

# DISPUTE REVIEW BOARD RECOMMENDATION

November 15, 2004

E-Mailed - November 15, 2004

Mr. Charles E. Clyatt Jr.  
Project Manager  
Bulger Construction Company  
3995 Hwy. 60 East  
Mulberry, Florida 33860  
E-Mail: cclyatt@bulgerco.com

Mr. Kent Dube  
Project Administrator  
Parsons Brinckerhoff Construction Services, Inc.  
2060 State Road 60E  
Bartow, Florida 33830  
E-Mail: pbcbs.bartow@verizon.net

RE: SR 60A (US 98 Vanfleet Dr) from Wilson St to W of Peace River  
FIN No.: 197027-1-52-01  
County: Polk  
Disputes Review Board Recommendation

## **Issue – Emergency Repair to Existing Sanitary Sewer**

Dear Sirs:

The Owner, Florida Department of Transportation (FDOT), and the Contractor, Bulger Construction Company (BCC) requested a hearing to **determine entitlement of the Contractor for reimbursement for emergency repair work to an existing sanitary sewer on the project**. Should entitlement be established, the Parties were to negotiate the quantum of such entitlement.

Pertinent correspondence and other information relating to the Owner's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on November 04, 2004.

## **CONTRACTOR'S POSITION:**

On August 30, 2004, BCC requested a hearing on the subject issue:

*Bulger Construction Company is requesting a hearing to settle a dispute between itself and Parsons Brinckerhoff Construction Services, Inc. (PBCS). The dispute involves emergency repair work to an existing sanitary sewer force main damaged during installation of a drilled shaft.*

### *Position Statement:*

*Lemco Contracting, Inc., a subordinate subcontractor, was attempting to install a drilled shaft at the Northwest corner of Highway 60 and Wilson Avenue on March 12, 2004. The location had been located several times and the City of Bartow representatives along with other utility representatives were present at the time. The site was cleared to dig. Lemco augured approximately 13' to 14' when an obstruction was encountered and the slurry was lost. It was later determined to be an existing 10" sanitary sewer force main. PBCS instructed Bulger Construction Company to proceed with emergency repairs immediately and time, manpower and equipment would be documented. Bulger Construction immediately hired Killebrew, Inc. to begin repairs to the force main. After reviewing Bulger's cost proposal for the repairs, PBCS has denied our claim for this extra work. Bulger Contracting Company feels that it is entitled to compensation for this work.*

### *Summary of Issues:*

- 1. Locates were made in accordance with Florida Law.*
- 2. Representatives of the utility companies were present.*
- 3. A pre-dig was conducted.*
- 4. The site was cleared to dig.*
- 5. Bulger Construction was instructed to make emergency repairs immediately and that the time, manpower and equipment would be documented for compensation.*
- 6. PBCS has denied payment for this work.*

# DISPUTE REVIEW BOARD RECOMMENDATION

Subsequent to this request and after denial by the Owner on September 22, 2004 of entitlement, BCC submitted its full position paper to the BOARD on the subject issue:

## MAST Arm No. 2 Drilled Shaft

*Lemco Contracting Inc, serving as the subcontractor for Montoya Electric Services Inc, has prepared this position paper concerning the above mentioned subject. The contractor performing the work of this contract is Bulger Construction Company, A Division of The Lane Construction Corporation (BCC), under contract No. 21690 for the FDOT – District 1.*

## DESCRIPTION

*On March 12, 2004, Lemco Contracting was attempting to install a drilled shaft at the North West corner of the intersection of Hwy. 60 and Wilson Ave. After receiving locate tickets and a 4' pre-dig was completed, we augered into the hole approximately 14' when an unknown void suctioned our drill slurry and dirt from the shaft. Per direct orders from Kent Dube, a representative from Parsons Brinckerhoff Construction Services (PBCS), we back filled the hole to prevent the road caving from the void. Over the next few days an increased volume of material was noticed in the sanitary sewer lines and per the directions of the FDOT, BCC removed slurry and materials from the lines and backfilled the excavation site.*

