

DEPONENT: DON STOVER

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 Deposition of:
17 DON STOVER
18 Taken on behalf of the Plaintiff
19 April 17 2001
20
21
22
23 VOWELL & JENNINGS INC
24 Court Reporting Services
25 326 Washington Square
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
5 For the Defendants/ GREGORY L. CASHION
6 Third-Party Plaintiff Attorney at Law
424 Church Street
Nashville TN 37219
7 For the Third-Party CHRISTINA GOODSON
8 Defendant Attorney at Law
306 Court Square
Franklin TN 37064
9
10 Also Present, Al Ritter
11
12
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1 The deposition of DON STOVER was taken
2 by counsel for the Plaintiff at the offices of
3 Smith & Cashion Attorneys at Law 424 Church
4 Street Nashville Tennessee on April 17
5 2001 for all purposes under the Tennessee
6 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
18
19
20
21
22 DON STOVER
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, please?
4 A. Don Stover.
5 Q Mr. Stover, we met just a few moments
6 ago My name's Todd Panther. I represent
7 American Excavators. This is going to be
8 what's called a discovery deposition, which is
9 my opportunity to find out what information
10 you have about the issues in this lawsuit.
11 The way I'll go about doing that is to
12 just ask you lots of questions. If at any
13 time you don't understand a question that I
14 ask you, I need you to stop me and tell me
15 so. Will you do that for me?
16 A. Okay.
17 Q The reason why that's important to me.
18 Mr. Stover, is if you don't tell me that you
19 don't understand my question and you answer. I
20 can only assume that you've understood it.
21 Okay?
22 A. Okay.
23 Q The court reporter here is taking down
24 what we're saying here, so when you mean to
25 respond, I'll ask you to give a verbal
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1 response rather than shaking or nodding your
2 head. because it's tough to take that down.
3 In addition, when you intend to
4 respond affirmatively or negatively, try to
5 use words like yes or no rather than uh-huh or
6 huh-uh. It's tough to do. I'll remind you.
7 But when we go back and read this later on at
8 trial or at some other proceeding, it makes
9 for a clearer record. Okay?

10 A. Okay.

11 Q. Give me just a brief sketch of your
12 education

13 A. I've been in the construction business
14 for 42 years.

15 Q. Formal education.

16 A. Formal education. I finished high
17 school and had some courses in the Marine
18 Corps in accounting.

19 Q. Any college degrees?

20 A. No.

21 Q. I want you to tell me a little bit
22 about your job history. If you can, just lead
23 me through, say, when you got out of the
24 Marines. Did you say you were in the Marine
25 Corps?

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1 A. Correct.
2 Q. Just lead me through generally, you
3 know, who you worked for, what you did and
4 about what time frame.
5 A. Well, when I got out of the Marine
6 Corps, I bought a millwork company here in
7 Tennessee.
8 Q. Okay.
9 A. And I operated it for, I guess,
10 approximately ten years. And after that I
11 went to work for Hardaway Construction Company
12 for approximately ten years.
13 Q. Okay. So that would have been -- you
14 worked for Hardaway when?
15 A. The '70s.
16 Q. Okay.
17 A. I think I moved to Nashville in 1958.
18 Q. All right. And you said you worked
19 for Hardaway for around ten years?
20 A. Ten years, correct.
21 Q. What did you do for them?
22 A. Managed projects and was a special
23 projects coordinator for them, which developed
24 work and oversaw developing of multifamily
25 projects.

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1 Q. What did you do after working for
2 Hardaway?
3 A. I left there and went to McMinnville,
4 J.D. Mulligan.
5 Q. What type of work does that company
6 do?
7 A. It's construction.
8 Q. What type?
9 A. At that time we were doing car
10 dealerships, motels, apartment houses, and we
11 did work all over the United States.
12 Q. What was your job with them?
13 A. I was president.
14 Q. How long did you work for J.D.
15 Mulligan?
16 A. I was there four years until the FDIC
17 decided Mr. Mulligan needed to come up with
18 some money. We had an opportunity to buy it,
19 but that was assuming his debt, and those of
20 us there elected not to.
21 Q. Okay. When you left J.D. Mulligan,
22 where did you next work?
23 A. I believe at that time I was with RP
24 Industries.
25 Q. Would that have been somewhere around
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1 what, '88?
2 A. Somewhere in that range, I guess.
3 Q. Okay. What type of company is RP
4 Industries?
5 A. They do general contracting.
6 Q. Okay. What type of work did you do?
7 A. There I was project manager and did
8 basically project managing.
9 Q. What type of construction work does RP
10 Industries typically do?
11 A. At that time they were doing theaters,
12 Circuit City, retail stores and that type of
13 thing.
14 Q. And you said you were a project
15 manager?
16 A. Correct.
17 Q. How long did you work for RP
18 Industries, about?
19 A. I think three or four years, if I
20 remember right.
21 Q. Okay. So that gets us somewhere --
22 A. Have I run out of time yet?
23 Q. So that puts us sometime in the early
24 '90s would you say?
25 A. Right.

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1 Q What did you do after RP Industries?
2 A Well, I've been with RCR now for going
3 on four years.
4 Q Okay
5 A I skipped somebody in there, didn't I?
6 Q Probably.
7 A I think I was with Heery International
8 in the in-between times.
9 Q Between RP Industries and RCR?
10 A Right.
11 Q What did you do for Heery?
12 A Was an owner's rep. We oversaw state
13 projects, supervised construction.
14 Q Forgive me. You said you started RCR
15 about when?
16 A I've been there four years.
17 Q So sometime in '96, '97?
18 A Right.
19 Q When you started with RCR, what
20 position did you start at?
21 A Project manager.
22 Q Have you kept that position all along?
23 A Other than I'm a senior project
24 manager. I don't know if that means I'm older
25 or...

