

STATE ARBITRATION BOARD
1022 Lothian Drive
Tallahassee, Florida 32312

28 June 1991

† † † NOTICE † † †

In the case of KACO Contracting Company, Inc. versus the Florida Department of Transportation on Project No. 75250-3520 in Orange County, Florida, both parties are advised that State Arbitration Board Order No. 4-91 has been properly filed on June 28, 1991.

H. E. Cowger

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

S.A.B. CLERK

JUN 28 1991

FILED

HEC/sfc

Copies of Order and Transcript to:

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

Robert E. Lacey, Executive Vice President/KACO Contracting Company, Inc.

STATE ARBITRATION BOARD

ORDER NO. 4-91

RE:

Request for Arbitration by
Kaco Contracting Company, Inc. on
Job No. 75250-3520 in
Orange County

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

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

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 10:45 a.m., Thursday,
May 30, 1991.

The Board Members, having fully considered the evidence
presented at the hearing,, now enter their order No. 4-91
in this cause.

ORDER

The Contractor presented a request for arbitration of
an eleven (11) part claim for extra work and related costs
and for release of liquidated damages in a total amount of
\$99,658.25.

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

PART I 1,683.60

In several instances, the location and elevation of the
sidewalk was changed from that shown in the plans. In some
cases these changes were necessary because a construction
easement had not been obtained by the Department.

Instructions to make these changes were issued verbally. It
is our position that, in the interest of avoiding confusion,
they should have been issued in writing. The changes caused
us to do re-working of forms and associated grading and to do
additional surveying work.

PART II \$2,938.00

In constructing a storm sewer line along Bluford Avenue we

encountered a conflict with an existing water line. This line was shown in the plans as "to be installed", but we did not know that it was to be installed prior to construction of the storm sewer. Also, the water line was not located as shown in the plans. We incurred additional costs due to the additional time required to construct this run on pipe.

PART III \$2,025.98

During laying of the storm sewer pipe between Structure No. 8 and Structure No. 9, we encountered an existing 15-inch pipe that was at a higher elevation than shown in the plans and thus conflicted with construction. We incurred additional costs due to related delays and in constructing a collar at the junction of the two pipes.

PART IV \$3,372.00

During construction left of Station 18+40 on Bluford Avenue, we encountered a tree stump which had to be removed. The roots were intertwined around existing underground telephone cables. It was necessary to mobilize a backhoe for this operation. Special care, including washing dirt away to expose roots in the vicinity of the cables, was required to protect these cables. We incurred delay and mobilization costs.

PART V \$11,458.90

In many instances, the elevations shown in the plans for curb and gutter and for sidewalk were incorrect. Resolving these plan errors caused us to incur delays and additional surveying work. Instructions to make these changes were issued verbally. We are of the opinion that they should have been issued in writing to prevent the confusion which led to delays. Also, when discrepancies were encountered, a Department inspector was not always available on the job to expedite decisions. The Department of Transportation offered to grant a five (5) day extension of the allowable contract time based on these delays but conditioned it on us not making a claim for additional compensation.

PART VI \$11,630.17

We decided to change the type of base course constructed under the item Optional Base Course from limerock to asphalt base to expedite the work. We are not asking compensation for the additional cost we incurred in making this change. However, we are asking that we be compensated for the difference in cost between limerock base and asphalt base in areas of base added to the project during construction and for all of the additional thick of base course. The additional base course thickness was due to raising the pavement elevation to accommodate existing conditions.

PART VII \$35, 200.00 44 CD @ \$200 Liquidated Damages
44 CD @ \$200 Statutory Penalty

We are requesting release of all liquidated damages and late completion penalties assessed by the Department of Transportation for the following reasons:

1. The first chargeable day fell on a Saturday and we began work on the following Monday. It is unfair to treat these two days as contract time.
2. Our operations were delayed a conflict with an existing water line, a conflict with an existing concrete pipe, removal of tree stump, and a conflict with an existing power pole during construction of a drainage structure, all of which were beyond our control.
3. The Department refused to grant a suspension of contract time charges for the Christmas Holiday period (December 24, 1988 through December 26, 1988) as we requested. This is inconsistent with their action of granting a suspension for the preceding Thanksgiving Holiday period.
4. Asphalt paving operations were stopped for one day while a question in regard to whether the crown of the pavement should be within a turning lane was resolved.
5. As described in Part 5 of our claim, there were numerous delays to the work due to changes in the layout

and design of curb and gutter and sidewalk.

