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IN THE CHANCERY COURT  
FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

AMERICAN EXCAVATORS, LLC, )  
 )  
Plaintiff, )  
 )  
vs. ) NO. 27213  
 )  
RCR BUILDING CORPORATION and )  
FIREMAN'S FUND INSURANCE )  
COMPANY, )  
 )  
Defendants. )  
 )  
RCR BUILDING CORPORATION, )  
 )  
Third-Party Plaintiff, )  
 )  
vs. )  
 )  
WILLIAMSON COUNTY, TENNESSEE, )  
 )  
Third-Party Defendant. )  
----- )

Deposition of:  
  
MARVIN PARKER  
  
Taken on behalf of the  
Defendants/Third-Party Plaintiff  
  
April 20, 2001

-----  
VOWELL & JENNINGS, INC.  
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4  
5 For the Defendants/  
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7  
8 For the Third-Party  
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10 Also Present: Al Ritter  
11  
12

13 I N D E X

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1           The deposition of MARVIN PARKER was  
2 taken by counsel for the Plaintiff at the  
3 offices of Tune, Entrekin & White, Attorneys  
4 at Law, 315 Deaderick Street, Nashville,  
5 Tennessee, on April 20, 2001, for all purposes  
6 under the Tennessee Rules of Civil Procedure.

7           The formalities as to notice, caption,  
8 certificate, et cetera, are waived. All  
9 objections, except as to the form of the  
10 questions, are reserved to the hearing.

11           It is agreed that Sabrina L. Isbell,  
12 being a Notary Public and Court Reporter, may  
13 swear the witness, and that the reading and  
14 signing of the completed deposition by the  
15 witness are waived.

16

17

18

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20

21

\* \* \*

22

MARVIN PARKER

23 having been first duly sworn, was examined and  
24 testified as follows:

25

1                                    E X A M I N A T I O N                                    ,

2    QUESTIONS BY MR. CASHION:

3    Q.            Would you state your full name,  
4    please?

5    A.            Marvin Parker.

6    Q.            What's your address, Mr. Parker?

7    A.            3331 Denning Lane, Spring Hill,  
8    Tennessee 37174.

9    Q.            Have you ever given a deposition  
10   before?

11   A.            Yes, sir.

12   Q.            How many occasions?

13   A.            Sir?

14   Q.            How many times?

15   A.            I don't know.

16   Q.            Okay. Well, what I'll be doing, of  
17   course, is asking you a series of questions.  
18   I would expect that each of your answers would  
19   be in response to my question. If at any  
20   point you don't understand my question, stop  
21   me, tell me you don't understand the question,  
22   otherwise I'll assume that each of your  
23   answers are in response to my questions.

24                    The second rule about depositions,  
25   she's taking down everything we're saying, so

1 it's important for you to wait until I finish  
2 my question before giving an answer, and I,  
3 likewise, will wait until you finish your  
4 answer before I ask you another question, as  
5 well as try to say either yes or no without  
6 uh-huh or huh-uh or nodding of the head. It  
7 doesn't come out well on the transcript.

8 How old are you, Mr. Parker?

9 A. 41.

10 Q. What's your educational background?

11 A. I graduated high school.

12 Q. What year?

13 A. 1977.

14 Q. Where?

15 A. Bell Buckle, Tennessee.

16 Q. What was your education after  
17 graduation of high school in '77?

18 A. Just life.

19 Q. Give me a little bit of your work  
20 history after you got out of high school just  
21 briefly. Kind of lead me up to when you got  
22 involved --

23 A. I've been involved in the construction  
24 business since before high school and  
25 afterwards, until this point.

1 Q. Okay. Who have you worked for?  
2 A. Other than my father, myself.  
3 Q. Who's your father?  
4 A. Bobby Parker.  
5 Q. Did he have his own construction  
6 company?  
7 A. Yes, sir.  
8 Q. Does he still have it?  
9 A. No, sir.  
10 Q. Okay. What years did you work for  
11 your father's construction company?  
12 A. Before high school through, I guess,  
13 '79, '80.  
14 Q. And then in '79 or '80 did you start  
15 your own construction company?  
16 A. Yes, sir.  
17 Q. And was it American Excavators?  
18 A. No, sir.  
19 Q. What was the name of the company that  
20 you started after you left your father's  
21 company?  
22 A. It was actually just a proprietorship.  
23 Q. Just Marvin Parker Construction?  
24 A. Yes.  
25 Q. What kind of work were you doing?

1 A. Masonry and home building.

2 Q. Okay. How long did you do that?

3 A. Still doing it.

4 Q. Okay. What areas have you worked in?

5 Did you work in the Bedford County area, Bell

6 Buckle, or did you come to Nashville or work

7 in Spring Hill, Robertson County?

8 A. At what time?

9 Q. When you started out in '79, '80.

10 A. Bedford.

11 Q. How long did you stay in Bedford

12 County, or are you still working there?

13 A. No, we haven't done any work recently

14 there.

15 Q. When did you start American

16 Excavators?

17 A. I'm not sure of the exact date.

18 Q. Can you give me a rough year? Five

19 years ago or fifteen?

20 A. Approximately three years ago.

21 Q. Okay. Now, prior to starting American

22 Excavators, how much experience had you had in

23 excavation?

24 A. As far as measured by?

25 Q. Owning, I would say, grading

1 equipment, performing work, doing take-offs,  
2 when you're actively in the business.

3 A. Eight to ten years.

4 Q. What company was doing excavation  
5 prior to American Excavators?

6 A. Marvin Parker Building and Development  
7 Company, Incorporated.

8 Q. What kind of excavation were you doing  
9 as Marvin Parker Building and Development  
10 Company, Incorporated?

11 A. Subdivision roads, water lines, sewer  
12 lines.

13 Q. When did you start bidding commercial  
14 jobs for excavation?

15 A. I'm not sure of the exact date.

16 Q. Was it while you were doing work as  
17 Marvin Parker Building and Development  
18 Company?

19 A. Yes, sir.

20 Q. Can you remember the first commercial  
21 excavation job that you did?

22 A. No, I can't remember the first, which  
23 one is the first.

24 Q. Why did you start American Excavators,  
25 that company?



1 A. Why did I?  
2 Q. Right.  
3 A. To start a separate excavating  
4 company.  
5 Q. And when you started that company, how  
6 much excavation work in dollar volume were you  
7 doing three years ago when you started for  
8 Marvin Parker Building and Development  
9 Company?  
10 A. I'm not sure.  
11 Q. Did you have a big excavation business  
12 or was it just a few machines and you decided  
13 to do more?  
14 A. When you say "a few machines," how  
15 many -- what are you --  
16 Q. I'm just trying to figure out, when  
17 you started American Excavators, if that was a  
18 move to buy more equipment or do a lot more  
19 work or if you had a lot of work before and  
20 you just shifted operations and called it  
21 American Excavators.  
22 A. Actually split -- or formed the new  
23 company to separate from the building and  
24 development.  
25 Q. And as American Excavators, how much

1 work have you done per year as a separate  
2 company in dollar volume?  
3 A. Average?  
4 Q. If you remember the years or an  
5 average. Is it \$100,000 a year or is it \$10  
6 million a year?  
7 A. Last year was approximately 8 million.  
8 Q. In just American Excavators?  
9 A. Yes.  
10 Q. So 2000 was approximately 8 million.  
11 Was it the same in '99?  
12 A. Probably not.  
13 Q. Can you give me an estimate of what  
14 you thought it was?  
15 A. An estimate of 4 million.  
16 Q. How much experience have you had in  
17 estimating earthwork jobs?  
18 A. As measured by?  
19 Q. Years.  
20 A. How many years have I estimated --  
21 Q. Earthwork jobs.  
22 A. Approximately 11.  
23 Q. Do you consider yourself competent to  
24 estimate earthwork jobs?  
25 A. Yes, sir.

1 Q. And when you estimate an earthwork  
2 job, what do you use to take off the  
3 quantities?

4 A. Currently we using Ag-Tech.

5 Q. How long have you been using Ag-Tech?

6 A. I'm not sure the exact date we got it.

7 Q. Well, when you bid the work for  
8 Williamson County Community Service building,  
9 were you using Ag-Tech then?

10 A. Yes, sir.

11 Q. Do you check your results of Ag-Tech  
12 by doing any other methods, such as cross  
13 sections, or do you just accept what the  
14 Ag-Tech program gives you for the cut and fill  
15 quantities?

