

1 IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

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4 AMERICAN EXCAVATORS INC)
)
 Plaintiff.)
)
 5 vs) NO. 27213
)
 6 RCR BUILDING CORPORATION)
 7 AND FIREMAN'S FUND)
 INSURANCE COMPANY)
 8)
 Defendants.)
 9 -----

10

11 Deposition of:
12 RICKY TIPPER
13 Taken on behalf of the Defendants
14 August 29 2001
15

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Vowell & Jennings, Inc. (615) 256-1935 1

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1 The deposition of RICKY TIPPER was
2 taken by counsel for the Defendants at
3 Entrekin, Tune & White, 21st Floor, AmSouth
4 Center, Nashville, Tennessee, on August 29,
5 2001, for all purposes under the Tennessee
6 Rules of Civil Procedure.

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

11 It is agreed that Jackie Wisinger,
12 being a Notary Public and Court Reporter for
13 the State of Tennessee, may swear the
14 witness, and that the reading and signing of
15 the completed deposition by the witness are
16 waived.

17
18
19
20

21 * * *

22 RICKY TIPPER
23 was called as a witness, and after
24 having been first duly sworn, testified as
25 follows:
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1 QUESTIONS BY MR. CASHION:
2 Q. Would you state your full name?
3 A. Ricky Sacson Tipper.
4 Q. Mr. Tipper, my name is Greg Cashion.
5 I'm an attorney. I represent RCR. And
6 you've been asked to come here today to give
7 a deposition.
8 Have you ever given a deposition
9 before?
10 A. Yes.
11 Q. Then you know I'll be asking you a
12 series of questions. I expect each of your
13 answers to be in response to my questions.
14 If for any reason you don't understand
15 one of my questions or it's not clear to you,
16 just stop, ask me to either rephrase it or
17 repeat it. Tell me you don't understand it
18 and we'll work to get a question that you
19 understand so they will be responsive.
20 Is that okay?
21 A. Yes, sir.
22 Q. The other thing to warn you about, we
23 have a court reporter that takes down all the
24 words. So it's important for me as well as
25 for you to try to keep all answers verbal.
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1 Uh-huh and hu-huh gets pretty tough
2 for her guessing which was the affirmative
3 and which was the negative. So occasionally
4 if you say that, I may ask you just to say
5 yes or no.
6 What is your educational background,
7 Mr. Tipper?
8 A. Well, I have no college. I'm a high
9 school graduate and an apprenticeship program
10 in machinist trade. I'm a journeyman
11 machinist by trade.
12 Q. What high school did you go to?
13 A. Marshall County Senior High School.
14 Q. Lewisburg, Tennessee?
15 A. Yes, sir.
16 Q. What year did you get out of high
17 school?
18 A. 1976.
19 Q. And what generally have you done --
20 and don't me a specific list -- since '76
21 until you went to work for American
22 Excavators?
23 A. United States Marine Corp, about 10,
24 11 years in the machinist field; and then two
25 or three or four different construction
Vowell & Jennings, Inc. (615) 256-1935 6

1 companies.
2 Q. What are the names of the construction
3 companies?
4 A. I can't remember the name of the first
5 one. They build golf courses, Pierman Golf.
6 And then it was Thomas & Associates, M.R.
7 Dillard, Civil Constructors, Bolden Pipe,
8 American Excavators, and the present is Ream
9 Construction.
10 Q. R-e-a-m?
11 A. Yes, sir.
12 Q. I'll touch these briefly. Thomas &
13 Associates, approximately what years did you
14 work for them and what did you do?
15 A. The years, I'm not sure of exactly on
16 the years, but I was an operator, assistant
17 foreman.
18 Q. M.R. Dillard?
19 A. Operator.
20 Q. Do you remember the years or
21 thereabout?
22 A. No, sir.
23 Q. Civil Constructors?
24 A. I was a trackhoe operator/lead person
25 on a pipe crew.
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1 Q. What kind of pipe?
2 A. All underground, water, sewage, storm.
3 Q. Bolden Pipe Company?
4 A. Foreman, utility.
5 Q. Do you remember what years you worked
6 for Bolden?
7 A. I only worked for Bolden about four
8 months, and that was right before I went to
9 work for American.
10 Q. How long were you at Civil?
11 A. I think it was 16 months.
12 Q. How long at M.R. Dillard?
13 A. About a year.
14 Q. Thomas & Associates?
15 A. I think it was -- I worked for them
16 twice. I think it was about two years total,
17 but I'm not sure exactly.
18 Q. When did you go to work for American
19 Excavators?
20 A. Either '98 or '99.
21 Q. This job started June of '99?
22 A. Yes, sir.
23 Q. Had you just started to work for them
24 or had you been there about a year?
25 A. No, sir. I had been there close to a
Vowell & Jennings, Inc. (615) 256-1935 8

1 year, I think.
 2 Q. Probably '98, best guess?
 3 A. Yes, sir.
 4 Q. What were your duties at American
 5 Excavators?
 6 A. Field superintendent.
 7 Q. Do you remember which jobs you were on?
 8 A. Moore's Lane, Brentwood.
 9 Q. What do you call this job?
 10 A. That's Williamson County Community
 11 Services Building.
 12 Q. Moore's Lane, Brentwood, that sounds
 13 like a location, not a project.
 14 A. That's all I knew it as.
 15 Q. What were you doing on that job?
 16 A. Water and sewer and some grade, some
 17 grade also.
 18 Q. Any other jobs you remember?
 19 A. Yes, sir.
 20 Q. Which ones?
 21 A. I'm trying to remember them in order.
 22 Q. Okay. So Moore's Lane in Brentwood
 23 was the first job you had?
 24 A. Yeah. That's where I went first, yes,
 25 sir. Then it was Casey Valley in Columbia,
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1 Tennessee.
 2 Q. What kind of job was that?
 3 A. It was a sewer rehabilitation project.
 4 Q. Next one?
 5 A. The next one that I was actually
 6 assigned to would have been the Williamson
 7 County Community Services Building. I've
 8 done other things in between jobs.
 9 Q. You're talking about assigned as like
 10 the superintendent?
 11 A. Yes, sir.
 12 Q. On the other, when you were waiting
 13 for the job to come open, you may have been
 14 an operator or --
 15 A. No, sir. I've always been field
 16 superintendent, but I may have been at the
 17 subdivision doing some work or helping
 18 another crew or something.
 19 Q. Now, after the Williamson County job,
 20 what did you do after that? Did you have
 21 another job with American?
 22 A. Yes, sir. It was Fiber Optics in
 23 Franklin, Kentucky, and Boiling Green,
 24 Kentucky.
 25 Q. Did you have any other jobs after that?
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1 A. Yes, sir.
 2 Q. Which ones?
 3 A. Oneida, Tennessee.
 4 Q. What were you doing up there?
 5 A. We made two bores on the railroad
 6 track and put in some manholes and some sewer
 7 lines.
 8 Q. Anything else you remember?
 9 A. After that I spent a couple of weeks
 10 at Pattonville Road.
 11 Q. Doing what?
 12 A. Waterline work.
 13 Q. After that?
 14 A. I left.
 15 Q. Why did you leave?
 16 A. Better job.
 17 Q. With Ream Constructors?
 18 A. Yes, sir.
 19 Q. What do you do for Ream?
 20 A. I'm a superintendent over the utility
 21 division.
 22 Q. Would it be fair to say that on the
 23 jobs that you've told me about for American
 24 Excavators that you were primarily doing
 25 utility work?
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1 A. Primarily.
 2 Q. And on the Williamson County job, was
 3 that more grading than utility?
 4 A. I put in all the water, the sewer and
 5 the storm also at Williamson County. So if
 6 you was to split it up, I guess it would be
 7 about half and half.
 8 Q. Was there any other project that
 9 you've done where you did as much grading
 10 work for American Excavators that you did on
 11 the Williamson County project?
 12 A. Not as far as a building pad, no, sir.
 13 Q. This was the largest building pad that
 14 you did for American Excavators?
 15 A. Yes, sir.
 16 Q. Had you performed or constructed a
 17 building pad of this size with your previous
 18 companies?
 19 A. Could you repeat that or rephrase it?
 20 Q. Let me just start over, back up a
 21 little bit.
 22 In reading your other companies where
 23 you were a foreman or superintendent, it
 24 looked like you were mainly doing utility
 25 type work?
 Vowell & Jennings, Inc. (615) 256-1935 12

1 A. When I was a foreman, yes, sir.
 2 Q. When you were a foreman or
 3 superintendent, had you ever performed
 4 grading work of the magnitude that you did on
 5 the Williamson County job?
 6 A. No, sir.
 7 Q. When you were foreman or
 8 superintendent prior to being employed by
 9 American Excavators, did you do any grading
 10 work?
 11 A. Yes, sir.
 12 Q. What was the extent of it?
 13 A. The finish work behind the utility.
 14 Q. So you would clean up after utility?
 15 A. Dress up slopes.
 16 Q. Dress it up, seed it?
 17 A. Yes, sir.
 18 Q. Prior to working for American
 19 Excavators, had you ever constructed a
 20 building pad out of dirt such as you did on
 21 the Williamson County job?
 22 A. Before I worked for American?
 23 Q. Yes, sir.
 24 A. Yes, sir.
 25 Q. Where was that?
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1 A. As a foreman?
 2 Q. Yes, sir.
 3 A. No, sir.
 4 Q. But you had been an operator on other
 5 grading jobs?
 6 A. Yes, sir.
 7 Q. Where you were building pads with M.R.
 8 Dillard after Thomas & Associates?
 9 A. Yes, sir.
 10 Q. Let's talk about the Williamson County
 11 project.
 12 Who did you work with on the
 13 Williamson County project? Who was your
 14 contact at American Excavators?
 15 A. Harley Ezell and Marvin Parker.
 16 Q. What was the role or function of
 17 Harley Ezell?
 18 A. I can't answer that question honestly,
 19 because I don't know exactly what his title
 20 was.
 21 Q. How did you interact with him? Would
 22 he be the first guy you would go to if you
 23 had a question or would it be Marvin Parker?
 24 A. To start with it would be Harley.
 25 Q. Then Harley left at some point during
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1 the job?
 2 A. Yes, sir.
 3 Q. Is that when Marvin Parker took over
 4 in that role?
 5 A. Yes, sir.
 6 Q. Had you worked with Harley Ezell
 7 before this job?
 8 A. I'm not sure.
 9 Q. And what was told to you when you
 10 first came to work for the Williamson County
 11 job?
 12 Did Mr. Ezell take you aside and tell
 13 you what was expected, or how did you get
 14 your instructions?
 15 A. I don't understand.
 16 Q. When you first started the job, how
 17 did you know what you were going to be doing?
 18 A. I had a set of blueprints.
 19 Q. Did you have any conversation with
 20 Harley Ezell?
 21 A. Yes, sir.
 22 Q. What did he tell you?
 23 A. He just went over the blueprints and
 24 showed me where the cuts and fills and looked
 25 at the job and went over the plan of attack.
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1 Q. What was going to be the plan of
 2 attack for this job?
 3 A. To strip the topsoil.
 4 Q. Then what as far as planning?
 5 A. The first plan was to strip the
 6 topsoil. The second plan was to get the
 7 building pad up, because that's what RCR
 8 wanted first. And then we would bring the
 9 parking areas up to grade, detention pond,
 10 the utilities, spread the topsoil and be out
 11 of there.
 12 Q. Had you ever worked with RCR before?
 13 A. I don't believe so.
 14 Q. Who did you work with at RCR? Who was
 15 out there?
 16 A. Anthony Orange.
 17 Q. How would you relate to Mr. Orange?
 18 A. I don't understand.
 19 Q. What was the role of Anthony Orange
 20 from your perspective on the job site?
 21 A. The superintendent.
 22 Q. Would he meet with you and give you
 23 instruction, or did you take your directions
 24 from Mr. Ezell on this job?
 25 A. If I run into a problem, I would take
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1 it to Anthony Orange and Anthony Orange would
2 advise me. I also took instructions from
3 Harley Ezell.

