

# STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE  
TALLAHASSEE, FL 32312-2837

PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

## NOTICE

In the case of Hubbard Construction Company versus the  
Florida Department of Transportation on Project Nos.  
15100-3546, 15100-6546 & 15100-6547 in Pinellas County,  
Florida, both parties are advised that State Arbitration  
Board Order No. 5-98 has been properly filed on September  
14, 1998.



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

S.A.B. CLERK

SEP 14 1998

**FILED**

Copies of Order & Transcript to:

Greg Xanders, P.E., Director of Construction/FDOT

Steven E. Sellers, Attorney/Vezina, Lawrence & Piscitelli, P.A.

## **STATE ARBITRATION BOARD**

**ORDER NO. 5-98**

**RE:**

Request for Arbitration by  
Hubbard Construction Company on  
Job Nos. 15100-3546, 15100-6546 & 15100-6547 in  
Pinellas 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 10:00 a.m. on Friday, July 31, 1998

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 5-98 in this cause.

### **ORDER**

The Contractor presented a request for arbitration of a two part claim in the total amount of \$144,371.21 plus prejudgment interest calculated at 10% per anum (\$13,763.40).

The Contractor presented the following information in support of each part of their claim:  
**Part I   Production Pile Overrun                      \$120,146.21**

1. The quantity of production concrete piling, as established from driving test piles or driving data from Phase I bridge construction, exceeded the plan quantity for those items by 59% which is a substantial difference.
2. This overrun in production piling increased the time required to drive piling above the time we anticipated at the time of bidding, as reflected in our approved work progress schedule. DOT agreed during the course of meetings that an additional 17 Working Days or 24 Calendar days were consumed in this operation.

3. The additional time required to drive production piling increased our rental costs for the equipment used in driving piling and in subsequent substructure and cast-in-place superstructure operations. The delay in completion of pile driving forced us to change the sequence of work on subsequent substructure and superstructure concrete operations, resulting in increased costs to perform this work. We could not use crews as efficiently as we had anticipated and we doubled up crews in some instances and worked additional overtime in order to mitigate the impact. The specification requirement that pile driving cannot take place within 48 hours of placing concrete that is within 200 feet of a pile driving operation combined with the delay in pile driving operations to exacerbate this problem.

4. The delays in pile driving caused us to not recover some of the unabsorbed overhead costs allocated to this job.

5. It is not appropriate to apply the prior notice of intent to file a claim provisions of Article 5-12 of the Standard Specifications here, because our claim is not based on extra work but rather on an unanticipated disruption of planned and orderly sequence of work. Also, DOT was not prejudiced by not having this notice, because, there is nothing DOT would have done differently has a formal notice been given.

**Part II Test Pile Payment    \$ 24,225.00**

1. DOT deleted from the work several of the Test Piles shown in the plans

2. DOT treated Pile No. 1 in Bent No. 6 as a Test Pile but paid for this pile under at the lower unit prices for production piling.

3. The DOT geotechnical engineer ordered additional tests to be performed on the pile in question, because of a concern he had with the adequacy of the geotechnical information contained in the plans. This constituted changing the pile to a Test Pile.

4. Article A-455-9.4 of the 1994 Supplemental Specifications states that a test pile left in place as a permanent pile shall be paid for only as a test pile. (Note: Specification reference changed)

**Part III Interest    \$13,763.40**

We are claiming prejudgement interest at 10% per annum for the period between the date of acceptance and the date we filed for arbitration of this dispute and then up to the date of the hearing before the State Arbitration Board.

The Department of Transportation rebutted the Contractor's claim as follows:

**Production Pile Overrun**

1. It is common knowledge that the quantity for production piling is subject to considerable variation between plan quantity and the quantity actually installed in the completed bridge. None of the production piling exceeded the length of the longest test pile shown in the plans. .
2. The Contractor had at least 28 days between the date on which he was aware of the need for additional pile lengths and the date on which pile driving could commence. This was ample time for them to reconsider scheduling of subsequent operations.
3. The increase in pile lengths constituted a significant change in quantity, but did not change the character of the pile driving work. Once substructure concrete work began it controlled progress.
4. We agreed that the length of time required for the pile driving operation increased by 17 Working Days (24 Calendar Days), but did not agree that this was a basis for additional compensation or a time extension for the pile driving or subsequent operations.
5. The equipment for which the Contractor included additional rental costs was concurrently used in other work not related to the additional time required to drive piling.
6. The claim for unabsorbed overhead is invalid because:

The overall completion of the project was not delayed by the increase in quantity of piling.

During the period of the alleged delay, the project was generating revenue to the Contractor. The Contractor has not demonstrated that this revenue flow was less than they anticipated.

7. We were prejudiced by the lack of notice by the Contractor of their intent to file a claim in regard to this matter. Lack of notice took away our ability to accurately track any additional costs that may have been incurred by the Contractor.

**Test Pile Payment**

1. The additional testing ordered was dynamic testing done by attaching a pile driving analyzer (PDA) to a production pile during driving to evaluate the affect of driving through soft material on stresses in piling.

2. The pile in question was not driven in accordance with the description of work for Test Piles set out in Subarticle 455-3. of the Supplemental Specifications.
3. Subarticle A-455-3.14 of the Supplemental Specifications provides that selected permanent piles may be instrumented for dynamic load testing.
4. Payment for dynamic load testing of this pile was made under the item Dynamic Load Tests.

**Interest**

1. We question whether prejudgement interest is appropriate in this situation.

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

**Production Pile Overrun**

1. It was agreed between the parties that driving of production piles took 17 Working Days longer than the time shown for this operation in the Contractor's work progress schedule.
2. Driving a quantity of production piling substantially greater than the quantity shown in the plans had a significant effect on the time required to drive piling and impacted subsequent interrelated concrete construction operations.
3. The Contractor did not substantiate a suspension of work caused by the overrun in production piling or that this caused a change in revenue being generated from the project.

**Test Pile Payment**

1. Pile No. 1 in Bent No. 6 was not driven in accordance with the description of work for a Test Pile.
2. Separate payment was made for the dynamic load testing ordered.

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 for his claim as follows:

PART I	\$ 65,000.00
PART II	\$ Nothing
INTEREST	\$ 6,500.00

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$211.30 for Court Reporting Costs.

