THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620
Appellate Case No.: 2016-001075

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation .....Plaintiffs,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, ... Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc. and 29th Place Developers, Inc., ... Third-Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually, ...Third-Party Defendants.

OF WHOM Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust and 29th Place Developers, Inc. are ..... Appellants,

AND

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually are ..... Respondents.

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INDEX

ORDERS:

Order of Reference signed by the Honorable Larry J. Hyman, Jr. dated July 23, 2009. 9

"Pre-Trial Order" of Judge Howe dated October 15, 2010 and recorded October 18, 2010 11

Order signed by the Honorable Cynthia Graham Howe dated March 23, 2015 and entitled "Judgment Against the Defendants Arthur W. Vereen, individually and as trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, Individually, and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc., Jointly and Severally." 17

Form 4 signed by the Honorable Cynthia Graham Howe dated March 23, 2015 59

Nunc Pro Tunc Order Amending Judgment Total signed by the Honorable Cynthia Graham Howe dated March 24, 2015 61

Form 4 signed by the Honorable Cynthia Graham Howe dated March 25, 2015 63

Order Disposing of Post-Trial Motions signed by the Honorable Cynthia Graham Howe dated April 25, 2016 65

This Court's September 22, 2016 Order 71

This Court's March 22, 2018 Order.....75

MOTIONS:

Defendants' and Third-Party Plaintiffs' Motions to Reconsider Order dated April 20, 2015.....77

Defendants' Motion to Reopen Hearing for Taking Testimony and Evidence Effecting Subject Matter and Relief Sought in Case, dated August 21, 2014, and attached exhibits A & B attached thereto 159

Motion to Dismiss Appeal with attached exhibits evidencing service of Judgments and Form 4s 199

PLEADINGS:

Complaint of Ellis E. Smith 417

Answer, Counterclaims, and Third Party Complaint filed by Appellants 458

Reply of Third-Party Complaint and Answer to Counterclaims 470

TRANSCRIPTS:

Complete and entire trial transcripts before the Honorable Cynthia Graham Howe. According to the information provided, the complete and entire trial transcripts include testimony taken on:

February 15 and 16, 2011 480
Testimony of Arthur W. Vereen:
Direct Examination by Mr. Durant 486
Cross Examination by Ms. Cook 707
Cross Examination by Mr. Thomas 716
Testimony of Susan E. Brady
Direct Examination by Mr. Durant 717
Cross Examination by Ms. Cook 721
Re-Direct Examination by Mr. Durant 729
Testimony of Ellis Smith
Direct Examination by Mr. Durant 871
Cross Examination by Ms. Cook 1015

Transcript of Hearing; June 13, 14, and 16, 2011 1269
Continued Testimony of Susan Brady:
Continued Direct Examination by Mr. Durant 1273
Continued Cross Examination by Ms. Cook 1344
Re-Direct Examination by Mr. Durant 1609
Continuing Testimony of Ellis Smith 1614
Cross Examination by Ms. Cook 1618

October 11, 12, and 13, 2011 1768
Testimony of Ellis Smith
Direct Examination by Ms. Cook 1776
Cross Examination by Mr. Durant 2018
Testimony of Elizabeth Sisson
Direct Examination by Ms. Cook 2039

August 27, 28, 29, and 30, 2012 2440
Testimony of Arthur Wayne Vereen 2500
Direct Examination by Mr. Durant 2500
Cross Examination by Ms. Cook 2722
Cross Examination by Mr. Thomas 2798
Re-Cross Examination by Ms. Cook 2823
Re-Cross Examination by Mr. Thomas 2826
Re-Re-Cross Examination by Ms. Cook 2858
Re-Re-Cross Examination by Mr. Thomas 3068
Re-Re-Cross Examination by Ms. Cook 3092

November 17, 2014 Transcript of hearing before the Honorable Cynthia Graham Howe.....3117

May 11, 2015 Transcript of hearing before the Honorable Cynthia Graham Howe 3155

EXHIBITS:

Defendant's Exhibit #15: Check from Vereen in amount of $50,000 3235

Defendant's Exhibit #18: E. Smith and Sons Construction, LLC filing with South Carolina Secretary of State 3236

Defendant's Exhibit #19: E. Smith and Sons Construction, LLC application to LLR.....3237

Defendant's Exhibit #21: Land Sales Contract between 29th Place Developers, Inc. and Ellis E. Smith.....3244

Defendant's Exhibit #22: Cost of Construction Materials.....3250

Defendant's Exhibit #24: Applications for Permit for construction for Perez, Davis, McMillan, and Sealy.....3252

Defendant's Exhibit #41: Building Permit for Condolux 3257

Defendant's Exhibit #48: Building Permit for Condolux 3258

Defendant's Exhibit #49: Documents reflecting work performed for Cari Ann Davis.....3261

Defendant's Exhibit #50: Certificate of Occupancy for Cari Ann Davis' house 3285

Defendant's Exhibit #51: Documents reflecting work performed for Robert Sealy 3286

Defendant's Exhibit #53: Documents reflecting work performed for McMillans 3298

Defendant's Exhibit #54: Certificate of Occupancy for McMillans.....3312

Defendant's Exhibit #55: Documents reflecting work performed for Perez 3313

Defendant's Exhibit #59: Contracting license to E. Smith and Sons Construction, LLC 3321

Defendant's Exhibit #65: Agreement signed by Ellis Smith on behalf of A&E 3323

Defendant's Exhibit #66: Building Permit for Condolux 3325

Defendant's Exhibit #67: Building Permit for Condolux 3326

Defendant's Exhibit #68: Building Permit for Condolux 3327

Defendant's Exhibit #69: Building Permit for Condolux 3328

Defendant's Exhibit #70: Building Permit for Condolux 3329

Defendant's Exhibit #71: Building Permit for Condolux 3330

Defendant's Exhibit #72: Building Permit applied for by Smith for Capital Partners IV, LLC 3331

Defendant's Exhibit #74: Documents reflecting loan to Smith 3332

Defendant's Exhibit #87: Letter from Turner Padgett dated July 30, 2007 3337

Defendant's Exhibit #88: Ledger reflecting payments made in 2008 on behalf of A&E 3339

Defendant's Exhibit #89: Ledger reflecting payments made in 2008 on behalf of A&E 3351

Defendant's Exhibit #102: Mr. Vereen's Application to be A&E's Qualifying Party signed Oct. 2, 2017 3353

Plaintiff's Exhibit #1: 2004 Notebook by Susan Brady, CPA 3357

Plaintiff's Exhibit #2: 2005 Notebook by Susan Brady, CPA 3515

Plaintiff's Exhibit #3: 2006 Notebook by Susan Brady, CPA 3705

Plaintiff's Exhibit #4: 2007 Notebook by Susan Brady, CPA 4025

Plaintiff's Exhibit #6: Business Records of A&E, job ledgers, and index of job records 4216
- Book 2 4216
- Book 3 4882
- Book 5 5601
- Book 6 5998

Plaintiff's Exhibit #7: Complete deposition of Carrie Drewett admitted into evidence and A&E's written general ledger 6515
- Exhibit 1 6682
- Exhibit 2 6846
- Exhibit 3 7206
- Exhibit 4 7496
- Exhibit 5 7700
- Exhibit 6 7798
- Exhibit 7 7889
- Exhibit 8 7934

Exhibit 9 8109
Exhibit 10 8112
Exhibit 11 8144
Exhibit 12 8148
Exhibit 13 8150
Exhibit 14 8162
Exhibit 15 8163
Exhibit 16 8164
Exhibit 17 8170
Exhibit 18 8178
Exhibit 19 8179
Exhibit 20 8180
Exhibit 21 8183
Exhibit 22 8184
Exhibit 23 8185
Exhibit 24 8186
Exhibit 25 8187
Exhibit 26 8188
Exhibit 27 8212
Exhibit 28 8218
Exhibit 29 8224
Exhibit 30 8227
Exhibit 31 8231
Exhibit 32 8233
Exhibit 33 8297
Exhibit 34 8305
Exhibit 35 8306
Exhibit 36 8312
Exhibit 37 8316
Exhibit 38 8324
Exhibit 39 8327
Exhibit 40 8329
Exhibit 41 8331
Exhibit 42 8337
Exhibit 43 8368
Exhibit 44 8370
Exhibit 45 8382
Exhibit 46 8383
Exhibit 47 8395
Exhibit 48 8398

Plaintiff's Exhibit #8: Incorporation Documents of A&E, Organizational Meeting, Sub S Election; Initial Deposit Ticket 8401

Plaintiff's Exhibit #9: Demand Letter of Smith 8405

Plaintiff's Exhibit #10: Licensing and Incorporation Documents for all parties.....8428

Plaintiff's Exhibit #11: List of Permits from the City of Myrtle Beach for A&E and Grand Strand Builders.....8444

Plaintiff's Exhibit #12: The Willoughby Job Documents.....8456

Plaintiff's Exhibit #13: The Kempe Job Documents.....8666

Plaintiff's Exhibit #14: Dr. Erol Lane Job Documents a/k/a South Strand Cardiology.....8694

Plaintiff's Exhibit #15: Park Place Properties, LLC Job, Pointe Marsh and Black Pearl Putt Job Documents.....8717

Plaintiff's Exhibit #16: Parkway Offices, LLC Job Documents.....8846

Plaintiff's Exhibit #17: Plantation Lakes Job Documents.....8860

Plaintiff's Exhibit #18: Financial Statements for Mr. & Mrs. Vereen from NBSC.....8888

Plaintiff's Exhibit #20: Arthur Vereen Const. Company and A&E Business records (contained in Box 20 as a group).....8893

Plaintiff's Exhibit #21: bank checking account records for A&E from 12/31/07 to 12/31/08.....12178

Plaintiff's Exhibit #24: HUD-1 statements from Park Place Pointe Marsh closings.....12281

Plaintiff's Exhibit #25: Check from daughter Elizabeth Sisson dated 10-28-08 in the amount of $35,803.10 payable to and deposited into Park Place Properties.....12284

Plaintiff's Exhibit #26: Letters regarding 2006 Worker's Comp. audit of A&E; refund check of $49,221.00 payable to A&E and deposit record of deposit of check into account of Park Place Properties.....12285

Plaintiff's Exhibit #27: wages paid to Arthur Vereen and Linda Vereen as reported on personal tax returns showing payment of wages from A&E: $30,000.00 in 2004; $52,000 in 2005; $70,800 in 2006; $70,800 in 2007; $96,566.40 from 1-2008 until 3-18-09 from Company payroll record.....12291

Plaintiff's Exhibit #28: Defendants' Answer lo Plaintiffs Interrogatories.....12306
Plaintiff's Exhibit #30: Deposition of Linda Vereen.....12351

Plaintiff's Exhibit #31: Business checks.....12412

Plaintiff's Exhibit #32: Single check from Whitley for $11,533.00 payable to A&E and deposited into Park Place Properties acct.....12427

Plaintiff's Exhibit #33: Settlement Statement Lot 20, Point Marsh 12428

Plaintiff's Exhibit #34: Settlement Statement Lot 21, Point Marsh 12431

Plaintiff's Exhibit #35: Smith Sapp's A&E accounts receivable as of 12/31/2005.....12435

Plaintiff's Exhibit #36: Smith Sapp's A&E accounts receivable as of 12/31/2004.....12439

Plaintiff's Exhibit #37: construction check from First Palmetto for $79,855.06 payable to A&E and Park Place Properties.....12440

Plaintiff's Exhibit #38: A&E jobs outstanding as of 12-31-06.....12441

Plaintiff's Exhibit #39: Invoice from Stock Builders and A&E check payable for $22,000 for material for Park Place Properties.....12442

Plaintiff's Exhibit #40: Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants prepared by Susan Brady, CPA (Has been called Plaintiff s Exhibit 5, contains "Consented Amounts") 12453

Plaintiff's Exhibit #40-A: "Amended Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants with Amended Proposed Statement of Assets, Liabilities and Equity as of 12.31.2007" reducing Defendants' accounts receivables and Ms. Brady's bill of $142,268.00 from Brady. Sent post-trial at direction of Court and served on all parties (no original exhibit number, mentioned in the Final Judgment) 12535

OTHER MATERIALS

April 6, 2015 Letter from Attorney Cook to Judge Howe regarding missing page 37 (no exhibit number).....12537

Exhibit 1 to May 2015 Transcript: Joint Post Trial Brief sent to Judge Howe as Ordered 12538

Letter from DuRant, Attorney for Respondents, dated March 25, 2015 serving Form 4 and Judgment upon the Appellants, with attachments.....12544

Letter from DuRant to Appellants dated March 27, 2015 serving Form 4 and Nunc Pro Tunc Order upon Appellants with attachments.....12593

Affidavit from DuRant dated July 20, 2015 with attached certificates of service, filed with Court of Appeals supporting Motion to Dismiss Appeal.....12600

Letter from Cook, attorney for Appellants, dated April 20, 2015, serving Respondents with attached Motion for Reconsideration.....12605

Affidavit of Kathryn M. Cook 12688

Certificate of Counsel 12737

NUMBERS. BECAUSE WHEN WE FIRST DID ALL THIS... I OBVIOUSLY -- THIS WAS MORE CONFUSING TO YOU AND I THOUGHT IT WOULD HAVE BEEN EASIER INSTEAD OF REDOING, GRABBING ALL THE BOOKS AND REDOING --

Q I THINK I UNDERSTAND.

A -- BACK. ALL THE CHANGES WERE MADE ON 2007 BEFORE THE FINAL NUMBER WAS DETERMINED.

Q WELL, BUT WHEN YOU LOOK AT YOUR EXHIBIT 40, EXHIBIT 40 IS YOUR FINAL, FINAL REPORT, RIGHT?

A CORRECT.

Q AND IF YOU LOOK BEHIND YOUR TAB THAT IS ENTITLED, "2004 REVISED WORKSHEETS." SO, FOR 2004 IT SHOWS REVISED WORKSHEET FOR 2004, BUT IT'S REVISED AS OF 6/10. UNDER TAB 4 IT'S GOT "JOHN HANCOCK, LIFE INSURANCE PREMIUMS OF $3,601.50." AND YOU'VE GOT THAT UNDER THE CONSENTED AMOUNTS, RIGHT?

A YES.

Q SO, THE CONSENTED AMOUNTS ARE ONLY AMOUNTS THAT MR. VEREEN ACKNOWLEDGED THAT WERE PERSONAL EXPENSES OR WERE NOT EXPENSES OF A&E? BUT CONSENTED AMOUNTS ALSO WERE AMOUNTS THAT ELLIS AND YOU THEN AGREED HAD INCORRECTLY BEEN FIGURED AS BEING ACCOUNTS RECEIVABLE?

A NO. THE CONSENTED AMOUNTS CAME FROM YOUR REPORTS.

Q BUT YOU DO AGREE THAT ALTHOUGH YOU INITIALLY SAID

$3,601.50 WAS OWED BY MY CLIENT, YOU AGREE THAT IT'S NOT?

A CORRECT. BUT LIKE I SAID, IF IT IS IN THAT COLUMN WHERE IT SAID, "CONSENTED AMOUNTS" IT WAS ON A NOTE THERE, BUT I THINK THAT PROBABLY SHOULD HAVE BEEN MORE OF A VERIFIED INSTEAD OF A CONSENTED.

Q SO, THAT'S NOT REALLY RIGHT ON THAT COLUMN?

A NO. THAT COLUMN IS NOT CORRECT.

Q THAT AMOUNT IN THAT COLUMN IS NOT CORRECT?

A NOT THE 3,601.50.

Q ANYTHING ELSE IN THAT COLUMN THAT IS NOT CORRECT? ANYTHING ELSE IN THESE REPORTS THAT YOU'VE DONE THAT AREN'T CORRECT?

A NOT TO MY KNOWLEDGE.

Q OKAY.

JUDGE HOWE: BUT IT'S NOT RE-REDACTED?

A THE 3,601.00 WAS ON A REPORT THAT I HAD CONSENTED, BUT THAT SHOULDN'T HAVE BEEN THERE BECAUSE THAT EXPENSE WAS TAKEN OFF. IT SHOULD HAVE BEEN IN THE VERIFIED COLUMN.

JUDGE HOWE: OKAY. I UNDERSTAND.

Q IN 2004, LET ME ASK YOU, I WANTED TO LOOK AT YOUR TAB 16. YOUR BACKUP FOR TAB 16 AND THEN YOUR LINE ITEM FOR TAB 16 IN YOUR SPREADSHEETS. ON YOUR SPREADSHEET IN 2004 UNDER TAB 16 IT'S ENTITLED,

"POINTE MARSH EXPENSE." NOW, IS POINTE MARSH AS FAR AS A&E IS CONCERNED, YOUR CLIENT'S CONCERN? IS THAT AN A&E JOB?

A THAT JOB WAS LISTED ON THE COMPUTER SOFTWARE AS AN A&E JOB.

Q OKAY. AND WHAT YOU'VE GOT UNDER TAB... YOUR LINE ITEM 16 IS $4,300.85 IS OWED BY MR. VEREEN OR HIS ENTITIES TO A&E ON THE POINTE MARSH JOB, CORRECT?

A CORRECT. THAT REPORT THAT YOU'RE LOOKING AT CAME OFF OF THE COMPUTER SOFTWARE. SO, MR. VEREEN OR HIS BOOKKEEPER CHARGED THOSE EXPENSES TO THE POINTE MARSH JOB. THAT IS A JOB LEDGER REPORT FOR THAT JOB.

Q AND YOU'RE SAYING THAT POINTE MARSH OR MR. VEREEN OR ONE OF HIS ENTITIES OWES A&E THE $4,300.85, CORRECT?

A CORRECT.

Q IS THAT THE ONLY BACKUP YOU HAVE FOR THAT IS THE JOB LEDGER?

A CORRECT.

Q AND MR. DURANT WAS ASKING YOU SOME QUESTIONS ABOUT HAD YOU SEEN ANY BILLS FROM A&E TO THE JOBS THAT WERE BEING DONE BY A&E ON ARTHUR VEREEN OR HIS FAMILY OR RELATED PROJECTS AND YOU SAID, "NO." DID I UNDERSTAND THAT TESTIMONY CORRECTLY?

A CORRECT. I HAVEN'T SEEN ANY.
Q WOULD A JOB LEDGER NOT CONSTITUTE A BILL?
A NO, MA'AM.
Q OKAY. IS THERE A DIFFERENCE IN WHAT'S LISTED AS BEING OWED ON A JOB LEDGER THAN A BILL?
A THE JOB LEDGER WOULD BE YOUR ACTUAL COST OF THE JOB. I WOULD THINK A BILL WOULD BE WHAT YOU BILL YOUR CLIENT WHICH HAS YOUR EXPENSES PLUS AN OVERHEAD OR PROFIT THAT YOU ARE GOING TO CHARGE THEM.
Q AND HAVE YOU REVIEWED ANY CONTRACTS OR THE ACTUAL JOBS BETWEEN A&E AS THE CONTRACTOR AND THE OWNER OR DEVELOPER OF THE A&E JOB?
A I HAVE SEEN VERY FEW CONTRACTS.
Q SO, DO YOU KNOW WHAT THE TERMS OF ANY CONTRACT WAS?

MR. DURANT: YOUR HONOR, IT'S UNDISPUTED THAT THERE WAS NO CONTRACT BETWEEN A&E AND ANY OF THE VEREEN RELATED ENTITIES.

MS. COOK: THAT IS TOTALLY DISPUTED.

MR. DURANT: YOU'RE SAYING THERE'S A WRITTEN CONTRACT?

MS. COOK: THERE COULD BE ALL KINDS OF CONTRACTS. I DIDN'T SAY THERE WAS A

WRITTEN CONTRACT. I ASKED HER IF SHE UNDER...

MR. DURANT: WHAT COULD SHE REVIEW UNLESS IT WAS IN WRITING? THERE WOULD BE NOTHING FOR HER TO REVIEW.

MS. COOK: THAT'S NOT WHAT I ASKED HER, FRANK. I ASKED HER IF SHE HAD A UNDERSTANDING OF WHAT THE TERMS OF THE CONTRACT WERE BETWEEN A&E AND PARK PLACE PROPERTY.

MR. DURANT: I'M SORRY, YOUR HONOR. I MISUNDERSTOOD HER QUESTION. I THOUGHT SHE ASKED HER ABOUT REVIEWING WRITTEN CONTRACTS BETWEEN A&E AND THE VEREEN ENTITIES.

JUDGE HOWE: I THOUGHT SHE SAID HAD SHE SEEN.

MS. COOK: I DID. AND THEN I ASKED HER ANOTHER QUESTION.

JUDGE HOWE: THANK YOU.

MR. DURANT: THERE ARE NO WRITTEN CONTRACTS, YOUR HONOR. THAT'S WHY THE QUESTION IS --

MS. COOK: WHY DON'T WE SWEAR MR. DURANT IN AND HE CAN JUST GET UP THERE

AND JUST TESTIFY.

MR. THOMAS: I WILL GO FOR THAT.

Q MRS. BRADY, DO YOU KNOW THE TERMS OF ANY CONTRACT BETWEEN A&E AND PARK PLACE PROPERTIES, THE DEVELOPER OF THE POINTE MARSH JOB?

A NO, I DO NOT.

Q OKAY. AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 5. I'M SHOWING YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT 5. IT'S A GROUP OF FOUR DOCUMENTS. THE FIRST AND FORTH SHEETS BEING COPIES OF CHECKS, ARTHUR VEREEN'S CHECKS. THE SECOND DOCUMENTS BEING COPIES OF ASI ENGINEERS BILLS. DID YOU REVIEW THESE CHECKS? YOU SAID YOU REVIEWED THE CHECKING ACCOUNT STATEMENTS OF ARTHUR VEREEN, CORRECT? ARTHUR VEREEN CONSTRUCTION? EXCUSE ME. NO. ARTHUR VEREEN? I'M SORRY.

A I AM TRYING TO THINK. I DON'T KNOW THAT WE HAD COPIES OF THE ACTUAL CHECKS OR JUST THE BANK STATEMENTS THAT LISTED THE CHECKS.

Q SO, YOU DON'T REMEMBER WHAT YOU HAD TO REVIEW?

A I DON'T KNOW IF WE HAD THE BANK STATEMENTS. I JUST DON'T KNOW IF IT HAD ANY IMAGES. IF THE BANK STATEMENT ACTUALLY HAD A IMAGE OF THE CHECK.

Q I HAD ASKED YOU EARLIER... THIS IS JUST AN EXAMPLE. I ASKED YOU EARLIER IN YOUR COMPILING OF

THIS INFORMATION FOR YOUR REPORT, YOU HAD SAID THAT YOU DID NOT HAVE DOCUMENTS SUCH THAT YOU COULD DETERMINE IF MR. VEREEN OR ANY OF HIS ENTITIES HAD PAID FOR EXPENSES OF A&E?

A WHAT I WAS REFERRING TO IS I DON'T HAVE ANY INVOICES THAT ARTHUR VEREEN WOULD HAVE HAD PERSONALLY.

Q WEREN'T THOSE INVOICES PART OF WHAT WAS PRODUCED AS A RESULT OF JUDGE HOWE'S ORDER OF OCTOBER 15TH, ALL THOSE HUGE NOTEBOOKS WE WENT OVER IN YOUR OFFICE FOR TWO OR THREE DAYS?

A REPHASE OR RESTATE THE QUESTION.

Q YOU RECALL WHEN WE MET IN YOUR OFFICE AFTER JUDGE HOWE'S ORDER AND WE PRODUCED NOTEBOOKS AND WE TRIED TO PRODUCE... THEY ARE GOING TO BE IN EVIDENCE, BUT WE TRIED TO PRODUCE NOTEBOOKS IN THE ORDER OF YOUR TABS SO THAT WE COULD FOLLOW ALONG AND THEY WERE PRODUCING WHATEVER BACKUP DOCUMENTATION WE HAD, WHETHER THEY WERE CHECKS, INVOICES? THERE WERE CREDIT CARD STATEMENTS, THINGS OF THAT NATURE. AND WE SAT IN YOUR OFFICE AND WE WENT THROUGH THEM AND WE SAID WE AGREE WITH THIS OR WE DON'T AGREE WITH THAT. Y'ALL DID THE SAME THING. BUT YOU WERE HAVING TROUBLE KEEPING... IT WAS A LOT OF STUFF AND YOU WERE

HAVING TROUBLE KEEPING UP WITH US.

A THOSE BINDERS THAT YOU'RE REFERENCING DID NOT GO BY THE NUMBER OF THESE TABS. YOU HAD THEM BY COMPANIES AND BY ENTITIES. SO, IT WASN'T A STRAIGHT LINE HERE. I DO REMEMBER THERE WERE PROBABLY ABOUT 14 BINDERS OR HOWEVER MANY YOU HAD. I DON'T KNOW THAT WE WENT THROUGH ALL OF THOSE IN THAT OFFICE THAT DAY.

Q OKAY. WELL, LET ME ASK YOU TO LOOK AT DEFENDANT'S EXHIBIT 5 AND IT'S A CHECK WRITTEN BY ARTHUR VEREEN TO ASI FOR $15,180 AND THE REFERENCE LINE SAYS, "WILLOUGHBY." IS WILLOUGHBY A JOB THAT YOU RECOGNIZE AS BEING AN A&E JOB ON THE A&E BOOKS?

A YES, MA'AM.

Q AND BEHIND THAT IS AN INVOICE OR A BILL OR A CLIENT ACCOUNT STATEMENT FROM ASI ENGINEERS, INC. THAT SHOWS A TOTAL BEING OWED OF $15,180.00 WHICH IS THE SAME AMOUNT OF THE CHECK THAT'S WRITTEN ON MARCH THE 10TH 2004, IS THAT CORRECT?

A YES, MA'AM.

Q AND WOULD YOU AGREE WITH ME THAT WILLOUGHBY -- THAT ARTHUR VEREEN PAID PER THIS CHECK $15,180.00 TO ASI ENGINEERS FOR ENGINEERING WORK PERFORMED ON THE WILLOUGHBY JOB, WHICH WAS AN A&E JOB?

A IT APPEARS THAT IS TRUE.

Q AND LIKEWISE, THE NEXT CHECK IS A CHECK FROM MR. VEREEN TO ASI IN THE AMOUNT OF $4,240.00 DATED DECEMBER THE 24TH 2004 AND BEHIND THAT IS AN INVOICE AGAIN FROM ASI DATED SEPTEMBER 30, 2004 SHOWING A TOTAL DUE OF $4,240.00, THE SAME AMOUNT AS THE CHECK ON THE WILLOUGHBY CONDOMINIUMS AT 44TH? DO YOU AGREE WITH THAT?

A YES, MA'AM.

Q NOW, WOULD YOU AGREE THAT THESE ARE EXPENSES PAID BY MR. VEREEN PERSONALLY ON A&E JOBS?

A I GUESS YOU COULD SAY THEY ARE. THEY WERE NEVER RECORDED AS A JOB COST FOR THE WILLOUGHBY JOB.

Q THEY'RE NOT RECORDED ON THE ACCOUNTING BOOKS AND RECORDS?

A NEVER EXPENSED. NEVER RECORDED AS AN EXPENSE ON ANY OF THE BOOKS FOR A&E.

Q OKAY. BUT WAS WILLOUGHBY AN A&E JOB?

A YES, IT WAS.

Q AND IS IT A FAIR STATEMENT THAT IF THAT WAS A WILLOUGHBY JOB AND THAT WAS A WILLOUGHBY EXPENSE AND MR. VEREEN PAID IT, BUT THEN MR. VEREEN WAS REIMBURSED FROM DEPOSITING A WILLOUGHBY CHECK FOR THE JOB AND AN AMOUNT SUFFICIENT TO COVER THIS, THEN MORE OR LESS, IT'S A WASH? ARE YOU FOLLOWING ME AT ALL?

A I FOLLOW WHERE YOU'RE GOING. I GUESS YOU COULD ASSUME THAT. I DON'T KNOW.

Q NO DOUBT IT WASN'T A STRAIGHT PAYMENT OF THE BILL AND SUBMISSION OF THAT BILL BACK TO A&E FOR A&E TO WRITE A CHECK BACK IN THE EXACT SAME AMOUNT CLOSE IN TIME TO THAT? BUT WHEN WE GET TO THE END OF THE DAY, MRS. BRADY, AND WE LOOK AT ALL OF THE JOBS OF A&E AND THE REVENUE THAT SHOULD BE RESULTING FROM THOSE JOBS, FORGET WHERE IT'S BOOKED, BUT THIS IS A JOB -- HOW MUCH GOT PAID TO WHOMEVER ALL THE ENTITIES COMBINED? THEN HERE ARE THE COMMISERATE EXPENSES FOR THAT JOB, THE WILLOUGHBY JOB, IRRESPECTIVE OF WHOEVER PAID THEM? SO THAT THE PROFIT SHOULD BE THIS AFTER YOU REIMBURSE THE RIGHT PEOPLE. WHEN YOU GET DOWN TO THE BOTTOM, WE'RE TRYING TO FIND OUT WHAT THE TRUE PROFIT FOR A&E SHOULD BE, IF ANY. IF YOU TAKE INTO CONSIDERATION ALL THE JOBS AND THE REVENUE THEY SHOULD HAVE GENERATED, ALL THE EXPENSES AND THE TOTAL EXPENSES THAT SHOULD BE PAID, WHEN WE GET TO THE END NUMBER, IT SHOULD BE A PROFIT OR A LOSS DEPENDING ON WHEN WE GET ALL THOSE JOBS AND THOSE COSTS THAT THEN SHOULD BE DIVIDED 50/50 BY THESE TWO MEN? DO YOU AGREE WITH THAT STATEMENT?

A I DON'T KNOW THAT I CAN AGREE WITH THAT BECAUSE

BASICALLY WHAT YOU'RE SAYING IS, WE DIDN'T REALLY HAVE TO REPORT THE INCOME IF WE PAID SOME EXPENSES THAT WERE NEVER RECORDED. SHOULD WE REALLY REPORT THE INCOME THAT WE NEVER REPORTED EITHER? IN LAYMAN'S TERM, I COULD SEE WHERE YOU MIGHT BE COMING FROM. ME AS A PROFESSIONAL CPA, I CAN'T AGREE WITH WHAT YOU'RE SAYING.

Q I UNDERSTAND FROM A TAX PERSPECTIVE OR FROM A RECORDING OF INCOME TAX PERSPECTIVE THAT MAY HAVE DIFFERENT RESULTS, BUT IT'S BETWEEN TWO PARTNERS IN A COMPANY THAT ARE DOING "X" JOBS AND HAVE "X" AMOUNT OF MONEY THEY SHOULD EARN FOR THAT AND HAVE "X" EXPENSES. IRRESPECTIVE OF WHO PAID IT AND WHERE IT WAS YOU'VE GOT TO DETERMINE BETWEEN... WHAT THAT PROFIT IS OR LOSS IS BETWEEN THESE TWO MEN, SEPARATE AND APART FROM THE TAX RAMIFICATIONS TO SEE IF EITHER ONE OF THEM OR BOTH OF THEM OWE MONEY TO A&E OR IS DUE MONEY BACK FROM A&E. WOULD YOU AGREE WITH IT IN THOSE TERMS, THAT STATEMENT IN THOSE TERMS? I UNDERSTAND THERE MAY BE INCOME TAX RAMIFICATIONS AND THOSE TYPES OF THINGS, BUT IN DETERMINING WHAT THE JOBS WERE OF THE COMPANY, WHAT THE REVENUE SHOULD BE ON THOSE JOBS FROM THE COMPANY, WHAT THE LEGITIMATE EXPENSES OF THAT COMPANY SHOULD BE FOR THOSE JOBS, TO GET DOWN TO A

BOTTOM LINE OF NET INCOME, YOU KNOW, NET PROFIT OR NET LOSS? SO, THAT THESE TWO MEN KNOW EITHER THERE WAS A LOSS IN THE COMPANY AND WE'VE GOT TO SHARE IT 50/50 OR THERE SHOULD BE "X" NUMBER OF DOLLARS IN THE COMPANY AND THAT SHOULD BE SHARED 50/50. THAT'S WHAT WE'RE SUPPOSED TO BE DETERMINING AND HER HONOR HAS TO DETERMINE IN THIS CASE, ISN'T THAT CORRECT?

A I DON'T KNOW HOW YOU CAN DETERMINE THAT IF YOU DON'T RECORD ALL OF YOUR INCOME AND YOUR EXPENSES.

Q YOU'D HAVE TO GO BACK TO LOOK AT THE SOURCE DOCUMENTS FOR EVERYTHING THAT WAS DONE DURING THAT TIME, WOULDN'T YOU?

A YES. AND I WOULD THINK THAT YOUR SOURCE DOCUMENTS WOULD INCLUDE YOUR JOB LEDGER REPORTS WHERE YOU... YOU POST THOSE... THAT'S THE PURPOSE OF A JOB LEDGER REPORT, IF YOU'RE GOING TO USE IT. THAT'S THE PURPOSE OF DETERMINING WHAT YOUR COSTS ARE ON THAT JOB. SO, IF YOU'RE GOING TO USE IT FOR FIVE OR SIX HUNDRED EXPENSES AND NOT FOR FOUR, IT'S KIND OF MISLEADING TO KNOW THAT THERE'S FOUR OR FIVE MISSING.

Q AND THE ONLY WAY TO REALLY BE ACCURATE AS TO NOT DEPEND ON THAT GENERAL LEDGER OR THAT JOB LEDGER, IT'S TO GO BACK TO THE SOURCE DOCUMENTS AND THE

BANK DOCUMENTS THAT DON'T LIE, ISN'T THAT CORRECT?
A FOR MY PURPOSE, BUT I DON'T THINK FOR A SHAREHOLDER THAT WOULD BE A RESPONSIBILITY THAT ONE OF THE OTHER SHAREHOLDERS WOULD HAVE TO GO THROUGH EVERY BANK STATEMENT AND EVERY DOCUMENT. THAT'S THE PURPOSE OF USING A SOFTWARE. WHAT I'M SAYING IS IF YOU ARE GOING TO USE THIS SOFTWARE TO RECORD YOUR DATA AND EXPENSES, I DON'T THINK YOU CAN USE IT FOR 90% AND SAY THE OTHER 10% DON'T MATTER. I THINK YOU SHOULD USE DUE DILIGENCE AND TRY TO USE THIS TO THE BEST OF YOUR KNOWLEDGE SO THAT EVERYBODY KNOWS.
Q AND IF YOU PUT GARBAGE IN THE COMPUTER SYSTEMS, YOU GET GARBAGE OUT, DON'T YOU?
A I GUESS. IF YOU PUT GARBAGE IN... I DON'T KNOW THAT THIS WAS GARBAGE. ALL THAT THEY RECORDED IN. I JUST THINK IT WAS MISSING DATA.
Q OKAY. BUT IF IT'S GARBAGE BECAUSE OF INTENT OR NOT INTENT OR LACK OF KNOWLEDGE OR DOING IT 90% OF THE TIME AND NOT 10% OF THE TIME, THEN WHAT YOU'VE GOT IN THE COMPUTER SYSTEM IS GARBAGE, ISN'T IT?
A I DON'T KNOW THAT THERE'S BEEN GARBAGE PUT IN. I'M JUST SAYING THAT YOU'RE MISSING INFORMATION.
Q THE COMPUTER SYSTEM IS MISSING INFORMATION?
A THERE IS SOME INFORMATION THAT IS NOT BEEN PUT IN.

I MEAN, THERE MIGHT BE SOME CODING ERRORS, BUT THE MAJORITY OF THIS INFORMATION HAS BEEN ENTERED AND HAS BEEN ACCOUNTED PROPERLY. IT'S JUST THERE --

Q PROPERLY OR IMPROPERLY?

A THE MAJORITY OF THE INFORMATION IN THIS HAS BEEN HANDLED PROPERLY. THERE'S JUST MISSING INFORMATION WHICH DOES NOT MAKE IT CORRECT.

Q SO, TO GET THAT MISSING INFORMATION, WHETHER TO GET THE INFORMATION AND PUT IT IN THE COMPUTER SYSTEM, HOPEFULLY NOT AS GARBAGE, BUT TO GET THE MISSING INFORMATION, YOU GOT TO GO TO THE SOURCE DOCUMENTS, DON'T Y'ALL? YOU'VE GOT TO GO TO THE CHECKS AND INVOICES AND THAT'S THE REAL WAY TO GET THE DOCUMENTS THAT "DON'T LIE" AS YOU SAID EARLIER? THE BANK RECORDS TELL THE TRUTH, RIGHT?

A YES, I GUESS. YOU WOULD HAVE TO GET THROUGH LITIGATION TO GET THERE FIRST.

Q AND YOUR REPORT IS BASED ON THE PEACHTREE COMPUTER INFORMATION, BUT AS SUPPLEMENTED AND VERIFIED BY WHAT YOU COULD GET YOUR HANDS ON IN TERMS OF WHAT I'M CALLING THE SOURCE DOCUMENTS, RIGHT?

A CORRECT.

Q DO YOU KNOW IF THE $15,180.00 WRITTEN, AS REFLECTED IN DEFENDANT'S EXHIBIT 5 WHICH MR. VEREEN PAID ASI FOR THE WILLOUGHBY ENGINEERING

EXPENSES AND THEN YOU ADD THAT 4,240.00 THAT'S $19,420.00? DO YOU KNOW IF YOU HAVE GIVEN MR. VEREEN OR HIS ENTITIES CREDIT FOR ADVANCING OR PAYING ON BEHALF OF A&E?

MR. DURANT: YOUR HONOR, BEFORE WE GO FORWARD I WISH YOU WOULD GO INTO THE BOOK THAT SHE GAVE US AND SHOW THAT IT'S IN THERE. BECAUSE I THINK THAT MRS. BRADY SAID THAT SHE DOESN'T REMEMBER SEEING IT. IF IT'S IN THERE, IT'S IN THERE.

A CAN I ASK A QUESTION?

JUDGE HOWE: ARE YOU LOOKING FOR THE DOCUMENT NOW?

MR. DURANT: THERE ARE 19 VOLUMES OF THIS.

OFF THE RECORD.

MS. COOK: YOUR HONOR, YOU ORDERED IN OCTOBER THAT WE HAVE THE DOCUMENTATION AND THE BACKUP TO MR. DURANT BY DECEMBER 1ST. WE DID. AND AS YOUR HONOR KNOWS, HONESTLY EVERYBODY HAS TRIED AS HARD AS THEY CAN TO TRY TO MAKE THIS AS EASY AS THEY COULD, BUT WE JUST COULDN'T DO IT. SO, WE

PROVIDED NOTEBOOKS OF ALL THAT INFORMATION. BUT WE HAD BROKEN THOSE NOTEBOOKS UP BY COMPANY. WE HAD IT BY COMPANY, BY YEAR. SO, WE HAD MR. VEREEN '04 TO '07 AND PARK PLACE '04 TO '07 LIKE THAT IN CHRONOLOGICAL ORDER. WE THEN TOOK THAT INFORMATION AND TRIED TO PUT IT IN THE SAME ORDER AS SUSAN'S REPORTS SO THAT WE COULD MATCH THE TABS OF SUSAN'S ANNUAL REPORT THAT WASN'T BY COMPANY BECAUSE SHE REALLY JUST DEALT WITH A&E. SO, WE WENT BACK AND THAT'S WHY WE DID THESE BOOKS TO TRY TO PUT IT IN SOME RESEMBLANCE OF THE SAME ORDER AS SUSAN WHICH... SO, WHEN WE WERE IN MRS. BRADY'S OFFICE WE WERE GOING BY THESE BOOKS AND THESE BOOKS BOTH. AND MR. DURANT IS CORRECT. THERE WERE SOME INVOICES, MAYBE INVOICES, BUT THERE WAS SOME BACKUP THAT WE HADN'T BEEN ABLE TO LOCATE. THERE WAS NOT MUCH THAT HAD NOT BEEN PROVIDED IN THESE NOTEBOOKS, BUT WAS PROVIDED BEFORE WE MET IN THAT OFFICE IN DECEMBER,

WHATEVER IT WAS.
JUDGE HOWE: BUT AFTER THE DATE PROVIDED IN THE ORDER?
MS. COOK: YES, MA'AM.
JUDGE HOWE: THE 1ST OF DECEMBER?
MS. COOK: YES, MA'AM. BUT VERY FEW AND I DON'T KNOW... I ACTUALLY HAVE THIS SET OF NOTEBOOKS. ALSO I BELIEVE ARE IN J. J'S CAR.
MR. DURANT: YOUR HONOR, FROM THE STANDPOINT OF THE PLAINTIFFS, WE MADE AN EARNEST EFFORT TO TRY TO GO THROUGH THIS STUFF. THE DEPOSITIONS OF MR. VEREEN WAS, I HAVE AN INVOICE AND I HAVE A CHECK AND YOU'VE GOT IT, BUT WE DIDN'T. SO, YOU HAD CUT YOUR ORDER AND WHEN WE MET IN JANUARY FOR TWO OR THREE DAYS, IF WE LOOKED AT THAT AND WE CHECKED TO SEE WAS THERE AN INVOICE IN THERE IDENTIFYING THIS AS AN A&E JOB AND A CHECK. IF THERE WASN'T, NO GO. THE CUT OFF DATE WAS THERE --
MS. COOK: AS FAR AS THEY WERE CONCERNED.
MR. DURANT: OKAY. AS FAR AS WE WERE

CONCERNED. IF YOU'RE TRYING TO GO IN THE BACK DOOR AND DO IT AGAIN, WE WILL BE HERE FOREVER.

JUDGE HOWE: I UNDERSTAND.

MR. DURANT: IF WE HAVE A CPA, HIRED BY THE DEFENDANTS ONLY, SUSAN WILL BE MEETING WITH THE ACCOUNTANT TO GO THROUGH THESE THINGS AND DOCUMENT THEM A YEAR AGO.

MS. COOK: WELL, YOUR HONOR, I DON'T DISPUTE THE MAJORITY OF WHAT FRANK SAID. I CERTAINLY DON'T DISPUTE THAT EVERYBODY IN THIS CASE HAS TRIED HONESTLY TO GET ALL OF THESE DOCUMENTS TOGETHER. IT WAS A YOMAN'S JOB IN ORDER TO GO BACK WHEN WE WERE DOING THIS IN 2010 AND 2011, AND YOU KNOW, THAT'S GOT TO BE AT THE FAULT OF MY CLIENT AND I UNDERSTAND THAT.

JUDGE HOWE: YES.

MS. COOK: I'M NOT TRYING TO SKIRT THAT RESPONSIBILITY AT ALL. WE WERE GOING THROUGH WAREHOUSES TRYING TO PULL DOCUMENTS AND WE WERE NOT TRYING TO HOLD ANYTHING UP. I UNDERSTAND

FRANK'S POSITION ON THAT, BUT I WOULD LIKE THE OPPORTUNITY TO BE ABLE TO GET THOSE EXHIBITS OUT OF THAT NOTEBOOK BECAUSE THERE WERE SOME THAT WERE ADDED TO, BUT THERE WEREN'T VERY MANY. I CAN'T VERIFY RIGHT NOW WHETHER THIS WAS OR THIS WASN'T, THIS PARTICULAR EXHIBIT 5.

JUDGE HOWE: THE QUESTION IS, WAS PROPOSED DEFENDANT'S 5 PROVIDED BY THE CUT OFF DATE IN THE PROPOSED ORDER?

MR. DURANT: IT WAS NOT.

MS. COOK: THE CHECKS WERE... YOUR HONOR, THE CHECKS WERE. THE TWO CHECKS TO ASI FROM ARTHUR VEREEN WERE. THEY ARE IN THERE --

JUDGE HOWE: THE INVOICES WERE NOT?

MS. COOK: I DON'T KNOW, YOUR HONOR. THAT'S WHY I WANT TO LOOK AT MY BLACK NOTEBOOKS TO SEE IF THEY WERE. IF ANYTHING WAS NOT, IT WAS THE INVOICES.

JUDGE HOWE: IS YOUR BLACK NOTEBOOK NOT THE SAME AS -- WHERE IS YOUR BLACK NOTEBOOK?

MS. COOK: IT'S IN HIS CAR. GO GET

IT.

MR. DURANT: THE PROBLEM WE HAVE, YOUR HONOR, IS WE'VE GOT MRS. BRADY HERE WHO IS TRYING TO KEEP THE RECORD STRAIGHT. REMEMBER THIS IS NOT A&E'S CHECKS OR A&E'S INVOICES. THESE ARE INVOICES THAT SOME OTHER COMPANY --

JUDGE HOWE: THIS IS ARTHUR VEREEN?

MR. DURANT: ARTHUR VEREEN IS SAYING, HERE IS MY CHECKING STATEMENTS AND I WANT CREDIT FOR $29,000.00 AND YOU SAID, "NO. YOU'RE GOING TO HAVE TO GIVE US THE BACKUP." WE TALKED ABOUT THAT IN DEPTH. IT'S ALWAYS THESE TWO CHECKS... WE PUT THE STAMP OF DISAPPROVAL ON IT BECAUSE WE ARE FOLLOWING THE ORDER BECAUSE THERE IS NO WAY TO JUSTIFY ANYTHING JUST ON THE CHECK. AND NOW, YOU'RE ASKING MRS. BRADY, YOU MEAN, YOU DIDN'T MAKE A REPORT? WELL, SHE CAN'T LOOK AT WHAT SHE DID NOT HAVE. IT'S A MESS, BUT IT WASN'T A MESS OF OUR CREATION. AND THE TIME PERIOD OF WANTING THESE RECORDS -- WE WERE TRYING TO GET THESE

RECORDS FOR OVER A YEAR AND I THINK SUSAN WAS TOO, BUT THEY WEREN'T FORTHCOMING. AT SOME POINT IN TIME, WE HAD TO CUT IT OFF BECAUSE YOU GAVE US THE CUT OFF.

JUDGE HOWE: I DID.

MS. COOK: YOUR HONOR, NOW, I AM NOT DISPUTING A LOT OF WHAT MR. DURANT IS SAYING, BUT I NEED TO ALSO MAKE IT CLEAR HERE ON THE RECORD THAT AS MRS. BRADY TESTIFIED, SHE AND MR. DURANT, MR. SMITH... LET ME PREFACE THIS BY SAYING, I WAS NOT THE ORIGINAL COUNSEL IN THIS CASE. MR. MACDONALD WAS THE ORIGINAL DEFENSE COUNSEL IN THIS CASE. I CAME IN AND BECAME INVOLVED WHEN MR. SMITH DID CAUSE CONFLICT AND MR. MACDONALD HAD TO GET OUT. DURING THE TIME PERIOD IN WHICH I WAS NOT YET COUNSEL, IT IS MY UNDERSTANDING, AND I DON'T THINK THIS HAS BEEN DISPUTED, BUT IT IS MY UNDERSTANDING THAT FRANK AND MR. SMITH WENT TO A&E'S OFFICE AND EVERY DOCUMENT THAT WAS IN THE POSSESSION OF A&E THAT THEY HAD BEEN

ABLE TO FIND AT THAT POINT WAS IN A CONFERENCE ROOM. THEY WERE LEFT IN THE CONFERENCE ROOM WITH ALL OF THOSE DOCUMENTS BY THEMSELVES WITH ALL OF THOSE DOCUMENTS SO THAT THEY COULD GO THROUGH THEM, HAVE THEM ALL COPIED OR WHAT THEY WANTED TO COPY, WHATEVER. ALL OF THOSE DOCUMENTS INCLUDING THESE WERE THERE.

JUDGE HOWE: THE TWO CHECKS, BUT NOT THE INVOICES.

MS. COOK: NO. THE INVOICES WERE THERE. THEY WERE NOT IN THE ORDER... I MEAN, THEY WERE NOT... THEY DIDN'T HAVE A REPORT LIKE THIS SO THEY COULDN'T HAVE BEEN... IT WAS NOT ORGANIZED. IT WAS IN BOXES.

MR. DURANT: YOUR HONOR, WE GOT TO LOOK AT OUR OWN INVOICES. OUR OWN RECORDS. WE GOT TO GO LOOK AT THEM.

MS. COOK: THAT'S RIGHT. WELL --

MR. DURANT: INITIALLY, WE WERE TOLD WE COULD GET OUR OWN INVOICES, GO SUBPOENA THEM AND I SAID, "I REPRESENT THE PLAINTIFFS. IT'S OUR --"

MS. COOK: AND, YOUR HONOR, THEY WENT AND THEY LOOKED AT THEM. THEY CHOOSE NOT TO GET A COPY OF EVERYTHING. THEY WANTED TO TAKE THEM OUT OF THE OFFICE. THEY WERE NOT ALLOWED TO TAKE THEM OUT OF THE OFFICE. THEY WERE ALLOWED TO TELL US WHERE TO TAKE THEM TO HAVE THEM RUN OFF FOR THEM. THEY PULLED OUT WHAT THEY WANTED TO COPY AT THAT TIME.

MR. DURANT: WE WERE LOOKING AT THE A&E RECORDS NOT ARTHUR VEREEN'S PERSONAL CHECKBOOKS.

JUDGE HOWE: IF THEY WERE ORGANIZED, I DON'T KNOW WHAT I WOULD HAVE SEEN. IF I WOULD HAVE SEEN CHECKS IN ONE PART OF THE ROOM AND THESE TWO PIECES OF PAPER IN ANOTHER PART OF THE ROOM, I CERTAINLY WOULD NOT HAVE KNOWN TO PUT THEM TOGETHER.

MS. COOK: NO. BUT WHAT YOU WOULD HAVE DONE IS YOU WOULD RUN OFF EVERY PIECE OF PAPER THAT WAS THERE AND GIVEN IT TO YOUR EXPERT TO HAVE THE EXPERT PREPARE HER REPORT. BUT, YOUR

HONOR, IN ALL FAIRNESS, I DON'T KNOW THAT THE ARTHUR VEREEN CHECKS WERE THERE BECAUSE THOSE ARE ARTHUR VEREEN CHECKS THAT DAY. THOSE WERE CLEARLY TURNED OVER. THE ARTHUR VEREEN CHECKS WERE CLEARLY TURNED OVER BEFORE THE DECEMBER 1ST CUT OFF.

JUDGE HOWE: WELL, THIS ONE PIECE OF PAPER --

MS. COOK: BUT WHAT WAS NOT --

JUDGE HOWE: THIS ONE PIECE OF PAPER DOESN'T EVEN SAY ARTHUR VEREEN OR VEREEN CONSTRUCTION. IT SAYS NOTHING ABOUT VEREEN ANYWHERE ON IT. IT SAYS, "WILLOUGHBY FAMILY INVESTMENT, INC." THAT'S IT.

MS. COOK: YES, MA'AM. BUT THAT'S BECAUSE WILLOUGHBY WAS THE JOB AND WILLOUGHBY WAS AN A&E JOB AND IF YOU LOOK AT THE SEPTEMBER 30TH 2004 ASI INVOICE, IT'S GOT THE WILLOUGHBY FAMILY INVESTMENT CARE OF MR. VEREEN. IT WAS IN THERE. THE TWO INVOICES WOULD'VE BEEN IN THE A&E DOCUMENTS. THE CHECKS... THE DAY THEY WERE OVER

THERE AND PULLED THE DOCUMENTS FROM A&E, THE ARTHUR VEREEN CHECKS WOULD NOT HAVE BEEN THERE. THIS WAS WHEN THE LIGATION STARTED IN --

JUDGE HOWE: 2009?

MS. COOK: YES, MA'AM. 2009. NOW, THEN, THEY WERE GIVEN THE ARTHUR VEREEN CHECKS BEFORE THE DECEMBER 1ST CUT OFF. SO, WHEN YOU PUT THE TWO TOGETHER, THEY HAD IT ALL BEFORE THE CUT OFF. NOW, DID THEY HAVE IT TOGETHER IN THIS FORM? I CAN'T SAY THAT THEY DID. THAT'S WHY WE ARE LOOKING TO WHERE MY NOTEBOOKS ARE DOWN IN THE CAR.

MR. DURANT: YOUR HONOR, WITHOUT THAT INVOICE, WE WOULDN'T EVEN KNOW THERE WAS A BILL. WE WOULDN'T KNOW THAT HE MADE PAYMENT. WE WOULDN'T KNOW WHETHER WILLOUGHBY WAS CHARGED OR WHETHER WILLOUGHBY PAID IT BACK TO HIM AND HE PUT IT IN HIS ACCOUNT. THERE'S ABSOLUTELY NO WAY, WITH THE CLUSTER WAY THAT THEY'RE BILLING AND DOING STUFF. IT'S NOT ON THE BOOKS AND

RECORDS OF THE COMPANY. IF IT HAD BEEN, MAYBE WILLOUGHBY WOULD HAVE BEEN CHARGED. MAYBE WILLOUGHBY WAS CHARGED AND REIMBURSED IN PERSON. YOUR HONOR, WE DO NOT HAVE EVERY ONE OF WILLOUGHBY'S DEPOSIT TICKETS. WE SPENT $4,000.00 OR $5,000.00 COPING SELECTIVE PARTS OF IT. THE MAN SAID THAT HE DIDN'T GET ANY DEPOSITS. WE COULD NOT GO THROUGH, YOU KNOW, SEVEN, EIGHT CHECKING ACCOUNTS AND PAY THEM. IT'S NOT THE DEPOSIT TICKETS. IT'S THE CHECKS THAT GO IN THEM. THAT'S WHAT WE HAD TO PAY THE BIG BUCKS FOR. THERE IS NO REASON FOR US TO EXPECT THIS. WE HAVE HIS CHECKING ACCOUNT BECAUSE MS. COOK GAVE IT TO US. IT'S MORE THAN JUST LOOKING AT A SET OF CHECKS THAT MR. VEREEN HAS... HAD FOUR ACCOUNTS AT CAROLINA FIRST, NOT ONE. SHE DIDN'T LOOK AT ALL THESE.

MS. COOK: I'M NOT DISPUTING THAT, BUT WHAT I AM DISPUTING IS THEY HAD THE INVOICES FOR A&E OR ACCESS FOR ALL INVOICES OF A&E THAT WERE IN THE ROOM

WHEN THEY WENT AND LOOKED AT THE DOCUMENTS, WHEN I WAS NOT YET COUNSEL. THEY CHOSE OUT OF ALL... AND WE SAVED THESE. WE CHOSE OUT OF ALL THE DOCUMENTS THAT WERE AVAILABLE. THEY CHOSE TO GET TWO BOXES OF THEM. THEY PICKED PAYROLL... I WAS KIND OF AMUSED AT WHAT THEY DID CHOOSE TO COPY. I MEAN, THEY COPIED PAYROLL CARDS AND PAYROLL RECORDS. JUST WEIRD STUFF THAT I WOULDN'T HAVE COPIED, BUT WHATEVER.

MR. DURANT: THAT'S NOT AN INVOICE TO A&E, YOUR HONOR.

MS. COOK: WHAT'S NOT AN INVOICE TO A&E?

MR. DURANT: IT'S PAID BY ARTHUR VEREEN. WHAT MAKES YOU THINK WE WOULD SEE SOMETHING AND JUST DELIBERATELY NOT COPY IT? YOU WEREN'T INVOLVED WITH IT. WE WENT AND COPIED STUFF BECAUSE IT WAS NOT PROVIDED TO US AND IT'S NOT ON THE BOOKS. WE ARE LOOKING WHERE WE CAN FIND IT. I WOULD HAVE NO IDEA WHAT ARTHUR VEREEN PAID FOR US

VERSES ANYTHING ELSE HE DID. AND IT WAS HER JOB TO GIVE ME THIS. YOU CAN'T SAY, "WELL, IT WAS IN MY OFFICE, FRANK. YOU SHOULD HAVE FOUND IT." THAT IS LUDICROUS.

MS. COOK: I AGREE WITH MR. DURANT TO SOME EXTENT, BUT WE HAVE TO LOOK AND SEE EXACTLY WHAT HE HAD BY THE CUT OFF DATE. BUT BY LIKE TOKEN, I MEAN, HE'S NOT SITTING OVER THERE WITH SOME INNOCENT BABE IN THE WOODS. THIS MAN HAS BEEN THROUGH THIS BEFORE. MR. SMITH, WAS THE PRESIDENT OF THE COMPANY. HE KNEW WHAT JOBS HIS BUTT WAS OUT THERE WORKING ON. HE KNEW HE WAS WORKING ON THE WILLOUGHBY JOB. SO, HE SAW AN INVOICE THAT SAYS, "WILLOUGHBY FAMILY INVESTMENT" AND SAYS, "WILLOUGHBY CONDOS AT 44TH" WHERE HE SPENT A YEAR OF HIS LIFE DOWN THE STREET FROM HIS HOME BUILDINGS CONDOS. HE WOULD HAVE PULLED THIS. MR. VEREEN TESTIFIED WHEN HE WAS ON THE STAND, YOUR HONOR, THAT SOMETIMES HE HAD STARTED, AS THEY HAVE TO DO IN

THE CONSTRUCTION INDUSTRY, TRYING TO WORK AND GET WORK LONG BEFORE YOU GET A CONTACT AND YOU START. SO, THE WILLOUGHBY FAMILY 44TH PROJECT WAS ONE OF THOSE THAT MR. VEREEN, WHILE HE WAS DOING BUSINESS AS ARTHUR VEREEN CONSTRUCTION, HAD BEEN WORKING ON GETTING THAT JOB WITH THE WILLOUGHBY FAMILY. HE SAID THEY COULDN'T DECIDE WHAT THEY WANTED TO DO WITH THAT PROPERTY OFF OF BOB GRISSOM FOR SOME PERIOD OF TIME. IT WAS ONE OF THE FIRST JOBS, AS I RECALL, LOOKING AT THE JOB LEDGERS THAT THEY STARTED WORKING ON AS A&E, ONCE A&E WAS FORMED IN EARLY '04. NOW, THEY HAD ALREADY BEEN DOING ALL THE PRELIMINARY WORK WITH THE WILLOUGHBY FAMILY. IT WAS ARTHUR VEREEN CONSTRUCTION. YOU KNOW, YOU'RE GOING TO TRY TO THROW A MONKEY WRENCH IN SOMETHING BY SAYING, WE'VE CHANGED OUR NAME OR OUR NEW COMPANY NOW OR WHATEVER. MR. SMITH, KNEW HE WAS WORKING FOR WILLOUGHBY.

MR. DURANT: YOU HONOR, WE DON'T HAVE

A WILLOUGHBY PLACE CONTRACT. THERE HAS NOT BEEN ONE PRESENTED WITH A&E OR WITH ARTHUR VEREEN. WE DON'T KNOW WHETHER IT WAS COST PLUS. WE HAVE NO WAY OF KNOWING.

JUDGE HOWE: OKAY.

MR. DURANT: MR. VEREEN NEVER PRODUCED IT. THAT'S THE PROBLEM.

JUDGE HOWE: MS. COOK HAS HER NOTEBOOK HERE NOW.

OFF THE RECORD.

Q MRS. BRADY, I THINK BEFORE MR. DURANT AND I STARTED HAVING AN EVIDENTIARY ISSUE, I THINK WHAT I WAS ASKING YOU ABOUT WAS ASIDE FROM THE INCOME TAX ISSUES THAT MIGHT ARISE FROM EXPENSES OR INCOME NOT BEING REFLECTED ON THE PEACHTREE GENERAL LEDGER BECAUSE THAT'S WHAT WAS USED IN THIS CASE WAS A COMPUTER PRINT OUT. THAT IF YOU WENT BACK TO THE SOURCE DOCUMENTS, AS I HAD BEEN ASKING YOU ABOUT GARBAGE IN GARBAGE OUT. YOU SAID THAT YOU THOUGHT IT WAS DONE PROPERLY, BUT THERE WERE THINGS THAT WERE MISSING AND TO SUPPLEMENT OR GET THE BOOKS AND RECORDS, THE GENERAL LEDGER OR THE ACCOUNTING SYSTEM CORRECT, YOU WOULD GO BACK TO THE SOURCE DOCUMENTS IN ORDER TO GET THAT

INFORMATION TO SUPPLEMENT OR FILL IN THOSE INCOMPLETE AREAS, IS THAT CORRECT?

A CORRECT. BUT THERE'S ONE THING I WANT TO MENTION AS FAR AS MY TESTIMONY. YOU'RE GOING A LITTLE BIT OUT OF THE SCOPE OF WHAT I WAS ENGAGED TO DO FOR A&E. WHAT YOU'RE PRESENTING NOW FOR ME TO LOOK AT WAS NEVER BROUGHT UP IN MY REPORTS. I NEVER CHARGED A&E WITH IT. SO, I'M NOT SAYING THERE'S A QUESTION OF... I THINK IT'S SOMEONE ELSE'S DECISION TO SAY WHETHER THESE EXPENSES FROM 2003 CAN BE REIMBURSED OR PAID. ME, AS THE EXPERT, I WENT THROUGH A&E'S BOOKS AND THAT'S WHAT I WAS ASKED TO DO. SO, THESE NOT BEING ON THE JOB LEDGER, NOT BEING RECORDED AS A NOTE, I WOULD HAVE NO REASON EITHER TO GO BACK AND QUESTION OR EVEN KNOW THOSE INVOICES EXISTED.

Q YOU HAVE CLARIFIED A LOT THAT I WAS TRYING TO UNARTFULLY ADDRESS WITH WHAT YOUR REAL SCOPE WAS. YOU LOOKED, IF I UNDERSTAND WHAT YOU'RE SAYING, SOLELY AT WHAT WAS REPORTED ON THE BOOKS AND RECORDS OF A&E'S GENERAL LEDGER AND BACKUP DOCUMENTATION? AND DID NOT GO FURTHER AFIELD OF THAT TO LOOK TO SEE IF IN FACT A&E MIGHT NEED TO REIMBURSE SOMEONE?

A NO. I LOOKED AT SOME OF THOSE DOCUMENTS, BUT I

CAN'T TELL YOU. I DID THE FULL... WITH ARTHUR VEREEN. I CAN'T SAY I WENT THROUGH EVERYTHING WITH ARTHUR VEREEN PERSONALLY, CONSTRUCTION, PARK WAY PROPERTIES, PARKWAY OFFICES. I DID NOT GO THROUGH EVERY EXPENSE AND EVERY CHECK TO SEE IF THEY LEFT OUT AN A&E EXPENSE. I STARTED WITH THESE AND THE THINGS THAT I QUESTIONED AND THERE WERE SOME EXPENSES WHEN I WENT TO LOOK AT THEIR BOOKS, YES. THEY PAID ASI ENGINEER. YES, THEY PAID PYRAMID ENGINEERING, BUT SO DID A&E. THERE'S REALLY NO WAY WITH THE MINGLING OF THIS TO DETERMINE WERE THEY PAYING THE SAME BILLS OR WERE THEY NOT. IF IT WASN'T ENTERED INTO THIS COMPUTER, IF IT DID NOT RUN THROUGH THE BANK ACCOUNT OF A&E AND THERE WAS SOMETHING OUT THERE THAT JUST EXISTED, I WOULD HAVE BEEN GRABBING AT STRAWS. AND I'M NOT THAT GOOD.

Q AND YOU WEREN'T HIRED TO DO THAT? THAT WAS NOT IN THE SCOPE OF WHAT YOU WERE HIRED TO LOOK AT?

A I WAS HIRED TO LOOK THROUGH THE BOOKS OF A&E AND TO FIND OUT IF THERE WERE SOME PROBLEMS.

Q SO, YOU HAVE NOT... OTHER THAN IF SPECIFIC MATTERS CAME UP, YOU HAVE NOT LOOKED AT THE BOOKS AND RECORDS OF MR. VEREEN OR HIS OTHER THREE ENTITIES TO VERIFY IF THEY PAID LEGITIMATE EXPENSES OF A&E

OR IF THE EXPENSE WAS NOT REFLECTED SOMEWHERE IN A&E'S BOOKS?

A I LOOKED THROUGH SOME OF THEIR EXPENSES, BUT YEAH. I DIDN'T PULL... LIKE I SAY, WE HAD THE BANK STATEMENT AND WE HAVE THE TAX RETURNS AND THEIR FINANCIAL RECORDS. DID I GO THROUGH THEIR BACKUP INVOICES, NO. AND THAT'S WHAT WE HAD REQUESTED EARLIER, BUT LIKE I SAID, WHAT YOU'RE PRESENTING IS NOT PART OF MY NUMBER. IT'S NOT WHAT I DID THE WORK ON.

Q SO, YOU WEREN'T ASKED TO NOR DID YOU LOOK AT AMOUNTS ARTHUR VEREEN MIGHT HAVE PAID VENDERS FOR A&E IF IT WAS NOT IN A&E'S BOOKS? IF IT WAS NOT BOOKED AS AN EXPENSE IN A&E'S BOOKS?

A WE DID ASK FOR THEM, BUT WE NEVER GOT THEM. BUT WHAT I'M SAYING IS, WHAT YOU PROVIDED US WITH, WE WENT THROUGH IN THE BEGINNING, BUT I'M SAYING WHEN I WENT TO DO MY WORK, DID I GO BACK THROUGH ALL OF ARTHUR VEREEN'S INVOICES OF ALL THE CHECKS THAT HE HAD WRITTEN TO FIND HIS BACKUP, NO.

Q AND TO THE EXTENT THAT YOU HAVE NOT DONE THAT, YOUR REPORT WOULD NOT INCORPORATE ANYTHING THAT MIGHT BE A LEGITIMATE A&E EXPENSE THAT WAS PAID FOR BY MR. VEREEN?

A IT COULD HAVE BEEN A LEGITIMATE EXPENSE BACK IN

2003, 2004. IT COULD'VE BEEN.

Q FOR EXAMPLE, IT COULD HAVE BEEN THAT THESE ASI INVOICES THAT ARE FOR WILLOUGHBY PLACE THAT WAS RECORDED AS AN A&E JOB --

MR. DURANT: YOUR HONOR, I HAVE A CONTINUALLY OBJECTION. I KNOW SHE IS PROFFERING EVIDENCE, BUT IF THIS WAS NOT AN INVOICE FOR HER TO LOOK AT, I DON'T KNOW HOW SHE CAN ANSWER ANY QUESTIONS CONCERNING IT.

MS. COOK: I AM MORE OR LESS ASKING A KIND OF HYPOTHETICAL --

JUDGE HOWE: YOU HAVEN'T OFFERED THOSE INTO EVIDENCE YET.

MS. COOK: YES, MA'AM. I HAVE OFFERED 5 AND IT WAS ACCEPTED, BUT THEN I THINK MR. DURANT WAS MAKING A MOTION TO STRIKE IT.

MR. DURANT: I THINK YOU SAID IT WAS INCLUDED IN THE DECEMBER BOOK AND IT WAS NOT SO.

JUDGE HOWE: OKAY. ARE YOU MOVING TO STRIKE NOW?

MR. DURANT: YES, MA'AM. IT WASN'T DELIBERATELY MISLEADING. WE OBJECTED

TO ANYTHING THAT WAS NOT IN THE BOOK IN DECEMBER.

JUDGE HOWE: LET ME TAKE UP THE MOTION TO STRIKE. AS I UNDERSTAND IT, THE CHECKS OF DEFENDANT'S EXHIBIT 5 WERE INCLUDED IN THE NOTEBOOK, IS THAT CORRECT?

MS. COOK: YES, MA'AM.

JUDGE HOWE: BUT THE INVOICES WERE NOT INCLUDED, IS THAT CORRECT?

MR. DURANT: CORRECT.

MS. COOK: THAT'S CORRECT, YOUR HONOR.

JUDGE HOWE: **SO, AS FAR AS DEFENDANT'S EXHIBIT 5 IS CONCERNED, I WILL STRIKE THE TWO INVOICES. THE CHECKS CAN COME** IN, BUT I DON'T KNOW THAT CHECKS DO YOU ANY GOOD WITHOUT THE INVOICES.

MS. COOK: I THINK THEY DO, YOUR HONOR. SO, I'M GOING TO TAKE WHAT I CAN GET AT THIS POINT, YOUR HONOR, RESPECTFULLY AND UNDERSTAND THAT YOU'VE... PERHAPS, I SHOULD UN-STAPLE THESE AND PUT IN THE TWO CHECKS AS 5 AND I WOULD LIKE TO PROFFER THE TWO INVOICES AS 5-A. WOULD THAT BE

APPROPRIATE?

MR. DURANT: YOUR HONOR, JUST SO THE RECORD IS CLEAR. WE DIDN'T GET A CHECK LIKE THIS. WE GOT A COPY OF THE BANK STATEMENT THAT SHOWS THE CHECKS AND YOU SEE SOMETHING THAT SAYS, "WV" ON THE BOTTOM, THAT'S WHAT WE GOT. NOTHING ELSE.

MS. COOK: YOUR HONOR, IF YOU WILL LOOK AT THE BANK STATEMENT. IT ALSO HAS A NOTCH BESIDE IT AND ANNOTATED AT THE FRONT OF EACH OF THOSE BOOKS. THEY GOT A TABLE THAT REFERENCED WHY WE HAD INCLUDED THOSE PARTICULAR... PUT INTO EVIDENCE. WHY WE INCLUDED THE CHECK.

MR. DURANT: FOUR OR FIVE MONTHS LATER YOU HAVE SOMETHING... WE JUST HAVE SOMEONE PUT... I DON'T KNOW WHO THAT IS.

MS. COOK: YOUR HONOR, WITH THE NOTEBOOK THAT HE'S REFERRING TO THAT WAS GIVEN BEFORE THE CUT OFF DATE WAS THIS TABLE THAT ANNOTATED IT. AND IF YOUR HONOR... WHICH WILL BE PUT IN AND

YOU WILL SEE IT'S GOT LISTED... SO, THAT THEY DIDN'T HAVE TO LOOK AT EVERY CHECK. THEY COULD SEE WHICH ONE WE WERE REFERENCING. AS YOU SEE, IT'S GOT 3/15/2004 ASI IS THE EXPENSE. THAT'S WHO THE CHECK WAS MADE PAYABLE TO AND THE AMOUNT $15,180.00 AND THE A&E JOB WILLOUGHBY. WE HAVE THE SAME THING WHEN YOU GO BACK TO THE ONE THAT'S IN DECEMBER AS WELL, YOUR HONOR.

JUDGE HOWE: I WOULD ALLOW THE TWO CHECKS IN BECAUSE THEY WERE SUBMITTED PRIOR TO THE CUT OFF DATE IN THE PRIOR ORDER, BUT NOT THE TWO INVOICES. YOU MAY PROFFER THE TWO INVOICES.

MS. COOK: YES, MA'AM. YOUR HONOR, IF IT'S OKAY, I WILL GET MADAM COURT REPORTER TO DO **5-A.**

Q MRS. BRADY, COULD WE MOVE TO 2005?

A YES, MA'AM.

Q I THINK 2005 IS PLAINTIFF'S EXHIBIT 2. AM I RIGHT, MRS. BRADY?

A YES, MA'AM.

Q SO, FOR 2005 YOU DID THE SAME THING YOU DID YOUR

SPREADSHEET FOR ALL OF 2005. CAN I HAVE YOU LOOK AT... CAN I HAVE YOU LOOK AT TAB 10, THE CHECK WRITTEN TO CAROLINA FIRST. IT'S IN THE AMOUNT OF $23,089.75.

A YES, MA'AM.

Q IS THAT AN AMOUNT THAT IT'S A&E'S POSITION THAT IS OWED BY MR. VEREEN, ONE OF THESE ENTITIES TO A&E?

A NO. I BELIEVE THAT WAS VERIFIED AT ONE OF OUR MEETINGS. SO, THAT SHOULD BE ON YOUR FINAL REPORT THAT SAYS WHAT WAS VERIFIED.

Q OKAY. LET ME FLIP TO THE ACTUAL TAB. LET ME SHOW YOU WHAT IS DEFENDANT'S EXHIBIT 6. MRS. BRADY, THIS DEFENDANT'S EXHIBIT 6 IS A CHECK WRITTEN OFF THE A&E ACCOUNT TO CAROLINA FIRST IN THE AMOUNT OF 23,089.75.

A YES, MA'AM.

Q IS IT FROM EXHIBIT 6? WAS THAT... THEY WROTE THAT CHECK TO CAROLINA FIRST TO GET A CASHIER CHECK MADE PAYABLE TO SEARS FOR $23,089.75, IS THAT CORRECT?

A CORRECT.

Q AND A&E DOES ADMIT THAT THE SEARS WAS FOR PAYMENT FOR APPLIANCES FOR THE TAHITIAN PRINCESS JOB WHICH WAS AN A&E JOB, CORRECT?

A A&E DID... IT WAS ONE OF THEIR EXPENSES. SO, I

CAN'T REMEMBER WHAT JOB IT WAS FOR, BUT I DO HAVE IN MY RECORDS THAT THEY DID VERIFY ONCE THEY GOT THE BACKUP THAT THAT WAS AN A&E EXPENSE SO THAT WAS TAKEN OFF.

Q WHILE IT IS ON YOUR 2005 LEDGER SHEET FOR YOUR WORKBOOKS, WAS IT TAKEN OFF IN YOUR 2007 BOOK?

A NO. THIS WAS PUT ON THE FINAL REPORT THAT HAS THE CHARGES THAT YOU CONSENTED TO AND THAT WE VERIFIED. IF YOU WILL GO ON TO 2005 TAB IT SAYS, "VERIFIED". THIS IS WHERE EVERYTHING THAT WE MET WITH HAS BEEN RECORDED ON THIS.

Q SO, YOU HAD NOT CORRECTED THAT AS OF YOUR 2007 REPORT, BUT YOU DID CORRECT THAT AS OF YOUR EXHIBIT 40 THAT WAS GIVEN TO US TODAY?

A YEAH. I DON'T KNOW THAT IT WAS EVER CORRECTED, BUT IT WAS A VERIFIED AMOUNT. IT WAS QUESTIONED IN HERE AS TO WHAT IT WAS. WE HAD A CHECK THAT WAS WRITTEN TO CAROLINA FIRST THAT HAD NO INVOICE WITH IT.

Q SO, IS IT YOUR TESTIMONY THAT THESE AMOUNTS THAT ARE ON YOUR SPREADSHEET FOR '04, '05, '06, AND '07 AND THE BACKUP, THOSE ARE NOT YOUR FINAL REPORTS? I UNDERSTAND THAT BUT THEY'RE JUST ITEMS THAT YOU QUESTIONED?

A THOSE ARE ITEMS THAT WE QUESTIONED. THAT FINAL

REPORT HAS EVERY ONE OF THOSE CHARGES AND HAS ANOTHER COLUMN BESIDE IT WHICH SAYS, "CONSENTED, VERIFIED" OR IT HAS NOTHING.

Q YOU DIDN'T COME UP WITH YOUR OPINION UNTIL YOU GAVE ME THIS REPORT TODAY?

A I HAD THIS REPORT WHEN WE CAME TO COURT IN FEBRUARY. YOU JUST NEVER ASKED FOR IT.

Q OH.

A I THINK I FINISHED --

Q SO, YOU HAD THIS REPORT IN FEBRUARY, EXHIBIT 40?

A I HAD MY FINAL REPORT. IT DID NOT HAVE WHAT YOU CONSENTED TO. LIKE I WAS SAYING EARLIER, FOR INFORMATION PURPOSES ONLY. THAT WAS WHERE YOU HAD GIVEN ME THE REPORT THE DAY WE CAME TO COURT OR FRANK GAVE IT TO ME. YOU MIGHT HAVE E-MAILED IT TO HIM THE NIGHT BEFORE.

Q TRY THE WEEKEND BEFORE, WHATEVER.

A OKAY. WELL, IT WAS A COUPLE DAYS BEFORE WE WENT TO COURT. I THINK YOU E-MAILED IT. BY THE TIME I GOT IT, I GOT IT THE DAY OF COURT. SO, TO MAKE THINGS SIMPLER AND HOPEFULLY IT WOULD BE A LITTLE BIT FASTER, WHAT I DID WAS I TOOK THE SAME REPORT, ADDED ANOTHER COLUMN "CONSENTED TO". SO, THAT WAS FROM THE REPORT THAT YOU GAVE ME. MY FINAL REPORT WAS DONE WHEN WE CAME TO COURT IN FEBRUARY.

Q IN FEBRUARY -- WE HAD FINISHED YOUR TESTIMONY IN FEBRUARY. WOULD IT HAVE BEEN YOUR POSITION THAT THE 23 AND CHANGE WAS OWED BY MY CLIENT OR THAT IT WASN'T OWED BY MY CLIENT?

A THAT IT WAS NOT.

Q AND WHERE WAS IT TAKEN OFF IN THE 2007 BOOK? YOU KEPT TALKING ABOUT, WELL, THE 2007 BOOKS -- WHERE YOU'VE GOT --

A OKAY. CAN I --

Q LET ME FINISH. -- YOU DIDN'T WANT TO GO BACK BECAUSE YOU HAD ALREADY DONE '04, '05, '06? SO YOU MADE THOSE ADJUSTMENTS AT THE END OF '07. WAS THIS ONE OF THE ADJUSTMENTS THAT YOU DID?

A NO, MA'AM. THE BOOKS WERE ALL DONE BEFORE WE ALL MET. THIS WAS NOT VERIFIED UNTIL WE ALL MET IN THE CONFERENCE ROOM. WHEN WE ASKED YOU TO PRODUCE AND YOU CAME UP WITH ALL THE BINDERS. THE BOOKS WERE MY WORK, MY WORK ALONE AND WHAT I QUESTIONED. AND THEN I THINK THE JUDGE ORDERED FOR SOMEHOW WE CAME TOGETHER TO MEET TO SEE WHAT WE COULD AGREE ON. AND ONCE WE DID THAT, THAT'S WHY THESE REPORTS, THE EXACT SAME SPREADSHEETS, HAVE TWO MORE COLUMNS. ONE OF THEM SAYS, "VERIFIED AMOUNT." ONE OF THEM SAYS, "CONSENTED AMOUNT." THESE ARE THE NUMBERS THAT EITHER YOU CONSENTED OR

MR. VEREEN OR THAT ELLIS AND FRANK SAID THEY AGREED THAT IT WAS AN EXPENSE.

Q SO, THIS IS AN AGREED TO EXPENSE THAT MY CLIENT DOESN'T OWE?

A CORRECT.

Q LET ME ASK YOU IF YOU WOULD LOOK AT --

A THAT IS ALSO NOT IN THAT $2.8 MILLION FIGURE.

Q LOOK AT TAB 13 FOR 2005, AND YOU HAVE GOT AN AMOUNT OF $6,209.83, A CHECK WRITTEN FROM A&E TO DOLPHIN?

A YES.

Q IS THAT AN AMOUNT THAT IS STILL OWED OR IT IS A&E'S POSITION OR YOUR POSITION AS THE EXPERT FOR A&E THAT IS OWED BY MY CLIENT TO A&E?

A I HAVEN'T FOUND ANYONE WHO CAN EXPLAIN TO ME WHAT THAT IS. SO, THAT'S STILL IN QUESTION.

Q SO, IF IT'S IN QUESTION, THEN MY CLIENT OWES IT TO A&E? IS THAT HOW YOU HAVE ANSWERED THOSE QUESTIONS? IS THAT YOUR POSITION?

A IF IT WAS A CHECK THAT WAS WRITTEN BY VEREEN AND THAT WE HAVE NO BACKUP, YES. IT'S STILL IN QUESTION.

Q OKAY. AND SO FOR THE BACKUP THAT YOU HAVE IN YOUR FILE, IN YOUR WORKBOOK BEHIND TAB 13, THE ONLY BACKUP THAT YOU HAVE IS A TYPED... WRITTEN SHEET

THAT SAYS CHECK NUMBER 3285, THE DATE, THE ACCOUNT AND THE AMOUNT? THAT'S THE BACKUP THAT YOU HAVE? WHERE DID THIS COME FROM?

A I CAN'T SEE THAT FAR. I'M SORRY. I HAVE A TYPED SHEET, YES, BUT I CAN'T SEE WHAT YOU'RE HOLDING IN YOUR HAND.

Q I'VE GOT ONE TYPED SHEET BEHIND TAB 13?

A I HAVE TWO SHEETS.

Q YOU HAVE TWO SHEETS BEHIND TAB 13?

A A COPY OF THE CANCELED CHECK.

Q SO, LET ME HAND YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT 7. IS THIS A COPY OF THE CANCELED CHECK THAT YOU HAD BEHIND TAB 13?

A I DON'T HAVE THE CHECK STUB. I JUST HAVE A COPY OF THE CANCELED CHECK.

Q SO, WHAT YOU'VE GOT BEHIND THE COPY OF THE CANCELED CHECK... WHAT YOU'VE GOT BEHIND TAB 13 IS A COPY FOR THE CHECKING ACCOUNT STATEMENTS THAT'S GOT A SERIES OF CHECKS AND ONE OF THEM ON THAT PAGE IS THE FRONT OF THIS PARTICULAR CHECK 3285, CORRECT?

A CORRECT.

Q DEFENDANT'S EXHIBIT 7 IS A CHECK 3285, BUT IT HAS THE TOP PART OF THE STUB, CORRECT?

A CORRECT.

Q HAVE YOU SEEN THAT BEFORE?
A I DON'T RECALL THAT I HAVE.
Q AND IT'S GOT WRITTEN ON THERE, "DOLPHIN EQUIPMENT/SUPPLIES FOUNTAIN BUILDING 5,6,11." AND THEN IT'S GOT SOME NUMBERS THAT I DON'T UNDERSTAND, BUT WAS THE FOUNTAINS AN A&E JOB TO YOUR KNOWLEDGE?
A I THINK SO.
Q NOW, THIS AMOUNT $6,209.86, IS THAT AN AMOUNT THAT YOU SAY --

MR. DURANT: YOUR HONOR, BEFORE SHE INTRODUCES THIS INTO EVIDENCE, I DON'T THINK THE PLAINTIFF HAS EVER SEEN WHAT SHE GAVE US AS FAR AS THE TOP OF THIS CHECK. ALL WE HAD WAS THE CHECK. WE HAVE NOTHING WITH A HANDWRITTEN NOTATION ON THE TOP.

MS. COOK: YOUR HONOR, IT WAS AN A&E CHECK THAT WAS IN THE DOCUMENTS THAT WAS PRODUCED TO THEM AT THE OFFICES OF A&E.

JUDGE HOWE: DO YOU WANT TO CHECK? WAS THIS DOCUMENT IN THE DOCUMENTS THAT WAS PRODUCED BY THE DATE IN THE ORDER?

MS. COOK: IT HAD BEEN PRODUCED IN...
MR. DURANT: NOT CORRECT, YOUR HONOR. WE HAVE THE CHECKING ACCOUNT RECORDS FOR THIS COMPANY. WE DON'T HAVE ANYTHING LIKE THIS. THIS IS A HANDWRITTEN CHECK WITH STUFF ON THE TOP. WE HAVE A COPY OF THE CANCELED CHECK AND THERE'S NOTHING ON IT AND WE HAVE NEVER SEEN THIS.
MS. COOK: YOUR HONOR, THIS WAS IN... WE'RE NOT ASKING... THAT WAS ANYTHING WE WERE ASKING FOR CREDIT FOR FROM PAYMENT FROM ANOTHER ENTITY. THAT'S WHAT YOUR ORDER WENT TO PARAGRAPH 9. THIS IS WHAT THEY CLAIM WE OWE A&E ON A&E'S OWN RECORDS. AND A&E'S RECORDS WERE PRODUCED AT THE OFFICES OF A&E WHEN MR. MACDONALD WAS IN THERE AND THEY CHOSE TO PULL WHATEVER THEY WANTED TO PULL AND RUN OFF WHATEVER THEY WANTED TO RUN OFF. THIS IS NOT ANYTHING THAT WE ASKED YOU BE GIVEN AS A CREDIT TO US FROM A PAYMENT SOURCE OTHER THAN BY MR. VEREEN OR ONE OF MR. VEREEN'S ENTITIES. WHICH IS WHAT YOUR

ORDER PARAGRAPH 9 WENT TO. THIS IS JUST A VERIFICATION OF WHETHER OR NOT THIS IS AN EXPENSE OF A&E THAT WAS PROPERLY PAID AND THEY ARE NOW TRYING TO SAY WE OWE.

JUDGE HOWE: MR. DURANT.

MR. DURANT: YOUR HONOR, I THINK THE BOOKS AND RECORDS SHOW THIS WAS NOT CHARGED TO THE BALANCE. THAT'S WHY IT WAS PULLED OUT BY MRS. BRADY. WE HAD NO INDICATION WHAT IT WAS FOR. IT WAS JUST A CHECK AND JUST LIKE OTHER CHECKS, IT WAS NOT PRINTED BY THE COMPUTERIZED PROGRAM PEACHTREE. THIS IS A CHECK THAT WAS PULLED OUT AND HANDWRITTEN BY MR. VEREEN. OUR RECOLLECTION OF THESE RECORDS IS WHENEVER WE SAW THAT WE SUSPECTED TROUBLE.

JUDGE HOWE: I THINK MS. COOK'S POINT IS, WAS THIS DOCUMENT IN THE RECORDS WHEN YOU AND MR. MACDONALD WERE STILL IN THE CASE?

MR. DURANT: YOUR HONOR, WE HAD NO IDEA WHAT THEY HAD THERE. WE GOT TO

GO LOOK AT OUR OWN RECORDS. WE DIDN'T HAVE ALL THESE INVOICES. IF WE HAD THIS, IT MIGHT NOT HAVE BEEN AN ISSUE. BUT THIS WAS NOT SOMETHING WE HAD TO CONSIDER WHEN WE SAID, "SHOW ME WHAT YOU'VE GOT TO SUPPORT THE DOLPHIN CHECK AS TO WHAT IT WAS." WE WEREN'T TOLD UNTIL TODAY. THIS IS THE FIRST TIME I'VE EVER HEARD THE DOLPHIN WAS... AND I BELIEVE WE ASKED MR. VEREEN IN HIS DEPOSITION WHAT IT WAS FOR AND HE DIDN'T KNOW.

MS. COOK: I'M SURE THAT MR. DURANT HAS FORGOTTEN THE CONVERSATION THAT WE HAD IN MRS. BRADY'S OFFICE ON A DELIGHTFUL DAY IN DECEMBER WHERE WE DISCUSSED DOLPHIN AND THERE WAS A DISCUSSION ABOUT WHETHER IT HAD TO DO WITH COLUMNS OR WHETHER IT HAD TO DO WITH A SIGN. I MEAN, I SPECIFICALLY RECALL THAT.

MR. DURANT: THAT'S NOT WHAT WE TALKED ABOUT, BUT THERE WAS A CONVERSATION ABOUT SIGNS.

MS. COOK: I KNOW I DIDN'T COME UP

WITH THAT OFF OF THE TOP OF MY HEAD.
MR. DURANT: THE PROBLEM WAS WHEN WE WERE HAVING THE CONVERSATION, YOUR HONOR, MR. VEREEN WAS NOT THERE TO TELL US WHAT HE DID WITH IT BECAUSE HE DIDN'T APPEAR AT THE MEETING. SO, YOU HAVE ATTORNEYS SAYING STUFF AND MR. SMITH WAS THERE, BUT THE PARTY THAT WROTE THE CHECK WAS NOT PRESENT.
MS. COOK: NOW, FRANK, MR. VEREEN WASN'T THERE FOR THE TOTALITY OF THE MEETINGS, BUT HE WAS THERE.
MR. DURANT: OKAY. RIGHT.
MS. COOK: AND THE OTHER MATTER, YOUR HONOR, WHEN WE DISCUSSED WHETHER OR NOT IT WAS A SHIPPING COMPANY THAT DELIVERED THE COLUMNS BECAUSE I REMEMBER THAT DISCUSSION. THE SHIPPING COMPANY THAT DELIVERED THE COLUMNS... BUT IRRESPECTIVE, IT GOES TO THE WEIGHT OF THE DOCUMENT, YOUR HONOR, ABOUT WHAT... I MEAN, I THINK IT'S CLEARLY ADMISSIBLE. I MEAN, IT'S A RECORD OF THE COMPANY. THEY WERE GIVEN ACCESS TO THE RECORDS.

MR. DURANT: YOUR HONOR, I'M SURE THAT WE ASKED THAT IN INTERROGATORY, BUT LET'S MOVE ON.

JUDGE HOWE: I'M GOING TO ALLOW DEFENDANT'S 7. OVERRULED.

Q MRS. BRADY, CAN I HAVE YOU LOOK AT 2005 AT YOUR TAB 15 THAT'S COASTAL PAVING. AND AT THE TIME THAT YOU DID THIS REPORT, WAS IT A&E'S POSITION AND YOUR POSITION THAT MR. VEREEN AND ONE OF HIS ENTITIES OWED $7,000.00 TO A&E FOR A PAYMENT TO COASTAL PAVING?

A YES, MA'AM.

Q WHAT WAS THE BASIS OF THAT OPINION?

A I THINK THAT WAS... BECAUSE THAT WAS THE PAVING THE PARKING LOT AT THE OFFICE THAT WAS OWNED BY, I BELIEVE, PARK PLACE?

Q AM I CORRECT THAT A&E'S OFFICE WAS LOCATED AT PARK PLACE OFFICES THAT'S OWNED BY PARKWAY OFFICE... THAT A&E'S OFFICE WAS LOCATED --

MR. DURANT: I STIPULATE THAT.

Q AND DO YOU KNOW WHAT THE TERMS OF THE LEASE OR THE ARRANGEMENT BETWEEN A&E WAS WITH THE OWNER OF THE PROPERTY THAT OWNED THE A&E PROPERTY OR WHERE THEIR OFFICE WAS?

A I THINK THERE WERE A COUPLE QUESTIONS THERE, BUT

NO, MA'AM.
Q DO YOU KNOW IF IN ADDITION TO UTILIZING OFFICE SPACE OWNED BY PARKWAY OFFICES, IF A&E UTILIZED WAREHOUSE SPACE AT THE SAME LOCATION OWNED BY PARKWAY OFFICES?
A ARE YOU ASKING IF I'M AWARE OF THAT? NO.
Q DO YOU KNOW IF THERE WAS A LEASE OR AN ARRANGEMENT BETWEEN A&E AND THE OWNER OF THE WAREHOUSE SPACE FOR THE UTILIZATION OF WAREHOUSE SPACE?
A OKAY. I HAVE NOT SEEN ONE.
Q DO YOU KNOW IF PART OF THE AGREEMENT BETWEEN PARKWAY OFFICES, THE OWNER OF THE LEASE SPACE AND A&E, WAS IT A TRIPLE NET LEASE?
A I'VE NEVER SEEN A LEASE.
Q DO YOU KNOW WHAT THE TERMS OF ANY ORAL AGREEMENT WERE?
A NO. I WAS TOLD THAT THERE WERE NONE. I HAVEN'T SEEN ANYTHING.
Q NOW, YOU HAVE SEEN THE INVOICE WHERE WORK WAS DONE ON THE PARKING LOT DUE TO THE CONSTRUCTION EQUIPMENT OF A&E AND THE TOTAL COST WAS $14,000.00, HAVEN'T YOU?
A NO, I HAVE NOT.
Q YOU'VE NEVER SEEN THIS INVOICE?
A NO, MA'AM.

Q OKAY.

MR. DURANT: YOUR HONOR, SAME OBJECTION. I DON'T THINK THIS WAS DELIVERED TO US EITHER.

