

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                                   Supreme Court No.:  
3                                   District Case Court No. 07A542616

4                                   D.R. HORTON, INC.

5                                   Petitioner,

6                                   v.

7                                   EIGHTH JUDICIAL DISTRICT COURT  
8                                   of the State of Nevada, in and for the COUNTY OF CLARK;  
9                                   and the HONORABLE SUSAN JOHNSON, District Judge,

10                                  Respondent,

11                                  ARLINGTON RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit  
12                                  corporation,

13                                  Real Party in Interest.

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15                                  **APPENDIX TO PETITIONER, D.R. HORTON, INC.'S**  
16                                  **PETITION FOR WRIT OF PROHIBITION OF MANDAMUS**  
17                                  **VOLUME VII OF VII**  
18                                  \_\_\_\_\_

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No.	Document Description	Filed Date	Volume	Bates
1	Complaint	6-07-07	I	0001-0012
2	Assignment of Causes of Action	6-18-10	I	0013
3	Plaintiff's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d)	9-30-10	I	0014-0052
4	Order on Standing Motion	2-10-11	I	0053-0072
5	D.R. Horton, Inc.'s Answer to Plaintiff's Complaint & Third Party Complaint	9-23-11	I	0073-0150
6	Order Denying Petition (Filed by the Association Writ)	1-25-13	I	0151-0160
7	Order Granting Petition (Filed by D.R. Horton Writ)	1-25-13	I	0161-0166
8	Plaintiff's Motion for Determination that the Superior Alternative Procedure to Proceed with Claims Pursuant to NRS 116.3102(1)(d) is as a Representative Action for all Members' Interests With Regard to the Building Envelope Issues, and as a Representative Action of the Assignee's Interests With Regard to the Firewall and Structural Issues	4-19-13	I	0167-0195
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10	Recorder's Transcript from May 9, 2013 Motions Hearing	05-09-13	II	0213-0263
11	D.R. Horton's Opposition to Plaintiff's Purported Matrix Outlining the Defects Alleged and Locations of the Defects and Joint Expert Response to Same	10-04-13	II	0264-0392
12	Recorders Transcript for October 10 hearing	10-10-13	II	0393-0433
13	Supplement to Notice of Plaintiff's Matrix Outlining the Defects Alleged and Locations of the Defects Pursuant to Court Order	10-23-13	III	0434-0502
14	Recorder's Transcript of Hearing re Rule 23 Standing October 24, 2013	10-24-13	III	0503-0530
15	Order Re: Standing	11-12-13	III	0531-0540
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17	Motion for Reconsideration on Order Shortening Time	1-08-14	IV	0587-0826
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	Shortening Time			
17	Motion for Reconsideration on Order Shortening Time		VI	1067-1095
18	DR Horton's Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time	1-13-14	VI	1096-1162
19	Recorder's Transcript from 1-16-14	1-16-14	VI	1163-1222
20	Deposition transcript of Harvey Kreitenberg	1-22-14	VI	1223-1406
21	Order Regarding Plaintiff's Motion for Reconsideration	3-20-14	VII	1407-1409
22	Notice of Entry of Order Granting Plaintiff's Motion for Stay	4-01-14	VII	1410-1412

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of April, 2014, I submitted for electronic filing and electronic service the foregoing APPENDIX TO PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS, VOLUME VII OF VII.

I HEREBY CERTIFY that on the 14<sup>th</sup> day of April, 2014, a copy of APPENDIX TO PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS VOLUME VII OF VII was hand delivered to the following:

Honorable Judge Susan H. Johnson  
Regional Justice Center, Department XXII  
Eighth Judicial District Court  
200 Lewis Avenue  
Las Vegas, NV 89101

I HEREBY CERTIFY that on the 14<sup>th</sup> day of April, 2014, a copy of PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS VOLUME VII OF VII was hand delivered to the following:

Paul P. Terry  
John J. Stander  
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Attorneys for Real Party in Interest



Employee of Wood, Smith, Henning, & Berman  
LLP

1 Q. Okay. Do you have any information for the  
2 101 and 103 plan types that homeowners are buying  
3 larger water heater tanks, other than what may be here?  
4 And certainly we don't need to take the time to study  
5 this.

6 A. No.

7 Q. I do have a couple more questions on this.  
8 Sorry. You just put it away.

9 But line 31 says "exterior only." I'm not  
10 sure what that's referencing.

11 A. We couldn't get into the unit.

12 Q. Oh, okay. That was just the inspection was  
13 exterior only?

14 A. Right.

15 Q. Gotcha. I thought somebody put in an  
16 exterior water heater. I was, like, okay.

17 Do you have the Smith product literature in  
18 your file?

19 A. I do. Some of it.

20 Q. Let me see what you've got, and then we'll  
21 take a lunch break. Oh, is it in here?

22 A. Yes it is.

23 Q. Great. So it's part of Exhibit 67?

24 A. Right. So this is a water heater selection  
25 guide from A.O. Smith. So this is a sheet that we use

1 when designing plumbing. So they talk about choosing  
2 the right water heater. So a couple of things that  
3 need to be considered, and I just go through the  
4 checklist. On bullet point number -- bullet -- one of  
5 the bullet points under No. 1 says are there more than  
6 two full baths in the home. Then they talk about  
7 teenagers in the home, because they destroy everything,  
8 including using a lot of water.

9 Q. When you can get them to use water.

10 A. The next bullet point is, if you have an  
11 oversized whirlpool bath or other large tub, which we  
12 have here at the garden tubs --

13 Q. Right.

14 A. -- that are in those plans. And then it says  
15 the water heater tank capacity should be a hundred  
16 percent of the bathtub capacity.

17 So an example, 75-gallon tub, should be a  
18 75-gallon water heater.

19 Q. Okay.

20 A. So we're not a 75-gallon tub.

21 And then the -- the other consideration is a  
22 recovery matrix. In other words, how much hot water  
23 can the heater produce over a period of time. So if  
24 there's two people in a home, then it needs to have --  
25 they want to have 45- to 55-gallon per hour recovery.

1 Q. Wow.

2 A. And then it goes up. So even if we were to  
3 use the lesser demand of the matrix that they provide  
4 at the bottom, the heaters don't satisfy those numbers  
5 either, according to A.O. Smith.

6 Q. So the manufacturer doesn't even recommend  
7 its own water heater?

8 A. For what?

9 Q. Well, you've given us a printout from the  
10 manufacturer, right, this document entitled Residential  
11 Water Heater Selection Guide.

12 A. Correct.

13 Q. And the water heaters that you have listed in  
14 your matrix, the 38- and 40-gallon heaters, apparently  
15 the manufacturer doesn't even recommend, according to  
16 this page.

17 A. Oh, I think you're kind of --

18 Q. Right?

19 A. -- jumping categories here. The A.O. Smith  
20 has a large line of water heaters.

21 Q. Oh, okay.

22 A. And they do have heaters that certainly  
23 satisfy the information on the sheet that I submitted  
24 in my codes package.

25 Q. But you didn't print the one for the 38- or

1 40-gallon water heaters?

2 A. This is their general sizing guide.  
3 They're -- the installation sheet for that water heater  
4 doesn't deal with the heater sizes. Just the heater  
5 installation.

6 Q. Okay. So for the heater size, it talks about  
7 45 gallons, but the largest we have on your matrix of  
8 inspections is 40 gallons.

9 A. Well, this is -- you're reading the bottom  
10 part of the document. This is the recovery rate.

11 Q. Right.

12 A. And the recovery rate on these heaters --

13 Q. Is not listed on your matrix.

14 A. No. It's -- I've got photographs of the  
15 heater tags that have that information.

16 Recovery gallons per hour on these heaters is  
17 39.32.

18 Q. The document that makes up Exhibit 67 doesn't  
19 appear to have a date on it. When did you -- what is  
20 the date of this document? It's Page 4 to something.

21 A. I don't know what the date is of that. It's  
22 been in my library for a long while.

23 Q. It's peculiar that A.O. Smith would put out a  
24 document with a recovery rate that is higher than the  
25 recovery rate of the water heaters that they're



1 selling. So somewhere there must be another document  
2 that talks about what these water heaters are good for  
3 that you don't have.

4 A. You're trying to set up a correlation that I  
5 don't think is fair. I understand what you're asking.

6 What this water heater selection guide says  
7 to me, that if I've got, as we do here, the garden  
8 tubs, and more than two people in there, then my  
9 desired goal would be to get a heater that has  
10 sufficient capacity and the recovery of 45 to  
11 55 gallons per hour.

12 Q. Right.

13 A. That's what it says. And with that  
14 information, and as a designer, I would then select a  
15 water heater that would satisfy that demand.

16 Q. But we're looking at a document from a  
17 manufacturer who clearly has an interest to sell a  
18 higher-dollar cost water heater that you're relying  
19 upon to criticize, presumably, what was a lower cost  
20 water heater. True?

21 MR. STANDER: Object to form of the question.  
22 Calls for speculation as to what the purpose and intent  
23 of the manufacturer is.

24 Go ahead if you're able.

25 A. To some extent that's true. I agree that the

1 manufacturer certainly wants to sell a bigger water  
2 heater, because it generates more profits for them.  
3 They also would like to satisfy their customer, to make  
4 sure that we get no complaints or callbacks of  
5 undersized water heaters.

6 Q. (By Mr. Odou) Okay. Do you have any  
7 literature for the 38- and 40-gallon water heaters that  
8 are listed here?

9 A. I've got parts of it inside this code  
10 package, 67.

11 Q. Okay.

12 A. But nothing dealing with sizing.

13 Q. Okay. I will take a look at those.

14 MR. ODOU: Why don't we get an early rush on  
15 the lunch crowd and come back.

16 MR. STANDER: Okay.

17 (A lunch recess was taken.)

18 Q. (By Mr. Odou) Let's go back on the record  
19 and pick up at defect P-05. It looks like we have two  
20 issues here: The size of the pans and then the way  
21 they are connected.

22 A. Correct.

23 Q. Now, you have provided us with some code  
24 provisions for P-5, as well as manufacturer  
25 documentation.

1 A. Right.

2 Q. Let's go through these first.

3 A. Okay. So the issue, as you correctly  
4 described, is the way the drain pans are piped. So  
5 what they basically did was they bought premanufactured  
6 Smitty pans, or drip collection pans, that come with an  
7 outlet on the bottom; and then what they did is they  
8 tried to fabricate a floor drain into the floor and  
9 have the Smitty pan drain into -- into that.

10 So what they -- what -- the pan itself has  
11 like a 1-inch outlet, and then they tried to fabricate  
12 a 2-inch pipe and integrate a 2-inch pipe into the  
13 floor assembly, and then they reduced that 2-inch pipe  
14 back down to 1 inch, and then spilled it out to the  
15 side of the house.

16 Q. Do you have a representative photo?

17 A. Yeah. So these are from 8670 Horizon Wind,  
18 Unit 103. So this is a --

19 Q. Refresh my recollection. These water heaters  
20 are actually in the living space, not in the garage?

21 A. Correct.

22 Q. Okay.

23 A. Correct.

24 Anyway, so this is one of the water heater  
25 closets.

1 Q. Right.

2 A. And this is the drip collection pan, or  
3 Smitty pan. That white object in the center is the  
4 drain outlet.

5 Q. And these pans come with a premanufactured  
6 outlet, or do they drill those in?

7 A. This looks like they drilled in, because  
8 usually they're either in the center or they're in the  
9 side wall.

10 Q. Yeah.

11 A. So that was image 1148. This is image 1149,  
12 which shows the drain itself has a 1-inch opening.

13 Q. Right.

14 A. This is image 1150, where there was a 2-inch  
15 pipe that was put into the floor.

16 Q. Okay.

17 A. This is image 1151, where you can see the  
18 2-inch pipe which then reduces back down to 1 inch.

19 Q. Okay.

20 A. This is image 1152, where it shows that even  
21 the drain spud that they use into the pan wasn't nutted  
22 or gasketed or anything to the pan.

23 So those -- those pictures basically describe  
24 the installation.

25 Q. Okay. And how does that relate to the

1 different code sections that you have cited here?

2 A. The first code section is 412.1, which talks  
3 about floor drains. And so what they did, by putting  
4 that 2-inch line into the floor, I believe was their  
5 attempt to create a floor drain.

6 And looking at the other section, 412.1, it  
7 says, "Suitably flanged to provide a watertight joint  
8 in the floor." So if you're going to use a floor  
9 drain, it has to be a device that is so designed and  
10 fabricated so it could be integrated into the floor, to  
11 make sure that when water does get into that area, all  
12 the water can only get into that pipe.

13 Q. Now, is there a photo showing the discharge  
14 from the water heater into this drain?

15 This is -- oh, no. This is just a pan,  
16 right? The water --

17 A. Correct.

18 Q. -- heater sits on top of the pan?

19 A. Exactly right.

20 Q. So where does the water come out of the water  
21 heater? Is there a discharge pipe, or is this just in  
22 case of leaks?

23 A. In case of leaks.

24 Q. Okay.

25 A. In case of leaks.

1 Q. Okay. And so your reading of this is the  
2 connection -- what's that photo number there?

3 A. The better one, I think, would be image 1151.

4 Q. Let's go back one, though, just . . .

5 The other way. No, the other -- the one we  
6 were looking at. That one right there.

7 A. That's 1152.

8 Q. Okay. So on 1152, you believe that that  
9 connection should be watertight?

10 A. No. I believe the watertight connection  
11 needs to be that which is shown in 1151, which is  
12 the --

13 Q. Between the pan and the floor?

14 A. Correct. The pipe -- the pipe and the  
15 floor --

16 Q. Okay.

17 A. -- should be an integrated assembly.

18 Q. Okay. What's the next code section that you  
19 have, or what's the reason for it, 311.5B, in there?

20 A. 311.5, it talks about that the installation  
21 cannot permit any obstruction or retardation of water  
22 flow. So by having a 2-inch pipe which then reduces  
23 down to 1 inch, you've created this obstruction or  
24 retardation in the ability to flow water.

