

1 IN THE CHANCERY COURT
2 FOR WILLIAMSON COUNTY, TENNESSEE
3 AT FRANKLIN

4 AMERICAN EXCAVATORS, LLC)
5 Plaintiff.)
6 vs.) NO 27213
7 RCR BUILDING CORPORATION and)
8 FIREMAN'S FUND INSURANCE)
9 COMPANY.)
10 Defendants)
11 RCR BUILDING CORPORATION)
12 Third-Party Plaintiff.)
13 vs.)
14 WILLIAMSON COUNTY, TENNESSEE.)
15 Third-Party Defendant.)
16 -----)

17 Deposition of:
18 ANTHONY W. ORANGE
19 Taken on behalf of the Plaintiff
20 April 17, 2001

21 -----
22 VOWELL & JENNINGS, INC.
23 Court Reporting Services
24 328 Washington Square
25 222 Second Avenue, North
Nashville, Tennessee 37201
(615) 256-1935

1 APPEARANCES:
2 For the Plaintiff: TODD E. PANTHER
3 Attorney at Law
315 Deaderick Street
Nashville TN 37238
4 For the Defendants/ GREGORY L. CASHION
5 Third-Party Plaintiff: Attorney at Law
424 Church Street
Nashville, TN 37219
6 For the Third-Party CHRISTINA GOODSON
7 Defendant: Attorney at Law
306 Court Square
Franklin TN 37064
8

9 Also Present: Al Ritter

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1 The deposition of ANTHONY W. ORANGE
2 was taken by counsel for the Plaintiff at the
3 offices of Smith & Cashlon, Attorneys at Law,
4 424 Church Street, Nashville, Tennessee on
5 April 17, 2001, for all purposes under the
6 Tennessee Rules of Civil Procedure
7 The formalities as to notice, caption
8 certificate, et cetera, are waived. All
9 objections, except as to the form of the
10 questions, are reserved to the hearing.
11 It is agreed that Sabrina L. Isbell,
12 being a Notary Public and Court Reporter, may
13 swear the witness, and that the reading and
14 signing of the completed deposition by the
15 witness are waived.
16
17
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21

22 ANTHONY W. ORANGE
23 having been first duly sworn, was examined and
24 testified as follows:
25

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1 EXAMINATION

2 QUESTIONS BY MR. PANTHER:

3 Q. What is your name?
4 A. Anthony W. Orange.
5 Q. Mr. Orange, we met just this morning.
6 My name is Todd Panther. I represent American
7 Excavators. This is going to be what's called
8 a discovery deposition. Have you ever given
9 one of those before?

10 A. Yes, sir.

11 Q. All right. This is my opportunity to
12 determine what information you have concerning
13 the events in this lawsuit. And the way I'm
14 going to do that is by asking you a series of
15 questions. If at any time you don't
16 understand a question that I ask you, would
17 you please stop me and tell me so?

18 A. Okay.

19 Q. The reason that's important to me is
20 if you answer, I can only assume that you've
21 understood my question when answering. Okay?

22 A. Okay.

23 Q. In addition, since the court reporter
24 here is taking down everything that we're
25 saying, when you intend to give a response, I

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DEPONENT: ANTHONY W. ORANGE

1 need you to give an audible response so that
2 the court reporter can take it down.
3 A. Okay.
4 Q. And when you intend to respond either
5 affirmatively or negatively, try to use the
6 words yes or no rather than uh-huh or huh-uh.
7 We'll have a conversation, so it will be easy
8 to slip into more conventional speech, and
9 I'll remind you. I don't do that to annoy
10 you. Okay?
11 A. Sure.
12 Q. Give me a brief sketch of what your
13 education is.
14 A. Graduated high school at Cheatham
15 County High School. Associate's degree in
16 computer technology from Nashville Tech.
17 That's basically it.
18 Q. Give me a summary of your work
19 history. And why don't you start from, say,
20 after your associate's degree. Just give me a
21 summary of where you worked, what you did.
22 A. I went in business for myself in '82,
23 and was in business for myself until
24 approximately '95.
25 Q. Doing what?
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1 A. Construction, as a general contractor.
2 Q. What name did you do business under?
3 A. Southern Enterprises.
4 Q. What type of construction work did you
5 do?
6 A. Residential and light commercial.
7 Q. How big a company was that?
8 A. We did about a million dollars a year.
9 Q. What did you do after '95?
10 A. I went to work for Solomon as a
11 project manager. Stayed there a little less
12 than a year, then was employed by RCR.
13 Q. Why did you leave Solomon?
14 A. Just disagreement with the management.
15 Q. Then you started RCR sometime in '95,
16 '96 maybe?
17 A. Let's see. October '96.
18 Q. Okay. When you began with RCR, what
19 was your position?
20 A. Superintendent.
21 Q. Is that what you are today?
22 A. Yes.
23 Q. With being project manager at
24 Solomon -- do this for me, Mr. Orange, compare
25 for me what your duties and responsibilities
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1 were as project manager at Solomon with what
2 they are as superintendent for RCR when you
3 first began?
4 A. Basically when you're a project
5 manager, you're responsible for writing
6 contracts and more of the business end, money
7 end. The difference between that and the
8 superintendent is you're in the field, you're
9 overseeing the job itself.
10 Q. Okay. Are you a superintendent for
11 only one project at a time or sometimes more
12 than one?
13 A. Well, sometimes more. A lot of times
14 we're finishing up one project and we're
15 starting another one.
16 Q. Okay. For the project that's the
17 subject of this case, the Williamson County
18 Community Service building, you were the
19 superintendent on that project, right?
20 A. Yes.
21 Q. The project manager, who was that?
22 A. Don Stover.
23 Q. Okay. Were there any other
24 superintendents other than you for that
25 project?
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1 A. No, sir, other than -- the first two
2 weeks of the job there was a -- I'm going to
3 guess at this because I'm not for sure. I was
4 finishing up a job in Virginia Way. The dirt
5 work -- American started the dirt work,
6 excavation a couple of weeks before I got
7 there. In other words, when I got there, they
8 already had their equipment on the job site.
9 Q. What was the project that you came
10 from before coming to the Williamson County
11 Community Services building?
12 A. Bright Hour office building, the
13 Bright Hour (phonetic).
14 Q. Is that here in town?
15 A. Virginia Way in Maryland Farms.
16 Q. Who was overseeing the excavation work
17 before you arrived; do you know?
18 A. I think Don, the project manager.
19 Here again, I couldn't say for sure on that,
20 because I wasn't there.
21 Q. Thank you. Did you play any role in
22 reviewing any of the bids on this particular
23 project?
24 A. No.
25 Q. Whose job was that at RCR, if you
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1 know?
 2 A. I'm not sure.
 3 Q. Okay.
 4 A. I'm really not. I'd rather not answer
 5 that because I don't know who reviewed them
 6 and who basically wrote them. I don't know.
 7 Q. Did you participate in the decision to
 8 accept American Excavators' bid for the
 9 excavation work?
 10 A. No.
 11 Q. Do you know who participated in that
 12 decision at RCR?
 13 A. Not really.
 14 Q. Okay. Is it typical for the project
 15 manager to play some role in that decision?
 16 A. Usually, yes.
 17 Q. It sounds like with regard to who was
 18 involved in reviewing and accepting bids, that
 19 would be a better question to ask Mr. Stover.
 20 A. Yes.
 21 Q. All right. As far as what was
 22 contained in American Excavators' bid, did you
 23 get involved in reviewing that at any
 24 particular time in this project?
 25 A. In what way?

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1 Q. Well --
 2 A. I read it.
 3 Q. At what point in time? And you don't
 4 have to give me a date, but if you can
 5 estimate it.
 6 A. I used to read all my contracts up
 7 front.
 8 Q. Okay. Let's do this. Give me sort of
 9 the sequence of events that you followed in
 10 this case when you became the project
 11 superintendent. What review of the contract
 12 documents, plans, specifications that you got
 13 from the owner and then your contracts with
 14 the subcontractors, what review did you do
 15 before you got on-site?
 16 A. Clarify that a little bit more.
 17 Q. I'm trying to figure out what summary
 18 you did of the project before you came on-site
 19 and started acting as superintendent.
 20 A. I did very little of it. Like I said,
 21 I was told that was my next job, to go to the
 22 job physically, observe what was there, look
 23 at the plans, locate certain corner lines on
 24 the lot and see what was there, and read over
 25 the contract to see what American was

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1 responsible for.
 2 Q. Did you do that before you came
 3 on-site and started supervising their work?
 4 A. No.
 5 Q. And this is what I'm getting at. At
 6 what point did you review American Excavators'
 7 contract?
 8 A. I received the contracts probably
 9 about a week after I was physically on the
 10 site.
 11 Q. Okay.
 12 (Exhibit No. 1 was marked at this
 13 time.)
 14 BY MR. PANTHER:
 15 Q. Mr. Orange, I'm handing to you and Mr.
 16 Cashion a document that I've marked as Exhibit
 17 No. 1. This is what appears to be the
 18 subcontract agreement between American
 19 Excavators and RCR. Is this the document
 20 that you reviewed in a short period of time,
 21 a week or so, after beginning work as a
 22 superintendent for the job?
 23 A. Yes, all except the last two pages.
 24 Q. Okay. Thanks for the clarification.
 25 Tell me about the last two pages, Attachment 1
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1 and Attachment 2. These weren't part of the
 2 document that you looked at?
 3 A. The original contract was and then
 4 this came in later (indicating).
 5 Q. I see. Okay. Great. This Exhibit 1,
 6 is this the same type of format that RCR
 7 commonly uses on its subcontracts?
 8 A. Yes.
 9 Q. I notice the initials. I can
 10 recognize Marvin Parker's initials. Whose
 11 initials are they for RCR?
 12 A. Well, I noticed here Joey, looks like
 13 Joey wrote the contract.
 14 Q. Now, who's Joey?
 15 A. Joey's the project manager over at
 16 RCR.
 17 Q. Okay. Do you know what role Joey
 18 Craig played in this project as opposed to Mr.
 19 Stover?
 20 A. I would take it that Joey was probably
 21 responsible for buying the job out. Basically
 22 what they do is they decide who -- you know,
 23 what subs are going to do what and then hand
 24 it over to Don.
 25 Q. Okay. When you say "buying the job

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DEPONENT: ANTHONY W. ORANGE

1 out," that's a term of art that you use in the
2 construction business, but for lay people,
3 tell me what you mean when you say "buying the
4 job out."

