

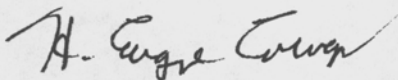
STATE ARBITRATION BOARD

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

OCTOBER 25, 1990

/ / / NOTICE / / /

In the case of Capital Asphalt, Inc. versus the Florida Department of Transportation on Project No. 55110-3509 in Leon County, Florida, both parties are advised that State Arbitration Board Order No. 6-90 has been properly filed on October 25, 1990.



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

Grace E. Cross, President/Capital Asphalt, Inc.

11/21/99

Told me

amount
2,000

and
"y"
ows

5,814.00
Y. of add'n

Correct Total \$10,127.41

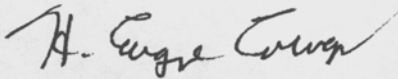
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H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.

S.A.B. CLERK

OCT 25 1990

FILED

Copies of Order & Transcript to:
R.D. Buser P.E., Director of Cons
Grace E. Cross, President/Capital

Order 6-90

11/21/99

Charles Goodman Told me
that the actual amount
claimed exceeded \$100,000

I reviewed Exhibit I and
found an error in the "Summary"

The narrative for Part I shows
\$7,093²⁸ claimed

The "Summary" shows \$5,814²⁰
for Part I (This is the S.Y. of add'n
Torsion being claimed).

Orig. Total \$99,935³³ Correct Total \$10,187⁴¹

STATE ARBITRATION BOARD

ORDER NO. 6-90

RE:

Request for Arbitration by
Capital Asphalt, Inc. on
Job No. 55110-3509 in
Leon 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 1:35 p.m., Friday,
September 14, 1990.

The Board Members, having fully considered the evidence
presented at the hearing,, now enter their order No. 6-90
in this cause.

ORDER

The Contractor presented a request for arbitration of
an eleven part claim in the total amount of \$99,935.33.

He contends that two major deficiencies in planning of
this project generated numerous problems not clearly
discernible from the Bid Documents:

A. The design provided for changing the existing profile
and cross section geometry to a degree not feasible with
the methods, equipment and materials specified. This
along with substantial errors in plan quantities
constitute ambiguities which mislead us in preparing our
bid.

B. Conflicts with utilities and administrative delays in
relocation of utilities were excessive and the plans
were inaccurate and lacked detail.

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

PART I Amount: \$4,752.00 20 Hrs (10 Events) @ \$237.60

Unanticipated Utility Conflicts 10/17/88 to 10/26/88

1. The plans indicated many instances where it would be
necessary to construct pipe in close proximity to an

underground utility, including working under and adjacent to them. We anticipated that, even though the plans provided extensive information in regard to the location of underground utilities, we would encounter some additional conflicts during the course of construction. However, the frequency of unanticipated conflicts was far in excess of what it was reasonable to expect.

2. The unanticipated utility conflicts caused us to incur delays, do extra work and in several instances be forced to relocate the pipe crew.

3. Individually these utility conflicts were relatively minor in nature, but, due to the number of them, the cumulative effect on the efficiency of our pipe crew was quite costly.

4. DOT personnel were at the site when these conflicts occurred and had the opportunity to mitigate costs.

5. We disagree with statements in DOT project records that these conflicts caused no lost time.

6. We gave DOT oral notice of our intent to file a claim for additional compensation as soon as the adverse effect of the pattern of utility conflicts became apparent and later confirmed this in writing (11/9/88).

PART II Amount: \$ 5,940.00 25Hrs (10 Events) @ \$237.50

Unanticipated Utility Conflicts 11/9/88 to 1/19/89

The circumstances here are of the exact same nature as described in Part I, except that this part of our claim is for a different period of time.

PART III Amount: \$5,821.20 24.5 Hrs (9 Events) \$237.50

Unanticipated Utility Conflicts 1/21/89 to 3/28/89

1. The circumstances here are of essentially the same nature as described in Part I, except that this part of our claim is for a different period of time.

2. The event which occurred at the Sinclair Road intersection, involving devising a way to avoid removal of a large oak tree and to prevent an increase in flow across adjacent property, extended over the period of time between March 10th and March 30th and forced us to move our pipe crew

to another location. The date on our letter of March 10 that included our claim relating to the additional work at this location was apparently in error.

PART IV Amount: \$1,053.00

Survey work in addition to that required by contract.

1. We were required to perform survey work beyond that required by Article 5-7 of the Specifications because of the following situations:

A. DOT requested that we verify completed work was at the proper location and elevation and the work was found to be correct.

B. Delays caused by having to await information to correct plan omissions.

C. Relayout of work which was layed out in accordance with plan details and then found to not fit the existing field conditions.

2. The phrase "incidental surveying work" does not appear in Article 5.7 (Engineering and Layout) of the Specifications.

3. DOT project representatives were aware of each instance where surveying work beyond the scope of the contract was performed and, thus, had the opportunity to time and cost records.

PART V Amount: \$7,922.00

Failure of DOT to arrange for relocation of an overhead power line which conflicted with construction of a section of 66" storm sewer pipe.

1. The plans provide for construction of a 66" storm sewer pipe on the right side of the project between Station 129+34 and Station 131+90.

2. An overhead electric line existed in essentially the same location as the proposed 66" pipe.

3. The plans clearly provide for the overhead electric line to be relocated to the east, thus making it clear of the 66" pipe. Also, the Utility Relocation Schedule covering the

overhead electric lines indicates that the section of the line right of Station 129+40 to Station 133+30 is to be relocated to clear drainage. The project specifications state that DOT will make arrangements with utility owners to adjust utilities where such adjustment is determined by the Engineer to be essential to performance of required construction.

4. When we requested the owner to move the overhead electric line to the east as shown in the plans and Utility Relocation Schedule, they advised us that this could not be done because they did not have the necessary permits to do the tree removal/trimming necessary to accomplish relocation to the east.

5. At an on-site meeting, the utility owner proposed temporarily relocating the overhead power line to the west of the 66" pipe. This involved setting a temporary pole between the 66" pipe and the roadway on which traffic was being maintained (behind the concrete barrier wall). We agreed to this plan with the reservation that we were not sure that we could lift sections of pipe from the truck on which it is delivered and lift it over the barrier wall without coming in contact with the relocated wires.

6. As it turned out, we could not lift the 12' sections of 66" pipe over the barrier wall with a backhoe or crane without coming in contact with the relocated power line.

7. After a delay of approximately two weeks, we rigged a large front end loader with a hook and began using it to unload the 66" pipe sections and move them into place. This involved unloading the pipe sections on the west side of the project at a location several hundred feet from where it was to be laid. The front end loader picked up a section of pipe, moved it down the road to where it was to be placed and then swung it over the concrete barrier wall. This is a very unorthodox construction method.

8. When the time came for us to remove the concrete barrier wall, thus placing the temporary pole in the traveled roadway, the owner relocated the overhead power line to near

the east right of way line as shown in the Utility Relocation Schedule.

9. We are claiming costs we incurred because our pipe crew was delayed, for rental of additional equipment, for retrofitting the front end loader with a hook and related overhead and profit.

PART VI Amount: \$22,850.01

Disputed final pay quantities for Sodding and Final Dressing

1. The quantity in dispute is the same for both Sodding and Final Dressing because the contract documents provide that all areas over which final dressing is accomplished is to be sodded.

2. Our field measurements of the sod placed on this project indicate that we sodded 7,483 square yards more than DOT included in the final pay quantity.

3. At one point in time during the course of the project, a monthly progress estimate indicated that 41,198 square yards of Sodding had been done. On a subsequent progress estimate, the pay quantity was reduced to the quantity that DOT now contends is the final pay quantity. This demonstrates that DOT personnel, at one time, thought that the larger quantity was the quantity of Sodding actually accomplished.

4. It is our contention that all sod placed on this project was placed in areas necessarily disturbed within the limits of construction or in areas that had been disturbed by others. All Sodding was done at the direction of DOT personnel.

5. DOT advised us in a letter dated August 8, 1989 that the final pay quantity for Sodding "represents the actual quantity of sod placed in authorized area on the project for pay". This indicates that DOT has excluded from their measurement of areas in which placement of sod was not authorized.

6. There was a substantial overrun in Sodding on this project, but this was not within our control.

PART VII Amount: \$2,272.92

Payment for 62 Tons of Type II Asphaltic Concrete

The plans require that driveway connections be constructed with Type S Asphaltic Concrete. During the time that a driveway connection to an apartment complex was under construction, we had Type II Asphaltic Concrete on the project and, in the interest of expediting restoring the driveway to service, placed 62 tons of that material in the lower portion of the connection. The project inspector advised that, since the material used was not that specified for this work, we would receive no payment for it. The Resident Engineer later told us we would be paid for this material if the upper layer of the connection was constructed with Type S.

PART VIII Amount: \$39,060.00 (4,200 Tons @ \$9.30)

Unrecovered costs in constructing the asphalt overbuild course caused by ambiguities in plan details.

1. The plans indicate that this project consists of resurfacing and widening, whereas, the actual work to be accomplished consisted of rebuilding the existing pavement to a new geometry (both profile and cross section) and then matching the rebuilt pavement with widening consisting of a base course and various courses of pavement.
2. The plan typical section showed construction of an overbuild course over the existing pavement using Type II A C and Type S A C. It was not possible to determine, from these details, the method to be used to construct the overbuild or to determine the locations at which a particular type of asphaltic concrete (Type S or Type II) was to be used.
3. At the time we prepared our bid, we could not determine the quantities of Type S AC and Type II A C to be used in the various pavement courses by analyzing the plan quantities because these quantities were substantially in error.
4. DOT contends that we could have determined the breakdown of the types of asphaltic concrete and where each type was to be placed by performing calculations. They suggest that we

should have applied the typical section to the cross sections and profiles shown in the plans to perform such calculations. It is our position that it was not possible to do the calculations suggested by DOT because there was insufficient information in the plans to do this and the profile and cross section of the existing pavement was highly variable. Also, it is unreasonable to expect a bidder to verify the accuracy of plan quantities during the short time he has to prepare his bid.

5. We anticipated placing the overbuild course with a paving machine as is normally required.

6. We bid Type II A C at a higher unit price (\$36.66 per Ton) than Type S A C (\$34.44 per Ton) because lower production, motor grader placement would be done with Type II A C.

7. At the time paving began, DOT produced their computation sheets which showed how that the designer anticipated the overbuild course would be placed. These sheets indicated alternating between Type II A C and Type S A C in very short distances. It was not possible to place the overbuild course in this manner.

8. DOT personnel determined that Type S A C should probably be used for all of the overbuild course and that this material of necessity would be placed with motor graders.

8. We contend that the overbuild course was constructed in a manner that was entirely different from the manner we could reasonably have anticipated from our prebid examination of the contract documents.

PART IX Amount: \$765.00

Payment for Concrete Sidewalk constructed at the direction of DOT representatives.

We contend that the 6" concrete sidewalk constructed at Station 112+25 and Station 128+25 was at the direction of DOT personnel and DOT has refused to pay us for this work.

PART X Amount: \$7,093.08

Payment for Topsoil for which DOT denied payment

1. We should be paid for topsoil placed in Retention Area No. 1. This topsoil was placed before DOT made the decision to delete topsoil under the sod in the retention area. The topsoil met specification requirements. This topsoil had to be placed and covered with sod as quickly as possible to control soil erosion.
2. We should be paid for topsoil placed in certain areas along the road prior to the decision by DOT to delete use of topsoil under the sod. Some of this topsoil was placed in areas which DOT contends they did not authorize placing sod (See Part VI).

PART XI Amount: \$3,685.20

Dispute over final pay quantity for Borrow Excavation
We have signed DOT tickets for more cubic yards of Borrow Excavation than the quantity for which we have been paid by DOT.

The Department of Transportation rebutted as follows:

PARTS I, II and III

1. The delays enumerated by the Contractor are minor in nature and should have been anticipated on this type of work.
2. The Contractor completed his pipe operation 61 days ahead of his approved work progress schedule so it appears that these delays did not significantly impact his calculated production rate.
3. Our daily diaries do not show every one or two hour utility conflict delay because our inspector was not informed of many of these delays. In some instances the Contractor and the utility company worked out minor conflicts.
4. In our opinion, the DOT and the utility owners made every effort to work with the Contractor on these matters.
5. The Contractor did not give notice of his intent to file a

claim as required by Article 5-12 of the Standard Specifications.

PART IV

1. The surveying work for which the Contractor is claiming compensation was incidental surveying work covered in Article 5.7 of the Standard Specifications.
2. The Contractor did not give notice of his intent to file a claim as required by Article 5-12 of the Standard Specifications.

PART V

1. It was determined that the excavation for the 66" pipe would be 10 to 12 feet wide. The utility owner determined that, if the overhead power line were relocated to the east of its existing location prior to installation of the pipe, it would be in jeopardy when the pipe excavation was made.
2. At a meeting at the site, there was general agreement that the power line would be temporarily relocated to the west of its existing location. One of the reasons for relocating the power line to the west was to give more room behind the power line to dig and unload the pipe. However, the Contractor chose to unload the pipe from the roadway.
3. Even though the Contractor has stated that he could unload the pipe without having any problems, when he attempted to do so, his equipment made contact with the temporarily relocated power line.
4. If the Contractor had made use of the sheeting item included in the plans, the trench width would have been reduced to 8' +/- and the power line could have been relocated to the east as shown in the plans.
5. The Utility Relocation Schedule states that the pole line would be relocated to clear drainage construction but did not say that this relocation would be to the final location shown in the plans.

PART VI

1. Areas outside the right of way and/or construction

easements were unnecessarily disturbed by the Contractor. Article 7-11.1 of the Standard Specifications (Preservation of Property) requires the Contractor to repair at his expense any ground he disturbs outside the limits of construction.

2. Up until the time Sodding was completed and actual field measurements were taken, the quantities shown on progress estimates were estimated based on the Subcontractor's count of pallets of sod used. It is common for estimated pay quantities to adjusted to reflect final measurements.

3. The field measurement of the areas of sod placed did not include areas outside the project limits because the Project Engineer did not authorize payment for sodding in those areas.

4. We requested the Contractor to supply us with his field measurements of Sodding. He has now furnished this information to us. Therefore, we have not been able to fully evaluate this part of his claim.

PART VII

Prior to any driveway connections being constructed, the project inspector told the Contractor that all such connections must be constructed with Type S Asphaltic Concrete. The Contractor disregarded the project inspector's instructions. The material used is of a lesser quality than the required material.

PART VIII

1. It is our contention that the work to be performed was fully represented by the Contract Bid Documents. With the Resurfacing and Widening Detail shown on Sheet No. 4 of the plans and the cross sections and elevations in the plans, the Contractor has sufficient information to determine the overbuild required and the method of placement.

2. The Contractor should not have assumed that low production, variable depth asphalt work would be accomplished with Type II A C.

3. It is clear from an examination of the plans that the overbuild work would be difficult to accomplish.

3. The Contractor elected to place all of the overbuild course with Type S A C. We did not direct the Contractor to substitute Type S A C for Type II A C.

PART IX

1. It is our policy that existing driveways will be replaced with like material during construction of a project. The existing driveways at these locations were not concrete.
2. We did not authorize construction of concrete driveways at these locations.

PART X

1. The Contractor is due compensation for 486 square yards of topsoil placed in Retention Area No. 1.
2. According to the Project Records, no topsoil was placed on the left side of the project.

PART XI

The Contractor's daily log of material sent to this project indicates that at least some of the quantity in dispute was sent to other projects.

The Board in considering the testimony and exhibits found the following points to be of particular significance:
PARTS I, II & III

1. The number of conflicts with unknown underground utilities occurring on this project was rather large. However, some of the conflicts for which the Contractor is claiming additional compensation are minor, such as service connections and water lines of unidentified size.

PART V

1. The contract documents require that DOT will make arrangements for adjustment of utilities where the Engineer determines this to be essential to performance of the required construction provided that normal construction procedures are used by the Contractor. They go on to set out circumstances under which it will be considered essential to adjust a utility in order to carry out a construction operation. These circumstances include providing reasonable

working room necessary for operation of equipment normally used for the particular type of construction.

2. DOT stated that sheeting was set up in the contract in accordance with the DOT Accident Prevention Manual (Worker Safety).

PART VI

1. In a memorandum dated February 16, 1989, the District Vegetation Specialist stated that this is a "very tight project with respect to right of way and area for temporary stockpiling of materials or for equipment moving necessary for construction. Therefore, there are disturbed areas that may have been unforeseen during the early development of the project."

2. In a letter dated August 8, 1989, the Project Engineer stated "We keep no record of sod placed in unauthorized areas, therefore we cannot furnish you a detailed listing of locations where sod was placed at no pay.

PART VII

DOT allowed the Type II Asphaltic Concrete to remain in place. The completed driveway connection did not conform to the plans, but there is no evidence to show that reasonably acceptable work was not produced.

PART VIII

1. The Standard Specifications mention placing only leveling courses with a motor grader.
2. The plan quantities for Type S A C and Type II A C were substantially in error.
3. It proved impractical to place the overbuild course using the technique shown in the plans.
4. The Contractor did not present complete documentation to substantiate the per ton placing and hauling costs he used to arrive at the additional unit cost on which his claim is based. (November 10, 1989 Letter)

PART IX

A DOT Daily Report of Construction (3/9/89) contains a notation that the concrete driveway constructed at Station

113+20 (112+25) is not an expense to the Department due to no concrete driveway existing.

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 for his claim as follows:

PARTS I, II and III	\$5,000.00	
PART IV	\$1,053.00	
PART V	\$7,922.00	
PART VI	\$10,000.00	0.00 +
PART VII	\$1,550.00	5000.00 +
PART VIII	\$20,000.00	1053.00 +
PART IX	Nothing	7922.00 +
PART X	\$4,000.00	10000.00 +
PART XI	Nothing	1550.00 +
		20000.00 +
		4000.00 +
		49525.00 *

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 243.75 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$243.75 for Court Reporting Costs.

