

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

Case No. 2012-CP-10-7594
Appellate Case No. 2018-001230

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SC Court of Appeals

One Belle Hall Property Owners Association, Inc., and
Marvin T. Meek and Francis E. Hill, individually and
on behalf of all others similarly situated,.....

Respondents,

v.

Builders FirstSource-Southeast Group, LLC, ...

Appellant.

RECORD ON APPEAL
VOLUME III

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Individually and on behalf of all others
similarly situated

**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CASE NO.: 2012-CP-10-07594

ONE BELL HALL PROPERTY OWNERS)
 ASSOCIATION, INC., AND MARVIN)
 T. MEEK AND FRANCIS E. HILL,)
 INDIVIDUALLY AND ON BEHALF OF)
 ALL OTHERS SIMILARLY SITUATED,)

PLAINTIFF(S))

v.)

TRANSCRIPT OF RECORD

BUILDERS FIRSTSOURCE -)
 SOUTHEAST GROUP, LLC,)

DEFENDANT(S))

ORIGINAL

Thursday, April 20, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Diane Schafer Goodstein, Judge

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NO EXHIBITS INTRODUCED

1 (The proceeding began at 2:06 p.m.)

2 THE COURT: I'm listening. Go for it.

3 MR. ANZELMO: Thank you, Judge Goodstein. Michael
4 Anzelmo here for Builders First, the moving party. And as
5 Your Honor knows, we had a previous hearing in November.
6 And at that hearing we ordered the transcript and reviewed
7 our filing. And we have withdrawn the vast majority of it
8 because it simply wasn't supported by the transcript. Filed
9 a supplemental memorandum, Your Honor, that simply outlined
10 the remaining items from the initial motion that remain and
11 related to the directed verdict and JNOV that was made at
12 trial. Now, plaintiffs' have raised some procedural issues
13 to this whole hearing. So it probably make sense as much as
14 it pains me to say to addresses those first.

15 THE COURT: Okay.

16 MR. ANZELMO: If Your Honor would like to do that. In
17 a filing -- in their memorandum, Your Honor, plaintiff's
18 aver that this matter is not properly before the Court any
19 longer because of the entry of a judgment that was entered
20 nunc pro tunc back to the date of the verdict. That
21 argument is simply not supported. While they site numerous
22 cases in the motion, none of them address the proposition
23 that somehow a Form 4 cuts off jurisdiction of the Court if
24 a timely post-trial motion has been filed. What we did is
25 the verdict was entered September 1st; we filed a post-trial

1 motion which we're going to hash out later when exactly that
2 is. But we filed a post-trial motion on the tenth day which
3 was September 12th, Your Honor; entered a Form 4 enrolling
4 the judgment nunc pro tunc back to September 1st, some ten
5 days after we filed our motion. Plaintiffs' position is
6 somehow that ends the action and you can't even entertain
7 the post-trial motion. That's not accurate, Your Honor,
8 because you entered it nunc pro tunc it relates back to
9 September 1st. Rule 59 is, as you know, motion to
10 alter/amend judgment. To alter/amend the judgment shall be
11 served not later than ten days after receipt. What we have
12 filed, the Supreme Court has said in Fields that is
13 unequivocally a Rule 59 motion despite the fact it may be
14 captioned as a JNOV, a new trial motion. Exactly what
15 happened in Fields. The party stood up at the end of trial,
16 asked for ten days; the judge said no; made a new trial
17 motion, lost. Within the ten days, same counsel filed a new
18 trial motion, captioned a new trial, same ground, added
19 some. The plaintiffs in that case said, hey, look, that is
20 a successive post-trial motion under Elam and that line of
21 cases. The Supreme Court said no it is not; it is in fact a
22 Rule 59 despite how it was captioned and despite the fact it
23 said new trial. Basically, it's your one shot at the apple.
24 So what we have is a timely filed post-trial motion, a
25 Rule 59, that's asking you to reconsider a JNOV that was

1 filed within ten days of entry of the judgment, end of
2 story. It was nunc pro tunc. So I believe we can proceed
3 on the setoff motion and the reconsideration of the JNOV.
4 There are other procedural matters that relate specifically
5 to each motion that I think we can -- probably makes more
6 sense to address the context of the motion. But as far as
7 the big picture, we're properly here.

8 THE COURT: Got it. Yes, sir.

9 MR. LUCEY: Yes, Your Honor. The procedural -- there
10 are two or three procedural issues that converge into this
11 procedural argument that we're facing right now. For
12 starters, the defendant clearly made a JNOV motion at the
13 close of trial -- it's in the transcript -- and did not ask
14 for ten days to make any other post-trial motions. Under
15 the Broom case we handed up at the last hearing that means
16 there is not ten days for any post-trial motions. They
17 would still be eligible to make a motion to reconsider.
18 That they did not do. Nowhere in that motion is found words
19 of alter, amend or reconsider, and importantly, and this is
20 discussed at length in similar contexts in the Elam case.
21 Importantly, there is no reconsideration point made in the
22 tenth day filed. It simply restates the grounds for JNOV
23 that were stated in the court. And the Elam case evaluates
24 that and says, no, that's not a motion to reconsider. That
25 is a second JNOV. It's not allowed under our procedure. It

1 does not toll the time limit for appeal. And once the
2 appeal period runs, the jurisdiction of the Circuit Court
3 ends. There is no motion to reconsider.

4 Now, having said that, let me break their ten-day JNOV
5 motion into two or three different sections. They started
6 with 27 grounds. Now, there is only two grounds in the
7 entire JNOV, the second JNOV, that were ever made in a
8 directed verdict to begin with. The two grounds were
9 sufficiency of the evidence as to defective condition of the
10 product. And the second was that we had not shown that the
11 windows were unreasonably dangerous. Those are the only two
12 grounds articulated at the close of plaintiffs' case. The
13 Court will recall there were no grounds, no motion at all
14 made at the close of evidence. So it appears as though
15 Builders FirstSource is still trying to argue that their
16 opposition to my motion for a directed verdict preserve
17 those original grounds from the motion made at the close of
18 plaintiffs' evidence. Well, the transcript clearly reads
19 otherwise. In fact, they can't point to the Court anywhere
20 they made a second directed verdict motion. They can't
21 point to the Court anywhere in the transcript where they
22 procured a ruling on a renewed directed verdict motion. And
23 so what they're trying to do is they're trying to say their
24 argument and opposition to my motion constitutes a motion,
25 which they just can't do because as the Court stated and it

1 ruled on my motion, on the plaintiffs' motion, as the Court
2 stated taking the evidence in light most favorable to the
3 nonmoving party, which here, of course, is Builders
4 FirstSource, I'm going to deny plaintiffs' motion. So there
5 can't be no confusion as to what the Court was ruling upon.
6 And at the next moment the Court turned to Builders
7 FirstSource and said any motions? At which point in the
8 transcript they declined.

9 So there's nothing to have a JNOV on anyway. The oral
10 JNOV at the close of trial could not possibly have been made
11 because there was not a directed verdict motion made at the
12 close of evidence. And then you take a step further, we now
13 have a ten-day JNOV motion being made when there's no leave
14 of court for ten days. And even within that ten-day JNOV
15 motion, we have three types of grounds. We have the 20-odd
16 grounds that they have now withdrawn acknowledging there's
17 just no way, imagination, they can argue those grounds any
18 longer to the Court now they've seen the transcript, which
19 they didn't bother to procure.

20 We have a second set of grounds. The two that were
21 made at at the close of plaintiffs' case were not preserved
22 at the close of trial. And then we still have four other
23 grounds in the remaining motion that they had no withdrawn
24 that were never made to the Court any time during the trial.
25 And so they just can't even be considered.

1 So, Your Honor, this current JNOV is so far out in left
2 field it can in no way be considered a motion to reconsider.
3 There is no reconsideration language in it. The 30 days --
4 the 30 days ran when they received -- 30 days after they
5 received notice of the entry of the Form 4 order ending the
6 case. Now, that the Form 4 order says expressly this ends
7 the case. And the Cheap-O case that we cited in our brief
8 clearly says a Form 4 order, that's a real thing. It ends a
9 case when the judge enters that. We even have now since the
10 last hearing cited to the Court an additional case in our
11 supplemental memorandum which we submitted at 8:00 p.m. last
12 night and we brought file-stamped copies with us today.
13 Today we submitted the Pitman case -- or last night we added
14 the Pitman case to the brief if I may hand a copy up to the
15 Court. And the Pitman case concerned a situation where a
16 party moved for attorney fees and sanctions approximately
17 two months after the final order had been entered. And
18 appellate courts looked at this and they said, well, that
19 doesn't work. The Circuit Court no longer had jurisdiction.
20 When the time to appeal the denial of any post-trial order
21 runs, Circuit Court loses jurisdiction.

22 So it's plaintiffs' position we don't even have
23 jurisdiction. Now, the Court as we set forth in detail in
24 our supplemental memorandum last night, we don't exactly
25 know when the post-trial Form 4 order and ruling, the jury

1 verdict was executed. We know it was transmitted from
2 Dorchester County to Charleston County on September 20th.
3 And we know notice was given on September 27th to all
4 counsel of record which would include, of course, Builders
5 FirstSource new counsel had entered an appearance
6 approximately two weeks earlier at that point.

7 There's no indication that the Court knew that on
8 September 7th that Builders FirstSource had filed a motion
9 to compel discovery because the cover letter does not
10 demonstrate service on the Court. It only demonstrates
11 filing. It did not serve the trial judge. Now, it's custom
12 and the rules provide any post-trial motions gets served on
13 the trial judge. She needs to know what's going on. Rule
14 50, 52, and 59 all provide that. You must serve the trial
15 judge if you have a post-trial motion. Well, this motion to
16 compel that's out there, it's kind of hard to figure out
17 what rule they're trying to push that under. At any rate,
18 there's no evidence that the Court knew that that motion
19 existed when it issued its Form 4 order ending this case.
20 So there's no mistake by the Court. There's no evidence the
21 Court even that that motion existed. Having received that
22 Form 4 order on September 27th -- 27th, September 27,
23 Builders FirstSource had absolutely no choice but to follow
24 Rule 59 motion to get this Court to amend the order ending
25 this case or else the order stands. And they had ten days

1 to file that motion. It never happened.

2 Now, we pointed this error out to Builders FirstSource
3 in our November hearing filings. And it probably at that
4 time still had an option of seeking a Rule 60(b) order from
5 the Court, which it has not done. We're here now five
6 months later and there's not even been a Rule 60(b)
7 request by the Builders FirstSource. And we would submit
8 that this point that that would probably be untimely because
9 Rule 60(b) requires prompt action when you learn that
10 there's an issue such as the one we're addressing.

11 So Your Honor, under any analysis there never was a
12 proper second JNOV motion. The jurisdiction of the Court
13 ended. The appeal period in this matter expired
14 approximately late October. The second JNOV motion was a
15 nullity in the eyes of the law according to the Elam case;
16 you can't do that. There's nothing in there regarding
17 reconsideration. There are no reconsideration points. And
18 Elam actually speaks to that. You can't call a second JNOV
19 motion a motion to reconsider and copy your JNOV motion.
20 You must actually point out to the Court what the error is.
21 What is it that they've misapprehended or overlooked? And
22 they did not do that. So, Your Honor, it's plaintiffs'
23 position this case has sailed. It's over. Thank you.

24 THE COURT: Thank you. All right. Yes?

25 MR. ANZELMO: Thank you, Your Honor. We sort of

1 started blending some concepts here. But the preliminary
2 one is can this court even entertain the issue of whether
3 our JNOV was proper and all those other procedural issues.
4 The fact of the matter is yes; the judgment was enrolled
5 nunc pro tunc which relates back. There's no
6 misapprehension about that. We filed it within ten day. We
7 do not need a request for ten days for Rule 59. You don't
8 have to call a 59; Fields makes that clear. Fields, bills
9 by the way the citation is 363 South Carolina 19. It's a
10 Supreme Court case from 2005 which postdates Elam. Look, I
11 do a lot of appellate work. It's 35, 45 percent of my
12 practice. This is a confusing area of the law. Everybody
13 admits that. And I think our Supreme Court has recognized
14 that, and that is why we shifted from the first line of
15 cases where we had to look and analyze -- Did it raise new
16 things, did it not? -- to Fields announcement that is a 59
17 regardless. You get one bite at the apple on a
18 reconsideration of the oral ruling, period. That's actually
19 the Supreme Court's phrase: One bite at the apple.

20 So what we have is a proper motion to reconsider, a
21 denial of the JNOV. And as I will explain here in a little
22 bit, we believe there was a directed verdict motion made in
23 substance at the close of plaintiffs' case. I'm happy to
24 address that now if you like. Just so you know, we have a
25 proper reconsideration. And the reason we believe that the

1 second post directed verdict was made is this: Well, first,
2 everything knows a directed verdict was made on two grounds
3 at trial. How you want to categorize them is this. Trial
4 counsel stood up and argued that there was a wholesale
5 failure of evidence on two of the elements for products
6 liability. One, product wasn't unreasonably dangerous, and
7 two, one in the same condition. One factual support for
8 that. That was the argument. Your Honor denied that. At
9 the close of plaintiffs' case -- of the defendant's case,
10 there was an admittedly, or I think confusing colloquy. If
11 you remember before the first hearing we thought perhaps
12 what Mr. Lucey was reading was -- when he was saying
13 Ms. Davis -- Ms. Dyer -- was actually him. We couldn't
14 quite figure out the back and forth. Here's why it was
15 confusing, Your Honor.

16 Mr. Lucey made a very nice argument for directed
17 verdict. And as part of the defending of that, trial
18 counsel said no, his points fail for the following factual
19 reasons. When she made that, Your Honor asked a various
20 question about what about issues of law as far as the
21 elements basically, the cause of action. In counsel's
22 argument, the substance of that argument, and as you know
23 substance controls over form, was that we, Builders First
24 should be entitled to directed verdict because there was a
25 wholesale failure to carry the burden of proof, i.e., those

1 two elements that she said earlier were missing. So when
2 Your Honor said, "Well, I disagree with that. I think there
3 is sufficient evidence to send this to the jury," you ruled
4 on their even though you said it was his motion. It was his
5 motion, but she argued a response with a directed verdict
6 motion. As our courts, the Supreme Court and Court of
7 Appeals, have said, a quintessential type of directed
8 verdict motion is when you say someone failed to carry its
9 burden of proof. That's the Town of Hollywood versus Floyd
10 and Martazen (ph) versus Hilton Head Health Systems. I only
11 cite those cases for the proposition that I just said,
12 failure to carry a burden proof is a directed verdict
13 motion. I'm not saying that the ultimate result of the
14 factual scenario matches, but the propositional law is what
15 it is, okay. So when Your Honor denied the motion and then
16 looked at counsel and said, "Do you have any motions," there
17 was not one that needed to be made. In fact, one couldn't
18 be made under our Rules of Civil Procedure because the Rules
19 of Procedure say once the judge has ruled -- I think it's 40
20 something -- you can't then argue again the same thing. So
21 counsel would have actually stood up again, said, "Your
22 Honor, the things I just argued in opposition to Mr. Lucey,
23 we should get directed verdict on that." That would've been
24 improper and you wouldn't have had to do that. So
25 substantively, the motion -- the opposition to his motion

1 was a directed verdict motion. And that's why when the JNOV
2 was made on the same grounds as she raised before, the two
3 grounds that I mentioned, you denied it.

4 We had ten days from the judgment, September 1st to
5 September 12th, to file our reconsideration. We're in front
6 of you, and we think the five things that we set forth in
7 our supplemental memorandum relate solely to the two issues
8 that were raised at trial. We're not seeking to expand it.
9 We're saying that part in parcel with the failure to show
10 something that is unreasonably dangerous is in fact that you
11 have to follow the Branham Rule that says you have to show a
12 feasible alternative design. Branham makes clear that that
13 is part and parcel of unreasonably dangerous. So that's why
14 that one is included. The other ones are included because
15 they specifically say it's a failure of proof in the
16 elements of cause of action. You can't get more on point
17 than that. So I think procedurally where we could,
18 obviously, we can lose the motion to reconsider. But
19 procedurally, it's properly before you on that issue, on
20 those limited issues.

21 THE COURT: Got it. Okay.

22 MR. LUCEY: The exception of address by Fields, Your
23 Honor, is only where the movant in the success of motion
24 explains to the Court in more detail why it was wrong in the
25 first instance and then it can be considered a motion to

1 reconsider. There's no additional detail in this motion,
2 none whatsoever. In fact, we received a supplemental
3 memorandum three days ago that still doesn't cite to any
4 evidence, transcript, anything whatsoever to tell the Court
5 why it should have ruled in its favor. And all this is
6 distinguished by the fact that in those earlier cases, they
7 didn't have an order already entered ending the case, and
8 they didn't have the failure to make the renewed directed
9 verdict motion at the close of evidence. There's many more
10 factors here, but they don't even qualify, even ignoring
11 those other factors, they don't qualify for the exception of
12 Fields which was actually discussed in the Elam case. It's
13 not anything new. In Elam they talk about the difference
14 between simply retyping that JNOV motion that you already
15 made, and actually providing the Court with some information
16 about why it should change its mind. So the cases are not
17 on all fours with each other, Your Honor. Thank you.

18 THE COURT: Okay.

19 MR. LUCEY: And I'd be happy to point to the Court to
20 the page in the transcript. We sent an index with the
21 transcript, but I'd be happy to point to the page in the
22 transcript where the failure to make a renewed JNOV -- a
23 renewed directed verdict motion occurred.

24 MR. ANZELMO: I think it was 684. Somewhere in that
25 neighborhood. Your Honor, if I could just -- two seconds.

1 THE COURT: Sure. Of course.

2 MR. ANZELMO: Fields, there was nothing, explanation
3 added. They added more things, sort of like what we did.
4 We talked to trial counsel; we talked to the client. We
5 said what happened at trial? Let's articulate some grounds
6 as a typical post-trial motion does. And the exact things
7 that were argued orally to the judge in Fields were then
8 recaptioned again as a new trial in Fields, added more
9 stuff. And the Court said, doesn't matter, it's a 59.
10 Also, Your Honor, if you take plaintiffs' position on this
11 Form 4 to its logical conclusion, if any time a judgment is
12 entered on the day of the verdict, you're automatically
13 precluded the losing party from filing post-trial motions
14 that are guaranteed by statute and Rules of Civil Procedure.
15 That's not how it operates. You can't just -- the Court
16 just can't enter an order and thwart someone's ability to
17 file these motions if they're timely, which we've already
18 explained they are timely. So I think we can proceed, in my
19 opinion, onto the merits of the two motions.

20 MR. LUCEY: That last point, Your Honor, is
21 contradicted by the Form 4 or itself. It has two
22 checkmarks: This does end the case; this does not end the
23 case. The judge selects which check mark is applicable and
24 that's how it's entered. So that last point is non . . .

25 (Brief pause in the proceeding.)

1 MR. LUCEY: And the plaintiffs' directed verdict motion
2 began at page 626, and the Court's ruling taking the
3 evidence in the light most favorable to the nonmoving party,
4 which of course would be the defendant, is on page 639 along
5 with BFS's declination making a post-trial motion. Excuse
6 me, a declination of a directed verdict motion.

7 (Brief pause in the proceeding.)

8 THE COURT: All right. I'm looking at what is in the
9 transcript at page 639.

10 (Brief pause in the proceeding.)

11 THE COURT: Let me ask you a question. What is the
12 case that that you maintain is the case that says that you
13 don't need to make a directed verdict or directed verdict
14 motion -- some people call it other things -- but directed
15 verdict motion at the end of the plaintiffs' case and the
16 defendant doesn't have to do that?

17 MR. ANZELMO: Yep. We assert they do have to and we
18 did. Here's why. The substance of what Ms. Dyer argued in
19 opposition to Mr. Lucey was in fact a directed verdict
20 motion. When in response to Your Honor's question on 633,
21 she said the plaintiff has the burden to prove that the
22 windows were illegal, and we have an absence of proof of
23 that. And the cases we look to, you don't need magic words,
24 you don't even have to say directed verdict. Our --
25 preservation rules are clear. As long as the substance of

1 what you're doing is clear to the Court, it qualifies as
2 what is asserted. And in Stevens versus CSX Transportation,
3 415 South Carolina 182, the rule is a party is not -- this
4 is a quote -- "the party is not required to use the exact
5 name of a legal doctrine in order to preserve the issue."
6 And then Lucey versus Myer, 401 South Carolina 122, quote,
7 "it's a substance of their requested relief that matters
8 regardless of the form in which the request for relief is
9 frank." That's precisely what happened here. It was framed
10 in the context of the plaintiffs' motion for a DV, but the
11 substance in fact -- like I said, the Town of Hollywood and
12 Martasian (ph) was he didn't carry -- plaintiffs' didn't
13 carry their burden of proof which were the two issues that
14 trial counsel had argued previously.

15 THE COURT: And those pages from the transcript are?

16 MR. ANZELMO: 633 was your question, Your Honor; 634
17 was trial counsel saying the plaintiff has the burden to
18 prove the windows were illegal. And here we have an absence
19 of proof of that. When Your Honor denied the motion, she
20 did it in the context of plaintiff moving because he's the
21 one that stood up and moved as he did. I think we're
22 extrapolating a little far that nothing happened. I mean,
23 there was a substantive argument there from Ms. Dyer.

24 MR. LUCEY: Your Honor, respectively, that's a
25 mischaracterization of what occurred. And no disrespect to

1 counsel, it's just that he wasn't there. What he's pointing
2 to is the middle of plaintiffs' directed verdict argument.
3 I realize I'm supposed to call it involuntary -- with
4 prejudice, but in the middle of plaintiffs' directed verdict
5 argument, one of our grounds in the entirety of the directed
6 verdict, one little ground, was that among other things
7 we're entitled to that because these windows were illegal
8 from day one. And they can't find any justification that
9 will offset that, and so that alone is going to entitle us
10 to a directed verdict on at least one of our causes of
11 action. And the Court was interested in that allegation.
12 And the Court asked me a question about it. And so I
13 addressed it further and then Ms. Davis addressed it
14 further. It was all in the context of plaintiffs' motion.
15 In fact, consistently in this dialogue, she's saying there
16 is enough evidence for it to go to the jury because she
17 knows she's arguing against my directed verdict. And she's
18 saying he hasn't proved entitlement to a verdict or to a
19 judgment as a matter of law. It's questions of fact for the
20 jury. She repeatedly says that.

21 So this portion of the transcript was on the subissue
22 of whether the windows were illegal. That's one minor
23 evidentiary component of what was before the Court. That
24 was by -- arguing about whether the window is illegal or not
25 is by no means a motion for directed verdict on the part of

1 the defendant even if you misconstrue all the other language
2 in this transcript. And the Court may recall at trial the
3 third-party report, the code report, was required under the
4 building code, and independent code report for the windows
5 to be legal for use in this jurisdiction. One was found for
6 the singles.

7 THE COURT: Right.

8 MR. LUCEY: But it didn't match. The components didn't
9 match.

10 THE COURT: Right.

11 MR. LUCEY: But there maybe was an argument that maybe
12 that's an accident. But none was ever found for the twins.
13 And their expert had previously represented the window
14 manufacturer and asked window manufacturer for all their
15 technical literature and had never received one, and
16 basically conceded the problem, the nonexistence of it, at
17 that time. So there was no evidence of the legality of the
18 twins. And at the point of my directed verdict argument, I
19 made the point, well, we're at least entitled to directed
20 verdict as to the sale of the illegal windows. Which the
21 Court entertained further, asked questions, and ultimately
22 denied it, and we had to go to the jury. Thank you.

23 MR. ANZELMO: Just one quick point, Your Honor.
24 Hypothetically, of course, if I lose this point. I don't --
25 the ruling the Court makes is not -- you don't have

1 jurisdiction until you entertain the motion. What the
2 ruling would be is that the motion to reconsider is denied
3 because a proper DV wasn't made at the close of the
4 evidence. It's not a jurisdictional issue. It's simply
5 that we lose reconsideration because the fundamental
6 prerequisite to what we're asking to reconsider wasn't done.
7 So that needs to inform your analysis of this, Your Honor.
8 And the evidentiary issue that Ms. Davis was arguing is
9 separate from the legal issue as to whether they countered
10 the burden of proof as to one of the elements of the cause
11 of action which they brought. I mean, that's it. Your
12 Honor understands the cause of elements -- the elements of
13 the cause of action. So again, if we were to lose, I don't
14 think we should, but it's not jurisdictional. It's simply
15 that the reconsideration is denied because of the failure to
16 renew the DV.

17 MR. LUCEY: It is jurisdictional because if there was
18 nothing to reconsider, then the appeal period already
19 started. Which, of course, we believe the appeal period
20 already started anyway because the Court issued an order
21 ending the case. Nobody ever moved to reconsider that
22 order. So there's two reasons. Essentially there's two
23 reasons why this ship has sailed. Thank you.

24 (Brief pause in the proceeding.)

25 THE COURT: Let me ask you this question because this

1 is troubling for me. And because as I go back and I look at
2 the argument, it appears that Ms. Dyer as she's arguing was
3 clearly a motion for a directed verdict at the end of the
4 case made by Mr. Lucey. That when she is arguing against
5 his position that she is talking about -- (Brief pause.)
6 And I'm looking at page 630. And she's arguing about all
7 three causes of action. And then she says, "We feel that
8 there has been a sufficient showing of evidence on all three
9 causes of action to allow the jury to make the final
10 determination." And so he's pushing to make a determination
11 that the twin windows are illegal and that you got to win on
12 strict liability. And she's arguing as opposed to that that
13 "there's plenty of evidence from which a jury could find
14 either way, Judge." She goes on to say -- and there's this
15 whole issue about damages. And she says, "I think they" --
16 she says "there is an element of speculation there." But
17 then she goes on and she says, "So we believe there is a
18 question of fact and plenty of evidence that could be
19 weighed either way as to damages which would be applicable
20 to all three causes of action." And then we talk about --
21 and I say you haven't talked about any intervening
22 negligence are you -- or reliance. Are you abandoning those
23 affirmative defenses?

24 And then she goes on and she says, "For those reasons
25 we believe that the liability of Builders FirstSource as the

1 supplier of the windows is unclear as it is muddled by the
2 intervening negligence of other parties who aren't in court
3 today." And I ask if there's anything further. And, of
4 course, Mr. Lucey goes on and he says, "I'm not saying that
5 we're entitled to a directed verdict as damages. I'm just
6 saying we're entitled to a directed verdict with regards to
7 liability." So I don't think there's any question but that
8 it is Ms. Dyer's position that the matters are for the jury.
9 And I think she's real candid with the Court about that.
10 This is a lawyer of great integrity. And I think that's why
11 she didn't make a motion for directed verdict because she
12 actually thought they were jury issues. And so when she
13 says -- and I'm talking about taking the evidence in the
14 light most favorable to the nonmoving party, the defendant.
15 I believe what's been laid out -- basically saying
16 Mr. Lucey's wrong, these are issues of fact for the jury. I
17 don't think I -- a directed verdict against your client.
18 And I think that vis-a-vis liability regarding those got to
19 go to the jury and Mr. Lucey loses on illegal windows,
20 strict liability, and the like. And so at that point it
21 would have been -- I think it would have been disingenuous
22 for her to say that -- to argue that somehow she can make a
23 motion for directed verdict, quite frankly. So I don't
24 think she was confused. I don't think anybody was confused.
25 I think she did an excellent job of beating back the

1 directed motion made by Mr. Lucey. I really do. And so I
2 think that -- because he had a strong argument regarding,
3 particularly, the illegality of the twin windows because the
4 people did come on and say -- we didn't get anything. Well,
5 just order them -- (descriptive sound) -- we're done. And
6 he had a strong argument. I thought she did a good job. I
7 said, whoa, bring the building code, he didn't do it. At
8 which point he said it didn't make any difference. Because
9 they did nothing with regards to the twin windows. So I
10 thought she did a pretty good job by saying, "No, no, no.
11 This is a motion of fact for the jury, Judge." What is the
12 liability of my client?

13 So at that point, I think it would have been
14 disingenuous for her to make a motion for directed verdict.
15 I don't believe 639, I don't believe that she -- I don't
16 think she made a motion for directed verdict. I think that
17 was intentional. Now, that's what it appears to me. Tell
18 me why that isn't accurate.

19 MR. ANZELMO: I can certainly think that's a fair
20 reading, Your Honor. But I think what differentiates this a
21 little bit is a part of Mr. Lucey's argument as Your Honor
22 stated in part was that BFS put on no evidence to show that
23 they were ---

24 THE COURT: That they were what?

25 MR. ANZELMO: That they were not -- that the windows

1 were not illegal. That they didn't do the certification.
2 They didn't review building codes. Okay. So pardon the
3 double negative, but it was the easiest way to say it. And
4 when Ms. Dyer was responding that there was sufficient
5 evidence, she was responding that we did in fact put on some
6 evidence of something to show that they met the code or
7 reviewed them or whatnot. That's why she said that because
8 evidentiary they carry their burden. Once Mr. Lucey put on
9 his case --

10 THE COURT: No, sir. No. That's not what your
11 argument said. And help me, now. Take me back there.
12 Because what she said she puts on him. She said, yeah --
13 that these things were illegal. All he says is we didn't do
14 anything. He hadn't proved they were illegal. He has an
15 affirmative burden to prove that they're illegal. He hadn't
16 done that. All he says we didn't do anything. You know
17 what -- he didn't bring the building code folks. He didn't
18 bring -- he needed to have done more other than just have
19 our people say, oh, he didn't do anything.

20 MR. ANZELMO: But that is quintessentially a failure of
21 burden of proof argument on behalf of plaintiff which is a
22 directed verdict motion in the context responding to
23 Mr. Lucey's directed verdict motion. She said he did not
24 carry his burden of proof by failing to do those certain
25 evidentiary things. Now, she acknowledges that there was

1 other evidence of certain issues. But the fact of the
2 matter is that evidence she was arguing, perhaps a little
3 cumbersome, that evidence wasn't enough to overcome the
4 failure to meet those other three -- the three key elements.
5 That that evidence simply didn't rise to that level. I
6 believe that's what she was trying to articulate there, Your
7 Honor.

8 THE COURT: Where?

9 MR. ANZELMO: Throughout her argument by saying that
10 Mr. Lucey didn't do this and Mr. Lucey didn't -- excuse me,
11 plaintiff. Not Mr. Lucey, it was -- plaintiffs' didn't put
12 the evidence in that Your Honor was just saying. That is
13 her saying he didn't carry his burden as a matter of law.
14 But there is other evidence in the record, but that evidence
15 simply isn't enough to get to where he needs to go. So her
16 saying -- that's our position, Your Honor.

17 THE COURT: Okay. All right.

18 MR. LUCEY: And there's two different burdens, Your
19 Honor. They're being confused. There's the one burden of
20 going forward which would be her motion. I have not met my
21 burden to go forward. The burden I'm arguing is I'm
22 entitled to judgment as a matter of law. Two different
23 versions.

24 THE COURT: That's right.

25 MR. LUCEY: Two different burdens. Her burden never

1 got argued, Your Honor. And I agree with you. You see --
2 the focus of some of the language you're quoting is she's
3 saying when we're in a predicament here, but other people
4 contributed to this, the architect and whatever else, and so
5 there's some jury issues about how much we should be
6 responsible for. That's part of what she's saying. It kind
7 of dovetails of what you said.

8 THE COURT: Yeah. But I think based upon what I have
9 reviewed, I believe that the way the she counted your motion
10 for directed verdict was basically saying these are issues
11 of fact for the jury, Judge. He's not entitled to a
12 directed verdict against us. He's not entitled to a
13 directed verdict against us because they're plenty of
14 evidence that can go either way. And that was the way she
15 argued it. And so if she argues -- if you take that
16 position, how do you then turn around and tell a judge, oh,
17 but? Oh, but. Even though I think there are jury issues
18 throughout and I think this ought to go -- there's plenty of
19 evidence that could go either way, Judge. Then say --
20 complete failure of proof. I just don't -- I don't think --
21 she intended to make a directed verdict motion. I don't
22 think that she made a directed verdict motion. But I want
23 to say I think that she did it because of a great amount of
24 integrity. I really do. I think it would've been
25 disingenuous for her to do that based on the way that she

1 countered the argument made by Mr. Lucey who was pushing for
2 a directed verdict on the issue of liability.

3 So, all right. Now, and your position is if that's
4 what occurred, they're out?

5 MR. LUCEY: They're out.

6 THE COURT: Because she could not have made a JNOV
7 argument at the conclusion of the evidence.

8 MR. LUCEY: Correct. And they can't make another one.
9 There's nothing to reconsider. They didn't put any
10 reconsideration points in the ten-day motion. And besides
11 that, the Court issued an order ending this case. And they
12 never moved to reconsider that either.

13 THE COURT: Well, let me just -- okay. And so what
14 you're telling me also is that the -- while it says in Rule
15 50(e) that the motion for JNOV shall be made promptly after
16 the jury is discharged or at the discretion of the Court not
17 later than ten days thereafter. And what you are saying is
18 you don't have to call it a Rule 59 motion; you just have to
19 make it within the ten days, yes?

20 MR. ANZELMO: Fields makes that clear, Your Honor. But
21 I would like to point out that the motion side of Rule 59,
22 inside of 50 and 59. As counsel comes in in the interim
23 between trial and the availability of a transcript, we have
24 to talk to people, see what happened, okay. So we do our
25 best because our error preservation rules are so difficult

1 in this state as Your Honor is aware. So we cover all the
2 bases. We cite 59; we cite 50. And Fields makes clear that
3 because the motion is characterized as a 59, you're under
4 59(e). You don't have to ask for the ten days as long as
5 it's made within ten days of entry of judgment, which this
6 was, is a timely 59. And so we think -- we understand --
7 like I told you earlier, if we lose, it's not a
8 jurisdictional thing. Error preservation does not equate to
9 jurisdiction. There are legions of cases where the Supreme
10 Court and the Court of Appeals have said you lose the appeal
11 because so and so didn't make the DV motion. They don't say
12 you lose the appeal because the trial court lacked
13 jurisdiction to hear the motion because they didn't make the
14 DV motion. Whether we preserve this or not, will also be
15 raised on appeal. But Your Honor can certainly find it's
16 not proper. We lose the reconsideration because it wasn't
17 made. That is not equal jurisdiction of the Court.

18 THE COURT: I understand. You made it. I mean you
19 made the Rule 59(e) motion.

20 MR. ANZELMO: Right. That's correct. Yes, ma'am.
21 Within the ten days under the 59 rule.

22 THE COURT: I understand. And Mr. Lucey's position is
23 that there was nothing to reconsider.

24 MR. ANZELMO: And the order can certainly say there was
25 nothing to reconsider. But it doesn't need to reach the

1 jurisdictional issue.

