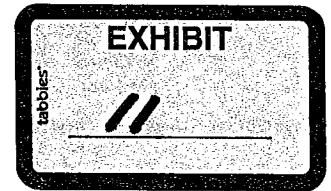


# **EXHIBIT 11**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION



BBF ENGINEERING SERVICES, P.C., a  
Michigan corporation, and BELINDA  
FOSTER, an individual,

Plaintiffs,

v.

STATE OF MICHIGAN, MICHIGAN  
DEPARTMENT OF TRANSPORTATION, a  
Dept. of the State of Michigan, VICTOR  
JUDNIC, and MARK STEUCHER,

Defendants.

---

Case No. 11-14853

Honorable Nancy G. Edmunds

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS  
TO DISMISS [9] [11] [12]**

This matter comes before the Court on Defendants State of Michigan, Michigan Department of Transportation, Victor Judnic, and Mark Steucher's motions to dismiss. For the reasons set forth below, Defendants' motions should be GRANTED in part and DENIED in part.

**I. Facts**

Plaintiff BBF Engineering Services, P.C. is a civil engineering company, whose clientele includes the Michigan Department of Transportation ("MDOT"). (Compl. ¶¶ 3, 7.) Plaintiff BBF is both a certified minority contractor and a disadvantaged business enterprise. (*Id.* at ¶ 29.) Plaintiff Bellandra Foster is a licensed professional engineer,

the first black female to be licensed as a professional engineer in the state of Michigan, and BBF's owner. (*Id.* at ¶¶ 3, 5.) Defendants Judnic and Steucher were MDOT employees during the time period relevant to this Complaint.

**A. Contract No. 2006-0490**

BBF was awarded MDOT contract No. 2006-0490 for \$4.2 million. (Compl. ¶ 30.) In June 2006, Defendant Judnic notified Plaintiff BBF that a portion of the contract, involving work to be done on M-10, would be re-bid. (*Id.*) MDOT had an initiative to unbundle larger contracts to diversify the consulting industry, but when asked if he considered the fact that Plaintiff BBF was a Disadvantaged Business Entity, Defendant Judnic stated that he "didn't think of that." (*Id.* at ¶¶ 31, 32.) Plaintiff BBF did not participate in the re-bid and the re-bid work for M-10 was awarded to another engineering firm, Fishbeck, a majority firm that was the third largest contractor doing business with MDOT. (*Id.* at ¶¶ 34, 35, 37.) Plaintiff BBF maintained the remainder of the contract, which was now worth \$2.2 million. (*Id.* at ¶ 33.) In 2006, Defendant Judnic made statements to his staff that "no woman should be making money like that" in reference to Plaintiff Foster. (*Id.* at ¶ 80; Compl. Ex. A, at 3.) Plaintiff BBF received low evaluation scores for this contract and the lowest scores from among its team members. (Compl. ¶¶ 54, 60.) Plaintiff had to submit a request under FOIA to obtain the scores for its sub-consultants on this contract because Defendant Judnic would not release the scores to Plaintiff. (*Id.* at ¶ 59.)

**B. Contract 2008-0044**

In October 2007, MDOT awarded Contract No. 2008-0044 to Plaintiff BBF. (*Id.*

at ¶ 38.) Project Engineer Jason Voigt, who was working under Defendant Judnic, informed Plaintiff BBF that the contract would be cut. (*Id.* at ¶ 39.) Plaintiffs complained to Defendant MDOT's finance division director and efforts to cut the contract stopped. (*Id.* at ¶ 46.) In July 2008, Plaintiffs requested a debriefing and evaluation from Jason Voigt. (*Id.* at ¶¶ 41-42.) The final evaluation was released in 2009, a month after Voigt left employment with MDOT, with strangely low evaluation scores and comments that were inconsistent with Plaintiff BBF's performance and interactions with Voigt. (*Id.* at ¶ 44.) The evaluation contained Voigt's mechanical signature despite the fact that he no longer worked for MDOT. (*Id.* at ¶ 45.) Plaintiff BBF received low evaluation scores for this contract and the lowest scores from among its team members. (Compl. ¶¶ 54, 60.) Plaintiff had to submit a request under FOIA to obtain the scores for its sub-consultants on this contract because Defendant Judnic would not release the scores to Plaintiff. (*Id.* at ¶ 59).

**C. Contract CS63052-JN72404**

In May 2009, Plaintiffs bid on MDOT Contract No. CS63052-JN72404 and initially received the highest score on the bid scoring sheet. (*Id.* at ¶¶ 61, 63). When Defendant Steucher, who served on the scoring panel, realized that Plaintiff Foster's company was the top scorer, he stated, "Oh no, I hate her" and unilaterally changed the scoring sheets to reduce Plaintiff BBF's score. (*Id.* at ¶¶ 66-67.) These changes resulted in Plaintiff BBF moving from first place to last place in the score rankings, and BBF was not further considered nor awarded the contract. (*Id.* at ¶¶ 64, 68, 70.) The first time this event was brought to management's attention, no action was taken. (*Id.* at ¶ 71.) When it was brought up again, Defendant MDOT removed Defendant Steucher

from future selection teams, but Plaintiffs received no direct remedy for his actions. (*Id.* at ¶¶ 71, 74.)

#### **D. Other Contracts**

In September 2009, Plaintiff BBF bid on a contract that was awarded to Fishbeck, the same majority firm that was awarded the M-10 rebid on the 2006 contract. (Compl. ¶ 47.) The score sheet for Plaintiff BBF indicated that it was missing key MDOT staff. (*Id.* at ¶ 48.) Defendant Judnic refused to meet with Plaintiffs to explain the scoring. (*Id.* at ¶ 49.) Defendant Judnic also refused to conduct debriefing meetings with Plaintiffs in person, even though he did them for other consultants, and would only conduct a debriefing meeting with them by phone. (*Id.* at ¶¶ 51-52.)

#### **E. Retaliation**

In July 2010, Plaintiffs filed eleven Title VI complaints with the United States Department of Transportation (“USDOT”) and Federal Highway Administration (“FHWA”), alleging discrimination and disparate treatment. (Compl. ¶ 20.) USDOT and FHWA deemed some of the complaints as untimely and referred the others to Defendant MDOT. (*Id.* at ¶¶ 24, 26.) Mary Finch, an employee of FHWA, investigated the complaints and found that Plaintiffs Foster and BBF were not treated fairly in the procurement process by Defendant MDOT. (Compl. Ex. A, at 1.)

In March of 2008, Plaintiff BBF was selected as Disadvantaged Business Enterprise Contractor of the year. (Compl. ¶ 82.) Between December 2008 and September 2011, Plaintiffs bid on 22 MDOT contracts and received only one selection as prime consultant. (*Id.* at ¶ 83.) Plaintiffs have been awarded only three prime

consulting contracts since 2006 and none since they filed their Title VI complaints. (Compl. ¶¶ 84, 89.) Additionally, they have not been asked to participate as a subcontractor on any projects since filing their complaints, where previously they periodically and regularly engaged in subcontracting work. (*Id.* at ¶¶ 88, 91.)

## II. Standard

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. In a light most favorable to the plaintiff, the court must assume that the plaintiff's factual allegations are true and determine whether the complaint states a valid claim for relief. See *Albright v. Oliver*, 510 U.S. 266 (1994); *Bower v. Fed. Express Corp.*, 96 F.3d 200, 203 (6th Cir. 1996).

To survive a Rule 12(b)(6) motion to dismiss, the complaint's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and emphasis omitted). See also *Ass'n of Cleveland Fire Fighters v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007). "[T]hat a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of all the elements of a cause of action, supported by mere conclusory statements do not suffice." *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009). The court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* at 1950 (internal quotation marks and citation omitted). Moreover, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief." *Id.* (internal quotation marks and

citation omitted). While legal conclusions provide the framework of a complaint, those conclusions must be supported by factual allegations. *Id.*

A rule 12(b)(6) analysis generally forbids a court from considering documents outside the pleadings, but when a document is referred to in the complaint and is central to the plaintiff's claim, the court may consider it. *Greenberg v. Life Ins. Co. of Va.*, 177 F.3d 507, 514 (6th Cir. 1999). This does not convert a motion to dismiss into a motion for summary judgment. *Id.* In a motion to dismiss, the court may take into account exhibits attached to the complaint. See *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997) (internal quotations and citation omitted).

### **III. Analysis**

Plaintiffs filed this action alleging violations of (1) Title VI, (2) Section 1983, (3) Section 1981, and (4) Michigan Whistleblowers' Protection Act.

#### **A. Title VI**

##### **1. Defendant Steucher and Defendant Judnic**

Defendants Steucher and Judnic argue that Plaintiffs' Title VI claims should be dismissed because individuals cannot be held liable under Title VI. Plaintiffs argue that Defendants Steucher and Judnic could fall within the statute as receiving federal funds because they steered work away from Plaintiffs to majority contractors, for whom they now work and who are receiving monies from federal programs. Additionally, Plaintiffs argue that even if Defendants Steucher and Judnic cannot be held personally liable, that they can be sued under Title VI in their official capacity.

42 U.S.C. § 2000d states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Courts have consistently held that individuals are not liable under Title VI. See *Buchanan v. City of Bolivar, Tennessee*, 99 F.3d 1352, 1356 (6th Cir. 1996) (holding that the plaintiff's claims were properly dismissed because they were asserted against the defendants as individuals and not the entity allegedly receiving the financial assistance); see also *Price v. Louisiana Dept. of Educ.*, 329 F. App'x 559, 561 (5th Cir. 2009); *Shotz v. City of Plantation*, 344 F.3d 1161, 1171 (11th Cir. 2003); *Shannon v. Lardizzone*, 334 F. App'x 506, 508 (3d Cir. 2009).

Plaintiffs may not bring Title VI claims against Defendants Steucher and Judnic personally and Defendants' motions to dismiss any such claims are GRANTED.

Although individuals may not be held liable for violations of Title VI, this does not necessarily require dismissal of the individual defendants if they are sued in their official capacity. *Harris v. Bd. of Governors of Wayne State Univ.*, No. 10-11384, 2010 WL 5173666, at \*3-4 (E.D. Mich, Nov. 19, 2010). The Supreme Court has ruled that individuals may be sued under Title VI in their official capacity. *Alexander v. Sandoval*, 532 U.S. 275 (2001). An official-capacity suit, however, generally represents another way of pleading an action against an entity where the officer is an agent and "is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). The Supreme Court established that an official-capacity suit is not a suit against the official personally and the real party in interest is the entity. *Id.* Therefore, damages in an official-capacity suit must be sought from the



entity itself and replacement of the named official will result in automatic substitution of the official's successor in office. *Id.* at 166 n.11; see also *Harris*, 2010 WL 5173666, at \*4 (holding that plaintiffs seeking damages must look to the government entity itself and not the official).

In a case where the plaintiff has sued the government entity itself, then, a suit against the individual in his official capacity is redundant. *Ebelt v. County of Ogemaw*, 231 F. Supp. 2d 563, 568 (E.D. Mich 2002) (adopting a magistrate's recommendation that the suit against the individual defendants in their official capacities be dismissed as duplicative of the suit against the county); see also *Santamaria v. Dallas Indep. Sch. Dist.*, 2006 WL 3350194, at \*48 (N.D. Tex, Nov. 16, 2006) (holding that because the suit also named the entity as a defendant, any claims against the individuals in their official capacity are redundant.)

In this case, Defendants Steucher and Judnic argue that the Title VI claims against them in their official capacity are redundant and should be dismissed. This Court agrees. Plaintiffs have named the State of Michigan and MDOT as defendants and any damages sought in a Title VI claim must be sought against those Defendants. Additionally, neither Defendant Steucher nor Defendant Judnic is employed by Defendant MDOT anymore, so they no longer occupy the office against which the official-capacity claim is being raised.

Defendants Steucher and Judnic's motions to dismiss the Title VI claims against them in their personal and official capacity are GRANTED.

## **2. Defendants State of Michigan and MDOT**

Defendants State of Michigan and MDOT argue that Title VI does not protect

gender discrimination, most of Plaintiffs' claims are barred by the statute of limitations, Plaintiffs have failed to show anything more than a personal dislike, and Defendants cannot be held liable on the basis of respondeat superior.

Title VI states that no one shall be discriminated against "on the ground of race, color, or national origin." The Eleventh and Third Circuits have held that Title VI does not extend to sex discrimination. See *Shotz*, 344 F.3d at 1170 n.12 (stating that Title VI is parallel to Title IX except that it prohibits race discrimination, not sex discrimination); *Davis v. Monroe County Bd. of Educ.*, 120 F3d 1390, 1396 (11th Cir. 1997) ("Title VI did not ban gender discrimination by recipients of federal funding."); *Shannon*, 334 F. App'x at 507 n.1 ("Title VI does not cover gender discrimination."). In discussing the history of Title VI, the Supreme Court has stated "Five years later, we more explicitly considered whether a private right of action exists to enforce the guarantees of Title VI and its gender-based twin, Title IX." *Alexander*, 532 U.S. at 297.

Plaintiffs maintain that sex discrimination is prohibited by Title VI through 23 U.S.C. § 324. This statute reads,

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964.

Plaintiffs argue that this extends Title VI protection to gender discrimination.

Defendants, however, disagree. The statute states it "will be enforced through agency provisions and rules similar to those already established." This language indicates that it does not provide a private cause<sup>6</sup> of action and does not extend Title VI to cover

gender discrimination, but relies on agency provisions as a vehicle of enforcement.<sup>1</sup> Additionally, 23 U.S.C. § 324 was enacted on August 13, 1973. The cases in the Third and Eleventh Circuits that concluded that Title VI does not extend to gender discrimination were decided well after that.

Both parties acknowledge that no Michigan court has addressed the specific question as to whether gender discrimination is prohibited by Title VI. This Court agrees with the Third and Eleventh Circuits and finds that a plain reading of 42 U.S.C. § 2000d, which prohibits discrimination “on the ground of race, color, or national origin,” does not extend to gender. Plaintiffs cannot assert a discrimination claim under Title VI based on gender.

Plaintiffs maintain, however, that they were discriminated against on the basis of race and gender. There is nothing in the Complaint, other than the fact that Plaintiff Foster is black and the bare assertions of racial discrimination, that suggests or supports any factual basis for a claim of race-based motives for the actions taken by Defendants. The report that Plaintiffs attached to their Complaint, outlining the findings of the investigation that took place after Plaintiffs filed Title VI complaints with the USDOT and FHWA, states “the evidence shows that based on Ms. Foster’s sex (gender) (female) an MDOT employee sent forward her contract to Lansing to have funds removed from it.” In the report’s conclusions, the report states, “The

---

<sup>1</sup> Plaintiffs’ assertion that the Surface Transportation and Uniform Relocation Assistance Act of 1987 includes women as a group presumed to be disadvantaged is not relevant to the issue here, which is whether Plaintiffs can maintain a Title VI claim based on gender discrimination. Additionally, it supports Defendants’ argument by providing an example of an agency provision being used to enforce 23 U.S.C. § 324’s prohibition on gender discrimination. Plaintiffs, however, have not included any similar agency provision in their Complaint.

preponderance of the evidence shows that Mr. Judnic appears to have taken actions based on Ms. Foster's sex (gender) (female)." The report does not indicate that any actions or discrimination took place on the basis of Plaintiff Foster's race.

There is only one mention of Plaintiff's race in the report, which indicates that Defendant Judnic's secretary verified that Defendant Judnic stated, in 2006, that "no woman should be making money like that" but did not recall if he said, 'no Black woman.'" Defendant Judnic's secretary not being able to recall whether Defendant Judnic said "no black woman" is the only mention of a possible reference to Plaintiff Foster's race by any of the Defendants, it is doubtful whether it was actually said, and Plaintiffs did not include this in their Complaint.

In a motion to dismiss, although the allegations in the Complaint are assumed to be true, the legal conclusions must be supported by factual allegations. Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief. Here, Plaintiffs have not shown that there was any racially-motivated discrimination.

Title VI does not permit a claim based on gender discrimination and Plaintiffs have failed to state a claim for race discrimination.<sup>2</sup> Defendants State of Michigan and MDOT's motion to dismiss Plaintiffs' Title VI claims is GRANTED.

### **3. Retaliation**

---

<sup>2</sup> Because the Court finds Plaintiffs' claim deficient for these reasons, the Court need not address Defendants' other arguments for dismissal of the Title VI claim.

In the Complaint, Plaintiffs allege that Defendants violated Title VI by retaliating against Plaintiffs after Plaintiffs filed complaints against Defendants. Plaintiffs argue that they have been systematically eliminated from all sources of work and blacklisted at MDOT. To bring a claim of retaliation under Title VI, Plaintiffs must show that: (1) she engaged in activity protected by Title VI; (2) this exercise of protected rights was known to defendant; (3) defendant thereafter took adverse action against the plaintiff; and (4) there was a causal connection between the protected activity and the adverse action. *Ross v. Michigan State University Bd. Of Regents*, No. 10-cv-216, 2011 WL 4036644, at \*6 (W.D. Mich., Sept. 12, 2011); *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 595 (6th Cir. 2007). To establish a causal connection, there must be an inference that the protected activity was the likely reason for the adverse action. *Michael*, 496 F.3d at 596. "Although temporal proximity itself is insufficient to find a causal connection, a temporal connection coupled with other indicia of retaliatory conduct may be sufficient to support a finding of a causal connection." *Randolph v. Ohio Dep't of Youth Servs.*, 453 F.3d 724, 737 (6th Cir. 2006).

In their briefs, however, Plaintiffs seem to argue a completely different factual basis for retaliation. Plaintiffs argue that the protected action that they engaged in was merely participating in the bidding process at MDOT and that Defendants were retaliating against Plaintiffs for Plaintiffs' attempting to be awarded contracts. Filing complaints against MDOT for discrimination is protected activity under Title VI, but participating in the public bidding process is not. Plaintiffs cannot turn all of their discrimination claims into retaliation claims by attempting to broaden "protected action" to encompass any action at all.

Plaintiffs engaged in protected action under Title VI when they filed complaints with the USDOT in 2010. In order to state a claim for retaliation, then, Plaintiffs must allege that Defendants knew of Plaintiffs' complaints, Defendants took adverse action against Plaintiffs after Plaintiffs filed the complaints, and the fact that Plaintiffs filed the complaints caused Defendant to take that adverse action. In the Complaint, however, Plaintiffs assert that between December 2008 and September 2011, Plaintiffs bid on 22 MDOT contracts and received only one selection as prime consultant. Plaintiffs also assert that they have been awarded only three prime consulting contracts since 2006. By its own allegations and admissions, then, Plaintiffs were not being awarded contracts with MDOT long before Plaintiffs filed their complaints with USDOT.

While Plaintiffs' lack of success in being awarded MDOT contracts may be the result of discrimination, there is no factual basis to support a claim for retaliation. Plaintiffs have failed to offer anything other than bare allegations that after Plaintiffs filed their complaints in 2010 that Defendants State of Michigan or MDOT retaliated against Plaintiffs.

Taking all the factual allegations in the Complaint as true, Plaintiffs have not stated a claim for retaliation under Title VI. Defendants' motions to dismiss any retaliation claim are GRANTED.

**B. Section 1983 and Section 1981**

In Counts II and III of the Complaint, Plaintiffs allege violations of Sections 1983 and 1981 against all Defendants. Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Section 1981 states:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981.

**1. Defendants State of Michigan and MDOT and Defendants Steucher and Judnic in their official capacities**

The Eleventh Amendment bars suits brought in federal court against a state and its agencies unless the state has waived its sovereign immunity or consented to be sued in federal court. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). The Supreme Court has established that Section 1983 was not intended to disregard the well-established immunity of a state from being sued without its consent. *Id.* at 67. Additionally, “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself.” *Id.* at 71 (holding that neither a state nor its officials acting in their official capacities are “persons” under § 1983); *see also Abick v. Michigan*, 803 F.2d 874, 876-77 (6th Cir. 1986).<sup>3</sup>

Additionally, the Supreme Court has established that Section 1983 provides an

---

<sup>3</sup> The exception for prospective equitable relief against a government official outlined in *Ex Parte Young*, 209 U.S. 123 (1908) does not apply here because neither Defendant Judnic nor Defendant Steucher remain employed by MDOT or the State of Michigan.

exclusive remedy for violations against state actors sued in their official capacity. “[T]he express ‘action at law’ provided by § 1983 for the ‘deprivation of any rights, privileges, or immunities secured by the Constitution and laws,’ provides the exclusive federal damages remedy for the violation of the rights guaranteed by § 1981.” *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 735 (1989). Like § 1983, then, § 1981 does not contain a cause of action against states or state actors in their official capacity. *Grinter v. Knight*, 532 F.3d 567, 577 (6th Cir. 2008).

Sections 1981 and 1983 do not support claims against a state or state actors in their official capacity. Plaintiffs’ § 1983 and § 1981 claims against Defendants State of Michigan, MDOT, and Defendants Steucher and Judnic in their official capacity are dismissed and Defendants’ motions GRANTED.

## **2. Defendant Judnic Individually**

Defendant Judnic argues that Plaintiffs’ § 1983 and § 1981 claims against him should be dismissed because many of the allegations are barred by the statute of limitations, Plaintiffs have not alleged that the actions were the result of discriminatory animus, and Plaintiffs fail to identify others who were similarly situated and treated differently.

Defendant Judnic argues that most of Plaintiffs’ allegations are barred by the statute of limitations. Both parties agree that the statute of limitations for § 1983 claims in Michigan is three years. *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005). Under federal law, the statute begins to run when the plaintiffs knew or should have known of the injury which forms the basis of their claims. *Ruff v. Runyon*, 258 F.3d 498, 500 (6th Cir. 2001). This inquiry focuses on when the harm occurred, rather than the plaintiff’s



knowledge of the underlying facts which gave rise to the harm. A plaintiff has reason to know of his injury when he should have discovered it through the exercise of reasonable diligence. *Id.*

Plaintiffs argue that the statute of limitations in this case did not start to run until May 2010, when Plaintiffs learned of Defendant Judnic's statement that "no woman should be making that kind of money." Defendants argue that in 2006, Plaintiffs knew its contract was cut and re-bid and that a portion of it was subsequently awarded to a majority firm. Plaintiffs, however, did not file a complaint with the USDOT until 2010 and did not file a complaint with this Court until November 2011. Plaintiffs offer no explanation for their delay, except that they did not know of Defendant Judnic's discriminatory statement until 2010. Plaintiffs did not exercise due diligence in a timely manner and cannot now assert claims for actions that occurred more than three years ago.

Plaintiffs next argue that equitable tolling should apply because Defendant Judnic deliberately misrepresented the truth about his motivations when Plaintiffs asked him why the contract was being cut. The Sixth Circuit has held, however, that a deception regarding motive supports equitable tolling only where the deception conceals the very fact of discrimination. *Hill v. United States Dept. of Labor*, 65 F.3d 1331, 1337 (6th Cir. 1995). Equitable tolling through fraudulent concealment will not be permitted where the plaintiff was aware of all the essential facts constituting discriminatory treatment but lacks direct knowledge or evidence of the defendant's subjective discriminatory motive. *Id.* The party relying on equitable tolling through fraudulent concealment has the burden of demonstrating its applicability. *Id.* at 1336. Equitable tolling is an

extraordinary remedy which should be extended only sparingly, and is unavailable unless the plaintiff exercised due diligence in pursuing his claims. *Drake v. City of Detroit, Michigan*, 266 F. App'x 444, 449 (6th Cir. 2008).

In this case, Plaintiffs knew of the actions that harmed them and they did not file a complaint until November 3, 2011. Although Plaintiffs did not know about Defendant Judnic's statement, they knew that Defendant MDOT was trying to diversify its contractors, that the 2006 contract originally awarded to Plaintiffs was cut, and that half the original contract was awarded to a majority firm. Courts have consistently held that lacking knowledge of the discriminatory motive is not enough where Plaintiffs knew all the essential facts constituting discriminatory treatment. This Court finds that Plaintiffs' allegations against Defendant Judnic before November 3, 2008 are barred by the statute of limitations.

Defendant Judnic argues that the allegations not barred by the statute of limitations are also deficient. To state a claim under § 1983, a plaintiff must set forth facts that establish the deprivation of a right secured by the Constitution or laws of the United States that was caused by a person acting under the color of state law. *Heyne v. Metro. Nashville Pub. Schs.*, 655 F.3d 556, 564 (6th Cir. 2011). Government officials performing discretionary functions have qualified immunity, shielding them from liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In determining a qualified immunity claim, the Court must: (1) decide whether the facts alleged in the Complaint make out a violation of a constitutional right and (2) decide whether the right at issue was "clearly established" at the time of the

defendant's alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 815-816 (2009).

The Sixth Circuit has held that "damage claims against government officials arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right." *Heyne*, 655 F.3d at 564. This means that the Court must analyze separately whether Plaintiffs have stated a plausible constitutional violation by Defendant Judnic without ascribing the acts of the other Defendants to Defendant Judnic.

In the Complaint, however, Plaintiffs allege that in September 2009, Plaintiff BBF lost the bid on a contract because its score sheet indicated that it was "missing key MDOT staff" and when asked, Defendant Judnic refused to meet with Plaintiffs to explain the scoring. Plaintiffs also assert that Defendant Judnic refused to conduct debriefing meetings with Plaintiffs in person, even though he did them for other consultants. Plaintiffs further assert that Defendant Judnic engaged in an orchestrated scheme to remove Plaintiff BBF's employee, Love Charles, in order to create a negative impact on Plaintiffs' ability to compete.

The Complaint alleges that Plaintiff Foster is a member of a protected class and that she and her company were treated differently than other similarly situated contractors that were bidding on MDOT contracts, and that Defendant Judnic intentionally discriminated against Plaintiffs because Plaintiff Foster is a woman. Although the statute of limitations applies to this claim as far as Plaintiffs' attempt to collect damages from the 2006 contract, this does not mean that Defendant Judnic's statement that "no woman should be making that kind of money" does not shed light on and further inform the motives he had when treating Plaintiffs differently than other

contractors.

This Court finds that the Complaint alleges enough factual bases for Plaintiffs to maintain a § 1983 claim against Defendant Judnic and Defendant Judnic's motion to dismiss the § 1983 claim is DENIED.

42 U.S.C. § 1981 states that all persons shall have the same rights as "enjoyed by white citizens." This does not extend to sex discrimination. *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 179 (1982) (upholding the dismissal of a § 1981 claim because sex discrimination is not cognizable under that section). Because Plaintiffs have not pled any facts to support racial discrimination, Defendant Judnic's motion to dismiss the § 1981 claim is GRANTED.

**C. Michigan Whistleblowers' Protection Act**

The Whistleblowers' Protection Act ("WPA") states:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

Mich. Comp. L. § 15.362.

**1. Defendants State of Michigan and MDOT and Defendants Steucher and Judnic in their official capacities**

Defendants argue that Plaintiffs' claim under WPA should be dismissed because an action cannot be brought against the state or its agents, pursuant to the Eleventh

amendment. As stated above, the Eleventh Amendment bars suits brought in federal court against a state and its agencies unless the state has waived its sovereign immunity or consented to be sued in federal court. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Additionally, the Supreme Court stated:

A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

*Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

Consideration of any state-law-based claims against the state or individuals sued in their official capacity would violate the Eleventh Amendment. *McNeilus Truck & Mfg., Inc. v. Ohio*, 226 F.3d 429, 438 (6th Cir. 2000) (barring a suit against state officials in a federal court for violating state law); *Edwards v. Ky. Revenue Cabinet, Div. of Compliance & Taxpayer Assistance*, 22 F. App'x 392, 393 (6th Cir. 2001) (ruling that neither supplemental jurisdiction nor any other basis for jurisdiction overrides Eleventh Amendment immunity).

Plaintiffs here have attempted to bring a state-law claim against Defendant State of Michigan and MDOT and its officials in violation of the Eleventh Amendment. Defendants State of Michigan and MDOT's motion to dismiss Plaintiffs' WPA claims is GRANTED. Defendants Judnic and Steucher's motion to dismiss, as it pertains to the WPA claim against them in their official capacity, is GRANTED.

## **2. Defendants Steucher and Judnic in their individual capacities**

Defendants Steucher and Judnic argue that Plaintiffs claims under the WPA

should be dismissed because Plaintiffs were not employees of the state and, therefore, Plaintiffs do not fall under the statute. The WPA defines an employee as “a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.” Mich. Comp. L. § 15.361(a). Independent contractors are not considered persons performing services “under a contract of hire.” *Chilingirian v. City of Frasier*, 200 Mich. App. 198, 200 (1993). In *Chilingirian*, however, the court determined that an independent contractor could be considered an employee as defined in the WPA under certain circumstances, but that “under the facts of this case, plaintiff was not an employee of the city.” *Id.*

In the Complaint, Plaintiffs assert that they are employees within the definition of M.C.L. § 15.361. Alternatively, Plaintiffs argue that even if they are considered to be independent contractors, *Chilingirian* leaves open the possibility that WPA still applies. While Defendants raise a strong argument that the facts in this case do not support a finding that Plaintiffs are or were an employee under the WPA, this argument is premature at the motion to dismiss stage. Plaintiffs need only state a claim upon which relief may be granted, and they have done so here.

Defendants Steucher and Judnic’s motions to dismiss Plaintiffs’ claims under the WPA, against them individually, are DENIED.

#### **IV. Conclusion**

For the foregoing reasons, Defendants’ motions to dismiss should be GRANTED in part and DENIED in part.

s/Nancy G. Edmunds  
Nancy G. Edmunds  
United States District Judge

Dated: February 6, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 6, 2012, by electronic and/or ordinary mail.

s/Carol A. Hemeyer  
Case Manager

# **EXHIBIT 12**



**In The Matter Of:**

*BBF Engineering Services, P.C. and Bellandra Foster vs.  
State of Michigan, Michigan Dept. of Transportation*

---

*Bellandra Foster  
November 9, 2012*

---

*Newcomer, Lathrop & Associates  
(517) 371-5500*

*Robin V. Darnbrook, CSR, RPR*

Page 180

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF MICHIGAN  
 3 SOUTHERN DIVISION  
 4 BBF ENGINEERING SERVICES, P.C.,  
 5 a Michigan Corporation, and  
 6 BELLANDRA FOSTER, an individual,  
 7 Plaintiffs,  
 8 vs. No. 11-14853-cv  
 9 STATE OF MICHIGAN, a Michigan Public  
 10 Corporation, MICHIGAN DEPARTMENT OF  
 11 TRANSPORTATION, a Department of the  
 12 State of Michigan, VICTOR JUDNIC, and  
 13 MARK STEUCHER,  
 14 Defendants.  
 15 Deposition of BELLANDRA FOSTER,  
 16 Plaintiff herein, taken pursuant to the Federal  
 17 Rules of Civil Procedure before Robin V. Darnbrook,  
 18 Certified Shorthand Reporter, Notary Public, Oakland  
 19 County, Michigan, at 535 Griswold, Suite 1000,  
 20 Detroit, Michigan on November 9, 2012 commencing at  
 21 10:07 a.m.  
 22 APPEARANCES:  
 23 WILLIAMS ACOSTA, PLLC  
 24 By: Avery K. Williams (P34731)  
 25 535 Griswold  
 Suite 1000  
 Detroit, Michigan 48226  
 Appearing for Plaintiffs  
 (Appearances continued)

Page 182

1 TABLE OF CONTENTS  
 2  
 3  
 4 WITNESS: BELLANDRA FOSTER  
 5  
 6 BY MR. DITTENBER:  
 7 Cross Examination . . . . . Page  
 8 183  
 9  
 10 Sealed Record - pages 205 through 214  
 11  
 12 - - -  
 13 Exhibits Identified  
 14 13 - Report of Inquiry Referred to but  
 15 not marked  
 16 14 - BBF Not Selected/Awarded  
 17 Proposal Submission Listing 215  
 18 2007 through Current  
 19 15 - 5-4-07 Letter to Greg Johnson  
 20 from Bellandra Foster 223  
 21  
 22  
 23  
 24  
 25

Page 181

1 MICHAEL J. DITTENBER (P722238)  
 2 Assistant Attorney General  
 3 4th Floor Transportation Building  
 4 425 West Ottawa Street  
 5 P.O. Box 30050  
 6 Lansing, Michigan 48909  
 7 Appearing for Defendants  
 8 Also Present: Victor Judnic  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 183

1 November 9, 2012  
 2 Detroit, Michigan  
 3 - - -  
 4 BELLANDRA FOSTER,  
 5 Plaintiff herein, having been first duly sworn to  
 6 testify the truth, the whole truth and nothing  
 7 but the truth, was examined and testified as  
 8 follows:  
 9 - - -  
 10 MR. DITTENBER: Let the record reflect  
 11 that this is the time and place for the  
 12 continuation of the deposition of Ms. Bellandra  
 13 Foster.  
 14 - - -  
 15 CROSS EXAMINATION  
 16 BY MR. DITTENBER:  
 17 Q Ms. Foster, did you attend Mr. Judnic's deposition  
 18 the other day?  
 19 A On November 7th?  
 20 Q Yes.  
 21 A Yes.  
 22 Q And there were some questions asked about  
 23 Mr. Judnic's family. Ms. Foster, are you aware  
 24 that Mr. Judnic has an adopted --  
 25 MR. WILLIAMS: Objection. The only

Page 184

1 purpose of this deposition is damages, not  
2 Mr. Judnic's deposition. That was all we  
3 continued. We didn't continue about Mr. Judnic's  
4 family.  
5 MR. DITTENBER: It's a continuance of  
6 her deposition.  
7 Q Ms. Foster, are you aware that Mr. Judnic has an  
8 adopted son who is African American?  
9 MR. WILLIAMS: Again, it's not part of  
10 this deposition.  
11 MR. DITTENBER: Your objection is on the  
12 record.  
13 MR. WILLIAMS: Well, that wasn't why we  
14 continued this deposition, so that was not part of  
15 the continuation. I'm not going to let her answer  
16 the question.  
17 MR. DITTENBER: It wasn't continued for  
18 any limited purpose.  
19 MR. WILLIAMS: Yes, it was. It was  
20 limited to damages. Go back and read it.  
21 MR. DITTENBER: Are you --  
22 MR. WILLIAMS: Yes.  
23 MR. DITTENBER: You are refusing to  
24 answer the question?  
25 MR. WILLIAMS: No, I'm instructing her

Page 185

1 not to answer the question.  
2 Q Ms. Foster, I've handed you what was marked as  
3 Exhibit 13 at your prior deposition. Do you recall  
4 seeing this document at your prior deposition?  
5 A Yes, briefly.  
6 Q And just so everyone's on the same page today,  
7 could you briefly explain what this document is?  
8 A This is the document that was included in the  
9 Report of Inquiry, Complainant's Request for  
10 Resolution.  
11 Q And who prepared this document?  
12 A Myself and my attorney.  
13 Q My understanding was when we left off last time you  
14 had not had time to consider damages against  
15 Mr. Judnic or Mr. Steucher individually; is that  
16 your understanding as well?  
17 MR. WILLIAMS: Objection,  
18 mischaracterization.  
19 A I was never requested to separate out any damages.  
20 When we did this document, this document was a  
21 complaint for resolution and they were supposed to  
22 be -- there was a recommendation in the original  
23 Report of Inquiry for a meeting and my thought was  
24 that this would be discussed as inclusive of the  
25 items in that meeting that the Report of Inquiry

Page 186

1 had suggested as recommendations. That meeting  
2 never occurred. So this document was not  
3 revisited. So there was never any discussion as  
4 far as separating out the original Defendants,  
5 being State of Michigan, MDOT, Judnic and Steucher.  
6 Q Are you able today to provide an estimation for the  
7 damages you seek from Defendant Judnic  
8 individually?  
9 A Not without a discussion with my attorney.  
10 Q I'm going to ask you a few questions about the  
11 numbers contained in Exhibit 3. For Project  
12 2006 --  
13 A Excuse me, isn't this Exhibit 13?  
14 Q Yes, it is. Exhibit 13 for Project 2006-0490, you  
15 show a profit loss of \$308,000. Could you tell me  
16 what that number reflects?  
17 A Estimated profit loss based on the projects listed.  
18 And to be quite honest, since this document was  
19 prepared at this point over a year ago, I would  
20 really need to have a discussion with my attorney  
21 to do any amendments or decide if this is still the  
22 case because there have been quite a few instances  
23 and issues that have occurred in regards to my  
24 health, in regards to profit loss, in regards to  
25 being blacklisted from projects, in regards to

Page 187

1 mental anguish and emotional distress to both  
2 myself and now my family.  
3 This document was prepared, I believe,  
4 in September of 2011, which is over a year ago at  
5 this point. There have never been any discussions  
6 since that date in regards to this document but  
7 there have been many things that have occurred  
8 since this document was prepared.  
9 Q When would you be able to give me an estimate of  
10 your damages against Mr. Judnic?  
11 A You're just requesting just Mr. Judnic or each  
12 defendant named in this lawsuit?  
13 Q Right now I'm just requesting Mr. Judnic.  
14 A I would have to have a discussion with my attorney,  
15 as I stated.  
16 Q What was the basis for the \$308,000 profit loss for  
17 Project 2006-0490?  
18 A I did not have access to the contract documents for  
19 this project when it was let -- oh, no, that's the  
20 wrong one. Scratch that. This is 2006-0490.  
21 Actually, this number should be higher because I'm  
22 looking at what the actual contract was that was  
23 cut and at the time, I believed that this was the  
24 amount of profit that would have been included on  
25 the project portion that was cut. But once we

1 received those documents that were FOIA'd, I don't  
2 believe those documents, MDOT included the correct  
3 documents where my attorney and I could actually  
4 see what that profit was.  
5 And then I would also have to have a  
6 discussion in regards to how overhead played in  
7 that and also how that impacted the ability to gain  
8 future work. And when I say future work, I mean by  
9 losing projects and having projects cut, there were  
10 people that were assigned to that and once you lose  
11 a project or are cut out of a project, there's some  
12 difficulty that can be assessed in moving forward.  
13 Q Okay.  
14 A In moving forward to obtain other work. That's  
15 what had occurred. But that's how that was  
16 originally derived because we were requested to  
17 supply these numbers pretty quickly.  
18 Q Let me make sure I understand. This profit loss  
19 reflects, and I know you said it has not been  
20 updated.  
21 A Right.  
22 Q But it represents the profit loss on the portion of  
23 the 2006 contract that was readvertised as a  
24 separate project, is that correct?  
25 A That was what I -- this profit loss was only that

1 was computed based on a formula and based on the  
2 difficulty level of the project contract that you  
3 had obtained.  
4 Q My question is of the total contract value, are you  
5 referring to the fixed fee as being 11 percent of  
6 that value?  
7 A I believe that this was but like I said, we were  
8 estimating because we did not receive the  
9 information timely enough about this project and  
10 then once we did receive it, it still was fairly  
11 inconclusive in regards to what their actual  
12 profit -- what the actual profit was or would have  
13 been based on the additional amount that was cut.  
14 Q You also have --  
15 THE WITNESS: Can we take one break? I  
16 think I forgot to cut my phone off.  
17 MR. DITTENBER: Yes, ma'am.  
18 THE WITNESS: Thank you.  
19 Q Back on. You also have some numbers listed for  
20 Project 2008-0044. You listed \$25,000 of pain,  
21 suffering and mental distress damages. How did you  
22 calculate those damages?  
23 A This was per discussion with my attorney coming up  
24 with an amount at the time that we thought was  
25 reasonable, and keeping in mind that this was a

1 and I don't think -- and that was an estimate. But  
2 at the time, I did not have Fishbeck, Thompson,  
3 Carr and Huber's information but then when we  
4 requested it through FOIA, if my memory is serving  
5 correctly, it still didn't include information  
6 where I could see what the actual profit would have  
7 been. But it does not include a look at inability  
8 to gain future work because of that lost contract.  
9 Q How do you calculate your profit?  
10 A The way MDOT basically tells us to. With MDOT, I  
11 believe at this time it was still labor, overhead,  
12 labor plus overhead 11 percent and that's, I think,  
13 how MDOT is still doing it.  
14 Now, there was a time when there was a  
15 form that you filled out and I believe profit could  
16 be up to 15 percent, 15 to 18 percent on a project,  
17 depending on the difficulty level of the project.  
18 Q And you're referring to percentages of the total  
19 overall contract awarded?  
20 A Profit or fixed -- profit with MDOT is the same as  
21 fixed fee. And if you have your labor plus your  
22 overhead multiplying it by an amount as set by  
23 MDOT, currently that number is 11 percent. Other  
24 agencies, it's different.  
25 And there was a time with MDOT where it

1 year ago and there have been many things that have  
2 occurred. And to be quite honest, I really have a  
3 concern with going through this document because we  
4 have not had an opportunity to revisit this  
5 document to have a discussion and a real accounting  
6 assessment of the true losses, pain and suffering,  
7 mental anguish, mental distress and all of these  
8 items.  
9 And as I stated, this document, I  
10 believe, was submitted in September of 2011. So  
11 these were estimates that we thought were  
12 reasonable amounts at the time for those areas and  
13 these were per discussion with my attorney. So I  
14 believe there needs to be some discussion with him  
15 as far as reasonable amounts from a legal  
16 standpoint as far as reasonable amounts in these  
17 areas. And then taking into account also the fact  
18 that there were many things that have occurred in  
19 the past approximately 14 months.  
20 Q Okay. As we go through this, I understand that it  
21 has not been updated since you submitted it and  
22 that there may be changes to it. I'm just asking  
23 what these numbers meant at the time.  
24 A Okay.  
25 Q Do you have any evidence to support the damages of

Page 192

1 \$25,000 for pain, suffering and mental distress?  
2 A I'm not aware of what information you're asking for  
3 when you say do I have information to support it.  
4 Q Do you have medical bills?  
5 A Numerous.  
6 Q Other receipts related to medical care?  
7 A Yes. But this is beyond medical care. How do you  
8 put a number on future issues related to what  
9 occurred and being on medication for the rest of  
10 your life? How do you put a number on that?  
11 Q How did you estimate \$20,000 of punitive damages  
12 for the Project 2008-0044?  
13 A When we estimated this number, when I estimated  
14 this number, it was based upon looking at the  
15 mental distress and taking a percentage of the  
16 mental distress, of the pain and suffering and  
17 mental distress and at the time, that number was  
18 considered reasonable.  
19 Q Are you alleging that you suffered damages on this  
20 project because of Mr. Judnic's alleged actions?  
21 A Mr. Judnic and/or people supervised by Mr. Judnic.  
22 Mr. Judnic was the senior resident engineer in  
23 charge at the time and MDOT was the agency that was  
24 supposed to be appropriately administering this  
25 project.