JUDGE HOWE: THAT EXPLAINS WHY SHE'S NEVER SEEN IT.

Q DO YOU KNOW IF A&E AGREED TO PAY FOR HALF THE PAVING OF THE PARKING LOT $7,000.00?

A NO, I DO NOT.

Q CAN YOU TELL ME WHY YOU PUT THE FIGURE OF $7,000.00 AS BEING OWED TO COASTAL PAVING? WAS THAT BY... WHAT THE CHECK WAS... THE AMOUNT THE CHECK WAS WRITTEN FOR?

A I THINK INITIALLY I WASN'T SURE.

MS. COOK: YOUR HONOR, I DON'T KNOW WHAT SHE'S LOOKING AT ON THAT COMPUTER. IT'S GOT ME SCARED.

A THIS IS THE PEACHTREE SOFTWARE.

JUDGE HOWE: SHE SAID THAT'S WHERE THE PEACHTREE SOFTWARE IS.

MS. COOK: YOUR HONOR, IF THAT HASN'T BEEN INTRODUCED AS AN EXHIBIT INTO EVIDENCE, I DON'T THINK IT'S... I WILL OBJECT TO HER --

JUDGE HOWE: WELL, YOU SHOULD KNOW

EXPERTS CAN USE DOCUMENTS AND INFORMATION THAT'S NOT INTRODUCED.

MS. COOK: THAT'S FINE.

A THIS IS WHAT I HAVE LOOKED AT PREVIOUSLY. I THOUGHT IT MIGHT TRIGGER SOMETHING.

JUDGE HOWE: DO YOU WANT HER TO INTRODUCE THE SOFTWARE?

MS. COOK: NO, THAT'S FINE.

Q I'M ASSUMING THAT YOU HAVE A&E'S CHECKING ACCOUNT RECORD. YOU SAID YOU DID, RIGHT?

A YES.

Q DO YOU KNOW IF THAT'S HOW MUCH THE CHECK... THE CHECK IS FOR $7,000.00 EXHIBIT --

MR. DURANT: WE WILL STIPULATE IT. SHE CAN EVEN PUT THE INVOICE IN IF YOU WANT TO BECAUSE IT WAS NOT TO A&E. PUT IT IN. PUT IT IN EVIDENCE.

MS. COOK: WELL NOW, I'VE GOT IT RIGHT HERE AND I WAS TRYING TO.

MR. DURANT: I WILL WAIVE MY OBJECTION ON THAT ONE.

MS. COOK: YOUR HONOR, I AM INTRODUCING EXHIBIT 8, WHICH IS THE INVOICE FOR THE PAVING AT ROBERT GRISSOM PARKWAY.

JUDGE HOWE: ALRIGHT. I WILL ASSUME IT'S A PARKING LOT AT ROBERT GRISSOM PARKWAY, RIGHT?

MS. COOK: WELL, IT'S A PARKING LOT OF OFFICE SPACE ON ROBERT GRISSOM PARKWAY.

JUDGE HOWE: THE WHOLE PARKING LOT? THIS IS DEFENDANT'S EXHIBIT 8. SO ADMITTED.

Q ARE YOU AWARE OF ANY CASH BY WAY OF CHECK OR CASH PAYMENTS OR CONTRIBUTIONS BY MR. SMITH INTO A&E TO HELP FUND THE OPERATIONS OF A&E IN 2003?

A IN 2003?

Q WHEN THE BUSINESS STARTED?

A NO.

Q DID YOU FIND ANY EVIDENCE OF ANY CASH OR CONTRIBUTIONS BY MR. SMITH TO A&E IN 2004?

A NO.

Q HOW ABOUT IN 2005?

MR. DURANT: YOUR HONOR, WE STIPULATE THAT WE MADE NO CASH CONTRIBUTIONS TO A&E.

MS. COOK: YOUR HONOR, I WOULD LIKE TO ASK THE QUESTIONS.

JUDGE HOWE: I MEAN, THE PLAINTIFF

STIPULATED. WHAT ELSE DO YOU WANT?

MS. COOK: DO YOU STIPULATE FROM '03 `TIL TODAY?

MR. DURANT: YES, YOUR HONOR, IN TERMS OF HIM WRITING THE CHECK AND PUTTING IT IN, CORRECT.

JUDGE HOWE: NO CASH CONTRIBUTIONS FROM MR. SMITH TO A&E?

MR. DURANT: THAT IS CORRECT, YOUR HONOR.

JUDGE HOWE: THANK YOU VERY MUCH, MR. DURANT.

Q TO YOUR KNOWLEDGE, HAS MR. SMITH MADE ANY CONTRIBUTIONS BY WAY OF MAKING ANY PAYMENTS FOR SUPPLIES, MATERIALS OR EXPENSES OF A&E FROM ANY OF HIS PERSONAL ACCOUNTS OR BUSINESS ACCOUNTS?

A I THINK THERE WERE SOME SMALL EXPENSES THAT HE PAID THAT HE WAS REIMBURSED.

Q I'M TALKING ABOUT, TO YOUR KNOWLEDGE, HAS HE MADE ANY CAPITAL CONTRIBUTIONS BY WAY OF PAYMENT OF ANY EXPENSES OF A&E?

MR. DURANT: THAT WERE NOT REIMBURSED?

MS. COOK: YES, OF COURSE.

MR. DURANT: THAT'S NOT WHAT YOU SAID.

A YOU DIDN'T SAY THAT, BUT... OKAY. WERE NOT

REIMBURSED, NO, MA'AM.

MR. DURANT: WE WILL STIPULATE THAT ALSO, YOUR HONOR.

Q TO YOUR KNOWLEDGE, DID MR. SMITH CONTRIBUTE ANY FF&E OR BUY ANY FF&E WITH FUNDS THAT WERE HIS AND NOT REIMBURSED BY A&E?

A NO, MA'AM.

Q TO YOUR KNOWLEDGE, DID MR. SMITH CONTRIBUTE ANY EQUIPMENT OR CONSTRUCTION EQUIPMENT THAT HE HAD TO A&E?

A NO. I BELIEVE THERE WAS... NO.

Q TO YOUR KNOWLEDGE, THE ONLY PERSON WHO CONTRIBUTED ANY CASH OR OTHER CAPITAL CONTRIBUTIONS TO A&E WOULD HAVE BEEN MR. VEREEN, IS THAT CORRECT?

A CASH. I DON'T KNOW WHAT YOU MEAN BY OTHER CAPITAL CONTRIBUTIONS.

Q WELL, PAYMENT OF EXPENSES OR LOANING OF MONEY TO A&E?

A CORRECT.

Q DO YOU KNOW OF ANY LOANS TO A&E OR ADVANCES TO A&E MADE BY MR. SMITH DURING A&E'S... FROM '03 TIL TODAY?

A I DO NOT.

Q CAN YOU TELL ME WITH REGARD TO THE COASTAL PAVING ENTRY, WHICH IS TAB 15 ON YOUR 2005 LEDGER SHEET,

YOU'VE GOT THE AMOUNT OF $7,000.00, BUT THEN ON CREDIT IT'S GOT $19,300.00. WHAT DOES THE CREDIT REFLECT? AND IT'S GOT THE ACCOUNT OF LAND?

A WHERE ARE YOU AT AGAIN?

Q YOUR SPREADSHEET FOR 2005. YES, MA'AM. AGAIN, UNDER THE COASTAL PAVING TAB 15, THAT LINE ITEM. TO THE RIGHT UNDER THE CREDIT COLUMN YOU'VE GOT LAND AND YOU'VE GOT $19,300.00?

A THAT MUST BE A TYPO, BUT THERE'S NO TOTAL ON THAT COLUMN.

Q WELL, THAT WAS NOT MY QUESTION. WHERE DID YOU GET THE FIGURE UNDER TAB 15, COASTAL PAVING? UNDER CREDIT IT'S GOT "LAND" $19,300.00. WHAT IS THAT?

A I SAID THAT WAS A TYPO.

Q WHAT SHOULD IT BE?

A IT SHOULD BE THE 7,000.00.

Q SO, INSTEAD OF TYPING 7,000.00 YOU TYPED "LAND $19,300"?

A IT LOOKS THAT WAY. BUT LIKE I SAID, THAT'S NOT A TOTAL COLUMN. SO, THAT HAS NO AFFECT ON THE NUMBER.

Q SO, ANYTHING THAT'S ON THIS REPORT UNDER CREDIT, IT DOESN'T MATTER?

A YEAH, IT MATTERS. I'M SORRY. IT WAS TYPED IN WRONG BUT THE TOTAL OF THAT COLUMN IS THE

$1,110,167.77.

Q WELL, NOW, ARE THERE ANY TYPOS IN THAT COLUMN?

A NOT TO MY KNOWLEDGE.

JUDGE HOWE: WHAT NUMBER DO YOU HAVE, 19?

MS. COOK: YES, MA'AM.

JUDGE HOWE: THAT'S THE ACCOUNT NUMBER 193?

MS. COOK: I'M JUST ASKING... IN MY COLUMN ON WHAT SHE HAD IN MY EXPERT BOOK IT'S GOT "LAND $19,300.00."

JUDGE HOWE: THAT'S THE ACCOUNT NUMBER 193.

MR. DURANT: THAT'S CORRECTED ON THE BIG ONE, YOUR HONOR, $7,000.00. HE HAS NOT BEEN CHARGED THE 19,000.00.

MS. COOK: NO. I UNDERSTAND THAT, BUT I WAS JUST WONDERING WHERE SHE GOT $19,300.00.

JUDGE HOWE: THAT'S WHERE SHE GOT IT. IT'S THE ACCOUNT NUMBER --

MS. COOK: SHE DID? THAT'S WHERE SHE GOT IT?

JUDGE HOWE: IT'S THE ACCOUNT NUMBER, MS. COOK. $19,300.00 IS THE ACCOUNT

NUMBER.

MS. COOK: I SEE THAT ON THE ACCOUNT NUMBER COLUMN.

A LIKE I SAID, MS. COOK, THERE WAS $40 MILLION WORTH OF TRANSACTIONS. THERE MIGHT BE A FEW --

Q AND WHERE DID YOU ARRIVE AT THAT $40 MILLION WORTH OF TRANSACTIONS?

A IF YOU TOTAL EVERY DEPOSIT THAT WENT THROUGH THE BANK ACCOUNT AND EVERY CHECK, IT WILL SURPASS 40 MILLION.

Q SO, IF YOU TOTAL EVERY DEPOSIT THAT WENT INTO A&E'S BANK ACCOUNT?

A YES, MA'AM.

Q IT'S $40 MILLION?

A YES. NO. IF YOU TAKE EVERY TRANSACTION. I DIDN'T MEAN TO SAY DEPOSIT. I'M TALKING ABOUT DEPOSITS GOING IN AND CHECKS COMING OUT, TRANSACTIONS.

Q IN TERMS OF MONEY COMING IN AND MONEY GOING OUT, IF YOU ADDED IT ALL, IT'S $40 MILLION? BUT YOU'RE NOT SAYING THERE WAS $40 MILLION IN DEPOSITS IN THIS ACCOUNT?

A NO.

Q OF A&E?

A NO.

Q YOU ARE NOT TESTIFYING THAT A&E DID $40 MILLION WORTH OF WORK TO HAVE THAT AMOUNT OF MONEY --
A NO, MA'AM. I'M TALKING ABOUT TRANSACTIONS THAT WERE REVIEWED, JUST FOR A&E, NOT COUNTING THE OTHER ACCOUNTS.
Q AND YOU'RE NOT SAYING THERE'S $40 MILLION IN CHECKS WRITTEN OUT OF A&E?
A NO. I DIDN'T SAY THAT EITHER.
Q HOW MUCH WAS DEPOSITED INTO A&E DURING THE COURSE OF THE TIME FROM '03 TO '07 THAT YOU LOOKED AT THE BOOKS? WHAT WERE THE TOTALS?
A I DON'T HAVE THAT EXACT TOTAL, BUT IT WAS SOMEWHERE AROUND THE 20 MILLION RANGE.
Q AND WHAT WERE THE EXPENSES THAT YOU GOT THAT WERE PAID OUT OF A&E?
A LIKE I ALREADY SAID, THAT WAS MORE THAN 20. I'VE GOT A BINDER IF YOU WANT THE BINDER THAT LISTS EVERY CHECK THAT CAME OUT.
Q NO, MA'AM. I WANT... YOU'RE THE EXPERT AND I WANT... IF YOU DON'T KNOW, YOU DON'T KNOW.
A I DON'T HAVE THE EXACT FIGURE, BUT IT'S MORE THAN 20 MILLION.
Q DO YOU HAVE A FEEL FOR HOW MUCH MORE THAN 20 MILLION?
A NO, MA'AM. I CAN'T QUOTE A NUMBER, NO.

Q SO, DID THIS BUSINESS MAKE MONEY OR LOSE MONEY?
A I DON'T KNOW IF THAT CAN BE DETERMINED.
Q OKAY. AND YOU HAVEN'T DETERMINED... AND YOU DON'T THINK AT THIS POINT, IT CAN BE DETERMINED IF THEY MADE MONEY OR... A&E MADE MONEY OR LOST MONEY?
A I THINK UNTIL WE DETERMINE WHOSE JOB WAS WHOSE AND WHOSE INCOME WAS WHOSE AND WHO PAID THE EXPENSES AND WHAT THE EXPENSES REALLY WERE, I DON'T KNOW THAT YOU CAN DETERMINE HOW MUCH MONEY WAS REALLY MADE.
Q AND THAT WAS NOT THE SCOPE OF YOUR JOB?
A NO.
Q YOU HAVE NOT MADE THAT KIND OF DETERMINATION?
A THAT MIGHT BE... THERE ARE SOME FINANCIAL STATEMENTS IF THESE NUMBERS ARE AGREED ON. IT COULD BE DETERMINED.
Q BUT YOU'VE NOT DETERMINED IT?
A I DO NOT WANT TO TESTIFY ON WHAT THAT NUMBER IS UNTIL I KNOW WHAT INCOME AND EXPENSES ARE LEGALLY A&E'S.
Q NOW, IN REVIEWING THE DOCUMENTS OF A&E, HAVE YOU COME ACROSS ANY INFORMATION THAT LEADS YOU TO BELIEVE THAT THERE WERE PAYMENTS FOR A&E JOBS THAT WERE MADE, BUT WERE DEPOSITED BY MR. SMITH INTO HIS PERSONAL ACCOUNT OR DO YOU LOOK AT THAT ISSUE?

A I'M GOING TO ASK YOU TO REPEAT THAT QUESTION.
Q YES, MA'AM. MAYBE THIS IS A BETTER WAY TO ASK YOU. WAS IT WITHIN THE SCOPE OF WHAT YOU DID TO LOOK AND SEE IF THERE WAS ANY PAYMENT FOR A&E JOBS MADE THAT MR. SMITH DEPOSITED NOT IN THE A&E ACCOUNT, BUT IN SOME OTHER ACCOUNT?
A THAT WAS NOT THE SCOPE, BUT I WAS INFORMED AT THE END OF THIS THAT THERE WAS A DEPOSIT THAT WENT INTO HIS COMPANY.
Q YOU WERE INFORMED THAT BY MR. SMITH?
A YES.
Q DID YOU EVER LOOK AND GET ANY VERIFICATION OF THAT OR BACKUP ON THAT?
A DID I GET ANY BACKUP TO VERIFY THAT HE ACTUALLY DID PUT THE MONEY IN HIS ACCOUNT?
Q YES, MA'AM?
A NO. I TOOK HIS WORD ON THAT ONE.
Q DID YOU GET ANY VERIFICATION AS TO HOW MUCH THAT DEPOSIT WAS?
A NO, MA'AM.
Q OTHER THAN THAT ONE, DID YOU DO ANYTHING TO DETERMINE IF THERE WERE ANY OTHER INCOME OR PAYMENTS THAT SHOULD HAVE GONE TO A&E THAT WERE UTILIZED BY MR. SMITH AND NOT PUT INTO A&E?
A WHAT DO YOU MEAN? DID I DO ANY MORE WORK?

Q DID YOU DO ANYTHING OTHER THAN THE ONE INSTANCE MR. SMITH TOLD YOU ABOUT TO DETERMINE IF THERE WAS OTHER INCOME THAT WAS NOT PUT INTO A&E BY MR. SMITH, BUT WAS UTILIZED BY MR. SMITH IN SOME OTHER MEANS OTHER THAN THE ONE INSTANCE THAT HE TOLD YOU ABOUT?

A I DIDN'T DO ANYTHING AT ALL. LIKE I WAS SAYING, AS FAR AS THE ARTHUR VEREEN, I DIDN'T KNOW THAT WASN'T THE SCOPE TO GO THROUGH HIS. THAT WAS NOTHING THAT I WAS ENGAGED TO DO. I DON'T KNOW HOW I WOULD HAVE GONE THROUGH THAT. LIKE I SAID, I WAS GOING THROUGH THE A&E --

Q BUT YOU DID MAKE THAT DETERMINATION -- THERE WAS SOME LEVEL THAT YOU MADE THAT DETERMINATION WHERE IT CONCERNS MR. VEREEN OR HIS COMPANIES?

A YES. I HAD REASON TO GO BACK AND CHECK IT. THE DEAL WITH MR. SMITH, WHO HIRED ME, HE GAVE ME THAT INFORMATION. THERE IS NO WAY THAT I COULD HAVE KNOWN THAT. I THINK THAT ACTUALLY CAME UP IN A MEETING WHEN ALL OF US WERE TOGETHER.

Q LET ME ASK YOU TO LOOK AT YOUR 2006. I BELIEVE THAT WOULD BE EXHIBIT... I'M SORRY. BEFORE YOU FLIP THERE, I WANT TO ASK YOU ABOUT ONE OTHER ITEM. THAT WOULD BE IN 2005, YOUR REFERENCE OF TAB 29. I'M SORRY. IT'S 27. I WAS LOOKING AT

THE WRONG THING. IN 27 ONE OF THE LINE ITEMS THAT YOU HAVE FOR 27 IS ENTITLED, "CITY OF NORTH MYRTLE BEACH, PERMIT FOR PARK PLACE." AND YOU'VE GOT $9,045.00. DO YOU SEE THAT ONE?

A YES, MA'AM.

Q AND YOU ALSO... IS THAT AN AMOUNT THAT YOU ARE CURRENTLY CHARGING MR. VEREEN AS HAVING OWED OR AS BEING OWED TO A&E?

A NO, MA'AM.

Q YOU HAVE NOW TAKEN THAT OUT UNDER YOUR EXHIBIT 40, YOUR REPORT OF TODAY?

A CORRECT.

Q WHAT HAPPENED BETWEEN YOUR TESTIMONY IN FEBRUARY ABOUT THAT $9,045.00 BEING DUE BY MR. VEREEN TO A&E AND YOU TAKING IT OUT OR CREDITING MR. VEREEN FOR THAT IN YOUR REPORT FOR TODAY?

A I THINK THAT WAS IN THERE -- IT WAS ACTUALLY PUT INTO THE JOB REPORT. WAS IT POINTE MARSH? I THINK WE BROUGHT UP THE FACT THAT WAS IN THERE TWICE.

Q WAS IT IN THERE TWICE?

A YES. BECAUSE IT WAS RECORDED AS A JOB COST. SO, THE JOB COST REPORT WAS IN HERE AND THEN THAT $9,000.00 WAS IN THERE AS WELL. THAT WAS PUT AS "VERIFIED".

Q SO, YOU DID DO THAT BETWEEN YOUR TESTIMONY IN FEBRUARY AND YOUR REPORT OF TODAY?
A THAT'S ON THE INFORMATION PAGE ALONG WITH THE CONSENTED ITEMS, YES.
Q SO, YOU HAD SAID EARLIER THAT YOU DIDN'T DO ANYTHING TO CHANGE ANY OF THE TOTALS, BUT YOU DID DO THAT?
A I DIDN'T CHANGE THAT TOTAL ON THE FIRST PAGE, NO, MA'AM. THE TOTAL THAT REPORT STARTS WITH AND WHAT IS OWED I DID NOT CHANGE. THAT IS PUT ON A VERIFIED COLUMN.
Q SO, WHEN YOU SAY IT' NOT CHANGED ON THE FRONT PAGE, YOU MEAN EXHIBIT 40?
A YES, MA'AM.
Q SO, MY CLIENT IS STILL BEING CHARGED FOR IT TWICE?
A NO, MA'AM.
Q DO YOU AGREE MY CLIENT DOES NOT OWE $9,045.00 FOR A PERMIT FOR PARK PLACE THAT WAS PAID TO THE CITY OF NORTH MYRTLE BEACH?
A DO I NOT AGREE THAT HE OWES IT TWICE? IS THAT WHAT YOU'RE TRYING TO SAY?
Q NO, MA'AM. I SAID, DO YOU AGREE THAT HE DOES NOT OWE $9,045.00 AS REFLECTED AS BEING PAID TO THE CITY OF NORTH MYRTLE BEACH FOR THE PERMIT FOR PARK PLACE?

A I AGREE THAT HE OWES IT. I AGREE THAT IT WAS RECORDED TWICE IN THE REPORT INITIALLY.
Q IN WHAT REPORT?
A THE BOOKS THAT YOU HAVE, THE 2004, THE 2005, THE 2006 AND THE 2007 BOOKS THAT HAVE THE EXPENSES THAT HAVE THE JOB LEDGERS. EACH YEAR THERE IS A JOB LEDGER FOR POINTE MARSH. EACH YEAR HAS THE EXPENSES THAT WERE PUT ON THE JOB LEDGER. THAT PERMIT WAS IN THERE AND, I GUESS, I COULD PULL IT AND SEE EXACTLY WHAT YEAR IT WAS, BUT IT WAS ACTUALLY RECORDED --
Q IT WAS IN YOUR 2005 JOB LEDGER?
A OKAY. WELL, THEN IT WAS A 2005 JOB LEDGER REPORT.
Q SO, IT WAS ALREADY INCLUDED AND THEN YOU ADDED IT AGAIN?
A IT WAS INCLUDED, RIGHT. IT WAS CODED TO THAT JOB.
Q NOW, DID YOU MAKE THAT CORRECTION IN YOUR 2007 BOOK? WAS THAT CORRECTION MADE BETWEEN PREPARING YOUR 2007 BOOK FROM WHAT YOU TESTIFIED HERE IN FEBRUARY AND THIS REPORT 40 THAT YOU HAVE GIVEN US TODAY?
A I'M SORRY. I WAS INCORRECT. THAT CHANGE WAS MADE, THE $9,000.00.
Q BETWEEN YOUR TESTIMONY IN FEBRUARY AND THIS REPORT OF TODAY?

A YES.
Q SO, YOU DID MAKE CHANGES?
A I DID MAKE THAT CHANGE.
Q IS THAT THE ONLY CHANGE YOU MADE?
A LET ME VERIFY THAT. THERE MIGHT HAVE BEEN, LIKE I SAY, THESE CHANGES ARE NOT THE BOTTOM LINE. I MEAN, THE TOP NUMBER. THE REVISED NUMBER... NO, I THINK SO. THERE WAS A... LET ME DOUBLE CHECK. I BELIEVE THAT WAS THE ONLY CHANGE THAT WAS MADE.
Q WELL, LET ME ASK YOU THIS. STAYING ON 2005, LOOK AT TAB 27, YOUR LINE ITEM THAT SAYS, "HORRY COUNTY TAXES, WAYNE'S PROPERTY TAXES." YOU HAVE GOT AN AMOUNT OF $16,572.12. THIS IS ON THE 2005 SPREADSHEET, CORRECT?
A CORRECT.
Q AT THE POINT THAT YOU DID THAT SPREADSHEET, IT WAS YOUR POSITION AS EXPERT FOR A&E THAT $16,572.12 WAS OWED BY A&E... BY MR. VEREEN TO A&E, CORRECT?
A YES.
Q THE BACKUP THAT YOU'VE GOT BEHIND TAB 27, FOR THAT LINE ITEM, WHAT BACKUP DO YOU HAVE FOR 2005?
A I DO HAVE THIS AS TAB 28 NOT 27.
Q WELL, LET ME LOOK AT YOUR... WELL, MY REPORT AT THE BOTTOM SAYS, "8/17/09" AS BEING THE DATE OF THE REPORT AND YOURS SAYS, "2/1/2011". HAVE YOU

DONE MORE THAN ONE VERSION OF THIS THAT'S IN THE NOTEBOOK THAT'S MARKED AS PLAINTIFF'S 2?

A I DON'T BELIEVE SO. THERE WERE SOME CHANGES IN THE FONTS AND FIXING IT UP. IS YOUR TOTAL THE SAME, THE 1,110,00?

Q I MAY NOT EVEN BE WORKING FROM WHAT HAS BE PUT INTO EVIDENCE. LET ME LOOK HERE. WHAT I HAVE AS YOUR LEDGER SHEET FOR 2005 THAT WENT WITH EXHIBIT 2, YOUR WORKBOOK THAT HAS BEEN PUT INTO EVIDENCE FOR 2005, HAS GOT A PREPARATION DATE OF 8/17/2009. THE ONE THAT'S IN EVIDENCE SAYS 2/10/2011.

A THAT'S NOT THE PREPARATION DATE.

Q OKAY. CAN WE TAKE A BREAK AND GET THE MICROPHONE?

A THANKS.

Q IS THE TOTAL ON YOURS, WHATEVER THE DATE IS ON YOURS, $110,167.77?

A YES, MA'AM.

Q NOW, TAB SAYS, "FOR THE WAYNE VEREEN TAXES." MY TAB SAYS TAB 27. YOURS SAYS TAB 28. ANY IDEA WHY... YOU'VE GOT MORE TABS THAN I DO. YOU'VE GOT TAB 28 AND MINE STOPS AT TAB 27. THERE'S A DIFFERENCE IN THESE VERSIONS, I GUESS, AND I THOUGHT I WAS WORKING OFF THE SAME EXHIBIT THAT HAD BEEN PUT INTO EVIDENCE AND EVIDENTIALLY I'M NOT. MAYBE WE WILL LOOK AT THAT THIS EVENING, BUT

IN THE INTERIM, FOR THE SAKE OF THE TIME WHETHER IT'S TAB 27 OR TAB 28 WOULD YOU GO TO WHERE YOUR BACKUP IS FOR THE CHARGES FOR THE WAYNE VEREEN PROPERTY TAXES. YOU HAVE A CHECK 3106, CORRECT?

A CORRECT.

Q AND IT'S FOR THE 16,000 AND CHANGE?

A YES.

Q AND YOUR BACKUP FOR THAT IS SEVERAL HORRY COUNTY TAX BILLS, IS THAT RIGHT?

A YES.

Q IS THAT THE BASIS OF YOUR CHARGE OF THE $16,572.12 TO MY CLIENT?

A YES, MA'AM.

Q WELL, THOSE TAX BILLS DON'T ADD UP BUT TO 6,730.97, DO THEY?

A I WOULD PROBABLY HAVE TO HAVE A CALCULATOR. THERE IS ABOUT 8 OF THEM HERE.

Q WELL, IF WE ROUND IT OFF, $1,870, $24.00. IT'S NOWHERE CLOSE TO $16,000.00, IS IT?

MR. DURANT: YOUR HONOR, PERHAPS YOU SHOULD ASK MRS. BRADY IF IN 2005 A&E OWNED ANY REAL PROPERTY FOR WHICH MR. VEREEN SHOULD BE WRITING A CHECK FOR TAXES?

MS. COOK: I KNOW WE HAVE BEEN

SOMEWHAT INFORMAL, BUT MAYBE MR. DURANT SHOULD LET ME ASK MY OWN QUESTIONS AND I WILL LET HIM ASK HIS.

MR. DURANT: THAT IS WHAT WE ARE HERE ABOUT.

MS. COOK: I'M TRYING TO FIND OUT, YOUR HONOR, WHERE SHE CAME UP WITH HER NUMBERS.

JUDGE HOWE: I'M CONFUSED BECAUSE MY DOCUMENT SAYS THAT AMOUNT WAS CONSENTED TO.

MR. DURANT: THAT'S CORRECT.

MS. COOK: YOUR WORKBOOK 2 OR YOUR EXHIBIT 40?

JUDGE HOWE: MY EXHIBIT 40.

MS. COOK: WELL, THERE'S A DIFFERENCE THERE. I WANT TO KNOW WHERE SHE CAME UP WITH HER NUMBERS.

A THE NUMBER CAME FROM THE CHECK.

Q BUT WHAT IS YOUR BACKUP HERE? THAT'S $6,000 AND SOME CHANGE, RIGHT?

A I'M ACTUALLY OVER AT THESE NOTICES. SO, YOU MIGHT BE MISSING SOMETHING IN YOURS.

Q SO, WHAT I HAVE IS NOT WHAT YOU HAVE?

A I DON'T KNOW. MINE ADDS UP TO MORE THAN 6,000.

Q DOES IT ADD UP TO 16,000?
A (NO RESPONSE).
Q WOULD IT BE FAIR TO SAY, MRS. BRADY, THAT THE BACKUP YOU HAVE BEHIND THE CHECK, YOU DON'T KNOW IF IT HAS ANY... IF IT'S RELEVANT AT ALL TO THE CHECK NUMBER? I MEAN, TO THE AMOUNT OF THE CHECK. THERE'S NO CORRELATION THERE?
A NO. THERE'S CORRELATION. I'M TELLING YOU SOMETIMES I DIDN'T HAVE ALL THE BACKUP. NOW, WHAT I DID HAVE IS BACK HERE. NOW, THIS ONE I'M TRYING TO VERIFY WITH YOU... I LOST MY TRAIN OF THOUGHT. SOME OF THESE I DON'T HAVE... THERE ARE SOME THAT HAVE NO BACKUP AND THERE ARE SOME THAT WE DO HAVE SOME AND THEY WERE REFERENCED TO A CHECK NUMBER.
Q SO, REALLY YOU'RE NOT RELYING ON THESE TAX BILLS AT ALL, YOU'RE JUST RELYING ON THE CHECK? OR WHAT ARE YOU RELYING ON? FOR SAYING $16,570.12 IS OWED BY MY CLIENT TO A&E?
A WELL, THE REASON IT WAS PULLED OUT... THE REASON THIS IS QUESTIONED TO START WITH IS A&E DOES NOT OWN ANY REAL PROPERTY NOR DO THEY HAVE... THEY HAVE TWO PIECES OF EQUIPMENT ON THEIR BOOKS. SO, THERE'S NO REASON IN THE WORLD THAT THEY WOULD HAVE WROTE A CHECK FOR 16,000 TO HORRY COUNTY TAX OFFICE.

Q THAT'S A BASIS. DO YOU HAVE ANY OTHER BASIS FOR HAVING INCLUDED THIS AMOUNT, THE 16,572.12 AS BEING OWED BY MY CLIENT TO A&E?

A THE ONLY OTHER BASIS WOULD'VE BEEN ON THE OTHER... SOME OF THE OTHER YEARS. THE CHECK NUMBERS HAVE THE TAX NOTICES WRITTEN ON THE CHECK SUB. IT MIGHT NOT BE ON THIS YEAR, BUT THERE IS ANOTHER YEAR WHERE THESE TAX NOTICES ARE REFERENCED ON A CHECK TO HORRY COUNTY TAX OFFICE.

Q THE LAST THING FOR 2009. I'M GOING TO LOOK AT YOURS BECAUSE MY TAB NUMBERS... MY REPORT IS NOT THE SAME AS YOURS. YOU DON'T HAVE AN ACTUAL TAB NUMBER. IT'S UNDER 29, BUT YOU'VE GOT "LULL RENTAL AMOUNT FOR 11 MONTHS AND A SKID RENTAL AMOUNT FOR 6 MONTHS." IS THAT UNDER YOUR TAB 29?

A I THINK THAT WAS JUST SOME INFORMATION THAT MR. SMITH HAD GIVEN ME.

Q SO, ARE THOSE AMOUNTS... IS IT YOUR TESTIMONY AS THE EXPERT FOR A&E THAT $20,900.00 IS OWED BY MR. VEREEN OR HIS ENTITIES TO A&E FOR LULL RENTAL?

A YES. YES. MR. SMITH SAID THAT THE LULL RENTAL WAS USED. IF THAT WAS USED AND THAT WAS THE RENTAL AMOUNT, THAT MUCH IS OWED.

Q SO, THAT'S YOUR BASIS IF ALL THESE THINGS MR. SMITH TOLD YOU WERE TRUE?

A MY BASIS FOR THAT PARTICULAR ITEM.
Q HOW ABOUT YOUR BASIS FOR THE SKID RENTAL? IS IT YOUR OPINION THAT MR. VEREEN OWES A&E $7,500.00 FOR THE RENTAL OF A SKID?
A IF THE SKID RENTAL WAS USED, YES.
Q DO YOU HAVE ANY BACKUP, WHETHER A SKID OR A LULL WAS RENTED? WHAT THE AMOUNT OF THE RENTAL WAS? WHAT WAS THE LENGTH OF THE RENTAL?
A YOU GOT A LOT OF QUESTIONS IN THERE. THESE TWO ITEMS THAT DO NOT HAVE A TAB NUMBER AND NO BACKUP THAT IS FROM MR. SMITH ONLY.
Q OKAY. I BELIEVE YOU HAD THOSE SAME CATEGORIES OF ITEMS IN '06 AND '07? I KNOW YOU HAVE THEM IN '06, ISN'T THAT CORRECT?
A (NO RESPONSE).
Q NOW, LET'S MOVE TO '06. I'M SORRY. I ALREADY MARKED THIS SO LET'S SAY THAT OUR NUMBERS ARE CORRECT. LET'S JUST DO THIS ONE. THIS IS FOR '05.
A WE ARE GOING BACK TO '05.
Q YES, MA'AM. I'M HANDING YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT 9. IT'S A NUMBER OF CHECKS AND SOME ACCOUNT... IT'S A COPY OF THAT CHECK, COPY OF THE SUB WITH THE CHECKS AND THIS RELATES ON MY NUMBERS, IF MY NUMBERS ARE CORRECT FOR '05

TO TAB 16. IS THAT CHECK DRAFTED TO MBNA AMOUNT CHARGED TO WILLOUGHBY? WOULD THAT BE YOUR TAB 16 AS WELL, SUSAN?

MR. DURANT: SAME OBJECTION, YOUR HONOR. WE NEVER GOT ANY OF THIS BACKUP INFORMATION HERE OR EITHER THE INVOICE TO SUPPORT THIS. THE CHECK, OF COURSE -- WE HAVE THE CHECK FROM THE CHECK REGISTER. THE CHECK STATEMENT WAS SOMETHING THAT WE DID HAVE. WE DIDN'T HAVE ANY OF THE BACKUP TO SUPPORT THIS.

MS. COOK: I CAN INTRODUCE IT AGAIN. I'M TRYING TO GET IT IDENTIFIED.

Q MRS. BRADY, FIRST LET ME ASK YOU, THIS TAB 16 IN YOUR 2005 SPREADSHEET, THAT'S THE TAB THAT RELATES TO CHECKS OR DRAFTS TO PAY AN MBNA CREDIT CARD?

A CORRECT.

Q AND ACCORDING TO THAT, DOES YOUR REPORT SHOW THAT YOU HAVE $12,953.30 AS AN AMOUNT OWED BY MR. VEREEN TO A&E?

A CORRECT.

Q NOW, TO THE RIGHT IT'S GOT IT BROKEN OUT INTO TWO CATEGORIES. CAN YOU EXPLAIN WHY IF A TOTAL IN THE DEBIT COLUMN AND THEN YOU HAVE TWO AMOUNTS BROKEN

OUT IN THE CREDIT COLUMN?

A THAT WAS THE WAY THEY WERE RECLASSIFIED IN THAT THESE EXPENSES CAME OFF THE SOFTWARE AND THEY WERE VERIFIED WITH THE BANK. BUT THAT'S THE WAY THEY WERE CLASSIFIED WHEN THEY WERE ENTERED INTO THE COMPUTER.

Q SO, THAT'S THE WAY THEY WERE CLASSIFIED... THAT'S WHAT THEY WERE EXPENSED TO IN THE PEACHTREE SOFTWARE OF A&E?

A CORRECT.

Q THAT CARRIE DID? THAT CARRIE ENTERED?

A I DON'T KNOW WHO ENTERED IT, BUT THAT'S THE WAY THEY WERE ENTERED.

Q NOW, EXHIBIT 16 THAT I HAVE GIVEN YOU, THE FIRST SHEET IS A CHECK MADE PAYABLE TO MBNA FOR $1,851.27 IN FEBRUARY OF '05. YOU WOULD HAVE SEEN THAT CHECK, CORRECT?

A CORRECT.

Q THE SECOND DOCUMENT THAT IS THE TOP AND THAT'S CHECK 2703 DATED 2/15/05, CORRECT?

A CORRECT.

Q AND THAT'S FOR THE PAYMENT OF A CREDIT CARD BILL. HAVE YOU EVER SEEN THE TOP STUB PART OF THAT CHECK? THAT'S THE SECOND PAGE. THAT'S 2703 WHERE IT TALKS ABOUT A HONEY BAKED HAM AND CHRISTMAS

BBQ?

A NO, MA'AM.

Q DO YOU RECALL THOUGH AT... WHEN WE WERE IN YOUR OFFICE, DO YOU REMEMBER ONE OF THE THINGS THAT ELLIS TALKED ABOUT WAS THAT? "YOU KNOW WHAT, OKAY. YOU DON'T OWE THAT. WE DID DO CHRISTMAS PARTIES AND THAT'S A LEGITIMATE EXPENSE. I'M NOT GOING TO CHARGE THAT AMOUNT AGAINST WAYNE." DO YOU REMEMBER ANYTHING OF THAT NATURE?

A I REMEMBER ON A "BEACH MEAT" INVOICE HE HAD SAID THAT.

Q BUT NOT ON THIS ONE?

A I DON'T THINK WE HAD THE BACKUP OF WHAT THIS WAS AT THAT MEETING.

Q THE SECOND CHECK $1,190.16 YOU HAD THAT CHECK, CORRECT?

A CORRECT.

Q THAT FORMULATES PART OF THE TOTAL THAT YOU HAVE CHARGED ON TAB 16?

A CORRECT.

Q DO YOU KNOW ANYTHING ABOUT THE AMOUNT BEING PAID TO MARBLE SLAB TO PAY FOR WORK DONE ON MARBLE SLAB?

A NO, MA'AM.

Q DO YOU KNOW, WAS MARBLE SLAB JOB, WAS THAT AN A&E

JOB?

A AND I BELIEVE SO. ONE SECOND. IT WAS A JOB LEDGER ON THE BOOKS OF A&E.

Q OKAY. DO YOU KNOW IF ON THE JOB LEDGER IT WAS REPORTED AT $4,177.80 EXPENSE ON THE JOB LEDGER FOR THE MARBLE SLAB JOB? THIS WOULD BE IN 2005.

A WHAT DID YOU SAY THE DATE WOULD HAVE BEEN?

Q IT WOULD HAVE BEEN IN 2005 SOMEWHERE IN THE NEIGHBORHOOD OF MARCH TO JULY OF '05.

A WOULD IT HAVE BEEN MATERIALS OR DO YOU KNOW?

Q I AM JUST ASKING YOU IF YOU SEE ON A LEDGER... AN AMOUNT CHARGED ON THAT JOB LEDGER OF THE 4,000.00?

A I DO NOT SEE THAT AMOUNT.

MR. DURANT: IS THERE A CHECK 3286 THAT IS SUPPOSED TO MATCH? THAT'S NOT THE CHECK WE HAVE HERE.

MS. COOK: NO. THAT'S A DIFFERENT CHECK.

Q LET'S GO TO 2006.

MR. DURANT: YOUR HONOR, THAT WAS NOT PUT INTO EVIDENCE, WAS IT?

MS. COOK: NO, IT WAS NOT.

Q IN 2006 IN YOUR SPREADSHEET FOR THAT YEAR... IN YOUR SPREADSHEET UNDER TAB 1, YOU'VE GOT AN AMOUNT THE VERY FIRST LINE ITEM IS, "$15,000 COMMISSION."

IS IT YOUR POSITION THAT MR. VEREEN OWES $15,000 BACK TO A&E FOR THAT $15,000.00 THAT'S CHARACTERIZED AS COMMISSION?

A CORRECT.

Q NOW, DO YOU HAVE ANY BACKUP FOR THAT $15,000.00 THAT WAS PAID TO MR. VEREEN THAT YOU SAY HE OWES BACK UNDER TAB 1?

A JUST A CANCELED CHECK.

Q JUST A CANCELED CHECK TO MR. VEREEN?

A YES, MA'AM.

Q CAN I LOOK AT YOURS?

A I WILL TELL YOU THAT A COUPLE OF THESE COPIES OF CHECKS, WHEN YOU WERE ASKING ME IN THE MEETING, "WHY DIDN'T I HAVE THE COPIES OF THE CHECKS BEHIND THEM?"

Q YES, MA'AM.

A I DID COPY SOME OF THE COPIES OF THE CHECKS BECAUSE WHEN WE WERE TALKING AND I TOLD YOU THAT I HAD ALL THOSE COPIES AND THEN WE STARTED COPYING THEM IN YOUR OFFICE THAT DAY.

Q SO, IF I UNDERSTAND WHAT YOU'RE TELLING ME IS MY COPY THAT I HAVE BEEN PROVIDED OF EXHIBIT 3 BECAUSE THIS IS NOW 2006, WAS PROVIDED TO ME BEFORE YOU SUBMITTED WHAT HAS BEEN INTRODUCED NOW AS EXHIBIT 3 BECAUSE YOU DO HAVE SOME CHECKS

BEHIND YOUR TABS THAT WERE NOT BEHIND... WHEN PRODUCED TO ME WEREN'T BEHIND THOSE TABS? DO YOU UNDERSTAND THAT?

A I THINK WE STARTED THIS IN THE OFFICE THAT DAY THAT YOU WERE IN THERE. REMEMBER I STARTED COPYING COPIES OF THE CANCELED CHECKS?

Q SO, YOU ADDED TO YOUR 2006 WORKBOOK FROM WHEN IT WAS ORIGINALLY PROVIDED TO ME IN DISCOVERY?

A THE DAY THAT WE WERE IN THE OFFICE.

Q I UNDERSTAND, MRS. BRADY, THAT YOU ADDED SOME STUFF THE DAY YOU WERE IN THE OFFICE. MY QUESTION IS, THE 2006 REPORT THAT WAS PRODUCED TO ME BEFORE WE GOT TO YOUR OFFICE, YOU HAD NOT PUT THOSE CHECKS BEHIND THEM, CORRECT?

A THERE WAS SOME THAT DID NOT. I CAN'T SAY SPECIFIC. THERE MIGHT HAVE BEEN A CANCELED CHECK THAT'S BEEN INTO EVIDENCE THAT MIGHT NOT HAVE BEEN BEHIND THIS TAB, BUT IT WAS STILL ALREADY INTO EVIDENCE. SO, I DON'T KNOW.

Q DO YOU KNOW THE BASIS FOR THAT 15,000.00 PAYMENT BY A&E TO MR. VEREEN?

A NO. I JUST KNOW THAT IT WAS A 15,000.00 CHECK THAT WAS WRITTEN TO HIM AND I BELIEVE IT WAS ELLIS SMITH AND IT WAS DEDUCTED ON THE BOOKS AS AN EXPENSE.

Q AND ACCORDING TO THE CHECK THAT YOU'VE GOT BACK THERE AS PROOF OF THAT CHECK TO MR. VEREEN, WHAT'S THE DATE OF THAT CHECK?
A I OPERATE FROM THE LIST 7/18/06.
Q LET ME HAND YOU WHAT I HAVE MARKED AS EXHIBIT NUMBER 10. WELL, FIRST OF ALL, WHAT CHECK NUMBER IS THE CHECK NUMBER TO MR. VEREEN ON JULY 18TH FOR THE $15,000.00?
A 6068.
Q LET ME ASK YOU TO LOOK AT 6067 AND SEE ON THE SAME DAY IF A&E WROTE A CHECK TO MR. SMITH FOR $15,000.00?
A YES, MA'AM.
Q SO, IS IT A&E'S POSITION THAT LIKEWISE, MR. SMITH OWES THAT $15,000.00 BACK TO A&E?
A YES, MA'AM.
Q AND HAVE YOU INCLUDED THAT IN YOUR FINAL REPORT EXHIBIT 40?
A I BELIEVE SO.
Q WHERE WOULD THAT BE SHOWN?
A IN THE 2006... RIGHT BEHIND THE SPREADSHEET. DO YOU HAVE THE THIRD SHEET THAT SAYS, "JOURNAL ENTRIES."?
Q IN EXHIBIT 40? WHAT EXHIBIT ARE YOU LOOKING AT?
A NO. I'M IN THE 2006 BINDER.

Q IN 2006 BINDER --
A THE ONE THAT WE WERE JUST GOING THROUGH.
Q BUT MY QUESTION WAS, HAVE YOU REFLECTED THAT IN EXHIBIT 40, YOUR FINAL REPORT THAT TALKS ABOUT $2.8 AND CHANGE? A&E BELIEVES THAT IT'S OWED BY MR. VEREEN? IT INCLUDES THIS $15,000.00 CHECK, CORRECT?
A ARE YOU TALKING ABOUT THE $15,000.00 CHECK TO ELLIS SMITH OR WAYNE VEREEN?
Q THE $2.8 MILLION DOLLAR FIGURE THAT YOU SAY IS OWED BY VEREEN TO A&E. IT INCLUDES A $15,000.00 CHECK FROM A&E TO MR. VEREEN, RIGHT?
A CORRECT. THE ONE YOU JUST HANDED ME WAS MADE TO ELLIS.
Q MY QUESTION IS LIKEWISE HAVE YOU AS THE EXPERT FOR A&E PROVIDED OR IS IT YOUR OPINION THAT MR. SMITH ALSO OWES BACK TO A&E $15,000.00 PER THE CHECK HE RECEIVED ON THE SAME DAY FROM A&E?
A YES, MA'AM.
Q AND THAT IS REFLECTED WHERE?
A IT'S REFLECTED ON THE STATEMENTS THAT ARE IN THESE REPORTS BEHIND IT.
Q BEHIND WHAT TAB?
A IN 2006, LIKE I SAY. THE THIRD PAGE IS WHERE THE JOURNAL ENTRY WAS MADE INTO THE BOOKS.

Q THE THIRD PAGE OF WHAT? THE PROPOSED STATEMENT OF REVENUES AND EXPENSES OR --

A NO. THE THIRD PAGE OF THE BINDER RIGHT BEHIND... YOU'VE GOT YOUR FIRST TWO PAGES IS YOUR SPREADSHEET. THE CONTINUATION OF THAT IS THE THIRD PAGE.

Q WELL, MINE IS NOT SET UP AS YOURS IS UNFORTUNATELY.

A WELL, DO YOU WANT ME TO SHOW YOU THIS?

Q YES. I WILL COME UP THERE.

A YOU DON'T HAVE THIS PAGE, DO YOU?

Q THE THIRD PAGE OF THE SPREADSHEET? I 'M SORRY. THE JOURNAL ENTRIES IS WHAT I THOUGHT YOU WERE REFERRING TO. I APOLOGIZE. I'M GETTING TIRED. ALRIGHT. THE THIRD PAGE OF THAT LEDGER SHEET THAT'S WHERE YOU SHOW MR. SMITH OWES A&E BACK THE $15,000,00, IS THAT CORRECT?

A CORRECT. THIS IS WHERE THE JOURNAL ENTRY WAS MADE AND IF YOU GO ON TO SEE THE FINANCIALS FOR THE COMPANY IT WILL HAVE THE "ACCOUNTS RECEIVABLE, ELLIS SMITH" AND THAT $15,000.00 IS REFLECTED IN THAT.

Q HOW MUCH HAVE YOU DETERMINED IS THE TOTAL OF THE ACCOUNTS RECEIVABLE THAT IS OWED BY ELLIS SMITH BACK TO A&E?

A THE TOTAL FOR THE FOUR YEARS?
Q YES.
A 85,252.41.
Q THAT'S AS OPPOSED TO THE $2.8 MILLION AND CHANGE THAT'S REFLECTED IN YOUR EXHIBIT 40?
A AS OPPOSED TO THE WHAT?
Q ELLIS OWES 85 AND CHANGE, ACCORDING TO YOUR OPINION AND MR. VEREEN OR HIS ENTITIES OWE 2.8 MILLION AND CHANGE, ACCORDING TO YOUR OPINION, IS THAT CORRECT?
A CORRECT.
Q NOW, IN 2006 IS THERE AN ACCOUNTS RECEIVABLE OR A PAYMENT DUE BY EES CONSTRUCTION FOR THE PAYMENT OF A VAN TO YOUR KNOWLEDGE?
A WAS THERE A RECEIVABLE ON THE BOOKS OF A&E?
Q NO, MA'AM. THAT'S NOT WHAT I ASKED YOU. TO YOUR KNOWLEDGE IN 2006, WAS THERE A PAYMENT OR AN ACCOUNTS PAYABLE DUE BY EES CONSTRUCTION? THAT'S MR. SMITH'S CONSTRUCTION COMPANY, CORRECT?
A CORRECT.
Q PAYABLE TO GMAC ON A VAN?
A NOT TO MY KNOWLEDGE.
Q WOULD YOU LOOK AT TAB 18 ON YOUR SPREADSHEET IN 2006. WHAT IS YOUR OPINION THAT'S OWED THAT RELATES TO TAB 18 BY MY CLIENT AND WHY TO A&E?

A THOSE ARE TRUCK PAYMENTS TO GMAC FOR AN AUTOMOBILE.

Q WHO OWNED THE AUTOMOBILE? DID EES CONSTRUCTION OWN THE AUTOMOBILE? MR. SMITH'S CONSTRUCTION COMPANY?

A I DON'T KNOW. I DON'T KNOW WHAT AUTO THAT WAS FOR. THAT'S WHY I QUESTIONED... I WAS TOLD THAT IT WAS RANDY LONGS'S TRUCK, BUT I HAVE NO DATA ON THAT TRUCK. I JUST KNOW A&E DID NOT OWN THE TRUCK.

Q SO, WHAT IS YOUR BASIS FOR SAYING A&E IS OWED BACK $2,797.64 FOR TRUCK PAYMENTS BY... FOR RANDY LONG'S TRUCK BY MR. VEREEN OR HIS ENTITIES?

A BECAUSE SMITH SAPP'S BOOKS, THEY HAD CODED IT TO GMAC AND THEN IT WAS TAKEN OFF... I THINK THERE WAS A NOTE SOMEWHERE THAT SAID, "RECORDED A LEASE. RANDY LONG'S TRUCK". I WOULD HAVE TO PULL THE RECORDS, BUT IT WAS ORIGINALLY QUESTIONED BECAUSE THE AUTO WAS NOT A&E'S.

Q SO, YOU QUESTIONED IT AND AFTER YOU QUESTIONED IT, YOU STILL COME UP WITH THE OPINION THAT IT WAS OWED BY MR. VEREEN BACK TO A&E?

A YES. I DIDN'T HAVE ANYTHING DIFFERENT FROM OUR MEETING ON THAT.

Q PARDON ME.

A I SAID YES. I DIDN'T HAVE ANYTHING DIFFERENT FROM OUR MEETING ON MY NOTE.
Q WHAT IS YOUR BASIS --
A THERE WAS NOTHING PROVIDED TO ME TO TELL ME WHAT THAT AUTO WAS WHEN WE HAD THE MEETING WITH ALL OF US.
Q OKAY. SO, YOU INITIALLY PUT IT ON THERE AS A QUESTION? WHY?
A BECAUSE IT WAS A NOTE PAYABLE TO GMAC FOR AN AUTOMOBILE THAT WAS NOT OWNED BY A&E. THERE WAS NOT A NOTE ON THE BOOKS OF A&E. SMITH SAPP'S RECORDS HAD TAKEN IT OFF AS AN AUTO LEASE, BUT IT WAS SOMEONE ELSE'S TRUCK AND I WAS GETTING READY TO PULL UP THE --
Q LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT 11 AND IT'S A GROUP OF DOCUMENTS. FIRST, IS A CHECK DATED JUNE 7TH 2006 TO GMAC WRITTEN BY A&E FOR $399.52, CORRECT?
A CORRECT.
Q ATTACHED TO THAT IS A BILL OR INVOICE FROM GMAC AND THE BILL OR THE INVOICE IS TO EES CONSTRUCTION AND ARE YOU FAMILIAR WITH EES CONSTRUCTION AS BEING MR. SMITH'S COMPANY, CORRECT?
A YES, MA'AM.
Q TO YOUR KNOWLEDGE... AND YOU DO EES'S TAX RETURNS

FOR A NUMBER OF YEARS, IS THAT CORRECT?

A CORRECT.

Q DID EES HAVE AN ACCOUNTS PAYABLE TO GMAC FOR A TRUCK?

A I CANNOT ANSWER THAT HONESTLY. I MEAN, NOT NOW WITHOUT LOOKING AT THAT FILE.

Q DO YOU KNOW ANYTHING ABOUT A&E TAKING OVER THE OBLIGATION OF EES ON THIS TRUCK?

A NO, MA'AM. THIS IS THE FIRST THAT I HAVE SEEN OF THIS.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT 11 INTO EVIDENCE.

MR. DURANT: NO OBJECTION, YOUR HONOR.

JUDGE HOWE: DEFENDANT'S 11, SO ADMITTED.

GROUP OF DOCUMENTS FOR GMAC LEASE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 11.

Q IF I COULD ASK YOU TO LOOK AT TAB 19. THIS IS FOR 2006 THE LINE ITEM ON YOUR SPREADSHEET 19. IT'S AGAIN FOR PROPERTY TAX PAYMENTS. YOU'VE GOT

"HORRY COUNTY TAX WAYNE PROPERTY TAX 19." AND ONE OF THEM IS FOR $8,993.46, CORRECT?

A OKAY.

Q AND YOU QUESTIONED A PAYMENT OF $8,993.56 FOR REAL ESTATE TAXES BY A&E, IS THAT CORRECT?

A CORRECT.

Q IS IT YOUR POSITION AFTER QUESTIONING THAT, THAT $8,993.46 IS OWED BY MR. VEREEN BACK TO A&E FOR A PAYMENT OF HORRY COUNTY TAXES?

A YES.

Q NOW, LET ME HAND YOU WHAT I'M MARKING AS DEFENDANT'S EXHIBIT 12. WELL, LET ME ASK YOU FIRST, UNDER YOUR REPORT, DO YOU HAVE ANY BACKUP FOR THOSE PAYMENTS?

A YES, MA'AM.

Q I THINK I HAVE THE SAME THING YOU DO. ALRIGHT. LET ME HAND YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT 12. AND THE FIRST PAGE OF THAT IS A CHECK WRITTEN BY A&E TO HORRY COUNTY TREASURER FOR $4,526.89, IS THAT CORRECT?

A YES.

Q AND BEHIND THAT IS A LETTER TALKING ABOUT THE PAYMENT OF A CORRECTED AMOUNT FROM HORRY COUNTY TREASURER. THEN WHAT I REALLY WANT YOU TO LOOK AT IS THE THIRD CHECK, 5412. THAT CHECK IS IN THE

AMOUNT OF 4,466.57. YOU ADD THE 4,466.57 AND CHECK THAT'S ON THE FIRST PAGE, 4,526.87 THAT MAKES UP THAT $8,993.46 THAT YOU TAKE THE POSITION IS OWED BY MR. VEREEN BACK TO A&E, CORRECT?

A CORRECT.

Q WELL, IN FACT, CHECK NUMBER 5412, THE $4,466.57, IT NEVER CLEARED THE BANK, DID IT, MRS. BRADY?

A (NO RESPONSE).

Q IF YOU LOOK AT THE 2006 CHECKING ACCOUNT STATEMENTS THERE.

A HAVE I GOT WHAT?

Q THE 2006 CHECKING ACCOUNT STATEMENTS.

A YES, MA'AM.

Q THAT NEVER CLEARED THE BANK, DID IT? IT WAS VOIDED, WASN'T IT?

A I DIDN'T SHOW IT WAS EVER VOIDED. I'LL LOOK TO SEE IF IT CLEARED THE BANK.

Q YOU CHECKED TO MAKE SURE ALL THIS CLEARED, DIDN'T YOU?

A WELL, CHECKS THAT WE HAD IN QUESTION DID, BUT THE INTERESTING THING ABOUT THIS IS THAT IT WAS NEVER VOIDED OFF OF THE SYSTEM AND IT WAS DEDUCTED AS AN EXPENSE OFF OF A&E. SO, THIS ONE I WENT TWO OR THREE MONTHS. I HAVEN'T GONE ANY FURTHER WITH TIME CONSTRAINTS, BUT I DO NOT SEE IT CLEARING AT

THIS POINT. AS I SAID, IT WAS DEDUCTED FROM A&E'S RECORDS.

Q IF IT DID NOT CLEAR AND YOU LOOKED AT THE SECOND PAGE, WHICH WAS THE LETTER FROM HORRY COUNTY BACK TO A&E DATED APRIL 6TH, THEY'RE BASICALLY SAYING WE CAN'T TAKE THE FIRST CHECK YOU SENT US BECAUSE YOU DIDN'T SENT IT IN TIME. ANOTHER PENALTY HAD ACCRUED. I'M PARAPHRASING THERE. YOU NEED TO SEND US ANOTHER CHECK.

A YES. BUT I HAVEN'T SEEN THIS LETTER BEFORE UNTIL NOW.

Q IT'S YOUR TESTIMONY THAT THIS WASN'T IN THE RECORDS? WOULD IT BE YOUR OPINION --

A WHAT RECORDS ARE YOU REFERRING TO?

Q ALL OF OUR NOTEBOOKS THAT WERE GIVEN TO YOU BEFORE DECEMBER 1ST?

MR. DURANT: YOUR HONOR, THE PLAINTIFF STIPULATES TO THE SMALLER AMOUNT. IF WE JUST HAD KNOWN THE CHECK HADN'T CLEARED. IT'S NOT AN ISSUE WITH US. IF THE CHECK DIDN'T CLEAR, WE STIPULATE TO THE 4,526.89, THE SMALLER AMOUNT.

MS. COOK: WELL, AND I DO APPRECIATE THAT, YOUR HONOR, AND WE WILL TAKE

THAT. BUT YOU KNOW, MRS. BRADY, UNEQUIVOCALLY STATED... LISTEN, EVERYBODY IS GOING TO MAKE MISTAKES. I DO UNDERSTAND THAT BUT MRS. BRADY DID TESTIFY EARLIER THAT, UNEQUIVOCALLY, THAT SHE WENT THROUGH EVERY DEPOSIT AND EVERY TRANSACTION AND VERIFIED AND WE MADE A NOTE THAT THE "BANK RECORDS DON'T LIE." SHE HAD THE BANK STATEMENTS AND THIS WAS ONE OF THE THINGS THAT SHE SPECIFICALLY QUESTIONED AND THIS ONE JUST MIGHT HAVE GOTTEN MISSED, BUT THERE MAY BE OTHER THINGS THAT GO MISSED AS WELL.

MR. DURANT: IF SOMEONE HAD TOLD US ABOUT THIS, IT WOULD HAVE BEEN RESOLVED AT THE MEETING. WE ARE NOT HERE TO MAKE YOU PAY SOMETHING THAT DIDN'T CLEAR AND NEITHER IS MRS. BRADY.

JUDGE HOWE: I UNDERSTAND. THEY DIDN'T GET THE LETTER.

Q IF I COULD HAVE YOU LOOK AT TAB 20 STILL IN 2006, AND WE TALKED IN 2005 ABOUT THESE LINE ITEMS AS WELL. THESE HAD TO DO AGAIN WITH SOME OF THE

AMOUNTS THAT YOU'VE ENTERED AS BEING OWED BY MR. VEREEN BACK TO A&E FOR LULL RENTAL AND THE RENTAL OF A SKID AND THIS TIME IT'S AMOUNTS FOR ALL FULL 12 MONTHS PERIOD. SO, ALL OF 2006, IS THAT CORRECT?

A CORRECT.

Q SO, IT'S 22,800 FOR THE LULL RENTAL AND 15,000 FOR THE SKID RENTAL, IS THAT CORRECT?

A CORRECT.

Q DID YOU HAVE ANY BACKUP ON ANY OF THAT? WAS THAT MERELY BY MR. SMITH TELLING YOU THAT WAS AN AMOUNT THAT HE THOUGHT SHOULD BE PAID FOR THESE MATTERS?

A THAT'S CORRECT. THE LULL RENTAL AND THE SKID RENTAL BOTH OF THOSE ENTRIES ARE BECAUSE OF MR. SMITH'S INPUT INTO THAT AREA.

Q ARE YOU AWARE OF WHETHER OR NOT, IN FACT, PARK PLACE PROPERTIES RENTED A SKID OR A FORKLIFT AND A EXCAVATOR AND THAT PARKWAY PROPERTIES PAID FOR THOSE LINE ITEMS NOT A&E?

A IF PARKWAY PROPERTIES LEASED A SKID RENTAL.

Q PARK PLACE PROPERTIES, WE ARE ALL GETTING --

A NO. I'M NOT AWARE OF THAT.

Q HAVE YOU EVER SEEN AN INVOICE TO A&E FOR THE RENTAL OF A SKID, A LULL OR A EXCAVATOR OR ANYTHING LIKE THAT?

A A INVOICE TO A&E?
Q YES, MA'AM. THAT WOULD JUSTIFY THESE AMOUNTS THAT MR. SMITH TOLD YOU OF THE $22,800.00 AND THE $15,000.00?
A NO, MA'AM.
Q AND IF YOU SUBSEQUENTLY SAW BILLS AND RECEIPTS FOR THE RENTAL ON SOME EQUIPMENT, BUT SAW THAT IT WAS PAID FOR BY PARK PLACE OR THAT IT WAS NOT PAID FOR BY A&E, WOULD YOU HAVE A PROBLEM IN YOUR OPINION OF TAKING THAT OFF ANY AMOUNT THAT YOU GOT IN 2005 OR 2006 FOR THOSE LINE ITEMS?
A I HONESTLY THINK THAT'S PROBABLY A DECISION THAT I CAN'T MAKE. IT WAS PUT ON THERE. I HONESTLY -- I CAN'T TESTIFY TO WHO USED THE SKID OR WHO USED THE LULL AND WHO RENTED IT.
Q ARE THOSE AMOUNTS INCLUDED IN YOUR $2,800,000.00 NUMBER?
A THEY WERE INCLUDED IN THE PART THAT WAS THAT NUMBER, YES.
Q BUT YOU REALLY DON'T HAVE A BASIS TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY TO INCLUDE THOSE NUMBERS, DO YOU?
A IF THEY WERE USED, THEY WOULD HAVE BEEN EXPENSES, SO, YES. IT'S JUST LIKE SEVERAL OF THE OTHER JOBS THAT ARE ON THIS JOB LEDGER LIKE POINTE MARSH OR

SOME OF THESE OTHER JOBS, I GUESS. IT'S UP TO THE COURTS TO DETERMINE WHOSE JOB IT WAS. LIKE IF POINTE MARSH WAS AN A&E JOB TO DO THE OVERHEAD AND THE PROFIT, IF IT'S NOT TO DO THE REIMBURSEMENT. I CAN'T... I CAN ONLY TESTIFY TO THE NUMBERS.

Q AND YOU'RE NOT TESTIFYING TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY AS TO THESE NUMBERS THAT THEY ARE OR ARE NOT A&E EXPENSES? THAT THEY ARE OR ARE NOT OWED BY MR. VEREEN OR HIS ENTITIES BACK TO A&E, ARE YOU? YOU'RE LEAVING THAT DECISION TO THE COURT? DO I UNDERSTAND THAT CORRECT?

A I THINK THE NUMBERS ARE CORRECT. I'M SAYING I DON'T HAVE CONTRACTS. I DON'T THINK IT'S... IT'S HARD FOR ME TO SAY WHOSE JOB IT WAS. I THINK A&E IS DUE MONEY REGARDLESS OF WHOSE JOB. HOW MUCH MONEY I THINK NEEDS TO BE DETERMINED BY WHOSE JOB IT WAS ABSOLUTELY. A&E NEEDS THEIR MONEY BACK. THEY NEED TO BE REIMBURSED AND THEY NEED TO BE PAID FOR THEIR OVERHEAD ON THAT.

Q AND TO MAKE THAT DETERMINATION TO DECIDE THAT QUESTION IN ADDITION TO THE INFORMATION THAT YOU HAVE HERE, IF SOMEONE WERE TO ASK YOU TO DO THAT, WOULD YOU NEED COPIES OF THE CONTRACTS THAT THEY HAD WITH THESE ENTITIES THAT THEY DID JOBS FOR AND THE PAY REQUESTED FOR THOSE JOBS?

A RESTATE THAT QUESTION.
Q IF IT WAS... IF YOU HAVE BEEN HIRED TO DETERMINE EXACTLY HOW MUCH MONEY A&E IS OWED FROM WHATEVER SOURCES, OTHER THAN WHAT YOU HAVE, IN ADDITION TO WHAT YOU'VE DONE HERE, WOULD YOU NEED TO SEE THE CONTRACT TO KNOW WHAT THE BASIS OF THEIR AGREEMENTS WERE FOR PAYMENT?
A NO. I THINK A&E... THE MONEY THAT THEY HAVE SPENT I THINK THEY SHOULD BE REIMBURSED AND MAYBE I WASN'T CLEAR. I THINK A&E IS DUE THEIR MONEY BACK. I THINK THEY ARE DUE SOME EXTRA FOR THEIR WORKMANS' COMP AND THEIR LIABILITY AND THEIR OVERHEAD BECAUSE THEY OBVIOUSLY PAID THE BILLS ON THESE JOBS. I'M NOT SAY --
Q AND I WANT TO -- I'M SORRY.
A THEY OBVIOUSLY WERE OVER THIS JOB OR ALL THESE EXPENSES WOULDN'T HAVE BEEN PAID THROUGH. THEY WOULDN'T HAVE RAN THROUGH. THEY WOULDN'T HAVE BEEN ON THE JOB. I'M SAYING WHEN YOU ARE GIVEN TO... AS FAR AS EQUIPMENT WAS USED, WHEN I DON'T HAVE A PAPER TRAIL, IT DOES GET A LITTLE BIT STICKY AS TO HOW I AM GOING TO ACTUALLY DETERMINE THAT AMOUNT.
Q LET ME ASK YOU, DID THERE COME A TIME... LET'S DO 2007 FIRST. IN 2007, DID YOU MAKE ANY ADJUSTMENTS

IN YOUR FINAL REPORT, YOUR EXHIBIT 40, FOR AMOUNTS THAT MR. VEREEN... I'M SORRY. THAT MR. SMITH CONCEDED AFTER CERTAIN AMOUNTS WERE QUESTIONED THAT AFTER DISCUSSION OR BACKUP DOCUMENTATION, MR. SMITH AGREED WERE A&E EXPENSES AND SHOULD NOT BE AN ACCOUNTS RECEIVABLE DUE TO MR. VEREEN OR FROM MR. VEREEN?

A I DON'T KNOW IF I UNDERSTAND THAT QUESTION.

Q TO YOUR KNOWLEDGE, WERE THERE EXPENSES OR ITEMS THAT YOU AND MR. SMITH QUESTIONED, SUCH THAT YOU PUT IT ON YOUR SPREADSHEET AND ONCE YOU GOT BACKUP DOCUMENTATION, DISCUSSED THE MATTER WHEN WE WERE ALL TOGETHER OR FOR WHATEVER BASIS YOU MAKE AN ADJUSTMENT TO SAY, "NO. I AM DELETING THAT AS AN ITEM. THAT IS AN ACCOUNTS RECEIVABLE OWED BY MR. VEREEN?"

A YOU'RE SAYING, DID I DO IT ON THIS REPORT?

Q YES, MA'AM.

A THERE ARE A COUPLE OF VERIFIED AMOUNTS ON HERE.

Q OKAY. WHAT AMOUNTS DO YOU VERIFY, BUT FIRST QUESTIONED, BUT NOW CONCEDE ARE A&E EXPENSES?

A THERE IS A CHECK TO PARK PLACE FOR $1,050.00.

Q WHAT WAS THAT FOR?

A THE CHECK SAYS IT WAS FOR A REIMBURSEMENT.

Q AND THAT'S ALL THE DETAIL THAT YOU HAVE ON THAT?

A YES, MA'AM.
Q OKAY.
A I DON'T KNOW IF IT WAS SOMETHING THAT WAS DONE. I MEAN, THIS WAS IN THE TAB. SO, I DON'T KNOW IF IT WAS SOMETHING THAT WAS DONE AT OUR MEETING.
Q TO YOUR KNOWLEDGE, WHEN WAS IT THAT MR. SMITH STOPPED WORKING AT, IF YOU KNOW, A&E?
A I'M THINKING IT WAS THE END 2007, BUT I DON'T KNOW THAT I CAN TESTIFY TO THAT EXACTLY.
Q IF YOU DON'T KNOW THAT'S FINE.
A I DON'T, NO.
Q DO YOU KNOW IF AFTER MR. SMITH INCORPORATED E SMITH AND SONS IN APRIL OF 2007, DO YOU KNOW IF HE CONTINUED TO ACTIVELY PARTICIPATE AND WORK FOR A&E?
A I THINK I WAS TOLD THAT HE DID. FOR SOME REASON I THINK TO THE END OF 2007 OR HE WENT THROUGH A PERIOD AND THEN TOOK THE REST OF HIS VACATION THAT HE WAS OWED IN 2007 MAYBE.
Q WHEN YOU SAY, "YOU THINK YOU WERE TOLD HE DID IT", WHO TOLD YOU THAT?
A MR. SMITH.
Q AND FROM REVIEWING THE BOOKS AND RECORDS OF A&E, IT'S TRUE THAT A&E PAID MR. SMITH WHETHER HE WAS WORKING OR NOT THROUGH THE END OF 2007, ISN'T IT?

THEY PAID HIM HIS REGULAR PAYROLL?

A I WOULD HAVE TO VERIFY THAT.

Q GO AHEAD.

A IT LOOKS LIKE THERE WERE CHECKS WRITTEN UP THROUGH DECEMBER.

MS. COOK: YOUR HONOR, CAN WE TAKE A SHORT BREAK?

JUDGE HOWE: HOW MUCH LONGER DO YOU INTEND TO GO?

MS. COOK: WHAT I WOULD LIKE TO DO IS FINISH WITH '07, BUT THEN I HAVE SOME WRAP UP. SO, I WOULD LIKE TO FINISH HER TOMORROW. ESPECIALLY IN LIGHT OF BEING ABLE TO REVIEW THIS.

JUDGE HOWE: WHAT KIND OF WRAP UP? YOU MEAN WRAP UP TOMORROW?

MS. COOK: YES, MA'AM.

Q YOU DON'T KNOW WHETHER HE WAS WORKING OR HE WASN'T WORKING?

A I DO NOT KNOW FOR A FACT.

Q AND, IN FACT, EVEN AFTER MR. SMITH... YOU DO KNOW THAT HE WAS NOT WORKING WITH A&E ANY LONGER AFTER 2007, CORRECT?

MR. DURANT: SO STIPULATED.

Q EVEN THOUGH HE STOPPED WORKING FOR A&E AFTER 2007,

DID A&E NONETHELESS PAY HIS TRUCK PAYMENT, THE TRUCK HE DROVE IN THE NAME OF A&E? DID THEY CONTINUE TO PAY THE TRUCK PAYMENT FOR HIS TRUCK AFTER HE LEFT WORKING FOR A&E?

A I CAN'T ANSWER THAT.

Q DO YOU KNOW IF THEY PAID THE INSURANCE AFTER 2007 ON THAT TRUCK?

A I DO NOT KNOW.

Q DID YOU LOOK AT ANY EXPENSES PAID BY A&E AFTER 2007?

A I DIDN'T VERIFY A LOT OF... I DIDN'T GO INTO DETAIL MUCH AFTER 2007.

Q NOW, A&E IS STILL AN ONGOING CONCERN? IT'S STILL A CORPORATION, CORRECT?

A ARE YOU ASKING IF HE IS IN IT NOW?

Q YES.

A I HONESTLY DON'T KNOW THAT.

Q DO YOU KNOW IF A&E HAS CONTINUED TO PERFORM WORK, PUNCH LISTS, REPAIR WORK AFTER 2007 FOR A&E JOBS?

A I DO NOT KNOW THE EXTENT OF WHAT A&E IS DOING. THAT WAS BEYOND MY SCOPE.

Q DID A&E PAY THE PERSONAL PROPERTY TAXES ON THE TRUCK DRIVEN BY MR. SMITH AFTER 2007?

A AS I HAVE ALREADY TESTIFIED, AGAIN, MS. COOK, I CAN'T REALLY TESTIFY TO WHAT WAS DONE DURING 2008

BECAUSE IT'S NOT PART OF MY REPORT.
Q SO, YOU WOULD NOT HAVE DONE ANYTHING AND YOU CAN'T GIVE AN OPINION AS TO WHETHER MR. SMITH OWES ANYTHING BACK TO A&E FOR ANY EXPENSES A&E MAY HAVE PAID OF HIS OR ON HIS BEHALF IN 2008 OR 2009 OR 2010 OR 2011, IS THAT CORRECT?
A CORRECT.
Q ARE YOU AWARE OF ONGOING POTENTIAL LIABILITY THAT A&E HAS WITH REGARD TO A&E PROJECTS FOR '04 TO THE PRESENT?
A NO, MA'AM. AGAIN, AS I SAID, THE SCOPE OF WHAT I WAS ENGAGED TO DO WAS TO GO THROUGH THE BOOKS AND RECORDS OF A&E. I WOULDN'T KNOW ANYTHING ABOUT ANY KIND OF LIABILITY AT THIS POINT.
Q IN THE $2,800,000 NUMBER THAT YOU ARE OF THE OPINION THAT IS OWED BY MR. VEREEN AND HIS ENTITIES TO A&E, IS ANY PART OF THAT NUMBER AN AMOUNT FOR PROFIT OR OVERHEAD EXPENSES FOR PARTICULAR CONSTRUCTION JOBS?
A YES, MA'AM.
Q WHAT PARTICULAR CONSTRUCTION JOBS?
A I THINK THAT WAS IN THE 2007 BOOK. THERE IS A LIST. DO YOU HAVE A TAB 27 IN YOUR BOOK FOR 2007?
Q YES, MA'AM, I DO.
A THERE IS NO ENTRIES ON YOUR SPREADSHEET?

Q NO, MA'AM. NOT UNDER TAB 27. YOU MIGHT HAVE IT UNDER SOMETHING ELSE.
A DO YOU HAVE THE FOUR PAGES?
Q YES, MA'AM. AND THE BOTTOM OF MINE IS DATED 9/15/2010. WHAT IS THE BOTTOM OF YOURS DATED?
A LIKE I SAID, IT'S GOING TO BE IRRELEVANT BECAUSE WE'VE CHANGED SOME OF THE FONTS. I'M JUST TRYING TO MAKE IT LOOK PRETTIER SO THAT'S THE DAY IT WAS PRINTED. BUT YOU DON'T HAVE THE JOURNAL ENTRY NUMBERS AND THE TAB NUMBERS ON YOUR REPORT?
Q I HAD ASKED YOU ABOUT IF THE $2,800,000 NUMBER INCLUDED ANY AMOUNTS FOR PROFIT AND OVERHEAD FOR JOB? AND THAT LEAD US TO --
A TAB 27. DO YOU WANT ME TO LIST THESE JOBS?
Q YES. I WANT YOU TO TELL ME SPECIFICALLY WHICH JOBS... AM I READING THIS CORRECTLY? IT'S POSITION OF THE 2,800,000 AND CHANGE THAT 925,394.33 OF THAT AMOUNT IS PROFIT AND OVERHEAD ON CONSTRUCTION JOBS?
A YES, MA'AM.
Q IF YOU WOULD TELL ME WHICH JOBS MAKE UP THAT TOTAL AMOUNT?
A THE FIRST ONE IS THE JOB THAT THEY HAVE TITLED PARK PLACE. IN THE SECOND ONE IT WOULD BE PLANTATION LAKES. THE THIRD ONE IS PARKWAY

OFFICES. THE NEXT ONE IS BRIAN MAULDIN, POINTE MARSH AND GAYLE PERRY, LITCHFIELD MEDICAL, MICHAEL ABESENT,(?) BETH SISSON, SEVEN OAKS AND MURRELL'S INLET HOME. AND I WILL SAY SOME OF THOSE LIKE THE MURRELL'S INLET HOME THERE'S NOT AN OVERHEAD AND PROFIT. THERE MIGHT HAVE BEEN A PAYROLL COST. BUT THE MURRELL'S INLET HOME, THERE WAS NO OVERHEAD AND PROFIT ADDED.

Q YOU SAID THERE IS A JOB CALLED PARK PLACE? DO YOU HAVE AN UNDERSTANDING OF PHYSICALLY WHAT CONSTRUCTION JOB THAT WAS?

A IT JUST SAYS, "PARK PLACE" IS THE WAY IT WAS LISTED ON THE BOOKS.

Q AND HOW DID YOU MAKE A DETERMINATION -- HOW DID YOU DECIDE TO PUT THE JOB PARK PLACE AS BEING AN A&E JOB FOR WHICH IT'S YOUR OPINION THAT MR. VEREEN OWES A&E ANY TYPE OF PROFIT OR OVERHEAD?

A I BELIEVE... LET ME VERIFY THIS BEFORE I ANSWER. INITIALLY, WHEN I WAS GOING THROUGH ALL THESE, THERE WAS SEVERAL REPORTS IN THE TAX RETURN THAT HAD JOB COSTS AND THE REVENUES AND WHAT THEY HAD EARNED TO DATE. THERE WAS ALSO SEVERAL THAT HAD NO INCOME OR VERY LOW INCOME. SO, THOSE WERE THE ONES THAT I PICKED OUT AND PARK PLACE WAS ONE OF THOSE.

Q SO, IT'S NOT... YOU HAVE GONE THROUGH THE BOOKS AND RECORDS OF A&E. YOU HAVE NOT LISTED EVERY JOB THAT THEY HAD DURING THE '04 TO '07 TIME PERIOD AND CHARGED SOME AMOUNT FOR PROFIT AND OVERHEAD, IT'S JUST CERTAIN JOBS?

A NO. THESE ARE JOBS THAT THEY DIDN'T GET PAID... MOST OF THESE ARE JOBS THAT THEY DIDN'T GET PAID ANYTHING ON OR THESE WERE JOBS THAT A&E PAID MONEY, BUT MADE NO MONEY OR THEY LOST. THEY LOST ON ALL OF THESE. THESE WERE ONES THAT THERE WAS EXPENSES COMING OUT. THEY WERE JOBS LISTED ON THE BOOKS. JOBS LISTED ON THE TAX RETURNS, BUT NO INCOME. THERE WERE A COUPLE OF THESE THAT HAD A SMALL AMOUNT OF INCOME, BUT IT WAS NOWHERE NEAR WHAT WAS PAID OUT.

Q YOU DON'T KNOW WHAT ACTUAL JOB THE PARK PLACE JOB WAS?

A NO.

Q AND INFORMATION OR WHAT IS THE BASIS OF YOUR OPINION THAT A&E IS OWED ANY MONEY BY MR. VEREEN ON THE JOB IDENTIFIED AS PARK PLACE?

A I KNOW THAT HIS COMPANY IS PARK PLACE PROPERTIES OR PARK PLACE, LLC, WHATEVER WE HAVE DETERMINED. SO, THERE IS A JOB ON THE BOOKS CALLED, "PARK PLACE" WHERE THERE IS A LOT OF EXPENSES CODED TO A

JOB. THAT WAS WHY THIS WAS BROUGHT OUT.
Q BUT YOU DON'T KNOW WHAT THAT JOB PHYSICALLY WAS?
A I KNOW WHAT THE EXPENSES WERE, BUT I DON'T KNOW WHAT THEY --
Q WHERE IT WAS? WHAT THEY BUILT?
A I'M ASSUMING, MY FIRST THOUGHT AND I CAN'T VERIFY THIS, WAS THAT IT WAS PROBABLY AT THE OFFICE.
Q BUT YOU HAVEN'T VERIFIED IT?
A DON'T THINK ANYTHING'S BEEN VERIFIED.
Q YOU VERIFY THAT THERE IS A JOB LEDGER FOR A JOB IDENTIFIED AS PARK PLACE, BUT OTHER THAN THAT, YOU HAVE NOT SEEN A CONTRACT FOR THAT JOB, IS THAT CORRECT?
A I HAVE NOT SEEN A CONTRACT.
Q AND OTHER THAN KNOWING MR. VEREEN OR... SOMEHOW HAS A CONNECTION WITH AN ENTITY KNOWN AS PARK PLACE, OTHER THAN THAT, AND KNOWING THERE WERE EXPENSES, OTHER THAN THERE, IS THERE ANY OTHER BASIS UPON WHICH YOU SAY HE OWES A&E ANY MONEY FOR THAT PARTICULAR JOB?
A I'M SORRY. I WAS LOOKING AT THE REPORT. WOULD YOU SAY THAT QUESTION AGAIN?
Q I DON'T EVEN REMEMBER WHAT IT WAS. I WAS ASKING YOUR BASIS FOR SAYING... OTHER THAN MR. VEREEN HAVING SOME CONNECTION WITH AN ENTITY KNOWN AS

PARK PLACE AND KNOWING THAT A&E PAID SOME EXPENSES TO A JOB CALLED PARK PLACE, DO YOU HAVE ANY OTHER BASIS UPON WHICH YOU HAVE THE OPINION THAT MR. VEREEN OWES A&E MONEY FOR THIS JOB?

A NO. OTHER THAN MR... NO. THERE'S OVER A HUNDRED THOUSAND DOLLARS WORTH OF EXPENSES AND MR. SMITH DIDN'T KNOW OF THE JOB AND IT'S CODED TO A JOB CALLED, "PARK PLACE". NO. THAT'S THE BASIS.

Q WHAT DO YOU SAY IS OWED BY MR. VEREEN OR HIS ENTITIES TO A&E FOR THE PARK PLACE JOB? WHAT IS THE TOTAL AMOUNT?

A ARE YOU TALKING ABOUT WITH THE PROFIT AND THE OVERHEAD?

Q MY QUESTION TO YOU IS, YOU'RE OF THE OPINION THAT SOME OF THE MONEY IS OWED BY MR. VEREEN OR HIS ENTITIES TO A&E, CORRECT?

A YES.

Q HOW MUCH?

A THE TOTAL ON THE BOOKS THAT WAS PAID WAS $110,021.86 WHAT WAS INITIALLY PUT ON AND THEN WITH THE PROFIT AND THE OVERHEAD, PAYROLL COST, LIABILITY, WORKMANS' COMP, THE GRAND TOTAL WITH ALL THOSE FIGURES IS $152,533.42.

Q AND THOSE AGAIN, ARE ARRIVED AT BY LOOKING AT WHAT AMOUNTS ARE REFECTED IN THE JOB LEDGERS ON THE

PEACHTREE SYSTEM FOR THE PARK PLACE JOB? IS THAT CORRECT TO GET THE 110,000 AND CHANGE?

A YES, MA'AM.

Q AND TO THAT YOU ADDED OTHER AMOUNTS AND WHAT AMOUNTS WERE THOSE?

A THERE WAS A 40% CHARGE ON THE PAYROLL COST. 40% OF THE ACTUAL PART THAT WAS CODED TO PAYROLL.

Q WHAT DO YOU MEAN BY THAT?

A ON THE JOB LEDGER BOOKS, THE EXPENSES ARE BROKEN DOWN WHERE MOST THE TIME THERE IS A PAYROLL EXPENSE. THERE IS A MATERIALS SUBCONTRACTOR, BUT THE PAYROLL IS USUALLY BROKEN OUT. THE $110.021.86, THE PAYROLL PART OF THAT WAS 50,000.00. THAT AMOUNT WAS CODED TO PAYROLL FOR THE PARK PLACE JOB. JUST A COMMENT HERE. WHEN YOU SEE THE JOBS IF IT SAYS, "PARK PLACE" AND THERE'S LIKE FOUR EXPENSES, THERE'S FOUR TOTALS ON EACH JOB, THERE IS USUALLY SEVERAL LINE ITEMS THAT'S DONE THAT WAY BECAUSE THOSE ARE BROKEN DOWN BY THE JOB LEDGER REPORTS.

Q MY QUESTION WAS... OR MY QUESTION NOW IS, HOW DID YOU ARRIVE AT THE AMOUNTS OVER THE $110,021.86 BECAUSE THAT AMOUNT WAS THE DIRECT AMOUNT OF EXPENSES ENTERED INTO THE JOB LEDGER FOR THIS JOB ON THE PEACHTREE ACCOUNTING SYSTEM OF A&E,

CORRECT?
A CORRECT.
Q BUT YOU ADDED SOME AMOUNT OF MONEY OVER 40,000 SOMETHING THOUSAND TO THAT. I WANT TO KNOW HOW YOU ARRIVED AT THAT ADDITIONAL AMOUNT OVER AND ABOVE THE 110?
A OKAY. THERE'S PAYROLL COST, THERE'S LIABILITY, THERE'S WORKMANS' COMP. I THINK I TESTIFIED EARLIER THAT THESE... THIS FORMULA WAS FIRST GIVEN TO ME BY ELLIS. HE TOLD ME THIS IS BASICALLY THE WAY THEY USUALLY DID IT. THEN WHEN MR. VEREEN TESTIFIED -- HE TESTIFIED TO THE SAME AMOUNT. NOT TESTIFIED IN HIS DEPOSITIONS. HE VERIFIED THAT THOSE WERE THE AMOUNTS THAT HE USUALLY USED. SO, I USED THAT SAME FORMULA TO COME UP --
Q TELL ME WHAT THE FORMULA IS?
A THE PAYROLL COSTS, 40% WAS ADDED TO THAT.
Q SO, YOU TOOK WHAT HAD BEEN CODED IN THE ACCOUNTING OF PEACHTREE AND ADDED 40% TO WHATEVER THOSE DIRECT COSTS WERE?
A WHAT HAD BEEN CODED IN THE ACCOUNTING AS PAYROLL FOR THAT JOB, CORRECT.
Q YOU ADDED 40% MORE TO THAT? THAT'S WHERE YOU GET THE 20,000?
A CORRECT.

Q SO, YOU ARE USING PAYROLL PLUS 40% FOR THE PAYROLL EXPENSES. WHAT ARE PAYROLL EXPENSES GENERALLY?
A FICA, MEDICARE, UNEMPLOYMENT, FEDERAL EMPLOYMENT, STATE UNEMPLOYMENT. IT COULD BE INSURANCE.
Q WHAT IS THE NEXT AMOUNT THAT YOU ADDED TO GET YOUR $152,000.00?
A LIABILITY.
Q WHAT KIND OF LIABILITY?
A I WOULD ASSUME THAT'S LIKE A GENERAL LIABILITY.
Q OKAY.
A THIS IS NOT A FORMULA THAT I CAME UP WITH. I USE THIS IN THE --
Q TELL ME WHAT YOUR FORMULA IS? LET'S DO THAT FIRST AND THEN WE WILL...
A DO YOU WANT ME TO START OVER WITH THE PAYROLL OR CATCH UP THERE?
Q NO. YOU SAID COSTS. THEN YOU DID PAYROLL EXPENSES PLUS 40%. WHAT'S THE NEXT THING?
A TOTAL COSTS. THEN IT WAS LIABILITY, WHICH WAS 2% ADDED TO THAT COST.
Q 2% WHICH WAS THE ACTUAL EXPENSES THE PAYROLL PLUS 40%?
A THE TOTAL JOB COST WHICH WAS THE ACTUALLY COST, THE PAYROLL AND THEN THE 40% ON TOP OF THE PAYROLL. THOSE TOGETHER CAME UP WITH THE TOTAL

JOB COST.
Q OF THE $137.02?
A CORRECT.
Q AND THEN WHAT DID YOU DO?
A 2% TO THAT.
Q THE 2% IS TO COVER WHAT?
A LIABILITY.
Q WHAT KIND OF LIABILITY?
A I'M ASSUMING THAT'S LIABILITY INSURANCE.
Q DO YOU KNOW WHAT THAT 2% IS FOR OR THAT'S SOMETHING THAT MR. SMITH TOLD YOU?
A THAT'S SOMETHING THAT MR. SMITH AND MR. VEREEN SPOKE IS THE WAY THEY DID IT.
Q OKAY. WHAT'S NEXT?
A OVERHEAD AND PROFIT 15%.
Q MR. SMITH TOLD YOU TO ADD 15% FOR OVERHEAD AND PROFIT? HE DIDN'T CONSIDER THE LIABILITY ANY OF THE PAYROLL COSTS, ANY OF THAT AS OVERHEAD? OVERHEAD WAS, IN ADDITION, TO THOSE TYPE COSTS AS YOU UNDERSTOOD THE FORMULA?
A YES. OVERHEAD DOESN'T NORMALLY INCLUDE PAYROLL.
Q NO. I DIDN'T SAY PAYROLL. SO, YOU ADDED 15% FOR OVERHEAD AND PROFIT?
A YES, MA'AM.
Q THEN AFTER THAT, WHAT DID YOU COME UP WITH? IS

THAT HOW YOU GOT YOUR TOTAL OF $152,000.00 AND CHANGE?

A YES, MA'AM.

Q WERE THERE ANY DEPOSITS OR PAYMENTS THAT YOU'RE AWARE OF ON THIS JOB THAT CAME INTO A&E?

A THERE WAS A PAYMENT THAT CAME IN... THAT WAS THE 40,000 THAT WAS JUST CODED... THE DEPOSITS WERE DONE GENERALLY BECAUSE THE RECEIVABLES WAS LABELED AS "WAYNE VEREEN AND ASSOCIATED ENTITIES." AND SOMETIMES THE DEPOSIT I COULD TELL CAME FROM -- EITHER IT WOULD SAY, "PARK PLACE OR POINTE MARSH." SO, THERE'S A $40,000.00 DEPOSIT THAT IS CREDITED AGAINST THIS.

Q THAT YOU CREDITED AGAINST THE 152?

A NO, NO, NO. IT'S JUST CREDITED AGAINST WHAT HE OWED THE COMPANY IN GENERAL. I DIDN'T GO THAT SPECIFIC WITH WHAT THAT DEPOSIT WAS SUPPOSED TO BE FOR. IT'S JUST A TOTAL, LIKE WE SAID BEFORE, WE'RE DOING GROUPS HERE.

Q DID YOU DO ANY TOTALS FOR ANY EXPENSES OR OBLIGATIONS THAT MR. VEREEN OR PARK PLACE PROPERTIES MAY HAVE PAID ON BEHALF OF A&E? INSTEAD OF BEING A DEPOSIT INTO A&E THAT MR. VEREEN OR HIS ENTITIES MADE, ANY PAYMENTS ON BEHALF OF A&E THAT SHOULD BE CREDITED?