5 A. It's basically just deciding who
6 they're going to award the contract to.

7 Q. Okay. Once you get your bids from the
8 excavators, in the course of buying out that
9 package, that excavation package, do you go to
10 the particular subs that bid the job to you
11 and ask them if they will do it for less money
12 in their bid?

13 A. Sometimes.

14 Q. Under what occasions do you do that?

15 A. I really couldn't answer. I don't
16 really know. I guess it's depending on how
17 it's bid.

18 Q. Okay.

19 A. I hate to be vague about it, but I
20 don't really -- I couldn't answer that in this
21 case or any of them that I'm not the project
22 manager in.

23 Q. Okay. You had said to me, I think,
24 earlier that -- I forget how you put it, but
25 that Joey Craig may have written this

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1 contract.

2 A. Yes. Uh-huh. Well, it's got his name
3 on it.

4 Q. Right. Without regard to whether you
5 were involved or not, just tell me from your
6 own understanding from conversations with Mr.
7 Craig, Mr. Stover or whoever else just what
8 negotiations occurred concerning the terms of
9 this subcontract with American Excavators.

10 A. I can't help you there because I
11 wasn't involved in any of it. Like I said,
12 when I received the contract, it was already
13 signed and given to me.

14 Q. I understand.

15 A. The only thing that -- I don't know.
16 I couldn't answer that.

17 Q. Have you had any conversations with
18 Mr. Stover or Mr. Craig concerning any of the
19 terms of this subcontract agreement between
20 American Excavators and RCR?

21 A. There was one -- there was only one
22 discussion that we had, was when the
23 controversy came up on the undercutting.

24 Q. Okay. Page 3, Paragraph 20. Let me
25 help you. Is that it, Mr. Orange?

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1 A. Yes.

2 Q. You had a conversation with who
3 concerning Paragraph 20 of the subcontract?

4 A. Well, I think Don, myself and Mr.
5 Parker was in the job trailer one day.

6 Q. Have you ever discussed the terms of
7 this provision, this Paragraph 20, with Mr.
8 Craig?

9 A. No.

10 Q. Ever ask him words to the effect, how
11 did this rock clause get in their subcontract?

12 MR. CASHION: Object to the form
13 of the question.

14 BY MR. PANTHER:

15 Q. Go ahead.

16 MR. CASHION: When I object to the
17 form of the question, that's just for me to
18 put that in the record. You go ahead and
19 answer his question, if you understand his
20 question.

21 THE WITNESS: No, I never spoke to
22 Joey Craig on any of this.

23 BY MR. PANTHER:

24 Q. Do you know if Mr. Stover has?

25 A. Not really. Don and, like I said, Mr.

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15

1 Parker and myself spoke about it.

2 Q. Okay. Do you know what negotiations,
3 discussions occurred between anyone at
4 American Excavators and anyone at RCR
5 concerning the terms of this Paragraph 20?

6 A. Clarify that.

7 MR. PANTHER: Can you repeat it?

8 She's going to read the question,
9 Mr. Orange, and if you need me to rephrase it
10 after that, I'll be glad to.

11 (Requested question was read.)

12 THE WITNESS: No.

13 BY MR. PANTHER:

14 Q. Among the documents that you reviewed
15 either before or shortly after you became
16 superintendent, did it include the contract
17 between RCR and the owner, Williamson County?

18 A. Yes.

19 Q. What was RCR's agreement with the
20 owner concerning what the owner would pay for
21 removal and replacement of unsuitable fill?

22 A. Without having that document, I
23 couldn't -- I'd need to see -- we're talking
24 about two years ago.

25 Q. Right. You don't know?

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1 A. No.
2 Q. You mentioned that you and Mr. Stover
3 and Marvin Parker had a conversation
4 concerning the terms in Paragraph 20 in the
5 subcontract.
6 A. Yes.
7 Q. About what point in time of the job
8 did that occur?
9 A. After the job was over.
10 Q. The whole job was over?
11 A. Well, if I'm not mistaken, not the
12 total job was over, but the -- let's see. It
13 was about in the paving stages when Mr. Parker
14 and Stover and I was in the trailer.
15 Q. Did you have any conversations with a
16 guy by the name of Harley Ezell concerning the
17 terms of this paragraph, Paragraph 20?
18 A. I was in a meeting when Harley brought
19 that up to the attention.
20 Q. What did he say?
21 A. He was just referring back to what
22 the -- the price of the undercutting.
23 Q. At what point did this occur?
24 A. This was in a meeting with Williamson
25 County, the architect Allen Thomas, RCR and
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1 Mr. Parker -- no, Mr. Parker wasn't there,
2 Harley was there -- in which this was all
3 discussed.
4 Q. About what stage of the work was that?
5 A. This was when a question came up as
6 far as some soils that needed to be removed.
7 Q. What area of the project was it?
8 A. Parking area.
9 Q. Do you remember a conversation with
10 Mr. Ezell about reducing the price from \$12.50
11 a cubic yard to \$10 a cubic yard?
12 A. I believe that was brought up in the
13 meeting.
14 Q. Okay.
15 A. If I recall.
16 Q. Pardon me?
17 A. If I'm recalling correctly, I believe
18 it was brought up in that meeting.
19 Q. Tell me what you recall as far as the
20 price being reduced from \$12.50 a cubic yard
21 to \$10 a cubic yard.
22 A. Give me a few minutes. It's been a
23 long time ago.
24 (Pause.)
25 When we were in the meeting --

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1 Q. Let me ask you, since I can tell that
2 you're having trouble remembering, the reason
3 that the price was reduced from \$12.50 to \$10
4 a cubic yard was because American Excavators
5 was having to cut a portion of the area that
6 they were excavating anyway; isn't that right?
7 MR. CASHION: Object to the form
8 of the question.
9 BY MR. PANTHER:
10 Q. Go ahead.
11 A. (Pause.)
12 Q. Let me rephrase it. At one point in
13 the job you complained or Don Stover
14 complained to American Excavators that it
15 wasn't fair for them to charge \$12.50 a cubic
16 yard for them to remove and replace fill
17 because they were having to cut anyway; isn't
18 that so?
19 MR. CASHION: Object to the form.
20 BY MR. PANTHER:
21 Q. Go ahead.
22 A. Yes, I remember that.
23 Q. And what American Excavators agreed to
24 do was, since they were having to cut certain
25 areas anyway, for those areas that they would
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19

1 cut, if they had to remove and replace
2 unsuitable fill that was in those areas, they
3 would only charge \$10 a cubic yard as opposed
4 to 12.50, right?
5 A. Yes.
6 Q. Who else was a part of that sort of
7 discussion that we just talked about here?
8 A. It was -- Al Thomas was in the meeting
9 for Thomas Miller & Associates, Don Stover --
10 who participated or who was just a witness?

11 Q. Right.
12 A. They mainly are the ones that
13 participated -- were discussing the issue.
14 Q. All right. Was that something that --
15 I think you said -- Marvin Parker wasn't a
16 part of that discussion, I don't think.
17 A. No. Harley was in that meeting.
18 Q. Okay.