Tallahassee, Florida

Dated: 25 October 1990

Certified Copy:

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

25 October 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

S.A.B. CLERK

OCT 25 1990

FILED

1 APPEARANCES:

2

3

MEMBERS OF THE STATE ARBITRATION BOARD:

4

Mr. H. E. "Gene" Cowger, Chairman

5

Mr. Sam Turnbull

Mr. Frank Carlile

6

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

7

Mr. Tom Shafer

8

Mr. Dorion Ogle

Mr. Charlie Hicks

9

Mr. George Cone

Mr. Jimmy Rodgers

10

Mr. Ralph Carter

Mr. Bill Armstrong

11

12

APPEARING ON BEHALF OF THE CONTRACTOR:

13

Mr. Al Cross

Mr. George Atkin

14

Mr. Charlie Blalock

Mr. Jack Steele

15

Ms. Grace Cross

Mr. Dan Erven

16

Mr. Allen Nobles

17

* * *

18

19

I N D E X

20

21 EXHIBITS

PAGE

22

Exhibit Nos. 1 and 2 in evidence

4

Exhibit No. 3 in evidence

50

23

24

25

CERTIFICATE OF REPORTER

120

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 choose me, Gene Cowger, to serve as the 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 submit written documents 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. This is the contractor's request for arbitration and the package of information that was submitted with that request. The entire Exhibit No. 1 was furnished to the DOT several weeks ago for

1 preparation for this hearing.

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

4 MR. ATKIN: Yes, we do.

5 CHAIRMAN COWGER: Off the record a minute.

6 (Discussion off the record).

7 CHAIRMAN COWGER: Back on the record. During the
8 time we were off the record there was an informal
9 discussion of exhibits. At this point we are accepting
10 in the record Exhibit No. 2, which is a bound booklet
11 in a blue cover by DOT, setting out their position with
12 certain documentation for each part of the contractor's
13 claim.

14 It was also agreed that during the course of the
15 hearing, the contractor will introduce some additional
16 exhibits at the proper time.

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

19 CHAIRMAN COWGER: Does either party wish to have
20 any further time to examine the exhibits that have been
21 submitted so far?

22 Hearing nothing, we will go on.

23 During this hearing the parties may offer such
24 evidence and testimony as is pertinent and material to
25 the controversy and shall produce such additional

1 evidence as the Board may deem necessary to an
2 understanding and determination of the matter before
3 it. The Board shall be the sole judge of the relevance
4 and materiality of the evidence offered.

5 The hearing will be conducted in an informal
6 manner. The contractor will elaborate on their claim,
7 and then the DOT will offer rebuttal.

8 Either party may interrupt to bring out a point
9 by coming through the Chairman. However, for the sake
10 of order I must instruct only one person speak at a
11 time.

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

15 While we were off the record, it was also agreed
16 by the parties that we would consider this -- we would
17 take under consideration each part of the claim
18 individually, and then allow DOT to rebut and wrap up
19 each part as we go through, rather than trying to have
20 the contractor present the entire claim and then come
21 back to rebuttal, with the understanding that parts
22 one, two and three of the claim will be considered as
23 one item.

24 I think it's appropriate now for the contractor
25 to begin his presentation. We would like for you to

1 begin by stating the total amount of your claim.

2 MR. ATKIN: Charlie Blalock, who is the project
3 manager on the project will handle that portion of the
4 claim, but the total amount -- well, I don't know that
5 I have part one, two and three added up.

6 CHAIRMAN COWGER: No, we want the total amount of
7 all claims.

8 MR. ATKIN: The total amount of all claims.

9 MR. OGLE: That's on page 29.

10 MR. ATKIN: \$99,935.32.

11 CHAIRMAN COWGER: We have a reason for wanting to
12 know the total amount right up front.

13 MR. BLALOCK: Mr. Chairman, Charlie Blalock. The
14 first three parts of the claim, as you said, are all
15 similar in nature. They result from conflicts which
16 occurred with the utilities as we were laying the
17 underground storm drainage pipe which essentially went
18 up both sides the road.

19 We noted that considerable effort had been taken
20 by the Department in trying to identify where utilities
21 were located and where there were conflicts. And in
22 fact they pointed out in the drawings some conflicts
23 and instructed the contractor what to do when these
24 occurred.

25 But when we first started laying pipe along the

1 east side of the road going north, we began to run into
2 many conflicts. And they would be small, and they
3 would be relatively minor in nature.

4 And we're talking about you lose an hour, you
5 lose two hours, you lose half an hour, you break a
6 water service to a house. You come in contact with a
7 phone line, a buried phone line, these type things.

8 And of course they're all reiterated in the three
9 parts of the claim, the locations, dates and what the
10 nature of the conflict was.

11 It's our feeling that while you would expect some
12 of this to occur in a contract such as this, that the
13 magnitude of them was such that it no longer was a
14 minor problem to us.

15 It interrupted the pipe laying operations to
16 the point that we felt we had a definite loss in
17 efficiency, and strictly from the viewpoint of looking
18 at all of them, not from any individual one.

19 It also, I think, caused the pipe laying crew to
20 grow bit tentative as they dug to lay the drainage pipe
21 simply because we struck so many things and damaged
22 them.

23 And then we would have to wait for the
24 appropriate City crew to come or we would have to
25 discuss it with DOT if we were to have to realign the

1 drainage pipe, that we just got a little bit gun shy
2 I guess is the proper word and dug very cautiously,
3 which we should be digging cautiously in any case.

4 Sometimes when we would arrive at a conflict and
5 you would have to change, say, the vertical alignment
6 of the pipe to either go under or over or whatever, we
7 would have to back up several joints and relay the pipe
8 in order to transition into a new alignment to
9 accommodate the conflict that we had in front of us.

10 So the whole essence of the claim, Mr. Chairman,
11 is there were a lot of small conflicts. We believe
12 that DOT knew about essentially all of them.

13 They were on the job when they occurred, though
14 occasionally one would occur early Saturday morning
15 before somebody got there. But basically they knew
16 about all of them.

17 They were just more than you ought to run into in
18 a job like this. They invariably cause a delay in our
19 work. There's just no way to avoid it. And it was a
20 loss of efficiency, and we think that it is more than
21 what was contemplated when the project was bid, and
22 that we are due some compensation. And that's all,
23 Mr. Chairman.

24 MR. ATKIN: Mr. Chairman, to preempt what I think
25 might be a part of the rebuttal, I see according to the

1 DOT submittal that there's a comparison made of the
2 operation versus the progress chart.

3 And I think it should be pointed out that we
4 worked a lot of overtime, we worked a lot of Saturdays,
5 worked a lot of Sundays. And they had wonderful
6 weather, so that the fact that there was a completion
7 ahead of the projected date on the project chart,
8 I don't think has any real relevance to the fact that
9 these items cost money and they cost a lot of money.

10 CHAIRMAN COWGER: Okay. Does that complete your
11 opening statement on this part, these three parts of
12 the claim, then?

13 MR. BLALOCK: Yes, sir.

14 CHAIRMAN COWGER: DOT.

15 MR. SHAFER: DOT's position is that contractor's
16 claiming \$16,000 for minor numerous utility conflicts
17 in laying these storm drains. The daily -- the
18 Department's daily diaries do not show every one or
19 two-hour utility conflict because these things normally
20 were handled in accordance with the contract and
21 Section 7-11.6 of the standard specifications. Those
22 are to be expected.

23 If every small one -- we need to be notified,
24 I guess, by the contractor every half hour he says I'm
25 going to be delayed so keep time on this, and that

1 certainly doesn't happen.

2 In the larger ones in accordance with Article
3 5-12, if we're notified why, we keep time on the
4 things. But we were never notified in accordance with
5 Article 5-12.

6 I think the question that needs to be addressed
7 is: Is the contractor entitled to delay time every
8 time that he has to stop for an hour or so when he cuts
9 a service line or whatever.

10 It appears that these minor delays did not impact
11 his production rate, and it's good to say that they
12 worked on Saturday and Sunday and I know that they did.

13 However, their bar charts doesn't show working
14 days, it shows calendar days. And so as far as -- we
15 think perhaps if you consider calendar days and they
16 still finished their work 61 days ahead of that
17 schedule, that their efficiency, we don't feel is
18 impacted to the point where they suffered any undue
19 delays.

20 Therefore the Department would recommend no
21 additional compensation for any of these small utility
22 delays, both in accordance with Article 5-12, we
23 weren't notified for each of them, and also because we
24 don't feel by their own schedule that they were even
25 impacted in their efficiency.

1 CHAIRMAN COWGER: May I ask a question, then, a
2 couple of questions, I guess. First, during the time
3 periods that are involved in parts one, two and three,
4 did the contractor -- is the contractor claiming delay
5 damages for every utility conflict that he encountered
6 during those three periods or only some of them?

7 MR. BLALOCK: I'm sorry, George was talking at me
8 and I didn't hear that.

9 CHAIRMAN COWGER: Maybe I can do better with the
10 question this time anyway.

11 The question is, there are three distinct time
12 periods involved in these three parts of the claim.
13 Are the delays that you're claiming the only delays
14 that you encountered during those three periods for --
15 due to utility problems or were there other times also?

16 MR. BLALOCK: I think the answer to that is no,
17 these are the ones that our foreman, Mr. Steele, who's
18 sitting here, who actually laid the pipe noted in his
19 diary at the time they occurred, those that we felt we
20 could document.

21 I think there were others, I believe, that didn't
22 get in those three parts and there were some that
23 occurred after those three parts were documented that
24 we were remiss in not getting a claim in, and therefore
25 have not tried to submit one.

1 Mr. Steele, could you respond any further than
2 that?

3 MR. STEELE: Yeah, there were quite a few others
4 that I never wrote down. I just really picked at the
5 ones that seemed to be the biggest -- our biggest
6 hindrance and cost us the most time.

7 MR. RODGERS: Mr. Chairman, Jimmy Rodgers with
8 the DOT.

9 I think Mr. Steele hit on a good point there.
10 That he picked out the ones, and I'd like to underline
11 picked out. That's in fact the way we learned about it
12 is somebody coming after the fact looking at records or
13 whatever means, and saying oh, here's a conflict. We
14 had, past tense underlined, a conflict.

15 Number one, we really don't have any means of
16 knowing if these conflicts actually occurred, and
17 number two, there was time set up in the contract for
18 the utilities to be working concurrently with the
19 contractor. This is not a total contractor singular
20 contract. It's a mutual concurrent operation with the
21 utilities. There was time set up.

22 We went extra steps to have the utilities to do a
23 significant amount of the relocation ahead of the
24 contract starting. And I think a good guess would be
25 probably 75, 80 percent of it that we went out of our

1 way to work well in advance of the contract even
2 beginning in getting the utilities out of the way.

3 So the only thing left was minor adjustments and
4 there was a full complement of time set up in this
5 contract for utility adjustments.

6 MR. BLALOCK: Mr. Chairman, could I comment on
7 his comment?

8 CHAIRMAN COWGER: Certainly.

9 MR. BLALOCK: Without exception, when I was on
10 the job and one of these occurred and DOT personnel
11 were there, they were informed at the time. As a
12 matter of fact in most cases -- in many cases they had
13 to tell us what to do, because it required changing
14 alignments, doing something other than what the
15 contract documents showed.

16 If you broke a pipe, of course we called the
17 water company and they had to come fix it, and we went
18 over or under it. If they were there. They obviously
19 weren't there in every case, but they were in most
20 cases.

21 The second thing, a lot was done to relocate the
22 utilities ahead of us and they did a pretty good job.
23 What is addressed in these claims are basically items
24 that occurred where DOT designers didn't know it was
25 there or didn't know it was at the vertical or

1 horizontal position it was.

2 And it was as much a surprise to their field
3 people as it was to us, and we had to make field
4 adjustments at the time.

5 And I don't believe the contract provided for
6 that in any way that I could see.

7 CHAIRMAN COWGER: May we do something? Let's
8 look in Exhibit No. 1. I'm looking at addenda or
9 exhibit, I guess I should say, Roman numeral II-1. And
10 it's the first page, a letter dated November the 9th
11 from Capital Asphalt, and there they have detailed each
12 of the conflicts that occurred on which their claim is
13 based.

14 And then later on back in the package they get
15 into breaking it down into hours and explaining it
16 further. But let's look at this one letter.

17 This gives us a pretty good feel for what it was
18 that happened in each instance. And I think except for
19 the problem which we'll have to talk about in a minute
20 about structure S-58, this is pretty typical of what
21 occurred in each of the three parts of the claim.

22 DOT, do you think that this is, in your opinion,
23 something unusual or not, or would this be something
24 that you would expect to occur?

25 MR. SHAFER: Well, in our opinion that thing is

1 fairly well covered under 7-11.6. You just don't --
2 the contractor or designer really doesn't know what is
3 underneath the ground on a job that's a rebuild job,
4 and I believe that needs to be taken into consideration
5 during the bidding process, and evidently it was
6 because their production rate wasn't hurt.

7 So I think that probably was taken into
8 consideration, as well it should have been, or we would
9 have seen something in their production rate that would
10 have really shown this up to be the case. I think it's
11 something that you normally expect.

12 CHAIRMAN COWGER: I'd like to have the contractor
13 in essence answer the same question, please, based on
14 your experience.

15 MR. BLALOCK: Yes, sir. As I said earlier on,
16 certainly you expect to run into this occasionally, but
17 we noted that DOT went to great effort to identify
18 these utilities and to relocate them ahead of us and
19 move them and this type of thing.

20 And if we had had one or two of those there would
21 be no problem with us. But we think the magnitude of
22 the number of them that we ran into constitutes a
23 change from anything we contemplated in going into this
24 contract.

25 CHAIRMAN COWGER: Okay.

1 MR. ATKIN: I might point out that even though
2 the utilities were scheduled to work at the same time
3 the contractor was, the schedule was also drawn for the
4 contractor to work areas where the utilities were
5 completed.

6 And as a result, the encountering of these things
7 just really was not expected on that basis.

8 CHAIRMAN COWGER: Okay. I think we've probably
9 heard enough on these first three parts, except that
10 I note that there was some discussion in part three
11 which dealt with a -- I don't know whether it's an
12 inlet or manhole, a structure referred to as structure
13 S-58.

14 I think the contractor in his written submittal
15 discussed that in some length as to what happened
16 there. Apparently you ran into a problem resolving a
17 problem with a tree that either had to be cut or taken
18 out and some water damage to an adjacent property
19 owner.

20 DOT, I don't see anything in here where you have
21 commented on that. Would you care to?

22 MR. SHAFER: I'm not sure exactly which instance
23 it is unless it's at that street --

24 CHAIRMAN COWGER: That's it.

25 MR. SHAFER: Well, I believe as I recall the

1 situation, I was involved in that particular situation
2 as project engineer with Mr. Blalock.

3 I believe, we were putting storm drain along the
4 east side or west side of that area and there was a
5 36-inch oak tree, some oak tree in the way. And they
6 said well -- they asked us -- and the tree was shown on
7 the plans, too, but not to be removed.

8 So they asked me what to do, and I told them that
9 they could move the catch basin around the corner a
10 little way, continue on and not cut down the tree.

11 To me, I didn't see it as anything other than a
12 field decision to take care of a problem immediately as
13 it occurred, and didn't think of it at the time to be
14 anything as a serious delay type thing.

15 CHAIRMAN COWGER: Well, it's not a major item.
16 The contractor is only claiming four hours for it.
17 I just wanted to make sure that DOT had the opportunity
18 to say whatever they wanted to say about it. And the
19 contractor has chosen to write a couple of pages on it.

20 MR. ATKIN: He was pretty modest in what he asked
21 for based on the amount of grief that situation caused.

22 CHAIRMAN COWGER: DOT, do you have anything
23 further to say, because when you read this thing, you
24 know, it's expanded over several days, apparently.

25 And, Tom, what you're saying is you went out

1 there and told them to move the inlet around the corner
2 and that's all there was to it.

3 MR. SHAFER: As far as I was concerned, and as
4 far as it affected us at the time, that's all there was
5 to it.

6 CHAIRMAN COWGER: How about all this business
7 with the contractor was told to do one thing -- was
8 told to proceed on in accordance with the plans, if I'm
9 correct, and he choose not to. And later on you all
10 told him well, yeah, that was right. We want you to
11 make a change.

12 MR. SHAFER: He's only claiming four hours.

13 CHAIRMAN COWGER: Okay. We won't pursue that any
14 further.

15 MR. ATKIN: Well, everybody had a very emotional
16 feeling about it. It went over a period of three or
17 four days.

18 MR. SHAFER: We brought out the commissioner, and
19 she said that's a great tree.

20 CHAIRMAN COWGER: Did you save the tree? That's
21 the important thing.

22 MR. SHAFER: Yes, sir, we did.

23 MR. ATKIN: They said it never happened, but they
24 claimed credit for saving the tree.

25 CHAIRMAN COWGER: I think let's go on to part

1 four. Let's let the contractor start on part four.

2 MR. ATKIN: Part four is what? Again, these were
3 problems that were generated by things that we don't
4 think should have happened.

5 The requirement for surveyors -- one of the
6 requirements was when the surveyor is called out --
7 called on by DOT personnel to check something that has
8 already been installed and he finds out it's all right,
9 there's a few of those instances.

10 In that case we didn't ask them to do it. We
11 didn't expect that we were going to have to keep
12 checking back to see that we done it right, so we
13 charged for it. We feel that is an extra item.

14 Another item that generated a lot of this time
15 was the fact that on the returns particularly, the
16 design detail was totally inadequate, and it required
17 the surveyor to stop and try to figure out what he was
18 going to do, what was going to be done.

19 And in many cases they spent time working it out
20 or they waited for DOT personnel to get out there and
21 work it out with them.

22 Now, we had a subcontract for the layout on this
23 job with a surveying firm, and we were paying them by
24 the hour. And the hours that are involved in these
25 incidents are hours that we paid for that we feel we

1 should not have anticipated that we would have had to
2 pay for.

3 We incidentally paid for \$7,000 worth of extras
4 over and above what the contract we originally had with
5 them and we're only talking about DOT paying slightly
6 over a thousand dollars of that portion. So we feel
7 that what we've asked for is fairly modest compared
8 with the overall problems that we had.

9 I think if the Board gets a chance to study the
10 changes in this contract, the things that we've just
11 been over, the number of unexpected conflicts, the
12 problems with the returns on the curbs, the errors in
13 the quantity take-offs and all the other problems that
14 existed, you probably will realize easily that there
15 was no easy layout to this thing. And all of the
16 problems that were generated were not problems that
17 could have been anticipated.