S.A.B. CLERK  
SEP 14 1998  
FILED

Tallahassee, Florida

Dated: 9/14/98

Certified Copy:

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

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

Bill Deyo  
Bill Deyo, P.E.  
Member  
John P. Roebuck  
John P. Roebuck  
Member

14 September 1998  
DATE

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

SEP 14 1998

FILED

HUBBARD CONSTRUCTION COMPANY )

)

)

)

PROJECT NO. 15100-3546,  
6546, 6547

- and -

)

)

LOCATION: Pinellas County,  
Florida

)

)

DEPARTMENT OF TRANSPORTATION )

)

**ORIGINAL**

RE: Arbitration In The Above Matter

DATE: Friday, July 31, 1998

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

TIME: Commenced at 10:10 a.m.  
Concluded at 11:05 a.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  
(850) 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 HUBBARD CONSTRUCTION COMPANY:

Mr. Robert Bistor  
Mr. Ernest Wolf  
Mr. Pete Denson  
Mr. Dave Dempsey

## APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Robert Grimsley  
Mr. John Brandvik  
Mr. Bryan Estock

\* \* \*

## I N D E X

## EXHIBITS

## PAGE

Exhibit Nos. 1, 2 and 3 in evidence

4

## CERTIFICATE OF REPORTER

42



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.

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 Chairman.

Our terms of office began July 1, 1997 and expire June 30, 1999.

I want to identify the exhibits that have been presented so far. We have a copy of the request for arbitration that the contractor sent in, along with a book full of documentation. We will identify that as Exhibit 1.

We have a notebook which contains a DOT rebuttal package to the contractor's claim, which we will identify as Exhibit 2.

While we are identifying exhibits -- the contractor will make mention of this later, but he has revised his damage summary form that was included in the original claim, and we will identify that as

1 Exhibit No. 3.

2 Does either party have any reason that they need  
3 to have any time to examine the new exhibits?

4 MR. BRANDVIK: No.

5 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in  
6 evidence.)

7 THE COURT: Hearing nothing -- during this  
8 hearing the parties may offer such evidence and  
9 testimony as is pertinent and material to the  
10 controversy, and shall produce such additional evidence  
11 as the Board may deem necessary to an understanding and  
12 determination of the matter before it.

13 The Board shall be the sole judge of the  
14 relevance and materiality of the evidence offered.

15 The parties are requested to assure that they  
16 receive properly identified copies of each exhibit that  
17 are submitted that were identified earlier during this  
18 hearing, and to retain these exhibits.

19 The Board will not furnish you a copy of the  
20 exhibits when we send you the court reporter's  
21 transcript, which will come along with the final order.

22 The hearing will be conducted in an informal  
23 manner. First the contractor's representatives will  
24 elaborate on their claim and then the Department of  
25 Transportation will offer rebuttal.

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

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

8           (Whereupon, all witnesses were duly sworn.)

9           CHAIRMAN COWGER: We have already identified our  
10          exhibits, and I think it's been established that there  
11          are no further exhibits to be presented. So, it's time  
12          now for the contractor to begin his presentation.

13          If you would, first address the issue of the  
14          revised damage summary and tell us what the current  
15          total of the claim is.

16          MR. DEMPSEY: Okay, I'm Dave Dempsey with Hubbard  
17          Construction. Our revised damage summary, if I go  
18          through that, it will pretty much lay out the  
19          foundation for our request for additional compensation  
20          on the project.

21          Our production pile overrun request was based on  
22          originally we had requested -- I think it was 32 days  
23          in additional time. Well, excuse me, I think it was 54  
24          days which included some time overrun for our pile and  
25          there was 12 days relating to some other issues.

1           The first item on our damage summary we revised  
2           was our extended rental costs which related to our  
3           equipment. Previously we had requested 57 days, and 32  
4           of it related to the piling, which converted to  
5           basically two months' rental on all of our equipment.

6           Subsequent meetings with the Department staff,  
7           going back through the records, we agreed to an overrun  
8           of 17 days, which equated to a one month rental on our  
9           equipment and, therefore, our extent of rental costs we  
10          reduced from two months to one month.

11           THE COURT: May I interrupt you a second?

12           MR. DEMPSEY: Yes.

13           CHAIRMAN COWGER: As I recall, in the original  
14          submittal you had two months on all of it, right?

15           MR. DEMPSEY: Right, sir.

16           CHAIRMAN COWGER: Now it's one month on all of  
17          it?

18           MR. DEMPSEY: Yes, sir. The resequencing of  
19          work, that cost stayed the same. That was our  
20          inefficiencies that related to the additional pile.  
21          Our unabsorbed overhead was reduced. Our overhead was  
22          based on 17 working days, which converts to 24 calendar  
23          days.

24           CHAIRMAN COWGER: All you did was convert it to  
25          calendar days?

1 MR. DEMPSEY: Yes, sir. I will have to find our  
2 original one.

3 MR. ROEBUCK: Seventeen.

4 CHAIRMAN COWGER: Seventeen on the original.  
5 That's okay. We understand.

6 MR. DEMPSEY: In issue number two, our test pile  
7 payment, previously we indicated the sum of \$60,000.  
8 That was in error. The -- this total is -- we were  
9 paid for the pile as production pile, and we feel that  
10 we should have been paid for it as a test pile.

11 The difference between those two numbers was the  
12 \$24,225. Our new total was \$144,371.21. With interest  
13 our grand total was \$158,124.61.

14 Our costs are related to an overrun of pile on  
15 the project which impacted our sequencing, which -- I'm  
16 not sure if all my dates are correct. One of my staff  
17 can probably correct me, but I believe from original  
18 contract time the project overrun of, I believe, 141  
19 days.

20 Out of the 141 days there was X number of days  
21 for weather. There was additional time granted for  
22 extra work, and with all those considered, our impact  
23 was an additional 17 days related to piling. That's  
24 what we are requesting compensation for.

25 CHAIRMAN COWGER: Okay. I was going to suggest

1           now that as you make your presentation if we -- there's  
2           two distinct issues here. If we could deal with the  
3           production pile overrun and then deal separately with  
4           the test pile, I think it might be a little easier to  
5           understand.

