

**STATE ARBITRATION BOARD**

1022 LOTHIAN DRIVE  
TALLAHASSEE, FLORIDA 32312  
PHONE: (904) 385-2852

July 20, 1990

+ + + NOTICE + + +

In the case of Baxter's Asphalt & Concrete, Inc. versus the Florida Department of Transportation on Project No. 59100-3510 in Wakulla County, Florida, both parties are advised that State Arbitration Board Order No. 3-90 has been properly filed on July 20, 1990.

*H. Eugene Cowger*

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

S.A.B. CLERK

JUL 20 1990

**FILED**

Copies of Order & Transcript to:

R.D. Buser, P.E., Director of Construction/FDOT

Kathy Sloan, Vice President/Baxter's Asphalt & Concrete, Inc.

STATE ARBITRATION BOARD

ORDER NO. 3-90

RE:

Request for Arbitration by  
Baxter's Asphalt and Concrete, Inc.  
Job No. 59100-3510 in  
Wakulla County

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

H. Eugene Cowger, P. E. Chairman  
Frank Carlile, P. E. Member  
Sam Turnbull, P. E. Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 10:30 a.m., Tuesday, May 15, 1990.

The Board Members, having fully considered the evidence presented at the hearing,, now enter their order No. 3-90 in this cause.

ORDER

The Contractor presented a request for arbitration of a claim for reimbursement of \$31,800 in liquidated damages assessed because the work under this contract was not completed within the time stipulated in the contract.

The Contractor presented information to support his contention that the work was delayed by factors beyond his control which could not reasonably have been anticipated at the time bids were received for this project as follows:

I Shortage of Washed Screenings-88 C.D. Delay

1. Our bid was based on obtaining washed crushed stone screenings for producing Type II Asphaltic Concrete Leveling Course from Limerock Industries. On October 13, 1986 we were ready to begin production of Type II AC except for the fact that our supplier could not furnish the necessary screenings at that time.

2. We attempted to obtain the screenings from Florida Crushed Stone Co. but a design mix prepared using these screenings had a very marginal Marshall Stability value. The design mix prepared by our laboratory had a Marshall Stability of 968

lbs., well above the 500 lbs. required, but a verification design mix prepared by the Department of Transportation using the same materials had a Marshall Stability of 503 lbs. We decided that it would not be wise to use a mix with a borderline stability value.

3. The cost of using washed screening produced at the other available source of supply would have increased our cost by \$56,226 which was more than the difference between our bid and the second low bid for this project.

4. We were delayed by this factor between October 13, 1986 and January 19, 1987.

#### II Unseasonable Weather Conditions-33 C.D. Delay

1. Between January 19, 1987 and July 15, 1987, our operations were delayed by extremely wet conditions on 18 days in addition to the 25 days allowed in the contract time for unfavorable weather conditions. When converted to Calendar Days this amounts to 33 days.

2. Between January 1, 1987 and July 12, 1987, the amount of rainfall at Tallahassee exceeded the normal amount by 10.73 inches.

#### III Additional Work Performed on Borrow Item-9 C.D. Delay

1. In calculating the allowable contract time, the Department of Transportation allowed three days for performing the borrow item.

2. The final quantity of Borrow Excavation exceeded the plan quantity for that item by approximately 1,200 Cu. Yds.

3. It took twelve days to place the borrow material.

4. There was uncertainty on the job as to the quantity of borrow material we would be authorized to place.

#### IV Conditional Acceptance Not Granted When Work Substantially Complete-31 C.D. Delay

1. On July 24, 1987, the Assistant Resident Engineer and the Project Engineer prepared a "punch list" of items of work remaining to be completed and advised our project superintendent that conditional acceptance could be granted on that date. Conditional acceptance stops the charging of

contract time.

2. The "punch list" contained only minor corrective work, erection of a few traffic control signs and resolution of a dispute over conformance of traffic signal strain poles to the contract requirements.

3. Conditional acceptance was not actually granted until August 25, 1987.

4. Florida law prohibits liquidated damages being imposed when the construction is substantially performed.

The Department of Transportation rebutted as follows:

I

1. The Contractor did not provide documentation of an aggregate shortage as required by Article 8-7.3.2 of the Standard Specifications.

2. An alternate source of washed crushed stone screenings was available at the time the Contractor said he was ready to begin placing Type II Asphaltic Concrete. An approved design mix showing that a Marshall Stability of 968 lbs. could be achieved using screenings from Florida Crushed Stone Co., the alternate source, was effective on November 11, 1986.

3. The Work Progress Schedule Chart submitted by the Contractor indicates that asphalt work would begin on Calendar Day 95 which was after January 19, 1987 (C.D. 88), the date on which the Contractor says that the washed screenings were available. The Contractor elected to not begin Asphalt work until January 29, 1987 which was Calendar Day 98.

II

1. Per a provision of the contract, the contract time may be extended only for delays which occur during the allowable contract time as may be extended. Thus, delays after Calendar Day 200 (May 10, 1987) cannot be considered.

2. Our project records indicate that, of the 28 week period during the 200 Calendar Days allowable contract time, there were 30 working days on which weather conditions affected the controlling item of work during more than 50 percent of the

workday.

III

1. The amount of time estimated by the Department for placing of borrow material is irrelevant because the Contractor is free to chose the method he wishes to use in order to complete that work within the allowable contract time.
2. Placing of borrow material was never a controlling item of work.

IV

1. Unhindered use of the road by the travelling public does not constitute grounds for conditional acceptance of the project. Traffic was unhindered during most of the construction phases.
2. The contractor installed delineator buttons and traffic signs subsequent to July 24, 1987 and did not complete the sign work until August 25, 1987.
3. There is no documentation of the alleged conditional acceptance on July 24, 1987.

General

The Prime Contractor worked on the project on 38 days of the 158 Calendar Days (200 Calendar Days less days during that period when weather conditions made is unsuitable to work) during the 200 Calendar Day contract time period when work could have been accomplished. During the 92 Calendar Day time period between the date on which the washed crushed stone screenings were available (January 19, 1987) and the date on which the allowable contract time expired (April 28, 1987) the Prime Contractor performed work on the project during 36 days.

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

IV A letter dated August 5, 1987 from the Project Engineer to the Contractor stated "Listed below is a list of items that need to be completed before the project can be final accepted" (Emphasis Added). The only work item listed which

constituted original work was installation of signs.

General

The Special Provisions included in the contract provide that an extension of the allowable contract time may be granted only for delays occurring during the contract time period or authorized extensions of that time period.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:

The Department of Transportation is ordered to release \$9,300 of the liquidated damages assessed which represents 31 Calendar Days.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$184.00 for Court Reporting Costs.

