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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

VIRGINIA:

IN THE SUPREME COURT

M.W. WORLEY CONSTRUCTION COMPANY, INC.,
Appellant

APPENDIX

v.

RECORD NUMBER 740057

HUNGERFORD, INCORPORATED,
Appellee

Robert P. Boyle &
Fred G. Wood, Jr.
BOYLE AND WOOD
420 Park Street
Charlottesville, Virginia,
Counsel for Appellant

William M. Sokol, ~~Jr.~~
WHITTICAR, WHITTICAR & SOKOL
918 Princess Anne Street
Fredericksburg, Virginia,
Counsel for Appellee

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Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF CULPEPER COUNTY:

M. W. WORLEY CONSTRUCTION COMPANY, INC.,
Plaintiff

v.

MOTION FOR JUDGMENT

HUNGERFORD, INCORPORATED,
Serve process on: Arthur H. Hungerford, Jr.
Registered Agent
3800 Deepwater Terminal Road
Richmond, Virginia 23234,
Defendant

TO THE HONORABLE HAROLD H. PURCELL, JUDGE OF SAID COURT:

Now comes your Plaintiff herein, M. W. Worley Construction Company, Inc., and files this, its Motion for Judgment, saying as follows:

(1) That your Plaintiff agreed to perform construction work for the Defendant in accordance with certain contractual arrangements entered into between the parties in October 1971;

(2) That said construction work was to be performed by the Plaintiff at the construction site of Westinghouse Electric Company, Infilco Division, Culpeper, Virginia;

(3) That your Plaintiff completed his work on said site in accordance with all contractual requirements and agreements between the parties;

(4) That the Defendant is now and has been indebted to your Plaintiff in the amount of $19,687.30 for construction work completed on said job in Culpeper, Virginia, and wrongfully refuses to pay your Plaintiff said amount.

WHEREFORE, your Plaintiff, M. W. Worley Construction Company, Inc., respectfully asks for judgment against the Defendant herein in the amount of $19,687.30 with interest thereon as follows:

BOYLE AND WOOD
ATTORNEYS AT LAW
CHARLOTTESVILLE, VA.

(a) Interest on $17,668.83 from 25 February 1972.

(b) Interest on $ 1,295.47 from 14 March 1972.

(c) Interest on $ 453.00 from 16 March 1972.

(d) Interest on $270.00 from 10 April 1972.

and its costs in its behalf expended.

Respectfully submitted,

M. W. WORLEY CONSTRUCTION COMPANY, INC.

M. W. Worley, President
By, Counsel

BOYLE & WOOD

BY: _____
420 Park Street
Charlottesville, Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER

M. W. WORLEY CONSTRUCTION COMPANY, INC.,	)
Plaintiff,	)
v.	)
HUNGERFORD, INCORPORATED,	)
Defendant.	)

GROUNDS OF DEFENSE AND COUNTERCLAIMS OF HUNGERFORD, INCORPORATED

Defendant, Hungerford, Incorporated (Hungerford), by counsel, in answer to plaintiff's Motion for Judgment, assigns the following grounds of defense.

(1) Hungerford admits the truth of the allegations contained in paragraphs 1 and 2 of the Motion for Judgment.

(2) Hungerford denies the truth of the allegations contained in paragraphs 3 and 4 of the Motion for Judgment.

(3) Hungerford reserves the right to amend its Grounds of Defense at any time if and as it may be so advised.

AFFIRMATIVE DEFENSE

Hungerford, by counsel, asserts the following as an affirmative defense, to which a reply is expressly requested:

(1) By Purchase Order dated October 22, 1971 and the plaintiff's acceptance of it, (the Sub-subcontract) the parties agreed that plaintiff as a sub-subcontractor, would furnish certain materials and perform certain work therein described at the Westinghouse Electric Company, Infilco Division, in Culpeper, Virginia.

(2) Performance of the Sub-subcontract required certain blasting operations which the plaintiff was obligated

and bound to conduct in a workmanlike and reasonably safe and proper manner.

(3) Notwithstanding its obligation and duty to perform its blasting operations in a workmanlike and reasonably safe and proper manner, plaintiff failed to do so but rather, conducted blasting in an unreasonable, negligent, unworkmanlike and reckless manner so as to cause substantial damages to the property under constructions at Westinghouse Electric, Infilco Division, in Culpeper.

(4) The damages caused by plaintiff's unreasonable, negligent, unworkmanlike and reckless conduct damaged Hungerford in the amount of $30,355.00 in that Hungerford, a subcontractor on the job in question, has had that sum withheld from it by W. H. Weaver Construction Company, the general contractor, as the cost of restoring the property.

(5) Despite demand, Hungerford has not been compensated by plaintiff for the money withheld from Hungerford by W. H. Weaver Construction Company.

(6) As a direct result of such unreasonable, negligent, unworkmanlike and reckless action on the part of plaintiff, Hungerford says that if any sum is owed to plaintiff, which is expressly denied, Hungerford is entitled to set off more than the sum sued for.

WHEREFORE, Hungerford prays that the Motion for Judgment be dismissed.

COUNTERCLAIMS

Furthermore, Hungerford, by counsel, asserts the following counterclaims against plaintiff:

COUNT ONE

(1) Hungerford repeats and realleges all the allegations set forth in its Affirmative Defense with the same force

and effect as if realleged in full in this Count One.

(2) On or about September 8, 1971, Hungerford entered into a contract (the Subcontract) with W. H. Weaver Construction Company (Weaver) whereby Hungerford agreed to perform certain work as a subcontractor to Weaver, the general contractor for the construction of a manufacturing plant and office building Culpeper, Virginia for Westinghouse Electric Company, the owner. A copy of that contract is attached hereto as Exhibit A and its terms incorporated herein.

(3) On or about October 22, 1971, plaintiff and Hungerford entered into the Sub-subcontract, a copy of which is attached hereto as Exhibit B and its terms incorporated herein.

(4) Plaintiff failed to comply with the Sub-subcontract in that it did not perform its work in accordance with the specifications incorporated therein requiring all work to be performed in a workmanlike manner.

(5) Plaintiff's failure to perform the Sub-subcontract in a workmanlike manner and in accordance with the specifications incorporated therein constitutes a breach of the Sub-subcontract.

(6) At all times subsequent to the unworkmanlike performance on the part of plaintiff, Weaver has held Hungerford responsible for the damages to the property in question and has withheld payment from Hungerford and otherwise owed to it of the sum of $30,355.00, the cost of restoring the property.

(7) Despite demand therefor, plaintiff has refused, and still refuses, to pay to Hungerford the sum withheld by Weaver as the cost of restoring the property damaged by plaintiff.

WHEREFORE, Hungerford prays judgment against the plain-

tiff in the amount of $30,355.00 together with interest and costs incident to this proceeding.

COUNT TWO

(1) Hungerford repeats and realleges the allegations set forth in its Affirmative Defense and in Count One of its Counterclaims with the same force and effect as if realleged in full in this Count Two.

(2) As a direct and proximate result of the unreasonable, negligent and reckless conduct on the part of plaintiff, Hungerford has sustained damages in the amount of $30,355.00.

WHEREFORE, Hungerford prays judgment against plaintiff in the amount of $30,355.00 together with interest and costs incident to this proceeding.

COUNT THREE

(1) Hungerford repeats and realleges the allegations set forth in its Affirmative Defense and in Counts One and Two of its Counterclaims with the same force and effect as if realleged in full in this Count Three.

(2) Hungerford is entitled to indemnification from the plaintiff for the monies withheld from Hungerford by Weaver.

WHEREFORE, Hungerford prays judgment against plaintiff in the amount of $30,355.00 together with interest and costs incident to this proceeding.

COUNT FOUR

(1) Hungerford repeats and realleges the allegations set forth in its Affirmative Defense and in its Counts One, Two and Three with the same force and effect as if realleged in full in this Count Four.

(2) Plaintiff's failure to perform its work in a work-

manlike manner constitutes a breach of its implied warranty to Hungerford that all work would be so performed.

WHEREFORE, Hungerford prays judgment against plaintiff in the amount of $30,355.00 together with interest and costs incident to this proceeding.

HUNGERFORD, INCORPORATED

By Robert F. Brooks
Of Counsel

B. Warwick Davenport
Robert F. Brooks
Dennis P. Brumberg
Hunton, Williams, Gay & Gibson
P. O. Box 1535
Richmond, Virginia 23212

Counsel

CERTIFICATE OF SERVICE

I certify that on the 31st day of July, 1972, I mailed a copy of the foregoing Grounds of Defense and Counterclaims to Edwin H. Bain, Jr., Esquire, Boyle & Wood, 420 Park Street, Charlottesville, Virginia, counsel of record for plaintiff.

Robert F. Brooks
Robert F. Brooks

VIRGINIA:

IN THE CIRCUIT COURT OF CULPEPER COUNTY:

M. W. WORLEY CONSTRUCTION COMPANY, INC.,
Plaintiff

v.

HUNGERFORD, INCORPORATED,
Defendant

PLAINTIFF'S REPLY TO
AFFIRMATIVE DEFENSE AND
PLAINTIFF'S GROUNDS OF DEFENSE
TO COUNTERCLAIMS OF
HUNGERFORD INCORPORATED

In reply to the Affirmative Defense of Hungerford, Incorporated, M. W. Worley Construction Company, Inc., (Worley), says as follows:

(1) Worley admits the truth of the allegations contained in paragraphs 1 and 2 of the Affirmative Defense.

(2) Worley denies the allegations contained in paragraphs 3 and 6 of the Affirmative Defense.

(3) Worley does not know whether the allegations contained in paragraph 4 of said Affirmative Defense are true or factual and calls for strict proof thereof with the exception of the allegations that Worley's conduct was negligent, unworkmanlike and reckless and that Worley caused damages, which allegations are expressly denied.

(4) Worley admits the allegations contained in paragraph 5 of the Affirmative Defense that it has not compensated the defendant, asserts that it is not bound to compensate the defendant and says it does not know whether the allegation that W. H. Weaver Construction Company has withheld money from the defendant is true or factual and calls for strict proof thereof.

BOYLE AND WOOD
ATTORNEYS AT LAW
CHARLOTTESVILLE, VA.

In answer to the Counterclaims of Hungerford, Incorporated, Worley says as follows:

COUNT ONE

(1) Worley repeats its answers made in its Reply to the allegations contained in the Affirmative Defense of the defendant as if restated in full in this Count One.

(2) Worley admits the allegations contained in paragraphs 2 and 3 of Count One.

(3) Worley denies the allegations contained in paragraphs 4 and 5 of Count One.

(4) Worley denies the allegation contained in paragraph 6 of Count One that its performance was unworkmanlike but Worley does not know whether the remaining allegations in paragraph 6 of Count One are true or factual and calls for strict proof thereof.

(5) Worley admits the allegations contained in paragraph 7 of Count One that it has not paid anything to defendant but asserts that it is not bound to compensate the defendant and Worley does not know whether the allegation concerning Weaver is true or factual and calls for strict proof thereof.

COUNT TWO

(1) Worley repeats its answers made in its Reply to the allegations contained in the Affirmative Defense and in its answers to the allegations contained in Count One of the Counterclaims as if restated in full in this Count Two.

(2) Worley denies the allegations contained in paragraph 2 of Count Two.

COUNT THREE

(1) Worley repeats its answers made in its Reply to the allegations contained in the Affirmative Defense and in its answers to the allegations contained in Counts One and Two of the Counterclaims as if restated in full in this Count Three.

(2) Worley denies the allegations contained in paragraph 2 of Count Three.

BOYLE AND WOOD
ATTORNEYS AT LAW
CHARLOTTESVILLE, VA.

COUNT FOUR

(1) Worley repeats its answers made in its Reply to the allegations contained in the Affirmative Defense and in its answers to the allegations contained in Counts One, Two and Three of the Counterclaims as if restated in full in this Court Four.

(2) Worley denies the allegation contained in paragraph 2 of Count Four.

WHEREFORE, Worley prays that Counts One, Two Three and Four of the Counterclaims of Hungerford, Incorporated be dismissed.

M. W. Worley Construction Company, Inc.

BY: M. W. Worley, Pres
Counsel

BOYLE & WOOD

BY: Robert P. Boyle
420 Park Street
Charlottesville, Virginia 22901
Counsel for M. W. Worley
Construction Company, Inc.

CERTIFICATE

I certify that a copy of the foregoing Reply to Affirmative Defense and Grounds of Defense to Counterclaims was mailed to Robert F. Brooks, Esquire, Hunton, Williams, Gay and Gibson, P. O. Box 1535, Richmond, Virginia, 23212, counsel of record for defendant on 16 August 1972.

Robert P. Boyle

VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY

WORLEY CONSTRUCTION COMPANY,
Plaintiff

v.

HUNGERFORD, INC.,
Defendant

The proceedings of trial held in the above captioned matter on June 22, 1973, commencing at approximately 12:45 P.M. in the courtroom of the Circuit Court of Culpeper County, such proceedings being duly taken down by me, Russell P. Crannis, Notary Public for the State of Virginia at Large, the Honorable Harold H. Purcell, Judge, presiding.

APPEARANCES

Robert P. Boyle, Esquire
Fred G. Wood, Jr., Esquire
Boyle & Wood
420 Park Street
Charlottesville, Virginia
Counsel for Worley Construction Co.

W. M. Sokol, Esquire
Attorney at Law
918 Princess Anne Street
P. O. Box 593
Fredericksburg, Virginia
Counsel for Hungerford, Inc.

I N D E X

WITNESSES:	Direct	Cross	Redirect	Recross
Defendant Hungerford, Inc.				
John Taggart	1	17	39,49	46
Roy Manus	50	55	--	--
Phil Burks, Jr.	65	70	--	--
Bill Bryson	82	--	--	--
Phil Burks, Jr. (Recalled)	87	92	--	--
Ralph Barnett	94	102	--	--
Murray Cooper	107	116	130	--
J. C. Nuckols	131	135	--	--
Murray Cooper (Rebuttal)	193	194	--	--
Plaintiff Worley Constr. Co.				
John Taggart	145	148	--	--
Perry Evans	150,155	153,160	168	169
Michael W. Worley	170	181	--	--

E X H I B I T S

DEFENDANT:

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Contract between Hungerford, Inc. and W. H. Weaver Construction Co., dated 8 September 1971	1	52
Photograph showing damage to upper roof, with man in photo with leg through roof	2	90
Photograph showing several large rocks on lower roof	3	90
Photograph showing rocks and damage to upper roof	4	90
Photograph showing lower roof with large indentation, gravel and pitch	5	91
Photograph of person with ruler showing size of rock on roof	6	91
Photograph of upper roof with rock imbedded.	7	91
Photograph of lower roof	8	91
Photograph of edge of upper and lower roof	9	91
Photograph of lower roof	10	91
Photograph of upper roof showing rocks stuck in roof	11	91
Photograph showing damage to roof	12	92
Photograph showing lower roof, rocks	13	92
Estimate of cost of repair of roof prepared by Mr. Barnett for Valley Roofing Co.	14	101
Photocopy of purchase contract signed by Mr. Nuckols	15	109
Utility Plat Plan of building	16	112

June 22, 1973
12:45 P.M.

JOHN TAGGART, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sokol:

Q Would you state your name for the Court, please?

A John Taggart.

Q Where do you live, Mr. Taggart?

A Charlottesville.

Q By whom are you employed?

A M. W. Worley Construction.

Q Where does M. W. Worley Construction do business?

A Charlottesville.

Q Are you presently employed by M. W. Worley Construction?

A Yes.

Q What is the nature of the business of M. W. Worley Construction Company?

A Underground utilities.

THE COURT: I didn't hear you, sir.

A Underground utilities.

Q In the course of accomplishing the work of underground utilities, does M. W. Worley Construction Company employ the use of

1 dynamite or explosives?

2 A Yes.

3 Q Does that company employ the use of dynamite and ex-

4 plosives on a regular basis?

5 A Yes.

6 Q How long have you been employed by that company?

7 A About three and a half years.

8 Q All right, and in what capacity are you employed?

9 A Superintendent.

10 Q Are you then directly subordinate to Mr. Worley?

11 A Yes.

12 Q Is there any other employee on a level between you

13 and Mr. Worley?

14 A No.

15 Q What did you do immediately preceding your employ-

16 ment of Mr. Worley?

17 A I was employed at Piedmont Tractor Company in Char-

18 lottesville.

19 Q All right. Did that involve the use of dynamite or

20 other explosives?

21 A No, sir.

22 Q Had you ever worked in the area of dynamite or explo-

23 sives prior to your employment with Mr. Worley?

24 A Yes.

25 Q Where was that?

A It was throughout the west, in Colorado, Arizona, New Mexico, Utah, on pipeline constructions.

Q All right. Now, were you employed by M. W. Worley Construction Company on or about January 27, 1972?

A Yes.

Q Were you employed with respect to a project at the site sometimes known as the Westinghouse Job Site here in Culpeper County?

A Yes.

Q For how long had you been working on that site prior to January 27, 1972?

A I really don't recall exactly when we started the project, sir.

Q Would it have been some months prior to January?

A Yes, I believe it would have been probably October or November, I believe.

Q All right, of 1971?

A Yes.

Q Did Mr. Worley direct you to that job site?

A Yes.

Q Did Mr. Worley himself supervise any of the activities on that job site?

A Inasmuch as coordination, yes, sir.

Q But were you primarily responsible for the physical activities in performing your responsibilities there at that job site?

A Yes.

Q Did you have any men working under you?

A Yes.

Q On that particular job site?

A Yes.

Q How many men would that have been?

A It varied -- probably ten or twelve men.

Q Between ten or twelve at any particular time?

A Yes, they come and went.

Q These would have been men also under Worley's employ?

A Yes.

Q All right. Had you utilized dynamite or explosives on that job site prior to January 27, 1972?

A I believe that January 27th -- the dates are not in my mind.

Q Well, if we make a reference to that date as the date on which certain damages - physical damages - were sustained to the Westinghouse plant -- if we make reference to that date and that event, can you recall doing any blasting prior to that event?

A Yes, we did.

Q On how many occasions would you have conducted blasting operations?

A I would imagine all told it would have probably come to three to four weeks prior to this. We had blasted down at the boxed culvert site, we had blasted on the waterline, then we had

1 blasted about two weeks on this section of storm drain up along
2 beside the northern front of the building.
3 Q All right. Now, during the course of that blasting
4 on the job site, had you encountered any problems prior to January
5 27, 1972?
6 A No.
7 Q You had not?
8 A No. I'm not sure I understand what you mean by prob-
9 lems.
10 Q Anything extraordinary with respect to an unusual con-
11 sequence of a blasting operation.
12 A No.
13 Q All right, had you done, prior to January 27, '72,
14 any blasting within the plant itself?
15 A Yes.
16 Q How many times had you done blasting within the plant?
17 A As well as I can recall, probably on four or five occa-
18 sions.
19 Q This would have been within the interior of the plant?
20 A Yes.
21 Q At the time you did the blasting within the interior
22 of the plant, was the roof in place?
23 A Yes.
24 Q All right, during the course of those blasting opera-
25 tions within the interior of the plant, did you use dynamite?

A Yes.

Q For what purpose did you use dynamite?

A Would you ask that again, please, sir?

Q All right, let me rephrase the question then. Did you conduct blasting operations in order to construct a ditch within the inside of the plant?

A Oh, I see. Yes, part of the time it was to construct a ditch and part of the time it was to blast out for footings.

Q All right, at what depth would you have been blasting within the interior of the plant for the construction of a ditch?

A Well, part of it was -- some of it, as well as I can recall, around twelve to fourteen feet deep and other than that - you know - it come up shallower than this - you know - kind of shallow.

Q But at times it was as deep as twelve or fourteen feet?

A Yes, and possibly deeper than that. As I recall, one ditch inside was somewhere in the area of sixteen feet to the best of my recollection.

Q Okay. How far would this particular ditch have been from the wall that you were proceeding along on January 27, 1972?

A It would have probably been from 75 to 100 feet.

Q Now, during the course of the blasting within the interior of the building, was debris or rock ever hurled to touch the roof of the building?

A To my knowledge, no, sir.

Q It never was?

A No, sir.

Q While you were blasting within the interior of the building, and again with reference to the twelve or fourteen foot ditch, did any of the materials that you were blasting among ever become propelled or projected against any part of the interior of the building?

A No, sir, not to my knowledge, it did not.

Q And this blasting within the interior of the building was under your supervision?

A Yes.

Q All right. Now, with specific regard to January 27 -- again, if we use that reference as the date in which this incident that we're here today occurred, what were you and your men doing on that date?

A We were laying the storm drain alongside the building in the ditch that we are talking about, 22 feet running parallel to the north side of the building, 22 feet away, I believe, and I don't recall the length of the line.

Q But the ditch that you were constructing would have been 22 feet away from the wall of the building?

A Yes.

Q Now, the plant at that time would have had, obviously -- have been constructed to include all four walls and the roof, is

1 that right?

2 A I don't believe all four walls were complete and the

3 roof -- the completion of the roof -- I don't know what state of

4 completion the roof would have been in at this particular time.

5 Q All right, had you been blasting along that course,

6 22 feet away from the building, all day long?

7 A We had been blasting along there for almost two weeks.

8 Q That same course?

9 A Yes.

10 Q Had you encountered any difficulties as you proceeded

11 along that course?

12 A No.

13 Q I mean with respect to controlling the consequences

14 of a blast.

15 A Other than normal difficulties of controlling a blast,

16 no. A blast is always difficult to control, if it can be controlled,

17 I guess, but we hadn't encountered anything abnormal.

18 Q All right, now, let's concentrate on a period one hour

19 before rock and debris were hurled to the roof of the building.

20 Did you encounter any difficulties during that one hour period of

21 time in blasting at that site?

22 A One hour before the blast went off that --

23 Q Caused the damage.

24 A Yes. We didn't blast one hour before it went off.

25 Q Well, how soon before it went off did you blast then?

A As well as I recall, it was in the morning. This blast occurred in the afternoon, sometime in the afternoon, and I don't recall the exact time, but I do know it was in the afternoon, but we had blasted that morning.

Q All right, now, at any time prior to the moment that the blast in question got out of control, did you run into any problems?

A No, I -- again, I don't know what you're considering problems. Now, --

Q I mean a problem with respect to would you be able to control the course of material, rock and debris through the explosives that you were utilizing?

A No.

Q All right, now, tell the Court then if anything unusual in fact happened that afternoon.

A The only thing that I can think of unusual that happened occurred in the morning rather than in the afternoon and it wasn't unusual in that it had happened previously on this same run. We had loaded the holes and originally the holes were -- I can't tell you exactly the depth - it's been a long time ago, but the original holes that were drilled were probably around twelve feet deep. We loaded these holes and put dirt over top of them, then laid a blasting mat on the dirt and then covered the blasting mat with dirt to prevent flyage. When we detonated the shot, after sufficient warning was given to everyone -- when we detonated the

shot, there was no fly. In fact, it didn't even raise the blasting mat. There was nothing. It just shot out a cavern underneath down in the bottom of the holes, which we had experienced before. Therefore, it made it necessary for us to go back in and drill holes to shoot this top layer off. Is that what you were referring to?--something of this nature? This is the only thing I can think of, sir.

THE COURT: So you did that that morning?

A Yes, sir.

THE COURT: All right.

A Well, we had finished drilling the holes sometime in the afternoon and loaded them up, so we would have been drilling from the time the first shot went in the morning and we discovered that it hadn't brought the rock on the surface and we had to go back and drill shallower holes in order to get this rock on the surface and we completed the holes somewhere around two to two-thirty roughly, sir.

THE COURT: All right. Is that the shot that threw the rock in the air that hit on the roof of this building?

A Yes.

THE COURT: All right.

Q (By Mr. Sokol) At what time?

A We probably completed drilling the holes around two to two-thirty. I don't recall exactly. It was in the afternoon.

Q In the afternoon?

A Yes.

Q All right, and then you advised persons in the area of the building that you were about to set off a charge?

A In the area and even on the roof. I sent a man up an accommodation ladder which was set up at the northeast corner of the building to allow the roofers to go up -- I sent a man up there to warn the people that were working on the roof and he stayed up there. He was up there when the shot went off.

Q You told the man to go up there?

A Yes, and I sent men inside the building and all around and posted them at corners of the building to intercept anyone that might be coming around the building unaware that we were going to blast.

Q All right, did you direct the detonation of that shot?

A No, not personally, no.

Q Did one of the employees under your supervision that were controlled detonaters?

A Yes.

Q All right, would you describe to the Court what happened when that detonation in fact occurred?

A Well, as I said, after the holes were loaded, we laid -- we put - I don't know, about a foot of dirt on top of this because the rock come right to the surface of the ground, so we padded that with about a foot of dirt and then we laid a blasting mat on top of the dirt, an eight by twelve woven steel cable blasting mat, and

1 then we put about two, two and a half feet of dirt on top of the
2 blasting mat for additional weight to help hold it down should there
3 be any fly, which was normal procedure. Then, of course, we warned
4 everyone in the area and when the men signaled the all-clear from
5 various points on the job site and within the building and on the
6 roof, the blaster, Mr. Breeden, detonated the shot.
7 Q Let me just backtrack one second. How deep was the
8 ditch you were digging?
9 A It was in the area of eight feet deep -- eight to
10 twelve feet deep. I'll tell you, it was hard to say because the
11 surface that we were digging in was not down to finished grade or
12 subgrade, so we were digging dirt that still had to be moved off
13 the surface. You could look at the profile and you still couldn't
14 tell how deep you were digging because the profile showed finished
15 grade on top and this was not down to finished grade, so from
16 eight to twelve feet I would estimate.
17 Q Eight to twelve feet?
18 A Yes.
19 Q All right, which would have been somewhat less than
20 the depth you were digging when you were digging inside the build-
21 ing?
22 A Yes.
23 Q All right, now, --
24 A Some of it -- some of the digging.
25 Q Okay. All right, did indeed some of the rock and

1 debris become hurled into the air?

2 A Yes.

3 Q Did it reach as high as the height of the building?

4 A Yes.

5 Q How high was that building, if you know, or can esti-

6 mate?

7 A I do not know, sir. I really don't.

8 Q All right. Did rock and debris go to height greater

9 than the height of the building?

10 A Yes.

11 Q Substantially greater?

12 A I don't know how much greater it went. I know that

13 it went higher than the building.

14 Q All right. Did you see rock and debris come down on

15 top of the roof of the building?

16 A Yes.

17 Q And I take it that it would be fair to say that at

18 that point you had realized something unusual and unexpected had

19 happened, is that right?

20 A Yes.

21 Q How large were some of the rocks, if you can recall,

22 or if you saw the rocks?

23 A How large were the biggest ones or average or what?

24 Q Biggest ones. Well, biggest and average.

25 A As I can recall, the biggest ones would have been

1 probably this size [witness indicating by forming circle with
2 hands]-- the biggest ones.
3 Q Okay. After the detonation, did you go to the roof
4 of the building?
5 A Yes.
6 Q Now, did you see rock and debris on the roof of the
7 building?
8 A Yes.
9 Q Did you see damage to the roof of the building?
10 A Yes.
11 Q Now, with respect to the charge that you used at the
12 time the rock and debris were hurled above the building and onto
13 the roof, was that charge any greater than the charge you used
14 when you were digging in the interior of the building?
15 A No.
16 Q It was a lesser charge?
17 A Yes.
18 Q All right, how can your account for the fact that the
19 blast was not controlled when the blast was controlled within the
20 building?
21 A Well, the -- the reason that the charge was less was
22 because the holes were more shallow outside in this particular shot
23 and in previous shots also. Any time that you shoot shallow, then
24 you lighten up on the load also and, as far as accounting for the
25 reason that we encountered fly at this point, the best reason that

I could give was because even before we attempted to blast this ditch open, that section had been previously shot by another contractor. Now, the rock had been cracked by them, but it hadn't brought it loose. They had to come back in after this and reshoot a lot of theirs outside. In fact, right near where we were working, and it had been previously shot. Now, when you have rock that is previously shot, there's cracks in it and crevices in it that allow the power of your charge to run and travel in various directions. You just -- one never knows. You can -- we prepare for it as best we can. We knew that the thing had been shot and that's why we were shooting as light as we were. We were shooting very light.

Q But you knew that it had previously been shot then?

A Yes.

Q All right, and you knew that there were cracks in the rocks where you'd be blasting?

A No, sir, I had no way of knowing whether it even cracked it or not. I just knew it had been shot.

Q But you could surmise--given your experience?

A I could.

Q And you did surmise, given your experience?

A I did not surmise, no, sir, that there were cracks. There was no way that I could. I could surmise there was a possibility.

Q All right. When the blast took place that caused the damage, do I understand that that blast was set off exclusively by

1 you or other employees of Worley Construction Company?

2 A The blast that we are talking about was. However,

3 there were other blasts shot that threw rock on this area that was

4 not.

5 Q Weeks previously, is that right?

6 A No, sir.

7 Q Well, let's talk about the blast that did the damage,

8 okay?