16 A. We accept Ag-Tech.

17 Q. Now, in 1999 who was doing the  
18 estimating for you when this project bid?

19 A. This particular project, Harley Ezell  
20 and myself.

21 Q. And who did the estimate for this  
22 project?

23 A. Harley primarily.

24 Q. Does Harley still work for you?

25 A. No, sir.

1 Q. Did you fire him?  
2 A. No, sir.  
3 Q. Did he leave voluntarily?  
4 A. Yes, sir.  
5 Q. Why did he leave?  
6 A. He became self-employed, business  
7 venture.  
8 Q. Did anybody else work on the estimate  
9 besides Harley Ezell?  
10 A. Just myself.  
11 Q. Did you check Harley's work on the  
12 estimate?  
13 A. Yes, sir.  
14 Q. Did you agree with the quantities that  
15 Harley came up with?  
16 A. Yes, sir.  
17 Q. Were there any mistakes made in the  
18 estimate?  
19 A. No, sir.  
20 Q. Were you comfortable with the bid that  
21 you gave to RCR for this job?  
22 A. Yes, sir.  
23 Q. Did you bid just RCR or did you give  
24 your price to the other general contractors  
25 that were bidding the job?

1 A. I'm not sure.

2 Q. Had you worked with RCR before this?

3 A. No, sir.

4 Q. Have you worked with RCR after this?

5 A. No, sir.

6 Q. Did you have any reservations about

7 working for RCR on the Williamson County

8 Community Service building?

9 A. No, sir.

10 Q. Now, who else was involved in this

11 project besides you and Harley Ezell? Who

12 else worked on it?

13 A. Ricky Tipper.

14 Q. What did Ricky Tipper do?

15 A. He was actually the project foreman.

16 Q. Who else worked on it?

17 A. I'm not sure.

18 Q. Who managed the work in the field?

19 A. Ricky Tipper and Harley Ezell.

20 Q. What was your role during the

21 construction of this project?

22 A. I was owner, estimator, part

23 estimator.

24 Q. Did you go by the project and check on

25 it, look at it?

1 A. Yes, sir.

2 Q. Did you attend any of the progress  
3 meetings?

4 A. I don't think so.

5 Q. Have you been in any other lawsuits as  
6 American Excavators?

7 A. Arbitration.

8 Q. What arbitration were you involved in?

9 A. I don't know what the name of it is.  
10 I mean, I don't know how to answer that.

11 Q. Was Mr. Panther representing you in  
12 the arbitration?

13 A. Yes, sir.

14 Q. How long ago was that arbitration?

15 A. Month.

16 Q. Who was the arbitrator?

17 A. Kenneth Taylor.

18 Q. Did you win or lose, or do you know  
19 yet?

20 A. I think it was both.

21 Q. Or neither?

22 A. Both or neither.

23 Q. Any other lawsuits or arbitrations?

24 A. Not that I can think of.

25 MR. PANTHER: Troll.

1 THE WITNESS: Yes.

2 BY MR. CASHION:

3 Q. What was that?

4 A. Troll Drilling.

5 Q. Was that a lawsuit?

6 A. I'm not sure it's been -- yes, it's  
7 been filed.

8 Q. Are you the plaintiff seeking money in  
9 that one?

10 A. Yes, sir.

11 MR. PANTHER: I'll be glad to give  
12 you details on all these.

13 BY MR. CASHION:

14 Q. Have you been in lawsuits as Marvin  
15 Parker Building and Development Company?

16 A. Yes, sir.

17 Q. How many of those, say, in the last  
18 five years? Let's don't stretch it back too  
19 far.

20 A. I don't think any in the last five  
21 years.

22 Q. Do you own any other companies besides  
23 American Excavators and Marvin Parker Building  
24 and Development Company?

25 A. Just a farm, farming operation.

1 Q. Now, let me hand to you what we'll  
2 mark as Exhibit 21.

3 (Exhibit No. 21 was marked at this  
4 time.)

5 BY MR. CASHION:

6 Q. Do you recognize this document?

7 A. Yes, sir.

8 Q. This is the printout of the Ag-Tech  
9 take-off; is that correct?

10 A. Correct.

11 Q. If I'm looking at this printout, does  
12 this tell me that the total square footage of  
13 the job is 158,061 square feet?

14 A. Repeat that.

15 Q. If I look at the printout, is the  
16 total area of excavation, either cut or fill,  
17 158,061 square feet?

18 A. Yes, sir.

19 Q. And of that total area, there is  
20 51,777 square feet of cut and 106,284 feet of  
21 fill?

22 A. Correct.

23 Q. How do you use this area calculation  
24 in formulating a price?

25 A. We don't.



1 Q. Do you ever estimate, say, six inches  
2 of topsoil, distributed over the whole area,  
3 strip it --

4 A. Yeah, correct.

5 Q. So you would use the area calculation  
6 to calculate either your clear and grub or  
7 your stripping of the topsoil?

8 A. Actually volume.

9 Q. Okay. So you go mainly to the volume  
10 numbers and not the area number; is that what  
11 you're telling me?

12 A. Correct.

13 Q. And up at the top it says topsoil and  
14 it plugs in the 167,000 square feet, half a  
15 foot, and you get a volume of 3,107 cubic  
16 yards topsoil, right?

17 A. Correct.

18 Q. Now, looking at the cut and fill -- it  
19 says after stripping -- does this tell you  
20 that you will have a total cut on the job of  
21 2,898 cubic yards?

22 A. Correct.

23 Q. And that you'd have a total fill of  
24 5,840 cubic yards?

25 A. Correct.

1 Q. So therefore you know when you bid  
2 this job that you're going to have to haul in  
3 at least 2,942 cubic yards; is that accurate?  
4 A. Approximately.  
5 Q. All right. So was this considered an  
6 unbalanced job or an import job?  
7 A. Yes, it definitely had import coming  
8 to it.  
9 Q. So it wasn't a balanced job, was it?  
10 A. Not perfectly balanced, no.  
11 Q. And you also figured that you would  
12 use your 2,898 cubic yards of cut as part of  
13 your fill material?  
14 A. Correct.  
15 Q. And the balance of it would come from  
16 off site?  
17 A. Correct.  
18 Q. And where did you plan on having a  
19 borrow location to bring this in?  
20 A. Harley worked the details on that.  
21 Q. Okay. Is it hard to find borrow pits  
22 out in the Cool Springs area, or is that  
23 something that's not that hard to get?  
24 A. Depends.  
25 Q. Do you remember any difficulty here in

1 obtaining borrow to be trucked in?

2 A. Yes.

3 Q. So you did have problems getting  
4 borrow on this job?

5 A. No.

6 Q. Now, these quantities that you took  
7 off from your Ag-Tech program, do you believe  
8 they're accurate?

9 A. Yes.

10 Q. Now, did you keep daily reports on  
11 this job?

12 A. Yes.

13 Q. Let me hand you one daily report that  
14 your attorney produced for us, which we'll  
15 make as Exhibit No. 22.

16 (Exhibit No. 22 was marked at this  
17 time.)

18 BY MR. CASHION:

19 Q. This is a daily report of June 17,  
20 1999, correct?

21 A. Yes, sir.

22 Q. How long did you think it would take  
23 you to do the excavation for this job?

24 A. I'm not sure.

25 Q. Now, in the comments section, the

1 first one says, "Moved 980 to chert pit." Do  
2 you see that?

3 A. Yes.

4 Q. Was that your borrow pit that you had  
5 to bring your import material in with?

6 A. I believe so.

7 Q. And then the next line says, "Built  
8 pad and compacted." Do you see that?

9 A. Correct.

10 Q. Okay. At that point in time, had you  
11 started your borrow operation as far as  
12 bringing -- or were you just getting ready to  
13 start it since you were moving your 980 over  
14 to the chert pit?

