



IN THE OHIO COURT OF CLAIMS

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TransAmerica Building	:	
Company, Inc.,	:	
	:	
Plaintiff,	:	
	:	Case No. 2013-00349
vs.	:	Referee Samuel Wampler
	:	
Ohio School Facilities	:	
Commission NKA OFCC,	:	
	:	
Defendant.	:	

- - - - -

EXCERPT OF TRIAL

VOLUME 6

TESTIMONY OF JOSHUA WILHELM

- - - - -

Before Referee Samuel Wampler  
 Taken at Court of Claims of Ohio  
 65 South Front Street, 3rd Fl.  
 Columbus, OH 43215-4131  
 May 26, 2015, 9:03 a.m.

- - - - -

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A P P E A R A N C E S

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3 ON BEHALF OF PLAINTIFF:

4       Kegler, Brown, Hill & Ritter Co. LPA  
 5       65 East State Street, Ste. 1800  
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 7       By Donald W. Gregory, Esq. and  
        Michael J. Madigan, Esq.

8 ON BEHALF OF DEFENDANT:

9       Attorney General's Office  
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 12       Columbus, OH 43215-3130  
 13       By William C. Becker, Jr., Esq. and  
 14       Craig D. Barclay, Esq. and  
 15       Jerry K. Kasai, Esq.

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3       EXCERPT OF PROCEEDINGS

4       -----

5       THE COURT: Back on the record in

6 TransAmerica Building Company versus Ohio School

7 Facilities Commission, Case No. 2013-00349.

8       Mr. Wilhelm, you're still under oath.

9       Mr. Madigan, you may proceed.

10       -----

11       JOSHUA WILHELM,

12 being first duly sworn, testifies and says as

13 follows:

14       CONTINUED DIRECT EXAMINATION

15 BY MR. MADIGAN:

16 Q.     Before we left off on Friday, Josh, we

17 were talking about certain discrete changes that

18 you had observed during the course of the project

19 and that you later looked at with Mr. McCarthy,

20 and I want to talk to you about those.

21       Did you observe any changes or issues

22 with respect to corner blocking?

23 A.     Yes, we did.

24 Q.     What did you -- and for the Court's --

       THE COURT: Excuse me, Mr. Madigan.

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1       Mr. Becker?

2       MR. GREGORY: I just want to make sure

3 that he's not -- okay. That's fine.

4       MR. MADIGAN: And what I'm doing is I'm

5 laying a foundation and I'm going to introduce

6 this chart that we discussed yesterday without the

7 coloring on it --

8       THE COURT: That's fine.

9       MR. MADIGAN: -- if that --

10 Q.     So corner blocking --

11       THE COURT: Mr. Madigan, before we

12 start, was there any communication between the two

13 sides since we broke about these exhibits about

14 the red -- with the color coding and without?

15       MR. MADIGAN: No --

16       THE COURT: Okay.

17       MR. MADIGAN: -- but I'm prepared to

18 introduce an exhibit without the color coding.

19       THE COURT: That's fine.

20 Q.     (By Mr. Madigan) With respect to

21 corner blocking, what did you observe?

22 A.     When the, you know, the wall panels get

23 shifted and moved, you're typically modifying the

24 end of a wall panel and then you've got to add

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1 corner blocking. A lot of this corner blocking is

2 added so that you can pick up the rating

3 conditions at the ceilings.

4 Q.     What about baffle blocking?

5 A.     Again, it's so you can fasten the

6 additional material to the panelized walls,

7 because you're not field -- most of these -- the

8 things they have in common is they're not field

9 constructed. And these changes are after the

10 fact, so you're fastening things to walls in

11 locations where normally you might modify the

12 layout of the stud or put a stud in that location,

13 and in these instances you have to put blocking in

14 to pick up -- pick up what you're doing next.

15 Q.     What about shower stall framing?

16 A.     Again, we talked about that earlier,

17 but that's the reworking of the shower stalls;

18 several different versions.

19 Q.     What about medicine cabinets?

20 A.     Medicine cabinets, we relocated those

21 for several different reasons, one of which was

22 interference with the thermostats, but there was

23 some other -- there were some other relocations of

24 medicine cabinets for other reasons as well.

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1 Q. And what about bulkhead diffusers and  
2 fire dampers?  
3 A. Yeah. The -- those are related to --  
4 this is reworking in the bulkheads, generally in  
5 the common areas or down the corridors where  
6 the -- in the process of the construction, either  
7 -- there was several versions of these changes.  
8 One was in relation to location where they wanted  
9 them. They moved them around a couple times. And  
10 then the other version is related to them becoming  
11 rated and the rough out needing to be different  
12 for that, for that diffuser.  
13 MR. MADIGAN: And I'm going to  
14 introduce TA-734.  
15 Q. And could you explain what TA-734 is,  
16 Josh?  
17 A. Yeah. This is our -- the roots of this  
18 are -- as I said I think last time, I always felt  
19 that one thing that went unappreciated on this job  
20 was you could talk about something that was -- and  
21 we use the term "discrete." That sounds like a  
22 small item in a building and it doesn't sound like  
23 a big deal. So if you were to say we had to  
24 rework the medicine cabinet location to move it

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1 for a thermostat, that just doesn't sound like a  
2 big deal.  
3 But when you remember that you're doing  
4 it in twelve buildings - inside each of those  
5 buildings, if it's a high school, at least seven  
6 times, depending on layouts, you know - you start  
7 to come up with a lot of occurrences. So even a  
8 small number of hours for a seemingly minor  
9 problem becomes a lot of dollars. And then when  
10 you add up, you know, the list of how many items  
11 here, and this isn't -- I wouldn't put this out  
12 there as all of the issues. These were issues  
13 that we put out there because we felt they were  
14 well-substantiated. It doesn't take a lot of  
15 hours and a lot of crew size to equal a lot of  
16 dollars when you're doing it in all those  
17 different locations and all those different  
18 buildings.  
19 Q. So all told, how much were you able to  
20 identify just in these items you identified on  
21 Exhibit 734?  
22 A. 603,392.  
23 Q. Now, were you permitted to include  
24 these in change order pricing?

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1 A. No.  
2 MR. MADIGAN: If we could go to TA-597.  
3 Q. And I want to switch topics here. I  
4 want to talk about the punch list process.  
5 THE COURT: Mr. Madigan, before you  
6 move on, I want to understand TA-734 a little  
7 more. I want to have a couple questions.  
8 MR. MADIGAN: Sure.  
9 THE COURT: Mr. Wilhelm, where did you  
10 derive your average hours from? What did you look  
11 at?  
12 THE WITNESS: Okay. What I did is as  
13 much as we could for most of these issues I went  
14 back into the documentation of the job and used  
15 what I could find on those things. A lot of these  
16 things occurred, I guess, just in the mix. And we  
17 did this some time ago. And I sat with  
18 Mr. McCarthy and we came up with the hours that we  
19 believed that those items would represent based on  
20 as much information as we could get out of the  
21 documents.  
22 THE COURT: And what was that  
23 information?  
24 THE WITNESS: Cost reports --

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1 THE COURT: Okay.  
2 THE WITNESS: -- field notes,  
3 superintendent field notes. That's primarily  
4 where those things came from.  
5 THE COURT: Okay. And explain -- can  
6 you explain the average inefficiency factor, 30  
7 percent?  
8 THE WITNESS: I actually think that's  
9 pretty conservative.  
10 What I explained to Don was,  
11 Mr. McCarthy, was, you know, a lot of these -- a  
12 lot of these tasks, if you look at them,  
13 they're -- most of them are a crew of two. This,  
14 again, was to show how small things can equal big  
15 dollars on this project and the number of hours  
16 aren't that great.  
17 So what I explained to him is when  
18 you're doing this stuff after the fact, not with  
19 the core scope of work, you're sending two guys to  
20 a building that you're otherwise not set up in.  
21 So you're taking your saws, you're taking your  
22 cutting table, whatever you're taking with you.  
23 You're running your air hoses and your cords, and  
24 you've got to set all that up. And there's pretty

1 strict rules about the cords not laying on the  
2 ground. They've got to be strung. So you've got  
3 to set up, and let's say that's an hour, just for  
4 sake of example for this. And then you do a task  
5 that's maybe a couple hours at that one location;  
6 maybe it's only an hour at that one location or  
7 that building, right? So you go along and you  
8 make these changes in that set of dorm rooms. And  
9 then you've got to clean up, tear down, take down  
10 your hose, take down your cords, take your  
11 compressor with you, and you move over to the next  
12 building. So for the hour you spent making the  
13 repairs, you've spent an hour or two doing --  
14 moving and setting up and tearing down.

15 So, again, we used 30 percent to be a  
16 conservative number, but it's to include that, you  
17 know. When you take a task that might be an hour  
18 or two and you put an hour or two's worth of setup  
19 and tear down with it, then you're not very  
20 efficient.

21 THE COURT: Okay. So you're basically  
22 taking -- for example, in corner blocking, you're  
23 taking 30 percent of the average hours, the  
24 average actual hours that you estimated based upon

1 briefly, what's going on at this point in time  
2 with respect to the punch list?

3 A. Okay. We had been tracking the punch  
4 list progress by building and we had been turning  
5 in our punch lists, and the architect was not  
6 performing his punch list.

7 So after feeling that we needed to let  
8 everybody know that that was occurring, I wrote  
9 this letter and established the status of each of  
10 the buildings, typically the fact that TA has  
11 completed our items and since then there hasn't  
12 been a review.

13 MR. BECKER: I can't hear you, the end  
14 of your sentence there.

15 THE WITNESS: Okay.

16 THE COURT: Yeah. Try to keep your  
17 voice up, Mr. Wilhelm.

18 Do you want that read back, Mr. Becker?

19 MR. BECKER: I just need the end there.

20 THE COURT: Go ahead and read it back.

21 THE REPORTER: (Reading) "Answer:  
22 Okay. We had been tracking the punch list  
23 progress by building and we had been turning in  
24 our punch lists, and the architect was not

1 your review of the job cost reports and your  
2 knowledge of the project, I assume.  
3 THE WITNESS: That's correct.  
4 THE COURT: And then you took that  
5 times 30 percent and you came up with roughly 4.8  
6 hours, so that's how you took that out to an  
7 average revised hours of 21. Is that --

8 THE WITNESS: That's correct.

9 THE COURT: I think I've figured this  
10 out. I just wanted to make sure.

11 How did you arrive at the hourly rate  
12 of \$41.77?

13 THE WITNESS: I believe that was our  
14 actual rate that we used -- that I was directed to  
15 use as calculated by Alan, our accountant, of what  
16 the amount -- and that's what we used in the job,  
17 you know, the base labor rate with the burden and  
18 all that per the prevailing wage.

19 THE COURT: Are these all carpentry?

20 THE WITNESS: Yes.

21 THE COURT: All right. Thank you.

22 Q. (By Mr. Madigan) So if we could switch  
23 gears and talk about the punch list process. This  
24 is a letter you authored on May 24th, 2012. Real

1 performing his punch list.

2 "So after feeling that we needed to let  
3 everybody know that that was occurring, I wrote  
4 this letter and established the status of each of  
5 the buildings, typically the fact that TA has  
6 completed our items and since then there hasn't  
7 been a review."

8 THE COURT: Thank you.

9 Q. (By Mr. Madigan) Now, were there  
10 certain dorms where you weren't permitted back in?

11 A. Yes. There was a casework schedule,  
12 and then typically after the casework was  
13 installed there would be a lock-out period where  
14 they literally refused us entry to the buildings  
15 while other trades did work.

16 Q. If we go to that second page, do you  
17 identify dorms where TA provided its punch list to  
18 the project team and was waiting on the response  
19 back?

20 A. That's correct. And we also kept a  
21 chart of this.

22 Q. If we go to page 3, that top -- that  
23 top paragraph, were you -- how was the inspection  
24 process -- let me back up.

1 How was SHP's inspection of the punch  
2 list being coordinated with TransAmerica?

3 A. It wasn't. They -- as we noted here,  
4 they wouldn't -- they didn't tell us when the  
5 review was going to occur. They didn't allow us  
6 to walk on the walkthrough with them.

7 THE COURT: When you say, "they," who  
8 do you mean?

9 THE WITNESS: Lend Lease and SHP.

10 THE COURT: Okay. Sorry.

11 A. So, in fact, if I had people anywhere  
12 near one of those buildings, they'd chase them  
13 out. So we didn't have the opportunity to walk  
14 through the punch list with them. We didn't, you  
15 know -- we would get a list with no understanding  
16 of what was intended, and we had no opportunity to  
17 discuss any alternative fixes or anything else.

18 Q. And based on this letter that you wrote  
19 in May, when are you forecasting the punch list  
20 process to be done?

21 A. I have to find that; sometime in August  
22 2012.

23 And I'd also like to point out that,  
24 you know, we weren't -- we weren't able to be

1 time that the hardware was delivered to the site  
2 and the manufacturer wouldn't take it back.

3 MR. MADIGAN: If we could go to TA-603.

4 Q. Is this another letter you wrote with  
5 respect to the status of the punch list?

6 A. Yes, it is.

7 Q. And with this letter, are you  
8 responding back to Lend Lease's points that were  
9 previously made to you about where things stand?

10 A. That's correct.

11 Q. And with this letter did you also  
12 include pictures of work that was going on in the  
13 dorm where there was construction damage?

14 A. Yes, I did.

15 MR. MADIGAN: If we can go to page 5.

16 Q. Could you explain what's shown on -- in  
17 this picture on page 5 of 603?

18 A. This is an electrician. He's doing one  
19 of two things. He's either adding a floor box,  
20 which was an issue, or he's relocating this  
21 conduit. I'm not sure which. But, in either  
22 case, he's in a building which is otherwise  
23 complete and he's in there with a jackhammer  
24 apparently zero protection to any of our finishes,

1 there to dispute some of these things, too,  
2 because, as I said previously, I believe a lot of  
3 the punch list was damaged by other trades.

4 Q. And during the punch list process, were  
5 the campus-wide packages being performed as well?

6 A. Yes. That's what we were being locked  
7 out to. So what would happen is we would submit  
8 our punch list. They delayed and didn't walk the  
9 punch list until that other work occurred, the  
10 casework, the fire alarm, the technology. So you  
11 had all these other people going in. You also had  
12 the electrician and the mechanical guys making  
13 changes, the shelving being put up and tore down  
14 and all this other stuff, and then they walked the  
15 punch list and said hey, look at all this stuff on  
16 the punch list.

17 Q. Going further on in your letter on page  
18 3, you talk about entry door hardware.

19 A. That's correct.

20 Q. Why is that still an issue?

21 A. It is unresolved and they're still  
22 making changes to it, and what -- what I'm  
23 indicating here is that they can't get a credit  
24 because over six months has elapsed between the

1 and he's taking up pieces of the floor.

2 MR. MADIGAN: If we can go to page 6.

3 Q. What's being shown in this picture?

4 A. This electrical box is being relocated  
5 due to the interference of this countertop or  
6 desk.

7 MR. MADIGAN: If we could go to page 8.

8 Q. What's being shown in this picture on  
9 page 8?

10 A. These are the hoods being installed.  
11 The appliances have to be removed and the --  
12 again, there's drywall damage up underneath the  
13 hood, and you can see in the background just  
14 little general condition of the buildings.  
15 There's things everywhere.

16 Q. And on page 9?

17 A. This is a mop sink being placed on top  
18 of the countertop. And, again, you can see in the  
19 background just the level of work that's occurring  
20 in these otherwise complete buildings.

21 Q. Page 10.

22 A. This is where it looks like there's a  
23 junction box sticking down there in the bottom of  
24 that hole in the wall where they're relocating

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1 that junction box. And, again, these pictures are  
2 representative of conditions that occur throughout  
3 twelve different buildings.  
4 Q. Page 11.  
5 A. This is a condition that I specifically  
6 reference in the letter. I believe there was a  
7 leak in one of the plumbing pipes, and they were  
8 in there cleaning that up.  
9 MR. MADIGAN: If we could go to TA-629.  
10 Q. Now, come August of 2012, were you  
11 continuing to write letters about the punch list  
12 work?  
13 A. Yes.  
14 Q. And is this another example of one of  
15 those letters?  
16 A. Yes, it is.  
17 Q. And in this letter, are you also  
18 disputing any backcharges for work that you  
19 believe may be later backcharged to you?  
20 A. Yes. Again, we were -- the tone of the  
21 situation was that the punch list was excessive  
22 and that we were going to be supplemented and  
23 that -- so I'm responding to that condition.  
24 MR. MADIGAN: If we could pull up

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1 TA-648.  
2 Q. Is this an example of one of the  
3 backcharges that you were disputing?  
4 A. Yes, it is.  
5 MR. MADIGAN: And if we go to --  
6 THE COURT: What's the change order  
7 number on that?  
8 MR. MADIGAN: It's change order 50.  
9 THE COURT: Thank you.  
10 MR. MADIGAN: If we can go to page 5.  
11 Q. And does it say here labor for 60 of 90  
12 access panels is a backcharge to TA?  
13 A. That's what it says, yes.  
14 MR. MADIGAN: And then if we could go  
15 to page 6.  
16 Q. How many fire-rated access doors are  
17 part of this backcharge?  
18 A. There's a total of 90, and 60 of them  
19 were highlighted as the 22 by 30's.  
20 Q. And are those fire rated?  
21 A. It says that they are, yes.  
22 Q. And when you bid this project, were  
23 there any fire-rating assemblies required?  
24 A. No, there were not.