9 A Well, I think both of them did.

10 Q Well, if we may, talk about the blast that did the

11 damage. Did anyone other than a Worley employee detonate that

12 blast?

13 A The blast 22 feet off of the north side of the build-

14 ing on the evening of January 27th, I believe you said?

15 Q Yes.

16 A We detonated the blast, the employees of Worley Con-

17 struction.

18 Q All right. Let me ask this question, Mr. Taggart.

19 Do you consider yourself an expert in the area of blasting in

20 the use of dynamite?

21 A I consider myself experienced. I don't know what

22 constitutes an expert.

23 MR. SOKOL: That'll be all, Your Honor.

24 THE COURT: How long have you been blasting, Mr. Taggart?

25 For how many years?

A About fifteen to sixteen years off and on.

THE COURT: All right, proceed.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Taggart, in response to one of Mr. Sokol's questions, you alluded to another blast which was not yours that occurred subsequent to the blast that you've described doing damage to this building. What blast was that, sir?

A Well, it was a blast that was detonated, I believe, by Canada. It was their men that were loading and drilling, loading and shooting right in the general area we were.

Q You say Canada? Canada what?

A Canada Construction Company from Richmond, I believe.

Q What was their job on that site?

A They were -- well, they had come in just to blast the rock on the site for the grading contractor, I believe.

Q In order to grade the outside of the building off according to specifications?

A Yes, to grade for parking lots and roads and the building itself, I guess.

Q Did any of their blasts do damage to the building?

A Yes.

Q Did you personally see this damage?

A Yes.

1 Q Did they throw rock?

2 A Yes.

3 Q Where did their rock strike the building?

4 A They -- their rock -- some of it struck the sides of

5 the building and some of it went on up on the roof.

6 Q What side of the building did it strike?

7 A The north side.

8 Q Is that the same side where you were working?

9 A Yes.

10 Q Approximately how far from the point that your blast

11 that damaged the building was the Canada blast that damaged the

12 building?

13 A Probably -- probably 50 to 75 feet.

14 Q Now, you said that the Canada blast did damage to the

15 sides of the building. Did your blast do any damage to the sides

16 of the building?

17 A The only damage that my blast done to the sides of

18 the building was to hurl mud -- and when I say mud, I mean muck --

19 very thin stuff that could be hosed off or washed off with water.

20 Q Now, what part of the side of the building did it

21 strike?--the mud that you're speaking of.

22 A You mean the lower or the --

23 Q No, sir, let me back up a little bit. To what extent

24 was the side of the building fully constructed at that time?--in

25 that location?

A There was siding, as I recall, most of the way up that side to a point where the office was going to come out and then the siding stopped there. The office was not constructed yet.

Q Now, are you speaking of interior and exterior siding?

A No, sir, this, I believe, would be considered interior. I'm not familiar with siding, but it was very thin stuff that you could -- I believe I could say literally take your finger and poke it through.

Q All right, now, this was where on the sides of the building? On what side was it, the interior side or the exterior side?

A I really don't recall. I really don't recall if the beams were outside or inside. I believe -- I believe this was on the inside, though. I believe that the upright beams were on the outside of this, but I couldn't say for sure.

Q Well, was this surface that you're describing to have been the exterior -- the final exterior of the building?

A No, sir. No, sir.

Q So this material that you've described would be erected and then the exterior would be put on, is that right?

A I believe that the material I described is erected and then an insulation of some type goes in and then the outside goes on.

Q All right, so the mud that your blast hurled hurled it onto this material that you've described as being inside of the

1 exterior sheathing that was to be put on later, is that right?

2 A Yes.

3 Q All right, now, were any holes pushed in this interior

4 sheathing?

5 A No, sir, not that I could find, not that I could see.

6 Q Did you make an inspection?

7 A Yes, I did.

8 Q All right, did you also make an inspection of the roof?

9 A Yes, I did.

10 Q Now, what damage did you see to the roof when you

11 were up there?

12 A I saw on the lower deck of the roof where some rocks

13 had went through the gravel and tar pitch or whatever it is --

14 Q What kind of roof was this? Let's back up a little

15 bit for the Court. What kind of -- was this a flat roof or a

16 peaked roof?

17 A Yes, a flat roof.

18 Q All right, now, is this the kind of roof where you

19 lay down something which will support considerable weight and then

20 put tarpaper and then pitch and then eventually gravel?

21 A Yes.

22 Q So that when it rains, the water sits there and

23 evaporates?

24 A Yes. Yes, sir.

25 Q All right, now, you said the lower portion. Is it

correct, sir, that this building was very, very large?

A Yes, it was very large.

Q And on the north face of this building, there was an addition which was also large, but lower than the main part of the building? Is that right?

A Yes.

Q All right, now, when you described the lower part of the roof and you said the rock flew onto that portion, what stage of completion was the roof in on that lower portion?

A I'm not sure I could tell you exactly what stage it was in, sir. Part of it was -- had the gravel on it; part of it did not and what --

Q So it was not -- so it was obviously not finished?

A No, sir.

Q Gravel was on a portion of it, which is the last part of a roofing job, I presume?

A Right. As far as I know, yes, sir.

Q And then part of it had not yet been graveled?

A Right.

Q Now, on the higher portion and the larger portion of this building, what was the stage of the completion of the roof?

A It wasn't nearly as complete as the lower one. If there was any gravel up there at all, it was very little, although I don't recall exactly, but there was tarpaper on the roof. I believe -- it looked to be a felt substance that they were putting

underneath it. I guess it was for insulation purposes.

Q All right, now, to which of these roofs did your blast do damage?

A It done damage to the lower roof and I think a little bit to the upper one as well.

Q How large is this building?-- if you know. If you don't, estimate.

A I don't. I would say probably 150 feet wide by 300 or 400 feet long. I don't know. I had no occasion to --

Q Now, roughly, what percentage of the roof was covered by the material which your blast threw up on it?

A I would say from 20 to 25 percent -- 30 at the very most.

Q And what damage was done by the material that was thrown up on it that you could see?

A The damage that was done that I could see was where a rock heavy enough had come down and broken through the tarpaper into the insulation - it looks to be - and then on maybe two or three or four places that it went on down through and even through the decking.

Q Down into the building?

A Yes, down into the building.

Q So in some of these holes you could stick your arm through them, is that right?

A Yes.

Q Now, approximately how many holes were there like that?

A As I recall, there was about three - as I recall -- two or three holes.

Q Now, on this - the remaining portion of this 20 to 30 percent of that roof - what was the character of the remainder of the damage where it was not all the way through?

A Well, the best word I could think of would be superficial damage - just - you know - on the surface.

Q It was dented?

A Yes, dented and maybe the tarpaper itself broken where you could see the insulation.

Q All right, now, approximately what quantity of rock and dirt was thrown up on that building that you can estimate?

A In cubic yards or how?

Q Well, wheelbarrow loads, truckload --

A Well, that's -- it's really hard to do, at this late date especially -- maybe a pickup load.

Q Pickup truckload?

A Yeah.

Q All right. Now, you were interrogated concerning interior blasting. Did your contract call for interior blasting?

A No, sir.

Q Well, how was it that you were doing interior blasting?

A Hungerford and Weaver Construction both asked us to

1 do it on an hourly basis.

2 Q This was not a contract job?

3 A No, sir, it was -- no, sir, it was not.

4 Q Who was supposed to do the interior blasting?

5 A I haven't the vaguest idea.

6 Q Well, who was doing the interior utility work?

7 A Hungerford.

8 Q All right, but this was something that they did not

9 want to undertake to do for one reason or another?

10 MR. SOKOL: Objection, Your Honor - leading the witness.

11 MR. WOOD: It's cross-examination.

12 THE COURT: Yes. Overruled. Proceed.

13 A Apparently they did not want to.

14 Q Did they undertake to explain to you why they wanted

15 you to do it instead of doing it themselves?

16 A The only time they ever did, their superintendent,

17 George, just said that they didn't -- had neither the equipment

18 nor the men experienced in this.

19 Q At that site?

20 A That's all he said. He didn't say this site or any-

21 thing else that I recall him saying.

22 Q All right, and so you did this on an hourly basis, is

23 that correct?

24 A Yes, but now, at a later date, I believe -- I don't

25 know if it was Hungerford or Weaver - one of the two of them -

1 bought a small compressor in and did drill some of the holes in
2 the ditch, but we done the blasting.
3 Q For the interior work?
4 A Yes, up until this incident occurred and then I
5 didn't do any more.
6 Q So they worked with you inside the building to some
7 degree preparing for the blasting, is that right?
8 A Yes, yes, yes.
9 Q And did they use their dynamite or yours?
10 A Our dynamite.
11 Q I see, but they drilled some of the holes?
12 A Yes.
13 Q Using their drill or your drill?
14 A Their drill. The holes that they drilled, they used
15 their drill. The holes that we drilled, we used ours.
16 Q So you worked together?
17 A Yes.
18 Q And you were working on an hourly basis?
19 A Yes.
20 Q But this was not contemplated by your original con-
21 tract?
22 A No, sir.
23 Q Now, the blasting that was outside -- was that con-
24 templated by your original contract?
25 A Yes.

1 Q Now, approximately how much ditching were you, or that
2 is, M. W. Worley Construction Corporation to have done on the
3 Westinghouse site by the contract?
4 A Lineal feet?
5 Q Describe for the Judge what all you had to do.
6 A Oh, we had all the storm drain to install, we had the
7 sanitary sewers to install and the water piping to install.
8 Q Now, in what sequence did you perform these tasks?
9 A And a boxed culvert to build. We started building
10 the boxed culvert first because that was the first thing that was
11 ready for us and it was imperative that we finish it so the grading
12 contractor could start his fill for the railroad spur.
13 Q All right, when you came onto the job site, was this
14 building there?
15 A No, sir.
16 Q All right, so no building had been built when you
17 came there, is that right?
18 A No, sir. This is right.
19 Q And had you had the opportunity to inspect the speci-
20 fications indicating that you would have to shoot a line 22 feet
21 from the building?
22 A Yes, sir.
23 Q Well, now, tell me, in view of that, how did you
24 establish the priorities insofar as what job you would do first
25 is concerned?

A Well, we tried to work with the other contractors, of course, and do work that would accommodate them in the performance of their work. The only thing that I recall that we specified was to do this line that we have referred to, 20 feet off of this building, because you could see the rock on top of the ground and we realized that, once the building was up, we were going to be shooting close to the building and so we did ask to begin with this line before the building was erected.

Q Who did you ask?

A We asked Westinghouse -- I guess it was the General Manager. I believe his name was Jebson -- Mr. Jebson. We asked Weaver's representatives, their General Superintendent, Mr. Brinkley, and as well as another gentleman, Mr. Cumbos, I believe, who was with Weaver, and we asked Hungerford, we asked their superintendent and, of course, this gentleman here, Murray.

Q Mr. Cooper?

A Yes, Mr. Cooper.

Q All right, now, when was it you asked them for the opportunity to blast in this area first?

A We asked them -- the first time we asked them was before the job ever started when Canada was out there blasting and we realized where this line was going to run because they were attempting to drill holes down in for these footers to set on.

Q Who was?

A I guess Weaver was doing it, but they were drilling

1 big holes to pour concrete in and they were drilling - I believe
2 they said to bed rock - and at the east end of the building, the
3 holes were going way on down somewhere around 30 feet I understand
4 and then it come up very sharply until they were just - you know -
5 right on -- the bed rock was right on top of the ground then and
6 we realized then that we were going to have to lay pipe down
7 alongside of this building and we asked then to - you know - be
8 able to start with that.
9 Q And this request was made before the building was
10 erected?
11 A Yes.
12 Q Was the request ever reiterated?
13 A Yes, it was on several occasions. I don't recall
14 exactly how many, but we did ask on several different occasions.
15 Q Was your request ever granted?
16 A Yes, it was granted, but it could never be accomplished.
17 It was impossible to do because there was material stacked where
18 this line was going to be put in and we had no means of moving
19 these materials. It was structural steel which requires a crane
20 to move it.
21 Q Did you have any authority to move those materials?
22 A No, sir.
23 Q Well, now, you say it was granted. In what respect
24 was the request granted?
25 A Well, we were assured that - you know - it would be

1 moved out of there within two days, three days, a week, something
2 of this nature.
3 Q And so they expressed a willingness to cooperate with
4 you?
5 A Yes.
6 Q Did they ever in fact cooperate with you?
7 A Not until we got started on it.
8 Q Now, of all the ditches that you had to construct on
9 this property, in what order was this one finally dug?
10 A This was the last.
11 Q And when you undertook to dig this last one, where
12 were the materials that had been stacked in your way?
13 A Well, there was -- some of the siding was still there.
14 I believe it was siding. At any rate, it was sheet metal that was
15 stacked there. Some of it was still there.
16 Q So even when you started this as the last part of
17 your project, the materials were still there?
18 A Yes, sir.
19 Q Do you know whether or not these were materials which
20 were those under the control of Hungerford or were they under the
21 control of Weaver or do you know?
22 A I believe they were under the control of Weaver.
23 Q Was there any time when you had to stop your work
24 because of the materials being in your way?
25 A Yes.

Q Describe that for the Court, please.

A Well, when any materials would be laying on the line with one of our storm drains or sanitary sewers, whether it be pipe or siding -- no matter what it was, then we could only go to a certain point and stop and on two or three occasions we have had to stop and wait for the materials to be moved or get permission to move them ourselves, which we have done.

Q The charges that you used in this blast that did the damage, what were those charges?

A There was one 2 by 8 stick of 40% gelatin with about two to three inches of ampoulgel on top of it.

Q In what size hole?

A In a three inch hole.

Q And was anything else put in the hole after the explosive was put into the hole?

A Yes. The stem was built with No.78 stone. I believe it was No. 78.

Q All right, now, is this a standard charge?

A It's hard to say a standard charge. It's a charge that my blaster and I, after talking it over and looking at the place, decided that it would be best to use this charge - this particular charge.

Q Well, now, I heard you testify that it was a weaker charge than that used inside the building.

A Yes, it was.

Q Now, why would you use a weaker charge outside than inside?

A The depth of the hole.

Q All right, and these holes were approximately how deep?

A These holes were approximately four and a half feet deep -- four and a half to five feet deep.

Q Are there any particular procedures that a blaster should follow for safety purposes when he blasts?

A Yes, sir, many of them.

Q Would you describe those procedures for the Court?

A Well, I think, of course, the first procedure that one follows is to determine that the area is clear of people, that there's no people around to get hurt and --

Q Did you do that on this occasion?

A Yes, I did.

Q All right, what other procedures are followed?

A Then you cover the shot as best you can if you're in an area where there is any likelihood of any damage from fly. You always cover the shot with a mat, you cover the mat with dirt and, in this particular case, we put dirt beneath the mat also. In other words, we put about a twelve inch layer of dirt on the mat or on the shot before we put the mat on for the purpose of protecting the electrical circuit wires. If you lay the steel mat directly on these wires, a lot of times it shorts them out and

1 your shot doesn't go because the mat tears the insulation off of
2 the wire, so we put the dirt on there and then lay the mat down
3 and then cover the mat with dirt to give it additional weight.
4 Q Well, now, you said when the blast went off, mud
5 went on the side of the building. Now, are you talking about dirt
6 or mud?
7 A I'm talking about mud on the building.
8 Q All right, well, but you said that you put dirt over
9 the blast area.
10 A This is true.
11 Q Well, where did you get this dirt?
12 A The dirt was got at the lower end of the building at
13 the west end of the building where this particular line had started.
14 There was dry dirt down there. Up in this particular area, there
15 was some mud left. I don't know if it had come from -- they'd
16 pumped it out from in the building or where, but we encountered
17 mud all the way up through here at this particular time.
18 Q All right, how much does this mat weigh?
19 A I would say around a ton to maybe a little better than
20 a ton.
21 Q Does every blaster use a mat?
22 A No, sir.
23 Q Did Canada use a mat?
24 A No, sir.
25 Q Did you see them blast?

A Yes, sir.

Q Approximately how many times?

A Probably fifteen, twenty times.

Q Did they ever use a mat?

A No, sir.

Q Were they doing surface blasting?

A Yes, sir.

Q Were they using the same charge you were using?

A I don't know, sir.

Q Is there also a precaution concerning the time sequence at which these detonations will go off?

A Yes, there is.

Q Now, in this particular blast that did the damage, how many holes did you drill?

A There was eighteen holes drilled.

Q All right, and so eighteen charges were set, is that right?

A Yes.

Q Now, when you detonate, do all these eighteen charges go off at one time or do they go off in sequence?

A No, sir, they go off in sequence. In this particular case, there would be two go off and they were spaced 25 milliseconds We were using 25 millisecond delay caps. We were using nine of them -- nine series - two of each - two number ones, two twos, threes.

Q Now, was that delay long enough to be detected by the human ear if you're listening to the blast?

A I doubt it, not the 25, no.

Q Now, what is the purpose for these delays between the eighteen charges?

A Well, you start -- the first shot should go -- the holes nearest the ditch that's already open should be the first shot to go. Therefore, this shot can begin to move the rock just slightly to give the other - the next charge a place to go. Rock has to move somewhere. It's going up or somewhere, so this first shot - No. 1 delay - will go and 25 milliseconds later, No. 2 will go and it just gives it a cushion. It don't move it -- there's not enough space between them to move it completely out of the way, but it gives each one of them a cushion to come against.

Q And a place to go?

A Yes.

Q What would happen if you set off all eighteen shots at one time without any delay?

A It's hard to say what would happen, but it would be my guess what would happen - you would have more of a tendency to go straight up.

Q All right, is also the concussion greater?

A Oh, yes. Yes, sir.

Q So does the delay between these shots reduce concussion?

A Yes.

Q Can you think of any safety precaution that blasters normally would take that you did not take?

A No, sir.

Q Mr. Taggart, were you familiar with the kind of rock in this area?

A Yes, sir.

Q How was it that you were familiar with the kind of rock in this area?

A We had blasted rock on two other jobs up here previously in that same area.

Q Now, what was the last job that you had done immediately prior to working for Hungerford on this job?

A We had run a twelve inch water main from the State road property near the railroad -- run it parallel with it. We had run a twelve inch water line from the State Department of Highways property near the railroad forty feet off of the railroad right-of-way and parallel all the way up the railroad to serve Westinghouse.

Q For whom were you working on that occasion?

A City of Culpeper -- Town of Culpeper.

Q And how long was that line?

A 2900 feet, I believe.

Q And did it go through this same deposit of rocks?

A Yes, it did.

Q And you went to the Westinghouse property line, is that right?

A Yes.

Q And what was the next job that you had following that job for the City of Culpeper?

A The Westinghouse job.

Q And was it part of your job to continue that line?

A Yes, it was.

Q All right, so you took that line for the City to the Westinghouse property and then from the Westinghouse property line to the Westinghouse building where the , is that correct

A Yes. Yes, sir.

Q Was the character of the rock on that 2900 foot stretch that you did for the City of the same character as the rock down at the site where this explosion occurred?

A Yes, it was.

Q Was there anything unusual about this rock?

A Yes, it's very unusual. The first encounter I had with this rock was on the By-Pass - on Route 29 By-Pass - we laid water line in that area and everyone that was working on the By-Pass when I say everyone, I'll say Basic Construction was there and they were shooting rock at the same time I was and they were having quite a few difficulties with it at the same time I was. I'd never encountered rock like this and Basic superintendent told me that the rock was of an old lava flow. It looked like cement that

1 has been poured and there's -- after it's broken, there is gravel
2 inside this that just looks like cement has been poured with gravel
3 and stone already mixed in.
4 Q Was it an odd color?
5 A Yes, it was.
6 Q What color?
7 A Well, it was a reddish looking, a maroon looking rock.
8 Q So you were thoroughly familiar with the character of
9 this rock?
10 A Yes, I was.
11 Q Did that have anything to do with your request to
12 these people to be able to blast on this particular line close to
13 the building first?
14 A Yes, it did.
15 Q And what bearing did it have upon your request?
16 A Well, because any rock is -- it's impossible to say
17 that I can shoot this rock and control it, but some of it, you
18 can be a little surer of controlling than other and this is the
19 least predictable of any rock I've ever shot, barring none.
20 Q Was this the basis for your asking to shoot this
21 line before any others?
22 A Just the fact that there was rock there was the basis
23 and I would have requested this no matter what kind of rock.
24 Q So then your request would have been made regardless
25 of the character of the rock?

A Yes.

Q All right, was your request agreed to by the people to whom you made this request?

A Yes.

[At this point there was a brief interruption of the proceedings by the sounding of a fire alarm which caused the testimony to be inaudible, after which the proceedings continued as follows:]

Q I've forgotten precisely what question I asked you, but --

THE COURT: Do you want the court reporter to read it back?

MR. BOYLE: Oh, that's all right, sir. I'll just take on from there.

Q You had made this request of these people, Mr. Taggart. Did you tell the people of whom you made this request that that was the reason you wanted to shoot this area first?

A Oh, yes. Yes, sir.

Q Was there any doubt in their mind as to why you wanted to work on this line first?

A No, sir, I don't think -- I don't see how there could be. Let me put it that way because --

Q Would there have been any other reason that you can think of for wanting to shoot it first?

A No, sir. No, sir.

MR. BOYLE: I have no further questions.

MR. SOKOL: May I redirect, if Your Honor please?

REDIRECT EXAMINATION

By Mr. Sokol:

Q Do you know Mr. Ralph Barnett? Would you stand up, Mr. Barnett, please? Do you know this gentleman?

A I've seen him, yes, sir.

Q You've seen him?

A Yes, sir.

Q All right. Did you see him on the job site the day following your blast that caused this damage?

A Yes. I believe it was the day following or shortly thereafter.

Q The day following, you believe, you saw Mr. Barnett on the site?

A I saw him shortly thereafter.

Q Did you see him go to the roof of the building?

A Yes, I saw him go to the roof.

Q All right. Now, this blast that you talked about that Canada performed, when was that?

A It was -- I don't know exactly the date. It was probably two weeks later.

Q That blast was after Mr. Barnett went to the roof of the building, if it was two weeks later?

1 A I believe so, yes.

2 Q All right. You've been in this business for fifteen

3 years?

4 A [Witness nods head affirmatively.]

5 Q You say that the rock you encountered was the most

6 unusual and the most unpredictable that you had ever seen?

7 A Yes, sir.

8 Q How many different types of rocks have you encountered,

9 Mr. Taggart?

10 A I don't know, sir. I don't know how many.

11 Q A dozen?

12 A Possibly.

13 Q But, barring none, this was the most unpredictable

14 of all?

15 A Yes, sir.

16 Q Unpredictable in the sense you didn't know what was

17 going to happen once that charge hit it?

18 A Yes.

19 Q All right, did you tell Mr. Worley this?

20 A Yes, sir, Mr. Worley was aware of this.

21 Q You all have firm stationery, do you not?

22 A Yes, sir.

23 Q Stationery, where you can -- and you have secretarial

24 service?

25 A Yes, sir.

1 Q Now, didn't it occur to you that this was a terribly
2 important finding on your part?
3 A Yes, sir, it did.
4 Q Did you or Mr. Worley write to Westinghouse, to
5 Weaver or to Hungerford and say, "Gentlemen, I believe we have a
6 problem?" Do you have any writing to that effect?
7 A I couldn't speak for Mr. Worley, sir. I did not.
8 Q Nothing --
9 A I did not.
10 Q And this rock was indeed the same rock that was 22
11 feet from the building?
12 A What rock was indeed the same rock?
13 Q This rock that you've described as the -- this unpre-
14 dictable rock -- this --
15 A Yes. Yes, sir. Yes, it was.
16 Q This ultrahazardous rock, okay?
17 A Yes, sir. Yes, sir.
18 Q Do you know Mr. Murray Cooper here?
19 A Yes, sir.
20 Q Are you telling the Court that you had a conversation
21 with him with respect to this rock?
22 A Not I personally, but Mr. Cooper was present at a
23 meeting where this was brought out on two or three occasions that
24 I can recall.
25 Q Before the blast that caused this loss?

A Yes. Oh, yes. Yes, sir.

Q Who conveyed the information to Mr. Cooper?

A I don't know if it was directly conveyed to Mr. Cooper or not, but I conveyed the information generally and Mr. Worley conveyed the information also at these meetings.

Q To whom?

A To -- I think the major comment was directed toward probably Mr. Brinkley, I would imagine, or to Mr. Jebson. I don't recall exactly who I directed my statement at, sir.

Q Did you ever say to Mr. Cooper --"Mr. Cooper, this rock is very hazardous. We'd better not blast near that building, if that building is done?" Did you ever tell Mr. Cooper that in so many words?

A If I discussed rock at all with Mr. Cooper, I did. I don't recall.

Q You told him there was a substantial hazard in your opinion?

A If I discussed it personally with Mr. Cooper, I'm sure I did, but I don't recall discussing it personally with Mr. Cooper.

Q You don't recall discussing it?

A Not with Mr. Cooper. Now, I might have made a generalization to the other people that were at the meeting, sir.

Q Well, look at -- you knew that Hungerford --

THE COURT: Just a minute, Mr. Sokol.

1 [At this point there was a brief interruption, after
2 which the proceedings continued as follows:]
3 Q You were job superintendent on that project for Worley?
4 A Yes, sir.
5 Q You had daily access with representatives of Hunger-
6 ford?
7 A Yes, with representatives - with George -- I don't
8 know George's last name.
9 Q Haslip.
10 A Haslip, yes.
11 Q You had -- you were able and had contact with Mr.
12 Cooper?
13 A Yes, when he was there.
14 Q You knew that Mr. Cooper was an official of Hunger-
15 ford?
16 A Yes.
17 Q Concerned with this particular job?
18 A Yes.
19 Q All right, now, I ask you -- did you say directly
20 yourself, as job superintendent, to Murray Cooper as an official
21 of Hungerford, "Mr. Cooper, this rock is ultrahazardous. We
22 should not blast in and about materials or a building." Did you
23 tell him that?
24 A I honestly couldn't tell you if I did or not.
25 Q All right. Did you ever tell Mr. Nuckols of Hungerford

that?

A I couldn't tell you that, but I did tell Mr. Hoadley on numerous occasions.

Q In anyone else's presence?

A I don't recall. I didn't make it a point to be in anyone else's presence, no, sir. I don't know if they overheard me or not.

Q Do you know Mr. Coley Brinkley?

A Yes, I do.

Q Who is Mr. Brinkley?

A Right there is Mr. Brinkley. [Witness indicating gentleman sitting in courtroom.]

Q All right. Did you ever tell Mr. Brinkley this very question?

A Yes, I did.

Q You did?

A Yes, I did.

Q When did you tell him that?

A I don't know -- during the course of the job before -- when we first started the job.

Q So the fact of the matter is when you conducted that blast 22 feet from the building, you were very, very concerned about that rock?

A Yes, I was.

Q And it's your opinion that indeed the damage that was

1 done was done because of that rock, isn't that right? Isn't that
2 your opinion?
3 A The damage that was done was done because of the rock?
4 Q If it had been any other rock, you don't believe the
5 damage would have been done, do you?
6 A No, sir, I wouldn't say that. I don't know. I would
7 have been worried no matter what kind of rock it was there.
8 Q Well, Mr. Taggart, in your fifteen years, it doesn't
9 happen very often that you project rocks high into the sky outward
10 and onward to the roof of a building that you're working nearby,
11 is it?
12 A Indeed it's not.
13 Q This day you did, January 27, 1972, correct?
14 A Yes.
15 Q And you've gone to great lengths to describe this
16 rock that you were so almighty concerned about, correct?
17 A Yes, this is true.
18 Q And based on your experience then, isn't a fair
19 assumption that this rock played a-- a material role in that blast
20 going out of control?
21 A Any rock would have.
22 Q This rock more than a dozen or so others that you've
23 described?
24 A I have no way of knowing. I know it concerns me, but
25 I don't know. One never knows when you're blasting rock what's

1 going to happen.

2 Q But you learn from experience, do you not?

3 A Yes.

4 Q You've already testified that Basic Construction had

5 had a good deal of trouble with this rock --

6 A Right.

7 Q -- in their inability to control it, correct?

8 A Right, uh huh.

9 Q You knew that?

10 A Yes, I did.

11 Q You knew that it happened on more than one occasion?

12 A Yes, I did.

13 Q Well, doesn't that tell you something about this rock

14 and the characteristics of this rock?

15 A It certainly does.

16 MR. SOKOL: I believe that's all, Your Honor.

17

18 RECROSS EXAMINATION

19 By Mr. Boyle:

20 Q Mr. Taggart, after this blast occurred that did the

21 damage to the building, did you all continue blasting?

22 A Yes, we did.

23 Q About how much longer in time did you blast?

24 A Probably another week. Yes, probably another week.

25 Q Was it on this same line?

A Yes, it was.

Q And about how much further in distance did you have to go?

A Probably another 100 or 125 feet.

Q Was this line also - the remaining 100 to 125 feet - still 22 feet from the building?

A Yes, it was.

Q Running parallel to the building?

A Yes, it was.

Q Did the specifications call for you to blast and create a ditch on this line?

A Yes, it did.

