

1
2 IN THE CHANCERY COURT FOR WEAKLEY COUNTY, TENNESSEE

3 AT DRESDEN

4
5 NORTHWEST TENNESSEE)
6 MOTORSPORTS PARK, LLC,)

7 plaintiff,)

8 VS.)

Case No. 20074

9 TENNESSEE ASPHALT COMPANY,)

10 defendant.)

11
12 THE DEPOSITION OF JOHN TAYLOR

13 July 23, 2008

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22 COPY

23 CHRISTINA K. SHUPERT, RPR
24 Court Reporter
25 P.O. Box 11002
Jackson, Tennessee 38308

A P P E A R A N C E S

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For the Plaintiff: MR. LEWIS L. COBB, JR.
Spragins, Barnett & Cobb
312 East Lafayette Street
Jackson, Tennessee 38301

For the Defendants: MR. GREGORY L. CASHION
AND
MS. MEGHANN E. MCCONNELL
Smith, Cashion & Orr
231 Third Avenue North
Nashville, Tennessee 37201

ALSO PRESENT: COREY EDWARD TODD
CANDACE TODD
MONTE PAUL SMITH
STEPHANIE ANN SMITH

1 The deposition of JOHN TAYLOR was taken at the
 2 instance of the plaintiff pursuant to agreement, on the 23rd
 3 day of July, 2008, beginning at approximately 9:00 a.m. at
 4 the law offices of Spragins, Barnett & Cobb, Jackson,
 5 Tennessee, for use pursuant to the Tennessee Rules of Civil
 6 Procedure before Christina K. Shupert, Notary Public at
 7 Large in and for the State of Tennessee.

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1 JOHN TAYLOR,

2 after having been first duly sworn, was examined and
3 testified as follows:

4

5 DIRECT EXAMINATION

6 BY MR. COBB:

7 Q I'm Lewis Cobb, and I represent the owners
8 of the Northwest Tennessee Motorsports Park. I
9 understand you did some paving for them?

10 A Yes.

11 Q And I want to talk to you about what
12 happened out there to find out what you know, what
13 you heard, what you did, things like that. But
14 before I get into that, I would like to get to know
15 a little more about you. So let's start off with
16 something easy, like tell me your name.

17 A John Taylor, T-A-Y-L-O-R.

18 Q John, where are you from?

19 A Halls, Tennessee.

20 Q Where do you live now?

21 A Paris, Tennessee.

22 Q Are you married?

23 A Yes, sir.

24 Q Who are you married to?

25 A Luanne Perkins.

1 Q And where did you go to school?

2 A High school or --

3 Q Both.

4 A Halls High School.

5 Q And what year did you graduate?

6 A 1988.

7 Q And what did you do after that?

8 A Worked for a couple of years, and then I

9 went to Dyersburg State for two years.

10 Q Okay.

11 A And I graduated from Union University here

12 in Jackson in '95.

13 Q Did you know Brandon McWherter while you

14 were there, Clint Scott?

15 A Now, I remember the name, but I don't --

16 Q You'd remember them.

17 What did you get a degree in?

18 A Biology.

19 Q And take me forward over the last twelve

20 or thirteen years. What have you done as far as

21 work?

22 A I worked for Tennessee Asphalt Company for

23 ten years last February.

24 Q That takes me back to '98. What did you

25 do between '95 and '98?

1 A Worked for -- well, I was -- I worked for
2 Dana Corporation in Paris, Tennessee, for -- I guess
3 that would have been '90 --

4 Q Was it called Plumley back then?

5 A Yes.

6 Q What did you do for them?

7 A Worked in the R&D lab, research and
8 development.

9 Q All right. Do you use your biology degree
10 in the paving business?

11 A No, sir.

12 Q Okay. That's what I was trying to figure
13 out.

14 All right. Tell me, how did you --
15 how did you make the transition from biology to
16 rubber to paving or why?

17 A I met my wife at Dyersburg State, and she
18 was from Paris, and I was living in Halls. And she
19 was taking summer class to get into UT Memphis, and
20 I was taking summer class to get into Union. And we
21 met there and started dating. And we dated for a
22 couple of years while she finished school, while I
23 finished school. And when we got married, I moved
24 to Paris, and I got a job at Dana. And how I wound
25 up at Tennessee Asphalt Company was the -- my

1 previous superintendent or boss worked for Tennessee
2 Asphalt Company, who is also from Halls, and I -- I
3 didn't even know he was in Paris. I was living in
4 Paris, and he was living in Paris, and I run into
5 him one day at a restaurant. And we got to talking,
6 and he was looking for an estimator, and that's how
7 I wound up at Tennessee Asphalt Company.

8 Q Who is that?

9 A Jon, J-O-N, Hargett.

10 Q And you said he had been your boss before.
11 Was this before you went back to college?

12 A No. He -- no.

13 Q I'm sorry.

14 A No. He was my boss -- Austin Bateman is
15 my boss now.

16 Q All right.

17 A And Jon was my boss from '97 until August
18 of '90 -- of 2006, I guess.

19 Q Okay. But I thought you said you knew Jon
20 Hargett before you --

21 A No. We were at school together in Halls.

22 Q Okay.

23 A We were both -- I'm a year older than him.
24 He's from Halls, and I'm from Halls, and that's how
25 we knew each other.

1 Q All right. Are you still an estimator?

2 A Yes, sir.

3 Q I'm going to ask you a question that
4 sounds crazy.

5 A Okay.

6 Q Because asking what an estimator does, he
7 estimates. But tell me a little bit deeper, what do
8 you do, and how do you do it?

9 A Well, if somebody calls and wants a price
10 on something, whatever it is, I go out and -- I've
11 got a measuring wheel, and I'll just go out, measure
12 the area that they want paved or any kind of work,
13 silt coating or whatever, but -- and that's how I
14 gather my square yards is based off of the
15 measurements I get in the field. And usually I take
16 a -- I've got a grid, eight-and-a-half-by-eleven
17 grid paper that I'll sketch it out while I'm out in
18 the field and make notes, you know, different things
19 that I might need to know later. But -- and then
20 I'll come back to the office, and I will not put the
21 drawing to a scale, but I will, you know, use a
22 ruler and make it neat and clean. And that's where
23 I work up my price based on the square yards,
24 depending on what the customer wants, you know, two
25 inches overlay or four inches or whatever, you know.

1 And I'll just work my price up on my spreadsheet.
2 Then I'll take my proposal -- I print a proposal and
3 put a drawing with it and mail it out to the
4 customer.

5 Q Would it be -- I'm not familiar with
6 paving other than driving on it, but I have done
7 some construction work and dealt with estimators for
8 roofs, and they would go out to a house and look at
9 a roof and say, "Well, the roof needs to be torn off
10 and put back on, or it needs to have -- it's got
11 some damage, it needs to have some decking put
12 down," things like that. Is that similar to what
13 you do? How do you know what needs to be -- in
14 making an estimate, how do you know what needs to be
15 done?

16 A It depends on what the customer wants.

17 Q Okay. Tell me about that.

18 A I mean, if they want to totally remove and
19 replace, that's a whole lot different from a
20 two-inch overlay or inch-and-a-half overlay.

21 Q How does a customer tell you what he wants
22 done?

23 A It depends on the job, but, I mean, if --
24 let's take a driveway, for example. If it's already
25 paved, you know, they'll call and say, "I need an

1 overlay," and I'll go out and measure it, you know.
2 Depending on what it looks like, I may -- you know,
3 you need a two-inch overlay or inch-and-a-half
4 overlay, or I have turned some jobs down that didn't
5 need overlaying because they were at a point where
6 there was some -- well, cracked up and, you know,
7 but --

8 Q What does it mean when they're cracked up?

9 A Well, I mean, it can mean a lot of things.
10 It could be surface cracking. It could be subgrade
11 cracking.

12 Q I've dealt with some houses, and I've
13 always heard or have seen in some cases where you
14 see a big crack that runs from the top through the
15 mortar to the bricks at the bottom. It usually
16 means there's been some settling. Is that what
17 you're saying?

18 A I'm sure there's some settling going on,
19 ground movement, I would think, yeah.

20 Q Do you have -- when you went to school
21 either at Dyersburg State or Union, did you take any
22 engineering courses?

23 A No, sir.

24 Q When you went to work for Tennessee
25 Asphalt, did you take any engineering courses?

1 A No, sir.

2 Q So what you have is sort of on-the-job
3 training doing the estimating?

4 A Yes, sir.

5 Q And if you had any engineering questions,
6 would you go ask an engineer?

7 A I would -- yes, sir, I would propose those
8 to either Austin or Jon at the time, because he was
9 an engineer also, and Austin is.

10 Q How do you know if there's an engineering
11 question that you need to ask about?

12 A We don't have a lot of engineering
13 questions on call-ins. I mean, if somebody sends a
14 set of plans in and a spec book, you know, I'll read
15 through, and if there's something that, you know,
16 engineering-wise that I don't know or am not
17 comfortable addressing, I'll usually ask Austin or,
18 you know, at the time Jon.

19 Q Let me try to ask it this way. There are
20 things that you know you know and things you know
21 you don't know.

22 A Right.

23 Q But there are things you don't know you
24 don't know using Rumsfeld's speech. Has anybody
25 ever talked to you about things to look out for

1 because it might indicate some hidden problem or
2 might be above your pay grade, for example, that you
3 need to get some help on? Is there a list of things
4 or any training on that?

5 A Not that I'm aware of.

6 Q Okay. Well, you said that you could --
7 you knew that -- or you had turned down an overlay
8 job on a driveway because it was cracked. How did
9 you know that was an indication of a bigger problem
10 than just a surface problem?

11 A Well, if it's alligatored -- and that's a
12 term.

13 Q I think I know what you're saying,
14 although I've never heard it before. But I get a
15 mental picture, you know.

16 A From my ten years of on-the-job training,
17 I think -- or I think that is a subgrade issue.

18 Q Okay. I'm not arguing with you. I'm
19 really asking you how you became aware of that as
20 being a subgrade issue.

21 A Ten years of looking at work. You know,
22 I've taken a lot of one-hour classes before, here
23 and there, on subgrade, but that by no means makes
24 me an expert soils person.

25 Q Does TAC have soil experts either as

1 employees or that they consult with on a regular
2 basis?

3 A To my knowledge, to answer the first part,
4 no, TAC does not have a soils engineer that I know
5 of.

6 Q If -- if you go on a job and you perceive
7 a subgrade soil problem, do you go to Austin or
8 somebody, or do you contact somebody outside of the
9 company to give you some advice?

10 A Neither. I mean, I don't -- every job I
11 go to, I don't investigate subsoil conditions.

12 Q Do you on some?

13 A Not unless they're from the beginning of
14 the job, like a plan, like a bid that we get plans
15 and specs on and get a soils report in it. But if
16 it's an overlay or anything like that, I do not -- I
17 don't inspect the soil and don't request an
18 inspection on it.

19 Q Well, here's what I'm trying to
20 understand. You said, "I looked at a driveway, for
21 example --

22 A Yeah.

23 Q -- and they wanted it overlaid, and I saw
24 cracking or alligatoring or whatever it was, and I
25 wouldn't do it." At some -- there's a reason you

1 wouldn't do it, and I'm trying to understand how you
2 got to that point.

3 A Well, if you -- you know, if you go to a
4 driveway and it's -- you can obviously tell that it
5 is subgrade failing, rutting, mud pumping up,
6 whatever. I mean, I'm not -- you know, the customer
7 -- you know, you can go in there and tell a
8 customer, you know, "I think that you've got a
9 subgrade problem here, you know. We're not going to
10 overlay that, your driveway."

11 Q Well, that sounds reasonable.

12 A Yeah. But I don't continue on and
13 investigate the subgrading. I mean, they can --

14 Q But you have turned down jobs?

15 A I shouldn't have said that. I mean, I
16 don't turn down jobs, but I -- you know, they're not
17 -- if you take a \$2,000 overlay for a driveway
18 that's going to turn into ten by a remove and
19 replace, I don't propose that. I don't -- I don't
20 want to get involved in that, I guess.

21 Q Well, is it because if you do a 2,000
22 overlay, it's not going to be long before it's
23 rutted and messed up and you have an unsatisfied
24 customer?

25 A I just want the -- to give the customer

1 the best job I can give them, and to put two inches
2 on something like that would be the wrong thing to
3 do.

4 Q Is that because it's not going to achieve
5 the desired result of having a smooth surface of a
6 driveway?

7 A I think that would be correct.

8 Q So you've got enough understanding of
9 subsoil to know at least in that obvious situation
10 that's like putting a Band-Aid over a broken bone;
11 it's just not going to fix the problem?

12 A Right, right.

13 Q Have you ever asked for an engineering
14 consultation on a job you estimated where you
15 thought there was or there might be subsoil or
16 subsurface conditions?

17 A No, sir.

18 Q How many jobs do you -- do you estimate?
19 Do you do one a day, ten a day?

20 A During, you know, from March to October,
21 well, November, I might do two, three a day. I may
22 go two days without doing any.

23 Q If you're not doing estimating, what do
24 you do?

25 A Generally paperwork, billing, you know,

1 stuff like -- just office work.

2 Q Are you paid a salary, by the hour, or are
3 you paid by the job?

4 A Salary.

5 Q So the amount of work that's done, does
6 that reflect in terms of bonuses or compensation?

7 A No, sir.

8 Q Somebody told me that TAC had been sold
9 recently; is that true?

10 A Yes.

11 Q Who did they get sold to?

12 A Delta Contracting bought Paris office.

13 Q Is that one of the Dement companies?

14 A Yes, sir.

15 Q Did you get sold with them?

16 A Yes, sir, I guess. I'm still there
17 anyway, right now.

18 Q Are y'all still doing business as TAC, or
19 are you going to come under the Delta?

20 A We're doing business as Delta Contracting.

21 Q Are you doing the same thing now with
22 Delta that you did for TAC?

23 A Yes, sir.

24 Q Did all the employees migrate to Delta, or
25 did they pick and choose?

1 A Everyone that was employed at the Paris
2 office is employed by Delta Contracting.

3 Q And you still report to the same people
4 you used to?

5 A Austin, I guess. Is that what you mean,
6 Mr. Cobb? I mean --

7 Q You can call me Lewis if you want to.

8 A Okay.

9 Q Yeah, that's kind of what I'm asking.

10 A Okay.

11 Q Is your chain of command the same now as
12 it was?

13 A Yeah. That happened in April, so I'm not
14 real familiar with a lot of the people at Delta
15 anyway.

16 Q All right. What did you do between high
17 school and college?

18 A I worked in a factory in Dyersburg,
19 Tennessee. I don't even remember the name of it.

20 Q I don't blame you. That's a good
21 motivator, right, to go back to school?

22 A Yes, sir. I boxed parts. I remember
23 that.

24 Q And does your wife work outside the home?

25 A Yes, sir.

1 Q What does she do?

2 A She's a dental hygienist.

3 Q Who does she work for?

4 A Doctors David Travis and George Whitfield
5 in Paris, Tennessee.

6 Q Y'all have children?

7 A Yes, sir.

8 Q How many?

9 A Two.

10 Q How old are they?

11 A My son, Ethan, will be eight Friday, and
12 my little girl, Abbey, will be five in February.

13 Q Now, I was looking at the notes that
14 Mr. Cashion -- it probably wasn't him personally --
15 but his office provided to me, and I would like to
16 ask you, have you looked at these in getting ready
17 for your deposition?