25 Q. And that's also in 316.4.1?

1 A. Correct.

2 Q. Are these pans and this assembly shown on the  
3 building plans? Do you have that level of detail?

4 A. No, they're not; and no, the plan doesn't.  
5 It's not detailed, not on the plumbing plan, not on the  
6 architectural plan.

7 Q. Okay. And have you looked through the  
8 files -- I don't think you have -- for the plumbing  
9 contractor to see if there's any shop drawings or notes  
10 about this condition?

11 A. No, I haven't. So I don't know.

12 Q. All right. And then the second half of this  
13 issue is the pans are undersized. How did you make  
14 that determination?

15 A. Staying within Exhibit 67, the next in order  
16 is again a cover sheet from the Smith water heater  
17 guide installation instruction. Sorry.

18 And the next page, left-hand column, I put an  
19 arrow there. It says, "Such drain pan must have a  
20 minimum length and width of at least 2 inches greater  
21 than the water heater dimensions."

22 We found in a most limited case -- we only  
23 found five locations out of 113 where the pan was  
24 undersized. That's why the report says it seems to be  
25 an anomaly and not worthy of extrapolation. So I would

1 only call for a pan change at those particular  
2 locations.

3 Q. Those particular five water heaters?

4 A. Yes.

5 Q. But for the drain pan connections, you've got  
6 that -- is that a hundred percent?

7 A. Yes.

8 Q. All right. Let's talk about P-6, water  
9 heater temperature and pressure relief valve, discharge  
10 lines with their connectors.

11 Presumably when the water heaters are  
12 changed, these connectors get changed, too, don't they?

13 A. Yes.

14 Q. Okay.

15 A. The short section of pipe coming off the  
16 temperature and pressure relief valve, the installer  
17 used corrugated connectors.

18 Q. Okay. You've got a representative photo of  
19 that?

20 A. Yes. This one here is image 1179. This  
21 one's taken at 8650 Horizon Wind, Unit 103. The  
22 temperature and pressure relief valve is right now  
23 obscured by the draft to the water heater. The  
24 corrugated connector runs a little bit horizontally and  
25 kind of drops down and ties into this hard piping. So



1 my criticism is of that short section of corrugated  
2 piping.

3 Q. And you believe that that corrugated piping  
4 is improper based on these instruction manuals you got  
5 from the manufacturer?

6 A. Correct. Yeah, there's a couple there from  
7 the manufacturer of the water heater. Also there's a  
8 code 608.5 that says that the relief lines cannot be  
9 reduced; and they specifically say in parentheses,  
10 "straight length as opposed to coils."

11 There is an accompanying text called the  
12 Interpretations Manual.

13 Q. Yeah. Hang on one second.

14 A. Sure.

15 Q. Let me do one step at a time.

16 A. Okay.

17 Q. So for the manual itself, what is the date of  
18 that document?

19 A. This -- bottom left-hand corner, it seems to  
20 be a 0704.

21 Q. Right.

22 A. This instruction manual came from 9440  
23 Thunder Sky, Unit 102.

24 Q. Okay. So there's an instruction manual on  
25 one of the homes?

1 A. Yes.

2 Q. And then you've got an arrow on the second  
3 page of that pointing at certain language.

4 A. Yes.

5 Q. And that's that the discharge opening must  
6 not be blocked or reduced in size?

7 A. Correct.

8 Q. And you believe that the corrugated pipe is  
9 reducing the size of the line?

10 A. Yes.

11 Q. Okay. Okay. Now we can go on to the code  
12 section. The third page for that -- actually I think  
13 it's the fourth page of P-6 -- has International  
14 Association of Plumbing and Mechanical Officials, 2001,  
15 at the bottom.

16 A. Correct.

17 Q. And so you were describing what that was.

18 A. Yes. This is a text that accompanies the  
19 Uniform Plumbing Code, and it's something called the  
20 Interpretations Manual. And the way it basically works  
21 is individuals can tender any question they want to the  
22 interpretations committee and then they basically write  
23 the answers back.

24 So this one in particular dealt with the  
25 concept of flex connectors for relief valve drains.

1 And the question that was generated asked if it's  
2 acceptable to use a 3/4-inch flex connector to connect  
3 the outlet to the 3/4-inch combination  
4 temperature/pressure relief valve to a 3/4-inch  
5 galvanized drain pipe. And their answer is no, 608.5  
6 is very specific, and da-da, da-da. It says that it  
7 reduces the internal bore.

8 Q. Okay. And the next page after that in your  
9 file, it looks like somebody's copied a tag from a  
10 water heater?

11 A. Correct. There were several different brands  
12 of temperature and pressure relief valves that we  
13 found, and these are the individual instruction sheets  
14 from those different manufacturers. And they all carry  
15 the same theme that says that you can't use anything  
16 that reduces the bore.

17 Q. Okay. And these relief valves, it looks like  
18 there's three different tags that were copied.

19 A. Yes.

20 Q. Okay. The last one, somebody wrote Watts.  
21 That's Watts regulators on there?

22 A. Yes.

23 Q. The second-to-last one is Wilkins, but the  
24 one that -- the very first one, do we know who that is?

25 A. Yes. On the very bottom, it says Cash Valve.

1 Q. Okay. Gotcha.

2 Oh, I skipped right over 7. 7 is seismic  
3 relief restraint devices are either lacking or the  
4 devices are not installed. Lacking vee blocks, or not  
5 installed.

6 A. Yes.

7 Q. And was this one a hundred percent?

8 A. Yes.

9 Q. And P-8, you've got corrosion on the shutoff  
10 valves. Those would be presumably replaced when the  
11 water heaters are replaced?

12 A. Exactly.

13 Q. Now, you've highlighted a code section for  
14 P-8, and I guess I'm not understanding why. You've got  
15 605.1.

16 A. The last sentence, "with the working parts of  
17 noncorrosive material."

18 Q. Okay. And so your interpretation is --  
19 without getting into a whole dissertation on yellow  
20 brass -- is that because these valves have yellow brass  
21 and have corroded, then they violate that section?

22 A. Correct.

23 Q. Okay. We will probably save that one for  
24 another case and another day.

25 A. I think we will.

1 Q. Let's see. I think the next page in the  
2 codes is for -- well, is that for the same P-8 still or  
3 is that -- that looks like a different one.

4 A. No. I failed to write down P-10 on that one.

5 Q. Okay. Since this is the official copy, would  
6 you write P-10 at the top of the official one, rather  
7 than me doing it and getting in trouble.

8 A. (Witness complied.) Done.

9 Q. Thank you. All right. So we'll talk about  
10 P-9 and then go to 10.

11 I am looking at a plumbing matrix that you  
12 prepared that has been Bates stamped P082372 that I'll  
13 just show you. What is this matrix for?

14 A. It's not my work. I don't know what that is.

15 Q. Hmm. Let's see if it's sequential. It may  
16 not be. Is that 372? It appears to be sequential with  
17 your file. Wait, maybe -- no. Actually, it's not with  
18 that one.

19 MR. TRIPPIEDI: Joel, I think this was  
20 produced based on the court's order, maybe in October.

21 MR. ODOU: Okay.

22 Q. (By Mr. Odou) So anyways, this was probably  
23 a submission to the court by the homeowners association  
24 as part of our various motions. And it's entitled  
25 Harvey Kreitenberg Plumbing Matrix, but it's not a

1 document you generated?

2 A. No.

3 Q. Okay. All right. So for P-9, is that one  
4 that's being extrapolated or is that a specific?

5 A. It's site specific, and we only found it in  
6 three locations of 113.

7 Q. Okay.

8 A. I don't know the associated cost to repair,  
9 but it's an -- overall it should be a small dollar  
10 item.

11 Q. Yeah, maybe it's one that is just not being  
12 pursued. Mr. Valine's got no cost for it.

13 All right. So let's go to 10, which I think  
14 is one being pursued and has a fairly significant  
15 dollar attached to it.

16 Bear with me one more second until I get to  
17 the right page.

18 Wow, flipped right to it. All right. Let's  
19 take defect P-10, possibly one thing at a time.  
20 There's an A and a B. The A section is talking about  
21 the plastic utility box having hose bib water  
22 connections piped with plastic tubing. Is it the fact  
23 that it's plastic tubing or the way that it's installed  
24 a defect in your opinion? Or both?

25 A. The use of the plastic tubing in and of

1   itself is not a defect. The way that it was configured  
2   or installed is where the problem lies. The washing  
3   machine boxes, they're constructed out of plastic.

4               This is image 1146, and it is from 8670  
5   Horizon Wind, Unit No. 103. And it's the underside of  
6   the utility box.

7               Q.   Right. Okay.

8               A.   And what we're seeing coming down are what  
9   are called the tailpieces of the bibs that are above.

10              Q.   Right.

11              A.   So there's the plastic tubing, the PEX  
12   tubing. These, by the way, are the Oetiker clamps that  
13   I was talking about earlier.

14              The way these are configured is there's  
15   nothing that stops the handle -- when the handles are  
16   rotated to turn the water off --

17              Q.   Right.

18              A.   -- from this whole item, rotating. So what  
19   they attempted to do was put this little pipe nipple in  
20   between and a zip tie to try to secure it, and it  
21   doesn't work. Had a cross block gone across these  
22   tailpieces and then secured, that would have worked.

23              What the repair is, to have the copper nipple  
24   basically extend down to where that cross block, and  
25   then be installed and lock it in place so that the bibs

1 don't turn when the water's attempted to be shut off.

2 Q. What's the date of this photo? Is this 2007?

3 A. Yes.

4 Q. Now, these water supply lines, would they  
5 have been switched out if somebody was doing a replumb?

6 A. There's evidence that those were changed out.

7 Q. The second part of this defect is the support  
8 arms are backwards and the box is set back from the  
9 drywall's face. Do you have a representative photo of  
10 that?

11 A. Yes. Before we do that, let me just take you  
12 to image 6458. This one is from 8727 Tom Noon, Unit  
13 102. And this is after repair has been made.

14 Q. Right. This one's got a different setup or  
15 configuration.

16 A. Right. It doesn't have the Oetiker clamp.  
17 It's got the Wirsbo PEX crimp ring on the outside. So  
18 that tells me that this object had been repaired. This  
19 image also shows that the support arm is broken.

20 As far as the box being set back . . .

21 So this is images 5694 and 5695. These are  
22 taken 8797 Tom Noon, Unit 101.

23 Q. These were in 2011?

24 A. Correct. It's important that the edge of the  
25 box be flush with the drywall. During washing machine



1 discharge, there's geysering that takes place.  
2 Sometimes we have leaks at the bibs as well. And  
3 what's important is that any water that collects inside  
4 of the box only goes to the outside of the wall and not  
5 down inside of the wall.

6 So when the first repair would be  
7 implemented, that is, to straighten up those bibs, at  
8 the same time the box can be pulled forward so the edge  
9 flushes out with the face of the drywall.

10 Want another example?

11 Q. Yeah. These boxes, they have a cover on  
12 them. You don't consider that to be the way to prevent  
13 the water from getting into the wall cavity?

14 A. No. That's a good question. The image 5693,  
15 again from 8797 Tom Noon, 101, that frame is a snap-in  
16 frame.

17 Q. Right.

18 A. It snaps on the inside of the box. So any  
19 water that collects inside of the box will run  
20 underneath that inner lip and still has the opportunity  
21 to get inside the wall cavity.

22 Q. Okay. And the last part of this defect, you  
23 talk about it being located in a party wall.

24 A. Correct. My concern there -- excuse me -- is  
25 the fire-resistive construction.

1 Q. Right.

2 A. I understand that Mr. Sanders is dealing with  
3 fire resistivity, so I'm going to defer that one  
4 component to him.

5 Q. Okay. While I'm thinking about it, so I  
6 don't forget, has Mr. Sanders asked you for any  
7 opinions about plumbing issues outside of your report?

8 A. No. We've not communicated at all about this  
9 project.

10 Q. Okay. With the replumb that was done, it  
11 appears that certainly some of these issues are still  
12 being alleged to need being addressed. Is that  
13 correct?

14 A. Yes.

15 Q. And this is a defect that's being projected  
16 to all of the homes?

17 A. Yes.

18 Q. In your opinion, when the plumbing lines were  
19 switched out, was it below the standard of care for the  
20 plumbing contractor to return these supply lines to the  
21 way that you see them in your April 2011 photos?

22 A. Notwithstanding any scope of -- contractor's  
23 scope of work, yes.

24 Q. Hang on. I'm confused.

25 Okay. I see where I'm confused.

1 A. Because you're talking to yourself.

2 Q. I am. And I mumble so she can't get it on  
3 the record.

4 All right. Explain to me the difference  
5 between defects P-5 and P-11.

6 Oh. I'm sorry. One is a laundry and the  
7 other is a water heater. That's the difference?

8 A. It's basically the same analysis.

9 Q. Right. It's the same issue, just for a  
10 different appliance?

11 A. Correct.

12 Q. How many locations do you have P-11 at?

13 A. Per the defect report, it's specific to  
14 Plan 101 only.

15 Q. Okay.

16 A. Plan 1s only. That's where the washing  
17 machine sits on the second floor, over the bank of  
18 garages.

19 Q. Okay. And so that's being projected to 114  
20 homes?

21 A. Yes.

22 Q. All right. P-12, the anti-tip brackets. Did  
23 you do an inventory or catalog of the ranges?

24 A. As far as brands?

25 Q. Brands --

1 A. No.

2 Q. Okay. But you did do an inventory of which  
3 ones you inspected had either improperly-installed  
4 anti-tip brackets or had no tip bracket at all?

5 A. Yes.

6 Q. Okay. Now, to look at your matrix, what's  
7 the key for that line item? There's zeros, Xs.

8 A. A zero means it was inspected and condition  
9 not observed.

10 Q. Okay.

11 A. NN means not noted.

12 Q. What's the difference between not observed  
13 and not noted?

14 A. Not observed is that we inspected for it and  
15 didn't find it.

16 Q. Okay.

17 A. Not noted means it escaped us or couldn't --

18 Q. You couldn't get into the unit?

19 A. Correct.

20 Q. Okay. And then the X means that that defect  
21 is present?

22 A. Correct.

23 Q. And what is the E? Oh, exterior only?  
24 Right?

25 A. No. No. E in that case means extrapolated.

1 So here, because we found so few of them, if, for  
2 whatever reasons, we could not make a notation on it, I  
3 decided it would probably not exist because of the  
4 infrequency of the condition.

