

# STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE

TALLAHASSEE, FL 32312-2837

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## NOTICE

FCAT  
11-29-07  
MBW

In the case of Ajax Paving Industries, Inc. versus the Florida Department of Transportation on Project Nos. 10130-3548, 10130-3550 & 10130-3551 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 8-95 has been properly filed on December 19, 1995.

*H. Eugene Cowger*

H. Eugene Cowger, P.E.  
Chairman & Clerk, S.A.B.

Copies of Order & Transcript to:

J.B. Lairscey, P.E., Director Office of Construction/FDOT

Mark O. Minich, Operations Manager/Construction/Ajax Paving Industries, Inc.

STATE ARBITRATION BOARD

ORDER NO. 8-95

RE:

Request for Arbitration by  
Ajax Paving Industries, Inc. on  
Job No. 10130-3548, 10130-3550 & 10130-3551 in  
Hillsborough County

The following members of the State Arbitration Board  
participated in the disposition of this matter:

H. Eugene Cowger, P. E. Chairman  
Bill Deyo, P. E. Member  
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 10:35 a.m., on Tuesday,  
October 24, 1995.

The Board Members, having fully considered the evidence  
presented at the hearing, now enter their order No. 8-95 in  
this cause.

ORDER

The Contractor presented a request for arbitration of a  
claim in the amount of \$249,327.00 for the cost of additional  
labor, equipment and supplies associated with grading,  
removal of existing pavement, and maintenance of traffic and  
erosion control features during the period between  
December 7, 1993 (Calendar Day 29) and June 28, 1994 when  
work on the overall projects allegedly could not proceed in  
an efficient manner because of delays related to plan  
ambiguities in regard to the traffic signal strain poles that  
were a part of the contract (\$229,707.00) and the amount of

liquidated damages assessed (18 CD @ \$1,009 = \$19,620). In addition, the Contractor added to his claim interest on the amount claimed.

The Contractor presented the following information in support of his claim:

1. These three projects had many dependent operations that required a specific order as sequenced by the Traffic Control Plan for each project and the contract time was set based on working all three projects simultaneously. Maintenance of Traffic and Erosion Control work had to be accomplished through the duration of the projects
2. The work on the traffic signal strain poles was delayed while ambiguities in the plans for these items were being resolved. Our approved work progress chart indicated work on installation of the strain poles to begin on December 7, 1993, but we could not begin installation until June 6, 1994, because the design details for the poles was not resolved until February 1, 1994 and our signalization subcontractor was delayed in returning to the projects by other previously scheduled commitments.
3. The delay in installation of the strain poles adversely impacted progress on many dependent roadway construction operations requiring a specific order to allow construction to proceed simultaneously. Construction traffic control devices and signs were maintained throughout the work in order to accommodate the traffic patterns established to facilitate construction. We attempted to mitigate the

additional cost by performing work on non-subcontracted roadway items with the same small crew that was needed to perform required daily maintenance of traffic and erosion control work.

4. Our monetary claim is based on the cost of grading, removal and maintenance of traffic and erosion control work accomplished between December 7, 1993 and June 28, 1995 plus associated home office overhead during that period. We have deducted from these costs amount received as payment for the contract items covering this work during the period.

The Department of Transportation presented the following information in rebuttal of the Contractors claim.

1. The Department admits that ambiguities in the plans affected progress on completion of the traffic signals, however, there were no ambiguities in plans and specifications for other contract items and there is not interdependence between work on the strain poles and work on roadway contract items.
2. The Department did not require a certain sequence of work. Scheduling of activities performed during the "strain pole delay period" was at the discretion of the Contractor. The "piecemeal" nature of sequencing of activities is a consequence of poor management of the project by the Contractor.
3. Curb work, grading, road work, sidewalk and final dressing were completed prior to commencing installation of the

traffic signal strain poles. This substantiates our contention that above-ground signalization items did not affect work on those items.

4. The strain poles were located sufficiently remote from the proposed limits of widening to not impede work on any roadway items. Work items completed after commencement of work on the traffic signals could have been accomplished before commencing work on the traffic signals.

5. The Contractor has not provided an explanation of how the additional costs claimed are attributable to the strain pole delay.

The Board in considering the testimony and exhibits presented found the following points to be of particular significance:

1. The additional contract time granted for strain pole delays did not take into consideration the period between authorization for work to begin on the revised strain poles (February 1, 1994) and the date the shop drawings were approved (April 7, 1994). The period between February 1, 1994 and March 11, 1994 was consumed by erroneous design of the strain poles by the Contractor's supplier.

2. The duration of the signalization work was extended substantially by the delays related to the Department arriving at decision on the design of the traffic signal strain poles.

From the foregoing and in light of the testimony and

exhibits presented, the State Arbitration Board finds as follows:

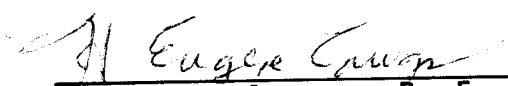
The Department of Transportation shall reimburse the Contractor in the amount of \$55,000 for his claim. This amount includes releasing \$19,620.00 in outstanding liquidated damage.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$406.00 for Court Reporting Costs.

Tallahassee, Florida

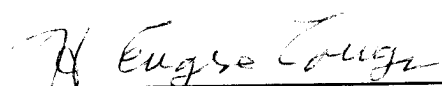
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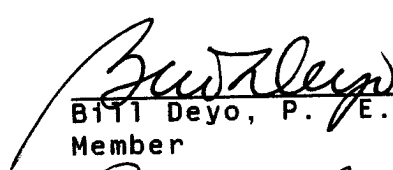
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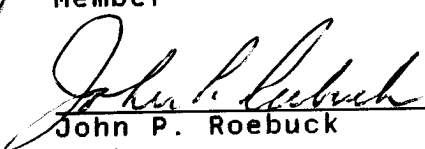
  
H. Eugene Cowger, P. E.  
Chairman & Clerk, S.A.B.

19 December 1995

Date

  
H. Eugene Cowger, P. E.  
Chairman & Clerk

  
Bill Deyo, P. E.  
Member

  
John P. Roebuck  
Member

STATE ARBITRATION BOARD  
STATE OF FLORIDA

AJAX PAVING INDUSTRIES, INC. )  
 )  
 )  
 ) PROJECT NO. 10130-3548,  
 - and - ) 3550 & 3551  
 )  
 ) LOCATION: Hillsborough  
 ) County, Florida  
 )  
 DEPARTMENT OF TRANSPORTATION )  
 )  
 ) ORIGINAL

RE: Arbitration In The Above Matter

DATE: Tuesday, October 24, 1995

PLACE: Florida Transportation Center  
1007 Desoto Park Drive  
Tallahassee, Florida

TIME: Commenced at 10:35 a.m.  
Concluded at 12:20 p.m.

REPORTED BY: CATHERINE WILKINSON  
CSR, CP  
Notary Public in and for  
the State of Florida at  
Large

WILKINSON & ASSOCIATES  
Certified Court Reporters  
Post Office Box 13461  
Tallahassee, Florida  
(904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman  
 Mr. Jack Roebuck  
 Mr. Bill Deyo

APPEARING ON BEHALF OF AJAX PAVING INDUSTRIES, INC.:

Mr. Terry Denk  
 Mr. Mike Horan  
 Mr. Mark Minich

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Tom Kayser  
 Mrs. Lynn Isaak  
 Mr. Marty Sanchez

\* \* \*

I N D E X

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P R O C E E D I N G S

CHAIRMAN COWGER: This is a hearing of the State Arbitration Board established in accordance with Section 337.185 of the Florida Statutes.

Mr. Bill Deyo was appointed as a member of the Board by the Secretary of the Department of Transportation.

Mr. John Roebuck was elected by the construction companies under contract to the Department of Transportation.

These two members chose me, H. Eugene Cowger, to serve as the third member of the Board and as the Chairman.

Will all persons who will make oral presentations during this hearing please raise your right hand and be sworn in.

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN COWGER: The documents which put this arbitration hearing into being, which is the contractor's request for arbitration and everything that was attached thereto is hereby introduced as Exhibit No. 1. You may want to mark that down on your exhibits, your copy of the exhibit.

Exhibit No. 2 is the -- will be identified as the package of information that was submitted by DOT dated

1           October 12, 1995. This was submitted to the Board.  
2           Each of the Board members was furnished a copy. And as  
3           I understand it, DOT has a copy of the package.

4           MR. SANCHEZ: Correct.

5           CHAIRMAN COWGER: Does either party have any  
6           other information it wishes to put into the record as  
7           an exhibit? By that I mean do you have anything that  
8           you're going to present that -- that you have four  
9           copies of and so forth?

10          MR. MINICH: We have, I think, one additional  
11          thing that we are going to present that you don't have  
12          now. And we have made some copies of some of the  
13          things, to make it easy to follow along.

14          CHAIRMAN COWGER: If it's already in one of these  
15          packages, let's agree to not introduce that as an  
16          exhibit.

17          MR. MINICH: We have made copies so it is easy to  
18          see them. There is only one thing that we want --

19          CHAIRMAN COWGER: When you get to it, remind us  
20          that this is something new and we will introduce it at  
21          that time.

22          MR. MINICH: Two things.

23          MR. HORAN: Two pieces of paper.

24          MR. ROEBUCK: When you bring them up in your  
25          presentation, say this is Exhibit 3 and 4.

1           MR. SANCHEZ: We do, too, Gene. We have three or  
2           four items we would like to introduce.

3           CHAIRMAN COWGER: All right. Please remind us  
4           this is something not in the package. All right.

5           Exhibit 3 is the letter dated October 19, 1995 to  
6           DOT from the contractor. Does either party wish  
7           additional time to examine the exhibits? I think  
8           everybody has had the exhibits well prior to the  
9           hearing, so we will assume the answer there is no.

10          MR. ROEBUCK: But the others, you may have to ask  
11          that again when the others are presented.

12          CHAIRMAN COWGER: Anything new that comes in that  
13          you haven't previously seen, if you want additional  
14          time to examine that, the party that wants the  
15          additional time has the obligation to ask for that  
16          time. I might want to stop and ask you --

17          MR. HORAN: One thing, that letter that you talk  
18          about, that October 19th letter, that was in response  
19          to a letter we received from the DOT. So, that really,  
20          I guess, isn't an exhibit. That will be --

21          MR. ROEBUCK: Part of the file.

22          MR. HORAN: Brought in as an exhibit.

23          CHAIRMAN COWGER: We will just leave it as three  
24          for now with that understanding.

25          During this hearing the parties may offer such

1 evidence and testimony as is pertinent and material to  
2 the controversy and shall produce such additional  
3 evidence as the Board may deem necessary to an  
4 understanding and determination of the matter before  
5 it. The Board shall be the sole judge of the relevance  
6 and materiality of the evidence offered.

7 The parties are requested to assure that they  
8 receive properly identified copies of each exhibit  
9 submitted during the course of this hearing and to  
10 retain these exhibits.

11 The Board will furnish the parties a copy of the  
12 court reporter's transcript of this hearing when we  
13 furnish the final order, but we will not furnish copies  
14 of the exhibits to the parties. So just be sure that  
15 you have them all.

16 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in  
17 evidence.)

18 CHAIRMAN COWGER: The hearing will be conducted  
19 in an informal manner. First the contractor's  
20 representatives will elaborate on their claim, and then  
21 the Department of Transportation will offer rebuttal.

22 Either party may interrupt to bring out a  
23 pertinent point by coming through the Chairman.  
24 However, for the sake of order, I must instruct that  
25 only one person speak at a time.

