches over 3 feet,
10 what would the distance of that be?

11 A. The height would be 10 and a half.

12 Q. All right, and is that what we have here?

13 A. Yes.

14 Q. Okay. So for comparison, we have those two roofs
15 right there. We've got a 3 and a half and 12, and we've
16 got a 4 and 12, correct?

17 A. That's correct, yes.

18 Q. All right. Now, I'm not going to try to convince you
19 that a 3 and a half is 4, but looking at those two angles,
20 what do we notice?

21 A. They're very close.

22 Q. Okay. When you -- in the scope of repair that we have
23 that you assisted with the roofing parts, do we have any of
24 the lower slope roofs that you are not getting repaired?

25 A. I don't recall of any.

1 Q. Okay. So, that was probably a bad question. You're
2 repairing all the lower sloped roofs, correct?

3 A. That's correct.

4 Q. Simply because the slope on the roof may be less than
5 4/12, that doesn't necessarily mean there is damage,
6 correct?

7 A. That is correct.

8 Q. Do you remember where on the project those lower
9 sloped roofs were associated?

10 A. The lower, probably less than 3 and a half 12 were, I
11 believe, the Palmetto B units on that rear elevation.

12 Q. And were those associated with any other construction
13 that was out there? Like any other components? The, the
14 privacy walls or anything like?

15 A. Some of them did have the privacy walls, yes.

16 Q. I want to talk to you, talk to you some more about
17 the, the roof shingles themselves. Did you look at the
18 roof shingles themselves?

19 A. I did in numerous locations, yes.

20 Q. How did you perform your work investigating the roof
21 shingles?

22 A. Well, basically, some of them I would just -- when we
23 had interior, interior access, I would just access the roof
24 from the rear or the front balconies and make some
25 observations then.

1 Q. Did you actually walk on the roofs?

2 A. I did walk on. I didn't walk on all the roofs, but I
3 did walk on a lot of them, and lift -- lifted some shingles
4 as well for observation of the fastener placements.

5 Q. All right, and so other than the -- well, tell me.
6 When you're lifting up the shingles, what were you actually
7 looking for?

8 A. Actually the nailing pattern and the installation of
9 the nail, the physical installation of each, each of the
10 nails in those locations.

11 Q. Can you tell me about the physical installation of the
12 nails that you're talking about?

13 A. Yeah. They typically were installed flush or nearly
14 flush with, with the shingle top.

15 Q. What does?

16 A. They were -- the head of the nail was either flush or
17 slightly below the granules of the shingle. So -- and
18 that's -- and appears to be in accordance with the
19 CertainTeed nail installation.

20 Q. I'm going to show you the second page of Exhibit 342
21 for the CertainTeed shingles we're talking about. Is this
22 the drawing you're talking about?

23 A. That's correct.

24 Q. And could you walk me through? We're talking about
25 that drawing, figure 15-2. Can you talk, walk me through

1 what's going on in that photo?

2 A. Yes. The one on the, the left side of the screen is
3 what they call the proper nailing, and it's actually nearly
4 flush with the top of the shingle. I mean, this is for
5 illustrative purposes only I'm sure because they don't have
6 granules. It's not smooth surface like -- I mean, the
7 shingle's not that smooth. Then the next nail over is
8 crooked or sometime called angled. Then of course the
9 underdriven fastener and then an overdriven fastener, which
10 this appears to have fractured the, the mat in that case
11 there.

12 Q. I want you to talk to me about the geometry of the
13 shingle so you can explain what you were just talking about
14 with getting to the mat. This is Exhibit 1002 that the
15 plaintiffs brought in. Does this look like it's a roof
16 shingle?

17 A. Yes, it does.

18 Q. And what can you tell me about the components of the
19 roof shingle?

20 A. The shingle, it looks like they had the -- it was
21 attached with nails and not staples, and it looks like
22 there were, I don't know, looks like 6 nails installed, and
23 it appears that this -- yeah, there -- the sealant strip
24 across here is -- appears to be intact in some locations
25 but has damaged the mat in other locations.

1 Q. All right, you just mentioned sealant strip. What is
2 that?

3 A. The sealant strip is what holds the leading edge down
4 on the shingle to provide wind uplift resistance.

5 Q. Now, what exactly is the sealant strip?

6 A. It's an asphaltic compound, and it might have some
7 polymers in it to, to give it a little bit more sealing
8 capabilities. But it's, it's just an asphaltic compound.

9 Q. All right, I need to dumb it down for me. It's
10 basically glue?

11 A. Glue, adhesive, yeah. Okay.

12 Q. Shingle glue?

13 A. Correct.

14 Q. Okay, and is that a similar type of compound that is
15 used to kind of stick parts of the shingle together?

16 A. Yes.

17 Q. Okay, and explain to me again what you were talking
18 about where that holds the leading edge of the shingle
19 down.

20 A. Well, actually, I have a shingle here.

21 Q. All right.

22 A. Of course I cut this one. It's deformed since it --
23 being in a box, but basically you have your, your nails go
24 across here, and then this piece which has that asphaltic
25 compound on the back will go there. And then when it heats

1 up, it will create a bond to prevent during wind events or
2 anything from this piece lifting up and becoming basically
3 a sail.

4 Q. All right, keep the shingle out real quick. Pick up
5 one of them for me, and show me on the back. There's some
6 shiny stuff on that. What is that?

7 A. Yeah. This is -- these are asphalt here, but it's got
8 release tape on it to -- and the purpose of this is to
9 provide -- when the shingles are shifted, they shift like
10 this and it keeps the shingles from sticking together when
11 it gets heated up like in warehouses and all like that.

12 Q. On the shingle you have there, it has a row near the
13 bottom of it. Is that where the sealant strip is on the
14 example you've got there?

15 A. Yeah. This is, this is sealant. This does not, this
16 does not have any cellophane or plastic.

17 MR. COLE: All right, there was a note on this. We'll
18 find it later. I don't know where it went, so we'll find
19 that later.

20 THE COURT: Okay.

21 MR. COLE: Can Mr. Polk step down and, and point out
22 some stuff on the shingle, Your Honor?

23 THE COURT: Sure.

24 BY MR. COLE:

25 Q. I'm going to try to hold this here. All right, you

1 were -- okay, first, I guess, on the back, that shiny part
2 that has cellophane on it, that is just so the shifting
3 doesn't ---

4 A. Shifting, correct, so it doesn't stick together.

5 Q. Are you supposed to peel that off?

6 A. No, you're not.

7 Q. Okay. On this shingle here, can you point out to me
8 where you said, said that there's the sealant strip?

9 A. Right here, line all the way across here.

10 Q. And so when I lay the next shingle on top of this,
11 that's what kind of glues the bottom edge of the upper
12 shingle to this thing?

13 A. That is correct.

14 Q. Okay, and then I think you pointed it out. I could
15 see it up there. I don't think the jury could see it.
16 That you said there was some indication that it looked like
17 the sealant strip had been engaged?

18 A. This -- well, it probably was all bonded together at
19 some point in time, but this was still -- and this, this
20 happens sometime when you either forcibly do it, it, it
21 pulls apart. It damages the membrane -- I mean, the
22 shingle itself because it pulls part of the granules off
23 and gets into the, the asphalt and down to the mat
24 sometimes.

25 Q. Yeah. So, this shows that it was engaged at some

1 point with the shingle above it?

2 A. Yes, at least in several locations.

3 Q. And we see the holes in this. All that tells us is it
4 used to have nails that was holding it on?

5 A. That's correct.

6 Q. Okay. Can I tell from looking at this sheath and then
7 was staring at a roof sheathing whether or not the nails
8 that were holding this originally were nailed correctly?

9 A. No. The only -- I mean, as far as overdriven at least
10 you can't determine that, I mean. It's pulled through.
11 So, you don't know how it was prior to the removal of that
12 shingle.

13 Q. Okay. Have a seat again.

14 So, when you were doing your inspections, were you
15 looking at whether or not you could make a determination of
16 the nailing and whether or not the nailing was correct?

17 A. I was, yes.

18 Q. And what did you do?

19 A. Like I said, I lifted the shingles and just visually
20 looked at all the, all the locations of that shingle, and
21 then I, I did not see anything that was indicated, that Mr.
22 Mease had alleged as being overdriven.

23 Q. Okay.

24 A. Well, I say -- let me back up. I did see one
25 location, possibly two locations, that I considered

1 overdriven.

2 Q. Mr. Mease testified there were a lot of overdriven
3 nails out there.

4 MR. LUCEY: Objection, Your Honor. Improper question.

5 MR. COLE: All right.

6 THE COURT: Rephrase.

7 BY MR. COLE:

8 Q. Are you aware of opinions that there are improper
9 nailing of the shingles out there?

10 A. Allegedly, yes.

11 Q. Okay, and you looked at, at that particular condition,
12 correct?

13 A. I did.

14 Q. And that's why you were walking around on the roofs,
15 correct?

16 A. That's correct.

17 Q. I'm going to show you Exhibit -- well, this is from
18 Exhibit Number 726, which was your December 2, 2016, site
19 visit, and this is a photograph from that selection that
20 you picked out from unit 1655, and let me...

21 MR. LUCEY: May we have the photograph identified for
22 us so we can follow along?

23 THE COURT: Aren't they numbered within the exhibit?

24 MR. COLE: Do we have the number?

25 WITNESS: I can find the number.

1 MR. LUCEY: Every photograph has a number on it.

2 MR. COLE: Which my printout does not have that, that
3 number on it. That's in Exhibit...

4 THE COURT: 726.

5 MR. COLE: 726.

6 WITNESS: Give me one second. I think I can find
7 that.

8 (A PAUSE.)

9 BY MR. COLE:

10 Q. All right, you pointed out to me it's image number
11 1821.

12 A. Okay.

13 Q. And again, what unit is that, that on?

14 A. I have it written on there. 1655.

15 Q. All right, and what are we actually looking at in this
16 photograph?

17 A. Actually two of the nails used to attach the shingle,
18 and the one on the left is -- if I can show here -- appears
19 to be overdriven.

20 Q. Okay. Why do you say that's overdriven?

21 A. Because it's well below and it appears to be down
22 possibly through the mat of the shingle.

23 Q. And you were using this for your analysis?

24 A. My reference, yes.

25 Q. All right. So, that photo that you were just showing

1 from 1655, that, you say, is, is similar to the right hand
2 of ---

3 A. Correct. That's correct.

4 Q. You did also look at other nails out there, right?

5 A. I did, yes.

6 Q. Okay. I'm going to show you, and this is from Exhibit
7 722. I don't have the photo number but Exhibit 722, and
8 this is for unit what?

9 A. 1625.

10 Q. Okay, and what are we looking at here?

11 A. Just two more nails that I observed that are -- appear
12 to be flush or nearly flush.

13 Q. And when you're saying flush or nearly flush, you're
14 saying that the head has not compressed so far into the
15 shingle that it could cause a problem?

16 A. That's correct.

17 Q. When you go out and do an inspection on a roof, you'll
18 find nails that are overdriven. You'll find nails that are
19 not overdriven, correct?

20 A. That's correct.

21 Q. Or the angle driven and the other examples as well,
22 correct?

23 A. More than likely, yes.

24 Q. You also looked at some of the photographs that Mr.
25 Mease took, correct?

1 A. I did. Correct.

2 Q. I'm going to show you this one from unit 1617. Do you
3 have an opinion as to whether -- or the condition of that
4 nail?

5 A. Yeah. He indicated that that was overdriven, and I
6 ---

7 MR. LUCEY: Objection. Move ---

8 A. --- I disagree ---

9 MR. LUCEY: --- to strike.

10 A. --- with that.

11 Q. All right, is that ---

12 THE COURT: Wait a minute. Let me rule on this. I'm
13 going to overrule that for now. Go ahead.

14 MR. COLE: All right.

15 BY MR. COLE:

16 Q. Is that overdriven in your opinion?

17 A. It is not.

18 Q. Why not?

19 A. I do not think it's overdriven because it's just right
20 around the granules and there's -- near the asphalt sealant
21 strip there. And, you know, it could be some of the
22 sealants, it's already melted at one point in time, so it
23 could be oozing around the head of the nail as well.

24 Q. And going back to the CertainTeed instruction, it's
25 similar to the left-hand portion of that drawing?

1 A. That's correct.

2 Q. I'm going to show you another photograph from unit
3 1617. Do you have an opinion as to ---

4 MR. LUCEY: May we have a photograph number before
5 there's testimony about this photograph, please?

6 Q. Do we have the photograph numbers for these?

7 A. I can look them up.

8 Q. All right.

9 THE COURT: Let's, yeah, take a minute and do that.
10 It helps the record.

11 (A PAUSE.)