A I DIDN'T UNDERSTAND THE QUESTION. I'M SORRY.
Q YOU TOOK INTO CONSIDERATION THE $40,000.00 DEPOSIT THAT WAS MADE ON THIS PARTICULAR JOB. WHILE IT'S NOT ASSIGNED TO THIS PARTICULAR JOB, IT IS INCLUDED IN THE TOTALS THAT 40,000.00 CREDIT, AM I CORRECT?
A CORRECT.
Q AND THAT WAS BY WAY OF DEPOSIT AND ACTUAL CASH DEPOSIT BY EITHER PARK PLACE PROPERTIES OR MR. VEREEN OR ONE OF HIS RELATED ENTITIES INTO A&E, AM I CORRECT?
A CORRECT.
Q DID YOU LIKEWISE CONSIDER ANY PAYMENTS THAT HAD BEEN MADE BY MR. VEREEN OR HIS RELATED ENTITIES ON BEHALF OF A&E TO GIVE HIM CREDIT FOR THOSE?
A I DON'T KNOW HOW I WOULD'VE KNOWN THAT.
Q SO, THE ANSWER WOULD BE NO? YOU DID NOT DO THAT?
A YOU'RE SAYING SOMETHING THAT HE WOULD'VE PAID PERSONALLY?
Q UH-HUH. (AFFIRMATIVE RESPONSE).
A NO.
Q YOU USED THAT SAME FORMULA... YOU ONLY DID THIS FORMULA FOR JOBS THAT YOU IDENTIFIED AS BEING SOMETHING THAT SHOULD BE PAID BACK? AND YOU ONLY DID THAT IN 2007? YOU DIDN'T DO THAT IN 2004, '5,

OR '6, IS THAT A FAIR STATEMENT?

A IT'S BASED ON EXPENSES FOR '4, '5, '6, AND '7. I ONLY DID IT AT THE END.

Q SO, WOULD THE REST OF THESE REPORTS HAVE BEEN SOLELY RELATED TO THE CALENDAR YEAR, THIS PORTION OF THE 2007 REPORT IS CUMULATIVE?

A WELL, ON THE OVERHEAD AND PROFIT BECAUSE SOME OF THESE JOBS, ACCORDING TO THE BOOKS, WERE STILL GOING ON. AT THIS POINT, THESE JOBS WERE... I DON'T KNOW IF I CAN SAY THAT. I'M NOT SURE. I WILL RETRACT THAT STATEMENT, YEAH. THIS IS THE END OF THE REPORT. SO, INSTEAD OF DOING IT BY YEAR, IT'S SIMPLICITY.

Q SO, IT'S NOT THAT ALL OF THESE JOBS WERE PERFORMED? ALL OF THESE EXPENSES WERE INCURRED OR PAID BY A&E IN 2007? THIS PORTION OF YOUR 2007 REPORT IS CUMULATIVE?

A JUST FOR THE OVERHEAD AND PROFIT. THE TOTAL COST THAT ARE ON THAT FIRST COLUMN WHERE IT SAYS, "A". THOSE HAVE ALREADY BEEN ADDED PER YEAR. THE YEAR THAT THEY WERE INCURRED. SO, THOSE HAVE NOT BEEN ADDED AGAIN. THAT'S JUST FOR THE SAKE OF USING THE FORMULA. LAST WHERE IT SAYS, "ADDITIONAL AMOUNT DUE."

Q SO, YOUR COLUMN "H" IS THE ONLY THING THAT YOU

--

A THAT IS WHAT IS INCLUDED IN THE 2007.

Q OKAY. NOW, DID YOU DO ANY COMPARISON TO SEE WHETHER OR NOT A 15% OVERHEAD AND PROFIT WAS REASONABLE GIVEN OUR ECONOMY AND WHAT WAS GOING ON IN THE CONSTRUCTION INDUSTRY IN 2004?

A NO.

Q HOW ABOUT IN 2005?

A NO. BECAUSE MR. VEREEN AND MR. SMITH BOTH STATED THAT'S WHAT THEY DID. SO, I DIDN'T SEE ANY SENSE OF ME GOING FURTHER TO --

Q WHAT ABOUT 2006?

A NO.

Q HOW ABOUT IN 2007?

A NO. SAME ANSWER.

Q DID YOU GO BACK AND DO ANY DUE DILIGENCE TO SEE WITH REGARD TO ANY OF THE OTHER JOBS THAT WERE DONE BY A&E IF THOSE WERE JOBS IN WHICH THEY WERE BID OR CONTRACTED AT A 15% OVERHEAD AND PROFIT FROM 2004 TO 2007?

A I WOULD DEFINE DUE DILIGENCE AS BOTH PARTNERS AGREEING TO THE SAME FORMULA.

Q WELL, THAT'S NOT WHAT I ASKED YOU.

A I KNOW WHAT YOU ASKED ME.

Q DID YOU DO... OTHER THAN HEARING A FORMULA FROM

THESE TWO GENTLEMEN, DID YOU DO ANYTHING TO SEE IF IN OUR COMMUNITY AND IN OUR AREA, IF A 15% PROFIT AND OVERHEAD WAS SOMETHING THAT WOULD TYPICALLY BEEN CONTRACTED FOR FROM 2004 TO 2007?

A I TOLD YOU ALREADY THAT WAS NOT THE SCOPE OF MY RESPONSIBILITY.

Q AND DID YOU DO ANYTHING TO DETERMINE IF ACTUALLY OTHER JOBS OF A&E WERE AT A 15% PROFIT AND OVERHEAD MARGIN?

A MS. COOK, AS I HAVE TESTIFIED, I DON'T KNOW THAT I COULD HAVE TOLD YOU WHAT THE TRUE COST OF ANY JOB THAT A&E DID BY THESE RECORDS. PLEASE, NO. I DID NOT GO BACK AND DO THAT.

Q OKAY.

JUDGE HOWE: MS. COOK, HOW MUCH LONGER ARE YOU PLANNING TO GO TONIGHT?

MS. COOK: YOUR HONOR, THIS WILL PROBABLY BE A GOOD PLACE TO BREAK.

JUDGE HOWE: THANK YOU.

OFF THE RECORD.

(JUNE 14, 2011).

JUDGE HOWE: ALRIGHT. MS. COOK, ARE YOU READY?

MS. COOK: YES, MA'AM.

Q GOOD MORNING, MRS. BRADY.

A GOOD MORNING.
Q WHEN WE BROKE YESTERDAY WE HAD KIND OF CONCLUDED TALKING ABOUT SOME FIGURES THAT YOU'VE CHARGED AGAINST MR. VEREEN HAVING TO DO WITH PROFIT AND OVERHEAD FOR THE COURSE OF YOUR INVESTIGATION, '03 TO '07 ON CERTAIN JOBS OF A&E. DO YOU RECALL THAT LINE OF QUESTIONING?
A YES, MA'AM.
Q I BELIEVE THAT THOSE AMOUNTS ARE ACTUALLY REFLECTED ON YOUR 2007 SPREADSHEET AND THEN THE BACKUP FOR HOW YOU CALCULATED THAT IS IN YOUR 2007 BOOK, WHICH IS EXHIBIT 4 BEHIND TAB 27, IS THAT CORRECT? LET ME GET YOU TO PULL THAT BECAUSE I'M GOING TO ASK YOU A FEW MORE QUESTIONS ON THAT LINE.
A YES, MA'AM. THAT'S CORRECT.
Q NOW, THERE ARE VARIOUS JOBS THAT YOU HAVE CHARGED MR. VEREEN AS OWING BACK SOME MONEY TO A&E FOR PROFIT AND OVERHEAD. I WANT TO BE CLEAR WHY YOU CHOSE THESE PARTICULAR JOBS TO CHARGE AS ANYONE OWING PROFIT AND OVERHEAD TO THE COMPANY AS OPPOSED TO ANY OTHER JOBS PERFORMED BY A&E DURING THE 2003 TO 2007?
A THAT'S THE QUESTION YOU'RE ASKING ME? IS WHY I CHOOSE THESE JOBS?

Q RIGHT.
A ORIGINALLY THESE JOBS WERE PULLED OUT BECAUSE ON THE BOOKS AND RECORDS THAT I HAD PULLED FROM THE ACCOUNTANT, IT STARTED WITH THESE JOBS AND THEY WERE THE ONES THAT EITHER RECEIVED NO PAYMENT AT ALL OR VERY LITTLE. AND AS I GOT INTO IT, I DID REALIZE MOST OF THESE JOBS ARE EITHER OWNED BY MR. VEREEN, MRS. LINDA VEREEN OR FAMILY MEMBERS. IN SOME WAY ASSOCIATED TO HIM, BUT THE BASIC WAS THESE ARE JOBS THAT THEY DID NOT RECEIVE REVENUE ON.
Q WERE THERE ANY OTHER JOBS THAT THEY RECEIVED NO REVENUE OR A SMALLER AMOUNT OF REVENUE THAN WOULD BE EXPECTED GIVEN THE EXPENSES SHOWN ON THE BOOKS AND RECORDS OF A&E OTHER THAT THESE JOBS?
A I BELIEVE GOING THROUGH THE LIST, THESE WERE THE ONES THAT I PULLED. I WOULD HAVE TO PROBABLY GO BACK TO BE CONCLUSIVE, BUT I FEEL PRETTY SURE THESE ARE THE ONES THAT HAD NO MONEY.
Q LET ME ASK THIS QUESTION. DID YOU LOOK AT EVERY JOB THAT WAS REFLECTED ON THE BOOKS AND RECORDS OF A&E TO SEE IF A REASONABLE AMOUNT OF PROFIT AND/OR OVERHEAD, IN YOUR OPINION BEING A CERTIFIED PUBLIC ACCOUNTANT, CHARGED WITH THE SCOPE OF DUTIES THAT YOU HAD IN HIS JOB TO SEE IF THERE WERE OTHER JOBS

OTHER THAN THESE THAT YOU SHOULD CHARGE OR WOULD HAVE EXPECTED MORE PROFIT AND OVERHEAD TO HAVE BEEN MADE BY THE COMPANY?

A BASICALLY WHERE I GOT THIS INFORMATION --

Q IF YOU WOULD ANSWER THAT QUESTION YES OR NO AND THEN YOU CAN EXPLAIN YOUR ANSWER, MRS. BRADY. DID YOU LOOK AT ALL THE OTHER JOBS DONE BY A&E FROM 2003 TO 2007 TO DETERMINE IF PROFIT AND OVERHEAD WAS PAID TO THE A&E BUSINESS?

A I LOOKED AT THE JOBS THAT WERE RECORDED ON THE TAX RETURN. I LOOKED THROUGH ALL OF THOSE JOBS ON THE TAX RETURN. THE ONES THAT WERE CHARGED WITH CONSTRUCTION IN PROGRESS AND CHARGED AS A JOB ON THAT TAX RETURN AND LOOKED AT THE PROFIT. I DID NOT FIGURE WHAT THE OVERHEAD AND PROFIT WAS IF IT LOOKED LIKE THERE WAS A PROFIT. I DIDN'T PULL THAT JOB OUT.

Q IRRESPECTIVE OF HOW BIG OR SMALL A JOB WAS, YOUR TESTIMONY UNDER OATH IS, YOU LOOKED AT EVERY JOB REPORTED ON A TAX RETURN? AND WHAT TAX RETURNS WERE THOSE, '04 AND '05?

A I LOOKED ALL THE WAY THROUGH '07. I THINK SMITH SAPP HAD KEPT A RUNNING TOTAL EACH YEAR BECAUSE SOME YEARS THE JOBS WERE OPEN. SOME YEARS, YOU KNOW, THEY WERE CLOSED. I THINK THEIR SPREADSHEET

STARTED IN '04 AND IT WENT THROUGH '07 AND '07 HAD MOST OF THEM CLOSED AT THAT TIME. IT SHOWED WHAT THEY REPORTED AS CONSTRUCTION COSTS. THERE WERE A COUPLE OF THE FAMILY JOBS THAT WERE STILL IN PROGRESS AND WHAT THE REVENUE WAS. I DID NOT... IT WASN'T MY SCOPE TO SEE DID THEY MAKE ENOUGH MONEY OR HOW MUCH MONEY THEY MADE ON THOSE JOBS, BUT IF THERE WAS A PROFIT AND THEY WERE PAID FOR THEIR EXPENSES, I DID NOT PULL IT OUT.

Q AND DO YOU KNOW... DID YOU DO ANYTHING TO VERIFY IF THE TAX RECORDS OR THE ACCOUNTING RECORDS OF SMITH SAPP THAT YOU WERE LOOKING AT, AND WE KNOW FROM THE TESTIMONY EARLIER YESTERDAY THAT AT LEAST '06 AND WE NEVER EVEN LOOKED AT '07 TAX RETURN, WHICH WAS A DRAFT RETURN. DO YOU KNOW IF THE INFORMATION THAT YOU WERE LOOKING AT SMITH SAPP WAS ACCURATE?

A WELL, I PULLED... I THINK IT'S EXHIBIT 6 IS ACTUALLY A PRINTOUT OF EVERY JOB LEDGER FOR A&E. I TRIED TO THE BEST OF MY KNOWLEDGE TO SEE WHICH ONE OF THESE -- I MEAN, TO SEE THE MONEY THAT HAD COME IN MATCHED WHAT WAS ON THE TAX RETURN. SOME IT HAD, BUT IT LOOKED AS THOUGH SOME OF THE RECEIPTS WERE NOT RECORDED ON THE JOBS. BUT SOME OF THE BIGGER ONES, IT WAS PRETTY CLOSE. SO, I

DID THE BEST OF MY ABILITY TO KIND OF COMPARE WHAT WAS ON THE PEACHTREE VERSES WHAT SMITH SAPP RECORDS HAD.

Q DO YOU HAVE AN OPINION AS TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY THAT THE RECORDS THAT YOU RELIED ON LOOKING AT IN SMITH SAPP'S OFFICE WERE ACCURATE?

A RESTATE THAT.

Q IS IT YOUR OPINION TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY THAT THE DOCUMENTS AND THE RECORDS THAT YOU WERE LOOKING AT FROM SMITH SAPP WERE ACCURATE?

A ACCURATE AS TO?

Q ACCURATE FOR THE SCOPE FOR WHICH YOU WERE LOOKING AT THE RECORDS TO DETERMINE WHAT PROFIT AND OVERHEAD SHOULD BE CHARGED TO ANYONE HAVING TO DO WITH A&E?

A THAT WASN'T THE SCOPE OF WHAT I DID TO DETERMINE WHAT THE OVERHEAD AND PROFIT WAS ON SOME OF THE OTHER JOBS BECAUSE I'VE NEVER SEEN THE CONTRACT. I DON'T KNOW IF IT WAS A COST PLUS JOB. I DON'T KNOW WHAT THE OVERHEAD AND PROFIT SHOULD HAVE BEEN.

Q OKAY. DID YOU LOOK AT JOBS OTHER THAN THESE THAT YOU CHARGED TO MR. VEREEN OWING PROFIT AND

OVERHEAD THAT WERE MEMBERS OF HIS FAMILY AND DETERMINE THAT THERE WAS PROFIT AND OVERHEAD MADE ON THOSE JOBS? FOR EXAMPLE, DID YOU LOOK AT THE GREG SISSON JOB, MRS. SISSON'S BROTHER-IN-LAW, TO DETERMINE HOW MUCH PROFIT AND OVERHEAD, IF ANY, WAS MADE BY A&E ON THAT JOB?

A I DID REMEMBER LOOKING AT THE SISSON JOB --

Q THE GREG SISSON JOBS BECAUSE THERE WERE MULTIPLE SISSON JOBS?

A YES, MA'AM. I'M SORRY. I DID LOOK AT THAT JOB AND I REMEMBER THERE WAS PROFIT MADE ON IT.

Q DO YOU KNOW HOW MUCH PROFIT IN TERMS OF PERCENTAGE OR DOLLARS?

A LIKE I ALREADY SAID BEFORE, I DIDN'T GO INTO WHAT THEY MADE ON THOSE JOBS BECAUSE IT WAS NOT PART OF MY ENGAGEMENT.

Q HOW ABOUT THE CARLA MAULDIN JOB, ALSO A RELATIVE OF THE VEREENS? DID YOU LOOK AT THAT JOB AND DETERMINE IF PROFIT AND OVERHEAD WAS PAID AND/OR MADE ON THAT JOB?

A I REMEMBER LOOKING AT IT, BUT I DON'T RECALL THE NUMBERS ON THAT JOB. I WOULD HAVE TO LOOK AGAIN.

Q DID YOU LOOK AT ANY JOBS THAT WERE BROUGHT INTO THE COMPANY BY MR. SMITH TO DETERMINE HOW MUCH PROFIT AND/OR OVERHEAD WAS MADE ON THOSE JOBS

BROUGHT INTO A&E BY MR. SMITH?

A I WOULDN'T OF HAD ANY WAY OF KNOWING HOW THE JOBS WERE BROUGHT IN.

Q NOW, ONE OF THE THINGS YOU SAID IN CHARGING PROFIT AND OVERHEAD OR ALLEGING THAT MR. VEREEN OWES PROFIT AND OVERHEAD ON THESE JOBS LISTED, WAS YOU USED THE DIRECT COST THAT WAS REPORTED AND THEN YOU LOOKED AT THE PAYROLL AND ADDED 40% TO THE PAYROLL ELEMENT TO GET A TOTAL COST FOR PAYROLL, INCLUDING THE FICA AND THOSE TYPES OF THINGS. AND YOU DID THAT BASED ON A 40% ADDITION TO THE PAYROLL COST, CORRECT?

A CORRECT.

Q LET ME ASK YOU, DID YOU HAVE TO DO THE SAME TYPE OF THING WHEN YOU WERE AN EXPERT WITNESS FOR A&E IN THE WILLOUGHBY CASE IN COMING UP WITH, IN THAT CASE, YOUR DETERMINATION OF HOW MUCH PROFIT WAS MADE ON THE WILLOUGHBY JOB? DID YOU HAVE TO DO THOSE SAME TYPES OF COMPILATIONS TO COME UP WITH THE PROFIT AND OVERHEAD ON THAT JOB?

A I DON'T THINK I HAD ANYTHING TO DO WITH THE PROFIT AND OVERHEAD IF I RECALL.

Q LET ME SHOW YOU A COUPLE OF DOCUMENTS. DO YOU DENY THAT WHEN YOU WERE AN EXPERT WITNESS FOR THIS SAME COMPANY IN JUNE OF '07, THAT YOU DID

CALCULATE WHAT THE PROFIT ON THE JOB WAS? YOU DID CALCULATE OVERHEAD AND UTILIZE THE PERCENTAGE OF 3.5% TO ADD TO PAYROLL FOR THE PAYROLL BURDEN VERSES 40% YOU USED HERE? DO YOU DENY THAT?

A I'M TELLING YOU, MS. COOK, I DON'T REMEMBER THE DETAILS OF THE CASE.

Q LET ME SEE IF WE CAN REFRESH YOUR MEMORY HERE. HAVE YOU GOT A CALCULATOR UP THERE WITH YOU?

A NO, MA'AM.

Q I'VE GOT ONE AND I WILL BRING IT UP THERE, MRS. BRADY. LET ME HAND YOU WHAT WE ARE GOING TO MARK AS EXHIBIT 13. DO YOU RECOGNIZE EXHIBIT 13 AS BEING YOUR EXPERT REPORT RENDERED FOR A&E IN THE WILLOUGHBY PLACE LITIGATION?

A YES, MA'AM.

Q DID YOU AUTHOR THIS REPORT?

A YES. I THINK THE ATTORNEY AND I DID.

Q AND I'M GOING TO ASK YOU TO LOOK AT THE NEXT TO THE LAST PAGE OF YOUR REPORT AT THE TOP OF IT. IT'S GOT "PAGE 2" FAXED. IT'S ENTITLED, "A&E CONSTRUCTORS AND CONSULTANTS, INC., WILLOUGHBY PLACE." AND AT THE BOTTOM IT COMES UP WITH A NET INCOME FIGURE OF $329,000 --

A I NEED TO LOOK OVER THIS BECAUSE I HAVEN'T SEEN THIS IN A WHILE. GIVE ME JUST A SECOND.

Q YES, MA'AM.
A I'M SORRY. THE QUESTION AGAIN.
Q HAVE YOU REFRESHED YOURSELF WITH THAT?
A YES.
Q LET ME ASK YOU TO LOOK ON THAT PAGE, THE WILLOUGHBY -- IF YOU WOULD LOOK AT THE... ACTUALLY, LET'S START... BACK UP. LET'S LOOK AT THE LAST PAGE OF YOUR REPORT. "A&E CONSTRUCTORS AND CONSULTANTS, WILLOUGHBY PLACE." THIS IS WHERE YOU HAVE GOT BROKEN OUT THE TOTAL PAYROLL EXPENSES THAT YOU USED FOR 2004 THROUGH 2007 ON THE SHEET THAT IS AHEAD OF IT, CORRECT?
A YOU MEAN THE SHEET BEHIND IT?
Q YES, MA'AM. LOOK AT THE LAST PAGE OF THE REPORT. WHAT'S THE LAST PAGE OF THE REPORT?
A THE PAGE 3.
Q WHAT IS REFLECTED ON THE LAST PAGE OF THE REPORT?
A IT STARTS OFF WITH "SALARY/EXPENSE/W-2'S." IS THAT THE PAGE?
Q YES, MA'AM. WHEN YOU GOT DOWN TO ASSIGNING A PERCENTAGE TO THAT IN ORDER TO CALCULATE THE TOTAL SALARY/EXPENSE OR THE TOTAL PAYROLL EXPENSE FOR 2004, IF WE LOOK AT THAT, YOU ASSIGNED IN THIS EXPERT REPORT $4,552.43 IN YOUR REPORT, IS THAT CORRECT, FOR RELATED PAYROLL TAXES?

A YES. CORRECT.
Q IF I'M CORRECT, WHEN YOU DIVIDE THAT INTO THE ASSIGNABLE SALARIES, THE TOTAL OF THAT IS $48,533.33 FOR THE YEAR 2004. THAT'S ASSIGNING THAT ADDITIONAL BURDEN FOR THE RELATED PAYROLL TAXES OF 9.38%, ISN'T THAT CORRECT? AND THAT'S WHY I WANTED YOU TO HAVE THE CALCULATOR SO YOU COULD VERIFY THAT.
A WHAT DID YOU SAY THE PERCENTAGE WAS?
Q 9.38.
A YES.
Q AND IF YOU DO THAT CALCULATION FOR ASSIGNING THE EXTRA BURDEN ON THE SALARY EXPENSE FOR EACH YEAR 2005, 2006, 2007 YOU USE THAT SAME 9.38% TO ASSIGN AN ADDITIONAL LABOR AND BURDEN... YOU DON'T NEED TO LOOK AT THEM. LOOK AT ME. THAT SAME 9.38% FOR EACH YEAR, DID YOU NOT?
A IT LOOKS AS THOUGH I DID. DO YOU WANT ME TO... THAT LOOKS CORRECT.
Q NOW, WHY DID YOU USE 9.38% IN THIS CALCULATION AS AN EXPERT WITNESS FOR A&E, BUT YOU ARE USING 40% IN THIS CASE AS AN EXPERT WITNESS FOR A&E?
A FIRST OF ALL, THIS DOESN'T SAY, "PAYROLL EXPENSE." THIS IS PAYROLL TAXES.
Q OKAY.

A AND I DON'T HAVE MY BACKUP FOR THIS IN MY FILE. I WASN'T PREPARED TO TESTIFY ON THIS. THIS IS PAYROLL TAXES. WHEN YOU ARE DOING A CONSTRUCTION JOB AND YOU HAVE PAYROLL COSTS, A LOT OF TIMES YOU'RE PUTTING A LOT MORE THAN YOUR PAYROLL TAXES.

Q WELL, WHAT YOU WERE DOING AS AN EXPERT IN THIS CASE WAS COMING UP WITH THE NAMED PROFIT OR THE NET INCOME EARNED ON THE WILLOUGHBY PLACE JOB. THAT'S WHAT YOU WERE DOING AS AN EXPERT IN THIS PARTICULAR CASE, ISN'T THAT CORRECT?

A I BELIEVE SO. LIKE I SAY AGAIN, THIS HAS BEEN MANY YEARS AGO, BUT I KNOW THIS IS THE EXACT PAYROLL TAXES THAT WAS PAID. WHAT I WAS ASKED TO DO ON THAT PART, I WOULD HAVE TO HAVE MY BACKUPS TO GO TO.

Q BUT TO COME UP WITH -- WHETHER IT'S A BUSINESS OR WHETHER IT'S A PARTICULAR JOB, THE NET PROFIT EARNED ON THAT PARTICULAR JOB, YOU HAVE TO INCLUDE SOME AMOUNT FOR PAYROLL, SOME AMOUNT FOR PAYROLL TAXES AND SOME AMOUNT FOR OTHER PAYROLL BURDEN, IS THAT A TRUE STATEMENT?

A CORRECT.

Q AND YOU DID THAT IN THE WILLOUGHBY PLACE JOB AND YOU ASSIGNED... YOU USED 9.38% FOR THE PAYROLL TAX EQUAL TO THE SALARIES, CORRECT?

A CORRECT.
Q AND YOU WERE DOING THAT IN AN EFFORT TO GET TO... IN YOUR EXPERT OPINION, WHAT THE NET PROFIT ON THE WILLOUGHBY JOB WAS, IS THAT CORRECT?
A I BELIEVE SO.
Q LOOK BACK AT THE SHEET BEFORE THAT. THIS IS THE SHEET WHERE YOU DO YOUR CALCULATIONS TO COME UP WITH YOUR EXPERT OPINION AS TO WHAT THE NET INCOME OR PROFIT ON THE WILLOUGHBY JOB WAS, IS THAT CORRECT?
A CORRECT.
Q NOW, THE BACK SHEET THAT WE WERE JUST LOOKING AT THAT'S WHERE YOU PUT ASSIGNABLE PAYROLL EXPENSES TOWARD THE BOTTOM, $284.080.82, WHICH YOU ARRIVED AT BY ADDING ALL THE AMOUNTS ON THE LAST PAGE, IS THAT CORRECT?
A CORRECT.
Q SO, YOU SUBTRACTED THAT IN ORDER... THAT WAS ONE OF THE THINGS THAT YOU DEDUCTED FROM THE GROSS REVENUE TO COME UP WITH THE NET PROFIT ON WILLOUGHBY, CORRECT?
A CORRECT.
Q NOW, CAN YOU SHOW ME ON THIS CALCULATION ANYWHERE WHERE UNDER "DIRECT CONTRACT COSTS" YOU'VE BROKEN THAT OUT AND ONE OF THE THINGS IS "DIRECT LABOR".

YOU'VE GOT "DIRECT LABOR" ON THE WILLOUGHBY JOB OF $45,942.10, IS THAT CORRECT?

A THAT'S CORRECT.

Q THE "DIRECT LABOR" THAT YOU CATEGORIZED HERE IS DIFFERENT FROM SUBCONTRACTOR LABOR. THIS IS LABOR BY PEOPLE WHO ARE ON A&E'S PAYROLL? DO I UNDERSTAND THAT CORRECTLY?

A YES. LIKE I SAY, I HAVEN'T LOOKED AT THIS IN FOUR YEARS SO I DON'T --

Q I UNDERSTAND. WELL, ON THE DIRECT LABOR FOR A&E, DOES THAT $45,000.00 FIGURE THAT YOU DEDUCTED FROM THE GROSS REVENUE OR CONTRACT REVENUE, WHAT PERCENTAGE PAYROLL BURDEN DID YOU USE TO COME UP WITH THAT TOTAL NUMBER? DID YOU USE 40%? DID YOU USE 3.48% FOR THAT DIRECT LABOR CHARGE OR DID YOU CHARGE ANYTHING?

A LIKE I SAY AGAIN, I WOULD HAVE TO GO BACK THROUGH MY FILES AND REFRESH MYSELF WITH --

Q YOU DIDN'T USE 40%, DID YOU, MRS. BRADY?

A NO, I PROBABLY DIDN'T.

Q AND YOU DIDN'T USE 40% ON THE SALARY EXPENSE BACK IN 2007, DID YOU?

A IT DOES LOOK THAT I DID.

Q ALSO WHEN YOU LOOK AT THE OVERHEAD THAT YOU CHARGED, WHAT PERCENTAGE DID YOU USE THERE?

A MS. COOK, I WANT TO TELL YOU ONCE AGAIN. UNTIL I CAN GET THE PAPERWORK BEHIND THIS, I DON'T FEEL COMFORTABLE TESTIFYING ON A REPORT THAT I DID FOUR YEARS AGO AND I HAVE NO BACKUP --

Q IF YOU DON'T KNOW YOU CAN SAY, I DON'T KNOW, MRS. BRADY.

A OKAY. I DON'T REMEMBER.

Q DID YOU CALCULATE WHAT THE PROFIT WAS ON THIS PARTICULAR JOB?

A YES, I DID.

Q AND CAN YOU TELL US WHAT THE PROFIT WAS YOU CAME UP WITH ON THIS JOB?

A PROFIT ON THIS JOB $329,592.78.

Q THAT WAS THE EXPERT OPINION YOU RENDERED IN THE WILLOUGHBY LITIGATION?

A THAT WAS THE EXPERT OPINION THAT I RENDERED WITH THE INFORMATION THAT I WAS GIVEN FROM A&E, WHICH I KNOW AT THIS POINT NOW, IS NOT CORRECT.

Q YEAH. OKAY. WE ARE GOING TO GO INTO THAT IN JUST A MINUTE TOO. BUT LET ME ASK YOU, DOESN'T THAT PROFIT END UP BEING A 7% PROFIT? NOT A 15% PROFIT, BUT A 7% PROFIT?

A I ACTUALLY GET A 6.75% PROFIT.

Q IF YOU DID THE CALCULATION ON YOUR OVERHEAD THAT'S 3.5% OF THIS JOB, ISN'T IT?

A IT'S CLOSE, YES, MA'AM.
Q SO, YOU ADD THE 6% AND YOU ADD THE 3.5%, THAT'S 10% PROFIT AND OVERHEAD THAT'S IN YOUR WILLOUGHBY REPORT, IS THAT CORRECT?
A THAT'S CORRECT.
Q YOU SAID THAT WAS BEFORE YOU THOUGHT YOU HAD ALL THE INFORMATION.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE THAT INTO EVIDENCE AS EXHIBIT 13?

JUDGE HOWE: ANY OBJECTIONS?

MR. DURANT: I HAVE NO OBJECTIONS.

JUDGE HOWE: DEFENDANT'S 13, SO ADMITTED.

EXPERT REPORT FOR WILLOUGHBY JOB MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 13.

Q MRS. BRADY, LET ME HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S EXHIBIT 14. TAKE A MINUTE AND LOOK AT THAT AND TELL ME WHAT IT IS?
A LOOKS LIKE A FAX.
Q FROM YOU TO MRS. SISSON?
A TO MRS. SISSON AND SHE SENT BACK TO ME.
Q THIS IS A FAX AND IT'S GOT JULY 5TH 2007 FROM YOU

TO BETH, IS THAT CORRECT?
A YES, MA'AM.
Q WAS THIS RELATING TO YOUR WORK AS AN EXPERT IN THE WILLOUGHBY LITIGATION?
A SEEMS TO BE.
Q AND I'M GOING TO ASK YOU IF YOU WOULD GO TO 9 PAGE IN THE TOP OF THE PAGE WHERE IT SAYS, "A&E CONSTRUCTORS CASH RECEIPTS JOURNAL FOR THE PERIOD JANUARY 1, 2004 TO JULY 31, 2007." DO YOU SEE THAT PAGE?
A YES, MA'AM.
Q AND IT ACTUALLY... THAT CASH RECEIPTS JOURNAL STARTS TWO PAGES IN FRONT OF THAT? IS THAT CORRECT IN THIS EXHIBIT 14?
A YES, MA'AM.
Q THIS CASH RECEIPTS JOURNAL WOULD BE ALL THE DEPOSITS ON THE WILLOUGHBY JOB THAT HAD BEEN RECORDED IN THE ACCOUNTING BOOKS AND RECORDS OF A&E THAT YOU USED IN COMING UP WITH YOUR CALCULATIONS OF PROFIT ON THE WILLOUGHBY JOB, IS THAT CORRECT?
A YES, MA'AM.
Q ON THAT THIRD PAGE THE CASH SHEETS JOURNAL, IF I'M READING IT CORRECTLY, INDICATES THAT ON WILLOUGHBY CASH RECEIPTS THEY HAD RECEIVED $4,885,028.03,

CORRECT?

A CORRECT.

Q THEN THERE IS SOME WRITING UNDER THAT ADDING THREE MORE... WHAT APPEARS TO BE CASH RECEIPTS OF $30,000 RECEIPT, ANOTHER $30,000 AND CHANGE RECEIPT, A 52,500 RECEIPT WITH A TOTAL OF $4,996,322.32. THAT'S SHOWN ON THAT LAST PAGE OF THE CASH RECEIPTS JOURNAL, CORRECT?

A CORRECT.

Q IS THAT YOUR HANDWRITING?

A I DON'T BELIEVE SO.

Q I WILL ASK YOU TO LOOK BACK AT EXHIBIT 13. IS THAT THE NUMBER THAT YOU USED? IT'S NOT, IS IT?

A YES. IT'S THE NUMBER THAT WAS ON MY REPORT.

Q NOW, LET ME ASK YOU TO LOOK IN YOUR 2004 WORKBOOK --

A EXCUSE ME, THE NUMBER THAT YOU ASKED ME TO VERIFY WAS THE 488284232.

Q YES, MA'AM.

A OKAY.

Q THE NUMBER THAT YOU USED ON YOUR EXPERT REPORT AS THE CONTRACT REVENUE THAT'S IN EXHIBIT 13, YOU USED $4,882,000 AND CHANGE, CORRECT?

A CORRECT.

Q IN THE CASH RECEIPTS JOURNAL, WHAT'S PRINTED IS

$4,885,000 AND CHANGE AS BEING THE CASH RECEIPTS ON THAT JOB, IS THAT CORRECT?

A ON THIS REPORT, YES.

Q SO, THOSE TWO NUMBERS ARE DIFFERENT?

A CORRECT.

Q YOU DID GET A COPY OF THIS FROM MRS. SISSON, DIDN'T YOU? IT'S IN YOUR FAX.

A I DON'T KNOW WHAT CAME FROM MRS. SISSON. THE FAX IS FOUR PAGES. THIS IS A WHOLE BUNCH. I CAN'T RECALL WHERE IT CAME FROM.

Q LET ME ASK YOU IF YOU WOULD TO LOOK BACK IN EXHIBIT NUMBER 1, YOUR 2004 WORKBOOK. LOOK BEHIND TAB 10. TAB 10 ARE THE FIGURES THAT YOU'VE GOT CHARGED AGAINST MR. VEREEN, AREN'T THEY?

A CORRECT.

Q SOME DEPOSITS?

A CORRECT.

Q AND BEHIND TAB 10 ARE THE DEPOSITS FROM THIS WILLOUGHBY JOB THAT ARE REFLECTED ON EXHIBIT 14, THE 30,880, THE 30,100 AND THE 52,500 NUMBER? THOSE ARE REFLECTED IN YOUR TAB 10 THAT YOU'RE CHARGING AGAINST MR. VEREEN AS HIM DEPOSITING INTO HIS ACCOUNTS WHICH WERE WILLOUGHBY RECEIPTS, IS THAT CORRECT?

A CORRECT.

Q WERE THEY WILLOUGHBY RECEIPTS OR NOT?
A I BELIEVE THEY WERE.
Q NOW, YOU HAD THIS INFORMATION, DID YOU NOT? IN PREPARING... AND YOU ACTUALLY... YOUR REPORT WAS DATED IN JULY OF... JUNE OF '07 IN THE WILLOUGHBY LITIGATION, BUT YOU ACTUALLY TESTIFIED AT THAT LITIGATION, DIDN'T YOU?
A NO. IT NEVER MADE IT TO COURT.
Q WELL, THE MEDIATION? WERE YOU PRESENT AT THE MEDIATION OR ARBITRATION?
A NO, MA'AM.
Q BUT YOU KNEW ABOUT THOSE ADDITIONAL REVENUES ON THE WILLOUGHBY JOB IN '07, DID YOU NOT?
A I DON'T KNOW THAT I DID BECAUSE MY REPORT DOESN'T TOTAL THAT $4,996,000 ACCORDING TO THIS EDITION.
Q WHERE DID YOU GET THAT NUMBER, MRS. BRADY, IN YOUR EXPERT REPORT BECAUSE THAT'S NOT EVEN THE NUMBER THAT'S ON THE JOURNAL, THE CASH RECEIPTS JOURNAL? DO YOU KNOW WHERE YOU GOT THAT NUMBER FOR YOUR REPORT, YOUR EXPERT REPORT?
A YES. I WOULD HAVE GOT IT FROM A JOB LEDGER REPORT, BUT I CAN TELL YOU RIGHT NOW, THE JOB LEDGER REPORT THAT I HAVE FOR THIS CASE DOESN'T MATCH EITHER. SO, THAT MEANS EACH TIME THIS REPORT HAS BEEN PRINTED, THERE'S A DIFFERENT

NUMBER OF WHAT THE INCOME COULD BE.

Q ALRIGHT. WELL, DO --

A SO, WITHOUT HAVING MY BACKUP -- THIS IS NOT MY HANDWRITING. I DON'T KNOW THAT THIS WAS PART OF THE FAX. I HONESTLY CAN'T TESTIFY TO YOU THAT I HAD THESE NUMBERS. I BELIEVE THIS IS BETH'S HANDWRITING ON HERE.

Q BUT AS YOU JUST SAID, AND IT WAS A LONG WAY TO GET TO THAT, BUT AS YOU JUST SAID, EVERY TIME YOU LOOK AT ONE OF THESE JOB LEDGERS OR THE CASH RECEIPTS JOURNAL OUT OF THE PEACHTREE SYSTEM FOR THE SAME PERIOD OF TIME, THE NUMBER IS DIFFERENT? YOU JUST SAID THAT. DO YOU AGREE WITH THAT STATEMENT?

A YES, I DO.

Q BUT YOU USED IN THIS CASE THOSE COMPUTER PRINTOUTS AS THE BASIS OF YOUR REPORT? YOU ALSO WENT BACK, AS I UNDERSTAND IT, TO VERIFY BY BANK DOCUMENTS AND RECEIPTS WHAT YOU COULD, BUT THERE WERE ITEMS THAT YOU DIDN'T HAVE ANY BACKUP YOU COULD GO TO, AM I CORRECT? OTHER THAN THESE REPORTS FROM THE PEACHTREE SYSTEM? NOW, SEVERAL OF THE ITEMS IN YOUR EXPERT REPORT, IN THIS CASE, FOR WHICH YOU'RE CHARGING MR. VEREEN ARE BASED SOLELY ON THE COMPUTER PRINTOUTS AND DISCUSSIONS WITH MR. SMITH, IS THAT A FAIR STATEMENT?

A NO, MA'AM.
Q DID YOU NOT TESTIFY YESTERDAY THAT THERE WERE EXPENSES THAT YOU'RE CHARGING FOR 2004 THROUGH 2007 TO MR. VEREEN MAKING UP PART OF THIS $2,800,000 NUMBER THAT YOU HAVE NO BACKUP FOR? YOU DID NOT TELL US THAT YESTERDAY.
A I DIDN'T ANSWER THAT... I DID TELL YOU THAT YESTERDAY, BUT THAT'S DIFFERENT THAN THE QUESTION YOU JUST ASKED ME.
Q I'M SORRY. BUT YOU DO AGREE WITH THE PART OF THIS $2,800,000 NUMBER THAT YOU SAY MR. VEREEN OWES A&E FOR WHICH YOU HAVE NO SUBSTANTIATED OR VERIFIED BACKUP?
A CORRECT. THIS WHOLE REPORT THERE ARE THINGS... THESE ARE THINGS THAT WE CHALLENGED AND REQUESTED THE BACKUP TO PROVE THAT THESE EXPENSES WERE NOT OWED. THERE ARE MANY THINGS THAT THERE ARE NOT BACKUP FOR.
Q AND YOU NEVER GOT BACKUP FOR THEM. SO THUS, YOU HAVE CHARGED THEM AGAINST MR. VEREEN? IF YOU DON'T HAVE BACKUP, YOU CHARGED IT AGAINST MR. VEREEN EVEN THOUGH YOU HAVE NOT VERIFIED WHETHER OR NOT AN EXPENSE OF AN ITEM IS A LEGITIMATE A&E EXPENSE, IS THAT CORRECT?
A NO, THAT'S NOT CORRECT. AND MAYBE I DID NOT

EXPLAIN MYSELF WELL. THESE ARE EXPENSES THAT CAME OUT OF THE COMPANY, OTHER THAN THE SKID RENTAL AND THE LULL RENTAL THAT MR. SMITH SAID THE COMPANY WAS DUE. I'M PRETTY SURE THAT ALL OF THE REST OF THOSE EXPENSES WERE ACTUALLY MONEY THAT CAME OUT OF THE COMPANY. THAT WERE WRITTEN, EITHER A CHECK AND THEY WERE TAKEN ON THE TAX RETURN AND TAKEN TO THE ACCOUNTANT AND RECORDED. WHEN I SAY, "THERE WAS NO BACKUP" WE HAVE NOTHING TO SUBSTANTIATE THE EXPENSE, BUT IT WAS A BUSINESS EXPENSE. THERE IS BACKUP THAT THE MONEY CAME OUT.

Q RIGHT. BUT THERE IS NO BACKUP TO PROVE WHETHER OR NOT THAT WAS A LEGITIMATE EXPENSE? YOU HAVE --

A WE HAVE NOTHING TO PROVE.

Q YOU HAVE NOTHING TO PROVE THAT THE MONEY FOR WHICH YOU'VE CHARGED MR. VEREEN, SOME OF IT, THE REASON IT CAME OUT? THERE IS NO DOUBT CHECKS WERE WRITTEN AND MONEY CAME OUT, BUT YOU HAVE NOTHING ON CERTAIN OF THESE ITEMS THAT PROVES THAT IT WAS NOT A LEGITIMATE BUSINESS EXPENSES, IS THAT CORRECT?

A WE HAVE NOTHING TO PROVE THAT SOME OF THESE CHECKS WRITTEN BY MR. VEREEN ARE ACTUALLY BUSINESS EXPENSES. WE CAN PROVE THE MONEY CAME OUT. MR. VEREEN WROTE THE CHECK. WE HAVE NOTHING TO

SUBSTANTIATE THAT IT IS A BUSINESS EXPENSE.

Q YOU HAVE NOTHING TO SUBSTANTIATE IT'S NOT A BUSINESS EXPENSE, DO YOU?

A UNFORTUNATELY, THAT'S NOT THE WAY THE TAXES WORK. IT DOESN'T WORK LIKE THAT, MS. COOK.

Q MA'AM, WOULD YOU PLEASE ANSWER MY QUESTION AND THEN YOU CAN EXPLAIN. DO YOU HAVE ANYTHING TO PROVE FOR THOSE UNSUBSTANTIATED AMOUNTS THAT CAME OUT THAT THEY WERE NOT LEGITIMATE BUSINESS EXPENSES?

A THAT'S NOT FOR ME TO DO. I CANNOT PROVE ANYTHING THAT I DON'T HAVE A BACKUP FOR.

Q OKAY. AND YOU UNDERSTAND THAT AS THE EXPERT IN THIS CASE YOUR CLIENT HAS THE BURDEN OF PROOF TO PROVE THAT --

MR. DURANT: YOUR HONOR, I OBJECT TO HER TESTIFYING AS TO WHAT THE LAW IS. THE BURDEN OF PROOF IS A LEGAL ISSUE AND HE WRITES A CHECK AND HE HAS TO ESTABLISH IT'S A BUSINESS EXPENSE, NOT MRS. BRADY.

JUDGE HOWE: SUSTAINED.

Q MRS. BRADY, YESTERDAY WHEN WE WERE GOING OVER SOME ITEMS ONE OF THE THINGS THAT I WAS ASKING YOU ABOUT... LET'S GO BACK TO THE RIGHT BOOK. ONE OF

THE ITEMS THAT WE WERE GOING OVER WAS THE CASH CONTRIBUTION MADE BY WAY OF CHECK THAT MR. VEREEN MADE INTO A&E FROM '03 TO CURRENT. LET ME HAND YOU...

MS. COOK: I'M NOT SURE I DID THIS, YOUR HONOR, BUT I WOULD LIKE TO PUT EXHIBIT 14 INTO EVIDENCE?

JUDGE HOWE: ANY OBJECTIONS TO DEFENDANT'S 14 COMING IN?

MR. DURANT: I DON'T KNOW WHAT IT IS, YOUR HONOR.

JUDGE HOWE: IT'S THE FAXES BACK AND FORTH BETWEEN MRS. SISSON AND MRS. BRADY.

MR. DURANT: YES. I OBJECT UNTIL SOMEONE TESTIFIES THAT THIS WAS SENT. SHE TESTIFIES AS TO HER REPORT. ANYTHING ELSE, I DON'T THINK SHE HAS ESTABLISHED A FOUNDATION.

MR. THOMAS: WE ALSO OBJECT, YOUR HONOR. THE FACE OF THE FAX SAYS IT'S 4 PAGES AND THE TOP OF THE FAX ONLY SHOWS PAGES 1 AND 4 AND ALSO INCLUDES PROBABLY 20 ADDITIONAL PAGES. WE DON'T THINK THIS IS PROPER.

JUDGE HOWE: ALRIGHT. I'M NOT GOING TO ALLOW IT. IT DOESN'T APPEAR AS IF ALL THE PAGES ARE HERE, MS. COOK.

MS. COOK: ALRIGHT. I WILL LEAVE IT IN FOR ID, YOUR HONOR. 14.

FAX BACK AND FORTH FROM SISSON TO BRADY MARKED FOR IDENTIFICATION AS DEFENDANT'S 14.

Q I'M GOING TO HAND YOU WHAT I'M MARKING AS EXHIBIT 15 AND IT'S TWO PAGES. THE FRONT PAGE IS A CHECK WRITTEN ON AUTHOR VEREEN'S PERSONAL ACCOUNT IN THE AMOUNT OF $50,000.00 TO CAROLINA FIRST. THE SECOND PAGE IS THE DEPOSIT SLIP FOR THAT CHECK. IT'S DATED DECEMBER 30TH 2003 DEPOSITED INTO THE ACCOUNT OF A&E. TO YOUR RECOLLECTION, DOES THIS REFLECT THE INITIAL CASH CONTRIBUTION TO START THE A&E OPERATING CHECKING ACCOUNT?

A I BELIEVE SO.

Q WHERE IN YOUR REPORTS OR IN YOUR EXPERT OPINION THAT MR. VEREEN OWES $2.8 MILLION AND CHANGE TO A&E DO YOU ACCOUNT FOR THE FACT THAT MR. VEREEN MADE THIS $50,000.00 CONTRIBUTION INTO A&E?

A THAT $50,000.00 WAS RECORDED ON THE BOOKS AS ADDITIONAL PAID IN CAPITAL.

Q ON WHAT BOOKS?
A THE BOOKS OF A&E AND THE TAXES.
Q SO, THOSE ARE IN SMITH SAPP'S BOOKS, BUT YOUR REPORT OF THE $2.8 MILLION DOES NOT TAKE INTO CONSIDERATION THAT THIS $50,000.00 WAS PUT INTO THE COMPANY, DOES IT?
A YES, MA'AM. IT WAS ALREADY CONSIDERED. WHY WOULD I DO IT AGAIN? THAT'S ALREADY REFLECTED ON THE REPORTS.
Q WHERE IN YOUR REPORTS -- THE EARLIEST THING I'VE GOT IS YOUR 2004 REPORT?
A ON THE FINANCIAL STATEMENTS FOR A&E THERE IS AN ACCOUNT CALLED "ADDITIONAL PAID IN CAPITAL."
Q WHAT FINANCIAL STATEMENT?
A THE FINANCIAL STATEMENTS THAT WERE DONE BY SMITH SAPP FOR A&E.
Q WHERE IS THAT LOCATED?
A THE TRIAL BALANCE. IT'S ON THE FRONT OF THE BOOK FOR 4, 5, 6 AND 7.
Q SO, IT'S ACCOUNTED FOR THERE?
A YES, YES, YES. IT'S ALREADY ON THE BOOKS AS "PAID IN CAPITAL."
Q MRS. BRADY, HAVE YOU OUT OF THAT 2.8 MILLON THAT YOU SAY MR. VEREEN OWES, ADDITIONAL CAPITAL THAT MR. VEREEN HAS PUT INTO A&E, WOULD YOU AGREE WITH

ME TO GET TO THE BOTTOM LINE NET PROFIT THAT SHOULD BE IN HIS COMPANY, AS WE SIT HERE TODAY, THAT THE COURT IS GOING TO HAVE TO DETERMINE, THAT YOU'VE GOT TO TAKE INTO CONSIDERATION IN GETTING TO THAT NUMBER -- LET'S SAY IT CAME OUT THAT THE NET PROFIT THAT SHOULD BE LEFT OUT OF PAYING ALL LEGITIMATE BILLS AND GETTING ALL LEGITIMATE RECEIPTS WAS... I'M JUST GOING TO PICK A NUMBER. LET'S SAY IT WAS $300,000.00. WOULD YOU AGREE WITH ME THAT IF YOU GOT TO THAT NUMBER AND LET'S SAY IT WAS $300,000.00 THAT BEFORE ANY DISTRIBUTIONS OF THAT $300,000.00 WAS MADE TO EITHER SHAREHOLDER, THE SHAREHOLDERS WOULD HAVE TO BE REIMBURSED WHAT THEIR CAPITAL CONTRIBUTIONS WERE FIRST BEFORE THAT AMOUNT WAS DIVIDED BETWEEN THE TWO? DO YOU AGREE WITH THAT?

A ARE YOU ASKING ME IF BEFORE DISTRIBUTION CAN BE MADE OUT OF A COMPANY THAT THE ADDITIONAL PAID IN CAPITAL... THAT THEIR CAPITAL ACCOUNT HAS TO BE REIMBURSED FIRST?

Q RIGHT. IF YOU ARE SHUTTING DOWN THE COMPANY --

A IF YOU ARE SHUTTING DOWN THE COMPANY --

Q IN THIS CASE MR. SMITH AND A&E HAVE ASKED THE COURT TO JUDICIALLY DISSOLVE THIS COMPANY. WOULD YOU AGREE WITH ME THAT TO PROPERLY DISSOLVE THE

COMPANY, SHUT THE COMPANY DOWN AND MAKE DISTRIBUTIONS, IF THERE ARE ANY TO BE MADE, YOU HAVE GOT TO PAY BACK THE SHAREHOLDER CAPITAL CONTRIBUTIONS FIRST BEFORE THERE IS A DIVISION OF ANY PROFITS?

A YES. YOU WOULD HAVE TO CLEAR ALL THE DEBT OF THE COMPANY AND THE CAPITAL ACCOUNTS IF YOU WERE TO CLOSE IT DOWN.

Q SO, WOULD YOU AGREE WITH ME THAT IN THIS CASE, YOUR EXPERT OPINION THAT MR. VEREEN OWES A&E $2,800,000 THAT THAT IS BUT ONE ELEMENT THAT HAS GOT TO BE FACTORED INTO THE EQUATION TO GET TO THE NET PROFIT OF THIS COMPANY? THAT NEEDS TO BE DETERMINED BEFORE IT CAN BE DISSOLVED?

A THE CAPITAL ACCOUNT HAS NOTHING TO DO WITH THE NET PROFIT --

Q MA'AM. I DIDN'T ASK YOU ABOUT THE CAPITAL ACCOUNT RIGHT THEN. LISTEN TO MY QUESTION. OKAY.

A OH, YES, YOU DID.

Q DID YOU AGREE WITH ME THAT WHAT YOU HAVE DETERMINED -- THE $2.8 MILLION THAT YOU DETERMINED THAT PART OF THE EQUATION THAT'S GOT TO BE SUBTRACTED FROM THE LEGITIMATE EXPENSES AS PART OF THE EQUATION TO GET TO THE NET INCOME OF THIS COMPANY SO... THAT HAS TO BE DETERMINED BEFORE IT

CAN BE DISSOLVED?

A I CAN'T SAY THAT I AGREE WITH THAT STATEMENT. I DON'T THINK THAT'S WORDED CORRECTLY.

Q WOULD YOU AGREE BEFORE THIS COMPANY CAN BE DISSOLVED THAT THE PARTNERS CAPITAL CONTRIBUTIONS HAVE TO BE REPAID TO THEM BEFORE IT CAN BE SHUT DOWN AND ANY DISTRIBUTIONS THEREAFTER MADE?

MR. DURANT: YOUR HONOR, THE OBJECT IS SHE HAS TO ASK HER FIRST, ARE THERE ANY CAPITAL CONTRIBUTIONS THAT HAVE NOT BEEN CREDITED IN HER ACCOUNTING? AND THEN SHE CAN ANSWER THAT.

MS. COOK: NO,SIR. I CAN ASK THE QUESTION I WANT TO ASK, MR. DURANT. YOU CAN OBJECT --

MR. DURANT: I'M TRYING TO AND I AM OBJECTING. YOUR HONOR, SHE NEEDS TO ASK HER, DID SHE TAKE THAT INTO ACCOUNT IN HER ACCOUNTING THAT HE OWED $2.8 MILLION. DID SHE GIVE CREDIT FOR EVERY DEPOSIT THAT HE MADE WHETHER IT BE CALLED "CAPITAL CONTRIBUTIONS" OR A CHECK BACK. THEN SHE CAN ANSWER THE QUESTION. NOW, SHE'S JUST CIRCLING AROUND FACTS THAT ARE NOT PRESENT IN

THIS CASE. MRS. BRADY IS FAMILIAR WITH EVERY DEPOSIT HE HAS MADE.

JUDGE HOWE: GO AHEAD AND TRY TO ASK THE QUESTION. I THINK WHAT'S GOING TO HAPPEN IS IF YOU GIVE CREDIT THEN SHE IS GOING TO HAVE TO RECALCULATE HER 2.8. IS THAT CORRECT?

MR. DURANT: MA'AM, I DO NOT THINK SO.

JUDGE HOWE: GO AHEAD AND ASK YOUR QUESTION.

Q DOES YOUR 2.8 TAKE INTO CONSIDERATION ANY CAPITAL CONTRIBUTIONS BY ANY MEMBER TO GET TO A NET NUMBER?

A WHAT WE NEED TO UNDERSTAND IS --

Q I NEED YOU TO ANSWER YES OR NO AND THEN YOU CAN EXPLAIN.

A IT'S TWO DIFFERENT THINGS.

MR. DURANT: YOUR HONOR, CAN SHE ANSWER HER QUESTION.

MS. COOK: YOUR HONOR, CAN YOU ASK HER TO ANSWER THE QUESTION AND THEN SHE HAS EVERY RIGHT TO EXPLAIN.

JUDGE HOWE: IF YOU CAN ANSWER YES OR NO AND THEN EXPLAIN. IF YOU CAN'T THEN, YOU KNOW, YOU CAN'T. CAN YOU

ANSWER YES OR NO?

A YOU CAN'T ANSWER YES OR NO TO THAT QUESTION. THEY'RE TWO DIFFERENT THINGS.

Q ALRIGHT. THEN, MRS. BRADY, I ALSO WANT TO FOLLOW UP WITH ONE OTHER MATTER THAT I ASKED YOU ABOUT YESTERDAY. I'M GOING TO ASK YOU IF YOU WOULD LOOK AT YOUR 2005 WORKBOOK. AND LIKEWISE LOOK AT YOUR 2005 SPREADSHEET.

A IN THE 2005 WORKBOOK?

Q YES, MA'AM. WHEREVER YOU HAVE IT. I DON'T KNOW.

A THERE'S SOME MORE SPREADSHEETS IN THE FINAL REPORT. I DIDN'T KNOW IF YOU WERE TALKING ABOUT THOSE.

Q NO. IN YOUR 2005... AND THEN I WILL ASK YOU IF YOU MADE ANY CHANGES IN SOME OF YOUR OTHER REPORTS. NOW, IN 2005, ACCORDING TO YOUR SPREADSHEET ON THE LAST PAGE, AND I ASKED YOU ABOUT THIS YESTERDAY. ON THE VERY LAST PAGE YOU SHOW, AS I UNDERSTAND IT, DEPOSITS MADE BY MR. VEREEN OR ONE OF HIS ENTITIES FOR THAT YEAR OF $365,000.00, CORRECT?

A CORRECT.

Q YOU REMEMBER WE TALKED ABOUT THAT YESTERDAY?

A YES, MA'AM.

Q YOU SAID THAT WAS MADE UP OF A $40,000.00 DEPOSIT

AND A $325,000.00 DEPOSIT, CORRECT?
A CORRECT.
Q I ALSO ASKED YOU, IN ADDITION TO THAT $365,000.00 DEPOSIT, DIDN'T MR. VEREEN ALSO MAKE AN ADDITIONAL $40,000.00 DEPOSIT? DO YOU REMEMBER ME ASKING YOU THAT?
A I --
Q IF YOU DON'T REMEMBER, LET ME ASK YOU NOW. DID HE IN ADDITION TO THE 365, MAKE AN ADDITIONAL $40,000.00 DEPOSIT?
A I THINK I HAVE THAT ANSWER, BUT LET ME GRAB MY BOOK TO VERIFY IT.
Q YES, MA'AM.
A AGAIN, YOU'RE ASKING ME WERE THERE TWO $40,000.00 DEPOSITS?
Q I'M ASKING YOU -- YOU HAVE REFLECTED ON YOUR LEDGER SHEET FOR 2004 OR YOUR SPREADSHEET, A TOTAL DEPOSIT OF $365,000.00 BY MR. VEREEN OR HIS RELATED ENTITIES IN 2005, CORRECT?
A CORRECT.
Q IN ADDITION TO THAT, I HAD ASKED YOU YESTERDAY AND I'M ASKING YOU AGAIN TODAY, WAS THERE AN ADDITIONAL $40,000.00 DEPOSIT OVER AND ABOVE THIS $365,000.00 DEPOSIT BY MR. VEREEN IN 2005?
A YES, THERE WAS.

Q WHERE DO YOU GIVE CREDIT FOR THAT?
A SMITH SAPP HAD ALREADY GAVE CREDIT. IT WAS ALREADY PART OF THE ACCOUNTS RECEIVABLE.
Q SO, THAT'S AN ACCOUNTS RECEIVABLE THAT IS DUE MR. VEREEN, NOT AN ACCOUNTS RECEIVABLE THAT IS DUE A&E? THE SMITH SAPP ACCOUNT?
A OKAY. AGAIN, I WAS TELLING YOU THAT I STARTED WITH SMITH SAPP BALANCES. SMITH SAPP HAD ALREADY SUBTRACTED THAT 40,000.00 FROM THE ACCOUNTS RECEIVABLE SO I DIDN'T DUPLICATE IT HERE.
Q LET ME SHOW YOU WHAT I'VE MARKED AS EXHIBIT 16. AND EXHIBIT 16 IS TWO PAGES. THE FIRST PAGE SHOWS A DEPOSIT SLIP INTO THE A&E ACCOUNT FOR A TOTAL OF $265,000.00, CORRECT?
A YES. I HAVE THREE PAGES.
Q I'M SORRY. I'VE GOT THREE AS WELL. I APOLOGIZE. A DEPOSIT ON JUNE 29TH 2005 INTO CAROLINA FIRST A&E ACCOUNT OF $165,000.00, CORRECT?
A CORRECT.
Q AND BEHIND THAT ARE THE TWO CHECKS THAT MAKE UP THAT $165,000.00 DEPOSIT. ONE BEING A CHECK FROM PARK PLACE PROPERTIES IN THE AMOUNT OF $125,000.00 AND ONE BEING A CHECK FROM AUTHOR VEREEN CONSTRUCTION COMPANY OR ARTHUR VEREEN, EXCUSE ME, AND LINDA VEREEN IN THE AMOUNT OF $40,000.00,

CORRECT?

A CORRECT.

Q LET ME HAND YOU WHAT I HAVE MARKED AS EXHIBIT 17. DOES EXHIBIT 17 ADD UP... ARE THEY COPIES OF CHECKS THAT ADD UP IN TOTAL TO THE $365,000.00 DEPOSIT IN 2005 THAT'S REFLECTED IN YOUR REPORT, YOUR LEDGER SHEET?

A THESE CHECKS TOTAL 405,000.00.

Q DEFENDANT'S 17? I MAY BE WRONG. I WAS DOING IT LAST NIGHT TOO.

A I'M NOT USED TO THIS CALCULATOR SO... I HAVE $405,000.00.

Q DID YOU ADD THE DEPOSIT SLIP AS A CHECK?

A YES, I DID. SORRY.

Q THAT'S 365.

A SO THAT'S 365. IT TOTALS 365.

Q JUST TO BE CLEAR, WITHIN DEFENDANT'S 17 IS THE SAME $125,000.00 PARK PLACE CHECK AS IS ALSO PART OF EXHIBIT 16? IT'S JUST THAT EXHIBIT 17 SHOWS ALL THE DEPOSITS FROM PARK PLACE PROPERTIES IN ONE PLACE, WHICH IS $365,000.00 AND THEN IT ALSO DEFENDANT'S 16 SHOWS AN ADDITIONAL DEPOSIT BY MR. VEREEN PERSONALLY OF $40,000.00, CORRECT?

A CORRECT.

Q SO, THERE WAS A $365,000.00 DEPOSIT IN 2005 FROM

PARK PLACE PROPERTIES INTO A&E AND THERE WAS ALSO A $40,000.00 CASH DEPOSIT INTO A&E FROM MR. VEREEN PERSONALLY?

A YES, MA'AM. IF YOU WILL LOOK AT EXHIBIT 6 OF 2, YOU WILL SEE ON THE RECORDS WHERE THAT OTHER $40,000.00 IS RECORDED.

Q WERE YOU AWARE IN DOING YOUR SCOPE OF RESPONSIBILITY IN THIS CASE, THAT MR. SMITH, THROUGH EES, WAS PAID SUPERVISORY FEES BY A&E?

A I KNOW THAT EES WAS PAID FOR SOME CONTRACTING WORK, YES.

Q AND PART OF THOSE AMOUNTS PAID TO EES WERE SUBMISSIONS OF SUPERVISORY FEES BY MR. SMITH AT THE TIME THAT HE WAS A STOCKHOLDER IN A&E, ISN'T THAT CORRECT?

A I'M NOT SURE. I JUST KNOW THAT HIS COMPANY WAS PAID FOR CONTRACTING WORK.

Q YOU HAVEN'T DONE ANYTHING TO DETERMINE WHAT, IF ANY, AMOUNTS MR. SMITH MIGHT OWE TO A&E, IS THAT CORRECT?

A YES. I THINK I HAVE.

Q DID YOU TAKE INTO CONSIDERATION THE SUPERVISORY FEES PAID BY A&E TO MR. SMITH?

A I JUST THOUGHT THERE WAS --

Q HAVE YOU TAKEN INTO CONSIDERATION THE SUPERVISORY

FEES PAID TO MR. VEREEN THAT YOU'RE SAYING MR. VEREEN OWES BACK TO A&E?

A I DIDN'T SEE ANY DOCUMENTATION WHERE EES WAS PAID SUPERVISORY FEES. I DID SEE WHERE THEY WERE PAID "CONTRACT FEES" AND TRACE IT BACK TO MR. VEREEN'S RETURN AND HE REPORTED THAT INCOME. I DIDN'T GO INTO EXACTLY WHAT... EXACTLY WHAT THAT WAS PAID FOR. I ASSUMED IT WAS CONTRACT WORK.

Q SO, YOU DON'T KNOW WHAT IT WAS FOR?

A I KNOW THAT HIS OTHER COMPANY DID WORK FOR HIM. I DON'T KNOW SPECIFICALLY WHAT THE WORK WAS DONE, NO.

Q BUT WOULD YOU AGREE WITH ME THAT IF A&E IS OWED BACK SUPERVISORY FEES FROM MR. VEREEN, THAT HE WAS PAID, MR. SMITH OWES BACK SUPERVISORY FEES THAT HE WAS PAID BY A&E?

A I DON'T KNOW THAT MR. SMITH WAS PAID SUPERVISORY FEES, BUT HIS COMPANY WAS PAID FOR SOME WORK. THAT'S TWO DIFFERENT THINGS.

Q DID YOU SEE WHAT WORK... WHAT PROOF DID YOU SEE OF WHAT WORK WAS DONE BY EES THAT JUSTIFIED PAYMENTS TO EES? WHAT VERIFICATION DID YOU SEE? WHAT PROOF DID YOU SEE?

A I DON'T KNOW THAT I SAW ANY PROOF OF WHAT HIS COMPANY WAS PAID.

Q IF YOU DIDN'T SEE ANY PROOF OF WHAT EES, HIS COMPANY, WAS PAID BY A&E, YOU DIDN'T CHARGE... AND THERE ARE SITUATIONS WHERE YOU DIDN'T SEE ANY PROOF OF WHY A&E WAS PAYING MR. VEREEN, YOU CHARGED THAT AGAINST MR. VEREEN, BUT YOU DIDN'T CHARGE THAT AGAINST MR. SMITH WHEN YOU DIDN'T HAVE PROOF, DID YOU?

A IT WASN'T PAID TO HIM INDIVIDUALLY AND THOSE EXPENSES WERE ON THE JOB LEDGER REPORTS.

Q AND IT'S YOUR TESTIMONY THAT THESE SUPERVISORY FEES PAID TO MR. VEREEN WEREN'T ON THE JOB LEDGER REPORTS?

A THEY WEREN'T CODED TO THE ACTUAL JOB, BUT I --

Q BUT THEY WERE ON THE BOOKS AND RECORDS OF A&E, WEREN'T THEY?

A THEY WERE ON THE BOOKS AS SUPERVISORY FEES, YES. AS A CONSTRUCTION COST, I BELIEVE.

Q ARE YOU AWARE OF ANY LIABILITY THAT HAS BEEN INCURRED BY A&E OR EITHER OF THESE TWO GENTLEMEN AS A RESULT OF ANYTHING HAVING TO DO WITH THE OPERATIONS OF A&E AS WE SIT HERE TODAY?

A AM I AWARE?

Q YES, MA'AM.

A NO, MA'AM.

Q ARE YOU AWARE... AND I KNOW ONE OF YOUR CONCERNS

IS ABOUT ACCURACY OF TAX RETURNS. ARE YOU AWARE OF ANY STATE OR FEDERAL ACTIONS OR NOTICES OF ISSUES CONCERNING THE TAX RETURNS OF A&E?

A AM I AWARE OF ANY NOTICES THAT A&E HAS RECEIVED?

Q CORRECT.

A NO, MA'AM.

Q DID YOU PERFORM WORK AND DO EES TAX RETURNS 2003, '4, '5, AND '6?

A I'M SURE I DID.

Q DID YOU PREPARE 1099S OR W-2S FOR EES IN 2003 THROUGH 2006?

A I KNOW I PREPARED THE W-2S AND IF THERE WERE ANY 1099S ISSUED, I'M SURE I PREPARED THEM.

Q DID YOU DO ANY 1099S TO MR. SMITH FOR SUPERVISORY FEES OR ANY OTHER MONIES THAT HE WAS PAID BY EES IN '03 THROUGH '06?

A DID I ISSUE HIM A 1099 FROM HIS OWN COMPANY?

Q YEAH.

A NO, MA'AM.

Q DID YOU ISSUE HIM A W-2 FROM EES?

A I DON'T HAVE THAT INFORMATION IN FRONT OF ME TO ANSWER THESE QUESTIONS. I DON'T WANT TO TESTIFY TO SOMETHING THAT I'M NOT PREPARED TO TESTIFY WITHOUT THAT FILE.

Q WELL, SHOULD YOU HAVE... DID HE EARN INCOME, MR.

SMITH? DID MR. SMITH EARN INCOME OR WAS HE PAID INCOME BY EES 2003 THROUGH 2006?

A I CAN'T RECALL. I WISH I WAS THAT GOOD. I CAN'T RECALL THAT --

Q IF HE WAS PAID INCOME BY THE COMPANY, SHOULD YOU HAVE ISSUED A W-2?

A IF HE WAS PAID INCOME BY THE COMPANY, I FEEL SURE I ISSUED HIM A W-2.

Q WHAT WOULD YOU HAVE RELIED ON OR WHAT WOULD HAVE BEEN THE BASIS OF YOU ISSUING A W-2? HOW YOU HAVE KNOWN WHAT TO PUT ON THE W-2 FOR MR. SMITH FROM INCOME HE EARNED FROM EES IN 2003 THROUGH 2006?

A IF MR. SMITH EARNED INCOME, A PAYROLL CHECK FROM EES, I WOULD'VE BEEN THE ONE WHO WROTE THE PAYROLL BECAUSE I PROCESSED HIS PAYROLL FOR HIS COMPANY. SO, IF HE WOULD'VE HAD A PAYROLL CHECK, I WOULD'VE WRITTEN IT AND I WOULD HAVE ISSUED A W-2 AT THE END OF THE YEAR.

Q AND DO YOU REMEMBER IF YOU ISSUED A W-2 IN ANY OF THOSE YEARS TO MR. SMITH THAT INCLUDED THE SUPERVISORY FEES EES WAS PAID FOR HIS WORK FROM A&E?

A IF HE RECEIVED ANY KIND OF FEE FROM ANOTHER CORPORATION THAT WOULD PROBABLY JUST HAVE GONE IN AS ECONOMY INCOME FOR HIM, HIS CONSULTING INCOME.

HE WOULDN'T HAVE BEEN ISSUED A W-2 OR A 1099 FROM ANY INCOME THAT HE MADE FROM ANOTHER COMPANY.

Q NOW, YESTERDAY YOU SAID SOMETHING ABOUT... MR. DURANT ASKED YOU SOMETHING ABOUT WERE YOU OBLIGATED AS A CPA TO GIVE INFORMATION, IN THIS INSTANCE, TO BOTH SHAREHOLDERS OF THE CORPORATION ONCE YOU HAD CONCERNS ABOUT MATTERS? AND MY RECOLLECTION OF YOUR TESTIMONY WAS YOU SAID YOU MIGHT NOT HAVE BEEN LEGALLY OBLIGATED TO DO IT, BUT YOU PROFESSIONALLY... YOUR PRACTICE WAS TO DO THAT. DO YOU RECALL THAT TESTIMONY?

A VAGUELY. A LITTLE BIT.

Q NOW, YOU ALSO... I ASKED YOU SOME QUESTIONS ABOUT YOU BRINGING UP TO MR. SMITH IN AN EFFORT TO DO THE 2004 TAX RETURNS FOR A&E. BRING UP TO MR. SMITH, AT SOME POINT DURING THAT YEAR FROM RECORDS YOU HAD GOTTEN, THAT YOU NEEDED MORE INFORMATION AND YOU HAD THE LIST OF QUESTIONS THAT WERE SENT BACK AND YOU PERIODICALLY WOULD TALK TO MR. SMITH, "HAVE YOU GOTTEN THOSE ANSWERS? I NEED THE INFORMATION." DO YOU RECALL THAT LINE OF QUESTIONING?

A YES, MA'AM.

Q WHEN YOU WEREN'T GETTING THE INFORMATION THAT YOU NEEDED IN ORDER TO TRY AND PREPARE THE 2004 OR THE

2005 OR THE 2006 RETURNS AND YOU WERE CONTACTING MR. SMITH AND POINTING OUT THESE CONCERNS OR ISSUES YOU HAD ABOUT THE BOOKS AND RECORDS, DID YOU EVER CONTACT MR. VEREEN ABOUT IT?

A I CALLED MR. VEREEN ONCE.

Q AND WHAT WAS THAT CALL ABOUT?

A THE INCOME TAXES.

Q WHAT WAS THAT CONVERSATION?

A I THINK I MIGHT HAVE CALLED TO SAY... I CAN'T REMEMBER THE DETAILS OF THAT.

Q DID YOU TELL THEM YOU WERE CONCERNED ABOUT THE BOOKS AND RECORDS AND HOW THEY WERE BEING KEPT IN THAT CONVERSATION?

A I'M PROBABLY NOT GOING TO TESTIFY AGAINST THIS CONVERSATION BECAUSE I DON'T REMEMBER THE WHOLE CONVERSATION.

Q OKAY. IN YOUR REPORT YOU STATE, IF I RECALL CORRECTLY, WHAT YOU SAID IS THAT ELLIS OWES A&E $85,252.41. MR. SMITH DOES. WHAT IS THAT MADE UP OF? WHERE DID YOU GET THOSE FIGURES TO COMPRISE THAT NUMBER?

A THERE AGAIN, I STARTED WITH SMITH SAPP BOOKS. I THINK ON THE BOOKS THEY HAD THAT HE OWES LIKE 50, WHICH I COULD PROBABLY GO BACK THROUGH THE BOOKS AND SEE THEIR WORK PAPERS AND WILL STIPULATE THAT.

THE CHANGES THAT I MADE TO IT WERE THE $15,000.00 THAT THEY WERE... THE COMMISSION. THE SAME CHECK THAT --

Q THAT MR. VEREEN HAD GOTTEN?

A -- AND MR. SMITH THAT WAS REALLY HANDLED INCORRECTLY ON THE BOOKS. IT WAS CHARGED AS AN EXPENSE AND NOT TAXED TO EITHER ONE OF THEM. SO, I CHARGED THAT BACK AND I BELIEVES THE OTHER WAS AN ACCOUNT ON SMITH SAPP'S BOOKS THAT SAID, "ACCOUNTS RECEIVABLE, EMPLOYEES." WHERE THEY WOULD ISSUE THE EMPLOYEES MONEY AND GET MONEY BACK --

Q ADVANCES OR LOANS?

A ADVANCES AND THINGS LIKE THAT. AS I WENT THROUGH THAT I REALIZED THAT THERE WAS A CHECK THAT HAD BEEN WRITTEN TO ELLIS THAT SMITH SAPP HAD INCORRECTLY RECORDED THAT AS AN ACCOUNTS RECEIVABLE FROM AN EMPLOYEE. SO, I PULLED THAT PART OUT AND CHARGED IT BACK TO MR. SMITH'S ACCOUNT.

Q DID YOU GO THROUGH AND LOOK TO SEE IF THERE WERE ANYTHING FOR THIS THREE YEAR PERIOD OF TIME, OTHER THAN THOSE THREE AMOUNTS THAT WAS OWED BY MR. SMITH TO A&E? DID YOU JUST GO ON THE TRIAL BALANCES AND THE RECORDS OF SMITH SAPP?

A NO. I BELIEVE I WENT THROUGH THE CHECKLIST JUST LIKE I DID FOR VEREEN AND SOME OF THE OTHER COMPANIES TO TRY TO PULL OUT WHEN I SAW CHECKS THAT WERE WRITTEN TO THE INDIVIDUAL OWNERS.

Q DID YOU LOOK AT OR INVESTIGATE ANY BACKUP FOR ANY CHECKS THAT WERE WRITTEN TO EES, MAYBE NOT MR. SMITH INDIVIDUALLY, BUT EES?

A NO. I DIDN'T RESEARCH ANY CHECKS THAT WERE WRITTEN TO EES. OH, I TAKE THAT BACK. I DID A REPORT OF ALL THE CHECKS THAT WERE WRITTEN TO EES AND WENT TO MR. SMITH TO ASKED HIM IF HE HAD INVOICES FOR THOSE AND I WAS TOLD THAT HE DID.

Q YOU WERE TOLD THAT HE DID?

A HE HAD INVOICES FOR THE CHECK REGISTER THAT I HAD PULLED --

Q DID YOU REVIEW THAT?

A I DID NOT REVIEW THEM. HE SAID THAT HE HAD BACKUP.

Q YOU DID VERIFY THAT? YOU TOOK HIS WORD FOR IT THAT HE HAD BACKUP?

A I DID. HE WAS MY CLIENT. I DON'T KNOW IF I NEED TO MAKE THIS COMMENT. THERE ARE MANY, MANY, MANY, CHECKS ON THE COMPANY WRITTEN TO WAYNE VEREEN, BETH SISSON AND ELLIS. A LOT OF REIMBURSEMENTS AND I WOULD TELL YOU, IT COULD HAVE 100, 200, 300

DOLLAR CHECKS THAT THE SIZE OF THOSE CHECKS, THEY WERE CODED TO JOBS. I DID NOT GO THROUGH EVERY SINGLE ONE OF THOSE CHECKS.

Q MRS. BRADY, IN CONCLUSION, AS I UNDERSTAND IT, WHAT DO YOU BELIEVE THE COURT OR SOMEONE MAKING A DETERMINATION OF THE ULTIMATE ISSUE IN THIS CASE, "ULTIMATE ISSUE" BEEN GIVEN PROPER RECEIPTS OR INCOME, GIVEN PROPER EXPENSES AS WE SIT HERE TODAY, WHAT THE NET PROFIT OR NET LOSS IS IN A&E? DO YOU UNDERSTAND THAT TO BE ONE OF THE ULTIMATE ISSUES THAT HAS TO BE DECIDED IN THIS CASE?

A AS TO WHAT THE NET PROFIT WAS?

Q UH-HUH. (AFFIRMATIVE RESPONSE). NET PROFIT OR LOSS?

A I WOULD THINK, YES.

Q AND YOU DID NOT AND HAVE NOT MADE THAT DETERMINATION, CORRECT?

A I HAVE RAN REPORTS THAT WOULD BE THE SAME AS AN INCOME AND LOSS AND THEY ARE IN THESE REPORTS. YOU WILL SEE A PROFIT AND LOSS STATEMENT FOR EACH YEAR IF YOU LOOK.

Q DID YOU ANSWER THAT QUESTION? HAVE YOU MADE THAT DETERMINATION AS AN EXPERT, TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY, THAT YOU'RE GOING TO ISSUE YOUR OPINION FOR THIS COURT TO RELY ON TO

GET TO THAT ULTIMATE ISSUE IN THIS CASE?

A I HAVE ISSUED PROFIT AND LOSS STATEMENTS. TAKING THAT THESE EXPENSES AND INCOMES THAT HAVE BEEN PRESENTED ARE ACCEPTABLE TO BOTH PARTIES, THERE IS A PROFIT AND LOSS STATEMENT IN THESE BOOKS THAT WILL TELL YOU BASED UPON THESE CHARGES WHAT THAT PROFIT AND LOSS SHOULD HAVE BEEN.

Q BUT YOU'RE NOT RENDERING YOUR OPINION AS TO THAT PROFIT OR LOSS AS YOU SIT HERE TODAY IRRESPECTIVELY OF WHETHER THESE PARTIES AGREE TO IT OR NOT?

A I WILL RENDER MY OPINION THAT THAT IS WHAT THE PROFIT AND LOSS SHOULD HAVE BEEN. I HAVE A LITTLE PROBLEM WITH THE TIME THAT HAS COME UP. HOW THIS CAN BE HANDLED. THAT WAS NOT THE SCOPE OF MY ENGAGEMENT AS FAR AS WHAT WE DO FROM THIS POINT FORWARD, BUT WE HAVE A STATUTE OF LIMITATIONS THAT HAVE RAN AND HOW THIS WILL BE PRESENTED. BUT I DO HAVE REPORTS IN EACH ONE OF THESE FILES THAT TELL YOU WHAT THE PROFIT AND LOSS SHOULD HAVE BEEN IN THAT YEAR AT THAT TIME.

Q AND THAT IS ASSUMING THAT YOUR CALCULATIONS IN YOUR REPORTS OF MR. VEREEN OWING A&E $2.8 AND CHANGE AND MR. SMITH OWING A&E $85,252.41, IS THAT CORRECT?

A ARE YOU ASKING ME IF THAT'S MY OPINION?
Q YES.
A YES, IT IS.
Q ARE YOU PREPARED TODAY TO TELL THIS COURT IN YOUR EXPERT OPINION TO A REASONABLE DEGREE OF ACCOUNTING CERTAINTY, WHAT THE PROFIT OR LOSS WAS IN A&E AT THE END OF 2007?
A WHAT THE PROFIT AND LOSS WAS FOR THAT YEAR?
Q NO. ALL TOGETHER FOR THE COMPANY AT THE END OF 2007 FOR THE BUSINESS OF A&E. WAS THERE A PROFIT IN THE CORPORATION OR A LOSS IN THE CORPORATION AND WHAT THAT AMOUNT WAS?
A YES. I BELIEVE THAT REPORT IS IN YOUR 2007 BOOK BEHIND THE SPREADSHEET.
Q I'VE GOT THE 2007 BOOK. TELL ME WHAT, IN YOUR OPINION, THE PROFIT OR THE LOSS WAS FOR A&E CUMULATIVELY AT DECEMBER 31, 2007.
A I CAN TELL YOU WHAT THE RETAINED EARNINGS WOULD BE. I BELIEVE IT'S 2,864,000.00. IF YOU LOOK AT THAT FINANCIAL STATEMENT WHERE IT HAS THE PROFIT AND LOSS AND THE RETAINED EARNINGS, THE ONLY THING ON THIS FINANCIAL IS THAT 730,000.00 WAS NOT ADJUSTED ON THAT. SO, I CAN TELL YOU IT'S CLOSE TO THERE. THAT REPORT CAN BE DONE, BUT THAT REPORT WAS NOT DONE FOR THIS CASE.

Q SO, YOU HAVE NOT DONE THAT FOR THIS CASE?
A NO. I HAVE DONE THE FINANCIALS UP THROUGH '07, BUT THE ADJUSTMENTS THAT WE'VE TALKED ABOUT HAVE NOT BEEN ADDED TO THESE FINAL REPORTS.
Q IF NONE OF THIS WOULD'VE HAPPENED AND IF ON DECEMBER 31, 2007 BOTH THESE GENTLEMAN SAID THEY WERE ENDING THE COMPANY TODAY, WE'RE DISSOLVING THE COMPANY TODAY, WHAT SHOULD MR. VEREEN HAVE BEEN PAID AND WHAT, IF ANYTHING, SHOULD MR. SMITH HAVE BEEN PAID?
A NO. THAT WOULD TAKE SOME TIME BECAUSE THERE'S NOTES ON THE BOOKS. YOU WOULD HAVE TO GO THROUGH THE NOTES. LIKE YOU SAID, THE CAPITAL ACCOUNTS AND TO CLEAN OUT ALL OF THAT... YOU GOT EQUIPMENT ON THE BOOKS. YOU HAVE TO CLEAN IT ALL OUT. I CAN'T ANSWER THAT. IT'S NOT A SIMPLE QUESTION AT ALL.
Q AND YOU'RE NOT RENDERING AN OPINION ON THAT?
A NOT AT THIS POINT.
Q SAME QUESTION IF YO... IF I ASKED YOU IF THESE GENTLEMAN SAID ON DECEMBER 31, 2009, "WE ARE DISSOLVING THE COMPANY. WAYNE GETS THIS MUCH AND ELLIS GETS THIS MUCH." CAN YOU GIVE ME THAT ANSWER TODAY?
A IF THEY WERE CLOSING THE COMPANY IN 2009?

Q DECEMBER 31, 2009.
A NO, MA'AM. NO, MA'AM.
Q NOW, IF THEY WERE CLOSING IT TODAY, JUNE 14TH 2011, CAN YOU GIVE ME... THEY ARE DISSOLVING TODAY, CAN YOU GIVE ME WHAT, IF ANY, DISTRIBUTIONS... WHAT AMOUNTS WOULD BE IN THE COMPANY OR SHOULD BE IN THE COMPANY TO BE DIVIDED OR DISTRIBUTED BETWEEN MR. VEREEN AND MR. SMITH?
A OH, MS. COOK, AS I HAVE TESTIFIED AGAIN AND AGAIN, I HAVEN'T DONE ANY FINANCIAL WORK OR REVIEWED OR ANYTHING IN THE LAST COUPLE YEARS. ALL I CAN REALLY TELL YOU, AT THIS POINT, IS AT THE END OF 2007, THERE WAS RETAINED EARNINGS OF OVER $2.8 MILLION THAT SHOULD HAVE BEEN IN THE COMPANY AND WERE TAKEN OUT.
Q AND THAT WAS WITHOUT ALL THESE OTHER ADJUSTMENTS THAT YOU HAVE TALKED ABOUT?
A NO. THAT'S WITHOUT SOME OF THE ADJUSTMENTS THAT Y'ALL CONSENTED TO ON THE SECOND PAGE OF THAT "INFORMATION ONLY" SHEET OF THIS REPORT.
Q IT DOES INCLUDE ANY AMOUNTS THAT WOULD DEAL WITH WHAT OUR POSITION IS THAT ELLIS OWES THE COMPANY, CORRECT?
A CAN YOU ELABORATE ON WHAT YOU'RE SAYING?
Q THE RETAINED EARNINGS THAT'S ON YOUR REPORT AT THE

END OF 2007 DOES NOT TAKE INTO CONSIDERATION ANY AMOUNTS THAT A&E OR MR. VEREEN BELIEVE THAT MR. SMITH OWES TO A&E?

A I DON'T THINK I WAS EVER GIVEN THAT DATA.

Q OKAY. ALRIGHT. MRS. BRADY, THANK YOU. THAT'S ALL I HAVE.

JUDGE HOWE: ANY RE-DIRECT? ANYONE NEED A SHORT BREAK BEFORE RE-DIRECT? OFF THE RECORD.

RE-DIRECT EXAMINATION BY MR. DURANT:

Q MRS. BRADY, YOU TOLD THE COURT YESTERDAY THAT YOU WOULD CHECK THE RECORDS AND SEE HOW MANY HOURS YOUR FIRM HAD IN IT'S ENGAGEMENT. DO YOU HAVE THAT FIGURE?

A I DO.

Q AND HOW MANY HOURS HAVE YOU SPENT?

A 817 AND A HALF HOURS.

Q ARE YOU IN THE PROCESS OF PREPARING A BILL THAT YOU WILL SUBMIT FOR APPROVAL OF THE COURT?

A YES, SIR.

JUDGE HOWE: LET ME ASK YOU, THOSE HOURS DO NOT INCLUDE HOURS FOR TESTIMONY OR DO THEY?

A THEY DO. IT WAS ESTIMATED... THE TIME MONDAY, TUESDAY AND WEDNESDAY, THERE WAS 24 HOURS PUT IN

THERE. 8 HOURS FOR MONDAY, TUESDAY AND WEDNESDAY FOR COURT.

JUDGE HOWE: FOR THIS WEEK?

A FOR THIS WEEK. SO, I ESTIMATED UP FOR TWO... YEAH.

Q MRS. BRADY, JUST A FEW FOLLOW-UPS. THE $2.8 MILLION FIGURE, WHAT I WANT TO ASK YOU IN REGARDS TO SMITH SAPP'S RUNNING TALLY, WHICH YOU TAGGED ONTO YOUR ACCOUNTING, HAS MR. VEREEN BEEN GIVEN CREDIT FOR EVERY PAYMENT THAT HE OR ONE OF HIS ENTITIES DEPOSITED INTO THE ACCOUNT OF A&E?

A YES, SIR.

Q AND I WILL ASK A SEPARATE WAY. IF THESE CHECKS THAT MS. COOK ASKED YOU ABOUT, WERE THEY REFLECTED ON SMITH SAPP BOOKS AS A CREDIT TO MR. VEREEN OR A PAYMENT? WERE THEY CHARGED AGAINST A JOB WHERE HE OWED THE COMPANY MONEY?

A THE CHECKS THAT SHE PRESENTED WERE EITHER IN MY BOOKS OR THEY HAD ALREADY BEEN RECORDED ON SMITH SAPP AS A CREDIT TO HIS ACCOUNTS RECEIVABLE ACCOUNT THAT THEY HAD ON THE BOOKS, CORRECT.

Q STATED ANOTHER WAY. HAVE YOUR BOOKS... DOES YOUR TOTAL REFLECT A CREDIT TO MR. VEREEN, PARKWAY OFFICES, TO PARK PLACE PROPERTIES FOR EVERY DEPOSIT MADE ON THEIR BEHALF FOR WHATEVER PURPOSE?

A YES, IT DOES.
Q AND $50,000.00 INITIAL DEPOSIT, HAS HE BEEN GIVEN A CREDIT FOR THAT OR IS THAT A CAPITAL CONTRIBUTION FOR WHICH HE WOULD GET A CREDIT LATER?
A IT'S ALREADY ON THE BOOKS. THE CAPITAL ACCOUNT THERE IS ALREADY... I THINK IT'S ACTUALLY A $49,800.00 BECAUSE $200.00 WAS MAYBE A LICENSE FEE. THAT CAPITAL ACCOUNT, ADDITIONAL PAID IN CAPITAL IS ON THE BOOKS OF A&E.
Q AND THAT IS ALREADY REFLECTED IN YOUR FIGURE? HE WOULD OWE THIS MONEY? HAVE YOU GIVEN HIM CREDIT FOR THE $49,000.00 THAT HE HAS AS A CAPITAL CONTRIBUTION?
A I DIDN'T GIVE HIM CREDIT THAT'S ALREADY ON THE BOOKS. JUST LIKE THE BALANCES WERE FROM LIKE THE ACCOUNTS RECEIVABLE. LIKE I PICKED UP WITH SMITH SAPP, THEIR BALANCE. THE TAX RETURN HAS THAT CAPITAL ACCOUNT ALREADY ON THE BOOKS AND HE WOULD HAVE TO BE PAID IF THAT COMPANY WERE TO CLOSE. THAT CAPITAL ACCOUNT WOULD BE EMPTIED, ALONG WITH EVERY LOAN --
Q SO, IF HE PAID THE $2.8 MILLION INTO THE COMPANY, HE WOULD GET THE $49,000.00 BACK, IS THAT WHAT YOU ARE SAYING?

A YES, SIR.
Q SO, THAT AMOUNT, THE INITIAL DEPOSIT OR THE 49,8 IS A CREDIT THAT HE IS ENTITLED TO AT SOME POINT IN TIME?
A CORRECT. AND IT'S ALREADY NOTED ON THEIR STATEMENTS.
Q OKAY. THAT'S ALL THE QUESTIONS I HAVE.

JUDGE HOWE: ANY RE-CROSS? I'M SORRY, MR. THOMAS?

MR. THOMAS: WE HAVE NOTHING.

MS. COOK: NO, MA'AM.

JUDGE HOWE: YOU MAY STEP DOWN MRS. BRADY.

(MRS. BRADY'S TESTIMONY WAS CONCLUDED).

SOUTH CAROLINA,

CERTIFICATE

HORRY COUNTY.

I, PEPPER M. MCCARTHY, A NOTARY PUBLIC AND VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA DO HEREBY CERTIFY THAT THE TAKING OF THIS HEARING AND THE FOREGOING (THREE-HUNDRED AND FORTY-FOUR)(344) PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE EVIDENCE AS GIVEN BY SAID WITNESS AND AS TAKEN DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS ACTION NOR AM I INTERESTED EITHER DIRECTLY OR INDIRECTLY IN THE RESULTS THEREOF.

I FURTHER CERTIFY THAT I AM NOT RELATED BY BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS ACTION.

THIS THE 19TH DAY OF MAY, 2015.

PEPPER M. MCCARTHY,
VERBATIM REPORTER AND
NOTARY PUBLIC

MY COMISSION EXPIRES:
FEBRUARY 2, 2022.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-0620

ELLIS E. SMITH, INDIVIDUALLY, AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., A SOUTH CAROLINA CORPORATION,

PLAINTIFFS,

V.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, PARKWAY OFFICE, LLC, ARTHUR VEREEN CONSTRUCTION INC. AND LINDA C. VEREEN,

DEFENDANTS.

