

Case of United States of America v Menominee Tribal Enterprises, Marshall Pecore and Conrad Waniger, Case Number 07-CV-00316, United States District Court, Eastern District of Wisconsin

**Rule 26(a)(2) Expert Report and Disclosures of Robert Sayer
February 1, 2008**

Introduction of Robert Sayer's Qualifications:

Education

1982: Master of Arts, Physical Geography and Cartography, Carleton University, Ottawa, Ontario

1979; Bachelor of Arts, Physical Geography, Carleton University, Ottawa

Training

2006: AMEC Leadership, Annapolis, Maryland

2004: AMEC Strategic Relationship Management, Halifax, Nova Scotia

2003: AMEC Project Management, London, Ontario

1999: Knowledge Management, Delphi Group, Boston, Massachusetts

1990: Database Design and Management, Algonquin College, Ottawa, Ontario

1990: Systems Analysis and Design, Algonquin College, Ottawa, Ontario

1988: Project Management, Environment Canada, Ottawa, Ontario

1982: Environmental Impact Assessment, Banff Centre School of Management, Banff, Alberta

Professional Experience

2003 – Present: Unit Manager, Information Management Business Unit, AMEC Earth & Environmental, Ottawa, Ontario – Manages the personnel, budget and financial tasks of the business unit. Provides project overview, project management, strategic planning, requirements definition, business and system process flow analysis, functional specification and facilitated workshop services for environmental, engineering and GIS related Information Management projects.

2000 – 2002: Director, AMEC Technologies Limited, Ottawa, Ontario – Provided project overview, project management, strategic planning, requirements definition, business and system process flow analysis, functional specification and facilitated workshop services for environmental, engineering and GIS related Information Management projects.

1999 – 2000: Technology Consulting Practice Lead (GIS), AMEC Technologies Limited, Ottawa, Ontario – Provided project management, requirements definition, business and application process flow analysis, functional specification and facilitated workshop services for environmental, engineering and GIS related Information Management projects.

1992 – 1999: Project Manager/Business Analyst/Senior System Analyst, AMEC Technologies Limited, Ottawa, Ontario – Provided project management, requirements definition, business and application process flow analysis, functional specification and facilitated workshop services for environmental, engineering and GIS related Information Management projects.

1987 – 1992: Team Lead/System Analyst/GIS Programmer, AMEC Technologies Limited, Ottawa, Ontario – Project technical lead, application design, application development, map production and report writing.

1985 – 1987: Researcher/Author, Environment Canada, Hull, Québec – Participated in research and authoring content for various articles and reports related to the Long Range Transportation of Airborne Pollutants program and the Ecological Land Classification mapping program in the Arctic.

1984 – 1985: Terrain Analyst, Energy, Mines and Resources, Ottawa, Ontario – Mapped rogen moraines from air photo interpretation.

1982: GIS Consultant/Environment Resource Management, Parks Canada, Hull, Québec – Provided GIS mapping services to various projects.

1981: Terrain Analyst, Smithsonian Institute, Ottawa, Ontario – Mapped rock glaciers in Labrador from air photo interpretation.

1980: Cartographer/Researcher, Department of Indian and Northern Affairs, Hull, Québec – Conducted research for and drafted circumpolar maps for inclusion in publications.

Map Publications:

Farm Operators, National Atlas of Canada, 5th Edition: 1976

Canada Streamflow, National Atlas of Canada, 5th Edition: 1993

Ecological Land Classification Southern Baffin Island, Environment Canada, 1988

Ecological Land Classification Central Baffin Island, Environment Canada, 1988

Ecological Land Classification Lancaster Sound, Environment Canada, 1987

Potential of Soil and Bedrock to Reduce the Acidity of Atmospheric Deposition in Canada, Environment Canada, 1986

Memberships:

AMEC representative to the Geomatics Industry Association of Canada

I am qualified to present my opinion based on my education in cartography and GIS and 25 years of work experience in mapping, GIS and process flow analysis.

Compensation:

AMEC is being compensated \$175.00 per hour for my services on this assignment.