12 BY MR. COLE:

13 Q. I know this is unit 1617, a Palmetto unit.

14 A. Oh, I, I don't know if I have his photo numbers. I do
15 not.

16 Q. All right.

17 MR. COLE: We can find it if you want them later on.

18 MR. LUCEY: We're not even sure what exhibit we're in.

19 BY MR. COLE:

20 Q. Where did you find this photograph of unit 1617?

21 A. In Mr. Mease's photo log. Yeah, his photo log.

22 Q. And this was taken November 11, 2015?

23 A. That's what it looks like.

24 Q. And do you have an opinion as to whether or not that
25 fastener is, is correct?

1 A. It is not overdriven; I do not think it is overdriven.

2 Q. Trying not to be redundant, but is this a similar
3 opinion?

4 A. It is similarly.

5 Q. All right, and this one as well?

6 MR. LUCEY: Your Honor, we would like -- plaintiff
7 would like to have the exhibit identified and the
8 photograph so we can follow along. There's no way for the
9 plaintiffs to cross the witness on these photographs unless
10 they tell us their source.

11 THE COURT: Are these -- these are -- can you at least
12 try to go by what unit they are, if you can?

13 MR. COLE: Yeah. Well, these are unit 1651.

14 WITNESS: 1651.

15 THE COURT: They're all 1651?

16 MR. COLE: Photographs. All of Mr. Mease's photos
17 have been put in already into the, the record, and we are
18 trying to speed up the process. This is the last photo I
19 was going to show.

20 THE COURT: Okay. Well, do your best. Go ahead.

21 BY MR. COLE:

22 Q. All right. Similar testimony about this?

23 A. That is correct.

24 Q. All right. Tell me more about the sealant strip.

25 A. Well the sealant strip, the sealant strips are -- the

1 NRCA actually -- look for that document here.

2 Q. Before you do that, what is NRCA?

3 A. I'm sorry, the National Roofing Contractors
4 Association, which is the industry standard for roofers.

5 Q. What does the NRCA do?

6 A. They produce volumes of information regarding the
7 installation of different roof assemblies.

8 Q. Is that a source that you would go to to assist with
9 your analysis of a roof?

10 A. That would be one of them, yes.

11 Q. And what are some other services you might use?

12 A. Installation instructions and also there, there's the
13 ARMA, which is the Architectural -- I mean, the Asphalt
14 Roofing Managers Association manual as well.

15 Q. And what is that publication?

16 A. It's just a, it's just a manual similarly specific to
17 shingles.

18 Q. Okay, and the -- let me back up. I don't think we
19 talked about this. Nails are important for the initial
20 installation of the shingles, correct?

21 A. That's correct.

22 Q. And why is that?

23 A. To, to hold the roof in place, and then at some point
24 in time to give the asphalt sealant strip time to bond to
25 the underlying shingle.

1 Q. And there's been discussion about six nails in a
2 shingle. Why is that significant?

3 A. It's to provide a better wind uplift capacity.

4 Q. And after the roof is initially installed, what does
5 the sealant strip then do?

6 A. The sealant strip, like I said earlier, provides the
7 -- it's the -- probably I would consider that more primary
8 for the leading edge of the shingle, to keep it from
9 blowing up and creating a sail-like condition.

10 Q. And if the bottom of the shingle is pushing up, what
11 does that do?

12 A. Well, it, it makes it very vulnerable for a blow-off.

13 Q. Okay, and have you done some research into the sealant
14 strip?

15 A. I have. It's -- the NRCA as well as the several
16 articles indicate that sealant ----

17 MR. LUCEY: Objection, Your Honor. Hearsay.

18 THE COURT: Overruled.

19 BY MR. COLE:

20 Q. Go ahead.

21 A. The sealant strips degrade or deteriorate over time.

22 Q. Are you just basically saying that the roof can wear
23 out?

24 A. Yes.

25 Q. And that's -- you have to replace roofs every so often

1 anyway, correct?

2 A. That's correct.

3 Q. And what happens when the sealant strip starts to
4 deteriorate?

5 A. Then the bond on that leading edge becomes weaker and
6 more vulnerable to wind uplift.

7 Q. Okay, and in English, what does that mean?

8 A. It loses adhesion.

9 Q. Okay, and can you give us a demonstration kind of with
10 your example shingle?

11 A. Like I said earlier, it's, as long as it's bonded,
12 then this shingle will not ---

13 COURT REPORTER: Excuse me. Don't speak and move them
14 at the same time, please.

15 WITNESS: Oh. I'm sorry.

16 COURT REPORTER: Thank you.

17 BY MR. COLE:

18 A. It kind of fell out my hands.

19 Q. I will hold this together so that you can talk and the
20 court reporter can hear us both.

21 A. Okay. So, this bonds to here, which provides
22 basically a monolithic system which is all basically one
23 piece. But as this fails, like I said earlier, this will
24 become, could become vulnerable to wind uplift and just
25 start peeling back basically.

1 Q. All right. That doesn't happen immediately, does it?

2 A. No. It typically -- I mean, it's -- the newer roofs
3 will definitely be bonded, unless there's another issue,
4 will be bonded better than a older roof.

5 Q. And did your investigations sort of give you a
6 timeline of the sealant strips?

7 A. Yes. Typically, research seems to indicate that they
8 start degrading approximately at five years, four to five
9 years.

10 Q. And what does that mean?

11 A. That at four -- any time after that, and I -- and it's
12 -- they just become to the point where they might
13 eventually just not want to bond anymore at all.

14 Q. So, you're saying that after the sealant strip
15 degrades, this shingle can start to flip up?

16 A. Yes.

17 Q. When you have a wind?

18 A. That's correct.

19 Q. Does it have to be a code-prescribed wind?

20 A. No, it does not.

21 Q. Okay, and when you have that wind the first time, that
22 may not cause any problems, correct?

23 A. It might not. It might be -- start breaking it loose
24 a little bit, but it might not be a sufficient enough wind
25 to cause it to flip all the way up.

1 Q. And so after enough winds hit this, what could happen?

2 A. Then you could start losing shingles. Blow-off would
3 occur, possibly occur.

4 Q. And did you look at the warranty documents for
5 CertainTeed?

6 A. I did.

7 Q. And I'm going to show you. I don't remember what
8 CBC's number was, but it was CBC's Exhibit 27 or Love
9 Number 2, which was a packet of information from Mr. Love,
10 Dr. Love. And included in his packet, starting at Bates
11 number 21607, was a document here that says limited
12 warranty to CertainTeed shingles, correct?

13 A. That's correct.

14 Q. And when you looked at this document, what did you
15 learn about the sealant strips?

16 A. That the CertainTeed appeared to warrant the sealant
17 strips for five years for the wind warranty.

18 Q. And what does that mean from your...

19 A. That tells me that they're assuming that the sealant
20 strips will deteriorate. It doesn't affect the material
21 warranty of the shingle itself, but the wind warranty for
22 the asphalt adhesive strip.

23 Q. So after five years, that adhesive strip can start to
24 wear out and when it wears out, are the shingles then more
25 susceptible for loss?

1 A. That's correct.

2 Q. And if the sealant strip is no longer engaged, will
3 the nails be able to hold the shingle on if there's no
4 sealant strip?

5 A. It could depending on the -- how much wind uplift
6 there is. I mean, it could be enough, adequate enough to
7 resist the wind, but if it's -- it's definitely not going
8 to be as much -- have the capability as it does if the
9 adhesive strip was intact.

10 Q. So, the adhesive strip is integral to the lifetime of
11 the shingles?

12 A. Correct.

13 Q. The, the property that is out there, where is it
14 situated to the ocean?

15 A. It's very near the ocean. I think there's only a
16 couple of small peninsulas between there and the ocean.

17 Q. And ---

18 A. Or islands.

19 Q. --- when you were investigating this, did you have
20 occasion to try to determine some of the air wind speeds
21 that are out in that location?

22 A. I did by, by the use of CoreLogic, which is a company
23 we use for -- it's an algorithm that they kind of estimate
24 the wind speeds at different locations.

25 Q. And is this a, a service that is used in your

1 capacity, in your investigations and expert testimony?

2 A. It is, and we use it also for insurance claims or
3 damages to roofs.

4 Q. And did you look up the wind speeds for a location
5 that would be equivalent to on the island Palmetto Pointe?

6 A. I did. It was one of the units. I don't recall.
7 Might have been 1645. I don't know exactly which. It was
8 a unit specific, though.

9 Q. And did you also look up a similar report for the
10 nearby airport?

11 A. Yes, I did, Johns Island.

12 Q. And what was the ---

13 A. Charleston Executive.

14 Q. --- the comparison between the two locations?

15 A. I think they were very similar. 2 to 3 miles per
16 hour, I believe, is what -- the difference in the wind
17 speeds, and the ocean, the one which would be expected, the
18 one closer to the ocean is a little bit higher.

19 Q. You're saying Palmetto Pointe has a higher wind speed
20 than the airport?

21 A. Correct.

22 Q. And that's because it's closer to water?

23 A. That's correct.

24 Q. And is not behind a bunch of trees?

25 A. That's correct.

1 Q. There's one thing I forgot to ask you when we were
2 going through the, the, the types of nails out there. In
3 your analysis of the nails that you looked at at Palmetto
4 Pointe, do you believe that these roof shingles need to be
5 replaced because of a problem with how they were nailed?

6 A. I do not, no.

7 Q. You're not going to have a 100 percent perfect nail
8 installation on a roof out there, right?

9 A. That's correct.

10 Q. Because you've got, what, six nails per shingle, and
11 how many nails would be in a roof?

12 A. Oh, several thousand.

13 Q. Okay. Although it may technically be a violation by
14 having an overdriven nail and you've got an example, you
15 would say it would not make sense to replace the roof
16 because of that overdriven nail?

17 A. That's correct.

18 Q. When you were out there investigating the, the
19 project, did you also have occasion to observe sort of the
20 condition of the, the buildings?

21 A. Yes, I did.

22 Q. And did you see things out there like how the, the
23 roof structures seemed to be taken care of?

24 A. Yes.

25 Q. And what kind of things did you see when you were out

1 there investigating those?

2 A. It looks -- I mean, as far as just pertaining to the
3 roofs or in general?

4 Q. I'm talking about the roofs because we've heard a lot
5 of testimony about this and the other stuff. I'm trying to
6 talk with you about the roofs right now.

7 A. I don't know. I mean, I've seen some possible
8 applications of some sealant, but -- and then there's other
9 areas where there wasn't -- didn't appear to be any -- a
10 lack of maintenance because some of the sealant was missing
11 around some nails or had deteriorated on a roof in
12 particular I recall.

13 Q. And did you observe some places where, like, a cable
14 line was stapled through the shingles?

15 A. That's correct.

16 Q. You shouldn't do that?

17 A. No.

18 Q. Going back to the waterproof decking, you saw somebody
19 had stapled a nail to the floor of waterproof decking?

20 A. Stapled something, yeah, a wire or something. That's
21 correct.

22 Q. You shouldn't do that, right?

23 A. That's correct.

24 Q. And then you looked on October 5th of 2018, you did a
25 site visit to unit 1633, correct?

1 A. That's correct.

2 Q. And we already talked about your photographs, Exhibit
3 852, and tell me about that site visit.

4 A. That was a site visit to inspect units that were
5 reported. Some had some indications of some water
6 intrusion.

7 Q. And you gave me this photograph from 1633. What is,
8 what is the, the purpose of this photograph being taken
9 October 5, 2018?

10 A. That unit had exhibited some water intrusion and
11 damage to the interior finishes.

12 Q. Okay. Is that a ceiling?

13 A. That is a ceiling, yes.

14 Q. All right. Did you stop your investigation there?

15 A. I did not.

16 Q. What did you do next?

17 A. Went up in the attic and to investigate what was going
18 on above that spot.

19 Q. What is this photograph?

20 A. That is the black spot downslope of that -- that's a
21 PVC.

22 Q. Can you stand up and point just so that we know what
23 you're talking about?

24 A. This is a PVC drain waste vent, and this is some
25 damage, and this is in the proximity over that spot on the

1 ceiling.

2 Q. And did you stop your investigation there?

3 A. I did not. I went on the roof to see what was
4 possibly causing that.

5 Q. Is that your shadow?

6 A. That is my shadow.

7 Q. And what are we looking at?

8 A. That's the -- that's that vent, and then that's the
9 vent boot that was used to flash that pipe.

10 Q. That ---

11 A. And there's sealant. I don't know if the next photo
12 shows it, but there's -- should -- there was evidence of
13 sealant there at one time, but the sealant has since
14 deteriorated.

15 Q. Let me ask real quick about -- this is a pipe that's
16 going through the roof?

17 A. That's correct.

18 Q. And that's something that is -- naturally happens on a
19 house?

20 A. Yes.

21 Q. And that's actually a plumbing pipe, but it's to help
22 get gasses out of the plumbing system?

23 A. That's correct.

24 Q. And the boot, is that the black thing that's around
25 it?

1 A. That is.

2 Q. And generally, how is a boot installed on a roof?

3 A. Well, it's installed with -- on there and then the --
4 on top of the -- and weather lap with the shingles, of
5 course, and the underlayment depending -- sometimes it
6 might be icy water there. CertainTeed has their
7 WinterGuard, and then it's counter-flashed with the --
8 basically with those shingles and the nails on the front
9 leading edge and then covered with sealant, should be
10 covered with sealant.