1           We have now reached a point where it is  
2           appropriate for the contractor to begin his  
3           presentation of his claim to the Board. We would like  
4           to have you state first the total amount claimed and  
5           then you can proceed on.

6           MR. MINICH: Do you prefer that I stand or I sit  
7           or do you have a preference?

8           (Discussion off the record)

9           CHAIRMAN COWGER: Okay.

10          MR. MINICH: I have some notes that I'm going to  
11          go from because I'm not a polished speaker and I've got  
12          to keep my mind on things. I have introduction first.  
13          I think everybody knows everybody here. We can stay  
14          off of that.

15          The other thing, for ease in following along, we  
16          have already told you that we do have some copies of  
17          some things that are included, and I think Mike will  
18          hand those out as they become pertinent.

19          Our claim amount is for \$249,327 plus interest.  
20          The contract detail -- this was a job, as you all know,  
21          on Dale Mabry Highway in Tampa, and the original  
22          contract amount was \$765,641. The original contract  
23          time included 90 days of acquisition period and 125  
24          calendar day construction time.

25          This job consisted of three projects to improve

1       the intersection geometrics and signalization in  
2       downtown Tampa on Dale Mabry Highway and major  
3       intersections near Tampa stadium.

4             The contract work was limited in production by  
5       design. It was designed this way. The construction  
6       sequence for this work was specified in the traffic  
7       control plan, which is rather unusual, the amount of  
8       detail in sequencing that was required in the traffic  
9       control plan.

10            The work items on the job were interrelated by a  
11       couple of things. The work items were interrelated by  
12       construction logic, and they were also interrelated  
13       because of the restrictions placed upon the items by  
14       the traffic control plan, which created another  
15       interrelationship.

16            The Department recognized the nature of the job  
17       when they combined three projects into one job and  
18       specified simultaneous construction. They also  
19       recognized the importance to the overall scheduling of  
20       the signal poles by providing for a 90-day acquisition  
21       period.

22            The maintenance of traffic plan had restrictions  
23       on lane closures that included restrictions in  
24       specific areas, and these restrictions were based on  
25       several things. They were based on the time of the

1 day, the day of the week, the activities in the Tampa  
2 stadium. There were all different kinds of  
3 restrictions, and it made planning and construction  
4 very detailed.

5 The maintenance of -- the restrictions that I'm  
6 talking about were in effect regardless of how much  
7 work was going on on the project. They were in effect  
8 on whether or not there was work going on on the  
9 project, which is a big difference. No matter how much  
10 or how little was going on, the restriction was in  
11 effect.

12 The job also had a special provision by which the  
13 Department required Ajax to escort all movements of our  
14 equipment with an attenuator truck even at signalized  
15 intersections which we believe was a misapplication of  
16 the specifications.

17 What I would like to do is explain this a little  
18 further. I don't know if I can spread this out, but  
19 this was in your package, in your original package.  
20 But I've made some notes on here that I can give this  
21 to you.

22 This is a time line of the project. This time  
23 line is based on first of all the blue portion of it,  
24 which starts down there at the beginning and ends here,  
25 represents our original job progress work chart. And

1 the red indicates the actual construction.

2 What we hope to show by this is how delays  
3 affected the construction. And I just want to spread  
4 it out here so I can refer and point out certain facts.

5 At the start of the project -- I'm going to have  
6 to come down here so I can see. On August 12th was the  
7 preconstruction conference. At the preconstruction  
8 conference we first gave the State notice that there  
9 was a problem, there was an error with the  
10 signalization plans, and we needed direction on  
11 straightening out the error that existed in the plans  
12 so that we could do the signalization portion of the  
13 project.

14 Then we just run through some critical dates.  
15 All these dates are in here. We put some in here.  
16 The State requested us to price some additional work  
17 items related to some of the errors in the plans on  
18 September 17th.

19 The State did advise us at that time to go ahead  
20 and submit the shop drawings for the poles as indicated  
21 in the plans. But there was a discrepancy. Okay.

22 We did -- on October 4th -- and this is during  
23 the acquisition period. We submitted the shop  
24 drawings. On October 6th they were rejected. We asked  
25 for direction. And then we got into the problem of



1       whether they were -- what kind of poles they were,  
2       whether they were concrete poles. The Department  
3       thought maybe they would be steel poles. We had all  
4       kinds. Nobody could make up their minds what was going  
5       on.

6               We got to January 4th of '94. The Department,  
7       after the job had already started -- because the  
8       contract time had started way back here in November.  
9       We were at day 29 in the contract. The delay began.

10              We said the delay began on day 29 because by our  
11       original work progress chart we show the signalization  
12       portion of the work, which starts with the foundation  
13       work, required to begin. And we hadn't had a decision  
14       from the Department on even what kind of pole we were  
15       going to put in the ground at that time.

16              So, we said our delay started in here because  
17       that's, in fact, when it did start.

18              On January 4, the Department notified us to use  
19       steel poles. We started the design, and the Department  
20       later paid our signalization subcontractor for the work  
21       he did on that design, then later told him they didn't  
22       want to do that, wanted to go to a different kind of  
23       concrete pole.

24              They went back to the original plan design, which  
25       we flip-flopped three times to get to the final design.

1           CHAIRMAN COWGER: Can I interrupt you a moment,  
2           Mark. To summarize, the poles as actually installed  
3           were the same as shown in the original plans when you  
4           got through all of this?

5           MR. MINICH: We submitted the first poles -- this  
6           was after the hurricane, Gene. And I think they were  
7           doing some kind of redesign where they were trying to  
8           get the Department a design. It was a double point  
9           attachment. The designers were having a problem  
10          figuring the double point attachment. That's what it  
11          goes back to. They had a problem with that.

12          Our designer said based on the new calculations  
13          that the Department wants us to do back up here, since  
14          you've given us a new set of circumstances, the  
15          concrete pole I would have to design would be mammoth.  
16          You will need to go to a steel pole. That's how the  
17          steel pole came in.

18          Then the Department looked at the steel pole.  
19          I don't know why they changed their mind not to do the  
20          steel, but they did. What they did was relaxed their  
21          design parameters to what they used to be before the  
22          hurricane requirements, and the guy was able to design  
23          the original poles, the poles originally specified.

24          CHAIRMAN COWGER: Does DOT agree with that, the  
25          poles installed were the ones originally specified?

1           MR. SANCHEZ: There were some ambiguities. DOT  
2           let the contract with the intent of having the designer  
3           for the contractor submit shop drawings designing the  
4           concrete strain poles.

5           The ambiguities referred to by Ajax are such that  
6           the DOT called out a foundation depth and messenger  
7           wire sizes for the strain poles, which we are not  
8           contending at this point, which are ambiguities, we are  
9           asking the contractor to design, yet we have given him  
10          design parameters. Their sub caught that and realized  
11          that. That was an ambiguity. That's no point of  
12          contention at this point.

13          CHAIRMAN COWGER: All right. I think we ought to  
14          let Mark go on because you answered my question.

15          MR. ROEBUCK: When you rejected his submittal in  
16          October, it was based on the possible change in pole  
17          design?

18          MR. SANCHEZ: No.

19          MS. ISAAK: The shop drawings rejected in October  
20          were rejected because of the lack of a seal from an  
21          engineer.

22          CHAIRMAN COWGER: We will talk about that later,  
23          Jack. That's a point of controversy.

24          MR. MINICH: Now, if I can try to figure out  
25          where I was here.

1 CHAIRMAN COWGER: I'm sorry.

2 MR. MINICH: That's okay.

3 MR. ROEBUCK: You got to the delay.

4 MR. MINICH: I'm at January 4 where they  
5 instructed us to use steel poles, working on a  
6 supplemental agreement to take care of that.

7 Then finally on February 1st, a month later,  
8 because there was still discussion about which way to  
9 go, February 1st the Department finally gave us final  
10 instructions to use the original concrete strain pole  
11 design, and they would relax some standards for us to  
12 use those. Our subcontractor was able to do that.

13 On March 1st -- now we are in this delay  
14 period -- on March 1st we submitted our new design for  
15 the poles. On March 11th we had approval of the shop  
16 drawings. On April 6th we submitted redesign of the  
17 foundation. Those are approved. Okay.

18 On approximately June 20th -- on June 20th was  
19 the end of the 194-day delay in our claim. The reason  
20 we claim it's the end of the delay, it's the day when  
21 the poles were delivered to the job and we were able to  
22 resume construction on that portion of the work again.  
23 That's where -- then it goes on, at the end of the job.

24 Then we started the job -- what we have done in  
25 our chart, we have shown that as day 29. We have the

1 delay period.

2 Then we get started again. We start with day 30.  
3 We show the contract was actually completed in 103 out  
4 of 125 days save the delay period of 196 days -- 194  
5 days.

6 CHAIRMAN COWGER: That period was December  
7 through June of '93 -- through June of '94, plus or  
8 minus?

9 MR. MINICH: Yes, it is. First of all, what I'd  
10 like to do -- I know it's been a little confusing on  
11 the contract time and the delay. We've had a chance to  
12 review our claim a little more and would like to  
13 clarify a few issues.

14 First, we feel that this chart here is -- it's a  
15 fact that it shows that the poles became a controlling  
16 item of work on day 29 of our contract. That was in  
17 our original approved work progress chart. That's a  
18 fact.

19 Unfortunately the Department was still undecided  
20 on whether to use steel or concrete poles and exactly  
21 how many poles would be required at that time when it  
22 became critical.

23 Their indecision continued until the 11th of  
24 March. Their indecision not only delayed us during the  
25 contract time, but it also wasted all of the 90 days of

1        acquisition time, plus it wasted all lead time that we  
2        had once the contract was signed to go about and get  
3        our subcontractors, the subcontractors to start making  
4        their preliminary drawings and everything like that  
5        prior to the preconstruction conference. All that time  
6        was wasted.

7                This time in itself, the wasted time that we are  
8        talking about, totals in excess of 150 days, or more  
9        than the time given for construction, the time we  
10       wasted up front before we had a decision.

11               The facts further show that the delay regarding  
12       the signalization plan error ended on the 24th of June.  
13       This came 194 days after the signalization work became  
14       the controlling item of work.

15               After the issue was resolved and Ajax was given  
16       final direction, the poles were designed -- this is  
17       critical -- the poles were designed, the shop drawings  
18       submitted, they were approved and construction started  
19       within a time frame equal to the elapsed time of the  
20       delay I just talked to you about up there.

21               In other words, from the time we got construction  
22       to the time we started work is 140 days. I just lost  
23       150 days up there. I think it shows had we had the  
24       decision and had we had a good set of plans down here,  
25       this could have all went on as planned right here, but

1           we just couldn't get it done because we showed we  
2           finished the job after the delay in no time.

3                   After the issue was resolved -- I just went  
4           through that.

5                   Construction of the balance of the remaining work  
6           items was completed in 74 days after the delay ended.  
7           We had 74 days, plus a 30-day cure period at the end of  
8           the job. The actual time of construction of the  
9           original planned work was 123 out of 125 days in the  
10          contract.

11                   Further, as a side note, at the end of the job  
12          the Department added some extra work and unilaterally  
13          gave us 56 additional days for some work they added at  
14          the end of the project, which was interesting because  
15          they're holding liquidated damages on us during the  
16          time they gave us extra work to do and unilaterally  
17          gave us 56 days. It's kind of interesting, that whole  
18          scenario.

19                   MR. SANCHEZ: We released LDs eventually and  
20          processed interest for the period we withheld LDs at  
21          12 percent.