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1 A Basically writing the contracts,
2 reviewing the pay requests and processing
3 change orders.
4 Q Anything else that you would throw
5 into there?
6 A No, I can't -- general management of
7 the project.
8 Q We were looking at Exhibit No 1
9 during Mr. Orange's deposition. This is the
10 subcontract between American Excavators and
11 RCR. You recognize that don't you, Mr.
12 Stover?
13 A I do.
14 Q Explain to us what Joey Craig's
15 involvement was at this stage of the game.
16 A He was the project manager.
17 Q Okay. When did you take over as
18 project manager?
19 A I believe excavating had already
20 started -- I'm going to guess two months,
21 somewhere like that, after it had been
22 started.
23 Q Okay. Did you participate at all in
24 reviewing the bids that you got from
25 excavators for this project?

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1 Q Are your duties any different from a
2 senior manager from when you were a project
3 manager?
4 A Other than we're more involved in the
5 management decisions.
6 Q For this project, the Williamson
7 County Community Services building, were you a
8 project manager or senior project manager?
9 A I was a project manager at that time.
10 Q Okay.
11 A I believe that was two years ago when
12 we started this, I think.
13 Q The contract with American Excavators
14 is in April of '99. if that helps you tell me
15 whether you were a project manager or had been
16 promoted
17 A I was probably a project manager at
18 that time. It's just been the last year and a
19 half.
20 Q Did RCR have a senior project manager
21 on this project?
22 A No.
23 Q Give me what your duties and
24 responsibilities were as project manager for
25 this project.

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1 A No. No, I didn't.
2 Q Did you participate at all in
3 selecting American Excavators as the project
4 excavator?
5 A No.
6 Q Would that have been Joey Craig?
7 A Correct.
8 Q Is he still with RCR?
9 A He is.
10 Q What's his position now?
11 A He's also a senior project manager.
12 Q Did they promote you all at the same
13 time?
14 A Well, the two of us.
15 Q I take it that you weren't involved in
16 negotiating this subcontract with American
17 Excavators?
18 A No, I wasn't.
19 Q One of the provisions that's at issue
20 in this lawsuit has to do with Paragraph 20 in
21 here, Mr. Stover, the unsuitable soils
22 provision.
23 A Okay.
24 Q Have you talked with Mr. Craig about
25 what discussion he might have had with anyone

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1 at American Excavators about this provision,
2 this Paragraph 20?

3 A. No.

4 Q. When you took over as project manager
5 for this project, did you review the
6 subcontracts that RCR had entered into with
7 the various subcontractors?

8 A. Well, now, some of them were not
9 written at that time. Joey had written, if I
10 remember, the mechanical maybe, the
11 excavating, the critical subs that had to be
12 on the front part of the job. And at that
13 point I picked up from there, the concrete and
14 so forth.

15 Q. Thank you. The contracts that were
16 written at the point in time that you took
17 over, did you review those?

18 A. I more than likely just read through
19 them to see who they were and what their scope
20 of work was.

21 Q. When you -- I think you said that when
22 you took over, American Excavators subcontract
23 had already been written. Do you have memory
24 of reviewing their subcontract when you first
25 started work on the project?

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1 A. No. I'm sure I would have just looked
2 at it to get a general idea of their scope of
3 work, because they were -- at that time was an
4 ongoing part of the work.

5 Q. Do you remember making any mental note
6 concerning the provision in the contract
7 regarding removal and replacement of
8 unsuitable soils?

9 A. I don't remember that at all.

10 Q. Did you have any conversations with
11 anyone at American Excavators shortly after
12 you began work, where you would have taken
13 over as project manager and you would have
14 talked with them about the terms of their
15 subcontract? Did you do that?

16 A. No. I don't know that at that time
17 there would have been any reason to have any
18 discussions. As long as they were performing
19 their work, there were no questions at that
20 time.

21 Q. Do you know, Mr. Stover, what RCR's
22 contract with the county provided concerning
23 whether RCR would be entitled to extra money
24 for encountering unsuitable soils?

25 A. No, I don't remember.

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1 Q. You don't remember that?

2 A. No.

3 Q. I'm handing you Exhibit No. 4. Take
4 your time to look at it as you need to.

5 A. (Pause.)

6 Q. Are you ready?

7 A. Okay.

8 Q. This Exhibit No. 4 are meeting notes,
9 June 30, 1999. Why don't you just tell me in
10 your own words what prompted this meeting and
11 what was discussed.

12 A. If I recall correctly, American
13 Excavators had wanted a meeting with Al and
14 the county to discuss some unsuitable soils
15 and undercutting. And I told them they'd have
16 to meet with Al Thomas first and then he would
17 schedule a meeting with the county. And I
18 believe they did meet with Al and, I think --
19 Thomas -- and he later set up this meeting
20 with the county.

21 Q. Okay.

22 A. And at that time I think he was
23 explaining that he had a claim for some
24 unsuitable soil. And the results was it was
25 unfounded, but that was the last -- I believe

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1 our last meeting.

2 Q. In Paragraph No. 1, the last sentence
3 of that paragraph says: If material
4 encountered is "noncompactable" or if a
5 situation requires undercutting, PSI will
6 document the quantities removed and new fill
7 will be put in place.