18 A The material tickets? I mean, just
19 everything?

20 Q Yeah. I really want to know if you've
21 looked at these recently, because I want to ask you
22 some questions about them.

23 A Okay. Yeah, I mean --

24 Q For example, some of them look like you
25 prepared them. Some of them look like they may have

1 been prepared by somebody else. I would like to go
2 through and understand who did what.

3 A Yeah. I mean, I --

4 Q Are you generally familiar with that
5 stuff?

6 A Yes, yes, sir.

7 Q Before we start going into the details of
8 that, let me ask you, in getting ready for the
9 deposition, obviously you drove from Paris to
10 Jackson today.

11 A Uh-huh.

12 Q Did you do anything else in preparation?

13 A No, sir.

14 Q Did you meet with anybody anytime?

15 A No. I mean, I went by the office this
16 morning and got my file, and Austin was there.

17 Q What I'm asking you is -- and I'm not
18 saying there's anything wrong with you doing it.
19 I'm assuming before you came to the deposition you
20 talked to somebody in Mr. Cashion's office about
21 what you knew, what a deposition is like, and things
22 like that in preparation?

23 A Oh, yeah.

24 Q Just tell me what you did in preparation
25 for the deposition.

1 A I just --

2 MR. CASHION: I would say, he's
3 not asking you what we talked about. He's just
4 saying what -- I don't want you to tell him
5 anything we talked about. You're getting kind
6 of close there, Lewis.

7 MR. COBB: Okay. But I
8 didn't -- I didn't get into subsurface
9 conditions.

10 A I don't know. I just reviewed the file
11 and tried to prepare myself to be here.

12 Q (By Mr. Cobb) Did you see anything in the
13 file that you thought was inaccurate or needed to be
14 changed?

15 A No, sir.

16 Q Are all these documents prepared on or
17 around the date that's on there?

18 A As far as I know, yes, sir.

19 Q Okay. Did you look at any photographs?

20 A Yes, sir.

21 Q And are those photographs in here, or were
22 they in Mr. Cashion's possession?

23 A We got photographs. I got some. And then
24 I sent some to Mr. Cashion.

25 Q Did you see photographs that someone else

1 had taken?

2 A You mean other than Tennessee Asphalt?

3 Q Yeah.

4 A No, sir.

5 Q I mean, Monte took some, and I sent those.

6 I just wondered if you had a chance to look at

7 those.

8 A No, sir.

9 MR. CASHION: We did look at the
10 aerial.

11 THE WITNESS: Yeah.

12 MR. CASHION: That was Exhibit
13 9. He explained some things to me about that.

14 THE WITNESS: Yeah, I'm sorry.

15 MR. CASHION: They took a whole
16 bunch, they said, yesterday, but we didn't -- I
17 didn't show those to you.

18 THE WITNESS: Right.

19 A No, I haven't.

20 Q (By Mr. Cobb) Is this the first deposition
21 you've given?

22 A Yes, sir.

23 Q Have you ever been involved in any other
24 litigation that involved Tennessee Asphalt?

25 A Yes, sir. And I'm sorry, I don't remember

1 the date, but it's been three or four years ago. I
2 was company representative on a work comp deposition
3 here in Jackson, not -- just as a representative of
4 the company.

5 Q All right. Any other depositions?

6 A No, sir.

7 Q Have you ever been involved in any
8 litigation or dispute where a customer is
9 unsatisfied with the result?

10 A No, sir.

11 Q All right. Let me just go through and get
12 you to identify the documents that you can identify.

13 A Okay.

14 Q In this file -- and they're bates -- do you
15 know what I'm talking about when I say
16 "bates-stamped"?

17 A No, sir.

18 Q All right. When a case goes to litigation
19 and documents are produced, oftentimes the parties
20 will have a numbering system for document
21 production, and here it has "SCO." I'm assuming
22 that's Smith, Cashion & Orr.

23 MR. CASHION: Right.

24 Q (By Mr. Cobb) 0001. So that means that
25 that law firm had someone go through and hand-stamp,

1 or as they made a copy, they put that on there. So
2 when I talk about bates stamp number --

3 A Okay.

4 Q -- that's what I'm talking about.

5 There's a collection of documents
6 that started SC01 and go through SCO --

7 A 28.

8 Q 28?

9 A Uh-huh.

10 Q And the front page has "Copy, Job File,
11 Northwest Tennessee MotorSports Park." Can you tell
12 me what is in that file?

13 A In here?

14 Q Yes, sir. Just identify it and --

15 A Material tickets.

16 Q All right.

17 MR. COBB: I'd like to have that

18 -- I'm not going to have it marked.

19 Q (By Mr. Cobb) All right. The next in
20 order looks like there is a fax to you from Adam
21 Perkinson, and it looks like that's numbers 44 and
22 47.

23 A Okay.

24 Q What is that?

25 A That is the invoice that I generated for

1 Adam regarding the cost for the Northwest Tennessee
2 Motorsports Park.

3 Q And who is Adam?

4 A Adam Perkinson, he's our controller, or
5 was.

6 Q The fax cover sheet is dated 8-22-07?

7 A Uh-huh.

8 Q Is that yes?

9 A Yes, sir.

10 Q And I'm trying to make you aware when you
11 say "uh-huh" and "huh-uh" that they are spelled
12 about the same.

13 A Okay.

14 Q And your answers will not be clear --

15 A I understand.

16 Q -- unless I get you to pick one of those.

17 A I understand.

18 Q Next is what I think you were describing
19 about grid paper.

20 A Yeah.

21 Q I would call it graph paper.

22 A Right.

23 Q But it has lines horizontal and vertical,
24 what, about six to eight per inch, and this is the
25 hand -- I'm assuming this is the drawing that you

1 did back at the office?

2 A Yes.

3 Q Okay. Not your field notes?

4 A No.

5 Q Do you know the date that that was
6 created?

7 A No, sir.

8 Q In looking at bates stamp 48 --

9 A Uh-huh.

10 Q -- it has some indications of core four,
11 core three, core two, core one, correct?

12 A Correct.

13 Q And did you do these?

14 A I did not do the actual coring. I drew
15 that drawing.

16 Q But this is your drawing?

17 A Yes, sir.

18 Q Who did the coring?

19 A Danny Wimberley and --

20 Q David Evans?

21 A No, sir. Just Danny, I do believe.

22 Q All right. Was this before you started
23 paving?

24 A Yes, sir.

25 Q All right. What was the purpose of those

1 corings?

2 A I wanted to check the asphalt depth.

3 Q And what was the reason for that?

4 A I was -- we were going to mill two inches
5 of asphalt off, so I wanted to make -- well, I
6 wanted to see how much asphalt was there.

7 Q All right.

8 A So if I milled two inches off, I was
9 hoping to have asphalt to pave over instead of stone
10 base.

11 Q And what did you -- what did you learn as
12 a result of that coring?

13 A They were very random in depth, the cores.

14 Q Did you document what the coring sample
15 showed?

16 A Yes, sir. I believe it's on the back of
17 there. Inch and seven-eighths to three inches.

18 Q Is that what's on the back of the page
19 stapled to this?

20 A Yes, sir.

21 Q And it's bates-stamped 49?

22 A Yes, sir.

23 Q And is this your handwriting?

24 A Yes, sir.

25 Q Let me look at it right-side-up again.

1 All right. If you would, let me just
2 make sure I read this right. Four cores?

3 A Uh-huh, yes, sir.

4 Q Depth --

5 A Ranged.

6 Q Why don't you read it because it's upside
7 down to me.

8 A "Depth ranged from an inch and
9 seven-eighths to three inches."

10 Q All right.

11 A "Cored on first part of April. Two of the
12 four holes had water present after removing cores."

13 Q Is that a good sign or a bad sign?

14 A Water, bad.

15 Q Why is that bad?

16 A It means there's water present in the
17 subgrade.

18 Q And is that good or bad?

19 A That's bad.

20 Q Why is that bad?

21 A Well, you just have saturated subgrade. I
22 mean --

23 Q Well, you're not worried about you getting
24 your feet wet, though, are you? I mean, why is it
25 bad?

1 A Well, I mean, you take a gravel base or
2 gravel material and introduce water to it, and it's
3 -- it -- it makes -- I mean, it -- I don't know how
4 to say it. I mean, it -- it certainly don't need to
5 be there. You know, your subgrade is not going to
6 be as hard. I mean, your gravel base is not going
7 to be hard with water in it.

8 Q And if your gravel base is not hard, what
9 happens?

10 A You could have base or subgrade failure
11 because it may be water in the subgrade as well.

12 Q And if you have subgrade or base failure,
13 what happens if you try to pave over it?

14 A It falls apart.

15 Q Okay. Did you ask an engineer to take a
16 look at that?

17 A No, sir.

18 Q Did you need an engineer to tell you, or
19 is that something that just everybody knows?

20 A I don't know if everybody knows it.

21 Q Everybody in the paving business that
22 that's just bad news?

23 A I don't know. I mean, I --

24 Q Well, let me ask you an open-ended
25 question then.

1 A Okay.

2 Q After you got the cores and noticed there
3 were water in two of the four holes, what did you
4 do?

5 A I don't think I did anything. I mean, I
6 didn't -- I didn't do anything.

7 Q Okay. All right. What was the next thing
8 that you did?

9 A What do you mean? After the cores?

10 Q Right. You took cores to determine the
11 depth of the asphalt, correct?

12 A Correct.

13 Q Did you give any written instructions to
14 the person that did the coring?

15 A No.

16 Q Did he give you a written report?

17 A No, sir.

18 Q Did you just -- I mean, did you just
19 eyeball it?

20 A No -- I mean, oh, he gave me that
21 information, the depth, and there was water in two.
22 I was not there when they cored it.

23 Q Okay. Well --

24 A He just -- I asked him what the cores
25 looked like.

1 Q You had a conversation, "What did the
2 cores look like," and he says, "Well, I took four"?

3 A Correct.

4 Q This, this, this, and this?

5 A I wrote as he talked.

6 Q All right. He does the coring, you get
7 the reports, you write down the information, and
8 then at some point the paving started. What I want
9 to know is was that the very next thing that
10 happened, or what happened next in time? Just take
11 me through the job as it progressed.

12 A Well, I'm trying to remember the date that
13 we cut the cores, and I can't, so --

14 Q And if you need to look at the file, you
15 can look at mine, or it may be that you have yours.

16 A I'm just trying --

17 Q This is not a memory test. That's why you
18 write stuff down, so you don't have to remember.

19 A Right. I just don't remember what day we
20 took the cores. I remember -- I know we started
21 paving on -- or milling on May 30th -- I mean
22 April 30th. And --

23 Q Well, let me ask you, read this right
24 here.

25 A "The first part of April." Okay.

1 Q Okay.

2 A So from that point we didn't do anything
3 until we came to mill regarding this job that I know
4 of.

5 Q Did you -- did you realize from your ten
6 years' experience that paving on top of a base that
7 had water in it might not be successful?

8 A Not really based on the size of the paving
9 area, 700 by 50, a core, you know -- one core -- or
10 two cores had water in it. I'm not going to say
11 that it didn't -- you know, I didn't run it through
12 my mind twice, but, I mean, I didn't question paving
13 the drag strip based on that information.

14 Q Would taking more cores have given you a
15 better understanding of what you were dealing with?

16 A No, sir, because all I was after was
17 asphalt depth.

18 Q Okay.

19 A I didn't -- you know, I didn't -- what was
20 below the asphalt really didn't concern me a great
21 deal. I was just checking asphalt depth --

22 Q Okay.

23 A -- for my information.

24 Q All right. I think I understand what
25 you're saying, but I want to make sure that I

1 understand. Tell me why you say you weren't
2 concerned about what was under the asphalt.

3 A Because we were just overlaying. We're
4 not responsible for the subgrade.

5 Q Okay.

6 A I mean, you can't -- yeah.

7 Q Do you think you have a responsibility to
8 alert the owners or the customers of possible
9 problems if you discover them?

10 A If I discover them, I might, but --

11 Q Did you discover this to be a possible
12 problem?

13 A No, I did not, no, sir.

14 Q You know now that there was a problem?

15 A Yes, sir.

16 Q And you know now that David Evans and his
17 company did corings and found out there was water?

18 A Correct.

19 Q And you would agree that the paving that
20 was done out there failed?

21 A Yes.

22 Q And the reason for the failure was the
23 water in the subsurface?

24 A I can't -- I can't answer that.

25 Q Have you read his report?

1 A Yes, sir.

2 Q Doesn't he say that?

3 A I believe he does.

4 Q Okay. So you know -- if he's telling the
5 truth, then you know that?

6 A Based on what he says, yes, sir.

7 Q And the first part of April you had
8 indications from your corings that there was water
9 in there, correct?

10 A Correct.

11 Q Okay. Did you ever send any letter or
12 give that information to the customers?

13 A Not that I'm aware of.

14 Q Okay. Did you ever report that to any of
15 your supervisors, that our corings found water in
16 the ground?

17 A Austin knew.

18 Q And when did you tell Austin?

19 A I guess probably the day that Danny told
20 me.

21 Q And Austin is an engineer?

22 A Yes, sir.

23 Q And he said, "Forget about it," or what?

24 A Well, he didn't say that. We probably
25 just didn't -- we didn't go into great detail

1 discussing it because we're --

2 Q Well, I'm not trying to make light, but
3 did he say, "I don't think it's a problem," or "I
4 think it's a problem, don't worry about it," or "Who
5 cares, let's just pave it and get our money and go
6 on to the next job"?

7 A No, sir. I don't think he said any of
8 those three. I don't think we discussed other than
9 there's water in two cores.

10 Q Did anybody suggest taking some more cores
11 to see the magnitude of the problem?

12 A No, sir.

13 Q Did anybody suggest we might need to take
14 some deeper cores to see the magnitude of the
15 problem?

16 A No, sir.

17 Q Why not?

18 A Because we were just overlaying the
19 runway. I wasn't doing an investigation of the
20 subgrade or base.

21 Q Well, why not?

22 A Because it was just a two-inch overlay on
23 existing -- or mill two inches off and pave two
24 inches.

25 Q But if you have reason to believe that

1 that's going to be a failure, don't you think you as
2 an estimator owe them the benefit of that
3 information?

4 MR. CASHION: Object to the form
5 of the question.

6 Q (By Mr. Cobb) He's objecting to me. You
7 can still answer it if you can still answer it.

8 A I mean, I -- you can't gather -- in my
9 opinion, you can't gather enough information off of
10 two cores with water to determine whether it's going
11 to fail or not.