22                   MR. ROEBUCK: You paid him interest for that  
23          hold-back?

24                   MR. MINICH: I think there's still 18 days of  
25          liquidated damages being withheld at this point.

1           MR. SANCHEZ: The previous withholding of LDs we  
2           processed interest payment for.

3           MR. MINICH: The Department ignored the fact of  
4           their delay, and more specifically they ignored the  
5           cost of their delay, even after repeated attempts by  
6           Ajax to negotiate a settlement.

7           In addition, the Department's delays extended the  
8           construction period of job through the summer rainy  
9           season. This job was scheduled at the end of March.  
10          Everybody knows what March is like in Florida, and we  
11          know what July and August and September are like.  
12          Okay?

13          And they extended us. On a nonproductive job,  
14          that not only causes unanticipated costs but  
15          unquantifiable costs. You can't quantify on a job like  
16          this what the rain does to you, especially with the  
17          restrictions. Now you couple one more thing in with  
18          all of these restrictions and it was almost impossible.

19          Ajax was awarded the time extension of 208 days  
20          or 210 days -- I believe it was 210. The time  
21          extension itself was 210. We never received, except  
22          for an explanation from the Department that they were  
23          giving us 80 days for the redesign of the poles, what  
24          the makeup of those other days were until we received  
25          the rebuttal package, and I will go into that later.



1           But there is a memorandum in there that says they  
2           gave us 80 days for pole redesign. They gave us 72  
3           days for delays to dependent items and 56 days at the  
4           end of the job for the extra work.

5           Okay. What is interesting is that the math --  
6           and you might want to write these figures down -- my  
7           delay was 194 days -- 194. They offered me for that  
8           delay period that I'm asking for 194 days 80 plus 72,  
9           152. So, we've got 194 that was delayed. They offered  
10          152, so that's 42 days difference.

11          Now, I don't know where they come with 108 to  
12          210. There's two phantom days in there.

13          The other thing, they are holding 18 days of  
14          liquidated damages. We add the 18 days of LDs, and  
15          then we completed the job at 103 out of 125. That's 22  
16          days. If you add it up, it comes to 42.

17          Now we couldn't figure that out until we got the  
18          rebuttal letter because we didn't know what they were  
19          giving us time for. They never told us what these  
20          different times were for. We feel that it comes out  
21          perfectly.

22          Another thing I'd like to address quickly, if  
23          I can, the cost analysis. This job was really  
24          difficult for us to get our arms around the costs on  
25          this job. We got a little handout -- this is one of

1 the handouts --

2 MR. HORAN: You have already got this in your  
3 package, but this is something you can throw in the  
4 basket after.

5 MR. MINICH: I will use this and you can refer to  
6 it. We looked at this thing several ways to present  
7 our claim and decided to present it based on the actual  
8 costs we incurred for the affected portions of the work  
9 during the 194 days delay, less any compensation  
10 received for completed pay items during this time  
11 period.

12 Now it's important to note that in our claim  
13 analysis we did not include any costs due to  
14 subcontractors or any income due to subcontract work.  
15 None of that was considered. And that includes any of  
16 the concrete work that was done on the job is not an  
17 issue. It's not part of our claim.

18 And the drainage work was subcontracted, not an  
19 issue, the electrical work, the signalization, those  
20 are not included. And also we didn't include any costs  
21 related to paving, only costs due to grading, project  
22 maintenance, traffic control, and erosion control and  
23 contractor's risks of being on these jobs. Those are  
24 the only costs included in our analysis.

25 We feel that this method of analysis captures our

1 actual costs and we propose fairly compensates Ajax for  
2 the damage incurred due to the relative massive delays  
3 on this job.

4 However, we also looked at this delay on a  
5 proportional basis of the mobilization and maintenance  
6 of traffic bid items, which is a way that I'm sure you  
7 see these things more often, on a proportional basis.  
8 It probably makes more sense. That's the handout  
9 I have.

10 CHAIRMAN COWGER: Now this is new, right?

11 MR. MINICH: This is Exhibit 4.

12 CHAIRMAN COWGER: This becomes Exhibit 4.

13 Everybody mark this as Exhibit 4 now, please.

14 (Whereupon, Exhibit No. 4 was received in evidence.)

15 MR. ROEBUCK: This is another way --

16 MR. MINICH: This is another way we are using to  
17 develop our claim amount. And like I say, this is  
18 something that is pretty more normal to see.

19 We had bid this job -- there's three projects.  
20 We bid the mobilization for a total of \$54,000 and the  
21 maintenance of traffic for \*a total of \$84,000.  
22 I think you guys can look at this and figure it out.  
23 I hope it's straightforward enough.

24 I want to point out one thing. On both jobs,  
25 I have taken the total costs and I subtracted out the

1 total costs that we said were nonvariable costs, that  
2 were fixed costs to us, and we shouldn't be able to  
3 extend those costs. In the spirit of fairness, that's  
4 what we're trying to do.

5 In any case, the mobilization comes out to  
6 \$394.08 a day. We extend that on the additional time  
7 of 257 days, because the project was originally 125,  
8 ended up 382. For mobilization we come up with 101,000  
9 on proportioned extension. On maintenance of traffic,  
10 we come up with over \$150,000. On the back page that's  
11 summarized.

12 You can read all these things. Mobilization is  
13 \$101,270.85. The home office overhead, we used the  
14 Eichleay calculations that are part of our original bid  
15 in this analysis, too. Interesting to note in the  
16 Eichleay, only 194 days that we used and the actual  
17 claim is 257; but 194, we are happy with that. We are  
18 not going to get into splitting hairs.

19 We had a 6 percent markup on our costs. We put  
20 that on our overhead. We add the liquidated damages  
21 in. This way of calculating our claim shows \$310,000  
22 in excess, well in excess of what we feel our actual  
23 costs were and what we are willing to settle for,  
24 \$249,327 plus interest.

25 We feel that this lends support to our claim and

1 we submitted it for that reason.

2 MR. HORAN: If I may interject one item in our  
3 original packet, we had figured the Eichleay on some  
4 numbers that we used that were from our auditors. I've  
5 got a letter here from our auditors that I want to put  
6 in as an exhibit, Exhibit 5, I guess.

7 They simply assert that those numbers are true,  
8 in fact, legitimate numbers.

9 CHAIRMAN COWGER: What this does is just supports  
10 the --

11 MR. HORAN: Supports our original claim of the  
12 calculation of Eichleay dollars. We hadn't put  
13 anything in on that.

14 MR. MINICH: Does everybody have one?  
15 (Whereupon, Exhibit No. 5 was received in evidence.)

16 MR. MINICH: Okay. I will move along here.  
17 I hope everybody is following me so far.

18 Now, the Department has mentioned in their  
19 rebuttal in regard to the settlement negotiations. We  
20 tried -- and it's a fact that Ajax tried several times  
21 during this project to get some kind of settlement, to  
22 get this thing off of dead center.

23 In each case our responses either went unanswered  
24 or our requests went unanswered or we got a response of  
25 rejecting it. And usually those responses would delay

1           for up to several months.

2           On September 12, 1994, we were totally  
3           frustrated. We were totally frustrated with this job.  
4           We offered to settle the thing, if they would just give  
5           us the days and we could get out of here, provided they  
6           meet some conditions. There was no response to that.

7           On November 17th we again offered to settle for  
8           the costs represented by the time, just for the signal  
9           work. Okay. We made another effort to settle, no  
10          response.

11          Then what happened was we were wrapping the job  
12          up. This is when the job was going on. We were  
13          developing costs.

14          Then Mike gets me when the job is cleaned up, in  
15          the office and tells me, look, we have been hurt bad on  
16          this job. I was told to hole up in the office. Terry  
17          and I sat and figured out the extent of our damages.

18          When Mike told me to get into this thing, on  
19          March 17th we submitted our claim, on May 2 and we  
20          received a letter from the Department denying our claim  
21          outright, no explanation, no meetings, no nothing, just  
22          denying it.

23          Shortly after that, Mike had some phone calls and  
24          some conversations with the district office, and we  
25          were able to get a meeting that I attended, and

1 I believe Marty and Lynn attended as well as some of  
2 the district people, where we would talk about our  
3 claim and I could present it to them. We had a  
4 meeting.

5 The upshot of that meeting was, number one, they  
6 denied my claim again outright. They didn't recognize  
7 any part of it. They said we were the cause of the  
8 whole delay, where obviously we weren't. They wouldn't  
9 look at that.

10 MR. SANCHEZ: We didn't allege they were the  
11 cause for the delay. Our point of contention at that  
12 point was they were the cause for the expenses  
13 associated with the delay. We never contended the fact  
14 that we extended the ultimate completion of the  
15 contract. We never contended that. We will go on  
16 further.

17 MR. MINICH: Now at this meeting, it was  
18 suggested that had we looked at this in an alternate  
19 way -- and this is the subject of the letters that we  
20 just submitted to you now. Had we looked at this  
21 another way, the Department may have been able to  
22 support us. In other words, what was said, had we  
23 looked at and had we completed the work up to when we  
24 could start putting the poles in, and we had done  
25 everything basically that we could do, up to when we

1           could get the poles started.

2                   They said if we could look at our expenses that  
3           were nonpay expenses after the delay ended, if we could  
4           look at that and had claims for that, maybe they could  
5           support us. That's what I did. This was in July that  
6           this meeting was. The first part of August I had a  
7           two-week vacation. I apologize for that, but Terry was  
8           working on it while I was gone.

9                   When I got back, we made a submittal to the  
10          Department figuring the way they suggested, that if we  
11          did it like that, we came up with a claim amount of  
12          \$190,000 that was 75 percent of the way we really feel  
13          it ought to be.

14                  MR. HORAN: I have that. I don't think it was in  
15          our original claim package. This is the subject of the  
16          last few letters. That is the letter that resulted  
17          from that meeting.

18                  MR. MINICH: Exhibit 5.

19                  MR. SANCHEZ: Gene, we are prepared to discuss  
20          the \$250,000 version of the claim. This was a version  
21          submitted, as Mark is correct, as requested by our  
22          district director of operations. It was submitted  
23          directly to the district construction engineer.

24                  There was conversation between our district  
25          construction engineer and Mike regarding the impact of



1           this claim. And the direction from the district  
2           construction engineer to Mike was that we were not  
3           going to -- we were going to reject this claim based on  
4           their discussions, what we had previously discussed on  
5           previous claims.

6                   And to further address this issue, the cover  
7           letter included in this claim, the last paragraph,  
8           which you will read and which we can submit at this  
9           point, clearly states if this progresses on to  
10          arbitration, we will discuss the merits of the \$250,000  
11          version, period. We are not ready to address the  
12          \$180,000 version.

13                   There is no malice on our part in the response  
14          time to the claim. There was ongoing discussion  
15          between the district construction engineer and Mike  
16          during this period. It was not left hanging.

17                   MR. HORAN: Let me just say something about that.  
18          First off, the reason we did this was per the DOT's  
19          request. We felt as though they requested we resubmit  
20          so that they could get another look at it. That's the  
21          only reason we submitted it, otherwise we wouldn't have  
22          sent it in.

23                   Based on that, I think it's relevant. I think it  
24          just shows no matter how you look at this thing, we got  
25          hurt on this job, a minimum of 180,000, I mean an

1 absolute minimum, looking at the way the DOT thought  
2 that it would be relevant. I think it's relevant  
3 because it's part of our good faith negotiations to try  
4 to settle this thing long before we ever get to an  
5 arbitration board.

