STATE ARBITRATION BOARD

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

OCTOBER 25, 1990

/ / / NOTICE / / /

In the case of Ranger Construction Industries, Inc. versus the Florida Department of Transportation on Project No. 93190-3521 in Palm Beach County, Florida, both parties are advised that State Arbitration Board Order No. 4-90 has been properly filed on October 25, 1990.

H. Eugene Cowger

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

S.A.B. CLERK
OCT 25 1990
FILED

Copies of Order & Transcript to:

R.D. Buser, P.E., Director of Construction/FDOT
Steve Kimmerle, Vice President/J.E. Hill Contractor, Inc.
Copy of Order to: Ranger Construction Industries, Inc.

STATE ARBITRATION BOARD

ORDER NO. 4-90

RE:

Request for Arbitration by
Ranger Construction Industries, Inc. on
Project No. 93190-3521 in
Palm Beach County, Florida

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 9:35 a.m., Friday, September 14, 1990.

The prime contractor provided the Board with written authorization for subcontractor, J. E. Hill Constructors to pursue this claim through arbitration.

The Board Members, having fully considered the evidence presented at the hearing,, now enter their order No. 4-90 in this cause.

ORDER

The subcontractor presented a request for arbitration of a claim in the amount of $95,272.22 for the additional costs he incurred in removing and replacing two units of Con/Span Precast Arch Bridge because of defective work in one of the units. He contends that the decision by the Department of Transportation (DOT) to require removal and replacement rather than a less expensive repair procedure he proposed was not within the terms of the contract.

The subcontractor presented following information in support of his claim:

1. We submitted and DOT approved a Value Engineering Change Proposal substituting a Con/Span Precast Arch Bridge for the double box culvert shown in the plans. Con/Span's engineer submitted a shop drawing covering special construction details at locations where storm sewer pipe intersected the arch bridge and DOT approved it.

2. After completing construction of the North half of the

arch bridge, we made a field measurement to establish the actual location of an intersecting 36" pipe near the South end of the structure relative to the completed portion of the bridge.

3. We cast a 5'x 5' opening in the sidewall of one precast unit to accommodate entrance of the 36" pipe.

4. Upon setting this unit in place, we discovered that, due to an error in our field measurement, the 36" pipe did not line up with the opening in the sidewall.

5. At that time, DOT approved construction of a bend in the 36" pipe to cause it to fit the as-cast opening in the sidewall.

6. Then, DOT discovered:

A. Cracks in the sidewall of the precast unit adjacent to the 5'x 5' opening.

B. The opening was not constructed in accordance with the approved shop drawing and a revised shop drawing had not been submitted.

C. The unit as cast was not adequate to resist the design loading.

7. We admitted that the unit was defective.

8. Con/Spans engineer designed a repair consisting of a supplemental wall which overlapped the adjacent units and was tied to the arch portion of the units and to the footing.

8. We submitted this corrective design to DOT and they rejected it. We were informed that their structures department refused to review the design. An important point to be made here is that the corrective design was prepared by a professional engineer and was supported by his calculations.

9. Then Con/Spans engineer prepared and submitted to DOT a shop drawing for a unit to replace the defective one. This unit had a 4' x 4' opening approximately centered in the 8' long sidewall.

10. We were instructed by the DOT Consultant Project Manager to effect corrective work in accordance with the originally

approved shop drawing. Since that drawing showed the opening for the 36" pipe to be centered on the joint between two precast units we were forced to remove and replace two units.
11. It is our position that, in accordance with Article 5-3 of the Standard Specifications, DOT should have reviewed the design for a supplemental wall as prepared by Con/Span's engineer and, if the design was found to be adequate, allowed us to correct the defective work at our expense. By refusing to even review the design for corrective work, DOT forced us to unecessarily incur substantial additional expense. Those expenses were increased by DOT's actions of withdrawing approval for us to construct a bend in the 36" pipe and instructing us to proceed in accordance with the original shop drawing.

The Department of Transportation rebutted as follows:
1. The Con/Span unit determined to be defective was not cast in accordance with the approved shop drawing and Con/Span's engineer was not made aware of the significant revisions to that unit. The unit was determined to be structurally deficient and there is no dispute of this determination.
2. On August 5, 1988, the Subcontractor submitted a proposed repair procedure involving construction of a supplemental wall.
3. On approximately August 9, 1988, the subcontractor began to disassemble Con/Span forms in his casting yard in preparation for casting the replacement units.
4. On August 11, 1988, we notified the subcontractor that the repair procedure (supplemental wall) he submitted was rejected.
5. On August 11, 1988, Con/Span's engineer submitted a shop drawing for a single replacement unit with a 4' x 4' opening.
6. On August 13, 1988, the first of two replacement units was cast.
7. It is our position that the subcontractor initiated action to cast the two replacement units prior to Con/Span's

engineer submitting the shop drawing for a 4' x 4' opening in a single unit and possibly before we advised him that his repair proposal was rejected.

8. In addition to structural inadequacy, our decision to reject the repair proposal was based on the possibility of increased long term maintenance costs, possible intrusion of moisture into the walls causing corrosion of the reinforcing steel and lack of knowledge of the actual quantity and location of the reinforcing steel in the defective unit.

9. We have shown that the subcontractor initiated actions to cast replacement Con/Span units (disassembling forms) prior to us notifying him that his repair proposal was rejected and before we had the opportunity to review the new Con/Span shop drawing that provided for an opening in a single unit. This indicates that the decision to cast two replacement units was at the subcontractor's discretion.

10. We acted in a timely manner on all submittals.

11. The amount claimed includes delay costs not associated with rejection of the Con/Span unit and does not take into consideration the time and work which would have been required to construct the repair proposed by the subcontractor.

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

1. DOT did not submit evidence to establish that they ever made a review of the repair proposal submitted by Con/Span's engineer to verify or dispute the structural adequacy of that design.

2. From the testimony, the date on which the DOT rejected the Con/Span repair proposal in uncertain.

3. The date on which the subcontractor began preparation for casting the new Con/Span units is not clearly established by the evidence presented.

4. DOT approved construction of a bend in the 36" pipe and later, when other problems developed, rescinded that approval.

5. The amount claimed does not make provision for a credit for the work and time which would have been required to construct the repair proposed by Con/Span.

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 compensate the Contractor in the amount of $20,000 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of $223.50 for Court Reporting Costs.

