

**ORIGINAL**

FILED  
COURT OF CLAIMS  
OF OHIO

**IN THE COURT OF CLAIMS OF OHIO**

2015 MAR 31 PM 3: 56

**TRANSAMERICA BUILDING COMPANY, :  
INC., :**

Case No. 2013-00349

Plaintiff/Counter Defendant :

Judge McGrath

v. :

Referee Wampler

**OHIO SCHOOL FACILITIES :  
COMMISSION, nka Ohio Facilities :  
Construction Commission, :**

Defendant/Counter Plaintiff/ :  
Third-Party Plaintiff/Counter :  
Defendant :

v. :

**LEND LEASE (US) CONSTRUCTION, :  
INC., :**

Third-Party Defendant/Counter :  
Plaintiff/Fourth-Party Plaintiff :

and :

**STEED HAMMOND PAUL INC., etc., :**

Third-Party Defendant/Fourth- :  
Party Plaintiff :

v. :

**BERARDI PARTNERS, INC., et al., :**

Fourth-Party Defendants. :

**TRANSAMERICA'S REPLY TO OHIO SCHOOL FACILITIES' SUPPLEMENTS TO  
ITS MEMORANDUM IN OPPOSITION TO TRANSAMERICA'S MOTION TO  
COMPEL**

With this Reply, TransAmerica Building Company, Inc.'s ("TransAmerica") provides an update with respect to its pending Motion to Compel and the discoverable items that remain

**ON COMPUTER**

outstanding. At the conclusion of the conference call with the Court on March 23, 2015, it was established that the remaining items still outstanding were the (1) signed “Posted Changes Set” of plans that Lend Lease’s (“LL”) Superintendent expressly represented in deposition testimony to exist (and contain the prime contractors’ signatures) and (2) the Project As-Built Drawings.<sup>1</sup> As the Referee emphasized in our call, we are simply seeking production of this “Posted Changes Set” or confirmation that it does not exist.

**A. The OSFC Has Failed to Produce a Signed “Posted Changes Set”**

First, there is no dispute that the OSFC has failed to produce a “Posted Changes Set” that was signed by TransAmerica let alone by any of the other prime contractors. For that matter, the OSFC has failed to produce any set of plans that was signed by TransAmerica or any of the other prime contractors. The plans that the OSFC has referenced in its prior supplements were never signed by TransAmerica.

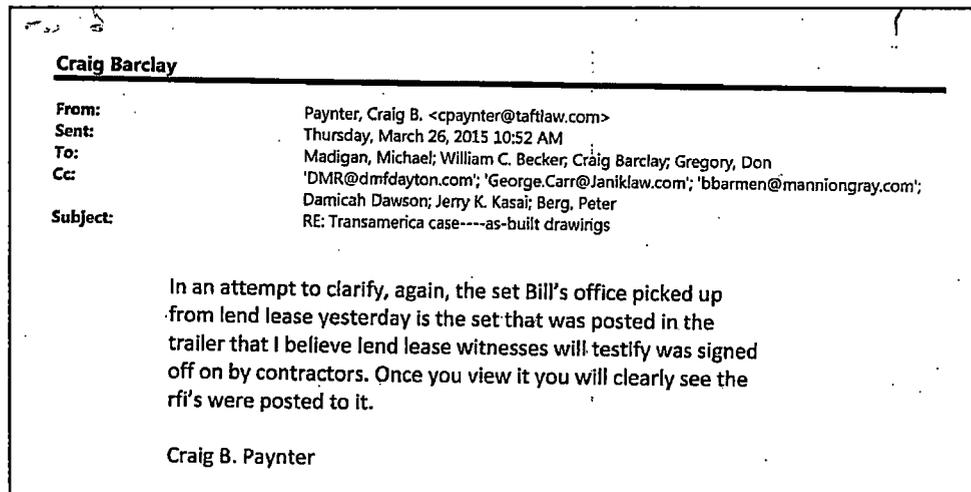
The failure of the OSFC to produce a signed “Posted Changes Set” is relevant to this dispute because a significant component of TransAmerica’s claim is based on the failure of the OSFC to provide full and accurate plans as required by O.R.C. §153.01. Instead of providing full and accurate plans, this Project was built from various sketches and RFI’s pasted to the Bid Set in an ad hoc fashion where information was not shared openly and consistently with the entire construction team. The significance of the material changes to the design and the confusion that resulted was far in excess of what is expected on public projects where the design is required under law to be complete at the time the public authority issues the documents for bid. The OSFC’s inability to produce a signed set of plans further supports TransAmerica’s claim that it

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<sup>1</sup> Just so this Court and the other parties understand, TransAmerica’s reference to the “Posted Changes Set” is the set of drawings LL kept in its trailer where it allegedly inserted the various RFI’s and sketches on top of the Bid Set. The “Posted Changes Set” supposedly evolved as construction progressed, problems were encountered, and sketches and RFI’s were issued to address those problems.

never agreed to build the Project in a haphazard way that conflicts with the contract's express change provisions and §153.01.