6           MR. DEMPSEY: All right.

7           CHAIRMAN COWGER: When you finish with your first  
8           issue, we will let the DOT rebut at that point.

9           MR. DEMPSEY: Pete, do you want to explain the  
10          sequence as far as our phasing and our time allowed?

11          MR. DENSON: With our production, we had  
12          basically 34 days per side scheduled. We found that we  
13          overran, and our overrun originally was 32 -- let me  
14          make sure I have my numbers right here -- the first  
15          thing we asked for in our original claim was 45  
16          calendar days.

17          Okay. We had a meeting with DOT over at  
18          McKinley. It was decided during that meeting that we  
19          were going to agree on compensable days.

20          Compensable days, we met with Bryan Estock at a  
21          subsequent date, Bryan Estock, Bob Bistor and myself.  
22          We agreed on 17 days. Those 17 days is what we were  
23          seeking as compensable dates.

24          We agreed on 17 days that the pile driving  
25          actually overran day for day, which in turn turns out

1 to be 24 calendar days.

2 CHAIRMAN COWGER: Okay.

3 MR. ROEBUCK: You mentioned you agreed, Pete.

4 Did you agree with Estock in that?

5 MR. DENSON: Yes.

6 CHAIRMAN COWGER: Were those calendar days or  
7 working days?

8 MR. DENSON: Seventeen were work days. That  
9 turned into 24 calendar days.

10 MR. WOLF: You have to understand that the job  
11 was pretty cyclical. In fact, it was a bridge that was  
12 a flat slab bridge. You had to cycle all of the  
13 materials, and we had barges and a tugboat and a crane  
14 out there, and everything had to cycle in order to be  
15 able to work our way back and forth across the bridge  
16 and get the equipment gone.

17 What we are asking for here is the cost of the  
18 heavy forming system that -- because of time overran,  
19 I think DOT said something like 59 percent. It took us  
20 longer to drive the piling and knocked us out of our  
21 cycle.

22 Actually, we ended up with two months of forming  
23 and equipment rental, heavy equipment rental costs for  
24 the barges and the crane and the heavy form system that  
25 was rented from Symons.

1                   We basically agreed on the 24 calendar days,  
2                   which we are -- that's the reason we knocked our claim  
3                   down.

4                   The basic crux of the situation here is that we  
5                   had all this equipment out there for a fixed period of  
6                   time. Because the time overran, it affected the rest  
7                   of the items on the bridge.

8                   The resequencing of the work was a -- because we  
9                   got knocked out of our cycling, we had to combine our  
10                  crews a lot of times. We were in a remote location  
11                  down there. You just couldn't get a crew, send a crew,  
12                  release them because you couldn't get them back. We  
13                  needed them to build the bridge. Then we doubled up  
14                  our crews. It left us with productivity that was less  
15                  than what we had anticipated when we bid the job.

16                  So, the cost overrun of the productivity is what  
17                  we are asking for here, the fact that we had to double  
18                  up our crews in order to keep them working, keep them  
19                  there on the job.

20                  We were more or less held hostage to the project.  
21                  We couldn't release the crews. We had no other work in  
22                  that location. You just can't let the crews go because  
23                  you just can't get them back.

24                  CHAIRMAN COWGER: I think we understand that.  
25                  All this problem was resequencing related to the



1 concrete operations, not to the pile driving  
2 operations?

3 MR. WOLF: That's correct. That's the forming  
4 operation basically. It just has to deal with the  
5 forming operation by itself. It doesn't have to deal  
6 with the concrete placement or anything like that.  
7 It's the resequencing with the crews, based on what we  
8 anticipated forming, and what it actually ended up  
9 costing us.

10 CHAIRMAN COWGER: Are you all about through?

11 MR. DEMPSEY: Yes, sir.

12 CHAIRMAN COWGER: Before we turn it over to DOT,  
13 I have one question. How about explaining to us a  
14 little bit about how the overrun in the production  
15 piles impacted or why it impacted, I should say, the  
16 substructure operation, which I assume is pouring the  
17 bents, pouring the caps on the bents?

18 MR. DENSON: We experienced additional time in  
19 the actual driving.

20 CHAIRMAN COWGER: I understand that.

21 MR. DENSON: Experiencing that, subsequently our  
22 substructure fell behind somewhat because of the extra  
23 time.

24 CHAIRMAN COWGER: I guess my question is why?  
25 What is interrelated between those two operations?

1           MR. DENSON: What was interrelated was after the  
2 pile were driven, the bents were subsequently poured.

3           The way our forming system was, we would have to  
4 have -- I think we were like six spans, five spans of  
5 bents ahead. Then we would take our form system.

6           By having the extra piling, it slowed down the  
7 cycling of our form system, if that answered your  
8 question.

9           CHAIRMAN COWGER: It slowed the pile driving  
10 operation down --

11          MR. DENSON: And thereby slowed everything else  
12 down.

13          MR. ROEBUCK: You had to stay five or six bents  
14 away with the pile driver?

15          MR. DENSON: We had to be five bents ahead, six  
16 bents ahead to get our five spans. By slowing the pile  
17 driving operation, that slowed our caps, which in turn  
18 slowed down our deck forming.

19          CHAIRMAN COWGER: There were two separate forming  
20 systems, one for the caps, one for the deck?

21          MR. DENSON: Yes, sir.

22          CHAIRMAN COWGER: Just so I understand that.

23          Okay. Let's go on with the DOT's rebuttal and  
24 then we will probably come back and discuss a little  
25 bit more.

1           MR. ESTOCK: I'm Bryan Estock, representative for  
2 DOT. We did meet with Pete and Bob regarding the 17  
3 days. At that time it was -- there was no intent as  
4 far as saying that these are compensable. The only  
5 reason for meeting was to establish the actual time it  
6 took to drive the pile because there was a big  
7 disagreement as far as that amount.

8           So, we did agree that by using all the records it  
9 did take 17 days more than what the contractor showed  
10 on his schedule.

11           The reason we have here regarding the sequencing  
12 is the contractor is solely responsible for the  
13 mobilizing of his substructure forms. The production  
14 pile links were established according to the  
15 specifications.

16           There was a dramatic overrun because during the  
17 bid process there is no way the designer can anticipate  
18 what is going to be required, because it is established  
19 during the test pile program.

