

Steven Todd Hickman

April 23, 2008

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SOILWORKS, LLC,

Plaintiff,

-VS-

MIDWEST INDUSTRIAL SUPPLY, INC.

Defendant.

_____/

Case No. 2:06-cv-02141

VIDEOTAPED DEPOSITION OF STEVEN HICKMAN

April 23, 2008

9:04 a.m.

Taken at:

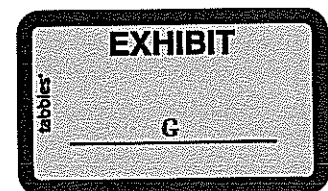
DeLisio Moran Geraghty & Zobel, P.C.

943 West 6th, Avenue

Anchorage, Alaska

Reported by:

Britney Dudley, Shorthand Reporter



Northern Lights Realtime & Reporting, Inc
(907) 337-2221

1 A-P-P-E-A-R-A-N-C-E-S

2 For the Plaintiff: KUTAK ROCK, LLP

Douglas H. Allsworth, Esquire

3 8601 N. Scottsdale Road, Suite 300

Scottsdale, AZ 85253

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5

6 For the Defendant: BROUSE MCDOWELL

Craig A. Marvinney, Esquire

7 1001 Lakeside Avenue, Suite 1600

Cleveland, Ohio 44114

8

9 Also Present:

HOLMES WEDDLE & BARCOTT

Grant Watts, Esquire,

10 701 West Eighth Avenue, Suite 700

Anchorage, AK 99501

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Bob Vitale,

Midwest Industrial Supply, Inc.

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I-N-D-E-X

STEVEN HICKMAN

APRIL 23, 2008

EXAMINATION BY:

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Mr. Marvinney

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EXHIBITS

NUMBER	DESCRIPTION	PAGE
58	May 4, 2006 Fax, Bates No. 0035504	156
59	May 4, 2006 Fax, Bates No. 0035468	171

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1 THE VIDEOGRAPHER: One moment please.

2 We are on the record. Today is April 23rd,
3 2008. The time is approximately 9:04 a.m. This is
4 tape 1 of the videotaped deposition of Steve Hickman
5 being taken on behalf of the Defendant in the matter
6 of Soilworks, LLC, versus Midwest Industrial Supply,
7 Inc., filed in the United States District Court for
8 the district of Alaska.

9 MR. MARVINNEY: District of Arizona.

10 THE VIDEOGRAPHER: District of Arizona? Pardon
11 me. I apologize.

12 MR. MARVINNEY: The subpoena was issued out of
13 the District of Alaska, United States Supreme Court.

14 THE VIDEOGRAPHER: Thank you, sir.

15 Case number 2:06-cv-02141. We're in the
16 conference room of the offices of DeLisio Moran
17 Geraghty & Zobel, PC, located at 943 West 6th
18 Avenue, Suite 200 in Anchorage, Alaska. My name is
19 Steve Miedzwiadok, and I'm the videographer. My
20 business address is 545 East 12th Avenue in
21 Anchorage, Alaska. The court reporter is Britney
22 Dudley with Northern Lights Realtime & Reporting.

23 Would counsel identify themselves for the
24 record, please.

25 MR. MARVINNEY: My name is Craig Marvinney,

1 appearing from Brouse McDowell in Cleveland, Ohio,
2 on behalf of Midwest Industrial Supply, Inc.

3 MR. ALLSWORTH: Douglas Allsworth of Kutak Rock
4 on behalf of Plaintiff Soilworks, LLC.

5 MR. WATTS: Grant Watts, with the law firm of
6 Holmes Weddle Barcott, here on behalf of Spenard
7 Builders Supply/Polar.

8 THE VIDEOGRAPHER: Pardon me, also present is
9 Bob Vitale.

10 We ask now that the court reporter please swear
11 the witness.

12 THEREUPON:

13 STEVEN HICKMAN
14 was called as a witness herein, after having been duly
15 sworn upon oath by Britney Dudley, Notary Public, was
16 examined and testified as follows:

17 EXAMINATION

18 BY MR. MARVINNEY:

19 Q. Good morning, sir. How are you?

20 A. I'm fine. How are you?

21 Q. Fine, thank you.

22 Would you please state your full name for the
23 record?

24 A. My name is Steven Todd Hickman.

25 Q. And Mr. Hickman, is that okay if I call you

1 that?

