

COPY

TRANSCRIPT OF  
DAVID L. CONGOS

DATE: DECEMBER 11, 2007

CASE NAME:  
U.S.A.  
V.  
MENOMINEE TRIBAL ENTERPRISES, INC.

CASE NO. 07-C-316

BAY REPORTING SERVICE, INC  
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**DAVID CONGOS**

11:51:22 1 **the work was not adequate?**  
 11:51:24 2 A I went out on the site and I looked at the work  
 11:51:34 3 that was done, and I'm trying to recall, and  
 11:51:44 4 I -- I can't say with certainty if I looked at  
 11:51:46 5 the project proposal at that point and read it  
 11:51:49 6 prior to going out there or not, but in any  
 11:51:53 7 event, the work that I observed did not appear  
 11:51:56 8 to provide any fire protection benefits to the  
 11:52:00 9 federal government or the reservation.  
 11:52:01 10 **Q What was the standard that you used to make that**  
 11:52:04 11 **determination?**  
 11:52:05 12 A The standard was the amount of slash that was  
 11:52:14 13 laying on the road side that resulted from some  
 11:52:18 14 type of cutting practice, and that the slash  
 11:52:23 15 that had been created by the cutting had  
 11:52:26 16 actually increased the risk of fire and MTE's  
 11:52:32 17 fire suppression staff's ability to control a  
 11:52:35 18 fire if it actually had burned into all of that  
 11:52:37 19 accumulated slash. And by its very nature, it  
 11:52:43 20 increased the fire risk and didn't decrease it.  
 11:52:46 21 **Q If I understand your testimony so far on this**  
 11:52:49 22 **issue, no invoice had been submitted, correct?**  
 11:52:54 23 A No, an invoice had been prepared for that area  
 11:52:58 24 and was sent to the regional office.  
 11:52:59 25 **Q So --**

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11:54:43 1 go to the regional office. I don't remember if  
 11:54:46 2 it went up there or if I simply held it and  
 11:54:51 3 looked at it before it went up to the regional  
 11:54:53 4 office.  
 11:54:56 5 MR. KANASSATEGA: Let's pull out Red  
 11:54:58 6 Rope 212, please.  
 11:55:15 7 **Q Let the record reflect I'm showing the deponent**  
 11:55:19 8 **what's been marked as Defendant's Exhibit**  
 11:55:20 9 **Number 26.**  
 11:55:23 10 A Um-hmm.  
 11:55:24 11 **Q Have you seen that red expandable folder before**  
 11:55:27 12 **today, Mr. Congos?**  
 11:55:30 13 A Yes, sir.  
 11:55:30 14 **Q When did you see that folder? When did you**  
 11:55:33 15 **first see it?**  
 11:55:34 16 A I'm thinking it was maybe two years ago. One or  
 11:55:42 17 two years ago.  
 11:55:43 18 **Q Okay. And what was the context in which you saw**  
 11:55:46 19 **that red expandable folder?**  
 11:55:48 20 A This material was being organized by OIG  
 11:55:57 21 investigators at the U.S. Attorneys Office in  
 11:56:01 22 Milwaukee.  
 11:56:01 23 **Q Identify all persons present during the**  
 11:56:04 24 **organization of the materials.**  
 11:56:06 25 A Joe Schwartz was there, Emma Canada, myself, and

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11:53:03 1 A Or was going to be sent to the regional office,  
 11:53:06 2 let me correct that.  
 11:53:07 3 **Q Do you know what invoice you're talking about,**  
 11:53:16 4 **what's the number on that invoice?**  
 11:53:17 5 A No, sir, I don't recall.  
 11:53:20 6 **Q Let me show you what's been marked as**  
 11:53:23 7 **Defendant's Exhibit 22. Is this the proposal**  
 11:53:25 8 **that you believe you reviewed? Or might not**  
 11:53:33 9 **have reviewed?**  
 11:53:33 10 A I may have but -- I don't recall specifically if  
 11:53:47 11 I looked at that at that time.  
 11:53:49 12 **Q That -- by "that," you mean Exhibit 22?**  
 11:53:52 13 A That's correct.  
 11:53:53 14 **Q Well, let me show you another exhibit. Let the**  
 11:53:56 15 **record reflect I'm showing the deponent**  
 11:53:58 16 **Exhibit 23.**  
 11:54:00 17 A Okay.  
 11:54:09 18 **Q So in June of 2001, you were looking at work**  
 11:54:15 19 **that was done when?**  
 11:54:16 20 A As I recall on the invoice, the work was billed  
 11:54:23 21 for the time period in May 2001.  
 11:54:27 22 **Q Okay. And I'm still clarifying. In your mind,**  
 11:54:32 23 **you have no doubt that the invoice has not been**  
 11:54:35 24 **submitted by MTE, correct?**  
 11:54:37 25 A I know the invoice was prepared and was going to