Q After the blast had done the damage to the building, did Hungerford undertake to tell you to abandon this project?

A No, sir.

Q Did they tell you to continue this project?

A They didn't tell me either way.

Q Were they aware of the blast?

A Yes.

Q Did they take any special actions in regard to controlling your conduct after the blast?

A No, sir.

Q Were they aware that you were continuing to blast?

A Yes, sir.

Q Was it your obligation to blast?

1 A Yes, sir.

2 MR. BOYLE: I have no further questions.

3 THE COURT: Mr. Taggart, you mentioned that Canada also

4 threw some rock on this roof. Is it your contention that they

5 damaged this roof in any way?

6 A Yes, sir, I think they did damage it somewhat. I

7 don't know how much, but there was rock that went on the roof.

8 THE COURT: And you know that you damaged it in some

9 way?

10 A Yes, sir.

11 THE COURT: All right, sir.

12 MR. BOYLE: May I ask some more questions, Your Honor?

13 THE COURT: [Nods head affirmatively.]

14 Q Was the damage that Canada did roughly in the same

15 area as the damage that you did?

16 A Part of it was and part of it was further to the

17 western end of the building -- of the roof.

18 Q To the western end?

19 A Yes, sir.

20 Q On what portion of the roof was your damage principally?

21 A The northeast corner.

22 Q Principally?

23 THE COURT: He said about 30% of the roof, I believe.

24 A Yes, sir.

25 Q And was this towards the hole that you had already

1 excavated or away from the hole that you had already excavated?

2 A It was --

3 Q As you described these charges, the first going off

4 towards the portion that had already been excavated --

5 A Oh, I see. Okay.

6 Q And you started on the west, is that right?

7 A Yes, sir.

8 Q Now, did the debris blow out the hole to the west

9 or did it blow to the east?

10 A No, sir, it blew to the east.

11 Q So, it blew through an area that had not been exca-

12 vated?

13 A This is true.

14 Q It blew onto the northeastern portion of the roof?

15 A Yes, sir.

16 Q In regard to Canada, I think you testified that

17 Canada did some damage to the siding of the building?

18 A Yes, sir.

19 MR. BOYLE: All right. I have no further questions.

20 MR. SOKOL: Just so this is firmly in the record, Your

21 Honor, I want to repeat, if I may. The blasting that you're talk-

22 ing about with respect to Canada occurred several weeks after

23 January 27th?

24 A I believe about two weeks, but I can't put my finger

25 on the exact date.

1 Q So to the best of your recollection, two weeks?

2 A Yes, sir.

3 MR. SOKOL: All right.

4 [The witness then stood aside.]

5

6 ROY MANUS, being first duly sworn, testified as follows:

7

8 DIRECT EXAMINATION

9 By Mr. Sokol:

10 Q Would you state your name to the Court, please?

11 A Roy Manus.

12 Q Where do you live, Mr. Manus?

13 A Greensboro, North Carolina.

14 Q And by whom are you employed?

15 A W. H. Weaver Construction Company.

16 Q How long have you been employed by W. H. Weaver Con-

17 struction Company?

18 A Approximately ten years.

19 Q In what capacity are you presently employed with W.

20 H. Weaver?

21 A Vice-President.

22 Q Vice-President?

23 A Vice-President in charge of production.

24 Q In charge of production?

25 A Yes.

1 Q Were you so employed at the time Weaver contracted
2 with Westinghouse for the construction of a plant and other
3 facilities here in Culpeper County?
4 A Yes, I was.
5 Q Are you familiar with the specifications with respect
6 to the duties of your company on the Westinghouse job site here in
7 Culpeper County?
8 A Yes, I am.
9 Q All right, now, would you describe to the Court in
10 brief the role and the duty and obligation of your company with
11 respect to that project?
12 A We had the general construction contract to deliver to
13 the owner a completed building, a turnkey job, so to speak -- the
14 Westinghouse building here in Culpeper.
15 Q You were obligated to give to them a completed build-
16 ing?
17 A Completed building, yes, sir.
18 Q All right. Did you in fact have a contract with
19 Westinghouse?
20 A Yes, we did.
21 Q Now, on or about January 27, 1972, how much of that
22 project was completed?
23 A Approximately seventy-five percent.
24 Q How much of the building was completed?
25 A I would say eighty percent of the building was in place.

1 Q All right. Was the building under roof?

2 A Yes, it was.

3 Q All right, now, in just a moment I'll wish to show

4 you a contract. I want to show it to counsel first.

5 MR. BOYLE: Your Honor, it's quite a long contract and

6 I think we'll unduly delay the Court if we attempt to read all of

7 it. It's in very small print and very long. I don't know the

8 purpose for introducing it, but if it is the contract that governed

9 the behavior between Weaver and Hungerford, I can't see that we

10 can validly object to it unless counsel is taking the position

11 that this contract in some way governed Worley's conduct.

12 MR. SOKOL: I do not take that position whatever. I

13 just want to document the fact that Weaver was the general, that

14 Hungerford was the sub.

15 MR. BOYLE: Well, I stipulate that. We have no objec-

16 tion.

17 MR. SOKOL: But I do want to introduce this as the

18 governing instrument by and between these two parties, Weaver and

19 Hungerford.

20 THE COURT: All right, sir, it'll be received as

21 defendant's Exhibit 1, isn't it?--or is it No. 2?

22 MR. SOKOL: Number 1.

23 THE COURT: All right, hand it to the court reporter so

24 that she may mark it.

25 [Contract between Hungerford, Inc. and W. H. Weaver

1 Construction Company dated 8 September 1971
2 received in evidence and marked by the reporter
3 as Defendant's Exhibit #1.]
4 Q Did Weaver Construction thereafter subcontract part
5 of its responsibilities to Westinghouse to others?
6 A To Westinghouse?
7 Q Did you subcontract a part of your responsibilities
8 to Westinghouse to any other contractor?
9 A Yes, we did.
10 Q Was Hungerford, Incorporated one of the companies to
11 which you subcontracted?
12 A Yes, they were.
13 Q Was it the principal company that you subcontracted
14 to by any chance? Was it the principal subcontractor under you?
15 A Yes, I would say it was the major --
16 Q In brief, what were Hungerford's responsibilities on
17 that job site?
18 A He was to install the utilities and the plumbing for
19 the interior of the building.
20 Q All right, did those utilities include the installa-
21 tion of sewer lines?
22 A Yes, they did.
23 Q All right, now, did there come a time after this
24 blasting operation and blasting loss that you assessed this loss
25 against Hungerford?

A We did.

Q And how much -- in what sum of money did you assess the loss against Hungerford?

A $30,355.00 as I remember.

Q So their contract with you was diminished by the sum of $30,355.00?

A We backcharged them that amount of money.

Q All right, now, do you know Mr. Coley Brinkley?

A Yes, I do.

Q Would you stand up, Mr. Brinkley?

[Mr. Brinkley was present in the courtroom and stood up.]

Q All right, is Mr. Brinkley an employee of your company?

A Yes, he is.

Q Was he responsible for any activities on this Westinghouse job site?

THE COURT: Have your seat, Mr. Brinkley.

A Yes, Mr. Brinkley was appointed the job superintendent for our company and has the direct responsibilities for our - all activities on the job site.

Q I see. Now, to the best of your recollection, when did his responsibilities commence?

A For this job?

Q Yes.

A Approximately September of '71, to the best of my

recollection.

Q And he was your superintendent on the site?

A Yes, he was.

Q Was he there on a daily basis?

A Yes, he was.

MR. SOKOL: I believe that's all. Your witness.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Manus, did you work here in the Culpeper area?

A No, I did not.

Q Did you have anything to do with the running of this job at the Westinghouse site?

A My duties are Vice President of Production; that is to - ultimately they're my responsibilities, but daily I'm not here. Maybe I visit the job once a week or once every two weeks. I do know - you know - what's going on.

Q Did you have any part in the execution - or the preparation of and the execution of this contract?

A With Hungerford?

Q Yes.

A Yes, I -- are you talking about directly?

Q Yes, sir.

A I approved it, or looked over the figures. The contract was settled with the project manager, who was John Cumbos.

1 Q Well, now, was it under the terms of this contract
2 that you withheld these funds of $30,355.00?
3 A Yes, we have the right just to hold it.
4 Q Is this right one which is enumerated in Article 9
5 of this contract?
6 MR. SOKOL: He's asking the witness a question of law,
7 Your Honor. I don't know that he's competent --
8 THE COURT: Well, he's asking him under what authority
9 he withheld it. Objection overruled. Proceed.
10 A Yes, it was under -- under 9 would be part of it.
11 Q All right, would you read the part under 9 that
12 would control your withholding these funds from Hungerford?
13 A "The subcontractor hereby agrees to save, indemnify
14 and keep harmless the contractor against all liabilities, claims,
15 judgments or demands for damages arising from accidents to persons
16 or property where they are occasioned by said contractor, his
17 agents or employees, provided said accident occurs in connection
18 with the subcontractor's work or are occasioned by the subcon-
19 tractor, his agents or employees."
20 Q Now, is there another portion of that contract that
21 authorizes you to withhold these funds?
22 A I would have to read it thoroughly to answer that.
23 Q Well, do you feel, in making your decision to with-
24 hold, that the language you just read was actually sufficient to
25 withhold the funds?

1 A Yes, I do.

2 Q And it does not require, does it, Mr. Manus, that

3 Mr. Hungerford or his agents -- that Hungerford or their agents

4 be negligent?--just that there be damages arising --

5 MR. SOKOL: If Your Honor please, again he is asking

6 him questions of law and this man is not a lawyer.

7 THE COURT: That -- not again, Mr. Sokol, but that ques-

8 tion is objectionable. Objection sustained. That is the provision

9 under this contract, though, that you withheld this funds to the

10 best of your knowledge, is that correct?

11 A Well, we have a contract with Hungerford to do the

12 utilities and, under Hungerford's contract the damage was done,

13 so we would withhold funds until the building was brought back to

14 the place it was whenever the damage was done.

15 THE COURT: You are saying you would have done that

16 whether you had a contract or not?

17 A We don't do work without a contract, but we would do

18 that according to the specifications and the contract.

19 THE COURT: Well, how did you arrive at the figure of

20 $30,355.00?

21 A We paid Valley Roofing Company $28,000 and some

22 dollars - I forget the exact figure - and we paid Clasfield

23 a Thousand and Six Hundred and some dollars. The two figures

24 come up to $30,355.00. We paid the roofing company to bring the

25 roof back to -- to repair the roof.

1 THE COURT: Well, how did you arrive at that figure
2 with the roofing company?
3 A The roofing company gave us a price of what it would
4 take to repair the roof.
5 MR. SOKOL: That will develop in the evidence, Your Honor.
6 THE COURT: All right.
7 Q (By Mr. Boyle) Mr. Manus, did you inspect the roof?
8 A I looked at the roof, yes.
9 Q Before it was repaired?
10 A Yes.
11 Q Approximately what percentage of the area of the roof
12 would you say was covered by this debris and rock?
13 A I would say eighty percent - that had some rock on
14 it.
15 Q Well, what percentage of the roof would you say was
16 damaged by the rock?
17 A It would be impossible to know when the rock hit a
18 roof how much damage it does. You assume that, when rock hits a
19 roof, that water could be getting into it.
20 Q Well, in what percentage did you see holes in the
21 roof? Did you see damage? If that's your assumption, on what
22 area of the roof did you see penetration of the roof?
23 A I saw penetration in areas of - as I can remember --
24 I saw holes probably scattered over half of the roof in different
25 sections.

1 Q Did you take pictures?

2 A I didn't take pictures, no.

3 Q Were pictures taken by Weaver?

4 A To my knowledge, they were not.

5 Q Were they taken for Weaver?

6 A To my knowledge, they were not.

7 Q Do you have pictures?

8 A To my knowledge, we do not.

9 Q Have you seen pictures?

10 A I have not seen pictures.

11 Q So, as far as you know, no pictures were ever taken?

12 A As far as I know, yes.

13 Q When did you make your trip up to Culpeper to inspect

14 the damage?

15 A I didn't make the trip specifically to inspect the

16 damage. I was in Culpeper -- it was probably two -- two weeks

17 after that. I just don't remember, but I did not make a specific

18 trip to inspect it.

19 Q Two or two weeks?--approximately two weeks, you say?

20 A Two weeks, I guess.

21 Q All right, now, was Valley Roofing the subcontractor

22 under Weaver to do the roof in the first place?

23 A Yes, they were.

24 Q And they had done a percentage of this roof, is that

25 right?

A Yes.

Q And then you said to them, I presume, "Fix the roof back the way it was," and they did, is that right?

A Yeah, we told them that -- see, the specifications called for a twenty year bondable roof and we had to bring the roof back to where it would be a twenty year bondable roof.

Q Well, -- and did you tell them to bring the roof back to where it would be a twenty year bondable roof?

A Yes.

Q Did you just tell them to go ahead and do it and send you the bill or what did you do?

A No, this was discussed, I think. There again, I wasn't directly involved in the discussion, but Worley could have gotten in someone else or Hungerford --

Q You didn't care who did the repair work?

A Not as long as it would have been -- could produce a bond, but that's a sort of hard thing to do, but we wouldn't have cared as long as we could have gotten a roof back to where we could meet the specifications.

Q Did you let bids for the repair work?

A No, we didn't let bids.

Q So you just told Valley to go ahead and do the job, is that right?

A We did after no one else done it.

Q Did you make an independent examination or investigation

1 to see whether or not you could have had it done more cheaply?

2 A I don't recall that - all the investigations that we

3 made, but - I just couldn't answer that.

4 Q Isn't it correct, Mr. Manus, that since you owed

5 Hungerford a great deal of money, you were in a position to with-

6 hold whatever it cost?

7 A Well, we're not -we were in a position to withhold

8 enough money to repair the roof, but we're not accustomed to just

9 doing something that's out of reason. It was --

10 Q Well, but you let Valley Roofing decide how much the

11 repair would cost, didn't you?

12 A Valley Roofing done the repairs and sent us the bill,

13 yes.

14 Q But I mean you didn't tell them to do it for a certain

15 price or you didn't measure -- did you take a bid from them for

16 what it would cost?

17 A We knew the cost before they started with it.

18 Q Did they give you a bid?

19 A Yes.

20 Q Did you get a bid from anyone else?

21 A Not to my knowledge.

22 THE COURT: Did you notify anybody what they were going

23 to cost? Did you notify Hungerford or did you notify these people

24 what it was going to cost?

25 A I think we noti-- you knew what they were going to

1 cost, didn't you?

2 MR. BOYLE: Objection, Your Honor.

3 THE COURT: Recall it as you know. Don't ask him.

4 A Oh, as I knew?

5 THE COURT: Yes.

6 A Well, as I know, I didn't do the actual notifications,

7 no.

8 Q When you described Hungerford as the principal sub-

9 contractor, I presume that they were a principal - so far as

10 utility and plumbing work were concerned?

11 A Yes.

12 Q But you had other subcontractors whose missions were

13 equally as important, did you not?

14 A All of them are important. When he said principal, I --

15 his was probably the largest.

16 Q The largest in terms of expenditures from the general?

17 A Right, uh huh, right.

18 Q The general itself did a great portion of the work,

19 did they not?

20 A Yes, we did do a great portion of it.

21 Q More than Hungerford?

22 A Yes, we did.

23 Q Did you have any contract with Worley?

24 A Not to my knowledge.

25 Q Well, now, did you hear Mr. Taggart testify about

1 blasting inside the building?

2 A Yes, I did.

3 Q Were you aware of that?

4 A I'm aware that -- yes.

5 Q Did you approve the expenditures for hourly rates

6 for blasting inside the building?

7 A I did not.

8 Q Are you aware that there were such payments made to

9 Worley by Weaver?

10 A Yes.

11 Q And that bypassed Hungerford?

12 A Yes.

13 Q Now, you told the Judge you had never hired anyone

14 without a contract. Did you have a contract with Worley?

15 A I didn't -- if I said we never hired anybody without

16 a contract, I meant that from a standpoint of the major parts of

17 the work -- now, the superintendent has authority to hire work on

18 the job without a written contract.

19 Q Well, verbal contract?

20 A Yeah, verbal, yes.

21 Q All right, so your contract with Worley was verbal?

22 A Yes.

23 Q For this inside work, but that's the only contract

24 you had with him, is that correct?

25 A To my knowledge.

1 Q Well, did this verbal contract include this indemni-
2 fication clause, Section 9, that was in this contract that you had
3 with Hungerford?
4 MR. SOKOL: If Your Honor please, I don't see the pur-
5 pose of this line of questioning with respect to any other con-
6 tractual arrangements maybe made on an hourly rate between Worley
7 and Weaver.
8 MR. BOYLE: I think—the reason I'm attempting to bring
9 this out, Your Honor, is that Mr. Sokol has made a point of claim-
10 ing to the Court that Hungerford is out of some money by virtue
11 of the fact that Weaver did not pay Hungerford. Mr. Manus has
12 explained that Weaver did not pay Hungerford because of this in-
13 demnity agreement in the contract and I'm attempting to show that
14 the relationship between Weaver and Hungerford was considerably
15 different than the relationship between Hungerford and Worley and
16 this is one of the major differences.
17 MR. SOKOL: I don't know what Mr. Boyle proposes to do,
18 but there has been a $30,000 loss roughly and we're litigating
19 who's responsible for that loss. Now, whether the party plaintiff
20 is Weaver or whether the party plaintiff is Hungerford, there's --
21 it's Hungerford because they've borne the loss, but I hope Mr.
22 Boyle doesn't want to relitigate this some other day.
23 MR. BOYLE: Indeed I don't, but as Mr. Sokol has indi-
24 cated, Your Honor, it's a question of whose loss or who shall bear
25 this loss. A person can bear a loss for one reason. In this case

1 Hungerford did because of an indemnity agreement. There's no
2 reason to imply that Worley should bear the loss for the same
3 reason when there was no such agreement.
4 THE COURT: I understand. I understand. All right.
5 Proceed, Mr. Boyle.
6 Q I have one more question, Mr. Manus. Do you know
7 whether or not Valley Roofing did replace the old roof or repair
8 the old roof?
9 A Yes, they did.
10 Q Did they repair the entire roof?
11 A I think they did.
12 Q All right, sir, I have no further questions.
13 MR. SOKOL: You may step down, Mr. Manus.
14 [The witness stood aside.]
15 MR. SOKOL: We call Mr. Burks, please.
16
17 PHIL BURKS, JR., being first duly sworn, testified as
18 follows:
19
20 DIRECT EXAMINATION
21 By Mr. Sokol:
22 Q State your name for the Court, please.
23 A Phil Burks, Jr.
24 Q Where do you live, Mr. Burks?
25 A Covington, Virginia.

Q By whom are you employed?

A My father.

Q In what capacity?

A Bookkeeper, carpenter.

Q Did you have any connection whatsoever with any work performed on the Westinghouse job site in Culpeper during the period October '71 until the Spring of '72?

A Yes, I did.

Q What connection did you have with that project?

A I was working for a company, Foley & Robertson, Inspection Engineers & Chemists out of Richmond and I was the roofing inspector for Valley Roofing.

Q Roof inspector?

A Right.

Q Had you had any specific training or experience in that field prior to January of 1972?

A Yes, I had worked on roofs in summers before and had also been trained by construction consultants out of Detroit for a job I was supposed to do at the Philip Morris building in Richmond.

Q How old are you, Mr. Burks?

A Twenty-seven.

Q Were you on the job site on January 27, '72 when a certain blast projected objects onto the roof of the Westinghouse plant?

A Yes, sir.

Q Did you see what occurred at that time?

A I saw the explosion.

Q Where were you?

A In the parking lot in the front of the building.

Q All right, how far from the building would that have been?

A Two hundred feet probably.

Q Two hundred feet? All right. Well, would you describe to the Court what you observed?

A Well, the other inspector and I were sitting in the car. It was late in the day and it was cold, so we were in the car getting warm and everyone had gone home except the blasting contractor and the roofers. Whatever time it was -- I don't remember what time it was, but the explosion occurred and you could see rocks going up on the roof, so we jumped out of the car. We didn't know if it was going to come our way or where, so after everything had died down, we ran over to see what had happened.

Q And would you be able to describe the quantity of rocks that you saw propelled into the air?

A Well, it wasn't a lot of dust. It was a lot of rocks. It wasn't - you know - just dust around the hole, but mostly rocks and I mean how much was there, I have no idea.

Q Well, would it be fair to say there were many rocks?

A Many.

1 Q Sir?

2 A Many. I would say many, yes.

3 Q You would? Did you see the rocks go above the roof

4 of the building?

5 A Some of them. Well, a couple of hundred feet away

6 I could see some large ones going up there. I suppose there were

7 a lot of small ones that I didn't see, but eventually I did find

8 out that there were - they were up there.

9 Q Did you see rocks come down on top of the roof of

10 the building?

11 A Well, not from where I was. I couldn't see them

12 come down on the roof, but I know they would have had to have come

13 down on it.

14 Q From the trajectory?

15 A From below, they had to be on top, yeah.

16 Q All right, did you thereafter go onto the roof of the

17 building?

18 A Yes.

19 Q Were you able to observe any damage to the roof of

20 the building?

21 A Yes, I observed considerable damage.

22 Q When you say considerable damage, would you be more

23 specific in terms of the extent and the amount of damage?

24 A Well, just knowing about roofs, they'd put what they

25 call felt over it and it could -- just a small rock could puncture

it and then, if you looked real close, you could see all over the place where they were up on the top roof which didn't have the flood coat and gravel on it. On the lower portion which already had gravel on it, you couldn't tell that there were holes in there, but there were large holes there, also, that you could see. But there were small holes on the top roof and large ones, which you could see the small ones where the felt would be broken. Consequently, water could seep through there and get into the insulation and go to an opening in the metal and cause a leak.

Q Would you describe the damage as substantial?

A Substantial? I would say yes. There was a considerable amount of damage.

Q Do you know whether or not the roof was damaged prior to this blast? Do you know the condition of the roof prior to the blast?

A It was in good shape. I had approved it so far.

Q You had approved the roof up to that point?

A As far as I was concerned, it was in good shape. I'd watched them put the roof down and knew what they were doing and it looked like it was -- to the best of my knowledge, it was a good roof.

Q Had you seen the roof earlier that day?

A Yes, been on it most of the day.

Q Was there any damage to the roof earlier that day?

A Not that I know of.

Q Do you know Mr. Ralph Barnett?

A Yes.

Q Did you see him come to the job site the following day?

A Yes, I did.

Q Did you see him inspect the roof?

A Yes.

MR. SOKOL: Answer to Mr. Boyle.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Burks, you say you work for your father. What does your father do?

A General contractor.

Q What's the name of his organization?

A H. Phil Burks, General Contractor.

Q And you've been a carpenter for him for how many years?

A Oh, all told, probably five years, but one year since then.

Q And a bookkeeper, too?

A Yes.

Q And when did you leave him as a carpenter before you took this job as a roof inspector?

A Oh, I hadn't worked for him for about four years. I'd

1 been in the Army and been back to college.

2 Q Well, how long have you been a roof inspector?

3 A About seven months.

4 Q Was this your first job as a roof inspector?

5 A Yes.

6 Q What does a roof inspector have to do in order to

7 inspect roofs?

8 A See that all the material is put down properly that's --

9 actually, the only thing you could do -- you can't -- still can't

10 guarantee that it won't leak, but as long as everything is put

11 down according to specifications, then as far as you're concerned,

12 it's put down like it's supposed to be.

13 Q You presume that it won't leak?

14 A Yeah.

15 Q If you follow the specifications?

16 A If everything is put down according to the specifica-

17 tions.

18 Q Now, were you working for Weaver or for Valley Roof-

19 ing or for whom were you working?

20 A Well, I was never sure exactly who I was working for.

21 I know I was working for Foley & Robertson, but I'd been somehow

22 contracted out to Valley Roofing to work for Valley Roofing to

23 inspect the roof for Valley Roofing.

24 Q For Valley Roofing, so if you found something wrong,

25 who would you report to?

1 A I'd report it to Valley Roofing and also my company
2 and -- which I had daily forms to be filled out which I sent to
3 Westinghouse and to Weaver, sent to my company and to Valley Roof-
4 ing.
5 Q So Foley & Robertson, as far as you know, was hired
6 to inspect the job as it progressed?
7 A Right.
8 Q And you were there to watch over Valley Roofing?
9 A Just watch over the roof, right.
10 Q Whoever was doing it?
11 A Yeah, whoever was doing it.
12 Q Well, they were the only ones doing it, though, isn't
13 that right?
14 A Yes, sir.
15 Q All right. Well, now, after this blast, what percent-
16 age of the roof would you say was covered with these rocks?
17 A You mean covered or damaged?
18 Q Well, I'm presuming that most of them stayed there
19 where they landed. Some of them went through the roof, didn't
20 they?
21 A Yes, they did.
22 Q Well, the ones that didn't go through the roof --
23 A I'd say there was debris on about eighty percent of
24 the roof.
25 Q What part of the roof would you say was damaged?--what

1 percent?

2 A Well, damage that you could see, I would say fifty

3 percent of it was damaged, but how much -- you know - you couldn't

4 see, like I was talking before. On a hot day the little holes

5 would cover up, but on a cold day they'd open up and, if it was

6 raining, the water would go right on through.

7 Q Well, this was a cold day?

8 A Yes.

9 Q So they were open?

10 A Right.

11 Q And what you saw covered about fifty percent of the

12 roof, is that right?

13 A Fifty percent of what I could tell was damaged. It

14 was late in the day, too.

15 Q Well, you made a detailed inspection, didn't you?

16 A Yeah, the next day.

17 Q All right, the next day -- was it cold then?

18 A I don't remember the weather report then.

19 Q Do you remember whether there was a change in the

20 weather in the two days?

21 A Not very much.

22 Q Well, so I presume that the holes that would be open

23 on a cold day were open the next day?

24 A Right.

25 Q And you say that these indentations -- I presume by

1 holes, you mean where a piece of roofing felt might have been
2 crimped or a little puncture in it?
3 A Right.
4 Q That covered about fifty percent of the roof?
5 A Fifty to sixty percent was the best I could tell.
6 Q All right, now, what portion of the roof was redone?
7 A I don't think any of it was completely redone. There
8 was a lot of -- a great deal of labor involved about cleaning off
9 the -- as you've probably seen the building, there was a low roof
10 beside the larger part, but it had already been completed except
11 for the flashing. Some of the flashing hadn't been completed.
12 Well, they already had the gravel on it. You couldn't tell if
13 there were holes there or not, so most of that had to be swept
14 off and then I'm not sure exactly what they did to correct that
15 because I left after about two weeks. On the top roof, what they
16 decided they'd have to do was put two more plys of felt down which
17 essentially is doing the roof fifty percent over again, which is --
18 Q Now, when you say fifty percent, you don't mean fifty
19 percent of the roof? You mean fifty percent of the construction
20 of the roof?--over the whole roof?
21 A Well, over the large portion up top. It was supposed
22 to be, as I remember, two plys of -- I'm not sure whether it was --
23 two or three plys of felt; well, they had to go back over the
24 entire roof with two more plys to insure that it wouldn't leak.
25 Q Put felt and pitch, then felt and pitch and then rock

1 or gravel, is that correct?

2 A Gravel, right.

3 Q All right, and the gravel wasn't on the big roof?

4 A No.

5 Q How big was that big roof?

6 A I can't remember what the size was.

7 Q Well, approximately.

8 A Six or seven hundred feet long and maybe a hundred

9 and -- maybe a hundred feet wide is the best --

10 Q Bigger than a football field?

11 A No.

12 Q Smaller than a football field?

13 A Well, the entire building covers thirteen hundred

14 squares which is 130,000 square feet. Now, how --

15 Q Are the squares ten by ten?

16 A A hundred square feet.

17 Q A hundred square feet. All right, now, you say that

18 entire large roof was refelted, pitched, refelted, pitched and

19 graveled, is that right?

20 A Yes.

21 Q But the damage that you saw to it covered only fifty

22 percent of it. Was there any reason, sir, for doing the whole

23 roof as opposed to doing the half that was damaged?

24 A Well, there was small damage all over. What I'm

25 talking about is a lot you can't see. Why take the chance of having

1 it leak? You're not sure what's up there. There were obviously
2 rock all over the roof - eighty percent of it. That's what I'm
3 saying.
4 Q Well, did you get down on your hands and knees and
5 take a look?
6 A I did several times, yes.
7 Q All over the roof?
8 A Not on my hands and knees - not all over the whole
9 roof. It's kind of hard to cover that much territory on your
10 hands and knees.
11 Q Well, how much dirt and rock would you estimate was
12 up on that roof?
13 A I have no idea how much. By weight, volume or what?
14 Q Well, you heard Mr. Taggart testify he'd say about
15 a pickup truck load. Would you say that's right? Would you say
16 it's more or less or what?
17 A Well, a large -- I'd say a large pickup truck full.
18 Q Well, are you saying that over however many thousand
19 square feet you said - that this pickup truck load of dirt and
20 rocks was over the entire roof?
21 A Uh huh.
22 Q Well, did you see where this blast occurred?
23 A Yeah.
24 Q Where in relation to the face of the building did it
25 occur?