2 A. That's fine.

3 Q. My name is Craig Marvinney and in the
4 introductory portion of the deposition that
5 Mr. Miedzwiadok did so well, we noted I represent Midwest
6 Industrial Supply, Inc., which is a company out of
7 Canton, Ohio and it's been named as a defendant in a case
8 filed by Soilworks, LLC, a company out of Gilbert,
9 Arizona.

10 And I'll be asking you some questions today. If
11 at any time you don't understand my question, would you
12 please straighten it out with me before you give your
13 answer in full on the record?

14 A. Yes.

15 Q. And if you've had a chance to speak with your
16 attorney before the deposition, you may already know
17 this, but if you answer each question out loud, verbally,
18 so that it has true meaning and understandability to the
19 transcript and to the video today, that would be great;
20 do you understand that?

21 A. I understand.

22 Q. That will ascribe meaning to things other than
23 huh-uh and uh-huh, which when we see your -- in person,
24 many times that makes sense, but on a transcript or
25 sometimes on video, it doesn't; if that's all right?

1 A. That's fine.

2 Q. The other thing is, if you find that my -- my
3 questions are confusing, ambiguous or otherwise in need
4 of clarification at any time, please also straighten --
5 straighten that out with me on the record before you
6 respond; is that all right?

7 A. I'll give it my best try.

8 Q. Are you feeling okay today?

9 A. I'm feeling fine.

10 Q. Under any medication or anything?

11 A. Not a thing.

12 Q. Feel all clearheaded, ready to go?

13 A. As clear as I can be.

14 Q. That's great.

15 MR. MARVINNEY: For the record - and I know this
16 has been said before - this is the deposition of
17 Steven Hickman in the United States District Court
18 for the District of Arizona, case number
19 2:06-cv-02141.

20 MR. MARVINNEY: The deposition today is being
21 taken pursuant to a subpoena issued to you
22 personally, correct?

23 THE WITNESS: Yes.

24 MR. MARVINNEY: All right. And you're here
25 pursuant to that subpoena, correct?

1 THE WITNESS: Yes.

2 MR. MARVINNEY: And that subpoena was issued by
3 the United States District Court for the District of
4 Alaska.

5 The court reporter today is registered and
6 certified here in the state of Alaska. Do you have
7 any objections, Mr. Allsworth, to the qualifications
8 or the abilities of the court reporter and the
9 videographer today?

10 MR. ALLSWORTH: No.

11 MR. MARVINNEY: The deposition is being taken
12 pursuant to subpoena. I have seen no objections
13 registered to the subpoena or the service of the
14 subpoena. And the notice that was supplied to your
15 office as well. There are no objections to that?

16 MR. ALLSWORTH: I'm aware of none.

17 MR. MARVINNEY: All right.

18 On that basis, then, pursuant to the subpoena
19 we'll proceed. Thank you very much.

20 Mr. Watts, as far as you're concerned, you're
21 representing Polar Supply and/or Steve -- Spenard --
22 is it Spenard?

23 MR. WATTS: It's Spenard.

24 MR. MARVINNEY: Spenard Builders Supply?

25 MR. WATTS: Yes, sir.

1 MR. MARVINNEY: All right. And you've got no
2 objections to the subpoena, as well, as we proceed?

3 MR. WATTS: At least for, you know, the
4 attendance of the witness today, I didn't raise any
5 objections to the subpoena. And I agreed we accept
6 service on behalf of the two people that you've
7 noticed up, Mr. Hickman and Mr. Gordner.

8 MR. MARVINNEY: Thank you very much.
9 With that then we can proceed further.

10 BY MR. MARVINNEY:

11 Q. Sir, if you would, please state your home
12 address for the record.

13 A. My home address is 2001, two zero zero one,
14 Salem Court, Anchorage, Alaska, 99508.

15 Q. And your date of birth?

16 A. 1/4/59.

17 Q. Would you briefly recite for us your educational
18 background?

19 A. My educational background.

20 I graduated from college in 1981 from Augustana
21 College in Rock Island, Illinois, with a bachelor of arts
22 in business administration.

23 Q. Did you grow up here in Alaska?

24 A. I've lived here the last 25 years.

25 Q. And so then where did you grow up?

1 that, that's fine.