S.A.B. CLERK
OCT 25 1990
FILED

Tallahassee, Florida

Dated: 25 October 1990

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

Frank Carlile, P. E.
Member

Certified Copy:

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

25 October 1990
Date

Sam P. Turnbull, P. E.
Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

J. E. HILL CONTRACTOR, INC.)
)
)
)
) PROJECT NO. 93190-3521
- and -)
) LOCATION: Palm Beach
) County, Florida
)
)
DEPARTMENT OF TRANSPORTATION)
) ORIGINAL
_____)

RE: Hearing In The Above Matter

DATE: Friday, September 14, 1990

PLACE: 1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 9:35 a.m.
Concluded at 11:05 a.m.

REPORTED BY: STEPHEN W. JACOBSEN
CSR, RPR, CP
Notary Public in and for
the State of Florida at
Large

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Ernest Garcia
Mr. Jeff Toussant
Mr. Querido Castillo

APPEARING ON BEHALF OF THE CONTRACTOR:

Mr. Steve Kimmerle

* * *

I N D E X

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. Frank Carlile was appointed as a member of the Board by the Secretary of the Department of Transportation.

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

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

Our terms of office began July 1, 1989 and expire June 30, 1991.

Will all persons who intend to make oral presentations or present written information during this hearing please raise your right hand and be sworn in.

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

CHAIRMAN COWGER: The documents which put this arbitration hearing into being are hereby introduced as Exhibit No. 1.

Exhibit No. 1 consists of the notice of arbitration hearing, the request for hearing and all of

the information that was attached to the request by the contractor.

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

Off the record, please.

(Discussion off the record)

CHAIRMAN COWGER: Back on the record. During the time that we were off the record, we accepted and sorted documents. A bound booklet with the first document in the booklet a letter dated September 12, 1990 from R. H. Bourdon, district construction claims engineer, District 4, is identified as Exhibit No. 2.

A summary of events submitted by DOT is identified as Exhibit No. 3.

A sequence of events, submitted by DOT is identified as Exhibit No. 4.

(Whereupon, Exhibit Nos. 1, 2, 3 and 4 were received in evidence.)

CHAIRMAN COWGER: Does anyone have any additional exhibits to offer at this time? It's understood that the DOT may pass some photographs around for viewing during the hearing.

MR. CASTILLO: I would say this is a backup to the sequence of events and I would submit this. This is how I made my sequence of events right here. That's

your documentation. That's the source.

CHAIRMAN COWGER: Isn't all this information already in Exhibit 2 somewhere?

MR. CASTILLO: It might be or it might not. I made the sequence of events based on that.

MR. TOUSSANT: It's basically the same as Section 4 of this booklet.

CHAIRMAN COWGER: The Board will take this single copy of a package of correspondence and a take a look at it, but probably will not use it as an exhibit.

MR. CASTILLO: Okay.

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

During this hearing the parties may offer such evidence and testimony as is pertinent and material to the controversy and shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the matters before it.

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

This hearing will be conducted in an informal manner. The contractor will elaborate on his claim and then DOT will offer rebuttal. Either party may interrupt to bring out a point by coming through the

Chairman.

However for the sake of order I must instruct that only one person speak at a time.

Also so that the court reporter will be able to produce an accurate record of this hearing, please introduce yourself the first time you speak.

Mr. Kimmerle, it's appropriate for you to begin your presentation now of your claim.

MR. KIMMERLE: My name is Steve Kimmerle. I work with J. E. Hill Contractor, out of Leesburg, Florida.

We are a subcontractor, or were the subcontractor on a project on State Road 706. 706 is a major east-west highway running across the state. The portion we're interested in is roughly the portion from I-95 east to Jupiter.

The plan for the road was to take a two-lane road and turn it into a four-lane road, and we were to build the structure -- remove an existing bridge and build a structure under the road.

So we first mobilized on the job, and we built the north half of the structure. They put traffic over the north half, and then we built the south half. The controversy developed in the south half of the structure.

Just to back up a little bit, the structure

specified in the plans was a concrete box culvert. I believe it was a double eight by eight by some length, 100 some-odd feet long.

And we proposed a Value Engineering change to the Department of Transportation to change it to a Con/Span. A Con/Span is a precast arch bridge structure that replaced the double barrel culvert with a single barrel Con/Span.

We got the Value Engineering approved and we started construction.

We built the north half without incident, and the only reason I mention the north half is in the north half of this structure there were pipe that would penetrate the walls of the structure, one coming in from the east, one coming in from the west.

We got shop drawings approved for the penetration that we didn't take into account during the original submittal of the Value Engineering, and they were approved. We cast them and we set them in place and tied the pipe in and all.

Once they put traffic on the north half of the box culvert there was another pipe penetration in the south half. We sent someone down to measure from the end of the existing structure to the centerline of the pipe, mainly because we looked at the plans and saw

that the pipe was shown at three different locations in three different plan sheets.

So we measured this, and we determined the length. But length was determined mistakenly. But based on this measurement we thought it was accurate. We sent someone down and measured it.

We cast a piece of Con/Span with an opening in it. It was a five-by-five opening. The piece of Con/Span is eight foot long, the span is 16 foot wide and eight foot tall. So in one of the walls we cast an opening that was five foot by five foot.

To cast an opening in a Con/Span, the designer explained to us when he submitted the other shop drawing the basic rules for casting on opening on the structure is for every bar that you cut in the wall of the structure, you have to replace an additional full-length bar in that portion of the structure that is still concrete. And that's basically what the shop drawings said for the penetrations on the north end of the box culvert.

Knowing the rules, we proceeded to cast this piece with a five-by-five opening without getting shop drawings approved. So we used the same procedure we used on the others. For every bar that we cut we added another bar in there.

We shipped the piece to the project after we started and we started setting the precast out in the structure, and the first problem arose.

The gentleman that we sent down to measure the structure measured it wrong, so the opening was cast too far to the south. So we requested through the resident engineer's office that he contact someone and get us permission, if it was allowable, to change the alignment of the pipe.

The district -- out of the district drainage office, an engineer whose name I can't remember, Mike something, said that there would be no problem in changing the alignment of the pipe provided we made a smooth transition when we changed the alignment. He suggested we use a Y-type connection. So we agreed to that and started to proceed.

During the construction, they noticed there was some cracks in one of the legs of this piece that we cast without the approved shop drawings. When the cracks were noticed, then the resident engineer researched the project a little bit and found out we cast this piece without any shop drawings.

Although we thought we were following the correct procedure, we evidently weren't. And therein lies our mistake, is that we did cast this piece without shop

drawings.

So we contacted the State, and they said remove the piece of Con/Span. We said let us contact the designer and see if we can propose a repair to the structure.

We contacted the designer and he submitted through us, through the resident and on up through Tallahassee, two proposed corrections to this structure.