4 Q. Now, did you have any trouble when you
5 went out there and started stripping the
6 topsoil?

7 MR. PANTHER: Can you identify
8 trouble?

9 THE WITNESS: Will you clarify
10 that?

11 BY MR. CASHION:

12 Q. Let me reask the question. Do you
13 recall when you started the stripping of the
14 topsoil operation?

15 A. Yes, sir.

16 Q. Describe how that proceeded.

17 A. In detail?

18 Q. Some detail. Did you go out there and
19 strip it and that was it?

20 A. We had a couple of dozers and we had a
21 pan scraper, and we started stripping the
22 topsoil.

23 Q. How much were you stripping, what
24 depth?

25 A. In places we took it down as much as a
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1 foot and a half, two foot.

2 Q. Were those places in the cut or the
3 fill or both?

4 A. Both.

5 Q. Did you stockpile it?

6 A. Yes, sir.

7 Q. Did you have any problems doing it as
8 far as what you encountered out there?

9 A. There again, you're going to have to
10 clarify that, because -- you just need to
11 clarify that for me, please.

12 Q. Well, what I wanted to do was to go
13 through your daily reports for you to
14 describe it for me. I was trying to get some
15 general observation.

16 Let's just specifically -- and I'm
17 sure we can be very specific when you've got
18 the report in front of you rather than trying
19 to remember or have some definition of
20 problems.

21 A. I can be specific and not go out of
22 bounds, but, I mean, I had problems with
23 equipment. I had problems with getting
24 people there on time.

25 So when you ask me did I have
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1 problems, yes, sir, but I need you to
2 clarify. If you ask me did I have a problem,
3 if you would be more specific as to the
4 problem that you are asking me about.

5 Q. I guess the reason I asked you in that
6 general way was just for you to give me a
7 list of things that you considered a problem
8 when you got started on this job, which would
9 include what you're talking about as far as
10 equipment problems or men not showing up, as
11 well as any problems you had with doing the
12 work itself.

13 MR. PANTHER: Let me object to
14 the form of the question. I've objected to
15 the form, but that doesn't mean -- you can go
16 ahead and answer.

17 BY MR. CASHION:

18 Q. Let me ask for clarification.

19 With my general definition of
20 problems, can you just give me a list of
21 problems that you encountered initially on
22 this project?

23 A. Yes, sir.

24 Q. Would you please do that?

25 A. There was garbage over the whole site.
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1 It was used as a dumping ground. There was
2 old couches and chairs and everything that
3 you could think of, cans, bottles. That was
4 a problem. That all had to be cleaned up and
5 hauled off.

6 I had a problem with my pan not
7 starting. I had to get the mechanic out
8 there to get it started. I had a problem
9 when my dozer over-heated. I had to get the
10 mechanic out there to fix that problem. I
11 had problems with employees that may not show
12 up on time and I had to discipline them.

13 Q. Anything else you remember?

14 A. Had problems with getting dump trucks
15 from time to time, had problems with the
16 rain. As far as problems, that's about it.

17 Q. Now, when you looked at this job, did
18 you do a take-off where you estimated the
19 amount of cut and the amount of fill on the
20 job?

21 A. Did I do it?

22 Q. Yes, sir.

23 A. No, sir.

24 Q. Did you know either from conversations
25 with Mr. Ezell and Mr. Parker or anyone else
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1 about whether you were going to have more cut
2 or more fill, whether it be a waste job or an
3 import job?
4 A. I knew it was going to be an import
5 job.
6 Q. How did you know that?
7 A. How did I know it?
8 Q. Yes, sir.
9 A. Because of Harley Ezell.
10 Q. What did Mr. Ezell tell you?
11 A. That it was going to have to be import
12 material. The site -- most of the site was a
13 fill site. There was very little cut areas
14 on the site.
15 Q. And who set up the borrow pit for
16 where you would get this material to bring in
17 to the site?
18 A. Harley, I believe.
19 Q. Did you have anything to do with it?
20 A. I talked to the Williamson County,
21 the guy that was over it, about where to
22 actually get the material and, you know,
23 which area to take it from.
24 Q. Was Williamson County offering some of
25 their other land as a borrow pit, do you
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1 know?
2 A. I don't understand that question.
3 Q. You said you talked with the guy with
4 Williamson County. Was that Al Ritter?
5 A. I don't remember his name.
6 Q. When you talked to him, was he going
7 to tell you of some Williamson County
8 property that if you needed dirt you could go
9 there and get?
10 I'm just trying to get the gist of the
11 conversation you had with the Williamson
12 County representative.
13 A. They told me where the site was at and
14 showed me where to take the material from.
15 Q. So they told you a different site
16 other than the project site.
17 Are you talking about when they were
18 on the project site?
19 A. I don't understand again.
20 Q. Try to back up. You knew this was
21 going to be an import job?
22 A. Yes, sir.
23 Q. Whenever you were looking or Mr. Ezell
24 was looking for a place to go dig up dirt,
25 what I'm calling a borrow pit, to import it
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1 to the site, was the Williamson County
2 representative telling you places off site
3 that you could go get dirt, or was he just
4 talking about where you were building the
5 project?
6 A. I'm still not sure I understand your
7 question.
8 Q. Part of my problem with the question
9 is I don't exactly understand what the
10 Williamson County guy is telling you. I'm
11 trying to get you to tell me more whether he
12 was trying to point out places to go or what
13 he was doing.
14 So if you could give me some more --
15 A. He didn't point out anything. They
16 had a place that had the material, and he
17 showed me where this place was at and told me
18 where to take the material from.
19 Q. Where was that?
20 A. It is where the end of Moore's Lane --
21 I guess that's Franklin Road where the end of
22 Moore's Lane tees off. They're building a
23 new road right straight across. It was up on
24 top.
25 Q. So they said if you need some
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1 material, which you did, go there and get the
2 material?
3 A. Yes, sir.
4 Q. And how much material did you think
5 you were going to have to import to this job?
6 MR. PANTHER: At what point?
7 BY MR. CASHION:
8 Q. When you were first on the job talking
9 about it being an import job with Mr. Ezell.
10 A. I don't remember how many yards,
11 actual yards, was supposed to be imported.
12 There was supposed to be some cut areas on
13 the job that we could get material from. But
14 as far as the exact yardage of import
15 material, I do not know.
16 Q. Now, when you were doing the job, were
17 you able to use any of the cut areas on the
18 job as fill material?
19 A. No, sir.
20 Q. What was wrong with that material?
21 A. It was unsuitable.
22 Q. Who said it was unsuitable?
23 A. PSI, and I want to think the name of
24 the other company was Southern --
25 Q. Southern Consulting?
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1 A. Southern Consulting, I believe.
2 Q. So what you're saying is you didn't
3 use any of the on-site material as fill
4 material?
5 A. No, sir. It wasn't suitable.
6 Q. Did PSI tell you it was not
7 unsuitable, or did Mr. Ezell relate that to
8 you?
9 A. PSI.
10 Q. Did PSI ever say that you could take
11 that material and spread it out and maybe
12 then it would dry out enough to where you
13 could use it?
14 A. They never told me that.
15 Q. Had you ever heard that before?
16 A. You're talking about scarifying?
17 Q. Yes, sir.
18 A. Yes, sir. There is certain types of
19 material that you can scarify and get it to
20 come to a 98 to 100 percent compaction, but
21 most of the time topsoil is not one of those
22 materials.
23 Q. Was all the material, all the cut
24 material, on site topsoil in your opinion.
25 A. In my personal opinion, yes, it was.
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1 Q. So what did you end up doing with the
2 material that was supposed to be cut out
3 there?
4 A. It was stockpiled in the topsoil pile.
5 Q. Now, did you run into unsuitable soil
6 once you cut it down to finish grade or
7 finish subgrade?
8 A. Once we got it to subgrade, which,
9 like I said before, most of the job was
10 already below subgrade. Most of the job,
11 what I call a subgrade -- we have finish
12 grade and we have subgrade.
13 In order for me to bring this job up
14 to subgrade, in most areas required fill if
15 you didn't touch anything on top to start
16 with. It was all too low.
17 Q. Right. This is why it was an import
18 job?
19 A. So the answer to that question is yes,
20 we encountered unsuitable material below
21 subgrade, because most of the job was below
22 subgrade to start with. But once we stripped
23 the topsoil, there was still unsuitable
24 material which was still below subgrade.
25 Q. That's what I was asking.
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1 And once you strip the topsoil, you
2 still encountered some unsuitable material;
3 is that correct?
4 A. An extremely large portion.
5 Q. Now, when you would encounter the
6 unsuitable material, how would you determine,
7 first, it was unsuitable, and second, how
8 much to take out?
9 A. PSI would come out on occasions when
10 Anthony would call them and they would do
11 some measuring. The other times Anthony
12 would look at it and tell me to take it out.
13 Q. How did you keep up with what you were
14 taking out as unsuitable material?
15 A. I didn't.
16 Q. Did you put some in your daily report
17 when you were hauling --
18 A. I don't remember as far as keeping up
19 with what I took out. I was told to keep up
20 with what we had to bring in.
21 Q. Did you keep up with what you took out?
22 A. No, sir, I didn't, not all of it. I
23 may have kept up with some of it, but I
24 didn't keep up with all of it.
25 MR. CASHION: Let me go through
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1 your daily reports. I guess, Todd, we're
2 continuing our consecutive deposition
3 numbering. This will be 29.
4 MR. PANTHER: I trust you.
5 (The previously mentioned document was
6 marked as Exhibit No. 29.)
7 BY MR. CASHION:
8 Q. Let me hand to you the first daily
9 report. Is this typically how you would keep
10 daily reports on this job?
11 A. Some days I was a little more slouchy
12 than others.
13 Q. Down the item number, what is WCO199?
14 What is that? Is that the job number?
15 A. I believe that was the job number. I
16 can't be positive about that, but I believe
17 that was the job number.
18 Q. This daily report is just showing you
19 clearing the trees and stuff?
20 A. Yes, sir.
21 MR. CASHION: Let's mark this.
22 (The previously mentioned document was
23 marked as Exhibit No. 30.)
24 BY MR. CASHION:
25 Q. Let me hand you next Exhibit No. 30.
Vowell & Jennings, Inc. (615) 256-1935 28

1 Same thing on June 3rd, 1999, hauling off
2 brush and trees and basically clearing the
3 job; is that accurate?
4 A. Yes, sir. That was one of the
5 problems, dump truck late. And another one
6 of the problems, we had wiring problems.
7 MR. CASHION: Let's mark this
8 next.
9 (The previously mentioned document was
10 marked as Exhibit No. 31.)
11 BY MR. CASHION:
12 Q. Next let me hand you Exhibit 31. This
13 has no description on it. Can you tell what
14 you all were doing?
15 A. No, sir, there is not.
16 MR. PANTHER: Must have been a
17 slouchy day.
18 THE WITNESS: It was a slouchy
19 day.
20 MR. CASHION: Mark this next.
21 (The previously mentioned document was
22 marked as Exhibit No. 32.)
23 BY MR. CASHION:
24 Q. Next 32, June 5th, '99, again, worked
25 a couple of hours with no description, on
Vowell & Jennings, Inc. (615) 256-1935 29

1 Saturday.
2 A. That was a rain out.
3 MR. CASHION: Mark this next.
4 (The previously mentioned document was
5 marked as Exhibit No. 33.)
6 BY MR. CASHION:
7 Q. Next is No. 33, same thing, not doing
8 much work other than clearing, grubbing.
9 A. I would say that was a rain out, also.
10 Q. Worked about three hours --
11 A. Yes, sir.
12 Q. -- on a Monday, June 7th.
13 MR. CASHION: Next is 34.
14 (The previously mentioned document was
15 marked as Exhibit No. 34.)
16 BY MR. CASHION:
17 Q. Next is Exhibit 34. It's a two-page
18 exhibit, and stapled behind that is an
19 invoice from Smith Trucking & Excavating,
20 which the invoice matches the date of the
21 daily report which in this case is June 8.
22 First, what's being hauled here on
23 this date? Can you tell from looking at
24 either the invoice or your daily report?
25 A. Trash and debris.
Vowell & Jennings, Inc. (615) 256-1935 30