ARTHUR WAYNE VEREEN, INDIVIDUALLY AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., AND 29TH PLACE DEVELOPERS, INC.,

THIRD-PARTY PLAINTIFFS

V.

E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., AND ELLIS E. SMITH INDIVIDUALLY,

THIRD-PARTY DEFENDANT'S

copy

HEARING

FROM (10:00 A.M.) UNTIL (2:30 P.M.)

JUNE 16, 2011

AS TAKEN AND TRANSCRIBED BY PEPPER M. McCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER, AT THE HORRY COUNTY COURT HOUSE, BEFORE THE HONORABLE CYNTHIA G. HOWE, 1201 3rd AVENUE, CONWAY, SOUTH CAROLINA.

**THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY 25A SOUTH CAROLINA CODE ANN. REGS. 67-615D (SUPP. 2000). THE UNAUTHORIZED COPYING OF THIS DOCUMENT IS DEEMED TO BE CONVERSION OF AN ASSET BELONGING TO THE COURT REPORTER.

APPEARANCES

FOR PLAINTIFFS: ELLIS SMITH
EXPERT: SUSAN BRADY

DURANT & MARTIN
FRANK H. DURANT, ESQ.
2107 FARLOW STREET
MYRTLE BEACH, SOUTH CAROLINA 29577
E. SMITH AND SON
THOMPSON & HENRY LAW FIRM
J. JACKSON THOMAS, ESQ.
1314 PROFESSIONAL DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

FOR DEFENDANTS: BETH SISSON

ARTHUR VEREEN

COOK & ROY
KATHRYN M. COOK, ESQ.
10409 N. KINGS HIGHWAY MYRTLE BEACH
SOUTH CAROLINA 29572

INDEX TO EXAMINATION

CONTINUING TESTIMONY OF ELLIS SMITH:

CROSS EXAMINATION BY MS. COOK.....PAGE 5

EXHIBITS

DEFENDANT'S:

24. HORRY COUNTY PERMIT FOR PEREZ.....PAGE 21

25. LETTER FROM SCOTT LONG'S OFFICE.....PAGE 24

26. FAX FROM SCOTT LONG'S OFFICE.....PAGE 143

37. OCEAN BLUE EXTRAS.....PAGE 37

COURT REPORTERS NOTES:

THESE ARE ALL THE EXHIBIT'S THAT WERE INTRODUCED OR **PROFFERED**

(START OF JUNE 15, 2011).

JUDGE HOWE: WELCOME TO THE PARTY, MS. COOK.

CONTINUE CROSS EXAMINATION OF MR. SMITH BY MS. COOK:

Q WHEN WE BROKE YESTERDAY WE HAD BEEN LOOKING AT EXHIBITS OR TAB 9, 2, PLAINTIFF'S EXHIBIT NOTEBOOK AD. THAT TAB INCLUDED SEVERAL DEMAND LETTERS FROM YOU AND SOME INFORMATION BACK FROM MR. VEREEN AND I WANT TO GO BACK TO THE PART OF TAB 9 THAT IS THE INFORMATION TO MR. VEREEN... FROM MR. VEREEN RESPONDING TO ONE OR MORE OF THOSE LETTERS. AND I'VE TAKEN THE LIBERTY OF PULLING THAT PORTION OUT AND MARKING THAT AS DEFENDANT'S EXHIBIT 23 SEPARATELY MAKING IT A LITTLE EASIER BECAUSE THAT WAY YOU CAN LOOK INTO YOUR NOTEBOOK IF YOU NEEDED TO LOOK AT ANYTHING AS WELL, BUT ASSURE YOURSELF THAT THAT IS THE BACK PORTION OF MR. VEREEN'S RESPONSE.

MS. COOK: YOUR HONOR, THIS IS EXHIBIT 23.

JUDGE HOWE: ALRIGHT. THANK YOU.

Q ON DEFENDANT'S EXHIBIT 23, WHICH IS ALSO PART OF EXHIBIT 9 IN THE PLAINTIFF'S EXHIBITS. THE HANDWRITING THAT IS ON THIS TYPED DOCUMENT, IS

THAT YOUR HANDWRITING?
A YES, MA'AM.
Q AND THE HANDWRITING, DOES IT REPRESENT COMMENTS OR POSITIONS YOU WERE TAKING AT THE TIME YOU REVIEWED THIS ABOUT THE DIFFERENT ITEMS ON MR. VEREEN'S RESPONSE?
A YES, MA'AM.
Q THE FIRST CATEGORY ON THE FIRST PAGE OF DEFENDANT'S 23 IS ENTITLED "EES ADVANCES/CREDIT FROM A&E."?
A YES.
Q WHAT WAS MR. VEREEN'S POSITION AS TO MONIES THAT EES OR YOU HAD BEEN ADVANCED FROM A&E? THE FIRST ONE IS $3,470 FOR CARPETS AT 29TH PLACE.
A YES, MA'AM.
Q DO YOU AGREE THAT YOU OR EES RECEIVED PAYMENT FROM A&E FOR CARPET AT 29TH PLACE IN THE AMOUNT OF $3,470?
A DID I RECEIVE... THEY PAID A CARPET THAT WAS MINE, THAT'S CORRECT.
Q SO YOU'RE IN AGREEMENT WITH THAT ITEM?
A YES, MA'AM.
Q THEN THERE IS A REFERENCE TO A CHECK FOR A REAL ESTATE PURCHASE OF $60,000. DO YOU AGREE WITH THAT?

A NO, MA'AM.
Q OKAY. THERE IS ALSO A CHECK OF $7,380 TO PAY REAL ESTATE TAXES ON YOURS OR EES' PROPERTY. DO YOU RECALL EVER HAVING A&E OR A&E AGREEING TO PAY SOME REAL ESTATE TAXES ON YOUR BEHALF OR EES BEHALF?
A NO, MA'AM, I DO NOT AGREE.
Q IF WE PRODUCE THE CHECK THAT SHOWS THAT YOU HAVE A PROBLEM WITH THAT AMOUNT GOING ON YOUR SIDE OF THE LEDGER SHEET SO TO SPEAK?
A I AM NOT FAMILIAR WITH IT.
Q OKAY. WE'VE GOT A CHECK FOR LAST PAYMENT ON THE NORTH MYRTLE BEACH DUPLEX. $19,280 IS THAT THE SAME AMOUNT IN THE SITUATION WE TALKED ABOUT YESTERDAY WHERE ON ONE OF MARTIN BROWN'S PROJECTS THERE WAS A CHECK WRITTEN TO EES, I BELIEVE YOU SAID, AND IT WAS DEPOSITED BY EES AND THAT WAS TO BE A&E JOB PROCEEDS?
A YES, MA'AM.
Q THAT TOTALLY WENT TO YOU AND YOU DON'T HAVE A PROBLEM WITH THAT BEING ON YOUR SIDE OF THE LEDER SHEET?
A NO, MA'AM.
Q DO YOU RECALL AN EMPLOYEE ADVANCE TO YOU IN THE AMOUNT OF $11,466 IN OCTOBER 2005 TO PAY... MY RECOLLECTION WAS THAT WAS ALSO TO PAY SOME REAL

ESTATE TAXES. DO YOU RECALL THAT?

A NO, MA'AM. I DON'T... I DON'T OWN ANYTHING THAT HAD THAT KIND OF REAL ESTATE TAX ON IT.

Q DO YOU RECALL AN ADVANCE IN THAT AMOUNT IN OCTOBER OF '05 THAT SHOULD BE ON YOUR SIDE OF THE LEDGER SHEET?

A I CAN'T TELL YOU IF THIS IS THE AMOUNT. I MEAN, I DID GET A CHECK TO PAY MY FEDERAL INCOME TAX, BUT I DO NOT... I DON'T RECALL THE EXACT AMOUNT.

MR. THOMAS: EXCUSE ME. ARE THESE A&E CHECKS THAT WE'RE TALKING ABOUT?

MS. COOK: YES, SIR.

Q BUT YOU WOULD AGREE THAT IF A&E DID ADVANCE YOU THAT MONEY AND IT WAS IN THAT AMOUNT FOR WHATEVER PURPOSE, THAT SHOULD GO ON YOUR SIDE OF THE LEDGER SHEET?

A I THINK THAT EVERYTHING THAT BELONGED TO ME THAT WAS IN MRS. BRADY'S COMPILATIONS OF THIS WHOLE THING. I THINK IT'S ALL RECOGNIZED, EVERY CHECK THAT WAS GIVEN TO ME OR... THE $19,000 CHECK THAT WAS ALL PART OF IT.

Q OKAY. I UNDERSTAND THAT, BUT MY QUESTION TO YOU IS, IF THERE'S A CHECK FROM A&E TO YOU OR ON YOUR BEHALF TO PAY AN OBLIGATION; FEDERAL INCOME TAXES OR WHATEVER ELSE IT IS, YOU DON'T DISPUTE THAT

THAT SHOULD BE ON YOUR SIDE OF THE LEDGER SHEET?

A THERE IS NO BILL PAID ON MY BEHALF EXCEPT FOR THE 29TH PLACE CARPET.

Q LET ME SHOW YOU AN A&E CHECK. CHECK NUMBER 4472 IN THE AMOUNT $11,466 PAYABLE TO ELLIS E. SMITH WHICH IS TABBED "EMPLOYEE ADVANCES". DO YOU DENY THAT YOU WERE ADVANCED THAT AMOUNT OF MONEY?

A NO, MA'AM. I DO NOT DENY IT ALL.

Q WOULD YOU DISPUTE THAT THIS SHOULD BE ON YOUR SIDE OF THE LEDGER SHEET? JUST LIKE WAYNE'S GOT A SIDE THIS SHOULD BE ON YOUR SIDE?

A YES, MA'AM.

Q I BELIEVE YOU ALREADY ACKNOWLEDGED BUT I JUST WANT TO CLARIFY WHEN YOU...

MR. THOMAS: IS THAT IN?

MS. COOK: IT'S ACTUALLY ALREADY IN. IT'S IN ONE OF THE EXHIBITS WHICH THE ENTIRE ACCOUNTING ACCOUNT LEDGERS FROM THE BANK FOR A&E.

MR. DURANT: THAT'S CORRECT.

Q AND YOU DON'T DENY AND YOU DO AGREE THAT THE ADVANCE TO YOU OF $51,876 FROM A&E IS WHAT ENABLED YOU TO PURCHASE THE HOME THAT YOU LIVE IN NOW ON JASMINE AND THAT'S ON YOUR SIDE OF THE LEDGER SHEET?

A YES.
Q YOU AGREE THAT THE $15,000 ADVANCE, BONUS OR WHATEVER IT WAS TO YOU WAS AT THE SAME TIME IN '06 AS WAS GIVEN TO WAYNE AND THAT SHOULD BE ON YOUR SIDE OF THE LEDGER SHEET?
A YES.
Q NOW, THE NEXT SECTION TALKS ABOUT POTENTIAL LIABILITIES TO A&E CREATED BY EES' FAILURE TO NOTIFY AND I BELIEVE THAT HAD TO DO WITH WAYNE'S POSITION THAT A&E DID NOT KNOW THAT PERMITS ON CERTAIN JOBS WERE PULLED BY THE EES, BUT IN THE NAME OF A&E? YOU'VE GOT SOME COMMENTS WRITTEN OVER TO THE SIDE OF SOME OF THOSE ITEMS. THE HORRY COUNTY PERMIT FOR THE CARI DAVIS JOB IN MARCH OF '05, YOUR HANDWRITTEN NOTATION SAYS, "WAYNE PERMISSION." SO, WHAT WAS YOUR POSITION THEN AND NOW ABOUT THAT PERMIT OR A&E PERMITTING THE JOB?
A WAYNE WAS AWARE OF BOTH OF THESE.
Q THE ROBERT SEALEY JOB AND THE CARI ANN DAVIS JOB?
A YES, MA'AM.
Q DO YOU AGREE WITH WHAT IS REFLECTED ON THESE DOCUMENTS AS TO WHAT THE PERMITTED VALUE OF THE JOB WAS PER THE PERMIT YOU PULLED?
A I DON'T REMEMBER BUT THEY LOOK PRETTY CLOSE.

Q SO, IF WE PUT THE PERMITS IN, YOU DON'T HAVE ANY DISPUTE WITH THAT?
A YES, MA'AM.
Q WERE ANY OF THE BILLS, WHETHER IT WAS MATERIALS, LABOR, SERVICES, SUBCONTRACTORS ON THE CARI ANN DAVIS OR ROBERT SEALY JOBS PAID FOR BY A&E?
A NO, MA'AM.
Q THEY WERE ALL PAID FOR BY YOU OR EES OR THE OWNERS OF THE PROPERTIES?
A THE OWNERS OF THE PROPERTY PAID.
Q DID A&E RECEIVE ANY COMPENSATION FROM THOSE TWO JOBS?
A NO.
Q DID A&E RECEIVE ANY COMPENSATION FOR THE USE OF ITS PERMITS ON THOSE TWO JOBS AND THE POTENTIAL LIABILITY THAT COULD BE IMPOSED ON A&E FOR PULLING THOSE PERMITS?
A NO.
Q THE NEXT 8 PERMITS PULLED IN THE NAME OF A&E, YOU DON'T HAVE ANY COMMENTS BESIDE THOSE? DO YOU AGREE OR ADMIT THAT THOSE WERE PERMITS THAT WERE PULLED BY YOURSELF OR EES THAT A&E WAS NOT AWARE OR MR. VEREEN WAS NOT NOTIFIED OF AND DID NOT KNOW HAD BEEN PULLED IN A&E'S NAME?
A ALL BUT ONE OF THOSE. THE ONE ON 12007 POOL AND

ENCLOSURE THAT IS A PERMIT FOR A POOL THAT'S AT SEACLUSIONS.

Q YES, SIR.

A THAT WAS INCLUDED IN AN A&E CONTRACT TO BUILD THAT BUILDING.

Q AND DID A&E PAY THE COST, MATERIALS, LABOR AND SUB WORK FOR THAT?

A YES, MA'AM.

Q DID A&E RECEIVE ANY PAYMENT FROM SEACLUSIONS FOR THAT POOL AND ENCLOSURE?

A THAT WAS IN THE SECLUSION ORIGINAL CONTRACT, YES, MA'AM. THEY DID RECEIVE PAYMENT FOR THAT POOL.

Q THE NEXT FIVE MYRTLE BEACH PERMITS, YOU DO ADMIT THAT ALL OF THOSE JOBS WERE EITHER YOURS OR EES, IS THAT CORRECT?

A (NO RESPONSE).

Q OR WERE PERMITS USED... LEE MCMILLAN HOME, WE TALKED ABOUT THAT YESTERDAY. YOU SAID MR. MCMILLAN PULLED THAT PERMIT?

A THERE IS NO CITY OF MYRTLE BEACH PERMIT FOR THAT JOB.

Q WHAT? THERE'S NO PERMIT AT ALL?

A THERE'S NO CITY OF MYRTLE BEACH PERMIT FOR THAT JOB NOR THE SEALEY JOB.

Q HOW COULD THAT WORK BE DONE WITHOUT A PERMIT?

A BECAUSE IT'S NOT IN THE CITY OF MYRTLE BEACH. NEITHER ONE OF THEM ARE IN THE CITY OF MYRTLE BEACH.
Q HORRY COUNTY?
A YES, MA'AM.
Q WERE THERE HORRY COUNTY PERMITS PULLED?
A YES, MA'AM.
Q WERE THEY IN THE NAME OF A&E?
A NO, MA'AM.
Q THEY WERE IN THE NAME OF THE JOB OWNER, THE PROPERTY OWNER?
A LEE MCMILLAN, IT WAS IN LEE AND HOLLY MCMILLAN. THE SEALEY HOUSE WAS IN SELENA AND K.J. MANN. THAT'S THE NAME, NOT SEALEY. THAT'S ROBERT SEALEY'S DAUGHTER.
Q OKAY. THAT'S THE MANN JOB. THESE LAST ITEMS, WERE THOSE PARTICULAR JOBS EXPENSES PAID BY A&E?
A NO, MA'AM.
Q DID A&E RECEIVE ANY COMPENSATION FOR THOSE JOBS?
A THE B&C FENCE WAS NOT AN A&E JOB. THAT WAS AN EES CONSTRUCTION JOB.
Q DID A&E RECEIVE ANY COMPENSATION ON ANY OF THESE JOBS?
A NO, MA'AM.
Q WEREN'T THESE JOBS PERFORMED FROM THE PERIOD OF

OCTOBER 2003 THROUGH DECEMBER OF 2007?

A YES, MA'AM.

Q WHILE YOU WERE ACTIVELY PARTICIPATING AS PRESIDENT AND 50% SHAREHOLDER OF A&E?

A WE DID NOT HAVE A LICENSE UNTIL JANUARY. WE COULDN'T BUY ANY PERMITS WITH A&E UNTIL JANUARY NOT OCTOBER.

Q BUT A&E WAS FORMED IN OCTOBER, WAS IT NOT?

A YES, MA'AM.

Q AND ALL OF THESE JOBS WERE PERFORMED DURING THE TIME PERIOD IN WHICH YOU WERE A 50% SHAREHOLDER OF A&E AND THE PRESIDENT OF A&E, IS THAT CORRECT?

A YES, MA'AM.

JUDGE HOWE: WHEN WERE THESE LAST FIVE JOBS PERFORMED, MR. SMITH?

A WHICH ONES?

JUDGE HOWE: THE LEE MCMILLAN, THE K.J. AND SELENA MANN JOB, THE B&C FENCE, THE EWELL SMITH AND ELLIS SMITH, WHEN WERE THOSE JOBS PERFORMED?

A THE LEE MCMILLAN JOB, I'M NOT SURE OF THE DATES, BUT I THINK IT WAS IN 2005. HE BUILT HIS OWN HOUSE AND I JUST HELPED HIM PUT SUBS TOGETHER AND DID SOME WORK FOR HIM. SELENA AND K.J. MANN THAT... I'M ALMOST POSITIVE THAT WAS IN 2006, I

CAN'T SAY THAT. BUT IT WAS EITHER 2005 OR 2006, BUT IT WAS IN THIS TIMEFRAME. EWELL SMITH, THAT'S MY SON'S ADDITION. HE GOT HIS OWN PERMIT AND HE PAID FOR EVERYTHING HIMSELF. ELLIS SMITH REPAIRS, I HAD A TOWNHOUSE THAT THE CARPET UP TOP WENT IN... THAT WAS NOT A MYRTLE BEACH PERMIT EITHER. THAT WAS JUST A REPAIR JOB THAT --

JUDGE HOWE: WAS THE FENCE BEFORE 2004?

A THE FENCE, I SIGNED THE CONTRACT IN AUGUST OF 2003, BUT THE WORK WAS GOING ON IN 2004.

JUDGE HOWE: THAT WAS IN CALAIS?

A YES, MA'AM. CALAIS FENCE.

MS. COOK: YOUR HONOR, I'M GOING TO PUT THOSE PERMITS IN. THE WORK PERMITS IN JUST THE SECOND.

JUDGE HOWE: THANK YOU.

Q AM I CORRECT THAT YOU DIDN'T PULL A PERMIT FOR THE WORK YOU WERE DOING ON YOUR HOUSE?

A YES, MA'AM. WHICH HOUSE ARE YOU REFERRING TO, 29TH PLACE?

Q NO, SIR. YES. THAT'S THE REPAIRS.

A 29TH PLACE?

Q YES, SIR.

A YES, MA'AM. THAT WAS PAINTING AND CHANGING OUT A

BATHROOM. YES, MA'AM.
Q YOU PULLED THE PERMIT FOR THE ADDITION THAT YOU DID TO YOUR HOUSE ON JASMINE AVENUE IN A&E'S NAME, CORRECT?
A YES. THAT'S THE GARAGE?
Q YES, SIR. YOU PULLED THAT IN JULY OF 2008, CORRECT?
A AUGUST, JULY, SOMEWHERE IN THAT TIMEFRAME.
Q THAT WAS IN A&E'S NAME?
A YES, SIR.
Q NOW, THE NEXT TWO ITEMS, ONE IS A LAWSUIT BY MIKE MULLINAX AND IT'S GOT BY EES AND THEN YOU'VE GOT A LAWSUIT BY BUZZ SOUTHERN BY EES? YOU'VE GOT COMMENTS OUT TO THE SIDE, "WAYNE DIDN'T APPROVE BILLS." I WANT TO GO INTO WHAT LAWSUIT WAS FILED BY MIKE MULLINAX. WHAT PROJECT WAS IT ON AND WHAT WAS THE SUBSTANCE OF THAT DISPUTE?
A IT WAS LANDSCAPING THAT WAS INSTALLED AT WILLOUGHBY PLACE. MR. MULLINAX DID NOT... IT WAS 8 OR 9 MONTHS AFTER HE HAD DONE THE WORK. HE FOUND HE HAD NOT BEEN PAID FOR SOME OF IT AND I DON'T KNOW EXACTLY WHAT WAS IT, BUT IT WAS FOR LANDSCAPING AT THE WILLOUGHBY PLACE THAT HE CLAIMS HE HAS NOT BEEN PAID FOR.
Q AND DO YOU DISPUTE THE FACT... DO YOU KNOW IF A&E

PAID THE $33,000 AND CHANGE THAT MR. MULLINAX WAS CLAIMING?

A I HAVE NO IDEA. I DIDN'T PAY THE BILLS, MR. VEREEN DID. IF A BILL CAME IN, IT WAS APPROVED BY ME, THEN HE USUALLY APPROVED IT. I DON'T REMEMBER SEEING THESE BILLS. I CAN'T SAY THAT I HAVE SEEN THEM OR APPROVED THEM OR ANYTHING.

Q DID THAT COME UP, THAT DISPUTE COME UP AFTER YOU HAD QUIT GOING TO THE OFFICE IN SEPTEMBER OF 2007?

A I DON'T REMEMBER THE TIMEFRAME.

Q HOW ABOUT THE LAWSUIT BY BUZZ SOUTHERN, THAT WAS ON POINTE MARSH?

A I THINK THAT LAWSUIT WAS BY CITY PLUMPING. I THINK THAT... I'M NOT SURE, BUT THAT'S THE COMPANY THAT BUZZ SOUTHERN OWNS AND THAT WAS THE COMPANY THAT WAS DOING WORK FOR MR. VEREEN AT POINTE MARSH.

Q WAS THAT LAWSUIT STARTED OR ACCLAIMED... RELATED TO THAT LAWSUIT STARTED BEFORE YOU LEFT A&E IN SEPTEMBER OF 2007?

A I COULD NOT TELL YOU IF THE LAWSUIT WAS DONE... I KNOW THE WORK WAS DONE IN 2005 AND 2006. HIM AND MR. VEREEN HAD A DISAGREEMENT ABOUT A PAYMENT OR SOMETHING FROM THE PAST OF SEVEN OAKS OR SOMETHING. I'M NOT FAMILIAR WITH THE TERMS OF

THIS.

Q LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT 24.

A IS IT IN THIS BOOK?

Q NO, SIR. DEFENDANT'S EXHIBIT 24 AND IT'S 5 PAGES WHICH INCLUDE THE HORRY COUNTY PERMIT APPLICATION OF THE PEREZ JOB, THE HORRY COUNTY PERMIT APPLICATION FOR THE CARI DAVIS JOB, THE HORRY COUNTY PERMIT APPLICATION FOR THE MCMILLAN JOB, THE HORRY COUNTY PERMIT APPLICATION FOR THE SEALEY JOB AND A PRINT OFF FROM THE CITY OF MYRTLE BEACH WHICH ENDS IN YOUR EXHIBITS, BUT IT'S JUST ONE PAGE THAT SHOWS CERTAIN PERMITS FOR JOBS PULLED BY ELLIS SMITH... A&E JOBS PULLED ON AN ELLIS SMITH JOB. I AM GOING TO LET MR. DURANT LOOK AT THAT FIRST. LET ME HAVE YOU LOOK AT THAT. TELL ME IF THOSE ARE THE PERMIT APPLICATIONS AND THE CITY OF MYRTLE BEACH PRINT OFFS RELATIVE TO SOMETHING THAT A&E PERMITS?

MR. DURANT: YOU'RE ASKING IF THOSE ARE PERMITS OR APPLICATIONS?

MS. COOK: APPLICATIONS. THE LAST PAGE SHOWS ACTUALLY THE PERMIT ISSUED BY THE CITY OF MYRTLE BEACH.

A THIS LOOKS LIKE MR. PEREZ'S PERMIT. I DIDN'T HAVE ANYTHING TO DO WITH IT.

Q WHAT'S THE DATE OF THAT APPLICATION?
A 9/24/03.
Q THE NEXT PAGE, DO YOU RECOGNIZE IT?
A CARI ANN DAVIS. YES, MA'AM.
Q WHAT'S THE DATE ON THAT ONE?
A 2/8/05.
Q 2005?
A YES, MA'AM.
Q IS ANY OF THAT HANDWRITING ON THAT APPLICATION YOURS?
A NO, MA'AM. YES, IT IS. THIS A&E CONSTRUCTION P.O. BOX AND THE... YES. THAT'S MY HANDWRITING.
Q OKAY. ANYTHING ELSE?
A THIS K.J. AND SELENA MANN, NO. I'M SORRY. THIS IS LEE AND HOLLY MCMILLAN.
Q WHAT'S THE DATE ON THAT APPLICATION FOR HORRY COUNTY?
A 9/7/05.
Q IS ANY OF THE HANDWRITING ON THAT APPLICATION YOURS?
A NO, MA'AM. I DON'T THINK IT IS.
Q OKAY. THE NEXT APPLICATION, WHAT JOB?
A ROBERT SEALEY.
Q WHAT'S THE DATE ON THAT PERMIT APPLICATION FROM HORRY COUNTY?

A 11/29/06.
Q OKAY. THE LAST PAGE, MR. SMITH.
A NONE OF THAT'S MY HANDWRITING EITHER.
Q DO YOU RECOGNIZE... I THINK THE TOTAL PRINTOUT WAS PUT IN BY YOUR COUNSEL, BUT DO YOU RECOGNIZE THAT AS BEING A PAGE OF THE CITY OF MYRTLE BEACH ROLE OF PERMITS ISSUED TO A&E ON JOBS?
A YES, MA'AM.
Q AND ON THE BOTTOM OF THE PAGE THERE IS AN INDICATION OF A PERMIT BEING ISSUED BY THE CITY OF MYRTLE BEACH TO A&E FOR THE ELLIS SMITH/JASMINE JOB, CORRECT?
A YES, MA'AM.
Q THAT'S IN 2008?
A YES, MA'AM. THAT WAS ISSUED ON 8/7... WHAT'S THE DATE IT WAS ISSUED? THAT CAN'T BE RIGHT BECAUSE A&E DID NOT HAVE A PERMIT... I KNOW WHAT IT IS. I RENEWED THE PERMIT. I HAD NOT FINISHED IT WHEN IT EXPIRED. IT HAS BEEN CHANGED AGAIN TO E SMITH AND SONS.
Q SO, YOU ACTUALLY PULLED THE PERMIT EARLIER THAN THE DATE SHOWN ON HERE --
A YES, MA'AM. IT WAS PULLED IN AUGUST 2008.
MS. COOK: I WOULD LIKE TO THE INTRODUCE DEFENDANT'S 24 INTO

EVIDENCE.

JUDGE HOWE: ANY OBJECTIONS.

MR. DURANT: NO OBJECTIONS.

MR. THOMAS: NO OBJECTIONS.

JUDGE HOWE: ALRIGHT. 24 SO ADMITTED.

HORRY COUNTY PERMIT FOR PEREZ JOB MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S 24.

Q NEXT CATEGORY IS OUTSTANDING PERSONAL LOANS OF EES OWED TO AWV ON 29TH PLACE DEVELOPERS/ARTHUR VEREEN CONSTRUCTION. AND IT LISTS SOME OF WHAT WE TALKED ABOUT YESTERDAY DEALING WITH THE PLANTATION POINTE HOME WHERE MR. VEREEN ALLOWED YOU TO CHARGE SUPPLIES AND ASSISTED WITH THE FINANCING OF YOUR CONSTRUCTION OF THE HOME AT PLANTATION POINTE. WE DID DISCUSS THAT YESTERDAY, CORRECT?

A YES.

Q THE NEXT LINE ITEM TALKS ABOUT THE 29TH PLACE WHICH WE HAVE ALSO REFERRED TO AS 29TH PLACE ROW HOME THAT YOU ALSO LIVED IN AND MR. VEREEN DID THE LAND SALES CONTRACT AND YOU ULTIMATELY BOUGHT THAT HOME AND PAID THE 35 OR $38,000 THAT'S SHOWN ON THAT LAND SALES CONTRACT, CORRECT?

A PLUS THE 17 I PAID TOO, YES.

Q AND THEN WE HAVEN'T TALKED ABOUT OCEAN KEYES YET, BUT WE WILL GET TO THAT. YOU'VE GOT ON THE FIRST TWO ITEMS "EES DIDN'T EXIST", BUT YOU EXISTED AS ELLIS SMITH? YOUR INITIALS ARE EES, CORRECT?

A I UNDERSTAND.

Q YOU INTERPRETED THAT TO MEAN YOUR COMPANY EES, AS OPPOSED TO YOUR PERSONAL INITIALS EES, CORRECT?

A YES.

Q AND THE PLANTATION POINTE AMOUNT SHOWED AS BEING OWED TO MR. VEREEN OR TO ARTHUR VEREEN CONSTRUCTION OR TO 29TH PLACE ON THE PLANTATION POINTE MATTER IS SHOWING THE PRINCIPAL BEING OWED AS $67,823. DO YOU AGREE WITH THAT OR DISPUTE THAT?

A I DISPUTE THAT.

Q AND THEN ON THE 29TH PLACE IT SHOWS $96,921 AS PRINCIPAL BEING OWED, DO YOU AGREE OR DO YOU DISPUTE THAT?

A I TOTALLY DISPUTE THAT.

Q WE'LL GO TO THE OCEAN KEYES MATTER A LITTLE BIT LATER. LET'S TALK JUST A MINUTE ABOUT THAT 29TH PLACE SITUATION. WE COVERED IT SOME YESTERDAY. I'M GOING TO SHOW YOU AGAIN THE LAND SALES CONTRACT AND THE DATE ON IT IS JULY 1ST 1992 AND HOLD THAT IN FRONT OF YOU BECAUSE I WANT YOU TO BE

ABLE TO REFER TO IT. I'M GOING TO HAND YOU A GROUP OF DOCUMENTS THAT I HAVE MARKED FOR IDENTIFICATION AS EXHIBIT 25. THE FIRST PAGE IS A JULY 25TH 1996 LETTER TO THE OWNER OF THE PROPERTY 29TH PLACE DEVELOPERS. MR. VEREEN FROM SCOTT LONG'S PARALEGALS SENDING A PAYOFF OR A CHECK IN THE AMOUNT OF $38,359.18 ALONG WITH $390.82 FROM YOU AS SHOWN ON A HUD STATEMENT THAT'S THE NEXT 2 PAGES WHERE YOU GOT FINANCING AND YOU PAID OFF SOME BILLS AND YOU ALSO PAID MR. VEREEN IN JULY '96 THE AMOUNT OF THE $38,750 AS PROVED FOR IN THE LAND SALES CONTRACT, CORRECT?

A YES, MA'AM.

Q SO, WE HAVE HERE PROOF THAT $38,750 UNDER THE LAND SALES CONTRACT WAS PAID IN FULL IN JULY OF 1996, CORRECT?

A I THINK IT ALSO... THERE WAS A... THE ORIGINAL AMOUNT WAS FIFTY SOMETHING AND HE HAD RECEIVED 17.

Q I DO AGREE. AND THAT'S YOUR POSITION THAT HE RECEIVED THAT AND YOU SAID THAT WAS BY WAY OF CHECK FROM YOUR FATHER, CORRECT?

A YES, MA'AM.

Q ALONG WITH... THE NEXT PAGE IS DEFENDANT'S EXHIBIT 25 AND IT IS A COPY OF THE DEED THAT AT THAT CLOSING YOU RECEIVED THE PROPERTY AT 29TH

PLACE CARRIAGE ROW AS A RESULT OF PAYING THAT DEBT, CORRECT?

A IT SEEMS TO BE, YES, MA'AM.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT 25.

JUDGE HOWE: ANY OBJECTIONS TO 25?

MR. THOMAS: YOUR HONOR, WE HAVE NONE AND IF I MAY SPEAK ON BEHALF OF MR. DURANT HE HAS DONE NEITHER.

MS. COOK: ALRIGHT. DEFENDANT'S EXHIBIT 25 SO ADMITTED.

DEED ON 29TH PLACE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S 25.

Q AT THE SAME TIME AS YOU DID THAT CLOSING, MR. SMITH... LET ME BACK UP A MINUTE. THE LAND SALES CONTRACT SAYS THAT THE PRINCIPAL BALANCE DUE TO BUY THE HOUSE IS $38,750, CORRECT?

A THAT WAS AFTER THE PURCHASE OF THE LOT, YES, MA'AM.

Q AFTER YOU PAID THE $17,000 DOWN PAYMENT, THE BALANCE OF WHAT YOU WOULD OWE UNDER THIS LAND SALES CONTRACT IS $38,750?

A YES.

Q AND YOU DIDN'T PAY IT IN THE MONTHLY INSTALLMENTS

THAT THE LAND SALES CONTRACT PROVIDED FOR. YOU PAID IT IN FULL IN 1996?

MR. THOMAS: WE OBJECT TO HER CHARACTERIZATION OF WHAT THE LAND SALES CONTRACT CALLS FOR. IT CALLS FOR MONTHLY INSTALLMENTS OF INTEREST OF THE BALANCE OF THE PRINCIPAL ON THE DAY OF CLOSING AND HE CLOSED A YEAR EARLY.

MS. COOK: THAT'S FINE.

Q YOU PAID THE BALANCE, THE PRINCIPAL IN 1996 AND YOU DIDN'T HAVE TO PAY IT UNTIL THE SUMMER OF '97, DID YOU?

A I DON'T KNOW. LET ME LOOK AND SEE.

MS. COOK: WILL YOU STIPULATE TO THAT, JACK?

MR. DURANT: YOUR HONOR, IS SHE TRYING TO CHANGE THE TERMS OF A WRITTEN AGREEMENT AT A CLOSING? SHE CAN'T DO IT WITH THE --

MS. COOK: NOT AT ALL.

MR. DURANT: THIS IS 1996. THE DOCUMENT WAS A DEED SIGNED BY HER CLIENT FOR A CERTAIN AMOUNT OF MONEY WITH NO PAYMENT AFTER THAT. HOW CAN

SHE CHANGE THE TERMS?
MS. COOK: I'M NOT TRYING TO.
MR. DURANT: I OBJECT TO HER TESTIMONY. IT HAS NOTHING TO DO WITH THE DEFENSE IN THIS CASE.
MS. COOK: YES, MA'AM, IT DOES.
MR. DURANT: SHE HAS SUED BASED ON A FAILURE TO PAY ON THE LAND SALES AGREEMENT WHERE YOU HAVE A CLOSING STATEMENT AND A DEED SIGNED BY THE DEFENDANT.
JUDGE HOWE: I'M NOT SURE WHAT SHE'S TRYING TO DO.
MS. COOK: BUT THERE'S ANOTHER DOCUMENT SIGNED THAT THE NOTES THAT MR. THOMAS TALKED ABOUT YESTERDAY. I HAVE THAT NOTE RIGHT HERE. AND MY QUESTION TO MR. SMITH... WHERE THIS IS GOING IS, DID YOU EVER PAY ANY OF THOSE INTEREST PAYMENTS FROM THE TIME YOU SIGNED THE LAND SALES CONTRACT, THE $322 A MONTH BEFORE YOU PAID IT OFF? DID YOU EVER PAY ANY OF THOSE INTEREST STATEMENTS? LET ME JUST ASK THAT QUESTION.

MR. DURANT: IT'S THE SAME THING, YOUR HONOR. THERE'S A PROMISE TO PAY. THAT'S A SATISFACTION OF THE NOTE FROM THE CLOSING.

JUDGE HOWE: WELL, HE PAID IT OFF AT CLOSING.

MS. COOK: NO, MA'AM. THE POSITION OF MY CLIENT IS HE PAID THE PRINCIPAL AT CLOSING, BUT HE SIGNED A NOTE FOR THE UNPAID INTEREST THAT HE HAD NOT PAID.

JUDGE HOWE: HE JUST SAID HE DIDN'T KNOW ABOUT THE NOTE.

MR. THOMAS: IF THERE IS A NOTE, YOUR HONOR, WE'VE NEVER SEEN IT AND WE OBJECT TO IT. WE'VE ASKED FOR WHATEVER YOU'VE HAD AS EARLY AS AUGUST OF LAST YEAR. SO, WE OBJECT ON THE FAILURE TO PRODUCE IT DURING DISCOVERY.

JUDGE HOWELL: WAS IT EVER PRODUCED?

MS. COOK: YES, YOUR HONOR. WE PRODUCED 19 NOTEBOOKS... NOT 19...

JUDGE HOWE: SEE IF IT WAS PRODUCED BEFORE.

MR. THOMAS: WE OBJECT, YOUR HONOR, ON

A FURTHER BASIS THIS NOTE IS NOT MENTIONED IN THE COMPLAINT. THEY HAVE SUED HIM FOR THE $38,000 WHICH HAS CLEARLY BEEN PAID, AND THAT'S THE SECOND CAUSE OF ACTION.

MS. COOK: YOUR HONOR, I... I ACKNOWLEDGE THAT AND WE HAVE CONCEDED TO MR. THOMAS THAT WE ARE NOT SEEKING TO RECOVER THAT $38,000 AND CHANGE, BUT MY CLIENT'S TESTIMONY WILL BE... AND I BELIEVE IT WAS WHEN HE WAS ALREADY PUT UP AS A HOSTILE WITNESS THAT ONE OF THE REASONS HE EVEN ENTERED INTO THIS PARTNERSHIP WITH MR. ELLIS SMITH WAS THAT HE KNEW THE ONLY WAY HE WOULD EVER BE PAID BACK ALL THE MONEY THAT WAS DUE HIM BY ELLIS SMITH FOR THE PLANTATION POINTE HOUSE, FOR ALL THE MONEY THAT WAS OWED ON THE CARRIAGE ROW HOUSE, WHICH THAT'S WHAT THIS ONE IS, WAS TO KEEP HIM EMPLOYED SO HE COULD EARN A LIVING SO HE COULD PAY HIM BACK. THAT WAS PART OF THE REASON, THE MAIN REASON, OR ONE OF THE MAIN REASONS THAT HE ENTERED INTO THIS

A&E CORPORATION WITH MR. SMITH WAS IN ORDER TO BE PAID BACK BY MR. SMITH THE MONEY THAT HE CONTINUALLY SAID HE WOULD PAY HIM BACK AS WELL AS FOR MR. SMITH AND MR. VEREEN TO CARRY ON, HOPEFULLY, A SUCCESSFUL AND PROFITABLE BUSINESS FOR THEMSELVES AS WELL. THIS IS NOT BEING OFFERED IN ORDER TO COLLECT THIS MONEY, THIS INTEREST FROM MR. SMITH AT THIS TIME. IT IS OFFERED TO SUPPORT THE BASIS MY CLIENT HAS SAID FOR WHICH HE ENTERED INTO THE AGREEMENT TO ENTER INTO BUSINESS WITH MR. SMITH AND WHAT HIS UNDERSTANDING OF THE DEAL BETWEEN HE AND MR. SMITH WAS WITH REGARD TO A&E.

MR. THOMAS: I DON'T UNDERSTAND THAT LAST STATEMENT. IT'S NOT BEING OFFERED AS A BASIS FOR THE COLLECTING OF MONEY, THEN IT'S NOT RELEVANT? WHAT WOULD BE THE RELEVANCE?

MS. COOK: IT GOES TO THE CREDIBILITY OF WHAT THESE GENTLEMEN'S AGREEMENT WAS AS SET FORTH IN THEIR CORPORATIONS AS 50% PARTNERS AS TO A&E.

JUDGE HOWE: SO, THIS IS NOT GOING TO BE SOMETHING THAT YOU ARE GOING TO TRY TO PUT ON MR. SMITH?

MS. COOK: YES, MA'AM. WE WILL BE ATTEMPTING TO PUT THAT ON MR. SMITH'S SIDE OF THE PAGE, NOT IN TERMS OF COLLECTION OF THE NOTE, BUT IN PART OF MR. SMITH AND MR. VEREEN'S AGREEMENT THAT A&E WAS GOING TO BE FORMED. MR. VEREEN WAS GOING TO PUT IN THE CAPITAL UP FRONT, MR. SMITH WAS GOING TO PUT IN NO CAPITAL UP FRONT AND WHEN THEY GOT TO BE ABLE TO DO DISTRUBUTION, MR. SMITH WOULD REPAY ALL HIS OBLIGATIONS TO MR. VEREEN BEFORE THERE WAS A DISTRIBUTION OF PROFIT OR CAPITAL. SO, IN ESSENCE, WHAT MR. SMITH PUT IN AS CAPITAL CONTRIBUTION, YOUR HONOR, AT THE BEGINNING OF A&E WAS HIS RENEWED PROMISE TO PAY HIS PAST DEBTS TO MR. VEREEN BEFORE HE TOOK OUT ANY PROFITS IN THE COMPANY.

JUDGE HOWE: WELL, WAS THAT IN WRITING?

MS. COOK: NO, MA'AM.

MR. THOMAS: YOUR HONOR, THEY'RE TRYING TO GET AROUND THE STATUTE OF LIMITATION WHICH IS A SERIOUS PROBLEM ON ALMOST ALL OF THESE CLAIMS. IT HAS TO BE IN WRITING.

JUDGE HOWE: HAVE YOU FOUND IT IN THE NOTEBOOKS OR DISCOVERY?

MS. COOK: HE DIDN'T FINISH LOOKING. YOUR HONOR, I UNDERSTAND IF YOU'RE GOING TO RULE THAT IN THE ACCOUNTING THAT WHEN WE GET TO THE END OF THE LEDGER PAGE THAT THIS AMOUNT CANNOT BE PART OF MR. SMITH'S SIDE OF THE PAGE FOR WHATEVER LEGAL OR OTHER REASONS YOU FIND, SUCH AS, STATUTE OF FRAUD, THE STATUTE OF LIMITATIONS OR ANYTHING ALONG THOSE LINES. AND I WOULD UNDERSTAND THAT, BUT IT'S ADDITIONALLY BEING OFFERED TO VERIFY THE AGREEMENT BETWEEN MR. SMITH AND MR. VEREEN AS TO THE PURPOSE OF THEIR CORPORATION FORMED AND WHAT MY CLIENT'S POSITION IS THAT HIS AGREEMENT TO ENTER INTO THIS BUSINESS WITH MR. SMITH WAS THAT BEFORE PROFITS WERE DISBURSED HE WOULD

BE PAID FROM MR. SMITH WHAT THESE TWO GENTLEMEN SEPARATE AND APART FROM A&E AND ITS BUSINESS AGREED WAS OWED. I KNOW THE AMOUNT AGREED IS DISPUTED. IT'S BEING OFFERED FOR TWO PURPOSES, AND I UNDERSTAND, YOUR HONOR, MIGHT ULTIMATELY RULE THAT THIS IS NOT A AMOUNT THAT CAN GO ON MR. SMITH'S SIDE OF THE LEDGER OF A&E, BUT IT'S ALSO BEING OFFERED AS PROOF OF AND IMPEACHMENT OF MR. SMITH'S TESTIMONY YESTERDAY THAT HE WAS NOT... THAT HE DIDN'T KNOW ANYTHING ELSE TO... IF YOU LET ME TALK LONG ENOUGH I'LL COME UP WITH A THEORY. BECAUSE HE DID TESTIFY YESTERDAY THAT HE DISPUTED HE OWED ANY MONEY.

JUDGE HOWE: I REMEMBER.

MS. COOK: THE THIRD GROUND IS TO IMPEACH THAT TESTIMONY BY VIRTUE OF THIS NOTE THAT WAS DRAWN BY HIS ATTORNEY ON THE SAME DAY AS THIS CLOSING WHICH REPRESENTS THOSE INTEREST PAYMENTS THAT HAD NOT BEEN PAID FROM '92 TO '96 WHEN HE DID PAY

IT OFF EARLY.
JUDGE HOWE: THAT'S WHY I WOULD BE SURPRISED IF IT'S IN ONE OF THOSE DISCOVERY NOTEBOOKS. I DON'T BELIEVE THAT EITHER ONE OF THESE ATTORNEYS WOULD HAVE ALLOWED MR. SMITH TO TESTIFY THAT HE DIDN'T KNOW ANYTHING KNOWING THIS WAS IN DISCOVERY.
MS. COOK: I WILL SAY THAT IN MY ANSWERS TO DISCOVERY BECAUSE I ALWAYS DO THIS... I ALWAYS PUT THAT WE RESERVE THE RIGHT TO USE ANY DOCUMENTS FOR THE PURPOSES OF IMPEACHMENT.
MR THOMAS: WE WOULD LIKE TO POINT OUT, YOUR HONOR, THAT WE SERVED INTERROGATORIES ON MR. VEREEN ON THE SECOND OF DECEMBER 2010 ASKING ALL THESE QUESTIONS. SIMPLY, "WHAT ARE YOU SUING US FOR" AND THEY HAVE NEVER BEEN ANSWERED.
MS. COOK: I JUST SAID, I WOULD TOTALLY UNDERSTAND IF YOUR HONOR DOES NOT PUT ON THE ELLIS SMITH SIDE OF THE PAGE THE A&E... THIS AMOUNT AS BEING OWED TO A&E, BUT IT'S BEING OFFERED

FOR TWO OTHER GROUNDS AS WELL.

JUDGE HOWE: I UNDERSTAND.

MR. DURANT: YOUR HONOR, THE WHOLE THING IS A GUISE TO GET AROUND THE STATUTE OF LIMITATIONS FOR A CLOSING THAT OCCURRED LONG, LONG AGO THAT PEOPLE DON'T HAVE ANY RECORDS OF INCLUDING MR. SMITH OR ME.

JUDGE HOWE: WELL, SHE HAS ANOTHER REASON.

MR. DURANT: AND SHE WANTS TO IMPEACH THE WITNESS TO SAY HE DID OR DIDN'T KNOW AND THAT'S WHY THE STATUTE OF LIMITATIONS IS THERE BECAUSE THESE THINGS WERE SO LONG AGO YOU'RE NOT GOING TO KNOW WHAT WAS GOING ON. THESE PEOPLE DID THIS FOR YEARS AND YEARS AND YEARS WITHOUT THIS EVER BEING BROUGHT UP. SO, NOW, THIS HAS COME IN OUT OF THE CLEAR BLUE SAYING, "WELL, LOOK A HERE, SOMEBODY OWES ME MONEY." I DON'T KNOW WHAT SHE'S USING IT FOR, BUT I HAVE NEVER SEEN IT MYSELF.

MS. COOK: YOUR HONOR, IT'S NOT BEING

OFFERED OUT OF THE CLEAR BLUE BECAUSE I BELIEVE MR. DURANT CAN GO BACK TO MR. VEREEN'S DEPOSITION AND MR. VEREEN TESTIFIED ABOUT NOT ONLY THIS DEBT, BUT THE OTHER PRE-EXISTING DEBTS AND SPECIFICALLY, THIS DEBT HAVING TO DO WITH 29TH PLACE CARRIAGE ROW AT HIS DEPOSITION.

JUDGE HOWE: BUT HE JUST DIDN'T PRODUCE THE DOCUMENT THAT'S IN HIS DEPOSITION?

MS. COOK: YES, MA'AM. WE... WE... AT THE DEPOSITION... I'M NOT SURE IF WE HAD THAT AT THAT TIME.

MR. DURANT: YOUR HONOR, IN THE COUNTERCLAIM HE SAID HE HAD NEVER BEEN PAID ANYTHING FROM THE TRANSACTION.

MR. THOMAS: I TELL YOU WHAT, IF THEY WILL STIPULATE THAT THEY ARE NOT LOOKING FOR CREDIT FOR THE NOTE AND THEY'RE OFFERING IT ONLY FOR PURPOSES OF IMPEACHMENT, WE WILL REMOVE OUR OBJECTION. THEY ARE NOT LOOKING FOR ANY CREDIT WHATSOEVER FOR PAYMENT ON THAT NOTE.

MS. COOK: FOR THIS INTEREST?
MR. THOMAS: FOR THE NOTE.
MS. COOK: I CAN'T STIPULATE TO THAT, YOUR HONOR. I UNDERSTAND YOUR HONOR MAY RULE THAT WAY, BUT I'M OFFERING IT FOR ALL THREE --
JUDGE HOWE: YOUR CO-COUNSEL IS LOOKING FOR...
MRS. SISSON: I DIDN'T SEE WHERE WE PRODUCED THIS AS PART OF THE REQUEST FOR PRODUCTION. I DIDN'T SEE IT IN ELLIS' NOTEBOOK. I DON'T KNOW WHERE ELSE IT WOULD BE.
MS. COOK: THAT BEING SAID --
JUDGE HOWE: YOU'RE GOING TO PROFFER IT?
MS. COOK: YES, MA'AM. I WILL PROFFER IT IN. ARE YOU WILLING AT THIS POINT THAT IT'S NOT ADMISSIBLE?
JUDGE HOWE: I'M NOT GOING TO ADMIT IT BECAUSE THERE ARE SO MANY DOCUMENTS IN THIS CASE AND I JUST THINK IT'S UNFAIR. THESE ATTORNEYS WERE SURPRISED AND I THINK IT SHOULD HAVE BEEN PRODUCED IN DISCOVERY, BUT I WILL

ALLOW YOU TO PROFFER IT. ANYWAY, YOU HAVE THE RIGHT TO PROFFER OVER MY RULING ANYWAY.

MS. COOK: YES, MA'AM. THAT'S PROFFERED AS DEFENDANT'S EXHIBIT 25.

Q NOW, MR. SMITH, SCOTT LONG WAS YOUR ATTORNEY FOR THE CLOSING WHEN YOU BOUGHT AND GOT THE DEED FOR THE CARRIAGE ROW HOUSE, CORRECT?

A TO THE BEST OF MY RECOLLECTION, YES.

Q AND THE NOTE IS DATED ON THE FIRST PAGE JULY 23RD 1996 AND ON... I'M SORRY, YOU KNOW WHAT?

MS. COOK: YOUR HONOR, THAT'S EXHIBIT 26.

PROFFERED INTO IDENTIFICATION.

AS DEFENDANT'S EXHIBIT 26.

Q NOW, IF YOU WOULD, THE NOTE ON THE FIRST PAGE STATING IS DATED JULY 23, 2000...

MR. THOMAS: YOUR HONOR, YOU HAVE ALREADY RULED THAT THIS NOTE IS NOT ADMISSIBLE. IF SHE WANTS TO ASK HIM QUESTIONS ABOUT THE DOCUMENT, WE THINK IT'S GOT TO BE ADMITTED. SO, WE OBJECT BECAUSE IT'S NOT BEEN ADMITTED. WE DON'T THINK SHE CAN ASK HIM QUESTIONS ABOUT THE DOCUMENTS UNLESS

IT'S... OTHER THAN FOR MAKING HER PROFFER.

MS. COOK: I'M MAKING MY PROFFER.

Q THIS NOTE IS DATED JULY 23, 1996. THAT IS THE SAME DAY THAT YOU CLOSED WITH MR. VEREEN TO BUY 29TH PLACE, ISN'T IT?

A I NEED TO SEE.

Q THE DATE ON THE CLOSING STATEMENT IS JULY 23, 1996, CORRECT?

A YES, MA'AM.

Q AND THE NOTE... IS THAT YOUR SIGNATURE ON THE BACK PAGE OF THE NOTE?

A YES, MA'AM, IT IS.

Q AND THE NOTE WAS IN THE ORIGINAL PRINCIPAL AMOUNT OF $17,850, IS THAT CORRECT?

A YES, MA'AM, IT IS.

Q NOW, THAT NOTE OF $17,850, THAT IS THE AMOUNT OF 10% INTEREST ON THE 48 MONTHS THAT YOU OWED FROM 1992 TO 1996 WHEN YOU PAID OFF THE LAND SALES CONTRACT. THAT EQUALS WHEN HE ROUNDS THE NUMBERS TO $17,850 --

MR. THOMAS: YOUR HONOR, WE THINK THE PROFFER IS LIMITED TO AN IDENTIFICATION SO IT CAN BE SUBMITTED TO THE COURT. I DON'T THINK SHE IS

ENTITLED TO CROSS-EXAMINE A DOCUMENT THAT'S NOT BEEN ADMITTED.

MS. COOK: I CAN CROSS... YOUR HONOR, IT'S THE DEFENDANT'S BELIEF THAT I CAN PROFFER THE DOCUMENT AND I CAN ALSO PROFFER THE TESTIMONY.

JUDGE HOWE: YOU MAY.

Q THAT'S THE AMOUNT OF THE INTEREST THAT YOU HADN'T PAID MR. VEREEN OR 29TH PLACE DEVELOPERS FROM '92 TO '96, ISN'T THAT CORRECT?

A I DON'T KNOW.

Q THE LAST PAGE OF THAT DOCUMENT IS THE AMORTIZATION SCHEDULE RUN BY YOUR ATTORNEY THAT SHOWS YOU WERE TO MAKE FOUR QUARTERLY PAYMENTS AND IT WAS AT AN INTEREST RATE OF 9%, CORRECT?

A THAT'S WHAT IT LOOKS LIKE.

Q DID YOU MAKE ANY OF THOSE INTEREST PAYMENTS?

A NOT TO MY KNOWLEDGE.

Q DO YOU DENY THAT YOU OWED THIS MONEY REFLECTED IN DEFENDANT'S EXHIBIT 26, THE NOTE, IN THE AMOUNT OF $17,850 PLUS WHATEVER INTEREST TO 29TH PLACE OR MR. VEREEN BECAUSE THE NOTE IS TO MR. VEREEN WHEN YOU AND MR. VEREEN FORMED A&E IN OCTOBER OF 2003?

A THIS WAS NEVER DISCUSSED.

Q BUT MY QUESTION WAS, DO YOU DENY THAT YOU OWED HIM

THIS MONEY WHEN A&E WAS FORMED IN OCTOBER OF 2003?

A MA'AM, I DIDN'T EVEN KNOW I OWED HIM THIS MONEY. I DO NOT RECALL THIS NOTE.

Q ALRIGHT. DOES SEEING THIS NOTE REFRESH YOUR RECOLLECTION CONCERNING THAT MATTER?

A I SEE WHERE I SIGNED THIS PAGE. I SEE IT CAME FROM SCOTT. I DON'T RECALL.

MS. COOK: YOUR HONOR, THAT WOULD BE THE END OF THAT PROFFER.

JUDGE HOWE: THANK YOU.

Q CAN WE TURN TO THE SECOND PAGE OF DEFENDANT'S 23 THAT'S THE DOCUMENT THAT'S PART OF YOUR EXHIBIT 9. IT'S YOUR RESPONSE AND HANDWRITTEN NOTES TO MR. VEREEN... POSITION AFTER YOUR DEMAND LETTERS. WE FINISHED THE FIRST PAGE OF THAT. NOW, ON THE SECOND PAGE IS THAT YOUR HANDWRITING ON THE SECOND PAGE?

A THIS ONE?

Q AT THE TOP THAT SAYS, "PROJECTS 2004 THROUGH 2007"?

A YES, MA'AM.

Q ARE THOSE YOUR CIRCLES AND QUESTION MARKS?

A YES, MA'AM.

Q THE LITTLE HASH MARKS OVER TO THE SIDE ARE THOSE YOURS?

A IT LOOKS LIKE THEY ARE BECAUSE THEY GO BACK AND FORTH.
Q WHAT SIGNIFICANCE IF YOU CIRCLED SOMETHING, WHAT DID THAT MEAN?
A I DIDN'T UNDERSTAND HOW OVERHEAD COULD BE PUT ON THESE JOBS LIKE IT LOOKS TO ME LIKE SOMEWHERE AROUND 10% LIKE THE DIXIE MOTEL. THE ONLY PERSON THAT WENT TO THE DIXON MOTEL TO TEAR IT DOWN WAS MYSELF. AND I HAD A SUB THAT TORN IT DOWN AND I WAS THERE MAYBE THREE HOURS A DAY FOR A WEEK AND IT WAS GONE. NOW, THE OVERHEAD DOES NOT STIPULATE... THERE IS ABSOLUTELY NO REASON FOR THERE TO BE 10% OVERHEAD ON A JOB THAT TOOK A SUPERINTENDENT AT $25 AN HOUR A GRAND TOTAL OF 15 HOURS TO DO.
Q DO YOU QUESTION --
A YES. I QUESTION THE OVERHEAD.
Q WOULD THAT BE THE SAME BASIS FOR EACH OF THESE ITEMS THAT YOU HAVE CIRCLED UNDER THE OVERHEAD COLUMN?
A YES, MA'AM.
Q DIFFERENT BASIS?
A THE SAME BASIS. EVERYONE OF THEM, YES.
Q IF YOU DIDN'T CIRCLE THE AMOUNT IN THE OVERHEAD COLUMN FOR A PARTICULAR JOB, DOES THAT MEAN THAT

YOU AGREED THAT'S A LEGITIMATE PERCENTAGE IN OVERHEAD FOR THAT PARTICULAR JOB?

A NO, MA'AM. IT'S NOT THAT I AGREE. IT'S JUST WHEN I LOOKED AT THESE JOBS.

Q YES, SIR.

A THE OTHER JOBS, IT'S SORT OF HARD FOR ME TO SAY BECAUSE I DIDN'T HAVE ALL THE STUFF. BUT THESE ARE JOBS THAT I SPECIFICALLY RAN AND KNEW WHAT WAS INVOLVED IN DOING THESE JOBS.

Q YES, SIR.

A AND I THINK THIS OVERHEAD FIGURE IS WAY, WAY OUTRAGEOUS.

Q WELL, LET'S LOOK AT WILLOUGHBY PLACE. I'M NOT GOING TO GO THROUGH EACH ONE OF THESE, BUT LET'S LOOK IN PARTICULAR AT WILLOUGHBY PLACE. YOU'VE GOT CIRCLED THE OVERHEAD FIGURE FOR WILLOUGHBY PLACE AND THAT FIGURE IS $783,544, CORRECT?

A YES.

Q WHAT WAS THE BASIS OF YOUR DISPUTE OR CIRCLING THAT FIGURE ON THAT JOB?

A I THINK IT'S HIGH.

Q OKAY.

A IT DOESN'T COST THAT MUCH TO RUN THE COMPANY THAT WE HAD. WHERE DID 980,850 COME, I DON'T KNOW. I'M SORRY, 783,544.

Q IT'S YOUR POSITION THAT OVERHEAD AMOUNTS IS TOO HIGH ON THAT JOB?
A YES, MA'AM.
Q YOU WOULD AGREE WITH ME THAT THERE IS AN AMOUNT OF OVERHEAD THAT SHOULD BE BORN BY THE WILLOUGHBY PLACE JOBS?
A OH, YES. I'M NOT DISPUTING THAT THERE SHOULD BE OVERHEAD. I'M JUST DISPUTING THE AMOUNT OF OVERHEAD.
Q LET'S GO TO THE THIRD PAGE. THE TOP SAYS, "OFFICE SUPPLIES/EXPENSES". THE FIRST TWO LINE ITEMS SAY "OFFICE EXPENSES AND SUPPLIES" AND IT GIVES A TOTAL FOR THE YEARS '04, '05, '06, '07 AND '08?
A YES, MA'AM.
Q YOU'VE GOT BETH'S PAPER AND A QUESTION MARK? WHAT SIGNIFICANCE DOES THAT HAVE TO YOU?
A BETH WAS DOING A LOT OF CLOSINGS, REAL ESTATE CLOSINGS. SHE WAS MAKING A LOT OF COPIES AND OFFICE EXPENSES AND SUPPLIES AND PAPER WAS A BIG DEAL. THAT'S WHAT THAT WAS ALL IN RELEVANCE TO.
Q DO YOU AGREE THAT SOME AMOUNT OF OFFICE EXPENSES AND SUPPLIES SHOULD BE BORN FROM EACH OF THOSE YEARS BY A&E?
A OH, YES. NO PROBLEM.
Q DO YOU HAVE AN AMOUNT THAT YOU BELIEVE IS

APPROPRIATE VERSES WHAT IS ON MR. VEREEN'S SUMMARY HERE?

A IF I'M NOT MISTAKEN THIS IS WHAT IS ASSIGNED TO A&E PAID EACH YEAR. 6816, 6816, 6816 EACH YEAR. I THINK THAT IT'S A LITTLE BIT HIGH. I DON'T HAVE RECORDS... I DON'T HAVE ANYTHING TO SUPPORT THAT. THAT SEEMS LIKE A LOT OF PAPER FOR A SMALL CONSTRUCTION COMPANY TO BE USING.

Q OKAY. WELL, YOU CONSIDER $40 MILLION OF TRANSACTIONS IN AND OUT OVER... I THINK YOUR ACCOUNTANT TESTIFIED YESTERDAY OVER FOUR YEARS SMALL?

A YES, MA'AM. THAT IS SMALL.

Q THE NEXT ITEM IS PUT DOWN FOR OFFICE SUPPLIES AND EXPENSES IS A SITE TECH SUBSCRIPTION FOR $1,710 A YEAR.

A YES, MA'AM.

Q DO YOU DISPUTE THAT AS BEING AN A&E EXPENSE AND A RESOURCE USED BY A&E?

A I DON'T THINK WE GOT SITE TECH UNTIL 2005 AND I HAVE NO BACKUP WHATSOEVER THAT SAYS THAT WAYNE PAID THAT. I KNOW WE HAD SITE TECH AND WE USED IT. I JUST DON'T HAVE THE FACTS TO SAY HE PAID IT. AND I DON'T THINK WE HAD IT IN 2004.

JUDGE HOWE: MR. SMITH FOR MY BENEFIT,

WHAT IS SITE TECH?

A SITE TECH IS LIKE A REAL ESTATE CONSOLIDATION. YOU CAN GO ON TO FIND WHO OWNS PROPERTY AND WHAT HAS BEEN SOLD BACK AND FORTH.

JUDGE HOWE: IT'S KIND OF A COMPUTER SOFTWARE PROGRAM?

A IT'S A FANTASTIC PROGRAM, YES MA'AM.

Q THE PUBLIC CAN GET ON THE HORRY COUNTY WEBSITE AND GET A CERTAIN AMOUNT OF INFORMATION, BUT THE SITE TECH TAKES IT AND GOES A STEP FURTHER WHERE YOU CAN GET A LOT MORE OF THAT TYPE OF INFORMATION?

A THAT'S CORRECT. AND YOU MUST PURCHASE AREAS, LIKE YOU PURCHASE GEORGETOWN COUNTY, HORRY COUNTY, MARION COUNTY. YOU HAVE TO PURCHASE FROM SITE TECH FOR YOUR SUBSCRIPTION FOR IT.

JUDGE HOWE: I UNDERSTAND.

Q WOULD YOU AGREE... WELL, YOU DO AGREE THAT A&E DID USE SITE TECH?

A YES, I DO.

Q WOULD YOU AGREE THAT WHENEVER A&E GOT SITE TECH AND YOUR RECOLLECTION IS YOU THINK '06?

A '04, '05. I DON'T THINK WE HAD IT IN '04.

Q WOULD YOU AGREE THAT THE EXPENSE OT THE ANNUAL SUBSCRIPTION FOR THAT SITE TECH PROGRAM WOULD BE AN APPROPRIATE EXPENSE OF A&E'S?

A IT WOULD BE AN APPROPRIATE EXPENSE IF A BILL AND A CHECK WOULD'VE BEEN PAID BY MR. VEREEN OR WHOEVER.

Q IF WE HAVE A CHECK, BUT WE DON'T HAVE AN INVOICE, YOU WOULD SAY IT'S NOT AN APPROPRIATE EXPENSE OF A&E'S? IF WE HAVE THE CHECK --

MR. DURANT: A CHECK FROM WHOM?

MS. COOK: A&E.

A A CHECK FROM A&E. THAT'S NO PROBLEM FOR SITE TECH.

Q IF IN SOME YEARS THE CHECK WAS NOT FROM A&E, BUT IT WAS PAID BY MR. VEREEN ON A&E'S ACCOUNT OR BENEFIT OF OR IT WAS PAID BY PARK PLACE PROPERTIES ON BEHALF OF A&E OR IT WAS PAID BY PARKWAY OFFICES BY CHECK ON BEHALF OF A&E OR IT WAS PAID BY ARTHUR VEREEN CONSTRUCTION COMPANY PER CHECK FOR A&E. DO YOU HAVE A PROBLEM WITH... A&E... SHOULD A&E HAVE OR SHOULD THEY NOW REIMBURSE WHATEVER ENTITY OF MR. VEREEN PAID THAT FOR SITE TECH THAT WAS USED BY A&E?

A IT MAY HAVE BEEN PARTIALLY USED BY A&E. IT MAY HAVE BEEN USED IN PARTIAL BY PARK PLACE PROPERTIES OR PARKWAY OFFICES OR ELIZABETH SESSION OR WHOEVER.

Q WAS IT USED BY YOU PERSONALLY AND NOT FOR A&E BUSINESS?

A I DID USE IT SOME, YES, MA'AM.
Q DO YOU HAVE A PROBLEM WITH A&E PAYING THE ANNUAL SUBSCRIPTION OF SITE TECH WHETHER IT ACTUALLY PAID IT AT THE TIME OR WHETHER MR. VEREEN OR AN ENTITY OF MR. VEREEN'S PAID IT AT THE TIME? DO YOU HAVE A PROBLEM WITH A&E BEING RESPONSIBLE FOR THAT CHARGE? I THINK IT'S $1,700 A YEAR?
A IF THEY HAVE A BILL AND THEY HAVE A CHECK WHERE THEY HAVE PAID IT. AND IT WAS PUT IN BEFORE DECEMBER THE 1ST, WE HAVE NO PROBLEM.
Q BEFORE FOR DECEMBER THE 1ST OF --
A WHEN Y'ALL HAD TO PRODUCE.
Q OH, SO, EVEN THOUGH IT WAS A LEGITIMATE... YOUR POSITION WOULD BE EVEN IF IT WAS A LEGITIMATE A&E EXPENSE, IF A CHECK AND A RECEIPT WAS NOT PRODUCED THAT THAT'S TOO BAD, A&E... MR. VEREEN OR HIS COMPANY DON'T... AREN'T ENTITLED TO BE REIMBURSED OR GIVEN CREDIT FOR BILLS WHICH YOU ACKNOWLEDGE ARE LEGITIMATE A&E EXPENSES --

MR. DURANT: YOUR HONOR, SHE'S TRYING TO GET AROUND A COURT ORDER THAT REQUIRED HER TO DO CERTAIN THINGS BEFORE A CERTAIN DAY. IT'S UNFAIR TO ASK HIM IF HE DISAGREES WITH YOUR ORDER. THAT'S WHAT SHE'S TRYING TO DO

HERE. THIS IS IMPEACHMENT ON DOCUMENT THAT WAS SUBMITTED TO SAY, "HEY, YOU OWE ME MONEY" AND THIS IS MR. VEREEN'S RESPONSE SAYING, "I DON'T." NOW, WE ARE GOING INTO, "CAN YOU PAY THE BILLS?" AND HE SAYS, "NO, YOU DIDN'T MEET THE DEADLINE. IF IT WAS WITHIN THE DEADLINE I WOULD PAY IT." THAT'S THE COURT'S DECISION, NOT MR. SMITH'S DECISION.

JUDGE HOWE: I UNDERSTAND. YOU'RE RIGHT.

MS. COOK: I AGREE IT'S YOUR DECISION, YOUR HONOR, BUT THE COURT ORDER SAYS I HAVE TO PRODUCE THE DOCUMENT. THIS DOESN'T SAY I CAN'T INTRODUCE THE TESTIMONY AND YOU CAN JUDGE THE CREDIBILITY OF IT.

JUDGE HOWE: I THINK HE'S SAYING IF YOU DIDN'T PRODUCE THE DOCUMENT THEN HE'S NOT GOING TO AGREE WITH IT.

MS. COOK: I UNDERSTAND.

JUDGE HOWE: I DON'T THINK YOU DO. I THINK HE'S TESTIFYING HE THINKS IT'S A LEGITIMATE A&E EXPENSE. I THINK HE

SAID ALL THESE OTHER ENTITIES USED IT AS WELL.

MS. COOK: OKAY. THIS WAS PRODUCED IN THE DOCUMENTS WELL BEFORE DECEMBER 21ST.

Q I'M GOING TO HAND YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT 27. IT'S A COPY OF THE BOTTOM OF ONE OF THE CHECKING ACCOUNT... THE CREDIT CARD, THE MASTERCARD OF MR. VEREEN --

MR. DURANT: IS THIS THE MASTERCARD OF MR. VEREEN OR WHO IS IT THE MASTERCARD OF?

MS. COOK: MR. VEREEN.

MR. DURANT: IT DOESN'T SHOW THAT ON THERE.

MS. COOK: WELL, THIS IS A MASTERCARD BILL AND WHEN WE GET MR. VEREEN ON THE STAND, I WILL HAVE HIM IDENTIFY THIS.

MR. DURANT: IT DOESN'T STATE WHICH COMPANY. THERE'S ARTHUR VEREEN CONSTRUCTION COMPANY THAT HAD CREDIT CARDS AND MR. VEREEN HAD SOME, BUT IT WASN'T PAID BY THE COMPANY THAT INCURRED THE BILL. THAT'S ONE OF THE REASONS FOR THE ACQUIREMENT OF THE

COURT'S ORDER. GO AHEAD AND ASK HIM WHAT YOU WANT TO. YOU'RE GOING TO ANYWAY.

Q LET ME ASK YOU ON THIS DEFENDANT'S EXHIBIT 27, THE THIRD LINE ITEM DOWN, IT'S GOT PURCHASE 11/8. DO YOU SEE AN ENTRY OF $1,795.50? WHERE IT SAYS SITE TECH SYSTEMS, LLC?

A YES, MA'AM.

Q TO YOUR KNOWLEDGE IS THAT SITE TECH SYSTEMS THE SAME SITE TECH THAT A&E AND THE OTHER PEOPLE USING THE A&E OFFICE HAD USE OF?

A THIS ONE WAS --

Q THIS IS '06, MR. SMITH, BECAUSE YOU CAN SEE WHERE IT SAYS CLOSING DATE 11/16/06?

A I SEE IT, YES. THIS IS THE SAME SYSTEM THAT WE USED.

Q THE TOP OF THE CHECK --

A SAME SYSTEM THAT WAS USED. WHEN WE SIGNED ON IT HAD MR. VEREEN'S NAME AND MR... EVERYTHING BELONGED... EVERYTHING AND THE PASSWORD TO GET ON WAS A VEREEN NAME, AVEREEN OR WHATEVER IT WAS TO GET ON.

Q NOW, THE TOP OF EXHIBIT 27 IS A CHECK FROM PARK PLACE PROPERTIES OF MYRTLE BEACH DATED 11/30/06. THAT PAYS THAT TOTAL BILL IN THE SAME AMOUNT,

CORRECT?

A IT LOOKS LIKE IT, BUT I GUESS, IT IS, YES.

Q LET ME SHOW YOU ANOTHER DOCUMENT THAT I AM MARKING FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 28.

MR. DURANT: YOUR HONOR, SO THE COURT IS CLEAR HERE ON YOUR ORDER. YOUR ORDER OF THE COURT SAYS THAT THE INVOICE WAS TO BE PRODUCED FROM THE PROVIDER, WHICH WOULD HAVE BEEN SITE TECH SYSTEMS AND THERE IS NO INVOICE. THEY HAVE A CREDIT CARD BILL FROM ONE OF THE DEFENDANTS AND THEY DIDN'T COMPLY BY SUBMITTING A CREDIT CARD STATEMENT. THERE IS A REQUIREMENT BECAUSE OF THE RULING OF THE COURT THAT THERE MUST BE A BILL FROM THE VENDER ITSELF AND THERE MUST BE A CHECK FOR PAYMENT. SHE HAS NOT COMPLIED AND THIS DOES NOT COMPLY WITH THE ORDER.

MS. COOK: WHEN YOU SAY "THIS" YOU'RE TALKING ABOUT DEFENDANT'S EXHIBIT 27?

MR. DURANT: CORRECT.

JUDGE HOWE: HAVE YOU MOVED TO ADMIT DEFENDANT'S EXHIBIT 27 YET?

MS. COOK: NOT YET.

Q MR. VEREEN --

A I'M MR. SMITH.

Q MR. SMITH, LET ME SHOW YOU WHAT WE'VE MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 28. IT'S ENTITLED SUBSCRIPTION INFORMATION FORM. IT'S GOT COMPANY NAME A&E. IT'S GOT A START DATE ON THIS PARTICULAR CONTRACT AS NOVEMBER 6TH 2006. YOU DON'T DENY, DO YOU, SIR, THAT A&E DIDN'T HAVE A CONTRACT AT LEAST BY NOVEMBER 6TH 2006 WITH SITE TECH TO PROVIDE THAT SERVICE --

MR. DURANT: YOUR HONOR, I OBJECT TO THE QUESTION. SHE SHOULD ASK HIM HAS HE EVER SEEN THIS BEFORE, BEFORE SEE ASKED HIM THE QUESTION.

MS. COOK: I HAVEN'T ASKED TO ADMIT IT YET.

MR. DURANT: IT DOESN'T MATTER. IF YOU'RE ASKING ABOUT A CONTRACT, YOU NEED TO ASK HIM IF HE'S EVER SEEN IT BEFORE. THAT'S THE OBJECTION OF THE PLAINTIFF.

JUDGE HOWE: ARE YOU ASKING TO ADMIT IT?

MS COOK: NOT AT THIS TIME, NO, MA'AM.

JUDGE HOWE: MR. SMITH, HAVE YOU EVER SEEN THIS DOCUMENT THAT MS. COOK IS SHOWING YOU?

A I'VE NEVER SEEN THIS SUBSCRIPTION INFORMATION FORM.

Q DO YOU DENY THAT A&E DID SUBSCRIBE TO SITE TECH AND THAT THEY DID IN TERMS OF BEING ABLE TO HAVE THAT SERVICE ENTER INTO SOME KIND OF CONTRACT OR ARRANGEMENT WITH SITE TECH TO PROVIDE THAT SERVICE FOR A FEE?

A I AGREE WE USED IT. ACCORDING TO THIS THING, THERE WAS SUBSCRIPTION INFORMATION AND THE COMPANY NAME WAS A&E.

Q IF YOU LOOK AT THE THIRD PAGE OF THAT DOCUMENT. IN ORDER TO USE THAT SYSTEM WAS THE CREDIT CARD OF MR. VEREEN'S, A MASTERCARD, 5474872750241679 USED AS A METHOD TO PAY FOR THE SITE TECH SERVICE FOR A PERIOD OF TIME.

A ACCORDING TO THIS, YES, MA'AM.

Q DO YOU HAVE ANY REASON TO DISPUTE WHAT IS SHOWN ON DEFENDANT'S EXHIBIT 28? THAT A CONTACT WAS ENTERED, THAT MR. VEREEN'S MASTERCARD WAS USED TO PAY FOR THE SERVICES THAT SITE TECH PROVIDED TO A&E?

A THERE IS SUBSCRIPTION INFORMATION AND IT APPEARS

TO BE CORRECT.

MS. COOK: YOUR HONOR, I MOVE TO ADMIT DEFENDANT'S EXHIBIT 28 AND DEFENDANT'S EXHIBIT 27.

MR. DURANT: SAME OBJECTION, YOUR HONOR. THERE IS NO PROOF THAT THIS SUBSCRIPTION AGREEMENT WAS GIVEN TO US BEFORE THE DECEMBER DEADLINE.

JUDGE HOWE: I UNDERSTAND.

MR. COOK: YOUR HONOR, I'M GOING TO NEED A RULING FROM THE COURT MAYBE...

JUDGE HOWE: WAS DEFENDANT'S 28 GIVEN TO PLAINTIFF'S ATTORNEYS WITHIN THE DEADLINE?

MS. COOK: YOUR HONOR, FIRST OF ALL, ANY DOCUMENT --

MR. DURANT: THE QUESTION HAS TO BE ANSWERED FIRST AS TO WHETHER SHE GAVE IT TO ME.

MS. COOK: YES. DEFENDANT'S 27 AND DEFENDANT'S 28 WERE GIVEN BEFORE THE DECEMBER 1ST DEADLINE INASMUCH AS MR. DURANT AND MRS. BRADY AND MR. SMITH PRIOR TO MY INVOLVEMENT IN THE CASE WENT AT LEAST ONCE BUT I BELIEVE

TWICE. BUT I MIGHT BE WRONG ON THAT. PLEASE LET ME FINISH MY THOUGHT.

JUDGE HOWE: YOU HAVEN'T SAID ANYTHING YET.

MS. COOK: I KNOW. BUT I WOULD LIKE TO TRY TO PRESENT MY ARGUMENT. THEN HE CAN TALK AND MAYBE I WILL COME UP WITH SOMETHING ELSE.

MR. DURANT: SHE'S VERY PERSISTENT.

MS. COOK: I AM AWARE AND I DON'T THINK MR. DURANT DENIES THE FACT THAT ON AT LEAST ONE OCCASION ME, MR. SMITH AND MRS. BRADY IN ORDER TO REVIEW THE A&E DOCUMENTS WENT TO THE OFFICES OF A&E TO REVIEW DOCUMENTS THAT WERE SET OUT IN THE CONFERENCE ROOM. THEY REVIEWED THOSE DOCUMENTS AND THEY CHOSE WHAT THEY WANTED TO GET. MY UNDERSTANDING IS MR. DURANT STAYED A LITTLE WHILE, BUT... AS WE LIKE TO DO, LEFT MR. SMITH AND MRS. BRADY THERE TO COMPLETE THE TASK. THEY DECIDED WHAT THEY WANTED TO MARK. THEY DIDN'T WANT EVERYTHING. AS I UNDERSTAND THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE,

THEY REQUIRE THAT YOU PRODUCE A DOCUMENT IN THE METHOD IN WHICH THEY ARE REGULARLY STORED.

JUDGE HOWE: I UNDERSTAND ALL THAT.

MS. COOK: SO, THEY WERE PRODUCED. IT IS MY... IN ADDITION TO THAT PRODUCTION BECAUSE THESE ARE RECORDS OF A&E. THESE ARE NOT RECORDS OF... THE CONTACT IS A RECORD OF A&E AS FAR AS EXHIBIT 27 IS CONCERNED, 28, SORRY, 28 IS CONCERNED. THAT'S A RECORD OF A&E. IT'S IN THAT DOCUMENT PRODUCTION. ADDITIONALLY, YOUR HONOR, WE PRODUCED...

JUDGE HOWE: NOT EXACTLY. 28 IS A DOCUMENT OF BOTH ARTHUR VEREEN AND A&E BECAUSE THE NAME OF THE SUBSCRIBER IS ARTHUR VEREEN AND THE COMPANY NAME IS A&E, BUT THE SUBSCRIBER IS ARTHUR VEREEN.

MR. DURANT: AND THE COMPANY THAT PAID IT IS PARK PLACE PROPERTIES.

MS. COOK: YOUR HONOR, IT'S OUR POSITION THAT THAT CONTRACT WAS IN THE GROUP OF DOCUMENTS THAT WERE PRODUCED

AT THE OFFICES OF A&E. BUT ADDITIONAL, YOUR HONOR, I WOULD LIKE AT THIS TIME TO INTRODUCE AS --

JUDGE HOWE: WHEN WAS THAT MEETING? DO YOU KNOW ABOUT WHEN? YOU MAY NOT KNOW EXACTLY WHEN AND THAT WAS SENT. MR. MACDONALD WAS STILL THE ATTORNEY OF RECORD FOR THE DEFENDANTS?

MS. COOK: YES, MA'AM. SEPTEMBER OF '09, AROUND THAT AREA OF TIME.

A IT WAS IN MARCH.

MS. COOK: I WOULD ALSO LIKE TO INTRODUCE AS EXHIBITS... PLAINTIFF'S EXHIBIT --

JUDGE HOWE: LET ME ASK YOU THIS, MS. COOK. IS THIS PART OF THE INFORMATION OR PART OF WHAT YOU CONSIDER ACCOUNTING INFORMATION TO SUPPORT YOUR CLAIM FOR SETOFF AND REIMBURSEMENT?

MS. COOK: YES, MA'AM. AND I WOULD ALSO LIKE TO INTRODUCE --

JUDGE HOWE: THAT'S PART OF... I KNOW WE HAD A STATUS CONFERENCE AND THAT IS EXACTLY WHAT PART OF THE ORDER THAT WAS RENDERED IN THE PRE-TRIAL ORDER

FILED OCTOBER THE 18TH FOR THE STATE. IT SAYS, "THE DEFENDANTS SHALL PRESENT EVIDENCE OF THE ACTUAL INVOICE FOR BILLS AND SERVICES AND LABOR RENDERED AND CANCELED CHECKS FOR PAYMENT MADE PURSUANT TO SUCH INVOICE. IF THE INFORMATION IS NOT DELIVERED TO PLAINTIFFS WITHIN SUCH DEADLINE, IT IS ORDERED THAT THAT SUCH ACCOUNTING RECORDS AND INFORMATION SHOULD NOT BE PRESENTED IN THE TRIAL OF THE CASE BY THE DEFENDANTS." THAT'S SUPPOSED TO BE DELIVERED BY DECEMBER 1ST 2010.

MS. COOK: YES, MA'AM. AND THE MARCH '09 PRODUCTION PRODUCED PART OF THIS, YOUR HONOR, PRODUCED PART OF THIS. ADDITIONALLY, IN THE REQUEST TO PRODUCE 8 NOTEBOOKS, WHICH WERE REQUEST TO PRODUCE RESPONSES 1 THROUGH 39 WERE PRODUCED. AS WELL AS...

JUDGE HOWE: I KNOW THERE ARE LOTS OF DOCUMENTS. IN FACT, I DON'T KNOW THAT I HAVE HAD A CASE WITH THIS MANY PIECES OF PAPER IN IT SINCE I'VE BEEN HERE. THAT'S BEEN A LITTLE OVER TWO

YEARS, BUT THERE'S STILL A LOT OF THESE PAPER.

MS. COOK: AS WELL AS FOUR NOTEBOOKS THAT WERE PRODUCED JUST PRIOR TO DECEMBER 1ST 2010.

JUDGE HOWE: WELL, MY QUESTION IS, WERE DEFENDANT'S 27 AND 28 IN ANY OF THOSE NOTEBOOKS?

MS. COOK: I DON'T KNOW IF THEY WERE IN --

MR. DURANT: YOUR HONOR, I THINK --

MS. COOK: NO, NO, NO. EXCUSE ME, IF I COULD! 27 WAS IN SOME OF THESE NOTEBOOKS.

MS. COOK: WAS DEFENDANT'S 28 IN THERE BECAUSE THAT'S THE SUPPORTING INVOICE?

MS. COOK: OH, 27 WAS PRODUCED PRIOR TO DECEMBER 1ST AND IS IN THE NOTEBOOK.

JUDGE HOWE: I UNDERSTAND THAT.

MR. DURANT: YOUR HONOR, THERE'S TWO NOTEBOOKS AND THE ONLY ONE I'M COUNTING IS THE ONE THAT SHE GAVE US IN COMPLIANCE WITH THE ORDER. NOT THE SECOND BOOK.

MS. COOK: AND WE'RE TALKING ABOUT THE FIRST BOOK.

MS. COOK: DEFENDANT'S 27 IS THE CHECK AND THE STATEMENT FROM THE CREDIT CARD COMPANY WHICH IS A REOCCURRING CHARGE FOR WHICH WE DON'T GET AN INDEPENDENT LITTLE RECEIPT.

MR. DURANT: NO TESTIMONY TODAY.

MS. COOK: THIS IS THE RECEIPT, YOUR HONOR. THAT WAS IN THE NOTEBOOKS PRODUCED PRIOR TO THE COURT ORDER. 28 WAS IN THE RECORDS OF A&E AT A&E'S OFFICE WHEN THE PLAINTIFFS WENT TO DO THEIR DOCUMENT INSPECTION.

MR. DURANT: WHO SAID IT WAS THERE? WHERE HAS THAT BEEN IN TESTIMONY?

JUDGE HOWE: THE PROBLEM IS YOU WEREN'T THE COUNSEL OF RECORD THEN BECAUSE MR. MACDONALD WAS THE COUNSEL OF RECORD. AND WE'VE GOT MR. DURANT WHO SAYS HE'S NEVER SEEN THIS BEFORE, IS THAT CORRECT?

MR. DURANT: I HAVE NEVER SEEN IT, YOUR HONOR.

MS. COOK: YES, SIR. HE'S HAS SEEN IT

BEFORE.

MR. DURANT: IT'S NOT ME WHO HAS TO SEE IT, YOUR HONOR. IT'S --

JUDGE HOWE: AND MR. SMITH SAID HE HAS NEVER SEEN IT BEFORE. MR. DURANT, YOU KNOW YOU HAVE NOT SEEN IT SINCE DECEMBER 1ST 2010?

MR. DURANT: YOUR HONOR, IF I COULD BE HEARD AND KIND OF EXPLAIN MY POSITION.

JUDGE HOWE: YOU MAY.

MR. DURANT: THERE WAS A LAWSUIT AGAINST THE DEFENDANT, A&E FOR MISAPPROPRIATION OF FUNDS. WE ADDED THE OTHER PARTIES BECAUSE THEY GOT THE MONEY AND IT WAS TRANSFERRED AND THEN THERE WAS A COUNTERCLAIM. SO, WE DID GO TO THEIR OFFICE, NOT BECAUSE THERE WAS A SUBPOENA. THOSE ARE OUR RECORDS TOO. WE ALMOST HAD TO GET A COURT ORDER TO DO IT. WE WENT IN THERE ONE DAY AND WE LOOKED AT RECORDS. THE CHECK HERE AND I'M TALKING ABOUT THIS ONE, THIS CHECK IS FOR PARK PLACE PROPERTIES.

JUDGE HOWE: YOU'RE POINTING TO

DEFENDANT'S 27?

MR. DURANT: YES. MAYBE THE COURT DISREGARDS THE ENTITIES, BUT MR. SMITH AND A&E WHO I REPRESENT DON'T. SO, PARK PLACE PROPERTIES CLAIMS THEY'RE ENTITLED TO A CREDIT. WELL, THEY HAVE GOT TO SHOW IT BECAUSE I DON'T TREAT THEM AS ONE IN THE SAME AND NEITHER DOES THE LAW. SO, IT'S INCUMBENT UPON THE DEFENDANT IN OUR DISCOVERY REQUEST THAT IF YOU'RE CLAIMING REIMBURSEMENT FOR A BILL AS PARK PLACE PROPERTIES THAT YOU PAID, SHOW ME AN INVOICE, NOT A CREDIT CARD FOR MR. VEREEN PERSONALLY OR ARTHUR VEREEN CONSTRUCTION COMPANY. WE WANT THE BILL AND WE WANT THE EVIDENCE OF PAYMENT BECAUSE WE NOT GOING TO GIVE MR. VEREEN PERSONALLY CREDIT FOR A PAYMENT MADE BY PARK PLACE PROPERTIES. WE THINK THESE ARE LEGAL ENTITIES. IF SHE'S GOT THESE TWO THINGS IN THE STUFF BY DECEMBER 2ND THEN, HEY, YOU MIGHT RULE WITH HER.

JUDGE HOWE: FOR THE RECORD, THOSE TWO

THINGS ARE DEFENDANT'S 27 AND DEFENDANT'S 28.

MR. DURANT: YES. BUT I DON'T THINK THOSE TWO... IF THEY HAD GIVEN THOSE THINGS, MY FEELING PROBABLY IS THAT MR. SMITH WOULD HAVE SAID, "YES, MAYBE I WILL APPROVE IT." BUT WE WOULD NEVER APPROVE THIS AS A CREDIT FOR PAYMENT FOR MR. VEREEN. IT WOULD BE A CREDIT FOR THE PERSON THAT PAID IT, PARK PLACE PROPERTIES. WE DON'T KNOW WHY THEY DID ALL THIS, BUT WE ARE GOING TO INSIST ON STRICT COMPLIANCE BECAUSE OF THESE PROBLEMS. YOU COULDN'T GET THIS CREDIT CARD BECAUSE IT'S NOT A CREDIT CARD OF A&E'S. THAT WOULD BE THE FIRST THING WE WOULD WANT TO KNOW: WAS IT OUR CREDIT THAT WAS BEING PLEDGED AND PAID WITH A CREDIT CARD AND DID SOMEONE ELSE PAY IT? I THINK WE WERE ALL AWARE OF THIS WHEN WE CAME OVER HERE. AND I THINK YOU SAID IF YOU WANT TO CREDIT PARK PLACE PROPERTIES, THEN PARK PLACE PROPERTIES GIVE ME THE CHECK WHERE YOU PAID IT

AND GIVE ME THE INVOICE SO WE CAN GIVE THE PROPER PERSON CREDIT OR IF YOU DON'T, YOU'RE NOT GOING TO GET IT. AND THAT'S OUT POSITION TO EVERY BILL.

MS. COOK: YOUR HONOR, FIRST OF ALL, EXHIBIT 27 IS PARK PLACE PROPERTIES, WHICH WAS A DIFFERENT ENTITY. THE BOTTOM OF MR. VEREEN'S CREDIT CARD PLUS THE REGISTER TAPE THAT ADDS ALL THE AMOUNTS THAT WERE ON THAT CREDIT CARD WERE PRODUCED TO MR. SMITH AND HIS COUNSEL BEFORE THE DECEMBER 1ST 2010 DEADLINE. I'M GOING TO FIND THAT... WE HAVE IT RIGHT HERE --

MR. DURANT: IF SHE SAID IT WAS THERE THEN, YOUR HONOR, I DON'T --

MS. COOK: NO, SIR! WE'VE GONE THIS FAR. IT NEEDS TO BE ON THE RECORD. I WILL SHOW YOU... AND I WOULD LIKE TO MARK THIS AS EXHIBIT... EACH OF THESE NOTEBOOKS THAT WAS PRODUCED BEFORE THAT DEADLINE. BECAUSE I CAN SEE THE WRITING ON THE WALL. IT'S GOING UP.

JUDGE HOWE: I DON'T KNOW YOU NEED TO PRODUCE IT AS LONG AS YOU PUT ON THE

RECORD WHERE IT WAS.

MS. COOK: NO, MA'AM. I WOULD LIKE TO PUT IT ALL ON THE RECORD.

JUDGE HOWE: I KNOW YOU'RE PUTTING IT ON THE RECORD NOW.

MS. COOK: NO. I WOULD LIKE TO MOVE THESE IN AN EXHIBIT, YOUR HONOR. BUT LET ME JUST SHOW IT TO MR. DURANT.