19 MR. PANTHER: Let's mark Exhibit
20 No. 2.
21 (Exhibit No. 2 was marked at this
22 time.)

23 MS. GOODSON: Off the record.
24 (Off-the-record discussion.)

25 BY MR. PANTHER:
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20

1 Q I've handed you Exhibit No. 2, Mr.
2 Orange. I'm really trying to find out what
3 the protocol was. It appears from this
4 Exhibit No. 2 that American Excavators had a
5 soils consultant.
6 A. Uh-huh.
7 Q. Tell me what the process was for this
8 project and why American Excavators was
9 getting somebody out to the site to inspect.
10 A. If I'm not mistaken, they were
11 supposed to have a consultant to look at the
12 soils to make sure that it was suitable for
13 compaction or whatever.
14 Q. Okay.
15 A. That's when the disagreement came up,
16 was there was a difference of opinion from
17 Southern Consulting and the original soil
18 testing people, or the people that did the
19 original soils work on the job.
20 Q. The outfit that did the original soils -
21 work, was that GTE?
22 A. I believe so, yes.
23 Q. Why did they not stay on as the soils
24 consultant, if you know?
25 A. Well, I think that it was felt by both
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1 parties that we should get somebody
2 independent, and that's when we asked for PSI.
3 Q. Okay. But it sounds like when
4 American Excavators would first encounter what
5 it thought was unsuitable soil, it would bring
6 in its own engineer, soils consultant, to
7 inspect. Is that what first would occur?
8 A. Let's see. They had Southern coming
9 out looking at the soil -- Southern was coming
10 out. I think they was contracted through
11 American to take a look at the soils. And
12 whenever -- and this is something you'd have
13 to ask Mr. Stover. I believe Harley or Mr.
14 Parker or someone contacted RCR and told them
15 that we had some unsuitable soils that was
16 going to have to be taken out.
17 Q. Okay. Then what would happen next?
18 A. And I believe that's when the meeting
19 was called to get all parties involved before
20 anything was done and to see at that point
21 what to do from there.
22 Q. Now, had RCR already engaged PSI at
23 this point in June of '99 to do soil tests on
24 the property or do you know?
25 A. As far as the dates, I'm not sure.
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22

1 (Exhibit No. 3 was marked at this
2 time.)
3 BY MR. PANTHER:
4 Q. We've handed you Exhibit No. 3.
5 There's a couple of fax transmittal sheets on
6 top, but then there's a PSI report.
7 A. Okay.
8 Q. Why was PSI coming in to inspect after
9 American Excavators' soil consultant, this
10 Southern Consulting, LLC?
11 A. Why were they coming in?
12 Q. Yeah. I mean, why didn't you just use
13 Southern Consulting? Why did you bring PSI to
14 come in and do their own investigation?
15 A. I believe what happened was when
16 Harley or -- here again, I don't know which
17 one contacted who. The way I understand it,
18 they contacted someone about some bad soils,
19 and there was a disagreement with GTE. They
20 sent their consultants out. They disagreed --
21 Q. With Southern Consulting?
22 A. Yes.
23 Q. All right.
24 A. They disagreed. That's when we had
25 our meeting. That's when it was decided to
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23

1 get an independent, which was PSI, that didn't
2 have anything to do with either one.
3 Q. Let me restate it for you and see if
4 this is what you remember. When a
5 disagreement arose between Southern Consulting
6 and GTE, the decision was to get rid of both
7 of them and hire PSI. Is that essentially,
8 correct?
9 A. Yes.
10 Q. Okay. I don't mean that in a bad
11 way. I'm just trying to find out.
12 A. I think everyone felt better by having
13 an independent that didn't have anything to do
14 with it.
15 Q. Okay. The area that PSI refers to in
16 this report, this Exhibit No. 3, I think this
17 is the parking area and the driveway area.
18 A. Yes.
19 Q. Now, it talks about, in the second
20 sentence, test pits exposing the upper two to
21 three feet of soil. Do you see that there?
22 A. Yes.
23 Q. And then later on they suggest areas
24 to be excavated to subgrade, sort of down in
25 the end of the first paragraph there. Do you
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24

1 see that?
2 A. Uh-huh.
3 Q. Yes?
4 A. Yes.
5 Q. I told you I'd remind you. The
6 unsuitable soils that PSI found, I take it
7 from this paragraph that they found those
8 above subgrade; is that right?
9 A. Yes.
10 Q. And if I understand it correctly, what
11 PSI was recommending be done is to excavate to
12 subgrade and then proof roll it; is that
13 right?
14 A. Exactly.
15 Q. Let me hand you another document, Mr.
16 Orange.
17 (Exhibit No. 4 was marked at this
18 time.)
19 BY MR. PANTHER:
20 Q. Exhibit No. 4 that I've handed you is -
21 a June 30, 1999, document titled Meeting
22 Notes. Do you remember seeing this while the
23 project was underway?
24 A. Yes.
25 Q. Shows you as one of the attendees.
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25

1 A. Yes.
2 Q. I take it that this summary of meeting
3 notes, these meeting notes were the discussion
4 that occurred after PSI had developed their
5 June 23, 1999, report that we just looked at
6 in Exhibit No. 3; am I right?
7 A. Yes.
8 Q. Okay. I take it that these meeting
9 notes are just dealing with the parking area
10 now; is that right?
11 A. (Pause.)
12 Q. In here it says -- and I just want to
13 make sure. In Paragraph No. 1, the areas that
14 PSI lists: parking lot, entry drive, and it
15 says detention pond as well.
16 A. Okay. What was your question again?
17 Q. The area that PSI recommended
18 excavating to subgrade, was that just the
19 parking lot and entry drive area or were there
20 other areas?
21 A. The detention pond, parking lot and
22 entry drive.
23 Q. Was it all those areas?
24 A. Yes.
25 Q. Okay. And the reason I ask the
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26

1 question, Mr. Orange, is because in the very
2 next sentence it says, "Approximately one to
3 two feet of material needs to be removed in
4 the parking lot area to get to subgrade," and
5 I didn't know if only saying parking lot area
6 was intentional or if the other areas were
7 excavated to subgrade as well.
8 A. Basically they were going to have to
9 build the pad up on top of the existing soils
10 there anyway. That's the only place that was
11 even in question, was the parking lot.
12 Q. At this point?
13 A. Yes. As far as I know, at any time.
14 Q. Okay. In these meeting minutes,
15 sticking here with the first paragraph, sort
16 of the second to last line in Paragraph 1, the
17 sentence reads this way, "If the material
18 encountered is, quote, noncompactable,
19 unquote, or if the situation requires
20 undercutting, PSI will document the quantities
21 removed and new fill will be put in its
22 place." Do you see where I read that there?
23 A. Uh-huh. Yes.
24 Q. The area that PSI refers to as
25 noncompactable, that would have been material
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1 that was encountered above the subgrade; is
2 that right?
3 MR. CASHION: Object to the form
4 of the question.
5 THE WITNESS: Yes, the way it's
6 worded there it is.
7 BY MR. PANTHER:
8 Q. Okay. Because it also refers in
9 that sentence to, "If the situation requires
10 undercut," which would be different than above
11 subgrade, right?
12 A. Yes, undercutting is different from
13 subgrade.
14 Q. Okay. Tell me what the difference is
15 in your mind between -- you said undercutting
16 is different than subgrade. Tell me what the
17 difference is in your mind.
18 A. When you're getting a site to
19 subgrade, you're getting it down to a point to
20 where you can start building back. When
21 you're undercutting is when the soils is not
22 the type soils that would support whatever
23 you're putting on top. So if it's bad soils,
24 undercutting is taking the bad soils out and
25 replacing them.
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DEPONENT: ANTHONY W. ORANGE

1 Q. Undercutting can occur whether it's
2 above subgrade or below subgrade?

3 A. Huh-uh. We always refer to
4 undercutting as below subgrade.

5 MR. CASHION: Is that no, when you
6 said huh-uh?

7 THE WITNESS: I'm sorry. No.

8 BY MR. PANTHER:

9 Q. So when this refers to, "If the
10 material encountered is noncompactable or if
11 the situation requires undercutting," that
12 would refer both to above subgrade and below
13 subgrade, right?

14 A. Well, the way I read it, "If the
15 material encountered is noncompactable or if
16 the situation requires undercutting," they're
17 talking about the material above subgrade when
18 they're talking about if they encounter some
19 material noncompactable. And then "If the
20 situation requires undercutting," which is if
21 they find soils below subgrade that needs to
22 be undercut, "then PSI would document the
23 quantities."

24 Q. Turn over on the second page of this
25 Exhibit No. 4. At the bottom there, there is
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1 some writing after the list of the people that
2 attended the meeting. Do you know who wrote
3 that? The fax at the top says from Mike
4 Leonard to Don Stover. I don't know if
5 Leonard wrote that or somebody else. Do you
6 know?

7 A. I don't know who wrote the note at the
8 bottom. Usually each one of us will sign our
9 name at the meeting.

10 Q. Okay.

11 A. But I don't know who wrote the bottom.

12 Q. This is why I ask, because what's
13 written there is "American Ex" -- which is
14 American Excavators, I'm sure -- "will give us
15 an approximate cost to remove uncompactable
16 soil off site and haul borrow in." Do you see
17 that there?

18 A. Uh-huh.

19 Q. Do you know who at the meeting --

20 A. Yes. I'm sorry.

21 Q. Was that discussed at the meeting,
22 that American Excavators would give a price to
23 remove the uncompactable soil?

24 A. Yes.

25 Q. Okay. Who asked them to do that?

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1 A. I believe Al Thomas was trying to get
2 a figure from Harley as far as -- you know,
3 I'm not familiar with this. I mean, this last
4 sentence here, I'm not -- I don't know what
5 he's referring to. I don't know who wrote
6 it. But I think that Al Thomas was trying to
7 find out how much it was going to cost the
8 county, you know, to remove it.

9 Q. Okay. When this conversation
10 occurred, this meeting in June of '99, I take
11 it that with Al Thomas asking what the cost to
12 remove and replace this fill would be it was
13 contemplated that this would be an extra on
14 RCR's contract. In other words, RCR would get
15 paid extra for American Excavators having to
16 do this work.

17 A. Yeah, on the undercutting.

18 Q. Pardon me?

19 A. Yes, on the undercutting.

20 Q. Yeah. This refers also to
21 uncompactable soil too, though, doesn't it?

22 A. Like I said, that's what it says on
23 the note there, but I don't know who wrote
24 it. It was my opinion that -- or my
25 recollection that the cost was how much it was

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1 going to cost to take the undercutting out. I
2 never thought there was a disagreement up to
3 now that there was a cost factor as far as
4 taking it down to subgrade.