20           The production links were established for the  
21 majority of the bents at the maximum length of our  
22 longest test pile. That was what was needed.

23           The issue being, as far as the contractor  
24 mobilizing his forms, the contractor between the actual  
25 establishing of the production pile links, he had a

1 28-day period because of cure requirements required on  
2 the pile. He knew what the links were going to be.

3 At that time he could have begun to adjust what  
4 his sequencing would have required, when was he going  
5 to have to mobilize.

6 Even if he used his original production rate  
7 established during his -- when he was establishing his  
8 schedule, there were things he could have done to  
9 resequence his operation, so as not to provide any  
10 delay.

11 One thing we also stated was even though the  
12 production link was actually greater, he actually  
13 doubled what his production rate was. He was driving  
14 more pile length than what he originally anticipated.

15 So, we feel like we compensated him for the extra  
16 length of the pile. So we compensated him for the  
17 material, labor and everything regarding the additional  
18 length of pile.

19 The substructure, regarding sequencing, that was  
20 in his direct control. He can move or slow down or  
21 mobilize at different times in order to maintain his  
22 production rate.

23 Regarding the 17 days, though, there were other  
24 factors that impacted the actual forming system. One  
25 was there were two caps that had to be removed. This

1 was in the latter part of the driving of the phase one  
2 piling. This was done due to substandard concrete.  
3 The entire cap had to be removed and repoured.

4 Throughout that time it -- it lasted for over a  
5 month trying to get a structural analysis done. Once  
6 the structural analysis was performed, the engineer did  
7 not address the durability of the concrete.

8 Well, these caps were directly into the splash  
9 zone. So permeability of the concrete was a direct  
10 factor as far as the life of the structure.

11 We had to bring Gainesville in to conduct  
12 testing, and we found the concrete was substandard.

13 Throughout this whole thing, this took over a  
14 month. This was time where his superstructure forms  
15 were basically halted. His cap forms were sitting dead  
16 because he had to rip the caps off and then reform.

17 So, there are other factors that actually  
18 extended time more than the 17.

19 And with the pile driving operation, the pile  
20 driving, once it started, according to his schedule,  
21 once he got out, once he started his substructure  
22 operation, that became the controlling factor. Once  
23 the superstructure started, that became the controlling  
24 factor.

25 So, pile driving was never really driving the job

1           except at the first couple of bents that he drove.  
2           That's where we are saying there really was no  
3           compensable delay associated with this driving or the  
4           sequencing of his forms because he had direct control  
5           over that.

6                     And there were other factors that were contractor  
7           fault that impacted his whole sequencing, such as the  
8           substandard caps.

9                     CHAIRMAN COWGER: Are you finished?

10                    MR. BRANDVIK: I guess that was the key point  
11           being that the real question here is did the overrun of  
12           piling control the completion of the project. That is  
13           the root question we need to ask and need answered.

14                    Hubbard's position is that it did, in fact,  
15           require a -- perhaps to use the term resequencing, it's  
16           more of a delay. They had to have these forms sitting  
17           around longer. They couldn't cycle them as quickly as  
18           they originally planned in their bid.

19                    No question the pile lengths we have in the  
20           plans, and I think the specs are clear, are estimated  
21           pile lengths at best. That's why we run a test pile  
22           program.

23                    As Bryan mentioned, as soon as we got into this  
24           test pile program, and it became obvious that the  
25           production pile lengths were going to be significantly

1 longer, that to me would have been the time to say we  
2 need to step back and rethink whether or not our  
3 original process of bringing these substructure crews  
4 in right behind the piling is going to work.

5 Perhaps we need to have a bigger lag than five,  
6 six bents, whatever it may have been, so that the  
7 substructure or superstructure crews don't, in fact,  
8 catch up with the piling crews.

9 I think then it goes beyond. So, we had this  
10 additional driving time that's recognized that Bryan  
11 and Pete and Bob have agreed to. The question is, in  
12 fact, did that drive ever require an extension of  
13 completion of the project.

14 Our position is that it did not. That quite  
15 frankly just in terms of stepping back to make a  
16 decision once production pile lengths were known to be  
17 longer, that you really needed to rethink the whole  
18 sequencing operation first.

19 But then, secondly, we had these issues with  
20 unnecessary cap replacement. That, in fact, had, you  
21 know, delays well beyond the 17 days that we're talking  
22 about here specifically just for piling overruns.

23 Quite frankly, while we recognize that there was  
24 an overrun in piling length, we are not recognizing  
25 that, in fact, it created a delay to how the

1           substructure or superstructure work was completed.

2           MR. DEYO: Without the specs available, this  
3           contract had a pile driving analyzer on it, a PDA?

4           CHAIRMAN COWGER: That's in the report, too. A  
5           couple of quick questions. I'm interested, curious,  
6           why was a corrosion analysis necessary on those two?  
7           Was that done in relation to the adequacy of the caps  
8           that were originally poured?

9           MR. ESTOCK: Yes.

10          CHAIRMAN COWGER: You determined that the  
11          corrosion reduction in service life was a problem? It  
12          didn't have anything to do with the new caps?

13          MR. ESTOCK: As far as -- I'm not following you.

14          CHAIRMAN COWGER: Your corrosion analysis had  
15          nothing to do with the new caps, right?

16          MR. ESTOCK: The ones that were placed, the  
17          substandard ones, no. The specifications state that  
18          when there's deficient concrete -- it was low strength.  
19          It requires a structural adequacy test. It says the  
20          engineer is to address durability.

21          CHAIRMAN COWGER: Okay. I just wanted to get  
22          straight which set of caps we are talking about. I've  
23          got that.

24          The 17 working days that you sort of agreed to --  
25          correct me if I'm wrong, and then I will address the



1 question to DOT. Those 17 days are the additional  
2 number of days it took to drive the piling basically?

3 MR. ESTOCK: Uh-huh.

4 CHAIRMAN COWGER: The schedule says 68 and it  
5 actually took 85? There is no question about this?

6 MR. ESTOCK: Uh-huh.

7 CHAIRMAN COWGER: This doesn't get into  
8 entitlement or anything, just trying to get the facts  
9 straight.

10 MR. ESTOCK: That's right.

11 MR. ROEBUCK: What is the length of the piling,  
12 generally from 40 to 85 feet? 69 percent you said --

13 MR. ESTOCK: Well, I would have to calculate out  
14 what the original quantity was. It was 7,000 lineal  
15 feet was the original plan quantity for all pile.