Despite the failure to provide a signed set of plans, it appears LL still intends to testify that the Posted Changes Set kept in LL's trailer "was signed off on" by the prime contractors based on a March 26, 2015 e-mail from counsel for LL.



Without producing a signed set of plans, the OSFC, LL, and SHP should be precluded from testifying a signed set of plans existed. Furthermore, the OSFC and its agents should be precluded from testifying that a signed set of plans was somehow an acknowledgement by TransAmerica that it had the necessary information to construct the Project while the design evolved.

#### **B. To Date the OSFC Has Failed To Produce the As-Built Drawings**

With respect to the As-Built Drawings, this still remains an open question despite the recent efforts of the OSFC, which only came after TransAmerica filed its Motion to Compel. In short, the simple question for the OSFC to answer is: What set of plans does it contend represents the true As-Built Drawings?

Is it the set referenced in the LL transmittal dated March 24, 2015?<sup>2</sup> Counsel for TransAmerica reviewed this set on Friday March 27, 2015, which is a completion of sketches and RFI responses taped to a set of plans. Importantly, there are significant components of the Project missing from this set, including the architectural plans for the Blind Dorms. Additionally, the LL transmittal that appears to have prompted the OSFC Second Supplement states “The Ohio State School for the Blind and Ohio School for the Deaf Residential Building Drawings that were kept in the Lend Lease Jobsite trailer and posted with all RFI’s, Addendum, PR’s and notes used by all contractors. Set was turned over to SHP to create as-built drawings and then SHP sent to Owner where they were recovered 3.24.15.” This statement raises questions as to whether the set referenced in the transmittal represents the final set of as-built drawings or whether SHP made additional changes.

Alternatively, the As-Built Drawings could be the set referenced in the SHP transmittal noted below.<sup>3</sup> That set was apparently provided to the Ohio School for the Deaf last April.

		<b>LETTER OF TRANSMITTAL</b>	
SHP LEADING DESIGN 250 Civic Center Drive, Ste. 200 Columbus, OH 43215		Phone: 614-223-2124 Fax: eMail: rcampagna@shp.com	
TO:	Ohio School for the Deaf	FROM:	Rene' Campagna
COMPANY:	Ohio School for the Deaf Ohio State School for the Blind	RE:	OSDB Dorms
DATE:	4/16/2014	COMM NO.:	2007022.00
We are Sending You the Following Items <input checked="" type="radio"/> Attached <input type="radio"/> Under a Separate Cover VIA _____			
<input type="checkbox"/> Copy of Letter <input type="checkbox"/> Prints <input type="checkbox"/> Specifications <input checked="" type="checkbox"/> Shop Drawings <input type="checkbox"/> Change Order <input type="checkbox"/> Pay Application <input type="checkbox"/> Plans <input type="checkbox"/> Samples <input type="checkbox"/> Other..			
<b>COPIES</b>	<b>DIV. NO.</b>	<b>DESCRIPTION</b>	
1	Hard Copy	OSSB Dorms As-Built Drawings	
1	Hard Copy	OSD Dorms As-Built Drawings	
1	CD	OSDB Dorms Record Drawings (PDFs)	
1	CD	OSDB Dorms MEPT -Dynamix CD- Record Drawings (PDFs)	

<sup>2</sup> See March 24, 2015 LL transmittal attached as Exhibit A.

<sup>3</sup> See April 16, 2014 SHP transmittal, attached as Exhibit B.

Counsel for SHP provided an explanation on Wednesday, March 26, 2015 as to the As-Built Drawings. As noted below, this explanation differs to what was stated in the OSFC's Second Supplement filed on March 24, 2015 where the OSFC represented that the "posted as-built drawings" were located by LL and will be provided shortly.

**Madigan, Michael**

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**From:** David M. Rickert <DMR@dmfdayton.com>  
**Sent:** Wednesday, March 25, 2015 9:01 AM  
**To:** William C. Becker; Madigan, Michael; cpaynter@taftlaw.com; Craig Barclay; Gregory, Don  
**Cc:** George.Carr@Janiklaw.com; bbarmen@manninggray.com; DamicaH Dawson; Jerry K. Kasal  
**Subject:** RE: Transamerica case----as-built drawings  
**Attachments:** 140416-OSDB Dorm-as-built and record drawing trans.pdf

Bill, here's the explanatory email I received from Josh Predovich:

David-  
I wanted to send you an e-mail in regards to our conversation on the phone.