## ISSUE RESOLUTION CHRONOLOGY

*On March 10, 2004, the Sunshine One Call system received a request for locates. The ticket issued was 07041453 replacing old ticket 05143143 taken on February 26, 2004.*

*On March 12, 2004, we began our pre-dig of a 4'+/- hole at the proposed location of the drilled shaft for Mast Arm # 2 at Wilson St. STA 65+05, 59' left (see appendix B – plan sheet # T-4 and utility adjustment sheet No. 256). After the completion of the pre-dig, an abandon communication line was cut out of the way of the drill location. We began to drill the shaft around 8:30 a.m. At approximately 10:30 a.m., an unknown structure was hit with our auger resulting in a loss of slurry from the drilled shaft. Under the direct orders of Kent Dube, we back filled the shaft with soil already on hand and a truckload from BCC/Lane Construction. We were informed at that time by Kent Dube the unknown structure was an old storm drain. Mr. Dube told our foreman at that time he knew it was in the ground but was not sure exactly where it was. Representatives from the City of Bartow Public Works Department, PBCS, FDOT, and BCC/Lane construction were all notified and came to the drilled shaft location after the unknown structure was hit.*

*After an investigation by BCC and FDOT, on March 14, 2003, it was discovered that the unknown structure was a 10" gravity sewer. BCC was directed to repair the sewer main and keep record of repairs and costs.*

*On March 19, 2004, PBCS sent letter No. 027-B099 to BCC stating the following: (page 7 of 49)<sup>1</sup>*

*"On March 12, 2004, at Sta. 62+05 59' LT of baseline SR 60 Bypass, your subcontractor, Lemco, was excavating for a drilled shaft for mast arm #2 when at 14' +/- below original ground at approximately 10:30 a.m., a void was encountered when immediately there was a loss of slurry and partial cave in of the excavation. Lemco 's foreman, at his own discretion, proceeded to backfill the excavation and moved to another location. Today, after thorough investigation of the existing storm sewer, the project administrator contacted the City of Bartow Assistant Public works Director, Mr. Russ Martin, to see what he could find out about the existing sanitary sewer. After removing manhole lids east and west of northwest quad at Wilson St. and SR 60, Russ called and told Kent Dube the manholes were full. There exists obvious obstruction of the gravity sewer line (10 "). Kent Dube proceeded to contact the project superintendent Don Belcher and Charlie Clyatt to discuss repairing the damaged gravity sewer line. Neither party, the City of Bartow, or BCC is able to perform any emergency repairs to this day. This has become a health concern. The City has contacted the Polk County Health Department, which is required by law. In any case, BCC is directed to repair the damaged gravity sewer. Time, manpower, and equipment will be documented. The damaged sewer line shall be repaired immediately... "*

---

<sup>1</sup> See original position papers for exhibits.

## DISPUTE REVIEW BOARD RECOMMENDATION

*On March 19, 2004, BCC's subcontractor, Killebrew, Inc. began the restoration effort.*

*On March 23, 2004, BCC sent Letter No. 104-063 to PBCS stating the following: (page 8 of 49)*

*"In reference to your letter 027-B099, we are reserving our right to file a claim under specification 5-12. Bulger feels the utility was not located and representatives from the City of Bartow determined there were no utilities in the way of the drilled shaft. Bulger has retained Killebrew, Inc. for the emergency repair and work has commenced as directed by PBCS... "*

*On March 23, 2004, PBCS sent Letter No. 027-B 103 to BCC stating the following: (page 9 of 49)*

*"PBCS acknowledges receipt of your letter 104-063 (Drilled Shaft for Pole 2) and your reservation of rights in accordance with Section 5-12. PBCS is documenting all the events surrounding this issue. Please submit your costs immediately after completion to the repair of the sanitary sewer so that it may be reviewed... "*

*On March 25, 2004, Killebrew, Inc. completed repair and restoration.*

*On April 12, 2004, PBCS received BCC Letter No. 104-069, dated April 9, 2004 stating the following: (page 11 nor 49)*