2 THE COURT: I'm with you. I get it. I get it.

3 MR. LUCEY: There was nothing to reconsider and they
4 didn't make any reconsideration points. In the motion, they
5 didn't point out to the judge or the Court how it had error.

6 THE COURT: Have you got -- let me see that. Somebody
7 put that in front of me.

8 MR. LUCEY: Their motion, Your Honor?

9 THE COURT: Yeah. The motion itself. Because I
10 thought it did. I thought it said a lot.

11 MR. ANZELMO: It said a good bit. We get paid by the
12 word.

13 THE COURT: I thought it said a lot on Rule 59.

14 MR. ANZELMO: There were 27 separate grounds for that.

15 THE COURT: Yeah. I was going to say I thought it said
16 a lot.

17 MR. ANZELMO: A new trial --

18 THE COURT: I was thinking, dang, in ten days they put
19 all this together. Okay.

20 MR. LUCEY: If the Court's record will reflect, I've
21 handed the Court a copy of the motion.

22 THE COURT: Yes. Yes.

23 MR. LUCEY: Your Honor, if I might point out to to the
24 Court respectfully, the 27 grounds had to be read in light
25 of what is being reconsidered. There's only two things to

1 reconsider. That is the unreasonably dangerous ground and
2 the failure to prove defective condition ground. So unless
3 somewhere in that document they explain to the Court why its
4 rulings denying those two grounds were wrong, it can't be
5 converted from a JNOV to a motion to reconsider.

6 (Brief pause in the proceeding.)

7 MR. LUCEY: If I may add, Your Honor, I actually can't
8 find those words in that motion.

9 THE COURT: Which words?

10 MR. LUCEY: Unreasonably dangerous or that we failed to
11 prove defective condition. I actually haven't found those
12 words in that motion.

13 (Brief pause in the proceeding.)

14 THE COURT: All right. I think probably at this
15 juncture the best way for me to proceed is to ask for
16 proposed orders rather than to try to rule because there are
17 some things I am concerned about in considering. And
18 Mr. Lucey, here's what I would suggest when you do yours. I
19 would do yours, however -- you know, do the order. And then
20 I think you need to do -- but even so, if you were to
21 consider that a directed verdict motion was made, dada,
22 dada, dada, do your alternatives.

23 MR. LUCEY: Yes, ma'am.

24 THE COURT: I think are important to do. And with
25 regards to the Rule 59 motion, one of the issues, and I

1 certainly am -- and I think you need to do the alternative
2 too. JNOV was made within without the DV having been made.
3 I think you need to do it as an alternative also. And when
4 you do that and you do it as a Rule 59, one of the
5 considerations that I have is whether or not the issues were
6 raised in the 59 motion that were denied prior to trial
7 start. The problem is is those two have been raised at the
8 juncture after plaintiffs' case and then again at the
9 conclusion of the trial. And they may have -- I think they
10 were raised at conclusion of the trial. I don't think that
11 they were raised in the plaintiffs' case. No. Let me say
12 that -- no. Let me start again because that's not correct.
13 It was at the conclusion of all of the testimony that the
14 directed verdict wasn't made. It was at the conclusion of
15 your case it was made.

16 MR. LUCEY: Yes, ma'am.

17 THE COURT: And so I just give you that. Those are my
18 thoughts. Because the issue that was raised before trial
19 was statue of limitations and denial. And so another
20 question is can that be raised in Rule 59 motion? I don't
21 know. I'll leave it to y'all. Thank you. Yes?

22 MR. ANZELMO: Just a point of clarification, Your
23 Honor.

24 THE COURT: Sure.

25 MR. ANZELMO: We abandoned the statue of limitation

1 arguments. The supplemental memo has the five remaining
2 that we believe relate to what was done. So I think what
3 Your Honor is asking for is to do it in context of what
4 remains.

5 THE COURT: 59. Okay.

6 MR. LUCEY: Thank you.

7 THE COURT: Thank y'all so much.

8 MR. ANZELMO: Well, Your Honor, we still have the
9 setoff up motion.

10 THE COURT: Yes. Right, right, right.

11 MR. ANZELMO: Just to keep you all day.

12 THE COURT: No. Absolutely not. No, no, no. And
13 that -- yes. I'm listening.

14 MR. ANZELMO: All right, Your Honor. There are some
15 procedural objections to this as well. And I will address
16 those briefly. Plaintiffs have asserted there is a time
17 frame in order to make a motion under a statute for setoff,
18 the legal statute.

19 THE COURT: Right.

20 MR. ANZELMO: That is not correct, Your Honor. The
21 case law on this, if I can find my case, allows for a setoff
22 at any time. And you can also setoff one judgment from
23 another judgment. So the plaintiffs' position has been we
24 had to move for setoff prior to the entry of judgment under
25 the statute. That's not accurate. What their second

1 argument is is that we didn't move for the traditional
2 equitable setoff. It's incongruous to think the Supreme
3 Court would say there's no time limit on the legal cause of
4 action, but there would be some unknown time limit on
5 equitable cause of action. So fact of the matter is trial
6 counsel filed a motion to compel the settlement documents
7 and a motion for setoff. It cited the statute, the
8 memorandum that we filed in support of the statute, and the
9 equitable grounds.

10 Now, there is some confusion also, Your Honor, as to
11 what exactly we're asking for. A good portion of
12 plaintiffs' memo that they filed last night argues that we
13 are unable to set off the warranty damages from the strict
14 liability damages. We are not advocating for that. We
15 understand that that is not how it's done. What we've asked
16 for is consistent with the Supreme Court precedent says
17 settlements on the same claim should be set off against
18 judgment on the same claim, okay, Your Honor. And what
19 we're saying is we have an independent avenue of set off for
20 the warranty and an independent avenue of set off on the
21 strict liability. So there's a lot of argument that we
22 can't set off because it's a general verdict. That's not
23 accurate. We can set them both off and we're going to argue
24 that we can do so. And here's why that is, Your Honor.

25 The fact -- the rule states that you set off if it's

1 the same claim for the same injury. Interestingly, they
2 don't use the word damages. And the reason for that, Your
3 Honor, is that the statute has been construed to be much
4 broader than damages. Ellis v. Oliver, Your Honor, from the
5 Supreme Court, 335 South Carolina 106, talks about this.
6 The exact argument was made that you can't tell what portion
7 of the damages were caused by which settling defendant and
8 the defendant who went to trial. Supreme Court said, no,
9 that's incorrect. The definition of injury is broader as
10 used in the statute; is broad enough to include all damages
11 which result from the joint cause of action. In this case
12 it was negligence; here, strict liability. The way this
13 case was pled specifically fits withing the statutory rule
14 because as to the strict liability claim, there are four
15 defendants, TAMKO, BASF, the window manufacturer, Raymond,
16 ESP, and my client. Same claim, strict liability; same
17 injury, repeated water intrusion to damage One Bell Hall and
18 other building deficiencies. So the fact that perhaps some
19 water that leaked through the roof went and damaged this
20 portion of the building, and that's what was settled. And
21 the window damages that leaked in through the window, jury
22 rendered a verdict on that, is immaterial. The fact that
23 the same claim from the same injury is all that matters.
24 And if fact, the different Supreme Court says that's harsh,
25 but that's what the statute requires us to do. If you want

1 to change that, then obviously that's something for the
2 legislature to do. And Ellis v. Oliver is also the case
3 that says you can bring the motion at any time. There is no
4 time limit that's specifically rejected.

5 What's interesting also about Ellis v. Oliver is that
6 it also addresses another argument that plaintiffs are
7 making. Plaintiffs as you remember from the November
8 hearing have argued this case was specifically tried as to
9 damages caused by the windows only. That was a big argument
10 in his briefs extensively about that. Plaintiff in Ellis v.
11 Oliver made the exact argument saying you don't have to
12 worry about setoff. The only damages the jury knew about
13 were those -- the injury that the jury knew about were those
14 introduced at trial. And the Court said that does not
15 matter. They said what is instructive is that it's the same
16 claim that was settled with the same parties for the same
17 cause of action. It is a harsh result. The case
18 acknowledges that it's a harsh result, but that is in fact
19 the rule. So regardless of whether how the plaintiff
20 postured the case to the jury, we're entitled -- actually,
21 the statute mandates the setoff because it's the same cause
22 of action with the same injury; they settled for amounts
23 that have yet to be made known. We know some, too. Counsel
24 stated the last one I think the roofer did 75,000 if memory
25 serves. And then the window manufacturer is at -- no.

1 That's not right? 215, it's in the motion for the window
2 manufacturer. I'm sure they'll clarify that for me. But
3 the fact of the matter is, Your Honor, the strict liability
4 claim was the same, the four defendants, three of them
5 settled; does not matter how the case was tried because the
6 statute says claim for injury, injury if broader than
7 damages. So we have a setoff ability for the strict
8 liability cause of action.

9 As to warranty, they've argued that warranty is a --
10 sounds in contract citing a case from 1924. That's
11 originally how the doctrine originated. It was a
12 contractual thing that required privity. And over the years
13 from '24 up until, I think it was 1976, the case law started
14 to evolve and eliminated privity and it ended up being
15 subsequent purchasers. When to caveat venditor rather than
16 the caveat emptor argument. Ultimately, our legislature
17 decided to codify 402(A) of the restatement of torts into
18 the products liability statute 15-73-10. Interestingly,
19 they also codified the comments that state unequivocally the
20 basis for liability for products liability under any of the
21 three theories, warranty, negligence, or strict liability,
22 "is purely one of tort." And our Supreme Court in Jackson
23 versus Bermuda Sands states that the same three elements for
24 each cause of action are the same. So it's no longer a
25 contractual claim. It is morphed into a tort through the

1 adoption 15-73-10, and the Supreme Court in the Shaw case,
2 278 South Carolina 646, shows that that is the exact
3 codification of the restatement of torts Section 402(A).

4 So the cause of action is morphed. I mean, it really
5 has, and it is now a tort cause of action which allows us
6 also to get the mandatory setoff under the statute. And the
7 reason we get a statute -- a setoff under warranty claim is
8 because, again, it was pled, as to basically everybody in
9 the case who had a warranty, but the general contractor was
10 in there and it was pass-through warranty that has been
11 mentioned multiple times in this case that passed through to
12 everyone. So the setoff would be what their settlement was.
13 They were all covered by the same warranty. Also, it was
14 pled for the warranty for the same set of damages again.
15 And, Your Honor, even if warranty somehow does not fit into
16 the statute, the equitable portion of this comes into play,
17 and for the same reasons I articulated, it should be set off
18 on the warranty site. But again, we have separate, distinct
19 avenues of recovery. And I think we've shown under the
20 statute for the -- power that we're entitled to.

21 THE COURT: Okay. Yes, sir?

22 MR. LUCEY: Yes, ma'am. If I may hand up to the Court
23 a diagram.

24 THE COURT: All right.

25 MR. LUCEY: Simplify things, at least for me.

1 THE COURT: Yeah. Great.

2 MR. LUCEY: This is the case in this diagram, Your
3 Honor, that -- by the plaintiffs. This is a simplification
4 of it obviously. There's actually three more or four more
5 causes of action that were mostly against the general
6 contractor and the developer which I have not put on here.
7 So all the defendants were named in negligence. In strict
8 liability, there was only four defendants. Implied warranty
9 was pled as applicable to the parties. All implied
10 warranties were pled, but obviously you can't get
11 habitability against a subcontractor. You can only get it
12 against the seller. So I've divided those up as to how they
13 actually apply. UCC (ph) implied warranty would apply to
14 the same four parties that were in the strict liability
15 cause of action. The workmanship implied warranty would
16 apply to the general contractors and subcontractors. And
17 implied warranty of habitability would apply to the
18 developers. So already we can see on implied warranty
19 there's actually three subcauses of action and they're
20 different. And pausing there for a second, why do we care?

21 Well, in part because a lot of case law in South
22 Carolina but notably the Hawkins case from 1998 is the best
23 example I have. Explains how close the cause of action
24 needs to be for you to be entitled to a setoff. It has to
25 be the same cause of action. What's neat about Hawkins is

1 it was a same cause of action, wrongful death. But doctors
2 from several different states participated in the negligent
3 delivery of medical services. So the decedent, she had
4 cervical cancer and they missed it in several Pap smears
5 over several years and she eventually dies. The decedent
6 sued the South Carolina doctors that had missed the lesions
7 in the early Pap smears and then sued a Georgia doctor she
8 had seen three years later who also -- during the delivery
9 of her second child that also missed the lesions. And she
10 sued under the Georgia wrongful death statute and the South
11 Carolina wrongful death statute. And the question came up
12 is do you off set -- do you set off the Georgia recovery
13 against the South Carolina recovery? The Georgia recovery
14 happened first. I'm going to say it was roughly a half
15 million dollars against the Georgia doctor. And the Court
16 looked at the Georgia wrongful death statute and the South
17 Carolina wrongful death statute. And it said, look, the
18 focus of the Georgia wrongful death statute is different
19 than ours. It focuses on the expected income or the
20 relationships with the family members, what have you, where
21 South Carolina focuses purely on the loss to the survivors.
22 And therefore, we deemed these two wrongful death actions to
23 be separate and you are not entitled to a setoff because
24 they have different components to the damages.

25 Now, they went on to say there is overlap and you would

1 be entitled to set off on that overlap. But you can't meet
2 your burden of proof to show us what part of the jury
3 verdict is the overlap because you didn't request any
4 special interrogatories. And that's the way you do it.
5 It's not -- in close calls like this, it's not for the Court
6 to go back and retry the case. It's for the movant to set
7 off movement to provide the Court with adequate evidence so
8 the Court can make the determination. The best way,
9 typically, is through a special interrogatory to the jury:
10 What part of your damages is X? Or are any of your damages
11 also caused by the second installer? If yes, say how much
12 of them, whatever. And in fact, in this particular case,
13 this court asked Builders FirstSource before it excused the
14 jury, "Anything further before I let this jury go?" And
15 that was their opportunity to stand up and say, "Your Honor,
16 we'd like to know if they attribute any part of those
17 damages to any other party or if there's any overlap," or
18 however they wanted to phrase it. And it wasn't like they
19 weren't on notice that there is a setoff issue. The Court
20 may recall that they came up in chambers. Would there be a
21 setoff and what might that entail? So it's not like it
22 wasn't on people's minds that this was an issue.

23 Now, there have been a few easy court cases where the
24 jury special interrogatory is not necessary. For instance,
25 there's been several cases where the parties have allocated

1 the prior settlement between the wrongful death action and
2 survival action in a favorable way to the settling parties so
3 that the plaintiff could still get his most money out of the
4 remaining defendants in the wrongful death action. And in
5 several of those cases, the Court has been able to look at
6 the evidence that came in -- and by the way, the pleadings
7 are only background. Ultimately on setoff, it's the
8 evidence, what occurred in this case whether it be in the
9 trial or the special interpreter, whatever it is. The
10 contracts, none of which has been presented to this court in
11 this motion for setoff. And let me clarify that too. I
12 apologize for going in three different directions at once.
13 There is no motion for setoff pending. There's a motion to
14 compel. There's a motion to compel production of settlement
15 agreements. In fact, the very last sentence of the motion
16 states that thereafter, after the Court hears this motion,
17 "Thereafter, pursuant to presented SC Code 15-38-50, BFS
18 will move to seek a determination by the Court of the amount
19 of setoff to be taken against the judgment awarded to the
20 jury." So right now we're here on a motion compel. But
21 they've taken it a step further; they're arguing setoff and
22 we're responding to it.

23 And to allow me to go a fourth direction at the exact
24 same time, let me remind the Court that it is plaintiffs'
25 position as to this motion only -- this motion additionally,

1 the jurisdiction has already disappeared. The Court ended
2 this case and issued a Form 4 order; no Rule 59 motion has
3 ever been filed; Form 4 expressly says this case has ended.
4 The time for all post-trial motions or appeal post-trial
5 motions has run. There is no more jurisdiction. And that's
6 plaintiffs' first and the foremost position.

7 But even getting back before I got distracted on those
8 different things, Your Honor, in several of those earlier
9 cases, the Court was able to look at the deal between the
10 settling parties, the allocation between the wrongful death
11 and the survival action, and the Court was able to say, "I
12 heard the testimony of the witnesses. The decedent never
13 came out of the coma. There could never have been survival
14 damages. Therefore, I'm going to allocate it the way I
15 want." So the Court has, when the evidence is so obvious,
16 the Court will look at the evidence and see and perform its
17 own allocation. Otherwise, the Court needs to be presented
18 with that evidence for a setoff which hasn't occurred in
19 this case. The best evidence in a complex case like this is
20 in fact the special interrogatory to the jury. And the
21 Hawkins case, Your Honor, isn't alone in South Carolina on
22 that issue. The Gold Kist case cited materials again.
23 What's neat about the Gold Kist case is the Court actually
24 said to the parties before submitting it to the jury, it
25 said let's use separate jury forms, verdict forms, on the

1 plaintiffs' claim and the defense claim, and then we'll have
2 everything. We'll be able to take care of everything
3 post-trial. Parties said no; we'd rather have a general
4 verdict form post-trial. The plaintiff is like, "Well, you
5 shouldn't have setoff my count." The Court is like, "Well,
6 I offered to let the jury provide us that information.
7 Excuse me, you did not avail yourself of that." You cannot
8 now go behind a jury verdict and try and prove what was for
9 the same damages and what was for the different damages.
10 Clearly, for instance, they're bringing up the roof. The
11 Court, if it recalls our case, which it probably doesn't.
12 It has the transcript. The court will recall there wasn't a
13 shred of evidence that anything relating to the roof caused
14 any of the damage blew the windows. Not a shred. In fact,
15 the roof probably wasn't even mentioned in the entire trial.
16 So for them to sit up here now and say that the roof
17 defendant paid on the same damages is not even -- doesn't
18 even rise to speculation. It's made up out of -- and
19 there's simply no basis there for them to assert that those
20 got paid on the same damages.

21 And, Your Honor, we cited to the Court an
22 out-of-jurisdiction case from the Seventh Circuit on this
23 issue also. And, Your Honor, that case is the Zivitz case,
24 Zivitz versus Greenburg. And we brought that case up just
25 simply because it explains the situation so well. That the

1 burden is on the party seeking setoff to prove its
2 entitlement. And without a jury interrogatory, except in
3 exceptional circumstances, without asking for that
4 interrogatory you can't prove the overlapping damages. And
5 again, Your Honor, the South Carolina case of Holly Hill
6 cited in our materials says the exact same thing, to prove
7 the overlapping damages, you got to ask the people who
8 awarded the damages, the jury: What did you award them for?
9 Without that, it's not for the Court to try and recreate or
10 go behind what the jury has done. And Your Honor, frankly
11 the suggestion that -- moving on to express warranty. The
12 suggestion that express warranty is a tort is just
13 completely unsupported. And I personally read Section
14 402(a) the restatement of torts two days ago to check
15 because I know that's statutorily incorporated into our
16 setoff statute. I read from start to finish. You will not
17 find, the Court will not find, any suggestion in 402(a) that
18 an express warranty, a written document, which is
19 essentially a contract -- I mean, it's -- out. It goes from
20 one party to the next -- that a written warranty is in any
21 way a tort. In fact, the Court will note that in Atkinson
22 which involved contracts, Atkinson versus Terminex, there
23 was a separate contract -- working a separate contract with
24 Terminex and no setoff was permitted. In fact, because of
25 the contractual nature, the Atkinson Court actually availed

1 itself with a collateral source rule and said that the --
2 essentially said that the policy of one recovery must stand
3 down to the collateral source rule in a situation such as
4 this one. By that I mean duties that arise out of contract.
5 You will a footnote in 402(a) that says that at some point
6 in the history of torts, that there's been some confusion as
7 to whether the evolution of strict liability came out of
8 tort or came out of warranty. And 402(a) explains why the
9 commentators that prefer the warranty history are wrong; how
10 that analysis does not work. That some people still think
11 of strict liability as having arisen out of warranty, but
12 that's bad academics. So you won't find that implied
13 warranties of tort there. Although, it certainly would be
14 closer than the express warranty.

15 And Your Honor, as to the other parties involved in the
16 strict liability cause of action and the UCC (ph) implied
17 warranty, we pointed out that Raymond is in fact the only
18 one of those four that paid any money worth arguing about.
19 And Raymond was sued in negligence like everybody else. And
20 if I may hand to this court the Raymond settlement checks.
21 The Raymond settlement checks are made out by insurance
22 companies for Raymond, and they total about \$215,000.
23 Should total \$215,000 we discussed earlier. Now, the Court,
24 I think, can take judicial notice that commercial general
25 liability policy as briefed by the plaintiff generally

1 insure negligence. They do not ensure contracts. They do
2 not cover warranties. And so the only logical conclusion of
3 the insurance company paying for the Raymond settlement is
4 that they paid on the negligence claim. And it's not
5 conclusive, but plaintiff doesn't have the burden of proof.
6 The movant does. And since they don't have a special
7 interrogatory from the jury, they cannot attribute any of
8 this verdict to anything that Raymond did or failed to do
9 and what appears that Raymond itself paid on negligence, and
10 they're not entitled to any setoff. So of the four
11 product-type defendants, one is here, BFS. Raymond paid on
12 the negligence claim. TAMKO has got the roofing -- the
13 shingles company has nothing to do with the wall damage.
14 And not only that, frankly I can tell the Court the TAMKO
15 claim was settled cheap because there was no proof of roof
16 leaks. It was actually a shingle blistering claim, not a
17 leak claim. We would have liked it to be as plaintiff
18 attorneys, but that's not what -- there may have been one or
19 two minor leaks but it was more of a blistering claim. And
20 that was settled on appeal.

21 So as to the express warranty, we briefed to the Court
22 why we believe that the defendant is not entitled to any
23 setoff on Builders FirstSource's express warranty. Builders
24 FirstSource itself created a document and gave it to the --
25 originally to the contractor. And we put it into evidence

1 and I have it here again, Exhibits 3 and 4. They gave it to
2 them and then in the sales contracts, the developer signed
3 those warranties to the buyers. And we put one of those
4 purchase contracts in evidence, then -- purchase contract.
5 And the Court will recall, and I have the transcript excerpt
6 if the Court would like it, that Builders FirstSource
7 witness admitted on -- we called him as an adverse witness
8 in our case -- admitted on my direct cross that as the
9 document show, the one-year limitation in the first Builders
10 FirstSource contract had been removed from the addendum in
11 the second Builders FirstSource contract. So the Builders
12 FirstSource warranty that was being provided pursuant to
13 that contract and the written documents, no longer had a
14 limitation. And why is that relevant? Well, it
15 indicates -- it goes to what causes of action plaintiffs
16 have recovered on on the breach of warranty. Except for the
17 window manufacturer, no other express warranty was valid by
18 the time at trial. In fact, no other express warranty was
19 valid by the time we filed the lawsuit. So for Builders
20 FirstSource to -- even to the extent any other party could
21 be deemed to pay Builders FirstSource warranty obligation,
22 which that's just unfathomable. Why would anybody walking
23 down the street pay for somebody else's obligation? That's
24 unfathomable.

25 But even to the extent that could be fathomable, there

1 were no other valid warranties to sue on. TAMKO is still in
2 existence but their roof has -- the blisters has nothing to
3 do with us. And the only other warranty that was in
4 existence was Raymond that did not have a temporal limit on
5 the vinyl only. So it did have a temporal limit on the
6 seals. And so on this chart, Your Honor, underneath the
7 Raymond description, I put down here there is vinyl defects,
8 cracks in the vinyl found on four of the approximate 24
9 windows tested by Rhet Whitlock (ph). We showed the jury
10 pictures of four cracked windows. So that would be
11 16 percent. Only 16 percent of our window defects would
12 have been covered by Raymond if for any reason Builders
13 FirstSource could show that we were somehow -- that they
14 were somehow entitled to an express warranty offset on a
15 different warranty from Raymond, it would be limited to 16
16 percent of the amount Raymond paid because the rest of their
17 warranty expired. It wasn't covering the seals.

18 And the Court -- the Court in musing, in sharing its
19 thoughts with us in November mentioned that the Court didn't
20 anticipate the statute contemplating another full blown
21 trial and it doesn't. But to augment that point, until
22 today we only heard they were seeking to offset the four
23 implied warranty defendants. Today it sounds like they want
24 some offset from the general contractor. They were raising
25 that issue. Well, we pointed out to the Court in our brief

1 again what are the difficulties raised by them failing to
2 get a special interrogatory from the jury as to what damages
3 were covered or not covered. What are the challenges?

4 Well, the general contractor developer had what's called a
5 project wrap policy on this project. And he enrolled almost
6 all the subcontractors into it. So it's a single, or
7 actually two, large policies covering everybody. That
8 carrier paid a confidential settlement that frankly a
9 majority of the funds we recovered. It's a very significant
10 amount. They made us keep it confidential because they know
11 that lawsuit is out there. And they paid that on behalf of
12 almost 20 defendants if you don't count the multiple TCR
13 entities. Close to 30 defendants if you do count those TCR
14 entities. For this court to have to try and unravel that
15 payment among 30 parties and four to eight different causes
16 of action because this defendant did not ask for a jury
17 interrogatory as to how the damages were calculated by the
18 jury is -- it's undoable, frankly. But it's not right
19 anyway. It's an insurmountable obstacle.

20 I brought copies of those warranties with us. I
21 brought copies of the expired warranties to substantiate
22 what I'm saying. And I brought the Lanier (ph) deposition
23 extract as to admitting the relation of the one-year
24 limitation. And I think where you get to -- you're already
25 outside the statute. They didn't plead every rule of

1 setoff. But we're already outside the statute which is
2 clear from the cases like Hawkins and the other cases we
3 cited. If it's not the exact same injury on the same cause
4 of action, then there's not that automatic right of offset
5 or setoff under that statute. You're then are back to the
6 equitable rules that we get in our case law. Those
7 equitable rules put it in the judge's discretion. There's a
8 lot of things, a lot of suggestions as to what should drive
9 that discretion. And the defendant wants the Court to pay
10 attention to one recovery rule as we briefed. The one
11 recovery rule yields what equity so dictates or when there's
12 appropriate public policies. And we cited the United States
13 Supreme Court case that says frankly there's many situations
14 where a windfall to a claimant, if there is going to be one,
15 is more appropriate than a windfall to a tortfeasor that
16 gets off with the tort he created just because the plaintiff
17 struck a better deal with some other defendant and it's not
18 proper. And our South Carolina Supreme Court recognizes
19 that because that's exactly what it did in Atkinson versus
20 Terminex is it used public policy and it allowed the
21 collateral source rule to trump the one recovery rule.

22 The truth is, though, there is only one recovery. By
23 consent of the parties, we tried a window damage only case.
24 BFS's counsel all trial long said those aren't our damages.
25 Those belong to the second installer; that's his sealant;

1 that's this whatever. She already got the jury to allocate
2 the damages as to what Builders FirstSource was responsible
3 for. And it shows in the verdict. It shows in the fact
4 that the jury only gave us half of what we asked for. And
5 her effectiveness shows in the fact that she beat us on the
6 negligence cause of action. So the windows only case was
7 tried by the consent of the parties. They're seeking a
8 second bite at the apple now. It's not right. They already
9 asked the jury to eliminate those damages from our verdict.
10 And now they're asking the Court to give them a credit for
11 the damages that they asked the jury to eliminate from the
12 verdict. It just does not make any since whatsoever. And
13 probably, Your Honor, as we briefed to the Court, and Your
14 Honor, it's my memory I told the Court at the beginning of
15 trial, that you were asking us I believe what we were
16 seeking damages. And we told you that the difference
17 between 4 and \$5 million of various factors. But it was a
18 four to five-million-dollar case. And I said, frankly, Your
19 Honor, coincidentally, that is the proximate difference
20 between what we've already recovered and what our damages
21 are. And in fact, the gross damages estimate of \$14.5
22 million was -- at trial, and it was reduced by our expert
23 for window only damages. So if the Court does not do a
24 setoff, plaintiffs will still be millions shy of their gross
25 damage estimate. So there is no double recovery that has

1 occurred.

2 And again, I would remind the Court of the defendant
3 BFS's own admission at the commencement of trial in it's
4 motion in limine, it's in writing, it's in the Court's file,
5 that the plaintiffs' damages are clearly divisible and BFS
6 should only be exposed to the damages they caused. That's
7 the case that got tried. It got tried in part as a result
8 of their motion in limine. For them to suggest how a case
9 should get tried and then come back and try to try a
10 different way post-trial just doesn't and shouldn't work.
11 Thank you, Your Honor.

12 THE COURT: Well, and my memory that we had two
13 conversations about setoff. My memory is is we were
14 preparing the verdict form as we were preparing the charges,
15 we had a conversation.

16 MR. LUCEY: Yes, ma'am. We did.

17 THE COURT: And then we had a conversation at the
18 conclusion of the trial about the issue of setoff.

19 MR. LUCEY: It was late, Your Honor. I honestly -- not
20 sure about the second one.

21 THE COURT: Well, maybe not after -- I though we had
22 one at the conclusion. If not after the conclusion, we
23 certainly did --

24 MR. LUCEY: It may have been when -- we came back for
25 several jury questions is what my memory is. And it may

1 have been while we were awaiting the jury. I can't recall.
2 Clearly, there was a long one in chambers.

3 THE COURT: And the conclusion was there was not.

4 MR. LUCEY: The position I expressed in chambers that I
5 recall is we didn't think they were going to be entitled to
6 a setoff. The case hadn't been tried that way. And
7 further, that the way they were arguing the case and the way
8 they were going to argue, we expected them to argue in
9 closing, that we thought that they would not be entitled to
10 any setoff whatsoever. I don't remember what Ms. Davis had
11 to say -- Ms. Dyer.

12 THE COURT: Okay.

13 MR. ANZELMO: Your Honor, can I just hit the highlights
14 with a quick reply.

15 THE COURT: Yeah, of course. Sure.

16 MR. ANZELMO: For purpose of the record, I think can
17 simplify this greatly. We're not asking for an allocation.
18 We don't need an allocation. The case law is clear that we
19 get of recovery for a credit for the amount paid by one
20 defendant who settles for the same cause of action. We're
21 asking for a setoff in full on each cause of action. So
22 there's no need for this allocation issue. There's no need
23 for a special interrogatory. This isn't a apportionment of
24 fault. It doesn't matter what's under what warranty, what's
25 under that. The rules from our Supreme Court in Raleigh

1 versus Ford make clear if you settle for the same cause of
2 action, we get a setoff. In the Ellis v. Oliver and the
3 other cases, the Court has recognized this is a harsh result
4 imposed by the legislature, okay. So what it comes down to
5 is for the reasons I mentioned earlier. We have two
6 independent columns, mainly the general contractor on the
7 warranty claims because they were sued on the warranty claim
8 and settled on it. Plaintiffs have said well, they settled
9 negligence. We have no idea if that's true or not because
10 we haven't seen the settlement documents. If that proves to
11 be the case, we would probably have to do an allocation on
12 that issue. But it shouldn't because it's the same claim,
13 warranty, both of them for the same injuries, not damages.
14 It's broader as I mentioned earlier. And then what we
15 have ---

16 THE COURT: Well, how do you ascertain damage? I mean,
17 how do you begin with the injury for the same injury? How
18 do you do that? How do you make that determination?

19 MR. ANZELMO: Well, that's a good question, Your Honor,
20 because it's what is pled. It is the claim. The test is
21 not what evidence came in at trial; it's not how the case
22 was tried. The test is what is the claim and what is the
23 injury? And the pleading says the claim is warranty, the
24 damage is this. It was consistent for all parties to that.
25 For the strict liability, same thing, four defendants for

1 the exact same injury.

2 THE COURT: So your position is that -- is that if you
3 have a building, obviously there are many component parts,
4 and you have a roof, you have a wall, you have windows, you
5 have doors. And if there are problems throughout and you
6 can ascertain that there are independent problems with
7 regards to let's say the windows and you can establish that
8 there are independent problems with regards to the windows
9 and specific damages caused by the windows, the fact that
10 somebody also sold defective doors and there is implied
11 warranty a claim filed against both defendants because those
12 component parts make up a building, then your position is is
13 that the window seller is entitled to setoff for the door
14 supplier?

15 MR. ANZELMO: If they settle the strict liability claim
16 with the door supplier, then yes and here's why.

17 THE COURT: Okay.

18 MR. ANZELMO: The complaint says it's lump sum damages
19 injury for water intrusion into and damage to One Bell Hall
20 and other building deficiencies. If plaintiff had
21 segregated out what damage was specific to certain ones,
22 we'd be here on an allocation argument. But they elected to
23 plead this case and the claim with one singular same injury
24 on the same claim. I don't know why, but that's how it was
25 done. They could have segregated that. Now, again, this

1 isn't a damage thing. It does not matter what is covered
2 under one warranty and what is not. Because, again, it all
3 links back to the test as our Supreme Court says is you get
4 the credit for settlement for the same cause of action.
5 Period. That's the test. So it's -- and as it's recognized
6 under the statute is tough, but it's mandatory. And as
7 to -- another point that as made, the timing issue.

8 THE COURT: So there's no more settlement. There's no
9 more settlement. That would be the -- if your position is
10 correct that is the end of all settlements. You understand
11 that, right? You think that's what the Supreme Court
12 intended. Because you could never settle, ever. It would
13 be impossible. It would be the end of the -- all this
14 money, time, energy, and effort for the American Bar
15 Association right on down to alternative dispute resolution,
16 dead, ended, over. This mandatory mediation that is being
17 pressed all over this state is over. Done. Thank you very
18 much. We've all had a lot of fun. Spend a whole lot of
19 money, but it's over. He can never do that again, can never
20 settle again, ever. You, you on behalf of your client,
21 forget protecting your client, ever. Is that what you -- I
22 mean, that's what you are telling me. Impossible.

23 MR. ANZELMO: I think the Supreme Court --

24 THE COURT: No.

25 MR. ANZELMO: -- off by saying it's a harsh result and

1 it's --

2 THE COURT: No.

3 MR. ANZELMO: -- what was imposed by the legislature.

4 THE COURT: I give them more credit than that. I mean,
5 I give them more credit than that. So here's what happened.
6 Mr. Lucey wants to go to your client and say look, I'd love
7 to be able to settle with you. I know I sued you. I know
8 your client would like to pay \$10,000 because you don't
9 think you got that much liability. But man, I can't settle
10 with you. Can't do it. Sorry. You got to spend hundreds
11 of thousands of dollars now for your client in defending
12 this entire construction case because I can't settle with
13 you, man. Sorry. Doesn't matter what my proof is; doesn't
14 matter what happens at trial; doesn't matter what evidence
15 comes in at trial; doesn't matter. None of that matters
16 anymore. It all goes down to drafting the complaint. You
17 know, he could amend the complaint today.