I informed Clay on Monday that the as-built drawings were delivered to the owner along with the record drawings produced by the design team. I personally hand delivered these sets to Chris Simonson on April 17, 2014 (see attached transmittal).

It is our company policy on OSFC jobs to give the as-builts to the owner along with the record drawings; we keep a digital copy of the record drawings and do not keep copy of the as-builts. Digital copy of the record drawings should be in every one's hands as part of discovery.

I understand that Clay has recovered the as-built drawings from Chris. Please let me know if there are any other questions in regards to these sets.

Thanks,  
Josh

Hopefully this helps solve the mystery.

Dave

According to the e-mail above, the As-Built Drawings appear to have been provided to Chris Simonson with the School for the Deaf almost a year ago. This is further established based on the e-mails recently obtained, where LL, SHP, and the OSFC's Project Administrator were discussing the As-Built Drawings and turning them over to Mr. Simonson.

**From:** [Josh Predovich](#)  
**To:** [Chris Simonson](#)  
**Cc:** [Dwight Madison](#); [Clay Keith](#)  
**Subject:** Re: as builts  
**Date:** Thursday, April 17, 2014 8:22:03 AM

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Chris-  
I have all the remaining as builts. Let me know if someone can meet me around 11am this morning and if I should drop sets off at each school or you are storing in 1 location.  
Thanks,  
Josh

On Apr 14, 2014 3:35 PM, "Josh Predovich" <[jpredovich@shp.com](mailto:jpredovich@shp.com)> wrote:  
Chris-  
We have received and reviewed the record drawings from Berardi. Rene in our office is compiling the set with the goal of having the both OSD and OSSB dorms as well as OSSB ACAD ready for you by Wednesday.  
I will let you know if anything changes; otherwise, I will drop off to you Wednesday as well as reviewing and re-sorting the OSD set you already have.  
Let me know if any questions.  
Thanks,  
Josh

The OSFC should have been aware that SHP had provided as-builts to Mr. Simonson almost a year ago, which was shortly after TransAmerica issued its Second Request for Production of Documents on March 28, 2014 requesting the As-Built Drawings. Keep in mind, the e-mails of Mr. Simonson were only recently made available after TransAmerica filed its Motion to Compel.

To help illustrate the issues with the various sets of plans, TransAmerica has attached the Bid Set for the Deaf Elementary/Middle School Dorms, which is the set TransAmerica based its bid on in October of 2010 (second time the Project was bid). A review of this set shows the architectural and structural plans were marked as either "Bid-Oct. 2010" or "Permit & Review."<sup>4</sup> However, as construction progressed and problems were encountered, this bid set was supplemented with various sketches and RFI's that LL would unilaterally post to the set in its trailer. Keep in mind, LL and SHP both represented that TransAmerica would receive an updated set of plans that would take into account the various changes that had taken place. **This never occurred.** TransAmerica never received this updated set during construction, apparently due to

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<sup>4</sup> See Oct-2010 Bid Set for Deaf Elementary/Middle School, referenced as Exhibit C on disk provided with this Reply. This set represents ¼ of the entire Project, as the Project also includes the Deaf High School, Blind Elementary/Middle School, and Blind High School.

concerns the updated set would lead to additional confusion and change order costs on a Project that at one point in time was forecasted to be in excess of \$7,000,000 over budget.

In contrast to what TransAmerica received, SHP provided to the Department of Industrial Compliance (“DIC”) various updated sets in order to eventually obtain full permit approval. Keep in mind, the SHP submissions to DIC were being made while TransAmerica was expected to construct the Project without benefit of this same information. SHP’s various submissions culminated in DIC approval almost two years after the Project was bid (for the first time) when DIC finally issued the full permit approval in July of 2012. Importantly, the July 2012 DIC Final Approved Set for Deaf Elementary/Middle School is labeled “Construction Set.”<sup>5</sup> So while TransAmerica was expected to construct the Project from the Bid Set that was unilaterally supplemented with various sketches and RFI responses, SHP only obtained the full permit approval by providing complete updated sets to DIC at the end of the job.

