

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 MONTE PAUL SMITH

13 _____ July 22, 2008

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

ORIGINAL

A P P E A R A N C E S

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3 For the Plaintiff: MR. LEWIS L. COBB, JR.
4 Spragins, Barnett & Cobb
5 312 East Lafayette Street
6 Jackson, Tennessee 38301

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7 For the Defendants: MR. GREGORY L. CASHION
8 AND
9 MS. MEGHANN E. MCCONNELL
10 Smith, Cashion & Orr
11 231 Third Avenue North
12 Nashville, Tennessee 37201

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13 ALSO PRESENT: AUSTIN BATEMAN
14 STEPHANIE SMITH

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The deposition of MONTE PAUL SMITH was taken at the instance of the defendant pursuant to agreement, on the 22nd day of July, 2008, beginning at approximately 9:00 a.m. at the law offices of Spragins, Barnett & Cobb, Jackson, Tennessee, for use pursuant to the Tennessee Rules of Civil Procedure before Christina K. Shupert, Notary Public at Large in and for the State of Tennessee.

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

4

5 DIRECT EXAMINATION

6 BY MR. CASHION:

7 Q Would you state your full name for the
8 record?

9 A Monte Paul Smith.

10 Q Mr. Smith, my name is Greg Cashion. I'm
11 an attorney representing Tennessee Asphalt Company.
12 And have you ever given a deposition before?

13 A Yes.

14 Q Okay. How many occasions have you given a
15 deposition?

16 A Couple of times.

17 Q Business related or personal?

18 A Business.

19 Q Okay. Then you realize that this
20 deposition I'll be asking you a series of questions.
21 If at any time you don't understand my question,
22 please ask me to repeat it, to rephrase it, because
23 otherwise we'll assume that your answer is in
24 response to my question.

25 A Yes, sir.

1 Q The other thing about a deposition is we
2 have a court reporter taking everything that we're
3 saying down. That means that we both have to be
4 clear and at least cordial not to talk over each
5 other, so she's not trying to take down two voices
6 at one time.

7 And secondly, which is more
8 difficult, is try not to say "uh-huh" and "huh-uh"
9 or hand gestures or head nods. It's very hard for
10 her to get those down as well. Some of them will
11 try hard, but let's try to keep it verbal. And
12 sometimes I may ask you, "Does that mean yes" if
13 you're shaking your head or if you say "uh-huh" and
14 "huh-uh." I've read those, and it's --

15 A Yeah.

16 Q -- hard to make out which one is which.
17 So what I want to do is just kind of go through a
18 series of questions about your background, and then
19 we'll talk about this case.

20 First, let me ask you on what you
21 mentioned before. Tell me the other times that you
22 have given a deposition. What were the occasions?

23 A Oh, they were for my job at the public
24 utility over some easement issues that we have when
25 we acquire land to put pipeline on.

1 Q Okay. So those -- how many occasions was
2 that?

3 A It was two.

4 Q They were both easement related?

5 A Yes.

6 Q And let me start with your background.
7 What's your educational background?

8 A I have a degree in general technology from
9 Jackson State, also a Tennessee Technology degree in
10 drafting.

11 Q Jackson State --

12 A Community College.

13 Q Would that be an associate's degree?

14 A Yes.

15 Q And what degree did you get from Tennessee
16 Technology?

17 A It is a drafting, AutoCAD.

18 Q And have you gone any further than
19 those --

20 A No.

21 Q -- two degrees? And what year -- let's
22 start with -- how old are you? Let's start there.

23 A Forty.

24 Q And what -- that would mean you graduated
25 high school in what?

1 A 1986.

2 Q '86. And then in '86 where did you
3 graduate high school?

4 A Huntingdon High.

5 Q After graduation, did you go to Jackson
6 State or --

7 A No. After graduation I went to University
8 of Tennessee at Martin for a year.

9 Q Uh-huh.

10 A Then I went to work --

11 Q Okay.

12 A -- and continued in my education while I
13 was working.

14 Q Okay.

15 A Just on and off.

16 Q You started working about 1987?

17 A '87.

18 Q Where did you work?

19 A At the time I worked for M and W Oil
20 Company.

21 Q What were you doing for M and W?

22 A Delivering gasoline.

23 Q Okay. How long were you at M and W?

24 A Until 1989.

25 Q Where did you go in '89?

1 A West Tennessee Public Utility.

2 Q And what did you -- what were you doing at
3 West Tennessee when you started in '89?

4 A When I started in '89 I was an equipment
5 operator.

6 Q What kind of equipment?

7 A Backhoe, trencher. Basically anything --
8 anything to put in a --

9 Q Pipe?

10 A Pipe, yeah.

11 Q All right. And how long were you an
12 operator?

13 A Approximately five years.

14 Q So that brings us up to about '94. Did
15 your job duties change with Tennessee Public?

16 A In the meantime I was going to school and
17 doing my -- in '94 I went full-time school.

18 Q Uh-huh.

19 A Took a janitor's job at the utility
20 company and finished my degree at Jackson State.

21 Q Okay. You got your degree in '95?

22 A '96 actually, I think, is when --

23 Q What did you do once you got your degree?

24 A I moved into the -- well, I was a field
25 representative, kind of construction inspection.

1 Q Staying with West Tennessee Public?

2 A Yes.

3 Q Okay. And so how long were you in that
4 capacity of field representative, construction
5 inspection?

6 A To the present.

7 Q You're still in that capacity?

8 A Yes.

9 Q And describe what you do in that capacity.

10 A Inspect installation of the pipelines that
11 we put in, get the new -- like new extensions on
12 lines. I go out and survey areas to make sure that
13 they are feasible to run the -- the gas lines in --
14 into the areas, as far as customer-per-foot base.

15 Q And when you say you inspect the
16 installation of pipelines, does West Tennessee
17 Public Utilities contract that work out, or do they
18 have their own forces doing it, or both?

19 A Both.

20 Q Okay. How much -- when you're doing your
21 inspection, are you doing your own service -- I
22 mean, your own forces or other contractors?

23 A It works both ways. In a way we have our
24 own forces. I do inspect their work and also
25 inspect the work of the contractors.

1 Q And about how much construction volume in
2 dollars would you say West Tennessee Public Utility
3 does per year?

4 A In the last two years we've done about
5 \$10,000,000 worth.

6 Q Ten mil per year or ten million for --

7 A \$10,000,000 for the two years. Over -- it
8 was a \$10,000,000 project we actually are finishing
9 up right now.

10 Q And that was contracted out?

11 A Yes.

12 Q Who was the contractor?

13 A It's three -- three different contractors.
14 Well, it's three different phases. TJ Construction
15 out of Alabama -- Florence, Alabama.

16 Q Uh-huh.

17 A And Bush Construction out of Cookeville,
18 Tennessee.

19 Q Who's the third?

20 A TJ.

21 Q TJ. So they've got two of the phases?

22 A Yeah, two of the phases.

23 Q Okay. And at the same time this project
24 going on, do you still have your own forces doing
25 miscellaneous work?

1 A Other stuff, yes.

2 Q Yeah. And then you'd mentioned you also,
3 as part of your job duties, do new extensions. So
4 you survey areas and investigate whether that's
5 viable, I suppose?

6 A Right, feasible. We have a
7 ten-customer-per-mile basis and for new line
8 extensions.

9 Q So you do the background work --

10 A Yes.

11 Q -- to see if that's something -- that it's
12 an area that you can feasibly service?

13 A Yes.

14 Q And what is the geographical area of West
15 Tennessee Public Utility?

16 A Carroll, Benton, Weakley, part of Henry,
17 and part of Henderson County.

18 Q Carroll, Benton, Weakley, and parts of
19 Henderson and Henry?

20 A Yes.

21 Q Okay. Where is the main office of West
22 Tennessee Public Utility?

23 A Huntingdon.

24 Q And that's the office you work out of?

25 A Yes, 14055 Paris Street.

1 Q Okay. Now, in your work for West
2 Tennessee Public Utility, do you work with
3 engineers --

4 A Yes.

5 Q -- as far as installation or design?

6 A With installation.

7 Q Explain to me how you interface with
8 engineers in your life's work.

9 A Mainly just through -- kind of I'm the
10 person here -- our engineering company's from
11 Louisiana, and I just kind of do different --
12 different things that he requests from me, you know,
13 as far as helping get different things done. I
14 mean, just a lot of things.

15 Q Give me an example. I'm not --

16 A Maybe talking to property owners about
17 crossing property and different -- you know, working
18 out any problems with any property owners.

19 Q Back to the easements?

20 A Easements.

21 Q And what's the name of the engineering
22 firm out of Louisiana?

23 A SJB Group.

24 Q And are they civil engineers or --

25 A Yes.

1 Q Okay. They're civil. And have you been
2 working with them since, I guess, '96 --

3 A Yes.

4 Q -- when you came into this capacity?

5 A Yes.

6 Q Does West Tennessee Public Utility
7 contract with any other engineers for any work?

8 A No.

9 Q And are these specialty engineers down in
10 Louisiana?

11 A Yes.

12 Q They specialize in?

13 A Natural gas.

14 Q Natural gas. So you don't really have any
15 local engineers that you use around the West
16 Tennessee area?

17 A (The witness shakes head negatively.)

18 Q That would be "No"?

19 A No, no. I'm sorry. I forget that head
20 nod.

21 Q Yeah. In your daily duties, how often
22 would you communicate with somebody at SJB Group?

23 A Couple times a week.

24 Q And do you have a specific contact that
25 you talk to, or is it different people?

1 A Specific contact.

2 Q Who's -- who's he or she?

3 A Charles Wood.

4 Q And he's a professional engineer in
5 Louisiana?

6 A Yes.

7 Q I'm sure he has a Tennessee license, too?

8 A Yes.

9 Q Now, let's move on and talk about
10 Northwest Tennessee Motorsports or Northwest
11 Tennessee Motorsports. Give me the -- a history.
12 When did Northwest Tennessee Motorsports become a
13 corporation or an LLC?

14 A I think we became an LLC, if I remember
15 right, in 19 -- I think '98 or '99.

16 Q Now, kind of tell me, how did -- did you
17 buy a track or -- I'm assuming that Northwest
18 Tennessee Motorsports owns the track --

19 A Yes.

20 Q -- in this case?

21 A Yes.

22 Q In Gleason; is that --

23 A Gleason.

24 Q And did you buy that track, or did you
25 build the track or -- give me a history.

1 A We -- we actually leased the track in
2 1996.

3 Q So the track was existing in 1996;
4 somebody else was running it?

5 A Yes.

6 Q Was it being run continuously before you
7 leased it, or had it been in hibernation for a
8 while?

9 A Continuous.

10 Q Okay. So you leased the track in 1996,
11 and who did you lease it from?

12 A Reed Exum.

13 Q And did Mr. -- I assume Mr. Exum owned the
14 track?

15 A Yes.

16 Q Did he start the track?

17 A He was one of the original owners.

18 Q Okay. I'm trying to figure out how old
19 the track is.

20 A The track was built in 1993.

21 Q So Mr. Exum was one of the original owners
22 that built the track in 1993?

23 A Yes.

24 Q In '96 you leased the track from Mr. Exum
25 until when?

1 A 1999.

2 Q I guess in 1999 you formed Northwest
3 Tennessee Motorsports Park, LLC, and entered into a
4 contract to purchase the track; is that --

5 A I think that's correct.

6 Q Now, does Northwest Tennessee Motorsports
7 Park, LLC, have any other assets, other than the
8 track?

9 A No.

10 Q Now, for the Northwest Tennessee
11 Motorsports Park, how much of your time do you
12 devote to the LLC, knowing that -- I'm assuming you
13 work full-time for West Tennessee Public Utility?

14 A Yes.

15 Q Okay. How much of your -- rest of your
16 time --

17 A Do I devote to the racetrack?

18 Q -- do you devote to the racetrack?

19 A Basically ten to twenty hours a week of
20 maintenance, plus race days.

21 Q And are you the president? Kind of give
22 me your title for --

23 A I think I'm -- I think I'm listed as
24 president on the LLC.

25 Q And who are the members of the LLC that

1 have an ownership interest in Northwest Tennessee
2 Motorsports Park, LLC?

3 A Myself and my wife, Stephanie Smith.

4 Q Okay.

5 A I think that's all that's listed.

6 Q How much percent ownership do you have?

7 A 50 percent.

8 Q Okay. You think it's 50/50?

9 A I think it's 50/50.

10 Q Between the both of you, you've got a
11 hundred?

12 A Yeah.

13 Q Okay. And I guess your wife holds the
14 title of secretary or just -- if there's any other
15 corporate title, she would hold that?

16 A Right, yes.

17 Q Now, how many people do you have work for
18 the LLC in this racing track operation? Employees.

19 A Employees -- I'm counting.

20 Q Okay.

21 A Roughly, it's around ten.

22 Q Now, are these employees that you give a
23 W-2 every year to, or --

24 A They -- some are -- some of them are just
25 volunteers. Some are paid, you know, employees.

1 Q First, let me have paid employees. Who
2 are they, what do they do, how many hours a week?
3 I'm just trying to get a sense of the operation, so
4 don't -- not real specific but something.

5 A I don't do any payroll stuff, so I
6 really --

7 Q Wrong person?

8 A I really don't know.

9 Q Is Ms. Smith the proper one to ask --

10 A Yes.

11 Q -- these types of -- who are the employees
12 and payments and all that stuff?

13 A Yes.

14 Q So we'll just ask her about the day-to-day
15 operation, as far as people.

16 Now, you've been running the track
17 since '96 --

18 A Yes.

19 Q -- when you leased it?

20 What is the season? When do you run?

21 A Generally begin in March and end in
22 November to -- we have run into December actually.

23 Q And how frequent do you have races from
24 March to November?

25 A Every Friday night we have test and tune.

1 Every Saturday we race.

2 Q What do you mean by "test and tune"?

3 A It's just a test night for the cars to
4 come practice.

5 Q Does that generate income for you on a
6 Friday night, or do you make the money on the
7 Saturday after the run?

8 A Both nights generate.

9 Q What kind of income are you then -- are
10 you generating on Friday night at the test and tune?

11 A You're getting into that other person's
12 questions.

13 Q Ask Ms. Smith about generation of income,
14 right?

15 A (The witness nods head affirmatively.)

16 Q So basically you've got the participants
17 there and not the spectators, I would assume?

18 A Yes.

19 Q Do you run the concessions on Friday
20 night, or do you save that for Saturday?

21 A Both.

22 Q Both, okay. Now, has there been any
23 fluctuation -- has there been any business
24 fluctuation in year-to-year, some years better than
25 the other, or has it been on a steady incline or

1 decline?

2 A It's been -- it's fluctuated.

3 Q Is -- are the -- has it been better in the
4 last five years than it was the first five years or
5 pretty much the same, from your aspect?

6 A It's -- it had declined, probably from
7 2003 until, you know, last -- last year.

8 Q To '07?

9 A To '07. Yeah. We were doing
10 improvements.

11 Q All right. And so are you having a bigger
12 year now in 2008, so far, about half-way through?

13 A Considerably, yes.

14 Q Now, when you purchased the track in
15 '99 -- let me back up.

16 In '96 when you started leasing the
17 track, were you responsible for any improvements to
18 the track, as a lessee?

19 A No.

20 Q Mr. Exum was taking care of that. If any
21 were needed, he was doing it?

22 A Yes.

23 Q And you were paying a monthly or yearly?

24 A Monthly.

25 Q Monthly lease to him, and he would make

1 any improvements necessary?