1 Q. And you're stripping topsoil?
2 A. We was stripping topsoil, but I don't
3 know what the rest is, something. I can't
4 even read my own writing.
5 Q. I can't either.
6 A. I honestly can't. But, yes, sir, we
7 were hauling off trash and debris.
8 MR. CASHION: Mark this 35.
9 (The previously mentioned document was
10 marked as Exhibit No. 35.)
11 BY MR. CASHION:
12 Q. Next I'm going to hand you Exhibit 35.
13 Now, on this one, I don't have an invoice
14 that matches 6-9-99.
15 A. That matches what?
16 Q. The haul off. It says, "Hauled off
17 RCP drain tile, hauled in shot rock."
18 A. Yes, sir.
19 Q. Quantity, it says "Virgil." What does
20 that mean?
21 A. Virgil was one of my operators. He
22 also had a CDL. He drove one of our dump
23 trucks, which we called Old Blue. And I
24 never kept a ticket on Old Blue.
25 Q. So that's why we don't have a ticket?
Vowell & Jennings, Inc. (615) 256-1935 31

1 A. Yes, sir.
2 Q. He's hauling an American Excavators,
3 in one of your trucks?
4 A. Old Blue was an American Excavators
5 dump truck.
6 Q. Where is he hauling in the shot rock
7 from? What was that for?
8 A. The shot rock came from the Williamson
9 County -- if you know where Williamson County
10 Garage is, back behind there they've got a
11 rock quarry. That's where the shot rock
12 came from.
13 Q. Right off Hillsboro Road next to the
14 Sonic?
15 A. No, sir. It's not Hillsboro Road. Do
16 you know where Moody's Tire is?
17 Q. No.
18 A. I guess that's 31 going toward Spring
19 Hill.
20 Q. Columbia?
21 A. Yes, sir. I think that's what people
22 from Franklin call it. People from Columbia
23 call it Franklin Road. But it's back in
24 there. That is where their county garage is.
25 MR. CASHION: Mark this 36.
Vowell & Jennings, Inc. (615) 256-1935 32

1 (The previously mentioned document was
2 marked as Exhibit No. 36.)
3 BY MR. CASHION:
4 Q. Let me hand you next 36, Exhibit 36,
5 which is your daily report of June 10th.
6 And you're hauling in the rock on this
7 one for trench backfill?
8 A. Yes, sir.
9 Q. Were you laying a storm drain?
10 A. No, sir. If you'll go back to the day
11 before, you will see had to dig up reinforced
12 concrete pipe, which is what RCP stands for.
13 "RCP drain tile across job site and
14 hauled off, not shown on print." RCR
15 superintendent came by. He's checking on the
16 trees.
17 But it was a reinforced concrete pipe
18 drain that went around from one side of the
19 job to the other that they did not know was
20 there and it had to come out.
21 Q. So you hauled it out and put shot rock
22 back in?
23 A. Yes, sir.
24 MR. CASHION: Mark this as 37.
25 (The previously mentioned document was
Vowell & Jennings, Inc. (615) 256-1935 33

1 marked as Exhibit No. 37.)
2 BY MR. CASHION:
3 Q. Next let me hand you Exhibit 37.
4 Is this simply a rain out day?
5 A. Yes, sir, except for me. It looks
6 like I worked all day.
7 MR. CASHION: Mark this 38.
8 (The previously mentioned document was
9 marked as Exhibit No. 38.)
10 BY MR. CASHION:
11 Q. Hand you Saturday, Exhibit 38. What
12 are you pumping off the water? I don't
13 understand what's happening on June 12.
14 A. Well, on June the 11th, on that
15 evening, it came an inch and a half rain.
16 And the reason I know it came an inch and a
17 half rain is because I had a rain gauge set
18 up.
19 So we brought in a six-inch pump to
20 pump all the drain water off the corner where
21 we had done stripped down a couple of feet of
22 topsoil.
23 Q. Basically a pond out there?
24 A. In that one corner.
25 MR. CASHION: Mark this 39.
Vowell & Jennings, Inc. (615) 256-1935 34

1 (The previously mentioned document was
2 marked as Exhibit No. 39.)
3 BY MR. CASHION:
4 Q. Next is Exhibit 39, which is June 14.
5 Another rain out day?
6 A. Yes, sir. We had one point one inches
7 that day. That was one of the problems that
8 I talked about earlier, was the rain. We
9 had a lot of rain.
10 MR. CASHION: Mark this 40.
11 (The previously mentioned document was
12 marked as Exhibit No. 40.)
13 BY MR. CASHION:
14 Q. Exhibit 40, which is the daily report
15 for June 15. "Site is too wet to work;" is
16 that about right?
17 A. Yes, sir.
18 MR. CASHION: Mark this 41.
19 (The previously mentioned document was
20 marked as Exhibit No. 41.)
21 BY MR. CASHION:
22 Q. Next let me hand you Exhibit 41, June
23 16. Here you say you hauled 33 loads, "shot
24 rock off hill." Can you describe to me what
25 you're doing?
Vowell & Jennings, Inc. (615) 256-1935 35

1 A. I didn't write that "shot rock off
2 hill." That's not my writing. Down at the
3 bottom, it says, "Started lifting building
4 pad 43 loads of shot rock from quarry."
5 Q. When you hit the topsoil layer
6 underneath, what was happening there? Was
7 that underneath the building pad?
8 A. It was everywhere. The whole site had
9 been used as a dump by the county and other
10 people. Plus it had been a -- the Battle of
11 Franklin had been fought there and there
12 would have been trenches dug by the
13 Confederate soldiers and everybody and all
14 through there. And over the years, it had
15 all been filled up with trash and garbage and
16 just anything.
17 Q. So you hit topsoil underneath the
18 clay?
19 A. There would be little spots of clay
20 that would appear, but the thickest one I can
21 remember was maybe four or five inches thick
22 and it wouldn't cover a whole area. It would
23 only be like a little spot here and there
24 where it would be just whatever material they
25 happened to be dumping in there that day.
Vowell & Jennings, Inc. (615) 256-1935 36

1 Q. Up until this point, had you hauled
2 off any undercut material, or was this the
3 first time you hit something that looked
4 bad --
5 A. Had we hauled off any undercut
6 material?
7 Q. Right.
8 A. Well, yes, sir. Because we dug up the
9 RCP drain tile on 6-9-99.
10 Q. Right. We talked about that. I
11 appreciate you bringing that back to my
12 attention.
13 Excluding where you dug up the drain
14 tile and replaced it with shot rock, had you
15 hit any other undercut material as of 6-16?
16 A. Had we hit any more undercut material?
17 Q. Right. Any while you were out there
18 up until that point.
19 A. I don't understand that.
20 Q. This is the first time I see a
21 reference to hitting topsoil under clay, and
22 you state, "Soils man coming in the morning
23 to evaluate the soil."
24 I'm just trying to see if this is the
25 first time that you can recall where you hit
Vowell & Jennings, Inc. (615) 256-1935 37

1 something to where you knew you were going to
2 have to dig deeper to get to --
3 A. No, sir.
4 Q. Where else had you done that?
5 A. Do you have a print?
6 Q. Not with me.
7 A. It would be in this corner where we
8 had pumped the water from the ponding area.
9 All that was already bad. There were several
10 more places throughout the job that the
11 material was no good. It was still topsoil.
12 And according to Anthony Orange, it needed to
13 be removed. So we removed it.
14 Q. Did you keep up with it?
15 A. No, sir. I was told to keep up with
16 how many loads it took to bring it back up.
17 I was not told to keep up with how many loads
18 of material we took out at any point in time.
19 We were told to keep up, from Anthony
20 Orange and Don Stover, to keep up with how
21 many loads that we had to bring in to bring
22 this job back up to subgrade. And that's
23 including all the areas that Anthony told us
24 to dig out, all the areas that PSI came out
25 there and measured and told us to take out,
Vowell & Jennings, Inc. (615) 256-1935 38

1 and all the areas that Anthony Orange and his
2 people -- they would get out there on several
3 occasions and they would dig big pits and
4 trenches looking for the main battle
5 trenches, souvenir hunting.
6 We would also have to fill those
7 trenches up from the chert pit. When I speak
8 of chert pit, that's our borrow pit.
9 Q. Moore's Lane?
10 A. Yes, sir. They dug a lot of trenches
11 and big deep trenches that we would have to
12 backfill with the chert. You couldn't put
13 the topsoil and the trash back in there,
14 because several of the areas they dug was out
15 in the parking. One was across their
16 entranceway.
17 And they didn't slow down when it came
18 to digging. They would dig them a trench and
19 they found a lot of nice souvenirs, lots of
20 bullets and stuff, bayonets and other types
21 of stuff.
22 But I was never told by anyone to keep
23 up with what we took out, only how many loads
24 it took to bring this job back up to
25 subgrade.
Vowell & Jennings, Inc. (615) 256-1935 39

1 Q. At this point on the job, as far as
2 June 16, are you saying that you had already
3 taken out more bad material than just
4 stripping the topsoil?
5 A. Yes, sir. That's where the ponding
6 area come from, plus under the building pad.
7 I mean, the whole job, it was a bad job. The
8 soils report was very inaccurate. The soils
9 report listed six inches of topsoil. And it
10 wouldn't take a rocket scientist to look at
11 borings and see there was a lot more than six
12 inches of topsoil.
13 Q. Now, prior to June 16, and we're
14 looking at Exhibit 41, had there been a soils
15 man either from PSI or Southern Consulting
16 out on the job to look at this soil that, I
17 guess, you thought was bad and had to come
18 out?
19 A. I believe that it was after that. I'm
20 not sure. We had done took out so much of
21 the topsoil. According to Anthony Orange,
22 when we started hitting these other big
23 areas, he wanted to get somebody out there to
24 look at them.
25 Q. Now, you haven't made any notes prior
Vowell & Jennings, Inc. (615) 256-1935 40

1 to June 16th taking out large areas of
2 topsoil because Anthony Orange told you to.
3 Is that something you didn't feel like
4 you needed to keep up with?
5 A. That wouldn't be something that I felt
6 like I needed to keep up with, because I'm an
7 honest person. I am a Christian. And I
8 thought that Anthony Orange was an honest
9 person, and I thought that with him telling
10 me to take it out, just to keep up with what
11 it took to bring back in, that that was good
12 enough.
13 Q. How were you keeping up with what was
14 bringing back in?
15 A. According to the truck tickets. And
16 we actually brought in more than the truck
17 tickets show credit for, because I never
18 ticketed Old Blue. All the loads that Blue
19 brought in, there was never a ticket for.
20 Most of the times I wouldn't even write it
21 down.
22 Q. Here on Exhibit 41, you've got 10
23 loads. That's Old Blue there?
24 A. Uh-huh.
25 Q. For Virgil -- is it Dillon?
Vowell & Jennings, Inc. (615) 256-1935 41

1 A. That's not my writing. I did not
2 write 10 loads.
3 Q. What's Virgil's last name?
4 A. Dillon. This is not my writing and
5 this is not my writing. How the 10 loads
6 come from, I didn't write those down there.
7 Q. So you didn't write 10 loads and shot
8 rock off hill?
9 A. No, sir.
10 Q. Do you recognize the writing?
11 A. No, sir.
12 Q. When did you have this conversation
13 with Anthony Orange about taking this extra
14 material out?
15 A. When we was stripping the topsoil. I
16 mean, we took off six, eight inches, a foot
17 some places, even more than that in some
18 places, and it's still topsoil. And Anthony
19 seen it and I showed it to Anthony and he
20 looked at it and said, Yes, it's still
21 topsoil, take it out.
22 I mean, it was just as black as it was
23 on the top, and it was like that in some
24 places eight, nine foot deep. There was
25 large -- there was were several pockets and
Vowell & Jennings, Inc. (615) 256-1935 42