6 MR. SANCHEZ: Again, the request from the  
7 district director of operations, that, too, was in good  
8 faith. There were no additional substantiations to  
9 substantiate the costs they submitted. You and Mike  
10 were somewhat involved in those discussions. I don't  
11 have any firsthand testimony as to what exchanges were  
12 made. That's the direction we inquired of our district  
13 construction engineer as to what transpired.

14 MR. DEYO: You're not going to address the 188 --

15 MS. ISAAK: That has not been submitted to the  
16 Board.

17 MR. HORAN: We just submitted it.

18 MS. ISAAK: But it's a separate claim.

19 MR. DEYO: Is this the reply to the letter in  
20 August --

21 MR. MINICH: They responded to us last week.

22 MR. DEYO: -- to your method of calculation of  
23 188,000 --

24 MR. MINICH: Last week we received this letter on  
25 Thursday of last week.

1           CHAIRMAN COWGER: Is that the letter dated  
2           October, what is it, the 19th?

3           MR. MINICH: 18th.

4           MR. HORAN: That's their letter to us.

5           MR. MINICH: That they rejected it outright and  
6           they wouldn't address it here.

7           MR. SANCHEZ: Per discussion with the district  
8           construction engineer.

9           MR. MINICH: We think it is relevant and we want  
10          to discuss it. We think it should weigh on your  
11          decision.

12          CHAIRMAN COWGER: What is it you want to address,  
13          your supplemental request dated August 7th?

14          MR. MINICH: Yes. Even figuring it their way,  
15          the way they suggest -- we come up with 75 percent --  
16          we didn't agree with that is the way to look at it, but  
17          we come up with that, in the same way we came up with  
18          our first claim amount. And last week, 72 days after  
19          we gave them the first letter we get a response less  
20          than a week before the arbitration hearing is where we  
21          get it.

22          The only reason I'm bringing that up is to make a  
23          point. Okay. We have tried to negotiate in good faith  
24          and we feel now the Department is trying to use our  
25          good faith negotiations against us in their rebuttal.

1 And we just don't think that's fair.

2 MR. HORAN: Gene, I have one last exhibit. They  
3 wrote us a letter dated October 18th rejecting that  
4 claim, and we wrote this letter here of October 19th,  
5 so now you have the whole thing.

6 CHAIRMAN COWGER: This October 19th letter has  
7 previously been introduced as an exhibit.

8 MR. ROEBUCK: Three.

9 CHAIRMAN COWGER: Three?

10 MR. ROEBUCK: That's just an extra copy. Okay.

11 CHAIRMAN COWGER: Now, let's stop a minute.  
12 We've had a lot of stuff thrown at us here. There is  
13 the letter to Mike Horan dated August 7th. We are  
14 going to call that Exhibit 6. Everybody has that,  
15 right? The letter to Mark Minich dated October 18th is  
16 going to be Exhibit 7. We already have this October  
17 19th letter introduced as Exhibit 3.

18 Now, I was just handed a minute ago, I believe,  
19 by Mike Horan another package here. Who gave me this?

20 MR. SANCHEZ: I did.

21 CHAIRMAN COWGER: Excuse me. What is this?  
22 Explain to me what it was. You handed it to me. I'm  
23 not sure what we have here.

24 MR. SANCHEZ: That is the cover letter which came  
25 with the \$180,000 claim. The point of relevance we are

1 submitting that, we are refuting the \$180,000 claim.  
2 You will note in the last paragraph that they clearly  
3 state, if this proceeds to arbitration they are going  
4 to proceed on with the \$250,000 version, which is what  
5 we are prepared to discuss at this point.

6 CHAIRMAN COWGER: Okay. We understand that. We  
7 are not going to put you in the position of trying to  
8 rebut the \$188,000 claim today.  
9 (Whereupon, Exhibit Nos. 6 and 7 were received in  
10 evidence.)

11 CHAIRMAN COWGER: Okay.

12 MR. SANCHEZ: There certainly was no --

13 MR. DEYO: I don't take it as a claim. I take it  
14 as a submission --

15 MR. HORAN: Good faith.

16 MR. DEYO: -- as requested by the district  
17 engineer.

18 MR. SANCHEZ: There was a review in good faith.  
19 Basically the review ended up with the same conclusion.  
20 That review was conducted by the director.

21 MR. ROEBUCK: I think you made a statement that  
22 they were advised immediately about the denial of this  
23 claim?

24 MR. SANCHEZ: I can't say how soon it was but  
25 Mike and --

1           MR. HORAN: As soon as I knew, when I got that  
2 letter on October 18th is the first time I knew the  
3 \$180,000 was firmly rejected.

4           MR. MINICH: You had conversations with Mike and  
5 asked what was the status, and there was no status.

6           MR. HORAN: It was that I will get back to.

7           MR. SANCHEZ: Our conversation with the  
8 construction engineer was that there was conversation,  
9 it was rejected, and we will proceed with arbitration.  
10 I can't tell you what the time frame is.

11          CHAIRMAN COWGER: I think we all understand that  
12 now, but before you leave the topic, let me go back and  
13 ask you a couple of questions, if I could, about the  
14 \$249,000 claim.

15                 In -- you've got this sheet here that sums it up.  
16 Then following that you've got some breakdowns. You've  
17 got these phases in here. What are those phases?

18           MR. MINICH: Those are from our former accounting  
19 system that we have recently changed, but they are from  
20 our accounting system. Those are claims or phases. If  
21 I could have that document, Terry -- I just have a  
22 cover here. That phase is 2,000 series numbers?

23          CHAIRMAN COWGER: Yes, most of them are in the  
24 9,000 series.

25           MR. MINICH: The 2,000 series in our old system

1           was relegated to base and grading-type items and the  
2           9,000 series was relegated to miscellaneous  
3           construction and maintenance of traffic items, the  
4           9,000 series. Those were from our accounting systems.

5           MR. ROEBUCK: Chart of accounts --

6           MR. DEYO: They are costs allocated to various  
7           phases or types of work?

8           MR. MINICH: In our system the 3,000 series were  
9           allocated for asphalt paving. You can see that is not  
10          in our claim.

11          MR. HORAN: And the 5,000 is for concrete.  
12          That's not in there, too.

13          CHAIRMAN COWGER: I think you answered my  
14          question.

15          MR. MINICH: And the other, the 9900 is for  
16          subcontractor, and those aren't in there.

17          CHAIRMAN COWGER: Another question. As  
18          I understand the \$249,000 now, that consists of direct  
19          costs, overhead calculated in accordance with Eichleay,  
20          a margin and bond for the period between 12 -- December  
21          of '93 and June of '94?

22          MR. MINICH: That's correct.

23          CHAIRMAN COWGER: Are those costs that you've  
24          claimed during that period all of your direct costs?  
25          Well, all the direct costs related to the phases shown

1 in the breakdown?

2 MR. MINICH: That's right.

3 CHAIRMAN COWGER: Not --

4 MR. MINICH: We have subcontractor costs --

5 CHAIRMAN COWGER: No credit given back?

6 MR. MINICH: There was payments, 86,622.92.

7 That's the credit given back. That's what we received  
8 for work accomplished during that period of time.

9 CHAIRMAN COWGER: That's in that same time?

10 MR. MINICH: Yes. Those are the payments we  
11 received for related items. We did credit that. Our  
12 subtotal is \$316,329.92. Payments are \$86,622.92, the  
13 total is 229.

14 CHAIRMAN COWGER: I understand. I think that's  
15 all I need to know right now. Was there any costs in  
16 here --

17 MR. ROEBUCK: May I ask a question --

18 CHAIRMAN COWGER: You mentioned all this business  
19 about the utilization of the truck-mounted impact  
20 attenuators. That's not reflected in here directly,  
21 right?

22 MR. MINICH: Not directly. It was part of our  
23 equipment costs.

24 CHAIRMAN COWGER: Excuse me, Jack.

25 MR. ROEBUCK: The amount of the progress payments



1           during that time, in your rebuttal are you going to  
2           address that? Is that correct, that amount of \$80,000?

3           MR. SANCHEZ: We didn't verify whether that was  
4           correct or not. There was work during that period. We  
5           will address that point in our rebuttal.

6           MR. HORAN: I want to clarify. The 86,000 is  
7           just work items that Ajax did. We did do some  
8           subcontractor items. So, the progress work  
9           estimates --

10          MR. ROEBUCK: May be higher?

11          MR. HORAN: -- will be higher because we did some  
12          concrete work. And what else did we do.

13          MR. MINICH: Priced some paving work during that  
14          period.

15          MR. HORAN: And some paving that -- things that  
16          weren't related to the project really.

17          MR. MINICH: We didn't include our forces in the  
18          paving operation.

19          CHAIRMAN COWGER: One other quick question. In  
20          the overall summary you've got margin, I assume that's  
21          at 10 percent because --

22          MR. MINICH: No, it's about 6 percent.

23          CHAIRMAN COWGER: I couldn't figure out how you  
24          got that number. It's not 10.

25          MR. MINICH: Just trying to be reasonable.

1           CHAIRMAN COWGER: That's good enough. Go ahead.

2           MR. MINICH: Just to summarize a little bit of  
3 what I was talking about, the different methods of  
4 calculation of the claim, the claim coming along,  
5 I think what it shows is we were trying right along to  
6 settle this thing.

7           The different methods of calculation showed that  
8 we were, indeed, damaged in a major way on this  
9 project. I think it's kind of simple to see that you  
10 can't take 125-day project and extend it for 257 days  
11 and not have any costs associated with that. I think  
12 that that is just common sense tells you you can't do  
13 that. Now, what is the cost of that? We have  
14 demonstrated what the cost is.

15           Now the only other thing I want to talk about  
16 here is a little bit about what appears to be the  
17 Department's defense of their position based on their  
18 rebuttal package. One is that they bring up the issue  
19 of poor management. We believe it's a nonissue. The  
20 Department alleges that we had seven project managers  
21 on this job. That's just not true. That's not true.

22           I hired a guy, a project manager, Dave Griffith,  
23 started right there, I added it to this sheet. Started  
24 around September 20th employment. He was on that job  
25 until he left us in May of '94. One project manager

1 from the start of construction up until almost the end  
2 of their delay. Okay. He left our employ at that  
3 time, moved on.

4 We had from that point on out two other project  
5 managers. For a short period we had Jim Scott and then  
6 Mike Knox came to the job when the work actually  
7 started after the delay and finished the job. Those  
8 were the three project managers we had on this project.

9 Another issue they bring up, they bring up that  
10 the project was too far away from our home office for  
11 us to be effective. This is a nonissue. At the same  
12 time we were doing this job, we were building a four  
13 and a half million job just as far away in St.  
14 Petersburg on Fourth Street. I don't understand how we  
15 can't manage a \$765,000 and can manage a four and a  
16 half million dollar job and be the best in the state.

17 Number two, cost and damage calculations.  
18 I don't think the Department understands our claim and  
19 they never did. They contend some of the costs we  
20 incurred during the delay were unrelated to the strain  
21 poles. We agree. We gave them an \$86,000 credit for  
22 those costs. For the ones unrelated we did some work,  
23 we gave a corresponding credit. We agree with that.

24 The simple fact is it doesn't matter how we would  
25 have figured our claim, their response was deny.

1           That's a simple fact. We figured every way to Sunday,  
2           and the fact is they denied it.

3                     Number three, the Department contends that our  
4           numerous efforts to resolve the claim, and the rising  
5           value of our claim, as it was becoming more obvious to  
6           us, affects the credibility of the claim. Again, not  
7           true. I've already gone over how we went through our  
8           negotiations, how the price went up, Mike getting after  
9           me to let's figure out how this thing actually is.