*"Pursuant to our letter 104-063 the cost for the emergency repair work on the sanitary sewer at this location is \$26,878.61.*

*In addition to these costs, we are requesting an additional 3 days be added to the contract time ... "*

*On April 14, 2004, PBCS sent Letter No. 027-B107 to BCC stating the following: (page 13 of 49)*

*"Parsons Brinckerhoff Construction Services, Inc. (PBCS) acknowledged receipt of your letter 104-063 dated March 23, 2004, in which you reserved your rights under Supplemental Specification 5-12 to file a claim against the Florida Department of Transportation (FDOT) regarding the above-mentioned subject. PBCS also acknowledges receipt of your letter 104-069, dated April 9, 2004, in which you requested a reimbursement for costs incurred and an extension of contract time. In accordance with Supplemental Specification Section 5-12.3, please submit all substantiating information to support your claim to this office... "*

*On April 16, PBCS received BCC Letter No. 104-070, dated April 14, 2004 stating the following: (page 14 of 49)*

*"Pursuant to your letter 027-B107 we are sending the attached documentation to substantiate the claim we filed in our letter 104-069... "*

*On August 24, 2004, PBCS sent Letter No. 027-B 148 to BCC stating the following: (page 13 of 49)*

*"Parsons Brinckerhoff Construction Services, Inc. (PBCS) acknowledges receipt of your letter 104-070 dated April 14, 2004, in which you submitted documentation to substantiate your additional costs and delays associated with the emergency repair work at the gravity sanitary sewer line. PBCS has reviewed all of the information surrounding this issue including relevant Florida Statutes governing contractor excavations and finds no merit justifying entitlement for additional time and funds. We hereby deny your claim for additional compensation and time associated with this utility damage and repair. If you would like to pursue this issue further, then please submit your formal request for a Dispute Review Board hearing in accordance with DRB Operating Guidelines... "*

*On August 31, 2004, PBCS received a copy of BCC Letter No. 104-109, dated August 30, 2004, to Mr. John Duke, Sr. stating the following:*

*"Bulger Construction Company is requesting a hearing to settle a dispute between itself and Parsons Brinckerhoff Construction Services, Inc. (PBCS). The dispute involves emergency repair work to an existing sanitary sewer force main damaged during installation of a drilled shaft... "*

*In addition to this request for a hearing, BCC provided its position statement.*

# DISPUTE REVIEW BOARD RECOMMENDATION

*On September 22, 2004, the FDOT sent a letter to BCC denying their claim for additional compensation and Contract time.*

## **BASIS OF LEMCO POSITION**

*Lemco is not responsible for the damages caused by the drilling operation, nor for the costs associated with the necessary repairs. The 10" gravity sanitary sewer line was not properly located by the City of Bartow Public Works Department, and city representatives determined there were no utilities in the way of the proposed drilled shaft. They claim the site was clear to dig. The lines were marked on the North side of the drilling area and we proceeded with our pre-digs. Telephone calls were made to the City of Bartow regarding this location and a representative from the city was on site. The sewer line was not properly marked for the Sunshine One Call ticket.*

## **BASIS OF LEMCO, MONTOYA, AND BULGER CONSTRUCTION COMPANY**

*Lemco Contracting, Inc., acting on behalf of Lemco Contracting, Montoya Electric Services, Inc., and Bulger Construction offers the following as its position concerning the events surrounding the above mentioned issue:*

*We used extreme care and caution when installing this drilled shaft. We followed the Florida guidelines by calling Sunshine State One Call service center for locates and performed a 4' pre-dig as required by law. We went above and beyond our call to Sunshine State One Call by contacting the City of Bartow and having a representative on the job site to go over the underground utilities with our foreman before any excavation was started. The man holes mentioned in paragraph 1 of page 7 of 64 have a strain pole directly in the center line of the two man holes. Page 256 of the Plan Utility Adjustment sheets does not show a sewer line in the area of the drilled shaft. Furthermore, we did not backfill the area without direct orders by Kent Dube, who was also on site. We feel that the city did a poor job on locating the underground utilities and we are not at fault for this incident.*