1 many of those pockets were deep. Some of
2 them weren't as deep as they were wide, a
3 larger area. But the whole site was that
4 way, even the detention pond area.
5 I never hit anything good in the
6 detention pond that I could use for fill
7 material. And they even dug a trench through
8 the bottom of it, too. After I got it down
9 to grade, they dug a trench through it and
10 there was still nothing that they dug out
11 that was nothing but what I would categorize
12 as topsoil.
13 Q. This remained at the bottom of it, the
14 detention pond?
15 A. Yes, sir.
16 Q. How far did you have to dig down below
17 the existing grade for the building pad?
18 A. That varied. I mean -- I wished you
19 had a print.
20 The building is shaped like this.
21 Okay. (Indicating.)
22 Q. You're showing us an L-shape type of
23 building.
24 A. Yes, sir. Primarily from about right
25 here all the way down --
Vowell & Jennings, Inc. (615) 256-1935 43

1 MR. PANTHER: I don't want to
2 interfere with your deposition, but I've got
3 a grading and drainage plan sheet if you want
4 to use it.
5 MR. CASHION: Sure. That's a
6 good idea. I didn't bring one with me, so if
7 you will get that. Let's just take a quick
8 break.
9 (Recess was taken.)
10 BY MR. CASHION:
11 Q. Mr. Tipper, we've handed to you a site
12 plan which we'll mark as Exhibit No. 42.
13 (The previously mentioned document was
14 marked as Exhibit No. 42.)
15 BY MR. CASHION:
16 Q. Now, you were describing to me the
17 undercut that you had taken out on this
18 project basically when you were stripping the
19 topsoil prior to this June 16th date; is that
20 correct?
21 A. Yes, sir.
22 Q. Using Exhibit 42, describe to me where
23 most of this undercut was prior to June 16,
24 1999.
25 A. When you're saying most of the
Vowell & Jennings, Inc. (615) 256-1935 44

1 undercut, you're talking about where we had
2 already stripped what was considered to be
3 topsoil?
4 Q. Right. And that's the way I
5 understand your testimony.
6 A. Yes, sir. The whole site had been
7 undercut, because we had done took it down a
8 foot, foot and a half, two foot in places of
9 topsoil. The main area was from about right
10 in here down. This is where the water was
11 ponded up.
12 Q. And you're pointing -- if I've got
13 Carter Street on the southwest side, you're
14 talking about more the northeast side of the
15 building at the end of the L?
16 A. No, you're not just talking about the
17 end of the building. We're talking about
18 this whole area right in here.
19 Q. The whole area surrounding --
20 A. Yes. Don't just square this building
21 up and say just this building. I'm talking
22 about all the way across.
23 This storm drain came from that -- I
24 listed taking out the RCP drain pipe. It
25 came from here all the way across.
Vowell & Jennings, Inc. (615) 256-1935 45

1 Q. And you're pointing to a line coming
2 across the building from basically southeast,
3 northwest?
4 A. Yes, sir.
5 Q. By June 16th you had already stripped
6 a lot more down than six inches?
7 A. Yes, sir.
8 Q. And you had stripped this based on
9 what Anthony Orange told you to do?
10 A. In part.
11 Q. Now, was it prior to June 16th that
12 Anthony Orange and others were digging
13 trenches, looking for souvenirs? Is that
14 what was happening early on in this project?
15 A. I don't remember if it was prior to
16 June the 16th. I can't give you any dates as
17 to when it actually was, but there was like
18 four, maybe five, different occasions that
19 when we would shut the job down at evening
20 time, they would start digging.
21 Q. Was this a lot of material?
22 A. A lot of material.
23 Q. Define a lot of material for me. How
24 big would the trench be, two or three feet
25 deep?
Vowell & Jennings, Inc. (615) 256-1935 46

1 A. No. Some of them would be seven,
2 eight, nine foot deep. Some of them would
3 just be big pockets, four, five, six foot
4 deep. It's hard to describe what they
5 actually was and what size they was.
6 Q. When you came back and you had these
7 pockets of excavated areas, what would you do
8 when you came back on the job the next day
9 and you've got this pit or trench?
10 A. No. They would cover it back up.
11 Q. So it wouldn't be exposed? They would
12 come back in and --
13 A. When they would get through digging,
14 they would take the dirt that they dug out
15 and just fill the hole back up. But it
16 was -- I knew where they were going to be
17 digging. I knew where they had been digging.
18 And according to Anthony, we'd just take over
19 that and fill them back up with chert and
20 compact them in.
21 Q. Did Anthony tell you that?
22 A. Yes, sir.
23 Q. What was his exact words?
24 A. I don't remember his exact words.
25 Q. Why would he fill them back up if he
Vowell & Jennings, Inc. (615) 256-1935 47

1 wanted you to take it back out and --
2 A. In case it rained.
3 Q. So it wouldn't get saturated?
4 A. It wouldn't be just a big mud
5 puddle. If you, at least, put something back
6 in it, it's more stable than if you just got
7 a big hole out there and it rains in it.
8 Q. How many times did this occur over the
9 course of the project?
10 A. Like I said, probably four or five
11 times. The main one was dug like right
12 across in this area.
13 Q. And you're pointing to --
14 A. They thought it had the main trench.
15 They thought that's where the main trench was
16 at.
17 Q. And you're pointing to an area that
18 crosses the entranceway off of Folks Street
19 between the detention pond and the other side
20 of the road?
21 A. Yes, sir. And also according to
22 Anthony, I was to backfill all of my storm
23 lines with the chert.
24 Q. Do you know what the specifications
25 called for as far as trench backfill?
Vowell & Jennings, Inc. (615) 256-1935 48

1 A. Some areas, they'll call for a hundred
2 percent stone backfill. But in this case, we
3 brought the stone up about a foot over the
4 pipe, and the rest of it was the chert
5 compacted backfill.
6 Q. Was that called for in the specs, to
7 have that type of material over the pipe?
8 A. As long as it meets the compaction.
9 The reason you use stone 67 is because you
10 don't have to compact it. It's
11 self-compacted. Compaction is not required
12 on 67 stone.
13 As long as you carry the 98 percent
14 compaction, you don't have to bring it all
15 the way to the top with stone if you compact
16 your ditch line. Sometimes it's just easier
17 and cheaper to go on and fill it all the way
18 up with 67s and let it be done.
19 Q. In this case, did you discuss with
20 Anthony whether it would be easier and
21 cheaper to fill it up with 67 stone or for
22 you to try to put the material back and
23 compact it to 98 percent?
24 A. Being it was so much going to have to
25 come out, his opinion along with mine, was
Vowell & Jennings, Inc. (615) 256-1935 49

1 that it would be just as easy to go on and
2 fill it up with chert and backfill it and
3 compact it.
4 Because the whole site was --
5 basically, the only part of this site that we
6 didn't have to really do much undercutting
7 was right here in this corner. And that's
8 basically it right there. Everything else
9 was pretty much in pitiful shape.
10 Q. And you're talking about the corner of
11 the parking lot. I'm going to call that the
12 northeast corner of the parking lot adjacent
13 to the detention pond?
14 A. Yes, sir.
15 Q. Now, was it ever discussed with
16 Anthony Orange whether you'd be compensated
17 any extra for filling up the trenches with 67
18 stone as opposed to compacting the soil back
19 in?
20 A. Say that again.
21 Q. Did you ever discuss with Anthony
22 Orange that American Excavators would receive
23 extra money for putting the 67 stone in as
24 opposed to trying to compact it up to 98
25 percent proctor?
Vowell & Jennings, Inc. (615) 256-1935 50

1 A. I'm not sure I understand what you're
2 saying.
3 Q. Let me ask it this way: Did you and
4 Anthony Orange ever talk about payment for
5 the stone backfill on the job?
6 A. I never talked with Anthony about
7 payment for a stone backfill.
8 Q. Did you ever talk about payment with
9 Anthony on the material you were taking out?
10 A. Anthony told me, along with Don
11 Stover, to keep up with the number of loads
12 and material that it took to bring into this
13 job, to bring it back up to grade, that we
14 would be paid. We weren't even going to
15 charge them for all this that we took down
16 stripping the topsoil out. And I don't know
17 how many yards that was.
18 But they said, Anthony and Don both,
19 said, No, go ahead and count that. We'll get
20 our money back.
21 Q. You're talking about stripping it down
22 on the--
23 A. Where this ponding area was at. We
24 weren't even going to charge them for that.
25 When we were stripping around this corner
Vowell & Jennings, Inc. (615) 256-1935 51

1 here, we got down almost two foot deep, right
2 in this corner. We wasn't going to charge
3 them for that. That's when, best I remember,
4 Harley said, Now, hang on. That's way too
5 much topsoil right here. And if I'm not
6 mistaken, that's when they got PSI out there.
7 But they told us to go ahead and count
8 this, Anthony and Don both, to go ahead and
9 count it, keep up with it, how many loads it
10 takes to bring it back up, because they would
11 get paid for it themselves.
12 Q. I'm going to continue on with the
13 daily reports.
14 MR. CASHION: I'm going to hand
15 to you what we'll mark as Exhibit 43.
16 (The previously mentioned document was
17 marked as Exhibit No. 43.)
18 BY MR. CASHION:
19 Q. The top sheet is also Exhibit 22 just
20 for the record. Let me show you 43 which has
21 the attachments of the load.
22 On this date, on June 17, it says,
23 "The soil man came out, said we have to
24 undercut the unsuitable soil. RCR --
25 A. "Gave go-ahead on undercut."
Vowell & Jennings, Inc. (615) 256-1935 52

1 Q. Are we talking about this area in the
2 northeast corner of the building that you
3 just described?
4 A. I'm not sure where we're talking about
5 if you want to know the truth. And I'm sure
6 you do.
7 Q. Then the attachments just show the
8 trucks that you were using that day?
9 A. I was using two Cook trucks, one D.W.
10 truck, one Wisner truck, one Bowman truck,
11 and Old Blue.
12 Q. Is all that your handwriting on there?
13 A. Yes, sir. I did keep up with Blue on
14 that day, it looks like. But now, there
15 shouldn't be an invoice for Old Blue.
16 Q. I don't think there is.
17 A. There shouldn't be.
18 MR. CASHION: Next let me hand
19 you what we will mark as Exhibit 44, which is
20 a daily report for 6-18.
21 (The previously mentioned document was
22 marked as Exhibit No. 44.)
23 BY MR. CASHION:
24 Q. Now, at this time you state, "building
25 pad compacted fill;" is that correct?
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1 A. It says, "Hauled in chert from pit,
2 built building pad and compactor pad."
3 That just means I was running the
4 compactor on it.
5 Q. So as of 6-18, you have pretty much
6 the pad to a stable ground that you're going
7 to build up from?
8 A. I don't -- we ended up having to cut
9 out a whole lot of this right here in this
10 area. I don't know if that's before this or
11 if that's after this. But to start with, we
12 concentrated on that back leg of the building
13 pad.
14 Q. You're talking about the southwest
15 leg?
16 A. Yes, sir.
17 Q. What you're saying is on the northeast
18 leg, pointing northeast, you had to take out
19 some material in the top half facing the
20 parking lot?
21 A. Yes, sir.
22 Q. Just on the record, it sounds better
23 if I repeat when you say "this" and "that."
24 That's the only reason I'm trying to make
25 sure we get a full record of that.
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1 A. Yes.
2 Q. But on this day at least you're
3 building up -- you've got some stable area
4 that you're starting to make your building
5 pad from?
6 A. Yes, sir.
7 Q. Do you know where you started?
8 A. We started in the back leg back there.
9 Q. Started on the southwest leg and moved
10 northeast?
11 A. We were just back and forth, just
12 coming back and forth. We concentrated back
13 here. This down here was in real bad shape.
14 We could not bring this pad all the way out
15 because of this material that was down here.
16 We couldn't complete the building pad.
17 Now, I don't know if the soils people
18 had already said take this out on this date
19 or not.
20 MR. CASHION: Next let me hand
21 you Exhibit 45, which is your daily report
22 for 6-19.
23 (The previously mentioned document was
24 marked as Exhibit No. 45.)
25 BY MR. CASHION:
Vowell & Jennings, Inc. (615) 256-1935 55