1 A It was twenty-some feet out from the side. It went
2 straight up and came on down.
3 Q Well, how far was it, say, from the east end of the
4 building,or the west end of the building, either one?
5 A Which end is east?
6 Q Well, now, the face that you saw was the north side.
7 A Where the blast was? Is that the north end?
8 Q Yes. All right, so how far from each corner - the
9 east and west corner - would this blast have occurred?
10 A About three-quarters of the way up one side of the
11 building, I'm not sure.
12 Q Up which side?--which way?
13 A The front - facing it from 29.
14 Q So if you were facing the building, would it be
15 three-quarters of the way from your left or the east or three-
16 quarters of the way from your right, which was from the west?
17 A Facing it, it would be three-quarters of the way
18 from the left to the right.
19 Q All right, so it would be three-quarters of the way
20 from the lefthand corner? That would be the northeast corner, is
21 that right?
22 A Yes.
23 Q All right, now, which direction did this rock go?
24 A Up and on the roof toward the main part of the build-
25 ing -- toward the main bulk of the building. It was up on one

1 corner and then came back across the rest of the building.

2 Q So it went east basically - southeast, is that right?

3 MR. SOKOL: If Your Honor please, let the witness des-

4 cribe where it went. I don't think it's proper that he --

5 THE COURT: He has a right to lead on cross-examination.

6 Objection overruled. Go ahead, Mr. Boyle.

7 Q Well, which direction would you say this blast went?

8 Did it go straight up in the air or did it go in a particular

9 direction?

10 A It would appear to me that the bulk of what went up

11 came up and went over top of the building -- came down on the

12 building -- well, not over top -- up and down on top of the build-

13 ing.

14 Q So the blast would go from the north side towards the

15 south side then?

16 A Right.

17 Q At the point where the blast occurred? Is that it?

18 A Yes.

19 Q And the majority of the building then would have been

20 to the east of where the blast occurred and it did not go in that

21 direction, is that --

22 A No, that's -- you're getting me messed up on direc-

23 tions. I could draw you a picture and show you how it went. It

24 was from one corner diagonally to the opposite corner, basically

25 where I saw it.

1 Q Are you the one that made the determination that the
2 whole roof should be redone?
3 A I may have made the suggestion. I wasn't the one to
4 finally say. I thought it best for the Westinghouse people for it
5 to be entirely covered, but the top part at least, because you
6 could cover half of it just about as easy as you could cover the
7 other half because of the labor involved and time involved and
8 it would be a safety factor --
9 Q Well, it's more advantage to cover the whole roof
10 than half the roof, isn't it?
11 A Not all the time.
12 Q Well, in this case it was, wasn't it?
13 A About half --
14 Q Put a coat of pitch over the entire roof and --
15 A Well, see, the entire roof wasn't destroyed because
16 the top part of the roof hadn't been completed yet, so what they
17 had to do yet was the most important part called the floodcoat
18 and gravel. Now, the insulation and the felt was already down,
19 but the major cost of what they had to do yet - the cost of the
20 pitch was still -- a great deal amount of the pitch still had to
21 go onto the roof.
22 Q All right, but that was the pitch to secure the
23 gravel?
24 A Right.
25 Q But the top hadn't been graveled yet, had it?

1 A No, that's what I'm saying.

2 Q Okay, so that doesn't relate to this damage, but the
3 two layers of pitch and two layers of felt had already been put
4 on that roof?

5 A And the insulation.

6 Q And the insulation. And they redid the two layers of
7 pitch and two layers of felt, didn't they?

8 A Yeah -- well, you can't put down the felt without
9 the pitch.

10 Q All right, but I mean the rock - the gravel wasn't
11 on the roof when the blast occurred -- on the big roof?

12 A Right.

13 Q So it wasn't a question of sparing that expense, was
14 it?

15 A Well, if the gravel had been on the upper part of
16 the roof, the cost would have doubled just that quick.

17 Q All right, but doing half the roof, pitch and felt,
18 would have been approximately half the cost of doing the whole
19 roof, wouldn't it? Just pitch and felt, now.

20 A No, you don't -- you're not grasping what I'm trying
21 to tell you. What had already been put on was an essential part,
22 but the major cost was yet to be put on the top part of the build-
23 ing.

24 Q But the major cost which had yet to be put on was not
25 put on at the time of the blast?

1 A Right, but the labor involved to put what they had
2 already put on over again is your labor cost.
3 Q Right, and that's the cost which was the damage to
4 the building, isn't that right?
5 A It had been -- what was the question again?
6 Q That the labor to redo the pitch and the felt with
7 the labor that we're talking about that was necessitated by this
8 blast?
9 A Right.
10 Q And this was done over the entire large roof rather
11 than half of the large roof which you say you felt was damaged?
12 A Right, but I couldn't say about the other half, though.
13 Q But you couldn't say it was damaged?
14 A No.
15 Q So you were assuming that it might be?
16 A Right, and, in my capacity, I thought it best for them
17 to do that.
18 Q Well, was your capacity to insure that the roof was
19 bondable for twenty years?
20 A That's what I was there for.
21 Q All right. So the requirement was that the roofer
22 was to produce for Westinghouse a twenty year bondable roof?
23 A Right.
24 Q And it was because of this bond requirement that the
25 repairs were made in this fashion?

A Yes.

MR. BOYLE: All right, sir. I have no further questions.

MR. SOKOL: Mr. Bryson.

THE COURT: Do you execuse this witness, gentlemen?

MR. SOKOL: Yes, Your Honor.

THE COURT: You're excused, sir. You can go home if you like.

[The witness was excused.]

BILL BRYSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sokol:

Q State your name for the Court.

A Bill Bryson.

Q By whom are you employed?

A Valley Roofing Corporation.

Q Are you presently employed by Valley Roofing?

A Yes.

Q How long have you been employed by them approximately?

A I started with them in '46 and worked 'til '50 and from '54 to the present.

Q What kind of work do you do for them, Mr. Bryson?

A I'm presently a roofing foreman.

1 Q Roofing foreman? How long have you been a roofing
2 foreman?
3 A Oh, fifteen - eighteen years.
4 Q Were you roofing foreman on the Westinghouse job
5 project here in Culpeper?
6 A Yes.
7 Q Were you on the project on January 27, 1972 when this
8 blasting incident occurred?
9 A I'd say so. I'm not sure of the date, but I remember
10 the blast.
11 Q You remember the blast?
12 A Right.
13 Q Was it January of '72?
14 A I'd say so.
15 Q All right. Were you on the roof of the building that
16 day prior to the blast?
17 A Yes.
18 Q Prior to the blast, was there any damage to the roof
19 of the building?
20 A To the roof of the building?
21 Q Yeah.
22 A No, not that I know of. There had been some dirt
23 throwed on it -- on the lower roof and we had looked that over,
24 but I don't believe it was any damage from it - just mostly dirt.
25 Q Now, did you see the blast occur?

A Yes.

Q Where were you?

A I was on the high roof, on one of the far ends, just observing, as most of us did at each blast, to see what would happen. When the blast went off, it looked like a -- well, kind of like driving in a snowstorm. It all just came in a big sheet.

Q What came in a big sheet?

A Oh, rocks and gravels.

Q Did the rock and gravel go above the building?

A Yes. Matter of fact, my kettleman said - we had kettle --

MR. BOYLE: Objection, Your Honor.

Q All right, don't refer to what your kettleman said, but you can describe it yourself, Mr. Bryson. Did you see rock and debris coming down on top of the building?

A Yes.

Q Can you describe to the Court the quantity of rock and debris that came down as a result of that blast?

A Well, I remembered at one time how much it was, but I've forgotten. We sort of estimate wheelbarrows. We cleaned it up and hauled it over the side of the roof and dumped it off on the side, but I believe we spent maybe a half a day or something like that with four or five men cleaning it up.

Q All right, did you see any large rocks?

A Yes.

1 Q How large would a large rock be?

2 A I guess the larger ones would have been about the

3 size of these drinking pitchers roughly.

4 Q About the size of this drinking pitcher?

5 A Yes, that one.

6 Q About a foot by six inches?

7 A Probably ten by six inches. It wasn't too many that

8 size, maybe five or six of them. The rest of them were the size

9 of your fist on down to smaller.

10 Q The rest of them were the size of a normal fist on

11 down smaller?

12 A On down, yes.

13 Q Did you see any holes in the roof?

14 A Oh, yes.

15 Q Did you see holes in the upper roof?

16 A Yes.

17 Q Did you see holes in the lower roof?

18 A Yes.

19 Q About how large was the largest hole?

20 A I'd say the largest hole would have been the size of

21 the end of the rock that had gone through. I don't think any --

22 I don't think any rocks went through the dirt to the ground, but

23 we found some that had penetrated our roof - penetrated the insu-

24 lation - penetrated, as a matter of fact, beneath our insulation.

25 Q All right. About how much of the roof area then

completed had been touched or affected by these rocks to the best of your estimate?

A On the lower roof it had two expansion joints in it, I believe, and two out of three sections on that roof and about half of the upper roof.

THE COURT: About half of the upper roof?

A Right.

THE COURT: And two out of three sections on the lower roof?

A Right.

THE COURT: Were damaged?

A Yes, sir. The roof -- the blast came at an angle. It missed the first section. It was beyond where the blast occurred and then it caught the other -- as it came at an angle, it caught the two lower roofs.

MR. SOKOL: I believe that'll be all. Answer to Mr. Boyle.

MR. BOYLE: May we confer just a minute, Your Honor?

THE COURT: Yes, sir. Do you know what it cost to put this entire roof on this entire building?

A No, sir, I don't -- I don't know what it cost.

THE COURT: You don't know what the contract figure was?

A No, sir.

MR. BOYLE: I don't have any questions.

THE COURT: Do you know what it cost to repair this

1 particular building?--this particular damage?

2 A Yes, sir, a few days after that, the superintendent --

3 superintendent for the mechanical man, told me that --

4 MR. BOYLE: I'd object, Your Honor, if it's hearsay.

5 THE COURT: All right, I'm inclined to --

6 MR. BOYLE: I don't make objection to the Court's ques-

7 tions, but the answers --

8 THE COURT: All right, I understand. That's all right.

9 It's hearsay with him, so he can't tell me. I understand that.

10 All right.

11 A I never saw any figures on it.

12 THE COURT: All right, sir.

13 MR. SOKOL: That's all, Mr. Bryson.

14 [The witness stood aside.]

15 MR. SOKOL: If Your Honor please, may we have a five

16 minute recess?

17 THE COURT: Certainly. Take a five minute recess.

18 [At this point there was a brief recess, after which

19 the proceedings continued as follows:]

20

21 PHIL BURKS, JR., having been previously sworn and testi-

22 fied, was recalled to the stand and testified as follows:

23

24 DIRECT EXAMINATION

25 By Mr. Sokol:

1 Q Mr. Burks, after this blast that you testified to a
2 few minutes ago, did you take photographs of the roof of the build-
3 ing?
4 A Yes, I did.
5 Q Do you have those photographs with you?
6 A I don't, but Mr. Barnett has them.
7 MR. SOKOL: Mr. Barnett, would you give those photographs
8 to Mr. Burks, please? [Photographs were handed to the witness by
9 Mr. Barnett.]
10 Q How many photographs do you have there?
11 A Twelve.
12 Q Did you take each of those twelve personally?
13 A Yes.
14 Q All right, do the --
15 THE COURT: You don't have to show that anymore. The
16 pictures speak for themselves.
17 MR. SOKOL: All right. I would like then to introduce
18 in evidence each of these twelve prints, Your Honor, showing the
19 photographs of the roof taken by --
20 THE COURT: Have you any objection, Mr. Boyle?
21 MR. BOYLE: We haven't seen them. We've not seen the
22 photographs.
23 MR. SOKOL: Certainly. [Hands photographs to counsel
24 for Plaintiff.]
25 MR. BOYLE: We have no objection, Your Honor.

THE COURT: Ask the court reporter to mark them successively one through twelve, each one to have a separate number. Are there any other defendant's exhibits?

MR. WOOD: There is one.

THE COURT: Yes, so these will begin with 2 -- 2 through 13, please. And please tell the witness to describe each one and then you may proceed, Mr. Sokol, with #2, please, as she's marking them.

[Twelve photographs received in evidence and marked by the reporter as Defendant's Exhibits 2 through 13 respectively.]

Q Referring to Defendant's Exhibit 2 -- do you wish to put an additional mark on these?

MR. BOYLE: So as not to delay, Your Honor, could this be done at the bench so the Court could look at them and --

THE COURT: All I want him to do is tell me what it is, then I'll look at it, whether it's the upper roof or the lower roof or what part of the roof --

MR. SOKOL: I'm not going to go through each of the 12, Your Honor. I don't think that that's -- I'd like to exhibit all 12 for the Court's viewing.

THE COURT: Well, I want to know, so you might as well do it. I want to know what each picture is if he can tell me, whether it's the lower or upper roof and --

Q All right. Defendant's Exhibit 2 - what part of the

1 roof -- what roof does that depict?

2 A That's the upper roof.

3 Q All right. Who is the gentleman, if you know?

4 A He's a foreman or some-- a carpenter for Weaver.

5 He's got his leg through the roof and the rock beside him.

6 THE COURT: Do I understand that these pictures were taken

7 immediately after the blast?

8 Q When were they taken?

9 A I took them the day after the -- they have it marked

10 on the back, "1/31/71."

11 Q Was that indeed when you took them?

12 A No, I took them the day after.

13 Q You took them the day after?

14 A Yes.

15 THE COURT: All right, let me see 2.

16 MR. SOKOL: The picture is intended to show a hole with

17 the man's leg through it, Your Honor, and as well as the rocks.

18 Q No. 3 - would you just briefly describe what that

19 portrays?

20 A Just several of the larger rocks on the lower roof,

21 which had already been graveled.

22 Q And No. 4?

23 A The upper roof,which shows some of the damage and all

24 of the rocks that - laying on the roof.

25 Q No. 5?

A Lower roof, showing the large indentation in the roof, gravel and the pitch showing.

THE COURT: You said 4 was the lower roof or the upper roof?

A That has the gravel on it is the lower roof.

MR. BOYLE: That's the upper roof, Your Honor.

THE COURT: Upper roof.

MR. BOYLE: The one graveled is the lower roof.

THE COURT: All right. Thank you.

Q Would you describe what photograph #6 depicts?

A This is someone out there with a ruler showing the size of the rock laying on the roof with a ruler.

THE COURT: Is this the lower or upper roof?

A Lower.

Q All right, in each one if you'd just say upper or lower, please. No. 7?

A It would be the upper roof with the rock imbedded.

Q No. 8?

A Lower roof.

Q No. 9?

A The edge of the upper and the lower roof.

Q No. 10?

A Lower roof.

Q No. 11?

A The upper roof with some of the rocks stuck in the

roof.

Q No. 12?

MR. BOYLE: I'm sorry, I didn't hear what he said about No. 11.

MR. SOKOL: No. 11?

A Is that the one? It's --

MR. SOKOL: Wait -- I beg your pardon. This is No. 11, yes.

A Some rocks imbedded in the roof. This is just a view of the upper roof showing some of the rocks.

Q No. 13?

A Lower roof, rocks.

MR. SOKOL: I have no questions of this witness, Your Honor.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Burks, the rocks that were measured, I take it that you had measured the largest rocks you could find up there, is that correct?

A Some of the larger ones, although we just took a couple of pictures with the rulers to illustrate the size of the rocks.

Q I notice in some of these pictures of the upper roof there seems to be a division. In other words, the upper roof in

several parts. It looks like a solid piece higher than the tar-paper perhaps by a foot running across the width of the roof. Is that -- was I misled by the photographs or is that the way the roof was constructed?

A Yeah, it's an expansion joint.

Q So, there were several sections?

A Yes, sir.

Q And the section where all these rocks -- how many sections were there up on the top?--the big roof?

A I can't remember how many there were. Here's three.

Q Three? You don't have any picture of the whole roof, do you, this 700 foot building or whatever it was?

A No, not -- there's one that shows a lot of it, but you can't get all of the roof standing on top of it.

Q I see, but the picture - the one section that keeps reappearing on the upper roof is the one where all the rock landed basically, is that right?

A Right.

MR. BOYLE: All right, I have no further questions.

MR. SOKOL: I have no further questions of this witness unless Your Honor does.

THE COURT: I've no further questions. Thank you, sir.

[The witness stood aside.]

MR. SOKOL: Mr. Barnett?

1

2 RALPH BARNETT, being first duly sworn, testified as

3 follows:

4

5 DIRECT EXAMINATION

6 By Mr. Sokol:

7 Q Would you state your name to the Court, please?

8 A Ralph Barnett.

9 Q Where do you live, Mr. Barnett?

10 A Roanoke.

11 Q By whom are you employed?

12 A Valley Roofing.

13 Q How long have you been employed by Valley Roofing?

14 A Well, I started in 1949 and I worked until 1950 and

15 I came back in 1954.

16 Q Have you worked from 1954 until 1973 continuously

17 for Valley Roofing?

18 A Yes. Yes.

19 Q What has been the nature of your responsibilities with

20 Valley Roofing?

21 A Well, now I'm the estimator and purchase agent for

22 the different jobs.

23 Q An estimator?

24 A Yes, sir.

25 Q And purchase agent?

A Yes.

Q How long have you been an estimator?

A Oh, since '54.

Q Since 1954?

A Yes.

Q Will you describe to the Court in a bit greater detail just what it is an estimator does?

A Well, he figures the cost of the job - I mean what it's going to run, the labor and the materials.

Q Labor and material in the cost of a job?

A That's to arrive at the cost of the job.

Q To arrive at the cost of the job. Does an estimator's duties also entail an assessment of the cost of repairing the job?

A Yeah, I get into that, too.

Q You get into that, too?

A Yeah.

Q How long have you been getting into that?

A Oh, about the same length of time. You offer new jobs and --

Q Since 1954?

A Yes.

Q I know it sounds like a silly question, but how many estimates do you reckon you've given over that nineteen year period?

A I wouldn't have any idea.

1 Q Huh?

2 A I wouldn't have any idea.

3 Q Would it be more than a hundred?

4 A Oh, yeah, a good many more.

5 Q Sir?

6 A A good many more than that, but I don't know how many.

7 Q A good many more than a hundred?

8 A Yes.

9 Q And you've done this for Valley Roofing, is that

10 right?

11 A Yes.

12 Q And Valley Roofing Corporation - are you familiar

13 with that business and what the nature of that business happens

14 to be?

15 A Yes, sir.

16 Q Does the name speak for itself, Valley Roofing?

17 A Yes, sir.

18 Q All right, now, with respect to this project, the

19 Westinghouse project here in Culpeper County, what was your first

20 relationship with that project, Mr. Barnett?

21 A Well, I estimated the original job when it was out

22 for bid.

23 Q You estimated the original job?

24 A Yes.

25 Q And did you submit that estimate of yours for

1 acceptance?

2 A Well, it was sent out to the bidders on the job, the

3 general contractors who were bidding the job.

4 Q All right, and then that job in fact was done by

5 Valley Roofing, is that right?

6 A Yeah, this job was, yes.

7 Q The Westinghouse job?

8 A Westinghouse, right.

9 Q Did you stay abreast of that job as it was proceeding?

10 A I did, yes.

11 Q You did? All right. Now, subsequent to January 27th,

12 precisely January 28th, did you go onto the roof of that building

13 to assess certain damages?

14 A Well, they give me a call and I came up there and

15 estimated the -- looked at the damages -- what damages had occurred

16 to the job - to the roofing.

17 Q All right, who paid you a call?

18 A My foreman and --

19 Q All right, did you go onto the roof of the building?

20 A Yes, sir.

21 Q What did you find on the roof?

22 A There was considerable stone and debris --

23 THE COURT: We've had enough evidence about that. Now,

24 let's get to what it cost. That's what I'm interested in.

25 Q All right, did you make an estimate of what it would

cost to repair the damage that had been done?

A I did, yes, sir.

Q All right, what figure did you arrive at?

A $28,700.00.

Q $28,700.00?

A Yes, sir.

Q Can you tell the Court how you arrived at that figure?

A I had 648 squares, install 2 plys of felt and 247 squares I had to remove the gravel and install a half inch insulation, install complete new roofing.

Q Now, when you say install complete new roofing, you don't mean new construction, do you?

A Well, that was --

Q I mean over what had already been done?

A Over what had already been done, we had to go over it and remove the gravel, knock on a half inch insulation and knock on four plys of felt and reslag it.

Q And was that estimate based on the damages that you had observed on the roof on January 28th?

A Yes, sir, it's based on the damages.

THE COURT: What was the original cost of the entire roof on this building?

A $74,400.00.

THE COURT: $74,400.00?

A Yes, sir.

Q Do you believe --

THE COURT: Do you recall how much of that was the lower roof and how much was the upper roof?

A No, I don't right now. Six Hundred and Forty-Eight is the upper roof, but I don't --let's see, 1300 squares in it would be -- around 650 squares in the lower roof, I believe.

Q What would that divide out at? Can you do that to determine --

THE COURT: How much per square, in other words?

A Oh, you get approximately $70.00 a square, somewhere along there. That's -- well, let's see -- 1300 squares would run approximately $50.00 a square, new roof.

THE COURT: Now, can you give me the dollars and cents figure for the lower roof and the upper roof, the original installation?

A No, I couldn't do it here. I'd have to work it out.

Q Can you work it out?

A Right here I couldn't because I don't have --

THE COURT: Can you give me the approximate figure? I don't have to know to the penny.

A I'd say it's around $33,000.00 for the lower roof, $32,000.00 - something like that.

THE COURT: Now, you say for the lower roof the original cost was approximately $32,000.00?

A Yes.

THE COURT: And the entire roof was seventy what? Seventy-four did you say?

A $74,400.00.

THE COURT: $74,400.00. So that made the upper roof $42,400.00. Does that sound about right?

A Somewhere in that neighborhood, yeah.

THE COURT: All right, sir.

Q All right, now, did you commit your estimate to any kind of writing?

A I mailed Weaver's a copy of the estimate.

Q All right. Do you have any writing with you today to indicate this figure of Twenty-Eight Thousand and some dollars?

THE COURT: Well, is there any question but what he billed Hungerford for it?

MR. SOKOL: No, there's no question as far as we're concerned, Your Honor.

THE COURT: All right.

MR. SOKOL: Well, I would like to introduce as an exhibit, though, any writing. He has here a two page writing signed by Mr. Barnett, both writings indicating the nature of the damages and the estimate for the cost of repair which I'd like to introduce as --

THE COURT: And what's the date on that?

MR. BOYLE: March 2, 1972, Your Honor. It's a repair --

THE COURT: Was this after it was done or before it was

done?

MR. BOYLE: This was after it was done apparently.

MR. BARNETT: Well, it's my -- my estimate was before it was done.

MR. BOYLE: Oh, this was before it was done? I'm sorry. I apologize, Your Honor.

THE COURT: That was before it was done?

A Yes, sir.

THE COURT: Did you send a copy of that to the Worley Construction Company?

A No, we deal directly through the general contractor.

MR. SOKOL: I'd like to offer this --

THE COURT: So you submitted this to Weaver?

A Yes, sir.

THE COURT: You don't know whether Hungerford got a copy of it or whether Worley got a copy of it or not?

A I do not know, no.

THE COURT: You don't know that. All right.

MR. SOKOL: I'd like to introduce this as the next consecutive exhibit.

THE COURT: All right, it'll be received - Defendant's Exhibit #14.

[Estimate of cost of repair prepared by Mr. Barnett for Valley Roofing Company received in evidence and marked by the reporter as Defendant's Exhibit #14.]

1 Q Now, again, forgive me for the question, Mr. Barnett,
2 but do you believe that this estimate that you submitted is a fair
3 and reasonable assessment of the cost for repairing the damage to
4 the roof of the Westinghouse plant?
5 A I do.
6 Q You do? Did Valley Roofing in fact effect those re-
7 pairs?
8 A You mean after it was bid?
9 Q Yes.
10 A Yes.
11 Q All right, and, to the best of your knowledge, was
12 Valley Roofing paid for those repairs?
13 A Yes, sir.
14 Q They were. In the sum of $28,700.00?
15 A Yes, sir.
16 MR. SOKOL: Your witness.
17
18 CROSS EXAMINATION
19 By Mr. Boyle:
20 Q Well, how close were you to what it cost, Mr. Barnett?
21 A You mean after it was all over with?
22 Q Yeah. You say this was an estimate. What did it
23 cost?
24 A I don't have my ledger sheets with me.
25 Q You don't know?

A No, I don't.

Q Did you figure a profit in there?

A Yeah, all jobs you try to figure a profit.

Q Now, in the total cost of the new roof, what all does Valley have to do when you compute what it's going to cost - like $74,400.00 - what all does Valley have to do to earn that money? Do they have, for instance, to put up steel trestles?

A No, sir.

Q They're provided, is that right?

A We take it from the deck up.

Q All right. Now, do you put on the deck?

A No, sir.

Q So there's a steel deck, is that right?

A Yes, sir.

Q Do you put on the insulation?

A Put the insulation - yes, sir.

Q Do you provide the insulation?

A Yes.

Q What kind of insulation is it?

A Well, this job was fiberglass.

Q And how thick was it?

A Oh, I believe it was an inch and a sixteenth, I believe.

Q And does that cover the entire roof area?

A Yes, sir.

1 Q And approximately what fraction of the cost of doing
2 a roof of this nature is the cost of the material, the insulation
3 material, and the putting it in place?
4 A You mean material versus the labor?
5 Q No, I want to know the cost of producing the material
6 and putting it in place as far as the insulation is concerned.
7 What portion of the total cost of installing this roof is that
8 part of it?
9 A You mean if we install the labor, install the insula-
10 tion, and install the felt?
11 Q Putting in the insulation -- buying the insulation,
12 bringing it on the job, putting it on the roof, in place; before
13 you do anything else, what portion is it of the job?
14 A Well, that all depends on the thickness of the insu-
15 lation you buy --
16 Q Well, in this case, sir, you said it was an inch and
17 a sixteenth.
18 A Right. I don't have the figures here right now.
19 Q Well, what's your estimate?
20 A Well, the total estimate was $74,400.00.
21 Q What's your estimate of what it would cost to put in
22 this insulation?
23 A Well, I don't have that figure here. I can't work it
24 out right now.
25 Q Well, do you know what insulation costs?

A Well, I know what it cost me.

Q Well, how big are the sheets?

A Three by four.

Q Feet?

A Yeah.

Q All right, what does a three by four feet of one and a sixteenth inch fiberglass cost?

A Well, your fiberglass insulation costs about $16.00 a square.

Q That's ten by ten?

A No, that's -- yeah.

Q All right, a square is ten by ten?

A Yeah.

Q And you put about eleven of these in a square, wouldn't you?

A You wouldn't put quite twelve --

Q Ten and a fraction of these in a square?

A Yeah, something like that.

Q So how much is it a square?

A $16.00.

Q So you had 1300 squares, is that right?

A Yes.

Q What does that add up to?--1300 at $16.00.

A About twenty thousand eight hundred.

Q All right, what would it cost to put it in? --1300 squares

of it?

A It would run you about $2.00 a square, labor.

Q $2.00 a square? So, it would be about $2600.00, is that right?

A Something in that neighborhood.

Q Now, how much does it cost for the gravel, the ground gravel that you put on the roof?

A It would cost you in the neighborhood of about $8.00 a square, something like that.

Q Would you say -- for the stone and the labor, is that what you're saying?

A Yeah.

Q About $8.00 a square?

A Somewhere along there.

Q Does that include the pitch to set the gravel?--slag it?

A Labor and all would run you about $7.50, $8.00 - something like that.

Q About $8.00? And at 1300 squares, what is that, about $11,000?--$10,500--something like that?

A Yeah.

Q Now, the only other process in doing a roof of this kind is to put on a layer of pitch, a layer of felt, layer of pitch, layer of felt?

A Well, we put on four layers.

1 Q All right, sir, so as I understand it, where you start
2 with your roof, you put down the fiberglass insulation, layer of
3 pitch, felt, pitch, felt, pitch, felt, pitch, felt, pitch, gravel,
4 is that right?
5 A That's right.
6 MR. BOYLE: All right, I've no further questions.
7 MR. SOKOL: That's all.
8 [The witness was excused.]
9
10 MURRAY COOPER, being first duly sworn, testified as follows:
11 DIRECT EXAMINATION
12 By Mr. Sokol:
13 Q Would you state your name for the Court?
14 A Murray Cooper.
15 Q Where do you live, Mr. Cooper?
16 A I live in Richmond.
17 Q By whom are you employed?
18 A I'm employed by Hungerford, Incorporated.
19 Q In what capacity are you employed by Hungerford, Inc.?
20 A I'm Vice-President of the corporation.
21 Q How long have you been employed by Hungerford?
22 A Twenty years in November.
23 Q How long have you been a Vice President of the corp-
24 oration?
25 A About fifteen years.