MR. DURANT: I AGREE WITH HER THAT EVERY EXHIBIT THAT SHE GOT THAT SHE GAVE ME ON DECEMBER 1ST WOULD BE AN EXHIBIT IN THIS CASE, NOT EVIDENCE. IT'S INCUMBENT UPON THESE DEFENDANTS TO ESTABLISH THAT THEY PAID THESE CLAIMS.

JUDGE HOWE: THAT'S DEFENDANT'S 27. NOW, WAS DEFENDANT'S 28 PRODUCED?

MS. COOK: EXHIBIT 28 WAS IN THE DOCUMENT PRODUCTION AT THE OFFICES OF A&E IN MARCH OF 2009 OR SEPTEMBER 2009 WHEN COUNSEL WENT TO LOOK AT DOCUMENTS.

JUDGE HOWE: HOW DO YOU KNOW THAT, MS. COOK? BECAUSE MY CLIENT HAS ADVISED ME THAT ALL THE DOCUMENTS OF A&E THAT

WERE IN THEIR POSITION WERE IN THAT OFFICE. BECAUSE YOU WEREN'T THERE --
MS. COOK: NO, MA'AM. I WAS NOT. AND I DON'T BELIEVE MR. DURANT WAS THERE BUT FOR A SHORT PERIOD OF TIME.
MR. DURANT: YOUR HONOR, IF THAT WAS THE CASE, WE COULD TELL GENERAL MOTORS TO... ASK THEM FOR DOCUMENTS AND THEY COULD SAY, YOU GOT IT IN THERE. I'M NOT BLAMING HER THE RULE... WE SENT A DISCOVERY REQUEST FOR THIS INFORMATION THAT SAID, "TELL ME WHAT YOU CLAIM AS A CREDIT." AS TO THIS ONE, IT WOULD BE IN THE CREDITS FOR PARK PLACE PROPERTIES AND IT WAS NOT IN THE RESPONSES. I BELIEVE WE HAD A COURT ORDER BECAUSE WE WERE TOLD... I'VE GOT THE RECORDS. I'VE GOT THE CHECK AND THE BACKUP FOR IT. AND WE DID NOT GET IT AND WE WENT TO COURT TO SAY, "WAIT A MINUTE. AT SOME POINT IN TIME THIS IS AN ACCOUNTING LAWSUIT. WE HAVE GOT TO GO THROUGH AND STRAIGHTEN THIS OUT. AND THEY DON'T HAVE AN ACCOUNTANT." WE ATTEMPTED TO COMPLY WITH YOUR ORDER

AND THAT WAS NOT REDUCED.
MS. COOK: YOUR HONOR, THIS NOTEBOOK... YOUR HONOR, EXHIBIT 27, WHICH IS THE CHECK AND THE INVOICE, THE CHECK AND THE INVOICE, WHICH IS... ONE OF THE ITEMS YOUR ORDER ADDRESSES.
MR. DURANT: THAT'S NOT AN INVOICE.
MS. COOK: WELL, IT'S OUR POSITION THAT THAT IS THE INVOICE! I UNDERSTAND MR. DURANT WOULD LIKE A --
JUDGE HOWE: NO. DEFENDANT'S 27 IS A CREDIT CARD STATEMENT.
MS. COOK: THAT SHOWS THE REOCCURRING CHARGE FOR THE SITE TECH SYSTEM, LLC CHARGE.
JUDGE HOWE: SO, THAT'S WHAT YOU'RE SAYING?
MS. COOK: YES, MA'AM. ALL I CAN PRODUCE IS WHAT... YOUR HONOR, WE COULD NOT GO TO SITE TECH OR TO MASTERCARD AND SAY IN 2006, "MASTERCARD AND SITE TECH, WE WERE CHARGED A REOCCURRING CHARGE THAT WE GAVE YOU AT THE BEGINNING OF THE CONTRACT. A CREDIT CARD NUMBER FOR

THAT AND YOU WOULD BILL US EVERY MONTH." THAT MR. SMITH HAS NOW SAID HE DOES NOT DISPUTE THAT SITE TECH WAS A PROGRAM THAT WAS IN THEIR OFFICE AND UTILIZED BY A&E AS WELL AS OTHERS. I MEAN, I DO NOT BELIEVE THAT THE COURT'S ORDER WENT SO FAR NOR DO THE RULES OF THE LAWS OF EVIDENCE REQUIRE THAT WE PRODUCE EVIDENCE IN A FORM THAT THE PLAINTIFF REQUESTS. OUR POSITION IS THAT THIS IS A RECEIPT OR A STATEMENT OR WHATEVER YOU WANT TO CALL THE DOCUMENT, BUT IT IS A DOCUMENT BY A THIRD PARTY THAT VERIFIES A CHARGE. ATTACHED TO IT IS A CHECK THAT INCLUDES AN AMOUNT THAT PAID THAT LINE ITEM CHARGE FOR A SERVICE IN THIS CASE THAT THE PLAINTIFF HAS ADMITTED WAS A SERVICE THAT WAS PROVIDED FOR AND USED BY ON A RECURRING BASIS, A&E.

JUDGE HOWE: WELL, DEFENDANT'S 27 CAN COME IN FOR WHATEVER IT'S WORTH. DEFENDANT'S 28 IS NOT COMING IN BECAUSE IT DOESN'T COMPLY WITH THE

PRE-TRIAL ORDER. AND YOUR CLIENT CAN TESTIFY LATER WHEN YOU PUT HIM UP AS TO DEFENDANT'S 27.

MS. COOK: YOU MEAN 28?

JUDGE HOWE: NO. 28 IS NOT COMING IN BECAUSE IT DOES NOT COMPLY WITH THE PRE-TRIAL ORDER.

MS. COOK: JUST SO THAT THE RECORD IS CLEAR, YOUR HONOR. I UNDERSTAND YOUR HONORS' RULING. I JUST WANT THE RECORD TO BE CLEAR. 28 IS NOT COMING IN BECAUSE IT DOES NOT COMPLY WITH YOUR ORDER IN TERMS OF... THAT ANYTHING... ANYTHING... JUST SO WE CAN CLARIFY THIS AND HOPEFULLY WE WILL SHORT CIRCUIT SOME THINGS DOWN THE ROAD. IF IT WASN'T PRODUCED IN ONE OF THESE NOTEBOOKS, DOES IT --

JUDGE HOWE: IF YOU CAN PROVE THAT IT WAS PRODUCED, YOU KNOW, MS. COOK. IT WOULD'VE BEEN NICE IF SOMEBODY HAD BATE STAMPED ALL THESE DOCUMENTS. THAT WAY, WE WOULDN'T HAVE A PROBLEM TODAY. SO, FOR WHATEVER REASON, THEY WEREN'T BATE STAMPED... THAT'S WHAT

MOST ATTORNEYS DO WHEN YOU HAVE A DOCUMENT CASE IS BATE STAMP THE DOCUMENTS AND THAT WASN'T DONE, MS. COOK, AND I DON'T KNOW WHY. BUT YOU CAN'T GO BACK AND DO IT NOW, BUT IT WASN'T DONE. I'VE GOT ONE SIDE OBJECTING TO THIS DOCUMENT SAYING, "I'VE NEVER SEEN IT" AND YOUR SIDE SAYING, "YES, IT WAS PRODUCED." MS. COOK, YOU WEREN'T THERE, SO YOU DON'T KNOW. I'M GOING TO DISALLOW IT FOR THAT REASON AND FOR THE REASON THAT IT WAS NOT PRODUCED IN YOUR NOTEBOOK. SO, IF IT WAS NOT PRODUCED IN THE NOTEBOOK AND YOU CAN'T ACTUALLY PROVE IT WAS PRODUCED, I'M DISALLOWING IT PERIOD.

MS. COOK: SO, DO I UNDERSTAND THAT THE COURTS' POSITION HEREAFTER MAY BE THAT ANYTHING OFFENSIVE TO THE PLAINTIFFS' COUNSEL... I'M NOT QUESTIONING... BECAUSE MR. DURANT WASN'T THERE THE WHOLE TIME.

JUDGE HOWE: HE WASN'T THERE AT THE MEETING THE WHOLE TIME. THAT'S

HEARSAY, MS. COOK.

MS. COOK: CORRECT. IT'S MY UNDERSTANDING THAT HE DIDN'T LOOK THROUGH ALL THE DOCUMENTS AT THAT TIME.

JUDGE HOWE: NOW, MS. COOK --

MS. COOK: SO I KNOW... TO BE PERFECTLY HONEST, I DON'T KNOW IF ME OR MR. DURANT HAD BEEN THERE THE WHOLE TIME AT THIS POINT AND COULD SAY EXACTLY WHAT WAS THERE OR WHAT WASN'T. BUT IS IT THE COURTS' POSITION THAT ANYTHING THAT'S NOT IN THE NOTEBOOKS THAT --

MR. DURANT: THE FIRST SET OF NOTEBOOKS. YOU HAD TWO SETS.

MS. COOK: NO, SIR! WE HAVE THREE SETS. WE HAVE THE DOCUMENTS PRODUCTION THAT WAS DONE AT THE OFFICE, WHICH AREN'T CONTAINED IN ANYTHING EXCEPT... I DO HAVE COPIES OF EVERYTHING THEY PULLED OUT OF THAT. WE WILL BE GOING BACK! BEING EXHIBIT 28. WE HAVE THAT DOCUMENT PRODUCTION. WE HAVE 8 BINDERS OF DOCUMENTS

PRODUCTION. WE HAVE FOUR BINDERS OF DOCUMENT PRODUCTION AFTER YOUR HONOR'S ORDER OF OCTOBER AND BEFORE THE DECEMBER 1ST DEADLINE.

JUDGE HOWE: IS THAT WHAT MR. DURANT IS CALLING THE FIRST?

MR. DURANT: YES, MA'AM.

MS. COOK: WHO KNOWS? THEN AFTER THE DECEMBER 1ST DEADLINE AND WE MET WITH THOSE DOCUMENTS, MY CLIENT WENT BACK AND REORGANIZED WHAT WAS IN THAT SET IN A WAY THAT TRACKED MRS. BRADY'S NOTEBOOKS --

JUDGE HOWE: THOSE ARE THE SAME SET OF DOCUMENTS JUST IN A DIFFERENT ORDER?

MR. DURANT: NO, MA'AM.

MS. COOK: NO, NOT AT ALL.

JUDGE HOWE: OKAY. I REMEMBER THAT FROM YESTERDAY OR THE DAY BEFORE.

MS. COOK: THAT SET THAT WE CAME BACK WITH, AND THEY WERE GIVEN A FULL SET OF THOSE THAT WERE REORGANIZED TO TRACK MRS. BRADY'S REPORT. ADDITIONAL DOCUMENTS HAVE BEEN LOCATED AND I UNDERSTAND THE COURTS' POSITION THAT

THE ADDITIONAL... AS I UNDERSTAND THE COURTS' RULING, THOSE ADDITIONAL DOCUMENTS THAT WERE PUT IN THE SECOND SET OF NOTEBOOKS AFTER YOUR ORDER, THE SECOND SET AFTER THE OCTOBER ORDER, THOSE ADDITIONAL DOCUMENTS BROUGHT IN THAT WERE PUT IN THAT SHOWED... THOSE DOCUMENTS CANNOT COME IN, THOSE ADDITIONAL DOCUMENTS?

JUDGE HOWE: WHEN WERE THOSE DOCUMENTS PUT IN?

MS. COOK: YOUR HONOR, WE MET ON DECEMBER... THAT SET OF NOTEBOOKS WAS GIVEN TO THEM ON DECEMBER 15TH I BELIEVE, YOUR HONOR. SO, 14 DAYS AFTER...

MR. DURANT: I THINK THEY WERE GIVEN TO US AT THE BEGINNING... WE HAD THREE DAYS THAT WE MET, AND THEY WERE GIVEN TO US ON THE DAY WE MET.

MS. COOK: THE FIRST DAY?

MR. DURANT: YES. AND WHAT WE WERE DOING IS TRYING TO LOOK AT A NEW DOCUMENT. I SAID, "WAIT A MINUTE." THEN WE FOUND OUT THERE WERE SOME

INVOICES THAT HAD BEEN ADDED AND WE SAID, "WE CAN'T DO THIS. WE'RE SHORT OF TRIAL. WE'VE GOT TO LOOK AT WHAT YOU GAVE US. IF IT WASN'T IN THERE WE CAN'T DO IT."

MS. COOK: I'M NOT EXACTLY SURE OF THE DAY, BUT I THINK THOSE THREE DAYS MAY HAVE BEEN DECEMBER 15, 16, 17. THEY WERE RIGHT IN THERE, BUT --

JUDGE HOWE: BUT SOMETIME AFTER THE CUTOFF?

MS. COOK: I BELIEVE IT WAS 14 TO 15 DAYS AFTER THE CUTOFF. I ACKNOWLEDGED THAT THERE ARE SOME DOCUMENTS WITHIN THAT SET OF NOTEBOOKS THAT I WILL PROFFER AS EVIDENCE. THAT DID NOT MEET YOUR HONOR'S OCTOBER ORDER DEADLINE OF DECEMBER 1ST. BUT TO SAY THAT THEY HAVEN'T RECEIVED THEM OR SEEN THEM IS TO MISCHARACTERIZE WHAT HAS OCCURRED.

JUDGE HOWELL: I UNDERSTAND MR. DURANT'S POSITION. IF I WAS SITTING IN HIS SHOES, I MIGHT VERY WELL TAKE THE SAME POSITION.

MR. DURANT: I CAN'T REMEMBER ANYTHING SHE GAVE ME WITHOUT LOOKING FOR IT. WE COULDN'T DO IT. WE HAVE TO GO BACK AND GET THE BOOK.

JUDGE HOWE: I UNDERSTAND.

MS. COOK: YOUR HONOR, TO SAY THAT THEY HAVEN'T SEEN IT... WHAT ACTUALLY OCCURRED --

JUDGE HOWE: THEY DIDN'T SEE IT BEFORE DECEMBER 1ST?

MS. COOK: CORRECT. THEY CHOSE TO SAY WE DIDN'T SEE IT BEFORE DECEMBER FIRST. WHETHER YOU GOT A BILL, A RECEIPT, A STATEMENT AND PROOF OF PAYMENT AND A CHECK FROM THE ENTITY, WE ARE NOT GOING TO CONSIDER IT. NOW, I WILL SAY I BELIEVE MR. SMITH, EVEN IN A COUPLE OF THOSE INSTANCES, AND I BELIEVE IN A COUPLE OF THOSE INSTANCES, THEY... WE WERE GIVEN CREDIT FOR THOSE ITEMS WHERE THAT PROOF WAS PROVIDED AFTER THE DATE AND PART OF THAT CREDIT IS GIVEN BY MRS. BRADY AT THE REQUEST OF MR. SMITH, WHO DID AGREE WHEN WE WERE ALL SITTING IN

THERE TRYING TO GO THROUGH IT. "OH, YES, NOW THAT I SEE THIS IN A DOCUMENT THAT WAS PRODUCED AFTER DECEMBER 1ST, 14 OR 20 DAYS LATER THAN THAT, I DO AGREE." THIS IS... YOU KNOW. I BELIEVE THAT JACK FROST MATTER WAS ONE OF THOSE.

MR. DURANT: WE WILL TAKE THOSE BACK IF SHE --

MS. COOK: NO. WE WANT THOSE CREDITS, YOUR HONOR. AND... AND... AND... I... I... THERE WERE ITEMS AND WE WENT THROUGH THEM. AND FRANK'S POSITION FOR HIS CLIENT AS I UNDERSTAND IT WOULD BE IS, "WELL, IT DIDN'T GET HERE BY THE CUTOFF SO WE'RE NOT GOING TO CONSIDER IT." BUT IN SOME CASES MR. SMITH DID SAY, "THAT WAS EXPENSE. I SEE IT NOW. I HAVEN'T SEEN IT BEFORE, YEAH. THAT NEEDS TO BE BACKED OUT OR GIVEN CREDIT FOR IT, YES. I DON'T EVEN REMEMBER WHERE IT WAS." DO I UNDERSTAND YOUR HONOR TO SAY THAT IF THE ACTUAL DOCUMENT PER YOUR ORDER WAS NOT PRODUCED BY DECEMBER 1ST THE

DOCUMENT CANNOT COME IN AS EVIDENCE?
JUDGE HOWE: YES. WE HAD TO HAVE A CUTOFF AND THAT WAS THE CUTOFF. AS I UNDERSTAND THAT WAS THE CUTOFF THAT Y'ALL AGREED TO IN MY OFFICE IN OCTOBER.
MS. COOK: I BELIEVE WE WERE ACTUALLY IN COURT, YOUR HONOR.
JUDGE HOWE: OKAY. MAYBE WE WERE IN THE COURTROOM. I SAID, "LET ME KNOW IF Y'ALL THINK YOU CAN COMPLY WITH THAT DECEMBER 1ST DATE. I DON'T WANT TO PUT ANY EXTRA PRESSURE ON YOU. JUST SET A DATE THAT YOU THINK YOU CAN COMPLY WITH. I UNDERSTAND THERE ARE A LOT OF DOCUMENTS." I THINK Y'ALL EVEN SAID YOU JUST DON'T EVEN KNOW HOW MANY DOCUMENTS.
MR. DURANT: ENOUGH FOR TWO OR THREE BONFIRES, YOUR HONOR.
MS. COOK: YOUR HONOR, I DON'T DISPUTE THAT. ALL I CAN TELL YOU IS WE USED OUR BEST EFFORTS. WE WERE NOT TRYING TO HIDE ANYTHING.
JUDGE HOWE: OKAY.

MS. COOK: YOU KNOW THIS IS A DIFFICULT CASE. AND MR. DURANT, I UNDERSTAND... BUT I WOULD ALSO LIKE TO PUT ON THE RECORD THAT, YOU KNOW, I DON'T BELIEVE IT'S INCUMBENT UPON THE DEFENDANTS IN THIS CASE TO DO THE PLAINTIFF'S DISCOVERY WORK IN TERMS OF... YES. WE'VE GOT TO PRODUCE IT AND I AGREE WITH THAT. SO, THAT THEY ARE NOT BLIND SIDED, BUT AS I UNDERSTOOD YOUR HONOR'S ORDER, IT WASN'T THAT... IT DIDN'T MEAN IT WASN'T... I DID NOT AND I DO NOT BELIEVE YOUR HONORS'S ORDER WENT SO FAR AS TO SAY IF YOU DON'T PRODUCE EVIDENCE OF... FROM A THIRD PARTY, A BILL OR AN INVOICE AND PROOF OF PAYMENT OF THAT INVOICE BY DECEMBER 21ST THAT THAT IS NOT A MATTER... THE COURT IN DOING AN ACCOUNTING WILL EVEN CONSIDER. I UNDERSTAND YOUR HONORS' RULING TO SAY THE DOCUMENTS CAN'T COME IN, BUT DID NOT AND I DO NOT BELIEVE YOUR ORDER GOES SO FAR TO SAY YOU CAN'T CONSIDER

THE TESTIMONY WITH REGARD TO IT.

JUDGE HOWE: IT SAYS, "ACCOUNTING RECORDS AND INFORMATION SHALL NOT BE PRESENTED IN THE TRIAL OF THIS CASE."

MR. DURANT: YOUR HONOR, THIS APPLIES TO CREDITS CLAIMED BY AN ENTITY OTHER THAN THE PLAINTIFF THAT WAS THE BUSINESS WE WERE DEALING WITH AND PARK PLACE PROPERTIES IS SAYING, "HEY, WAIT A MINUTE. WE GET A CREDIT OF ALL THE VEREENS IF WE MADE A PAYMENT FOR A&E." IT'S INCUMBENT UPON PARK PLACE TO ESTABLISH THAT, NOT A&E. WE DON'T HAVE TO... WE CAN'T PROVE THAT HE DID SOMETHING FOR US, BUT THEY ARE CLAIMING THE BURDEN OF PROOF IS ON THAT DEFENSE.

JUDGE HOWE: I THINK PART OF THE PROBLEM IN THIS CASE WAS MR. DURANT AND MR. THOMAS REPRESENT A&E AND YOUR CLIENTS REALLY HAD ALL OF A&E'S RECORDS. IS THAT NOT PART OF THE PROBLEM?

MR. DURANT: CORRECT.

MS. COOK: WELL, THAT IS WHERE THE

RECORDS WERE SUPPOSEDLY HOUSED, BUT I BELIEVE, YOUR HONOR, THERE'S PLENTY OF TESTIMONY IN THE RECORD BY MR. SMITH YESTERDAY THAT HE RAN OFF MANY DOCUMENTS. SO, WHAT WAS OR WAS NOT LEFT IN OUR OFFICE WHEN MR. SMITH WAS STILL THERE... HE'S PART OF A&E, YOUR HONOR. I TOTALLY UNDERSTAND THAT AND I'M NOT SAYING HE WASN'T ENTITLED TO THOSE DOCUMENTS. HE CLEARLY WAS ENTITLED TO THEM. HE WAS PRESIDENT OF THE COMPANY. HE WAS JUST AS ENTITLED TO THEM AS THEM BEING STORED AT THE ACTUAL PHYSICAL OFFICES OF A&E WHICH, I GUESS, DIDN'T HAVE TO PAY RENT TO THE LANDLORD OF THAT OFFICE. SO, YOU KNOW, I CAN'T SAY WHAT MR. SMITH AS THE PRESIDENT OF THE COMPANY HAD AS WELL. AND I BELIEVE, YOUR HONOR, IF YOU READ THE ANSWER AND COUNTERCLAIMS OF MY PRIOR PREDECESSOR IN THIS CASE, THAT THE CLAIMS BROUGHT ADDITIONALLY... IN THE DEFENSES AND IN THE COUNTERCLAIMS, MR. VEREEN AS AN OFFICER OF A&E, ALSO REQUESTED THAT AN

ACCOUNTING BE DONE IN THIS MATTER. SO, BOTH OF THESE GENTLEMEN ARE SUING ON BEHALF OF A&E. THEY BOTH WANT AN ACCOUNTING.

JUDGE HOWE: I UNDERSTAND.

MS. COOK: FOR OUR HANDS TO BE TIED IN A COURT OF EQUITY TO DO AN ACCOUNTING, A TRUE ACCOUNTING FOR BOTH THESE GENTLEMEN --

JUDGE HOWE: I DON'T THINK YOUR HANDS ARE TIED. GET AN ACCOUNTANT.

MS. COOK: WELL, YOUR HONOR, IF YOU'RE SAYING NOW... MAYBE I'M UNDERSTANDING WHAT YOUR HONOR'S RULING IS, BUT IF YOU'RE SAYING NOW THAT NO EVIDENCE OF PAYMENTS MADE BY OTHERS ON BEHALF OF A&E, FOR A&E OBLIGATIONS OTHER THAN PAYMENTS MADE BY OTHERS ON BEHALF OF A&E FOR WHICH SOME DOCUMENTS HAVE BEEN PROVIDED PRIOR TO DECEMBER 1ST 2010. ANYTHING OTHER THAN THAT, NO TESTIMONY AND NO DOCUMENTARY EVIDENCE CAN BE INTRODUCED, I BELIEVE THAT MY HANDS ARE TIED. I DO UNDERSTAND THE COURTS' POSITION --

JUDGE HOWE: BUT I DIDN'T TIE THEM, MS. COOK. I DIDN'T TIE THOSE HANDS. YOUR CLIENT MAY HAVE TIED THEM BY NOT GIVING YOU THIS DOCUMENT TO PRODUCE TO THE PLAINTIFF'S ATTORNEYS. I DIDN'T TIE THOSE HANDS.

MS. COOK: YOUR HONOR, I RESPECTFULLY UNDERSTAND YOUR POSITION. AND I UNDERSTAND YOUR POSITION WITH REGARD TO THE DOCUMENTS, BUT I RESPECTFULLY DISAGREE WITH THE INTERPRETATION OF YOUR ORDER THAT WOULD GO SO FAR AS TO SAY THAT NO TESTIMONY, AND I UNDERSTAND IT'S DISPUTED TESTIMONY, BUT NO TESTIMONY COULD COME IN ABOUT THAT... ABOUT THOSE EXPENSES PAID BY THIRD PARTIES BECAUSE, YOUR HONOR, TO RULE THAT WAY IS TO EVEN SAY THAT NO TESTIMONY CAN COME IN BY MY CLIENT THAT IS UNSUPPORTED BY A DOCUMENT TO BE CONSIDERED IN THIS ACCOUNTING. NOW, THE WEIGHT YOU PUT ON TESTIMONY WITHOUT SUPPORTING DOCUMENTATION IS ONE THING. BUT TO DISALLOW TESTIMONY ABOUT IT AT ALL AND MY ABILITY TO

CROSS-EXAMINE MR. SMITH AND HIS SENSE OF DECENCY AND JUSTICE MAY DECIDE JUST AS HE DID WHEN WE MET IN MRS. BRADY'S OFFICE THAT EVEN THOUGH A PARTICULAR INVOICE OR PARTICULAR CHECK OR PROOF OF PAYMENT WAS NOT PRODUCED BY DECEMBER 1ST, BUT HE HAS SUBSEQUENTLY SEEN IT AND/OR AGREED, YOU KNOW, THIS IS A LOT OF STUFF AND, YES. THAT IS A LEGITIMATE EXPENSE THAT WAS A&E'S. AND THAT COULD BE ONE PART OF WHAT HE AGREES. BUT I DON'T AGREE THAT IT WAS PAID FOR BY A THIRD PARTY BECAUSE I DON'T HAVE PROOF OF THAT, BUT MY CLIENT CAN TESTIFY ABOUT IT. BUT IF YOUR HONOR WON'T LET PROOF OF PAYMENT COME IN, WHICH I... THE PROOF OF PAYMENT PART IS PROBABLY NOT GOING TO BE AN ISSUE, YOUR HONOR, BECAUSE THE PROOF OF PAYMENT... AND I THINK MR. DURANT MIGHT NOT BE ABLE TO SAY THAT RIGHT THIS MINUTE, BUT THE PROOF OF PAYMENT. THEY GOT ALL THE CHECKING ACCOUNT STATEMENTS FROM A&E, PARKWAY OFFICES, PARK PLACE PROPERTIES, AND

ARTHUR VEREEN CONSTRUCTION COMPANY.

MR. DURANT: YOUR HONOR, FROM THE PLAINTIFFS, WE DON'T KNOW THAT WE HAVE ALL OF ANYTHING. I KNOW THAT SHE HAS NOT DECEIVED ME ON ANYTHING, BUT TO SAY THAT WE BELIEVE MR. VEREEN WITH WHAT HE HAS DONE IN THIS CASE WOULD BE RIDICULOUS. MY CLIENT DOES NOT BELIEVE IT AND HE WANTS PROOF. WE CAME HERE FOR THE PROOF. WE ARE NOT SUBMITTING MR. SMITH UP HERE TO SAY THAT I WANT CREDIT FOR $12,000 THAT I PAID OUT OF MY INDIVIDUAL ACCOUNT THAT I WON'T GIVE YOU A CHECK. WE HAVEN'T DONE IT. NOW, IF HE WANTS CREDIT --

MS COOK: BECAUSE MR. SMITH DIDN'T HAVE ANY MONEY ON --

MR. DURANT: IF YOU WOULD PLEASE LET ME FINISH! IF HE WANTS CREDIT FROM A COMPANY AND IT'S NOT TO THE COMPANY THAT MR. SMITH OWNS, IT'S A VERY SIMPLE REQUIREMENT THAT THE COURT HAS. GIVE ME THE INVOICE AND THEN WE WILL SEE WHO IT'S PAYABLE... WHO INCURRED THE BILL AND THEN WHO PAID IT AND IF

IT'S THERE AND APPROPRIATE, EITHER WE WILL AGREE OR YOU CAN RULE ON IT. BUT WITHOUT THAT, HE CAN'T JUST GO AND SAY IN THIS CASE, "WELL, I PAID $2 MILLION MORE THAN I TOOK OUT." THAT'S WHY THEY NEEDED AN ACCOUNTANT. WE CAN'T DO THIS FOREVER.

JUDGE HOWE: IT IS AN ACCOUNTING CASE. AND YOU DO NEED TO HAVE... IF YOU PAID A BILL, WHOEVER YOU IS. I MEAN, THE ENTITIES ARE MAKING MY HEAD SPIN. A&E AND YOU'VE GOT TWO SHAREHOLDERS. I DON'T KNOW WHY ALL THESE OTHER ENTITIES ARE INVOLVED IN THIS. THEY SHOULDN'T BE BUT THEY ARE. YOU NEED TO HAVE A CHECK AND YOU NEED TO HAVE AN INVOICE. THAT'S WHAT THE PRE-TRIAL ORDER WAS ALL ABOUT. AND THAT'S WHY WE HAVE A CUTOFF DATE. IT SHOULDN'T BE THAT COMPLICATED EXCEPT YOU BROUGHT IN ALL THESE OTHER ENTITIES. AND SO, THAT'S WHY WE HAVE A CUTOFF DATE AND WE NEED TO STICK TO IT.

MR. DURANT: THANK YOU.

MS. COOK: YES, MA'AM. I UNDERSTAND.

I CLEARLY AGREE THAT THE CHECK HAS NOT BEEN PRODUCED BY THE CUTOFF DATE, BUT IT MAY BE THAT THERE ARE IN EXISTENCE WHICH THERE IS A CHECK PRODUCED IN THE REALM OF YOUR ORDER, SUCH THAT IT WOULD BE ADMISSIBLE AND IT MAY ALREADY BE IN. BUT THERE MAY BE INSTANCES... THERE ARE INSTANCES IN WHICH WE GOT THE BACKUP INVOICE OR WHATEVER RECEIPT AFTER YOUR HONOR'S CUTOFF DATE. I UNDERSTAND YOUR HONOR]S RULING THAT ANYTHING THAT WAS PRODUCED AFTER THAT DECEMBER 1ST DATE IN TERMS, PAYMENT OR THE INCURRING OBLIGATION, THE RECEIPT, THAT DOCUMENT CANNOT COME IN. BUT DOES IT GO SO FAR TO SAY MY CLIENT CAN'T TESTIFY ABOUT THAT OBLIGATION BEING INCURRED? I THINK THAT'S... MY ARGUMENT WOULD BE, YOUR HONOR, THAT THAT GOES TO WEIGH. YOUR HONOR MAY TOTALLY DISCOUNT IT.

JUDGE HOWE: I THINK YOUR CLIENT CAN PROBABLY TESTIFY BECAUSE I THINK IT PROBABLY DOES GO TO WEIGHT. WITHOUT THE DOCUMENT, I MEAN, WE HAVE SO MANY

ENTITIES INVOLVED. I DON'T KNOW HOW MUCH WEIGHT I WOULD GIVE TO THE TESTIMONY.

MS. COOK: YES, MA'AM. WITH THAT SAID...

MR. DURANT: THAT WAS VORACIOUS ARGUMENT THAT DEMANDS A BREAK.

MS. COOK: BEFORE WE TAKE A BREAK, CAN I BE CLEAR? LET'S GET THE RECORD CLEAR ON YOUR HONOR'S RULING. AS I UNDERSTAND YOUR HONOR'S RULING 27, WHICH IS THE BOTTOM PART OF THE CHECKING ACCOUNT STATEMENT THAT SHOWS THE CHARGING OF THE SITE TECH MONTHLY CHARGE... WHATEVER THE CHARGE IS AND THE TOP HALF OF THE EXHIBIT SHOWS A CHECK THAT INCLUDES AN AMOUNT SUFFICIENT TO PAY THAT BILL, THAT CAN BE ADMITTED? BUT DEFENDANT'S EXHIBIT 28 CANNOT BE ADMITTED AND IT CANNOT BE ADMITTED BECAUSE WE CANNOT VERIFY TO THE COURT... I CAN VERIFY TO THE COURT IT WAS NOT IN ANY OF THE NOTEBOOKS AND OTHER THAN BEING AT THE OFFICES AT THE SEPTEMBER '09 DOCUMENT REVIEW, WHICH

WE CANNOT VERIFY THAT IT WAS PRODUCED, THEN 28 CANNOT COME IN?

JUDGE HOWE: YES. APPARENTLY 27 WAS PRODUCED SOME TIME AGO FOR WHATEVER IT'S WORTH. I MEAN, I DON'T KNOW HOW YOU CAN --

MR. DURANT: 27 WOULD STILL HAVE TO BE AUTHENTICATED BY THE DEFENDANT.

JUDGE HOWE: RIGHT. BUT I'M NOT SURE THIS WITNESS CAN AUTHENTICATE IT.

MS. COOK: OKAY.

JUDGE HOWE: YOU MAY HAVE TO PUT THAT IN UNDER MR. VEREEN OR MRS. SISSON. I'M NOT SURE MR. SMITH IS THE PROPER WITNESS TO PUT IT IN UNLESS MR. DURANT WOULD AGREE TO IT.

MR. DURANT: NO. HER NOTEBOOKS ARE NOT INTO EVIDENCE. I WILL AGREE THE NOTEBOOKS THAT SHE DELIVERED TO ME BY DECEMBER 1ST CAN BE MARKED AS AN EXHIBIT. THEY CANNOT GO INTO EVIDENCE UNDER RULE 8.

JUDGE HOWE: UNTIL THEY ARE AUTHENTICATED?

MR. DURANT: CORRECT.

MS. COOK: SO, 27 AND 28 AS I UNDERSTAND THE COURT'S RULING RIGHT NOW ARE NOT ADMITTED INTO EVIDENCE? YOUR HONOR, CAN WE TAKE A BREAK NOW AND COULD WE PERHAPS TAKE A LITTLE BIT LONGER BECAUSE WHAT I WOULD LIKE TO DO DURING THE BREAK IS MARK THE NOTEBOOKS. I UNDERSTAND THAT I CAN MARK THEM AS EVIDENCE, BUT THEY WON'T BE IN EVIDENCE YET, BUT --

JUDGE HOWE: THEY HAVEN'T BEEN MARKED YET.

MS. COOK: OR WE CAN WAIT AND I CAN DO THAT AT THE LUNCH BREAK.

JUDGE HOWE: OKAY. ABOUT A 10 MINUTE BREAK.

(OFF THE RECORD).

Q MR. SMITH, I WANT TO GO BACK TO DEFENDANT'S EXHIBIT 23, WHICH IS MR. VEREEN'S RESPONSE TO YOUR DEMAND LETTERS THAT HAVE SOME ANNOTATION BY YOU THEM AND ON THE THIRD PAGE... IF YOU WOULD FLIP OVER TO THE THIRD PAGE. MR. SMITH, UNDER THE CATEGORY THAT SAYS, "SALARY EXPENSES" ONE OF THE THINGS ONCE YOU GO THROUGH THE INDIVIDUAL'S NAME, THE ANNUAL BONUSES AND HOLIDAY PARTIES, IT'S GOT

RECEIPTS WRITTEN. IS THAT YOUR HANDWRITING?
A YES, MA'AM.
Q LET ME ASK YOU, DID A&E GIVE HOLIDAY PARTIES AND BONUSES TO EMPLOYEES AND TO YOURSELF, MR. VEREEN, MRS. SISSON AND MRS. DEWITT AND RANDY LONG? I'M GOING TO CALL Y'ALL MORE OF ADMINISTRATIVE OR SUPERVISORY EMPLOYEES?
A NOT RANDY LONG.
Q SO YOU DID NOT --
A NO.
Q OKAY. YOU DISAGREE THAT RANDY LONG GOT BONUSES OR YOU DISAGREE WITH HIM BEING CALLED SUPERVISORY?
A RANDY LONG DID NOT GET BONUSES. HE DIDN'T GO TO WORK FOR A&E UNTIL LIKE JUNE OR JULY OF 2007.
Q ALRIGHT. DO YOU AGREE THAT ANNUAL BONUSES WERE GIVEN TO EMPLOYEES AND THAT YOU DID HAVE HOLIDAY PARTIES AT A&E?
A WE HAD SOME HOLIDAY PARTIES, YES, SIR.
Q DO YOU DISAGREE WITH IT BEING A LEGITIMATE A&E EXPENSE FOR 2004 THROUGH 2007 OF THE AMOUNTS 5,000, 10,000, 4,000 AND THEN 4,000 RESPECTIVELY FOR THOSE FOUR YEARS? THAT THOSE ARE LEGITIMATE A&E EXPENSES WITHOUT RECEIPTS BEING PRODUCED TO YOU?
A SOME OF THE BONUSES I UNDERSTAND. AS FAR AS HOW

THEY CAME UP WITH 5,000, 10,000, 4,000, AND 4,000 I DON'T THINK THAT'S RIGHT.

Q DO YOU HAVE AN AMOUNT THAT YOU CONSIDER A LEGITIMATE A&E EXPENSE FOR ANNUAL BONUSES AND HOLIDAY PARTIES FOR 2004?

A HOLIDAY PARTIES, THERE SHOULD BE RECEIPTS FOR IF ANYTHING WAS BOUGHT. THERE WOULD BE RECEIPTS FOR THAT.

Q MY QUESTION THOUGH, SIR, WAS, DO YOU HAVE AN AMOUNT AS PRESIDENT OF A&E, AS TO AN AMOUNT THAT YOU BELIEVE WAS A LEGITIMATE A&E EXPENSE FOR HOLIDAY PARTY AND ANNUAL BONUSES FOR 2004?

A NO, MA'AM.

Q IS IT YOUR POSITION THAT IF THERE IS NOT A RECEIPT OR THE AMOUNTS THAT IT COST TO THROW THE PARTY THAT A&E SHOULD NOT HAVE TO PAY THAT AS A LEGITIMATE EXPENSE?

A NO, I DIDN'T --

Q SHOULD NOT BE RESPONSIBLE FOR THAT AS A LEGITIMATE EXPENSE?

A NO, MA'AM. THAT'S NOT WHAT I SAID. IF THE BONUSES WERE WRITTEN OUT AS TO WHO GOT WHAT. I HAD A LIST OF THOSE. AND I HAD THE RECEIPTS FOR THE PARTY WHERE THE STUFF WAS PURCHASED OR WHATEVER. IF WE TOOK THEM OUT TO EAT OR WHATEVER,

IF I HAD THOSE RECEIPTS, YES, THAT'S OKAY.

Q DO YOU HAVE A FIGURE THAT'S ACCEPTABLE FOR 2005?

MR. DURANT: FOR WHAT?

MS. COOK: ANNUAL BONUSES AND HOLIDAY PARTIES.

A SAME THING ON ALL OF THEM.

Q OKAY. YOU HAVE NO AMOUNT FOR 2004? YOU HAVE NO AMOUNT FOR 2005 THAT YOU BELIEVE AS PRESIDENT OF A&E IS APPROPRIATE TO COVER THE COST OF THE ANNUAL BONUSES THAT YOU GAVE OUT FOR HOLIDAY PARTIES?

A NO, MA'AM.

Q FOR 2006?

A NO, MA'AM.

Q FOR 2007?

A NO, MA'AM.

Q IT'S MY UNDERSTANDING THAT IT'S YOUR POSITION AS PRESIDENT OF A&E THAT ANYTHING AFTER 2007 THAT THERE SHOULD BE NO A&E EXPENSES AT ALL? DO I UNDERSTAND THAT POSITION CORRECTLY?

A YES, MA'AM.

Q THE NEXT IS "BETH SISSON'S ALLOWANCE." IT'S GOT $300 PER MONTH. AND IT HAS FOR 2004, AN AMOUNT OF $3,600. YOU STRUCK THROUGH IT AND SAID $2,100, IS THAT CORRECT?

A YES, MA'AM. I AM AWARE THAT WAYNE PAID HER $300 A

MONTH FOR THE USE OF HER TRUCK. I AM AWARE OF THAT.

Q DO YOU AGREE THAT THAT IS A LEGITIMATE A&E EXPENSE?

A IT'S LISTED ON A&E. THEY HAD PAID IT. IT'S NOT DISPUTED.

Q OKAY. BUT AT A $2,100 LEVEL NOT AT A $3,600 LEVEL?

A YES, MA'AM.

Q 21 NOT 36?

A 21 NOT 36.

Q THANK YOU. WOULD THAT BE THE SAME FOR MS. DREWETT?

A I DON'T THINK THAT HE GAVE HER $300 A MONTH FOR A CAR ALLOWANCE. I KNOW THAT HE GAVE HER A TANK OF GAS EACH MONTH TO DO THE RUNNING AROUND FOR BANK DEPOSITS AND STUFF LIKE THAT. BUT AS FAR AS THE 300... I CAN'T TESTIFY TO THAT.

Q DO YOU AGREE AS AN A&E EXPENSE, A LEGITIMATE AMOUNT OF $2,100 A YEAR FOR MR. DREWETT?

A NO, MA'AM.

Q THAT WOULD BE NO TO EACH OF THE YEARS 2004 THROUGH 2007?

A YES, MA'AM. I WAS NOT AWARE THAT HE WAS DOING IT, IF HE WAS DOING IT. IF IT'S IN THE BOOKS, IT

WOULD NOT BE CHARGED AGAINST MR. VEREEN.

Q IF IT'S IN WHAT BOOKS?

A IF IT IS IN SUSAN'S ANALYSIS THAT WAS A CHARGE FOR A&E, IT WOULD NOT HAVE BEEN CHARGED TO MR. VEREEN.

Q IF YOU WOULD FLIP TO THE NEXT PAGE. THE TOP OF THAT PAGE SAYS, "ITEMS DUE TO AWV, ARTHUR WAYNE VEREEN FROM A&E."?

A YES, MA'AM.

Q DID YOU REVIEW THIS PAGE?

A YES, MA'AM.

Q AND THE HANDWRITING ON THIS PAGE IS YOURS?

A YES, MA'AM.

Q THE FIRST ITEM IS "WILLOUGHBY PLACE LAWSUIT EXPENSES." NOW, WILLOUGHBY PLACE LAWSUIT, THAT IS THAT TRADEMARK SUIT THAT WE TALKED ABOUT THAT MRS. BRADY WAS THE EXPERT FOR A&E IN, CORRECT?

A YES, MA'AM.

Q THAT'S THE LAWSUIT IN WHICH THE TURNER/PADGET FIRM DEFENDED A&E?

A YES, MA'AM.

Q AND IT'S MY UNDERSTANDING AND IS IT CORRECT THAT A&E PAID LEGAL FEES AND EXPENSES TO THE TURNER/PADGET LAW FIRM TO COVER THE COST OF THE DEFENSE OF THE WILLOUGHBY PLACE LAWSUIT FOR A PERIOD OF TIME?

A A&E PAID PART OF THE EXPENSE, YES, MA'AM.
Q AND THEN ADDITIONALLY TURNER/PADGET ALSO REPRESENTED THE OWNER OF THAT PROJECT, THE WILLOUGHBY FAMILY, IN THAT SUIT AND SO THEY PAID PART OF THE LEGAL EXPENSES AS WELL AS --
A TO THE BEST OF MY KNOWLEDGE, YES.
Q AND YOU NEVER PERSONALLY PAID ANY OF THE DEFENSE COST OF A&E TO THE LAWYERS, DID YOU?
A PERSONALLY, NO, MA'AM.
Q AND DO YOU DISPUTE THE $193,738 AS BEING A LEGITIMATE A&E EXPENSE PAID FOR --
A YES, MA'AM.
Q -- THE DEFENSE OF A&E IN THAT TRADEMARK CASE?
A YES, MA'AM, I DO.
Q WHY DO YOU DISPUTE THAT?
A BECAUSE I DO NOT HAVE BILLS OR RECEIPTS OR WHERE THAT HAS BEEN PAID. THIS NUMBER MEANS NOTHING TO ME. IT'S JUST AN ARBITRARY NUMBER.
Q IF YOU REVIEWED AND SAW THE CHECKS IDENTIFYING PAYMENT AND THE INVOICES FOR THAT WORK PERFORMED, WOULD YOU HAVE A PROBLEM WITH THAT BEING CREDITED OR VIEWED IN THIS ACCOUNTING AS A LEGITIMATE A&E EXPENSE?
A ONLY IF I HAD HARRY WILLOUGHBY WHERE HE HAD PAID WHAT HE HAD, A COPY OF HIS. SO, I COULD SEE IF HE

PAID A&E BACK FOR ANYTHING THAT WE FRONTED ON THE LAWSUIT.

Q OKAY. HERE WE GO.

MS. COOK: YOUR HONOR, CAN YOU GIVE ME JUST A MINUTE TO CONFIRM WITH PLAINTIFF'S COUNSEL?

JUDGE HOWE: CERTAINLY.

Q MR. SMITH, I'M GOING TO SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT 29. IT IS A GROUP OF DOCUMENTS WHICH CONTAIN COPIES OF CANCELED CHECKS FOR PAYMENTS TO THE TURNER/PADGET AND ALSO INVOICES FROM THE TURNER/PADGET LAW FIRM FOR THEIR SERVICES AND EXPENSES IN CONNECTION WITH THE DEFENSE OF THE WILLOUGHBY PLACE LITIGATION.

MR. COOK: AND I WILL STATE FOR THE RECORD, YOUR HONOR, THAT THE CHECKS THEMSELVES WERE PRODUCED IN OUR NOTEBOOKS OF DECEMBER 1ST 2000... THE PARK PLACE PROPERTIES NOTEBOOKS PRODUCED BEFORE THE DECEMBER 1ST DEADLINE OF YOUR HONOR. AND THE INVOICES THEN FOR TURNER/PADGET WORK WERE PRODUCED IN THE NOTEBOOKS THAT CONTAIN THE RESPONSES FOR REQUEST TO PRODUCE AND THAT WOULD HAVE BEEN IN

RESPONSE TO REQUEST TO PRODUCE NUMBER 10.

Q NOW, MR. SMITH, DID YOU REVIEW OR HAVE YOU REVIEWED WITH YOUR COUNSEL AND YOUR EXPERT THE PAYMENT FOR THE DEFENSE IN THE LAWSUIT TO TURNER/PADGET BY PARK PLACE PROPERTIES ON BEHALF OF A&E AND THE BILLS OF THE TURNER/PADGET LAW FIRM? HAVE YOU SEEN THOSE DOCUMENTS DURING THE COURSE OF THIS LAWSUIT?

A CAN YOU JUST GIVE ME A SECOND PLEASE?

Q YES, SIR. I WILL POINT OUT THE VERY LAST DOCUMENT IN THAT STACK IS CHECK NUMBER 4871 FROM PARK PLACE PROPERTIES TO TURNER/PADGET DATED OCTOBER THE 28TH 2007 IN THE AMOUNT OF $70,000. IT WAS NOT FOR PAYMENT OF LEGAL FEES, BUT WAS A&E'S PAYMENT OF A SETTLEMENT AS PART OF THE SETTLEMENT THAT YOU HAD WITH THE PLAINTIFF IN CASE, WHICH A&E'S PORTION OF THAT SETTLEMENT WAS $70,000. DO YOU RECOGNIZE THOSE DOCUMENTS AND DO YOU AGREE THAT A&E PAID $70,000 TOWARDS... A&E'S RESPONSIBILITIES WAS FOR A PAYMENT OF $70,000 TOWARDS THE TOTAL SETTLEMENT OF A --

MR. DURANT: YOUR HONOR, I OBJECT TO THE FORM OF THE QUESTION. CONCERNING THE CHECKS, YOUR HONOR, WE DID GET THE

CHECKS AND WE DID GET THEM WITHIN THE TIMEFRAME OF THE COURT ORDER. THAT'S NOT AN ISSUE. SO, TO THAT EXTENT WE DID... AND I THINK THE ONLY THING SHE CAN ASK HIM ABOUT IS DOES HE HAVE ANY KNOWLEDGE OF THE PAYMENT OF THESE BILLS BY THE OTHER DEFENDANTS. HE CANNOT AUTHENTICATE THE CHECKS. HE CAN SAY HE RECEIVED IT, BUT HE DOESN'T KNOW WHAT THEY PAID OR WHETHER THEY GOT MONEY FROM SOMEONE ELSE FOR REPAYMENT. THEY HAVE THREE INSURANCE CARRIERS. THAT IS THE REASON THAT WE DECIDED WE ARE NOT GOING TO AGREE ON THIS. HE CAN TESTIFY TO ANYTHING HE WANTS TO, BUT I DON'T THINK THAT HE WAS INVOLVED IN THE SETTLEMENT OF THE CASE.

MS. COOK: BECAUSE HE WOULDN'T EVEN ATTEND THE CONFERENCE, WOULD HE?

MR. DURANT: YOU CAN ASK HIM WHETHER --

MS. COOK: NEVER MIND. I WILL PUT IT IN THROUGH MY CLIENT. THAT WILL BE FINE. I WILL WITHDRAW THAT.

MR. DURANT: BUT WE ADMIT THEY GAVE THEM TO US.

Q MR. SMITH, DO YOU AGREE OR DISAGREE THAT A&E IS RESPONSIBLE TO PAY TURNER/PADGET FOR THE ATTORNEYS FEES THAT WERE INCURRED TO DEFEND A&E IN THE WILLOUGHBY LAWSUIT?

A I HAVE, IN THIS STACK OF PAPERS, THERE IS NOT ONE INVOICE FROM TURNER/PADGET TO A&E CONSTRUCTORS FOR PAYMENT, NOT ONE. SO, I DON'T KNOW WHAT WE ARE RESPONSIBLE FOR, WHAT WE PAID, BUT EVERYTHING IS ADDRESSED WILLOUGHBY FAMILY INVESTMENTS, LLC. THAT'S NOT A&E.

Q OKAY. WELL, DO YOU AGREE... YOU DO AGREE THAT TURNER/PADGET DEFENDED A&E, RIGHT?

A TO BEST OF MY KNOWLEDGE, YES.

Q WOULD YOU AGREE WITH ME THAT TURNER/PADGET DIDN'T DO THAT FOR FREE?

A YES, MA'AM, I WOULD AGREE WITH THAT.

Q AND DO YOU AGREE THAT A&E SHOULD PAY TURNER/ PADGET FOR THE SERVICES RENDERED BY TURNER/ PADGET TO A&E?

A YES, MA'AM.

Q AND WAS THE LAWSUIT SETTLED?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q AND DO YOU KNOW WHAT THE TOTAL SETTLEMENT AMOUNT

FOR THAT LAWSUIT WAS?
A NO, MA'AM, I DO NOT. I WAS NEVER GIVEN THAT AMOUNT.
Q SO, YOU DON'T KNOW WHETHER A&E CONTRIBUTED $70,000 TOWARD THAT SETTLEMENT OR $135,000 TOWARD THAT SETTLEMENT OR YOU HAVE NO IDEA?
A THERE IS NOTHING IN THE A&E CHECKBOOK THAT SAYS WE GAVE $70,000 TOWARD THAT LITIGATION, NO, MA'AM. THERE IS JUST NOT.
Q OKAY. ALRIGHT. NOW, THE NEXT LINE ITEM ON EXHIBIT 23 IS 2004 THROUGH 2008 TAX PREPARATIONS IN AN AMOUNT OF $45,000?
A YES, MA'AM.
Q DID SUSAN BRADY CHARGE A&E OR HER FIRM CHARGE A&E FOR ANY OF THE ACCOUNTING WORK THEY DID FOR A&E, NOT ASSOCIATED WITH HER EXPERT WITNESS DUTIES? ASIDE FROM HER EXPERT WITNESS DUTIES AND WILLOUGHBY, WERE THERE ANY CHARGES OR FEES INCURRED WITH SUSAN BRADY'S ACCOUNTING FIRM FOR ACCOUNTING WORK THAT SHE DID FOR A&E?
A I FEEL SURE THAT THERE WERE, BUT I DO NOT KNOW WHAT THE AMOUNT WAS.
Q AND DO YOU AGREE WHETHER OR NOT THERE IS A RECEIPT FOR THAT A&E WAS RESPONSIBLE FOR PAYING MRS. BRADY OR HER FIRM FOR THAT LEGAL WORK?

A A&E SHOULD HAVE PAID THAT BILL, YES, MA'AM.
Q BILL OR BILLS?
A YES, MA'AM.
Q DO YOU KNOW... DID SHE SEND A MONTHLY BILL OR DO YOU KNOW?
A SHE SENDS ME A MONTHLY BILL.
Q AND IF MRS. BRADY OR HER FIRM DID NOT SEND A BILL, BUT THEY PERFORMED THE WORK, IS IT YOUR POSITION THAT A&E HAS NO RESPONSIBILITY TO PAY HER?
A IF YOU'RE NOT BILLED FOR A SERVICE, HOW WOULD YOU KNOW HOW MUCH YOU OWED.
Q OKAY. SO, IF SOMEONE DOESN'T SEND YOU A BILL, EVEN THOUGH THEY GIVE YOU GOODS OR SERVICES OR THEY PROVIDE GOODS OR SERVICES YOU DON'T OWE IT?
A NO, MA'AM, THAT'S NOT WHAT I SAID. WHAT I'M SAYING IS IF IT WERE DONE ON AN HOURLY RATE, HOW WOULD WE KNOW HOW MUCH TO PAY MRS. BRADY IF WE DID NOT HAVE A BILL OUTLINING THAT.
Q WELL, IF SHE CALLED YOU AND SAID, "ELLIS, THIS MONTH I HAVE DONE THIS MUCH WORK AND Y'ALL OWE ME $600." SHE DIDN'T SENT YOU A BILL. WOULD YOU BELIEVE THAT THERE WAS NO OBLIGATION? IS IT YOUR POSITION THERE WOULD BE NO OBLIGATION IF SHE JUST TOLD YOU THAT AND DIDN'T SEND YOU A BILL? THERE WILL BE NO OBLIGATION ON A&E TO PAY HER THAT $600?

A NO. SHE CALLED AND TOLD ME THAT I WOULD SAY, "PLEASE SEND ME A BILL."
Q BUT WITHOUT A BILL YOU WOULD HAVE NO OBLIGATION TO PAY HER?
A I WOULD NOT PAY HER UNTIL I RECEIVED A BILL.
Q OKAY. ON THAT LAST PAGE THAT YOU'RE LOOKING AT, IF YOU GO DOWN TO THE LINE ITEM THAT YOU JUST HAVE STRUCK THROUGH THERE... IT BEGIN WITH, IT SAYS, "RENT OF 1 DUMP TRUCK. RENT ON 2 PICKUP TRUCKS. RENT 1 PICKUP TRUCK."?
A YES, MA'AM.
Q AND THE TYPED LINE ITEMS ARE 21,000 FOR THE DUMP TRUCK, 21,600 FOR THE PICKUP TRUCK, THEN 6,000 FOR THE SECOND PICKUP TRUCK. OUT TO THE SIDE YOU'VE GOT WRITTEN $2,040, IS THAT CORRECT?
A YES, MA'AM.
Q WHAT DOES THAT MEAN? WHAT DOES THAT MEAN TO YOU WHEN YOU WROTE IT DOWN THERE?
A THE DUMP TRUCK WAS... A VAST MAJORITY WAS USED ON WAYNE VEREEN JOBS, HIS PERSONAL STUFF. THE PICKUP TRUCK ONE WAS DRIVEN BY BASIL BECAUSE HE WORKED ON WAYNE VEREEN JOBS AT POINTE MARSH. THERE'S ONE PICKUP TRUCK THAT WAS USED FOR ABOUT THREE MONTHS BY SOMEONE ON A DAILY BASIS DRIVING BACK AND FORTH TO THE FOUNTAINS. THAT WAS AN A&E EXPENSE. THE

REST OF THEM WE DIDN'T USE.

Q SO, OF THOSE AMOUNTS THAT ARE OUTLINED BY MR. VEREEN, YOU AGREE THAT ONLY $2,040 IS OWED IN TOTALITY FOR THE YEARS 2004 THROUGH 2007?

A AT THIS TIME, WITH THE INFORMATION THAT I HAVE AND WHAT I PUT TOGETHER TO DO, YES, MA'AM.

Q THAT WAS FOR A CUMULATIVE PERIOD OF TIME THAT WASN'T PER YEAR?

A YES, MA'AM, I THINK THAT'S CORRECT.

Q THE LIGHTER NUMBER THAT'S UNDER THAT, THAT LOOKS LIKE 117343. IS THAT YOUR HANDWRITING?

A NO, MA'AM.

Q DOWN, I THINK THIS GOES TO THE SITE-TECH SYSTEMS MEMBERSHIP, THE DATE NUMBER 14550. IS THAT YOUR HANDWRITING?

A NO, MA'AM.

Q IF YOU WOULD FLIP TO THE NEXT PAGE. THIS SAYS, "OFFICE RENT PROPERTY EXPENSES." AGAIN, IT ITEMIZES ANNUALLY 2004 THROUGH 2008. THE FIRST IS 511 GRISSOM PARKWAY. MR. VEREEN PUT $3,300 A MONTH AND THEN WRITTEN BESIDE THAT IS $700 A MONTH, CORRECT? IS THAT YOUR HANDWRITING, THE $700 A MONTH?

A YES, MA'AM, IT IS.

Q NOW, THE 511 ADDRESS, WAS THAT THE BIGGER OFFICE

THAT A&E UTILIZED TO BEGIN WITH OR WAS THAT THE SMALLER OFFICE THAT YOU MOVED TO?

A ACCORDING TO THIS IT SAYS, IN 2004 WE WERE IN THAT OFFICE. IN 2006, WE MOVED TO THE OTHER OFFICE.

Q WHICH IS THE 505 GRISSOM PARKWAY OFFICES, CORRECT?

A (NO RESPONSE).

Q MR. VEREEN HAS $1,600 A MONTH AND YOU DON'T HAVE ANYTHING WRITTEN THERE, BUT YOU'VE GOT STRUCK OUT OVER ON 2008, CORRECT?

A NO. I'VE GOT THE $700 A MONTH FOR THOSE TWO. THAT'S WHAT THAT REFERS TO.

Q OKAY. ARE YOU... DO YOU... AND SO DO YOU... DID YOU AT THAT TIME TAKE THE POSITION THAT THE RENT A&E SHOULD PAY THE OWNER OF YOUR OFFICE SPACE OR THE LANDLORD WAS AT A RATE OF $700 A MONTH? THAT WAS IRRESPECTIVE OF WHICH OFFICE YOU WERE IN?

A YES, MA'AM. THAT WAS THE AMOUNT OF THE CHECK THAT A&E WROTE TO PARKWAY OFFICES FOR MONTHLY RENT. WE HAD CHECKS IN OUR ACCOUNT THAT ADDRESS THAT IN THE LITTLE MEMO SECTION AT THE BOTTOM OF THE CHECK.

Q BUT AT ONE TIME YOU ALSO AGREED THAT THE RENT ON OFFICE SHOULD BE $950 A MONTH, DIDN'T YOU?

A YES, MA'AM, I DID.

Q AND AT OTHER TIME YOU AGREED THE RENT ON THE OFFICE THE SHOULD BE $1,200 A MONTH?

MR. DURANT: YOUR HONOR, IF SHE TESTIFIED THAT HE AGREED OR IF HE SETTLED THE CASE, HE WOULD ALLOW THAT. THERE TWO DIFFERENT THINGS.

MS. COOK: MR. DURANT, I BELIEVE I CAN... I DON'T BELIEVE THAT WAS A PROPER... I ASKED THE QUESTION AND MR. SMITH ANSWERED IT. I DON'T WANT TO --

MR. DURANT: BUT YOU ARE ASKING ABOUT A SETTLEMENT OFFER THAT HE MADE, NOT ABOUT WHAT HE AGREED TO PAY.

MS. COOK: JUDGE, I BELIEVE MR. DURANT KNOWS HE WILL HAVE AN OPPORTUNITY TO RE-DIRECT, I GUESS, IT WOULD BE ACTUALLY. AND IF HE WANTS TO RE-DIRECT ON AN ISSUE, HE CERTAINLY CAN DO THAT, BUT UNLESS HE'S GOT AN OBJECTION TO MY QUESTION, I DON'T THINK THAT WAS A PROPER... I DON'T EVEN KNOW WHAT THAT WAS. I DON'T THINK THAT WAS PROPER TESTIMONY FOR MR. DURANT.

MR. DURANT: I OBJECT TO THE FORM OF THE QUESTION, YOUR HONOR, BECAUSE SHE'S ASKING THE WITNESS, "DID YOU

AGREE TO PAY MORE THAN THAT?" AND HE'S ANSWERING IT AND SHE'S TAKING IT FROM A SETTLEMENT OFFER. I THINK SHE SHOULD REPHRASE THE QUESTION IN A WAY THE WITNESS CAN ANSWER IT OR ALLOW HIM TO EXPLAIN HIS ANSWER.

MS. COOK: I THINK HE EXPLAINED HIS ANSWER.

JUDGE HOWE: ALRIGHT. MR. SMITH, WOULD YOU LIKE TO EXPLAIN YOUR ANSWER?

A YES, MA'AM. I WOULD LIKE TO EXPLAIN.

MS. COOK: WELL, I THINK HE... HE ANSWERED IT.

MR. DURANT: HE SAID HE WOULD LIKE TO EXPLAIN.

A NO. I WOULD LIKE TO EXPLAIN. THE $700 A MONTH IS WHAT I TOOK OUT OF THE CHECKBOOK THAT WE PAID PARKWAY OFFICES AND PARKWAY OFFICES ACCEPTED THAT AS RENT BECAUSE I THINK THE FIRST 6 OR 8 MONTHS THAT WE WERE IN THOSE BUILDINGS, THERE WAS A CHECK IN THE A&E ACCOUNT THAT IS MARKED FOR THAT. WHEN I MADE THE OFFER OF THE 900 OR THE 1200 IT WAS FOR A SETTLEMENT AMOUNT. I WOULD SETTLE AND AGREE TO PAY HIM THAT IF THIS THING WOULD END. I COULD GET MY MONEY AND WE COULD GO OUR SEPARATE WAYS. I

AGREED TO GIVE UP EXTRA.

Q WELL, AT ONE TIME YOU AGREED THAT A FAIR VALUE FOR THE RENT ON THE OFFICE SPACE WAS $1,600 A MONTH, DIDN'T YOU?

A MS. COOK, THAT'S ALL IN THE SETTLEMENT OFFER AS I JUST EXPLAINED TO YOU.

Q WHERE IS IT IN THE SETTLEMENT OFFER?

A MA'AM, I COULDN'T TELL YOU. I DIDN'T WRITE IT. I DON'T HAVE IT IN MY HANDS.

Q SO, IT'S YOUR TESTIMONY, UNDER OATH, THAT THE ONLY TIME THAT YOU KNOWLEDGE A $1,600 A MONTH RENT OBLIGATION BY A&E WAS IN A SETTLEMENT OFFER?

A THAT WAS IF HE SETTLED AT THE TIME THAT I MADE THE OFFER. THAT'S WHAT I SAID.

Q THAT'S THE ONLY TIME THAT YOU HAVE EVER ACKNOWLEDGED A $1,600 A MONTH OBLIGATION OF A&E TO PAY RENT?

A I DON'T RECALL, BUT I... I KNOW THAT I HAVE MADE A 900 OR 950 AND A 1200.

Q OKAY. NOW, AT THE... ON THAT SAME PAGE AS YOU GO DOWN CATEGORIES IT SAYS, "WAREHOUSE RENT AND EXPENSES."?

A YES, MA'AM.

Q WERE THERE ANY WAREHOUSES OR STORAGE UNITS THAT A&E USED TO STORE MATERIALS?

A THERE WAS A WAREHOUSE BEHIND 511 THAT HAD ALL KINDS OF EQUIPMENT AND MATERIALS THAT BELONGED TO MR. VEREEN, YES.

Q THERE WAS NO MATERIALS OR EQUIPMENT OF A&E'S THAT WERE EVER STORED BY A&E IN ANY WAREHOUSES OR STORAGE UNITS?

A THERE WERE ABOUT 8 OR 10 MINI WAREHOUSES BEHIND 505 AND THE END ONE, WHICH WAS A DOUBLE ONE, THERE WERE MATERIALS IF WE HAD LEFT OVER FROM A JOB OR WHATEVER WE WOULD JUST PUT THEM IN THERE, YES, MA'AM.

Q DID... WAS THERE A WAREHOUSE OR STORAGE UNIT ANYWHERE EVER USED BY A&E TO DO WORK FOR JOBS KIND OF LIKE A SHOP?

A OH, YES. YES, MA'AM.

Q WHERE WAS THAT LOCATED?

A THAT WAS BEHIND 511.

Q AND THAT WAS SEPARATE AND DISTINCT FROM THE OTHER WAREHOUSE THAT WAS USED YOU SAID TO STORE LEFTOVER MATERIALS OR --

A THEY ARE SIDE BY SIDE, YES, MA'AM.

Q OKAY. AND IS IT YOUR POSITION THAT A&E DIDN'T OWE THE OWNER OF THOSE WAREHOUSES OR STORAGE UNITS THAT WERE USED TO STORE MATERIALS OR WERE USED AS A SHOP TO WORK ON THINGS FOR A&E ANY RENT? THEY

PAID ZERO RENT?

A I THOUGHT IT WAS INCLUDED IN THE $700 A MONTH. IF I LOOK BACK AT ARTHUR VEREEN CONSTRUCTION CHECKBOOK, THEY PAID $600 A MONTH RENT TO PARKWAY OFFICES AND THAT INCLUDED THE WAREHOUSE AT THE BACK. I MEAN, THEY WERE BOTH... HE DIDN'T HAVE A SEPARATE WAREHOUSE BILL. I HAD NO REASON TO BELIEVE THAT THERE WOULD BE ANOTHER WAREHOUSE BILL.

Q NEXT UNDER "TRUCKS AND EQUIPMENT COSTS." THE FIRST LINE IS "REPLACEMENT OF STOLEN EQUIPMENT" AND UNDER 2006 IT'S GOT $590 AND THEN YOU HAVE A QUESTION MARK. DO YOU KNOW ANYTHING ABOUT ANY EQUIPMENT THAT WAS STOLEN IN 2006?

A YES, MA'AM, I DO.

Q WHAT WAS THAT?

A THERE WERE TWO ROOF NAILING GUNS THAT DID NOT BELONG TO A&E, THEY BELONGED TO ELLIS SMITH. THEY WERE STOLEN OUT FROM IN FRONT OF THE BUILDING. THERE WAS ALSO A CONCRETE SAW THAT WAS STOLEN AT THAT TIME TOO.

Q WHO DID THAT BELONG TO?

A IT BELONGED TO A&E. I THINK THAT WAS ONE THAT WAYNE BROUGHT INTO A&E WHEN IT DID...

Q WHEN THOSE TWO NAIL GUNS OF YOURS AND THAT

CONCRETE SAW OF MR. VEREEN'S WERE STOLEN, DID A&E PAY MONEY TO HAVE TO BUY TWO MORE NAIL GUNS AND A CONCRETE SAWS.

A THEY NEVER REPLACED MY NAIL GUNS AND WE NEVER REPLACED THE CONCRETE SAW BECAUSE I HAD ONE THAT I BOUGHT BEFORE I CAME TO WORK FOR A&E.

Q ALRIGHT. THE NEXT LINE ITEM IS "PLACEMENT OF DAMAGE BOB-CAT." AND THAT AGAIN, IS UNDER 2006. I GUESS Y'ALL WERE HAVING A LOT OF BAD LUCK. $8,500, DO YOU KNOW ANYTHING ABOUT HAVING TO HAVE A NEW BOBCAT OR HAVING TO HAVE A BOBCAT REPLACED OR REPAIRED?

A NO. WE HAD A BRAND NEW BOBCAT. WE HAD A CAT SKID STEER.

Q WAS THERE ONE THAT WAS DAMAGED OR BLOWN UP OR?

A IN 2006, NO, MA'AM.

Q WAS THERE ONE ANY TIME FROM 2004 TO 2007 THAT WAS DAMAGED AND BLOWN UP OR ENGINE BLOWN OR SOMETHING LIKE THAT?

A WAYNE HAD ONE THAT WE WERE USING AT TAHITIAN PRINCESS AND THE COOLANT WENT OUT OF IT AND IT BURNED THE MOTOR UP, YES, MA'AM.

Q AND THAT HAPPENED WHEN YOU WERE USING IT, DIDN'T IT?

A NO. ONE OF MY CONCRETE BOYS, YES.

Q SO, BECAUSE THAT BOBCAT WAS DAMAGED AND BLOWN UP, YOU HAD TO GET ANOTHER ONE, IS THAT CORRECT?
A NO, MA'AM. WE DID NOT GET ANOTHER ONE AT THAT TIME.
Q BUT DID YOU --
A THAT WAS IN 2004.
Q PARDON ME?
A THAT WAS IN 2004, NOT 2006.
Q WHEN YOU GOT A NEW ONE OR WHEN YOU BLEW UP THE OLD ONE?
A WHEN WE BLEW UP THE OLD ONE, HE WENT TO TRY TO GET IT FIXED AND THEY SAID IT WASN'T WORTH FIXING.
Q THAT WAS IN 2004?
A YES, MA'AM.
Q IN 2006, DID YOU BUY A BOBCAT?
A A&E BOUGHT A BOBCAT.
Q A&E BOUGHT A BOBCAT?
A YES, MA'AM.
Q AND THAT WAS IN 2006?
A YES, MA'AM. I THINK THE BOBCAT WAS PURCHASED AT THE END OF 2005. I MAY BE MISTAKEN, BUT... IT WASN'T A BOBCAT, IT WAS A SKID STEER.
Q SO, I CAN'T KEEP IT STRAIGHT. WHAT'S A SKID STEER?
A IT'S THE SAME THING. IT'S GOT A BUCKET ON THE

FRONT. YOU OPERATE THE WHEEL... THE BUCKETS WITH YOUR HANDS. IT'S LIKE JOYSTICKS.

Q SO, A BOBCAT AND A SKID STEER --

A A BOBCAT IS A SKID STEER.

Q LIKE COKE AND SODA, RIGHT?

A THERE YOU GO.

Q THANK YOU. UNDER "GAS" YOU'VE GOT A WHOLE LOT OF ITEMS CIRCLED AND THEN YOU'VE GOT 80% PAYMENT. WHAT DID YOU MEAN BY THAT?

A WHERE ARE YOU?

Q I SKIPPED DOWN. I SKIPPED STUFF ABOUT THE DUMP AND THE PICK UP TRUCKS. DO YOU SEE WHERE IT SAYS GAS? I THINK THAT SAYS 80%?

A GAS HAS GOT NOTHING TO DO WITH THAT.

Q OKAY. IT DOESN'T?

A I DON'T KNOW.

Q I THOUGHT THAT LINE ITEM GAS WAS THE DESCRIPTION IN THE LINE ITEM 3725 FOR 2004. AND 2005 WAS 15,347. IS THAT NOT WHAT YOU INTERPRETED THAT WHEN YOU WROTE WHATEVER IT WAS ON THE SIDE?

A JUST A MINUTE.

Q OKAY.

A GAS WAS AN A&E EXPENSE?

Q OKAY. DO YOU AGREE WITH THE AMOUNTS THAT MR. VEREEN HAD OR DID YOU DISPUTE THOSE AND THAT'S WHY

YOU GOT IT CIRCLED?

A I DON'T KNOW EXACTLY WHAT THE AMOUNT IS. I DON'T HAVE ANY RECEIPTS OR BILLS WHERE WE PAID FOR THAT MUCH GAS, BUT MOST OF THE GAS THAT WAS USED BY A&E WAS USED IN VEHICLES TO TRAVEL FROM MYRTLE BEACH TO NORTH MYRTLE BEACH OR MYRTLE BEACH TO MURRELL'S INLET. I DIDN'T --

Q IS THERE SOMETHING WRONG WITH THAT?

A NO, BUT THOSE WERE JOBS THAT BELONGED TO WAYNE. I MEAN, HIS HOUSE OR POINTE MARSH. NONE OF OUR COMPANY TRUCKS WENT TO OTHER JOBS VERY RARELY OTHER THAN TO HIS JOBS THAT USED THE GAS. BETH CHARGED GAS THERE. CARRIE CHARGED GAS THERE. THAT WAS ALL PART OF A&E'S EXPENSE.

Q SO, IT'S YOUR TESTIMONY THAT A&E NEVER HAD GAS EXPENSES FOR THIS EQUIPMENT OR IT'S TRUCKS THAT WENT TO WILLOUGHBY?

A OUR TRUCKS VERY RARELY WENT TO WILLOUGHBY. WE MAY HAVE A DUMP TRUCK EVERY NOW AND THEN. YOU CAN LOOK AT THE TIME CARDS AND YOU CAN TELL THE ONLY PERSON THAT DROVE THE TRUCK IN OUR COMPANY WAS MATTHEW CHESTNUT. THE VAST MAJORITY OF HIS TIME CARDS WERE AT POINTE MARSH, MURRELL'S INLET, SOMEWHERE OF THAT NATURE.

Q HOW ABOUT YOU NEVER HAD TRUCKS... A&E NEVER HAD

TRUCKS OR EQUIPMENT THAT YOU DROVE TO THE FOUNTAINS PROJECT?

A NO. I PURCHASED THE FUEL AND TURNED IN A RECEIPT TO BE REIMBURSED FOR THE FOUNTAINS, TAHITIAN PRINCESS. I DIDN'T BRING THE PIECES OF EQUIPMENT BACK TO MYRTLE BEACH TO GET FILLED UP WITH FUEL.

Q BUT WAS THAT GAS FOR YOU PURCHASING IT AND TURNING IN A RECEIPT AND BEING REIMBURSED? IS THAT WHAT IS SHOWN ON THIS LINE ITEM?

A IN MY OPINION, NO, THAT'S NOT. I THINK THIS GAS THAT IS HERE IS WHAT WAS CHARGED TO THE THIRD AVENUE 501 TEXACO STATION THAT WE HAD AN ACCOUNT AT AND IT WAS PAID ON A MONTHLY BASIS. THAT'S WHAT I INTERPRETED IT TO BE.

Q AND DID YOU USE ANY TRUCKS OR EQUIPMENT THAT UTILIZED GAS ON THE TAHITIAN PRINCESS JOB IN NORTH MYRTLE BEACH?

A I HAD EQUIPMENT THAT UTILIZED GAS, YES. IT UTILIZED DIESEL FUEL.

Q AND HOW ABOUT AT TAHITIAN PRINCESS II?

A YES, MA'AM.

Q AND HOW ABOUT AT SEACLUSION?

A YES, MA'AM.

Q AND HOW ABOUT AT... I CAN'T REMEMBER ALL THE JOBS?

A I HAD EQUIPMENT AT EACH ONE OF THOSE JOBS,

FORKLIFT, WHATEVER THAT I HAD RENTED FROM HERTZ AND WE WOULD TAKE GAS CANS AND GO TO IT. FOR INSTANCE, THE DODGE STORE IN NORTH MYRTLE BEACH AND THAT'S WHERE I PURCHASED DIESEL FUEL TO PUT IN THOSE PIECES OF EQUIPMENT. THEY WERE NOT CHARGED TO THIS LOCATION.

Q LET'S GO ON FURTHER AND IT'S GOT "AWV". SO, THAT'S WAYNE VEREEN'S TRUCK PAYMENTS?

A YES, MA'AM.

Q DO YOU DISPUTE THAT AS BEING A LEGITIMATE A&E EXPENSE?

A I DON'T KNOW WHAT HIS TRUCK PAYMENT COST. I SEE MINE IS 620. I ASSURE YOU HIS IS NOT THE SAME AS MY TRUCK PAYMENT. SO, I DON'T KNOW. I QUESTION WHERE IS THE CHECK THAT HE PAID THIS AND WHAT WAS THE AMOUNT THAT HE OWED? I HAVE NO IDEA.

Q DID A&E PROVIDE YOU A TRUCK?

A YES, MA'AM, THEY DID. THEY DID FROM DECEMBER... THAT WAS IN JANUARY OF '05 TO PRESENT. YES, MA'AM.

Q DID A&E PAY FOR GAS FOR YOU FOR THAT TRUCK?

A I PAID FOR THE GAS AND THEY REIMBURSED ME, YES, MA'AM.

Q DID A&E PAY FOR THE INSURANCE ON THAT TRUCK THAT YOU USED?

A THAT TRUCK BELONGED TO A&E. SO, YES, MA'AM.
Q AND DID A&E PAY THE TAXES ON THAT TRUCK?
A YES, MA'AM.
Q THAT WA S THE SAME TRUCK THAT WE TALKED ABOUT THAT THEY CONTINUED TO PAY THE PAYMENTS ON UNTIL IT WAS PAID OFF WELL AFTER DECEMBER OF '07 AND SENT YOU THE TITLE FOR?
A YES, MA'AM.
Q DID A&E PAY FOR THE INSURANCE ON THAT TRUCK AFTER YOU LEFT FOR VACATION IN SEPTEMBER OF 2007?
A YES, MA'AM.
Q DID IT PAY THE INSURANCE ON THAT TRUCK THROUGH DECEMBER OF 2007?
A THROUGH DECEMBER... YOU JUST SAID...
Q I THOUGHT I SAID SEPTEMBER WHEN YOU LEFT FOR VACATION.
A DID THEY PAY FOR IT AFTER? YES. THEY PAID FOR IT RIGHT ON, YES, MA'AM.
Q DID THEY PAY... DID A&E PAY FOR YOUR INSURANCE ON THAT TRUCK AFTER DECEMBER 31, 2007?
A YES, MA'AM, THEY DID.
Q AND DO YOU AGREE THAT WHATEVER THAT INSURANCE AMOUNT IS THAT A&E PAID ON YOUR BEHALF AFTER DECEMBER 31ST SHOULD BE ON YOUR SIDE OF THE LEDGER SHEET?

A YES, MA'AM.
Q AND THE SAME WITH PROPERTY TAXES? WERE THE PROPERTY TAXES PAID ON THE TRUCK AFTER DECEMBER 31, 2007?
A YES, MA'AM.
Q AND YOU WOULD AGREE THAT THAT SHOULD BE... AFTER 12/31/07 THAT SHOULD BE ON YOUR SIDE OF THE LEDGER SHEETS?
A YES, MA'AM.
Q NOW, DO YOU HAVE ANY OBJECTION TO MR. VEREEN WHETHER HE HAD A PAYMENT OR HE ALREADY PAID THE TRUCK OFF OR WHETHER THE TRUCK WAS IN HIS NAME THAT HE DROVE GIVING THE SAME AMOUNT OF MONEY AS A BASIC CAR ALLOWANCE FOR WHAT HE DROVE AS A 50% PARTNER AS WHAT YOU GOT?
A AS LONG AS HE HAS RECEIPTS FOR THE GAS AND OTHER PAPERWORK, THAT'S NO PROBLEM.
Q AND HOW ABOUT FOR HIS TRUCK PAYMENT OR AN ALLOWANCE... LET'S SAY HE HAD ALREADY PAID THE TRUCK OFF?
A WELL, HE HADN'T PAID THE TRUCK OFF. HE WAS MAKING PAYMENTS ON IT. I KNEW THAT.
Q WHETHER HIS PAYMENT WAS LOW OR HIGHER, DO YOU HAVE A PROBLEM WITH THAT?
A AS LONG AS HE GAVE US A COPY OF WHAT WAS OWED ON

IT, I HAVE NO PROBLEM WITH THAT THROUGH DECEMBER 31ST 2007.

Q BUT ANYTHING AFTER THAT DATE --

A YES, MA'AM.

Q -- YOU DO NOT BELIEVE IS A LEGITIMATE A&E EXPENSE?

A NO, MA'AM.

Q HOW ABOUT REPAIR EXPENSES ASSOCIATED WITH EITHER OF YOUR TWO VEHICLES BEFORE DECEMBER 31, 2007? DO YOU HAVE A PROBLEM WITH THOSE EXPENSES BEING LEGITIMATE EXPENSES OF A&E'S?

A ASK THAT QUESTION AGAIN?

Q REPAIR EXPENSES ON THE TWO TRUCKS DRIVEN BY EACH OF YOU?

A REPAIR EXPENSES?

Q (HUH-UH). AFFIRMATIVE RESPONSE. OIL CHANGES --

A THE TRUCKS WERE UNDER WARRANTY --

Q -- TIRES --

A I UNDERSTAND. THE TRUCKS WERE UNDER WARRANTY. I DON'T KNOW WHY WE WOULD HAVE REPAIR EXPENSES. YOU KNOW, A NEW SET OF TIRES AFTER 50,000 MILES, SURE I UNDERSTAND THAT.

Q SO, YOU HAVE NO PROBLEM WITH THAT IF THERE'S RECEIPTS AND THERE WERE REPAIRS OR OIL CHANGES OR TIRES FOR EITHER OF YOUR TRUCKS?

A I HAVE NO PROBLEM WITH THAT.

Q HOW ABOUT IF THERE WERE REPAIRS OR TIRES OR ANYTHING WITH REGARD TO THE DUMP TRUCK, PICK UP TRUCK, THAT WERE USED BY A&E?

A AS I SAID, THEY WERE USED BY A&E ON WAYNE VEREEN'S JOBS. SO, THE WAY I LOOK AT IT, PARK PLACE PROPERTY IS RESPONSIBLE FOR REPAIRS ON THOSE TRUCKS.

Q SO, IT'S YOUR POSITION THAT ANY REPAIRS ON ANY OF... I'M JUST GOING TO CALL IT HEAVY EQUIPMENT FOR LACK OF BETTER CATEGORY TERMS, THAT NONE OF THAT IS A LEGITIMATE EXPENSE FOR A&E?

A IT WOULD ALL HAVE TO BE QUANTITATED. I MEAN, I CAN'T JUST GIVE YOU A BLANKET THING SAYING ANY REPAIRS ON ANYTHING. I NEED TO SEE A BILL AS TO WHAT IT WAS AND HOW IT WAS HANDLED. I'VE GOT ALL KINDS ON THIS LITTLE LIST WHERE YOU SAY, "REPAIR EXPENSES" AND THEY'VE JUST GOT NUMBER IN HERE. I DON'T... I HAVE NO IDEA WHAT THEY ARE FOR. ANY OF THESE THINGS THAT WE GOT BEFORE DECEMBER 1ST WE WOULD HAVE GLADLY LOOKED AT THEM.

Q MR. VEREEN, DO YOU RECALL --

A IT'S MR. SMITH.

Q I'M SORRY. MR. SMITH, DO YOU RECALL HAVING WORK OR SOMETHING DONE AT THE CARRIAGE ROW HOUSE IN 2005 WHERE YOU NEEDED CONCRETE?

A EXCUSE ME. NO, MA'AM, I DON'T RECALL ANYTHING LIKE THAT.

Q YOU DON'T RECALL THAT? OKAY. DO YOU RECALL EES HAVING SOMETHING DONE AT THE CARRIAGE ROW HOUSE WHERE YOU NEEDED CONCRETE AND A&E PAID FOR IT?

A NO, MA'AM, I DO NOT.

Q IF THAT HAPPENED IT WAS A MISTAKE AND IT SHOULD BE PUT BACK ON YOUR SIDE OF THE LEDGER SHEET, IS THAT CORRECT?

A I DON'T RECALL IT EVER HAPPENING SO I DON'T KNOW WHAT YOU'RE TALKING ABOUT. I WOULD LIKE TO SEE A RECEIPT OR A BILL OR WHATEVER IT WAS WHERE THAT HAPPENED.

Q LET ME SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT 34. IT'S TWO PAGES. THE FIRST PAGE IS A CHECK DRAWN OFF OF A&E'S ACCOUNT OCTOBER 18TH 2005 TO S&W READY MIX CONCRETE FOR $1,113. THE SECOND IS AN INVOICE FOR THAT AMOUNT DATED 9/30/2005 FROM S&W READY MIX TO ELLIS SMITH D/B/A, EES CONSTRUCTION SHOWING 2940 CARRIAGE ROW. NOW CARRIAGE ROW WAS?

MR. DURANT: IS THAT A DIFFERENT INVOICE FROM THE ONE YOU GAVE US?

A I DON'T SEE 2940.

Q HOLD ON JUST A MINUTE. I DID MESS UP. I'M SORRY.

ELLIS, I GAVE YOU THE WRONG ONE AND I DO APOLOGIZE.

MR. DURANT: IS THIS SOMETHING THAT YOU GIVEN US BEFORE?

MS. COOK: YES, SIR.

MR. DURANT: WHEN WAS THAT GIVEN TO US?

MS. COOK: THAT WAS IN THE ELLIS SMITH ACCOUNTS RECEIVABLE NOTEBOOK.

MR. DURANT: JUST GO AHEAD.

Q NOW MR. SMITH, I APOLOGIZE. NOW, YOU HAVE THE ONE THAT HAS THE CHECK FOR THE $1,113 PAID BY A&E TO S&W READY MIX ALONG WITH THE INVOICE OF $113.40 WHERE THE DESCRIPTION IS CARRIAGE ROW?

A THERE IS NO PLACE AT MY HOUSE, 2940 CARRIAGE ROW LANE, THAT YOU COULD PUT 10 YARDS OF CONCRETE. THE LOT IS NOT BIG ENOUGH. THIS IS A MISTAKE. THERE IS NO CONCRETE AT CARRIAGE ROW.

Q OKAY.

A I MEAN, YOU'RE WELCOME TO GO LOOK.

MS. COOK: YOUR HONOR, CAN WE TAKE A BREAK? I'M GETTING DIZZY AND MAYBE WE CAN BREAK FOR LUNCH NOW.

JUDGE HOWE: YES. IS THIS A GOOD TIME TO BREAK FOR LUNCH?

MR. DURANT: WHATEVER PLEASES THE COURT.

MS. COOK: MAYBE IF I SIT A FEW MINUTES I WILL FEEL BETTER.

JUDGE HOWE: LET'S TAKE ABOUT AND HOUR FOR LUNCH.

(OFF THE RECORD FOR LUNCH.)

Q BEFORE WE BROKE FOR LUNCH I HAD BEEN ASKING YOU ABOUT SOME INVOICES. I'M GOING TO HAND YOU WHAT WE HAVE MARKED AS EXHIBIT 30. I HAVE HANDED A COPY OF THOSE TO OPPOSING COUNSEL. IT'S A TWO PAGE DOCUMENT, THE FIRST PAGE BEING A COPY OF AN A&E CHECK... IT'S ACTUALLY A THIRD PAGE DOCUMENT. IT'S AN A&E CHECK TO S&W READY MIX FOR $2,329.95. THE SECOND PAGE IS AN INVOICE FROM S&W READY MIX IN THE SAME AMOUNT. AND THE THIRD PAGE IS ANOTHER INVOICE FROM S&W. THIS IN A DIFFERENT AMOUNT, $425 FROM S&W READY MIX?

MR. DURANT: DID YOU SAY 425 OR $500?

MS. COOK: I MAY HAVE SAID 425. I'M SORRY. $525.

MR. DURANT: I'VE GOT IT.

Q MR. SMITH, DO YOU RECOGNIZE THAT INVOICE, THE SECOND PAGE WHICH IS AN INVOICE FROM S&W READY MIX TO ELLIS SMITH D/B/A EES? WHAT I'M LOOKING AT IS

THE SECOND ENTRY, THE 1528 BROOKGREEN FOR 525.
A YES, MA'AM.
Q IS THAT THE FOUNTAINS JOB?
A IT SAYS IT IS. I DON'T KNOW THE ADDRESS OF THE FOUNTAINS. I COULDN'T TELL YOU.
Q WELL, THE FIRST LINE ITEMS FOR THE $391.39 IS NOTED AS A FOUNTAINS JOBS. ACTUALLY 1528 IS... BROOKGREEN IS ANOTHER JOB OF EES, ISN'T THAT CORRECT?
A I HAVE NO IDEA. I DON'T KNOW WHERE 1528 BROOK-GREEN IS.
Q DID EES EVER DO A JOB FOR BENEDICT RAPPA?
A WHO?
Q BENEDICT RAPPA?
A I DON'T KNOW.
Q OKAY. BUT THE FOUNTAINS IS NOT AT 1528 BROOK-GREEN, IS IT?
A I DON'T KNOW. I COULDN'T TELL YOU.
Q DO YOU RECALL HAVING PAYMENTS FOR CONCRETE PAID BY A&E FOR JOBS OTHER THAN A&E JOBS?
A REPEAT THE QUESTION?
Q DO YOU RECALL AS A PARTNER OF A&E PAYING BILLS FOR EES JOBS THAT WERE JOBS OTHER THAN AN A&E? LIKE A JOB AT 1528 BROOKGREEN?
A NOT THAT I KNOW OF. NOT INTENTIONALLY BY NO

MEANS.

Q SO, IF THAT HAPPENED AND A&E PAID THAT BILL, IT WOULD HAVE BEEN... WHICH INCLUDED A CHARGE FOR 1528 BROOKGREEN, WHICH IS NOT A FOUNTAINS JOB OR ANOTHER JOB OF A&E, THAT WOULD'VE BEEN A MISTAKE AND THAT SHOULD GO ON YOUR SIDE OF THE LEDGER PAGE?

A YES, MA'AM.

Q I JUST MARKED THAT FOR ID. I DIDN'T ASK FOR IT TO BE ADMITTED AT THIS POINT, DEFENDANT'S 30. LET ME SHOW YOU WHAT I HAVE MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 31. IT'S TWO PAGES, ONE IS A CHECK FROM A&E TO S&W READY MIXED JUNE 26TH 2006, IN THE AMOUNT OF $9,225.56. AND BEHIND THAT IS AN INVOICE FROM S&W READY MIX DATED JUNE 5TH 2006 IN THE AMOUNT OF 9,225.56 WHICH IS THE SAME AMOUNT OF THE CHECK.

A YES, MA'AM.

Q DID A&E HAVE ANY JOBS OFF OF INTERNATIONAL DRIVE?

MR. THOMAS: WE OBJECT TO THE FORM OF THE QUESTION. THERE'S NOTHING ABOUT INTERNATIONAL DRIVE ON HERE ANYWHERE.

MS. COOK: WELL, IF YOU LOOK AT THE SECOND PAGE OF THE INVOICE WHERE IT'S GOT CUSTOMER PO NUMBER, IT'S GOT

INTERNATIONAL. DO YOU SEE THAT?

A YES.

Q WHEN YOU WOULD ORDER CONCRETE OR SUPPLIES FROM THE CONCRETE COMPANIES, WOULD YOU JUST CALL UP AND SAY WHERE YOU NEEDED IT TO BE DELIVERED?

A YES. I WOULD GIVE THEM A BUILDING NUMBER AND I WOULD GIVE THEM DIRECTIONS. THIS MAY BE PART OF MYRTLE BEACH NATIONAL... BECAUSE YOU CAME RIGHT BY MYRTLE BEACH NATIONAL GOING INTO THE FOUNTAINS.

Q HOW ABOUT, WOULD IT BE THE MCMILLAN JOB AT BLACK CREEK WHICH IS OFF OF INTERNATIONAL DRIVE?

A NOT THAT I KNOW OF. THAT'S A LOT OF CONCRETE FOR ONE LITTLE HOUSE, NO. I WOULDN'T THINK SO.

Q WELL, WHEN YOU GOT CONCRETE DELIVERED TO THE FOUNTAINS, DID THE CUSTOMERS PO SAY, "FOUNTAINS" OR DID IT SAY, "INTERNATIONAL" OR DO YOU RECALL WHAT IT SAID?

A I DON'T RECALL. I DON'T KNOW.

Q IS THAT YOUR HANDWRITING ON TOP OF THE INVOICE WHICH IS THE SECOND PAGE THAT SAYS FOUNTAINS?