18 MR. ANZELMO: Understood, Your Honor.

19 THE COURT: I mean, so help me with that. I mean, what
20 you're telling me, and if you are correct and you very well
21 may be, but in the event that you are correct that there is
22 no allocation, that it doesn't matter, nothing matters other
23 than he mentioned there's a water intrusion problem at this
24 building, and lots of people warranted lots of stuff. And
25 because of that, and because of that he forfeits the ability

1 to say the windows, this is what was caused by the windows;
2 this is what was caused by the doors; this is that was
3 caused by the roof. Not so much.

4 MR. ANZELMO: All I can respond, Your Honor, is what
5 the Court said in Ellis v. Oliver when it did just what I'm
6 advocating. It said we recognize the strict application of
7 the statute may lead to unintended results. However, this
8 is a matter for the legislature to correct if our
9 interpretation is contrary to its intent.

10 THE COURT: Yeah. Yeah.

11 MR. ANZELMO: So I recognize it's strict. I really do.
12 But I'm just advocating what the Supreme Court had said ---

13 THE COURT: Sure. But help me with that as you
14 advocate. Help me with that. Help me with your theory when
15 you -- I don't know. Let's say that you represent Lowes and
16 Lowes buy the doormats, and each one of those doormats cost
17 ten bucks. And those doormats got wet. People slipped on
18 them. But you warranted the doormats that they were good
19 doormats. And they were fit for the intended purpose of
20 being a doormat. And let's say that -- let's say it's like
21 Trump Tower. Let's think big. Let's say that the alleged
22 damages are a billion dollars on this building because the
23 windows leak, the roof leaks, and the -- I don't think he
24 uses stucco. I think he uses gold flakes and glass.

25 MR. ANZELMO: Yes, ma'am.

1 THE COURT: Leaks. And all you did for Lowes is you
2 had a couple of doormats. So what do you do?

3 MR. ANZELMO: Here's how you get out of that, Your
4 Honor.

5 THE COURT: How do you get out of that?

6 MR. ANZELMO: Let us see the settlement agreement in
7 confidence. And if it's allocated in such way that it's a
8 different cause of action or something we have to talk
9 about, then you can -- we don't get all of it. We might get
10 part of it.

11 THE COURT: Oh, it's all strict liability. My theory
12 is -- not -- everything is a violation of the implied
13 warranty. It's implied warranty. I mean, your doormats, I
14 mean they should have been able to get wet and not be slick,
15 right?

16 MR. ANZELMO: Agreed, Your Honor. And that's why ---

17 THE COURT: Bad doormats. Bad doormats. Really bad
18 doormats. But you got like two doormats. Does that mean
19 you have to stay in for a billion dollar piece of litigation
20 because he can't settle with you?

21 MR. ANZELMO: No, he can.

22 THE COURT: How ---

23 MR. ANZELMO: That's why we need to see the settlement
24 agreement to see what was allocated where. We're not
25 claiming allegation now because we can't because we haven't

1 seen the documents.

2 THE COURT: Okay.

3 MR. LUCEY: I've already confirmed and disclosed
4 there's not a single allocation in any document.

5 THE COURT: Okay.

6 MR. LUCEY: That still doesn't get them around that the
7 law requires not just the same cause of action, the same
8 injury. And they still have to show these other people paid
9 on the same injury. And for him to bring up a an express
10 warranty claim by general contractor and try to claim
11 entitlement to it without presenting the Court with a shred
12 of evidence is ---

13 THE COURT: --- you kind of can't.

14 MR. LUCEY: I don't know how you get there.

15 MR. ANZELMO: He has the evidence in his office.

16 MR. LUCEY: No. They have the evidence. See, that's
17 what's wrong here. They have the express written warranty
18 from the general contractor. The reason they're not giving
19 it to the Court because it expired after one year. So the
20 express warranty claim against the contractor had very
21 little value, if any. So the contractor paid on negligence.
22 His insurance policy paid. There's more evidence it was
23 paid on negligence. His insurance policy paid. And for
24 them to say that they're entitled to a setoff on a warranty
25 verdict without a shred of evidence whatsoever to support it

1 is just astounding.

2 THE COURT: Tell me what you need to know from the
3 settlement. What information?

4 MR. ANZELMO: The amount and what the settlement was
5 for, which cause of action. That's it. I don't need to see
6 his -- any proprietary language in the settlement agreement.

7 THE COURT: Okay.

8 MR. ANZELMO: That would take this outside of the
9 Draconian statute to get us into what part would be
10 allocated.

11 THE COURT: What if it doesn't say anything other than
12 this lawsuit?

13 MR. ANZELMO: Well, then the statute does come into
14 play, Your Honor. I mean, it does. And our position on
15 that we've discussed.

16 THE COURT: Absolutely. Okay.

17 MR. LUCEY: There is no allocation in any one of them.
18 It references the case just like the Court says. And 98
19 percent of them ---

20 THE COURT: I bet they do. I bet they say every claim
21 you could possibly think of in your head.

22 MR. LUCEY: Exactly. 98 percent of the settlement
23 agreements are paid ---

24 THE COURT: Well, sure they do.

25 MR. LUCEY: --- are paid with insurance funds

1 indicating they were on the negligence cause of action.
2 That's the only evidence that we'll ever have because they
3 never asked for a special interrogatory to the jury. And if
4 they can't show it was on their cause of action, they don't
5 get the setoff.

6 THE COURT: Except you sue them for negligence too.

7 MR. LUCEY: Yes, but I lost.

8 THE COURT: That's right.

9 MR. LUCEY: As a matter of law, they were not
10 negligent.

11 THE COURT: That's right.

12 MR. LUCEY: So if they paid on negligence, they don't
13 get a dime of setoff.

14 THE COURT: That's right.

15 MR. LUCEY: They keep arguing I don't where we got down
16 this road. We keep arguing this express written contract
17 setoff. That contract doesn't come underneath the
18 tortfeasors setoff act. There's no tort. It's a contract.
19 It sounds of contract. South Carolina law is clear on that.
20 So that pushed it over to equitable setoff which is
21 completely in this Court's discretion based upon what this
22 Court knows about this trial with any evidence that the
23 movant happens to proffer which so far is none.

24 THE COURT: Okay.

25 MR. LUCEY: Would you like us to get out of tour hair

1 and send in competing orders?

2 THE COURT: Well, you know, that's what -- you know,
3 that's what I'm thinking about how -- I know that I want
4 that with the other. I know that I want the competing
5 orders. But the other one is a little -- it's a little
6 more -- it's a little different. And that's probably a good
7 place to start is just with proposed orders. But I want
8 them sent in separate, obviously. Don't throw them in. I
9 want them separate on the setoff. And I've got to decide
10 what to do about -- because I'm actually putting the cart
11 before the horse. I need to deal with the settlements.
12 What is the confidential language? What happens?

13 MR. LUCEY: It says confidential except by order of the
14 Court. It's a large carrier we deal with in every case and
15 we have other -- the main developer in this was TCR. We
16 have two other cases against TCR. So it's just -- I
17 wouldn't say it's anything beyond the standard. It requires
18 an order of the Court for us to violate it. I don't know
19 that there's more than one. I do know the biggest one, the
20 biggest settlement, does have a confidentiality clause.

21 THE COURT: Okay. Well, go back -- if they don't have
22 a confidentiality clause, go ahead and give those to him.
23 And under a confidentiality -- just under a
24 confidentiality ---

25 MR. ANZELMO: Certainly.

1 THE COURT: --- order. And with regards to the large
2 one, I'm going to order it. And I'll leave it up to you.
3 You need to just send him the whole things. These are the
4 component parts I think are important. I guess the amount
5 and how it got settled. And you may need to provide him all
6 of that settlement language. I agree with you. I think
7 it's probably from the beginning of time until the day of
8 the settlement, you know, claims, causes of action, and is
9 probably what it says because some lawyer drafted it to
10 protect themselves and to protect their client, and you
11 know, and their company, so. But just for purposes -- it's
12 going to have to indirect -- under a confidentiality
13 agreement.

14 MR. ANZELMO: Absolutely, Your Honor.

15 THE COURT: And then, you know, once -- and then let
16 me -- with that on board then let me have proposed orders.

17 I need to put on the record and I want you to raise
18 this with Ms. Davis and if she has any concerns whatsoever I
19 want you to bring this back to the Court. Because here's
20 what I find troublesome about this particular issue. It is
21 my policy that I draft and present to counsel, two things:
22 the charge and the verdict form. I do that in an informal
23 charge conference. And I do it in an informal charge
24 conference so that counsel has as well as the Court a freer
25 opportunity for the exchange of charges, concerns. And that

1 happened in this case. And the reason that I know that it
2 happened in this case is because of the issue of -- well,
3 number one, I always do it. But I distinctly remember the
4 issue arising with regards to setoff and there was no
5 request for special interrogatories. And that's my memory.

6 MR. LUCEY: Your Honor, my cocounsel Dabny Lynn is
7 sitting next to me for court reporter's record. And she was
8 at trial.

9 THE COURT: I know.

10 MR. LUCEY: And she's freshed my memory as to the
11 conversation you were referencing at the close of trial.
12 And the conversation between the Court and parties was that
13 because there was no negligence verdict there would not be a
14 setoff issue to deal with. And that conversation did occur.
15 I apologize for not recollecting it. As to the verdict
16 form, the Court might not recall, we actually circulated
17 electronically and Ms. Davis approved that verdict form
18 electronically. And we filed -- was an exhibit with our
19 materials at the last hearing. So that was circulated in
20 advance. Everybody did have a chance to dwell upon it,
21 comment on it, suggest changes. In fact, the Court required
22 several changes in one of them proposed. So that did occur
23 in this case.

24 THE COURT: Okay. Well, I just wanted -- and it
25 because that causes me some concerns as well. And I think

1 Mr. Davis did an outstanding job trying the case. I really
2 do. And so, there was -- and probably because of the motion
3 that you were talking about, it was excruciating to try to
4 keep those damages separate. And the only place -- and
5 Ms. Davis although did -- she certainly did remain -- it
6 remained her position that because the seals, there was a
7 comment about the seals and the design of the stucco seals.
8 And that was an architectural design. And she elicited
9 testimony from one of the experts and I do not recall who.

10 MR. LUCEY: Dr. Whitlock.

11 THE COURT: Okay. About that design itself was
12 defective and that ---

13 MR. LUCEY: Recessed windows.

14 THE COURT: Yes. Yes. And that issue was certainly
15 the -- I hesitate to say the only because it's been a while.
16 But it was the place that she argued that Builders Source
17 was not alone in damages and the causing of the damages
18 would delay those, and did a good job what that as a matter
19 of fact. So, I don't know what you do with that but I put
20 it out there. I mean, it seems to me that at some point
21 what gets represented to the Court and what is done at trial
22 is one thing. And then, you know, you hire new counsel and
23 all of sudden you want to raise it again. You know, it's
24 tough on -- it's tough -- very difficult position. I
25 understand it. You know, it is what it is. But it's

1 difficult.

2 All right. Proposed orders. Proposed orders. You got
3 your information.

4 MR. ANZELMO: Thank you.

5 MR. LUCEY: To protect myself, my I submit a short
6 order to the Court ordering me to produce that and ordering
7 him to keep confidential.

8 THE COURT: Sure. Short order.

9 MR. LUCEY: Yes, ma'am.

10 THE COURT: Sounds like we're in a restaurant.

11 MR. LUCEY: Yes, ma'am.

12 THE COURT: Absolutely. And I will certainly sign it.
13 Against you mashing of teeth and tearing of clothes. All
14 right. Thank you everyone.

15 MR. ANZELMO: Thank you, Your Honor.

16 MR. LUCEY: Thank you.

17 (The proceeding concluded at 4:20 p.m.)
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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO.: 2012-CP-10-7594
ONE BELLE HALL PROPERTY OWNERS
ASSOCIATION, INC., AND BRANDY
RAMEY, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

-vs-

TRAMMELL CROW RESIDENTIAL, INC.;
TCR NC CONSTRUCTION I, LP,
ET AL.,

Defendants.

Thursday, August 27, 2015

30(b)(6) Deposition of BUILDERS FIRST
SOURCE, RICHARD WOODWARD, taken pursuant to notice,
was held at the law office of Lucey Law Firm, 415
Mill Street, Mount Pleasant, South Carolina, 29464,
commencing at 10:00 A.M., on the above date, before
Judy W. Galuppo, Professional Court Reporter and
Notary Public for the State of South Carolina.

Job No. 208087

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ROA_00874

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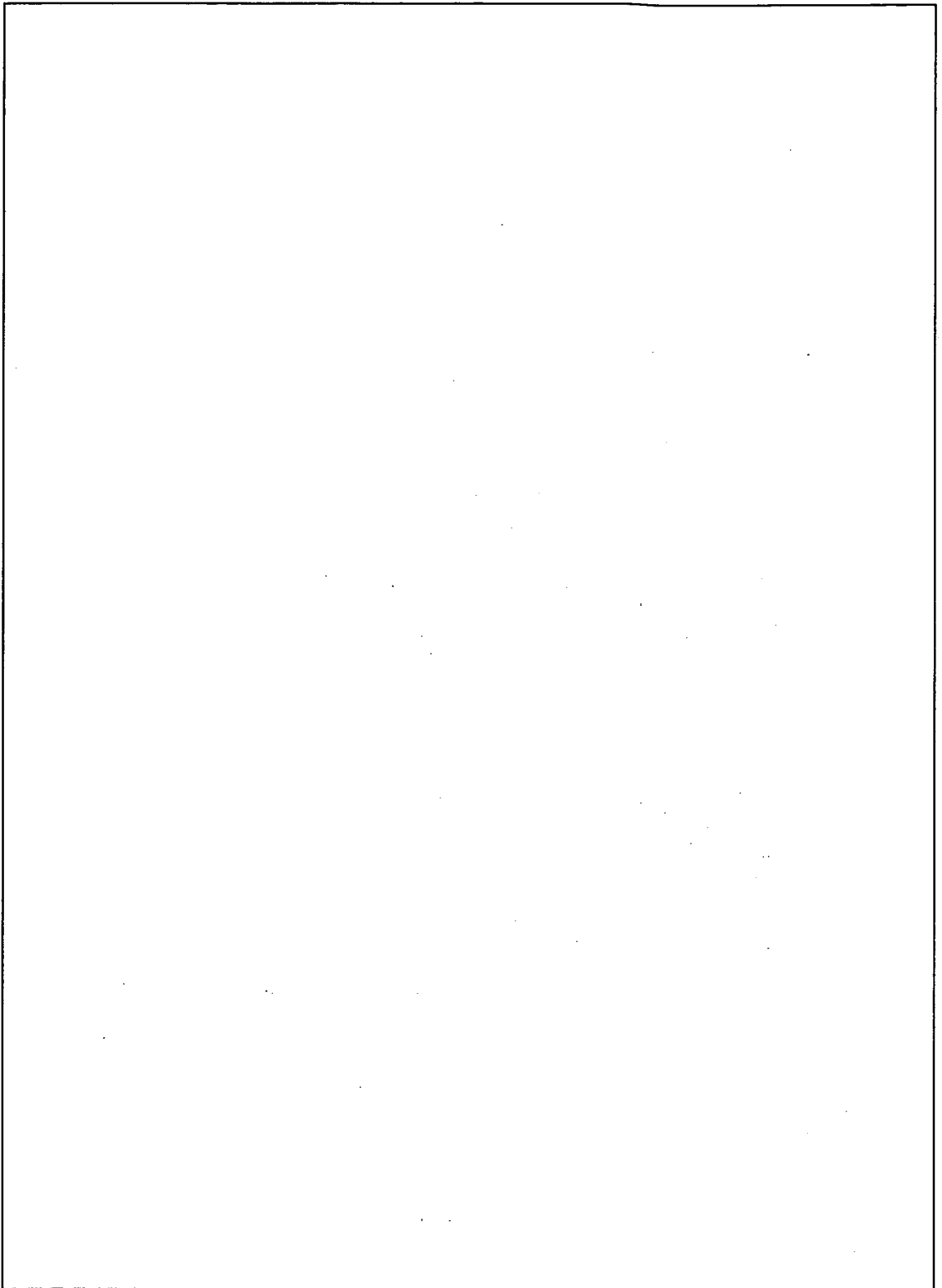
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1 STIPULATIONS

2 It is hereby stipulated by, between and
3 among counsel for the respective parties that all
4 signing, sealing and certification are waived; and
5 that all objections, except as to the form, will be
6 reserved until the time of trial.

7 - - -

8 Whereupon,

9 30(B)(6) BUILDERS FIRST SOURCE, RICHARD
10 WOODWARD, after having been duly sworn, is examined
11 and testifies as follows:

12 - - -

13 E-X-A-M-I-N-A-T-I-O-N

14 BY MR. LUCEY

15 Q Mr. Woodward, I see you've brought some
16 materials to your deposition. Do you mind sharing
17 with me what they are, please?

18 A They are -- this stack is information
19 produced by plaintiff and/or codefendant and the
20 other documents, this is a download from the
21 Floridabuilding.org website, the installation
22 instructions for the window in question, a related
23 document from the same site for the window and a
24 couple of pages provided by Trammell Crow,
25 corresponding Builders First Source invoices, and a

1 screen capture of the origination of the Builders
2 First Source account for the Belle Hall project.

3 Q Okay. Let me just, to save us both
4 time, read a list in addition to what you itemized.
5 You just grouped all the produced documents
6 together. They include the specifications from the
7 Cline Design file relating to windows; the One Belle
8 Hall manual excerpt, Revision 8, relating to doors
9 and windows; the One Belle Hall window replacement
10 color coded schedule from Cline Design drawing, but
11 I believe it's been probably color coded by MEP.
12 You've got Plaintiff's Exhibit 44 which is the
13 window invoice, original window PO for the windows
14 dated January 16th, 2006. You've got a WDP report
15 excerpt at Bates stamp 10481, page 80, relating to
16 window and the door testing observations. You've
17 got the Keystone certifications and attached
18 third-party report. And the drawings attached to
19 the third-party report including component drawings.
20 You've got Appendix C to the WDP report which is
21 relating to the window leakage test reports. And
22 you've got the TCR change, potential change order
23 list at Bates stamped TCR NC 196.

24 Did I list those correctly in addition
25 to the ones you itemized?

1 A I believe so.

2 Q I'm going to borrow the group of
3 documents you have clipped behind Keystone and we'll
4 borrow your screen shot and have copies made; is
5 that okay?

6 A That's fine.

7 (At this time there is a brief break in the
8 deposition from 10:05 a.m. to 10:05 a.m.)

9 Q Sir, who is your employer?

10 A Builders First Source.

11 Q Which Builders First Source?

12 A Builders First Source, Inc.

13 Q What is Builders First Source, Inc.?

14 A Could you rephrase the question?

15 Q What is Builders First Source, Inc.? Is
16 that unclear?

17 A It is the parent entity of Builders
18 First Source companies.

19 Q Okay. And I didn't get the spelling of
20 your last name. Would you let me have it, please?

21 A W-O-O-D-W-A-R-D.

22 Q Great. And what is your position with
23 the parent entity, please?

24 A I am the director of construction
25 science and innovation.

1 Q And what is -- how long have you been in
2 that position?

3 A Approximately five years.

4 Q Sounds like you have a bit of a
5 technical background. So let's reach back and go
6 back through your background just a little bit. Is
7 that okay?

8 A Sure.

9 Q Let's start with where and when you were
10 born?

11 A Jacksonville, Florida, January 12th,
12 1969.

13 Q And where and when did you graduate from
14 high school?

15 A June 1987, Edward H. White High School,
16 Jacksonville.

17 Q And where did you go to college?

18 A Florida Community College at
19 Jacksonville.

20 Q Degree and year, please?

21 A I did not finish.

22 Q What did you study?

23 A General studies and Aviation.

24 Q And was it a two-year degree you were
25 working on?

1 A Yes.

2 Q And you did not finish your two-year
3 degree?

4 A That is correct.

5 Q Any post Florida Community College
6 education?

7 A Not formal. Specific training for
8 various licenses and duties, yes.

9 Q Let's go ahead and go through that, if
10 you would, please.

11 A Okay. I surely won't be able to recall
12 them all. But I've had various continuing education
13 classes in construction-related matters, building
14 contamination assessment and remediation course,
15 letter innovation training, HERs training, home
16 energy rating.

17 Q Let's do this, too. Let's switch over
18 to any certificates or licenses you have, because
19 that might refresh your memory about any other
20 courses you've had. Let's make a list of those,
21 okay?

22 A Certified general contractor, Florida,
23 Mississippi, Tennessee, Louisiana; mold remediator
24 and mold assessor, Florida; ICC 600 wind load tech;
25 inactive HERs building energy rater; and inactive

1 certified professional building designer.

2 Q And what year were you first licensed as
3 a general contractor, please?

4 A 2010, I believe.

5 Q And what year were you first -- in what
6 jurisdiction was your first one?

7 A Florida.

8 Q Okay. What year were you first licensed
9 as a mold remediator?

10 A 2011, I believe.

11 Q What year were you first certified as an
12 ICC 600 tech, approximately?

13 A 2012, I believe.

14 Q And the builder/energy rating thing,
15 what year was that?

16 A 2010, I believe.

17 Q And the certified professional
18 builder/designer?

19 A 1995.

20 Q Okay.

21 A Probably.

22 Q Let's switch over to your employment
23 background, because that might help me understand
24 your certificates when we go back through them,
25 okay?

1 First of all, how long were you at the
2 community college before you left?

3 A I took part-time courses over a number
4 of years. I don't recall when I last --

5 Q Did you start immediately after high
6 school?

7 A I did.

8 Q Okay. Let's walk through -- first of
9 all, before graduating high school, did you have any
10 material construction or manufacturing experience?

11 A Yes.

12 Q Tell me about that, please.

13 A Beginning in the summers in probably
14 1981, I worked on framing crews during my summer
15 school breaks.

16 Q Anything else?

17 A Beginning in 1984, I began drawing house
18 plans for contractors and homeowners.

19 Q Anything else before graduating high
20 school?

21 A No.

22 Q And the -- the work you did on framing
23 crews, was that single-family or multifamily?

24 A Both.

25 Q And was that a family business?

1 A Yes.

2 Q Tell me about that, please.

3 A My stepfather was a framing contractor,
4 worked for him during summers.

5 Q Is that also with whom you drew plans
6 for?

7 A No.

8 Q What was your stepfather's company's
9 name, please?

10 A DC Builders.

11 Q Are they still in existence?

12 A Not to my knowledge.

13 Q They're were in Jacksonville?

14 A Yes.

15 Q And they built both single-family and
16 multifamily?

17 A Yes.

18 Q What company were you drawing the house
19 plans for?

20 A I did it as an independent as well as I
21 worked for a while for Custom Plan Services.

22 Q Where were they at?

23 A Orange Park, Florida.

24 Q And did you have any sort of license or
25 certificate of authority to be drawing plans for

1 construction in 1984?

2 A No.

3 Q Let's go to your post high school
4 graduation experience. Walk me through that,
5 please.

6 A I continued to draw house plans
7 independently, and eventually was hired by a general
8 contractor in 1988 or '89. Continued to do design
9 work for the GC for new single-family homes.
10 Transitioned to another larger contractor in 1990,
11 doing design work and field troubleshooting. Went
12 out on my own in '94 doing design work and wind load
13 work for various home builders in the market. And
14 was hired in '99 by Holmes Lumber Company to start
15 an in-house design center. Holmes Lumber was
16 acquired by Builders First Source in '99. And I've
17 been employed with Builders First Source since.

18 Q And we'll come back to Builders First
19 Source. First of all, the first GC you worked for
20 in '88 doing design work after high school doing
21 single-family housing, what was the name of that GC,
22 please?

23 A T.E. James Construction.

24 Q Was that in Jacksonville?

25 A Yes.

1 Q And the second largest GC, what was his
2 name, please?

3 A Glenn T. Reynolds Custom Homes.

4 Q Okay. And now any design work that you
5 did either solo or for others between when you
6 started in '84 in high school and '99 when you went
7 to the Holmes Lumber Company, any of that design
8 work, were you putting your name on the design work?

9 A Yes.

10 Q Were you putting any sort of seal or an
11 authorization of any kind on the design work?

12 A No.

13 Q Your design was being used for
14 permitting?

15 A Yes.

16 Q So some engineer or architect would
17 review it and approve it and stamp your designs?

18 A No.

19 Q Florida didn't require permit designs to
20 be stamped or approved.

21 A Not for residential work.

22 Q I take it that's changed now?

23 A No.

24 Q They still don't require it?

25 A Not on architectural work.

1 Q So you can go get a building permit and
2 build a single-family house in Florida today without
3 an engineering stamp or an architect's stamp?

4 A That is correct.

5 Q Going to your -- well, let's talk about
6 your design work. What types of instructions have
7 you designed prior to Holmes Company?

8 A Predominantly single-family residential
9 projects, some townhome projects and a small handful
10 of small commercial buildings.

11 Q And did you have any formal training in
12 design work at the community college before you left
13 early?

14 A No.

15 Q Have you ever had any formal training in
16 your design work?

17 A Yes.

18 Q When was that?

19 A In high school, I took three years of
20 drafting and design.

21 Q Okay. Have you ever been tested for
22 your design work or achieved any license of any kind
23 for work?

24 A Yes.

25 Q And that's one of the licenses you told

1 me about earlier?

2 A Yes.

3 Q Tell me, in '94 you started designing
4 with regards to wind load in addition to regular
5 design; is that correct?

6 A That's correct.

7 Q What were your qualifications to do that
8 in '94?

9 A I took a course presented by the local
10 building department and the local Home Builders
11 Association to present a prescriptive design method
12 approved locally for single-family construction.

13 Q Okay. And what -- tell us if you would,
14 please, what a prescriptive design method is.

15 A Prescriptive design method is a set of
16 criteria that if the subject building falls within
17 the parameters of the design limitations, you can
18 pick and choose, if you will, some prepackaged
19 design criteria to ensure the building is code
20 compliant with respect to wind load design.

21 Q And was there a prescriptive design
22 category that you were dealing in? Or was there
23 multiple categories and you were being taught how to
24 select which one applied to the different building
25 situation?

1 A There were -- there were different
2 criteria subject to the building shape and location
3 and alternative methods of complying with the
4 criteria, each criteria available.

5 Q Okay. You say that was some local
6 building course of some kind. Was it like a
7 six-week course, two nights a week, what are we
8 talking about?

9 A No. It was maybe four nights in one
10 week, but it's been 20 years ago. I don't recall
11 the criteria specifically.

12 Q Gotcha. And after that course you
13 understood it all better, but you still weren't
14 licensed to do anything with it, were you?

15 A That is correct.

16 Q And then going back to your
17 certification, starting with the ICC 600 2012 wind
18 load tech, what is that all about, please?

19 A That is a certification that allows a
20 non-engineer to design residential structures to
21 applicable code criteria for wind, wind design
22 requirements in the Florida building code, and the
23 International Code Council designated regions and
24 certify without having an engineer seal.

25 Q Okay. So once you got that certificate

1 you could draw something that a local building
2 official would accept? You could specify what the
3 window package would be and why?

4 A Subject to the criteria, the
5 requirements of the jurisdiction, yes, possibly.

6 Q Okay. They could accept your drawing
7 and your specifications as to the windows and wind
8 loads without having an engineer approve your work?

9 A That is correct.

10 Q Or they could reject it?

11 A That is correct.

12 Q Let's go back to the certificate of
13 professional builders design that you got in 1995.
14 What's that all about?

15 A That was a day-long test criteria
16 initially -- initially presented by the Florida
17 Residential Designer's Association which
18 subsequently was integrated into the American
19 Institute of Building Design. It is a designation
20 given to folks with experience designing homes and
21 who can subsequently pass an eight-hour test,
22 questioning various aspects of home design as well
23 as practical design work.

24 Q And what, if anything, did that
25 certificate tell you to do after you got it or that

1 you couldn't do before you got it?

2 A It allowed me to identify myself as a
3 certified professional building designer.

4 Q Was that certificate accepted by any
5 southeast jurisdiction to permit plans with?

6 A Could you repeat the question?

7 (At this time there is read back in the
8 record.)

9 A Yes.

10 Q Which ones?

11 A Duval County Building Department;
12 St. Johns County Building Department; Clay County
13 Building Department; Nassau County Building
14 Department; Jacksonville Beach Building Department;
15 St. Augustine Building Department; St. Augustine
16 Beach Building Department, Fernandina Beach Building
17 Department. Possibly others. Those there are the
18 ones that I have specific knowledge of.

19 Q Are you telling me that there are a
20 number of jurisdictions in Florida that do not
21 accept it for permitting the plans?

22 A No. I'm saying those are the ones that
23 I am specifically aware of that do, and the others I
24 have no specific knowledge of whether they do or
25 don't.

1 Q Is there any state outside of Florida or
2 the Southeastern United States that you're aware of
3 that accepts that certificate for the permitting of
4 plans?

5 A I suspect all do that do not have a
6 specific requirement for a licensed architect to
7 produce home plans.

8 Q Do you know which states those are?

9 A Could you rephrase?

10 Q Do you know what states those are?

11 A Which states do or do not require an
12 architect?

13 Q Whichever one is easier for you.

14 A I am not aware of any state that
15 requires an architect to produce the drawings and
16 subsequently sign and seal them for single-family
17 residential projects.

18 Q Does South Carolina require an architect
19 for the permitting of plans?

20 A No.

21 Q Does South Carolina require an engineer
22 for the permitting of plans?

23 A Probably, depending on the instance --
24 the characteristics of the building and the
25 location.

1 Q Okay. Most often it does because you
2 need an engineer to certify the foundation, correct?

3 A My experience has been the criteria is
4 usually more applicable to wind design criteria than
5 foundation.

6 Q Okay. So you don't believe South
7 Carolina accepts the certified professional designer
8 designation for wind load permitting design; is that
9 correct?

10 A That is correct.

11 Q And is -- is that a similar situation
12 that you've -- that occurs in other states in the
13 Southeastern United States, excluding Florida, of
14 course?

15 A Probably.

16 Q Okay. All right. I notice that you've
17 got your general contractor licenses after you went
18 to work for Builders First Source, correct?

19 A That's correct.

20 Q Well, let's go through Builders First
21 Source experience first. Tell us if you would,
22 please, if you were starting a home design center at
23 Holmes Lumber Company in 1999 -- I take you were
24 still establishing it at the time of the acquisition
25 by Builders First Source, correct?

1 A No, it was established already.

2 Q And what was this Home Design Center
3 that you established in Holmes Lumber Company just
4 before the acquisition?

5 A It was in-house design center that
6 provided house plans and engineering plans to
7 builders who requested those services in the
8 Jacksonville market.

9 Q Okay. And how, if at all, did your role
10 change after the acquisition?

11 A It didn't.

12 Q And did you have engineers in this Home
13 Design Center?

14 A Yes.

15 Q And did they answer to you?

16 A Yes.

17 Q How -- what was your next position or
18 your next change of position at Builders First
19 Source?

20 A After being the general manager of
21 Design Center, I became the director of Construction
22 Science & Innovation.

23 Q Approximately what year was that?

24 A 2009.

25 Q So you ran that design center, if my

1 math is right, for roughly 10 years?

2 A Yes.

3 Q And what is your role and
4 responsibilities in your current position as
5 director of Construction Science & Innovation?

6 A I -- I evaluate construction claims on
7 occasion. I review products at customer's request.
8 I maintain some licenses, as I've described, for --
9 for the company, and review some of the work
10 associated with those and maintain relationships
11 with some of our vendors.

12 Q Now, were you doing some of this work
13 previous to your change of position, previous to
14 '09, in your capacity as general manager of the
15 house design center, or was this a complete change?

16 A I was doing some of this already.

17 Q And when you were in-house design center
18 general manager, was your region at all times
19 Jacksonville, or did there come a point in time
20 where it expanded?

21 A It was exclusive to Florida, primarily
22 Jacksonville, but it reached to the market
23 immediately adjacent to Jacksonville as well.

24 Q Okay. And you were in Jacksonville when
25 you were managing the design center, correct?

1 A That's correct.

2 Q And are you still in Jacksonville now
3 that you're the director of Construction Science
4 Innovation?

5 A I work out of the Jacksonville office.

6 Q And you mentioned earlier that your
7 employer is Builders First Source, Inc., the parent
8 company, correct?

9 A That is correct.

10 Q Is the main home headquarters of the
11 parent company in Jacksonville?

12 A No.

13 Q Where is that located?

14 A Dallas, Texas.

15 Q And does the parent company have
16 numerous locations, or is there a single location?

17 A To the best of my knowledge, there's a
18 single location.

19 Q So you're actually working in one -- at
20 a location in one of the subsidiaries, although
21 you're working for the parent?

22 A That is correct.

23 Q And has the parent company been in
24 Dallas since it acquired your company in 1999?

25 A I believe so.

1 Q You did not have any ownership interest
2 in Holmes when it was acquired, did you?

3 A No.

4 Q You mentioned your first item was
5 evaluating construction claims. Are you talking
6 about lawsuits?

7 A Occasionally lawsuits, yes.

8 Q And warranty claims, too, on large
9 projects?

10 A Yes.

11 Q Is there a certain threshold of claim
12 that comes to you?

13 A No.

14 Q Is it discretionary as to when Holmes
15 assigns you?

16 A With respect to what the home office
17 assigns, yes, it's discretionary.

18 Q Do you have a particular region?

19 A No.

20 Q You -- even if you don't have an
21 official region, as a practical matter, do you, in
22 fact, have a predominant region?

23 A No.

24 Q Do you work all over the United States?

25 A I have worked in most of the states

1 represented by Builders First Source traditionally:
 2 Florida, Georgia, Alabama, Mississippi, North
 3 Carolina, South Carolina, Tennessee. I have not --
 4 I don't recall doing any work in Virginia or -- I've
 5 consulted in Texas.

6 Q Roughly how many depositions have you
 7 given?

8 A Three.

9 Q And what do you do that's encompassed by
 10 this description you gave me, "evaluate construction
 11 claims"?

12 A I will occasionally review documents
 13 provided to me by someone else for the purpose of
 14 determining if we had any fault in the claim.
 15 Occasionally I will visit a jobsite during a --
 16 during a repair. Occasionally I will visit a site
 17 to look at a purported claim.

18 Q And occasionally you'll give testimony?

19 A Yes.

20 Q Okay. And the second item you mentioned
 21 to me is, review products that customers request.
 22 Tell me about that, please.