15 A. I don't know.

16 Q. Would it be fair to say if you were  
17 building your pad and compacting and getting  
18 your borrow pit ready, that you already had  
19 major cut on as much area as you could cut to  
20 start building your pad?

21 A. Repeat that.

22 Q. Let me rephrase it. Whenever you do a  
23 job, do you strip the topsoil first?

24 A. Usually.

25 Q. Then stockpile it?

1 A. Yes, sir.

2 Q. And is the next thing you do is do you  
3 start your cut operation?

4 A. You can.

5 Q. And then you start taking your cut and  
6 putting it in the fill area; is that accurate?

7 A. You can.

8 Q. Well, on this job, do you know if you  
9 started your cut operation and putting it over  
10 to where your fill was first?

11 A. First thing?

12 Q. Well, after you stripped the topsoil,  
13 what are you going to do? What did you do out  
14 here after you stripped the topsoil?

15 A. I'm not sure exactly what we did after  
16 we -- I don't want to presume. I wasn't on  
17 the job.

18 Q. Did you go out and visit the job?

19 A. Occasionally.

20 Q. Well, on this job, would there be any  
21 reason that you know of why you wouldn't take  
22 your excavation, your cut, put it in the fill  
23 area first, and when you got your fill area  
24 with as much cut as you could put in it, then  
25 start your import to bring material in to

1 finish off the job?

2 A. Could you repeat that?

3 Q. Okay. On this particular job, do you

4 know of any reason why you would not first do

5 your excavation material, excavate it in the

6 cut section, put it in the fill section -- you

7 got all your material excavated and put in the

8 fill section -- start your import material

9 coming in to finish out the job?

10 A. No.

11 Q. Okay. So that would be a normal

12 sequence to do the work?

13 A. Could be.

14 Q. And you don't know whether you did

15 that sequence on this job or not?

16 A. No, sir.

17 Q. Would there be any reason why you

18 would start going to the chert pit and

19 excavating your borrow if you hadn't exhausted

20 your cut section yet?

21 A. Repeat that again.

22 Q. Do you know of any reason why you

23 would start your borrow excavation before you

24 finished your regular excavation on site?

25 A. Yes.

1 Q. Why would you do that?

2 A. If you knew you were going to have to

3 import fill.

4 Q. But on this job you don't know if you

5 exhausted the cut on site first and then

6 started your borrow or if you were doing them

7 simultaneously?

8 A. No.

9 Q. Now, on the third line in comments, it

10 says, "Soil man came out and said we have to

11 undercut the unsuitable soil." Do you see

12 that?

13 A. Yes, sir.

14 Q. It says, "RCR gave go ahead on

15 undercut." Do you see that?

16 A. Yes, sir.

17 Q. What does that comment mean; do you

18 know?

19 A. Yes.

20 Q. What are you talking about there?

21 A. Soils man came out, said to undercut

22 it. RCR said go ahead.

23 Q. Now, what does undercut mean to you?

24 A. To cut the soil, remove it.

25 Q. Below subgrade?

1 A. Could be.

2 Q. When does undercut above subgrade?

3 A. Whenever it's unsuitable.

4 Q. Would you say that you were

5 undercutting if you were removing soil above

6 subgrade?

7 A. Well, we were cutting.

8 Q. Right.

9 A. Yeah.

10 Q. But when this says, "We have to

11 undercut the unsuitable soil," do you know if

12 that meant they were going below subgrade to

13 take out the unsuitable soil or not?

14 A. No, I don't know if it was above or

15 below.

16 Q. In your definition of undercut, can it

17 be above or below subgrade?

18 A. I generally refer to it just as

19 cutting above or below, just to cut the soil

20 below what it is at the time it is.

21 Q. What do you mean "the time it is"?

22 A. You know, if we encounter it and it's

23 unsuitable, we have to go in and cut it.

24 Q. So do you see a difference between

25 undercut unsuitable soil or removing



1 unsuitable soil?

2 A. No.

3 Q. Well, what's this guy mean here? Do

4 you have any idea what he's talking about, if

5 he's above or below subgrade?

6 A. On this particular day, I don't know.

7 Q. Okay. And isn't it true that when you

8 went out and you undercut the unsuitable soil

9 -- you made no claim at that time for this,

10 did you, or do you even know, on June 17,

11 1999?

12 A. I believe at this time we did not -- I

13 mean, yes, we made a claim in our contract. I

14 mean, we had a contract -- no.

15 Q. No, you didn't make a claim at this

16 time? On June 17, 1999, when RCR said go

17 ahead on the undercut, you didn't make a

18 claim, did you?

19 A. It had already been made.

20 Q. When was it made?

21 A. At contract.

22 Q. At contract you said what?

23 A. Any unsuitable material would be 12.50

24 per yard.

25 Q. Where did you say that? And I'll

1 refer you to Exhibit 1. Where you said any  
2 unsuitable material would be 12.50 per yard,  
3 please find that provision for me.

4 A. Okay. It's in No. 20.

5 Q. Read it in for the record.

6 A. Me read it?

7 Q. Please.

8 A. No. 20, "Any additional undercutting  
9 and refilling of areas due to unsuitable soils  
10 will be done for a unit price of 12.50 per  
11 cubic yard."

12 Q. Well, any undercutting and refilling  
13 of areas due to unsuitable soils, that's what  
14 it says, right?

15 A. Correct.

16 Q. Why do you think that means any  
17 removal of unsuitable soil?

18 A. That's the way we bid the job.

19 Q. When you got the take-off, 2,898 cubic  
20 yards of cut, how much of that was suitable or  
21 unsuitable?

22 A. Of the 2,000 --

23 Q. 898 cubic yards of cut that you bid on  
24 this job, how much was unsuitable?

25 A. Parts of it.

1 Q. Half of it? 25 percent? 10 percent?  
2 90 percent?  
3 A. I'm not sure.  
4 Q. Well, how did you bid it?  
5 A. We bid it with it being 100 percent  
6 suitable.  
7 Q. Okay. And where in your contract did  
8 you qualify your price that it was bid as 100  
9 percent suitable?  
10 A. No. 20.  
11 Q. Okay. Now, if No. 20 -- if you're in  
12 the excavation area of this 2,898 yards and  
13 you cut an unsuitable material, are you going  
14 to refill it as you're describing in Article  
15 20?  
16 A. If I'm in an area --  
17 Q. You're in a cut, it's unsuitable, are  
18 you going to refill that area?  
19 A. Yes.  
20 Q. Why?  
21 A. Because it's unsuitable.  
22 Q. Well, if it's in a cut area, why are  
23 you going to put dirt back in there? You're  
24 cutting it. Explain that to me.  
25 A. Okay. You're in a cut area.

1 Q. You're in a cut area. You're in this  
2 2,898 cubic yards.  
3 A. Okay. I see what you're saying.  
4 Q. You're cutting it, and from what  
5 you're saying, it's unsuitable. In Article  
6 20, "Any additional undercutting and  
7 refilling." So are you going to refill an  
8 area in a cut?  
9 A. No, sir.  
10 Q. Okay. So if you remove unsuitable  
11 material in a cut section, you do not refill  
12 it, do you?  
13 A. You do not refill the cut section, no.  
14 Q. But if you undercut an area -- if  
15 you're at subgrade and you undercut an area,  
16 you go below subgrade, then you would bring  
17 import material back in and refill it,  
18 correct?  
19 A. Yes.  
20 Q. So isn't it true that Article 20 is  
21 when the unsuitable materials are in an  
22 undercut or below subgrade situation, that you  
23 would undercut and refill for 12.50 a cubic  
24 yard?  
25 A. No. 20 was bid 12.50 per yard for

1 unsuitable soils.

2 Q. Okay. I don't think you answered my  
3 question.

4 A. Okay.

5 Q. If No. 20 says, "Any additional  
6 undercutting and refilling of areas due to  
7 unsuitable soils" -- that's what the words  
8 are, aren't they?

9 A. Correct.

10 Q. Wouldn't the undercutting and  
11 refilling only be applicable when you are  
12 removing soil below subgrade and refilling it  
13 with import material to bring it back up to  
14 subgrade?