A YES, IT IS.

Q AND FOUNTAINS WAS A FIXED PRICE CONTRACT?

A YES.

Q AND SO, COULD YOU HIDE MONEY OR BILLS IN THE FOUNTAINS FIXED PRICE CONTRACT --

A COULD I?
Q UH-HUH. (AFFIRMATIVE).
A IT'S A POSSIBILITY.
Q LIKE YOU SAID YOU THOUGHT MR. VEREEN HAD DONE YESTERDAY IN ONE OF HIS JOBS?
A LIKE I KNOW HE DID IN ONE OF HIS JOBS, YES, MA'AM.
Q SO, YOU COULD HAVE DONE THE SAME THING BY ASSIGNING AN EES BILL FOR A JOB THAT WAS NOT AN A&E ACCOUNT AND ASSIGNING IT TO FOUNTAINS WHICH WAS A FIXED PRICE CONTRACT OF A&E AND HAVING A&E PAY FOR YOUR SEPARATE COMPANIES EXPENSES, IS THAT CORRECT?
A THAT'S A DEFINITE POSSIBILITY, YES.
Q OKAY.
A BUT THERE'S 80 YARDS OF CONCRETE ON HERE AND I DON'T RECALL DOING A 80 YARD JOB ANYWHERE.
Q DO YOU THINK IT HAD A&E... BECAUSE YOU APPROVED THAT BILL... I MEAN, THE FOUNTAINS IS IN YOUR WRITING. THAT'S HOW YOU WOULD APPROVE BILLS, "YEAH, THAT WAS GOOD FOR PAYMENT, CORRECT?" THIS IS YOUR METHOD --
A IT DOESN'T SAY, "OK EES" ON IT. I DIDN'T APPROVE IT FOR PAYMENT. I PUT IT IN FOR PAYMENT, YES, I DID BECAUSE IT CAME TO ME. IT COMES TO ELLIS SMITH, IT DOESN'T COME TO A&E.

Q I JUST INTRODUCED THAT AS IDENTIFICATION. IT WASN'T INTRODUCED INTO EVIDENCE YET?

MR. DURANT: WHAT NUMBER WAS THAT?

MS. COOK: 31.

Q MR. SMITH, I'M SHOWING YOU WHAT I'VE MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 32 AND IT'S A TWO PAGE DOCUMENT. THE FIRST PAGE IS A CHECK FROM A&E TO S&W CONCRETE ON JUNE 28, 2006 IN THE AMOUNT OF $5,591.25 AND ATTACHED TO THAT IS AN INVOICE FROM S&W CONCRETE DATED JULY 15, 2006. EXCUSE ME, DATED JUNE 12TH 2006. IT'S DUE JULY 15TH 2006 FOR THE SAME $5,591.25.

A YES, MA'AM.

Q DID EES HAVE A JOB AT MYRTLE BEACH GOLF CLUB?

A NO, MA'AM.

Q IT DIDN'T?

A ALL I CAN SAY IS MYRTLE BEACH NATIONAL GOLF COURSE IS WHERE THEY WOULD TURN IN TO GO TO THE FOUNTAINS. THAT'S ALL I CAN TELL YOU. MYRTLE BEACH GOLF CLUB, I DON'T KNOW EVEN KNOW WHERE THAT'S AT.

Q AND IS IT YOUR HANDWRITING ON THIS INVOICE AT THAT... THAT SAYS, "FOUNTAINS", RIGHT?

A FOUNTAINS 8.

Q SO, YOU RECEIVED THIS INVOICE AND YOU NOTED IT TO

BE ASSIGNED TO THE FOUNTAINS JOB, CORRECT?
A YES, MA'AM.
Q A&E PAID THAT JOB?
A YES.
Q A&E PAID FOR THAT INVOICE IS WHAT I MEAN?
A RIGHT.
Q MR. SMITH, I'M GOING TO HAND YOU WHAT I'VE MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 33. IT'S A PACKAGE OF DOCUMENTS THAT HAS A&E CHECKS AND ALSO HAS INVOICES. THE INVOICES AND THESE CHECKS ALL DEAL WITH CHARGES FROM GRAND STRAND DISPOSAL. NOW, GRAND STRAND DISPOSAL, THAT WAS ONE OF THE COMPANIES THAT YOU TESTIFIED YESTERDAY THAT WOULD NOT ESTABLISH AN ACCOUNT WITH MR. VEREEN, IS THAT CORRECT?
A YES, MA'AM.
Q DO YOU HAVE AN UNDERSTANDING AS TO WHY THEY WOULD NOT ESTABLISH AN ACCOUNT WITH MR. VEREEN ACCORDING TO YOU?
A I THINK THEY HAD A FALLING OUT. MR. VEREEN WOULDN'T PAY SOME... THERE WAS SOME DISPUTES ON SOME BILLS.
Q THAT'S YOUR UNDERSTANDING?
A YES, MA'AM.
Q NOW, THE FIRST CHECK IN THIS EXHIBIT 33 IS A CHECK

DATED JANUARY 16TH 2006 IN THE AMOUNT OF $1,272.77.

A YES, MA'AM.

Q AT THE TOP OF THE CHECK IS THE NOTE FOR SOME INVOICES, SOME INVOICE NUMBERS, CORRECT? ON THE CHECK STUB THAT'S ON THE TOP?

A YES.

Q THE INVOICE NUMBERS THAT ARE REFLECTED ON THE CHECK STUB OF THAT CHECK 5038 ARE ATTACHED, ARE THEY NOT, OR ONE OF THEM AT LEAST IS, WHICH WOULD BE INVOICE NUMBER 68189?

A YES, MA'AM.

Q AND THAT MAKES UP PART OF WHAT THE FIRST CHECK PAID FOR?

A YES, MA'AM.

Q NOW, THAT INVOICE 68189 SHOWS SERVICES FOR AN ADDRESS OF 5313 HIGHWAY 17 BUSINESS IN MYRTLE BEACH. WAS THAT AN A&E JOB?

A I DON'T KNOW. I DON'T RECALL ONE BEING THERE.

Q RIGHT. BUT THIS BILL WAS TO EES, CORRECT?

A YES, MA'AM.

Q WAS THIS FOR THE TEAR DOWN OF A GAS STATION OF MARTIN BROWN IN MYRTLE BEACH?

A YES, IT WAS. AND WE GOT PAID FOR IT.

Q WHO GOT PAID FOR IT?

A A&E.
Q A&E GOT PAID FOR IT?
A YES, MA'AM.
Q THAT WAS AN A&E JOB?
A YES, MA'AM.
Q THAT'S ON THE A&E JOB LEDGER?
A YES, MA'AM.
Q NEXT CHECK IN EXHIBIT 33 IS A&E CHECK NUMBER 6566 TO GRAND STRAND DISPOSAL IN THE AMOUNT OF 1,445.28 IN OCTOBER OF '06.
A YES, MA'AM.
Q AGAIN, ON THE TOP OF THE CHECK STUB IT REFLECTS INVOICE NUMBER FOR GRAND STRAND DISPOSAL AND THE NEXT DOCUMENT IS INVOICE NUMBER 84149.
A YES, MA'AM.
Q AUGUST OF '06, THAT'S FOR SERVICES PROVIDED AT 1762 CLIFFWOOD DRIVE IN MYRTLE BEACH, CORRECT?
A THAT'S WHAT IT SAYS.
Q DID YOU... DID EES DO A JOB IN CLIFFWOOD?
A NO, MA'AM. I PUT A DUMPSTER THERE FOR BOB FAITH WHO OWNS THE TAHITIAN PEARL.
Q AND YOU DIDN'T DO ANY WORK FOR MR. FAITH AT THAT CLIFFWOOD DRIVE?
A NO. I DIDN'T DO ANY WORK, NO.
Q DID YOU HAVE A&E PAY THAT BILL, $389.34?

A IT SAYS I DID.
Q IS THAT YOUR HANDWRITING THERE?
A THAT'S MY... YES, MA'AM, THAT IS.
Q WHERE IT STRUCK OUT CLIFFWOOD AND IT SAYS WILLOUGHBY?
A IT WAS AN HONEST MISTAKE.
Q SO, YOU WEREN'T HIDING EXPENSES OF YOUR OTHER COMPANY EES ON IT'S INDIVIDUAL JOBS THAT WEREN'T A&E JOBS IN FIXED PRICE CONTRACTS FOR A&E JOBS LIKE YOU ACCUSED MR. VEREEN OF DOING? YOU WEREN'T DOING THAT HERE?
A NO, MA'AM.
Q UH-HUH, OKAY. IF YOU WOULD LOOK FOR ME AT THE NEXT CHECK AND IT IS CHECK NUMBER 6632 FROM A&E TO GRAND STRAND DISPOSAL IN NOVEMBER OF 2006 IN THE AMOUNT OF $877.99 AND ATTACHED TO THAT IS AN INVOICE 85535 OF GRAND STRAND DISPOSAL TO EES AND THAT INVOICE NUMBER IS REFLECTED ON TOP OF THE CHECK STUB. AND AGAIN, THAT SHOWS A CHARGE OF $187.25 FOR SERVICES PROVIDED AT 1762 CLIFFWOOD DRIVE THAT'S MR. FAITH'S PROPERTY?
A THAT'S MR. FAITH'S HOUSE, YES, MA'AM. AND HE OWNED THE TAHITIAN PEARL.
Q DID A&E HAVE AN AGREEMENT WITH MR. FAITH TO PAY THE BILL OF MR. FAITH'S FOR A DUMPER AT HIS

PRIVATE HOUSE AT CLIFFWOOD DRIVE?
A I CHARGED HIM IN THE TAHITIAN PEARL BILL, IN THE EXTRAS THAT WE CHARGED HIM.
Q IN THE WHAT!
A TAHITIAN PEARL EXTRAS BILL.
Q SO, IF WE LOOK AT THE TAHITIAN PEARL EXTRAS BILL WE ARE GOING TO FIND WHERE HE BASICALLY REIMBURSED EES OR E SMITH AND SONS THIS?
A I COULDN'T TELL YOU WHAT HAPPENED. I DON'T REMEMBER. IT'S BEEN A LONG TIME.
Q THIS $187.25?
A YES, MA'AM.
Q IT WILL BE THERE? IT WILL BE REFLECTED THERE?
A TO THE BEST OF MY KNOWLEDGE IT WILL.
Q AND IF IT WASN'T THAT'S AN HONEST MISTAKE AND YOU DON'T DISAGREE WITH THE COURT PUTTING THAT ON YOUR SIDE OF THE LEDGER SHEET, DO YOU, MR. SMITH?
A IF I DID NOT COLLECT IT FROM MR. FAITH, YES.
Q THAT WOULDN'T BE YOU HIDING THAT PAYMENT IN THE TAHITIAN PEARL JOB LIKE YOU ACCUSED MR. VEREEN OF DOING YESTERDAY?
A NO, MA'AM.
Q OKAY. WHAT EVEN MADE YOU THINK OF THAT, MR. SMITH WHEN YOU SAID THAT ABOUT MR. VEREEN YESTERDAY?
A YOU'RE THE ONE THAT BROUGHT IT UP.

Q NO. ABOUT HIDING AMOUNTS IN FIXED PRICE CONTRACTS. I DIDN'T BRING THAT UP, YOU SAID THAT.
A NUMBER ONE, HE WROTE A HANDWRITTEN CHECK FOR A BILL TO STOCK BUILDERS AND ATTACHED TO THE BACK OF THE CHECKS WAS POINTE MARSH 23. THE EXACT SAME AMOUNT ON THE CHECK AS WHAT WAS CHARGED TO POINTE MARSH 23.
Q THAT WAS PRETTY HARD TO... THAT WAS PRETTY EASY TO TRACK, WASN'T IT?
A IT WAS.
Q IT WOULDN'T HAVE BEEN THAT YOU CAME UP WITH THAT THEORY BECAUSE THAT'S EXACTLY WHAT YOU WERE DOING?
A EXCUSE ME. YOU GOT SOME NERVE.
Q IT WOULDN'T BE BECAUSE YOU CAME UP WITH THAT THEORY OF ACCUSING MR. VEREEN OF DOING THAT BECAUSE YOU WERE ACTUALLY DOING THAT?
A NO, MA'AM. THAT'S NOT TRUE.
Q WELL, LET'S TALK ABOUT THAT HANDWRITTEN STOCK BUILDERS BILL FOR A MINUTE THAT YOU ACCUSED MR. VEREEN OF DOING. LET ME HAND YOU WHAT I'M GOING TO MARK AS DEFENDANT'S EXHIBIT 35. DEFENDANT'S EXHIBIT 35 THAT I HAVE MARKED FOR IDENTIFICATION IS A SERIES OF DOCUMENTS?
A YES, MA'AM.
Q THE FIRST SHEET... FIRST DOCUMENT IN THERE IS A

COPY OF THE CHECK TYPEWRITTEN STOCK BUILDERS FOR $22,049.48 AND THEN THE CHECK STUB IS TYPED IN. THERE ARE SEVERAL NOTES THAT ADD UP TO THE 22,049.48 INDICATING PAYMENTS OR SUPPLIES ON THE WILLOUGHBY PLACE. IS THIS THE CHECK YOU'RE TALKING ABOUT THAT MR. VEREEN HAND WROTE ON AND WHERE YOU THOUGHT HE WAS HIDING BILLS FOR OTHER JOBS IN A FIXED PRICE JOB AT WILLOUGHBY.

A YES, MA'AM.

Q THIS IS IT?

A THIS IS NOT A HANDWRITTEN. THIS WAS WRITTEN ON A TYPEWRITER.

Q YOU HAVE BEEN SAYING HANDWRITTEN, BUT YOU MEANT TYPED CHECK, RIGHT?

A IT WAS DONE BY HAND. I'M SORRY.

Q WEREN'T ALL THE CHECKS DONE BY HAND? I MEAN, DONE TYPED?

A NO. THEY WERE DONE ON A COMPUTER.

Q ATTACHED TO DEFENDANT'S EXHIBIT 35 FOR IDENTIFICATION IS A STOCK BUILDERS INVOICE?

A YES, MA'AM.

Q THAT TOTALED $22,049.48 WHICH IS THE SAME AMOUNT AS THE CHECK 5965, CORRECT?

A CORRECT, YES, MA'AM.

Q AND WITHIN THIS LEDGER OF STOCK BUILDERS, IT

INCLUDES NUMEROUS INVOICES THAT WERE INCLUDED ON THERE THAT AMOUNTS TO THE 22,048.48, CORRECT?

A YES, MA'AM. THIS IS A STATEMENT DETAILED FOR LOT 23 POINTE MARSH.

Q AND YOU GET THAT BY WHERE THE "SHIP TO" ADDRESS IS ON THE STOCK BUILDERS STATEMENT?

A YES. "SHIP TO". IT'S IN THE UPPER RIGHT HAND CORNER, SALESMAN DENNIS MACKIE, 612 SEA MOUNTAIN HIGHWAY.

Q IS IT YOUR BELIEF THAT EVERY INVOICE THAT'S LISTED ON THIS STATEMENT AS OF 5/31/06 WAS A POINTE MARSH INVOICE?

A THIS IS A STATEMENT FOR THAT LOT. THIS IS THE CHECK FOR THE PAYMENT OF THAT STATEMENT. THAT'S ALL I'M SAYING.

Q SO, IF SOME OF THESE INVOICES LIKE THE FIRST LINE IS ONE DATED 4/4/06, IT'S GOT INVOICE 26024500-00 AND IT'S IN THE AMOUNT OF $849.61?

A YES, MA'AM.

Q FROM LOOKING AT THE STATEMENT YOU BELIEVE THAT WHATEVER IS REFLECTED ON THAT PARTICULAR INVOICE FOR $849.61 WERE FOR MATERIALS ON THE POINTE MARSH JOB?

A YES, MA'AM.

Q DO YOU HAVE ANY OTHER BASIS OTHER THAN THIS

STATEMENT FOR BELIEVING THAT THE ITEMS REFLECTED ON THIS STATEMENT ALL WENT TO POINTE MARSH? DO YOU HAVE ANY OTHER BASIS?

A NO, MA'AM, I DO NOT.

Q OKAY. BUT THAT WAS THE INVOICE THAT YOU WERE TALKING ABOUT YESTERDAY THAT YOU BELIEVE MR. VEREEN... I THINK YOU TESTIFIED TODAY THAT YOU KNOW MR. VEREEN WAS HIDING PAYMENTS... EXPENSES ON HIS OWN PERSONAL JOBS IN FIXED PRICE A&E JOBS, IS THAT CORRECT?

A YES, MA'AM, THAT IS CORRECT.

Q I WANT TO SWITCH GEARS, MR. SMITH. YOU TALKED YESTERDAY ABOUT THERE COMING A POINT IN TIME WHEN YOU WANTED TO DISASSOCIATE YOURSELF WITH... FROM MR. VEREEN AND A&E RESULTING FROM SOME ACTIVITY YOU THOUGHT WAS HAPPENING DEALING WITH CLOSINGS AT POINTE MARSH.

A YES, MA'AM.

Q DO RECOLLECT THAT AREA OF TESTIMONY?

A YES, MA'AM.

Q ONE OF THE THINGS YOU TALKED ABOUT WAS YOU BECAME PARTICULARLY CONCERNED WHEN SCOTT LONG, WHO HAD BEEN PERFORMING OR HAD PERFORMED ONE OR TWO OF THE CLOSINGS ON THE POINTE MARSH HOUSES...

MS. COOK: YOUR HONOR, DO YOU MIND IF

I SIT?

JUDGE HOWE: NO.

Q ...HE DECIDED HE NO LONGER WANTED TO DO ANY OF THE CLOSING BECAUSE OF A CALL YOU TESTIFIED THAT HE RECEIVED FROM A PURCHASER OF A POINTE MARSH HOME WANTING TO KNOW WHERE HER CHECK WAS FROM THE DEVELOPER OR MR. VEREEN AFTER THE CLOSING OCCURRED. AM I CHARACTERIZING THAT LINE OF TESTIMONY, CORRECTLY?

A HE CLOSED MORE THAN ONE OR TWO.

Q WELL, HOW MANY DO YOU THINK HE CLOSED?

A I HAVE NO IDEA. I DON'T WORK FOR SCOTT LONG.

Q LET ME HAND YOU WHAT I'VE MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT 36. IF YOU WOULD TAKE A MINUTE AND LOOK THROUGH THAT. DEFENDANT'S EXHIBIT 36 ARE A SERIES OF CLOSING STATEMENTS FROM SCOTT LONG'S OFFICE ON POINTE MARSH HOMES. I BELIEVE POINTE MARSH WAS THE DEVELOPMENT DONE BY PARK PLACE PROPERTIES?

A YES, MA'AM.

Q AND THAT'S THE DEVELOPMENT THAT YOU'RE ASKING THE COURT IN THIS ACCOUNTING TO AWARD A&E A CERTAIN PERCENTAGE OF PROFITS AND OVERHEAD ON THAT JOB?

A YES, MA'AM.

Q HOW MANY HOUSES WERE BUILD UP THERE, 23?

A I THINK THAT'S CORRECT.
Q IF YOU FLIP THROUGH ALL OF THESE, DIDN'T MR. LONG CLOSE 17 OF THE 23 BETWEEN FEBRUARY 21ST 2006 AND JANUARY 1, 2007?
MR. DURANT: I OBJECT TO THE FORM OF THE QUESTION. SHE CAN ASK HIM DO YOU KNOW. HE WASN'T THERE. HE WOULD NOT KNOW ANYTHING OTHER --
JUDGE HOWE: HE CAN ANSWER I DON'T KNOW.
A I DON'T KNOW HOW ANY CLOSINGS.
Q YOU SAID YESTERDAY THAT HE CLOSED ONE OR TWO, DIDN'T YOU?
A NO, MA'AM, I DID NOT. I SAID --
Q OH, YOU DIDN'T SAY THAT --
A I SAID HE HAD CLOSINGS AT POINTE MARSH. I DIDN'T GIVE YOU A NUMBER, NO.
Q HE CLOSED ONE OR TWO AND AFTER THAT ONE OR TWO, HE DIDN'T WANT TO MESS WITH THIS ANYMORE. BECAUSE THAT WHOLE LINE OF QUESTIONING ABOUT WHEN YOU WERE "SCARED" AND YOU WERE "AFRAID" AND YOU WERE "CONCERNED" AND YOU WERE "DISAPPOINTED"? YOU DON'T REMEMBER THAT THAT YOU TESTIFIED HE CLOSED ONE OR TWO?
A NO, MA'AM. I DON'T REMEMBER THAT.

Q OKAY. WELL, THESE STATEMENTS SHOW HE CLOSED 17 TO 23, THESE SETTLEMENT STATEMENTS. YOU WOULDN'T ARGUE WITH THAT, WOULD YOU, MR. SMITH?

MR. THOMAS: YOUR HONOR, WE OBJECT TO THE QUESTION. THIS MISSTATES AND I DON'T THINK THE EXHIBIT IS IN EVIDENCE.

MS. COOK: IT'S NOT.

MR. THOMAS: NUMBER TWO, THESE EXHIBITS ARE NOT IN EVIDENCE. THEY ARE CLOSING STATEMENTS DONE BY LAWYERS OTHER THAN SCOTT LONG AND HIS PRACTICE.

MS. COOK: OKAY. I'LL WITHDRAW THAT QUESTION.

Q ONE OF THE JOBS THAT WAS DONE AND YOU TALKED ABOUT GETTING A CHECK WAS FROM A KIRK DODRILL?

A YES, MA'AM.

Q MR. DODRILL WAS THE DEVELOPER OR THE CUSTOMER FROM WHOM A&E BUILT WHAT PROJECT?

A WE DID NOT BUILD A PROJECT FOR KURT DODRILL.

Q HOW DID YOU BECOME INVOLVED WITH MR. DODRILL?

A MARTIN BROWN.

Q HOW DID MARTIN BROWN GET YOU INVOLVED WITH MR. DODGER?

A MARTIN BROWN OWED THE DUPLEX THAT KIRK DODRILL BOUGHT.
Q WAS THAT THE SEACLUSIONS?
A YES, MA'AM.
Q AND YOU ACTUALLY BUILT THE SEACLUSION FOR MARTIN BROWN, BUT RIGHT AT THE TIME IT WAS BEING FINISHED, MR. DODRILL BROUGHT THE SEACLUSION FROM MARTIN BROWN, WHO WAS AN A&E CUSTOMERS, IS THAT RIGHT?
A YES, MA'AM.
Q AS A RESULT OF THAT PURCHASE BY MR. DODRILL OF THE SEACLUSION PROJECT, WHICH YOU BUILT FOR A&E, WERE THERE EXTRAS OR MORE WORK THAT A&E DID ON THAT JOB THAT WERE NOT INCLUDED IN THE MARTIN BROWN JOB FOR SEACLUSION?
A YES, MA'AM.
Q MR. DODRILL WAS THE GENTLEMAN WHO GAVE THE $19,000.00 AND CHANGE CHECK TO YOU WHICH YOU AGREE GOES ON YOUR SIDE OF THE PAGE BECAUSE IT DIDN'T END UP GOING INTO A&E?
A YES, MA'AM.
Q IN ADDITION, TO THAT, ISN'T IT TRUE, MR. SMITH, THAT $41,000 GIVE OR TAKE OF EXTRAS WERE DONE FOR MR. DODRILL ON THE SEACLUSIONS PROJECT?
A I COULDN'T TELL YOU THAT. I DON'T KNOW.

Q DO YOU REMEMBER EXTRAS BEING DONE ON THAT PROJECT?
A YES, MA'AM. I GAVE HIM A LIST OF EXTRAS AND I PRICED THEM OUT AND HE CHOOSE WHICH ONES HE WANTED DONE.
Q OKAY. AND WHO PREFORMED THOSE EXTRAS?
A A&E PREFORMED THEM.
Q A&E PREFORMED THEM?
A YES, MA'AM.
Q WAS A&E PAID FOR THEM?
A EXCUSE ME?
Q WAS A&E PAID FOR THE EXTRAS WORK THAT WAS DONE?
A NO, MA'AM. THE MONEY... THE 19,000 AND CHANGE THAT I GOT WAS FOR THE EXTRAS THAT WERE DONE FOR THAT JOB.
Q SO, LET ME SHOW YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT 37. IS THIS THE STATEMENT OF THOSE EXTRAS THAT YOU WORKED UP PRICES FOR MR. DODRILL FOR?
A YES, MA'AM. IT LOOKS LIKE IT.
Q SO, THE EXTRAS THAT YOU PRICED FOR HIM AMOUNTED TO $41,619.20?
A YES, MA'AM.
Q THAT WAS ADDED OVERHEAD AT A 12% RATE?
A MA'AM, I COULDN'T TELL YOU. I DON'T REMEMBER.
Q ISN'T IT ON THERE?

A YES, MA'AM. I SEE IT ON HERE, YES, MA'AM.
Q SO, YOU PUT OVERHEAD ON THIS PARTICULAR JOB AT 12%?
A YES, MA'AM.
Q BUT A&E DID NOT PREFORM ALL OF THESE EXTRAS OR DID THEY?
A NO, MA'AM.
Q WHICH EXTRAS DID A&E PREFORM?
A I KNOW WE PUT THE BAHAMAS SHUTTERS ON. I KNOW WE PUT THE TRELLES ON.
Q DID YOU ADD OUTLETS?
A DID I ADD WHAT?
Q DID YOU ADD ANY OUTLETS? I'M TAKING THAT TO BE ELECTRICAL OUTLETS.
A MS. COOK, I REALLY DON'T REMEMBER. I KNOW WE PUT TILE SURROUNDS IN TWO SHOWERS INSTEAD OF FOUR.
Q DO YOU PUT THE SPEAKERS IN THE GAME ROOM?
A NO, MA'AM, WE DIDN'T DO THAT.
Q DID YOU PUT IN SHOWERS INSTEAD OF TUBS? YOU PUT IN TILE SURROUNDS FOR SHOWERS. DOES THAT MEAN YOU PUT IN SHOWERS AND NOT TUBS?
A WE PUT IN TILE SURROUNDS FOR TWO... SHOWERS...
Q ISN'T IT TRUE, MR. SMITH, THAT NOT ONLY DID YOU PUT THAT $19,000 IN YOUR POCKET ON THE SEACLUSIONS A&E JOB, YOU ALSO PUT THE $41,619.20 FOR EXTRAS

THAT A&E PAID FOR THE SUPPLIES THAT A&E DIDN'T KNOW IT HAD AS A JOB, ISN'T THAT TRUE?

A NO, MA'AM.

MS. COOK: YOUR HONOR, I MOVE TO INTRODUCE EXHIBIT 37 INTO EVIDENCE. HE DID SAY HE RECOGNIZED THAT?

MR. DURANT: NO OBJECTIONS.

MR. THOMAS: NO OBJECTIONS.

JUDGE HOWE: DEFENDANT'S 37 SO ADMITTED.

STATEMENT OF EXTRAS FOR DR. DODRILL MARKED FOR IDENTIFICATION AND INTRODUCE INTO EVIDENCE AS DEFENDANT'S EXHIBIT 37.

Q NOW, A&E DID A JOB FOR MARTIN BROWN CALLED TAHITIAN PRINCESS, CORRECT?

A YES, MA'AM.

Q DO YOU RECALL GETTING A CHECK ON THE TAHITIAN PRINCESS JOB FROM MARTIN BROWN THAT WASN'T PUT INTO A&E, BUT THAT YOU KEPT IN THE AMOUNT OF $2,300 OR SO?

A I DON'T RECALL, NO, MA'AM.

Q YOU DON'T REMEMBER THAT?

A NO.
Q IF MARTIN BROWN TESTIFIED TO THAT IN HIS DEPOSITION WOULD YOU DISPUTE IT?
A IF YOU WOULD SHOW ME THE CHECK WHERE I PUT IT INTO THE ACCOUNT. I REALLY DON'T REMEMBER. I JUST DON'T REMEMBER. I DON'T THINK I DID.
Q WHILE YOU WERE INVOLVED WITH A&E, DID A&E LOOK AT OR ACTUALLY PUT A DEPOSIT DOWN ON A LOT AT THE CYPRESS RIVER DEVELOPMENT?
A I'M NOT FAMILIAR WITH IT.
Q YOU'RE NOT FAMILIAR WITH IT?
A NO, MA'AM.
Q IS IT THAT YOU DON'T RECALL A&E SIGNING AND PUTTING DOWN A DEPOSIT AND YOU HAD A YEAR TO CLOSE ON THAT LOT AND WITHIN THAT YEAR A&E DECIDED NOT TO CLOSE ON THE LOT. THE BELLAMY LAW FIRM REFUNDED THAT DEPOSIT CHECK ON THAT LOT, BUT THAT CHECK WAS GIVEN BY YOU TO MR. AND MRS. BROWN AND THEY DEPOSITED THAT INTO THEIR COASTAL FEDERAL ACCOUNT?
A NO, MA'AM.
Q YOU DON'T REMEMBER ANYTHING ABOUT THAT?
A NO, MA'AM.
Q MR. SMITH, LET ME HAND YOU WHAT I'M MARKING AS DEFENDANT'S EXHIBIT 38 AND IT'S A COPY OF A SERIES

OF SOME CHECKS. TAKE A MINUTE AND LOOK AT THAT. ACTUALLY I NEED TO START FROM THE BACK PAGE AND WORK FORWARD. TELL ME WHEN YOU'RE READY?

A I'M READY.

Q LAST PAGE OF DEFENDANT'S 38 FOR ID IS A CHECK FROM THE BELLAMY LAW FIRM MADE PAYABLE TO A&E IN NOVEMBER OF 2005 IN THE AMOUNT OF $6,990, IS THAT CORRECT?

A YES, MA'AM.

Q THE BOTTOM OF THAT PAGE SHOWS AN ENDORSEMENT OF THAT CHECK SIGNED BY YOURSELF AND MR. VEREEN, DOESN'T IT?

A YES, MA'AM, IT DOES.

Q NOW, DO YOU REMEMBER ANYTHING ABOUT GIVING THAT CHECK AFTER IT WAS ENDORSED TO MR. OR MRS. BROWN?

A DO I REMEMBER?

Q YEP.

A IT WAS NEVER GIVEN TO MR. OR MRS. BROWN. THIS IS THE CHECK THAT WAYNE VEREEN HANDED TO ME BECAUSE I HAD TO PAY MY TAXES AND HE TOLD ME TO PUT IT IN MY ACCOUNT. I TOOK IT TO COSTAL FEDERAL AND COASTAL FEDERAL SAID IT HAS A&E ON THE FRONT. THERE WILL BE NO DEPOSITING OF THAT IN A PERSONAL ACCOUNT. I TOOK IT BACK TO HIM AT THAT POINT IN TIME, AND HE WROTE ME A CHECK OUT OF A&E.

Q LET ME ASK YOU THIS, THE A&E CHECK... THERE'S A CHECK IN THE AMOUNT $6,900 THAT'S AN A&E CHECK AND IT'S PAYABLE TO COSTAL FEDERAL. THAT'S IN MAY '06. NOW, THE REFUND FROM THE BELLAMY FIRM... THE CHECK WAS WRITTEN IN NOVEMBER OF '05, BUT IF YOU LOOK ON THE BACK OF THAT CHECK IT WASN'T PROCESSED UNTIL MAY 2ND OF '06, WAS IT?

A YES, MA'AM.

Q AND ON MAY 2ND OF '06, THERE'S AN A&E CHECK TO COASTAL FEDERAL AND IF YOU LOOK AT THE BACK OF THAT A&E CHECK TO COASTAL FEDERAL ON THAT SAME DAY MAY 2, 2006 THE BOTTOM OF THAT SHOWS A COASTAL FEDERAL BACK OF THE CHECK. IT WAS PROCESSED AND ENTERED IN AND PUT INTO THE ACCOUNT OF MR. AND MRS. EVELYN BROWN, WASN'T IT? THE WHOLE REASON THAT MIDDLE CHECK IS IN THERE IS TO SHOW WHAT THE COASTAL FEDERAL CHECKING ACCOUNT NUMBER OF MR. AND MRS. BROWN IS. MR. AND MRS. EVELYN BROWN... MARTIN BROWN AND EVELYN BROWN CHECKING ACCOUNT AT COASTAL FEDERAL IS --

MR. DURANT: YOUR HONOR, I DON'T WANT TO INTERRUPT, BUT SHE SHOULD ASK HIM FIRST HAS HE EVER SEEN THIS CHECK WHICH IS THE CHECK FOR 6,000 AND THEN HE CAN SAY, YES, HE HAS OR HASN'T.

HE'S JUST GUESSING WHEN SHE'S ASKING HIM QUESTIONS ABOUT SOMETHING UNLESS HE'S GOT KNOWLEDGE OF IT.

MS. COOK: WELL, YOUR HONOR, I'M ASKING ABOUT THE TRANSACTION AND I'M GIVING HIM THESE DOCUMENTS TO SEE IF IT WILL REFRESH HIS RECOLLECTION ABOUT HIS... ABOUT A NEGOTIATION OF AN A&E CHECK IN NOVEMBER OF '05 ENDORSED BY BOTH HE AND MR. VEREEN, BUT NOT NEGOTIATED UNTIL MAY THE 2ND OF 2006.

JUDGE HOWE: YOU CAN ASK HIM, BUT I'M GUESSING HE DIDN'T HAVE A LOT TO DO WITH THE CHECKING ACCOUNT OF A&E. YOU ARE CERTAINLY WELCOME TO ASK HIM, BUT MY GUESS IS HE IS JUST GOING TO SAY HE DOESN'T KNOW. I DON'T THINK HE HANDLED THE CHECKING ACCOUNT.

MS. COOK: HE DIDN'T SIGN THE CHECKS, YOUR HONOR.

Q YOU DIDN'T SIGN THE CHECKS, BUT YOU... CHECKS WERE GIVEN TO YOU, CORRECT? AFTER THEY WERE SIGNED?

A SOMETIMES, YES, MA'AM.

Q DO YOU RECALL ANYTHING ABOUT A&E WRITING A CHECK TO COASTAL FEDERAL THAT THEN WAS DEPOSITED IN

THEIR COASTAL FEDERAL ACCOUNT?

A I DON'T SEE WHERE... I DON'T SEE WHERE THIS IS MARTIN AND EVELYN BROWN... I DON'T FOLLOW. I REALLY DON'T FOLLOW WHAT YOU'RE SAYING.

Q THAT'S FINE. WE CAN GET IT CLEARED UP LATER. AND YOU DIDN'T SIGN THE CHECKS, BUT WHAT YOU DID TO GET A CHECK ISSUED... WELL, WHAT DID YOU DO TO GET A CHECK ISSUED FROM A&E TO PAY AN A&E EXPENSE?

A WHAT?

Q WHAT DID YOU DO TO GET A CHECK ISSUED TO PAY AN A&E EXPENSE?

A I GAVE IT TO WAYNE VEREEN. HE APPROVED IT AND HE WROTE A CHECK FOR WHATEVER IT WAS.

Q NOW, THAT'S NOT EXACTLY WHAT YOU DID. YOU HANDED A BILL TO CARRIE DREWETT, THE BOOKKEEPER --

MR. DURANT: YOUR HONOR, WAS THAT A QUESTION?

MS. COOK: RELAX. IT'S GOING TO BE.

MR. DURANT: SHE CAN ASK HIM A QUESTION, BUT SHE CAN'T TELL HIM THE ANSWER.

JUDGE HOWE: YOU ARE TELLING HIM WHAT HE DID.

Q ISN'T IT TRUE THAT IS NOT EXACTLY WHAT HAPPENED IS IT, MR. SMITH?

A AT TIMES, YOU'RE EXACTLY RIGHT. MOST OF THE TIME I GAVE THE BILLS TO CARRIE ANS SHE WOULD PROCESS THEM AND GIVE THEM TO MR. VEREEN FOR APPROVAL AND THEN WRITE CHECKS.

Q ISN'T IT TRUE, MR. SMITH, THAT WHAT YOU WOULD DO IS YOU WOULD GIVE A BILL THAT YOU WANTED PAID BY A&E TO CARRIE DREWETT. SHE WOULD RIGHTLY OR WRONGLY ENTER STUFF INTO THIS PEACHTREE COMPUTER SYSTEM, GENERATE THE CHECK AND THEN TAKE THAT STACK OF CHECKS TO MR. VEREEN FOR HIM TO SIGN? ISN'T THAT WHAT HAPPENED?

A THAT I COULDN'T TELL YOU.

Q BUT YOU DON'T DISAGREE, DO YOU, MR. SMITH, THAT WHEN YOU HAD A BILL THAT YOU WANTED A&E TO PAY, THE PROCESS WAS YOU HANDED THE BILL TO CARRIE, THE BOOKKEEPER AND FROM THERE A PROCEDURE WAS GONE THROUGH UNTIL A CHECK WAS ISSUED AND EITHER MAILED TO PAY OUT OR EITHER GIVEN TO YOU TO TAKE TO THE CREDITOR? IS THAT A FAIR STATEMENT?

A NO, MA'AM, I DON'T THINK IT IS. I THINK THOSE BILLS WERE COLLECTED BY CARRIE AND THEY WERE GIVEN TO MR. VEREEN AND HE WOULD TELL HER WHAT CHECKS TO WRITE. SHE DID NOT INDISCRIMINATELY WRITE CHECKS ON WHATEVER BILL. MR. VEREEN WOULD TELL HER AND SOMETIMES HE WOULD THROW THE BILLS OUT.

Q NOW, DID I UNDERSTAND YOU CORRECTLY TO SAY THAT MR. WAYNE VEREEN WAS THE ONE WHO APPROVED BILLS FOR PAYMENT?

A I APPROVED BILLS ON MY JOBS. I GAVE THEM TO HIM. HE WOULD CHECK THEM TO MAKE SURE THEY WERE RIGHT AND HE WOULD TELL CARRIE TO WRITE THE CHECKS AND HE WOULD SIGN THE CHECKS THAT SHE WROTE ACCORDING TO WHICH ONES HE WANTED TO PAY.

Q SO, YOUR TESTIMONY ON JOBS THAT YOU WERE THE SUPERVISOR ON OR YOU WERE RUNNING, YOU APPROVED THE PAYMENT OF THE BILLS AND YOU GAVE THE BILLS TO WAYNE? YOU DIDN'T GIVE IT TO CARRIE, YOU'D GIVE IT TO WAYNE TO REVIEW?

A NO, MA'AM. THAT'S NOT WHAT I SAID. I PRIMARILY APPROVED THE CHECKS THAT CAME TO MINE. ANY BILL THAT I HAD LIKE EES, THEY WENT TO CARRIE. SHE WOULD TAKE THEM ALL TO WAYNE. WAYNE WOULD TELL HER WHAT CHECK HE WANTED. HE WOULD HAND HER A STACK OF INVOICES AND SAY, "WRITE CHECKS FOR THIS." HE WOULD LEAVE SOME CHECKS... SOME INVOICES ON THE DESK THAT MAY NOT BE DUE AT THIS TIME. SHE WOULD WRITE THE CHECKS AND GIVE THEM BACK TO HIM AND HE WOULD SIGN THEM AND WE WOULD DISTRIBUTE THEM.

Q MR. SMITH, AT THE BEGINNING OF THIS BUSINESS A&E,

WHY WASN'T IT... YOU AS THE PRESIDENT, WHY WAS IT YOU DIDN'T WANT TO BE A SIGNATORY ON THE CHECKING ACCOUNT OF A&E?

A I WAS NEVER ASKED. I NEVER ASKED MYSELF... I NEVER ASKED TO BE PUT ON IT.

Q IN FACT, YOU TOOK THE POSITION AND YOU TOLD WAYNE YOU DIDN'T WANT TO BE ON THE CHECKING ACCOUNT, DIDN'T YOU?

A NO, MA'AM, I DID NOT TELL HIM THAT. THAT'S A LIE.

Q DID YOU EVER BEFORE SEPTEMBER... IN 2004, YOU WERE THE PRESIDENT OF A&E, CORRECT?

A CORRECT.

Q YOU HAD FREE REIN TO COME AND GO IN THE OFFICES OF A&E, IS THAT CORRECT?

A YES, MA'AM.

Q DURING THAT TIME, DID ANYONE EVER DENY YOU ACCESS TO ANY BOOKS OR RECORDS OF A&E?

A NO, MA'AM.

Q DID YOU EVER ASK TO SEE ANY BOOKS OR RECORDS OR FINANCIAL INFORMATION ON A&E IN 2004?

A QUITE OFTEN I WOULD GET CARRIE TO RUN A GENERAL LEDGER TO WHAT KIND OF COSTS WE HAD ON THE JOB OR WHAT WAS DONE.

Q DID ANYONE EVER DENY YOU THAT?

A SHOULD TELL ME... SHE DIDN'T PRINT THEM OUT. SHE

WOULD TELL WE WHAT WAS GOING ON THERE.
Q DID YOU EVER ASK ANYBODY TO SEE THE CHECKING ACCOUNT RECORDS?
A NO, MA'AM.
Q DID ANYBODY EVER PREVENT YOU FROM LOOKING AT THOSE?
A NO, MA'AM.
Q 2005, SAME SCENARIO. YOU HAD FREE REIN AND YOU COULD ASK FOR AND LOOK AT ANY DOCUMENTS YOU WANTED, IS THAT CORRECT?
A YES, MA'AM.
Q DID YOU EVER ASK TO LOOK AT ANY CHECKING ACCOUNT RECORDS OR JOB LEDGERS THAT ANYONE DENIED YOU ACCESS TO?
A NO, MA'AM. I THOUGHT I COULD TRUST MY PARTNER, THAT HE WOULD BE DOING THE RIGHT THING.
Q SAME QUESTION WITH REGARD TO 2006. DID YOU EVER ASK TO SEE ANYTHING THAT YOU WERE NOT SHOWN?
A NO, MA'AM.
Q IN 2007, WHAT'S THE FIRST TIME YOU ASKED TO SEE ANY RECORDS, GENERAL LEDGERS, CHECKING ACCOUNT STATEMENTS OR ANY A&E RECORDS OR OTHER RECORDS THAT YOU WERE DENIED BEING ABLE TO SEE?
A NEVER SINCE THE TIME I WAS THERE.
Q NEVER?

A NO. I WAS TOLD THAT... THEY HAVE NO IDEA WHAT WAS IN THE BANK. THAT CAME FROM CARRIE. SHE COULDN'T EVEN GET A BALANCE AT THE TIME. ALL SHE HAD WAS A STATEMENT.

Q WHILE YOU WERE THERE, DID YOU EVER ASK MR. VEREEN, "LET ME SEE THE CHECKING ACCOUNT RECORDS."?

A NO.

Q NEVER ASKED MR. VEREEN FOR THE BALANCE THAT WAS IN THE BANK?

A NO, MA'AM.

Q ISN'T IT TRUE, MR. SMITH, THAT ANY TIME YOU NEEDED AN ADVANCE OR YOU NEEDED SOME MONEY FOR PAYING YOUR INCOME TAXES OR HELPING TO BUY YOUR NEW HOUSE, A&E AND MR. VEREEN AGREED TO THAT AND ADVANCED THAT TO YOU?

A A&E DID, YES, MA'AM.

Q WERE YOU EVER DENIED ANY REQUEST FOR ADVANCES OR MONEY FROM A&E?

A NO, MA'AM.

MS. COOK: BATHROOM BREAK PLEASE.

(OFF THE RECORD).

THIS TRIAL WAS ADJOURNED IN LIEU OF ILLNESS OF MS. COOK.)

SOUTH CAROLINA,

CERTIFICATE

HORRY COUNTY.

I, PEPPER M. MCCARTHY, A NOTARY PUBLIC AND VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA DO HEREBY CERTIFY THAT THIS HEARING AND THAT THE FOREGOING (ONE HUNDRED AND FIFTY-THREE)(153) PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE EVIDENCE AS GIVEN BY SAID WITNESS AND AS TAKEN DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS ACTION NOR AM I INTERESTED EITHER DIRECTLY OR INDIRECTLY IN THE RESULTS THEREOF.

I FURTHER CERTIFY THAT I AM NOT RELATED BY BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS ACTION.

THIS THE 21ST, DAY OF JULY, 2016.

PEPPER M. MCCARTHY,
VERBATIM REPORTER AND
NOTARY PUBLIC

MY COMISSION EXPIRES:
FEBRUARY 2, 2022

STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS

COUNTY OF HORRY — FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-0620

ELLIS E. SMITH, INDIVIDUALLY, AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., A SOUTH CAROLINA CORPORATION,

PLAINTIFFS,

V.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, PARKWAY OFFICE, LLC, ARTHUR VEREEN CONSTRUCTION INC. AND LINDA C. VEREEN,

DEFENDANTS.

ARTHUR WAYNE VEREEN, INDIVIDUALLY AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., AND 29TH PLACE DEVELOPERS, INC.,

THIRD-PARTY PLAINTIFFS

V.

E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., AND ELLIS E. SMITH INDIVIDUALLY,

THIRD-PARTY DEFENDANT'S

HEARING

FROM (9:45 A.M.) UNTIL (4:00 P.M)

OCTOBER 11 THROUGH 13, 2011

AS TAKEN AND TRANSCRIBED BY PEPPER M. McCARTHY , NOTARY PUBLIC AND VERBATIM REPORTER, AT THE HORRY COUNTY COURT HOUSE, 1201 3rd AVENUE , CONWAY, SOUTH CAROLINA.

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APPEARANCES

FOR PLAINTIFFS: ELLIS SMITH

DURANT & MARTIN
FRANK H. DURANT, ESQ.
2107 FARLOW STREET
MYRTLE BEACH, SOUTH CAROLINA 29577

E. SMITH AND SON
THOMPSON & HENRY LAW FIRM
J. JACKSON THOMAS, ESQ.
1314 PROFESSIONAL DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

FOR DEFENDANTS:

COOK & ROY
KATHRYN M. COOK, ESQ.
10409 N. KINGS HIGHWAY MYRTLE BEACH
SOUTH CAROLINA 29572

INDEX TO EXAMINATION

ELLIS SMITH:

DIRECT EXAMINATION BY MS. COOK.....PAGE 9

CROSS EXAMINATION BY MR. DURANT.....PAGE 251

BETH SISSON:

DIRECT EXAMINATION BY MS. COOK.....PAGE 272

EXHIBITS

DEFENDANT'S:

39. LETTER FROM ELLIS SMITH DATED 6.2.06 WITH CHECK, FINAL PAYMENT FOR THE FOUNTAINS....PAGE 19

40. NORTH MYRTLE BEACH BUILDING PERMIT FOR THE TAHITIAN PRINCESS.....PAGE 27

41. THE NORTH MYRTLE BEACH BUILDING PERMIT FOR MARTIN BROWNS TAHITIAN PRINCESS II.....PAGE 31

42. STANDARD FORM AN AGREEMENT BETWEEN OWNER AND CONTRACTOR.....PAGE 32

43. CONTINUATION SHEET DATED 11.27.06 FOR TAHITIAN PEARL, SCHEDULE OF VALUES AND QUOTES.....PAGE 36

44. PHOTOGRAPHS OF EWELL SMITH.....PAGE 46

45. CONTINUATION SHEET DATED 8.8.06 DIAMOND DUNES II, SCHEDULE OF VALUES.....PAGE 49

46. A&E CONSTRUCTION AND CONSULTANTS TO MARTIN BROWN ON CONDOLUX.....PAGE 57

47. LETTER TO A&E TO KIRK DODRILL ON OCEAN BLUE EXTRAS.....PAGE 60

48. NORTH MYRTLE BEACH BUILDING PERMIT FOR MARTIN BROWN, OCEAN BLUE.....PAGE 64

49. HORRY COUNTY PERMIT AND APPLICATION FOR CARI ANN DAVIS.....PAGE 82

50. CERTIFICATE OF OCCUPANCY FOR THE CARI ANN DAVIS HOUSE.....PAGE 82

51. HORRY COUNTY PERMIT APPLICATION FOR THE SEALEY JOB WITH TICKETS....PAGE 87

52. CERTIFICATE OF OCCUPANCY

FOR THE SEALEY JOB..... .....PAGE 87

53. HORRY COUNTY PERMIT AND APPLICATION FOR THE MCMILLAN JOB WITH TICKETS.....PAGE 92

54. CERTIFICATE OF OCCUPANCY FOR THE MCMILLAN JOB.....PAGE 92

55. HORRY COUNTY PERMIT APPLICATION FOR THE PEREZ JOB WITH TICKETS.....PAGE 96

56. HERTZ INVOICE FOR THE LULL AND SKID.....PAGE 111

57. SOUTH CAROLINA SECRETARY OF STATE FOR E SMITH AND SONS CONSTRUCTION, LLC.....PAGE 122

58. APPLICATION FROM MR. SMITH FOR A LLR, LICENSE.....PAGE 121

59. THE STATE OF SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD CARD BACK AND FRONT.....PAGE 127

60. FREEDOM OF INFORMATION ACT REQUEST FORM ON 10.24.10 BY ELLIS SMITH.....PAGE 129

61. APPLICATION FOR CONSTRUCTION PERMIT FOR CAROLINA KEYES.....PAGE 185

62. GENERAL OR MECHANICAL CONTRACTORS APPLICATION FOR PINE BLUFF CONSTRUCTION.....PAGE 186

63. CHECK AND INVOICES TO MCGEE AND CADD REPROGRAPHICS WITH A BANK STATEMENT.....PAGE 161

64. APPLICATION FOR CERTIFICATE OF PAYMENT ON CONDOLUX.....PAGE 186

65. CONTRACTORS ACKNOWLEDGMENT CONSENT TO ASSIGNMENT AND LIEN SUBORDINATION AGREEMENT.....PAGE 184

66. CITY OF NORTH MYRTLE BEACH PERMIT FOR MARTIN BROWN

ON THE CONDOLUX PROJECT.....PAGE 188

67. CITY OF NORTH MYRTLE BEACH PERMIT FOR MARTIN BROWN ON A MR. G'S DEMO.....PAGE 190

68. CITY OF NORTH MYRTLE BEACH PERMIT FOR A FENCE.....PAGE 191

69. CITY OF NORTH MYRTLE BEACH PERMIT FOR MARTIN BROWNS BEACH HOUSE.....PAGE 194

70. CITY OF NORTH MYRTLE BEACH PERMIT FOR MARTIN BROWN FOR ROTTEN WOOD AND DECK.....PAGE 198

71. CITY OF NORTH MYRTLE BEACH PERMIT FOR REAL ESTATE OFFICE.....PAGE 199

72. CITY OF NORTH MYRTLE BEACH PERMIT FOR THE BUCCANEER HOTEL.....PAGE 202

73. HORRY COUNTY SOUTH CAROLINA BUILDING PERMIT FOR CARRIAGE ROW...PAGE 210

74. ARTHUR VEREEN CONSTRUCTION LETTERHEAD TO ELLIS SMITH FROM WAYNE VEREEN WITH ATTACHMENTS.....PAGE 225

75. LETTER TO WAYNE VEREEN FROM ELLIS SMITH'S WITH PLANTATION POINTE CHECK.....PAGE 232

76. CHECK TO WAYNE VEREEN FROM ELLIS SMITH.....PAGE 232

77. NOTEBOOKS FOR AWV, ACCOUNTS RECEIVABLE 2003-2009.....PAGE 382

78. NOTEBOOKS FOR AVC, ACCOUNTS RECEIVABLE 2003-2009.....PAGE 383

79. NOTEBOOKS FOR PARKWAY ACCOUNTS RECEIVABLE 2003-2009.....PAGE 384

80. NOTEBOOKS FOR PARK PLACE PROPERTIES ACCOUNTS RECEIVABLE

FOR 2003-2009.....PAGE 384

81. ELLIS SMITH ACCOUNT RECEIVABLE.....PAGE 671

82. SUMMARY SHEET FOR VEREEN.....PAGE 385

83. ARTHUR WAYNE VEREEN'S NOTEBOOK.....PAGE 437

84. CHECKS, DEPOSITS, AND INVOICES FOR THE PERRY HOUSE.....PAGE 463

85. EXPENSE SPREADSHEET.....PAGE 614

86. CHECK, INVOICE FOR PARK PLACE PROPERTIES ACCOUNT FILE.....PAGE 546

87. LETTERHEAD FROM TURNER/PADGET.....PAGE 630

88. SUMMARY FROM RICE/MCDONALD.....PAGE 632

89. SUMMARY FROM RICE/MCDONALD C. F. C.....PAGE 633

90. HORRY COUNTY BUILDING PERMIT, INVOICES, AND PAYMENT FOR HARDEE...PAGE 638

91. CO FOR THE MATHI JOB.....PAGE 640

92. GRAND STRAND BUILDERS DATED MAY 17TH, 2011.....PAGE 646

93. GRAND STRAND BUILDERS DATED JUNE THE 21, 2011 TO MR. SMITH.....PAGE 647

94. GRAND STRAND BUILDERS DATED 10.3.11 TO MR. SMITH.....PAGE 647

95. LETTERS WITH DOCUMENTS.....PAGE 653

96. FAX TRANSMITTAL TO MRS. BRADY DATED 7.5.07.....PAGE 656

97. PARKWAY OFFICES JOB LEDGER AND CHECKS.....PAGE 664

98. JOB LEDGERS AND CHECKS FOR 2005 THROUGH 2007.....PAGE 667

COURT EXHIBIT:

1. 2004 - 2009 NOTEBOOK FOR A&E'S CHECKING ACCOUNT.....PAGE ?

COURT REPORTERS NOTES:

***ALL PROFFERED EXHIBIT ARE IN BOLD.**

**ALL EXHIBITS MARKED FOR IDENTIFICATION ONLY, IN ITALIC.*

*BLUE PRINTS THAT ARE ATTACHED TO EXHIBIT "95" ARE ONLY IN THE ORIGINAL.

*ALL NOTEBOOKS RETAINED BY COUNSEL EXHIBITS 77, 78, 79, 80, 81, AND COURT EXHIBIT 1.
****

MS. COOK: YES, MA'AM. MY IS RECOLLECTION THAT MR. SMITH WAS ON THE STAND AND I WAS CROSS-EXAMINING HIM.

JUDGE HOWE: MR. SMITH I BELIEVE YOU ARE STILL UNDER OATH AND I KNOW IT'S BEEN A LONG TIME.

MS. COOK: YOUR HONOR, MAY I ALSO ASK YOUR INDULGENCE. MR. THOMAS AND MR. DURANT WERE KIND ENOUGH TO SAY THEY HAD NO PROBLEM IF I SAT.

JUDGE HOWE: THAT'S PERFECTLY FINE.

MS. COOK: THANK YOU, YOUR HONOR, AND MR. SMITH, THAT IS NO DISRESPECT TO YOU IF THAT IS OKAY.

A THAT'S FINE.

MR. DURANT: YOUR HONOR, I DID TELL MR. SMITH THAT HE COULD BRING HIS DRINK UP THERE SINCE YOU SAID.

JUDGE HOWE: THAT'S FINE TOO. YOU WOULD RATHER HAVE YOUR CARBONATED DRINK AS OPPOSED TO WATER.

ELLIS EWELL SMITH, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MS. COOK:

Q MR. SMITH, GOOD MORNING.

A GOOD MORNING.

Q IT HAS BEEN A LITTLE WHILE BUT I AM NOT GOING TO TRY TO REPEAT, BUT I WANT TO SEE IF YOU AGREE WITH ME ON A COUPLE THINGS. FIRST, YOU AGREE THAT YOU ARE A 50 PERCENT MEMBER/OWNER OF THE COMPANY CALLED A&E CONSTRUCTION AND CONSULTANTS, CORRECT?

A CONSTRUCTION AND CONSULTANT, YES, MA'AM.

Q AND WOULD YOU AGREE WITH ME THAT AS A 50 PERCENT MEMBER/OWNER OF THAT COMPANY ...

MR. DURANT: YOUR HONOR, I BELIEVE HE IS A SHAREHOLDER, NOT A MEMBER. LLC'S HAVE MEMBERS. THIS IS A CORPORATION.

MS. COOK: I'M SORRY.

Q SHAREHOLDER, EXCUSE ME. WOULD YOU AGREE WITH ME

THAT AS A 50 PERCENT SHAREHOLDER, ALONG WITH MR. VEREEN, THAT YOU TAKE THE POSITION THAT YOU WERE ENTITLED TO THE SAME BENEFITS, SALARY, DISTRIBUTION OF MONIES FROM THE COMPANY AS MR. VEREEN WAS?

A YES, MA'AM.

Q AND WOULD YOU AGREE WITH ME THAT MR. VEREEN PUT IN CASH CONTRIBUTIONS TO HELP FUND A&E DURING THE COURSE OF ITS BUSINESS?

A IN THE BEGINNING, YES.

Q AND YOU DID NOT PUT IN ANY CASH CONTRIBUTIONS, IS THAT CORRECT?

A YES MA'AM. THAT IS CORRECT.

Q AND IT IS YOUR POSITION THAT IF ANY LABOR OR MATERIALS OR SUPPLIES PAID FOR BY A&E WERE USED ON JOBS OTHER THAN A&E JOBS, WHOEVER USED THOSE A&E ASSETS SHOULD HAVE TO REIMBURSE A&E FOR THOSE ASSETS, IS THAT CORRECT?

A IF THEY WERE PURCHASED BY A&E, YES, MA'AM.

Q NOW, WITH REGARD TO SOME OF THE JOBS OF A&E, DO YOU AGREE THAT ONE OF THE JOBS WAS A JOB THAT WAS REFERRED TO AS THE WILLOUGHBY JOB?

A YES, MA'AM.

Q AND THE WILLOUGHBY JOB IS ONE IN WHICH THE COMPANY WAS SUED, ALONG WITH SOME OTHER FOLKS BY

AN ARCHITECT ON SOME ALLEGED COPYRIGHT VIOLATIONS, IS THAT TRUE?

A CAN YOU ASK THE QUESTION AGAIN PLEASE?

Q THAT WITH REGARDS TO THE WILLOUGHBY JOB, A&E WAS SUED ALONG WITH SOME OTHER DEFENDANTS BY AN ARCHITECT HAVING TO DO WITH ALLEGATIONS OF COPYRIGHT VIOLATIONS ON PLANS DEALING WITH THE WILLOUGHBY JOB, IS THAT CORRECT?

A YES, MA'AM.

Q AND DO YOU AGREE THAT THE COST TO DEFEND THAT SUIT -- THE COST FOR A&E TO DEFEND THAT SUIT, TO DEFEND ITSELF, WAS A LEGITIMATE COST OF A&E?

A I DON'T NECESSARILY BELIEVE THAT.

Q AND WHY, IF A&E AND THE COMPANY, WHICH YOU WERE A 50 PERCENT SHAREHOLDER WAS SUED, DO YOU NOT BELIEVE A&E SHOULD HAVE PAID FOR THE DEFENSE OF ITSELF?

A I HAVE NEVER SEEN A CONTRACT WITH A&E WITH HARRY WILLOUGHBY TO BUILD WILLOUGHBY PLACE. TO MY UNDERSTANDING IT WAS AN ARTHUR VEREEN CONSTRUCTION CONTRACT TO BUILD WILLOUGHBY PLACE. THE PLANS WERE DRAWN BEFORE ANY PERMIT WAS BOUGHT TO BUILD A BUILDING AT WILLOUGHBY PLACE. SO, I CAN'T SAY THAT FOR SURE.

Q SO, IS YOUR POSITION THAT A&E SHOULD HAVE NOT

DEFENDED ITSELF IN THAT LAWSUIT?

A NO, MA'AM, THAT'S NOT MY POSITION.

Q SO, YOU AGREE THAT A&E HAD AN OBLIGATION TO DEFEND ITSELF IN THE LAWSUIT WHERE IT WAS SUED HAVING TO DO WITH WILLOUGHBY PLACE?

A YES, MA'AM.

Q BUT YOU DO NOT AGREE THAT THE COST OF THAT DEFENSE OF A&E SHOULD BE BORNE BY A&E?

A I COULD NOT SAY.

Q OKAY. DO YOU AGREE WITH ME THAT A&E DID HIRE LAWYERS TO DEFEND ITSELF IN THAT LAWSUIT?

A YES, MA'AM.

Q AND WAS THAT LAWSUIT ULTIMATELY SETTLED BY WAY OF A NEGOTIATED SETTLEMENT WITH THE PLAINTIFF?

A TO THE BEST OF MY KNOWLEDGE, YES. THAT'S WHAT I WAS TOLD.

Q AND WAS THERE A MEDIATION WHERE PARTIES GOT TOGETHER TO TRY TO SETTLE THE CASE?

A TO THE BEST OF MY KNOWLEDGE, YES. THAT'S WHAT I WAS TOLD.

Q AND YOU REFUSED TO ATTEND THAT MEDIATION, ISN'T THAT CORRECT?

A EXCUSE ME.

Q YOU REFUSED TO ATTEND THAT MEDIATION, IS THAT NOT CORRECT?

A NO, MA'AM. I DID NOT EVEN KNOW IT WAS TAKING PLACE UNTIL AFTER IT HAD TAKEN PLACE.

Q OKAY. AND DO YOU HAVE ANY REASON TO DISPUTE THAT THE STATEMENT WITH REGARD TO THE SETTLEMENT OF THE WILLOUGHBY PLACE LAWSUIT THAT A&E PAID $70,000 TO SETTLE OUT ITS POTENTIAL LIABILITY IN THAT LAWSUIT?

A I COULDN'T TELL YOU EITHER WAY WHETHER THEY DID OR WHETHER THEY DIDN'T.

Q OKAY. OKAY. DO YOU AGREE THAT IT WAS IN THE BEST INTEREST OF A&E TO SETTLE THE LAWSUIT?

A FROM WHAT I UNDERSTAND, YES.

Q AND DO YOU HAVE A PROBLEM IF THE EVIDENCE WERE TO SHOW THAT $70,000 WAS THE AMOUNT THAT A&E PAID TOWARD THE TOTAL SETTLEMENT OF THAT CASE?

A EXCUSE ME NOW.

Q DO YOU HAVE A PROBLEM IF THE EVIDENCE SHOWS THAT $70,000 ...

MR. DURANT: YOUR HONOR, I OBJECT TO THE FORM OF THE QUESTION. SHE CAN ASK HIM DOES HE KNOW WHETHER OR NOT A&E PAID IT. I DON'T KNOW IF IT'S PROPER TO ASK HIM IF HE HAS A PROBLEM WITH WHAT SOMEONE MIGHT HAVE PAID. SO I OBJECT TO FORM.

JUDGE HOWE: OVERRULED.

A DO I HAVE A PROBLEM IF THEY PAID $70,000?
Q YES, SIR.
A IN THE DEFENSE OF THAT SUIT, IF EVERYTHING WAS THERE, NO, MA'AM, I DON'T.
Q OKAY. IN CONNECTION WITH DEFENDING THE WILLOUGHBY LAWSUIT, DID YOU, ON BEHALF OF A&E, WORK WITH SUSAN BRADY TO COME UP WITH SOME OF THE FIGURES TO DETERMINE HOW MUCH PROFIT A&E MADE ON THE WILLOUGHBY JOB?
A NO. I DIDN'T PERSONALLY DISCUSS THE PROFITS ON THE WILLOUGHBY JOB. I MAY HAVE TAKEN SOME MATERIAL THAT I WAS ASKED TO TAKE TO HER TO DO THE CALCULATIONS, YES.
Q DID YOU PROVIDE, AND BETH SISSON PROVIDE, THAT INFORMATION ON BEHALF OF A&E TO MRS. BRADY TO MAKE THAT CALCULATION?
A I DID NOT PROVIDE IT. I DID NOT RUN THE COMPUTER. I DID NOT KNOW WHAT THE PROFITS WERE ON THAT JOB.
Q DID YOU GIVE ANY INFORMATION TO MRS. BRADY AS TO WHAT PERCENTAGE SHOULD HAVE BEEN USED IN MRS. BRADY'S CALCULATIONS FOR PROFIT, FOR OVERHEAD, FOR CHARGING FICA, AND OTHER HOLDINGS FROM THE LABOR CHARGES HAVING TO DO WITH THE WILLOUGHBY PROJECT?

A I COULD NOT TELL YOU. I CANNOT RECALL.
Q YOU DON'T REMEMBER IF YOU DID OR NOT?
A NO, MA'AM.
Q DID YOU AGREE WITH THE CALCULATIONS THAT MRS. BRADY MADE ON BEHALF OF A&E AS TO THE PROFIT THAT SHOULD HAVE BEEN MADE BY A&E ON THE WILLOUGHBY JOB?
A AT THIS TIME? NO.
Q NO, SIR. AT THAT TIME. DID YOU AGREE WITH THE CALCULATIONS OF MRS. BRADY?
A TO WHAT I WAS PRIVILEGED TO OBSERVE, IT LOOKED NORMAL.
Q AND SO, DID YOU AGREE WITH HER FIGURES AT THE TIME THAT YOUR EXPERT CAME UP WITH DEFENDING A&E IN THE WILLOUGHBY LAWSUIT?
A A&E'S EXPERT, NOT MY EXPERT?
Q A&E'S EXPERT, YES.
A FROM WHAT SHE WAS GIVEN, YES.
Q AND YOU DISPUTE THOSE FIGURES NOW? YOU DO NOT STILL AGREE WITH THE FIGURES THAT YOUR EXPERT -- EXCUSE ME. THAT A&E'S EXPERT, MRS. BRADY, CAME UP WITH FOR THE WILLOUGHBY JOB?
A THE FIGURES THAT SHE WAS GIVEN AND I HAVE LEARNED SINCE THEN THEY WERE COMPLETE. SO, NO, I DO NOT AGREE WITH WHAT SHE CAME UP WITH.

Q DO YOU AGREE WITH THE PERCENTAGE THAT SHE USED FOR JOB COSTS AND OVERHEAD AND PROFIT IN HER CALCULATIONS?

A I COULDN'T TELL YOU. I DON'T RECALL.

Q ISN'T IT TRUE, MR. SMITH, THAT YOU ARE THE ONE WHO GAVE MRS. BRADY'S THOSE PERCENTAGES FOR HER TO USE IN HER CALCULATIONS AS A&E'S EXPERT IN THE WILLOUGHBY TRIAL, THE WILLOUGHBY SUIT?

A I COULD NOT TELL YOU. I DO NOT RECALL.

Q YOU MAY HAVE?

A IT'S A POSSIBILITY, SURE.

Q ANOTHER JOB OF A&E'S WAS A JOB REFERRED TO AS THE FOUNTAINS JOB, IS THAT CORRECT?

A YES, MA'AM.

Q AND YOU WORKED ON THAT JOB? YOU WERE A SUPERINTENDENT ON THAT JOB?

A A PROJECT MANAGER. YES, MA'AM.

Q PROJECT MANAGER, EXCUSE ME. ALRIGHT. AS PART OF -- OR IN DOING THAT JOB, DID THERE COME A POINT IN TIME WHERE THERE WAS A DISPUTE BETWEEN A&E AND THE DEVELOPER/ OWNER OF THE FOUNTAINS PROJECT AS TO HOW MUCH WAS OWED AND FINISHING UP THE PUNCH LIST AND THINGS OF THAT NATURE AT THE FOUNTAINS JOB?

A AT WHAT POINT IN TIME?

Q TOWARD THE END OF THE JOB.
A NOT THE VERY END, NO, MA'AM.
Q NOT THE VERY END?
A NO, MA'AM.

MS. COOK: YOUR HONOR, I BELIEVE WHEN WE LEFT OFF DEFENDANTS LAST EXHIBIT WAS "38". SO, WE WOULD BE STARTING WITH DEFENDANT'S EXHIBIT "39".

JUDGE HOWE: OKAY.

Q MR. SMITH, I'M GOING TO HAND YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT "39" AND ASK IF YOU CAN IDENTIFY THAT? IS THAT YOUR HANDWRITING, MR. SMITH?
A THIS SIGNATURE IS MY HANDWRITING. YES, MA'AM.
Q DO YOU RECOGNIZE THIS DOCUMENT?
A YES, MA'AM. I HAVE SEEN IT.
Q WHAT IS IT?
A IT IS AN AGREEMENT FOR FINAL PAYMENT.
Q ON WHAT?
A THE FOUNTAIN'S $66,000 ON BUILDING K,J,I,H,G,11, 5, AND C.
Q AND THE DATE ON HERE IS 6/2/2006?
A YES, MA'AM.
Q DO YOU REMEMBER ABOUT THAT TIME THERE BEING A LITTLE BIT OF A DISAGREEMENT -- PRIOR TO THIS

TIME, THERE BEING A LITTLE BIT OF DISAGREEMENT BETWEEN THE OWNER -- I THINK HIS NAME WAS MR. KUHN, OF THAT PROJECT AND A&E ABOUT THE PUNCH LIST AND FINISHING UP, AT LEAST, THOSE BUILDINGS?

A NO. I DIDN'T REMEMBER EXACTLY WHAT THE DISAGREEMENT WAS ABOUT, BUT WE DID HAVE A DISAGREEMENT WITH HIM. IT WAS SOMETHING TO DO WITH THE LENGTH OF CONTRACT. WE TOOK TOO LONG TO DO IT OR SOMETHING. I DON'T RECALL EXACTLY.

Q WHATEVER THE DISAGREEMENT WAS, IS IT TRUE THAT Y'ALL DID WHATEVER WAS NECESSARY -- A&E DID WHATEVER WAS NECESSARY IN ORDER TO SATISFY THE OWNER SUCH THAT HE WOULD PAY THIS FINAL $66,000 ON OR ABOUT JUNE 2ND AND THAT YOU EXCEPTED HIS FINAL PAYMENT ON THOSE BUILDINGS?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q AND IS THAT A COPY OF THE CHECK FOR THAT FINAL $66,000 PAYMENT ON THOSE BUILDINGS?

A TO THE BEST OF MY KNOWLEDGE, YES.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE THIS AS EXHIBIT NUMBER "39".

JUDGE HOWE: ANY OBJECTIONS?

MR. DURANT: NO. NONE FROM US.

MR. THOMAS: NO FROM US, YOUR HONOR.

JUDGE HOWE: THAT WILL BE DEFENDANT'S EXHIBIT "39". SO ADMITTED.

AGREEMENT FOR FINAL PAYMENT ON THE FOUNTAINS JOB 6/2/06 MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "39".

Q MR. SMITH, WAS IT SHORTLY AFTER THIS TIME THAT AS A RESULT OF GETTING THIS MONEY AND WHERE Y'ALL WERE WITH A&E THAT A&E MADE A DISTRIBUTION TO YOU OF $15,000 AND TO MR. VEREEN OF $15,000 OUT OF A&E MONEY?

A I COULD NOT TELL YOU THE DATES. I REALLY DON'T KNOW.

Q DO YOU RECALL YOU GETTING -- IRRESPECTIVE OF WHEN IT WAS, DO YOU RECALL YOU GETTING A DISTRIBUTION OF $15,000 AND MR. VEREEN GETTING A DISTRIBUTION OF $15,000 FROM A&E?

A YES, MA'AM.

Q DO YOU HAVE A PROBLEM WITH THAT?

A NO, MA'AM.

Q DID YOU RECALL AT ABOUT THE SAME TIME THAT YOU AND MR. VEREEN GOT YOUR $15,000 DISTRIBUTION THAT A&E ALSO GAVE MRS. SISSON WHO WORKED ON THE WILLOUGHBY JOB A $5,000 BONUS?

A WHAT'S THE QUESTION?
Q DO YOU RECALL THAT AT ABOUT THE SAME TIME OR AT THE SAME TIME THAT YOU AND MR. VEREEN GOT YOUR $15,000 DISTRIBUTION THAT A&E ALSO GAVE A $5,000 BONUS TO MRS. SISSON?
A I FOUND OUT ABOUT THAT LATER. I DID NOT KNOW ABOUT THAT AT THE TIME IT WAS GIVEN. NO, MA'AM.
Q DID MRS. SISSON WORK ON THE FOUNTAINS JOB?
A YES.
Q DID MRS. SISSON TAKE OVER THE PROCESS OF FINISHING UP ALL THE PUNCH LISTS FOR A&E ON THE JOB OR OVERSEEING THAT?
A SHE DID A LITTLE BIT MORE THAN THAT. SHE DID A LOT OF THE SELECTIONS LIKE THE CABINET SELECTIONS AND THE GRANITE SELECTIONS AND THE FLOOR COVERING SELECTIONS BUT SHE DID HANDLE A LARGE PART OF THE PUNCH LISTS AT THE END OF THE JOB, YES.
Q DO YOU, AS A SHAREHOLDER OR A&E, HAVE A PROBLEM WITH MRS. SISSON HAVING GOTTEN THAT $5,000 BONUS?
A I WOULD LIKE TO HAVE KNOWN ABOUT IT BEFORE IT HAPPENED.
Q OKAY. WHILE YOU HAVE A PROBLEM WITH NOT KNOWING ABOUT IT WHEN IT HAPPENED, DO YOU BELIEVE THAT

MRS. SISSON OWES THAT $5,000 BACK TO A&E?

A NOT FOR WORK THAT WAS DONE ON THE FOUNTAINS, NO.

Q OKAY. NOT THAT $5,000 BONUS?

A WELL, I DON'T KNOW WHAT THE $5,000 -- WHAT THE -- AT THE POINT IN TIME THAT SHE GOT IT, I DON'T KNOW WHAT IT WAS FOR.

Q BUT IF SHE GOT A BONUS FOR WORK ON THE FOUNTAINS, YOU DON'T HAVE A PROBLEM WITH THAT?

A WELL ...

Q WITH THE MONETARY AMOUNT, I UNDERSTAND YOU HAVE A PROBLEM WITH NOT HAVING ALLEGEDLY KNOWN WHEN IT HAPPENED?

A I DON'T KNOW. IT'S HARD TO REALLY SAY AT THIS TIME.

Q NOW, SINCE THE FOUNTAINS WAS COMPLETED, HAS A&E BEEN NOTIFIED OF CONSTRUCTION DEFICIENCIES OR ALLEGED CONSTRUCTION DEFICIENCIES AT THE PROJECT?

A I HAVE BEEN TOLD BY MR. VEREEN AND BETH, YES.

Q IN CONNECTION WITH THOSE ALLEGATIONS, HAVE BETH OR MR. VEREEN OR A&E SENT YOU LETTERS ADVISING YOU AND KEEPING YOU APPRISED OF WHAT WAS HAPPENING WITH REGARDS TO THOSE ALLEGATIONS?

A TO AN EXTENT, YES.

Q AND IN SOME INSTANCES, DID YOU RESPOND -- DID

THEY DO THAT BY WAY OF WRITING YOU LETTERS?

A YES, MA'AM.

Q HAVE THEY ALSO DONE THAT BY WAY OF TALKING TO YOU ABOUT THE SITUATION?

A A FEW TIMES, YES.

Q AND HAVE YOU, LIKEWISE, RESPONDED BACK TO A&E OR BETH OR MR. VEREEN BY WAY OF LETTER?

A YES.

Q AND, LIKEWISE, HAD CONVERSATIONS WITH THEM?

A YES.

Q ALRIGHT. SINCE THOSE ALLEGATIONS WITH REGARD TO THE FOUNTAINS HAVE COME UP, HAVE YOU OR ANY OF YOUR BUSINESSES GONE DOWN THERE AND PERFORMED ANY INVESTIGATIVE WORK ON THE ALLEGATIONS?

A I HAVE LOOKED AT THE SITUATION.

Q AND WHEN DID YOU DO THAT?

A I COULDN'T TELL YOU THE EXACT DATE.

Q DID YOU DO IT MORE THAN ONE TIME?

A YES.

Q HOW MANY TIMES HAVE YOU BEEN TO THE SITE TO LOOK AT THE SITUATION?

A THREE DIFFERENT TIMES I THINK.

Q AND AS A RESULT OF YOU LOOKING AT THE SITUATION, DO YOU AGREE THAT THERE ARE SOME ISSUES THAT A&E SHOULD ADDRESS?

A THERE ARE SOME ISSUES THAT OUR SUBS AND THE DEVELOPER SHOULD ADDRESS.

Q OKAY. BUT A&E WAS THE GENERAL CONTRACTOR ON PROJECT, RIGHT? IS THAT CORRECT?

A YES, MA'AM.

Q HAVE YOU DONE ANYTHING TO GET A&E'S SUBS TO GO BACK AND ADDRESS THOSE SITUATIONS THAT YOU ACKNOWLEDGE ARE THERE?

A NO, MA'AM.

Q HAVE YOU PERSONALLY, PHYSICALLY, DONE ANYTHING OR SPENT ANY MONEY TO CORRECT ANY OF THE ALLEGATIONS OF DEFECTS THAT ARE AT THE FOUNTAINS PROJECT?

A NO, MA'AM. NOT AT THE FOUNTAINS.

Q HAVE YOU OR ANY OF YOUR COMPANY'S PERSONALLY REFUSED TO GO DO ANYTHING WITH REGARD TO TRYING TO RECTIFY THE SITUATION AT THE FOUNTAINS?

A REFUSED?

Q YES, SIR.

A NO.

Q OKAY. DO YOU KNOW IF A&E HAS DONE ANYTHING TO TRY TO RECTIFY THE SITUATION OR TO UNDERTAKE ANY REPAIRS OR WARRANTY WORK AT THE FOUNTAINS?

A I HAVE BEEN TOLD BY A SUBCONTRACTOR OF THEIRS OR AN EMPLOYEE OF THEIRS, I DON'T KNOW WHAT YOU

WOULD CALL HIM, RANDY LONG, THAT THEY HAVE BEEN BACK AND DONE SOME WORK.

Q AND DO YOU KNOW OR DO YOU HAVE ANY PROBLEM IF A&E HAS SPENT MONEY TO GO BACK AND DO WORK AT THE FOUNTAINS?

A IF IT WAS WARRANTY -- IF IT WAS A WARRANTY ITEM THAT SEEMED TO BE WORKING, NO PROBLEM.

Q WHAT ABOUT IF IT'S A CONSTRUCTION DEFECT ITEM?

A A CONSTRUCTION DEFECT. IF IT WAS BY THE SUB THAT'S WHO IS RESPONSIBLE FOR IT.

Q WHAT IF IT WAS SOMETHING THAT WAS SELF-PREFORMED BY A&E'S SOURCES?

A EXAMPLE? I DON'T KNOW.

Q LET ME ASK YOU THIS: YOU WERE A CONSTRUCTION SUPERVISOR ON THE FOUNTAINS PROJECT?

A YES, MA'AM.

Q HOW MANY BUILDINGS WAS THAT?

A 13.

Q AND SO IT TOOK A LONG PERIOD OF TIME? IT TOOK A YEAR OR MORE OUT THERE DOING WORK, CORRECT?

A YES, MA'AM.

Q AND SOME OF THAT WORK WAS PREFORMED BY SUBS, IS THAT CORRECT?

A YES, MA'AM. THE MAJORITY OF THE WORK WAS PERFORMED BY SUBS. VAST MAJORITY.

Q WAS THERE WORK PREFORMED BY A&E?
A THERE WAS SOME, YES.
Q AND WOULD YOU AGREE THAT IF THERE ARE CONSTRUCTION DEFECTS WITH REGARD TO WORK THAT WAS, WE CALLED IT SELF-PREFORMED, PERFORMED BY A&E AND ITS FORCES, NOT ITS SUBCONTRACTORS, THAT'S THE RESPONSIBILITY OF A&E TO CORRECT?
A YES, MA'AM.
Q DO YOU HAVE ANY PROBLEM IF A&E OR SOMEONE ON BEHALF OF A&E HAS CORRECTED SOME OF THOSE ISSUES?
A I WOULD LIKE TO REVIEW WHAT WAS DONE AND WHY IT WAS DONE.
Q AND HAS ANY OF THAT INFORMATION BEEN FORWARDED TO YOU BY WAY OF A LETTER FROM MRS. SISSON OR MR. VEREEN?
A AND HAVE RECEIVED COPIES OF BILLS FROM GRAND STRAND BUILDERS PERFORMING WORK FOR A&E. AND I'VE RECEIVED SOME COMPUTATIONS OF WHERE A&E HAS SPENT SOME MONEY TO FIX SOME PROBLEMS, YES.
Q DO YOU HAVE ANY PROBLEM WITH -- OR DO YOU BELIEVE THOSE FIGURES TO BE LEGITIMATE FIGURES SPENT BY A&E TO CORRECT PROBLEMS?
A I FEEL THAT BEFORE THOSE FIGURES WERE SPENT WITH AN OUTSIDE COMPANY EITHER MR. VEREEN OR MYSELF

SHOULD HAVE LOOKED AT THE SITUATION AND SEE IF WE WERE GOING TO DO IT, YOU KNOW. I DON'T BELIEVE HE HAS ANOTHER COMPANY NOW, BUT I HAVE ANOTHER COMPANY NOW. I WOULD JUST ASSUME GO DO THE WORK IF A&E'S GOING TO PAY ME FOR -- PAY SOMEBODY FOR IT, I WOULD JUST ASSUME GO DO THE WORK MYSELF.

Q OKAY. WAS THERE ANOTHER JOB PERFORMED BY A&E THAT GOES BY THE NAME OF THE TAHITIAN PRINCESS?

A YES, MA'AM.

Q AND THAT WAS A PROJECT UP IN NORTH MYRTLE BEACH, CORRECT?

A YES, MA'AM.

Q AND WAS A&E THE GENERAL CONTRACTOR ON THAT JOB?

A YES, MA'AM.

Q AND DID YOU HAVE A PARTICULAR RESPONSIBILITY WITH REGARD TO THAT JOB?

A PROJECT MANAGER.

Q ALRIGHT. WAS THE OWNER OR THE DEVELOPER OF THAT PROJECT TAHITIAN PRINCESS, LLC?

A I AM NOT SURE, BUT IT VERY POSSIBLY COULD HAVE BEEN.

Q ALRIGHT.

A I DON'T KNOW WHAT ENTITY IT WAS.

Q MR. SMITH, LET ME HAND YOU WHAT I HAVE MARKED AS

DEFENDANT'S EXHIBIT NUMBER "40" AND LET ME ASK YOU IF YOU RECOGNIZE THAT DOCUMENT?

A IT LOOKS LIKE A PERMIT AND THE PERMIT APPLICATION FOR THAT JOB.

Q FOR THE TAHITIAN PRINCESS JOB?

A YES, MA'AM.

MS. COOK: YOUR HONOR, I WOULD LIKE TO MARK THIS AND INTRODUCE THIS AS DEFENDANT'S EXHIBIT NUMBER "40".

MR. DURANT: NO OBJECTION.

JUDGE HOWE: DEFENDANT'S EXHIBIT "40" SO ADMITTED.

BUILDING PERMIT AND APPLICATION FOR THE TAHITIAN PRINCESS JOB MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "40".

Q NOW, MR. SMITH, ACCORDING TO THE APPLICATION THE OWNER WAS TAHITIAN PRINCESS, LLC, IS THAT CORRECT?

A YES, MA'AM. THAT IS WHAT IT SAYS.

Q THAT IS A GENTLEMAN BY THE NAME OF MARTIN BROWN, WHO IS CONNECTED WITH THAT COMPANY?

A YES, MA'AM.

Q AND THE PERMIT WAS ISSUED ON THAT JOB ON APRIL

THE 2ND, 2004 ACCORDING TO THE PERMIT, IS THAT CORRECT?

A YES, MA'AM.

Q BRIEFLY, WOULD YOU DESCRIBE WHAT THAT BUILDING WAS?

A IT WAS A SIX UNIT, 4,000-SQUARE FOOT EACH UNIT BUILDING? FIVE UNIT BUILDING, I'M SORRY.

Q UP IN THE CHERRY GROVE AREA?

A WINDY HILL.

Q NOW, ON THE TAHITIAN PRINCESS JOB, DID YOU RETAIN -- DID THE OWNER OF TAHITIAN PRINCESS PAY YOU DIRECTLY $2,317.13 FOR SOMETHING DONE BY A&E ON THAT JOB?

A I COULD NOT TELL YOU. I DON'T RECALL.

Q IF THE EVIDENCE SHOWS THAT A PAYMENT IN THE AMOUNT OF $2,317.13 WAS MADE BY MR. BROWN OR TAHITIAN PRINCESS TO YOU, WAS THAT FOR YOUR SEPARATE WORK YOU DID ON THAT JOB OR DO YOU KNOW?

A I DON'T RECALL.

Q IF THAT WAS AN A&E PAYMENT THAT MR. BROWN GAVE TO YOU AND YOU KEPT, WOULD YOU AGREE THAT, THAT WAS AN ADVANCE THAT WAS GIVEN TO YOU BY A&E?

A IF IT WAS PAYMENT MADE BY MARTIN BROWN FOR WORK THAT A&E DID AND IT WAS MADE OUT TO ME.

Q IT WAS EITHER MADE OUT TO YOU OR IT WAS AN A&E CHECK AND YOU KEPT IT WHETHER MR. VEREEN GAVE YOU PERMISSION TO OR SAID THAT'S OKAY, BUT IF IT WAS A CHECK FOR PAYMENT FOR WORK DONE BY A&E AND YOU GOT IT INSTEAD OF IT GOING INTO A&E, WOULD YOU AGREE THAT WAS ADVANCED TO YOU BY A&E?

A I GUESS I WOULD HAVE TO, BUT I DON'T RECALL EVER DOING ANYTHING LIKE THAT. SO, I DON'T KNOW.

Q OKAY. DO YOU RECALL ON THE TAHITIAN PRINCESS JOB EVER RECEIVING ANY FUNDS OF A&E ON THAT JOB THAT YOU DID NOT HAVE DEPOSITED INTO THE A&E ACCOUNT?

A I DON'T RECALL.

Q YOU DON'T REMEMBER?

A NOT TO MY KNOWLEDGE, NO.

Q BUT IF THAT HAPPENED -- IF IT HAPPENED, THEN THOSE WOULD BE ADVANCES BY A&E THAT SHOULD BE CREDITED TO ANY PROFIT -- CREDITED BACK INTO ANY PROFIT THAT YOU ARE DUE FROM A&E? WOULD YOU AGREE WITH THAT STATEMENT?

A TO ELLIS SMITH?

Q YES, SIR.

A IF THE CHECKS WERE MADE OUT TO ELLIS SMITH AND IT WAS FOR WORK DONE BY A&E ON TAHITIAN PRINCESS JOB, YES, THEN I AGREE.

Q DO YOU RECALL THERE BEING A PAYMENT -- WELL, LET ME STOP. WAS THERE A PROJECT DONE BY A&E, AN A&E JOB, CALLED TAHITIAN PRINCES TWO?

A YES.

Q AND DID YOU HAVE ANY RESPONSIBILITY ON TAHITIAN PRINCESS TWO?

A YES, MA'AM.

Q AND WHAT WAS THAT RESPONSIBILITY?

A PROJECT MANAGER.

Q WAS THAT ANOTHER ONE OF THE MARTIN BROWN ENTITIES THAT WAS THE OWNER OF THAT PROJECT?

A ALMOST IDENTICAL TO TAHITIAN PRINCESS ONE, YES.

Q ALRIGHT. MR. SMITH, I AM GOING TO SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "41". CAN YOU TELL THE COURT WHAT THAT IS?

A IT SEEMS TO BE A COPY OF THE BUILDING PERMIT FOR TAHITIAN PRINCESS TWO, 300 33TH AVENUE SOUTH, WINDY HILL.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE THAT AS DEFENDANT'S EXHIBIT "41".

JUDGE HOWE: ANY OBJECTIONS?

MR. DURANT: NO OBJECTIONS.

MR. THOMAS: NONE FROM US, YOUR HONOR.

JUDGE HOWE: DEFENDANT'S "41" SO ADMITTED.

BUILDING PERMIT FOR THE TAHITIAN PRINCESS II MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "41".

Q AND THIS BUILDING PERMIT WAS ISSUED BY THE CITY OF NORTH MYRTLE BEACH ON APRIL 20, 2005, IS THAT CORRECT?

A YES, MA'AM.

Q DO YOU RECALL THE CONTRACT ON THAT WITH THE DEVELOPER, A&E'S CONTRACT, BEING TO CONSTRUCT THAT BUILDING FOR THE AMOUNT OF THE $1,589,000,000?

A I DON'T RECALL THE EXACT THE AMOUNT. I DON'T KNOW.

Q MR. SMITH, I'M GOING TO HAND YOU DEFENDANT'S EXHIBIT NUMBER "42". TAKE A MINUTE AND LOOK AT THAT AND SEE IF YOU CAN TELL ME WHAT THAT IS.

A YES, MA'AM. THIS LOOKS LIKE THE CONTRACT.

Q DO YOU HAVE ANY REASON TO BELIEVE THE AMOUNT OF $1,589,000.00 IS NOT THE CONTRACT AMOUNT FOR A&E TO BUILD THAT BUILDING?

A NO, MA'AM. I HAVE NO REASON TO DISPUTE IT. I

DON'T KNOW.

MR. DURANT: YOUR HONOR, DOES SHE HAVE THE FINAL SIGNED CONTRACT?

MS. COOK: NO, SIR. I DO NOT. ALL THAT HAS BEEN PRODUCED.

MR. DURANT: PRODUCED BY WHO?

MS. COOK: EITHER Y'ALL OR US. I THINK THIS WAS US.

STANDARD FORM AND AGREEMENT
BETWEEN OWNER AND CONTRACTOR
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "42".

Q DO YOU RECALL IF YOU SIGNED A CONTRACT ON BEHALF OF A&E FOR ...

A I COULDN'T TELL YOU. I DON'T REMEMBER. I DON'T KNOW.

Q DOES A MILLION FIVE (1.5) SOUND ABOUT RIGHT FOR WHAT A&E CONTRACTED TO BUILD THAT BUILDING FOR?

A SOMEWHERE IN THAT NEIGHBORHOOD, YES.

Q TO THE BEST OF YOUR KNOWLEDGE, WAS A&E PAID WHATEVER THE AMOUNT WAS THAT THEY CONTRACTED WITH TAHITIAN PRINCESS TWO PAID IN FULL FOR ITS WORK?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q ALRIGHT. WAS THERE ALSO A JOB DONE BY A&E CALLED THE TAHITIAN PEARL JOB?
A YES, MA'AM.
Q WAS THAT ANOTHER MARTIN BROWN ENTITY?
A TO START OFF WITH, YES, MA'AM.
Q AND YOU SAID, "TO START OFF WITH", WHAT HAPPENED TO CHANGE THAT AT SOME POINT AND TIME IN THAT JOB?
A MARTIN BROWN SOLD IT.
Q DO YOU RECALL WHO HE SOLD IT TO?
A ROBERT FAITH.
Q SO IT STARTED OUT AS A MARTIN BROWN ENTITY AND THEN DURING THE CONSTRUCTION PHASE, IT WAS SOLD TO ROBERT FAITH?
A TO THE BEST OF MY KNOWLEDGE, YES.
Q DID A&E HAVE A CONTRACT WITH MARTIN BROWN'S ENTITY TO BUILD THAT BUILDING?
A TO THE BEST OF MY KNOWLEDGE, YES.
Q DID YOU HAVE ANY RESPONSIBILITY ON THE TAHITIAN PEARL JOB?
A BEG YOUR PARDON?
Q DID YOU HAVE ANY RESPONSIBILITY ON THE TAHITIAN PEARL JOB?
A PROJECT MANAGER.
Q ALRIGHT. AND DID YOU STAY AS PROJECT MANAGER

WHEN ROBERT FAITH BOUGHT THE PROJECT FROM THE OWNER?