Previous Testimony:

I have not previously testified in a court case or been deposed for a case.

Opinion:

The following report summarizes my opinion with regard to reports and maps I reviewed in relation to “allegations that Menominee Tribal Enterprise, Marshall Pecore and Conrad Waniger submitted false or fraudulent invoices and documents in support of certain claims for BIA-funded road and fire work on the Menominee Indian Reservation.” (November 29, 2007 letter of Mr. Congos to Mr. Larsen).

My opinion is:

- The standard upon which the Government is relying for the level of accuracy in calculating distance as established by Special Agent Bucci cannot be attained with the methodologies and data collection processes used;
- The standard upon which the Government is relying for the level of accuracy in determining positional accuracy for mapping road segments as established by Special Agent Bucci cannot be attained with the methodologies and data collection processes used;
- The methodologies used in transcribing mapped road segments from one or more source maps to a product based on the source maps has resulted in road segments being excluded or incorrect segments being added to the product map; and
- The road crews were not provided with the appropriate processes or technology to accurately map and track work accomplishments at the time the work was executed.

My opinion relates to the reliability of Special Agent Bucci's interpretation and analysis of map information to identify the quantity of alleged fraudulent and double billing of road work completed by MTE. This opinion is based on the review of documentation in my hands as of February 1, 2008. In my opinion SA Bucci's assessment of total distance of road that was allegedly fraudulently claimed or double billed can not be supported by the information he was working with and the standards he had established for determining accuracy of distance and actual segments of roads claimed.

By assessing allegedly fraudulent claims on invoices 200, 202, 212, 214, 217, 219, 224 and 248 (Investigative Report Dec. 23, 2005) to 1/10 of a mile or a confidence level of 528 feet. That is the standard he set for measuring distance.

SA Bucci established a second standard of accuracy in his deposition of December 10, 2007 in which he states "If it's a hand-drawn map, I am holding them to the standard that their claiming they did work on that road. If they pulled the map out and they said we did work on these roads over here, then I am holding them to the standard that they did work on those roads." He has set the standard that everyone that was in the field (road crews, Mr. Cooper and Mr. Congos) knew exactly where they were at all times and the government is relying upon this standard.

It is these levels of distance and positional accuracy which all other data sets must meet if it is to be used for interpretation, analysis and/or measurement. These data sets include:

- The road crew hand-drawn accomplishment maps;
- Mr. Waniger's interpreted and hand-drawn compilations of the road crew maps;
- Mr. Cooper's interpretation of accomplishment maps and his hand-drawn field validation maps;
- All maps digitized from hand-drawn maps used by either the MTE or BIA GIS systems to calculate distance and create map products; and
- Mr. Congos's interpretation of the hand-drawn and digital maps and his analysis and subsequent hand-drawn mark up of these maps.

The third standard SA Bucci established was how he determined whether a road was completed or not. He stated in his deposition of December 10, 2007 that "I relied on

David Congos's testimony" when asked what standard he used in determining whether a road was complete or not. If there were errors in Mr. Congos's methods then SA Bucci's analysis does not stand up.

In SA Bucci's investigative report of December 23, 2005, he indicated that the supporting maps for some of the invoices "made no sense". However, the investigative report states distance of fraudulently claimed work to 1/10 of a mile. Based on a review of the investigative reports and SA Bucci's deposition there is no explanation of the method used to identify the segments of fraudulently claimed road work or the method for the distance calculations derived for the maps that "made no sense".

SA Bucci stated in his deposition of December 10, 2007 that there was "Huge discrepancy, yes." in the distances he calculated measuring from the handwritten map and the calculated distance generated from the GIS. Based on a review of the investigative reports and SA Bucci's deposition there is no explanation of the method used to reconcile the differences. In fact SA Bucci is of the mistaken belief that "There should not be a discrepancy between a hand-drawn map and a digitized map. If someone is being honest and they said this is the road I did work on, and it's 2 miles long, when you go back, input it into the GIS system, that same road should be 2 miles long." That false assumption prevented SA Bucci from reconciling differences in reported distances and took the GIS distances to be accurate and the hand-drawn distances to be fraudulent.