## **OWNER'S POSITION:**

*Parsons Brinckerhoff Construction Services, Inc. (PBCS) serving as the Agent of the State to the Florida Department of Transportation (FDOT) has prepared this Position Paper concerning the above-mentioned subject. The Contractor performing the work of this construction project is Bulger Construction Company (BCC) under Contract No. 21690 for the FDOT – District 1.*

## **DESCRIPTION**

*On March 12, 2004, Lemco Contracting, Inc. (Lemco) damaged a 10" gravity sanitary sewer line approximately 14 feet below existing grade while drilling for the drilled shaft substructure of Mast Arm No. 2. Lemco is a subcontractor to Montoya Electric Service, Inc. (Montoya). Montoya is a subcontractor to Bulger Construction Company (BCC). Upon damaging this 10" gravity sewer line, the slurry maintaining the hole escaped into the sewer line partially collapsing the shaft. Lemco backfilled the remainder of the excavation without receiving direction from PBCS or the FDOT. Over the next few days, an increased volume of material was noticed within the sanitary sewer line. PBCS, at the request of the FDOT, directed BCC to remove the slurry and any other materials which entered the sewer system, excavate the shaft to confirm the cause of the increase in volume, repair the damaged section of the 10" gravity sewer line and backfill the excavation. BCC removed all drilled shaft materials from the sewer system and backfilled the excavation.*

## **ISSUE RESOLUTION CHRONOLOGY** (See Appendix A)

*On February 29, 2004, the FDOT website visualasbuilts.com indicated sanitary sewer locates were flagged per digital photographs taken on this day. In addition, the PBCS inspection staff observed green paint markings throughout the intersection. (See page 8 of 64)*

*On March 10, 2004, the one call system received a request for locates. The ticket issued was 07041453 replacing the old ticket 05143143 taken on February 26, 2004.*

*On March 12, 2004, Lemco began to pre-dig 4' +/- at the proposed location for the drilled shaft for Mast Arm #2 at Wilson St. Sta. 65+05 59' Lt. (See Appendix B - Plan Sheet #T-4 and Utility Adjustment Sheet No. 256). After completion of the pre-dig, an abandoned communication was cut out of the way of the shaft location. At approximately 8:30 a.m., the foreman began to auger the shaft. At approximately 10:30 a.m. the Contractor hit an obstruction at approximately 14 feet in depth and lost all of the slurry within*

## DISPUTE REVIEW BOARD RECOMMENDATION

*the shaft hole partially collapsing the shaft. Lemco began to immediately backfill the shaft hole and demobilized to the intersection of SR 60A Ext. and US 17 without discussion with the FDOT or PBCS to try to identify the obstruction (See Appendix C – inspectors' Daily Reports of Construction). The Project Administrator Kent Dube e-mailed the Engineer-of-Record to discuss the situation. (See page 9 of 64)*

*On March 14, 2004, the Project Administrator Kent Dube, visited the location at the northwest quadrant of SR 60A and Wilson St. At this time, he identified green paint marks on the turn out to Goodyear and at the intersection of Wilson St. next to a manhole that aligned with the mast arm drilled shaft #2 location. He proceeded to call Russ Martin, the Assistant City of Bartow Public Works Director to discuss his finding with him. Russ Martin visited the site and proceeded to remove sanitary manhole covers in the vicinity. Russ discovered the manholes were full so there had to be an obstruction. That afternoon, the Project Administrator, Russ Martin, Bill Pickard, Charlie Clyatt – BCC Project Manager, and John Hayes, FDOT Project Manager met on-site. At this meeting, BCC was directed to repair the damaged 10" gravity sewer.*

*On March 19, 2004, PBCS sent Letter No. 027-B099 to BCC stating the following (See page 10 of 64):*