A YES, MA'AM.

Q AND DID ROBERT FAITH THEN ASSUME THE OBLIGATIONS OF MARTIN BROWN'S ENTITY TO PAY A&E OR DID MARTIN'S COMPANY CONTINUE TO BE THE OWNER AND PAY A&E AND THEN ROBERT FAITH BOUGHT IN AT THE END?

A ROBERT FAITH STARTED PAYING.

Q OKAY. SO AT SOME POINT, YOU WERE WORKING FOR MARTIN BROWN'S ENTITY AND THEN WHEN ROBERT FAITH BOUGHT IT, YOU THEN BECAME THE GENERAL CONTRACTOR FOR ROBERT FAITH, IS THAT CORRECT?

A I RECEIVED PAYMENT FROM ROBERT FAITH. A&E RECEIVED PAYMENT FROM ROBERT FAITH AT SOME POINT IN TIME.

Q WHO DID YOU WORK FOR AT POINT IN TIME? WHO DID A&E WORK FOR AT THAT POINT IN TIME?

A AT THAT POINT IN TIME, I WAS ANSWERING TO BOB FAITH BUT MARTIN BROWN SAID HE WAS STILL RESPONSIBLE FOR THE CONTRACT.

Q WHEN YOU DID THE TAHITIAN PEARL JOB, DID YOU DO A SCHEDULE OF VALUES FOR THAT JOB TO SHOW THE DIFFERENT COMPONENTS THAT WERE GOING TO MAKE UP THE TOTAL COST OF JOB?

A FROM THE ORIGINAL, YES.
Q AND DO YOU RECALL COASTAL FEDERAL BEING THE CONSTRUCTION LENDER FOR THE OWNER?
A WHO?
Q COASTAL FEDERAL.
A I DON'T THINK THAT'S RIGHT.
Q WHO DO YOU THINK WAS THE CONSTRUCTION LENDER?
A A COMPANY CALLED SUN TRUST.
Q SUN TRUST BANK. LET ME HAND YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBITED "43". TAKE A MINUTE AND LOOK AT THIS SCHEDULE OF VALUES. WELL, ACTUALLY IT'S MORE THAN JUST A SCHEDULE OF VALUES. MAYBE WE COULD GO PAGE BY PAGE. THE FIRST TWO PAGES IS A SCHEDULE OF VALUES. DO YOU RECOGNIZE THAT?
A YES, IT LOOKS RIGHT.
Q THE NEXT PAGE IS A QUOTE FROM SHERMAN WILLIAMS FOR FLOORING ON THE TAHITIAN PEARL, IS THAT CORRECT?
A LOOKS TO BE, YES.
Q DO YOU RECALL SHERWIN WILLIAMS TO BE THE PROVIDER OF THE FLOOR COVERING ON THAT JOB?
A OH, YES, MA'AM. YES, MA'AM.

MS. COOK: YOUR HONOR, WE WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT "43".

JUDGE HOWE: ANY OBJECTIONS?

MR. DURANT: NO OBJECTIONS.

MR. THOMAS: NO OBJECTIONS HERE.

JUDGE HOWE: DEFENDANT'S EXHIBIT "43" SO ADMITTED.

SCHEDULE OF VALUES AND QUOTES
FROM SHERWIN WILLIAMS
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "43".

Q WITH REGARD TO THE SCHEDULE OF VALUES, IF YOU WOULD LOOK AT THAT AND TELL THE COURT WHAT A&E ALLOCATED FOR THE FLOOR COVERINGS FOR THE TAHITIAN PEARL PROJECT?

A $30,000. THAT IS WHAT WAS ALLOCATED TO START OFF AND THEN THERE WAS SOME CHANGE ORDERS.

Q WHEN YOU SAY, "THERE WAS SOME CHANGE ORDERS" EXPLAIN THAT TO ME.

A WELL, NUMBER ONE, MR. FAITH PUT HIS OWN APPLIANCES IN. THERE WAS A $10,000 CREDIT THAT CAME BACK FROM THAT. MR. FAITH PUT IN HIS OWN POOL AND FENCE AND THERE IS A $35,000 CREDIT FROM THAT FROM THE ORIGINAL CONTRACT.

Q I WANTED TO TALK ABOUT -- JUST ABOUT -- WE ARE TRYING TO SHORTEN THIS. AND I DON'T MEAN TO

INTERRUPT YOU, BUT IF YOU WANT TO EXPLAIN ALL THAT, THERE IS NO PROBLEM, BUT I JUST WANTED TO DEAL MAINLY WITH THE FLOOR COVERING.

A THE NAMED FLOOR COVERING?

Q THE FLOOR COVERING.

A SHERWIN WILLIAMS?

Q NO. WERE THERE ANY CHANGE ORDERS WITH REGARD TO THE FLOOR COVERING?

A YES, MA'AM.

Q WHAT WERE THOSE? JUST RELATED TO THE FLOOR COVERING?

A THEY PUT TILE ON THE EXTERIOR DECKS. THEY TILED THE WHOLE BOTTOM FLOOR INSTEAD OF JUST THE KITCHEN AND BATH AREAS. THEY TILED SOME WALL, HALF WALLS IN BATHROOMS AND THAT IS BASICALLY IT.

Q AND SO FROM THE TIME THAT YOU DID YOUR ORIGINAL SCHEDULE OF VALUES WITH MR. BROWN TO THE TIME THAT MR. FAITH STEPPED IN, THERE WAS ADDITIONAL TILE THAT WAS ADDED?

A YES, MA'AM.

Q DID THAT CHANGE AT ALL THE SCHEDULE OF VALUES OR WHAT YOU HAD IN THE BUDGET FOR FLOOR COVERING?

A LIKE I JUST SAID, WE -- THEY HAD CREDIT FROM THE APPLIANCES. WE APPLIED THAT TO THE FLOOR

COVERING BILL. WE HAD CREDIT FOR A POOL AND THAT WAS APPLIED TO CHANGES THAT WERE MADE ON THE JOB.

Q BUT WITH REGARD TO THE FLOOR COVERING, AM I CORRECT, THAT INSTEAD OF $30,000 AS WAS IN THE ORIGINAL SCHEDULE OF VALUES, WHEN THOSE CHANGES WERE MADE BY THE OWNER, IT INCREASED THE COST OF THE FLOORING THAT WAS GOING TO BE PUT IN THE TAHITIAN PEARL, IS THAT CORRECT?

A YES, MA'AM. THE FLOOR COVERING. YES, MA'AM.

Q IF YOU WOULD TURN TO THE FOURTH PAGE, WHICH IS THE FIRST QUOTE FROM SHERWIN WILLIAMS. FIRST PAGE SHOWS A QUOTE OF $6,755.86. WHAT WAS THAT FOR?

A I COULD NOT TELL YOU RIGHT OFF. IT JUST SAYS, "FOR DUPLICATE ORDER OF UNIT 'B'".

Q WELL, YOU DON'T KNOW IF THIS WAS FOR TILE OR THIS WAS GOING INTO UNIT 'A'?

A IT LOOKS TO BE TILE THAT WENT IN UNIT 'B'. I'M SORRY, UNIT 'A'.

Q AM I CORRECT IN THAT IN TAHITIAN PEARL THERE WERE TWO UNITS, AN 'A' UNIT AND A 'B' UNIT?

A YES, MA'AM.

Q WHERE THEY UP-FITTED OR DRESSED THE SAME WAY?

A YES, MA'AM.

Q THE DATE OF THAT QUOTE IS JULY THE 26, 2006, CORRECT?

A YES, MA'AM.

Q AND THE REST OF THESE ESTIMATES OR QUOTES THAT ARE BACK HERE, THOSE WOULD BE WHATEVER WAS QUOTED FOR UNIT 'A'? YOU WOULD JUST DOUBLE THAT BECAUSE YOU WOULD DO THE SAME THING FOR UNIT 'B', IS THAT CORRECT?

A IT'S WHAT THEY SAY I THINK. THAT'S WHAT IT LOOKS LIKE.

Q OKAY. AND IF YOU ADDED ALL THAT UP, YOUR QUOTES DIDN'T GO FROM IT BEING $30,000 FOR THE FLOOR COVERING TO IT BEING OVER 85,000 FOR THE FLOOR COVERING?

A THE QUOTES, YES, BUT WE WENT BACK AND REMEASURED. MYRA AND MYSELF FROM SHERWIN WILLIAMS WENT BACK AND REMEASURED AND REALIZED THAT THEY HAD MADE SOME OVER ESTIMATES AND SHE CORRECTED THOSE AND I DON'T KNOW WHERE THAT IS IN HERE.

Q OKAY. BUT WOULD YOU AGREE FROM THE QUOTES, YOU HAD BUDGETED $30,000 FOR THE OCEAN PEARL AND WHATEVER THIS ADDS UP TO, BUT IF IT ADDED UP TO AROUND $85,000 THAT WAS AN OVERAGE OF ABOUT $55,000?

A THAT'S CORRECT.
Q FROM WHAT YOU ORIGINALLY BUDGETED?
A YES, MA'AM.
Q THEN I UNDERSTAND FROM YOUR TESTIMONY THAT THERE WAS SOME MIS-MEASUREMENT OR SOMETHING?
A RIGHT.
Q SO IS IT CORRECT THAT SHERWIN WILLIAMS THEN CAME BACK AND GAVE SOME CREDITS, CREDITED A&E SOME OFF OF THAT, LET'S JUST SAY 85,000?
A TO THE BEST OF KNOWLEDGE, YES.
Q SO, IT WOULD HAVE BROUGHT THAT DIFFERENCE OF $55,000 DOWN?
A YES, MA'AM.
Q NOW, WHEN IT BROUGHT THAT AMOUNT DOWN AFTER THE CREDITS WERE GIVEN, DID A&E, TO THE BEST OF YOUR KNOWLEDGE, PAY SHERWIN WILLIAMS WHATEVER THAT AMOUNT WAS AFTER THE CREDIT WAS GIVEN?
A AFTER THE CREDIT WAS GIVEN, TO THE BEST OF MY KNOWLEDGE, YES.
Q OKAY. WOULD YOU AGREE WITH ME THAT EVEN AFTER THE CREDIT WAS GIVEN THE AMOUNT FOR THE FLOOR COVERING THAT A&E ACTUALLY PAID FOR WAS MORE THAN YOU HAD BUDGETED OF THE $30,000?
A IT WAS MORE THAN THE $30,000, YES.
Q OKAY. NOW, DID YOU EVER GIVE A CHANGE ORDER TO

THE OWNER, WHETHER IT WAS MR. FAITH AT THE TIME OR WHETHER IT WAS MR. BROWN'S COMPANY TO SEEK THAT ADDITIONAL MONEY FROM THEM?

A NO. IT WAS EXACTLY WHAT I EXPLAINED TO YOU BEFORE. THEY HAD A $10,000 CREDIT FOR APPLIANCES, WHICH IS ADDED BACK TO THE FLOOR COVERING, WHICH MADE IT $40,000. THERE WAS A $35,000 CREDIT TO THE POOL, WHICH MAKES IT 75,000.

Q WHAT DO YOU MEAN $75,000?

A 35,000 AND 40,000 EQUALS $75,000.

Q I THOUGHT YOU JUST SAY $10,000 CREDIT FOR THE ...

A 30,000 IN THE ORIGINAL FLOOR COVERING ESTIMATES, AND THEN 10,000 FOR THE APPLIANCES, AND 35,000 FOR THE POOL AND THE FENCE. $75,000.

Q WELL, THE FLOOR COVERING, WHATEVER IT COST, YOU HAD BUDGETED $30,000?

A YES, MA'AM.

Q AND THEN THERE WAS AN EXCESS OF $55,000, BUT THEN WE KNOW THERE WAS SOME CREDIT TAKEN OFF OF THAT?

A RIGHT.

Q WHATEVER THAT DIFFERENCE WAS THAT EXCESS OF $50,000 OR WHATEVER IT WAS, YOU'RE SAYING WAS

MADE UP BY -- THERE WAS A DEDUCT CREDIT FROM THE OWNER FROM THE 10,000 FOR THE APPLIANCES AND THE 35,000 FOR THE POOL. SO, THAT IS 45,000. SO YOU SAY THAT'S A WASH? THE $45,000 CREDIT FOR THE POOL AND THE APPLIANCES OFFSET THE ADDITIONAL MONEY OWED FOR THE FLOOR COVERING, IS THAT YOUR TESTIMONY?

A YES, MA'AM.

Q DID YOU, OR TO YOUR KNOWLEDGE, DID A&E EVER DO ANY DOCUMENTATION TO SHOW THAT?

A TO THE BEST OF MY KNOWLEDGE, NO.

Q AND YOU WERE THE PROJECT MANAGER ON THAT JOB?

A YES, MA'AM.

Q AM I TO UNDERSTAND -- IS IT CORRECT THAT THE MEASURING THAT WAS DONE, THE CREDIT THAT SHERWIN WILLIAMS GAVE YOU ON THE TAHITIAN PEARL WAS AS A RESULT OF YOUR POSITION ON BEHALF OF A&E THAT THEY HAD SUPPLIED TOO MUCH MATERIAL?

A I ADDED UP THE SQUARE FOOTAGE THAT THEY HAD ON THEIR QUOTES. IT WAS MUCH MORE THAN WHAT THE SQUARE FOOTAGE OF THE BUILDING WAS. SO, THEREFORE, THEY MIS-APPLIED IT.

Q OKAY. WELL, YOU DID THAT AFTER THEY HAD SUPPLIED THE FLOOR COVERING, CORRECT?

A YES, MA'AM.

Q OKAY. SO THEY HAD SUPPLIED TOO MUCH FLOOR COVERING FOR THE PROJECT BASED ON YOUR CALCULATIONS AND MEASUREMENTS?

A THAT'S CORRECT. NO, NOT MY CALCULATIONS AND MEASUREMENTS, THEIR CALCULATIONS AND MEASUREMENTS.

Q THEY CAME BACK WHEN YOU HAD THAT DISPUTE?

A NO. THEY ORIGINALLY MEASURED IT.

Q NO, NO, NO. I UNDERSTAND THAT THEY ORIGINALLY MEASURED THE JOB. THEY SUPPLIED YOU, A&E, THE MATERIALS BASED ON ORIGINAL MEASUREMENTS. YOU UTILIZED -- A&E UTILIZED THAT FLOOR COVERING AND WHEN THE BILL CAME IN YOU KNEW THE MEASUREMENTS WERE WRONG?

MR. DURANT: YOUR HONOR, THE ESTIMATES SHOWED THAT SHERWIN WILLIAMS WAS DOING THE INSTALLATION, I THINK, DOES IT NOT?

Q WHOEVER DID THE INSTALLATION WAS THERE MORE FLOOR COVERING PROVIDED AND BILLED TO A&E THAN WAS NECESSARY ON THE JOB?

A THERE WAS MORE BILLED AS FAR AS PROVIDED. I CANNOT TELL YOU BECAUSE THEY COME IN AND PUT IT DOWN. THEY BRING WHAT THEY'RE PUTTING DOWN FOR THAT DAY AND THAT'S WHAT THEY PUT DOWN. AS FAR AS A MASSIVE TRUCKLOAD OF TILE THAT COMES TO THE

JOB, NO. I DID NOT INVENTORY THEIR FLOOR COVERING AS IT CAME IN, NO, MA'AM, I DIDN'T.

Q DO YOU RECALL THERE BEING ADDITIONAL TILE AND FLOOR COVERING PROVIDED AND LEFT OVER AT THAT JOB?

A EVERY JOB HAS SOME TILE AND FLOOR COVERING LEFT OVER.

Q DO YOU REMEMBER IT BEING MORE THAN USUAL IN A TYPICAL JOB OF THAT SIZE?

A YES, YES, YES.

Q IT WAS MORE THAN WAS TYPICAL?

A YES.

Q AND AS A RESULT OF THAT AND AS A RESULT OF THEM COMING OUT RE-MEASURING -- SHERWIN WILLIAMS COMING OUT AND RE-MEASURING, THAT RESULTED IN THE CREDIT BEING GIVEN TO A&E, CORRECT?

A CORRECT.

Q OKAY. WHAT HAPPENED TO THAT EXCESS FLOOR COVERING?

A YOUR GUESS IS AS GOOD AS MINE. IT DIDN'T BELONG TO US. IT BELONGED TO SHERWIN WILLIAMS UNTIL IT IS INSTALLED. IT IS NOT OURS.

Q YOU DID NOT TAKE ANY OF THAT FLOOR COVERING AND YOUR SON EWELL, DID NOT TAKE ANY OF THAT FLOOR COVERING, DID YOU?

A NO, MA'AM.
Q OKAY. WAS THERE AN ADDITION DONE TO YOUR SON'S HOME?
A YES, MA'AM.
Q THERE ON 48TH AVENUE?
A 48TH AVENUE, YES, MA'AM.
Q OKAY. DID YOU HELP YOUR SON EWELL ...
A YES, MA'AM.
Q ... IN DOING THAT?
A YES, MA'AM.
Q AND WHAT WAS THE ADDITION? WHAT DID THEY ADD?
A BEDROOM, GAME ROOM, AND A LIVING ROOM, AND A BATHROOM.
Q OKAY.
A AND A WALK-IN CLOSET.
Q THEN, IN ADDITION TO THE ACTUAL PHYSICAL ADDITION, DID THEY DO ANY OTHER REMODELING OF EXISTING ROOMS IN THE HOUSE?
A TO START OFF WITH, NO.
Q HOW ABOUT TO FINISH UP WITH?
A LATER IN TIME, YES. THEY ARE STILL DOING STUFF TODAY.
Q OKAY. HOUSES ARE KIND OF MONEY PIT, AREN'T THEY?
A YES, MA'AM.

Q AND THEN PART OF WHAT THEY DID IN THAT HOUSE IS THEY LAID DOWN TILE, DIDN'T THEY?
A YES, MA'AM.
Q WHAT ROOMS HAVE TILE IN THEM?
A THE ONLY ROOM THAT HAS TILE IN THE OLD PART OF THE HOUSE IS THE KITCHEN.
Q LET ME SHOW YOU WHAT I AM MARKING AS DEFENDANT'S NUMBER "44" AND ASK IF YOU RECOGNIZE THESE PEOPLE IN THESE PICTURES?
A YES. THAT'S MY GRANDSON AND SON.
Q YOUR GRANDSON IS ADORABLE.
A THANK YOU.
Q ARE THEY PICTURES TAKEN OF YOUR GRANDSON AND YOUR SON IN YOUR EWELL'S HOME?
A IN THE KITCHEN OF HIS HOME, YES, MA'AM.
Q SO THE KITCHEN HAS TILE IN IT?
A YES, MA'AM.

PHOTOGRAPHS OF EWELL AND HIS SON MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "44".

Q AND THEN, WAS THE KITCHEN PART OF THE REMODEL OF THE HOME, DID THEY DO SOME REMODELING AND ADDITIONS IN THERE?

A FROM THE EXISTING HOME, YES, MA'AM.
Q OKAY. AND WAS THE ADDITION OF TILE ONE OF THE THINGS THAT THEY REMODELED WITHIN THE KITCHEN?
A THEY JUST PUT TILE DOWN ON THE FLOOR, YES.
Q OKAY. NOW, DID YOU HAVE A SIMILAR SITUATION WITH REGARD TO SHERWIN WILLIAMS PROVIDING AND INSTALLING THE FLOOR COVERING AT A PROJECT CALLED DIAMOND DUNES? LET ME GO BACK WAS THERE A PROJECT DONE BY A&E THAT WAS A MARTIN BROWN PROJECT WHERE YOU ORIGINALLY TORE DOWN AN OLD HOUSE CALLED OCEAN BLUE?
A YES.
Q AND THEN PART OF A&E'S JOB ON THAT PROJECT, DID YOU BUILD A NEW RESIDENTIAL SPACE?
A YES.
Q AND DID THAT RESIDENTIAL SPACE ORIGINALLY START OUT WITH THE NAME DIAMOND DUNES TWO?
A I THINK IT DID. I CAN'T SAY FOR SURE, BUT I'M ALMOST POSITIVE.
Q AND THEN ULTIMATELY, DID SIMILAR TO THE TAHITIAN PEARL DURING THE CONSTRUCTION OF THAT DIAMOND DUNES, WHICH WAS ALSO KNOWN AS THE OCEAN BLUE, IT GOT SOLD TO ANOTHER GENTLEMAN?
A IT WAS NOT SOLD UNTIL IT WAS CLOSED.
Q ALRIGHT. DID THAT GENTLEMAN THEN CALL THAT SAME

PROJECT SEACLUSION?

A YES, MA'AM.

Q OKAY. WHEN WE TALK ABOUT OCEAN BLUE OR DIAMOND DUNES OR SEACLUSION, THAT'S ALL ONE PROJECT, RIGHT?

A YES, MA'AM.

Q AND SO THAT IT HELPS MY MIND, CAN WE CALL THAT THE OCEAN BLUE PROJECT?

A THAT'S FINE.

Q BUT DID A SIMILAR SITUATION HAPPEN WITH SHERWIN WILLIAMS AND THE MIS-MEASUREMENT AND SHERWIN WILLIAMS GIVING A&E A CREDIT BACK FOR THE FLOOR COVERING ON THE OCEAN PROJECT?

A YES.

Q OKAY. LET ME SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT "45" AND SEE IF YOU RECOGNIZE THAT AS THE SCHEDULE OF VALUES FOR THE OCEAN BLUE PROJECT? AND THEN YOUR QUOTES FROM SHERWIN WILLIAMS ON THE OCEAN BLUE PROJECT?

A IT SEEMS TO BE.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE THIS AS DEFENDANT'S EXHIBIT "45".

JUDGE HOWE: ANY OBJECTION?

MR. DURANT: YOUR HONOR, IT'S THE

DOCUMENT SAYS, "APPLICATION NUMBER FIVE". I ASSUME THERE WAS A 4, 3, 2, 1, AND 6. IT IS WHAT IT IS, BUT THIS IS NOT THE APPLICATION OF PAYMENTS FOR THE WHOLE JOB, JUST FOR THE INVOICE OR APPLICATION NUMBER FIVE. OTHER THAN THAT, I HAVE NO OBJECTION.

JUDGE HOWE: DO YOU HAVE APPLICATIONS ONE THROUGH FOUR, MS. COOK?

MS. COOK: I DON'T KNOW IF I DO OR NOT, YOUR HONOR. I AM SEEKING TO INTRODUCE APPLICATION NUMBER FIVE.

JUDGE HOWE: I'LL OVERRULE THE OBJECTION AND ALLOW HER TO ADMIT APPLICATION NUMBER FIVE FOR WHATEVER IT'S WORTH. DEFENDANT'S "45" SO ADMITTED.

SCHEDULE OF VALUES FOR DIAMOND DUNES II, APPLICATION NUMBER FIVE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "45".

MR. DURANT: YOUR HONOR, THAT WAS MY OBJECTION. IT IS NOT THE SCHEDULE. IT IS JUST THE APPLICATION NUMBER FIVE. THAT'S THE ONLY OBJECTION THAT I HAVE.

MR. THOMAS: NO OBJECTION.

Q MR. SMITH, FROM APPLICATION NUMBER 45, DOES THIS DOCUMENT HELP YOU VERIFY WHAT YOUR ORIGINAL FLOOR COVERING BUDGET WAS FOR THE OCEAN BLUE PROJECT?

A YES, YES. IT SAYS 30,000.

Q AND IN TERMS OF SIZE AND CONFIGURATION, WAS THE OCEAN BLUE JOB THE SAME AS THE TAHITIAN PEARL JOB?

A NO.

Q THE SQUARE FOOTAGE OF THE BUILDING WASN'T?

A THEY ARE SIMILAR. THE FINISHES ARE VERY DIFFERENT.

Q BUT DOES -- DO YOU BELIEVE $30,000 TO BE ORIGINALLY WHAT YOU BUDGETED WHEN YOU SIGNED YOUR CONTRACT WITH THE OWNER FOR THE OCEAN BLUE PROJECT?

A I REMEMBER THAT WE SPENT $75,000 ON THE TAHITIAN PRINCESS ONE. THAT WAS FIVE UNITS THAT ARE VERY, VERY SIMILAR TO TWO UNITS IN SEACLUSION. SO, IT'S 15,000 AND 15,000 AND THAT'S $30,000 AND THAT'S THE VALUE THAT I ASSIGNED FOR THAT.

Q OKAY. SO YOU HAD BUDGETED IN YOUR CONTRACT WITH THE OWNER ORIGINALLY $30,000 FOR FLOOR COVERING IN THE OCEAN BLUE PROJECT, IS THAT CORRECT?

A THAT'S A LINE ITEM, YES, MA'AM.
Q AND THEN SIMILARLY BEHIND THE SCHEDULE OF VALUES CONTAINING IN THE PAYOUT APPLICATION, ARE THERE QUOTES FROM SHERWIN WILLIAMS FOR UNITS 'A' AND 'B' IN THE OCEAN BLUE PROJECT?
A THEY SEEM TO BE, YES, MA'AM.
Q AND AGAIN, DO THOSE TOTAL UP TO AROUND $85,000?
A NO.
Q WHAT DO THEY TOTAL UP?
A RIGHT OFF I COULDN'T TELL YOU, BUT IT LOOKS LIKE...
Q I'M SORRY. 42,000 ABOUT $43,000?
A I DON'T HAVE MY CALCULATOR, BUT THAT'S SOMEWHERE IN THAT NEIGHBORHOOD. YES, MA'AM.
Q 25, 732, 16,505 2,440 THEN ...
A SOUNDS GOOD.
Q ... $3,000. WHAT THEY ACTUALLY QUOTED YOU WAS ABOUT $13,000 OR $14,000 OVER WHAT YOU BUDGETED?
A THE ORIGINAL QUOTE, YES. IT SEEMS TO BE THAT WAY, YES.
Q IN FACT, DID YOU ORDER AND WERE YOU DELIVERED AND DID THEY INSTALL WHAT'S ON THESE QUOTES?
A I COULD NOT TELL YOU.
Q DO YOU RECALL THAT THE FLOOR COVERING BILLED ON THE OCEAN BLUE PROJECT BEING MORE THAN 30,000?

A COULD NOT TELL YOU FOR SURE. I DO NOT KNOW.
Q DO YOU RECALL THERE BEING ABOUT A $14,000 DIFFERENCE BETWEEN WHAT YOU WERE BILLED AND WHAT YOU HAD QUOTED?
A I DON'T RECALL.
Q DO YOU REMEMBER DISPUTING THAT ISSUE WITH SHERWIN WILLIAMS AND THEN, LIKEWISE, ISSUING CREDIT BACK TO A&E FOR SOME MONEY ON THE OCEAN BLUE PROJECT ON THE FLOOR COVERING?
A I REMEMBER TAKING THIS QUOTE AND WHEN YOU GOT SQUARE FOOTAGE OF CERTAIN THINGS LIKE ALMOST -- LIKE 3800 SQUARE FEET OF THE 12 BY 12 TILE AND THEN YOU HAVE GOT THE DIFFERENCE WHEN YOU ADD THE CARPETS THAT WERE PUT IN THERE. AND THE BUILDING IS NOT BUT 8,000 SQUARE FEET AND YOU'VE GOT ALMOST 10,000 SQUARE FEET OF FLOOR COVERING, SOMETHING IS WRONG. SO THEY RE-QUOTED IT.
Q OKAY.
A YOU SEE THE SQUARE FOOTAGE ON THE CARPET IS 6,576 AND THE SQUARE FOOTAGE ON THE TILE IS 3,795. YOU ADD THOSE TWO TOGETHER AND THAT IS A LOT HIGHER THAN 8,000. AND THERE IS NOT BUT 8,000 SQUARE FEET IN THE BUILDING.
Q DO YOU RECALL, AS A RESULT OF THOSE SQUARE FOOTAGE CALCULATIONS AND WHAT WAS QUOTED,

RECEIVING A CREDIT ON THE OCEAN BLUE JOB FROM SHERWIN WILLIAMS?

A TO THE BEST OF MY KNOWLEDGE, YES, WE DID RECEIVE A CREDIT.

Q AND DO YOU REMEMBER IF IT WAS AROUND $4,000?

A I COULDN'T TELL YOU.

Q WELL, IF YOU ASSUME -- IF YOU ASSUME THEY BILLED FOR THE AMOUNT QUOTED 40 SOMETHING THOUSAND DOLLARS, 42, AND YOU HAD BUDGETED $30,000.

A YES, MA'AM.

Q YOU HAVE GOT A COST OVERRUN OF AROUND $12,000 AND CHANGE, CORRECT?

A 20 PERCENT OF WHATEVER THEIR BILL IS, IS AN OVERRUN.

Q DID YOU THEN DISPUTE THAT AND THEN THEY GAVE YOU A CREDIT BACK?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q THEY GAVE YOU, TO THE BEST OF YOUR KNOWLEDGE, A CREDIT LARGE ENOUGH TO WIPE OUT THE $12,000 OVERRUN CHARGES?

A I DON'T RECALL. I DON'T KNOW.

Q IF THEY DIDN'T, WOULD THE PROPER THING -- AND A&E PAID FOR THE TOTAL AMOUNT LESS WHATEVER CREDIT THEY GAVE, WOULD THE PROPER THING TO HAVE BEEN FOR A&E THEN TO DO A CHANGE ORDER SEEKING

MORE MONEY FROM THE OWNER OF THE OCEAN BLUE?

A IF IT WAS CORRECT, YES. JUST AS I SAY, THEY'VE GOT 10,000 FEET OF FLOOR COVERING IN A 8,000 SQUARE FOOT BUILDING. THAT IS 25 PERCENT TOO MUCH ANYWAY. YOU LOOK AT IT.

Q DID YOU SUBMIT A CHANGE ORDER TO THE OWNER OF OCEAN BLUE FOR THE DIFFERENCE BETWEEN WHAT WAS BILLED BY SHERWIN WILLIAMS AND WHAT WAS BUDGETED BY A&E?

A I DON'T RECALL, BUT I DON'T THINK I DID.

Q WHY DIDN'T YOU?

A I COULDN'T TELL YOU.

Q OKAY. DO YOU AGREE THAT IF YOU DID NOT SUBMIT OR A&E DIDN'T SUBMIT A CHANGE ORDER SEEKING THAT INCREASED AMOUNT BACK, THAT WAS A LOSS TO A&E ON THE JOB?

A UNLESS WE GOT CREDIT SOMEWHERE ELSE TO OFFSET IT.

Q DO YOU REMEMBER GETTING ANY CREDIT SOMEWHERE ELSE IN THE OCEAN BLUE JOB TO OFFSET IT?

A I DON'T RECALL.

Q DO YOU RECALL WHAT HAPPENED TO THE EXCESS 2,000 SQUARE FEET OF MATERIAL THAT WAS QUOTED TO YOU ON THE JOB?

A JUST LIKE I SAID BEFORE, WHEN MATERIAL WAS

DELIVERED TO THE JOB, THE ONLY THING THAT I PAID FOR IS WHAT IS INSTALLED. IT IS NOT MY JOB TO INVENTORY THEIR PRODUCT PRIOR TO THEM PUTTING IT IN. I'M NOT PURCHASING IT UNTIL IT IS INSTALLED, NOT UPON DELIVERY.

Q MY QUESTION WAS, DO YOU RECALL WHAT HAPPEN -- DO YOU RECALL THERE BEING AN OVERAGE ON THIS JOB OF FLOOR COVERING MATERIAL?

A I DON'T RECALL. THERE IS ALWAYS OVERAGE ON EVERY TILE JOB. EVERY TILE JOB HAS OVERAGE ON IT, YES, MA'AM.

Q WELL, JUST LIKE YOU REMEMBER, THERE WAS AN UNUSUAL AMOUNT OF OVERAGE ON THE TAHITIAN PEARL. DO YOU REMEMBER THERE BEING AN UNUSUAL AMOUNT OF OVERAGE ON THIS JOB?

A I DON'T RECALL. THERE WAS OVERAGE, I DO REMEMBER THAT.

Q DO YOU KNOW IF EWELL OR YOU OR ANYONE ON Y'ALL'S BEHALF TOOK ANY OF THAT OVERAGE AND USED IT ON THE ADDITION TO EWELL'S HOME?

A IN THE ADDITION TO HIS HOME, THAT TILE WAS PURCHASED AT HOME DEPOT. THAT HE TESTIFIED TO IN HIS DEPOSITION AND HE OFFERED TO BRING YOU A RECEIPT FOR THAT AMOUNT AND ...

Q AND I NEVER GOT THAT, DID I, MR. SMITH?

A I COULDN'T TELL YOU. I THINK YOU SAID, NO, IT WAS NOT NECESSARY. BUT NO TILE WAS USED IN HIS ADDITION.

Q NOW, YOU DID AT SOME POINT, THOUGH, ORDER CARPET THROUGH A&E, WHICH A&E PAID FOR THAT YOU PUT IN THE CARRIAGE ROW, 29TH AVENUE HOME BEFORE YOU SOLD IT, RIGHT?

A YES, MA'AM. IT WAS CARPET AND LINOLEUM, YES, MA'AM.

Q IF I RECALL CORRECTLY, IT WAS AROUND $3,000?

A HOW MUCH?

Q AROUND $3,000?

A I THINK I WAS 3,700 OR SOMETHING LIKE THAT.

Q OKAY. AND YOU AGREED THAT A&E PAID FOR THAT AND THAT NEEDS TO BE TAKEN INTO ACCOUNT WHEN THE COURT GIVES CREDITS AND DEBITS IN THIS CASE, RIGHT?

A YES, MA'AM. YES, MA'AM.

Q LET'S STAY ON THE OCEAN BLUE JOB FOR JUST A MINUTE. MR. SMITH, I AM GOING TO SHOW YOU WHAT WE HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "46". WOULD YOU TAKE A LOOK AT THAT. IT'S ON A&E LETTERHEAD AND TELL ME WHAT THAT IS.

A THIS IS PRICING THAT WE PROVIDED MARTIN BROWN ON A PROJECT CALLED OCEAN BLUE DUPLEX, WHICH IS

WHAT YOU'RE QUESTIONING. AND OCEAN WIND WAS A PROJECT THAT WE WERE GOING TO BID, BUT DECIDED NOT TO BECAUSE THE PEOPLE THAT WERE BIDDING IT WAS OUT OF OUR RANGE.

A&E CONSTRUCTION AND
CONSULTANTS TO MR. BROWN
ON THE CONDOLUX PROJECT
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "46".

Q WOULD THIS HAVE BEEN AN INITIAL ESTIMATE THAT YOU GAVE MARTIN BROWN FOR THE OCEAN BLUE THAT WE WERE JUST TALKING ABOUT? BEFORE YOU WOULD HAVE DONE YOUR ACTUAL CONTRACT AND BEFORE YOU CAME UP WITH YOUR INITIAL SCHEDULE OF VALUES?

A I WOULD ASSUME SO, YES, MA'AM.

Q SO, A&E DID DO THE OCEAN BLUE PROJECT, BUT YOU DID NOT DO THE OCEAN WINDS PROJECT?

A YES, MA'AM.

Q DO YOU REMEMBER IF YOUR CONTRACT OF OCEAN BLUE WAS THE 787,000 AND CHANGE THAT YOU'VE GOT LISTED HERE OR IF IT WAS MORE OR LESS?

A I COULDN'T TELL YOU.

Q OKAY.

A IT SHOULD BE CLOSE TO THAT.

Q IF YOU LOOKED BACK AT EXHIBIT NUMBER "45", WHICH CONTAINED THE SCHEDULE OF VALUES THAT WAS CONTAINED IN APPLICATION NUMBER FIVE.

A YES, MA'AM.

Q IF YOU LOOK DOWN, THAT COLUMN 'C' ON THE SECOND PAGE, IT SHOWS THE TOTAL IN THAT SCHEDULE OF VALUES AS BEING 787,000, CORRECT?

A I DON'T KNOW IF THAT'S THE CONTRACT, BUT, YES, I SEE THAT.

Q OKAY. AFTER YOU FINISHED THE JOB FOR MARTIN BROWN'S COMPANY TO BUILD THE OCEAN BLUE OR THE TAHITIAN -- WHATEVER IT WAS CALLED, HE THEN SOLD THE BUILDING TURN KEY TO MR. DODRILL, IS THAT RIGHT?

A THAT'S CORRECT.

Q DID MR. DODRILL WANT ANY CHANGES OR EXTRAS OR ADDITIONS TO WHAT YOU HAD CONTRACTED WITH MR. MARTIN BROWN TO PUT IN SEACLUSION OR OCEAN BLUE?

A YES, MA'AM, HE DID.

Q DID A&E COME UP WITH AN ESTIMATE FOR THOSE ADDITIONS?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q DID A&E THEN INSTALL THOSE ADDITIONS THAT HE WANTED?

A I DON'T CALL RECALL EXACTLY, BUT THERE WERE SOME

THINGS THAT WE DID OFF THE LIST THAT WAS PROVIDED.

Q OKAY. AND DID MR. DODRILL PAY A&E FOR THOSE ADDITIONS?

A NO. THAT CHECK WAS MADE OUT TO ELLIS SMITH AND ELLIS SMITH CASHED IT MYSELF AND IT WAS LIKE 19,200 AND CHANGE.

Q HOW MUCH?

A 19,200 SOMETHING I THINK. I DON'T EXACTLY RECALL, BUT, YES, I DID THAT.

Q WOULD YOU AGREE THAT WHATEVER MR. DODRILL PAID YOU PERSONALLY FOR THOSE EXTRAS SHOULD BE LIKE THE CARPET SITUATION, CONSIDERED AND ADVANCED TO YOU, THAT THE COURT SHOULD TAKE INTO CONSIDERATION?

A YES, MA'AM.

Q ALRIGHT.

MR. DURANT: YOUR HONOR, THAT CHECK WAS 19,280 AND IT IS ON OUR LIST.

JUDGE HOWE: OKAY. DO YOU HAVE A DATE?

MR. DURANT: NO. IT'S ACTUALLY ON THE DOCUMENTATION THAT MRS. BRADY HAS.

JUDGE HOWE: THAT'S OKAY. THANK YOU.

MS. COOK: I THINK WE WILL BE ABLE TO CLEAR THAT UP FOR THE COURT.

LETTER TO MR. DODRILL
FOR EXTRAS ON THE OCEAN BLUE
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "47".

Q MR. SMITH, I AM GOING TO HAND YOU WHAT WE HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "47" AND ASK YOU IF THIS IS THE LIST OF EXTRAS THAT YOU PROPOSED TO MR. DODRILL FOR OCEAN BLUE?

A IT LOOKS TO BE, YES.

Q DID A&E ACTUALLY DO ALL OF THESE FOR THE $41,619.20 ...

A NO, MA'AM.

Q WOULD YOU TELL US WHICH THINGS THAT ARE ON THIS LIST THAT A&E DID DO? OR IF IT'S EASIER FOR YOU TO TELL US WHAT YOU DIDN'T DO, WHICHEVER IS EASIEST?

A I DON'T KNOW.

Q YOU DON'T KNOW?

A I DON'T RECALL. I MEAN --

Q YOU DON'T REMEMBER IF A&E ADDED THE OUTLETS?

A NO, MA'AM. I DON'T REMEMBER DOING THE ...

Q DO YOU REMEMBER ...

A I REMEMBER THAT WE DID THE TRELLIS.

Q DO YOU REMEMBER A&E ADDING THE SPEAKERS IN THE

GAME ROOM?

A I DON'T RECALL THE BAHAMA SHUTTERS. I KNOW THAT WE DID THOSE.

Q DO YOU REMEMBER ADDING THE SHOWERS INSTEAD OF THE TUBS?

A SHOWERS INSTEAD OF THE TUB? NO. WE DIDN'T DO ANY SHOWERS INSTEAD OF THE TUBS.

Q YOU DIDN'T DO THAT?

A WE DIDN'T DO SHOWERS INSTEAD OF TUBS, NO.

Q DID YOU ADD SHOWERS FOR THE TUBS?

A WE MAY HAVE. I DON'T RECALL.

Q BUT IT IS YOUR TESTIMONY UNDER OATH TO THIS COURT THAT YOU DID NOT DO $41,000 WORTH OF EXTRAS TO THE OCEAN BLUE FOR MR. DODRILL?

A NO. WE DID NOT DO ALL OF THAT.

Q YOU DID $19,000 AND SOME CHANGE?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q IS THAT CORRECT? DID YOU DO MORE OR LESS?

A I DON'T RECALL.

Q AT THIS TIME, YOU WERE CHARGING 12 PERCENT OVERHEAD FOR A&E'S WORK, RIGHT?

A WHAT IS THAT?

Q YOU WERE CHARGING 12 PERCENT OVERHEAD FOR A&E'S WORK, IS THAT CORRECT?

A IF THAT'S WHAT I GOT WRITTEN DOWN ON THERE, YES.

Q NOW, MR. SMITH, LET ME ASK YOU A QUESTION. WHY DID YOU WHITE OUT ON THIS INVOICE AND I'VE GOT THE ORIGINAL AND I WANT THE COURT TO LOOK AT IT. WHY DID YOU WHITE OUT ...

A THIS IS THE ORIGINAL.

Q I KNOW. I'M GOING TO HAVE THE COURT LOOK AT THE ORIGINAL. WHY DID YOU WHITE OUT ON THE A&E LETTERHEAD THE ADDRESS, THE MAILING ADDRESS AND THE PHYSICAL ADDRESS FOR THE A&E OFFICE?

A I DON'T RECALL.

Q WAS THAT SOMETHING THAT MR. DODRILL WAS GOING TO PAY YOU DIRECTLY INSTEAD OF PAYING A&E?

A YES, MA'AM. HE DID PAY ME DIRECTLY. YES, MA'AM.

Q DID YOU LET MR. VEREEN KNOW THAT?

A YES. HE KNEW IT. I WAS SUPPOSED TO GIVE HIM HALF OF IT -- I JUST -- I THOUGHT I HAD, BUT MAYBE I HADN'T. I DON'T KNOW. I DON'T HAVE ANY PROOF WHERE I DID.

Q YOU BELIEVE AND IT IS YOUR TESTIMONY, THAT YOU WEREN'T PAID OR YOU DIDN'T DO $41,000 WORTH OF EXTRAS? OR YOU DON'T KNOW?

A MS. COOK, I COULD NOT TELL YOU.

Q OKAY.

A WE DID A LOT OF JOBS. I CANNOT DELINEATE WHAT

WE DID ON EVERY JOB.

Q WE ARE TRYING TO DO AN ACCOUNTING HERE AND YOU WOULD AGREE, WOULDN'T YOU, THAT IT MAKES A DIFFERENCE WHETHER A&E SHOULD HAVE MADE $41,000 OR A&E SHOULD HAVE MADE $19,000? THAT MAKES A DIFFERENCE, DOESN'T IT, MR. SMITH?

A I UNDERSTAND WHAT YOU ARE SAYING. YES, MA'AM.

Q ABOUT $22,000 WORTH OF DIFFERENCE?

MR. DURANT: YOUR HONOR, MIGHT WE TAKE 5 MINUTES?

JUDGE HOWE: CERTAINLY.

(DISCUSSION HELD OFF THE RECORD.)

Q ALRIGHT. MR. SMITH, I AM GOING TO SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT "48". IT IS A NORTH MYRTLE BEACH BUILDING PERMIT WITH SOME CASE ACTIVITY INFORMATION ON THERE FROM THEIR COMPUTER. WOULD YOU LOOK AT THAT AND TELL ME WHAT THAT IS A BUILDING PERMIT FOR?

A FOR A SWIMMING POOL AT OCEAN BLUE.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT NUMBER "48".

JUDGE HOWE: ANY OBJECTIONS?

MR. DURANT: NO OBJECTION TO IT BEING A PERMIT APPLICATION.

MR. THOMAS: NONE FROM US.

JUDGE HOWE: ALRIGHT. DEFENDANTS "48" SO ADMITTED.

NORTH MYRTLE BEACH PERMIT APPLICATION FOR OCEAN BLUE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "48".

Q WAS THERE A PERMIT -- DID NORTH MYRTLE BEACH ISSUE A BUILDING PERMIT TO A&E TO BUILD THE OCEAN BLUE BUILDING AND A SEPARATE PERMIT TO THE BUILD THE SWIMMING POOL?

A YES.

Q NOW, WITH REGARD TO THE OCEAN BLUE PROJECT, WAS A SWIMMING POOL BUILT?

A YES.

Q AND DID THE OWNER PAY A&E FOR CONSTRUCTION OF THAT POOL?

A IT WAS IN THE ORIGINAL CONTRACT, BUT I DID NOT HAVE IT ON LINE ITEMS. IT SOMEHOW GOT OVERLOOKED, BUT IT WAS IN THE ORIGINAL CONTRACT.

Q SO, IT IS YOUR TESTIMONY THAT DEFENDANT'S EXHIBIT NUMBER "45", WHICH CONTAINS A SCHEDULE OF VALUES FOR THE OCEAN BLUE, DOESN'T HAVE THE SWIMMING POOL INCLUDED AS A SEPARATE LINE ITEM,

BUT WAS INCLUDED IN THE ORIGINAL $787,000 AND CHANGE TO BUILD THE BUILDING?

A YES, MA'AM.

Q HOW MUCH DID IT COST A&E TO BUILD THE SWIMMING POOL?

A I DON'T KNOW EXACT. THE TROPICANA POOLS BUILT IT FOR US.

Q WHEN YOU WERE COMING UP WITH THE PRICE THAT YOU WERE GOING TO CHARGE TO DO THE OCEAN BLUE PROJECT, THE $787,000 PRICE, DID YOU, IN YOUR ESTIMATE, INCLUDE THE COST OF THE POOL OR DID A&E KIND OF HAVE TO EAT -- DID A&E HAVE TO EAT THE COST OF THE POOL?

A IT WAS INCLUDED IN THE COST.

Q NOW, AM I CORRECT, MR. SMITH, THAT A&E WAS FORMED AS A CORPORATION IN OCTOBER OF 2003 AND GOT LICENSED BY THE STATE OF SOUTH CAROLINA, LLR IN JANUARY OF 2004?

A TO THE BEST I RECALL, YES.

Q OKAY. YOU WORKED WITH A&E FROM WHEN IT WAS INCORPORATED THROUGH WHEN YOU LEFT SOMETIME IN ABOUT MID 2007, IS THAT A FAIR STATEMENT?

A SOMEWHERE AROUND AUGUST/SEPTEMBER OF 2007.

Q AND EVEN AFTER YOU LEFT, YOU DO ADMIT THAT A&E CONTINUED TO PAY YOU UNTIL THE END OF THE YEAR

OF 2007 YOUR SALARY?

A THEY PAID ME MY VACATION PAY THAT I WAS OWED WITHOUT TAKING A VACATION WITH A&E.

Q OKAY.

A HE AGREED TO THAT. THAT'S WHY I GOT THE CHECK.

Q OKAY. WHEN YOU LEFT THE EMPLOYMENT OF A&E OR YOU STOPPED WORKING AT A&E BECAUSE YOU ARE STILL A 50 PERCENT SHAREHOLDER. WHEN YOU STOPPED WORKING AT A&E, DID YOU TAKE WITH YOU THE 2005 GMAC TRUCK THAT WAS OWNED BY A&E?

A YES, I DID.

Q AM I CORRECT THAT FROM -- A&E PURCHASED THAT TRUCK IN 2005 AS A NEW TRUCK?

A IT MAY HAVE BEEN THE END OF 2004. I DON'T KNOW. RIGHT AT THE BEGINNING OF 2005 OR END OF 2004.

Q IT'S A 2005 MODEL, CORRECT?

A YES, MA'AM.

Q AND IT WAS NEW WHEN A&E PURCHASED IT?

A YES, MA'AM.

Q DO YOU REMEMBER HOW MUCH IT COST?

A NO, MA'AM, I DO NOT.

Q A&E PAID THE MORTGAGE PAYMENT -- THAT COULD BE A MORTGAGE ALMOST, BUT PAID THE CAR PAYMENT ON THAT TRUCK, CORRECT?

A YES, MA'AM.

Q AND A&E PAID THE INSURANCE ON THAT GMAC TRUCK, CORRECT?
A YES, MA'AM.
Q AND A&E PAID THE TAXES ON THAT TRUCK, CORRECT?
A YES, MA'AM.
Q AND YOU DON'T HAVE ANY PROBLEM WITH A&E PAYING ANY OF THOSE BILLS, DO YOU?
A WELL, WHAT ARE YOU ...
Q YOU ACKNOWLEDGE THAT IS A LEGITIMATE BUSINESS EXPENSE OF A&E THAT YOU APPROVED?
A I DID.
Q NOW, AFTER YOU LEFT OR STOPPED WORKING FOR A&E IN 2007, THE TRUCK WAS NOT PAID -- THE GMAC 2005 TRUCK WAS NOT PAID OFF, WAS IT?
A NO, MA'AM.
Q BUT YOU TOOK IT AND A&E CONTINUED TO PAY THE PAYMENTS ON THE TRUCK UNTIL IT WAS PAID OFF, ISN'T THAT CORRECT?
A YES, MA'AM.
Q AND FROM THE POINT THAT YOU TOOK IT TO THE POINT IT WAS PAID OFF, IT WAS NOT BEING USED FOR A&E ACTIVITIES, CORRECT?
A THAT'S CORRECT.
Q AND, LIKEWISE, THEY CONTINUED TO PAY THE TAXES ON THE TRUCK UNTIL IT WAS PAID OFF, IS THAT

CORRECT?

A YES, MA'AM.

Q AND THEY PAID THE INSURANCE ON THE TRUCK `TIL IT WAS PAID OFF?

A YES, MA'AM.

Q AND THEN WHEN IT WAS PAID OFF, A&E SIGNED THE TITLE TO THE TRUCK OVER TO YOU, IS THAT CORRECT?

A YES, MA'AM.

Q AND YOU STILL HAVE THE TRUCK?

A YES, MA'AM.

Q AND DO YOU AGREE THAT ANY PAYMENTS A&E MADE ON THE TRUCK AFTER YOU LEFT, FOR THE CAR PAYMENT, FOR THE TAXES, AND FOR THE INSURANCE, SHOULD BE COUNTED AS PART OF THE PROFITS YOU WERE OWED BY A&E?

A YES, MA'AM.

Q OKAY. SO WHATEVER THAT AMOUNT IS YOU ACKNOWLEDGE THAT IS A CREDIT FROM A&E ON YOUR SIDE OF THE LEDGER LIKE AN ADVANCE?

A YES, MA'AM.

Q AND DO YOU AGREE WITH ME THAT THE 2005 GMAC TRUCK WAS NEW WHEN PURCHASED IN 2005? SO, IT WAS TWO AND A HALF YEARS OLD WHEN YOU TOOK IT AFTER YOU LEFT AND IT HAD A VALUE IN 2005? IN 2007. I'M SORRY. IF A&E HAD SOLD THAT TRUCK,

IT COULD HAVE GOTTEN SOME AMOUNT OF MONEY FOR IT?

A YES, MA'AM.

Q AND DO YOU AGREE THAT THE VALUE IN JUNE, JULY, AUGUST OR SEPTEMBER OF 2007 WAS, GIVEN THE CONDITION OF THE TRUCK, AROUND $25,000 TO $30,000?

A OH, ABSOLUTELY NOT.

Q WHAT DO YOU SAY THE VALUE OF THE TRUCK IN SEPTEMBER, 2007 WAS?

A I HAVE NO IDEA.

Q WELL, DO YOU BELIEVE THAT THE VALUE OF THE TRUCK, SAY IN 2010, WOULD BE $17,000?

A I HAVE NO IDEA.

Q YOU DON'T HAVE AN OPINION?

A IT IS NOT WORTH $17,000 TO ME.

Q OR IT WASN'T IN 2010?

A IN 2010.

Q AND IT WASN'T IN 2007 WORTH $20,000?

A I DON'T KNOW WHAT WE PAID FOR -- I DON'T RECALL WHAT WE PAID FOR IT.

Q OKAY. WHILE YOU WERE AN OWNER AND WORKING WITH A&E FROM THE END OF 2003 `TIL WHEN YOU LEFT IN SEPTEMBER 2007, IN ADDITION TO DOING A&E JOBS, YOU PERSONALLY HAD ANOTHER BUSINESS CALLED EES,

CORRECT?

A YES, MA'AM.

Q AND EES, AND YOU PERSONALLY, DID OTHER WORK. WHAT I AM JUST GOING TO GENERICALLY CALL, "SIDE WORK." IN ADDITION TO THE WORK THAT YOU WERE DOING WITH A&E, IS THAT A FAIR STATEMENT?

A YES, MA'AM.

Q I JUST WANT TO GO OVER WITH YOU THAT DURING THIS TIMEFRAME THAT THIS IS THE SIDE WORK THAT YOU DID; THE GRANDE DUNES FENCE AT CALAIS IS THAT ONE OF THE JOBS THAT YOU DID AS SIDE WORK?

A YES, MA'AM.

Q YOU BUILT THE CARI ANN DAVIS HOUSE AT MOSS CREEK?

A NO, MA'AM.

Q YOU DID NOT?

A NO. A&E BOUGHT THE PERMIT FOR IT. HE BUILT HIS OWN HOUSE. I WAS PAID NOTHING TO BUILD THAT HOUSE.

Q I DID NOT ASK YOU WHAT YOU WERE PAID. MY QUESTION WAS, WAS THE MOSS CREEK HOUSE OF CARI ANN DAVIS AN ELLIS SMITH JOB?

A I ADVISED. I GUESS THAT YOU WOULD HAVE TO SAY, YES.

Q AND YOU SAY A&E BOUGHT THAT PERMIT?

A YES, MA'AM.
Q AND WAS THE ROBERT SEALEY ROOF WORK AND ADDITION WORK AN ELLIS SMITH OR EES SIDE JOB?
A THAT WAS AN OFFICE UP-FIT. YEAH. WELL, YES, MA'AM.
Q AS ONE OF YOUR SIDE JOBS, DID YOU BUILD THE LEE MCMILLAN -- OR WAS ONE OF YOUR SIDE JOBS THE LEE MCMILLAN HOUSE AT BLACK CREEK PLANTATION?
A YES, MA'AM.
Q AND WAS ONE OF YOUR SIDE JOBS THE PEREZ HOUSE AT PRESTWICK?
A I DON'T KNOW WHEN THAT ONE FINISHED, BUT I DID BUILD A PEREZ HOUSE IN PRESTWICK.
Q AND DID YOU DO SOME WORK FOR BOB FAITH AT HIS CLIFFWOOD HOUSE?
A NO, MA'AM.
Q YOU DID NOT?
A NO, MA'AM.
Q DID YOU PROVIDE ANY MATERIALS TO BOB FAITH FOR HIS HOUSE AT CLIFFWOOD?
A NO, MA'AM, BUT I DID PROVIDE A DUMPSTER FOR HIM THAT WAS BILLED BACK THROUGH TAHITIAN PEARL BECAUSE HE WAS THE OWNER OF THE TAHITIAN PEARL.
Q WAS ONE OF YOUR SIDE JOBS THE SELENA MANN HOUSE AT HUNTERS RIDGE?

A YES, MA'AM.
Q WAS ONE OF YOUR SIDE JOBS THE WORK OR PROVIDING OF MATERIALS OR EQUIPMENT TO THE LAKESIDE CROSSING CLUBHOUSE?
A NO. I WAS DONE WITH THAT LONG BEFORE A&E STARTED.
Q OH, OKAY. DID YOU BUILD A HOUSE FOR BENEDICT RAPPA DOWN OFF OF INTERNATIONAL DRIVE?
A WHO?
Q BENEDICT RAPPA?
A I HAVE NEVER HEARD THE NAME.
Q DO YOU DO ANY WORK AT THE MYRTLE BEACH GOLF AND YACHT CLUB AS SIDE WORK?
A NO.
Q DID YOU PROVIDE ANY MATERIALS OR EQUIPMENT FOR USE AT THE MYRTLE BEACH GOLF AND YACHT CLUB?
A NO, MA'AM.
Q DID YOU DEMOLISH THE LOT, NOW OWNED BY MARTIN BROWN, THAT USED TO HAVE A GAS STATION ON IT THERE BETWEEN 38TH AVENUE AND 48TH AVENUE?
A THE GULF STATION. A&E DID THAT AND WE GOT PAID FOR THAT.
Q A&E GOT PAID FOR THAT?
A YES, MA'AM.
Q THAT WAS AN A&E JOB?

A YES, MA'AM. BOUGHT THE PERMIT AND THE WHOLE NINE YARDS.

Q OKAY. DO YOU REMEMBER ANY OTHER -- WELL, AS PART OF A SIDE JOB YOU WERE HELPING EWELL WITH HIS HOUSE AND YOU WERE REMODELING OR DOING AN ADDITION TO YOUR HOUSE, CORRECT?

A WHAT TIMEFRAME ARE WE TALKING ABOUT?

Q DURING THE TIME PERIOD OF WHEN A&E STARTED IN OCTOBER OF 2003 THROUGH WHEN YOU LEFT IN SEPTEMBER 2007?

A REMODEL? I PAINTED AND RAN THE CARPET IN 29TH PLACE, WHICH WAS MINE, YES. BUILT EWELL'S ADDITION. THERE IS A HOUSE FOR MARTIN BROWN THAT HE WAS REDOING. AND GOT CALLED IN NORTH MYRTLE BEACH AND ASKED ME IF I WOULD GO BUY A PERMIT FOR HIM AND BOUGHT A PERMIT. HE PAID ALL THE BILLS AND DID EVERYTHING. I JUST BOUGHT A PERMIT FOR HIM SO HE COULD GET OPENED BACK UP. THAT WAS AT 19 SOMETHING.

Q LET'S EXCLUDE FOR RIGHT NOW THOSE JOBS?

A TO THE BEST OF MY KNOWLEDGE THAT IS IT.

Q WELL, LET ME SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "49". IT IS A HORRY COUNTY PERMIT APPLICATION AND THEN SOME HORRY COUNTY INSPECTION TICKETS. DO YOU RECOGNIZE

THAT AS BEING THE PERMIT ISSUED FOR THE CARI DAVIS HOUSE?

A IT SEEMS TO BE, YES.

Q SO THE PERMIT WAS ISSUED ACCORDING TO THIS ON FEBRUARY THE 14TH, 2005, CORRECT?

A I SEE, YES.

Q AND DOES THAT COMPORT WITH YOUR RECOLLECTION THAT IT WOULD HAVE BEEN ABOUT THE BEGINNING OF FEBRUARY OF '05?

A TO THE BEST OF MY RECOLLECTION, YES.

Q AND THE VALUE ON THE PERMIT IS $200,836.00, CORRECT?

A SEEMS TO BE.

Q AND YOU HAVE LISTED A&E AS THE GENERAL CONTRACTOR?

A YES, MA'AM.

Q WAS A&E THE GENERAL CONTRACTOR ON THAT JOB?

A NO, MA'AM. I WENT BY AND CHECKED THE JOB. WE WERE NOT PAID TO DO THAT JOB. BRIAN WAS A SUB OF OURS AND HE WAS DOING ALL OUR SIDING WORK. HUNDREDS OF THOUSANDS OF DOLLARS WORTH OF WORK, AND BASICALLY I LET HIM USE THE LICENSE AND MR. VEREEN WAS AWARE OF IT. I LET HIM USE THE LICENSE TO BUILD THE HOUSE. AND I MADE PERIODIC INSPECTIONS TO MAKE SURE THAT IT MET CODE AND

DID WHAT WAS DONE PROPERLY.

Q YOU WOULD AGREE WITH ME THAT WITH A&E DOWN AS THE CONTRACTOR, THAT A&E WAS EXPOSED TO LIABILITY FOR THE CONSTRUCTION OF THAT HOUSE, ISN'T THAT CORRECT?

A YES, MA'AM.

Q LET ME SHOW YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "50". IT'S A CERTIFICATE OF OCCUPANCY FOR CARI DAVIS HOUSE DATED OCTOBER THE 14TH, 2005. DO YOU RECOGNIZE THAT DOCUMENT?

A I DON'T RECOGNIZE IT, BUT I KNOW THAT IT IS A CO.

MS. COOK: YOUR HONOR, I AM NOT SURE IF I HAVE ASKED FOR EXHIBIT "49" TO BE INTRODUCED. I WOULD LIKE TO ASK TO INTRODUCE EXHIBIT "49". YOUR HONOR, I AM NOT KEEPING QUITE STRAIGHT HERE, BUT I WANT TO MAKE SURE THAT I ASKED FOR IT TO BE INTRODUCED EXHIBIT "47", "48", "49" AND NOW "50"?

MR. THOMAS: WE OBJECT TO ALL OF THOSE ON GROUNDS OF RELEVANCE, YOUR HONOR.

JUDGE HOWE: WHAT IS THE RELEVANCE?

MS. COOK: YOUR HONOR, WE ARE DOING AN

ACCOUNTING HERE OF THE EXPENSES AND THE CREDITS OF A&E TO DETERMINE WHAT THE PROFIT OR LOSS IN THE A&E COMPANY SHOULD BE. SO THAT YOUR HONOR CAN DETERMINE WHAT, IF ANY, DIVISION OF THAT PROFIT OR LOSS SHOULD HAPPEN BETWEEN THE SHAREHOLDERS OF THE COMPANY. AND THE PLAINTIFF, MR. SMITH, ON BEHALF OF A&E HAS ASKED THAT A&E BE JUDICIALLY DISSOLVED AND WE -- OUR POSITION IS THAT A&E SHOULD NOT BE AND WE SEEK THE COURT'S ORDER THAT IT SHOULD NOT BE JUDICIALLY DISSOLVED BECAUSE OF THE POTENTIAL ONGOING LIABILITY IN THE COMPANY FOR CONSTRUCTION DEFECTS AND OTHER MATTERS DEALING WITH A&E.

JUDGE HOWE: WELL, MR. DURANT.

MR. DURANT: YOUR HONOR, THE POSITION OF THE DEFENDANT IN THE LAWSUIT IS THAT THEY AGREE THAT A&E SHOULD BE SHUT DOWN. THAT IS THEIR POSITION IN THEIR ANSWER. HOWEVER, YOUR HONOR, WE ARE AWARE OF THE RESPONSIBILITY TO KEEP FUNDS AVAILABLE TO PAY CLAIMS, BUT IT IS NOT THEIR POSITION THAT THEY OPPOSE THE

DISSOLUTION. THEY AGREE WITH THAT WHEN THEIR ANSWERS WERE FILED WITH THE COURT. IN REGARDS TO THE INTRODUCTION OF EVIDENCE, YOUR HONOR, WE HAVE BEEN PATIENT, BUT NONE OF THIS STUFF IS RELEVANT TO THE ISSUE AS TO WHAT LOSS DID A&E SUFFER OR WHAT MONETARY LOSS THE COMPANY HAD OR WHAT BENEFIT DID MR. SMITH HAVE ON ANY OF THESE CLAIMS THAT THEY HAVE INTRODUCED TO OCEAN BLUE ET CETERA. IT IS ONLY RELEVANT IF MR. SMITH GOT SOME BENEFIT OUT OF ANY OF THESE ACTIONS THAT WOULD REFLECT AN ACCOUNTING CHANGE. AND WHAT WE ARE DOING IS ASKING A LOT OF STUFF, I GUESS. THE QUESTION IS, DID MR. SMITH RECEIVE SOME IMPROPER BENEFIT AS A RESULT OF THIS ACTION? AND WITHOUT THAT INFORMATION, IS IT IRRELEVANT. IF THEY WENT AND USED THIS PARTICULAR -- SAY AT MRS. DAVIS HOUSE, WITH OR WITHOUT, I'M ASSUMING THAT THE TESTIMONY HERE IS THAT MR. VEREEN KNEW ABOUT IT AND THAT NO MONEY WAS EXPENDED BY THE COMPANY FOR THE JOB, THEN WHY IS IT RELEVANT? OKAY.

HE DID IT. HE ADMITS THAT HE DID IT. WE ADMITTED THAT IN DISCOVERY, BUT THERE WAS NO -- THERE'S NO TESTIMONY HERE OR NO QUESTIONS ASKED CONCERNING WHAT DID A&E PAY FOR ANY OF HIS THAT CAUSED IT TO SUFFER LOSS AND THERE IS NONE.

MS. COOK: WELL, I HAVEN'T FINISHED ASKING ...

MR. DURANT: WELL, IT APPLIES TO ALL OF THE ISSUES HERE, EVEN ON THE CARPET ISSUES, OTHER THAN THE AMOUNT THAT WE HAVE AGREED UPON, THIS $19,000. THERE IS NO EVIDENCE THAT ANY PERSON HAD A FINANCIAL GAIN FROM THE TRANSACTION.

MS. COOK: YOUR HONOR, I AIN'T EVEN PUT UP MY CASE YET. I AM LAYING A FOUNDATION.

MR. DURANT: WE HAVE BEEN GIVEN NO EVIDENCE IN DISCOVERY AND WE HAVE ASKED FOR IT, YOUR HONOR.

MS. COOK: YOUR HONOR. THEY HAVE GOTTEN -- YOUR HONOR KNOWS WHAT ALL OF THESE DOCUMENTS ARE FOR. ADDITIONALLY, YOUR HONOR, WE HAVE THE PLAINTIFFS IN THE CASE WHO HAVE DONE WHAT THEY CALL AN

ACCOUNTING, WHICH, IN ESSENCE, WHAT THEY HAVE DONE IS THEY HAD DETERMINED WHAT, IF ANY, MONIES THE PLAINTIFFS BELIEVES MR. VEREEN OWES TO A&E. THEY HAD NOT DONE AN ACCOUNTING TO DETERMINE, LIKEWISE, IN THE SAME DEPTH AND BREATH AS THEY DID FOR MR. VEREEN TO DETERMINE WHAT MONIES MR. SMITH MAY OWE A&E. IT'S BEEN OUR POSITION ALL ALONG THAT THEY HAVE DONE PART OF THE TASK WITH THEIR EXPERT. THAT THEY HAVE ASKED THIS COURT TO MAKE AN ULTIMATE DETERMINATION OF, BUT THEY HAD NOT DONE THE TOTAL TASK. ADDITIONALLY, YOUR HONOR, MR. SMITH HAS TESTIFIED THAT HE DID GET MONEY ON SOME OF THESE JOBS. HE'S SAYING HE DIDN'T GET MONEY ON SOME OF THESE JOBS, BUT THAT'S HIS TESTIMONY. I HAVE NOT PUT MY CASE UP YET, YOUR HONOR. ADDITIONALLY, YOUR HONOR, PART OF WHAT MR. SMITH WAS QUESTIONED ON AND HAS ADMITTED IS THAT FOR PART OF THE TIME THAT HE WAS ACTIVELY WORKING IN A&E, THAT IS FROM THE END YEAR 2003 TO THE MIDDLE OF 2005, THAT INSTEAD OF PERCEIVING A FIXED

SALARY, AS MR. VEREEN DID OF A $1,000 A WEEK, MR. SMITH DID NOT RECEIVE A SALARY, BUT HE CHOSE TO BE PAID THROUGH BILLING FROM HIS COMPANY, EES SUPERVISORY FEES, WHICH WERE BILLED -- NOT AT A RATE THE SAME AS MR. VEREEN OF $1,000 A WEEK, BUT WERE BILLED AT A RATE THAT EQUATES TO $2,000 A WEEK. THAT WAS FOR HIS WORK AS SUPERVISORY. FEES FOR WORK HE WAS ACTIVELY DOING WITH A&E. THIS EVIDENCE ALSO GOES TO SHOW PER OUR ACCOUNTING THAT WE BELIEVE A&E IS ENTITLED TO A CREDIT BACK FOR SOME OF THOSE SUPERVISORY FEES BECAUSE OF THE VOLUME OF THE BUSINESS MR. SMITH WAS DOING ON HIS SIDE JOBS. HE WAS NOT DEVOTING HIS FULL ATTENTION OR EVEN THREE QUARTERS OF HIS ATTENTION. IT'S GOING TO BE OUR TESTIMONY THAT HALF OF HIS ATTENTION PERHAPS WAS TO THE A&E JOBS. AND A&E IS DUE A CREDIT BACK FOR A PORTION OF THOSE SUPERVISOR FEES THAT IT PAID TO MR. SMITH WHO WAS SUPPOSED TO BE OUT SUPERVISING A&E JOBS, BUT WAS, IN FACT, DOING THIS MYRIAD, OVER A MILLION

DOLLARS WORTH OF PERMITTED WORK, ON HIS SIDE JOBS. SO, IT IS VERY RELEVANT FOR THE COURT'S DETERMINATION OF THE ULTIMATE CREDITS AND DEBITS BY BOTH OF THESE GENTLEMEN TO A&E TO FIND OUT WHAT THE TOTAL AT THE END OF THE DAY PROFIT AND LOSS SHOULD BE IN A&E. SO, WHAT THESE GENTLEMEN ARE DUE IN TERMS OF SPLITTING IT 50 PERCENT, HALF THE PROFIT OR HALF THE LOSS, DEPENDENT UPON WHERE, YOUR HONOR, ENDS UP.

JUDGE HOWE: OKAY. I'M GOING TO LET IT IN FOR WHATEVER IT IS WORTH.

MR. DURANT: YOUR HONOR, THE OBJECTION IS JUST CONTINUING. SHE HAS A RIGHT TO EXPLORE THESE. SHE'S ON CROSS, BUT SHE HAS TO TIE THIS UP BY ASKING THE QUESTION, "DID YOU GET ANY MONEY OR DID YOU MAKE ANY MONEY?" AND SHE IS NOT DOING THAT.

JUDGE HOWE: I DON'T KNOW THAT SHE HAS TO TIE IT UP THROUGH THIS WITNESS.

MR. DURANT: CORRECT, YOUR HONOR.

JUDGE HOWE: THANK YOU. AS SHE TALKED ABOUT IN CHAMBERS, I THINK SHE SAID SHE

HAS TWO OTHER WITNESSES. SHE MAY HAVE MRS. DAVIS COME IN AND SAY, "HERE'S MY CHECK THAT I ..." "HERE'S MY CANCELED CHECK THAT I GAVE THEM." I DON'T KNOW.

MR. THOMAS: WELL, THE PROBLEM WITH US IS THAT SHE HASN'T TURNED IT OVER TO US.

JUDGE HOWE: I UNDERSTAND.

MS. COOK: YOUR HONOR, AM I TO UNDERSTAND THAT EXHIBITS "47", "48", "49" AND "50" HAVE BEEN ADMITTED?

JUDGE HOWE: YES, MA'AM.

DAVIS HORRY COUNTY PERMIT
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "49".

CERTIFICATE OF OCCUPANCY
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "50".

JUDGE HOWE: FOR WHATEVER, THEY ARE WORTH AND HOWEVER YOU MAY TIE THEM UP.

Q SO, MR. SMITH, WOULD YOU AGREE WITH ME THAT THE PERMIT FOR MRS. DAVIS' HOUSE WAS ISSUED IN FEBRUARY OF '05 AND HER HOUSE WAS CO'ED IN

OCTOBER OF '05, ACCORDING TO EXHIBITS "49" AND "50"?

A YES, MA'AM.

Q AND IT IS YOUR TESTIMONY THAT YOU RECEIVED NO PAYMENT FROM MRS. DAVIS FOR THE WORK YOU OF A&E OR ANYONE PERFORMED AT THE DAVIS HOUSE?

A MYSELF NONE. EES CONSTRUCTION, EITHER ONE, RECEIVED PAYMENT FROM MRS. CARI ANN DAVIS OR BRIAN DAVIS, HER HUSBAND, FOR THE BUILDING OF THIS HOUSE.

Q DID A&E RECEIVE ANY PAYMENT?

A TO THE BEST OF MY KNOWLEDGE, NO.

Q DURING THE EIGHT MONTHS THE HOUSE WAS BEING BUILT, YOU WERE WORKING WITH A&E, CORRECT?

A YES, MA'AM.

Q AND WAS A&E PAYING YOU THROUGH EES SUPERVISOR FEES FOR A PORTION OF THE TIME AND THEN ABOUT IN, IF MY MEMORY SERVES ME, APRIL OR MAY, JUST STARTED PAYING YOU A STRAIGHT SALARY?

A THEY DIDN'T PAY ME A SUPERVISORY FEE FOR THIS JOB ...

Q NO, SIR.

A ... OR PAY A SALARY FOR THIS JOB AT ANY TIME.

Q I'M NOT TALKING ABOUT HIS JOBS, SIR. AT THE TIME THIS JOB, MRS. DAVIS JOB, WAS GOING ON IN

FEBRUARY OF 2005 TO OCTOBER, 2005, YOU WERE WORKING FOR AND WITH AS A 50 PERCENT OWNER OF A&E, CORRECT?

A YES, MA'AM.

Q AND ISN'T IT TRUE THAT FROM FEBRUARY 2005 `TIL APRIL OF 2005, A&E PAID YOU SUPERVISORY FEES?

A YES, MA'AM.

Q THEN FROM -- EXCUSE ME. FROM ABOUT APRIL OF 2005 ON THROUGH WHEN YOU LEFT EMPLOYMENT WITH A&E, A&E PAID YOU A SALARY, IS THAT CORRECT?

A YES, MA'AM.

Q MR. SMITH, LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT NUMBER "51". IT IS A COPY OF HORRY COUNTY BUILDING PERMIT FOR A ROBERT SEALEY JOB, AND BEHIND IT ARE SOME INSPECTION TICKETS AND SOME MORE DOCUMENTS RELATING TO THE CONSTRUCTION AT THAT JOB. DO YOU RECOGNIZE THOSE DOCUMENTS?

A I'LL SEE WHAT THEY ARE. I HAVE NOT SEEN THEM BEFORE, NO.

Q DID YOU AUTHORIZE OR DID YOU -- IF YOU LOOK AT EXHIBIT "51" KIND OF THREE QUARTERS DOWN TO THE END OF THE PAGE WHERE IT'S GOT, "CONTRACTOR/BUILDER", MR. SEALEY'S NAME IS SCRATCHED OUT AND THEN THERE IS A&E CONSULTANTS, ELLIS SMITH. IS THAT YOUR WRITING?

A IT LOOKS TO BE.
Q AND UNDER THAT IS EES CONSTRUCTION, BUT IT LOOKS LIKE THAT IS MARKED OUT. IS THAT YOUR WRITING?
A I DON'T KNOW.
Q OKAY. THE P.O. BOX 1248 MYRTLE BEACH, WHAT IS THAT A P.O. BOX FOR?
A THAT IS FOR EES CONSTRUCTION.
Q THAT'S EES CONSTRUCTION'S P.O. BOX?
A YES, MA'AM.
Q OKAY. DID YOU ALLOW MR. SEALEY OR DID YOU TAKE OUT THIS BUILDING PERMIT IN THE NAME OF A&E?
A YES, MA'AM, I DID.
Q AND THE PERMIT WAS ISSUED ON OR ABOUT APRIL 23RD, 2007?
A IT SEEMS TO BE, YES, MA'AM.
Q AND THE VALUE THAT IS PLACED ON THIS PERMIT IS $8,000 FOR THE ROOF WORK AND 6,300 FOR AN ADDITION, IS THAT CORRECT?
A NO. IT WAS $6,300 FOR THE ROOF ADDITION.
Q OH, I'M SORRY. WHAT IS THE $8,000 FOR?
A THAT'S WHAT HE ORIGINALLY VALUED IT WITH CONSTRUCTION. THEY CHANGED IT TO $6,300 WHEN THAT'S ALL IT COST HIM TO DO.
Q OKAY.
A I TAKE THAT BACK. HE DID DO SOME STUFF ON THE

INSIDE THAT THE ENGINEER REQUIRED TO DO SO THAT IS WHY THE $8,000.

Q SO IT WAS 8,000 PLUS THE 6,300, WASN'T IT?

A NO, NO. IT WAS 8,000 TOTAL. 6,300 OF IT WAS THE ROOF ADDITION.

Q LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT "52".

MR. DURANT: NO OBJECTIONS TO THAT, YOUR HONOR, FROM THE PLAINTIFF.

MS. COOK: WELL, I HAVEN'T EVEN TRIED TO INTRODUCE IT JUST YET.

MR. DURANT: IF THIS IS "52" THEN WE HAVE NO OBJECTION TO "52".

MS. COOK: WELL, THEN, YOUR HONOR, THEN I WILL GO AHEAD AND INTRODUCE "51" AND "52" AS EXHIBITS PLEASE.

MR. THOMAS: WE HAVE THE SAME IRRELEVANCY. OBJECTION.

JUDGE HOWE: SO WE HAVE AN OBJECTION FROM ONE PLAINTIFF AND NO OBJECTION FROM THE OTHER PLAINTIFF'S ATTORNEY?

MR. DURANT: YOUR HONOR, WE HAVE A CONTINUING OBJECTION AS TO RELEVANCY, BUT WE DON'T HAVE A PROBLEM WITH THIS BEING THE PERMIT AND THIS BEING THE

APPLICATION.

JUDGE HOWE: OKAY. DEFENDANT'S "51" AND "52" ADMITTED OVER THE OBJECTION CONCERNING RELEVANCY.

SEALEY HORRY COUNTY PERMIT
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "51".

CERTIFICATE OF OCCUPANCY
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "52".

Q AND ACCORDING TO EXHIBIT "51", THE PERMIT WAS ISSUED ON APRIL 23RD, 2007, AND THE CO WAS ISSUED ON SEPTEMBER 11, 2007, CORRECT?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q AND DURING THAT TIMEFRAME, AT LEAST, IN APRIL OF 2007, AND YOU SAID THAT YOU DID NOT LEAVE A&E UNTIL SEPTEMBER OF 2007, YOU WERE STILL ACTIVELY EMPLOYED AND SUPPOSED TO BE WORKING WITH A&E, IS THAT CORRECT?

A YES, MA'AM.

Q AND YOU WERE DRAWING A SALARY?

A YES, MA'AM.

Q IS THAT CORRECT?

A YES, MA'AM.
Q DID YOU OR EES OR ANYONE CONNECTED WITH YOU DO ANY PHYSICAL WORK WITH MR. SEALEY?
A NO, MA'AM.
Q BUT YOU DID DRAW THE A&E -- YOU DID TAKE OUT THE PERMIT IN A&E'S NAME?
A YES, MA'AM.
Q SO A&E HAS ONGOING LIABILITY AS A CONTRACTOR WOULD UNDER A PERMIT FOR THIS PARTICULAR JOB, IS THAT CORRECT?
A I DON'T KNOW THE LAW, BUT THAT IS WHAT YOU SAY.
Q MR. SMITH, LET ME SHOW YOU EXHIBIT NUMBER "53", WHICH IS A HORRY COUNTY PERMIT APPLICATION FOR STEVE MCMILLAN AND "54", WHICH IS A CERTIFICATE OF OCCUPANCY FOR THE MCMILLAN BLACK CREEK PLANTATION HOME. SEE IF YOU CAN IDENTITY EITHER OF THOSE?
A YES, IT LOOKS TO BE.
Q NOW, WAS THE MCMILLAN BLACK CREEK PLANTATION A SIDE JOB OF YOUR?
A YES, MA'AM.
Q AND WERE YOU PAID FOR THIS WORK BY MR. MCMILLAN?
A YES. I WAS PAID TO DO SOME WORK FOR MR. MCMILLAN.
Q THE DATE OF THE APPLICATION IS SEPTEMBER 7TH,

2005, AND THE DAY IT WAS ISSUED SAYS, "DATE OUT 9/14/2005", IS THAT CORRECT?

A THAT'S WHAT IT SAYS, YES, MA'AM.

Q I ASK YOU IF YOU WOULD TURN TO THE VERY LAST PAGE ...

MR. DURANT: YOUR HONOR, I OBJECT TO ANY QUESTIONS ON THIS BECAUSE IT IS NOT A&E'S PERMIT OR IS NOT MR. AND MRS. MCMILLAN'S PERMIT. ANY COMMENT THAT HE WOULD HAVE WOULD BE SUPPOSITION BASED ON LOOKING AT THE APPLICATION UNLESS SHE ASKED HIM, DID HE PREPARE IT?

MS. COOK: YOUR HONOR, I HAVE NOT TRIED TO INTRODUCE IT YET. I AM NOT FINISHED. HE JUST SAID THAT HE BUILT THE HOUSE.

JUDGE HOWE: NO. HE SAID THAT HE DID SOME WORK ON IT.

MS. COOK: HE SAID THAT THIS WAS ONE OF HIS SIDE JOBS.

JUDGE HOWE: IT SAYS THAT STEVEN MCMILLAN IS THE CONTRACTOR OR BUILDER.

MS. COOK: WELL, LET ME ASK THIS.

Q THAT'S NOT YOUR HANDWRITING, IS IT, MR. SMITH, ON THE APPLICATION?

A NO, MA'AM.

Q AND IS IT YOUR UNDERSTANDING THAT AN OWNER, THE PERSON WHO OWNS THE LOT OR THE HOUSE, THEY CAN GET THEIR OWN APPLICATION?

A YES, MA'AM.

Q NOW, I AM GOING TO ASK YOU IF YOU WOULD TURN TO THE LAST PAGE WITHIN EXHIBIT NUMBER "53", WHICH IS THE HORRY COUNTY CODE ENFORCEMENT ROSTER CARD?

A YES, MA'AM.

Q YOU FILLED OUT THAT ROSTER CARD, DIDN'T YOU, SIR? THAT'S YOUR HANDWRITING?

A SOME OF IT IS, YES, IT IS.

Q THE SUBS LISTED ON THE HORRY COUNTY CODE ENFORCEMENT ROSTER, THOSE ARE THE TYPICAL SUBS THAT A&E USED ON ITS JOBS, IS THAT CORRECT?

A YES, MA'AM.

Q AND DID YOU OR -- WHAT WOULD YOU SAY YOUR ROLE ON THE MCMILLAN JOB WAS?

A COORDINATION.

Q PROJECT MANAGER?

A I PERSONALLY BUILT THE DECK ON SATURDAY AND SUNDAY, THE BACK DECK. I DID THAT. I DID SOME GRATING WITH THE BOBCAT ON THE WEEKEND AND AT NIGHT, I GUESS, I DID A LITTLE BIT OF EVERYTHING.

Q SO YOU WERE THE PROJECT MANAGER?
A I WOULD SAY SUPERINTENDENT.
Q I'M SORRY. SUPERINTENDANT. OKAY.
A I WOULD SAY THAT I JUST HELPED THEM WITH CONSTRUCTION.
Q I KNOW THAT'S A TERM OF ART WITH CONSTRUCTION AND I'M NOT USING IT CORRECTLY. DOES IT COMPORT WITH YOUR MEMORY THAT THE JOB STARTED ABOUT SEPTEMBER OF '05 AND THEN WOULD HAVE FINISHED AROUND JULY OF '06?
A THAT'S WHAT IT SAYS ON THERE, YES, BUT I DON'T RECALL THE DATES.
Q DO YOU HAVE ANY REASON TO DOUBT THAT?
A NO, MA'AM.

MS. COOK: YOUR HONOR, I WOULD MOVE TO INTRODUCE EXHIBIT NUMBER "53" AND "54".

JUDGE HOWE: ANY OBJECTIONS?

MR. THOMAS: ONLY AS TO RELEVANCE.

MR. DURANT: ONLY AS TO RELEVANCE, YOUR HONOR.

JUDGE HOWE: SO THIS WILL BE DEFENDANT'S "53"?

MS. COOK: YES, MA'AM. IS THE PERMIT.

JUDGE HOWE: AND DEFENDANT'S "54".

MS. COOK: IS THE CO.

JUDGE HOWE: DEFENDANT'S "53" AND "54" SO ADMITTED.

MCMILLAN HORRY COUNTY PERMIT MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "53".

CERTIFICATE OF OCCUPANCY MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "54".

Q AND FROM SEPTEMBER 14TH, 2005 AND THROUGH JULY 26TH, 2006, YOU ARE ACTIVELY PARTICIPATING IN WORKING FOR A&E, CORRECT?

A YES, MA'AM.

Q AND YOU WERE DRAWING A SALARY FROM A&E DURING THAT TIME?

A YES, MA'AM.

Q AND DO YOU AGREE THAT -- WELL, LET ME ASK YOU, HOW MUCH WERE YOU PAID BY MR. MCMILLAN FOR YOUR SERVICES ON HIS JOB?

A I COULD NOT TELL YOU. I DO NOT KNOW.

Q WELL, THE PERMIT IT SAYS THE VALUE OF THE CONSTRUCTION IS $370,000. DO YOU BELIEVE THAT WAS A FAIR ESTIMATE WITH YOUR EXPERIENCE AND YEARS OF WORKING IN THE CONSTRUCTION INDUSTRY?

DO YOU BELIEVE THAT TO BE A FAIR COST OF CONSTRUCTION THAT THEY'VE GOT ON THE PERMIT?

A CLOSE, YES.

Q OKAY. WERE YOU PAID BY THE HOUR FOR YOUR WORK OR DID YOU SUBMIT INVOICES? DO YOU REMEMBER HOW THAT WAS DONE?

A I WAS PAID BY THE HOUR, YES, FOR THE TIME I SPENT ON THE JOB.

Q AND HOW MUCH DID YOU CHARGE PER HOUR?

A I DON'T REMEMBER.

Q WERE YOU PAID MORE THAN $100,000 FOR YOUR WORK ON THIS JOB?

A NO, NO, NO.

Q MORE THAN 50,000?

A NO, NO.

Q MORE THAN 20,000?

A I DON'T KNOW. COULD BE, YES.

Q YOU DID NOT PASS ANY OF THAT MONEY ALONG TO A&E, CORRECT?

A NO. IT WAS NOT THEIRS.

Q AND DID MR. VEREEN AND A&E KNOW YOU WERE DOING THIS JOB?

A I THINK HE DID, BUT I HAVE LEARNED NOW THAT HE DIDN'T.

Q WHAT DID YOU DO TO ADVISE A&E OR MR. VEREEN THAT

YOU WERE GOING TO DO THIS SIDE JOB FOR THE MCMILLANS FOR A PROJECT THAT WAS $370,000?

A I DON'T THINK IT IS MY JOB TO PROVIDE THEM KNOWLEDGE OF ANYTHING THAT I DO ON MY PRIVATE TIME. HE DOESN'T PROVIDE ME THAT AND HE NEVER HAS.

Q DO YOU HAVE ANYTHING THAT WOULD SHOW THAT ALL OF THE WORK THAT YOU DID ON THE MCMILLAN PROJECT WAS ON THE WEEKENDS?

A DON'T HAVE ANY -- NO.

Q WAS ALL THE WORK THAT YOU DID AS PROJECT SUPERINTENDENT ON THE WEEKENDS?

A NO.

Q DID YOU AND MR. VEREEN HAVE SET HOURS YOU WORKED FOR A&E?

A NO.

Q DID YOU PUNCH A CLOCK FOR A&E?

A NO.

Q AND LIKE ME, WOULD YOU AGREE WITH ME THAT AN OWNER OF A BUSINESS STAYS AND DOES WHATEVER IT TAKES TO MAKE THAT BUSINESS SUCCESSFUL FOR AS LONG AS IT TAKES?

A YES, MA'AM.

Q OKAY. LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT NUMBER "55". MR. SMITH, DO YOU

RECOGNIZE THIS AS THE HORRY COUNTY PERMIT FOR THE PEREZ HOUSE AT PRESTWICK THAT YOU SAID YOU BELIEVE WAS ONE OF YOUR SIDE JOBS?

A YES, MA'AM. IT WAS A JOB THAT I HAD BEFORE A&E WAS FORMED. BUT IT WAS A CONSTRUCTION MANAGEMENT JOB, NOT A CONTRACTOR JOB.

Q AND I BELIEVE IF YOU LOOK AT THE APPLICATION THAT IS DATED 10/6 -- THE APPLICATION AND CERTIFICATE OF ZONING COMPLIANCE IS DATED OCTOBER 6TH, 2003, IS THAT CORRECT?

A I'M MISSING SOMETHING.

Q I'M SORRY. I'M LOOKING AT SOME DIFFERENT EXHIBIT. EXHIBIT "55", ON THE SECOND PAGE, IT'S THE ROSTER CARD?

A YES, MA'AM.

Q IS THAT YOUR HANDWRITING?

A SOME OF IT IS, YES.

Q NOT THE SIGNATURE THAT'S PETE PEREZ'S? THAT'S MR. PEREZ'S SIGNATURE?

A YES, MA'AM.

Q BUT THE REST OF THE WRITING WITH THE SUBS AND THE SUBS LICENSE NUMBERS, IS THAT YOUR WRITING?

A NOT ALL OF IT. SOME OF IT IS, YES.

Q AND ARE THOSE THE SUBS THAT TYPICALLY A&E WAS USING ON ITS JOBS AS WELL?

A SOME OF THEM, YES. NOT ALL OF THEM. SOME OF THEM.

Q AND HOW MUCH WERE YOU PAID BY MR. AND MRS. PEREZ FOR THE SUPERVISION WORK THAT YOU DID ON THEIR HOME?

A I COULD NOT TELL YOU.

Q WELL, IN ADDITION TO THE HOME, DO YOU AGREE THAT THE VALUE OF THE HOME WAS ABOUT $250,000 IN CONSTRUCTION COST?

A NO. AND DID YOU SAY 450?

Q NO, SIR, 250.

A YES. ABOUT 250, YES, MA'AM.

Q DO YOU HAVE --

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT NUMBER "55".

JUDGE HOWE: ANY OBJECTION?

MR. THOMAS: ONLY AS TO RELEVANCE.

MR. DURANT: RELEVANCE.

JUDGE HOWE: DEFENDANT'S "55" SO ADMITTED OVER OBJECTION AS TO RELEVANCE.

PEREZ HORRY COUNTY PERMIT WITH TICKETS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S

EXHIBIT "55".

Q NOW, IN ADDITION TO GETTING THE PERMIT AND THE PEREZ'S BUILDING, THE HOUSE THAT YOU OVERSAW, I THINK YOU SAID THAT YOUR ROLE WAS CONSTRUCTION MANAGEMENT. DID THE PEREZ'S ALSO BUILD A POOL?

A EXCUSE ME?

Q DID THE PEREZS ALSO BUILD A POOL?

A YES, MA'AM, THEY DID.

Q SO THEY GOT A SEPARATE PERMIT FOR THE CONSTRUCTION OF A POOL?

A I DON'T KNOW. I DON'T THINK IT SAYS POOL ON HERE. SO, I WOULD THINK THAT THEY PROBABLY DID.

Q WAS PART OF YOUR JOB IN YOUR CONSTRUCTION THE OVERSIGHT OF THE PEREZ CONSTRUCTION TO OVERSEE THE CONSTRUCTION OF THE POOL ...

A NO. THAT WAS D.J. BENNETT, A FRIEND OF MINE.

Q ... AS PROJECT MANAGEMENT? DO YOU HAVE A BALLPARK OF HOW MUCH MONEY YOU WERE PAID?

A I HAVE NO IDEA.