These standards are being applied retroactively to work performed based on the 2000 and 2001 Hazardous Fuel Reduction Project proposals (USA0011241-245 and USA00110074-078) in which there are no standards or methodology identified for tracking work accomplishment.

For the Government to rely on SA. Bucci's findings:

- The original source maps created by the road crews to show their accomplishments would have had to be complete and accurate to 1/10 of a mile and accurately identify each road segment treated;
- The complete set of the original road crew accomplishment maps or an accurate compilation of the maps would have been provided that clearly and accurately indicated which road segments were associated with each invoice;
- Mr. Congos would have had a Quality Assurance process based on a standard to support his interpretation of the maps and field verification and he would have had to consistently and accurately map all portions of road segments that were not treated to standard; and
- The interpretation of all of the maps and the digitizing of the hand-drawn maps by Mr. Waniger, Mr. Cooper, Mr. Congos, the MTE GIS team, SA Bucci and Mr. Casselius had to be error free.

SA Bucci's findings are only as strong as the weakest link in the chain and the chain consists of many links.

The Government is relying on Mr. Congos's findings to be reliable. As such MR. Congos would have had to have a complete and accurate set of accomplishment maps that clearly indicated which road segments had been treated, how each segment was treated

(graded, fully brushed, partially brushed, re-done) and with which invoice each segment was associated.

The original source accomplishment maps created by the road crews were not submitted with the invoices until after Mr. Congos requested the information. Each set of maps was submitted with a signature page. As evidenced by the difference in date between the invoice date and the signature page date for invoices 212, 214, 217, 219, 224 and 248, the maps were submitted 4 to 12 months after the invoices were originally submitted. This required the road crew accomplishment maps to be collected and matched to invoices long after the work was done, in effect, recreate history.

In order to accurately recreate the history of the work activity by month and report it to Mr. Congos, there had to be an accurate record keeping of the road crew accomplishment maps turned in to MTE and Mr. Congos had to receive a complete set of these maps that accurately detailed work activity during the month to 1/10 of a mile and type of activity performed on each road segment based a methodology that ensured that the road segments mapped were the actual road segments treated in order to meet SA Bucci's standards.

Mr. Congos's letter to Mr. Larsen on November 29, 2007 indicated that the field inspection showed "the above results were intermingled throughout a project compartment or within a contiguous segment of road. For example, a segment of road or firebreak work found to be acceptable would be adjacent to work not performed or work not providing fire protection benefit." Neither Mr. Congos's letter to Mr. Larsen nor Mr. Congos's Statement of Facts (August 2, 2002) indicated that he precisely map those portions or segments of road that were acceptable and those that were not based on the field validation.

If a portion of a road segment was not considered to meet Mr. Congos's standard then the entire road segment was marked as not done. This results in a greater distance of road being marked as not done than was the actual case.

Neither Mr. Congos's letter to Mr. Larsen on November 29, 2007 nor Mr. Congos's Statement of Facts (August 2, 2002) defines his field checking methodology. Without a defined methodology, the actual segments of road that Mr. Congos actually viewed and identified as acceptable or not acceptable cannot not be established. Mr. Congos indicates in the Statement of Facts that spot checks were performed and SA Bucci's Investigative Report of December 23, 3005 comments that "It's possible that not every road was driven that was claimed." Without a repeatable field validation process that assesses the entire segments of the road network invoiced it is not possible to derive an accurate calculation of the total distance of road work that was acceptable or unacceptable.

Neither Mr. Congos's letter to Mr. Larsen on November 29, 2007 nor Mr. Congos's Statement of Facts (August 2, 2002) defines his methodology for mapping road segments in the field that ensured he was marking the correct road segment or the QA process that was used to ensure that road segments marked on Mr. Congos's field maps were accurately transcribed to the accomplishment maps provided by MTE, such as Map 3 of Attachment C to Initial Disclosure.