2 Do you understand that?

3 A. Yes.

4 Q. All right.

5 Now, back to where I asked, is, to your
6 knowledge, Polar Supply an approved distributor of
7 Soilworks for Soilworks products?

8 A. An approved distributor?

9 MR. ALLSWORTH: Same objection.

10 THE WITNESS: You know, I don't know. I mean,
11 I'm a sales guy.

12 BY MR. MARVINNEY:

13 Q. Do you have any --

14 A. Approved distributor, we sell -- we buy and sell
15 the product. So if that means that we're a distributor,
16 if that makes you happy, then I guess we are. But I
17 don't know, to be truthful.

18 Q. Well, then that's fair. And if I ask you a
19 question that you don't know the answer to that's --
20 that's the -- that's the accurate answer then, you don't
21 know.

22 Your role with Polar Supply is, and now Spenard
23 as a Polar Supply division, is outside sales, which does
24 not necessarily include developing a relationship with
25 the suppliers of Polar Supply, does it?

1 A. That's really a loosely --

2 MR. WATTS: You understand the question?

3 THE WITNESS: -- ended question. You know, I --
4 of course I help develop relationships. I talk to
5 your suppliers personally, but as far as contractual
6 agreements, I'm not involved in that at all.

7 BY MR. MARVINNEY:

8 Q. And that's a -- that's a fair way of clarifying
9 my question. If I ask an inartful question, I apologize.

10 So you do have relationships with your
11 various -- your company's various vendors or suppliers?

12 A. Correct.

13 Q. But you don't get involved in the nitty-gritty
14 of the legalese, the detailed contracts or the
15 distribution arrangements, per se?

16 A. Correct.

17 Q. And agreements, correct?

18 A. Correct.

19 Q. All right.

20 But you do, for instance, with Soilworks, you
21 have made contacts with people at Soilworks yourself?

22 A. Yes.

23 Q. And who would those people at Soilworks be that
24 you have contact with?

25 A. Dorian and Chad Falkenberg, their freight

1 division, I think it's Tara Hensley (phonetic). There's
2 two Tara's there. I've talked to both of them, I'm sure.
3 And I think they have an outside sales guy, Chuck.

4 Q. Can you think of Chuck's last name?

5 A. No.

6 Q. Is there any individual or number of those
7 individuals with whom you have primary contact at
8 Soilworks?

9 A. It would be Chad.

10 Q. If you had a question regarding a Soilworks
11 product that your company was selling and you had to call
12 someone at Soilworks to find out about that product, who
13 at Soilworks would you call?

14 A. Chad.

15 Q. Have you done that?

16 A. Yes.

17 Q. And has Chad responded favorably, or at least in
18 a way that you felt satisfied?

19 A. Chad's very responsive.

20 Q. And so the question -- the answer would be
21 "yes"?

22 A. Yes.

23 Q. Aside from Durasoil and Soiltac, does your
24 company sell, to your knowledge, any other Soilworks
25 products?

1 A. I'm not sure.

2 Q. -- "I'm not sure"?

3 A. That is correct.

4 Q. With respect to the compounds phrase -- or I
5 should say the phrase a "synthetic organic liquid
6 compound," what does the word "synthetic" mean to you in
7 that parlance?

8 A. In that parlance, I'm not sure.

9 Q. So your answer to my question is you're not sure
10 what synthetic means?

11 A. And that's what I say to my customers, as well,
12 yes.

13 Q. And so if a customer or a prospective customer
14 of Polar Supply asks what does synthetic mean, when you
15 say "synthetic organic liquid compound," your answer to
16 them is "I'm not sure"?

17 A. Correct. Do you believe it?

18 Q. I have to understand you're telling the truth
19 today. Are you?

20 A. Yes.

21 Q. Now, with respect to Soiltac, what do you
22 understand Soiltac to be?

23 A. Polymer emulsion.

24 Q. Let me go back to Durasoil just for a moment.

25 The phrase severely treated alkaloid ring compound, to

1 your knowledge, comes from what source?