A cursory review of the July 2012 DIC Final Approved Set for Deaf Elementary/Middle School shows that it is a “clean set” and does not contain the various sketches and RFI responses found in the “Posted Changes Set.” The differences in these sets support TransAmerica’s claim the OSFC and its agents failed to provide full and accurate plans as required by §153.01 – either at the time of the bid or during the course of construction. This failure is proven by the significant differences in plans that SHP issued to DIC, when compared to what it provided to TransAmerica during construction.

As this Referee correctly stated, SHP and LL each had contractual responsibilities with respect to the As-Built Drawings and the Record Drawings. For example, under paragraph 2.7.16

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<sup>5</sup> See July 2012 DIC Final Approved Set for Deaf Elementary/Middle School, referenced as Exhibit D on disk provided with Reply.

of LL's Final Agreement for Construction Management Services, LL was required to verify that the As-Built Drawings "detail the actual construction of the Project."

**2.7.16 Record Drawings.** The Construction Manager shall review the As-Built Drawings provided by the Contractors and verify that the As-Built Drawings, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations during the progress of the Project, detail the actual construction of the Project. The Construction Manager shall transmit the verified As-Built Drawings to the Architect for the preparation of Record Drawings.

Accordingly, the As-Built Drawings should provide another piece of the puzzle as to how the Project's design evolved during construction. Additionally, the As-Built Drawings could shed light on the differences in what was provided to DIC for the external permit approval versus what was provided to TransAmerica during construction.

Similarly, SHP was required to take the As-Built Drawings and prepare the Record Drawings as described under paragraph 2.7.16 of its Agreement No. 3 for Professional Design Services.

**2.7.16 Record Drawings.** Based on marked-up prints, drawings or data provided by the Contractors and the As Built Drawings transmitted by the Construction Manager, the Architect shall prepare and furnish to the Commission one (1) set of Record Drawings in the form of reproducible Drawings correctly marked to show the Project as completed in the form of reproducible tracings, one (1) set of all other Contract Documents showing the Project as completed in the form of paper documents and one (1) set of all Contract Documents showing the Project as completed on a computer medium approved by the Commission. The Record Drawings, to the best of the Architect's knowledge based upon the As-Built Drawings delivered to the Architect by the Contractors and the Architect's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the Architect as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the original Drawings. The Commission may request Record Drawings, by individual building, in same sequence as actual construction of the Project.

Again, differences in the As-Built Drawings and the Record Drawings will be relevant as to whether the OSFC satisfied its obligations under §153.01 and provided full and accurate plans. While the Record Drawings may be the final set approved by DIC, TransAmerica seeks a copy

of the Record Drawings to confirm this. They were apparently provided to the School for the Deaf along with the As-Built Drawings on April 16, 2014.

With this Reply, the Court should at a minimum issue an order precluding the OSFC, LL and SHP from alleging or testifying that a “Posted Changes Set” of plans signed by TransAmerica and the other prime contractors existed in the LL trailer. Additionally, the Court should impose a deadline of April 10, 2015 for the OSFC to produce the true As-Built Drawings and the Record Drawings. While TransAmerica acknowledges the OSFC’s recent efforts in obtaining this information, the OSFC has failed to produce the As-Built Drawings despite these efforts and only further confusion has resulted. Additionally, the OSFC’s latest Supplement raises concerns that such drawings may never be produced or questions about authenticity will continue to linger.

Specifically, in its Third Supplement, the OSFC stated that SHP and LL were scheduled to go to the facility to locate “another set of as-built drawings.”<sup>6</sup> The concern with the OSFC’s most recent statement is that there should not be multiple sets of the As-Built Drawings (beyond copies). Put another way, there should only be true one set of As-Built Drawings and one set of Record Drawings and those drawings should be provided to TransAmerica well in advance of the trial scheduled to commence in seven (7) weeks.

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<sup>6</sup> See Ohio School Facilities’ Third Supplement to Memorandum in Opposition to Plaintiff’s Motion to Compel filed on March 27, 2015.

Respectfully submitted,



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*Attorneys for Plaintiff TransAmerica Building  
Company, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing TransAmerica's Reply to Ohio School Facilities' Supplements to Its Memorandum in Opposition to TransAmerica's Motion to Compel was sent via e-mail and by regular U.S. mail, postage prepaid, this 31st day of March, 2015 to:

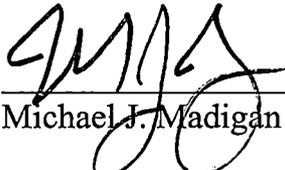
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\_\_\_\_\_  
Michael J. Madigan

(0079377)

# Transmittal Cover Sheet

Detailed, Grouped by Each Transmittal Number

OSBD - Residential Dorms  
502 Morse Road  
Columbus, Ohio 43214

Project # 55055500-c  
Tel: 614-732-5275 Fax: 614-732-5295

Lend Lease (US) Construction Inc.