18 We do have the party chief and the officer of the
19 surveying company here who had the subcontract for the
20 surveying work, and if you have any specific questions,
21 I think that they will be able to address them.

22 CHAIRMAN COWGER: Let's let DOT make a rebuttal
23 on this first, unless they want to make a statement.

24 I would like -- before DOT starts, let's get in
25 front of us exhibit Roman numeral II-4, that's Roman

1 numeral II hyphen 4.

2 The second page is a letter from Capital Asphalt
3 dated January 26th, which is essentially the basis for
4 the claim, I believe. It sets out the date on which
5 extra work was done. Just so we're all looking at that
6 as we go along, it might help.

7 Tom, do you want to start, then, whenever you
8 find that.

9 MR. SHAFER: Yes, sir, I do.

10 CHAIRMAN COWGER: Before you start may I ask a
11 question? In the DOT exhibit in part four you have
12 shown certain pages out of the standard specification
13 book.

14 MR. SHAFER: Yes, sir.

15 CHAIRMAN COWGER: Were there any other
16 requirements in the contract, like in the special
17 provisions, that dealt with this matter of contractor
18 layout or is this it?

19 MR. SHAFER: I believe this is it.

20 CHAIRMAN COWGER: Okay. There are no special
21 requirements. Okay. All I want to know is in
22 reviewing this would someone down there who's got the
23 contract just look and tell us at some point in time,
24 not right now, but see if there's anything in the
25 contract that modifies Section 5-7 in any way at all.

1 Go ahead.

2 MR. SHAFER: Basically then -- let me go back to
3 my -- basically what we're saying is that the work that
4 was done -- we're claiming that the work that was done
5 by the surveyor as a subcontractor to the contractor
6 was covered by 5-7, which included all work.

7 And if there were extra items, we were not
8 notified in accordance with 5-12 where we could have
9 mitigated by maybe doing it ourselves or such.

10 And also I think it needs to be noted that the
11 plans that were bid upon showed those street returns
12 with the lack of information that they had, so it
13 didn't come as any surprise that there was a lack of or
14 an abundance of information on the plans.

15 The plans are what they are, and the contractor
16 had that to bid on. And I'm sure when he looked at it
17 there isn't anything for street turns, I better figure
18 in something for figuring those things. The plans --
19 as I say, the plans are what they were. And we didn't
20 surprise them with them. Everybody was bidding on the
21 same thing.

22 MR. RODGERS: Mr. Chairman, I think also it needs
23 to be pointed out that the Department of Transportation
24 did not call upon the subcontractor, Nobles, Varnum and
25 Associates, Incorporated. They called upon Capital

1 Asphalt, if in fact they needed some checking done.
2 They were working together with the prime contractor.

3 MR. ATKIN: Dan, can you respond to that? Did
4 DOT ask you to check that?

5 MR. NOBLES: Yeah, and certain pipes and so
6 forth, I had to go back to my office and we started
7 getting a form, or I would get with Capital Asphalt and
8 find out who was responsible for ordering the work when
9 we were having problems.

10 And I wanted to make sure that we were covered,
11 so I went back to my office and started getting forms,
12 so any work that was done or ordered, we had them sign
13 from Capital Asphalt. Then we had to run everything
14 through Capital Asphalt's foreman before we did any
15 work that DOT required or asked us for.

16 MR. ATKIN: I guess in response to the fact that
17 the plans showed or did not show the detail for the
18 apartments -- I guess our response to that is that
19 there wasn't any contract item for engineering, either.

20 We could well have assumed that particularly
21 after the first problem cropped up that somebody for
22 DOT would have assumed the responsibility of having
23 survey data available, layout data available for the
24 rest of the returns by the time we got there.

25 So I don't really think that that's a mitigating

1 element from the point of the Department.

2 MR. NOBLES: I'd like to comment on that --
3 Allen Nobles, with Nobles, Varnum.

4 Some of the returns -- when the returns aren't
5 shown on plans, generally what we're going to do is
6 relay the construction site out and we prorate back in
7 and tie this back in, and it's usually a pretty simple
8 matter.

9 Some of the returns there, if you prorate in,
10 either drainage couldn't work, cars couldn't drive down
11 the road. So it wasn't just layout, it was more into
12 design, how we're going to get these things in, because
13 you are coming off a DOT road.

14 A lot of times you would have to pull back, go to
15 DOT, let them take care of the problem and get back to
16 us. For us to spend that time -- it takes quite a bit
17 of effort to determine you have a problem, get with
18 DOT, get it resolved and then get back to how you're
19 going to lay it out. And any place we could, we'd just
20 go ahead and design it and we just about did.

21 MR. ATKIN: In our presentation here, we've also
22 shown the total extras that we paid the survey company
23 for that. We extracted the part we felt DOT had a
24 clear responsibility for. We did not in any way try to
25 impose all the surveying costs on the Department by a

1 long shot.

2 MR. RODGERS: As I said before, the DOT did not
3 call on Nobles, Varnum and Associates, Incorporated.
4 We called upon Capital Asphalt. If in fact the person
5 on the job belonged to Nobles, Varnum and Associates,
6 Incorporated, we did not distinguish. We were working
7 a project.

8 And also about the returns, as Mr. Shafer said,
9 the plans are very explicit. And it's a simple matter
10 when you're figuring your bid to understand from a
11 brief site visit what is available to you and what is
12 not available to you.

13 And you have to determine the engineering
14 necessary to make the necessary tie-ins. And as
15 Mr. Nobles mentioned, that was not available to them.
16 Capital Asphalt has to have the experience and
17 expertise in order to provide that.

18 If not, then they have to go outside, hire a
19 consulting firm, which in fact I understand they did,
20 no problem with the DOT in them doing that. This is
21 something that was clear to all bidders, prospective
22 bidders whenever they approached the plans and
23 specifications for this job.

24 CHAIRMAN COWGER: Couple of questions. Number
25 one, were complete details shown for some of the

1 intersections and not for others, can anybody answer
2 that?

3 MR. ERVEN: Dan Erven, with Nobles and Varnum.
4 There was no return whatsoever. On the plans they give
5 you on Meridian Road they would give you a station
6 where your return began and a grade. And then they
7 would give you how far you go up the side road to tie
8 in. And it just said you would match there. And there
9 was nothing in between.

10 And I know on one occasion, one intersection
11 that sticks out in my mind was South Ride. We had to
12 go back and redo that one because the tie-in wasn't far
13 enough down.

14 It's a fairly steep road coming into Meridian
15 Road, and they didn't allow us to go far enough back to
16 make it a smooth transition. The profile that went
17 off the road had it coming in like this with just a
18 ten-foot --

19 CHAIRMAN COWGER: I understand. What were you
20 staking? Were you staking grades for the centerline of
21 the pavement going down the intersection?

22 MR. ERVEN: Curve grades.

23 CHAIRMAN COWGER: But those had to be such that
24 the thing would drain properly, and so that when the
25 pavement was constructed to match those curb grades

1 that the intersection would ride properly?

2 MR. ERVEN: That's correct. And it was critical
3 in the steeper areas where either a side road was steep
4 coming into Meridian Road, or vice versa. It created a
5 problem due to the fact that one road was falling a lot
6 faster than the other one, and we had problems with the
7 water.

8 CHAIRMAN COWGER: Unless someone has something
9 else on this item four --

10 MR. ATKIN: I'd just like to make a final
11 comment, Gene.

12 If you look at 5-7 in the specs, I don't see any
13 place in there that imposes any requirement on the
14 contractor to make design decisions or perform design
15 functions, and that's what was done on a good many of
16 these returns.

17 MR. SHAFER: Mr. Chairman, "The contractor shall
18 establish all horizontal-vertical controls necessary to
19 construct the work and conform to the plans and
20 specifications. Work shall include performing all
21 calculations required in setting the stakes needed."

22 MR. CROSS: That's still control, not design.

23 MR. SHAFER: Also, it's true there was not an
24 item for engineering for layout, but it says in here
25 that it's included in the cost of it in Article 5-7,

1 "Cost of performing layout work as described shall be
2 included in this contract unit price of the various
3 items of work to which it is incidental."

4 CHAIRMAN COWGER: You've directed the Board's
5 attention to the provisions of the contract and we will
6 look at them. Is there anything else that we need to
7 bring out on item four? I think we've talked about a
8 thousand dollar item about long enough. Let's go on to
9 five.

10 MR. BLALOCK: Mr. Chairman, I'll try to condense
11 all this that's in the written report somewhat. It's
12 our contention that the contractor, looking at the bid
13 documents and specifications and the information
14 available to him before he bid the job had every reason
15 to expect that overhead high tension line in the
16 vicinity of where the 66-inch pipe, 250 feet of 66-inch
17 reinforced concrete pipe had to be laid, that these
18 utilities would be relocated out of the way so we could
19 lay this pipe in an ordinary fashion.

20 We called this to the attention of the DOT on
21 many occasions before we got to that point in the
22 normal progression of the job. The lines did not get
23 moved.

24 In one of the meetings on site with the City of
25 Tallahassee, who's owner of the lines, and DOT and

1 myself, the City suggested trying to move the pole in
2 board; that is, towards the road, and see if that would
3 work.

4 I said -- and I happened to be there myself on
5 this occasion -- I said that we could try, but I didn't
6 think it would.

7 We had lots of meetings with a lot of people from
8 DOT, all of which are documented in the written
9 narrative.

10 The reason DOT told us -- not DOT, the City of
11 Tallahassee told us at the time that they could not
12 relocate the line to the location shown on the drawing
13 was because they would have to trim or cut some trees,
14 and they didn't have a permit to do so.

15 And this is even though they had signed off on
16 the utility relocation schedule a year prior to that,
17 and those trees were there then. And they knew they
18 would have to get a permit.

19 To make a long story short, because the lines
20 conflicted with the crane, and we did get our crane in
21 the lines a couple times and it was a very dangerous
22 situation, we couldn't get the poles moved eastward
23 from the road so we could set the pipe in the trench
24 with the crane.

25 We had to go out and jerry rig with a front

1 loader, rig a hook on it, and lay this 250 feet of pipe
2 in a very unorthodox way. Even though we got it in
3 there actually in five days, though DOT says we did it
4 in three, which I don't agree with that.

5 We spent a lot of money and a lot of time doing
6 it the way we did, and just as soon as we got -- not as
7 soon as we got through, but just prior to Christmas,
8 the job was shut down for two weeks for Christmas
9 break.

10 We came back -- about a week or two after we were
11 back I told the City of Tallahassee your pole is out in
12 the middle the road, and I'm going to move a concrete
13 barrier and you're going to have a pole in the middle
14 of the road.

15 Within two weeks they got out there, put those
16 poles were in where they were supposed to go in the
17 contract, strung that wire, cut those trees, still
18 didn't have a permit I think, I don't really know, but
19 I know Leon County and the City of Tallahassee that
20 made threats to shut the job down.

21 And I simply told them to speak to DOT and the
22 City. That's in essence it. We think they had an
23 obligation to get that line out of the way so we could
24 lay that pipe in a reasonable way. They didn't do it
25 for whatever reasons they had.

1 And I've read the blue book. I'll let DOT say
2 their say, and then I'd like to talk to that a minute.

3 CHAIRMAN COWGER: Let me make a couple of
4 comments because I spent some time reading your
5 submittal.

6 And as I understand the situation, there was an
7 overhead power line that was clearly in conflict with
8 laying the pipe in your opinion, at least.

9 The City came out there and said we can't
10 relocate it to the other side of the road because of
11 the problem with the tree permit. They did relocate
12 one or two poles.

13 MR. BLALOCK: One.

14 CHAIRMAN COWGER: But still as I understand it,
15 it's your position that they still didn't give you the
16 clearance that you needed to lay the pipe without going
17 to these extraordinary means that you describe.

18 MR. BLALOCK: That's correct, because the pole
19 instead of being relocated to the west -- to the east
20 away from the work area, was relocated to the west and
21 still conflicted with a crane boom trying to set a
22 piece of pipe or to unload the pipe, for that matter,
23 whereas if it had been relocated as shown on the
24 contract we could have used the crane and sat on the
25 road to place the pipe in the hole.

1 CHAIRMAN COWGER: I have a question in looking at
2 these photographs. Which side of the road were you
3 laying the pipe on?

4 MR. BLALOCK: This is the east side, sir.

5 CHAIRMAN COWGER: And where were the power poles
6 ultimately relocated?

7 MR. BLALOCK: If you would look on the back there
8 marked as Exhibit 2-5K, do you see that, sir.

9 CHAIRMAN COWGER: I'm still looking.

10 MR. BLALOCK: On the back down at the bottom.
11 2-5K.

12 CHAIRMAN COWGER: We got it.

13 MR. BLALOCK: In the right center of the picture
14 there's a very handsome guy standing next to a pole
15 there.

16 MR. CARLILE: I don't see that.

17 MR. BLALOCK: All right. That pole is in the
18 correct location that the contract called for. And
19 that's where they ultimately put it, and that's where
20 it is today.

21 If you look back right on down the line there's a
22 second pole there and that also is in accordance with
23 the contract.

24 If you look to the left, kind of between the
25 concrete truck and the paving machine, you see a pole

1 with the lines on it. That's where they relocated the
2 line to temporarily.

3 And those wires in there are why we could not sit
4 on the road with a crane and put a piece of pipe. The
5 pipe would be just about under where that curb line is
6 that you see there.

7 CHAIRMAN COWGER: This picture is looking north?

8 MR. BLALOCK: Looking north, yes, sir.

9 CHAIRMAN COWGER: So the power line was
10 originally on the east of the existing road, and they
11 were moving it further east is what they were doing.

12 MR. BLALOCK: They moved it west temporarily and
13 moved it back east after we laid the pipe.

14 CHAIRMAN COWGER: But ultimately the poles were
15 further east than they were originally?

16 MR. BLALOCK: Yes, sir, as called for by the
17 contract. And these are just different shots of the
18 same thing from different vantage points. The
19 narrative in the text tells you where and in which
20 direction we're looking for each one of these.

21 MR. ATKIN: Those are enumerated in there.

22 CHAIRMAN COWGER: Can we keep one set?

23 MR. ATKIN: You can keep them all. They're
24 enumerated in the exhibit, Gene, as exhibits. There's
25 a copy for each of you there.

1 MR. CARLILE: How did you assume that that
2 adjustment was going to be made in preparing for the
3 job?

4 MR. BLALOCK: Well, there are notes on the
5 drawings that points to the existing line, and then it
6 shows the new location of that line, and it shows
7 existing lines to be removed, and the new lines to be
8 constructed.

9 The existing line, the poles had to be removed
10 because they weren't in exact alignment. You couldn't
11 physically put a piece of pipe under it. You would go
12 through the pole. So we deduced the line was going to
13 be per those notes and the other.

14 MR. CARLILE: Which way -- you said they had
15 moved to the west, and that is what hampered you.
16 Which way did you assume they were going to be moved?

17 MR. BLALOCK: The contract showed them being
18 moved to the east, which is where they finally were
19 put.

20 MR. CARLILE: You didn't contemplate the interior
21 move?

22 MR. BLALOCK: No, sir, that was not mentioned in
23 the contract documents in any way.

24 MR. ATKIN: There wasn't any real good valid
25 reason for it.

1 MR. BLALOCK: Well, it came up as a result of our
2 meetings when the City said we can't relocate it to the
3 east. We'll have to cut some trees. That would put
4 them in the trees, and you can see from the photographs
5 they did have to cut some trees. They said we didn't
6 have a permit.

7 But the fact is that they signed that document to
8 relocate that a year before we're talking about, and to
9 my knowledge they hadn't even applied for a permit.

10 MR. ATKIN: And they finally cut the trees
11 without a permit anyway.

12 CHAIRMAN COWGER: Let me ask you about
13 photograph I. I see the handsome fellow in the
14 foreground again. Behind him and to the left of him,
15 as we're looking at the photographs, there's a pole
16 sitting right near the edge of the pavement.

17 MR. BLALOCK: Yes, sir.

18 CHAIRMAN COWGER: That as I understand it was a
19 temporary pole?

20 MR. BLALOCK: That's correct.

21 CHAIRMAN COWGER: That's all I want to know.

22 MR. BLALOCK: And the City put that there as an
23 effort to solve the problem, but all it did was
24 exacerbate it.

25 CHAIRMAN COWGER: I understand. I just want to

1 be sure -- the area where you're standing and behind
2 you, and probably somewhat ahead of you, is the area
3 where you were trying to lay this 66-inch pipe?

4 MR. BLALOCK: Well, actually it would be about
5 where this curb machine is sitting. I'm standing on
6 existing pavement that was already there. It would be
7 over to the right. This side of the new pole
8 but -- right about underneath that curb machine.

9 CHAIRMAN COWGER: I was trying to place
10 it longitudinally on the project. I think maybe it
11 would be good to let DOT rebut at this time a little
12 bit, and then let you all come back.

13 MR. SHAFER: In rebuttal, I need to direct your
14 attention, and not exactly at this time, but I need to
15 direct your attention to the letter that the electric
16 department wrote to Mr. Charlie Hicks on July 7, 1989.
17 And I'm going to read some of this right here.

18 Mr. Hugh Mullins -- and this in no way mentions
19 anything about trees. Bear in mind, when he's
20 relocating his lines it had nothing to do with trees,
21 at least in accordance with these letters that were
22 written.

23 Hugh Mullins, City electric department says he
24 met with the DOT and Capital Asphalt concerning the
25 66-inch pipe installation between station number

1 129 + 34 and station 131 + 90.

2 It was determined that the ditch cut for the
3 66-inch pipe would be approximately 10 to 12 feet wide,
4 and that would put the proposed power line relocation
5 area in jeopardy of being dug up, therefore the
6 overhead power line could not be relocated to the
7 proposed location until after the pipe had been placed.

8 Mr. Mullins further states that all were in
9 general agreement to move the overhead power line to a
10 temporary position closer to the road, which would have
11 taken it out of the way of the pipe contractor's ditch
12 line, and then the City would move the line back to the
13 proposed location after the pipe had been installed.