S.A.B. CLERK

JUL 20 1990

**FILED**

Tallahassee, Florida

Dated: 20 July 1990

Certified Copy:

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

20 July 1990  
Date

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

Frank Carlile  
Frank Carlile, P. E.  
Member

Sam P. Turnbull  
Sam P. Turnbull, P. E.  
Member



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APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman  
Mr. Sam Turnbull  
Mr. Frank Carlile

APPEARING ON BEHALF OF THE CONTRACTOR:

Ms. Kathy Sloan

APPEARING ON BEHALF OF THE DEPARTMENT OF  
TRANSPORTATION:

Mr. Tom Shafer  
Mr. Dorion Ogle  
Mr. Bill Armstrong  
Mr. Ernest Garcia  
Mr. L. G. "Buddy" Wilkinson

\* \* \*

I N D E X

EXHIBITS

PAGE

Exhibit Nos. 1, 2 and 3 in evidence

4

CERTIFICATE OF REPORTER

44



P R O C E E D I N G S

1  
2 CHAIRMAN COWGER: This is a hearing of the State  
3 Arbitration Board, established in accordance with  
4 Section 337.185 of the Florida Statutes.

5 Mr. Frank Carlile was appointed as a member of  
6 the Board by the Secretary of the Department of  
7 Transportation.

8 Mr. Sam Turnbull was elected by the construction  
9 companies under contract to the Department of  
10 Transportation.

11 These two members chose me, Gene Cowger, to serve  
12 as the third member of the Board and as Chairman. Our  
13 terms of office began July 1, 1989 and expire June 30,  
14 1991.

15 Will all persons who intend to make oral  
16 presentations during this hearing please raise your  
17 right hand and be sworn in.

18 (Whereupon, all witnesses were duly sworn by the  
19 Chairman.)

20 CHAIRMAN COWGER: Note that Mr. Armstrong and  
21 Mr. Garcia are here, and were not sworn, so they do not  
22 intend to give testimony.

23 The documents which put this arbitration hearing  
24 into being are hereby introduced as Exhibit No. 1.  
25 This is the notice of arbitration hearing, the request

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for arbitration hearing and the documents that were attached to that request for arbitration.

Does either party have any other information it wishes to put into the record as an exhibit?

We'll go off the record.

(Discussion off the record)

CHAIRMAN COWGER: We're now back on the record. During the time that we were off the record, the DOT and the contractor submitted their exhibits.

The exhibit submitted by the DOT is identified as Exhibit No. 2. It is a bound package in a black cover.

Exhibit No. 3 is a package submitted by the contractor, that's in a manila folder with the information bound.

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

CHAIRMAN COWGER: Does either party have any further exhibits they wish to enter at this time?

MR. SHAFER: No.

MS. SLOAN: No.

CHAIRMAN COWGER: Does either party wish any additional time to examine the exhibits?

MR. SHAFER: No, we're fine.

MS. SLOAN: No.

1           CHAIRMAN COWGER: During this hearing, the parties  
2 may offer such evidence and testimony as is pertinent  
3 and material to the controversy, and shall produce  
4 such additional evidence as the Board may deem  
5 necessary to an understanding and determination of the  
6 matter before it. The Board shall be the sole judge of  
7 the relevance and materiality of the evidence offered.

8           The hearing will be conducted in an informal  
9 manner. The contractor will elaborate on his claim,  
10 and then the DOT will offer rebuttal.

11           Either party may interrupt to bring out a point  
12 by coming through the Chairman. However, for the sake  
13 of order I must instruct that only one person speak at  
14 a time. Also, so that our court reporter will be able  
15 to produce an accurate record of this hearing, please  
16 introduce yourself the first time you speak.

17           It's now appropriate for the contractor to begin  
18 her presentation. We'd like for you to begin by  
19 stating the total amount of your claim.

20           I also had one other comment to make. It appears  
21 like it would be best to consider each of the four  
22 issues brought forth in the claim separately, the  
23 contractor to present testimony and the Department to  
24 rebut that particular issue, and then we'll move on to  
25 the next issue.

1 Do both parties agree to that concept?

2 MR. SHAFER: Yes, DOT does.

3 MS. SLOAN: Yes.

4 CHAIRMAN COWGER: All right. You may begin, then.

5 MS. SLOAN: I'm Kathy Sloan, with Baxter's  
6 Asphalt and Concrete Company.

7 We are requesting to be reimbursed for the  
8 liquidated damages in the sum of \$31,800.

9 The basis for our claim consists of four items:  
10 one, an aggregate shortage; two, weather conditions;  
11 three, additional work performed on the borrow item;  
12 four, time not stopped when project conditionally  
13 accepted. We'll take item number one, the aggregate  
14 shortage, first.

15 When this project was bid, we used Limerock  
16 Industries as our supplier for the aggregate in the  
17 Type II and Type S asphalt. We were told by the  
18 supplier at the time of the bid that we would be able  
19 to obtain these materials from them in a timely manner.

20 However, we were not able to obtain the washed  
21 screenings aggregate as quickly as we needed to to  
22 proceed with the job as we should.

23 We were ready to run asphalt starting with  
24 October 13th, 1986, except for the washed screening  
25 material.

1           We tried to obtain the material from another  
2 source. We tried Florida Crushed Stone, and their  
3 material did not pass the first time that we submitted  
4 it to them.

5           The next time it was submitted by their salesman,  
6 Mr. Scott Smith. We submitted -- he submitted a sample  
7 to the DOT lab on November the 7th, 1986.

8           The sample barely passed, and our lab man,  
9 Mr. Bob Whaley, would not allow us to use this material  
10 because it was so close, the stability on this material  
11 was so close. He was not comfortable with it at all.

12           Our only other alternative was to change our  
13 design mix and get our material from Radcliff Materials,  
14 which is now Dravo, in Chattahoochee.

15           To purchase and haul from Chattahoochee to our  
16 plant site in Wakulla County would have cost an  
17 additional \$56,226.55.

18           Had we planned to buy the materials from Radcliff  
19 Materials, we would not have been awarded the project.  
20 Therefore, we saved DOT \$56,037.99, at a cost to our  
21 company of \$26,400 in liquidated damages.

22           It was January 19th, 1987 before we had enough  
23 washed screenings to run the plant on this project.

24           Baxter's Asphalt Company is requesting relief of  
25 the liquidated damage for the shortage of materials on

1 this project, which is 88 days, at \$300 a day.

2 Exhibit A will show you how I came up with the  
3 difference in the estimate. It's from the DOT's  
4 recap of the bid on the project.

5 Exhibit 1(b) shows the difference in cost between  
6 purchasing from Radcliff Materials or Limerock  
7 Industries. That's all I have right now.

8 CHAIRMAN COWGER: Before DOT starts, one question.  
9 In your testimony and in your exhibit, you say that you  
10 were ready to run asphalt on October 13th, 1986?

11 MS. SLOAN: Yes, sir.

12 CHAIRMAN COWGER: Except for the fact that you  
13 did not have the materials?

14 MS. SLOAN: Right.

15 CHAIRMAN COWGER: And you're saying that you did  
16 not have the necessary washed screenings, is that  
17 correct?

18 MS. SLOAN: Correct.

19 CHAIRMAN COWGER: Okay. You documented that by a  
20 letter dated November the 6th, which was in Exhibit  
21 No. 1. But you're saying that even though the letter  
22 didn't get out until November the 6th, your testimony  
23 is that on October 13th you were ready to start then?