15 A. No.

16 Q. Why not?

17 A. Because some of the material is above  
18 subgrade.

19 Q. But you're not going to refill it if  
20 it's above subgrade, are you?

21 A. But we would replace it.

22 Q. Okay. If you're in a cut section,  
23 you're going to replace that material?

24 A. If it's unsuitable.

25 Q. What are you going to refill it to?

1 A. To the fill areas.

2 Q. Where?

3 A. Where?

4 Q. Yeah.

5 A. The fill areas designated on the

6 plans.

7 Q. All right. This got back to the

8 original question of: On the June 17, 1999,

9 report, did you tell RCR at that time that you

10 believed that you were entitled to additional

11 compensation? Did you or Harley Ezell say

12 that in writing or verbally at that time?

13 A. On the 17th?

14 Q. Yes, sir.

15 A. Well, yes, in writing it was in our

16 contract, No. 20.

17 Q. Well, no, sir. 20 says you will be

18 paid 12.50 if you undercut and refill. If we

19 look in the contract elsewhere, do you realize

20 you have to give notice that you're actually

21 making a claim for that unit price, or are you

22 unfamiliar with that?

23 A. Yes, sir.

24 Q. You don't know about that?

25 A. No, sir.

1 Q. You're not aware that the contract  
2 places an obligation on you to give RCR notice  
3 when you intend to make a claim for extra  
4 work?

5 A. Yes, sir.

6 Q. You're aware of that?

7 A. Yes, sir.

8 Q. Then do you know if you ever gave RCR  
9 the notice as required under the subcontract  
10 that you were going to make a claim for  
11 additional compensation?

12 A. Yes, sir.

13 Q. Did you give them notice on June 17,  
14 1999?

15 A. I'm not sure.

16 Q. If any notice was given, it would have  
17 been given by Harley Ezell, correct?

18 A. Or me.

19 Q. Well, did you give any notice on June  
20 17, 1999?

21 A. On that date, I don't know.

22 Q. Did you ever give any notice?

23 A. Yes, sir.

24 Q. When did you first remember giving  
25 notice?

1 A. It would have been about this time.  
2 Q. What kind of notice did you give?  
3 A. Written.  
4 Q. You gave written notice? Did you  
5 write a letter on this job in June 1999?  
6 A. The company did.  
7 Q. Did you write a letter?  
8 A. No, I didn't write it.  
9 Q. Well, let me hand to you Exhibit No.  
10 5, which is the letter of Harley Ezell. On  
11 July 1, 1999, Mr. Ezell says that he removed  
12 approximately 600 yards of unsuitable material  
13 for which he did not seek a change order,  
14 saving the county approximately \$7,500. Do  
15 you see that?  
16 A. Yes, sir.  
17 Q. Now, is Mr. Ezell accurate in what he  
18 is saying on behalf of American Excavators?  
19 A. Yes.  
20 Q. So isn't it true that on June 17,  
21 1999, when this unsuitable material was  
22 encountered, no notice was given and it was  
23 not the intent of American Excavators to ask  
24 for that compensation?  
25 A. Correct.



1 Q. Now, after the meeting, Mr. Ezell  
2 estimated that there would be anywhere from  
3 1,000 to 1,700 cubic yards of unsuitable  
4 material, correct?

5 A. Correct.

6 Q. Okay. Now, as of July 1, 1999, how  
7 much cut did you have to go on that job?

8 A. I'm not sure.

9 Q. Well, isn't it true that as of July 1,  
10 1999, you were already down to subgrade in all  
11 the area and you were doing your fill work on  
12 the pad with your import material?

13 A. I'm not sure.

14 Q. Well, are you aware that as of July 1  
15 of 1999, that the area we're talking about  
16 where you found the unsuitable material was in  
17 the parking area?

18 A. I'm not sure.

19 Q. Do you even know how much cut that you  
20 would have to bring down as of July 1, 1999?

21 A. No, sir.

22 Q. Who would know that?

23 A. I don't know.

24 Q. Okay. Well, as of July 1, 1999, was  
25 any of the unsuitable material found in the

1 cut sections that you estimated at 2,898 cubic  
2 yards?

3 A. Yes, sir, I believe so.

4 Q. And why do you believe that? What's  
5 the foundation of your belief?

6 A. On July 1st?

7 Q. Yes, sir.

8 A. Repeat that again.

9 Q. Okay. On July 1st, 1999, when Harley  
10 Ezell wrote this letter to RCR which is  
11 Exhibit 5, do you know if any of the material  
12 that had been excavated in the cut section  
13 contained any unsuitable soil?

14 A. No.

15 Q. Now, have you reviewed the daily  
16 reports on this job?

17 A. Yes, sir.

18 Q. And how did you go about keeping up  
19 with the amount of soil that was excavated due  
20 to unsuitable soils?

21 A. By the truckload.

22 Q. Let's go through these reports. Let  
23 me hand to you what we'll mark as Exhibit No.  
24 23, a daily report dated July 16, 1999.

25 (Exhibit No. 23 was marked at this

1 time.)

2 BY MR. CASHION:

3 Q. You see there where you hauled off 17

4 loads of undercut, right?

5 A. Yes, sir.

6 Q. How many cubic yards do you get in a

7 truck?

8 A. I estimate 12.

9 Q. What kind of trucks you got?

10 A. Tri-axle.

11 Q. So are you hauling that or is that the

12 capacity of the truck?

13 A. That's the compacted volume.

14 Q. Well, you're not compacting your dirt

15 in a truck, are you? Isn't that loose?

16 A. It's loose.

17 Q. But you still estimate on the

18 compacted volume and not the loose volume?

19 A. 12.

20 Q. Okay. And what's the total capacity

21 of that truck volume?

22 A. 12 yards of compacted, 15 yards --

23 approximately 15 yards disturbed.

24 Q. Did you have an understanding of how

25 you were going to be paid for this undercut

1 area?

2 A. Yes, sir.

3 Q. How?

4 A. By the yard.

5 Q. How were you going to calculate the

6 yard?

7 A. By the truckload.

8 Q. Do you have anything in writing that

9 says we're going to count truckloads and

10 that's going to be determinative of the amount

11 of --

12 A. No, sir.

13 MR. PANTHER: Let him finish his

14 question.

15 BY MR. CASHION:

16 Q. Isn't it true that PSI was out on the

17 job site to direct the areas to be undercut?

18 A. At times.

19 Q. Isn't it true that when the soil was

20 undercut, PSI measured the area and the depth

21 in order to determine the volume that had been

22 removed?

23 A. At times.

24 Q. When did PSI not measure the undercut

25 soil that left the job site?

1 A. Whenever RCR didn't contact them.  
2 Q. Who hired PSI?  
3 A. My understanding, it was RCR.  
4 Q. Okay. Were you ever out on the job  
5 site when you were removing unsuitable soil  
6 where PSI was unaware of it?  
7 A. Yes, sir.  
8 Q. When was that?  
9 A. Numerous times.  
10 Q. Well, how often were you on the job  
11 site?  
12 A. How often?  
13 Q. Yeah. I thought before you weren't  
14 out there very much.  
15 A. Huh-uh.  
16 Q. You've got to say yes or no.  
17 A. Correct.  
18 Q. You were not on the job site very  
19 often, were you?  
20 A. No, sir.  
21 Q. And when were you there where you  
22 observed hauling undercut materials when PSI  
23 wasn't there in order to document?  
24 A. Me personally?  
25 Q. Yes, sir.

1 A. Once.

2 Q. Okay. And what day was that or

3 what --

4 A. I don't know.

5 Q. What was the operation looking like?

6 Were you in this July time frame when PSI was

7 there monitoring undercut or was it before PSI

8 came on the job?

9 A. I'm not sure.

10 Q. Did you have the building pad up?

11 A. I'm not sure if it was completed.

12 Q. Where were you hauling off this

13 unsuitable material? Where was it coming out

14 of?

15 A. Just the general site.

16 Q. Well, if you were there looking at it,

17 you're looking at the building, what are you

18 looking at that particular day that you saw

19 where you were taking out unsuitable material

20 and PSI's not there to look at it?

21 A. Approximately, as you pull in, it was

22 over to the right of where the drive was

23 going.