11 Q. When you're saying counter-flashing, what do you mean?

12 A. I mean it's weather lap, not counter-flash, but I
13 guess weather lap with the shingles.

14 Q. So, the shingles go on top of the boot so if water
15 gets on top of the shingle, it goes ---

16 A. Correct.

17 Q. --- on top of the boot and then goes on top of the
18 shingle?

19 A. That's correct.

20 Q. And is a boot like this something that has to be
21 routinely maintained?

22 A. Yes. All, all roofs have to be routinely maintained.

23 Q. What is a maintenance thing that you could do on a
24 book like this?

25 A. Just primarily you, you just walk the roof and you

1 look at, like, the sealant should be on top of the heads of
2 those things. And then also around the collar around the
3 pipe is a neoprene gasket, and those periodically will wear
4 out and have to be changed as well.

5 Q. That just naturally degrades?

6 A. That's correct.

7 Q. And does the sunlight degrade it?

8 A. Yes.

9 Q. And ---

10 A. That's what causes degradation.

11 Q. And does the salt spray and the salt air degrade it?

12 A. It probably doesn't help it.

13 Q. You were asked about another photograph. This is the
14 last photograph you gave me from this series. What are you
15 looking at here?

16 A. That's that same vent with the -- where that nail --
17 and that's the likely source of where that water was
18 getting in that, underneath that -- I mean, on that
19 ceiling.

20 Q. Are you saying this was installed correctly
21 originally?

22 A. It appears to be installed correctly.

23 Q. And then this is just something that, that degraded
24 over time?

25 A. Yes. The nail is just no longer holding it down and

1 it's not covered in sealant.

2 Q. And so that's a maintenance issue on a roof?

3 A. That's correct.

4 Q. And you have to do something to help maintain your
5 roof to, to have it use its useful life, correct?

6 A. Correct.

7 Q. You assisted with the repair scope that was presented
8 earlier, correct?

9 A. Parts of it, yes.

10 Q. And you helped with the repair scope with the roofs,
11 right?

12 A. That's correct.

13 Q. Do you remember what parts of the repair scope with
14 the roof -- let me, let me start over. That was a terrible
15 question. What was the repair scope you offered for the,
16 the roofs?

17 A. Primarily the starter strip and the overhang. The
18 starter strip was incorrectly installed, and the -- there
19 was an excessive overhang on the shingles. So, recommended
20 to cut the first course in the shingles. Well, first
21 course and the starter and install sealant along there to
22 provide it. Like, the starter strip would have the
23 asphalt.

24 Q. By adding the sealant, you're basically adding a
25 sealant strip at the bottom?

1 A. That's correct.

2 Q. And what was the purpose of that on the starter strip?

3 A. To give it the wind uplift resistance along that and
4 provide it like it should have probably been installed.

5 Q. And the starter strip's at the bottom of the, the
6 roof?

7 A. Correct.

8 Q. And you did not specify to replace the whole roof,
9 correct?

10 A. That is correct.

11 Q. And you do not believe that it's necessary to replace
12 the whole roof from the original installation issues?

13 A. I do not believe so.

14 MR. COLE: All right, that is all the questions I have
15 for you. Thank you very much.

16 WITNESS: Okay.

17 THE COURT: Anybody else on this side have any direct?

18 MR. KENDALL: Can we just clarify something?

19 THE COURT: Sure.

20 (A PAUSE.)

21 MR. KENDALL: Your Honor, I don't have any questions.

22 Thank you.

23 THE COURT: Okay.

24 All right, ladies and gentlemen, given the hour and
25 the estimated time for the next portion, I'm going to --

1 THE COURT: So, they actually have already been
2 transported?

3 CLERK OF COURT: Yes, ma'am.

4 THE COURT: To Charleston County. So, that's going be
5 at 9:30. We anticipate that lasting half an hour, so I
6 plan to begin at 10 a.m. Anything else I can do this
7 evening for you all?

8 MR. COLE: You are doing the hearing here in this
9 courtroom?

10 THE COURT: Yeah.

11 MR. COLE: Do, do you ---

12 THE COURT: I mean, if you could just clear off maybe
13 2 feet of space y'all are in, that would be fine. You can
14 leave everything else here. It shouldn't take very long.

15 All right, thank you very much. That's it. I'll see
16 y'all in the morning.

17 (WHEREUPON, THE CASE IS AT EASE.)

18 *TUESDAY, MAY 14, 2019*

19 (COURT RESUMES AT 11:11 A.M.)

20 THE COURT: All right, I believe when we left off
21 yesterday, Mr. Lucey was just about to cross-examine Mr.
22 Polk. Is that correct?

23 MR. LUCEY: Yes, ma'am.

24 THE COURT: All right. Mr. Polk is present. We have
25 prepared the witness stand for you, Mr. Polk. You may

1 resume your seat there. You are still under oath.

2 And I'll let the bailiff know the jury can come back
3 in.

4 (THE JURY ENTERS AT 11:13 A.M.)

5 THE COURT: Please be seated, everybody. Ladies and
6 gentlemen, I will fall on the sword this morning. We did
7 not know this that hearing we had this morning was going
8 to take that long. Obviously we would never waste your
9 time on purpose. The least we can do is get your lunch
10 today, so your lunch will be on us today for that
11 inconvenience, and we do apologize again. I apologize
12 again.

13 But we are ready to go forward at this point in time
14 and Mr. Lucey.

15 MR. LUCEY: Thank you. May it please the court?

16 CROSS-EXAMINATION BY MR. LUCEY:

17 Q. Mr. Polk, good morning, sir. How are you doing?

18 A. Good morning.

19 Q. I don't think we've met before, have we?

20 A. I don't believe so. Eddie Polk.

21 Q. Justin Lucey. Good to see you.

22 I'm showing you what's been mark for purposes of
23 identification as Plaintiff's Exhibit 826. Do you see
24 that?

25 A. Yes, sir.

1 Q. And that was an exhibit you and my associate Josh
2 Evans went over, what, about six months ago when you gave a
3 deposition?

4 A. I believe so.

5 Q. And you and he went over the items on that exhibit
6 that apply Tri-County Roofing. Do you recall that?

7 A. Yes, sir.

8 Q. And you recall indicating to Mr. Evans that you agree
9 with Mr. Schweickhardt on his list of defects, code
10 violations, deviations from manufacturing instructions, and
11 industry standards that have been set forth in this list,
12 correct?

13 A. Yes, sir.

14 Q. And that included ponding on decks of 7/16 of an inch
15 or more, correct?

16 A. Yes, sir.

17 Q. And that wasn't necessarily the cutoff. That was just
18 one photo or one exemplar where the ponding was 7/16 of an
19 inch deep, correct?

20 A. That was, yeah, that was one photo, correct.

21 Q. And you agree that ponding that deep on a deck would
22 be both a violation of manufacturer's installation
23 instructions and a building code violation, correct?

24 A. As a result of the violation of the manufacturer's
25 instructions, yes, sir.

1 Q. Let's show the jury the ponding we're talking about.

2 MR. LUCEY: Let me have Exhibit 722.

3 Q. These are your photos, sir. It's the same set of
4 photos you all looked at. I guess it was yesterday. I
5 want a couple of different ones. We'll go to photo 727
6 first. That's that one, and then so we can get this, you
7 can see the corner. And then if we go to 728, we can see
8 the reflection of the water a little better, and this was
9 -- this is ponding that was present when you were on-site,
10 correct?

11 A. Yes, sir.

12 Q. And not only do you see the residue from prior
13 ponding, but you actually see the water in this photo,
14 correct?

15 A. Yes, sir.

16 Q. And we don't have any ruler to check this pond depth,
17 but if we had a ruler in this picture and if it was 7/16 of
18 an inch -- that's less than half an inch. If it was 7/16
19 of an inch deep, you would agree with me that that
20 photograph would constitute both a building code violation
21 and violation of manufacturing instructions, correct?

22 A. At that location, yes, sir.

23 Q. Now I want to go to that other photo where you all --
24 photo 852 where you all told the jury that the damaged
25 ceiling was due to a fastener in the, in the plumbing vent.

1 You recall that?

2 A. Yes, sir.

3 Q. Let's go to photo 2186, please, and 852. Now in 2186,
4 we're looking at the bottom of a post, and we're going to
5 go to 2187 where you're going to give us a broader view of
6 that post. You with me? We're looking at a post base to
7 shingle intersection, correct?

8 A. That's correct, yes, sir.

9 Q. Now, I'm going sequentially. I want you, I want you
10 to stay with me on this. I was at 2186. Your photos, your
11 numbering on your photos, it automatically works
12 sequentially, correct?

13 A. Yes, sir.

14 Q. So, if you go on-site and you take at 9 a.m. and you
15 take photo 2000 and at 9:01 a.m. you take another photo,
16 it's going to be 2001, correct?

17 A. It should be, yes, sir.

18 Q. All right. So, we're going to go sequentially, and we
19 are now on -- I believe this would be 2187. Then 2188,
20 you're looking at a post base, correct?

21 A. Yes, sir.

22 Q. 2189 ---

23 A. Or a -- or the corner of a wall. That's not a post
24 base but a corner of a wall, yes, sir.

25 Q. And, and that's trim, HardieTrim of some sort coming

1 down the corner, correct?

2 A. Some type of trim, yes, sir.

3 Q. And you're looking at the intersection between the
4 corner of the structure and the shingles, correct?

5 A. Yes, sir.

6 Q. Stated differently, you're looking at the intersection
7 between Miracle Siding's work on the corner and Mr.
8 Vasquez's work on the shingles on the, on the roof,
9 correct?

10 A. I guess if they'd installed those locations, yes, sir.

11 Q. And then if we go to the very, very next photo, we see
12 you're peeling back the shingles to determine that, in
13 fact, the locations you're looking at have severely leaked
14 and severely degraded, correct?

15 A. Yes, sir.

16 Q. And you go inside to look, to see where this water has
17 gone, correct?

18 A. I don't believe I did go inside to see where it went.

19 Q. Let's go to the next photograph, 2190. That's the
20 next photograph, isn't it?

21 A. I don't believe so. I mean, if it is ---

22 Q. Well, let me ---

23 A. --- that's ---

24 A. --- show you a printed copy so you can confirm for the
25 jury that after you peeled back the shingles and found the

1 rot, that the very next photo, 2190, is the staining in the
2 ceiling. Was that over the stairway, base of the stairway?

3 A. I thought that -- I didn't think it was in the
4 stairwell there, no, sir.

5 Q. That is the next photo, correct?

6 A. It is the next photo.

7 Q. And it's in the ceiling where we see all that orange
8 damage, correct?

9 A. Yes, sir.

10 Q. And can you tell us what room that's in?

11 A. No, not looking at it. Looks like the stairwell
12 there.

13 Q. Now, it's not for three or four more photos. Let's
14 stay sequential in our photos, please, sir. Go to 2191 and
15 then to 2192 and then to 2193, and there's a teeny, weeny
16 black stain near the vent pipe, correct?

17 A. Yes, sir.

18 Q. Now, sir, you worked on this job in 2006 during
19 construction, didn't you?

20 A. Yes, sir.

21 Q. ABS, your firm, was a consultant to the designers on
22 this job, correct?

23 A. I don't know if we were a consultant. I recalled
24 after we got involved with this that I had been on-site. I
25 didn't recall at the time.

1 Q. Y'all worked for SGM, the architects, correct?

2 A. I didn't remember who we worked for.

3 Q. You were on-site during ---

4 A. Yeah.

5 Q. --- construction?

6 A. I was on-site, yes, sir.

7 Q. As was Mr. Lazo, correct?

8 A. Yes, sir, I believe so.

9 Q. He was another then ABS employee, correct?

10 A. Correct.

11 Q. All right, and ABS, just so we're clear, the jury has
12 heard from Mr. Al Schweickhardt twice this week. He is
13 with the ABS, correct?

14 A. Yes, sir.

15 Q. The same firm that was on-site during construction?

16 A. Yes, sir.

17 Q. And we also heard from Mr. Elkin, correct?

18 A. Yes, sir.

19 Q. And he was with ABS, the same firm that was on
20 construction in 2006, provided consulting services on-site,
21 correct?

22 A. I don't know if they were on-site.

23 Q. He was with ABS?

24 A. He was, ABS, but he -- doesn't mean that he was
25 necessarily involved with this project.

1 Q. Right. Your firm was on-site?

2 A. Yes, sir.

3 Q. Every witness they've heard from in this case from the
4 defendants is related to ABS, correct?

5 A. All those, yes, sir. All those people you named are
6 from ABS.

7 Q. Every defense expert they've heard from was with the
8 firm that was on-site during construction on Peas Island,
9 correct?