24 MS. SLOAN: Right.

25 CHAIRMAN COWGER: Okay. DOT?

1 MR. SHAFER: Tom Shafer, with DOT. In rebuttal  
2 to that, we're saying that the contractor did not  
3 provide documentation of an aggregate shortage, which  
4 was required by Article 8.732 of the Standard  
5 Specifications. That's shown at Tab A, that  
6 specification.

7 Where they're saying that it should be an  
8 area-wide shortage or something like that, the shortage  
9 of one supplier or the ability of one supplier not to  
10 be able to supply, we don't say that constitutes a  
11 shortage.

12 There was an alternate source of adequate  
13 material available from Florida Crushed Stone, and they  
14 show that in their letter. That's our Tab B.

15 They chose not to use it, even though the marshal  
16 stability was 500 pounds, and it passed the 500 pounds.  
17 They chose not to do that, and that was by their choice.

18 They did have an approved type mix design that  
19 was effective on November 7th, 1986, and it shows  
20 Florida Crushed Stone supplying the screenings. It  
21 gives a stability of 968 pounds, which is well above  
22 the 500 pounds. That's shown in Tab C, their approved  
23 mix.

24 We say that the contractor's supplier promised an  
25 adequate supply of aggregate for the project, and failed

1 to deliver in a timely manner. We don't think the  
2 Department should be held liable for that.

3 We don't think they showed a statewide or an  
4 area-wide shortage in material, because it was  
5 available in various places.

6 We also say that the contractor's work schedule  
7 shows that they would begin -- this is their revised  
8 work schedule, which shows that they would begin their  
9 asphalt work on contract day number 95. Contract day  
10 number 95 would have been January the 21st, I believe,  
11 or the 22nd.

12 They show that they were able to start on  
13 January 19th, so they had their materials. Even given  
14 the fact that they couldn't be supplied by their  
15 supplier, they had their material to start their  
16 asphalt work by the time they say they're going to  
17 start it in their own progress schedule.

18 They began their leveling on January 29th, which  
19 was contract day number 98, which was within three days  
20 of the contract day that they say they were going to  
21 start it.

22 They say it appears that the contractor was in a  
23 position to begin asphalt work before their planned  
24 start date, but they chose to wait to begin work.

25 Tab E shows Mr. Buser's response to their original



1 claim.

2 CHAIRMAN COWGER: Couple of questions. Were you  
3 through?

4 MR. SHAFER: Yes.

5 CHAIRMAN COWGER: You said that they were in a  
6 position to begin work on the day that their work  
7 schedule showed them to begin, but they chose to wait?

8 MR. SHAFER: Yes.

9 CHAIRMAN COWGER: That's a difference, really,  
10 though, between contract day 98 and contract day 95.  
11 Is that what you're referring to?

12 MR. SHAFER: Yes, I am.

13 CHAIRMAN COWGER: All right. I wanted to make  
14 that clear. I notice in your summary, at the beginning  
15 of section one you've got a reference to Tab F, and  
16 there is no Tab F -- wait a minute, there is.

17 Tab F is back there behind section two, for some  
18 reason or another.

19 MR. OGLE: Tab F applies to more than one section.

20 MR. SHAFER: Yeah. Tab F applies to more than  
21 one section. That shows the job diary, and when they  
22 started.

23 CHAIRMAN COWGER: Okay. That's all that's doing,  
24 is documenting when they actually began work?

25 MR. SHAFER: Yes, sir.

1 CHAIRMAN COWGER: And the only aggregate in  
2 dispute here, now, or the only aggregate that was  
3 unavailable was the washed screenings, is that true?

4 MS. SLOAN: Right.

5 CHAIRMAN COWGER: Go ahead and make a rebuttal.

6 MS. SLOAN: I don't quite understand this Tab F.  
7 On 5-31-87, that's when we started doing what?

8 MR. SHAFER: That's when you put down your first  
9 asphalt -- wait a minute. We might have the wrong tab  
10 there. Hang on.

11 Tab F actually shows -- Tab F is all of the  
12 diary entries.

13 MR. OGLE: Right.

14 MR. SHAFER: It isn't just that one sheet. It's  
15 the entire section of diary entries.

16 So we have to go to January 29th, which would be  
17 toward the end of this thing, to look for the date on  
18 there. Do you see what I'm saying?

19 MS. SLOAN: All right. That's fine.

20 CHAIRMAN COWGER: Is there any dispute, though,  
21 that the first leveling was placed on January 29th,  
22 that that was the first asphalt mix placed on the job?  
23 Does either party dispute that?

24 MS. SLOAN: No.

25 MR. SHAFER: No, evidently not. But the diaries

1 show that they worked on the 29th.

2 (Whereupon, Mr. Wilkinson entered the room.)

3 CHAIRMAN COWGER: Off the record just a minute.

4 (Discussion off the record)

5 CHAIRMAN COWGER: Let's go back on the record.

6 Mr. Wilkinson, the District Construction Engineer,

7 arrived late at the hearing because of car trouble.

8 We at this point in time will swear him in, in order

9 that he can give testimony.

10 (Whereupon, Mr. L. G. "Buddy" Wilkinson was duly sworn  
11 by the Chairman.)

12 CHAIRMAN COWGER: Okay. Where were we, now,  
13 before the interruption? I think we were going to let  
14 the contractor come back, now, and offer any rerebuttal,  
15 I believe.

16 MS. SLOAN: Well, I might note that this work  
17 progress schedule that he's referring to was not done  
18 until January of '87, when we knew what our situation  
19 with the aggregate was.

20 CHAIRMAN COWGER: Was this a revised schedule?

21 MR. SHAFER: This was a revised schedule, because  
22 they had added some work to it. The schedule still  
23 shows them finishing in time. It showed them --  
24 actually on the first schedule, they show it starting  
25 on the sixtieth day, I believe it was.

1 CHAIRMAN COWGER: I don't think we need any more  
2 on that right now. Do you have anything else on that,  
3 then?

4 MS. SLOAN: No, sir.

5 CHAIRMAN COWGER: Before we go on, DOT, give us --  
6 just for the Board's edification, give us just a quick  
7 overview of what this job consisted of, the work that  
8 was in the project.

9 MR. SHAFER: It was a shoulder widening and  
10 resurfacing project. It was a widening and resurfacing  
11 project, basically. I have the plans here, if you want  
12 them.

13 MR. WILKINSON: The shoulder widening was added  
14 as an afterthought. It was primarily a leveling and  
15 resurfacing job. The shoulder widening was added.

16 MS. SLOAN: The bicycle path was added after the  
17 job was bid.

18 MR. SHAFER: That's what the supplemental  
19 agreement was for, was to add the bicycle path. And  
20 everybody agreed to that.