5 Q. Okay. Well, in your job as
6 superintendent, what role do you play in
7 determining what proposed change orders to
8 submit to the owner?

9 A. I really don't have a part to play in
10 the change orders at all. That's above my
11 position.

12 MR. CASHION: We need to take a
13 break for me.

14 MR. PANTHER: That's fine.

15 (A short break was observed.)

16 BY MR. PANTHER:

17 Q. Let's go back to Exhibit No. 4, Mr.
18 Orange. Now, in Paragraph 2 it refers to "Bad
19 material will be wasted at the adjacent rock
20 quarry at the recommendation of the county."
21 Do you see that?

22 A. Uh-huh.

23 Q. Now, it has bad material in quotes.
24 I take it that that refers to both non-
25 compactable material and, too, material that

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DEPONENT: ANTHONY W. ORANGE

1 requires undercutting; is that right?
2 A. Yes.
3 Q. Okay. And then if I drop down to
4 Paragraph 4, it says: RCR will work up an
5 estimated quantity of "bad material" at a fee
6 to haul and import material per load. Do you
7 see where I read?
8 A. Uh-huh. Yes.
9 Q. And, again, bad material refers to
10 both noncompactable material and material
11 requiring undercutting, right?
12 A. Yes.
13 Q. Okay. Now -- and in the summary of
14 action down below, RCR will work up estimated
15 quantities of the soil material to be removed
16 as well as prices for removal off site. Do
17 you see that?
18 A. Yes.
19 Q. Who at RCR was responsible for
20 collecting those estimates and then getting
21 them on to the owner, the county?
22 A. I would say Don.
23 Q. Don was?
24 A. Don.
25 MR. PANTHER: Exhibit 5.
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1 (Exhibit No. 5 was marked at this
2 time.)
3 BY MR. PANTHER:
4 Q. Let me ask you before we look at
5 Exhibit 5, in this meeting June 30, did any of
6 the county representatives or the
7 representatives of Thomas Miller & Associates
8 take the position that they don't owe anything
9 more for this unsuitable fill that may be
10 encountered?
11 A. We were in two or three -- I don't
12 think at this meeting it came up at all,
13 because we weren't into the undercutting
14 areas. We were still trying to get to
15 subgrade.
16 Q. Right. But this June 30, 1999,
17 meeting minutes refers to both above and below
18 subgrade, doesn't it?
19 A. Yes.
20 Q. And so my question is: Did any county
21 representatives or representatives of the
22 designers take the position that we're not
23 paying anything more for unsuitable material
24 that's above subgrade?
25 A. I don't remember it coming up at this
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1 meeting.
2 Q. All right. I've handed you Exhibit
3 No. 5, a July 1, 1999, letter -- my copy is
4 unsigned -- from Harley Ezell. Is this the
5 estimate that American Excavators put together
6 in response to this June 30, '99, meeting?
7 A. (Pause.)
8 Now, I'm sorry. Would you rephrase
9 your question?
10 MR. PANTHER: Would you read it
11 back?
12 (Requested question was read.)
13 THE WITNESS: Yes.
14 BY MR. PANTHER:
15 Q. Okay. According to Mr. Ezell, he and
16 PSI visited the site to try to determine the
17 amount of unsuitable material that would be
18 removed, according to the second paragraph.
19 Do you see that there?
20 A. Yes.
21 Q. Did you or did anyone else at RCR
22 attend that meeting with PSI and Mr. Ezell?
23 A. Yes, but there was a drawing. If this
24 is the correct meeting -- there were several
25 meetings.
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1 Q. Okay.
2 A. There should be a sketch detailing the
3 locations and what depth to take this material
4 out.
5 Q. Okay. The purpose of my question is
6 really to ask the next one, which is: In the
7 next sentence it says, "I feel there is
8 anywhere from 1,000 to 1,700 cubic yards." Do
9 you see that?
10 A. Yes.
11 Q. That quantity of unsuitable material,
12 did that quantity include material that was
13 above subgrade as well as below subgrade?
14 A. I'm not sure. I'm really not. Do you
15 have a drawing, the sketch that showed the
16 areas? I could tell you, that drawing
17 detailed the undercut areas.
18 Q. All right.
19 A. If that's the same meeting that we had
20 July 1st or this is referring to, then it
21 would be the undercut. If it's not, I
22 couldn't say for sure.
23 Q. Tell me what the drawing looks like
24 I'm not sure if I have it or not.
25 A. It's just a drawing with a couple of
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DEPONENT: ANTHONY W. ORANGE

1 triangles, rectangles in some areas.
2 Q. Okay. Hold on a minute.
3 (Exhibit No. 6 was marked at this
4 time.)
5 BY MR. PANTHER:
6 Q. Mr. Orange, I'm going to hand you what
7 we've marked as Exhibit No. 6. This is a
8 collection of documents that I intended to get
9 into a little bit later, but since you asked,
10 leaf back and you'll find a document that
11 looks like this (indicating).
12 A. Uh-huh.
13 Q. Is that the drawing that you're
14 referring to or are you referring to something
15 else?
16 A. No, that's it. Now, I don't know if
17 that's at the same time as this, but that was
18 the unsuitable soils that was below, that was
19 in the undercutting.
20 Q. All right. My question that prompted--
21 us to look at this drawing was this: The
22 1,000 to 1,700 cubic yards of unsuitable soil
23 that's referred to in Mr. Ezell's July 1,
24 1999, letter, Exhibit No. 5, is that quantity
25 above subgrade as well as below subgrade?
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1 A. No. That should be below subgrade.
2 Q. Pardon me?
3 A. That should be below subgrade. That
4 should go with those four areas right there.
5 Q. Okay.
6 A. That's the way I remember it.
7 Q. All right. In the last paragraph of
8 this letter, Mr. Ezell writes, "Per the
9 contract price of 12.50 a cubic yard for
10 unsuitable material." Do you see that there?
11 A. Yes.
12 Q. I take it that at the time that he
13 wrote this July 1, 1999, letter, you had not
14 had that conversation with Mr. Ezell
15 concerning reducing his price from 12.50 to
16 \$10 a cubic yard.
17 A. I never had the conversation with him.
18 Q. I thought you earlier said that you
19 did.
20 A. Not on the -- I was present at the
21 meeting at the county, at Williamson County,
22 where it came up, but I was never -- that was
23 in a meeting.
24 Q. I may have misunderstood you earlier.
25 I had asked you how it occurred that American
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1 Excavators' price for removal and replacement
2 of unsuitable fill was dropped from \$12.50 a
3 cubic yard to \$10 a cubic yard.
4 A. And I told you I remember the
5 conversation. I remember being in the
6 meeting, I believe.
7 Q. And what I thought you testified to is
8 that the way that it all came up was because
9 you or Mr. Stover at RCR felt that it was
10 unfair for American Excavators to charge
11 \$12.50 a cubic yard for unsuitable soils that
12 they were going to have to cut anyway. Didn't
13 you testify to that?
14 A. Yes.
15 Q. Okay.
16 A. I'm not sure that we were talking
17 about if Don disagreed or Al Thomas disagreed,
18 the architect, or who, but it came up in that
19 meeting.
20 Q. But it came up, if I understand you
21 right, because either you or Stover complained
22 to Harley Ezell that since they were having to
23 cut anyway, they shouldn't charge \$12.50 a
24 cubic yard for unsuitable soils?
25 MR. CASHION: Object to the form
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1 of the question.
2 THE WITNESS: It wasn't my
3 disagreement. That's not part of my job
4 description as far as arguing the price of
5 somebody's work.
6 BY MR. PANTHER:
7 Q. I'm not asking about that. I'm asking
8 about how it came up that American Excavators'
9 price for removal and replacement of
10 unsuitable soils dropped from \$12.50 a cubic
11 yard to \$10 a cubic yard. And I thought you
12 said that it came up because someone at RCR,
13 either you or Stover, complained about it to
14 Harley Ezell.
15 A. No, I didn't say that. I said that it
16 came up in that meeting that -- and I told you
17 that I remembered the comment being made, that
18 since they were going to have to remove it
19 anyway --
20 Q. Right.
21 A. -- that's the reason why it was,
22 instead of 12.50, \$10.
23 Q. And the reason they were going to have
24 to remove it anyway is because they were going
25 to have to cut up to that point anyway, right?
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DEPONENT: ANTHONY W. ORANGE