14 Mr. Mullins also states one of the reasons we
15 moved to a temporary position closer to the road was to
16 give more room behind the power line to dig and unload,
17 but instead the contractor choose to unload from the
18 roadway, which was not acceptable to us. They're
19 blocking off the road.

20 During the same meeting the contractor stated
21 that he would not have any problems with unloading
22 their pipe, but due to the contractors unloading method
23 his crane made contact with the overhead line, and he's
24 saying this is a violation of the safety codes. And it
25 probably is, but it's also -- I'm sure it's nothing

1 that the contractor intended to do.

2 It should be noted that the contractor had a
3 sheeting item available, so he could have cut down the
4 width of his ditch to seven and a half to eight feet,
5 and then the line could have been located to the
6 permanent position and they could have laid their line.
7 It's our feeling on this.

8 And also it says that the order says that the
9 line will be relocated to clear the drainage course
10 from station 129 + 40 to station 133, but it doesn't
11 say -- does not state that it would be relocated to the
12 proposed new location as shown in the plans.

13 The utility did relocate their poles and at the
14 time that they made the decision -- that everybody made
15 the decision, the electric company, and so did we,
16 think everybody was in agreement, that this was the
17 place to put it.

18 Now, if the problem was as appears to be the case
19 that the ditch was so wide they would have dug up a
20 relocated pole, they had the means to protect that and
21 evidently chose not to and perhaps at the time of the
22 meeting -- I was not at the meeting -- at the time of
23 the meeting that was discussed.

24 MR. RODGERS: Mr. Chairman, you saw where the
25 letter was located in the DOT's presentation, right?

1 CHAIRMAN COWGER: Which letter are we talking
2 about?

3 MR. SHAFER: This is Tab D.

4 CHAIRMAN COWGER: I'm with you now.

5 MR. RODGERS: It's highlighted there. I think
6 some things to consider here is Mr. Blalock said that
7 an interim move was not mentioned in the contract.
8 I take exception with that, in that it was implied by
9 the contract that stated that there was a certain
10 amount of time in -- that's in our presentation packet
11 under the tab there.

12 There was time allotted in the contract for this
13 interim move, or relocation. As Mr. Shafer said from
14 the letter, it states the final relocation position of
15 the poles would have had to be dug up to facilitate the
16 method of construction that the contractor used, i.e.,
17 not utilizing the sheeting item that was provided in
18 the contract.

19 And if you'll notice in the contract, they
20 were -- if I -- for lack of a better term, and pardon
21 me if this offends anybody, this item was unbalanced in
22 that they only bid \$18.15 a linear foot for sheeting,
23 which is unheard of. Who ever heard of that kind of
24 price short of a penny a foot?

25 The statewide average for sheeting in this period

1 of time was \$60 something. So this was all planned
2 well in advance of the contract. They saved somewhere
3 around \$300,000 by not utilizing their sheeting, which
4 would have eliminated this problem totally.

5 CHAIRMAN COWGER: May I ask a question? You say
6 there's an item in the contract for sheeting. Was
7 there anything in the contract documents that detailed
8 the purpose of the sheeting, what it was to be used
9 for?

10 MR. RODGERS: The contract makes part of -- let
11 me get this right. As a part of this contract is the
12 DOT's accident prevention manual. In Section 500 of
13 that manual it spells out exactly where you are to use
14 sheeting.

15 Any time you go deeper than five foot on a trench
16 excavation, you're either to have a registered engineer
17 certify that the type of material you're excavating the
18 angle of repose, would not present a safety hazard.

19 Therefore you can utilize vertical walls in your
20 trench cut. If not, you've got to lay those -- and
21 this is what they did, you have to lay those trenches
22 back.

23 So in this case with a 66-inch pipe, doing this
24 in my head, you have a five and a half foot diameter
25 pipe, so the specs allow you to go with a seven and a

1 half foot wide trench. They went, as stated here, with
2 a 12-foot trench to eliminate the need for sheeting and
3 also to comply with the accident prevention manual,
4 which is a part of this contract.

5 I say again any time you go deeper than a
6 five-foot trench cut you are required to either use a
7 shoring method, lay back the walls of the trench to an
8 angle of repose that is suitable to that type material,
9 and if not then you get a person to certify that
10 material can withstand a vertical wall.

11 CHAIRMAN COWGER: Did the contractor use any
12 sheeting at all on the job?

13 MR. SHAFER: The contractor used a movable box
14 which would be considered sheeting.

15 CHAIRMAN COWGER: Did he get paid for that as
16 sheeting?

17 MR. CROSS: I don't know where Mr. Rodgers'
18 \$300,000 come from, but every foot of the 66-inch pipe
19 was sheeted on the job and DOT paid us for it.

20 MR. BLALOCK: Let him get through.

21 CHAIRMAN COWGER: Let me finish first, if
22 I could. I'm going to ask the question. You've got
23 the estimate in front of you and it's in the package.
24 Was there sheeting paid for?

25 MR. ATKIN: Sheeting both sides was exceeded --

1 the contract quantity was exceeded. Sheeting one side,
2 we ran about 500 feet short of the contract, the
3 contract quantity was 5100, and the pay amount ran
4 4500.

5 On the two sides the contract quantity was 84 and
6 the pay quantity was 102. So the one type of sheeting
7 was exceeded in the contract, the other was about 500
8 short.

9 CHAIRMAN COWGER: So that we understand, one
10 sided sheeting means sheeting one side of the trench;
11 two sides is the different price for sheeting two
12 sides?

13 MR. ATKIN: Yes.

14 CHAIRMAN COWGER: All I'm trying to do is get out
15 on the table the facts. In the area in question here,
16 where they're laying 66-inch pipe down, there was no
17 sheeting done, is that correct?

18 MR. BLALOCK: May I comment on that?

19 CHAIRMAN COWGER: Answer my question first.

20 MR. BLALOCK: That's what I want to answer. If
21 you turn to Exhibit G in DOT's book, they report using
22 252 feet of sheeting at that 252-inch pipe on one side,
23 which we in fact did. This is their document,
24 Exhibit G in their book. And they paid for it.

25 CHAIRMAN COWGER: That was on the roadway side?

1 MR. SHAFER: Yes, sir.

2 MR. BLALOCK: Yes, sir, that was the steep side.

3 CHAIRMAN COWGER: The other side you just laid it
4 back?

5 MR. BLALOCK: And what actually happened, you
6 couldn't put the sheeting in when you were laying the
7 pipe because it was a six or eight or ten-inch high
8 pressure gas main that we were right on, but as soon as
9 we got the joint in we put the sheeting in for the
10 backfill operation, yes. It was a very ticklish
11 operation, but the sheeting was there, they reported it
12 in there documents and they paid for it.

13 CHAIRMAN COWGER: Okay. The relevant point was
14 why was the outside not sheeted? Isn't that right,
15 Jimmy?

16 MR. ATKIN: To save you a cut.

17 MR. CROSS: Daylighted to save you a cut.

18 CHAIRMAN COWGER: Jimmy, aren't you saying if
19 that side had been sheeted then they could have
20 relocated the poles over to the right-of-way line where
21 they tended to put them, or at least maybe that's what
22 could have been done?

23 MR. RODGERS: Did you pay for the box as
24 sheeting?

25 MR. HICKS: This was steel sheeting that he used.

1 MR. RODGERS: Was it a box trench?

2 MR. SHAFER: This has nothing to do with that.

3 MR. RODGERS: Yes, sir.

4 MR. SHAFER: Yes, sir, we're saying that pole
5 perhaps could have been protected if the sheeting had
6 been put on there.

7 CHAIRMAN COWGER: That's what I was asking.

8 MR. SHAFER: Our diaries showed this operation
9 took three days, and they're claiming two days of
10 delay, so evidently they were planning on doing this
11 whole thing in one day.

12 CHAIRMAN COWGER: Is that unreasonable?

13 MR. SHAFER: Yes, it is, 252 feet of 66-inch pipe
14 is unreasonable to do in one day, yes, sir.

15 MR. RODGERS: And again I'd like to point out in
16 our presentation packet, there's the contract document
17 with the utilities that shows that they will be
18 relocating this line, and there's days allotted for
19 that.

20 MR. ATKIN: There were no days allotted in the
21 preconstruction meeting for the 66-inch pipe to be held
22 out for that power line to be relocated. That's a lot
23 of crap. That should have been done long before we got
24 there.

25 CHAIRMAN COWGER: Let's not get emotional about

1 it.

2 MR. ATKIN: Okay.

3 CHAIRMAN COWGER: As I see it, what Mr. Rodgers
4 is trying to say is there was time built into the
5 contract for utility relocation, and the contractor
6 should have anticipated some delays due to utility
7 relocation.

8 But what the contractor is saying on the other
9 hand is this shouldn't have been one of those places
10 because there was ample time to get the line out of my
11 way before I got there.

12 MR. ATKIN: Right.

13 CHAIRMAN COWGER: Now, I think that's what both
14 sides have said. Does anybody want to say anything
15 else?

16 MR. BLALOCK: If DOT was through, I want to
17 mention something in Mr. Mullins' letter.

18 CHAIRMAN COWGER: Go ahead.

19 MR. BLALOCK: With respect to the width of the
20 trench, and talking about being 10 to 12 feet -- of
21 course Mr. Mullins saw it after we dug it.

22 As it turned out we had to dig it with the
23 front-end loader, because we could not use -- sit up
24 there and use the crane. We had to use a loader to lay
25 that pipe.

1 And the reason it's that wide, and the only
2 reason, is that the width of the bucket on the loader.
3 It wouldn't have been near that wide if we dug it with
4 a backhoe, and been able to sit on the road and place
5 the pipe in there with a crane.

6 And Mr. Mullins didn't know how we were going to
7 lay that pipe, whether or not he was talking about
8 moving that thing inward. So I don't know where he
9 concluded the ditch was going to be 10 to 12 feet wide.

10 Second thing, if he's going to relocate a pole
11 anywhere, he could have just as easily have relocated
12 it to the east, which would have been out of our way,
13 away from the road, and we wouldn't have had any
14 problem at all. He could have got as far away as he
15 wanted to if he's worried about a 12-foot ditch.

16 Second thing with respect to the number of days,
17 if you start on the 15th and finish on the 18th, that's
18 four days, that's not three, that's four workdays.

19 We spent two days trying to figure out if we
20 could pick this pipe up with that front loader, rigging
21 different kinds of hooks to try to pick it up, trying
22 to rig a ball and swivel onto the front of it and
23 seeing if we could move it, and finding out if the back
24 end would come off the ground, putting counterweights
25 on it.

1 So according to their log I think it counts up to
2 four days. They say three. But my logs shows that we
3 didn't lay the last two joints of pipe until the 19th,
4 which would make it five days we were actually laying
5 pipe plus the two days trying to get the front loader
6 to work.

7 CHAIRMAN COWGER: DOT, if the contractor would
8 have proposed to sheet the outboard side of that trench
9 to allow the utility line to be placed along the
10 right-of-way line so that it would be totally out of
11 his way, would you all have paid for the sheeting?

12 MR. SHAFER: We would have paid for the sheeting
13 throughout.

14 CHAIRMAN COWGER: You would have paid for that
15 particular sheeting, though?

16 MR. SHAFER: Certainly.

17 CHAIRMAN COWGER: As it is, he got paid for
18 one-sided sheeting, and this would be two-sided
19 sheeting, is that right?

20 MR. SHAFER: Yes, sir.

21 CHAIRMAN COWGER: I don't know if it's pertinent
22 or not, but I wanted to get it out so we could have it
23 to think about.

24 MR. BLALOCK: That subject never came up, to my
25 knowledge, in my discussions with the power company.

1 MR. RODGERS: Under Tab F, Mr. Chairman, is the
2 utility agreement -- relocation agreement schedule, and
3 it does show the time for this operation, and it
4 specifies this actual line of pipe.

5 MR. SHAFER: Tab E, I believe.

6 MR. RODGERS: Tab E, I'm sorry.

7 CHAIRMAN COWGER: You lost me.

8 MR. SHAFER: Tab E shows the utility relocation
9 schedule.

10 CHAIRMAN COWGER: The one highlighted in yellow
11 is the one you're talking about?

12 MR. SHAFER: Yes, sir.

13 CHAIRMAN COWGER: As I understand your testimony,
14 DOT, the utility relocation schedule which was a part
15 of the contract, shows that particular line -- that
16 particular section of overhead electric line being
17 relocated under the contract. But I don't see where it
18 assigned any particular number of days to do that, does
19 it, for that one location?

20 MR. BLALOCK: No.

21 CHAIRMAN COWGER: Okay. Does the contractor have
22 anything else to say about this particular issue?

23 MR. BLALOCK: No, sir.

24 MR. CROSS: Nobody is questioning about the
25 relocation. They didn't relocate it where they said

1 they were going to relocate it on the plans until after
2 we got done. Nobody is arguing about the time.

3 MR. BLALOCK: Mr. Chairman, I think we covered it
4 in sufficient detail.

5 CHAIRMAN COWGER: I think we're far enough into
6 this one we can quit any time anybody wants to.

7 Let's go on to number six unless somebody has
8 something to say.

9 MR. ATKIN: What is number six?

10 CHAIRMAN COWGER: Sod and final dressing.

11 MR. ATKIN: Okay. First off, we have a new
12 exhibit.

13 CHAIRMAN COWGER: We're going to identify this as
14 Exhibit No. 3, now?

15 MR. SHAFER: What were those pictures?

16 CHAIRMAN COWGER: They're a part of Exhibit
17 No. 2 -- No. 1. They were referred to in Exhibit
18 No. 1, but they weren't put in there, so we're going to
19 insert them in number one. So insert them in the back
20 of your book. Don't you have a set of them?

21 MR. SHAFER: I'm the one that asked the question.

22 MR. ATKIN: There's three pictures in each
23 packet.

24 CHAIRMAN COWGER: There's three pictures in each
25 packet?

1 MR. ATKIN: Right.

2 CHAIRMAN COWGER: These are going to be part of
3 Exhibit No. 1, then.

4 Okay, now, we're to three.

5 MR. ATKIN: I have an exhibit. The sod
6 subcontractor, Marty Ard, was to be present at this.
7 A large part of this involves him. He could not be
8 here after the last change on the arbitration. He had
9 another prior commitment that he didn't feel he could
10 break. He did send us a letter.

11 Right now the issue does not have to take a lot
12 of time. I can tell you he made a mistake in his
13 letter in one respect. He referred to the sod -- the
14 limit of sod line as the DOT's right-of-way which is
15 incorrect. The limit of sod was not in many cases the
16 DOT right-of-way line, and he apparently did not
17 understand that distinction.

18 CHAIRMAN COWGER: Exhibit No. 3 -- excuse me a
19 minute -- is identified as a letter from Marty Ard
20 Landscaping, Inc., dated September 13, 1990.
21 (Whereupon, Exhibit No. 3 was received in evidence.)

22 CHAIRMAN COWGER: Now proceed.

23 MR. ATKIN: I think we have one other exhibit.
24 I don't know how you want to handle it. We have 20
25 minutes of TV time we'd like you to look at.

1 CHAIRMAN COWGER: What does it amount to?

2 MR. ATKIN: A part of the contention in this
3 thing is that even in some of the areas -- DOT is
4 contending much of the sod we're claiming payment for
5 was laid outside of the contract limit of sod lines.

6 Our contention is that there was no real choice
7 in that matter, in view of the fact that after the time
8 the contract was bid and before we were -- got in there
9 to work, and even during to time we did work, other
10 subcontractors were doing a lot of work that tore up
11 the ground outside of the sod line.

12 And DOT directed our subcontractor to sod those
13 areas, and our subcontractor did, and we feel payment
14 is due for that.

15 We have movies which we think demonstrate very
16 clearly that condition. One video is of the condition
17 prior to Capital Asphalt moving onto the project, and
18 the other video is prior to the sod being placed in
19 some of the areas of contention to show where the limit
20 of sod lines were versus the limit of tear-up.

21 CHAIRMAN COWGER: Okay. I think it might be
22 appropriate if before we see the video, if you give us
23 any other information that you might have supporting
24 your position, and let DOT give us information they
25 have supporting their position, and then let us look at

1 the video. I think it might be a little more
2 educational if we did it that way. Look at the video
3 after we know what the problem is.

4 MR. ATKIN: I might clarify one thing, and that
5 is that this -- this is a combined -- two pay items
6 combined in this. One is final dressing and the other
7 is sod, because in this particular contract, the final
8 dressing was paid on a square yard basis.

9 And the requirement was that all of the areas to
10 be sodded also be final dressed. So whatever we
11 resolve on the sod we should be resolving on the final
12 dressing.

13 And that might not be a hundred percent true,
14 because I guess a decision was made that something
15 other than sod could have been used that would still
16 have to be final dressed. But DOT was very adamant
17 that no grassing would be permitted on this project,
18 that it had to be sodded.

19 I think it's a question of interpretation, and
20 that question is whether we should be paid for sod
21 placed outside of the limit of sodding that is -- was
22 in the original contract or whether we should not be
23 paid for that sod.

24 I think basically that's the issue and I don't
25 know there's an awful lot could be said about it

1 beyond -- the facts are that we felt we should be paid
2 because additional areas had to be sodded for reasons
3 that were beyond our control, beyond the control of
4 Capital. They had to be sodded and had to be final
5 dressed.

6 CHAIRMAN COWGER: Is your position that you
7 placed sod everywhere you were told to place sod, and
8 DOT decided not to pay for some of it.

9 MR. ATKIN: If you read the letter from
10 Marty Ard --

11 CHAIRMAN COWGER: That's what I'm reading.

12 MR. ATKIN: In many cases he was directed to
13 place the sod. However we're not saying that we were
14 unfamiliar with that at all.

15 CHAIRMAN COWGER: Let's let DOT make a rebuttal on
16 this.

17 MR. SHAFER: DOT needs to look at this in two
18 parts. DOT is saying that the sod is on the job, and
19 there isn't any question. But some of that sod was
20 placed where the contractor had disturbed ground that
21 wasn't part of the construction work that he had to do.