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11:56:20 1 I don't recall if Mr. Bucci was there or not.  
 11:56:23 2 Mr. Larsen, Chuck Westphal. Chuck Westphal  
 11:56:30 3 works for the U.S. Attorneys Office. I don't  
 11:56:36 4 recall if there was anyone else there.  
 11:56:38 5 **Q Okay. Exhibit 26 contains a number of pieces of**  
 11:56:43 6 **paper, correct?**  
 11:56:43 7 A That is correct.  
 11:56:44 8 **Q How were the documents selected that found their**  
 11:56:48 9 **way into the red expandable folder that's been**  
 11:56:51 10 **marked Exhibit 26? Who selected the paper?**  
 11:56:56 11 A A system was developed between the people  
 11:57:09 12 working there, and I'm thinking primarily Joe  
 11:57:13 13 Schwartz, Emma Canada, and I'm sure with input  
 11:57:20 14 from others, and documents pertaining to this  
 11:57:26 15 invoice were tabbed and put in sequential order,  
 11:57:31 16 and every invoice in which there was a question  
 11:57:33 17 was organized in the same manner.  
 11:57:36 18 **Q Who did all that?**  
 11:57:37 19 A The staff working there.  
 11:57:39 20 **Q And who were those people?**  
 11:57:41 21 A The people that I already identified.  
 11:57:44 22 **Q What was your role in identifying the doc --**  
 11:57:48 23 **Well, first of all, to the best of your**  
 11:57:52 24 **knowledge were the documents related to invoice**  
 11:57:56 25 **212 pulled together before that meeting, or did**

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11:58:01 1 **you have to select those documents from some**  
 11:58:03 2 **other source and pull them together in one red**  
 11:58:08 3 **expandable folder?**  
 11:58:11 4 A My recollection is that the documents were at  
 11:58:15 5 the U.S. Attorneys Office.  
 11:58:16 6 **Q Okay.**  
 11:58:17 7 A And that the people that held the documents were  
 11:58:25 8 extracting them and organizing them by  
 11:58:29 9 individual files.  
 11:58:29 10 **Q Okay. And what was your role in selecting and**  
 11:58:34 11 **organizing the documents?**  
 11:58:35 12 A From time to time they would ask me a question  
 11:58:41 13 regarding a particular document, whatever the  
 11:58:44 14 question might be, and that would -- that would  
 11:58:52 15 have been my involvement.  
 11:58:53 16 **Q Okay. Do you believe you were an active or a**  
 11:58:56 17 **passive participant in the process that was**  
 11:58:59 18 **going on that day?**  
 11:59:00 19 A Sometimes passive, other times active,  
 11:59:11 20 particularly active when a question was asked  
 11:59:14 21 about a particular document.  
 11:59:15 22 **Q Okay. So you weren't -- If I understand your**  
 11:59:18 23 **testimony, correct me if I'm wrong, you weren't**  
 11:59:21 24 **the one that was rummaging through the boxes of**  
 11:59:24 25 **documents, selecting the documents, saying, Ah,**

**DAVID CONGOS**

12:00:34 1 **that were associated with Invoice 212?**  
 12:00:39 2 MR. LARSEN: Objection.  
 12:00:40 3 Mischaracterizes the previous testimony.  
 12:00:43 4 **Q Is that your testimony?**  
 12:00:44 5 MR. LARSEN: Go ahead and answer if  
 12:00:45 6 you can.  
 12:00:46 7 A I was not the person selecting the documents,  
 12:00:50 8 but I could clarify a document if a question was  
 12:00:53 9 asked.  
 12:00:53 10 **Q Okay. Could you take the documents inside of**  
 12:01:02 11 **Exhibit 26 out of the folder and put them in**  
 12:01:05 12 **front of you. Try to keep them in the same**  
 12:01:08 13 **order.**  
 12:01:12 14 MR. LARSEN: Stick them on top of the  
 12:01:14 15 file, keep from mixing there. Yeah, if you  
 12:01:16 16 can -- it's there so you can look at it.  
 12:01:18 17 **Q Do you see an Invoice 212 in Exhibit 26?**  
 12:01:23 18 A Yes, sir, I do.  
 12:01:25 19 **Q And what is the description of the date of the**  
 12:01:30 20 **work identified on Exhibit 34? What is the date**  
 12:01:42 21 **of the work that was done? What is the work**  
 12:01:45 22 **period?**  
 12:01:45 23 A May 2001.  
 12:01:47 24 **Q And do you believe that the inspection that you**  
 12:01:56 25 **performed in early June 2001 related to work**