The Department of Transportation offered to grant a five (5) day extension of the allowable contract time based on these delays but conditioned it on us not making a claim for additional compensation.

6. The Department of Transportation resumed charging of contract time on January 23, 1989, at expiration of the 30 day period for curing of the friction course. We advised them that we could not complete the work because the manufacturer of the amber reflective markers could not supply them to our subcontractor's supplier. The Department of Transportation continued to charge contract time until February 14, 1989, a period of 23 days. Because we were delayed by unavailability of materials, a factor beyond our control, in accordance with Article 8.7.3.2 of the Standard Specifications, an extension of the allowable contract time should be granted for all of the days falling within the above period except for the two days required to do the work necessary to complete the project.

7. Rain delayed work on this project for a total of 9 1/2 days. The Department of Transportation has granted us only five (5) additional days for weather delays. In our opinion, they did not properly consider the impact of rain on construction operations.

8. As described in Part 1 of our claim, there were numerous delays to the work due to changes made by the Department of Transportation in sidewalk construction, a controlling item of work. These changes caused us to have to re-work forms and associated grading.

PART VIII \$5,954.13

Of the delay days documented in Item 7, 19.5 days are due to delays resulting from reasons which are compensable. We claim our job overhead costs for those days.

PART IX \$4,231.00

We claim our home office overhead costs, based on the Eichleay Formula for the same 19.5 days mentioned in Item 8 of our claim.

PART X \$11,964.00

The delays caused by erroneous plans caused us to have to maintain the presence of certain equipment on the project for three additional weeks. We claim rental on this equipment at Weekly Blue Book Rates.

PART XI \$9,227.50

In order to mitigate damages because of the delays caused by plan errors, we worked an excessive amount of overtime on weekends. We are claiming 50% of overtime worked on weekends only.

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

PART I

It was necessary to reset forms only because the Contractor failed to communicate to his subcontractor instructions we gave him to construct the sidewalk so that the back edge matched the existing ground. The changes we ordered are incidental to this type of construction. Surveying work is a contractual responsibility of the Contractor.

PART II \$2,938.00

We admit that the Contractor's operations were delayed by the conflict with a water line. We dispute the amount of compensation claimed.

PART III

We do not dispute that the Contractor performed additional work. We do not agree with the number of hours he claims for additional labor and equipment.

PART IV

The Contractor was aware of the stump earlier in the life of the job when he cut down the tree. The existing underground telephone cables were shown in the plans and a plan note

designated them "to remain".

PART V

The plan note "Existing grade shown on Silver Star Road does not reflect recent resurfacing project" should have alerted the Contractor that these minor changes in plan elevations would be necessary during construction.

All revisions to plan elevations were made prior to any forms having been set.

Our inspectors were available on the job most of the time, except on weekends if the Contractor told us he would not be performing work requiring an inspector to be present.

We proposed to grant the time extension in an attempt to mitigate.

PART VI

The quantity of Optional Base Course was increased in accordance with Article 2.3 of the Standard Specifications.

The additional thickness, as determined from cores, is limited to 1/2 inch as provided in the Standard Specifications.

The thickness of the Optional Base Course (ABC 6" Thick) averaged 7.92" This over thickness was due to the Contractor cutting the subgrade too low. He could have controlled this cut from the existing pavement and the curb and gutter which had previously been constructed. All asphalt structural course (asphalt above the base course) was paid for under a separate tonnage item.

PART VII

1. There is no provision in the contract allowing the first chargeable day to be changed. The Contractor could have avoided this situation beginning work earlier or by anticipating it and requesting that the work order be issued earlier.

2. We offered to grant two (2) additional days contract time on the basis of delays caused by conflicts with existing utilities, water lines and storm sewer. This was in accordance with the project records.