10 A. During that one time, I believe it was some window
11 testing was the only evaluation that we were doing at that
12 time.

13 Q. And you did that for the architect, correct?

14 A. I don't, I don't know who the party was we did it for.
15 I just, I know we were involved spray testing some of the
16 windows.

17 Q. Now, did you also consult on River Landing Drive?

18 A. The number sounds familiar, but I don't recall.

19 Q. And tell us if you would, please. Y'all put a bunch
20 of yardsticks up here showing some slopes yesterday. I
21 think it was yesterday. Tell us if you would, please, what
22 the relationship is between those yardsticks and the
23 shingle blow-offs that the homeowners have been
24 experiencing.

25 A. Nothing with the shingle blow-offs. It's just to

1 illustrate those various slopes that were out on the
2 project.

3 Q. Do you agree with me that shingles blowing off in
4 winds that are less than 60 miles an hour, I mean, regular
5 thirty-year shingles that have not expired, shingles
6 blowing off in winds that are less than 60 miles an hour is
7 more likely than not due to a defective installation?

8 A. I disagree.

9 Q. Okay, and you're not trying to tell the jury that
10 because of that asphalt sealant strip, that the nails in
11 the, in the shingles don't matter anymore, correct?

12 A. I, I'm not saying that, no.

13 Q. Okay, and these, these, these shingles that we have
14 here that you testified about, as I understand it, they're
15 kind of in the middle of the road. I call them
16 middle-class shingles. Would you agree with me?

17 A. Yes, sir.

18 Q. And they're thirty-year ---

19 A. Thirty.

20 Q. --- shingles, right?

21 A. Thirty-year shingles, correct.

22 Q. Which is actually pretty long for a shingle, right?

23 A. Correct.

24 Q. There's a lot of twenty-five and twenty-year shingles
25 out there, right?

1 A. Correct.

2 Q. So, thirty years is not bad, right?

3 A. That's correct.

4 Q. And these are what I think they are, you tell me, but
5 I think they are what people call architectural shingles?

6 A. That is correct.

7 Q. So, they have this dimensions so they look nicer?

8 A. Gives an aesthetic appeal, yes, sir.

9 Q. And they're a little heavier because they're
10 architectural shingles, right?

11 A. That's correct.

12 Q. So, we've got some minimally rough shingles, correct?

13 A. Yes, sir.

14 Q. And, and probably fairly typical of what a lot of
15 people in the Charleston area use on their houses, right?

16 A. That's typical, yes, sir.

17 Q. Okay, and so as I understand your testimony that --
18 yesterday, that since these typical shingles have adhesion
19 that fails at five years, that any residence within 5 miles
20 of the coast over the last five years with shingles that
21 are over five years old, they should have experienced five
22 or six blow-offs just like my clients did because shingles
23 fail at five years, right?

24 A. Not necessarily. It doesn't say they fail. but they
25 just say that asphalt strip degrades, which makes them more

1 vulnerable as they get older to blow off.

2 Q. I haven't noticed any reporting about widespread blow-
3 offs of Charleston shingles in, in the last five years,
4 have you? Is -- do you have any newspaper articles in your
5 file about that or anything?

6 A. Well, I'm not a roofer, but I know roofers have
7 replaced several blown off shingles in the last couple of
8 years due to those storms.

9 Q. So according to you, about half the people on James
10 Island and half the people in Mt. Pleasant should have
11 experienced one or more blow-offs in each of the last five
12 years, correct?

13 A. Not necessarily. I just -- it can possibly happen.
14 I'm not saying they are guaranteed they're going to lose
15 shingles.

16 Q. Now, sir, you have never ever recommended a complete
17 shingle replacement in your witness testimony, have you?

18 A. I don't believe so.

19 Q. And, sir, you found roof leaks at Peas Island that you
20 were unable to determine the cause or the source, correct?

21 A. That is correct.

22 MR. LUCEY: That's all I have, sir. Thank you.

23 THE COURT: All right, any redirect?

24 MR. COLE: I have none, Your Honor.

25 MR. KENDALL: Oh, I'm sorry. I have nothing.

1 THE COURT: Anything else, Mr. Cole?

2 MR. COLE: Nothing.

3 THE COURT: Okay. Thank you, Mr. Polk. You can step
4 down from the stand.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Mr. Cole, you can call your next witness.

7 MR. COLE: Christie Poyner.

8 CHRISTINA D. POYNER, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Please state your full name and spell
11 your last name for the record.

12 WITNESS: Christina Diane Poyner, P-o-y-n-e-r.

13 DIRECT EXAMINATION BY MR. COLE:

14 Q. Christie, good morning. How are you?

15 A. Good morning.

16 Q. All right, we're going to go through some questions
17 here, but before we get into that, would you give us a
18 little bit of background about you?

19 A. About me?

20 Q. Yes.

21 A. I was -- let's see. My parents are Dale and Kim
22 Hawkins. They were high school sweethearts, and my dad
23 joined the army after he graduated from high school, and I
24 was born at Fort Bragg, North Carolina, where he was in the
25 82nd Airborne.

1 It was instilled in us to if we wanted something, we
2 had to work for it, and that's just something he always
3 taught us, and through that we all became involved in our
4 family business. I ---

5 Q. What businesses that?

6 A. Tri-County Roofing.

7 Q. And how long have you been working for Tri-County?

8 A. I -- well, on and off all growing up, but I have been
9 there since 2006.

10 Q. And when you got on board, was there a reason why you
11 got on board?

12 A. Yes. I was staying home with our kids, and my dad
13 asked me to come in and help manage the paperwork involved
14 with the Palmetto Pointe project.

15 Q. What is your current position at Tri-County?

16 A. I am the office manager.

17 Q. Okay. What is that duty, or what do you do with that?
18 What are your duties as the office manager?

19 A. Well, I oversee and assist our office staff. I help
20 with customer service. I do the billing; I help with
21 accounting. I, I do job cost reports and, you know,
22 whatever else is needed.

23 Q. And how long how has, how long has your father been
24 operating Tri-County?

25 A. Full-time or part-time?

1 Q. Well, why don't you answer both since you're helping
2 to clarify.

3 A. Well, he was -- he did it on a part-time basis for
4 years as we were small. That was how -- you know, when he
5 was in the 82nd Airborne, he'd come home. He would do
6 roofs and save the money, and that's how he bought our
7 first home. You know, he used it as a downpayment. And
8 then he did that throughout as he worked at -- he was with
9 the post office and, you know, different things. And then
10 in the early '80s is when he decided, you know, I, I want to
11 do this full-time. And so he's been doing it full-time
12 since the early '80s.

13 Q. Do you have other family members that work there?

14 A. Yes.

15 Q. Who are they?

16 A. Well, of course my parents. My brother Travis is the
17 general manager. My, my youngest brother, Shannon, is in
18 charge of our sales team. Mark, my husband, is the
19 operations manager. I'm the office manager. I have an
20 uncle who works there part-time. That may be all the
21 family I can think of right this minute.

22 Q. Okay. You don't go out there on a roof to install the
23 roofing, do you?

24 A. No.

25 Q. Okay. You, you deal with the paper in the office?

1 don't happen to know which exhibits these are.

2 (A PAUSE.)

3 Q. I'm going to just show you this pack of documents that
4 -- I'm just going to help reference for the, the clerk and
5 we'll find the actual number that it's been marked, but
6 it's Bate number Tri-County 83 through 124. Could you look
7 at those and see if you can identify what those are?

8 A. These would be invoices that were turned in to pay
9 Eloy for the work that he performed on the jobsite.

10 Q. All right, and that's Mr. Vasquez and the work that he
11 did at there at Palmetto Point?

12 A. Yes.

13 Q. Do you understand what type of work he did at Palmetto
14 Pointe?

15 A. He did the roofs out there and the decks.

16 Q. And you tried to find every piece of paper that you
17 could find in your paper file for this project, correct?

18 A. I did.

19 Q. I'm going to hand you -- again when we get to a break
20 because I don't have the notes here. Actually, hold on.
21 Vasquez, that is Exhibit Number 170. I know that, so --
22 but the ones you were just talking about is already
23 premarked 170.

24 The next one I'm going to show you with the Bates
25 numbers at the bottom, Tri-County 131 through 223 and 1159

1 through 1165. Can you identify what those are?

2 A. These would be labor bills that -- they were usually
3 faxed to us from Wilson Sales, and it's also -- I guess
4 these all are labeled. No, there's some on here. That is
5 Miracle Siding but that was also Wilson as well.

6 Q. And Mr. Sales, or I think Sales is how it's been
7 pronounced before as well, he was also doing business as
8 Miracle Siding?

9 A. Yes.

10 Q. Okay, and it does appear to be copies of those
11 invoices that were for his work out there?

12 A. Correct.

13 Q. Do you know what work Miracle Siding, Mr. Sales, did
14 out at the project?

15 A. I think he generally did the siding, but I think there
16 may have been some punch-out work as well that he would do
17 on-site.

18 MR. COLE: Okay, and I was just told by my paralegal
19 that that is actually Exhibit 164 premarked that we have,
20 and so I would move right now to put in exhibits 164 and
21 170, which are these invoices that she has identified.

22 MR. LUCEY: I don't object if you move your other two
23 exhibits in also, which is Exhibit 1047, your supplemental
24 production, and 959. We move all four in so the whole file
25 goes in. I'm good with that.

1 Q. Your deduction?

2 A. I can't tell you to the penny.

3 Q. Right.

4 A. But I can tell you is a pretty close amount.

5 Q. Okay, and that is based on this review that happened
6 in April of this year?

7 A. That was concluded in April, yes.

8 Q. Okay, and you've also testified as to some of Mr.
9 Vasquez's scope of work. What is the source of that
10 knowledge?

11 A. Well, I was there at the time in the office. So,
12 there were would be conversations about him doing roofing
13 and the decks. I helped coordinate having the decks
14 inspected by the manufacturers. So, I would talk with Mark
15 and say what -- which projects has Eloy completed on these
16 decks, you know, which ones are complete, and that would --
17 then we would, you know, be able to contact to have the
18 inspection take place.

19 Q. Okay. So, you were coordinating inspections of the
20 decks and the roofs. Is that correct?

21 A. I would help coordinate, yes.

22 Q. Okay, and what about Mr. Sales and Miracle Siding?
23 Did you coordinate any of their work?

24 A. No.

25 Q. Do you know ---

1 Q. But it's not here?

2 A. No.

3 Q. Mr. Vasquez's is not here. Miracle Siding's is not
4 here. Mr. Sales's is not here. What about the name
5 Cornerstone Construction? Does that to sound familiar to
6 you?

7 A. Yes.

8 Q. What did Cornerstone do?

9 A. They were the other contractor that did a few of the
10 buildings on Palmetto point.

11 Q. Did they have a subcontract?

12 A. I can't answer that; I have not looked in their file.

13 Q. Do you know if it was produced?

14 A. No. It would -- like once again, it would not have
15 been something that would have been in the Palmetto Pointe
16 file earmarked Palmetto Pointe. It would have been a
17 general subcontractor agreement for any job that we would
18 have used them for.

19 Q. Did you ever go on-site and observe anyone doing any
20 work?

21 A. On-site at Palmetto Pointe?

22 Q. Yes, ma'am.

23 A. No.

24 Q. And you personally did not make that observation,
25 correct?

1 A. For the decks. I would help contact the rep.

2 Q. The rep?

3 A. For each -- there is two different systems used on
4 different buildings out there, Hydro-Stop and Sealoflex.
5 There would have been a rep who had to come out and inspect
6 it in order for us to get the warrantees that we needed to
7 submit to Complete Building for us to be paid on the job.

8 Q. Okay. So, Tri-County was supervising those deck
9 installations with someone from the manufacturer?

10 A. Yes.

11 Q. So for the decks, if there's a deck in those invoices,
12 if a check was issued and Eloy was paid or anyone was paid,
13 that's because the decks were put on just like you wanted
14 them, correct?

15 A. It would have meant that they passed the inspection of
16 the, the manufacturer.

17 Q. And Tri-County?

18 A. Yes.

19 Q. And who was handling those inspections for Tri-County?

20 A. It would have been Mark.

21 Q. And would that include inspections of the roof?

22 A. Yes.

23 Q. Siding?

24 A. Yes.

25 Q. Trim?

1 Ms. Poyner.

2 (THE WITNESS EXITS THE STAND.)

3 (FILE OF WILSON SALES MARKED INTO EVIDENCE AS
4 PLAINTIFF'S EXHIBIT NUMBER 164.)

5 (VASQUEZ INVOICES MARKED INTO EVIDENCE AS PLAINTIFF'S
6 EXHIBIT NUMBER 170.)