16 MR. BRANDVIK: It was 48, you had your hundred  
17 percent overrun. It must have been more like maybe 50  
18 or 60.

19 MR. DENSON: It went from 7,000 to over 11,000.  
20 Also, if I might speak now, our efficiencies were  
21 pointed out in Mr. Estock's letter of November the 3rd.

22 In an attempt to keep up with resequencing our  
23 work, what we actually did in lieu of resequencing our  
24 work, we extended our daily hours for operating to stay  
25 within our schedule we increased our daily hours of

1 operation.

2 CHAIRMAN COWGER: What else did you all have to  
3 say, anything else?

4 MR. BRANDVIK: Let me touch briefly on the  
5 unabsorbed overhead portion of it. This -- for  
6 purposes of these damages it's been presented  
7 specifically for the 17 workdays translated into 24  
8 calendar days to the project.

9 Our position is that the first thing that we have  
10 to agree on is that, in fact, this extended the  
11 completion of the job, and our position is that it did  
12 not.

13 So, from that standpoint there would be no  
14 unabsorbed home office overhead. Specifically, you  
15 know, we would have to agree, as I said quite frankly,  
16 that this had a delay to completion of the job to even  
17 be willing to consider, you know, whether or not  
18 unabsorbed was there, first of all.

19 Secondly, to go beyond that, we have to consider  
20 whether or not it was a complete shut-down or if, in  
21 fact, there was still revenue being generated, was the  
22 revenue being generated equivalent to what was  
23 originally claimed.

24 That, quite frankly, in my opinion is the one  
25 problem with Eichleay is that it does not recognize if

1           there is other revenue generation either on this  
2           particular project or on any other project for the  
3           firm.

4                     It is solely saying that these are our estimated  
5           overhead costs and, therefore, if we have any extension  
6           of time, whether we are generating revenue elsewhere or  
7           not, we are damaged. That's where I think the fallacy  
8           lies with Eichleay in general.

9                     In this particular case, since we are not  
10          recognizing entitlement to the completion of the job  
11          for this overrun of time on piling, we would not  
12          recognize entitlement for unabsorbed overhead either.

13                    MR. WOLF: I would like to talk about that  
14          situation if I may. First of all, we have to disagree.  
15          The formula as it was used in the model that was put in  
16          here accounts for the additional time and the  
17          additional revenues.

18                    I would agree with Mr. Brandvik that if you  
19          figured an Eichleay formula at the very beginning of  
20          the project, it would not account for the absorbed  
21          portion of the overhead.

22                    The reason is as you go through the job and the  
23          volume of the project increases and so do the number of  
24          days increase, that the original formula is never  
25          correct. It's never correct until you finish the job.

1           In this case I calculated this formula at the  
2           very end of the project at almost the end of the  
3           project at the time in which we thought that we were  
4           pretty close to knowing what the final days and the  
5           final dollars were.

6           If you follow the formula through in the detail,  
7           you will see that instead of the \$5 million figure,  
8           plus or minus whatever it was, I used a revenue of \$6  
9           million. That's close to the final revenue of the  
10          project. In fact, I think it's a little more. It's  
11          what we had anticipated the final revenue being.

12          In that case it took into account all the revenue  
13          of the project. And I put in over 500 calendar days.  
14          So, it took into account the total number of calendar  
15          days, took into account the total amount of the  
16          revenue.

17          So, it does make up for the absorbed portions of  
18          the overhead in this case. If you utilize the formula  
19          for the way it was intended to be utilized, and you  
20          figure it at the end of the project, then it does do  
21          those things for you.

22          Or there is another method. You can use the  
23          beginning of the project and find out by taking the  
24          additional revenue and dividing it by the number of  
25          days, and see how much it did absorb.

1 I mean there's a couple of different ways you can  
2 figure this out.

3 We are not interested in something that was  
4 absorbed, so we use this method. We will be happy to  
5 recalculate it, if that's a fact.

6 In delays of this nature, where it's intermittent  
7 and not a complete shut-down of the project, a company  
8 is held hostage to the job. We can't just pick up and  
9 leave the job. We can't go out and secure additional  
10 work.

11 It's true that Hubbard is a big company and can  
12 bid other work, but we only have limited resources. We  
13 are bigger than a lot of companies, but we still have a  
14 limitation on our resources.

15 CHAIRMAN COWGER: Excuse me. I think we  
16 understand. The Board understands that you could not  
17 take your equipment and personnel and put them  
18 somewhere else.

19 MR. WOLF: Can I make just one more comment.

20 CHAIRMAN COWGER: Go ahead.

21 MR. WOLF: This whole \$1500 is not all Eichleay.  
22 There is a job site overhead cost in here, and that has  
23 nothing to do with the Eichleay formula. It's just  
24 strictly how much money we spent on the job divided by  
25 the number of days that we are there. So, the job site

1 support costs are in the \$1500 number as well.

2 CHAIRMAN COWGER: Is that \$1530 justified  
3 somewhere in your submittal?

4 MR. WOLF: Yes, it is. The back-up numbers, DOT  
5 has been to our office and audited our costs on a  
6 couple of occasions. I think two years ago was the  
7 most recent time, and agreed with how we have  
8 calculated overhead numbers.

9 We also calculate them in relationship to the FAR  
10 regulations with the U.S. Army Corps of Engineers.

11 CHAIRMAN COWGER: John, am I right, the basic  
12 dispute is not so much how much but a matter of whether  
13 they are entitled to any on the Eichleay?

14 MR. BRANDVIK: Yes.

15 CHAIRMAN COWGER: I have one question that's kind  
16 of left floating I think. You talk about a production  
17 rate on the pile driving operation. In one of the  
18 pieces of correspondence -- I don't have it right here  
19 in front of me at the moment -- I mean I haven't looked  
20 it up.

21 You talk about the fact that -- DOT talks about  
22 the fact that actually for some reason or other the  
23 production rate on pile driving, calculated in feet per  
24 minute, was greater on the project than what the  
25 schedule had anticipated, the original contractor's

1 schedule.