8 Do you see that there?

9 A. Correct. And they did that.

10 Q. Pardon me?

11 A. They did that.

12 Q. Okay. They did what?

13 A. They gave us the areas of undercut
14 areas.

15 Q. Yeah.

16 A. Gave us a drawing. We removed it. I
17 think there were four areas, if I remember
18 correctly.

19 Q. Okay. This refers to both a situation
20 requiring undercutting and it also refers to
21 material that's noncompactable. Do you see
22 that?

23 A. Right.

24 Q. "If the material encountered is
25 noncompactable or if the situation requires

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1 undercutting." when this was discussed, if I
2 understand right. requiring undercutting would
3 be below subgrade; is that right?
4 A. Correct.
5 Q. When it says, "If the material
6 encountered is noncompactable," does that
7 refer to material that's above subgrade or
8 below subgrade?
9 A. I believe they're referring to below
10 subgrade.
11 Q. All right. Now, this says, "If the
12 material encountered is noncompactable or if
13 the situation requires undercutting."
14 A. This particular situation on these
15 areas was in the parking lots.
16 Q. Right.
17 A. So when we tried to compact the soil,
18 we couldn't get compaction, therefore it had
19 to be undercut and soil brought in that would
20 compact. Otherwise we'd have had problems in
21 our parking lots with settling and cracking.
22 Q. And according to these meeting notes,
23 RCR was to work up an estimated cost to remove
24 and replace that soil, right?
25 A. I think that was so. Now, whether we
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1 did, I don't remember.
2 Q. Turn to the next page of this Exhibit
3 No. 4. The last sentence reads, "American Ex
4 will give us an approximate cost to remove the
5 uncompactable soil off site and haul borrow
6 in " Do you see that?
7 A. Right. That was referring to those
8 areas in the parking lot that were not
9 compactable.
10 Q. Do you know who wrote that?
11 A. Well, if I didn't know better, it
12 looks like my handwriting.
13 Q. Is it?
14 A. Looks like it. I'd have to guess that
15 it appears to be mine.
16 Q. I don't know who else to ask if it's
17 your handwriting other than you
18 A. Yeah, right.
19 Q. Let's take a look at Exhibit No. 5
20 here. Is that the estimate that American
21 Excavators gave you concerning the material?
22 A. Correct.
23 Q. The estimate that Mr. Ezell provided
24 said the quantity could be anywhere from a
25 1,000 to 1,700 cubic yards?

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1 A. Correct.
2 Q. Was that estimate of unsuitable soils
3 above subgrade or below subgrade or both?
4 A. It should have been below. And that's
5 what I'm assuming that to be because, again,
6 we're talking about the parking lot area.
7 Q. The last paragraph, Mr. Ezell says to
8 verify actual quantities removed, he would
9 like a representative of PSI or RCR to be
10 present at the time the work is performed.
11 A. Correct.
12 Q. Did that occur?
13 A. It did.
14 Q. Who for RCR attended?
15 A. Anthony, I assume, was there for most
16 of the time that they were doing this and a
17 representative from PSI. In fact, I'm
18 thinking in their contract, they were supposed
19 to provide that, American, but, however, we
20 did.
21 Q. And Mr. Ezell refers to that in the
22 paragraph just above, doesn't he, where he
23 says, "Since PSI will be taking over the
24 testing agency" --
25 A. Right.

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1 Q. -- "and I had this in my contract, I
2 will issue RCR a credit"? He was referring to
3 the testing, wasn't he?
4 A. Right. He never did that I remember.
5 Q. Well, was there any unused portion?
6 A. Of the testing?
7 Q. Yeah.
8 A. I don't remember now what he was
9 allowing, what he had in there.
10 Q. Okay. Do you agree that under
11 American Excavators' subcontract with RCR,
12 that American Excavators is entitled to extra
13 for unsuitable soils that it has to remove and
14 replace below subgrade?
15 A. Yes.
16 Q. Okay. Is RCR entitled to extra from
17 the county for unsuitable soils below subgrade
18 that have to be removed and replaced?
19 A. Right.
20 Q. Let me get you to look at -- I'm going
21 to ask you to keep Exhibit No. 6. I want you
22 to look at Exhibit No. 8 too. Let's first
23 look at Exhibit No. 8. It might be helpful to
24 have both of these open for you because I'm
25 going to go through them sort of that way

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1 When American Excavators would submit
2 applications for payment to RCR, I take it
3 from your earlier statement that one of your
4 jobs would be to review those applications; is
5 that right?
6 A. Correct.
7 Q. To determine if the amount that
8 they're applying for is correctly due, right?
9 A. Right.
10 Q. What's Anthony Orange's job in
11 reviewing American Excavators' applications
12 for payment?
13 A. He also reviews pay requests. When
14 they come in, they're placed in a folder. He
15 reviews them. If he has -- doesn't have any
16 questions with them, he'll pass them on to me.
17 Q. On this Exhibit No. 8, if you flip
18 back one page, there's a stamp there that
19 looks to bear your initials -- well, I don't
20 know about your initials. Mr. Orange said if
21 they're his initials under superintendent --
22 A. Then I'm the next one.
23 Q. -- that you're the next one?
24 A. Yeah.
25 Q. Tell me what the protocol is, just
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1 what you follow before you decide that you
2 should initial a pay ap like this
3 A. Well, like I say, first of all the
4 superintendent will initial it, because he's
5 on-site and he knows what work has or hasn't
6 been done. And if he feels the value of their
7 billing is in order, he approves it. And
8 then, in turn, I approve it, and then it goes
9 to accounting for payment.
10 Q. Keep that page open right there. And
11 I want you to look at Exhibit No. 6. Flip
12 over two pages. You'll see a document that
13 looks like this (indicating). It's American
14 Excavators' Change Order No. 1.
15 A. Right.
16 Q. Got it? This is a change order
17 request for two items, clearing and grubbing
18 for \$6,200 and remove and replace with
19 structural fill for \$1,800.
20 A. Correct.
21 Q. The total of those two numbers is the
22 \$8,000 --
23 A. Correct.
24 Q. -- in American Excavators' first pay
25 ap. right?