22 He maybe perhaps parked a piece of equipment
23 somewhere and tore up some ground that needed to be
24 sodded. Under Article 7-11, he's required to repair
25 any ground that he disturbs through his operation,

1 that's not part of our construction operation, at his
2 expense.

3 And the other thing that we need to concern
4 ourselves with is the pallet count as opposed to the
5 measured count.

6 We made final measurements on this, and the
7 contractor, although we requested final measurements
8 from the contractor to support his claim, we never
9 received those final measurements.

10 And the pallet count can be -- I'm going to ask
11 Mr. Carter to tell us the difference between pallet
12 count and measurement, if that's okay with you.

13 CHAIRMAN COWGER: Sure.

14 MR. CARTER: Mr. Chairman, Tom, your pallet count
15 can vary from the actual final measurement for these
16 reasons. If from the point of origin to the point of
17 consumption or the final laying of the sod, if it's dry
18 conditions, they will lay 45 to 50 square yards or 450
19 standard square footage on a pallet.

20 But if it's real wet bogging down the front-end
21 loader, it might not lay but -- ship out but 35 to 40
22 yards.

23 And then you have the possibility of theft on a
24 job site, or somebody borrowing the sod and putting it
25 outside the limits of the project. That would vary as

1 far as a rule 10 percent. 10 to 20 percent under is
2 standard in the industry.

3 In other words, if a vendor says I have 450 to
4 500 square feet, and they will all tell you that, that
5 we build our pallet to 450 to 500 square feet, but very
6 seldom will they lay 500 square feet off of a pallet
7 count. That's about all I got to say to address that.

8 MR. RODGERS: Mr. Chairman, the DOT would go on
9 record taking position that none of this sod was
10 stolen, especially in this fine City of Tallahassee.
11 Now, if it was in Panama City, we might not.

12 But we'd like to say this may be considered as
13 not a completely evaluated claim, in what Mr. Shafer
14 says. We asked for additional information and never
15 received it, thus we never gave -- as the DOT -- never
16 gave an official denial or acceptance or full
17 evaluation of this part of the claim.

18 MR. ATKIN: We got a turndown letter from Buddy,
19 with no request for additional information.

20 MR. SHAFER: We can't find one. We don't see it
21 as an official claim.

22 I have a set of plans that we have our
23 measurements plotted on that we asked the contractor to
24 look at, and evidently he didn't.

25 MR. ATKIN: We did look at them. We've got them.

1 MR. SHAFER: These are the plan profile sheets,
2 and you can take them for your information if you need,
3 of the measurements plotted on the plan profile sheets
4 per the sod that we paid for and measured, that we
5 actually measured and paid for.

6 CHAIRMAN COWGER: Do you also show the sod that
7 was not paid for?

8 MR. SHAFER: No, sir, we don't.

9 CHAIRMAN COWGER: Really the dispute here,
10 gentleman, is over the areas outside of what DOT
11 considers to be the construction limits or the limits
12 within which sod was authorized to be placed as opposed
13 to the area inside the authorized limits.

14 MR. SHAFER: And also the difference between
15 pallet count because I believe they're basing their
16 quantity on pallet count and we're basing it on our
17 measured count.

18 MR. ATKIN: Read the second paragraph of Marty's
19 letter. I went over those measurements with him some
20 months ago.

21 MR. SHAFER: We were never allowed to see that.

22 MR. ATKIN: The reason is that we were told that
23 you had it.

24 MR. SHAFER: We had the measurements. We don't
25 have Marty's measurements. We've never had Marty's

1 measurements at all.

2 MR. ATKIN: He and his foreman actually
3 physically measured every yard of sod out there. Not
4 pallet count.

5 MR. SHAFER: We never saw that, and we -- that
6 would fall under additional information that we would
7 like to have had.

8 MR. RODGERS: The letter that your referring to,
9 Mr. -- George, if you have that, you referred to a
10 letter where you were denied this claim?

11 MR. ATKIN: Yeah.

12 MR. RODGERS: I'm not saying that hasn't
13 happened, but we're were unable to establish that.

14 MR. ATKIN: I'm looking for it right now, Jimmy.

15 CHAIRMAN COWGER: It was not in the package.

16 MR. RODGERS: Mr. Chairman, in our package we
17 have a supplemental agreement for additional sod under
18 Tab L, and of course that has the standard disclaimer
19 clause.

20 George, being a lawyer, may have a better term
21 for that, but down at item number four, it specifically
22 states that this is -- in this agreement we added final
23 dressing and we increased the quantity of sod.

24 And this of course has the statement, says the
25 contractor accepts the terms of this supplemental

1 agreement as full compensation of all costs of
2 equipment, man hours, materials, overhead, profit,
3 delay damages, and for all other costs whether indirect
4 or whether incurred now or in the future related to the
5 issues set forth in this agreement.

6 And I point out there was an additional 20 days
7 added to the contract.

8 I also point out that Mrs. Grace Cross signed
9 this on July the 6th, '89, which was -- correct me if
10 I'm wrong -- after the sod had been placed, all the sod
11 had been placed. There was no more sod placed after
12 this date. That, it seems to me, would be the end of
13 that issue.

14 CHAIRMAN COWGER: Was this supplemental agreement
15 executed essentially at the completion of the project
16 or after the project was completed?

17 MR. RODGERS: I can't recall, Mr. Chairman, but
18 the dates are on the supplemental agreement. I think
19 it's dated June something, and then the signatures are
20 in July of '89, and the diaries -- let me go through
21 the diaries here, but I think they had time suspended
22 for a curing period during this time.

23 And we do not normally suspend time unless all
24 work is complete except for the friction course. So
25 I'm taking the position -- the DOT will take the

1 position right now that all work was completed at the
2 signing of this supplemental agreement that pertained
3 to sod. There was no more sod laid after this signing
4 of this supplemental agreement.

5 MR. ATKIN: Well, that don't really have an awful
6 lot to do with it, because it's a unit price item that
7 was in contention at that time. I don't see that that
8 has any particular bearing on it.

9 CHAIRMAN COWGER: Let me try to get this in
10 focus. We just happen to have in the package here a
11 copy of the Department's pay estimate for the period
12 ending June 25, 1989 which is approximately the same
13 date as this supplemental agreement was prepared.

14 And it shows the quantity of sod to be 41,198.
15 Is that the final pay quantity or was that some 7,000
16 yards greater?

17 MR. SHAFER: That was some 7,000 yards greater
18 because that was based on pallet count, sir. We made
19 final measurement, the --

20 CHAIRMAN COWGER: At the time the supplemental
21 agreement was executed, the contractor thought he was
22 going to get paid for 41,000 square yards of sod,
23 didn't he?

24 MR. RODGERS: Can't disagree with that,
25 Mr. Chairman. What I continue to point out to you is

1 under Tab J, specifications for this contract, item
2 7-11 states that, and it's highlighted there, "Whenever
3 property is damaged due to the activities of the
4 contractor, it shall be immediately restored to a
5 condition similar to or equal to that existing before
6 such damage or injury was done by the contractor and at
7 his own expense."

8 MR. ATKIN: Probably time to look at the video.

9 CHAIRMAN COWGER: Just exactly what I had in
10 mind, because I think what it's come down to -- we've
11 talked all around this thing a lot, and what it really
12 comes down to is two basic things.

13 And I think Tom Shafer brought them out when he
14 first started talking. One of the disputes is pallet
15 count versus actual area.

16 The other one is there were areas outside the
17 limits disturbed necessarily by construction of the
18 project that the contractor sodded and the Department
19 did not include in the measurements.

20 And I think the second point is the more critical
21 one, because we don't really know on the first point
22 the relationship, because you're talking about pallet
23 count for one area and you're talking about measurement
24 for a different area.

25 MR. RODGERS: Let me add one more thing before we

1 start the movies. I don't think it would make any
2 difference if we had of known or the contractor had of
3 known the exact final measured to the tenth of a square
4 yard amount or quantity at the time of the laying of
5 the sod.

6 I think that the dispute would still remain the
7 same, i.e., do you pay for sod or do we pay for sod
8 outside the right-of-way that was damaged by the
9 contractor?

10 CHAIRMAN COWGER: And that's really what we're
11 here to talk about.

12 MR. ATKIN: It's not the right-of-way, it's the
13 sod limit line which is not necessarily the
14 right-of-way.

15 CHAIRMAN COWGER: Gentleman, while he's setting
16 that thing up, let's take a five-minute break.

17 (Brief recess)

18 (Whereupon, a video was shown.)

19 CHAIRMAN COWGER: What else is there, if
20 anything, to be said about the sod?

21 MR. ATKIN: I don't know if there's any bearing
22 or any difference -- if you make a determination that
23 some of the sod was not payable, whether or not you
24 could make the same determination about the final
25 dressing or not, I'm not a hundred percent sure how

1 that would work.

2 I think everything out there had to be final
3 dressed. I don't know how to avoid that. Whether or
4 not you can say the contractor is responsible for a
5 construction-caused disturbance, regardless of what
6 side of some artificial line it's on, it would be
7 awfully hard for me to say it shouldn't be final
8 dressed.

9 Whether or not you should pay for the sod,
10 I don't even think that's an issue. I think you should
11 remember in evaluating this, there are two pay items
12 involved. One is final dressing, one is sod.

13 MR. RODGERS: If you had an item for sod, in a
14 one-square-yard area and it was disturbed by the
15 specification in order to get it ready for sod, you
16 would level it, fertilize it, water it, and then you
17 would lay the sod.

18 MR. ATKIN: Fertilizing and water doesn't have
19 anything to do with final dressing.

20 MR. RODGERS: But what would you have to do to it
21 after you got the sod down?

22 MR. ATKIN: Give it to you.

23 MR. RODGERS: Right, so there's no final dressing
24 necessary.

25 CHAIRMAN COWGER: Final dressing was before the

1 sod?

2 MR. RODGERS: In order to do the work to lay the
3 sod, that's included in the price of the sod, you've
4 got to get it ready for sod.

5 MR. CROSS: We had a final dressing item by the
6 square yard. This job was set up as a square yard item
7 for final dressing before you put the sod down, and
8 then the same amount of square yards for the sod.

9 MR. RODGERS: You don't get my point.

10 MR. ATKIN: No, we don't.

11 MR. RODGERS: This is additional work not covered
12 by the contract. The specification for sod covers
13 everything necessary to lay the sod. You don't need an
14 item for final dressing.

15 MR. ATKIN: But if you put one in the contract,
16 then you have one.

17 MR. RODGERS: And you got paid for it.

18 MR. ATKIN: Yeah.

19 CHAIRMAN COWGER: I think we understand the
20 dispute and we'll deal with it. You make good points,
21 but that's enough said.

22 MR. SHAFER: You do have the information on these
23 plans here for what DOT measured for the sod, if you
24 you want to look at them now or later.

25 CHAIRMAN COWGER: At the very end of this item

1 I want to look at those just a minute. Does anybody
2 else have anything else they want to say about item
3 number six? Because this is your last chance.

4 Okay. Off the record just a minute, so we don't
5 get all this extraneous talk in the thing.

6 (Brief recess)

7 CHAIRMAN COWGER: Back on the record. I've got
8 to ask the question again.

9 To the contractor, the quantity that you're
10 claiming for final payment for sod is based on field
11 measurements and is in no way based on pallet
12 measurements, is that correct?

13 MR. ATKIN: That's correct.

14 CHAIRMAN COWGER: DOT, I guess really you
15 can't --

16 MR. SHAFER: If that's correct, and I won't
17 dispute it except that I haven't seen the measurements,
18 I can't say yes or no.

19 CHAIRMAN COWGER: Let's go on to another item and
20 in the meantime, we'll think about that one. Let's go
21 to number seven. Is that the next one?

22 MR. ATKIN: Yes, sir.

23 MR. RODGERS: Mr. Chairman, before we get started
24 on this item, I'd like to make the same statement
25 I made on the past item.

1 The Department does not consider this as a
2 properly submitted claim in that we requested
3 additional information on this, did not receive it and
4 there was no denial letter issued the contractor.

5 MR. ATKIN: Mr. Chairman, we received a letter,
6 I think we better clear that up right now. We received
7 a letter.

8 MR. RODGERS: While he's looking, we have five
9 out of these 11 that we will contend -- we'll take the
10 same position on five of these issues, this being the
11 second of the five. So we've got three more to go, and
12 I can let you know at the time or now, whichever way.

13 CHAIRMAN COWGER: Don't keep bringing them up.
14 This one and the next three are ones that you contend
15 have not been properly submitted and considered by the
16 Department?

17 MR. RODGERS: No, sir, that's not correct. It's
18 the last three. There's one in between this one and
19 the next one, so it would be part six which I've
20 already mentioned, part seven which we're on.

21 Part nine, which is the next one after the next
22 one, part ten and part 11. All five come under that
23 same complaint, that we have not received these as
24 claims and have not been afforded the opportunity to
25 evaluate them fully.

1 CHAIRMAN COWGER: Okay.

2 MR. ATKIN: On August 1st, we sent a letter
3 requesting additional information from Charlie Hicks as
4 to how they arrived at the estimate quantities to see
5 the measurement of the sod that was involved in the
6 quantities.

7 We received a letter on August 8th that says, "In
8 closing we keep no record of sod placed in unauthorized
9 areas, therefore we cannot refer you to locations where
10 sod was placed at no pay." We took that to be a final
11 determination to us that they weren't going to pay us
12 for it.

13 Then on the 19th, we sent out a letter and said
14 hey, you know, if we don't get a change on these we're
15 going to have a claim.

16 MR. SHAFER: The procedure of the Department is
17 for those changes to be processed through Chipley and
18 signed by Mr. Wilkinson.

19 CHAIRMAN COWGER: We've heard enough about that.
20 Let's talk about the issue. The Board will take a look
21 at that after a while.

22 We're on item number seven, cost of the Type 2
23 material. Dispute over 62 tons.

24 MR. ATKIN: That one Mr. Cross can speak to.

25 MR. CROSS: That's just a driveway. The first

1 driveway -- this was on that film, the first apartment
2 on the job, they went through there and he got a
3 driveway probably 12 or 14 inches of asphalt.

4 It was originally Type 2. And it was put in.
5 The first layer of it, first couple of layers was put
6 in in Type 2.

7 The big argument I had with Lewis Harper, he
8 wasn't there that day. He found out about two days
9 later. We put Type 2 because Type 2 was in the
10 existing driveway, and it was built up 12 or 14 inches.
11 Lewis came in two or three days later and said it
12 called for S-1. We don't want Type 2, all the buildup
13 has got to be S-1.

14 About then is when Tom got involved. It was
15 already in and had been in for a while. And my
16 understanding what Tom said about it was if you put S-1
17 the rest of the way to build it up we'll pay for the
18 item, so we did it, completed with S-1.

19 And every other driveway was completed with S-1,
20 and Lewis failed to pay us for the 62 tons of material.

21 CHAIRMAN COWGER: As I understand the claim, or
22 understand the situation, I guess I should say, what
23 happened here is that there's no dispute about the fact
24 that the driveway approach should have been paved. It
25 was paved with the wrong type of material.

1 MR. CROSS: That's correct, the first piece of
2 it. It was very very deep. The first section, six
3 inches or seven inches, it was Type 2 instead of S-1.
4 We asked to be paid under the Type 2 item and he flatly
5 refused to pay us. And Tom --

6 CHAIRMAN COWGER: Excuse me. The total depth was
7 like --

8 MR. CROSS: Oh, 12, 14, 18 inches maybe in there.

9 CHAIRMAN COWGER: What is this? Is this a means
10 of connecting from the curb back into a driveway and
11 it's got a variable thickness and you're building up
12 with asphalt to make a connection?

13 MR. SHAFER: Right.

14 MR. RODGERS: But our plans called for S-1, in
15 this particular case, and correct me if I'm wrong,
16 I think their Type 2 asphalt was at a higher price than
17 Type S.

18 MR. ATKIN: It was, because it was --

19 MR. RODGERS: But we could not alter the plans
20 without a supplemental agreement. Our plans called for
21 a Type S driveway connection, as shown in there.

22 CHAIRMAN COWGER: Now, as I understand the
23 situation, what actually happened was that a portion of
24 the driveway depth-wise was constructed with Type 2,
25 instead of Type S, but there was also an upper portion

1 of the driveway that was constructed with the right
2 materials. And this 62 tons is the portion that was
3 constructed with Type 2. Correct me if I'm wrong, now,
4 Tom.

5 MR. SHAFER: That's correct.

6 CHAIRMAN COWGER: And no payment was made for it.

7 MR. SHAFER: That's correct.

8 CHAIRMAN COWGER: So we've got 62 tons of Type 2
9 out there should have been Type S, and you've made no
10 payment for it at all?

11 MR. SHAFER: That's correct. We paid for the S-1
12 that went on top of it. They finished it out with the
13 S-1. And we paid for that S-1, and as I recall that's
14 what I agreed to.

15 MR. ATKIN: I don't think we would have quibbled
16 if you wanted to pay at the S-1. I don't think that
17 would have been the issue.

18 MR. SHAFER: We paid for the balance after the
19 two, and it was decided we can't -- the contractor
20 can't do that. So they finished it with S-1, and that
21 was paid for.

22 MR. RODGERS: We really have no choice in that
23 matter. That can only be changed by Bobby Buser, the
24 State construction engineer. And that was out of the
25 control of us to make a payment decision of that type.

1 The other alternative would have been, I think,
2 to tear out the Type 2 and replace it with S-1, and he
3 would have been paid for S-1.

4 CHAIRMAN COWGER: We're ready to move on.

5 MR. CROSS: It was a pretty nasty driveway and a
6 lot of traffic. We were trying to get it open.

7 CHAIRMAN COWGER: What type of facility does this
8 serve?

9 MR. CROSS: A big apartment complex.

10 MR. HICKS: We could have substituted S material
11 for Type 2 but not Type 2 for S.

12 CHAIRMAN COWGER: I'm familiar with what the
13 specs say. You can't go down, you can go up.

14 MR. ATKIN: One other thing ought to be said. It
15 was a situation where we were using Type 2 material.
16 The driveway was blocked and they were trying to get it
17 opened so they could use it that night. And somebody
18 made a mistake.