2 A Yes.

3 Q Did he keep it well-maintained for the
4 three years that you were leasing it?

5 A Yes.

6 Q When you picked up and purchased the track
7 in 1999, you started -- at that point you were
8 responsible for all improvements?

9 A Yes.

10 Q And what was the purchase price of the
11 track in 1999?

12 A I really --

13 Q In round numbers.

14 A I really don't remember.

15 Q Okay.

16 A I -- I can get that. I mean, I don't know
17 for sure.

18 Q Was it -- how much land is with it? I'm
19 trying to get a --

20 A Forty acres -- 40 -- actually 44 acres.
21 44 acres.

22 Q All right. 44 acres. Forgive me. I
23 haven't been to the track.

24 A Okay.

25 Q I've seen photographs. I know you've got

1 a long asphalt strip where they basically, what I
2 would call, do drag races; is that accurate?

3 A That's correct.

4 Q It's not an oval. They don't do laps.
5 It's just a --

6 A No. Straight-line drag racing.

7 Q It's a quarter-mile track?

8 A Eighth mile.

9 Q Eighth mile, okay. So your improvements
10 on that track would consist of, obviously, the
11 surface, the guardrail. Then you would have
12 fencing. You would have a concession building, I'm
13 assuming?

14 A Yes.

15 Q Have you -- okay. What other improvements
16 do you have?

17 A Pit area.

18 Q Is that covered or just --

19 A Paved.

20 Q Paved, okay.

21 A Yes.

22 Q What else?

23 A I mean, just general maintenance and
24 upkeep on that would be, you know --

25 Q Okay. What about -- I'm sure you have a

1 parking lot somewhere.

2 A That's the pit area.

3 Q Okay. Is that -- so it's all paved
4 parking, or do you have grass or gravel?

5 A No, a lot of grass. A lot of grass and
6 gravel.

7 Q Okay. And is it fenced off?

8 A The racing area is fenced off --

9 Q Okay.

10 A -- but the parking area is not.

11 Q Obviously you don't want people down there
12 when you're not racing?

13 A Right.

14 Q So you have just fence around the
15 racetrack?

16 A Uh-huh -- or, yes.

17 Q Now, since '99 explain to me what
18 improvements you've made to the track itself.

19 A Oh, we have done some paving on the pit
20 area. We have also replaced the timing system.

21 Q Okay.

22 A Upgraded it in 2000, I think, is when we
23 did that.

24 Q When did you do the paving in the pit
25 area?

1 A I want to say we did that in 1999, the
2 best of my remembrance.

3 Q Do you remember who did that paving for
4 you?

5 A I think Ford Construction.

6 Q So I've got paving pit area, replace
7 timing system. What -- what other improvements?

8 A Just some various PA, small PA
9 improvements, you know, nothing -- some paint,
10 some -- you know, some fencing.

11 Q General upkeep?

12 A General upkeep and maintenance is a
13 good -- and some return road improvements.

14 Q What's a return road?

15 A That's where they get to the end of the
16 racetrack and where they turn around and come back,
17 so --

18 Q Uh-huh. Did you always have a return road
19 and you just repaved it?

20 A Yeah, we just patched some spots on it
21 where we had cut a ditch -- had to cut a ditch
22 across it.

23 Q So I'm assuming -- pardon me. I'm not a
24 race guy, so you have to work with me. When they go
25 down the eighth-mile track and they turn around, do

1 they go outside of a barrier or something and come
2 back?

3 A Yes.

4 Q I saw in the photographs you had a barrier
5 so they --

6 A Yes.

7 Q Do you have that fenced off there, or is
8 the fence beyond the barrier?

9 A The racetrack is just barriered off so
10 that the cars that are going down the racetrack
11 won't veer off and get to the cars that are coming
12 back down the return road.

13 Q Okay. So they -- and that's always been
14 there?

15 A Yes.

16 Q When you bought it in '99?

17 A Yes.

18 Q Okay. So when you talk about return road
19 improvements, you're just keeping them up?

20 A Yeah, just maintenance.

21 Q Okay. Any other improvements since '99?

22 A Not that I can remember.

23 Q Now, let's move and talk about repaving
24 your racetrack. That's the subject of this -- this
25 lawsuit we're into.

1 When did you first conceive the idea
2 that we're going to, or we need to, repave the
3 track?

4 A I guess somewhere in the -- in the 2006
5 racing season, you know, I -- I can't really
6 specifically tell you exactly when, but, I mean,
7 it's somewhere, you know, in the 2006 racing season.

8 Q And why did you believe that you needed to
9 undertake the project to repave the track?

10 A To improve it. I mean, it was working on
11 15 years or whatever, however long -- '93 to that
12 point, you know.

13 Q Thirteen years?

14 A Thirteen years, okay.

15 Q You had the asphalt down for 13 years, and
16 you were looking to --

17 A Right, just to improve it.

18 Q Did you see evidence of wear and tear to a
19 point that you thought, I need to do something about
20 this?

21 A Yes.

22 Q Okay. What -- tell me visually what you
23 were seeing when you thought, I need to do something
24 to make this improvement?

25 A Just wear and tear on the -- on asphalt.

1 I don't --

2 Q Was it cracking? Were you getting cracks
3 beyond the hairline crack in the pavement where you
4 thought, Well, that's starting to separate?

5 A Yes.

6 Q A quarter of an inch or something?

7 A Yes.

8 Q I don't like the way that looks?

9 A Right.

10 Q If we let this go, it's going to unravel
11 on me?

12 A Right.

13 Q I'm not trying to put words in your mouth,
14 but I'm trying to get you to communicate what you
15 were visualizing on the track.

16 A We had -- it had some -- a crack, you
17 know, cracks in it.

18 Q And they were cracks such that -- more
19 than a hairline that you were looking at?

20 A Yes.

21 Q And what other evidence of wear and tear
22 were you noticing on the track, 2006 racing season?

23 A I mean, that was basically it.

24 Q Did you see on the -- I'm not sure. I've
25 seen your photographs. I know a little bit of what

1 it looks like. On the edge of the pavement was it
2 put up against concrete, or was it open and it was
3 starting to unravel at the edges, if you know what I
4 mean, or did you notice anything like that?

5 A No. I didn't really notice anything.

6 Q And were there any, I want to say -- ruts
7 is too strong a word -- sunken places in the
8 pavement where it wasn't smooth where the -- when
9 the cars' tracks are going down, it was becoming
10 less uniform?

11 A It always -- ever -- it always had a --
12 like a transition. It's got a transition from
13 concrete to --

14 Q Right.

15 A -- the black -- to the asphalt. Had a
16 little area -- had the transition that was -- was a
17 bump.

18 Q And I'm assuming when you say "a bump,"
19 the concrete kind of stayed where it was, and it was
20 a difference in elevation when you hit the asphalt?
21 Is that a bump?

22 A Well, actually, it was just a high spot
23 left in the blacktop when they paved it the first
24 time.

25 Q Okay. So you have the asphalt -- I mean,

1 you've got the pavement, and when you hit the
2 asphalt, it's a little rise to it?

3 A Rise.

4 Q Okay. I was going bump in the wrong way.

5 A Yeah.

6 Q But did you have any wear -- did you see
7 where the tracks -- was it sunken in any way or
8 depressed in any way, where you thought, Well,
9 that's becoming less than smooth across there?

10 A It was -- I mean, it was just -- I'd --
11 I'd say it was normal wear and tear on a blacktop.
12 I mean --

13 Q Okay. Now, when you noticed -- well, when
14 you noticed this and you decided you were going to
15 do something, who did you talk to about it?

16 A I've got an estimate from H&H. I don't
17 know if they were a contract -- if it was H&H
18 Contractors or H&H -- there -- it was a guy -- it
19 was a guy that raced that -- it was an estimate to
20 concrete the actual surface.

21 Q He was going to concrete the full 700 feet
22 down?

23 A Yes.

24 Q The full 700 feet?

25 A Yes.

1 Q And who was the individual that gave you
2 that estimate to concrete?

3 A Mark Smith, III.

4 Q Any relation to you?

5 A No.

6 Q And was he -- how did you know him?

7 A Just through racing.

8 Q Did he have a race car and --

9 A Yes.

10 Q So he was a racer on your track?

11 A (The witness nods head affirmatively.)

12 Q And his day job was as an H&H contractor?

13 A Yep.

14 Q What did he tell you, or how did the
15 conversation come up? Did you say, "Hey, Mark" --

16 A He had given an estimate to another
17 racetrack in Nashville.

18 Q So did you approach him, or did he
19 approach you?

20 A I approached him.

21 Q What did you ask him?

22 A To give me an estimate.

23 Q So you had heard he had given an estimate
24 to another racetrack and you had experience in it,
25 and you asked him to give you an estimate?

1 A Uh-huh.

2 Q Is that the way it went?

3 A Yes.

4 Q What did he tell you?

5 A I don't remember the exact number. I
6 can -- I think you probably have a -- should have a
7 copy of that.

8 Q Okay. And when you got that estimate,
9 what did you do with that, or --

10 A Well, I just put it aside until I got some
11 more estimates.

12 Q And what other estimates -- or who else
13 gave you estimates?

14 A Actually, Tennessee Asphalt.

15 Q Uh-huh.

16 A I'm blank as -- I don't exactly remember
17 who the other one was. My brother-in-law got the
18 estimates.

19 Q Who's your brother-in-law?

20 A Corey Todd.

21 Q Is he -- did he marry your sister, or is
22 he your wife's brother?

23 A He's my wife's brother.

24 Q So when I talk to Corey, he's going to
25 tell me what he did in obtaining estimates?

1 A Yes.

2 Q Now, did you talk with anybody in general
3 about what you -- how you needed to go about doing
4 this, that -- people that weren't giving you an
5 estimate?

6 A As far as what?

7 Q Repaving the track.

8 A Really -- I don't understand who you're --

9 Q I'm asking, I guess, in a broader sense,
10 did you talk to another owner of a racetrack to say,
11 "Okay, I'm going to do this, how do I do it"? Did
12 you talk to an engineer saying, "Okay, I'm going to
13 do this, how do I do it," or did you consult with
14 somebody that wasn't actually giving you a price is
15 what I'm trying to ask?

16 A To our division director.

17 Q Okay. Who is your division director?
18 This is with West Tennessee Public Utility?

19 A No, no, no.

20 Q Division director, okay.

21 A Oh, no. Division -- NHRA Division 2 --

22 Q Okay. This is back on racing people?

23 A Racing, yes.

24 Q NHRA. It stands for?

25 A National Hot Rod Association.

1 Q Talked to the division director of the
2 National Hot Rod Association. Where is he -- where
3 is he located?

4 A Florida.

5 Q What town?

6 A Gains -- Gainesville.

7 Q Probably a Gator fan. Talked to him in
8 Gainesville, Florida. What did he say?

9 A We basically talked about it.

10 Q What advice did he give you?

11 A If it's failing, you know, make it safe.

12 Q Did he say anything else to you as far as
13 how to go about doing this?

14 A No.

15 Q Did he have any recommendations for
16 retaining an engineer that could walk you through
17 the process?

18 A No.

19 Q Did y'all talk about engineers?

20 A No.

21 Q Did he say much else, other than if it's
22 failing make it safe?

23 A That's pretty much it.

24 Q Okay. Did you talk to anybody else
25 besides the division director? What's his name?

1 A Bill Holt.

2 Q Is he still the division director?

3 A Yes.

4 Q Did he have any technical specifications
5 to give to you, to tell you what you should be
6 doing, or aspiring to do, as far as the track
7 surface was concerned?

8 A I think I asked him -- may have asked him
9 if there was a special mix of asphalt, you know, to
10 put back on it. He didn't really specify anything,
11 you know.

12 Q Did he have any specifications for, I
13 guess, smoothness or flatness for these tracks?

14 A I mean, I don't know if he said anything,
15 but, I mean, I know it has to be smooth.

16 Q I mean, typically if you -- you know,
17 smooth to me may mean something entirely different
18 to you if I'm looking at a surface. Did he impart
19 any information to you to tell how you would specify
20 like how many variation per ten feet or fifteen --
21 some specification that you would say, "Okay, this
22 is smooth"? Did he impart that to you?

23 A No.

24 Q Okay. Do you remember anything else that
25 Mr. Holt talked to you about?

1 A No.

2 Q Now, did you have the conversations with
3 Tennessee Asphalt, or did Corey?

4 A Corey.

5 Q How much contact did you have with
6 Tennessee Asphalt --

7 A Prior?

8 Q -- prior to the installation starting?

9 A That I remember -- I can't remember at
10 this time any. But, I mean, at that time I wasn't
11 really -- he was taking care of the -- of the
12 bidding process for me.

13 Q Okay. Corey was?

14 A Yes.

15 Q And did you meet anyone with Tennessee
16 Asphalt prior to the work starting?

17 A No.

18 Q So you didn't meet with Mr. Taylor or
19 Mr. Bateman or anybody that you -- nobody?

20 A Not that I can remember.

21 Q Okay. Corey pretty much took care of
22 that?

23 A (The witness nods head affirmatively.)

24 Yes.

25 Q You're slowly, "yes," but --

1 Now, after this bidding, estimate,
2 evaluation, did you make a decision to use Tennessee
3 Asphalt?

4 A We did.

5 Q Okay. Explain to me the process, or did
6 you have a meeting and you sat down with Corey,
7 maybe Stephanie -- I don't know -- but kind of
8 describe how that decision was made.

9 A We just sat down and -- and --

10 Q Who sat down?

11 A Corey, Stephanie, and Corey's wife,
12 Candace, and myself.

13 Q So y'all sat down. And tell me what you
14 discussed as far as the evaluation of the different
15 bids that Corey had obtained.

16 A That of the -- of the bids that we
17 obtained, that we thought that Tennessee Asphalt was
18 best qualified to do the job.

19 Q And was that evaluation they were best
20 qualified something that you in your mind
21 determined, or was that Corey that --

22 A Both.

23 Q Okay. What was the basis of your belief
24 that they were best qualified?

25 A I had seen work that's been done.

1 Q So you looked at some other jobs?

2 A Not necessarily just looked at them, but,
3 I mean, I've been around jobs --

4 Q Uh-huh.

5 A -- that they had done.

6 Q Okay. Do you know about when this meeting
7 took place?

8 A No.

9 Q Now, the proposal dated March 29th, 2007,
10 do you know if it was before or after?

11 A It was before that.

12 Q So you, Stephanie, Candace --

13 A Wait, wait, wait. Let me -- you said that
14 was -- the proposal is what now?

15 Q Let me hand you a copy.

16 A Let me look at that, because I don't --

17 Q Yeah. I'm trying to put a --

18 A Yeah.

19 Q -- time line together on it.

20 A It was probably -- this was an estimate --
21 this is an estimate, so it would have to be after
22 this estimate that we decided.

23 Q It's kind of -- I'm not sure. It looks
24 like it's an estimate. It looks like Corey signed
25 it the same day of the estimate. I'm not trying to

1 put words in your mouth, but it looks like he's
2 already accepted it on that day. So it's kind of
3 odd it's dated the same day.

4 A Well, I think we had --

5 Q Do you have something before that?

6 A I think we had -- there was something --
7 there should be, probably, something that they had
8 given us before this.

9 Q All right.

10 A So, I mean, yeah, we had -- if he had
11 signed it, then we would have talked about it.

12 Q Right. That's what I'm saying.

13 A Yeah.

14 Q It is right in this time frame?

15 A It's in that time frame, but exact date I
16 couldn't tell you for sure.

17 Q Okay. Okay. Once -- did you review this
18 proposal? Let me make this Exhibit 1. She's going
19 to mark this as Exhibit 1.