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1 Q. And when there was the change to the  
2 partitions and the draft stopping, did that  
3 require additional access doors?  
4 A. It did. And we submitted and had  
5 approved the access panels that we used. So the  
6 panels that got added in that change order, there  
7 was a shop drawing and a specific approval of  
8 those access panels.  
9 I had in fact submitted first a  
10 different access panel and that was rated for a  
11 ceiling condition and was told no.  
12 THE COURT: Rated for a?  
13 THE WITNESS: Ceiling condition.  
14 A. And they directed me back to this  
15 manufacturer that was listed in the specifications  
16 and said that we had to use one of those. I  
17 raised a question with it but submitted the one  
18 that they told me to. They approved it, and  
19 that's what we used.  
20 MR. MADIGAN: If we go to TA-652.  
21 Q. Explain what Lend Lease is saying here  
22 as of October 17th, 2012.  
23 A. 652? Okay. I see. I was a little  
24 thrown by the -- Lend Lease is telling the project

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1 and the different contractors that the substantial  
2 completion date is to be considered June 1st of  
3 2012.  
4 Q. And when were they saying this?  
5 A. They were saying this in October,  
6 October 17th of 2012.  
7 Q. Now, was the building substantially  
8 complete as you observed them as of June 1st,  
9 2012?  
10 A. No, they weren't.  
11 Q. And why -- were the campus-wide  
12 packages going on at this point in time?  
13 A. They were, yes.  
14 MR. MADIGAN: If we could go to TA-659.  
15 THE COURT: Excuse me. I want to read  
16 this exhibit for a second. Just back -- no, the  
17 one you just had up, 652.  
18 Okay. Thank you.  
19 Q. Now we're on to TA-659, which is their  
20 November 7th, 2012, supplemental claim, and I want  
21 to talk to you about a line item on page 3. It's  
22 the line item for unprocessed change order and  
23 scope adjustments in the amount of \$22,029.67.  
24 And we can see there's a reference there to

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1 Exhibit 5 for further detail. If we go find  
2 Exhibit 5, which is on page 12, I'd like to have  
3 you explain what's going on with this charge  
4 that's in the November 2012 supplemental claim.  
5 A. Okay. These are made up of added door  
6 hardware, again, that door hardware issue which  
7 was supported by an RFI and a field work order  
8 directing to order that additional hardware, and  
9 then there's the disputed flooring credit and the  
10 amount of the flooring credit, which arrived at  
11 the amount of 22,000.  
12 Q. And what was going on with the  
13 flooring?  
14 A. The flooring was removed from our  
15 scope, but we still were required to do much of  
16 the floor prep, deliver all the material. And so  
17 the -- it was strictly the one aspect of labor  
18 removed from our scope.  
19 Q. And was one of the reasons why it was  
20 removed from your scope was the problems that were  
21 going on with the moisture content of the slabs?  
22 A. That's correct. Our testing never  
23 revealed or never arrived at an acceptable  
24 moisture content per what the manufacturer

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1 requires, so the scope was removed from our scope.  
2 Q. But you coordinated the delivery of  
3 material out to the project?  
4 A. That's correct. We delivered the  
5 material to each building and, like I said, we're  
6 still responsible for scraping the floors and  
7 having them presentable.  
8 MR. MADIGAN: If we could go to -- if  
9 we could go to TA-1201, which is the Don McCarthy  
10 report.  
11 Q. And I just want to reference you to the  
12 as-built schedule that was included in  
13 Mr. McCarthy's supplemental report. And did you  
14 have a chance to review the as-built schedule that  
15 was attached to Mr. McCarthy's October  
16 supplemental report?  
17 A. Yes, I did.  
18 Q. Does it accurately show the  
19 construction of the project as you observed it?  
20 A. Yes, it does.  
21 MR. MADIGAN: And if we could -- I'd  
22 like to pull up an animation. It's TA-1405. It's  
23 a comparison of the blind as-planned versus the  
24 blind as-built based on the McCarthy as-built

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1 schedule. And we'll play this, but my question is  
2 going to be does this animation, TA-405 (sic),  
3 accurately show how the project was to be  
4 completed versus how it actually was completed?  
5 A. Yes.  
6 MR. MADIGAN: If we could go to TA-408  
7 (sic), which is a similar animation but of the  
8 deaf site.  
9 And I'll ask you the same question:  
10 Does this animation accurately reflect the  
11 comparison between the baseline schedule and what  
12 transpired on the project?  
13 A. Yes, it does.  
14 MR. MADIGAN: And, just to be clear for  
15 the record, that was TA-1408.  
16 THE COURT: And that was the blind?  
17 THE WITNESS: No. This site that we  
18 just looked at was the deaf.  
19 THE COURT: Was the deaf? Okay.  
20 Q. So in these animations, are we  
21 comparing the as-planned compared to the baseline?  
22 A. That's correct.  
23 Q. To the as-built based on the McCarthy  
24 as-built?

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1 A. That's correct.  
2 Q. And these animations accurately show  
3 that comparison?  
4 A. Yes.  
5 MR. MADIGAN: If we could go to --  
6 THE COURT: Just a second.  
7 Mr. Wilhelm, remember the change order 1 where the  
8 baseline schedule was reversed?  
9 THE WITNESS: Yes.  
10 THE COURT: Is that the baseline you're  
11 talking about or the baseline that you bid?  
12 THE WITNESS: This is the bid baseline.  
13 MR. BECKER: I'm sorry. I didn't hear  
14 the answer.  
15 THE WITNESS: This is the bid baseline.  
16 MR. MADIGAN: If we could go to TA-667.  
17 Q. And I want to switch gears and I want  
18 to talk about the roof. And this is a letter you  
19 wrote on January 22nd, 2013?  
20 A. Yes, it is.  
21 Q. And what prompted you to write this  
22 letter?  
23 A. We were notified of roof leaks on  
24 January 7th of 2013.

1 Q. And you go in this letter and you  
 2 explain what you believe is the cause.  
 3 A. Yes. When we went out to the site  
 4 that -- to investigate, we had -- and I took  
 5 pictures and attached them, there was significant  
 6 amounts of ice damming on the roof.  
 7 Q. And you mentioned that there's pictures  
 8 you attached.  
 9 A. Yeah.  
 10 Q. And if we go to page 6, is that an  
 11 example of the ice damming that you were talking  
 12 about?  
 13 A. It is, yes.  
 14 Q. If we can go to page 7?  
 15 A. Yes.  
 16 Q. And you included a section of the  
 17 architectural plans on page 8, and why did you  
 18 include this section?  
 19 A. Because I was pointing out that the  
 20 underlayment as shown on the drawings, the amount  
 21 of ice damming on the roofs would go well above  
 22 that area as shown by those pictures.  
 23 Q. And had you received complaints about  
 24 the roofs during the summer and spring and fall

1 months?  
 2 A. No, we had not.  
 3 Q. And when was the only time that you had  
 4 received complaints about the roof?  
 5 A. The only time we got complaints of roof  
 6 leaking was when there was significant amounts of  
 7 ice on the roofs.  
 8 MR. MADIGAN: If we could go to TA-670.  
 9 Q. Why did you write this letter on April  
 10 1st, 2013?  
 11 A. There was an issue with the keyways  
 12 provided on this project from Ingersoll-Rand, and  
 13 it amounted to, after they investigated, the  
 14 manufacturer agreed that they would replace them  
 15 at their cost as they felt it was a manufacturing  
 16 defect. So this was our -- I was laying out the  
 17 plan of replacement and as I coordinated it with  
 18 Ingersoll-Rand and their local locksmith company  
 19 that they elected to use.  
 20 MR. BECKER: I'm sorry, Your Honor. I  
 21 didn't hear the first part of his answer. There  
 22 was an issue in regard to what?  
 23 THE WITNESS: The keyways or the  
 24 cylinders, the lock cylinders --

1 MR. BECKER: I still can't hear you.  
 2 THE COURT: Aim towards the microphone.  
 3 Is there a way to turn that up at all?  
 4 THE BAILIFF: No. He just has to speak  
 5 up.  
 6 THE WITNESS: Okay. The keyways and  
 7 the cylinders and the locks --  
 8 MR. BECKER: Are you saying "keyways"?  
 9 THE COURT: Keyways.  
 10 THE WITNESS: Yeah, keyways. There's a  
 11 bolt in there that was breaking off that turns the  
 12 cylinder.  
 13 Q. (By Mr. Madigan) Now, at the same  
 14 time, are you also discussing the outstanding  
 15 contract balance in this letter?  
 16 A. Yes. We were indicating that we're  
 17 still -- there was LDs being incorrectly held and  
 18 we had not been paid the balance of our contract.  
 19 However, we were taking care of our obligations.  
 20 MR. MADIGAN: If we can go to TA-687.  
 21 Q. Is this another letter you wrote on  
 22 February 17th, 2014, with respect to the roof?  
 23 A. Yes, it is.  
 24 Q. And, again, is this an example where

1 the roof issues arise when we're in the dead of  
 2 winter?  
 3 A. That's correct. And we -- I indicate  
 4 in this letter that there's approximately six foot  
 5 of ice up the roofs.  
 6 Q. And did you include pictures in this as  
 7 well, in this letter?  
 8 A. Yes, I did.  
 9 MR. MADIGAN: If we can go to page 4 and  
 10 if we can go to page 5.  
 11 A. What we did to -- this letter is also  
 12 letting them know that we were planning on going  
 13 out to the site and putting a special -- roofing  
 14 companies sell it. It's basically an ice melter  
 15 on the roofs to eliminate the ice dams or help  
 16 eliminate the ice dams, a measure that we felt  
 17 should have been occurring on these buildings.  
 18 Q. Now, at some point in time did you end  
 19 up getting a quote to redo the shingled roofs?  
 20 A. Yes, we did.  
 21 MR. MADIGAN: And if we can go to  
 22 TA-698.  
 23 Q. And explain the quote that you received  
 24 to redo the shingled roofs.

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1 A. We asked --

2 MR. BECKER: Let me just object to this

3 being hearsay.

4 THE COURT: Sustained. Try to ask the

5 question differently if you can.

6 Q. Now, Josh, you're familiar with the

7 roofs and the value that it cost to install them.

8 A. That's correct.

9 Q. Did you ever do any research to find

10 out what it would cost to replace the shingled

11 roofs and to reinstall them?

12 A. Yes, I did.

13 Q. And did you get a -- did you get

14 pricing information to tell you what that cost

15 would be?

16 A. Yes. I sent out to Complete Roofing

17 here a -- the drawings, a listed scope of work,

18 which they put on this document, and asked them

19 for a price of what that would cost to do the

20 work.

21 Q. And when you told them to -- what was

22 the direction that you gave this subcontractor

23 with respect to the scope of work that he was to

24 do?

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1 A. Okay. It would be tear off existing

2 shingle and felt roof deck; install JAF Timberline

3 heavy-duty dimensional shingles; install

4 pre-finish step flashing and apron; install two

5 rows of Winterguard and eaves, that's the ice and

6 water shield; install one layer of 15-pound felt

7 on remaining deck. I'm mirroring the specs.

8 Install shingle vents; supply dumpsters; supply

9 all necessary materials and accessories to

10 complete the shingle roof portion; provide all

11 safety requirements and OSHA requirements.

12 Q. When you said you wanted to mirror the

13 specifications for the roof, is that what's -- is

14 that what follows --

15 A. Yes.

16 Q. -- on page 2?

17 A. Yes, it is.

18 Q. So, all told, what was the price that

19 you received to redo the shingled roofs?

20 MR. BECKER: Objection; hearsay.

21 THE COURT: Sustained.

22 MR. MADIGAN: Can we go to TA-700?

23 Q. In August of 2014, you received the

24 notice from Lend Lease, and did you respond to

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1 that notice?

2 A. Yes, I did.

3 Q. And how did you -- how did you respond?

4 A. I told them, "In response to your 96

5 hour notice, TransAmerica is not in a position to

6 provide a more detailed response until its counsel

7 discusses this issue with counsel for the OFCC in

8 light of the upcoming mediation scheduled for

9 August 18."

10 So this was on August 6th, just a

11 little bit of ahead of that. And I indicated if

12 that's not acceptable, that with this e-mail --

13 "please consider this e-mail a public records

14 request for all correspondence (including e-mails)

15 with any possible replacement contractor. We

16 particularly want to review any document outlining

17 the scope of work that was given to the

18 replacement contractor, any corresponding quote,

19 and the agreement between OFCC and replacement

20 contractor. Additionally, TransAmerica requests

21 access as to when the replacement contractor will

22 be onsite so it can observe the work."

23 MR. MADIGAN: If we could go to TA-701.

24 Q. What did you do on September 12th,

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1 2014?

2 A. Well, I was responding to the letter

3 that we had received, and our e-mail

4 correspondence from Lend Lease and the Mays

5 report.

6 MR. MADIGAN: And if we go to 701-A.

7 Q. Is that your written response?

8 A. Yes, it is.

9 Q. And if we go to page 5, towards the

10 bottom, what was -- what was TransAmerica

11 requesting as of September 2014?

12 A. We were requesting, "that the OSFC

13 specify roof areas for the various dorms it

14 believes are deficient and whether" or not "there

15 are subsequent changes to the original design,

16 such as replacing the roof felt with ice guard."

17 And we indicated that, "Please be aware

18 that the failure of the OSFC to provide the

19 information requested above and any notice in

20 advance of destructive work being performed by

21 others will create issues of spoliation and

22 prejudice TransAmerica's rights to mitigate its

23 damages should the OSFC later seek to offset costs

24 associated with roof repair work performed by

1 others."  
 2 MR. MADIGAN: And if we could go to  
 3 TA-704.  
 4 Q. Is TransAmerica again making a request  
 5 to monitor any subsequent roofing work --  
 6 A. Yes, we are.  
 7 Q. -- with this letter?  
 8 A. Yes, we are.  
 9 Q. As of this point in time, was  
 10 TransAmerica that the roofs had been worked on in  
 11 November (sic)?  
 12 A. No, we were not.  
 13 Q. In terms of the cost to replace the  
 14 roof, did you form any -- let me rephrase it.  
 15 In terms of the cost to replace the  
 16 shingled roofs, do you have an opinion as to how  
 17 much that cost?  
 18 A. Yeah. It would be approximately --  
 19 MR. BECKER: Well, excuse me.  
 20 Objection. "Opinion"? There hasn't been a  
 21 sufficient foundation laid that this witness could  
 22 render such an opinion. He obviously went  
 23 out -- this is a way, obviously, around the  
 24 hearsay objection. He went out and sought this

1 price from, as has been referred to, a  
 2 subcontractor.  
 3 So, again, you know, objection as to  
 4 lack of foundation for him to render such an  
 5 opinion.  
 6 THE COURT: Sustained.  
 7 MR. MADIGAN: Would the Court entertain  
 8 this being a business record?  
 9 THE COURT: No. The problem,  
 10 Mr. Madigan, is we have someone, whoever that  
 11 person was, who said this is what I can propose to  
 12 replace the roof for. If he's not in court and  
 13 you're offering it for the truth, which is this is  
 14 what it cost to replace the roof, that's hearsay.  
 15 So unless that person comes in or you find another  
 16 way to do it, you can't do it that way.  
 17 Q. (By Mr. Madigan) Josh, you're familiar  
 18 with the job costs for this project. Based on  
 19 what you saw in terms of the cost to install the  
 20 roofs, your familiarity with the roofs, what would  
 21 it cost to replace these roofs?  
 22 MR. BECKER: Objection. The job cost  
 23 in terms of what they spent to install the roofs  
 24 is not going to have any relevance to the cost to

1 repair the roof, or there's certainly been no  
 2 foundation laid for that.  
 3 THE COURT: Sustained.  
 4 Q. Let me ask you this way, Josh: The  
 5 schedule of values indicates line items for the  
 6 roofs. Based on your knowledge of those schedule  
 7 of values, what's the value of the roof, of the  
 8 shingled roofs?  
 9 A. Of the shingle portion? I believe that  
 10 the value was somewhere under 200,000 for all -- I  
 11 believe for all of the roofing. So the shingle  
 12 portion would be something less than that.  
 13 Q. And the issue with the roofs is only  
 14 relating to the shingle portion, as you see it.  
 15 A. That's correct.  
 16 MR. MADIGAN: I have nothing further.  
 17 THE COURT: Would you like to  
 18 cross-examine, Mr. Becker?  
 19 MR. BARCLAY: Thank you, Your Honor.  
 20 THE COURT: I stand corrected.  
 21 Mr. Barclay?  
 22 MR. BARCLAY: I'm sorry?  
 23 THE COURT: I said I stand corrected.  
 24 I said Mr. Barclay. I'm sorry.

1 MR. BARCLAY: Thank you.  
 2 -----  
 3 CROSS-EXAMINATION  
 4 BY MR. BARCLAY:  
 5 Q. Morning, Mr. Wilhelm.  
 6 A. Morning.  
 7 Q. You did have your deposition taken in  
 8 this case by Mr. Becker. Do you recall that?  
 9 A. Yes, I do.  
 10 Q. I have a copy here. If in fact we get  
 11 to the point where we need to talk about it, I'll  
 12 provide you a copy. Is that fair enough?  
 13 A. Yes.  
 14 Q. Did you get a chance to look at that  
 15 deposition before your testimony?  
 16 A. I've reviewed it.  
 17 Q. Generally, sir, can we agree that  
 18 TransAmerica's work was the starting point for all  
 19 buildings on both sides in this project?  
 20 A. Yes. There was an early site package,  
 21 but yes. For the dorm package, yes.  
 22 Q. The TransAmerica work was frankly a key  
 23 to timely constructing this project, right?  
 24 A. I would say there's certainly some

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1 inputs that go into that that affect our ability  
2 to do so.  
3 Q. And TransAmerica's work was the key to  
4 efficiently running this project, correct?  
5 A. Again, I would say that there's some  
6 inputs into that process that would determine our  
7 ability to do that, yes.  
8 Q. Okay. Now, you joined TransAmerica  
9 after the bid; is that right?  
10 A. Yes.  
11 Q. Your work began, I believe you said,  
12 when you started working on the contracts, the  
13 subcontractors, and so forth after the bid and  
14 after the work was assured and the contract was  
15 let.  
16 A. Yes. I actually believe there was a  
17 small overlap there. I started in November  
18 and -- but yes, my first task was to go through  
19 the bid book and start to work on getting  
20 contractors under contract.  
21 Q. Okay. And you had worked on school  
22 projects for the State previously in some of your  
23 previous work, right?  
24 A. Yes, I had.

