

STATE OF WISCONSIN CIRCUIT COURT SAWYER COUNTY

JAMES HAUSMAN, Plaintiff, vs. Case No. 03-CV-167 SAWYER COUNTY, Defendant.

Deposition of: ROBERT J. MONTGOMERY

Date: Friday, June 17, 2005 Time: 8:40 o'clock a.m.

Reported by NANCY L. DELANEY

EXHIBIT INDEX (Continued)

Table listing exhibit numbers 178-190 and their descriptions, such as 'Report of Mr. Montgomery dated June 7, 2005' and 'Shoreline loss report addendum'.

DEPOSITION of ROBERT J. MONTGOMERY,

a witness in the above-entitled action, taken at the instance of the plaintiff, under the provisions of Chapter 804 of the Wisconsin Statutes...

APPEARANCES

LAUREN L. AZAR, MICHAEL, BEST & FRIEDRICH, LLP, Attorneys at Law, 1 South Pinckney Street, Madison, Wisconsin, appearing on behalf of the plaintiff; MATTHEW P. DREGNE, STAFFORD ROSENBAUM LLP, Attorneys at Law, 222 West Washington Avenue, Madison, Wisconsin, appearing on behalf of the defendant.

ALSO PRESENT: JAMES HAUSMAN NANCY JOHNSON DENT

EXHIBIT INDEX

Table listing exhibit numbers 175-177 and their descriptions, such as 'Notice of deposition and request for documents dated July 6, 2004'.

ROBERT J. MONTGOMERY,

called as a witness, after being first duly sworn in the above cause, testified under oath as follows:

EXAMINATION

BY MS. AZAR:

Q Good morning.

A Good morning.

Q Mr. Montgomery, as you know, I'm Lauren Azar. I'm the attorney for Jim Hausman in this litigation. Before we begin, let's talk about some ground rules on the best way to insure that this deposition goes well.

First, if you could remember to always answer audibly, because that helps the court reporter and if we can try not to talk over each other, that also helps the court reporter.

A Okay.

Q If at any point in time you don't understand a question, just stop me and ask me to rephrase the question, because I want to insure that you understand what I'm asking and as well, if at any point in time you need to change any of your answers, regardless of when it happened during the day, stop the deposition and let us know that you need to change an answer. I want you to be completely comfortable with all the

1 answers you give today.
 2 A Okay.
 3 Q Also, if you need to take a break, just let me know
 4 that. This is not supposed to be a torturous
 5 activity. Do you understand those directions?
 6 A Yes.
 7 Q Have you ever been deposed before?
 8 A Yes.
 9 Q When was that?
 10 A Actually, it was quite some time ago, I think it was
 11 1995.
 12 Q In what context?
 13 A It was a valuation dispute about a property that had
 14 wetlands. It was in Walworth County.
 15 Q Have you given any other depositions?
 16 A I was deposed a long time ago, this is perhaps 20
 17 years ago, on a water reg and zoning dispute that was
 18 across the lake in the Town of Westport.
 19 Q Any other depositions?
 20 A I can't recall any.
 21 Q Have you ever testified in court?
 22 A Yes.
 23 Q In what context?
 24 A The same two issues and actually, the older one was a
 25 contested case hearing and I testified in another

1 contested case hearing more recently.
 2 Q In what case was that?
 3 A It was another water regulation dispute and it was
 4 near Green Bay.
 5 Q What's your birthday?
 6 A November 3, 1953.
 7 Q And please give me your educational background.
 8 A Well, after getting out of high school, I went to the
 9 University of Illinois at Urbana, graduated from there
 10 in 1976, worked for a little while, went to Colorado
 11 State University, graduated from there with a master's
 12 degree, emphasis in water resource engineering, in
 13 1980.
 14 (Exhibit 175 is marked for identification)
 15 Q I'd like you to take a look at what's been marked as
 16 Exhibit Number 175. Can you identify that document,
 17 please?
 18 A This looks like the deposition request.
 19 Q And attached to that deposition request is a request
 20 for documents, correct?
 21 A Correct.
 22 Q Did you produce all the documents that were requested
 23 in this notice of deposition and request for
 24 documents?
 25 A Yes.

1 Q And have you produced all the documents upon which you
 2 reviewed in preparing your expert opinion?
 3 A Yes, I believe so. We produced our entire file.
 4 There might have been some things we looked at in
 5 Stafford's offices that we didn't take copies of, but
 6 everything that was in our file was turned over.
 7 Q And what sorts of things did you review in Stafford's
 8 offices?
 9 A I can't remember anything specifically, I think you
 10 have everything we looked at.
 11 (Exhibit 176 is marked for identification)
 12 Q I'd now like you to take a look at what's been marked
 13 as Exhibit Number 176.
 14 A All right.
 15 Q Could you please identify what's been marked as
 16 Exhibit 176?
 17 A This is an affidavit that I signed last year.
 18 Q And attached to this affidavit is your resume,
 19 correct?
 20 A That's correct.
 21 Q Do you have any additions to your resume that you'd
 22 like to add now?
 23 A Not any that I think -- it's fundamentally more of the
 24 same. There are more projects to describe, but I
 25 don't think there's any big change.

1 Q Do you have experience with the design of dams?
 2 A I've analyzed dams for various compliance conditions
 3 and spillway capacity. I haven't actually prepared
 4 plans and specifications for a new dam construction.
 5 Q So you said you analyzed dams for essentially
 6 adequacy?
 7 A Yeah, for hydraulic and hydrologic issues, but I
 8 haven't prepared -- and we've prepared some plans for
 9 rehabilitation of dams, of a dam just recently in
 10 Walworth County, but we have not prepared new dam
 11 construction complete plans and specifications.
 12 Q Have you -- do you have any experience with designing
 13 replacement dams?
 14 A Not specifically.
 15 Q And do you have any experience with the operation of
 16 dams?
 17 A Well, yes, in the course of various projects working
 18 on things to do with gate operation and things like
 19 that.
 20 Q Throughout today's deposition, we're going to be using
 21 a lot of different terms and want to make sure you and
 22 I are talking about the same thing. So first of all,
 23 why don't you tell me the difference between a storm
 24 event and a flood event.
 25 A A storm event is basically dealing with the difference

1 between precipitation and the frequency or the rarity
2 of some rainstorm event and a similar issue on a water
3 body, whether it's a lake or a river. A storm event
4 is some sort of rainfall event and a flood event is a
5 change in water surface in a lake or river. They're
6 related, about they're often times not exactly related
7 in their frequency.

8 Q In your expert report that you prepared on June 7,
9 2005, on a number of occasions you talk about the
10 normal event versus the extreme event?

11 A Correct.

12 Q Are you talking about the normal flood event and the
13 normal -- and the extreme flood event or the normal
14 storm event and the extreme storm event?

15 A I would say it's more of a distinction between normal
16 conditions and conditions you would expect to run into
17 in general versus extreme conditions that would be at
18 some return period of, let's say, once every ten years
19 or once every 100 years.

20 Q So when you talk about extreme events, you consider an
21 extreme event something that's once every ten years or
22 more?

23 A I'd say that's a reasonable definition.

24 Q And on what do you base that?

25 A Judgment and experience. I'm trying to think if

1 there's some particular citation I can give you, but I
2 can't think of one. I can give you a couple of
3 references.

4 It's not specifically applicable, but storm water
5 management in terms of analyzing storm events that
6 create flooding in neighborhoods typically require
7 control of storm events at the 10-year frequency and
8 sometimes to the 100-year frequency and that's
9 considered control of extreme events. It's not
10 directly applicable to this situation here.