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1 A. It is.
2 Q. And I take it from Mr. Orange's
3 initials and your initials that you approved
4 that for payment?
5 A. Not necessarily.
6 Q. Why did you initial it then?
7 A. In doing this, as long as we have
8 enough money -- because at that time that may
9 not have been approved, the change order.
10 They're showing it as a change order, assuming
11 it's going to be approved, and I don't know at
12 that time what the status of this change order
13 was.
14 Q. Well, I thought that after you initial
15 it, you send it to accounting.
16 A. We do, for the amount that they're
17 drawing at the bottom.
18 Q. The 62,219.70?
19 A. Correct.
20 Q. And if I look at the next page on
21 Exhibit No. 8 right there that you had -- next
22 page RCR paid American Excavators the amount
23 that it requested?
24 A. Correct.
25 Q. 62,219.70?

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1 A. Correct.
2 Q. Which included the \$8,000 requested
3 change, right?
4 A. Well, I don't know what was included
5 in that amount. We were just looking at the
6 total work in place was at that value of 62,
7 felt like that was the correct amount for the
8 draw at that time. Whether that did or didn't
9 include any change orders is -- all we're
10 looking at is work in place.
11 Q. Well, the only way you get to the
12 62,219 is to include the \$8,000 that American
13 Excavators requested, don't you?
14 A. I'm not sure of that. Well, it looks
15 like that's correct.
16 Q. The next pay ap that American
17 Excavators sent was Pay Ap No. 2. That's on
18 Exhibit No. 8 as well.
19 A. (Pause.)
20 Q. Mr. Stover, are you there?
21 A. Uh-huh.
22 Q. You mean yes?
23 A. Yes.
24 Q. Now, according to American Excavators'
25 second request for payment in Line Item No. 2,

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1 he has approved Change Orders 1, 2, 3 for
2 53,355. Do you see that there?
3 A. Correct.
4 Q. And then on this request for payment,
5 I see Anthony Orange's initials. Are those
6 your initials as well?
7 A. Correct.
8 Q. There's a bunch of writing below that
9 stamp that bears your initials. Is that your
10 writing or someone else's?
11 A. Looks like mine.
12 Q. Okay.
13 A. And I don't know what I was doing
14 there. I don't know what those numbers
15 represent.
16 Q. Okay. And if we flip back one page in
17 this exhibit -- I'm sorry, flip forward one
18 page, the check that was written to American
19 Excavators was for the full amount?
20 A. Correct.
21 Q. The 146,468.70?
22 A. Correct.
23 Q. Keep that open where you are in
24 Exhibit 8, and I want you, on Exhibit 6, to
25 turn to American Excavators' Change Order No.
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1 2 It looks like that (indicating).
2 A. (Pause.)
3 Q. There you go. I take it that before
4 initialing this second request for payment,
5 American Excavators would have sent along this
6 Change Order No. 2 for you and Mr. Orange to
7 look at, wouldn't they?
8 A. I'm not sure.
9 Q. Well, you wouldn't have approved a pay
10 application without seeing what approved
11 Change Order No. 2 was, would you?
12 A. Not normally.
13 MR. CASHION: Object to the form
14 of the question.
15 BY MR. PANTHER:
16 Q. Now, in Change Order No. 2, American
17 Excavators shows 2,898 cubic yards at \$10 a
18 cubic yard. Do you see that?
19 A. Okay.
20 Q. Now, how is it that the unit price was
21 reduced from American Excavators' contract
22 amount of \$12.50 a cubic yard to the \$10 a
23 cubic yard that's in this change order?
24 A. If I remember correctly, Harley had
25 written us a letter -- I don't remember the
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1 circumstances -- changing it from 12 to 10.
2 Now, I can't tell you much more than that, but
3 seems to me there was a letter, and I don't
4 remember the reason for it, that reduced this
5 from 12.50 to \$10.
6 Q. Now, in American Excavators performing
7 its work when it takes the site, part of what
8 it's going to have to do is excavate, clear
9 off a certain amount of material to get it to
10 subgrade?
11 A. Correct.
12 Q. And in doing that they're going to cut
13 from whatever the grade was before any work
14 down to subgrade, won't they?
15 A. That's correct.
16 Q. Now, is it correct that the reason
17 American Excavators reduced its price from
18 12.50 to 10 per cubic yard was because either
19 you or Mr. Orange brought up the fact that
20 since they were having to cut to bring it down
21 to subgrade, it wouldn't be fair -- it
22 wouldn't be equitable for them to get \$12.50
23 per cubic yard for the unsuitable fill that
24 they encountered in that cut? Is that true?
25 A. I don't remember that.
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1 Q. Well, if Harley Ezell says that the
2 reason that we agreed to the \$10 a cubic yard
3 as opposed to the 12.50 was because we were
4 cutting a certain amount of material and
5 bringing it to subgrade, and we agreed that in
6 the unsuitable fill encountered in that area
7 that we cut, we would only charge them \$10 a
8 cubic yard for?
9 MR. CASHION: Object to the form
10 of the question.
11 BY MR. PANTHER:
12 Q. Do you dispute that?
13 A. I don't remember that.
14 Q. Let's look back at -- well, Pay
15 Request No. 2 also refers to Change Order No.
16 3 that American Excavators sent, and that's in
17 this Exhibit No. 6. You're there. Good.
18 Now, this Change Order No. 3 from
19 American Excavators to RCR calls out these
20 quantities of cubic yardage for a total of
21 \$1,637 -- that's not right. Let me try that
22 again. A total of 1,310 cubic yards at a
23 price of 16,375. There we go. Now, did you
24 approve that for payment?
25 A. I did.
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DEPONENT: DON STOVER