The first one came in and the resident engineer said well, I'm going to recommend this for disapproval because I believe that it doesn't address the long-term corrosive environment of the structure.

The first proposal consisted of us bolting a piece of channel to the side of the structure to reinforce the structure that had the five-foot hole in it.

So when he expressed that concern about that method of repair, we submitted a second method of repair. The second method of repair consisted of us doweling into the footing and doweling into the walls of the Con/Span, and then pouring a solid concrete wall. It was nine foot long, the full height of the Con/Span, and one foot thick with reinforcement.

We submitted that to the resident who submitted

it to the district who submitted it on to the area engineer up in Tallahassee.

During the time that the submittals were being passed back and forth, I talked with Rob Robertson up in the State construction engineer's office, and explained our situation.

And he suggested that we submit calculations demonstrating that our repair proposal was structurally sound. He said since the engineer of record was proposing the design, he didn't see any problem, provided that, you know, the engineer could demonstrate it was structurally sound.

So we submitted calculations along with our drawings, informed them that they would be signed and sealed at a later date, but for time's sake the designer was just submitting it to show that it was a structurally adequate repair, in his estimation, since he designed the structure and he designed the repair. And would submit a formal copy later that was signed and sealed.

We submitted it to the resident engineer, and the resident engineer said that provided that the repair is structurally sound he recommends that they accept it, and in his estimation it was marginally acceptable.

It was sent up to the State construction

engineer's office for review. I called the State construction engineer's office and talked with Earl Smalley.

And he told me that he was rejecting our proposal. Because in his words it was a marginally -- it was a structurally deficient repair of a marginally designed structure.

I pressed him. I said how is it structurally deficient, who reviewed it and how did you come to that determination?

To which he told me that well, structures didn't review it at all. He said in fact they were reluctant to review the proposal, in fact they didn't review it at all and we rejected the proposal.

So essentially the crux of our claim is the fact that the State denied our proposal without giving it adequate review, and to this date they have not instructed me or informed me as to why our repair was unacceptable.

The State keeps pointing out to us that we made a mistake. We openly admitted the mistake and informed the State we would make repairs to the structure to make it structurally, functionally and aesthetically equivalent or superior to the originally designed structure.

And the State still took the position no, we decided it's not adequate, tear the structure out.

So we agreed -- we said we were bound by the contract to comply with their requests, but we notified them that we feel we should be compensated for all the extra expense because we submitted a repair and they rejected it for, in our estimation, no apparent reason. And I call this adding insult to injury.

We submitted a shop drawing to replace the bad piece, piece A-20 that was cast without shop drawings.

And I called our consultant, the Con/Span engineer who designed it, who said he'd talk with the State. And they said the shop drawings weren't to be reviewed because it was a construction problem.

I then called Dave Bergeron and Kurt Stone, the resident engineer and the DOT liaison officer, and said how come you won't review these shop drawings?

He said you already have shop drawings approved for an opening reviewed for splitting it between two joints, and we decided you should use those previously approved shop drawings, and that would correct the alignment problem on the pipe. So we're not going to review these drawings. Just proceed.

I objected to that and informed him that since we were already submitting a claim we would just submit

the extra costs associated with replacing the second piece.

We feel that what the State has done is decided to basically punish us for making a mistake. We feel that it's our right and responsibility that if we make a mistake that we be allowed to repair it, as long as the structure is structurally equivalent to the originally designed structure.

We've outlined all of our costs in the Exhibit 1, the original claim, and all those costs are based on the DOT's diary.

We basically just compiled some spread sheets to determine what days the equipment was working and wasn't working, what days the people were on the project and weren't on the project, and condensed that down into the summary of claim in the body of our narrative in Exhibit 1. That's it.

CHAIRMAN COWGER: We'll give you an opportunity to come back if you then want. Why don't we let DOT rebut.

MR. KIMMERLE: That's basically it. We were ready to repair our mistake and weren't given the opportunity to.

CHAIRMAN COWGER: So that the Board can fully understand this, I had a couple of questions. One, in

the original unit A-20 that was cast, you mentioned a five-foot opening that was cast in the unit, five by five.

MR. KIMMERLE: Yes, sir.

CHAIRMAN COWGER: The unit is eight foot long. Where in relation to that eight foot was the five-foot opening?

MR. KIMMERLE: It was closest to the end. In other words, it was a five-foot opening and a three-foot concrete leg.

CHAIRMAN COWGER: So one end was completely open in that particular unit, you might say?

MR. KIMMERLE: More or less, yes.

CHAIRMAN COWGER: On the 36-inch pipe, you went out and made the measurement from the end of the as-constructed culvert to date to the location of the pipe. Was the 36-inch pipe already in place?

MR. KIMMERLE: Yes, the 36-inch pipe was an existing line that we had to tie into.

CHAIRMAN COWGER: It was an existing line?

MR. KIMMERLE: Yes, it was not a new line. It was an existing line.

CHAIRMAN COWGER: Okay. That's all I wanted to know.

Mr. Garcia, do you want to proceed or designate

somebody to proceed?

MR. GARCIA: Yeah, I'll proceed. My name is Ernest Garcia, area engineer, Districts 4 and 6. I work out of the State construction office in Tallahassee. Bob Bourdon sends his apologies, he had a previous commitment with attorneys on another project and won't be here.

We submitted a package known as Exhibit 2 which Bob put together, basically outlining the rebuttal. Essentially I'd like to go through the sequence of events and a series of mistakes that occurred that started this.

Sometime -- and we don't know the exact date -- but the contractor measured the storm sewer wrong. That was the first mistake that led to the problem.

Really the second mistake was that they then proceeded to form up and cast a unit that wasn't according to the plans. This casting plan at that point, modified casting plan, wasn't submitted to Con/Span, or anybody else for that matter.

The unit was then transported to the site and installed. Sometime during the shipment or early installation, of course, the leg cracked, the three-foot leg that remained cracked.

CHAIRMAN COWGER: Ernest, can I interrupt you one

minute?

MR. GARCIA: Sure.

CHAIRMAN COWGER: I'm a little confused. You say the unit was cast without being submitted to Con/Span?

MR. GARCIA: Right.

CHAIRMAN COWGER: Who's involved here? Is there a casting yard, and Con/Span is the engineer or what?

MR. GARCIA: Con/Span is a proprietary unit. Con/Span essentially provides the forms to cast these units.

MR. TOUSSANT: The forms and the engineering.

MR. GARCIA: Yeah. J. Hill had their own casting yard that cast the unit.

CHAIRMAN COWGER: You've answered my question.