23 A Occasionally a customer will contact me
 24 and request that I evaluate a product or provide a
 25 comparative analysis of products to them unique to a

1 community or a region or a climate, and I'll provide
2 that resource to them.

3 Q And how will they know to contact you?

4 A Relationships I've had with them over
5 the years or presentations I've given that they
6 might have seen.

7 Q Well, as I understand it, most of your
8 relationships would have been in the Jacksonville
9 area.

10 A Historically, yes.

11 Q So how would people outside of Florida
12 know to contact you for a product evaluation?

13 A Most of the folks that I deal with are
14 with national builders, and I guess they had a
15 positive experience with me in Jacksonville, and
16 they relocated or they shared that information with
17 someone.

18 Q Okay. And the third item that you
19 mentioned was, maintain some of the licenses that
20 were discussed. Why is it that you're the one that
21 maintains those?

22 A Because that's what my boss asked me to
23 do.

24 Q And these licenses are for jobs where
25 Builders First Source provides the labor, the

1 installation?

2 A That is correct.

3 Q And do you visit these jobs while
4 they're in process?

5 A Occasionally.

6 Q So some of the jobs that are done under
7 your license by Builders First Source are done
8 without you visiting the jobsite?

9 A That is correct.

10 Q And do you have a counterpart in the
11 parent company that maintains some of the other
12 licenses, or do you have your own?

13 A There are others in the company that
14 have licenses for other states as well as the states
15 I mentioned.

16 Q Well, who's got the license for South
17 Carolina?

18 A I believe it's Terry Rosamond.

19 Q Can you spell that last name, please?

20 A R-O-S-A-M-O-N-D.

21 Q And where is he located?

22 A Greenville, South Carolina.

23 Q And does he work for the parent company,
24 or does he work for all of the distributors?

25 A I don't know.

1 Q And you mentioned reviewing work
2 associated with licenses. Is that in advance of the
3 work being done? Or during? Or after? Or all
4 three? Tell me about that.

5 A Occasionally before, occasionally during
6 and occasionally afterwards.

7 Q Depending on what's needed?

8 A That's correct.

9 Q And since you're not out at a lot of
10 these job sites, is there an immediate subordinate
11 that you have that you rely on to manage these jobs
12 that you're not visiting?

13 A There are installation managers for each
14 market that directly oversee install and sales.

15 Q Do they answer directly to you?

16 A No.

17 Q Do they answer indirectly to you?

18 A Yes.

19 Q And you mentioned maintaining
20 relationships with some vendors. Tell me about
21 that, please.

22 A Occasionally a vendor will bring a
23 product or a new product to me and inquire as to my
24 opinion as to the suitability for -- for a given
25 market or region or climate and whether or not I

1 think it might have success.

2 Q Are you maintaining relationships with
3 any window manufacturers?

4 A Yes.

5 Q Which ones?

6 A Pella, Ply Gem, MI.

7 Q And how long have you been maintaining a
8 relationship with Pella, please?

9 A Less than a year.

10 Q What about Ply Gem?

11 A Approximately five years.

12 Q What about MI?

13 A Approximately three years.

14 Q And what other window vendor
15 relationships have you had over the years? I mean
16 relationships that have been other than incidental
17 or temporary? Just to make it easy, why don't we go
18 back to your original Florida design work and just
19 tell me if there was a particular vendor that you
20 commonly specified for the windows and we can just
21 go forward it time.

22 A We did not specify a window brand.

23 Q Did you have any relationship with any
24 window manufacturers or brands prior to going to
25 Home?

1 A No.

2 Q Did you have any relationship with any
3 window manufacturers or brands prior to becoming the
4 director of Construction Science & Innovation?

5 A No.

6 Q Had you spent any time evaluating
7 windows at any time prior to becoming the director
8 of Construction Science & Innovation?

9 A Yes.

10 Q Tell me about that, please.

11 A I evaluated -- how do I say that? I
12 reviewed Florida product approvals to determine if a
13 particular product met the minimum DP criteria for a
14 project at the request of a customer.

15 Q Okay. Well, the Florida product
16 approval already has DPs set forth on it, correct?

17 A That is correct.

18 Q So I mean, that's in the very first
19 screen, correct?

20 A That is correct.

21 Q So did you simply check the screen to
22 see if the number was higher or lower than the
23 number that was specified by the architect, or did
24 you do something more than that?

25 A I did something more than that.

1 Q Tell me about that.

2 A I compared the different DPs associated
3 with different window sizes and the different DP
4 requirements for different locations on the building
5 of the engineering prepared by Design Center to see
6 if a particular product was suitable for that
7 project.

8 Q Well, I'm still not hearing anything
9 other than comparing numbers. So you checked -- you
10 recognized that a particular -- like Zone 4 might
11 have a different number than Zone 5, and you needed
12 to make sure the window satisfies both zones, I
13 understand that. But did you do anything besides
14 compare numbers?

15 A No.

16 Q Have you ever conducted any window
17 testing, performance testing?

18 A No.

19 Q Have you ever witnessed any performance
20 testing being conducted?

21 A No.

22 Q When's the first time you ever studied a
23 third-party window test report to determine its
24 accuracy, or its appropriateness or its accuracy?

25 A Could you repeat that?

1 Q You may read it back.

2 (At this time there is read back in the
3 record.)

4 A I'm sorry. I need you to repeat the
5 question, please.

6 Q Sure. When was the first time you ever
7 reviewed a third-party window test report to
8 determine its appropriateness or its accuracy, or
9 for any other reason?

10 A I don't recall.

11 Q When did you begin to commonly work with
12 third-party test reports, the reports that are
13 behind the certifications that you see online at
14 Florida?

15 A Three to five years ago.

16 Q Okay. And what circumstance, please?

17 A I don't recall.

18 Q What type of windows?

19 A I don't recall.

20 Q What did you determine about the test
21 report?

22 A I don't recall.

23 Q Are you able to identify a single
24 instance where you studied the third-party test
25 report for its appropriateness or accuracy,

1 completeness or suitability, or any other factor,
2 besides this case?

3 A No.

4 Q Sir, I want you to teach me a little bit
5 about how Builders First Source does business. I
6 show in the list of named insureds in the insurance
7 schedule in the parent company that you've
8 identified, and roughly speaking, about 20
9 subsidiaries. Does that correlate with your
10 understanding of the company?

11 A I don't know how many company
12 subsidiaries there are.

13 Q Well, let me hand you Plaintiff's 501.
14 We'll go to Bates stamp BFS 32, which is the named
15 insured's schedule on the BFS insurance policy
16 for -- apparently for the policy year beginning June
17 1 of 2008. And the very first entry is the parent
18 company, Builders First Source, Inc., correct?

19 (Plaintiff's Exhibit No. 501 is marked for
20 identification.)

21 A That is correct.

22 Q And then underneath there, there's,
23 roughly speaking, about 20 other BFS-affiliated
24 companies, correct?

25 A That is correct.

1 Q And are you familiar with these?

2 A I'm familiar with some of them.

3 Q Okay. Do you recognize most of these to
4 be regional subsidiaries that distribute
5 construction products?

6 A Most of them, yes.

7 Q And there's a company two-thirds of the
8 way down called Builders First Source Southeast
9 Group, LLC. Do you see that?

10 A I do.

11 Q Who is that? What is that?

12 A That is the operating entity that
13 includes most of -- not most, many of the -- of the
14 locations in the Carolinas and Georgia.

15 Q Is -- is Builders First Source Southeast
16 Group, LLC the Builders First Source company that
17 took over for all the Pelican lumber locations?

18 A I believe that is correct.

19 Q And so it was more driven by wherever
20 Pelican was as opposed to dividing up states between
21 different subsidiaries?

22 A I believe that is correct.

23 Q I also notice a couple further down,
24 there's a CCWP, Inc., which is a South Carolina
25 closed corporation. Can you tell me what that is,

1 please?

2 A I do not know what that is.

3 Q Besides that one that I just read to
4 you, and Builders First Source Southeast Group, LLC
5 and Builders First Source parent company, are you
6 aware of any other Builders First Source entity that
7 does business in South Carolina?

8 A No.

9 Q Do you each of these Builders First
10 Source subsidiaries have their own employees?

11 A I don't know how the employment
12 structure works.

13 Q Do you know if the people that I would
14 see if I walked into the local Charleston Builders
15 First Source are employed by Builders First Source
16 Southeast group or the parent company?

17 A I'm only aware of one person you might
18 run into at the Charleston store that is not a
19 Southeast group employee.

20 Q Who is that?

21 A Morris Tolly.

22 Q And what is that, T-O-L-L-E-Y?

23 A I don't believe there's an E.

24 Q Gotcha. What does he do?

25 A He's the Chief Operating Officer East.

1 Q So he, I take it, is the CO for more
2 than one subsidiary?

3 A I believe that is correct.

4 Q But he's employed by the parent?

5 A I believe that is correct.

6 Q And are you aware of a Builders First
7 Source subsidiary that is, in fact, essentially a
8 personal leasing company to the other Builders First
9 Source subsidiaries?

10 A I'm not aware of that.

11 Q As I understand it, Builders First
12 Source, generally speaking, has about 78,000 SKUs;
13 is that roughly correct?

14 A I don't know the answer to that.

15 Q Has thousands anyway, correct?

16 A Yes.

17 Q How does a product get authorized to be
18 in the Builders First Source system and get an SKU?

19 A I don't know the answer to that.

20 Q Well, you are occasionally asked to look
21 at new products, correct?

22 A That is correct.

23 Q New products to be sold through the
24 Builders First Source system, correct?

25 A That is correct.

1 Q And to be sold through the system you
2 need to get assigned an SKU, correct?

3 A In most instances, yes.

4 Q Okay. Well, I take it Joe, Jr.,
5 salesperson fresh out of high school at age 19 at a
6 local Builders First Source, can't just assign an
7 SKU to a new product, can he?

8 A I believe that's correct.

9 Q So is it the parent company that
10 assigned those SKUs?

11 A I don't know the answer to that.

12 Q Well, who's in charge of authorizing
13 what products will be sold through the Builders
14 First Source system?

15 A I don't know the answer to that.

16 Q Is it controlled by the parent company?

17 A I don't know the answer to that.

18 Q Do any distributors -- do any
19 subsidiaries have their own unique SKUs?

20 A I don't know.

21 Q Okay. Who today is in charge of
22 authorizing what window products can be sold or will
23 be sold through the Builders First Source system?

24 A I don't know.

25 Q Who is was in charge of that back in

1 2006?

2 A I don't know.

3 Q Do any of the subsidiaries listed on
4 page 32, BFS 32, Plaintiff's Exhibit 501, perform
5 installation?

6 A Yes.

7 Q Which ones?

8 A Southeast Group, Florida. Those are the
9 only two I know for sure do.

10 Q Are those really the only two entities,
11 and plus the parent company, that you're really
12 familiar with in the Builders First Source family?

13 A No.

14 Q What other entities do you have
15 familiarity with?

16 A Florida Design Center.

17 Q Well, that's a separate entity?

18 A Yes.

19 Q It's probably listed here. I probably
20 just didn't see it, right?

21 A Fourth from the top.

22 Q Gotcha. What others are you familiar
23 with?

24 A Fama Truss (ph).

25 Q Okay. Is that where y'all manufacturer

1 your own trusses?

2 A That is a location, an acquisition that
3 is a truss manufacturer.

4 Q Do they sell in South Carolina?

5 A Not to my knowledge.

6 Q Do you have more than one truss
7 manufacturer in the BFS system?

8 A One truss manufacturing facility?

9 Q Yes, sir.

10 A Yes.

11 Q What are the other facilities?

12 A I don't know them all. There are
13 probably 20.

14 Q And are they all under the same entity
15 or are there different truss manufacturing entities
16 within the Builders First Source family?

17 A They are within the entity's named.

18 Q Okay. Which -- what other Builders
19 First Source subsidiaries are you personally
20 familiar with?

21 A I know the name Atlantic Group, South
22 Texas. And that extends -- that's the extent of the
23 ones I'm personally aware of.

24 Q Which Builders First Source subsidiary
25 manufactures vinyl windows in the state of Texas?

1 A I believe that's South Texas.

2 Q Does it manufacture vinyl windows for
3 any other location?

4 A Not to my knowledge.

5 Q Does it sell -- does Builders First
6 Source South Texas manufacture the windows and
7 retail them, or does it just manufacture them for
8 other Builders First Source subsidiaries to retail
9 them?

10 A I don't know how they're retailed, if
11 they're self-retailed or if they're distributed to
12 other stores in Texas.

13 Q And does the window manufacturing entity
14 or facility have its own R&D department?

15 A I don't know.

16 Q Does the parent company, Builders First
17 Source, Inc., provide any research and development
18 to the window manufacturing group down there in
19 Texas?

20 A I don't know.

21 Q Does Builders First Source manufacture
22 windows in any other location besides Texas?

23 A Not that I am aware of.

24 Q Who is the head of the window product
25 line of Builders First Source?

1 A I cannot recall the gentleman's name.

2 Q You've got five different product
3 divisions in Builders First Source, correct, one of
4 which is windows and doors?

5 A That -- I don't know the answer to that.

6 Q The gentleman whose name you can't
7 recall that's in charge of windows at Builders First
8 Source, is he located at the parent company
9 headquartered in Texas?

10 A I don't think so.

11 Q Where do you think he's located?

12 A At the manufacturing facility.

13 Q In South Texas?

14 A Correct.

15 Q And I apologize if my question wasn't
16 adequately clear. I wasn't just asking about who
17 heads up the windows that Builders First Source
18 manufactures. I was asking who heads up all window
19 products for Builders First Source.

20 A I don't know the answer to that.

21 Q How are products divided up
22 responsibility-wise, the parent company?

23 A I don't know the answer to that.

24 Q Can you tell me anything about how
25 Builders First Source vets its window products?

1 A With any specificity, no, I cannot.

2 Q Okay. Can you tell me about how
3 Builders First Source generally vets all products or
4 any products in a manner such that we might think
5 that windows are better the same way?

6 A I suspect, generally, there would be a
7 review of the associated literature or approvals,
8 code approvals, product approvals, et cetera, to see
9 if there are, in fact, certifications, appropriate
10 certifications for the product.

11 Q And you started that answer with
12 suspect. Does that mean you're really just guessing
13 for me?

14 A I don't think I'm guessing. But I don't
15 know that to be a fact.

16 Q Okay. And does -- is it your insight
17 that Builders First Source relies entirely upon
18 other company certifications and does no checking
19 behind the certifications?

20 A I don't know if there is no checking
21 behind the certifications, but I know we rely
22 heavily on the certifications provided.

23 Q And does Builders First Source have
24 information as to which certification entities are
25 more reliable than others?

1 A No.

2 Q Does the South Texas facility have --
3 manufacturing facility have its own test lab?

4 A I don't know that.

5 Q Who is the third-party certifier that
6 Builders First Source uses for the windows it
7 manufacturers?

8 A I don't know.

9 Q Tell me about any entities utilized in
10 the sale, distribution, marketing or installation of
11 Builders First Source products that are not listed
12 on BFS 32.

13 A I'm not aware of any.

14 Q Does Builders First Source use any
15 outside third-party entities to market their
16 products?

17 A I'm sorry. I need to go back to the
18 previous question. I'm not sure I understood it.
19 Could you have her read that back, please?

20 (At this time there is read back in the
21 record.)

22 A Sorry. I misunderstood the question.
23 We use various installation subcontractors to
24 perform the installations when we provide installed
25 sales.

1 Q Okay. Any others?

2 A No.

3 Q Does Builders First Source use both
4 inside and outside salespeople?

5 A Yes. '

6 Q What is the difference?

7 A Outside salespeople are generally
8 outside of the store interacting with the customers
9 in their office and on the jobsite, while inside
10 sales are generally support positions for the
11 outside sales.

12 Q And are both inside and outside
13 salespeople, are they W-2 employees?

14 A Yes.

15 Q Are either of them on commission?

16 A Yes.

17 Q Are they both on commission?

18 A Outside are generally exclusively
19 commissioned. Inside are generally salaried with
20 a -- sometimes with some type of commission
21 structure.

22 Q A small bump on top?

23 A Agreed.

24 Q So the outside people that are
25 commissioned, describe as best you can what a

1 typical commission configuration arrangement would
2 be, or compensation arrangement would be for those
3 outside salespeople?

4 A I don't know the compensation
5 arrangement for the salespeople.

6 Q Have you ever known the compensation
7 arrangement for any salesperson?

8 A Yes.

9 Q So I mean, did you know it to be in the
10 10 percent range? 20 percent? What did you know
11 about it?

12 A As I recall from years ago, in one store
13 it was 10 percent of the gross margin sale.

14 Q And that they call on mid-size and local
15 builders to sell Builders First Source products?

16 A Among others, yes.

17 Q The large nationwide builders are
18 in-house accounts, correct?

19 A I need you to define "in-house."

20 Q "In-house" meaning there'll be an
21 account manager in-house, you won't be paying an
22 outside salesperson to call the Dan Ryans of the
23 world?

24 A In my experience, there is a salesman
25 that calls all the largest of the builders in each

1 market.

2 Q So they call on the builders at jobsites
3 and at their offices?

4 A Depending on the circumstances, yes.

5 Q Do they call on any other third-party
6 middleman for the sale of the product?

7 A Not that I'm aware of.

8 Q Then going back to your installation
9 subcontractors. Are all your installers actually
10 subcontractors, or they're independent 1099 persons
11 or companies?

12 A They are predominantly 1099.

13 Q And help me out with that. You're
14 saying that you actually employ some installers?

15 A In some markets I know we have been
16 known to employ some specific installers, but that
17 is the minority by far, and I don't know how
18 widespread it is.

19 Q Okay. And what about the South Carolina
20 market, do you know if they've employed -- actually
21 employed any of the subcontractor installers in the
22 South Carolina market?

23 A I do not know the answer to that.

24 Q Is there any training provided to the
25 installers?

1 A For W-4 (sic) employees, yes. In my
2 experience, yes.

3 Q What's a W-4 employee?

4 A I'm sorry. I misspoke, a W-2.

5 Q I thought there was something I didn't
6 know there. So training is provided to W-2
7 employees?

8 A (Nodding head.)

9 Q Is that a seminar or is there a
10 handbook, or what is it?

11 A Specific to what they're installing.
12 Occasionally it's a video. Occasionally it's
13 on-the-job training. Occasionally it is a
14 manufacturer presenting an installation seminar.

15 Q And the installation manager is a W-2
16 employee, correct?

17 A That is correct.

18 Q So the installation manager supervising
19 the independent subs is directly employed by the
20 subsidiary?

21 A That is correct.

22 Q And what is -- what is the job
23 description of the installation manager?

24 A I don't know their job description
25 specifically.

1 Q What is your understanding to be -- to
2 do? Do they go to the jobsite?

3 A Yes.

4 Q Are they supposed to, for instance,
5 employ some quality control while they walk the
6 jobsite?

7 A Yes.

8 Q On Builders First Source behalf?

9 A Yes.

10 Q Following page 32 of Plaintiff's 501
11 there is a list of Builders First Source Southeast
12 Group, Inc. locations. Do you see that?

13 A I do.

14 Q Are you familiar with parts of this
15 list?

16 A Yes.

17 Q And it continues on for three more
18 occasions on the second page?

19 A Okay.

20 Q Correct?

21 A That is correct.

22 Q And it appears from this particular
23 document that the Southeast Group has far more
24 locations than the rest of the groups; is that
25 correct?

1 A It appears the same to me.

2 Q The same?

3 A Yes.

4 Q Yes? Okay. In fact, it appears as
5 though Builders First Source Southeast has
6 approximately a third of all the distribution
7 locations for the Builders First Source family,
8 correct?

9 A I would substantially agree with that.

10 Q And it operates in Georgia, North
11 Carolina, South Carolina, Tennessee, Virginia,
12 correct?

13 A I see all of those states identified,
14 yes.

15 Q What puzzled me was this. You brought
16 with you Exhibit 44, a purchase order for the One
17 Belle Hall windows, correct?

18 (Previously Marked Plaintiff's Exhibit No. 44
19 is referenced.)

20 A I did.

21 Q And the purchase order is executed in
22 behalf of Builders First Source Southeast Group, LLC
23 at the top, correct, top and the bottom?

24 A Yes.

25 Q And the address for Builders First

1 Source Southeast is listed as 430 Leisure Lane,
2 Catawba, South Carolina. Do you see that?

3 A I do.

4 Q That address is not on this list over
5 here in Plaintiff's Exhibit 501. Can you explain
6 that to me?

7 A It's not a Builders First Source
8 location.

9 Q Why did Builders First Source list it as
10 its location in the purchase order?

11 A I don't believe Builders First Source
12 listed it. I believe that is a Trammell Crow
13 document that provided that.

14 Q Who signed that document on behalf of
15 Builders First Source?

16 A I've been told Bob Lanier.

17 Q Who is Bob Lanier?

18 A He is a former area vice president.

19 Q For Builders First Source Southeast or
20 for National?

21 A I don't know the answer to that.

22 Q And who told you Bob Lanier signed it?

23 A My attorney.

24 Q And do you see where -- when TCR
25 prepared the PO, they listed the PO as being

1 Builders First Source-Total Opening Sales?

2 A Yes.

3 Q And it appears as though Bob Lanier
4 crossed out the Total Opening Sales and wrote
5 Builders First Source Southeast Group, LLC, correct?

6 MS. DYER: Object to form.

7 A I don't know who crossed it out. But
8 Total Opening Sales has been crossed out and
9 Southeast Group, LLC added.

10 Q Are you suggesting that -- is it your
11 belief for some reason that TCR made that
12 correction?

13 MR. TRAMMELL: Object to form.

14 A I don't have an opinion as to who did
15 that.

16 Q You agree it was done prior to the
17 document being executed by Builders First Source
18 Southeast, correct?

19 A I don't know when it occurred.

20 Q Do you see the initials next to it?

21 A I see something. I don't recognize them
22 as initials.

23 Q You don't recognize that as initials to
24 a correction?

25 A It --

1 Q You're familiar with the practice of
2 people initialing things when they change them,
3 right?

4 A I am.

5 Q It doesn't look like initials to you?

6 A It does not look like initials to me.
7 But I would give you that it could be initials. But
8 it doesn't look like initials to me.

9 Q Well, you agree with me that when Bob
10 Lanier affixed his signature to this purchase order
11 in behalf of Builders First Source, the address set
12 forth on the purchase order was 430 Leisure Lane for
13 Builders First Source, correct?

14 A I will agree that 430 Leisure Lane is
15 the address identified.

16 Q And that was the address identified at
17 the time the purchase order was signed?

18 A I would presume so.

19 Q And you're telling me there's no
20 Builders First Source at 430 Leisure Lane?

21 A That is correct.

22 Q What is at 430 Leisure Lane?

23 A According to my Google search, it is a
24 house in the country.

25 Q Okay. Did you see any windows there?

1 A Didn't zoom down that close.

2 Q Do you have any insight as to what used
3 to be there?

4 A No.

5 Q Okay. Who is Total Opening Sales, or
6 what is?

7 A I have learned through the course of
8 this exercise that Total Opening Sales is an entity
9 either owned or operated, or both, by a gentleman
10 named Larry Bratton.

11 Q Okay. And what was his relationship
12 with Builders First Source?

13 A I have been told that he was an
14 occasional installer of products for Builders First
15 Source and an occasional customer of Builders First
16 Source and -- give me a moment, please, I'm trying
17 to recall the description. I apologize. I don't
18 remember the word that was used. But it went to
19 suggest that he may have been a -- I'm sorry -- a
20 brokered salesman. That is not a W-2 employee of
21 Builders First Source but a gentleman who would
22 occasionally broker a sale between Builders First
23 Source and some other entity.

24 Q Let me come back to that. First of all,
25 several of these answers you said "I've been told."

1 What was the source of who told you?

2 A With respect to Larry Bratton's
3 capacity, that came from Greg Turnage.

4 Q Who is he?

5 A Area VP.

6 Q What company?

7 A Builders First Source. I do not know if
8 he's specific to an entity or not.

9 Q Where is he located?

10 A Jacksonville.

11 Q Did he tell you what his source of
12 information was?

13 A His recollection over the years.

14 Q Okay. What else did -- let's stop here
15 for a second. Who else have you gotten information
16 from in this case besides the Builders First Source
17 attorney sitting next to you and Greg Turnage?

18 A My coworkers in my Jacksonville office
19 who have done research on my behalf.

20 Q What research did they do?

21 A Accounting, purchase order, invoice
22 history, employment search. That's all that comes
23 to mind now.

24 Q Okay. Any other sources of information
25 that you have for this case besides the attorney

1 sitting next to you, Greg Turnage, and the coworkers
2 that have done research for you?

3 A Just my independent research using the
4 worldwide web.

5 Q Anything else?

6 A Not that comes to mind at the moment.

7 Q What independent research did you do
8 personally?

9 A I researched the window manufacturer and
10 the model of the window that we're here to talk
11 about today and the Florida product approvals for
12 the same, and some of the information that --
13 relative to the testing of the windows.

14 Q Okay. So we're going to pause here and
15 talk about your independent research and then go
16 back to what we were previously talking about. I
17 don't want us to lose our spot, okay? Before we do
18 any of that, we're going to take a minimum break for
19 10 minutes.

20 A Okay.

21 (At this time there is a brief break in the
22 deposition from 11:13 a.m. to 11:22 a.m.)

23 BY MR. LUCEY

24 Q Back on the record, sir. I would like
25 to first review the independent research that you

1 personally did, except for the Florida product
2 approval research. We'll talk about that another
3 time. Addressing your first item, you researched a
4 window manufacturer. Tell me what you did and what
5 you learned.

6 A I Googled the name ESP, or Energy Saving
7 Products, and found out that there's minimal
8 information out there about that manufacturer. I
9 did the same with the window model numbers 2031 and
10 2041 and could not find any -- any meaningful
11 information on the window models via that avenue.

12 Q Did you learn that there had been an ESP
13 factory in Tennessee?

14 A No.

15 Q Did you learn that there had been an ESP
16 factory in Florida?

17 A Yes.

18 Q Did you find out or learn when the
19 Florida factory stopped making the windows, if ever?

20 A No.

21 Q Did you find out whether or not the
22 Florida factory ever became owned by Raymond
23 Building Supply?

24 A Not through my independent research, no.

25 Q Did you learn that Energy Saving

1 Products of Florida, Inc. was administratively
2 dissolved over a year prior to the sale of the
3 windows for One Belle Hall?

4 A No.

5 Q Did you -- did you reach a conclusion
6 that the windows were manufactured by Raymond
7 Building Supply?

8 A No.

9 Q Assuming I'm correct, and we can look at
10 the administrative dissolution in a minute, but
11 assuming I'm correct, how does it come to pass that
12 Builders First Source is selling products from a
13 dissolved company? And let me ask -- let me be more
14 specific. We'll get to the whole chain of events in
15 a moment. But doesn't Builders First Source do any
16 background checks on the vendors it's doing business
17 with?

18 A I don't know the answer to that.

19 Q Who would know that answer?

20 A Possibly someone from our legal
21 department or corporate executive level.

22 Q Does that surprise you?

23 A That ESP was administratively dissolved?

24 Q No, that Builders First Source was
25 selling products from a dissolved entity?

1 MS. DYER: Object to form.

2 A I could not find a record of Builders
3 First Source either purchasing or selling the
4 windows in question so I can't act surprised that
5 that happened.

6 Q Just so I'm clear, you just told me you
7 can't find any record that Builders First Source
8 purchased or sold the windows installed at One Belle
9 Hall; is that correct?

10 A That is correct.

11 Q Let me ask you to turn to Plaintiff
12 Exhibit 512 in the brochure, in the notebook in
13 front of you. Let's go to Bates stamp TCR 5067.
14 This is a Builders First Source invoice, correct?

15 (Plaintiff's Exhibit No. 512 is marked for
16 identification.)

17 A It is not in a format of any Builders
18 First Source invoice that I'm familiar with, and it
19 does not appear to be labeled an invoice.

20 Q Have you seen this document previously,
21 sir?

22 A Yes.

23 Q And what do you believe it to be? Page
24 5067 of Plaintiff's Exhibit 512, what do you believe
25 it to be?

1 A I do not have an opinion as to what this
2 is, other than to say it does not match the format
3 of a Builders First Source invoice. It does not say
4 invoice. The number that is identified on it, when
5 researched to find the BFS record of that invoice,
6 produces another invoice from another location to
7 another customer for a different amount for a
8 different product.

9 Q Did you bring a copy of the other
10 invoice with you that has the same number?

11 A I did (document tendered to Mr. Lucey).

12 Q And what number am I looking at that's
13 going to be the same?

14 A Upper right corner, No. 6462029.

15 Q Okay. And just so we'll have a clear
16 record, let's mark this Plaintiff's Exhibit 513.

17 (Plaintiff's Exhibit No. 513 is marked for
18 identification.)

19 Q Sir, 513 is the invoice that you brought
20 with you today that has the same invoice number as
21 Bates stamp TCR 5067 in Plaintiff's Exhibit 512,
22 correct?

23 A That is correct.

24 Q May I see it, please?

25 A Sure (document tendered to Mr. Lucey).

1 Q Sir, what subsidiary, what Builders
2 First Source subsidiary does Exhibit 513 relate to?

3 A For Raleigh, LLC.

4 Q Does Builders First Source, Inc. parent
5 company have a consolidated ordering system for the
6 entire family?

7 A I don't know if the ordering system is
8 consolidated, but I know there is no duplication of
9 invoice numbers among the different operating
10 subsidiaries.

11 Q And how does that occur? How does it
12 make sure that doesn't happen?

13 A I would -- I can only conclude that
14 there's a central numbering or ordering.

15 Q Or central invoicing?

16 A Possibly.

17 Q Okay. And the number we're looking at
18 is it an invoice number?

19 A Yes.

20 Q Okay. So headquarters, parent company
21 does the billing for all Builders First Source
22 subsidiaries, or at least offers the software
23 utilized by all the subsidiaries in the billing
24 process?

25 A I would agree that it offers the

1 software used.

2 Q And then each subsidiary using that
3 software generates its own bills?

4 A I believe that to be the case, yes.

5 Q May I see that again, please?

6 A Sure.

7 Q And looking back for a second at Bates
8 stamp 5067, do you see that it refers to BFS of
9 Columbia-SCOSYD, do you see that?

10 A I do.

11 Q Is there an entity such as that? Is
12 that an acronym or an abbreviation that you're
13 familiar with?

14 A The SCOSYD is an identifier for the
15 Columbia yard.

16 Q So the entity listed on this invoice
17 exists?

18 A Yes.

19 Q Okay.

20 A Excuse me. I need to correct that.
21 That is a store location. It's not a separate
22 operating entity. It is a store within the
23 Southeast region.

24 MR. TURNER: Justin, was that 512 and
25 513?

1 MR. LUCEY: The new exhibit is 513.

2 MR. TURNER: Okay.

3 BY MR. LUCEY

4 Q So the invoice -- or the document,
5 excuse me, is the Columbia store part of Builders
6 First Source Group Southeast?

7 MS. DYER: Object to form.

8 A It's part of -- it is a location of
9 Builders First Source Southeast Group, LLC.

10 Q Okay. So the document generated at 5067
11 and purports to be generated by a different entity
12 than Exhibit 513, correct?

13 A That is correct.

14 Q And this document appears to be more --
15 page 5067 appears to be more in the order of a
16 confirmation than an invoice, correct?

17 A I don't know what the format is supposed
18 to be. The only title I see to it appears to be a
19 stamp that says office copy. But I don't -- I
20 don't -- I don't know what it is.

21 Q And does the Columbia store exist at the
22 P.O. Box and address that's set forth on Bates stamp
23 5067?

24 A I know the town that it's located in is
25 Blythewood, but I'm not familiar with the specific

1 street address.

2 Q You don't know whether a customer has
3 sent a check to that address on this document, page
4 5067, whether it would have arrived at a Builders
5 First Source facility or not?

6 A I have not researched that, no.

7 Q Is there anything in the materials that
8 would allow us to do that?

9 A In the materials I brought today?

10 Q Yes, sir.

11 A No.

12 Q Is this lumberyard still open?

13 A The Columbia store is still in operation
14 today.

15 Q Great.. So we can just Google it next
16 break, right?

17 A That's correct.

18 Q So what is your theory about how this
19 document, Bates stamp 5067, Plaintiff's Exhibit 512,
20 came to be, sir?

21 A I do not have an opinion or theory.

22 Q Did you perform any research, you or
23 yourself perform any research regarding receipt of
24 funds from the One Belle Hall job or from Trammell
25 Crow Residential?

1 MR. TRAMMELL: Object to form.

2 A No. We were not able to identify that
3 an account specific to One Belle Hall was created
4 until the year after this document is dated.

5 Q And what did that account relate to?

6 A One of the Builders First Source
7 locations. And forgive me. I don't recall which
8 one, made a sale of approximately \$124 to this
9 location. And I believe it was to Trammell Crow for
10 some aluminum fascia material.

11 Q Did you bring that invoice with you?

12 A I did not.

13 Q And how did you locate or identify that
14 transaction?

15 A One of my -- one of my coworkers
16 researching this on my behalf discovered when the
17 account was created and then subsequently associated
18 with the account.

19 Q Do you believe the document at page
20 5067, Plaintiff's Exhibit 512, to be bogus?

21 MR. TRAMMELL: Object to form.

22 A I believe that it's inconsistent with
23 any Builders First Source document that I've ever
24 seen.

25 Q Do you believe it not to be authentic?

1 MR. TRAMMELL: Object to form.

2 A I do not have an opinion.

3 Q Is 5067, Bates stamp 5067 in Plaintiff's
4 Exhibit 512 a Builders First Source document, sir?

5 A It doesn't match anything I've ever seen
6 or known of. It's inconsistent with the records
7 associated with the number. We have nothing in our
8 system to support it.

9 Q Gotcha. It does say Builders First
10 Source on it, does it not?

11 A It does.

12 Q It does appear to have the Builders
13 First Source logo on it, correct?

14 A It does.

15 Q So I'm going to need a final answer from
16 Builders First Source whether it believes this
17 document is a Builders First Source document or not,
18 just a clear answer. Or an "I don't know."

19 A I don't know.

20 Q And I take it that testimony holds true
21 for the document 5057, too, additionally?

22 A Yes.

23 Q And the document, the Builders First
24 Source confirmation at 5067 was generated on May
25 2nd, 2006 at 10 a.m., correct?

1 A May 2nd, 2006, 7:10 a.m.

2 Q And at Bates stamp 5057, Plaintiff's
3 Exhibit 512, the confirmation, is generated on May
4 2nd, 2006 at 1:38 p.m., correct?