2 A. Their literature.

3 Q. "Their" being?

4 A. Soilworks, excuse me.

5 Q. The phrase "synthetic organic liquid compound"
6 comes from where?

7 A. Soilworks literature.

8 Q. The meaning behind severely treated alkaloid
9 ring compound comes from Soilworks, to your knowledge?

10 A. The meaning?

11 Q. Right. What is meant by that?

12 A. I don't know.

13 No one's defined that for me, and I haven't
14 asked.

15 Q. So you've been supplied that phrase from
16 Soilworks with respect to its Durasoil product, but
17 you've never had a discussion with anyone there as to
18 what it means, correct?

19 A. Correct.

20 Q. With respect to the phrasing "synthetic organic
21 liquid compound," that phrase, again, comes from
22 Soilworks, correct?

23 A. Correct.

24 Q. Have you ever had a discussion or asked them
25 what it means there at Soilworks?

1 A. But that's not really part of my sales pitch.

2 Q. But you have said that to customers and you got
3 that information from Soilworks --

4 A. If they ask, yes.

5 Q. -- and passed it on to the customer without
6 changing it?

7 A. Yes.

8 Q. When it comes to that type of product
9 information, technical information as it relates to
10 Durasoil, its composition or background, the information
11 that you provide the customer is from Soilworks without
12 embellishment or change from you, correct?

13 A. Technical information that's provided from
14 Soilworks?

15 Q. That's provided to the customer of Polar Supply
16 by you, is that from Soilworks or is it from Soilworks to
17 you with some embellishment or change or alteration?

18 MR. WATTS: Counselor, just for clarification on
19 the record, are you talking about verbal information
20 or written information? Perhaps that would help him
21 formulate his response.

22 MR. MARVINNEY: First off, I appreciate that
23 difference.

24 BY MR. MARVINNEY:

25 Q. With respect to technical product background and

1 information, as it relates to Durasoil, do you provide
2 written materials to customers and prospective customers?

3 A. Yes.

4 Q. Does that written material come from Soilworks
5 and you pass it on to the customer, or does it come from
6 Polar Supply, which is adapted from Soilworks literature?

7 A. It comes directly from Soilworks.

8 Q. And you pass it on unchanged to the customer,
9 correct?

10 A. Yes.

11 Q. That's in writing with respect to Durasoil. Is
12 that also true in writing with respect to Soiltac?

13 A. Yes.

14 Q. Now, let's talk about oral representations as to
15 the technical background of the product. Technical
16 information regarding Durasoil, its characteristics, its
17 performance data and its technical description, do you
18 take that information from Soilworks and pass it on
19 without substantial alteration to the customer, or do you
20 take information of your own and embellish and pick and
21 choose from Soilworks as to what you tell the customer
22 orally with respect to Durasoil?

23 A. I -- I think that -- any information that I get
24 from Soilworks off -- comes from their website. And I
25 use their material. Do I give every single page of

1 everything, you know, I don't -- you know --

2 Q. But orally --

3 A. I don't really know what you're getting at.

4 Q. In an oral discussion with a client.

5 A. In an oral discussion?

6 Q. Right. That's what I'm talking about, is the
7 oral representations that you make in your -- in your
8 meetings with prospective customers or customers.

9 Do you, as relates to the technical information
10 available from Soilworks, do you relate that information
11 as close to verbatim as you can get it?

12 A. As close to verbatim as I can get it, yes.

13 Q. Or do you change it substantially and alter it
14 in any way?

15 A. No, I'm not making stuff up here.

16 Q. So it comes -- in other words, when you tell a
17 customer --

18 A. The information I say comes from Soilworks.

19 Q. That's my question.

20 As it relates to Durasoil, correct?

21 A. Yes.

22 Q. And as it relates to Soiltac, correct?

23 A. Yes.

24 Q. Can you think of any instances where you haven't
25 directly related information from Soilworks, but have

1 instead substantially changed the information before you
2 told it to a customer?

3 A. No.

4 Q. As it relates to Soilworks?

5 A. No.

6 Q. As it relates to, specifically, their product
7 Durasoil?

8 A. No.

9 Q. As it relates specifically to their product,
10 Soiltac?

11 A. No.

12 Q. Are you familiar with the phrase --

13 THE WITNESS: Are you okay there?

14 BY MR. MARVINNEY:

15 Q. Are you familiar with the phrase, as it relates
16 to the application of Durasoil or Soiltac, meaning,
17 quote, applied neat, close quote? Have you ever heard
18 that?