MR. GARCIA: J. Hill also received the unit and installed the unit. So there were no other subs involved in that portion of it.

CHAIRMAN COWGER: I think we understand.

MR. GARCIA: On July 26 when first delivered to the project site, is when we first discovered the five-by-five blockout and the crack. Documentation shows that is when everybody realized there was no approved shop drawing for the five-by-five-blockout.

August 2nd, Con/Span notified Kurt Stone that a five-by-five blockout was not adequate. The comment

was made -- Steve made the comment that they used the rule that was -- that was shown on the shop drawings removing bar, replacing a bar every time you cut a bar.

I'd like Jeff to elaborate on that a little bit, because basically the shop drawings showed two openings and did not essentially give a rule for any size opening.

And in fact as we know Con/Span rejected the five-by-five opening later, even though they were told that the rule -- a misinterpretation of the rule for that size opening was followed.

Jeff, like I said, made the original Value Engineering -- evaluated the original Value Engineering proposal which was approved, of course. And so, Jeff, why don't you tell us about the size opening and such.

MR. TOUSSANT: Name is Jeff Toussant. I work in Value Engineering at Florida DOT.

And what Ernest was talking about is that that initial shop drawing submission made in December of '87 showed two sizes of opening. One was a five-by-two opening and the other was a five by two and a half, the two and a half and the two-foot dimension being in the horizontal direction.

The intention was to cast these openings in two adjacent pieces so that we would have the total

blockout shared between the two units at a joint location.

If you look at those shop drawings, there's a copy in just about any one of these documents, you'll see that there's one additional piece of reinforcement added for the larger opening.

It can be surmised from that that for the larger opening, the five-foot opening, just taking the steel that normally would be in that area and sliding it over to the remainder of the concrete leg would not be adequate.

I received no documentation or no information from Con/Span that that was the technique that was used. I can only say that there was added steel for the two and a half foot opening, more steel than what normally would have been used in the normal unit.

So I guess what I'm saying is I disagree with Steve's statement that the same amount of steel was used whether the opening was two foot or five foot or four foot or whatever.

MR. GARCIA: And in fact as we know Con/Span found the unit was not acceptable and rejected the five-foot opening.

CHAIRMAN COWGER: I think we've heard enough about that particular issue. I think we ought to move

on, because we really haven't gotten to the meat of the dispute yet.

MR. CASTILLO: Let me interject. I'm Mr. Castillo. I'm the assistant engineer for DOT.

We're talking about one error being made. But actually there have been two errors made. You need to remember that on the casting of panel A-21 which is adjacent, that was supposed to have another opening in there.

So we're not talking about one error that the contractor made. We're talking about two errors that he made on two panels.

CHAIRMAN COWGER: I think we understand that. But let's proceed on. I appreciate that.

MR. GARCIA: Part of the importance of that issue, though, is that really this went into the rejection of the second proposal, in that one of the issues involved in the rejection of the second proposal is that we didn't really know.

The DOT, the district, nobody knew what was in the original unit that was miscast. There were no drawings ever submitted that showed the location of the steel and such. That was one of the decisions that we used to make that final decision.

We see the series of proposals. The first

proposal was received, and a rejection of that proposal occurred two days later. We're now to August the 4th.

A second proposal was submitted August the 5th. Kurt Stone made a conditional recommendation that if certain items, certain things were done, including epoxying the rebar proposed to go into that wall, waterproofing and such, that it would be acceptable, if it's acceptable from a structural standpoint, in his opinion. He gave that opinion to the district and it's on the record.

However, he also stated that in his opinion the best way was still to replace the original -- place that unit with the original planned unit, or actually units. There would have been two.

Now, the DOT rejected the second proposal. And all this was done very quickly. The rejection of the original unit and the rejection of the second proposal and the forming up of the new unit as per the original plans all occurred within 15 days.

We're talking about as timely a response as you could ever imagine on a construction project. I feel that DOT didn't do anything to delay this. The main delay that occurred here was the contractor making attempts to have a repair job approved.

Now, the Department documented and rejected the

second proposal. It wasn't a matter of just not being structurally equivalent. We were looking at other things that really Steve didn't discuss.

We're talking about the possibility of increased long term maintenance costs, possible intrusion of moisture causing corrosion in the rebar, causing cracks along the new wall, and the fact that we did not know what the steel placement size or quantity was in that unit.

So at that point they followed the proper procedures and documented to the contractor that the second proposal was rejected.

He received formal in-writing rejection of that on August the 12th. On August the 9th, two or three days before that, he already begun to take down the forms that he had in his casting yard, and began forming up the new unit.

So actually even though he received rejection on August 12 in writing, on August 13 he had already cast the original unit as per the original signed and sealed plans.

So we don't feel that we're responsible or have any liability with regards to the money that the contractor may feel that he lost because of our failure to accept the repair.

And in fact, Jeff, why don't you go into a little bit about the cost, as well as some items that were not discussed in the contractor's package.

MR. TOUSSANT: Okay. First of all, I did not review in detail the itemization of costs that Steve developed. But there were several other work operations taking place during this same amount of time.

One item that was done is -- at the top of the Con/Span units there's a lifting hole that has to be patched. Those lifting holes were incorrectly patched during this same period of time, using a nonapproved material. The resident engineer made the contractor remove that material and redo those patches.

There was two breakdowns, I believe, of the dewatering system. There was a lot of time spent by the contractor trying to reestablish that dewatering system. There were several other operations that were occurring during that same work time.

So I guess what I'm trying to say is that the amount of money that J. E. Hill has identified seems very much out of proportion to the overall size of the project, the total project cost. Their involvement was about $150,000, $160,000. And I really think that the amount of money that we're talking about is really way

out of line.

Okay. The other thing about that is the amount of money that Steve has identified in this claim doesn't take into account the alternative solution.

The solution that he maintains that we did not address or did not adequately review would have cost a considerable amount of money also, because it cost -- it would require excavation of that existing pipe, relocation of that existing pipe.

It would have to purchase an additional Y to make that transition. There would be a cost for the concrete for the additional wall which was quite sizable, quite a large amount of concrete to do that.

There was epoxy-coated steel that would have been required, that's noted in the documentation. There was delays associated with that repair that were also not considered in this itemization of costs that Hill feels they're entitled to.

MR. GARCIA: In summary, I think the district --

MR. CASTILLO: Castillo speaking here again. In the change of the double culvert from eight by eight double barrel, it was changed into an arch structure.

And as well you know, in an arch structure it's very critical design because your load factors are transmitted from the arch into your walls. Your loads

are transmitted from the top to the bottom through the walls, so when you are getting a large opening into the walls, then it is very critical that you do not have a wall that is too large for the transmission of your loads into -- down into your base.