12 Q How many would you need?

13 A I have no idea. I'm not an engineer. I'm
14 not a soils person.

15 Q Wait a minute. You said two is not
16 enough, so you've got an opinion about that. How
17 many is enough?

18 A I don't know.

19 Q Well, who does know?

20 A I guess somebody like David Evans would
21 know, Construction Materials.

22 Q My question was a little different. Let
23 me go back to that. Do you believe that TAC owes
24 its customers the benefit of the information that
25 they gather that there may be a problem underneath

1 the paving?

2 A I said from day one that I was -- there
3 might be a problem from 2004. So at this point, no,
4 sir, I don't. I mean, Corey and I talked in 2004
5 and were concerned about -- or I was concerned about
6 subgrade at that point.

7 Q Tell me about that.

8 A It was 2004 that we -- that I first
9 contacted Corey and we talked about -- or Corey
10 called the office, and we talked about crack sealing
11 and striping the strip, drag strip, and then I
12 believe it was about a month later in '04 that Corey
13 and I talked again, and he wanted a price on paving.
14 So I gave him a price on paving, and, you know,
15 during that time I don't think we talked a great
16 deal about subgrade, because we went from crack
17 sealing, which I'm not -- you know, we're talking
18 about a pickup truck -- to paving as kind of a
19 budget number. I don't know if we called it that or
20 not, but anyway -- and then it wasn't again until
21 '07 that Corey called and wanted to look again at
22 revisiting what we talked about. And I -- we
23 started talking about subgrade at that point before
24 a proposal was ever signed.

25 Q Tell me what you said about subgrade.

1 A I just told him that, you know -- and I
2 do -- I do this for just about every job I do, you
3 know. This price includes whatever the scope is,
4 whether it's mill and pave or just pave only. You
5 know, we can't be responsible -- if we mill off two
6 inches of asphalt and it just falls apart, we can't
7 be responsible for that.

8 Q Is that what you told Corey?

9 A Yes, sir.

10 Q Did you tell him why you were concerned
11 about the subgrade?

12 A I'm concerned on every job that's an older
13 job for subgrade.

14 Q And why is that?

15 A Age. Nothing lasts forever.

16 Q Well, okay. Remember now you've done this
17 for ten years, and I have almost no experience. So
18 if I ask you a question that you say, "I can't
19 believe he doesn't understand it," believe it. I
20 don't understand it.

21 A I understand.

22 Q I mean, my -- I do have some experience
23 that if I'm working on a hundred-year-old house, I'm
24 assuming that it's got problems in being updated to
25 modern conditions. That is within my field of

1 experience. On paving, I really don't understand
2 why you would be concerned about subgrade, but
3 that's probably because of my ignorance. Help me
4 out.

5 A Asphalt is a pliable product.

6 Q Okay.

7 A It's not a rigid product. It's only as
8 good as what's under it.

9 Q Okay.

10 A And if you don't have a proper subgrade
11 and a proper -- either gravel base or -- stone base
12 or gravel, then the top is no good. I mean, it's --
13 I mean, for the top to be strong and viable and
14 last, you've got to have a good subgrade and gravel
15 base.

16 Q It's like building a house without knowing
17 what the foundation is like?

18 A Right. I mean, you know, you were talking
19 about roofing earlier. I mean, if --

20 Q If you've got rotten rafters --

21 A Yes, sir.

22 Q -- you could fall through while you're
23 putting the best roof on?

24 A And if you -- you know, if you contract
25 with a fellow to put a new roof on and he don't tell

1 you that, I mean, I don't -- you know, who's
2 responsible for the decking.

3 Q So finding water in the gravel would be
4 sort of like finding rotten wood under a roof?

5 A I'd say that'd be a good comparison.

6 Q Okay. Help me understand what coring is.
7 David Evans said they took a backhoe and actually
8 dug a -- I think he called it a pit. And my
9 understanding is that's not what y'all did, but I
10 don't understand what you did. The only thing I
11 have seen that looks like maybe coring is when
12 they're making the new holes in the golf course and
13 it goes down and takes a chunk out. Is that what --

14 A Yes, sir.

15 Q Is that done by a hand or by a machine?

16 A A machine.

17 Q Is that called a coring machine?

18 A Yes, sir.

19 Q What does it look like?

20 A There's different ones. Ours is a --
21 looks like a drill press.

22 Q Just (indictes)?

23 A Yes, sir.

24 Q How big is it?

25 A Lewis, I'm not real sure. I'm not --

1 Q Do you put it on --

2 A -- around that machine much.

3 Q Do you put it on wheels and roll it like

4 a --

5 A Yeah, just like a dolly.

6 Q Okay.

7 A You know, you've got to load it in a
8 truck. I mean, it will fit in the back of a pickup
9 truck.

10 Q All right.

11 A And I don't know how big the --

12 Q The diameter?

13 A -- the inside diameter of the core is. I
14 mean, Danny knows that.

15 Q Like a drill press, can you set it for
16 variable depths?

17 A I'm not sure on that. I've just not been
18 around it much. I don't know that much about it.

19 Q When the cores were taken were you there,
20 or did you just get the report?

21 A I just got the report.

22 Q And who did the coring?

23 A Danny Wimberley.

24 Q Does he still work for TAC?

25 A Yes, sir.

1 Q Who was it that suggested that corings
2 needed to be done?

3 A I wanted to core it, so I guess I did.

4 Q All right.

5 A But, again, to check asphalt depth, not
6 gravel depth or subgrade.

7 Q And did you talk to Corey or to Monte or
8 anybody about --

9 A Did not talk to Monte. I can't honestly
10 remember if Corey and I talked between the coring
11 and the paving.

12 Q All right.

13 A We very well might have, but I can't --

14 Q Did you use the corings to check on the
15 depth of the gravel also?

16 A No, sir.

17 Q If the corings had come back and you knew
18 that doing the paving would not be a satisfactory
19 service, would you do the paving anyway, or would
20 you tell Corey and Monte, "This is just not going to
21 work"?

22 A If I knew it was going to turn into what
23 it did, I certainly wouldn't have done it. I would
24 have went to both of them and told them, "We don't
25 need to do this."

1 Q Okay.

2 A I didn't know it was going to do that.

3 Q When did you realize that it had turned
4 into what it became?

5 A The day we paved. What was that, April --

6 MR. CASHION: May 1st.

7 A May 1st, that afternoon.

8 Q (By Mr. Cobb) Were you there on the job
9 when it began?

10 A I was there the day we milled.

11 Q All right.

12 A And I got there the afternoon that we
13 paved. I was not there what we call our first
14 pull --

15 Q Okay.

16 A -- with a paver.

17 Q Okay. Tell me about that.

18 A It's where we call a -- when we set the
19 paver down and go down the street or roller or
20 whatever, parking lot, we call that a pull.

21 Q But you're actually laying asphalt down as
22 you go?

23 A Yes, sir.

24 Q Do you lay a layer and come back and lay a
25 second layer?

1 A If the specs call for that.

2 Q All right. Did the specs in this case
3 call for --

4 A No, sir.

5 Q -- one pull or more than one pull?

6 A One pull.

7 Q All right.

8 MR. COBB: Let's go off the
9 record just a second.

10 (Off the record.)

11 Q (By Mr. Cobb) Just as we're going through
12 the documents, the first 28 pages are here, and it
13 appears a gap and then the next set -- or the next
14 page is 44. 45 and 46 are out. 47 is here, and
15 then 48 was the graph paper with the coring samples.
16 The next one in order was number 50. Was that
17 prepared by you?

18 A Yes, sir.

19 Q And was that prepared back at the office?

20 A Yes, sir.

21 Q And I say that because the lines look like
22 they were drawn with a straightedge.

23 A Yes, sir.

24 Q Was that done before the other one or
25 afterwards?

1 A I do not remember. That is a -- the
2 drawing that I attached to the work order, which is
3 our internal work order that we -- that I give to
4 the paving crew or whatever, I -- I don't remember
5 if that was before or after the other. When I get
6 the contract back, whatever date that was from
7 Corey, within a day or two I would do this, so --

8 Q All right.

9 A I don't remember what --

10 Q And, again, it's a very simple drawing.
11 Let me see Exhibit 9. What you're doing is trying
12 to make a simple illustration --

13 A Right.

14 Q -- of the things on Exhibit 9?

15 All right. In your drawing you have
16 a section called "concrete slab" with a "start."

17 A Uh-huh.

18 Q And I've got on Exhibit 9 a thing called
19 "start" with an arrow.

20 A Yes, sir.

21 Q Is that the start?

22 A For the paving?

23 Q Yes.

24 A It would be here at the beginning of the
25 concrete.

1 Q I mean, is that the starting line?

2 A Oh, yes, sir, for the track itself.

3 Q Right. And it's in concrete?

4 A Yes, sir.

5 Q And then the racing part is 700 feet long
6 and about 50 feet wide?

7 A Yes, sir.

8 Q Okay. And then you have a line across it
9 and have another 700 feet by 50, and you call it the
10 slowdown area?

11 A Yes, sir.

12 Q Okay. Does this photograph appear to be a
13 fair representation of the track?

14 A Yes, sir.

15 Q All right. And it's my understanding that
16 the work that was going to be done was to mill and
17 repave the 700 feet that's designated as the
18 racetrack?

19 A Yes, sir.

20 Q And there was nothing indicated it was
21 going to be done on the 700 feet after that, the
22 slowdown area, right?

23 A Originally. But there was a change order.

24 Q All right.

25 A For a patch.

1 Q The next set of documents appears to be
2 five pages, and it's to Monte from John Taylor.

3 A Uh-huh.

4 Q And I'm assuming that that's something you
5 prepared.

6 A (The witness nods head affirmatively.)

7 Q And what was that for?

8 A Unit pricing for digout and put back --

9 Q Okay.

10 A -- of the subgrade and gravel.

11 Q All right. And it looks like to me -- I
12 need you to confirm -- it was faxed on May 4th,
13 2007, at about 6:22. Would that be a.m.?

14 A No, sir, p.m. Well --

15 Q I'm not arguing that. How do you know
16 that, or is that just what you recall?

17 A Well, we generated these the day that Bill
18 Ratliff came down and visited.

19 Q Okay.

20 A I went straight back to the office, and
21 talking to Austin and Bill and myself, we generated
22 some unit pricing for Monte and coring.

23 Q And the unit pricing was -- let me back up
24 and start again.

25 By this time you knew there was a

1 problem with that job?

2 A Yes, sir.

3 Q And you were talking about, "What do we do
4 now"?

5 A Yes, sir.

6 Q And so you were trying to give some unit
7 pricing on how to fix what was out there, correct?

8 A Correct.

9 Q But it was not a set price like the first
10 contract?

11 A Right.

12 Q Because you didn't know how much it was
13 going to take --

14 A Correct.

15 Q -- till you got it fixed?

16 A Correct.

17 Q Okay. Had there been any additional
18 coring done at this time to give an idea of the
19 magnitude of the problem?

20 A Not that I'm aware of.

21 Q The next document is page 56. What is
22 that?

23 A That is another one that is generated that
24 was probably not sent to -- Austin, Bill, and I, we
25 went -- we did this many ways.

1 Q Okay.

2 A We tried to do it as reasonable as we
3 could to try to help Monte and Corey. We tried to
4 -- you know, at one time we had like the geofabric a
5 dollar fifty a square yard. That's what it was
6 going to cost us to buy it and haul it to Gleason.
7 We didn't have any labor to install it or anything
8 like that. You know, and then the invoice price,
9 instead of saying a dollar fifty, we went invoice
10 price, and that way if it was fifty cents, we didn't
11 care, if it was a quarter, you know.

12 Q All right.

13 A So that's why there's so many of these in
14 there.

15 Q All right.

16 A Because, you know, we would talk about it,
17 and I would print it, type it, print it, go in there
18 and talk to Austin, and we'd starting walking
19 through it and say, "Well, let's just do him a
20 price." So, you know, that's why that's going to be
21 different on scenarios with those. And I'm sure
22 there's another one in there somewhere, because we
23 wound up -- if I'm not mistaken, it wound up at one
24 point in time we were not going to charge for
25 equipment at all. Bill was going to take care of

1 that.

2 Q All right.

3 A Toward the end of our conversation we were
4 not going to charge anything but material and labor.

5 Q And that's not your standard rate, right?

6 A No, sir.

7 Q What was the reason for quoting lower
8 rates?

9 A To try to help Monte and Corey.

10 Q Was there recognition that TAC may have
11 had some responsibility for the problem?

12 MR. CASHION: Object to the
13 form.

14 A (The witness shakes head negatively.)

15 MR. CASHION: Did you answer?

16 THE WITNESS: I didn't answer.

17 MR. COBB: He just shook his
18 head.

19 Q (By Mr. Cobb) I took that for a no, but
20 use your words.

21 A I don't know if I should --

22 MR. CASHION: You can answer it.
23 My objection is to his question.

24 THE WITNESS: Okay.

25 MR. CASHION: If I deem you

1 don't need to answer, I'll say, "Don't answer."

2 THE WITNESS: Okay.

3 Q (By Mr. Cobb) You were shaking your head
4 no.

5 A Could you repeat your question?

6 Q I doubt it, but I'll do the best I can.

7 The quotes that TAC gave to Corey and
8 Monte were substantially below regular retail rates,
9 correct?

10 A Yes, sir.

11 Q And I asked, was that because TAC was
12 acknowledging that it had some responsibility for
13 the problem out there?

14 MR. CASHION: Same objection.

15 A No, sir.

16 Q (By Mr. Cobb) All right. What was it?

17 A I think Bill wanted to do it because he
18 did not want to see Monte and Corey lose -- I don't
19 know their financial situation, and Bill didn't
20 either, but we're not -- we didn't want to see them
21 go bankrupt over this thing. We were trying to get
22 in there -- we were trying to come up with a way to
23 get it fixed as cheap as possible and pave it, and
24 that's why we went from a hundred dollars an hour to
25 whatever to no charge, I mean.

1 Q Okay.

2 A Bill is going to have to answer that for
3 himself, but that's --

4 Q I understand.

5 A That was his call.

6 Q Well, were you there when Bill was having
7 the discussions of how much we can do it or how much
8 we can lower and things like that?

9 A In and out of my office to Austin's
10 office.

11 Q And who else was involved in that?

12 A That's all.

13 MR. COBB: Let's go off the
14 record just a second.

15 (Off the record.)

16 MR. COBB: Back on the record.

17 Q (By Mr. Cobb) We're looking now at pages
18 57, 58, 59, and it appears to be the same memo
19 format with a TAC logo on the front and a fax stamp
20 showing 5-4-2007.

21 A Uh-huh.

22 Q At 6:51, correct?

23 A Yes, sir.

24 Q So are you faxing this to Bill for his
25 review?

1 A Well, what's the date on that other?

2 Q It's the same date, but the time is a
3 little different.

4 A I think Bill left late that night and went
5 back to Knoxville. I think he had to be back the
6 next morning, and I -- if I remember correctly.