5 A I'm sorry, sir. I got confused with the
6 numbers there on the last one. Could you repeat
7 that, please?

8 Q Sure. The second invoice we're looking
9 at in Plaintiff's Exhibit 512 was generated at 1:38
10 p.m. on the same day, correct?

11 A The 5057 stamp, yes, same date, 1:38
12 p.m.

13 Q Have you looked at this document
14 previously?

15 A I have.

16 Q And does it have the same inconsistent
17 reference number?

18 A It does.

19 Q Is there any variation that you can tell
20 me about between the first invoice in Exhibit 512
21 and the second invoice in Exhibit 512 besides the
22 time of printing and the handwriting on the second
23 one?

24 A I apologize. I have not seen this
25 document before. I do not see any inconsistencies

1 other than the handwriting and the date, the time
2 stamp.

3 Q I'm sure you have no insight as to that
4 anyway?

5 A I do not.

6 Q So let's go back to Greg Turnage. What
7 did he tell you about Total Opening Sales, or Larry
8 Bratton, besides what you already related to me?

9 A Nothing.

10 Q When you said that you were told that
11 Larry Bratton may have been an occasional broker
12 salesperson, to what were you referring, please?

13 A Could you rephrase the question, please?

14 Q Do you recall telling me that the third
15 description of Larry Bratton that you were provided
16 was that he may occasionally have been a brokered
17 salesman?

18 A Yes.

19 Q To what were you referring when you made
20 that statement?

21 A He was not an employee of Builders First
22 Source. However, he did occasionally broker the
23 sale of certain BFS products to contractors and
24 would be, in some form or fashion, compensated for
25 that presumably as a 1099.

1 Q And did he only broker Builders First
2 Source products, or was he also brokering other
3 products?

4 A I have no knowledge of that.

5 Q Has Builders First Source ever sold
6 windows manufactured by ESP or Energy Savings
7 Products of Florida, Inc.?

8 A Yes.

9 Q During what period of time?

10 A My research indicated between 2000 and I
11 think 2008.

12 Q And what was the basis of that finding,
13 sir?

14 A I had -- I requested that all the
15 purchase orders ever issued to ESP, or Energy Saving
16 Products, be pulled up, and I looked through the
17 list of purchase orders issued.

18 Q Did the products carried by Builders
19 First Source include the products at issue in this
20 case?

21 MS. DYER: Object to form.

22 Q The ESP products sold by Builders First
23 Source between 2000 and 2008, did they include the
24 models that are at issue in the One Belle Hall case?

25 A They included a very small number of the

1 2031 model window.

2 Q Any others?

3 A They included a variety of other ESP
4 models.

5 Q Did they include the 2018?

6 A I don't recall.

7 Q Did you bring any of the evidence with
8 you that showed that Builders First Source, in fact,
9 sold some of these models between the year 2000 and
10 year 2008?

11 A No.

12 Q Would that just simply involve print
13 screens?

14 A It could -- it would be a lot of print
15 screens, but...

16 Q Is Builders First Source's computer
17 capable of outputting a spreadsheet of those sales
18 transactions?

19 A I believe so, yes.

20 Q Has that been done?

21 A No.

22 Q And that spreadsheet could show the
23 states in which they were sold into and the models
24 that were sold?

25 A Yes.

1 Q And the customers?

2 A Customers, no. This was a review of
3 purchase orders issued by Builders First Source
4 only.

5 Q Okay. And what entity was Builders
6 First Source issuing its purchase orders to after
7 ESP was administratively dissolved in 2005?

8 A ESP.

9 Q And that continued into 2008?

10 A I believe so.

11 Q And did you see any purchase orders for
12 the year 2006?

13 A I did.

14 Q Did you bring any of those with you?

15 A I did not.

16 Q You're capable of generating those,
17 correct?

18 A I am.

19 Q Were any of those purchase orders in
20 favor of Builders First Source Southeast?

21 A Yes.

22 Q Tell me about purchasing. We already
23 covered how products get screened and authorized,
24 and you were unable to testify about that for me
25 today, correct?

1 A That's correct.

2 Q Well, assuming the product -- if, in
3 fact, you have SKUs on the ESP products, that means
4 at some point in time they got authorized by
5 Builders First Source to be sold through the
6 Builders First Source system, correct?

7 A I'm not personally aware that SKUs were
8 created. But if there are SKUs for those --

9 Q How does Builders First Source in its
10 computer system sell a product without a SKU? Isn't
11 that how y'all track all product?

12 A It's how we track commodity products.
13 It is not how we track all products that are
14 generally custom ordered.

15 Q How do you track custom ordered
16 products?

17 A I don't know the answer to that.

18 Q All right. Well, in continuing on in
19 purchasing, is -- is purchasing handled by each
20 subsidiary, or is it handled globally by the parent
21 company?

22 A Generally -- generally orders are placed
23 by the local store.

24 Q And what types of quantities were you
25 seeing on the ESP Builders First Source purchase

1 orders that you reviewed from the year 2000 through
2 2008?

3 A They were all job specific. There were
4 no general orders. They were all job lot
5 quantities.

6 Q Couple hundred a piece here and there?

7 A What?

8 Q A couple hundred windows a piece here
9 and there?.

10 A No. A dozen or so windows here and
11 there, generally. Sometimes less.

12 Q And the -- did -- was TCR identified as
13 the customer on any of those purchase orders?

14 MR. TRAMMELL: Object to form.

15 A No.

16 Q If, in fact, a purchase order is for a
17 custom product, it's not a standard BFS product,
18 will the purchase order reflect the customer for
19 whom the order is being made?

20 A It may. But please allow me to clarify.
21 I was not looking at individual purchase orders. I
22 was looking at a list of all the purchase orders and
23 the associated products that were identified on the
24 purchase order.

25 Q And I take it for a number of those data

1 points on the list there exist a PDF or data backup
2 where you'd be able to regenerate the actual
3 purchase order; is that correct?

4 A That's possible. It's likely.

5 Q Okay. Did you determine what the total
6 number of ESP window products was that Builders
7 First Source had purchased in the 2000-2008
8 timeframe?

9 A Quantity, no. Dollar value, I don't
10 remember specifically, but I'm going to guess around
11 \$750,000.

12 Q If there's a phone call you need to take
13 or something, we can take a break.

14 A There's not.

15 Q So what else did you learn about the
16 entity known as Total Opening Sales or the person
17 who apparently owned it, Larry Bratton, besides what
18 you told me today?

19 A I learned Builders First Source paid
20 Total Opening Sales about \$400,000 for installations
21 in the late 2000 era. And additionally that he had
22 purchased about \$25,000 in product from Builders
23 First Source.

24 Q Anything else?

25 A Not that I recall.

1 Q Did you investigate how much in
2 commissions he'd been paid on the brokering of
3 Builders First Source products?

4 A I was unable to find that information.

5 Q Did you look?

6 A I requested his employment history. And
7 that's when I learned he was not an employee and did
8 not have ready access to that information, because
9 he was not an employee.

10 Q Right. It would be a 1099, right?

11 A That is correct.

12 Q Did you research the Total Opening of
13 Larry Bratton in 1099s?

14 A No.

15 Q Do you know for a fact the \$400,000 of
16 installation is purely installation, or may, in
17 fact, be a combination of installation and brokerage
18 commissions?

19 A I don't know the answer to that.

20 Q Is Larry Bratton and Total Opening, is
21 that a one-off in the Builders First Source system,
22 or are there other brokerage salespersons such
23 as him?

24 A He's the first and only I've heard of
25 with such a scenario.

1 Q Now, we've established all the other
2 outside salespeople were commissioned, correct?

3 A To the best of my knowledge, yes.

4 Q I'm not sure I completely confirmed,
5 even though they're commissioned, they are still W-2
6 employee, correct?

7 A To the best of my knowledge, yes.

8 Q So Mr. Bratton is apparently the only
9 1099 Builders First Source outside salesperson that
10 you've ever identified?

11 A I would not characterize him as a
12 Builders First Source, an outside salesperson. But
13 to the extent of your question, yes, he's the only
14 person I've ever heard of that's 1099.

15 Q And he's the only outside brokerage
16 person that you've ever heard of?

17 A That is correct.

18 Q Have you done any investigation to see
19 if Builders First Source Southeast has had any other
20 part-time, outside broker such as Mr. Bratton? Have
21 you asked any of the other subsidiaries whether
22 they've engaged in that practice?

23 A No.

24 Q Is there a Builders First Source manual
25 or policy, written or oral, regarding the conduct of

1 its outside salespeople?

2 A There is a Builders First Source
3 employment manual. As to whether or not there's any
4 specific information to outside salespersons, I
5 don't know.

6 Q Is there any Builders First Source
7 policy, written or oral, regarding the existence or
8 conduct of outside part-time brokers?

9 A Not to my knowledge.

10 Q Have you made an inquiry as to how it
11 came to pass, one, that this one-off outside
12 brokerage arrangement occurred in the Builders First
13 Source family?

14 A Yes.

15 Q Please?

16 A I've not gotten a response. I've only
17 just been made aware of this this morning.

18 Q While we're in Plaintiff's Exhibit 512,
19 let's go back to the very first page and page
20 through it together. Have you seen Bates stamp
21 5036, page 1 of the exhibit, have you seen that page
22 before?

23 A I have, yes.

24 Q What is it, please?

25 A It's titled an Agreement Draft.

1 Q Okay. And do you know the source of
2 this?

3 A I presume it is a Trammell Crow
4 document.

5 Q Is there any information on here from
6 One Belle Hall -- excuse me, from Builders First
7 Source that you're aware of?

8 A I see under the name of the
9 subcontractor or vendor it identifies Builders First
10 Source-Total Opening Sales, as well as the address
11 we previously discussed was not a Builders First
12 Source location, and it identifies a contact as
13 Larry Bratton. I'm unfamiliar with the phone
14 numbers identified.

15 Q What is TCR?

16 MR. TRAMMELL: Object to form.

17 A I believe them to be a multifamily
18 housing developer.

19 Q Has Builders First Source ever had a
20 relationship with TCR?

21 A I know we have sold them materials in
22 the past.

23 Q Do you know the period of that
24 relationship?

25 A I do not.

1 Q Do you know whether they've ever been a
2 preferred builder?

3 A I hear the term "preferred builder" all
4 the time with different definitions, so I don't
5 know.

6 Q Does Builders First Source use vendor
7 contracts with large builders or builders that it
8 regularly does business with?

9 A Yes. I would not necessarily
10 characterize them as a vendor contract, but we
11 generally have contracts with larger builders.

12 Q And what do those contracts generally
13 provide?

14 A I don't know everything they provide.

15 Q Is it -- for instance, is it really just
16 a list of standard products that that customer uses?
17 Or is it a bunch of cross indemnities? Or is it
18 preferred pricing or discounts? What's the purpose
19 of the contract?

20 A Terms and conditions of the sale. To
21 the extent of my knowledge, I'm not aware of pricing
22 or other nature -- other items of that nature in the
23 contract.

24 Q Has Builders First Source ever had a
25 contract with TCR?

1 A I don't know.

2 Q Have you investigated that?

3 A I have not.

4 Q How would you go about investigating
5 that?

6 A I would contact the legal department and
7 ask if such a document exists.

8 Q Okay.

9 MR. LUCEY: Ms. Dyer, I'm not going to
10 mark the record every time that there's a relevant
11 document that has been mentioned that's not been
12 produced in the case. And I take it that will be
13 okay with you? We can just leave it in the
14 transcript and when it's done we can talk about it.

15 MS. DYER: Okay.

16 BY MR. LUCEY

17 Q Sir, have you investigated whether or
18 not Builders First Source and TCR had any
19 relationship with regards to the supplying of
20 products for the One Belle Hall complex besides the
21 allegations which relate to the windows?

22 A I have researched all Builders First
23 Source billing and invoicing for One Belle Hall and
24 have found only the -- of the relevant time period,
25 only the -- I believe it was a \$124 invoice for some

1 miscellaneous materials. I did find a few years
2 after the project was completed some miscellaneous
3 sales, maybe not three digits, maybe three digits,
4 to some addresses at the Belle Hall complex, for
5 lack of a better word, but unrelated to TCR.

6 Q Was your search performed in such a way
7 that we'd pick up Belle Hall or One Belle Hall or
8 any other reasonable variation?

9 A Yes.

10 Q What about your search for Trammell
11 Crow, was their performance such where you'd pick up
12 all those variations, TCR, Trammell Crow, Trammell
13 Crow Residential, Trammell Crow of North Carolina,
14 et cetera, et cetera?

15 A Yes.

16 Q Let's go to the second page of
17 Plaintiff's Exhibit 512 which is Bates stamped TCR
18 5030 and is entitled at the top Energy Saving
19 Products of Florida. Have you seen this document
20 previously and can you tell me what it is?

21 A I've seen it previously. It appears to
22 be a document created by ESP indicating that product
23 or products were sold to another Builders First
24 Source location with a ship to address of Belle Hall
25 in Mount Pleasant.

1 Q This is starting to get intriguing,
2 isn't it?

3 A Very.

4 Q So does there exist a Builders First
5 Source apparently Edisto in Conway?

6 A No.

7 Q Does there exist a Builders First Source
8 Edisto anywhere?

9 A Yes.

10 Q Where is that?

11 A Edisto Island.

12 Q Does there exist a Builders First Source
13 in Conway?

14 A There used to be an office in Conway.

15 Q Was there an office in Conway in 2006?

16 A I believe there was.

17 Q Why do you describe it as an office?

18 A It was a -- it was a corporate office of
19 sorts for the former -- for Southeast Group. I
20 believe it was the old Pelican office.

21 Q But not a store?

22 A Not at that address.

23 Q Were there any shipping activities at
24 that address?

25 A Not to my knowledge.

1 Q Purely administrative?

2 A That is my understanding, yes.

3 Q Which would include purchasing and
4 invoicing?

5 A I am unaware of any purchasing or
6 invoicing that occurred at that office.

7 Q Going back to the order confirmation we
8 saw in this Exhibit previously -- well, let's skip
9 that. Let's go to Plaintiff's Exhibit 513.

10 Exhibit 513 would be printable at any
11 Builders First Source distributor that was
12 generating this at the time, correct?

13 A That is correct.

14 Q They have their software, their local
15 software, and it's also coordinated with the Dallas
16 server?

17 A I don't know if there's software at the
18 location level or if when someone logs on to create
19 an order or an invoice or any other document if
20 they're not connecting to a computer room, a central
21 computer room somewhere.

22 Q Okay. And at any rate, they have a
23 computer that will print a document such as this
24 with Exhibit 513 with Builders First Source logo on
25 it, correct?

1 A That's correct.

2 Q And a different variation of this would
3 have been printed when the salesperson made the
4 original bid for the sale or the estimate for the
5 sale, correct? Proposal?

6 A Possibly.

7 Q You can't -- they could have gone
8 straight to sale? Or there first could have been a
9 proposal and they say yes, okay, book it, go, right?

10 A Could have been.

11 Q Now, did the outside salespeople have
12 software or laptops or the wherewithal to print an
13 estimate, a sales estimate, off of that computer
14 system?

15 A Some do.

16 Q And are they able to go to their truck
17 and print it on a portable printer? Or do they have
18 to go to their home office? Or do they go to the
19 store? How does that work?

20 A I'm not aware of any instance where an
21 invoice is printed in any non-BFS location.

22 Q So you don't think an outside
23 salesperson can print a bid, a sales quote in their
24 home office?

25 A I think it's possible.

1 Q That's the way it works today, right?

2 A I believe it is.

3 Q It's just a question how long your
4 outside salespeople have been able to do that,
5 correct?

6 MS. DYER: Object to form.

7 A I don't know when they could have
8 started doing that or how frequently they do. I
9 don't know the answer to that.

10 Q And presumably there's some sort of
11 username and you log in and then you work, correct?

12 A I don't know how that side of the sales
13 really works.

14 Q Tell me the investigation that Builders
15 First Source has performed to satisfy itself that it
16 never provided Larry Bratton with access to that
17 computer system?

18 A We haven't. I've only become aware of
19 him not being an employee this morning. So I've not
20 had the opportunity to research that.

21 Q It would appear -- it would appear that
22 somebody generated the Builders First Source
23 document, Bates stamp 5067 in Plaintiff's Exhibit
24 512, off of a Builders First Source system, correct?

25 MS. DYER: Object to form.

1 A I don't know that that was printed off
2 of a Builders First Source anything, despite the
3 fact it has a Builders First Source logo on it. As
4 I mentioned earlier, it does not conform to any
5 format that I've ever seen for an invoice or
6 statement or order at Builders First Source.

7 Q So has Builders First Source considered
8 whether they've facilitated a fraud whereby Larry
9 Bratton utilized Builders First Source's name to
10 sell these windows to One Belle Hall project?

11 MS. DYER: Object to form.

12 A We have not considered any such
13 undertaking at this point. This is -- this is being
14 revealed to us.

15 Q It's a work in process?

16 A It certainly is.

17 Q All right, sir. Well, while we're on
18 page 5067, can you tell me, do you see the column
19 where it says Item?

20 A I do.

21 Q Is that a SKU number?

22 A I don't recognize it as a SKU number.

23 Q Are the item numbers in the item column
24 on Exhibit 513 that you brought with you today, are
25 those SKU numbers?

1 A I believe they are.

2 Q And is there a standard format for a SKU
3 number? For instance, you know, a code system where
4 the first number is the product line or the third
5 number is the region, the country it comes from, or
6 some other nonsense?

7 A For commodity products, there's a
8 relatively straightforward formatting process. For
9 others, possibly. In this instance, I can look at
10 that item number and correspond it to what the
11 product is.

12 Q Give me an example of that. You know
13 what, let me take a break and make a copy of that
14 because I can't follow you. Be right back.

15 (At this time there is a brief break in the
16 deposition from 12:09 p.m. to 12:10 p.m.)

17 BY MR. LUCEY

18 Q Sir, you were giving us an example of a
19 commodity SKU that you can directly associate with a
20 description, sir.

21 A I would not characterize this as a
22 commodity. But in this instance, the first -- the
23 first item ordered and shipped is 5. The item
24 number is 2850 3500S. And in the description, it's
25 identified as a 2850 3500 series window screen. So

1 in that instance, 2850 is the window size, 3500 is
2 the window series, and S for screen. The line
3 beneath that, 2060 3500 EQS, that is an equal sash
4 height, 2060, 3500 series screen.

5 Q There's no SKUs in that column. These
6 are MI product numbers, correct?

7 A They are an item number associated with
8 that window. Whether or not they are an identifying
9 SKU, I don't know.

10 Q Okay. So we don't actually know if we
11 have any SKUs in front of us on this table?

12 A I don't know.

13 Q Are the stock keeping units identified
14 with unique item numbers in the Builders First
15 Source system?

16 A For inventory items, yes.

17 Q And are you able to describe for me how
18 the non-inventory items are tracked?

19 A No.

20 Q Okay. Going back to the second page of
21 Plaintiff's Exhibit 512, the purchase order entitled
22 Energy Saving Products, have you seen documents such
23 as this in Builders First Source records relating to
24 other ESP purchases or sales?

25 A No.

1 Q Do you have a belief as to the source of
2 this form of document? In other words, that this is
3 an ESP standard purchase order of some sort?

4 A I do not have an opinion.

5 Q And I assume that you don't know whose
6 handwriting it is?

7 A I do not.

8 Q Let's go to the fourth page of
9 Plaintiff's Exhibit 512, which is another Builders
10 First Source computer-printout-looking document
11 entitled "Statement Copy." Do you see that?

12 A I do.

13 Q Have you seen this document previously?

14 A I have.

15 Q And can you tell me what this document
16 is?

17 A No.

18 Q Does it appear similar to other
19 statement copies printed off of the Builders First
20 Source system?

21 A No.

22 Q And what is different about this one?

23 A It's formatted in a landscape format,
24 whereas Builders First Source statements with which
25 I am familiar are formatted and printed in a

1 portrait orientation.

2 Q When did they change to portrait?

3 A I have never -- I've never seen one
4 that's not.

5 Q Pelican was always landscape.

6 MS. DYER: Question.

7 Q Are you aware of the Pelican invoices?

8 A No.

9 Q Is this the same order number that we
10 saw for Exhibit 513 again?

11 A I'm sorry. 513. No, the number is
12 different. If we're talking about the number near
13 the upper right corner of the statement copy.

14 Q Okay. Have y'all researched this number
15 to see if there's a conflicting invoice?

16 A We have. And there is.

17 Q And again, does the researched invoice
18 that you brought with you, Plaintiff's Exhibit 514,
19 does it not match the statement copy that we're
20 seeing in Plaintiff's Exhibit 512?

21 (Patient's Exhibit No. 514 is marked for
22 identification.)

23 A The BFS entity, the sold to, the shipped
24 to, the date, the products, the quantities and the
25 pricing are all inconsistent.

1 Q All right. I'll get back to that after
2 we make a couple of copies at the next break, sir.

3 Let's go to next page of Plaintiff's
4 Exhibit 512, which is a letter dated May 2nd, 2006,
5 purporting to be from Builders First Source
6 Southeast Group, Inc. at 4450 Marco Lane to a Kyle
7 Crout. Do you recognize this document?

8 A It looks like a typical Builders First
9 Source letterhead.

10 Q Okay. So while we may have some
11 questions about the invoices, it doesn't appear that
12 there's any question that Builders First Source
13 entered an agreement with Trammell Crow to provide
14 windows at One Belle Hall, correct?

15 MR. TRAMMELL: Object to form.

16 A I would not reach that conclusion based
17 on this document.

18 Q Well, we looked at Plaintiff's Exhibit
19 44, which is the purchase order, and you identified
20 that as being signed by Bob Lanier who is an AVP for
21 Builders First Source, correct?

22 A Could you refresh me of that, please?

23 Q Sure.

24 A Yes, that is a -- that appears to be a
25 purchase order and it appears to be signed by Bob.

1 Q Okay. And it appears, if we combine the
2 information we see on page 5033 with the information
3 we see in the face of Plaintiff's Exhibit 44, that
4 TCR generated a PO, they sent it to either Larry
5 Bratton or Builders First Source. Somehow it got
6 into Bob Lanier's hands, who is Builders First
7 Source. He executed it and he sent it back to TCR,
8 but with an additional addendum that Builders First
9 Source was going to require on this job. And we see
10 by the addendum, which is attached to Plaintiff's
11 Exhibit 44, that TCR signed the addendum and sent it
12 back to Bob Lanier, correct?

13 A That appears to be what I'm seeing here.

14 Q So there appears to be little doubt that
15 Builders First Source was involved on the front end
16 of the sale of the windows to or for use at the One
17 Belle Hall project, correct?

18 MS. DYER: Objection to form.

19 A It appears that BFS was involved in
20 the -- in receiving the PO and addressing some
21 contract to deliver them, yes.

22 Q Okay. So at the front end of this
23 window transaction, Builders First Source agreed to
24 supply the ESP windows to One Belle Hall project,
25 correct?

1 A It appears so.

2 Q And Bob Lanier, I think you mentioned he
3 was retired?

4 A Yes.

5 Q Do we know where he's located?

6 A Someone at BFS does. I don't
7 personally.

8 Q Can you provide that to us?

9 A I can.

10 (This page contains requested information.)

11 Q And has anybody taken the opportunity to
12 ask Bob Lanier about this unusual course of events
13 that you and I are discussing this morning?

14 A I believe my attorney has spoken with
15 him.

16 MS. DYER: Can we go off the record?

17 (At this time there is an off-the-record
18 conversation.)

19 Q Has your attorney provided you with any
20 information from Bob Lanier? I'm not asking what it
21 is, just whether she has.

22 A Not that I recall.

23 Q So she's spoken with him but has
24 provided you with no information from him?

25 A If she did provide me with information

1 specific to whatever correspondence that was, then I
2 don't recall it at this time.

3 Q Okay. You referenced correspondence. I
4 thought you said the first time she spoke to him.
5 Do you recall whether it was written or oral?

6 A I have no idea.

7 Q Do you have any information to share
8 with us today from Bob Lanier, directly or
9 indirectly from Bob Lanier?

10 A No.

11 Q Do we know where Larry Bratton is
12 located these days?

13 A My attorney indicated if he's --
14 MS. DYER: We've identified him as a
15 witness as well. I believe you have his address.

16 A If he's alive, in Alabama, last known to
17 be in Alabama.

18 MR. LUCEY: Counsel, my vague
19 recollection was the discovery response said
20 believed to be in Alabama. Do you believe there's
21 an address in there?

22 MS. DYER: Yes. If not, I believe we've
23 found him since then. But I think there's an
24 address.

25 BY MR. LUCEY

1 Q Do you have any information from Larry
2 Bratton, directly or indirectly, related to anything
3 that you and I are discussing today?

4 A No.

5 Q Do you know when his relationship with
6 Builders First Source ended?

7 A No.

8 Q In 2007 he described himself as having a
9 15-year relationship with Builders First Source. Do
10 you have any information to substantiate or
11 contradict that assertion by Mr. Bratton?

12 A No.

13 Q What's the last year that you know they
14 had a relationship, the most recent year?

15 A Based purely on payment information, I
16 was able to find relative to Total Opening Systems
17 (sic) late 2000s was the last I recall.

18 Q And going back to the Builders First
19 Source purchase orders from the year 2000, 2008 you
20 were able to locate, or at least on the spreadsheet
21 of the list, was there any information available to
22 you or your people that would have indicated to you
23 to what extent those eight years of purchase orders
24 did or did not relate to Larry Bratton or Total
25 Opening Sales?

1 A They're -- the ESP sales were almost
2 exclusively in Florida. The total amount of the --
3 the total amount of the purchase orders from
4 Southeast Group amounted to, I believe, around
5 \$2,000 for one window and some other miscellaneous
6 parts. Whether or not Larry Bratton?

7 Q Bratton?

8 A Bratton, whether or not he had any
9 involvement in those, I do not know.

10 Q You don't know if he was involved in the
11 Florida sales?

12 A I have no reason to believe he had
13 anything to do with Florida.

14 Q Okay. Let's skip forward, please, to
15 Bates stamp 5021 in Plaintiff's Exhibit 512.

16 A Okay.

17 Q Have you seen this document previously?

18 A I believe I have.

19 Q And what do you understand it to be?

20 A It appears to be an ESP document
21 identifying an order.

22 Q And this one again uses the Conway
23 address but uses a different Builders First Source
24 name, correct?

25 A It does.

1 Q It's no longer Edisto. It's Southeast
2 Group, correct?

3 A That is correct.

4 Q Is that the correct entity that's at
5 that location?

6 A I believe Conway is Southeast Group
7 only. So yeah, I believe that would be correct.

8 Q Now, this particular document relates to
9 River Landing, correct?

10 A That's -- that appears to be in the ship
11 to column.

12 Q And are you familiar with River Landing
13 as another TCR project?

14 MR. TRAMMELL: Objection.

15 A I am not. Let me say, maybe I have not
16 seen this one. I don't recall seeing a River
17 Landing document specifically before, at least
18 identifying that it said River Landing.

19 Q Have you investigated, you or your
20 people investigated whether or not Builders First
21 Source supplied ESP windows to the TCR projects
22 known as River Landing Drive, Parkside, Blakeway,
23 Pier View, 234 Seven farms, or Alexan Wellborn?

24 MR. TRAMMELL: Object to form.

25 A No.

1 Q You don't know one way or the other?

2 A With specific supply to Trammell Crow, I
3 looked exclusively for Belle Hall, Belle Hall named
4 communities and street names associated with Belle
5 Hall.

6 Q You've never been asked whether or not
7 Builders First Source supplied ESP windows to
8 Parkside?

9 MR. TRAMMELL: Object to form.

10 A Not that I recall.

11 Q And when you were researching ESP
12 windows being supplied for use at One Belle Hall,
13 did you look to see whether or not they had
14 potentially been supplied for use by Total Opening
15 Sales instead of One Belle Hall or instead of TCR?

16 A I researched the sale of any windows to
17 Total Opening Systems (sic) and found nothing of any
18 significance.

19 Q Did you also research the sale to Larry
20 Bratton?

21 A Yes.

22 Q Same thing?

23 A No indicated sales to Larry Bratton.

24 Q Going to the following page, Bates stamp
25 5022, another ESP document with a handwritten note,

1 attention Mickey something with a phone number. Do
2 you know whose handwriting that is?

3 A I do not.

4 Q Have you seen this document previously?

5 A It may have been one that I had the
6 opportunity to see but could not find it legible in
7 the format. So whether or not I've seen it, I don't
8 know.

9 Q The next page in this exhibit is a
10 statement copy with a "received March 31" stamp on
11 it. Do you see that?

12 A I do.

13 Q Have you seen this statement copy
14 before?

15 A I believe I have.

16 Q And what do you recall about how this
17 differed from the other BFS looking documents that
18 you and I have looked at in Plaintiff's Exhibit 512?

19 A It appears to be consistent with those
20 other documents provided. Although it is identified
21 as a charge invoice, and I don't think I've seen
22 that before.

23 Q Let's go to TCR 5042 within Plaintiff's
24 Exhibit 512, same set of questions, please.

25 A It appears to be consistent with the

1 former document and identified as a charge invoice.

2 Q I take it you're unaware today as to
3 whether any of the BFS-invoice-looking documents in
4 Plaintiff's Exhibit 512 are authentic or not,
5 correct?

6 A I don't know if they're authentic or
7 not. They are -- the ones I've been provided to be
8 able to research numbers on are inconsistent with
9 what we have.

10 Q Is Builders First Source maintaining a
11 list of approved products?

12 A Not that I'm aware of.

13 Q Does Builders First Source have a
14 policy, written or oral, regarding its salespeople's
15 deviations from the list of approved products, if
16 there is one?

17 A I don't know.

18 Q On the Builders First Source -- excuse
19 me -- Builders First Source computer system, can one
20 access all of the products available through
21 Builders First Source?

22 A I don't know.

23 Q Can one access products that are not
24 available through Builders First Source?

25 A Are you referring to Internet research

1 or within the BFS --

2 Q I mean within the BFS computer system?

3 A If -- if a product has a SKU, I believe
4 they can look up that product with some limited --
5 with some limited information.

6 Q What if it doesn't have a SKU?

7 A I don't know.

8 Q Can an outside salesperson add a
9 product, a custom product to a quote?

10 A An outside salesperson can add a custom
11 order product.

12 Q And is there any approval required for
13 doing that?

14 A I don't know.

15 Q What can you tell me about how it came
16 to pass that Builders First Source began selling ESP
17 windows in or before the year 2000?

18 A I have no information about that.

19 Q What can you tell me about Builders
20 First Source vetting the ESP products in or before
21 2000?

22 A I have no information about that.

23 Q You're aware that the IRC 2000 went into
24 effect in most jurisdictions in or by mid-2002?

25 A I wouldn't necessarily agree "in most

1 jurisdictions," but I know many jurisdictions have
2 adopted it.

3 Q And those that did required third-party
4 certification for the use of those windows in their
5 jurisdiction, correct?

6 A I believe that's correct.

7 Q And the earliest third-party
8 certification we've seen by ESP is what, 2004?

9 A No, I've seen approvals prior to that on
10 the Florida product approval website for the 2000
11 code.

12 Q Were they sold in -- were the ESP
13 windows sold in South Carolina between 2002 and
14 2004?

15 A I don't recall seeing any dates that
16 early for the very limited South Carolina sales of
17 the ESP products.

18 Q What do you know about Raymond Building
19 Products?

20 A My -- I believe they acquired the assets
21 of ESP.

22 Q Approximately when do you believe that
23 occurred?

24 A I do not know.

25 Q Do you have a belief as to whether that

1 occurred before or after the ESP windows were sold
2 to One Belle Hall?

3 A My opinion was afterwards, but I don't
4 have anything to substantiate that.

5 Q Why were you thinking it was afterwards?

6 A From my research of ESP, they seemed to
7 have disappeared around 2008 or '9, and I just
8 assumed that they went out of business at that
9 point, and at some point after that Raymond acquired
10 their assets.

11 Q What research did you see before they
12 appeared to have disappeared in 2008 or 2009?

13 A Could you repeat that?

14 Q Sure. What research did you see
15 relating to ESP prior to them disappearing in 2008
16 or 2009 which indicated to you that it was in 2008
17 or 2009 timeframe when they disappeared?

18 A I seem to recall some testing or
19 approvals dated in the 2006 to 2008 era, and then
20 subsequently I didn't find anything dated past 2008
21 or '9.

22 Q Prior to Raymond acquiring the assets of
23 ESP, did you observe whether or not ESP was a
24 subsidiary of Raymond Building Supply?

25 A I didn't see anything to suggest that.

1 Q A division of Raymond Building Supply?

2 A I don't recall seeing anything to
3 suggest that.

4 Q Did you see the warranty issued on the
5 windows?

6 A No.

7 Q You didn't see Raymond Building Supply's
8 name on that?

9 A I don't recall seeing it.

10 Q Let me hand you Plaintiff's Exhibit 515,
11 a screen print that you brought with you. What is
12 this, please?

13 (Plaintiff's Exhibit No. 515 is marked for
14 identification.)

15 A This is the Builders First
16 Source/Trammell Crow/Belle Hall condo-specific
17 account. That is, it is the -- it's the resource
18 that anything Builders First Source sold to Trammell
19 Crow for Belle Hall would go under.

20 Q And this account was created when?

21 A July 24th, 2007.

22 Q So this account relates to the
23 128-odd-dollar sale that you told me about that you
24 found about a year after construction?

25 A I believe it does.

1 Q Do you know whether or not Builders
2 First Source was provided with the window
3 specifications for the One Belle Hall job?

4 A I have -- no, I do not know if they were
5 provided with that.

6 Q Can -- did the list of windows purchased
7 from ESP by Builders First Source from the year 2000
8 through the year 2008 include a model 1841?

9 A I don't recall.

10 Q Going back to Plaintiff's Exhibit 44 for
11 a moment. The purchase order with the attached
12 addendum, the addendum appears to relate to the
13 provision of installation services by the vendor,
14 correct?

15 A You're going to need to give me a few
16 minutes to read that if you'd like for me to answer
17 that.

18 Q Certainly.

19 A Can you repeat the question, please?

20 Q Read the question back, please.

21 (At this time there is read back in the
22 record.)

23 MR. TRAMMELL: Object to form.

24 MS. DYER: Same objection.

25 A If we're discussing paragraph 3 of the

1 contract addendum, it appears to me to address
2 warranty for any installation if provided.