20 (Exhibit Number 1 was marked.)

21 MR. CASHION: Lewis, I can make
22 copies. Do you have this stuff?

23 MR. COBB: Uh-huh.

24 Q (By Mr. Cashion) Did you review the
25 proposal?

1 A Yes.

2 Q Did you have any questions about the terms
3 of this proposal?

4 A No.

5 Q Did you understand the first page of the
6 proposal? Did you understand the terms of what
7 they're talking about?

8 A I mean, I read it.

9 Q Now, item number one of the scope of work
10 where it says, "Mill approximately two inches of
11 existing asphalt on drag strip," parentheses open,
12 "700 feet by 50 feet," parentheses closed. Do you
13 see that?

14 A Yes.

15 Q How was it decided that you would mill
16 that two inches off to start the process?

17 MR. COBB: When you say you
18 would mill it, you don't mean that he would
19 mill it; you mean --

20 MR. CASHION: Let me rephrase
21 the question.

22 MR. COBB: Okay.

23 MR. CASHION: Because you are
24 correct.

25 Q (By Mr. Cashion) How was it decided that

1 Tennessee Asphalt would start the process by milling
2 two inches of the existing asphalt off?

3 A That was their decision.

4 Q Had they talked with you about different
5 alternatives as far as, "Well, we can mill it and
6 put it back for this price, or we can cover
7 everything over and not mill it, and you're going to
8 have to do something with the concrete apron
9 because -- to raise it the same elevation"?

10 A Not that I'm aware of.

11 Q And if they had those conversations, would
12 that have been more of what they'd been talking to
13 Corey about?

14 A Yes.

15 Q And did you know how much asphalt -- the
16 thickness of the asphalt that you had on the track
17 was?

18 A No.

19 Q Do you know -- it says, "Mill two inches."
20 Do you think you got another two inches below it, or
21 is that about what you've got, or you don't know?

22 A I have no idea.

23 Q Okay. And were you aware that Tennessee
24 Asphalt had taken core samples to determine the
25 depth of the asphalt on the track?

1 MR. COBB: Are you talking about
2 the date this agreement was signed?

3 MR. CASHION: I mean -- I'll
4 break it apart.

5 MR. COBB: Okay. I mean,
6 obviously we know it now.

7 Q (By Mr. Cashion) Were you aware of that at
8 all, that they had taken samples?

9 A I knew that Corey met them at the
10 racetrack to take core samples, yes.

11 Q And do you know when that was? Was it
12 before or after this proposal?

13 A I do not know.

14 Q And then on number three it says, "Pave an
15 average of two inches of compacted hot-mix asphalt
16 surface course using 411-E surface mix."

17 Did you have any input as to
18 specifying 411-E surface mix for this job?

19 A Not that I'm aware of.

20 Q Was there any special conditions that you
21 told Tennessee Asphalt about the surface mix that
22 should be used for the drag racing strip?

23 A Not that I'm aware of.

24 Q As we talked about a little bit earlier
25 ago, did you have any special specifications or

1 requirements regarding how smooth the track would
2 have to be?

3 A I mean, I told, you know, Corey that -- to
4 relay to them that, you know, what I -- I wanted a
5 smooth transition from the concrete, and a smooth
6 transition back to the asphalt at the other end.

7 Q Now, when Tennessee Asphalt -- well, let
8 me ask you one other thing. Look at item number
9 seven on Exhibit 1. "Bid is quoted assuming that
10 the proper gravel or base material, minimum of six
11 inches, is existing in-place after milling two
12 inches of existing asphalt surface."

13 Did you understand the assumption
14 being made by Tennessee Asphalt that you had a
15 proper gravel or base material in there?

16 A I really thought that's what they were
17 coring, to make -- to determine whether it was
18 correct or not.

19 Q So you thought they were coring the base
20 stone to see the subgrade there, base stone
21 subgrade?

22 A Yes.

23 Q Did you ever have any conversation with
24 anyone from Tennessee Asphalt about what they were
25 coring or why they were coring it?

1 A Just in some fax communication.

2 Q Okay. What --

3 MR. COBB: F-A-X.

4 A F-A-X, fax communication.

5 Q (By Mr. Cashion) Between you and --

6 A Well, between my fax machine and John
7 Taylor.

8 Q Okay. What -- do you remember anything in
9 particular that made you think they were coring for
10 something related to the base stone or the subgrade?

11 A I just -- I can't quote the exact facts,
12 you know, statement, but, I mean, it was to the fact
13 of we're coring to make sure the base is correct and
14 there is no subgrade issues. If I'm -- I'm not
15 going to quote that to you, but I -- best of my
16 knowledge that's what it said.

17 Q Do you have an approximate time frame of
18 when that occurred?

19 A I do not.

20 Q You don't know if it's before or after
21 this proposal?

22 A The fax is dated. I'd have to look at the
23 fax.

24 Q Here it says, "After milling two inches of
25 existing asphalt surface." That makes it sound like

1 you only had two inches there, and they were going
2 to take all the asphalt off. Is that -- was that
3 your understanding?

4 A (The witness shrugs shoulders.)

5 Q You didn't know?

6 A I didn't know.

7 Q And the next one says, "Price does not
8 include gravel or base material, undercutting, or
9 any other subgrade work." Did you understand that?

10 A I read that, yes.

11 Q Well, did you understand that their price
12 of \$39,500 they were not going to do any base
13 material work, undercutting, or anything to do with
14 the subgrade?

15 A That's what it said.

16 Q On the second page of Exhibit 1 did you
17 read their -- "Tennessee Asphalt Company Standard
18 Terms and Conditions"?

19 A I read over it, yes.

20 Q And again on number seven, did you read
21 that, "Neither grading or compaction of subsurface
22 ground are the responsibility of Tennessee Asphalt
23 Company under this agreement"? Did you understand
24 that?

25 A Yes.

1 Q And then it says, "Tennessee Asphalt
2 Company does not warrant its work where defective
3 work product or drainage problems result from
4 improper preparation or installation of the
5 underlying soil, gravel, or base stone when the
6 gravel or base stone is not a part of Tennessee
7 Asphalt Company's work."

8 Did you see that?

9 A I did.

10 Q Did you have any discussions with anyone
11 within your company -- I guess when you met with
12 Corey, Stephanie, and Candace -- about the terms of
13 this proposal and what they were excluding and what
14 they were including for their price of \$39,500?

15 A I mean, we talked about it. I don't know
16 if we went into any in-depth, you know,
17 conversation, but we just spoke about it and --

18 Q Okay. Now, once the work started, what
19 involvement did you have in the work itself when
20 they were -- when they showed up on-site to do the
21 paving?

22 A I was at my job.

23 Q Who was responsible for the work between
24 you and Corey, Stephanie, and Candace, or anybody
25 else? Who was there to be the -- the inspector?

1 A Corey -- Corey was the inspector is what I
2 would say. He was -- I was -- I was in and out.

3 Q Now Corey is not an owner of the track,
4 correct?

5 A Correct.

6 Q Is he a paid employee of the track?

7 A No.

8 Q Does he get any money from doing anything
9 with respect to the track?

10 A He's a brother-in-law.

11 Q Okay. I'm not sure -- there's a lot of
12 brother-in-law deals out there. Which one is this?
13 I mean, he's not paid, but he's doing -- he's doing
14 work. I mean, he's --

15 A Right.

16 Q He's got some responsibility. He's
17 representing your company in this, I guess, business
18 transaction, correct?

19 A Right.

20 Q Okay. And is he -- but you're not paying
21 him directly?

22 A Correct.

23 Q You may be picking up expenses somewhere
24 else. I don't -- I don't want to get into the
25 family history, but you're not paying him from the

1 corporate funds or the company funds? You're not
2 cutting him a check?

3 A He has been cut a check.

4 Q Okay.

5 A Yes.

6 Q For this or for other stuff, for --

7 A Just other stuff.

8 Q So is it the arrangement where he comes to
9 you and says, "Monte, I need some money," you say,
10 "How much you need," he tells you and you say,
11 "Well, you can have half of it"? I don't know what
12 the deal is, but --

13 A Kind of.

14 Q Okay. But on this transaction he was, for
15 lack of a better word, your inspector and kind of
16 your --

17 A He was my company representative.

18 Q Company representative on the site?

19 A Yes.

20 Q Whether he's being paid or not, he was
21 your man on the site?

22 A (The witness nods head affirmatively.)

23 Q Because you're working full-time during
24 the day at West Tennessee Public Utility?

25 A Yes.

1 Q Was there anybody else, besides Corey,
2 that was watching or monitoring this operation?

3 A My wife was there at the time. I don't
4 know exactly when -- what time she was there, but
5 she was there at times.

6 Q So Stephanie was there at some points?

7 A I was there at some points.

8 Q Okay. Anybody else?

9 A Corey's wife was there at some points.

10 Q If you turn to the page you're on, which
11 is Exhibit 1, which is the fourth page of Exhibit 1,
12 this is an overrun agreement for asphalt pavement
13 dated April 30th, 2007. It's signed by John Taylor
14 of Tennessee Asphalt Company and Corey Todd. Were
15 you familiar with this event?

16 A Yes.

17 Q Okay. Explain to me what this is
18 memorializing for this.

19 A Give me that again.

20 Q Explain to me what -- what your
21 understanding of this event that they were wanting
22 you to be responsible for the overrun of asphalt
23 pavement that both parties signed.

24 A Okay. This was signed after the milling
25 was complete and the -- I guess it would be John and

1 Austin had talked about the surface area and was --
2 had decided that there was a little softness in the
3 surface area and that they were going to rut it up
4 when they were putting in the asphalt back on it.
5 And this was supposedly to cover some extra asphalt
6 to fill up those ruts, plus to fix an area that had
7 been messed up beyond the 700 feet that was supposed
8 to have been paved first, which it says an area of
9 30 by 12 --

10 Q Uh-huh.

11 A -- at that time had been messed up beyond
12 the scope of the work.

13 Q All right. Let me -- it would probably be
14 appropriate for me to hand you what you provided to
15 us, which are your notes. I'm going to hand to the
16 court reporter what we'll mark as Exhibit 2.

17 (Exhibit Number 2 was marked.)

18 Q (By Mr. Cashion) Because your notes start
19 on the same day as this agreement, so --

20 A Yes.

21 Q -- it might help you and help us to get a
22 complete understanding of what we're talking about
23 on Monday April 30th of 2007. At this time it looks
24 like the -- first, on Exhibit 2 it says, "Monte's
25 notes approximately 11:30 a.m." And below it, it

1 says, "Corey's notes," and that's all -- then they
2 don't tell me whose notes they are.

3 A I can --

4 Q Explain to me where this document came
5 from.

6 A Well, of course, me being in construction,
7 pipelining work, I have a habit about journaling my
8 jobs, so I journal.

9 Q All right. Okay.

10 A And this is just -- at the time I just --
11 when the job started, I started journaling.

12 Q Okay. So these -- I've got your notes
13 above, and Corey's notes is one sentence there?

14 A Well, a lot -- a lot more of this is
15 Corey's.

16 Q Okay. Then I've got the next -- I don't
17 see who wrote that. On some days it -- like Corey's
18 conversation with TAC?

19 A Because I told him to journal, too.

20 Q Okay. Y'all are both journaling?

21 A Yes.

22 Q So did you have this handwritten
23 somewhere, and then y'all typed it up at some point?

24 A Some point.

25 Q So this is basically taking your journal,

1 journaling the job, and Corey's, and putting them
2 together in chronological order?

3 A Yes.

4 Q Is that accurate?

5 A Yes.

6 Q Let's look on April 30. And did the
7 milling operation -- did that take the morning? I
8 mean, that wasn't a long operation, was it?

9 A I don't know exactly when they had began,
10 but when I got there, they were on, like say, the
11 first -- first run of milling.

12 Q Uh-huh.

13 A And it took, I'll say, most of the day.

14 Q Okay. And when did -- oh, look at this.
15 It will be a second to flip over here. Now, when
16 you first say at 11:30 you met with John and Austin,
17 are you sure that Austin was there at 11:30, or
18 what's your specific recollection on that date?

19 A My recollection was I was at work and had
20 a job in the area, so I pulled in there and --
21 and -- to see how things were going.

22 Q And so both John and Austin were on the
23 job site?

24 A Best of my knowledge.

25 Q Okay. And you looked at it at 11:30, and

1 things were okay basically?

2 A Looked okay to me.

3 Q Okay. And then at 1:30 you looked at it,
4 and you came back and some equipment had marred down
5 a couple of times, according to John and Austin.
6 This is where you talk about, "Had rutted up
7 approximately 15 feet past the original stopping
8 point." You were told that Tennessee would take --
9 Tennessee Asphalt would take care of that, right?

10 A Yes.

11 Q Now, is that the part that is the subject
12 of this page 4 of Exhibit 1 we're talking about, the
13 paving area of two inches where the current contract
14 is 433 tons including adding a 30-by-12-foot area?

15 A Yes.

16 Q That's what we're talking about here, that
17 mucked up -- or messed up area you described beyond
18 the 700 feet?

19 A (The witness nods head affirmatively.)

20 Q Okay. So did -- did you -- when you came
21 back at 3:30, had Corey already signed this agreeing
22 to pay for that, or did you and Corey talk about it
23 and he signed it and gave it to Tennessee Asphalt on
24 April 30th?

25 A I don't remember.

1 Q Do you remember reading this on April 30
2 when you were on the job site? You were out there
3 at 1:30 and then 2:30 to 3:30? Do you remember
4 anything about that?

5 A Not really.

6 Q And on the last of your observation when
7 you talk about 2:30 to 3:30, they're talking about
8 "would require" -- "They decided it might be all
9 right but might rut up some, and the job would
10 require some additional asphalt." Do you see that?

11 A Uh-huh.

12 Q You need to say, "Yes."

13 A Yes.

14 Q It's a hard -- I'm the same way.

15 When you talk about that, was that
16 the area where you said that was to cover extra
17 asphalt to fill up ruts? Is that what you're
18 talking about in this document?

19 A Rephrase that again.

20 Q In your daily notes, which is on the first
21 page of Exhibit 2 a little after your section, you
22 say, "They decided it would be all right, might rut
23 some and the job would require additional asphalt."
24 And when you and I were talking about what this
25 included, "this" being page 4 of Exhibit 1, the

1 April 30 document, you said that was also to cover
2 extra asphalt to fill up ruts is what I wrote down.
3 So that's the same thing we're talking about.

4 That's what I'm asking. Or is that the same thing?

5 A I -- I think so. But one thing we were
6 talking about in this -- in this note here, where it
7 says that they were test digging off the right lane,
8 and that's where we're talking about, you know, that
9 the ruts were.

10 Q Testing in right lane?

11 A Uh-huh.

12 Q Okay. That was the rut location you're
13 talking about?

14 A Yes.

15 Q And on April 30th, at that time you agreed
16 that Tennessee Asphalt would be paid extra for
17 filling in the ruts?

18 A At that time.

19 Q Okay. Then, if you flip this page to the
20 next one, you have another document dated April 30,
21 2007. And here it talks about -- number one
22 consists of adding 30-by-12-foot area and slowdown
23 area of the track. The cost is \$300, five tons at
24 \$60 per ton, in-place. That's what we talked about
25 earlier, right?

1 A Yes.

2 Q Okay. And at that time you were agreeing
3 that would be an extra cost to Tennessee Asphalt?

4 A Yes.

5 MR. CASHION: Now let's -- tell
6 you what. Why don't we take a quick break.

7 (Recess.)