7 Q All right.

8 A Of course, Austin faxed this, so I can't
9 really -- I don't know, but I would say --

10 Q This one is faxed --

11 A 6:22.

12 Q At 6:22. And that one is about 30 minutes
13 later?

14 A Yeah. I would say Bill had left at that
15 point to head back to Knoxville.

16 Q All right.

17 A As far as I know.

18 Q And then the second page it says, "To:
19 Bill." Is that "FYI, the attached is what we
20 have --

21 A I believe that's what that is.

22 Q -- sent to drag strip people"?

23 A Yes, sir.

24 Q And Monte and Corey are the drag strip
25 people?

1 A I guess that's what Austin --

2 Q And then that squiggle down there is
3 Austin's initials?

4 A That's Austin Bateman, AB.

5 Q Well, I might argue with you whether
6 that's an A or a B, but that's his initials?

7 A Yes, sir.

8 Q All right. So page 59 would have been the
9 per-unit-price sheet that was sent out?

10 A Yes, sir, if everybody agreed on it.
11 Nobody signed it because nobody, you know --

12 Q The drag strip people didn't agree?

13 A We didn't get that far.

14 Q Okay.

15 A And, actually, you know, you're going to
16 find out later on that there was no charges for
17 equipment, so, you know --

18 Q All right. The next number-wise is packet
19 number 60, 61, 62, 63, 64, and I have no idea what
20 that is.

21 A That is grade shots of the track. Danny
22 Wimberley did this, shot it.

23 Q The surveyor's notes?

24 A Yes, sir. And he'll have to talk to you
25 about --

1 Q And then you punch those into the
2 computer, and it gives you a profile?

3 A No, sir. I'm sure some of them do. We
4 don't have the capability of doing that. We
5 manually calculate them.

6 Q What was your understanding about whether
7 the drag strip was flat or had a crown on it?

8 A It had a little crown in it. And we
9 discussed that on the milling that we were, you
10 know, going to try to keep some, but there wasn't
11 any way to keep what was there.

12 Q Why not?

13 A If I understand or remember correctly, we
14 started at what I'm calling zero grade on the center
15 line --

16 Q Okay.

17 A -- and 25 foot away where we were going to
18 be two inches deep. And so, you know, I don't know.
19 It's pretty flat. I never did check those shots,
20 but one percent is pretty flat really. I mean, you
21 know, it's --

22 Q Were these shots that were taken of the
23 track before the repaving started or after?

24 A I don't remember, Lewis. Danny knows.

25 Q Okay.

1 A He'll have to answer that.

2 Q Okay.

3 A I can't remember.

4 Q Next numerically is a letter dated
5 May 3rd, 2007, to Northwest Tennessee Motorsports --
6 or by them. It's addressed to Corey from you; is
7 that correct?

8 A Yes, sir.

9 Q Did you prepare that?

10 A Yes, sir.

11 Q And here it's a rate quote for additional
12 work. Was this in contemplation of a change order?

13 A No, sir. That's -- that was for
14 additional work for the removal, digout, and put
15 back.

16 Q Okay.

17 A Which is part of what we looked at a
18 second or two ago. Like I said, we went back and
19 forth with what to do and how to approach it.

20 Q Well, I have looked at these --

21 A Okay. Go ahead.

22 Q -- 65 and 66.

23 A Uh-huh.

24 Q They look the same to me, but --

25 A It might be a copy.

1 Q Okay. They're the same date also?

2 A May 3rd, May 3rd, May 3rd.

3 Q Well, I was just wondering if I was
4 missing something, but --

5 A Well --

6 Q If I am, you're missing it, too?

7 A Yeah -- well, I don't know if they're a
8 copy or not, but I don't know. I might have printed
9 two and signed two and left one for the file. You
10 know, I don't know.

11 Q Or you might have signed two and had a
12 duplicate original, one for his file, one for yours?

13 A I might have and never sent this to them.
14 Because at that time Austin might have told me to
15 hold up, you know, let's look at -- because --

16 Q Because the stuff we looked at earlier was
17 actually dated the next day, wasn't it, May 4th?

18 A Right, right.

19 Q Then 67 looks like you done some --

20 A Yeah.

21 Q -- done some work on it?

22 A That is the same rates as this and
23 probably a copy if I had to guess, you know, but
24 like I'm saying, we started playing with it and
25 trying to go back and say, well, let's do -- and

1 this is Austin's writing.

2 Q All right. And there's a thing up here,
3 looks like somebody was doodling?

4 A Yeah, I guess.

5 Q But that's not --

6 A I don't know what that's for.

7 Q Okay.

8 A But that's where we started going down on
9 the crew rates and the labor rates, you know.

10 Q All right.

11 A And it may -- you know, I think I faxed
12 that to Monte. I don't remember for sure, but I
13 think Monte got that, and you -- I think Monte
14 called Austin and talked about some rates, and then
15 we started going down from there. I may be wrong
16 there, but I think that's what happened.

17 Q Okay. Then number 68 is a letter dated
18 May 9th of 2007, and it looks like here we've gone,
19 for example, the stuffed invoice price, right?

20 A And a thousand dollars a day instead of
21 1,200 for labor. We were just trying to get it --

22 Q All right.

23 A -- down there.

24 Q The next page is number 69, and it looks
25 like now marked through all the equipment charge and

1 gone to no charge, correct?

2 A Yes, sir, as per Bill's --

3 Q It sounds sort of like Wal-Mart prices are
4 dropping?

5 A That's right.

6 Q Okay.

7 A That's right.

8 Q And then number 70 looks like it's the
9 same date, but it doesn't have the strike through
10 and no charge?

11 A Correct. That's probably -- I printed
12 that probably, and then, like I said, we were going
13 back and forth between my office and Austin's office
14 and asking him because, I mean, he was directing me
15 on what to charge. I was typing.

16 Q Okay. Well, you said several times,
17 "You're going to see a bunch of these," and what I
18 want to make sure is that I understand the
19 significance or the lack of significance of those.
20 And it's just a --

21 A Well, some of it probably is me not
22 throwing anything away, throwing these -- just
23 putting these back in the file as I printed them and
24 changed them.

25 Q Okay. All right. That takes us through

1 72. And, again, I don't know that it's any
2 significance, but 73 is dated May 4th, but it's got
3 a later number. Is it probably just misfiled or in
4 the wrong order? There's no significance that you
5 know to that?

6 A No, sir.

7 Q Okay. 74 is dated May 9th, and it has a
8 phone number at the top. Do you recognize that
9 phone number, 986 --

10 A It's Monte or Corey's either home number
11 or fax number, if I had to guess. It's a Huntingdon
12 prefix.

13 Q And then down at the bottom it has, "Prior
14 to" -- read that into the record.

15 A From here?

16 Q Yes.

17 A "Prior to commencement or further
18 operation."

19 Q And that's a handwritten change --

20 A Yes, sir.

21 Q -- to number four which says, "By
22 7:00 a.m. Thursday, May 10th"?

23 A (The witness nods head affirmatively.)

24 Q Was that changing the time frame because
25 it had taken a little longer to get this negotiation

1 worked out; is that correct?

2 A I don't know. That's Austin's writing.

3 Q Okay. Is this Austin's writing up here?

4 A That's my writing.

5 Q Then the next several sheets in the file
6 all have the same heading.

7 A Uh-huh.

8 Q "Estimated Dollar Amounts"?

9 A Right.

10 Q Is this your estimations?

11 A Those are Austin's and my estimations,
12 both of us sitting down together and walking through
13 it.

14 Q Okay.

15 A And then that's where you -- you know,
16 this is where we get away from the crew rate -- I
17 mean the equipment rates. You know, Monte and Corey
18 wanted a --

19 Q Flat rate?

20 A Not a flat rate but a close budget number.

21 Q Okay.

22 A And that's how we come up with that
23 number.

24 Q Did they ever tell you something to the
25 effect, "We need to go to the bank and tell them how

1 much we're going to have to borrow to do this before
2 we commit"?

3 A Yes, sir.

4 Q All right. Did that seem reasonable to
5 see if they could get the money to pay you?

6 A Yes, sir. That suited us, I guess, pretty
7 well.

8 Q Look at that one and let me just ask you
9 some questions about the individual items.

10 A Okay.

11 Q The top line is digouts, and it was
12 estimated approximately 1,943 yards. How did you
13 estimate that?

14 A The areas of the track that were exposed
15 or not paved, that was --

16 Q That had not been repaved?

17 A That had not been repaved after milling.

18 Q All right.

19 A That's where that 1,943 comes from.

20 Q Okay. Did you do that like you did the
21 first job: Get your wheel out, roll it, and mark
22 it?

23 A I'm almost certain Danny measured that for
24 me.

25 Q All right. Is Danny an estimator?

1 A Danny does a little bit of estimating, but
2 he's our layout -- our layout guy, I guess, or --

3 Q Okay.

4 A He's not an engineer, but he does a lot of
5 our layout, pulling tape and stuff like that.

6 Q All right. The next line is approximately
7 six days labor at a thousand a day. Is that your
8 estimate?

9 A Yes, sir.

10 Q And then the next item is the fabric at
11 invoice price, and then you have specified
12 four-ounce nonwoven and a total price of \$1,258.56?

13 A Yes, sir.

14 Q And then another one is called geogrid.
15 Is that -- obviously it's different. What is the
16 difference between nonwoven and geogrid?

17 A A -- a geogrid is a -- an open-graded
18 material that's almost like -- it's plastic, and the
19 four-ounce nonwoven is more of a blanket or a more
20 consistent material.

21 Q Is one less water permeable than the
22 other?

23 A I'd say the nonwoven is less permeable.

24 Q Okay. Next section is chert gravel, and
25 you made estimates of the same number of yards?

1 A Yes, sir.

2 Q And then you did an estimate of asphalt
3 pavement, and, again, it's 1,943 yards?

4 A Yes, sir.

5 Q So you were only contemplating paving the
6 part that had yet to be paved, correct?

7 A Yes, sir.

8 Q What was going to happen with the part
9 that had been paved -- that y'all had repaved?

10 A Right. We were just going to, you know,
11 tie next to it joints. Just like, you know, any
12 other paving job, pave right next to them.

13 Q Was there any -- did you contemplate doing
14 any work beneath the surface of what you had already
15 paved?

16 A No, sir.

17 Q What were you going to do about the damage
18 that had been done to that area? How were you going
19 to take care of that?

20 A The area that was paved?

21 Q My recollection is there were some areas
22 that had been paved, but that it had had some ruts
23 or some dips or some humps, whatever you want to
24 call them.

25 A Yes.

1 Q What were you going to do about that?

2 A I'm not sure. I mean, that's -- Austin
3 was in the construction process. I mean, I'm -- I
4 don't think we had any plans to do anything with it.

5 Q Okay. Well, as I look through these next
6 four documents, I didn't see anything that
7 contemplated doing anything else on the part that
8 y'all had already repaved; would that be correct?

9 A Yes, sir.

10 Q Okay. Now, on the bottom of page number
11 -- oh, I see. Page number 76 -- and if you'll note
12 for the record the bates stamp on 76 is not at the
13 bottom because there's some handwriting on the
14 bottom.

15 A Yes, sir.

16 Q It's about one-third from the bottom.
17 Whose handwriting is that on the bottom?

18 A That's Austin's.

19 Q Is this something that was sent to the
20 drag strip people, or was this just for y'all's
21 internal consideration?

22 A With the handwriting?

23 Q Yes.

24 A No. I've got -- I've got all this on my
25 computer, so he's telling me what to type.

1 Q Okay.

2 A Instead of telling me, he wrote it. I
3 couldn't keep up with him. I told him to write it
4 down, whatever he wanted.

5 Q And then he writes -- handwrites, "Actual
6 dollars billed could be higher or lower --

7 A Correct.

8 Q -- than those stated," but I can't make
9 out quite the rest of it. Can you help me?

10 A No, sir, I don't really know what --
11 "Actual dollars billed could be higher or lower than
12 those stated." I don't know what that says.

13 Q Okay.

14 A Something to actual.

15 Q All right. The next one in order is
16 number 79, and it is -- actually, 79 and 80. It
17 looks like they go together. Whose handwriting is
18 that?

19 A Austin's.

20 Q And it looks like that this may have been
21 the starting point for what you typed up; is that
22 correct?

23 A Very possible, yes, sir.

24 Q All right. Then the next document is
25 number 81, and it's a fax, and it says, "May 4th,

1 To: Monte/Corey." Is that a fax that you did?

2 A Yes, sir, that's -- oh, "busy." It must
3 be pertaining to a different fax, "busy/no
4 response."

5 Q All right. It says that there were two
6 pages, but I didn't see anything attached to this.
7 Do you think that's because it didn't --

8 A It probably didn't go, or it just got
9 misfiled.

10 Q All right.

11 A You know, I'm not real sure.

12 Q Then 82 and 83 and 84 are some more
13 handwritten notes?

14 A Uh-huh.

15 Q Whose handwriting is that?

16 A That's mine.

17 Q And what was the purpose of that?

18 A Just to go back and figure unit prices for
19 digouts.

20 Q Is this what you did on pencil and paper
21 before you typed it in the computer?

22 A Probably.

23 Q Okay.

24 A Probably.

25 Q On number 83, it has digouts. Is this

1 information that you did, or is this something you
2 got from Danny?

3 A Danny, yeah. He measured it for me, and
4 then he called and I would write as I went.

5 MR. COBB: Let's take a short
6 break.

7 MR. CASHION: Okay.

8 (Recess.)

9 Q (By Mr. Cobb) Next is a document, and it
10 has, "To: Austin, From: Kirk England"?

11 A Yes, sir.

12 Q Who is Kirk England?

13 A He is an employee at Superior Seed &
14 Supply in Nashville.

15 Q All right. And that would explain why the
16 Superior Seed & Supply is --

17 A Yes, sir.

18 Q All right. That's just gathering
19 information for pricing?

20 A Yes, sir.

21 Q Number 87 appears to be the typed version
22 of some handwritten notes.

23 A Correct.

24 Q And who -- who -- first of all, who wrote
25 the notes?

1 A Danny.

2 Q And who did the typing?

3 A I did.

4 Q And what was the purpose of all this?

5 A Just to get a -- an idea of what was at
6 the racetrack at that point on June 26th.

7 Q Okay. Well, that's what I was going to
8 ask you. The handwritten notes have a date --

9 A Uh-huh.

10 Q -- at the top, but the typed ones do not?

11 A Do not.

12 Q But it's the same time frame?

13 A Yes. Probably that afternoon or the next
14 day.

15 Q It looks like this is identical to that,
16 but I can't tell. Do you know?

17 A Yeah, that's --

18 Q That's the front page, and that's the --

19 A Yeah. That looks like a copy of that.

20 Q All right. And then that's something you
21 typed in using this as your information --

22 A Correct.

23 Q -- or your database?

24 A Correct, yeah.

25 Q All right. Let me just go through a

1 couple of these with you. "Item number one, staging
2 area had a rut -- rutting four inches deep lane." I
3 think I know what that means, but I want to make
4 sure. Tell me what that is saying.