*"On March 12, 2004, at Sta. 62+05 59' LT. of baseline SR 60 Bypass, your subcontractor, Lemco, was excavating for a drilled shaft for mast arm #2 when at 14' +/- below original ground at approximately 10:30 a.m. a void was encountered when immediately there was a loss of slurry and partial cave in of the excavation. Lemco's foreman at his own discretion proceeded to backfill the excavation and move on to the next location. Today, after thorough investigation of the existing storm sewer, the project administrator contacted the City of Bartow Assistant Public Works Director Mr. Russ Martin to see what he could find out about the existing sanitary sewer. After removing manhole lids east and west of northwest quad at Wilson St. and SR 60, Russ called and told Kent Dube the manholes were full. There exists obvious obstruction of the gravity sewer line (10'). Kent Dube proceeded to contact the project superintendent Don Belcher and Charlie Clyatt to discuss repairing the damaged gravity sewer line. Neither party, the City of Bartow or BCC is able to perform any emergency repairs on this day. This has become a health concern. The City has contacted the Polk County Health Department which is required by law.*

*In any case, BCC is directed to repair the damaged gravity sewer. Time, manpower and equipment will be documented. The damaged sewer line shall be repaired immediately... "*

*On March 19, 2004, BCC's subcontractor, Killebrew, Inc. began the restoration effort.*

*On March 23, 2004, BCC sent Letter No. 104-063 to PBCS stating the following (See pages 11 and 12 of 64):*

*"In reference to your letter 027-B099, we are reserving our right to file a claim under specification 5-12. Bulger feels the utility was not located and representatives from the City of Bartow determined there were no utilities in the way of the drilled shaft. Bulger has retained Killebrew, Inc. for the emergency repair and work has commenced as directed by PBCS...*

*On March 23, 2004, PBCS sent Letter No. 027-B103 to BCC stating the following (See page 13 of 64):*

*"PBCS acknowledges receipt of your letter 104-063 (Drilled Shaft for Pole 2) and your reservation of rights in accordance with Section 5-12. PBCS is documenting all the events surrounding this issue. Please submit your costs immediately after completion to the repair of the sanitary sewer so that it may be reviewed..."*

*On March 25, 2004, Killebrew, Inc. completed repair and restoration.*

*On April 12, 2004, PBCS received BCC Letter No. 104-069, dated April 9, 2004 stating the following (See pages 14 and 15 of 64):*

*"Pursuant to our letter 104-063 the cost for the emergency repair work on the sanitary sewer at this location is \$26,878.61.*

*In addition to these cost we are requesting an additional 3 days be added to the contract time..."*

# DISPUTE REVIEW BOARD RECOMMENDATION

On April 14, 2004, PBCS sent Letter No. 027-B107 to BCC stating the following (See page 16 of 64):

*"Parsons Brinckerhoff Construction Services, Inc. (PBCS) acknowledges receipt of your letter 104-063 dated March 23, 2004, in which you reserved your rights under Supplemental Specification 5-12 to file a claim against the Florida Department of Transportation (FDOT) regarding the above-mentioned subject. PBCS also acknowledges receipt of your letter 104-069, dated April 9, 2004, in which you requested reimbursement for costs incurred and an extension of contract time. In accordance with Supplemental Specification Section 5-12.3, please submit all substantiating information to support your claim to this office..."*

On April 16, PBCS received BCC Letter No.104-070, dated April 14, 2004 stating the following (See pages 17 through 24 of 64):

*Pursuant to your letter 027-B107 we are sending the attached documentation to substantiate the claim we filed in our letter 104-069...*

On May 5, 2004, Terry Kirkland (City of Bartow utility locator), provided a statement to PBCS regarding locate tickets 04440403, 05143143 and 07041453. (See pages 25 through 27 of 64).