5 Q. Okay. And it looks like there was a quantity  
6 of eight of these.

7 A. I've got 19 of 108.

8 Q. I was looking at Mr. Valine's quantities.  
9 Shame on me.

10 All right. So you had 19. We'll use your  
11 quantities. Let's not compare apples to oranges.

12 And then you've got some literature that  
13 you've printed out about why it's important to have  
14 anti-tip brackets?

15 A. Correct.

16 Q. Okay. All right. P-13 is the next one. Is  
17 that a specific one to specific homes?

18 A. I projected the condition would exist at  
19 34 percent of the homes. It's a short section of hose  
20 under the sinks that goes from the air gap to the  
21 garbage disposer.

22 Q. Yeah. Why is that projected, rather than  
23 just, you know, we saw it here and we didn't see it  
24 there?

25 A. Because those were my Quon Bruce marching

1 orders, to take the numbers that we found.

2 Q. Right.

3 A. What I would expect to find if we were to go  
4 project-wide on it.

5 Q. All right. And this is P-13?

6 A. Yes.

7 Q. All right. Let's not spend a lot of time on  
8 it. Mr. Valine's got a \$912 cost of repair. So if  
9 he --

10 A. We always just double that.

11 Q. Yeah. So if he changes and is going to  
12 extrapolate, I'm sure somebody will let me know.

13 So for whatever reason, Quon Bruce had you  
14 extrapolate; and it looks like Mr. Valine is taking  
15 just where you found it as the issue.

16 A. Okay.

17 Q. P-14, pedestal lavs have the inaccessible  
18 interior clean-outs.

19 A. This is specific to the units 103s only.

20 Q. Right. And the -- well, since I'm one of the  
21 few people in the room, and John, are the only ones  
22 that didn't sit through the Gunderson trial, why don't  
23 you describe for me this issue.

24 MS. SPLAINE: I sat there.

25 MR. ODOU: That's what I'm saying. You sat

1 through it, and John and I didn't. So let me beat this  
2 dead horse for John and myself.

3 Q. (By Mr. Odou) You believe that this is a  
4 construction defect, correct?

5 A. Correct.

6 Q. And you base that upon some code sections  
7 that you have provided.

8 A. Correct.

9 Q. And you're aware from that trial and from  
10 your investigation that there are some easements given  
11 to homeowners to get at these clean-outs?

12 A. Not these, because these are located within  
13 the units. These are not those that are located in the  
14 garage floors.

15 Q. My mistake. Okay. So these being  
16 inaccessible, what's the -- how are they inaccessible?  
17 Describe that for me. Or show me a picture, is  
18 probably even better.

19 A. I can flip the computer around for you. This  
20 is image -- this is image 4516.

21 Q. Right.

22 A. And I'll show you 4517. These are taken from  
23 8790 Horizon Wind, Unit 103.

24 Q. Okay.

25 A. So this is a downstairs bathroom --

1 Q. Yeah.

2 A. -- showing the toilet and the pedestal lav.  
3 And if you look near the base of the pedestal itself  
4 and behind, you can see this little white object.

5 Q. Right.

6 A. I've got another picture of it. And that's  
7 where the clean-out is.

8 I'm going to the next image, 4517.

9 Q. Right.

10 A. You can see the clean-out. The code requires  
11 that on this size clean-out, we have 12 inches clear  
12 access on the face of it. You need to be able to pull  
13 the plug and get a snake down in that line to clear it  
14 if there's ever a stoppage.

15 And because of the location of the clean-out  
16 with the pedestal, the required access has been  
17 compromised.

18 Q. So this particular instance, the pedestal for  
19 the sink is in front of the clean-out, likely to  
20 present a more aesthetically-pleasing appearance than  
21 having just a clean-out in the middle of the wall. Is  
22 that why it's located where it is?

23 A. I don't know what the plumber's ambition was.  
24 It's typical for us to stack fittings on top of each  
25 other, because the drain connection's right above that



1 in line.

2 Q. Right.

3 A. So from plumbing economy, that's a way to do  
4 it. What would have been appropriate, which is what  
5 the repair was, is basically just offset it over; and  
6 then a clean-out cover could have been placed on the  
7 face of it.

8 Q. But that may not be pleasing to a homeowner,  
9 to have a clean-out where you're looking at it every  
10 time you walk into a bathroom. True?

11 A. True.

12 Q. And this one occurs at how many units?

13 A. It's the 103 units only. So --

14 Q. This is every 103?

15 A. Correct. So project-wide it would be 114.

16 Q. All right. Let's go on to 15. For 15 you're  
17 citing some code sections.

18 A. Correct. Let me show you a picture of it  
19 first to help you understand the code sections where  
20 I'm going on this.

21 Q. Sure.

22 A. This one is from 8825 Traveling Breeze.  
23 Image number 3082. In front of the buildings there's a  
24 valve box. And looking at the image here, what happens  
25 is the water comes -- it's coming from the right, turns

1 up to where this elbow is, then there's this one valve  
2 body.

3 Q. Right.

4 A. And there's what's called a cross tee.

5 Q. Right.

6 A. And then downstream from the valve, the cross  
7 tee then has three outlets, which then go into the  
8 individual buildings.

9 Q. The three units?

10 A. The three units. The problem is that from  
11 the face of the building from the water service to the  
12 actual shutoff that's inside of the garage, those lines  
13 are not individually valved. So --

14 Q. If you shut off the line for one unit, you're  
15 shutting it off for everybody?

16 A. The whole building, correct.

17 Q. And that's a code violation why?

18 A. I cited 605.2 and 605.3, and that in  
19 conjunction with a couple of the interpretation  
20 manuals.

21 What they're basically saying is that the  
22 valving and piping should be such that if repair is  
23 required in one unit, that the entire building is not  
24 disabled to facilitate that one repair.

25 Q. What steps did you take to determine whether

1 or not this was a variance that was approved by the  
2 Clark County Building Department?

3 A. None.

4 Q. One of the other items that you provided in  
5 P-15 is a code interpretation section for apartment  
6 shutoff valves. Is that right?

7 A. Yes.

8 Q. Actually two of them. They're both for  
9 apartments. Excuse me. Okay.

10 A. I can't let the comment go without a  
11 response. Plumbing-wise, we don't differentiate  
12 between the legal definition of an apartment or a  
13 condominium.

14 Q. And I don't want to argue the comment, but  
15 are these condominiums?

16 A. That's my understanding.

17 Q. What's that based on?

18 A. I thought I saw somewhere a condominium tract  
19 map or something like that.

20 Q. If you could -- well, will you be offering an  
21 opinion that these are condominiums?

22 A. No.

23 Q. Okay. Various insurance companies have  
24 asserted that these are condominiums, and that is a  
25 hotly contested issue in this case and others.

1           A.    Okay. Well, I'm not going to offer the real  
2   estate legal definition.

3           Q.    Yeah. So while somebody may later be reading  
4   this transcript and we may have used the terms "condo"  
5   or "townhome," certainly if I used it in my  
6   questioning, it was for ease of reference, not to imply  
7   any type of legal definition.

8                   And I think in your answering, from what I  
9   take it, you weren't trying to make a legal definition  
10  one way or the other?

11          A.    Exactly true. I'm here as a plumbing expert  
12  and not as a real estate expert.

13          Q.    Okay. Is the next section -- I think we  
14  missed a defect number on the top of that. Does that  
15  go with this one or someplace else? The 3 -- 313.5.  
16  Maybe I got it out of order, too.

17          A.    No.

18          Q.    Let's write the section that it goes with  
19  when you find it, just so I don't get these out of  
20  order.

21          A.    Give me a second.

22          Q.    Sure.

23          A.    I'm making a note --

24          Q.    Thank you.

25          A.    -- that that is associated with allegation

1 P-17.

2 Q. Appreciate that. Thanks.

3 All right. P-16. What is that issue?

4 A. This is image 3081. It's from 8825 Traveling  
5 Breeze. This is one of the side yards in front of the  
6 building. There's basically four pipes that are in the  
7 softscape area. The larger one is the main clean-out,  
8 but the smaller ones service the drain lines for each  
9 of the three units. And it's not known which one  
10 served which unit. So the -- in the event that one of  
11 them has a main line stoppage, in order to facilitate a  
12 more effective repair, it's appropriate that each of  
13 these clean-out plugs just be identified or tagged so  
14 if, example, Unit 101 has a stoppage, they can go to  
15 the Unit 101 clean-out and clear it.

16 Q. But there's more to the repair than just  
17 tagging it.

18 A. Correct. You've got to identify which is  
19 which. So it's just a matter of pulling the plug,  
20 flushing the toilet, whatever, so you can watch the  
21 water run, and then you know which one's which.

22 Q. It's not -- well, is there a second part for  
23 this defect? Because you've got, "trim the existing  
24 riser with an ABS female iron pipe adapter, provide a  
25 thread riser square head clean-out plug and a brass tag

1 with the unit number on it, and permanently affix it."

2 A. Right now with -- there's what's called  
3 countersunk plugs that are installed --

4 Q. Right.

5 A. -- and they basically take a flat bar and put  
6 it inside that slot and put a crescent wrench on the  
7 flat bar and twist it.

8 To put a permanent tag on it, you can buy  
9 premanufactured round brass tags or square, and you can  
10 stamp a number on them. And you can reorder them  
11 stamped.

12 Q. Right.

13 A. There's something called a dry rivet, which  
14 kind of looks like a drive nail; but if we put it  
15 across the top of that, then we lose access to the  
16 slot.

17 Q. Right.

18 A. So by changing out the plug to a square  
19 head -- it's a raised square head -- you can still put  
20 the tag on top of the square head plug, and then you  
21 can still put a wrench on the raised portion of the  
22 square head to unscrew if you need. So that --

23 Q. The goal is to be able to identify which  
24 clean-out goes with which unit, right?

25 A. Correct.

1 Q. So there's a lot of different ways that you  
2 could choose to identify them? You could probably  
3 paint them with some kind of paint; you could probably  
4 do a lot of different things, put arrows on the side of  
5 the building pointing at which one? There's a lot of  
6 different methods, right?

7 A. Sure. Whatever -- whatever would be the most  
8 cost effective and let the technician know which is  
9 which.

10 Q. So it's not the way that they're installed.  
11 It's just the fact you can't identify which one goes to  
12 which, is the defect?

13 A. Yes.

14 Q. All right. Let's go to P-17.  
15 Pressure-reducing valves apparently are exposed to  
16 presumably somebody running into them with something.

17 A. Yes. This is image 35 and image 36. These  
18 are from 8757 Tom Noon, Unit 103. The pressure  
19 regulator and shutoff valve sticks out of the garage  
20 wall. The concern is wheelbarrows, trash cans, golf  
21 carts, golf bags, whatever homeowner storage, has the  
22 opportunity to hit that valve and cause damage either  
23 to the piping or the regulator itself.

24 Q. If you shut off that valve, does that shut  
25 off all the water in the house?

1           A.    It shuts off everything downstream from that  
2 valve, correct.

3           Q.    Then I guess why is the prior issue that we  
4 talked about a few moments ago a defect if you can shut  
5 off the water for the house where you've got the  
6 shutoff in the street going to the three?

7                    Wouldn't a technician that wants to work on a  
8 particular unit just go into the garage and shut it  
9 off?

10          A.    Correct, if the leak was within the garage.  
11 But if the leak's in the water service from the valve  
12 box to the unit, that's when all three would lose  
13 water.

14          Q.    How often do you shut off the valve box to  
15 the unit water to change out an appliance?

16          A.    To change out an appliance or to do a repair,  
17 I would not expect that to be required. The only time  
18 that that would have to be shut off is if there was  
19 failure with the water service itself.

20          Q.    Are you aware of a failure of the water  
21 service at Arlington Ranch ever?

22          A.    No.

23                   MR. STANDER: Is this a good time to take a  
24 five-minute break?

25                   MR. ODOU: Yeah. I'm almost done. Why don't



1 we do that, and then everybody else can have questions  
2 and then we can mosey on down the road.

3 (A recess was taken.)

4 MR. ODOU: All right. Let's go back on the  
5 record.

6 Q. (By Mr. Odou) I do have some follow-up  
7 questions on P-17 and P-15. The valves that you're  
8 concerned about being defective because they're exposed  
9 to a mechanical injury, you obviously believe that  
10 those don't meet the code obligations under P-15 for  
11 the homes; is that true?

12 A. I didn't follow your question well. I'm  
13 sorry.

14 Q. That's okay. In P-17, there are certain  
15 valves that can be used to shut off the water from that  
16 point forward for the entire house.

17 A. Correct.

18 Q. In P-15, one of your criticisms or concerns  
19 for defects is that there's -- in the street shutoffs,  
20 you have to shut off the water for all three homes.

21 A. Correct. I can't isolate the water service  
22 laterals to the homes.

23 Q. Right. So the shutoffs in 17, in your view,  
24 don't meet the intent of the codes that you have cited  
25 in 15?

1 A. Correct.

2 Q. And that's because there's no way to shut off  
3 the water between the street and the garages themselves  
4 without shutting off the water to all three?

5 A. Correct.

6 Q. From the shutoff in the street to the point  
7 in the garage where there's another shutoff, is there  
8 any other device connected to the water, such as hose  
9 bibs or anything like that?

10 A. No.

11 Q. Okay. If you wanted to shut off a hose bib,  
12 would that shutoff in the garage do the trick?

13 A. Yes.

14 Q. One of the code sections that you have  
15 provided us for apartment buildings discusses the  
16 shutoff valves for hose bibs would be optional. Is  
17 that true?

18 A. Yes.

19 Q. The interpretation that you gave us for  
20 apartment shutoffs, the interpretation of 605.2, in  
21 particular, discusses that a master shutoff -- I just  
22 lost my point -- discusses that Section 50 -- 605.2  
23 requires shutoff valves controlling both the hot and  
24 cold water supply to each building in each complex; in  
25 addition, valves isolating each unit in the building

1 and each plumbing fixture in any such unit.