1 A. And I said I think so.
2 Q. Okay.
3 A. If I remember correctly.
4 Q. All right. Now, after Mr. Ezell gave
5 you this July 1, '99, estimate, what happened
6 after that in terms of taking this on to the
7 owner and determining what the owner wanted to
8 do?
9 A. I don't know what Don did with it at
10 that point.
11 (Exhibit No. 7 was marked at this
12 time.)
13 BY MR. PANTHER:
14 Q. Mr. Orange, we've handed you what
15 we've marked as Exhibit No. 7. It's a
16 collection of documents. After the first
17 page, we have a fax transmittal from RCR to
18 American Excavators, followed by a July 8,
19 '99, letter from Ralph Moore of Thomas Miller
20 to Don Stover.
21 You remember this collection of
22 documents, don't you?
23 A. Yes.
24 Q. Okay. Now, if I'm reading this
25 document correctly, this July 8, '99, letter
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1 from Thomas Miller & Associates, Mr. Moore was
2 essentially saying that it doesn't matter how
3 much unsuitable fill you guys have to remove
4 and replace, we're not paying for it. Do I
5 have it right?
6 MR. CASHION: Object to the form
7 of the question.
8 THE WITNESS: That's the way it's
9 worded.
10 BY MR. PANTHER:
11 Q. Was the county declining to pay extra
12 for unsuitable soils that were encountered
13 both above subgrade and below subgrade?
14 A. The only thing that I can say is what
15 the architect is saying. I never heard the
16 county say anything as far as this -- the
17 architect was their representative. But the
18 architect was saying that the soils above
19 subgrade, but I don't know of any disagreement
20 with the undercutting of the bad soil.
21 Q. The best of your understanding, the
22 architect's position, statement, was that they
23 would recommend to the owner to pay for any
24 unsuitable soils that were encountered below
25 subgrade, but they would not recommend paying
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1 extra for any unsuitable soils that were
2 encountered above subgrade; is that right?
3 A. Right.
4 Q. Okay. Does this discussion help
5 refresh your recollection on what RCR's
6 contract with the owner, the county, provided
7 concerning RCR's entitlement for extra for
8 unsuitable soils that it encountered?
9 A. This paragraph here (indicating)?
10 Q. Yes, sir.
11 A. On the one you just gave me?
12 Q. Right. I asked you earlier what your
13 contract provided regarding RCR's entitlement
14 to extra for unsuitable soils that it had to
15 remove and replace. And at that time you
16 didn't know. And I'm asking you if this
17 discussion that we've had refreshes your
18 recollection on what your contract provides.
19 A. As far as what we're responsible for?
20 I mean, what's going to be an extra, is that
21 what you're asking?
22 Q. Yes, sir. What RCR -- in your
23 agreement and RCR's agreement with the county,
24 does this discussion that we've just had
25 concerning Thomas Miller's July 8 letter
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1 refresh your memory as to what RCR is entitled
2 to charge extra for regarding unsuitable
3 soils?
4 A. Yes. It pretty well states it right
5 here, yes.
6 Q. Is that your memory of what your
7 contract provided between RCR and the county,
8 that you would be entitled to extra for
9 unsuitable soils encountered below subgrade?
10 A. I don't know that. I don't remember
11 that contract. If you have one, I can read
12 it.
13 Q. I don't with me. In the construction
14 business, when an excavator has to cut, does
15 that mean that the excavator has to bring it
16 to subgrade? In other words, when we say they
17 had to cut this particular area, does that
18 mean they're removing the soil to bring it to
19 subgrade?
20 A. I wouldn't say that's the only time
21 that you use cut. You can cut it to subgrade
22 or you can cut it to get down to the depth
23 that you want to take the unsuitable soils out
24 below subgrade to either bridge over some
25 other bad soils or whatever. We use cut
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DEPONENT: ANTHONY W. ORANGE

1 several different ways.
2 Q. All right. If I understand you, one
3 of the meanings -- one of the ways that the
4 words, in the excavation business, to cut --
5 one of the ways that's used is if an excavator
6 has to take off soil to bring it down to
7 subgrade, one of the ways that that's
8 expressed is to say that the excavator has to
9 cut that area, right?
10 A. Right.
11 Q. Let's look back at Exhibit No. 6. Let
12 me first ask you, Mr. Orange, did you have any
13 role in reviewing American Excavators' pay
14 applications?
15 A. Before they were paid?
16 Q. Yes, sir.
17 A. Yes.
18 Q. Did you also review American
19 Excavators' requests for change orders before
20 they were paid?
21 A. The way the paperwork works in the
22 office is we get a copy of the change order
23 that's written and issued, and we keep it in
24 our files. And the change order amount is
25 added to the contract and basically it's
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1 included in here.
2 Q. But before that, when American
3 Excavators, for instance, thinks that they
4 deserve a change order, they write it up and
5 submit it to RCR. My question to you is:
6 When they do that, are you one of the people
7 on this project who would review their request
8 for a change order?
9 A. No, sir.
10 Q. Who does that?
11 A. Don Stover.
12 (Exhibit No. 8 was marked at this
13 time.)
14 BY MR. PANTHER:
15 Q. I've handed you Exhibit No. 8. Now,
16 the top page of Exhibit No. 8, do you
17 recognize whose writing this is?
18 A. No, not really.
19 Q. Okay. Next page, American Excavators'
20 Pay Application No. 1, do you see that?
21 A. Yes.
22 Q. Okay. Now, according to this Pay
23 Application No. 1, there's a stamp box sort of
24 in the middle of the page, and it's got a
25 place for superintendent. I take it that
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1 those are your initials?
2 A. Yeah, AWO.
3 Q. All right. Now, on this Pay
4 Application No. 1, Line Item No. 2 is an item
5 for approved change orders. Do you see that
6 there?
7 A. Yes.
8 Q. And American Excavators, on this line,
9 put \$8,000, didn't it?
10 A. Yes.
11 Q. Okay. When you initialed as the
12 superintendent, were you approving that pay
13 application for payment?
14 A. Yes.
15 Q. All right. Let's look at Exhibit No.
16 6. This is Exhibit No. 6. Keep both of these
17 handy.
18 A. Okay.
19 Q. Now, this \$8,000 amount in the pay
20 application --
21 A. Okay.
22 Q. -- that's broken down in this Exhibit
23 No. 6 -- flip back one more page, I think, Mr.
24 Orange.
25 A. (Complying.)
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1 Q. There we go. In Exhibit No. 6 there's
2 a proposed change order that American
3 Excavators submitted, isn't it?
4 A. Yes.
5 Q. And if we add up the \$6,200 and the
6 \$1,800, we'd come up with the \$8,000 that they
7 were requesting?
8 A. Yes.
9 Q. Now, also on the pay application,
10 Exhibit 8 -- we're going to jump back and
11 forth -- there's a place here for PM. I take
12 it that's project manager.
13 A. Yes, sir.
14 Q. Is that Don Stover's signature or
15 initials?
16 A. Yes, it looks like it.
17 Q. Near as you can tell? Okay. Now, if
18 I'm looking at the requested Change Order No.
19 1 on Exhibit No. 6, an item for \$6,200 was
20 "Clear and grub additional trees not shown on
21 construction drawings." Do you see that
22 there?
23 A. Yes.
24 Q. You approved that item for payment,
25 didn't you?
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1 A. Yes.
 2 Q. Why is that? Why would they be
 3 entitled to extra for that amount?
 4 A. The tree line was infringing on the
 5 area of the building.
 6 Q. That was a changed condition from what
 7 was shown on the drawings?
 8 A. Yes.
 9 Q. The next item in Change Order No. 1,
 10 Exhibit No. 6, "Remove and replace with
 11 structural fill approximately 400 linear feet
 12 of 4-inch RCP" --
 13 MR. CASHION: That's 24 inch.
 14 BY MR. PANTHER:
 15 Q. Forgive me. "24-inch RCP running
 16 through site not shown on construction
 17 drawings." The record will bail me out,
 18 whether I read that right. What was that
 19 referring to?
 20 A. It was referring to a concrete pipe --
 21 that was going across the property that had to
 22 be removed.
 23 Q. Okay. And that item was for \$1,800,
 24 right?
 25 A. Yes.
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1 Q. And you approved that for payment too?
 2 A. Yes.
 3 Q. Okay. Let's look back at Exhibit No.
 4 8. Let's now look at Pay Request No. 2. And,
 5 again, in Pay Request No. 2 there's a place
 6 for your initials and Mr. Stover's initials,
 7 right?
 8 A. Yes.
 9 Q. And both of you approved Pay Request
 10 No. 2 for payment?
 11 A. Yes.
 12 Q. And on Pay Request No. 2, American
 13 Excavators has Item No. 2, Change Orders 1, 2
 14 and 3 in the amount of 53,355, right?
 15 A. Yes.
 16 Q. Okay. And then if I look at, in
 17 Exhibit No. 6, I come up with Change Order No.
 18 2 that American Excavators submitted, right?
 19 A. Uh-huh.
 20 Q. Yes?
 21 A. Yes.
 22 Q. Okay. This was a proposed change
 23 order of \$28,980, wasn't it?
 24 A. Yes.
 25 Q. And you approved that for payment,
 VOWELL & JENNINGS, INC. (615) 256-1935
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1 didn't you?
 2 A. Yes.
 3 Q. Okay. Now, this shows that \$28,980
 4 was derived by taking 2,898 cubic yards at \$10
 5 a cubic yard. Do you see that there on Change
 6 Order No. 2?
 7 A. Yes.
 8 Q. That 2,898 cubic yards, do you know if
 9 that was soil that was encountered above
 10 subgrade, below subgrade or both?
 11 A. I don't know.
 12 Q. Okay. And I notice here that the \$10
 13 a cubic yard is set forth in this Change Order
 14 No. 2 on Exhibit 6. By that time the
 15 discussion concerning the rate from \$12.50 to
 16 \$10 a cubic yard, it obviously occurred by the
 17 time they submitted this Change Order No. 2?
 18 A. Yes.
 19 Q. Also on Pay Application No. 2, it
 20 refers to Change Order No. 3 in Line Item No.
 21 2. Do you see that?
 22 A. Yes.
 23 Q. If we look back at Exhibit No. 6,
 24 we'll come to Change Order No. 3, which was a
 25 proposed change order by American Excavators
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1 of 16,375, right?
 2 A. Yes.
 3 Q. Okay. You approved that for payment
 4 as well?
 5 A. Yes.
 6 Q. This is based upon, according to the
 7 summary, if the math is right, 1,310 cubic
 8 yards of unsuitable material, right?
 9 A. Yes.
 10 Q. Do you know if that was above subgrade
 11 or below subgrade or both?
 12 A. It would be below, because that's the
 13 areas 1, 2, 3 and 4 that I mentioned awhile
 14 ago that was in the diagram.
 15 Q. The \$16,375 that you approved, that
 16 would be for unsuitable soils that were
 17 encountered below subgrade?
 18 A. Yes.
 19 Q. Turn back to Exhibit No. 8, what you
 20 approved. Flip two pages and you'll come to
 21 American Excavators third pay request. Are
 22 you with me.
 23 A. Okay.
 24 Q. Now, American Excavators submitted a
 25 pay request in this Request No. 3 for
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DEPONENT: ANTHONY W. ORANGE