1 Q All right. Are you professionally trained?

2 A Yes, I am.

3 Q Do you hold a degree?

4 A Yes, I do.

5 Q In what?

6 A B.S. in Mechanical Engineering.

7 Q Now, Mr. Cooper, were you involved in your capacity

8 with Hungerford in the Westinghouse project here in Culpeper

9 County?

10 A Yes, I was.

11 Q Earlier today the contract between Weaver and Worley

12 was introduced into evidence. Have you examined --

13 MR. BOYLE: Objection, Your Honor. It was not a contract

14 between Weaver and Worley.

15 MR. SOKOL: I beg your pardon. I stand corrected.

16 Q -- between Weaver and Hungerford was introduced in

17 evidence. Have you examined that contract?

18 A Yes, I have.

19 Q To the best of your knowledge, is that the contract

20 existing between Weaver and Hungerford with respect to the Westing-

21 house project?

22 A It is.

23 Q Now, under that contract, what were Hungerford's

24 responsibilities, Mr. Cooper?

25 A We contracted to install the mechanical work for the

1 project. It's designed by Wiley & Wilson, Consultant Engineers.
2 Q All right, did a part of that include the installa-
3 tion of utility lines?
4 A Yes, it did.
5 Q Did you subcontract that work out?
6 A We subcontracted it to M. W. Worley Company.
7 Q Was there a specific reason why you decided to sub-
8 contract that portion of it out?
9 A Yes. We don't normally go in for larger utility work.
10 We try to sub it out and that's been our policy over the years.
11 Q Did you have any dealings with Mr. Worley yourself?
12 A Yes, I did.
13 Q With respect to he and his employees doing this work?
14 A We discussed the details of the contract and entered
15 into an agreement together.
16 Q All right, now, if I may show counsel, I believe that
17 this has been agreed in the pleadings, Your Honor, or it's uncon-
18 tested by the pleadings that this is a writing that -- I show you
19 a photocopy of a writing executed by your Mr. Nuckols. It's a
20 purchase contract. Is this an operative document with respect to
21 your relationship with Worley?
22 A Yes, it is.
23 MR. SOKOL: I'd submit it to the Court as Defendant's
24 Exhibit 15, the purchase contract signed by Mr. Nuckols and is
25 admitted by the plaintiff.

1 [Document received in evidence and marked as Defendant's
2 Exhibit #15.]
3 Q During the course of your discussions with Mr. Worley,
4 did the matter of blasting operations come up?
5 A Yes, it did.
6 Q What was the relationship of the blasting operation
7 to the duties that Worley would be performing?
8 A Well, it was recognized that the job itself would
9 require some blasting, but the documents themselves were not
10 sufficiently finite to determine exactly how much blasting would
11 occur. As a result, the document stipulates that a given allowance
12 would be paid for blasting on demand.
13 Q All right. Now, I believe you've brought with you
14 certain plans of this job site. Would you extract from that --
15 I don't intend to -- oh, go ahead, extract from that the plan that
16 shows the building and the sewer line. Now, have you examined
17 that drawing?
18 A I'm familiar with the drawing.
19 Q Well, does the drawing depict construction of the
20 Westinghouse plant?
21 A Yes, it does.
22 Q What is the width of that building according to the
23 drawing?
24 A It's approximately 600 feet by about 200.
25 Q 600 by 200?

1 A Yes.

2 Q And does that particular drawing show the fact that

3 there are two levels of roofing?

4 A Not specifically, no. This is a plan drawing only

5 to show the -- this is a utility plat plan.

6 Q All right. Is the sewer line running on the northerly

7 side of the building shown on this schematic drawing?

8 A Yes, it is.

9 Q Would you -- do you have a colored pen?

10 A I've got blue.

11 MR. BOYLE: Would you show it to the Judge while you're

12 doing this? We don't have any objection.

13 THE COURT: Is it any question about it being 20 feet

14 from the building?

15 MR. SOKOL: Well, I just wanted to demonstrate that that's

16 how far it is, Your Honor.

17 THE COURT: All right. I think that that's admitted,

18 gentlemen.

19 MR. SOKOL: All right. I'd like to introduce this as an

20 exhibit if there's no objection.

21 MR. BOYLE: No objection.

22 THE COURT: All right, gentlemen.

23 MR. SOKOL: Let the record show that Mr. Cooper has

24 marked on this drawing by means of a circle and his initials the

25 location of the sewer line running on the northern side of the

building and the location where the blasting occurred in relationship to the building and that's offered as Hungerford's Exhibit #16.

[Document so received in evidence and marked as Defendant's Exhibit #16.]

Q Now, Mr. Cooper, during the course of your relationship with Mr. Worley, did you have any discussions with him regarding the timing of his conducting these operations?--blasting operations?

A No, sir.

Q Did Mr. Worley ever advise you of any particular hazard or peril that existed by reason of certain rock?

A No, sir.

Q Did Mr. Taggart ever advise you of any particular hazard or peril that existed by reason of the rock on the job site?

A No, sir.

Q Did anyone advise you of any particular hazard or peril which existed by reason of this particular rock on the job site?

A No.

Q Did either Worley or Taggart tell you that they would like to work in proximity to the plant at an earlier date?

A Not to my recollection. They were busy the entire time. They kept their forces busy. They had plenty to do.

Q Were you made aware of any unusual peril or hazard

existing by Worley or by Taggart?

A No.

Q Did Worley ever refuse to conduct any blasting operations by reason of any hazard?

A Not to my knowledge.

Q Now, at the time of this blasting incident, how much of the building was completed to the best of your knowledge?

A I would say probably between 70 and 80 percent.

Q All right. Now, who is Mr. Nuckols?

A Mr. Nuckols is associated with me and works -- he's directly responsible to me in the company.

Q Was he also concerned with this particular project?

A Yes, he was. He visited the job.

Q All right. Now, as a result of this blasting loss, has Hungerford suffered any damages?--any financial damages?

A Yes. We were backcharged for the repair of the roof along with other damages that occurred.

Q How much were you backcharged for the repair of the roof?

A About $28,700.00.

Q By whom were you backcharged?

A We were backcharged by Weaver Construction Company.

Q Have you ever recovered that specific backcharge?

A No, we have not.

Q Now, after this loss occurred, did you have occasion

1 to meet Mr. Worley?

2 A Yes, I did.

3 Q On how many occasions you have met Mr. Worley?

4 A I had one specific meeting with him at my office.

5 Q At your office in Richmond?

6 A Yes.

7 Q Who was in attendance during that meeting?

8 A Mr. Nuckols.

9 Q Did Mr. Worley during the course of that meeting make

10 any statements with respect to bearing the loss for this blasting

11 damage?

12 A He made the statement that Hungerford would not be

13 responsible for it.

14 Q Did he make any statement with respect to the responsi-

15 bility of Worley Construction Company?

16 A He intimated to me that he would see that we were absolved of

17 it. That was the way. He didn't specifically say, "I will pay

18 for the loss" in so many words, but the inference that I got in

19 the way it was stated was that Hungerford would not have to pick

20 up the tab.

21 Q Now, at the time you dealt with Worley -- let's go

22 back to the beginning -- did he hold himself out to be qualified

23 to conduct blasting operations?

24 A Yes, sir, he did.

25 Q Did you rely on the qualifications that he expressed

to you?

A Yes, I did.

Q Subsequent to the blasting and the loss, did you meet with him on any other occasions than the one you described?

A Not to my knowledge.

Q Did at any time Worley or Taggart refuse to do any blasting or convey to you a message that they would not blast?

A One time. They had been doing some blasting within the building. We had run some deep sewer lines and we ran into rock in the building that we did not anticipate and we asked them to do some blasting. They did some blasting and then they said they preferred not to do any blasting within the building.

Q They said they preferred not to do any within the building?

A That's correct.

Q Did you relieve them of that responsibility?

A Yes, we did. We hired another blasting company.

Q At their request then, you made a change in whoever would do the blasting inside the building, is that right?

A That's correct.

Q If they had made the same request with respect to the outside of the building, would you also have made other arrangements?

A I would have been obliged to do so.

Q Did you happen to see the roof shortly after the

damage to the roof?

A Yes, I did.

Q When did you go?

A Approximately - about four days later.

Q Four days later?

A Yes.

Q Would you describe to the Court what you saw on the roof?

A The roof had general debris scattered throughout -- variable sizes of rocks -- small, large. Some of it was finger size, some of it was fist size, some of it was milk bottle or, as he said, this size [witness indicating with hands] and it was a lot of just -- looked like pulverized rock along with it.

MR. SOKOL: Your witness.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Cooper, you said that if he had requested outside the building not to have been required to do the blasting, you would have had to have granted his request, is that correct?

A That's what I said.

Q Well, now, outside the building you had a contract with him, didn't you?

A That's correct.

Q And inside the building, you didn't have a contract

1 with him, did you?

2 A That's correct.

3 Q So you had to follow his request inside the building

4 but you didn't have to follow it outside of the building, did you?

5 A No, I didn't have to, but I did not --

6 Q All right, you'd have been breaching a contract,

7 wouldn't you?

8 A No, his contract was to do blasting outside of the

9 building on a cost-plus basis.

10 Q Wasn't it to be according to specifications?

11 THE COURT: Yes. This says, "Blasting shall be performed

12 as an extra to the above figure only after approval of the same

13 and then in accordance with accepted standards for payment, not to

14 exceed $25.00 per cubic yard." So you paid him extra for all of

15 the blasting he did?

16 A That's correct, because it was -- I couldn't determine

17 how much was to be done.

18 Q That requirement was in there because when these --

19 before the ground had been touched, you didn't know how much was

20 rock and how much wasn't, isn't that right?

21 A That's correct.

22 Q So you put this in there for a blasting contractor

23 so if he runs into rock, he's paid $25.00 a yard for it?

24 A That's right.

25 Q If it's dirt, he's not paid that extra money, isn't

1 that right?

2 A That's right.

3 Q All right, but he was obliged to dig all of the ditches

4 set out on the plans and specifications under his contract, isn't

5 that right?

6 A Yes.

7 Q So, if he hadn't done it outside for any reason, he

8 would have breached his contract?

9 A I don't know whether he would have breached his con-

10 tract or not. I mean I can't give you a determination on that.

11 Q You're a utilities contractor, aren't you?

12 A No, sir, not basically.

13 Q Don't you do a lot of utilities work?

14 A No, sir. We usually sub it out.

15 Q Well, didn't you sign a utilities contract with

16 Weaver here?

17 A Yes, I did sign a utilities contract because it was

18 as a part of the major mechanical specification. It's an incidental

19 item that's less than 10% of the contract.

20 Q Well, what was your contract for?

21 A For a complete turnkey job.

22 Q Well, for doing what?

23 A For doing the mechanical work on the project.

24 Q Now, that's plumbing?

25 A Plumbing, heating and air conditioning.

1 Q All right. No wiring?

2 A No wiring.

3 Q All right, and that requires ditching?

4 A Yes, it does.

5 Q It requires laying pipe underground?

6 A Yes.

7 Q And you do that,too, don't you?

8 A Yes, we do.

9 Q And your corporation does a lot of it in the Richmond

10 area, does it not?

11 A Yes, we do.

12 Q And you do some blasting, don't you?

13 A No, sir, we do not.

14 Q Have you ever done any blasting?

15 A No, sir. We sub it out.

16 Q So, when you contract to do a job that requires

17 ditching, you do it until you come to a rock?

18 A That's correct.

19 Q And when you come to a rock, you go out and hire some-

20 body to do it?

21 A That's right.

22 Q Do you supervise?

23 A No, sir.

24 Q Do you have anything to do with it?

25 A No, sir, we rely on a qualified contractor who does

1 this type of work and this is one of the reasons why we avoid
2 doing outside utilities work.
3 Q Do you frequently run into rock?
4 A No, not in the areas that we normally work.
5 Q But you have run into rock on a number of occasions
6 before, haven't you?
7 A Yes, sir.
8 Q And you had to hire people to blast it out?
9 A Yes, sir.
10 Q So, are you familiar with blasting?
11 A I'm familiar with it to the extent that I stay away
12 from it.
13 Q Don't you ever watch it?
14 A No, sir.
15 Q You don't know how it's done?
16 A I have seen it done, yes, sir, but I'm not an expert,
17 nor do I hold myself to be an expert on it.
18 Q You've seen it done on this job, haven't you?
19 A I watched Ryder do a small portion inside the building.
20 Q Did you watch Canada do some?
21 A No, sir.
22 Q You watch Worley do some?
23 A I don't believe I've ever watched Worley do any
24 blasting.
25 Q Well, when you're paying somebody $25.00 a yard for

1 rock, doesn't somebody go around there and check and see whether
2 he's really in rock or in soil?
3 A I would say somebody checks it, but I don't.
4 Q Well, you really keep a pretty close tab on it, don't
5 you?
6 A I don't do it.
7 Q Well, somebody --
8 A I have a superintendent that watches the job and Mr.
9 Worley checks with him when he comes into something or one of my
10 subcontractors run into a place where they need to be paid for
11 rock, they usually check it out and show that they've hit rock and,
12 after the rock is removed, then you measure the opening and see
13 how much is due, or if you have a rapport with him, you trust him
14 and take his word for how much he's excavated.
15 Q Did you bid this job yourself?
16 A Somebody in the company did. I did not estimate it,
17 no.
18 Q Did you go to the site before Hungerford undertook to
19 do any of the work?
20 A No, sir, we did not.
21 Q Somebody did, though.
22 A No, but we had test borings.
23 Q So you knew there was rock there?
24 A We knew there was some rock.
25 Q All right, did you know that there was rock in the

1 location of this line?

2 A Yes, sir, I think we did.

3 Q Did you know that it would require blasting?

4 A Yes, I think we probably did.

5 Q Did it appear reasonable to you that it would be best

6 to blast before the building was built rather than afterwards?

7 A No, because at the time there was still blasting going

8 on to lower the grade. This was a mountain there at the time when

9 the job first started.

10 Q Well, my question was did it appear reasonable to you

11 to do the blasting before the building was built rather than after

12 it was built?

13 A Only in retrospect.

14 Q You mean when you knew there was rock there, you

15 couldn't contemplate the possibility of damage to the building?

16 A Well, I figure that this is a blasting expert's ex-

17 pertise. That's up to him to determine.

18 Q Don't you know enough about dynamite to know that --

19 A No, I do not.

20 Q Well, I haven't finished my question, sir. I presume

21 the answer will be negative, but you do know that dynamite and use

22 of it in blasting sometimes results in rocks flying, don't you?

23 A I would assume so.

24 Q All right, so if they flew and the building was there,

25 it would hit them, wouldn't it?

A Possibly.

Q So, if you blast 22 feet from a building, there would be a possibility the building would be damaged, wouldn't it?

A It's possible.

Q So it does seem more reasonable to blast before the building is built, doesn't it?

A I say in retrospect.

Q But not in -- you couldn't use foresight and make that determination?

A No, I think that blasting could be done. I would have presumed that blasting could be done safely. I think they did repeated shots in that area, from what I've understood, without damage.

Q So this was a freak thing?

A I don't know whether it's freak or not.

Q Well, you say there were repeated shots there without damage.

A That's what I said.

Q So, this was an unusual thing?

A This is your statement, not mine.

Q Well, I'm asking you if you can draw a conclusion from what you know of the job, sir?

A I don't know. I don't know.

Q Do you know whether or not Canada blasted and threw rock?

1 A No, sir.

2 Q Do you know that they didn't?

3 A No, sir.

4 Q Was the blasting done inside the building before or

5 after the blasting on the outside did the damage?

6 A It was done before.

7 Q Did whoever it was for Worley who told you that they'd

8 prefer not to blast anymore inside the building tell you why?

9 A No, sir. They didn't tell me. They told my superin-

10 tendent and the information was passed on to me.

11 Q Do you know what the reason was?

12 A No, sir. I was just told that they were not going

13 to do it inside the building anymore.

14 Q Well, did you know whether it was because they didn't

15 want to work for you on an hourly basis or they just didn't want

16 to blast rock in there?

17 A No, sir, I don't know.

18 Q No reason was given?

19 A Not to me. I was just told that they didn't want to

20 do the work inside the building.

21 Q Were you on the job when all of the contractors got

22 together and planned how they would go about this job?

23 A I was at a pre-job discussion.

24 Q Was Mr. Worley there?

25 A No, sir. He didn't enter into the job until after --

1 until some time after this was held.

2 Q Well, did you ever have any discussion with Mr. Worley

3 as to what he would do and where he would do it and when he would

4 do it and how he'd do it?

5 A Not specifically, I don't think.

6 Q Well, did you have any meeting that wasn't so specific?

7 A We had general discussions on the job;from time to

8 time I'd check his progress. He knew what he had to do and he --

9 in all fairness to Mr. Worley, he seemed like a competent utility

10 contractor. He knew where he had to proceed.

11 Q Do you know of anything that he did improperly?

12 A Not that I can recall.

13 Q Did it appear to you that he worked in a workmanlike

14 fashion?

15 A Yes, it did.

16 Q And do you know of any -- do you have any reason to

17 believe that he didn't work in a workmanlike fashion?

18 A No.

19 Q So he did things safely and properly and efficiently

20 I presume? Things were on the right grade?

21 A I'd say that the work he did was -- that was satis-

22 factory.

23 Q You had no complaints?

24 A No, I had no complaints.

25 Q After this blast occurred, did you tell him or indicate

1 to him that you didn't want him to blast anymore?

2 A No.

3 Q Did you know that he had to continue to blast through

4 rock to fulfill his contract?

5 A I can't say that I knew or didn't know at that time.

6 I can't -- I just assumed he was going to finish his contract.

7 Q Well, when you went up there, did you go up the day

8 after the blast?

9 A Within a couple of days.

10 Q He hadn't finished the line, had he?

11 A No, he had not.

12 Q There was rock ahead of him, wasn't it?

13 A I guess there was.

14 Q Did you issue any special instructions in regard to

15 arrangements that he would have to make in order to avoid damaging

16 the building?

17 A No.

18 Q You didn't give him any additional instructions?

19 A None.

20 Q So, as far as you knew, he was doing everything a

21 blaster could do to protect the building?

22 A As far as I knew.

23 Q Now, before he started this project, did you delineate

24 for him the order in which he would go about digging these lines?

25 A No, I did not.

1 Q So, was it up to his discretion to dig any line he
2 wanted to any time he wanted to?
3 A No. There were some -- any number of areas that he
4 could work at will or wherever he elected to work if it was avail-
5 able to him, but there were a number of procedures going on on
6 this job at the same time. There were areas in which fill was
7 being placed away from the building, there were areas that cuts
8 were being made within the building area and there was -- there's
9 still a hill sitting out there which people were drilling on the
10 thing it seemed to me.
11 Q But, now, the hill wasn't his responsibility?
12 A No, it was not.
13 Q All right. Now, as utility contractor, you handled
14 the water?
15 A Right.
16 Q All right, now, wasn't it necessary for the water
17 line to be brought to the building?
18 A Yes.
19 Q Did you ask that that water be brought first?
20 A We probably did.
21 Q So the concrete could be mixed and so forth?
22 A Well, I don't -- I don't know --
23 Q Furnish the other contractors with water?
24 A Probably so.
25 Q Wasn't this why you told him to do the water line first?

1 A If I said -- if he knows that I told him that, I'd
2 agree that I might have told him that.
3 Q Well, don't you think it would be reasonable to get
4 water to the site first?
5 A Why not?
6 Q Do you know whether or not he did that first?
7 A I can't remember whether he did it first or not.
8 Q How often were you up at this job, Mr. Cooper?
9 A About once every three weeks - four weeks.
10 Q Who -- when you weren't there, Mr. Cooper, who was
11 in charge of that job for Hungerford?
12 A George Haslip.
13 Q Would Mr. Worley have been, as far as you're con-
14 cerned, required to take orders from Mr. Haslip only?
15 A I don't think we ever discussed that with Mr. Worley.
16 The occasion, to my knowledge, didn't come up.
17 Q Well, if anyone from Weaver or Westinghouse on this
18 job had said they wanted a particular thing done first and so
19 forth, would Mr. Worley have been obliged to do that or would he
20 have been obliged only to take instructions from you?
21 A I would say that the normal procedure would have been
22 for -- if Westinghouse had a preference, to go to the general con-
23 tractor. The general contractor would have or should have advised
24 my superintendent that he wanted a certain phase of work completed
25 next.

1 Q Well, now, that's the normal chain of command, but if
2 someone -- let's say the general contractor had said something to
3 Worley about something that should be done first, do you feel that
4 Worley should have done that or that Worley should first have con-
5 sulted you?
6 A Oh, I think he's actually ultimately responsible to
7 me in this case. He should have -- if he had any questions or any
8 reason to object to doing it in this specific order, he should
9 have contacted me unless he --
10 Q If he had no objections, then just go on and do it?
11 A That's right, if it was a logical request.
12 Q When you were up there on that job, were the materials
13 that Mr. Worley has described as being stacked in the vicinity of
14 this line -- were they there? Did you see them?
15 A I remember a tremendous amount of loose structural
16 steel being out in front of the building for a good time. I can't
17 tell you when it was removed or where it was at a specific time.
18 Q Now, you circled that drawing for the Judge to indi-
19 cate the line. Is that circle not also approximately where the
20 blast occurred?
21 A Yes, because I understand that the blast occurred at
22 where they were digging for a manhole and that is a manhole that
23 I circled.
24 Q And you were there the next day and --
25 A No, I did not say -- I said within a few days.

Q -- within a few days, and that's approximately where they were when you --

A Well, I presume so from the scale of the drawing.

Q Well, you do remember where they were when you arrived several days later?

A I don't know where -- I don't remember where Mr. Worley had proceeded from the time of the blast to the time that I arrived on the job, but I know that he was working at the time of the blast in the area that I circled on the job as a manhole.

Q Now, you indicated that you had one meeting after the blast with Mr. Worley at your office?

A Yes.

Q Was that in Richmond?

A Yes, it was.

Q Did you attend any meeting with Mr. Worley up here?

A No, I did not.

Q Was the meeting in your office tape recorded?

A No, sir.

MR. BOYLE: I have no further questions.

MR. SOKOL: One other question on redirect, Your Honor.

REDIRECT EXAMINATION

By Mr. Sokol:

Q Subsequent to this blast of January 27th, did you advise Mr. Worley of the estimate that had been received, $28,700.00?

A Yes, sir, we discussed it over the phone.

Q You and Worley discussed it?

A Yes, we did.

Q Prior to the time the repairs were made?

A Yes, sir.

THE COURT: Did he object to that as being too high?

A He questioned it, yes, sir.

Q Was he invited to get any other estimates that he wished to get?

A Yes, sir, he was.

Q To the best of your knowledge, did he get any estimates and submit them to you?

A He never submitted any estimates to me. Mr. Worley advised me that he was going to get estimates.

Q All right, did he submit any estimates to you?

A No, sir, he did not.

MR. SOKOL: All right, that's all.

[The witness then stood aside.]

J. C. NUCKOLS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sokol:

Q Would you state your name to the Court?

A J. C. Nuckols.

1 Q Where do you live, Mr. Nuckols?

2 A In Goochland County.

3 Q By whom are you employed?

4 A Hungerford, Incorporated.

5 Q How long have you been employed by Hungerford?

6 A Twenty-two or twenty-three years.

7 Q In what capacity are you employed?

8 A As an estimator.

9 Q Estimator?

10 A Yes.

11 Q Were you employed by Hungerford with respect to the

12 Westinghouse project here in Culpeper County?

13 A Yes, sir.

14 Q Did your duties involve any of the work that was per-

15 formed on that project?

16 A Yes, they did.

17 Q Now, already introduced in evidence has been a writing

18 which bears the signature, "J. Nuckols." Is that your signature?

19 A Yes, it is.

20 Q Did you execute that for Hungerford?

21 A Yes, sir.

22 Q Did you talk with Mr. Worley at all prior to his

23 assuming his responsibilities on this job site?

24 A Yes, sir, I think we talked back and forward about

25 the price from time to time, but nothing as far as how they were

1 going to do it and whatnot.

2 Q Did you understand that he was going to do blasting

3 work on the job site?

4 A Possibly, yes.

5 Q Now, do you know Mr. Worley?

6 A Yes, I do.

7 Q Do you know Mr. Taggart?

8 A Yes, I do.

9 Q During the period October '71 until late January '72,

10 on approximately how many occasions have you seen those gentlemen,

11 do you know?

12 A From October to what?

13 Q Through January 26th.

14 A Two or three times maybe -- maybe four times. I

15 don't recollect or recall really.

16 Q Did they ever call you or contact you?

17 A Not to my knowledge.

18 Q Did Mr. Worley ever advise you of any peril that

19 existed by reason of the nature of the rock that was contained on

20 that job site?

21 A No.

22 Q Did Mr. Taggart ever advise you of any peril?

23 A No.

24 Q Did anyone advise you of any peril?

25 A No.

Q Did you meet with Mr. Worley after this incident of January 27th?

A I was on the job and we had a meeting at Holiday Inn on February 1 or February 2.

Q February 1 or February 2?

A I forget the date, but in that 1 or 2 we had a meeting - job meeting. This was after the blast and --

Q This was at the Holiday Inn?

A Yes, sir.

Q Here in Culpeper?

A Here in Culpeper.

Q All right, who attended that meeting?

A Mr. Worley was there, or we went and got Mr. Worley; the roofers were there and John Cumbos with Weaver Construction Company was there, our superintendent, George Haslip, Mr. Coley, and the Westinghouse people.

Q And you were there?

A Yes, sir.

Q All right, during the course of that meeting, was Mr. Worley advised of this estimate of $28,700.00?

A He was. He was not at the meeting to start with and my superintendent, or our superintendent - Hungerford, Inc. superintendent - went and got Mr. Worley.

Q Was that estimate --

A It was brought out in the open --

Q I mean during the course of that meeting, was he invited to get any other estimates that he wanted to get?

A Yes, he was.

Q In your presence?

A Yes, sir.

Q Did he ever submit an estimate to you?

A No.

Q For repairs to the -- he did not?

A [Witness nods head negatively.]

Q During the course of that meeting, did Mr. Worley ever make any sort of statement with respect to making good the loss?

A At that particular meeting? I don't recall at that particular meeting. He probably said that he would take care of whatever was necessary to be done.

Q Would you know whether he said that or not?

A I would say yes.

Q He did?

A Yes.

MR. SOKOL: Your witness.

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Nuckols, how often were you on this job up here?

A Well, we would stagger meetings. Mr. Cooper would

1 probably come to one and I would come to one maybe once a month or --
2 Q Were you at a planning meeting when this project be-
3 gan which Mr. Worley attended and Mr. Taggart attended?
4 A At the job meeting you say?
5 Q Yes, up here in Culpeper.
6 A I don't recall whether I was at that particular meet-
7 ing or not.
8 Q Well, you know there was one?
9 A Yes, sir.
10 Q But you don't know if you were there?
11 A I don't remember whether I was there or not. I'd have
12 to look back --
13 Q How do you know there was one if you don't know if
14 you were there?
15 A You said it was.
16 Q No, I was asking you if you attended such a meeting.
17 A No.
18 Q So you don't know if you were there and you don't even
19 know if there was one?
20 A No.
21 Q Did Mr. Worley ever say anything to you about wanting
22 to do the pipeline on the north face of this building, or 22 feet
23 from the north face of this building before he did the other areas
24 on the job?
25 A No.

1 Q Did he ever have any discussion even remotely relating
2 to that with you?
3 A I talked to Mr. Worley very little.
4 Q Who did the talking to Mr. Worley up there in Culpeper?
5 A I'm assuming my superintendent did, Mr. Haslip.
6 Q Was he there every day?
7 A Yes, sir.
8 Q Is he here today?
9 A No.
10 Q He's not. Is he working for Hungerford?
11 A Yes.
12 Q How long has he worked for Hungerford?
13 A Oh, I'd say ten or twelve years.
14 Q Where is he?
15 A He happens to be in Charlottesville.
16 Q He's in Charlottesville today?
17 A [Witness nods head affirmatively.]
18 Q Was he not able to come up here to court today?
19 A He wasn't subpoenaed. He wasn't asked to come.
20 Q Was he subpoenaed?
21 A No.
22 Q You weren't subpoenaed to come up here, were you, Mr.
23 Nuckols?
24 A No, no.
25 Q Now, you remember, though, attending the meeting on

1 the first or second of February, 1972 where Mr. Worley was present,
2 is that right?
3 A Right.
4 Q It's been a long time ago and it's hard to remember
5 exactly what happened in that meeting?
6 A Right.
7 Q Well, the fact is that that meeting was tape recorded,
8 wasn't it?
9 A Yes, sir.
10 Q And you have the tape, don't you?
11 A Yes, sir.
12 Q And you listened to it yesterday, didn't you?
13 A Not all of it, no.
14 Q Well, you listened to parts of it, didn't you?
15 A I listened to parts of it, yeah.
16 Q Well, why didn't you listen to all of it?
17 A Because I didn't have time to listen to all of it.
18 Q Well, how did you know what part to listen to?
19 A I just happened to be in Mr. Cooper's office at the
20 time that he was listening to it, and --
21 Q Well, did Mr. Worley say anything in that meeting about
22 having told y'all in advance that that's what he should have done
23 first?
24 A I don't recall whether he did or not.
25 Q Well, now, do you recall hearing it on the tape

1 yesterday?