8 Q (By Mr. Cashion) One thing I didn't ask
9 you and probably should have asked you on the
10 preliminary stuff. We talked about depositions.
11 Have you been involved in any lawsuits as a part of
12 the Northwest Tennessee Motorsports Park, LLC, other
13 than the one we're at here?

14 A Yes.

15 Q Okay. What other lawsuits have you been
16 involved in?

17 A It was a class action lawsuit.

18 Q Who was the class? Were they suing you?

19 A No.

20 Q You were a member of the class?

21 A Yes.

22 Q What --

23 A For -- it was against, I don't know, a
24 power plant. I guess it -- I don't even know the
25 name of it.

1 Q But your company was a member of the
2 class?

3 A Yes.

4 Q Is it still ongoing?

5 A No.

6 Q When did it complete or resolve?

7 A I really don't know.

8 Q A while back?

9 A Right.

10 Q Have you been involved in any other
11 lawsuits with anybody relative to this?

12 A No.

13 Q Northwest Tennessee Motorsports Park?

14 A No.

15 Q Okay. That's the only one?

16 A Can I --

17 Q Sure.

18 A I think I'm confused. I think you
19 confused me here a little bit on this.

20 Q Okay. Tell me what.

21 A On this 30-by-12 --

22 MR. COBB: Let's talk about the
23 exhibit number, Monte.

24 A Exhibit Number 2.

25 Q (By Mr. Cashion) No. We're talking about

1 Exhibit Number 1.

2 A I'm sorry, Exhibit Number 1.

3 MR. COBB: Which --

4 MR. CASHION: Page 5, if I
5 remember correctly.

6 MR. COBB: It has a fax stamp
7 04-30-2007 at 18 colon 53, and then a second
8 one at 14 colon 32 just below it, with the
9 phone numbers.

10 Q (By Mr. Cashion) Page 5 of Exhibit 1. Go
11 ahead and explain what you need to.

12 A I think -- I don't know how I was, but
13 I'm -- I got -- I'm confused on exactly what you
14 wanted to know about this area.

15 Q Right. So if you would just tell me what
16 you know about the area, that's all.

17 A This was just an area that we -- that we
18 needed to be patched.

19 Q Where was this area in location to the
20 track?

21 A It was only like -- it was down -- like
22 right on the end of the -- of the return -- I mean
23 of the shutdown.

24 Q The end of the shutdown area? Does that
25 have another area -- is that what you call it, the

1 shutdown area?

2 A Yes.

3 Q Where you go --

4 A Once you race, you shut down.

5 Q Okay. So after you've gone the 700 feet,
6 you go into a shutdown area?

7 A Yes.

8 Q And what you wanted was --

9 A Just a patch.

10 Q This area of 30-by-12 to be a patch?

11 A Yes, just a --

12 Q And what was the problem with that area?
13 What big signs were --

14 A It had a -- it had some deterioration in
15 the blacktop. It's where the -- actually, it's
16 where the cars turned a lot.

17 Q Uh-huh.

18 A And it deteriorated the asphalt.

19 Q So would you describe it as broken up or
20 rutted or --

21 A Probably cracked up.

22 Q Was there significant ruts in it or --

23 A No.

24 Q -- just cracked pavement?

25 A Just cracked.

1 Q So this was something extra you were
2 asking Tennessee Asphalt to do?

3 A While they were there.

4 Q While they were there, go down, I've got
5 this 30-by-12 spot that -- did you want to pave over
6 it or dig it out or what?

7 A No. Just -- just -- just overlay it.

8 Q Just overlay it, okay.

9 A That's the area they were already slowed
10 down in. Just overlay it.

11 Q You weren't worried about smoothness?

12 A Not at that point.

13 Q Not at that area?

14 A No at that area.

15 Q And on the smoothness, were you primarily
16 worried about the smoothness from the start area and
17 the finish area or smoothness of the whole length of
18 the 700 feet?

19 A Well, the whole 700 feet smoothness, but
20 the start area and the finish area were -- also need
21 to be a smooth transition.

22 Q Okay. Anything else on page 5, Exhibit 1?

23 A No.

24 Q I appreciate you telling me that. If
25 there's something else, you know, just volunteer at

1 any time. Be glad to talk about it.

2 Now, let's talk about the next day's
3 events, Tuesday May 1, '07.

4 A Okay.

5 Q Now, are these your notes?

6 A No.

7 Q Okay. Whose notes are these?

8 A Corey's.

9 Q Were you there on the job site on Tuesday,
10 May 1?

11 A I don't think that I was there any
12 significant time. I may have dropped in and out,
13 you know. I don't think I spoke with anyone on that
14 day.

15 Q Okay. So as far as the conversations that
16 are referenced here, those are Corey's conversations
17 and --

18 A These are Corey's.

19 Q You don't have any firsthand knowledge of
20 them?

21 A I think I was on the phone that day.

22 Q What do you recall on your phone call on
23 May 1?

24 A Basically what it says here.

25 Q Where? Point me to the part.

1 A Next page.

2 Q Next page. Oh, okay. So you went to the
3 site after -- Tuesday after work, right?

4 A Yes.

5 Q And the shutdown area is the area that you
6 were talking about that you had the patch of the
7 30-by-15?

8 A Yes.

9 Q 30-by-12. Excuse me. So tell me what you
10 saw Tuesday afternoon, or late afternoon, on
11 May 1st.

12 A I saw rutted staging lanes and rutted
13 shutdown area.

14 Q Now, where are the staging lanes in
15 relationship --

16 A That is where they line up prior to
17 running at the beginning of the racetrack.

18 Q So this is not the 700 feet?

19 A No.

20 Q This is prior to being on the -- what
21 we'll call the "concrete apron" --

22 A Yes.

23 Q -- at the starting line?

24 A Yes.

25 Q And the rutted staging lanes, was it your

1 impression that that looked like it was caused by
2 the trucks coming through there?

3 A Yes.

4 Q And then the rutted shutdown area, that is
5 after you go the 700 feet? I mean, that's where you
6 had the patch?

7 A Right.

8 Q Was it rutted in the patch area or leading
9 up to the patch area, or did the patch area have
10 anything to do with the proximity of the ruts?

11 A Nothing. It was rutted from end to end, I
12 mean, as far as, you know --

13 Q Did it appear to be from the trucks coming
14 onto the track at the --

15 A Backing --

16 Q -- staging area and then exiting the
17 shutdown area? Is that the loop they were making?

18 A I don't know what -- exactly how they were
19 doing it, I mean.

20 Q Uh-huh.

21 A But there -- yes, there had been trucks on
22 it, it looked like, continuously.

23 Q Okay. And as a result of -- prior to any
24 work being performed, was there ever a conversation
25 about how the tracks should enter or exit from

1 the -- in doing their cycle of operation?

2 A No.

3 Q As a result of what you saw, did you call
4 Mr. Bateman or Mr. Taylor or anybody? Did that lead
5 you to any action?

6 A I don't think I called them that day. I
7 think we talked -- could have talked the next day.
8 I think Corey had talked -- Corey, I'm pretty sure
9 he talked to them the next day.

10 Q Uh-huh. And then on Wednesday, May 2nd,
11 that's Corey's conversation, not yours, with John
12 Taylor, correct?

13 A I think so.

14 Q And then the next entry on Wednesday,
15 May 2nd, that's not your conversation, correct?

16 A Parts of it is.

17 Q Down there it says, "Monte and Corey both
18 told TAC repeatedly that the job had to be done
19 right and had to be smooth." Did you have a
20 conversation that day, or is that just prior
21 conversations being referenced?

22 A I'm not sure. I'm thinking that's
23 probably going to be prior.

24 Q Do you recall a conversation on Wednesday,
25 May 2nd with Austin Bateman or John Taylor?

1 A Nothing that I can recollect.

2 Q Now we go to Thursday, May 3rd. We have a
3 meeting that you're attending on -- around 12:30,
4 correct?

5 A Yes.

6 Q Okay. Tell me what you recall about this
7 meeting on May 3rd at 12:30.

8 A Just that we were meeting to find out kind
9 of what had went wrong, and why that everything that
10 happened has happened the way it did, and just, you
11 know, trying to -- trying to figure out the whole
12 situation, what's gone wrong here.

13 Q And what was here -- at the bottom you
14 say, "Monte told Austin they should have used a
15 service road hot gate, and Austin said, 'Nobody told
16 me to use that road.'" Do you see that?

17 A Yes.

18 Q Did you ever -- is Mr. Bateman correct
19 that nobody ever told him to use that road?

20 A No.

21 Q Okay. And do you know if they could have
22 used the service road, if it was --

23 A Yes. I mean, it was within the 700 feet
24 that they were going to be paving. That road was
25 within that area.

1 Q And could they get -- isn't it divided by
2 a fence?

3 A It has an opening in the -- it's for a --
4 it's called a "hot gate." It's for if a car has
5 problems. Instead of driving all the way down the
6 racetrack, they can drive out there and -- yeah.

7 Q And is that gate sufficient to get trucks
8 in and out of?

9 A I would think so.

10 Q Do you know the dimensions, or did you
11 talk about can they use the hot gate?

12 A It's --

13 Q Practically?

14 A It should be. I mean, I don't know the
15 exact dimensions of it.

16 Q Then it says, "John and I talked over to
17 the side." Is that --

18 A Corey.

19 Q Corey, okay. At the bottom it says,
20 "Monte: Austin said that TAC takes no
21 responsibility because they have no warranty.
22 Austin said that he was not going to eat the asphalt
23 in-place, that we were just being hard to deal
24 with." Is that what Austin told you?

25 A Yes.

1 Q And you wrote it down that day?

2 A Yes.

3 Q Okay. And you say, "Austin said, 'What we
4 have in-place is what we'll have to keep.'" That's
5 what he told you?

6 A Yes.

7 Q "Monte said, 'Looking at the racetrack it
8 is dipped, humped, and looks like crap.'" Accurate
9 what you told him?

10 A Yes.

11 Q "They walked down the raceway looking at
12 the work that had been done. Austin quoted to me
13 and Corey that looking at how much would have to be
14 undercut, he estimated the price would be around
15 \$150,000 on top of the original quoted price." Is
16 that what he told you at that time?

17 A I think so.

18 Q "Plus, we'd have to pay for getting the
19 rutted shutdown area paved in addition to this."
20 That's what he told you?

21 A Yes.

22 Q So at this time did you do anything to
23 determine if the problem was the subgrade or not?
24 What was your reaction when told what I would
25 consider bad news, as far as future pricing of this?

1 A Well, at that time I was kind of in shock.

2 Q Uh-huh.

3 A You know, I didn't -- didn't -- didn't
4 understand, you know, what all had went wrong. Just
5 kind of continued to leave it up to them to tell me
6 at this point.

7 Q Well, did -- at this time he's telling you
8 it's going to cost a lot of money to --

9 A Right.

10 Q We've got soft soil down there. We've got
11 to dig it out, and it's going to be expensive.
12 Had -- did you do anything to check to see -- get
13 some other opinion about what situation you had
14 because of it?

15 A At this time?

16 Q Yeah, at this time.

17 A I don't think I had at this time.

18 Q Who -- did you start calling anybody to
19 find out what -- what you could do about this?

20 A I don't know if it was right -- exactly
21 what point in time. I can't give you a time line
22 exactly. But at one time, yes, I started --

23 Q Right.

24 A -- investigating what could be done, other
25 than this or that or whatever, you know. I don't

1 know exact time.

2 Q Okay. I know. We'll get to that. I know
3 you've got estimates from Ford.

4 A Right.

5 Q I know at some point you talked to your
6 attorney. I don't want to get into his
7 conversations. But at this time you didn't -- you
8 don't recall doing any of your own investigation to
9 double-check what Mr. Bateman's telling you; is that
10 true?

11 A No. I mean, I don't remember anything at
12 this time. If I do, I'll give you a date or
13 something on it. But, I mean, I did it sometime,
14 but I don't know exactly what date it was.

15 Q Okay.

16 A It could have been at this time.

17 Q Okay. On Friday, again, you're on the
18 site, I guess?

19 A Yes.

20 Q Friday, May 4th?

21 A (The witness nods head affirmatively.)

22 Q And you see a surveyor on-site from
23 Tennessee Asphalt, correct?

24 A Yes. He was just pretty much giving a --
25 an entire kind of layout of where all this stuff has

1 ended up, how high, how low or whatever, you know,
2 the pavement had ended up being.

3 Q Uh-huh. And here it says, I guess, in the
4 second sentence, "John expressed several times that
5 he was sorry that this happened and that after the
6 first pull they should have stopped paving." Do you
7 see that?

8 A Yes.

9 Q Did John tell that to you or to Corey or
10 to everybody?

11 A I think he told it to me and to Corey,
12 both.

13 Q Okay. And by -- you realized that when
14 he's saying, "Stop paving," he still has asphalt on
15 the way, correct? Did you understand his business
16 end of this?

17 A I understood that, you know, he was
18 paving. I don't -- I don't know how they do their
19 job, so --

20 Q Okay. So did he -- did he explain to you
21 that by -- what he means by, "Stop paving," was you
22 were going to have to pay for the asphalt whether
23 they put it down or not because it was already en
24 route?

25 A No.

1 Q He just said what you --

2 A Yeah.

3 Q -- you're quoting here?

4 A Yes.

5 Q He didn't go --

6 A He didn't go into any detail.

7 Q You did not understand --

8 A He didn't go into any detail.

9 Q Okay. Then down here it says, "John
10 Taylor admitted once again that they should have
11 never kept on paving once they realized the subgrade
12 was too soft." Is that what he told you?

13 A I'm thinking that we were both standing
14 there at the time.

15 Q It says, "John also stated that he wasn't
16 real sure that they truly understood just how smooth
17 the track surface needed to be, and that he was sure
18 that Austin Bateman did not understand." What did
19 you take that to mean?

20 A Maybe they didn't understand how smooth it
21 needed to be.

22 Q What did -- what is -- and this kind of
23 gets back to my other previous questions. Did you
24 ever take the time to explain to him the definition
25 of smoothness, of how smooth you would have to have

1 that?

2 A I mean, I didn't particularly, but I'm
3 sure that Corey did.

4 Q Okay. And then on Sunday this is your
5 conversation?

6 A Uh-huh.

7 Q You need to say, "Yes."

8 A Yes.

9 Q It's a hard one.

10 A I was reading.

11 MR. COBB: You do better than
12 most.

13 Q (By Mr. Cashion) And when Mr. Bateman gave
14 you these prices, how did you respond to the pricing
15 of it?

16 A I don't think I just responded at all, you
17 know.

18 Q You were just taking the information?

19 A I was just taking the information down.

20 Q At this time everything is shut down on
21 the job, right?

22 A I think so.

23 Q Nobody's doing anything out there?

24 A They might have been there, but I don't
25 know if any work was being done.

1 Q Then on --

2 A They weren't there on Sunday, but --

3 Q Right. Sunday Austin's trying to get back
4 to you to tell you --

5 A Right. He was getting me the price.

6 Q Right. Then on Monday you talked to
7 Bill Ratliff, correct?

8 A Yes.

9 Q What do you recall Mr. Ratliff telling
10 you?

11 A Basically what it says on this paper,
12 that, you know, we discussed what was going on and
13 asked him was he aware, and he, you know -- he
14 was -- you know, pretty much told me what's wrote
15 down here. I mean, I can read it.