21 CHAIRMAN COWGER: Okay. I was just trying to get  
22 what the scope of the work was. It appears like there  
23 was a fairly minor amount of pipe work and guardrail.

24 MR. SHAFER: They were incidental items to the  
25 resurfacing.

1 CHAIRMAN COWGER: All right. Let me ask a  
2 pointed question, then. The contractor has stated  
3 that they were in a position to begin work on October  
4 the 13th of 1986. Assuming that all materials were on  
5 the job at that point in time, all necessary materials  
6 were on the job, was it reasonable to anticipate that  
7 they could have begun work on that date on the asphalt?

8 In other words, was there anything that would  
9 have precluded them from beginning work on the asphalt  
10 on October the 13th, other than this shortage of  
11 materials?

12 MR. SHAFER: Give me a minute. I need to look,  
13 since I wasn't even employed by the State at that time.  
14 I need to look at something.

15 Their first progress schedule shows them laying  
16 asphalt on the sixtieth day. So obviously there was  
17 work to be done prior to the sixtieth day, before they  
18 felt that they could put down asphalt.

19 Then they also took their vacation time at the  
20 beginning of the job, instead of waiting for the  
21 Christmas holidays. So that would throw that another  
22 14 days, I guess.

23 The first chargeable day on this job was what?

24 CHAIRMAN COWGER: According to Exhibit No. 1,  
25 there is a form, a DOT form in there. Time began on

1 10-10-86.

2 MR. SHAFER: Okay. So time began on 10-10-86.  
3 What was the date that they had -- could have started?  
4 The 13th?

5 They couldn't have put down asphalt right away,  
6 I wouldn't think, not if in the original schedule they  
7 wouldn't do it until the sixtieth day. There are  
8 certain preparations and things you have to do.

9 CHAIRMAN COWGER: I don't think my question has  
10 really been answered fully. I realize that there are  
11 circumstances that you've presented that impact this.  
12 But was there any work, other than preparation, that  
13 had to precede beginning work on the asphalt?

14 MR. SHAFER: I don't know. I cannot answer that.

15 CHAIRMAN COWGER: Okay. Let me go to one other  
16 thing on this item number one. In the DOT exhibit,  
17 section one Tab C, we have a design mix using -- this  
18 is for Type II, which I assume was the first mix that  
19 had to be placed, because this was the mix to be used  
20 for leveling, is that correct?

21 MS. SLOAN: Yes, sir.

22 CHAIRMAN COWGER: And it consisted of a 60-40  
23 blend, 60 percent of it being screenings. This mix was  
24 approved, and it shows that the required stability  
25 could in fact be achieved with an optimum asphalt

1 content of 7 percent.

2 This shows the stability to be 968 pounds for  
3 that particular mix made with the Florida Crushed Stone  
4 screenings.

5 MR. SHAFER: Yes, sir.

6 CHAIRMAN COWGER: Where did the -- I guess I need  
7 to ask the contractor this question. Your testimony  
8 was that that showed a stability of only 503?

9 MS. SLOAN: There was more than one sample. I'll  
10 have to look a minute.

11 CHAIRMAN COWGER: DOT?

12 MR. SHAFER: Yes. They were showing that their  
13 screenings did not come from Florida Crushed Stone.  
14 They had gotten their screenings from -- planned on  
15 using it from Limerock Industries. It's not the same  
16 source.

17 What we're saying is there wasn't a shortage,  
18 because there was material available.

19 CHAIRMAN COWGER: Well, in essence what you're  
20 saying with this design mix that you submitted, is  
21 that --

22 MR. SHAFER: They could have used that mix.

23 CHAIRMAN COWGER: -- they could have used the  
24 screenings from Florida Crushed Stone, that was  
25 available --

1 MR. SHAFER: And they had an approved mix for it.  
2 CHAIRMAN COWGER: -- and achieved the stability?  
3 MR. SHAFER: Yes, sir.  
4 CHAIRMAN COWGER: Which is counter to what the  
5 contractor is saying. I'm trying to get that out, you  
6 know, why the difference in the testimony.  
7 MR. WILKINSON: Mr. Chairman, in the letter  
8 presented by Baxter's in their packet, dated October  
9 the 17th, is where they stated that Florida Crushed  
10 Stone did not reach the required stability.  
11 CHAIRMAN COWGER: The required stability for this  
12 mix was 500, is that correct?  
13 MR. OGLE: Yes, sir.  
14 MR. WILKINSON: Mr. Chairman, also I'd like to  
15 point out that this design mix was dated October  
16 the 7th, the same date as this letter from Baxter's.  
17 CHAIRMAN COWGER: Huh-uh. They're a year apart.  
18 MR. WILKINSON: You're correct.  
19 CHAIRMAN COWGER: Kathy, do you have any  
20 explanation of this?  
21 MS. SLOAN: I can tell you that the original  
22 samples that were submitted to Florida Crushed Stone,  
23 the pills broke at 314 pounds and 333 pounds. And when  
24 the salesman submitted the samples to DOT, then I know  
25 there was one set that passed at 503 pounds. And I'm



1           sorry, but I do not have a copy of that with me.

2           Maybe you all do.

3                     MR. OGLE: I don't believe so.

4                     MS. SLOAN: I can say that it was enough that  
5           our lab man, Mr. Whaley, was not comfortable that all  
6           the material we would receive from Florida Crushed  
7           Stone would meet DOT's specifications, whereas the  
8           material from Florida Limerock Industries did.

9                     CHAIRMAN COWGER: I'm left confused.

10                    MR. SHAFER: Mr. Chairman, can I say something,  
11           please?

12                    CHAIRMAN COWGER: Certainly.

13                    MR. SHAFER: On November 6th, 1986 -- and that's  
14           in this letter here from Baxter's, dated October 7th,  
15           1987 -- on November 6th, 1986, they sent a letter,  
16           evidently, to the State, saying that they couldn't get  
17           screenings. However -- and that evidently had been  
18           from Limerock Industries.

19                    However, they did have a mix already from Florida  
20           Crushed Stone, that had adequate stability. So at the  
21           time they're saying they couldn't get it to get their  
22           stability, they had a mix already that gave stability.  
23           And that is dated 10-7-86. So a month earlier, they had  
24           a mix that had passed.

25                    CHAIRMAN COWGER: Were washed screenings required

1 in the Type S mix also?

2 MR. SHAFER: I don't know that.

3 MS. SLOAN: That's on the surface course?

4 CHAIRMAN COWGER: Yes.

5 MS. SLOAN: Yes.

6 CHAIRMAN COWGER: Was there a problem with the  
7 design mix on that?

8 MS. SLOAN: Sir?

9 CHAIRMAN COWGER: Was there a problem with the  
10 design mix on that, or was it a matter that you had the  
11 problem -- at least the contractor's position is that  
12 you had the problem with the Type II, and you couldn't  
13 proceed on until you got that resolved anyway? Is that  
14 really what it amounts to?