So we need to realize that the -- that this is a critical structure, and any errors made on the structure of an arch are very critical, and you need to carefully review those proposals for corrections. And one cannot just make a repair job and not take into consideration that we are dealing with an arch structure.

And in the review of the proposals that were made by the contractor, it was determined that the repairs on both proposals that was made were deficient structurally and were not satisfactory, and were not the same as was designed for the arch structure.

So we're dealing with an arch structure and not just a double barrel.

MR. GARCIA: You know, I can't speak for Mr. Smalley, and the discussions that Steve may have had with Tallahassee. Nowadays a problem like that might not even reach Tallahassee. We are decentralized. But they asked our opinion, and we gave our opinions.

The decision is made ultimately in the district.

And Kurt Stone, Dave Bergeron and Bob Bourdon, who was the district construction engineer, all had input from a lot of sources.

And they made the decision that they were not getting an equivalent unit in the unit that was cast, even with the repairs that were made. Not equivalent in -- marginally equivalent in terms of structural but certainly not equivalent in terms of longevity, durability or increased maintenance and -- they made the decision, documented it, and it all occurred very quickly.

It is always our view to try to get the job done. We're working as a team out there to produce a good project. And I think they responded as quickly as I can ever imagine with anybody in a case like this.

I know Steve wasn't satisfied with the outcome.

MR. KIMMERLE: The response time I considered to be fine. I didn't like the decision, and my claim is not based on just a straight delay. It's mainly based on extra work.

I don't know if it's appropriate for me to speak now.

CHAIRMAN COWGER: That's okay.

MR. KIMMERLE: Okay. Jeff mentioned work that was going on during the time that the delay was going

on. He mentioned having to redo the lifting holes.

We're talking about a sizable amount of work going on. We're talking about repairing a hole two and a half inches in diameter and ten inches deep. To repair something like that in -- to repair 16 holes like that, your talking about five hours worth of work, usually.

MR. GARCIA: I think the point of that --

MR. KIMMERLE: There was extra work going on.

MR. GARCIA: I think that was the point of the discussion. It appears in the claim you submitted that it was for all the equipment, all the time for the whole period of time that was involved, when there was days in there when you simply could not have worked in any case.

Frankly we don't think you're due anything, but there were certainly days in there where you couldn't have worked in any case, due to the flooding and rains and such.

MR. KIMMERLE: And I do agree that I did not take into account the extra concrete and steel. Had I taken that into account, I think a fair way to reduce that extra cost associated with that -- I don't know if you would agree, whoever prevails -- but what I would think a fair way to apportion that portion to reduce the

damages, if they do award damages to us, would be -- I think the contract unit price was like $400 a cubic yard and the steel was like 75 cents a pound.

If we were to calculate the volume of concrete and steel and deduct that from whatever damages are awarded, that would be a fair way to apportion what the extra work would have been if we had been allowed to proceed with the repairs.

The breakdown of the dewatering system occurred at the time we weren't on the project. We were trying to maintain the hole because we were concerned with the stability of the adjacent roadway, is what mainly the reason the dewatering system had to be maintained. Because we were concerned with keeping up the roadway, which was a mere four or five feet away.

So that was a necessary evil to maintain the dewatering system, whether we were on the project or not, just to maintain traffic.

I do agree the response time was outstanding. I mean people were very willing, even though it's basically against the rules to discuss something with a subcontractor, it's supposed to all go through the contractor, the engineers worked very well with us and did a lot over the phone and I appreciate that, because I think it minimized the damages.

Like I said before, I think our claim is not necessarily for a straight delay claim. The bulk of our claim is for extra work.

I wanted to note there was a DOT inspector at the precast yard during every single pour, and the DOT inspector did see the steel go in and he did test the concrete. And he believed that the structure was correct, based on working with him every day, and he even stamped the structure going out.

Everybody is entitled to a mistake, and maybe he shouldn't have stamped it and we admit to a mistake for casting that piece without a shop drawing. But it's not like we tried to sneak something in.

We had a DOT inspector on the project and everybody believed when that piece left the yard that it was made according to plans. there was extra steel in it, but no one could say there was ten extra bars or eight extra bars. So when the design engineer reviewed this, he made the assumption there was no extra steel in there because he wanted to be as conservative as possible.

MR. CASTILLO: There's reason for being conservative in this, and that is -- and we -- the Department needs to point this out, that in previous panels that were cast, on inspection of the structure

there were some cracks on other panels that appeared.

And this is not the only panel that showed cracks. There were other cracks on other panels that were cast. And he was very conservative because he was very concerned over the stability of it, of the error that was made.

So other panels had been put in there had been cracked already, and we have photos to show the cracks on other panels. So that's the reason why the review was conservative in that respect.

CHAIRMAN COWGER: Excuse me a minute. The other panels were all accepted, though, right?

MR. CASTILLO: Sir?

CHAIRMAN COWGER: The other units were all accepted? You are only talking about one unit that you rejected in this whole culvert?

MR. CASTILLO: Yes. But the fact that the cracks had appeared on other panels has to be considered in reviewing an error on a particular panel on an opening.

CHAIRMAN COWGER: Okay.

MR. KIMMERLE: I'd like to address that. I think, Jeff, you know, we went on that inspection of all the structures, and I think basically it was determined that all the cracks existing on every other Con/Span structure made like this are cracks that ran

longitudinally down the center of the structure.

And the Con/Span engineers suspect that it was done -- when you pick up a Con/Span, you're basically spreading the arch.

And all this DOT work where the clearance was three inches, it just promoted cracking on the surface in handling. And those cracks are different than the cracks that we are discussing here. The crack we're discussing in the leg is a crack probably because of the mistake we made.

And like I said, we don't back up a minute and we do say we did make a mistake.

And like I said -- one more thing. They talk about the joints being designed -- the holes being designed to split a joint.

Well, the primary concern for the shop drawings being located where they were in the north end of the structure, and the reason that we split the joint was not to accommodate the structure, but to accommodate the alignment of the pipe, where the structure had to start at a certain point and eight foot down from the end of the structure the pipe was.

So since the pieces were eight foot long that's the only reason it forced us to put an opening in two pieces, not to distribute the opening. It was mainly

for pipe alignment, when we had the other shop drawings approved.

MR. GARCIA: To redirect you a moment towards -- Everett Bass, who was at the casting yard is a DOT man who was on call and working there part time, at that stage, since they already pulled their main crew out of there, the DOT had.