24 Q. I'm going to hand to you Exhibit No.

25 6. And turn over to one of the pages, fourth

1 one from the back, which shows a diagram. If  
2 you pull into the drive and it's over to the  
3 right, is it in the area marked 2?  
4 A. I believe it's to the right of Area  
5 No. 1.  
6 Q. In the building pad?  
7 A. No, sir.  
8 Q. Okay. Excuse me. I'm looking upside  
9 down. You're saying to the right of Area No.  
10 1?  
11 A. Yes, sir.  
12 Q. And was that an undercut area or was  
13 that an excavated area where you're doing a  
14 cut section?  
15 A. I can't remember.  
16 Q. Well, how far to the right of Area 1  
17 was it?  
18 A. I don't know.  
19 Q. But you're thinking somewhere over to  
20 the right of Area 1?  
21 A. Correct.  
22 Q. Now, let me hand you the daily report  
23 of July 19th, '99, which we'll mark as Exhibit  
24 No. 24.  
25 (Exhibit No. 24 was marked at this

1 time.)

2 BY MR. CASHION:

3 Q. Exhibit No. 24, this indicates that  
4 you hauled off 31 loads of undercut, correct?

5 A. Yes, sir.

6 Q. Did you instruct Mr. Tipper to log all  
7 the undercut that he hauled off of this job?

8 A. Yes, sir.

9 Q. Do you believe that he did follow your  
10 instructions and account for the loads that  
11 left the job as undercut material?

12 A. Yes, sir.

13 Q. Okay. Next let me hand to you what  
14 will be marked as Exhibit No. 25, which is the  
15 July 20, 1999, daily report.

16 (Exhibit No. 25 was marked at this  
17 time.)

18 BY MR. CASHION:

19 Q. Do you see Exhibit 25?

20 A. Yes, sir.

21 Q. It says, "PSI came by at" -- what is  
22 that; do you know? It looks like 9200, but  
23 that's even pretty high for military time.

24 A. Nine o'clock.

25 Q. Okay. Those are two colon marks,



1 9:00. "Proof rolled parking lot and road,  
2 designated areas for undercut," right?

3 A. Correct.

4 Q. And you hauled 17 loads of undercut?

5 A. Correct.

6 Q. And back on the diagram, on Exhibit  
7 No. 6 I was talking to you about, did you have  
8 to build a retention pond to the right of Area  
9 1?

10 A. Yes.

11 Q. Was it the retention pond that you  
12 were talking about that there was unsuitable  
13 soil that you were hauling off that PSI wasn't  
14 accounting for?

15 A. I don't think so.

16 Q. So that wasn't the retention pond,  
17 that was somewhere else in the parking lot?

18 A. Yes, sir.

19 Q. Where were you hauling the undercut  
20 material to?

21 A. I'm not sure.

22 Q. Well, in your price of 12.50 a cubic  
23 yard, did you contemplate hauling it off site  
24 or wasting it on site? What were you planning  
25 on doing with it?

1 A. Off site.

2 Q. Okay. So if you wasted it on site,  
3 would that be less costly for you than hauling  
4 it off site?

5 A. Yes, sir.

6 Q. Would it be significantly less costly,  
7 you didn't have to put it in the truck, haul  
8 it somewhere and dump it and come back?

9 A. Yes.

10 Q. Would it be about half that price?

11 A. I don't know.

12 Q. Would it be in that range?

13 A. I don't know.

14 Q. Okay. But it would be significantly  
15 cheaper to waste it on site, wouldn't it?  
16 You'd agree with that?

17 A. Correct.

18 Q. Let me hand you the next exhibit which  
19 we'll mark as Exhibit 26, which is the daily  
20 report of 7/21/99.

21 (Exhibit No. 26 was marked at this  
22 time.)

23 BY MR. CASHION:

24 Q. On Exhibit 26, you started hauling  
25 your chert again. That's your import

1 material, isn't it, on the comments section?

2 A. Yes, sir.

3 Q. And you started putting it back where

4 you had undercut it, correct, building up the

5 parking lot at the undercut area?

6 A. Yes, sir.

7 Q. And then it says that you wasted the

8 undercut on site for about 38 loads; is that

9 correct?

10 A. Yes, sir.

11 Q. Do you know where you wasted the

12 undercut, that material?

13 A. No, sir.

14 Q. Who decided to waste it on site?

15 A. I'm not sure.

16 Q. Was that a decision you made?

17 A. No.

18 Q. Who would have made that?

19 A. I don't know.

20 Q. Were you aware if PSI ever told you

21 that any material in the cut section was

22 unsuitable?

23 A. Yes.

24 Q. When did PSI tell you that the

25 material in the cut section was unsuitable?

1 A. I don't know.

2 Q. Well, tell me what you remember if you

3 said yes, they told you.

4 A. I just remember they looked at the

5 material and said it was unsuitable.

6 Q. When was that?

7 A. I'm not sure.

8 Q. Were you on site?

9 A. Was I?

10 Q. Yes, sir.

11 A. No, sir.

12 Q. Who was relating this story to you?

13 A. Harley.

14 Q. And what did Harley say to you?

15 A. That PSI had been out and looked at

16 the site.

17 Q. And did they say the cut section

18 wasn't suitable or that you had unsuitable

19 material that would have to be undercut?

20 A. I'm not sure.

21 Q. Okay. Do you recall there being a

22 dispute as to whether the material in the cut

23 section was suitable or not between you and

24 PSI?

25 A. Yes.

1 Q. And what was that that you recall  
2 about that?

3 A. That there was a dispute.

4 Q. What do you recall about the dispute?

5 A. Only that there was a dispute.

6 Q. Well, did you ever investigate to find  
7 out if PSI was right about the suitability of  
8 the cut?

9 A. Me personally?

10 Q. Right.

11 A. No.

12 Q. Did you ever hire anyone, when PSI  
13 said this material was suitable and apparently  
14 you disagreed or your company disagreed, to  
15 make an independent or another evaluation of  
16 that material?

17 A. I believe we did.

18 Q. Who was that person?

19 A. I don't know.

20 Q. Well, I know at the start of the  
21 project you hired Trent Smith with Southern  
22 Consulting. Do you recall that?

23 A. I'm not for sure of the exact person,  
24 no.

25 Q. Do you recall hiring Southern

1 Consulting?

2 A. No.

3 Q. Have you ever worked with Southern  
4 Consulting before?

5 A. I don't believe so.

6 Q. Do you know Trent Smith there?

7 A. No.

8 Q. Let me next hand to you what we'll  
9 mark as Exhibit 27, which is the daily report  
10 dated July 27, 1999.

11 (Exhibit No. 27 was marked at this  
12 time.)

13 BY MR. CASHION:

14 Q. If you look at this daily report, this  
15 is apparently -- Ricky Tipper writes these,  
16 correct?

17 A. Yeah.

18 Q. Ricky and Harley didn't agree on the  
19 material apparently; is that accurate?

20 A. I believe so.

21 Q. And he says, "He called RCR." I  
22 assume that would be Harley, correct?

23 A. Yes.

24 Q. Okay. And you waited while PSI came  
25 out, and PSI said the material was suitable,

1 correct?

2 A. Correct.

3 Q. That you could use it, correct?

4 A. Correct.

5 Q. And this is the material from the

6 retention pond?

7 A. Part of it.

8 Q. Okay. It says, "Started digging in

9 the pond and placing it on the pad to top

10 off." Do you see that?

11 A. Correct.

12 Q. So PSI said you could use the

13 excavated material that you were excavating

14 from the retention pond?

15 A. That part of it.

16 Q. Where and how much material was out

17 there that was unsuitable to use in the

18 excavated section? Not the undercut, but in

19 the 2,898 cubic yards that you figured to

20 excavate.

21 A. Repeat that.

22 Q. Okay. You figured 2,898 cubic yards

23 to excavate, correct?

24 A. Yes, sir.

25 Q. Of that, you're saying somewhere was

1     some unsuitable material, right?

2     A.           Correct.

3     Q.           Now, are you saying that all of the

4     excavated material was unsuitable?

5     A.           No.

6     Q.           Okay. And you recognize that at least

7     the retention pond area, that PSI said that

8     material was suitable, correct?