15 MS. SLOAN: Right.

16 CHAIRMAN COWGER: The critical issue or the  
17 critical item was the Type II mix?

18 MR. SHAFER: (Nodding head affirmatively)

19 CHAIRMAN COWGER: Okay. Does anybody else have  
20 any -- Mr. Turnbull or Mr. Carlile, since we're getting  
21 close to the end, do you have any questions?

22 MR. TURNBULL: No.

23 MR. CARLILE: I was just going to ask the  
24 contractor this. We didn't discuss the assertion by  
25 the Department that you could have started, I guess,

1 ten days earlier. You indicated you had the materials  
2 available to start ten days earlier. Did we ever  
3 clearly settle on that, whether that was indeed the  
4 case?

5 MS. SLOAN: Between January 19th and January 29th?

6 MR. CARLILE: Yes.

7 MS. SLOAN: Well, for one thing, if you'll look  
8 under my item number two, under weather conditions,  
9 you'll see that there were several days in there that  
10 were bad weather days from the 19th through --

11 MR. CARLILE: Okay. You'll address that in the  
12 next section?

13 MS. SLOAN: Yes, sir.

14 MR. CARLILE: Okay. We can do that, then.

15 CHAIRMAN COWGER: Mr. Turnbull, did you have  
16 anything?

17 MR. TURNBULL: No.

18 CHAIRMAN COWGER: We're ready to move on to  
19 section two, then.

20 MR. WILKINSON: Mr. Chairman, I'm sorry. I might  
21 be repeating something that has already been discussed.  
22 If I am, just tell me to hush.

23 Other than this notice that they were experiencing  
24 difficulty in obtaining the washed screenings, we had  
25 no justification for that other than that letter. And

1 in accordance with our specifications, as pointed out  
2 in Mr. Shafer's exhibit, we should have been furnished  
3 documentation that there was an actual shortage of  
4 this material. And other than prices, this does not  
5 give that documentation.

6 CHAIRMAN COWGER: Does anybody else have anything  
7 further to say on item one?

8 Then we can move, now, to item two.

9 MS. SLOAN: Okay. Item two is weather conditions.  
10 Once we were able to obtain the materials to run  
11 asphalt on this project, we experienced extremely wet  
12 conditions.

13 As you can see from the attached exhibit, on  
14 July 12th, 1987 we were 10.73 inches above normal in  
15 rainfall for the year.

16 We feel that the time frame from January 19th  
17 through July 15th should be considered for foul weather  
18 conditions.

19 There is also enclosed a calendar, showing which  
20 days there were wet conditions, as well as backup  
21 documentation from the diaries. It's pretty  
22 self-explanatory.

23 CHAIRMAN COWGER: Looking at the calendars that  
24 are in Exhibit No. 3, as I understand it, now, just to  
25 be sure, where a heavy line is drawn, this is where the

1 DOT's diaries showed foul weather?

2 MS. SLOAN: Right.

3 CHAIRMAN COWGER: And where there are circles  
4 drawn, the contractor's foreman's diary indicated foul  
5 weather?

6 MS. SLOAN: Correct. And there are the quotes  
7 from our foreman's diaries on the last page of that  
8 number two exhibit.

9 CHAIRMAN COWGER: That's the last three pages of  
10 that -- oh, no.

11 MS. SLOAN: It's on the last page.

12 CHAIRMAN COWGER: Okay. What are the pages  
13 immediately following the calendar? What are the foul  
14 weather working days in diary?

15 MS. SLOAN: That's the engineer's -- the DOT's  
16 diary.

17 CHAIRMAN COWGER: And then the last page is in  
18 there to substantiate the circles on the calendar, is  
19 that correct?

20 MS. SLOAN: Correct.

21 CHAIRMAN COWGER: Okay.

22 MS. SLOAN: Now, I might point out that on the  
23 quotes from the DOT's diaries, it should have been put  
24 in parentheses.

25 Like, if it has a statement where it says rain,

1 and then it says too wet to work, that's our notations,  
2 not DOT's.

3 Like, after the period, say, 2-5-87, light rain  
4 all day, our notation is "Could not lay asphalt due to  
5 weather conditions," because asphalt was the controlling  
6 item of work.

7 CHAIRMAN COWGER: So any place where there's a  
8 comment on weather conditions, like the next one says  
9 poor working conditions, that was not in the diary?

10 MS. SLOAN: Correct.

11 CHAIRMAN COWGER: Are we ready, then, for the  
12 DOT to begin their rebuttal?

13 MS. SLOAN: Yes, sir.

14 MR. SHAFER: The contractor claims that the  
15 weather conditions delayed the project from January 19th  
16 through July 25th. Not for that entire time.

17 Contract time ended on May 10th, and no foul  
18 weather days occurring after that date are considered.

19 For the 200-day contract, 28 weeks -- this is  
20 what DOT is saying. For a 200-day contract, which is  
21 what this contract was ultimately, 28 weeks, 28 foul  
22 weather days are allotted for the contract for foul  
23 weather.

24 According to the project diaries -- and Tab F  
25 shows those project diaries, again -- there were 30

1 weekdays in which weather conditions held up the  
2 controlling item by more than 50 percent of the workday  
3 during the project.

4 So we say there are two days in excess of the one  
5 day per week allotted in determining contract time.

6 The prime contractor worked 38 days of an  
7 available 158 days during the 200 days allowable  
8 contract time.

9 Now, that includes some Saturdays and Sundays,  
10 because they did work on some Saturdays and Sundays.

11 The prime contractor worked 36 days of an  
12 available 92 days from the time he started with an --  
13 when he says his aggregate was available, on  
14 January 19th, 1987.

15 We did not count a 14-day vacation period, which  
16 was granted -- which was requested and granted from  
17 October 15th through October 28th. We did not count  
18 contract time.

19 Let me reiterate. They worked a total of 38 days  
20 of an available 158 days for a 200-day contract. They  
21 simply weren't on the job.

22 And from the day that they said their aggregate  
23 was available, they worked 36 days out of 92 available  
24 days.

25 The calendars that we have shown just follow that

1 page. We have a computer printout of calendars. The  
2 legend on there is fairly explanatory.

3 The orange dots are days that they had rain.  
4 The little percentages, if you can read them in there,  
5 is the down time. The yellow dots show the days the  
6 contractor worked. No dot at all shows that it didn't  
7 rain and they didn't work.

8 I'll leave you to look at that, if you have any  
9 questions.

10 CHAIRMAN COWGER: I had one question. You talked  
11 about 158 available days and 92 available days?

12 MR. SHAFER: That's taking out all the rain days  
13 and such that are shown here.

14 CHAIRMAN COWGER: That's what I wanted, was a  
15 definition of available days.

16 MR. SHAFER: An available day is a day when they  
17 could work.

18 CHAIRMAN COWGER: Does that include Saturdays  
19 and Sundays?

20 MR. SHAFER: I did include Saturdays and Sundays,  
21 because they did work Saturdays and Sundays. They  
22 chose to, so I had to use them.