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1 Q. In fact, as I understand it -- do you  
2 understand that that's one of the reasons you were  
3 hired here, because you had this experience in  
4 State projects and most of the TransAmerica people  
5 did not?  
6 A. I wouldn't say it that way. I -- there  
7 were several reasons, one of which is that yes, I  
8 had been on school projects previously. But also  
9 I had worked with Alan Starr, our CFO, at that  
10 time, and he and I knew each other, and  
11 TransAmerica was looking for a project manager.  
12 So I would say probably more like with those two  
13 facts that yes, I was ideal for that.  
14 Q. Fair to say that TransAmerica relied on  
15 you to navigate the State system with regard to  
16 the contracts and the management of it?  
17 A. Not solely. We always met and  
18 discussed things, but I would typically be the one  
19 to bring the issue to the table.  
20 Q. And would you agree with me that State  
21 construction projects are different from project  
22 construction?  
23 A. Yes, they are.  
24 Q. At this particular point in time, the

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1 economy for construction was not great; would that  
2 be right?  
3 A. That's correct.  
4 Q. And as far as you know, this is the  
5 first venture into a full State project by  
6 TransAmerica.  
7 A. I'm not sure that that's the case. I  
8 believe that they had done some State contracting  
9 before, but I'm not terribly familiar with all of  
10 it. So I wouldn't say the first, but probably the  
11 first of this type with the OSFC.  
12 Q. Fair to state State projects are more  
13 detailed than private for a number of reasons?  
14 A. I think the paperwork side of it is,  
15 not necessarily the construction. But in this  
16 case that's probably a fair -- I would call it a  
17 generalization, but that's probably fair.  
18 Q. Safety and security measures are  
19 detailed in State projects.  
20 A. You mean life safety for like the  
21 building components?  
22 Q. No. I'm talking about safety for  
23 workers and the way the project is conducted.  
24 A. No. You know, OSHA doesn't just govern

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1 State contracts. OSHA's over everything we do.  
2 So while they do tend to be a little more strict  
3 on certain aspects of the OSHA regulations,  
4 or -- what I would say actually is they have  
5 interpretations that go beyond OSHA requirements  
6 sometimes.  
7 Other than that, I would say the  
8 overall safety environment is all based off of  
9 OSHA, in my experience. It's just sometimes they  
10 go farther in some respects.  
11 Q. All right. But it's all -- but at  
12 least the stated purpose is for the safety of all  
13 those on the construction project?  
14 A. Correct.  
15 Q. Security was somewhat tight on this  
16 project, as I understand it.  
17 A. Yes. There was a background check  
18 required, FBI and BCI.  
19 Q. The background check was the  
20 responsibility of TransAmerica for not only the  
21 TransAmerica employees, but for your subs; would  
22 that be fair?  
23 A. Yes.  
24 Q. And there was a number of months to

1 take care of that, namely somewhere between  
 2 December and the start of the work in March?  
 3 A. Yes. We -- I tended to deal with the  
 4 contractors in phases similar to how the submittal  
 5 process worked as to their appearance on the job  
 6 site, but there was -- there was time before the  
 7 project for getting the background checks done,  
 8 and we encouraged our subcontractors heavily and  
 9 reminded them often of the requirement to do so.  
 10 Q. Having said that, there was still  
 11 difficulty with getting background checks for a  
 12 number of your subs; would that be correct?  
 13 A. The biggest difficulty we had was with  
 14 the insulation contractor, whose corporate policy  
 15 was that they would not release background check  
 16 results to third parties, and we had to move them  
 17 heavily to change that policy, or at least in this  
 18 one example.  
 19 The other issues that we had with  
 20 getting background checks came with the much  
 21 greater than anticipated number of carpenters  
 22 mainly, but workers that we had to bring to the  
 23 site to accelerate or to, you know, as the events  
 24 of the project unfolded. And so there was always

1 this lag between when you wanted to add --  
 2 increase the manpower or were required to increase  
 3 the manpower and not always an agreement with  
 4 that, but then you had to put new people through  
 5 that process. So there was that process that had  
 6 to be dealt with, yes.  
 7 Q. TransAmerica actually had a contractor,  
 8 as I understand it, that they were using for these  
 9 background checks?  
 10 A. Yeah. We set up -- I forget the exact  
 11 name of the place, but there was a company that  
 12 had two or three locations around town, maybe  
 13 more. They had -- what I know is there was  
 14 several locations that were convenient for a lot  
 15 of the contractors on this job that were near  
 16 areas of town where they were that we set up an  
 17 account that these folks could go down and try to  
 18 streamline the process of getting these checks  
 19 done.  
 20 Q. There was some problem with the roofing  
 21 contractors' security and background checks, too,  
 22 weren't there?  
 23 A. He had represented to us that he had  
 24 sent his folks through, and I don't think he did

1 until right up until his folks were needed on  
 2 site.  
 3 Q. Is it fair to say that you had not  
 4 worked with the subcontractors that you worked  
 5 with on this project previously?  
 6 A. Certainly some of them. I believe I  
 7 had worked with a few of them previously.  
 8 Q. A few of them?  
 9 A. I mean, I believe I had run into Masco  
 10 or Gayle Insulation on projects, and I knew Todd  
 11 Seckerson with -- it was one of the contractors we  
 12 were looking at using for the -- they've changed  
 13 their name and the name's escaping me now, but I  
 14 knew Todd for many years. I had worked with him.  
 15 We were looking at them for the finish work and  
 16 the supplying the finish material.  
 17 Q. So there was --  
 18 A. I'm sorry.  
 19 Q. Go ahead.  
 20 A. Arledge Concrete, the folks that did  
 21 the slabs and the footers.  
 22 Q. You had not worked with AAA Roofing?  
 23 A. Had not.  
 24 Q. Had not worked with Sammie Walker --

1 A. I had not.  
 2 Q. -- the drywaller?  
 3 A. I had not.  
 4 Q. The other thing about State projects  
 5 that you were aware of, I take it, is that they're  
 6 always on tight budgets, correct?  
 7 A. I would say so. I mean, they're bid.  
 8 They're public and low bid, yeah.  
 9 Q. Now, the bids in this case, when you  
 10 started working with the subcontractors to  
 11 contract with them, those bids weren't locked in,  
 12 were they?  
 13 A. I'm not sure what you mean by that.  
 14 Q. They were not committed to those bids.  
 15 A. I think I know where -- I'll try to  
 16 answer the question as you've put it.  
 17 No, but this process was the same as  
 18 every other State project that I've ever been on,  
 19 so I don't know what further commitment than  
 20 having a written offer in your bid book on bid  
 21 date that there is, at least on our end of it.  
 22 Q. So, from your standpoint, there are no  
 23 procedures by which these bidders can have their  
 24 bids locked in; is that what you're saying?

1 A. I think you could certainly go to  
2 companies and make agreements in advance or bind  
3 them to things via a bid security or something  
4 like that, but in this case we didn't have -- no,  
5 we didn't. And, again, in my experience, that's  
6 not normal.

7 Q. The carpentry bidder, as I understand  
8 it, was the Deering Group.

9 A. They were one of the bidders.

10 Q. Okay. They were the low bidder --

11 A. No.

12 Q. -- from your standpoint?

13 A. No, I don't believe they were.

14 Q. They were not. Who was?

15 A. It escapes me. It was between -- I  
16 believe it was between Holmes and Graves Lumber.  
17 There was a third bidder that was low, and I  
18 actually believe Deering was probably not in the  
19 low three. But that's who the bidders were.

20 Q. Did you try to negotiate a contract  
21 with Holmes Lumber?

22 A. I called the low -- what I did was I  
23 called the apparent low bidder and attempted to  
24 negotiate a contract with them and then I also

1 to -- when we -- let me back up.

2 When we had the issue of the apparent  
3 low not maintaining their price, we had done our  
4 own study of what we felt the package was worth to  
5 determine what we felt we were going to do about  
6 that. And, in doing that, and I believe -- I  
7 can't speak to what I wasn't there for, but my  
8 expectation, at least with those two companies,  
9 are in the world of wood framing, I don't think  
10 anybody would reject Holmes Lumber or Graves on  
11 their basis of their ability to do the work.

12 Q. My naivete; are you talking about rough  
13 carpentry with these particular carpenters that  
14 you and I are talking about now?

15 A. Yes, it is.

16 Q. Okay. Is that separate? Was there a  
17 separate bidder for finish carpentry?

18 A. Yes, although -- let me add to that:  
19 In my own personal experience, there's times where  
20 guys, carpenters, will go between those trades, so  
21 they're not mutually exclusive. Like I myself was  
22 a finish carpenter, but there are many times where  
23 if we were between projects or something like that  
24 that I would do framing, so they're not mutually

1 called the second low bidder and attempted to  
2 negotiate a contract with them.

3 Q. Okay. The second low bidder was  
4 Holmes?

5 A. I believe.

6 Q. What was the outcome of your attempts  
7 to contract with either of those two?

8 A. The apparent low bidder wouldn't stand  
9 behind their price and gave me another number  
10 which was higher than what their bid day price  
11 was, and at which point I tried to call Holmes and  
12 see if they had any room to move to see if I could  
13 get them down to the or close to the bid number of  
14 the apparent low, which I believe is Graves, but  
15 I'm not 100 percent sure. It was one of  
16 the -- they were in one of those orders.

17 Q. So as far as you're concerned with  
18 those two, were they simply a matter of price?

19 A. No. Holmes and Graves were competent  
20 framing contractors. We knew that. We had  
21 checked. Steve Morley had been doing the framing  
22 estimate. We had done I guess I would call it our  
23 own. Subsequent to the bid we had gone -- done  
24 our own framing estimate as if we were going

1 exclusive. So I know that a lot of those guys can  
2 do both.

3 Q. Did you end up contracting with a  
4 particular contractor for finish carpentry?

5 A. That was Todd Seckerson. And I'm  
6 trying to think what their -- we attempted to.  
7 And what happened there was I think they -- by  
8 that point in the project it was getting known  
9 outside in the construction circles that this  
10 project was in trouble and I had trouble bringing  
11 them to contract.

12 Q. So what happened?

13 A. We decided to self-perform the finish  
14 carpentry work.

15 Q. Of course, what happens with rough  
16 carpentry? You also decided to essentially  
17 self-perform that?

18 A. That's correct.

19 Q. And, as I understand it, you utilized  
20 principally the Deering Group.

21 A. That's correct. TransAmerica had  
22 worked with the Deerings and knew them, I would  
23 say, pretty well.

24 Q. Have you worked with them subsequent to

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1 this project?

2 A. I don't believe we have.

3 Q. I'm sorry?

4 A. No.

5 Q. The Deerings, as I understand it, were

6 a total of seven carpenters.

7 A. Specific numbers I don't know. I

8 believe that they -- if they directly employed

9 seven at the time, my guess is that they knew of

10 several other guys that they had worked with that

11 they could -- that they could call up.

12 Q. So basically they became -- at least

13 the Deering carpenters became employees for

14 purposes of the project, as far as you can

15 understand?

16 A. Yeah. We hired them directly, yes.

17 Q. Now, it took more than seven

18 carpenters, right?

19 A. Yes.

20 Q. In fact, I think it was alluded to that

21 there were 40 or more there at one time or

22 another.

23 A. Again, with the changes, with what

24 occurred on the project, manpower requirements

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1 increased significantly from what we expected.

2 Q. Did you tear into the bid enough as you

3 were doing the contracts to know how many

4 carpenters you expected to be in rough carpentry

5 in this project throughout?

6 A. Yes, I did. Prior to -- in leading up

7 to making this decision, I actually made a

8 resource schedule of how many carpenters I felt we

9 needed to do the project.

10 Q. And how much was that?

11 A. I believe it was between 20 and 24,

12 somewhere in that ballpark.

13 Q. And beyond the Deerings, then, how did

14 you acquire carpenters for the job?

15 A. It was ultimately mostly through the

16 Deerings. We had a -- we had a large meeting at

17 our office where we -- with the number of

18 carpenters in mind, I believe there was another

19 contractor that was in I'm going to call it

20 TransAmerica's orbit and as well as I knew of a

21 couple from my prior experiences, and we called up

22 these carpenters and had a large meeting with all

23 of them, explained the project, and basically

24 asked them if they were interested in working on

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1 it with us. And I remember we had that meeting at

2 our office and that's how we hired the carpenters.

3 And we explained what the rules of the job were,

4 the background checks, the whole thing, and

5 established some sort of a structure to the

6 system.

7 Q. Do you know what you expected to pay

8 for carpentry on this project?

9 A. Yeah. It was -- it would have been

10 based on the prevailing wage requirement that

11 would have been published with the bid.

12 Q. Do you recall what that number was; for

13 example -- I'm not trying to trick you here.

14 Would there have been testimony about 600,000 and

15 then when the Deerings became employees, it was

16 thought that it may have to go to 660 for the

17 rough carpentry?

18 A. I don't remember the specific numbers.

19 To be honest, I don't -- we could look at the bid

20 book. I think that would --

21 Q. Very good. That's fine. And through

22 the course of this, TA had or TransAmerica had to

23 supplement several subcontractors' work?

24 A. Subcarpenters work or --

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1 Q. Subcontractors work. If I said

2 carpenters, I'm sorry.

3 A. Yes. We ended up supplementing the

4 roofer, AAA. We also supplemented Gayle

5 Insulation or Masco. I'm not sure what

6 their -- they're both, I guess, and --

7 THE COURT: What was the name of the

8 last?

9 THE WITNESS: If you look at a truck,

10 it's going to say Gayle insulation, but their

11 parent company, I believe, is Masco, and that's

12 like a larger, national -- I don't know if -- how

13 that system works.

14 THE COURT: Okay.

15 Q. Speaking of that company, by the way,

16 they actually had a policy up against doing

17 background checks; is that right?

18 A. Not against -- they didn't -- they had

19 a policy against releasing them to third parties,

20 and they considered us a third party. And when we

21 reminded them that they had bid this project and

22 that was a requirement of it, it took a little bit

23 of time, but we got them to comply with that.

24 Q. Now, you mentioned Sammie Walker.

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1 A. Yes.

2 Q. The job was just more than they could  
3 handle, right?

4 A. I wouldn't say it like that. What I  
5 would say is that, you know, they were waiting for  
6 the project to progress and by the time that the  
7 work got to them, it was a stack situation. And,  
8 just like the carpenters, bringing on more and  
9 more carpenters, like we had to do, his resource,  
10 you know -- any company has a certain amount of  
11 resources, and they were taxed.

12 THE COURT: Explain what you mean by  
13 "stacked."

14 THE WITNESS: Instead of doing one or  
15 two buildings at a time, you're doing four or five  
16 or six or you're getting all the buildings turned  
17 over to you within days or weeks instead of a  
18 stagger.

19 THE COURT: And expected to start  
20 simultaneously?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Thank you.

23 Q. Now, speaking of the scheduling, you  
24 didn't take part in initial consideration of that

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1 because you weren't there before the bid.

2 A. I was there -- you know, before the  
3 bid, I would say, you know, I can't -- I wasn't in  
4 the room.

5 Directly after the bid, my take on the  
6 situation is that they had roughly planned to do  
7 what was outlined in the project with one  
8 exception is they felt that there was a  
9 possibility that they could get ahead, that we  
10 could get ahead of this schedule. And so I, you  
11 know, reflected in our subcontracts that I wrote  
12 it was a requirement for our subcontractors to be  
13 able to do a little bit better than what the  
14 contract would say.

15 Q. And the idea, as I understand it, was  
16 that they were going to -- they were set to do the  
17 buildings one at a time, right?

18 A. I'm not sure what you mean by that.

19 Q. Well, they're supposed to be able to  
20 complete one, start the next one.

21 A. With certain elements of the -- I'm  
22 going to say complete one piece before you start  
23 the next piece, I would agree with that.

24 But what we did -- again, this goes

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1 back to that labor resource schedule that I put  
2 together to figure out how many carpenters we  
3 would need. I did that with other trades, too, in  
4 general to make sure that we didn't have any  
5 overlaps that would have somebody in four, five,  
6 or six buildings at the same time so that you  
7 could be reasonably assured that with a crew of  
8 some number you could get the work done.  
9 So -- and I did the same thing for the carpenters.  
10 So it was certainly phased. It was logical. It  
11 was a stepped process.

12 And then I would be looking at the  
13 greater picture to make sure that I didn't have  
14 any individual task with -- occurring with the  
15 same group of people that would be expected to do  
16 that work in multiple buildings.

17 Q. Part of the idea, as I understood it,  
18 was that the repetition should bring efficiency;  
19 is that how you understood it?

20 A. There's some -- there is some value to  
21 that, yes. But, again, I would say there's  
22 obviously some outside inputs and factors that  
23 have to be present for that to occur.

24 Q. Switch back to the idea of talking

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1 about the drywaller. Do you recall the bid, the  
2 drywall bid, was 270,000?

3 A. That number sounds familiar.

4 Q. Your company loaned Sammie Walker  
5 \$400,000, correct?

6 A. To be honest, the exact amount of that  
7 loan and that structure I'm not personally aware  
8 of.

9 Q. You didn't have anything to do with it,  
10 sir?

11 A. I was in the room when it was discussed  
12 and the -- I guess the conversations about what we  
13 should do. I wasn't involved in the making of the  
14 deal or the documents that flowed with it. I  
15 don't know.

16 Q. Well, I assume you were consulted with  
17 the idea, as I heard from Mr. Koniewich, that it  
18 needed their people, which is one of the reasons  
19 the loan was made.

20 A. Yes.

21 Q. You had input into that?

22 A. Absolutely. And that's the part I'm  
23 referring to.

24 Q. You did need their people.

1 A. That's right. And we made the  
 2 calculation -- as I said earlier, his needing more  
 3 people wasn't as much a fault of Sammie Walker as  
 4 it was a reality of where the job was at that  
 5 point in time for a lot of different reasons, most  
 6 of which I would say weren't TransAmerica's fault,  
 7 either. But so, you know, removing him from the  
 8 site for not having enough people wasn't going to  
 9 solve any problems. It was only going to have  
 10 fewer people available to do the work.  
 11 Q. Did you make any inquiries about  
 12 replacing them or adding a separate contractor?  
 13 A. I believe we did. We looked into -- we  
 14 talked to a couple of contractors that we're  
 15 familiar with and, again, by a certain point in  
 16 the project the word was out with the  
 17 subcontractor world that this was probably a  
 18 project you didn't want to have a whole lot of  
 19 involvement with.  
 20 Q. When would that have been, when that  
 21 word was out, middle of 2011?  
 22 A. Late, middle to late, you know. I  
 23 don't know. I can't speak for the industry. But  
 24 I can tell you on several occasions when we talked

1 to, like I just indicated, drywaller contractors  
 2 and the finish carpenter contractor, that they  
 3 were hesitant and at least reported to me that  
 4 they were hesitant to get involved.  
 5 Q. Why don't you tell me what problems you  
 6 had with the roofer.  
 7 A. We had a problem of him supplying two  
 8 or three people. Again, if that had been per  
 9 plan, I would say that would be minimally  
 10 sufficient.  
 11 Q. I'm sorry. Did you say two or three?  
 12 A. Yeah. There was a couple people that  
 13 he supplied, as well as he worked sometimes  
 14 himself personally. So, you know, we supplemented  
 15 the roofing for that reason as well as him not  
 16 being a certified PVC installer, and so that was  
 17 ultimately the reason that he got removed from the  
 18 project. And we brought on a certified installer  
 19 and we brought on competent workmen and replaced  
 20 most of his work.  
 21 Q. Who did you use --  
 22 THE COURT: Excuse me. A qualified --  
 23 THE WITNESS: PVC.  
 24 THE COURT: PVC?