2 Can you tell us real quick how you arrived at  
3 those numbers? What did you -- how did you calculate  
4 that? There's nothing here to support it. I just  
5 wondered.

6 MR. ESTOCK: In one of my letters to the  
7 contractor, I detailed it. It was basically I just  
8 took the original quantity in the plans and  
9 estimated -- got the contractor's schedule, what they  
10 anticipated would take them to drive the pile.

11 CHAIRMAN COWGER: That much I understand.

12 MR. ESTOCK: I took, you know -- there was a  
13 certain length. I just took the thing, took all the  
14 pile out, established the pile length. I established a  
15 certain time frame to drive a certain length of pile  
16 and I divided it out.

17 CHAIRMAN COWGER: How did you arrive at the  
18 minutes is what I want to know.

19 MR. ESTOCK: I just took an eight-hour day.

20 CHAIRMAN COWGER: Okay.

21 MR. ESTOCK: I established it as I said one day  
22 to set up, set barge, set template, relocate barge,  
23 then one day to actually set pile and drive.

24 MR. WOLF: I think the basic flaw in that  
25 calculation is the fact that no one ever went back to

1           see how many actual hours we drove in a day as related  
2           to what our plan was.

3           MR. ESTOCK: That's what I established, and when  
4           I actually established what production rate they  
5           achieved, I went back to the actual pile driving log  
6           per each pile with the length driven and the actual  
7           time.

8           We had a start and a stop time. That's where  
9           I took an average. I just went through there and  
10          took -- I think like about 20 piling out and came out  
11          with an average.

12          CHAIRMAN COWGER: Your records indicate the time  
13          of day that they began driving a particular pile and  
14          the time of day they finished?

15          MR. ESTOCK: Yes.

16          MR. WOLF: You used the 20 pile sample. You  
17          didn't use all the piling?

18          MR. ESTOCK: No, I didn't go through and  
19          calculate every single piling. I had just a random  
20          sampling.

21          MR. DENSON: That was the point I was making.  
22          That was in his November 3 letter. That's the point  
23          I am making. We increased our hours of operation to  
24          stay within our schedule. To use an eight-hour day as  
25          far as basing our production rates would be unfair.



1                   CHAIRMAN COWGER: You increased your daily hours  
2                   on the pile driving operation?

3                   MR. DENSON: Yes, sir.

4                   MR. BISTOR: There is also the assumption made in  
5                   Bryan's calculations in his letter that there was a day  
6                   spent -- out of two days per bent that we had in our  
7                   approved baseline, he is saying there was one day  
8                   devoted to setting the template, moving the barge,  
9                   taking the template down, and a day to drive out the  
10                  bent.

11                  That's a big assumption. When we put together  
12                  our baseline schedule, we looked at the total number of  
13                  feet in each phase, and two days per bent is just an  
14                  average.

15                  When we put that schedule together, we understand  
16                  that some bents you might drive out in a day, some  
17                  bents may take us three days, but our anticipation was  
18                  that it was going to take us a total of 34 days to  
19                  drive out all the piling in a phase.

20                  And when we set up activities for each bent, we  
21                  said 17 days -- 17 bents, 34 days total to drive it  
22                  out. That's an average of two days per bent for doing  
23                  all the work associated with driving that pile.

24                  CHAIRMAN COWGER: How many piles were there in a  
25                  bent?

1 MR. BISTOR: It differed from phase to phase.

2 MR. ESTOCK: Four for phase four and five for  
3 phase two.

4 MR. WOLF: Nothing erases away the fact that we  
5 had agreed that 17 working days overran the piling. No  
6 one has, on the DOT side that I can see, has went back  
7 and made a study, which I did, to see, you know, what  
8 effect the increased productivity in the piling had.  
9 It had no increase, it had no effect.

10 I mean we still -- we didn't overrun our budget,  
11 but we didn't have this huge material gain that DOT is  
12 trying to claim that we have by getting this additional  
13 feet of piling. If we did, we would have offered that  
14 back, but there was nothing.

15 We met our budget on the productivity cost of  
16 driving the piling. Even though they overran, even  
17 though they say they got more per foot, we still didn't  
18 do better than what we had in the budget to begin with.

19 MR. ESTOCK: Regarding the assuming of the  
20 original production rate, that was established right  
21 after Pete, Bob and myself had agreed upon the 17 days.  
22 That was a time when we were doing most of our  
23 discussions as far as what time frame was required for  
24 the actual driving.

25 That's where my assumption of the relocation of

1 the barge, setting the template and moving the barge,  
2 that's where I came up with the one day, because during  
3 our negotiations that was the basic operation we had  
4 agreed to.

5 We had included all of that in our calculation of  
6 the 17, everything associated with the driving of the  
7 pile is included in the two days.

8 MR. DENSON: I think that's a good point, too.  
9 When we left the meeting, the agreement as we  
10 understood was that we were going to agree on  
11 compensable days. We agreed on those 17 compensable  
12 days. We took out any inefficiencies caused by  
13 Hubbard, DOT or whatever that caused those  
14 inefficiencies. That was gone and the agreement was  
15 for the 17 days.

16 CHAIRMAN COWGER: I think we have heard enough on  
17 that particular issue. I do have -- I do feel we need  
18 to let the contractor address one more thing that the  
19 DOT said, just so the Board has all of it, all of the  
20 facts out here.

21 They made a comment about the fact that the  
22 contractor had control of the schedule. He knew at the  
23 time that the final pile lengths were furnished to him,  
24 which is some 30 days before he began driving the  
25 piling.

1                   That you were aware as a contractor of this  
2                   overrun, and that in DOT's opinion you should have made  
3                   some adjustments in planning your operations to  
4                   compensate for the fact that the pile driving was going  
5                   to take longer than you had originally planned at the  
6                   time you bid the job.

7                   What do you have to say about that?

8                   MR. DENSON: To respond to that, let's go -- as  
9                   we said, there were two different phases of the job, a  
10                  phase one and a phase two, which each phase had a  
11                  different test pile program.

12                 Actually, on our test pile for phase one, the  
13                 lengths were given in two separate -- at two separate  
14                 times.