For the Government to rely on Mr. Congos's findings:

- The original source documents created by the road crews to show their accomplishments would have had to be complete and accurate to 1/10 of a mile for all work accomplished;
- The field verification map created by Mr. Cooper would have had to be complete and accurate to 1/10 of a mile and accurately reflect the correct segments of road treated and any conversion of this map to a digital map would have had to meet the same standards;
- The complete set of the original accomplishment maps or an accurate compilation of the maps would have been provided, clearly and accurately indicating which road segments were associated with each invoice;
- For Mr. Congos to meet Mr. Bucci's standards he would have had a defined methodology and Quality Assurance process based on a standard to support his interpretation of the maps and field verification. He would have had to consistently and accurately map to 1/10 of a mile, all portions of road segments that were not treated to standard; and
- The interpretation of the source maps by Mr. Congos had to be error free.

The foundation for all interpretation of the work accomplishment on a monthly or annual basis by Mr. Congos and SA Bucci is ultimately based on the accuracy and completeness to the road crew accomplishment maps and the ability of all the mappers involved (road crew, Mr. Waniger, the MTE GIS team, Mr. Cooper, Mr. Congos, SA Bucci and Mr. Casselius) to accurately interpret and transfer the marked roads from their source map to their product map.

For the road crews to meet the standards established by SA. Bucci of an accuracy to 1/10 of a mile and all road segments mapped were the actual road segments treated, the field crews would have required and consistently executed:

- A defined process for recording daily accomplishments that met the standard;
- Appropriate method and technology to measure distance in the field and accurately record it on a map;
- The methodology and technology to accurately locate themselves in the field as they treated each road segment;
- Training in the process and use of the appropriate technology prior to conducting any of the road work;
- Knowledge of the importance of accomplishment tracking in support of invoicing; and
- QA of the accomplishments immediately following the work.

Neither Mr. Congos's letter to Mr. Larsen on November 29, 2007 nor Mr. Congos's Statement of Facts (August 2, 2002) provides any information to establish that these steps were consistently taken by the road crew in tracking their accomplishments or to validate the work immediately after it was completed or that they were informed of an appropriate methodology to track accomplishments.

The following identifies examples of discrepancies that have been noted in the mapping efforts.

There are very few straight road segments and hundreds of intersecting forest roads within the Menominee Indian Reservation. Without an appropriate methodology for locating themselves the road crews could not be assured that they were accurately

mapping the correct road segment. As an example, Mr. Cooper who performed a field check on the work done, at the request of Mr. Waniger, marked a road on his inspection map with the note "Does this road even exist?" (Map No. 22 Attachment C to Initial Disclosure). My interpretation of the note is that he could not find the road while he was in the field. A review of a 2006 aerial image (Virtual Earth website) of the area clearly shows the road is there as identified on the 1997 version of the base map Mr. Cooper was using. This clearly illustrates the fact that people can not always locate themselves while in the field. This calls into question SA Bucci's reliance on the positional accuracy standard.

Examples of possible transcriptions errors from one map to another are numerous. There are road segments on the hand-drawn Compartment map 122 (USA0010864) associated Invoice 200 (USA0010855) that have not been marked but subsequently appear on Cooper's maps (Map No. 22 Attachment C to Initial Disclosure) and digital compartment maps (Map No. 30 Attachment C to Initial Disclosure) as "not having been brushed". Somewhere along the line an interpretation error, a transcription error or a new map has been inserted that has caused the discrepancy. This calls into question the reliability of mapping Quality Assurance being applied to the map products and the reliability of these maps.

Map 3 of Attachment C to Initial Disclosure is a hard copy print of a digital map of Road Maintenance 2000. Mr. Congos highlighted roads where "brushing not done". In Compartment 122 of the map, there is no highlighting of roads where "brushing not done". The fiscal year 2000, Invoice 200 hand-drawn Compartment 122 map (USA0010864) shows the road segments that were brushed. Therefore, according to Mr. Congos's marking of the map, the road segments in Compartment 122 meet his standard. However, Map 4 from Attachment C to Initial Disclosure is the digital Road Maintenance 2001 map. The digital road segments in Compartment 122 indicate brushing was done and Mr. Congos has highlighted roads as "Brushing not done". According to the invoices, this area was brushed in 2000 not 2001. Both the underlying digital map and Mr. Congos's interpretations do not reflect the title of the map. Whether the error is in the miss-mapping of road segments to the wrong year or the title of the map is wrong, Map 4 would lead SA Bucci to misinterpret the intention of the map.