1 \$46,114.60?
2 A. Okay.
3 Q. Do you see that there?
4 A. Yes.
5 Q. It's crossed out, isn't it?
6 A. Yes.
7 Q. My question to you is, first: Do you
8 know whose writing is on this Request No. 3,
9 the cross-outs?
10 A. No, sir.
11 Q. Do you recognize the writing -- who
12 was putting numbers on top of American
13 Excavators' typewritten numbers.
14 A. No, not really. I mean, I don't know
15 who wrote the numbers in.
16 Q. Okay. Do you know why it was that
17 American Excavators' Pay Request No. 3 was
18 reduced from 46,000 and change to about
19 \$1,800?
20 A. I remember a conversation saying that
21 the first -- the pay request that you brought
22 up awhile ago on the \$10 cubic yard --
23 Q. Right.
24 A. -- was in error.
25 Q. Pardon me?

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1 A. Was in error.
2 Q. Which one, Change Order No. 2?
3 A. Yes.
4 Q. Okay. The \$28,980 was in error?
5 A. I don't remember exactly. Let me look
6 it up. It was 28,980.
7 Q. What was in error about it?
8 A. It wasn't supposed to be paid. It was
9 in the unsuitable materials instead of the
10 cut.
11 Q. Well, how much of it was above grade,
12 subgrade, how much of it was below subgrade?
13 A. Well, this 2,898 cubic yards was above
14 subgrade.
15 Q. What area was it?
16 A. Parking area. Parking lot and
17 retainage pond areas.
18 Q. Why did you approve it?
19 A. Good question. I did it by mistake.
20 Q. And Mr. Stover, did he make a mistake
21 too you think?
22 A. You'd have to ask him that. I don't
23 know. I think that -- that was July 16th.
24 That was after our meeting. Maybe I did not
25 look at it as close as I should have.

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1 Q. Well, it's your position that the
2 \$28,980, all of that was a mistake?
3 A. Yes, sir.
4 Q. Okay.
5 (Exhibit No. 9 was marked at this
6 time.)
7 BY MR. PANTHER:
8 Q. Mr. Orange, I've handed you Exhibit
9 No. 9. This appears to be Change Order
10 Request No. 3 from RCR to accounting, right?
11 A. Yes.
12 Q. Okay. Where you were requesting of
13 the county that they pay you \$28,980, right?
14 A. I was?
15 Q. RCR was
16 A. RCR was.
17 Q. RCR was requesting that the county pay
18 it \$28,980?
19 A. Yes.
20 Q. Did they?
21 A. I don't know. I'm serious, I don't.
22 Q. What role did you play in coming up
23 with this proposed change order to the county?
24 A. None.
25 Q. Who did at RCR?

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1 A. I would say Don. The project manager
2 and the controller probably are the two that
3 handles this.
4 Q. Okay. Do you know if the county
5 approved this change order for 28,980?
6 A. No.
7 Q. You don't know?
8 A. Huh-uh.
9 Q. Okay.
10 (Exhibit No. 10 was marked at this
11 time.)
12 BY MR. PANTHER:
13 Q. I hand you Exhibit No. 10. The third
14 page back, is that an approved change order
15 that the owner signed approving an additional
16 28,000 for RCR's contract sum -- on RCR's
17 contract sum?
18 A. Yes.
19 Q. Okay. That additive change order is
20 based upon the proposed change order that
21 American Excavators submitted to RCR in Change
22 Order No. 2, right?
23 A. Yes.
24 Q. So the county paid RCR based upon
25 2,898 cubic yards of unsuitable soils, but RCR

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DEPONENT: ANTHONY W. ORANGE

1 didn't pay American Excavators?
2 A. That's what it looks like.
3 (Exhibit No. 11 was marked at this
4 time.)
5 BY MR. PANTHER:
6 Q. Mr. Orange, I'm handing you Exhibit
7 No. 11. This appears to be an RCR generated
8 document concerning the 2,898 cubic yards of
9 unsuitable soils. Do you see that?
10 A. Yes.
11 Q. Did you generate this document?
12 A. No.
13 Q. Do you know who at RCR did?
14 A. Don.
15 Q. Okay. Now, according to the date, if
16 I compare the date of Exhibit No. 10 with the
17 date on Exhibit No. 11, this Exhibit No. 11
18 was sent to American Excavators after the
19 county approved your requested change order
20 for 2,898 cubic yards of unsuitable soils; is
21 that right?
22 A. Looks like, yes.
23 Q. And then if I look at Exhibit No. 8 --
24 have you got Exhibit No. 8 in front of you,
25 Mr. Orange?
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1 A. I think it's right --
2 Q. We've got them all spread out here.
3 A. I think that's 8 right here.
4 Q. Yeah, it is. If I look at Exhibit No.
5 8, we were looking at the marked up Pay
6 Request No. 3. The very next page is the
7 check that RCR wrote American Excavators for
8 the \$1,857. You see that there?
9 A. Yes.
10 Q. Now, this check is dated October 19,
11 1999. Do you see that there?
12 A. Yes.
13 Q. My question to you, if you know, is:
14 Why is it that RCR sent American Excavators a
15 change order for \$28,000 which it had deducted
16 only a few months before? Do you know?
17 A. Let me get my bearing here.
18 Q. Okay. Let me go at it another way.
19 Let me withdraw that question and start over.
20 What we had talked about was when
21 American Excavators submitted this Pay Request
22 No. 3 it was for 46,000 and some change,
23 right?
24 A. Okay. Yes.
25 Q. And the reason it was reduced, if I
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1 understood you right, was that you mistakenly
2 approved about \$28,000 in unsuitable soils,
3 right?
4 A. Right.
5 Q. Okay. And according to this check
6 dated October 1999, that's when you would have
7 made the reduction and sent American
8 Excavators the amount that you felt was due,
9 right?
10 A. Yes.
11 Q. All right. But after that, RCR
12 submitted a proposed change to the owner for
13 the \$28,000, didn't it?
14 A. After that?
15 Q. Yes, sir.
16 A. What was the dates on what we were
17 just looking at?
18 Q. Well, look at Exhibit No. 9 in front
19 of you.
20 A. Yes.
21 Q. Okay. And then after submitting
22 Exhibit No. 9, which was the change order
23 request, the owner issued the approved change
24 order, right?
25 A. Yes.
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1 Q. Did you ever pay American
2 Excavators -- did RCR ever pay American
3 Excavators the 28,000 that you had deducted
4 from Pay Request No. 3?
5 A. I don't remember. I don't think so.
6 I don't remember.
7 (Exhibit No. 12 was marked at this
8 time.)
9 BY MR. PANTHER:
10 Q. I'm handing you Exhibit No. 12. This
11 is the Pay Request No. 4 and the Change Order
12 No. 4 that American Excavators sent to RCR,
13 right?
14 A. Yes.
15 Q. According to Change Order No. 4,
16 American Excavators is asking to be paid
17 123,395, if you look back few pages.
18 A. Okay. Yes.
19 Q. Now, about the time that American
20 Excavators submitted this Change Order No. 4,
21 did you and Mr. Stover have a meeting where
22 Marvin Parker came to you to talk about being
23 paid for what he thought was extra work that
24 he was entitled to?
25 A. Yes.
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DEPONENT: ANTHONY W. ORANGE

1 Q. Okay. Is it true that when you had
2 that conversation with him, you and Mr. Stover
3 were under the impression that he didn't have
4 a clause in his contract that would entitle
5 him to extra for removal and replacement of
6 unsuitable soils?

7 A. Yes.

8 Q. Okay. And then later on is it correct
9 that Mr. Parker left the meeting and then
10 looked at his contract and called you guys up
11 after the meeting and said I've looked at my
12 contract and I do have a clause in there that
13 calls for removal and replacement of
14 unsuitable soils. Did that occur? Is that
15 correct?

16 A. I remember Don saying something. Yes,
17 he did call Don back.

18 Q. Tell me what Don told you about that
19 conversation.

20 A. He basically said that Marvin had
21 called back and said that he thinks he has a
22 legitimate gripe and that, you know, if he has
23 to, he'll just take legal means to collect it.