1 Q Okay That cubic yardage, that 1,300
2 cubic yards, was that above subgrade or below
3 subgrade?
4 A. That was below subgrade.
5 Q Okay. And the document behind this
6 change order, is that the drawing that you
7 were referring to?
8 A. Correct. That's the four approved
9 areas that PSI had given us the areas to
10 undercut, take out the bad soil.
11 Q Okay.
12 A. And that was the undercut areas.
13 Q All right. I forgot to ask you when
14 we were looking at Change Order No. 2, the
15 28.000 --
16 A. Correct.
17 Q -- did you approve that for payment?
18 A. Best I remember I did.
19 Q Okay. The \$28,980 in Change Order No.
20 2 that American Excavators submitted, was that
21 for material that it encountered above
22 subgrade or below subgrade?
23 A. Right now I can't remember exactly
24 where that was.
25 Q Okay. While you have Exhibit No. 8 in
VOWELL & JENNINGS, INC. (615) 256-1935

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1 front of you, this is the one with your --
2 turn back and you'll get to Pay Request No.
3 3
4 A. Right.
5 Q On the tally of the amounts there are
6 cross-outs and numbers. Is that your writing?
7 A. That is.
8 Q Tell me what you were doing when you
9 got this pay application and why you were
10 crossing out the numbers.
11 A. Apparently I made a mistake.
12 Q Lead me through. You ended up with
13 1,857.69. Tell me how you arrived at that.
14 A. Well, after two years or so, I don't
15 know that I'll remember why I did that. At
16 the time, apparently there was a good reason.
17 But to be honest with you, I don't know why,
18 other than I apparently disagreed with
19 something that apparently I had approved
20 before and it wasn't correct. Now, why I did
21 that, I don't know.
22 Q Okay. When we were looking at Change
23 Order No. 3 from American Excavators to RCR --
24 A. Correct.
25 Q -- American Excavators had asked for a
VOWELL & JENNINGS, INC. (615) 256-1935

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1 change of the 16,375
2 A. That's correct.
3 Q From your whole review, looking back
4 on it, do you agree that American Excavators
5 is entitled to that 16,375 as a changed
6 amount?
7 A. They are.
8 Q Okay. Let me get you to look at --
9 hand me those back, Mr. Stover, so we don't
10 get confused any more than we have to.
11 A. (Complying.)
12 Q I'm going to hand you Exhibit No. 9.
13 Exhibit No. 9 is what looks to be a change
14 order request from RCR to the county.
15 A. Correct.
16 Q That's your signature there at the
17 bottom?
18 A. It is.
19 Q One of the items, Item No. 1 on this
20 requested change order is for 28,980.
21 A. Correct.
22 Q That's the same amount -- well, let me
23 ask it this way: The basis for that request,
24 28,980, was the 28,980 that American
25 Excavators asked for in its Change Order No. 2
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1 to RCR?
2 A. That's correct.
3 Q You can keep that exhibit there, No.
4 9. According to what I'll hand you, Exhibit
5 No. 10, the county approved RCR's proposed
6 change order for the 2,898 cubic yards of
7 unsuitable soils
8 A. Well, they made an adjustment.
9 Q What do you mean?
10 A. Well, I think it was 28,980 and they
11 approved 28,000. And then on the other, it
12 looks like they only approved the 30 -- what
13 was it?
14 Q \$6,820?
15 A. Right.
16 Q But the basis for the county's \$28,000
17 add was the 2,898 that American Excavators
18 asked for from RCR, right?
19 A. I think that was the intent, yes.
20 Q Okay. Do you know why the county
21 disallowed the \$1,800 on the removing and
22 replacing the structural fill of 400 linear
23 feet of 24-inch RCP?
24 A. I don't remember why.
25 Q At one point you had authorized that
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DEPONENT: DON STOVER

1 for payment, and then now the county is not
2 authorizing to pay RCR that amount. Why did
3 you authorize to pay American Excavators the
4 \$1,800 without having heard from the county?
5 A. Well, I don't know that we had -- we
6 took it that that was a justifiable claim, and
7 apparently the county felt that it wasn't. It
8 was something that wasn't shown on the
9 drawings. And I don't remember why -- I don't
10 know that the county necessarily did that. It
11 may have been the architect that decided not
12 to pay them. And I don't remember what his
13 reasoning for it was.