19 MR. CROSS: No question --

20 MR. ATKIN: But it was a pretty normal mistake.

21 MR. CROSS: An existing driveway.

22 CHAIRMAN COWGER: We need to spend some time on
23 eight, so let's get on though that. That's going to be
24 a hard one to understand. Am I on the right one now?

25 MR. CARLILE: I'm a little confused because the

1 exhibits are numbered a little strange here. We don't
2 have a seven or ten.

3 CHAIRMAN COWGER: We apparently don't have a
4 seven.

5 MR. CARLILE: That was the seventh item we looked
6 at, but it's numbered as eight.

7 MR. ATKIN: It's right below part seven, Gene.

8 MR. OGLE: There's no Exhibit 7, but there is a
9 part seven.

10 CHAIRMAN COWGER: Let's go on to part eight, now.
11 That's where we are.

12 MR. ATKIN: All right. The basic contention of
13 Capital Asphalt in this claim is that the over-build on
14 the project was an item that was, I guess the best way
15 to say it, was -- had to be placed totally differently
16 than was indicated by the plans or the contract
17 documents, let me put it another way. The contract
18 documents.

19 And in that context, I do have one set of
20 something. This comes from the plans, but it might be
21 easier if you have them to look at. I don't know that
22 you need to call them an exhibit. They are off the
23 plans.

24 CHAIRMAN COWGER: George, let me interrupt just a
25 second. DOT, in your exhibit part eight, Tab O, in the

1 lower right-hand corner is a drawing.

2 MR. SHAFER: Yes, sir.

3 CHAIRMAN COWGER: Does that pretty well tell me
4 the details that are shown on the plans for how to
5 construct the over-build?

6 MR. RODGERS: Additionally with Tab S.

7 MR. SHAFER: And also the note where it says if
8 you're over you use one type, and if you're under you
9 use another. But that entire drawing plus the notes,
10 yes. And in addition to Tab S.

11 MR. RODGERS: Tab S shows you the profile grade
12 line.

13 MR. SHAFER: And also the cross sections, and
14 you'll have the plans. Also the existing and the
15 proposed centerline elevation shown as Tab S.

16 CHAIRMAN COWGER: Where is that line, in the
17 center of the road?

18 MR. SHAFER: That's the centerline of the road,
19 yes, sir.

20 MR. RODGERS: Proposed line versus the existing
21 line.

22 Apply the typical section with that and you come
23 out with the amount of asphalt in any one spot. This
24 Tab R is our denial letter that gives an example and
25 very specifically spells that out on how that should be

1 done.

2 CHAIRMAN COWGER: All right. Now, if the
3 contractor is preparing his bid on this job, what other
4 information does he have besides Tab O and Tab S on
5 which to -- including the notes on Tab O --

6 MR. SHAFER: He has the cross section in the plan.

7 CHAIRMAN COWGER: Do you have a cross section
8 every every hundred feet?

9 MR. RODGERS: Is it every 50 or is it a hundred?

10 CHAIRMAN COWGER: Off the record a minute.
11 (Discussion off the record)

12 MR. RODGERS: Mr. Chairman, we have an example of
13 how this would be done by a proposed bidder in our
14 Tab R. They are given a sheet by sheet description of
15 an actual example of how anybody could calculate the
16 amount of asphalt that would be at any one location.

17 I don't really call it scaling, I call it looking
18 at the cross sections and counting the little blocks
19 that are shown to you in terms of labeled blocks with
20 elevations. You don't use a scale, as I call a scale,
21 to measure this. You just look at the sectioned off
22 elevations and you count those differential sections.

23 CHAIRMAN COWGER: But other than at the
24 centerline you can't really do it mathematically with
25 numbers.

1 MR. RODGERS: Yes, you can do it mathematically
2 and every 50-foot section you're given the centerline
3 and the cross section. You are given the exact
4 elevation of the proposed and the existing.

5 MR. ATKIN: At centerline.

6 MR. RODGERS: At centerline, and you know a point
7 zero two cross slope and you calculate it out.

8 CHAIRMAN COWGER: We all understand that we can
9 get an elevation on the finished pavement anywhere we
10 want to through calculation.

11 MR. RODGERS: And you can get it on the existing
12 pavement through calculations at the centerline, and
13 you can get it from actual measurements on the roadway.

14 MR. ATKIN: Actual measurement?

15 CHAIRMAN COWGER: Meaning you have to go out
16 there and run your own elevations, right?

17 MR. RODGERS: Well, you don't have to. You can
18 propose it. The centerline is shown -- the actual is
19 shown on the cross sections. It's run for you by the
20 cross sections.

21 CHAIRMAN COWGER: I don't want to start an
22 argument on this thing. I just want to get the facts
23 out.

24 MR. RODGERS: I don't mean to sound
25 argumentative, I didn't mean it in that way.

1 CHAIRMAN COWGER: I didn't mean that, either.
2 Okay. Well, I interrupted. I think it's time now to
3 let the contractor come back and state his case.

4 MR. ATKIN: Well, I guess maybe I'll state it a
5 little differently than I was going to. Based on the
6 fact that we're looking at -- we got into Buddy's
7 letter and how simple it would be to figure out what
8 you needed to do here. There is a chance at the crown
9 to determine how much asphalt you're going to need.

10 Now, this road, one of the functions of this
11 contract was to restore this road to profile and
12 section. And the section did not exist.

13 In other words, there was no template for the old
14 section like you wanted to restore it to. So whatever
15 you had to put at the centerline was no guide at all to
16 what you might have to do at the edge line.

17 Now, again, you might possibly -- you could
18 certainly go out in the field and run some surveys and
19 find out what you had to do. You could also do some
20 estimating from the half sections furnished for bidding
21 purposes, but you want to remember the contractor
22 normally has 30 days to bid this job.

23 The Department, I'm sure, had a couple years to
24 put it together and prepare the contract documents.
25 They missed the amount of leveling or over-build

1 material that it was going to take by about 300
2 percent.

3 And I don't really think you can expect a
4 contractor to be that good in the 30 days he's got to
5 prepare a bid. I don't think that that's a fair
6 presumption.

7 Now, additionally, the work was represented, if
8 you look for the widening, if you look at the cut we
9 just gave you --

10 CHAIRMAN COWGER: Excuse me. He's referring to
11 plan sheet 85.

12 MR. ATKIN: All right. This presents a picture
13 whereby you're going to put down the leveling, the
14 crack relief, the variable over-build, which don't look
15 very variable in that section.

16 And then you're going to establish a temporary
17 pavement six point five feet long. And then you're
18 going to get down to the next section and you're going
19 to put a temporary barrier wall up and you're going to
20 establish two ten-foot traffic lines where you have --
21 from the barrier wall out to the edge of the temporary
22 pavement.

23 One little hangup with that was if you had done
24 it that way in the areas where there was a six or
25 seven-inch buildup of over-build, there was going to be

1 a six or seven-inch step right in the middle of the
2 temporary pavement. So that obviously could not --
3 that work could not be performed in that manner.

4 CHAIRMAN COWGER: Excuse me just a minute. You're
5 talking about that that step up would have been in
6 approximately the center of that outside lane?

7 MR. ATKIN: Yes.

8 CHAIRMAN COWGER: Go ahead.

9 MR. ATKIN: What actually happened was that some
10 of the over-build was put on before the barrier walls
11 were put up, but a certain amount of the leveling that
12 had to be achieved with the over-build was not done
13 until the widening was put in, and it was done in small
14 quantities.

15 And it turned out, number one, that there was far
16 more of it than what was anticipated by the contract.
17 And number two, it was not done in a way that the
18 contract represented.

19 And we did some calculating as to how we bid the
20 job, and we did some calculating as to how we finally
21 had to do the job, and felt that we were underpaid by a
22 substantial amount, which is the amount of the claim of
23 that section of the claim.

24 Now, I think that -- I see George Cone here, and
25 he's very familiar with the situation because I think

1 he was here almost constantly when we were doing it.

2 Mr. Cross wants to address this. He was on the
3 job while they were doing it also.

4 MR. CROSS: We started this over-build and got
5 into looking at this, and Charlie and I looked at it.
6 Where you're going to have one wheel here -- and once
7 we got to comp sheets you're going to have a wheel
8 eight inches in the air, and decided that wouldn't be
9 so good.

10 So it happened that Edward Prescott was in your
11 office, Charlie, and came over to your office, Tom, and
12 then come over to our office to discuss it. So we had
13 a had a meeting with Charlie, Edward Prescott and
14 myself.

15 At that time I didn't have any answer of how we
16 would do it or didn't have any answer of what kind of
17 money we would be looking for or anything else. But
18 Prescott told Charlie and I -- told Charlie to go ahead
19 and he would sent some people over here from Chipley,
20 and to keep track of it. And in some way we would make
21 some kind of adjustment, and that's what got started.

22 The very next day or two days later came
23 James Best and George. James, I guess, told George
24 what to do and we started playing around with different
25 ways of putting this material down with the grader.

1 He changed some of the material from S-1 to a
2 modified S-1, so he did away with the Type 2 in that,
3 and this was all done, like George is saying, on an
4 everyday job.

5 I don't think there was ten ton of that material
6 laid there that not only was inspectors from
7 Tallahassee involved, George Cone was there through
8 ever piece of it, trying to figure out how to make it
9 work.

10 MR. ATKIN: Now, if we go to the prebid
11 determination, it's spelled out in here pretty good,
12 but the prebid determination said there was going to be
13 431 tons of this monkeying around to contend with from
14 the contract quantities, which is normally where the
15 contractor looks to see what he's going to be doing.

16 He really don't have time to get into the overall
17 design of the job. He relies to a large degree on the
18 representations of the contract documents.

19 The comp sheets, and this is a very important
20 fact, the comp sheets you should remember were not made
21 available until after the contract was underway.

22 At that point in time it was determined that
23 there had been an error in the quantity analysis, and
24 that a substantial amount of S material had been left
25 out on the widening.

1 Therefore the amount of over-build that was even
2 required by the original contract was substantially
3 more than what appeared originally from the contract
4 documents. And of course this difficult work was a
5 function of that over-build.

6 What actually went on here was that instead of
7 tearing the old road out and restoring a new section
8 and profile, an attempt was made using asphalt to make
9 a major change in this road to bring it to almost a
10 primary design standard.

11 And I guess probably asphalt wasn't really the
12 way to do it, but that's beside the point. The point
13 is it turned out to be a lot different than what
14 Capital Asphalt bid the job, and they feel that they
15 can document that situation, and have documented it.

16 MR. CROSS: The comp sheet George is talking
17 about, they were brought out when DOT -- not only we
18 didn't have them, but local DOT didn't have them, and
19 Gerald Gavens was actually running the show at that
20 time.

21 He brought them out the day we got them with
22 Charlie and said, oh, we've got some big problems. And
23 I wouldn't have signed off on these plans had I seen
24 these comp sheets before that. But he didn't see them,
25 either.

1 CHAIRMAN COWGER: Quick question. What was the
2 optional base group six constructed from? That was
3 your widening base, asphalt, limerock.

4 MR. BLALOCK: ABC.

5 CHAIRMAN COWGER: Asphalt, that's all I wanted to
6 know.

7 Do you want DOT to now go ahead and make some
8 comments?

9 MR. ATKIN: Do you feel there's any more that
10 should be said on this?

11 MR. CROSS: I'd like to hear what George has to
12 say about it.

13 MR. ATKIN: He's probably more familiar with it
14 than anybody else.

15 MR. CONE: Well, I agree with what you say.
16 There's nothing -- the way we did it, it was a hell of
17 a job. I agree with that.

18 MR. CROSS: Nobody knew how to do it. I mean, we
19 just stood out there and pulled our hair out and tried
20 to figure out how to get the road to come somewhere
21 near it was supposed to be, and keep traffic on it.

22 MR. SHAFER: Mr. Chairman, I'd like to point out
23 if I may that the over-build that was inadvertently
24 left off the plans was the over-build in the widening.
25 And that really didn't affect the method of

1 construction they used when they built up the lanes in
2 the existing pavement.

3 It appears to me, while they were doing their
4 over-build and leveling and crack relief in the
5 pavement that exists, I can't -- I agree that
6 over-build was left off, but that was in the widening
7 and that was after all this other stuff was fairly well
8 set.

9 And it's still the Department's contention we
10 feel there's enough information in these plans for the
11 contractor to -- that shows -- the plans show that this
12 would be a difficult, difficult construction procedure.
13 And we feel that the contractor perhaps didn't bid it
14 as he might have had he seen it as difficult a
15 procedure as it is.

16 MR. ATKIN: I think Tom missed the point on the
17 over-build.

18 MR. RODGERS: I think we need to continue with
19 the Department's side on this. They've had their
20 chance, if you will.

21 CHAIRMAN COWGER: All right. Go ahead. We'll
22 let them come back.

23 MR. RODGERS: Tom.

24 MR. SHAFER: Go ahead.

25 MR. RODGERS: Thank you. First off, sheet 85 is

1 as it's shown on the bottom right hand corner, a
2 maintenance of traffic sheet. Has nothing to do with
3 the typical section, although it more than likely
4 equals the typical section shown on the typical section
5 sheet. Maintenance of traffic plan is submitted by the
6 DOT in a set of plans as a suggestion.

7 And the contractor is required to submit their
8 own maintenance of traffic plan. And if in fact they
9 feel like they need to operate in a different manner
10 than is suggested in the plans, then they are bound to
11 change it and submit their own method. All this is is
12 a suggested method.

13 So let's not get into the -- locked into thinking
14 this is a part of what I would call the meat of the
15 contract. This is a little extra that the DOT provides
16 as a suggestion.

17 It appears to me that the discussion started out
18 at sheet 85 being the problem in the fact that we're
19 going to have a wheel out in mid air five or six inches
20 above, but then we talk about Chipley coming over and
21 on a day-to-day basis working these problems out.

22 Well, I don't think the problem that was worked
23 out had anything to do with the barrier wall being in
24 the middle the road and the fact that you would be
25 hanging a wheel out into mid air. I think the problem

1 that was worked out was a quantity of how much asphalt
2 to lay down at any one location.

3 And our contention is, as Mr. Shafer said, that
4 an experienced contractor could calculate that amount
5 from the profile grade line sheet. The comp book or
6 comp sheet that is referenced here is only a
7 calculation straight from the plans. It's a designer's
8 notes that he jotted down that he used the plans to
9 calculate.

10 It's just written down. He did the same thing
11 that the bidder would have to do. He looked at the
12 profile grade line, he looked at the cross section and
13 he made calculations based on those.

14 And that's what a comp sheet consists of, and
15 that's nothing magic. A comp sheet doesn't solve any
16 problems. It's the same thing in the plans, it just
17 eliminates having to do the engineering again, those
18 calculations. And this comp sheet was provided as a
19 courtesy. But it's the same information that's
20 consisted in these plans.

21 CHAIRMAN COWGER: Are you through?

22 MR. RODGERS: Yes, sir.

23 CHAIRMAN COWGER: I've got a couple questions.
24 Let's look at Tab O a minute, resurfacing and widening
25 detail. There was some testimony a while ago that

1 talked about a substantial overrun in the quantity for
2 Type S in the widening.

3 And am I to understand that the underrun -- that
4 overrun involved what I see to the left of that typical
5 section where it says 175 pounds of Type S?

6 MR. RODGERS: Yes, sir.

7 CHAIRMAN COWGER: Is that the area that the
8 overrun occurred in?

9 MR. SHAFER: Yes, sir.

10 MR. RODGERS: I think that area was -- correct me
11 if I'm wrong, Tom, that area that you see as outlined
12 as 175 pounds of Type S was totally left off?

13 MR. SHAFER: That's what he's asking, and that's
14 the answer.

15 CHAIRMAN COWGER: What did you make it up with?

16 MR. SHAFER: When we saw it was left off we added
17 it in.

18 CHAIRMAN COWGER: All right. It wasn't in the
19 plans. Are you going to talk about that one specific
20 issue?

21 MR. ATKIN: That one specific issue. We're not
22 arguing that was left out. The point they're missing
23 is that we did not know that at the time we bid the
24 job. We didn't know that that material had been left
25 out.

1 We calculated how much over-build was going to be
2 needed by how much Type S was set up for the job, along
3 with other things. And that calculation, not
4 recognizing that this Type S was left out, said there
5 was going to be 431 tons of over-build.

6 CHAIRMAN COWGER: Okay.

7 MR. ATKIN: We aren't arguing the fact that the
8 part left out was on the widening. What we're arguing
9 about is that that was misleading because at the time
10 of the contract that wasn't apparent that that was what
11 was left out.

12 MR. RODGERS: I disagree that that's part of this
13 issue. I think the issue is pointed toward an entirely
14 different quantity. The issue that George and Capital
15 Asphalt is pointing to has an additional quantity to
16 this.

17 I think maybe in their opening statement they
18 mentioned some tonnage here, and quantities, and this
19 4200 tons, I don't think is a part of that 175.

20 CHAIRMAN COWGER: I think we can sort that, if
21 you'll answer my question.

22 MR. ATKIN: Yes, sir.

23 CHAIRMAN COWGER: Was there -- you've got two
24 places that I can see -- three places that I can see
25 that Type S was used on this typical section, again

1 going back to Tab O. One place is that 175 pounds out
2 there on the widening, another place is in some of the
3 over-build, depending on how thick the over-build is,
4 whether it's S or Type 2. And then there's also some
5 Type S to be used up there as what I would call a
6 structural course.

7 MR. SHAFER: That's it.

8 CHAIRMAN COWGER: Was that all in one bid item?
9 That's my question.

10 MR. ATKIN: Yes.

11 MR. RODGERS: And the contractor added some
12 Type S, is that not correct?

13 MR. SHAFER: Yes, that is all in one item.

14 CHAIRMAN COWGER: That's all my question was.

15 MR. ATKIN: That's all in one bid item.

16 CHAIRMAN COWGER: That helps me understand.

17 Let's look at this typical section one more time.

18 Looking at these notes that you referred to,

19 "Over-build thickness varies from zero to 750 pounds
20 per square yard." I think I can understand that one.

21 "Over-build zero to a hundred pounds used as for the
22 concrete Type 2. Over a hundred bounds, per square
23 yard use asphalt and concrete Type S-1."