15                 We were not given bent one through 17 to  
16                 complete. As a matter of fact, and this will probably  
17                 go into our second issue, there is an additional PDA  
18                 put on another piling. We established the pile  
19                 lengths. I think some of that information was used to  
20                 establish the pile lengths for the second half of  
21                 phase one.

22                 So, it was impossible for us to say based on what  
23                 we did in phase one, with the phase two piling lengths  
24                 because there were two different test pile programs.

25                 CHAIRMAN COWGER: When you say you weren't

1           furnished all of the lengths at the same time,  
2           basically is what you said --

3           MR. DENSON: Yes, sir.

4           CHAIRMAN COWGER: You weren't just given this is  
5           the length?

6           MR. DENSON: I think phase one, we were given  
7           either bents one through five or one through six.

8           MR. ESTOCK: Your phase one was giving one  
9           through six. They were established I think at 75 foot.  
10          The rest of them, from seven through 17, there was a  
11          lot of subsurface material.

12          The geotech engineer was doing a more detailed  
13          analysis. So, he had to -- he went ahead and  
14          established the lengths separately after he already  
15          established the first six bents.

16          That was done primarily because of the 28-day  
17          cure requirement, go ahead -- we had solid data for the  
18          first six bents, get that information to the  
19          contractor, let him start casting his piles.

20          CHAIRMAN COWGER: How long a time would you say  
21          elapsed between the time you furnished the lengths in  
22          those two different subphases you might say?

23          MR. ESTOCK: I would have to look at the letters,  
24          but it was probably two weeks.

25          CHAIRMAN COWGER: What were the longer piles, the

1           ones in bent seven through 17? How long were they?

2           MR. ESTOCK: I believe they were 85. The same  
3           length as our longest test pile.

4           CHAIRMAN COWGER: Unless somebody has something  
5           overwhelming to say about part one, why don't we go to  
6           part two.

7           Before we get into that, so we can kind of plug  
8           this in as we go through, does anybody remember what  
9           the unit price for the test piles was?

10          MR. ESTOCK: \$60 a foot?

11          MR. DENSON: The unit price for the test piles  
12          was \$350 a foot furnished and a dollar a foot driven.

13          CHAIRMAN COWGER: Okay. There was something  
14          mentioned in here, and maybe you all will bring it out,  
15          there was some discussion somewhere in the  
16          correspondence that we saw about the DOT eliminated  
17          some of the production piles. Is that true or not?  
18          Not the production piles, the test piles, sorry.

19          MR. ESTOCK: Yes, two test piles were eliminated  
20          in phase two. This was primarily due to trying to  
21          assist the contractor because of the 28-day  
22          requirement.

23          The test piles in phase two required that the  
24          existing bridge be completely removed. Well, this  
25          would have caused the contractor to have had to remove

1 the whole existing bridge, start his test pile program,  
2 drive all four, then wait 28 days after receiving  
3 authorized lengths.

4 We felt like we had sufficient data for the first  
5 few bents from our phase one test pile program. So, we  
6 got with the geotechnical engineer. They agreed to go  
7 ahead and establish lengths for the first five bents  
8 for phase two, and that way the contractor could begin  
9 casting his piling while he is still in the process of  
10 removing the old bridge.

11 That was just a matter of trying to assist the  
12 contractor in assisting him.

13 So, the two test piles that were for that area,  
14 we eliminated them, but we did pay production piling at  
15 their original length. We did not pay by authorized  
16 length.

17 CHAIRMAN COWGER: Okay. We will get into that in  
18 just a minute. While we are talking about the number  
19 of test piles, were there two in each phase?

20 MR. ESTOCK: Four in each phase.

21 CHAIRMAN COWGER: In phase one you used all four  
22 of them?

23 MR. ESTOCK: Yes.

24 CHAIRMAN COWGER: Phase two you eliminated two of  
25 them?

1 MR. ESTOCK: Yes.

2 CHAIRMAN COWGER: Did you begin to set pile  
3 lengths on phase two before you had any test piles  
4 driven?

5 MR. ESTOCK: We did for the first five bents.

6 CHAIRMAN COWGER: While he was driving the test  
7 piles then, the two that were remaining, he could start  
8 casting for those six bents?

9 MR. ESTOCK: Yes.

10 CHAIRMAN COWGER: Good enough. Okay. What were  
11 the length of the test piles?

12 MR. ESTOCK: They differed. The shortest was 70  
13 foot and the longest was 85.

14 CHAIRMAN COWGER: Okay. Now, let's move on and  
15 let the contractor -- I got kind of maybe a little bit  
16 of the cart before the horse.

17 MR. ROEBUCK: Yes.

18 CHAIRMAN COWGER: I thought this information  
19 would be helpful for us to understand what you are  
20 saying. Now, if you want to rebut anything that was  
21 said, feel free, but, Contractor, why don't you go  
22 ahead and present your case on part two then.

23 MR. DEMPSEY: Pete, do you have anything to add?

24 MR. DENSON: I disagree the elimination of the  
25 test piles was done to assist us. Demolition of the



1 old bridge was not a dried-in factor in the test pile  
2 program because we wrote a letter where we requested an  
3 opportunity to shift the pile position and get them  
4 outside the old bridge lining.

5 CHAIRMAN COWGER: The test pile?

6 MR. DENSON: The test pile, yes. We submitted a  
7 letter to shift the location of the pile so as to  
8 facilitate being able to drive the pile prior to  
9 removal of the old bridge as approved by DOT.

10 MR. ESTOCK: I would like to address that if  
11 I could.

12 CHAIRMAN COWGER: Go ahead.

13 MR. ESTOCK: The fault in that was that, one, the  
14 only way that could have been done due to space  
15 restrictions, there was boat docks all along the side  
16 of the bridge that would not allow his barge to come  
17 in.

18 The test pile could not be driven from the  
19 existing bridge because it would not have been able to  
20 support the actual weight of the crane needed to drive  
21 the piles.

22 CHAIRMAN COWGER: Okay. Was that your proposal,  
23 drive them off the existing bridge?

24 MR. DENSON: No, sir, we did our test pile off  
25 there.

1                   CHAIRMAN COWGER: Wanted to make sure  
2                   I understood.

3                   MR. DEMPSEY: The dock didn't bother us any  
4                   because Pete's diesel hammer, we got fuel all over the  
5                   boats. I think we bought all the boats and the dock --

6                   MR. ESTOCK: It was a matter of space, I mean  
7                   because we had this discussion. The barge was of such  
8                   a width where even after removing the bridge it was --  
9                   we had to completely have the dock owners move these  
10                  big old yachts out of the way just so we could get the  
11                  barge in there to drive our piling.