14 Q. Let me get you to look at Exhibit No.
15 11. Did you prepare that to issue to American
16 Excavators?

17 A. I did.

18 Q. I'm curious about this, Mr. Stover.
19 This Exhibit No. 11 is dated January 31, 2000,
20 up here at the top.

21 A. Correct.

22 Q. Which, if I'm reading it right, adds
23 28,000 to American Excavators' contract
24 amount, right?

25 A. It did.

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1 Excavators, did you -- well, what did you do?
2 Who did you submit it to? Who did you call?
3 You said that it put you in shock.
4 A. Oh, I was just being facetious.
5 Q. Well, tell me what you did once you
6 got these proposed changes.
7 A. First of all, I probably couldn't
8 figure out where that came from or how that
9 number -- what made up that number.
10 Q. And when you say "made up that
11 number," the number that you're referring to
12 is the --

13 A. 176.

14 Q. -- the 176,750?

15 A. Right.

16 Q. Who at American Excavators did you
17 call to help answer that question for you?

18 A. I would assume -- I guess at that time
19 Harley was gone, so I don't know who it was
20 that I talked to, whether I talked to the
21 accounting department to ask: What is this?

22 Q. What did you find out; do you
23 remember?

24 A. I don't remember what our discussion
25 was.

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1 Q. Okay.
2 A. Or it would have had they signed it.
3 Q. Pardon me?
4 A. It would have had they signed it.
5 Q. What's confusing me is why did you
6 eliminate in Exhibit No. 8 the 28,000 when you
7 made your adjustments but then later add back
8 the 28 in January of 2000?

9 A. And the question is why did I take it
10 out?

11 Q. Yeah. Why did you take it out in
12 October of '99 and then propose to put it back
13 in January of 2000?

14 A. I can't answer that. I don't remember
15 what my reasoning was at that time.

16 Q. Okay.

17 A. I'd like to think it was a good
18 reason.

19 (Off-the-record discussion.)

20 BY MR. PANTHER:

21 Q. Exhibit No. 12, I'm certain that you
22 remember getting this from American
23 Excavators

24 A. It probably put me in shock, I guess.

25 Q. After getting this from American

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1 Q. According to Change Order Request No.
2 4 from American Excavators to RCR, it requests
3 123,395 for unsuitable materials. Do you see
4 that on the document?

5 A. Right.

6 Q. Did you meet with anyone at American
7 Excavators to ascertain what it was that they
8 were including in that number?

9 A. If memory serves me correct, we met
10 with Al and -- several of us at Al's office

11 with the geotech people, the architects,
12 Anthony to discuss this. And I think that's

13 -- I think they told them at that time that
14 it was not a justifiable change order. And as
15 far as I know, that was all that was ever --

16 Q. Well, before that meeting, do you
17 remember Marvin Parker coming to talk with you
18 and talk with Mr. Orange about his subcontract
19 and why he felt he was entitled to extra for
20 removing and replacing unsuitable soils? Do
21 you remember that?

22 A. He did come to the site, and I think I
23 went out and met with he and Anthony. As to
24 what -- again, I don't remember all of the
25 details of it.

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DEPONENT: DON STOVER

1 Q What Mr. Parker says, and I'm going to
2 ask you if you disagree, is that at the time
3 that you had that first meeting, he says you
4 were under the impression that the subcontract
5 did not contain a qualifier for removal and
6 replacement of unsuitable soils
7 A. I don't --
8 MR. CASHION: Object to the form.
9 BY MR. PANTHER:
10 Q. You don't remember that?
11 A. I don't remember that.
12 Q. Okay. Do you remember any discussion
13 at all where Mr. Parker was contending that
14 his contract, his subcontract did contain a
15 provision where he would be entitled the extra
16 for unsuitable soils and you were saying no,
17 it doesn't? Did that occur, or you have no
18 memory of it?
19 A. I don't remember all the details. I
20 remember meeting him out there and we were
21 discussing it, but as far as, you know,
22 general terms of the conversation, that's been
23 so long ago I couldn't tell you.
24 Q. Okay. What Mr. Parker remembers is
25 that after that meeting with you and Mr.
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1 Orange, that he went back and pulled the
2 subcontract and read it and called you back
3 and said I looked at my subcontract and there
4 is a provision in there for unsuitable soils.
5 Do you remember that?
6 A. He could have. I'm not disputing
7 anything you're saying. I'm just -- his
8 memory is better than mine apparently. The
9 only thing I recall about this particular
10 issue is after he talked to us, we then went
11 to the county and the architects and reviewed
12 the situation.
13 Q. Do you know what area, where on the
14 project American Excavators says it removed
15 and replaced the unsuitable material that
16 comprises the 123,395 that it was asking for?
17 A. No, I don't. I don't know where that
18 could have been.
19 Q. Pardon me?
20 A. I don't know where that could have
21 been. I don't know that it was ever said
22 where he came up with that.
23 Q. Did you ever ask?
24 A. Oh, I'm sure the question was asked.
25 I don't remember what the answer was.
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1 Q. I take it that RCR did not submit this
2 proposed Change Order No. 4 to the county for
3 payment?
4 A. We did not.
5 Q. Now, I think you said that after the
6 discussion that you had with Mr. Parker, he
7 requested a meeting with representatives of
8 the county and their architects to discuss his
9 request for additional money due to soils.
10 A. That's correct. He first requested a
11 meeting with the architect and the engineers.
12 And if I'm not mistaken, I think Al Thomas and
13 the geotech people met with him, and then
14 apparently that answer he got wasn't
15 satisfactory. Then he had asked would I set
16 up a meeting with the county, which we did.
17 And the county and the architects were at that
18 particular meeting where we reviewed his
19 request.
20 Q. Now, let me ask if you agree with this
21 statement I'm about to make. Whether American
22 Excavators is entitled to extra for removal
23 and replacement of unsuitable soils would
24 depend on what American Excavators'
25 subcontract with RCR provides, right?
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1 A. Correct.
2 Q. And American Excavators' subcontract
3 with RCR may be different than RCR's contract
4 with the county, right?
5 A. It could be. I don't know that it is.
6 Q. All right. Let me get you to look at
7 Exhibit 13. Here's an April 2, 2000, letter
8 from Mr. Thomas to you. Essentially Mr.
9 Thomas is --
10 A. The architect.
11 Q. And he's rejecting \$16,500 for fill
12 brought in from off site to complete the
13 building pad, correct?
14 A. Correct.
15 Q. Did RCR ever present a proposed change
16 order to the county for this \$16,500?
17 A. I don't remember whether we did or
18 not. If that was one of the -- I was thinking
19 that was No. 2. Was it not? I think, if
20 memory serves me, the only one we didn't send
21 to them was the 123,000, if I'm correct. And
22 I could be wrong.
23 Q. Well, let me hand you Exhibit 6. The
24 numbers aren't quite the same. I've turned to
25 American Excavators' Change Order No. 3 to
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DEPONENT: DON STOVER