On August 24, 2004, PBCS sent Letter No. 027-B148 to BCC stating the following (See page 28 of 64):

*"Parsons Brinckerhoff Construction Services, Inc. (PBCS) acknowledges receipt of your letter 104-070 dated April 14, 2004, in which you submitted documentation to substantiate your additional costs and delays associated with the emergency repair work at the gravity sanitary sewer line. PBCS has reviewed all of the information surrounding this issue including relevant Florida Statutes governing contractor excavations and finds no merit justifying entitlement for additional time and funds.*

*We hereby deny your claim for additional compensation and time associated with this utility damage and repair. If you would like to pursue this issue further, then please submit your formal request for a Dispute Review Board hearing in accordance with DRB Operating Guidelines..."*

On August 31, 2004, PBCS received a copy of BCC Letter No. 104-109, dated August 30, 2004, to Mr. John Duke, Sr. stating the following (See pages 29 and 30 of 64):

*"Bulger Construction Company is requesting a hearing to settle a dispute between itself and Parsons Brinckerhoff Construction Services, Inc. (PBCS). The dispute involves emergency repair work to an existing sanitary sewer force main damaged during installation of a drilled shaft..."*

*In addition to this request for a hearing, BCC provided its position statement.*

On September 22, 2004 the FDOT sent a letter to BCC denying their claim for additional compensation and Contract time. (See pages 31 through 34 of 64).

## **BASIS OF BCC POSITION**

*BCC feels that they are not responsible for the damages caused by the drilling operation nor are they responsible for the costs associated with the necessary repairs. They feel that the 10" gravity sanitary sewer line was never located by the City of Bartow Public Works Department and, furthermore, City representatives determined that there were no utilities in the way of the drilled shaft. They claim that the site was cleared to dig.*

*BCC has requested payment under Supplemental Specification Section 5-12 for repairs made to this damaged gravity sanitary sewer line in the amount of \$26,878.61 and that an additional 3 Contract days be added to the Contract time.*

# DISPUTE REVIEW BOARD RECOMMENDATION

## **BASIS OF FDOT/PBCS POSITION**

*Parsons Brinckerhoff Construction Services, Inc. (PBCS) acting on behalf of the Florida Department of Transportation (FDOT) as an Agent of the State offers the following as its position concerning the events surrounding the above-mentioned issue:*

*FDOT Standard Specifications for Road and Bridge Construction Section 7-1.1 states: "Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations."*

*Florida Statutes, Chapter 556 Underground Facility Damage Prevention and Safety states the following (See also Appendix D):*

### **556.102 Definitions.**

*Paragraph (3) – "Damage" means any impact upon or contact with, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance, partial or complete, of any underground facility.*

*Paragraph (6) – "Excavate" or "excavation" means any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state...*

*Paragraph (7) – "Excavator" or "excavating contractor" means any person performing excavation or demolition operations.*

*Paragraph (8) – "Member operator" means any person who furnishes or transports materials or services by means of an underground facility except a small municipality that has elected not to participate in the one-call notification system in the manner set forth in s. 556.103(1).*

*Paragraph (12) – "Tolerance zone" means 24 inches from the outer edge of either side of the exterior surface of a marked underground facility.*

*Paragraph (13) – "Underground facility" means any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic...or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines.*

### **556.105 Procedures.**

*Paragraph (1)(a) – Not less than 2 nor more than 5 full business days before beginning any excavation or demolition, an excavator shall provide the following information through the system:...*

*Paragraph (4)(b) – If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator...the member operator shall identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 2 full business days after the time the notification is received...*

*Paragraph (4)(d) – When excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protection requires hand digging, pot holing, soft digging, vacuum excavation methods, or other similar procedures to identify underground facilities. Any use of mechanized equipment within the tolerance zone must be supervised by the excavator.*

*Paragraph (11) – If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator...*

### **556.106 Liability of the member operator, excavator, and system.**

*Paragraph (2)(b) -- If any excavator fails to discharge a duty imposed by the provisions of this act, such excavator, if found liable, shall be liable for the total sum of the losses to all parties involved...*

*Paragraph (2)(d) – Obtaining information as to the location of an underground facility from the member operator as required by this act does not excuse any excavator from performing an excavation or*

# DISPUTE REVIEW BOARD RECOMMENDATION

*demolition in a careful and prudent manner, based on accepted engineering and construction practices, nor does it excuse such excavator from liability for any damage or injury resulting from any excavation or demolition.*