MR. THOMAS: YOUR HONOR, WE ARE GOING TO HAVE TO OBJECT TO THE QUESTION ABOUT HOW MUCH HE WAS PAID. THIS IS NOT ONE OF THE JOBS THAT THEY SAY WAS A CORPORATE OPPORTUNITY. WE DON'T KNOW -- THAT'S AN ADDITIONAL RELEVANCE GROUND. WE DON'T

SEE WHAT THIS HAS GOT TO DO WITH ANYTHING WHETHER OR NOT HE WAS PAID ANYTHING?

MS. COOK: YOUR HONOR, IT IS VERY RELEVANT IF THAT WAS -- IF MR. SMITH WAS TAKING THE TIME AND THE FIDUCIARY OBLIGATION THAT HE HAD AS AN OWNER, A 50 PERCENT OWNER, OF A CORPORATION AND INSTEAD OF DEVOTING HIS TIME AND ENERGY TO THOSE JOBS AND INSTEAD OF ALLOWING THOSE JOBS, WHETHER IT'S CONSTRUCTION SUPERVISION OR THE WHOLE JOB, AND HE IS ABSCONDING WITH THOSE AND TAKING THOSE FOR HIMSELF, THAT IS CERTAINLY EVIDENCE THAT NEEDS TO BE TAKEN INTO THE ACCOUNT AND WAS PLED IN THE PLEADINGS WITH REGARD TO THE ACCOUNTING. WE HAVE, LIKEWISE, SOUGHT AN ACCOUNTING HERE OF THE MONIES AND OPPORTUNITIES THAT HAVE BEEN -- THAT SHOULD BE ON MR. SMITH'S SIDE OF THE LEDGER PAGE. YOUR HONOR, ADDITIONALLY, THIS WORK BEING DONE ON THE PEREZ HOUSE WAS A SIDE JOB TAKING PLACE AT EXACTLY THE SAME TIME THAT HE IS DRAWING SUPERVISORY FEES AND/OR A

SALARY FROM A&E, BUT IS SPENDING TIME ON OTHER EFFORTS IS DIRECTLY RELATED TO WHAT THE COURT CAN CONSIDER IN IT'S EQUITABLE CHAIR IN WHAT, IF ANYTHING, IN TERMS OF REIMBURSEMENT OF CREDIT SHOULD COME BACK -- IS OWED BY MR. SMITH TO A&E FROM THE SALARY AND THE SUPERVISORY FEES THAT HE WAS BEING PAID BY THEM. A&E'S HIS COMPANY WHILE HE WAS OUT DOING OTHER JOBS.

JUDGE HOWE: IS THAT A&E -- IS THAT MR. VEREEN'S POSITION?

MS. COOK: YES, MA'AM.

MR. THOMAS: WELL, BASICALLY, SHE IS SAYING TWO THINGS; ONE SHE IS SAYING THAT THIS WAS A CORPORATE OPPORTUNITY.

JUDGE HOWE: THAT SHOULD HAVE BEEN A&E.

MR. THOMAS: AND IF THAT WERE THE CASE, THEN CERTAINLY WHAT HE WAS PAID AND WHAT THE PROFIT WAS COULD BE RELEVANT, HOWEVER, IN RESPONSE TO OUR INTERROGATORIES, WE ASKED THEM TO DELINEATE THE CORPORATE OPPORTUNITIES THAT THEY CLAIM WERE DAMAGES AND SHOULD BE PAID TO A&E. IN THEIR COMPLAINT THEY

LIST JOBS 'A THROUGH P' IN THEIR ANSWERS TO INTERROGATORIES WHERE THEY SPELL OUT WHAT DAMAGES THEY ARE SEEKING. THEY ONLY LIST 1, 2, 3, 4, 5, 6 JOBS OF WHICH THIS IS NOT ONE OF THEM. ALL THESE JOBS THAT WE HAVE BEEN TALKING ABOUT ARE NOT ANY OF THEM. SO, THEY HAVE GOT NOTHING TO DO WITH CORPORATE OPPORTUNITY. YOU HAVEN'T SAID THAT THEY WERE CORPORATE OPPORTUNITY AND IT IS TOO LATE NOW.

MS. COOK: THAT'S CORRECT, YOUR HONOR. WE ARE NOT CLAIMING THOSE AS CORPORATE OPPORTUNITIES, BUT WE ARE CLAIMING THOSE AS -- INSTEAD OF DOING HIS FIDUCIARY DUTY TO THIS COMPANY FOR WHICH HE WAS BEING PAID A SALARY, HE WAS SPENDING TIME DOING THESE OTHER THINGS AND WE ARE ENTITLED -- A&E IS ENTITLED TO A REIMBURSEMENT AS THE COURT DETERMINES AND THAT'S OUR POSITION. THAT 50 PERCENT OF THE AMOUNT THAT HE WAS BEING PAID A SALARY OR SUPERVISORY FEES BY EES DURING THE TIME THAT HE WAS OUT DOING THIS. THE JOBS THAT WE HAVE CLAIMED IN OUR COMPLAINT WERE COOPERATE

OPPORTUNITIES THAT WERE TAKEN BY MR. SMITH OR HIS COMPANIES IN ABOUT 2007. AND THEREAFTER, THESE ARE SIDE JOBS HE WAS DOING WHILE HE WAS WORKING FOR US, TAKING HIS TIME AND EFFORTS AND HIS FIDUCIARY DUTY TO US AWAY FROM A&E, WHILE A&E WAS PAYING HIM EXACTLY THE SAME THING THAT MR. VEREEN WAS BEING PAID, AND FOR PART OF THE TIME MORE THAN MR. VEREEN WAS BEING PAID FOR WHICH A&E IS DUE BACK REIMBURSEMENT BECAUSE HE WAS NOT UTILIZING HIS TIME AND EFFORTS FOR WHICH HE WAS BEING PAID BY A&E FOR A&E JOBS. HE WAS DOING SIDE JOBS. THAT IS OUR POSITION WITH REGARD TO THIS BODY OF WORK HE WAS DOING, AS WHAT I HAVE BEEN CALLING IT, SIDE JOBS. WE ARE NOT CLAIMING THOSE AS CORPORATE OPPORTUNITY, WE ARE CLAIMING THOSE AS VERIFYING TO SHOW THE COURT HOW MUCH TIME BY WAY OF HOW MUCH THE PROJECTS WERE WORTH, HOW LONG THEY TOOK. THE EVIDENCE WE CAN -- THAT MR. SMITH -- THAT THE COURT CAN DETERMINE HOW MUCH TIME MR. SMITH WAS SPENDING ON THESE SIDE JOBS VERSES USING

HIS ABILITIES FOR A&E, BUT FOR WHICH HE WAS BEING PAID TO GIVE A&E A CREDIT BACK. IT'S ALL BACK TO A&E. A CREDIT BACK TO A&E FOR A PART OF THAT MONEY THAT HE WAS PAID FOR WORK HE WAS NOT DOING.

JUDGE HOWE: WELL, I HAVEN'T HEARD ANYONE TALK ABOUT TIME YET.

MS. COOK: WELL, YOUR HONOR, EVERY TIME I HAVE QUESTIONED HIM, I HAVE QUESTIONED HIM ABOUT THE AMOUNT OF TIME THAT THE JOB TOOK FROM WHEN IT STARTED TO WHEN IT ENDED. THAT'S TIME, IS IT NOT?

JUDGE HOWE: WELL, AS FAR AS HOURS. YOU HAVEN'T ASK HIM ABOUT HOW MANY HOURS.

MS. COOK: IN SOME OF THEM I HAVE ASKED HIM HOW MANY HOURS AND HE SAID HE DIDN'T KNOW.

JUDGE HOWE: OKAY.

MS. COOK: I MEAN, I HAVE ASKED. I'M PUTTING THE EVIDENCE BEFORE YOU. THERE WILL BE MORE EVIDENCE.

JUDGE HOWE: OKAY.

MR. THOMAS: A COUPLE OF THINGS, YOUR HONOR. NUMBER ONE; EVERY CHECK THAT

THIS GENTLEMAN PAID FOR HIS EFFORTS, WHETHER IT WAS SUPERVISORY FEES/SALARY OR WHATEVER WAS SIGNED BY MR. VEREEN. HE HAD EVERY OPPORTUNITY TO ESTABLISH THAT HE WAS SATISFIED WITH THE WORK BEFORE HE SIGNED THE CHECK. SECONDLY, HE NOW APPARENTLY SAYS, "I HAVE NOW DISCOVERED THAT I AM SATISFIED WITH WHAT I PAID HIM FOR." THERE HAS BEEN NO TESTIMONY THAT HE WAS REQUIRED AS A RESULT OF RECEIVING A PAYCHECK TO EXPEND A HUNDRED PERCENT OF HIS EFFORTS DURING ANY WORKING DAY ON BEHALF OF THE COMPANY. THERE IS NONE. SO NONE OF THAT IS RELEVANT TO ANY CLAIM MADE BY MR. VEREEN OR ANY OF HIS COMPANIES AGAINST MR. SMITH.

JUDGE HOWE: WELL, I THINK MS. COOK IS SAYING THAT HE MAY HAVE GOTTEN SOME EXTRA CHECKS BESIDES THE CHECKS THAT HE GOT FROM MR. VEREEN.

MR. THOMAS: HE MAY HAVE. HE MAY HAVE, BUT SO WHAT? THE QUESTION IS, WAS HE ABLE TO DO THESE SIDE JOBS? WAS THERE ANYTHING THAT PROHIBITED HIM FROM DOING

THESE SIDE JOBS?

JUDGE HOWE: I UNDERSTAND.

MR. THOMAS: AND WE DON'T THINK THAT THERE IS ANY TESTIMONY, ANY EVIDENCE THAT THERE WAS SUCH A ...

JUDGE HOWE: AND THERE MAY NOT BE. I THINK YOU WILL GET YOUR CHANCE TO CROSS-EXAMINE MR. VEREEN ON THAT ISSUE.

MR. THOMAS: THANK YOU, YOUR HONOR.

JUDGE HOWE: THIS MIGHT BE A GOOD PLACE TO TAKE A LUNCH BREAK.

(OFF THE RECORD FOR LUNCH.)

JUDGE HOWE: ARE YOU READY?

MS. COOK: YES, YOUR HONOR.

Q MR. SMITH, I AM SHOWING YOU WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER "56". I HAVE GIVEN A COPY TO COUNSEL TO LOOK AT IT. IT IS AN INVOICE FROM HERTZ FOR A RENTAL CHARGE. FOR A LULL DELIVERED TO LAKESIDE CROSSING.

MR. DURANT: YOUR HONOR, THE PLAINTIFF OBJECTS TO THIS DOCUMENT. IT WAS NOT PROVIDED TO US IN DISCOVERY. I ALSO OBJECT TO THE QUESTION. SHE NEEDS TO ASK HIM CAN HE IDENTIFY THIS DOCUMENT FIRST BEFORE SHE ASKS QUESTIONS ABOUT

IT. HE HAS NOT IDENTIFIED THIS AS ANYTHING.

MS. COOK: YOUR HONOR, MR. DURANT IS CORRECT. I WAS MERELY VOICING WHAT IT WAS BECAUSE THE COURT REPORTER HAS BEEN SO KIND AS TO ALLOW ME TO MARK THEM. I WANTED TO GIVE HER SOMETHING TO GO AHEAD, AT THIS POINT, AND WRITE DOWN TO KEEP HER LOG TOGETHER. SO THAT WAS REALLY WHY I WAS SAYING WHAT IT WAS, WAS SO THAT THE COURT REPORTER WOULD HAVE SOMETHING SHE COULD WRITE DOWN. YOUR HONOR, I DO ALSO ADMIT THAT THIS IS NOT A DOCUMENT THAT WAS PRODUCED TO COUNSEL BY YOUR DISCOVERY DEADLINE DATE. IT WAS PRODUCED THEREAFTER, BUT IT WAS NOT BY THE DATE IN YOUR HONOR'S ORDER, WHICH I BELIEVE WAS DECEMBER SOMETHING 2010. THE PURPOSE OF INTRODUCING THIS IS I HAD QUESTIONED MR. SMITH ABOUT THIS IN TALKING TO HIM ABOUT SIDE JOBS AND ONE OF THE QUESTIONS THAT I HAD ASKED HIM WAS, DID HE HAVE A SIDE JOB OR DID HE DO WORK OUT AT -- OR PROVIDE MATERIALS OUT AT LAKESIDE CROSSING AT THE CLUB HOUSE.

AND I BELIEVE HE HAD TESTIFIED THAT HE HAD DONE THAT LONG BEFORE, WHATEVER HE DID OUT THERE. HE HAD DONE THAT LONG BEFORE A&E STARTED -- HE STARTED WITH A&E. AND IT WAS MAINLY TO HELP REFRESH HIS RECOLLECTION ABOUT A TIMEFRAME, AT LEAST, OF WHEN A LULL WAS PROVIDED AS REQUESTED BY HIM. I DO UNDERSTAND YOUR HONOR'S PRIOR RULING WITH REGARD TO ANY DOCUMENTS THAT WERE NOT PRODUCED PRIOR TO DECEMBER 1ST, BUT I WOULD SAY TO YOUR HONOR, UNFORTUNATELY, FOR ALL OF US, A COUPLE OF THINGS. FORTUNATELY, THIS IS A COURT OF EQUITY AND WHAT YOU ARE BEING ASKED TO DO IS TO DETERMINE FROM THE TRANSACTIONS WITH REGARD TO A&E WHAT, IF ANY, PROFIT OR LOSS SHOULD BE IN A&E, WHICH WOULD THEN SHOW WHAT, IF ANY, DIVISION OF PROFITS OR LOSSES BETWEEN THESE GENTLEMEN AS THE 50 PERCENT SHAREHOLDERS ARE. IN ORDER TO DO THAT, YOUR HONOR, TO DO A PROPER ACCOUNTING, I BELIEVE THAT WE MUST INTRODUCE EVIDENCE THAT SHOWS WHAT, IF ANY, MONIES A&E ADVANCED TO EITHER OF THESE GENTLEMEN.

WHAT, IF ANY, MONIES THESE GENTLEMEN MAY OWE BACK TO A&E. THESE GENTLEMEN BEING MR. SMITH AND MR. VEREEN OWE TO A&E THAT THEY RECEIVED BY WAY OF PAYMENTS OR PAYMENT FOR PERSONAL MATERIAL OR LABOR ON OTHER JOBS. SO, WE HAVE GOT TO DETERMINE -- THE COURT HAS GOT TO DETERMINE WHAT MONIES MR. SMITH MAY OWE TO A&E, WHAT MONIES MR. VEREEN MAY OWE TO A&E. IT ALSO HAS TO DETERMINE WHAT MONIES A&E MAY OWE TO EITHER OF THESE GENTLEMEN FOR CONTRIBUTIONS -- CASH CONTRIBUTIONS OR PAYMENT OF MATERIALS OR LABOR ON BEHALF OF A&E THAT EITHER OF THESE GENTLEMEN PUT INTO THE BUSINESS. ONCE YOU DO THAT, YOUR HONOR, I THINK YOU HAVE GOT TO HAVE THAT IN ORDER TO COME UP WITH THE PROFIT OR LOSS IN THIS BUSINESS. THE LAST SECTION, IF YOU WILL, OF QUESTIONING THAT I HAVE BEEN DOING WITH MR. SMITH GOES TO THE POSITION OF MR. VEREEN ON BEHALF OF A&E THAT A PORTION OF THE SALARY AND A PORTION OF THE SUPERVISOR FEES THAT WERE PAID EITHER TO MR. SMITH OR TO EES BY

A&E SHOULD BE REFUNDED TO A&E BECAUSE OF A&E'S LACK OF KNOWLEDGE THAT MR. SMITH WAS SPENDING HIS TIME AND EFFORTS WHILE HE WAS BEING PAID BY A&E ON OTHER JOBS. THE ULTIMATE DETERMINATION OF THAT, OF COURSE, IS UP TO YOUR HONOR, BUT I'M TRYING TO PRESENT THE EVIDENCE BY WAY, YOUR HONOR, THAT CAN MAKE A FAIR DECISION FOR BOTH OF THESE GENTLEMEN IN AN UNBIASED WAY OF MONEY IN AND MONEY OUT AND WHERE THAT SHOULD LEAVE THEM IN THE EQUATION. I UNDERSTAND YOUR HONOR'S RULING ABOUT WHAT HAD TO BE GIVEN TO COUNSEL BY WHEN. AS A COURT OF EQUITY, THOUGH I WOULD ASK YOUR HONOR TO RECOGNIZE. I MEAN, MY CLIENT HAD TO GO BACK THROUGH BOXES AND BOXES AND BOXES OF DOCUMENTATION THAT HAD BEEN MOVED AROUND AND ALL SORTS OF THINGS. I UNDERSTAND YOUR HONOR'S RULING, BUT TO GET TO THE END OF THE DAY TO REALLY DELIVER JUSTICE TO BOTH OF THESE MEN ANDO A&E, I WOULD ASK THAT YOU CONSIDER THIS INFORMATION, BUT IF YOU DON'T, YOUR HONOR, I WOULD LIKE TO PROFFER THE

INFORMATION IN ORDER THAT IF -- IN ORDER TO PRESERVE A RECORD IF NEED BE. ADDITIONALLY, YOUR HONOR, I WOULD LIKE TO ALSO SAY WHEN I STARTED THIS UNFORTUNATE SITUATION, WE'VE BEEN HERE FOR TWO DAYS IN FEBRUARY, THE CASE DID NOT CONCLUDE. WE WERE HERE FOR THREE DAYS IN JUNE, THE CASE -- THE PLAINTIFF HAD NOT EVEN FINISHED ITS CASE YET. WHEN WE WERE HERE IN JUNE AND MRS. BRADY TESTIFIED AND PUT OTHER INFORMATION WE WERE GIVEN ON THE DAY OF HER TESTIMONY, REVISED NUMBERS BY HER FOR THE FIRST TIME. AND IN ALL FAIRNESS, SO THAT JUSTICE CAN BE DONE IN THIS CASE, I WOULD ASK THAT YOU ADMIT THIS, BUT IF NOT, I RESPECT YOUR HONOR'S DECISION AND WOULD NONETHELESS LIKE TO PROFFER IT.

JUDGE HOWE: LET ME HEAR FROM MR. DURANT.

MR. DURANT: YOUR HONOR, FIRST OF ALL, THE OBJECTION WAS THAT SHE DID NOT PRODUCE IT. I UNDERSTAND SHE IS NOT CLAIMING THIS AS AN AMOUNT OF MONEY THAT HER CLIENT HAS PAID, BUT SHE STILL MUST

ASK HIM, "CAN YOU IDENTIFY IT?" SHE HAS GOT TO AUTHENTICATE THE DOCUMENT AND THEN SHE CAN ASK QUESTIONS ABOUT IT AND IT NOT GO INTO THE EVIDENCE. THAT I THINK SHE CAN DO. SHE JUST CAN'T -- THERE'S TWO OBJECTIONS. FIRST, YOU DIDN'T GIVE IT TO ME. SECOND, YOU HAVE TO AUTHENTICATE THE DOCUMENT THROUGH THIS WITNESS. DOES HE KNOW WHAT IT IS? AND IF HE DOESN'T, THAT'S AS FAR AS IT GOES.

MS. COOK: I WASN'T THERE YET. I SAID WHAT THE NAME OF IT WAS SO THAT I COULD GIVE THE COURT REPORTER SOMETHING SHE COULD PUT ON HER LIST OF EXHIBITS. BY HANDING IT TO HIM AND SAYING, WHAT IT WAS, IT WAS SO THAT PEPPER COULD MAKE HER LIST. I WAS NOW GOING TO SAY, "CAN YOU IDENTIFY THIS DOCUMENT?" SO, PERHAPS INSTEAD OF TRYING TO SHORTCUT THIS MATTER, I WILL GIVE THE EXHIBITS TO PEPPER AND LET HER NAME THEM WHAT SHE WANTS TO AND THEN HAND IT TO THE WITNESS.

JUDGE HOWE: OKAY. LET'S SEE IF WE CAN

AUTHENTICATE IT FIRST.

Q MR. SMITH, HAVE YOU EVER SEEN THIS INVOICE FROM HERTZ TO ARTHUR VEREEN CONSTRUCTION COMPANY?

A NO, MA'AM. NOT TO MY KNOWLEDGE.

Q AND THEN THAT WAS MARKED FOR ID, YOUR HONOR.

JUDGE HOWE: SO DEFENDANT'S "56" ID ONLY?

MS. COOK: YES, MA'AM.

INVOICE FROM HERTZ FOR LULL MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT "56".

Q MR. SMITH, DO YOU RECALL ASSISTING LAKESIDE CROSSING IN OBTAINING A LULL FOR ANY WORK THAT WAS GOING ON AT LAKESIDE CROSSING?

A YES, MA'AM.

Q AND WHAT WORK WAS GOING ON AT LAKESIDE CROSSING THAT YOU HAVE KNOWLEDGE OF?

A EES CONSTRUCTION CONTRACTED WITH LAKESIDE CROSSING TO PUT THE ROOFS ON THE RECREATION BUILDING. I SUBCONTRACTED THAT OUT TO GEORGIA HERRARA. HE ASKED ME TO GET HIM A LULL AND THAT'S WHAT I DID.

Q AND DO YOU RECALL -- WOULD THE INVOICE FOR THE WORK HELP YOU RECALL WHEN THAT WORK MIGHT HAVE BEEN GOING ON THAT EES CONTRACTED FOR?

A I COULD NOT TELL YOU RIGHT OFF.
Q WOULD AROUND MAY OF 2004 SOUND RIGHT?
A THAT COULD HAVE BEEN RIGHT, YES.
Q DID EES HAVE AN ACCOUNT WITH HERTZ?
A NO.
Q DID ARTHUR VEREEN CONSTRUCTION COMPANY, TO YOUR KNOWLEDGE, HAVE AN ACCOUNT WITH HERTZ?
A YES.
Q TO YOUR KNOWLEDGE, WAS HERTZ EVER PAID BY EES FOR OBTAINING THE LULL FOR LAKESIDE CROSSING?
A NO. ARTHUR VEREEN WAS PAID BY EES FOR OBTAINING THE LULL.
Q SO, THERE WOULD BE SOME CHECK FROM EES TO ARTHUR VEREEN CONSTRUCTION COMPANY TO REIMBURSE?
A IT HAS BEEN A LONG TIME, KIF. I COULD NOT TELL YOU.
Q WELL, IF EES DID NOT REIMBURSE ARTHUR VEREEN CONSTRUCTION COMPANY AND EITHER ARTHUR VEREEN CONSTRUCTION COMPANY OR A&E PAID THAT BILL TO HERTZ, WOULD YOU AGREE THAT, THAT SHOULD BE CONSIDERED BY THE COURT ...

MR. THOMAS: YOUR HONOR, WE OBJECT TO THAT. THAT COULD BE A CLAIM BY ARTHUR VEREEN AND THERE IS NO CLAIM MADE BY ARTHUR VEREEN FOR THAT, NOT IN THE

RESPONSES TO DISCOVERY THAT WE HAVE.

MS. COOK: I DON'T KNOW WHAT THAT IS. I DON'T KNOW IF THAT'S AN OBJECTION OR IF THAT IS A WHAT?

JUDGE HOWE: I THINK THAT'S AN OBJECTION.

MR. THOMAS: OBJECTION. IT IS NOT CONSISTENT. APPARENTLY, SHE IS WANTING TO SET IT OUT AS A DAMAGE OWED BY EES TO ARTHUR VEREEN IN ORDER TO GET DAMAGE. SHE IS REQUIRED TO PLEAD IT. SHE IS REQUIRED TO ANSWER OUR INTERROGATORIES. INTERROGATORIES DO NOT CONTAIN ANY CLAIM FOR THAT AMOUNT OF MONEY. THEY ARE ANSWERS.

MS. COOK: YOUR HONOR, MY QUESTION WAS IF EES -- NO, MY QUESTION WAS, IF ARTHUR VEREEN CONSTRUCTION COMPANY OR A&E, I SAID, "OR A&E", PAID THIS HERTZ BILL, WOULD HE AGREE THAT IT WAS AN ADVANCE THAT THE COURT SHOULD CONSIDER AS A CREDIT ON HIS BEHALF FROM A&E.

JUDGE HOWE: IF ARTHUR VEREEN?

MS. COOK: YES. I SAID IF ARTHUR VEREEN OR -- I WILL BREAK IT INTO TWO. ARTHUR

VEREEN HAS NOT MADE A CLAIM WITH REGARD TO THAT. I WILL STRIKE THAT ONE.

Q MR. SMITH, IF A&E PAID THE INVOICE TO HERTZ FOR THE RENTAL OF THE LULL THAT EES PROVIDED TO LAKESIDE CROSSING WITHOUT EES REIMBURSING A&E THAT AMOUNT OF MONEY, WOULD YOU AGREE THAT, THAT PAYMENT BY A&E FOR THIS LULL TO LAKESIDE CROSSING SHOULD BE CONSIDERED AN ADVANCE TO YOU BY A&E?

MR. DURANT: TO HIM OR TO EES?

MS. COOK: TO HIM.

A NO.

Q YOU AGREE THAT, THAT SHOULD BE CONSIDERED AN ADVANCE TO EES BY A&E OR A PAYMENT TO EES BY A&E?

A IT IS HARD TO SAY. I DON'T KNOW WHAT THE CIRCUMSTANCES OR THE PAYMENT OF THIS WORK WAS. GEORGE HERRARA MAY HAVE PAID IT. I DON'T KNOW.

Q AM I CORRECT THAT EES HAS NEVER HAD A CONTRACTOR'S LICENSE?

A EES CONSTRUCTION?

Q RIGHT.

A THAT IS CORRECT.

Q AND SO THESE JOBS THAT YOU WERE DOING THAT YOU SAID WERE EES JOBS, LIKE YOU JUST SAID EES

CONTRACTED TO DO THE ROOF AT LAKESIDE CROSSING, EES DID NOT HAVE A CONTRACTOR'S LICENSE TO DO THAT JOB, DID THEY?

A NO, MA'AM.

Q AND EES DID NOT HAVE A CONTRACTOR'S LICENSE SO THAT IT COULD DO THE GRAND DUNES FENCE, DID IT?

A YOU ARE NOT REQUIRED TO HAVE ONE TO DO A FENCE. I BOUGHT A PERMIT FOR EES CONSTRUCTION FROM THE CITY OF MYRTLE BEACH TO DO THAT FENCE.

Q BUT EES CONSTRUCTION WAS NOT A LICENSED CONTRACTOR?

A YOU DON'T HAVE TO BE A LICENSED CONTRACTOR TO BUILD A FENCE.

Q DID THE CITY OF MYRTLE BEACH GIVE EES THE PERMIT TO BUILD THE FENCE?

A YES.

Q DID EES REPRESENT TO THE CITY OF MYRTLE BEACH THAT IT HAD A CONTRACTOR'S LICENSE?

A NO.

Q CARI ANN DAVIS' HOME, THAT PERMIT WAS PULLED IN MRS. DAVIS' NAME, CORRECT?

A CORRECT.

Q EES COULD NOT PULL A PERMIT ON MRS. DAVIS' HOME, COULD IT, BECAUSE IT WAS NOT LICENSED?

A THAT IS CORRECT.

Q AND THAT IS WHY YOU HAD MRS. DAVIS PULL HER OWN LICENSE WAS BECAUSE YOU KNEW EES COULDN'T PULL A PERMIT FOR HER HOUSE, ISN'T THAT TRUE?

A NO.

Q WELL, WHY THEN DIDN'T -- LIKE YOU HAD, I BELIEVE, ON MR. SEALEY'S ADDITION, YOU PULLED THE PERMIT IN THE NAME OF A&E, CORRECT?

A BECAUSE IT WAS A COMMERCIAL JOB. IT HAS TO BE A COMMERCIAL LICENSE. ROBERT SEALEY COULD NOT PULL HIS OWN PERMIT ON A COMMERCIAL LICENSE.

Q AND YOU COULDN'T PULL ONE UNDER EES BECAUSE EES WASN'T LICENSED, RIGHT?

A THAT IS CORRECT, BUT MY LICENSE IS IN A&E. THAT'S THE ONE I PULLED IT UNDER.

Q BUT YOU DIDN'T TELL MR. VEREEN THAT YOU WERE DOING IT, DID YOU?

A OH, BY ALL MEANS, HE KNEW ALL ABOUT IT. YES, MA'AM.

Q THE MCMILLAN'S HOME, YOU PULLED THE PERMIT -- THE PERMIT WAS PULLED BY THE MCMILLANS NOT EES BECAUSE EES COULD NOT PULL A PERMIT BECAUSE IT WASN'T LICENSED, ISN'T THAT TRUE?

A IT IS TRUE, BUT THE REASON THEY PULLED THEIR OWN LICENSE IS SO THEY COULD CONTROL AND DO WHAT THEY WANTED TO DO ON THE HOUSE AND EVERYTHING

ELSE WOULD BE BUILT AT COST.

Q AND IT WAS ALSO SO THAT MR. VEREEN WOULD NOT KNOW YOU WOULD BE DOING THAT JOB, ISN'T THAT CORRECT?

A NO, ABSOLUTELY NOT.

Q AND THE SAME THING WITH THE PEREZ HOUSE? MR. AND MRS. PEREZ PULLED THAT LICENSE BECAUSE EES COULDN'T BECAUSE IT DIDN'T HAVE A LICENSE, ISN'T THAT RIGHT?

A THAT IS CORRECT, BUT THE PEREZ HOUSE, THE PERMIT WAS PULLED BEFORE A&E EXISTED.

Q BUT THE WORK WAS DONE BY YOU AND THE FORCES OF EES AFTER A&E EXISTED, ISN'T THAT CORRECT?

A THE MAJORITY OF THE WORK WAS DONE BEFORE A&E HAD A CONTRACTORS LICENSE.

Q WAS IT? I WANT YOU TO LOOK AT EXHIBIT "55" WITH YOU FOR SECOND. I AM GOING TO SHOW YOU EXHIBIT "55" AND IT SHOWS THAT THE PERMIT WAS PULLED ON 9/23/03, CORRECT?

A YES, MA'AM.

Q AND WASN'T A&E FORMED ON OCTOBER THE 3RD, 2003?

A YES, MA'AM.

Q OKAY. AND THEN --

A AND JUST LIKE I SAID, WHAT I SAID WAS NOT THAT. WHAT I SAID WAS THE MAJORITY OF THE WORK WAS

DONE BEFORE A&E HAD A LICENSE.

Q AND DIDN'T A&E GET ITS LICENSE ON JANUARY THE 23RD, 2004?

A YES, MA'AM.

Q AND HOW MUCH WORK WAS DONE TO BE SHOWN ON EXHIBIT "55" BY ALL THE INSPECTION TICKETS THAT ARE THERE AND THAT ARE DATED, ISN'T THAT CORRECT?

A BY 1/23/04 ALL THE ROUGH ENDS HAD BEEN DONE.

Q AND THOSE TICKETS SHOW EXACTLY WHAT WAS DONE AFTER 1/23/04, DON'T THEY?

A THAT'S CORRECT.

Q OKAY. AND IT TOOK NINE MONTHS TO DO HER JOB, DIDN'T IT?

A NO. IT TOOK MORE THAN THAT.

Q HOW LONG DID IT TAKE TO DO THE PEREZ HOUSE?

A MR. PEREZ CHOOSE TO FINISH IT HIMSELF. SO, IT WOULD BE THE LAST TWO MONTHS OF IT THAT WAS HIS 11/04/2004.

Q SO THE LAST TWO MONTHS WOULD HAVE BEEN OCTOBER AND SEPTEMBER, RIGHT?

A I COULD NOT TELL YOU EXACTLY.

Q WELL, BETWEEN THE TIME IT WAS PERMITTED AND THE TIME IT WAS CO'ED WAS 13 MONTHS, WASN'T IT?

A YES, MA'AM. I GUESS YOU COULD SAY THAT.

Q THE SELENA MANN HOUSE THAT WAS DONE, WHO PERMITTED THAT JOB. WHOSE NAME WAS THE PERMIT PULLED FOR THE SELENA MANN JOB?

A K. J. AND SELENA MANN.

Q OKAY. AND YOU SAID YOUR WORK WAS, I BELIEVE, YOU SAID MOST OF IT WAS COORDINATION AND THEN YOU SAID YOU DID THE DECK?

A NO.

Q I'M SORRY. I MIXING UP THE JOBS?

A YES, MA'AM.

Q ALRIGHT. WELL, WHAT DID YOU DO ON THE SELENA MANN JOB?

A FEED HER SUBS.

Q YOU DID WHAT?

A JUST BASICALLY TOLD HER WHAT SUBS TO USE. I DID VERY LITTLE ON THE SELENA MANN HOUSE.

Q HOW MUCH TIME DO YOU THINK THAT YOU SPENT ON THE SELENA MANN JOB?

A MAYBE 20 HOURS TOTAL.

Q DID YOU RECEIVE ANY PAYMENT FROM SELENA MANN?

A ABSOLUTELY NOT. IT'S ROBERT SEALEY'S DAUGHTER. I HAVE KNOWN HER SINCE SHE WAS ABOUT SIX YEARS OLD. THEY DID NOT HAVE THE MONEY.

Q DID YOU RECEIVE ANY PAYMENT FOR ANY OF THE SUBS -- FOR HELPING LINE THEM UP TO DO THE WORK?

A ABSOLUTELY NOT. I DON'T DO THAT KIND OF THING.
Q OKAY. YOU JUST DO ALL THAT OUT OF THE GOODNESS OF YOUR HEART?
A SOME PEOPLE ARE LIKE THAT, KIF.
Q WELL, LET ME SHOW YOU THIS. HOW LONG HAVE YOU DONE CONSTRUCTION JOBS IN HORRY COUNTY BEFORE EES OR ANY COMPANY THAT YOU OWNED FOR CONSTRUCTION JOBS IN HORRY COUNTY BEFORE YOU GOT A LICENSE, A CONTRACTORS LICENSE, FROM THE STATE OF SOUTH CAROLINA?
A PROBABLY EIGHT YEARS PRIOR TO 2004.
Q DO YOU KNOW WHAT THE PENALTY IS FOR DOING CONTRACTING WORK WITHIN THE STATE OF SOUTH CAROLINA WITHOUT HAVING A LICENSE?
A YES. THE PERSON WHO LICENSES YOU GETS THEIR LICENSES SUSPENDED. IT IS ILLEGAL.
Q DO YOU KNOW IF THERE IS ANY REQUIREMENT THAT YOU REFUND ANY MONEY THAT YOU OBTAIN OR REPAY FOR DOING WORK IF YOU ARE NOT LICENSED?
A I HAVE NO IDEA. I DO NOT KNOW.
Q LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT NUMBER "58" AND ASK YOU IF YOU CAN IDENTIFY THAT?
A MY APPLICATION. YES, MA'AM.
Q WELL, IT IS AN APPLICATION FOR WHAT AND FROM

WHOM?

A IT IS AN APPLICATION FOR A CONTRACTORS LICENSE FROM THE LLR STATE OF SOUTH CAROLINA.

Q AND IT IS AN APPLICATION E. SMITH AND SON CONSTRUCTION INC., IS THAT CORRECT?

A YES, MA'AM.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE EXHIBIT "58".

MR. THOMAS: NO OBJECTION.

MR. DURANT: NO OBJECTION.

JUDGE HOWE: DEFENDANT'S "58" SO ADMITTED.

APPLICATION FROM MR. SMITH FOR A LLR LICENSE, SOUTH CAROLINA MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "58".

Q LET ME HAND YOU WHAT I HAVE MARKED AS EXHIBIT "57". DO YOU RECOGNIZE THAT?

A SECRETARY OF STATE GIVING FORMATION OF A CORPORATION FOR E SMITH & SONS CONSTRUCTION.

MS. COOK: YOUR HONOR, I WOULD LIKE TO MOVE TO INTRODUCE EXHIBIT "57".

MR. DURANT: NO OBJECTION, YOUR HONOR. I

THINK IT IS ALREADY IN EVIDENCE.

MR. THOMAS: NO OBJECTION.

JUDGE HOWE: DEFENDANT'S EXHIBIT "57" SO ADMITTED.

SECRETARY OF STATE
FORMATION OF COMPANY, E.
SMITH AND SONS CONSTRUCTION
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "57".

Q LET ME HAND YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT "59". IT IS TWO PAGES, AND ASK IF YOU CAN IDENTIFY THAT?

A MY LICENSE NUMBER.

Q WHAT IS THAT, MR. SMITH?

A G-115120 CONTRACTORS NUMBER.

Q NO. WHAT IS THIS A COPY OF?

A MY CONTRACTORS LICENSE NUMBER.

Q IT'S YOUR CONTRACTORS LICENSE CARD, IS THAT RIGHT?

A YES, MA'AM.

Q WHEN YOU SAY, "IT'S YOUR" IT'S YOUR COMPANY, E SMITH AND SONS CONSTRUCTIONS INC. CONTRACTORS LICENSE, CORRECT?

A YES, MA'AM.

Q AND YOU'RE THE QUALIFYING INDIVIDUAL FOR THIS COMPANY, IS THAT CORRECT, E SMITH AND SONS?
A I DON'T THINK IT HAS THE QUALIFYING INDIVIDUAL ON HERE.
Q BUT ARE YOU QUALIFYING INDIVIDUAL OF E SMITH AND SONS?
A YES, MA'AM.
Q AND IS THAT SHOWN PER EXHIBIT "58" WHERE YOU APPLIED FOR LICENSE FOR E SMITH AND SONS?
A YES, MA'AM.
Q AM I CORRECT THAT E SMITH AND SONS WAS FORMED IN 2007, APRIL THE 30TH, 2007?
A YES, MA'AM.
Q AND ON APRIL 30TH 2007, WERE YOU STILL ACTIVELY WORKING FOR AND WITH A&E AS A 50 PERCENT SHAREHOLDER?
A YES, MA'AM.
Q YOU WERE STILL PRESIDENT OF A&E?
A YES, MA'AM.
Q AND DID YOU LET MR. VEREEN KNOW PRIOR TO APRIL THE 3RD, 2007, THAT YOU WERE FORMING A NEW CONTRACTING COMPANY?
A A NEW CONTRACTING COMPANY? I DID NOT HAVE A LICENSE OR FORMED A CORPORATION.
Q DID YOU LET HIM KNOW THAT YOU WERE FORMING A

CORPORATION?

A NO.

Q AND DID E. SMITH AND SONS UNDERTAKE WORK AS A CONTRACTOR PRIOR TO OBTAINING A LICENSE FROM THE STATE OF SOUTH CAROLINA?

A ASK THAT QUESTION AGAIN PLEASE?

Q DID E. SMITH AND SONS, YOUR CORPORATION, UNDERTAKE CONTRACTING AND PREFORM CONTRACTING WORK BEFORE E. SMITH AND SON GOT A CONTRACTORS LICENSE?

A YES.

Q AND IS THAT AGAINST THE RULES AND REGULATIONS OF THE STATE OF SOUTH CAROLINA?

A I CAN'T TELL YOU FOR SURE, BUT I FEEL SURE IT IS PROBABLY IS. I DON'T KNOW.

Q OKAY. AND EVEN THOUGH YOU FORMED E. SMITH AND SON IN APRIL OF 2007, YOU DID NOT APPLY WITH THE STATE OF SOUTH CAROLINA FOR A CONTRACTORS LICENSE FOR E. SMITH AND SONS UNTIL ALMOST TWO YEARS AND 1 MONTH LATER?

A YES, MA'AM.

Q MAY 1ST, 2009?

A YES, MA'AM.

Q DURING THAT TWO YEARS AND 1 MONTH BEFORE E. SMITH AND SONS WAS LICENSED, E. SMITH AND SONS

WAS DOING CONTRACTING WORK, IS THAT CORRECT?

A YES, MA'AM.

Q AND E. SMITH AND SONS WAS A GENERAL CONTRACTOR, BUT IT IS LIMITED TO AND CAN ONLY DO WORK UNDER A $100,000, IS THAT CORRECT?

A YES, MA'AM.

Q AND BETWEEN APRIL THE 3RD, 2007, AND MAY 1ST OF 2009 WHEN E. SMITH AND SONS GOT LICENSED, DID E. SMITH AND SONS DO WORK VALUED AT MORE THAN $100,000 PER JOB?

A YES.

Q AND PRIOR TO E. SMITH AND SONS GETTING ITS LICENSES FROM THE STATE OF SOUTH CAROLINA IN MAY OF 2009, DID E. SMITH AND SONS PULL PERMITS IN THE NAME OF A&E ON SOME OF THE JOBS THAT IT DID?

A YES, MA'AM.

Q AND DID IT DO THAT AND NOT INFORM MR. VEREEN THAT IT WAS PULLING PERMITS IN THE NAME OF A&E?

A HE BECAME AWARE OF IT, YES, BUT HE DID NOT KNOW AT THE TIME THAT I PULLED THEM, NO.

Q HE BECAME AWARE OF IT. DIDN'T HE, MR. SMITH, BECAUSE WHEN YOU DECIDED TO DO THE CONDOLUX OFFICE BUILDING IN NORTH MYRTLE BEACH, YOU SET UP THE TEMPORARY POWER SERVICES AT SANTEE COOPER AND BILLED IT TO A&E, DIDN'T YOU?

A I COULD NOT TELL YOU RIGHT OFF. I DON'T KNOW.
Q AND THEN SANTEE COOPER SENT THE BILL, THE POWER, FOR THE CONDOLUX CONSTRUCTION THAT E. SMITH AND SON WAS DOING, ALTHOUGH IT WAS NOT LICENSED AND HAD PULLED A PERMIT UNDER THE NAME OF A&E TO MR. VEREEN'S OFFICE AND THAT IS HOW HE FOUND OUT ABOUT IT, CORRECT?
A IT DON'T KNOW. I DON'T KNOW EXACTLY HOW HE FOUND OUT ABOUT IT, BUT THAT COULD HAVE HAPPENED.
Q HAD YOU EVER PULLED PERMITS IN THE NAME OF ONE OF MR. VEREEN COMPANIES BEFORE WHEN YOU WEREN'T WORKING WITH THE COMPANY? WHEN YOU WEREN'T WORKING WITH HIS COMPANIES?
A WHEN I WAS WORKING WITH EES CONSTRUCTION, I USED HIS LICENSE TO PULL PERMITS WITH HIS PERMISSION AT CAROLINA KEYES IN NORTH MYRTLE BEACH.
Q AND YOU SAY MR. VEREEN AUTHORIZED YOU TO DO THAT?
A YES.
Q DO YOU HAVE ANYTHING IN WRITING THAT SHOWS THAT?
A NO, MA'AM.
Q IN FACT, HE DID NOT AUTHORIZE YOU TO DO THAT, YOU DID IT UNBEKNOWNST TO HIM, DIDN'T YOU?
A NO, MA'AM.

Q YOU PULLED $8 MILLION WORTH OF PERMITS IN THE NAME OF ARTHUR VEREEN CONSTRUCTION COMPANY FOR THE CAROLINA KEYES PROJECT, ALL WITHOUT MR. VEREEN KNOWING YOU WERE DOING IT, DIDN'T YOU?

A ABSOLUTELY NOT.

Q HOW MUCH DID YOU PAY MR. VEREEN FOR UTILIZING HIS LICENSE THAT YOU SAY HE KNEW ABOUT?

A ZERO. HE GOT PAID NOTHING. HE WAS SUPPOSED TO BE PAID 10 PERCENT OF THE PROFIT OFF THE JOB. WE MADE NOTHING.

Q SO, AGAIN, YOU DID THAT $8 MILLIONS WORTH OF PERMITTED WORK FOR NOTHING?

A $8 MILLION. IT WAS NOT $8 MILLION WORTH OF PERMITTED WORK.

Q WHAT? WELL, LET'S TAKE A LOOK THAT FOR A MINUTE THEN.

MS. COOK: I WOULD ASK THAT, THAT EXHIBIT NUMBER 59 BE ADMITTED INTO EVIDENCE, YOUR HONOR?

MR. THOMAS: NO OBJECTIONS.

MR. DURANT: NO OBJECTIONS.

JUDGE HOWE: DEFENDANT'S EXHIBIT "59" SO ADMITTED.

CONTRACTORS LICENSE CARD

FOR E. SMITH AND SONS

MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "59".

Q MR. SMITH, I WANT TO HAND YOU WHAT HAS BEEN MARKED AS EXHIBIT NUMBER "60". TAKE A MOMENT AND LOOK AT THAT AND TELL ME IF YOU CAN, TELL ME WHAT IT IS.

A FREEDOM OF INFORMATION ACT. STUFF WITH ELLIS SMITH'S NAME ON IT.

Q WELL, IS THAT YOUR WRITING ON IT?

A YES, MA'AM, IT IS.

Q DO YOU RECALL MAKING ...

A YES, MA'AM, I DO.

Q HOLD ON JUST A MINUTE. I'M NOT DONE. DO YOU REMEMBER TAKING THE FREEDOM OF INFORMATION ACT FOR THE CITY OF NORTH MYRTLE BEACH ABOUT OCTOBER OF LAST YEAR FOR PERMITS PULLED IN THE NAME OF ARTHUR VEREEN CONSTRUCTION COMPANY FROM '97 TIL 2002?

A YES, MA'AM.

Q AND IS THE DOCUMENT THAT I JUST GAVE YOU MARKED AS EXHIBIT "60" A COPY OF THAT REQUEST AND THE INFORMATION THAT THE CITY OF NORTH MYRTLE BEACH, PROVIDED TO YOU?

A YES, MA'AM.

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE EXHIBIT NUMBER "60"?

MR. THOMAS: WE HAVE NO OBJECTIONS.

MR. DURANT: NO OBJECTION EITHER.

JUDGE HOWE: DEFENDANT'S EXHIBIT "60" SO ADMITTED.

FREEDOM OF INFORMATION ACT
MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS DEFENDANT'S EXHIBIT "60".

Q NOW, WHEN YOU ASKED FOR THAT REQUEST, AND IF YOU GO THROUGH THE FIRST FREEDOM OF INFORMATION -- EXCUSE ME. THE FIRST PERMIT APPLICATION IS 98892 THAT IS PULLED IN THE NAME OF -- OR APPLIED FOR BY ARTHUR VEREEN CONSTRUCTION COMPANY ON SEA MOUNTAIN HIGHWAY FOR A SALES OFFICE WITH THE OWNER OF THE PROPERTY BEING LLOYD COX? DO YOU KNOW THAT TO BE THE SEVEN OAKS PROJECT THAT WAS DONE BY ARTHUR VEREEN CONSTRUCTION COMPANY?

A YES, MA'AM.

Q SO, THAT FIRST PERMIT PULLED IS 98892 IS FOR AND IT IS SIGNED FOR -- THAT'S NOT YOUR SIGNATURE?

A NO, MA'AM.

Q AND THE SEVEN OAKS WAS A ARTHUR VEREEN

CONSTRUCTION JOB, THAT WAS NOT AN A&E JOB? IT WAS BEFORE A&E AND THAT WAS ARTHUR WAYNE VEREEN CONSTRUCTION JOB, CORRECT?

A YES, MA'AM.

Q NEXT PERMIT WHICH IS 981272 IS A PERMIT FOR CAROLINA KEYES?

A YES, MA'AM.

Q FOR BUILDING NUMBER EIGHT, RIGHT?

A YES, MA'AM.

Q AND WHO DOES THAT SHOW HAS BEEN THE CONSTRUCTION COMPANY ...

A ARTHUR VEREEN CONSTRUCTION COMPANY.

Q ... ARTHUR VEREEN CONSTRUCTION COMPANY?

A YES, MA'AM.

Q AND IS IT YOUR TESTIMONY THAT, THAT PERMIT WAS PULLED WITH MR. VEREEN'S PERMISSION TOO?

A YES, MA'AM.

Q AND KNOWLEDGE?

A YES, MA'AM. TO PULL A PERMIT IN THE CITY OF NORTH MYRTLE BEACH, IF YOU AREN'T EMPLOYED WITH THE COMPANY YOU HAVE TO HAVE A LETTER FROM THE CONTRACTOR TO DO IT AND IT HAS TO BE NOTARIZED AND THEY HAVE ONE ON FILE. IT IS THE ONLY WAY I CAN PULL A PERMIT.

Q HAVE YOU PRODUCED AT COPY OF THAT IN THIS

DISCOVERY?

A NO, MA'AM. WHY WOULD I? IT'S COMMON KNOWLEDGE.

Q AND IS IT YOUR TESTIMONY UNDER OATH HERE THAT THERE IS A NOTARIZED LETTER FROM MR. VEREEN AUTHORIZING YOU TO PULL A PERMIT FOR ARTHUR VEREEN CONSTRUCTION COMPANY FOR THE CAROLINA KEYES PROJECT? THAT IS YOUR TESTIMONY?

A TO THE BEST OF MY KNOWLEDGE, YES. THERE IS ONE ON FILE WHETHER THEY HAVE IT OR NOT, I DO NOT KNOW.

Q FOR CAROLINA KEYES?

A YES, MA'AM.

Q THE CAROLINA KEYES PROJECT?

A YES, MA'AM.

Q DID YOU KEEP A COPY OF SUCH A DOCUMENT?

A NO, MA'AM.

Q AND WOULD YOU AGREE WITH ME THAT THE BEST EVIDENCE THAT THERE IS WOULD BE A COPY OF THE SAME? A COPY OF THE DOCUMENT?

A OR THE ORIGINAL.

Q DID YOU GO UP THERE AND TRY TO GET A COPY?

A NO, MA'AM.

Q OKAY. THIS DOCUMENT SPEAKS FOR ITSELF. YOU CAN GO THROUGH HERE AND YOU CAN LOOK AT WHAT JOBS WERE SEVEN OAKS AND WHAT JOBS WERE FOR CAROLINA

KEYES, CORRECT?

A YES, MA'AM.

Q NOW, THE CAROLINA KEYES PROJECT, HOW MANY BUILDINGS WAS THAT?

A I THINK THAT WE BUILT -- I WANT TO SAY I BUILT 6 OR 7 BUILDINGS WITH HIS LICENSE.

Q BUT MY QUESTION WAS, HOW MANY BUILDINGS WAS IN THE CAROLINA KEYES PROJECT?

A I COULD NOT TELL YOU. 20 SOME ODD.

Q OF THE 20 SOME ODD, HOW MANY DID EES OR YOU BUILD AS THE GENERAL CONTRACTOR UNDER MR. VEREEN'S LICENSE?

A THAT'S WHAT I JUST SAID 6,7,8. I DON'T KNOW EXACTLY HOW MANY.

Q AND THEN AFTER YOU STOPPED PULLING PERMITS UNDER MR. VEREEN'S LICENSE, DID YOU PULL PERMITS UNDER ANY OTHER OWNER OR CONTRACTORS LICENSE FOR ANY BUILDINGS AT CAROLINA KEYES?

A YES, MA'AM.

Q WHOSE?

A PINE BLUFF AND ASSOCIATES. PINE BLUFF CONSTRUCTION OR WHOEVER THEY WERE?

Q AFTER YOU UTILIZED MR. VEREEN'S LICENSE FOR 6, 7, 8 BUILDINGS AT CAROLINA KEYES, IS IT CORRECT THAT YOU THEN STOPPED USING MR. VEREEN'S LICENSE

AND APPLIED WITH THE -- AND BY THAT TIME, YOU HAD TAKEN THE TEST YOURSELF AND YOU HAD PASSED THE CONTRACTORS EXAM, CORRECT?

A YES, MA'AM.

Q AND I BELIEVE YOU PASSED THAT IN LATE '99, RIGHT?

A I DON'T KNOW THE EXACT DATE. SOMEWHERE IN THAT NEIGHBORHOOD.

Q AND AFTER THAT OCCURRED AND AFTER YOU HAD USED MR. VEREEN'S LICENSE, YOU MADE APPLICATION IN THE NAME OF PINE BLUFF CONSTRUCTION, AN ENTITY OWNED BY THE DEVELOPER OUT THERE, AS A CONSTRUCTION COMPANY AND YOU GOT THEM LICENSED WITH YOU AS THE QUALIFIED PERSON, ISN'T THAT CORRECT?

A I WAS AN EMPLOYEE OF THEIRS.

Q AND YOU HAVE TO HAVE A QUALIFYING PERSON AS A COMPANY TO HAVE A LICENSE, DON'T YOU?

A YES, MA'AM.

Q AND YOU COULD NOT DO THAT UNTIL YOU PASSED YOUR CONTRACTORS TEST, CORRECT?

A YES, MA'AM.

Q AND THEN YOU COULDN'T FORM A COMPANY AND BUILD THOSE BUILDINGS OUT THERE BECAUSE YOU DIDN'T HAVE THE FINANCIAL WHEREWITHAL THAT IS REQUIRED

TO GET A LICENSE FOR A UNLIMITED AMOUNT OF MONEY THAT IT WAS GOING TO TAKE -- A UNLIMITED GENERAL CONTRACTORS LICENSE IN ORDER TO HAVE THE CAPACITY TO LAWFULLY BUILD THOSE BUILDINGS, ISN'T THAT CORRECT?

A THAT IS NOT ENTIRELY TRUE.

Q WELL, WHY DIDN'T YOU FORM A CONTRACTING COMPANY? YOU HAD PASSED THE TEST AND BECOME THE GENERAL CONTRACTOR OUT THERE INSTEAD OF WORKING FOR THE DEVELOPERS CONTRACTING COMPANY?

A IN THE STATE OF SOUTH CAROLINA, A RESIDENTIAL HOME BUILDER CAN BUILD A CONDO BUILDING UP TO 16 UNITS THREE STORIES TALL. THOSE BUILDINGS, THE BIGGEST ONES, ARE 15 UNITS. SO AS A RESIDENTIAL BUILDER YOU HAVE TO HAVE A NET WORTH OF $40,000.

Q WELL, YOU DIDN'T HAVE A RESIDENTIAL BUILDERS LICENSE, DID YOU?

A NO, I DIDN'T.

Q SO HOW IS THAT RELEVANT TO ANYTHING THAT I JUST ASKED YOU?

A IT'S NOT.

Q OKAY.

A YOU JUST SAID THAT YOU HAD TO HAVE A CONTRACTORS LICENSE TO BUILD A BUILDING AND THAT'S NOT TRUE.

YOU COULD HAVE A RESIDENTIAL LICENSE TO BUILD A BUILDING.

Q NO, SIR. WHAT I ASKED YOU WAS, WHY -- I HAVE ASKED YOU, WASN'T IT TRUE THAT YOU DID NOT HAVE SUFFICIENT FINANCIAL RESOURCES TO GET AN UNLIMITED GENERAL CONTRACTORS LICENSE TO BUILD THOSE BUILDINGS? THAT'S WHAT I HAD ASKED YOU.

A NO, MA'AM, I DID NOT.

Q WHY DID YOU DO -- YOU'RE SAYING MR. VEREEN GAVE YOU PERMISSION TO USE HIS LICENSE AND THAT THERE IS A LETTER ON FILE FOR THE CITY OF NORTH MYRTLE BEACH THAT SAYS YOU CAN DO THAT FOR CAROLINA KEYES? WHY DIDN'T YOU KEEP ON DOING THAT AS YOU HAD BEEN FOR 7,8, OR 9 BUILDINGS AT CAROLINA KEYES RATHER THAN START PULLING THEM UNDER PINE BLUFF CONSTRUCTION COMPANY?

A JUST LIKE I TOLD YOU BEFORE, I DID NOT MAKE ANY MONEY. I HAD TO TAKE A SBA LOAN OUT TO PAY OFF THE DEBTS THAT I HAD INCURRED. THERE WAS NO PROFIT OFF THE JOB.

Q WELL, HOW DID NOT PULLING THE PERMITS UNDER MR. VEREEN'S LICENSE HELP YOU WITH THAT SITUATION WHEN YOU STARTED PULLING PERMITS UNDER THE DEVELOPERS CONSTRUCTION COMPANY?

A BECAUSE THEY DECIDED THEY HAD RATHER DO IT

THEMSELVES WITH ME AS A QUALIFYING PARTNER.

Q OH, OKAY. LET ME HAND YOU EXHIBIT "61" AND TELL ME IF YOU WILL WHAT THAT IS.

A THE FIRST PAGE IS A APPLICATION FOR A CONSTRUCTION PERMIT AT CAROLINA KEYES.

Q AND IF YOU LOOK AT -- DOES IT ALSO INCLUDE THE ACTUAL PERMIT ITSELF IN THAT STACK OF DOCUMENTS?

A I DON'T KNOW. I CAN GO THROUGH THEM AND LOOK THROUGH THEM.

Q WELL, LET ME ASK YOU ...

A YES, IT DOES.

Q OKAY. AND IS THAT PERMIT SIGNED BY YOU, ELLIS E. SMITH?

A I HAVE NOT FOUND THE PERMIT.

Q I KNOW IT'S HARD TO READ.

A YES, MA'AM.

Q SO THAT'S THE ACTUAL PERMIT ITSELF SIGNED BY YOU?

A YES, MA'AM.

Q NOW, THIS PERMIT WAS ISSUED FOR BUILDING 7, WASN'T IT?

A YES, MA'AM.

Q AND IT WAS PULLED IN THE NAME OF ARTHUR VEREEN CONSTRUCTION COMPANY AND YOU SIGNED FOR IT?

A YES, MA'AM.

Q AND IS THE AMOUNT ON THE PERMIT FOR BUILDING 7 SHOWN AS $643,000?
A I THINK IT IS 653,994.
Q I'M SORRY. 653,994 AND YOU BELIEVE THAT IS WHAT YOU HAD VALUED THE WORK AT?
A YES, MA'AM. THINK IT IS.
Q IS THAT THE VALUE OF THE CONTRACT THAT EES HAD TO DO THE WORK OR IS THAT THE VALUE OF THE CONSTRUCTION WORK?
A IT'S BEEN A LONG TIME AGO. I WOULD NOT KNOW.
Q WELL, LET ME ASK YOU THIS: TYPICALLY, WHEN YOU ARE GETTING A PERMIT, DO YOU PUT THE AMOUNT THAT THE GENERAL CONTRACTOR ACTUALLY HAS A CONTRACT AMOUNT FOR OR DO YOU PUT THE COST OF CONSTRUCTION?
A IT DEPENDS ON WHO BUYS THE PERMIT.
Q WHAT WAS YOUR GENERAL PRACTICE THROUGH EES?
A I WOULDN'T HAVE PRICED THE FULL AMOUNT.
Q PARDON ME?
A I WOULD NOT WRITE THE FULL AMOUNT.
Q YOU WOULD HAVE PUT COST OF CONSTRUCTION?
A YES. BASICALLY.
Q RATHER WHAT YOUR CONSTRUCTION CONTRACT WAS?
A BASICALLY, YES.
Q SO THAT WAY THE OWNER OR THE GENERAL CONTRACTOR

ONLY HAD TO PAY THE PERMIT FEE BASED ON COST OF CONSTRUCTION? IT WOULD NOT HAVE INCLUDED PROFIT AND OVERHEAD FROM THE GENERAL CONTRACT?

A NO. THEY DO EVALUATE -- THE CITY OF NORTH MYRTLE BEACH ISSUES YOU A PERMIT ON THEIR EVALUATION OF THE JOB.

Q BASICALLY, BASED ON SOME SQUARE FOOTAGE?

A I DON'T KNOW EXACTLY WHAT THEY DO, BUT THAT'S HOW IT IS.

Q SO, WOULD IT BE FAIR TO SAY THAT THE EVALUATION ON THE PERMIT, THE 653,994, WAS THAT MORE OR WAS THAT LESS THAN WHAT YOUR ACTUAL CONTRACT TO DO THE WORK WAS?

A I WOULD ASSUME IT TO BE LESS. I DO NOT KNOW FOR SURE.

Q OKAY. AND THAT PERMIT WAS PULLED -- IT WAS APPLIED FOR IN JANUARY OF '98 AND IT WAS ISSUED IN JUNE '98, CORRECT?

A I CAN'T READ THIS THING.

Q OKAY. THAT'S OKAY. IT SPEAKS FOR ITSELF. I THINK THE JUDGE CAN PROBABLY SEE THAT.

A IT LOOKS LIKE 9/22/98.

Q THEN IF YOU GO BACK ONE MORE PAGE IN THAT STACK, THAT IS THE APPLICATION FOR BUILDING 'A'?

A YES, MA'AM.

Q AT CAROLINA KEYES, CORRECT?
A YES, MA'AM.
Q AND IF YOU GO ONE PAGE BACK FROM THAT, THAT IS WHERE YOU APPLIED IN THE NAME OF ARTHUR VEREEN CONSTRUCTION AND SIGNED FOR THAT PERMIT?
A YES, MA'AM.
Q AM I CORRECT, THAT FOR BUILDING 'A' THE VALUE OF THE WORK FOR ISSUANCE OF THE PERMIT WAS $643,000?
A YES, MA'AM.
Q THAT IS HOW MUCH YOU APPLIED FOR THE PERMIT WHEN YOU PUT DOWN THE 643, CORRECT?
A YES, MA'AM.
Q THE PERMIT WAS ACTUALLY ISSUED AT ANOTHER EVALUATION POINT, WASN'T IT? IF YOU LOOK AT THE PERMIT, THE NEXT SHEET 98-01593, THE VALUE OF THE WORK AS DETERMINED BY THE CITY OF NORTH MYRTLE BEACH WAS $1,000,006,347.00, ISN'T THAT RIGHT?
A DO WHAT?
Q YOU APPLIED FOR THE PERMIT IN THE AMOUNT OF $643,000, BUT WHEN IT WAS ISSUED BY THE CITY OF NORTH MYRTLE BEACH IT WAS ISSUED WITH EVALUATING THE WORK AT 1,000,006,347.00, CORRECT?
A IT LOOKS LIKE THIS HERE IS ANOTHER ONE WHICH IS

THE SAME EXACT BUILDING. IT'S 505,000. I DON'T THINK THAT ...

Q THAT IS THE APPLICATION, ISN'T IT?

A NO.

Q LET'S TALK ABOUT BUILDING 8 FIRST. WAS THE CITY OF NORTH MYRTLE BEACH, WHO ISSUED A PERMIT VALUING THE WORK AT $1,000,006,347.00?

A THAT'S WHAT THEY SAY.

Q AND YOU SIGNED THAT PERMIT, DIDN'T YOU?

A SIGNED TO PICK IT UP, I SURE DID.

Q THE NEXT PAGE IS AN APPLICATION FOR THE BUILDING PERMIT FOR CAROLINA KEYES FOR BUILDING 4, IS THAT CORRECT?

A THAT'S CORRECT.

Q AND YOU APPLIED FOR THE PERMIT VALUING THE WORK AT $624,300, CORRECT?

A CORRECT.

Q THEN THE PERMIT WAS ISSUED -- I'M SORRY. I THINK I HAVE CONFUSED THE SITUATION BEFORE, OKAY. LET'S GO BACK BECAUSE I DON'T MEAN TO BE MISLEADING THE COURT OR MISLEADING YOU. SO, YOU TELL ME. YOU ARE FAMILIAR WITH THESE THINGS. LET'S GO BACK TO THE FIRST PAGE OF EXHIBIT "61". THAT IS THE BUILDING PERMIT APPLICATION FROM THE CITY OF NORTH MYRTLE BEACH FOR BUILDING 7,

CORRECT?

A YES, MA'AM.

Q AND WHEN YOU APPLIED FOR THAT PERMIT, HOW MUCH DID YOU OR THE CITY VALUE THAT BUILDING 7 AT?

A THE EVALUATION OF WORK AT 653,994.

Q OKAY. AND THEN, IF YOU LOOK AT THE NEXT PAGE, THAT IS A COPY OF THE ACTUAL PERMIT, CORRECT?

A YES, MA'AM.

Q AND IT WAS ISSUED ON JUNE 23RD, 1998, AND IT WAS ISSUED IN THE SAME AMOUNT AS YOU HAD APPLIED FOR THE EVALUATION OF THE WORK, CORRECT?

A YES.

Q THAT IS BUILDING 7?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

Q THE NEXT PAGE IS THE ACTUAL PERMIT THERE FOR BUILDING 8, IS THAT CORRECT?

A LOOKS TO BE.

Q AT CAROLINA KEYES?

A YES, MA'AM.

Q AND THAT PERMIT WAS ISSUED IN THE AMOUNT OF $1,000,046,573?

A THAT IS THE EVALUATION OF THE BUILDING AND THE LAND AND THE PARKING, EVERYTHING.

Q OKAY. BUT THAT IS ...

A NOT THE CONSTRUCTION.

Q I UNDERSTAND. THAT IS THE AMOUNT THAT THE CITY OF NORTH MYRTLE BEACH ASSIGNED WHEN IT ISSUED THIS PERMIT, CORRECT? FOR BUILDING 8?

A NO. YES, FOR THE WHOLE BUILDING. THAT IS CORRECT.

Q AND YOU SIGNED FOR THAT PERMIT FOR BUILDING 8 AS A REPRESENTATIVE OF ARTHUR VEREEN CONSTRUCTION, CORRECT?

A YES, MA'AM.

Q TURN TWO PAGES. IS THAT THE PERMIT FOR BUILDING FOUR FOR CAROLINA KEYES?

A SEEMS TO BE.

Q AND YOU SIGNED FOR THAT PERMIT WHEN IT WAS ISSUED, CORRECT?

A YES, MA'AM.

Q AND THE EVALUATION THE CITY ISSUED THAT PERMIT IN WAS $1,000,006,347, IS THAT CORRECT?

A YES, MA'AM.

Q TURN TWO PAGES TO THE THIRD PAGE, AND IS THAT THE BUILDING PERMIT FOR BUILDING 6?

A WHERE DO YOU SEE THE 6?

Q IF YOU TURNED BACK ONE PAGE, IT HAS GOT THE APPLICATION APPLIED FOR DATE 3/12. SOMEWHERE I MUST HAVE SEEN THE 6, BUT I'M NOT FINDING IT RIGHT THIS MINUTE.

A BUILDING 6 IS NUMBER 19863.
Q DO YOU KNOW WHAT PERMIT 99363 WAS FOR?
A BUILDING 3.
Q OKAY. AND YOU APPLIED FOR THAT IN THE AMOUNT OF $878,667 AND IF YOU TURN TO THE NEXT PAGE, THEY ISSUED THAT PERMIT IN SAME AMOUNT, CORRECT?
A 99363, THE EVALUATION OF THE CONSTRUCTION IS $505,000. IT'S IN THE LINE ABOVE THE EVALUATION OF WORK.
Q BUT THE EVALUATION OF WORK THAT THEY ISSUED THE PERMIT BASED ON IS THE ...
A THAT IS PARKING LOTS AND ALL THIS IS THE EVALUATION OF THE BUILDING.
Q OKAY. BUT THE EVALUATION OF THE WORK PER THE PERMIT IS $878,667, IS THAT CORRECT?
A YES. THAT IS THE WAY IT LOOKS.
Q OKAY. WHEN YOU APPLIED FOR THAT BUILDING THAT'S THE EVALUATION YOU PUT OR WAS PUT ON THE APPLICATION FOR BUILDING 3, CORRECT?
A WHAT IS.
Q $878,666?
A BUILDING 3.
Q YES, SIR?
A NO.
Q THE PAGE IN FRONT OF THE PERMIT, THE ACTUAL

APPLICATION HAS GOT THE EVALUATION OF WORK BEING 878 ...

A YOU DON'T DO THAT. THIS IS THE VALUATION OF WHAT I PUT THE CONSTRUCTION WORK WOULD BE, KIF. THIS IS THE VALUATION OF THE TOTAL BUILDING, WHICH THE CITY OF NORTH MYRTLE BEACH DOES. I DID NOT DO ANY -- ALL I DID IS I APPLIED FOR THE $550,000 OR THE $500,000.

Q YES, SIR. THAT IS WHAT YOU PUT ON THE APPLICATION, BUT THE CITY OF NORTH MYRTLE BEACH PLACED THE VALUATION OF WORK ON THE PERMIT AS 878,667, DIDN'T THEY?

A LAND AND ALL, THAT IS CORRECT.

Q THAT IS HOW THEY ISSUED THE PERMIT IN THAT SAME AMOUNT OF MONEY, CORRECT?

A I GUESS. YOU WERE RIGHT.

Q NEXT PAGE SHOWS THE APPLICATION -- EXCUSE ME. IT SHOWS THE ACTUAL PERMIT FOR BUILDING 6, CORRECT? PERMIT NUMBER 99794.

MR. THOMAS: WHAT IS THE DATE ON THAT APPLICATION?

MS. COOK: THE DATE IT WAS ISSUED WAS 6/4/99.

MR. THOMAS: 1999?

MS. COOK: YES, SIR.

A YES.
Q AND THE EVALUATION OF WORK AS ASSIGNED BY THE CITY OF NORTH MYRTLE BEACH ON THE BUILDING PERMIT IS $878,677, CORRECT?
A AND THE CONTRACTORS STATED VALUE IS 525,000.
Q I GOT'CHA. THE NEXT PAGE IS THE PERMIT ISSUED FOR BUILDINGS 1 AND 2?
A THEY ARE THE SAME BUILDING, JUST CONNECTED.
Q OKAY. BUT THEY ARE IDENTIFIED AS BUILDING 1 AND 2, CORRECT?
A IT'S ONE BUILDING, BUT, YES.
Q THEN THIS ONE SAYS THE APPLICANTS NAME WAS ELLIS E. SMITH, PROJECT MANAGER, AT VEREEN CONSTRUCTION, CORRECT?
A CORRECT.
Q AND IT IS SIGNED FOR -- DO YOU RECOGNIZE THAT SIGNATURE?
A ROBERT GRIFFITH.
Q AND WHO IS ROBERT GRIFFITH?
A HE WORKED FOR ME.
Q HE WORKED FOR YOU?
A YES, MA'AM.
Q AND WHO DID YOU WORK FOR? YOU WERE EES?
A YES, MA'AM.
Q AND THAT PERMIT WAS ISSUED BY THE CITY OF NORTH

MYRTLE BEACH VALUING THE WORK AT $675,400, CORRECT?

A AND THE GENERAL CONTRACTORS VALUE WAS $305,000.

Q OKAY. IF YOU FLIP ON BACK YOU GET TO THE BUILDING PERMIT NUMBER 991671 AND THAT IS THE PERMIT FOR BUILDING 9, IS THAT CORRECT?

A YES, MA'AM.

Q AND AGAIN, IT IS ISSUED TO ARTHUR VEREEN CONSTRUCTION COMPANY SIGNED FOR BY MR. GRIFFITH, WHO WORKED FOR YOU, CORRECT?

A YES, MA'AM.

Q AND WHAT WAS THE VALUATION OF THAT WORKED AS ASSIGNED BY THE CITY OF NORTH MYRTLE BEACH?

A 878,667. THE CONSTRUCTION COST WAS 450.

Q AND YOU DID NOT DO THESE JOBS, EES DID NOT DO THESE JOBS FOR COST, DID YOU? YOU DID THEM FOR COST AND THEN SOME ...

A YES.

Q ... SOME PERCENTAGE OF OVERHEAD ...

A YES. IT WAS COST PLUS 10 PERCENT. WHAT I FIGURED IS IT WAS COST PLUS 10 PERCENT THAT WAS THE CONTRACT AMOUNT.

Q OKAY. AND THEN IF YOU FLIP OVER TO PERMIT 991678 THAT IS THE PERMIT ISSUED BY THE CITY NORTH MYRTLE BEACH FOR BUILDING 5, IS THAT

CORRECT?

A YES, MA'AM.

Q AND THAT IS SIGNED FOR BY YOU?

A YES, MA'AM.

Q AND THE DATE ON THAT ONE IS MARCH 2ND, 2000?

A YES, MA'AM.

Q BY MARCH 2ND, 2000 HAD YOU, AT THAT POINT, TAKEN YOUR GENERAL CONTRACTORS TEST AND PASSED IT?

A I OBVIOUSLY DID BECAUSE THEY ARE -- I DON'T KNOW. I COULD NOT TELL YOU TO BE HONEST. I KNOW I TOOK IT AT SOME POINT IN THE LATE 90'S AND EARLY 2002, I JUST DON'T KNOW EXACTLY WHEN.

Q MR. SMITH, LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT NUMBER "62". CAN YOU IDENTIFY WHAT EXHIBIT NUMBER "62" IS?

A IT IS A APPLICATION FOR PINE BLUFFS CONSTRUCTION LICENSE.

Q AND IF YOU FLIP TO THE SECOND PAGE OF THAT -- WELL, IT IS ACTUALLY PAGE 4, BUT IT'S THE SECOND PAGE OF THE ACTUAL EXHIBIT UNDER 'B'. IT SAYS, "TRANSFERRING MY QUALIFICATIONS FROM ANOTHER LICENSEE CURRENTLY LICENSED WITH THE SOUTH CAROLINA CONTRACTORS LICENSING BOARD. NAME OF TECHNICAL EXAMS PAST." IS THAT YOUR HANDWRITING THAT SAYS GENERAL CONTRACTOR?

A YES, MA'AM, IT IS.
Q AND THEN IT SAYS DATE. WHAT IS THAT DATE? IT'S DECEMBER SOMETHING 1999, CORRECT?
A YES, MA'AM.
Q DOES THAT SOUND ABOUT RIGHT WHEN YOU WOULD HAVE PASSED THAT GENERAL CONTRACTORS LICENSING TEST?
A LATE '98 OR 2000, YES, MA'AM.
Q AND SO BY APRIL OF 2000, AFTER YOU PASSED IN '99, APRIL OF 2000, YOU WERE APPLYING AS THE QUALIFYING INDIVIDUAL HOLDING THE LICENSE FOR THE COMPANY, PINE BLUFF CONSTRUCTION COMPANY, INC., CORRECT?
A I DON'T KNOW IF THAT IS THE CORRECT DATE, BUT, YES, I WAS THE QUALIFYING PARTNER.
Q I WAS LOOKING AT THE -- DOES YOURS HAVE A RECEIVED APPLICATION STAMP ON THE TOP OF IT?
A JUST BECAUSE IT WAS RECEIVED THAT DAY DOESN'T MEAN IT WAS ISSUED ON THAT DAY.
Q NO, SIR. I SAID THAT'S WHEN YOU WERE APPLYING FOR IT?
A I GUESS.
Q WELL, DO YOU KNOW IF PINE BLUFF CONSTRUCTION EVER ISSUED A GENERAL CONTRACTORS LICENSE?
A YES, MA'AM, THEY WERE.
Q AND WOULD THAT MAKE SENSE THAT ON THE MARCH OF

2000 PERMIT THAT I JUST SHOWED YOU BEING ISSUED FOR BUILDING 5 WHICH WAS MARCH THE 2ND, 2000?

A YES, MA'AM.

Q THAT WAS THE LAST PERMIT THAT YOU PULLED USING ARTHUR VEREEN CONSTRUCTION COMPANY'S LICENSE AND THEN, THEREAFTER, PULLED PERMITS IN THE NAME OF PINE BLUFF CONSTRUCTION?

A YES, MA'AM.

Q SO, THE PERMIT THAT WE JUST WENT OVER, YOU PULLED IT IN ARTHUR VEREEN CONSTRUCTION'S NAME FOR BUILDINGS 7, 8,4, OR LICENSES. 6, 1, 2, 9 AND 3 AND 5, CORRECT?

A IF THAT IS WHAT'S ON HERE.

Q SO, IN ADDITION TO THAT, YOU ALSO PULLED THE PERMIT TO BUILD THE MECHANICAL ROOM AND ALL AROUND THE POOL FOR $23,000, DID YOU NOT UNDER ARTHUR VEREEN CONSTRUCTION'S LICENSE?

A YES, MA'AM.

Q AND SO IF YOU ADDED ALL OF THOSE VALUE OF WORK AS ASSIGNED BY THE CITY OF NORTH MYRTLE BEACH FOR THE TOTAL JOBS -- IF YOU ADDED ALL THAT UP, YOU WOULDN'T DISPUTE THAT IT IS OVER $8,000? I'M SORRY. $8 MILLION, WOULD YOU?

A I HAVE NO IDEA HOW YOU GET TO THE EVALUATION OF THE WORK -- TO THAT EVALUATION OF THE

CONSTRUCTION IS WHAT I WAS GOING ON. THAT IS ALL THAT I DID IS THE EVALUATION OF THE CONSTRUCTION.

Q WELL, IF YOU ADDED ALL THE VALUATION OF CONSTRUCTION AND USED THOSE NUMBERS, IT IS WELL OVER $5 MILLION, ISN'T IT?

A IT IS ABOUT 5 MILLION.

Q SO ARE YOU TELLING THIS COURT UNDER OATH THAT WHETHER YOU VALUED IT AT $5 MILLION WORTH OF WORK OR $8 MILLION WORTH OF WORK OR SOMEWHERE IN BETWEEN, EES AND YOU MADE NO MONEY ON THAT JOB?

A NO, MA'AM.

Q WHY DID YOU KEEP WORKING ON IT?

A BASICALLY, LOYALTY TO DO IT AND I WANTED TO FINISH IT. I BORROWED OVER $300,000 FROM THE SBA TO FINISH IT.

Q AND THEN AFTER YOU GOT YOUR GENERAL CONTRACTORS LICENSE IN DECEMBER 1999, AND GOT PINE BLUFF'S LICENSE AS A GENERAL CONTRACTOR IN APRIL OF MAY OF 1999 -- I'M SORRY. 2000, YOU ONLY WORKED WITH THEM AND PULLED TWO MORE PERMITS UNDER THEIR NAME AND THEY LET YOU GO, DIDN'T THEY?

A OH, NO. THERE WAS ONLY ONE BUILDING LEFT IN CAROLINE KEYES WHEN I LEFT BUILDING NUMBER 12.

Q WELL, IF YOU WERE LOYAL BEFORE BUILDING NUMBER

12 WAS DONE --

A BECAUSE THEY WERE MOVING ACROSS THE STREET TO OCEAN KEYES AND THEY HAD HIRED SOMEBODY ELSE NAMED JIM ALLISON, WHO HAD A LICENSE AND THAT'S WHOSE LICENSE THEY WERE GOING TO USE IN OCEAN KEYES.

Q YOU HAD SAID THAT YOU HAD A SIGNED NOTARIZED LETTER FROM MR. VEREEN ALLOWING YOU TO PULL THE PERMITS FOR CAROLINA KEYES WITH THE CITY OF NORTH MYRTLE BEACH, THAT'S YOUR TESTIMONY?

MR. DURANT: YOUR HONOR, THAT IS NOT HIS TESTIMONY.

Q WELL, THEN I WILL LET YOU ...

A THAT IS NOT WHAT I SAID.

Q WELL, TELL ME WHAT YOU SAID THEN?

A I SAID THE CITY OF NORTH MYRTLE BEACH, FOR SOMEONE WHO IS NOT THE CONTRACTOR TO PULL A PERMIT, THEY MUST HAVE A NOTARIZED LETTER FROM THE CONTRACTOR THAT IT IS OKAY FOR THEM TO PULL IT. HORRY COUNTY DOES THE SAME THING. THE CITY OF NORTH MYRTLE BEACH, CITY OF MYRTLE BEACH DOES THE SAME THING.

Q AND DID THE CITY OF NORTH MYRTLE BEACH, HAVE A SIGNED NOTARIZED LETTER FROM MR. VEREEN AUTHORIZING YOU TO PULL PERMITS IN ARTHUR VEREEN

CONSTRUCTION FOR THE CAROLINA KEYES PROJECT?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q HAVE YOU EVER SEEN THAT?

A IF I PULLED A PERMIT -- I CAN'T SAY THAT I SAW IT. HE MAY HAVE TURNED IT IN. I DON'T KNOW.

Q WELL, PRIOR TO STARTING THE CAROLINA KEYES PROJECT, YOU HAD DONE WORK WITH MR. VEREEN, HIS COMPANY, BEFORE AS A SUB, HADN'T YOU?

A YES. NO. I WORKED FOR HIM FOR YEARS.

Q WHEN YOU SAY, "YOU WORKED FOR HIM" AS AN EMPLOYEE?

A AS AN EMPLOYEE.

Q HAD YOU EVER SIGNED FOR AND PULLED PERMITS FOR ARTHUR VEREEN CONSTRUCTION BEFORE THE CAROLINA KEYS PROJECT?

A NOT IN NORTH MYRTLE BEACH, BUT AROUND THE COUNTY. YES, A LOT IN THE COUNTY.

Q DID YOU EVER PROVIDE TO THE CITY OF NORTH MYRTLE BEACH ANY SIGNED NOTARIZED LETTER FROM MR. VEREEN OR ANYBODY ELSE WITH ARTHUR VEREEN CONSTRUCTION COMPANY AUTHORIZING YOU TO PULL PERMITS IN THE NAME OF ARTHUR VEREEN CONSTRUCTION FOR THE CAROLINA KEYES PROJECT?

A I DON'T RECALL. I CAN'T SAY FOR SURE.

Q OUT OF $5 MILLION WORTH OF WORK, HOW MUCH DID

YOU -- YOU SAID THAT YOU DIDN'T MAKE ANY MONEY. HOW MUCH DID YOU LOSE?

A IT COST ME $360,000 IN SBA LOANS. I HAVE PAID THEM OFF THOUGH.

Q WELL, WHY DID YOU LOSE MONEY? DID YOU NOT ESTIMATE IT RIGHT?

A BASICALLY, JUST DIDN'T ESTIMATE IT RIGHT AND PAID TOO MUCH FOR IT, WHATEVER. WHATEVER HAPPENED, HAPPENED.

Q LET ME ASK YOU THIS: YOU TALKED ABOUT DOING SOME WORK ON ONE OF YOUR SIDE JOBS. WE ARE GOING TO LEAVE CAROLINA KEYES FOR A MINUTE. I THINK WE ARE GOING TO LEAVE CAROLINA KEYES FOR YOU FOR RIGHT NOW FOR GOOD. WHEN YOU WERE DOING THE WORK ON THE SIDE JOBS, WHICH HOUSE WAS IT THAT YOU SAID YOU DID SOME WORK ON THE WEEKENDS WHERE YOU FRAMED THE DECK AND DID SOME GRADING?

A LEE MCMILLAN.

Q MCMILLAN HOUSE. AND THE GRADING THAT YOU DID, DID YOU HAVE TO USE A BOBCAT OR ANY EQUIPMENT TO DO THAT?

A ROBERT SEALEY'S BOBCAT.

Q IF ON ANY OF THESE SIDE JOBS THAT YOU WERE DOING FROM OCTOBER OF 2003, WHEN A&E WAS FORMED, `TIL WHEN YOU LEFT WORKING FULL-TIME FOR A&E IN

SEPTEMBER, I BELIEVE YOU SAID '07, DURING THAT TIMEFRAME, JUST THAT TIMEFRAME, IF ANY MATERIALS WERE PAID FOR BY A&E ON YOUR SIDE JOBS, WAS THAT BY MISTAKE?

A OH, I DID NOT CHARGE ANY MATERIALS ON SIDE JOBS TO DO WITH A&E. THEY WENT TO EES CONSTRUCTION.

Q WELL, DID EES CONSTRUCTION OR YOU ON THESE SIDE JOBS USE S&W CONCRETE FOR SOME OF YOUR CONCRETE SUPPLIES?

A I USED THEM ON THE SIDE JOBS AND I ALSO USED THEM WITH A&E, WHICH WAS BILLED TO EES BECAUSE WE DID NOT HAVE AN ACCOUNT. IT WAS BILLED TO EES, BUT THEY WERE A&E JOBS BECAUSE A&E DID NOT HAVE AN ACCOUNT WITH THEM.

Q SO, ALL THE BILLS FROM S&W WERE BILLED TO EES?

A THEY CAME THROUGH EES, YES.

Q THAT WERE NOT BILLED TO A&E?

A NO. A&E DID NOT HAVE AN ACCOUNT WITH THEM.

Q OKAY. WELL, DID ...

A AT THAT TIME.

Q ON YOUR SIDE JOBS, DID YOU USE --

MS. COOK: CAN WE TAKE A BREAK FOR A MINUTE?

JUDGE HOWE: HOW LONG A BREAK DO YOU NEED?

MS. COOK: 5 MINUTES.

(DISCUSSION HELD OFF THE RECORD.)

MR. COOK: ALRIGHT. MS. COOK.

Q MR. SMITH, DID YOU UTILIZE THE SERVICES OF MCGEE/CADD REPROGRAPHICS FOR ANY OF YOUR SIDE JOBS?

A NO.

Q DID A&E USE MCGEE/CADD ...

A QUITE A BIT, YES, MA'AM.

Q ... FOR ITS WORK FOR ITS JOBS?

A YES, MA'AM.

Q AND S&W WAS A SUPPLIER OF WHAT OR IS A SUPPLIER OF WHAT?

A S&W CONCRETE?

Q YES, SIR.

A YES, MA'AM. IT WAS A CONCRETE COMPANY.

Q AND DID YOU OR EES USE S&W ON SOME OF YOUR SIDE JOBS AS WELL AS A&E USED S&W ON SOME OF ITS JOBS?

A THE MAJORITY OF THE JOBS, YES.

Q OKAY. AND THE JOBS THAT A&E USED S&W CONCRETE ON A&W BILLED EES BECAUSE A&E DID NOT HAVE AN ACCOUNT?

A THAT IS CORRECT.

Q BUT A&E WOULD PAY THE BILLS, IS THAT CORRECT?

A AFTER A CERTAIN POINT IN TIME, YES, THAT IS CORRECT.

Q OKAY. AND IF BY MISTAKE OR OTHERWISE A BILL FOR S&W'S CONCRETE THAT WAS ON ONE OF YOUR SIDE JOBS GOT PAID BY A&E, WOULD YOU AGREE THAT IT SHOULD BE CREDITED BACK OR YOU SHOULD REIMBURSE A&E?

A YES, MA'AM. BY ALL MEANS.

Q AND DO YOU KNOW IF THAT HAD HAPPENED? HAVE Y'ALL GONE THROUGH AND LOOKED TO SEE IF THAT HAD HAPPENED?

A NOT TO MY KNOWLEDGE.

Q OKAY. IS THERE ANY REASON WHY YOU AND YOUR EXPERTS ON BEHALF OF A&E DID NOT LOOK TO SEE IF THAT HAD EVER HAPPENED?

A WE DID NOT HAVE ALL THE S&W BILLS.

Q WELL, YOU WENT TO THE OFFICES OF A&E IN MARCH 2009, DIDN'T YOU, WHEN MR. MACDONALD WAS IN THE CASE AND LOOKED THROUGH ALL OF A&E'S RECORDS AND A&E'S RECORDS WERE THERE FOR YOU TO LOOK THROUGH?

A I COULD NOT GO THROUGH ALL OF THE A&W BILLS.

Q BUT FROM WHAT WAS THERE, YOU DID CHOOSE AND WANTED TWO BOXES COPIED FOR YOU? YOU WENT THROUGH AND CHOSE WHAT YOU WANTED COPIES OF AND YOU CHOSE TWO BOXES OF DOCUMENTS THAT WERE RUN

OFF AT KINKO'S, IS THAT CORRECT?

A I DON'T REMEMBER HOW MANY I CHOSE, BUT, YES, WE DID.

Q BUT YOU DID NOT PULL ANY S&W CONCRETE BILLS OR PAYMENTS TO THE S&W CONCRETE?

A I DON'T RECALL.

Q AND GRAND STRAND DISPOSAL, IS THAT A PROVIDER OF THOSE DUMPSTER THINGS THAT YOU SEE AT CONSTRUCTION SITES?

A YES, MA'AM.

Q THEY PROVIDED THEM AND THEY COME BACK AND PULLED THEM WHEN THEY ARE FULL AND DUMP THEM AND YOU PAY THEM FOR THE DUMPSTER AND THE DUMPS?

A YES, MA'AM.

Q AND DID YOU USE G.S.D., THE DISPOSAL COMPANY, ON SOME OF YOUR SIDE JOBS?

A WHO IS G.S.D?

Q GRAND STRAND DISPOSAL. I'M SORRY.

A YES, YES.

Q AND DID A&E, LIKEWISE, USE GRAND STRAND DISPOSAL?

A WE USED THEM BASICALLY TOTALLY UP UNTIL A POINT.

Q AND AGAIN, BY MISTAKE, IF A&E PAID BILLS FOR A GRAND STRAND DISPOSAL INVOICE THAT WAS REALLY ON ONE OF YOUR OF EES'S SIDE JOBS? YOU WOULD AGREE

THAT, THAT SHOULD BE CREDITED BACK TO THE COMPANY?

A BY ALL MEANS.

Q ARE YOU FAMILIAR WITH A COMPANY, RICHARDSON'S LAND SERVICES?

A THEY HAUL LIKE AGGREGATES. WHAT -- IT'S LIKE COQUINA. WHEN WE WERE PUTTING DOWN THE BLUEGRASS CREEK PARKING LOT THAT YOU ARE REQUIRED TO HAVE THE THING FOR TAHITIAN PEARL AND OCEAN BLUE, THEY HAULED THE COQUINA STUFF FOR ME.

Q OKAY. DID THEY ALSO PROVIDE SOME BRICK PAVERS AND SOME OF THOSE KINDS OF THINGS?

A THAT'S WHAT IT WAS. IT WAS FOR THE BRICK PAVERS.

Q RIGHT, OKAY. AND DID THEY DO THAT AND PROVIDE YOU SOME MORE EES BRICK PAVERS FOR THE MCMILLAN'S HOME?

A NO, NO.

Q NO? ARE YOU FAMILIAR WITH FLIPA RAMOS?

A FLIPA RAMOS. YES, MA'AM.

Q WHAT DOES HE DO?

A HE IS A CONCRETE MAN. HE POURS CONCRETE. HE WAS POURING CONCRETE FOR A&E. HE MADE PAVERS FOR ME AT THE TAHITIAN PEARL -- THE GRASS CREEK

PAVERS AT TAHITIAN PEARL AND OCEAN BLUE.

Q DID HE DO ANY PAVERS OR ANYTHING OF THAT NATURE AT THE MCMILLAN'S HOME?

A NO. HE POURED SOME CONCRETE, BUT HE DID NOT DO ANY PAVERS.

Q MR. SMITH, I'M GOING TO HAND YOU WHAT I MARKED AS DEFENDANT'S NUMBER "63". AT THE TOP IS A COPY OF THE A&E CHECK AND THEN THERE IS AN INVOICE BEHIND THAT. DO YOU RECOGNIZE THIS AS BEING AN A&E CHECK MADE PAYABLE TO MCGEE/CADD?

A YES, MA'AM.

Q AND THE INVOICE BEHIND THAT, DO YOU RECOGNIZE THAT AS AN INVOICE FROM MCGEE/CADD REPROGRAPHICS FOR A STATEMENT --

A IT'S A STATEMENT, YES, MA'AM.

Q ... FOR A NUMBER OF INVOICES?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

MS. COOK: YOUR HONOR, I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT "63".

MR. THOMAS: YOUR HONOR, WE OBJECT TO IT. THEY GAVE US A LIST OF MCGEE/CADD IN RESPONSE TO THE INTERROGATORIES THAT WE ADDRESSED TO THEM OF WHAT DAMAGES THEY WERE CLAIMING AND WHAT IMPROPER PAYMENTS THAT THEY WERE CLAIMING. THERE