3. Time was not suspended for the Christmas Holiday because the allowable contract time had expired.
4. The Contractor was advised to pave the turning lane in question as shown in the plans on the day the question was asked. It was the Contractor's decision to not proceed with paving.
5. There is no documentation of significant delays due to minor field adjustments to curb and sidewalk. We offered a five (5) day extension only to show a good faith effort to mitigate with the Contractor.
6. The work remaining to be completed on January 23, 1989 included installing thermoplastic pavement markings as well as the reflective pavement markers. No documentation was furnished by the Contractor to substantiate inability to obtain thermoplastic material.
7. We granted an additional contract day for each day during which the Contractor was unable to perform more than 50% of the work on controlling items of work. This is in accordance with the Standard Specifications.
8. Our response is the same as to Item 1 of the Contractor's claim.

PARTS VIII, IX, X and XI

The Contractor was not significantly delayed in progress of the work by plan errors. Late completion of the work was due to the Contractor's failure to properly schedule his operations.

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

PART I The number of changes to sidewalk was significant.

PART IV The stump in question was the remainder of a tree which was removed by the Contractor during the clearing and grubbing operation. The telephone cable were shown in the plans with a note "to remain".

PART V The elevation of the curb and gutter was changed from

that shown in the plans at numerous locations. The number of changes made was greater than normal. Delays had a greater than usual impact on the Contractor's operations because of the short duration of the project. Department of Transportation inspectors were not available on weekends to resolve unanticipated problems as they arose.

PART VI The Contractor could not reasonably have anticipated the overrun in area of Optional Base Course when he made the decision to change to asphalt base. Article 285-8 of the Standard Specifications provides for the pay adjustment for thickness of Optional Base Course to be based on the Plan Thickness. Several thicknesses are allowed in the plans depending on the type of base material selected.

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

The Department of Transportation is directed to reimburse the Contractor for his claim as follows:

PART I	\$ 500.00
PART II	\$ 2,500.00
PART III	\$ 1,500.00
PART IV	Nothing
PART V	\$11,458.90
PART VI	\$ 2,000.00
PART VII	Release liquidated damages (\$400 per day) and penalty (\$400 per day) charged for 32 Calendar Days.
PART VIII	\$ 1,500.00
PART IX	\$ 1,200.00
PART X	\$ 4,000.00
PART XI	Nothing

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$301.25 for

Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$100.00. for Court Reporting Costs.

S.A.B. CLERK
JUN 28 1991
FILED

Tallahassee, Florida

Dated: 28 June 1991

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

Certified Copy:

Frank Carlile
Frank Carlile, P. E.
Member

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

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

28 June 1991

Date

STATE ARBITRATION BOARD
STATE OF FLORIDA

KACO CONTRACTING COMPANY)
)
)
)
) PROJECT NO. 75250-3520
 - and -)
) LOCATION: Orange County,
) Florida
)
)
 DEPARTMENT OF TRANSPORTATION)
 _____)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Thursday, May 30, 1991

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

TIME: Commenced at 10:45 a.m.
Concluded at 1:30 p.m.

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

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida 32317

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF THE KACO CONTRACTING COMPANY:

Mr. Bob Lacey
Mr. Rick Coble
Mr. Robert Frasier

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Larry Field
Mr. Richard Large
Mr. Stanley Milton
Mr. Archie Montgomery

ALSO PRESENT:

Mr. Ken Morefield

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	4
CERTIFICATE OF REPORTER	95

P R O C E E D I N G S

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

5 Mr. Frank Carlile was appointed as a member
6 of the Board by the Secretary of the Department of
7 Transportation. Mr. Sam Turnbull was elected by
8 the construction companies under contract to the
9 Department.

10 These two members chose me, Gene Cowger, to serve
11 as the third member of the Board and as Chairman.

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

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

17 (Whereupon, all witnesses were duly sworn.)

18 CHAIRMAN COWGER: The documents which put this
19 arbitration hearing into being are hereby introduced as
20 Exhibit 1. Exhibit 1 is the notebook containing the
21 request for arbitration to which has been added the
22 notice of arbitration which set up this hearing.