3 Q Where does it say "if provided"?

4 A It doesn't.

5 Q In paragraph 4 there's a lien waiver,
6 correct?

7 A Yes.

8 Q That also relates to installation
9 services, correct?

10 A I believe it could include installation.

11 Q And paragraph 1 provides for the vendor
12 to provide insurance coverage, correct?

13 A Vendor agrees to provide insurance
14 coverage..

15 Q And vendor would not be providing
16 insurance coverage unless vendor was installing,
17 correct?

18 MS. DYER: Object to the form.

19 A I would disagree with that.

20 Q Builders First Source provides insurance
21 coverage when it simply sells products?

22 A This is what I would call some
23 boilerplate language that I see routinely on
24 projects that Builders First Source supplies
25 materials only.

1 Q This is a standard Builders First Source
2 form?

3 A I don't know the answer to that.

4 Q Do you see the form number referenced at
5 top right-hand corner, BFS E069-0306?

6 A I do.

7 Q That's a form number from BFS, correct?

8 A That's what that identification suggests
9 it is.

10 Q Why did BFS insist that this contract
11 addendum be added to the One Belle Hall purchase
12 order for TCR?

13 A I don't know the answer to that.

14 Q What's the difference between a model
15 2031 and a model 2041?

16 A 2031 is a fin-type window meant for
17 installation in wood frame construction, while a
18 2041 is a flange-type window meant for installation
19 in a masonry entry.

20 Q What's the basis of that belief?

21 A The Florida product approval drawings
22 and documents for the window, as well as the
23 different sizes associated with those products on
24 the purchase order history, I was able to look at
25 for ESP windows.

1 Q Explain the second half of that answer
2 to me, please?

3 A The purchase order history identified a
4 small number of 2041 model windows. All of those
5 windows were identified by masonry size call-outs,
6 which are significantly different than size
7 call-outs for fin-type windows for frame openings.

8 Q Explain that to me, please.

9 A A fin-type window for a frame opening
10 would be a size call-out. A size call-out is,
11 substantially, the width of the window followed by
12 the height of the window in feet and inches.

13 For example, a 2860 is a 2'-8" wide --
14 speaking nominally, a 2'-8" wide by 6'-0" tall
15 window. A masonry or CMU window is called out with
16 a different set of identifiers.

17 For example, a 2-5, I believe is a 37"
18 wide by 61 or 62" tall window. But the dimensions
19 are not provided for in feet and inches.

20 Q So the call-out on the masonry window
21 will have a single number set and the call-out on
22 the fin window will have a dual number set?

23 A Not -- no, not necessarily. The masonry
24 call-out is two numbers, sometimes one of those
25 numbers is a fraction. Sometimes one is a whole

1 number and a fraction followed by another whole
2 number. The frame window will have the width
3 identified in feet and inches followed by the height
4 in feet and inches, and it could be as many as six
5 digits if the width or height of the window ends in
6 10 or 11-inches.

7 Q Six digits. But the frame, the fin
8 window is always four numbers?

9 A The fin window --

10 Q Two sets of feet, two sets of inches?

11 A That is correct.

12 Q Got that. Let's leave that behind.

13 Now, your example in the masonry window
14 gave me a single set -- a single number -- excuse
15 me. A single dataset. You called it a 2-5; that
16 was your example, right?

17 A That is correct.

18 Q What does a 2-5 equate to?

19 A The 2 in the 2-5 is, I believe, 37
20 inches of width. And the 5 is, I believe, 61 or 62
21 inches in height.

22 Q So if it's not an even numbered --
23 excuse me. A standard number call-out without
24 inches, a masonry window will use a fraction as
25 opposed to a second inch number; is that correct?

1 A No. There are standard-established
2 masonry sizes, they include the second identifier,
3 the height, I believe ranging from 3 through 6. And
4 the first number, I believe, ranging from 1 through
5 3, but there can also be a half designation.

6 For example, a half to 5, which would be
7 another width. And I apologize for not being more
8 specific with masonry call-outs, but I don't know
9 those offhand.

10 Q And your differentiation between the
11 2031 and the 2041, based upon the call-outs, was
12 purely from your review of the purchase orders, not
13 from your review of the test data or certification?

14 A The other piece was the drawing provided
15 for via the Florida product approval that identified
16 both the 2031 and a 2041 as the window. And within
17 that approval both fin-type installation and
18 flange-type installation was identified via
19 depiction and labeling.

20 Q And did the drawing clearly indicate
21 which number belonged to the fin-type and which
22 numbered belonged to the flange-type?

23 A It did not.

24 Q You got that information back from the
25 purchase order?

1 A Yes.

2 Q And I take it it's your belief that the
3 difference between a 2031 and 2041 does not relate
4 to whether or not it's impact resistant?

5 A That is correct.

6 Q Have you used any other resource other
7 than what you've just described to me to reach that
8 conclusion?

9 A To reach the conclusion that there's no
10 variation with respect to impact between 2031 and
11 2041?

12 Q Correct, that the variation has to do
13 with fin versus flange, rather than impact versus
14 non-impact?

15 A To support the impact side of that
16 question, every document that I've seen -- and when
17 I say document, I mean the research, the limited
18 research I did online, as well as the testing on
19 approvals and Florida product approval for the
20 windows identify the 2031 and 2041 simultaneously.
21 And everything that I've seen identifies them as
22 impact-resistant windows. I've not been able to
23 find anything that suggests either a 2031 or 2041
24 was ever manufactured as a non-impact product.

25 Q Well, one of the four -- at least one of

1 the four specimens in the third-party test report
2 were not impact, correct?

3 MS. DYER: Object to form.

4 A I didn't recognize that distinction.

5 Q Were the four specimens in the
6 third-party test report fin or flange or some
7 variation of that?

8 A I don't recall seeing which version was
9 tested.

10 Q Did you ever use the Wayback Machine to
11 find out what ESP technical information was
12 available back in the day on the Internet?

13 A Could you rephrase that for me?

14 Q Are you familiar with an electronic
15 service known as the Wayback Machine?

16 A I am not.

17 Q Let me ask you to go to Plaintiff's
18 Exhibit 146 in the notebook in front of you.

19 A What section is that in?

20 Q Tab 146, Exhibit 146. We're going to
21 look at 146.1 first, which is a series of emails
22 ending on October 31st, 2006. Do you see that?

23 (Previously Marked Plaintiff's Exhibit No.
24 146.1 is referenced.)

25 A I do.

1 Q It apparently relates to a collection of
2 the outstanding \$5,000 balance on the TCR One Belle
3 Hall invoice?

4 A Correct.

5 Q And it's between Larry Bratton and TCR,
6 among others?

7 A Yes.

8 Q Page 2 of this has the initial email
9 from Larry Bratton to TCR regarding about --
10 regarding the payment, correct?

11 MS.. DYER: Object to the form.

12 Q At least in this exhibit?

13 A Yes.

14 Q And his signature line reads, "Larry
15 Bratton, Total Opening Sales & Installations, LLC
16 representing Builders First Source Corp."

17 Did I read that correctly?

18 A I believe you did.

19 Q Was Mr. Bratton authorized by Builders
20 First Source as of October 30th, 2006, to represent
21 to others that he and his company were,
22 "representing Builders First Source Corp."?

23 A I don't know.

24 Q Let's go to 146.2.

25

1 (Previously Marked Plaintiff's Exhibit No.
2 146.2 is referenced.)

3 A I would like to point out, though, that
4 I'm not aware of a Builders First Source entity
5 called Builders First Source Corp.

6 Q Kind of like TCR, huh?

7 MR. TRAMMELL: Object to form.

8 BY MR. LUCEY

9 Q Sir, have you checked to see whether or
10 not Builders First Source has ever used the name or
11 moniker Builders First Source?

12 (At this time there is a telephonic
13 interruption.)

14 (At this time there is a brief break in the
15 deposition from 1:01 p.m. to 2:07 p.m.)

16 BY MR. LUCEY

17 Q Sir, I'm handing you what's been marked
18 as Plaintiff's Exhibit 516 and Plaintiff's Exhibit
19 517 and Plaintiff's Exhibit 518. Plaintiff's
20 Exhibit 516 is a list of various invoices, I
21 believe, and attached to it you'll see starting at
22 page 3 various Builders First Source invoices for a
23 ship to project known as Meeting Street Builders at
24 Tennyson Row. Do you see that?

25

1 (Plaintiff's Exhibit Nos. 516 through 518 are
2 marked for identification.)

3 A I do.

4 Q The first one is February of 2006, and
5 it's landscape, correct?

6 A We're looking at BFS 109; is that
7 correct?

8 Q Yes?

9 A Yes.

10 Q Same with BFS 110 -- excuse me -- yes,
11 110, correct?

12 A Yes.

13 Q Same with BFS 113, correct?

14 A Yes.

15 Q And 114, correct?

16 A Yes.

17 Q And 117, correct?

18 A Yes.

19 Q All February 2006 and all landscape,
20 correct?

21 A I didn't look at the dates on the
22 earlier, but yeah.

23 Q And if we flip through the rest of the
24 document, you can see more landscape Builders First
25 Source invoices for the Meeting Street and Tennyson

1 Row project, correct?

2 A Yes, I see behind 117 that are
3 consistent.

4 Q And if we go to Plaintiff's Exhibit 517
5 over here, you'll find a ship to BFS invoice dated
6 October of 2002 to Wieland Homes in South Carolina,
7 correct?

8 A Yes.

9 Q And it's landscape, correct?

10 A It appears to be.

11 Q And we go to Exhibit 518, you'll find a
12 series of invoices from 2006 from Builders First
13 Source with a ship to address of New Tradition
14 Custom Homes at 250 Island Park -- 230 Island Park
15 Drive, correct?

16 A Yes.

17 Q And they're all landscape, correct?

18 A Yes.

19 Q Do you still feel like the Landscape
20 orientation of the One Belle Hall invoices is a
21 reason for them not to be authentic Builders First
22 Source invoices?

23 A I don't recall stating that their
24 landscape orientation would be a reason to think
25 that they're not authentic.

1 Q You don't recall saying this morning
2 that you didn't recognize the format, in part,
3 because they're landscape, not portrait?

4 A Yes.

5 Q And we see from these last three
6 exhibits that lots of Builders First Source
7 invoice-type documents or shipping documents are
8 landscape, not portrait, correct?

9 A Yes.

10 Q Let me show you Plaintiff's Exhibit 519.
11 It's a printout from the Florida Department of
12 State, Division of Corporations relating to Energy
13 Saving Products of Florida, Inc., correct?

14 (Plaintiff's Exhibit No. 519 is marked for
15 identification.)

16 A Yes.

17 Q And it shows on their last event that
18 there was administrative dissolution for annual
19 report on September 16, 2005, correct?

20 A Yes.

21 Q And you were unaware of that before
22 today?

23 A That is correct.

24 Q And nobody at Builders First Source that
25 you talked to regarding this case was aware of that,

1 that you know of?

2 A That is correct.

3 Q And you have no information or evidence
4 to contradict that, correct?

5 A No, I do not.

6 Q Let me hand to you Plaintiff's Exhibit
7 520 which is the group of documents that you had in
8 a collection behind the Keystone certification,
9 correct?

10 (Plaintiff's Exhibit No. 520 is marked for
11 identification.)

12 A I believe so.

13 Q That you brought with you this morning?
14 If we look at the first CAR, C-A-R, Keystone CAR,
15 it's No. 146-190, correct?

16 A Yes.

17 Q And this particular CAR does not have an
18 impact rating on it, does it?

19 A No, not that I'm aware of.

20 Q And if we go to the second CAR, it's
21 No. 146-34 (sic), correct?

22 MS. DYER: Object to the form.

23 A Sir, could you restate the question?

24 Q If we go to the second CAR, it's
25 No. 146-234, correct?

1 A That is correct.

2 Q And this does have an impact rating,
3 correct?

4 A Yes.

5 Q Two different certifications, correct?

6 A Yes, I believe so.

7 Q Both certifications rely on the same
8 test report, correct?

9 A Yes.

10 Q And both certifications have an April
11 2007 revision, correct?

12 A Yes.

13 Q Are you able to testify as to what the
14 difference was between the certification that
15 existed at the time that the One Belle Hall windows
16 were sold and the ones we're looking at that you
17 brought with you this morning, the revised ones?

18 A No.

19 Q And behind these two certifications you
20 have the infamous test report, NCTL 210-2947-2,
21 correct?

22 A Yes.

23 Q Referencing both CARs?

24 A Referenced in both CARs, yes.

25 Q And the expiration on the test report

1 does not match the expiration on the CARs, does it?

2 A It does not.

3 Q And the test report does, in fact --
4 does reflect that it has a revision date of March
5 29th, 2005, correct?

6 A Yes.

7 Q Which is four years different than the
8 revision date on the CARs, correct?

9 A No.

10 Q I'm looking at the wrong date. Is it
11 the same revision date?

12 A The date I see on the National Certified
13 Testing Lab report, the revision date is 3/29/05.

14 Q Right.

15 A The revision date on the Keystone CAR is
16 4/12/07.

17 Q Two years different?

18 A Approximately, yes.

19 Q Okay. I know you've had limited
20 experience with test reports, third-party test
21 reports, but are you familiar with the practice that
22 when it's revised that the nature of the revision is
23 appended to the test report?

24 A No.

25 Q You're not familiar with that practice?

1 A No.

2 Q And the nature of the revision is not,
3 in fact, described in this test report, is it?

4 A I haven't read it thoroughly enough to
5 be able to state that with any certainty.

6 Q Usually it's the page that's appended to
7 the last page of the test report. So if you go to
8 the signature page, which is page 6, and look behind
9 that, there's an Appendix A, but there's no
10 revision, correct?

11 A There is an Appendix A, but there is not
12 a revision identified that I see.

13 Q Okay. Now, looking back at the first
14 page of the test report, it sets forth the fastener
15 method for the test specimens at the bottom of the
16 first paragraph under General, correct?

17 A I'm sorry. Say that again, please.

18 Q It sets forth the fastener pattern for
19 the test specimens in the last sentence of the first
20 paragraph under General, correct?

21 A It identifies how it was attached, yes.

22 Q And then the following paragraph sets
23 forth the glazing that's being tested, correct?

24 A That's what it appears to describe.

25 Q And the third sentence reads, "A

1 15-millimeter thick polyester film (Film Technology
2 Inc. Part No. T396-et cetera) was adhered to the
3 glazing surfaces in No. 2 and 3."

4 Correct?

5 A Yes.

6 Q But if we pause there for a moment and
7 go to page 3, you see a Specimen 2A, correct, in the
8 middle of the page? Are you on page 2 of the test
9 report, sir?

10 A I'm on page 3.

11 Q Third page of the document is page 2 of
12 the test report. Do you see Specimen 2A under Par
13 No.?

14 A I do.

15 Q And we just flipped forward to the
16 bottom of the fourth page, page 3 of the test
17 report, we see Specimens 2B, 2C and 2D, correct?

18 A I do.

19 Q So now we know there's four specimens,
20 right?

21 A Yes.

22 Q And none of them are labeled 2 and 3,
23 are they? None of the specimens are labeled
24 Specimen 2 and Specimen 3, are they?

25 A Not that I see.

1 Q So there's an immediate pattern
2 ambiguity as between the specimens described in the
3 paragraph we looked on page 1 of the test report
4 referring to the plastic film on Nos. 2 and 3 and
5 the four specimens that are actually tested in the
6 test report, correct?

7 MS. DYER: Object to the form.

8 A I disagree.

9 Q What does 2 and 3 refer to?

10 A It says the glazing surfaces.

11 Q Two and 3?

12 A Yes.

13 Q What do you think they are, if it's not
14 Specimens 2 and 3?

15 A Glazing surfaces, based on my
16 experience, identify the location on the surface of
17 the glazing of the window.

18 Q Which glazing surface do you believe
19 this to be, sir?

20 A Glazing surface No. 2, I would believe
21 is the interior surface of the outermost pane of the
22 glass, or glazing.

23 Q And glazing surface 3, please?

24 A Glazing surface 3 would either be the --
25 would be the next surface inward from glazing

1 surface 2.

2 Q So you believe the plastic film is
3 applied to both sides of the interior side of the
4 IGE; is that correct, sir?

5 A As this is presented, it suggests that
6 it's -- it's adhered to surfaces 2 and 3. Whether
7 or not there are more than four surfaces, I can't
8 infer from the information that I have in front of
9 me.

10 Q You can't tell from this test report?

11 A Not with the limited time I've looked at
12 it.

13 Q Have you studied this test report before
14 today, sir?

15 A Studied it would be an exaggeration.
16 I've seen it and read through pieces of it.

17 Q Okay. Well, going back to the first
18 paragraph again, Glazing, the following sentence
19 reads: Each impacted specimen used Sika 552
20 adhesive back-bedding, the structural specimen used
21 GE2800 structural silicone with a snap-in rigid
22 glazing bead.

23 Do you see that?

24 A I do.

25 Q To what are they referring when they say

1 structural specimen?

2 MS. DYER: Object to the form.

3 A I don't know.

4 Q What is the difference between GE2800
5 and Sika 552?

6 A Based on my limited research and
7 anticipation of this deposition, Sika 552 is a
8 structural adhesive. And the information available
9 for a GE branded 2800 series silicone is -- is not
10 identified as a structural adhesive but instead as a
11 sealant.

12 Q It's actually identified as a glazing
13 bedding, is it not?

14 A I don't recall that from the few minutes
15 I spent looking for that..

16 Q Did you print out whatever you looked at
17 for your information?

18 A I did not.

19 Q Can you describe for us what the
20 anticipated performance differences would be in
21 those two silicones?

22 A No, I don't know.

23 Q Okay. Have you heard in the window
24 industry, sir, a common parlance that refers to the
25 AAMA 1013 lowest common denominator test, air, water

1 and structural, simply referred to as the structural
2 testing?

3 A No.

4 Q So you're unaware of whether the
5 structural specimen for GE2800 equates to the AAMA
6 101 specimen?

7 A I don't know.

8 Q Let's look at the test results, pages --
9 I'll use the test report page number, pages 2 and 3.
10 Page 2 is the test results for Specimen 2A and the
11 bottom of page 3 and then onto page 4 and 5 are the
12 test results for specimens 2B through 2D, correct?

13 A That's what it appears to me to be.

14 Q What glazing was used for the specimen
15 2A?

16 A It's not obvious to me.

17 Q Well, let's see if we can back into it,
18 all right? Specimens 2B, C and D are being impact
19 tested, correct?

20 A That's what it appears.

21 Q And we go back to paragraph 1 and the
22 glazing, we know that the impact specimens are using
23 Sika 552, correct?

24 A Part of the sentence says: Each
25 impacted specimen used Sika 552.

1 Q And we know that some specimen used a
2 GE2800, correct?

3 A Part of that same sentence continues on,
4 used GE2800.

5 Q So if the specimens that were impact
6 tested, 2B, C and D, used the Sika 552, specimen 2A
7 had to have used the GE2800, correct?

8 A I would not have inferred that from
9 what's provided.

10 Q Are you able to tell what specimen in
11 this entire document used the GE2800?

12 A Based on the information provided, no.

13 Q Okay. Are you able to tell me what
14 glazing material was utilized to pass the air, water
15 and structural testing for a DP-50 rating?

16 A Absent some additional information, I
17 suspect it would be the glazing described on the
18 cover page under the title Glazing. The overall
19 thickness of .75" consisting of 2 lites of 3/16"
20 thick annealed glass and one space created by a
21 Swiggle Strip spacer system. And subsequently the
22 15-millimeter thick film adhered.

23 Q And what was the back-bedding, what was
24 the glazing compound utilized on the sole specimen
25 that was water tested to a DP-50?

1 MS. DYER: Object to the form.

2 A I don't know.

3 Q Sir, are you aware of whether or not you
4 can substitute glazing compounds from a certified
5 product without equivalency letter from the
6 third-party certifying agency?

7 A I'm not aware.

8 Q Sir, have you read the report of Fuller
9 Engineering in this matter?

10 A I don't think so.

11 Q Have you ever heard of that name before
12 in this matter?

13 A I don't recognize it.

14 Q Have you talked to an architect named
15 David Van Domelen?

16 MS. DYER: Domelen.

17 A Not that I recall.

18 Q Have you heard the name?

19 A No.

20 Q How about an engineer named Lucas Young?

21 A Don't recognize the name.

22 Q Has anybody shared with you that
23 Builders First Source is hiring an engineering firm
24 in this matter?

25 A I know we have an expert; I don't know

1 if it's an engineering firm.

2 Q Okay. So you -- you do know you have an
3 expert. Has anybody shared with you what that
4 expert had to say about this third-party test
5 report?

6 A Not that I recall.

7 Q Sir, if we go further back in the test
8 report we'll see the component drawings for the
9 specimens, correct?

10 A I see -- I see some component drawings.

11 Q The very first one is a profile and a
12 cross section of the window, correct?

13 A That's what it appears to be.

14 Q And the drawing has a revision date of
15 February 5, 2004?

16 A I don't know what I'm looking at. Show
17 me where that revision date would be.

18 Q It's in the revision box underneath
19 date, bottom right-hand corner.

20 A 5/11/01.

21 Q The revision is listed in the revision
22 box, sir, 1 inch above?

23 A I'm sorry. That's not legible to me.
24 It looks like it might conclude with an 04.

25 Q Let me get a looking glass for you.

1 A It looks like maybe '02 or '08? '05?
2 '04.

3 Q The '02 is the most cloudy, but the '04
4 is pretty evident, correct?

5 A I believe it is.

6 Q Did it ever cross your mind how a
7 drawing with a 2004 revision date could have been
8 authenticated on September 25th, 2003 on the test
9 date?

10 A No.

11 Q Be kind of hard, wouldn't it?

12 A If the dates are accurate, it would be.

13 Q Now, the cross section of profiles all
14 show a fin, correct?

15 A Those all appear to be fin windows.

16 Q There's no flanges, apparently, on those
17 pages, correct?

18 A I don't see anything that would be
19 consistent with a flange.

20 Q And if we go to the following page, we
21 see the extrusion for the frame, correct?

22 A Yes, that's an extrusion drawing.

23 Q Once again, we clearly see a fin
24 extending out from the middle to the right on this
25 extrusion, correct?

1 A That's what I believe it to be.

2 Q And if we go to the parts list, we only
3 see one header, one frame header, one frame sill,
4 one frame jamb, correct? We don't see any
5 variations or alternative headers and jambs, right?

6 A I don't see anything else immediately.

7 Q And we go further back, we've got the
8 sash component profiles, and then various vinyl
9 inserts of various types, correct?

10 A That appears to be.

11 Q There's no evidence that any flange
12 product was ever considered or certified in this
13 third-party test report, correct?

14 MS. DYER: Object to the form.

15 A I apologize. Let's go back to the
16 drawing of extrusion 1824.

17 Q Is that the first drawing, sir?

18 A That's the first drawing of an
19 extrusion, it's the second drawing overall.

20 Q Entitled Extrusion 1824, Master Frame?

21 A Yes.

22 Q Fiber Locks, Inc.?

23 A Yes.

24 Q Okay.

25 A I may have been distracted during that.

1 What was -- your question was, is that a fin or a
2 flange?

3 Q Yes, sir.

4 A That appears to be a fin intended for
5 wood frame construction.

6 Q Yes.

7 A Is that --

8 Q My understanding, you've been using the
9 word fin for wood framed construction and flange for
10 masonry construction?

11 A Right. Right. Based on the dimension,
12 it appears to be a fin for wood frame construction.

13 Q Correct. So you're not changing
14 anything in your prior answer?

15 A I'm sorry. I've gotten distracted with
16 the nomenclature we were using back then.

17 Q So we're at the point where a flange
18 model was considered or certified in this
19 third-party test report, correct?

20 MS. DYER: Object to the form.

21 A I don't see any drawings to suggest a
22 flange product was used.

23 Q And we didn't see any reference to a
24 flange product in the product description on page 1
25 of the test report, did we?

1 A No, I don't recall seeing anything, and
2 I don't see anything as I'm looking at it now.

3 Q And you're aware, of course, that
4 there's more difference between a fin and a flange
5 than simply the length of the lip that protrudes
6 from the frame, correct?

7 A It's product specific.

8 Q It's construction specific. It's wood
9 frame versus masonry. There's a different dimension
10 in the wall and the fin and the flange are attached
11 in different locations to account for the different
12 depth of the wall, correct?

13 A Among other issues, yes.

14 Q So it's not just changing the length of
15 the lip?

16 A Depending on the design of the window,
17 it could be.

18 Q It could be. But generally speaking,
19 with wood frame versus masonry, the difference
20 between a flange and a fin is not just the length of
21 the protruding part, it's also the location of the
22 protruding part, correct, because of the depth of
23 the wall?

24 MS. DYER: Object to the form.

25 A I would not say that I have common

1 knowledge of that. I've never measured those or
2 evaluated them.

3 Q Are you aware that fin products and
4 flange products have different wind performance?

5 A Yes.

6 Q They have to be tested differently,
7 correct, unless you get an equivalency letter, which
8 you won't get because they do test differently,
9 correct?

10 MS. DYER: Objection.

11 A My understanding is the difference in
12 the testing is related to the attachment to the
13 wall. If it relates to another aspect of the
14 window, I'm not familiar with that.

15 Q Sir, let's go back briefly to
16 Plaintiff's Exhibit 512 that had those BFS invoices
17 that you didn't recognize. It's in the back of the
18 notebook in front of you. Let's turn to Bates stamp
19 5067 again. Are you with me?

20 A I am.

21 Q Do you recall you and I looked at the
22 item column on this exhibit this morning?

23 A Yes.

24 Q And one of the comments you made was you
25 didn't recognize the format of the item numbers?

1 A That's correct.

2 Q Let's look at Plaintiff's Exhibit 517
3 from the Wieland job at Hamlin Plantation. The item
4 numbers on that Builders First Source invoice are
5 very similar to the format of the item numbers on
6 Bates stamp 5067, Plaintiff's Exhibit 512, correct?

7 A They start with a three-letter
8 identifier and continue with a series of numerals
9 thereafter, and they appear to be the same length
10 overall.

11 Q And they start with the same three,
12 three-letter identifiers, don't they?

13 A Yes.

14 Q Sir, who is Dan Glass?

15 A I don't know.

16 Q Does he work for Builders First Source?

17 A I don't know.

18 Q Let me show you an excerpt from
19 Plaintiff's Exhibit 327 which I believe is a
20 submittal log to the One Belle Hall job. Have you
21 seen that document before?

22 (Previously Marked Plaintiff's Exhibit No. 327
23 is referenced.)

24 A I don't recall seeing this.

25 Q Did you see that it's indicated that a

1 Dan Glass of Builders First Source submitted a
2 submittal on new window products?

3 A I see a Dan Glass identified as a
4 contact. I would not read into that that he
5 submitted something on behalf of someone.

6 Q No inquiry has been made as to where Dan
7 Glass worked for Builders First Source in the 2006
8 timeframe?

9 A I don't ever recall hearing the name
10 before now.

11 Q And sir, just to be clear, you've never
12 seen Plaintiff's Exhibit 503 previously?

13 (Plaintiff's Exhibit No. 503 is marked for
14 identification.)

15 A I don't believe I have.

16 Q I was pretty sure of that from your
17 prior testimony, but I just have to ask. I can't
18 have you walk into the courtroom at trial and say,
19 oh, yeah, that's the report, I remember now. So
20 I'll have you bear with me on that stuff.

21 A Sure.

22 Q Thank you. Who is Vicki Shafer, sir?

23 A I believe she was the credit manager at
24 the Columbia store.

25 Q Has any inquiry been made of her as to

1 what she knows about this matter you and I have been
2 discussing today?

3 A If it has been, I'm unaware of it.

4 Q Has an inquiry or investigation been
5 made as to whether or not a credit application was
6 submitted in regards to the One Belle Hall job?

7 A I'm sorry. Ask the question again.

8 Q Well, no, first you started to look as
9 though you had a follow-up answer to the last
10 question. So rather than me interrupt you, is there
11 something you wanted to add?

12 A I'm trying to recall the -- Vicki?

13 Q Vicki Shafer.

14 A It's my understanding she worked at the
15 store at the time. I don't know if she does now or
16 not, but I don't recall any information from her.

17 Q Which store?

18 A The Columbia store.

19 Q And so then my follow-up question that
20 you asked me to reask is, has any investigation been
21 made by Builders First Source as to whether any
22 credit application took place relating to the sale
23 of windows for One Belle Hall?

24 A Not that I know of.

25 Q No investigation?

1 A Not that I know of.

2 Q Has any inquiry been made of William
3 DeHaas as to what he knows about this matter?

4 A I believe my attorney has spoken with
5 him, but I'm not aware of the nature of the
6 conversation.

7 Q Sir, what did you do to prepare for this
8 deposition?

9 A I researched our purchases of ESP
10 products.

11 Q Let me interrupt you. You've already
12 described a number of things you did. So let me
13 rephrase my question.

14 Besides what you've told me, sir, who
15 have you talked to, in or out of BFS, to learn
16 everything that might be available to BFS regarding
17 this dispute that it finds itself in today? Who
18 have you made an effort to talk to?

19 A I've spoken with the store manager at
20 the Charleston location who informed me that this
21 job did not appear to come from Charleston. He
22 referred me to someone, whose name escapes me at the
23 moment in the Columbia store, who indicated she had
24 researched this prior to my inquiry, both
25 electronically and physically, and found no record

1 of the transaction. I've spoken with our counsel.
2 I've spoken with Barbara Combs (ph) and Tim Hale
3 (ph) in my office, and I've spoken with Greg
4 Turnage.

5 Q And what was the name of the store
6 manager here in Charleston you talked to?

7 A Griff Burke.

8 Q And he was the store manager then and
9 now?

10 A I don't believe he was then. He's only
11 recently been named the manager.

12 Q Okay. Was William DeHaas the manager
13 then?

14 A Of the Columbia store, it's my
15 understanding that he was the manager of the store
16 at the time.

17 Q Sir, let me ask you to turn to
18 Plaintiff's Exhibit 82. Are you familiar with this
19 document, sir?

20 (Previously Marked Plaintiff's Exhibit No. 82
21 is referenced.)

22 A I believe I've been -- I believe it's
23 been made available to me, yes.

24 Q Do you believe this to be the
25 installation instructions for the 2131 (sic)?

1 MS. DYER: Object to form.

2 (At this time Court Reporter asks for
3 clarification.)

4 Q 2031. Thank you.

5 A I don't see a specific indication as to
6 which model it's applicable to.

7 Q Do you believe the drawing attached to
8 it -- well, first of all, do you believe it applies
9 to the windows that were supplied to One Belle Hall?

10 A I don't see anything in particular that
11 would prevent it from being used.

12 Q Okay. Do you think it was the
13 appropriate window instructions intended for use
14 with the windows that were supplied to One Belle
15 Hall?

16 A I don't know.

17 Q What was that?

18 A I said I don't know.

19 Q The drawings attached to Plaintiff's
20 Exhibit 82, do you agree that these show both a fin
21 and flange condition?

22 A Yes.

23 Q And the drawing appears in its notes to
24 apply to either impact or non-impact?

25 A There appears to be an additional -- an

1 additional note exclusive to windows required to
2 meet impact.

3 Q Does it also -- does that note appear to
4 apply to both framed windows and locked windows?

5 A Could you repeat the question?

6 Q Does that note, the new note, note No. 4
7 under "for windows required to meet impact," does
8 the substance of that note appear to apply to both
9 framed window openings and masonry openings?

10 A I can't tell from the note.

11 Q Let's go to Plaintiff's Exhibit 82.2,
12 please. The first page appears fairly similar to
13 the installation instructions we just looked at,
14 correct?

15 (Previously Marked Plaintiff's Exhibit No. 82.2
16 is referenced.)

17 A It does.

18 Q Let's go to the drawing on the second
19 page. This note has an additional instruction for
20 windows that are to meet DP-50, correct? It's note
21 3 under the impact section?

22 A It has an additional note that appears
23 to be specific to installations requiring a DP
24 greater than 40.

25 Q And that wasn't in the last instructions

1 we looked at, correct?

2 A I didn't see it.

3 Q Have you seen this installation
4 instruction before?

5 A Not that I recall.

6 Q Is this the first time you've ever seen
7 any ESP documentation that differentiated between
8 the requirements of DP-50 window and a non-DP-50
9 window?

10 MS. DYER: Object to the form.

11 A That I recall, yes.

12 Q And you were unaware of that before
13 today?

14 A That is correct.

15 Q Let's go back to Plaintiff's Exhibit
16 146.2, which I think is where we started before we
17 got distracted with the noise on the phone just
18 before lunch.

19 A Could you repeat the number?

20 Q 146, Exhibit 146.2. This is an email
21 chain involving Mr. Larry Bratton which ends on
22 November 8th, 2006. Do you see that?

23 A I do.

24 Q And have you seen this document
25 previously?

1 A I don't believe I have.

2 Q And this is the note I referenced
3 earlier where Mr. Bratton describes his relationship
4 to Albert Cannon, III, and Charles B. Farrelly, both
5 of TCR, "I do have some influence with certain
6 individuals due to a longstanding relationship, 15
7 years, and can sometimes help in these situations."

8 Do you see that? You want to start from
9 the top if you weren't with me?

10 A No, I wasn't with you.

11 Q Let's take a moment then and let you
12 read it.

13 A Okay. I've read it.

14 Q Now, he inserts two things in that
15 sentence, and I want to ask about them separately.

16 First of all, it asserts that he has a
17 longstanding 15-year relationship with Builders
18 First Source. My question to you, sir, is, do you
19 have any information to dispute that?

20 A No.

21 Q The second thing he inserts in this
22 sentence is that he has influence with Builders
23 First Source. And my question to you sir, is, do
24 you have any information with which to dispute that
25 assertion by him?

1 MS. DYER: Object to the form.

2 A No.

3 Q Sir, if we go back to the initial email
4 in this chain on page 2, we see that Larry is
5 writing these people at TCR because the account's
6 about to be placed on credit hold due to some monies
7 that were outstanding, perhaps the \$5,000 we saw in
8 that email this morning. Do you recall that?

9 A I do.

10 Q And he's concerned because that's going
11 to hold him up on starting his crown, trim and other
12 work at River Landing. Do you see that?

13 A No. Give me just a minute, please.
14 Okay. I've read it now. Can you repeat the
15 question?

16 Q He's concerned about the credit hold
17 because he needs some crown and other trim he's
18 supposed to do at River Landing, correct?

19 A That's what it appears to suggest.

20 Q And you do know that one of the areas of
21 inquiry today was your company's relationship with
22 TCR, correct?

23 MR. TRAMMELL: Objection.

24 A Yes.

25 Q And are you aware that you all supplied

1 materials to TCR at the River Landing project?

2 MR. TRAMMELL: Object to form.

3 A I have no personal knowledge of that.

4 Q Are you able to tell me whether the sub
5 that Bratton has lined up for River Landing was
6 working for TCR or Bratton's company, Total Windows,
7 or Builders First Source?