Mr. Bass did not have a set of plans to look at to see whether or not that unit was acceptable or wasn't acceptable. He didn't have any plans to look at. He was told, as per documentation here, that you all had contacted the engineer of record.

MR. KIMMERLE: We did.

MR. GARCIA: And as such he took you all at your word and mistakenly stamped the unit with the DOT stamp on it.

However, Section 5-9.2, failure of engineer to reject work during construction, does not put any of that responsibility on the DOT. The fact that we missed it at that point, later on we got it.

MR. KIMMERLE: Yeah, what I'm saying is that everyone believed that everything was in in accordance with the plans and specifications, because there was a set of plans kept in my office a block and a half away, and we referred to them several times.

And I'm not inferring that Everett accepted it. I'm just saying everyone believed to the best of their knowledge that that was correct when it left our yard.

MR. CASTILLO: There's no doubt about it that it was an honest mistake.

MR. KIMMERLE: That's right.

CHAIRMAN COWGER: Gentleman, I think we're down to arguing. Unless somebody has some real important point, we're going to start towards wrapping this up.

MR. CASTILLO: Let me say one thing. There were several other openings on the culvert, right? Those openings also occurred at the joint. Let's don't forget that.

It's not like you said, that it just happened to be there. The other openings, pipe openings on the culvert occurred on the joints, and that's the reason -- there's a reason for that.

CHAIRMAN COWGER: We understand that. A comment. Just for the record, Mr. Smalley's name came up several times, and it's not in the record that Mr. Smalley is deceased. So that might be pertinent in knowing why he wasn't here.

DOT -- on the contractor, I have a couple of questions first.

MR. KIMMERLE: Yes, sir.

CHAIRMAN COWGER: Who did the design of the corrective work, the supplemental wall, you might say?

MR. KIMMERLE: The engineer of record. The designer that designed the original structure.

CHAIRMAN COWGER: So somebody that worked for Con/Span?

MR. KIMMERLE: Yeah, the engineer that designed the Con/Span originally, a fellow named Tim Beach.

CHAIRMAN COWGER: And he was a PE?

MR. KIMMERLE: Yes.

CHAIRMAN COWGER: All right.

MR. KIMMERLE: In fact, he's a PE up in Ohio. And the gentleman that owns the company that works with him in the company is a PE in Florida and Ohio. And two of them collaborated on it, and the signed and sealed documents were from Bill Lockwood.

CHAIRMAN COWGER: Question for DOT. In reading over the submittal made by the contractor originally and in listening to some of the testimony, a key point seems to be that DOT did not reveal to the contractor back when all these events were occurring, first off, whether or not there was in fact a structural review made of his second proposal, the one that involved the casting of the supplemental wall.

DOT, you have explained that, you know, you had

concerns other than structural concerns, durability concerns, I would call them, but today is the first time that it appears like the contractor had been made aware of exactly why you rejected that proposal.

Now, I'd like for you all to comment on that.

MR. GARCIA: Possibly a more elaborate letter could have been written by Mr. Stone or I guess -- was it Bill Sears by then?

MR. CASTILLO: Yeah.

MR. GARCIA: Bill Sears at that point had become the resident on the project. And I think Bill is maybe a little bit more curt and to the point than Mr. Stone was, and possibly should have elaborated more.

But I've talked with Kurt, Bill, Bob, everybody involved in this, and there were certainly other considerations that went into it.

Frankly, I'm not a party to what additional reviews were made in the district. Like I say, the district structural people had input into it as well as drainage people as well as people up here.

In terms of a formal review or rejection of the second proposal, Jeff is the one who was looking at it at that time, and he never made one. Like I say, the decision was made at the district.

CHAIRMAN COWGER: You've come down to the point.

Did anyone at DOT, that is a qualified structural engineer, make a review of that second proposal and say yes -- make an analysis of that second proposal and say this is structurally inadequate?

MR. GARCIA: I can't answer that.

MR. CASTILLO: The resident engineer was informed that it was unsatisfactory. The project diary documents that the Tallahassee structures division inspected it and turned it down, and it's well documented right there in the project diary.

MR. KIMMERLE: Could I just make one quick point? The reason they told me my repair was rejected was that it was structurally deficient, but no one reviewed the structure adequately to the best of my knowledge.

And had they proposed durability questions we could have addressed those, but they just said it was structurally inadequate, without a review. And the way I see it, therein lies my dispute with the State.

MR. GARCIA: I'm not sure it's without review.

CHAIRMAN COWGER: Well, my question has not been answered.

MR. CARLILE: First of all I'm not sure I understand the pertinence of the question. If it indeed is structurally inadequate, whether that's determined now or later, you still couldn't have done

it.

Did you have anything that could have shown --

MR. KIMMERLE: Yes, sir. We submitted calculations from the designer that designed the original structure, who also designed the repair and submitted calculations to Tallahassee. And those were not reviewed.

Now the question asked earlier, the review of this particular complaint or particular problem, the resident engineer contacted Dave Bergeron, who was the DOT liaison engineer.

They contacted Ray Cline in the district engineer's office, who said I think this would be better to send to Tallahassee. Please send it to Earl Smalley. In some of the correspondence, exactly which one I'm not sure, it refers to talking with Ray Cline, who said please submit to to Earl Smalley in Tallahassee for his review.

So the chain of events was through the district to Tallahassee, but at the district's request they opted not to make a decision, and asked Tallahassee to make the decision.

CHAIRMAN COWGER: To clarify just a moment, maybe what I said a while ago, my question may have been directed to points in time. But really what I wanted

to know is has DOT to this date ever made a review, a structural review of the proposal to determine that it was structurally inadequate.

MR. GARCIA: We have on the record August 10th that Mr. Smalley stated the repair was structurally deficient on a marginally designed structure.

CHAIRMAN COWGER: Okay.

MR. GARCIA: We work as a Department. I'm not sure who would have specifically looked at it. I assume Earl looked at it. I know Bob has.

MR. KIMMERLE: He said no one in structures reviewed this proposal, but he was rejecting it. And I noted on my notes when he told me that. I noted that in my notes and it's somewhere in the body of the claim here. My notes -- I tote this thing around all the time, and as I talk to people I usually jot down notes.

And I made a copy of that and it's in the claim where he said no one has reviewed it. So that's what I think. I don't think they have ever.

CHAIRMAN COWGER: I don't want to pursue that any further, but I do want to give each side a full opportunity to make any further comments.

Mr. Carlile, did you have another question?

MR. CARLILE: I just want to make a point of clarification.

Mr. Toussant lists what he feels are appropriate costs and charges incurred in making the ultimate repair. But in flipping through there I do not see any deducts.