19 A. Yes.

20 Q. What does that mean to you?

21 A. It's not mixed with water.

22 Q. Is there any other meaning to it?

23 A. As far as I know, no.

24 Q. So it's applied --

25 A. For the use of these products.

1 Q. Do you understand what the phrase oil sheen-free
2 means?

3 A. Yes.

4 Q. What does it mean to you?

5 A. Oil sheen-free, I would think that it means that
6 if a product, oil, for instance, were on water, there
7 would be a sheen. So oil free-sheen would be the lack of
8 a sheen if it was on water, in water.

9 Q. So an oil sheen, would be that rainbow-like
10 look --

11 A. Rainbow.

12 Q. -- that we see on puddles or things in parking
13 lots, for example?

14 A. Prince William Sound, for instance.

15 Q. From the Exxon Valdez?

16 A. Yeah.

17 Q. And for those from outside the area, that would
18 mean the 11 million gallon crude oil spill from the Exxon
19 Valdez back in the 1980s?

20 A. Correct.

21 Q. And the rainbow-like sheen that's left when oil
22 drops into the water, correct?

23 A. Yes.

24 Q. And so oil sheen-free would be something which
25 doesn't leave that rainbow-like effect in water, correct?

1 A. Yes.

2 Q. On the surface?

3 A. Yes.

4 Q. Are you aware of the phrase oil sheen-free as
5 applies to dust control chemicals or compounds, soil
6 stabilization chemicals or compounds?

7 A. I believe, yes. Soilworks claims that.

8 Q. And you just mentioned Soilworks claims that.
9 Does it claim it with respect to Durasoil?

10 A. Durasoil.

11 Q. Does it claim it with respect to Soiltac?

12 A. I don't know.

13 Q. Do you pass that information from Soilworks,
14 that Durasoil is oil sheen-free, on to customers and
15 prospective customers?

16 A. Yes.

17 Q. Do you understand why customers would put an oil
18 sheen-free requirement in its specification?

19 A. No.

20 Q. Have you, to your knowledge, as you sit here
21 today, can you recall any project where you've responded
22 to a customer bid or a prospective customer involving an
23 oil sheen-free requirement in its specifications?

24 A. I can't remember.

25 Q. Do you know what a branched alkane is?

1 prospective customer of yours or your company's, as
2 relates to Durasoil that it is petroleum resin-free?

3 A. No.

4 Q. Or that it is, in Soiltac's context, petroleum
5 rosin free?

6 A. No.

7 Q. At some point this morning we talked a little
8 bit about uses of Durasoil and uses of Soiltac. As you
9 sit here today, can you recall any projects where you've
10 sold Durasoil as the primary dust control chemical or
11 compound that was applied?

12 A. Yes.

13 Q. Can you relate to us any of those projects?

14 A. Runways and roads.

15 Q. Can you relate to them -- to us any specifics,
16 any specific runway or road that you can recall where
17 Durasoil was the primary purchased and used dust control
18 chemical or compound --

19 A. Yes.

20 Q. -- on a project where you've sold?

21 A. Yes.

22 Q. Such as what?

23 A. Tanana city streets.

24 Q. Any others?

25 A. Kokhanok Airport.

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1 Q. Okay. Any others?

2 A. Togiak -- Togiak, Port Heiden.

3 Q. Togiak Airport or road?

4 A. They're all airports, the ones that I'm naming
5 now.

6 Q. Okay.

7 A. Which ones do you have?

8 Q. I've got Kokhanok --

9 A. Say the last couple.
10 Port Heiden.

11 Q. Port Heiden, Togiak?

12 A. Okay. Port Heiden, Togiak, Emmonak, Stebbins
13 Village, Savoonga, Ambler. That's all I can remember.

14 Q. Okhanok (sic) Airport is west of here --

15 A. Kokhanok?

16 Q. Kokhanok. Thank you for pronounce -- the
17 pronunciation on that.

18 Kokhanok is out in the southwestern portion of
19 the Alaska mainland, isn't it?

20 A. Yes.

21 Q. With respect to Kokhanok, that was used, to your
22 knowledge, and sold for the purpose of application to the
23 runway of that airstrip?

24 A. Yes.

25 Q. Same question as to Togiak?

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1 A. Yes.