1 RCR
2 A. Uh-huh.
3 Q. Where they asked for 13,375, I think.
4 A. I would think these are probably the
5 two and that's just a typo, and that's just an
6 assumption. I couldn't swear to that, but
7 it's the only thing that I think it could be.
8 Q. Okay. Well, actually I think I
9 misspoke American Excavators' Change Order
10 No. 3 to RCR was 16,375.
11 A. Correct.
12 Q. Al Thomas's letter in this Exhibit No
13 13 --
14 A. 16-5.
15 Q. -- 16,500.
16 A. Right.
17 Q. You think that's the same issue?
18 A. That's the only thing I can see, that
19 it's just a mistake.
20 Q. And I'm just trying to figure out if
21 there's another \$16,000 issue out there
22 A. No. I have a feeling that's --
23 because that's the only one that I think there
24 was in the 16,000 range.
25 Q. Let me hand you Exhibit 16. These
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1 appear to be the notes from the meeting that
2 was held to discuss the unsuitable soils that
3 American Excavators was asking to be paid
4 for. Do you remember seeing these before?
5 A. I'm sure I did.
6 Q. In the summary of action it says that
7 RCR will discuss this issue with American
8 Excavators in relation to their contract. Do
9 you see that there at the bottom?
10 A. Yes, I do.
11 Q. You correct me, but it sounds like
12 what the county and the architect were saying
13 is whether American Excavators is entitled to
14 extra is dependent upon what the subcontract
15 between RCR and American Excavators says and
16 that's not really our business.
17 MR. CASHION: Object to the form
18 BY MR. PANTHER:
19 Q. Is that essentially a paraphrase of
20 what they were saying?
21 A. He's just saying that we will discuss
22 this in relation to their contract --
23 Q. Right
24 A. -- at that time, I'm sure. I'd have
25 to talk to Al to see what he meant by that.
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1 Q. But the upshot of the meeting, the way
2 the meeting was left, was that as far as the
3 county's concerned, we don't owe RCR, but RCR
4 may owe American Excavators depending on what
5 the contract provides, right?
6 A. Well, that's true.
7 MR. CASHION: Is this a good time
8 for a break?
9 MR. PANTHER: Yes, I'm nearly
10 finished.
11 (A short break was observed
12 wherein Exhibit No. 18 was marked.)
13 BY MR. PANTHER:
14 Q. I've handed you what we've now marked
15 as Exhibit 18. My question is merely if
16 those -- Exhibit 18, are those your notes that
17 you kept?
18 A. No.
19 Q. Whose are they?
20 A. If I had to guess without knowing, it
21 looks like something Steve would have typed
22 up.
23 Q. Steve who?
24 A. Steve Yokell (phonetic). And I don't
25 know that. I'm just guessing because that's
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1 kind of the way he formats.
2 Q. What's his position with RCR?
3 A. He's the vice-president.
4 MR. PANTHER: Okay. Well, Mr.
5 Stover, that's all I have. Thank you.
6 MS. GOODSON: I just have a few.
7 Won't take but a second.
8
9 QUESTIONS BY MS. GOODSON:
10 Q. Mr. Stover, my name is Christina
11 Goodson and I represent the county in this
12 matter. Okay?
13 A. Yes, ma'am.
14 Q. I just have a few questions just for
15 clarification. I'm going to hand you an
16 exhibit --
17 MS. GOODSON: Can we go off the
18 record for just a second?
19 (Exhibit 19 was marked at this
20 time.)
21 BY MS. GOODSON:
22 Q. This change order that you're looking
23 at is the Change Order No. 3 from Williamson
24 County?
25 A. Correct.
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DEPONENT: DON STOVER