Page 193

1 Q What specifically are you alleging that Mr. Judnic  
2 did on this project to cause you damages?  
3 A On this particular project, 2008-0044, there is  
4 information in regards to the project that when we  
5 were selected, we were told that the project would  
6 be cut and there is a distress in that happening  
7 again after the first one was cut and rebid.  
8 This particular project, I had to  
9 contact MDOT and then have a concern about whether  
10 the project was going to be reinstated, which it  
11 took a couple days before Mr. Vogt, who was  
12 Mr. Judnic's subordinate, to get back with me and  
13 finally confirm that the project would be  
14 reinstated when it should not have been even cut in  
15 the first place as the first contract was cut.  
16 So Project 2008-0044, we were selected  
17 for that project, we bid on it, we submitted a  
18 proposal, we were selected on the project and  
19 again, I get a phone call that it was cut. I asked  
20 the question why whenever my company gets a  
21 contract, it's always cut. Mr. Vogt stated that he  
22 didn't know about that and I did ask him various  
23 questions about it and then I finally just stopped  
24 asking him questions and called Lansing.  
25 So this project because of the actions

Page 194

1 of MDOT in again attempting to cut another contract  
2 that was awarded, selected and awarded to a  
3 minority disadvantaged business enterprise, that's  
4 why these numbers are there.  
5 Q Are you able today to provide an estimation for the  
6 damages you seek from Defendant Mark Steucher?  
7 A In regards to 2008-0044, there's also an aspect --  
8 Q That's not what I asked you.  
9 A Well, I thought I could finish my answer. I can't  
10 respond to anything on 2008-0044 anymore?  
11 Q I had asked you a new question.  
12 A Okay. You don't want to know, that's fine. What  
13 was your question?  
14 Q My question was are you able today to provide an  
15 estimation for the damages you are seeking from  
16 Defendant Steucher?  
17 A No.  
18 MR. WILLIAMS: You're saying separately?  
19 MR. DITTENBER: Yes.  
20 Q You have some numbers listed on Exhibit 13 for  
21 project CS63052-JN72404. Do you understand that to  
22 be the project involving the allegations with  
23 Mr. Steucher?  
24 A Correct.  
25 Q You have listed a \$55,000 profit loss. What does

Page 195

1 that number represent?  
2 A On that project, again, once this document was  
3 requested, I was unable to obtain the information,  
4 so I was estimating by memory what that contract  
5 value was. I actually think that contract was a  
6 lot higher than what I estimated. So this was  
7 based upon the assumed profit on this project but  
8 I'm not claiming that I'm accurate in this number  
9 but I don't know what the profit was. I was going  
10 by memory.  
11 Q I understand. Would that have been your fixed fee  
12 for that project?  
13 A Based on assumed profit, a fixed fee would be 11  
14 percent and I believe that's what the fixed fee  
15 would have been assessed for this project but I  
16 cannot be -- say I'm absolutely a hundred percent  
17 accurate because I did not have access to the MDOT  
18 final estimate, final documents on that.  
19 Q You show an interest rate of seven percent. How  
20 did you decide that seven percent is the interest  
21 rate that you seek?  
22 A Based upon looking at what interest rate one  
23 reasonably were to obtain in a portfolio.  
24 Q Do you recall what portfolio you visited to --  
25 A Just in discussions with my financial person.

Page 196

1 Q And who would that be?  
2 A My financial person?  
3 Q Yes.  
4 A I don't think I need to disclose that information.  
5 MR. WILLIAMS: You can go ahead and  
6 answer.  
7 A Gregory Hill.  
8 Q Gregory Hill?  
9 A Mm-hmm (affirmative).  
10 MR. WILLIAMS: You have to answer yes.  
11 A Yes.  
12 Q Does Mr. Hill work for a firm?  
13 A Yes.  
14 Q What firm is that?  
15 A Wells Fargo.  
16 Q Is he located in Detroit?  
17 A Not at this time.  
18 Q Do you know where he is located?  
19 A Farmington Hills.  
20 Q And how long has Mr. Hill served as your financial  
21 consultant or advisor?  
22 A It's probably between eight and ten years.  
23 Q Does he advise you personally or just in your  
24 business?  
25 A Both.

Page 197

1 Q On that same project, you list pain, suffering,  
2 mental distress damages which appear to be 150  
3 percent of your profit loss. How did you come to  
4 the 150 percent figure?  
5 A That was based upon a percentage of the profit loss  
6 and also looking at with this, one of the aspects  
7 as in what I looked at in the other projects was  
8 the outcome.  
9 In Project 6305272404, pain, suffering,  
10 mental distress, what also is in this figure is  
11 looking at what happened in the debriefing meeting  
12 that it took numerous attempts to obtain and that's  
13 where the distress in obtaining a simple debriefing  
14 from Mr. Steucher and requesting that certain  
15 people be there, that it would have been an  
16 appropriate request and that not being accomplished  
17 or even considered, and then also the punitive  
18 damages in the same manner as what was done in the  
19 other projects when I looked at those aspects.  
20 And in the other projects, I also  
21 thought about in the pain and suffering and mental  
22 distress the aspects of the evaluations that were  
23 done and when I talked before about moving forward,  
24 when you get low evaluations with MDOT, that  
25 affects your ability to get future projects and one

Page 198

1 way that it does impact that is when you get a low  
2 evaluation, there's a score section called past  
3 performance and if an evaluation team can give you  
4 a lower score, a one point difference, two point  
5 difference makes a lot of difference. So there  
6 were several projects that I lost by under five  
7 points where those scores really are meaningful.  
8 So when I look at these numbers and you  
9 look at pain, suffering, mental distress and  
10 punitive damages, those are the thoughts in those,  
11 you know, lack of future work, poor evaluations,  
12 not being allowed to build the projects. All of  
13 those aspects in my mind entered into that. Just  
14 being disenfranchised and discriminated against as  
15 far as not being able to get a fair shot at getting  
16 work.  
17 So when you ask the question about what  
18 is into those, those are the things and to be quite  
19 honest, I really think that they're low.  
20 Q The \$88,000 figure, so that's a --  
21 A Which, the 88,275?  
22 Q 88,275. So that's a percentage of the profit loss  
23 estimation, is that correct?  
24 A Yes. Yes, I just took a percentage.  
25 Q It's not based on any calculation of medical bills

Page 199

1 or anything like that, is that correct?  
2 A That's in there but that's not all that's in there.  
3 Q Can you tell me out of that 88,275 how much of  
4 that represents actual medical bills?  
5 A I don't have that figure.  
6 Q And the punitive damages are also a percentage of  
7 the profit loss estimation, is that correct?  
8 A Yes.  
9 Q And that number is 105 percent?  
10 A Yes.  
11 Q And how did you decide upon 105 percent as the  
12 appropriate number?  
13 A We discussed an amount that we thought was  
14 reasonable at the time.  
15 Q You show a loss of work profit opportunities FY, I  
16 assume that means fiscal year?  
17 A That was looking at 2006 through 2009, which was  
18 the original subject of this Report of Inquiry.  
19 Q And it shows 2006 through 2009, so that would be  
20 four fiscal years, is that correct?  
21 A Yes.  
22 Q And you show a total of \$9 million, is that  
23 correct?  
24 A Mm-hmm (affirmative). Yes. I'm sorry. Yes.  
25 Q Would that number represent \$9 million in fixed

Page 200

1 fees over that time period?  
2 A Potential lost profit opportunities, and this is an  
3 area that my attorney assisted me with and if  
4 memory serves me correctly, the computation was  
5 based on an estimated loss of work of approximately  
6 \$2.5 million per year, just under that amount.  
7 Q Is that a loss of work or a loss of profit?  
8 A Loss of work and combined profit, yes. Loss of  
9 work profit. This profit is not fixed fee profit,  
10 this is profit, revenue profit, revenues from doing  
11 work or ability to do work or obtain work.  
12 Q Does this number represent then contracts totaling  
13 \$9 million?  
14 A Potential loss of work profit, right, loss of work,  
15 loss of revenue, loss of potential work and also  
16 looking at if you have a block of time where you're  
17 denied opportunities, that period has impacted my  
18 ability to obtain work now and be successful in my  
19 business, hence the reason why the business has  
20 become unsuccessful.  
21 So that time frame was very important  
22 because when this document was prepared, by the  
23 time this document was prepared, it was 2011.  
24 Q Would your profit on this \$9 million be a fixed fee  
25 of 11 percent then, your potential profit?

Page 201

1 A I'm not sure what you're asking in that question.  
2 Because this number is loss of work profit, loss of  
3 revenue. So when you look at the wording, you  
4 can't just look at the fixed fee or 11 percent.  
5 This is loss of revenue. So entered into this, you  
6 have to have the mindset it is not just profit,  
7 it's also potential work opportunities, potential  
8 work moving forward. If you cannot obtain work in  
9 a certain period of time, then you can't build  
10 staff, you can't maintain staff, therefore, you  
11 can't get future work.  
12 So by the time this was done, I was able  
13 to look and see the impacts and we looked at --  
14 this number is derived from what potential work was  
15 thought that should have been obtained, that could  
16 have been obtained in those years had things been  
17 done differently in regards to BBF Engineering  
18 Services and myself.  
19 Q Let me try asking a little different way. Can you  
20 tell me how much of that \$9 million represents lost  
21 profit?  
22 A No. I don't have that figure. No. We didn't look  
23 at it in that manner when it was computed.  
24 Q Do you have an estimation today of your loss of  
25 work profit opportunities for fiscal year 2010?

Page 202

1 A No, we would have to discuss that.  
2 Q I assume the same for 2011?  
3 A Correct.  
4 Q You show pain, suffering, mental distress estimated  
5 damages of \$900,000 and is it correct to assume  
6 that that is ten percent of your loss of work  
7 profit opportunities that you've estimated?  
8 A Correct.  
9 Q Can you explain why you chose to estimate it at ten  
10 percent for this as opposed to 150 percent?  
11 A We thought that was a reasonable amount for that  
12 time period since it was -- these other numbers  
13 were based on actual projects that we looked at.  
14 This was based on loss of profit and revenue  
15 opportunities. So we thought that was a reasonable  
16 amount in our discussions.  
17 Q And what does that number represent?  
18 A Pain, suffering, mental distress, taking ten  
19 percent of the 9 million.  
20 Q And again, is that based on calculated medical  
21 billings or is it just a general estimate?  
22 A It's medical bills but it's also future health  
23 issues, pain, suffering, mental, emotional  
24 distress, the aspects of what have occurred both to  
25 my health, the health of my family and then the

Page 203

1 various aspects of pain, suffering, mental distress  
2 and the one that's now there, emotional distress.  
3 So that was a consideration when that number was  
4 formulated and it was felt that that percentage was  
5 a reasonable percentage at the time that this  
6 document was completed.  
7 Q And what health issues do you attribute to your  
8 loss of work profit opportunities?  
9 A I need to have a question with my attorney in  
10 regards to that.  
11 Q Are you asking to take a break?  
12 A Yes.  
13 MR. WILLIAMS: I think she wants an  
14 agreement for confidentiality of this discussion  
15 involving her personal health issues and issues of  
16 her family. I mean I don't think she wants it to  
17 go beyond, you know --  
18 A There's HIPAA laws and things like that.  
19 MR. DITTENBER: She's put her health in  
20 dispute in this litigation.  
21 MR. WILLIAMS: I'm asking to agree to  
22 keep it in this litigation, I want a  
23 confidentiality agreement between us. I don't  
24 think that's uncommon.  
25 MR. DITTENBER: Okay, just a protective

Page 216

1 I had submitted as a prime but not all of them, but  
2 the majority of these are ones that I submitted as  
3 a prime.  
4 Q And you said you prepared this document?  
5 A Yes.  
6 Q And these were all proposals submitted to MDOT?  
7 A Yes.  
8 Q Looking at this document, are you able to identify  
9 which projects you would have been awarded but for  
10 the allegation regarding Mr. Judnic?  
11 A No, I cannot identify particular ones related just  
12 to Mr. Judnic.  
13 Q Can you identify any contracts that you would have  
14 been awarded but for the alleged actions of  
15 Mr. Steucher?  
16 A No, I cannot attribute just projects that are  
17 attributed to Mr. Steucher because at the time,  
18 they were MDOT employees, so when damages were  
19 figured, it was not figured based just on Judnic  
20 and Steucher. When this list was completed, this  
21 is based on MDOT projects, not just Judnic and not  
22 just Mr. Steucher but MDOT RPF's.  
23 Q Do you anticipate being able in the future to  
24 identify specific projects that you were not  
25 awarded because of the allegations against

Page 217

1 Mr. Judnic?  
2 A I need to take a break. I have a question to my  
3 attorney in regards to that question.  
4 MR. WILLIAMS: No, if you can't answer  
5 it, just tell him you can't answer it.  
6 A I cannot answer that question at this time.  
7 MR. DITTENBER: You can take a break if  
8 you need a break but not to receive guidance on  
9 this question.  
10 A Oh, okay.  
11 Q Can I get your answer again?  
12 A Can you repeat the question?  
13 Q Yes. Will you be able in the future to identify  
14 specific projects from this list that you were not  
15 awarded because of the alleged actions of Defendant  
16 Judnic?  
17 MR. WILLIAMS: Objection, calls for a  
18 legal conclusion but to the extent you can answer,  
19 Ms. Foster.  
20 A Okay. I could look at projects that are attributed  
21 to the actions -- it is likely that I could  
22 attribute projects to the actions of Judnic,  
23 Steucher and MDOT because of the climate and the  
24 processes that are in place at MDOT.  
25 Q You've sued Mr. Judnic personally and I'm just

Page 218

1 trying to get an idea today of what damages you are  
2 seeking against him personally.  
3 MR. WILLIAMS: That's a  
4 mischaracterization of what is happening and that's  
5 a legal conclusion, but to the extent you can  
6 answer, Ms. Foster.  
7 Q I'm asking if you can identify projects that you  
8 did not receive with specific regard to Mr. Judnic.  
9 A Well, you stated previously in regards to a lawsuit  
10 with Mr. Judnic. The lawsuit that I filed has four  
11 parties on it. So if you're stating -- if your  
12 question is whether I can break out specifically of  
13 those four parties this percentage is this party,  
14 this percentage is this party, this percentage is  
15 this party, this percentage is the fourth party, is  
16 that your question?  
17 Q Yes.  
18 A Because the lawsuit has four parties in it, not  
19 just one. So are you asking what percentage would  
20 be attributable to Mr. Judnic, what percentage to  
21 Mr. Steucher, what percentage to MDOT and what  
22 percentage to the State, is that the question or is  
23 it more of an all or nothing, Judnic or none of the  
24 other parties? Because the lawsuit has four  
25 defendants.

Page 219

1 Q I'm only asking what you are seeking from  
2 Mr. Judnic.  
3 MR. WILLIAMS: Either you can break that  
4 out or you can't. I object because I think it  
5 calls for a legal conclusion, but to the extent you  
6 can break it out.  
7 A I cannot answer that question.  
8 Q Can you answer that question in regard to  
9 Mr. Steucher?  
10 A No. I would have to have a consultation based on  
11 that because when this was set, when the original  
12 lawsuit was filed, it's based on four defendants,  
13 not one.  
14 Q But two of those defendants have been dismissed.  
15 I'm asking about the remaining two individual  
16 defendants.  
17 A No, my understanding, two of the defendants have  
18 not been dismissed.  
19 MR. WILLIAMS: She is right. Two of the  
20 defendants are still -- there's still four  
21 defendants.  
22 MR. DITTENBER: There's two new  
23 defendants. I'm asking with regard to the two  
24 individual defendants we're talking about here  
25 today.



Page 220

1 MR. WILLIAMS: The problem is the two  
2 individual defendants are State actors under 1983.  
3 That's a legal issue. That's why she's struggling  
4 with it.  
5 Q (by Mr. Dittenber) Are there additional proposals  
6 that you've submitted that are not included on this  
7 list?  
8 A Let me see. What does this list go up to? I  
9 believe there was one additional one that we  
10 submitted on at the end of 2011 that was not  
11 selected. Seems like there was one update to this.  
12 I believe there was one for -- I believe MDOT  
13 called it statewide DBE services or something to  
14 that effect at the end of 2011 and I don't see that  
15 one on there. And I believe if memory serves me  
16 correct, the project manager was Terry Stepanski  
17 for MDOT.  
18 Q Do you recall who was selected for that contract?  
19 MR. WILLIAMS: If you know.  
20 A I don't remember the name of the company.  
21 Q And to the best of your recollection, that's the  
22 only additional proposal you've submitted as a  
23 prime consultant since September of 2011?  
24 A To the best of my recollection, yes.  
25 Q Do you plan on submitting any additional proposals

Page 221

1 to MDOT as a prime consultant?  
2 MR. WILLIAMS: Objection, calls for  
3 speculation.  
4 A At this point, to be quite honest, one of the  
5 concerns is I don't really have a lot of staff  
6 anymore because I was unable to obtain work. So I  
7 cannot say what proposals my company would be  
8 eligible to submit on because I have a very low  
9 staff right now. In addition to that, we lost some  
10 of our prequalifications due to lack of ability to  
11 obtain work.  
12 Q Is your company currently working as a prime  
13 consultant on any MDOT projects?  
14 A We have one project we're finishing that I think  
15 this year one person has billed maybe a hundred or  
16 200 hours, if that.  
17 Q And what contract --  
18 A It's closeout.  
19 Q What contract is that?  
20 A Ray Stewart is finishing up just the final from  
21 work we did primarily in 2010 a little bit, the  
22 summer work, I believe it was for Michigan Avenue,  
23 and I believe this year he's billed maybe between 1  
24 and 200 hours for the year. That's the only prime  
25 contract.

Page 222

1 Q Do you recall the MDOT contract number for that  
2 project?  
3 A No, I don't have that.  
4 MR. WILLIAMS: I think it's a 2007  
5 contract.  
6 Q Is it possibly the 2008-0064 with Tia Klein?  
7 A Yes, that's the only one.  
8 Q Do you have any active self-consulting contracts  
9 with prime consultants performing work for the  
10 Michigan Department of Transportation?  
11 A As of when?  
12 Q Today.  
13 A Yes, I have one that was an ongoing and -- with  
14 MDOT, one that was ongoing and there's one person  
15 working on it. Right now, I have one person  
16 working, so that's it.  
17 Q Who is the prime --  
18 A That's MDOT.  
19 Q Who was the prime consultant on that project?  
20 A That one, HNTB and that's the only person I have  
21 working right now, and that's a subcontract.  
22 Q Do you have any other subcontracts that you've  
23 performed services on since the first of this year,  
24 2012?  
25 A Not MDOT, no. Wait, that I performed work on?

Page 223

1 Q Your company.  
2 A No, not since the beginning of this year that are  
3 active, that were active by -- that we've actually  
4 billed to, no.  
5 MR. DITTENBER: Would you please mark  
6 this as 15?  
7 (Exhibit 15 was marked for  
8 identification).  
9 Q I have handed you a document that's been marked as  
10 Exhibit 15, Ms. Foster.  
11 A Mm-hmm (affirmative).  
12 Q Do you need a moment to review this document?  
13 A Let me see, which letter was this? Yes.  
14 Q Could you please identify this document?  
15 A This was a letter that I sent to Mr. Greg Johnson,  
16 who's the region engineer at this point, and the  
17 letter is dated May 4th, 2007.  
18 Q And you drafted this document?  
19 A Yes.  
20 Q If you could look at the second page of the  
21 document.  
22 A Yes.  
23 Q And starting at the very end of the second line and  
24 continuing to the third and fourth lines, "as we  
25 had been doing for the past nine years completing

1 projects at the Detroit TSC during a time when many  
 2 majority consultants were not willing to do work  
 3 within the City of Detroit." Did I read that  
 4 accurately?  
 5 A Okay.  
 6 Q What is your definition of the term majority  
 7 consultants?  
 8 A Majority consultants are as opposed to minority  
 9 consultants, majority owned meaning a company that  
 10 is not owned by a disadvantaged business enterprise  
 11 protected group, which would be female, African  
 12 American, Hispanic.  
 13 There's a qualification to become in  
 14 Michigan a disadvantaged business enterprise. So  
 15 it would be a company that particularly in this  
 16 case would be owned by a Caucasian person that is  
 17 not considered as a disadvantaged business  
 18 enterprise or a minority business enterprise. In  
 19 the State of Michigan, they recognize disadvantaged  
 20 enterprise as per Federal requirements because  
 21 there are no minority programs recognized by the  
 22 State of Michigan.  
 23 Q Were you referring to any specific consulting firms  
 24 in general when you were making that statement?  
 25 A Well, when -- at this time, there were companies

1 train people and keep obtaining work.  
 2 Q Can you provide examples of these firms that were  
 3 not previously willing to do work within the city  
 4 of Detroit?  
 5 A Ones that were coming over at this time? I know  
 6 Fishbeck, Thompson, Carr & Huber, they approached  
 7 me on one of their first contracts that was  
 8 actually out of the Taylor TSC and they prior to  
 9 that had done most of their work on the west side  
 10 of the state.  
 11 Q Any others?  
 12 A I believe one of the other ones -- I believe at the  
 13 time, Mannik & Smith because I'm thinking of firms  
 14 that contacted me to team with me and after they  
 15 got their foot in the door, I never really heard  
 16 from them again. But I believe Mannik & Smith was  
 17 also one that at the time they didn't have an  
 18 office in the City. I was contacted by Mannik &  
 19 Smith to team on a project, I think, that was  
 20 administered by the Economic Growth Group and they  
 21 got the work, I was a sub and a couple years later,  
 22 they ended up opening an office but they basically  
 23 moved on from there and did very well.  
 24 So those are two that I can think of  
 25 that did not do work in the City that I worked with

1 that I -- that were starting to do work in the city  
 2 of Detroit that in the past had never been on work  
 3 in the city of Detroit, didn't have a location in  
 4 the city of Detroit.  
 5 So that was the thought behind that,  
 6 that we were actively, you know, completing  
 7 projects in the city of Detroit, hiring city of  
 8 Detroit residents, attempting to train people and  
 9 at this time, what I believe one of my concerns  
 10 was, there were times when I put city of Detroit  
 11 residents in proposals and offered to MDOT to train  
 12 them at no cost for anywhere from one to three  
 13 months because I had very experienced staff  
 14 members.  
 15 And when I would submit proposals, I  
 16 believe it was -- I note the 2006 project and then  
 17 at least one other that we were not allowed to  
 18 train the people and it was the -- I remember one  
 19 African American gentleman and then in around 2008,  
 20 an African American female that we were not allowed  
 21 to train and I offered to train them at no charge.  
 22 So that was a frustration of mine that we were  
 23 actively working in the city of Detroit, running,  
 24 operating a business, attempting to hire city of  
 25 Detroit residents and to no avail in our efforts to

1 initially as a sub and -- and then actually, Mannik  
 2 & Smith and Fishbeck, Thompson, Carr & Huber, I  
 3 actually had them as a sub on major roles on  
 4 Detroit TSC work as a subconsultant when I was  
 5 getting work. So I was able to subcontract to them  
 6 in very significant roles but it was them and other  
 7 companies it was not reciprocated in some cases.  
 8 So those are two examples, to answer your question.  
 9 Q If you know, did Fishbeck begin submitting  
 10 proposals to serve as a prime consultant for work  
 11 at the Detroit TSC?  
 12 MR. WILLIAMS: Objection, lack of  
 13 foundation, but to the extent you know what  
 14 Fishbeck did.  
 15 A Did Fishbeck end up submitting proposals for City  
 16 of Detroit work for State of Michigan MDOT work?  
 17 Q Yes.  
 18 A I believe they did, yes.  
 19 Q In the Detroit area?  
 20 A Fishbeck?  
 21 Q Yes.  
 22 A I've seen them obtain work, so I'm assuming they  
 23 didn't get it as a sole source, I'm assuming they  
 24 submitted a proposal. That's an assumption but --  
 25 Q And again, if you know, did Mannik & Smith begin

Page 228

1 submitting proposals for MDOT?  
2 A At some point, I believe they did.  
3 MR. WILLIAMS: Just for the record,  
4 could you spell Mannik for the court reporter?  
5 A M-a-n-n-i-k & Smith, S-m-i-t-h Group.  
6 Q Is it fair to say that BBF was then competing  
7 against consulting firms that they were not  
8 previously competing against for projects within  
9 the city of Detroit?  
10 A At what point?  
11 Q From 2006 on?  
12 A I was always competing. I was never -- I could  
13 never think of an instance where I was the only  
14 company submitting a proposal, so I was always  
15 competing against someone.  
16 Q No, I understand that. I'm just asking about the  
17 statement in the letter that there was a time --  
18 you stated there was a time when many majority  
19 consultants were not willing to do work in the City  
20 of Detroit.  
21 A But in answer to your question in regards to  
22 competition, I don't remember one instance where my  
23 proposal was the only submittal. So I was always  
24 in competition with other consulting firms and  
25 typically other firms that were not minority owned.

Page 229

1 So to say that this statement is tied to that, I  
2 really couldn't say because I don't know who  
3 submits on every RPF.  
4 Q Do you recall when you teamed with Fishbeck for the  
5 first time?  
6 A When?  
7 Q Yes.  
8 A That would have been on the first project, at least  
9 they stated that was one of their first ones, and  
10 that would have been in the Taylor TSC but I don't  
11 remember the year. And there were two submittals.  
12 One of these submittals, I bid on and they  
13 teamed -- they were on my team and one they bid on  
14 and I was on their team.  
15 My understanding was that was their very  
16 first submittal for a project in the Metro region.  
17 That was in the Taylor TSC, and interestingly  
18 enough, even though I had been working at the time,  
19 I believe that may have been in the mid 2000s, so I  
20 believe I had been working, obtaining work for MDOT  
21 for probably maybe about four or five years, but  
22 interestingly enough, when we bid on that, they  
23 were the ones selected for me to be the sub to  
24 them. The one that I primed, we did not obtain.  
25 So even though they were somewhat new to this area

Page 230

1 as far as bidding on work, they were -- Fishbeck's  
2 team was selected with me as the sub.  
3 Q Do you recall what year or what time period that  
4 these majority consultants that did not previously  
5 bid for work in the city of Detroit began to  
6 compete with you for that business?  
7 A No, I don't. I don't know. Because I would have  
8 no idea of knowing when exactly they submitted on  
9 MDOT projects. And like I said, the only two I can  
10 think of were the Mannik & Smith and Fishbeck but I  
11 know -- I'm sure there were others that just  
12 started doing work because this area had work and  
13 maybe other areas that they were working on, they  
14 decided they wanted to start bidding on City of  
15 Detroit but it just -- there was a period where  
16 they were not bidding on work in the City.  
17 Q And you don't recall when that switch was, when  
18 those firms began to bid in the City of Detroit?  
19 A Bid on MDOT work?  
20 Q Yes.  
21 A Okay. I couldn't tell you an exact date of when  
22 they bid on MDOT work.  
23 Q I'm not asking for an exact date.  
24 A Well, I don't know -- I'm not in their companies,  
25 so I can't speculate on a year when they started

Page 231

1 bidding on MDOT work. I know around the time frame  
2 of this letter, it must have been occurring.  
3 Q Okay. Later on in the letter, you state that  
4 "large majority firms have chosen to limit their  
5 teaming to about five firms"; do you recall writing  
6 that?  
7 A At the time. This was occurring at the time. And  
8 typically, it may even be less than that.  
9 Q What firms do you consider large --  
10 A Wait, let me read that sentence.  
11 MR. WILLIAMS: Looks like it's the first  
12 full paragraph.  
13 MR. DITTENBER: First full paragraph,  
14 line three and four.  
15 Q Which firms do you consider large majority firms?  
16 A Oh, large majority firms, HNTB, Tetra Tech, URS,  
17 Parsons Brinckerhoff. I'm particularly thinking of  
18 companies that would bid on similar work that I  
19 would bid on. You're speaking of just professional  
20 services, not construction?  
21 Q Yes.  
22 A Okay. Mannik & Smith is fairly large but not as  
23 large -- they're regional. When I think -- the  
24 national firm HNTB is a large national firm.  
25 Parsons Brinckerhoff is a large national firm.

Page 232

1 Fishbeck is -- Fishbeck, Thompson, Carr & Huber is  
2 a large regional firm.  
3 Q And do you --  
4 A Wade Trim, they're fairly large. I think they do  
5 work in other states also. And they've been on my  
6 team for MDOT work.  
7 Q And which consultants were these large majority  
8 firms limiting their teaming with, if you recall?  
9 A You mean what companies?  
10 Q Yes.  
11 A Oh, I can't name -- I just know they were limiting  
12 their team. When I would contact them, they were  
13 always teaming with the same companies or the  
14 comment would be made -- I would call in many cases  
15 as soon as the RPF was posted and they would say  
16 they already had their team, and I would often  
17 wonder well, it was just posted, what information  
18 did you have that you already put your team  
19 together, and I remember comments that they would  
20 state that they've already had their team for six  
21 months. So you know, so teams, you know, they  
22 already had their teams. So typically they would  
23 have the same team on various projects and I would  
24 contact them and wouldn't be allowed to team, which  
25 it start looking like collusion.

Page 233

1 Q Are you alleging that Mr. Judnic had any influence  
2 over who the prime consultants are choosing to who  
3 to team with?  
4 A I'm sure he did. He had discussions with them. I  
5 mean he was close to a lot of the companies that  
6 did work for MDOT. He was close to a lot of the  
7 people that worked for them. You know, my  
8 understanding is they went to lunch a lot, they --  
9 you know, so he would meet with them. I mean I  
10 can't attest that he did that with me but, you  
11 know. So my understanding was that there were  
12 various primes, some of them that I just spoke of  
13 that he was, you know, very active with.  
14 Q Do you have any evidence that he directed a prime  
15 consultant to team with specific subconsultants?  
16 A Not a specific one but I remember occasions where  
17 it was stated to me that I really should have one  
18 of the large firms on my team and that's why if you  
19 look at my proposals, my MDOT proposals that I  
20 submitted, even though I had staff that could  
21 handle what was considered inspection services  
22 contracts at the time, there was always one of  
23 those other firms on the team with me and that was  
24 because Mr. Judnic stated to me, he would never put  
25 it in writing but he stated that, and so you'll see

Page 234

1 a contract where you'll see HNTB on my team, you'll  
2 see a contract where you'll see Fishbeck, Thompson,  
3 Carr & Huber on my team, you'll see a contract  
4 where there's URS on my team.  
5 Q When did Mr. Judnic make that statement?  
6 A When we were doing work at MDOT. I can't give you  
7 an exact date but it was on the telephone. And so  
8 you'll see that each contract that I have has one  
9 of the larger majority-owned firms or non-minority  
10 firms in a subcontract role even though I had staff  
11 that could handle that and I didn't need them  
12 necessarily, the majority firm for testing because  
13 I would typically have a testing company on there  
14 that handled that role, like a Somat Engineering.  
15 Q How many staff members does your company have  
16 currently?  
17 MR. WILLIAMS: That's been asked and  
18 answered.  
19 A Working? There's one person working on a project  
20 right now and then Ray Stewart, he's billed -- in  
21 the last couple months, he's billed zero hours. So  
22 one person I would consider actively, you know,  
23 full time billing as a staff person on an  
24 assignment.  
25 Q Do you recall how large your staff was at its

Page 235

1 largest?  
2 A At its largest, I believe between full -- I mean  
3 excuse me, full and part time staff, I think 17.  
4 Q And do you recall about when your staff was at that  
5 level?  
6 A I don't know what year. I know in 2008, it was  
7 like around 14, so I know at some point, the height  
8 of staff was probably around 17.  
9 Q Are you alleging that Mr. Steucher had any  
10 influence over who a prime consultant would choose  
11 to team with as a subconsultant?  
12 A I'm sure he did but I was never able to obtain work  
13 in Mr. Steucher's office.  
14 Q Do you have any evidence that he ever directed a  
15 prime consultant to contract with certain  
16 subconsultants?  
17 A I was never able to work with him, so there would  
18 be no way to obtain evidence if I've never obtained  
19 any work from him or any of his subordinates.  
20 Q Are you familiar with Bruce Bordner, B-o-r-d-n-e-r?  
21 A Right. Yes.  
22 Q Who is that?  
23 A He used to work for BBF Engineering Services.  
24 Q And do you recall his years of tenure with BBF?  
25 A Maybe around 1999 or 2000. I think he worked for

Page 236

1 four or five years. I can't remember the exact  
2 dates.  
3 Q Do you recall why he left?  
4 A Bruce Bordner basically retired from me and then I  
5 know his wife got ill.  
6 Q Do you recall approximately how many years of  
7 engineering experience Mr. Bordner had at the time  
8 of his retirement?  
9 A He had been with MDOT over 30 years, I believe.  
10 Q And he came to BBF after MDOT?  
11 A Yeah, he actually was retired for, I think, a  
12 couple years before he came to work for me.  
13 Q Did you replace Mr. Bordner, his position with  
14 another employee when he left?  
15 MR. WILLIAMS: I'm having trouble as to  
16 how this relates to damages.  
17 MR. DITTENBER: I'm asking questions  
18 about how her firm has been staffed over the  
19 years.  
20 MR. WILLIAMS: I don't see how this  
21 relates to damages, which is what the transcript  
22 says, pretty clear.  
23 MR. DITTENBER: Relates to the makeup of  
24 her firm and how competitive she was in the market.  
25 MR. WILLIAMS: You can answer.

Page 237

1 A What was the question?  
2 Q Did you replace -- did you fill Mr. Bordner's  
3 position with another employee after he left?  
4 MR. WILLIAMS: Objection, lack of  
5 foundation.  
6 A I don't --  
7 Q If you know.  
8 A I can't remember the exact date that Bruce Bordner  
9 left, so I know that he worked as an engineer, he  
10 had some assignments, he worked as an engineer and  
11 inspector. Actually, more so as an inspector. He  
12 didn't work as an engineer because Bruce was not  
13 licensed. He didn't have a PE license, so he could  
14 not work as a typical engineer. He worked more so  
15 on MDOT assignments as an inspector.  
16 So any person who came behind him, which  
17 other inspectors, you know, that had some level of  
18 experience would be able to function as inspectors  
19 but Bruce was just one of my inspectors that had an  
20 engineering degree that had experience as did, you  
21 know, some of my other ones. But there were other  
22 people that I hired after him that did have  
23 experience or were trained, you know. They may not  
24 have had 30 years but they may have had ten or 15  
25 years but I was still able to bid on work.

Page 238

1 Q What about Rick Covington, do you know that name?  
2 A Yes.  
3 Q And who is Mr. Covington?  
4 A He was an inspector that worked for me up until the  
5 time Mr. Judnic came, and Mr. Judnic never really  
6 hired him to do any work on any of the projects  
7 that we worked on under him. He worked from  
8 probably late 90's maybe through like 2002 or  
9 something like that.  
10 Q Do you recall if Mr. Covington had any engineering  
11 experience before he came to BBF?  
12 A He was not an engineer. Mr. Covington was an  
13 inspector, as I stated.  
14 Q Do you recall if he worked for MDOT before he came  
15 to BBF?  
16 A Yes.  
17 Q And if you recall, do you recall how many years he  
18 worked for MDOT approximately?  
19 A No. I know probably -- he retired, so...  
20 Q He retired from MDOT?  
21 A From my understanding, yes. What I remember, he  
22 was an MDOT retiree.  
23 Q Are you familiar with the name Charles Latimore?  
24 A Latimer.  
25 Q Latimer?

Page 239

1 A Yes.  
2 Q And who is Mr. Latimer?  
3 A He was an inspector.  
4 Q For BBF Engineering?  
5 A Yes.  
6 Q Do you recall how long he worked for BBF  
7 Engineering?  
8 A He worked with BBF -- I don't remember the year he  
9 started, probably early 2000's, 2001 or something  
10 to that effect, and he worked up until the point  
11 where they would not select him. He actually did  
12 the electrical, a lot of the electrical work on the  
13 Gateway Project and projects prior to that and I  
14 think he actually did a little bit of summer work,  
15 actually did a little bit of summer work in 2010  
16 supplementing staff for about maybe a month or two  
17 and that's about it. And he actually is employed  
18 with someone else now because I could not -- I did  
19 not have, you know, assignments to keep him  
20 working.  
21 Q Do you know if Mr. Latimer worked for MDOT before  
22 coming to BBF?  
23 A I don't remember him working for MDOT before BBF.  
24 He worked for some other company.  
25 Q Are you familiar with the name Willis Stewart?

Page 240

1 A Yes.  
2 Q And who is Willis Stewart?  
3 A He was an inspector.  
4 Q For BBF?  
5 A Yes.  
6 Q And do you recall what years he worked at BBF?  
7 A I don't remember exactly when he left. He started  
8 early 2000's. And I really have a question on how  
9 this relates to damages now. Why are you asking  
10 about all my people that worked during the tenure  
11 of my company and either retired -- and it's  
12 especially concerning because my understanding is  
13 that Mr. Judnic phoned someone and was asking about  
14 these people that had left my company.  
15 Q Ma'am, there's not a question on the table.  
16 A Yes, it is.  
17 Q No, I have not asked a question.  
18 A Well, I'm not going to answer any more questions  
19 unless you tell me how this relates to damages  
20 because I don't understand how all these people  
21 that I started my company with that worked and got  
22 the company to a certain point and we had great  
23 staff, how this relates to damages.  
24 Q Do you recall when Mr. Stewart left BBF?  
25 A No, I do not.

Page 241

1 Q Do you recall if he worked at MDOT prior to coming  
2 to BBF?  
3 A Yes, he did.  
4 Q Do you recall for about how many years?  
5 A No, I do not.  
6 Q Are you familiar with the name Al Hinchcliff?  
7 A Yes.  
8 Q And who is Al Hinchcliff?  
9 A He was an inspector.  
10 Q For BBF?  
11 A For a time period.  
12 Q Yes, he was for BBF?  
13 A Yes.  
14 Q Do you recall that time period?  
15 A No, I do not.  
16 Q Do you recall if Mr. Hinchcliff worked for MDOT  
17 prior to coming to BBF?  
18 A Yes, he did.  
19 Q Do you recall for how many years?  
20 A No, I do not.  
21 Q And correct me if I'm wrong but I believe you've  
22 testified earlier that -- and earlier, I mean in  
23 your first deposition, that Mr. Love Charles left  
24 your company in December, 2008?  
25 MR. WILLIAMS: Nope, that's not damages

Page 242

1 and we're not going to discuss that.  
2 MR. DITTENBER: It certainly is.  
3 MR. WILLIAMS: No, it isn't.  
4 MR. DITTENBER: The makeup of her  
5 company's changing and it's relevant to her --  
6 MR. WILLIAMS: No, her company was  
7 destroyed.  
8 MR. DITTENBER: That's your opinion.  
9 MR. WILLIAMS: No, that's a fact. And  
10 if she testified to it in her earlier deposition,  
11 it's been asked and answered, so I'm not going to  
12 let her answer it again.  
13 MR. DITTENBER: Okay.  
14 Q (by Mr. Dittenber) Do you recall approximately how  
15 many years of engineering experience Mr. Charles  
16 had when he left your company?  
17 A Mr. Charles was not an engineer.  
18 Q What was he?  
19 A He was a DBE technician, he provided inspection  
20 services and DBE services and he also was able to  
21 provide inspection services and technical  
22 services.  
23 Q Do you recall how many years of experience he had  
24 in that field?  
25 A At least 30.

Page 243

1 Q Is it possible that the employees we just  
2 discussed, that their departure from your company  
3 had an effect on your company's success in  
4 obtaining contracts?  
5 A No, because I brought on other people. I had other  
6 engineers that I brought on in later years to  
7 replace them and they had to leave because I was  
8 not able to obtain work during the years in  
9 question.  
10 Q Who did you bring on?  
11 A There was a gentleman named Daniel Sperber that  
12 actually had an engineering degree. I couldn't  
13 keep him working. And there was another gentleman  
14 that had an engineering degree in the last, I would  
15 say, two to three years that was -- I can't recall  
16 his name but he had an engineering degree, civil  
17 engineer, they were both civil engineers.  
18 Q Do you recall how many --  
19 A Prior to them, I had other technicians that I had  
20 supplemented that were trained by these gentlemen,  
21 many of them that were experienced gentlemen that  
22 you had spoken about. There were other ones that  
23 you did not speak about that were very experienced  
24 MDOT technicians and inspectors that assisted me in  
25 training other people or would have had I been able

Page 244

1 to bring them on board, and like I stated, I  
2 offered on at least two to three occasions to bring  
3 people on board and request that they be trained  
4 and would not even bill MDOT and I was not allowed  
5 to do this.  
6 So there were others, those two, Daniel  
7 Sperber and there was one other gentleman that  
8 actually did work for BBF as engineers but I could  
9 not hire them, keep them working due to lack of  
10 work.  
11 Q Do you recall the names of any inspectors that you  
12 brought on that you just mentioned?  
13 A Other inspectors?  
14 Q Yes.  
15 A That did some work for some period of time?  
16 Q Yes.  
17 A Let me see. Inspectors -- you mentioned Charles  
18 Latimer because Charles Latimer worked for me and  
19 he was still calling me up until -- I couldn't find  
20 work for him. Let me think. Let me think of all  
21 the staff's names. Let me think about that, the  
22 other inspectors.  
23 Q Do you recall how many years of engineering  
24 experience Mr. Sperber had when he joined your  
25 company?