*The excavating contractor, Lemco, provided notification through the system for excavation in this area on March 10, 2004 (Ticket No. 07041453). The member operator, the City of Bartow, properly identified the underground facilities within 2 full business days after the time the notification was received in accordance with s 556.105 (4)(b). These markings showed that the proposed excavation was in proximity to or in conflict with an underground facility of the City of Bartow. The City of Bartow met with the excavating contractor on site on March 12, 2004 prior to drilling and discussed the need for the excavating contractor to determine the depths of the marked underground facilities. On March 12, 2004, Lemco pre-dug (pot holed) the excavation area to four-foot ± below existing grade. Lemco did not pull the adjacent sanitary sewer line manhole covers to establish the depth of its piping as discussed earlier with the City of Bartow. Lemco proceeded with the excavation with an auger. Lemco damaged the 10" sanitary sewer line 14 feet ± below existing grade with the auger.*

*Lemco failed to discharge the duties imposed in s. 556.105 (4)(d) by not using increased caution to protect the underground facility, and, in such, is liable under s. 556.106 (2)(b) and (d). Furthermore, Lemco failed to discharge the duties imposed in s. 556.105 (11) by not notifying the member operator of the damage. In fact, Lemco backfilled the excavation and moved to another location.*

*Upon review of all relevant information, and specifications under which BCC is contractually obligated, we find BCC responsible for all damages associated with this underground facility damage.*

## **BOARD RECOMMENDATION:**

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing, **the BOARD recommends the Contractor is ENTITLED to recover cost associated with repair to the Gravity Sanitary Sewer damaged during the excavation of the Drilled Shaft for Mast Arm No. 2 on the project.**

## **EXPLANATION OF RECOMMENDATION:**

- The Contractor followed the Standard Specifications and Special Provisions requesting a locate of utilities in the area for Mast Arm No. 2 drilled shaft and hand dug the required pot hole 4 feet below grade.
- The City of Bartow representatives were on site the morning of the excavation leaving after the auger depth was advanced 6 to 8 feet below grade.
- The Plan Sheets did not locate the Sanitary Sewer accurately.
- Lemco Contracting, Inc., subcontractor to Montoya Electric, testified “The site was clear to dig. There was no green paint or flags directly around the area of the shaft”. After the damage occurred, “Adam Bell (Lemco) was informed by Ken Luggen (City of Bartow) that it (broken pipe) must have been an old septic or storm drain”. (Excerpts from page 19 of 64 in FDOT position papers).
- The DAILY REPORT OF CONSTRUCTION for 3-12-04 was not signed until 3-24-04. The inspector provided a detailed description of the existing 12” sanitary sewer at around 14 feet. The City of Bartow and the Contractor were not aware of the type of structure encountered. (See above)
- Plan Sheet T-4 (Page 35 of 64 FDOT position papers) did not show the existing sewer west of Wilson Avenue.
- The Contractor performed the excavation in accordance with Section 556.105 Procedures, of Chapter 556 of the Florida Statutes.



## DISPUTE REVIEW BOARD RECOMMENDATION

- It is also worth noting that this shaft had to be redesigned to allow for it to remain in this location. It could not be moved slightly to miss the alignment of the sewer.
- The contractor took all reasonable precautions to avoid hitting an underground obstruction.
- Correspondence between the parties indicates that the Contractor has requested an additional 3 days be added to the contract time. No substantiation of any delay to the critical path was presented to the BOARD.

This BOARD sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation. The Disputes Review Board's recommendation should not prevent, or preclude, the parties from negotiating an equitable solution (should it be appropriate) to any issue.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by the non-responding party.

I certify that I have participated in all of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board  
John H. Duke, Sr., DRB Chairman  
Earl Keith Richardson; DRB Member  
James T. Guyer; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

A handwritten signature in black ink, appearing to read "J H Duke", with a stylized flourish at the end.

John H. Duke, Sr.  
DRB Chairman