23 CHAIRMAN COWGER: Okay. That's what I wanted to  
24 know. So it includes all calendar days except rain  
25 days?



1 MR. SHAFER: Except rain days, that's correct,  
2 and those 14 vacation days.

3 CHAIRMAN COWGER: Per the DOT diary?

4 MR. OGLE: Well, I think we included any day.

5 MR. SHAFER: These are our diaries.

6 MR. OGLE: These are our diaries.

7 CHAIRMAN COWGER: And that vacation period that  
8 you're talking about there, from October 15th to  
9 October the 28th, is that the same period you were  
10 referring to when we were dealing with issue number one,  
11 that they took vacation at the beginning of the project?

12 MR. SHAFER: Yes, as opposed to taking it during  
13 Christmas. So I did not include Christmas Day and  
14 New Year's Day in these days, but I didn't exclude the  
15 normal 14 days that they would take for Christmas, or  
16 for that holiday period.

17 CHAIRMAN COWGER: Any holidays that fell in there,  
18 but no vacation time. I see.

19 Any further testimony on this one?

20 MR. OGLE: I have something to add. My name is  
21 Dorion Ogle.

22 If you look at the contractor's exhibit, where  
23 they have the quotes from the diaries, the first few  
24 that I looked at and checked with our diaries,  
25 January 21st of '87, they have overcast, cold, light

1 rain. They left out, "Had no effect on the project."

2 MS. SLOAN: In their opinion.

3 CHAIRMAN COWGER: What is the date again, now?  
4 I'm sorry.

5 MR. OGLE: January 21st, 1987.

6 CHAIRMAN COWGER: Overcast and cold, light rain.  
7 So now we have a difference of opinion as to whether or  
8 not that day in fact --

9 MR. OGLE: Our engineer stated it had no effect  
10 on the project.

11 CHAIRMAN COWGER: Was that in your diary?

12 MR. OGLE: In the weekly summary. And also the  
13 inspector stated, "Weather did not affect work on the  
14 project." That's for January 21st through January 25th.

15 Also, February 28th is a Saturday, March 7th is a  
16 Saturday, March 8th is a Sunday. Then I haven't been  
17 able to look at the rest of them.

18 CHAIRMAN COWGER: That's okay. Your testimony is  
19 that some of these days listed are Saturdays and  
20 Sundays?

21 MR. SHAFER: Yes, sir.

22 MR. OGLE: And some of them don't reflect the  
23 full DOT side from the diaries.

24 CHAIRMAN COWGER: I understand.

25 MS. SLOAN: As I stated before, Mr. Chairman, the

1           comments are ours, not DOT's.

2           CHAIRMAN COWGER: Let's take just a minute -- and  
3 I don't want to get into this in great depth, but you  
4 zeroed in on January 21, 1987.

5           In Exhibit No. 2, Tab F, is that note shown in  
6 here somewhere? I don't know if you just happened to  
7 pick that one up or not.

8           MR. SHAFER: What is the date?

9           CHAIRMAN COWGER: Well, January 21, 1987.

10          MR. OGLE: You want to look at the engineer's  
11 weekly summary?

12          CHAIRMAN COWGER: Yes. Is that included in --

13          MR. OGLE: Yes, sir. If you look at contract day  
14 94, this should be in there.

15          CHAIRMAN COWGER: All right. I'm going backwards  
16 through the thing. I see. I see it.

17          MR. SHAFER: Contract day number 94 is down there  
18 at the bottom.

19          MS. SLOAN: Mr. Chairman, would you like to use  
20 these diaries from the project engineer's diaries?

21          MR. OGLE: We've got a copy of them in our  
22 exhibit.

23          MS. SLOAN: Okay.

24          CHAIRMAN COWGER: I think we'd like to have one  
25 set, just to refer to.

1 MR. OGLE: We've got a set right here.

2 CHAIRMAN COWGER: Let us just borrow the DOT's  
3 set. They're the same, are they not? Let us just have  
4 that.

5 Mr. Carlile, do you have any further questions on  
6 this particular issue?

7 MR. CARLILE: No, I don't.

8 CHAIRMAN COWGER: Mr. Turnbull?

9 MR. TURNBULL: No.

10 CHAIRMAN COWGER: I don't want to cut it off if  
11 anybody has anything else to say, but I think we can  
12 probably go ahead and move on.

13 MS. SLOAN: May I say one thing, please?

14 CHAIRMAN COWGER: Sure.

15 MS. SLOAN: I would just like to restate that,  
16 as shown in this clipping from the Tallahassee Democrat,  
17 on July 12th, 1987 the rainfall was 10.73 inches above  
18 normal, which had a definite effect on the project.

19 CHAIRMAN COWGER: Are we ready, then, to move on  
20 to item number three?

21 MR. CARLILE: I just want to ask one question.  
22 I want to ask you something about that last comment.  
23 The 10.73 inches, that was for January through July?

24 MS. SLOAN: Yes, sir.

25 MR. CARLILE: Do you have anything to indicate

1           how that was spread out? Was that one particular  
2           period or what?

3                     I guess what I'm saying is if you get ten inches  
4           in one day, then you'd be ten inches over at that point  
5           in time.

6                     MS. SLOAN: Yes, sir. Somewhere I do have that.

7                     MR. WILKINSON: Mr. Chairman, I think that this  
8           10.73 inches was as recorded at the Tallahassee Airport.  
9           During the summer months, everybody is aware that there  
10          are scattered showers throughout. It might rain at the  
11          Tallahassee Airport, but 20 miles down the road or five  
12          miles down the road, it would have no effect on a  
13          project.

14                    MS. SLOAN: This is true, but there were several  
15          months of it over the winter.

16                    MR. SHAFER: And I'd like to say that on a  
17          resurfacing job, rain doesn't hold you up nearly as  
18          much as it does on an earthwork job.

19                    CHAIRMAN COWGER: I think we've got enough on  
20          that item, unless somebody else has something they just  
21          have to present.

22                    MR. CARLILE: Well, I just was making a point  
23          that unless we know specifically how that 10.73 inches  
24          was spread, I'm not sure it's pertinent.

25                    CHAIRMAN COWGER: Oh, yeah. Did you want to

1 pursue that any more, Mr. Carlile?

2 MR. CARLILE: She said she thought she had  
3 something, and I was giving her a chance to look.

4 CHAIRMAN COWGER: Well, we'll pause a minute,  
5 then, and wait and see.

6 (Brief pause)

7 MS. SLOAN: I have it somewhere. I just don't  
8 know that I have it with me.

9 MR. CARLILE: We can go on, then, and if you can  
10 locate it, you might produce that later.

11 MS. SLOAN: All right. Item number three is  
12 additional work performed on the borrow item.

13 There was additional work performed on the borrow  
14 item. According to the DOT estimating department,  
15 there were three days estimated to do the work on the  
16 borrow item.

17 Considering the extent of the additional work,  
18 it took 12 working days rather than the three that was  
19 estimated, which is an overrun of nine working days.  
20 I feel that we should be given some consideration for  
21 this.