Page 245

1 A No, I do not.  
2 Q Do you recall of the other gentlemen you hired as  
3 an engineer?  
4 A They both had at least like two to three years.  
5 They had both been out of school.  
6 Q If you recall, did Mr. Sperber work for MDOT before  
7 coming to BBF?  
8 A No, he did not.  
9 Q If you recall, did the other gentleman work for  
10 MDOT before coming to BBF?  
11 A No, he did not. Oh, Regan Jeeter worked for me for  
12 a little while.  
13 Q As an engineer or as an inspector?  
14 A She was a technician inspector. J-e-e-t-e-r.  
15 Q Is that a male or female?  
16 A Female.  
17 Q Do you recall --  
18 A And I attempted to hire -- her name was Mary Jo or  
19 Mary Lou. She actually was the former wife of one  
20 of the MDOT engineers and she had an engineering  
21 degree and I was unable to hire her due to lack of  
22 work. Teale, her last name was Teale but I don't  
23 know what she uses now.  
24 Q Do you recall how many years of technician  
25 experience Ms. Jeeter had when she joined your

Page 246

1 company?  
2 A Oh, she had been a technician -- she actually had  
3 done work -- did you ask me -- she actually had  
4 done work for MDOT as a seasonal, so she had a few  
5 years, and then --  
6 Q Did you say a few years?  
7 A Yes.  
8 Q Two or three maybe?  
9 A I don't know, I think it was more than that. She  
10 had been working for MDOT as a seasonal.  
11 Q What about Ms. Teale, what --  
12 A She actually was an engineer.  
13 Q She was an engineer?  
14 A And I don't remember her background or how many  
15 years she had but she was -- she had been -- you  
16 know, had her degree at least ten years.  
17 Q And you stated you never actually hired Ms. Teale?  
18 A I was unable to because of lack of work. But she  
19 was prepared to come on board with BBF Engineering  
20 Services.  
21 Q Can you recall any other inspectors or technicians  
22 at this time?  
23 A I could look it up and get back with you but I  
24 don't -- there were others.  
25 MR. DITTENBER: If I could just take a

Page 247

1 quick break to see if I have any final questions.  
2 Off the record, please.  
3 (A break was taken at 11:43 a.m.).  
4 ---  
5 (Deposition resumed at 11:48 a.m.).  
6 Q Back on the record. Ms. Foster, I'm not looking  
7 for exact numbers here.  
8 A Okay, I have additional people.  
9 Q Oh, you did come up with some additional people?  
10 A Mm-hmm (affirmative). Yeah. That worked with BBF?  
11 Q Yes.  
12 A Through the years? Greg Vigilar, he was actually  
13 an engineer, he had a Ph.D.; Hunter Hinchcliff, he  
14 had a degree, I believe, in math and after I  
15 trained him, he actually was hired away from me by  
16 MDOT; Chad Godbout, he had a technician -- he was a  
17 technician for BBF, he was hired away from BBF by  
18 Fishbeck; Clarence Wilson was a technician; Hubert  
19 Barnes was a technician; Ray Stewart is a  
20 technician; and then there was a gentleman that  
21 worked one or two seasons for me in the early  
22 years, his first name's Andy and I can't remember  
23 his last name but he's deceased now; and then there  
24 were three technical people that provided services  
25 and they worked with me and they worked on City --

Page 248

1 a lot of their work was with the Detroit DOT. So  
 2 that's ten.  
 3 Q Do you recall when Mr. Vigilar left your company?  
 4 A I don't recall the exact year. It's been about  
 5 three years ago, I think.  
 6 Q What about Mr. Hinchcliff, Hunter Hinchcliff?  
 7 A I can't remember the year MDOT hired him away.  
 8 Q What about Mr. Godbout?  
 9 A Godbout, G-o-d-b-o-u-t? I think he went -- seems  
 10 like it was maybe 2009 or '10. He went to  
 11 Fishbeck, Thompson, Carr & Huber.  
 12 Q And Mr. Wilson?  
 13 A Maybe 2003, something like that, 2 or 3.  
 14 Q Do you recall where he went?  
 15 A No.  
 16 Q Mr. Barnes?  
 17 A I can't remember the year he left BBF but it was  
 18 after Mr. Wilson, I believe. And Ray Stewart but  
 19 he doesn't have any work. Then the three City DOT  
 20 ones, they end up leaving working for someone else,  
 21 too.  
 22 Q Do you remember what companies they went to?  
 23 A No, I don't.  
 24 Q I just have a couple questions going back to  
 25 Exhibit 13 and then I'll be done. This document

Page 249

1 discussed your loss of work profit opportunities  
 2 from fiscal year 2006 to 2009. Do you recall your  
 3 company's gross revenue in fiscal year 2005?  
 4 A No, I don't know the exact number.  
 5 Q I'm not asking for an exact number; if you have an  
 6 estimate?  
 7 A I'm sure it was over a million dollars gross  
 8 revenue. I believe it's between one and two  
 9 million.  
 10 Q And do you recall your profit for that year?  
 11 A No, I don't know the amount.  
 12 Q Are you able to provide an estimate?  
 13 A No, I won't provide an estimate. I don't know what  
 14 the exact profit number was.  
 15 Q What about fiscal year 2004, do you recall an  
 16 estimate of your gross revenue then?  
 17 A I believe it was between one and two million in  
 18 '04. I'm not sure if we were at a million dollars  
 19 in '04. '04?  
 20 Q Yes.  
 21 A Okay, I thought the first question was -- was that  
 22 '06? What was your first --  
 23 MR. WILLIAMS: '05.  
 24 MR. DITTENBER: The first question was  
 25 '05.

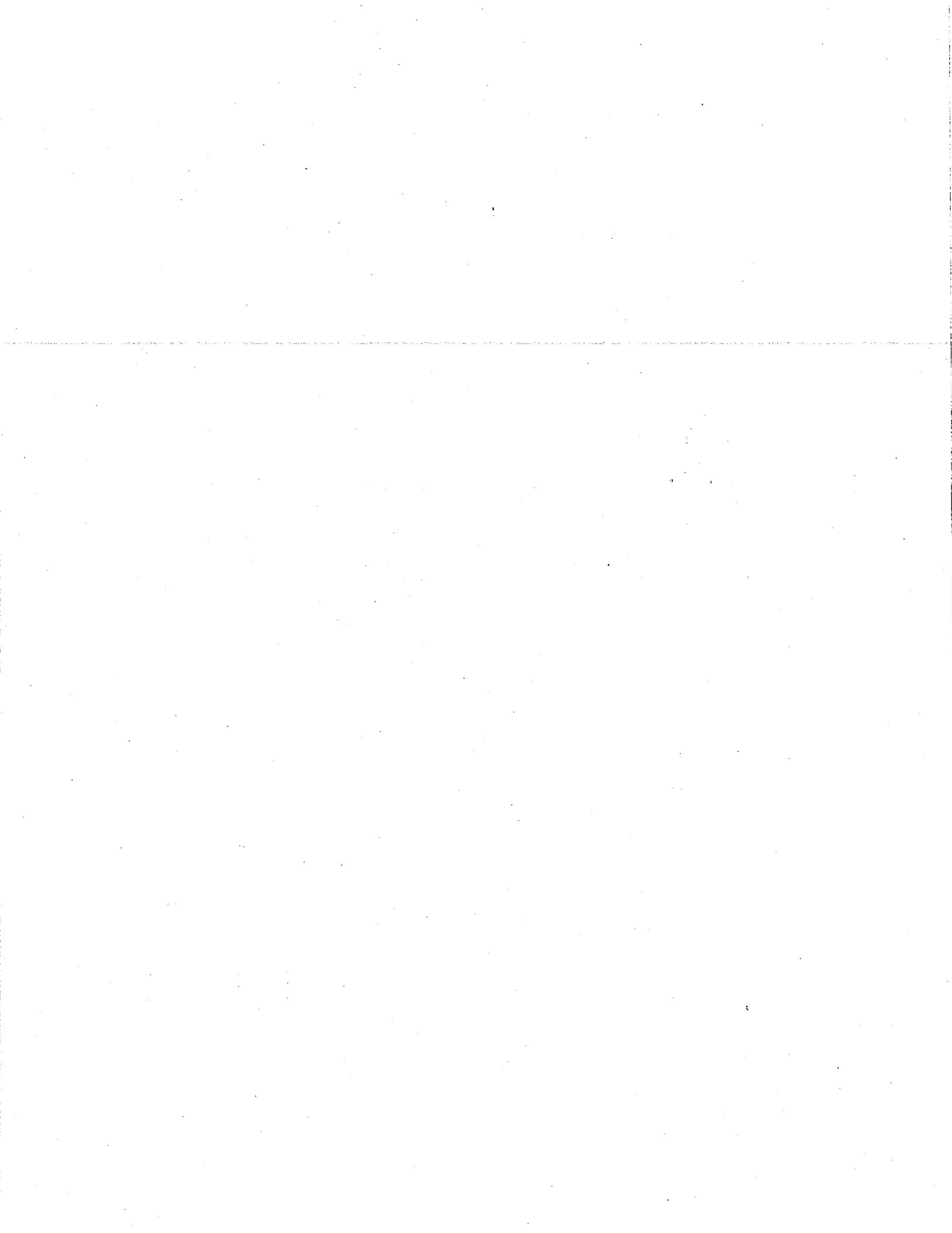
Page 250

1 A Okay, yeah.  
 2 Q Is your answer accurate to '05 then?  
 3 A I think it was between one and two million but I  
 4 can't remember. My accountant would have the  
 5 numbers. I don't keep all those numbers in my  
 6 head.  
 7 Q I was just asking you to provide a rough estimate.  
 8 Is your answer to '04 accurate then, between one  
 9 and two million?  
 10 A I believe we were at a million dollars.  
 11 Q And are you able to estimate your profits that  
 12 year?  
 13 A For '04?  
 14 Q Yes.  
 15 A No.  
 16 Q And I know this is taking you back a ways but what  
 17 about '03, do you recall your gross?  
 18 A No, I don't remember.  
 19 MR. DITTENBER: I have no further  
 20 questions for you, Ms. Foster.  
 21 MR. WILLIAMS: I don't have any  
 22 questions for you, Ms. Foster.  
 23 MR. DITTENBER: We're off the record.  
 24 ---  
 25 (Deposition was concluded at 11:54 a.m.).

Page 251

1 STATE OF MICHIGAN }  
 2 COUNTY OF OAKLAND } SS.  
 3 CERTIFICATE OF NOTARY PUBLIC  
 4 I, Robin V. Darnbrook,  
 5 Certified Shorthand Reporter, Notary Public,  
 6 Oakland County, Michigan, certify the witness  
 7 whose deposition was taken before me on  
 8 November 9, 2012 was by me cautioned and  
 9 sworn to testify the truth, that the testimony  
 10 contained in the deposition was recorded by means  
 11 of stenography, was reduced to a typewritten form  
 12 and is a true and correct transcript.  
 13 I further certify I am not  
 14 connected by blood or marriage to any of the  
 15 parties, their agents or attorneys; that I am  
 16 not an employee of any of them, nor interested  
 17 directly or indirectly in the matter in  
 18 controversy.  
 19 IN WITNESS WHEREOF, I have  
 20 hereunto set my hand and affixed my notarial  
 21 seal in the County of Oakland, State of  
 22 Michigan, this 10th day of Nov., 2012.  
 23  
 24 ROBIN V. DARNBROOK - CSR2508  
 25 Notary Public, Oakland County, MI  
 My Commission Expires 11/19/2018





1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 BBF ENGINEERING SERVICES, P.C.)  
5 a Michigan Corporation, and )  
6 BELLANDRA FOSTER, an )  
7 individual, )  
8 Plaintiffs, )

9 -vs-

10 STATE OF MICHIGAN, a Michigan )  
11 Public Corporation, MICHIGAN )  
12 DEPARTMENT of TRANSPORTATION, )  
13 a Department of the State of )  
14 Michigan, VICTOR JUDNIC, and )  
15 MARK STEUCHER, )  
16 Defendants. )

) File No.  
) 11-14853-CV  
) JUDGE EDMUNDS

COPY

17 D E P O S I T I O N

18 of BELLANDRA FOSTER, a Plaintiff called by Defendants,  
19 taken before Melinda S. Nardone, Certified Shorthand  
20 Reporter and Notary Public, at 535 Griswold, Suite 1000,  
21 Detroit, Michigan, on Friday, August 24, 2012, noticed  
22 for the hour of 1:00 p.m.

23 HECKAMAN & NARDONE, INC.  
24 Certified Shorthand Reporters  
25 P.O. Box 27603  
Lansing, Michigan 48909  
(517) 349-0847  
Fax: (517) 244-0805  
msnardone5@gmail.com

RECEIVED

SEP 11 2012

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

1 APPEARANCES:  
 2 WILLIAMS ACOSTA, PLLC  
 3 535 Griswold Street, Suite 1000  
 4 Detroit, Michigan 48226-3692  
 5 By  
 6 AVERY K. WILLIAMS, J.D.  
 7  
 8 On behalf of Plaintiffs.  
 9  
 10 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL  
 11 Transportation Division  
 12 425 West Ottawa Street  
 13 4th Floor  
 14 Lansing, Michigan 48909  
 15 By  
 16 MICHAEL J. DITTENBER, J.D. and  
 17 MICHAEL J. REILLY, J.D.  
 18  
 19 On behalf of Defendants.  
 20  
 21 Also present: Victor Judnic  
 22 Mark Steucher  
 23  
 24  
 25

1 Detroit, Michigan  
 2 Friday, August 24, 2012  
 3 1:00 p.m.  
 4 R E C O R D  
 5 BELLANDRA FOSTER,  
 6 having been first duly sworn, testified as follows:  
 7 EXAMINATION  
 8 BY MR. DITTENBER:  
 9 Q. Good afternoon, Ms. Foster.  
 10 A. Hello.  
 11 Q. My name is Mike Dittenber, I'm an Assistant  
 12 Attorney General for the State of Michigan. To the  
 13 right is Mick Reilly, also an Assistant Attorney  
 14 General. And also with us are Victor Judnic and Mark  
 15 Steucher, who are parties to this matter. For the  
 16 record, this is the time and place for taking the  
 17 deposition of Bellandra Foster.  
 18 Ms. Foster, have you ever had your  
 19 deposition taken before.  
 20 A. No.  
 21 Q. Okay. What I'm going to do is ask you a series  
 22 of questions. If you don't understand a question or  
 23 would like me to repeat a question feel free to ask me,  
 24 okay?  
 25 A. Yes.

1 3

2 EXAMINATION INDEX

3 ATTORNEY'S NAME EXAMINATION RE-EXAMINATION

4 BY MR. DITTENBER: 4

5 BY MR. WILLIAMS:

6 \* \* \*

7

8 INDEX OF EXHIBITS

9 EXHIBIT	MARKED
10 Ex #1 Review team action sheet	34
11 Ex #2 9-22-09 Score sheet	68
12 Ex #3 4-8-09 Performance evaluation	74
13 Ex #4 7-18-08 Meeting minutes	83
14 Ex #5 5-18-10 Performance evaluation	104
15 Ex #6 9-22-08 Consultant evaluation	106
16 Ex #7 6-15-10 Foster to Kratofil letter	111
17 Ex #8 7-11-10 Foster to Judnic e-mail	112
18 Ex #9 Scope of services	131
19 Ex #10 Scope of services	140
20 Ex #11 5-13-09 Score sheet	149
21 Ex #12 7-27-10 Discrimination complaint	156
22 Ex #13 Report of Inquiry	171
23 * * *	
24	
25	

1 5

2 Q. If I ask a question that requires a yes or no  
 3 answer, please give a verbal response. The court  
 4 reporter will be taking down all your answers, she can't  
 5 write down a head shake or an uh-huh; do you understand  
 6 that?  
 7 A. Yes.  
 8 Q. And if at any time you need a break, just please  
 9 let me know.  
 10 A. Okay.  
 11 Q. Could you state your full name for the record?  
 12 A. **Bellandra Benefield Foster.**  
 13 Q. And what's your date of birth, Ms. Foster?  
 14 A. **██████████, 1961.**  
 15 Q. And what is your current occupation?  
 16 A. **Engineer.**  
 17 Q. For what company?  
 18 A. **BBF Engineering Services.**  
 19 Q. And what is your position with BBF Engineering  
 20 Services?  
 21 A. **President and principal engineer.**  
 22 Q. Could you just briefly describe your educational  
 23 background?  
 24 A. **My undergraduate degree is from Michigan State**  
 25 **University. Master's degree from Wayne State**  
**University. Doctorate in civil engineering from**

1 Michigan State University. Certified in Intelligent  
2 transportation systems from the University of Michigan.

3 Q. And what were the years of those degrees and  
4 certifications?

5 A. Undergraduate degree, Michigan State University,  
6 obtained 1983. Master's degree, civil engineering,  
7 Wayne State University, obtained in 1989. Ph.D. in  
8 civil engineering, Michigan State University, obtained  
9 in 1999. And the certification in transportation  
10 systems, that's what they call it, transportation  
11 systems, that was 1992, I believe, from the University  
12 of Michigan.

13 Q. And could you briefly describe your work  
14 experience, just your engineering work?

15 A. Starting when?

16 Q. After you graduated from college.

17 A. I graduated from college, I was a structural  
18 engineer, worked for Bechtel Power Corporation. After  
19 that I worked with what was called at that time the  
20 Oakland County Road Commission, now called the Road  
21 Commission of Oakland County.

22 Left there, worked for the Michigan  
23 Department of Transportation. After that position I was  
24 selected -- appointed as the director of highways and  
25 streets for the City of Atlanta, Georgia, appointed by

1 Oakland, Macomb, and St. Clair County. And I was in  
2 that position until I left MDOT.

3 Q. Did you have any contact with Victor Judnic when  
4 you worked as an MDOT employee?

5 A. He was not an MDOT employee at that time.

6 Q. Did you have any contact with Mark Steucher while  
7 you were an employee of MDOT?

8 A. I knew Mark, yes, so we would have -- just by  
9 being both employees of MDOT. When you say contact, I'm  
10 not sure what you're referring to when you say contact.  
11 Clarify that, please.

12 Q. You said you knew who he was?

13 A. Uh-huh.

14 Q. Did you ever --

15 MR. WILLIAMS: You have to answer yes or no.

16 THE WITNESS: Yes.

17 BY MR. DITTENBER:

18 Q. Did you ever work directly with Mark?

19 A. I don't believe we worked directly -- I don't  
20 recall working directly with him in the same office.  
21 When I was in construction we may have been in the same  
22 office, but I don't remember if he was in that office or  
23 not.

24 Q. Which MDOT office were you based in?

25 A. When I was in construction I worked -- I know I

7

9

1 Mayor Maynard Jackson. Quit that position, came back to  
2 Michigan, worked for Hubbell, Roth, and Clark as an  
3 engineer. Started my Ph.D., went -- I worked for  
4 Hubbell, Roth and Clark between 1993 and '96, I believe  
5 it was.

6 I started BBF Engineering Services, obtained  
7 the name in 1994, started doing active projects in 1997,  
8 and have been working with BBF Engineering Services  
9 after it was incorporated since 1997.

10 Q. And you indicated you worked for the Michigan  
11 Department of Transportation?

12 A. Yes.

13 Q. Which years did you work for MDOT?

14 A. That was from '85 to '92 roughly.

15 Q. And what was your position --

16 A. Around seven years, seven and a half years.

17 Q. What was your position with MDOT?

18 A. Various positions. I started out as an  
19 engineering trainee. I worked in construction, traffic  
20 and safety. Let's see, I was assistant design engineer,  
21 as I was in the region office in Southfield. And I  
22 obtained my license as a professional engineer in 1987.

23 And upon -- and after that I interviewed and was  
24 selected for the position of utilities permits engineer  
25 for the metro region, which covered at the time Wayne,

1 worked for Dick Cluk for a while. I was on the I-696  
2 project, as were a lot of people that was in  
3 construction.

4 Q. Okay. And you left MDOT to take the position  
5 with the City of Atlanta?

6 A. I was appointed, right, director of highways and  
7 streets.

8 Q. With BBF Engineering --

9 A. Services.

10 Q. BBF Engineering Services, do you have any  
11 licenses to operate the business?

12 A. I'm a licensed professional engineer.

13 Q. Does BBF Engineering Services currently conduct  
14 work with MDOT?

15 A. We have -- well, yes.

16 Q. Are you currently prequalified with MDOT?

17 A. Yes.

18 Q. What is the nature of that prequalification?

19 A. Clarify the question, please.

20 Q. What services are you prequalified to perform?  
21 A. I don't have a list of all of them. It's less  
22 than it was before, significantly less, but we are  
23 prequalified in some areas.

24 Q. And what services does BBF Engineering Services  
25 provide to MDOT?

1 A. Well, right now the -- we have one subcontract  
2 and the services are primarily just project  
3 administration is what the person is doing.

4 Q. Let me ask that a different way. What services  
5 does your company offer to its clients?

6 A. You mean --

7 Q. Can you just tell me a little about the nature of  
8 your company?

9 A. So are you asking what service we offer to any  
10 client at the present time or what service we offered to  
11 MDOT in the past? Can you clarify that?

12 Q. Yes. Just a description of your company and what  
13 it does.

14 A. Now?

15 Q. Sure.

16 A. Now, in the present day. Okay, now the only  
17 services we're providing right now that we're able to  
18 provide are really I have one inspector, one person that  
19 would regularly do inspection, so the services  
20 that -- it's very distracting if they are over there  
21 talking, I'm just saying.

22 MR. REILLY: Well, they are here to observe  
23 a little bit, I guess.

24 THE WITNESS: Is that protocol where -- I  
25 don't understand the protocol of this. I mean, are

1 A. In the past. Construction administration,  
2 project management, project administration, inspection,  
3 testing oversight, utility coordination, those are  
4 things we were prequalified to do. Construction  
5 engineering, civil engineering, those things that fall  
6 under the gamut of civil engineering that I would have  
7 been able to do also.

8 Q. How many employees does your company currently  
9 have?

10 A. There's a staff of three working, a combination  
11 of employees and independent contractors. So there's  
12 three people working right now, one person that  
13 basically puts in last time was like four hours in a  
14 month.

15 Q. Where is BBF Engineering Services office located?

16 A. 719 Griswold Street, Suite 820, Detroit,  
17 Michigan, 48226.

18 Q. Is that your only office?

19 A. Yes. Currently it's my only office now.

20 Q. Did you have another office in the past?

21 A. We had other offices in the past that are now  
22 closed.

23 Q. Where were those located?

24 A. The one office was -- I had an office in Chicago,  
25 it was located on LaSalle Street, it was in an office

11

13

1 there side bars that are going to be going on or is this  
2 going to be between me and you where they are just  
3 observing? If you're saying they are observing, they  
4 are observing. If they are not going to be observing  
5 when they are talking --

6 MR. REILLY: Well, if they are distracting  
7 you we can take a break, but they do have a right to  
8 write things down and communicate with us and make  
9 sure that --

10 THE WITNESS: Communicate with us or with  
11 each other?

12 MR. REILLY: With us.

13 THE WITNESS: Okay, that's fine, as long as  
14 it's with you two. Can you repeat the question, please?

15 BY MR. DITTENBER:

16 Q. I was asking what services your company offers.

17 A. Currently?

18 Q. Yes, that was the question you were answering was  
19 currently.

20 A. Currently we're able to provide -- we have one  
21 person doing project administration, one person finaling  
22 out a project, and one person that's finishing out an  
23 inspection, but that's not for MDOT.

24 Q. Okay. What services has your company offered in  
25 the past?

1 suite. And an office in Southfield on Northwestern  
2 Highway, that one closed. And the home office.

3 Q. What clients are you currently performing work  
4 for?

5 A. City of Detroit, and we have one small thing with  
6 MDOT still. Those are the two clients that we currently  
7 have some work -- oh, wait, no, the City of Detroit,  
8 that's not a prime contract, so it would be HNTB is the  
9 prime, and actually -- actually we don't have any prime  
10 contract, so both of them were HNTB -- oh, no, the one,  
11 I'm sorry, the HNTB is the one, then the one that's  
12 being finalized out that's four hours a month, that is  
13 under MDOT, so that one is being closed out now. So the  
14 two would be HNTB and MDOT.

15 Q. What other clients have you performed work for in  
16 the past?

17 A. Going back how far? A couple years, eight years?

18 Q. The last ten years.

19 A. The client list we perform work for, we've worked  
20 with -- now, are these companies that we've been subs to  
21 or ones that have been subs to us or worked with or are  
22 you asking ones that where they were the prime and we  
23 worked for them? Can you state that again?

24 Q. Sure. Who has BBF performed work for in the past  
25 ten years, and I'm referring --

1 A. Who has BBF worked for?  
 2 Q. Correct.  
 3 A. Okay, as a sub. In the past ten years.  
 4 Fishbeck, Thompson, Carr & Huber, HNTB, URS, Wade Trim.  
 5 No matter what the amount of work, right?  
 6 Q. Correct.  
 7 A. Okay. I'm missing some. Trans Systems,  
 8 Corradino Group. If I'm going back ten years it's going  
 9 to take me a few minutes.  
 10 Q. That's okay if you don't list them all. Those  
 11 are all companies that you performed work as a sub  
 12 consultant to?  
 13 A. Right.  
 14 Q. What about prime contracts or direct contracts?  
 15 A. That I've obtained?  
 16 Q. (Nodding head up and down.)  
 17 A. MDOT. Oh, I forgot on the other list, at Parsons  
 18 Brinckerhoff, I think we did a little work for them.  
 19 I'm trying to think if I had the City of Detroit. Let's  
 20 come back to that one because I know there's some prime  
 21 contracts we had but I'll have to think about that to  
 22 remember who they were.  
 23 Q. That's fine. Is it fair to say you performed  
 24 prime contracts with entities other than MDOT?  
 25 A. Yes.

1 MR. WILLIAMS: I don't know that you've seen  
 2 it before.  
 3 BY MR. DITTENBER:  
 4 Q. If you want to see it at all during this please  
 5 ask me and I'll pass it to you.  
 6 A. Who does that, you or him?  
 7 MR. WILLIAMS: I did.  
 8 THE WITNESS: You do.  
 9 BY MR. DITTENBER:  
 10 Q. Your attorney prepared this. Okay. When did you  
 11 first meet Victor Judnic?  
 12 A. I believe 2003.  
 13 Q. And in what capacity have you known Victor  
 14 Judnic?  
 15 A. As an engineer with MDOT.  
 16 Q. Where did he work?  
 17 A. MDOT.  
 18 Q. Did he work in Detroit?  
 19 A. Yes.  
 20 Q. Do you know his title with MDOT?  
 21 A. When he started?  
 22 Q. When you interacted with him?  
 23 A. I don't know if they called it delivery -- I  
 24 don't know when they changed it to delivery engineer or  
 25 he was -- I know at one time they called them project

15

17

1 Q. Do you have an estimate of how many prime  
 2 contracts you've had with MDOT since the inception of  
 3 your business?  
 4 A. I don't know what that exact number is and I  
 5 don't want to just throw a number out there because when  
 6 we started the first prime contract would have been '97,  
 7 '98, so that's going back a long way to try to remember  
 8 an exact number.  
 9 Q. I'm going to ask you a series of questions about  
 10 Victor Judnic, who you've named as a defendant in this  
 11 case. And I'm going to be referencing the document, the  
 12 first amended complaint that was filed as an exhibit to  
 13 the motion for reconsideration. Do you understand which  
 14 document I'm referring to?  
 15 A. I believe that's the sec- -- the last opinion we  
 16 received?  
 17 MR. WILLIAMS: No, he's talking about the  
 18 amended complaint that was attached to it.  
 19 THE WITNESS: Okay.  
 20 BY MR. DITTENBER:  
 21 Q. I know this hasn't been filed yet but do you  
 22 understand if I reference to this document?  
 23 THE WITNESS: Have I seen that?  
 24 MR. WILLIAMS: I don't know.  
 25 THE WITNESS: I don't think I've seen that.

1 engineer, project manager, that nature.  
 2 Q. Has Mr. Judnic served as the project engineer or  
 3 project manager for contracts with BBF Engineering  
 4 Services?  
 5 A. Yes.  
 6 Q. Do you recall about how many he served in that  
 7 capacity as?  
 8 A. I don't know exactly how many. I know at least  
 9 two.  
 10 Q. Do you recall him serving as the project  
 11 manager --  
 12 A. Now, are you speaking when I was a prime; is this  
 13 merely as a prime?  
 14 Q. That's correct, as a prime.  
 15 A. I know at least two.  
 16 Q. Do you recall a contract for work in 2004 at the  
 17 Detroit TSC where defendant Judnic served as a project  
 18 manager?  
 19 A. Well, no, I don't recall, no.  
 20 Q. Do you recall if --  
 21 A. In 2004?  
 22 Q. That's correct.  
 23 A. A project -- a contract that we did?  
 24 Q. Yes, a project that BBF was the prime consultant  
 25 on.

1 A. I don't recall that contract that we primed in  
2 2004. I don't recall that because I don't think that  
3 was the subject of that document.

4 Q. No, it's not, I'm just --

5 A. Oh, okay. I don't recall a contract in 2004.

6 Q. Do you recall having Mr. Judnic as your project  
7 man- -- as BBF Engineering's project manager before 2006  
8 on any projects?

9 A. Well, I'm not sure because Cedric Dargin was  
10 project engineer on a lot of our contracts early on. So  
11 I don't know when they would have crossed over and made  
12 that distinguishing whether it was Cedric Dargin or  
13 Victor Judnic. So I don't know exactly when they  
14 switched -- they crossed that. I know Victor started  
15 around 2003, and we were working on contracts then, but  
16 I don't know when they crossed and I don't remember the  
17 year that they would have crossed and it wouldn't have  
18 been Cedric and it would have been Victor.

19 Q. Do you recall working with Mr. Judnic before  
20 2006?

21 A. As just working him being in the office?

22 Q. Yes.

23 A. Uh-huh, yes.

24 Q. Did you have any problems with Mr. Judnic before  
25 2006?

1 things occurring, information I received from MDOT  
2 staffers that led me to believe that my company was  
3 being treated differently, was being discriminated  
4 against.

5 Q. Who were those MDOT staffers?

6 A. That I received information?

7 Q. Yes.

8 A. Okay, the three sets of information I received  
9 were -- and are you just talking about Judnic or are you  
10 talking about in general discrimination?

11 Q. I'm talking about Mr. Judnic right now.

12 A. Okay. The one aspect was -- well, in that case  
13 because when I talk about the three there were three key  
14 things that happened, three key pieces of information  
15 that I received that made me realize that there is  
16 something to this that, you know, here I have people  
17 from the inside letting me know that there's something  
18 going on. And one was the comment that what was told to  
19 me by Victor Judnic's secretary that was reiterated to  
20 me in 2010 where it was stated that he said either no  
21 woman or no black woman should be making that kind of  
22 money.

23 The other was -- one of them is related to  
24 Mark Steucher. The other one was an e-mail that I  
25 received from an MDOT manager in Lansing stating that I

19

21

1 A. Problems, what do you mean by that?

2 MR. WILLIAMS: Yes.

3 THE WITNESS: What do you mean by problems?

4 BY MR. DITTENBER:

5 Q. What was your working relationship like with  
6 Mr. Judnic prior to 2006?

7 A. He was a -- if he was project engineer or  
8 whatever, whoever we were told to work with, that's who  
9 we worked with.

10 Q. In your complaint you allege that Mr. Judnic has  
11 discriminated against you and your company based on your  
12 gender. What are you alleging that Mr. Judnic did to  
13 discriminate against you on that basis?

14 A. In what context are you speaking? I mean, what  
15 do you want me to embellish on in that? Are you asking  
16 me why I think he discriminated against me based on race  
17 and gender or why -- I mean, repeat the question and  
18 rephrase it in a way that I can understand what you're  
19 asking me to respond to.

20 Q. I'm asking you what acts did Mr. Judnic take to  
21 discriminate against you based on your gender?

22 A. Okay. One of the aspects was the cutting of the  
23 contracts, which the one contract being cut, later  
24 contract that was -- the attempt was to be cut and later  
25 finding out in 2010, being verified, three different

1 see what's been going on, the issues and concerns with  
2 you, with your company and your staff, and you may want  
3 to consider looking in to this, and it was details about  
4 Title VI and who to contact with the Federal Highway  
5 Administration to give -- and the person stated you can  
6 either contact me or Mary Finch with the Federal Highway  
7 Administration.

8 And so that between -- those two things  
9 related to Victor Judnic were the two things that kind  
10 of pulled things together and I thought, you know --  
11 because I had received an award in 2008, you know, so  
12 even though, you know, things would occur, when I got  
13 those pieces of information the puzzle pieces kind of  
14 pulled together. So that's -- I hence made that contact  
15 with the person from MDOT who sent me that information  
16 about Title VI and then ended up subsequently setting a  
17 meeting up with Mary Finch to discuss it with her, with  
18 the Federal Highway Administration, to see what their  
19 thoughts were and what was occurring. And I was told  
20 that they thought that I had enough to move forward  
21 filing a formal complaint.

22 Q. And who was that person that sent the e-mail?

23 A. The original e-mail? The e-mail that I was  
24 telling you about?

25 Q. Yes.

1 A. Pat Collins. Patricia Collins, I'll say, because  
 2 it's a lady.  
 3 Q. I know who Ms. Collins is.  
 4 A. Okay.  
 5 Q. Had you contacted Ms. Collins prior to that?  
 6 A. No. Well, not about this. We had talked before  
 7 about -- because we were -- one of our contracts  
 8 included the DBE consultation and she's one of the  
 9 managers in the DBE/Office of Business Development. So  
 10 when you say had I contacted her, we had, you know,  
 11 spoken over the years about -- because we had that  
 12 contract. So I don't want you to think that when I say  
 13 I didn't contact her, I had contacted her about issues  
 14 related to the DBE under the contract we were doing, but  
 15 I had not contacted her about, you know, the issue  
 16 related to the e-mail she sent me because that's  
 17 obviously why she sent it, because I didn't know that  
 18 information. But we had spoken before.  
 19 Q. I understand that you probably had contact with  
 20 Ms. Collins prior to that.  
 21 A. Right, but not about this issue.  
 22 Q. She reached out to you on that e-mail; is that  
 23 correct?  
 24 A. Exactly. Exactly.  
 25 Q. When did you receive that e-mail, do you recall?

1 we don't have a contract in place.  
 2 Q. Going back to Mr. Judnic, you listed the cutting  
 3 of contracts as one action that Defendant Judnic took  
 4 and the comment he allegedly made to his secretary. Are  
 5 there other actions that Mr. Judnic took that you  
 6 believe were discriminatory?  
 7 A. Yes, and I think that there's several things in  
 8 the complaint as far as related to the cutting of the  
 9 one contract, rebid, the next contract attempting to be  
 10 recut on the backs of the company, and then there's  
 11 another contract and then there was subsequent the  
 12 scoring process where I was asking, you know, to get  
 13 information as far as like the scoring and request  
 14 certain information and certain meetings that, you know,  
 15 we were granted, but there was a set of meetings for, I  
 16 believe it was, that we requested for contract 2008.  
 17 We did -- despite his original objection to  
 18 it we did get meetings, and the meetings ended up only  
 19 being between me and Steve Griffith. Victor Judnic  
 20 didn't show up at any of the meetings. And I requested  
 21 those meetings because the first contract we received  
 22 what I thought were some unfair low evaluations, we were  
 23 in the contract 2006.  
 24 So then we requested to have at a minimum  
 25 monthly meetings. And originally the comment at that

23

25

1 A. It was June of 2010.  
 2 Q. And you touched on something that I should have  
 3 asked you about earlier, what's your understanding of  
 4 DBE or Disadvantaged Business Enterprise?  
 5 MR. WILLIAMS: You mean the program or  
 6 her --  
 7 THE WITNESS: Yeah.  
 8 BY MR. DITTENBER:  
 9 Q. It's a program with MDOT, correct?  
 10 A. Yes.  
 11 Q. And other government agencies?  
 12 A. Now, you say what's my understanding of it. It's  
 13 an MDOT program mandated by the federal government.  
 14 Q. Does your company participate in that program?  
 15 A. We are -- at the time we were certified DBEs when  
 16 that was going on, we were certified DBE.  
 17 Q. Is your company currently certified DBE?  
 18 A. We are certified under MDOT currently. I believe  
 19 that we still have that certification. I really truly  
 20 haven't checked on it because we only have the  
 21 one -- actually, yeah -- well, let me go back. There's  
 22 one small contract we just got but I don't have -- I  
 23 didn't name it because we don't have a contract. It's  
 24 some work that HNTB got for I-94, but I don't really  
 25 call it a contract until I actually have a contract. So

1 meeting where I requested those was that he didn't have  
 2 time to meet with me about that. So then he changed it  
 3 and we did have meetings, but all of the meetings that  
 4 were held, I set them up and they  
 5 were -- and even though I invited the people who were at  
 6 that original meeting, it was always just between me and  
 7 Steve Griffith. And those were to discuss to make sure  
 8 there were no ongoing issues, you know.  
 9 And I believe that was the contract that  
 10 ended up being ultimately managed by his subordinate,  
 11 Jason Volgt.  
 12 Q. Let's start with the comment that Mr. Judnic  
 13 allegedly made to his secretary. How did you find out  
 14 about that?  
 15 A. Well, I have it documented that in 2010 at  
 16 the -- in May at the Gateway project opening, the  
 17 celebration, you know, the Gateway project event, and I  
 18 saw Ms. Caldwell briefly at the meeting and I believe,  
 19 you know, she was seeing some stuff going on and she  
 20 reminded me, she said, well, you know, remember this  
 21 comment? And truthfully I didn't remember it because it  
 22 had been in 2006 and I didn't have any recollection of  
 23 her saying it then, but that's not surprising because I  
 24 was ill most of 2006, and that's documented, I was ill a  
 25 lot in 2006.



1 So in 200- -- this was 2010 she reminded me  
2 and then I made a note to the file and documented it  
3 that this comment was made. And then that was around  
4 the time, right around the time that I got the e-mail  
5 from Ms. Collins, shortly after that.

6 Q. How did the conversation come up?

7 A. I don't remember. I mean, it was just -- It was  
8 a brief conversation, to be quite honest. We didn't  
9 talk that long. Actually I was on my way out, I do  
10 remember I was leaving the event because it was at the  
11 Welcome Center and I was on my way out and I believe she  
12 was too. And we said our hellos, because we hadn't seen  
13 each other at the event, and there were a lot of people  
14 there and we hadn't seen each other in a while, you  
15 know, so we talked briefly.

16 And at that point, 2010, I mean, you know, I  
17 had received the award but then in that four year  
18 period, between 2008 and 2011 -- or 2007 and 2011, I'd  
19 gotten only like one contract despite bidding on  
20 several. So we were on our way out and struck up a  
21 conversation, but I can't remember the gist of the  
22 conversation, exactly what was said, but I do remember  
23 being on my way out.

24 Q. Did you have a relationship with Ms. Caldwell  
25 outside of work?

1 could have been for like five staff people.

2 Q. Okay.

3 A. And if it was December that would have been  
4 around the time that they would have had the Christmas  
5 luncheon for MDOT. And if you look at the notices they  
6 tell you who to write the check to, and it's typically  
7 Marlyn Caldwell, Sharleta Paris, or Twyla Chinn Lee.

8 Q. Going back to the statement that you allege that  
9 Mr. Judnic made, did he ever say anything of that nature  
10 directly to you?

11 A. Directly to me?

12 Q. Yes.

13 A. No.

14 Q. Do you know if he said anything of that nature to  
15 any of your staff members?

16 A. Of that nature?

17 Q. Yes.

18 A. Staff members have told me that they have been  
19 told by other MDOTers that there were comments made that  
20 they've heard where my staff members have been told by  
21 MDOT employees about things that, you know, were said or  
22 alluded to or done so....

23 Q. Do you know if he said anything of that nature  
24 directly to one of your employees?

25 A. I don't know.

1 A. No.

2 Q. You never saw her socially?

3 A. No.

4 Q. Lunch?

5 A. No.

6 Q. Telephone conversations?

7 A. Nope. We didn't -- I've known her for a long  
8 time because I used to work for MDOT and she was there  
9 at MDOT, but we were not social outside of the office.

10 Q. Do you know why your company would have written  
11 her a check in December of 2008?

12 A. Yes.

13 Q. Why?

14 A. Because that was for probably one of the  
15 luncheons.

16 Q. And what luncheon are you referring to?

17 A. MDOT had annual Christmas luncheons and it was  
18 asked that you write the check to Marlyn Caldwell or  
19 usually Sharleta Paris or Twyla Chinn Lee. So it was  
20 probably for 25, \$50. A lot of times I paid for myself  
21 and the staff to go to the luncheon.

22 Q. \$75. I have a ledger here if you want to see it.

23 A. Uh-huh. \$75 what?

24 Q. Was the amount of the check.

25 A. Right, that probably would have been -- that

1 Q. Do you have any other evidence of gender based  
2 discrimination aside from the comment we've been  
3 discussing?

4 A. Related to who?

5 Q. Mr. Judnic.

6 A. Let me think about that. Well, I guess one of  
7 the aspects that I want to bring out, since you brought  
8 that up, is you're calling it gender based, whether it  
9 was race or gender, you know, but the Mary Finch report  
10 states clearly some certain aspects based on the  
11 investigation, and those are the aspects that I looked  
12 at prior to making a decision, you know -- well, the  
13 aspects I looked at once the report came out and  
14 thinking, you know, that it being confirmed that my  
15 company was treated in a disparate manner.

16 And some of the aspects that were in that  
17 complaint, report, they would call it a report of  
18 inquiry, were actually that they were -- the contract  
19 cut, the first contract being cut and rebid, the second  
20 contract attempting to be cut. And even though at the  
21 time it was said at MDOT that they were trying to make  
22 sure that DBEs -- you know, that they was spreading the  
23 work around. Well, the reason that I was told that my  
24 contract was being cut was to spread the work around,  
25 when supposedly the spreading of the work around was to,

1 you know, assist smaller DBE firms that weren't getting  
2 work to get work.

3 And the comment was -- that was asked, well,  
4 did you ever think that BBF Engineering Services was a  
5 certified DBE? And the response to the investigator for  
6 Mr. Judnic was I didn't think of that. Well, he knew I  
7 was a DBE, it was well-known that I was a DBE. So that  
8 when you asked about whether there are other aspects  
9 where I think I was discriminated against, yes, that's  
10 one of them that I feel was validated.

11 And that the cutting of contracts of that  
12 type was always done or attempted to on the backs of my  
13 company when there were other companies that were  
14 non-DBEs that were obtaining higher value contracts,  
15 more work than my company at the time. But my company  
16 was the one that the cuts were being done on the back  
17 of, done one time and attempted a second time. And  
18 that's validated in writing by one of his subordinates  
19 who he had direct -- who reported directly to him.

20 Q. Okay. What I'm asking is you stated that -- you  
21 allege that Mr. Judnic made a statement regarding your  
22 gender.

23 A. Uh-huh.

24 Q. And that is evidence that is of a discriminatory  
25 nature. I'm asking are there any other statements or

1 Q. And do you agree that the Finch report -- do you  
2 understand what I'm referring to as the Finch report?

3 A. The report of inquiry, yes.

4 Q. Yes. Did the Finch report conclude that  
5 Mr. Judnic had made a statement based on race?

6 MR. WILLIAMS: Objection, the Finch report  
7 is the best evidence of what it states. To the extent  
8 you recall the report, Ms. Foster, you can answer the  
9 question.