8 MS. DYER: Object to the form.

9 A I don't know.

10 Q It appears that this collection email on
11 the One Belle Hall windows was copied to Builders
12 First Source, AVP, Bob Lanier, correct?

13 A It so appears.

14 Q Do you have any information to dispute
15 that Builders First Source was involved in
16 collecting the last \$5,000 that was owed on the One
17 Belle Hall windows?

18 A I have no information for that.

19 Q So at this point today we've clearly
20 seen AVP -- Builders First Source AVP on the front
21 end of the relationship with the initial contractor,
22 purchase order of the addendum, and on the back end
23 of the relationship collecting the last \$5,000
24 that's owed on the job, correct?

25 A I see his name on the CC line of the

1 email.

2 Q Do you still have any doubt left that
3 those exhibits, those invoices on 512 were Builders
4 First Source invoices?

5 A I don't know.

6 Q Seeing what we have here today, unless
7 Bob Lanier was also doing a job on the side,
8 Builders First Source sold those windows, correct?

9 MS. DYER: Object to form.

10 A I have no records to support that.

11 Q Builders First Source just doesn't know;
12 is that correct?

13 A That's not what I said.

14 Q Well, did they sell them or not?

15 MS. DYER: Object to the form.

16 A I have no records to support that we
17 procured the windows or that we sold the windows.
18 The invoice numbers that we've been provided with do
19 not match with the records we have. And the PO
20 numbers provided on the ESP documents do not match
21 up with our PO format.

22 Q But you've got a contract signed by Bob
23 Lanier and you have the \$5,000 collection being
24 copied to Bob Lanier. And you doubt that Builders
25 First Source sold the windows?

1 MS. DYER: Object to the form.

2 A I have no records that Builders First
3 Source sold them.

4 Q Well, I just need to know if we go to
5 trial tomorrow and you take the witness stand, is
6 Builders First Source going to say we sold them, we
7 didn't sell them, or we just don't know?

8 A Subject to additional information
9 becoming available, our position is we have no
10 record to support that we issued a PO for them, paid
11 for them, sold them, invoiced them or collected for
12 them.

13 Q What evidence do you have to contradict
14 the evidence that you did sell them?

15 A The invoice numbers that are referenced
16 as provided are specifically contradictory to our
17 invoice records.

18 Q Okay. What evidence do you have to
19 contradict the purchase order contract signed by Bob
20 Lanier?

21 A I don't know.

22 Q And not only was Bob Lanier copied on
23 the collection of the last \$5,000, Bill DeHaas was
24 copied, too?

25 A It so appears.

1 Q You haven't had the opportunity to ask
2 him whether he received this email?

3 A No.

4 Q Any other Builders First Source
5 employees on this email that are missing?

6 A I believe Vicki Shafer was a BFS
7 employee.

8 Q That's right. She's credit manager,
9 isn't she?

10 A Uh-huh.

11 Q That's a yes for her.

12 A Yes.

13 Q Thank you. And I forget, you haven't
14 talked to her?

15 A I have not.

16 Q So you personally don't know what
17 information Vicki Shafer may be able to share with
18 us about this collection?

19 A No.

20 Q Did you read the areas of inquiry that
21 were attached to the deposition notice for today?

22 A Expand on that for me, what that is.

23 Q Well, this is Exhibit 200.13.

24 Apparently, for some reason, my office likes these
25 dots. I don't know what it is. But this is a

1 letter to Builders First Source attorneys and it has
2 attached to it a deposition notice which asks them
3 to present a witness today, August 27th, at 10 a.m.,
4 and then it attaches to it three or four pages, the
5 areas of inquiry that we're going to ask the witness
6 about in the deposition notice, instructs Builders
7 First Source to present the most knowledgeable
8 witness on those areas. Have you seen these areas
9 of inquiry on this notice before?

10 (Previously Marked Plaintiff's Exhibit No.
11 200.13 is referenced.)

12 A I have.

13 Q Were you also informed that if you
14 didn't readily have the knowledge that you should
15 make reasonable inquiry to try to obtain it?

16 A I don't know that that was described to
17 me specifically.

18 Q Sir, have you had the opportunity to
19 review the report by the plaintiff's engineer
20 regarding the window testing? You have an extract
21 of it in your file.

22 A Yes, I looked through that.

23 Q And you're aware that plaintiff's
24 engineers did some water testing on-site?

25 A Yes, I'm aware of that.

1 Q Two different types?

2 A I didn't recognize that there were two
3 different types, but I saw that they did some water
4 testing.

5 Q Are you familiar with the standard ASTM
6 E1125?

7 A Somewhat.

8 Q ASTM 2128?

9 A No.

10 Q The 1105 testing, is it a spray rack
11 test, are you aware of that?

12 A I am.

13 Q You utilize differential pressure?

14 A That's my understanding.

15 Q To simulate wind-driven rain events?

16 A That's my understanding.

17 Q And did you observe that the windows
18 were documented to fail that at zero pressure?

19 MS. DYER: Object to the form.

20 A I don't recall seeing that it failed at
21 zero.

22 Q Okay. What pressures did you see it
23 fail at?

24 MS. DYER: Object to the form.

25 A I don't recall the pressures, but I did

1 see instances where it was identified as a fail.

2 Q In fact, they all failed. But they
3 raised at least several of the tests to one-third
4 pressure and two-thirds pressure, correct?

5 A I don't know.

6 Q And the results -- the failure is a
7 technical term, I guess, for leakage; did you
8 understand that?

9 A I understood failure to be not meeting
10 some criteria identified in the ASTM.

11 Q Leakage, right?

12 A I would suspect leakage.

13 Q And there's a second set of tests
14 performed called sill dam test?

15 A I remember reading the term.

16 Q And 14 -- and 14 windows failed the sill
17 dam test?

18 A I don't recall reading that
19 specifically.

20 Q And they leaked to the interior?

21 A If you say so.

22 Q Do you have any evidence, sir, to
23 contradict plaintiffs' engineer's documentation that
24 the windows at Belle Hall leak?

25 A I am not here in the capacity of an

1 expert, so I have not reviewed those in that
2 capacity and I don't know. I don't know that much
3 about how the tests were done so I can't comment on
4 that.

5 Q Let me ask it a different way. Have you
6 seen or heard of any evidence from any source
7 whatsoever that suggest to you that the windows do
8 not leak?

9 A Not that I recall.

10 Q And are you aware that plaintiffs have
11 alleged that the leaks have, in fact, damaged their
12 structure?

13 A I gleaned that from the report.

14 Q Are you aware of any evidence, written,
15 or oral testimony, whatever, that contradicts
16 plaintiffs' allegations that the leaking windows are
17 damaging their structure?

18 MS. DYER: Object to the form.

19 A No.

20 Q Have you seen that the remediation
21 recommended by plaintiffs' engineers is the
22 replacement of the windows?

23 A I believe I recognize that in some
24 instances.

25 Q Some instances?

1 A Based on their color-coded chart, I seem
2 to recall a small handful that did not appear to be
3 recommended for replacement.

4 Q Do you have any evidence to share with
5 us, written or oral, your memory, anything, that
6 contradicts the engineer's recommendation that the
7 windows need to be replaced?

8 A No.

9 Q And are you aware that these windows
10 apparently came with a back dam that was essentially
11 glued into place?

12 A No.

13 Q Do you know what a back dam is?

14 A No. I know what I've seen some window
15 manufactures call a back dam, but I'm not
16 specifically familiar with it, with this product.

17 Q Another name for it sometimes is a sill
18 dam or a sill stop?

19 A I've seen the terms.

20 Q Or an upstand lake?

21 A Haven't heard that one.

22 Q So whatever the terminology is, you're
23 aware that it's, generally speaking, a vertical leg
24 on the rear or interior side of the sill?

25 A Yes.

1 Q And have you learned in this case that
2 these windows apparently came with a rear leg that
3 was essentially glued in place?

4 A No.

5 Q Are you aware that the height of the
6 rear leg affects the performance rating of a window?

7 A I could reach that conclusion.

8 Q And you're not aware that this rear leg
9 was glued into place in an attempt to raise or
10 increase points at the rear of the window?

11 A No.

12 Q Are you aware that when you use sealant
13 as an adhesive the sealant has to have what's called
14 enough bite, enough overlap, enough surface area of
15 attachment to actually perform a function as an
16 adhesive?

17 A I'm struggling with the use of a sealant
18 as an adhesive. I'm not aware of a -- I'm not aware
19 of a specific sealant that's intended to be used as
20 an adhesive without being called an adhesive.

21 Q That's a good point. But even for an
22 adhesive sealant, to perform its function of
23 adhesion, it must have enough surface area contact
24 to perform that function, correct?

25 MR. TRAMMELL: Object to form.

1 A I believe that to be the case, subject
2 to the manufacturing criteria for the adhesive.

3 Q You started doing your window wind load
4 work in 1995, correct?

5 A Whole house wind load including windows.

6 Q So you've been in the wind load and DP
7 arena for roughly 20 years now, correct?

8 A Yes.

9 Q Have you ever seen a window with a
10 glued-in-place back dam?

11 A I don't recall.

12 Q Sir, the email that you and I looked at
13 in Plaintiff's Exhibit 146.2 was dated November 5th,
14 2006, the one that Ms. Shafer was copied on, right?

15 A I'm sorry. Repeat the date, please.

16 Q November 5th, 2006, at the very bottom
17 of page 1 of Plaintiff's Exhibit 146.2.

18 A That's the date there, yes.

19 Q And that's the one that was copied to
20 manager DeHaas and credit manager Shafer, correct?

21 A Yes, I believe so.

22 Q And if we go to Plaintiff's Exhibit
23 146.3, we have an earlier email chain ending on
24 October 31st, 2006, correct?

25 (Previously Marked Plaintiff's Exhibit No.

1 146.3 is referenced.)

2 A I see that.

3 Q And if we look to the bottom, we see
4 that a portion of this chain was also copied to
5 DeHaas a week or so earlier on October 30, 2006,
6 correct?

7 A Yes, October 30th.

8 Q And again, it's still all regarding
9 collecting the last \$5,000 owed on the One Belle
10 Hall windows, correct?

11 MS. DYER: Object to the form.

12 A Yeah, that appears to be the case.

13 Q And if we go further back in that email
14 chain to page 3, a day earlier on October 30th,
15 2006, Bates stamp 314 at the bottom, 314, the bottom
16 email?

17 A Okay.

18 Q This collection email from Larry Bratton
19 to TCR was also copied to Bill DeHaas and Vicki
20 Shafer, correct?

21 A Yes.

22 Q Is there any doubt left in your mind
23 that Builders First Source Columbia was involved in
24 the collection of the last \$5,000 owed on the One
25 Belle Hall windows?

1 MS. DYER: Object to the form.

2 A We have no record of this job.

3 Q It's starting to look like there should
4 be a record, isn't it?

5 A I don't know.

6 Q Sir, tell me everything you know about
7 how it came to pass that these windows got ordered
8 through Builders First Source?

9 A We have no records of how that came to
10 be.

11 Q So you don't know?

12 A I don't know.

13 Q All we know is, is that some point in
14 time the contract with Builders First Source
15 signatures shows up?

16 A According to what we've been provided
17 with, yes.

18 Q Where was Bob Lanier's office?

19 A I don't know.

20 Q As far as you know, Builders First
21 Source did not check or secure a copy of the
22 third-party report, test report on the ESP windows
23 until after this litigation arose, correct?

24 A As far as I know, that is correct.

25 Q What is a typical markup on Builders

1 First Source window products?

2 A Mid to high teens. .

3 Q How can Builders First Source only be
4 marking up mid to high teens if it's paying outside
5 salespeople 10 percent?

6 A Outside sales generally pay 10 percent,
7 that I'm aware of, of the gross profit, which would
8 be 10 percent of the mid to high teens portion.

9 Q Stated differently, they're paid perhaps
10 2 percent of the gross sales price?

11 MS. DYER: Object to the form.

12 A If --

13 Q Roughly speaking?

14 A Thereabouts.

15 Q We discussed just a moment ago the
16 leaking windows at One Belle Hall. Do you have any
17 evidence or testimony that that is caused by
18 defective installation?

19 A Only what I gleaned from Plaintiffs'
20 expert's report.

21 Q Do you have any testimony or evidence to
22 suggest that leaking windows are caused by anything,
23 at One Belle Hall, are caused by anything other than
24 the product themselves leaking or the installation
25 deficiencies set forth in Plaintiffs' report?

1 MR. TRAMMELL: Object to the form.

2 A Repeat, please.

3 Q Please.

4 (At this time there is read back in the
5 record.)

6 A I do not.

7 Q There was a mockup performed on-site
8 prior to construction that included an ESP window.
9 Did your company provide that window?

10 A I don't know.

11 Q Was there any indemnity agreement
12 between your company and TCR, flowing either way?

13 MR. TRAMMELL: Object to form.

14 A I don't know.

15 Q If there's a builder's agreement in
16 place, and I understand you haven't looked for it
17 yet, but if there's a builder's agreement in place,
18 would that contain an indemnity agreement?

19 A It could.

20 Q In favor of Builders First Source?

21 A I don't know.

22 Q Tell me what marketing you're aware of
23 occurred directed at Cline Design related to these
24 windows?

25 A I'm not aware of any.

1 Q Do you know who Cline Design is?

2 A I don't know.

3 Q And you're unaware of what marketing
4 Bill Bratton might -- excuse me. Larry Bratton may
5 have done to either Cline Design or TCR?

6 A That is correct.

7 Q Had you seen any disclaimer of the
8 implied warranties on the windows at One Belle Hall
9 by Builders First Source in your review of this
10 file?

11 A I've seen a one-year warranty statement
12 in a couple of instances, I believe, but that's all
13 I recall seeing with respect to a warranty from
14 Builders First Source.

15 Q Sir, let's turn back to Plaintiff's
16 Exhibit 501. You're not at the front of it. Let's
17 go to the front. This is the Declaration page for
18 the 2004 policy year, correct?

19 A Yes, that's what it appears to be.

20 Q Are you involved at Builders First
21 Source in the insurance claim that's made on this
22 matter?

23 A No.

24 Q Has anybody asked you for information
25 for that claim?

1 A Not that I recall.

2 Q Do you know if a reservation of rights
3 letter has been issued on that claim?

4 A I don't know.

5 Q Do you know what the deductible or the
6 SIR is on the Builders First Source primary
7 policies?

8 A I do not.

9 Q Do you know what an SIR is?

10 A I do not.

11 Q Who is handling the claim for Builders
12 First Source, the insurance claim?

13 A I don't know.

14 Q What department at Builders First Source
15 would be handling that claim?

16 A Legal.

17 Q Who heads up legal at Builders First
18 Source?

19 A Don Macaleen.

20 Q You want to spell that for her just in
21 case.

22 A M-A-C-A-L-E-E-N, I think.

23 Q Is he an attorney?

24 A He is.

25 Q And is there more than one attorney in

1 that office, do you know?

2 A Yes.

3 Q How many?

4 A Four that I know of.

5 Q Do you know the other names?

6 A Daryl Ward, Jeff Wier, Lindsay Dolm?

7 Q Does Builders First Source have a policy
8 regarding goodwill payments on warranty claims that
9 occur outside of the warranty claim period?

10 A I don't know.

11 Q For typical Builders First Source
12 products or stock products, are they warehoused
13 essentially under the control of the parent company,
14 or do the regional subsidiaries have their own
15 warehousing?

16 A Primarily the location warehouses the
17 inventory.

18 Q The locations, each different
19 distributor location, each store warehouses its own
20 inventory?

21 A Yes.

22 Q Are there central warehouses to supply
23 each store?

24 A There are a couple for specific
25 products.

1 Q Such as?

2 A A specific brand of composite decking, a
3 specific brand of synthetic trim, a specific brand
4 of house wrap.

5 Q Are any windows housed anywhere besides
6 the stores and besides the Texas manufacturing
7 facility?

8 A Not that I'm aware of.

9 Q Assuming that Builders First Source did
10 supply the windows pursuant to the purchase order
11 contract that it signed, would the ESP windows have
12 been shipped directly from ESP in Florida or from
13 Raymond in Florida to the ordering store in South
14 Carolina?

15 A The provided documents suggest that was
16 not the case.

17 Q Where would they have been shipped to?

18 A The documents that you've provided me
19 would indicate they were direct shipped to the
20 jobsite. Excuse me. I have to grab some water.

21 Q Let's take a quick break.

22 (At this time there is a brief break in the
23 deposition 3:27 p.m. to 3:30 p.m.)

24 BY MR. LUCEY

25 Q Sir, we're back on the record. You

1 agree with me, sir, that leaking windows create an
2 unreasonable risk of damage or danger to the
3 surrounding wood components and drywall, correct?

4 MS. DYER: Object to the form.

5 A Could you ask her to read that back?

6 Q Would you read the question back,
7 please?

8 (At this time there is read back in the
9 record.)

10 A They can.

11 Q They're not supposed to leak, right?

12 A To the extent of the standard that's
13 applicable, they shouldn't.

14 Q Consumers have a right to expect they
15 won't leak, correct?

16 A I think they have a right to assume they
17 would perform to the standard.

18 Q And hidden water damage in walls can
19 cause rot and microbial growth, correct?

20 A That is correct.

21 Q Which is an unreasonable danger to both
22 the structure and the occupants, correct?

23 A Yes.

24 MS. DYER: Objection to form.

25 Q And sir, you agree with me there's no

1 evidence in this case that the contractor altered
2 the window products in any way when he installed
3 them, correct?

4 A I have no knowledge of that.

5 Q And you have no evidence that there was
6 any alteration of the window products, correct?

7 A That's correct.

8 Q I'm turning to Plaintiff's Exhibit 179
9 in the book in front of you, please. It's at Tab
10 179. This is I believe excerpts from the owner's
11 manual that was provided by the developer to the
12 Homeowners Association at the time of sale, so to
13 speak. And if we go back a few pages, about six or
14 seven pages to OBH Meek 607, Bates number.

15 (Previously Marked Plaintiff's Exhibit No. 179
16 is referenced.)

17 A 507.

18 Q 607.

19 A Okay.

20 Q We find the Builders First Source
21 warranty agreement for the One Belle Hall
22 condominium project, correct?

23 A Yes.

24 Q Have you seen this document before?

25 A I have.

1 Q Tell us who it's signed by, please.

2 A William E. DeHaas.

3 Q And he again was the general manager of
4 the Columbia store?

5 A Yes.

6 Q Where we saw the invoices from?

7 A Yes.

8 Q And it's signed on December 15th, 2006?

9 A That's the date, yes.

10 Q And Builders First Source certainly
11 wouldn't issue a warranty on windows it hadn't
12 supplied, would they?

13 A I don't know.

14 Q Tell me once in your employment at
15 Builders First Source in 16 years you've ever seen
16 them issue a warranty on a product they did not
17 supply?

18 A I can't.

19 Q Give me any scenario in the world you
20 can ever imagine where Builders First Source would
21 issue a warranty on products it had not supplied?

22 A I can't.

23 Q And there's no disclaimer of implied
24 warranties in this warranty agreement signed by
25 Builders First Source, is there?

1 A I don't know.

2 Q Well, let's take a moment and read it.

3 A What was the question, please?

4 Q There's no disclaimer of implied
5 warranties in this warranty agreement that's signed
6 on December 15th, 2006, by Builders First Source,
7 correct?

8 A I don't see anything that's suggested a
9 disclaimer of an implied warranty.

10 Q And the best of your knowledge, ESP is
11 defunct, correct?

12 A Yes.

13 Q Considering the warranty issued by ESP
14 wouldn't be worth the paper its written on, correct?

15 A I don't know the terms of the
16 acquisition of assets by Raymond, so I couldn't
17 answer that.

18 Q In your industry, it's rare that a
19 manufacturer requires another company assumes the
20 liability on prior company's activities, isn't it?

21 A I'm sorry. Repeat that, please.

22 Q In your experience, it's rare that an
23 acquiring manufacturing company assumes the previous
24 warranty obligations or litigation liabilities of
25 the prior company, correct? Especially when it's an

1 acquisition of assets?

2 A I can't speak to the condition of the
3 acquisition of assets, but my understanding when one
4 entity acquires another one it acquires its
5 liabilities as well.

6 Q When you acquire one entity, correct?

7 A Yes.

8 Q And you believe ESP was ongoing when
9 Raymond acquired it?

10 A I don't know.

11 Q And sir, are you aware of whether or not
12 Builders First Source has been sued for supplying
13 other windows in South Carolina such as Ply Gem, MI,
14 Andersen or General?

15 A I know we've been involved in claims
16 specific to windows. I don't recall the specific
17 manufacturer.

18 Q And what claim, what South Carolina
19 window claims were you aware that Builders First
20 Source has been involved in?

21 A East Bridge, and another town in Hilton
22 Head that I don't recall the name of the project.

23 Q What type of windows were down in Hilton
24 Head?

25 A I don't recall the brand.

1 Q Let me ask you to turn to Plaintiff's
2 Exhibit 506. Do you recognize this as a copy of a
3 portion of Builders First Source web page?

4 (Plaintiff's Exhibit No. 506 is marked for
5 identification.)

6 A I do.

7 Q Let's turn to 507, please. Do you
8 recognize this as a copy of one of Builders First
9 Source web pages?

10 (Plaintiff's Exhibit No. 507 is marked for
11 identification.)

12 A I don't recall seeing it specifically
13 before, but it looks like our website.

14 Q Is this second sentence in this web page
15 accurate, "The products carried at each location are
16 selected to meet the needs and preferences of the
17 local market"?

18 A What's the question?

19 Q Is that accurate?

20 A I don't know.

21 Q Does Builders First Source make it a
22 practice to only sell products that are building
23 code compliant in the local market?

24 A Yes.

25 Q Does Builders First Source expect its

1 outside salespeople to be familiar with the
2 requirements of the local building code in the sale
3 of products?

4 A In many instances, yes.

5 Q Including the DP rating of products?

6 A I need you to repeat the previous
7 question for me to be able to answer that, please.

8 Q Would you read both questions back, Ms.
9 Reporter?

10 (At this time there is read back in the
11 record.)

12 A DP rating, in my opinion, is a
13 function -- is an engineering function that is
14 outlined in the code. I don't think it would be
15 practical for any salesman to -- in fact, I may even
16 go so far as to say it might be illegal for a
17 salesman to determine DP based on code criteria. It
18 should be found from the engineering documents for
19 the project.

20 Q Are you familiar with South Carolina, or
21 at least a significant portion of South Carolina,
22 being in a severe weather belt?

23 A Yes.

24 Q Are you familiar with a significant
25 portion of Coastal South Carolina being in a

1 hurricane zone?

2 A Yes.

3 Q Are you familiar with the fact that
4 coastal areas, for instance, here in Charleston,
5 east of Highway 17 at least, and all along the coast
6 all the way down to Florida, Jacksonville, where you
7 are, typically require DP-50 or better in that high
8 wind hurricane zone?

9 A I don't think that's accurate.

10 Q You don't?

11 A No.

12 Q Do you know what the requirement is for
13 DP rating in Charleston, South Carolina east of
14 Highway 17?

15 A I know it would be subject to the
16 building height, the location of the fenestration
17 product, the area of the fenestration product, the
18 surrounding terrain and its impact on the building
19 exposure category, and it's proximity to the wind
20 speed contour lines.

21 Q Okay. And you don't expect your
22 salespeople to be familiar with the fact that most
23 windows east of Highway 17 need to be approximately
24 a DP-50 or better to qualify?

25 A I expect them to adhere to what's on the

1 engineering documents that are provided to them.

2 Q And how many single-family homeowners
3 provide them with engineering documents specifying a
4 DP rating?

5 A I don't know. I should have that -- I
6 believe it is a function of the code to require that
7 the building designer identify that information on
8 the construction documents used for permitting.

9 Q You believe the IRC requires that for
10 single-family dwellings?

11 A I do.

12 Q Has Builders First Source ever been
13 involved in any other claims relating to ESP windows
14 anywhere?

15 A Not that I know of.

16 Q Sir, although we may have accidentally
17 covered part of it in our examination today, I never
18 really focused on your testimony very early this
19 morning about the research that you had your
20 assistants in your office do for you in preparation
21 for today. And I'd like you to explain it to me,
22 with particular emphasis on identifying the source
23 of the data or information that they looked at to do
24 these various searches.

25 A We researched our PO system to identify

1 any purchase orders issued to Energy Saving Products
2 or ESP. We also searched our accounts payable to
3 determine if there were any -- if there were
4 multiple accounts that may be associated with ESP or
5 Energy Saving Products and then subsequently used
6 that information to create a list of all purchase
7 orders issued by Builders First Source to ESP or
8 Energy Saving Products.

9 Q Anything else?

10 A Subsequent to that I reviewed the list
11 of purchase orders that were issued, the locations,
12 the store locations associated with the PO. I
13 searched for the window model numbers, and I
14 searched for the sizes associated with what was
15 identified on the PO from Trammell Crow. And I'm
16 sorry. Were we speaking specifically to what I did
17 to research whether or not we --

18 Q What your staff -- the research your
19 staff performed on your behalf.

20 A Okay. With respect to interactions with
21 ESP?

22 Q With respect to any research they
23 performed for your testimony or this litigation.

24 A Okay. Additionally, they researched
25 invoices to Trammell Crow, invoices for Belle Hall

1 or One Belle Hall or OBH or BH, and any identifier
2 that might suggest Belle Hall in Charleston County.
3 We researched invoices to the street names that we
4 found to be associated with Belle Hall. We also
5 looked for payments from Builders First Source to
6 ESP in 2006 in an amount that might be consistent
7 with the sales -- the price of the windows that ESP
8 would have sold them to BFS for.

9 Q Anything else?

10 A Not that I recall at this time.

11 Q You mentioned researching something for
12 Charleston County. What was that?

13 A That was just another avenue of research
14 for Trammell Crow in Charleston County as opposed to
15 Belle Hall or the street address.

16 Q What research did your people perform
17 relating to Larry Bratton, Total Opening?

18 A We researched to see if he was an
19 employee of the company, any POs that were issued to
20 him or payments made to him, as well as any sales
21 made to -- and when I say "him" I'm referring to
22 Total Opening Sales in addition to the name Larry.

23 Q Okay. And anything else?

24 A Not that I recall.

25 Q Did you -- why was it you were unable to

1 research his commissions?

2 A He was not an employee, so we determined
3 he could not have been paid a traditional commission
4 since he was not an employee.

5 Q Why couldn't you research his 1099s?

6 A I don't know that we couldn't. We
7 didn't.

8 Q You didn't know at the time that that
9 might have been an issue because you learned that
10 more recently, this brokerage thing?

11 A That is correct.

12 Q Well, if you end up doing any more
13 research, which we're going to request anyway,
14 because some of the subject matters of this
15 deposition we don't believe have been completed.
16 But if you end up doing any more research, please
17 know that Daniel Island, I think it's considered
18 part of Berkeley County, and that's where three or
19 four of the TCR projects are. So if there was some
20 confusion as to which TCR project was going on, you
21 might find some Total Concept (sic) material over
22 there, as well as some of those emails that we
23 looked at, okay?

24 A Okay.

25 Q And the PO system that you all

1 researched, the first answer you gave me, what years
2 does that cover?

3 A 2000 through current.

4 Q Did y'all change the Pelican ESI system
5 after the acquisition?

6 A I don't recognize the name ESI system.

7 Q ESI, electronically stored information.
8 Was Pelican acquired by Builders First Source before
9 or after your then employer Holmes Lumber Company?

10 A I believe Pelican was prior to.

11 Q And the accounts payable, what date
12 range did those cover, the ones that were searched?

13 A 2006 and '7.

14 Q Okay. And the invoices, what software
15 was searched for invoices?

16 A I don't know the name of the software.

17 Q Is all the data stored on servers in
18 Dallas?

19 A Yes. To the best of my knowledge, yes.

20 Q And when you send your research invoices
21 to Trammell Crow, specifically what variations of
22 the Trammell Crow name did you research?

23 MR. TRAMMELL: Objection.

24 A I think we searched something as basic
25 as Trammell. And I know we searched TCR. And I

1 believe Tram*C-R-O-W*.

2 Q Any other computer searches that were
3 done?

4 A Not that I recall.

5 Q Any paper research of any kind done?

6 A I was told that someone at the -- not on
7 my behalf, but prior to my involvement, someone in
8 the Columbia store went through physical records
9 that were stored on-site.

10 Q What was found there?

11 A Nothing related to this job.

12 Q And how were the records stored?

13 A I don't know.

14 Q Who would know that?

15 A The store manager.

16 Q Do you know who went through the records
17 in Columbia?

18 A I do not.

19 Q Prior to you appearing for this
20 deposition today, what activity, if any, have you
21 personally had in the State of South Carolina?

22 A I've been -- I worked on-site in
23 preparation for the East Bridge claim and then gave
24 a deposition there. I attended mediation in the
25 Hilton Head claim I referenced earlier. And I have

1 given a couple of presentations at different
2 locations. And I have looked at a floor out of
3 level condition up above Columbia.

4 Q And what presentations have you given in
5 what context, please, in South Carolina?

6 A Code evolution.

7 Q To what type of audience?

8 A Home builders.

9 Q When was the last time you did that?

10 A 2010, maybe.

11 Q Did any of your work relate to DP rating
12 on windows?

13 A No, the focus was on energy.

14 Q When you first described your activities
15 as director of Construction Science & Innovation,
16 the first of the five activities listed was evaluate
17 construction claims. What percentage of your time
18 is spent evaluating or handling construction claims?

19 A Forty, 50 percent.

20 Q Sir, that's all I have for now. I do
21 appreciate your time and patience today. I'm
22 adjourning.

23 MR. LUCEY: I don't believe that the
24 number of areas of inquiry were adequately
25 addressed. We don't have to argue about it. We can

1 address it at mediation. Thank you (to Ms. Dyer).

2 (At this time there is an off-the-record
3 conversation.)

4 MR. LUCEY: Trammell Crow.

5 MR. TRAMMELL: My name is Harrison,
6 Justin.

7 E-X-A-M-I-N-A-T-I-O-N

8 BY MR. TRAMMELL

9 Q Mr. Woodward, are you able to continue?
10 Need a break?

11 A Yeah, I'm good.

12 MR. TRAMMELL: Judy, are you good (to
13 Court Reporter).

14 COURT REPORTER: Yes.

15 BY MR. TRAMMELL

16 Q My name is Harrison Trammell. I
17 represent a number of defendants in this lawsuit
18 including TCR NC Construction I, Limited
19 Partnership, the general contractor for this job.

20 I just have a handful of questions for
21 you. Clarify me for the record, Bill DeHaas is
22 currently, or was, an employee of Builders First
23 Source?

24 A Was.

25 Q Was, okay. And was he an employee of

1 Builders First Source, Inc. or Builders First Source
2 Southeast Group?

3 A Southeast Group.

4 Q And was he employed with Builders First
5 Source Southeast Group in 2006 and 2007?

6 A My information that I found suggests
7 through the middle of 2007.

8 Q Okay. And all the way back to before
9 2006?

10 A I don't know how far back behind 2006.

11 Q And Vicki Shafer, similar line of
12 questions, is or was an employee of Builders First
13 Source?

14 A Definitely was. I do not know if she is
15 currently or not.

16 Q And was she at Builders First Source,
17 Inc. or Builders First Source Southeast Group?

18 A Southeast Group.

19 Q And was she employed by Builders First
20 Source Southeast Group in 2006 and 2007?

21 A I think so.

22 Q Okay. And I've seen an address in
23 Blythewood, South Carolina, 180 Hobart Road, that's
24 H-O-B-A-R-T, Road, Blythewood, South Carolina 29016.
25 Is that a Builders First Source location?

1 A I believe that is the physical address
2 of the store that we refer to as the Columbia store,
3 I believe.

4 Q Okay. And that would be the, I guess,
5 location of Ms. Shafer and Mr. DeHaas during their
6 employment?

7 A If that's what it is, then almost
8 certainly.

9 Q Mr. Woodward, I just got one copy, so
10 I'll walk around with you. I'm going to show you
11 what I've marked Defendant's Exhibit A which, for
12 the record, Madame Court Reporter will renumber
13 appropriately when she has the opportunity.

14 This is a series of lien waivers that
15 I'll represent to you came from the general
16 contractor project file. Have you seen these
17 documents before?

18 (Defendant's Exhibit No. 148 is marked for
19 identification.)

20 A I have not.

21 Q Okay. Who signed this lien waiver?

22 A It appears to be Vicki Shafer.

23 Q And what company does she say she is
24 signing on behalf of?

25 A Builders First Source Southeast Group.

1 Q And that date is what?

2 A 7 June 2006.

3 Q In the amount of \$120,799.53?

4 A That is correct..

5 Q Are you familiar with the lien waiver
6 process?

7 A Somewhat, yes.

8 Q Okay. My understanding is that that is
9 a waiver of a lien right upon receiving payment
10 for -- or it's supplied -- or formed or supplied on
11 a particular job; is that your understanding?

12 A It is.

13 Q Would you agree with me this document
14 appears to be a lien waiver executed by Vicki Shafer
15 on behalf of Builders First Source Southeast Group
16 at the One Belle Hall project?

17 A It does appear to be that.

18 Q And if you'll just flip to the second
19 document there, there's another lien waiver. Is
20 that also signed by Vicki Shafer?

21 A It appears to be.

22 Q On behalf of Builders First Source
23 Southeast Group?

24 A It appears to be.

25 Q Dated July 25th, 2006?

1 A Yes.

2 Q In the amount \$89,843.81?

3 A Yes.

4 Q And then flip to the third page, please.

5 It's similarly a lien waiver executed by Vicki

6 Shafer, correct?

7 A Yes.

8 Q On behalf of Builders First Source

9 Southeast Group?

10 A Yes.

11 Q Dated November 6th, 2006?

12 A Yes.

13 Q In the amount of \$4,586.99 s?

14 A Correct.

15 Q Okay. Thank you. You can set that
16 aside, unless you'd like to check my math. I'll
17 represent to you that that amount totals \$215,000 --
18 or \$215,230 and some change.

19 A Okay.

20 Q I'm also going to hand you what's been
21 marked as Defendant's Exhibit B, which again Madame
22 Court Reporter will update the numbering on when she
23 has the opportunity, similarly a lien waiver to the
24 others, or does it appear to be a lien waiver?

25

1 (Defendant's Exhibit No. 149 is marked for
2 identification.)