10                    The actual numbers. I'm not an attorney, okay,  
11           but the way I understand it, by what I've heard is that  
12           an offer to settle that is rejected can't be used  
13           against you after negotiations, after further  
14           negotiations. You can't use that offer to settle  
15           against us. And that's what the Department is trying  
16           to do. We feel the Department has taken our good-faith  
17           efforts to negotiate with them out of context.

18                    And last, okay, the Department insists that the  
19           signal pole error did not cause the delay. This  
20           project could not have been completed one day earlier  
21           than it was except for the delay.

22                    In the Department's own internal memo, which you  
23           probably have a copy of, it's in your rebuttal package.  
24           Here is a copy to refer to if you need it. In their  
25           own internal memo they not only admit to the strain

1 pole delay but they recognize and propose the addition  
2 of 72 more days for the completion of the remaining  
3 work items that were in their words dependent on the  
4 installation of the poles.

5 MR. SANCHEZ: Those remaining work items are not  
6 included in the costs in that document. As Ajax just  
7 stated, they removed asphalt items. Remaining work  
8 items added in that time extension for subsequent  
9 completion after strain pole completion were not costs  
10 included in this document.

11 MR. MINICH: If I could go on, the 72 days that  
12 were dependent is strictly a little number here. If  
13 you remember, back here on day 29, we say it started.  
14 If you take 29 from 125, that's 96. So that means that  
15 there were 96 days that we had planned for  
16 construction, and they are saying that we should have  
17 had a 72-day extension based on the remaining 96 days  
18 of work, by their own admission.

19 That's 75 percent of the remaining contract time  
20 they are admitting was dependent upon the installation  
21 of the poles.

22 We think by their own analysis the Department  
23 concurs with our analysis. We don't believe they  
24 understand our plan. I don't know that it's that hard  
25 to understand, but that's pretty much the end of our

1 presentation unless there's any questions anybody may  
2 have. I will be glad to answer them if I can, and I'm  
3 sure I can.

4 CHAIRMAN COWGER: May I ask something. Before  
5 DOT starts, we have a few sheets out of the plans, but  
6 from all that I couldn't quite figure out the sequence  
7 of work on the pavement itself.

8 I assume that, talking about just the pavement,  
9 the sequence was to mill off some existing pavement,  
10 construct some friction course on top of that, and  
11 somewhere in there I read that there was no asphalt  
12 structural course. Is that correct?

13 MR. SANCHEZ: No structural course over the  
14 milled surface.

15 MR. MINICH: Over the milled surface.

16 MR. DEYO: Of C-4.

17 MR. SANCHEZ: Correct.

18 CHAIRMAN COWGER: Then the loops for the  
19 traffic signals had to be put in at some point. As  
20 I understand, it was necessary because of certain  
21 factors that those be installed after the friction  
22 course was in place, right?

23 MR. SANCHEZ: That's what actually happened.  
24 Whether it was a contract requirement, I don't know.  
25 The -- we will say it's uncommon to install loops in a

1 milled surface.

2 MR. MINICH: The reason that it's done, though,  
3 it's really the logic of construction, Gene. The logic  
4 of construction, you've got your home runs and  
5 everything, and if those things aren't buried the same  
6 depth, if you put those in before you mill, a lot of  
7 times you nick them. We still had pole foundations to  
8 put in. The home runs have got to run to the  
9 controller.

10 MR. SANCHEZ: We are not talking about putting  
11 them in before you mill.

12 MR. DEYO: On dense graded mixtures you usually  
13 cut those in afterwards. If you have FC-2 you cut them  
14 in the structural layer.

15 CHAIRMAN COWGER: That's what I thought, but you  
16 are saying in this case, why was it not practical to  
17 put them in between the time you milled and the time  
18 you laid the friction course?

19 MR. MINICH: We had a 72-hour pay-back. We  
20 couldn't leave it open. We had a restriction, another  
21 restriction.

22 MR. HORAN: Not only that, Gene, the home runs  
23 couldn't be -- you couldn't saw through the concrete  
24 because we didn't know where the controller would be  
25 mounted because we didn't have the poles set up yet.

1           You couldn't really run everything. You couldn't do  
2           any of that work.

3           MR. MINICH: Our subcontractors, they don't want  
4           to assume the risk of their stuff laying out there in  
5           no man's land and everything is going on and then they  
6           hook it up and then they've got something to fix  
7           because it doesn't work.

8           CHAIRMAN COWGER: I think I understand that. At  
9           some point in time, whether it is done now or during  
10          the DOT's rebuttal, I think we need to hear a little  
11          bit more about the statement that was made in some of  
12          these documents here that the problems with the signal  
13          pole design and the delays related thereto somehow or  
14          other impacted other items of work. I haven't heard  
15          much on that, how that happened. So, will that come  
16          out in your --

17          MR. MINICH: How they impacted other items?

18          MR. SANCHEZ: We will agree with what you are  
19          alluding to right there. We do not see the relation.  
20          That's our point of context. We will go on.

21          CHAIRMAN COWGER: Okay.

22          MR. SANCHEZ: That's exactly what we are saying.

23          MR. MINICH: I think that's the subject we were  
24          just talking about.

25          CHAIRMAN COWGER: It had to do with part of it,



1 but the thing I want to hear is why is it that any  
2 other items of work, other than those related to the  
3 signals were delayed by the fact the signals couldn't  
4 be put in? In other words, what I'm saying is how come  
5 that work couldn't have been done far earlier than it  
6 was?

7 MR. MINICH: Most of it was, Gene, most of it was  
8 done far earlier, what could be done. However, it  
9 couldn't be completed --

10 MR. HORAN: Let them go. At this point we will  
11 let him go ahead and give his statement.

12 CHAIRMAN COWGER: Why don't we do that. I want  
13 that to come out somewhere in the testimony because I'm  
14 confused.

15 MR. HORAN: Maybe it will get cleared up when  
16 he --

17 CHAIRMAN COWGER: Mr. Roebuck or Mr. Deyo, do you  
18 have any questions before we proceed on?

19 MR. ROEBUCK: Not at this point.

20 CHAIRMAN COWGER: We will now let DOT start.

21 MR. SANCHEZ: There's one point regarding the  
22 chronology of what transpired with the strain poles  
23 that we would like to contend before we make another  
24 statement, and that is that they contend that the delay  
25 began when they have scheduled on their bar chart,

1 commencement of signalization. That date is December  
2 '93 sometime.

3 We did not get just the second submittal shop  
4 drawings until December of '93. During that period we  
5 are still under the premise of the contract, that we  
6 would have copies of special design strain poles.  
7 That's one thing we would like to clarify.

8 The big overall picture, since this began we have  
9 not contended DOT failed in our obligation in regard to  
10 the signalization, the strain poles specifically and  
11 the span wire.

12 This was new, as Mark is correct. There was a  
13 new learning curve for our production people and what  
14 we were trying to do with the signalization. We were  
15 wrong. That part of the contract we failed. The time  
16 frame which we are talking about we feel we made Ajax  
17 hold. That's why we had a 210-day time extension.  
18 That was an attempt to make them whole in that regard.

19 We acknowledge we pushed out ultimate completion  
20 of the job, ultimate completion, including completion  
21 of the signalization work.

22 The signalization, they made one statement, they  
23 stated signalization was critical after their schedule  
24 commencement of signalization. We disagree. We felt  
25 and we contended all along signalization was critical

1           when signalization was the last item and it was very  
2           feasible for signalization to be the last item. There  
3           were concurrent contract items throughout the whole  
4           duration of the alleged delay period.

5                     Again, we do not contend the time frame. DOT  
6           pushed out ultimate completion of the job. We charged  
7           LDs. We said wait a minute, this is not correct. We  
8           paid interest on the LDs.

9                     In regards to our attempts to resolve the claim,  
10          we have to have a good working relationship with Ajax.  
11          We will continue to have a good working relationship  
12          with Ajax. They will continue to get jobs out of our  
13          office. The end product was a good product. There is  
14          no contention to that effect. I can't testify as to  
15          what Mike and Mike Irwin's exchanges were.

16                    If we were not as timely in some of our issues,  
17          and there are some other issues we apologize to Ajax  
18          for not being as timely as we should have been. There  
19          is no malice intended.

20                    We feel we processed SAs. We made Ajax and  
21          Ajax's subcontractor hold. They had a very good  
22          subcontractor on the job, highway safety devices. We  
23          processed the SA for roughly 50 grand.

24                    Each new strain pole was roughly \$12,000. We  
25          made them whole in their design attempts for steel

1 design. DOT did not know what we wanted.

2 We feel that we pushed out completion of the  
3 signalization part, the above ground signalization part  
4 of the contract. DOT failed in that part.

5 Now, there is a balance of the contract. The  
6 balance of the contract is what these costs are  
7 associated for. One of the key issues we feel is that  
8 our failure to administer the contract properly in  
9 regards to this particular item does not relieve Ajax  
10 of their obligation to complete the balance of the  
11 contract in a reasonably timely fashion. There must be  
12 an assumption of responsibility there to complete the  
13 project. We completely assume the responsibility for  
14 ultimate completion.

15 That's probably the main point we want to make.  
16 We are going to go through our rebuttal and try to  
17 emphasize some of the points that we wish to make  
18 during this process here. We will go ahead -- let's  
19 flip through the Department's rebuttal to the claim.  
20 These are sheets copied directly out of Ajax's claim.  
21 We have highlighted the points of contention which we  
22 think we need to make clear to the Board where there  
23 may be some -- a very broad statement which needs to be  
24 narrowed down a little bit.

25 The first statement, in Ajax's introduction to

1           the claim. "Ajax experienced conditions and delays to  
2           the work due to ambiguities in the plans and  
3           specifications which were not apparent at the time the  
4           project was bid."

5                   That's partially correct, very true. There were  
6           ambiguities in regard to signalization, concrete strain  
7           poles. The balance of the contract was predominantly  
8           constructed as designed. That's important because the  
9           costs, 95 percent of this document or 90 percent of  
10          this document, whatever, are costs associated with the  
11          balance of those contract items. We feel there is no  
12          link. That's the main point of contention. That's why  
13          we are here.

14                   We highlighted or we bolded portions of our  
15          rebuttal, and just to reiterate what I said, the  
16          remaining balance of the contract items were  
17          constructed as designed. There was never any redesign  
18          in the balance of the items.

19                   Again, we feel in our business we need to work  
20          together here. We completely assume responsibility for  
21          the Department's actions on the strain pole issue, but  
22          there must be a responsibility on the contractor's  
23          actions for the balance of the items.

24                   We are going to go on. We will talk about the  
25          plans, the relation between the balance of the items

1           and the strain pole just does not exist. We talk  
2           about -- I will make that point further on.

3                     Pertinent information, Ajax claim. MOT was  
4           required during the duration of the project when work  
5           was being performed and when no work was available,  
6           erosion control required throughout project time when  
7           work being performed, no work available, correct.

8                     Point A, let me back up one step and try to  
9           explain. We should lay out the contract plans. The  
10          contract was three separate projects, each with its own  
11          intersection improvement. Columbus Drive had no strain  
12          pole work, only span wire work and did have widening  
13          work.

14                    The other two signalized intersections were  
15          existing diagonal spans which were to be proposed  
16          expansions. We will lay out each intersection here.  
17          This is Columbus Drive, the orange indicating existing  
18          strain poles. We did nothing but reconstruct the span  
19          wire and place new signalization heads.

20                    There is widening work along these limits here in  
21          this quadrant approaching Columbus Drive. These  
22          intersections are separated by a couple of thousand  
23          feet. Each project -- separate project ended in a  
24          couple thousand feet.