10 THE WITNESS: I can't remember -- repeat the  
11 question, please.

12 MR. REILLY: She can read it back.

13 MR. DITTENBER: I'm ask it again.

14 BY MR. DITTENBER:

15 Q. Do you agree that the Mary Finch report did not  
16 conclude that Mr. Judnic mentioned race in his  
17 statement?

18 MR. WILLIAMS: Objection, that's a  
19 misstatement, mischaracterization of the report, but to  
20 the extent you can answer, Ms. Foster.

21 THE WITNESS: No, I don't agree with that.  
22 Are you asking me do I agree whether the Finch report  
23 said he did not discriminate based on race?

24 BY MR. DITTENBER:

25 Q. Yes.

1 actions that you are relying upon to show that  
2 Mr. Judnic discriminated against you based on your  
3 gender?

4 A. Any other statements? No.

5 MR. WILLIAMS: Hold on. I think she just  
6 answered the question.

7 THE WITNESS: Yes.

8 MR. WILLIAMS: She gave you what she thought  
9 were her views about other actions. I mean, if you're  
10 asking did she have evidence of any other statements,  
11 that's a different question.

12 THE WITNESS: That's a different question.

13 BY MR. DITTENBER:

14 Q. I'll ask that question then. Do you have any  
15 other statements that you intend to use as evidence  
16 of --

17 A. Statements, no. The other question you asked was  
18 not just statements I thought.

19 Q. That was a bad question, I apologize. What about  
20 any other statements that Mr. Judnic discriminated  
21 against you on the basis of race?

2 A. Any other statements?

23 Q. Yes.

24 A. I don't know -- I don't have fact of any other  
25 statements that he made to me.

1 A. I don't agree that the Finch report stated that  
2 he did not discriminate based on race.

3 Q. What evidence do you have to support your  
4 allegations that Mr. Judnic discriminated against you  
5 based on your race?

6 A. Because I believe to my recollection doesn't the  
7 Finch report state that the comment was made no woman or  
8 black woman. And in my review conversation with  
9 Ms. Finch -- Mrs. Finch on when she went over the report  
10 with me, she stated that it didn't matter whether he  
11 said black or woman.

12 Q. Well, you've alleged gender and race  
13 discrimination. Those are two separate things, so do  
14 you have any evidence that Mr. Judnic discriminated  
15 against you based on your race?

16 A. My belief is that race and gender were both  
17 identified as in that report that it could have been  
18 either one and that as she stated, as Ms. Finch stated  
19 to me, that it didn't matter whether he said black or  
20 woman, that both are equally as bad, that it still shows  
21 discrimination.

22 Q. Did Mr. Judnic continue to serve as project  
23 manager on projects where BBF had a prime consulting  
24 contract with MDOT after 2006?

25 A. After 200- -- the 2008 contract that we had, the

1 project engineer ended up -- the project engineer  
2 manager ended up being Jason Voigt. And the one we got  
3 after that would have been the 2010, and that project  
4 engineer manager was Tia Schnee.

5 Q. Do you recall --

6 A. So I can't recall.

7 Q. Do you recall when the 2006 contract ended?

8 A. The exact date I don't remember. I think it was  
9 supposed to be a two year contract, I believe, so I  
10 believe it ended some time possibly late '07 but I'm not  
11 positive of the exact date.

12 Q. Was your company selected for additional  
13 consulting contracts as a prime consultant with MDOT  
14 after 2006?

15 A. 2008, after -- now, were we selected for other  
16 contracts in the -- are you speaking of the Detroit TSC  
17 as a prime?

18 Q. Yes.

19 A. I remember the one in '08 that was attempted to  
20 be cut, and then 2010 and Schnee was the project  
21 engineer, I believe, of record of that.

22 Q. I'm going to hand you an exhibit. Mark it as  
23 Exhibit 1.

24 (Whereupon Deposition Exhibit No. 1  
25 marked for identification.)

1 Q. And what is BBF's -- do you see where BBF is  
2 listed next to its score?

3 A. Uh-huh, 107.

4 Q. Is that the highest score on the sheet?

5 A. Yeah, that's the 2010 contract we got.

6 Q. And Victor Judnic served as a member of that  
7 selection team?

8 A. It looks like it, uh-huh. That was the one  
9 contract I was speaking of that -- between 2008 and  
10 200- -- end of 2011.

11 Q. Going back to what Marilyn Caldwell told you about  
12 Mr. Judnic's alleged statement.

13 A. Uh-huh.

14 Q. Do you recall what she told you?

15 MR. WILLIAMS: Objection, asked and  
16 answered. I think she's already testified to that.

17 BY MR. DITTENBER:

18 Q. Did Ms. Caldwell tell you that Mr. Judnic said no  
19 black woman?

20 A. She told me it was -- at that point in 2010 she  
21 said it was either no woman or black woman, and that's  
22 what I just said, that it was either no woman or black  
23 woman, but she definitely knew it was at least no woman  
24 because by then it was, you know, it was 2010, and it  
25 was definitely no woman. So that's what was said that

1 BY MR. DITTENBER:

2 Q. Do you recognize this document?

3 A. No. You mean do I think I received it?

4 Q. No, I'm not asking that, I'm just asking if you  
5 recognize what it is?

6 A. Oh, no, this is something that would be internal,  
7 it looks like, to MDOT.

8 Q. Have you seen this type of document before?

9 A. A central selections review team action sheet?  
10 No, I wouldn't have -- the CSRT is in Lansing, I  
11 believe.

12 Q. I understand that, I'm just asking if you've ever  
13 seen a document like this before.

14 A. I've seen something similar but I don't recall  
15 seeing a 5100E for the central selection review team.

16 Q. Do you recall being selected as a prime  
17 consultant on or around November 2009 for a contract in  
18 the Detroit TSC?

19 A. That was the 2010 contract that I just stated.

20 Q. Okay.

21 A. I believe the Tia Schnee ended up taking that one  
2 over.

23 Q. Who is listed as the project manager on this  
24 document?

25 A. Victor Judnic.

1 It was no woman should be making that kind of money or  
2 something to that -- I'm paraphrasing. But I believe I  
3 answered that question already, that's the gist of what  
4 she said.

5 Q. I was just confirming what Ms. Caldwell said. I  
6 know you spoke about what Ms. Finch's report stated.

7 A. Right, no --

8 MR. WILLIAMS: No, she testified to what  
9 Ms. Caldwell said originally.

10 THE WITNESS: No, but you asked me about  
11 when we left the -- I told you about when we left the  
12 Ambassador Bridge opening ceremony and I saw her on my  
13 way out, remember?

14 BY MR. DITTENBER:

15 Q. Yes, I'm just clarifying whether it was woman or  
16 black woman.

17 A. Well, she stated it was -- at that point she said  
18 it was, you know, no woman should be making that kind of  
19 money, she said it was one of those. She said she knows  
20 it was no woman, but possibly that black was in there  
21 too, but, you know, to me in my mind both are equally  
22 bad, to be quite honest.

23 I mean, I just -- I just -- you know, by  
24 that time I'm not even wrapping my head around this  
25 that, you know, because by then, you know, I'd bid on

1 numerous projects and, you know, this came about after  
2 bidding on several projects and Victor Judnic may have  
3 been the project engineer at this point, but that's when  
4 I remember Tia Schnee ended up being the project engineer  
5 soon after selection because she was the one that I  
6 worked with, if this is the 2010 contract that we're  
7 currently closing out, that we bill like four hours a  
8 month on, and I believe that's this one.

9 Q. Let's talk about the 2006 contract for a little  
10 bit. Do you recall -- do you understand which contract  
11 I'm referring to?

12 A. 2006-0490?

13 Q. Yes.

14 A. Uh-huh.

15 Q. Let's start with a little background. What is  
16 your understanding of how MDOT selects a consulting  
17 engineer firm?

18 MR. WILLIAMS: Objection, lack of  
19 foundation, but to the extent that you know.

20 THE WITNESS: Well, they advertise an RFP.

21 BY MR. DITTENBER:

22 Q. Which is?

23 A. Request for proposal. You review it and if  
24 you -- your company meets the criteria then you can  
25 submit a proposal for that RFP. My understanding is

1 come up with, you know, who is going to be -- they agree  
2 who is going to be selected. And I know that I've had  
3 at least two MDOT employees that told me they stopped  
4 being on panels because there were panels that they went  
5 in and the decision was already -- the project engineer  
6 already had decided who he wanted to have the work when  
7 he walked in the room. So they refused to be on any  
8 more panels.

9 Q. Who are those employees?

10 A. One of them that stated that she would not be on  
11 any -- that she stopped being on panels was Georgina  
12 McDonald. Who is the other? Let me think. There was  
13 one other person. I know Georgina McDonald told me that  
14 she had stopped being on panels.

15 See, my issue with this is for fear of  
16 retaliation because that's why a lot of people I know  
17 have told me that they have real concerns because of  
18 being retaliated against on their jobs at MDOT, to be  
19 quite honest, and that's why I really have a concern  
20 over, you know, giving names. But I know Georgina  
21 McDonald told me that she stopped being on panels  
22 because -- and I have to think because there was one  
23 other person I know that told me that they pulled back  
24 from wanting to be on panels because they had seen where  
25 they had come on selection panels and it was -- you

39

1 that the project engineer has basically the ultimate  
2 power. They assist in writing the RFP, they pretty much  
3 have the primary hand in picking their panel, selection  
4 panel.

5 There's some -- my understanding is that  
6 there's some stipulations on who needs to be on the  
7 panel, but the project engineer has a lot of say in who  
8 is on that panel. And they come together and, you know,  
9 they supposedly have an opportunity to review the  
10 proposals that they've received in response to that RFP,  
11 and then when they come together, you know, that should  
12 make the evaluation period go a lot smoother if they  
13 reviewed them prior.

14 And I don't know what their process is in  
15 that room, but I know that it's fairly subjective and  
16 that they have a score sheet because I know -- I know  
17 you get the score sheet, a copy of your score sheet, if  
18 you don't get the work. So I've had those faxed to me  
19 or e-mailed to me in the past. But I don't know what  
20 their process is in that room and how they come up with  
21 out of 50 points for this category who gets 30, who gets  
22 31, who gets 32, who gets 49. So I don't know how that  
23 process goes about but I know it seems to be very  
24 subjective.

25 And then they review them and I believe they

41

1 know, their concern was that it was already  
2 somewhat -- the project engineer knew who they wanted  
3 when they walked in the room.

4 Q. Do you recall who that second person is?

5 A. I'll have to think about who that was.

6 Q. Let's go to Ms. McDonald. How did -- is it  
7 Ms. McDonald?

8 A. I think Georgina is still married.

9 Q. Mrs. McDonald. How did Mrs. McDonald inform you  
10 about her stance on not being on panels anymore; did she  
11 call you, did she e-mail you?

12 A. No, she didn't e-mail me. It was a conversation  
13 we had probably on the phone.

14 Q. Do you recall about when that was?

15 A. I think last year some time.

16 Q. And the second person you can't recall or you  
17 don't want to name?

18 A. If I could think of it I'll let you know if I  
19 wanted to name them or not. I didn't want to name  
20 Georgina.

21 Q. After the committee meets and makes its  
22 selection, do you have an understanding of what happens  
23 after that?

24 A. Well, I know with the ARRA contracts my  
25 understanding was that the top three were -- her

1 discussion with Tony Kratofil, the top three moved on to  
2 the region for recommendation. Now, as far as the  
3 panels when -- that were not ARRA, I know it had some  
4 dependence on the dollar amount and who was on the  
5 panel. If it was over a million dollars, I think  
6 someone from CSRT needed to be on the panel. So if it  
7 was under a million dollars, I know the panel made a  
8 recommendation, but I'm not sure if it went to the  
9 region or went straight to Lansing or if region reviewed  
10 it first or....

11 Q. Okay. At some point one consultant is selected,  
12 would you agree?

13 A. Well, there were contracts where they selected  
14 more than one consultant.

15 Q. When a consultant's been selected, what's the  
16 next step?

17 A. It's posted.

18 Q. Okay. Do you just --

19 A. On the MDOT web site.

20 Q. Do you just sign the contract then?

21 A. No, there's negotiations.

22 Q. Could you please tell me about the negotiation  
23 period?

24 A. What do you want to know about it? You're  
25 requested by the project engineer to do a cost proposal

1 A. The initial proposal response to the RFP  
2 typically does not contain price information.

3 Q. What does it contain?

4 A. Response to the RFP.

5 Q. And what kind of information is that generally?

6 A. Understanding a -- there's a format that MDOT has  
7 that they request that you -- like a template, and it's  
8 understanding of service, staffing, at one time there  
9 was capacity, various aspects. And I think at that time  
10 in 2006 there were probably -- you had to submit certain  
11 forms, whether it was capacity or, you know, who your  
12 team was, some information about, you know, percentages,  
13 what type of work the companies on the team were going  
14 to do.

15 Q. Now, on the 2006 contract when did Mr. Judnic  
16 inform you that the contract was going to be reduced?

17 A. I believe that was June of 200- -- yeah, June  
18 of -- I think that was June of '07 -- no, June of '06,  
19 yes, when I got the call. Wait a minute. I'm pretty  
20 sure it was June.

21 Q. Had you entered the price negotiation phase on  
22 the selection yet at that time?

23 A. Well, that was the initial phone call where he  
24 said that it would be cut in half. So in the RFP -- I  
25 mean -- yeah, in the RFP there's information about the

43

45

1 typically. I mean, I can just go by when I was  
2 selected, okay?

3 Q. Sure.

4 A. You're requested by the project engineer to come  
5 up with a price proposal typically, and they review the  
6 proposal and sometimes there's some negotiation, you  
7 know, sometimes not, you know, depending on if your  
8 proposal is acceptable and within the dollar amount that  
9 was set for that work type, from my understanding. And  
10 then they would move forward with, you know, the  
11 contractual process that's internal at MDOT.

12 But the next step as far as the consultant  
13 on contracts I've been on is the price proposal phase.  
14 But granted this could have changed because it's been,  
15 you know, over years since I've -- you know, so my  
16 understanding is that the process has changed somewhat  
17 so I can't tell you.

18 Q. I'm asking based on your knowledge and experience  
19 in the process. So on the 2006 contract you must have  
20 submitted a proposal, correct?

21 A. Uh-huh, I would have, yes, a response to the RFP  
22 proposal.

23 Q. Yes.

24 A. Yes.

25 Q. And does that contain any price information?

1 number of hours. Typically MDOT can approximate the  
2 amount of that contract based on the hours. Like if  
3 it's 20,000 hours, my understanding is that they  
4 somewhat allocate on average \$100 an hour with labor,  
5 overhead, and fixed fee. So you can look at the number  
6 of hours and come up with a ballpark of what that dollar  
7 amount would be. So when he called it was that the  
8 contract was going to be cut to spread the work around,  
9 and cut in half.

10 Q. Had you signed the contract at that point?

11 A. No. When he called me?

12 Q. Yes.

13 A. No, I wouldn't have signed a contract when he  
14 called me, no.

15 Q. So you didn't have a contract with MDOT at that  
16 time on that project?

17 A. Now, which contract are you -- are you talking  
18 about the IDS contract when you're saying I signed a  
19 contract, because there's a couple different types of  
20 contracts, sir, okay? There's an IDS contract that you  
21 have to sign with MDOT to do work as an umbrella. So I  
22 don't want to get hung up here with the contract issue  
23 because I had signed an ID -- I had an IDS contract in  
24 place. But when Victor Judnic called me to notify me  
25 about the 2006 contract, I wouldn't have signed a

1 contract because I didn't know I had the work until he  
2 called me, so there would be --

3 Q. I'm not trying to trip you up, ma'am.

4 A. Okay.

5 Q. I'm asking if you had signed the contract --

6 A. No, I had not. When he called me to notify me  
7 that we got the contract and it was going to be cut in  
8 half, no, I had not signed the contract during that  
9 conversation.

10 Q. So you didn't have a contract yet at that time.  
11 You keep referring to it as a contract. You were  
12 engaged in the price proposal process; is that correct?

13 A. Not yet. When he called I had submitted a  
14 proposal responding to an RFP. They must have met, my  
15 company was selected, he calls and says, you were  
16 selected but your contract is going to be cut in half,  
17 and it was cut in half and rebid, okay. So, no, there  
18 had not been a contract signed yet because I had just  
19 received notification that day.

20 The next step would be to do a proposal -- a  
21 price proposal based on half of whatever that RFP stated  
22 that contract was supposed to be when we bid on it.

23 Q. Are you alleging that the reduction in hours was  
24 Mr. Judnic's decision?

25 A. I can go by what he stated. When I asked him

1 know, the mixed signals and that Lansing stating that --  
2 you know, the people in Lansing stating the reasons why  
3 contracts were being done like that and that what he did  
4 was not in line with what was said. So hence my  
5 conclusion that's him acting somewhat, you know, alone  
6 on that.

7 Q. And you base your conclusion on the Finch report?

8 MR. WILLIAMS: Objection, that's not what  
9 she said.

10 THE WITNESS: No, that's not what I said.

11 That's not what I said. I also said that -- when it was  
12 brought up later that -- and the comment was made that  
13 that was a lie, that Lansing did not do that. And the  
14 fact that Mr. Judnic would not give me the name of a  
15 person, so hence when I did the letter to Mr. Frierson,  
16 it just came back that, yeah, it was done, but they are  
17 doing that -- you know, and there was no other similar  
18 contract that they had done that to other than that 2006  
19 contract. There was no other CEI services contract that  
20 that had been done to with the exception of that one.

21 BY MR. DITTENBER:

22 Q. What evidence do you have that the decision to  
23 reduce the hours was based on your gender?

24 A. It could have been based on race too.

25 Q. That's my next question.

1 whose decision it was he said Lansing. And subsequent  
2 to that, I remember asking -- I did do a letter in  
3 regards to that issue, received a response back from  
4 Myron Frierson. I know you should have that  
5 information.

6 So, you know, all I could do at that point  
7 was do a letter notifying Mr. Frierson, you know, who is  
8 the finance director of contract -- I'm not sure what  
9 his title was at the time but I know he was over that  
10 contractual issue. And then the issue in 2010 when I  
11 spoke to -- when I got the e-mail from Ms. Collins.

12 And I did bring that up to her as that being  
13 one of the things that had happened. And I asked her at  
14 that time, you know, that it was said that Lansing --  
15 because I figured she's in Lansing she would know who  
16 would have cut that contract, and she stated that that  
17 was a lie, that Lansing did not do that.

18 So your question was in regards to, you  
19 know, Mr. Judnic and the contract related to whether it  
20 was him that cut it. At the time all I could go by  
21 his word, he stated that it was Lansing, yet he would  
22 not give me the name of a person in Lansing, he just  
23 said Lansing cut it.

24 Now, subsequent to that, if you look at the  
25 Finch report, she addresses that issue related to, you

1 MR. REILLY: Ask one question at a time.

2 BY MR. DITTENBER:

3 Q. I'm asking you about gender.

4 A. Because it was. It wasn't done to anybody else,  
5 and none of the other, you know, African American female  
6 firms or whatever, you know. It was done to my  
7 contract, so it was based on race or gender or both, one  
8 or the other or both.

9 Q. Do you have any evidence that supports that?

10 A. All I can go by is that it was done and it was  
11 disparate treatment and it wasn't done to anybody else,  
12 and it hadn't been done to anybody else on a similar  
13 contract since that I know of. And the Frierson letter  
14 didn't even detail a similar type of contract where that  
15 had even been done. And the Finch report didn't detail  
16 a contract where that had been done.

17 And when the question was asked about who  
18 made the decision in Lansing, the response was that that  
19 was a lie, that it wasn't Lansing that did that, that  
20 made the decision to cut -- to cut one contract and try  
21 to cut a second one on the backs of my company. And  
22 there were other companies that had more work than my  
23 company that were not DBE companies that were not having  
24 that done to them. So hence the response to your  
25 question, that's why I conclude that, one of the reasons

1 why I conclude that.

2 Q. What are the other reasons?

3 A. Because as I just stated, what came out in the  
4 Finch report and then the comment that it was a lie and,  
5 you know, and then asking, you know, Mr. Judnic when the  
6 comment was made that Lansing did it because I remember  
7 specifically asking, well, who made the decision? And  
8 Lansing. And, no -- there was never a name of a person,  
9 so it was just Lansing. So basically I thought that  
10 meant the Lansing office or someone in the Lansing -- I  
11 don't know, you have to ask him that question I guess.

12 Q. Okay. And when Ms. Collins told you that the  
13 explanation was a lie, was that in the same e-mail  
14 correspondence that you referenced earlier?

15 A. No, that was when -- in the e-mail she said if I  
16 had any questions about Title VI to call her. And in  
17 the course of that conversation when we were discussing  
18 some of the things that had occurred to the company  
19 and/or to the staff, that that issue came up about that  
20 contract, even though I had received that letter prior.  
21 And I still remember, you know, I just asked her, I  
22 said, you know, it was said that Lansing made that  
23 decision just in the conversation and she stated that  
24 that was, you know, it was a lie.

25 Q. After you were informed that the number of hours

1 A. I don't remember the exact amount of that  
2 contract. I knew it was -- we ended up working longer  
3 on it because the overhead rate, the company overhead  
4 rate, was lower, so we ended up instead of -- the dollar  
5 amount was cut in half, but instead of only being able  
6 to work one year instead of two we were able to work, I  
7 believe, a little bit longer because the overhead rate  
8 allowed us to with the hours. We were able to bill more  
9 hours for that overhead rate.

10 Q. In your complaint in paragraph 36 you state that  
11 it was a 2.2 million dollar contract; does that sound  
12 familiar?

13 A. With prime and subs, I believe that sounds....

14 Q. That's the contract that you executed with MDOT;  
15 is that correct?

16 A. I believe that ended up being the amount  
17 approximately for the whole team.

18 Q. Yes.

19 A. Not BBF portion.

20 Q. No, I just asked prime. And you stated that the  
21 remaining hours on the project were re-advertised. Was  
22 that a separate request for proposal; do you recall?

23 A. We were selected for the original RFP. A portion  
24 of it was pulled out, being the Lodge freeway portion.  
25 Our original contract, if you look at the RFP, included

1 would be reduced on the 2006 project, did you submit a  
2 price proposal for the remaining hours?

3 A. Yes, for the amended -- I submitted a price  
4 proposal for this contract as amended as requested by  
5 Mr. Judnic.

6 Q. And did you eventually agree to a contract with  
7 MDOT for that project?

8 A. Well, he accepted that price proposal. There  
9 wasn't -- it's not an issue of whether you agree or not  
10 with Mr. Judnic, it was this is what he said was going  
11 to be done. He said this contract is going to be cut in  
12 half, and it was cut in half and rebid, okay.

13 So I did what I was told to do by  
14 Mr. Judnic. I submitted the proposal that he requested  
15 for that contract and we obtained -- you know, that  
16 contract was ultimately signed, but it was per his  
17 request. That was not the contract as stated in the  
18 original RFP or the hours or the staffing that was  
19 requested as in the original RFP.

20 Q. What was --

21 A. But he --

22 Q. Finish, I apologize.

23 A. No, go ahead.

24 Q. What was the amount of the contract that you  
25 executed with the Department of Transportation for that?

1 all of that. It included staffing for as needed  
2 services including the Lodge freeway.

3 And prior to that I had had a discussion  
4 with Mr. Judnic on the phone and it was stated that that  
5 contract, as it was in the RFP, had staffing that would  
6 work on the as needed services, you know, contracts, the  
7 work that came up, plus the Lodge freeway. Once I was  
8 selected and that portion was pulled out -- I was  
9 selected for the entire thing because when they -- when  
10 you submit it for that RFP you were submitting on that  
11 entire RFP for all of the work, but that's what the  
12 company submitted on.

13 And so once we submitted, there was a  
14 selection made. So my company was selected for that RFP  
15 award, which included the as needed services, Lodge  
16 freeway, and if you look at the staffing, it had  
17 staffing for -- you know, that couldn't handle all of  
18 that work, and that's what my team had is the staffing  
19 at the levels requested in the RFP. Once we were  
20 selected it was cut, it was cut, and then that portion  
21 was pulled out of that original RFP and rebid, and  
22 Fishbeck ended up getting it.

23 MR. REILLY: Mike, Victor has got to go.  
24 He's got some questions we wants you to follow up so  
25 let's take a break.

1 MR. DITTENBER: Okay, can we take a brief  
 2 break?  
 3 (A recess was taken.)  
 4 MR. DITTENBER: Back on the record.  
 5 BY MR. DITTENBER:  
 6 Q. When we went off the record, Ms. Foster --  
 7 A. Yes, I don't remember.  
 8 Q. I think the last question I asked you was was the  
 9 M-10 portion of the 2006 proposal re-advertised and you  
 10 answered yes. Is that consistent with what you recall?  
 11 A. My understanding is, yes, it was re- -- the  
 12 Lodge -- or M-10 portion was pulled out after it was cut  
 13 and re-advertised.  
 14 Q. Did you submit a proposal for that proposal?  
 15 A. No, because I had already been selected for the  
 16 entire thing, and per discussions prior -- let me see.  
 17 I don't know if it was before the RFP came out or --  
 18 probably before the RFP came out I remember having a  
 19 discussion with Mr. Judnic that that entire proposal  
 20 included the Lodge freeway. And I --  
 21 Q. Okay. Ms. Foster, I'm just asking if when it was  
 22 re-advertised did your company submit a proposal for  
 23 that advertising?  
 24 A. No, you --  
 25 MR. WILLIAMS: You can't stop the witness in

1 that contract, to be a sub on their team.  
 2 Q. What about any other prime consultant that  
 3 submitted a proposal but was unsuccessful?  
 4 MR. WILLIAMS: Objection to the form of the  
 5 question. If you know what he's talking about.  
 6 THE WITNESS: Yeah, I mean....  
 7 BY MR. DITTENBER:  
 8 Q. Did any prime consultant that submitted a  
 9 proposal for the M-10 portion ask you to serve as a  
 10 subconsultant?  
 11 A. I don't recall. Now, I really want to --  
 12 Q. I haven't asked a question yet.  
 13 A. I really wanted to add something to that last  
 14 issue but it can come out at trial, I guess.  
 15 MR. WILLIAMS: Well, if you can't answer a  
 16 question yes or no you can indicate you can't answer yes  
 17 or no.  
 18 THE WITNESS: Okay.  
 19 BY MR. DITTENBER:  
 20 Q. In paragraph 41 of your proposed amended  
 21 complaint you allege that you were selected for contract  
 22 2008-0044 in October 2007. Do you know which contract  
 23 I'm referencing?  
 24 A. Is that the one that Jason Voigt was the project  
 25 manager?

1 the middle of completing her answer. If you want to  
 2 wait until she's completed her answer and give her some  
 3 instructions, that's one thing, or if you want to  
 4 instruct her to only answer your questions, that's one  
 5 thing, but you've got to let her complete her answer.  
 6 MR. DITTENBER: Okay.  
 7 MR. REILLY: Well, to the extent it's not  
 8 responsive --  
 9 MR. WILLIAMS: Well, you're not taking the  
 10 deposition, you're sitting here.  
 11 MR. REILLY: I'm sitting here --  
 12 MR. WILLIAMS: You're just sitting here, so  
 13 you don't get to make statements.  
 14 BY MR. DITTENBER:  
 15 Q. I'm going to ask you a yes or no question. Did  
 16 your company submit a proposal for the M-10 portion?  
 17 A. Okay. Now, when you say the M-10 portion that  
 18 was part of the original contract?  
 19 Q. That was part of the original request for  
 20 proposals.  
 21 A. No, we did not submit another response for that  
 22 M-10 portion that was pulled out of my contract.  
 23 Q. Thank you. Did you serve as a subconsultant on  
 24 the M-10 portion on the M-10 contract?  
 25 A. I was not contacted by Fishbeck, who obtained

1 Q. Yes.  
 2 A. Yes.  
 3 Q. And in paragraph 42 you allege that Mr. Voigt  
 4 asked you to cut that contract; do you recall that?  
 5 A. Yes.  
 6 Q. Was it Mr. Voigt that informed you of that  
 7 intent?  
 8 A. Yes. Yeah, and I have that documented. He told  
 9 me on the phone and then I documented what he said.  
 10 Q. Do you recall when that occurred?  
 11 A. I don't know the exact month but I do have -- the  
 12 e-mails are in your file, so that information you have.  
 13 Q. Shortly after October 2007, would that be fair?  
 14 A. You know, it's a 200- -- I know that contract  
 15 number 2008-0044, but I don't know the exact date when I  
 16 spoke because -- but I know that exact date because I  
 17 know I have the e-mail where I responded to him stating  
 18 this is what you requested because I contacted the other  
 19 team members stating that the project was to be cut, the  
 20 dollar amount and hours, in half.  
 21 Q. And, again, was that like the previous contract  
 22 before you submitted a price proposal?  
 23 A. Like you mean when he called me?  
 24 Q. Yes.  
 25 A. Yes, uh-huh.



1 Q. Are you alleging that Mr. Judnic was involved in  
2 that process?

3 A. He was the supervisor of Mr. Voigt, and when I  
4 spoke with him when he called me, when Mr. Voigt phoned  
5 me, I asked him the question, how come when I get a  
6 contract it's cut? And the concern was that that came  
7 up again in the Finch report and Mr. Judnic was asked a  
8 question about that and whether -- I don't know how it  
9 was worded but you have that and I remember the response  
10 was that he didn't remember whether he had asked it to  
11 be cut or not.

12 So that's why, you know, with him being the  
13 direct supervisor over -- as the senior delivery  
14 engineer over Mr. Voigt and because the way it was done  
15 it was so similar to the prior contract, so that's why  
16 my thought was that there was some involvement or  
17 direction given by Mr. Judnic to Mr. Voigt.

18 Q. Do you have any facts to support that Mr. Judnic  
19 discriminated against you based on gender on this  
20 contract?

21 A. Just the fact -- because no other -- because, you  
22 know, gender or race because the other companies -- it  
23 was disparate treatment based on -- my company was  
24 treated differently and that's disparate treatment. So  
25 whether it was disparate treatment based on gender or

1 we -- when he originally cut the contract, the cutting  
2 of the contract was based on race or gender or both  
3 because it was disparate treatment of one or both of  
4 those, and that was not happening to any other company.

5 Q. What do you mean by disparate treatment, you keep  
6 using that word?

7 A. Disparate treatment is a term for discrimination.  
8 So that's the term that is used in the report of  
9 inquiry. And when they -- when you look at disparate  
10 treatment or discrimination, disparate treatment under  
11 Title VI even talks about whether someone under the  
12 Title VI or I believe the 14th amendment also as to  
13 whether you were treated differently. And in this  
14 instance I was treated differently, and it is my belief  
15 that it was based on race and/or gender.

16 Q. But you can't tell me which one?

17 A. If I was to pick one first I would say race.

18 Q. Why would you pick race first?

19 A. Because I see some of the other female firms now  
20 and even then that were being helped more, and I'm not  
21 saying specifically by just Mr. Judnic, and that didn't  
22 have some of the issues. And I was, you know, being  
23 told that the other companies never had contracts cut  
24 like this. As a matter of fact, I was told by several  
25 white males that there were female firms that had more

59

61

1 race, I'm not here to say which one it is, you'd have to  
2 ask him that.

3 Q. Ask who?

4 A. Judnic that. I'm saying my company was treated  
5 differently, disparately, in that instance.

6 Q. But you don't know whether it was based on race  
7 or gender?

8 A. It was one or both of those.

9 Q. But you don't have any evidence supporting one or  
10 the other; is that what you're saying?

11 A. It was one or both of those. And evidenced by  
12 one of the aspects that I'm going by is in the Finch  
13 report when he was directly asked about that, he stated  
14 that he couldn't remember whether he was -- that he told  
15 Mr. Voigt to cut the contract. Now, if he had no  
16 involvement it seems to me like he would have said I did  
17 not ask him to cut that contract.

18 Q. I'm not asking what's in the Finch report. I  
19 know you've read it and I know I've read it. I'm asking  
20 if you have any facts supporting whether Mr. Judnic  
21 discriminated based on race or gender on the selection  
22 and proposal for this contract?

23 A. My facts are as I just stated. I said based on  
24 the evidence that I've seen in the Finch report and his  
25 conduct and the discussions with Mr. Voigt when

1 work than they could handle. So, you know, so....

2 Q. I'm sorry, I thought you said race first.

3 A. Right.

4 MR. WILLIAMS: That's what she said, white  
5 female owned firms are being treated differently than  
6 she is.

7 THE WITNESS: Right.

8 MR. WILLIAMS: And so the only difference is  
9 race.

10 THE WITNESS: So what's left is race,  
11 because the disparate treatment is affecting my firm  
12 being that there's some white female firms that I saw  
13 that were being helped more, that were, as I was told by  
14 males, that this -- this company has more work than they  
15 can handle. This company is not even accepting any more  
16 work because they have too much work already. That's  
17 never been my problem. So when you ask which one, I  
18 would say it was race over gender if I was to select  
19 one.

20 BY MR. DITTENBER:

21 Q. Okay.

22 A. But in my case I do believe it was a combination,  
23 to answer your question.

24 Q. Okay. On the 2008 contract with Jason Voigt.

25 A. Yes.

1 Q. Was there any change to the scope of the  
 2 proposal?  
 3 A. You mean the work -- now, when you say the scope,  
 4 the proposal comes out -- the RFP -- yeah, are you  
 5 saying the RFP?  
 6 Q. I misspoke, then. The scope of the request for  
 7 proposal, the work described in that, was that cut, so  
 8 to speak?  
 9 A. Okay. After I was told to cut the contract in  
 10 half by Mr. Voigt, I, you know, acknowledged his  
 11 request, sent the information to the team, and contacted  
 12 Lansing and let them know that this request had been  
 13 made again, this request was made, and I contacted Myron  
 14 Frierson. So did I answer your question or what was the  
 15 question? Did I answer your question? I'm not sure.  
 16 Q. Was your work reduced on that project?  
 17 MR. WILLIAMS: Are you asking her was --  
 18 MR. DITTENBER: In the end --  
 19 MR. WILLIAMS: -- the scope of services in  
 20 the end ultimately cut?  
 21 MR. DITTENBER: Yes.  
 22 MR. WILLIAMS: I think he's talking about  
 23 the scope of services in the final contract, not the  
 24 RFP.  
 25 THE WITNESS: It was not changed because

1 name was, but he actually worked for one of the  
 2 consultants. But I remember Ed Tatem mentioning that  
 3 some of the female owned firms had, you know, more work  
 4 than they could handle. And he's a black male.  
 5 Q. And who does he work for?  
 6 A. PB, Parsons Brinckerhoff. And I believe the  
 7 other person that mentioned it was Sean Kelley mentioned  
 8 that a lot of the -- you know, some of the firms, you  
 9 know, had quite a bit of work.  
 10 Q. Who does Mr. Kelley work for or who did he work  
 11 for at the time?  
 12 A. I'm not sure. He was with Mannik & Smith now,  
 13 but I'm not sure if he was with them then or not. I'm  
 14 not sure who he worked for then. Those are two I  
 15 remember right now.  
 16 Q. And you spoke with those individuals?  
 17 A. No, we were -- this was like in passing, you  
 18 know. And then the one gentleman, I just can't remember  
 19 his name because it's been like six, seven -- you know,  
 20 it's been a while back.  
 21 Q. And you spoke with them in passing around the  
 22 same time --  
 23 A. Well, no, because the thing is is that --  
 24 Q. Could I please finish my question?  
 25 A. Sure.

1 Myron Frierson intervened after I contacted him. And he  
 2 sent me -- he contacted me and told me -- his words were  
 3 your contract will remain as stated in the RFP. And  
 4 that was because I contacted him now and he said you'll  
 5 be hearing from the project engineer. And then the  
 6 project engineer contacted me, it was like a couple days  
 7 later.  
 8 BY MR. DITTENBER:  
 9 Q. Is your answer no?  
 10 A. Ultimately it was not, after I made contact with  
 11 his -- ultimately, his ultimate supervisor in Lansing.  
 12 Q. You referenced some white male owned companies  
 13 that gave you some information regarding the female  
 14 companies?  
 15 A. Uh-huh.  
 16 Q. Which company, which white male owned company  
 17 gave you --  
 18 A. Oh, that's been quite a few years, that was  
 19 around that time so....  
 20 Q. Who were they?  
 21 A. Who was it that -- I believe one of the persons  
 22 that mentioned that there were female companies that had  
 23 a lot of work -- actually they weren't all consultants,  
 24 so it wasn't just consultants. There was one gentleman  
 25 that I was at a class, and I can't remember what his

1 Q. When you spoke with these two individuals in  
 2 passing, as you said, was this around the same time as  
 3 the issue with the selection on the 2008 contract,  
 4 around October of 2007?  
 5 A. I don't know the dates.  
 6 Q. Do you recall which white female owned firms  
 7 these gentlemen were referring to as having too much  
 8 work?  
 9 A. No, I didn't -- I don't think I said too much  
 10 work, I don't think I used those words. Had more work  
 11 than they could handle and some of them were not  
 12 accepting any more work, I think that's what I stated.  
 13 You can check, I think that's what I stated, not that  
 14 they had too much work, that they had more work than  
 15 they could han- -- they had more work coming in than  
 16 their capacity could handle, okay?  
 17 Q. Okay, that's not an important distinction to me;  
 18 do you understand what I'm saying?  
 19 A. Oh, yeah, but it is, though, it is.  
 20 Q. I'm --  
 21 A. When someone says a company has too much work  
 22 that can be looked at in a derogatory manner as opposed  
 23 to more work than they can handle means they have so  
 24 much work coming in that their staff -- that they need  
 25 to ramp up.

1 Q. Which companies are you talking about?  
2 A. I think they were speaking of at the time HH  
3 Engineering, Liz Harding, Access Engineering, and  
4 currently the latest one, and this wasn't then but  
5 latest one that now has, you know -- and this is an  
6 aspect of ramping up and getting more work than they can  
7 handle, but being helped to obtain work is Great Lakes  
8 Engineering is the latest one, but that wasn't back  
9 then. The companies back then we're speaking of those  
10 first two.

11 Q. Did you ever contact anyone from any of the first  
12 two companies regarding their workload?

13 A. We don't do a similar type of work. They are  
14 design. And they sub a lot.

15 Q. The selection process, and I'm jumping back to  
16 the 2006 contract with Victor Judnic, was that completed  
17 before November 2008?

18 A. I don't remember the exact completion date. I  
19 believe it was, but I'm not sure of the exact close out  
20 date of that contract.

21 Q. I'm not talking about the close out date of the  
22 contract, just the issues we've discussed involving the  
23 proposal and the re-advertisement.

24 MR. WILLIAMS: Object, lack of foundation.  
25 To the extent you know, just answer only what --

1 Q. Do you recall if that was before November 2008?

2 A. What, the phone call to Myron Frierson?

3 Q. Yes.

4 A. It was the same day -- whatever that day was that

5 Jason Volgt called me, that was the day I talked to

6 Myron Frierson so....

7 Q. In paragraph 44 you allege that in September 2009

8 Fishbeck was awarded an as needed contract that your

9 company had submitted a proposal for?

10 A. September of '09?

11 Q. Do you recall that contract selection?

12 A. Yeah, I recall, yeah, there was a contract that

13 was obtained by Fishbeck.

14 Q. And you allege that your scoring sheet for that

15 selection process indicated that it was missing key MDOT

16 staff.

17 A. Uh-huh. Yes, sorry.

18 Q. I'm going to show you, it's going to be marked as

19 Exhibit 2.

20 (Whereupon Deposition Exhibit No. 2

21 marked for identification.)

22 BY MR. DITTENBER:

23 Q. Do you recognize this document?

24 A. This is the score sheet I believe for that

25 selection, correct.

1 THE WITNESS: Can you repeat the question?

2 MR. WILLIAMS: He's asking you was the  
3 reselection process completed prior to November 200- --

4 THE WITNESS: Oh, when they cut it and  
5 rebid?

6 BY MR. DITTENBER:

7 Q. Yes.

8 A. Oh, I'm not sure. Yeah, I'm not sure when that  
9 next company was selected, what their exact date was. I

10 believe it was -- because it was, you know, around the  
11 same time, it was rebid right after, not long after the

12 first one. And the one that was cut, then the rebid  
13 came out, the advertisement for the rebid came out soon

14 after, but I don't know the exact dates in there.

15 Q. And in paragraph 41 of your complaint you state  
16 that the initial selection for the 2008 contract with

17 Jason Volgt was in October 2007.

18 A. It was, okay.

19 Q. Do you recall if your contacts with Myron  
20 Frierson and your eventual execution of that contract,

21 was that conducted before --

2 A. Soon after.

23 Q. -- November 2008, if you recall?

24 A. You mean my con- -- well, my contact with Myron  
25 Frierson was the same date that Jason Volgt called me.

1 Q. Did you receive a copy of this?

2 A. It should have been -- I believe it was faxed to  
3 me.

4 Q. And do you see where that statement was made  
5 regarding the organizational chart that's in the --

6 A. Right.

7 Q. -- middle column under the comment section. Your  
8 complaint indicates you requested a meeting with

9 Mr. Judnic about this score sheet; do you recall that?

10 A. Is this the one where it was on the phone, ended  
11 up being on the phone, I believe?

12 Q. That's what your complaint alleges.

13 A. Okay.

14 Q. Why did you want to meet with Mr. Judnic, if you  
15 recall?

16 A. Because we're allowed to request a debriefing on  
17 the contract. And is this the one -- oh, one of the key

18 issues for me on this score sheet was actually  
19 understanding of service in addition to the one comment

20 about the organizational chart.

21 Q. Okay.

22 A. The key issue, because the information about the  
23 overhead rate was really one of my main questions on

24 here.

25 Q. Okay. Did you contact Mr. Judnic to schedule --

1 A. I contacted him to schedule a debriefing and he  
2 informed me, and I believe that's in writing, that they  
3 weren't doing debriefings in person, but I was told by  
4 an MDOT person that they do still do debriefings in  
5 person with many companies, he just would not agree to  
6 do one with me. And so we ended up doing it on the  
7 phone.

8 Q. Do you recall when that conversation took place,  
9 the debriefing?

10 A. When we had the debriefing, the exact -- It was  
11 probably some time after that. I don't know the exact  
12 date now.