Map 4 and Map 6 of Attachment C to Initial Disclosure are both maps of Road Maintenance 2001 on which Mr. Congos highlighted road segments where "brushing not done". There are segments of roads on Map 4 that are highlighted as "brushing not done" but these same segments are not highlighted on Map 6. It appears from the signature date that Mr. Congos marked the "brushing not done" on both maps on 2/2/07. There was an inconsistency in the highlighting of the "brushing not done" road segments. This calls into question the reliance of SA Bucci on Mr. Congos's ability to accurately map road segments.

Another example of possible transcription errors, two of the documents for Invoice 212 (USA0010899 and USA0010901) show significant differences. The document USA0010899 is a hand drawn map that appears to be a compilation of the work accomplished, including work in Compartment 119. The document USA0010901 is a Compartment 119 map generated from the GIS to show the accomplishment of work done in the compartment 119. There are five road segments in the south west corner of the digital Compartment map (USA0010901) that are not on the hand-drawn map (USA0010899). Yet the hand-drawn map (USA0010899) should have been the source

for the digital map (USA0010901). If the additional segments on the digital map (USA0010901) are based on other maps not associated with work done with regard to this invoice it should be noted. Secondly, the road segment noted on the Cooper map (Map No. 22 Attachment C to Initial Disclosure) as "Does this even exist?" is mapped on the hand-drawn map (USA0010899) but is not included on the digital map (USA0010901). This indicates that errors occur in the transcription from a source map to a product map. This calls into question the reliance of SA Bucci on accuracy of the maps being assessed.

As an example of possible misinterpretation of map information, Invoices 212 (for May 2001 work) and 214 (for September 2001 work) both have the same map included (USA0011000 and USA0010899). The map is a hand-drawn map that appears to be a compilation of the work accomplished, including work in Compartments 115, 118 and 119. There is no date as to when this map was created, nor is there a title indicating what has been mapped. If the map is truly a compilation of all of the work done in the compartments over the course of 2001 and does not differentiate work done by date, then there is some logic to add it to both invoices, however it should clearly indicate what work was done in which month.

The maps for Invoice 214 (USA0011002, USA0011008 and USA0011011) appear to be different hand drawn versions of the same work accomplishment map that all clearly show what work was done within Compartment 118 during September 2001. In fact USA0011002 appears to indicate segments of road that were redone. USA0011011 appears to have work accomplished in Compartment 119 that is not dated. The map (USA0011011) is also included in Invoice 212 (USA0010900), so it could mean that the Compartment 119 work was done in May. An interpretation of these maps could be that work was done in Compartment 118 in September including some road segments that were redone and therefore may be miss-interpreted as being done twice, and the road segments in Compartment 119 was done in May and should not be included as a distance on the September invoice.

These two examples illustrate that the maps are open to multiple interpretations any one of which could be mistaken.

In conclusion, the Government is relying on the accuracy and completeness of the work accomplishment maps produced by the road crew which were not to any defined standard, were not managed, compiled or validated immediately after the work was completed and therefore the base information from which all subsequent analysis and interpretations were made is not accurate to the standards established by SA Bucci. There was no method to accurately map portions of road segments that were deemed to have acceptable or unacceptable work completed and as a result of whole segments being mapped the calculation of unacceptable work is over estimated. There are clear indications that segments of road were added or excluded through the various map transformation efforts (road crew to Mr. Waniger to Mr. Congos to SA Bucci, GIS personnel and Mr. Cooper) so it is not clear as to whether Mr. Congos accurately marked the correct road segments or whether SA Bucci's final maps accurately reflect the road crew maps or Mr. Congos's mapping of acceptable versus unacceptable road segments. Finally SA Bucci noted the confusing state of the maps associated with some invoices "makes no sense" and therefore the chance of misinterpretation is high. The end result of these issues it calls into serious question the reliability of SA Bucci's analysis.