11 Q Why not?

12 A Well, it's an example of an interpretation of what a
13 design standard would be to cover an event that's
14 judged to be large or extreme.

15 Q And why is that not applicable to this situation?

16 A Well, I think it's generally applicable, I'm just
17 saying storm water management is not exactly the same
18 thing as lake management.

19 Q So you then are -- when we use the term extreme event
20 today, you will be referring to either storm events or
21 flood events that occur once every ten years or more,
22 is that correct?

23 A I'm not quite sure of the questions you're going to be
24 asking me, but I'd say that's a reasonable starting
25 point for defining the extreme, yes.

1 Q If at any point in time I ask you a question about an
2 extreme event and you will not be using that
3 definition, you need to tell me.

4 A Okay.

5 Q Because I want to make sure we understand what we're
6 talking about, okay?

7 A Okay.

8 Q A normal event, then, when we talk about a normal
9 event today, here's the definition we'll be using,
10 either a storm event or a flood event that occurs less
11 than once every ten years, is that agreeable?

12 A I think there's probably somewhat of a gray zone
13 between extreme and normal conditions, but that's
14 fine, we can just -- I wouldn't say there's an
15 absolute division between extreme and normal, there's
16 a gradation.

17 It's sort of a common sense issue, but when
18 events get large enough, you would say, well, this is
19 an extreme event and then there's some sort of
20 moderate event and then there's typical conditions.

21 Q Well, what do you consider to be typical conditions?

22 A Well, I would define typical conditions as the sorts
23 of things that happen most of the time and I would say
24 that thinking about lake levels or stream flow, most
25 of the time, the majority of the time, conditions are

1 not extreme and so I would say normal conditions are
2 conditions that occur most of the time.

3 Q And what is most of the time? Give me a period of
4 time.

5 A More than 50 percent. I'm making this up as I go, I
6 didn't have this definition in mind when I was putting
7 together the work that I did, but if you're just
8 asking me right here, I'd say at least half the time.

9 Q And how does that translate into storm events or flood
10 events, would that be the annual flood event, the
11 two-year flood event, the five-year flood event?

12 A I would say the annual or the one-year or the two-year
13 would be in the range of normal. It would be on the
14 outside of what typically occurs the bulk of the time,
15 but that would be getting toward the upper end of what
16 you'd call normal conditions.

17 Q So the one and two-year you would consider normal
18 conditions, the five-year, what would you consider
19 that?

20 A It's somewhere in a gray zone, but it's getting toward
21 an extreme event. I'm not sure I'd call the five-year
22 event -- we're not speaking of any event in
23 particular, it could be a five-year flood, it could be
24 a five-year rainstorm. I'm just saying that a return
25 period of five years is somewhere in a gray zone. I

1 would put it between normal conditions and extreme
 2 conditions.
 3 Q Continuing with our definition of terms here, I will
 4 be using the local datum, not the adjusted local
 5 datum.
 6 A Good.
 7 Q So when I give you numbers, they'll be based on the
 8 local datum and when I use the term high water on
 9 Round Lake, I'll be referring to the amount 77.25 feet
 10 local datum, do you understand that?
 11 A Yes.
 12 Q The State of Wisconsin has regulations specifying
 13 design parameters for dams, doesn't it?
 14 A Yes.
 15 Q It is important to design a dam with sufficient flow
 16 capacity, isn't it?
 17 A Yes.
 18 Q When designing a dam, how do you determine what the
 19 flow capacity should be?
 20 A It is based upon a hazard classification and the
 21 spillway capacity. If you are subject to the
 22 Administrative Code defining design standards for
 23 dams, the spillway capacity is based upon a hazard
 24 classification and it's described in NR 333.
 25 Q And do you consider what the inflows are to that

1 watershed when designing a dam?
 2 A Yes.
 3 Q What happens when a dam is designed without sufficient
 4 flow capacity?
 5 A Well, the worst thing that can happen would be that
 6 the dam would be over topped and that could be -- that
 7 could lead to a failure of the dam.
 8 Q Does the dam structure restrict flow if it has
 9 insufficient flow capacity?
 10 A Well, yes.
 11 Q For purposes of this deposition, we'll be calling a
 12 dam that was designed and constructed with
 13 insufficient flow capacity as an undersized dam, do
 14 you understand that?
 15 A Okay.
 16 Q Have you ever participated in the permitting process
 17 for the construction of a dam?
 18 A Not a new dam, no.
 19 Q For purposes of the next few questions, we're going to
 20 be discussing a dam that's a timber wing wall dam and
 21 one or more of the wing walls becomes unconnected to
 22 the dam, what would this indicate?
 23 A When you mean a timber wing wall dam, do you mean -- I
 24 need a little more description of this. This is a
 25 hypothetical dam you're describing?

1 Q Yes.
 2 A Tell me a little more about this dam.
 3 Q What do you need to know besides that it's a timber
 4 wing wall dam, it's a large dam, I can say that.
 5 A It is an urban embankment?
 6 Q Yes.
 7 A With timber wing walls to the approach to some sort of
 8 a conduit?
 9 Q Yes.
 10 A And repeat your question then.
 11 Q If one or more of the wing walls becomes unconnected
 12 to the dam, what would this indicate?
 13 A It would be a cause for concern.
 14 Q Why?
 15 A It's possible that the -- that there could be erosion
 16 of embankment material through the separation, however
 17 it was put together.
 18 Q And how would one repair such a situation?
 19 A Well, it depends completely on exactly what the issues
 20 were. You may need to reconstruct the wing wall, you
 21 may need to simply bolt things back together. I'm
 22 running out of a hypothetical here.
 23 Q If one or more of the wing walls starts to lean, what
 24 would this indicate?
 25 A It may indicate a problem.

1 Q And what sort of problem would it possibly indicate?
 2 A If it's leaning, depending which way it's leaning, it
 3 could indicate that earth pressure from the embankment
 4 was starting to exceed the structural capacity of the
 5 wall to resist it. If it was leaning the other way,
 6 it might indicate a loss of material. I'm speculating
 7 on this hypothetical.
 8 Q Is the Little Round Lake dam a large or a small dam
 9 under the definitions provided in the Wisconsin
 10 Administrative Code?
 11 A From the material that I read, I think it would be
 12 classified as a large dam.
 13 Q Have you ever conducted a water quality study of a
 14 lake?
 15 A Not as thorough as what I -- what I've seen conducted
 16 here.
 17 Q When studying water quality trends in a lake, what
 18 length of time is required for the study to draw valid
 19 conclusions about trends in water quality?
 20 A I don't think that question has a specific answer. I
 21 would say a number of years and I would I say it
 22 depends on the parameters involved and depends on what
 23 else you know about the watershed.
 24 Q Let's go into that. It would take -- first of all,
 25 you said it would take a number of years, how many

1 years, more than five?
 2 A Perhaps.
 3 Q More than ten?
 4 A I'm not sure where you're going with this, so I would
 5 say I would have to again respond with perhaps. You
 6 could use -- I'll just say perhaps.
 7 Q We don't need to know where I'm going with this.
 8 A I know I'll find out.
 9 MR. DREGNE: Could I just ask that
 10 you repeat the question that kind of initiated
 11 this discussion?
 12 (Reporter reads back previous question)
 13 Q You were unable to give me a specific time period
 14 besides saying that it would take years, why don't you
 15 explain to me what factors you would consider, how you
 16 would determine what an appropriate length of study
 17 time is.
 18 A Okay. The factors that you would consider would be
 19 what you know, first of all, depending upon what
 20 characteristic of water quality you're interested in.
 21 You would want to understand what was going on in the
 22 tributary watershed to the water body you were
 23 interested in and it's possible that you would have
 24 information on land use that had a longer duration
 25 than the water quality data.