1 THE WITNESS: Yeah. The flat roofs on  
 2 this project, we were required to use PVC.  
 3 THE COURT: All right.  
 4 Q. Who did you use to supplement the  
 5 roofing work?  
 6 A. Mr. Williams. Shawn Williams was his  
 7 name. He was a certified, I believe, Carlisle  
 8 installer.  
 9 Q. All right. Did you have to use some of  
 10 your own people to supplement at one time or  
 11 another?  
 12 A. We did. We hired some people that we  
 13 were aware of that were available with good  
 14 roofing experience and generally had them work  
 15 with Mr. Williams.  
 16 Q. Had you been involved in negotiating  
 17 with the roofing company to begin with, the  
 18 subcontract?  
 19 A. Yes, I was.  
 20 Q. Did they represent to you or  
 21 did -- strike that.  
 22 Did you have a discussion with them at  
 23 the time you contracted with them about their  
 24 certification to put this roof on?

1 A. Yes.  
 2 Q. And did they misrepresent that to you?  
 3 A. Ultimately. Ultimately, yes, but it's  
 4 more complicated. Roofing companies have  
 5 proprietary material and they get it from a  
 6 wholesaler or whatever, and some levels of their  
 7 material are available to different levels of  
 8 their contractors. So -- and to use the example  
 9 of Carlisle roof, you can install certain Carlisle  
 10 products if you're a -- I'm going to make a -- but  
 11 some tier of Carlisle installer, okay? I don't  
 12 know if it's tier one or tier four. It goes in  
 13 some version like that. And then in order to  
 14 install other Carlisle products, you have to have  
 15 this additional Carlisle certification.  
 16 So it -- you know, a guy could be  
 17 installing Carlisle work or material every day of  
 18 the week and then run into a different product,  
 19 and he's technically not certified.  
 20 Q. The point is you didn't -- "you,"  
 21 meaning TA, didn't find out about the  
 22 certification problem until, as I understand it,  
 23 about the fall of 2011.  
 24 A. That's correct.

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1 Q. And what happened when you found out  
2 about that?

3 A. We -- well, because he had, like I  
4 said, installed Carlisle material in the past, the  
5 first attempt was -- or maybe it's not Carlisle.  
6 It could have been Firestone, the original  
7 material. But since he had installed that  
8 material in the past, the first attempt was to try  
9 to get him to the manufacturer to say okay, he's  
10 authorized to install material. And that didn't  
11 work.

12 And so ultimately we replaced him and  
13 we replaced every bit of that material.

14 Q. Okay. Would I be correct that none of  
15 those expenses involving the roofing to date is  
16 included in your claim against OSFC?

17 A. That's correct. None of that's in  
18 there.

19 MR. BECKER: As we transition here,  
20 Your Honor, is this a good point for the  
21 mid-morning break?

22 THE COURT: What are we transitioning  
23 to?

24 MR. BECKER: Oh, he's just moving to a

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1 different exhibit.

2 THE COURT: I'm sorry. Yes. That's  
3 fine. We'll be in recess until 10:45.  
4 (A recess was taken.)

5 THE COURT: Back on the record in  
6 TransAmerica Building Company versus Ohio School  
7 Facilities Commission, Case No 2013-00349.  
8 Mr. Barclay, you may proceed.

9 MR. BARCLAY: Thank you, Your Honor.

10 Q. (By Mr. Barclay) Mr. Wilhelm, I'm  
11 going to follow up with a few things that we  
12 already touched on today, just a couple follow-  
13 ups.

14 With regard to the supplementing of  
15 various folks for various parts of the project  
16 that we alluded to generally, did you use any  
17 temporary employment or manpower service groups?

18 A. I don't think we did, although, if we  
19 did, it was one or two guys at most. I'm not sure  
20 that we did. I -- honestly, I don't know.

21 Q. When we talk about Sammie Walker and  
22 you talk about using them in multiple places, was  
23 that in the context of trying to get ahead?

24 A. Well, no. That would -- when that

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1 occurred on the job site at that point in time,  
2 that would be in the context of trying to get the  
3 amount of work done that was available or that had  
4 stacked up to that point in time.

5 Q. Generally that points to some of the  
6 things you testified to Friday about problems with  
7 dimensional issues and things of that nature?

8 A. Those would -- yeah. Those things  
9 would be included in there, yes.

10 Q. So when Sammie Walker had to do  
11 additional work, did you have that work specified  
12 so that you could account specifically for time  
13 and materials for work that they were doing that  
14 was extra work, work that had to be supplemented?

15 A. We tracked -- yes. We had several cost  
16 codes and we tracked certain things, you know.  
17 Some of the problems of the job were unknown to us  
18 at that point in time so we couldn't account for  
19 all of it and it -- you know, in hindsight, you  
20 know, I probably would have liked to have tracked  
21 things a little closer and better, but we didn't  
22 know about all the problems, so it was kind of  
23 hard to do.

24 Q. But you could have tracked it when they

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1 did work on a part of the project that you felt as  
2 the project administrator was extra work that  
3 TransAmerica should not have had to do.

4 A. Except that the volume of it was just  
5 so -- like that list that we looked at. You're  
6 talking -- you know, there could be days where the  
7 majority of the crew is off doing, you know,  
8 fixing this wall over here and putting in the  
9 ceilings of those mechanical closets, you know.  
10 We were directed to do a lot of that stuff, so we  
11 anticipated that that's where it would be  
12 resolved. So when this didn't occur, it put us at  
13 a deficit because we had no way to go back and  
14 recreate it. So I think the level of complexity  
15 was pretty great.

16 Q. You'd probably give me that answer if I  
17 asked you about any of the precise and specific  
18 things that you talked about Friday where you felt  
19 it was a delay because of plans or not getting  
20 information back. Would your answer be the same  
21 in terms of trying to document specifically what  
22 extra work TransAmerica did?

23 A. Well, I would say that, in general, it  
24 would be along that theme. However, when we

1 did -- when we were aware of an issue and we were  
2 doing extra work towards it, we did set up extra  
3 cost codes and we did track costs as best we could  
4 across that. So we made an attempt, but it wasn't  
5 always possible.

6 And, again, I would point to the fact  
7 that we certainly weren't aware of all the issues  
8 at that point in time.

9 Q. Give me an example of what it is that  
10 you did "track," as you say.

11 A. I remember we had set up several cost  
12 codes, primarily in the carpentry, for additional  
13 work. Exactly what all of them were -- I believe  
14 some of them are on that exhibit that we talked  
15 about earlier.

16 We also -- there could be different  
17 levels of tracking where a superintendent might  
18 write in his daily report, things like that, but  
19 those would be examples. A lot of them were in  
20 carpentry.

21 Q. With regard to that extra carpentry  
22 work, did you give notice of a claim about that  
23 work as it was happening?

24 A. Yes, we did.

1 counts and everything.

2 So I would say the estimate that we  
3 relied on at the end of the day was the one that  
4 we put together.

5 Q. You put together based upon your own  
6 evaluation of the work?

7 A. Our own takeoff. I mean, detailed  
8 takeoff and everything, yes.

9 Q. And when you talked about your manpower  
10 resource loading analysis, when did that -- when  
11 did you do that?

12 A. I did that, again, in that same time  
13 period when we didn't come to terms with a  
14 contractor and we were studying the concept of  
15 doing the self-performing the carpentry is when I  
16 did that to establish how many people I believed  
17 we needed.

18 I also -- we were taking into account  
19 the panelization, because that was a key in that  
20 as well. We felt that by doing panelization you  
21 would cut down on the number of hours on site,  
22 because you were essentially ordering the  
23 buildings prebuilt or panelized and then you're  
24 not stick framing in the field. You're erecting

1 Q. You did? An Article 8 notice?

2 A. We sent in -- we sent in numerous  
3 notices regarding the problems that we were  
4 having.

5 Q. All right. And did you make the  
6 Article 8 claim within 30 days of these codings  
7 beginning and occurring?

8 A. We did with the exception of the  
9 drawing issue, because we were -- we were not able  
10 to do that because the drawings were always yet to  
11 be produced and they never then got produced. So  
12 within filing our notices, yes, and the later  
13 notices in the project they came along with claim  
14 pricing attached to them.

15 Q. What carpentry bid did TransAmerica use  
16 in their bid? We're talking about the rough  
17 carpentry.

18 A. Yeah. Well, what happened is I think I  
19 alluded earlier we did our own takeoff. After we  
20 were not able to come to terms with an individual  
21 subcontractor, we had done our own takeoff to,  
22 one, understand where we thought the costs were  
23 and, two, it was detailed enough to do our own  
24 ordering of material. I mean, these were piece

1 wall panels. So you're -- it's a little bit of a  
2 different -- it's a little bit of a different  
3 concept. And we thought very strongly, and I  
4 still feel very strongly, that had we been able to  
5 do that without these changing dimensions, that we  
6 would have -- TransAmerica would have easily met  
7 its carpentry budget with the panelization.

8 Q. And before we leave the resource  
9 loading and then I'll go back to the panelization.  
10 So when you did this resource load, as I  
11 understand it then you would have used the  
12 baseline schedule.

13 A. Yes. We would have -- the input  
14 information to that would have been built off of  
15 the schedule, yes.

16 Q. Okay. So at least at the time you were  
17 working on putting your bid together in terms of  
18 negotiating your contracts and so forth, you were  
19 utilizing the schedule for that purpose?

20 A. That's correct.

21 Q. Okay. Let's talk about the panelizing,  
22 since you brought it up.

23 The original bid information that was  
24 presented in evidence earlier in this case

1 suggested that TA did not favor that. That idea  
 2 changed, then, did it?  
 3 A. I don't know if that was stated prior  
 4 to my being there. And, in fact, to be honest  
 5 with you, I'm unaware of any discussion of  
 6 panelization prior to my coming on. So I would  
 7 say that the panelization idea was one that we had  
 8 come up with.  
 9 Q. When did the contract to do the  
 10 panelization start?  
 11 A. Well, when I had been going through the  
 12 submittal process with Automated Building  
 13 Components, which happens to be in North  
 14 Baltimore, Ohio, which is near where I grew up, I  
 15 asked them if -- I was generally familiar with  
 16 them and asked them if they still did wall  
 17 panelization. And he said -- Mark Wagner, the  
 18 contact there, indicated that yeah, in fact,  
 19 he -- that's a big part of their business.  
 20 So we kind of did an exploratory dive  
 21 into this project in regard -- they already had  
 22 the drawings for the trusses, they already had the  
 23 drawings, so I asked them to get back to me and  
 24 tell me what panelizing these would look like.

1 Q. Now, are we talking about before  
 2 mobilization and work begins?  
 3 THE COURT: Excuse me. Excuse me. The  
 4 question was when.  
 5 THE WITNESS: Oh, when?  
 6 THE COURT: When did the panelization  
 7 contract begin, and we never got to that.  
 8 THE WITNESS: I'm sorry.  
 9 THE COURT: If you know.  
 10 THE WITNESS: Yeah. It would have been  
 11 the same time that I was negotiating the trusses.  
 12 We --  
 13 THE COURT: And when was that?  
 14 THE WITNESS: Generally -- well,  
 15 trusses had to be submitted -- it would have been  
 16 generally January.  
 17 THE COURT: 2011?  
 18 THE WITNESS: Of 2011.  
 19 THE COURT: Okay. Thank you.  
 20 THE WITNESS: It was from the onset.  
 21 Q. Okay. That's when you were negotiating  
 22 with them. When did you actually contract with  
 23 that panel company to produce the panels?  
 24 A. It was right up front. It would have

1 been -- the exact date, I mean, we could look at  
 2 our purchase order, but by memory, I believe that  
 3 the one purchase order was issued by -- for the  
 4 trusses. It may actually have the additional  
 5 scope on that purchase order. If not, it was a  
 6 very short time afterwards that the panelization  
 7 purchase order would have been sent.  
 8 Q. And, if you recall, was that  
 9 panelization order for the entire project?  
 10 A. Yes. The only things that  
 11 weren't -- the only things that weren't panelized  
 12 were the bulkheads just because of the, you  
 13 know -- you would be building those bulkheads at a  
 14 point in time where getting them into the building  
 15 would be problematic. And then I think that's it.  
 16 Even minor interior walls were panelized.  
 17 Q. Was that ever -- that production ever  
 18 stopped when you got into having issues with your  
 19 dimensions and so forth?  
 20 A. It was for a short period of time, and  
 21 I let the team know that we had stopped  
 22 panelization.  
 23 Q. So how much was produced and provided  
 24 to you before you could stop it?

1 A. Well, that's a wide-ranging question.  
 2 The problem we had is that the issues  
 3 continued. They didn't have -- they weren't like  
 4 early issues that stopped, then we could  
 5 incorporate them. The issues continued across the  
 6 whole length of the project.  
 7 So what really happens, and I think I  
 8 alluded to the other day, is with all these  
 9 changes, what you really get is a past condition  
 10 of a building that's already been built or  
 11 panelized or erected in the field and a present  
 12 condition and a future condition. So we never  
 13 escaped that. There wasn't a clear, bright,  
 14 defining line where there were issues and there  
 15 were no issues. There were always issues.  
 16 Q. So did panels have to be redone by the  
 17 panel company?  
 18 A. Yes. What we did is if we got ahold of  
 19 a change early enough to get that to ABC and have  
 20 it reflected in later buildings, it absolutely  
 21 was. So yeah, if we had a change where we knew  
 22 about it, and you can see records of that, we  
 23 would get that to Automated and they would  
 24 incorporate that into future designs.

1 Q. So I guess my point is, did you track  
 2 the panelling that you had to redo that was at  
 3 additional cost to TransAmerica?  
 4 A. I think that's one of the things we  
 5 attempted to track. I'd have to look at the cost  
 6 codes to see what we listed out.  
 7 Q. And did you make any claim in the  
 8 project by change order, by notice under Article 8  
 9 or claim under Article 8, about that while it was  
 10 happening?  
 11 A. Yes. The --  
 12 Q. When?  
 13 A. The notices that start right off in  
 14 February I indicate that there's going to be  
 15 rework and I indicate that we're having trouble  
 16 with shop drawings and all those things.  
 17 Q. You reference the February 17th letter  
 18 where you're more or less talking, correct me if  
 19 I'm wrong, about anticipatory problems.  
 20 A. Yes.  
 21 Q. My question is once it occurred that  
 22 the panels had to be redone or adjusted in some  
 23 way, did you track that?  
 24 A. Yes. We attempted to. But, again, my

1 answer would be that it was -- that was every day,  
 2 all day there was examples of that stuff.  
 3 Q. I'm sorry. You said, "every day all  
 4 day"?  
 5 A. Yeah. I mean, they're -- as this thing  
 6 went on, as we saw earlier, there's dimensions  
 7 that go across these buildings both directions  
 8 that get changed repeatedly. And every time you  
 9 do that, that's -- that's, you know -- somebody's  
 10 out there making that happen.  
 11 So what we're alluding to in regards to  
 12 did we put you on notice on that, yes. When those  
 13 things started being realized we kept repeatedly  
 14 asking for the drawings and corrections and I kept  
 15 stating it was because we needed them to  
 16 coordinate with later trades. And then at some  
 17 point we expected that to happen in a PR and the  
 18 drawings were even held out there that they were  
 19 going to be issued in a PR. And then, when that  
 20 didn't happen, we put everybody on notice that  
 21 these changes weren't coming in PRs. And I think  
 22 one of the first lines of that letter is drawings  
 23 haven't been issued and here's what's happening.  
 24 Q. And generally when are you speaking

1 about now?  
 2 A. October.  
 3 Q. October of '11?  
 4 A. Yeah.  
 5 Q. So by that time, by October of '11, had  
 6 there been panels that had to be redone in some  
 7 fashion?  
 8 A. Sure. But it's ongoing, yeah.  
 9 Q. So your -- the bills that were  
 10 submitted by this company will reflect additional  
 11 charges as they were being done?  
 12 A. Well, most of the modifications  
 13 that -- no. There's not going to be bills from  
 14 ABC for -- I'm going to say significant, if there  
 15 are any. I don't recall. There are going to --  
 16 if a panel gets reworked, that's typically done in  
 17 the field.  
 18 Q. In the field?  
 19 A. Yes. If we get the design change to  
 20 them, then they implement that and there's --  
 21 Q. And who's doing that? In the field who  
 22 does that adjustment of the panel?  
 23 A. Our carpenters.  
 24 Q. All right. Did you track that work?

1 A. Again, yes. We had -- again, I  
 2 keep -- what I'm up against is they're -- we set  
 3 up at different times different cost codes for  
 4 carpenters, and I believe one of those would be in  
 5 there, but I'd have to look at the record of what  
 6 we track.  
 7 Q. Building permits: It's my  
 8 understanding that you've indicated you were not  
 9 aware of any problems with building permits on  
 10 this project until very late in the project.  
 11 A. That's correct. But let me -- I'll add  
 12 some detail for you. We -- there were different  
 13 points in the project, like when they told me they  
 14 needed the truss drawings stamped, that I would be  
 15 aware of that part of the permit. But at the  
 16 whole picture of the permits, no, I was not aware  
 17 of it.  
 18 Q. What work needed to be torn out and  
 19 redone as a result of problems with the building  
 20 permits for TA, or TransAmerica?  
 21 A. Frankly I don't know. I know that  
 22 there's work that I would associate with being  
 23 delayed permitwise, but the specifics of what the  
 24 inspector was telling Lend Lease or SHP, I don't

1 know.