2 But you believe that the way that the  
3 shutoffs are configured at Arlington violates that  
4 section?

5 A. Yes.

6 Q. And why is that?

7 A. If you look at -- they're identified as -- in  
8 the upper left-hand corner it says 605.2.

9 Q. Yes.

10 A. Item No. 4. The first paragraph on the  
11 answer, it says, "Apartment building water supply  
12 valving must conform to Section 605.0. This means that  
13 a separate water supply control valve must be provided  
14 for each living unit in the building or for each  
15 plumbing fixture or appliance in such unit to minimize  
16 service disruption."

17 So to minimize service disruption is what I'm  
18 relying on, because if there's a problem with any of  
19 those three water service laterals, then there will be  
20 disrupted service to the other two units.

21 Q. Okay. All right.

22 The last one is presumably related to your  
23 video of the sewer lines, maybe.

24 A. Yes.

25 Q. Oh, wow.

1 A. We're all right.

2 Q. All right. So as I have not watched your  
3 sewer videos, what will they show?

4 A. There's areas of the piping that have  
5 bellies, and those bellies promote stoppages.

6 Q. Okay.

7 A. And that's basically what the videos show.

8 Q. The homes have been in service for presumably  
9 about ten years, just under. Do you have any  
10 complaints of stoppages that have been reported to you?

11 A. I do not.

12 Q. You have provided us with a code section.  
13 What was the purpose of doing that, for 708.0?

14 A. I provided two of them. 708 talks about the  
15 grade of horizontal piping, which says it has to be in  
16 practical alignment and uniform slope. And the purpose  
17 of the uniform slope, they're trying to achieve a  
18 quarter-inch foot, to be uniform so that there is  
19 constant flow rates of the sewage through the line. We  
20 don't want it going too quickly, because then solids  
21 get left behind. We don't want to get too slow,  
22 because then it doesn't carry any of the solids with  
23 it.

24 The other section I provided was 314.3.  
25 314.2 and 314.3. 314.2 says that "Piping shall be

1 supported in such a manner as to maintain its alignment  
2 and prevent sagging." The bellies I described is a  
3 product of sagging.

4 And 314.3 says the piping has to be laid on a  
5 firm bed. So the trenches are created, some type of  
6 bedding material is typically laid, then the piping  
7 goes on the firm bed. And it appears that because we  
8 have some bellies in the piping, that that did not  
9 occur.

10 Q. At how many locations did that occur?

11 A. We took cam inspections at eight locations.

12 Q. Okay.

13 A. And of those eight, there was short sections  
14 of piping that had some bellies in it.

15 Q. At all eight?

16 A. Yeah.

17 Q. Does the association own those sewer lines?

18 Well, let me ask, did you do any  
19 investigation to see if the association owns those?

20 A. I don't know.

21 Q. All right. It looks like there's one  
22 mechanical issue. Is that an extrapolated issue?

23 A. I've got two.

24 Q. You have two?

25 A. Mechanical issues, yes.

1 Q. Oh, I'm sorry. There was a page turned.  
2 Let's do them one at a time. The refrigerant lines are  
3 not properly weatherproofed. Is that extrapolated or  
4 is that a specific?

5 A. It's extrapolated.

6 Q. And how many locations did you find that at?

7 A. We found it at each of the units that we were  
8 at, but the extrapolation is to be project-wide.

9 Q. So that would be a repair at 342 locations?

10 A. Yes.

11 Q. Do you know who the original HVAC contractor  
12 was?

13 A. I do not.

14 Q. Did you review any contracts or job files  
15 from HVAC contractors?

16 A. No.

17 Q. How did you determine the condensers are not  
18 secured to the pads?

19 A. I'm sorry. What did you ask?

20 Q. Part of this defect is the condensers are not  
21 secured to the pads. I was wondering how you  
22 determined that.

23 A. Oh, it's just visual. They've got the  
24 precast pads present, and the condensers are just  
25 free-floating on the pads.

1 Q. Are they required to be secured?

2 A. Yes.

3 Q. And what is that -- where is that  
4 requirement?

5 A. Section 304.4 of the Uniform Mechanical Code.

6 Q. And you rely on that same section for the  
7 FAUs in the attics?

8 A. Yes.

9 Q. And so defect M1 is being extrapolated to the  
10 entire project?

11 A. Yes.

12 Q. And defect M2, is that being extrapolated as  
13 well?

14 A. Yes.

15 Q. How many locations does defect M2 occur at,  
16 that you observed it at?

17 A. Apparently we got into 113 attics.

18 Q. Can you describe for the record your repair  
19 for defect M1.

20 A. Yes. Basically to draw down the refrigerant,  
21 which is a vacuum process; disconnect the lines from  
22 the condenser; retrofit a transition boot into the  
23 stucco assembly; and then reconnect the lines and  
24 recharge the refrigerant.

25 Q. What about securing the condensers?

1           A.    That's basically just a small sheet metal  
2 clip, small L-brackets. Just need two of them.

3           Q.    Okay.

4           A.    One screwed down to the pad, one screwed into  
5 the chassis of the condenser.

6           Q.    Would you need to break out any stucco to do  
7 that repair? The first repair, not the second,  
8 obviously.

9           A.    There's a couple ways that this can be done.  
10 The ones that I'm familiar with would require stucco.

11          Q.    Would, yes, require?

12          A.    Would, yes. There may be some other  
13 methodologies.

14          Q.    And I'm sorry. For M2, that does occur at  
15 342 homes?

16          A.    Yes.

17          Q.    All right. As I may have gotten these out of  
18 order, let's go through the pages of Exhibit 67 and  
19 make sure that we get them back in the right order.

20                And to facilitate that, let's make sure the  
21 defect appears on the top of each page. The first page  
22 just has some general notes. Is there a specific one  
23 that that first page is in reference to?

24                It looks like yours are out of order, too. I  
25 don't feel so bad.



1           A.    The first one is Section 310, Workmanship;  
2   and 310.4, Installation Practices.

3           Q.    Okay.

4           A.    And as I stated earlier, it basically applies  
5   to all the plumbing allegations.

6           Q.    Okay.  So that's why there's nothing on the  
7   top.  Maybe I do have them all.  I'll just double  
8   check.

9                    It doesn't look like we have them for the  
10   anti-tip brackets.  Let's go -- well, at least one of  
11   the pages.  Do we?  It got cut off.  Can you write P-12  
12   up there for us.

13          A.    Sure.

14          Q.    Thanks.  I think we've got them.  All right.

15                   The one for mechanical, though, goes for both  
16   M1 and 12.  Why don't you write that at the top there.

17          A.    (Witness complied.)

18          Q.    All right.  As of today, you have completed  
19   your investigation in this matter?

20          A.    Yes.

21          Q.    Is there any additional work that you intend  
22   to do between now and the time of trial?

23          A.    Other than trial prep, which will probably  
24   just be selection of exhibits, which would basically be  
25   either the code sections or the photographs.  I would

1 expect counsel to have me read some of the defense  
2 depos.

3 Q. Okay.

4 A. Just pretty much routine stuff.

5 MR. ODOU: All right. Mr. Kreitenberg, it's  
6 always a pleasure to see you. I'm going to let some of  
7 the other people in the room ask you some questions,  
8 and maybe I'll have some follow-up.

9 THE WITNESS: Mutual. It's always great  
10 working with you.

11 EXAMINATION

12 BY MS. SPLAINE:

13 Q. Good afternoon, Mr. Kreitenberg. My name is  
14 Shannon Splaine. I represent Firestop, Inc., in this  
15 matter. I'm going to follow up on some of Mr. Odou's  
16 questions, and then I have some additional questions.

17 You indicated that you expect counsel to have  
18 you read some of the defense depositions as part of  
19 your trial preparation; is that correct?

20 A. Yes.

21 Q. As you sit here today, have you been  
22 specifically asked to do that?

23 A. No.

24 Q. Have -- as you sit here today, have you been  
25 specifically asked to read any of developer's expert

1 reports?

2 A. No.

3 Q. As you sit here today, have you been  
4 specifically asked to review any of the subcontractor  
5 expert reports once published?

6 A. No.

7 Q. For defect 10C, my understanding of your  
8 prior testimony was that you were going to defer to  
9 Mr. Sanders as it relates to that specific section of  
10 defect 10. Is that correct?

11 A. Correct.

12 Q. Just so I'm clear, that includes any opinions  
13 with regard to observations of the condition and repair  
14 recommendations, correct?

15 A. I'm not sure they can all be segregated that  
16 way. The issue is the use of the plastic box in a  
17 fire-resistive constructed wall. We found the plastic  
18 utility boxes used throughout the entire project. We  
19 also found that the location to be pretty repetitive.

20 So I'm not sure if Mr. Sanders is going to  
21 use that information or not; but the use of the plastic  
22 box, I'm going to defer to Mr. Sanders.

23 Q. Okay. And I just want to understand the  
24 delineation between your testimony at trial and his.  
25 And my understanding was that subpart C specifically

1 relates to the issue in party walls.

2 A. Correct. If Mr. Sanders was to decide that  
3 the use of the plastic box would be okay, then I'm okay  
4 with that.

5 Q. Okay.

6 MR. STANDER: Let me just get in there  
7 Mr. Sanders might rely on the observations and data  
8 collected by Mr. Kreitenberg. So if you want to ask  
9 him about his observations, feel free.

10 Q. (By Ms. Splaine) Have you shared your  
11 observations and data with Mr. Sanders with regard to  
12 defect 10C?

13 A. I haven't directly. I don't know what  
14 counsel has provided to him or not.

15 Q. Do you know if Mr. Sanders has reviewed your  
16 photos, field notes and data with regard to defect  
17 allegation 10C?

18 A. No.

19 Q. But if Mr. Sanders says that this issue is no  
20 longer an issue, then you would concur with him,  
21 correct?

22 A. Correct.

23 Q. And if Mr. Sanders has different opinions  
24 with regard to this condition, again, he would be  
25 offering those opinions and not you?

1 A. Correct.

2 Q. Specifically again as it relates to 10C and  
3 the party wall fire wall resistive issue, any repair  
4 recommendations for that you would defer to  
5 Mr. Sanders?

6 A. Yes.

7 Q. I think you were asked this question, but I  
8 can't recall. Are all of the photographs, field notes,  
9 codes, standards, manufacturers' recommendations and  
10 data that you are relying upon in offering your final  
11 opinions included within your job file?

12 A. Yes.

13 Q. When you were first retained to serve as an  
14 expert consultant in this matter by Ms. Quon's office,  
15 were you specifically directed to go investigate any  
16 particular conditions at High Noon?

17 A. No.

18 Q. You were asked to just go see what conditions  
19 were of concern to you?

20 A. Yes.

21 Q. Were you -- you or anyone at your office --  
22 involved in choosing the units that were inspected  
23 and/or tested?

24 A. No.

25 Q. Were you or anyone at your firm involved in

1 choosing the locations within a unit or on the exterior  
2 of a building that were tested?

3 A. If -- again, we didn't select the units; but  
4 once we were in a unit, depending upon what we found,  
5 and accessibility, we, meaning myself and members of my  
6 staff, would decide if it would be appropriate to make  
7 a cut behind a tub/shower or to pull a toilet. That  
8 decision would have rested with us.

9 Q. Did you have a protocol in place -- for  
10 example, that every master bath in a 101 unit would  
11 have a cut in the same exact location -- or was that  
12 decision made on-site?

13 A. It was made on-site.

14 Q. Do you recall if there were any units chosen  
15 for destructive testing where you and your staff opted  
16 not to do testing for the plumbing-related issues?

17 A. Well, we did not, for example, make a cut at  
18 every single tub/shower valve. So I guess we would  
19 have opted not to. We did not pull every single  
20 toilet. So there, too, I guess we would have opted not  
21 to.

22 Q. And what protocol or considerations do you  
23 yourself take into to decide whether or not a  
24 particular location is going to be tested or not at  
25 each of the units?

1           A.    Well, it depends on the issue.  These  
2   tub/shower valves in particular, we know they leak  
3   because of a product design.  So it's not necessary to  
4   open each and every single one.  If we found toilets  
5   that appeared to not be properly mounted, then that  
6   would be a motivator to pull it and find out why.

7                We also have to be considerate of some more  
8   customized finishes that may exist in some of the  
9   homes, because the repairs or the put-backs sometimes  
10  drive the accessibility.

11          Q.    Were you involved in choosing the company or  
12  crew that did the destructive testing?

13          A.    No.

14          Q.    Do you know which company it was?

15          A.    I don't recall now.

16          Q.    Did you or anyone at your office perform any  
17  type of investigation to determine if the destructive  
18  testing crew was licensed to perform both the testing  
19  work and the repair work?

20          A.    No.

21          Q.    Do you know if permits are needed to do any  
22  of the repair work after the destructive testing crew  
23  is finished at a project?

24          A.    From memory, building safety wants permits  
25  for these type of activities.

1 Q. And do you know if permits were pulled?

2 A. I do not.

3 Q. Have you seen any invoices or work orders  
4 that reflect the repair work after destructive testing  
5 in any of the units?

6 A. No.

7 Q. Did you review any of plaintiff's other  
8 previously retained or currently retained experts'  
9 photos or field notes with regard to any of the  
10 allegations in this case?

11 A. The only other files I saw -- and again, on a  
12 limited basis -- was just from Forensic Analytical.

13 Q. So, for example, you did not review any  
14 photographs taken by Mr. Valine?

15 A. Correct.

16 Q. Or Mr. Sanders or Mr. Adcock?

17 A. Correct.

18 Q. I noticed in looking through the deposited  
19 version of your job file that a lot of your photographs  
20 have a building number and then photos thereafter, but  
21 they don't have street names. Is there a log or way to  
22 correlate the photos with the addresses?

23 A. I'm going to show you Bates number P000673.  
24 It's one of our photo logs. Down the left-hand column  
25 are just line identifiers. The right-hand column are



1 image numbers. So if you look at any of the D -- any  
2 of the DVDs that have all the pictures, you'll find  
3 that there's an individual JPEG file for each and every  
4 one, with an image number.