22 CHAIRMAN COWGER: DOT?

23 MR. SHAFER: DOT feels that the contractor  
24 shouldn't be depending upon the Department's estimate,  
25 for one thing.

1           Secondly, they did place, in three working days,  
2           within four days of the end of the job -- as a matter  
3           of fact, they had placed 2600 yards of borrow in three  
4           days.

5           There was an overrun of borrow by about a thousand  
6           yards. So based on the prediction of doing 2600 yards  
7           in three days, that might give them a day at the most.  
8           But a lot of this borrow they show, they show days when  
9           they put in borrow as 60 yards, 50 yards, 100 yards,  
10          and that was for taking care of pipes.

11          And I'd also like to say that borrow was not a  
12          controlling item. That borrow could have been placed  
13          while they were doing other items.

14          But the bulk of that borrow was placed in three  
15          days, and it was right toward the end, when things were  
16          getting down to the wire. And they were able to put  
17          down 2600 yards of borrow.

18          CHAIRMAN COWGER: May I ask a question?

19          MR. SHAFER: Certainly.

20          CHAIRMAN COWGER: How many total yards?

21          MR. SHAFER: 3400 yards, finally. By the  
22          deadline, May 10th, which was the contract deadline,  
23          they had already placed approximately 3,000 yards.  
24          They had placed -- prior to the three days that they  
25          had put down the 2600 yards, they had placed another

1 800 yards, or 400 or 500 yards. I've got -- let's see.  
2 They had placed a considerable amount.

3 CHAIRMAN COWGER: The testimony that you're  
4 making now says that 2600 yards were placed on May 4th,  
5 5th and 6th, is really what you're saying, is it not?

6 MR. SHAFER: That's what I'm saying.

7 CHAIRMAN COWGER: Okay.

8 MS. SLOAN: Mr. Chairman, I would like to make  
9 one statement on the subject, that there was not enough  
10 borrow material on this project to really, as they say,  
11 sweeten up the shoulders of the road as there should be,  
12 which DOT has gone back and corrected that at this  
13 point, but there was some discrepancy as to how much  
14 they would allow us to put out.

15 MR. WILKINSON: Mr. Chairman, as far as  
16 additional time for this additional borrow, as  
17 Mr. Shafer pointed out, the plan quantity was 2220  
18 cubic yards, whereas the final quantity was 3480 yards.

19 This overrun of 1260 yards, approximately, if the  
20 contract itself overran, then this additional borrow  
21 would accrue additional time.

22 CHAIRMAN COWGER: Okay. Mr. Carlile or  
23 Mr. Turnbull, do you have any further questions on this?

24 MR. TURNBULL: No.

25 MR. CARLILE: No.



1 CHAIRMAN COWGER: I think we're ready to move on  
2 to item number four.

3 MS. SLOAN: Item number four is time not stopped  
4 when project conditionally accepted by DOT.

5 On July 24th, 1987, our superintendent on the  
6 project rode through the job with DOT's project  
7 engineer and assistant resident engineer.

8 They all agreed that the job could be  
9 conditionally accepted and the time stopped as of that  
10 day, July 24th, 1987.

11 As usual, there was a small punch list of items  
12 to be cleaned up. Our superintendent came back to our  
13 office that Friday afternoon with the good news that  
14 time had been stopped on the project.

15 Later, on August the 5th, 1987, we found out  
16 quite by accident that time was still running on this  
17 project. Time was finally stopped on August 25th, 1987.

18 We feel that it is not fair to our company to pay  
19 the 31 days that we were assessed in liquidated damages,  
20 which is \$9,300, when the road was traveled unhindered  
21 by the public during this time frame.

22 The next page is a memorandum of law, which states  
23 in it that Florida law prohibits liquidated damages  
24 from being imposed when construction is substantially  
25 performed.

1                   CHAIRMAN COWGER: Does that complete your  
2 statement for the moment?

3                   MS. SLOAN: Yes, sir.

4                   CHAIRMAN COWGER: DOT, we're ready for you,  
5 whenever you are.

6                   MR. SHAFER: Sure. As I understand it, when they  
7 rode through that job they came up with a punch list.  
8 Work isn't done until the punch list is completed.

9                   On August the 5th, which would have been  
10 approximately a week later after they rode through it,  
11 I guess, they sent them a punch list, and they said  
12 that this needs to be completed before we can accept  
13 the job. Evidently, it wasn't completed until August  
14 the 25th.

15                   There was no documentation or written notice that  
16 the job was conditionally accepted on July 26th. We  
17 have a letter, dated August 5th, saying that these  
18 things need to be done before we can accept the job.

19                   I don't understand how they could feel that it  
20 was accepted, when they received a letter saying we had  
21 to finish these items.

22                   Conditional acceptance on a job -- the condition  
23 would be that the traffic signal is burned in or the  
24 markers are stuck down, but not that there is work to  
25 be completed. Work wasn't done or completed until the

1 25th of August, when they did finish the job.

2 And as far as folks using the road, it was open  
3 to traffic the entire time during construction.

4 CHAIRMAN COWGER: Let's go to Tab J a minute,  
5 and look at it. Is it true to say that even though  
6 this letter is dated August the 5th, that this was the  
7 work remaining to be completed on July 24th, or is  
8 there any way to establish that?

9 MR. SHAFER: I can only say that's my  
10 understanding. Particularly, the signs needed to be  
11 put up.

12 CHAIRMAN COWGER: So you wouldn't argue that this  
13 date -- that this letter could apply to the situation  
14 as it existed on July 24th?

15 MR. SHAFER: No, sir, I couldn't argue that.

16 CHAIRMAN COWGER: Okay.

17 MS. SLOAN: Mr. Chairman, this letter would  
18 probably never have been written if I had not discovered  
19 that time was still running on this project. It was a  
20 complete surprise to our company that time was still  
21 running on the project.

22 We were definitely told that time was stopped on  
23 the 24th of July, by both the project engineer and the  
24 assistant resident engineer.

25 CHAIRMAN COWGER: DOT, was that Mr. Gavins?

1 MR. SHAFER: Yes, sir. I talked to him about it.  
2 I can just tell you that he said they drove through  
3 there, and they gave them a punch list. There was no  
4 talk of accepting the job until the punch list was done.  
5 It's just one word against another, I guess.

6 CHAIRMAN COWGER: Let's go back to Tab J a minute.  
7 The work that remained to be completed on July 24th or  
8 26th -- and there seems to be a little discrepancy  
9 between the dates -- whatever that is, is the work  
10 outlined in the letter of August the 6th what remained  
11 to be completed at that time?

12 MR. SHAFER: That's what I understand, yes.  
13 That's what it says.

14 CHAIRMAN COWGER: Okay. Number three there, five  
15 concrete string poles not meeting DOT specification.  
16 Can anybody enlighten us as to that?

17 MR. SHAFER: Yes. That was finally resolved by  
18 a supplemental agreement, as I understand it. They  
19 were able to go to a Class IV pole instead of a Class V  
20 or something.