2 Q. And the delays you're referring to are  
3 the problems that you've already discussed about  
4 not knowing when inspectors are going to be there,  
5 not being able to be there while the inspections  
6 were going on, that sort of thing?

7 A. Well, I don't know what the rules of  
8 Court are, but I was shocked at the end of the  
9 project when we were doing discovery for this to  
10 find out there was at least some periods of time  
11 where they were apparently unable to get  
12 inspections or they -- that there were the level  
13 of problems that were apparent in -- with the  
14 permits. I was not aware of that.

15 Q. So up to today, even after looking at  
16 all the information that's developed throughout  
17 this lawsuit, you don't have any particular work  
18 that you've discovered that TransAmerica had to do  
19 or redo as a result of some problem with building  
20 permits; would that be correct?

21 A. Well, I -- the problem is is how do you  
22 go back and track something that you weren't aware  
23 of, like I was saying earlier.

24 So my problem is we suffered these

1 That's what I suspect.

2 Q. However, you can't bring any specific  
3 evidence to us today; is that right?

4 A. Because I was unaware of it when it was  
5 going on, that's right.

6 Q. Did you have any difficulty with other  
7 prime contractors on the project?

8 A. You know, there's always some bumping  
9 elbows on projects, but as a whole, the only -- we  
10 did have some difficulties with the electrical  
11 contractor. There was some trenches early in the  
12 project that inhibited our movement around the  
13 project site. Again, we let everybody know about  
14 that.

15 I think a lot of the problems with  
16 contractors come in as what they're being asked to  
17 do via changes that they're being asked to make.  
18 So there's like a second and third tier of some of  
19 these changes which I think were largely  
20 unanticipated.

21 Q. So were you able to identify problems  
22 other than delay with regard to the electrical  
23 contractor?

24 A. Most of the stuff I'm referring to

1 delays, we didn't know about these delays, and so  
2 I don't know how to quantify. I don't know, you  
3 know. I suspect -- my opinion is that a lot of  
4 the rework that we were put out there to do right  
5 down to the framing --

6 MR. BARCLAY: Your Honor, I'm going to  
7 just ask that he not talk about his opinion about  
8 things.

9 THE COURT: No. I'm going to let him  
10 finish the question. Go ahead.

11 A. That I suspect that some of the rework  
12 we were doing was a fool's errand. I think we  
13 were out there doing things to keep our -- to be  
14 busy while they couldn't get inspections. I think  
15 we were put to tasks that had no actual merit to  
16 the job. I think we were out there spinning  
17 hours. I think that's what was happening.

18 Q. Okay. Let me get this straight: You  
19 think they had you out there spending hours making  
20 changes that were related to the building permit  
21 problems that they were having with inspectors?

22 A. I -- yes. And I think at times the gas  
23 pedal for how fast the project moved was whether  
24 they could get inspections and permits or not.

1 probably ended up on the punch list that we were  
2 forced to do. And we notified everybody of what  
3 we're doing.

4 In regards specifically to the  
5 trenches, yes, we did. We actually put together  
6 pricing at one point for some of the delays that  
7 we had encountered early in the project from the  
8 electrical contractor around not having enough  
9 temporary electric and things like that. And that  
10 would have been at a similar time to the trenches,  
11 and I believe that would have been on there. And  
12 we actually submitted pricing for that and it was  
13 not accepted.

14 Q. I'm sorry. What?

15 A. It was not accepted.

16 Q. Did you make any claim against any  
17 other prime?

18 A. No, we did not.

19 Q. In the claim information -- I thought I  
20 heard it alluded to, but I'm just going to ask  
21 you: Did you have input with Mr. McCarthy on  
22 using the measured mile as it related to the  
23 carpentry production figures?

24 A. That was a conversation that we had

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1 with counsel and Mr. McCarthy, yes.  
2 Q. All right. So -- I'm sorry. So you  
3 had -- I'm not asking you what it was. Did you  
4 have input into that process?  
5 A. Sure. Yeah.  
6 Q. All right.  
7 A. I was there at the meeting, yes.  
8 Q. And do you know why that was not used  
9 for drywall or painting?  
10 A. The -- my understanding is that it  
11 wasn't used for those other scopes. We looked at  
12 it, and I believe the opinion of our counsel and  
13 Mr. McCarthy was --  
14 MR. GREGORY: We would -- Your Honor,  
15 we don't mind the inquiry into the general  
16 subject, but always -- I mean, the lawyer tells  
17 the client and vice versa would be off limits and  
18 we ask that you restrict it.  
19 THE COURT: Yes.  
20 MR. BECKER: Excuse me. It's not going  
21 to be off limits when there's a third party in the  
22 room. They named Mr. McCarthy.  
23 THE COURT: Well, I think Mr. McCarthy  
24 was engaged as an expert in those discussions for

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1 the benefit of the client, so I think I understand  
2 Mr. Gregory's point. And just don't -- don't  
3 state anything that you said to Mr. Gregory or any  
4 of his attorneys or what they said to you.  
5 THE WITNESS: Okay.  
6 THE COURT: You can discuss -- and I  
7 understand, Mr. Gregory, you're okay if he has a  
8 general discussion of what they were trying to  
9 accomplish.  
10 MR. GREGORY: Yes, Your Honor.  
11 THE COURT: Okay.  
12 A. The exact composition of the claim as  
13 to what we calculated was generally the result of  
14 meetings with myself and -- well, actually it  
15 wasn't just myself, but was with TransAmerica, our  
16 counsel, and Mr. McCarthy.  
17 Q. Regarding the schedules, is it true  
18 that you agreed to recovery schedule 1 and 2?  
19 A. I know we signed off on the schedule, I  
20 believe, for recovery 2, on the change order for  
21 just that schedule.  
22 So recovery 1 -- I might be mixing the  
23 two up, but I think that was just -- I'm not sure.  
24 That came in -- I believe that's when the things

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1 get resequenced and things like that. But I don't  
2 think there was a change order for that.  
3 Q. And the documents show that you did  
4 sign recovery schedule 3 in November of 2011. Do  
5 you recall that?  
6 A. I think we signed the schedule, not  
7 necessarily a change order for that schedule.  
8 Q. Okay. And what was the circumstances  
9 of that? Why did you sign that schedule?  
10 A. One, it's a requirement to be paid. In  
11 order to be paid on the project you have to sign  
12 the project schedules.  
13 Q. And you did advance input into the  
14 subject matter for that schedule, did you not?  
15 A. Yes, but I also believe it was attached  
16 to a change order request or a pricing request.  
17 It had significant cost associated with it.  
18 Q. Supervision on this case: Had you  
19 worked with the supervisor before?  
20 A. I had worked with Don Ball before.  
21 Q. All right. Mr. Ball was there from the  
22 beginning of the project until the summer of 2011?  
23 A. That's correct.  
24 Q. He was asked to leave at that time, was

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1 he not?  
2 A. I wouldn't state it that way. He was  
3 having -- and I don't know what the issues were.  
4 He was having a medical issue that was affecting  
5 his ability to even be at work.  
6 Q. To even be at work?  
7 A. Yeah.  
8 Q. Had you noticed a problem with his  
9 performance?  
10 A. Not up until the medical condition that  
11 occurred. And we addressed that, I think, fairly  
12 quickly. I was personally concerned for him. I  
13 mean, I knew Don for many years, and --  
14 Q. Did Lend Lease or anyone from Lend  
15 Lease express concern over his performance to you?  
16 A. No, I don't think so. Not that I  
17 recall. I think we got ahold of that pretty  
18 quickly. I mean, it was -- I mean, it wasn't  
19 something that went on for a long time. It  
20 was -- it was pretty severe. I was -- in fact,  
21 one day we even took him home. I didn't think he  
22 was able to be driving.  
23 Q. You admit -- would you agree with me  
24 that particularly when you go -- start working on

1 self-performing things such as rough carpentry,  
 2 supervision becomes more important.  
 3 A. Yeah. The structure that we set  
 4 up - and this goes back to that meeting that I was  
 5 alluding to earlier - is that Steve Morley,  
 6 project manager for TransAmerica, would act to me  
 7 as more or less the carpentry subcontractor. So  
 8 he was going to handle most of the deals, you  
 9 know, as much as possible. He had a framing  
 10 background as well. And the Deerings would act as  
 11 site management.

12 And so our structure of self-performing  
 13 carpentry, we were taking into account the  
 14 additional management requirement that that would  
 15 take. But, yes, it would take more management.

16 Q. So you were basically trusting  
 17 basically Jim Deering to be your main carpentry  
 18 supervisor?

19 A. No. We were -- Steve Morley  
 20 was -- think about a subcontractor's setup.  
 21 You've got a project manager typically from that  
 22 subcontractor and then you've got his field  
 23 personnel, his superintendents.

24 So what we set up was Steve Morley

1 would meet, and he was on site when we started the  
 2 carpentry most of the day and would get the crews  
 3 started and things and meet with the Deerings and  
 4 act very much like that subcontractor project  
 5 manager and would relay information to me if there  
 6 were issues, just like that kind of model.

7 Q. On the project you were actually  
 8 located in the TransAmerica trailer that I  
 9 understand was on the blind side.

10 A. Yes.

11 Q. And you spent most of the time managing  
 12 from the trailer?

13 A. More than I like to. I normally like  
 14 to get out and walk the sites a little bit more,  
 15 but -- I always made it a point to get to the deaf  
 16 site, but yeah. I mean, I'm sorry, to the blind  
 17 site. But yeah, most of my time on the site was  
 18 on the deaf site on the -- in the trailer or --

19 Q. I understand that Brad Miller replaced  
 20 Mr. Ball.

21 THE COURT: Wait a minute. I'm all  
 22 confused. Where was the trailer that you worked  
 23 in?

24 THE WITNESS: The main trailer -- we

1 had a main trailer at the deaf site, which is  
 2 where Lend Lease's trailer was.

3 THE COURT: Off of Morse Road?

4 THE WITNESS: Yeah, off of Morse Road.

5 THE COURT: Okay.

6 THE WITNESS: And then we also had  
 7 another trailer on the blind side, just like Lend  
 8 Lease did, like a secondary trailer, a little  
 9 smaller where Jim Deering could work out of. So  
 10 both sites had a trailer and we had a place to  
 11 work out. But like my -- the site at the deaf  
 12 site was a little bit longer, had an office in the  
 13 back, you know. You get those. That's where I  
 14 was.

15 THE COURT: Okay. Thanks.

16 Q. The work in this case, did TransAmerica  
 17 do any poor quality work in this case?

18 A. You know, do mistakes happen? Yes.  
 19 But I definitely would not categorize this project  
 20 as a result of TransAmerica's mistakes, no.

21 Q. All right. Not a result of  
 22 TransAmerica's mistakes, but you admit they did  
 23 make mistakes.

24 A. Sure. I mean, you know, you put that

1 much effort into that many men on a job, there's  
 2 going to -- somebody's going to mess up, yeah.

3 Q. So you're saying, from your  
 4 perspective, it was no more mistakes than you  
 5 would more or less expect in a size of this  
 6 project?

7 A. No, I wouldn't say that. There was a  
 8 lot more rework and things that I would expect.  
 9 What I'm saying is I don't believe TransAmerica  
 10 made any more mistakes than would be normal.

11 I would also add that we, in the course  
 12 of putting our claim together, very specifically  
 13 accounted for things that I think would be  
 14 attributable to TransAmerica. So I think, one,  
 15 we've accounted for that and, two, I don't think  
 16 TransAmerica -- we as a company committed more  
 17 mistakes than, you know, a project of this size  
 18 and scale would -- you would anticipate.

19 Q. You say you "accounted" for that. Did  
 20 you --

21 A. Yes.

22 Q. -- personally work on that?

23 A. I helped Mr. McCarthy, yes.

24 Q. All right. And what input did you

1 provide to him?

2 A. There would be issues that he would ask  
3 me about, you know, what happened. And if it was  
4 the case I would let him know that there might be  
5 some responsibility for that and then I would  
6 provide him with as much backup as we had on that  
7 issue. So --

8 Q. Can you provide me with any specific  
9 topics that came into your thinking as to what you  
10 told Mr. McCarthy TransAmerica was responsible  
11 for?

12 A. I'm trying to -- I believe Mr. McCarthy  
13 would have -- would have that information. I  
14 can't think of any off the top of my head.

15 I would say, though, that the same  
16 degree of unknown about what we were dealing with  
17 would -- when he and I did this was early. It  
18 would be with the -- earlier in the claim than our  
19 discovery.

20 So I personally believe that there  
21 would be essentially credits or costs that were  
22 taking away from our claim that may in fact be  
23 attributable to the permit situation that we're  
24 talking about. So I'm not sure that those errors

1 were truly TransAmerica errors. I may have  
2 attributed them to that because of not knowing  
3 anything else, but I would also point out at the  
4 time that the original claim was put together that  
5 our knowledge of the whole situation wouldn't be  
6 complete.

7 Q. You discussed the issue of not being  
8 able to be at inspections --

9 A. That's correct.

10 Q. -- is that correct?

11 A. Yes.

12 Q. Did you complain about that?

13 A. We did in meetings, yeah.

14 Q. And in those meetings, Madison Dowlen  
15 was there at times?

16 A. He was at most, if not, you know, a  
17 majority of the project meetings, yes.

18 Q. And you had included him on some  
19 e-mails that I saw. So you'd felt like you could  
20 at least communicate with him, correct?

21 A. Yeah. Well, to be honest, I got  
22 chastised by Lend Lease for doing that, but I  
23 decided I was going to do that anyway. I felt  
24 that the OSFC needed to know what was going on.

1 Q. But the inspection in your mind, as I  
2 understand your testimony, was a pretty big deal.

3 A. Yeah. It was well-known on the project  
4 that Lend Lease and SHP were the only ones to meet  
5 with the inspector.

6 Q. But you did not specifically go to  
7 Mr. Dowlen or e-mail him or anything and bring  
8 that to his attention?

9 A. My belief, he was in agreement with it  
10 because, like I said, it was an ongoing, known  
11 issue on the project.

12 Q. When you say, "ongoing" and "known,"  
13 are you saying that in some of those meetings  
14 where he was in attendance you raised the  
15 complaint and he basically didn't have a response?

16 A. What I'm referring to is -- no. He  
17 never -- you'll see that -- I don't know that he  
18 talked very much during the meetings at all. I  
19 think you could probably go through the project  
20 record and assemble a paragraph at most.

21 What you'll see is in the presence of  
22 Madison Dowlen, TransAmerica was strictly informed  
23 of the procedure that would be implemented on the  
24 job site regarding inspections, and we were

1 chastised multiple times for not following that or  
2 what Lend Lease perceived as our not following  
3 that.

4 Q. And you say, "chastised multiple  
5 times." So you're telling me that someone at Lend  
6 Lease chastised you orally --

7 A. There's e-mails out there.

8 Q. In e-mails? Okay. That you were not  
9 supposed to direct any communication to OSFC?

10 A. To the OSFC. I was told that orally,  
11 but I continued to do it. In regards to  
12 inspections, yes. It's in the project record that  
13 they absolutely told us that we were not to attend  
14 those meetings.

15 Q. All right. But you did not seek any  
16 clarification of that inspection issue with anyone  
17 at OSFC directly, correct?

18 A. Well, no. At the time I didn't -- you  
19 know, I'm unaware of the permit status and I don't  
20 think it's that big of a deal. Is it annoying at  
21 the time? Yeah, it's annoying. But I'm not aware  
22 that the reason they're keeping us out of it is to  
23 mask this greater issue. So at the time it's not  
24 as big of a deal as I would view it now. So no, I

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1 didn't -- you know, with all the other issues we  
2 had out there, that one wasn't at the top of the  
3 list at the time.  
4 Q. Okay. And that's your supposition now  
5 is that the reason they were keeping you away from  
6 inspections is that they didn't want you to know  
7 that they had fallen behind on certain permit  
8 problems?  
9 A. That's my belief.  
10 Q. You don't have any specific evidence to  
11 that effect?  
12 A. No, but why else do you keep the  
13 general contractor away from the inspector, you  
14 know? Why do you schedule them and you don't tell  
15 us when he's coming? It impacts our work. You're  
16 always the mouthpiece of the inspector. It serves  
17 no other purpose than that, I think.  
18 Q. Talk just a few minutes about punch  
19 list items. You agree with me that when you look  
20 at the list of punch list items on these twelve  
21 buildings and they're in the 6, 7, 800s, that's a  
22 lot of punch list items on these buildings, is it  
23 not?  
24 A. Yes, it is.

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1 Q. Is it your testimony here today that  
2 Lend Lease is not responsible for any of those  
3 punch list problems?  
4 A. You asked Lend Lease? I assume you  
5 mean TransAmerica.  
6 Q. Pardon me?  
7 A. You said Lend Lease. Do you --  
8 Q. I'm sorry. TransAmerica is not  
9 responsible.  
10 A. Well, certainly any contractor  
11 completing a scope of work is going to have a  
12 punch list.  
13 I do believe that, as we've -- I've  
14 testified here in the last couple days that  
15 there's a lot of work that made its way onto the  
16 punch list. We've shown that the pending changes  
17 were put on the punch list. You had multiple  
18 subsequent contractors come through these  
19 buildings and do significant amounts of work, and  
20 then all that work just magically appears on our  
21 punch list.  
22 So no, I absolutely do not think that  
23 the work on the punch list is representative of  
24 TransAmerica's responsibility. I think it's

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1 representative of the amount of damage that got  
2 caused to these buildings.  
3 Q. And your counsel showed you some  
4 correspondence with Lend Lease and others in the  
5 project about specific problems that you  
6 identified or were caused by other trades on your  
7 work that were part of those punch lists?  
8 A. Yes.  
9 Q. Did you keep track of time and  
10 materials where you were asked to go back in and  
11 fix those problems?  
12 A. I believe we established a punch list  
13 cost code, yes.  
14 Q. I'm sorry. You established?  
15 A. A punch list cost code, something to  
16 track punch list work by, yes.  
17 Q. And how did you go about doing that?  
18 Strike that.  
19 Did you do that for each building?  
20 A. The guys would note what building they  
21 were in and what they were working towards. So  
22 yeah, it would be by building.  
23 Q. And do you know where that exists in  
24 your claim?