5 A Well, they correspond with a picture.

6 Q All right. Do you have the photographs?

7 A I'm not sure I do. I think they're on the
8 disk. I've got the disk.

9 MR. CASHION: We can get you the
10 disk. You've got all the photographs.

11 MR. COBB: All right.

12 MR. CASHION: We didn't print
13 them off.

14 Q (By Mr. Cobb) Who took the photographs?

15 A Danny while he was measuring.

16 Q Were all of these in the part of the job
17 that TAC had redone, or was this --

18 A I would say not if he took some pictures
19 of the staging area.

20 Q All right. The contract did not
21 contemplate doing anything to the staging area?

22 A No, sir.

23 Q Do you know how the damage occurred to the
24 staging area?

25 A I would say loaded trucks pulling into the

1 staging area to go to the paver.

2 Q And were those trucks loaded with the hot
3 asphalt?

4 A Yes, sir.

5 Q Do you know how much a loaded truck
6 weighs?

7 A If I had to guess, 80,000 pounds,
8 somewhere in there.

9 Q Is that truck and load?

10 A Yes, sir.

11 Q Do you have enough experience to know
12 whether or not asphalt that's two inches thick on a
13 six-inch gravel base would be strong enough to carry
14 that kind of load?

15 A No, sir, I -- I mean, I -- technically
16 that's considered a light-duty pavement.

17 Q Is that considered a heavy-duty load?

18 A Yes, sir.

19 Q Items 30 through 41 are referred to as the
20 deceleration zone, and I think on your diagram you
21 call it the slowdown?

22 A Correct.

23 Q But the same thing?

24 A Same area.

25 Q Okay. Do you know why there was damage

1 and ruts in the deceleration zone?

2 A The subgrade, and it just wouldn't hold a
3 truck up empty. I mean, we were on empty down
4 there.

5 Q Do you know why the trucks were using that
6 instead of getting off and just riding on the
7 ground?

8 A There was no way to get off the racetrack
9 for the rails.

10 Q All right. That's what I want you to
11 explain, so that I understand your --

12 A Okay.

13 Q -- your position on that.

14 Looking at Exhibit -- or looking at
15 your counsel's copy of Exhibit 9, do the rails run
16 all the way down, even the slowdown lane, or do they
17 stop at the finish line?

18 A I don't recall.

19 Q Okay. Is there anything other than the
20 rails that kept the ruts -- the trucks from leaving
21 the paved portion?

22 A Well, I don't -- it looks like the rail
23 ends here, I mean. I don't know where the -- I
24 don't remember where the rail ends.

25 Q I don't either, and --

1 A I don't know if it's all the way down.

2 Q But it ends where it ends?

3 A Right. There's no way to -- yes, sir.

4 Q Once the rail ends, then the trucks could
5 have gotten off the paved portion of the road?

6 A I guess they could have.

7 Q Okay.

8 MR. CASHION: Can't argue with
9 it ends where it ends.

10 MR. COBB: Yeah. That was not
11 meant as a question. What's that called, a
12 tautology?

13 Q (By Mr. Cobb) Did it concern you when you
14 saw that the empty trucks were causing damage to
15 that slowdown area?

16 A Yes, sir.

17 Q Because it was pretty clear that that was
18 going to have to be fixed, too?

19 A Before the day was over, yes, sir.

20 Q Did anybody -- any of the drag strip guys
21 say, "Quit tearing up the rest of my track"?

22 A Yes, sir.

23 Q Tell me about that.

24 A Well, I know -- I believe Monte -- yeah,
25 Monte asked Austin why we didn't use the hot pass --

1 is that what that is -- or hot gate.

2 Q Hot gate, yeah.

3 A And there's some -- nobody told us we
4 could use it. Now, whether we should have used it
5 or not, I don't know. I don't know if I would have
6 used it if they had told me to use it, because
7 you're going to have loaded trucks coming in here,
8 and if that's -- the paving area is anywhere near
9 it, you know, they're going to be out here anyway
10 with loaded trucks. We tried to bring loaded trucks
11 in here --

12 Q You're talking loaded trucks in the
13 staging area?

14 A Yes, sir. That was our plan.

15 Q All right.

16 A Pave on this lane first.

17 Q You talking about the outside lane,
18 left-hand lane first?

19 A Yes, sir. And then hit a stopping point
20 here, 700 feet, and hopefully the trucks would be
21 empty when they got in this area to come out. Now,
22 you know, you asked me a while ago about loaded
23 trucks down here. I'm sure there was a loaded truck
24 in this area.

25 Q You talking in the slowdown lane?

1 A Yeah, I mean, it had to be. If you've got
2 a paver 695 feet to the stopping point, you've got
3 to get a truck to it. See what I'm saying? I don't
4 want to deny that we had loaded trucks in here, but
5 it wasn't just to have them in there, I mean, you
6 know.

7 Q Okay. Document number 92 is a handwritten
8 document?

9 A Yes, sir.

10 Q Whose handwriting is that?

11 A Austin's.

12 Q And was that done before the job started
13 or after the problem arose?

14 A That was after the problem arose. Again,
15 that goes back to trying to get some unit pricing
16 for digouts.

17 Q Well, it looks like this may have been
18 some information you were using when you were typing
19 up the proposal that you sent to --

20 A Yeah.

21 Q -- Monte and Corey?

22 A Very possible.

23 Q It may have been created sometime during
24 May 4th to May 9th time frame?

25 A Yes, sir.

1 Q Now, down at the bottom there is a --
2 looks like a final estimate, and I'm reading this
3 into it -- tell me if you think I'm right -- 83 to
4 98,000?

5 A That's what it looks like to me, yes, sir.

6 Q All right.

7 A Based on these totals being --

8 Q The assumptions at the top?

9 A Right.

10 Q And then page 93, does it go with this? I
11 mean, it's on a different kind of paper, or is it a
12 different set of estimates?

13 A I don't know. That's Austin's.

14 Q Whose handwriting is that?

15 A Both are Austin's. I don't know if
16 they're together or separate.

17 Q Is that your handwriting?

18 A Yes, sir, yes, sir.

19 Q Is that the notes you made out in the
20 field that you used to come back and make your graph
21 paper drawings?

22 A These are. Well, let me take that back.

23 These -- I don't know who these -- that looks like

24 Austin's numbers to me, but anyway --

25 Q Let's talk about them one at a time. Look

1 at 94. Is that your notes? I'm really just trying
2 to get an idea of the dates.

3 A I think -- and I may be wrong, but I think
4 that's my calculations but Danny's notes.

5 Q All right.

6 A I think he was over there measuring some
7 areas.

8 Q Well, it has area one, area two, area
9 three, area four, correct?

10 A Yes.

11 Q And I've never heard the areas broken down
12 like that. Do you know what those areas were, the
13 difference in the areas?

14 A Not unless they're the areas that were
15 left in the --

16 Q The unpaved area?

17 A Yes, sir.

18 Q Okay. Number 96, whose handwriting is
19 that?

20 A That is my handwriting.

21 Q And do you recall, was that done before
22 the job started or after the problems arose?

23 A After the problems arose.

24 Q All right. And what were you trying to
25 do?

1 A Generate unit pricing for digouts.

2 Q Was the proposal that TAC was making is to
3 dig out the existing rock, put rock back in, and
4 then pave it?

5 A The add-on or the original proposal?

6 Q The add-on --

7 A Yes.

8 Q -- after the problem arose.

9 A Yes, sir.

10 Q You were going to put three inches of
11 what?

12 A Chunk rock.

13 Q And then six inches of --

14 A Chert.

15 Q For a total of a nine-inch base?

16 A Yes.

17 Q And then pave over that?

18 A Yes, sir.

19 Q Okay. Had any geotechnical data been
20 taken to see if that would work?

21 A No, sir.

22 Q Why not?

23 A A -- we did a job in Paris, and that's
24 what we did on an undercut based on professional
25 engineering, so that's where that came from.

1 Q All right. But if that was not -- if that
2 didn't work, then it would still be Northwest's
3 problem, right?

4 MR. CASHION: Object to the
5 form.

6 A I would assume so based on the unit
7 pricing.

8 Q (By Mr. Cobb) Because it was still that
9 you're not -- you're assuming that the subgrade is
10 okay when you're making this proposal, correct?

11 A Correct.

12 Q And you still didn't know if the subgrade
13 was okay at this point, did you?

14 A No, sir.

15 Q In fact, you knew the subgrade was not
16 okay?

17 A Yes, sir. That's why we proposed to dig
18 out three foot.

19 Q All right. What were you going to put
20 back in that three foot?

21 A Chunk rock, just three to five-inch
22 material, nonwoven fabric and geogrid, and six
23 inches of chert on top of all that to have some base
24 material or some finer material to pave on.

25 Q Next starts at 98, and it looks like those

1 are some typed notes --

2 A Yes, sir.

3 Q -- that you made?

4 A Uh-huh.

5 Q Paragraph one talks about the period of
6 2004?

7 A Yes, sir.

8 Q I guess I'm saying if you need to take a
9 minute to review your notes before I ask you a
10 question about it, please feel free. But if you're
11 ready to go, I am.

12 A I'm ready.

13 Q Did you make the notes about 2004 from
14 memory, or did you have a journal or a log book?

15 A I had the proposal from '04 in my file.

16 Q All right. Have we looked at that so far?

17 A No, sir.

18 Q Was that produced; do you know?

19 A (The witness shrugs shoulders.)

20 Q But you still have that?

21 A Yes, sir.

22 Q Did you go out and look at the track in
23 2004?

24 A Yes, sir.

25 Q And you noted that there was a problem

1 with the crack sealing -- or requesting a bid for
2 crack sealing?

3 A Yes. Corey requested a bid for crack
4 sealing.

5 Q I mean, but did you see that there was a
6 crack that needed sealing?

7 A Yes.

8 Q Did you take photographs at that time?

9 A No, sir.

10 Q He also said he needed a repair of a
11 10-by-40 pothole?

12 A Yes, sir.

13 Q Is that 10 inches by 40 inches or 10 feet
14 by 40 feet?

15 A Ten inches by -- I mean -- yeah, 10 feet
16 by 40 feet.

17 Q I'm just asking. I would not call that a
18 pothole. I would call that a truck hole.

19 A Yeah.

20 Q Well, I'm trying to get an idea of what
21 that looked like. To me, a pothole is something
22 that would swallow a tire.

23 A Yeah, it wasn't a pothole. It was a
24 failed area with alligator cracking, what I referred
25 to earlier.

1 Q And then number C is to fill existing
2 cracks with hot-pour crack sealer. What is that?

3 A It's a rubber product that you melt that's
4 in solid form until you heat it to 450 degrees, and
5 then it becomes full.

6 Q And then D is a restripe? That's just
7 painting?

8 A Painting, yes, sir.

9 Q And it shows you faxed him a proposal on
10 May 28th of '04. Is that what you were talking
11 about that you went back and looked at?

12 A Yes, sir.

13 Q Then it looks like about a month later
14 Corey asked you to quote to repave a 700 foot by 50
15 foot portion of track, and did you make that
16 proposal?

17 A Yes, sir.

18 Q Do you recall whether that proposal was
19 substantially different from the one that y'all came
20 up with in '07?

21 A As far as pricing or scope of work?

22 Q Scope of work.

23 A It was not milling, I don't think. I
24 mean, it was paving only.

25 Q If you've got it here, yeah. If you have

1 it here, I'd like to look at it.

2 A I just want to make sure our dates are the
3 same. There's a proposal for the crack sealing.

4 Q All right.

5 MR. COBB: Let's go off just a
6 second.

7 (Off the record.)

8 Q (By Mr. Cobb) Is this all of 2004 stuff?

9 A No, sir.

10 Q Could I see what you've got?

11 A It's 2007, 2004. That's the facsimile
12 confirmation.

13 Q Let him look at it, and let me just look
14 at it. I'm going to make copies for everybody. Can
15 I see that?

16 A Yes, sir.

17 MR. CASHION: They're all 2004.

18 THE WITNESS: That one is 2007.

19 MR. CASHION: I haven't seen
20 that one.

21 MR. COBB: It's addressed to
22 Corey.

23 THE WITNESS: That's the one I
24 read to you that we talked about.

25 MR. COBB: Let me make copies.

1 (Off the record.)

2 MR. COBB: Let's mark these next
3 five pages as Exhibit Number 14.

4 (Exhibit Number 14 was marked.)

5 Q (By Mr. Cobb) The first one is a fax
6 verification report March 2nd of '07. It's to Corey
7 Todd from John Taylor and total of eleven pages. Do
8 you recall what else accompanied this?

9 A Probably the -- probably the proposal that
10 he signed.

11 Q All right. The second page of Exhibit 14
12 is a fax stamp-dated May 28th of '04, and it's to
13 Corey. And it talks about, "I will work on the
14 removal and repave price today." Was that -- is
15 removal the same thing as milling?

16 A That might have been the patch that we
17 talked about. I don't remember if we -- I don't
18 remember if we quoted a removal and repave in '04.
19 I know we did a pave, but I don't remember if we
20 talked about removal.

21 Q All right.

22 A That may be the patch.

23 Q It looks like the next page is pretty much
24 the same thing.

25 A Yeah.

1 Q Except it's got a different fax time on
2 it.

3 A Well, I might have faxed it. I don't
4 know.

5 Q It looks like the 14:59 one had three
6 pages, and the other one doesn't have a -- my
7 younger client just pointed out that the other one
8 has June 28th of '04 instead of May 28th, and I
9 think he's right. Do you know what would have been
10 different about the June versus May?

11 A No, sir.

12 Q And the next page, it looks like it has
13 the same text, "Corey, following is the price and
14 scope of work."

15 A Uh-huh.

16 Q But it doesn't have a date on it. Do you
17 think this is what was the two accompanying pages?

18 A Yeah. I would say they're the fax
19 verification from the original thing I sent.

20 Q All right. And then the last page says a
21 price of \$4,000 for those four items we talked
22 about?

23 A Yes, sir.

24 Q And there was never any contract entered
25 into between the two parties on that?

1 A No, sir.

2 Q Do you know why?

3 A No, sir.

4 Q Did you ever follow up to check and see
5 why or if he had gone somewhere else?

6 A Probably not.

7 Q All right. Do you know now that he got
8 somebody else?

9 A I don't know, no, sir.

10 Q Well, when you went back out to the track
11 in '07, did you notice that the problems you saw in
12 '04 had been fixed or had not been fixed?

13 A I don't think they had, but I may be
14 wrong.

15 Q All right.

16 A I don't think they had.

17 Q All right. Going back now to page 98 of
18 the document production.

19 A Yes, sir.

20 Q Paragraph two you talk about, "In February
21 of '07 Corey contacted TAC and wanted to revisit our
22 conversations from '04," correct?