2 A No, I don't.

3 Q What do you remember hearing on the tape yesterday?

4 A Well, some of the things that I remember I can't re-

5 peat in court.

6 Q Well, anything relating to this -- you've said that

7 Mr. Worley said in the meeting that he would take care of the loss,

8 isn't that right?

9 A More or less.

10 Q You're remembering from yesterday in listening to

11 this, isn't that right? Didn't you hear that on the tape yesterday?

12 A If it was on there, I might have heard it.

13 Q Well, now, you know if you heard it or not. Did you

14 hear it yesterday or didn't you?

15 A I don't remember I told you.

16 Q Do you remember anything you heard on the tape?

17 A I can't repeat what I remember. I don't remember.

18 Just forget it.

19 MR. BOYLE: Your Honor, I realize that there might be

20 objectionable material on this tape. I've never heard it. None

21 of us have heard it on this side of the courtroom. I'm quite

22 willing to have it played blind. I presume that Mr. Sokol has

23 heard it and Mr. Cooper has heard it. I haven't heard it and it's

24 been a long time for these people, but they've all heard it. I

25 don't know what's on it, but I'm willing to take my chances if they

1 want to play it.

2 MR. SOKOL: I've heard snatches of it, Your Honor.

3 MR. BOYLE: If there's information there that would shed

4 some light on whether or not Mr. Worley did in fact refer in that

5 meeting to the fact that he had told them before that he wanted

6 to do that pipeline first -- I believe there's probably something

7 on that tape to that effect, but I just don't know, so I can't

8 vouch the record.

9 MR. SOKOL: Well, if anyone had wanted to suppress that

10 tape, they wouldn't have brought it. The tape is here. We don't

11 intend to suppress or conceal anything,but it's going to run about

12 forty-five minutes and I really don't think that there's anything

13 in the tape that's dispositive of the issues before the Court.

14 I'm sure Mr. Worley is going to take the stand and testify that he

15 made some statements and maybe he made some self-serving statements

16 on the tape, but it's after the fact. I have no objection to it,

17 but I would -- I would do this. I would be willing to submit the

18 tape to the Court for the Court to listen to it at the Court's

19 convenience and then give it whatever probative value the Court

20 desires.

21 THE COURT: Well, he can't be bound in that. Let's pro-

22 ceed, gentlemen.

23 MR. BOYLE: All right. We have no further questions of

24 Mr. Nuckols.

25 [The witness was excused.]

1 MR. SOKOL: Hungerford rests, Your Honor.

2 MR. BOYLE: We move to strike the evidence, Your Honor.
3 In the counterclaim, which is really the only claim before the
4 Court now, in count 4, the allegation is one of implied warranty.
5 There has been no evidence adduced which would substantiate such
6 a claim. Count 3 is one of indemnification. There has been no
7 evidence adduced which would sustain such a count. Count 2 is of
8 negligence. There has been no evidence adduced which would sub-
9 stantiate such a claim. Count 1 relates to contract and indeed
10 there is a contract before the Judge. The contract calls that
11 this be done in a workmanlike manner. Mr. Cooper himself testi-
12 fied that in his opinion Mr. Worley did his work in a workmanlike
13 manner. I think that it, too, cannot be sustained. Now, I'm sure
14 that Mr. Sokol has a different view so I'd like the opportunity to
15 rebut what he has to say, but on the face of the pleading and,
16 after having heard the evidence, it seems to me that all four
17 counts have not been proven.

18 MR. SOKOL: If Your Honor please, this is not the first
19 time in the State of Virginia, indeed it's not the first time that
20 the Circuit Court of Culpeper County has entertained a blasting
21 case.

22 THE COURT: Yeah, I tried one less than six months ago.
23 I don't recall, but I believe that was - involved Basic that's
24 been mentioned here.

25 MR. SOKOL: I happened to look at the instructions in

1 that case where Your Honor approved the instruction which was in
2 effect an instruction to find the blaster liable without any fault
3 on the blaster's part.
4 THE COURT: There's a law in Virginia to that effect.
5 MR. SOKOL: Yes, sir. I'm not going to go through all
6 of the evidence, Your Honor. There's been evidence, however, that
7 Worley held himself out and Taggart out to be experts at blasting
8 operations with dynamite; that Hungerford relied upon that exper-
9 tise, that Hungerford didn't have that expertise, that's why they
10 asked Worley to do this work; that Taggart was concerned about
11 this unusual rock and rock proclivity to be hurled into the air
12 as a result of blasting; that despite that, he went on ahead 22
13 feet from this building and blasted and was concerned about what
14 the blast might develop and indeed he did cause these projectiles
15 to go into the air and onto the roof of the building. I think
16 that, given the proximity of the building and his previous know-
17 ledge and his high stand---
18 THE COURT: What have you got to say about this, Mr.
19 Sokol? Can a general contractor by simply subcontracting some
20 work absolve himself from all responsibility for any damage that
21 may result therefrom? That's what you're essentially involved
22 with in this case.
23 MR. SOKOL: Well, I think that he in effect says that
24 this part of the function of this job is now yours. We shall do
25 this. We are paying you a consideration, a substantial consideration,

1 for you to do the following, to-wit: blast, and indeed they blasted.
2 Now, I don't think that this plaintiff is relegated to the proof
3 of negligence. I think we also have the matter of a contract
4 existing between --
5 THE COURT: Now, let's see, in the Basic case this ques-
6 tion arose and I made several rulings on it after briefs were
7 filed. You'll find briefs in that case and I don't remember who
8 Basic -- Basic was being sued by someone - I've forgotten who.
9 MR. SOKOL: By a man by the name of Levy.
10 THE COURT: All right. Now, was that case appealed?
11 MR. SOKOL: I don't believe it was appealed, Your Honor,
12 but one of the briefs which Mr. Slaughter submitted which I believe Your
13 Honor accepted was the fact that in Virginia there is a standard
14 of responsibility on the part of the blaster irrespective of fault
15 being proved. Now, Dean Muse has commented on that in a Law Review
16 article, there's been the same comment in the University of Virginia
17 Law Review, I think the cases are suggestive of that certainly --
18 204 --
19 THE COURT: Has there been a case in Virginia?
20 MR. SOKOL: Sir?
21 THE COURT: Has there been a case in Virginia?
22 MR. SOKOL: There's been a case that -- the Barnes case,
23 I think, at 205 Va. where the trial court gave an instruction to
24 the jury that the person or the firm conducting the blasting opera-
25 tion was to be held responsible irrespective of fault. Now, that

case was appealed to the Supreme Court. The Supreme Court rendered a decision on other grounds, however. The Supreme Court found that the person or firm conducting the blasting operations was sub to the Highway Department and -- the Highway Department, acting under the eminent domain laws, and because the doctrine of sovereign immunity applied to the Highway Department, it also applied to its sub and, given that immunity, then negligence would have to be shown, but implicit in that instruction was first, approval of the trial court's instruction with respect to the standard employed here in Virginia and, secondly, that that standard would indeed be applicable to that case had it not been for the doctrine of sovereign immunity.

THE COURT: Well, let me cut you off here, Mr. Sokol. Gentlemen, I'm going to overrule Mr. Boyle's motions. I want to -- I'm going to ask for briefs on this subject before I make a final ruling. I recall the briefs in the Basic case, but quite frankly, that's some six months ago and I'm trying two and three cases a day almost and, for me to remember exactly what I ruled six months ago is sometimes kind of difficult, so I'm going to require new briefs to be filed in this particular case. At this point, we've got witnesses here which we should accommodate. Motions overruled. Let's proceed. I'm also going to require a brief, Mr. Sokol, in reference to the responsibility as to whether or not a general contractor can absolve his responsibility by simply getting a subcontractor to do the work.

MR. BOYLE: If Your Honor please, I think the case that Mr. Sokol cited deals with damage to an adjacent landowner and not one in which they are in privity - with which they are in privity. There is a glaring distinction there.

THE COURT: Yes, I think there's quite a glaring distinction. I think that's true. That's exactly my question to him in this regard. Go ahead. Let's hear what your evidence is, Mr. Boyle. Motion's overruled.

MR. SOKOL: Your Honor, if I may state, there is a converse to that question, too. Can a specialist who's a subcontractor say I'm absolved of responsibility because I'm merely a subcontractor?

THE COURT: Yes, right.

MR. BOYLE: If he's not guilty of negligence.

THE COURT: Both are involved in this case, gentlemen. Both are involved.

JOHN TAGGART, having been previously sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Boyle:

Q Mr. Taggart, I'll not keep you long. You testified

1 this morning concerning almost everything you knew concerning this
2 case. I do want to ask you, however, under oath to whom you made
3 the request that you and/or Worley Construction Company be per-
4 mitted to do that area of that drainage line first?
5 A I made one request for sure to Mr. Brinkley - at
6 least one, and I made one or maybe two requests to Mr. Jebson.
7 Q All right, and were Mr. Haslip and Mr. Cooper or
8 Mr. Nuckols present?
9 A No, sir, Mr. Haslip may have been. At any rate, I
10 did ask Mr. Haslip and he referred me to Mr. Brinkley.
11 Q All right, did Mr. Cooper or Mr. Nuckols have know-
12 ledge of this?
13 A It seemed like they did, but I couldn't swear to it--
14 not Mr. Nuckols - Mr. Cooper, but I couldn't swear to this. It
15 seemed like he was there one time, but I wouldn't say under oath,
16 no, sir.
17 Q All right, did Mr. Haslip have knowledge?
18 A Yes, he did.
19 Q Did the general have knowledge of it?
20 A Yes, he did.
21 Q Westinghouse?
22 A Yes.
23 MR. BOYLE: I have no further questions.
24 MR. SOKOL: No questions.
25 MR. BOYLE: Oh, excuse me, I will ask one question. Did

1 you refuse to do any blasting inside the building?

2 A Yes, I did.

3 Q Why was that?

4 A Because after the damage was done and after this

5 meeting, everyone at the meeting who had asked me to do blasting

6 for them had hindsight - a very good hindsight - because they all

7 seemed to know what I had done wrong. I had either overloaded or

8 underloaded or - I forget all the things that I had done wrong,

9 but until that time, no one there knew anything about blasting.

10 That's why they had asked me to do it and so I told them if they

11 knew what was wrong, then they must know how to blast for them-

12 selves and I would not do any more.

13 Q And that's why you refused to do the blasting --

14 A That's why I refused.

15 THE COURT: But that was after this accident had happened,

16 or this explosion had happened - whatever you want to call it?

17 A Yes, sir.

18 THE COURT: All right.

19 Q So you had not refused for Hungerford to do any

20 blasting inside the building prior to this occasion?

21 A I might have refused at a given time insomuch as we

22 didn't have time to do it right now or something. I don't recall

23 for sure, but then, after this blast, I said I would not do any

24 more blasting at all for any other contractor on the job, not just

25 Hungerford, but any of them.

Q Until that time, they had been asking you?

A Yes, and I done it if we had time; if I was not tied up with my own work, then we would do it to accommodate them.

Q Did they ever tell you they didn't want you to do any more blasting?

A No, sir.

MR. BOYLE: All right, I have no further questions.

MR. SOKOL: A question now, then, Mr. Taggart.

CROSS EXAMINATION

By Mr. Sokol:

Q Prior to this event of January 27th, did you ever say to them, "Gentlemen, I'm not going to do any blasting, or this particular blasting around the building unless you follow my recommendations or requests?"

A No, sir, I never said that. However, when we were blasting -- started blasting one particular ditch - I believe it was for a sewer line inside the building, we were blasting relatively light because -- inside the building, of course. We had a backhoe in there. We were also -- they were renting our backhoe to dig this ditch with. Well, we were having trouble digging it, so Mr. Haslip suggested to me that I load heavier and I told him that I wouldn't load any heavier and he said, "Well, your backhoe isn't big enough to dig what you're shooting out." He said, "You either need a bigger backhoe or you need heavier loads," and I

1 said, "George, if we put heavier loads in there, we may blow it
2 right back through the roof." I said, "I would prefer to pop
3 shoot it," and he said, "Yeah, but we don't have time." He said,
4 "They're wanting to pour these floors," I believe was the reason.
5 I'm almost sure of that, but they were wanting to pour some floors
6 and he said, "I'm going to see if I can't get a bigger backhoe."
7 There was nothing referred to shooting as the reason that he was
8 going to - you know - didn't want me shooting any more. It was
9 just that we didn't have a big enough backhoe, so he got R. R.
10 Ryder to bring -- I forget what size backhoe it was, but it was
11 substantially larger than ours and they tried to dig it and tore
12 it all to pieces.
13 Q Mr. Taggart, do you understand that you and Mr. Worley
14 were hired for this job because of your experience in blasting?
15 Did that occur to you?
16 A No, sir.
17 Q It did not occur to you?
18 A No, sir.
19 Q That anyone was relying on the experience that you
20 had?
21 A Not just in blasting -- our experience in utility
22 work.
23 Q Not -- not -- it had nothing to do with your experi-
24 ence in blasting?
25 A I guess maybe it had something to do -- but not as

1 such. It was our experience in utility work and, when you do
2 utility work, you're going to encounter rock and you must blast.
3 Q Did you and Mr. Worley hold yourselves out to be
4 qualified and competent to perform blasting operations?
5 A Well, I wasn't around when the agreement was made.
6 I don't know -- I can't speak for Mr. Worley, but yes, I do hold
7 myself to be competent.
8 Q And you conveyed that?
9 A No, not to Hungerford or Weaver or anyone else. I
10 conveyed it to Mr. Worley and --
11 Q And he relied on that?
12 A That's right.
13 MR. SOKOL: All right, that's all.
14 [The witness then stood aside.]
15
16 PERRY EVANS, being first duly sworn, testified as follows:
17
18 DIRECT EXAMINATION
19 By Mr. Wood:
20 Q Please state your full name and address.
21 A Perry Evans, Chase City, Virginia.
22 Q What's your occupation, Mr. Evans?
23 A Roadbuilding -- construction work.
24 Q What job or position do you hold in that occupation?
25 A Well, mostly blasting and drilling. In other words,

1 the rough work.

2 Q Now, face the Judge, please, and speak up so he can

3 hear you.

4 THE COURT: I can hear him. Go ahead.

5 Q Fine. All right, sir. How long have you been engaged

6 in blasting work?

7 A Well, I've been into it ever since about 1949.

8 Q Have you worked continuously during that time with

9 one company?

10 A Well, I've worked for several different contractors,

11 but I was with one contractor ten years previous to that and this

12 one I'm with now.

13 Q All right, sir, now, what exactly does your job as

14 a blaster entail? Describe that briefly for the Court.

15 A Well, when we take a job or when the contractor bids

16 the job off and if it's rock on the job, that - my end of the job

17 is to go in and take care of the rock and do the drilling.

18 Q What exactly do you do? Do you supervise or do you

19 actually set the charges or what all do you do?

20 A Well, I participate in both. I supervise it and I'm

21 there when the charges are set off.

22 Q Have you ever had occasion to do any blasting in this

23 area of the state?

24 A Yes, sir, I have.

25 Q Where exactly did you do it and when was that?

A Well, I done the blasting and drilling out here on 29 By-Pass, but now, what year it was I just don't remember.

Q Here in Culpeper?

A That's right, yeah.

Q Are you familiar with the location of the Westinghouse plant that's been testified about here today?

A Yeah, I believe they was getting ready to do the excavation on that just about the time that this job was being completed.

Q Approximately how far was the area you were blasting in from the plant site?

A I'd say not more than a quarter of a mile. In other words, you can see the plant from the bridge, but now, the distance, I would, just guessing at it -- I'd say about a quarter of a mile or maybe it could have been --

Q All right, sir, now, you --

THE COURT: Are you the man that blasted the rock that went through Levy's roof?

A I probably was, sir, or I took part in it, I guess.

THE COURT: All right, sir. Go ahead, Mr. Wood.

Q Now, you heard Mr. Taggart's testimony regarding the nature of the charge and the depth of the hole and so forth here. Based on what you heard, how would you describe his activities in terms of safety precautions and standard procedure in blasting?

MR. SOKOL: If Your Honor please, I've got to object to

1 that question. It has absolutely no relevance to what happened
2 22 feet of the Westinghouse plant, the depth of the ditch, the
3 kind of problems confronted, the time it was confronted. He had
4 absolutely no connection at all with this project, with Worley's
5 activities on the project and to say -- to have him come here now
6 and try to confirm something that Taggart and Worley did back in
7 January of 1972 is of so slight probative value as I think it
8 should be inadmissible.
9 THE COURT: Well, hasn't he qualified this man as an
10 expert witness on - to ask him a hypothetical question as to what
11 else would have been done? Isn't that in essence what he's trying
12 to do?
13 MR. WOOD: Is there any objection to this man's qualifi-
14 cations as an expert?
15 MR. SOKOL: Yes, indeed. When you talk about being an
16 expert, all I heard is that he's conducted some blasting operations
17 and one of them indeed caused Mr. Levy to suffer.
18 MR. WOOD: Well, since 1949, Mr. Sokol, he's been doing
19 it and doing it on State Highway projects continuously.
20 MR. SOKOL: Well, I'm not ready to concede that he's an
21 expert in the sense --
22 THE COURT: All right, I'll permit you to cross-examine
23 this man as to his qualifications. Proceed, Mr. Sokol.
24 Cross-Examination on Qualification of Witness as Expert:
25 By Mr. Sokol:

1 MR. WOOD: Mr. Sokol?

2 MR. SOKOL: Are you through?

3 MR. WOOD: You can cross-examine him as to his qualifica-

4 tions at this point as I understand it.

5 THE COURT: Yes, you can cross-examine this man as to

6 his qualifications to testify as an expert on blasting. The Court

7 will need all the assistance it can get on blasting.

8 Q All right. Your name is Mr. Evans?

9 A Yes, sir.

10 Q Are you an engineer, Mr. Evans?

11 A No, sir.

12 Q Have you attended any Army or Armed Services Schools

13 on demolition?

14 A No, sir, I served three years in the Air Force, but

15 not in demolitions.

16 Q But not in demolition?

17 A No, sir. In other words, that type of demolition is

18 a little different. Theirs is tearing it up, the same as ours.

19 Q Are you a chemist?

20 A No, sir.

21 THE COURT: You've been using dynamite since what year?

22 A Well, I've been working with it and around it ever

23 since 1949. It's been about twenty-four years and I retract a

24 statement. They said an expert. Now, when you mean expert, that

25 covers a big field.

Q Indeed it does.

A That's right. Well, now, the years experience that I've had and I'm still on the job and I'm still on the man's payroll. That's all I've got to go by and I do his work for him.

THE COURT: You're dealing with the use of dynamite all the time in blasting rock?

A Yes, sir.

MR. SOKOL: If Your Honor please, this would require such a degree of expertise for someone to come in and try to reconstruct what another man has done and then to draw some conclusion that what he's done is proper -- I don't --

THE COURT: I'm not going to permit this man to testify to what's proper and what's not proper, Mr. Sokol, but I will permit him to testify what is usual in the trade in blasting from a safety precaution viewpoint as to whether you put dirt over it or whether you put a steel mat over it or whether you put and that kind of thing, if he can phrase such a question. After all, this man has been in the trade for twenty-four years and I don't think that -- I think that's much better than a college education so far as I'm concerned. Proceed, Mr. Wood.

MR. SOKOL: I respectfully except, Your Honor.

DIRECT EXAMINATION (Cont'd)

By Mr. Wood:

Q Mr. Evans, was the type of rock located at the Highway

1 project where you were blasting the same rock that's over at the
2 Westinghouse plant?
3 A Well, I tell you, I wasn't on the site at the Westing-
4 house plant, but I'd say generally the way the rock run, the forma-
5 tion would still be pretty much the same -- pretty close.
6 Q Would you state what the customary procedure would be
7 in terms of safety precautions with the type of blast that was
8 involved at this Westinghouse plant? What would you have done --
9 THE COURT: Does he know what kind of blast was involved
10 there?
11 MR. WOOD: Well, I assume he's heard the testimony. I
12 can ask him.
13 Q Are you familiar with the details of the blast that's
14 been the subject of testimony here today?
15 A Yes, sir, as to what they said, I am.
16 Q You've heard the testimony?
17 A Yes, sir.
18 Q Are you familiar with the type of charges used?
19 A Yes, sir.
20 Q Do you know how many holes were drilled?
21 A Well, they said eighteen.
22 Q Do you know the type of rock that was being blasted?
23 A Well, in that general area, it's not a -- it's very
24 difficult rock to shoot in that formation.
25 Q Why do you say that?

1 A Well, from the experience that I had on the previous
2 job out here, we was in a bigger area than actually this boy was
3 and the rock -- you just have to shoot it to get it to come out
4 and then the danger part of it is that you either can underload it
5 and give you just as much danger as overloading and then it has a
6 tendency to break in the bottom and leave your top in layers. It
7 comes in layers, in streaks about four or five foot thick and if
8 you load the bottom, naturally in a place like that, you'd be
9 holding the shot down to prevent damage, but a lot of times it
10 just don't work out like it should. In other words, nobody -- I'd
11 say like this here -- nobody has complete control of dynamite al-
12 together. Nobody has complete control. He can do everything in
13 his possible - to make it safe and as long as he can make it safe,
14 use mats, use his delays, keep down the concussion on the job and
15 when he does everything that he knows, that's about all that's
16 left to do. When you pull the switch, that's it. Nobody can
17 stop it once you pull it.
18 Q Now, Mr. Evans, you heard Mr. Taggart's testimony,
19 did you not?
20 A That's right.
21 Q Did you hear all of it?
22 A I think so.
23 Q And did you understand it all?
24 A Yeah, I think so.
25 Q Now, having heard his testimony, can you think of any

1 additional steps he should or could have taken to have added safety
2 to what he was doing?
3 A Well, I don't say that I can, because the first thing
4 I would or anybody that's in that field -- the first thing to do
5 is look out for the people - the safety of the people. When they
6 get them into safe -- then the next thing they do, they try to
7 make the shot safe and he stated that he used a cover of dirt and
8 a cover of a steel mat and then another cover of dirt, which on
9 most jobs I've ever been on that -- in the city ordinance or wherever
10 you're using it, they only require the mats and, from what I can
11 see, he went and he even added an added precaution into it 'cause
12 most people just require a mat and then he went and put a cushion
13 of dirt, then a mat, then another cushion of dirt. Well, that was
14 more than a lot of places even require that I've ever worked for
15 now.
16 Q Is there anything about the charges used or the depth
17 of the holes drilled in your opinion unsafe?
18 A When you're dealing the real hard rock and granite
19 or this type rock, any kind, the shallower your holes are, then
20 you are getting into kind of a danger stage here because the
21 shallower the rock is, and especially when it's hard, you're going
22 to have to cut your charge down to try to prevent danger and then
23 you got a possibility there that your rock just cracked. You don't
24 get no results from it. In other words, you're taking a chance
25 there when you get in shallow --

Q Well, now, this -- do you feel the proper charge was used in this particular rock?

THE COURT: Now, you can't ask him that.

MR. WOOD: All right, sir.

THE COURT: Don't you cut the charge down when you're in close vicinity to a building?

A Yes, sir, you do.

THE COURT: And don't you attempt to cut -- not drill your holes so deep so that you don't -- you're not dealing with so much rock when you're close to a building?

A Well, most of the time when you're getting close to anything - a building or anything that can be damaged - say, for instance, your grade there is,say eight feet. Well, normally you would drill deeper so you could get a little more control over it, but in his case, why he'd done already shot the bottom ditch and the type of rock and all, they had trouble with it and they had to come and get the top and you can run into a problem like that. Any contractor will realize that.

THE COURT: In other words, the dynamite man would know that, with an explosion below it, that he was in trouble to begin with, wouldn't he?

A Well, it would -- the job that was set before him wouldn't be as easy for him on the second time. I'll put it that way.

THE COURT: It's certainly abnormal to have rock to go as

high as to go to the top of this building in this case, isn't it?

A Yes, sir.

THE COURT: Something went wrong, didn't it?

A Yeah, well, it seemed like it did, yes, sir.

THE COURT: All right, sir.

Q Is there anything that a blaster could do in a situation like that to prevent something going wrong?

A Well, in a case like that, I tell you, he just don't know. You just can't -- he just can't tell you. I mean - in other words, he can go there and explain to you and do the job and do it the best that he can, but he couldn't -- still couldn't give you a hundred percent guarantee or even seventy-five percent or fifty percent guarantee. I mean ain't no blaster will do that. I know I wouldn't.

Q How high did the rock go that went on the Levy's building over there?

MR. SOKOL: If Your Honor please, I -- he can answer the question, I guess.

THE COURT: Sustained. Objection sustained.

MR. WOOD: That's all.

CROSS EXAMINATION

By Mr. Sokol:

Q Mr. Evans -- is that your name again?

A Yes, sir.

1 Q I'm sorry, I did forget. You know Mr. Worley, do you
2 not?
3 A Yeah, I've been on the job with him at one time or
4 another.
5 Q Did you know him prior to January 27, 1972?
6 A Yes, sir.
7 Q Do you know Mr. Taggart?
8 A Yes, sir.
9 Q Have you known him prior to January 27, 1972?
10 A Yes, sir.
11 Q Now, counsel asked you if you remembered Mr. Taggart's
12 testimony. You said that you did, so I guess that you were listen-
13 ing pretty closely to Mr. Taggart, is that right?
14 A Well, yeah, I was listening to him.
15 Q You'll remember Mr. Taggart testified that Basic
16 Construction was doing certain work in that area and had problems,
17 is that right?
18 A That's right.
19 Q Was he talking about you?
20 A Well, I didn't have no problems. Basic had them. I
21 don't -- I mean if he hired me to go out there and do the job,
22 I'll go out and do it to the best of my ability. It's up to him
23 to have that much faith in me to do the job and if I happen to
24 throw a rock on a roof, then it's his responsibility, see?
25 Q But prior -- let me ask you this question. When was

1 the rock thrown on-- or rocks thrown on Levy's roof? When did that
2 happen?
3 A Well, I'm going to be -- I'll be frank with you -- I
4 don't even know about the rock being thrown on the roof as far as
5 the damage out there. I don't even know anything about that,
6 either. I mean something like that -- a lot of times it's taken
7 up after the job is completed and they're gone and they don't come
8 and consult me on that.
9 Q Prior to January 27th, had you ever discussed with
10 Worley the problems that you had had, either on the Levy job or
11 any other job?
12 A No, I don't think it would be -- I don't think it
13 would be in line because I mean we didn't have no reason to -- I
14 mean he was there putting in pipeline right on the same job with
15 me.
16 Q Yeah, but you never took up with him the problem with
17 this particular rock?
18 A Oh, no.
19 Q Did you ever take up the problem with Taggart?
20 A No, not on that.
21 Q All right, let's go back then -- let's go forward,
22 rather, to January 27. I want to ask you a hypothetical question,
23 okay?
24 A Okay, I reckon, if I can answer it.
25 Q All right, let's suppose you, Mr. Evans, late one

1 afternoon in January are standing 22 feet from a building, okay?
2 Now, this building is 600 feet long, it's almost two stories high
3 and, in fact, it's the Westinghouse plant and it's under roof,
4 okay? Now, you're standing 22 feet from the wall, okay? You know
5 what you know about blasting and you know what you know about this
6 rock, okay? And you know the trouble that you've just had and you
7 see this rock very shallow, near the surface, okay? And you're
8 about to put in eighteen charges. At that point in time, knowing
9 what you know, are you going to -- just like you said to me --
10 you said are you going to explain to somebody what the danger is
11 before you go zap? You're going to go to the man that hired you
12 and say, "Buddy, we'd better take a second look." Are you going
13 to do that before you let it fly?
14 A Well, I think that should have been taken up as a --
15 way beforehand.
16 Q But I asked you a question. Are you going to tell
17 anybody before you let it fly, given all those circumstances, with
18 that building right by your shoulder?
19 A Oh, you mean at the time of the blast? You mean
20 notifying the people?
21 Q Right before you set it off, right.
22 A Well, sure. Well, that's your normal procedure.
23 Q I don't mean just telling people to get out of the way.
24 I mean about telling the people who owned the building or people
25 who were doing the construction or the people that asked you to do

1 the work. You see that shallow rock sitting up there and you know
2 you're going down deep with eighteen sticks --
3 THE COURT: In other words, he's saying are you going to
4 go tell your boss, "Now, this thing's going to have some danger."
5 Did you do that?
6 A No, sir.
7 Q You're not going to do that?
8 A No, sir, I don't. I've been shooting right beside
9 schoolhouses and the kids never come out of the classrooms. I
10 didn't even tell them. I didn't even stop classes, but I mean if--
11 the situation was there way before the rock was drilled to start
12 with.
13 Q You've already told the Court how dangerous it is
14 when you've got that shallow rock.
15 A Sure, it's dangerous. It's just as dangerous as any-
16 thing can happen and it's getting -- it's going to be so -- looks
17 like in the near future they're going to have to start building
18 highways over top of the rock because people are getting out of it.
19 Q It's awful dangerous and a blaster knows it, doesn't
20 he?
21 A That's right. It's a certain risk involved in any-
22 thing you go at.
23 Q But doesn't a blaster go to the next guy and say,
24 "Look, here's a risk. You ought to know about it?"
25 A Well, say --

1 Q Isn't eighteen sticks a lot of dynamite?

2 A Well, that depends on how -- I have shot 25,000 and

3 30,000 pounds at a time, so I mean a lot of times eighteen sticks

4 could have been too much; sometimes it wouldn't even be enough.