16 Q Right. We don't want -- was anything
17 else -- was Mr. Ratliff trying to be helpful to you?
18 Was he confrontational? What was the general tone
19 of your conversation with him?

20 A Basically it was, "Hey, what can we do
21 here?" That was my tone. "Hey, what can we do
22 here?" And his was, you know, "I'll try to come up
23 and look at it. I don't know what's -- exactly
24 what's going on, to what extent or whatever, but
25 I'll come look at it." I asked him to please come

1 look at it, you know, "We do have a problem, and I
2 think you being the owner of the company, you need
3 to come look at it."

4 Q Okay. And did he come look at it?

5 A Yes.

6 Q Now, we skipped Tuesday. We go to
7 Wednesday. Is this your observations on Wednesday,
8 May 9th?

9 A I think this is kind of a -- this is
10 everybody's.

11 Q There were a bunch of people there?

12 A Right.

13 Q John Taylor, Austin, and Bill Ratliff. So
14 he came -- you talked to him Monday, and he's there
15 on Wednesday, right?

16 A Yes. He said, "I can't be there Tuesday.
17 I'll be there Wednesday."

18 Q You, Stephanie, Corey, Candace, and
19 Kyle Atkins -- who's he?

20 A He's a personal friend of mine.

21 MR. COBB: Kyle's a lawyer in
22 Gibson County with Floyd Flippin's firm.

23 MR. CASHION: We'll discount
24 anything he would say then, just because I know
25 Floyd.

1 MR. COBB: Sounds like you know
2 Kyle.

3 MR. CASHION: I don't know Kyle,
4 just Floyd. Floyd and I were law school
5 classmates.

6 MR. COBB: I thought you were.

7 Q (By Mr. Cashion) Seriously, did Mr. Atkins
8 have any role on this, or was he just coming as your
9 personal friend?

10 A Personal friend.

11 Q Now, at this -- before I get to Wednesday,
12 they did drop off a piece of equipment to -- to dig
13 a test pit, right, or a test area?

14 A I think so.

15 Q And what was the purpose of doing that, to
16 you, or what did you understand?

17 A It was just something they was going to do
18 to see if they could firm up something. I didn't
19 really understand it.

20 Q Okay. They were just investigating, I
21 guess. Is that a fair assessment?

22 A That would be fair as I know.

23 Q And is this pretty much what y'all talked
24 about on Wednesday?

25 A Yes.

1 Q Anything more to it than that? Was
2 anything resolved?

3 A Nothing was really resolved, you know. We
4 just -- kind of a couple of, you know,
5 conversations. We walked down the racetrack and
6 conversated about what was ready, you know, here,
7 and he kind of got in his car and left.

8 Q And Thursday, this is your phone call?
9 This is not anything happening on the job site?

10 A This is a phone call about what was going
11 to happen.

12 Q Okay. And how did they leave that test
13 area?

14 A How did they leave it?

15 Q Right.

16 A Part of it they put some fabric and some
17 geotextile fabric and some matting down and covered
18 it up. Part of this, at the time, they left it just
19 opened. Most of it, I'd say, they left open.

20 Q Okay. Because here you say, "It's going
21 to be a real mess if it rained."

22 A Yeah.

23 Q Did it stay out there like that?

24 A Yes.

25 Q Was it ever covered up?

1 A Not until the next contractor.

2 Q So for the next --

3 A Month.

4 Q -- month, two months?

5 A Something like that.

6 Q It was open?

7 A Generally.

8 Q Let's talk about the next contractor. Let

9 me hand to you what we'll make Exhibit Number 3.

10 Describe what this is.

11 MR. CASHION: Let's mark it

12 first as Exhibit 3.

13 (Exhibit Number 3 was marked.)

14 A Number 3?

15 Q (By Mr. Cashion) Three.

16 A This is an estimate from Ford -- or

17 statement from Ford Construction on what they're

18 going to -- actually, it's what they did --

19 Q Right.

20 A -- to -- to repair the racetrack.

21 Q And it looks like -- if you look on the

22 last page of Exhibit 3 that y'all signed this

23 agreement on July 3rd, '07, correct?

24 A Yes.

25 Q And describe to me what they did out there

1 in July.

2 A Well, the first thing they did was
3 everything that had been taken -- put down the first
4 time --

5 Q Uh-huh.

6 A -- they took it up.

7 Q So the whole 700 feet?

8 A Plus the whole other 700 feet that was
9 messed up and rutted.

10 Q Okay. When Tennessee Asphalt left the
11 job, the paving -- all of the pavement was not put
12 down, or was all of the pavement put down?

13 A All of it was not put down.

14 Q How much was put down that was
15 contemplated to be put down, in your opinion?

16 A How much of it?

17 Q Yes. Did they have 50 percent down?

18 A Maybe 50 percent, maybe 55. Hard to judge
19 it.

20 Q So they had -- let's just say 50 percent
21 down.

22 A Maybe.

23 Q And the 50 percent was -- did it look bad,
24 of the 700 feet?

25 A Yes.

1 Q All of it? Did any of it look like it was
2 any good?

3 A Not really.

4 Q Now, if you say 50 percent, then there's
5 another 50 percent that wasn't done, right?

6 A Correct.

7 Q What did that existing 50 percent look
8 like? Had they stayed off it, or did it look bad
9 over there, too, that had never been touched by
10 them? I'm talking about the 750 -- I mean, the
11 700-feet run.

12 A Okay. We're on the 700 -- the first
13 700 feet, which was the original 700 feet, okay?

14 Q Correct.

15 A I mean, like say, 50 percent of it was
16 done.

17 Q Okay.

18 A And 50 percent wasn't done.

19 Q Right.

20 A The 50 percent that wasn't done was
21 nothing there but dirt and gravel. And most of it
22 was dirt where they had dug up to put that other
23 stuff down and --

24 Q I thought it was asphalt over there, too.

25 A No.

1 Q Had they done all the asphalt work they
2 were going to do? That's why I'm having trouble --

3 A No.

4 Q -- getting their scope of work. Let me
5 back up. And I've seen photographs. Let me see if
6 photographs would help us.

7 MR. COBB: You've got those,
8 right? (Shows pictures.)

9 MR. CASHION: I think I do. Do
10 I?

11 MS. McCONNELL: I believe
12 they're on a disk.

13 MR. CASHION: These are just the
14 before. They're on this disk?

15 MR. COBB: (Shows photographs.)

16 MR. CASHION: Okay.

17 Q (By Mr. Cashion) So that -- they're doing
18 the full strip, and they've milled everything off,
19 correct? This is the before photograph, as they
20 were labeled. And she said we have that. I didn't
21 print that out.

22 MS. McCONNELL: Is that what's
23 on this disk, the after photos, or --

24 THE WITNESS: During.

25 MR. COBB: (Nods head

1 affirmatively.)

2 MS. McCONNELL: During photos.

3 MR. CASHION: Yeah.

4 A This was prior to anything.

5 Q (By Mr. Cashion) Right. And what you're
6 saying is the other part over there, they did half
7 of it. The part they didn't do was what they milled
8 off?

9 A No.

10 Q I thought -- was that after the milling
11 operation?

12 A Yes.

13 Q Right. And that's -- so when they started
14 their work, all the asphalt in the 700 feet's gone?

15 A Correct.

16 Q And all you've got is the base stone --

17 A Correct.

18 Q -- there, so another contractor comes back
19 in, and he takes up the asphalt over here?

20 A Correct.

21 Q And what does he do over here?

22 A The same thing. I mean, he just -- you
23 get --

24 MR. COBB: Would you like me to
25 print some black and whites of these so you

1 can -- I mean, I'm not trying to -- I can do
2 that.

3 MR. CASHION: Yeah.

4 MR. COBB: Let me do this real
5 quick.

6 MR. CASHION: That would be
7 easier for our record anyways. Off the record.

8 (Off the record.)

9 (Exhibit Number 4 was marked.)

10 Q (By Mr. Cashion) We've marked as Exhibit 4
11 the photograph that we were just discussing, and
12 it's my understanding that that is what the
13 condition looked like when Tennessee Asphalt --

14 MR. COBB: You don't mind if I
15 let him look at the color one when he talks
16 about it?

17 MR. CASHION: No, that's fine.

18 MR. COBB: It's a little easier.

19 A Yes.

20 Q (By Mr. Cashion) What you're saying is
21 that Ford came in there and basically took out the
22 asphalt, the two inches of asphalt that was laid in
23 the 700 feet, correct?

24 A Correct.

25 Q On half of it. And then --

1 A Well -- yeah.

2 Q Where it was laid?

3 A Yeah.

4 Q And then on all of the base stone, Ford
5 took that out all the way across the 700 feet?

6 A No.

7 Q Did they -- what did they do with the base
8 stone there?

9 A Left it in-place.

10 Q So they left the base stone. Did they do
11 anything at all, as far as --

12 A They put this soil cement.

13 Q We're on the second page of Exhibit --

14 A Second page of Exhibit 3, I believe it
15 was. Three, yes.

16 Q So you've got -- when they took off the
17 asphalt, you've got all base stone looking at it,
18 right?

19 A Yes.

20 Q And they put soil cement down?

21 A Yes.

22 Q There's no charge for "cement patching,"
23 is what it's called?

24 A It's called -- I don't know why it says --
25 but "soil cement" is what they call it.

1 Q And they put that over the whole 700 feet?

2 A Yes.

3 Q And then --

4 A Plus the other 700 feet.

5 Q Both sides or -- are we talking about the
6 same 700 feet?

7 A No, we're talking about two 700-feets.

8 Q That's why I'm -- you're losing me there.

9 A Okay.

10 Q Okay. The 700 feet that was milled and
11 partially paved by Tennessee Asphalt is one 700 feet
12 strip?

13 A Yes.

14 Q And that's what they're responsible for?

15 A Plus the 700 feet that was rutted up.

16 Q Is that in the shutdown area?

17 A In the shutdown area.

18 Q Okay. So the only thing that Tennessee
19 Asphalt was going to do in the shutdown area was
20 that 30-by-12 patch under their contract, correct?

21 A Correct.

22 Q What you're saying is Ford went in there
23 and took out all of the asphalt for the 700 feet --
24 the second shutdown 700 feet?

25 A Yes.

1 Q Did they take out the base stone?

2 A No.

3 Q Did they cement patch over the base stone?

4 A Yes.

5 Q For the second 700 feet?

6 A Yes.

7 Q And then they put down the asphalt again?

8 A Yes.

9 Q And all of that work was not in the scope
10 of Tennessee Asphalt's contract?

11 A No.

12 Q And here it says -- it says, "Mill off old
13 pavement and cement treat base and pave truck with
14 two-and-three-quarter inches of 411-E hot mix." I'm
15 assuming milling off pavement is the second 700 feet
16 in the shutdown area?

17 A Where they took this up to.

18 Q Right. Took up the new asphalt Tennessee
19 Asphalt had laid, as well as the 700 feet of the
20 shutdown area?

21 MR. COBB: When you say "they
22 took this up" and point to a picture, without
23 the picture and watching you point, it makes
24 almost no sense. Be careful about that
25 because --

1 THE WITNESS: Okay.

2 A They -- they took up both sections of
3 asphalt.

4 Q (By Mr. Cashion) They took up what
5 Tennessee Asphalt put down on the first 700 feet,
6 and then they took up, or milled, the existing
7 asphalt of the second 700 feet that was the shutdown
8 area?

9 A To be able to fix it, what was messed up.

10 Q Right. And here it says they put "paved
11 with two-and-three-quarters inch." Did they take up
12 three quarters of an inch of base stone with that,
13 or did they just make it higher when they paved it?

14 A They didn't take up any base stone.

15 Q Well, did it -- my understanding was that
16 Tennessee Asphalt put down two inches of asphalt.

17 A Correct.

18 Q They're putting down
19 two-and-three-quarters?

20 A That was their -- that was just what they
21 said they were going to do.

22 Q Was there any extra work done on the
23 transitions where you have the concrete start area?

24 A No.

25 Q What about, was it concrete at the finish

1 line, or --

2 A No.

3 Q So you wouldn't fill that out there?

4 A (The witness shakes head negatively.)

5 Q Okay.

6 MR. CASHION: And here is a
7 photograph that we'll mark as Exhibit 5.

8 (Exhibit Number 5 was marked.)

9 Q (By Mr. Cashion) Lewis may have that on
10 his color, but where are we talking about there?

11 A That's the staging lanes.

12 Q That's before you get to --

13 A Yes, before you get to the racing starting
14 line. That's where they line up to race.

15 Q Did they do any work on the staging lanes?

16 A Who?

17 Q Ford.

18 A Yes.

19 Q Okay. Did they mill that as well?

20 A No.

21 Q Okay. What did they do to correct what's
22 shown in Exhibit 5?

23 A They patched it.

24 Q Okay. Is that in here?

25 A Yes. "Additional charge for patching

1 staging area."

2 Q Yes, \$2,000?

3 A \$2,000.

4 Q Okay.

5 MR. CASHION: And I'll mark as

6 Exhibit 6 this photograph.

7 (Exhibit Number 6 was marked.)

8 Q (By Mr. Cashion) If you can, kind of tell
9 me where that occurs.

10 A That is, again, the staging -- staging
11 lanes, staging area.

12 Q Staging area, okay.

13 MR. CASHION: I want to mark as

14 Exhibit 7 this photograph.

15 (Exhibit Number 7 was marked.)

16 Q (By Mr. Cashion) Can you tell me where
17 this occurs? That may be a tough one. I don't know
18 if we got enough photo.

19 A It's in the shutdown area, I'm pretty
20 sure. Let me see.

21 MR. COBB: (Shows color photo.)

22 Q (By Mr. Cashion) You can see a little more
23 of it.

24 A I'm thinking that's in the shutdown area.

25 Q Okay.

1 MR. CASHION: Then let me show
2 you the final one here, which we'll mark as
3 Exhibit 8.

4 (Exhibit Number 8 was marked.)

5 Q (By Mr. Cashion) Where is that one?

6 A That is on the racetrack --

7 Q Okay.

8 A -- past the finish line. That would be
9 the -- well, right here -- oh, I don't guess this
10 thing -- but this is about the extent of the
11 700 feet.

12 Q Uh-huh.

13 A And this is past the 700 feet.

14 Q Okay. So are we looking --

15 A We're looking --

16 Q -- toward the --

17 A -- toward the start line.

18 Q Toward the start line.

19 A From the race -- from the finish line.

20 Q And this was that extra 12 or 15 feet

21 that --

22 A No, no.

23 Q Okay. It doesn't have anything to do with
24 that?

25 A That's where I corrected that on that

1 other.

2 Q Right. Was there some area right past the
3 finish line where --

4 A That was what was kind of told at one
5 time --

6 Q Uh-huh.

7 A -- to -- it had been 12 to 15 feet past
8 the original area.

9 Q Right.

10 A I think is what you're saying, I think,
11 would be right.

12 Q And for any of this -- was any of the
13 stone -- base stone taken out on any of the
14 operation with Ford?

15 A No.

16 Q And was any of the subgrade issues
17 addressed by Ford?

18 A No.

19 Q Did you redo the drainage around the site
20 as far as increasing the ditch depth or making it
21 drain away? Any improvement in that area?

22 A No.

23 Q And when Ford did the work, were you there
24 when they were performing the work?

25 A Yes.

1 Q Were you in the same role as Tennessee
2 Asphalt? I mean, was Corey doing most of the
3 inspection, or were you doing it?