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1 A. I believe it would be in the -- in the  
2 cost reports.  
3 Q. With regard to the roofing problems,  
4 your counsel showed us a number of pieces of  
5 correspondence regarding that. TransAmerica took  
6 the position that they didn't have any liability  
7 with regard to the roofing problems that were  
8 identified; is that correct?  
9 A. What do you mean by "liability"?  
10 Q. Well, not your responsibility or your  
11 subcontractors' responsibility for any leakage  
12 problems that were found in that roof, those  
13 roofs.  
14 A. We believe, as I stated earlier, that  
15 the leaking is occurring due to ice damming as far  
16 as we are able to tell.  
17 Q. So the answer to my question is that's  
18 not TransAmerica's fault, right?  
19 A. Okay.  
20 Q. Well, I mean, that's the position  
21 TransAmerica has taken from the beginning of time  
22 that that issue was raised with them; isn't that  
23 true?  
24 A. No. I think what we've asked is to be

1 present at any destructive testing, and we've gone  
 2 every time that we've been aware of anything. So  
 3 no, I think our position would be, as far as we're  
 4 currently able to ascertain, we believe this is a  
 5 problem of ice damming, but if there's going to be  
 6 further exploration we would like to be there.  
 7 Q. And you and/or others in your company,  
 8 along with your chosen consultant, had an  
 9 opportunity to go out and look thoroughly at those  
 10 roofs, right?  
 11 A. We looked at a few --  
 12 MR. GREGORY: Objection as to whatever  
 13 the consultant did or didn't do, which is  
 14 obviously his knowledge.  
 15 If it's as to what he did, I have no  
 16 objection, Your Honor.  
 17 THE COURT: I'm going to overrule it to  
 18 the extent he knows. He's just asking him for his  
 19 knowledge, what happened with the roof inspections  
 20 by either him or an expert, if he knows.  
 21 A. So can you -- what's the question?  
 22 THE COURT: You want to read the  
 23 question back, since I ruled on an objection?  
 24 MR. BARCLAY: Sure. Thank you.

1 THE REPORTER: (Reading) "Question:  
 2 And you and/or others in your company, along with  
 3 your chosen consultant, had an opportunity to go  
 4 out and look thoroughly at those roofs, right?  
 5 THE COURT: And read his answer up to  
 6 the objection.  
 7 THE REPORTER: "Answer: We looked at a  
 8 few -- "  
 9 A. Yeah. We looked at a few on two  
 10 occasions, but prior to any -- prior to any, I  
 11 guess, reports from the OSFC or any conclusions by  
 12 anybody's expert, it was the initial -- initial  
 13 look into the roofs, I guess.  
 14 Q. All right. And as you evaluated those  
 15 roofs, you were out there a couple times yourself?  
 16 A. I was, but -- I was out there I believe  
 17 on at least two different occasions, yes.  
 18 Q. And did you draw a conclusion as to who  
 19 was responsible, if anyone?  
 20 A. I did not.  
 21 Q. The plans that were discussed in great  
 22 detail in your direct testimony, you indicated  
 23 that you provided the folks with which you worked  
 24 closely, like the carpenters, with their own

1 notebooks of updated drawings and corrections?  
 2 A. It would be the lead guys.  
 3 Q. The lead guy, like Mr. Jim Deering?  
 4 A. Yes.  
 5 Q. And other than delays in getting the  
 6 information, once the information was there, your  
 7 carpenters and so forth were able to do their  
 8 work, were they not?  
 9 A. I wouldn't agree with that. The  
 10 information often changed and the information on  
 11 multiple times, we would get it, we would go to,  
 12 let's say, implement it, we'd go to lay it out or  
 13 something, and we'd find out that it didn't work  
 14 or something wasn't aligning or there was  
 15 something else.  
 16 So, as a simple statement, I would say  
 17 no, that was not always the case.  
 18 Q. The bid set of plans with all the  
 19 corrections that were made, whether you want to  
 20 call them RFIs, addenda, or whatever you want to  
 21 put as a label onto the updates, were kept all the  
 22 time in the Lend Lease trailer, correct?  
 23 A. The -- yes.  
 24 Q. You had access to that?

1 A. I had access to the bid set of  
 2 drawings, which is the same drawings that we had,  
 3 that had the postings on them by ourselves and  
 4 other contractors.  
 5 But, as I said before, I don't think  
 6 through much of the first part of the project  
 7 there was much emphasis on keeping those accurate,  
 8 because everybody was expecting a set of drawings  
 9 to replace them.  
 10 So I know that there are multiple  
 11 dimension changes that don't get updated in those  
 12 drawings because, if they were known, they would  
 13 be -- you would produce them. So they were kept.  
 14 We did have access to them, but they -- I would  
 15 say that they were just as wrong as the set we  
 16 had.  
 17 Q. With all the trouble that you've  
 18 described here Friday and this morning that you  
 19 had with the plans and dimension problems with the  
 20 plans, did you ever formally ask that this project  
 21 be stopped until the plans got finished?  
 22 A. I believe we did, or at least we talked  
 23 about it. I mean, we made -- I don't want to get  
 24 pinned to an exact number, but I'll bet you there

<p style="text-align: right;">Page 381</p> <p>1 are more than a dozen, probably approaching two  2 dozen, requests from us for corrected drawings.  3 Q. Was it pretty clear to you by the end  4 of the summer in 2011 that you weren't going to  5 get them?  6 A. I was starting to worry that we  7 weren't, although -- although, at that point, a  8 certain amount of damage is being done as well as  9 we're still being promised that we're going to get  10 these now in a PR. So my expectation at that  11 point is that there's going to be some final  12 accounting of it.  13 Q. One point about the carpenters: As I  14 understand it, they were -- the rough carpentry  15 people were off the project by February 2012,  16 correct?  17 A. By February -- to be honest, the  18 exact -- we started -- when we started wrapping up  19 the framing, we obviously had to start laying  20 people off. But the exact dates of who went when,  21 I don't know.  22 THE COURT: Do you know a month and  23 year?  24 THE WITNESS: February sounds about</p>	<p style="text-align: right;">Page 383</p> <p>1 project?  2 A. Not in conversations that I've been  3 involved with.  4 Q. All right. So you don't recall any  5 enhancement to the motivations that you were told  6 to present to your workers as of December 2011?  7 A. No.  8 Q. You've mentioned quite a few times here  9 in the last couple days the number of problems you  10 had with the way you were personally treated --  11 A. Yes.  12 Q. -- and some of your other folks were  13 personally treated by I guess mostly you were  14 talking about the Lend Lease people.  15 A. That's correct.  16 Q. Did you complain directly to the Ohio  17 School Facilities Commission about that?  18 A. At one point we did.  19 Q. And who did you complain to?  20 A. We put it in a formal letter. I  21 believe Madison Dowlen would be copied on it.  22 Q. Okay. Was any action taken in one form  23 or another?  24 A. Not that I'm aware of.</p>
<p style="text-align: right;">Page 382</p> <p>1 right, just simply by the progression of the  2 project.  3 THE COURT: Of 2012?  4 THE WITNESS: Yes. But that's probably  5 getting late for the bulk of the guys. It  6 depends.  7 Are we -- if we're talking about a lead  8 guy or we're talking about one of the -- just a  9 carpenter, you know, I probably started turning  10 carpenters loose when drywall starts. So it just  11 depends who we needed and what we were asking for  12 them to be doing.  13 Q. (By Mr. Barclay) The owner of  14 TransAmerica, Mr. Hadley, got involved at the end  15 of 2011, I see; is that correct?  16 MR. GREGORY: Objection. That's --  17 THE COURT: Sustained.  18 MR. GREGORY: -- mischaracterizes the  19 testimony.  20 Q. (By Mr. Barclay) Did he get involved  21 directly with you by the end of December 2011?  22 A. No, not that I -- no.  23 Q. All right. Were two project managers  24 like yourself ever suggested at TA for this</p>	<p style="text-align: right;">Page 384</p> <p>1 Q. You talked about temporary doors, that  2 being a problem.  3 Did you actually install the temporary  4 doors?  5 A. TransAmerica did, yes.  6 Q. All right. But someone else supplied  7 the temporary doors that you put on?  8 A. No. These were -- these were field  9 fabricated. They were plywood and two by fours  10 with bungee straps.  11 Q. And that was what TransAmerica decided  12 to use for temporary doors?  13 A. We were asked -- temporary doors were  14 nowhere in our scope. When the issue with the  15 doors were supplied by others or came up, in order  16 to at least close in the buildings temporarily,  17 TransAmerica built and installed temporary doors  18 on the buildings. And, again, the intent was only  19 that they would be temporary and, I mean, I'm  20 talking a month.  21 Q. It's been alluded to about the  22 additional buildings that were represented on the  23 schedule that were never constructed.  24 Do you recall that?</p>

<p style="text-align: right;">Page 385</p> <p>1 A. Yes.</p> <p>2 Q. Is it fair to say that there weren't</p> <p>3 any predecessor or successor activities tied to</p> <p>4 those dorms that were never going to be</p> <p>5 constructed?</p> <p>6 A. Anything I know about that study would</p> <p>7 have come from Mr. McCarthy and his work on the</p> <p>8 schedules.</p> <p>9 Q. All right. Interior walls for this</p> <p>10 project, were they prefabbed?</p> <p>11 A. Most of them, yes.</p> <p>12 Q. And how were they actually installed?</p> <p>13 Were they dropped in by crane or how did that</p> <p>14 work?</p> <p>15 A. No. They -- most of the interior walls</p> <p>16 would have been set prior to the trusses, and then</p> <p>17 the minor I'm going to call them like the closet</p> <p>18 partitions or the closet walls, you're dealing</p> <p>19 with a wall that's two foot, maybe four foot or</p> <p>20 six foot, and those -- those could be carried in</p> <p>21 through doorways and things.</p> <p>22 THE COURT: How were the interior walls</p> <p>23 carried?</p> <p>24 THE WITNESS: By hand. Oh, you mean --</p>	<p style="text-align: right;">Page 387</p> <p>1 A. Yes.</p> <p>2 Q. It's an electrical conduit.</p> <p>3 A. Yes.</p> <p>4 Q. How did you determine where the mistake</p> <p>5 was here -- well. Strike that.</p> <p>6 Was a mistake made here?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. All right. And how was it determined</p> <p>9 who made the mistake?</p> <p>10 A. Well, this -- the problem with this is</p> <p>11 the floors are poured earlier in the project, so</p> <p>12 all the undergrounds are done and are stubbed up.</p> <p>13 So now when you have dimensional changes occur</p> <p>14 after that, those things are literally set in</p> <p>15 concrete. So any change of a wall or other</p> <p>16 subsequent modification to the layout of that</p> <p>17 building, those conduit aren't going anywhere.</p> <p>18 Now, if you're alluding to is it</p> <p>19 possible that those conduit weren't put in the</p> <p>20 right place in the first place, sure. But with</p> <p>21 the number of dimensional changes across these</p> <p>22 buildings, I don't know how you'd know that.</p> <p>23 Q. Well, from your standpoint when 1019</p> <p>24 was put up there, it was supposed to show that it</p>
<p style="text-align: right;">Page 386</p> <p>1 THE COURT: Material.</p> <p>2 THE WITNESS: -- the bigger ones?</p> <p>3 THE COURT: Yeah.</p> <p>4 THE WITNESS: They would be set by a</p> <p>5 machine or by hand.</p> <p>6 THE COURT: I think he asked earlier if</p> <p>7 they were set by crane. There was some machine</p> <p>8 other than a crane that you used?</p> <p>9 THE WITNESS: Grade-All.</p> <p>10 THE COURT: Okay. Thanks.</p> <p>11 Q. I'm going to show you what was marked</p> <p>12 TA-1019. You testified about that earlier.</p> <p>13 A. Yes.</p> <p>14 Q. The device that's sticking through the</p> <p>15 wall there, what is that?</p> <p>16 A. The conduit?</p> <p>17 Q. Right. Electrical?</p> <p>18 A. Yes.</p> <p>19 MR. BECKER: Craig, you said wall.</p> <p>20 It's floor, isn't it?</p> <p>21 THE COURT: That's what I thought. I'm</p> <p>22 glad you cleared that up, Mr. Becker.</p> <p>23 Q. Sorry about that. Obviously it's a</p> <p>24 floor.</p>	<p style="text-align: right;">Page 388</p> <p>1 was the result of dimensional changes, right?</p> <p>2 A. Yes, and I believe it was.</p> <p>3 Q. But you really don't know if that's</p> <p>4 completely erect, right?</p> <p>5 A. Well, the reason I believe that is the</p> <p>6 RFI, where the wall in particular comes from, was</p> <p>7 one that there was no detail for that gets hand</p> <p>8 sketched into the RFI after the fact. So one of</p> <p>9 the questions about the RFI was the dimensional</p> <p>10 thickness of those walls and how they laid out.</p> <p>11 So I believe that that's a good example of a</p> <p>12 dimensional problem.</p> <p>13 Q. I'm going to show you what's been</p> <p>14 marked previously and you testified about</p> <p>15 previously, TransAmerica 1051, and there's 2 and 3</p> <p>16 here if either will help you answer my question.</p> <p>17 This was discussed in terms of how this</p> <p>18 was very peculiar and had a lot of caulk involved,</p> <p>19 right?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. What happened here?</p> <p>22 A. What happened were we -- we were</p> <p>23 required, and I believe this comes in from a punch</p> <p>24 list, to caulk joints and studs where two panels</p>

1 meet.

2 There was also, I believe, something in  
3 the specifications or the drawings that did have  
4 us caulking at the top and bottom of the walls,  
5 like I indicated previously. But what it turned  
6 into was us having to caulk everywhere, and I  
7 think that was -- was nowhere should that have  
8 occurred.

9 Q. And you attributed that to dimensional  
10 problems?

11 A. No. I attributed this to, frankly, the  
12 toxic atmosphere of the job. I just think they  
13 made us do this.

14 Q. They simply made you do more caulking?

15 A. Yes.

16 Q. Did you keep track of your time and  
17 materials doing this?

18 A. This would have been one of the items  
19 captured in the punch list, because I think this  
20 comes in under punch list.

21 Q. I'm sorry.

22 A. This caulking activity I believe is  
23 introduced to TransAmerica as a problem as being  
24 one of those items on punch lists.

1 the basics of all of these topics for extra work?

2 A. We -- we came up with these -- yes.

3 I -- it's blurry on my screen, but I have the  
4 original in here if you give me a second to find  
5 it.

6 THE WITNESS: Mike, what --

7 MR. BECKER: There you go.

8 Q. Does that help you?

9 A. Yes. There you go. What happened when  
10 we were discussing, again, this point was, one,  
11 that we were discussing about how some of these,  
12 again, what seemed like small issues just turned  
13 into these big dollar items, how does that happen.

14 And what I did is I went through my  
15 notes, the field notes, you know, I'm sure to some  
16 extent cost reports, all the information that we  
17 had in those binders - that was some of where this  
18 came from - and assembled a list. And, again, it  
19 says partial list, because I'm not claiming this  
20 is exhaustive of it, and I state that. So that's  
21 where those items come from are they're gleaned  
22 from the field notes and binders and all that  
23 stuff.

24 Q. So from your perspective, when you

1 Q. Okay. In fact, the need to do all of  
2 the caulk, you're saying, was part of the punch  
3 list?

4 A. Yeah. That picture is after the punch  
5 list price list, on that scope of work.

6 Q. Does that show that there's some sort  
7 of problem with construction that necessitated the  
8 caulk?

9 A. No.

10 Q. You're just saying they made you do  
11 caulk and it didn't need to be done?

12 A. Yes.

13 Q. Now, I'm probably going to show my  
14 ignorance here, but let's look at TransAmerica  
15 1430.

16 MR. BECKER: No, Craig. We're not  
17 going to look at that.

18 Q. I'm sorry. We're going to look at 734,  
19 right?

20 MR. BECKER: Yeah. Do you need it?

21 MR. BARCLAY: I guess I do.

22 Q. My apologies. Look just briefly at  
23 734, for me, sir.

24 Are you saying that you came up with

1 pulled this information, each of those topics  
2 includes extra work that you believe TransAmerica  
3 should not have had to do here?

4 A. Yes. And this would be, again,  
5 assembled after the fact.

6 Q. And you indicated this was not allowed  
7 to be produced as part of change order pricing?

8 A. Blocking in particular was something  
9 that was always argued in the trailer as being  
10 included. It was just some feature of carpentry  
11 that just was supposed to be done.

12 And I kept arguing that look, you know,  
13 I would agree that we have the miscellaneous  
14 blocking that should have reasonably been inferred  
15 by the bid documents, but these things changed so  
16 much that all this other stuff that now comes  
17 in -- and you'll never find this on a drawing or  
18 anything, this is all stuff that's required in  
19 order to get the end product done that the scope  
20 has just increased. It's just -- it's gotten  
21 bigger.

22 Q. You referred particularly to the corner  
23 blocking. Are you saying that all of these topics  
24 were somehow told to you could not be addressed in

1 a change order?  
 2 A. Maybe it's better to say they weren't  
 3 addressed in a change order. This would be,  
 4 probably, a list of things that would be included  
 5 in an exhaustive change order for all of the  
 6 changes, you know, that didn't occur.  
 7 Q. While these things were going on, all  
 8 of these topics that you felt were not TA's  
 9 ultimate responsibility, did you keep track of  
 10 time and materials and so forth on these so you  
 11 could say exactly how much time and effort it took  
 12 to get them done?  
 13 A. Again, this was only done -- this was  
 14 done after the fact when we went back and looked  
 15 at all the things.  
 16 Q. Did you ever request a copy of the  
 17 posted plans that were kept in the Lend Lease  
 18 trailer?  
 19 A. As -- as far as when?  
 20 Q. At any time. You said there was a full  
 21 set kept in the Lend Lease trailer. Did you at  
 22 any time say I would like exactly what you have,  
 23 but I want it in my trailer so it's easier for me  
 24 to handle?