5 So you can take an image number, then read  
6 into the description, and it will tell you specifically  
7 where you are. That's how we do it.

8 Q. Okay. Do you know if the way the photos were  
9 deposited have the image number on the photograph?

10 A. I know that the deposited DVDs do.

11 Q. Okay. Have you done any type of  
12 investigation to determine whether the homeowners or  
13 the unit owners are responsible for any plumbing  
14 penetrations on the exterior of the building?

15 A. No.

16 Q. I did not see in your report any notation  
17 that relocation is required for any of the allegations  
18 you have identified. Is that correct?

19 A. Correct. I'm not saying that is or isn't  
20 required, but it's not in my reports.

21 Q. Okay. Did you do any type of evaluation to  
22 determine if relocation is required for any of the  
23 allegations you have identified in your report?

24 A. No.

25 Q. Did you do any type of investigation with

1 regard to any of the plumbing penetrations and whether  
2 or not those are included on party walls?

3 A. No.

4 Q. Did you do any type of investigation to  
5 determine if there's any type of fire-stopping or fire  
6 sealing, depending on who you ask these words  
7 interchangeably, with regard to any plumbing  
8 penetrations on these party walls at these units?

9 A. No.

10 Q. So you won't be offering those opinions at  
11 the time of trial?

12 A. Correct.

13 Q. When you and your staff are doing inspections  
14 and testing at a project, is it your practice and  
15 procedure to remove the shower valve plates to look  
16 behind, see what's in the wall cavity?

17 A. It really depends on what's -- what we're  
18 trying to investigate or what cause we're trying to  
19 confirm. I can't say that's a standard practice, but  
20 in some particular issues it is what we will do.

21 Q. When an individual removes from the shower  
22 user side, the unit side, the valve plate, looks behind  
23 the wall, they would have to seal that plate before  
24 sticking it back on, correct?

25 A. The manufacturers don't require any sealant.

1 The manufacturers are relying on the gaskets that are  
2 provided with the escutcheon plate.

3 Q. Do you have any instructions to your staff  
4 with regard to whether or not they should caulk that  
5 plate before they stick it back on the wall?

6 A. Our practice is, after it's stuck on the  
7 wall, to then put a bead of caulk over the -- basically  
8 the top 200 degrees or so of the arc.

9 Q. Okay. Do you consider removing that plate to  
10 look behind the wall destructive in nature?

11 A. No.

12 Q. So that would be part of visual inspections?

13 A. Yes.

14 Q. So it's possible that if your office went and  
15 performed that type of inspection and somebody came  
16 back several years later, there would be sealant that  
17 might not have been there, or could have been there and  
18 removed from original construction because it's been  
19 modified?

20 A. Yes.

21 Q. Is there a notation anywhere in your job  
22 files with regard to whether that type of inspection  
23 has occurred and if there's been caulk or sealant  
24 placed?

25 A. I don't remember seeing any. Any notations,

1 I should say.

2 Q. Okay. Did you have any discussions with Gary  
3 Lorden with regard to how the units were chosen for  
4 testing?

5 A. I'd have to go back to the billing. I  
6 certainly haven't spoken to him in the last year or so  
7 about this.

8 Q. If you had spoken with Mr. Lorden regarding  
9 any testing, would there be some type of note on your  
10 invoice, "Communications with Dr. Lorden"?

11 A. Possibly. I think on occasion there will be  
12 team conference expert calls involving Dr. Lorden to  
13 make sure that our testing or numbers that we've  
14 developed meet whatever burdens he has.

15 Q. Is that something that I would be able to  
16 readily tell if I looked at your invoices, or is there  
17 a secret code that only you can decipher?

18 A. No, there's nothing cryptic in my file. So  
19 if it's in there, it's there.

20 Q. Okay. Mr. Kreitenberg, I'm going to show you  
21 a chart that was shown to you during Mr. Odou's  
22 questioning. I will represent to you it is part of a  
23 Supplement to Notice of Plaintiff's Matrix Outlining  
24 the Defects Alleged and Locations of the Defects  
25 Pursuant to Court Order Filed by Plaintiff on

1 October 23rd, 2013, Exhibit No. 4.

2 Can you take a look at that. My  
3 understanding from your earlier testimony is that you  
4 were not involved in creating that document. Is that  
5 correct?

6 A. Correct.

7 MS. SPLAINE: I'm going to mark this as the  
8 next exhibit in order.

9 (Exhibit 68 marked.)

10 Q. (By Ms. Splaine) Counsel has indicated to me  
11 this chart I've just shown you, which is Exhibit 68, is  
12 different than the chart that counsel showed you  
13 earlier. Exhibit 68 you were not involved in  
14 preparing, correct?

15 A. Correct.

16 Q. Okay.

17 MR. STANDER: Can I see that a sec?

18 Q. (By Ms. Splaine) So if the counts on  
19 Exhibit 68 are different than your various matrixes  
20 that we have in small and bigger sizes, you would not  
21 know why the documents are different, correct?

22 A. Correct.

23 Q. The item P-9 on Exhibit 68 says "condition  
24 not present." Do you see that?

25 A. I do.

1 Q. Do you know why this document represents the  
2 conditions not present?

3 A. No.

4 Q. Did you have any discussions with counsel  
5 with regard to any defect allegations being dropped in  
6 this case by counsel?

7 A. No.

8 Q. Did you review any of Judge Johnson's orders  
9 in this case with regard to what issues the HOA can and  
10 cannot pursue and in what capacity?

11 A. No.

12 Q. For defect 1B in the plumbing section -- do  
13 you see that? Are you there?

14 A. Yes.

15 Q. Okay. The last part of subpart B talks about  
16 the penetrations not being sealed. Do you see that?

17 A. Yes.

18 Q. Is that sealant issue at the party walls or  
19 on other wall locations?

20 A. It's the tub/shower wall. I guess that would  
21 be other locations. And its purpose is not for fire or  
22 smoke stopping or sealing. It's for water invasion.

23 Q. Okay. And looking at defect P-9, the water  
24 heater flue allegation, is this issue, if it still  
25 exists in the case, at all related to the fire wall

1 party wall issues?

2 A. No.

3 MS. SPLAINE: I believe that's all the  
4 questions I have for you, so I'm going to pass you at  
5 this time. Thank you.

6 EXAMINATION

7 BY MR. TRIPPIEDI:

8 Q. Mr. Kreitenberg, my name is Adam Trippiedi.  
9 I represent the plumber and drywall subcontractor in  
10 this case. I'll start off with a little background and  
11 then get into your report. Hopefully I won't be too  
12 long.

13 There's been a little bit of discussion about  
14 testing, destructive testing. What kind of testing was  
15 performed that would have involved your scope of work?

16 A. We would have removed drywall to examine the  
17 tub/shower valves or the tub/shower modules themselves.  
18 I know we removed some drywall at the washing machine  
19 utility boxes to see how those devices were installed,  
20 and I know we pulled some toilets to see how those  
21 closet rings were installed.

22 Q. So just so I'm clear, that would be defect 1,  
23 defect 3, and defect 10?

24 A. Yes.

25 Q. So those are the only defects in your report

1 which would have involved destructive testing?

2 A. Correct.

3 Q. Mr. Odou talked a little bit about the  
4 refitting or replumbing issue. What's your  
5 understanding of what was done?

6 A. Well, I don't have any definite  
7 understanding, but it appears that some of the units  
8 that had high-zinc yellow brass connector fittings at  
9 the PEX tubing have been replaced with connectors that  
10 are less susceptible or not susceptible to  
11 dezincification corrosion.

12 Q. And you think that happened sometime between  
13 your initial inspections and your inspections in 2011?

14 A. Yes.

15 Q. You said you think the new fittings -- I'm  
16 sorry. The old fittings were REHAU?

17 A. I believe so.

18 Q. How do you spell that?

19 A. R-E-H-A-U.

20 Q. What's that understanding based on?

21 A. REHAU, as I recall -- I have to really get  
22 back to my manuals to make sure -- but there's  
23 something called an Oetiker clamp, o-e-t-i-k-e-r, which  
24 is a stainless steel band, and the REHAU system used  
25 the Oetiker clamps.



1 Q. Now, this question might take a little bit of  
2 time to answer, but which one of the defects, if any,  
3 in your report would have been affected by a replumb or  
4 a refit as you understand occurred at this project?

5 Should we go through the report one by one  
6 or . . .

7 MR. STANDER: Well, first of all, calls for  
8 speculation. I think he stated he didn't know exactly  
9 what the replumb was, but go ahead to the extent you  
10 can.

11 A. And I'm not sure what you mean by "would have  
12 been affected."

13 Q. (By Mr. Trippiedi) Well, which defects would  
14 have compromised the original construction -- I'm  
15 sorry. Which -- yes, which defects -- strike that.

16 Certain defects -- would any of the original  
17 construction have been compromised by the refitting or  
18 replumbing?

19 A. Let me -- let me try and answer it this way.  
20 Mr. Odou asked the question if I felt it was below the  
21 plumber's standard of care to not make those other  
22 repairs when the refit or re-pipe was being performed.  
23 My answer to that was yes. That's notwithstanding any  
24 scope of work that that re-piping contractor may have  
25 been involved in.

1 But certainly, as an example, if they're  
2 changing out the water supply fittings to the  
3 tub/shower valves, which are at issue in plumbing issue  
4 No. 1, at that point in time it would have been a much  
5 easier repair because the whole area is already opened  
6 up to get in there and do whatever needed to be done.

7 Q. Okay. I'm not asking the question the right  
8 way. Let's go to defect No. 1, talking about the  
9 valves leak, the valve spouts and shower arms are not  
10 properly aligned, et cetera.

11 Okay. There's a few different issues  
12 contained within that defect number. Now, you saw  
13 this, or your -- your firm saw this in 2007 and 2008,  
14 correct?

15 A. Correct.

16 Q. And it was documented?

17 A. Correct.

18 Q. Now, between that time and today, some or all  
19 of the units have been -- the original plumbing  
20 construction has been altered by the refitting or  
21 replumbing, correct?

22 MR. STANDER: Vague and ambiguous.

23 A. I don't know what you mean by "altered."  
24 Near as I can tell, the conditions -- first of all,  
25 none of the tub/shower valves have been changed out, so

1 part 1 of allegation No. 1 still stands, because it's a  
2 product defect.

3 And the other items, such as the tub spout  
4 penetrations not being sealed or loose valves, doing a  
5 refit of those connections only would not impact or  
6 alter that condition.

7 Q. (By Mr. Trippiedi) Okay. And that's what  
8 I'm trying to get at, is if the refitting would have  
9 impacted or altered a condition.

10 Are there any defects in your report that  
11 would have been impacted or altered by a refitting?

12 MR. STANDER: Calls for speculation.

13 Go ahead if you're able.

14 A. No, I don't believe so. Again, it would have  
15 been an ideal time to make those corrections; but  
16 notwithstanding, again, scope of work, no. It seems  
17 the original allegations were not altered or impacted  
18 by the refit or re-pipe.

19 Q. (By Mr. Trippiedi) Okay. Thank you.

20 How many times -- I guess how many visits did  
21 your firm make to the site? And I don't -- I mean, I  
22 have the specific dates in here, but there was -- in  
23 2007, 2008, and in 2011, correct?

24 A. Correct.

25 Q. And that was just based on dates provided to

1 you by the firms which have retained you?

2 A. Yes.

3 Q. You inspected or your firm inspected 113  
4 units?

5 A. Yes.

6 Q. During Mr. Odou's examination, you stated  
7 that -- I think it was defect 13 -- you extrapolated  
8 that issue based on, quote-unquote, marching orders  
9 from the Quon Bruce law firm.

10 A. It wasn't that one issue. The marching  
11 orders from Quon Bruce were to basically come up with  
12 an extrapolative value of how many of these conditions  
13 we believe would exist project-wide.

14 Q. What do you mean by extrapolative value? I'm  
15 sorry.

16 A. So if I saw a certain condition that existed  
17 in X number of units, and compared that to the number  
18 of units totally observed, we would come up with --  
19 it's just a straight ratio, just a percentage. Unless  
20 it was plan type specific, I would take that number and  
21 say I would believe, based on what I've seen, that that  
22 number would then be applicable project-wide.

23 Q. But that's not necessarily something you were  
24 told to do? You did that on your own accord, correct?

25 A. No. I was told to come up with an

1 extrapolative value by Quon Bruce.

2 Q. Now, you have -- you have a number of  
3 extrapolations that are done in your matrix.

4 A. Correct.

5 Q. And so for your purposes, it sounds like you  
6 do agree with that -- you do believe in extrapolation;  
7 that it's a -- it's a good way to -- I'm sorry. I'm  
8 not asking this correctly.

9 For instance, in defect P-03A, you saw that  
10 in 18 percent of units, correct?

11 A. Correct.

12 Q. You're extrapolating that out to 18 percent  
13 of all units, correct?

14 A. What that means is that I would believe that  
15 condition exists in 18 percent of the units at the  
16 project.

17 Q. So I guess my question really boils down to  
18 you don't -- you don't believe that you need to see  
19 individualized proof of every defect in every unit to  
20 say that it would exist there?

21 A. Correct.

22 Q. Okay. I'd like to specifically talk about  
23 your report now. In the preamble, I guess, at the end,  
24 there are the two asterisks. And one says, "Added P-19  
25 and accordingly modified repairs."

1           You have a list of the repairs which were  
2 modified. What do you mean when you said modified  
3 repairs?

4           A. Well, assuming that the units had to be  
5 completely re-piped, then at that point in time, with  
6 the walls already open and those areas already exposed,  
7 it would be appropriate to implement those repairs.

8           Q. During the course of the re-piping?

9           A. Correct.

10          Q. But your actual repairs did not change, did  
11 they?

12          A. No.

13          Q. Getting into defect 1, you state that the  
14 valves leak. First of all, why -- why are these valves  
15 leaking?