1 Q. Here again, you're building the
2 building pad?
3 A. Can we go back to this for a minute?
4 Can you tell me what this says down here at
5 the bottom, because I can't read it all.
6 Q. I can't read it. It says, GT&E
7 borings. I can't make out the rest of it.
8 A. Okay.
9 Q. Now, Exhibit 45, which is the June
10 19th report, you're just building up the
11 building pad. And this would be the
12 southwest leg that you're building on; is
13 that correct?
14 A. Ill say yes.
15 MR. CASHION: Let's go ahead and
16 mark this next.
17 (The previously mentioned document was
18 marked as Exhibit No. 46.)
19 BY MR. CASHION:
20 Q. Next on Exhibit 46, this is your daily
21 report of 6-21. Are you bringing dirt in or
22 chert in at this time?
23 A. Yes, sir.
24 Q. Who is the GT&E guy that came to the
25 site?
Vowell & Jennings, Inc. (615) 256-1935 56

1 A. I don't remember his name.
2 Q. What did he tell you?
3 A. He told us that we was dumb
4 Southerners and that's what us dumb
5 Southerners called topsoil, but it was
6 actually brown silky clay.
7 Q. So did he say you could use it?
8 A. No. He took some samples and said he
9 would get back to us.
10 Q. Did he get back to you?
11 A. He didn't get back to me.
12 Q. Did you ever know if he said you could
13 use it or not?
14 A. I don't know if he did or he didn't.
15 Q. Did you see him back on the job?
16 A. I don't remember. I don't think I
17 seen him, because he got in trouble from his
18 boss.
19 Q. For what reason?
20 A. For calling us dumb ignorant Southern
21 boys and that's what we call topsoil.
22 Q. Good.
23 A. Yeah, he should have.
24 MR. CASHION: Let's mark this
25 next.
Vowell & Jennings, Inc. (615) 256-1935 57

1 (The previously mentioned document was
2 marked as Exhibit No. 47.)
3 BY MR. CASHION:
4 Q. Next let me hand you Exhibit 47. Is
5 this your daily report of June 22nd?
6 A. I can't -- yeah. Yeah, I see it
7 there.
8 Q. Here you're hauling in your chert,
9 right?
10 A. Yes, sir.
11 Q. And here it says no compaction. What
12 happened on that day?
13 A. The material fell out from under --
14 the best I remember, it was back here in this
15 corner where we didn't take enough of the
16 unsuitable material out it started sinking.
17 We ended up having to cut more of this corner
18 out back here to get the pad to stay up.
19 Q. And with respect to that, you're
20 pointing to what I'm going to call the south
21 corner of the Community Center?
22 A. Yes, sir.
23 Q. Were you getting compaction everywhere
24 else on your pad? It was just that corner
25 that on June 22nd you weren't getting it?
Vowell & Jennings, Inc. (615) 256-1935 58

1 A. No, sir. We wasn't getting it
2 everywhere else. I mean, there was places
3 that would kind of pump, but some of them
4 tightened up. And places like that corner,
5 they didn't tighten up. We ended up having
6 to undercut that more and bringing it back
7 up.
8 Same way with this area down in here.
9 We had started to lift down here, but it
10 would not hold up.
11 Q. And you're pointing to the northeast
12 leg of the Community Center?
13 A. Yes, sir.
14 MR. CASHION: We'll mark this
15 next.
16 (The previously mentioned document was
17 marked as Exhibit No. 48.)
18 BY MR. CASHION:
19 Q. Let me hand you next Exhibit 48, your
20 daily report of 6-23.
21 Is this what you were describing? And
22 they said, "Recommend taking it down to
23 subgrade and proof rolling and go from
24 there."
25 Is this the south corner of the
Vowell & Jennings, Inc. (615) 256-1935 59

1 Community Center?
2 A. What are you calling south?
3 Q. This way is north. This would be
4 south. (Indicating.)
5 A. No, sir.
6 Q. Which corner?
7 A. This area that they looked at was
8 right in here.
9 Q. This is in the parking lot?
10 A. Yes, sir.
11 Q. On the north side of the Community
12 Center?
13 A. Yes, sir.
14 Q. This is not in the building pad itself?
15 A. No, sir. If it's where I'm thinking,
16 that was Marshall Basket, I believe was his
17 name. I've got that wrote above there.
18 MR. CASHION: Mark this next.
19 (The previously mentioned document was
20 marked as Exhibit No. 49.)
21 BY MR. CASHION:
22 Q. Exhibit 49, rain out day?
23 A. Yes, sir, except for me.
24 MR. CASHION: Mark this next.
25 (The previously mentioned document was
Vowell & Jennings, Inc. (615) 256-1935 60

1 marked as Exhibit No. 50.)
2 BY MR. CASHION:
3 Q. Exhibit 50, rain out day?
4 A. Yes, sir.
5 MR. CASHION: Mark this next.
6 (The previously mentioned document was
7 marked as Exhibit No. 51.)
8 BY MR. CASHION:
9 Q. Exhibit 51, rain day, "Hollis showed
10 up."
11 A. I don't know what Hollis was doing,
12 but he evidently worked for an hour and a
13 half.
14 MR. CASHION: Mark this next.
15 (The previously mentioned document was
16 marked as Exhibit No. 52.)
17 BY MR. CASHION:
18 Q. Exhibit 52, another rain out day?
19 A. Yes, sir.
20 MR. CASHION: Mark this next.
21 (The previously mentioned document was
22 marked as Exhibit No. 53.)
23 BY MR. CASHION:
24 Q. Exhibit 53, which is the June 29th
25 report, another rain out day?
Vowell & Jennings, Inc. (615) 256-1935 61

1 A. Yes, sir.
2 MR. CASHION: Mark this next.
3 (The previously mentioned document was
4 marked as Exhibit No. 54.)
5 BY MR. CASHION:
6 Q. Exhibit 54, trying to get the pad back
7 in shape by airerating it?
8 A. Yes, sir.
9 MR. CASHION: Mark this next.
10 (The previously mentioned document was
11 marked as Exhibit No. 55.)
12 BY MR. CASHION:
13 Q. Exhibit 55 looks like some
14 attachments to it, hauling tickets.
15 You state on your daily report of
16 Exhibit 55, which is July 1st, 1999, you
17 built up the sides of the pad?
18 A. I'm only assuming that I'm talking
19 about building up this side that we had to
20 undercut.
21 Q. And you're pointing to the south
22 corner of the Community Center?
23 A. That would coincide with 6-22, "had to
24 cut down sides of pad, no compaction."
25 It looks as though this was the day we
Vowell & Jennings, Inc. (615) 256-1935 62

1 was trying to bring it back up after all the
2 rain and stuff on the job site.
3 Q. Exhibit 47 is when you cut it down.
4 Exhibit 55 is when you bring it back up?
5 A. I believe so.
6 Q. And these loads are all loads coming
7 in of your chert material?
8 A. Yes, sir.
9 Q. And did all the borrow material come
10 from the Moore's Lane?
11 A. No, sir. Some of it came, like I
12 stated earlier, from the rock quarry up
13 there, the Williamson County rock quarry.
14 Q. Did most of it come from one place or
15 the other?
16 A. Most of it came from the Moore's Lane.
17 Q. Did the rock quarry have a better
18 quality of rock?
19 A. No, sir.
20 Q. Same stuff?
21 A. We only got a few loads of what I
22 thought was pretty good stuff. It started
23 getting old big boulder -- not big boulders,
24 but, you know, two, three foot diameter. It
25 got to where there wasn't enough fines. We
Vowell & Jennings, Inc. (615) 256-1935 63

1 weren't able to get enough fines in with the
2 rock to make it do good, so we moved to
3 Moore's Lane.
4 MR. CASHION: Mark this next.
5 (The previously mentioned document was
6 marked as Exhibit No. 56.)
7 BY MR. CASHION:
8 Q. Next I'm going to hand you Exhibit 56,
9 which appears to be another rain out day?
10 A. Yes, sir.
11 MR. CASHION: Mark this one.
12 (The previously mentioned document was
13 marked as Exhibit No. 57.)
14 BY MR. CASHION:
15 Q. Exhibit No. 57?
16 A. Holiday.
17 Q. Holiday, July 4th.
18 MR. CASHION: Mark this next.
19 (The previously mentioned document was
20 marked as Exhibit No. 58.)
21 BY MR. CASHION:
22 Q. Can you tell me what Exhibit 58 is?
23 A. Sir?
24 Q. Exhibit 58, what is that showing?
25 A. It's showing where we hauled in chert.
Vowell & Jennings, Inc. (615) 256-1935 64

1 And it says, "15 by 28 by 48, two and a half
2 foot deep, dug out corner of pad and proof
3 rolled, begin lifting corner."
4 Q. Is this at the south corner again?
5 A. This corner.
6 Q. This is the northwest corner?
7 A. I believe that's that corner.
8 Q. The northwest corner of the Community
9 Center closest to the entrance drive?
10 A. Yes, sir.
11 Q. Now, the northeast leg with the
12 northern corner?
13 A. Yes, sir.
14 Q. I'm just trying to get this in case
15 somebody reads it.
16 A. You are pointing to the right spot.
17 Q. We all agree I'm pointing to the right
18 spot. The question is if I'm saying the
19 right spot.
20 So you think that's what happened
21 there?
22 A. I believe it is. I mean, just with
23 what I got. If I had my original plans, I
24 could tell you for sure, because I drew it
25 off on my original plan.
Vowell & Jennings, Inc. (615) 256-1935 65

1 Q. When you dug this out here, who told
2 you to dig it out?
3 A. I believe it was PSI.
4 Q. Now, had they told you other spots to
5 dig out?
6 A. At that particular point in time, I
7 can't recall.
8 Q. But you think on July 6, '99, PSI is
9 telling you to dig out that corner we're
10 talking about?
11 A. I believe these figures coincide with
12 this corner.
13 Q. That's the northeast leg of the
14 Community Center with the side facing the
15 parking lot; is that correct?
16 A. Yes, sir.
17 MR. CASHION: Mark this next.
18 (The previously mentioned document was
19 marked as Exhibit No. 59.)
20 BY MR. CASHION:
21 Q. Next I am going to hand you Exhibit
22 59. It says, "Don Stover and Anthony came
23 out about the undercut, said they would call
24 Harley."
25 Do you recall what that was about?
Vowell & Jennings, Inc. (615) 256-1935 66

1 A. No, sir. I can only assume that it's
2 talking about that corner.
3 Q. The northeast corner that you were
4 digging out?
5 A. Yes, sir.
6 Q. Was anybody trying to keep up with how
7 much you dug out at that point in time on
8 July 7?
9 A. There was never a question of how much
10 we took out. It was only instructed to keep
11 up with how much we brought in. Never the
12 whole time that any of this was going on did
13 anybody say keep up with how much you take
14 out. It was only keep up with how many loads
15 it takes to bring it back up to subgrade.
16 MR. CASHION: Mark this next.
17 (The previously mentioned document was
18 marked as Exhibit No. 60.)
19 BY MR. CASHION:
20 Q. Next let me hand you Exhibit 60. What
21 are you doing on this day, on July 8, '99?
22 A. Hauling in chert. It says Anthony --
23 if I refer to RCR, I'm sure I'm referring to
24 Anthony.
25 It says, "Take the parking lot to
Vowell & Jennings, Inc. (615) 256-1935 67