Date: 3/24/2015

Reference Number: 0279

**Transmitted To**

OFCC/Attorney General  
  
TO be picked up at Lend Lease Office

**Transmitted By**

Clay Keith  
Lend Lease (US) Construction Inc.  
111 West Rich Street  
Suite 280  
Columbus, OH 43215  
Tel: 614-621-4148  
Fax: 614-621-4149

Acknowledgement Required

Package Transmitted For	Delivered Via	Tracking Number
As Requested	Messenger	

Item #	Qty	Item	Reference	Description	Notes	Status

Cc: Company Name	Contact Name	Copies	Notes

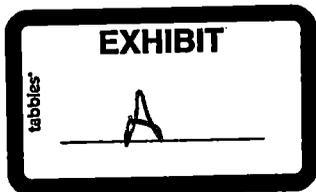
**Remarks**

The Ohio State School for the Blind and Ohio School for the Deaf Residential Building Drawings that were kept at Lend Lease Jobsite trailer and posted with all RFI's, Addendum, PR's and notes used by all contractors. Set was turned over to SHP to create as-built drawings and then SHP sent to Owner where they were recovered 3.24.15. The set contains the following pages in roll 1:  
Buildings 5&6 A104, A104a, A106, A203, A204, A304, A305, A306, A404, A405, A406, A409, A505, A506, A603, A604, A802, S106, A304, A409, A603, A604, A000, LS102, LS102a, A002, A102, A102a  
Buildings 1 & 2 A301, A303, A407, A408, A601, A602, A702, Cover Sheet, LS101, LS101a, A001, A002, A101, A101a, A103, A103a, A301, A302, A303, A401, A402, A403, A407, A408, A501, A502, A503, A504, A601, A602, A702, A801, S105, A001  
No Building identification A701, A703, A701, A703  
Roll 2 MEP&T Drawings FP000, FP101, P000, P101, P201, P501, P601, H000, H101, H401, H403, E000, E101, E201, E401, E501, T000, T101, T501, T502, T503, T504, ET000, ET101, ET501, ET502, FP000, FP102, P000, P102, P202, P501, P601, H000, H102, H401, H403, E000, E102, E202, E401, E501, T000, T102, T501, T502, T503, T504, ET000, ET202, ET501, ET5??(Corner ripped on sheet)  
Roll 3 Civil Drawings C601, C602, C603, C604, C605, C601, C602, C603, C604, C605  
Roll 4 Structural Drawings Building 1&2 Blind S101, Blind S103, Deaf S100, Deaf S101, Blind S103, Deaf S103, Blind S100.  
Buildings 5&6 Blind S104, Deaf S100, Deaf S102, Deaf S104, Blind S100, Blind S102

Clifford Edgington  
Signature

3-24-15  
Signed Date

CLIFFORD EDGINGTON





SHP LEADING DESIGN  
 250 Civic Center Drive, Ste. 200  
 Columbus, OH 43215

# LETTER OF TRANSMITTAL

Phone: 614-223-2124  
 Fax:  
 eMail: rcampagna@shp.com

TO: Ohio School for the Deaf FROM: Rene` Campagna  
 COMPANY: Ohio School for the Deaf RE: OSDB Dorms  
 Ohio State School for the Blind

DATE: 4/16/2014 COMM NO.: 2007022.00

We are Sending You the Following Items  Attached  Under a Separate Cover VIA \_\_\_\_\_

- Copy of Letter
- Shop Drawings
- Plans
- Prints
- Change Order
- Samples
- Specifications
- Pay Application
- Other..

COPIES	DIV. NO.	DESCRIPTION
1	Hard Copy	OSSB Dorms As-Built Drawings
1	Hard Copy	OSD Dorms As-Built Drawings
1	CD	OSDB Dorms Record Drawings (PDFs)
1	CD	OSDB Dorms MEPT -Dynamix CD- Record Drawings (PDFs)

**THESE ARE TRANSMITTED as checked below**

- For Approval
  - For Your Use
  - For Review & Comments
  - Reviewed as Submitted
  - Reviewed as Noted
  - Returned for Corrections
  - Resubmit
  - Submit
  - Return
- copies for approval  
 ----- copies for approval  
 ----- corrected prints

**REMARKS**

For Your Records \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_

IF ENCLOSURES ARE NOT AS NOTED, PLEASE NOTIFY SIGNEE

COPIED TO

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNED \_\_\_\_\_  
 Rene` Campagna  
 Construction Administrator