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11:59:28 1 **this one here goes into Invoice 212. Do I -- Is**  
 11:59:33 2 **that correct or not?**  
 11:59:33 3 A That is -- That's correct.  
 11:59:35 4 **Q Okay. So somebody was bringing you documents**  
 11:59:38 5 **only if they had a question that they had with**  
 11:59:40 6 **respect to the document, correct?**  
 11:59:42 7 A It -- Well, they weren't bringing me documents.  
 11:59:45 8 **Q Okay.**  
 11:59:46 9 A The documents were already there, and they were  
 11:59:49 10 organizing them.  
 11:59:50 11 **Q All right. So you took no part in the**  
 11:59:52 12 **organization of the documents; your role was**  
 11:59:55 13 **simply to answer a question if it was asked?**  
 11:59:57 14 A I was there when the document was compiled,  
 12:00:01 15 so --  
 12:00:02 16 **Q Okay.**  
 12:00:03 17 A But I was not physically the person creating the  
 12:00:06 18 file.  
 12:00:06 19 **Q Okay. Who was the person who physically created**  
 12:00:12 20 **the file?**  
 12:00:12 21 A My recollection, it was Joe Schwartz and Emma  
 12:00:20 22 Canada primarily involved with creating the file  
 12:00:25 23 organization.  
 12:00:26 24 **Q So it would not be correct if someone were to**  
 12:00:29 25 **say that Dave Congos identified the documents**

**DAVID CONGOS**

12:02:02 1 **identified on Invoice 212, or Exhibit 34?**  
 12:02:08 2 A I believe I went out and looked at the area that  
 12:02:13 3 was invoiced for.  
 12:02:16 4 **Q Okay. And so do you believe that Invoice 212 is**  
 12:02:22 5 **the invoice that you're talking about when you**  
 12:02:27 6 **previously testified that MTE had not yet**  
 12:02:33 7 **submitted but was in the process of preparing an**  
 12:02:37 8 **invoice?**  
 12:02:43 9 MR. LARSEN: Objection to the use of  
 12:02:44 10 the word "submitted." I'm -- vague. It's -- on  
 12:02:46 11 vagueness grounds.  
 12:02:47 12 **Q Well, let me rephrase it.**  
 12:02:48 13 A Yeah.  
 12:02:49 14 **Q You testified that you believed MTE was**  
 12:02:55 15 **preparing an invoice for work done in May 2001,**  
 12:02:59 16 **correct?**  
 12:02:59 17 A That's correct, yes, sir.  
 12:03:01 18 **Q Do you believe Invoice 212 is that invoice?**  
 12:03:04 19 A Yes, sir.  
 12:03:06 20 **Q Okay. Would you look at the date of Invoice 212?**  
 12:03:12 21 A It's June 28th, 2001.  
 12:03:18 22 **Q So as of the date of that invoice, you had**  
 12:03:21 23 **already conducted your inspection, correct?**  
 12:03:24 24 A I documented the date of my inspection in an  
 12:03:32 25 e-mail, whenever -- whenever that was. I don't

**DAVID CONGOS**

1 STATE OF WISCONSIN )  
2 COUNTY OF BROWN )  
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I, CARRIE S. BOHRER, a Notary Public and  
5 Registered Professional Reporter in and for the State  
6 of Wisconsin, do hereby certify that the foregoing  
7 proceedings were taken at said time and place and is  
8 a true and accurate transcript of my original machine  
9 shorthand notes.

10 That the appearances were as noted  
11 initially.

12 That said witness was first duly sworn to  
13 testify the truth, the whole truth and nothing but  
14 the truth relative to said cause.

15  
16 Dated at Green Bay, Wisconsin  
17 This 1st day of January, 2008.

18  
19

20 CARRIE S. BOHRER, RPR  
21 Notary Public, State of Wisconsin  
22 My commission expires 11/09/08  
23 (fc)  
24  
25

**DAVID CONGOS**

1 STATE OF WISCONSIN )  
 )  
2 COUNTY OF BROWN )  
3

4 I, DAVID L. CONGOS, do hereby certify  
5 that the foregoing transcript was taken of me on  
6 December 11, 2007; that I have read the foregoing  
7 transcript, that corrections, if any, are itemized on  
8 a separate page attached hereto; that said transcript  
9 is now a true and correct transcript of my testimony.

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Deponent