23 A Yes, sir.

24 Q Now, let me ask you this: When did you
25 write this?

1 A Probably very soon after we got a letter
2 from you, if I had to guess.

3 Q Okay. Well, I would -- that was my guess.
4 Do you know who you wrote the letter to? Was it to
5 Austin or to Bill?

6 A This?

7 Q (Nods head affirmatively.)

8 A It was to me. I knew we'd be where we are
9 today, so I wanted to be sure I tried to keep up the
10 best I could.

11 Q All right. In paragraph two you write, "I
12 met with Corey at the track to discuss further.
13 Corey wanted to mill two inches of asphalt and
14 repave with two inches of hot mix." Was that his
15 idea, or was that your suggestion of what needed to
16 be done to achieve the surface that he wanted?

17 A I think it was Corey's idea of removal of
18 some kind, because we had to remove the existing
19 asphalt from the starting area. Because the asphalt
20 -- the existing asphalt was already higher than the
21 concrete starting area. So something had to be
22 done. So I recommended to pour concrete is what I
23 would have liked to have seen, that way we wouldn't
24 have to remove it. But, you know -- and Corey and
25 I -- you know, he asked me, "Well, what else can we

1 do," you know, because I told him then, I said, you
2 know, "If we remove this asphalt and the subgrade is
3 no good and the gravel -- I mean, we cannot be
4 responsible for what's under this asphalt." And he
5 said, "Well, what are some other suggestions?" And
6 to answer your question, I guess -- I guess Corey
7 and I both talked about something had to be done for
8 removal. You're either going to have to build up
9 the concrete or remove the asphalt. And that's when
10 the milling, I'm assuming, took place, which, you
11 know, I don't know if Corey asked me about or I
12 brought it up. I don't remember.

13 Q In the context of this transaction Corey
14 and Monte are the customer, and TAC is the
15 contractor?

16 A Correct.

17 Q And I would assume that your ten years as
18 an estimator would give you more experience --

19 A Uh-huh.

20 Q -- in paving than Corey?

21 A Yeah.

22 Q I would hope it would. And at the company
23 there are people with engineering backgrounds and
24 degrees who have more experience and more training
25 in that area than you?

1 A Correct.

2 Q So what Corey and Monte are wanting is a
3 smooth track to accomplish the purpose of drag
4 racing, correct?

5 A Correct.

6 Q And what you're doing is giving them
7 options?

8 A Correct.

9 Q And analysis?

10 A Correct.

11 Q And then a proposal of what it would cost
12 to achieve the results that you want?

13 A Right.

14 Q And if you want two surfaces to be level
15 and they're not, you said, "Well, you can build one
16 up, or you can bring the other down"?

17 A Correct.

18 Q And that's the only two options that were
19 available?

20 A Only two options.

21 Q And to build it up would be add
22 concrete -- or tear out the concrete and repour it,
23 correct?

24 A Correct.

25 Q And the other one is to mill the asphalt

1 and bring it down?

2 A Correct.

3 Q Now, you say that you understood when you
4 milled that asphalt, if there was subsurface
5 problems, they would get worse with the less asphalt
6 you had because you've got less structural
7 integrity?

8 A I don't know if they would get any worse
9 or not. Because I -- like I said earlier, two
10 inches of asphalt, whether it's two inches after
11 milling or none after milling, that's not going to
12 -- in my opinion that's not going to affect the
13 condition of the subgrade.

14 Q Did you ever suggest to Corey, "Look, if
15 you've got subgrade problems, we need to know that
16 before we start running heavy machinery out here"?

17 A No, sir, I never suggested that. We
18 talked about it just, like I say, here, you know,
19 and Corey was concerned about it. And I told him, I
20 said, you know, "If we mill that asphalt off and
21 this thing goes away, it just goes downhill, you
22 know. There's nothing I can do about it. I can
23 give you a, you know -- based on the price that you
24 have, it's for mill and pave." And Corey said,
25 "Well, I sure don't want that to happen," and I

1 said, "Well, I don't either." But I don't know if
2 it's going to -- you know, I can't tell him that,
3 whether it's going to happen or not.

4 Q But if you had done coring samples, you
5 would have had a better understanding of the
6 subsurface, wouldn't you?

7 A If you would have done subsurface --
8 subsoil, sure, if somebody like Construction
9 Materials would have done that, but you can't do
10 that with every overlay job.

11 Q Do you know how much it would have cost to
12 do that?

13 A No, sir.

14 Q Do you know how much it cost for David
15 Evans to do the four pits that he did?

16 A No, sir. I probably read it, but, I mean,
17 I can't quote it off right now.

18 Q Did you ever suggest to Corey that would
19 be one way to buy a little insurance to make sure
20 that we had a site that was suitable for paving is
21 to do some coring or some analysis?

22 A I can't say that we said -- you know,
23 distinctly said why don't we get some construction
24 material people, no, sir.

25 Q Well, with the benefit of hindsight, that

1 would have been the prudent thing to do, wouldn't
2 it?

3 MR. CASHION: Object to form.

4 Q (By Mr. Cobb) You can go ahead and answer.

5 A Yes, sir, I guess it would have.

6 Q If you were faced with this situation
7 again, would you recommend that they consider
8 getting subsurface analysis?

9 MR. CASHION: Object to form.

10 A I was not faced with the situation until
11 it all went down.

12 Q (By Mr. Cobb) Well, you now have eleven
13 years' experience as an estimator, right?

14 A I guess in February it will be.

15 Q All right. And you now have been through
16 a paving job that has not gone well?

17 A Correct.

18 Q Has really not gone well, correct?

19 A Yes, sir.

20 Q You would agree with me that it's been a
21 bad result up to this point?

22 A Yes, sir.

23 Q With the benefit of that experience, if
24 you were faced with the same situation today, would
25 you recommend to the customer, "You really ought to

1 check and see what's below the grade before you
2 spend \$45,000 on paving"?

3 MR. CASHION: Object to the
4 form.

5 A No, sir, I wouldn't do that, I don't
6 think, not -- not for a overlay.

7 Q (By Mr. Cobb) What if you knew that half
8 of the core samples that you had done had water in
9 them? Wouldn't that be a red flag, "Hey, we need to
10 check and see where the water is coming from"?

11 A It's possible. I mean, we don't core
12 every job.

13 Q But in this one you did have the foresight
14 to core the job?

15 A Right, to check asphalt depth.

16 Q And in checking asphalt depth you found
17 not just asphalt but water, right?

18 A Correct.

19 Q And that's unusual, correct?

20 A Uh-huh.

21 Q And that's a warning that there is water
22 coming from somewhere, probably subsurface?

23 A Yes.

24 Q And if there's subsurface water, that's a
25 warning that the subsurface is not stable, correct?

1 A Very possible, yes.

2 Q And is it reasonable once you've seen
3 water that may be subsurface water to assume that
4 it's not there?

5 A I didn't know how much -- because they're
6 in two holes, I didn't know if it was -- there was
7 no way for me to determine whether it was all over
8 the entire racetrack.

9 Q It would be unreasonable to assume that it
10 was in every hole, right?

11 A Correct.

12 Q But it would be unreasonable to assume
13 there was no water there, correct?

14 A Correct. Because two didn't and two did,
15 so --

16 Q So the reasonable thing to do would be to
17 check more, correct --

18 MR. CASHION: Object to form.

19 Q (By Mr. Cobb) -- to find out the magnitude
20 of the problem?

21 MR. CASHION: Object to the
22 form.

23 A No, sir, because I was just checking
24 asphalt depth. I wasn't checking subgrade or base
25 material.

1 Q (By Mr. Cobb) Well, what I'm trying to do
2 is see if you would agree with me that once you see
3 water at asphalt depth, that probably indicates
4 there's water below that, right?

5 A Yes, sir.

6 Q Because it's either coming from above or
7 below, right?

8 A Correct.

9 Q So if you have water in a hole that's two
10 inches deep, the further down you go the more likely
11 it is to find more water, correct?

12 A Correct.

13 Q Well, don't you think it would be
14 reasonable to find out whether or not you had a
15 small isolated water problem or whether you had a
16 large water problem that made it unsafe to assume
17 the subgrade is okay?

18 MR. CASHION: Object to the
19 form.

20 A I mean, it would -- you know, it would
21 probably -- you know, go to the owner and say,
22 "Look, I found water, we're pulling off," or
23 something. I don't know. But, I mean, I don't see
24 that it -- it wasn't enough cores to determine that,
25 and all we were doing was paving.

1 Q (By Mr. Cobb) Let me ask you this way,
2 something I'm more familiar with, and maybe you are,
3 too. If you were doing a roofing job and you had
4 found a rafter that had been eaten up by termites,
5 would it be safe to assume, well, that's probably
6 the only termites there is and go ahead and re-roof,
7 or would you check for termites before putting the
8 roof on?

9 MR. CASHION: Object to the
10 form.

11 A I would have checked.

12 Q (By Mr. Cobb) And you could have done the
13 same thing with the water. You could have checked
14 to see if there was other places that had water,
15 correct?

16 A I guess Corey and Monte could have also.
17 Not at -- you know, I can't -- not at our -- at TAC
18 not -- I can't go to do a soils report on everything
19 I look at.

20 Q Well, you could have made a recommendation
21 that they do it, couldn't you have?

22 MR. CASHION: Object to form.

23 A I guess I could have.

24 Q (By Mr. Cobb) Is there any reason not to
25 make that recommendation?

1 MR. CASHION: Same objection.

2 A No, I don't guess. I mean, I don't know
3 if there's --

4 Q (By Mr. Cobb) I mean, it wouldn't have
5 hurt anything to say, "You might want to get some
6 more core samples, we found water in half," that way
7 you can be sure that it's going to be okay?

8 A And I'm not too sure that Corey and I
9 didn't talk. And I'm not going -- I'm not going to
10 say we specifically talked about the cores, but we
11 did talk. Between core drilling and paving we
12 talked.

13 Q Did you tell him you thought there was a
14 likelihood that there was subsurface water under
15 there?

16 A I'm not sure if he knew that or not. He
17 was with Danny when the core -- so I'm assuming he
18 did. I mean, he was right there with Danny when
19 they was coring, so --

20 Q On paragraph 3 of bates stamp 98 you said,
21 "Corey and I discussed at this time that Tennessee
22 Asphalt could not and would not be responsible for
23 the underlying base and subgrade conditions if this
24 scope of work was chosen." Did I read that
25 correctly?

1 A Yes, sir.

2 Q Did you suggest to him that the scope of
3 work should be broadened to spend a thousand, \$2,000
4 to check the subgrade?

5 A No, sir.

6 Q You did say that, "This statement was a
7 concern to Corey, and he asked me about some other
8 options other than milling," correct?

9 A Yes.

10 Q Wouldn't one of those options have been,
11 "Well, why don't we do some more coring to see what
12 we've got"?

13 A Not on my end.

14 Q You did suggest another option would be
15 for Corey to get a concrete contractor and pour the
16 pad, correct?

17 A Correct.

18 Q So you did suggest that other option?

19 A Correct.

20 Q And you did suggest that this would be
21 better because then you could overlay asphalt
22 without having to mill it, correct?

23 A Correct.

24 Q And that would have decreased the chances
25 of the problems with the subsurface conditions,

1 correct?

2 A As far as I knew by looking at it.

3 Q All right. And you wrote that Corey said
4 he got a quote for pouring concrete, and the price
5 was too high, that he was not going to do that,
6 correct?

7 A Correct.

8 Q Did he ever tell you who he got a quote to
9 pour concrete from?

10 A No.

11 Q I think the answer to this question is
12 obvious. Tennessee Asphalt does not do concrete?

13 A Correct.

14 Q If they did do concrete, would you have
15 given him a quote for concrete?

16 A Possibly.

17 Q Do y'all have somebody that does concrete
18 that you subcontract with or partner with on jobs?

19 A Not really, no, sir.

20 Q The last paragraph, number four, on page
21 99 is, "On March 2nd I faxed Corey on Tennessee
22 Asphalt Company letterhead a quote for the mill of
23 approximately two inches of existing asphalt and
24 repave with average two inches of compacted hot-mix
25 asphalt surface," correct?

1 A Yes, sir.

2 Q "On March 29 Corey contacted me and said
3 he wanted to contract with TAC to perform the work,"
4 correct?

5 A Yes.

6 Q All right. So this contract date of
7 March 29th was before the coring was done, right?

8 A Yes.

9 Q So when Corey signed the contract, neither
10 he knew nor you knew that those core samples had
11 water in them, correct?

12 A Correct.

13 Q But after the contract was signed and
14 Northwest was committed to the job, you learned that
15 there was water in the subsurface, correct?

16 A Correct.

17 Q But you didn't --

18 A And two core holes.

19 Q In half of the core holes. But you didn't
20 communicate and give that information to Corey?

21 A No, sir, I didn't. I assumed that he knew
22 because he was with Danny when they were cored.

23 Q Were you there when they were cored?

24 A No, sir.

25 Q So that was an assumption that you made,

1 but you never confirmed it, correct?

2 A Correct.

3 Q Now, page 100 and 101 look to be the
4 typewritten notes that Austin Bateman did?

5 A Correct.

6 Q I'll ask Austin about those.

7 A Is that yours?

8 Q Actually, that's mine.

9 Next in sequence is pages 102 through
10 107. Tell me what these are.

11 A Those are daily reports from the foreman.

12 Q And the foreman's name is?

13 A Larry Hunter.

14 Q What sort of training does Larry have? Is
15 he an engineer, or is he just on the job?

16 A Worker.

17 Q Okay. Let me just ask you to identify --

18 A Okay.

19 Q -- people that signed.

20 A Okay.

21 Q This one looks like Tim?

22 A Tim Olive.

23 Q This one is --

24 A Tommy Counce.

25 Q All right. Tim Olive?

1 A Uh-huh.

2 Q Tim?

3 A Uh-huh, yes.

4 Q Okay. Next document is number 108, and it

5 shows the original contract price of 39,800,

6 correct?

7 A Yes, sir.

8 Q And then it has "additional work"?

9 A Yes, sir.

10 Q And what is that additional work?

11 A That is for some digging out of an area

12 that we tried the filter fabric and the chunk rock.

13 Q Was this in the racing part of the track

14 or the slowdown part of the track?

15 A In the racing part of the track.

16 Q Was this an area that had been milled,

17 paved, and then the pavement had been damaged?

18 A It was milled, but it -- I don't think it

19 could have been paved --

20 Q Okay.

21 A -- if I remember that correctly. The

22 paving machine sunk.

23 Q But it sunk in the part that had not yet

24 been repaved? I'm asking. I'm not telling.

25 A I don't remember. Because I wasn't there

1 when that last little bit was paved that I remember.