9     A.           No.

10    Q.           Is that not what PSI has told Harley

11    and Ricky, even though Ricky doesn't sound

12    like he agrees with it, that the material was

13    suitable and you could use it?

14    A.           Some of it.

15    Q.           Well, where is the unsuitable material

16    in the cut area?

17    A.           Various locations.

18    Q.           So it's not concentrated in any one

19    location, just in little pockets all over the

20    project?

21    A.           Basically.

22    Q.           But you recognize there, there was

23    suitable material on the project that you

24    excavated?

25    A.           Correct.



1 Q. Okay. Do you know how much of the  
2 total excavation was suitable versus  
3 unsuitable?

4 A. Repeat that again.

5 Q. Do you know how much of the total  
6 excavation, the 2,898 cubic yards, was  
7 suitable and how much of that total excavation  
8 was unsuitable?

9 A. Not exactly.

10 Q. Was it 50/50 or do you have no idea?

11 A. I haven't calculated it.

12 Q. How would we figure that out given the  
13 records that you have? What would we look at  
14 to determine that?

15 A. The amount of -- the amount of fill  
16 imported versus what should have been  
17 imported.

18 Q. Where are those records?

19 A. In the --

20 Q. In your daily reports?

21 A. Daily reports and the take-off.

22 Q. Okay. I thought you said you kept up  
23 with the unsuitable material by the truckloads  
24 going out. Is that another way to attack it?

25 A. Basically every time a truck was

1   hauled out, one was brought back in to replace  
2   it.

3   Q.           Okay.   So if we counted the loads that  
4   Ricky recorded going out of unsuitable  
5   material, would that be the best way to figure  
6   out how much unsuitable material was on this  
7   job totally that left the job?

8   A.           I think so.

9   Q.           Okay.   In the next sentence it says,  
10  "PSI said take 55 more feet out of road  
11  entrance, one and a half feet deep."   Do you  
12  see that?

13  A.           Yes, sir.

14  Q.           And that was unsuitable material at  
15  the road entrance, correct?

16  A.           Yes, sir.

17  Q.           Was that on Exhibit No. 6 on the  
18  diagram where it's marked 4?

19  A.           I think so.

20  Q.           Okay.   Next I'm going to hand to you  
21  what we'll mark as Exhibit No. 28, which is a  
22  daily report dated July 31, 1999.

23                       (Exhibit No. 28 was marked at this  
24  time.)

25  BY MR. CASHION:

1 Q. Here you're hauling off topsoil to  
2 subdivision. Do you see that?  
3 A. Yes, sir.  
4 Q. What subdivision are you going to?  
5 A. Pipkin Hills.  
6 Q. Where's Pipkin Hills?  
7 A. In Spring Hill, Tennessee.  
8 Q. Is that the closest place you could  
9 find for the topsoil? Seems like a long  
10 haul.  
11 A. No, sir.  
12 Q. That's not unusual?  
13 A. No, sir.  
14 Q. Was it pretty good topsoil?  
15 A. Usable.  
16 Q. Did you sell the topsoil or were you  
17 wasting it?  
18 A. (Pause.)  
19 Q. Who's developing Pipkin Hills?  
20 A. I am.  
21 Q. Oh, okay. So you weren't selling it  
22 to yourself, you were just exporting topsoil  
23 from the Williamson County property to use in  
24 your own subdivision that you were developing?  
25 A. Correct.

1 Q. And there's no claim by you for  
2 hauling off the topsoil, is there?

3 A. No, sir.

4 Q. Okay. And you took several loads out  
5 of the topsoil, correct?

6 A. Yes, sir.

7 Q. When did you decide to turn in a  
8 change order for the unsuitable soils?

9 A. On one of the billings.

10 Q. Who made that decision? Was that  
11 something you did or did Harley do it?

12 A. Both.

13 Q. If you would, look at Exhibit No. 6.  
14 Look at what is part of Collective Exhibit 6,  
15 which is called Change Order No. 2.

16 Now, this Change Order No. 2 is where  
17 you're claiming unsuitable soils being removed  
18 from the project, correct?

19 A. Yes, sir.

20 Q. And you're claiming 2,898 cubic yards  
21 at \$10 a cubic yard, correct?

22 A. Correct.

23 Q. How did you calculate 2,898 cubic  
24 yards?

25 A. I'm not sure who calculated that.

1 Q. Well, is it based on a truck count or  
2 a quantity take-off?

3 A. I'm not sure at this time.

4 Q. Do you have any documentation to  
5 support a quantity of 2,898 cubic yards of  
6 unsuitable soil for Change Order No. 2?

7 A. Repeat that.

8 Q. Do you have in your possession,  
9 American Excavators, any documentation that  
10 would support the calculation of a value of  
11 2,898 cubic yards of unsuitable material which  
12 is the basis of Change Order No. 2?

13 A. Yes.

14 Q. What is that?

15 A. It would be in the documents we have,  
16 the truckloads, if that's what was used.

17 Q. Well, so far I've got truckloads in  
18 the daily reports. Is that all you've got?  
19 If I counted up -- if I look at all your daily  
20 reports and counted the truckloads and  
21 multiply it by 12 cubic yards per truckload,  
22 is that going to give me 2,898 cubic yards?

23 A. I'm not sure.

24 Q. Who calculated this?

25 A. I'm not sure.

1 Q. Did you calculate this?

2 A. I'm not sure of that.

3 Q. If you flip over a couple of pages and

4 you get to Change Order No. 3 -- do you see

5 that?

6 A. Yes, sir.

7 Q. Here you calculated 1,310 cubic yards,

8 correct?

9 A. Correct.

10 Q. How did you calculate that quantity?

11 A. I believe this was in an area we

12 calculated it by measurement.

13 Q. Okay. So you didn't do truckloads on

14 this calculation, did you?

15 A. No, sir.

16 Q. You calculated the areas that PSI had

17 mapped out as unsuitable, which is the next

18 sheet, correct?

19 A. Yes, sir. This is actually my

20 drawing.

21 Q. So that's your drawing for what PSI

22 represented as unsuitable areas, and you

23 calculated the area plus the depth and came up

24 with the 310 (sic) cubic yards?

25 A. Correct.

1 Q. Back on Change Order No. 2, where did  
2 this material come from on Change Order No.  
3 2? If you've already got 1,310 cubic yards on  
4 the other undercut, where did this one come  
5 from?

6 A. This is all -- this is the material  
7 that was above subgrade.

8 Q. Okay. Well, if that's the material  
9 above subgrade, is it a coincidence that that  
10 matches Exhibit 21 exactly to the cubic yard  
11 of cut on the job?

12 A. What was the question?

13 Q. Is it a coincidence that the amount  
14 you're requesting on Change Order No. 2 of  
15 2,898 cubic yards is the exact amount that you  
16 calculated as your total cut on the job?

17 A. Is it a coincidence?

18 Q. Yes, sir.

19 A. I don't know.

20 Q. Well, if you're telling me in Change  
21 Order No. 2 that that represents unsuitable  
22 material in the cut area, is it your testimony  
23 that the entire cut section on this job was  
24 unsuitable?

25 A. Repeat that again. I'm sorry.

1 Q. Was the entire cut section on this job  
2 unsuitable?

3 A. I don't know.

4 Q. Well, didn't you testify previously  
5 that you knew at least in the retention pond  
6 that you had suitable material in the cut  
7 section?

8 A. Oh, in the cut area?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. So you know you had suitable material,  
12 correct?

13 A. Correct.

14 Q. So then is Change Order No. 2 in error  
15 if you're saying that the entire cut section  
16 was unsuitable when you requested this  
17 payment?

18 MR. PANTHER: Object to form.

19 BY MR. CASHION:

20 Q. You can still answer. He's objecting  
21 to the way I asked the question.

22 A. Ask it again because I didn't  
23 understand it either.

24 Q. That was probably a good objection,  
25 then.



1           Since Change Order No. 2, 2,898 cubic  
2 yards, is the same as your total cut that you  
3 estimated on this job, is it your testimony  
4 that all of the cut was unsuitable?