16          A. There's a center post in these valves, and  
17 the center post has a chrome or a plated trim sleeve  
18 that goes over that center post. Then there's a plate,  
19 called an escutcheon plate, that goes over that center  
20 post. And the manufacturer relies on something called  
21 the lip seal gasket. It's a non-friction, non -- I'm  
22 sorry. It's a non-compressed gasket. It's just a  
23 friction fit, and it does not keep water out of the  
24 wall cavities, and that's why they'll leak.

25          Q. So is this a failure of the gasket?

1           A.    It's a failure of the design.  That gasket  
2 cannot seal under those circumstances.

3           Q.    So this wasn't an installation issue, in your  
4 opinion?

5           A.    There's installation that goes with that  
6 condition, loose valves, valves that are not installed  
7 correctly that exacerbate that condition; but the  
8 valves by themselves leak, regardless of installation.

9           Q.    So even with perfect installations, these  
10 valves would have been leaking?

11          A.    Yes.

12          Q.    And that's -- that's part 1A, correct?

13          A.    Correct.

14          Q.    1B is something entirely different?

15          A.    Correct.

16          Q.    Now, 1B, would your opinion be similar, that  
17 this is a manufacturing or a design issue; or is this  
18 more of an installation issue?

19          A.    B is all installation.

20          Q.    And in your answers to the previous question,  
21 when you said that the installation was affecting the  
22 valve -- the leaking, that's basically -- you're  
23 talking about 1B?

24          A.    No.  Again, 1A, the valves will leak no  
25 matter what we do.  But because some of the valves are

1 not properly installed, either they're skewed or they  
2 lack support behind the valves, then that existing leak  
3 condition because of the bad gasket design, it's just  
4 exacerbated, just shows up even worse.

5 Q. So what should the installer have done  
6 differently to correct issues contained in 1B?

7 A. The tub spout penetrations, they have  
8 something called a bulkhead fitting. It goes through  
9 the fiberglass. It basically provides a gasketed seal  
10 for the pipe penetration that the tub spout comes  
11 through.

12 And in addition with that, where the valves  
13 are installed and the tub spout drop nipple is  
14 installed, that required necessary securement to make  
15 sure that those devices were not subject to any  
16 stresses or movement.

17 Q. So essentially whoever installed the valve  
18 spouts in the shower should have secured them better?

19 A. Correct.

20 Q. You saw loose valves?

21 A. Yes.

22 Q. And in your matrix, the P-1B, the Note  
23 column, that's essentially pinpointing exactly where  
24 the issue -- what the issue is in each specific unit?

25 A. Correct.



1 Q. So, for instance, in the first unit,  
2 8639 Horizon Wind, 102, the valve was loose? Is that  
3 what that means?

4 A. Yes. The master's -- the master bathroom  
5 valve was loose.

6 Q. And what does it mean in 8649 Horizon Wind  
7 103, B2, valve shallow rough-in?

8 A. B2 is the second bath. And the valve itself,  
9 it was not installed far enough into the wall, so the  
10 escutcheon plate could not at all engage with the trim  
11 sleeve.

12 Q. What is the -- you have -- in several places  
13 you have SW.

14 A. Soft wall. That's where, if you were to  
15 actually lean up against the surrounds, the tub or the  
16 shower, it flexes. It moves in and out. And those  
17 walls have to be rigid to maintain any type of an  
18 attempted seal of penetrations through those wet walls.

19 Q. Why are those walls soft?

20 A. Because whoever did the installation of those  
21 tub surrounds didn't provide what are called kickers.  
22 They didn't provide the necessary support behind those  
23 panels.

24 Q. Now, you saw water intrusion as a result of  
25 this issue, P-1A?

1 A. Yes.

2 Q. Is there -- so where did you see -- where did  
3 you actually see water intrusion? Do you have a list  
4 of units, or was it in every unit?

5 A. Every unit we opened up the walls and we put  
6 water on the wet wall, you can just see the water  
7 cascading through the valves.

8 Q. How many units was that testing done at?

9 A. I'd have to go through all the pictures.

10 Q. Was it all 113 that you saw?

11 A. No. We didn't do DT in all 113. Again, I'd  
12 have to go through all the pictures to quantify  
13 specifically how many of those we tested.

14 Q. Do you have any idea off the top of your  
15 head?

16 A. I would say at least 20.

17 Q. And in all approximately 20, you saw water  
18 entering the wet wall?

19 A. Yes.

20 Q. From the escutcheon?

21 A. Yes, and/or the tub spout.

22 Q. In your report in the Resultant Damage  
23 section, the second sentence says, "Propagation of  
24 mold, mildew and fungi." Did you witness any of that  
25 stuff as a result of this issue?

1 A. No.

2 Q. Now let me ask more generally, because I --  
3 your report does mention mold in a few places. Did you  
4 see mold at this project?

5 A. We did in a couple of locations.

6 Q. Could you tell me what that was or if you  
7 remember?

8 A. Oh, one of them was one of these special  
9 inspections that we did where there was a bad kitchen  
10 sink faucet. I think there was another one where there  
11 was a bad shower drain that may have had some mold.

12 Q. Is there anything -- do any of the defects in  
13 your report -- did any of them result in mold that you  
14 can remember?

15 A. Not on -- not in a global fashion. So where  
16 we found mold was in a real limited basis.

17 Q. Just essentially, as you remember, those two  
18 instances right now?

19 A. Correct.

20 Q. So in your matrix for issue 1A, it has 2X in  
21 every -- every column. Does that mean both bathrooms  
22 in all units?

23 A. Yes. That tub/shower valve is installed  
24 universally throughout the project.

25 Q. You didn't actually witness leaking at all

1 113 units, correct?

2 A. Correct.

3 Q. So that's an extrapolation, essentially?

4 A. Well, essentially, yes. But, you know, I  
5 probably -- we, my company -- we probably tested in  
6 excess of a thousand of these valves over the last 15  
7 years, and it's just a defect in design of that trim  
8 sleeve/escutcheon intersection.

9 Q. Okay. Okay. And then move to -- you know  
10 what, hold on a second.

11 Okay. Let's go to defect 2. Now, this issue  
12 is lack of support, correct?

13 A. Correct.

14 Q. So what was the -- was it defective  
15 installation?

16 A. Yes.

17 Q. So what was done wrong?

18 A. These shower pans -- there's two ways of  
19 doing it. Ideally, before the pan is set, there's a  
20 mortar bed that's put in place, and then the pan is set  
21 down in the mortar bed so it then contours to the  
22 bottom side of the pan.

23 The second way of doing it is to install the  
24 pan and then basically follow what the repair is and  
25 then just use a flat nozzle -- a flat nozzle outlet

1 with lightweight concrete that you can then flow  
2 underneath the pan to provide that support.

3           So near as we can tell, nothing was done  
4 whatsoever in that regard. They just had the pan  
5 sitting directly on the floors.

6           Q. Now, you state that the -- in terms of  
7 resultant damage, premature failure of the fixture.  
8 Did you witness any such failure?

9           A. No.

10          Q. And the failure would have been, I'm  
11 assuming, some cracking or breaking of the pan?

12          A. Correct.

13          Q. So you saw no resultant damage as a result of  
14 this issue?

15          A. Correct.

16          Q. Now, I apologize if you already answered  
17 this; but for part B, you state that wainscot panels  
18 are improperly sealed. What type of sealant are we  
19 talking about?

20          A. The -- during assembly, the horizontal  
21 surface of the bathing and showering receptor needs to  
22 have a bed of silicone laid in, and then the walls have  
23 to be planted down inside of that silicone bed. And it  
24 appears that in a couple of locations that didn't  
25 happen.

1 Q. You state that you -- you reviewed  
2 manufacturers' specifications for this issue?

3 A. Yes.

4 Q. Are those contained in Exhibit 67?

5 A. No. I didn't bring those in.

6 Q. Could you tell me what documents you  
7 referenced?

8 A. It would be the Sterling installation  
9 instructions.

10 Q. Would those essentially say you need to put  
11 some sort of base underneath the pan so it doesn't  
12 create a break?

13 A. Yes, as well as a need for silicone sealant  
14 with the attending wall panels.

15 Q. Okay. Okay. Moving to defect 3. You state  
16 that the toilets are not securely mounted. What do you  
17 require -- or what does the code require to be securely  
18 mounted?

19 A. Whether we're on wood or concrete, there's --  
20 the closet ring itself -- that's the mounting device --  
21 it's got a series of holes in the outer ring, and each  
22 of those holes needs to have a noncorrosive fastener  
23 attached to the structure, and then the accompanying  
24 piping itself should be supported as well so that when  
25 the toilet itself is weighted or sat on, that that load

1 is only transferred to the closet ring, which is then  
2 transferred and diffused to the floor surface.

3 Q. So did whoever installed the toilets simply  
4 fail to use fasteners?

5 A. They didn't use enough fasteners, and in some  
6 instances -- excuse me -- it looks like they didn't  
7 provide support for the piping.

8 Q. I think you mentioned that during an  
9 emergency repair there was a leak from a toilet,  
10 correct?

11 A. Yes.

12 Q. Did you have any other instances where you or  
13 your staff witnessed leaks coming from unsecured  
14 toilets?

15 A. No.

16 Q. So would there be any resultant damage as a  
17 result of this issue, as defined in your report?

18 A. We didn't always open up sealing cavities  
19 underneath toilets, so I don't know if there was  
20 anything else going on in there. We certainly didn't  
21 break out any of the concrete on the first floor  
22 toilets, so I don't think I can really answer that  
23 definitively.

24 Q. But yourself and your staff did not see any  
25 leaking, correct?

1 A. Correct.

2 Q. Would you say any of this issue is a result  
3 of homeowner wear and tear or basic usage of the  
4 toilets over time?

5 A. Well, that's one of the things that we check  
6 for. We try to see if the closet bolts themselves are  
7 tight. And if we are able to tighten them and  
8 remove -- or return stability to the fixture, then we  
9 wouldn't call it a defective condition.

10 But after we've tighten them, if we find that  
11 the toilet was still unstable or a rocker, then at that  
12 point we know that the mounting device or a closet ring  
13 is the culprit.

14 Q. Moving on to defect 4. Did you ever hear  
15 any -- of any complaints from a homeowner regarding  
16 that they didn't have hot enough water or that they  
17 were being scalded or that the water heaters failed?

18 A. No.

19 Q. Or that they had higher operating costs as a  
20 result -- or that they had higher operating costs?

21 A. No.

22 Q. You stated this violates a standard of care  
23 because you -- your standard is there should be enough  
24 hot water to supply the tub as well as one other  
25 fixture; is that correct?



1           A.     Correct. Based on the hot water heating  
2 manual that's published by the American Society of  
3 Plumbing Engineers.

4           Q.     Was that contained in your documents in  
5 Exhibit 67?

6           A.     No.

7           Q.     But there is literature out there about this?

8           A.     Yes.

9           Q.     Is that -- the document that you just  
10 referenced, is that the only source for that standard  
11 that you know of?

12                   MR. STANDER: Vague and ambiguous. He's  
13 already testified about conferences he's had.

14           Q.     (By Mr. Trippiedi) Is that the only written  
15 or -- written document or literature that you're aware  
16 of?

17           A.     Besides the manufacturers' recommendations,  
18 yes.

19           Q.     So those -- those recommendations are  
20 contained in here, correct?

21           A.     Yes.

22                   MR. STANDER: Good time for a break?

23                   MR. TRIPPIEDI: Sure.

24                             (A recess was taken.)

25           Q.     (By Mr. Trippiedi) Okay. Getting back into

1 defect 4 just a bit. Do you know how many gallons  
2 these tubs are in these homes?

3 A. I believe they're 60s.

4 Q. 60 gallons?

5 A. Yes.

6 Q. Is that just based on sizing, looking at them  
7 or . . .

8 A. Familiarity with the product.

9 Q. So based on what you were talking about with  
10 Mr. Odou earlier, you would need to heat up a certain  
11 amount of gallons for the tub and then have something  
12 left over?

13 I mean, I don't need you to get back into too  
14 technical, but is that essentially what it is?

15 A. Yes.

16 Q. And how many gallons would you need -- would  
17 you need 60 gallons of heated water for the tub, then,  
18 since it's a 60-gallon tub?

19 A. No. No. The repair recommendation suggests  
20 a 50-gallon heater, with the addition of high recovery,  
21 a larger burner of 65,000 BTU. And when we're sizing  
22 water heaters, we kind of play back and forth with  
23 capacity and burner size to accomplish what the goal  
24 is.

25 Q. Okay. Going to defect -- defect 5. Give me

1 just a second.

2 So why is it an issue if the 2-inch pipe  
3 nipple -- first of all, is there a size -- is there an  
4 issue with the size of the pipe nipple at -- is it that  
5 it's 2 inches or that it reduces down to 1 inch?

6 A. It's the overall assembly that's the problem.  
7 Excuse me. There's -- I'm of the opinion that this is  
8 a floor drain, and a floor drain needs to be -- by code  
9 definition, needs to be integrated into the floor  
10 assembly. And that is not present.

11 And No. 2, the floor drain requires that be a  
12 minimum of 2-inch piping. And No. 3, we can't have any  
13 reduction or obstruction in our drainage lines.

14 So we don't have an integrated floor drain,  
15 and we've got a piping size which is less than  
16 2 inches, and we've got a step-down reduction in pipe  
17 diameter. So between the three items, my opinion is  
18 the overall installation is non-code compliant.

19 Q. So the issue is not that it's 2 inches at  
20 first; instead it decreases to 1 inch?

21 A. It's all of them. It really can't just be  
22 parsed out. These are all components that add up to  
23 the condition.

24 Q. Okay. But you did say that it needs to be  
25 2 inches minimum?

1 A. Yes.

2 Q. So 2 inches is okay, then, at first?

3 A. Well, yes.

4 Q. And then it decreases -- in what way does it  
5 decrease down to 1 inch? Is it just a narrowing of the  
6 line?

7 A. Yeah, there's a piece of 2-inch diameter pipe  
8 that looks like it's about 2 or 3 inches long, and then  
9 they put a reducer in there that brought it back down  
10 to 1 inch.