1 A. That -- did I request that? No, I  
 2 never requested that.  
 3 THE COURT: Excuse me. I have a  
 4 question while you're on that topic.  
 5 Was that -- that posted set at the Lend  
 6 Lease trailer, was that changed on a daily basis  
 7 or weekly basis or monthly basis? I mean --  
 8 THE WITNESS: The basis was that all  
 9 contractors would come to this one location and  
 10 update these drawings regularly with all these  
 11 changes. But, like I keep saying, the problem is  
 12 is that for most, you know, a good half of the job  
 13 or better, everybody involved, including Lend  
 14 Lease, thinks that these drawings are going to get  
 15 replaced. So as far as posted drawings go, I  
 16 would argue that these things are not current.  
 17 And then the other problem is that  
 18 for the same reason we were asking for updated  
 19 drawings, because the architectural don't show  
 20 any changes to the structurals and vice versa, the  
 21 drawings themselves can't be really utilized,  
 22 that -- so nobody's bothering to update dimensions  
 23 because it doesn't mean anything on that set of  
 24 drawings. So --

1 THE COURT: Okay.  
 2 Q. (By Mr. Barclay) Was there a procedure  
 3 by which TransAmerica was asked to sign off on  
 4 posted plans regularly?  
 5 A. We were required, because it was part  
 6 of the general conditions, to do our updating of  
 7 them.  
 8 To my knowledge, we never signed any  
 9 off as -- and we certainly never would have agreed  
 10 or made any representation that we agreed with the  
 11 content of them.  
 12 Q. Were you asked to do so and you simply  
 13 refused?  
 14 A. No. We always complied.  
 15 Again, we were -- if our task was to  
 16 make the drawings correct, we couldn't do that.  
 17 We didn't have the correct dimensions and the  
 18 correct things to do that with. So the best we  
 19 could do was paste the information that we were  
 20 given which, again, wasn't complete.  
 21 Q. Do you remember the discussion where we  
 22 went through very carefully the fire-rated wall  
 23 change orders?  
 24 A. Uh-huh.

1 Q. They were --  
 2 THE COURT: Is that a yes?  
 3 A. I'm sorry. Yes.  
 4 Q. They were Joint F-25 and F-26. Do you  
 5 recall going through all of that?  
 6 A. Okay. I'll take your word for the  
 7 exhibit. Yes.  
 8 Q. I'll show them to you. I just wanted  
 9 to get the orientation here.  
 10 If we look at Joint F-25, and I'm  
 11 referring to the second page, did you type in the  
 12 information in the blocks, or someone from  
 13 TransAmerica did, as I understand.  
 14 A. I did.  
 15 Q. All right. And it appears what you  
 16 were saying is that you were seeking \$47,943, and  
 17 that was reduced to 35,473.82; is that right?  
 18 A. That's correct.  
 19 Q. And then you were asking for an  
 20 adjustment to the contract time of ten days, and  
 21 then did you type in per building?  
 22 A. Yes. That was on the original sheet.  
 23 Yes.  
 24 Q. All right. So they gave you, at that

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1 point on 25, no time?  
2 A. Well, what they said was additional  
3 time to be determined per delay claim resolution.  
4 Q. Okay. So your expectation was that  
5 that was going to be dealt with in another change  
6 order?  
7 A. At that point we had -- that's -- can I  
8 see that document again?  
9 Q. Sure.  
10 A. So, to be honest, let's see --  
11 THE COURT: Where's the date?  
12 THE WITNESS: Yeah. That's what I'm  
13 after. In November? This is --  
14 Q. November 6th, 2011.  
15 A. Right. Right. This is beyond, again,  
16 where we had already --  
17 THE COURT: Wait a minute. I'm looking  
18 at November 4th, 2011, a change order date typed  
19 in. Are we looking at some other date now?  
20 MR. BARCLAY: I'm sorry. I said 4th.  
21 THE COURT: 6th, you mean the 4th,  
22 right?  
23 MR. BARCLAY: I said 6th. It's the  
24 4th, Your Honor.

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1 THE COURT: All right. I just wanted  
2 to make sure. Thank you.  
3 A. My expectation as of this point and at  
4 this point in the project is that there's going to  
5 be some -- I'm not really in control of that.  
6 What I'm expecting is there's going to be some  
7 contractual remedy, whether it be a change order  
8 or we go ahead with a claim as indicated in  
9 the -- in the notes there. I'm not sure at this  
10 point in time exactly what the contractual remedy  
11 to this is going to be.  
12 Q. And there was a second change order. I  
13 just pulled the top sheet off of -- marked F-26  
14 that you also talked about, and we'll get a date  
15 on that one. You tell me what it is.  
16 A. 29th of November, 2011.  
17 Q. And you signed that one --  
18 A. Yes.  
19 Q. -- on 12-2 of '11; is that right?  
20 A. Yes.  
21 Q. All right. If you look at the second  
22 page, once again, is that information that you  
23 filled out that's in the blocks?  
24 A. Yes. We're still asking for ten days

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1 per building, yes.  
2 Q. All right. And I see no notations on  
3 there. Was that granted?  
4 A. I don't believe it was.  
5 Q. All right.  
6 A. But we're still -- I'm still expecting  
7 that the time is being dealt with per additional  
8 either change order or claim at this point.  
9 Q. Okay. If these are -- if these are not  
10 granted, don't the change orders look like 25,  
11 where they cross that out?  
12 A. I suppose, but I don't believe they  
13 ever -- they ever added these days.  
14 THE COURT: Mr. --  
15 Q. The third page --  
16 THE COURT: Mr. Barclay, what is the  
17 exhibit number on that again, please? Joint  
18 exhibit?  
19 MR. BARCLAY: It's Joint --  
20 THE COURT: Is that 26?  
21 MR. BARCLAY: That's 26.  
22 THE COURT: Thank you.  
23 Q. And then on the third page of that same  
24 exhibit deals with drywall; is that right?

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1 A. Yes.  
2 Q. And you asked for five days per  
3 building on that one?  
4 A. Right. And that's -- that's at that  
5 point in time. That would be as of the point in  
6 time that we're talking about this change order.  
7 Q. You can't tell from looking at this  
8 whether or not that was granted; is that what  
9 you're telling me?  
10 A. I guess I don't know your -- I didn't  
11 grant these days. I asked for these days.  
12 Q. All right. My point is you don't know,  
13 based on what this shows, whether or not those  
14 days were granted.  
15 THE COURT: Can we see the rest of the  
16 document?  
17 THE WITNESS: I don't -- to answer your  
18 question, I don't believe these days were granted.  
19 MR. BARCLAY: Okay.  
20 THE COURT: Well, I -- wait a minute.  
21 Wait a minute.  
22 MR. BARCLAY: Is there something --  
23 THE COURT: I want to see the rest of  
24 this come in while it's fresh. Isn't there a

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1 space down below that says approved, not approved?  
 2 MR. BARCLAY: There it is.  
 3 THE COURT: All right. Thank you.  
 4 A. Part of my unsure -- the reason I'm not  
 5 completely sure is there are examples where there  
 6 are things struck after my signing them. So I  
 7 don't -- I don't know what -- I'd have to go back  
 8 and look at whether these dates are granted or  
 9 not, and I suspect they weren't.  
 10 THE COURT: Mr. Wilhelm, are you saying  
 11 that you signed the change order that then went to  
 12 signature for someone else who changed what you  
 13 signed? And if you're saying that, how do you  
 14 know that?  
 15 THE WITNESS: At least on one occasion,  
 16 because when it came back to me it was modified,  
 17 and that was --  
 18 THE COURT: And how do you know it was  
 19 modified?  
 20 THE WITNESS: They initialled it. They  
 21 struck it and initialled it.  
 22 THE COURT: Okay.  
 23 Q. (By Mr. Barclay) Mr. Wilhelm, are you  
 24 aware whether or not TransAmerica ever protested

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1 the fact that \$3,000 a day for liquidated damages  
 2 was inappropriately assessed when it should have  
 3 been two?  
 4 A. I'm aware that we protested that, yes.  
 5 Q. And do you know how far along in this  
 6 matter we were when that happened?  
 7 A. I believe we -- there would actually be  
 8 several occurrences of that protest, and one would  
 9 have been to Lend Lease directly early on. And  
 10 then I believe we were well along in this process  
 11 when we brought it up again.  
 12 THE COURT: Mr. Barclay, we're at 12  
 13 noon sharp. I don't know if this is a good time  
 14 for a break or you want to continue with this  
 15 line --  
 16 MR. BARCLAY: I have much more, Your  
 17 Honor.  
 18 THE COURT: I'm open either way if you  
 19 want to continue.  
 20 MR. BARCLAY: No, I'd rather get my  
 21 bearings. I can do it more efficiently if I do it  
 22 right after lunch.  
 23 THE COURT: Okay. That will be fine.  
 24 We're in recess till 1:00.

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1 Mr. Wilhelm, you're still under oath.  
 2 Do not discuss your testimony.  
 3 -----  
 4 Thereupon, a luncheon recess is taken  
 5 at 12:02 p.m.  
 6 -----  
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1 Tuesday Afternoon Session  
 2 May 26, 2015, 1:00 p.m.  
 3 -----  
 4 THE COURT: Back on the record in  
 5 TransAmerica Building Company versus Ohio School  
 6 Facilities Commission, Case No 2013-00349.  
 7 Mr. Wilhelm, you're still under oath.  
 8 Mr. Barclay, you may proceed.  
 9 MR. BARCLAY: Thank you, Your Honor.  
 10 -----  
 11 CONTINUED CROSS-EXAMINATION  
 12 BY MR. BARCLAY:  
 13 Q. Mr. Wilhelm, let me show what we  
 14 previously talked about, TransAmerica exhibit --  
 15 MR. BARCLAY: What did I do?  
 16 THE COURT: It's a purple haze.  
 17 MR. BECKER: We have no signal on our  
 18 monitors.  
 19 THE COURT: Right. Thank you.  
 20 Q. Mr. Wilhelm, I'm showing you --  
 21 THE BAILIFF: Just one second.  
 22 Q. I'm showing you what we previously  
 23 marked as --  
 24 THE COURT: Excuse me, Mr. Barclay.

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1 Were we on the record when we went back on?  
2 THE BAILIFF: Yes. Then I paused it to  
3 try to fix that issue.  
4 THE COURT: Thank you.  
5 Q. Show you what we previously marked as  
6 TransAmerica Exhibit 419, and it discusses the  
7 baffles and the -- basically the problems with the  
8 bathrooms and showers that you alluded to.  
9 Do you recall that, sir?  
10 A. Yes, I do.  
11 Q. All right. What I want to know is how  
12 many of these showers were involved, because I  
13 wasn't clear. You said there were 30, but then  
14 total was 60. How many did you have to redo or  
15 work on that you felt that was inappropriate for  
16 you to have to do that?  
17 A. There were -- okay. The first thing is  
18 the solution or the design, as it were, changed  
19 several times. So you have some showers that  
20 adjoin a separation wall. Some showers that  
21 don't. Some showers -- and I think most showers  
22 adjoin a partition wall. And so you've got these  
23 different rating requirements at each one.  
24 Here what he's talking -- this is when

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1 they're talking about having two layers. Like I  
2 said earlier, there was one iteration where behind  
3 the shower there might be only one layer of  
4 drywall and now he's indicating that he's talking  
5 about a location where there's two layers of  
6 drywall.  
7 THE COURT: Mr. Barclay, can I get the  
8 exhibit number on this? I can't see it on the  
9 screen.  
10 MR. BARCLAY: TransAmerica 419.  
11 THE COURT: Sorry about that.  
12 Q. All right. Sir, my question was  
13 directed -- and maybe you've answered it in your  
14 own way but I didn't understand. Earlier you said  
15 there were 60 showers essentially I thought you  
16 said and that many of those, if not all, had to be  
17 in some form reworked by you guys.  
18 A. Yes.  
19 Q. Is that true, all 60?  
20 A. Well, there -- we didn't count in that  
21 number the ones that are in the common area. So  
22 in all of these dorms there's a common area  
23 bathroom that was not impacted by a rating system  
24 because they're in the common area. They're

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1 beyond the partition for the sleeping areas.  
2 So -- and we didn't include those. So generally,  
3 speaking, we were saying that there are seven  
4 bathrooms in a high school and there are three  
5 bathrooms in an elementary dorm.  
6 Q. Thank you. You've partly alluded to  
7 what you had to do, but did you have to actually  
8 tear out drywall and showers in some fashion among  
9 that 60?  
10 A. Yes. Yes, we did. We --  
11 Q. How many?  
12 A. The exact number I don't know because,  
13 again, you get into a situation where you've got  
14 multiple different dorms, different rating  
15 conditions depending on where that bath sits in  
16 relation to these other walls, and then you have  
17 the added complexity of at some point during the  
18 process of that something changes, and so now you  
19 again have these three other conditions of work  
20 that's in place, work that's taking place, and  
21 work that will take place. And so you try to  
22 correct the work that will take place with the fix  
23 as you now understand it, and then you go and  
24 modify the work that was put in place.

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1 So some of those, like in earlier  
2 buildings -- let me summarize it by this: Blind  
3 dorm 5, being the high school 5, was probably  
4 built and taken apart more than, let's say, one of  
5 the last dorms. Does that make sense? Because by  
6 then things have changed. So a lot of -- not  
7 everything, but a lot of things that you do in 5  
8 something happens later and then you come back to  
9 5 and have to replace that.  
10 Q. So in these reworks, the tear outs, did  
11 you actually keep an accounting of that so you  
12 knew exactly what work was being done?  
13 A. Yes. We tried to. A lot of the work  
14 that we're talking to specifically with this issue  
15 was as a result of PR 18, which we were directly  
16 to do T&M. So we were keeping time and material  
17 records.  
18 Q. When we go into the documents, we're  
19 going to see cost coding that talks about having  
20 to redo showers and drywall?  
21 A. Yes. And we eventually, on the shower  
22 issue, I believe that --  
23 Q. All right. Thank you. I'm still  
24 unclear on the fabrication of the walls topic;

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1 take you back there for a minute.  
2 I believe you indicated that you  
3 started the process of actually contacting and  
4 contracting in January of '11.  
5 A. I said roughly. When I approached  
6 Automated, I approached them first about the  
7 trusses, and then as an outcropping of that  
8 conversation I asked them about doing panelized  
9 walls as well.  
10 Q. And so how long did it take to get  
11 those panels in your possession?  
12 A. We had panels -- there would  
13 be -- there was certainly some build time, but as  
14 I recall, getting panels to site, there was a  
15 backup, as stated earlier.  
16 We did at one point have to suspend  
17 production of panels, and so when we resumed, we  
18 had to ask Automated to get us a lot of panels  
19 quickly. The exact time from when I ordered to  
20 when they arrived on site, I don't recall, but I  
21 also don't recall that that was much of an issue  
22 beyond after we got caught back up from when we  
23 stopped.  
24 Q. Did there come a time when you were

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1 able to refabricate; in other words, did they ever  
2 have to redo the sizing that they were using?  
3 A. There was a couple of places  
4 where -- I'm going to say roughly mid way through  
5 the project where field input did go back to  
6 Automated. Specifically I think the upper dormer  
7 wall I think we did some I guess corrective  
8 measurements or whatever and got that back to  
9 Automated.  
10 And I believe that front wall, I think  
11 it's at least in high school dorms, but  
12 potentially in elementaries. I don't recall.  
13 There was a change with how it was framed that  
14 made it back to Automated. So yeah, there was  
15 information going back to Automated to make  
16 changes as we knew them.  
17 Q. All right. And some of that was  
18 prospective; in other words, you were able to  
19 catch some of it before it was being sized  
20 incorrectly?  
21 A. Some of it, yes.  
22 Q. Okay. As far as your superintendents  
23 were concerned -- and part of it's my problem with  
24 terminology, but did you have a superintendent for

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1 each site?  
2 A. We generally had one superintendent,  
3 and that would be over everybody fieldwise, and  
4 then we had one foreman, I would say, per site.  
5 Q. You had a superintendent over everybody  
6 from, let's say, from the beginning forward?  
7 A. It was Don Ball initially and then Brad  
8 Miller and then Bruce Bowman.  
9 Q. Let me show you what hopefully --  
10 THE BAILIFF: I'm not sure what the  
11 problem is. We've never had this happen before.  
12 THE COURT: Just our luck. Is it going  
13 to be worth while to take a short recess?  
14 THE BAILIFF: I think. I think we  
15 should do that.  
16 THE COURT: We'll be in recess. We're  
17 going to see if we can get somebody from IT to  
18 come up and fix whatever technical difficulties  
19 we're having.  
20 (A recess was taken.)  
21 THE COURT: Back on the record in  
22 TransAmerica Building Company versus Ohio School  
23 Facilities Commission, Case No. 2013-00349.  
24 Before the last recess we've

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1 experienced some technical issues with the  
2 displaying of exhibits in the case, and we had  
3 hoped maybe we could get someone up from IT or  
4 from the vendor representative to solve our  
5 problem, but that's been unsuccessful.  
6 So what we're going to do for the  
7 balance of the day is we're going to do it the  
8 old-fashioned way. We're going to use hard-copy  
9 exhibits, and we'll probably initially realize  
10 just how cumbersome that was in light of the last  
11 few days of testimony with all the advantages of  
12 technology, but I'm sure we'll get back in the  
13 swing pretty quick.  
14 In the morning -- assuming we don't  
15 have a resolution yet today, in the morning  
16 Mr. Gregory, your office is going to send over  
17 support staff to install displays or I guess you'd  
18 say displays upon which you can project your  
19 exhibits much the way we've been doing, but  
20 independent of the overall system. And I  
21 understand, assuming -- I mean, I realize this is  
22 all sort of off the cuff, but assuming you can do  
23 it, we're going to install two monitors or two  
24 displays so that everybody in the courtroom can

1 have a clear view of what's being put in front of  
2 the witness, and I think we're going to continue  
3 to see if we can get IT in here to fix this thing  
4 or a representative in here. But, until then,  
5 we'll just proceed in that fashion.