5       A.       The question is, is the entire cut  
6 unsuitable?

7       Q.       Correct.

8       A.       No, sir.

9       Q.       Then is Change Order No. 2 in error  
10 when it references 2,898 cubic yards of  
11 unsuitable material which you've testified had  
12 to come from the cut section?

13      A.       Repeat that again, the cut section.

14      Q.       Let me just start with one question.  
15 It's my understanding that your testimony on  
16 Change Order No. 2 is that this represents  
17 unsuitable material that you found in the cut  
18 section. Is that correct?

19      A.       No, sir.

20      Q.       Okay. Then what is Change Order No. 2  
21 if that's not correct, if you didn't  
22 previously testify to that?

23      A.       What is this change order?

24      Q.       Where is that material coming from?

25      A.       It would have been above subgrade.

1 Q. Okay. If it's above subgrade, that  
2 has to be in the cut section, correct?  
3 There's no place else for the soil to be,  
4 above subgrade, cut?

5 A. It has to be in the cut section,  
6 correct.

7 Q. Okay. So if Change Order No. 2  
8 represents unsuitable materials which you  
9 removed from the cut section, then isn't there  
10 a mistake in this calculation since you've  
11 referenced all of the cut on the whole job?

12 A. Not necessarily.

13 Q. Why not?

14 A. I don't know if it is the entire cut.

15 Q. Isn't that what's represented on your  
16 take-off, as the entire cut of the job?

17 A. The same numbers, correct.

18 Q. So if your take-off is accurate,  
19 you're asking to be paid the entire cut  
20 section as unsuitable material?

21 A. I'm confused.

22 Q. We don't understand Change Order No.  
23 2, and that's what I'm trying to get at.  
24 Because it appears that in Change Order No. 2,  
25 you're asking for everything that you

1 estimated on this job to be excavated to be  
2 paid for as unsuitable material.

3 Are you requesting in this litigation  
4 to be paid for all of the cut that you  
5 estimated on this job site as unsuitable  
6 material?

7 A. I don't think so.

8 Q. Okay. Do you have any estimation as  
9 to how much material was suitable in the  
10 excavated areas above subgrade?

11 A. No, sir.

12 Q. If you were paid Change Order No. 2  
13 for 2,898 cubic yards, would you agree that if  
14 your estimate is correct, that would be the  
15 entire cut section?

16 A. Repeat it again.

17 Q. Okay. If Change Order No. 2 -- do you  
18 think Change Order No. 2 is accurate?

19 A. Yes.

20 Q. If that's accurate and if you were  
21 paid that, wouldn't that represent payment for  
22 removing and refilling the entire cut section?

23 A. I'm confused. I apologize.

24 Q. Is there any other dirt on this job  
25 that could be unsuitable beyond the cut

1 section of 2,898 cubic yards?  
2 A. Yes.  
3 Q. Where besides Change Order No. 3? I  
4 recognize we undercut.  
5 A. Below subgrade.  
6 Q. Right. So you've undercut that  
7 material. Change Order No. 3 is 1,310 cubic  
8 yards, so we've got those two. Is there any  
9 other material on this job that was unsuitable  
10 besides what was in the cut section of Change  
11 Order No. 2 or that you undercut in Change  
12 Order No. 3?  
13 A. Yes.  
14 Q. Where?  
15 A. On the site.  
16 Q. Where on the site?  
17 A. Various locations.  
18 Q. Well, you did the drawing on Change  
19 Order No. 3 and you said this was undercut.  
20 A. This was one of the areas, yes.  
21 Q. You drew four of them, unsuitable  
22 areas 1, 2, 3 and 4.  
23 A. Yes, sir.  
24 Q. You calculated them, right?  
25 A. (Nods head up and down.)

1 Q. Correct? You calculated those areas  
2 or those volumes?  
3 A. Yes, sir.  
4 Q. Where else on this site did you go  
5 below subgrade to excavate unsuitable  
6 material?  
7 A. Various locations.  
8 Q. Okay. Why didn't you calculate  
9 various locations when you put together Change  
10 Order No. 3 and you identified the four areas  
11 for us?  
12 A. These were the four major -- or not  
13 four major, but the easily identifiable ones  
14 that had actual measurements taken of them,  
15 these were (indicating).  
16 Q. Where's the other ones?  
17 A. On the site.  
18 Q. Well, can you look at that little  
19 diagram and tell me where else you undercut on  
20 in site?  
21 A. Various locations.  
22 Q. How do you know that? Were you on the  
23 job when you were undercutting at various  
24 locations other than those calculated?  
25 A. Was I personally on the job?

1 Q. Yes, sir.

2 A. No, sir.

3 Q. Then what do you base your testimony

4 on that there were other areas that were

5 undercut besides the ones that you submitted?

6 A. On conversation with Ricky Tipper.

7 Q. Okay. Turn over to Change Order No.

8 4.

9 A. (Pause.)

10 Q. Do you have Change Order No. 4?

11 A. Yes, sir.

12 Q. Where did you come up with 13,500

13 cubic yards?

14 A. How did we calculate it?

15 Q. Yes, sir. How did that number appear

16 on this site that started out with a total of

17 2,898 cubic yards of cut? How?

18 A. Where did this come from?

19 Q. Yes, sir.

20 A. The site.

21 Q. No. Where did the calculations come

22 from?

23 A. The total trucks that was used to

24 import fill with, times, I believe I used 12

25 yards per truck. Yes, sir.

1 Q. Well, where do those numbers come  
2 from? I haven't seen anything that gave me a  
3 truck count. All I saw was the truck count in  
4 the daily reports.

5 A. That's it.

6 Q. If I count up my trucks in the daily  
7 reports, I've got 93 truckloads at 12 cubic  
8 yards a truckload. So I'm going to get about  
9 1,000 cubic yards, maybe closer to that 1,300,  
10 but I'm not going to get much over 1,000 cubic  
11 yards if I count your daily reports. Where  
12 else am I going to look to figure out where  
13 you took out unsuitable material of 13,500  
14 cubic yards?

15 A. In the daily reports and the truck  
16 tickets.

17 Q. Where are the truck tickets?

18 A. The bill for the trucking.

19 MR. CASHION: Do we have that,  
20 Todd?

21 MR. PANTHER: I thought you did.

22 MR. CASHION: I probably didn't  
23 know what I was looking at.

24 MR. PANTHER: I'll be glad to look  
25 now. I thought we had that.

1                   Is that among the stuff?

2                   THE WITNESS: I assumed it was,  
3                   yes, sir.

4                   MR. CASHION: Let's take a short  
5                   break. You may have given it to me and I  
6                   didn't know what I had.

7                   MR. PANTHER: I thought we had.

8                   (A short break was observed.)

9                   BY MR. CASHION:

10                  Q.           You're correct, your attorney gave us  
11                  truck tickets. And the truck tickets indicate  
12                  loads that were hauled. How did you determine  
13                  from these truck tickets if you were hauling  
14                  unsuitable material or if you were hauling  
15                  import material in this case?

16                  A.           Repeat that.

17                  Q.           Well, your attorney furnished us with  
18                  tickets, and they indicate hours, price and  
19                  the number of loads that these various people  
20                  charged you, right?

21                  A.           Correct.

22                  Q.           How did you determine in the  
23                  calculation of your 13,500 cubic yards that  
24                  was unsuitable material?

25                  A.           That's all we hauled out was



1 unsuitable material.

2 Q. Well, these truck tickets, you're

3 hauling in fill material, right?

4 A. Correct.

5 Q. You've got a borrow pit set somewhere

6 up, sounds like you're excavating chert out of

7 it and you're hauling it in. If I've just got

8 a truck ticket, how am I supposed to know if

9 that's hauling import material as a load or if

10 I'm hauling unsuitable material out?

11 A. (Pause.)

12 Q. You can't tell from these tickets, can

13 you? They don't tell you what they're

14 hauling.

15 A. I was told.

16 Q. By?

17 A. Ricky Tipper.

18 Q. That?

19 A. That was the loads of unsuitable

20 material hauled out and replaced.

21 Q. Okay. And how do we know -- like I've

22 got one just as an example. The Carter house

23 job. Now, that's not for Williamson County,

24 is it?