1 subgrade, then get PSI out to proof roll and
2 go from there. Said to add in the trucks it
3 takes to get down to subgrade."
4 Q. What was he talking about there?
5 A. All the material that was in a fill
6 area below the six inches of topsoil was
7 supposed to have been suitable material for
8 backfill, for fill purposes.
9 Q. To start your fill on?
10 A. No, sir. Not to start my fill on, to
11 use as fill.
12 Q. Okay. The material that you're taking
13 off of a cut section?
14 A. Yes, sir. Six inches below topsoil.
15 Everything below six inches that was in the
16 cut area, according to the borings, was
17 supposed to have been good material that we
18 could use in the fill areas. Well, it
19 wasn't. It was topsoil.
20 And Anthony said keep up with what it
21 takes on these fill areas, on the cut areas,
22 that you have to take off.
23 Q. How were you going to keep up with
24 that?
25 A. I don't know.
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1 Q. Were you trying to keep up with it, or
2 was that something Harley Ezell was keeping
3 up with?
4 A. I don't know. I didn't never keep up.
5 All we done was push it up.
6 Q. You just cut it down and pushed it
7 over until you got to a --
8 A. Pushed it up in the stockpile, right.
9 The stockpile was right here.
10 Q. And you're pointing to the area
11 between the detention pond and the entrance
12 and Folks Street?
13 A. Yes, sir. And when it was all said
14 and done, it was approximately 50 foot or
15 higher and covered this whole area. It ran
16 from about 5 foot back a curb, all the way to
17 5 foot back a curb, all down in this corner.
18 And right here where the road is, it's
19 probably 10 foot off the road. It went
20 straight up.
21 Q. And that was your stockpile?
22 A. Everything that came out of there
23 except for the RCP pipe that we hauled out
24 and the trash and the trees, this was all
25 dirt, topsoil.
Vowell & Jennings, Inc. (615) 256-1935 69

1 Q. So when Anthony said take it down, did
2 you just have a pan and took it down and ran
3 it up on --
4 A. The pan and the dozer.
5 Q. Was PSI there to proof roll it?
6 A. I don't remember if PSI proof rolled
7 it. I think they did. I'm not sure. I'm
8 not sure exactly who proof rolled it.
9 MR. CASHION: We'll mark this
10 next.
11 (The previously mentioned document was
12 marked as Exhibit No. 61.)
13 BY MR. CASHION:
14 Q. Next let me hand you Exhibit 61,
15 which is the report of July 9, '99. What are
16 you doing on that day?
17 A. Hauling in chert and cutting in the
18 road, entrance road.
19 Q. Turn on Exhibit 60. Turn over on the
20 last page. Somebody drew a diagram. Is that
21 yours?
22 A. I can't --
23 Q. Let me just hand you my exhibit. Is
24 that anything that you drew?
25 A. No, sir. I didn't copy these tickets
Vowell & Jennings, Inc. (615) 256-1935 70

1 off on this paper. This is the first time
2 I've actually --
3 Q. Sat down --
4 A. -- sat down with these and looked at
5 them like we're looking at them.
6 Q. There's no undercut operation going on
7 in 61, is there, Exhibit 61?
8 A. Not according to this.
9 Q. And at that time, do you have your
10 building pad up to grade and you're working
11 in the parking lot?
12 A. I don't think we've got the building
13 pad up to grade. I think I wrote down when
14 we got that pad up to grade, but I'm not sure
15 I would have wrote that down.
16 Q. We may see it as we pick up here.
17 A. No, we didn't, because it said,
18 "worked on pad."
19 MR. CASHION: Mark this next.
20 (The previously mentioned document was
21 marked as Exhibit No. 62.)
22 BY MR. CASHION:
23 Q. Exhibit 62, what's that?
24 A. Mostly cloudy and rain. It looks like
25 we didn't do much of nothing.
Vowell & Jennings, Inc. (615) 256-1935 71

1 MR. CASHION: Mark this next.
2 (The previously mentioned document was
3 marked as Exhibit No. 63.)
4 BY MR. CASHION:
5 Q. Exhibit 63, which is July 12th?
6 A. "Two point seven inches of rain since
7 Saturday afternoon, pumped off water and cut
8 trenches to drain water."
9 MR. CASHION: Mark this next.
10 (The previously mentioned document was
11 marked was Exhibit No. 64.)
12 BY MR. CASHION:
13 Q. Exhibit No. 64?
14 A. "Site still wet."
15 MR. CASHION: Mark this.
16 (The previously mentioned document was
17 marked as Exhibit No. 65.)
18 BY MR. CASHION:
19 Q. Sixty-five?
20 A. "Half inch rain overnight, site too
21 wet."
22 MR. CASHION: Mark this next.
23 (The previously mentioned document was
24 marked as Exhibit No. 66.)
25 BY MR. CASHION:
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1 Q. Exhibit 66, which is Thursday, July
2 15th?
3 A. "Dried up site and hauled off spoils."
4 Q. What are you talking about on the
5 spoils?
6 A. I can't answer that.
7 Q. What did you haul them off to?
8 A. I can't answer that, either.
9 MR. CASHION: Mark this next.
10 (The previously mentioned document was
11 marked as Exhibit No. 67.)
12 BY MR. CASHION:
13 Q. Exhibit 67?
14 A. "Hauled off undercut, three Logan
15 trucks, one American Excavators, seventeen
16 loads of undercut, seven loads of topsoil."
17 Q. Where did you haul it off to?
18 A. We sold it. I didn't sell it. I
19 don't know who arranged that, but Logan
20 bought some of the topsoil and some of the
21 road -- cut that was in the road.
22 Q. On this day on the 16th, were you
23 hauling off undercut somewhere on the site or
24 were you hauling out of your stockpile?
25 A. It says seven loads of topsoil, so I
Vowell & Jennings, Inc. (615) 256-1935 73

1 believe seven loads of topsoil came out of
2 the topsoil pile. The seventeen loads -- if
3 you go back to Exhibit 61.
4 Q. Right.
5 A. I believe they kind of coincide.
6 Q. Now, 61, how did it coincide? I'm
7 reading on July 9.
8 A. Logan, the Logan trucks. We didn't
9 use Logan trucks, to my knowledge, for
10 hauling in anything. They bought this
11 topsoil.
12 Q. So when it says, "Hauled 39 loads in
13 Logan trucks for \$15 a load," that's material
14 moving out?
15 A. Yes, sir.
16 Q. Who set up the deal to sell the
17 topsoil?
18 A. I don't know.
19 Q. So on that deal, you're not paying
20 Logan to haul anything. They're paying you?
21 A. They're not paying me.
22 Q. They're paying American Excavators?
23 A. I assume that's what's happening.
24 MR. CASHION: Mark this next.
25 (The previously mentioned document was
Vowell & Jennings, Inc. (615) 256-1935 74

1 marked as Exhibit No. 68.)
2 BY MR. CASHION:
3 Q. Let's look at Exhibit 68, "Hauled off
4 undercut, 31 loads." Is that Logan?
5 A. I can't answer that. I don't have it
6 wrote down. I don't remember.
7 Q. Did you keep up with Logan tickets?
8 Would they give you something?
9 A. I was only told to keep up with the
10 trucks that was bringing the chert in. I
11 wasn't told to keep up with anything that we
12 dug out, as far as keeping a ticket on it. I
13 was supposed to keep a ticket on the trucks
14 that hauled in the chert.
15 Q. So when you hauled off the undercut,
16 31 loads, on Monday, July 19th, is it your
17 recollection that that was being hauled by
18 Logan for money, for sale?
19 A. I would have to assume, not having any
20 more information than I have right there, I
21 would have to assume that's possible that
22 could be correct.
23 Q. Was there any other scenario out there
24 of someone else hauling your undercut or your
25 topsoil off the site besides Logan?
Vowell & Jennings, Inc. (615) 256-1935 75

1 A. Our own truck hauled topsoil.
2 Q. And he was taking it to your
3 subdivision?
4 A. I believe so.
5 Q. On this day do you know if your own
6 truck was running this 31 loads?
7 A. I don't know.
8 Q. That looks like more than one truck on
9 that day?
10 A. As far as the subdivision on that job,
11 you're absolutely correct.
12 Q. So other than your own truck, Logan
13 was the only one that was hauling away from
14 the site?
15 A. I can't say that. I don't remember if
16 there were any others.
17 Q. And all the stuff that Logan took out,
18 they had an arrangement with someone with
19 American Excavators, not you, for \$15 a load?
20 A. I don't know.
21 MR. CASHION: Mark this next.
22 (The previously mentioned document was
23 marked as Exhibit No. 69.)
24 BY MR. CASHION:
25 Q. Next let me hand you Exhibit 69, which
Vowell & Jennings, Inc. (615) 256-1935 76

1 is Tuesday, the 20th of July?
2 A. Yes, sir.
3 Q. This one, we do know, that's one Logan
4 truck and one American Excavators truck?
5 A. Yes, sir.
6 Q. Hauling off the undercut, right?
7 A. Yes, sir.
8 Q. Who would know the --
9 A. It also says PSI came back at nine
10 o'clock, "proof rolled parking lot and rolled
11 in designated areas for undercut."
12 Q. Do you recall when they did that?
13 A. It's wrote down there.
14 Q. I mean, do you recall them coming out
15 there and --
16 A. I recall -- I can't say it's PSI. I
17 recall a soils person coming out on more than
18 one occasion and measuring off areas that
19 they definitely wanted undercut. I don't
20 recall if it was PSI, but my daily says it
21 was PSI.
22 MR. CASHION: Mark this next.
23 (The previously mentioned document was
24 marked as Exhibit No. 70.)
25 BY MR. CASHION:
Vowell & Jennings, Inc. (615) 256-1935 77

1 Q. Let me hand you Exhibit 70. You're
2 starting to haul the chert back in again and
3 building up the parking lot?
4 A. Yes, sir.
5 Q. At the undercut area?
6 A. Yes, sir.
7 Q. You wasted undercut on site. I guess
8 that's depositing in the stockpile?
9 A. Yes, sir.
10 Q. And you had 38 loads. Does that mean
11 you wasted 38 loads or hauled off 38 loads?
12 A. I don't know.
13 Q. Now, let me show to you what has been
14 previously marked as Exhibit 10 in this case.
15 And if you look at Exhibit 10 and you
16 flip to the very last page, someone has made
17 a diagram of the building and as well as the
18 unsuitable areas, and they sketched that out.
19 MR. PANTHER: Object to the form
20 of the question. Go ahead.
21 BY MR. CASHION:
22 Q. Did you have anything to do with the
23 drawing of this?
24 A. No, sir.
25 Q. Do you recognize the areas that
Vowell & Jennings, Inc. (615) 256-1935 78

1 someone has labeled unsuitable area?
2 A. I recognize an approximate location,
3 but these areas that are drawn on this little
4 print that you have given me are only
5 approximate. They're not exact.
6 Q. And they're not to scale or anything?
7 A. No, sir.
8 Q. I recognize that on the print itself.
9 Are these the areas that you recall
10 being undercut during this July time period
11 that we've been going through your daily
12 reports on?
13 A. Say that again.
14 Q. Do you recall these areas being
15 undercut?
16 A. Yes, sir. I recall those areas being
17 undercut along with many other areas.
18 Q. When do you recall these areas being
19 undercut?
20 A. I don't recall the date except for
21 this one that was brought to my attention
22 while ago where it said the 16 by whatever by
23 48. That was the specific date, because I
24 wrote it down there.
25 Q. Do you recall PSI being out there and
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1 measuring these areas as far as getting
2 horizontal dimension and then vertical, how
3 much depth they were undercut?
4 A. I recall -- if it was PSI, I recall
5 the soils people, which I don't remember if
6 it was PSI or if it was Southern Consulting.
7 I'm sure it wasn't Geotech or GT&E, but I
8 don't remember if it was PSI or Southern
9 Consulting for sure. My daily says PSI.
10 Q. Regardless of whether it's PSI or
11 Southern Consulting, do you recall when they
12 were out there doing that activity as far as
13 measuring?
14 A. Yes, sir.
15 Q. Describe to me what you recall about
16 them being out there measuring in these four
17 areas that are marked on Exhibit 10.
18 A. What I remember?
19 Q. Right.
20 A. I remember about No. 3 area, because
21 all that was proof rolled and none of it
22 passed proof rolled. Some areas weren't as
23 deep as the other areas that he wanted cut.
24 As far as No. 1, I remember that area.
25 No. 2, I remember that area. No. 4, I
Vowell & Jennings, Inc. (615) 256-1935 80