7 THE COURT: Do you have any other witnesses, Mr. Cole?

8 MR. COLE: I do. My next witness is going to take a
9 while. I don't know what you want to do with scheduling.

10 THE COURT: We're going to keep going.

11 MR. COLE: That's fine.

12 THE COURT: Y'all all right?

13 MR. COLE: That's fine.

14 (A PAUSE.)

15 MR. COLE: Mark Poyner is my next witness, Your Honor.

16 THE COURT: All right, I'll ask this. Does anybody on
17 the jury need a break real quick before we keep going? If
18 you do, just throw a hand up. All right, if at any time
19 anybody does, just let me know. Stick your hand up and
20 I'll scan every once in a while and make sure.

21 All right, thank you very much. We'll keep going for
22 now.

23 MARK A. POYNER, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please state your full name and spell

1 your last for the record.

2 WITNESS: Mark Alan Poyner, P-o-y-n-e-r.

3 DIRECT EXAMINATION BY MR. COLE:

4 Q. All right, Mark, where do you work?

5 A. I am employed at Tri-County Roofing.

6 Q. And what is your relationship with Tri-County Roofing?

7 A. Well, I am the operations manager there, but I am
8 son-in-law to Dale and Kim Hawkins and husband to Christie
9 Hawkins.

10 Q. You gave a little bit of background earlier last week,
11 but I want to get to a little more of that right now.

12 Where did you go to school?

13 A. High school?

14 Q. Yeah.

15 A. I went to South Hagerstown High school in Hagerstown,
16 Maryland.

17 Q. And then after that, did you have any experience in
18 the construction field?

19 A. I did. Actually about a year or so after graduating
20 high school, before I joined the Marine Corps, I worked for
21 an electrical contractor on construction sites doing
22 electrical construction work.

23 Q. Like what kind of stuff were you doing with that?

24 A. Running wire, wiring things up, light switches,
25 equipment, you name it.

1 customer, scheduling with a supply house, whatnot, and then
2 coordinating the crews to actually go out and do that work,
3 and then close it out.

4 Q. Now, you still go out to jobsites?

5 A. I do.

6 Q. Do you still physically do the work?

7 A. Not if I don't have to.

8 Q. Okay. So, you've been able to graduate a little bit
9 to supervisor capacity?

10 A. A little bit. If I, I do a lot of the work, I end up
11 -- I'm out another week because of back and knees and
12 everything else. If you've done any roofing, you know you
13 don't want to do it long.

14 Q. Okay, and back in the 2006, 2007 time period, you were
15 with Tri-County?

16 A. That's correct.

17 Q. And you're familiar with the Palmetto Pointe project?

18 A. I am.

19 Q. And how are you familiar with that project?

20 A. I actually bid the job, order material, supervise the
21 work, schedule the work, whatnot. Everything that needed
22 to be done from our aspect, I basically handled all those
23 details except the administrative stuff.

24 Q. All right, and the general contractor was who?

25 A. Complete Building.

1 Q. And Complete, I think we've already talked about, had
2 a contract with you, correct?

3 A. That is correct.

4 Q. Okay, and I'm going to show you -- first, let me show
5 you Exhibits -- show you my copy of Exhibit 22. Have you
6 seen that exhibit before?

7 A. Yes, sir.

8 Q. And what is that?

9 A. Is an AIA document, and that pertains to, pertains to
10 scope of work and dollar amounts.

11 Q. And who is that contract actually with?

12 A. This is with Complete Building.

13 Q. Because that's Complete's contract. Is that a change
14 order?

15 A. This document here?

16 Q. Yes.

17 A. Yes, it is.

18 Q. Do you know what change order number that is?

19 A. Number 12.

20 Q. And do you know how many change orders were -- how
21 many change orders did, did you have for the project?

22 A. A lot.

23 Q. Twelve?

24 A. At least.

25 Q. I'm going to show -- and again because I'm not going

1 to dig through all these volumes of things, I'm going to
2 show you what was marked as Exhibit 36. Do you recognize
3 what that document is?

4 A. Yes, I do.

5 Q. And what is 36?

6 A. It's an actual physical change order document.

7 Q. What number is that?

8 A. This is number 12.

9 Q. And what is -- is that the last change order that you
10 all have?

11 A. No, sir.

12 Q. Is 12 the last change order that you have?

13 A. Oh.

14 Q. For Tri-County?

15 A. No, sir. This file?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Tell me a little bit. What is a change order?

19 A. Any time that a scope of work changes or a new scope
20 begins, any type -- any time that there is an addendum to
21 the contract, a change order is filled out so that it
22 encompasses a scope of work and the dollar amount for
23 those.

24 Q. And a change order can add and it can subtract from
25 the contract, correct?

1 A. Yes, sir, it can.

2 Q. Is there a total at the bottom of Tri-County's change
3 order number 12 as to what the amount of the final part of
4 the contract was?

5 A. Yes, sir. It is \$1,382,558.24.

6 Q. And so that was at least the contract amount for all
7 of the work Tri-County did out at Palmetto Pointe?

8 A. That is correct.

9 Q. And you have the Exhibit Number 22. That is the
10 change order number 12 from Complete Building, correct?

11 A. Yes, sir.

12 Q. And does that have a similar format where it has
13 additions and subtractions?

14 A. It does.

15 Q. And then at the bottom of that, what was the total
16 amount of Tri-County-- or, excuse me, total amount of
17 Complete Building's contract for Palmetto Pointe?

18 A. It looks like it reads \$11,578.

19 Q. I think you mean ---

20 A. I'm sorry. 11 million, 578 and -- let me start that
21 again.

22 Q. That's all right.

23 A. This was a big number. \$11,578,454. Sorry.

24 Q. All right. So, that's at least the contract amount
25 for the original construction, and then we talked about

1 your contract amount for what you did out there, correct?

2 A. That's correct.

3 Q. Okay. Let me get those out of your way so we won't
4 get them mixed up too much. What was the general scope of
5 work that Tri-County was hired to do out at Palmetto
6 Pointe?

7 A. Generally, we were to install the roofing, the siding,
8 and to waterproof the decks.

9 Q. And did you hire subcontractors to assist you with
10 that?

11 A. Yes, sir, we did.

12 Q. And who did you hire to do the roof -- excuse me, the
13 roofing and waterproofing?

14 A. That would have been Eloy Alonzo Vasquez.

15 Q. And who did you hire to do the siding?

16 A. Wilson Sales, DBA Miracle Siding.

17 Q. And then I think your wife also said Cornerstone may
18 have ---

19 A. That's correct, and Cornerstone, yes.

20 Q. All right, and why did you hire Mr. Vasquez?

21 A. As my wife testified, he had worked on several other
22 jobs for us, and I worked closely hand-in-hand with him.
23 He was very meticulous, detail oriented. Any time he had a
24 question, we would discuss it. Just had a, a very good
25 working relationship and, and appreciated his work.

1 Q. And had you used him on other jobs?

2 A. Yes, sir.

3 Q. Had you used him on jobs before this and after this?

4 A. Yes, sir.

5 Q. I think last week you testified that this was a fairly
6 large job that Tri-County did. Is that correct?

7 A. Yes, sir. In, in the, in the sense of the dollar
8 amount and the actual timeframe involved, it was a fairly
9 large job.

10 Q. Now, you kind of answered that in a way that you, you
11 wanted to explain a little bit more.

12 A. Well, obviously, I mean, we, we cut our teeth on
13 roofing, siding, and waterproofing. What was unique about
14 this project being a multifamily project is it was actually
15 pretty much individual homes. So, so, if it had been, you
16 know, eight, ten units or whatever together, we, we
17 wouldn't have been able probably to handle that. So, I
18 liked from the fact it kind of encompassed what we did on a
19 daily basis with waterproofing, siding, and roofing. It
20 was just the same thing, you know, every day.

21 Q. All right, let me -- and you said ten units together.
22 You're talking about if you have, like, a townhome?

23 A. Absolutely.

24 Q. Okay.

25 A. Yeah.

1 Q. Okay. So, you're talking about one really long
2 building?

3 A. Apartment complex, townhome.

4 Q. Palmetto Pointe has how many buildings in it that
5 we're dealing with?

6 A. It has twenty buildings that we worked on.

7 Q. Okay, and those are how many units per building?

8 A. There is two units per building.

9 Q. So, a duplex?

10 A. That's correct.

11 Q. And the size of that duplex, is that equivalent to
12 what?

13 A. It's a house.

14 Q. So, is it basically, like, twenty different houses
15 next to each other?

16 A. Pretty much, yes, sir.

17 Q. So, it was big job for the money and a lot of time
18 because you had a lot of stuff that you were doing out
19 there?

20 A. Yes, sir.

21 Q. But doing the work on, you know, the first building
22 out there, was it similar to the work you did on the second
23 building, et cetera?

24 A. Yes, it was.

25 Q. Do you know how Tri-County was first brought into the

1 construction process?

2 A. For this project?

3 Q. Yes.

4 A. So, I had worked -- Complete has, when they were open,
5 they had a contractor room in the back, and any contractor
6 could come in and look at the prints, look at the specs of
7 any jobs that they had -- that they were currently
8 receiving bids on. This one actually I was approached
9 personally. It was not going to be necessarily a bid
10 project, that I was asked to personally submit numbers for
11 this project.

12 Q. And who asked you to do that?

13 A. That would be Buddy Hilton.

14 Q. All right. What is Mr. Hilton's capacity?

15 A. At that, at that point in time, he was, like, VP, if
16 I'm not mistaken, of Complete Building and he was project
17 manager, one of the liaisons for -- other than the direct
18 supervision on site, he, he was the one directly involved.

19 Q. Let me back up a second. Out at Palmetto point, what
20 kind of siding was selected?

21 A. The siding that selected to be installed was the 9 and
22 a quarter cedar-look. Cementitious siding is what was
23 actually chosen as the final.

24 Q. By what brand?

25 A. CertainTeed.

1 Q. And what was the roofing material that was selected?

2 A. It was Certainteed Landmark shingles.

3 Q. Are, are the cementitious sidings something that
4 Tri-County has been involved with installing before or
5 after this project?

6 A. Yes, sir.

7 Q. And what about the roof? Is that a, kind of a
8 standard shingles?

9 A. Yes, sir. Absolutely.

10 Q. There, there's a question asked earlier that the
11 shingle is kind of middle of the road for grade of
12 shingles. Is that correct?

13 A. It, it's -- now it's very commonplace to put an
14 architectural shingle on a house, and even then it was as
15 well, so.

16 Q. What's the difference between a lower grade shingle
17 and an upper grade shingle other than maybe its looks?

18 A. Weight. Three tabs are, are different makeup than a,
19 than a architect shingle. An architect shingle is
20 basically two pieces of laminate that's put together to
21 give it that architectural design.

22 Q. Is that what we have here that, that we've talked
23 about before?

24 A. That is correct.

25 Q. Okay, and so that -- when you look at the roof, you

1 products?

2 A. I know that when I trained with my father-in-law,
3 Dale, he was a big Certainteed advocate. I mean, every
4 shingle has its good points and, you know, negative points,
5 but we have been installing Certainteed since, I mean, way
6 before I was there.

7 Q. Let's go back to the process. You were asked to
8 submit a bid. What did you do to then submit your initial
9 bid documents?

10 A. Right. So as I stated, Complete had a contractors'
11 room in the back of their office, or they did. When I was
12 asked to submit numbers and look at this project, I came to
13 their office. There's a big photo copier back there. You
14 can run off your own set of prints. So, I basically got a
15 set of prints and I got a spec book that went with the
16 project, and that's how I put my number, numbers together.

17 Q. All right, I'm going to hand you something that is
18 falling apart, so we'll deal with it later. These are some
19 of the documents that were premarked. I'm just putting
20 them in front of you. Do you recognize what Exhibit 157
21 is?

22 A. Yes, sir, I do.

23 Q. What is Exhibit 157?

24 A. This is the document that I submitted for the pricing
25 for the bid.

1 Q. And how did you submit the pricing? Was it by unit?
2 Was it by product? What, what was it?

3 A. I actually -- this is detailed per product, and
4 whatever the square footage was of that is whatever our
5 numbers were for that is what is included on the page on
6 the -- on this submittal.

7 Q. All right. So we can have the benefit of the jury
8 seeing this, this is the same thing as that first sheet you
9 have there, correct?

10 A. That is correct.

11 Q. Okay, and this is a document that you submitted to
12 who?

13 A. I submitted to Buddy Hilton.

14 Q. Okay.

15 A. Complete Building.

16 Q. And the job address, what, what is that name by the
17 job address?

18 A. Peas Island on Folly Road.

19 Q. That's the, yeah, that's the address, and below it we
20 have the job address is different?

21 A. Yes. So, the, the buildings had different names to
22 them, and this one was the Oak A and B, which there was two
23 sides. One was A and one was B. So, this estimate
24 would've included both sides of that, that building.

25 Q. And was the Oak, like, a particular design of the

1 duplex?