6 Mr. Becker, if you -- if your office  
7 has an overhead projector that you would like to  
8 use to tie into this display system we're going to  
9 use - I'm not sure how all that happens. I assume  
10 it's a matter of cabling - I assume you'll furnish  
11 that. Otherwise we'll just have to see how it  
12 goes.

13 Mr. Gregory?

14 MR. GREGORY: And they would not need  
15 their own monitor. We're happy to share a monitor  
16 or tie into the Elmo or tie into whatever  
17 equipment the State might be interested in using.

18 THE COURT: Does that capture what we  
19 discussed? Anybody want to make any comments?

20 MR. GREGORY: No, Your Honor.

21 THE COURT: In that event, Mr. Barclay,  
22 you may proceed the old fashioned way.

23 MR. BARCLAY: Thank you, Your Honor.

24 Q. (By Mr. Barclay) With regard to the

1 foundations and things like that, but I don't  
2 recall exactly when the last panels were showing  
3 up.

4 Q. All right. Thanks. With regard to  
5 the -- you answered my question about the  
6 superintendents, but you indicated there were  
7 foremen on each site?

8 A. Yes.

9 Q. Who were they?

10 A. Those were the Deerings.

11 Q. Pardon me?

12 A. Generally for carpentry it would be the  
13 Deerings, Jim and Gerry Deering. And for other  
14 I'll call it tasks, especially later in the  
15 process as we moved away from carpentry, we would  
16 generally have a lead guy in charge of whatever  
17 operation.

18 Q. So you didn't have a separate  
19 superintendent that managed all the other  
20 activities?

21 A. That's correct. We had generally one  
22 superintendent.

23 MR. BECKER: I'm sorry. I didn't hear  
24 the end of that.

1 fabrication, I'm still trying to decide, and you  
2 may not have the answer, but for what period of  
3 months did you actually continue to receive the  
4 paneling?

5 A. Off the top of my head, I don't recall  
6 specifically, but it would have been -- let's see.  
7 There's documents -- I have some schedules that I  
8 put together with Automated for the building  
9 panels, but it would be in my file somewhere. But  
10 generally we're talking pretty early in the  
11 project. I think we mobilized in, I'm going to  
12 say, you know, roughly spring of -- spring and  
13 into early summer of 2011. It was earlier in the  
14 project.

15 Q. That you had received essentially all  
16 the paneling?

17 THE COURT: I think his original  
18 question was what period of months did you  
19 continue to receive paneling. That was the  
20 original question, right?

21 A. I guess what I'm struggling with is I  
22 don't recall when the last panels started showing  
23 up. I recall when the first panels would start  
24 showing up because it's roughly, you know, after

1 THE WITNESS: I said that's correct.  
2 We generally had one superintendent.

3 MR. BARCLAY: Your Honor, it may be  
4 easier --

5 MR. GREGORY: If it's something that  
6 came from our exhibits, if you just show it to  
7 us --

8 MR. BARCLAY: Your Honor, I'm going to  
9 show the witness TA-443.

10 THE COURT: Okay.

11 MR. BARCLAY: -- an October 7, 2011,  
12 letter that he signed to Clay Keith.

13 Q. You may recall talking about that  
14 Friday.

15 A. Yes, I do.

16 Q. All right. That refers to scheduling  
17 analysis and a recovery plan, does it not?

18 A. It does.

19 Q. All right. And what software did you  
20 utilize to manage that, to put that together?

21 A. Well, we didn't have the functioning  
22 Primavera program that Lend Lease did or their  
23 scheduling consultant, so what I did is literally  
24 sketched out -- and it was attached. That was

1 this letter and there was a notice letter and  
 2 there was backup to all of that of the same date,  
 3 and it was attached to their -- what I did was  
 4 literally hand sketched the schedule, I guess,  
 5 kind of the old fashioned way, kind of like we're  
 6 doing now, and literally put the bar charts out on  
 7 a piece of paper and indicated their relationships  
 8 and what would change or what I proposed those  
 9 changes would be.

10 I believe I also indicated that it  
 11 should be put into Primavera to verify the  
 12 results.

13 Q. So that was a full result of your own  
 14 analysis?

15 A. It was at the time, yes.

16 Q. Without a specific software package?

17 A. That's right. I mean, we -- we have  
 18 Primavera, it's just without having the Primavera  
 19 works, we would get the paper schedules from Lend  
 20 Lease, but we didn't have the functioning program  
 21 from Lend Lease to be able to make any  
 22 modifications or changes to. So what I'm left  
 23 with is dealing with paper, so --

24 Q. Okay.

1 A. I believe it was, yes.

2 Q. And on that it discusses, among other  
 3 things, the fact that there are, I believe, nine  
 4 building roofs that are not complete.

5 A. He indicates start dates for, yes, nine  
 6 buildings.

7 Q. From your standpoint at that time, was  
 8 that accurate?

9 A. You know, I don't know. I'd have to go  
 10 back and look at our records. But I would note on  
 11 here that he's also indicating that the  
 12 subsequent -- the successor activities have  
 13 started and/or are completed. So he's indicating  
 14 that the work has moved past these roofs.

15 Q. Okay.

16 THE COURT: He's indicating --

17 THE WITNESS: That the work has  
 18 progressed, moved past these roofs.

19 THE COURT: Okay. Thank you.

20 Q. Thank you, sir. Next I'm going to show  
 21 you TA-520.

22 MR. BARCLAY: For the Court's benefit,  
 23 it's a December 6, 2011, letter to Mr. Wilhelm  
 24 from Clay Keith.

1 MR. BARCLAY: I apologize, guys. I  
 2 don't have a copy of it with me right now. This  
 3 is from Lend Lease to Mr. Wilhelm.

4 THE COURT: Is there an exhibit number?

5 MR. BARCLAY: Yes. I just marked it as  
 6 Defendant's Exhibit J. Your Honor, I'm going to  
 7 ask him to identify it.

8 THE COURT: Is it in your book here, do  
 9 you know? Oh, that's right. These aren't marked,  
 10 are they?

11 MR. BARCLAY: No, sir.

12 THE COURT: Would it be under --

13 MR. BARCLAY: It's a Lend Lease --

14 THE COURT: That's all right. Go  
 15 ahead.

16 MR. BARCLAY: From Clay Keith to  
 17 Mr. Wilhelm dated October 11, 2011.

18 Q. I'm going to ask you if you can  
 19 identify that for the record.

20 A. Yes. I recognize this, yes.

21 Q. And what is it, sir?

22 A. It is a 96-hour notification regarding  
 23 roofing work from Clay Keith.

24 Q. Was that received by you, sir?

1 THE COURT: May I see that,  
 2 Mr. Barclay, just a second? Thank you.

3 Q. I believe you also discussed this on  
 4 Friday, but could you take a look at it and  
 5 identify it for us, just to be sure?

6 A. Yes. This is the -- this is the  
 7 five-day notification of liquidated damages.

8 Q. All right. Does it relate to the roof  
 9 also?

10 A. It does.

11 Q. And it also relates to some further  
 12 activities with drywalling, I believe; is that  
 13 correct?

14 A. Yes. He also -- it's based off of  
 15 recovery schedule 3, which he indicates was  
 16 created with TransAmerica's input. And it was,  
 17 but it was also -- our input was also that there  
 18 was additional cost with that schedule, which was  
 19 not approved.

20 Q. All right. Did you actually provide  
 21 your additional cost estimates for recovery  
 22 schedule 3?

23 A. Yes. I believe I did, yes.

24 Q. And do you recall how much was

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1 involved?

2 A. Not off the top of my head. I believe

3 it's something we've looked at. It was -- it

4 would generally be -- there was a couple that kind

5 of run together. If I was looking at it, we

6 could --

7 Q. Okay.

8 MR. BARCLAY: His roofing notes. Go

9 ahead. You take a look at it. We have other

10 copies here.

11 I've marked it K, Your Honor.

12 MR. MADIGAN: Are there any other

13 documents that came with it?

14 THE COURT: Which one is marked K?

15 MR. KASAI: What he just gave you.

16 MR. MADIGAN: It's the start of -- I'm

17 trying to --

18 MR. BARCLAY: Pardon me, Your Honor.

19 I'm just making sure that this document that I'm

20 trying to introduce is properly before the other

21 side.

22 MR. MADIGAN: Okay. We got it. We got

23 the answer. Okay.

24 THE COURT: So is this Defendant's

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1 Exhibit K I'm looking at? It's entitled, "Roofing

2 Field Notes," and it has a Bates stamp number

3 Trans003277 is the first page and Trans003282 is

4 the last page, and I assume everything

5 sequentially in between?

6 MR. BARCLAY: As far as I know, Your

7 Honor, that's correct.

8 THE COURT: Okay.

9 Q. (By Mr. Barclay) Mr. Wilhelm, I'm

10 going to hand you what we've marked as Defendant's

11 Exhibit K with the heading, "Roofing Field Notes,"

12 and I'd ask you to leaf through it and, if you

13 can, please, identify it.

14 A. Okay. These are -- I believe that's

15 what they're labelled, "Roofing Field Notes."

16 These would not have been made by myself.

17 Q. I'm sorry. They were made by yourself

18 or not?

19 A. They were not made by me.

20 Q. Okay. Do you know who made them?

21 A. I suspect --

22 THE COURT: Do you know --

23 THE WITNESS: No. There could be one

24 of a couple people.

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1 Q. How did they get in your computer? As

2 you see, they have Bates stamps from TransAmerica.

3 A. I don't know that this was in my

4 computer. You mean computer -- specifically in my

5 computer or in our --

6 Q. That's how it was represented by your

7 counsel.

8 A. Okay. Then it would have been scanned

9 in at the trailer. If it was in my field

10 computer, it would have been scanned in at the

11 trailer. Or did you get these from our file

12 production?

13 Q. Yes. I'm assuming it was some type of

14 production that we received from your counsel.

15 A. Okay. If it was just in our file

16 production, we preserved -- when we demobilized

17 from the site with -- at the advice of our

18 counsel, we literally preserved everything in

19 those trailers. They went in boxes and those

20 boxes were ultimately made available. So I'm

21 assuming that's where this gets picked up.

22 Q. Can you say whether you've ever seen

23 that collection of field notes?

24 A. The bound binder, no. But -- well, I

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1 remember seeing some of the pictures, but not with

2 any kind of notes or comments. But --

3 Q. Did you have -- I'm sorry. Go ahead.

4 A. But the -- like what's shown as the

5 spiral binder --

6 Q. Did you have a role in authorizing or

7 providing someone to go evaluate the roofs on

8 these buildings?

9 A. We did that, yes.

10 Q. You say, "we did that." I mean, I'm

11 sorry, is this something --

12 A. I'm sorry.

13 Q. -- that was done through --

14 A. "We" refers to --

15 Q. -- counsel's office, as far as you

16 know?

17 THE COURT: One at a time.

18 A. I'm sorry. I guess I'm referring to

19 you, "we" generically as TransAmerica. We did go

20 and evaluate the conditions of the roofs in order

21 to see what rework and what other work there might

22 be that we needed to fix.

23 Q. All right. And can you say through

24 what period of time that occurred?

1 A. It would have been after we removed AAA  
2 or maybe even actually a little before we removed  
3 AAA, somewhere in that time period, and the exact  
4 time period of that I don't recall, so --

5 Q. To your knowledge, then, are we talking  
6 about some independent roofing consultant or  
7 someone that worked for TA?

8 A. It would have been someone who was  
9 ultimately working for us on the project, yes.

10 Q. But you can't identify who that might  
11 be?

12 THE COURT: He said he could narrow it  
13 down to a couple.

14 A. Yeah. There could be a couple  
15 different people that might be responsible for  
16 this.

17 THE COURT: But my question is back to  
18 your question: Have you ever seen these notes  
19 before?

20 THE WITNESS: I don't recall seeing the  
21 notes. It's not to say I didn't. I just don't  
22 remember them. The pictures do look familiar,  
23 although, like I said, I don't recall ever putting  
24 what appear to be notes on them.

1 to you, you did not use those notes yourself?

2 A. What I recall is I had -- I had the  
3 guys go out and look at the site and then we sat  
4 and talked about it. This may be used by that  
5 individual to go through that discussion with me,  
6 but I don't think they just handed -- like they  
7 didn't like turn that in to me, which is probably  
8 why I don't recognize it.

9 Q. Well, did you go yourself and evaluate  
10 the condition of the roofs in and around the time  
11 that AAA was removed from the job and sometime  
12 around the beginning of December 2011?

13 A. I did go up on a roof, but to call it a  
14 comprehensive review, I would not.

15 Q. Did you find that there was defective  
16 work by AAA?

17 A. We believed that there was. That was  
18 part of our reasoning for removing them.

19 Q. And have you learned anything since  
20 that would suggest that that was correct, that  
21 there was defective work there by AAA?

22 A. Well, certainly we replaced all of the  
23 PVC. In the course of that we removed most of the  
24 metal and replaced a lot of the flashing and

1 Q. Can you state what the purpose was?

2 A. We at times went out to --

3 THE COURT: Excuse me. The purpose of  
4 the notes or the purpose of going out there --

5 MR. BARCLAY: Well, the -- first the  
6 purpose of the notes.

7 THE COURT: I'm getting confused about  
8 this, because this witness doesn't seem to know  
9 much about these notes. That troubles me a little  
10 bit. There may be another witness who knows more  
11 about it, so --

12 Q. Who was it that you suspect among the  
13 two TransAmerica employees who may know about  
14 these notes?

15 A. It would -- generally we had Williams,  
16 Shawn Williams was generally in charge of roofing,  
17 especially anything that had to do with the PVC;  
18 Gordon Green as well. He was an experienced  
19 roofer. There was another guy, and I'm forgetting  
20 his name. I almost want to say it was Randy, but  
21 I can't recall a last name. But I would believe  
22 that either Shawn Williams or Gordon Green  
23 produced this list.

24 Q. But from your perspective, in fairness

1 coping. So yes, we felt that there was work that  
2 we needed to correct that was left to us by AAA,  
3 yes.

4 Q. And the poor work coupled with the  
5 timing of their work also contributed to delaying  
6 the project?

7 A. I don't believe so. The buildings were  
8 dry. The work, as indicated by Mr. Keith's  
9 previous letter, had -- the successor activities  
10 had progressed or completed, and work was going  
11 full go inside the buildings.

12 MR. BECKER: Just take a minute, if we  
13 might, Your Honor, in the back, please.

14 THE COURT: Sure. Off the record.  
15 (A discussion was held off the record.)

16 THE COURT: Back on the record in  
17 TransAmerica Building Company versus Ohio School  
18 Facilities Commission, 2013-00349.

19 Mr. Barclay?

20 Q. (By MR. Barclay) Mr. Wilhelm, there  
21 were a number of pictures that were taken that are  
22 part of that document that we've identified as  
23 Exhibit K, are there not?

24 A. Yes.

1 Q. Can you take a couple of minutes and  
2 look through and tell me if you're able to tell me  
3 whether or not they match any of the situations  
4 you discovered when you evaluated the roof?

5 A. Again, I wouldn't hold out my trip up  
6 to the roof as an evaluation, but --

7 MR. BECKER: I'm sorry. I didn't hear  
8 what you said.

9 A. I wouldn't hold out my trip to the roof  
10 as a full evaluation of the roof, but these are no  
11 doubt pictures of the dorm buildings out at the  
12 project, yes.

13 MR. BARCLAY: Thank you, Your Honor.  
14 That's all I have.

15 THE COURT: Any redirect?

16 MR. MADIGAN: No.

17 THE COURT: Any reason we can't release  
18 this witness?

19 MR. GREGORY: No, Your Honor.

20 THE COURT: Mr. Becker?

21 MR. BECKER: I can't make that  
22 determination at this point.

23 THE COURT: Okay. Did you subpoena  
24 him?

1 State of Ohio : CERTIFICATE  
2 County of Franklin: SS

3 I, Reva Chafin Mundy, a Notary Public in and  
4 for the State of Ohio, do hereby certify that I  
5 reported the aforementioned proceedings and that  
6 the within-named witnesses were first duly sworn;  
7 that the foregoing is a true record of the  
8 proceedings.

9 I do further certify I am not a relative,  
10 employee or attorney of any of the parties hereto,  
11 and further I am not a relative or employee of any  
12 attorney or counsel employed by the parties hereto,  
13 or financially interested in the action.

14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand and affixed my seal of office at Columbus,  
16 Ohio, on October 20, 2015.

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*Reva Chafin Mundy*

Reva Chafin Mundy, Notary Public - State of Ohio  
My commission expires June 23, 2017.

1 MR. BECKER: He's under our subpoena.

2 THE COURT: Okay. Mr. Wilhelm, you're  
3 excused for the day. We'll try to give you  
4 reasonable notice in case the State wants to call  
5 you back as a witness in their case.

6 Plaintiff call its next witness?

7 MR. MADIGAN: Yes.

8 THE COURT: Mr. Wilhelm, don't discuss  
9 your testimony until you're completely done here  
10 with anyone, okay?

11 THE WITNESS: Okay.

12 THE COURT: Thank you. Off the record.

13 \*\*\*\*\*

14 END OF EXCERPT

15 \*\*\*\*\*

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<b>\$</b>	<b>accurately (4)</b> 302:18;303:3,10; 304:2	300:23	<b>Aim (1)</b> 307:2	302:22;303:2,7,10
<b>\$22,029.67 (1)</b> 300:23	<b>acquire (1)</b> 330:14	<b>administrator (1)</b> 344:2	<b>air (1)</b> 288:23	<b>animations (2)</b> 303:20;304:2
<b>\$3,000 (1)</b> 402:1	<b>across (4)</b> 345:4;352:5; 354:7;387:21	<b>admit (2)</b> 364:23;367:22	<b>al (1)</b> 307:3	<b>annoying (2)</b> 372:20,21
<b>\$400,000 (1)</b> 336:5	<b>act (3)</b> 365:6,10;366:4	<b>advance (3)</b> 312:20;325:2; 363:13	<b>Alan (2)</b> 290:15;318:9	<b>answered (2)</b> 406:13;415:5
<b>\$41.77 (1)</b> 290:12	<b>action (1)</b> 383:22	<b>advantages (1)</b> 412:11	<b>alarm (1)</b> 294:10	<b>anticipate (1)</b> 368:18
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