5 Q How about eighteen sticks 22 feet from a building,

6 given the same rocks?

7 A I don't -- I don't believe it would have been any too

8 much. Now, as I made a statement a while ago, now -- I mean I

9 won't say it in this case, but a lot of times a person can get in

10 a close place and he can go over precaution and underload a shot,

11 now, and a shot that's underloaded can cause damage, too.

12 Q Let me ask you the question another way. Based on

13 what you heard happened to the Westinghouse plant, okay?--Given

14 the rock and the blasting and the shallow depth, are you surprised

15 that happened?

16 A Well, yes, I would be --

17 Q You'd be surprised?

18 A Yeah, if it was me, I'd even be a little surprised.

19 Q A little surprised?

20 A Yeah, but, as I say, them things will happen and he

21 had a disadvantage there to him, too, see?

22 Q Let me ask you one more question. As you see your

23 responsibility as a blaster, if you're 500 yards from a person or

24 a building, does your responsibility increase as you get a little

25 bit closer to the person or the building or is your responsibility

1 the same?

2 A Well, I'll tell you, I try to take the same precaution

3 wherever I'm at.

4 Q It doesn't matter how close you are to a person or a

5 building?

6 A No, sir, if I'm out here in the middle of an open

7 field, I still put out all the safety precautions there is because --

8 in the blasting.

9 Q Your sensitivity would be the same as if it would be --

10 A And I try not to ever forget it because in the twenty-

11 four years that I've been in it, I never had a lost time accident

12 on the job with me.

13 Q You never have?

14 A Never have had a man to get hurt.

15 Q Oh, a lost time, but you've had some property damage?

16 A Oh, a little bit, but I don't mean heavy.

17 Q Little bit. Okay. Again, with respect to Mr. Levy,

18 right?

19 A Well, I don't even know the gentleman.

20 Q Have you had any other instances?

21 A Oh, yes, in less than a couple of months ago.

22 Q A couple of months ago you had property damage?

23 A Yes, sir.

24 Q Who suffered that damage?

25 A The contractor that we were subcontracting for.

Q And you set off the charge that caused damage?

A We were shooting at a lagoon within 150 feet of a building and I put holes through the top of his building, but it wasn't anything said about it.

Q Nothing said about it, huh?

A No, siree. He said, "I was tickled to death to get that lagoon shot. I'm in a hurry. I want to get the job completed."

Q It didn't matter about the roof of the building?

A Well, they put the roof on and they ain't ever mentioned it no more.

Q Any other times you've blasted anybody's property other than Levy and the lagoon?

A No, not as I know of. I mean, doing -- we've done small damages, but there was never anything to cover anything that the contractor didn't pay off. I mean no lawsuits or anything like that.

Q No lawsuits, huh?

A No. Never have. In other words, I can prove mistakes by the men I've worked for.

Q Sir?

A I can always go back -- you can always get in touch with the men I've worked for and they can tell you, and they've got the records.

Q Let me ask you one more question. Just -- maybe I just didn't understand your reply, but the closer you get to a

1 building, is it getting a little more dangerous insofar as doing
2 damage?
3 A Oh, sure, it has to anything. Anybody would know that.
4 Q Anybody would know that? The closer you get, the
5 greater the chance you're going to do some harm, right?
6 A That's right.
7 Q Is 22 feet pretty close?
8 A Yeah, it's getting pretty close.
9 Q Getting right up on it?
10 A Yes, sir.
11 MR. SOKOL: All right, that's all.
12
13 REDIRECT EXAMINATION
14 By Mr. Wood:
15 Q Mr. Evans, when you say underloading charges of an
16 amount of dynamite could be dangerous, how would that be dangerous?
17 A Well,say, when you have a real hard rock, you've got
18 to break it and, if you underload the rock - what I'm talking
19 about - you got to -- powder ain't going to do but just so much
20 and, if you don't load the hole, if you don't get it -- it has a
21 tendency to -- if you don't break the rock, it's coming out the
22 top.
23 Q What do you mean by it's coming out the top?
24 A Well, I mean it'll shoot out - right out the top. I
25 mean if you -- you've got to put the charge down there you've got

to get it to break the rock. If you don't, that shot will just come right up out of the holes. Now, I've had instances in both ways. You can have shots that go where a person gets over precaution, try to hold it down too much in hard rock and it'll shoot out the top. It don't do the job. A lot of times you have to go back and do it again and then at a time like that, you get a lot of concussion. You don't -- probably wouldn't get very much rock thrown, but it's a lot of concussion from it.

MR. WOOD: No further questions.

MR. SOKOL: May I ask him one more question, Your Honor?

THE COURT: Yes, Mr. Sokol.

RECROSS EXAMINATION

By Mr. Sokol:

Q You heard Mr. Taggart describe this as the most unpredictable and probably the hazardous rock he'd ever come up against. Do you agree with that?

A Well, now, I've had dealings with rock just as bad as this was here.

Q This is plenty bad rock to work with?

A Well, I - I -- it sure is.

Q And the shallower it is from the surface, the more dangerous it is, is that right?

A Well, that can stand true in any type rock, not only this kind.

1 Q Well, yeah, any type rock, but the shallower it is,
2 the more hazard you've got, right?
3 A Right.
4 MR. SOKOL: Okay. That's all.
5 [The witness then stood aside.]
6
7 MICHAEL W. WORLEY, the plaintiff in this matter, being
8 first duly sworn, testified as follows:
9
10 DIRECT EXAMINATION
11 By Mr. Boyle:
12 Q State your name for the Court, please.
13 A Michael W. Worley.
14 Q What's your occupation, Mr. Worley?
15 A Self-employed.
16 Q What is this employment?
17 A President of M. W. Worley Construction Company.
18 Q You're a contractor?
19 A Yes, sir.
20 Q What's the nature of your contracting business?
21 A Utility work.
22 Q How long have you been in the contracting business?
23 A Twelve years this past April.
24 Q How old are you?
25 A Thirty-two.

1 Q So you've been in it since you were twenty years old,
2 is that right?
3 A Yes, sir.
4 Q How long has your work involved blasting?
5 A Since I've been in business.
6 Q So you've also been blasting as long as you've been
7 in the contracting business?
8 A Yes, sir.
9 Q Has your work always involved ditching?
10 A Yes.
11 Q And the use of ditching equipment, front-end loaders,
12 ditchers and so forth?
13 A Yes, sir.
14 Q All right, now, on this Westinghouse job, I want you
15 to tell the Court whether or not you had any conferences with any-
16 body concerning how you wished to proceed on that job.
17 A Yes. Before we started work -- of course, it took us
18 a couple weeks to negotiate the job. We didn't put a bid on the
19 job. We gave Hungerford a price which, in the beginning, was more
20 money than they said they had in the job and we finally came to
21 terms as to what would be a fair price to do the work by them
22 furnishing the material -- most of the material. We furnished
23 some of the drainage structures. Other than that, they furnished
24 all of the materials and there was some question as to whether they
25 could pay me extra for the rock. Finally we came to an agreement

on what I should be paid for rock if it was encountered because I was most positive we would hit rock on a couple different places on the job.

Q Who did you negotiate with?

A Mr. Cooper.

Q Did you negotiate at any time with Mr. Nuckols as well?

A No.

Q All right, had you and Mr. Cooper had the opportunity to inspect the job site?

A Yes.

Q Could any rock be seen?

A There was some outcrops in the field where the water line had to come through and then, of course, it was just as obvious as it could be on the open site excavation because the grading contractor had it heaped up like a mountain where they'd been shooting.

Q So, when you came to the job, first, before you entered into a contract, some work had been done on the site, is that correct?

A That's right.

Q Who had done that work?

A I believe it was Baldwin Construction doing the grading and I'm not sure who employed Canada Construction, but they did the drilling and blasting.

1 Q All right. Now, this grading had heaped up rock at
2 the time you made your estimate, is that right?
3 A Yes, it was heaped up then.
4 Q So did all parties concerned know that rock was in the
5 area?
6 A It was obvious.
7 Q Did they know the precise or approximate location of
8 this rock?
9 A Yes, Mr. Cooper and I discussed that there was rock
10 on the northwest end of the building and he said he felt like this
11 would be the only place I would encounter rock, if I should at that
12 point.
13 Q Now, this was before you had signed the contract?
14 A Right.
15 Q Now, you agreed on the rock price of $25.00 a yard,
16 which was in addition to the normal price per foot in a ditch,
17 isn't that correct?
18 A That's right.
19 Q You executed the contract, is that right, after this
20 conversation?
21 A Which particular conversation?
22 Q Well, when I say you executed it, you accepted the
23 terms in the contract which Mr. Nuckols signed --
24 A That's right.
25 Q -- a memorandum of a contract. You never actually

1 signed it yourself?

2 A That's right.

3 Q But you agreed to work under the terms set out in that

4 document that the Judge has seen and which was put into evidence

5 here today, is that right?

6 A Yes, sir.

7 Q All right, now, did you then have any discussions

8 with anybody there, either from Hungerford or others concerning

9 the priorities that you wanted to put on the work that you did?

10 A Yes. Before we started the work, we had sort of a

11 little meeting in this office trailer on the job that belonged to

12 Weaver Construction. They have plan tables in where you leave

13 your plans spread out as you go along with the job. They're on

14 most every job that size.

15 Q Now, the plan that you saw up there in front of the

16 Judge -- is that one of the plans that was laid out?

17 A Well, we went through that page. It was several things

18 discussed in the meeting in general and I didn't take time to listen

19 to the whole part of the talk that day, but, at that particular

20 meeting, they wanted to discuss with me the parts of the job that

21 they wanted done and what order they would like to have them done

22 and their biggest concern, even before I signed the contract -- it

23 was known that they needed the water line in first and with Mr.

24 Cooper and Mr. Brinkley and Mr. John Cumbos - I believe - was at

25 this meeting. There was another man there representing Weaver --

1 I can't remember his name, but anyway, I think he was this job
2 manager they spoke of - or is that Cumbos? Anyway, there were three
3 representatives of Weaver there and Mr. Cooper and I think George,
4 the superintendent, was present. I'm not positive.
5 Q George, the superintendent for whom?
6 A For Hungerford.
7 Q So that would be Mr. Haslip?
8 A Right.
9 Q All right.
10 A And I asked at that time if we couldn't put in this
11 particular line in the very beginning and they said that, just as
12 soon as they could get the steel moved out of the way, that they
13 would let us work in that particular location.
14 Q Who said that?
15 A This was said by -- I believe it was Mr. Brinkley.
16 He was coordinating the work on the job.
17 Q Now, he's Weaver's supervisor?
18 A He's Weaver's superintendent.
19 Q Well, did you tell them why you wanted to work in
20 that area first?
21 A Yes, we knew the rock was up there and we wanted to
22 get a chance to shoot the rock before it was - you know - some
23 structure there that could be damaged.
24 Q Was there any structure there at all when you had that
25 conversation?

A No, sir.

Q If they had told you you could shoot that rock at that time, what would have had to have been done in order for you to do so?

A If they would let us shoot that rock when I requested to?

Q Yes.

A We would have used heavier loads. We'd have probably been able to get the ditch excavated much, much faster. We wouldn't have had to have been quite as cautious as to whether we had fly or not. You can always make a much better shot if you're not in fear of throwing a rock or whether it doesn't make any difference to throw the rock or not because a lot of times when you get out where you're not involved with property damage or bodily injury, then you load it a little bit heavier and don't worry about it flying. You just pick a range far enough back from the work that won't incur bodily injury and shoot it harder.

Q Were there any materials in the way?

A Yeah, there was structural steel piled in the way.

Q What quantity of it?

A The best I could see, it was all the steel they needed to build the building - not in one pile, but I mean it was all up and down the length of the building.

Q Was it -- the length of the building on what side?

A On the north side.

Q And this is where that line went 22 feet from the building?

A That's right.

Q So, as a result of these things, what work did you do first?

A The water line first and I talked to Mr. Taggart time and time again, telling him to stress to them or anybody that was authorized to listen to him how important it was for us to get this particular line in.

Q Did you ever talk to anyone else again about how important it was to get that line in again, other than Mr. Taggart?

A Personally, I didn't. Well, I wish it was some way to have a photostatic mind. I think I did mention it to the owner's representative. His name is Bob -- he had an odd name, but I think it's on record.

Q Bob someone?

A Right.

Q But you're not certain --

A He represented Westinghouse.

Q But you're not certain that you did do this?

A I'm not certain, no.

Q What work was done second?

A The second phase of the job I'm almost positive was a storm drain line put in on the east end of the building, which went toward the south end as the land fell off and we could grade

1 out to --

2 Q Now, after you had finished the water line, what stage

3 of construction was the building in?

4 A Well, they were getting well on the way with the

5 superstructure, putting the girder beams up, the upright beams and

6 tying them together. They had welding operations, bolting opera-

7 tions and so forth.

8 Q Were the roof or the sides on?

9 A No.

10 Q All right, what did you do then after you did the

11 drain lines that went to the south of the building?

12 A Well, we -- the best I can remember, we started on a

13 sewer line that ran pretty much parallel with the building and

14 back, which would be on the south side.

15 Q How far was this from the building?

16 A No, I have to retract -- I remember that we did some-

17 thing else prior to that. There were other drain lateral type

18 lines that feed out of catch basins which is a drainage structure

19 that catches water off of a graded parking lot. That was on the

20 north side of the building in the front. That's where the parking

21 area was being constructed, but the whole time that I was -- I

22 mean that we were doing these different jobs, I kept stressing to

23 John to encourage these people to move this material so that we

24 could get that part of the job done before any siding or roof was

25 put on the building. You can't hurt the superstructure hardly with

1 a bazooka, but roof and siding is delicate and it can be damaged
2 very easily.
3 Q Well, now, the things that you did -- in what order
4 did you finally do the storm drain there which was on the north
5 face of the building and 22 feet from it?
6 A That was the very last thing left to do on the job.
7 Q Why was this the last thing to do on the job?
8 A We had completed everything else, other than some
9 incidental concrete work, which was called spill-outs you build
10 on the end of your pipes where they come out of the ground on a
11 graded slope.
12 Q Why couldn't you do it any sooner?
13 A Because the steel - structural steel and other
14 materials were still in the way.
15 Q Did you have any authority to move those materials?
16 A No, sir. We didn't have the equipment to move it,
17 anyway.
18 Q After the blast, did you inspect the damage?
19 A Yes.
20 Q Did you see these pictures, Mr. Worley?
21 A Yes, sir.
22 Q They're a fairly accurate reflection of the damage,
23 are they not?
24 A Well, to me, it appeared like it made the roof look
25 a lot bigger than what it was, even though it was a huge roof, but

1 other than that, I couldn't see that there was anything wrong with
2 the pictures.
3 Q All right, did you attend a conference subsequent or
4 after the blast and damage occurred?
5 A Yes.
6 Q In which Mr. Cooper was present?
7 A Yes -- well, I'm not sure exactly who was present at
8 the meeting.
9 Q Where was this meeting held, Mr. Worley?
10 A It was at the Holiday Inn in Culpeper.
11 Q And who was at that meeting?
12 A I'm not positive. There were several representatives
13 of Weaver Company, there was representatives of Valley Roofing,
14 there was -- I'm almost positive Hungerford was represented by Mr.
15 Nuckols and this Mr. Haslip, the superintendent of Hungerford's.
16 Q Did you make any statements at that meeting relating
17 to whether or not you had asked that the work on that particular
18 line be done first?
19 A Yes, I did. I brought up that we could have avoided
20 every bit of this damage by letting me do the shooting prior to
21 the construction of the building.
22 Q What responses did your statement generate from the
23 others present?
24 A You could hear a pin drop.
25 Q Did they say anything?

A No, sir.

Q Did they say, "Yes, you were right," or anything of that nature?

A I didn't see anyone make any motion one way or the other.

Q Now, that meeting was in February of 1972, wasn't it?

A Yes, sir.

Q Have you heard -- did you ever have access to a tape indicating what -- showing what occurred in that meeting?

A No, sir.

Q You've never heard it?

A [Witness nods head negatively.]

Q So your memory's going back over a year?

A Yes, sir.

MR. BOYLE: No further questions.

CROSS EXAMINATION

By Mr. Sokol:

Q Mr. Worley, you're an excavating contractor?

A Well, excavating is involved in my type of work, yes.

Q Also involved in your type of work is the use of dynamite?

A Yes, sir.

Q For blasting?

A Yes, sir.

1 Q This is an important part and parcel of your business,
2 isn't that right?
3 A Yes, at times.
4 Q At times. Now, when you agreed to do this job for
5 Hungerford, you expressed to Mr. Cooper or others your ability
6 and the ability of your men to do blasting operations, did you not?
7 A No.
8 Q You did not?
9 A No, sir.
10 Q Well, weren't you going to be paid certain sums of
11 money for blasting operations?
12 A Yes.
13 Q Do you mean to suggest then that you were not compe-
14 tent to do it?
15 A No, sir.
16 Q Well, if they had asked you, "Are you competent to
17 do this work?" - what would your reply have been?
18 A I would say that I've had experience with it.
19 Q You've had experience. Were you competent when you
20 did this work?
21 A In blasting, there's no way a person can truthfully
22 say they're competent.
23 Q Everyone's the same?
24 A Everyone's the same, anyone that can call themselves
25 an experienced powder person.

1 Q Mr. Worley, your company has stationery, does it not?

2 A Yes, sir.

3 Q Your company has a secretary?

4 A Yes, sir.

5 Q During the course of your business -- I have a letter

6 here in front of me -- you find it necessary to send out written

7 communications to people you deal with, is that right?

8 A Yes.

9 Q So it's not unusual for you to state your position

10 in various matters to people you deal with by letter, right?

11 A Well, I don't do as much correspondence as a lot of

12 companies I know of.

13 Q A lot of excavating contractors do more correspondence,

14 is that right?

15 A Any contractors.

16 Q Sir?

17 A No particular kind of contractors - any contractors -

18 is my thoughts.

19 Q You do less corresponding than the average, is that

20 what you're saying?

21 A I like for most of my correspondence to be oral.

22 Q Oh, you like your correspondence to be oral. All

23 right. Now, --

24 A I always thought a letter was cold.

25 Q You did?

A Yes.

Q Well, Mr. Worley, you say you consider the timing on a blasting operation to be important, right?

A Yes, sir.

Q And you say you conveyed this to Mr. Cooper?

A Mr. Cooper or his representatives.

Q But was it Mr. Cooper?

A Personally,Mr. Cooper was in the meeting when I asked about doing this work prior to --

Q You say Mr. Cooper was at a meeting?

A It was a meeting in the office trailer on the job.

Q When was that meeting?

A It was in the very early stages of the construction. It was before we even started laying water pipe.

Q But earlier, and during the course of that meeting, did you agree that you and your employees would do the blasting on this job?

A Yes.

Q You did agree to do it, right?

A Yes, sir.

Q And you agreed that you'd be paid for it?

A Yes, sir.

Q By Hungerford?

A Yes, sir.

Q And Mr. Taggart was your general superintendent?

1 A Yes, sir.

2 Q And there were others that assisted him, correct?

3 A Yes, sir.

4 Q Other employees of yours?

5 A [Witness nods head affirmatively.]

6 Q Now, Mr. Worley, did you ever refuse to do any blast-

7 ing with respect to this project?

8 A Did I refuse?

9 Q Refuse -- did you tell them, "It's too hazardous, I'm

10 not going to do it."?

11 A No, sir.

12 Q You did not. Did you ever write to any of these other

13 companies or individuals expressing to them any kind of hazard

14 involved in doing any blasting near where the site of the building

15 was or would be?

16 A No, sir.

17 Q You did not?

18 A No, sir.

19 Q Did you ever instruct Mr. Taggart to so advise any of

20 them in writing?

21 A No, he doesn't do correspondence work.

22 Q Well, did you think this was a fairly important part

23 of your responsibilities in this project?

24 A No, sir, except for the fact that, any time you blast,

25 you're putting yourself in a position to do damage. I don't care

1 where you come from or how long you've been shooting.

2 Q But you put yourself in that position when you agreed

3 to do the work, didn't you, Mr. Worley?

4 A Yes, sir.

5 Q You did. You knew it when you agreed to do the work,

6 that there are hazards involved, did you not?

7 A Yes, sir.

8 Q And you set up your building and your contracts based

9 upon the hazard which you know confronts you?

10 A Yes, sir.

11 Q You do. Now, when you then engage to do this work,

12 Mr. Worley, and based upon your experience and based upon your

13 letterhead which says, "Gas, Water and Sewer Mains," don't you

14 hold yourself out to be responsible for your work and any damages

15 that result from your work?

16 A The best we can.

17 Q The best you can?

18 A [Witness nods head affirmatively.]

19 Q If you go on a person's property to do some work and

20 a blast gets out of control and does damage to a house, you reckon

21 the owner of the house ought to bear that loss? Is that your

22 understanding of your obligation?

23 A No, we don't take a negative attitude such as that.

24 Q What is your attitude?

25 A We -- the only attitude is to do work and do it in a

1 workmanlike manner. It's hard to know when you're responsible
2 for damages and when you aren't.
3 Q Mr. Worley, aren't you saying - and it's rather
4 ironical - that the more hazardous the work, the more dangerous
5 the work, the less you're responsible? Isn't that what you're
6 saying, or is it otherwise? The more hazardous the work, the
7 greater your responsibility. Which is it?
8 MR. BOYLE: May it please the Court, I --
9 A I think the best thing is for somebody else to decide.
10 MR. BOYLE: -- think Mr. Sokol is continually asking
11 for legal conclusions and he's aware of that --
12 Q I'm asking that -- go ahead. Make your argument.
13 I'm sorry.
14 MR. BOYLE: I did. I object to your questions.
15 THE COURT: Objection sustained, gentlemen. Proceed,
16 Mr. Sokol.
17 Q Now, Mr. Worley, you recall after this event of
18 January 27, you met with Mr. Cooper in Richmond. Do you remember
19 going to Richmond to see Mr. Cooper?
20 A Yes, sir.
21 Q Do you recall during the course of your meeting with
22 Mr. Cooper that you told him that you deemed yourself to be
23 responsible for this damage loss?
24 A No, sir, I told him I felt like that he wouldn't
25 have to suffer a loss.

1 Q You told him you didn't think he'd have to suffer a
2 loss?
3 A Yes, sir.
4 Q Did you tell him that you would see to it that he
5 didn't suffer a loss?
6 A No, sir.
7 Q You did not?
8 A No, sir.
9 Q Did you express to him a belief that ultimately the
10 loss would be yours?
11 A No, sir, I was confident that he wouldn't be stuck
12 with the loss.
13 Q Well, who would be stuck with it?
14 MR. BOYLE: Objection, Your Honor. I think that Mr. --
15 I mean he asked this question at his own risk. If the question
16 comes out that the answer might be improper, I take it that Mr.
17 Sokol will assume responsibility.
18 MR. SOKOL: I'm not assuming responsibility of anything.
19 MR. BOYLE: All right. Okay.
20 MR. WOOD: You listened to the tape, Mr. Sokol. You
21 know what he said.
22 MR. SOKOL: This isn't on any tape. You'll have to pay
23 more careful attention to the testimony. The meeting in Richmond
24 was not on tape.
25 MR. WOOD: All right. You know what the answer is already.

1 THE COURT: No, you're asking for improper evidence in
2 this case, Mr. Sokol. Objection sustained.
3 Q On the next meeting that you had, did you realize
4 that the conversations being conducted by you and others would be
5 on tape?
6 A Would you clarify which meeting we're talking about,
7 now?
8 Q Well, there was a meeting where you attended, Mr.
9 Nuckols attended, I think Mr. Cumbos attended after the blast.
10 I believe you said it was at the Holiday Inn, I'm not sure.
11 A All right. Okay, I know which meeting now.
12 Q Or someone said that it was the Holiday Inn. Do you
13 recall that meeting?
14 A Yes, sir.
15 Q Do you recall that the conversation was taped?
16 A Yes, sir.
17 Q So it wasn't a big secret? You knew it was going to
18 be taped, did you not?
19 A No, sir.
20 Q Sir?
21 A I saw the tape recorder.
22 Q It was out in plain view for you to see?
23 A No, it wasn't out in plain view, but it was setting
24 on the table over behind some of the people.
25 Q You saw it?

1 A Yes, sir.

2 Q And you realized that things that you said during

3 that meeting would be picked up on the tape, right?

4 A Yes, sir.

5 Q All right. During the course of that conversation,

6 did you acknowledge responsibility for this loss?

7 A I don't know. I don't remember.

8 Q You don't know. Mr. Worley, after this loss, isn't

9 it true that you received an estimate for the repair of the damages

10 which exceeded $30,000?

11 A Yes.

12 Q You did?

13 A From Hungerford, Inc., but it was forwarded to me.

14 Q From anyone else? From whom? Who did that estimate?

15 A It was done by Valley Roofing.

16 Q Do you know of any other estimates that exceeded

17 $30,000?

18 A No, sir.

19 Q Didn't indeed someone tell you, based on your

20 initiative, that it would cost $30,000 or more to repair the roof

21 of that building?

22 A No, sir.

23 Q No one did tell you that?

24 A No, sir.

25 Q What estimates did you obtain, or did you obtain any?

A I tried to get a couple of people to give me an estimate and I was never successful.

Q You were not successful in getting estimates?

A No.

Q During the course of this meeting at the Holiday Inn, were not you in fact invited to get other estimates and submit them?

A I'm not sure that I was.

Q Didn't one of the gentlemen say, "Be my guest. You're invited to get whatever estimates you want to get and we'll see."? Wasn't that posed to you?

A That's very possible. I don't remember.

Q It's very possible?

A I don't remember the exact conversation.

Q But you have not submitted to Hungerford or to anyone else any other estimates for the repair of this roof, is that right?

A I can't recall getting any other estimates. I know I had requested two other contractors to give me an estimate and I don't recall receiving them.

Q All right, but you have never submitted any estimates to any of the other parties involved in this project for the repair of that roof?

A If I did, I don't remember it.

Q All right, do you recall during the course of this

meeting you were advised of the fact that Valley Roofing had submitted an estimate of $28,700?

A Yes, sir.

Q You knew that?

A Yes, sir.

MR. SOKOL: That's all, Your Honor.

MR. BOYLE: No further questions.

THE COURT: Step down, Mr. Worley. Thank you, sir.

[The witness stood aside.]

MR. BOYLE: Your Honor, we have additional witnesses, all of the people who had anything to do with this blast and we submit them for Mr. Sokol; if he wants to ask them any questions, we'd be delighted to have him personally accost the witnesses. Otherwise, I know their testimony is going to be repetitive and at five o'clock in the afternoon I don't see any purpose to be served, but I don't want to deny Mr. Sokol the opportunity if he wants to cross-examine them. We have Mr. Breeden who was the blasting man, we have another Mr. Breeden, unrelated, who ran a front end loader and, to be quite frank, I don't know what this other gentleman did. I know he was at the scene and on the job. I don't know what he did.

MR. SOKOL: If Your Honor please, if counsel does not desire to call them as witnesses, I have no desire to call them as hostile witnesses.

MR. BOYLE: All right. I see no reason to take any more

of the Court's time then.

THE COURT: All right, sir. Do you wish to put on any rebuttal evidence?

MR. SOKOL: Just one witness, Your Honor, very briefly, Mr. Cooper.

THE COURT: All right, sir. You're still under oath, sir.

MURRAY COOPER, being previously sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sokol:

Q Mr. Cooper, Mr. Worley has just testified about a meeting prior to the work actually being accomplished on this project that took place at a trailer in which he says you were in attendance, in which he also said he told you that there were hazards involved unless the blasting near where the building site would be could be done at an early date. Do you recall that?

A I recall having a preliminary meeting with Mr. Worley in Weaver's trailer to go over the plans and the specifications prior to his preparing a bid in order to outline in detail just what we wanted him to bid on because this was a subcontract we elected to sell out, rather than having him on a competitive bid basis.

Q Now, during the course of that meeting, did he convey

to you any concern about the perils in delaying the blasting near where the building site would be?

A No, sir, not to my recollection.

Q Well, if he had told you, do you reckon you'd have recalled it?

MR. WOOD: Objection, Your Honor, because -- voiced by my former objection.

THE COURT: All right, sir. Sustained.