1 I'm speculating, I'm giving you a general
 2 answer. So you need to look at the data that you may
 3 have additional to specific data collected in the
 4 water quality to put together a study plan for the
 5 lake.
 6 Q Well, let's assume you have a lot of information about
 7 the tributary watershed and the land use. How long --
 8 strike that. Let's assume that you have a lot of
 9 information about the tributary watershed and
 10 information on land use.
 11 Given that assumption, what length of time is
 12 required for the water quality study to draw valid
 13 conclusions about trends in water quality?
 14 A I don't think there's a definite answer to your
 15 question, but if you had a set of data on a water body
 16 and could project past and future water quality
 17 inputs, you may be able to project future water
 18 quality as a projection, a prediction, if that was
 19 what your -- the objective of your study is.
 20 Q I'm confused now. I'm trying to understand -- you're
 21 a scientist, right?
 22 A I'm an engineer, actually.
 23 Q You're an engineer, but you've done water quality
 24 studies, correct?
 25 A Yes.

1 Q I'm trying to understand what a valid water quality
 2 study is and how long it takes to conduct such a
 3 study.
 4 A Okay. I'm trying to describe that you could define a
 5 water quality study in a number of ways in terms of
 6 what is your objective. If you're trying to document
 7 50 years of water quality changes in Lake Mendota out
 8 here and you don't have 50 years worth of data, you
 9 just plain can't do that.
 10 Then you have to do some sort of technique to
 11 project what things may have been and if you're
 12 interested in determining what water quality may be in
 13 the future, again, you need to use some sort of a
 14 model to project what may occur based on physical
 15 things that you project as occurring, like changes in
 16 watershed use or changes in land use, so I'm
 17 struggling here. I'm trying to give you an answer,
 18 but I'm not quite sure how to do it.
 19 Q If we're trying to determine the trends in water
 20 quality on a specific lake, could you do that based on
 21 one year worth of data -- strike that. If you're
 22 trying to determine the water quality trends on a
 23 specific lake, could you make a valid prediction based
 24 on one year worth of water quality data?
 25 A Alone?

1 Q Let's start with alone.
 2 A I think if all you had was one year worth of water
 3 quality data and no other analysis, you could report
 4 what the results were, but you'd have to have other
 5 information to conclude how the water quality was
 6 changing through time.
 7 Q So your answer is no, you could not make a valid
 8 prediction on the trends in water quality based on one
 9 year worth of water quality data if you had no other
 10 information, correct?
 11 A Yeah, I think that's a fair statement. I'm still
 12 struggling a little bit -- ask that question again,
 13 please.
 14 (Reporter reads back previous question)
 15 A Yeah, I think that's correct.
 16 Q What about two years worth of water quality data?
 17 A Well, two years would give you a differential from one
 18 to the next. I'm not sure if you could determine a
 19 trend from that or not. I think it would be weak.
 20 Q A weak prediction?
 21 A If that's all you had.
 22 Q What if you had some, but not exhaustive information
 23 concerning the tributary watershed and land use in the
 24 area, could you make a valid prediction about water
 25 quality trends with only one year worth of water

1 quality data?

2 A There are more accurate and less accurate studies, but

3 if you have land use data from which you could project

4 water quality variables, you could do a better job.

5 You could attempt to make a projection. It would

6 probably -- it would certainly be better if you had

7 data to calibrate your analysis against.

8 Q So it would be a weak prediction?

9 A As a general hypothetical situation, I would say yes.

10 Q And what if you had two years of water quality data

11 and some information on the tributary watershed and

12 land use information, could you draw a valid

13 conclusion about trends in water quality on such a

14 lake with two years of data?

15 A Keep in mind that I have not prepared such projections

16 personally, so there are variables here that I might

17 not be aware of. I'm giving you a general science

18 reasoning answer.

19 If you had two years of data and you had land use

20 data from which you could project water quality

21 trends, it would be an incrementally better

22 prediction. That's a statement of basically logic.

23 Q And would it be a valid prediction, in your mind?

24 A I think determining whether it is valid or not,

25 there's a judgment there that you would have to get

1 specific to the data in order to make.

2 Q You're being presented as an expert witness in this

3 case, correct?

4 A That's correct.

5 Q Do you consider yourself an expert witness in

6 evaluating the trends in water quality on a lake?

7 A I think I can make reasonable projections based on

8 what I'm -- the material that I'm reading, but it is

9 not my science specialty.

10 Q So given that, I want you to make -- give us opinion

11 on whether or not you can render a valid prediction on

12 trends in water quality based on the following:

13 Number one, two years of water quality data, number

14 two, moderate information on the tributary watershed

15 and the land use in the area.

16 MR. DREGNE: I object to the form

17 of the question. I think that's two questions.

18 Can you break it into -- if it's two, can you

19 break it into two?

20 MS. AZAR: Actually, it's not two

21 questions, it's two assumptions that he should be

22 making in answering the question.

23 Q Do you understand the question?

24 A I think I understand the question, but read it back.

25 (Reporter reads back previous question)

1 A I think you can't -- I think it's difficult to answer

2 that question in the abstract, because it depends on

3 the water quality parameters that you're concerned

4 about and on the kind of data that you have. I'm

5 having a difficult time giving you a yes or no answer

6 on that question.

7 Q We're going to continue with questioning while I ask

8 somebody to find a document and then we can get very,

9 very specific. We're going to come back to this line

10 of questions in just a minute, but let's continue.

11 When were you hired by Sawyer County to assist in this

12 litigation?

13 A Early 2004, but I'd have to look to make sure I

14 understood exactly when we were retained.

15 Q And why would that be a question?

16 A Just because I can't remember the exact date.

17 Q And what were you hired to do?

18 A Provide assistance in general which could lead to

19 expert witness testimony.

20 Q And what sort of assistance in general were you asked

21 to provide?

22 A Understanding of the hydrology and hydraulics of the

23 system, understanding of the issues to do with the

24 regulation of lakes, general technical assistance on

25 the project to Stafford.

1 Q And when you're talking about the system, let's make

2 sure we're again using the same nomenclature. I'm

3 going to pull out what's been marked as Exhibit Number

4 1 and when you just referenced the system, you're

5 talking about the Round Lake system, correct?

6 A That's correct.

7 Q As shown on Exhibit Number 1?

8 A Yes.

9 Q And ultimately, were you asked to render an expert

10 opinion in this case?

11 A Yes, in terms of preparing a report, yes.

12 Q And what sort of expert opinion were you asked to

13 provide? They asked you to prepare a report, right?

14 A Correct.

15 Q What did they ask you to put in the report?

16 A Our opinions regarding the issues that Mr. Hausman has

17 brought up and the reports prepared by his

18 consultants.

19 Q So your expert report then addresses two things,

20 number one, the issues raised by Mr. Hausman in his

21 complaint?

22 A Correct.

23 Q And number two, the expert opinions provided by Barr

24 Engineering, is that correct?

25 A Yes. Let me add that we weren't asked to provide some

1 sort of legal opinion about the complaint, but there
2 were issues raised in the complaint and amplified in
3 Barr's report and we looked at those.