2 Q. Togiak is where?

3 A. Western Alaska.

4 Q. Port Heiden is where?

5 A. They're all Western Alaska, from there down.

6 Q. How far up, how far north is Togiak, further
7 north than Nome?

8 A. You know, I'm not sure, to be honest with you.

9 Q. Have you been to these places?

10 A. No.

11 Q. You do these -- are -- are these bid responses?

12 A. Yes.

13 Q. So you're bidding to someone's specification?

14 A. Yes.

15 Q. Is the specification provided by the Alaska
16 Department of Transportation in these instances?

17 A. Yes.

18 Q. Are there other entities that provide
19 specifications relative to any of these projects that
20 you've just listed?

21 A. No.

22 Q. So these are all ADOT, Alaska Department of
23 Transportation, bids?

24 A. Yes.

25 Q. Port Heiden is in Western Alaska, you mentioned.

1 And the Durasoil was used on the tarmac on the airstrip?

2 A. From Kokhanok down hasn't been used yet. It's
3 en route.

4 Q. Has it been used at Kokhanok?

5 A. Yes.

6 Q. But at Togiak, Port Heiden, Stevens Village,
7 Savoonga, Amber (sic) -- Ambler and Emmonak?

8 A. Emmonak.

9 Q. Emmonak, it's en route, but it hasn't been used
10 yet?

11 A. Correct.

12 Q. In other words, it's been sold for the current
13 season treatment after the breakup?

14 A. Yes.

15 Q. And up in Alaska we'd know the breakup would
16 mean the breakup of ice that occurs in early April,
17 generally?

18 A. In Anchorage.

19 Q. Fair comment.

20 Have you been aware of any ecosystem testing of
21 Durasoil?

22 A. Eco -- no.

23 Q. Are you aware of any ecosystem testing of
24 Soiltac?

25 A. No.

1 got it from Soilworks, correct?

2 A. Correct.

3 Q. And you passed it on from Soilworks then, on to
4 your customers, or prospective customers?

5 A. Yes.

6 Q. Are you aware of the phrase synthetic organic
7 dust control?

8 A. Yes.

9 Q. Have you used that phrase, synthetic organic
10 dust control, in the context of sales of Durasoil?

11 A. Yes.

12 Q. Of syn -- of Soiltac?

13 A. No, I don't think so.

14 Q. What does synthetic organic dust control mean to
15 you?

16 A. Not much.

17 Q. Do you understand what it means?

18 A. No.

19 Q. Where did you get the phrase synthetic organic
20 dust control for use in sales presentations as relates to
21 Durasoil?

22 A. From Soilworks literature.

23 Q. You didn't come up with that on your own, did
24 you?

25 A. Huh-uh.

1 Q. Is that a no?

2 A. Yes, that's a no.

3 Q. And you got that from Soilworks?

4 A. Yes.

5 Q. Did you ever have any discussions with either
6 the Falkenbergs or anyone else at Soilworks about the
7 meaning of synthetic organic dust control?

8 A. No.

9 Q. Do you know where they got the phrase synthetic
10 organic dust control?

11 A. No.

12 Q. Are you aware of synthetic organic dust control
13 being a trademarked phrase?

14 A. No.

15 Q. Are you aware of the phrase or the word cohesion
16 in the context of Durasoil in sales techniques or sales
17 presentations regarding Durasoil?

18 A. No.

19 Q. Are you aware of the phrase adhesion as it
20 relates to Durasoil?

21 A. No.

22 Q. Have you ever heard of a foreign object damage
23 measurement, or FOD, as relates to airfields and
24 performance of dust control inhibitors?

25 A. Yes.

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1 owner rejects it because of a spec issue, then I
2 don't object. But if you're just making it a
3 broad-brush answer, then I'd object to the form.

4 BY MR. MARVINNEY:

5 Q. Let me see if I can clarify that a little bit
6 further with you.

7 If you, on behalf of Polar Supply, are putting
8 together a bid response, and your bid proposal doesn't
9 meet the bid requirement specifications, can that be one
10 of the reasons, obviously, why that bid is rejected by
11 ADOT or the other organization asking for the bid?