MR. KIMMERLE: That's correct.

MR. CARLILE: So we know the amount is high, if everything else is equal.

MR. KIMMERLE: Yeah. In other words, if you all decide that I'm to prevail and give me all the money in the world, granted we should deduct that from it, and I think that would be a logical means to do it. Just take the contract unit price times whatever the quantity of concrete and steel is and deduct that from whatever amount you award to us.

MR. GARCIA: We also have the question of the 36-inch pipe which was existing.

MR. KIMMERLE: The 36-inch pipe the Department paid for. The Department paid us for X number of linear feet of pipe to go from the structure to the existing.

MR. GARCIA: You had to dig up part of it to realign it with a Y and then tie it in. Are we talking about some type of extra collar that would have been called for?

MR. KIMMERLE: No, because we had to remove --

we basically put in an eight-foot joint at our own expense for our own access to the site. We overexcavated the hole because of the dewatering problem. We lost one joint of pipe.

And so when we replaced the pipe the State basically paid us for one eight-foot joint of pipe, and we put in one because we're good fellows.

CHAIRMAN COWGER: Gentleman. I think we've got enough on that. There was testimony earlier about the fact that there was work going on during this time period of the claim that was not related to the claim. Look at Exhibit No. 2, just a minute, at Tab Q. There's a fold-out sheet.

MR. KIMMERLE: Isn't that Exhibit No. 1?

CHAIRMAN COWGER: Oh, that's Exhibit No. 1. I'm sorry. All I want to know is -- I understand what you've done. You've tabulated day by day from the DOT diary certain hours on equipment?

MR. KIMMERLE: What I've done is I've taken the date and I've taken the equipment list in the DOT's diary and just combined every day.

For example, where it says date and says 11, underneath there it says backhoe I and A. The DOT in their diary says that piece of equipment is either idle or active on the diary. And I collected that

information in one sheet, in order to compile the rest of that information.

At the bottom of that column it has hours. That's hours the DOT recognized as working on that job on that particular day.

CHAIRMAN COWGER: Let's look at that chart. Along the top you have dates. Look at 15. Under there you have -- opposite backhoe you have an A, and down at the bottom you have three hours. So in calculating the total number of hours that you're claiming for the backhoe, you take that three hours into consideration.

MR. KIMMERLE: Three hours times the rental rate times the active expense.

CHAIRMAN COWGER: All I'm trying to get is hours.

MR. KIMMERLE: Okay. Yeah, that's how I did it.

CHAIRMAN COWGER: So if I want to get total hours on the backhoe, all I do is go across that line and pick out the As, and go down to the bottom and pick out the hours.

MR. KIMMERLE: The active hours, yes.

MR. CARLILE: If you go down to the pumps, where it's shows three pumps, I guess one was active. Is that for one hour, two hours, is that what that is?

MR. KIMMERLE: If you look at the 20th, and you get down to where the pumps are, it says A(2) I(1)

that -- A(2) I(2), that means that two were active and two were inactive.

CHAIRMAN COWGER: So that would mean three hours.

MR. KIMMERLE: That would mean three and a half hours of active work on the project, but I explain how I calculated the pump hours earlier in the document.

CHAIRMAN COWGER: Does anyone have any other questions that they would like to bring up? Mr. Carlile or Mr. Turnbull?

MR. TOUSSANT: I'd like to clarify something, if I could. If you would take a look at Exhibit 3, please. Turn to the third page of that. I kind of want to let you know or just kind of give you a picture of what was going on during that period of time.

We have a period of about four days when there were FAXes going back and forth from south Florida to Ohio to my office, and a lot of telephone communications going on.

But on the 8th, as I've noted on this sheet, there was a letter from Kurt Stone to Bergeron transmitting the second repair plan, in which he stated, "I still believe complete replacement to be a more desirable fix. The proposed solution may be marginally acceptable." That's kind of what Steve is hanging his hat on, that that would have been an

acceptable repair.

On that same day J. E. Hill FAXed the second repair plan to Lou Songer for his review.

The next day, memorandum from Bergeron to Earl Smalley transmitting repair proposal and Stone's letter of recommendation, the same thing that I just talked about above, that -- and basically what I'm pointing out there is Bergeron concurred with what Stone had said in that letter.

Okay. On the 9th, Hill called Songer to discuss fix number two. Songer referred him to Robert Robertson and Earl Smalley, because those were the people reviewing that second submittal in the central office.

On that same day, the 9th, Hill began disassembly of the forms back down in their Leesburg yard. They were casting a different sized unit. They began disassembly of the form and reforming for the new unit that was going to be cast with the blockout in the right location.

And it's my contention and Bob Bourdon's contention that it was actually on the 9th that J. E. Hill made that decision to go with the approved shop drawings anyway.

It was prior to the time that the letter was

issued rejecting that second fix. Hill had already made up his mind that he was going to comply with the shop drawings, because they started work towards that. And we have a conversation which documents that from Everett Bass to Pat Hayes, who was project engineer.

The next day, letter from Tim Beach, Con/Span engineer to Earl Smalley transmitting details and calculations for repair plan two. He's just getting repair plan two on the 10th.

On the 10th, steve Kimmerle transmits a ten-page submittal, a FAX, I don't know what that was. I've just got a cover sheet there. I'm not sure what that was.

Okay. Also on the 10th there was conversation between Steve Kimmerle and Earl Smalley and that's the conversation which was kind of just sketchily documented by Steve, in which he points out that Earl made a comment that it was a marginally designed structure and this was a structurally deficient repair.

On the 10th, next page, there's a letter from Kurt Stone to Ranger, which states corrected proposal forwarded to Tallahassee for review. Although any corrective action to salvage piece A-20 must have prior approval by FDOT, complete replacement of the piece at the contractor's cost is an option that may be

exercised by the contractor.

Okay. So what was happening there is Kurt Stone is encouraging the contractor to do it the approved way. So that conversation is taking place, all right?

On the 11th, per Beiswenger's diary, notification that both repair plans have been rejected. Beiswenger notifies Hill of rejection. Hill advised that the work would be removed under protest.

On the 11th, again the same day, Bill Lockwood up in Ohio is transmitting details for casting a new segment with a four-by-four blockout to be used as replacement for piece A-20. This repair detail was not reviewed in detail by VE.

It was not reviewed by structures also. It is possible that the construction office preferred to handle it at this point, and that's basically when VE was kind of taken out of the loop, I guess, so to speak.

On the 12th we have a letter from Stone signed by Bill Sears to Ranger which rejected both repairs.