4 Q And so as far as the issues raised in Mr. Hausman's
5 report, you were asked to provide engineering expert
6 opinion in relation to those issues, not the legal
7 analysis, correct?

8 A Yes.
9 (Exhibit 177 is marked for identification)
10 (Exhibit 178 is marked for identification)

11 Q I'd now like to have you take a look at what's been
12 marked as -- you've already got Exhibit 176, we'll
13 look at what's been marked as 177 and 178. Could you
14 please identify what's been marked as Exhibit 177?

15 A Exhibit 177 is a memorandum that we prepared in 2004
16 based on a conference call amongst various technical
17 folks.

18 Q And is that an accurate and complete copy of the
19 memorandum you prepared?

20 A It looks like it, yes.

21 Q I'd like you to take a look at what's been marked as
22 Exhibit 178, could you please identify that document?

23 A This is the report we transmitted last week to Matt
24 Dregne.

25 Q Is that an accurate and complete copy of your report?

1 A It looks like it.

2 Q The expert opinions that you've rendered in this case,
3 are they all included within Exhibit 178?

4 A We expect that we may present some additional
5 discussion after I get up to Round Lake and take a
6 look at things to do with the Hausman property and
7 perhaps the culverts next week.

8 Q And what will that involve?

9 A Looking at some of the issues that were raised in the
10 last memorandum prepared by Barr and taking a look at
11 the drilling data. I can't remember the date of the
12 memo.

13 Q Well, let's then -- you're now referring to responding
14 to the --

15 A Oh, there it is.
16 (Exhibit 179 is marked for identification)

17 Q The supplemental -- I should say the addendum to the
18 Round Lake shoreline loss report prepared by Barr
19 Engineering which has been marked as Exhibit 179,
20 correct?

21 A Yes.

22 Q So let's go back. I want to understand -- you've
23 already rendered some expert opinions, correct?

24 A Yes.

25 Q And where would I find those expert opinions?

1 A In the report.

2 Q Anywhere else?

3 A Well, I think that they would be in the affidavit as
4 well and I think that you could view our memorandum.
5 This depends on a definition that I don't quite
6 understand. We've issued three things. I am prepared
7 to discuss all of them.

8 Q So the three items that have been marked as Exhibit
9 176, 177 and 178 contain your expert opinions,
10 correct?

11 A Yes.

12 Q And are your expert opinions contained in any other
13 document?

14 A No.

15 Q Now, you just indicated that you may issue
16 supplemental expert opinions, correct?

17 A Yes.

18 Q And the scope of that supplemental expert opinion
19 would be to respond to Barr Engineering's addendum
20 which has been marked as Exhibit 179, correct?

21 A Yes.

22 Q And do you expect to provide any other supplemental
23 opinions?

24 A I don't know. I may be asked, I may not.

25 Q To date, do you have any reason to believe that you

1 will be asked to provide supplemental expert opinions
2 on any other topics?

3 A I don't know of any right now.

4 Q How much have you been paid to date as far as this
5 litigation? And when I say you, I'm talking about
6 your company, Montgomery Associates Resource
7 Solutions.

8 A I can't give you an exact figure. Paid to date is, I
9 believe, somewhere around \$5000 to \$6000.

10 Q And how much -- is there any money outstanding as far
11 as past due accounts?

12 A Yes.

13 Q How much is outstanding?

14 A I can't remember the exact figure, but perhaps 16. I
15 don't remember the exact figures.

16 Q And why is so much outstanding at this point?

17 A Procedural issue with the insurance company, I
18 believe. Is this -- is this a legal question?

19 MR. DREGNE: Go ahead and answer
20 the question.

21 A A procedural foul-up, I would call it, at the
22 insurance company.

23 Q And what procedural foul-up?

24 A They haven't paid our invoices for a while.

25 Q Why is that?

1 A I believe it is purely procedural, it's not that they
 2 have been rejected.
 3 Q Have you been given any reasons whatsoever?
 4 A That they have a review committee and it is supposed
 5 to be meeting very soon and the invoices will be
 6 approved.
 7 Q And what does the review committee take a look at?
 8 A I actually don't know.
 9 Q Do you have any other information about why your
 10 invoices have not been paid?
 11 A No. I do not have any indication that they are not
 12 going to be paid.
 13 Q Do you have any other information as to why they
 14 haven't been paid to date?
 15 A No.
 16 (Exhibit 180 is marked for identification)
 17 (Exhibit 181 is marked for identification)
 18 Q I have already handed you what in previous depositions
 19 were marked as Exhibits 125 and 126 and those are the
 20 Barr Engineering reports dated January 4, 2005. In
 21 front of you is also what's been marked as Exhibit
 22 179, 180 and 181. Now, 179 is the Barr Engineering
 23 addendum to the Round Lake shoreline loss report.
 24 Exhibit 180 is Ms. Dent's first affidavit and
 25 Exhibit 181 is Ms. Dent's second affidavit. For

1 purposes of this deposition, I will be referring to
 2 all five of those documents as the Barr's expert
 3 opinions, do you understand that?
 4 MR. DREGNE: Would you repeat
 5 that?
 6 MS. AZAR: Let me rephrase that.
 7 MR. DREGNE: I need the numbers
 8 that you're talking about.
 9 Q The expert opinions contained in Exhibits 125, 126,
 10 179, 180, and 181 will be referred to as the Barr's
 11 expert opinion, do you understand that?
 12 A If that's the way you --
 13 MS. AZAR: Off the record for a
 14 minute.
 15 (Discussion off the record)
 16 (A short recess is taken)
 17 Q Before we took a break, I was defining what I would be
 18 using the phrase Barr's expert opinion as and I'd like
 19 to point your attention to Exhibits 125, 126, 179, 180
 20 and 181. When I say the term Barr's expert opinion,
 21 it's the expert opinions contained in those five
 22 documents, do you understand that?
 23 A Yes.
 24 Q Have you reviewed and evaluated the Barr's expert
 25 opinion?

1 A Yes.
 2 Q Has your review been in depth?
 3 A It's a qualitative term. Some of the issues have been
 4 reviewed in depth, some of the issues have been
 5 reviewed briefly.
 6 Q As part of your expert opinion report, you were
 7 supposed to render an expert opinion on your response
 8 to the Barr's expert reports, correct?
 9 A Yes.
 10 Q So when you rendered that expert opinion, did you
 11 conduct an indepth review before preparing your
 12 report?
 13 A Yes.
 14 Q And which documents did you review in depth before you
 15 prepared your report?
 16 A I read all the documents that you've defined.
 17 Q And you reviewed them in depth?
 18 A Yes.
 19 Q Now, I'd like to point to Exhibit 178, which is your
 20 expert report dated June 7, 2005 and this is the
 21 expert report that includes your critique of the Barr
 22 expert opinions, correct?
 23 A Yes.
 24 Q In Exhibit 178, your expert conclusions appear in
 25 boldface, correct?

1 A I tried to organize the document by topics using
 2 boldface, but all the report is there.
 3 Q So your expert opinions then are throughout the report
 4 and not necessarily limited to the boldface text?
 5 A Correct.
 6 Q But the boldface text represents topical areas of your
 7 expert opinion, correct?
 8 A Correct.
 9 Q Looking on page 1, your first boldfaced topic area is
 10 that, "Mr. Hausman's property is located in and
 11 adjacent to regulatory floodplain area. Periodic
 12 flooding and flood related issues should be expected
 13 on this property," period, end quote. Do you see
 14 that?
 15 A Yes.
 16 Q Does your expert opinion contained in this topic area
 17 conflict with the Barr's expert opinion?
 18 A I'm not sure that it does.
 19 Q How could you become sure?
 20 A I would have to -- I don't believe that it does, but I
 21 would need to review the report against that question,
 22 that issue specifically, in order to answer you
 23 completely.
 24 Q Why don't you take a few moments and do that. How
 25 long is that going to take, I guess, is my question?