Final Statement:

My understanding is that discovery in this matter is continuing and I respectfully reserve the right to supplement and expand on my opinions as further information becomes available.

**Documents Considered:
January 2, 2008**

- (1) David Congos' Letter to Chris R. Larsen dated November 29, 2007.
- (2) Investigative Activity Reports authored by Special Agent Todd Bucci dated December 23, 2005, December 23, 2006, and June 22, 2007.
- (3) Compartment maps bates labeled as USA0010770 – USA0010771 and USA0010809 – USA0010810.
- (4) Maps bates labeled USA0010899 – USA0010900.
- (5) Electronic Copy/Version: CD 1: Pictures Used to Support Gov. Claims Containing 2 Folders Identified as (a) Culvert Pictures and (b) Pictures Used to Support Gov. Claims.
- (6) Electronic Copy/Version: CD 2: Maps Used to Support Gov. Claims Contains 2 Folders Identified as (a) Map Attachments to Invoices in Box 7 and (b) Maps Used to Support Gov. Claims.
- (7) Map Attachments to Invoices in Box 7.
- (8) Maps Used to Support Gov. Claims.

January 8, 2008

One CD containing photocopies of MTE invoices (Invoice Nos 200, 202, 212, 214, 217, 219, 220, 222, 224 and 248) and other documents such as photocopies of time cards, accounting sheets, Request for Reimbursement Incurred Hazard Fuels, a Worksheet for WO#867 Roads Dept. Activity for the Month of September 2001, two to three different map types (some containing hand-written notes and other marginalia), lists of photographs by location, photographs and one hardcopy of all the previously identified documents contained on the CD. In addition, documents referenced in Special Agent Bucci's Investigative Activity Reports were also delivered.

One Photocopy of a Hazardous Fuel Reduction Proposal for fiscal year 2000 Bates Nos. USA0011241 – USA0011245 and one photocopy of a Hazardous Fuel Reduction Proposal for fiscal year 2001 Bates Nos USA0011074 – USA0011078

January 15, 2008

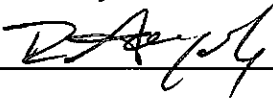
1. A CD containing Cooper's images as well as hard copies of those images;
2. The Deposition Transcripts of David Congos and Todd Bucci;
3. David Congos Memoranda, including: (1) August 2, 2002 Memo bates numbered USA0010932-USA0010941; (2) October 31, 2002 Memo bates numbered USA0013283-USA0013285; (3) November 6, 2002 Memo bates numbered USA0013289-USA0013290; (4) January 30, 2003 Memo bates numbered USA0013305-USA0013306; (5) February 3, 2003 Memo bates numbered USA0013307; (6) February 5, 2003 Memo bates numbered USA0013308; and (7) October 26, 2004 Memo bates numbered USA0013497.
4. Document captioned "BIA Hazardous Fuels Reduction Program," bates numbered MTE31004-MTE31007;
5. Document captioned "Hazardous Fuels Reduction Program BIA Supplemental Funding Request Procedures," bates numbered MTE31014-MTE31015;
6. Memorandum from David Congos dated November 4, 2002 bates numbered MTE31021 and document captioned "Indian Affairs Manual," bates numbered MTE31022-MTE31035;
7. Miscellaneous correspondence bates numbered MTE31037-MTE31060

January 28, 2008

USA0017247 – USA0017261, USA0017775 – USA0017583, USA0018040 – USA0018045, and USA0018010 – USA0018036, and USA0018282 – USA0018289. In addition, I am enclosing one set of United States Department of Interior – Bureau of Indian Affairs documents bates numbered (BIAF007846 and BIAF007848), (BIAF007850 and BIAF007852), (BIAF007828 and BIAF007830), (BIAF007832, BIAF007834, BIAF007836, BIAF007836, BIAF007840, BIAF007842, and BIAF007844), (BIAF007822, BIAF007824, and BIAF007826).

I have considered the Expert Report of Brian Sovik.

Date: February 1, 2008

Signature:  _____

Name: Robert Sayer _____