11 Q. So what was the point of that?

12 A. That's my question to you.

13 Q. Fair enough. And then the undersizing,  
14 that's -- that's contained in the documentation, I  
15 believe?

16 A. Yes.

17 Q. And what did -- I'm sorry. Can you tell me  
18 exactly what the size is supposed to be and what it is?

19 A. It should be 2-inch. Should be 2-inch  
20 throughout its entire run.

21 Q. This is the collection pan?

22 I'm sorry. I'm talking about 5B.

23 A. Oh, I'm sorry. 5B was -- occurred on a real  
24 small basis. Yeah, we only found a total of three of  
25 these throughout the entire project.

1           It has to be a minimum of 2 inches tall and  
2   2 inches larger than the -- 2 inches larger than the  
3   diameter of the water heater. So we found five of  
4   these, actually.

5           Q.   Now, for A and B, these are both installation  
6   issues?

7           A.   Yes.

8           Q.   And the issue -- the resultant damage,  
9   essentially, is there could be leaking or damage to the  
10   components?

11          A.   If called upon to operate the way those  
12   things are supposed to be, there will just be this  
13   inundation of water in these units.

14          Q.   But you didn't see any such inundation,  
15   correct?

16          A.   Correct.

17          Q.   Going back to issue 4 for a second, do you  
18   know if the plans called for a 38-gallon tank, or water  
19   heater?

20          A.   The plans called for a 40.

21          Q.   But in your opinion that wouldn't have been  
22   enough, correct?

23          A.   Correct.

24          Q.   So are you critical of the plans, then?

25          A.   Yes.

1 Q. Are you -- are you critical of whoever  
2 decided to follow those plans and install an undersized  
3 water heater?

4 A. I didn't see any of the contracts, and I  
5 certainly don't know what occurred during any  
6 negotiations. If the subcontractor is ordered and  
7 guided, and possibly restricted, by the contract  
8 documents, then it's pretty hard to hold that  
9 subcontractor responsible. But if there was some  
10 impact on the -- or conversations to the contrary, then  
11 that would be considered as well.

12 Q. Okay. Going to defect 6. I know a lot of  
13 this was talked about with Mr. Odou, but I just want a  
14 little clarification on each issue.

15 You stated the corrugated pipes essentially  
16 reduce the size of the pipe?

17 A. Correct.

18 Q. It shouldn't be corrugated? It should be a  
19 straight pipe?

20 A. Correct.

21 Q. So this could result in excessive pressure,  
22 risk of scald and damage to property?

23 A. Correct.

24 Q. Did you see any of that resultant damage at  
25 this project?

1 A. No.

2 Q. For this issue, the manufacturer  
3 specifications are contained within Exhibit 67,  
4 correct?

5 A. Correct.

6 Q. Does it specifically discuss corrugated  
7 piping in these documents?

8 A. One of the documents does.

9 Across the very top, it says Uniform Plumbing  
10 Code, Interpretations Manual. The upper right-hand  
11 corner says P-06. And there it specifically says that  
12 the flexible connectors would violate that requirement.

13 Q. Would you do -- or would you have liked to  
14 have done any testing to see if that's the case, that  
15 there was actually reduction in the flow?

16 A. Well, 3/4-inch pipe has a nominal internal  
17 diameter of 3/4 inch. The flexible connectors are  
18 reduced down to 5/8 of an inch, just dimensionally. It  
19 can be measured. It doesn't require anything more than  
20 that.

21 Q. You're calling for the replacement in defect  
22 5 of two-thirds of the water heaters in the project,  
23 correct?

24 A. Correct.

25 Q. Defect 6 is discussing a valve which is

1 connected to the water heater, correct?

2 A. Correct.

3 Q. Would you need to -- if you're replacing the  
4 water heater, is the valve -- does the valve come with  
5 the water heater?

6 A. Yes.

7 Q. So would you need to -- you wouldn't need to  
8 do this on all -- defect 6 wouldn't occur -- sorry.  
9 Strike that.

10 Defect 6 would not have to be -- a repair  
11 would not have to be performed if you're replacing a  
12 water heater, correct?

13 A. In conjunction with a repair, you replace the  
14 corrugated connector. But where the water heater  
15 repair is not asked for, then the corrugated connector  
16 would just be removed and hard piped.

17 Q. So essentially this would only have to be  
18 performed where the water heater is not replaced?

19 A. No, it would be -- it's required at all  
20 locations; but where water heaters are replaced, it  
21 would be part of that work.

22 Q. Okay. Okay. Defect 7. What is a vee block?

23 A. It looks like the a letter V, except it sits  
24 horizontally. It basically hugs the water heater.  
25 When the water heaters are pulled against the wall,



1 they're cylindrical and they have the ability to roll  
2 back and forth because of their round surface. So the  
3 vee block captures or hugs the cylinder so that the  
4 heater can't roll.

5 And there's a couple of ways of constructing  
6 the vee block. It's just a term of art. It could be  
7 as simple as putting a piece of lumber across a wall  
8 and then two shorter pieces so there's a little step in  
9 between so, again, the cylinder can fall into that  
10 step.

11 Just any type of item that would prevent the  
12 cylinder from rolling.

13 Q. And I apologize if you already stated this,  
14 but what UPC citation specifically talks about this?

15 A. It's a -- there isn't a UPC code section on  
16 it. It's a means and methods item of how to strap that  
17 water heater. But if there's restraints required, then  
18 something -- again, a vee block, a couple of blocks of  
19 wood, whatever device -- just to stop the cylinder from  
20 rolling.

21 Q. Now, you state there's manufacturers'  
22 specifications. Have those been produced?

23 A. No.

24 Q. So do you know -- do they call for this?

25 A. It depends on what -- again, it depends on

1 the type of strap that would be used. Here they  
2 basically used cloth seat belts.

3 Q. Well, what I'm saying, is a strap or any sort  
4 of restraint required in the specifications?

5 A. It's actually the other way around. If  
6 you're going to put the strap on, then those  
7 manufacturers, depending upon which one you use, is  
8 going to require some type of device to prevent  
9 cylindrical roll.

10 Q. I'm not understanding. In the UPC or in the  
11 manufacturers' specs, is some sort of restraint  
12 required?

13 A. In --

14 Q. What I'm saying, what's the basis for you  
15 calling for this repair?

16 A. There's multiple manufacturers of restraints,  
17 and depending upon which manufacturer gets installed is  
18 going to determine the methodology of cylindrical  
19 restraint. So sometimes they use metal straps and  
20 sometimes they'll use the seat belt type strap.  
21 Sometimes they'll use something called strap iron or  
22 plumber's tape. And these are all means and methods,  
23 however you want to get there, just to stop that  
24 cylinder from rolling. That's what the objective is.

25 Q. I understand the objective and the types of

1 restraints that could be used, but I'm not seeing where  
2 you're saying that the UPC requires a restraint, it  
3 requires something to prevent it from rolling, or where  
4 manufacturer specs talk about that.

5 A. Well, I didn't bring the manufacturers' specs  
6 because there's too many different specifications  
7 available.

8 Q. Right. But we know which types of heaters  
9 are used in this case, correct?

10 A. It's -- it's -- but it's going to be driven  
11 by the restraint manufacturer, not the water heater  
12 manufacturer. Not every part of the United States of  
13 America requires these restraints.

14 Q. Do we require them here?

15 A. They were installed, required by the plans,  
16 yes.

17 Q. The plans called for them?

18 A. Yes.

19 Q. And those plans have been produced, correct?

20 A. Yeah. They're on a disk.

21 Q. I kind of asked this in the beginning, but  
22 the UPC, there's no specific citation anywhere that  
23 calls for a restraint on a -- on a water heater, right?

24 A. Correct.

25 Q. So you're mostly relying on the plans and

1 maybe the manufacturers' specifications?

2 A. Correct.

3 Q. Have you seen any toppling of any water  
4 heaters on this project? Have you heard of that?

5 A. No.

6 Q. And again, going back to defect 5, if the  
7 water heater is being replaced, is this a separate  
8 issue unto itself aside from replacement of the water  
9 heater?

10 A. Yes. When the water heater is out, it's  
11 really a very, very, simple easy repair. Throw a vee  
12 block type device in there. If the water heater is in  
13 place, it's little bit more difficult.

14 Q. These restraints don't come with the water  
15 heater when you buy it, right?

16 A. Correct.

17 Q. I'm going to go through 8 and 9 quickly  
18 because it doesn't look like there's any repairs being  
19 called for by counsel.

20 For No. 8, you saw premature corrosion and  
21 failure?

22 A. Correct.

23 Q. And that was at whatever addresses are listed  
24 in your matrix?

25 A. Yes.

1 Q. Do you know the cause of those?

2 A. They look like they're dezincifying. We  
3 didn't pull any or submit them to metallurgical  
4 analyses.

5 Q. For P-9 -- I think I'm just going to skip  
6 P-9.

7 In defect 10, why does that only occur in  
8 Plan 102? I'm sorry. That's 10C specifically.

9 A. Are you asking specifically why does 10C only  
10 occur in 102?

11 Q. Yes.

12 A. Oh, because of the location of that washing  
13 machine on a party wall.

14 Q. Is this more -- is that an installation  
15 issue, or is this a manufacturing or design issue?

16 A. Are we staying with 10C?

17 Q. Let's go -- let's start with 10A and work our  
18 way down.

19 A. 10A and B are both installation.

20 Q. And 10C?

21 A. And 10C, depending upon what the architect  
22 decides, would either be a product selection issue. As  
23 an example, had a metal washing machine box been used  
24 instead of a plastic, then the issue may not be  
25 present. Or as an alternative, if a plastic box was to

1 be used, possibly locate it in a different location.

2 So 10C could be the product spec or location  
3 specification.

4 Q. Now, you have several different types of  
5 resultant damage listed. Do you know which would tie  
6 into part A, part B and part C, respectively, or do  
7 they all . . .

8 Go ahead.

9 A. 10C would just be compromised fire-resistive  
10 construction. But the others would relate to 10A and  
11 B.

12 Q. And earlier I believe you said 10B was  
13 potential for water-related damage?

14 A. Correct.

15 Q. This is the water dripping behind the  
16 drywall?

17 A. Exactly.

18 Q. You also stated that the plastic itself is  
19 not the issue, right? The fact that it's made of  
20 plastic, the box?

21 A. Correct. There's no complaint about the use  
22 of the plastic box. The question is the use of the  
23 plastic box on a fire wall.

24 Q. The pipe can be compromised as a result?

25 A. I don't understand the question.

1 Q. Strike that. This issue -- I believe you  
2 answered this earlier, but this issue would not have  
3 been -- I'm going to talk about 10A specifically.

4 This issue would not have been affected by a  
5 refitting, a change of the fittings?

6 A. Correct.

7 Q. And for P-11, you cite to plans and  
8 specifications. Are those contained in Exhibit 67?

9 A. P-11, the code sections are in Exhibit 67.  
10 Plans are located on a disk that was deposited seven  
11 years ago.

12 Q. Could you tell me which plans specifically  
13 you talk -- what the plans called for that you're  
14 critical of, or what's -- what is the issue with the  
15 plans? Why did you include them?

16 A. Well, the plans are saying that the  
17 installation has to comply with the -- all applicable  
18 codes and that, based on a code reference, we don't  
19 have that condition. There was nothing detailed in the  
20 plans as far as the design or installation of these  
21 drainage devices.

22 Q. Did the plans call for a specific size  
23 outlet?

24 A. No. There's nothing on the plan at all.

25 Q. So it's simply someone chose the wrong size

1 outlet?

2 A. Yes.

3 Q. And is this specific to Plan 101 because of a  
4 fire wall again?

5 A. No. The 102 and 103 plans, there are washing  
6 machines on the first floor. And if there's a problem,  
7 it's going to be pretty much localized to that one  
8 unit. But 101 is a single-story flat unit that spans  
9 over the bank of the garages; so when that washing  
10 machine problem occurs, it's going to wipe out the  
11 garages below as well as the other two units.

12 Q. Issue P-12, briefly, when you say improperly  
13 installed brackets, what's -- what was done improperly?

14 A. Well, they're either not installed or  
15 improperly installed. If they're not installed or  
16 improperly installed, the range, with the oven door  
17 open, has the ability -- when that oven door is  
18 weighted, has the ability to tilt forward. And the  
19 anti-tip brackets are just that. They engage the legs  
20 of the stove to make sure that the range doesn't tip  
21 forward.

22 Q. And which -- when you say improperly  
23 installed, what does -- what does that mean?

24 A. That if they're present, they're not set up  
25 to engage the legs of the range. They could be too far



1 back, too far in, off center.

2 Q. How many have -- or do you know how many  
3 have -- are missing versus improperly installed?

4 A. I don't know. The reason we don't  
5 distinguish this is because it's the same repair.

6 Q. Have you heard of any of your resultant  
7 damage as a result of this issue?

8 A. Not here, but I have here in Las Vegas.

9 Q. Not in this project, right?

10 A. Correct. There was actually a thing on the  
11 news a couple of years ago about some kid that got  
12 killed because of this.

13 Q. Well, luckily it didn't happen here.

14 For P-13, is there some allowable amount of  
15 kinking or trapping; or is it just, if you see any kink  
16 or trap, you call for a repair?

17 A. Yeah, there's a reasonable amount. If  
18 there's a condition that looks like flow may be impeded  
19 or that food laying in water may get trapped, then we  
20 consider it a problem.

21 Q. So you basically use your judgment or your  
22 staff's judgment to make that decision?

23 A. Yes.

24 Q. Based on experience?

25 A. Correct.

1 Q. Have you heard any complaints as a result of  
2 this issue?

3 A. No.

4 Q. Defect 15, did you -- did you test these  
5 valves to -- how did you determine that shutting off  
6 one would shut off all of them?

7 A. You can see by the way it's configured.  
8 There's one valve ahead of the cross tee; and if that  
9 valve is off, there's no water that's going to flow  
10 through it, and it will disable the three outlets.

11 Q. So basically there's one way in, one way out?

12 A. There's one way in with three ways out.

13 Q. Got it. And you state that --

14 This issue about it's not located in a  
15 watertight masonry pit and failing prematurely, can you  
16 explain that?