4 A Corey was; I was. I mean, about the same.

5 Q And did Ford do anything different than
6 the way Tennessee Asphalt did?

7 A I mean, other than they didn't mess it up.
8 I mean, it was --

9 Q Well, did they have -- did the paver look
10 the same?

11 A Yes.

12 Q Did the trucks look the same?

13 A Yes.

14 Q That's what I'm saying. Was there any
15 noticeable difference in the way they were doing it
16 than when Tennessee Asphalt was out there?

17 A When they were off-loading their truck on,
18 you know -- when they were milling and off-loading
19 their trucks, they were not driving on the
20 racetrack. They were using the grass area beside
21 it, you know, wherever they, you know -- they were
22 kind of treating it like it was a racetrack and not
23 a highway.

24 Q Uh-huh. So when they would off-load their
25 truck, they wouldn't drive it out to the shutdown

1 area?

2 A No.

3 Q When Tennessee Asphalt was doing the
4 milling, were they driving it through the shutdown
5 area?

6 A I don't know for sure. Like I say, I
7 probably wasn't there all that time. I'm not -- you
8 know, I would say somebody drove down through there,
9 and it was when Tennessee Asphalt was working. I
10 don't know if it was a full truck, empty truck, or
11 what. But trucks did drive down there. I don't
12 know if it was when they was putting it back or, you
13 know --

14 Q It looked to me, from your notes --

15 A -- taking it out.

16 Q -- that you didn't really notice that
17 until after the paving operations started. I didn't
18 notice that when you came out there on April 30 --
19 you can look back on Exhibit 2.

20 A The -- they were noticed before they
21 started paving it.

22 Q It was noticed? Where did you put that
23 note?

24 A That was on the first.

25 Q That's after they started paving.

1 A Okay. Well, let me go back and look
2 because, I mean, it's been a while. I guess that's
3 right. Because they -- the ruts on the other end of
4 the shutdown area is when -- after they had started
5 paving. So evidently they was bringing the paving
6 in that way, I guess, on the shutdown area.

7 Q Okay. And that's when you noticed that?
8 With the milling operation it doesn't appear that
9 the trucks caused the rutting --

10 A I noticed --

11 Q -- in the shutdown area?

12 A I noticed -- well, yeah. Because you can
13 see right here where it says on the first day --

14 Q Right.

15 A -- that, you know, there was some -- some
16 ruts from the milling operation.

17 Q "TAC has rode up approximately 15 feet
18 past the original stopping point, and I was told
19 that TAC would take care of it." We're just talking
20 15 feet there?

21 A Yes. That was past --

22 Q Past the --

23 A -- the rest of the area. I mean, it said
24 right here, they decided about the ruts, you know,
25 the job would require extra asphalt, and that was

1 ruts in an area on -- which I can show you.

2 Q Where was that?

3 A There were ruts in the -- there were some
4 ruts in this area right here.

5 Q In the previously milled area?

6 A Yes. (Shows a photograph.)

7 Q And when Ford did the work, before they
8 got on that area, they put the soil -- I mean the
9 cement stabilization or the cement patching.

10 A No.

11 Q Is that the way they started?

12 A No. They took everything off, and then
13 they soil-cemented it.

14 Q Right. After they completed their milling
15 operation --

16 A Right.

17 Q -- they cleaned it up. I'm sure they took
18 a grader to it.

19 A Graded it off --

20 Q Graded it off.

21 A -- level, whatever.

22 Q Then they put their cement?

23 A They started their soil cement process.

24 Q Right. And are you satisfied with the
25 work of Ford?

1 A Yes.

2 Q And is it your position in this lawsuit
3 that you want Tennessee Asphalt to pay you the total
4 bill for everything Ford did on the job?

5 A Yes.

6 Q Why is that?

7 A Because had -- had all of it not been
8 messed up, then we wouldn't have had to, you know --
9 had they done their job like they said they would do
10 their job, I would have been not out what I'm out.
11 They were -- they were supposed to do the job for --
12 and a satisfactory job and said they could do the
13 job, and, you know, for \$39,500.

14 Q Well, do you recognize that Ford did a lot
15 more work than they did out there?

16 A I mean, they did what they had to do to
17 fix what had gone wrong with what they did.

18 Q And, in your mind, what caused this
19 problem that Tennessee Asphalt had on this case in
20 doing the work?

21 A Just more or less negligence.

22 Q How were they negligent?

23 A By continuing to tear up what -- what they
24 were working on. They didn't recognize when they
25 were messing up and didn't continue to -- they

1 continued to go about doing it, you know.

2 Q Did you recognize that the reason it was
3 sinking down was because of the subgrade not holding
4 up?

5 A I don't know.

6 Q Did you recognize that?

7 A Me?

8 Q Yeah.

9 A No. I didn't -- I didn't know why.

10 Q And if it's the subgrade that wasn't
11 holding the trucks up when they were on it, are you
12 saying that's Tennessee Asphalt's problem?

13 A When -- when they came out and cored and
14 give me all indications that everything was okay.

15 Q And you got -- well, and you believe that
16 they cored through the base stone and through the
17 foundation and did testing to make sure --

18 A They said they were doing coring to make
19 sure that it was okay, you know. I don't know what
20 okay is in theirs.

21 Q Do you realize that they had told you they
22 were not responsible for the subgrade and the base
23 stone that was out there; that was your
24 responsibility?

25 MR. COBB: Object to form.

1 Q (By Mr. Cashion) Do you remember, we went
2 through the contract? They were not responsible for
3 the base stone and subgrade; do you remember that?

4 MR. COBB: Object to form.

5 A Rephrase it.

6 Q (By Mr. Cashion) Well, we covered that
7 earlier this morning. I believe Exhibit 1 is the
8 contract. Exhibit 1, item seven on the first page,
9 "Bid is quoted assuming that the proper gravel and
10 base stone material is existing in-place."

11 A And that's what -- that's what my
12 indications of what they cored for.

13 Q But that was their assumption. When did
14 they -- did they give you something else that said,
15 "We're going to remove this assumption, we're going
16 to accept your subgrade and base stone as it exists
17 out there"?

18 A I think that it was verbal.

19 Q Now, who said what to who?

20 A I can't remember exactly who said what,
21 but --

22 Q Did anybody tell you from Tennessee
23 Asphalt that we've cored this job and we know that
24 you've got good base stone and good subgrade to do
25 this?

1 A I don't think anyone from Tennessee
2 Asphalt told me.

3 Q Okay. Were you -- did you hear a
4 conversation where anybody from Tennessee Asphalt
5 said, "We agree this is good base stone, good
6 subgrade, we're going to do this job"?

7 A No, I didn't.

8 Q And have you ever hired any other
9 geotechnical engineer to make an investigation as to
10 the -- should have built the subgrade and the base
11 stone at the time this was going on? We have one
12 reported date in evidence.

13 A Right. That's what I was thinking about.

14 Q Lewis and I --

15 A Yeah, that's the only thing that I know
16 of.

17 Q -- split that.

18 A That's the only thing that I know of.

19 Q Was there anybody else?

20 A No.

21 Q That's what I was asking. I didn't want
22 to confuse you.

23 A Yeah. Yeah. We did daily. That's the
24 only thing I know. That was after the fact.

25 MR. CASHION: Lewis, give me

1 about five minutes and let me huddle and see if
2 I can't wrap this up for you.

3 MR. COBB: Okay.

4 (Recess.)

5 Q (By Mr. Cashion) I have one other question
6 that I wasn't too sure about, and that is the hot
7 gate that you described. Is that somewhere located
8 between the start and finish line?

9 A Just past the finish line.

10 Q Just past the finish line.

11 A Yes. It's with -- it's about from the
12 starting line -- or from the end of the concrete,
13 let's say.

14 Q Right.

15 A We were going to pave 700 feet. The hot
16 gate is in one of these pictures.

17 MR. COBB: No.

18 A Yeah, it should be. The hot gate is
19 about, roughly, from the end of the concrete
20 650 feet.

21 Q (By Mr. Cashion) So it's just before you
22 get to the finish line?

23 A No. Just past the finish line.

24 Q I thought it was 700 feet.

25 A No. An eighth mile is 660 feet from start

1 to finish.

2 Q Good. That's what I was missing.

3 A Okay. The concrete is about a hundred
4 feet long from -- about a hundred feet from the --
5 of concrete. From the start line to the end of the
6 concrete is about 700 feet.

7 Q Uh-huh.

8 A So we were going 700 feet past that.

9 Q So you've got 800 feet from the start
10 line?

11 A From the start line to where, actually,
12 the job was supposed to end. So a hundred feet of
13 that, approximately, was concrete.

14 Q And the eighth of a mile stops at
15 660 feet?

16 A Correct.

17 Q So you've got another 140 feet beyond
18 that, of their paving operation?

19 A Correct.

20 Q And what you're saying is at the finish
21 line you think the hot gate is --

22 A -- maybe 50 feet.

23 Q Maybe 50 feet. So it's within that
24 700-feet paving area?

25 A The scope of the 700-feet paving area,

1 yes.

2 Q So I didn't quite understand how you
3 wanted them to use the hot gate, because once you go
4 past the 700 feet you've got to stay on the shutdown
5 area, right?

6 A Yes.

7 Q I mean, you can't get off that -- I mean,
8 that's -- because you've got it fenced and railed
9 all the way to the end?

10 A Right.

11 Q So why were you saying they should use the
12 hot gate, because they've still got to go off the --

13 A All right.

14 Q Explain that to me.

15 A Okay. The hot gate could have been used
16 in the -- when the trucks were coming off in the
17 milling operation, because before -- the area before
18 they got to the hot gate, they were milling and
19 trucks were going off. You know, they were going,
20 you know -- they could have used it during that
21 operation before they got to it. They could come in
22 that area and back into where they're paving. I
23 mean, they may not could have used it completely at
24 all times, but there's times when they could have
25 used it, yes.

1 Q Right. Okay. I understand what you're
2 saying. So we both agree they couldn't have used it
3 all the time?

4 A Not all the time.

5 Q Because physically when they go past it,
6 it's impossible?

7 A Right, unless they turned around.

8 Q Turned around and went back over the --

9 A I mean --

10 Q Do we agree that the last thing you want
11 these big trucks to do is start --

12 A Turning.

13 Q -- turning their wheels?

14 A Right. Correct.

15 Q Turning wheel bad in this case, right? If
16 they start turning the wheels, it's going to put a
17 lot more stress on the pavement?

18 A Well, if they're on the -- if they're on
19 the new pavement, yeah, I'm sure it would.

20 Q What if they're on your shutdown area? If
21 they're -- if they're turning around in your
22 shutdown area, they're going to put extra stress on
23 your pavement out there as well?

24 A I think that's -- I agree, yes.

25 Q All right. That's what I didn't know. I

1 appreciate you taking the time to explain --

2 A Yeah.

3 Q -- the hot gate.

4 And that's to keep them from going --
5 a car from going all the way down --

6 A Like if something was broke on the car --

7 Q -- the shutdown area?

8 A -- or if they break at the starting line,
9 we can pull them out that area instead of --

10 Q Right.

11 A -- dragging them all the way down the
12 racetrack.

13 Q Okay. Well, Mr. Smith, that's all the
14 questions I have. Thank you for taking the time to
15 talk with me about it.

16 A Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. COBB:

20 Q Monte, when counsel asked you about your
21 claim for damages, you understand that Ford did more
22 work than you had asked TAC to do in the contract?

23 A Yes.

24 Q Like the soil cement, correct?

25 A Yes.

1 Q You don't expect TAC to pay for the soil
2 cement part of the contract, do you?

3 A No.

4 MR. COBB: That's all.

5

6 REDIRECT EXAMINATION

7 BY MR. CASHION:

8 Q One other thing I probably should have
9 asked you. You're asking, for lack of a better
10 word, lost revenue, lost profit on this job,
11 correct?

12 A Correct.

13 Q But you're not the one that pulled all
14 these numbers together, are you?

15 A No.

16 Q Did you have anything to do with coming up
17 with those numbers?

18 A I mean, not really. I mean --

19 Q I just want to make sure I don't ask
20 somebody and they say, "Well, Monte did it."

21 A No. I know what -- about the numbers, but
22 I don't know exactly any -- any of the formulas. I
23 work on the racetrack. She works in the accounting
24 department.

25 MR. COBB: If somebody says that

1 and you want a chance to ask him, we'll think
2 it appropriate to follow up.

3 MR. CASHION: Sure.

4 Q (By Mr. Cashion) And just so I clean this
5 up: Are you asking for any other damages besides --
6 Ford damages, which I now understand is Ford less
7 cement -- soil cement and whatever revenue loss?

8 A I think that's basically it, as far as I
9 remember.

10 Q Okay. Make sure we're not overlooking
11 anything.

12 MR. CASHION: That's all the
13 questions I have.

14 MR. COBB: That's it.

15 AND FURTHER DEPONENT SAITH NOT

16 -----

17

18

19

20

21

22

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24

25

C E R T I F I C A T E

STATE OF TENNESSEE)

)

AT LARGE)

I, Christina K. Shupert, hereby certify that

the witness in the foregoing deposition was first duly

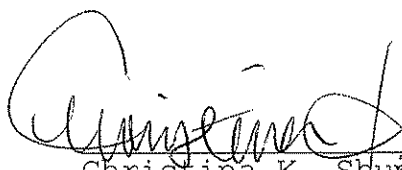
sworn; and that the foregoing is a true and accurate

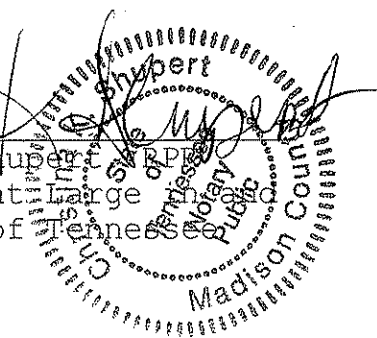
transcript of the testimony given by said witness on July

22, 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
4th day of August, 2008.


Christina K. Shupert, Notary Public
Notary Public at Large
for the State of Tennessee



My Commission Expires:

November 21, 2010

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NWTNMS

PAGE 01

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TAC PARIS

PAGE 03/04

Proposal

TENNESSEE ASPHALT COMPANY
P.O. BOX 1327 • HIGHWAY 79 EAST
PARIS, TENNESSEE 38242

TELEPHONE NO (731) 642-5791 • FAX NO. (731) 644-2848

PROPOSAL SUBMITTED TO:

Name:	WEST TENNESSEE MOTORSPORTS PARK	Phone:	731.566.9935 (fax & office)	Date:	MARCH 29, 2007
Street:	HIGHWAY 22	Job Name:	WEST TENNESSEE MOTORSPORTS PARK DRAG STRIP		
City:	GLEASON TENNESSEE 38228	Street:	HIGHWAY 22	City:	GLEASON TENNESSEE 38228
State:	TN	Zip Code:	38228	Architect:	N/A
Description of Work:			The attached plan is made a part of this proposal:		

3,889 (700 FEET X 50 FEET) SQUARE YARDS OF LIGHT DUTY ASPHALT PAVING \$39,500.00
Thirty Nine Thousand Five Hundred Dollars and Zero Cents

1. MILL APPROXIMATELY 2" OF EXISTING ASPHALT ON DRAG STRIP (700 FEET X 50 FEET).
2. APPLY TACK COAT TO MILLED SURFACE.
3. PAVE AN AVERAGE OF 2" OF COMPACTED HOT-MIX ASPHALT SURFACE COURSE USING 411-E SURFACE MIX.
4. RE-STRIP DRAG STRIP AS PER EXISTING LAYOUT.