23 Before we began the hearing, we had a brief
24 discussion, a presentation of the exhibits. DOT had
25 presented a notebook submitting the information that

1 they have in rebuttal of the contractor's claim. And
2 this will be identified as Exhibit 2.

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

5 CHAIRMAN COWGER: Does either party have any
6 additional information it wishes to put into the record
7 as an exhibit?

8 MR. COBLE: I think our line diagram, our time
9 diagram we would want to be entered.

10 CHAIRMAN COWGER: Since we only have one copy,
11 rather than calling it an exhibit, we will call it an
12 informational document which the Board will retain, if
13 that's okay, for use in their deliberation. And it
14 will be used by the contractor, I assume, in making his
15 presentation. And the Department will have the
16 opportunity to review it as we get to that point.

17 During the hearing the parties may offer such
18 evidence and testimony as is pertinent and material
19 to the controversy and shall produce such additional
20 evidence as the Board may deem necessary to an
21 understanding of the determination of the matter before
22 it. The Board shall be the sole judge of the relevance
23 and materiality of the evidence offered.

24 The hearing will be conducted in an informal
25 manner. The contractor will elaborate on their claim

1 and then the DOT will offer rebuttal.

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

6 Before we let the contractor commence with his
7 presentations, I would like to make a couple of
8 statements.

9 First off, the submittal by the contractor is
10 quite voluminous, but much of the submittal is merely
11 documentation of the various parts of the claim. The
12 Department has submitted a rather voluminous rebuttal
13 document, too. Again, a lot of that is documentation.

14 Even though we are dealing here with an 11-part
15 claim with all of this documentation, the Board intends
16 to finish this hearing in approximately an hour and a
17 half from now.

18 Keeping that in mind, remember that the members
19 of the Board are professional engineers. We are
20 familiar with the administration of highway
21 construction contracts, and all we need to have
22 presented to us is basic facts relating to each part of
23 the claim. It doesn't mean you can't present
24 arguments, but we are going to cut it off if we get
25 into what the Board considers to be too much detail on

1 any point.

2 We will proceed part by part. I believe that's
3 the best way to handle this thing. We will let the
4 contractor make a statement on each part of his claim
5 and let the DOT rebut then before we go to the next
6 part.

7 I realize that there is some overlap after you
8 get back into some of the later parts of the claim.
9 And where we get into those overlap situations, keep in
10 mind that you've already presented information on an
11 earlier part and let's not overlap our facts any more
12 than we have to.

13 With that, we will ask the contractor now to make
14 his opening statement on part 1. We would like, first,
15 to get into the record what is the total amount of your
16 claim and then proceed from there.

17 MR. COBLE: Total amount of the claim is
18 \$99,685.28.

19 CHAIRMAN COWGER: You may proceed then.

20 MR. COBLE: As far as our line diagram, it may
21 help to show the continuity if we go to that first.

22 CHAIRMAN COWGER: That will be fine.

23 MR. COBLE: Let me also for the record say two
24 things. One, this is the first we have seen of the
25 DOT's response when we walked in here today. So we

1 will be trying to study it as we go along here, trying
2 to get caught up to speed. Like you say, it appears
3 that it's a lot of backup. But again, this is the
4 first we have seen of it.

5 Just a real quick statement on the overview. We
6 feel that the job, the problems on the job were caused
7 by inadequate design, and then they were coupled with
8 the inspection being done on an arm-waving basis rather
9 than giving written field directives as to the change.

10 Now at this juncture, and I think time is
11 critical, Bob Frasier will go ahead and explain the
12 line diagram, and then we will start moving point by
13 point through our claim.

14 CHAIRMAN COWGER: Will you define what arm waving
15 is? I keep seeing that throughout here.

16 MR. COBLE: We refer to it as pointing, going
17 ahead and saying move the sidewalk over three feet or
18 move the sidewalk around the tree or raise the curb or
19 using your hands or using verbal description rather
20 than going ahead and giving a written description that
21 would be something that we could pass down to our
22 subcontractors that would eliminate the confusion, and
23 also it would document the DOT's position that there
24 was a change. Then we could argue about it.