2 Q Okay. I should have asked you, are you
3 the one that prepared this, or was it somebody else?

4 A I did.

5 Q Next in sequence starts at 109, 110, 111.

6 It's on Tennessee Asphalt --

7 A That's our standard --

8 Q Work order?

9 A Yes, sir.

10 Q And what was this? Is this the document
11 that supported the additional billings?

12 A No, sir.

13 Q Okay.

14 A That's the -- that's based off the
15 original contract.

16 Q All right. And then attached to page 110,
17 it looks like another copy of your work in the
18 office?

19 A Correct.

20 Q Scope of work?

21 A Right.

22 Q Next is stamps number 112 through 139.

23 And the first seven or eight pages from 112 to 118
24 appear to be the initial proposal that you made to
25 Corey?

1 A Uh-huh.

2 Q Is that correct?

3 A Yes, sir, yeah.

4 Q All right. Then the next page, I'm not
5 sure I understand what that is. It's dated
6 March 29th. Is that just another fax, or is that a
7 fax of the contract? Do you know what --

8 A No, sir, I don't know. It's probably the
9 confirmation for this fax.

10 Q All right. You're right. Thank you.

11 A Yes, sir.

12 Q Next is a -- looks like a fax to Corey
13 saying, "Please sign, date, and fax back to
14 664-2646." Is that TAC?

15 A That's TAC's fax number.

16 Q And is that where you faxed him the
17 contract?

18 A What date is it? I don't know.

19 Q 4/30.

20 A It might have been the --

21 Q Or the change order?

22 A I don't know. It might have been the --
23 that overrun agreement.

24 Q But that was before any paving had
25 started, right? April 30th is before the paving?

1 A Yes.

2 Q All right. Well, maybe they're not in
3 order, but it looks like the next document is a fax
4 of August 3rd of 2007 and another one of August 3rd.

5 A Uh-huh.

6 Q Do you know what that's in reference to?
7 Because there's no attached documents. And then it
8 goes back to the overrun agreement, April 30th.

9 A No, sir. I don't -- that could have been
10 anything. I don't know.

11 Q All right. But it's addressed to Bill
12 Ratliff?

13 A Yeah. It could have gotten in this file
14 and it shouldn't have been. I mean, it could have
15 been anything.

16 Q Is there any way to tell what this -- I
17 mean, it says, "Referencing the Gleason track."

18 A I don't know. He might have wanted a copy
19 of what I sent Corey for the overrun agreement. I
20 don't know. 4-30. I don't know.

21 Q You know what. It does look like you got
22 -- no.

23 A I don't know.

24 MR. CASHION: We'll figure it
25 out. It's bound to his file. I don't know how

1 you want to get it out.

2 MR. COBB: I don't. And I'm not
3 suggesting anything. I'm just asking.

4 Q (By Mr. Cobb) In this April 30th agreement
5 it talks about filling up any potential rutting.

6 A Yes, sir.

7 Q What were you talking about there?

8 A In the 700-by-50 original paved area.

9 Q Why did you think it might need additional
10 asphalt to fill potential rutting?

11 A Because the -- when we milled it, we began
12 to notice rutting.

13 Q When did you mill it?

14 A April 30th. Is that right? I'm going off
15 memory here. April 30th.

16 Q That's the --

17 A That's the milling date of report right
18 there.

19 Q All right. So the plan was -- the new
20 plan was after the milling was done, TAC noticed
21 rutting in the --

22 A Paved area.

23 Q -- the paved area, and TAC's solution was
24 to sell more asphalt to fill the ruts?

25 A I don't know that I'd say that. The

1 solution was to hopefully pave it and have minimal
2 rutting and get it paved.

3 Q All right. Wouldn't that have been a good
4 time to stop and say, "I wonder what the subsurface
5 is like"?

6 A Yes, sir. And I believe that Austin spoke
7 to Corey or Monte, one, about that before they
8 signed this. He gave them an option of an overrun,
9 or let's back up and let's look at some undercut
10 numbers and stuff like that.

11 Q Were you there for that conversation, or
12 is that what Austin told you he said?

13 A I know I was there. Now, I might not have
14 been standing right next to them.

15 Q All right.

16 A Unless I'm wrong, because that's where
17 I've gathered the -- Austin and I talked about the
18 overrun agreement on-site, and I went back to Paris
19 and typed up the letter and mailed it.

20 Q The next document, page 125, is another --
21 it looks like addition or -- I'm not sure what we
22 would call it -- additional contract or change
23 order. What would you call that?

24 A I'd call that a change order.

25 Q All right. And there is going to be some

1 additional charges for filling in that section, the
2 slowdown lane?

3 A Yes, sir.

4 Q And then it was signed by Corey on
5 April 30th of '07?

6 A Yes, sir.

7 Q Was this contract signed by Corey before
8 he received the document 124 that talked about the
9 additional asphalt for the rutting?

10 A No, sir. This is the original, first one.
11 I signed it and dated it, sent it to Corey, and he
12 signed it and sent it back to me.

13 Q Well, now, they're not the same.

14 A Oh, they're two separate pieces of paper.

15 Q Right. And I'm not trying to --

16 A I don't know. There these two are.

17 Q Let me ask that question again because it
18 wasn't clear. Document 124 and 125 are different?

19 A Correct.

20 Q 125 is signed by Corey where he agrees to
21 pay some additional money for some additional
22 paving, correct?

23 A Correct.

24 Q Had he already signed this document before
25 you typed up and mailed the one dated 4-30-07?

1 MR. CASHION: Why don't you just
2 show him the document that was signed 4-30.

3 MR. COBB: I did. It's right
4 here.

5 MR. CASHION: No. You've got
6 both of them.

7 MR. COBB: I'm asking when.

8 MR. CASHION: Right there.

9 MR. COBB: Okay. I'm sorry.

10 A 4-30. And I don't know which one was done
11 first, but they're both 4-30.

12 Q (By Mr. Cobb) I'm sorry. I thought I
13 heard you say, "I took -- looked at the ruts and
14 went back to the office and typed the document up
15 and mailed it to him."

16 A No, sir.

17 Q Okay. Well, I misunderstood you. I'm
18 sorry.

19 So you took both documents to Corey
20 on April 30th?

21 A I faxed them apparently.

22 Q Okay. In looking at the top of number
23 123, which has been signed by both you and Corey and
24 both dated April 30 -- and I apologize for any
25 confusion I may have created -- it looks like

1 there's a fax stamp 4-30-07 at 14:32?

2 A Uh-huh.

3 Q TAC Paris; is that y'all's fax stamp?

4 A (The witness nods head affirmatively.)

5 Q And then another one going back at 18:53
6 from Northwest Motorsports.

7 A Okay.

8 Q So what I'm assuming is this document was
9 faxed from you to Northwest Motorsports in the
10 afternoon and sent back that evening?

11 A Correct.

12 Q Okay. Did you tell Corey or Monte at that
13 time that the coring samples had shown water in
14 them?

15 A No, sir.

16 Q Okay. Why not?

17 A No reason. I just didn't tell him. I
18 mean, we didn't talk about it.

19 Q Number 127 appears to be a fax from Corey
20 -- I mean from you to Corey, and in there you write,
21 "Following are the bid prices for asphalt pavement
22 as per your request. This price is with assuming
23 that there is a proper subgrade and proper gravel or
24 base specifications when milling off the asphalt,"
25 correct?

1 A Correct.

2 Q After you did the coring, do you think it
3 was reasonable to assume that there was proper
4 subgrade?

5 MR. CASHION: Object to the
6 form. Asked and answered.

7 A I wouldn't have any way of knowing that.

8 Q (By Mr. Cobb) Okay. Let me just ask you,
9 this is -- this is language that you typed in
10 yourself, correct?

11 A Yes.

12 Q This is not something that a lawyer
13 prepared and asked you to include?

14 A No, sir.

15 Q So you're the one that chose the words?

16 A Correct.

17 Q And you understand that this language
18 protects Tennessee Asphalt from the problems if
19 there's a subgrade problem, correct?

20 A I wouldn't say it protected them, but I
21 mean it's --

22 Q It's trying to say we're not responsible
23 for the subgrade, correct?

24 A Correct.

25 Q So if there's a problem there, it's your

1 problem, not ours?

2 A Correct.

3 Q Do you put that disclaimer language in all
4 the contracts?

5 A About the subgrade?

6 Q Yes.

7 A Yes, sir. And since then, there's a
8 little more in it now.

9 Q What else do you put in there? What's the
10 change that's been made?

11 A Prices not include -- or Delta Contracting
12 now shall not be responsible for existing asphalt,
13 concrete, soils, grass, curb when crossing said
14 items to complete the pavement project, because, you
15 know, we've got to get there somehow.

16 Q This appears to be some more daily
17 worksheets. I'm now looking at 102.

18 A Correct.

19 Q This looks like something we've looked at
20 before, and I don't want to keep repeating unless
21 it's something different. Is it just another copy?

22 A It's just another copy as far as I know.
23 That's --

24 Q Now, number -- that was 108. 109 is a
25 work order report. Is that just another copy of the

1 same old, same old?

2 A Yes, sir.

3 Q Next it looks like somebody went on
4 Northwest Motorsports web site?

5 A Yes, sir.

6 Q And that was in May of '07?

7 A Uh-huh.

8 Q Who did that?

9 A Austin.

10 Q Do you know why?

11 A No, sir.

12 Q This is the next set of documents 143
13 through 151. What are they?

14 A That's job cost. That's my workup.

15 Q Aha. This looks like the notes from the
16 2004 era.

17 A Okay.

18 Q That's what it looks like to me.

19 A Uh-huh, yep. That's what that is.

20 Q That's 149?

21 A Yes.

22 Q Okay.

23 MR. CASHION: You scare me when
24 you say "aha."

25 MR. COBB: I doubt that.

1 Q (By Mr. Cobb) It looks like page 150 is
2 also of the 2004 era, correct?

3 A Yes, sir.

4 Q And is 151 that same era?

5 A No, sir.

6 Q What is that?

7 A That's milling for '07.

8 Q Okay. Are 149 and 150 both in your
9 handwriting?

10 A Yes, sir.

11 Q Okay. Next is bate number 156, 157, 158,
12 and it's from L.I. Smith & Associates. They call
13 themselves surveyors and engineers. Do you know
14 them?

15 A Yes, sir.

16 Q Have you worked with them on other
17 situations?

18 A Not directly.

19 Q Okay. And it appears that on June 7th of
20 '07 they wrote a letter to Austin Bateman; is that
21 correct?

22 A Correct.

23 Q Just take a second and read that. I want
24 to ask you some questions about it.

25 A (Witness complies.) Okay.

1 Q And it appears that someone asked them to
2 go out and check what was under the racetrack to
3 determine what was causing the problems, correct?

4 A Yes, sir, that's the way I read it.

5 Q And that they used a four-foot probe rod
6 in the areas of the asphalt and base stone had been
7 removed and determined that there was a soft, gray,
8 clayey material estimated three or four-foot
9 thickness, correct?

10 A Okay, up here. Yes, sir, three to four
11 feet.

12 Q And their recommendations were three in
13 number, remove all of that clay?

14 A Uh-huh.

15 Q Correct?

16 A Yes, sir.

17 Q And backfill with shot rock to subgrade
18 level. What is shot rock?

19 A It's a different term for chunk rock.
20 It's not crushed.

21 Q And then it said, "Remove one foot of the
22 clayey material, put down a layer of geogrid
23 material and backfill to grade using either shot
24 rock or base stone"?

25 A Yes, sir.

1 Q Okay. Was this the engineering analysis
2 that was done to make the proposal that was later
3 given to them?

4 A No, sir.

5 Q Did you -- had you seen this before today?

6 A Yes, sir.

7 Q When did you first see it?

8 A Probably soon after it was faxed in.

9 Q Okay. And the cost of that analysis was
10 \$200?

11 A Yes, sir.

12 Q Would you agree with me that it would have
13 been prudent to have spent this \$200 before the
14 milling and paving was done to see what was under
15 the track?

16 MR. CASHION: Object to the
17 form.

18 A At the time, no, sir -- I mean, no, sir.

19 Q (By Mr. Cobb) Knowing what you know today,
20 would you recommend doing this before you did the
21 milling?

22 MR. CASHION: Object to the
23 form.

24 A It depends on what the scope of the
25 estimate is.

1 Q (By Mr. Cobb) I didn't say to do it.

2 Would you recommend doing it?

3 A Probably not.

4 Q You would just go ahead and lay \$40,000 of
5 asphalt down without checking?

6 A If it's not part of my scope of work, I
7 don't guess I would.

8 Q All right. Well, but you made
9 recommendations as to the scope of work, correct?

10 A Correct.

11 Q I mean, that's part of the job of an
12 estimator?

13 A Correct.

14 Q If you're going to do that, you might want
15 to consider doing this as well?

16 A Correct.

17 Q Wouldn't this be a reasonable thing to
18 suggest to Corey?

19 A I guess it would have. I mean, I didn't
20 know it was \$200. I didn't know if it was \$5,000.
21 I didn't know.

22 Q Now knowing it's \$200, it would be almost
23 foolish to not do that before spending 40,000 on
24 pavement, wouldn't it?

25 MR. CASHION: Object to the

1 form. That's not even an analysis. That's not
2 what you go to the job before you do the work.
3 That's nothing like what Dave Evans testified
4 to. I mean, I'm going to object to that whole
5 line of questioning. It's not an analysis.

6 MR. COBB: Well, he says, "We've
7 got clay under here."

8 MR. CASHION: He's looking at an
9 open pit. He's not looking at -- I'm just
10 going to object to the whole line of
11 questioning on the \$200 engineering bill as
12 being anything that would have been done prior
13 to doing the job.

14 Q (By Mr. Cobb) Well, let me ask you this:
15 You could have gone down right next to the track to
16 check what's under the ground. I mean, you wouldn't
17 have to do it through the asphalt, would you?

18 A I'm not sure. I mean, I'm assuming you
19 could.

20 Q There's no reason that you can think of
21 why you couldn't, right?

22 A Correct.

23 Q Okay. \$200 would have been a small price
24 to pay to avoid where we are now, wouldn't it?

25 A (The witness shrugs shoulders.)

1 MR. CASHION: Object to the
2 form. Object to the question.

3 A I don't know.

4 Q (By Mr. Cobb) The next items are letters
5 from lawyer to lawyer?

6 A Yes, sir.

7 Q I'm not going to go over that with you.
8 But page 180 is some handwriting on Tennessee
9 Quality Asphalt Initiative. What is -- first of
10 all, what is Tennessee Quality Asphalt Initiative?

11 A It's just a group of people, I guess, in
12 the paving business.

13 Q All right.

14 A Kind of like a --

15 Q Trade association?

16 A Yes, sir.

17 Q Whose handwriting is that?

18 A I'm assuming -- and I'm not certain, but
19 it's Austin's. It's not mine, but I don't know who
20 else it would have been besides one of us.

21 Q And it looks to me like that it's a workup
22 for an estimate of repairs?

23 A Correct.

24 Q All right.

25 MR. COBB: Let's take just a

1 short break.

2 MR. CASHION: Sure.

3 MR. COBB: I would like to make
4 this entire file as the next collective exhibit
5 to the deposition.

6 MR. CASHION: Okay.

7 (Exhibit Number 15 was marked.)

8 (Recess.)