25 A. Yeah.

1 Q. Is this known as the Carter house job?

2 A. Yeah. Some of the drivers wrote that

3 on there. It's right behind the Carter house.

4 Q. So this is, to the truck drivers, the

5 Carter house job?

6 A. I've seen it on -- some of them wrote

7 that, yeah.

8 Q. And how am I supposed to know if these

9 are tickets where you're hauling your topsoil

10 off to your subdivision?

11 A. Those aren't included in there.

12 Q. So it's your testimony that every one

13 of these tickets that you included is hauling

14 unsuitable soils off the site?

15 A. Yes, sir.

16 Q. And do you have any idea how you would

17 haul off 13,500 cubic yards from a site that

18 only had 3,000 cubic yards set up for total

19 excavation?

20 A. (Pause.)

21 Q. Do you understand my question?

22 A. No.

23 Q. I've got a site out there. I've got a

24 total cut of 3,000 cubic yards. How do I dig

25 out another 10,000 cubic yards from that site?

1 A. We did it with a track hoe.

2 Q. But you told me you undercut 1,310

3 cubic yards of undercut in the major areas,

4 areas that you marked as 1, 2, 3 and 4.

5 A. Yes, 1, 2, 3 and 4.

6 Q. Now, if that's 1,000 yards, I've got

7 another 9,000 yards that you're telling me you

8 took out of that site?

9 A. Correct.

10 Q. If those were the major areas, where

11 else are we digging this gigantic hole on this

12 site to take out that much material on a

13 little-bitty earth job?

14 A. Those areas was the ones that PSI came

15 out and marked.

16 Q. PSI marked about 1,000 cubic yards,

17 and what you're saying is you took another

18 9,000 cubic yards that PSI missed?

19 A. Or didn't come out and -- RCR didn't

20 need their opinion to qualify it as

21 unsuitable.

22 Q. What was RCR doing qualifying as

23 unsuitable? I thought that was PSI's job.

24 A. If RCR called them.

25 Q. Now, when did you have unsuitable

1 material there that RCR wasn't calling them  
2 on?

3 A. Often.

4 Q. So it's your testimony that PSI  
5 documented 1,310 cubic yards of undercut,  
6 right?

7 A. Of questionable.

8 Q. That you took out?

9 A. Yes, sir.

10 Q. And that there was another 9,000 cubic  
11 yards other than what PSI documented that you  
12 removed from that project site?

13 A. That was unquestionable.

14 Q. That was unquestionably bad stuff?

15 A. Yes, sir.

16 Q. And you took it out, and PSI didn't  
17 look at it because it was so bad, everybody  
18 knew that it was going to come out?

19 A. Yes, sir.

20 Q. And did you have a conversation with  
21 anybody at RCR about this unquestionably bad  
22 stuff coming out?

23 A. Did I?

24 Q. Yeah.

25 A. No.

1 Q. Who was having these conversations out  
2 there with RCR when all this 9,000 cubic yards  
3 were being removed?

4 A. Harley Ezell and Ricky Tipper.

5 Q. Okay. Why did you wait until April of  
6 the next year before you told them about this  
7 extra 9,000 cubic yards that came out of that  
8 site?

9 A. I couldn't get Don Stover to return my  
10 calls.

11 Q. Well, you didn't have any trouble  
12 submitting these change orders, did you?

13 A. No, sir.

14 Q. Why didn't you submit a change order  
15 for the 13,000 whenever you were through  
16 excavating?

17 A. We did.

18 Q. You submitted that in April.

19 A. Yes, sir.

20 Q. Why didn't you submit it when you were  
21 through excavating the site in the summer of  
22 1999?

23 A. I was waiting on Don Stover to call  
24 me.

25 Q. What was Don Stover going to call you

1 and talk to you about?

2 A. Finalizing, and the issue of the  
3 unsuitable material.

4 Q. Well, how did Harley Ezell miss this  
5 unsuitable material so bad on July 1st when he  
6 wrote the letter and he said it looked like it  
7 was going to be about 1,000 to 1,700 cubic  
8 yards?

9 A. In that particular area.

10 Q. Well, where else -- can you point to  
11 me on the drawing, on Exhibit No. 6, where  
12 else you undercut the rest of the 9,000 cubic  
13 yards?

14 A. Just various locations all over it.

15 Q. There's your drawing (indicating).  
16 Did you undercut in the building pad? That's  
17 a big area there.

18 A. I'm not sure. I wasn't there.

19 Q. Well, various locations all over  
20 doesn't seem to be very exact. And part of  
21 this, you only had 3,000 cubic yards to cut.  
22 Did you have to do a lot of undercutting  
23 before you could start your fill operation?

24 A. I'm not sure.

25 Q. How many conversations did you have

1 with Don Stover during --  
2 A. In my life?  
3 Q. Sir?  
4 A. In my life?  
5 Q. No, just during the summer of '99 when  
6 Harley and Ricky were out there doing this  
7 work.  
8 A. I'm not sure.  
9 Q. Do you recall any conversations that  
10 you had with anyone on the site whenever the  
11 excavation was being performed?  
12 A. Yes.  
13 Q. Who?  
14 A. Harley Ezell, Ricky Tipper, Anthony  
15 Orange, Don Stover.  
16 Q. What did you tell them at that time?  
17 A. About what?  
18 Q. What do you recall having a  
19 conversation about?  
20 A. A conversation I remember -- with  
21 who?  
22 Q. With Anthony Orange or Don Stover.  
23 A. Which one?  
24 Q. Okay. With Anthony Orange. What do  
25 you recall telling Anthony Orange on the site?

1 A. I think the conversation we had with  
2 him -- I had with him was, I think me and  
3 Barber had -- that was after they paid us and  
4 they had took it back.

5 Q. Right. And what conversation did you  
6 have then?

7 A. Only part I remember, that sticks out  
8 in my mind, is seems like Anthony and Don said  
9 that they weren't going to pay us because the  
10 county wasn't going to pay them now, and that  
11 was the reason they were taking it back.

12 Q. Did you have any other conversations?

13 A. With Anthony or Don?

14 Q. Right.

15 A. I can't recall. That was in '99.

16 MR. CASHION: I think I'm about  
17 through. Christina, if you want to go ahead  
18 and ask and I'll review my notes. Do you have  
19 some questions?

20 MS. GOODSON: Yes.

21

22 QUESTIONS BY MS. GOODSON:

23 Q. Mr. Parker, my name's Christina  
24 Goodson. I represent the county. I have very  
25 few questions. I just want to clear up a few



1 things.

2 So your testimony today is that any  
3 material you removed from the site above and  
4 below subgrade that was unsuitable, you're  
5 charging for now?

6 A. Charging what?

7 Q. Charging for now, this 12.50 per cubic  
8 yard, any unsuitable material.

9 A. No, ma'am.

10 Q. Explain it to me.

11 A. The 12.50 a yard was for the material  
12 below subgrade.

13 Q. Below subgrade?

14 A. Correct.

15 Q. So absolutely none of the material  
16 above subgrade declared to be unsuitable is at  
17 issue in this lawsuit?

18 A. Is what?

19 Q. At issue now.

20 A. Yes.

21 Q. Okay. Do you know if you had the  
22 opportunity to borrow material from the Moores  
23 Lane area from the county on this job?

24 A. What was that?

25 Q. Do you know if you had the opportunity

1 to borrow material from the Moores Lane area?  
2 A. I believe that's where we got the  
3 borrowed material from.  
4 Q. And the county gave you permission to  
5 do that free of charge?  
6 A. Yes, ma'am.  
7 Q. And did you have the ability to dump  
8 materials at the rock quarry in the county  
9 free of charge?  
10 A. I think so.  
11 Q. I just wanted to make sure that I had  
12 that straight.  
13 MS. GOODSON: That's all I have.  
14 MR. CASHION: I don't have  
15 anything else.  
16  
17 FURTHER DEPONENT SAITH NOT.  
18  
19 SWORN to before me when taken,  
20 April 20, 2001  
21  
22 *Sabrina L. Isbell*  
23 -----  
24 Sabrina L. Isbell, Notary Public  
25 State of Tennessee At Large  
My Commission Expires: 1/31/2004