NOTE:

- PRICE DOES NOT INCLUDE SEEDING, SODDING AND/OR BACKFILLING AROUND EDGES OF ASPHALT, EXTRUDED CURB, AND/OR CURB AND GUTTER. LIGHT DUTY ASPHALT PAVEMENT (2" SURFACE MIX ONLY) CANNOT BE GUARANTEED AGAINST HEAVY DUTY TRAFFIC.
3. A MINIMUM OF 1.5% FALL IS REQUIRED IN ORDER TO GUARANTEE DRAINAGE.
 4. A MINIMUM OF 6" OF COMPACTED GRAVEL OR STONE BASE IS REQUIRED TO PAVE UPON.
 5. SUB-GRADE TO BE PROOF ROLLED WITH A LOADED TRUCK BEFORE INSTALLING GRAVEL OR STONE BASE.
 6. EXISTING GRAVEL OR STONE BASE TO BE PROOF ROLLED WITH A LOADED TRUCK BEFORE INSTALLING ASPHALT PAVEMENT.
 7. BID IS QUOTED ASSUMING THAT THE PROPER GRAVEL OR BASE MATERIAL (MINIMUM OF 6") IS EXISTING IN-PLACE AFTER MILLING 2" OF EXISTING ASPHALT SURFACE. PRICE DOES NOT INCLUDE GRAVEL OR BASE MATERIAL, UNDERCUTTING OR ANY OTHER SUB-GRADE WORK.
 8. SURFACE MIX TO BE PUT BACK IN-PLACE IS TDOT 411-E SURFACE MIX. IF ANY MIX BY NFRA IS REQUIRED, PRICE WILL BE ADJUSTED.
 9. OWNER TO KEEP ASPHALT MILLINGS. ASPHALT MILLINGS TO BE DUMPED ON SITE.
 10. 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
THIRTY NINE THOUSAND FIVE HUNDRED dollars (\$39,500.00) with payment to be made as follows:
NET DUE AT 30 DAYS FROM INVOICE

Plus a service charge of one and one-half percent (1 1/2%) 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 30 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.

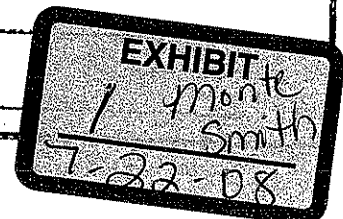
Accepted: _____

Signature _____

Date

3-29-07

Signature _____



TENNESSEE ASPHALT COMPANY

STANDARD TERMS AND CONDITIONS

1. PAYMENT unless otherwise provided herein, the purchaser shall be billed as the work progresses and agrees to remit payment not later than the 10th day of the following month. Payment shall be made to the offices of Tennessee Asphalt Company at 520 Maryville Pike, Knoxville, Tennessee 37920, and should the financial responsibility of the purchaser at any time appear or become unsatisfactory to Tennessee Asphalt Company, it reserves the right to require payment in advance or other satisfactory security.

2. ACCEPTANCE all proposals and/or quotations are subject to acceptance by an authorized agent of Tennessee Asphalt Company at either the office in Knoxville, Tennessee or the office in Tennessee from which the proposal and/or quotation originated. Prices and specifications quoted shall remain firm for a period of thirty (30) days unless otherwise noted. Any revisions or changes to a proposal or quotation shall be made only upon the written consent of Tennessee Asphalt Company, and, if the revisions or changes involve additional cost, such cost shall be added to the contract price quoted herein.

3. DAMAGES AND GUARANTEES Tennessee Asphalt Company guarantees that all supplied material will be as specified and all work shall be completed in a workmanlike manner according to standard industry practices. If within one (1) year from the date the material is supplied and labor is performed, it is established to Tennessee Asphalt Company's satisfaction that it's material was not as specified or it's labor not performed in a workmanlike manner, Tennessee Asphalt Company will repair or replace the defective work at it's own expense. The parties agree that this shall be the exclusive or sole remedy. In no event shall purchaser retain any portion of the contract price for any reason. In the event Tennessee Asphalt Company is required to repair or replace a defective work product as provided herein and fails to do so, it's liability shall be limited to the difference at the time and place of completion between the value of the work product completed and the value as warranted. All other liability, including liability for consequential damages is hereby excluded.

EXCEPT OTHERWISE STATED HEREIN, NO REPRESENTATION, PROMISE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN MADE WITH RESPECT TO THE MERCHANTABILITY, SUITABILITY OR FITNESS FOR THE PURPOSES OF THE MATERIAL SUPPLIED OR OTHERWISE UNLESS THE SAME IS ENDORSED HEREON IN WRITING OR IS CONTAINED IN A SEPARATE INSTRUMENT SIGNED BY AN AUTHORIZED AGENT OF TENNESSEE ASPHALT COMPANY

4. RISK OF LOSS Upon the delivery of materials to the job site, risk of loss shall be at the purchaser's expense. The purchaser or owner shall obtain and maintain at his/her own expense hazard insurance or other insurance necessarily required to protect from risk of loss. Tennessee Asphalt Company shall obtain and maintain worker's compensation insurance on all of its workers.

5. EXCUSED PERFORMANCE Performance hereunder shall be excused if made impracticable by the occurrence of a contingency, the non-occurrence of which was a basic assumption on which this proposal was made, or any other act or occurrence beyond the control of Tennessee Asphalt Company.

6. TIMING OF WORK The work to be performed hereunder shall be performed during normal working hours on Monday through Friday. Tennessee Asphalt Company reserves the right to delay performance of the work when, in it's sole opinion. The weather and/or soil conditions are such that the successful completion of the work would be at risk.

7. WORK OF OTHERS Neither grading or compaction of subsurface ground are the responsibility of Tennessee Asphalt Company under this agreement. Tennessee Asphalt Company does not warrant it's work were defective work product or drainage problems result from improper preparation or installation of the underlying soil, gravel or base stone, when gravel or base stone is not a part of Tennessee Asphalt Company's work.

8. ENGINEERING AND SURVEY The purchaser agrees to be responsible for designating on the ground the boundaries where Tennessee Asphalt Company is to install the work. The purchaser will indemnify and hold Tennessee Asphalt Company harmless from any liability to third parties arising from the location of the work, when the work is installed, where, and as designated, by the purchaser.

9. IMPAIRMENT OF WORK BY OTHERS Tennessee Asphalt Company shall not be responsible for damages or deterioration of its work resulting from the inadequacy of work done by others, abuse or other cause by others, or any other causes beyond its control. In the event of such damage to or deterioration of the work prior to completion, purchaser shall pay Tennessee Asphalt Company its normal charges to perform the repair and/or cleanup, so that the work can be completed. Tennessee Asphalt Company shall not be responsible for, and purchaser agrees to hold it harmless from any liability resulting from damages to utilities or other objects buried beneath the work area which were not disclosed prior to commencement of the work.

10. DEFAULT In the event the purchaser defaults in any payment, or fails to comply with any provision hereof, Tennessee Asphalt Company shall have the right to declare all amounts due hereunder to be immediately due and payable and further performance by Tennessee Asphalt Company hereunder shall be excused should the default not be cured within ten (10) days of written notice thereof. The purchaser agrees to pay a reasonable attorney's fees (which the parties agree shall be at least 1/3 of the amount sought, but which may be more) and other expenses incurred by Tennessee Asphalt Company in affecting collection, or enforcement of the provisions of this agreement. The rights of Tennessee Asphalt Company hereunder are in addition to any given by law and may be enforced successively or concurrently. Waiver by Tennessee Asphalt Company of any default shall not be deemed a waiver of any other default.

11. GENERAL This proposal constitutes the entire agreement between the parties and no modification hereof shall be valid in any event, and the owner or purchaser expressly waives the right to rely thereon, unless made in writing and signed by an authorized agent of Tennessee Asphalt Company. Any provision of this proposal prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating any other provision. The proposal shall be governed by the laws of the State of Tennessee and no legal or administrative proceedings shall be brought against Tennessee Asphalt Company until after thirty (30) days written notice of any default in its obligation under this proposal and a demand to cure the default.

12. ASSUMPTION OF RISK Once the material has been supplied and labor performed as required by this proposal, and the work has been accepted by the owner or purchaser, the owner or purchaser agrees to assume all risk of third party liability to third parties for personal injury or property damage proximately or remotely resulting from the work and the owner or purchaser shall hold Tennessee Asphalt Company harmless with respect to any such liability and shall, upon demand, defend itself with the respect to any personal injury or property damage against which the owner or purchaser has agreed to hold it harmless, the owner agrees to pay in addition to basic liability, all attorney fees and cost incurred in any such legal or administrative proceedings.

TENNESSEE ASPHALT COMPANY
STANDARD TERMS AND CONDITIONS

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2. ACCEPTANCE all proposals and/or quotations are subject to acceptance by an authorized agent of Tennessee Asphalt Company at either the office in Knoxville, Tennessee or the office in Tennessee from which the proposal and/or quotation originated. Prices and specifications quoted shall remain firm for a period of thirty (30) days unless otherwise noted. Any revisions or changes to a proposal or quotation shall be made only upon the written consent of Tennessee Asphalt Company, and, if the revisions or changes involve additional cost, such cost shall be added to the contract price quoted herein.

3. DAMAGES AND GUARANTEES Tennessee Asphalt Company guarantees that all supplied material will be as specified and all work shall be completed in a workmanlike manner according to standard industry practices. If within one (1) year from the date the material is supplied and labor is performed, it is established to Tennessee Asphalt Company's satisfaction that it's material was not as specified or it's labor not performed in a workmanlike manner, Tennessee Asphalt Company will repair or replace the defective work at it's own expense. The parties agree that this shall be the exclusive or sole remedy. In no event shall purchaser retain any portion of the contract price for any reason. In the event Tennessee Asphalt Company is required to repair or replace a defective work product as provided herein and fails to do so, it's liability shall be limited to the difference at the time and place of completion between the value of the work product completed and the value as warranted. All other liability, including liability for consequential damages is hereby excluded.

EXCEPT OTHERWISE STATED HEREIN, NO REPRESENTATION, PROMISE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN MADE WITH RESPECT TO THE MERCHANTABILITY, SUITABILITY OR FITNESS FOR THE PURPOSES OF THE MATERIAL SUPPLIED OR OTHERWISE UNLESS THE SAME IS ENDORSED HEREON IN WRITING OR IS CONTAINED IN A SEPARATE INSTRUMENT SIGNED BY AN AUTHORIZED AGENT OF TENNESSEE ASPHALT COMPANY

4. RISK OF LOSS Upon the delivery of materials to the job site, risk of loss shall be at the purchaser's expense. The purchaser or owner shall obtain and maintain at his/her own expense hazard insurance or other insurance necessarily required to protect from risk of loss. Tennessee Asphalt Company shall obtain and maintain worker's compensation insurance on all of its workers.

5. EXCUSED PERFORMANCE Performance hereunder shall be excused if made impracticable by the occurrence of a contingency, the non-occurrence of which was a basic assumption on which this proposal was made, or any other act or occurrence beyond the control of Tennessee Asphalt Company.

6. TIMING OF WORK The work to be performed hereunder shall be performed during normal working hours on Monday through Friday. Tennessee Asphalt Company reserves the right to delay performance of the work when, in it's sole opinion, the weather and/or soil conditions are such that the successful completion of the work would be at risk.

7. WORK OF OTHERS Neither grading or compaction of subsurface ground are the responsibility of Tennessee Asphalt Company under this agreement. Tennessee Asphalt Company does not warrant it's work were defective work product or drainage problems result from improper preparation or installation of the underlying soil, gravel or base stone, when gravel or base stone is not a part of Tennessee Asphalt Company's work.

8. ENGINEERING AND SURVEY The purchaser agrees to be responsible for designating on the ground the boundaries where Tennessee Asphalt Company is to install the work. The purchaser will indemnify and hold Tennessee Asphalt Company harmless from any liability to third parties arising from the location of the work, when the work is installed, where, and as designated, by the purchaser.

9. IMPAIRMENT OF WORK BY OTHERS Tennessee Asphalt Company shall not be responsible for damages or deterioration of its work resulting from the inadequacy of work done by others, abuse or other cause by others, or any other causes beyond its control. In the event of such damage to or deterioration of the work prior to completion, purchaser shall pay Tennessee Asphalt Company its normal charges to perform the repair and/or cleanup, so that the work can be completed. Tennessee Asphalt Company shall not be responsible for, and purchaser agrees to hold it harmless from any liability resulting from damages to utilities or other objects buried beneath the work area which were not disclosed prior to commencement of the work.

10. DEFAULT In the event the purchaser defaults in any payment, or fails to comply with any provision hereof, Tennessee Asphalt Company shall have the right to declare all amounts due hereunder to be immediately due and payable and further performance by Tennessee Asphalt Company hereunder shall be excused should the default not be cured within ten (10) days of written notice thereof. The purchaser agrees to pay a reasonable attorney's fees (which the parties agree shall be at least 1/3 of the amount sought, but which may be more) and other expenses incurred by Tennessee Asphalt Company in affecting collection, or enforcement of the provisions of this agreement. The rights of Tennessee Asphalt Company hereunder are in addition to any given by law and may be enforced successively or concurrently. Waiver by Tennessee Asphalt Company of any default shall not be deemed a waiver of any other default.

11. GENERAL This proposal constitutes the entire agreement between the parties and no modification hereof shall be valid in any event, and the owner or purchaser expressly waives the right to rely thereon, unless made in writing and signed by an authorized agent of Tennessee Asphalt Company. Any provision of this proposal prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating any other provision. The proposal shall be governed by the laws of the State of Tennessee and no legal or administrative proceedings shall be brought against Tennessee Asphalt Company until after thirty (30) days written notice of any default in its obligation under this proposal and a demand to cure the default.

12. ASSUMPTION OF RISK Once the material has been supplied and labor performed as required by this proposal, and the work has been accepted by the owner or purchaser, the owner or purchaser agrees to assume all risk of third party liability to third parties for personal injury or property damage proximately or remotely resulting from the work and the owner or purchaser shall hold Tennessee Asphalt Company harmless with respect to any such liability and shall, upon demand, defend itself with the respect to any personal injury or property damage against which the owner or purchaser has agreed to hold it harmless, the owner agrees to pay in addition to basic liability, all attorney fees and cost incurred in any such legal or administrative proceedings.

04/30/2007 18:53 9019869935
04/30/2007 14:32 7316442646

NWTNMS
TAC PARIS

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TENNESSEE ASPHALT COMPANY

POST OFFICE BOX 1327 • PARIS, TENNESSEE 38242-1327
PHONE (731) 642-5791 • FAX (731) 644-2646

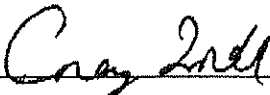
April 30, 2007

West Tennessee Motor Sports Park
Highway 22
Gleason Tennessee 38229
Attention: Cory Todd

Re: Overrun Agreement for Asphalt Pavement

Cory,

By your signature below, you authorize Tennessee Asphalt Company to install additional hot-mix asphalt as needed in order to pave the West Tennessee Motor Sports Park. The additional asphalt will be needed to fill potential rutting or added depth in order to achieve the best paving project possible when paving over the soft sub-grade that was discussed on-site today. The per ton price for any additional asphalt surface will be \$60.00 (Sixty Dollars and Zero Cents) per ton in-place. The current tons set up to pave an average of 2" as per the current contract is 433 tons (includes adding 30 ft x 12 ft area). Final billing for the asphalt surface will be determined by the actual tons in-place above the existing 433 tons.