Q Did you ever receive a writing from Mr. Worley or from Mr. Taggart with respect to their desires concerning the order of blasting to be performed?

A No, sir.

Q Do you recall receiving any sort of communication, written or oral, from either Worley or Taggart with respect to the order of blasting and the reasons behind it?

A No, sir.

MR. SOKOL: All right, answer any questions --

CROSS EXAMINATION

By Mr. Boyle:

Q Mr. Cooper, Mr. Haslip was your on-the-job-superintendent on a day to day basis, wasn't he?

A Yes, he was.

Q Is there any particular reason he's not here today?

A He wasn't asked to be here.

1 Q You didn't ask him to?

2 A No, sir.

3 Q Did he have the opportunity to talk to your lawyer?

4 A I don't -- didn't -- well, the lawyer knew where he

5 was.

6 Q Did the lawyer talk to Mr. Haslip?

7 A I do not know.

8 Q You don't. I have no further questions.

9 THE COURT: Any surrebuttal, gentlemen?

10 MR. SOKOL: That concludes the rebuttal.

11 THE COURT: No surrebuttal?

12 MR. BOYLE: No surrebuttal.

13 THE COURT: Then that concludes the evidence. All right,

14 gentlemen, now, I want you both to prepare at least a memo with

15 reference to responsibility of - in this type of a case and, in

16 particular, whether or not a contractor can absolve himself of

17 responsibility by hiring a subcontractor. I'd like some authority

18 along that line, and I want to set this case down for argument

19 now and your memos, and let's see --

20 MR. SOKOL: If Your Honor please, there's been a great

21 deal of testimony which has been taken today. I would not have

22 any objection to Mr. Boyle being able to submit another memo based

23 on the testimony since he may want to, but I, frankly, would like

24 to have a transcript so that I could refer to the testimony itself

25 in --

THE COURT: I don't want to wait that long, gentlemen. This testimony is fresh in my mind. You all have brought out lots of testimony here that is of no importance to the Court and I want some law on this subject. I might as well proceed with setting a date for argument and let you submit your briefs and argument at that time. I'm trying to find a date. It's a rough situation.

[At this point there was further discussion between the Court and counsel to determine a date for argument of this matter, after which the proceedings continued as follows:]

THE COURT: This Court is working right straight through August. I'd like for you both to check your dockets and see if you can be here on Monday, August 27th, and advise this Court by return mail.

MR. BOYLE: What time, sir?

THE COURT: Ten o'clock.

MR. BOYLE: Sir, Mr. Sokol stated during the trial that he would make this tape available to the Court. I would ask that he make it available to us as well so that we might have Mrs. Crannis record it and transcribe it for our benefit at our expense, realizing, of course, that portions of it may be inadmissible and that would be discussed with Mr. Sokol in advance. It would not be my intention to simply finally submit it to the Court but rather --to find out what it says, with the understanding that what I

1 think might be admissible I'll be permitted to tender to the
2 Court as evidence and argue its admissibility.
3 THE COURT: All right, sir. We'll permit you to do
4 that, sir.
5 MR. BOYLE: Thank you, sir.
6 THE COURT: I don't know that self-serving declarations
7 made on the part of either party in reference to a statement after
8 the fact would have much effect on this Court.
9 MR. BOYLE: Yes, sir, I'm concerned with the conduct
10 contrary to interests of the other contractors.
11 THE COURT: Nor does the fact that the man made some re-
12 quest in advance about the -- doing the blasting before the build-
13 ing was constructed. It's quite obvious if the blasting had been
14 done before the building was constructed, it couldn't have done
15 any damage to the building. That's quite obvious, but I don't
16 know that that absolves him from all responsibility, but that's
17 beside the point. I need some briefs on this responsibility for
18 blasting and, particularly, as I've said before, whether or not a
19 general contractor can get rid of responsibility by simply hiring
20 a subcontractor to do it and that's the two positions in essence
21 of Hungerford and Worley. Worley has become the subcontractor
22 and Hungerford has become the contractor in this case, so that's
23 what I'm essentially interested in and I would like to have argu-
24 ment on this case on August 27th before this case gets completely
25 out of my mind.

1 MR. BOYLE: And when do you want the briefs in, sir?

2 THE COURT: I'd like both in within about ten days.

3 Give you ten days to put yours in and Mr. Sokol ten days within

4 which to reply and I'm going to set this case on my docket for

5 argument on the 27th and you all can advise me if you have some

6 conflict and I'll try to assist counsel in that regard.

7 MR. BOYLE: Sir, you gave us ten days to do ours and

8 him ten days to reply. Now, he's the Complainant here.

9 THE COURT: I beg your pardon. I should have reversed

10 that. He will file his -- you think you can file a brief within

11 ten days, Mr. Sokol?

12 MR. SOKOL: I was just going to ask the Court for a little

13 bit of additional time. I've got two trials scheduled for next

14 week and --

15 THE COURT: Well, you have other people in your office,

16 don't you?

17 MR. SOKOL: But they're equally as busy, Your Honor.

18 The writing of the brief would fall to me.

19 THE COURT: Well, I'll give you fifteen days then. How

20 about that?

21 MR. SOKOL: Well, that's better than ten, anyway.

22 THE COURT: All right. Let's do -- Boyle's reply in

23 ten. All right, gentlemen, I'm expecting to hear argument on

24 this case on August 27th. Now, y'all make a note of that.

25 MR. BOYLE: We'll withdraw the one we've submitted then,

1 Your Honor, and submit another.

2 THE COURT: I think that would be wise.

3 THEREUPON, court was adjourned at approximately 5:30

4 P.M.

5

6 STATE OF VIRGINIA AT LARGE:

7 I, Russell P. Crannis, Notary Public for the State of

8 Virginia at Large, do hereby certify that the foregoing proceed-

9 ings of trial were duly taken down by me at the time and place

10 aforesaid and later reduced to typewriting by me and I further

11 certify that this is a true and correct transcript of such pro-

12 ceedings to the best of my knowledge and belief.

13 Given under my hand this ____ day of November, 1973.

14 My Commission expires: September 13, 1975.

15

16 _____

17 Notary Public

18

19

20

21

22

23

24

25

W. H. WEAVER CONSTRUCTION COMPANY

232 NORTH EDGEWORTH STREET, P. O. BOX 3466
GREENSBORO, N. C. 27402

Subcontract No. 624/203

Subcontract For HEATING - VENTILATING - AIR CONDITIONING - PLUMBING

With
Street Hungerford, Inc.
City 3300 Deepwater Terminal Road
Richmond, Virginia 23234

Attention: Mr. M. L. Cooper
Telephone: 703/233-7671

Job Manufacturing Plant & Office Building
Westinghouse Electric Corporation
Infilco Division
Culpeper, Virginia

Job No. 624

Amount $ 443,261.00

THIS AGREEMENT, made this 8th day of September, 19 71, by and between W. H. WEAVER CONSTRUCTION COMPANY, Greensboro, N. C., hereinafter called the Contractor and

HUNGERFORD, INC. ---------- hereinafter called the Subcontractor.

WITNESSETH, That whereas the said Contractor has heretofore entered into a Contract with

Infilco Division of Pittsburgh, Pennsylvania,
Westinghouse Electric Corporation
hereinafter called the Owner, to furnish all labor and material and perform all work required for

general construction of Manufacturing Plant and Office Building, Culpeper, Virginia,
in accordance with the General Conditions, Drawings, Specifications and all addenda prepared by

Wiley & Wilson, Architects of Lynchburg, Virginia, Architect,

Engineer, or any other person employed by the owner, which are a part of said Contract, and which are now made a part of this Subcontract insofar as they apply:

NOW, THEREFORE, said Contractor, and said Subcontractor, for and in consideration of the mutual and reciprocal obligations hereinafter stipulated, do contract and agree as follows:

Article 1—The said Subcontractor hereby agrees to furnish and pay for all materials; all required shop erection drawings; all required samples; all equipment together with all labor under supervision satisfactory to the Architect, Owner, and the Contractor, to complete the following part of parts of the work of the Contract in all respects as is therein required of the Contractor, and all work incidental thereto, including payment to the Contractor of all costs for water, electric current and heat necessary for the Subcontractor's work, and pro-rata cost of sanitary facilities, watchmen, fencing in of the project, operator and hoisting equipment, and final clean-up of the project, as required by the Architect and/or Owner.

Specification Division 15 - Mechanical

Also Includes: 12" Water Main from Va. State Route No. 686 to Fire Pump House.
6" Domestic Water from Fire Pump House into Building.
Motor controllers, starters, controls, accessories, interlock wiring and control wiring for all equipment furnished under this subcontract.

Excludes: Section 15M - Fire Protection System

DEPARTMENTAL EXHIBIT

Article 2.—The Subcontractor hereby certifies that he has examined all the plans, drawings and specifications prepared by said Architect for the entire work, of which the work covered by this Subcontract is a part. Said plans and specifications are hereby referred to and made a part of this Subcontract. The Subcontractor and his Subcontractors will be and are bound by any and all parts of said plans and specifications insofar as they relate in any part or in any way to the work undertaken herein, but it is hereby specifically agreed that the Subcontractor will not sublet, assign, or transfer this Subcontract or any part thereof, including any account which may arise out of said Subcontract, without the express written consent of the Contractor.

List of Contract Documents

1. This subcontract.

2. Specifications entitled Westinghouse Electric Corporation, Infilco Division, Manufacturing Plant and Office Building, Culpeper, Virginia, and dated July 1, 1971, and the following Addenda thereto:
   Addendum No. 1 dated August 5, 1971
   Addendum No. 2 dated August 17, 1971
   Addendum No. 3 dated August 19, 1971

3. Plans numbered CD-1 thru CD-9, A-1 thru A-14, S-1 thru S-10, M-1 thru M-5, P-1 thru P-3, FP-1, E-1 thru E-12, all dated July 1, 1971.

4. Occupational Safety and Health Act of the U. S. Department of Labor.

Article 3—It is understood and agreed by and between the parties hereto, that the work included in this Subcontract is to be done under the advice of said Architect and Owner, ~~and that his decisions as to the true construction and meanings of the plans and specifications shall be final.~~ It is also mutually agreed by the parties hereto, that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said Architect, and both parties hereto agree to conform to and abide by the same, insofar as they may be consistent with the purpose and intent of the original plans and specifications.

Article 4—The Subcontractor agrees to furnish a unit cost break down of Contract by work, if required, for partial payment or change in scope of work purposes.

Article 5—The Subcontractor hereby agrees to make any and all changes and furnish the materials and perform the work, that the Contractor may require, without nullifying this agreement at a reasonable addition to, or deduction from, the contract price, hereinafter named, figured on original unit price where applicable. No alterations or changes shall be made, however, except upon the written order of an authorized representative of the Contractor, in which written order the cost of such change shall be quoted.

Article 6—The Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the Contractor, Architect, or their authorized representatives, and shall within twenty-four hours after receiving written notice from the Contractor to that effect, proceed to take down all portions of the work, and remove from the building and grounds all material, whether worked or unworked, which the Architect shall condemn as unsound or improper, or as failing in any way to conform to the plans and specifications, and shall make good all work so condemned, and all other work of the Contractor or other Subcontractors damaged or destroyed in the making good of such condemned work.

Article 7—The Subcontractor hereby agrees that the work under this Subcontract is to be provided for immediately, and shall be begun when notified by the Contractor, and completed as follows:

It is agreed that the work will be carried on as required by the Contractor, promptly and efficiently, and without delaying other branches of work; and if necessary as Contractor may indicate, certain parts of the work shall be prosecuted in preference to others in order to secure the execution of this work at and within the time specified. It is hereby distinctly agreed that damages arising from nonfulfillment of this contract by Subcontractor as regards time, shall be deducted from the contract price.

Article 8—Should the Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen, or a sufficient quantity of materials of proper quality, or fail in any respect to prosecute the work covered by this Subcontract, with promptness and diligence or fail in the performance of any of the agreements herein contained or file for, or be declared or adjudged bankrupt or go into any form of receivership, the Contractor may, at his option, after forty-eight hours written notice to the Subcontractor, provide any such labor and materials, and deduct the costs thereof from any money then due or thereafter to become due the Subcontractor under this Subcontract; or, the Contractor, may, at his option, terminate the employment of the Subcontractor for the said work, and shall have the right to enter upon the premises and take possession, for the purpose of completing the work included under this Subcontract, of all the materials, tools, and appliances, thereon, and may employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment by the said Contractor, said Subcontractor shall not be entitled to receive any further payments under this Subcontract until the work shall be wholly finished; at which time, if such expenses shall exceed the unpaid balance, the Subcontractor shall pay the difference to the Contractor, but if the unpaid balance of the amount to be paid under this Subcontract exceeds the expenses incurred by the Contractor in finishing the work, such excess shall be used first to pay the Subcontractor for his materials and equipment so used and any amount thereafter remaining shall be apportioned between the Contractor and the Subcontractor in ratio to the percentage of the work completed by each party. The expense incurred by the Contractor, as herein provided, either for furnishing materials or for finishing the work, and any damages incurred by such default shall be chargeable to, and paid by, said Subcontractor, and the Contractor shall have a lien upon all materials, tools, and appliances, taken possession of as aforesaid to secure the payment thereof, or the Subcontractor shall pay the General Contractor any and all costs that the General Contractor shall incur due to the lack of performance by the Subcontractor and/or the failure of the Subcontractor to keep the progress of his work up to that of the General Contractor or other trades, or failure to execute his work as directed by the Contractor.

Article 9—The Subcontractor hereby agrees to save and indemnify and keep harmless the Contractor, against all liability, claims, judgments or demands for damages arising from accidents to persons or property, whether occasioned by said Subcontractor, his agents or employees, provided said accidents occur in connection with the Subcontractor's work or are occasioned by said Subcontractor, his agents or employees, in connection with other work; and the said Subcontractor will defend any and all suits which may be brought against the Contractor on account of any such accidents, and will make good to and reimburse the Contractor for any expenditures that said Contractor may make by reason of such accident.

In order to insure the fulfillment of the foregoing, the Subcontractor hereby agrees to carry Employers and Public Liability Insurance, and also such insurance as is required to cover Workmen's compensation as required by State or Federal laws.

The Subcontractor also agrees to furnish the Contractor with suitable evidence that such insurance has been taken out, in limits as required by the Contractor, and if the Subcontractor shall sublet any of this work to a third party he agrees to see that the said third party shall carry insurance, as mentioned above. A certificate of such insurance from companies issuing same shall accompany and become a part of this contract.

Article 10—The said Subcontractor is to insure his own risks against fire, theft, sabotage, windstorm, and other casualty in and about the project, unless special agreement is made to the contrary. Said insurance shall continue in force until the building is accepted by the Owner. At the Contractor's option, Contractor may provide Standard Builders' Risk Insurance with extended coverage ~~and invoice the Subcontractor for the Subcontractor's proportionate share of the cost of such Builders Risk Insurance.~~ N/A

Article 11—The Subcontractor shall remove from the premises daily and/or as often as necessary or as may be directed by the Contractor, all rubbish, debris, and surplus material which may accumulate from the prosecution of the work covered by this Subcontract, and shall the Subcontractor fail to do so upon proper notice, then the Contractor may, at his option, cause the same to be removed and charge the expense of such removal to said Subcontractor.

Article 12—It is hereby made a part of this contract that with respect to labor requirements, wage scales, overtime wages, nondiscrimination and equal employment practices, the Subcontractor will comply with all statutory and specification requirements, will pay all taxes assessed against his labor, and will also comply with all statutory and specification requirements as to equal opportunity employment, labor reports, payroll taxes, etc.

Article 13—The said Contractor hereby agrees to pay the said Subcontractor for such labor and material herein undertaken to be done and furnished the sum of and above the sum of FOUR HUNDRED FOURTY THREE THOUSAND TWO HUNDRED SIXTY ONE DOLLARS ($443,261.00) subject to additions and deductions as hereinbefore provided. Partial payments shall be paid by the Contractor to the Subcontractor as the work progresses, based upon estimates and certificates of the Architect, monthly billings shall be submitted by the first of the month and shall be paid on or about the twenty-fifth, 10% to be retained. Final payment shall be made within 30 days after the completion of the work included in the Subcontract, and upon the written acceptance of the Architect, and full payment therefor by the Owner. All payments are contingent upon evidence that all claims for labor and material are settled.

Article 14.—The said Subcontractor agrees to turn said work over to the Contractor in good condition, and free and clear from all claims, encumbrances, patent royalties and liens growing out of the performance of this Subcontract, and in the event of the failure of the Subcontractor during the progress of said work, or at any time thereafter, to pay for all materials and labor used in the prosecution of the said work, the Contractor may, at his option, and without notice to the Subcontractor prior thereto, pay all such claims for labor and materials, and charge the amounts to said Subcontractor. In case suit to establish lien is brought by any person, firm or corporation employed by or furnishing material to said Subcontractor under this Subcontract, Subcontractor will at his own cost and expense (including Attorney's fees) defend such suit and pay such lien established in court.

Said Subcontractor shall, as often as requested in writing by the Owner or by the Contractor, make out and give to said Owner or Contractor a sworn statement of persons furnishing labor or materials to the Subcontractor, giving their names and how much, if any, is due or will be due to each. Such statement shall be furnished by the Subcontractor to the Contractor without special request therefor, each time the Subcontractor receives payments from the Contractor under this Subcontract, and shall accompany requisition for same.

Like statement shall be required from any and all Subcontractors of the Subcontractor.

Article 15—The Subcontractor guarantees that the work to be done under his Subcontract will comply with the plans, drawings and specifications of the general contract for the same period of time and to the same extent and in the same manner as the Contractor is required to guarantee said work under the terms of the general contract, the plans and specifications of which the Subcontractor admits notice.

Article 16—It is further mutually agreed between the parties hereto that no payment made under this contract, except the final payment, shall be conclusive evidence of the performance of this Subcontract, either in whole or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Article 17—The Subcontractor hereby agrees to procure and pay for all permits and licenses, sales and other taxes, necessary to or brought about by this Subcontract, in conformity with all governing state, federal and municipal laws.

Article 18—Subcontractor shall give and pay for performance and payment bond, payable to the Contractor in the sum of $NOT REQUIRED on the form hereto attached, with surety thereon satisfactory to the Contractor for the faithful performance of this Subcontract.

Article 19—The Subcontractor shall be entitled to receive no extra compensation for extra work of any kind whatsoever regardless of whether the same was ordered by the Contractor or any of its representatives unless such extra order is given in writing and signed by an authorized representative of the Contractor.

Article 20—The Subcontractor will be responsible for the care and protection of his work until the final inspection and acceptance by the Architect and/or Owner.

Any damage inflicted by another Subcontractor shall be repaired by this Subcontractor and be billed on a weekly basis to the Subcontractor responsible for the damage. The party responsible for the damage must be notified, in writing, before repairs or corrective work is done. The Contractor assumes no responsibility for the collection of any charges claimed by this Subcontractor against any other subcontractor and/or supplier.

Article 21—See reverse side for further conditions and billing instructions which are an integral part of this Subcontract.

Article 22—This Subcontract contains the sole and entire agreement between the parties and all previous negotiations, proposals, discussions and/or agreements are merged into this subcontract and the parties acknowledge that any statements or representations or agreements that may have heretofore been made by either of them to the other are void and of no effect. No change, modification, or alteration of this Subcontract shall be valid unless it be in writing, duly executed by the parties hereto, and no course of dealing between contractor and subcontractor shall be construed to alter the terms of this subcontract in any manner.

Article 23—~~Subcontractor shall not have any cause of action against Contractor because of hindrance or delay no matter what the cause.~~ N/A

Article 24—This Subcontract is subject to approval by the Architect and/or Owners as required by the contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first written above, this instrument being executed in duplicate each party retaining a copy.

W. H. WEAVER CONSTRUCTION COMPANY

Witness _____ By: _____ (Seal)
CONTRACTOR

HUNGERFORD, INC.

Witness _____ By: _____ (Seal)

"EQUAL OPPORTUNITY EMPLOYER"

INSTRUCTIONS FOR BILLING SUBCONTRACTS

Mail all invoices to: W. H. Weaver Construction Company
P. O. Box 3466
Greensboro, North Carolina 27402

Submit all invoices in triplicate by the last day of the month to insure payment during the following month. Payment will be made on approximately 25th of month. 15th

Show the job name and the subcontract number.

Render separate invoices for each subcontract if more than one is awarded on the same project.

Use the following form in making up your application for payment:

TO: _____

FROM: _____

_____

PROJECT:

PAYMENT REQUEST NO. _____

PERIOD _____ 19____, to _____, 19____.

STATEMENT OF CONTRACT ACCOUNT:

1. Original Contract Amount $_____
2. Approved Change Order Nos. _____ (As per attached breakdown) (Net) $_____
3. Adjusted Contract Amount $_____
4. Value of Work Completed to Date: (As per attached breakdown) $_____
5. Value of Approved Change Order Completed: (As per attached breakdown) $_____
6. Materials Stored on Site: (As per attached breakdown) $_____
7. Total to Date $_____
8. Less Amount Retained (_____%) $_____
9. Total Less Retainage ($_____)
10. Total Previously Certified (Deduct) $_____
11. AMOUNT DUE THIS REQUEST $_____

CERTIFICATE OF THE SUBCONTRACTOR:

I hereby certify that the work performed and the materials supplied to date, as shown on the above represent the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto) between the undersigned and _____ relating to the above referenced project.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from the contractor, to (1) all my subcontractors (sub-subcontractors) and (2) for all materials and labor used in or in connection with the performance of this Contract. I further certify I have complied with Federal, State and local tax laws, including Social Security laws and Unemployment Compensation laws and Workmen's Compensation laws insofar as applicable to the performance of this Contract.

Date _____

_____
SUBCONTRACTOR

Subscribed and sworn before me this _____ day of

_____, 19____

BY: _____
(authorized signature)

Notary Public: _____
My Commission Expires:

TITLE: _____

It is necessary for you to follow the above instructions in order for us to expedite checking and handling of your invoices.

PURCHASE ORDER

HUNGERFORD INC.

3800 DEEPWATER TERM L ROAD
RICHMOND, VIRGINIA 23234
PHONE (703) 233-7671

PURCHASE ORDER NO. 800

SHOW THIS NUMBER ON AL PACKAGES, INVOICES, AND REFERENCES TO THIS ORDER

TO: M. W. Worley Company
Route 8, Box 23A
Charlottesville, Virginia

SHIP TO: Westinghouse Electric Company
Infilco Division
Culpepper, Virginia

DATE October 22, 1971
TERMS
JOB NO.
SHIP VIA
DATE REQUIRED
AUTHORIZED SIGNATURE

QUANTITY ORDERED	QUANTITY RECEIVED	PLEASE ENTER OUR ORDER FOR THE FOLLOWING:	UNIT PRICE	EXTENDED	DISC	TOTAL
		To furnish all labor and equipment to install outside utilities at the Westinghouse Infilco Plant, Culpeper, Virginia as follows:				
		All pipe, valves, pipe fittings, prefabricated manholes, manhole tops, catch basin tops, water main from city connection to pump house and from pump house to plant will be delivered to the job by Hungerford, Inc. for installation by you.				
		Furnish all labor and materials including concrete, reinforcing steel, forms and miscellaneous specials to fabricate and install all drainage structures such as culverts, head walls, catch basins etc.				
		Workmanship and materials shall be as set forth in applicable sections of the job specifications.				
		Payment shall be made in accordance with the job contract stipulations. For all the work described above, Hungerford, Inc. agrees to pay the sum of $35,000.00				
		Submit drawings on shop fabricated items for approval. Blasting shall be performed as an extra to the above figure only after approval of the same and then in accordance with accepted standards for payment. (Not to exceed $25.00 per cubic yard)				
				TOTAL		

DEFENDANT'S EXHIBIT

PLEASE ACKNOWLEDGE RECEIPT OF THIS ORDER AND DATE OF SHIPMENT, RENDER ALL INVOICES IN DUPLICATE.

INVOICE COPY

VIRGINIA:

IN THE CIRCUIT COURT OF CULPEPER COUNTY

M. W. WORLEY CONSTRUCTION COMPANY, INC.

v.

HUNGERFORD, INCORPORATED

ORDER

This day came the parties, by counsel, upon the Motion for Judgment of M. W. Worley Construction Company, Inc., the grounds of defense, plea of Set-Off, and four (4) count Counter-claim of Hungerford, Incorporated, and Worley's reply and grounds of defense to the counter-claims; upon the evidence adduced on June 22, 1973, wherein all questions of fact and law were tried by the parties; and was argued by counsel on August 27, 1973.

On Consideration Whereof, the Court finds and holds that Worley recover of Hungerford the sum of $17,163.00 for services performed under its contract with Hungerford; that, on the basis of the applicability of the rule of absolute liability to this case and also on the basis of Worley's negligence in its performance of the blasting operations, the Court finds and holds that Hungerford recover of Worley the sum of $28,700.00 for losses sustained as a result of blasting operations conducted by Worley; and further that neither party recover interest on said amounts from the other party; all of which is ADJUDGED, ORDERED, and DECREED.

The Court further finds and holds by reason of the foregoing decision that Hungerford's plea of Set-Off is well taken, and it is accordingly the judgment of the Court that the recoveries herein recited be set-off; and the verdict and judgment be, and it hereby is, that Hungerford, Incorporated, be awarded judgment against M. W. Worley Construction Company, Inc., in the amount of Eleven Thousand, Five Hundred Thirty-seven ($11,537.00) Dollars,

which judgment shall be duly docketed by the Clerk.

And it is hereby noted that Worley excepts to all the findings and holdings of this Order with the exception of the holding that Worley recover of Hungerford and further that Hungerford excepts to the action of the Court in failing to award it interest and in failing to sustain the counts of Hungerford's counter-claim based on breach of contract and breach of warranty, all exceptions being on the grounds that the actions of the Court to which exception is taken are contrary to the law and the evidence.

ENTER: _____

DATE: _____

I ask for this:

_____

Seen:

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER:

M. W. WORLEY CONSTRUCTION COMPANY, INC.

NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

V.

HUNGERFORD, INCORPORATED

TO: Miss Dorothy A. Faulconer, Clerk
Circuit Court of Culpeper County
Culpeper, Virginia

NOTICE is hereby given that M.W. Worley Construction Company, Inc. appeals from the final judgment rendered by the Circuit Court of Culpeper County on 26 September 1973, and announces its intention of applying for a writ of error and supersedeas to the Supreme Court of Virginia.

ASSIGNMENT OF ERROR

The Circuit Court of Culpeper County erred in finding and holding that Hungerford, Incorporated recover any amount whatever from M.W. Worley Construction Company, Inc. and in ordering that M.W. Worley Construction Company, Inc., not recover interest on the amount it recovered against Hungerford, Incorporated, both said actions being contrary to the law and the evidence.

A transcript of the testimony and trial proceedings on 22 June 1973 will be hereafter filed.

M. W. Worley Construction Company, Inc.
M.W. Worley Construction Company, Inc.
By Counsel

BOYLE AND WOOD
By: Joel Wood
420 Park Street
Charlottesville, Virginia

This is to certify that the above stated Notice of Appeal and Assignment of Error was served upon Hungerford, Incorporated,

BOYLE AND WOOD
ATTORNEYS AT LAW
CHARLOTTESVILLE, VA.

by mailing a true copy thereof to William M. Sokol, Esquire Attorney at Law, P.O. Box 593 Princess Anne Street, Fredericksburg, Virginia on the 17th day of October 1973.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER

M. W. WORLEY CONSTRUCTION COMPANY, INC.

V.

HUNGERFORD, INCORPORATED

TO: Miss Dorothy A. Faulconer, Clerk
Circuit Court of Culpeper County
Culpeper, Virginia

ASSIGNMENTS OF CROSS-ERROR

Comes now the appellee, pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia, and files with the Clerk of the Circuit Court of Culpeper County its Assignments of Cross-Error, as follows:

The Circuit Court of Culpeper County correctly applied the law of Virginia on the evidence adduced in finding in favor of Hungerford, Incorporated, in the sum of Twenty-eight Thousand Seven Hundred Dollars ($28,700.00), on the basis of the applicability of absolute liability (Count Three of Counter-claim) and also on a finding of negligence (Count Two of Counter-claim) on the part of Worley in the performance of blasting operations, but the appellee assigns as cross-error the Court's finding that Hungerford was not entitled to recovery on the counts grounded in breach of contract and breach of warranty, to-wit: Count One and Count Four of the Counter-claim, the same being contrary to the law and evidence.

HUNGERFORD, INCORPORATED

By _____
Of Counsel

WHITTICAR, WHITTICAR & SOKOL
918 Princess Anne Street, P.O.Box 593
Fredericksburg, Virginia 22401

CERTIFICATE

I, William M. Sokol, Counsel for Hungerford,

Incorporated, hereby certify that I mailed, postage prepaid, a true copy of the foregoing Assignments of Cross-Error, to Robert P. Boyle, Boyle & Wood, 420 Park Street, Charlottesville, Virginia 22901, counsel for the appellant, this 29th day of October, 1973.

William M. Sokol