There we have the formal rejection of those two repairs on the 12th. On that same day, the 12th, J. E. Hill's yard completed the forming for the new unit, the one with the correct blockout in the right location.

Again, J. E. Hill did this on his own. They were already doing the work, correcting the problem correctly, before we even rejected, formally rejected those two submissions.

On the 13th, the following day, the first unit was cast. It was delivered on the 18th. I don't have the date when the second unit was cast, but it was delivered on the 19th. And the 26th they were actually grouted in place.

What I'm trying to point out here is that Steve or I should say J. E. Hill based their acceptance of the rejection on a verbal communication that they received from Earl Smalley. And we don't really have any good documentation of that conversation, because the only place it appears is a comment written in Steve's diary.

But previous to that time, on two occasions we had rejection of that five-by-five unit with no reaction from the contractor to remove it at that point. So what I'm saying is we told them to take it out. They didn't do it.

It was a period of days before this second verbal rejection was made by Earl Smalley, and they acted upon that. I don't quite understand the logic of not responding to the verbal rejection, but then responding

to the verbal rejection from Earl Smalley, if you kind of understand what I'm trying to say.

CHAIRMAN COWGER: I think the Board can understand that. I think you've explained that deep enough. I think we also understand the chain of command of DOT to some degree, too.

I want to give the contractor just a brief opportunity to -- you don't get to go back through all that chronological stuff.

But I think what the board needs to know is what logic did the contractor use in deciding to take the action that he finally took, and that is -- and this hasn't really come out in the testimony, but I think it's true that it actually required replacing two units in order to accomplish what you actually accomplished.

Originally you had one unit rejected, but in order to accomplish what you actually accomplished, which was to put the blockout -- divide it between two units, you had to remove and totally recast and replace two units.

MR. KIMMERLE: The reason we replaced two units is at Dave Bergeron's instructions. When we asked to replace the hole in one piece, Dave said there's no need, because you have already got preapproved shop drawings to put it in two pieces, so we're not

reviewing the shop drawing for one piece to be replaced.

And that's when I told them just to keep track a little longer, because we would submit a claim for not only one piece but two pieces. Basically we were going to wait for the shop drawing to be approved until we got confirmation from Dave Bergeron, who told us that they would not review the four-by-four opening. And that thus forced us to replace two pieces.

CHAIRMAN COWGER: I think that's all we need to know. I want to find out a couple things. Who's Dave Bergeron? Who does he work for?

MR. GARCIA: DOT.

CHAIRMAN COWGER: One of your employees or a consultant employee?

MR. GARCIA: One of our employees.

CHAIRMAN COWGER: DOT, that's a statement we haven't heard before. Dot, you need to rebut that.

MR. GARCIA: Essentially that brings up the third proposal. We've got basically two repair jobs that were proposed. At the last minute -- and I say last minute because this is two days after you already made the decision to recast your original planned units according to our notes and your testimony.

MR. KIMMERLE: I think that's an error, but go

ahead.

MR. GARCIA: The facts are that on 8-11, Con/Span transmitted plans for casting a segment with a four-by-four blockout. Now, that would have allowed them to replace the broken unit with just one unit as opposed to the original plan which called for replacing two units?

MR. KIMMERLE: That's correct.

MR. GARCIA: That was evidently send directly up to Jeff.

MR. TOUSSANT: Which I received on the 12th.

MR. GARCIA: He received that on the 12th. You cast the other unit on the 13th. So did you expect a decision would be made within one day on that? And frankly, that transmittal of the four-by-four blockout never went through the district, is that correct?

MR. KIMMERLE: That's correct, it never went through district. We were informed by the district they would not review it, and in order to cast that -- you know, it doesn't take anything to drop out a few extra bars of steel.

And I had those people working late every night because I was holding up Ranger's DOT project, and I wasn't about the get at cross purposes with the prime contractor to hold up his project because of an error

we made.

So we were doing everything we could to accelerate our work, and once we got the rejection that's when we redid the forms. It doesn't take but a few moments to change the blockout from any one particular spot in the structure. It's basically replacing a dozen bars of steel.

MR. GARCIA: Well, we don't --

MR. TOUSSANT: Steve, would you tell us where that's documented again, that instruction from Mr. Bergeron?

MR. GARCIA: See, we have no record of the four-by-four blockout ever having been reviewed.

MR. KIMMERLE: That's one thing I looked to tried to include in here. That's one thing I didn't put in my notes, but that is just -- you all have to choose whether to believe me or not on that, because I have no written document on my notes or anything else that Dave told me he would not review those drawings. I wouldn't foolishly act and cast an extra piece just because I felt like it.

MR. GARCIA: What it appears, looking at the records and everything, here we've got a project underway, a short duration project. Everybody on the front line is trying to get this thing done, stay on

schedule and proceed ahead.

Con/Span, who works for you all, you're their client, is made aware that you made a mistake in the field. You cast a piece that they can't approve of. Obviously they could have, but they certainly wouldn't have approved the piece as you cast it. They couldn't. They're up there trying to produce repairs. The first repair with the channels and such, I seriously doubt was their original design. It may have come from the field.

MR. KIMMERLE: It was their design.

MR. GARCIA: Obviously it would not have worked from other standpoints, even if it would have worked structurally. So here they are now, they come up with a second proposal. At that point probably somebody tells them no, that one is going to be rejected as well.

So they begin generating a third, which is now to cast a single unit. Meanwhile, while we're scrambling around trying to help you out, you have already made the decision to proceed casting the original unit. So Bergeron tells you, if you cast the unit let's get back to the original plan.

Take out this Y, which the only reason they added the Y and permitted you to have that Y in there is

because you measured it wrong in the first place.

At that point I can imagine him saying let's get the pipe back where it's supposed to go. The drainage engineer only looked at that pipe from a drainage standpoint.

MR. KIMMERLE: That's not what they said. They said they would not, I mean that's exactly --

CHAIRMAN COWGER: Gentleman, we're into conjecture and we're cutting it off.

Mr. Carlile, do you have any further questions? Do you agree with cutting it off? Do you think there's any reason to get any further testimony, Mr. Carlile?

MR. CARLILE: No.

CHAIRMAN COWGER: This hearing is hereby closed. The Board will meet on -- the Board will meet sometime during the month of October to deliberate on this claim, and you will have our order shortly thereafter.

(Whereupon, the hearing was concluded at 11:05 p.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 52 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 29th day of September, A.D., 1990, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON, STATE OF FLORIDA.

Stephen W Jacobsen

STEPHEN W. JACOBSEN
CSR, RPR, CP
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My Commission Expires March 25, 1991