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A. Of the pit face?

Q. Yes.

A. I don't believe I've been in the pit since then.

Q. And am I correct that because of the potential variability of gravel deposits in this area recent photographs might show something quite different?

A. Of what, of this pit face?

Q. Yes.

A. I have no idea.

Q. All right, that is a possibility?

A. No, I don't think so.

Q. If it is not possible, it is impossible?

A. I think that this pit, the rock in Mr. Nichols' pit hasn't changed, its response to weathering will not be changed.

Q. I gather you don't agree then that there is variability in that pit face?

A. There is variability in the pit face but not necessarily in the rock types within the pit face.

Q. O.K. Now, the photographs 6 through 13 in Exhibit # 23 are of Highway # 3 between Simcoe and Delhi?

A. Yes.

Q. And do I understand that was an M.T.O. contract and the source of materials from Mr. Nichols was Granular "A" from his pit 3?

* A. Yes unfortunately from my point of view we found out from the products supervisor on this job who works for M.T.O. that he had blended another or placed another Granular "A" on top of the Nichols' Granular "A" in these locations so it wasn't very useful to us as a performance test because it wasn't one gravel, it was a mixture of two gravels so we didn't do any further tests.

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We took some samples, I believe, but we didn't do any further testing.

5 * Q. I gather you are telling me that in effect by having two sources of Granular "A" on that site, it would make it more difficult if not impossible to attribute the road failure to the specific Granular "A" from the Nichols' pit?

* A. Absolutely.

10 Q. Now photographs 25 through 36 are what you call County Road 19, I think we may have described it in the evidence as Regional Road 19.

A. O.K.

15 Q. Were you given any information about the subgrade materials that may have been applied to this road?

A. No.

20 Q. And from what you were able to observe on that road inspection were you able to make any comment about subgrade materials?

A. No.

* Q. Just one moment, if I may. If I understood your last comment, sir, I gather then because of, if I can use the phrase, the contamination of Mr. Nichols' Granular "A" with someone else's Granular "A" on the ... was this on Highway # 3?

A. Highway # 3.

25 Q. That you would not then be in a position to determine whether or not the Nichols' gravel was suitable for provincial highways?

* A. Based on its field performance.

Q. Based on that field performance?

30 A. That's correct which is why I was so interested in the Township rights.

* Q. All right, can I ask that Exhibit # 1, tab 12 be placed before this witness please? Mr. Rogers, I am showing you a letter from a Mr. Richard Picini?

A. Yes.

Q. Do you know him?

A. No I don't. I don't believe he works for the Ministry of Transportation anymore.

Q. What I am interested in is ...

HIS HONOUR : Which tab is that?

MR. AMEY : Tab 12 of Exhibit # 1, Your Honour

* HIS HONOUR : How does this come into proper cross-examination of this witness? He hasn't been asked about this.

MR. AMEY : That is true but cross-examination, with respect, is not confined to those areas that my friend chooses to ask about.

* HIS HONOUR : All he has asked is whether he took photos and what was the source of his information. He hasn't given any conclusions.

MR. AMEY : I haven't asked him ... well, that is true.

* HIS HONOUR : You want to get into the Picini letter. Well, I will hear the question but I am concerned.

* Q. Mr. Rogers, before you answer the question let us give His Honour and my friends an opportunity to consider whether they think it is an appropriate question for me to ask you. So hold off your answer until the lawyers have had an opportunity, and His Honour, to think about it. Now just as a prelude to the question, so I understand it, you were involved in 1990 in inspecting

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the Highway Three work that had been done between Simcoe and Delhi in 1989 for M.T.O.?

A. I was involved prior to that.

5 Q. Those photographs were taken by you in 1990 a year after the job was done?

A. Six months after, sir.

* Q. Six months, thank you. What I wanted to ask you about was the comment at the top of page two. Can I ask you to read to yourself the first paragraph at the top of page two of Mr. Picini's letter?

10 * A. Yes. I have read it.

* Q. Now given what you have just told me about two sources of Granular "A" being applied one on top of the other to that construction project, would that appear to make it difficult to conclude that Mr. Nichols' gravel wasn't suitable?

A. Would you re-phrase the question please?

15 * Q. All right, I'll try. Given that you have told us that there are two sources of Granular "A" that were applied on Highway #3 prior to the surfacing coating.

A. Yes?

20 * Q. One of those two sources being Nichols Gravel from apparently pit three, would that fact make it difficult to conclude that the Nichols' gravel wasn't suitable for Provincial Highway No. 3?

25 * A. Do you want to find out what someone says?

* MR. HANEY : Your Honour, perhaps I am thick but I am failing to see the relevance of the line of questioning but M.T.O. is not on trial or not a defendant in this action. Other than that I don't really find any problem with the question.

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* HIS HONOUR : You may answer the question.

* A. It certainly makes it very difficult to make a sound judgment about ... based on the performance of those gravel shoulders and whether or not Mr. Nichols' material was good or bad or satisfactory or unsatisfactory.

* Q. Thank you, those are my questions.

HIS HONOUR : Is there any re-examination?

MR. HANEY : No, sir.

HIS HONOUR : All right, I just have one question and it is just a name that I missed. About ten minutes ago you were being asked about consultants who were used by Mr. Nichols to do tests and you referred to a person who had worked with M.T.O. before '56 and '78 and I just didn't get the name.

A. Woda, it is a Ukrainian name, W-o-d-a.

HIS HONOUR : Is there a first name?

A. George.

HIS HONOUR : George Woda. Thank you. You may step down.

MR. HANEY : Sir, I do have one final witness Mr. Katona and I'm in your hands, sir, as to whether you want to start him before we leave off today or whether we should leave it for the morning.

HIS HONOUR : We'll start the witness in the morning because I have a long drive and I'm a little reluctant to sit much beyond 4:30 so we are not going to accomplish much.

MR. HANEY : That's fine, sir.

HIS HONOUR : All right, thank you.

.... COURT RECESSES.