13 Q. Did you discuss the comments on the scoring sheet  
14 with Mr. Judnic at the debriefing?

15 A. Yes -- well, not after -- It was on the phone, so  
16 it wasn't in person.

17 Q. Correct. But you were able to discuss the issues  
18 you had over the phone with Mr. Judnic; is that correct?

19 A. We discussed the -- we discussed the score sheet.

20 Q. Which contractors did Mr. Judnic conduct in-  
21 person, face-to-face debriefings with?

22 A. I was told by an MDOT person that they do conduct  
23 debriefings in person.

24 Q. Who was that MDOT person?

25 A. Mr. Dargin, Cedric Dargin, told me that they do

1 stated, I believe, that he was no longer doing  
2 debriefings in person. So if he wasn't doing them in  
3 person with anyone, but there was some that he was doing  
4 in person, then that was a false statement. So that's  
5 all I can go by.

6 Q. If he said he was no longer doing them, do you  
7 have any evidence that after he made that statement to  
8 you that he continued to conduct in-person debriefings?

9 A. I'm not in MDOT, all I can go by is what he's  
10 told me.

11 Q. Mr. Judnic or Mr. Dargin?

12 A. Both. Both.

13 Q. Both. When did you speak with Mr. Dargin  
14 regarding this?

15 A. I don't remember the date. I know it was, you  
16 know, somewhere probably around that time '09 or  
17 something, because I was inquiring about -- and I  
18 actually spoke with Rita Screws about that too, and she  
19 was the one who early on told me to request -- you know,  
20 that I still had the right to request a debriefing. And  
21 that was not just about the Judnic contract but also  
22 about the, you know, any contract that I was -- that my  
23 right was to request a debriefing.

24 And then when I contacted -- because I  
25 didn't really know what the process was at that point

1 conduct -- that he had conducted -- at that time he was  
2 still conducting debriefings in person.

3 Q. That Mr. Dargin himself was or that Mr. Dargin  
4 was --

5 A. That MDOT still does conduct debriefings in  
6 person. Because I believe the statement that I received  
7 from Mr. Judnic stated that MDOT was now conducting  
8 debriefings via phone, and that was not the case, they  
9 were still conducting debriefings in person.

10 Q. But --

11 A. He just would not conduct it with me.

12 Q. Do you know if Mr. Judnic conducted an in-person  
13 debriefing with other contractors at that time?

14 A. My understanding was that there were debriefings  
15 that he had conducted with HNTB, with Fishbeck,  
16 Thompson, Carr and Huber, at a minimum those two.

17 Q. Do you know when those debriefings would have  
18 taken place?

19 A. No.

20 Q. Where did you -- how do you know that those two  
21 firms met in person with Mr. Judnic?

22 A. Well, I know that Mr. Dargin told me that there  
23 were debriefings that he had been in, and from what I  
24 remember, those particular contracts were contracts that  
25 Mr. Judnic was also involved in, and also Mr. Judnic

1 early on, this was -- I'm getting this mixed up, because  
2 I received an e-mail from MDOT stating that I was to  
3 contact the project engineer directly, that they were no  
4 longer setting those up through Lansing.

5 Q. Was your communication with Mr. Dargin through an  
6 e-mail, if you recall?

7 A. The question about the debriefings may have been  
8 on the phone at some point where I was asking him  
9 about -- because he was the construction engineer at the  
10 time and I was asking him about the debriefing process.  
11 And I remember him stating that he -- that there still  
12 are debriefings done in person.

13 Q. Do you have any evidence that Mr. Judnic would  
14 not conduct a debriefing with you in person based on  
15 your gender?

16 A. No, not based on gender, no.

17 Q. What about based on race?

18 A. It had to be some reason, I don't know what it  
19 was.

20 Q. What damages did your company suffer by not  
21 having a face-to-face meeting, by discussing it over the  
22 phone?

23 A. When you say damage, what do you mean?

24 Q. Monetary damages.

25 A. When someone won't meet with you face to face --

1 there's a whole different dynamic when you meet face to  
2 face versus talking on the phone and trying to ask  
3 questions. That would be like us doing this on the  
4 phone versus sitting here face to face, okay.

5 Q. Okay.

6 A. So that's your answer is that I can't put a  
7 monetary value to that.

8 Q. I'm going to move on to some evaluations that  
9 your company received.

10 A. Uh-huh.

11 Q. And you claim that you were -- you received  
12 low -- your company received low scores on both the 2006  
13 contract with Mr. Judnic and the 2008 contract with  
14 Mr. Volgt; is that your understanding?

15 A. When you say low scores, you mean -- what's the  
16 exact -- there's a couple of aspects in there about the  
17 scoring, there's a few, so....

18 Q. I'm going to go over all of those.

19 A. Right.

20 Q. I'm going to start with the 2006 contract with  
21 Mr. Judnic. And I'm going to give you a document that's  
22 going to be marked as Exhibit 3.

23 (Whereupon Deposition Exhibit No. 3  
24 marked for identification.)

25 BY MR. DITTENBER:

1 Q. It's your allegations.

2 A. Well, I believe that this is -- I believe this is  
3 the issue where -- my thought when I received this was  
4 that first -- I believe this is the one where the first  
5 one we received where I received one of the sub's  
6 evaluations and requested the correct evaluation and --

7 Q. Was that just a mistake, do you know?

8 A. I don't know. I don't know if it was sent to the  
9 wrong address. I received a sub's evaluation, that was  
10 probably a mistake, because I requested the right  
11 evaluation, but then my concern was was that when in  
12 prior years it was no problem getting -- if you were a  
13 prime you could get the evaluations of the subs on your  
14 team, because it was your team and you wanted to know  
15 how your subs were evaluated because the MDOT project  
16 engineer did that evaluation, supposed to, you know, do  
17 the evaluation.

18 So I requested and I can't remember if I  
19 ended up having to FOIA these or how I ultimately got  
20 these. I know I had to FOIA the next ones. And my  
21 concern was that for every year up until that we had,  
22 you know, in major contracts like this, had done very  
23 well. And the staffing, you know, hadn't changed that  
24 much.

25 And then the concern was that now all of a

1 Q. Do you recognize this document?

2 A. Let me see which one this is. Yes.

3 Q. And this is the final evaluation on the 2006  
4 contract?

5 A. 2006-0490.

6 Q. And did you receive a copy of this evaluation?

7 A. Yeah, after requesting for -- initially I did  
8 not, I received -- I believe this is the one where I  
9 received one of the sub's evaluations.

10 Q. If you look at the back page, Mr. Judnic signed  
11 this evaluation; is that correct?

12 A. Yeah, I see it looks like his signature, I mean I  
13 can't --

14 Q. I'm not asking you to -- what it appears from the  
15 face of the document?

16 A. I see it's signed.

17 Q. And dated April 2009?

18 A. Uh-huh, yes.

19 Q. What are you alleging was improper about this  
20 evaluation?

21 MR. WILLIAMS: Objection to the form of the  
22 question. To the extent you know.

23 THE WITNESS: I don't really know what  
24 you're asking me.

25 BY MR. DITTENBER:

1 sudden we're getting, you know, evaluations that  
2 are -- it wasn't bad, it wasn't awful, but the bigger  
3 concern I believe than this one was that when I looked  
4 at my subs I had never had an instance that I could  
5 relate to or that I had known about where the subs were  
6 all evaluated higher than the prime.

7 Q. Okay.

8 A. And that was, I believe, the situation on this.  
9 And so....

10 Q. During the course of this project did Defendant  
11 Judnic identify any problems with your company's  
12 performance?

13 A. I can't remember if this is the -- let me see. I  
14 believe this is the one where he had a problem with  
15 Mr. Love Charles, I believe, and I can't remember if it  
16 was this one or the next one, and that may be the reason  
17 for the one seven.

18 MR. WILLIAMS: I believe there are two  
19 sevens.

20 THE WITNESS: Yeah, there is, okay.

21 MR. WILLIAMS: One on two and one on seven  
22 in here.

23 BY MR. DITTENBER:

24 Q. Did you appeal this evaluation?

25 A. We met with him. We had a meeting, and I ended

1 up after -- yeah, I remember the meeting I believe was  
2 the meeting with myself, Victor, Rita Screws, and I  
3 believe that's the one I was speaking of earlier where I  
4 believe Steve Griffith was in that meeting. And this  
5 particular -- I don't remember if I appealed this or  
6 not, I don't think I did. But I remember having a  
7 meeting with him and he did granted me -- MDOT met with  
8 the vendor project manager to discuss the deficiencies  
9 and address concerns.

10 And that was the meeting that I met with and  
11 requested, because of this evaluation, that we then have  
12 monthly meetings, and the first words from Victor were  
13 that he didn't have time.

14 Q. But that was for the next contract, correct,  
15 where you requested the meetings?

16 A. That was --

17 Q. That was after this evaluation?

18 A. That was in this meeting, I believe, in the  
19 meeting that he's referring to here.

20 Q. Okay.

21 A. Because I think by I believe by this time we had  
22 the next contract already and this was when I believe  
23 HNTB was on the team. And one of my major issues with  
24 this one was that towards the middle portion of this  
25 contract he would not allow my company to bill, if this

1 modified evaluation, to be quite honest, I really don't.

2 They are saying that the rating wasn't  
3 modified but this -- I read this as saying the comment  
4 was modified following appeal, so I must have appealed  
5 it but what I'm wondering is the date's not making sense  
6 to me so I just can't recall why the date would be '09.  
7 Maybe it took him a while to modify it, I'm not sure.  
8 The date seems awfully far out for this contract -- for  
9 this evaluation, I'm sorry.

10 Q. We're both looking at the same document, though,  
11 right?

12 A. Yeah.

13 Q. Are you alleging that this evaluation was  
14 discriminatory?

15 A. If this is the one that's based on the issues  
16 that I mentioned with Love Charles -- let me see. Let  
17 me make some sense of this. Something is not right.

18 Q. Can we talk about Mr. Charles for a minute?

19 A. Sure.

20 MR. WILLIAMS: Well, let her answer the last  
21 question. You're asking another question and she hasn't  
22 answered the last one.

23 THE WITNESS: Yeah, my concern is that,  
24 yeah, I'm looking at the dates and something is not  
25 making sense with this, with the dates. I'm kind of

1 Is the HNTB one, he would not allow BBF to bill to this  
2 contract. There are several invoices where he would  
3 only allow HNTB to bill.

4 Q. On this contract, on 2006?

5 A. If this is the one with HNTB as a sub to me, it's  
6 this one, and he would not allow me to bill. And I  
7 asked him several times and even at -- there was a  
8 meeting in July -- is this the one? Wait a minute.  
9 Something doesn't seem right about that because this is  
10 the '06 contract that we would have worked on in seven  
11 and -- that date seems awfully late for this, for '06.

12 Are you sure something isn't combined  
13 because this is the 2006 contract. We would have worked  
14 on this in '06 and 7, and I'm just wondering why, if  
15 there's a 2006 contract that we would have worked on in  
16 '06 and '07, why this isn't done till '09. Something  
17 doesn't seem quite right about this. I'm not sure  
18 about --

19 Q. Do you recall if you did appeal this evaluation?  
20 And I'll direct you to the last page in the other  
21 comments section, what does that say?

22 A. Oh, okay, comment for number two. The comment  
23 for number two is they are saying that the rating wasn't  
24 modified but the comment was modified, is that what  
25 that's saying? Because I don't remember receiving a

1 stuck on that, to be quite honest. But I believe there  
2 were some discriminatory aspects of this because this  
3 was one of the first ones -- if this was in '0- -- if  
4 this was evaluated in '09, there was a distinct -- some  
5 issues I started seeing after my company got the award  
6 in 2008, so my concern is that Mr. Charles did -- he was  
7 one of the leaders of the company when it came to the  
8 DBE program in monitoring that.

9 So if you're asking whether I believe there  
10 was some discrimination in the formulation of the  
11 evaluation of this I say yes, but from the standpoint of  
12 my concern with this evaluation was that BBF Engineering  
13 Services was evaluated lower than all of the subs, and  
14 that had never happened before, that we were evaluated  
15 lower than our subs. And for no -- you know, I didn't  
16 end up with a reason why, you know, we did worse than  
17 the subs.

18 And then the other thing about this contract  
19 and this evaluation, if this is the one that HNTB is on,  
20 the other reason why I say there was some discriminatory  
21 practices is because my company was not allowed to bill.  
22 We're the prime, but there was about a six month period  
23 of time where we were not allowed to bill and only HNTB  
24 could bill.

25 And I did bring this up later to Mr. Judnic

1 and I also brought it up to commission audits and they  
2 confirmed that, yes, they did know that for I believe it  
3 was a six month period of time I was not allowed to bill  
4 to this contract. And I believe it was this one.

5 Q. Okay. Let's talk about Mr. Charles for a bit.

6 A. Yes.

7 Q. Maybe that will clear some of this up. Who is  
8 Mr. Charles, Mr. Love Charles?

9 A. He used to work for BBF Engineering Services.

10 Q. How long did he work for your company?

11 A. I believe he came on in like '97, '98 early and  
12 then he left in 2008, in December.

13 Q. Do you know any of his background prior to  
14 joining your company?

15 A. He worked for MDOT. He was an MDOT employee.

16 Q. Do you know how many -- approximately how many  
17 years he was?

18 A. I know it was over 30 years.

19 Q. Do you recall how old Mr. Charles was when he  
20 joined your company?

21 A. No, I don't know how old he was.

22 Q. What was his position at BBF Engineering  
23 Services?

24 A. He was DB tech -- he handled the DBE technical  
25 assistants. He worked as an office technician. He was

1 BY MR. DITTENBER:

2 Q. Do you recognize this document?

3 A. Yes, we did this document.

4 Q. By did, you mean you prepared this document?

5 A. Yeah, this is the minutes that my company did.

6 Q. Okay.

7 A. We did the minutes for this meeting and I believe

8 I requested this meeting and when we walked in the  
9 meeting this is the meeting that was a catalyst because

10 we walked in and there was a hand document that we had  
11 just got that day from Mr. Judnic with these issues, a  
12 list of issues. And you see here it was provided that  
13 day.

14 Q. And were the issues -- who did those issues  
15 pertain to that were on that document?

16 A. They were related to a project, and I believe it  
17 says here the M-10 project, you know, I'm assuming  
18 that's the case.

19 Q. Did they -- did these -- did this list of issues  
20 involve Mr. Charles?

21 A. It involved questions. And the job was not  
22 finalized so everything on that document was still  
23 being worked on because the job was not final. And then  
24 I released Mr. Charles from the meeting early and he  
25 went -- he took the document with him.

1 the one who was the office technician when Victor Judnic  
2 came to MDOT and he ultimately was the one who was the  
3 office technician that got Victor Judnic certified and  
4 he also was a technician, you know, where he could do  
5 inspection work. Did I say DBE tech?

6 Q. Yes.

7 A. Okay.

8 Q. And do you recall if he served in those  
9 capacities on the 2006 contract?

10 A. Yeah, he should have served in those capacities,  
11 yeah. I'm not sure how much office tech work he did,  
12 but I think he did a little bit, maybe quite a bit.

13 Q. Did Mr. Judnic bring to your attention any  
14 deficiencies with Mr. Charles' performance on that  
15 contract?

16 A. There was a meeting we had in July of '08, I  
17 believe it was July, but that, I believe, would have  
18 been under the Volgt contract because I remember Jason  
19 Volgt being at that meeting.

20 Q. I'm going to hand you a document which would be  
21 Exhibit 4.

2 (Whereupon Deposition Exhibit No. 4  
3 marked for identification.)

4 THE WITNESS: Is this the July '08 meeting?  
5 Yes, this is the one.

1 And later that day I spoke with him and he  
2 told me that he was -- some of the things on the  
3 document that Ms. Papanek and Mr. Judnic stated that  
4 couldn't be found or, you know, he told me, he said,  
5 Bellandra, I'm taking them the things that they said  
6 they couldn't find and they won't even talk to me. And  
7 Mr. Judnic -- they wouldn't even respond to him.

8 And in addition to that, that same day  
9 because I didn't have -- the document was prepared in  
10 writing, it was not a Word document -- it was not a  
11 typed document, it was a handwritten document, and I  
12 requested in writing to Mr. Judnic to send me the  
13 document in a Word document so we can address each issue  
14 and have it documented and then I could get the  
15 information back to him, and he would not do that. I  
16 sent him an e-mail either that day or the next day  
17 stating please forward the document that you gave to  
18 Mr. Charles so we can address each issue.

19 And he came back with an e-mail that was  
20 saying something about there's issues with City of  
21 Detroit. And Mr. Charles was even, you know, related to  
22 what he was talking about. And to this day, and that's  
23 been four years, I never did get the document.

24 So what -- coupled with Mr. Charles going to  
25 him right after the meeting and Ms. Papanek, and showing

1 them where things were and handing them things to no  
2 response, what I concluded was they didn't want us to  
3 fix anything. They wanted a reason that they could come  
4 back and evaluate me lower based on Love and that would  
5 get us out of there, okay?

6 That gets us -- because this contract and  
7 the next contract had two aspects, one in each one, that  
8 were exclusive to that Detroit TSC, and that was a DBE  
9 technical assistance. And Love was one of the few  
10 people and he worked for my company that had the ability  
11 to do that work, the experience, I should say, not  
12 ability, experience, because he had worked in that  
13 capacity. And I believe I had that on the list, he  
14 worked in that capacity with MDOT and carried over and  
15 did that type of work with BBF Engineering Services.

16 Q. Okay. Do you know who prepared the handwritten  
17 document?

18 A. When we got to the meeting, my understanding was  
19 that based on what they said, Deanna said she prepared  
20 it for Mr. Judnic because she worked for him, yes.

21 Q. And your company received a copy of the  
22 handwritten document; is that correct?

23 A. Mr. Charles received the handwritten document, he  
24 took it, because he left the meeting early. I didn't  
25 get -- I didn't have a copy of it.

1 writing prior to that saying, you know, these are issues  
2 that are -- you know, that we have that we want  
3 addressed. So we walked in the meeting and we got the  
4 document so....Now, this is related to the document,  
5 right, just the document that we received, that's the  
6 questions you have, right?

7 Q. Yes.

8 A. Because there's a lot of stuff in these minutes  
9 so -- okay.

10 Q. Yes, I was just asking about the issues  
11 identified in the document. In paragraph 130 of the  
12 proposed amended complaint you state -- you allege that  
13 Mr. Judnic did not allow Mr. Charles to attend meetings.  
14 Which meetings are you referring to?

15 A. Oh, there were -- I mean, I can't tell you  
16 exactly the number of meetings but my understanding was  
17 that there were several meetings with DBEs that he told  
18 me that there would be meetings, you know, for the  
19 D- -- as the DBE technical assistance or meetings  
20 regarding questions with DBEs or claims or whatever.  
21 And he told me that there were several times where he  
22 was told not to attend, that they would attend it, that  
23 he was not allowed to attend.

24 MR. WILLIAMS: Who is they you're talking  
25 about, MDOT personnel?

1 Q. I understand.

2 A. Okay.

3 Q. But Mr. Charles did receive the handwritten  
4 format?

5 A. Right, he was responding, as I stated, and -- but  
6 they wouldn't respond back. And when I requested to  
7 have it in a formal format, they -- it was not sent to  
8 me.

9 Q. Okay. Did you disagree that there were any  
10 issues with Mr. Charles' performance on that work?

11 A. I didn't agree or disagree. I had just received  
12 that document, I mean, you know. And then with  
13 maybe -- I wasn't going to sit there and tell the boss,  
14 well, no, he didn't -- you know, there's nothing wrong.  
15 I mean, there's always things that can possibly be, you  
16 know, worked on or addressed. These were things that  
17 they said that needed to be addressed, that's how it was  
18 presented. But my concern was that when he was trying  
19 to address them, there was no response.

20 Q. And that that July meeting was the first time you  
21 or Mr. Charles, to your knowledge, had heard of these  
22 problems?

23 A. Well, this was the first time I ever actually had  
24 a formal document, you know, where he said this is --  
25 you know. And I don't remember Victor contacting me in

1 THE WITNESS: Yeah, he and/or Sharleta Paris  
2 would attend.

3 BY MR. DITTENBER:

4 Q. He being Mr. Judnic?

5 A. Yes, yes. And also related to DBE meetings, the  
6 other ones were the difficulty in -- there were some  
7 meetings where the Office of Business Development that  
8 heads up the DBE program wanted Love to attend meetings  
9 and, you know, there was a couple of occasions, maybe  
10 probably more than that, where there would be different  
11 forms or meetings related to DBEs where Love normally  
12 over the past years would always attend these meetings.

13 And in this case there were times where he  
14 would send an e-mail basically saying that, you know,  
15 Love could not attend. And I remember sending e-mails  
16 to like Pat Collins and Ann Williams and them stating  
17 back to me that basically, you know, Victor heads up  
18 this contract so he basically has the say in whether  
19 Love can attend the meetings. So those were meetings  
20 that they wanted him to attend but he was not allowed  
21 to. But the other ones were specific meetings with DBEs  
22 where he told me that there were several occasions where  
23 he was told, no, that he would not be allowed to  
24 attend -- that he would attend or Sharleta or whoever  
25 Victor appointed to attend.



1 And that was part of our contract because I  
2 remember on occasion mentioning to Mr. Judnic that --  
3 actually not mentioning but I have it in writing, I know  
4 at least one e-mail where I told him that, you know,  
5 this is part of our contractual obligations to assist  
6 the DBEs. And one of the concerns was about some of the  
7 DBEs wanting to be anonymous because they had concerns  
8 for, you know, being out there and the questions and  
9 that they be labeled a complainer and, you know, not get  
10 any future work. So some -- and I told them some of  
11 them do want to remain anonymous, you know, that he  
12 would meet with over the years because of fear of  
13 retaliation.

14 Q. Do you recall the time period that this was going  
15 on?

16 A. This was probably -- oh, the year -- I know some  
17 of it happened the year Love left, he left in December  
18 of '08, so I know some happened that 2008 year and  
19 possibly the end of '07, but I know '08. And there's  
20 really nothing I could do, I mean, you know.

21 Q. Are you alleging that Mr. Judnic did not have the  
22 authority to request that Mr. Love Charles not attend  
23 the meeting?

24 MR. WILLIAMS: I think she's alleging the  
25 exact opposite.

1 had sat down with Mr. Voigt at our expectation meeting,  
2 and I believe that's what they called it.

3 Q. Are we talking about the 2008 contract now?

4 A. Yes, yeah, we sat down -- is that what you were  
5 talking about? Am I off key here? Did I lose track?  
6 We were talking about Mr. Charles, so he worked on both  
7 contracts.

8 Q. Right.

9 A. He worked on the '06 and '08. So this  
10 particular -- and you asked me a question about, you  
11 know, before he left, and that would have been '08.  
12 So --

13 Q. I'm just asking the meeting you were specifically  
14 referencing there.

15 A. The meeting I was referring to, yeah, the  
16 expectation meeting would have been the expectation  
17 meeting for the '08 contract because I remember  
18 Mr. Voigt was there and he was the project engineer.  
19 And Mr. Judnic was supposed to be there because he was a  
20 supervisor but he was not there.

21 Now, at that meeting, at the expectation  
22 meeting there were many things discussed, and one of the  
23 things that was discussed was that every winter, because  
24 of the slowness of the period of time and to maintain  
25 the budget, Mr. Charles would be off like probably about

1 THE WITNESS: No, I said the exact opposite,  
2 that he was the one who, you know, could say that he  
3 couldn't attend the meeting, even though it was part of  
4 our contract that Love was supposed to attend the  
5 meetings.

6 BY MR. DITTENBER:

7 Q. Was this an as needed contract, do you recall?

8 A. Yes. But the DBE component had -- in the past it  
9 had specific things that MDOT and the Office of  
10 Development wanted that technician to do, and one of the  
11 things was to attend meetings with the DBEs, you know,  
12 on behalf the DBEs to assist them with claims and  
13 questions out in the field, you know.

14 Q. In paragraph 132 you allege that Mr. Charles  
15 retired because of Mr. Judnic. What evidence do you  
16 have to support that allegation?

17 A. Well, all the things that led up to it. I mean,  
18 there were so many instances of where it got to the  
19 point where Mr. Charles really couldn't do his job  
20 specifically relative to the DBE. It was increasingly  
21 difficult, like even the annual conference that he was  
22 requested to attend every year and it typically is in  
23 March of each -- right around March of each year.  
24 Mr. Judnic even had an issue with Love attending that.  
25 I mean, it was -- at the beginning of the contract we

1 three months, you know, during the slow  
2 non-construction -- the slow portion of construction  
3 time. And so but he would always get back prior to that  
4 DBE annual meeting, and the Office of Business  
5 Development DBE program wanted him there.

6 But when he came back there was just huge  
7 issues with Mr. Judnic about, you know, Love attending  
8 the meeting and, you know. And what I ended up telling  
9 him is that this was decided that he would come back in  
10 time for the meeting at that expectation meeting.

11 And, you know, so then it just went downhill  
12 from there. That's the year we got the award and from  
13 then on it just got to the point where that was the year  
14 that there was a lot of meetings they wouldn't allow him  
15 to attend and we got Office of Business Development  
16 asking me about meetings that, you know, that they  
17 wanted him at and it just -- it got to be, I think, too  
18 much, you know, so he just....

19 Q. When did Mr. Charles first mention retirement to  
20 you; do you recall?

21 A. He didn't mention it to me, I ended up having to  
22 mention it to him. He wasn't planning to retire.

23 Q. When did you first mention it to Mr. Charles  
24 then?

25 A. When all these issues started happening with

1 Mr. Judnic.

2 Q. When was that?

3 A. Late '07, early '08, probably '08, around '08  
4 when all these things started happening. It just -- it  
5 got to the point where it was just too much.

6 Q. When did Mr. Charles inform you that he was going  
7 to, in fact, retire?

8 A. Towards the -- let me see. It seems like it was  
9 not long after -- right around this time, shortly after  
10 this meeting, the July meeting, I believe. It seems  
11 like it was right around that time or something. I  
12 don't remember the exact date when -- and I remember  
13 Victor Judnic sending an e-mail, you know, about exactly  
14 when is Love leaving and blah, blah, blah, you know,  
15 just sending an e-mail about that. And we did confirm  
16 it and he ended up leaving in December of '08.

17 Q. Do you recall how old Mr. Charles was at the time  
18 of his retirement?

19 A. Exact date? No, I don't remember his exact date  
20 when he retired.

21 Q. Do you know how long he planned to keep working?

22 A. Well, he still did work for MDOT after he left  
23 me. MDOT hired him on an independent contract to do  
24 specific work. So even after he left me MDOT still  
25 hired him back on a separate contract that I had nothing

1 that Gateway project, one of the aspects that came out,  
2 and this was in -- it would have been in 2010, and this  
3 would have been a year after -- because when Mr. Charles  
4 left there was a time period when we assisted -- still  
5 were assisting MDOT but Mr. Ray Stewart was helping him  
6 a little bit with the DBE program in their transition  
7 period.

8 In 2010 -- I'm sorry, I just lost my train  
9 of thought, hold on. Shoot, I can't get it back, oh, my  
10 gosh. I believe I was saying in 2010 -- oh, the Federal  
11 Highway Administration, that was one of the issues in  
12 their audit of the Gateway project was that they had  
13 major concerns about the DBE program. So we handled the  
14 program for a little over ten years. Two years, year  
15 after we stopped working on it, then there's issues with  
16 it.

17 Q. Do you believe -- do you have any evidence that  
18 Mr. Judnic informed your company of the issues involving  
19 Mr. Charles because of Mr. Charles' race?

20 A. Race -- Mr. Charles' race?

21 Q. Yes.

22 A. I don't know if it was -- it may have been  
23 Mr. Charles' race, but I also think that my race and sex  
24 had a play in that too because I am the owner of the  
25 company. So, you know, what it looked like to me when

95

1 to do with, so they must have thought his services were  
2 somewhat valuable.

3 Q. Do you know who hired him?

4 A. Lansing, Lansing Office of Business Development,  
5 DBE people. I know he had at least one contract with  
6 them if not two, and this was after 2008 and he  
7 just -- he did some work for them just working on that  
8 Southfield freeway project, helped them out with some  
9 DBE, you know, worked with the DBE and Office of  
10 Business Development, and that would have been 2011,  
11 late 2010, he did some work for them then. That had  
12 nothing to do with me. So they were still hiring him as  
13 an independent after he -- this was two or three years  
14 after he left me. So he must not have been that bad.

15 Q. What are the damages your company suffered by  
16 virtue of Mr. Charles' retirement?

17 A. It's immeasurable. I mean, he was one of the  
18 backbones of the company. He came on board when we  
19 started. He handled the DBE program. He was a  
20 technician that -- and a lot of the DBEs trusted him.

21 And in addition to that I found out that on  
22 that Gateway project, that project was evaluated by the  
23 Federal Highway Administration, and my understanding  
24 from someone with the Federal Highway Administration is  
25 that when that audit was done or evaluation was done for

97

1 all this happened was that because Mr. Charles, you  
2 know, worked on the DBE program, he was well liked in  
3 handling the DBE program and other things as far as  
4 office technician. If Love was gone, that basically  
5 would cripple the company.

6 And that's ultimately what happened, you  
7 know. Love was one of the people -- you know, not that  
8 it would totally disband the company, but it did cripple  
9 it, you know, because those two contracts, as I stated,  
10 the 2006 and 2008 contracts were two contracts that had  
11 DBE technical assistance as a major component of the  
12 contract.

13 Q. Did you have any discussions with Mr. Charles  
14 regarding his performance on those contracts?

15 A. Yes, on several occasions, to make sure that he  
16 was doing what he's supposed to do and, you know, and  
17 even with this, you know, I told you we talked that day  
18 about that list.

19 Q. Were you Mr. Charles' direct supervisor?

20 A. Well, at MDOT Victor would have been his direct  
21 supervisor, you know, so because I was not allowed to  
22 bill to the contracts, I was not -- Victor would not  
23 allow me to be on the contract direct bill, so I was the  
24 owner of the company. So in that capacity I had a say  
25 to discuss this issue of Mr. Judnic -- Mr. Charles to

1 make sure he was doing what he was supposed to do. But  
2 on the job daily Victor was the MDOT person or the  
3 client.

4 Q. Within your business do you evaluate your  
5 employees?

6 A. Yes, I had in the past, uh-huh.

7 Q. Did you evaluate Mr. Charles?

8 A. This year, no, I did not because he was -- this  
9 year, 2008, we just had verbal conversations based on  
10 that, and he knew what my expectations were.

11 Q. As Mr. Charles' supervisor within your company,  
12 was he meeting those expectations?

13 A. Well, in that capacity I would have to defer  
14 based on this because he was here every day. So based  
15 on this and based on the evaluation, you know, Judnic  
16 was saying that in this -- with this document he was not  
17 meeting expectations, with that document, but that was  
18 just one of the things he did in one document, in one  
19 project he worked on, you know. He worked on several  
20 projects over the years in addition to being the  
21 technician who was responsible or in that office working  
22 for Mr. Judnic that got Mr. Judnic certified.

23 Q. Going back to the evaluation for the 2006  
24 contract with Mr. Judnic, now that we've discussed some  
25 of the issues with Mr. Charles, do you believe that

1 know, higher and there were no major issues with his  
2 performance.

3 So now all of a sudden we go from nines,  
4 tens, you know, I don't even know -- I don't even  
5 remember getting even an eight, and then you go to a  
6 seven, you know. So that's why I think there was  
7 another motivation here. I truly believe and that the  
8 reason for the low evaluation was motivated by disparate  
9 treatment or discrimination based upon race and/or  
10 gender.

11 Q. Okay. And one thing you mentioned earlier was  
12 that your evaluation was lower than that of your sub  
13 consultants; is that correct?

14 A. I believe this -- yeah, both of these, the '06  
15 and '08 contract, when we finally did get the  
16 evaluations of our subs, that's when I realized, and I  
17 put together a spreadsheet showing that. And what  
18 I -- but there was a reason why I thought that was done  
19 so....

20 Q. Do you get extra points for being a prime  
21 consultant?

22 A. I don't understand that question.

23 MR. WILLIAMS: Well, if you don't know say  
24 so.

25 THE WITNESS: Extra points for being a prime

99

101

1 Mr. Judnic discriminated against you or your company  
2 based on your race in this evaluation?

3 A. That's exhibit --

4 Q. That is Exhibit 3, I believe.

5 A. I do believe Mr. Judnic's motivation for the low  
6 evaluation was discrimination based on race and/or  
7 gender.

8 Q. Can you tell me on this evaluation whether it was  
9 race or gender?

10 A. I believe I said race and/or gender. I cannot  
11 say which one or the other.

12 Q. Why do you consider this a low evaluation?

13 A. Well, it's low -- low in the aspect of some of  
14 the ones we had in the past. Particularly what was  
15 interesting to me about this one is this comment. The  
16 two sevens I believe were addressed more so at  
17 Mr. Charles' performance. I have evaluations that from  
18 just a couple years before that where for, you know, his  
19 services as DBE tech they were nines, tens, so....

20 Q. Were similar issues involving Mr. Charles'  
21 performance raised on those past contracts?

22 A. This is DBE. I said DBE, DBE technician, so some  
23 of these comments I think were based on his aspect of  
24 DBE, you know. So we have past evaluations before  
25 Mr. Judnic came to MDOT where Mr. Charles was rated, you

1 consultant?

2 BY MR. DITTENBER:

3 Q. Yes.

4 A. What do you mean by extra points for being a  
5 prime consultant?

6 Q. I mean is there any reason why the difference  
7 between a prime consultant and a sub consultant should  
8 matter in the evaluation rating?

9 A. Well, the reason that the scores on your  
10 evaluation matter is because there is a component on  
11 every score sheet.

12 Q. I'm not asking that, ma'am.

13 MR. WILLIAMS: Well, let her finish her  
14 answer. You asked an open-ended question, you got to  
15 let her finish her answer.

16 MR. DITTENBER: She wasn't responding to my  
17 question.

18 MR. WILLIAMS: But you got to let her finish  
19 her answer. You asked an open-ended question, let her  
20 finish her question. Stop interrupting.

21 THE WITNESS: Okay. Would you --

22 BY MR. DITTENBER:

23 Q. Listen to the question I'm asking.

24 MR. WILLIAMS: No, let her finish her  
25 answer.

1 THE WITNESS: What I --  
 2 MR. REILLY: Could you read back the  
 3 question?  
 4 MR. WILLIAMS: I don't care about that, let  
 5 her finish her answer.  
 6 MR. DITTENBER: Will you please read back  
 7 the question?  
 8 MR. WILLIAMS: No, let her finish her  
 9 answer. Go ahead and finish your answer.  
 10 THE WITNESS: Okay. What I was saying was  
 11 that you have -- the reason why it's a concern about the  
 12 scores on the evaluation is that your evaluation scores  
 13 are directly related to the past performance component  
 14 of every score that you get with MDOT. So if your  
 15 scores are low here, even if it's a .5 difference, that  
 16 can be justification for out of 20 under past  
 17 performance, as this was, of giving one company a 16 and  
 18 one company an 18. And there have been numerous  
 19 contracts that I lost for point values of under five  
 20 points. So that was my point.  
 21 BY MR. DITTENBER:  
 22 Q. Okay. I'm going to ask the question, just answer  
 23 the question I ask.  
 24 MR. WILLIAMS: If you can answer yes or no,  
 25 otherwise you tell him you can't answer yes or no. He

1 mean, all I know is that my evaluation on two  
 2 consecutive contracts were lower than all my subs and  
 3 that's very unusual, you know.  
 4 Q. You also allege that you received a low  
 5 evaluation on the 2008 contract involving Mr. Voigt; do  
 6 you recall that?  
 7 A. Yes, but there's another concern with that one in  
 8 that --  
 9 MR. WILLIAMS: Just stick to his answer.  
 10 THE WITNESS: Yes.  
 11 MR. WILLIAMS: Don't volunteer.  
 12 MR. DITTENBER: Could you mark that as  
 13 Exhibit 5, please?  
 14 (Whereupon Deposition Exhibit No. 5  
 15 marked for identification.)  
 16 BY MR. DITTENBER:  
 17 Q. Do you recognize this document, Ms. Foster?  
 18 A. This is the final one. The one that I'm thinking  
 19 of is the -- when you say the evaluation that supposedly  
 20 Mr. Voigt did, that was an interim because he left prior  
 21 to this.  
 22 Q. That's correct, but this is the --  
 23 A. This is not Mr. Voigt's evaluation.  
 24 Q. No, this is the project that Mr. Voigt began as  
 25 the project manager on, though; is that your

1 can decide whether he wants the answer.  
 2 THE WITNESS: Okay.  
 3 BY MR. DITTENBER:  
 4 Q. Is there any difference between the evaluation of  
 5 a prime consultant and a subconsultant -- let me start  
 6 that over, strike that.  
 7 MR. WILLIAMS: Therein lies the problem.  
 8 MR. DITTENBER: Excuse me?  
 9 MR. WILLIAMS: Therein lies the problem.  
 10 BY MR. DITTENBER:  
 11 Q. Why is it surprising that a prime consultant  
 12 would receive a lower evaluation score than a  
 13 subconsultant?  
 14 MR. WILLIAMS: Objection to the form of the  
 15 question. If you know what he's asking you.  
 16 THE WITNESS: I don't really understand what  
 17 you're asking. I mean, why is it surprising? I mean, I  
 18 didn't say it was surprising, I said my thought is it  
 19 was concerning in that for the reason I just stated, is  
 20 that the evaluation scores have a significant  
 21 concern -- have a significant concern on your future  
 22 work.  
 23 BY MR. DITTENBER:  
 24 Q. And --  
 25 A. So I don't know about the prime versus sub, I

1 understanding?  
 2 A. Right.  
 3 Q. Do you recall receiving a copy of this  
 4 evaluation?  
 5 A. I would have -- I believe I would have, yes.  
 6 Q. Why do you allege that the scores on this  
 7 evaluation are low?  
 8 MR. WILLIAMS: Objection, I think that  
 9 mischaracterizes what she just said, but if you can  
 10 answer that, because I thought you said this wasn't the  
 11 one.  
 12 THE WITNESS: Yeah, my concern with this one  
 13 was the issue related to the interim evaluation. And  
 14 what I contend is that had I been given the appropriate  
 15 interim evaluation, then, you know, there could have  
 16 been issues addressed that this would have never -- you  
 17 know, these scores would have never happened like this.  
 18 So I have a document that I requested numerous interim  
 19 evaluations for Jason Voigt starting at this meeting.  
 20 And I believe he was at -- is this the meeting he was  
 21 at? Yeah, that meeting, because that's what when I  
 22 found out he was leaving MDOT.  
 23 BY MR. DITTENBER:  
 24 Q. And you're referring to that July 2008 meeting,  
 25 just for the record, correct?

1 A. Right, yes.

2 Q. Well, let's talk about the interim evaluation on  
3 that project, then.

4 A. Okay.

5 Q. This will be Exhibit 6.  
6 (Whereupon Deposition Exhibit No. 6  
7 marked for identification.)

8 BY MR. DITTENBER:

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. And what is this?

12 A. This was the form that was used for the interim  
13 evaluation that I received a month after Jason Voigt  
14 left MDOT.

15 Q. What are your allegations regarding this  
16 document, then?

17 A. I requested an interim evaluation starting at  
18 this meeting because this is when I found out that Jason  
19 Voigt was leaving MDOT, and I believe it's stated in  
20 those minutes that I was requesting a meeting with Jason  
21 Voigt. There were several meeting request dates, there  
22 were dates set that were cancelled by Mr. Voigt, and the  
23 last time we spoke was at his luncheon that I went to  
24 and asked him about the evaluation and he stated that he  
25 would contact me and never did. And so there were

1 least at this time you could. I don't know what that  
2 standard is now. But what I contend is that Jason Voigt  
3 was not allowed to meet with me.

4 Q. And who prevented him from doing that?

5 A. His boss.

6 Q. Who would be?

7 A. Jason -- Victor Judnic.

8 Q. And what evidence do you have of that?

9 A. Because he wouldn't meet with me, I mean. And  
10 what other reason would he not? I mean, we set dates,  
11 he'd change the dates and -- or not change them, just

12 cancel them, and I think that was at least on two  
13 occasions. And then the third time he said he would  
14 contact me and didn't do that. And then my further  
15 evidence is to get a document a month later with an  
16 electronic signature when if he'd have done this why  
17 couldn't he -- you know, if it was dated the 22nd, why  
18 couldn't he contact me before he left or right around  
19 the time when he was going to leave and go over it.

20 Q. Are you alleging that Jason Voigt did not  
21 complete this evaluation?

22 A. I don't know if he completed it or not, but it  
23 just seems awfully strange to me that Mr. Voigt was  
24 contacted on several occasions and told me that he was  
25 going to meet with me up until his last -- his luncheon,

1 several opportunities to have this interim evaluation  
2 with him as a project engineer of record and I didn't  
3 get the --

4 Q. When was that --

5 A. Pardon me?

6 Q. Sorry, I'll let you finish.

7 A. I didn't get the opportunity to have that with  
8 him despite the numerous requests, dates that cancelled.  
9 And then I received an e-mail from Victor saying that  
10 he's now the eng- -- I think I got that before, I can't  
11 remember what the date was, but I remember it was about  
12 a month later, yeah, because it's dated September 22nd,  
13 but it was e-mailed me October 17th that I received an  
14 e-mail from Steve Griffith with Jason Voigt's electronic  
15 signature.

16 Q. Okay.

17 A. And these things, the commentary in here, were  
18 never things that Jason Voigt and I even -- that he ever  
19 voiced any concern with me whatsoever during the time  
20 that he was the project engineer on the contract. So  
21 that's why there's concern for this one because now I  
22 get the minimum, as I believe I stated, the minimum  
23 rating that you can get is an eight before you can, I  
24 think, request what MDOT calls an appeal. If it's  
25 anything below an eight you can request an appeal, at

1 which was a couple days before he left, and then a month  
2 later I get this with an electronic signature. And it's  
3 sent from Steve Griffith, not even sent from Jason  
4 Voigt, but by then he's gone from MDOT, why couldn't he  
5 send it before he left. If it was actually done on  
6 September 22nd, why didn't I receive it until October  
7 17th?

8 Q. What are you alleging that Mr. Judnic did with  
9 respect to the interim and final evaluations on this  
10 project?

11 A. Alleging that Mr. Judnic did not allow Jason  
12 Voigt to meet with me so we could discuss the issues and  
13 then he could complete the evaluation. This evaluation  
14 basically, you know, doesn't give me an opportunity to  
15 ask any questions because when this came, I actually did  
16 a response to it, when I received this I did a response  
17 that day, sent it back, and Judnic got it, he, you know,  
18 acknowledged that he got it and nothing. So I did  
19 respond to each of these points that they had here and I  
20 to this day have received no response, no discussion, no  
21 meeting, nothing.