24 Now, as I understand that, if I'm going down the
25 roadway and I come to an area where less than 100

1 pounds or one inch of over-build is required, I use
2 Type 2. The minute I switch and the over-build becomes
3 thicker -- and I'm just moving down the road now -- the
4 minute it becomes thicker than an inch, then I have to
5 start using Type 3 -- Type S-1, I mean. I'm sorry. Is
6 that true?

7 MR. RODGERS: I think in actuality -- somebody
8 help me out here -- the contractor actually used Type S
9 in all locations.

10 MR. CROSS: Didn't have any choice.

11 CHAIRMAN COWGER: Wait a minute. I'm analyzing
12 it from what is right here. I don't care what the
13 contractor did. Continue.

14 MR. CROSS: The question you asked is precisely
15 the way it was set up, and at times it varied in a
16 hundred feet. You would go from one inch to a half
17 inch to inch and a half back to three inches and back
18 to an inch.

19 CHAIRMAN COWGER: Keep in mind we're talking only
20 about the plans. I haven't started work but I'm a
21 contractor and I'm looking at what I've got to do. And
22 is what I described correct?

23 MR. SHAFER: Yes.

24 CHAIRMAN COWGER: All right. Now the next note
25 says -- now, this is the one that kind of confuses me.

1 "In no case shall the total amount of Type 2 placed on
2 an area of pavement over 300 pounds per total square
3 yard."

4 Now, is the area of pavement a certain designated
5 area -- I think I see what it is. I'm going down the
6 road like I was before now and, hypothetical case, I go
7 a hundred feet.

8 And I've got a certain width and I calculate the
9 square yards in that area and I determine the number of
10 tons that it took in that area and divide the square
11 yards into the tons, and I cannot come out with more
12 than 300 pounds per square yard. Is that what it
13 amounts to?

14 MR. CROSS: We took that, Gene, and again --

15 CHAIRMAN COWGER: Let me ask Tom that question.

16 MR. SHAFER: Yes, that's my interpretation.

17 CHAIRMAN COWGER: There's an inconsistency there
18 I can't get over. I don't quite understand how I can
19 do that, because I can't ever exceed over a hundred
20 pounds a square yard.

21 MR. RODGERS: Are you considering the additional
22 leveling for Type 2 that was used in that typical
23 section?

24 MR. SHAFER: Says total.

25 CHAIRMAN COWGER: No, I didn't. Okay. It's not

1 just the over-build.

2 MR. CROSS: It's the whole thing.

3 MR. RODGERS: 50 pounds of leveling and then you
4 have the crack relief layer of 80 pounds, that comes up
5 to 130.

6 CHAIRMAN COWGER: Okay. Then I have the
7 over-build and I have another 50 pounds of leveling,
8 which I assume is what?

9 MR. CROSS: Type 2.

10 MR. RODGERS: Which would come up to a 180, and
11 with your hundred pounds of over-build would be 280,
12 and they're saying keep it all under 300 pounds.

13 CHAIRMAN COWGER: Okay. Now I got it.

14 MR. ATKIN: While you're on that issue, Gene, the
15 original 431 tons of S material we calculated would be
16 available for this over-build was how much we felt we
17 were going to have to deal with in that sandwich. As
18 it turned out, we had to deal with something like 2368
19 tons in that.

20 MR. RODGERS: We allowed them to use the cheaper
21 of their two mixes there, the Type S mix with the
22 modifications so that they could use that, in order to
23 keep from switching back and forth. So this problem
24 was invariably resolved as an on-site-type solution in
25 favor of the contractor's operation.

1 MR. ATKIN: Jimmy has earned his pay today.

2 CHAIRMAN COWGER: Before the two of you start to
3 choke, I'll let you talk about that. Do you want to
4 rebut that?

5 MR. ATKIN: I don't think you can rebut it. We
6 wound up doing this more expensive-type work with the
7 cheaper material with the permission of the contract.

8 MR. RODGERS: The work didn't change. The work
9 remained to be done. We just allowed them to do it at
10 their option.

11 MR. ATKIN: It could not be done as it was
12 represented by the original contract documents, and
13 that is about our position. And I don't really
14 know -- I think if you read the narrative on it, or if
15 I read it to you, if you want to take that kind of
16 time, it would cover some issues that we haven't
17 covered.

18 CHAIRMAN COWGER: I read the narrative.
19 I understand what it says. We can all read it later.

20 Mr. Carlile?

21 MR. CARLILE: You said it couldn't be done the
22 way the original contract documents portrayed it?

23 MR. ATKIN: Well, the original contract states it
24 as over-build. First of all I --

25 MR. CARLILE: I'm asking you why you bid on it.

1 MR. ATKIN: Well, because we didn't think -- we
2 thought there was only about 400 ton.

3 MR. CARLILE: You indicated it couldn't be done
4 the way the plans --

5 MR. ATKIN: You can do almost anything with 400
6 tons of material. You can rake it in by hand.

7 MR. RODGERS: We're getting back to that same old
8 misconception here. I don't think the overrun was this
9 material. Is that not true? You're saying that --
10 you're implying here that they --

11 MR. ATKIN: We are implying that we thought --

12 MR. CROSS: You had so many ton of S-1 set up.
13 Assuming, if you just look at that, 175 pounds of it --
14 I'm just using this number. You had 2300 tons set up.
15 If you look to the calculation, at 175 pounds we would
16 have used 2,000 tons. That means you had 300 ton to
17 put in these goofy things. When you left out the 2,000
18 ton, then we had to put 2600 or 2300 ton in there.

19 MR. SHAFER: However, it appeared from an
20 examination of the existing and proposed grade line,
21 you would say there's an error in your over-build.

22 MR. CROSS: I don't disagree with you, Tom. That
23 could have been done. But on half section plans, and
24 30 days to do it, you guys didn't do it until -- we got
25 in the middle of the job before DOT figured it out, and

1 that's the same time we figured it out.

2 CHAIRMAN COWGER: I think we've heard enough
3 about that particular part of the argument. I haven't
4 heard quite everything I want to hear, though. But
5 I have a question first.

6 The claim -- the dollar amount of the claim is
7 based on 4200 tons at \$9.30. And in the contractor's
8 claim, the written data here, he explains how he got
9 the 9.30.

10 Tell me where the 4200 tons came from. Did you
11 explain that in there, too? Then if you did, just tell
12 me you did and we won't get into that anymore.

13 MR. ATKIN: Yeah. It's explained in the letter
14 to Mr. Wilkinson. It's not explained in the body of
15 the of the claim to you. It's explained in one of the
16 letters. I'll get it. I think it's 2-8-A, B or C.
17 Yeah, 2-8-C.

18 CHAIRMAN COWGER: Okay. If it's in here, let's
19 not spend any more time on that, unless -- okay.
20 You're saying that this 2-8-C --

21 MR. ATKIN: 2-8-C is the derivation of the claim,
22 the money.

23 CHAIRMAN COWGER: The last page of that gives a
24 listing, and are those allegedly the days on which you
25 were placing --

1 MR. ATKIN: Those were the production days.

2 CHAIRMAN COWGER: -- on which you were placing
3 over-build?

4 MR. ATKIN: Right.

5 CHAIRMAN COWGER: Okay. I understand. DOT, let
6 me ask you this. There's some conversation in the
7 contractor's claim about the DOT took the position that
8 at one point in time, at least, that part of the
9 problem was created by building some part of the job
10 too high, but then it talked about it being all milled
11 off anyway. Does that enter into this discussion in
12 any way at all?

13 MR. SHAFER: Well, only in that it shows a lack
14 of cross slope control, when they're putting down
15 starting from the very bottom and coming up. But it
16 really doesn't enter into the claim. But having
17 brought it up, it does enter into their cross slope
18 control and such through the job.

19 MR. ATKIN: The overrun that Tom contended was
20 created by a few spots where the curb was put in too
21 high was computed by DOT and we agreed to drop it.

22 CHAIRMAN COWGER: And there's no argument over
23 that?

24 MR. ATKIN: We agreed to drop our claim for that
25 tonnage.

1 MR. CROSS: 400 tons we put in for free.

2 CHAIRMAN COWGER: I think the purpose of having
3 that in there is you all were showing how generous you
4 were not to claim that.

5 MR. ATKIN: Our good deed for the day.

6 CHAIRMAN COWGER: Is there any reason to stay on
7 part eight any longer, or can we go on to part nine?

8 MR. CROSS: We're done with eight.

9 MR. ATKIN: Well, I guess we're done with eight.
10 There's a lot more that could be said about it, but
11 it's covered in the narrative.

12 CHAIRMAN COWGER: I think we can sort through it.
13 Let's go on to nine. This one has to do with sidewalk.

14 MR. ATKIN: Mr. Cross was the superintendent in
15 charge of that.

16 CHAIRMAN COWGER: This has to do with 45 square
17 square yards of sidewalk constructed across the
18 driveways owned by Mr. Cross and Mr. Johnson. Is this
19 one of these, Jimmy, that you're saying that you all
20 never dealt with?

21 MR. RODGERS: Yes, sir.

22 MR. CROSS: What it amounts to -- I don't know,
23 George handled that, so I don't know that they never
24 dealt with it. But we had two pieces of driveway and
25 they both show up on the film there.

1 One of them was a piece of property that we
2 purchased and had a driveway into it to put a trailer
3 on to get the trailer off the right-of-way and get it
4 on the job. And we ended up not being able to use the
5 property for anything because the home owners
6 association didn't want the trailer there.

7 And we put a concrete driveway into it when we
8 got finished so we could get ready to sell it with the
9 okay of Mr. Charlie Hicks. That's one driveway.

10 The other driveway is in front of
11 Malcolm Johnson's walk into his house and he come out
12 and requested that a driveway go in there where -- he
13 had a driveway over the hill and he had a walk going
14 into his house, and Charlie again told me to okay that
15 driveway and put a driveway in. And we come to get
16 paid for it, and Lewis Harper said I ain't going to pay
17 for that, because it don't show on the plans.

18 CHAIRMAN COWGER: What is DOT's answer for that?

19 MR. SHAFER: DOT's answer is that we pay for
20 driveways replaced in kind. And if you were to
21 continue to look at that same film you would see a very
22 expensive house back on the west side of there that has
23 a concrete drive all the way up to the right-of-way
24 line, but since the house wasn't there when the thing
25 was planned it was only a dirt drive, or an asphalt

1 drive, and we put an asphalt drive back in.

2 MR. CROSS: No, you didn't. You did nothnig.
3 You left this poor guy out with a mess of milling is
4 what you did, but that's the only one on the job.

5 MR. SHAFER: Everything else though --

6 MR. CROSS: Some of these driveways, they went
7 200 feet into the driveway, replacing concrete.

8 MR. SHAFER: In kind. If it was concrete there
9 before, we put in concrete. If it was asphalt, we put
10 in asphalt. And if it was dirt, we put in dirt.

11 CHAIRMAN COWGER: What happened in these two
12 cases?

13 MR. SHAFER: There was no concrete.

14 CHAIRMAN COWGER: What was it to start with?

15 MR. SHAFER: Dirt.

16 CHAIRMAN COWGER: And the contractor went in
17 there and constructed concrete. One was a driveway and
18 one was a walkway?

19 MR. CROSS: Looks like a driveway. Looks like a
20 driveway apron. It's only a peanut little thing.

21 CHAIRMAN COWGER: The contractor testified that
22 he was authorized to do that. Can the DOT comment on
23 that?

24 CHAIRMAN COWGER: Mr. Charlie Hicks can comment
25 on that.

1 MR. HICKS: My name is Charlie Hicks, and I'm
2 project engineer. I might have told Mr. Cross if that
3 was my piece of property, I would put a concrete drive
4 there. But I don't remember telling him to put it
5 there and I was going to pay for it.

6 MR. CROSS: How about Malcolm Johnson's?

7 MR. HICKS: I don't recall that.

8 MR. ATKIN: I guess we'll leave it right there.

9 MR. CROSS: That's where we sit, then.

10 CHAIRMAN COWGER: Let's go to ten.

11 MR. ATKIN: "Payment for 5814 square yards of top
12 soil not paid for in the final estimate replaced by
13 Capital Asphalt and considered eligible for payment."

14 Our people turned in that much square yardage of
15 top soil having been placed and we just never got paid
16 for it.

17 MR. CROSS: We got a whole big problem on that
18 top soil that we just got done discussing and I don't
19 understand how that final estimate come up. But we had
20 originally so many square yards of top soil on this
21 job.

22 Them stakes you seen in that film was put in
23 before some of this was done to determine how bad
24 off -- because all of a sudden it looked like it was
25 going to be crazy, so we had an engineer come in and

1 put them in. And it came up with some wild number.
2 Even the sod they did pay for is 35,000 against 13,000
3 something.

4 So they brought a man over from Chipley, who
5 happens to be in the room right now. And we agreed,
6 when he got done, to top soil and pay -- to use the
7 item they had in the job. They had 13,000 and
8 something set up. We were going to put that on one
9 side the road, and put sod on top of it. The other
10 side of the road was going to get zero.

11 So they were not going to increase the top soil
12 item from what was originally set up. Some way we
13 didn't get near that. I didn't notice that, but that's
14 how it was done.

15 The only disputed argument I know about top soil
16 was 4,000 yards down in the holding pond. And both of
17 these -- Charlie and Mr. Carter there, the sod man,
18 knows about this.

19 We top soiled a big area in the number one
20 holding pond, and then the man came from the Burns
21 Building and decided he didn't want to put any more top
22 soil down there.

23 We then sodded it, because it was in a bad area
24 to wash out. And in the meantime -- that was early in
25 the job. We had not -- but Lewis Harper said we can't

1 pay you for that top soil down there because it wasn't
2 pretested before you put it there.

3 And that amounts to about 4,000 yards, but looks
4 like me we're 7,000 yards short besides that anyway.
5 Whatever the original top soil item was, we should have
6 been paid for, was our agreement out there. We placed
7 top soil one side of the job.

8 MR. ATKIN: The site of the job under the sod
9 that was payable -- that you considered payable on that
10 side -- well, we top soiled under all that sod.

11 MR. CROSS: On one side of the job. We used up
12 the top soil item on one side of the job.

13 MR. ATKIN: And there was 23,000 square yards of
14 top soil originally set up. They deleted half of the
15 top soil and left half the top soil in, and we should
16 have been paid for it.

17 Now, I think somebody took the adjusted quantity
18 and said they should be paid for half of it. I believe
19 that's happened, but I don't see any possible rationale
20 for not having been paid for that top soil. The final
21 estimate carries 23,000 yards of top soil to this day
22 on it as being the planned quantity.

23 CHAIRMAN COWGER: You've not been paid that
24 amount?

25 MR. ATKIN: No, we were only paid 5,000 yards.

1 CHAIRMAN COWGER: How can the final estimate be
2 carrying 23,000 and you only be paid 5,000?

3 MR. OGLE: Planned quantity.

4 CHAIRMAN COWGER: Oh, the planned quantity.

5 MR. OGLE: Not final.

6 MR. CROSS: Somewhere we got a big screwup. The
7 only one -- do you agree with that, Tom, that we do
8 have a screwup that might be looked at?

9 MR. SHAFER: I don't know. I'm going to let
10 Charlie address this, because Charlie --

11 MR. CROSS: What I'm saying is where there's a
12 dispute is the 4,000 or whatever there is down in that
13 holding pond, and Mr. Carter and Charlie is well aware
14 of it. We put it in there, and the reason we didn't
15 get paid for is we put it in and sodded it, and Lewis
16 said you didn't check it before you put it in there,
17 and I ain't going to pay for it.

18 MR. SHAFER: We agree that we should have paid
19 for a little bit, and we've got that in there.

20 MR. CROSS: 400 yards, and it should have been
21 4,000.

22 MR. SHAFER: Mr. Chairman, is it time for me to
23 make a statement?

24 CHAIRMAN COWGER: Yes.

25 MR. SHAFER: It's true we deducted top soil under

1 the sod. It's my understanding we deducted it while
2 sod was going down on the left-hand side, whatever side
3 we did put top soil.

4 MR. CROSS: We put top soil on the right.

5 CHAIRMAN COWGER: You deleted it, is that what
6 you're saying?

7 MR. SHAFER: We deleted top soil. And while we
8 were doing the side that had top soil it's my
9 understanding that the top soil was stopped -- wasn't
10 completely done on that side when we deleted all the
11 rest of the top soil. And Charlie Hicks, I believe,
12 has a better handle on that than I.

13 MR. HICKS: Mr. Chairman, while we was putting
14 top soil on the right-hand side I instructed them to
15 put the top soil only where the comp book showed the
16 limits of sodding, therefore it didn't -- the top soil
17 didn't extend out under all the sod. And then while
18 I was doing that I told them to delete all the top soil
19 on the left side of the road.

20 MR. CROSS: That's correct, I'll buy that, I have
21 no problem with that. I said that's the only dispute,
22 but we have a mistake in the pay estimate, Charlie.

23 CHAIRMAN COWGER: Okay. Wait a minute. On the
24 left side they put some, on the right side they didn't
25 put any, right?

1 MR. HICKS: Right, and on the right side I didn't
2 put top soil under all the sod, just a portion of it.

3 MR. ATKIN: But the part he didn't put it under
4 is the part that's in dispute, not the part that's
5 being paid for.

6 MR. HICKS: We didn't put top soil under all of
7 it.

8 MR. CROSS: We originally had 23,000 square yards
9 of top soil. You went back to a comp sheet and come up
10 with whatever it was, and we split that down the
11 middle, as I remember, and said half for the left and
12 half for the right. And we were going to top soil the
13 right side of the job and delete the left side of the
14 job, right?

15 MR. HICKS: Something to that effect, yes.

16 MR. CROSS: All right, and some way we haven't
17 been paid for that.

18 MR. SHAFER: The top soil, however, we paid for
19 was the top soil that went to the limits of the
20 original sod on the right side.

21 MR. ATKIN: But that didn't come up to 5,000
22 yards. They put a lot more than what you paid for.

23 MR. CROSS: I don't know. Somewhere we've got a
24 mistake.

25 MR. SHAFER: I hear what you're saying.

1 MR. ATKIN: You have in your rationalization of
2 final quantities here, I guess it's an interoffice memo
3 that's in this tab, that there's a final quantity of
4 sod, a final planned quantity -- an original planned
5 quantity of 13,000.