1 remember that area. Of course, it's not
2 exactly drawn there actually where it was at.
3 Q. You would put it a little different
4 but it's in the entrance?
5 A. Yes, sir, it's in the entrance.
6 Q. The No. 4 area. Do you remember when
7 each area was marked or measured? Were they
8 all done about the same time or just
9 different points in time?
10 A. They were done at different times.
11 Q. Did you ever keep up with any of your
12 daily reports about which area they were --
13 anything in your daily reports that can match
14 up to this sketch?
15 A. If you had the geotechnical
16 measurements, I believe I would have wrote it
17 down the way that they wrote it down. We
18 could probably match it up in that aspect.
19 The best I remember, he took a can of
20 paint and he would go around and paint him a
21 little outline, and then he would come back
22 and measure it.
23 Q. Then would he come back after you knew
24 whether it had gone six inches or three feet
25 down and measured the depth of it?
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1 A. I don't remember.
2 MR. CASHION: Mark this next.
3 (The previously mentioned document was
4 marked as Exhibit No. 71.)
5 BY MR. CASHION:
6 Q. Next I'll hand you Exhibit 71. Here
7 you just bring the chert back in the parking
8 lot?
9 A. "Hauled in chert to build up parking
10 lot. Harley staked out the back lot," back
11 of the parking lot.
12 Q. On July 22nd, are you pretty much
13 through with your undercutting?
14 A. I don't remember. I don't believe so.
15 Up until the time we got out of there and got
16 the parking lot to subgrade, there was being
17 trenches dug hunting for war relics and
18 souvenirs.
19 I can't sit here and tell you I did
20 not take out any more material after this
21 date. Up until I got the parking lot on
22 subgrade, it was constant of taking out bad
23 material. May not have been every day, but
24 constantly taking out bad material and
25 putting it in the stockpile. Kept digging
Vowell & Jennings, Inc. (615) 256-1935 82

1 out the trenches that was dug looking for war
2 relics and filling them back up.
3 When I actually did not remove the
4 last shovelful of unsuitable material, I
5 cannot answer that.
6 MR. CASHION: Let's mark this
7 next.
8 (The previously mentioned document was
9 marked as Exhibit No. 72.)
10 BY MR. CASHION:
11 Q. Let me hand to you Exhibit 72, which
12 is your daily report of July 23.
13 And here again, you're hauling in the
14 chert material. You've got, "Open up road
15 entrance, cut out five loads of black dirt,
16 replaced with chert."
17 Is that that area No. 4 we talked
18 about?
19 A. No, sir. That's right at the -- this
20 right here is talking about right at the very
21 entrance ramp area.
22 Q. What do you mean, "Five loads of
23 topsoil in civil truck for black man at
24 church per Harley and Marvin."
25 A. Yes, sir. That was for a minister at
Vowell & Jennings, Inc. (615) 256-1935 83

1 one of the little community churches that
2 needed five loads of topsoil, and I talked to
3 Marvin and Marvin said get him the topsoil,
4 but he'd have to get somebody to haul it.
5 Evidently, he must have talked to
6 civil and civil sent their trucks over there
7 and we loaded civil's trucks and they took it
8 to the black minister of one of the churches.
9 Q. Did this come off your stockpile?
10 A. Yes, sir. I guess. I mean, I presume
11 it did.
12 MR. CASHION: Mark this next.
13 (The previously mentioned document was
14 marked as Exhibit No. 73.)
15 BY MR. CASHION:
16 Q. Next hand you Exhibit 73, which is
17 July 24, '99. Here you're just bringing in
18 more chert?
19 A. I think so.
20 Q. At this time, is it going on the
21 parking lot or can you tell?
22 A. I can't tell by this. According to
23 the last notes on the dailys, it looked like
24 we were building up the parking lot. So I'm
25 going to say it was going on the parking lot.
Vowell & Jennings, Inc. (615) 256-1935 84

1 MR. CASHION: Mark this next.
2 (The previously mentioned document was
3 marked as Exhibit No. 74.)
4 BY MR. CASHION:
5 Q. Let me hand you Exhibit 74. What do
6 you mean by, "Hollis already crying."
7 A. That was a leased dozer and it was a
8 nice Komatsu dozer with a cab and air
9 conditioning and all. And we had the old D-8
10 pull stick, left/right brake to make it turn.
11 He was already crying when he found out that
12 they was coming to pick up the nice dozer. I
13 mean, not literally, but I can't believe
14 they're going to get this dozer.
15 Q. I understand. Now, on the RCR,
16 "Anthony and Don came by this morning wanting
17 building pad."
18 A. Yes, sir.
19 Q. So you still haven't got the building
20 pad?
21 A. It was -- the building pad was up, but
22 it wasn't what I will call tweaked in.
23 Q. What do you mean by tweaked in?
24 A. It needed topping. And if you know
25 construction, you try not to give anybody the
Vowell & Jennings, Inc. (615) 256-1935 85

1 building pad until the last minute, because
2 as soon as you give it to the, they're going
3 to have everybody and their brother in there
4 in your way. So I held off as long as I
5 could as far as actually finishing the top of
6 the building pad.
7 MR. CASHION: Mark this next.
8 (The previously mentioned document was
9 marked as Exhibit No. 75.)
10 BY MR. CASHION:
11 Q. Exhibit 75, it looks like you and
12 Harley have a disagreement?
13 A. We did. No, we wasn't through taking
14 out unsuitable material, because on this
15 date, it says that I was told to take out 55
16 more feet of road entrance a foot and a half
17 deep.
18 Q. Is that what we had marked as No. 4?
19 A. That's No. 4.
20 Q. In Exhibit 10; is that correct?
21 A. Yes, sir. There was -- the material,
22 like I said, I only needed to what we call
23 blue top the pad. And it was real close.
24 And Anthony was in a hurry to get it.
25 So we took this material in one area of the
Vowell & Jennings, Inc. (615) 256-1935 86

1 pond that still wasn't hitting on nothing,
2 but I put it on there. And Harley said it
3 was no good. So Anthony shut me down and got
4 PSI out there to look at it, and then it was
5 only a thin layer. PSI said it would be okay
6 since they were going to put stone over it.
7 Q. So they let that go?
8 A. They let that go, because Anthony had
9 the footer people coming in that next
10 morning.
11 Q. Now, on the entranceway, that area
12 that we described as No. 4 in Exhibit 10, did
13 you see the PSI guy out there measuring and
14 verifying that?
15 A. Whoever it was. And according to
16 this, it was PSI. It was 55 foot long.
17 And if you come three foot off the
18 face curb each side, I'd have to have a scale
19 to measure this road for you to tell you
20 exactly how wide it was. But 3 foot offset,
21 face of curb each side 50 foot long or 55
22 foot long. And according to this, it was
23 approximately one and a half foot deep.
24 MR. CASHION: Mark this next.
25 (The previously mentioned document was
Vowell & Jennings, Inc. (615) 256-1935 87