22 Q. Are you alleging that Mr. Judnic had any role in  
23 the final evaluation?

24 A. In the final one?

25 Q. Yes.

1 A. Oh, he had to, because even though Steve Griffith  
2 signed it, I believe MDOT's guidelines state that he  
3 allowed him to sign it, which was really, I believe,  
4 against MDOT's guidelines because the project engineer  
5 is supposed to do the final evaluation, and this was  
6 done -- he had Steve Griffith sign it. So he had to see  
7 it. He had to because MDOT's -- from my understanding,  
8 I believe I read that the evaluation is supposed to be  
9 done by the project engineer of record. Well, if he had  
10 Mr. Griffith do it, then for one thing he did it, and if  
11 he did it without Victor's knowledge there's an issue  
12 where they are going against their own MDOT guidelines.

13 Q. Do you have any evidence that Mr. Judnic  
14 discriminated against your company or yourself based on  
15 gender regarding the evaluations on the 2008 project?

16 A. I believe my evidence is as I stated in that  
17 Mr. Voigt was not allowed to do interim evaluations  
18 before he left despite numerous requests. Mr. Judnic  
19 would not sign the final but he had Mr. Griffith do it  
20 and he was both of their supervisors, so that's the  
21 reason why I believe I was discriminated against  
22 ultimately by Mr. Judnic based on race and/or gender  
23 because he was both of these gentlemen's supervisor.

24 Q. Do you know whether it was based on your race or  
25 on your gender for the evaluations on this project?

1 (Whereupon Deposition Exhibit No. 8  
2 marked for identification.)

3 BY MR. DITTENBER:

4 Q. I've handed you what has been marked as Exhibit  
5 8. And do you see the e-mail at the top of this  
6 document?

7 A. Right. I postponed that meeting because  
8 of -- the meeting on July 18th, that meeting after we  
9 got my assistant at the time, we left that meeting, her  
10 response was that she had never seen anyone treated so  
11 awful in a meeting before in her life, speaking of me.

12 Q. Which meeting are you referring to?

13 A. The July 18th, 2008, meeting.

14 Q. Okay.

15 A. And I had vowed I would never be ambushed like  
16 that because that meeting could have been done  
17 differently and it could have been a situation where I  
18 didn't walk in and have -- just like a situation where,  
19 you know, I'm ambushed and just like -- so this -- the  
20 reason this was postponed was that I asked for a  
21 meeting, a debriefing, and a debriefing typically  
22 is -- any debriefing that I've been involved in has been  
23 between that company or the representative for that  
24 company, which is me, and that project engineer. I had  
25 never had any other debriefing that was any other way.

1 A. As I stated, race and/or gender.

2 MR. DITTENBER: Exhibit 7.  
3 (Whereupon Deposition Exhibit No. 7  
4 marked for identification.)

5 BY MR. DITTENBER:

6 Q. I've handed you what's been marked Exhibit 7. Do  
7 you recognize this document?

8 A. Yes.

9 Q. Is this a letter from yourself to Tony Kratochvil?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Dated June 15th, 2010?

14 A. Uh-huh.

15 Q. And what was your intent in writing this letter?

16 A. Just notifying him of the evaluation issue that  
17 we just discussed.

18 Q. Did anyone from MDOT contact you following this  
19 letter?

20 A. I believe Tony sent me an e-mail back that  
21 stated -- I believe Tony sent me an e-mail back, I can't  
22 recall, I believe he did -- I mean, I think he did  
23 contact me. But this is addressing the issue, you know,  
24 the issue that we just talked about related to the  
25 evaluations on the contract 2008.

1 So when Mr. Judnic was sending e-mails and,  
2 you know, the meeting was evolving into  
3 something -- he's calling it a performance evaluation,  
4 that wasn't what was being asked for, and then he was  
5 inviting Tia Schnee, which had nothing to do with this  
6 contract, and so that's why the meeting was postponed  
7 because -- well, you know, I just couldn't stress-wise  
8 take another meeting where I walked in and I'm ambushed.  
9 And that's why these people were copied, you  
10 know, because I wasn't trying to hide anything, I let  
11 them know, it was like, you know, I'm not doing this  
12 anymore with him, I'm just not going -- I'm not putting  
13 myself through that anymore.

14 I requested the debriefing and -- prior to  
15 the debriefing response Tony K -- debriefing of your  
16 performance evaluation and he was referring to it as a  
17 debriefing, and I requested a further review of the  
18 performance evaluation for contract 2008-0044. I  
19 did -- and as I stated here, I did have discussions with  
20 Steve Griffith, I asked him a question, was this typical  
21 scoring, and I asked him about the fact that BBF  
22 Engineering Services was the lowest score on the team of  
23 two consecutive contracts and that there was no comments  
24 on my evaluation or those of the subconsultants.

25 So I had no basis as far as why I was

1 evaluated lower than my subs because there was no  
 2 commentary. And in light of this, a debriefing, what  
 3 they were stating was not in line with their own  
 4 policies pertaining to performance evaluations, so  
 5 that's why I postponed the meeting. And it's stated  
 6 very clearly here why I postponed the meeting.  
 7 Q. Did that meeting ever take place?  
 8 A. That meeting did not take place. Is this the one  
 9 that ended up being on the phone? 2010 -- I'm not sure  
 10 if this -- there was one -- I remember the one that he  
 11 said he only did debriefings on the phone, and I'm not  
 12 sure if that was related to that or not. I think that  
 13 was something different.  
 14 Q. I believe that was related to the Fishbeck  
 15 contract.  
 16 A. Okay, okay.  
 17 Q. Okay. Switching gears here. In paragraph 56 of  
 18 your complaint you allege that BBF had to submit a FOIA  
 19 request for the evaluation scores of its subconsultants.  
 20 A. I know we had to do that for the '08. I can't  
 21 remember if we had to do that for '06 or not, possibly.  
 22 Q. What entitles you to directly receive your  
 23 subconsultant scores?  
 24 A. In the past we always received -- in the past  
 25 contracts that we did even at the Detroit TSC, you know,

1 MR. WILLIAMS: I don't even see where you're  
 2 at. Where are you?  
 3 BY MR. DITTENBER:  
 4 Q. I'm looking at the 2008-44 performance  
 5 evaluation.  
 6 A. Number six?  
 7 Q. The final one, sorry. Exhibit 5.  
 8 A. Exhibit 5. Where are you at?  
 9 Q. I'm at the very top of the first page where it  
 10 says notes to evaluator.  
 11 A. Uh-huh.  
 12 Q. The second paragraph, below that where it starts,  
 13 The evaluator is to send; do you see that?  
 14 A. Okay, uh-huh.  
 15 Q. It says, The evaluator is to send a signed copy  
 16 of the evaluation to the contract administrator for the  
 17 respective support area and a copy to the vendor being  
 18 evaluated. Does this document direct the evaluator to  
 19 send a copy to the prime consultant if that prime  
 20 consultant is not being evaluated?  
 21 A. It says, The evaluator is to send a signed copy  
 22 of the evaluation to the contract administrator for the  
 23 respective support area. Is the contract administrator  
 24 for the respective support area an MDOT person? Does  
 25 that mean an MDOT person?

1 when I was a prime we received the scores for our subs.  
 2 Once the performance evaluations were done we received  
 3 the scores for the prime. And if you were the prime,  
 4 you received the scores for your subs also, at least I  
 5 did.  
 6 So when this came about, because a prime  
 7 wants to know how their team is doing, because you don't  
 8 have any input, so that was of concern to me that if you  
 9 have a sub on your team that's getting evaluated poorly,  
 10 that's a concern, that should be a concern of the prime.  
 11 Q. Do you know if the contract states that the prime  
 12 is to receive the evaluations of its subs?  
 13 A. I don't know if the contract states -- when you  
 14 say the contract, which contract? The IDS contract or  
 15 the individual contract? I'm not sure if the contract  
 16 states that but -- and I don't -- I'm not sure if  
 17 the -- if the contract, whether it's the IDS contract,  
 18 the umbrella contract, or if your individual service  
 19 contract for that project states that.  
 20 Q. Can I have you take a look back at is it Exhibit  
 21 6, the evaluation? Do you see at the top where it says  
 22 notes to evaluator?  
 23 A. Uh-huh.  
 24 Q. In the second paragraph it starts the evaluator  
 25 is to send, do you see where I'm at?

1 Q. I believe so.  
 2 A. Okay. I don't know when this was put on there.  
 3 Was this starting in '05 and then -- and it doesn't say  
 4 you cannot send a copy to the prime.  
 5 Q. I'm not saying that.  
 6 A. Okay.  
 7 Q. I'm asking if it does say that.  
 8 A. If it does say what?  
 9 Q. If it does instruct the evaluator to send a copy  
 10 to the prime?  
 11 A. It doesn't instruct them to send it to the prime  
 12 but it doesn't say they cannot. And I'm saying in the  
 13 past I received copies of my subs' evaluations.  
 14 Q. From Mr. Judnic?  
 15 A. The year before I received the one. I don't know  
 16 if it was in error or not, but I did receive one.  
 17 Q. You're referring to when you received the one --  
 18 A. In 2006, right.  
 19 Q. Instead of year actual?  
 20 A. I don't think that year they required me to FOIA,  
 21 but I'm not sure for the 2006.  
 22 Q. Okay. Do you know -- do you have any knowledge  
 23 that defendant, Mr. Judnic, provided subconsultant  
 24 scores to other prime consultants?  
 25 A. I don't know.

1 Q. Do you have any evidence that Mr. Judnic refused  
2 to provide your subconsultant scores to you based on  
3 your gender?

4 A. I don't have any evidence of that.

5 Q. Do you have any evidence that Mr. Judnic refused  
6 to provide your subconsultant scores based on your race?

7 A. I don't have evidence of that.

8 Q. And you're unsure whether on the 2006 you had the  
9 FOIA; is that correct?

10 A. I know I FOIA'd '08. I cannot recall whether I  
11 FOIA'd '06 or not.

12 Q. Do you recall who you sent the FOIA request to?

13 A. Well, there was a procedure for FOIA request  
14 where I believe you sent it to the region office, and I  
15 believe at the time Marilyn Montgomery was the FOIA  
16 person, I believe, I can't recall, but there was a  
17 process where you sent your FOIA request to a person,  
18 but I can't recall who it was sent to.

19 Q. Was that request responded to?

20 A. I know I did get the evaluations for '08. I  
21 remember getting them. That's how I was able to  
22 formulate the spreadsheet.

23 Q. Did your company suffer any damages by having to  
24 file the FOIA request?

25 A. By having to file the FOIA request?

1 you had on that project?

2 A. We probably had almost once every month. I tried  
3 to get it once every month.

4 Q. Do you recall how long of a time frame we're  
5 talking about; was it over the course of a year?

6 A. I tried to do it close to the year. It was  
7 probably ended up being maybe like eight, nine months, I  
8 believe, at least, yeah, it was within that year we had  
9 several.

10 Q. Did your contract with MDOT require Mr. Judnic to  
11 hold monthly meetings with your company?

12 A. The contract didn't require it, but the monthly  
13 meetings were as a result of the issues with the prior  
14 contract and I wanted to make sure that if there were  
15 any issues that came up that they were addressed.

16 Q. Were you able to address issues with  
17 Mr. Griffith?

18 A. When I discussed the issues -- the meeting's  
19 format typically was us coming together and me asking if  
20 there were any concerns, any issues. And my goal was to  
21 get a high evaluation score. And I still basically  
22 ended up with a mediocre evaluation score even after all  
23 that. Because eight is really considered a mediocre  
24 evaluation, in my opinion, because a seven is, you know,  
25 basically almost I consider failing because you can file

1 Q. Yes.

2 A. Or getting low evaluations?

3 Q. Just the FOIA request.

4 A. No, not that I can think of where I can put a  
5 monetary number on it.

6 Q. Paragraph 116 you allege that you requested  
7 monthly meetings with Defendant Judnic; do you recall  
8 that?

9 A. I think we talked about that earlier where we  
10 were at the meeting and I requested monthly meetings  
11 with the meeting with him, Steve Griffith, and Rita  
12 Scrows, and his first statement was he didn't have time  
13 to meet with me -- he didn't have time for monthly  
14 meetings. And then about five minutes later he chimed  
15 in and changed it but he just never attended any, it was  
16 just me, myself, and Steve Griffith and at every  
17 meeting.

18 Q. Did those occur each month?

19 A. It occurred when I called -- I was the one who  
20 had to initiate each meeting.

21 Q. But Mr. Griffith did attend these meetings?

22 A. When I did initiate it I would send the request  
23 to them and the only one who came to each one was  
24 Mr. Griffith.

25 Q. Do you recall about how many meetings like that

1 an appeal. So my goal in the meetings was to do a good  
2 job so that we could get higher evaluation scores so our  
3 past performance number would be, you know, a high  
4 number for our services for future, you know -- to  
5 obtain future contracts.

6 Q. Are you aware of any monthly meetings Mr. Judnic  
7 held with other prime consultants?

8 A. I wouldn't have any idea about that.

9 Q. Do you have any evidence that Mr. Judnic did not  
10 attend the meetings based on the fact -- based on your  
11 gender?

12 A. I don't know why he didn't attend the meetings.

13 Q. I assume the same answer for race, then?

14 A. Yeah, I don't know why he didn't attend the  
15 meetings, he didn't show up.

16 Q. Did your company suffer any harm because  
17 Mr. Griffith attended the meetings instead of  
18 Mr. Judnic?

19 A. My company suffered harm because the evaluation  
20 ended up being low. And subsequently there were  
21 numerous instances where we bid on projects before my  
22 company, you know, even filed a complaint, and I could  
23 think about there may be an argument that past  
24 performance, because I never was able to get 20 out of  
25 20 or raise my score for the past performance component,



1 which is directly related to that aspect of the  
2 performance evaluations. So I can say that ultimately,  
3 yes, my company probably did suffer harm because there  
4 may have been contracts lost because that score is  
5 lower, I was scored lower, and at a minimum that aspect.

6 Q. I'm going to shift over to your allegations  
7 regarding the Gateway project, then.

8 MR. REILLY: Let's take a break first.

9 MR. DITTENBER: Off the record, please.

10 (A recess was taken.)

11 MR. DITTENBER: Back on the record.

12 BY MR. DITTENBER:

13 Q. The next questions I'm going to ask you about,  
14 Ms. Foster, regard the Gateway project. Do you  
15 understand which project I'm referring to?

16 A. Yes, the Detroit TSC, uh-huh.

17 Q. Yes. Did you have a prime consulting contract  
18 with MDOT for work performed on the Gateway project?

19 A. Sub.

20 Q. And which prime consultant were you a  
21 subconsultant to?

22 A. URS and -- mainly it was URS, I mean, that was  
23 early on. I don't think we had -- I know we had some  
24 work with HNTB, but I think that that was actually a  
25 different as-needed that they had. So primarily it was

1 A. Yes, yes, and Mr. Judnic, and so....

2 Q. To your knowledge did Mr. Judnic have any role in  
3 the billing?

4 A. Yes, because the project engineer reviews every  
5 invoice that goes in.

6 Q. When did you bring this issue to MDOT's  
7 attention; do you recall?

8 A. I don't remember the date. It would be in the  
9 complaint. I don't remember the exact date. It seems  
10 like it was 200- -- some time in 2010, early 2010, I'm  
11 not sure.

12 Q. Maybe around June 2010?

13 A. I can't remember the exact date. There's so many  
14 dates, I'm sorry. But I know that I requested payment  
15 and then, like I said, I found out that -- I received  
16 the e-mail stating that my invoices were not being  
17 submitted. So that was the major concern there.

18 And then I remember contacting -- I do  
19 remember contacting -- I know I contacted Paul Ajegba  
20 because I was told that one of the comments from Mr.  
21 Judnic was that's not our problem, that me being paid  
22 was not his problem, or our problem, you know, something  
23 to that effect, that he stated that it's not his  
24 problem.

25 Q. Mr. Judnic stated that to whom?

1 URS. We were actually on their team as a sub. I was on  
2 the team as a sub for another team with a more major  
3 role but we didn't get the work.

4 Q. And did you -- did your company have a payment  
5 issue with URS on that contract?

6 A. Yes.

7 Q. Could you describe the nature of that for me,  
8 please?

9 A. They had a -- there was some issues with the  
10 funding where they -- what does MDOT call that, with our  
11 contract, there was some issues with where they had -- I  
12 guess URS got additional funding and there were months  
13 where we were not getting paid and I received -- when I  
14 inquired about it, and then I did receive an e-mail from  
15 MDOT and the concern of that one was not just not  
16 getting paid, it was also that URS was not even  
17 submitting our invoices. So I got an e-mail forwarded  
18 to me from Lansing contracts stating that they were not  
19 submitting our invoices.

20 Q. URS not was not submitting --

21 A. BBF's invoices, and they were submitting their  
22 own but ours were not being included for a number of  
23 months.

24 Q. Did you bring that to the attention of anyone  
25 from URS?

1 A. Yes, to Mr. Ajegba.

2 Q. And do you know, did Mr. Ajegba relay that to  
3 you, then?

4 A. Yes.

5 Q. Was the payment -- did you get paid for that  
6 project?

7 A. It took a while. After I received a contact -- I  
8 never received contact from Mr. Judnic, I received a  
9 contact from Mr. Gooder, and what was disconcerting  
10 about it was it wasn't -- the initial call wasn't an  
11 issue of getting me paid, one of the questions was  
12 related to, well, you know, even if you're in a tight  
13 situation, you know, we can, you know, get you some  
14 money or, you know. And I'm like, well, you know, and  
15 then he wanted me to do a letter saying everything was  
16 okay and I refused to do a letter telling him everything  
17 was okay, because I'm like everything is not okay, I  
18 haven't been paid.

19 Q. And Mr. Gooder, does he work for URS?

20 A. Yes, but the project engineer was Mr. Judnic.  
21 And like as I stated, the project engineer has to review  
22 and approve every single invoice. And I had a gentleman  
23 that was working on that contract in the office every  
24 day.

25 Q. Do you have any evidence that had URS submitted

1 your invoices that Mr. Judnic would not have approved  
2 those?  
3 A. If they were submitted, that's not the issue to  
4 me. The issue is that he saw the invoices -- the  
5 bigger concern, the issue is that he saw invoices being  
6 submitted and mine were not included. So my issue was  
7 why wasn't the question asked. You know, we have this  
8 guy here working for BBF, why aren't they billing? Why  
9 aren't you paying her for this person that she has  
10 sitting here doing work every day.

11 Q. Whose responsibility is it to submit the invoices  
12 to MDOT?

13 A. The project engineer submit -- I mean, the client  
14 submits them to the project engineer, who reviews them.

15 Q. And in this case the client was URS?

16 A. Yes.

17 Q. In paragraph 64 you allege that Mr. Judnic never  
18 contacted URS about this issue. Do you have any  
19 evidence that he did not contact URS?

20 A. No, that would have been -- he did contact URS  
21 because my -- that would have been a mistake, he didn't  
22 contact me about this issue. He contacted URS because  
23 URS was the only one that contacted me. So I know he  
24 had to contact URS at some point, because Mike Gooder  
25 called me, so if that states that he didn't contact URS,

1 because the guy that I had working there works closely  
2 with Mr. Judnic so he had to see him probably almost  
3 every day. So I contend that there was some bias based  
4 on race and/or gender in that instance from Mr. Judnic.

5 Q. Are you able to tell me whether it was based on  
6 race or based on gender in that instance?

7 A. I don't know which one. I say race and/or  
8 gender.

9 Q. Do you have any evidence that Mr. Judnic  
10 contacted prime consultants when they were not  
11 submitting invoices of their subconsultants in other  
12 contracts?

13 A. I don't have any evidence of that.

14 Q. What damages -- let me strike that. When were  
15 you paid for these invoices; do you recall?

16 A. It was months later, a few months later. I don't  
17 know exactly when.

18 Q. Are we talking two or three months?

19 A. There were several invoices so they didn't all  
20 come at one time so it was -- you know, it was like six  
21 months, I believe, worth of invoices. It was a lot.

22 Q. Have you been paid in full for those invoices?

23 A. Now that's been over a year ago. Yeah, at this  
24 point I have, yes.

25 Q. What damages did your company suffer by the delay

127

1 someone contacted URS.

2 Q. It says, Defendant Judnic never questioned URS  
3 about its failure to submit plaintiff's invoices even  
4 though plaintiff's staff person was working under his  
5 direction at the MDOT Detroit office.

6 A. Okay, that's different than what you just said.  
7 You said he never contacted URS, that's not what that  
8 says.

9 Q. Well, what do you mean by never questioned, then?

10 A. He never questioned them, as I just stated, as to  
11 I'm getting invoices from you, URS, every month and I  
12 know this guy is working and BBF can't be getting paid  
13 for them because there's no invoices. So that's what I  
14 mean by question, which is different than the question  
15 you posed initially.

16 Q. I misunderstood your complaint, then.

17 A. Right, right.

18 Q. Do you have any evidence that Mr. Judnic did not  
19 question URS based on your gender?

20 A. I believe that in that instance my company was  
21 discriminated against in the fact that Mr. Judnic did  
22 not question URS as to why my invoices -- well, why they  
23 weren't even seeing invoices. There was definitely no  
24 concern whether I was paid because, I mean, he wasn't  
25 seeing invoices so there couldn't have been a concern

129

1 in payment on those invoices?

2 A. Well, the issue is damages related to the time  
3 that I had to take and, you know, even dealing with it.  
4 The concern about the relationship with a, you know,  
5 prime, you know, because I did have to, quote, complain,  
6 you know, about not being paid. And then letting the  
7 prime know, being URS, know that, no, I would not do a  
8 letter saying everything is okay because everything was  
9 not okay. And then the other concern of mine being that  
10 Mr. Judnic stating that my being paid is not his  
11 problem.

12 Q. Okay. You also make some allegations in your  
13 complaint regarding office technician training; are you  
14 familiar with those?

15 A. Yes, that was related to Mr. Stewart.

16 Q. Yes, I haven't asked --

17 A. But that was the newer, that's in the newer --

18 MR. WILLIAMS: Let him ask his question.

19 THE WITNESS: Okay.

20 BY MR. DITTENBER:

21 Q. Are you alleging that Mr. Judnic had anything to  
22 do with the office technician training?

23 A. Now, when you say office technician, are you  
24 speaking of the instance where Ray Stewart was required  
25 to take the class after two years where I was told the

1 requirement was every five years; is that when you say  
2 office technician?

3 Q. Yes.

4 A. Okay, let me clarify that. Yes, he was Tia  
5 Schnee's supervisor.

6 Q. Do you know if he required Mr. Stewart to take  
7 the class?

8 A. I don't know if he required it, but he was her  
9 direct supervisor.

10 Q. You don't know --

11 A. And she was new on the job so -- and I had had a  
12 meeting with Rita Screws and -- no, with Rita -- I don't  
13 know if Tia -- Tia was not there, I had a meeting with  
14 Rita Screws and Rita stated to me that there have been I  
15 think what MDOT called -- they had reviewed different  
16 jobs that office technicians that done both, consultants  
17 and MDOT, and one of the jobs they reviewed was Ray's.

18 And she told me herself that Ray's work was  
19 better than some of the MDOT office technicians were.  
20 So, you know, there was one area that he needed to brush  
21 up on and that was the area that -- you know, and  
22 Fishbeck, Fishbeck, Thompson, Carr, Huber is the one  
23 that teaches that office tech so....

24 Q. But you don't know whether Mr. Judnic had any  
25 role in that besides the fact that he was Tia Klein's

1 contract you just stated where there was a component  
2 where the proposals were required to have a minimum of  
3 five leased vehicles.

4 Q. And if you'd turn to page seven of this document,  
5 it's paragraph U, is that the component you were  
6 referring to?

7 A. Yes.

8 Q. What's wrong with the requirement that a  
9 consultant provide five leased vehicles?

10 A. There's a few things. When I submitted this  
11 complaint there have been several as-needed services  
12 contracts in the history of MDOT, and my  
13 understanding -- I had never seen this and my  
14 understanding is that this had never shown up in any  
15 other.

16 The other aspect is, as a tax paying citizen  
17 in the State of Michigan, why is the State of Michigan  
18 subsidizing and telling companies they have to have  
19 leased vehicles for the company, which means the State  
20 of Michigan taxpayers are paying leased costs and fuel  
21 costs, because I have some subs that I've worked with in  
22 the past that have both of those, where the state is  
23 paying both of those.

24 The other aspect is my company is one of the  
25 few that would have the ability based on staffing to bid

131

133

1 supervisor?

2 A. I mean, do I know if he had a role in that?  
3 Well, just from the fact that he was her supervisor,  
4 right.

5 Q. Thank you.

6 A. At that time he was her supervisor.

7 Q. You also make some allegations regarding a  
8 request for proposal.

9 A. Which one?

10 Q. It was issued in July 2010.

11 A. With the vehicles?

12 Q. Yes.

13 A. Yes.

14 Q. You recall that request for proposal?

15 A. Yes.

16 Q. And who was to be the project manager on that; do  
17 you recall?

18 A. What month in 200- -- that would have been Victor  
19 Judnic's RFP at the time, yes.

20 (Whereupon Deposition Exhibit No. 9  
21 marked for identification.)

22 BY MR. DITTENBER:

23 Q. Do you recognize the document I've marked as  
24 Exhibit 9 as the --

25 A. This looks like it may be the RFP for that

1 on this type. We have since the inception of the  
2 company only billed the State of Michigan for on-the-job  
3 mileage. And it's a pass through cost and it's based on  
4 the federal/State of Michigan approved mileage rate.  
5 They drive their own vehicles and they are just paid  
6 mileage.

7 And, as a matter of fact, whatever they  
8 drive per day, 20 to 40 miles is deducted out of that  
9 mileage to make sure that it's just considered on the  
10 job. So that's what's wrong with this.

11 Q. You referred to it as a pass -- you referred to  
12 it as a pass through?

13 A. Right, my staff is just paid mileage. The  
14 company doesn't make any money off it, it's just -- they  
15 are paid mileage based on -- right now it's 55.55 cents  
16 per mlie.

17 Q. But the State of Michigan paid -- does the State  
18 of Michigan reimburse the consultant for these leases;  
19 is that what you meant by pass through?

20 A. No, my company only bills mileage, which is just  
21 a pass through cost, meaning whatever they -- like if  
22 they drive 40 miles in a day I deduct out 20 so they  
23 only pay for 20 because it's supposed to be on-the-job  
24 mileage. This when I say pass -- for the other  
25 consultants, from what I've seen with invoices that have

1 been submitted to my company, I have invoices where  
 2 companies bill for one employee the lease rate/day rate  
 3 for that truck or whatever, plus fuel. So my invoice  
 4 for the whole month is what some of these companies are  
 5 billing in one, you know, one month for one person.

6 Q. Okay. You stated that a request for proposal is  
 7 posted somewhere publicly?

8 A. Uh-huh.

9 Q. Where is that?

10 A. On the MDOT website.

11 Q. Okay. And can any consulting firm that meets the  
 12 requirements of a proposal submit a proposal for that  
 13 that meets the requirements of the request?

14 A. If you are prequalified and have all -- you can  
 15 submit, from my understanding, unless that's changed,  
 16 unless there's other requirements.

17 Q. Does every consulting firm view the same  
 18 proposals?

19 A. They can. But in this case the concern was that  
 20 this section U you spoke of eliminated many DBE firms,  
 21 and mine was one of them.

22 Q. How did it eliminate anyone?

23 A. Because I don't have five leased vehicles and  
 24 never have had five leased vehicles. My staff drive  
 25 their personal vehicles, like millions of people do

1 company based on gender?

2 A. For the same reason, that it eliminated me  
 3 because my company being a DBE, a DBE as based on race  
 4 and gender, that's how I'm qualified to be a DBE, and so  
 5 I say I was eliminated as a DBE based on race and gender  
 6 because of this requirement that was placed in this  
 7 proposal that Victor Judnic was the project manager,  
 8 that I had never seen and haven't seen since in any  
 9 other contract. And then once they got it they changed  
 10 it.

11 Q. Do you have any knowledge of who prepared this  
 12 request for proposals?

13 A. My understanding from what I've seen and from my  
 14 interworking -- working with MDOT on various contracts,  
 15 the project engineer has a major say in writing the  
 16 contract documents -- I should say proposal -- RFP  
 17 documents. And subsequently seeing the e-mail where  
 18 after the company HNTB was selected, he changed it where  
 19 the change could have made it so, you know, it may have  
 20 been duable for a company like mine.

21 Q. You can't say for sure who wrote this, though,  
 22 based on your personal knowledge?

23 A. No, I don't work for MDOT, so I can't say who  
 24 wrote it.

25 Q. And do you agree that any firm who intended to

135

1 every day to every job they go to, and they are paid  
 2 mileage like, you know, what a company would do like  
 3 that has a salesman. So this component was put in there  
 4 and I know it eliminated my company, and my company is  
 5 one of them that would have bid on something like this.  
 6 There's other companies that may have, you know, looked  
 7 at it but may not have had the other requirements, but  
 8 my company as a DBE, this eliminated me from being able  
 9 to compete.

10 Q. Is that based on the size of your company?

11 A. It's based on -- I had the personnel, I would  
 12 have had the personnel, obtained the personnel to bid on  
 13 a project of this type and developed a team, but because  
 14 of this component and because of my company's structure,  
 15 we never had a structure where we had leased vehicles.  
 16 The company drove their vehicles and were paid  
 17 mileage -- the staff.

18 Q. How does this provision discriminate based on  
 19 race?

20 A. Because I'm a DBE, I'm a minority DBE, and this  
 21 eliminated me from being able to compete, that's  
 22 discrimination based on race, when there was hundreds of  
 23 RFPs over the years that have been put out similar to  
 24 this and never had this component in it.

25 Q. How did this component discriminate against your

137

1 submit a proposal for this RFP would have had to comply  
 2 with that -- with the staff vehicles requirement?

3 A. Any firm would have had to comply with that, as  
 4 it was stated here, but it was changed later.

5 Q. What e-mail are you talking about that it was  
 6 changed in?

7 A. Victor changed the requirement once HNTB got this  
 8 work.

9 Q. And that was -- who was the sender of that  
 10 e-mail?

11 A. Victor Judnic.

12 Q. And who was it sent to?

13 A. HNTB, Victor Frendo.

14 Q. Did you submit a proposal for this project?

15 A. No, because I couldn't qualify based on that.

16 Q. Did you perform work as a subconsultant on this  
 17 project?

18 A. I am a sub to HNTB.

19 Q. And you also refer to in this request for  
 20 proposal a requirement that the principal cannot bill;  
 21 is that correct?

22 A. Yes.

23 Q. And what's wrong with that requirement?

24 A. Well, that was referred to in this one because in  
 25 the past contracts, the 2006 and 2008 MDOT, Victor

1 Judnic did not allow me to bill at any capacity on any  
 2 of those contracts and that was brought up to Office of  
 3 Commission Audits. And the concern with that is that  
 4 they stated that other people in similar capacities with  
 5 other companies were being allowed to bill so that's why  
 6 that's in here, it's as a reference to that was in  
 7 there, but that has actually occurred to me on other  
 8 contracts where I was not allowed to bill because when  
 9 they looked at the documents, you know, in the audit  
 10 process it was noted that there was no billing process  
 11 for Bellandra Foster because he would not allow me to  
 12 bill, but maybe he would say because you're a principal  
 13 but, you know, I'm a working principal so it didn't  
 14 matter.

15 Q. If that's stated in the request for proposal  
 16 would that requirement apply to any consultant who  
 17 submitted a proposal on that project?

18 A. Would what apply?

19 Q. The requirement that a principal cannot bill for  
 20 the project?

21 A. No, because I was told that other people in  
 22 similar capacities were being allowed to bill. So it  
 23 sounds like it was subjective, on who he allowed to bill  
 24 and who he did not allow to bill.

25 Q. Mr. Judnic?

1 their title. And he made the decision that I was not  
 2 allowed to bill, so -- direct bill to the contract. So  
 3 I wouldn't have known that unless -- you know, and  
 4 that's why it was brought up and the commission auditors  
 5 were supposed to do an investigation and that's why I  
 6 asked the question again at our second meeting in May  
 7 and they stated that by then they had met with him.

8 Q. Well, just briefly, make this Exhibit 10.  
 9 (Whereupon Deposition Exhibit No. 10  
 10 marked for identification.)

11 BY MR. DITTENBER:

12 Q. I've handed you Exhibit 10. Do you recognize  
 13 this document?

14 A. It's an RFP. Which one is it? It's the 2006  
 15 one, it looks like.

16 Q. And do you see on the second page where Victor  
 17 Judnic is listed as the project manager?

18 A. Uh-huh, yes.

19 Q. And do you see the bottom paragraph?

20 A. It says as determined, that he makes the  
 21 determination. Are you talking about the exact  
 22 distribution of our sentence? I don't think that's the  
 23 one you're speaking of.

24 Q. No, I'm talking about the last paragraph where it  
 25 says vendor principals/officers will not be included in

139

1 A. Mr. Judnic.

2 Q. Who did he allow to bill?

3 A. Oh, they didn't say, the commission auditors just  
 4 said there were people in similar capacities that were  
 5 being allowed to bill on MDOT projects.

6 Q. With Mr. Judnic, though, or just in general on  
 7 MDOT projects?

8 A. Well, that comment was made after one of the  
 9 commission auditors had met with him.

10 Q. Do you recall who that was?

11 A. Chris Schafer.

12 Q. And when did Mr. Schafer make that comment to  
 13 you?

14 A. I believe that would have been in our -- we had a  
 15 May 2011 meeting.

16 Q. Do you know if that requirement was stated in the  
 17 2006 contract?

18 A. What requirement?

19 Q. That a principal cannot bill.

20 A. I don't know.

21 Q. Would you like to see it?

22 A. No, because it really -- it's of no consequence  
 23 to me because if I know that, even though that comment  
 24 is in there, it's obvious that certain people were being  
 25 allowed to bill and certain people were not based on

141

1 the budgeted hours and are considered overhead expense.

2 A. Uh-huh.

3 Q. And your -- and you weren't allowed to bill as a  
 4 principal on that contract; is that correct?

5 A. Right, but my understanding, like I stated, was  
 6 that this is based on where it says principal's  
 7 officers. I was told that people in similar capacities  
 8 on other contracts were being allowed to bill to MDOT  
 9 contracts.

10 Q. And that was by Mr. Schafer?

11 A. Well, and also in the discussion with Linda  
 12 Shepard.

13 Q. And Ms. Shepard also works at the Office of  
 14 Commission Audit; is that correct?

15 A. Yes, uh-huh.

16 Q. And did she tell you that around the same time as  
 17 you've spoken --

18 A. Well, she was at that second meeting in May of  
 19 2011.

20 Q. But did Ms. Shepard give you any names of firms  
 21 that were allowed to bill?

22 A. No, I mean, I didn't ask for names. They just --  
 23 they said that, you know, because -- and it was as a  
 24 result of the first meeting when it came up, and she was  
 25 going to do an investigation, so I notice they weren't

1 bringing it up so I brought it up and asked the question  
2 again, and that's, you know, when the discussion ensued  
3 about that. So but they didn't -- they didn't give me  
4 names of companies or people, I didn't ask them for  
5 names of people, but they said that there were people in  
6 similar capacities that were being allowed to bill.

7 Q. Do you have any evidence that Mr. Judnic included  
8 that requirement in the request for proposals to  
9 discriminate against your company based on your gender?

10 A. Which requirement?

11 Q. Both the 2006 and the 2010.

12 A. 2006 and 2008 contract, you mean? Or 200- -- oh,  
13 the two we just looked at?

14 Q. (Nodding head up and down.)

15 A. Now repeat the question, please.

16 Q. Do you have any evidence that Mr. Judnic inserted  
17 that requirement to discriminate against your company  
18 based on your gender?

19 MR. WILLIAMS: Objection to the form of the  
20 question, it assumes facts that are not in evidence and  
21 misstates the witness' testimony, but to the extent you  
22 can answer, Ms. Foster.

23 THE WITNESS: Repeat the question again,  
24 please.

25 BY MR. DITTENBER:

1 and, therefore, my company is that when I found out that  
2 other people in similar capacities were being allowed to  
3 bill and MDOT has since changed that requirement because  
4 all along when Mr. Judnic would not allow me to bill I  
5 would state to him that it's different for smaller  
6 companies that have working principals as opposed to a  
7 large company.

8 And MDOT has since changed that requirement  
9 where no longer do they just base it on, well, if you're  
10 the president of the company, even if you have a one or  
11 two person company, you can't bill. That requirement  
12 has since changed.

13 BY MR. DITTENBER:

14 Q. But you can't tell me who those other companies  
15 are that were allowed to bill under Mr. Judnic?

16 A. Persons, it would have been persons. And  
17 Ms. Schafer -- I mean, Mr. Schafer, Ms. Shepard, I did  
18 not ask them who the persons were, but it did come out  
19 in that meeting that there were people in similar  
20 capacities, which means they must have been principals  
21 and officers, that were being allowed to bill.

22 Q. And did you say it affected you because of the  
23 size of your company?

24 A. Now what affected me?

25 Q. That billing requirement.

1 Q. There's Exhibit 10, which is the 2006 request for  
2 proposal.

3 A. Uh-huh.

4 Q. And that contains a requirement that the  
5 principal cannot bill in the budgeted hours, correct?

6 A. Right.

7 Q. Do you have any evidence that Mr. Judnic included  
8 that requirement to discriminate against your company  
9 based on your gender?

10 A. Yes, I believe --

11 MR. WILLIAMS: Well, objection,  
12 mischaracterizes the witness' testimony, but to the  
13 extent you can answer.

14 MR. DITTENBER: I'm not characterizing her  
15 testimony at all.

16 MR. WILLIAMS: Yes, you have, because the  
17 witness has testified that it wasn't the inclusion, it  
18 was the implementation, but go ahead, Ms. Foster.

19 THE WITNESS: Yeah, he did implement but I  
20 do believe -- you know, I forgot the question again, I'm  
21 sorry.

22 MR. WILLIAMS: I think the question was did  
23 he include it to discriminate against your company.

24 THE WITNESS: Well, the reason I think it  
25 was included and ultimately discriminated against me

1 A. Well, I wouldn't say that it affected me  
2 because -- you mean the ultimate effect in the form of  
3 damages or the ultimate effect by not being allowed to  
4 bill or can you elaborate on that?

5 Q. Sure. Does that requirement -- did that  
6 requirement affect you because of the size of your  
7 company?

8 A. I don't really understand that question, did it  
9 affect me because of the size of my company. It  
10 shouldn't have affected me because of the size of my  
11 company because I am the principal of the company so  
12 what I informed Mr. Judnic of is that a principal of a  
13 ten person company as a working principal is different  
14 than the principal of 1,000 or 500 person company. So  
15 to say any principal can't bill, you know, or this  
16 principal can bill and this one can't, you're making a  
17 subjective judgment based on who you want to bill and  
18 who you're not going to allow to bill.

19 Q. Okay. I'll move on to your claims against  
20 Mr. Steucher.

21 A. Uh-huh.

22 Q. When did you first meet Mr. Steucher?

23 A. Well, I knew him in '85 when I started with MDOT,  
24 I probably learned of him, I don't know exactly when I,  
25 quote, unquote, met him.

1 Q. And you said you didn't really work with  
2 Mr. Steucher while you were at MDOT?  
3 A. I don't remember if we worked direct -- I worked  
4 in construction on the 696 project, I worked in Dick  
5 Fukes' office, but I don't recall whether we ever  
6 worked, you know, in the same office. And then the rest  
7 of the time I was in the region office, and I don't  
8 believe he ever worked in that office.

9 Q. Did you have any contact with Mr. Steucher after  
10 you left MDOT?

11 A. In what way? Like bidding on proposals in that  
12 office or something?

13 Q. Well, prior to the -- before you started BBF did  
14 you have any in those years in between when you were --

15 A. I don't recall. I don't recall, no, because I  
16 was out of state for a while and having children so I  
17 don't recall any interaction with him during that time.

18 Q. Did your company ever perform a contract where  
19 Mr. Steucher was the project manager or project  
20 engineer?

21 A. I don't recall getting any work in that Oakland  
22 TSC.

23 Q. What about as a subconsultant to him?

24 A. No.

25 Q. You submitted a proposal for an MDOT contract at

1 Q. And who was that?

2 A. I knew Mr. Dargin.

3 Q. And you contacted him regarding this score sheet?

4 A. I did contact him and -- you know, yes, I did.

5 Q. When was that, do you recall?

6 A. I don't know. I think that's the one that's  
7 dated May. I don't know when -- I don't even know when  
8 I actually got that. I don't think it was right

9 after -- I don't know what took so long, but I don't  
10 know the date I actually got that faxed to me. And then  
11 at some point after -- shortly after I, you know, would  
12 have contacted to ask, you know, a couple questions.

13 Q. And what did Mr. Dargin tell you?

14 A. He got quiet and then he said something did  
15 happen in that evaluation.

16 Q. And what happened, according to Mr. Dargin?

17 A. He said that they -- the four of them convened  
18 and reviewed the proposals, I think he said there were  
19 six or seven submittals or so, and that Mr. Steucher had  
20 to leave the room but he asked the rest of them, of the  
21 three, to continue on reviewing the submittals. And he  
22 said that, based on the evaluations of the submittals,  
23 that I had an excellent proposal and that I was at the  
24 top.

25 And Mr. Steucher came back in and he looked

1 the Oakland TSC that's number JN-72404; do you  
2 understand which contract I'm referring to?

3 A. That's the one with the scoring issue?

4 Q. Yes.

5 A. Yes.

6 Q. And your company did not receive that project; is  
7 that correct?

8 A. Right. Yes, we were not selected.

9 Q. Why did you file a Title VI complaint based on  
10 this individual contract?

11 A. Why did I file the complaint for this?

12 Q. Yes.

13 A. This was filed because I received the score sheet  
14 and when I viewed the score sheet there have been  
15 contracts that -- you know, proposals that I was  
16 unsuccessful, but when I looked at this score sheet it  
17 just -- things just didn't add up. It just didn't --  
18 you know, the deductions for the points didn't add up  
19 based on the comments that were listed there. So I  
20 just -- it just didn't make sense, you know, and I had  
21 been -- and I had put together a very good team. I had  
22 been bidding on work in that office, not obtaining, you  
23 know, any work from him or that I had bid on other  
24 projects from his subordinate engineers so I  
25 contacted -- I knew a person on the panel.