12 A. Yes.

13 Q. Has that happened to you in one of your bids or
14 any of your bids, to your knowledge?

15 A. Have we had any bids rejected?

16 Q. For that reason.

17 A. And the reason, again?

18 Q. That the bid proposal did not meet the bid
19 specifications.

20 A. Yes. Sure.

21 Q. Can you think of any examples as you sit here
22 today?

23 A. No. There's -- no.

24 Q. Can you think of any examples as it relates to
25 erosion or dust control chemicals or compounds?

1 A. Yeah. Yeah, we were rejected somewhere where
2 EK35 was specified. And we bid on it and we weren't EK35
3 so we were rejected.

4 Q. Who was it that held the position as the bidding
5 entity that rejected the bid?

6 A. Alaska DOT.

7 Q. Do you remember the project; was it an airport
8 or a road?

9 A. I'm not sure, it was an airport, but I'm not
10 sure which one. It was last year.

11 Q. Chevak, C-H-E-V-A-K?

12 A. That's -- I don't know. I -- I don't know.

13 Q. You don't know or you don't recall?

14 A. I don't recall if it was Chevak or not. I'd
15 been at Polar Supply for about a month at that point.
16 And I wasn't involved in a lot of things right then.

17 Q. Were you involved in that particular bid, to
18 your knowledge?

19 A. To Chevak?

20 Q. Yeah.

21 A. No.

22 Q. With respect to selecting a product for dust
23 control in responding to a bid, do you make it a point to
24 review the specifications of the bid requirements before,
25 or in the process of selecting the responsive product in

1 A. Okay.

2 Q. And that Exhibit 30 is the first page of the
3 ADOT spec, which is the document which you're providing
4 as part of the Kokhanok job -- you're referencing this
5 particular spec from ADOT shown in Exhibit 30 on the
6 Kokhanok Airport job, correct?

7 A. Okay.

8 Q. Now, who prepared, within Polar Supply, the bid
9 response by Polar Supply on the Kokhanok Airport job?
10 Who put the bid together?

11 MR. WATTS: I'm just going to object to the
12 form. There's no testimony that they bid it.

13 MR. ALLSWORTH: Join.

14 THE WITNESS: I believe it was Steve Gordner.

15 BY MR. MARVINNEY:

16 Q. Because, indeed, Polar Supply did respond to the
17 bid request, correct?

18 A. Yes.

19 Q. All right.

20 And if you look at the last page of Exhibit 31
21 marked SBS 000776, that page is a July 18th, 2006 letter
22 from Steve Gordner, Polar Supply, to Jerry Fletcher at
23 Tamsher Construction, correct?

24 MR. WATTS: I'm just going to enter an objection
25 in that I believe it mischaracterizes. I think

1 handwritten drawings in case 1 and case 2 for the airport
2 job, correct?

3 A. Yes.

4 Q. And the last page of this document, which is the
5 next page, is the letter from Steve Gordner to Jerry
6 Fletcher at Tamsher Construction that we just identified,
7 correct?

8 A. Yes.

9 Q. Tamsher Construction, to your knowledge, was
10 actually preparing the bid response to the Alaskan
11 Department of Transportation bid request for the Kokhanok
12 Airport job, correct?

13 MR. WATTS: Object to the form.

14 BY MR. MARVINNEY:

15 Q. If you know.

16 A. Tamsher bid on the Kokhanok job.

17 Q. And it was Polar Supply that was working with
18 Tamsher to provide Tamsher's aspect of the dust
19 palliative aspect of the bid response, correct?

20 MR. WATTS: Again object to form.

21 BY MR. MARVINNEY:

22 Q. For Kokhanok?

23 MR. WATTS: Object to the form.

24 Did you understand his question?

25 THE WITNESS: Just say it one more time. Try it

1 again. Sorry.

2 BY MR. MARVINNEY:

3 Q. It was Polar Supply that was putting together
4 the aspect of Tamsher Construction's response to the bid
5 associated with the dust palliative conditions, correct,
6 the product involved?

7 A. Yes.

8 Q. And that product was Durasoil?

9 A. Yes.

10 Q. Now, did you have any input to Steve Gordner's
11 letter which is seen at the last page of this Exhibit
12 31 --

13 MR. WATTS: What page are you referring to,
14 Counsel? Is that the -- 76?

15 THE WITNESS: 000776.

16 MR. MARVINNEY: Yes, sir.

17 BY MR. MARVINNEY:

18 Q. Did you have any input to that letter?

19 A. I don't remember.

20 Q. Whose handwriting on that letter is it, is it
21 yours?

22 A. That's mine, yeah.

23 Q. What was the purpose of this fax to Chad
24 Falkenberg dated November 14, 2006?

25 A. To give him the surface treatment requirement

1 for Kokhanok.