9 Q (By Mr. Cobb) John, Monte made some notes
10 about his recollection of events, and we've produced
11 them. Have you had a chance to see those in getting
12 ready for the deposition?

13 A Yes, sir.

14 Q And he has highlighted for me some of the
15 things that you and he discussed, and I'd just like
16 to ask you your recollection about that. May 4th he
17 said y'all were talking and that you admitted once
18 again they should never have kept paving once they
19 realized the subgrade was too soft. Did you say
20 that or words to that effect?

21 A Words to that effect. I don't remember
22 saying that.

23 Q And he also noted you told him that you
24 weren't real sure he truly understood just how
25 smooth the track surface needed to be. Did you say

1 words to that effect?

2 A Yes.

3 Q You're not a drag racer?

4 A No, sir.

5 Q Me either. And then he noted on
6 Wednesday, May 2nd, that y'all were talking and that
7 -- actually, you were talking with Corey and agreed
8 that they should have stopped paving after the first
9 run. Did y'all have words to that effect?

10 A To that nature.

11 Q Because even on the first run you realized
12 that something was wrong?

13 A I wasn't there the first run to begin
14 with.

15 Q Right.

16 A I didn't get there until three-quarters of
17 the way the second run. But, anyway, I wouldn't
18 have known what the first one looked like.

19 Q But if on the first run they were creating
20 ruts and doing damage because of the subsurface
21 problems, that would have been a good time to stop
22 and figure out what you needed to do to do it right?

23 A Depending on the rutting. If it was just
24 minute, no. If it were bad like the second pull,
25 yes.

1 Q All right. And Corey notes that you told
2 him words of this effect, that all the work done to
3 date they -- being TAC -- would be responsible for.
4 Did you tell him that?

5 A No, sir. If I did, it wasn't that intent.

6 Q And then on Thursday, May 3rd, Corey notes
7 that John and I -- he's saying, "John and I talked,
8 and John agreed with me that they should never have
9 kept on paving after the first path. I told him I
10 was not going to pay for their screwup, and he all
11 but said I agree with you." Do you recall that
12 conversation?

13 A I remember Corey saying that, yes.

14 Q And when I was asking you about the
15 pricing and reducing it and reducing it, wasn't that
16 a way to try to make up for continuing to pave after
17 problems became apparent?

18 A I can't answer that because it wasn't my
19 decision to reduce them.

20 Q All right. Now, I want to go back to
21 document 127.

22 A Okay.

23 Q This appears to be a fax to Corey from
24 you.

25 A Yes, sir.

1 Q And, if you would, just read that part you
2 typed in. Just read it out loud.

3 A "Following are the bid prices for asphalt
4 pavement as per your request. The price is with
5 assuming that there is a proper subgrade and proper
6 gravel or base specification when milling off two
7 inches of existing asphalt. I am sure you are
8 getting tired of waiting on me, so I wanted to get
9 you these numbers under the assumption that we can
10 mill and pave without subgrade and base issues. I
11 would still like to cut cores to investigate a
12 little bit, but I have been out a few days with a
13 family emergency. I will try to get the core
14 machine next week."

15 Q All right. Corey said that he assumed
16 that when you took cores, you were going to
17 investigate both the base and the subgrade. Do you
18 think that's a reasonable assumption based on what
19 you wrote?

20 A No, sir.

21 Q All right. Tell me why you think that's
22 unreasonable.

23 A Because we knew from day one we were not
24 investigating the subgrade and base. From the very
25 first day we're not investigating that in no way,

1 shape, or form. The core machine was to check
2 asphalt depth.

3 Q How deep -- well, you don't know.

4 MR. COBB: All right. That's
5 all.

6

7 CROSS-EXAMINATION

8 BY MR. CASHION:

9 Q I just have one area of questioning. When
10 you looked at the job in '07, when you looked at the
11 track you were going to replace, 700 by 50 feet --

12 A Yes, sir.

13 Q -- did you see any cracks on the racetrack
14 that would indicate problems with the subgrade?

15 A No, sir. It was very similar to '04.
16 There was longitudinal cracks, joint cracks, where
17 two layers are put together, which is where cracking
18 occurs normally before anywhere else. There was no
19 alligatoring, what I call alligatoring -- there's
20 different terms for that -- other than the area --
21 the 40 by 10 that I looked at in '04, which was
22 actually a 30 by 12 that we physically did was
23 alligatored and mud pumping up through it, you know.
24 You could tell that it was a subgrade issue.

25 Q And that area was in the shutdown lane?

1 A Correct. It was outside of the 700 by 50
2 foot area that we contracted for.

3 Q And that area was of the nature that
4 looked like you would have subgrade issues?

5 A Correct.

6 Q But nothing -- there was no evidence that
7 you witnessed on the track itself that would
8 indicate subgrade failure issues?

9 A No, sir.

10 MR. CASHION: That's all the
11 questions I have.

12

13 REDIRECT EXAMINATION

14 BY MR. COBB:

15 Q If you had seen something on the surface
16 of the asphalt that indicated subgrade issues, would
17 you have done anything differently?

18 A If the whole runway looked like that one
19 area, mud, muddy water coming up when you walked
20 over it, I wouldn't even have agreed to pave it.

21 Q Why not?

22 A Because I knew it would fail.

23 MR. COBB: Okay. That's all.

24 AND FURTHER DEPONENT SAITH NOT

25

C E R T I F I C A T E

STATE OF TENNESSEE)

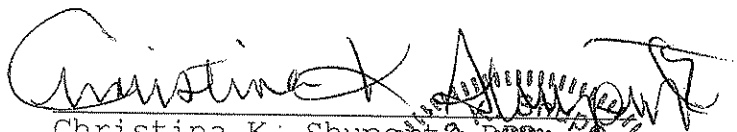
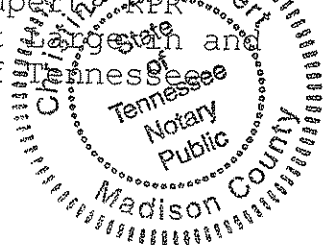
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AT LARGE)

I, Christina K. Shupert, hereby certify that the witness in the foregoing deposition was first duly sworn; and that the foregoing is a true and accurate transcript of the testimony given by said witness on July 23, 2008.

I further certify that I am neither kin nor counsel to any of the parties hereto and that I am not interested in the outcome hereof.

Witness my hand and seal, at office, on this 7th day of August, 2008.


Christina K. Shupert, RPR
Notary Public at Large and
for the State of Tennessee


My Commission Expires:

November 21, 2010

TRANSMISSION VERIFICATION REPORT

TIME : 03/02/2007 15:34
NAME : TAC PARIS
FAX : 7316442646
TEL : 7316425791
SER. # : 000B5J212193

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DURATION
PAGE(S)
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MODE

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TENNESSEE ASPHALT COMPANY
PO BOX 1327
WWW.TNASPHALT.COM
OFFICE 1.731.642.5791
FAX - 1.731.644.2646



3/29/07

FACSIMILE TRANSMITTAL SHEET

TO:	COREY TODD	FROM:	JOHN TAYLOR
COMPANY:	WEST TENNESSEE MOTORSPORTS	DATE:	3/27/07
FAX NUMBER:	1.731.986.9935	TOTAL NO. OF PAGES INCLUDING COVER:	11 (ELEVEN)
PHONE NUMBER:	1.731.986.9935	SENDER'S REFERENCE NUMBER:	
RE:	ASPHALT PAVEMENT	YOUR REFERENCE NUMBER:	

COREY,

FOLLOWING ARE THE BID PRICES FOR ASPHALT PAVEMENT AS PER YOUR REQUEST. THIS PRICE IS WITH ASSUMING THAT THERE IS A PROPER SUB-GRADE AND PROPER GRAVEL OR BASE SPECIFICATION WHEN MILLING OFF 2" OF EXISTING ASPHALT. I'M SURE YOU ARE GETTING TIRED OF WAITING ON ME SO I WANTED TO GET YOU THESE NUMBERS UNDER THE ASSUMPTION THAT WE CAN MILL AND PAVE WITHOUT SUB-GRADE AND BASE ISSUES. I WOULD STILL LIKE TO CUT CORES TO INVESTIGATE A LITTLE BUT I HAVE BEEN OUT A FEW DAYS THIS WEEK FOR A FAMILY EMERGENCY. I WILL TRY AND GET THE CORE MACHINE NEXT WEEK.

PLEASE CALL IF YOU HAVE ANY QUESTIONS.

TRANSMISSION VERIFICATION REPORT

TIME : 05/28/2004 17:12
NAME : TENN ASPHALT
FAX : 7316442646
TEL : 7316425791

DATE, TIME
FAX NO. / NAME
DURATION
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TENNESSEE ASPHALT COMPANY
P.O. BOX 1327
1815 EAST WOOD STREET
PARIS TENNESSEE 38242
PHONE: 1-731-642-6791 FAX: 1-731-644-2646
www.tnasphalt.com

to:
COREY TODD

from:
JOHN TAYLOR

Company

date:
MAY 28, 2004

Fax number:

Total no. of pages including cover:

1-731-986-9935

phone number:

Sender's reference number:

1-731-986-9935

Re:

Your reference number:

RACETRACK @ GLEASON

COREY,

FOLLOWING IS THE PRICE AND SCOPE OF WORK AS PER OUR DISCUSSION.

I WILL WORK ON THE REMOVAL AND RE-PAVE PRICE TODAY. DOES THE NHRA REQUIRE A CERTAIN SPECIFICATION FOR DRAG STRIPS? I HAVE HEARD OF RACE TRACKS THAT HAD A SPECIAL SURFACE MIX DESIGNED FOR THE RACE TRACK. THE MIX HAD SOME MATERIAL IN IT THAT WE DO NOT EVEN HAVE IN THIS PART OF THE COUNTRY.

I WILL GO AHEAD AND WORK UP A PRICE WITH A STANDARD SURFACE MIX THAT IS TENNESSEE DEPARTMENT OF TRANSPORTATION APPROVED.

TRANSMISSION VERIFICATION REPORT

TIME : 06/28/2004 14:59
NAME : TENN ASPHALT
FAX : 7316442646
TEL : 7316425791

DATE, TIME
FAX NO. / NAME
DURATION
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to:
COREY TODD

from:
JOHN TAYLOR

Company

date:
MAY 28, 2004

Fax number:

Total no. of pages including cover:

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phone number:

Sender's reference number:

1-731-986-9935

Re:

Your reference number:

RACETRACK @ CALIFORNIA

COREY,

FOLLOWING IS THE PRICE AND SCOPE OF WORK AS PER OUR DISCUSSION.

I WILL WORK ON THE REMOVAL AND RE-PAVE PRICE TODAY. DOES THE NHRA REQUIRE A CERTAIN SPECIFICATION FOR DRAG STRIPS? I HAVE HEARD OF RACE TRACKS THAT HAD A SPECIAL SURFACE MIX DESIGNED FOR THE RACE TRACK. THE MIX HAD SOME MATERIAL IN IT THAT WE DO NOT EVEN HAVE IN THIS PART OF THE COUNTRY.

I WILL GO AHEAD AND WORK UP A PRICE WITH A STANDARD SURFACE MIX THAT IS TENNESSEE DEPARTMENT OF TRANSPORTATION APPROVED.

TENNESSEE ASPHALT COMPANY
P.O. BOX 1327
1815 EAST WOOD STREET
PARIS TENNESSEE 38242
PHONE: 1-731-642-5791 FAX: 1-731-644-2646
www.tnasphalt.com

571.1540

Cell ↑

to:
COREY TODD

from:
JOHN TAYLOR

Company

date:
MAY 28, 2004

Fax number:

Total no. of pages including cover:

1-731-986-9935

3

phone number:

Sender's reference number:

1-731-986-9935

Re:

Your reference number:

RACETRACK @ ELIZABETH

COREY,

FOLLOWING IS THE PRICE AND SCOPE OF WORK AS PER OUR DISCUSSION.

I WILL WORK ON THE REMOVAL AND RE-PAVE PRICE TODAY. DOES THE NHRA REQUIRE A CERTAIN SPECIFICATION FOR DRAG STRIPS? I HAVE HEARD OF RACE TRACKS THAT HAD A SPECIAL SURFACE MIX DESIGNED FOR THE RACE TRACK. THE MIX HAD SOME MATERIAL IN IT THAT WE DO NOT EVEN HAVE IN THIS PART OF THE COUNTRY.

I WILL GO AHEAD AND WORK UP A PRICE WITH A STANDARD SURFACE MIX THAT IS TENNESSEE DEPARTMENT OF TRANSPORTATION APPROVED.

IF YOU NEED ANYTHING ELSE, PLEASE CONTACT ME

- 1-731-642-5791 - OFFICE
- 1-731-644-2646 - FAX
- 1-731-707-0004 - MOBILE
- john.t@tnasphalt.com

THANK YOU

Proposal

TENNESSEE ASPHALT COMPANY
P.O. BOX 1327 • HIGHWAY 79 EAST
PARIS, TENNESSEE 38242
TELEPHONE NO. (901) 642-5791 • FAX NO. (901) 644-2646

PROPOSAL SUBMITTED TO:		Phone: 1-731-571-1540 1-737-986-9935 - FAX	Date: MAY 27, 2004
Name: GLEASON RACETRACK ATTENTION: COREY TODD		Job Name: GLEASON RACETRACK	
Street:		Street:	City: State:
City: State: Zip Code:		Highway 22 GLEASON TENNESSEE 38	
		Architect: N/A	Date of Plans: N/A

Description of Work: The attached plan is made a part of this proposal.

BID PRICE FOR WORK DESCRIBED BELOW \$4,000.00

1. CLEAN EXISTING CRACKS IN DRAG STRIP.
2. REPAIR A 10 FOOT X 40 FOOT AREA.
3. FILL EXISTING CRACKS IN DRAG STRIP WITH RUBBERIZED HOT-POUR CRACK SEALER.
4. RE-STRIP DRAG STRIP AS PER EXISTING LAYOUT.

E:

1. PRICE DOES NOT INCLUDE SEEDING AND/OR BACKFILLING.
2. PRICE DOES NOT INCLUDE TESTING.

We propose to furnish the material and labor described above, subject to the terms and conditions specified on the front and reverse sides of this proposal for the sum of FOUR THOUSAND FOUR HUNDRED dollars (\$4,000.00) with payment to be made as follows:

NET DUE AT 30 DAYS

Plus a service charge of one and one-half percent (1½%) per month on all charges more than thirty (30) days in arrears.

Contract subject to progressive payments as work is performed

PLEASE SIGN, DATE, AND RETURN ONE COPY. THE OTHER COPY IS FOR YOUR RECORDS.

Authorized Signature _____

John Taylor / Estimator

NOTE: This proposal may be withdrawn by us if not accepted within 20 days

Acceptance of Proposal

The above proposal for the furnishing of material and labor is hereby accepted at the prices and upon the terms and conditions specified above and on the reverse side hereof.

Accepted:

Signature _____

Date _____

Signature _____