1 MR. DREGNE: Are you suggesting we
2 take a break off the record so he has time to do
3 that?

4 MS. AZAR: Sure, let's just take a
5 break.

6 Q How long would it take you to do that?

7 A I don't think it would take me more than ten minutes
8 to look through this and see if I can answer your
9 question.

10 Q To give you an idea, I'm going to ask for each one of
11 your topic areas.

12 A Right.

13 MR. DREGNE: In terms of whether
14 there's a --

15 MS. AZAR: Whether there's a
16 conflict.

17 A Well, I guess we're here to answer questions.

18 MS. AZAR: Let's take a break.
19 (A short recess is taken)

20 MS. AZAR: Could you read back the
21 last question?

22 (Reporter reads back previous question)

23 A Yes, I believe it does.

24 Q And how does it conflict?

25 A I think that the Barr analysis does -- I think we

1 concur that the property is subject to -- it is
2 located in -- I don't believe there's a great conflict
3 between us and Barr in the first sentence.

4 That is, that the property is located in and
5 adjacent to a regulatory floodplain area, but I do
6 believe that Barr's conclusions, mainly drawn in the
7 affidavits of Nancy Dent and ours in the second
8 sentence are in a good deal of conflict.

9 Q How so?

10 A That the high water levels that are the problem that
11 Barr has been evaluating were the responsibility of
12 the county to control via the Round Lake dam.

13 Q And I just want to focus in on the second sentence
14 here. "Periodic flooding and flood related issues
15 should be expected on this property." That's the
16 sentence that you're saying that, in your opinion,
17 conflicts with the Barr expert opinion?

18 A That's correct.

19 Q So do you believe that Barr does not think that
20 periodic flooding and flood related issues should be
21 expected on the Hausman property?

22 A In their affidavits, Barr is contending that problems
23 related to periodic flooding and flood related issues
24 are a problem that needs to be corrected and so I
25 infer that they would disagree with that statement.

1 Q So the conflict then arises from Barr wanting the
2 problem to be corrected and you not believing that the
3 problem will be corrected, is that an accurate
4 description?

5 A Yes.

6 Q And why don't you believe the problem will be
7 corrected?

8 A It's not so much that -- I said yes, but it's not so
9 much that I think that the problem will be corrected,
10 it's an interpretation of whether or not the problem
11 is the responsibility of the county to correct at --
12 for the regulatory floodplain adjacency issues.

13 MS. AZAR: Could you read that
14 back, please.

15 (Reporter reads back previous answer)

16 Q I'm not sure I understand your answer. So you're
17 questioning whether the county has any
18 responsibilities to lower the floodplain elevations in
19 the Round Lake area?

20 A Yes.

21 Q And how is the floodplain elevation related to the
22 water level elevation on Round Lake?

23 A Well, the floodplain elevation would be the water
24 level, the flood elevation would be the water level
25 for the event that was defined as the 100-year

1 recurrence interval event.

2 Q I'm just trying to understand the conflict between you
3 and Barr in relation to this first boldfaced opinion
4 on page 1 of Exhibit 178. You believe then that the
5 inconsistency between your expert opinion and Barr's
6 expert opinion is that Barr believes Sawyer County
7 should control the water levels on Round Lake so as
8 not to --

9 A That's correct, that's correct. I'm inferring that
10 there is a conflict in Barr's expert opinion and the
11 second sentence of that boldface by the issues that
12 they bring up in their affidavits.

13 Q And it all has to do with whether or not the problem
14 should be solved, not the periodic nature of the
15 current flooding situation?

16 A Yes, I believe that's correct.

17 Q Any other conflicts that you see between your expert
18 opinion that's included in this first boldfaced item
19 or topical area, I should say, and the Barr expert
20 opinions?

21 (Witness examines documents)

22 A I don't believe so.

23 Q Then let's move to page 2 of Exhibit 178 and I'm now
24 looking at the second boldfaced item in your report
25 which reads, quote, "Round Lake water levels regularly

1 fluctuate above and below the 1941 orders," end
 2 quote. Do you see that?
 3 A Yes.
 4 Q Do the expert opinions contained in this topical
 5 section conflict with the Barr's expert opinion?
 6 A We developed additional data to that provided in the
 7 Barr report regarding water level. It provides a --
 8 it provides more data regarding water level
 9 fluctuations. I don't think it necessarily conflicts
 10 with the data presented in Barr's report.
 11 Q In the expert opinions you draw within this section,
 12 does -- do your opinions conflict with the Barr expert
 13 opinions?
 14 MR. DREGNE: Could you repeat that
 15 question, please.
 16 (Reporter reads back previous question)
 17 A Not specifically. I would have to infer or project
 18 something about how Barr would react to this data in
 19 order to really answer your question. I don't believe
 20 that there's anything that we've written down in the
 21 materials that they have that conflict with the
 22 material in that second section.
 23 Q Let's turn then to page 3 of Exhibit 178 and I am
 24 going to read your third topic area which reads as
 25 follows: Quote, "The water levels observed in 2002

1 and 2003 were unusually high, and correspond with
 2 other high water events observed in northern
 3 Wisconsin," period, end quote.
 4 Do your expert opinions contained in this topical
 5 area conflict with the Barr's expert opinion?
 6 A I think the only place where I saw something in the
 7 Barr reports that directly conflicted with that was in
 8 a discussion, now I have to try to find it. It's in
 9 the -- let me find it.
 10 Q Take all the time you need.
 11 (Discussion off the record)
 12 A I believe that the material on page 9 of Barr's study
 13 of shoreline loss, cause of shoreline loss report
 14 would conflict.
 15 MS. AZAR: I'd like the record to
 16 reflect that Mr. Dregne, while we were off the
 17 record, informed Mr. Montgomery that he should
 18 take a look at page 9.
 19 Q Now, in relation to page 9, how does it conflict?
 20 A And that was the section I was looking for. Well, it
 21 conflicts in terms of this issue of extremes. We make
 22 the point that 2002/2003 was unusually high and that
 23 the analysis by Barr includes a statement that the
 24 snow melt, at any rate, would not be considered an
 25 extreme precipitation event, which is a bit of a