2 Q. Was that to determine whether or not Polar
3 Supply could supply Durasoil from Soilworks in response
4 to the spec?

5 A. Say that again?

6 Q. Was that to determine whether or not Polar
7 Supply could provide Durasoil from Soilworks in response
8 to the spec?

9 A. Yes.

10 Q. Did you get a response from Mr. Falkenberg to
11 your inquiry?

12 A. I'm sure we did.

13 Q. And what was your response?

14 A. I don't remember.

15 Q. Did Tamsher Construction get the Kokhanok
16 Airport job?

17 A. Yes.

18 Q. Was Durasoil the dust palliative that was used
19 on the Kokhanok Airport job by Tamsher Construction as
20 part of its bid award?

21 A. Yes.

22 Q. Did Polar Supply provide that Durasoil on that
23 job?

24 A. Yes.

25 Q. And it was Polar Supply that provided the

1 Durasoil as part of this bid response, then executed upon
2 by doing the job at the airport, correct?

3 A. Yes.

4 Q. When you faxed Chad Falkenberg at Soilworks on
5 November 14, 2006, did you know whether or not Durasoil
6 fit the spec or not, or were you making inquiry to
7 Chad at -- Chad Falkenberg at Soilworks in order to
8 determine whether or not the Soilworks Durasoil would
9 meet that spec?

10 A. I'm not sure. I don't remember.

11 Q. I'm going to hand you a document that's been --

12 MR. MARVINNEY: I'm going to ask you mark this
13 Exhibit 58.

14 (Exhibit 58 was marked.)

15 MR. WATTS: Why don't you go ahead and read
16 through it.

17 (Reading.)

18 MR. WATTS: Let me take a look at that when
19 you're done.

20 THE WITNESS: Sure.

21 MR. MARVINNEY: Why don't you take a look at
22 this, that's an extra copy for him.

23 MR. WATTS: Thank you.

24 BY MR. MARVINNEY:

25 Q. The cover sheet on this is May 4, 2006, fax from

1 A. I have no idea.

2 Q. Have you ever made inquiry to anyone at ADOT as
3 to why they have certain specifications for dust control
4 chemicals, compounds or products as opposed to others on
5 these airport jobs?

6 A. Yes.

7 Q. And what -- what responses do you get?

8 A. Because we've used it before and it works.

9 Q. Anything else?

10 A. Pretty much it.

11 Q. Who was that at ADOT who made that -- made that
12 response to you?

13 A. Clark Milne.

14 Q. What job was it?

15 A. Oh, I can't remember specific job.

16 Q. All right. Clark Milne?

17 A. Milne.

18 Q. M-E-L-N?

19 A. M-I-L-N-E.

20 Q. And how do you know Mr. Milne?

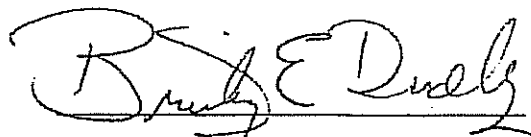
21 A. He's a construction manager for northern
22 regions, Alaska DOT.

23 Q. And forgive my ignorance here, but does the ADOT
24 have various regions? You mention there is another
25 northern region?

1
2 REPORTER'S CERTIFICATE
3

4 I, Britney E. Dudley, Notary Public for the State
5 of Alaska, and Shorthand Reporter, do hereby certify that
6 the forgoing proceedings were taken before me at the time
7 and place herein set forth; that the witness was sworn to
8 tell the truth; that the proceedings were reported
9 stenographically by me and later transcribed by computer
10 transcription; taht the waived signature; that the
11 foregoing is a true record of the proceedings taken at
12 that time; and that I am not a party to, nor do I have
13 any interest in the outcome of the action herein
14 contained.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 and affixed my official seal this 2nd day of May, 2008.
17
18

19 
20
21 BRITNEY E. DUDLEY, REPORTER

22 Notary Public - State of Alaska