21 CHAIRMAN COWGER: But no additional work was done?

22 MR. SHAFER: No, no.

23 CHAIRMAN COWGER: Mr. Wilkinson?

24 MR. WILKINSON: No additional work was done,  
25 Mr. Chairman, but there was a lesser restriction of the

1 Class IV against the Class V. The problem was the  
2 prestresser's class -- and don't hold me to this class,  
3 now, because it's been so long ago I don't remember --  
4 but the problem was that the prestresser's class number  
5 was different from DOT's class number. Our  
6 specifications were referring to our class rather than  
7 the prestresser's class. And that had to be resolved.

8 CHAIRMAN COWGER: But no work was done, that's  
9 the key thing.

10 MR. WILKINSON: No. I would like to point out,  
11 Mr. Chairman, that as of our -- or on August the 25th,  
12 the last day, the acceptance date by DOT, there was --  
13 the contractor was actively putting up signs, which  
14 were a bid item of the contract. Our diaries indicate  
15 that.

16 CHAIRMAN COWGER: Was there a reason for the delay  
17 in installation of the signs?

18 MS. SLOAN: We were having trouble acquiring them.

19 CHAIRMAN COWGER: What kind of signs were they?  
20 Were they just -- were there any overhead signs, or  
21 were they just roadside signs?

22 MS. SLOAN: Roadside.

23 MR. WILKINSON: Mr. Chairman, I don't remember.  
24 But the contract, which you have in front of you, should  
25 state it.

1 MS. SLOAN: They were roadside signs. As a  
2 matter of fact, one of them was knocked down the next  
3 day, and it's never been put back up, because they  
4 can't keep it up. It was in the middle of an  
5 intersection, on a little median-type thing.

6 CHAIRMAN COWGER: Was there any documentation  
7 submitted, though, in regard to the delay in the  
8 delivery of these signs?

9 MS. SLOAN: No, sir.

10 CHAIRMAN COWGER: Okay. I have no further  
11 questions. Does either party have any statement they  
12 want to make at this point?

13 Mr. Carlile or Mr. Turnbull, do you have any  
14 further questions at this point?

15 MR. CARLILE: Just one point of clarification on  
16 time. You said that your impression was it was going  
17 to be conditionally accepted on July 24th, and you did  
18 find out on August the 5th, which I guess would be 12  
19 days later. You're really claiming the full 31 days,  
20 from July 21st until final acceptance.

21 MS. SLOAN: From the time we were told that time  
22 would be stopped.

23 MR. SHAFER: May I add something? The signs were  
24 not up, then. I mean, there was work to be done.  
25 There was still work to be done.

1 A job cannot be conditionally accepted when  
2 there is still work to be done on the job.

3 MS. SLOAN: If DOT rode through the job with us  
4 on July 24th, why was the letter written on August  
5 the 5th?

6 MR. SHAFER: To remind you what still needed to  
7 be done.

8 MS. SLOAN: It was written after we took  
9 Jimmy Rodgers' deposition, when I found out that time  
10 was still running on the project, at the same time he  
11 found out that we had been told that time had been  
12 stopped.

13 MR. CARLILE: What was that deposition in regard  
14 to?

15 MS. SLOAN: We were late on this project, and it  
16 was prior to an administrative hearing.

17 CHAIRMAN COWGER: Having to do with delinquency?

18 MS. SLOAN: Yes, sir.

19 CHAIRMAN COWGER: It had nothing, really, to do  
20 with this claim?

21 MS. SLOAN: No, sir. It was an absolute accident  
22 that I discovered this.

23 CHAIRMAN COWGER: One question I have, DOT, in  
24 your summary of section four you talk about the fact  
25 that on August the 19th, the contractor was actively

1 engaged in installing delineator buttons.

2 MR. SHAFER: Yes, sir.

3 CHAIRMAN COWGER: Yet that wasn't mentioned in  
4 the August 5th letter as work remaining to be done,  
5 was it?

6 MR. SHAFER: Well, that's probably part of the  
7 sign work.

8 CHAIRMAN COWGER: Okay. I just wondered what had  
9 happened.

10 So actually, then, all the delineators, the  
11 pavement markers, I guess you would call them -- is  
12 that what we're talking about, when you say delineator  
13 buttons?

14 MR. WILKINSON: That's probably the reflectors --  
15 the reflective pavement markers, Mr. Chairman.

16 CHAIRMAN COWGER: And they were installed on or  
17 about August the 19th?

18 MR. OGLE: Yes, sir, as shown in the diaries.

19 CHAIRMAN COWGER: Okay. Does anybody have any  
20 further statements about item number four?

21 Before we close, a couple of comments. In regard  
22 to item number two, dealing with weather conditions,  
23 Mr. Carlile raised a question whether or not there was  
24 any documentation that would show how that ten point  
25 some-odd number of inches of additional rain was spread



1 over the year.

2 If the contractor can come up with some  
3 documentation on that, we will allow that to be  
4 submitted subsequent to this hearing. And if the  
5 Board feels it necessary, we'll allow DOT to have a  
6 look at that information and submit something.

7 Also in regard to item number one, at Tab C there  
8 was a design mix for Type II, dated 10-7-86. There's  
9 a little but of question, possibly, how that relates  
10 to the contractor's statement that pills taken on the  
11 Florida Crushed Stone samples broke at a stability of  
12 503.

13 We will give the contractor an opportunity to  
14 submit any additional information that they have in  
15 regard to that statement.

16 Only those two things that I've outlined will  
17 they be allowed to submit to the Board, and this  
18 information will have to be to the Board prior to  
19 June 1st, to give us time to look at it and decide  
20 whether or not we need to give DOT the opportunity  
21 to rerebut it.

22 This hearing is hearby closed. The Board will  
23 meet on June 19th to deliberate on this claim, and  
24 you'll have our order shortly thereafter.

25 (Whereupon, the proceedings were concluded at 11:40 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA )

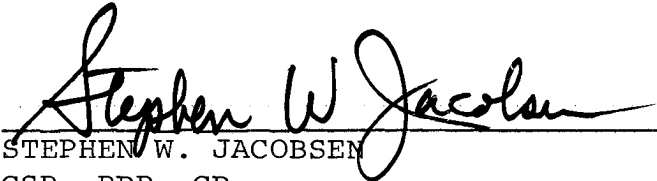
COUNTY OF LEON )

I, STEPHEN W. JACOBSEN, Certified Shorthand Reporter  
and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings were  
taken before me at the time and place therein designated;  
that my shorthand notes were thereafter reduced to  
typewriting under my supervision; and the foregoing pages  
numbered 1 through 43 are a true and correct record of the  
aforesaid proceedings.

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

WITNESS MY HAND AND SEAL this, the 29<sup>th</sup> day of May,  
A.D., 1990, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,  
STATE OF FLORIDA.



STEPHEN W. JACOBSEN  
CSR, RPR, CP  
Post Office Box 13461  
Tallahassee, Florida 32317

My Commission Expires March 25, 1991

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