25                    There is widening in this quadrant of Columbus

1 Drive. If you do a little detective work and look at  
2 the claims they submitted, there are costs included in  
3 that claim which were prosecuted during the completion  
4 of regular excavation of stabilizing of curve work  
5 which are in this quadrant no relation, mind you, all  
6 we did was reconstruct the span wire portions of the  
7 signalization.

8 We had a very hard time seeing the relation. And  
9 we did look at it. It certainly was not taken for  
10 granted. We believe we are objective enough to realize  
11 if we hurt somebody we intend to make them whole. We  
12 are here to enforce our interests and the taxpayers'  
13 interest. They are here to make money.

14 This is the layout of the three separate  
15 intersections involved, roughly, again, a couple of  
16 thousand feet in between each intersection.

17 MOT items. We paid for devices throughout the  
18 extended period. Once we processed the time extension,  
19 we were able to, because of our own internal  
20 procedures, we were able to process payment for all of  
21 the devices involved.

22 Let's talk about what actually happened on the  
23 project. The project involved roadside grading. We  
24 graded roadside ditches. What happened was, yes, it  
25 extended during the rainy season, but the roadside was

1        never stabilized, and more importantly could have been  
2        stabilized and should have been stabilized in regards  
3        to the original schedule.

4                The fact that it was not stabilized, they are  
5        attempting to recoup expenses for their recovery work,  
6        I will call it, during that period. The roadside was  
7        never stabilized. We can't quote you at this time for  
8        how many months it was not stabilized.

9                Our contention is there was no reason it was not  
10       stabilized in final dress. There were -- station bores  
11       were laid out incorrectly, grade stakes were laid out  
12       incorrectly. We can't quantify their attempts at  
13       regrading in regards to their errors in layout, in  
14       project layout. We did not do that legwork.

15               Erosion control, same theory, stabilize it. We  
16       are stable, out of there. There is no attempt to  
17       mitigate -- and mind you they did not stabilize. For  
18       example, they did not stabilize Columbus Drive and  
19       Tampa Bay Boulevard because strain poles were not  
20       constructed. Were strain poles going to impact the job  
21       to that effect that they would lose their dressing  
22       work? We will go on and address that.

23               Item B on page five from Ajax's claim. FDOT  
24       required Ajax to proceed with construction on a  
25       piecemeal basis by skipping portions of work items and



1           entire items as they were individually affected by the  
2           Department's delay.

3           The only work item which Ajax could not complete  
4           because of the Department's actions were strain poles.

5           One very -- another very important point to make,  
6           the perimeter of the widening areas were constructed  
7           prior to commencement of strain pole construction.  
8           Curb and gutter was in, widening was in. The roadside  
9           was dressed. The fact that it was dressed over a  
10          period of 200 days, I can't tell you when dressing  
11          began, when dressing ended. The fact that it was  
12          dressed over a period of 200 days is not related to the  
13          strain pole issue.

14          That is a choice by the contractor. I can't tell  
15          you why, if they were overextended. If Mark was able  
16          to have much more of a presence on the job, perhaps it  
17          would have been addressed. I can't tell you that, it's  
18          pure speculation.

19          Again, let me repeat, the roadside was dressed.  
20          The perimeter of all widening areas was in and  
21          constructed prior to commencement. That in itself  
22          contradicts the predecessor-successor relation which  
23          Ajax contends.

24          If it's truly a predecessor, yes, in some  
25          traditional lighting jobs the strain poles are within

1           the limits of widening, are in the way. We delay and  
2           we are going to impact the contractor, no doubt.

3                     In this case, you can look back and note some of  
4           the existing strain poles are set back 40 feet. Some  
5           are closer. Again, the perimeter of the widening was  
6           in place. The fact that it was extended for that  
7           period of time, not related to strain poles, not  
8           related to the Department's liability, we feel.

9                     In regards to a portion of their claim is  
10          extended maintenance of traffic, extended erosion  
11          control items. Let's say they did have that intent for  
12          that delay period to maintain a presence out there.

13                    Based on the Department's standards we feel that  
14          it wasn't quite the effort that they were performing  
15          at, was not what we expected. Again, this is, the main  
16          point here is that these items should not have been  
17          necessary or drawn out as they were.

18                    We would like to introduce some correspondence  
19          from Lynn to the project superintendent and we want to  
20          mark this regarding erosion control. We would like to  
21          introduce this.

22                    MR. KAYSER: Is that part of the original  
23          submittal?

24                    MR. SANCHEZ: It is not part of the original  
25          submittal.

1 CHAIRMAN COWGER: Where are we, 7 or 8? All  
2 right. We will identify this as Exhibit 8.

3 (Whereupon, Exhibit No. 8 was received in evidence.)

4 CHAIRMAN COWGER: Am I missing the date on this?

5 MR. ROEBUCK: It's down at the bottom.

6 MR. SANCHEZ: Here is Exhibit 9.

7 CHAIRMAN COWGER: Okay, this letter to  
8 Mark Minich dated February 4, 1994 is Exhibit 9.

9 (Whereupon, Exhibit No. 9 was received in evidence.)

10 MR. SANCHEZ: So, one of the points there, they  
11 are claiming basically a full-time presence during this  
12 alleged delay period. There were many shortcomings  
13 during this period. The first point we'd like to make  
14 is alleviate this situation, address the roadside. The  
15 perimeter is in. Dress it in. It took the contractor  
16 by choice, for whatever reasons, took them X number of  
17 days. It could have been completed on schedule within  
18 the scope of the contract.

19 There are some certain -- do you want to talk  
20 about specific things that happened with the separator?

21 MS. ISAAK: Other than the grading that Marty has  
22 been speaking of, we also had a separator down the  
23 middle of the main line that had to be removed in order  
24 to reconstruct the new one with the new alignments.

25 What we had noticed on the job was that the

1 separator was moved -- removed, which was necessary for  
2 construction, although when you removed this particular  
3 separator, since it was delineating the centerline of  
4 the main line, you had to put up barricades and  
5 maintain those barricades. You had high truck traffic  
6 and all of this. It took quite a lot of work to  
7 maintain it.

8 CHAIRMAN COWGER: May I interrupt you a second?  
9 During that period of time these barricades that were  
10 sitting there delineating the area where the existing  
11 separator had been removed, did you pay for those?

12 MR. SANCHEZ: Yes, we did.

13 MS. ISAAK: We had a large overrun at the end of  
14 the job in order to compensate the contractor for  
15 those. What we had seen is that the separator wasn't  
16 put back right away so that these devices had to be  
17 maintained over a long period of time. That also is  
18 another point that shows that if no separator had been  
19 constructed, then we would have eliminated the need to  
20 maintain these maintenance of traffic items.

21 MR. SANCHEZ: There was a significant lag between  
22 the removal of the separator and the construction of  
23 the new separator. If Ajax alleges, contends the  
24 payment for handling of those devices -- first off, we  
25 did pay for the devices.

1           Second, that is a good-faith move by our part.  
2           Second, the fact that those devices are there in the  
3           first place is not related to the strain pole issue.  
4           There is no relationship. The strain pole issues are  
5           not related to that scenario.

6           Again, we will continue to refer to the plans as  
7           we go on through this rebuttal.

8           If you have a chance to go through the  
9           attachments in depth in our rebuttal, you will see we  
10          have copied every weekly and we have also contended  
11          those points on the weekly, noting our trouble, our  
12          efforts to have Ajax address the MOT and erosion  
13          control issues which they were not addressing.

14          Also during this alleged delay period, we have a  
15          tabulation of somewhere around 50 to 55 days where  
16          there was no presence.

17          MS. ISAAK: Marty, that's another exhibit.

18          MR. SANCHEZ: We can submit that. Straight from  
19          the dailies.

20          CHAIRMAN COWGER: Glad you brought that up  
21          because I was looking for that and couldn't find it.  
22          This will be Exhibit 10. A summary of nonproductive  
23          days. That is presented by DOT.

24          (Whereupon, Exhibit No. 10 was received in evidence.)

25          MR. HORAN: What page are you on in your

1           rebuttal?

2                   MR. SANCHEZ: We are now going to talk about page  
3           8, item C.

4                   "Ajax has been severely delayed in the  
5           performance of this contract due to the problems  
6           associated with the strain poles. Due to the many  
7           underground utilities present, the exact location for  
8           strain pole placement could not be determined until the  
9           size of the footing was known. Therefore, a large area  
10          could not be completed and as a result the grading,  
11          concrete curbs, sidewalks and final dressing of these  
12          areas was delayed."

13                  These areas were, in fact, in place prior to  
14          commencement of the strain pole construction.

15                  Andy Price, he is a very good subcontractor. The  
16          traditional size of a footer -- and I will say  
17          traditional for lack of a better word, are not going to  
18          vary from 42 to 48 inches in diameter. They vary in  
19          depth. We did turn out with large footers. They were  
20          basically placed as designed.

21                  When they were placed, concrete curb was in  
22          place, grading was done, final dressing was in place.  
23          The spoils from the drill shaft operation did not  
24          destroy any of the existing grading or sodding. They  
25          merely set up a ditch block and filtered the spoils

1 through natural filtration processes.

2 Point D, "Ajax contends that the Department's  
3 delay began on day 29 of the contract and continued  
4 until the day that actual construction of the strain  
5 poles began."

6 If strain poles were truly a delaying factor,  
7 then the alleged delay period would not have ended  
8 until signalization was complete. Ajax's contention  
9 again is they are a predecessor to certain activity  
10 that cannot be completed. They reiterated that point  
11 in responding to our correspondence, stating that  
12 certain items cannot be completed until after strain  
13 pole construction was complete.

14 Again, that time extension was a good-faith  
15 effort on our part to address what Mark had discussed  
16 in his letter, process of time extension up to a  
17 certain date.

18 We feel we have no claim, process payment for SA  
19 payment for the additional costs for design and  
20 concrete strain poles involved. We have no claim.  
21 That was an attempt, a good-faith attempt by our  
22 resident to mitigate, to negotiate. We completely  
23 acknowledged ultimate completion was the Department's  
24 responsibility.

25 Ajax attempted to mitigate the additional costs

1 associated with the delays by using his basic crew to  
2 complete traffic and erosion control items on a daily  
3 basis, and after these items were complete then perform  
4 available portions of the contract work.

5 Again, all portions of the contract were  
6 available due to the geometrics of the contract. In  
7 this scenario all work items were available. And a  
8 true attempt to mitigate the situation is to proceed.  
9 We will refer to the contract again, the contract  
10 plans, proceed with the areas in question and get the  
11 job done, get out of there.

12 All work items with the exception of the above  
13 ground signalization work were available during the  
14 alleged delay period and could have been completed as  
15 Ajax originally scheduled, as they bid, as they  
16 intended. Ajax, that was a choice by Ajax not to  
17 proceed in that manner.

18 CHAIRMAN COWGER: May I suggest something? In  
19 order to speed this thing up, we have all this  
20 information that you have presented us with all of your  
21 rebuttals to each -- up through H, I, J, I guess.

22 Is what you are going to say about all of this  
23 essentially the same, that all of these items that they  
24 are claiming were delayed were not related to the  
25 strain poles?



1           MR. SANCHEZ: That's correct. Is there any other  
2 point?

3           CHAIRMAN COWGER: All right. I think we can skip  
4 on through to --

5           MS. ISAAK: We can skip on through to page 15.

6           CHAIRMAN COWGER: Why don't we do that. I think  
7 you've made your points. I'm sure there will be some  
8 rebuttal, but there's no use going through that over  
9 and over again.