1 conflicted wording.
 2 But I believe that there would be some conflict,
 3 I would infer there would be a conflict of opinion
 4 there.
 5 Q Besides page 9 from Exhibit 125, is there anything
 6 else in the Barr expert opinions that conflict with
 7 your opinion that the water levels observed in 2002
 8 and 2003 were unusually high and correspond with other
 9 high water levels observed in northern Wisconsin?
 10 A Not that I'm aware of.
 11 Q let's move on to your boldfaced topical area four,
 12 also on page 3, which reads as follows: Quote,
 13 "Extreme high water levels such as the 100-year flood
 14 elevation are often substantially higher than maximum
 15 levels listed in Wisconsin DNR water level orders,"
 16 period, end quote. Do you see that?
 17 A Yes.
 18 Q Does the expert opinion contained in this topical area
 19 conflict with the Barr's expert opinion?
 20 A Well, I think by inference, I think in many ways it
 21 does. I don't think Barr specifically addresses this
 22 point in their discussions, but by inference to the
 23 issues they raise, yes, I believe there is a conflict.
 24 Q And by inference, what by inference -- please describe
 25 for me what the conflict is, as you see it.
 1 A It again is the description of the control of water
 2 levels to a high stage, a rare event such as is
 3 described in Nancy Dent's affidavits. In other words,
 4 the 100-year event. I'm inferring that there is a
 5 conflict there in terms of that extreme event as
 6 contrasted with the 1941 order levels and is described
 7 as an issue.
 8 That's not a specific -- they don't express a
 9 direct opinion that I'm aware of on this subject of
 10 that boldface, but I do perceive a conflict. You're
 11 asking me to infer something that actually isn't
 12 addressed directly.
 13 Q I think I don't understand what your answer was, as
 14 far as the conflict goes.
 15 A I'm not certain there is a conflict. I'm inferring
 16 there's a conflict.
 17 Q I'm sorry, could you just describe for me again what
 18 you infer the conflict is?
 19 A Fundamentally, agreement with the statement that
 20 control of an event such as a 100-year event to a DNR
 21 water level order is appropriate.
 22 Q So you believe that --
 23 A That's my speculation on their -- excuse me, I've
 24 interrupted you, go ahead.
 25 Q So you believe that Barr Engineering is proposing that

1 Sawyer County maintain the water levels on Round Lake
 2 at or below 77.25 at the 100-year event?
 3 A The material that I have, I don't believe, makes that
 4 point explicitly.
 5 Q Does it make that point implicitly?
 6 A I believe it heads that way in some of the discussion
 7 or the issues raised in the affidavits.
 8 Q Could you point to me where you believe that is
 9 implied in the Barr expert opinions?
 10 A Well, for example, in item number four in Nancy's
 11 second affidavit.
 12 Q I'm sorry, what exhibit number is that?
 13 A It's Exhibit 181.
 14 Q You said item four?
 15 A Yes.
 16 Q What specifically in item four causes you to infer
 17 that Barr Engineering is proposing that Sawyer County
 18 control the water levels so as to not to exceed 77.25
 19 in the 100-year flood event?
 20 A I'm sorry, a better example of this would be item
 21 number five in that affidavit.
 22 Q Okay.
 23 A Where it is specifically described as an issue that
 24 the flooding elevation is more than 200.4 feet above
 25 the state designated maximum level and then item

1 number six goes on to describe potential floodplain
 2 ordinance impacts of that stage. Again, I'm inferring
 3 that there would be a conflict here. It's not
 4 explicitly stated.
 5 Q So nowhere in the Barr Engineering -- strike that. So
 6 nowhere in the Barr expert opinions do they explicitly
 7 state that Sawyer County should control the water
 8 levels on Round Lake so as not to exceed 77.25 in the
 9 100-year flood event, correct?
 10 A I don't believe that's absolutely stated in black and
 11 white, that's correct.
 12 Q Any other inconsistencies between your opinion and the
 13 Barr expert opinion in relation to this topical area
 14 four, that extreme high water levels such as the
 15 100-year flood elevation are often substantially
 16 higher than maximum levels listed in the Wisconsin
 17 Department of Natural Resources water level orders?
 18 A I don't think additional to the general issue that I
 19 brought up already.
 20 Q Then let's move on to topical area number five, which
 21 is found on page 5 of Exhibit 178 and your topical
 22 area number five reads, quote, "Control of normal and
 23 extreme events. Water level fluctuations at Round
 24 Lake to remain within the 1941 order levels will
 25 require substantial construction, including a larger

1 outlet structure at the Little Round Lake dam, channel
 2 dredging, and other actions," period, end quote. Do
 3 you see that?
 4 A Yes.
 5 Q Does your expert opinion as contained in this topical
 6 section conflict with the Barr's expert opinion?
 7 (Witness examines document)
 8 A I don't believe so. Obviously, there is a -- we are
 9 in a contest here, but I don't believe that -- I think
 10 I should just answer this question yes or no and
 11 give -- for the statements that are contained in here,
 12 I don't believe there's a direct conflict with the
 13 statements contained in the Barr reports.
 14 Q Then let's move on to topical section number six, also
 15 located on page 5 of Exhibit 178, and that section is
 16 entitled, quote, "Installation of a new Round Lake
 17 outlet structure and associated downstream
 18 construction that would control Round Lake to the 1941
 19 order levels for events up to the 100-year flood would
 20 produce a substantial change to the hydrologic regime
 21 downstream of Round Lake," period, end quote. Do you
 22 see that?
 23 A Yes.
 24 Q Does the expert opinion contained within this topical
 25 section conflict with the Barr's expert opinion?

1 A We describe an analysis here that is not contained in
 2 the Barr report, although I believe it's consistent
 3 with what is contained in the Barr report in terms of
 4 things that would produce a hydrologic regime change
 5 downstream of Round Lake.
 6 So once again, I'm not certain there is a
 7 conflict with material that we present in this section
 8 with material that Barr has in their expert opinions
 9 on the record.
 10 Q When you say you're not certain, does that mean you
 11 don't believe that's the case?
 12 A I don't believe that there is a conflict on what's in
 13 the record right now.
 14 Q Then let's move on to page 7 and topical area number
 15 seven, which is entitled, quote, "Permitting of a
 16 proposed new Round Lake outlet structure as described
 17 above would be extremely difficult and extremely
 18 expensive under current regulatory requirements,"
 19 period, end quote. Do you see that?
 20 A Yes.
 21 Q Does your expert opinion contained in this topical
 22 area conflict with the Barr's expert opinion?
 23 A I don't think Barr discusses this issue to a great
 24 extent, and, again, I would say that I don't perceive
 25 a conflict in what's on the record now with what's in

1 this statement.
 2 Q Then let's move on to topical area number eight which
 3 is located on page 8 of Exhibit 178. Topical area
 4 number eight is entitled, quote, "The shoreline
 5 protection installed by Mr. Hausman will provide
 6 permanent protection from future shoreline erosion,"
 7 period, end quote. Do you see that?
 8 A Yes.
 9 Q Does your expert opinion contained within this topical
 10 area conflict with the Barr's expert opinion?
 11 A Yes, I think so.
 12 Q How so?
 13 A I believe -- let me take a look here, because I know
 14 there's some statements that I want to describe, if I
 15 could.
 16 Q Take as much time as you need.
 17 MR. DREGNE: Are we off the
 18 record?
 19 MS. AZAR: Sure.
 20 (A short recess is taken)
 21 MS. AZAR: Could you read back the
 22 last question, please.
 23 (Reporter reads back previous question)
 24 A Yes, I believe it does.
 25 Q How so?