1 Q. The two change orders that are
2 attached to this are Change Order No. 1 and
3 Change Order No. 2 that were presented to RCR
4 from American Excavators; is that correct?
5 A. That's correct.
6 Q. So is it your testimony that these two
7 change orders were approved by the county
8 according to this Change Order No. 3?
9 A. That's correct.
10 Q. Were any other change orders approved
11 by the county pertaining to American
12 Excavators to your knowledge, besides just
13 these two?
14 A. I don't believe so. I think this
15 was...
16 Q. You think that's it?
17 A. I think that's it.
18 Q. Okay. Just to your knowledge, if you
19 know, did the county pay RCR \$34,820, what's
20 specified in this change order for the
21 changes?
22 A. They did.
23 Q. They did. Okay. Williamson County,
24 to your knowledge, has paid the total contract
25 price to RCR in the amount of \$3,321,063; is
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1 that correct?
2 A. They have.
3 Q. And to your knowledge Williamson
4 County owes RCR nothing further?
5 A. That's correct.
6 MS. GOODSON: If we can have this
7 marked. And I do not have copies. It was a
8 last-minute addition.
9 (Exhibit No. 20 was marked at this
10 time.)
11 BY MS. GOODSON:
12 Q. Okay. This is Exhibit 20. Have you
13 ever seen this document before?
14 A. I have.
15 Q. You have. Okay. This is the project
16 manual pertaining to the Williamson County
17 Community Services project?
18 A. Correct.
19 Q. And it does contain the contract
20 between RCR and Williamson County to your
21 knowledge?
22 A. Yes, it does.
23 Q. Okay. I've marked two pages in there
24 with -- you see those sticky notes?
25 A. The pink and the yellow?
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1 Q. That's right. You were asked earlier
2 whether RCR was entitled to extra from the
3 county for unsuitable soils removed below
4 subgrade.
5 A. Uh-huh.
6 Q. And you stated that you did not know
7 what the specific contract provisions were
8 pertaining to our contract.
9 A. Correct.
10 Q. If you could, read that section right
11 there marked by the pink. I believe it's
12 Subsection B.
13 A. (Complying.)
14 Q. Okay. And then on the next page, the
15 section marked with the yellow, could you read
16 that section?
17 A. (Complying.)
18 MR. CASHION: Just for the record,
19 it's Page 2300-4, starting with A and B.
20 THE WITNESS: Okay.
21 BY MS. GOODSON:
22 Q. Does that refresh your memory at all
23 what our contract provisions were pertaining
24 to subsurface soil materials being removed
25 from the site by RCR?
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1 A. Correct.
2 Q. And could you state for the record
3 what those contract provisions are, just a
4 summary?
5 A. It just says when we've reached
6 required subgrade. Notify geotech engineers
7 when we reach subgrade.
8 Q. And then for removal of those
9 subsurface materials, who's responsible for
10 that?
11 A. (Pause.)
12 Q. In your own words. You can either
13 read it or just summarize it, however you want
14 to do it.
15 A. It says, "For undercutting below
16 subgrade within a cut section, additional
17 excavation and replacement material will be
18 paid for according to contract provisions for
19 changes in the work. Measurement for payment
20 of unsuitable material will be by the average
21 end area method for the volume of unsuitable
22 material excavated below design depths. Any
23 proposed trench excavation within the impacted
24 area will be deducted from the volume
25 computed."
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DEPONENT: DON STOVER

1 Q Do either one of those sections state
2 that any undercutting performed by the
3 contractor will be at the contractor's risk if
4 it's not first approved by the owner?
5 A. It does.
6 Q. It does. So it's been your testimony
7 that these change orders that were submitted
8 that you looked at earlier --
9 A. Uh-huh.
10 Q. -- in reference to the pay
11 applications, you approved those pay
12 applications with the change order amounts
13 listed in them without first receiving
14 approval from the county; is that correct?
15 A. I probably did.
16 Q. Okay. And then you went back and
17 subtracted that amount because you did realize
18 your mistake?
19 A. Correct.
20 Q. Okay. And then after the county did
21 approve that amount, then you sent that fax to
22 American Excavators concerning the \$28,000 for
23 the removal of unsuitable materials that was
24 already approved by the county?
25 A. Correct.
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1 Q You don't have any power to approve
2 change orders or change order amounts for the
3 county without their approval, then, right?
4 A. I do not.
5 Q. All right. So did you turn in a lump
6 sum bid to the county for this contract in the
7 beginning -- did RCR? I'm sorry.
8 A. Yes, we did.
9 Q. Okay. And according to your contract
10 with the county, then, you can't make any
11 changes to the total contract price without
12 the county's first approval, correct?
13 A. That's correct.
14 Q. Just on a side note, to your knowledge
15 did the county have any part in hiring PSI for
16 the soil testing of this site? Or is that
17 something --
18 A. I think the architect had recommended
19 -- I don't think the county had any -- I
20 guess they could have objected, but I think Al
21 Thomas probably was the one that selected PSI.
22 Q. So are you saying that the architect
23 hired PSI or did the subcontractor or did the
24 contractor?
25 A. No. The architect.
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1 MS. GOODSON: All right. That's
2 all. Thank you.
3
4 FURTHER DEPONENT SAITH NOT.
5
6 SWORN to before me when taken,
7 April 17, 2001
8
9 -----
10 Sabrina L. Isbell, Notary Public
11 State of Tennessee At Large
12 My Commission Expires: 1/31/2004
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25 VOWELL & JENNINGS, INC. (615) 256-1935
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DEPONENT: DON STOVER

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- ' -	4 15:3,8 18:3 36:2 39:2 400 32:22 42 5:14		
'70s 6:15 '88 8:1 '90s 8:24 '96 9:17 '97 9:17 '99 10:14 34:12	3 25:1 28:16,18 30:3,23 40:25 41:10 44:23 45:8 30 15:9 32:12 31 33:19		
- 1 -	5 18:19 53,355 25:2		
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