12                 CHAIRMAN COWGER: Let's not spend too much time  
13                 on that. The main thing I want to find out on the test  
14                 piles is why is it that the contractor thinks that this  
15                 one production pile -- I think that's the case --  
16                 should be treated as a test pile?

17                 MR. DENSON: When we go back -- Mr. Estock states  
18                 that through bents one through six they had solid  
19                 information to give those pile lengths.

20                 Okay. It's our understanding that what happened  
21                 originally -- and I will have to give a brief history  
22                 of what happened here.

23                 I think Ardaman started off doing the test pile  
24                 program. DOT was somewhat displeased with the  
25                 information gathered by Ardaman because we had pile

1           that began to run that Ardaman really didn't show that  
2           happening.

3           After that happened, DOT brought their own man  
4           in. I think his name was Mr. Tom Turner. He came in  
5           and did the PDA on the subsequent test pile and the  
6           other pile that we are calling -- they are calling the  
7           production pile that was actually a test pile.

8           He came in and gathered that extra information  
9           off that pile and that's why he said that was a test  
10          pile. There was information gathered off that.

11          Correct me if I'm wrong, but I think that  
12          information was used to set the pile for bents seven  
13          through 17.

14          MR. ESTOCK: They weren't. Pile lengths were  
15          established prior to that pile being driven. The  
16          reason the PDA was attached to that pile was during the  
17          test pile program -- Pete is correct -- Ardaman was the  
18          geotech to establish the criteria and lengths.

19          The criteria they originally submitted, the  
20          district geotech was not comfortable with it. So, the  
21          district geotech took the data, reviewed it himself,  
22          and he established the lengths and the criteria.

23          There was a concern that was right around bent  
24          six, it was right where the subsurface material --  
25          there was a layer of soft material that did concern

1 him.

2 So, that's -- when we were driving the test pile  
3 on the higher bents, he noticed that as the pile was  
4 going down, it hit the soft material, and he was -- we  
5 ended up having to perform set checks on it because the  
6 piles were just not taking up.

7 So, he was concerned that with his criteria that  
8 he had established, he was concerned that as we were  
9 driving bent six he did not want to blow out the bottom  
10 of the pile when it hit that soft material.

11 So, that's the only reason he put the PDA on  
12 there, the first pile for that bent. We drove it.  
13 Once it hit that soft layer and he found out the pile  
14 was still good and it looked like it was going to hold,  
15 the PDA was turned off and we drove it according to the  
16 criteria.

17 We didn't drive it by test pile criteria. We  
18 drove it by permanent. We were just monitoring it with  
19 the PDA.

20 CHAIRMAN COWGER: That all took place at bent six  
21 on phase two?

22 MR. ESTOCK: Phase one.

23 MR. DENSON: I would like to address, Mr. Estock  
24 mentioned the set check. Basically even with the  
25 elimination of the two test piles, we ended up having

1 to set check the majority of every pile we drove there.  
2 We think the elimination of the two test piles might  
3 have contributed to that somewhat.

4 MR. ESTOCK: The two test pile were eliminated in  
5 phase two. The set checks began in phase one, right at  
6 around, I think bent nine, bent ten.

7 MR. DENSON: Right.

8 MR. ESTOCK: Is when we had to start doing set  
9 checks on each bent.

10 MR. DENSON: We set check, even with our  
11 efficiency, that included set checking almost every  
12 pile.

13 MR. ESTOCK: We set check one bent per pile. Or  
14 one pile per bent. One pile per bent.

15 CHAIRMAN COWGER: Okay. Anybody have anything  
16 else to say about that issue? We might finish on time  
17 or close to it.

18 DOT, do you wish to -- excuse me just one moment.  
19 DOT, do you wish to address the interest portion of the  
20 claim, assuming we would award something?

21 MR. BRANDVIK: I can tell you right now that from  
22 my perspective as DCE, I have considered prejudgment  
23 interest. I think it was just yesterday. That has  
24 been challenged by our legal staff.

25 So, I would have to sit here today and tell you

1           that my opinion would be legally I'm not authorized to  
2           include prejudgment interest.

3           CHAIRMAN COWGER: DOT's legal staff has  
4           challenged --

5           MR. BRANDVIK: The prejudgment interest.

6           CHAIRMAN COWGER: Okay. Anything else on the  
7           interest? Just to be fair with everyone, I notice  
8           looking at your revised damage summary that you've got  
9           interest calculated up through May 14th. Then you  
10          start another calculation from May 14th through  
11          July 31st which is a period of time roughly after you  
12          filed your request for arbitration, between then and  
13          the time that we actually got to this hearing today.

14          To be frank with you, I doubt that the Board is  
15          going to give much weight to that particular issue  
16          because of the way this process works.

17          Frankly, part of it is our fault because we don't  
18          schedule the hearings quite as fast as we should  
19          sometimes. Anyway, that's all I've got to say about  
20          that.

21          Mr. Deyo, do you have any questions?

22          MR. DEYO: No.

23          MR. ROEBUCK: No questions.

24          CHAIRMAN COWGER: Either party have anything else  
25          to say? All right. Hearing nothing, this hearing is

1 hereby closed.

2 The Board will meet to deliberate on this claim  
3 in approximately six weeks, and you will have our final  
4 order shortly thereafter.

5 (Whereupon, the hearing was concluded at 11:05 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

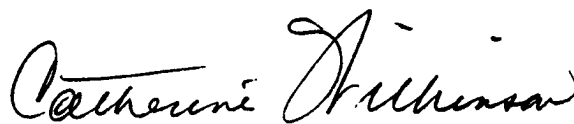
CERTIFICATE OF REPORTER1  
2 STATE OF FLORIDA )

3 COUNTY OF LEON )

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

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

13 Dated this 6<sup>th</sup> day of August, 1998.

14   
15

16 CATHERINE WILKINSON  
17 CSR, CP  
Post Office Box 13461  
Tallahassee, Florida 32317

18

19

20

21

22

23

24

25