24 Q. Okay. What was the reason why RCR did
25 not approve Pay Request No. 4 for payment?

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1 A. I couldn't tell you.

2 Q. Okay.

3 (Exhibit No. 13 was marked at this
4 time.)

5 BY MR. PANTHER:

6 Q. Let me hand you Exhibit No. 13.

7 A. Okay.

8 Q. According to this, Al Thomas is
9 writing to Don Stover, dated April 2, 2000,
10 that the grading subcontractor, which I'm sure
11 is American Excavators, is requesting \$16,500
12 for consideration of fill that he brought in
13 from off site to complete the building path.
14 Do you see that there?

15 A. Yes.

16 Q. Now, that \$16,500, is that the amount
17 that's referred to in American Excavators'
18 Change Order No. 3 here in Exhibit 6? Is that
19 what that refers to? The number's a bit
20 different, but it's pretty close.

21 A. I can't say for sure, but that's what
22 it looks like.

23 Q. When we looked at Change Order No. 3,
24 I thought you said to me that Change Order No.
25 3 reflected undercutting, that is to say soils

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1 that were removed below subgrade.

2 A. It was. That's the areas. That's
3 this little drawing right here (indicating).

4 That was what was okayed.

5 Q. If that's so, why is it that the
6 county is refusing to pay RCR for unsuitable
7 soils that were removed below subgrade?

8 MS. GOODSON: Objection to form.

9 BY MR. PANTHER:

10 Q. You can go right ahead.

11 A. Do what?

12 Q. Answer the question.

13 A. I don't know.

14 Q. Okay.

15 (Exhibit No. 14 was marked at this
16 time.)

17 BY MR. PANTHER:

18 Q. I've handed you Exhibit No. 14, Mr.
19 Orange. This is a different copy of American
20 Excavators' Change Order No. 1. For the
21 \$1,800 item, the \$1,800 has been crossed out
22 and the words "not approved" have been written
23 below it. Do you see that there?

24 A. Yes.

25 Q. How did this happen that monies that
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1 you had approved to pay American Excavators is
2 now not approved?

3 A. I don't know.

4 Q. Can you identify your writing on
5 either the first or second page where it says
6 not approved?

7 A. No, sir. It's not mine.

8 Q. Okay.

9 (Exhibit No. 15 was marked at this
10 time.)

11 BY MR. PANTHER:

12 Q. I've handed you Exhibit 15. It's some
13 handwritten notes. Do you know whose those
14 are?

15 A. It looks like mine.

16 Q. Okay. Is RCR showing that it owes
17 American Excavators \$21,937.50?

18 A. That's what it looks like, yes, sir.
19 Of course, I have -- that's my writing, but
20 I'm trying to figure out what that's to. I
21 mean, there's nothing there but a piece of
22 paper. If I had something to refer back to...

23 Q. Well, I don't know. I pulled this out
24 of the documents that were produced to me.

25 A. Is 258,315 on a contract amount or
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DEPONENT: ANTHONY W. ORANGE

1 something? It's my writing, but I...
2 Q. Whatever review you did, you were
3 showing at the time that 21,937.50 was owed to
4 American Excavators, right?
5 A. If that's what -- yes. If that's what
6 this is referring to, yes, sir.
7 Q. Well, do you know if it could be
8 referring to something else, Mr. Orange?
9 A. I mean, this is all I've got. I've
10 got --
11 Q. I know. It's all I've got too.
12 A. I don't know.
13 Q. Okay. Well, how much is RCR showing
14 it owes American Excavators?
15 A. I have no idea.
16 Q. Now, at some point Mr. Parker
17 requested a meeting with the owner's
18 representative because RCR was not paying him
19 the amounts that he felt were due, right?
20 A. Yes.
21 Q. Okay.
22 (Exhibit No. 16 was marked at this
23 time.)
24 BY MR. PANTHER:
25 Q. Now, do you recognize these meeting
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1 notes from an April 7, 2000, meeting?
2 A. Yes.
3 Q. Okay. According to the summary of
4 action, RCR will discuss this issue with
5 American Excavators in relation to their
6 contract. Do you see that at the bottom,
7 close to the bottom?
8 A. Yes.
9 Q. Is it true that what was discussed at
10 this meeting was that American Excavators had
11 a different provision in their subcontract
12 concerning removal and replacement of
13 unsuitable soils than did RCR in its contract
14 with the county?
15 MR. CASHION: Object to the form.
16 THE WITNESS: I don't remember. I
17 mean, I don't know the specifics of it. I
18 don't remember what our contract said with
19 Harley and, vice versa, I don't know what our
20 contract said with the county.
21 BY MR. PANTHER:
22 Q. But the way that this meeting ended
23 was -- well, let me back up for a minute. If
24 I understand it right, RCR was taking the
25 position that it did not owe American
VOWELL & JENNINGS, INC. (615) 256-1935
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1 Excavators because the county was taking the
2 position that it did not owe RCR, right?
3 A. Yes.
4 Q. Okay. And American Excavators'
5 position at this meeting was it doesn't matter
6 what the contract between RCR and the county
7 says, my contract with RCR entitles me to
8 \$12.50 per cubic yard. That was his position.
9 wasn't it?
10 A. Yes.
11 Q. And so the meeting ended with the
12 architect saying: RCR and American
13 Excavators, you go figure out what your
14 contract provides but that doesn't involve us,
15 essentially, right?
16 A. Correct.
17 (Exhibit No. 17 was marked at this
18 time.)
19 BY MR. PANTHER:
20 Q. Mr. Orange, I've handed you Exhibit
21 No. 17.
22 A. Okay.
23 Q. Handwritten notes from a meeting at
24 Mr. Ritter's office. According to the list
25 below, it shows that you attended. Are these
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1 your notes or somebody else's?
2 A. No, they're someone else's.
3 Q. Do you recognize the writing?
4 A. Not really.
5 Q. Okay. Not really?
6 A. No, sir, I don't.
7 Q. Okay. In the second to last paragraph
8 it reads, "The county did agree to pay for
9 some unsuitable soils in the parking areas
10 that were called for by PSI testing lab and
11 nothing else." Do you see where I read there?
12 A. Yes.
13 Q. Okay. What amount did that refer to?
14 A. It refers back to those drawings of
15 PSI, the map that PSI did in Exhibit 6.
16 Q. Okay. Why don't you turn to it and
17 tell me.
18 A. The unsuitable area is 1, 2, 3 and 4.
19 Q. Which refers to Change Order No. 3 for
20 16,375?
21 A. Yes. That's the best of my
22 recollection. That's what that -- that's what
23 that has to do with.
24 Q. You correct me if I'm wrong, but I
25 thought that you testified that you had
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DEPONENT: ANTHONY W. ORANGE

1 mistakenly approved the 16,375.
2 A. No. I mistakenly approved the 28,000.
3 Q. I see.
4 A. This Change Order No. 2.
5 Q. Okay. So you agree that the 16,375 is
6 owed to American Excavators?
7 A. Yes, sir. That's what was agreed to,
8 yes, sir.
9 Q. Okay. And the 28,000 that you
10 mistakenly approved was the amount that you
11 had submitted to the county and that the
12 county issued a change order for, right?
13 A. RCR did, yes.
14 Q. Can you tell me what numbers you have
15 to deduct to get from the 46,114 that American
16 Excavators requested to pay out No. 3 to
17 arrive at the \$1,857?
18 A. The 28 -- I don't know if it's the
19 28,980 or the 28,980 plus the other that was
20 denied for the removal of the concrete tile.
21 Q. The \$1,800?
22 A. Yeah, I don't know if that's added
23 into it.
24 Q. Okay.
25 (Off-the-record discussion.)
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1 BY MR. PANTHER:
2 Q. You've looked at American Excavators'
3 pay applications and their Change Orders 1, 2,
4 3 and 4. I realize RCR's dispute is whether
5 it owes American Excavators for unsuitable
6 soils above subgrade. That's what you're
7 disputing, at least partly, right?
8 A. Best of my understanding, yes.
9 Q. All right. In terms of quantity, do
10 you know of any disagreement concerning the
11 amount of total cubic yards that American
12 Excavators contends that it removed and
13 replaced, whether above or below subgrade?
14 A. What is the yardage that we're
15 speaking of?
16 Q. Well, it's the yardage that's in the
17 American Excavators --
18 A. That's listed in here?
19 Q. Right. I'm trying to ascertain what
20 we're arguing about. I know we're arguing
21 about the contract language, but I'm also
22 trying to figure out if you disagree that
23 American Excavators removed and replaced a
24 total of 1,000 -- I'm sorry, 13,500 cubic
25 yards of unsuitable soil.
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1 A. I don't know where he come up with the
2 1,000 -- or 13,500 cubic -- I mean, I don't
3 know where he come up with that number.
4 Honestly, I don't know. I know about the
5 change orders.
6 Q. Right.
7 A. But this one, you've got me.
8 Q. In reviewing these documents that
9 American Excavators submitted to you, Change
10 Orders 2, 3 and 4, what investigation did you
11 make to determine what American Excavators was
12 basing its proposed change orders on?
13 A. On 3 I based it on, you know, the
14 change order, you know, that PSI drew up. And
15 the form on the first one, I believe it was on
16 the second one.
17 Q. The \$28,000 one?
18 A. The \$28,000 one. I'm in the dark
19 there. I don't know if it was truck count
20 or -- I can't answer that on 2. I know where
21 3 was.
22 Q. And 4, where they're showing a total
23 of 13,500 cubic yards minus what they
24 submitted in Change Orders 2 and 3?
25 A. As I said, I don't know where he come
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1 up with the 13,500 cubic yards.
2 Q. I understand. What did you do to
3 determine where he came up with that?
4 A. I wasn't aware that this was payable,
5 so therefore I didn't keep up with anything.
6 We're talking about to subgrade?
7 Q. I don't know what we're talking
8 about. I'm asking you: What did you do when
9 you got this Change Order No. 4 in from
10 American Excavators to determine what was
11 included in it?
12 A. I didn't do anything on this one.
13 Q. Did you call anybody at American
14 Excavators and say, hey, I got this change
15 order in, what's it about?
16 A. That's not my job. I mean, it's the
17 project manager's to take this.
18 Q. I misunderstood you, then. I thought
19 one of your roles was to review proposed
20 change orders that American Excavators
21 submitted to you.
22 A. If I'm given this one.
23 Q. And you weren't given it?
24 A. I don't remember being given this one.
25 Q. Okay.
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DEPONENT: ANTHONY W. ORANGE