2 A. It is. There were, there were several different
3 models, I believe, possibly six or seven different models
4 that they gave me that I got the blueprints, whatnot, to
5 bid for them.

6 Q. And this was a bid to do what kind of work?

7 A. This was the waterproofing, shingles, and the siding,
8 to include the fascia soffit, and the gutter and
9 downspouts.

10 Q. All right, I just zoomed in on part of this section.
11 It's a little fuzzy. Hopefully we can -- there we go.
12 This is the documentation you gave for that Oak-type
13 building, correct?

14 A. That is correct.

15 Q. And what's significant about the siding, siding cement
16 fiber?

17 A. On this particular document, I was asked to price out
18 a 6 and a quarter.

19 Q. Were you also asked to price out a different sized
20 siding?

21 A. Yes, sir. I was asked to submit pricing for a 9 and a
22 quarter 8 inch reveal.

23 Q. I'm showing you this document. I'll zoom out a little
24 bit. Does this appear to be another one of those documents
25 in your series of submittals?

1 A. Yes, sir.

2 Q. And this is the third page out of that packet from the
3 exhibit we're talking about?

4 A. Yes, sir.

5 Q. Is this is also for the Oak A and B?

6 A. That is correct.

7 Q. And we have here that same or similar chart, and what
8 are you sizing here?

9 A. That says 8 inch.

10 Q. Okay, and why were you asked to size 6 and a half or 6
11 and a quarter and 8 inch?

12 A. I'm not really sure. I guess they wanted different
13 options for the project.

14 Q. And do you know who was making the selection of the
15 actual siding type?

16 A. I'm not mistaken, it was Complete, along with the
17 owner-developer.

18 Q. And with the pricing, was -- and actually let's do it
19 this way. Was the price of the siding more or less with
20 the narrower siding?

21 A. With the narrow siding it -- the, the estimate was
22 less. It was cheaper.

23 Q. Okay. I don't think you can see it, but there's,
24 there's the comparison of the Oak side by side, that the,
25 the, the price to put the wider-type siding on it is more

1 expensive is what you said?

2 A. That's correct.

3 Q. Were you the person that selected the siding width?

4 A. I am not.

5 Q. Do you know who did that selection?

6 A. I know I, I put the, the pricing together and
7 submitted everything to Buddy. Where it went from there,
8 I'm not sure.

9 Q. This has been discussed already. We're not going
10 through the whole thing. Do you recognize what Exhibit 340
11 is? I don't think you have that up there.

12 A. It's hard for me to read. It's an architect, ESGM
13 Architects.

14 Q. That the project manual?

15 A. Yes.

16 Q. Okay. Let's see. I don't know where it is up here,
17 so I'm forced to do it this way. Did you see the project
18 manual when you were doing your work?

19 A. I did.

20 Q. You what?

21 A. I did.

22 Q. Okay, and what exactly is a project manual?

23 A. The project manual lays out the specifications for the
24 project, to include what products are to be used, size, all
25 the different particulars so that we can give an adequate

1 estimate on that project.

2 Q. Where does the project manual come from? Who, who
3 puts it together?

4 A. This one looks like it came from SGM and was given to
5 me by Complete Building.

6 Q. And who is SGM?

7 A. It's an architectural firm.

8 Q. Were they involved in the construction process?

9 A. Yes, sir, they were.

10 Q. Were they involved during construction as well?

11 A. Yes, sir.

12 Q. I'm showing you section 07180 from this document.

13 MR. KENDALL: Say that, say that again, Andy?

14 MR. COLE: Section 07180, and it's Novis 886.

15 MR. KENDALL: Thank you.

16 BY MR. COLE:

17 Q. What is the title of this section?

18 A. This one is traffic coatings.

19 Q. What is traffic coatings?

20 A. That would be the waterproofing.

21 Q. And although we've already talked about that, I want
22 to make sure we cover this. The specification says you can
23 use what for your traffic coating?

24 A. It says Hydro-Stop on this one.

25 Q. Okay, and it also has for the top coat, they give you

1 Sealoflex as an, as an alternative?

2 A. That's correct.

3 Q. This isn't suggesting that the architect wants you to
4 mix those, is it?

5 A. Well, if, if you read it like that, it, it looks very
6 confusing.

7 Q. Okay.

8 A. So, it...

9 Q. You didn't read it that way. You read it as
10 Hydro-Stop as ---

11 A. I ---

12 Q. --- the first way?

13 A. Yes, sir.

14 Q. And then we'll get into it in a little bit later. At
15 a certain point, it switched from Hydro-Stop to Sealoflex?

16 A. The other way around.

17 Q. Other way around, okay. All right. Section 07311,
18 which is Novis 905, what is this?

19 A. That is the spec for the asphalt shingles.

20 Q. Okay, and the shingles, that's, that's the stuff that
21 we talked about here that ultimately went on the tops of
22 the roofs?

23 A. That's correct.

24 Q. Now, there was some testimony about lower sloped and
25 low sloped roof. There's one building out there that they

1 only made one version of, correct?

2 A. That's correct.

3 Q. Do you remember what the name of that was?

4 A. That was the River Birch.

5 Q. Where is that? On the -- in the -- do we have a map?

6 Where we're, where we're looking at it is -- where is it?

7 Is it over here somewhere?

8 A. Yes, sir. It's two or three buildings below the X on
9 the very right.

10 Q. One. So, that's one of the first buildings that ---

11 A. That's correct.

12 Q. --- was erected? And I guess we haven't talked about
13 this, but the sequencing of the buildings out there, when
14 you drive out to Palmetto Pointe, when you drive out to
15 Palmetto Pointe, you go through a, a gate at, at the front,
16 right, and then you've got kind of -- the road loops around
17 the right to the cul-de-sac, correct?

18 A. That's correct.

19 Q. The buildings -- kind of the generally in order they
20 were constructed, if I'm going back and driving there,
21 where would I go to go to the older buildings, and where
22 would I go to the newer buildings?

23 A. Right where I alluded to the first time. If you go
24 down the road, I think it's Peas Island Way, the first set
25 of buildings was not built until they got something done

1 with the causeway. There was supposed to be some kind of
2 right of way. So, we started couple buildings back on the
3 right-hand side.

4 Q. Talking about the two buildings with the Xs on them?

5 A. That's correct.

6 Q. Okay, that aren't part of the suit?

7 A. That is correct.

8 Q. Okay, and then so you're describing where the -- where
9 does the building start?

10 A. They started towards the end of the road and worked
11 their way up to the front ---

12 Q. Okay.

13 A. --- of the development.

14 Q. And was that -- you had worked on one side of the road
15 towards the front?

16 A. At the beginning, yes. We, we primarily stayed on the
17 right side of that road, and then sometimes they, they
18 skipped some lots for some reason, and then they would --
19 they skipped over to the other side of the road. So, they
20 went down the right side first for the most part, and then
21 started building of the left-hand side.

22 Q. So, the older buildings are on the back of the right
23 side, and the newer buildings are on the left?

24 A. That's correct.

25 Q. Okay, and you said that there was a River Birch, but

1 there's only one of those designs out there, correct?

2 A. Yes, sir.

3 Q. And was there something different about the River
4 Birch compared to the others?

5 A. Yes, sir. On the roof, the River Birch had what we
6 commonly refer to as a saddle area between the units, and
7 it actually -- I don't remember. It was a low pitch, so
8 one of the things that had to go on was a, was a modified
9 membrane. That's a -- it's a sheet basically of, of
10 asphalt and granulars that went on. So, I think once we
11 put the roof on that and looked at those numbers, they were
12 wanting to get away from that building just because of the
13 extra costs that were involved.

14 Q. So, on the River Birch are two different types of roof
15 toppings on that?

16 A. That is correct.

17 Q. And when you're saying a sheet, you're talking about
18 instead of individual shingles, you actually have something
19 big enough to cover a particular area?

20 A. That's correct.

21 Q. And why did you need that on the River, River Birch
22 design?

23 A. Because the -- it was too flat for shingles.

24 Q. Okay, and so the shingles drained that or somehow to,
25 to ---

1 A. Right. They had gables that came together. The water
2 flowed into the saddle area, and that's where the modified
3 needed to be installed.

4 Q. Now, other than it might make it a little more
5 complicated to put together, having a roof that has the,
6 the lower slope with the, the sheet and the shingles,
7 that's something that's not uncommon?

8 A. No, sir, it's not uncommon.

9 Q. And then also with the specifications, section 07460,
10 Novis 914, what is this?

11 A. That is the specifications for the siding.

12 Q. All right, and I highlighted my copy here, but what
13 type of siding was specified?

14 A. In that particular, it asked for -- you could either
15 use James Hardie or Certainteed. We elected -- I guess the
16 builder architects were not -- elected to use the
17 CertainTeed siding.

18 Q. Okay, and what size boards was that?

19 A. It was 9 and a quarter.

20 Q. And if you have a 9 and a quarter board -- I, I think
21 we've used the term before, but I don't know if anybody has
22 explained it. What's the reveal?

23 A. The reveal is actually what can be seen outside.

24 Q. And so that's one board overlaps another ---

25 A. That is correct.

1 Q. --- correct? And so if you have a 9 and a quarter
2 wide board, how much is then exposed?

3 A. In this particular instance, we had an exposure of 8
4 inches.

5 Q. And that was one of the two types that you were asked
6 at the beginning to actually price?

7 A. That's correct.

8 Q. And that's in these specifications for the architect?

9 A. Yes, sir.

10 Q. So, we're going to get back into the process itself in
11 a second, but we talked about what you did at the beginning
12 of the project where you were submitting these, these
13 documents. What happened at the end of the project?

14 A. Well, at the end of the project, we were required to
15 give a packet of materials to be available to potential
16 homeowners. That included all the warranty information.
17 For us to get the warranties, the decks and whatnot had to
18 be, had to be inspected.

19 Q. We've looked at this before from CBC, Exhibit 26, I
20 believe, is how it was referenced, that this is a packet of
21 information from Dr. Love when we took his deposition where
22 he had information that he said was in a booklet when he
23 got to his unit. And I want to show you a page from this
24 that -- it's a large packet, so I'll just help out. It's
25 Palmetto Pointe 21604 is the Bates number. Do you

1 Tri-County supplied to the, the -- for each of the units
2 out there?

3 A. Yes, sir.

4 Q. Do you recognize what this document is?

5 A. Yes, sir.

6 Q. And what is that?

7 A. That is the Certainteed shingle warranty.

8 Q. And is that for the type of shingles that are out
9 there?

10 A. Yes, sir.

11 Q. Now, there were the waterproof toppings on the decks
12 out there, correct?

13 A. Yes, sir.

14 Q. And, first, who installed that?

15 A. Eloy.

16 Q. And did you use him because you believed he knew how
17 to install it?

18 A. Absolutely.

19 Q. Had you had any issues with his work previously?

20 A. No, sir.

21 Q. And did you issue warranties for those deck toppings?

22 A. Yes, sir.

23 Q. And Dr. Love's information, which is at page 21600,
24 what does this appear to be?

25 A. That is the Sealoflex warranty.

1 Q. And what did you have to do in order to get that
2 Sealoflex warranty?

3 A. Well, the very first thing we had to do is actually
4 take their course to be certified to install the product.

5 Q. Well, let's, let's go with that. What did you
6 actually do to take that course?

7 A. We actually went to the plant, which is on the old
8 naval base, and we toured the factory, and actually I had
9 classroom time and hands-on, actually applying the product
10 ourselves.

11 Q. So, they actually watched you as you were applying it?

12 A. Yes, sir.

13 Q. And when you were applying it out there at Palmetto
14 Pointe, take me through that process.

15 A. Same thing. I mean, when, when we, when we installed
16 the product, the decks have to be inspected before. We
17 adhere the product to make sure that they are compatible
18 with what we're doing. Then we install the system, and
19 then before we can turn over the warranty -- in fact, we
20 don't say yes or no on the warranty. The manufacturer does
21 that. So, they would come out. Their rep for the area
22 would come out, inspect those decks to make sure that they
23 could be warrantied.

24 Q. What kind of things should you be concerned about when
25 you're installing the waterproof decking out there?

1 A. Like as far as, like, then...

2 Q. The installation. What are some, what are some things
3 that you need to be cognizant about with the installation
4 of that waterproofing?

5 A. Well, these, these particular products, I mean, they,
6 they -- I think it was alluded to earlier in the week about
7 how changes in weather and whatnot, buildings shift. So,
8 being able to -- this was a system using fabric and
9 whatnot. So, you want to make sure you have the correct
10 pitch. Has to be in order for -- to even get a warranty.
11 So, we have to make sure that the pitch is right. We have
12 to make sure that -- they specify what's called a can't
13 strip in the floor to wall areas, which is like a triangle
14 strip. We just have to make sure that all that is, is
15 flash and that the proper amount of coating is put on.