1 at it and I saw him changing stuff and I was no longer  
2 in the top three. And I knew at that time that the top  
3 three moved on, the top three scores moved on to region  
4 for review and -- because they were -- I think the  
5 intent was being made to -- it was a stimulus fund  
6 project, an attempt was being made to kind of spread,  
7 you know, projects around, stimulus fund money projects.  
8 And so I was no longer even in the top three.

9 And then I later found out that, after the  
10 report of inquiry came out, that that wasn't all that  
11 was done, that there was a comment made before the  
12 scores were changed.

13 Q. And what comment are you referring to?

14 A. In the report it states that he said, oh, no, I  
15 hate her, and then the scores were changed.

16 Q. I'm going to hand you what's going to be marked  
17 as Exhibit 11.

18 (Whereupon Deposition Exhibit No. 11  
19 marked for identification.)

20 BY MR. DITTENBER:

21 Q. Do you recognize this document as the scoring  
22 sheet?

23 A. Yes.

24 Q. For the project we've been discussing?

25 A. Yes.

1 Q. And Mr. Steucher is listed as the project  
 2 manager?  
 3 A. Yes.  
 4 Q. Now, the statement you allege was made is that I  
 5 hate her?  
 6 A. No, the document says, oh, no, I hate her, that's  
 7 what --  
 8 Q. Oh, no, I hate her. Do you have any evidence  
 9 that Mr. Steucher was discriminating against you based  
 10 on your gender when he made that statement?  
 11 A. Yes, because he said, oh, no, I hate her. And  
 12 her implies female.  
 13 Q. You are a female, correct?  
 14 A. Yes.  
 15 Q. He's not going to say I hate him, is he? The  
 16 court reporter can't pick up that head gesture.  
 17 A. Oh, no, he won't say, oh, no, I hate him, but why  
 18 is he saying, oh, no, I hate her at all and then  
 19 changing the scores, that's the better question, in my  
 20 opinion.  
 21 Q. I'll ask the questions.  
 22 MR. WILLIAMS: You'll what?  
 23 MR. DITTENBER: I said I'll ask the  
 24 questions.  
 25 MR. WILLIAMS: Well, you did ask the

1 that's in front of you that was filled out on this  
 2 project?  
 3 A. No, he changed the scores that the group had come  
 4 up with. He changed the scores of whatever the group  
 5 had come up with, the ranking that they had come up  
 6 with. So if there was -- you know, whatever they had in  
 7 that room, I would have no way of knowing what was in  
 8 that room, all I know is it was validated that the  
 9 scores were changed. I obviously had a different score  
 10 before he walked in the room versus the score I had when  
 11 he walked in the room and they all walked out of that  
 12 room.  
 13 Q. Do you agree that Mr. Steucher was on the panel?  
 14 A. Yes, from this here it looks like he was.  
 15 Q. Do you agree that each panel member should be  
 16 allowed to evaluate the proposals?  
 17 A. Yes.  
 18 Q. And you indicated that Mr. Steucher had left the  
 19 room for a portion of the evaluation; is that your  
 20 understanding?  
 21 A. That was my understanding.  
 22 Q. Were the scores final prior to Mr. Steucher  
 23 returning to the room?  
 24 A. It is my understanding that each person  
 25 had -- each person -- that's why they have a panel. If

1 questions, she answered it, so don't be argumentative  
 2 and certainly don't be insulting to her.  
 3 MR. DITTENBER: I'm not being insulting to  
 4 her.  
 5 MR. REILLY: He's not being insulting to  
 6 her.  
 7 MR. WILLIAMS: No, he is being insulting.  
 8 MR. REILLY: He is asking the question.  
 9 MR. WILLIAMS: No, he is being insulting. I  
 10 keep telling you, you have no right to say anything,  
 11 you're just here. Don't insult her. I'm not going to  
 12 let him insult her.  
 13 MR. DITTENBER: I didn't insult her, I'm  
 14 just --  
 15 BY MR. DITTENBER:  
 16 Q. Do you have any evidence that Mr. Steucher was  
 17 discriminating against you based on your race when he  
 18 made that statement allegedly?  
 19 A. When someone says, oh, no, I hate her, hate can  
 20 imply race or gender. It had to imply something, and I  
 21 believe it implied one or both of those aspects when  
 22 that comment was made and then acted on it by changing  
 23 the scores so I was no longer in the top.  
 24 Q. You said that he changed the scores. Do you have  
 25 any evidence of any other score sheets besides the one

1 that was the case, then the project engineer should just  
 2 make the decision without a panel. The panel is  
 3 supposed to review the proposals objectively. My  
 4 understanding, and Mr. Dargin stated, that I had, you  
 5 know, an excellent proposal, that it was good, you know,  
 6 and that when they rated them there must have been some  
 7 consensus among the three of them, and the other two  
 8 people on the panel I didn't know. So, you know, I had  
 9 never met the other two that I know of, you know. So  
 10 when they reviewed them they must have come to some  
 11 consensus that mine was, you know, at a certain level  
 12 and ranked. And then when he came in, that was changed.  
 13 Q. Do you agree that Mr. Steucher was entitled to  
 14 participate in the selection after he returned from his  
 15 meeting?  
 16 A. Yeah, he's entitled to participate.  
 17 Q. And do you agree that his participation may  
 18 result in rethinking whatever the panel had concluded  
 19 before that point?  
 20 MR. WILLIAMS: Objection.  
 21 THE WITNESS: No.  
 22 MR. WILLIAMS: Calls for speculation but  
 23 you've answered.  
 24 BY MR. DITTENBER:  
 25 Q. At the top of the score sheet do you see where it



1 says the selection team will complete one consensus  
 2 score sheet?  
 3 A. Yes.  
 4 Q. Do you understand this score sheet to represent  
 5 that consensus score sheet?  
 6 A. I don't believe it was a consensus. I believe  
 7 that what was done was that the group looked at the  
 8 proposals, mine was in the top, and that he came in,  
 9 didn't agree with them, and it didn't matter how good  
 10 mine was, that based on race and/or gender that he made  
 11 the decision to eliminate me from the competition,  
 12 change the scores, and I was no longer in the running.  
 13 Q. Did Mr. Steucher sign the score sheet?  
 14 A. Yes. Well, I'm assuming that's his signature. I  
 15 mean, I can't -- I didn't see him sign it.  
 16 Q. Do you see Mr. Dargin's signature on the score  
 17 sheet?  
 18 A. Yes.  
 19 Q. Do you see Mr. Kerley's on the score sheet?  
 20 A. Yes, I see a signature for all of them.  
 21 Q. And Mr. Koskinen?  
 22 A. Yes.  
 23 Q. Did you request a debriefing on this score sheet?  
 24 A. Yes.  
 25 Q. From who?

1 (Whereupon Deposition Exhibit No. 12  
 2 marked for identification.)  
 3 BY MR. DITTENBER:  
 4 Q. Do you recognize this document?  
 5 A. Uh-huh, yes.  
 6 Q. And what is this document?  
 7 A. This was the complaint for the issue that we're  
 8 talking about now.  
 9 Q. I want you to take a minute and just review your  
 10 statement you included in this document.  
 11 A. Okay.  
 12 Q. Where in this document do you make any  
 13 allegations that Mr. Steucher discriminated against you  
 14 based on your gender?  
 15 A. Right here.  
 16 Q. Just where you circled it at the top?  
 17 A. Yeah, that's what you're supposed to do, yes.  
 18 Q. Is there anything in your statement that supports  
 19 that?  
 20 A. Well, it supports it because of what occurred.  
 21 The comment that was made. And at this point I knew  
 22 that the scores were changed and that I was -- had  
 23 submitted a good proposal and the panel had evaluated me  
 24 and then he changed the scores and eliminated me from  
 25 competing.

1 A. Mr. Steucher.  
 2 Q. Did Mr. Steucher provide a debriefing?  
 3 A. After several requests. I requested it at least  
 4 two times in e-mail, he would not respond, so I ended up  
 5 doing a certified letter and contacting the region  
 6 office. And this was after I contacted Lansing to  
 7 verify what the debriefing process was and they said  
 8 that I needed to contact the project engineer directly,  
 9 which I did.  
 10 Q. And the meeting was held?  
 11 A. After all that I stated.  
 12 Q. After all that?  
 13 A. Right.  
 14 Q. Did Mr. Steucher make any direct comments to you  
 15 regarding your gender?  
 16 A. When, at the meeting?  
 17 Q. At any time.  
 18 A. Not that I can think of.  
 19 Q. Did he make any comments regarding your race?  
 20 A. No, not that I can think of.  
 21 Q. To your knowledge, did he ever make any comments  
 22 regarding your race or gender to any of your employees?  
 23 A. I don't know.  
 24 MR. DITTENBER: Mark this as Exhibit 12.  
 25

1 Q. The statement that Mr. Dargin attributes to  
 2 Mr. Steucher is, oh, no, I hate her; is that the exact  
 3 statement?  
 4 A. Well, I'm just going by -- he didn't tell me, he  
 5 told the investigator that, the Federal Highway  
 6 Administration investigator. So this is what's in the  
 7 report of inquiry. You can read it just like I can, so  
 8 that's -- I'm attributing that to -- because I didn't  
 9 know that comment was made until the investigation was  
 10 done.  
 11 Q. I'm sorry, I thought you told me Mr. Dargin told  
 12 you that.  
 13 A. Mr. Dargin told me that the scores were changed.  
 14 What I said was it was the report that let me know  
 15 that --  
 16 Q. Okay.  
 17 A. -- that comment was made, right, that came out in  
 18 the report of inquiry.  
 19 Q. And the comment was not I hate her because she's  
 20 a woman, was it?  
 21 A. The comment that the report states I believe  
 22 he -- I believe it is in there as Mr. Steucher stated  
 23 prior to changing the scores, oh, no, I hate her.  
 24 Q. And it doesn't state that Mr. Steucher said, oh,  
 25 no, I hate her because she's an African American; is

1 that correct?

2 MR. WILLIAMS: Objection, argumentative.  
3 She already told you what the statement was.

4 THE WITNESS: Well, that's what the  
5 statement says. I'll take it for what it says. You'd  
6 have to ask him why he said it or why he hates me.

7 BY MR. DITTENBER:

8 Q. Do you have any knowledge why he would make such  
9 a statement based on your experience with him?

10 A. You'd have to ask him that question, sir. I have  
11 no knowledge of that. I do not know.

12 Q. Had your company been in the top three for this  
13 proposal what would be the next step?

14 A. My understanding was that it goes to the region  
15 office and they make a recommendation. And they were  
16 recommending firms based on whether you had been  
17 selected for stimulus fund work. At that point my  
18 company had not.

19 Q. How do you know that you would have been awarded  
20 the contract had it gone to the central region?

21 A. My indication is that I had an excellent chance  
22 of being selected because I had not obtained any  
23 stimulus fund work. And subsequently I received an  
24 e-mail from Tony Kratofil, I can't remember what the  
25 date is, but there was an e-mail from Tony Kratofil

1 work in that -- that one, you know, I couldn't bring the  
2 people on board. And with me being the prime, you know,  
3 it's hard to develop confidence in your company if  
4 things like that come and you're always losing. And  
5 then to make matters worse to know what really happened  
6 behind the scenes, it just makes matters worse.

7 Q. And in your complaint you allege that

8 Mr. Steucher was removed from future committees?

9 A. That's what I was told.

10 Q. And who told you that?

11 A. I believe Paul Ajegba, I believe, is the one who  
12 told me that because he was the TSC manager.

13 Q. Do you recall when he told you that?

14 A. No, I don't know the exact date.

15 Q. And do you know if that was an e-mail?

16 A. I believe he told me verbally, but it may have  
17 been put in writing at some point.

18 Q. Your complaint contains a claim under the  
19 Michigan Whistle Blowers Act. Are you familiar with the  
20 claim I'm talking about?

21 A. Yes. I may need some help from you with this  
22 one.

23 MR. WILLIAMS: I can't help you.

24 THE WITNESS: Oh, whistle blowers.

25 BY MR. DITTENBER:

159

1 stating that I had not been in the top three.

2 So my thought is that if something came  
3 across his desk and I was in the top, I probably would  
4 have got the nod because, you know, he stated that,  
5 well, you know, you haven't really been in the top  
6 three, so, you know, but in this case I was I know at  
7 least in the top three, you know. I think the report of  
8 inquiry states I was in the top, you know, at the top,  
9 so I don't know if that -- you know. But that's why I  
10 believe that I would have been the one selected for this  
11 for those reasons.

12 Q. Do you recall when you received that e-mail from  
13 Mr. Kratofil?

14 A. It's in the documents you have. I don't know the  
15 exact day.

16 Q. What would your -- what are your damages on your  
17 claims against Mr. Steucher?

18 A. Well, for one thing, not receiving the work, the  
19 aspect of not being able to employ staff, that implies  
20 not being able to keep staff, build staff, grow the  
21 company, get future or other, you know, stimulus fund  
22 projects in that area because -- and after that, you  
23 know, I mean I just haven't had any success, wasn't able  
24 to be successful in getting work.

25 So I tie all that together with not getting

161

1 Q. I'm not going to ask any legal questions.

2 A. Oh, okay, because if you ask legal questions  
3 about the whistle blowers, I don't know all of the  
4 legalities related to that.

5 Q. In paragraph 215 you allege that you and your  
6 company are employees within the meaning of that statute  
7 of the Department of Transportation?

8 A. As consultants, right?

9 Q. Are you currently an employee of the Michigan  
10 Department of Transportation?

11 A. An employee?

12 Q. Yes.

13 A. No, I'm not an employee. I don't  
14 receive -- well, my company receives at the time, when  
15 we do work for MDOT, you know, right now I don't have  
16 any contract -- well, I have one contract directly with

17 MDOT and that check is from the State of Michigan.

18 Q. Okay. When your company does work for MDOT, does  
19 it always do it pursuant to a contractual agreement?

20 A. As BBF Engineering Services, yes, we have to have  
21 a contract.

22 Q. Yes. Do you do any work for MDOT outside of BBF  
23 Engineering Services?

24 A. No.

25 Q. And BBF Engineering Services is a corporation

1 Incorporated in the State of Michigan; is that correct?  
 2 A. Yes.  
 3 Q. Do you consider yourself an employee of BBF  
 4 Engineering Services?  
 5 A. Yes.  
 6 Q. Does your company perform work for clients other  
 7 than the Michigan Department of Transportation?  
 8 A. Yes.  
 9 Q. Who pays your salary?  
 10 A. My salary is paid by BBF Engineering Services.  
 11 Q. Who pays the salary of your employees?  
 12 A. BBF Engineering Services.  
 13 Q. How does BBF Engineering Services receive payment  
 14 from MDOT?  
 15 A. Check or -- check or direct deposit.  
 16 Q. And when you receive payments from MDOT, is that  
 17 for specific work that your company has performed?  
 18 A. Yes.  
 19 Q. How often does MDOT make payments to your  
 20 company?  
 21 A. There's no set schedule.  
 22 Q. It's based on what work you're doing for them at  
 23 the time; is that fair?  
 24 A. Right. I thought you were talking about a time  
 25 frame, like every two weeks.

1 Q. Does the project engineer select from existing  
 2 BBF employees?  
 3 A. When you say do they select from, when you submit  
 4 a proposal you -- if they don't like your employees  
 5 you're not going to get the work. So if you don't  
 6 like -- you know, so if you get a contract, they select  
 7 based upon who they want. So they do have a direct say  
 8 in who works on projects.  
 9 Q. Okay. But when you're hiring an employee for  
 10 your company does MDOT sit in on the interview?  
 11 A. No.  
 12 Q. Does MDOT help you make the decision whether to  
 13 hire this employee or not?  
 14 A. Yes, because if it's someone who I know MDOT  
 15 would not allow or doesn't want to work on the job I  
 16 cannot hire that person.  
 17 Q. Does MDOT contact you when you're hiring an  
 18 employee to let you know whether that person will be  
 19 acceptable for MDOT work?  
 20 A. No, you just -- if it's a person that they will  
 21 not allow to work on the job or that they don't like or  
 22 won't -- you know, don't like their credentials, they  
 23 will not allow -- they will not select that person to be  
 24 on the job. So if you hire that person, then you're not  
 25 going to get any work because there's a direct

163

1 Q. Does MDOT provide you or your company with a W-2  
 2 for income tax purposes?  
 3 A. No.  
 4 Q. Does MDOT withhold income tax, federal income  
 5 tax, from payments it sends to your company?  
 6 A. No.  
 7 Q. Does MDOT provide your company health insurance?  
 8 A. No.  
 9 Q. Does it provide you or your employees health  
 10 insurance?  
 11 A. No.  
 12 Q. Does MDOT provide any type of pension or 401(k)  
 13 plan for your company?  
 14 A. No.  
 15 Q. What about for you or your employees?  
 16 A. I thought you just said me or my company; isn't  
 17 that the same question?  
 18 Q. What about your employees?  
 19 A. No.  
 20 Q. Does MDOT have any role in hiring the employees  
 21 for BBF Engineering Services?  
 22 A. Yes.  
 23 Q. And what is that role?  
 24 A. The project engineers determine who works on  
 25 projects and who is allowed to work on projects.

165

1 correlation between who your company has working for it  
 2 and whether they are going to be allowed -- whether the  
 3 project engineer is going to select you and select those  
 4 people to work on a project.  
 5 Q. If you were to terminate one of your employees,  
 6 who would have the final say on that decision?  
 7 A. Who would have the final? I would have  
 8 the -- BBF, the company, would have a say in that.  
 9 Q. Does MDOT have the authority to terminate your  
 10 employees?  
 11 A. Indirectly.  
 12 Q. Can you explain that answer?  
 13 A. Because if there is an employee that you cannot  
 14 obtain work for and the project engineer does not want  
 15 that person on the job and you cannot find work for that  
 16 person, then you have to terminate them because if you  
 17 can't -- if the person can't work on an MDOT project,  
 18 I'm just speaking specifically for MDOT work, then that  
 19 person would have to be terminated.  
 20 Q. Does MDOT --  
 21 A. Or at least not work for that company, you know,  
 22 it could go somewhere else and work on something else  
 23 maybe.  
 24 Q. Does MDOT request that you terminate certain  
 25 employees?

1 A. They won't request it, but if they won't allow  
 2 them to work on the job, you can't have them sitting  
 3 around doing nothing, you know, you have to have work  
 4 for the people.

5 Q. Who has the final say on disciplining the  
 6 employees at BBF Engineering?

7 A. Me, I do, but in conjunction with whatever  
 8 feedback you get with that client, in this case you're  
 9 speaking of client MDOT.

10 Q. Do you have any examples of MDOT requesting that  
 11 you fire or discipline an employee?

12 A. Love Charles.

13 Q. Who requested that you terminate Love Charles?

14 A. I didn't say terminate, discipline -- well, you  
 15 know, terminate in the form of Victor kept asking, and I  
 16 don't know if those e-mails are in there, but there were  
 17 several instances where he, you know, when's Love going  
 18 to retire, when's Love going to retire, I mean, you  
 19 know. It's like basically when are you going to get rid  
 20 of him, when is he going to be gone. So that would be  
 21 the example that I would give you and that, yeah,  
 22 discipline and, you know, time, you know, he's got to  
 23 go, call it termination, call it retirement, whatever  
 24 you want to call it.

25 Q. Do you have any examples other than Love Charles?

1 and for whom and, you know, who is selected to work  
 2 where and that's the framework of your company, if they  
 3 are steering people away from your company, then there's  
 4 a concern with me as the company owner because I can't  
 5 get people, you know.

6 And then there was instances where I've  
 7 offered to train people at no charge to MDOT. And I  
 8 know for one Victor's one who wouldn't allow it, you  
 9 know. And later a lot of these people came forward and  
 10 said that they were intimidated and told that if they  
 11 did come work for me and trained that they weren't going  
 12 to let -- they weren't going to be allowed to do the  
 13 work anyway.

14 Q. Who was intimidating these people?

15 A. I know that Victor was one. And intimidation in  
 16 the fact of -- the instances that you speak of I'm  
 17 saying were steered away, there were, I know, two  
 18 females that were on target to come work for BBF  
 19 Engineering Services and then there was one male and he  
 20 did come to work for the company, but as soon as he got  
 21 his three years in and his pension he was out the door,  
 22 even though he told me he was going to show up to work  
 23 the next day, and went to work for a competitor and --

24 Q. Do you recall the names of those three  
 25 individuals?

1 A. Charles Latimer.

2 Q. And who is Mr. Latimer?

3 A. He used to work for me and he worked on the  
 4 Gateway project. And after the last contract that  
 5 we -- the contract that he was working on, he was doing  
 6 some of the utility inspection and couldn't get work for  
 7 him, couldn't hire him back because, you know, Victor  
 8 Judnic was the project engineer and he worked with a  
 9 couple of -- one, I think one technician he worked with,  
 10 but the project engineer was Victor Judnic and couldn't  
 11 get him back and couldn't -- you know, even though it  
 12 was said that he did a good job, you know, so I don't  
 13 know, you know, I can't say to the extent that, you  
 14 know, how much Victor had to do with it, but he was the  
 15 project engineer. Latimer, L-a-t-i-m-e-r, I saw you  
 16 writing it down.

17 And let me think. And the other thing, you  
 18 mentioned about the ability to hire people, there were  
 19 people that I know one recently that has come forth that  
 20 there was some intimidation, you know, where I've been  
 21 told a couple people in the past that have been told --  
 22 basically steered away from coming to work for my  
 23 company and being steered to other companies.

24 So when you ask the question about the  
 25 project engineers having relevance in who works where

1 A. Well, one was Chad Godbout, he was the one that  
 2 worked for me. And, you know, and the two that I was  
 3 told later that were on target to come work for me but  
 4 were steered away from the company initially were  
 5 Octavia Stewart and Regan Jeeter. And Regan Jeeter was  
 6 one who while Mr. Charles was there I offered to train  
 7 her at no charge to MDOT for up to three months so she  
 8 could get experience -- she was a technician for MDOT  
 9 but she had already left MDOT, she was, you know,  
 10 working as a -- going in the consulting because she was  
 11 seasonal and being laid off so she wanted something a  
 12 little more stable.

13 And she told me that she was intimidated and  
 14 basically told that, you know -- for one thing I wasn't  
 15 allowed to train her even at no charge to MDOT, that's  
 16 the first thing. And then later she told me that she  
 17 was told that, yeah, even if you do train we're not  
 18 going to allow you to come in and be office tech anyway.  
 19 She's a black female.

20 Q. And who are you alleging steered these  
 21 individuals away from your company?

22 A. Well, I know that at the time Mr. Judnic --  
 23 Mr. Charles worked for Mr. Judnic and Ms. Stewart was  
 24 also on projects for Mr. Judnic, and Mr. Godbout went to  
 25 Fishbeck, who was doing a lot of work for Mr. Judnic, so

1 that's why I say the framework, those are all related to  
 2 Mr. Judnic.  
 3 Q. And what was the period of those? You said it  
 4 was when Love Charles still worked for your company?  
 5 A. Yeah, I know that the one had to be '08 because I  
 6 was going to train her before he left, yeah.  
 7 Q. Okay. When was the first time you contacted FHWA  
 8 about the issues you were having between MDOT and your  
 9 company?  
 10 A. After I got the e-mail from Patricia Collins.  
 11 Q. And you sent several complaints in to FHWA; is  
 12 that correct?  
 13 A. After my meeting with Mrs. Finch.  
 14 Q. Do you recall about when that was?  
 15 A. They are dated July 27th of 2010.  
 16 Q. What actions did Mr. Judnic take toward you after  
 17 you filed those complaints?  
 18 A. Let's see after the complaint -- July 2010.  
 19 Q. Uh-huh.  
 20 A. I think right after that is when that one  
 21 proposal that we talked about earlier with the vehicles,  
 22 I think that came out after that. We've discussed that  
 23 issue already. And then -- actions against me, I mean,  
 24 that's the one that comes to mind right now is that --  
 25 because that complaint, that issue, I don't think, was

1 Q. No, I understand.  
 2 A. Okay.  
 3 Q. I've handed you what's been marked as Exhibit 13.  
 4 A. Yes.  
 5 Q. Do you recognize this document?  
 6 A. Yes, this was part of the report of Inquiry by  
 7 Mrs. Finch as a part of her recommendations asking me to  
 8 come up with a document proposing a settlement.  
 9 Q. And this document was also provided to me by your  
 10 attorney about a month ago, you understand that?  
 11 A. It sure seems like it was more than a month ago.  
 12 Q. Is this the most updated estimate you have?  
 13 A. Well, this was included with the MDOT report of  
 14 Inquiry when she sat down with MDOT last year.  
 15 Q. Do you have a more recent document that lays out  
 16 the damages?  
 17 A. When I say she, I should say Mrs. Finch. She had  
 18 me provide this before she even set down with MDOT to  
 19 discuss the report of Inquiry.  
 20 Q. Okay. Do you have a document more recent that  
 21 describes the damages --  
 22 A. This document? This document?  
 23 Q. Could I please get the question out?  
 24 A. I thought you were finished with your question.  
 25 Q. No.

171

1 part of the initial complaints that went in in July.  
 2 Q. Do you have any knowledge as to when Mr. Judnic  
 3 became aware that you had filed Title VI complaints?  
 4 A. No, I don't know.  
 5 Q. What adverse actions did Mr. Steucher take toward  
 6 you after July 2010?  
 7 A. I didn't have any contact with him so I don't  
 8 know what would have been done at MDOT. I had no  
 9 interactions with Mr. Steucher.  
 10 Q. And do you have any knowledge when Mr. Steucher  
 11 would have become aware of your Title VI complaints?  
 12 A. No. But my understanding is that they -- the  
 13 Federal Highway Administration, because they go to  
 14 Washington, D.C., and they do send MDOT information  
 15 because I had to sign a document so....  
 16 MR. DITTENBER: Mark this as Exhibit 13.  
 17 (Whereupon Deposition Exhibit No. 13  
 18 marked for identification.)  
 19 THE WITNESS: Now, one of the reasons why  
 20 there would be no interaction, Mr. Dittenber, because  
 21 really I -- my work was being funneled off, so, you  
 22 know, the contact with him would have been minimum. I  
 23 didn't have a contract with Mr. Steucher so there would  
 24 be no reason --  
 25 BY MR. DITTENBER:

173

1 A. You asked me if I had a document more recent than  
 2 this.  
 3 Q. Essentially that's what I'm asking, that lays out  
 4 your damages that you're seeking in this case?  
 5 A. This is the only one that we had come up with at  
 6 that time, right.  
 7 Q. You don't have anything today that lays out the  
 8 damages on paper?  
 9 A. No, because this document was supposed to be  
 10 discussed and there was no reason to advise them because  
 11 there was never any contact with me and my attorney for  
 12 the meeting that was recommended by Mrs. Finch.  
 13 Q. What damages do you seek today against  
 14 Mr. Steucher and Mr. Judnic?  
 15 A. I don't understand the question. This is what's  
 16 outlined at this time and we really -- I haven't  
 17 discussed any difference -- or anything with my attorney  
 18 since this was provided because the recommendation was  
 19 for MDOT to sit down with me and just come to an  
 20 amicable agreement, which I was willing to do. And we  
 21 were never contacted by MDOT, hence the reason why I  
 22 believe we're here today.  
 23 Q. Can you tell me as of today the amount of damages  
 24 you are seeking against Mr. Steucher and Mr. Judnic?  
 25 A. No, I cannot.

1 Q. Can you provide me any type of estimate?  
2 A. Well, I guess I don't understand the question  
3 because the lawsuit is not just against Mr. Steucher and  
4 Mr. Judnic, it's against Mr. Steucher, Mr. Judnic, MDOT,  
5 and the State of Michigan, so I can't answer your  
6 question when you state just Mr. Steucher and Mr. Judnic  
7 because they are not parties in and of themselves of  
8 this lawsuit.

9 Q. I'm not asking what you're seeking against the  
10 State of Michigan or MDOT or their respective directors  
11 or governors.

12 A. Okay.

13 Q. Can you provide me an estimate of the damages you  
14 are seeking just against Mr. Steucher?

15 A. No, not today I cannot.

16 Q. When would you be able to provide that?

17 MR. WILLIAMS: I think that calls for a  
18 legal conclusion.

19 THE WITNESS: I just -- I can't answer that.  
20 I don't know when I'd be able to provide that because I  
21 looked at this as, you know, the last documents  
22 regarding this case and this lawsuit, it's Steucher,  
23 Judnic, the State of Michigan, and MDOT. So I had not  
24 thought after that ruling came down most recently from  
25 the judge in terms of just Mr. Steucher and Mr. Judnic.

1 discrimination, yes.

2 Q. Will you have a medical professional testify  
3 regarding these?

4 A. Yes.

5 Q. Can you tell me who will be testifying?

6 A. That's in the documents.

7 MR. WILLIAMS: I think the witness list does  
8 identify her physicians.

9 THE WITNESS: Yeah, I have -- there's an  
10 epidemiologist -- endocrinologist. The cardiologist is  
11 not on there. The dermatologist, just now getting over,  
12 you know, all the issues related to the dermatologist  
13 related to this. Who am I missing? The main one is the  
14 endocrinologist. And then the cardiologist is not on  
15 there because I think the witness list was done before  
16 my most recent appointment with him.

17 BY MR. DITTENBER:

18 Q. And on this document you list damages for loss of  
19 work profit opportunities?

20 A. Yes.

21 Q. And I know this is an old document. Are you  
22 seeking damages of that nature against Mr. Judnic or  
23 Mr. Steucher?

24 A. Again, I'm looking at this, I haven't split it  
25 out just based on two people, and this is -- that's how

1 BY MR. DITTENBER:

2 Q. I see on here that you've listed damages for  
3 pain, suffering, and mental distress. What's the nature  
4 of those damages that you seek?

5 A. We came up with that number based upon what we  
6 felt was fair and amicable based upon the distress, the  
7 illness, and the things that have occurred under the  
8 duration of, you know, what has occurred based upon  
9 what's here. And that's a number, you know, that we  
10 came up with at that point last year. This was done  
11 about a year ago, I believe.

12 Q. What illness are you speaking of?

13 A. Well, Graves disease, multi-nodular goiter,  
14 hyperactive thyroid, two radioactive iodine treatments,  
15 moving forward most recently, high blood pressure, now  
16 on the medicine Synthroid for thyroid disease in which  
17 my -- oh, and cardiologist stating that early on I did  
18 not have high blood pressure and now I do, that's from a  
19 cardiologist. So the disease, the thyroid issue is  
20 directly related to stress, because it's under the  
21 category of autoimmune disease.

2 Q. Are you alleging that you became afflicted with  
23 these various diseases because of the actions of  
24 Mr. Judnic and Mr. Steucher?

25 A. And the ongoing discrimination and claim of

1 we were looking at it here was based on those four  
2 entitles, and that's how we're -- you know, with the  
3 most recent court documents, it does incorporate all  
4 four, Judnic, Steucher, State of Michigan, and MDOT.

5 MR. DITTENBER: Can we go off the record for  
6 a minute? We'll take a quick break and see if  
7 Mr. Steucher has any additional questions.

8 (A recess was taken.)

9 MR. DITTENBER: We're back on the record  
10 here. Based on events over the last couple of days,  
11 there's been some court orders, there will be some new  
12 documents filed and I have no --

13 THE WITNESS: Is that what you just  
14 explained to me?

15 MR. WILLIAMS: Yeah.

16 MR. DITTENBER: I have no further questions  
17 for you at this time. I'm going to adjourn the  
18 deposition to a time and date to be mutually worked out  
19 between the parties.

20 THE WITNESS: Okay.

21 MR. DITTENBER: Mr. Williams, would you like  
22 to examine the witness today?

23 MR. WILLIAMS: No, I don't need to do an  
24 examination today since you're keeping the record open  
25 at least as it relates to the damage issues. I'm not

1 going to have her come back to go over things other than  
2 relate to damages.

3 MR. DITTENBER: Well, relate to damages and  
4 the claims against the newly added defendants.

5 THE WITNESS: Who is the newly added --

6 MR. WILLIAMS: That's the renamed,  
7 reconstituted defendants.

8 THE WITNESS: And you're waiting on the  
9 court to --

10 MR. WILLIAMS: No, the court has done it I  
11 think.

12 MR. DITTENBER: Yes. We are off the record  
13 for today.

14 (Whereupon Deposition concluded at 6:00 p.m.)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

179

1 STATE OF MICHIGAN )  
 ) SS  
2 COUNTY OF INGHAM )

3 I, Melinda Nardone, Certified Shorthand  
4 Reporter and Notary Public in and for the County of  
5 Ingham, State of Michigan, do hereby certify that the  
6 foregoing Deposition was taken before me at the time and  
7 place hereinbefore set forth.

8 I further certify that said witness was  
9 by me duly sworn in said cause; that the testimony then  
10 given was reported by me stenographically; subsequently  
11 with computer-aided transcription, produced under my  
12 direction and supervision; and that the foregoing is a  
13 full, true, and correct transcript of my original  
14 shorthand notes.

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand and seal this 9th day of September, 2012.

17 

18 Melinda Sue Nardone, CSR-1311,  
19 Certified Shorthand Reporter,  
20 Registered Professional Reporter,  
21 Certified Proficient,  
22 and Notary Public,  
23 County of Ingham, State of  
24 Michigan.  
25 My Commission Expires: 10-24-12

# **EXHIBIT 13**



Sheila Lincoln

From: bbfengr@aol.com  
Sent: Monday, July 21, 2008 5:57 PM  
To: screwsr@michigan.gov  
Cc: slincoln@bbfes.com  
Subject: Fwd: Re: July 18th Detroit TSC Meeting

Rita,

Please look into this matter. I had a meeting with Jason, Victor and Steve Griffith on Friday, July 18th. When I arrived at the meeting, Deanna Papanek was there with a two page document with issues related to the M-10 project. I had received no prior information of any issues on this project even when I proposed Lakeisha Hamilton to begin assisting with office tech/dbe duties over a month ago (at no cost to MDOT for at least one month). She is a certified office tech. with field experience and a degree in Construction Management. I proposed her to assist the transition with Love since Ray Stewart has been assigned field project. I was told by Jason Voigt and Victor Judnic that she was not needed. I received no indication of any problems on any project relative to FieldManager or DBE.

Today, I requested a copy of the document from Jason Voigt that was given to us at the July 18th meeting. Based upon the comments from Mr.

Judnic below there are other issues that he has not discussed or either expects to find. His statements are unfounded since we have not had an opportunity to fully review the document or respond to any of the issues contained therein. In addition, the final review process relative to this project is no where near completion.

Rita, unfortunately, based upon the comments Mr. Judnic made at the meeting, it was obvious that he has chosen to make BBF Engineering Services his target for downfall. In his final comment within the prior email (see below) "We need to make a decision on this matter and will be getting back to you soon." What does this imply?

I am not aware of what Mr. Judnic is referring to, but this is placing undue stress on me and my staff.

Please inform as to how you would like me to proceed with this issue.

Bellandra Foster

-----Original Message-----

From: Victor Judnic <JudnicV@michigan.gov>  
To: bbfengr@aol.com  
Cc: Steve Griffith <GriffithS@michigan.gov>; Deanna Papanek <PapanekD@michigan.gov>; Sharleta Paris <ParisS@michigan.gov>; Rita Screws <SCREWSR@michigan.gov>; Roger Teale <tealer@michigan.gov>; Jason Voigt <VoigtJ.CL2P01.CL2DOMR1@michigan.gov>  
Sent: Mon, 21 Jul 2008 5:20 pm  
Subject: Re: July 18th Detroit TSC Meeting

B,

The deficiency list was not complete, as it was intended as a sample of the many deficiencies on the M-10 project. Also, there are other projects that may need to be corrected.

We are having similar issues with the City of Detroit, who was depending on MDOT to find all the project deficiencies, and that is not the responsibility of MDOT.

In other words, FHWA does not inform MDOT of our project deficiencies,

though MDOT is expected to meet the requirements of the Federal Aid Program.

Thanks

>>> <bbfengr@aol.com> 7/21/2008 4:53PM >>>

Jason,

Please request Deana to forward the MS Word version of the Lodge Freeway (fieldmanager) information that was given to me and Love at the July 18 meeting. This would aid us in providing information to MDOT as each item is addressed and resolved. Thanks

Bellandra Foster, PE

-----Original Message-----

From: Jason Voigt <VoigtJ@michigan.gov>

To: bbfengr@aol.com; Victor Judnic <JudnicV@michigan.gov>

Cc: Rita Screws <SCREWSR@michigan.gov>; Roger Teale <tealer@michigan.gov>

Sent: Mon, 21 Jul 2008 10:31 am

Subject: Re: July 18th Detroit TSC Meeting

Bellandra,

Another comment. If you are producing minutes from this meeting, please include us in the distribution. Thank you.

>>> Victor Judnic 7/19/2008 8:45:52AM >>>

B,

Though we had somewhat of a rough meeting yesterday, I believe we have good direction on how to deal with the TSC and BBF issues at hand.

One item to add: Upon Love's departure, I believe we will need to rely on Ray Stewart taking care of DBE Liason issues during the transition into the new direction that MDOT is taking regarding this DBE position in Wayne County. We will let you know the details of the new direction once the TSC has more information.

Let us know if you have any follow-up questions. Thanks

Victor Judnic, P.E.

Michigan Department of Transportation

Detroit Transportation Service Center

Senior Resident Engineer

1400 Howard Street

Detroit, MI. 48216

office: 313-967-5407

cell: 313-215-2128

fax 313-965-6340

>>> <bbfengr@aol.com> 07/11/08 4:15 PM >>>

To All:

I received a correspondence from Jason Voigt that the subcontractors do not need to attend the July 18 meeting (9am) at the Detroit TSC.

Subcontractors should not plan to attend this meeting. I will provide any necessary project updates. Thanks

# **EXHIBIT 14**

From: Gregory Johnson <JOHNSONG2@michigan.gov>  
To: bbfengr@aol.com  
Cc: Rita Screws <SCREWSR@michigan.gov>  
Subject: Re: Meeting  
Date: Thu, 11 Oct 2007 8:32 am

---

Bellandra,

In order for me to get a full understanding of both sides of this issue I need to hear from both you and Victor. I need for him to understand what your concerns are as well as you understand what his concerns are without my or Rita's third party interpretation. Victor is a very ethical person and unless you have instances where he has retaliated against your company or individuals, or acted unethically, this is not a valid concern as far as I am concerned. Victor remains invited to our discussion this morning.

Greg Johnson  
Metro Region Engineer

>>> <[bbfengr@aol.com](mailto:bbfengr@aol.com)> 10/10/2007 10:43PM >>>

Greg,  
I had no ill intent in my meeting request with you and Rita.? Some, but not all, of the issues I wish to discuss were relative to my contract 2006-0490 with V. Judnic as the PEM.? My preference would have been that I would be allowed to discuss my concerns openly and confidentially with you and Rita without fear of retribution from V. Judnic.?

Bellandra Foster

---

Email and AIM finally together. You've gotta check out free AOL Mail! -  
<http://mail.aol.com>

From: Rita Screws <SCREWSR@michigan.gov>  
To: Bbfengr@aol.com  
Cc: Gregory Johnson <JohnsonG2@michigan.gov>  
Subject: Re: Meeting Confirmation  
Date: Thu, 11 Oct 2007 1:05 am

---

Hi Bellandra:

I assure you that any issues you have that do not pertain to your current contracts or Detroit TSC personnel can be discussed when Victor leaves. The reason for Victor's presence is to bring clarity to, or get a better understanding of issues that relate to the contracts he manages and/or any issues you may have on other recent Detroit TSC contracts, as Victor is the direct supervisor of the other TSC Delivery Engineers.

We can discuss these issues first as Victor has another meeting to get to in Detroit...it is scheduled for either 10:00 or 10:30 AM.

Rita

-----Original Message-----

From: <bbfengr@aol.com>  
To: Screws, Rita <SCREWSR@michigan.gov>  
CC: Johnson, Gregory <JohnsonG2@michigan.gov>  
Creation Date: 10/10 6:00 pm  
Subject: Re: Meeting Confirmation

Per phone call from Greg Johnson, attorney Fletcher will not be in the meeting.? I was not aware Victor would be in attendance at the meeting.?? Based upon your email, Victor will only be in attendance at a portion of the meeting.??

Thanks for your response.  
Bellandra Foster

-----Original Message-----

From: Rita Screws <SCREWSR@michigan.gov>  
To: bbfengr@aol.com  
Cc: Gregory Johnson <JohnsonG2@michigan.gov>; Victor Judnic <JudnicV@michigan.gov>; Dana Kraynak <KraynakD@michigan.gov>  
Sent: Wed, 10 Oct 2007 2:11 pm  
Subject: Re: Meeting Confirmation

Hi Bellandra:

Thanks for the confirmation. FYI...Victor will be joining us for the first portion of the meeting. See you tomorrow.

Rita

>>> <bbfengr@aol.com> 10/10/2007 2:04 PM >>>

I am confirming our meeting on Thursday, October 11th at 9:00 am at the MDOT Region office.? I plan to be accompanied by Mr. Loyst Fletcher, esq.?to discuss BBF Engineering Services past and present relationship with MDOT.? I would?also like to?discuss any MDOT or consultant concerns

with the services provided.? I appreciate you making the time for this cordial discussion.?

Sheila Lincoln

From: bbfengr@aol.com  
Sent: Monday, July 21, 2008 5:57 PM  
To: screwsr@michigan.gov  
Cc: slincoln@bbfes.com  
Subject: Fwd: Re: July 18th Detroit TSC Meeting

Rita,

Please look into this matter. I had a meeting with Jason, Victor and Steve Griffith on Friday, July 18th. When I arrived at the meeting, Deanna Papanek was there with a two page document with issues related to the M-10 project. I had received no prior information of any issues on this project even when I proposed Lakeisha Hamilton to begin assisting with office tech/dbe duties over a month ago (at no cost to MDOT for at least one month). She is a certified office tech. with field experience and a degree in Construction Management. I proposed her to assist the transition with Love since Ray Stewart has been assigned field project. I was told by Jason Voigt and Victor Judnic that she was not needed. I received no indication of any problems on any project relative to FieldManager or DBE.

Today, I requested a copy of the document from Jason Voigt that was given to us at the July 18th meeting. Based upon the comments from Mr.