10          MR. SANCHEZ: Okay. Correspondence lists, one of  
11 the letters we alluded to before that Mark had written,  
12 "Signalization work that was to be completed  
13 simultaneously in the original construction contract is  
14 now being constructed after substantial completion of  
15 other work items."

16          Substantial completion of other work items, those  
17 are charges included in 95 percent of this document.  
18 They are done before signalization commences. There is  
19 no relation.

20          CHAIRMAN COWGER: We hear you.

21          MR. HORAN: Marty, where was that you read that  
22 from?

23          MR. SANCHEZ: Our page 17. Number 1. This is  
24 the --

25          CHAIRMAN COWGER: The points you are making

1           there, is that in this letter of June 16th from Ajax  
2           where they are saying that all other work other than  
3           the signalization was substantially completed before  
4           they even began work on the signalization?

5           MR. SANCHEZ: That's correct.

6           CHAIRMAN COWGER: All right. We got that point.

7           MR. SANCHEZ: In their own words signalization  
8           was simultaneous. And that implies you can remove that  
9           item completely.

10          MR. HORAN: We agree. We said substantial  
11          completion of the project, we said substantial  
12          completion of the other work items was completed.  
13          That's taken out of context. Substantial completion  
14          not of the project but of the other work items  
15          available were completed prior to the pole  
16          installation. We don't disagree with that.

17          MR. SANCHEZ: Let's go on to the meat of what is  
18          included in this document, the vast majority of the  
19          dollars involved, around \$160,000.

20          CHAIRMAN COWGER: We are on page 20 now?

21          MR. SANCHEZ: That's correct. We do not agree  
22          with -- again this is based on the same thing that we  
23          have reiterated ten times prior. We are going through  
24          and sampling some. We are not going to go through  
25          every single one. This is completely random.

1           First off, dates of service, December 17th, 31st,  
2       Jason's Hauling. What did Jason's Hauling do? Jason's  
3       Hauling removed excavation material from the project,  
4       which was excavated from stations 476 to 486. Where is  
5       476 to 486? That is this quadrant right here on  
6       Columbus Drive where there is no strain pole work.

7           They are charging us for items of work we paid  
8       for under regular excavation, charging us again for  
9       their haul efforts for that excavated material. We  
10      don't agree. There is no --

11           MR. HORAN: You may not agree because we credited  
12      \$86,000 against the claim. That's part of the  
13      excavation. You paid us for that item. That's what  
14      you don't understand about the doggone claim.

15           MR. SANCHEZ: That's correct.

16           MR. HORAN: We gave back \$86,000. You paid us  
17      \$86,000 to do that excavation.

18           CHAIRMAN COWGER: What you are saying is that  
19      this 2,000 and some odd dollars you are really not  
20      claiming it. You are claiming it but you credited it  
21      back.

22           MR. SANCHEZ: It's repeated. There's more than  
23      what we feel, Mike, there's more than \$86,000 worth of  
24      what we just explained and included in those costs.

25           MR. ROEBUCK: Let me interrupt, but I think you

1           agreed that you did not credit the subcontract items  
2           nor did you charge for it.

3           MR. HORAN: No. There's no subcontract items  
4           involved.

5           MR. ROEBUCK: He said it would be more progress  
6           payment dollars you paid them than 86,000, but the  
7           subcontract item, Jason's Hauling, they have neither  
8           charged it as a cost to the job nor have they credited  
9           the payment for it.

10          MR. KAYSER: Why is it included in here?

11          MR. MINICH: That was an expense, part of the  
12          \$86,000. The concrete work, the drainage work,  
13          anything like that was neither charged nor credited.

14          MR. HORAN: In effect the barrier, the traffic  
15          separator was not done. That's not part of the claim,  
16          but yet you bring it up.

17          MR. SANCHEZ: We brought it up because they  
18          allege extended MOT costs and that's our point of  
19          relevance for that issue. That is correct, that's not  
20          part of the costs. We didn't say it was part of the  
21          cost.

22          CHAIRMAN COWGER: I think we need to go on.

23          MR. SANCHEZ: Again, this is a scenario repeated  
24          over and over, true line coring, excavator for the  
25          proposed separator, roughly \$12,000 that we paid.

1           The claim history, Mark alluded to this during  
2           his presentation. It first started out -- and I have  
3           highlighted it on page 24.

4           It's been Ajax's position that if FDOT would  
5           agree to items one, two and three -- item one, utility  
6           conflicts -- early on in this contract, resolve that by  
7           SA, process payment to the prime contractor, claim for  
8           signalization, forward vision, that's exactly what we  
9           paid, 11,7 for each strain pole, including design  
10          efforts.

11          Item number 3, claim for removal of limerock. We  
12          resolved that. That was another SA.

13          Claim for extension of contract time. Mark's  
14          statement, extending contract time to September 16th,  
15          that was our good-faith attempt to mitigate this delay.  
16          We did not want delinquency for Ajax. They were not  
17          delinquent. The job was finished so late because of  
18          the Department's actions.

19          The claim went from -- originally no monetary  
20          claim, second, \$84,000; third, \$249,000. If we were --  
21          I believe we are objective enough to realize that had  
22          we impacted them, you know, we certainly wouldn't be  
23          sitting here in the first place.

24          The fact that the claim fluctuated, we are not  
25          privy to their internal bookkeeping or how they

1 schedule, how they bid, but certainly if we are  
2 impacted, again, it's speculation, there is not  
3 contractual liability at all, but certainly for impact  
4 I want retribution.

5 Background information, this is some FYI  
6 information, based on some of the things we have talked  
7 about. SA for project overruns, strain poles, the  
8 limerock and base work Mark is talking about in his  
9 letter, utility claim, interest on LDs, which we held  
10 and realized we were wrong, we needed to pay them, the  
11 time extensions involved.

12 In conclusion we contend the strain poles did not  
13 interfere with the prosecution of the balance of the  
14 work. We can speculate. Speculations are irrelevant  
15 as to what Ajax did with their forces. That was their  
16 choice. We attempted to make it clear during the  
17 prosecution of the contract that, hey, we have some  
18 other work here that needs to be done and should get  
19 done. We attempted to make that clear in dailies and  
20 in our conversation with Ajax.

21 Our reference to their physical location, again,  
22 it's a -- they did have a \$4 million job which they did  
23 an excellent job on. Perhaps that's one reason they  
24 did an excellent job on is they were able to reallocate  
25 forces. Speculation, again, irrelevant.

1           We feel we retained an open mind to the strain  
2           pole issue and acted fairly. We never contended that  
3           we extended the ultimate completion of this job, and we  
4           attempted to make Ajax whole in that regard.

5           Our time extension, dependent items on the time  
6           extension, those were dependent items not done. We did  
7           not contend those items while we were processing the  
8           time extension. That was a good-faith effort. Those  
9           happen to be the items not completed. The cost for  
10          those items are not in this document.

11          Lynn, do you want to add anything?

12          MS. ISAAK: No, I think you did a great job.

13          CHAIRMAN COWGER: Before -- I think we are going  
14          to let the contractor come back with some rerebuttal or  
15          whatever.

16          MR. HORAN: It won't take but ten minutes.

17          CHAIRMAN COWGER: I would like to address that.  
18          I know you have a plane to catch. I would like you to  
19          confine things to things that have been pertinent. All  
20          this business about good faith and who is responsible  
21          for what, let's stay away from that and deal  
22          specifically with why it is that you all think the  
23          strain pole issue did, in fact, delay all this other  
24          work. Isn't that basically what you want to come back  
25          with?

1 MR. MINICH: Yes.

2 CHAIRMAN COWGER: Go ahead.

3 MR. MINICH: I have just one point. The  
4 Department admits to the delay. They admit to this job  
5 being as long as it is. We have letters, we have to  
6 maintain this project from the time it starts, our  
7 contractual obligations, regardless of what reason.

8 So, whatever happened out there, they sent us  
9 these letters. Lynn sent these letters.

10 Their project guy had us out there. We had the  
11 scrub barricades, all those kind of things. You have  
12 to maintain it. That is our contractual obligation.

13 The other thing is, that's interesting to know  
14 they said nothing is dependent on the strain pole  
15 operations. However, once we couldn't proceed with the  
16 strain poles -- on our original job work progress chart  
17 we show three areas of clearing and grubbing. The  
18 first two areas we were going to get started on we  
19 could get those poles in there, proceed through with  
20 the project.

21 When they took those out, they necessarily  
22 stopped some work on certain items, such as we couldn't  
23 do the milling, couldn't do the friction course. They  
24 say most of the final work in the concrete work and  
25 everything was done. We agree, but it was done at our



1       peril. And we replaced certain items of that work out  
2       there. There's things that got broke that we had to  
3       replace. We didn't get payment for that.

4               There was grading that had to be done. There was  
5       milling that had to be cleaned off of areas that were  
6       already dressed and things like that.

7               The whole sequence of the job was changed.

8               Our point is that, yes, there is a lot of things  
9       that could have been done, and yes, there were a lot of  
10      things that were done, and we had to maintain the  
11      presence on the job.

12              I think that our claim has proven in several ways  
13      and especially with the proportional method that  
14      I submitted today. I think that's normal operating  
15      procedure to see on such a claim, and it more than  
16      supports the number that we're talking about.

17              I just want to talk about the sequence. Once  
18      this thing got thrown out, once the sequence got messed  
19      up -- that was Columbus Drive. The other two ended up  
20      being way after all the other contract was done, before  
21      those intersections could be -- before we could address  
22      those.

23              You say, well, you actually were able to do that  
24      work without a big mess. Well, there's a couple of  
25      things that play in there. First of all, they reduced

1           the dam work in half. They cut from eight poles to  
2           four poles late in the project.

3           Yeah, it wasn't much. You got cut in half. Why  
4           didn't we know that up there when the delay was going  
5           on? Just cut half of it out right there.

6           So, I get a little too emotional. I will let  
7           Michael take over from here. I was too close to it.

8           MR. HORAN: We don't really need to spend a lot  
9           of time on the rebuttal. They said in here ten times  
10          I think I counted, that the poles had nothing to do  
11          with the time it took to finish this project.

12          But yet in the memorandum they say that 75  
13          percent of the work items were directly related.  
14          I don't understand how you could have one and not the  
15          other. That's confusing to me.

16          The other thing is they say that the work items  
17          were available. Marty admits they were completed, most  
18          of them were completed. What he neglects to tell you  
19          is that some of the stuff we did got broke because of  
20          the installation of the poles. Sidewalk and curb had  
21          to be replaced.

22          MR. SANCHEZ: There were quite a few areas of  
23          sidewalk replaced due to sidewalk ending up two inches  
24          thick. It was a poor concrete subcontractor.

25          MR. HORAN: We didn't charge you for that.

1           MR. SANCHEZ: I understand that.

2           MR. HORAN: The other thing is our curb and our  
3 sidewalk out there, even if we had done it early on, is  
4 out there to the traffic and anything else that might  
5 break it and you guys would make us fix it. We are  
6 responsible.

7           If we had done this curb back here on schedule,  
8 if it had been broken here, I don't know how many days  
9 into the, I don't know, 300 and whatever days into the  
10 contract, you would have made us fix it. We are  
11 responsible to the very end. Nobody talks about risks.  
12 We took the risks of this whole job and held the State  
13 harmless. It just isn't right.

14           We should have completed this job right there  
15 (indicating on chart). That's where we bid it. We put  
16 our pricing to build it, and we bid it according to the  
17 way that chart is.

18           Nothing happened that way, yet you all say it  
19 doesn't cost us anything. Yeah, nice to give us 210  
20 days. Even though you had to have a project guy out  
21 there the whole time. This doesn't make sense. You  
22 know, I think the State just is -- I just don't think  
23 they understand, period. That's all I can tell you.