1 A I believe there are several places that Barr describes
 2 the potential for future erosion.
 3 Q And you -- strike that. They describe the potential
 4 for future shoreline erosion?
 5 A Correct.
 6 Q And where is that?
 7 A I believe there may be one or two other places, but I
 8 see it in the second affidavit of Nancy Dent.
 9 Q That's Exhibit 181, correct?
 10 A I'm sorry, yes, Exhibit 181, item 12.
 11 Q Where else?
 12 A Exhibit 180, item six and Exhibit 179, item C on page
 13 3.
 14 Q And in your expert opinion, is Ms. -- strike that.
 15 You've now pointed to three different discussions by
 16 Barr Engineering in which they describe how damage may
 17 occur to the Hausman property in the future because of
 18 elevated water levels, correct?
 19 A Correct.
 20 Q Do you disagree with their discussions in the three
 21 documents you just identified?
 22 A Let me read it.
 23 Q Sure.
 24 (Witness examines documents)
 25 A Actually, I think we're talking about a definition

1 issue here.
 2 Q And what is that definition issue?
 3 A Damage from high water levels versus shoreline
 4 erosion.
 5 Q And are you -- why is this an issue?
 6 A You asked about a conflict and I provided three spots
 7 where Barr was describing damage, but they don't
 8 specifically use the phrase shoreline erosion, so I'm
 9 not sure that they do actually disagree from the
 10 position or the opinion that I put on page 8.
 11 Q So you're now saying you're not sure, does that mean
 12 you don't believe that your expert opinions contained
 13 in the topical area number eight conflict with Barr's
 14 expert opinions?
 15 A Let me just make sure on this point. I don't believe
 16 the Barr reports describe that the shoreline will
 17 continue to erode. Those sections that I gave you
 18 descriptions of describe the potential for damage, but
 19 don't specifically describe shoreline erosion.
 20 Q And your expert opinion contained in this topic eight
 21 pertains only to shoreline erosion, correct?
 22 A Yes, that's correct.
 23 Q Therefore, there is no conflict between your expert
 24 opinion contained in this topic area eight and Barr's
 25 expert opinions, correct?

1 A Bear with me. I'm not sure there is a conflict, no.
 2 I mean, I'm not sure there is a conflict between
 3 Barr's opinions and our opinions in that paragraph.
 4 Q And what would make you sure?
 5 A That's a hard question to answer, because I don't
 6 believe Barr directly, point blank, addresses the
 7 issue that I describe in this paragraph.
 8 Q So if they don't directly address it, you guys don't
 9 have conflicting opinions on the issue, correct?
 10 A On the exact issue of shoreline erosion, I think
 11 you're correct.
 12 Q Moving on to topical area number nine, it's located on
 13 page 8 of Exhibit 178. It is entitled, quote, "Ground
 14 water elevations on Mr. Hausman's property are related
 15 to water levels in Round Lake. The duration of high
 16 and low ground water elevations on the property are
 17 expected to be similar to that observed on Round
 18 Lake," period, end quote. Do you see that?
 19 A Yes.
 20 Q Are the expert opinions contained in this topical area
 21 in conflict with Barr's expert opinion?
 22 A I don't believe so. I quote some of Barr's
 23 conclusions and agree with them.
 24 Q Let's move on to topical area number 10, which is
 25 located on page 9 of Exhibit 178. It's entitled,

1 quote, "Round Lake water quality is quite good, and
2 available analyses do not indicate a recent negative
3 trend in water quality," period, end quote. Do you
4 see that?

5 A Yes.

6 Q Does your expert opinion contained in this topical
7 area conflict with the Barr's expert opinion?

8 A Yes, I believe it does.

9 Q How so?

10 A Barr, in -- let me find it.

11 (Witness examines documents)

12 Q Go ahead.

13 A Yes, I expect there's a conflict with the statement
14 number two on page 14 of Exhibit 125.

15 Q And what is the conflict?

16 A The Barr report describes a calculated phosphorus
17 input to Round Lake and draws some conclusions
18 regarding water clarity and the data we've looked
19 at -- water clarity related to shoreline erosion.

20 The data we've looked at don't bear that out. In
21 addition, we have some just plain calculation issues
22 with the material that's presented in appendix D of
23 that report.

24 Q Any other conflicts you see between your expert
25 opinion and Barr's expert opinion in relation to this

1 topic area number 10?

2 A No, but could I ask you -- I'll just leave it at that.

3 Q Are you sure?

4 A Well, this -- I'm assuming you'll come back to this
5 subject in some further discussion. We have received
6 the final version of this paleoecological study and I
7 have a copy of it here with you and we can discuss
8 that when we get back to it.

9 MS. AZAR: Off the record for a
10 minute.

11 (Discussion off the record)

12 Q Mr. Montgomery, we've just gone through all of the
13 different topical areas in which Barr Engineering --
14 strike that, in which Montgomery Associates has
15 provided expert opinions in this litigation, correct?

16 A Yes.

17 Q And as I had explained when we began this endeavor, I
18 wanted to understand all of the different ways in
19 which your expert opinion conflicted with Barr's
20 expert opinion, do you remember that discussion?

21 A Yes.

22 Q And we have just walked through your entire report and
23 you've articulated the areas in which you stated that
24 your expert opinions conflicted, correct?

25 A Yes.

1 Q Are there any other areas that you would -- strike
2 that. Are there any other areas where your expert
3 opinion conflicts with Barr's expert opinion?

4 A There ought to be, I say that in humor.

5 Q And just so you know, for purposes of the record, I'm
6 going to ask the court reporter to read back the
7 question and have you answer that.

8 (Reporter reads back previous question)

9 A Let me think about that a moment.

10 (Witness examines documents)

11 Q Go ahead.

12 A I think in the rest of the record --

13 MR. DREGNE: Just let me ask, are
14 we on the record?

15 MS. AZAR: Yes.

16 A You asked whether or not I have any additional
17 comments on the Barr opinions and I did have some
18 comments that were in the following sections of this
19 report.

20 Q All right, so the items then listed on page 9 and 10,
21 you list an additional seven items there, there are
22 seven different bullets that are, according to your
23 report, areas in which you have, quote, unquote,
24 "Questions," about the Barr's expert opinions,
25 correct?

1 A Yes, that's what the report says.

2 Q And so those are additional areas in which you've got
3 potential inconsistencies between your expert opinion
4 and Barr's expert opinion, correct?

5 A Correct.

6 Q Let's just walk down through each of those bullets
7 then and you can tell me where the inconsistencies
8 are. So the first bullet is located on page 10 and it
9 reads as follows, quote: "Ms. Dent describes as
10 damage requirements for compliance with Sawyer County
11 floodplain zoning regulations as a damage, whereas
12 such compliance is appropriate given the regulatory
13 floodplain status and calculated floodplain elevations
14 at the property," period, end quote.

15 Please describe for me whether your expert
16 opinion in relation to this -- strike that. Please
17 first -- what is your expert opinion in relation to
18 this issue?

19 A It's that the compliance with floodplain ordinance
20 requirements is a consequence of the location and
21 elevation of the property.

22 Q And how does that conflict with Barr's expert opinion?

23 A They describe compliance with their calculated
24 floodplain elevations as a cost, as a damage, as an
25 issue for Mr. Hausman.

1 Q Let's go to the second bullet then. It states, quote,
 2 "High water is described as creating damage due to
 3 increased ground water levels, whereas ground water
 4 levels are actually closely related to Round Lake
 5 levels, fluctuate with time, and are only rarely near
 6 the ground surface. Occasional, an intermittent high
 7 lake and associated ground water levels should be
 8 expected given the landscape position of the property,
 9 and its location with respect to regulatory floodplain
 10 areas." What is your expert opinion in relation to
 11 this?
 12 A That's it.
 13 Q And how does that conflict with the Barr expert
 14 opinion?
 15 A Again, in the -- I believe this is the second
 16 affidavit, items seven, eight and nine describe issues
 17 associated with high ground water as problems for
 18 Mr. Hausman.
 19 Q And you don't believe that those are problems for
 20 Mr. Hausman?
 21 A They may be problems, but my statement is what's in
 22 the report, in that bullet point.
 23 Q Let's move on then to pull the bullet point number
 24 seven, quote, "High water levels and adjacent wetland
 25 areas are described as potentially damaging landscape

1 plantings and the access driveway, whereas such
 2 features installed adjacent to wetland areas subject
 3 to occasional flood stage elevations should be
 4 designed accordingly," end quote.
 5 Where is the conflict here between your opinion
 6 and Barr's expert opinion?
 7 A Again, it's in relation to Nancy's second affidavit,
 8 item number 10. That's Exhibit 181.
 9 Q Moving on to the next bullet, bullet number four, it
 10 says, quote, "Possible performance or code compliance
 11 issues to a septic system are described as damage,
 12 whereas any issues related to high water level
 13 conditions should be anticipated for in construction
 14 in an adjacent to floodplain and wetland areas," end
 15 quote.
 16 What is the conflict between your expert opinion
 17 and Barr's expert opinion?
 18 A Barr's opinion is in item 11 of Nancy's second
 19 affidavit and essentially theorizes that it may be
 20 subject to failure and it's -- I'm not sure this is a
 21 specific conflict or not, but it's a response to that
 22 question of septic system issues.
 23 Q So you're not sure if your expert opinion conflicts
 24 with Barr's expert opinion on this issue?
 25 A I'm not certain if this is a conflict or not.