Judnic below there are other issues that he has not discussed or either expects to find. His statements are unfounded since we have not had an opportunity to fully review the document or respond to any of the issues contained therein. In addition, the final review process relative to this project is no where near completion.

Rita, unfortunately, based upon the comments Mr. Judnic made at the meeting, it was obvious that he has chosen to make BBF Engineering Services his target for downfall. In his final comment within the prior email (see below) "We need to make a decision on this matter and will be getting back to you soon." What does this imply?

I am not aware of what Mr. Judnic is referring to, but this is placing undue stress on me and my staff.

Please inform as to how you would like me to proceed with this issue.

Bellandra Foster

-----Original Message-----

From: Victor Judnic <JudnicV@michigan.gov>  
To: bbfengr@aol.com  
Cc: Steve Griffith <GriffithS@michigan.gov>; Deanna Papanek <PapanekD@michigan.gov>; Sharleta Paris <ParisS@michigan.gov>; Rita Screws <SCREWSR@michigan.gov>; Roger Teale <tealer@michigan.gov>; Jason Voigt <VoigtJ.CL2P01.CL2DOMR1@michigan.gov>  
Sent: Mon, 21 Jul 2008 5:20 pm  
Subject: Re: July 18th Detroit TSC Meeting

B,

The deficiency list was not complete, as it was intended as a sample of the many deficiencies on the M-10 project. Also, there are other projects that may need to be corrected.

We are having similar issues with the City of Detroit, who was depending on MDOT to find all the project deficiencies, and that is not the responsibility of MDOT.

In other words, FHWA does not inform MDOT of our project deficiencies,

though MDOT is expected to meet the requirements of the Federal Aid Program.

Thanks

>>> <bbfengr@aol.com> 7/21/2008 4:53PM >>>

Jason,

Please request Deana to forward the MS Word version of the Lodge Freeway (fieldmanager) information that was given to me and Love at the July 18 meeting. This would aid us in providing information to MDOT as each item is addressed and resolved. Thanks

Bellandra Foster, PE

-----Original Message-----

From: Jason Voigt <VoigtJ@michigan.gov>

To: bbfengr@aol.com; Victor Judnic <JudnicV@michigan.gov>

Cc: Rita Screws <SCREWSR@michigan.gov>; Roger Teale <tealer@michigan.gov>

Sent: Mon, 21 Jul 2008 10:31 am

Subject: Re: July 18th Detroit TSC Meeting

Bellandra,

Another comment. If you are producing minutes from this meeting, please include us in the distribution. Thank you.

>>> Victor Judnic 7/19/2008 8:45:52AM >>>

B,

Though we had somewhat of a rough meeting yesterday, I believe we have good direction on how to deal with the TSC and BBF issues at hand.

One item to add: Upon Love's departure, I believe we will need to rely on Ray Stewart taking care of DBE Liason issues during the transition into the new direction that MDOT is taking regarding this DBE position in Wayne County. We will let you know the details of the new direction once the TSC has more information.

Let us know if you have any follow-up questions. Thanks

Victor Judnic, P.E.

Michigan Department of Transportation

Detroit Transportation Service Center

Senior Resident Engineer

1400 Howard Street

Detroit, MI. 48216

office: 313-967-5407

cell: 313-215-2128

fax 313-965-6340

>>> <bbfengr@aol.com> 07/11/08 4:15 PM >>>

To All:

I received a correspondence from Jason Voigt that the subcontractors do not need to attend the July 18 meeting (9am) at the Detroit TSC.

Subcontractors should not plan to attend this meeting. I will provide any necessary project updates. Thanks

# **EXHIBIT 15**





**From:** Paul Cristini  
**To:** Voigt, Jason  
**Date:** 7/25/2008 2:18PM  
**Subject:** Victor Judnic  
**CC:** Beller, Arnie; Streeter, Dennis

Jason,

This is a follow up from yesterday's meeting and our conversation that followed. As requested this is my formal written complaint.

My complaint is that Victor Judnic is abusing his authority, is doing a personal witch hunt on me, is harassing me, and is creating an intimidating and hostile work environment. I also feel some of his tactics are unfair labor practices.

Please send me any forms or information that I need to fill out to follow up with my complaint.



STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

ANNE HURST  
GOVERNOR

KIRK T. STEUDLE  
DIRECTOR

July 30, 2008

Mr. Paul D. Cristini  
11341 Savage Drive  
Sterling Heights, Michigan 48312

Dear Mr. Cristini:

I received your internal complaint dated July 25, 2008, and I am forwarding it to the Civil Service Commission, Office of Human Resources (OHR), Transportation Division, for appropriate action. The behavior described in your complaint does not constitute discriminatory harassment, as it was not based on factors protected under state and federal civil rights laws. In other words, the action taken by the employer was not taken because of your protected status (i.e., race, color, national origin, sex, religion, partisan consideration, genetic information, sexual orientation, or disability). Please note the definition as follows:

**Discriminatory Harassment** means unwelcome advances, requests for sexual favors, and other verbal or physical conduct or communication *based on religion, race, color, national origin, age, sex, height, weight, marital status, partisan consideration, disability, or genetic information* under any of the following conditions:

1. Submission to the conduct or communication is made a term condition, either explicitly or implicitly to obtain employment.
2. Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.
3. The conduct or communication has a purpose or effect of substantially interfering with the person's employment or creating an intimidating, hostile, or offensive employment environment.

To establish a hostile work environment, the conduct must be "severe" or "pervasive" to constitute a "legal claim." The victim must show a "pattern" of unwelcome behavior that a reasonable person would react to as abusive. The behaviors described in your complaint, "verbal, non-verbal, or physical threats or acts of intimidation in the workplace" fall under the Workplace Safety Policy. Therefore, I have forwarded your complaint to the OHR, Labor Relations Section to determine the merits of your concerns with respect to the employer's actions and obligation to investigate complaints.

If you have further questions, you may contact Anna Lee, Office of Human Resources, Labor Representative, at 517-335-3001.

Sincerely,

Cheryl J. Strayhorn  
EEO Officer



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

KIRK T. STEUDLE  
DIRECTOR

August 13, 2008

Mr. Paul Cristini  
11341 Savage Drive  
Sterling Heights, Michigan 48312

Dear Mr. Cristini:

On July 29, 2008, the Office of Human Resources received your internal complaint regarding an Investigatory Conference Victor Judnic conducted with you on July 24, 2008. In doing so, your complaint alleges that Mr. Judnic has abused his power and created a hostile and intimidating work environment in the Detroit TSC.

Your employer has the right and obligation to conduct a thorough investigation. Investigations may involve interviewing others including fellow employees, consultants and customers, or members of the general public. As stated in the SEIU Technical Unit Collective Bargaining Agreement, Article 10, Section 2 states:

*"Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer."*

Furthermore, the Agreement also states:

*"The employee will cooperate in the investigation, to the extent possible including responding to questions related to the investigation."*

Conducting interviews does not constitute harassment or a hostile work environment. As outlined in a letter to you from the Michigan Department of Transportation's EEO Officer, Cheryl Strayhorn, dated July 30, 2008, to establish a hostile work environment, the conduct must be "severe" or "pervasive" to constitute a "legal claim." There were no facts brought to the attention to the employer that the investigation has created a hostile work environment. In addition, you have not demonstrated how the investigation performed was flawed in any way. As a result, based on the information you have provided, your allegations have not been proven.

Mr. Paul Cristini  
August 13, 2008  
Page 2

If you have further questions, please contact your Labor Relations Specialist,  
Anna Lee, at 517-335-3001.

Sincerely,



Tamara Kirschenbauer  
Administrator/Labor Relations Manager  
Office of Human Resources

bc: Cheryl Strayhorn

---

---

# **EXHIBIT 16**

# Selection and Contracting of Service Vendors

## Central Selections Review Team Meeting

Friday, January 25, 2008, at 8:30 a.m.  
Executive Plaza Conference Room, 4<sup>th</sup> Floor, VanWagoner Building

### Meeting Notes

Present: Wayne Roe, Acting Chair Myron Frierson (1/2 hour)  
Jim Culp Matt DeLong  
Cheryl Strayhorn Pauline Misjak  
Bill Tansil Kelly Villarreal

The meeting notes from the January 11, 2008 regular meeting were approved with modifications noted.

Real Estate Selection Forms Reviewed and Approved by Chair between January 11, 2008, and January 25, 2008.

- Control Section/Job Number:** 39052,39081/87785B,60513B  
**Type of Selection:** Low Bid – \$7,500 (estimated). Five firms:

Kal-Creek Appraisers	\$2,750
Affinity Valuation Group	\$3,000
Bratcher and Associates	\$3,700
Maturen and Associates, Inc.	\$3,600
Oetzel-Hartman Group	\$5,000

  
**From:** Southwest Region/Kem Hoopingarner, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 3 days  
**Type of Service:** Value of the part taken appraisal on M-331 and M-43.  
**Firm(s) Recommended:** Kal-Creek Appraisers \$2,750  
**CA Comments:** None.  
**CSRT Action:** Approved by Chair on 1/15/08. Approved under the MDOT Pre-Approved Purchasing List, Approved Category #23, issued by DMB.

☐ **Consultant Selection Forms Under \$25,000 Reviewed and Approved by Chair between January 11, 2008, and January 25, 2008.**

1. **Control Section/Job Number:** 21022/79021D  
**Type of Selection:** QBS – \$12,000 (estimated). Three firms:  
Wilcox Professional Services, LLC  
Consoer Townsend Envirodyne Engineers  
Mansell Associates  
**From:** Traffic & Safety Division/Ali Mahdavi, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** N/A  
**Type of Service:** Signal modernization design and staging plans for two locations during bridge reconstruction on US-2/US-41/M-35 over the Escanaba River, Delta County.  
**Vendor(s) Recommended:** **Wilcox Professional Services, LLC**  
**Selection Specialist Comments:** None.  
**CSRT Action:** **Approved by Acting Chair on 1/15/08.** Approved under the MDOT Pre-Approved Purchasing List, Approved Category #23, issued by DMB.
  
2. **Control Section/Job Number:** 44031,44032/100578C  
**Type of Selection:** QBS – \$16,500 (estimated). Three firms:  
Mansell Associates  
Consoer Townsend Envirodyne Engineers  
Wilcox Professional Services, LLC  
**From:** Traffic & Safety Division/Doug Adelman, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** N/A  
**Type of Service:** Signal modernization design for three locations in Lapeer County, Bay Region CMAQ project.  
**Vendor(s) Recommended:** **Mansell Associates**  
**Selection Specialist Comments:** None.  
**CSRT Action:** **Approved by Acting Chair on 1/18/08.** Approved under the MDOT Pre-Approved Purchasing List, Approved Category #23, issued by DMB.



3. **Control Section/Job Number:** 11031/101099C  
**Type of Selection:** QBS – \$6,000 (estimated). Three firms:  
Consultant Engineering Associates  
URS Corporation Great Lakes  
Consoer Townsend Envirodyne Engineers  
**From:** Traffic & Safety Division/Doug Adelman, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** N/A  
**Type of Service:** Signal modernization design for M-139 at Nickerson, City of Fair Plain, Berrien County.  
**Vendor(s) Recommended:** **Consulting Engineering Associates**  
**Selection Specialist Comments:** Selection Specialist will inform the Prequalification Unit that this is a pilot job for Consulting Engineering Associates in Traffic Signal Design.  
**CSRT Action:** **Approved by Chair on 1/24/08.** Approved under the MDOT Pre-Approved Purchasing List, Approved Category #23, issued by DMB.

**☐ Consultant Selection Forms for Tiers II and III – Deferred from Previous Meeting**

None received.

**☐ Consultant Selection Forms for Tiers II and III - Reviewed**

1. **Control Section/Job Number:** 17034/M00218  
**Type of Selection:** QBS – \$200,000 (estimated). Four firms:  
Hardesty & Hanover, LLP  
Bergmann Associates  
TranSystems  
TY Lin International Great Lakes, Inc.  
**From:** International Bridge Administration/Karl Hansen, PM.  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 14 days  
**Type of Service:** Bridge deck study at the International Bridge.  
**Vendor(s) Recommended:** **Hardesty & Hanover, LLP**  
**Selection Specialist Comments:** Selection Specialist will inform Prequalification Unit that this will be Hardesty & Hanover's pilot job in the classification of Bridge Project Scoping.  
**CSRT Action:** **Approved.**

2. **Control Section/Job Number:** Various/Various  
**Type of Selection:** QBS – \$950,000 (estimated). One firm:  
HNTB Michigan, Inc.  
**From:** Port Huron TSC/Lawrence Young, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 31 days  
**Type of Service:** As-needed inspection and testing services for the Port Huron TSC.  
**Vendor(s) Recommended:** HNTB Michigan, Inc.  
**Selection Specialist Comments:** Region Engineer approval of the Selection Team is attached. FHWA approval is also attached for the one vendor.  
**CSRT Action:** Approved.
3. **Control Section/Job Number:** Various/Various  
**Type of Selection:** QBS – \$139,000 (estimated). Three firms:  
Parsons Brinckerhoff Michigan, Inc.  
DLZ Michigan, Inc.  
RS Engineering  
**From:** University Region/Stephanie Palmer, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 29 days  
**Type of Service:** Work zone inspections and plan reviews in University Region.  
**Vendor(s) Recommended:** Parsons Brinckerhoff Michigan, Inc.  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.
4. **Control Section/Job Number:** Various/Various  
**Type of Selection:** QBS – \$800,000 (estimated). Three firms:  
Hubbell, Roth & Clark, Inc.  
Spicer Group  
Rowe, Inc.  
**From:** Davison TSC/Armando Lopez, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 28 days  
**Type of Service:** As-needed construction testing and inspection and geotechnical assistance for the Davison TSC.  
**Vendor(s) Recommended:** Hubbell, Roth & Clark, Inc.  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.

5. **Control Section/Job Number:** 86000/M00215  
**Type of Selection:** QBS – \$600,000 (estimated). Two firms:  
KTA-Tator, Inc.  
Dixon, Inc.
- From:** Mackinac Bridge Authority/Kim Nowack, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 6 days  
**Type of Service:** Bridge painting inspection at Mackinac Bridge.  
**Vendor(s) Recommended:** KTA-Tator, Inc.  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.
6. **Control Section/Job Number:** Various/Various  
**Type of Selection:** QBS – \$1,000,000 (estimated) (\$250,000/consultant). Thirteen firms:  
Holland Engineering, Inc.  
Wade Trim Associates, Inc.  
Fishbeck, Thompson, Carr & Huber, Inc.  
Spicer Group, Inc.  
Rowe, Inc.  
Williams & Works  
Mannik & Smith Group  
DLZ Michigan, Inc.  
METCO Services, Inc.  
Wightman & Associates, Inc.  
Surveying Solutions, Inc.  
Coleman Engineering, Inc.  
Orchard, Hiltz & McCliment, Inc.
- From:** Design Division/Michael Barger, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 20 days  
**Type of Service:** Statewide as-needed survey services.  
**Vendor(s) Recommended:** Holland Engineering, Inc.  
Wade Trim Associates, Inc.  
Fishbeck, Thompson, Carr & Huber, Inc.  
Spicer Group, Inc.
- Selection Specialist Comments:** None.  
**CSRT Action:** Approved.

7. **Control Section/Job Number:** 33084/84130C  
**Type of Selection:** QBS – \$260,000 (estimated). Six firms:  
 URS Corporation Great Lakes  
 Wilcox Professional Services, Inc.  
 RS Engineering  
 Bergmann Associates  
 Wade Trim Associates, Inc.  
 DLZ Michigan, Inc.  
**From:** Lansing TSC/Robert Leppala, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 27 days  
**Type of Service:** Design for roadway rehabilitation on I-96.  
**Vendor(s) Recommended:** URS Corporation Great Lakes  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.
8. **Control Section/Job Number:** 70014/88887,88888  
**Type of Selection:** QBS – \$2,950,000 (estimated). Four firms:  
 TranSystems  
 URS Corporation Great Lakes  
 Alfred Benesch & Company  
 Hardesty & Hanover, LLP  
**From:** Grand Region/Terry Stepanski, PM  
**DBE Goal Requirement:** 10%  
**Days from RFP Due Date to CSRT Receipt Date:** 13 days  
**Type of Service:** Bridge design for new Grand River Bridge crossing along with two new structures over North Cedar Street and the Allen Pipple Drain on the new route M-231 (US-31 Bypass).  
**Vendor(s) Recommended:** TranSystems  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.

9. **Control Section/Job Number:** 33061/100215C  
**Type of Selection:** QBS – \$100,000 (estimated). Sixteen firms:  
Orchard, Hiltz & McCliment, Inc.  
Capital Consultants  
Wilcox Professional Services, LLC  
URS Corporation Great Lakes  
Hurley & Stewart  
Northwest Consultants  
TranSystems  
DLZ Michigan, Inc.  
MACTEC Engineering  
Bergmann Associates, Inc.  
Fleis & VandenBrink  
Consoer Townsend Envirodyne Engineers  
Williams & Works  
Rowe, Inc.  
Parsons Brinckerhoff Michigan, Inc.  
Wade Trim Associates, Inc.
- From:** Lansing TSC/Robert Leppala, PM  
**DBE Goal Requirement:** 5%  
**Days from RFP Due Date to CSRT Receipt Date:** 33 days  
**Type of Service:** Design services on M-53 from Rosemary Street to Coolidge Road.  
**Vendor(s) Recommended:** Orchard, Hiltz & McCliment, Inc.  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.
10. **Control Section/Job Number:** Various/101124C  
**Type of Selection:** QBS – \$165,800 (estimated). Two firms:  
Parsons Brinckerhoff Michigan, Inc.  
Parson Transportation Group, Inc. of Michigan
- From:** Traffic & Safety Division/Jason Firman, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 34 days  
**Type of Service:** Traffic signal optimization management on various corridors in Bay and Grand Region.  
**Vendor(s) Recommended:** Parsons Brinckerhoff Michigan, Inc.  
**Selection Specialist Comments:** None.  
**CSRT Action:** Approved.

☐ Consultant Selection Forms for Tier I – Selection Made

11. **Control Section/Job Number:** 50011,50031/100099A,100104A,100105A  
**Type of Selection:** QBS – \$90,000 (estimated). Six firms:  
Northwest Consultants, Inc.  
Hubbell, Roth & Clark, Inc.  
BBF Engineering Services, P.C.  
5 Star Engineering, P.C.  
Rowe, Inc.  
Spicer Group
- From:** Macomb TSC/Denoris Everett, PM  
**DBE Goal Requirement:** 10%  
**Days from RFP Due Date to CSRT Receipt Date:** 27 days  
**Type of Service:** Construction engineering services for three projects in Macomb County.
- Vendor(s) in Top Band:** Northwest Consultants, Inc.  
Hubbell, Roth & Clark, Inc.  
BBF Engineering Services, P.C.
- Top Band Justification:** Northwest Consultants, Inc. – exceeds expectation in understanding, provides adequate personnel, and past performance is above average. Hubbell, Roth & Clark, Inc. – exceeds expectation in understanding, provides adequate personnel, and past performance is above average. BBF Engineering Services, P.C. – exceeds expectation in understanding, provides adequate personnel, and past performance is above average.
- CA Comments:** None.  
**CSRT Selected Vendor:** Northwest Consultants, Inc. No provisional ratings and past performance equal, so the deciding factor was year-to-date workload. Approved under the MDOT Pre-Approved Purchasing List, Approved Category #23, issued by DMB.

☐ Consultant Selection Forms for Tiers II and III (QBS/Low Bid) – Bid Results

12. **Control Section/Job Number:** 41900/86789A, 100446A  
**Type of Selection:** QBS/Low Bid – \$665,000 (estimated). Two firms:  
Motor City Electric Technologies, Inc.  
Telvent Farradyne Michigan, Inc.
- From:** Grand Rapids TSC/Tom Teller, PM  
**DBE Goal Requirement:** N/A  
**Days from RFP Due Date to CSRT Receipt Date:** 87 days  
**Type of Service:** Provide and integrate a microwave vehicle detection system along I-196, I-96, and US-131, in Kent County.
- Bid Results:** Motor City Electric Technologies, Inc. \$844,131.57  
**Selection Specialist Comments:** On 11/2/07 CSRT approved the QBS portion of this selection. Only one firm scored above the minimum requirement, and now the bid is being submitted as an informational item.
- CSRT Action:** Approved. 10% justification letter needed.



### Consultant Selection Forms for Tiers II and III - Reviewed

13. **Control Section/Job Number:** 77111/80911,100701  
**Type of Selection:** QBS – \$200,000 (estimated). Three firms:  
Tetra Tech of Michigan  
Orchard, Hiltz & McCliment, Inc.  
Wade Trim Associates, Inc.
- From:** Port Huron TSC/Scott Singer, PM  
**DBE Goal Requirement:** 5%  
**Days from RFP Due Date to CSRT Receipt Date:** 15 days  
**Type of Service:** Hydraulic drainage study for I-94 from Allington to Macomb County line.
- Vendor(s) Recommended:** Tetra Tech of Michigan  
**Selection Specialist Comments:** Selection Specialist informed project manager that for future selections he needs to get someone from out of his reporting relationship for the Selection Team.
- CSRT Action:** Approved.



### Consultant Selection Forms for Low Bid – Bid Results

None received.



### Consultant Selection Forms for Best Value Selections

None received.



### Informational Items

1. Michele Mueller forwarded two selections that were approved by CSRT. The first one, for signal timings at locations countywide was approved by CSRT on October 5, 2007, with an estimate of \$450,000 and three consultants selected for \$150,000 per consultant. Michele has indicated that her estimate was not correct and the new estimate should be \$700,000, or \$230,000 per consultant. The second one was for program management for the signal timings which was approved by CSRT on November 30, 2007, with an estimate of \$300,000 and two consultants selected for \$150,000 per consultant. Michele has also indicated on this one that her estimate was not correct and the new estimate should be \$500,000, or \$250,000 per consultant. Michele has also added a job number to the program management piece, which was not approved at the time the RFP was posted.

Greg Johnson has approved both of these increases in amount pursuant to the attached e-mail. **CSRT noted the increase.**

2. CSRT approved a selection for full construction engineering services on I, US, and M routes in Metro Region for the Port Huron TSC on December 28, 2007, with an estimate of \$499,800. Wade Trim Associates, Inc. was the selected consultant. At the time of approval, this was the second submission to CSRT because it was originally submitted for approval on November 30, 2007, but the recommended vendor did not meet all of the prequalification classifications. The project manager requested that the job be reposted for one week with Traffic & Safety Services removed as a secondary classification. The project manager is now indicating that the estimate has increased to \$753,605.49. The Region Engineer has approved the Selection Team since this will now be in the range of \$500,000 to \$1 million, as well as the increase in the estimate of approximately \$250,000. His approval is attached. **CSRT noted the increase.**
  
3. CSRT approved a selection for as-needed inspection and testing services for the Mt. Pleasant TSC on March 15, 2006, with an estimate of \$195,000. Rowe, Inc. was the selected consultant. This selection was actually authorized for \$91,474 on May 1, 2006. There was a revision done on June 18, 2006, in the amount of \$249,083, which was listed as Phase II of the project. The total following that revision was \$340,558, which was \$145,558 over the original estimate. The project manager then requested another \$80,000 be added to the authorization on November 8, 2006, because they had "over spent" on the authorization. The project manager indicated in the attached e-mail dated December 8, 2006, that the reason for the overrun was multiple including that they had several of the projects get into considerable overtime work that was not anticipated. There were also a few projects added that were not anticipated at the time of the authorization including two bike path projects and two bridge contracts. All of these projects were 100% staffed with Rowe inspectors. Finally, nearly all of the projects went into extensions of time, thereby increasing the inspection and costs. On December 8, 2006, the project manager indicated that the work was nearly complete and \$80,000 should completely cover the overruns and also any anticipated work needed. The project manager also indicated that Rowe did not work at any time that they were not approved to do so by his office. The completion date on this authorization was December 31, 2006. The Contract Analyst then responded to the project manager on January 23, 2007, and indicated that he needed to obtain Region Engineer approval for this revision. The cost proposal was received on October 26, 2007. The project manager finally received Region Engineer approval on November 14, 2007, and then forwarded another request to the Contract Analyst on November 21, 2007, for \$110,223 instead of \$80,000 with Region Engineer approval. If this second revision is approved, then the authorization will be \$255,781 over the original estimate. It appears that this revision is being requested to pay the consultant for work performed before the completion date and during the normal contract period. The authorization expires on May 4, 2008. **Myron has requested more information on this item.**

CSRT also needs to determine if they would like to see all of the increases in estimate or just certain ones. The Contract Analysts are not consistent about giving them to Kelly to put on the agenda for CSRT to review because some were unaware that CSRT needed to see those. Once CSRT makes a determination regarding this, it will be communicated to all of the Contract Analysts. **Future issues with contracts, i.e. increase in funds and/or work, should be brought to Wayne who may consult with Myron. Myron will determine if they need to go to the full CSRT team for review.**

The next meeting of the CSRT is scheduled for Friday, February 8, 2008, at 8:30 a.m., in the Executive Plaza Conference Room, Fourth Floor, VanWagoner Building.



# **EXHIBIT 17**

# TITLE VI COMPLAINT FORM

## Discrimination Complaint

<b>Name</b> Bellandra B. Foster	<b>Phone</b> 248.262.5777 248.538.5345	<b>Name of Person(s) That Discriminated Against You</b> Victor Judnic – Michigan Department of Transportation
<b>Address (Street No., P.O. Box, Etc.)</b> BBF Engineering Services, P.C. 24445 Northwestern Highway Suite 110	<b>Location and Position of Person (If Known)</b> 1400 Howard Street – Suite B Position of Person – Resident/Delivery Engineer	
<b>City, State, Zip</b> Southfield, MI 48075-2436	<b>City, State, Zip</b> Detroit, MI 48216	
<b>Discrimination Because Of:</b>	Race/Color      Sex      Disability Age      National Origin      Retaliation	<b>Date of Alleged Incident</b> August, 2010

**Explain As Briefly And Clearly As Possible What Happened And How You Were Discriminated Against. Indicate Who Was Involved. Be Sure To Include How Other Persons Were Treated Differently Than You. Also Attach Any Written Material Pertaining To Your Case.**

In late July, 2010, a request for proposals (rfp) was posted on the MDOT website. The RFP requested Construction Engineering Services for the MDOT Metro Region Detroit TSC. The project engineer for this service request was Mr. Victor Judnic. Upon review of the RFP, I noted that on pages 7 through 9, the rfp provided specific detail requesting a priced proposal inclusive of a fleet of a minimum of 5 lease vehicles. I noted that this was a request that I had never seen in any other rfp of similar scope posted on the MDOT website. The rfp states (page 7) that this request is to reduce the cost of operation and overall vehicle expenses. I am aware that this is not true since I have invoiced on the job mileage as a direct cost for my staff working on MDOT projects since 1998. My staff drive their personal vehicles to the worksite, and they are reimbursed for an equivalent to their on-the-job mileage as a direct cost. This is paid at the State of Michigan approved vehicle mileage rate. I have had subcontractors on my past project teams that bill lease vehicle costs, including invoicing for a daily vehicle lease rate. I have also included three similar current MDOT rfp postings that do not have any provision for the consultant to maintain a fleet of lease vehicles. If this is such a cost saving measure, it should be posted as a requirement in other similar rfp's. Based upon my knowledge of the prequalified consultants located within proximity to propose on this assignment as stated in the rfp, BBF Engineering Services is the only company that would be eliminated due to this requirement. Therefore, this requirement eliminated my company from competing for this assignment as a prime consultant.

In addition, I noted on page 3/14 of the rfp the following statement is printed "Consultant principals/officers shall not be included in the budgeted hours and are considered an overhead expense unless approved by the PEM." I have not been allowed to bill to any MDOT contracts where Victor Judnic was the project engineer manager (PEM). I informed Mr. Judnic that due to the size of my company, I am a working principal engineer of my company that has never exceeded a staff of 17. As the owner and principal engineer, I am required to perform administrative and engineering functions relative to the daily operations of the company.

It has been indicated to me that there are persons in similar positions as myself within other consulting firms which provide services to MDOT that are allowed to invoice for services. I have not been approved to invoice for my services rendered for any contracts where Mr. Judnic was the project engineer manager since 2006. Based upon the statement in the rfp that is noted above, I would request a determination as to when approval is granted to a principal/officer to bill for services and is this determination being done in a manner that is non discriminatory. I have made attempts to contact officials at MDOT to ask questions pertaining to this rfp and as of the date of this submittal, I had not received a response.

Who Was Involved or Knowledgeable/Informed of this RFP: Victor Judnic (MDOT), Terrence Hicks(MDOT), Patricia Collins (MDOT), Cedric Dargin(MDOT), MDOT Lansing Contract Services Division

<b>Signature</b>	<b>Date</b>
------------------	-------------

BBF Engineering Services, P.C.

This information is provided to show that ongoing race discrimination and disparate treatment.

Also reference the original accepted complaint BBF0810[J]

The original complaint referenced an As Needed CEI (Construction Engineering and Inspection) Services contract obtained by HNTB in late 2010. Victor Judnic was the MDOT project manager for this contract at the time of the selection of HNTB for this service. The MDOT project engineer determines and dictates to the consultant who will be allowed on the MDOT project relative to inspection staff. When Victor Judnic left MDOT to go to employment at HNTB, his subordinate Tia Schnee (now Tia Klein) took over as project management for this contract. The HNTB team also included Fishbeck, Thompson, Carr and Huber and Great Lakes Engineering (a female owned business). When I realized HNTB had been selected for this contract, I contacted the HNTB project engineer, Brian Gauthier. The supporting documents provided show contact by HNTB requesting that I submit only resume information for Patrick Lawton who is a staff member of BBF Engineering Services. My return document to Bryan Edwards included the resume for Patrick Lawton and notice of other available inspectors. I had informed Brian Gauthier via phone and to HNTB staff in writing that BBF Engineering Services had inspectors who were city of Detroit residents that were available to provide inspection services. This later would become very important relative to the Southfield Freeway project where MDOT maintained that there was a public and concerted effort to employ minorities and city of Detroit residents on this project. My email to Brian Gauthier dated September 21, 2010 again advises HNTB construction management staff for this project that BBFES has available staff that were city of Detroit residents.

This information is being forwarded to show ongoing race discrimination and disparate treatment based upon the following:

In April, 2012, I was contacted by an inspector looking for employment with my company. This inspector informed me during the conversation that while an employee with Fishbeck, Thompson, Carr and Huber, this person and at least 3 other inspectors were "loaned" to Amy Trahey's company (Great Lakes Engineering) so she could "spend her money" for the Southfield Freeway Project (M-39). This project was included in the HNTB CEI services contract. This roadway was opened in 2011, but is still an open MDOT contract. Prior to the M-39 project, I had notified HNTB that my company had legitimate, current BBF Engineering Services employees that would have been available to provide inspection services on this project. The inspector I spoke with contacted me again a couple months later (approximately June, 2012) stating continued unemployment and reiterated that when Great Lakes Engineering had spent all of their funding on the Southfield Freeway project, they were released.

This is at issue due to the following:

- Great Lakes Engineering (a female, non-minority firm) was loaned staff to deplete her budget when BBF Engineering Services had legitimate staff available to provide inspection services.
- Additional assistance was provided to Great Lakes Engineering to ensure success in her being able to provide services to MDOT.
- This was allowed under the approval of the current MDOT project manager, Tia Klein, who took over as project manager when the prior MDOT project manager, Victor Judnic, left MDOT to work for HNTB 3 months after awarding this contract to HNTB. I have been informed by several people that Tia Klein and Amy Trahey are close friends.
- Email documents to HNTB (prime) construction management staff verify that I was only allowed to include and invoice for one BBF Engineering Services staff person Patrick Lawton, a white male. Mr. Lawton is an excellent technician, but with this submittal, it is my attempt to show that my inspectors who were minorities and/or city of Detroit residents were eliminated from consideration.
- If Fishbeck, Thompson, Carr and Huber had to “loan” inspectors to Great Lakes Engineering, this would imply DBE fraud. I reference the following document sections regarding shuffling of employees and DBE owner lacking of employee expertise. (<http://www.preventtransportationfraud.org/docs/DBEcard.pdf>). What inspectors were listed for Great Lakes Engineering in the original proposal that allowed HNTB to be selected for this contract? If Great Lakes Engineering was to provide inspection services to MDOT as would have been stated in the original proposal, why would inspectors employed by another majority company on this team “loan” her inspectors so she could deplete her budget. On past projects, when a situation such as this occurred, BBF Engineering Services funds were reallocated to the prime or one of the other subconsultants, even though my company had capable staff to provide the services as a viable DBE.
- As a subconsultant, this instance shows potential opportunities for BBF Engineering Services are being minimized. Great Lakes Engineering has gained a significant growth opportunity due to this and recently obtain a contract to prime a major freeway project in 2012.

# **EXHIBIT 18**



U.S. Department  
of Transportation  
Federal Highway  
Administration

Michigan Division

October 18, 2011

316 W. Allegan Street, Room 201  
Lansing, MI 48933  
517-377-1844  
517-377-1084  
Michigan.FHWA@dot.gov

In Reply Refer To:  
HDA-MI

Mr. Kirk T. Steudle, P.E.  
State Transportation Director  
Department of Transportation  
Lansing, Michigan

*Kirk*  
Dear Mr. Steudle:

The enclosed report concerns the issues brought to our attention by Ms. Belandra Foster, Owner of BBF Engineering Services, P.C., in Detroit, Michigan.

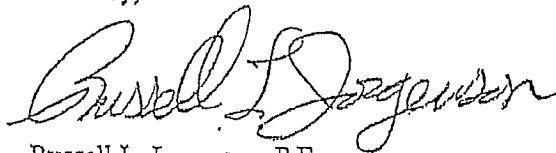
In October of 2010 the Federal Highway Administration Civil Rights Headquarters' Office (FHWA- CR-HQ) accepted for investigation four alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) made by Ms. Foster. These four complaints (and others that were accepted later) are still in the hands of the CR-HQ Office. In addition, CR-HQ remanded seven complaints that were not considered to have been filed timely (within 180 days of the incident) the FHWA Division Office. Please understand that although the complaints were not timely, we did not find them without merit. The report indicates Ms. Foster was not treated fairly in the procurement process by MDOT.

On September 15, 2011 FHWA and MDOT met to discuss the report and FHWA asked MDOT to consider negotiating a settlement with Ms. Foster. At this point we understand that MDOT is in consultation with the Attorney General's Office. However, since it has been one month since the meeting, FHWA does not view it as fair to Ms. Foster to withhold the official report any longer.

We encourage you to continue to pursue an opinion from the Attorney General's Office and to work with Ms. Foster on settlement of her claims.

By this letter, we are requesting that you form a process improvement team aimed at strengthening MDOT's monitoring of the consulting/service contract award process. It is our recommendation that you include both your Title VI Coordinator (Ms. Cheryl Hudson) and representative from the FHWA Division Office on the team. If you have further questions concerning this report, you may contact Ms. Mary Finch, Civil Rights Program Manager at 517-702-1853 or [Mary.Finch@dot.gov](mailto:Mary.Finch@dot.gov).

Sincerely,

A handwritten signature in cursive script that reads "Russell L. Jorgenson". The signature is written in dark ink and is positioned above the printed name.

Russell L. Jorgenson, P.E.  
Division Administrator



lmk

Attachment

By e-mail

cc: Ms. Cheryl Hudson, [HudsonC1@michigan.gov](mailto:HudsonC1@michigan.gov) MDOT  
Mr. Gregory Johnson, [JohnsonG2@michigan.gov](mailto:JohnsonG2@michigan.gov) MDOT  
Ms. Belandra Foster, BBF Engineering

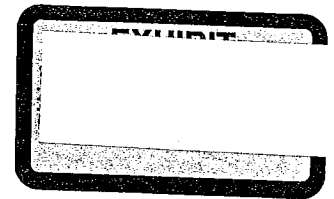
DMS: BBF Engineering Letter

File Directory: J:\GroupWiseFiles

File Name: MKF\_BBF Engineering Letter\_OCT182011.docx

# **EXHIBIT 19**

BBF Engineering Services, P.C.  
Not Selected/Awarded Proposal Submission Listing 2007 through Current



Control #	Job #	Description	Year	Status	Score Sheet Incl.
Various	Various	Gateway Construction Inspection/Road Portion (BBF - Subcontractor to MSG)	2007	Not Selected	
63459	TBD	Widening of Beck Road from north side of Beck Interchange to West Road, City of Wixom, Oakland County	2007	Not Selected	
50111/50031/50031	100099A/100104A/100105A	Construction Engineering Services for JN100099A, 100104A and 100105A within Macomb County, MI	2007	Not Selected	
47066, 47065, 33085	85906, 85908, 87556	Full Construction Engineering Services on I-96 in Ingham and Livingston Counties	3/2007	Not Selected	*
Various	Various	As-Needed Office Technician - MDOT Macomb TSC	2/2007	Not Selected	*
50111	86717A, 86718A	0.96 Miles of Sound Wall Barriers on EB I-94 from 11 Mile Rd. to Frazho and from Martin Rd. to 12 Mile Rd.-MDOT Macomb TSC	2007	Not Selected	
Various	Various	As-Needed Office Technician Services - MDOT Port Huron TSC	2007	Not Awarded	
Various	Various	As-Needed Office Technician Services - MDOT Macomb TSC	2008	Not Selected	
50052	100101A	9.04 miles of hot mix asphalt cold milling and resurfacing, pavement repair, and sidewalk ADA ramp upgrades. - MDOT Macomb TSC	10/2008	Not Selected	*
Various	Various	As-Needed Services. Prevailing Wage Oversight - Lansing, MI	11/2008	Not Selected	*
Various	Various	As-Needed Construction Services - Oakland TSC	5/2008	Not Selected	*
82192 and 82022	101324A and 88420	Full Construction Engineering Services for Sound Abatement Wall Construction on I-75 and the I-94 at US-24 Interchange - MDOT Taylor TSC	4/2009	Not Selected	*
Various	Various	As-Needed Inspection and Testing Services - Macomb County	2009	Not Selected	
50091/50111	105852A/105851A	Full Construction Engineering and Road Construction on I-94 and M-19 - Macomb County	2009	Not Selected	
63052	72404A	Square Lake Road Full Construction Engineering in Bloomfield Township, Oakland County	5/2009	Not Selected	*
82053/82081	100807A/102724A	Geometric Improvements at US-24/M-153; Crack Seal and Microsurfacing on M-153	6/2009	Not Selected	*
84916	107163/64/65	As-Needed Construction Services Warranty Inspections & Documentation - University Region	7/2009	Not Selected	*
Various	Various	As-Needed Inspection and Testing Services	9/2009	Not Selected	*
Various	Various	MDOT Detroit TSC As-Needed Construction Engineering Services	11/2009	Not Selected	*
50011	75865A	Noise Barrier and Landscaping on M-53 NB from 18 Mile Rd. to Utica Rd. in the City of Sterling Heights, Macomb County	12/2009	Not Selected	*
63052	85538A	US-24 (Telegraph Rd.) from Square Lake Rd. to Orchard Lake Rd.	2010	Not Selected	

BBF Engineering Services, P.C.  
Not Selected/Awarded Proposal Submission Listing 2007 through Current

Control #	Job #	Description	Year	Status	Score Sheet Incl.
Various	Various	As-Needed Contract for Staking, testing, and Inspection services for projects in the Metro Region, Oakland County	3/2010	Not Selected	*
50111	107719A	Construction Engineering Services for Freeway Signing Replacement throughout the Metro Region	2010	Not Selected	
81132	103352A	Construction Engineering Services on US-12 BR from Ward Road in Ypsilanti Township, Michigan	2010	Not Selected	
50091 and 50092	106542A	Construction Engineering Services on M-19 from 31 Mile Road to Division Street in the City of Richmond in Macomb County	2010	Not Selected	
Various	Various	As Needed Inspection and Testing - Oakland TSC Major Sub to NTH	12/2010	Not Selected	
81104 and 84916	110587A and 110592A	Construction Engineering Services - Mill and Resurface and Crack Sealing on 2 Separate Projects	1/2011	Not Selected	*
<del>82051, 82062, 82191</del>	<del>108185, 112954,</del>	<del>ADA Sidewlk Ramps and I-75 Soundwall Repair</del>	<del>7/2011</del>	<del>Not Selected</del>	<del>*</del>
Various	Various	Full CE Services for 6 projects, Detroit TSC Major Sub to OHM	9/2011	Not Selected	*

# **EXHIBIT 20**

**Wedley, Deborah (MDOT)**

**From:** VanPortfliet, Randy (MDOT)  
**Sent:** Friday, October 28, 2011 9:34 PM  
**To:** Johnson, Gregory (MDOT)  
**Subject:** Re: BBF Engineering Letter

No attachment

Sent from my iPad

On Oct 28, 2011, at 7:47 AM, "Johnson, Gregory (MDOT)" <[JohnsonG2@michigan.gov](mailto:JohnsonG2@michigan.gov)> wrote:

Director

The two folks identified as culpable in this incident have both left the department. Both were gone before I was made aware of these allegations. David Brickey is reviewing the documents related to this complaint in order to provide guidance.

I have had a team of folks (prior to this incident) including Mark V., Myron, Dee Parker, and Roger S. looking at a more centrally based selection system to address internal and external concerns with the existing process.

I will give you a timeline on both of these efforts in the upcoming week or so.

Gregj

---

**From:** Steudle, Kirk (MDOT)  
**To:** Johnson, Gregory (MDOT); VanPortfliet, Randy (MDOT); VanPortfleet, Mark (MDOT)  
**Sent:** Thu Oct 27 13:10:11 2011  
**Subject:** Fwd: BBF Engineering Letter

Greg,

Please see the attached and take corrective action. Please consult the AG's office as you have been. Seems to me, on a larger scale, we may need a revamp of the consultant selection process again. We need some consistent stated goals for the program and have the processes back that up.

Thanks for your attention to resolving this issue.  
Kirk

Sent from my iPad

Begin forwarded message:

**From:** "[laura.kirschensteine@dot.gov](mailto:laura.kirschensteine@dot.gov)" <[laura.kirschensteine@dot.gov](mailto:laura.kirschensteine@dot.gov)>  
**To:** "Steudle, Kirk (MDOT)" <[SteudleK@michigan.gov](mailto:SteudleK@michigan.gov)>  
**Cc:** "Hudson, Cheryl (MDOT)" <[HudsonC1@michigan.gov](mailto:HudsonC1@michigan.gov)>,