16 Q. What exactly is a can't strip?

17 A. A can't strip is a, is a triangle. In this particular
18 case -- sometimes it can be made out of wood. Sometimes it
19 can be made out of a fibrous material. Sometimes it can be
20 made out of Styrofoam.

21 The thought process behind it is you don't -- there's
22 a stress point when uniting the material any length of
23 time. So, those walls, many of the decks had a certain
24 amount of wall footage that was on them. So, those can't
25 strips go against the wall to relieve the fatigue of that

1 mat not being 90 degreed up that wall.

2 Q. We've seen this detail that's been discussed a couple
3 of times already, the Hydro-Stop detail from January of
4 1999, and you're describing a can't strip. I don't see
5 that on this. Where would be if they ---

6 A. No, it would be ---

7 Q. --- had it?

8 A. --- on a separate detail that would pertain to the
9 wall.

10 Q. So, we're talking about not on the edge of it? We're
11 talking about where ---

12 A. That's correct.

13 Q. Okay, and -- so, you're saying that that makes it so
14 that it adheres better at the wall?

15 A. And there's not a stress on that 90 degree turn up.

16 Q. And why are you turning it up the wall?

17 A. To flash it.

18 Q. You've seen some, some testimony out there of some of
19 the columns out there where some of them looked like they
20 had the, the turn up and some didn't. Do you have any idea
21 why?

22 A. You know, I actually -- that really bothered me
23 because as my wife stated, this is a family owned and
24 operated businesses and we, we take this very seriously.
25 So, to get the proper certifications and whatnot, the way

1 we do things, I'd just been -- I tried to look for the
2 files that I had, but I had been through several different
3 computers and could not find any, any pictures, whatnot,
4 but it just, it just really bothered me that some of our
5 work could be in jeopardy. So, it, it, it just makes good
6 sense that we do a proper job. Can you...

7 Q. Well, let, let me ask you this. When the, when the
8 buildings were being constructed, did all of the different
9 parts of construction always got from A to B to C to D?

10 A. No, not necessarily and, and like I said, it -- we
11 went -- we would do partial. It was important at the time
12 when the house was built. You don't want it to be
13 unprotected for a length of time, especially if you're
14 using an OSB. A piece of plywood does not do weather --
15 does not do well when it's weathered. So, very early on
16 when they would frame up those decks, we would come in and
17 actually put the base coat on and get the product up the
18 post.

19 Now, in, in going back and looking, I know that there
20 were some posts that were structural and some that were
21 just ornamental. You couldn't tell the difference, but the
22 difference was the structural posts were put in at the
23 beginning when the building was framed. The ornamental
24 posts weren't always put it at the same time that they
25 built the deck. Were, you know, framing up the house and

1 even when the waterproofing on -- some, some instances they
2 came back and put those posts after we had already
3 waterproofed the deck.

4 Q. And you were not a framer who installed those posts?

5 A. No, sir.

6 Q. The lumber that is out there on the decks, is that
7 pressure treated?

8 A. I do not believe it was. I think the first one they
9 did -- once again on the River Birch -- I think they had
10 tried to install treated lumber, but the manufacturer's
11 instructions say, I believe, not to use treated lumber.

12 Q. You're talking about the sheathing on the ---

13 A. That's correct.

14 Q. --- the posts? Are those treated?

15 A. They are.

16 Q. Okay, and the, the, the actual framing parts of the,
17 the joists, those are treated?

18 A. As far as I know.

19 Q. We were asked -- or, or some questions were asked
20 about this particular detail that we have here on the
21 outside edge of the decks. Can you say whether or not the
22 way that the outside edge at Palmetto Pointe was consistent
23 with this particular detail from Hydro-Stop?

24 A. Yes, sir. Because the way the manufacturer specifies
25 their product to be installed, the way that the drip edge

1 and product are a little bit higher on the edge would be
2 indicative of what, what happened with that deck.

3 Q. We were talking about this warranty previously. This
4 is one from Sealoflex, and what is the duration of that
5 warranty?

6 A. This is a five-year warranty.

7 Q. And what does that mean?

8 A. It just means that the manufacturer had warrantied the
9 product for five years.

10 Q. And can you continue the warranty end of the five
11 years' time?

12 A. Yes, you can.

13 Q. And what do you need to do to continue that warranty?

14 A. You would call the manufacturer, and you would give
15 them your address the warranty was originally registered
16 through, whoever the manufacturer was on that deck. But
17 you would basically call the manufacturer. In this case,
18 it was -- this is Sealoflex, but you do the same for
19 either. You call their office and you tell them you'd like
20 to extend the warranty on your deck. They will send a
21 field rep, their field rep, to your home or place of
22 business, whatever it is. They will inspect and tell you
23 what you need to do. If it needs to be washed, if it needs
24 to be patched, whatever it is, they'll tell you exactly
25 what you need to do, and then have a qualified installer do

1 that to extend that warranty another five years.

2 Q. And we're looking at the one from Dr. Love. I'm going
3 to show you what's previously marked as Exhibit 169, and
4 these were produced earlier and these are, it appears,
5 Sealoflex warranties for the units. Can you read the
6 units?

7 A. 1653.

8 Q. All right, and?

9 A. That 1655, it looks like. 1649. That's blurry, and
10 1651.

11 Q. All right, and for each of those warranties that you
12 got for the Sealoflex products, did you have somebody out
13 there looking at the decks before you got the warranty?

14 A. Yes, sir. As my wife stated, she would have to notify
15 the manufacturer, who would in turn come out and inspect
16 those decks.

17 Q. All right, I'm going to show you what was previously
18 marked as Exhibit 478. All right, do you recognize what
19 Exhibit 478 is?

20 A. Can you blow it up just a little bit? Five. It says,
21 yeah, Flexcoat five-year material warranty.

22 Q. And that's for who?

23 A. That's Hydro-Stop.

24 Q. Okay, and we only have one in this exhibit, but this
25 is for what unit?

1 A. 1617.

2 Q. And so for the units that have Sealoflex on them, you
3 have somebody from -- who would go out there and look at it
4 before the warranty was issued?

5 A. From Sealoflex, that would have been Skip Elliott at
6 that time.

7 Q. And for the decks out there with Hydro-Stop on them,
8 who would be out there looking at those before the warranty
9 was issued?

10 A. Would have been Michelle Carlin.

11 Q. And did you get these documents for every one of the
12 units that were worked out there?

13 A. Yes, sir.

14 Q. And so the ones that have Hydro-Stop on them, the
15 owners would have received something similar to what's up
16 here, and the ones that have Sealoflex on them would have
17 received the Sealoflex version?

18 A. That is correct.

19 Q. Okay.

20 MR. COLE: Your Honor, that's a stopping point if you
21 want to stop.

22 THE COURT: Okay, ladies and gentlemen, we'll take our
23 lunch. It's here at this time. It's 1:15. We'll break
24 until about 1:45, and we'll resume at that time. If
25 anybody needs extra time, let the bailiffs know. We'll

1 accommodate you. You're by no means held hostage. You're
2 free to come and go, go outside or do whatever, but we did
3 provide lunch. We're just trying to move through things a
4 little faster. All right, thank you very much. We'll be
5 at ease.

6 (THE JURY EXITS AT 1:15 P.M.)

7 THE COURT: Mr. Poyner, you can come down obviously.
8 We're going to take a break, but don't talk about the case
9 to anybody, okay?

10 (OFF THE RECORD.)

11 THE COURT: Everybody ready?

12 Bring them in. Thank you.

13 (THE JURY ENTERS AT 2:01 P.M.)

14 THE COURT: Please be seated. Thank you so much.

15 Mr. Cole, you may resume.

16 MR. COLE: All right. Please the court?

17 THE COURT: Thank you.

18 BY MR. COLE:

19 Q. Mark, you ready?

20 A. Yes, sir.

21 Q. All right. Let me show you this document that was
22 also in evidence, Dr. Love's file materials. We've seen
23 parts of this before. Do you know what this is?

24 A. Yes, sir. That's a Certainteed warranty.

25 Q. For what kind of product?

1 A. It looks like a weather board.

2 Q. And when you say weather board, what does that mean?

3 A. Siding.

4 Q. Siding?

5 A. Yes, sir.

6 Q. And so there's a warranty for the siding as well?

7 A. That's correct.

8 Q. Let's try to get this a little bit organized. All
9 right, so we talked about the beginning of the project.
10 Talked about what you did at the end of the project. Let's
11 talk about what happened during the project. I think you
12 said already that you were out there on-site, correct?

13 A. That is correct.

14 Q. How often were you out there?

15 A. At the beginning of the project, I was out there quite
16 often, almost every day or so. And as the project got
17 underway and everybody knew what was going on, it became
18 not as frequent.

19 Q. What kind of things were you doing when you went out
20 to the project?

21 A. I would look at the work that was being done. I would
22 have conversations with the crews, make sure that they had
23 everything they needed, make sure everything was in order.
24 A lot of times we had meetings with the GC, the architect,
25 the engineer, all to collaborate on the project. Any

1 issues, any concerns, any questions.

2 Q. All right, the first part of that, you said you spoke
3 with some of the subcontractors. Those were your
4 subcontracts?

5 A. Yes, sir.

6 Q. You weren't out engaging with any other subcontractors
7 you didn't hire?

8 A. No, sir.

9 Q. And then these meetings that were on-site, were they
10 scheduled?

11 A. Yes, sir.

12 Q. And how that you know about the schedule?

13 A. They typically would send out an email or call just to
14 say that they were having meetings on certain days.

15 Q. And would they ask for any particular people to be out
16 for these meetings?

17 A. Typically the -- anybody who was overseeing the crews.
18 Many times the lead for the crew themselves would attend.
19 Sometimes you would have the manufacturers of the products.
20 Anybody who, you know, had any say in the project and, and
21 how it was progressing typically was asked to be there.

22 Q. And when the meetings were held, was there somebody
23 that was in charge of them?

24 A. Yes, sir. Typically the GC. In this case Buddy
25 Hilton oversaw, along with Gary Stanley, who was the

1 project manager out there.

2 Q. Do you know how often you were out there at these
3 meetings?

4 A. Sometimes weekly, sometimes every other week. It
5 really just depended on what phase we're at in the project
6 and how many buildings were going up and what different
7 phases they were.

8 Q. What were the general topics during these meetings?

9 A. Any upcoming -- where we were on the schedule. Any,
10 once again, any product concerns, any installation
11 concerns. A lot of it towards the end had to do with any
12 punch list inspections, anything where the architect,
13 engineer, GC, anybody had walked on the property and made
14 notes of any deficiencies or things that needed to be
15 corrected. We went over those as well, as well as covering
16 any issues from the previous meeting that were listed in
17 there to be rectified and resolved.

18 Q. Since you brought it out, what is a punch list, or
19 what's part of a punch list?

20 A. Well, any time that a project is being worked on and
21 you have multiple trades, it's not uncommon for the GC or
22 architect or whoever to go through and inspect, like we
23 talked about, and they would make lists of things that were
24 -- if a particular joint needed to be caulked, if a
25 particular detail was not as it was supposed to be,

1 whatnot, they would have pictures and they would have a
2 punch list of things that needed to be done to correct
3 those issues.

4 Q. Are on-site meetings during the jobs something that is
5 a known or a typical thing that happens?

6 A. Yes, sir.

7 Q. And is a punch list something that's typical for a
8 job?

9 A. Yes, it is.

10 Q. And the, the punch list that you gave us a little bit
11 of description, is that to redo a bunch of work, or is that
12 just to try to tighten up?

13 A. Typically it's just to tighten up what's there. If
14 there are any major discrepancies, that would not be -- it
15 would be brought up whenever that happened. I did get --
16 from time to time if there were a concern, like I know
17 early on the pitch of the deck, decks came in. So, I would
18 get a phone call saying basically we had to have a specific
19 meeting regarding that issue.

20 Q. Do you remember some other issues that came up?

21 A. I mean, early on, like I said, usually when the
22 products are going on. I don't remember all the meetings
23 or all the topics that were -- that were being addressed.
24 We had some that had to do with, I guess, privacy walls and
25 whatnot. There were some -- anything that needed a change

1 order, a detail, once again inspections, you know, we, we
2 would have a meeting to discuss those things.

3 Q. And ultimately what's the purpose of having all of
4 these organized meetings?

5 A. Well, obviously you have a lot of different trades
6 working on this and the GC, along with the engineer,
7 architects, whatnot, these are human beings that are
8 putting these buildings together. So, inevitably they may
9 miss something here and there, but obviously, you know, we
10 want to make sure that we give the customer the best
11 product we can. So, inevitably it might be hindsight,
12 whatnot. Obviously not intentional but sometimes we had to
13 go back and fix, tighten up some things just so in order
14 that, that we would present that good product that we want
15 the customer to have.