17 A. That one component of the allegation should  
18 be removed. The assembly is completely made out of  
19 brass and not subject to that kind of corrosion.

20 Q. Okay. Sorry. I'm just reviewing to see if I  
21 have any questions.

22 Defect 16, who's supposed to identify the  
23 clean-outs?

24 A. I would expect the plumbing subcontractor  
25 would have identified that.

1 Q. Okay. So -- I'm sorry. For No. 19, if -- if  
2 the -- if the fittings that you are talking about have  
3 been replaced, would there be any need for any further  
4 repairs?

5 A. The answer is no. If the fittings have been  
6 replaced with the appropriate material, no, there would  
7 be no need for additional repairs.

8 Q. Okay. Mr. Kreitenberg, are you an industrial  
9 hygienist or licensed as such?

10 A. No.

11 Q. If any of the appliances in the project, such  
12 as dishwashers or washing machines, have been  
13 replaced -- do you know if any have been, first?

14 A. I noted one water heater had been replaced.  
15 I don't know about the specific appliances.

16 Q. -- would that change your opinions as to  
17 those appliances?

18 A. If they've been replaced, yes, it would no --  
19 it would no longer be part -- even if the condition was  
20 defective, it wouldn't be subject to litigation.

21 Q. Okay. I have an issue about your matrix, a  
22 question. In certain areas you have O, which means  
23 condition not present; but you'll have an E next to it  
24 for extrapolation. I'm wondering what that indicates.

25 A. I spoke about that with Mr. Odou. I

1 extrapolated that the condition doesn't exist because  
2 of the low frequency of occurrence. In my judgment,  
3 the likelihood of finding that condition is extremely  
4 low.

5 Q. So it's almost like a reverse extrapolation  
6 for our purposes?

7 A. For whose purposes?

8 Q. For our purposes.

9 A. For the purposes, yes.

10 Q. Do you have some sort of standard base level  
11 of percentage it would have to be before you'd feel  
12 uncomfortable extrapolating an area?

13 A. Before I'd feel uncomfortable?

14 Q. Either way.

15 MR. STANDER: Vague and ambiguous, compound,  
16 incomplete hypothetical.

17 A. There's a couple of factors. If there's  
18 tremendous variables in installations, that becomes a  
19 consideration. As an extension of that concept, if  
20 there's a large number of different subcontractors,  
21 then that can possibly become a consideration. If we  
22 find the construction extended out over real long  
23 periods of time, with multiple, multiple phases, that  
24 can become a consideration.

25 There can also be different general

1 contractors involved with a single development, and  
2 that can become a consideration.

3 So I guess these are considerations  
4 because -- I can't tell you when it becomes  
5 uncomfortable or when I'm not very confident in doing  
6 it; but those are just items that need to be  
7 considered.

8 Q. (By Mr. Trippiedi) But as far as a baseline  
9 percentage, you wouldn't do a blanket -- you wouldn't  
10 make a blanket statement about that?

11 A. No.

12 MR. TRIPPIEDI: Okay. That's all the  
13 questions I have. Thank you.

14 THE WITNESS: Thank you.

15 MR. ODOU: I have just a couple of follow-ups  
16 before we adjourn.

17 FURTHER EXAMINATION

18 BY MR. ODOU:

19 Q. I am going to go ahead and attach the next  
20 exhibit in order, the document that I showed you, which  
21 is slightly different than Exhibit 68.

22 And I believe, Mr. Kreitenberg, you had never  
23 seen that document before either.

24 A. Correct.

25 Q. Okay.

1 (Exhibit 69 marked.)

2 Q. (By Mr. Odou) Also, it looks like there was  
3 a PowerPoint presentation given to someone, as that was  
4 produced as part of your file in this matter. Who was  
5 the PowerPoint presentation given to?

6 A. As I recall, that PowerPoint was assembled  
7 for marketing purposes and presented to, I believe, the  
8 association, their board members and possibly some of  
9 the residents.

10 Q. Okay. And that was on August 24, 2007?

11 A. Yes.

12 Q. Okay. For defect 1, P-1, was it your  
13 intention to include all of the defects -- actually for  
14 defect 1 and 2, is it your intention to include all of  
15 the defects that you found with the tubs and the  
16 showers in those two categories of defects?

17 A. I'm sorry, Joel. I don't understand the  
18 question.

19 Q. Sure. Defect 1 and defect 2 both deal with  
20 the tub/showers.

21 A. Correct.

22 Q. And it appears, but I'm not certain and I  
23 want to make certain, that those two defects encompass  
24 all of your defects for the tubs and the showers at  
25 Arlington.

1 A. Yes.

2 Q. In addition, you had some defects for the  
3 mechanical issues at the project. Was it your task to  
4 investigate any and all claims for the mechanical  
5 devices at the project?

6 A. Yes.

7 Q. And did you in fact complete that  
8 investigation?

9 A. Yes.

10 Q. And so all of the opinions as to defects for  
11 the mechanical systems at Arlington at High Noon are  
12 contained within defects M1 and M2?

13 A. Correct.

14 Q. Okay.

15 MR. ODOU: All right. That's all the cleanup  
16 I have.

17 MR. STANDER: Are you done, Shannon?

18 MS. SPLAINE: Yes.

19 (Whereupon, the deposition  
20 concluded at 3:49 p.m.)  
21  
22  
23  
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25

CERTIFICATE OF REPORTER

STATE OF NEVADA     )  
                                  )     ss:  
COUNTY OF CLARK     )

I, Judith Payne Kelly, a Certified Court Reporter licensed by the State of Nevada, do hereby certify that I reported the deposition of HARVEY KREITENBERG, commencing on Wednesday, January 22, 2014, at 9:16 a.m.

Prior to being deposed, the witness was duly sworn by me to testify to the truth; and I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes; and that a review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any party involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 29th day of January, 2014.



Judith Payne Kelly, RMR, CCR No. 539



DEPOSITION ERRATA SHEET

Our Assignment No. 64863

Case Caption: High Noon at Arlington Ranch

vs. D.R.Horton

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the foregoing transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
HARVEY KREITENBERG

DEPOSITION ERRATA SHEET

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HARVEY KREITENBERG

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SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

HARVEY KREITENBERG





CLERK OF THE COURT

**ORDR**

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Attorneys for Plaintiffs

DISTRICT COURT  
CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, a Nevada  
non-profit corporation, for itself and for all  
others similarly situated,

Plaintiffs

v.

D.R. HORTON, INC. a Delaware Corporation  
DOE INDIVIDUALS, 1-100, ROE  
BUSINESSES or GOVERNMENTAL  
ENTITIES 1-100 inclusive

Defendants.

And Related Third Party Actions, Cross Claims,  
and Consolidated Actions.

Case No. A542616  
Dept. XXII

[ELECTRONIC FILING CASE]

~~PROPOSED~~ ORDER REGARDING  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION

Date: January 16, 2014  
Time: 9:00 a.m.

Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS  
ASSOCIATION'S MOTION FOR RECONSIDERATION ON ORDER SHORTENING  
TIME came on regularly for hearing on January 16, 2014, the Honorable Susan Johnson  
presiding. After consideration of the pleadings and files on record, the argument of counsel,  
and GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT THE MOTION IS  
GRANTED IN PART, as described below:



1 The Court's Order dated November 12, 2013 regarding Plaintiff HIGH NOON AT  
2 ARLINGTON RANCH'S standing to pursue constructional defect claims on its own behalf  
3 and on behalf of its homeowner-members is hereby amended as follows:

4 With regard to constructional defects that relate to the building envelope (roofs,  
5 stucco, windows, doors, and decks) Plaintiff HIGH NOON AT ARLINGTON RANCH  
6 HOMEOWNERS ASSOCIATION may prosecute the claims of all of its 342 homeowner-  
7 members. Within those homes, Association may prosecute the following claims relating to  
8 the building envelope:

- 9 1) Claims that may exist in 100 percent of the homes. Association may also use  
10 statistical proof to extrapolate or show such constructional defects found in 100  
11 percent of the homes inspected also exist in the building envelope of all 342  
12 homes, as identified in this Court's order, dated November 12, 2013, at pp. 5-6.
- 13 2) Claims of homeowners numbering more than 40, but less than the total 342.  
14 Plaintiff may prosecute those claims as their representative in a sub-class format,  
15 meaning the Association may use generalized proof to demonstrate such claims.  
16 The Association, however, may not infer such claims are suffered by all 342  
17 homeowner-members.
- 18 3) Claims on behalf of two or more of any of its homeowners who actually suffer  
19 certain constructional defects that may not have been experienced or encountered  
20 by their neighbors pursuant to NRS 116.3102(l)(d).

21 With regard to constructional defects that relate to the interior of the buildings,  
22 including fire resistive, electrical, plumbing and structural claims, Plaintiff HIGH NOON AT  
23 ARLINGTON RANCH HOMEOWNERS ASSOCIATION may prosecute the claims only in  
24 the 192 homes of the homeowner-members that assigned their claims to the Association.  
25 Within those homes, Association may prosecute the following claims that relate to the interior  
26 of the buildings:

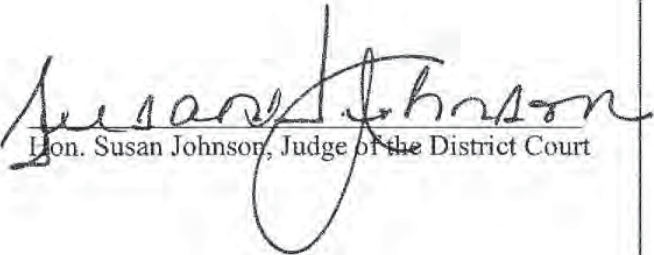
- 27 1) Claims that may exist in 100 percent of the homes. Association may also use  
28 statistical proof to extrapolate or show such constructional defects found in 100  
percent of the homes inspected also exist in the interior of all 192 homes, as  
identified in this Court's order, dated November 12, 2013, at pp. 5-6;
- 2) Claims of homeowners numbering more than 40, but less than the total 192.  
Plaintiff may prosecute those claims as their representative in a sub-class format,

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meaning the Association may use generalized proof to demonstrate such claims.  
The Association, however, may not infer such claims are suffered by all 192  
homeowner-members.  
3) Claims on behalf of two or more of any of its homeowners who actually suffer  
certain constructional defects that may not have been experienced or encountered  
by their neighbors pursuant to NRS 116.3102(l)(d).

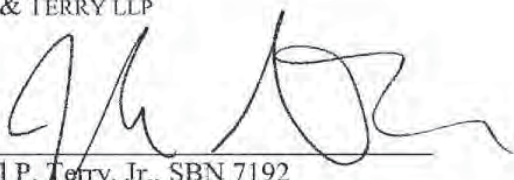
IT IS SO ORDERED.

Dated: March 19<sup>th</sup>, 2014

  
Hon. Susan Johnson, Judge of the District Court

Respectfully submitted.

ANGIUS & TERRY LLP

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12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **HIGH NOON AT ARLINGTON RANCH**  
15 **HOMEOWNERS ASSOCIATION, a Nevada**  
16 **non-profit corporation, for itself and for all**  
17 **others similarly situated,**

18 Plaintiffs

19 v.

20 **D.R. HORTON, INC. a Delaware Corporation**  
21 **DOE INDIVIDUALS, 1-100, ROE**  
22 **BUSINESSES or GOVERNMENTAL**  
23 **ENTITIES 1-100 inclusive**

24 Defendants.

25 And Related Third Party Actions, Cross Claims,  
26 and Consolidated Actions.

Case No. A542616

Dept. XXII

[ELECTRONIC FILING CASE]

**NOTICE OF ENTRY OF ORDER**  
**GRANTING PLAINTIFF'S MOTION FOR**  
**STAY OF PROCEEDINGS ON ORDER**  
**SHORTENING TIME**

27 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

28 **PLEASE TAKE NOTICE** that an Order Granting Plaintiff's Motion for Stay of  
Proceedings on Order Shortening Time in the above-entitled action was entered into and filed

///

1 on the 31<sup>st</sup> day of March 2013, a copy of which is attached hereto.  
2  
3

4 Dated: April 1, 2014.

ANGIUS & TERRY LLP

/s/ David Bray

By: \_\_\_\_\_

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DISTRICT COURT  
CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, a Nevada  
non-profit corporation, for itself and for all  
others similarly situated,

Plaintiffs

v.

D.R. HORTON, INC. a Delaware Corporation  
DOE INDIVIDUALS, 1-100, ROE  
BUSINESSES or GOVERNMENTAL  
ENTITIES 1-100 inclusive

Defendants.

And Related Third Party Actions, Cross Claims,  
and Consolidated Actions.

Case No. A542616  
Dept. XXII

[ELECTRONIC FILING CASE]

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR STAY OF PROCEEDINGS  
ON ORDER SHORTENING TIME**

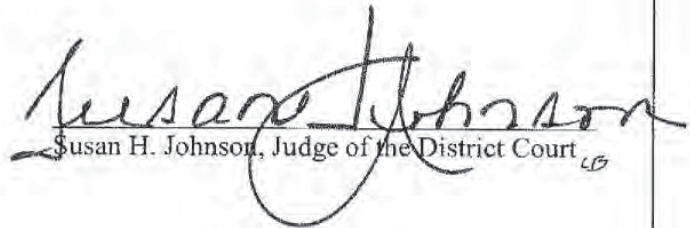
**Date: March 27, 2014  
Time: 9:00 a.m.**

Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS  
ASSOCIATION'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING  
TIME came on regularly for hearing on March 27, 2014 at 9:00 a.m. before the Honorable  
Susan H. Johnson presiding. After consideration of the pleadings and files on record, the

1 argument of counsel, and GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT  
2 THE MOTION IS GRANTED, and the STAY is in effect until the August 5, 2014  
3 status check.

4 IT IS SO ORDERED.

5 *March 27,*  
6 Dated: ~~April~~, 2014

7   
8 Susan H. Johnson, Judge of the District Court *LB*

9 Respectfully submitted.

10 ANGIUS & TERRY LLP

11 By: 

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