3 A It does.

4 Q And this is executed, not by Vicki
5 Shafer but it looks like to me a William DeHaas; is
6 that correct?

7 A That's what it appears.

8 Q All right. States that he's the general
9 manager for Builders First Source Southeast Group?

10 A It does.

11 Q Dated May 31st, 2007?

12 A Yes.

13 Q In the amount of \$11,965.31?

14 A Yes.

15 Q And has an address of 1000 South Egypt
16 Road, Mount Pleasant, South Carolina?

17 A Yes.

18 Q This lien waiver, as are the other ones
19 in Exhibit A, which you're welcome to confirm, are
20 to TCR NC Construction 1 Limited Partnership,
21 correct?

22 A Yes.

23 Q Do you recognize any of the signatures
24 or the names from the signatures in the notary block
25 or the witness block, any of these?

1 A This one I recognize, Vicki Shafer from
2 the earlier.

3 Q And that's in Exhibit B?

4 A Exhibit B, as the unofficial witness.

5 Q How about the others?

6 A No, I don't recognize the names.

7 Q Okay. But they could be other employees
8 of Builders First Source, you just don't know?

9 A That is correct.

10 Q Ms. Shafer and Mr. DeHaas wouldn't be
11 executing lien waivers unless they received payment
12 for supplied products, would they?

13 A I doubt that.

14 Q If you'll look in Plaintiff's Exhibit
15 512. All right. If you'll flip back, there's a
16 letter that looks like that, if you'll flip to it.
17 And if you'll read the Bates label into the record.

18 A Is this it?

19 Q That's it.

20 A Okay.

21 Q What is the Bates number on the bottom,
22 if you will?

23 A 5033.

24 Q Okay. Thank you. And you were asked
25 about this earlier. It is on Builders First Source

1 letterhead, correct?

2 A That's correct.

3 Q 4450 Arco Lane, North Charleston, South
4 Carolina, is that a North Charleston location for
5 Builders First Source?

6 A Yes.

7 Q And again we talked about earlier that
8 Bob Lanier, who signed this letter, is an area vice
9 president for Builders First Source?

10 A That is correct.

11 Q Or at least he was before he retired?

12 A Yes.

13 Q If you'll read in there, first
14 paragraph, it says: As you can see, we have deleted
15 the paragraph on warranty.

16 Did I read that correctly?

17 A As you can see, we have deleted the
18 paragraph on warranty.

19 Q And it's dated May 2nd, 2006?

20 A That is correct.

21 Q I'm going to hand you what's now been
22 marked Defendant's Exhibit C, which again will be
23 remarked by the court reporter. It's a copy of the
24 purchase order earlier referenced to Exhibit 44, or
25 similar to that, correct?

1 (Defendant's Exhibit No. 150 is marked for
2 identification.)

3 A It looks very similar to something I saw
4 earlier.

5 Q I understand. And the contract addendum
6 is the third page of that. You read this addendum
7 as dated May 2nd, 2006?

8 A I see that.

9 Q And has three paragraphs?

10 A Three numbered paragraphs.

11 Q Three numbered paragraphs, correct.

12 And as I understood your testimony
13 earlier, the number in the top right-hand corner
14 indicates this is a Builders First Source Southeast
15 Group form?

16 A It suggests that it is.

17 Q Okay. Is that similarly Bob Lanier's
18 signature under Builders First Source Southeast
19 Group?

20 A It looks somewhat like the other Lanier
21 signatures.

22 Q I'm saying if you want to reference
23 Exhibit 512 that we were just looking at, the
24 signature, does it look similar?

25 A Somewhat similar, yeah.

1 Q As best we can tell, that is Bob
2 Lanier's signature?

3 A It would be challenging to argue that.

4 Q Understood. All right. And again, this
5 purchase order was between Builders First Source
6 Southeast Group, LLC and TCR NC Construction I
7 Limited Leadership, correct?

8 A Yes.

9 Q Throughout this deposition you've
10 referenced Trammell Crow or TCR, or some other
11 variation of that. When you're referring to those
12 names, are you really referring to TCR NC
13 Construction I Limited Partnership who is the
14 general contractor on the purchase orders related to
15 this particular project, that is?

16 A In some instances, I suppose so. But in
17 other instances, with respect to searching our
18 history, for example, it was not specific to this
19 specific entity.

20 Q I understand. Beyond your earlier
21 description of your searches you performed, were
22 references for Trammell Crow or TCR essentially a
23 shorthand for TCR NC Construction I Limited
24 Partnership?

25 A I believe that to be the case.

1 Q On the purchase order, the amount
2 totaled on the purchase order is \$215,230.46,
3 correct?

4 A Oh, here. 215,230.46.

5 Q I'm going to hand you what's been marked
6 Defendant's Exhibit D, which again, for the record,
7 will be renumbered by the court reporter.

8 It says Change Order No. 1, to the
9 purchase order, signed -- or listing Builders First
10 Source as the subcontractor/vendor, correct?

11 (Defendant's Exhibit No. 151 is marked for
12 identification.)

13 A Yes.

14 Q The total of this change order is
15 \$11,965.18?

16 A Yes.

17 Q Which created the new contract value
18 between TCR NC Construction I Limited Partnership
19 and Builders First Source Southeast Group of
20 \$227,195.64, correct?

21 A Correct.

22 Q All right. And I'll represent to you,
23 sir, that the total of lien waivers in Defendant's
24 Exhibits A and B equal \$227,195.64. So given all
25 that, does it appear that Ms. Shafer and Mr. DeHaas

1 signed lien waivers for the full contract amount at
2 least as of this change order No. 1?

3 A That's what it appears.

4 Q Okay. Do you have any evidence to
5 suggest otherwise?

6 A That they didn't sign those? No, I have
7 no evidence otherwise.

8 Q It's certainly possible that whenever
9 Larry Bratton brokered a deal for Builders First
10 Source he probably just recorded something
11 differently than your typical arrangements?

12 A I don't know.

13 Q In your searches, you searched for ESP
14 in a different number of varieties. Did you ever
15 search for Raymond Building Supply, or any variation
16 of that?

17 A Yes.

18 Q How about specifically TCR NC
19 Construction I Limited Partnership?

20 A Specifically, no. We searched TCR
21 without the rest of the information.

22 Q And would that have generated a response
23 for that, maybe, to your knowledge?

24 A Yes.

25 Q I think those are all the questions I

1 have.

2 MR. TURNER: I don't have any questions.

3 MR. NICOLETTE: Nothing.

4 MS. WAGNER: No questions.

5 MR. LUCEY: We're adjourned. Thank you,

6 sir.

7 A Thank you.

8 (Whereupon, the deposition is adjourned at 4:22
9 p.m.)

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO.: 2012-CP-10-7594
ONE BELLE HALL PROPERTY OWNERS
ASSOCIATION, INC., AND BRANDY
RAMEY, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

-vs-

TRAMMELL CROW RESIDENTIAL, INC.;
TCR NC CONSTRUCTION I, LP,
ET AL.,

Defendants.

Wednesday, September 9, 2015

Discovery Deposition of MARK GALVIN, taken
pursuant to notice, was held at the law office of
Lucey Law Firm, 415 Mill Street, Mount Pleasant,
South Carolina, 29464, commencing at 10:00 A.M., on
the above date, before Judy W. Galuppo, Professional
Court Reporter and Notary Public for the State of
South Carolina.

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1 ~~your background?~~ I know off the record we spoke and
2 you're originally from New England; is that correct?

3 A That's correct.

4 Q So you were born in Massachusetts?

5 A Yes.

6 Q Can you tell me what your educational
7 background is, please?

8 A I have a B.S. in mechanical engineering.

9 Q ~~Where was that from?~~

10 A WPI.

11 Q ~~What is WPI?~~

12 A ~~Worcester Polytechnic Institute of~~
13 ~~Technology.~~

14 Q ~~When did you get your B.S.?~~

15 A 1979.

16 Q ~~And did you have any postgraduate work?~~

17 A No.

18 Q ~~And you're married; is that correct?~~

19 A Correct.

20 Q ~~Your wife is Cheryl?~~

21 A Cheryl, yes.

22 Q ~~Does she have any technical background?~~

23 A No. Her education is, she has a B.S. in
24 accounting.

25 Q All right. So tell me -- take me

1 ~~some form that you can understand, I'll be happy to~~
2 ~~do that, okay?~~

3 A ~~Very good.~~

4 Q ~~If you go on and answer a question, I'm~~
5 ~~going to assume that you understood the question; is~~
6 ~~that fair?~~

7 A ~~Sure.~~

8 Q So you have a wife, Cheryl. And she's
9 at One Belle Hall with you?

10 A Yes.

11 Q Okay. And y'all live in what unit?

12 A Building 1900, Unit 201.

13 Q All right. And you have two children?

14 A Three children.

15 Q I'm sorry. How old are they?

16 A Twenty-seven, 25, 21.

17 Q Do any of them live in Charleston?

18 A No.

19 Q Have any of them been at One Belle Hall
20 and had any complaints with One Belle Hall?

21 A Sure. So my two youngest have lived in
22 the unit from time to time. And both children have
23 been there when we've had termites swarm inside the
24 unit and been covered in termites and had to deal
25 with the aftermath.

1 Q All right. Your two youngest are, what
2 are their names?

3 A So Caitlin, my daughter, C-A-I-T-L-I-N,
4 and Michael, my son; Caitlin is 25 and Michael is
5 21.

6 Q Neither are married?

7 A No.

8 Q Do you live in the apartment or in the
9 condominium full time?

10 A Yes.

11 Q So when Caitlin and Michael were back,
12 they were living with y'all?

13 A Yes.

14 Q Anything else other than the termite
15 swarms that they would have experienced as an issue
16 with the condominium at One Belle Hall?

17 A Well, I think some of the other issues,
18 you know, would a child complain? Maybe not. But
19 they were there during the having to replace all of
20 the tile, the tile failures, and that generated a
21 lot of dust, and that was -- they kind of had to
22 breathe that and kind of live through that, so...

23 Q Anything else?

24 A No.

25 Q Well, let's talk about the termite



1 swarms. Can you -- 'can you tell me how many times
2 this happened, where it originated from, what caused
3 it?

4 A Sure. So we've had three major
5 swarmings, when I say major, it was like a multi-day
6 event. It typically happens in May. We have
7 windows that leak, the water goes in between the
8 walls that creates an environment that termites
9 enjoy. The termites have eaten through the woodwork
10 surrounding the windows, so the moldings, if you
11 will, in the foundation for the placement of the
12 window. And then they've chewed through the
13 drywall. So they have created holes that you could
14 probably put two or three fingers through. And we
15 jokingly call it the termite superhighway.

16 So literally in the month of May, I
17 think -- I'm not an expert, but I understand it's
18 mating season for termites, so they enjoy swarming.
19 So first time it happened, my son was out, I was
20 reading a book in bed and my son walks into the
21 room. I have my light on, he says dad, there's bugs
22 flying around the lights. So I looked down and they
23 were all over me.

24 So then we go out into the kitchen, we
25 turn on that light and then they all go to that



1 light. And we turn on the dining room light they
2 all go to that light. So we try to kind of corral
3 them, we spray them, we try to knock them down.
4 It's a mess. They're in our food, our tables,
5 everywhere, all over the apartment.

6 So you know, this occurs again and again
7 and again multiple days, and generally in May. So
8 apparently that's mating season for termites.

9 Q Let me back up real quick.

10 A Sure.

11 Q The first time that this happened, when
12 was that?

13 A So it's -- three occurrences, it was
14 this year in May, the year before in May, the year
15 before that in May.

16 Q So 2015 in May, 2014 in May, 2013 in
17 May?

18 A Correct.

19 Q So the one that you just described was
20 May 2013?

21 A Yes.

22 Q Okay. And how many days did that last?

23 A It's typically three, four-day swarming.
24 Usually in the evenings. Usually around somewhere
25 between 8 and 10 o'clock.



1 Q At night?

2 A Uh-huh.

3 Q Okay. So the -- your son comes in, or
4 whatever time it was at night in May 2013, says
5 there's bugs. Y'all try and knock them down with
6 spray?

7 A Uh-huh.

8 Q What do you do after that?

9 A Okay. So then I go to Lowe's. We
10 contact Marvin Meek to let him know from an
11 Association point of view. Then we do some stuff to
12 kind of defend ourselves individually. So some of
13 the things we did were we purchased commercially
14 available termite sprays, chemicals. Then I took a
15 pistol drill and drilled holes around the windows
16 where they'd come swarming out of. I would spray
17 into the holes with the thought that that might slow
18 them down a little bit.

19 This year we got a little more
20 sophisticated. We actually would have a shop vac
21 set up and try to vacuum as they're starting to come
22 through the windows. When they swarm, they
23 actually, in our living room, there's a window on
24 one side and then two double windows that face the
25 street. So the termites would actually migrate from



1 the bottom of the window, come across the windows to
2 swarm outside, but they'd also start working their
3 way inside the apartment if you have a light on,
4 right.

5 So at some point, I can manage the
6 number of termites coming in, but at some point it
7 gets overwhelming, right, there's too many of them.
8 Literally the entire window would be covered -- two
9 double windows, two double windows would be covered
10 with termites. I mean, the entire window, and
11 they're just coming out. And they're making a
12 choice, they're either coming into our apartment or
13 they're swarming lights that are outside, the street
14 lights that are adjacent to our unit.

15 Q I think I just got a little bit
16 confused.

17 A Sure.

18 Q So you have two double windows?

19 A Two double windows.

20 Q That face what?

21 A The street.

22 Q That face the garage side?

23 A I think that would be opposite the
24 garage. Yeah, it's Belle Hall Ave, I guess. No,
25 maybe it's not. Well, anyway, the street behind

1 1900.

2 Q So the opposite side from the garage?

3 A Correct.

4 Q And then on the garage side you also
5 have a window?

6 A We're an end unit, so this would be 90
7 degrees from the two doubles.

8 Q Okay.

9 A Yeah, so if -- I apologize. If this is
10 the street, this is the garage, double window,
11 double window, single window. And during a
12 swarming, literally the entire surface area of the
13 window, 1, 2, 3, 4, 5 windows covered with termites.

14 Q Each window?

15 A All of them.

16 Q Okay. Now, do they originate from each
17 window or do they originate from one and spread to
18 the others?

19 MS. LYNN: Objection.

20 A So depending on the day of the swarming,
21 more would come out of this side or this side or
22 this side. Might have had something to do with the
23 amount of chemical I would spray into the walls. So
24 if you could picture a window, I would drill every
25 12 inches or so around the perimeter, 360 degrees



1 around the perimeter of the wall and inject termite
2 spray and then I would spackle it back up, you know,
3 thinking that that would help, that we would go
4 right past it and swarm through those windows.

5 Each window had molding around it, and
6 they would chew through the molding, right. So now
7 I've got big gaping holes in my molding, the side
8 molding, you know, where it takes a 90-degree corner
9 and then maybe the molding on the adjacent bottom.
10 And then I have to kind of re-putty or laying
11 caulking to seal all those areas to keep them from
12 coming back in.

13 Q When you say "they," who is they?

14 A The termites. "Them." Sorry.

15 So you know, during these events,
16 they're very aggressive. They chewed through --
17 they would chew through and leave holes in our
18 drywall. They would chew through the wood. What's
19 holding those windows in, I have no idea at this
20 point, right. I expect that at some point those
21 windows will just fall out into the street, right,
22 because there's not much structure left there.

23 Q The part that I was getting a little bit
24 confused on is you said sometimes they're swarming
25 inside and sometimes they're going towards the



1 streetlight?

2 A Oh, sure. They have a choice. If
3 there's a light on in the unit, they go to --
4 they're interested in the light for some reason,
5 right. They just swarm around the lights. We have
6 a chandelier that's probably got 1, 2, 3, 4, 5 cups,
7 right, and the light is inside. There will
8 literally be 4 or 500 termites in each cup when I'm
9 done spraying.

10 So I just like vacuum up the cups, bang,
11 bang, bang, around the -- over our table, you know,
12 where we eat. So they'll be cast over the entire
13 table, all over the woodwork. After an invasion,
14 right when I'm done spraying, they're everywhere.

15 Q So they're able to get out to exit the
16 walls to go to the outside or to the inside of the
17 apartment? They're not -- I guess my question is,
18 they're not inside the apartment and then flying
19 from the inside to the outside?

20 A Right. I think there's enough choices
21 they have in openings and gaps, right, that they can
22 choose to fly outside, to the outside light post or
23 they can come in and fly towards our lights inside.
24 They seem to enjoy both.

25 Q Did you see any impact from your



1 spraying?

2 A Well, I -- hard to judge. I have a
3 neighbor upstairs. Seems that maybe at some point I
4 might have driven some up that way, right, because
5 the amount of termites in his unit are just
6 incredible.

7 Q Who is that?

8 A Jack Wilson.

9 Q And he would be in unit?

10 A So we're 208, he would be 308, right.
11 The lady next door has them. Well, they're all
12 throughout the building in 1900.

13 Q Who is the lady next door?

14 A Cheryl something or other. I can't
15 remember her last name.

16 Q And that would be unit what, 202, 203?

17 A Yeah, 202, I believe it would be.

18 Q Have you talked to anybody else in the
19 building who has them, any other unit owners?

20 A Typically through Marvin. Every time we
21 have a swarming I report it to Marvin. Marvin would
22 let me know that there are other active termite
23 spots in the buildings and there have been other
24 swarmings. So it seems that the middle of the
25 building has had a number of them, as well as other



1 buildings, so 2200, you know, 2200 -- it seems that
2 all buildings have termites.

3 Q ~~Have you spoken to anybody other than~~
4 ~~Marvin who had termites?~~

5 A No.

6 Q ~~Did you ever contact an exterminator?~~

7 A ~~Marvin contacted Dobson.~~

8 Q ~~Did you ever speak with Dobson?~~

9 A ~~No. I travel a lot. So when Dobson was~~
10 ~~there, I wasn't necessarily there during a~~
11 ~~treatment.~~

12 Q ~~Did they come out and treat?~~

13 A ~~Dobson has come out and treated.~~

14 Q ~~Was that after the first event?~~

15 A ~~I don't recall.~~

16 Q ~~Who would have -- would your wife have~~
17 ~~dealt with them or would that just be Marvin or the~~
18 ~~homeowners association?~~

19 A ~~Marvin and the homeowners association~~
20 ~~handles the termite contract.~~

21 Q ~~Do you know how many times Dobson's come~~
22 ~~out to try to address this issue?~~

23 A No.

24 Q Do you have any pictures?

25 A Yes.

1 Q Of the swarms? Have you turned those
2 over to your attorney?

3 A Yes.

4 Q I may have them in front of me, I don't
5 know.

6 (At this time there is a brief break in the
7 deposition.)

8 BY MR. TURNER:

9 Q I have handed you what's been marked as
10 Defendant's Exhibit 51; is that correct?

11 A 152.

12 (Defendant's Exhibit No. 152 is marked for
13 identification.)

14 Q 152. Which is Bates numbered, which is
15 this number right here on the left, and that says
16 OBH?

17 A OBH HO 47.

18 Q Right. And that's 47 through 56?

19 A Okay.

20 Q The first one which is 47 is the one at
21 the kitchen table, correct?

22 A Yes.

23 Q All right. Do you know whether this was
24 taken in 2013, '14 or '15?

25 A No, can't remember. I'm sure the stuff



1 I sent probably had dates on it.

2 Q Okay.

3 A But you have to go back to the
4 emails to -- this would be typical of all three. I
5 probably got a little bit better at it third year
6 into it. Then as they would come through the wall.
7 If I could find the opening, you know, I'd try to
8 vacuum through there. But this would be typical of
9 what would be left after they'd be swarming and I
10 would hit them with the termite chemicals. So at
11 this point they were swarming the light above the
12 table and the table is covered with chemicals,
13 they'd fall into that and die.

14 Q If you'd turn the page.

15 A Forty-eight.

16 Q The next one which is 48 is the light
17 over your dining room table, correct?

18 A Yeah. So what's probably that hard
19 detail to pick up is there's termites all over stuck
20 to the light in those bowls probably 2 inches deep.

21 Q Okay. And same thing, you don't know --
22 did you take these pictures or somebody else?

23 A I did with my cell phone.

24 Q Did you give them to anybody other than
25 the attorney for the homeowners association?



1 A I probably copied Marvin.

2 Q All right. Turn to the next page.

3 A Forty-nine.

4 Q Okay. That's 49, and that has the
5 blinds and orange I guess termites underneath it?

6 A Those are dead termites, yes. So in
7 this scenario, they probably have eaten through the
8 intersections of the window in the bottom molding or
9 the window in the side moldings. So if you look,
10 that's probably caulking I did the night before.
11 But they're chewing through the intersection points
12 between the windows and the moldings.

13 Q Okay. Can you circle where you think
14 that they're coming through on this picture?

15 A There might be a better one. Yeah, so
16 up here, this is looking up at the top of the
17 window.

18 Q Can you give me the Bates number?

19 A Fifty-three.

20 Q Okay.

21 A In this particular swarming, right, it
22 won't be the same any two days in a row.

23 Q The orientation should be like that?

24 A Yeah, so I'm looking up at the top of
25 the window. This is the blind pushed aside. So



1 you're looking between the blind and the window.

2 Q Okay.

3 A So you see these huge, these gaps here.

4 Q Right.

5 A I'll circle, here, here, here, here.

6 Those are holes (indicating).

7 Q Okay. Can you initial that for me just
8 so we know that it wasn't me drawing for you?

9 A Sure. No problem. So you're looking
10 up. But so I would caulk that and they'll come
11 through someplace else the next day.

12 Q Okay. Now, is this your caulking, that
13 these holes are through?

14 A Depends on when the photo was taken. So
15 at some point they're coming through the original
16 caulk, right? And then I would -- or they're
17 creating gaps in the wood, right, and then I would
18 caulk, so maybe.

19 Q Maybe a better question is, that's
20 caulking, not weather stripping?

21 A Yes. What you're looking at here is the
22 intersection of the window and the wood.

23 Q ~~Okay. And if we go back to the -- if we~~
24 ~~go back to, what is it, 48, the one with the blinds,~~
25 ~~this one right here?~~



1 A I'm sorry. ~~Fifty-four would be a better~~
2 ~~example of the gap.~~

3 Q And I'll get there. Let me just --

4 A Which page are you on?

5 Q That one, if that's the one with the
6 orange? Next one right there. Okay. So again we
7 see caulking where the windows would move up where
8 it intersects with the molding. Did you caulk that?
9 Because that wouldn't have been originally caulked,
10 would it?

11 MS. LYNN: Objection.

12 Q Let me ask you that, was it originally
13 caulked when you moved in?

14 A Yes, it was caulked.

15 Q Where the windows -- so do those windows
16 actually open?

17 A I don't understand your question.

18 Q Right. So are these windows that -- and
19 I just -- do they open up from the bottom?

20 A Well, sure. There's -- that's a wood
21 surface, there's metal that comes up this way or
22 window, right? And then the window fits inside the
23 frame where it opens and closes. They used to open
24 very freely, and then over time there's so much
25 moisture in these walls that now it's very difficult

1 to open those windows. They're not caulked closed
2 if that's your question.

3 Q That was my question.

4 A No. If you move the blind, there's
5 probably a better picture. The windows are not
6 caulked closed, if that's your question.

7 Q Okay. So are they coming, then, in
8 between the space between the caulking and the
9 moveable part of the window?

10 MS. LYNN: Objection.

11 Q And she's going to object to form, which
12 at some point in time if it gets to that point the
13 judge will hear, but you can go on. And if she
14 instructs you not to answer, then that's something a
15 little bit different.

16 A I'll try and answer your question.
17 They're not eating the caulk. They're eating the
18 wood and they're eating the drywall. The caulk is
19 used to plug the holes that they've eaten through.

20 Q Okay. Now, the next picture -- which
21 one are you on? That one.

22 A Fifty.

23 Q This has -- this is the one -- all
24 right. And tell me what's going on here.

25 A We're looking at dead termites.



1 Q All of those are dead?

2 A Yes.

3 Q Did you see them coming out of any part
4 of this picture? Can you identify any part in this
5 picture where they came out?

6 A No.

7 Q All right. Is this what you were
8 talking about when you meant that a window was
9 covered?

10 MS. LYNN: Objection.

11 A No. During the active swarming you
12 have -- this lower window has a screen behind it.

13 Q Right.

14 A This window goes up and down. The
15 termites would literally blackout, if you will, the
16 entire window area, right? And they would find
17 their way through gaps between the windows. They
18 would chew through the wood and they would come
19 through the -- they would eat through the drywall.

20 Q ~~On the out --~~

21 A ~~Right.~~

22 Q ~~On this?~~

23 A ~~Right. So maybe if we moved to 54.~~

24 Q ~~Hold on one second.~~

25 A ~~Fifty-four shows -- again, we're looking~~



1 ~~up. That's now an opening. Right? Did some~~
2 ~~caulking there, that's an opening. That's an~~
3 ~~opening. Right? That's saw dust on the bottom.~~
4 ~~That's top. That's bottom.~~

5 Q ~~We need to do this so she can -- because~~
6 ~~we're going to read it back and not know what "this"~~
7 ~~stands for because nobody's going to be able to see~~
8 ~~your point.~~ So on 54; is that right?

9 A Fifty-four.

10 Q You're looking at what's the separation
11 between the molding and the drywall?

12 A Molding and wood.

13 Q And wood, okay?

14 A The wood casing.

15 Q Okay. And there's some -- there's
16 intermittent caulking, is what you were pointing to?

17 A Right.

18 Q In that separation, correct?

19 A Correct.

20 Q And that's at the top of the window?

21 A Top of the window.

22 Q And when you turn to the next page which
23 is what, 56?

24 A Six.

25 Q You're saying that this is at the bottom

1 of the window?

2 A Right.

3 Q And that is saw dust created by what?

4 A Termites chewing through.

5 Q And where this saw dust is concentrated,
6 is that where you saw the termites coming out?

7 A Saw dust, I believe, is falling from the
8 upper window.

9 Q Okay.

10 A Yeah. I've actually witnessed termites
11 coming from top, sides, bottom, holes. They're
12 coming from 360 degrees around the window.

13 Q Okay. And that's on each window?

14 A Yes. I've had termites enter -- in the
15 living room, there's a double window on the left, a
16 double window on the right, a single window as you
17 take a 90-degree turn, and they've come through all
18 of those. And in addition, they've chewed through
19 the drywall underneath the windows. I find holes
20 that big where termites just fly freely into the
21 condo (indicating).

22 Q Okay. After Dobson came out, the
23 exterminating company, did that lessen the issue at
24 all?

25 A Well, seems like the answer to that is



1 no. The reason being is that you haven't taken away
2 the food source, right? As long as the windows
3 leak, as long as there's water pouring in from the
4 outside, you still have the moisture problem and
5 termites will go.

6 Q Let's deal with that first.

7 MS. LYNN: Let him finish.

8 A So we've had swarmings in three years.
9 And do I think the termite problem is solved? I
10 doubt it. I think they're still in the walls and I
11 think they still will continue to swarm and I think
12 we'll have a swarming problem next year.

13 Q Do you have any expertise with termites?

14 A None, except I'm getting very good at
15 vacuuming them up.

16 Q Who told you that if you treat wet wood
17 or where there's still food that that won't get rid
18 of the termite problem?

19 A I'm not an expert. To me it's a common
20 sense thing, right, there's a food supply there.
21 And my guess is deep enough inside where the
22 chemicals I'm spraying aren't getting to them. So
23 my guess is that there's a food supply that they'll
24 continue to enjoy the 24-hour-a-day buffet, if you
25 will, until there's no food left, which means



1 moisture.

2 Q Okay. There's a -- I would draw a
3 distinction between the chemicals that you were
4 spraying and the treatment that Dobson has
5 performed, whatever that is. And what I'm trying to
6 say is, has any expert in termites, any exterminator
7 or anybody else who specializes in this, told you
8 you can't get rid of termites if there's still a
9 food source?

10 A No.

11 Q Okay. That's something you came up with
12 on your own?

13 MS. LYNN: Objection.

14 A I think it's -- from my point of view,
15 it's just a common sense thing. It was a food
16 supply.

17 Q Okay. Do you know what treatments -- do
18 you know what they did to try and deal with the
19 termite swarms?

20 A No.

21 Q Have you complained to them every year,
22 or do you just go back to Marvin every year?

23 A Marvin.

24 Q And do you just go back -- let me do it
25 this way. So you had the first swarm in May of 2013

1 Q All right. ~~Do you own a garage?~~

2 A Yes.

3 Q Okay. ~~And have you had any electrical~~
4 ~~issues with the garage?~~

5 A ~~Not that I'm aware of.~~

6 Q ~~No tripping of fuses?~~

7 A No.

8 Q ~~Have you ever been locked out of your~~
9 ~~garage?~~

10 A No.

11 Q Okay. ~~Personal property, furniture,~~
12 ~~carpets, that type of stuff, any damages to any of~~
13 ~~that from either moisture intrusion or termites or~~
14 ~~something else?~~

15 MS. LYNN: ~~Objection.~~

16 A ~~Not that I'm aware of.~~

17 Q All right. Have you seen any moisture
18 intrusion into your apartment or into your
19 condominium?

20 A Yes.

21 Q And where was that?

22 A We get puddles on the window sills.

23 Q Okay. I'm going to show you two pages
24 of what's marked as Defendant's 156, which is WDP
25 OBH 12522 and 12523, and ask if you've ever seen



1 that.

2 (Defendant's Exhibit No. 156 is marked for
3 identification.)

4 A No, I don't think I've seen this.

5 Q Okay.

6 A This is that test report?

7 Q Right. Have you had -- that's
8 discussing a window on the south elevation. Do you
9 know if you've had any leaks -- have you seen -- let
10 me put it that way. Have you seen a leak in the
11 window on the south elevation which is listed on the
12 front page?

13 A South is facing away from the garage?
14 Garage faces north?

15 Q I think so.

16 MS. LYNN: Toward the street.

17 A Toward the street. Yes, I've had
18 puddles on those window sills.

19 Q Have you seen any moisture intrusion on
20 any of the other windows?

21 A I've had puddles on the windows on the
22 garage side as well.

23 Q How many windows do you have in your
24 unit?

25 A Well, let's count: 1, 2, 3, 4, 5, 6, 7,



1 8, 9, 10, 11.

2 Q All right. How many of those are
3 doubles?

4 A Five.

5 Q So five double, six singles?

6 A No, five doubles, one single, that's 11.

7 Q Oh, I see. You were counting the
8 doubles as two. So out of those six individual --
9 let's call it six, the five doubles being -- or each
10 double being one unit, how many of those have you
11 seen leak?

12 A Three.

13 Q And those -- can you tell me where those
14 were exactly?

15 A Sure. They would be the two doubles
16 facing the street, opposite side of the garage, and
17 one double in the bedroom over the garage.

18 Q And that is -- is that a guest bedroom?

19 A Guest bedroom, correct. So if you're
20 walking towards the two bedrooms, there's a bedroom
21 on the right, there's a bedroom on the left, it's
22 the bedroom on the left.

23 Q Have you reported those leaks to anyone?

24 A Well, sure, to this activity here, the
25 people that came through for evaluations.



1 Q Had you reported it before they came
2 through?

3 A I don't think so. If you have the
4 blinds pulled down, you wouldn't notice the leak.
5 Then when we started having discussions about the
6 leaks, when I pulled the blinds up, oh, my God, I've
7 got water on the window sills. So I found that out
8 later in the process.

9 Q Have you seen where the water is coming
10 from?

11 A I see the result of puddles after a
12 storm. Depending on which way the wind is blowing
13 is which window is going to puddle.

14 Q ~~Have you actually seen where it comes~~
15 ~~in, or you just see the after effect?~~

16 A Correct.

17 MS. LYNN: Objection.

18 Q ~~Have you ever had condensation on your~~
19 ~~windows?~~

20 A Sure. ~~In the morning there's~~
21 ~~condensation on the windows.~~

22 Q ~~Is there some reason why you believe~~
23 ~~that the puddles on the sill is not related to~~
24 ~~condensation?~~

25 A ~~Can't answer that.~~



1 Q How long did you meet?

2 A Approximately an hour and a half.

3 Q All right. Few follow-ups on the

4 termite issue. It sounds like you never had any

5 direct contact with Dodson; is that correct?

6 A That's correct.

7 Q Did you receive any reports of any sort

8 after they came to provide treatment?

9 A No.

10 Q Any reports from Dodson?

11 A No.

12 Q Marvin did not provide you any reports

13 from Dodson?

14 A No.

15 Q Did you request any?

16 A No.

17 Q Why not?

18 A Why not? The termites are part of the

19 litigation that's being worked through with the HOA.

20 Q So your first notice of termite issues

21 in your unit was in May of 2013?

22 A Yes.

23 Q There were some photos made exhibits --

24 made an exhibit earlier. Are those the only photos

25 you have of termites in your unit?

1 MS. LYNN: ~~Objection.~~

2 A ~~I can't recall when I first saw the~~
3 ~~leaks.~~

4 Q ~~Were you aware of windows leaking in~~
5 ~~2013?~~

6 MS. LYNN: ~~Objection.~~

7 A ~~I can't recall when I saw the windows~~
8 ~~leaking.~~

9 Q Have you ever seen the windows leak?

10 A Actually, I observed puddles on the
11 window sill after a rain.

12 Q ~~You've never seen puddles form?~~

13 A No.

14 Q ~~But you've seen puddles after it rains?~~

15 A Correct.

16 Q ~~I'm sorry. I didn't see all the photos~~
17 ~~that were made. Do you have any pictures of puddles~~
18 ~~at your windows in your unit?~~

19 A ~~So I think I tried to photograph them,~~
20 ~~and you can't tell on a cell phone that there's a~~
21 ~~puddle there. It's difficult to photograph. So I~~
22 ~~don't think there's any pictures here of puddles.~~

23 Q ~~Do you have any pictures anywhere of~~
24 ~~puddles?~~

25 A ~~I can go back and look.~~



1 Q ~~Would you please do that, and if you~~
2 ~~find any, provide those to Ms. Lynn.~~

3 ~~(This page contains requested information.)~~

4 A ~~Sure.~~

5 Q Thank you.

6 A Actually, I cleaned a puddle up the last
7 heavy rain we had a weekend ago.

8 Q ~~Okay. Do you know the cause of that~~
9 ~~water intrusion?~~

10 MS. LYNN: ~~Objection.~~

11 A ~~Can't answer that.~~

12 Q ~~You don't know the cause of the water~~
13 ~~intrusion?~~

14 MS. LYNN: ~~Objection.~~

15 Q Do you know the cause of the water
16 intrusion?

17 A So the water occurs after a heavy rain
18 on the ledge of the window. I'm not an expert, but
19 I have to believe it's coming through the window,
20 around the window.

21 Q ~~That's your best guess?~~

22 A ~~Yes.~~

23 Q ~~You've not consulted with any other --~~

24 A ~~Experts? No.~~

25 Q ~~-- expert?~~