24           The only other thing I can say is that the --  
25 everything was constructed but we couldn't really

1           construct and set up a plan that would construct it  
2           simultaneously. I think that's key because we figured  
3           to go in and build all three intersections at once and  
4           we couldn't.

5                   I know there is a statement in here and we read  
6           it, where they said, well, the friction course on  
7           Columbus could have been done, could have been  
8           completed. Yeah, and that was 500 square yards. Do  
9           you know how many tons that is? That's two and a half  
10          loads. Am I going to send a paving crew out there to  
11          do two and a half loads of friction course? No.

12                   I don't know how they can say the thing wasn't  
13          constructed according to the plans. It just doesn't  
14          make sense. On that alone I believe that we are right.  
15          You know, I do want to emphasize that our costs in this  
16          thing, you keep bringing up the concrete, you keep  
17          bringing up this and that, those are not in the claim.

18                   That's why I don't understand why the State  
19          continues to throw that back in our faces when we ate  
20          any costs of repairing concrete that was done poorly  
21          and we ended up kicking that sub off and we got a  
22          better sub in there.

23                   Yes, we had poor management. I don't quite  
24          understand that either. It's not an easy thing to kick  
25          a sub off and get another one.

1           So, I guess with that, I don't know, do you have  
2           a whole lot of other rebuttal?

3           MR. DENK: Have we made it sufficiently clear how  
4           we feel the job should have been built, the exact  
5           sequence that the strain poles affected?

6           CHAIRMAN COWGER: I'm not sure. Can you tell us  
7           quickly about that?

8           MR. DENK: The way we designed this job to build  
9           it was to -- you clear it, then you put the strain  
10          poles in. You do all that earthwork right there, you  
11          know, get it designed, get it in the ground. Then you  
12          go through and do all of the relevant earthwork on the  
13          widening and the -- any of the grading for the ditches.

14          When they took the poles out of the sequence,  
15          that led to the point where we could only do some of  
16          the earthwork. We had to leave the corners bare. We  
17          couldn't do any work in the corners. We ended up doing  
18          that work and then had to redo it again later when the  
19          poles were put in. And the rework is not part of the  
20          claim. It's just the costs we incurred during that  
21          period that are part of the claim.

22          MR. ROEBUCK: Can I ask you a question, Marty.  
23          In your experience or Lynn's, whoever, have you ever  
24          seen a job run overtime 200 percent?

25          MR. SANCHEZ: Absolutely.

1 MR. ROEBUCK: That's unusual for me.

2 MR. KAYSER: We are getting a lot of them.

3 MR. SANCHEZ: And mixes where it's the  
4 contractor's liability and the Department's liability.

5 MR. ROEBUCK: If it's the Department's liability,  
6 have you ever paid any money for claims of the delay to  
7 him?

8 MR. SANCHEZ: Yes.

9 MR. ROEBUCK: Yet here you didn't think it was  
10 necessary because the man had to staff and man the job  
11 for a whole year's time when he should have been out of  
12 there in three or four months.

13 MR. SANCHEZ: That's correct. When discussions  
14 began, Tom began to get in the loop, and it's --  
15 completion of the job was the Department's liability.  
16 The nature in which it was completed, we will contend  
17 that, again, was not the Department's or the taxpayers'  
18 responsibility.

19 MR. ROEBUCK: You saw this occur early on, barely  
20 mobed on the job. Did you ever consider telling him to  
21 demob and come back in six months or a year?

22 MR. SANCHEZ: One other person with Ajax had  
23 requested to postpone the project. The basis for that  
24 request for postponement was -- in writing I believe we  
25 have that here -- was Tampa stadium events.

1           CHAIRMAN COWGER: We are familiar with that.

2           MR. SANCHEZ: Okay. At the time -- the resident  
3 at the time reviewed the request. I don't know if the  
4 DC was involved or not, but we decided to proceed.

5           MS. ISAAK: The only thing along that line  
6 I would like to say is we do have correspondence  
7 between our office and Tom Kayser's office where we do  
8 state -- and we had reiterated this to the contractor,  
9 if we did get to a point in the contract where there  
10 was no additional work that could be completed other  
11 than the strain poles, that we would either extend time  
12 or suspend time. I don't know if I should introduce  
13 that as an exhibit.

14          MR. KAYSER: It was never done in writing.

15          MS. ISAAK: It was a verbal. That was the stance  
16 that our office took.

17          MR. MINICH: That was kind of like the one Mike  
18 talked about, the one where we were told if we just  
19 kept proceeding on this thing and would get it to the  
20 point where we couldn't do any more, they would work  
21 with us, and a few days later we got a supplemental --

22          MR. HORAN: In July they said they would work  
23 with us on the days. They hadn't held any liquidated  
24 damages. They said they would work those liquidated  
25 damages out. A few days later I get the project

1 estimate in, they took away \$130,000 in liquidated  
2 damages. And not only that, it took us until December  
3 until they said they would give them back to us and pay  
4 interest.

5 MR. SANCHEZ: Again, that's our problem.

6 MR. HORAN: I don't understand why it takes the  
7 State so long to make a decision.

8 CHAIRMAN COWGER: I think we are off into things  
9 that we have heard three or four times already. I do  
10 have one question, though. I'm looking at a memorandum  
11 here, December 7, 1994, dealing with the time extension  
12 of 72 days.

13 You delineate here how you got the 72 days.  
14 I notice that you say that these were work items that  
15 were dependent upon installation of the poles. And  
16 it's milling, joint sealing, friction course, signal  
17 installation, et cetera, temporary striping.

18 It all states earliest event would have been  
19 milling. Now as I understand it, these items were not  
20 done until after installation of the strain poles, and  
21 DOT concurs that these particular items you have got  
22 listed here, this was a practical way to do things. In  
23 other words, it wasn't practical to do any of this work  
24 until the poles were in place.

25 And that was all related to the fact that you had



1 to fit the installation of the loops into all of this,  
2 which had to be -- they couldn't be put in until you  
3 got the signalization well along.

4 MR. SANCHEZ: It was practical and not for some  
5 of their subs to mob twice.

6 CHAIRMAN COWGER: Their signal sub?

7 MR. SANCHEZ: Correct.

8 CHAIRMAN COWGER: Wants to put the loops in  
9 and --

10 MR. SANCHEZ: That's correct. Again, those  
11 items, as I stated in the presentation, those costs are  
12 not part of what they claim as expenses.

13 MR. DEYO: Would you have had signal operation  
14 during that time period?

15 MR. SANCHEZ: The signals were on recall during  
16 that time period.

17 MR. DEYO: So you could have left those poles in  
18 without damage to traffic operations?

19 MR. HORAN: Let me say one last thing, too. All  
20 through rebuttal they keep talking about above ground  
21 signalization. The problem is the footers were  
22 underground. And being underground, the size of the  
23 footers and the equipment that it takes and the small  
24 confined area that it takes is what caused a lot of the  
25 problems.

1           Those intersections could not be worked in. We  
2 ended up having to fix some concrete sidewalk that went  
3 right next to the pole. It couldn't be done. There  
4 was a pole that got broke from the equipment being in  
5 there.

6           That's not part of our claim. We didn't even  
7 charge them for fixing a curb that we feel shouldn't  
8 have been our responsibility.

9           MR. MINICH: Was out of sequence, just out of  
10 sequence.

11          MR. HORAN: If that curb is over here, why over  
12 here is it still my responsibility? Well, it's my  
13 responsibility because they extended the contract out  
14 that far. If the contract had been done on time,  
15 I would have been responsible from here to here.

16          Now I have curb laying out there and who knows  
17 who will run into it and break it. I'm responsible and  
18 doggone it, it's not right. It's just not right.

19          MR. KAYSER: I have a couple of questions to ask.  
20 When was the job substantially complete and you got the  
21 decision on the poles? When was that?

22          MR. MINICH: The decision on the poles?

23          MR. HORAN: Wait a minute. You are talking about  
24 two different things. Decision to order the poles?

25          MR. MINICH: Decision -- February 1st. We

1           started installing the poles on June 24th.

2           MR. HORAN:   March 11th we got our approval of the  
3           shop drawings.   Then we ordered the poles.

4           MR. KAYSER:   Let's say June 24th is when you  
5           started installation?   That's when you got back in?

6           MR. HORAN:   Uh-huh.

7           MR. KAYSER:   When did you submit the last claim  
8           that you submitted?

9           MR. HORAN:   March 17th, '95.

10          MR. KAYSER:   March 17th, '95.   And you all have a  
11          pretty good accounting system?

12          MR. HORAN:   Yes.

13          MR. KAYSER:   Did you all suddenly realize at the  
14          end of the job that you had overextended and spent more  
15          money than you wanted?   Looks like you would have known  
16          early on --

17          MR. HORAN:   No, with the holidays and everything  
18          else --

19          MR. MINICH:   When did we actually get through  
20          with the job?

21          MR. DENK:   DOT didn't accept the job until  
22          July 1st.

23          MR. KAYSER:   If you knew about this -- you knew  
24          about this on June 24th.   Why did it take almost a year  
25          to get a claim in?

1           MR. MINICH: That March 17th is not when we  
2 submitted this claim. That was our claim for this  
3 time -- when was that claim submitted?

4           MR. DENK: The very first one.

5           MR. KAYSER: The very first one was  
6 September 12th.

7           MR. HORAN: This claim here --

8           MR. KAYSER: September 12th -- the costs that you  
9 incurred back here that you knew about, you didn't ask  
10 for any money. Why didn't you ask for money back here?  
11 That makes no sense.

12          MR. HORAN: We did.

13          MR. KAYSER: No, you didn't.

14          MR. HORAN: Yes, we did. We hadn't put it all  
15 together. This stuff doesn't get figured out  
16 overnight.

17          MR. DEYO: Time out.

18          CHAIRMAN COWGER: I think we have everything we  
19 need. We are down to arguing now. I think we are  
20 about to get there. Mr. Deyo said he had a question or  
21 two.

22          MR. DEYO: The only thing I had a question, did  
23 you submit this, is it supposed to be in the package  
24 here anywhere? You handed that over earlier. I marked  
25 it Exhibit 9 or something, but then we have another 9

1           somewhere else.

2           MR. SANCHEZ: Yes, with the intent of being --  
3           that's us.

4           MR. ROEBUCK: That's 7 I think.

5           CHAIRMAN COWGER: Anything else?

6           MS. ISAAK: I think we submitted that twice.

7           MR. ROEBUCK: It's a duplicate.

8           MR. DEYO: Some of it is in the original main  
9           package, some of it is not.

10          CHAIRMAN COWGER: Okay. Does either party have  
11          anything they are just burning to say? Does either  
12          member of the Board have anything to say or any  
13          questions to ask?

14          This hearing is hereby closed. The Board will  
15          meet to deliberate on this claim in about six weeks and  
16          you will have our final order shortly thereafter.  
17          (Whereupon, the hearing was concluded at 12:20 p.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA )

COUNTY OF LEON )

I, CATHERINE WILKINSON, Court Reporter, do hereby  
certify that I was authorized to and did stenographically  
report the foregoing hearing; and that the transcript is a  
true record of the testimony given.

I FURTHER CERTIFY that I am not a relative, employee,  
attorney or counsel of any of the parties, nor am I a  
relative or employee of any of the parties' attorney or  
counsel in connection with the action, nor am I financially  
interested in the action.

Dated this 6<sup>th</sup> day of November, 1995.



CATHERINE WILKINSON  
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