1 marked as Exhibit No. 76.)
2 BY MR. CASHION:
3 Q. Next I'm handing you Exhibit 76, your
4 report of 7-28.
5 What do you mean by the notation,
6 "lifted back parking area?" You're putting
7 in lifts back there?
8 A. I'm going to assume that's where we
9 dug -- where is your sketch?
10 Q. What's the term "lifted," what are
11 you --
12 A. Bringing it up, filling. Put a lift
13 means put a foot lift or a two-foot lift.
14 Q. I'm handing you Exhibit 10, the last
15 page.
16 A. I'm assuming it's this area here. I
17 am not positive. Back parking lot, to me,
18 that sounds like that's probably where that's
19 at.
20 Q. And you're pointing to No. 3?
21 A. Yes, sir. And this here coincides
22 with what I was talking about, the little
23 thin of layer of dirt on top the pad where it
24 says, "finished pad, RCR to start digging
25 footers on Thursday." They was in a hurry to
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1 get the pad.
2 MR. CASHION: Mark this next.
3 (The previously mentioned document was
4 marked as Exhibit No. 77.)
5 BY MR. CASHION:
6 Q. Let's look at Exhibit 77.
7 A. "RCR bought the pad, started digging
8 footers on Friday."
9 Q. Where's all this chert that's being
10 hauled in, where's it going?
11 A. I'm going to have to say it's going in
12 the parking areas.
13 MR. CASHION: Mark this next.
14 (The previously mentioned document was
15 marked as Exhibit No. 78.)
16 BY MR. CASHION:
17 Q. Exhibit 78?
18 A. And the road entrance.
19 Q. Is this when you finished hauling the
20 chert?
21 A. According to this, that's the last
22 load of chert that we hauled.
23 Q. So when you finished the pad just a
24 few days after that, you finished the parking
25 lot?
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1 A. I'd say so.
2 MR. CASHION: Mark this next.
3 (The previously mentioned document was
4 marked as Exhibit No. 79.)
5 BY MR. CASHION:
6 Q. Let me hand you Exhibit 79, which is
7 your daily report of July 31. Is this where
8 they start hauling to the subdivision?
9 A. It says, "Haul off topsoil to
10 subdivision." I imagine that's what they
11 did.
12 Q. Whose subdivision is that?
13 A. Whose is it?
14 Q. Right. Where is it going?
15 A. It's going to Pipkin Hills. I can't
16 tell you whose it is, because it's been sold.
17 It was Marvin Parker's at the time.
18 Q. And how far is Pipkin Hills from this
19 job site?
20 A. It's in Spring Hill.
21 MR. CASHION: Mark this next.
22 (The previously mentioned document was
23 marked as Exhibit No. 80.)
24 BY MR. CASHION:
25 Q. Next let me hand you Exhibit 80. At
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1 this time you're pretty much through with the
2 pad and you're hauling more of that topsoil
3 pile off; is that accurate?
4 A. Yes, sir.
5 MR. CASHION: Mark this next.
6 (The previously mentioned document was
7 marked as Exhibit No. 81.)
8 BY MR. CASHION:
9 Q. I'll hand you Exhibit 81.
10 A. "Hauled topsoil to Pipkin Hills."
11 MR. CASHION: Mark this next.
12 (The previously mentioned document was
13 marked as Exhibit No. 82.)
14 BY MR. CASHION:
15 Q. I'll hand you Exhibit 82, which is
16 August 4th, '99.
17 A. I guess they hauled topsoil to Pipkin
18 Hills.
19 MR. CASHION: Mark this next.
20 (The previously mentioned document was
21 marked as Exhibit No. 83.)
22 BY MR. CASHION:
23 Q. And Exhibit 83, which appears to be
24 the final report, at least, is what I've got.
25 It just says Ricky Tipper.
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1 A. Nothing.
2 Q. We've gone through these daily reports
3 and this pretty much represents finishing up
4 the grading work, correct?
5 A. No, sir. It wouldn't finish the
6 grading work. I mean, there was still
7 topsoil to be spread and --
8 Q. What else remained to be done after
9 the last report of 8-5-99? What condition is
10 the site in?
11 A. What else had to be done?
12 Q. Right.
13 A. I don't recall seeing anything in my
14 reports about already have put in the water
15 and the sewer and the storm. So evidently,
16 this is not all of my report or I didn't
17 report it. And I'm pretty sure I would have
18 put in that I laid two hundred foot of storm
19 pipes.
20 Q. And then did you come back after the
21 pavements then and respread the topsoil and
22 dress it up? Did you do that?
23 A. Yeah, we did. We came back and put
24 the topsoil into the planters and around the
25 front of the building. I think I had already
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1 spread the topsoil around the back southeast
2 corner to the southwest corner and from the
3 southwest corner to the north corner.
4 Q. All back on the --
5 A. I believe I had already filled all
6 this in with topsoil back around here, and I
7 brought this -- they probably got four or
8 five foot of topsoil in this back. Where it
9 dropped off, it was real bad. So I went on,
10 according to Anthony, since we had so much
11 topsoil and unsuitable materials filled that
12 up nice and level across the back. And when
13 I got over here to the corner, I kind of
14 just sloped it in toward the fence. Same way
15 here on this side. It was about three foot,
16 I guess, higher than the original ground.
17 Q. You're talking about the area beside
18 of Carter Street?
19 A. Yes, sir.
20 Q. And around --
21 A. And back in here. There was a big
22 ditch back there. It was just a mess. But
23 we did come back after they got the paving
24 and all in and put the topsoil in the
25 planters and right up next to the curbs, plus
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1 we left I don't know how many loads. I'll
2 say 7,500 loads of topsoil still stockpiled
3 up here that Anthony said that they would
4 like to have and they would take care of it.
5 Q. So RCR said don't worry about taking
6 that stockpile?
7 A. Not all of it.
8 Q. Did you dress that area up or did they
9 do it?
10 A. They did it, or somebody. I didn't do
11 it. I don't think American Excavators did
12 it.
13 Q. Not that you're aware of?
14 A. Not that I'm aware of. But I don't
15 believe this is when the job was through,
16 because I don't see anything in my logs about
17 me putting in the storm drain or the water or
18 the sewer. I did all of that, too.
19 MR. CASHION: Give me a couple
20 of minutes and I'll wrap up.
21 (Brief recess was taken.)
22 BY MR. CASHION:
23 Q. Mr. Tipper, I just have a couple of
24 more questions.
25 Did you anticipate that you'd be
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1 stripping just six inches off this whole site
2 as topsoil when you came on the job?
3 A. Did I anticipate?
4 Q. Right.
5 A. I was just told to strip the topsoil.
6 Q. You weren't told a certain depth?
7 A. No, sir.
8 Q. Did you read the plans and the
9 specifications and the borings about how much
10 topsoil you thought would be there?
11 A. The borings said six inches.
12 Q. Did they say six inches everywhere?
13 A. Everywhere. All the borings showed
14 six inches of topsoil. I mean, when I
15 started stripping, I didn't just strip six.
16 Some places would be eight inches, some
17 places would be a foot. When you run an old
18 pan, it's hard to take six inches off.
19 Q. When you stripped it and you had to go
20 deeper, did you talk to anyone at American
21 Excavators about what the procedure would be
22 if you were taking out more soil, if you were
23 going deeper on it?
24 A. Only Harley, when he come out and seen
25 where we had done this area right in here
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1 that I talked about earlier.
2 Q. We're talking about the northeast
3 corner of the Community Center?
4 A. Yes, sir. We had done had it down
5 about two foot. In other places throughout,
6 we done had it down a foot, foot and a half.
7 And Harley said, Whoa. We were only supposed
8 to take six inches.
9 And that, to the best of my
10 recollection, was the first verbal
11 understanding with Anthony. When Harley gets
12 them out there and shows them, we're going to
13 give this to you, but we can't keep taking
14 all this topsoil off. And that's when
15 Anthony and Don came out and told us to take
16 the topsoil out and to keep up with how many
17 truckloads that come in.
18 Harley was going to give them that,
19 said, we ain't going to charge you for taking
20 this down like we did. He said, But we can't
21 keep going. He said, No, you go ahead and
22 count that. We'll get paid for it anyway, go
23 ahead and count that. Whatever it takes to
24 bring it back up, go ahead and count it.
25 Just keep up with the trucks. Ever how much
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1 you bring in, make sure we got a ticket for
2 it. That's the only way they can get their
3 money.
4 Q. When you bring this chert in, from
5 your daily reports, is there anyway to tell
6 what you're bringing in to replace undercut
7 material or what you're bringing in because
8 it's an import job and you've got to go up to
9 a certain elevation above the subgrade?
10 A. I'm sure that the job had a chart on
11 it that showed how much import the job was
12 supposed to take had there been no unsuitable
13 material. I don't see how they could have
14 bid it without that.
15 Q. I understand you can do a calculation.
16 What you're saying is that Anthony Orange
17 told you to keep up with the loads that it
18 took --
19 A. And Don Stover.
20 Q. Anthony Orange and Don Stover told you
21 to keep up with the loads that it took to
22 replace the undercut material, right? That's
23 what they told you?
24 A. Yes. Keep up with the loads that it
25 takes to bring the site back up to subgrade.
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1 Q. How did you do that on your daily
2 reports?
3 A. I just kept up with the truck tickets
4 that you see on the daily reports.
5 Q. So you didn't try to separate the
6 loads that were bringing it back up to
7 subgrade. You just kept up with everything
8 that it took --
9 A. To bring it back up to subgrade and to
10 fill in the trenches.
11 Q. Fill in everything?
12 A. Fill in the RCP pipe that we dug out.
13 That's the way I was told to keep up with it.
14 To me, there was no question, just keep
15 tickets on the trucks that it takes to bring
16 this job back up to subgrade. We'll get paid
17 for it.
18 Q. Who was going to keep up with it? Was
19 that was your job for American Excavators?
20 A. My job to keep up with the number of
21 trucks that came into the site.
22 Q. Who was going to communicate that to
23 RCR at some point?
24 A. I imagine Marvin. I don't know. I
25 didn't do the billing. I don't know -- I
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1 turn in my dailys once a week when I turn in
2 my time. I turn them in every week. I
3 wouldn't turn them in every day. I'd turn
4 them in every week. I'd turn in all my
5 tickets, all my fuel receipt tickets.
6 Anything that I had done that week, I turned
7 it in.
8 MR. CASHION: That's all.
9
10 QUESTIONS BY MS. GOODSON:
11 Q. I actually have just one now. He hit
12 on both areas that I was going to ask you
13 about, about keeping up with fill material.
14 When you brought it back in, where did
15 it particularly go, you don't know that?
16 A. No, ma'am. I can't tell you we put 15
17 loads here and we put 20 loads there.
18 And like I said before, the load count
19 that shows the rental trucks, it don't show
20 all the trucks that our truck hauled, Old
21 Blue hauled. They're not even part of the
22 count on what we brought in. In some cases,
23 I may have wrote down Blue hauled 10 loads
24 or something like that, but we have no
25 invoice for Blue.
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1 Q. And just for clarification, we being
2 Williamson County provided that fill material
3 for you from either the Moore's Lane site or
4 the rock quarry; is that right?
5 A. Yes, ma'am.
6 Q. So American Excavators bore no expense
7 in fill material; is that right?
8 A. Ma'am?
9 Q. American Excavators bore no expense
10 towards fill material, because it was
11 provided for free; is that correct?
12 MR. PANTHER: Object to the form.
13 THE WITNESS: No, ma'am. We bore
14 tremendous expense as far as man hours,
15 machine, equipment hours, and lease truck
16 hours. It was not at no expense. It was a
17 whole lot of expense.
18 You've got a 90, 50 trackhoe sitting
19 out there everyday loading chert, you've got
20 a man doing that. You've got all these
21 rental trucks that you see with the tickets.
22 They were getting 45 to \$50 an hour. So you
23 can't say that it was at no expense to us,
24 because we had a lot of expense involved.
25 BY MS. GOODSON:
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1 Q. Actually I misspoke. I only meant
2 that you didn't have to buy the fill
3 material?
4 A. Oh, no, ma'am. We didn't have to buy
5 the fill material.
6 Q. And my last question: Did you
7 actually read the geotechnical report about
8 the soils, the borings? Did you actually
9 read that or did someone tell you?
10 A. No. I actually did read it. I mean,
11 I don't remember when I read it, but I did
12 read it.
13 Q. So you read it and you know that the
14 borings for the six inches was all across the
15 entire plan and there were no other --
16 A. It didn't say, the best of my
17 recollection, it never said anywhere that in
18 Boring 1 you have six inches of topsoil and
19 then so much of this or that and then in
20 boring No. 2 you had seven inches.
21 Best of my recollection, it showed six
22 inches in every boring, six inches of
23 topsoil. The rest, I think, they classified
24 it as brown silky clay.
25 Q. Did you read that prior to even going
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1 on the site and beginning?
2 A. No, ma'am. I didn't read it prior to
3 that.
4 Q. You didn't?
5 A. No, ma'am.
6 Q. So you showed up and you started work
7 and then you read the geotechnical report?
8 A. Once I got -- I just started stripping
9 the topsoil. And it was still topsoil. Like
10 I said, some places we stripped a foot and a
11 half, two foot, and it was still topsoil.
12 So I'm smart enough to know I can't
13 build on topsoil. I should have stopped at
14 six inches, but I didn't. I kept stripping
15 the topsoil. And if it hadn't of continued
16 like it did, there wouldn't have been any
17 question about anything. But once we got
18 down here and all this and Harley comes out
19 and he sees I've done stripped more than six
20 inches, he says, Whoa, you can't do this. So
21 that's when everything else come into play.
22 Q. Just to make sure, then PSI and
23 everybody else came on the scene after that
24 point, after we started having problems where
25 you were running into taking off too much
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1 topsoil and we're calling in people to look
2 at the unsuitable materials, right?
3 MR. PANTHER: Object to the form.
4 BY MS. GOODSON:
5 Q. You can answer that.
6 A. You'd have to say it again.
7 Q. After you were on site and you began
8 to remove the topsoil, then you read the
9 geotechnical report. I'm just trying to get
10 the sequence of events, how it might have
11 happened.
12 You started removing the topsoil and
13 then you read the geotechnical report and
14 then you were instructed by someone that PSI
15 or GT&E or someone had to come on the scene
16 and look at the unsuitable soils; is that
17 right? Is that about how it happened?
18 A. I stripped the topsoil and I stripped
19 more than six inches. And when Harley Ezell
20 seen that I had stripped more than six
21 inches, he told me to stop, and that's when
22 we had a meeting with Anthony Orange. And
23 after that is when GT&E or PSI or whoever
24 comes out and looks at it.
25 MS. GOODSON: That's all.
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1 MR. CASHION I've got another
2 question. Todd, did you want to ask?
3 MR. PANTHER: No thanks.
4
5 FURTHER QUESTIONS BY MR. CASHION:
6 Q. Did you ever attempt to survey or
7 measure the material that you were
8 undercutting after you took it out?
9 A. What was your name?
10 Q. Greg Cashion.
11 A. Greg, there was never any
12 misunderstanding. There was never -- I never
13 felt there was any reason for me to measure.
14 I was told by Anthony and Don to keep up with
15 ever how many trucks it took. They did not
16 say, Now, you've got to get a measurement on
17 that, We've got to have that measurement.
18 They said keep up with the trucks that
19 it takes to bring it back up to subgrade,
20 because they were going to turn it in and get
21 paid for it themselves.
22 Q. I understand that. You just said
23 that. I'm just trying to verify that there's
24 not some -- you never tried to take a
25 measurement while you were out there? I
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1 understand why.

2 A. The only time I was involved with
3 measurements is those there, yes, that are
4 measured.

5 Q. And whenever you had this conversation
6 with Anthony Orange and Don Stover, it was
7 after Harley Ezell said, Whoa, we got to look
8 at this?

9 A. Yes, sir. That's when we had done cut
10 that down and Harley said we can't go no
11 deeper. Harley even went as far as to tell
12 them, We'll give you this. And they went as
13 far as to say, No, count that, go ahead and
14 count it.

15 MR. CASHION: I don't have
16 anything else.

17 FURTHER DEPONENT SAITH NOT.
18
19
20
21
22
23
24
25

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1 SWORN to before me when taken,
2 August 29, 2001
3
4

5 _____
6 Jackie Wisinger, Notary Public
7 State of Tennessee At Large
8

9 My Commission Expires: 10/21/2001
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