16 Q. And did you take notes of these meetings?

17 A. I did. Actually, there were, there were notes
18 provided for us.

19 Q. So, that was after the meeting, someone provided you
20 notes?

21 A. Yes. I, I would get notes. I would take some myself,
22 but more or less, for lack of a better term, they would
23 take minutes of a meeting and each trade would go down
24 through. They would say where they are in the schedule.
25 Any corrections, additions, any problems they were having,

1 they would go down through. And then at the end, within a
2 couple days, usually a day or two, we would get an email
3 that basically had the same things that we discussed at the
4 meeting so everybody was on the same page.

5 Q. When the litigation started, did you go back and try
6 to find any of these old emails?

7 A. I absolutely did.

8 Q. And were you able to find any?

9 A. I was not. It was -- such a time had passed since the
10 time, and I, I had been through several different
11 computers. Even took some hard drives out of some old
12 computers trying to locate some of the emails and documents
13 and just wasn't able to find anything.

14 Q. We're not going to go through this whole thing, but
15 this is somewhat organized to help out with some of the
16 questions I'm going to ask now, but I want to go through
17 and ask you if you remember any, any particular meetings
18 while we're going through this. For example, do you
19 remember a meeting from -- on July 27, 2006? If you'll
20 look at Exhibit 345.

21 A. Yes, sir.

22 Q. And were you present at a meeting on that date?

23 A. Yes, I was.

24 Q. Who else was present on that date?

25 A. It shows Buddy Hilton from Complete, Tommy Smith from

1 SGM, Jim McGuire from SGM, and Tommy Brown, the owner.

2 Q. And SGM is the architect?

3 A. That is correct.

4 Q. And at this particular time, you said that Tommy
5 Brown, the owner, was there. Do you recall his
6 participation in any of these meetings.

7 A. Yes, sir, I do.

8 Q. Will you flip to the next page, and do you recall any
9 discussions about things called scuppers?

10 A. Yes, sir.

11 Q. And what is a scupper?

12 A. Basically when there is a, drain area that is
13 inhibited by a wall where there needs to be moisture, water
14 pass-through, what is called a scupper is basically an
15 opening that allows the water to egress off of that
16 particular area. In this particular case, it had to do
17 with a deck.

18 Q. So, this was on a deck that had kind of a small wall
19 in front of it?

20 A. That is correct.

21 Q. Okay, and so what was the ultimate fix for that?

22 A. In this particular instance, we put together a plan
23 for a through-the-wall scupper, which would have an opening
24 on one side, an inlet from the deck side. And from the
25 roof side it had an outlet that would allow water to egress

1 and find its way out from the deck.

2 Q. I'm going to show you a photograph that's attached to
3 that document you're looking at. Can you tell me what's
4 the capacity -- or what's the status of what we're looking
5 at here?

6 A. This is before the waterproofing went down during the
7 framing construction period.

8 Q. What are we looking at? Is this an interior or an
9 exterior spot?

10 A. This is an exterior on the back of the house, and the
11 wall that has -- I'm not sure what -- the brick or
12 something right there, that is actually the ---

13 Q. This?

14 A. Yes, sir. That right there is the back wall where --
15 the deck being tapered, that's where the water would run to
16 would be that wall right there.

17 Q. And so a scupper -- describe to me using this what you
18 all came up with.

19 A. Well, obviously if, if it rains, there's, there's
20 going to be water, and sometimes even the homeowner would
21 maybe want to put plants on the deck or whatnot so they'd
22 have the opportunity to obviously water those plants
23 hopefully. So, in case that there would be rain or water
24 that got on the deck, it would still be able to pass
25 through and not stay built up and retained on that deck.

1 Q. When you were out there, did people other than the
2 Tri-County, the architect, and, and the builders go out
3 there?

4 A. Yes, sir. As I mentioned earlier, sometimes the trade
5 foremens -- foremen would be involved in the meetings as
6 well.

7 Q. Do you call a meeting on August 4, 2006?

8 A. What number would that be?

9 Q. Okay, 353.A, and did you have a sign-in sheet
10 sometimes?

11 A. Yes, sir.

12 Q. Does this look like sign-in sheet? Obviously there's
13 highlights on it. Does that look like ---

14 A. Yes, sir.

15 Q. --- a sign-in sheet?

16 A. It does.

17 Q. And who was there at that meeting?

18 A. This meeting had Jim McGuire from SGM; Tommy Smith,
19 SGM; Buddy Hilton, CBC; myself for Tri-County; Steve Apat
20 from Complete Building; Jennifer Buchwalder from Buck
21 Lumbar; Gary Stanley from Complete Building; Tommy Brown,
22 owner; Billy Minter, CertainTeed rep; Tim Campbell from
23 Atlantic; Jay, looks like Passmore from Anderson Windows;
24 Alan Fielder from Curry Engineering.

25 Q. All right, and do you remember any of the discussions

1 at this meeting?

2 A. Yes, sir. Actually we invited the product reps to be
3 involved as much as they could. Obviously we want to
4 collaborate together. So this particular meeting, we were
5 actually able to get the rep to come out and I believe one
6 of the -- let me read through this, make sure this is...

7 Q. If you'll look at 353, does that look like the
8 follow-up notes that you would have received by email,
9 Exhibit 353?

10 A. Yes, sir, it does.

11 Q. And was one of the topics discussed dealing with the
12 siding?

13 A. Yes, it is.

14 Q. Do you know Billy Minter?

15 A. Billy Minter was the CertainTeed field rep when I came
16 on to work with Tri-County. And once again because of the
17 working relationship with the shingle manufacturers, we try
18 to, to interface with them as much as possible, and he was
19 the, the field for CertainTeed.

20 Q. And he was there on the August 4th visit?

21 A. Yes, sir, he was.

22 Q. And did you all discuss during that time the siding
23 installation?

24 A. Actually did. One of the concerns was the face nail
25 and blind nailing, and CBC was, as it says in the notes, to

1 confirm with the siding manufacturer if that is allowed for
2 the installation.

3 Q. And we've heard some testimony about face nailing and
4 blind nailing. Blind nailing is you nail the top part, and
5 it's covered by the piece above it, correct?

6 A. That is correct.

7 Q. And face nailing is you can go through the face on the
8 outside of it?

9 A. That is correct.

10 Q. Is it your understanding that the CertainTeed siding
11 was able to be installed using either of these methods?

12 A. Yes, it is.

13 Q. And what's installed out there today is how? How is
14 it installed out there today?

15 A. Currently it is blind nailed.

16 Q. And would you have blind nailed this if you were given
17 directions to install it a different way?

18 A. No, sir, I would not have.

19 Q. When the first piece of siding was installed, was it
20 apparent that this was the wide siding?

21 A. Yes, it was.

22 Q. Did you also talk about the caulk joints around the
23 siding?

24 A. We did.

25 Q. And do you remember what that discussion was about?

1 A. They were to be an 8 inch wide.

2 Q. Do you remember a meeting that was on September 7,
3 2006?

4 A. What number would that be?

5 Q. 430.

6 A. Yes, sir.

7 Q. And who was present at that meeting?

8 A. This had Seth Roberts; it would have been BPA with
9 Britt Peters; Chris Danzler with DNS Plumbing; Gary
10 Stanley, CBC; Buddy Hilton, CBC; John Brooks with Atlantic
11 Builders; Jim McGuire, SGM; Tommy Smith, SGM; myself, Skip
12 Elliott from Sealoflex; and Paul Fields from Curry
13 Engineering.

14 Q. And what was Sealoflex doing at the meeting here that
15 you were attending?

16 A. Once again, we encourage the reps to be involved with
17 the project so that they can be hands on. They, they need
18 to be there, you know, for the install regardless because
19 it has to be inspected before and after for the warranty to
20 be issued.

21 Q. Do you know why the waterproofing changed from
22 Sealoflex to Hydro-Stop?

23 A. I do. obviously they were looking for much of a
24 flawless finish as they could in there. Many times when
25 waterproofing is installed, if you don't do something extra

1 to conceal the joints between the plywood, sometimes they
2 telescope through and sometimes that's unsightly. So, they
3 were looking for almost a seamless finish on those decks.

4 Q. There's some documentation that use the term butter
5 grade. What does that mean?

6 A. So, Sealoflex uses a material. It's kind of like
7 drywall mud consistency, and it could be applied in the
8 openings where the fasteners would go through the deck and
9 on the seams. Then you could sand it down and basically
10 put your, your fabric. Actually it could be done before,
11 it could be done during, and even after if there were some
12 abnormalities in the deck that the customer didn't want to
13 see. It would allow to have a more finished, polished look
14 to it.

15 Q. And to sort of assist with what we're talking about
16 here, do you remember attending a meeting on October 19,
17 2006? Look at 372.

18 A. 372?

19 Q. Yes.

20 A. Yes, sir.

21 Q. And if you look at the second page, I think that goes
22 to what you're talking about with the, the two different
23 brands that you were talking about, looking at the
24 Hydro-Stop versus Sealoflex. Is that, correct?

25 A. That's correct.

1 Q. Okay. So, early on in the project, they decided they
2 wanted to change the aesthetics of the waterproofing
3 membrane?

4 A. That's correct.

5 Q. Now, was the workability of the membrane any
6 different?

7 A. No, sir.

8 Q. Okay. So, they just wanted the look changed?

9 A. That is correct.

10 Q. Do you remember a meeting November 2, 2006, at 375?

11 A. Yes, sir.

12 Q. And who was here at that meeting?

13 A. Buddy Hilton for Complete; Tommy Brown, owner; myself,
14 Joe Brown, Complete Building; Gary Stanley, Complete
15 Building; Jim McGuire, SGM; and John Brooke, ABC.

16 Q. Now, there's been some testimony already that the
17 front of the buildings have a wrap around the columns and
18 the backs do not have a wrap. Do you know ---

19 A. That is correct.

20 Q. Okay. Do you know sort of the, the background to
21 that?

22 A. So, I believe the initial bid prints called for an
23 architectural column to be installed that was both
24 supportive and decorative. Not sure, it might have been
25 cost, but they decided to install the 6 x 6 posts. When

1 those were installed, they tried to paint them. Still was
2 somewhat unsightly, so they decided to go ahead and have
3 the columns wrapped so that they would once again look more
4 finished.

5 Q. And they did not want to have the back columns
6 wrapped?

7 A. Did not at that point in time because the, the spec
8 changed as to what we were installing. They wanted me to
9 submit a price on that. That would be another change order
10 again. I submitted that change order to wrap all the
11 columns, and for some reason it was -- they elected to do
12 that on the front but not to the back.

13 Q. And that was a change order that you had in your
14 contract document, right?

15 A. That is correct.

16 Q. You have change order number 5, which is Exhibit 29.
17 Have you seen this before?

18 A. Yes, sir.

19 Q. And what is that change order dated, and what is it
20 about?

21 A. This change order is August 24, 2007. Once again
22 there were a few items that were not given during the bid
23 process. One was band board and then the boxing of the
24 beams at the front of the building, the gutters, reinstall
25 some soffit. That had to do with a framing error. And

1 then the last one was to remove and replace siding on one
2 of the units.

3 Q. You invoiced or did a change order to remove and
4 replace siding on what unit?

5 A. This says 1523.

6 Q. You think that's a typo?

7 A. I, I do.

8 Q. Okay. Do you think it's 1623?

9 A. I do. I think it's 1623, yes, sir.

10 Q. Do you recall what it looked like out there at this
11 time period with some of the siding coming off?

12 A. Well, the -- when this came out, obviously some of the
13 buildings were -- the exteriors were fairly far along, even
14 having been painted, and the siding had to be -- they asked
15 me to remove a section of the siding.

16 Q. Now, was the siding being removed for your
17 installation issues?

18 A. It was not.

19 Q. Was it a framing issue?

20 A. Yes, sir, it was.

21 Q. Okay, and you weren't involved in the framing issue,
22 right?

23 A. No, sir.

24 Q. And so you don't -- you're not going to offer any
25 testimony as to what they were looking at with the framing?

1 A. No, sir.

2 Q. You -- do you know the company Britt Peters and
3 Associates?

4 A. Yes, sir.

5 Q. And they were out there at the same time that that was
6 coming off, correct?

7 A. Yes, sir.

8 Q. I'm going to show you a photograph from a Bitt Peters
9 report that is dated May 24, 2007, and this is unit 1623.
10 Does that look like unit 1623?

11 A. Yes, sir.

12 Q. And does it look like there's some siding removed on
13 the left-hand side of the, of the building?

14 A. It does.

15 Q. Can you get up and point to it so that we know that,
16 that I'm asking you and you're talking about what I think
17 I'm asking you about?

18 A. This area right here.

19 Q. Okay. So, it's the part that is not blue, correct?

20 A. Yes, sir. That's correct.

21 Q. Okay, and what is being to used to access the wall
22 there?

23 A. Those are pump jacks.

24 Q. And, and pump jacks are essentially what?

25 A. Pump jacks are basically like scaffolding. You put