6 MR. SHAFER: Overruns and underruns.

7 MR. ATKIN: Yeah, you show that as being 13,000.

8 MR. SHAFER: Tab V.

9 MR. ATKIN: If you go to final estimate you see
10 that figure is shown as 23,000. I think 13,000
11 is probably what it was reduced to as a plan, but it
12 never got into the final estimate.

13 MR. RODGERS: Mr. Chairman, you have me on record
14 as this being one of those that an official claim was
15 not processed?

16 CHAIRMAN COWGER: No, but we have now.

17 MR. RODGERS: Okay. Thank you.

18 MR. ATKIN: They're taking the position that the
19 letter we got from Charlie on this doesn't constitute
20 terminating the claim, making it ineligible for a
21 claim.

22 CHAIRMAN COWGER: All right. I don't think we're
23 going to gain much by continuing to hassle this thing
24 except for one thing.

25 I heard some testimony and I also saw it in the

1 exhibit that was submitted about the sod -- about the
2 top soil material placed in the retention area and DOT
3 refused to pay for it because it had not been
4 pretested. That I heard from the contractor.

5 Now, DOT I didn't hear anything from you on it,
6 or is there anything to say?

7 MR. SHAFER: What we're saying is that we did
8 pay -- if we read -- where am I? Oh. In part -- in
9 our written rebuttal in part ten, which is just our
10 written sheet, we said according to the DOT inspector
11 on the job, Emil Bennett, the first top soil placed on
12 this project was three truck loads of 18 cubic yards,
13 or 486 square yards in retention area number one.

14 He thought that was borrow for building the berm
15 or whatever. It was top soil, so we decided that we
16 said yes, we probably should have paid that because he
17 hadn't been instructed yet not to put it down.

18 We're saying yes, he did put a small amount of
19 top soil in the retention pond that we ought to be
20 paying for. And this is how we arrived at what we've
21 got.

22 MR. CROSS: Can I add rebuttal to that?

23 CHAIRMAN COWGER: Have you paid for it?

24 MR. SHAFER: Yes, we have -- no, no, no, we
25 haven't.

1 CHAIRMAN COWGER: You will, though.

2 MR. SHAFER: Yeah. I'm sure you'll make us.

3 CHAIRMAN COWGER: No, I'm not going to make you.

4 MR. RODGERS: Mr. Chairman, let us finish with
5 this.

6 CHAIRMAN COWGER: All right. Go ahead.

7 MR. RODGERS: Dorion, how about you or Charlie
8 covering that.

9 MR. OGLE: You state that the planned quantity
10 was 23,000 yards of top soil. According to the
11 contract it was 13,103. By supplemental agreement it
12 was increased to 23,849.

13 MR. ATKIN: Okay.

14 CHAIRMAN COWGER: But then the final pay quantity
15 was only like 5,000?

16 MR. OGLE: That's correct.

17 CHAIRMAN COWGER: Why did you increase it by
18 supplemental agreement? Had the decision not been made
19 at that point in time to delete the top soil?

20 MR. ATKIN: The supplemental agreement recognized
21 the sod clump that they decided they should pay.

22 MR. CROSS: No, no, wait a minute. The
23 supplemental agreement that they had down there was in
24 a holding pond that was done after the job. In the
25 middle of the job it was changed. And this holding

1 pond came out and that's where the supplemental
2 agreement came from.

3 MR. ATKIN: But they adjusted a lot of their
4 contract quantities in that same supplemental
5 agreement. They adjusted up and down contract
6 quantities to try to come up with some of the money.

7 MR. CROSS: The other question, this 486, Tom,
8 I don't know if you could go measure it today, but you
9 took three truck loads from down there.

10 In the meantime we had done that other job where
11 this job connected for that housing development and
12 every piece of that top soil was stopped on that job
13 and put down there. We covered in that area, in the
14 supplemental agreement it had 10,000 or 11,000 square
15 yards of sod. We put 4,000 or 5,000 in, and then the
16 man said to quit.

17 MR. SHAFER: But it was put in with stockpile, is
18 that correct?

19 MR. CROSS: It was not checked. There's 40 some
20 hundred yards, I don't have a memory of how many,
21 4,000.

22 MR. CARTER: Didn't get involved in the quantity.

23 MR. CROSS: It was something like that, 4500
24 square yards or something, and then they told us to
25 quit and Lewis refused to pay for any of it, because it

1 had not been checked.

2 CHAIRMAN COWGER: Let me recap that. What the
3 contractor just said in retention area number one --

4 MR. CROSS: That's correct.

5 CHAIRMAN COWGER: -- some 4500 plus or minus
6 square yards of top soil were constructed prior to the
7 time that DOT issued instructions to quit placing top
8 soil under the sod.

9 MR. CROSS: In that area.

10 CHAIRMAN COWGER: And that he's not been paid for
11 that 4500 square yards. And that DOT told him at that
12 time the basis for that was that the material had not
13 been tested in the stockpile or had not been pretested.

14 So I assume now, I'm putting my interpretation on
15 it, that DOT refused to pay for it because they don't
16 know whether it met specifications or not, or is there
17 evidence that it did fail the specifications? Now, let
18 the DOT talk.

19 MR. HICKS: We don't have no evidence.

20 MR. RODGERS: Mr. Chairman, let me preface any
21 comments by the project personnel by stating this is
22 the type problems you run into going into arbitration
23 on an issue that has never been run through the
24 district. It appears to me there's some confusion on
25 this issue.

1 CHAIRMAN COWGER: Okay.

2 MR. SHAFER: I just need to reiterate the only
3 thing that our inspector saw placed out there was these
4 three loads.

5 MR. CROSS: That's truck loads that came in.
6 That's not true, Tom.

7 MR. SHAFER: I'm telling you what he says that
8 he's seen.

9 MR. CROSS: They have tickets for three loads
10 that we hauled in there. But we also took all of the
11 top soil -- Charlie you know that, and so does
12 Lewis Harper know that.

13 We took all the top soil off that job where
14 they're building the houses over there, stockpiled it
15 and put it in that retention area. And so does Mr.
16 Carter know that, he was down there.

17 MR. CARTER: No, Mr. Cross, I didn't get in there
18 until after the sod was laid.

19 CHAIRMAN COWGER: Let me ask this, I want to
20 interrupt a second. I'm confused now about the tally
21 tickets. What was the purpose of that when it was
22 being paid for by the square yard? You lost me there.

23 MR. SHAFER: That was borrow.

24 MR. CROSS: Right, we did put a lot of fill dirt
25 in there, and they took three loads of it and called it

1 top soil.

2 CHAIRMAN COWGER: All right. I think we've heard
3 enough on this one. Jimmy, let me ask you a question,
4 though. Give me those numbers again on the ones you
5 think have not been adequately submitted and considered
6 by the Department, part number.

7 MR. RODGERS: If you'll turn to the table of
8 contents, if I might suggest, of our presentation, I'll
9 be going in that order, by that numbering system.

10 MR. OGLE: Second page at the very beginning.

11 CHAIRMAN COWGER: There it is.

12 MR. RODGERS: As you look down -- I don't know
13 why we used Roman numerals on that stuff. Part six.

14 CHAIRMAN COWGER: Sod claim, right?

15 MR. RODGERS: Yes, sir.

16 CHAIRMAN COWGER: Okay.

17 MR. RODGERS: Part seven, Type 2 claim.

18 CHAIRMAN COWGER: Okay. I got that one marked.

19 MR. RODGERS: Part nine, which is the concrete
20 claim.

21 CHAIRMAN COWGER: Got that one marked.

22 MR. RODGERS: Part ten, top soil claim, and part
23 11, the borrow claim.

24 CHAIRMAN COWGER: Let's go on to part 11 now. In
25 order to speed things up, as I understand the dispute,

1 from the contractors viewpoint I want to try to get
2 this in as few words as possible.

3 The dispute is over the pay quantity for borrow
4 material that was apparently paid for based on truck
5 measure by tally tickets.

6 Capital says they have in their possession signed
7 tickets for a certain quantity.

8 And they're saying that DOT is paying less than
9 that quantity on -- with the position that their
10 inspector signed some tickets in error.

11 MR. ATKIN: They don't say that, though, in
12 theirs. I don't really know what they're saying.

13 CHAIRMAN COWGER: But is that what you said?

14 MR. ATKIN: Yeah.

15 CHAIRMAN COWGER: All I'm doing is saying what
16 you said. Now I want to hear what DOT says.

17 MR. ATKIN: We're saying that we have signed
18 tickets for 22,802 cubic yards.

19 CHAIRMAN COWGER: All right.

20 CHAIRMAN COWGER: I want to hear what DOT says.

21 MR. ATKIN: They said there was 76 yards on
22 another job, which I don't have any idea about that at
23 the moment, and 199 yards placed unknown, and that
24 leaves 7419 cubic yards. That wouldn't make sense.

25 MR. OGLE: 74.19 cubic yards.

1 MR. SHAFER: That's unaccounted for.

2 MR. OGLE: Yes.

3 MR. ATKIN: Where did you come up with that
4 amount? Why?

5 MR. OGLE: Turn to our Tab W, which is the same
6 as your Tab 2-11-A, same exhibit. You have a copy of
7 Mr. Bill Cowart's computations for material that went
8 out to Meridian Road, and at the last sheet total
9 22,802.57 cubic yards of borrow.

10 In fact, on 4-12 of '89, you show two loads going
11 out on Sunday to Meridian Road. 76.51 cubic yards and
12 199.13.

13 The Department, according to our daily diaries,
14 no work occurred on Meridian Road on Sunday, 4-2-89.

15 MR. RODGERS: Let me correct you on that or clear
16 myself up, and it might be helpful for everyone else.
17 You said on Sunday April the 2nd, two loads went to
18 Meridian Road, 70 something and 199 something, although
19 the foreman or Mr. Cowart has a different job number
20 listed by those, which is not Meridian Road.

21 MR. OGLE: I put that job number there.

22 MR. RODGERS: Okay. I'm sorry.

23 MR. OGLE: I put the Sunday and the job number.
24 We have a daily diary from a different job. That
25 particular job number, if you turn to Tab Y, showing

1 that 76.51 cubic yards going to this other job on that
2 Sunday. Not to Meridian Road. That's Tab Y.

3 MR. ATKIN: Where did it go to?

4 MR. OGLE: Went to Bill Fulford's job.

5 MR. ATKIN: Did we haul any other dirt that day?
6 Does his tab say anything about it?

7 MR. OGLE: You also hauled 199.3. We didn't work
8 on Sunday on Meridian Road.

9 MR. ATKIN: Is that the day one of those washouts
10 was going on? Could have been.

11 MR. RODGERS: The point is we paid for the 76.51
12 yards on another job, so you were paid for that.

13 MR. ATKIN: That's possible.

14 MR. OGLE: We didn't work on that day, so we
15 don't know where you took that. That's why we say your
16 calculations on sheet 11 -- we take the 76.51 and 199
17 cubic yards off your quantity come up to 22,526 cubic
18 yards, deduct that from the quantity paid, and that
19 leaves 74 cubic yards unaccounted for.

20 MR. ATKIN: That's right. I don't know where
21 that other quantity came from.

22 MR. OGLE: And we don't either.

23 MR. RODGERS: And we don't feel obligated to do
24 your record keeping, for the same problem that we've
25 got on about \$47,000 worth of this claim, is that

1 you're not furnishing us with any kind of documentation
2 on these claims, that we have requested.

3 MR. ATKIN: We furnished you with all kind of
4 documentation in the beginning. The only problem we
5 have with what you're bringing up is that Charlie sent
6 us a letter on the sod.

7 We sent you a letter and said hey -- we had a sit
8 down meeting and we did not get together on any of
9 these quantities any further than what we were.

10 You were there, Tom. We had the meeting in your
11 conference room. I went from that meeting and sent you
12 a letter. You didn't say anything about additional
13 information or anything. I went from that meeting,
14 sent you a letter, enumerated the items that we felt
15 were still in discrepancy and said we were going to
16 take them to claim.

17 Some time after that we got a letter that said
18 you already sent out your final quantities and you
19 wanted information as to why we said they were wrong
20 and we sent the exception letter.

21 I guess at that time we were going down the road
22 with the claim and didn't figure we were getting
23 anyplace. We had already had a meeting and had been
24 told that we were -- as far as this borrow is
25 concerned, I agree. 74 yards looks like it's right.

1 That looks like what we haven't been paid for.

2 I don't know where we came up with the 3,000 -- we come
3 up with a about a thousand yards, and I don't
4 understand where that came from.

5 MR. CROSS: They paid you 21-9 and you put in for
6 22-8.

7 MR. ATKIN: Oh, no. That's what we said, but
8 I don't know where we come up with that amount of money
9 there.

10 MR. CROSS: 800 yards or something.

11 MR. ATKIN: Oh. Okay. But that's still --

12 MR. CROSS: They didn't pay us that, they paid us
13 21-9. They're saying they theoretically might owe us
14 for 22-5, but they only paid you 21-9. They took 309
15 yards out as a deduction here. There's 500 yards of it
16 right there.

17 MR. OGLE: Turn to Tab Z, unauthorized due the
18 subsoil excavation. Unauthorized. That's Tab Z.
19 That's where the other 481 cubic yards were deducted.

20 CHAIRMAN COWGER: Unauthorized subsoil excavation
21 being subsoil excavation that was done outside the
22 limits authorized, and this was the borrow to replace
23 it?

24 MR. SHAFER: Yes, sir.

25 CHAIRMAN COWGER: I think we've heard about all

1 I can stand and I think about all the Board can stand.

2 MR.CROSS: What was the tolerance on the
3 excavation?

4 MR. RODGERS: It's spelled out in the specs. You
5 can look it up.

6 MR. ATKIN: This is just hypothetical
7 computations. The pay item is the truckload
8 quantities.

9 CHAIRMAN COWGER: Let's wrap it up. Let's back
10 up to something here just a minute. Part number six
11 having to do with payment for sodding and final
12 dressing. DOT has on that set of plans the measurement
13 of the sod they paid for?

14 MR. SHAFER: Yes, sir.

15 CHAIRMAN COWGER: Mr. Contractor, you say you
16 have measurements on which -- for the quantity on which
17 you're basing your claim?

18 MR. ATKIN: Our sub said he has measurements,
19 yeah.

20 MR. OGLE: Did he submit his measurements to you?

21 MR. ATKIN: He says in this letter he sent us
22 yesterday, "DOT has the measurements of all sod.
23 My foreman physically measured all sod on site at the
24 time of completion."

25 So he has it. We're going with his quantities.

1 He's the subcontractor.

2 CHAIRMAN COWGER: Frank, Mr. Turnbull, what do
3 you think about us requesting that they furnish those
4 measurements?

5 MR. CARLILE: I was going to ask could we either
6 do that or redirect them to take a look at the issues
7 themselves and try to resolve it, because I don't think
8 we have enough information to make a good decision.

9 CHAIRMAN COWGER: I think that's a good
10 suggestion.

11 MR. ATKIN: What are the procedures for the ones
12 that they contend are not a properly submitted claim?

13 CHAIRMAN COWGER: That's the only one that we're
14 really interested in, I think, is the number six. The
15 rest of them I think we can deal with, properly
16 submitted or not. This is the only one --

17 MR. CROSS: Do you have another copy of that?
18 That's the first time we ever seen these.

19 MR. SHAFER: No, we don't but we'll be glad to.

20 MR. CROSS: You're not going to leave them here.

21 CHAIRMAN COWGER: He don't want to leave them
22 here.

23 MR. CROSS: If we have to dispute this thing
24 ourselves, we'll have them and Marty get together.

25 CHAIRMAN COWGER: Tell you what we're going to

1 do. We're going to take Mr. Carlile's suggestion. And
2 I think we're through taking testimony now.

3 So before I make the closing statement, the Board
4 will direct the contractor and DOT to get back together
5 on item number six, dealing with the sod claim, pay
6 quantities for sodding and final dressing, part six the
7 amount of the dispute is -- the amount of the claim is
8 \$22,850, and no later than -- what is today -- no later
9 than October the 1st, each side is to submit us a
10 statement on it.

11 And what we want you to do is compare DOT's
12 measurements to the contractor's measurements and each
13 give us a written statement on what your position is
14 after you do that.

15 MR. ATKIN: Okay. I see what you're saying. In
16 other words, you will still treat it as a claim after
17 you get those statements?

18 CHAIRMAN COWGER: That's the reason I put an
19 October 1st deadline on the thing, because we won't be
20 making our decision until mid October. If that's not
21 enough time, we'll add another week on, but whatever
22 you all want.

23 MR. SHAFER: That ought to be enough time.

24 CHAIRMAN COWGER: October 1st. Mr. Carlile, do
25 you have anything else? Mr. Turnbull?

1 MR. TURNBULL: No.

2 CHAIRMAN COWGER: Okay. This hearing is hereby
3 closed. The Board will meet sometime in October, we're
4 not sure when because we've got a problem with our
5 date, to deliberate on this claim and you'll have our
6 order shortly thereafter.

7 (Whereupon, the hearing was concluded at 4:55 p.m.)

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CERTIFICATE OF REPORTER

1

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

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

6 DO HEREBY CERTIFY that the foregoing proceedings were
7 taken before me at the time and place therein designated;
8 that my shorthand notes were thereafter reduced to
9 typewriting under my supervision; and the foregoing pages
10 numbered 1 through 119 are a true and correct record of the
11 aforesaid proceedings.

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

16 WITNESS MY HAND AND SEAL this, the 10th day of October,
17 A.D., 1990, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,
18 STATE OF FLORIDA.

19

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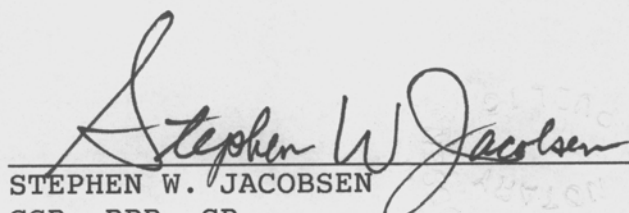
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My Commission Expires March 25, 1991