Cory Todd / Owner


John Taylor / Tennessee Asphalt Company

4-30-07
Date:

4.30.07
Date:

04/30/2007 18:53 9019869935
04/30/2007 14:32 7315442646

NWTNMS
TAC PARIS

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PAGE 03/03



TENNESSEE ASPHALT COMPANY

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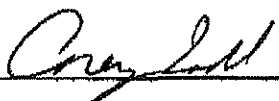
April 30, 2007

West Tennessee Motor Sports Park
Highway 22
Gleason Tennessee 38229
Attention: Cory Todd

Re: 30 ft x 12 ft addition

Cory,

By your signature below, you authorize Tennessee Asphalt Company to add change order # 1 to the West Tennessee Motor Sports Park Paving Project. Change Order # 1 consists of adding a 30 foot x 12 foot area in "slow down" area of the track. The cost for change order # 1 is \$300.00. (5 tons of asphalt @ \$60.00 per ton in-place.


Cory Todd / Owner


John Taylor / Tennessee Asphalt Company

4-30-07
Date:

4.30.07
Date:



TENNESSEE ASPHALT COMPANY

POST OFFICE BOX 1327 • PARIS, TENNESSEE 38242-1327

PHONE (731) 642-5791 • FAX (731) 644-2646

May 9, 2007

Northwest Tennessee Motorsports
PO Box 691
Huntingdon Tennessee 38344
Attention: Cory Todd

Cory,

Per your request, we respectfully submit the following list of equipment rates by the hour, crew labor rate by the hour and material by the unit. These items will be installed and utilized as you direct to address preexisting, substandard sub grade conditions.

EQUIPMENT: (Tennessee Asphalt Company will provide the following equipment rates at no charge)

• Tandem Dumptruck (Driver and Equipment).....	\$65.00 per hour
• Single Axle Dumptruck (Truck Only)	\$50.00 per hour
• Trackhoe (Equipment only)	\$100.00 per hour
• D-7 Dozer (Equipment only).....	\$70.00 per hour
• Vibratory Roller (Equipment only)	\$50.00 per hour
• Motor Grader (Equipment only)	\$80.00 per hour
• Backhoe (Equipment only)	\$50.00 per hour
• Track Loader (Equipment only)	\$50.00 per hour

Any required equipment rentals will be billed at invoice price (saws, vibratory tampers, de-watering pumps etc)

MATERIAL:

• Chert Gravel (Delivered)	\$12.00 per ton
• Chunk Rock (Delivered)	\$13.00 per ton
• Geo-Textile Fabric (Material Only).....	invoice price

LABOR:

- \$1,000.00 per day for 3 (three) man crew

Final billing will be determined by actual hours equipment is used, actual tons of Chert and Chunk Rock used, actual square yards geo-textile fabric used and actual crew days worked. Tennessee Asphalt Company does not and will not take responsibility or guarantee sub-grade, compaction or drainage. The previously signed contract and other agreements with regard to asphalt paving will still be in effect. Also as contingencies for this agreement, it is agreed that:

1. Tennessee Asphalt Company will be paid in full for all work completed to date.
2. Tennessee Asphalt Company will be paid in full for all work completed on this project in the future.
3. Any required repair of ingress and egress will be paid for at contract unit prices as discussed.
4. Prior to the commencement of future operations, Northwest Tennessee Motor Sports Park will provide Tennessee Asphalt Company bank documentation as to the amount of funds set aside for work to be completed by Tennessee Asphalt Company and will certify the timeframe for release of said funds after completion of work.

Cory Todd – Monte Smith / Owners

John Taylor / Tennessee Asphalt Company

Date:

Date:

ESTIMATED DOLLAR AMOUNTS AND ESTIMATED QUANTITIES

Dig Outs

Approximately 1,943 square yards		
Approximately 6 Days Labor @ \$1,000.00 per day	=	\$6,000.00
Fabric @ Invoice Price		
4 oz Non Woven	=	\$1,258.56
Geo Grid	=	\$4,113.71
(Possibility of needing 1 (one) more roll depending upon actual dig outs)	=	\$1,028.42
Approximate amount for dig outs	=	\$12,400.69

Chert Gravel

Approximately 1,943 square yards @ 6" deep		
Approximately 700 tons @ \$12.00 per ton	=	\$8,400.00
Approximate amount for Chert Gravel	=	\$8,400.00

Asphalt Pavement

Approximately 1,943 square yards		
Approximately 243 tons @ \$60.00 per ton	=	\$14,580.00
Approximate amount for Pavement	=	\$14,580.00

Overlay "slow down area"

Approximately 3,611 square yards		
Approximately 270 tons @ \$60.00 per ton	=	\$16,200.00
\$16,200.00 / 2 (cost to be split between Tennessee Asphalt Company and owners)	=	\$8,100.00
Approximate amount for overlay in "slow down area"	=	\$8,100.00

Approximately \$43,480.69

The above quantities and prices are intended to be used for estimates only. Final billing will be determined by actual day's labor used for dig outs, actual square yards of fabric and geo textile used, actual tons of Chert gravel used and actual tons of hot-mix asphalt in-place. Actual dollars billed could be higher or lower than those stated due to actual sub-grade conditions encountered. However, we will make every effort to stay within this budget.

Cory Todd – Monte Smith / Owners

John Taylor / Tennessee Asphalt Company

Date:

Date:

Monday, April 30, 2007

Monte's notes approx 11:30 am

I met with John & Austin, the milling machine was on the first pass, things were going okay.

1:30 pm Came back to racetrack, still milling, some equipment had marred down a couple of times, according to John & Austin. TAC had rutted up approx. 15 feet past the original stopping point, and I was told that TAC "would take care of it."

2:30-3:30 pm Final run of milling was done, Austin & John were test digging a few feet off of the concrete in the right lane. They said were not sure if this would work to pave over. I asked what could we do, Austin said we could dig it out and put big rock in it and re-base. Austin continued to say this would cost a lot of money. I told him that we did not have the money appropriated for that, but we could make arrangements. I also told him that at this point, we had no choice but to get the racetrack back in operating condition. I told them to do whatever it takes to get the racetrack back in a smooth operating condition. They decided it would be alright, but might rut some and the job would require additional asphalt. I did not question this, as I thought they would know the right thing to do and that it would work.

Corey's notes approx 3:30 pm

After the milling was complete, the milling machine operator stated to Corey that the "ground was pretty soft" he had been on worse, but "ground was pretty soft."

Tuesday, May 1, 2007 9:30 am

Stephanie and Corey spoke to John, Austin and paver operator regarding the proper crown on the dragstrip. The original planned crown of 1½ % was not going to be achievable, therefore they were only going to have a ½ % crown on the dragstrip. Around 12:45 pm, Austin came to me and asked me to come with him because he had a couple of issues to discuss with me. He pointed out to me the two places that were messed up in the staging lanes and told me he could fix it one of two ways. He could cut that section out and repave it or just smooth them back down and pave over them. I told him that it would be fine with me to just pave over the places after they were smoothed down because it did not matter if the staging lanes were smooth. Austin and I never discussed who was responsible for paying for this. However, Austin led me to believe that TAC would be responsible for the staging lanes. Then we walked down the track and Austin said that there may be a few roller marks left in the pavement. I told him a few roller marks would not be a problem as long as the track was smooth and without dips and humps. This conversation took place before the second pull of the paver was complete. Towards the end of the second run, the paver was sunk. TAC tried to pull the paver out with their road grader, then they had to pull the road grader with a loaded asphalt truck in order to finally get the paver out. However, they continued on! Stephanie, Corey, John Mitchell, & Joe Mitchell watched as the paving crew paved over a large piece of old asphalt and gravel, that stuck up above the surface to be paved approximately 8-12 inches. We joked over that fact that "surely they are not about to pave over that big chunk of stuff." We stood and watched as they paved over the spot and then stopped to dig out the



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piece of asphalt and shovel some fresh asphalt over the spot.

Monte I was told over phone calls with Stephanie & Corey that the paver had been stuck on more than one occasion. I was also told that the staging lanes were rutted. I came to the track after work, the staging lanes and shutdown area were both rutted and the racetrack was a mess.

Wednesday, May 2, 2007 10:10 am

Corey's conversation with TAC

John Taylor agreed with me that they should have stopped paving after the first run and that all the work they had done to date, they should be responsible for. John said that he was going to talk to his boss about that and he would figure a price for digging it out and putting new rock down and then paving 1400 ft x 50 ft wide.

Wednesday, May 2, 2007 3:17 pm

Austin called Corey and said that we (NWTNMS) told TAC to pave over what was there, but we told them that we wanted the job to be done right and that it had to be smooth. Monte & Corey both told TAC repeatedly that the job had to be done right and it had to be smooth.

Thursday, May 3, 2007

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Corey, Candace and Monte met John and Austin at the racetrack around 12:30.

Corey: I asked Austin, "Why did you not stop after the first pull, when you realized that the ground was too soft?" Austin said that once we had the asphalt mixed and on site, we had to do something with it, "the asphalt would be garbage if we don't use it." I said, "It doesn't matter, it is garbage now!" Austin responded "That's your opinion." I continued to question Austin regarding why TAC chose to use the shutdown area to transport asphalt after they had already damaged the staging lanes and knew the dragstip was soft. I said, "Common sense should tell you not to be down there, when you already messed up the staging lanes." Austin said that nobody told him not to be in the shutdown area. On the other hand, no one told him it was okay to use the shutdown area. At this time, Monte told Austin they should have used the service road (hot gate) and Austin said, "Nobody told me to use that road."

John and I talked over to the side and he agreed with me that they never should have kept on paving after the first pass they made. I told him that I was not going to pay for their screw up and he all but said I agree with you. He said, "Let me talk to Austin and see if I can lean on him some." I asked him if I needed to call Austin's boss and he said not right now, let me see if I can talk to him back at the office first. After that, I may need to call Austin's boss.

Austin stated that TAC is "not an engineering company" and if we wanted someone to tell us what we needed to do, we may need to hire an engineering company to decide how to fix the problem "TAC is a paving company."

Monte: Austin said that TAC takes no responsibility because they have no warranty. Austin said that he was "not going to eat the asphalt in place and that we were just being

hard to deal with." Austin said, "What we have in place is what we will have to keep." Monte said, "Looking at the racetrack it is dipped, humped and looks like crap." They walked down the racetrack looking at the work that had been done. Austin quoted to me and Corey that "Looking at how much would have to be undercut" he estimated the price "to be around \$150,000 on top of the original quoted price." Plus we would have to pay for getting the rutted shutdown area paved in addition to this.

Friday, May 4, 2007 1:00 - 3:00 pm

Corey, Candace, Monte, Stephanie, John Taylor, & Danny (TAC)

Monte TAC surveyor, Danny, surveyed entire area for low spots and uneven pavement. John Taylor came later to assist Danny. After they were finished, we all met around the tower area. John expressed several times that he was sorry this had happened, and that after the first pull, they should have stopped paving. I asked him if his boss in Knoxville, Bill Ratliff, knew about this mess. John said that he thought Bill knew about it, but he wasn't sure to what extent he knew how bad it was. He suggested that I call Bill to find out exactly how much he knew and to express my concerns. I attempted to contact Bill at the Knoxville office, but he had already left for the day. I left a message for Bill to call me with my cell number and home office number. I called Austin and told him that we would not sign an open end contract. Austin said that he would work on it over the weekend and call me back Saturday or Sunday.

John Taylor admitted, once again, that they should have never kept on paving once they realized the sub grade was too soft. John also stated that he wasn't real sure that he truly understood just how smooth the track surface needed to be and he was sure that Austin did not understand.

Danny said that he was pretty sure that the paver got stuck at the end of the track on the first pull.

Sunday, May 6, 2007

Monte Austin called me back with an estimate of the cost to fix. He said he could not narrow it down specifically, but he could give me a high end and low end. He gave me a 3 foot dig out of the sub base to install fabric and 3 foot of chunk rock and 6 inches of chert base \$109,000 - \$129,000. We could save \$5,000 if we could recycle some of the existing base. If we only had to dig out 2 feet and put in 2 feet of chunk rock and 6 inches of chert rock and fabric \$83,000 - \$98,000. This is only for the areas that are not currently paved that were included in the original area to be paved. This does not include any of the shutdown area.

Monday, May 7, 2007

Monte 8:34 am I received a returned phone call from Bill Ratliff, with TAC. Upon thanking him for returning my phone call, I began to discuss the situation at the dragstrip. He said that he was aware there were some problems, but not aware to the extent of the problems. Bill said that he was aware of some sub-grade issues that came up during paving, however he was not aware that TAC came to the track and took a core sample of the dragstrip. He was also not aware of the extent of the damage done to the shutdown

area (he only thought the shutdown was approx. 50-60 ft of damage). I continued to tell him that the damage to the shutdown area was more like 600-700 ft. I continued to inform him of all of the problems that we were having at the dragstrip, and asked him to come and take a look for himself. Upon this information, he proceeded to tell me that he would be at NWTNMS Wednesday afternoon to discuss the problem in detail.

Monte 10:49 am I received a phone call from Austin, TAC engineer, asking me to send someone to the racetrack to unlock the gate. TAC had dropped a backhoe and would be returning with additional equipment. TAC would dig a test area out, lay in some geotextile fabric, place some type of grid over the area and recover with existing base. Austin said that this test area would be done at TAC's expense. Austin said that this would be a lot cheaper and we would see how this works and go from there.

Wednesday, May 9, 2007

Approx. 12:30 am met with John Taylor, Austin Bateman, Bill Ratliff, Monte, Stephanie, Corey, Candace and Kyle Atkins. TAC accepted no blame for any of the damage done. TAC said they would cover ½ of the cost of repaving the shutdown area that they damaged. Bill Ratliff from TAC said that if we would like, they could "remove all of their equipment from the job site and be done with it." According to Bill, if they do this they will not send us a bill for any work done. He stated at least two times during our conversations that they "could just leave and be done with it." We told him that was not necessarily what we wanted, we just want our racetrack back in working condition. Bill continued to tell us that they were going to leave most of the asphalt down, and patch the other areas. When asked if they could provide us with a smooth surface, they could not "guarantee us a smooth surface." Any additional work done to achieve a smooth surface would be billed to us in addition to any contracts with TAC.

Thursday, May 10, 2007

Approx. 7:00 am Monte called Austin to tell him that he originally told Monte that they would, at TAC expense, dig out a test area and cover with the fabric. As of this point they had told us, they were done until they heard back from our bank. Monte said to Austin you told me that you were going to do a test area at your expense and it is not done. Austin said that they would do the test area this am and stop after that. Monte called Austin back because they have several areas dug out at least 6 inches. Austin said he would have to talk to Bill. Monte told Austin that it would be a mess if it rained on those exposed areas and that it would be TAC's problem then because we did not tell them to dig out all of those areas. Austin did not seem to care. Austin called Monte back and said that he discussed with Bill and TAC would only cover the first dug out area with fabric.

FORD CONSTRUCTION CO, INC.

2914 EAST REELFOOT AVE. UNION CITY, TN 38261
PH. #: 731-885-1925 FAX #: 731-885-8073

TELECOMMUNICATION COVER SHEET

DATE: 7-30-07 TIME: 7:55 A.M.

NUMBER OF PAGES: 2 (INCLUDING COVER SHEET)

TO: Monte Smith

COMPANY: Northwest TN Motorsport.

DESTINATION PHONE #: 731-986-9935

FROM: JIMMY HARRISON

THIS SPACE MAY BE USED FOR ANY SUPPLEMENTAL MESSAGE