1 Q How could you become certain?
 2 A Well, I'd have to review the septic design and confirm
 3 the facts that are in here and compare that to a
 4 projection of 100-year stages.
 5 Q So you need further information to know if there's a
 6 conflict in your expert opinions?
 7 A I think that's probably -- yes, I'd say that's
 8 correct.
 9 Q Let's move on then to the sixth bullet there that
 10 says, "We cannot follow the rationale for the creation
 11 of the adjusted local datum or for the specific 0.50
 12 foot alteration of the elevations specified in the
 13 1941 other period," end quote. What is your expert
 14 opinion in relation to this issue?
 15 A Well, that's it. This is definitely along the line of
 16 a commentary as opposed to something that we're
 17 presenting as a conflict. The statement is our
 18 opinion based on what we know right now.
 19 Q So you -- this is more of a question than a conflict,
 20 correct?
 21 A Yeah, it is. I mean, the statement stands for
 22 itself. We cannot follow the rationale, we can't
 23 follow the arithmetic. We're not quite sure where
 24 this is going. We're not sure if we -- I think there
 25 might be implications about this that we would

1 disagree with, but we'd be relying on other
 2 information. It was a question.
 3 Q We'll get to that later then.
 4 A The statement stands for itself.
 5 Q Then I suspect the same response will occur with
 6 bullet number seven which states, quote, "We could not
 7 follow the conclusions regarding the performance of
 8 various modifications to the Highway NN culverts based
 9 on the text."
 10 "Review of model data supplied separately has
 11 yielded different results regarding structures
 12 required to maintain 1941 order levels as described
 13 above," end quote.
 14 A Right.
 15 Q What is the conflict between your expert opinion and
 16 Barr's expert opinion?
 17 A Some of it was just material that we couldn't track in
 18 the discussion of the control, possible schemes for
 19 control of water levels. There were some statements
 20 in the Barr report, I have to figure out which report
 21 it is, that we couldn't track from the appendices, but
 22 we did get close to that in looking at the model.
 23 And then we looked at some other issues
 24 associated with the models and that's what that
 25 statement is about.

1 Q Just so you know, after lunch, we will go into
 2 specifics as to where you think -- where you had
 3 questions, so if you could look for that specific item
 4 in the report, that would be helpful.
 5 A I'll find it. There was a bullet point you jumped
 6 over.
 7 Q I'm so sorry, I think it was bullet point number five
 8 I jumped over, isn't it?
 9 A Yes.
 10 Q Let's go back to that. It says, quote, "Surface water
 11 inundation of portions of Mr. Hausman's property
 12 during extreme high water events is described as a
 13 damage, whereas they are an expected consequence of
 14 the location of the property. In any event, we do not
 15 believe that wave heights of four feet as discussed in
 16 item 12 could be developed at the Hausman property
 17 shoreline," period, end quote.
 18 Please describe the conflict between your expert
 19 opinion and Barr's expert opinion in relation to this
 20 issue.
 21 A Barr describes -- in item number 12 of Exhibit 181,
 22 Barr describes the potential for damage due to
 23 over-topping of the retaining wall in 100-year flood
 24 conditions and our statement about expected
 25 consequences of the location of the property with

1 expected floodplain at that extreme event, 100-year
 2 event, is where I believe we have a conflict.
 3 Barr doesn't actually calculate or propose
 4 that wave heights of four feet could develop at the
 5 shoreline, that's a quotation from Mr. Hausman, so I
 6 don't believe that's exactly Barr's opinion and so I'm
 7 not sure that -- it's a commentary on the reporting
 8 described in Barr's item number 12 and I don't think
 9 that's exactly Barr's opinion. They don't state one
 10 way or the other.
 11 Q We have now gone through each of the additional items
 12 that you have identified in Exhibit 178 that could
 13 possibly be construed as an inconsistency between your
 14 expert opinion and Barr's expert opinion. Are there
 15 any other areas in which your expert opinion conflicts
 16 with Barr's expert opinion?
 17 MR. DREGNE: I'll object that the
 18 term your expert opinion is vague. We have, I
 19 believe, a definition of the Barr expert opinion
 20 and I don't believe you established a definition
 21 for what you were referring to when you say your
 22 expert opinion to Rob. Are you referring to
 23 Exhibit 178?
 24 Q I'm referring to the expert opinion of the expert
 25 hired by Sawyer County. Is that you, Mr. Montgomery,

1 or is that Montgomery Associates? You can tell me.
 2 A It's me with support from personnel in Montgomery
 3 Associates.
 4 Q So I'm asking for your expert opinion.
 5 A It's kind of a fishing expedition question.
 6 MS. AZAR: And I'm going to ask the
 7 court reporter again to read the question back, so
 8 the answer goes with the question.
 9 A That's fine.
 10 (Reporter reads back previous question)
 11 A That is a difficult question to answer, to just close
 12 the door. We provided a fair amount of description of
 13 issues that Barr doesn't directly describe. We've
 14 reviewed their models and have minor issues with this
 15 or that. It is difficult for me to say that beyond
 16 what we've talked about, we're in perfect agreement.
 17 I can't really say that, but it's difficult to
 18 churn through a list of issues to specifically answer
 19 your question.
 20 Q Well, you were hired, and in fact, your June 7 report
 21 was intended to provide a critique of Barr's expert
 22 report, correct?
 23 A Well, not actually. I was asked to provide a report
 24 describing what we thought was important to bring
 25 forward. I wasn't actually directed to critique point

1 by point the Barr report, except as is important.
 2 Q So then all of the material expert conclusions --
 3 strike that. Your report addresses all of the Barr
 4 expert opinions that are material in this litigation,
 5 correct?
 6 A That was our attempt with this list, that's correct.
 7 Q And therefore, if you disagreed with or questioned any
 8 of those material Barr expert opinions, those would be
 9 contained within Exhibit 178, correct?
 10 A Yes.
 11 Q And we have then just walked through each one of those
 12 inconsistencies, correct?
 13 A Yes.
 14 Q So then let me rephrase the question. Are there any
 15 other material areas in which your expert opinion --
 16 strike that. Are there any other areas in which your
 17 expert opinion conflicts with the material portions of
 18 the Barr's expert opinion?
 19 A I don't believe so.
 20 Q Let's jump to page 1 of your report. In the section
 21 called terminology, you discuss the local datum and
 22 the NAVD88 datum?
 23 A Mm-hm.
 24 Q In this paragraph, you use a conversion factor of
 25 1267.75, isn't that correct?