1 A. I remember the first three, but I
2 don't remember this one.
3 Q. When people in the construction
4 business say that the site balances, what does
5 that mean in the business?
6 A. Basically you can use the material
7 on-site for -- you've got compactable material
8 that you can use to build the pad with and you
9 don't have to bring in the material.
10 Q. The plans and specifications in the
11 geotech report, what did they show as far as
12 this project balancing or not?
13 A. Without reviewing that I couldn't tell
14 you.
15 Q. You don't know?
16 A. It's been a long time.
17 Q. American Excavators says that it shows
18 that it balances. Do you have any reason to
19 disagree with that as you sit here?
20 A. Yes.
21 Q. Okay. Tell me what you're basing that
22 on.
23 A. I just think that there was a -- I
24 just don't think that the site would have
25 balanced. I don't think the soils were --
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1 that's a personal opinion just looking at the
2 job site.
3 MR. PANTHER: Thank you, Mr.
4 Orange. That's all I have.
5 MS. GOODSON: Can I ask a few
6 questions?
7 MR. CASHION: Yes, ma'am, you
8 may.
9 MS. GOODSON: Thank you very
10 much.
11
12 QUESTIONS BY MS. GOODSON:
13 Q. Mr. Orange, my name is Christina
14 Goodson and I represent the county. I just
15 have a few questions based on some of your
16 answers to Mr. Panther's questions.
17 A. Okay.
18 Q. At any time when you approved the pay
19 requests that you've looked at today, were you
20 approving those pay requests for the county?
21 A. No.
22 Q. Okay. Did you have approval from the
23 county to pay American Excavators those
24 amounts?
25 A. No.
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1 Q. You did not? In Exhibit 4 --
2 A. Let me back up a little bit.
3 Q. Sure.
4 A. Are you -- when I signed the pay
5 requests or the change orders?
6 Q. Right.
7 A. If I signed one, it was after a
8 meeting when, you know, it was my
9 understanding that we were going to pay for
10 the undercut. Is that what you're asking?
11 Q. Yes, sir. I want to know if you had
12 any information from the county that those
13 amounts were approved when you signed your
14 name to them?
15 A. The Change Order No. 3, it was
16 discussed in the meeting as far as the areas
17 that PSI designated that had to come out.
18 That was the only time that I remember in a
19 meeting that those were agreed on.
20 Q. Okay. You signed these pay
21 applications. It was my understanding you
22 made the \$28,000 mistake. You stated that.
23 A. Yes, ma'am.
24 Q. So therefore what I'm really asking
25 is: Did you sign this pay application prior
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1 to Williamson County Change Order No. 3 being
2 signed?
3 A. Yes, ma'am, I had to.
4 Q. You did. Okay. So you approved the
5 pay application without the approval of the
6 county for the changes that were contained in
7 that pay application?
8 A. Yes, ma'am.
9 Q. All right. Thank you. In Exhibit 4
10 -- which I'll give you a second, because I
11 know there's lots of them. If you could find
12 it?
13 A. (Pause.)
14 Q. Do you recognize that, that meeting?
15 A. Yes, ma'am.
16 Q. And that you were present at that
17 meeting?
18 A. Yes, ma'am.
19 Q. You stated or you testified that at no
20 time during that meeting did the county state
21 that it was going to be responsible for any
22 additional costs for the removal of unsuitable
23 materials; is that correct?
24 MR. PANTHER: Objection to form.
25 THE WITNESS: Repeat that
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DEPONENT: ANTHONY W. ORANGE

1 question.
2 BY MS. GOODSON:
3 Q. You testified earlier that at that
4 meeting at no time did the county state that
5 it was going to pay for the removal,
6 additional costs for any removal of unsuitable
7 soils; is that correct? Was that your
8 testimony?
9 A. Yes.
10 Q. And nowhere in that letter does it
11 state that the county is going to be
12 responsible for such costs, does it?
13 A. No.
14 Q. Okay. I'm having a little trouble
15 with our change order numbers, because when
16 American Excavators submits change orders to
17 you, they're numbered 1, 2, 3.
18 A. Right.
19 Q. And when RCR submits change orders to
20 the county, they're also numbered 1, 2, 3.
21 A. Okay.
22 Q. So when you were testifying at the
23 very end there -- let me make sure I get this
24 right.
25 A. Change Order 4?
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1 Q. It was Exhibit 17, the handwritten
2 notes pertaining to the meeting.
3 A. Okay.
4 Q. All right. In a paragraph there it
5 states that the county will pay for the
6 removal of some unsuitable soils.
7 A. Right.
8 Q. Right?
9 A. Right.
10 Q. Okay. And you testified that that was
11 pertaining to Change Order No. 3 that was
12 submitted by American Excavators to RCR.
13 A. In No. 3 it says that were called for
14 by PSI testing.
15 Q. Okay. I just want to make a
16 clarification that the county only approved
17 Change Order No. 2 pertaining to the removal
18 of unsuitable materials -- let's make sure
19 that you have that in front of you. It would
20 have been contained in Exhibit 10.
21 This Change Order No. 3 from the
22 county pertains to Change Order No. 2 that was
23 submitted by American Excavators to RCR; is
24 that correct?
25 A. No.
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1 Q. No, that's not correct. Okay
2 Correct me.
3 A. Change Order No. 3 was in reference to
4 Change Order No. 2 by American Excavators.
5 Q. Okay. Did it also not incorporate
6 Change Order No. 3?
7 A. No.
8 Q. Let me make sure I'm saying my
9 question correctly. Okay?
10 A. Okay.
11 Q. Change Order No. 3 from the county --
12 A. Change Order No. 1.
13 MR. CASHION: First she's asking
14 you to refer to Change Order No. 3 from the
15 county.
16 THE WITNESS: Okay.
17 BY MS. GOODSON:
18 Q. Change Order No. 3 from the county
19 refers to which numbers of the change orders
20 submitted from American Excavators to RCR?
21 A. Change Order No. 2 and Change Order
22 No. 1.
23 Q. Okay. So in Change Order No. 2, that
24 refers to the removal of some unsuitable
25 materials; is that correct?
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1 A. Yes.
2 Q. Okay. So in those handwritten notes,
3 in that meeting --
4 A. Okay.
5 Q. -- some of the unsuitable materials
6 that were removed were approved by the county
7 in that change order that you have right there
8 in front you, right?
9 A. Yes, ma'am.
10 Q. So Change Order No. 3 from American
11 Excavators to RCR --
12 A. Yes.
13 Q. -- was never approved by the county to
14 your knowledge; is that correct?
15 A. Let me get this straight.
16 Q. Okay.
17 A. I'm as confused as you are now.
18 Q. Okay.
19 A. It looks like 3 should have been
20 approved by the county, 1 should have been
21 approved by the county, 2 shouldn't have been
22 approved by the county. But the way that I'm
23 reading, the county approved 1 and 2 -- yeah,
24 1 and 2.
25 Q. Yes, sir.
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DEPONENT: ANTHONY W. ORANGE

1 A. Yes. They're wrong.
2 Q. Which are wrong? If you could just
3 clear up the record for us, that would be
4 great. Just state what you think it should
5 be.
6 A. Change Order No. 1 and Change Order
7 No. 3 was agreed to be paid by the county.
8 Q. All right.
9 A. Change Order No. 2 was never agreed to
10 be paid by the county.
11 Q. And do you have any documentation to
12 back that up?
13 A. No, ma'am, I don't.
14 Q. Okay.
15 A. I just know what was approved and what
16 wasn't as far as the documents.
17 Q. All right. Thank you.
18 MS. GOODSON: I'll reserve all my
19 other questions for Mr. Stover.
20 MR. CASHION: I have no
21 questions.
22
23
24
25

VOWELL & JENNINGS, INC. (615) 256-1935
81

1 FURTHER DEPONENT SAITH NOT.
2

SWORN to before me when taken,
3 April 17, 2001
4
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6 -----
Sabrina L. Isbell, Notary Public
7 State of Tennessee At Large
8 My Commission Expires: 1/31/2004
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VOWELL & JENNINGS, INC. (615) 256-1935
82

DEPONENT: ANTHONY W. ORANGE

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