25 The DOT went ahead and it was a make-fit

1 situation. It wasn't designed to work. It was
2 accomplished by pointing and verbal conversation out
3 in the field to make it work.

4 CHAIRMAN COWGER: I understand.

5 MR. FRASIER: Gentlemen, this diagram was done to
6 maintain -- it's a simple line diagram that relates to
7 the time the activities above the line were schedule
8 for construction. It's not meant to be a CPM, it's
9 meant to show the critical items that would have gotten
10 the contractor to the 60-day completion period.

11 And 60 days as we all know is a pretty short
12 time in which to order materials, get submittals, do
13 layouts, start work, install, receive deliveries.

14 There can't be much to interfere with -- there
15 can't be much in the way of interferences in a 60-day
16 duration that would prevent you from ever attaining a
17 60-day completion time.

18 What I personally have done is go through Kaco's
19 files and their daily reports. I've gone through the
20 field logs of the field engineer who was on the site.

21 The problems that affected his work from the
22 start of the layout to the completion of the job are
23 noted on -- in yellow here.

24 As we viewed this diagram from the start, we felt
25 like we had to start the earthwork and quickly get the

1 under pavement drainage structures, the subgrade, the
2 finish surface and base, start -- create a 30-day
3 curing period, and then get the traffic and control
4 aids to finish the project.

5 All this was scheduled to be done in 60 days.
6 What happened is represented below the line. We have
7 attempted to do the same thing.

8 I think the contractor started timely in
9 unloading and receiving the storm drainage pipe. He
10 started laying it in a timely manner.

11 Meanwhile there appeared to be a waterline that
12 was installed -- seemed to be some work that had been
13 done at the intersection that was not reflected on the
14 contract drawings that Kaco Contracting bid the work
15 on.

16 There seems to have been a waterline that was
17 installed that no one knew anything about. That
18 created a conflict with the proposed storm drainage
19 lines that were called to be installed.

20 There were some garbage type -- a large tree
21 stump that had to be removed. Normally you wouldn't
22 think that would be much of an item, and yet it was
23 entwined with some existing utilities. The city got
24 involved in washing out the root areas so that it could
25 be extracted. A machine had to be hauled in to do the

1 work.

2 During this month period that this work was
3 attempted to be done, there was conflicts in utilities,
4 there was conflicts in telephones. There was road
5 elevation changes. There were conflicts between
6 utility poles and inlets.

7 And, frankly, if we had a long period of time in
8 which to perform the work, there wouldn't have been big
9 traumatic things. They could all have been handled
10 without a problem. Again, when you're trying to get
11 done in 60 days, you can't have many of these things
12 without impacting on your schedule adversely.

13 All of these dates are represented in the
14 three-ring binder that we gave you an outline of the
15 specific items of conflict that can be read about.

16 The sidewalk had to be realigned in vertical and
17 horizontal alignment. There seemed to be a centerline
18 road error that created a stoppage in the work while it
19 was determined what was to be done.

20 The actual start of the curing period we
21 identified as being December 27th, and started the
22 30-day curing period in which we could attempt to
23 install the traffic control aids.

24 This fell outside of the contract time by a short
25 distance. The 30-day curing period, the time stopped.

12

1 When it came time to have the reflective pavement
2 markers installed, the amber reflectors were not
3 available. The manufacturer didn't have them in stock.
4 We don't feel like that was anything we had any control
5 over. But yet we were charged liquidated damages for
6 that period of time that we were waiting delivery from
7 a manufacturer for a product that they didn't have.

8 This whole project took 114 days of duration and
9 created a 44-day total time overrun for which the
10 Department charged liquidated damages at the rate of
11 \$400 a day, which was specified.

12 And after they had used the facility, and
13 sometime, I believe almost a year later, the assessment
14 was doubled, making a total liquidated damages withheld
15 from Kaco of \$35,200. As I said, all of these
16 conflicts we think are well-defined and established in
17 the three-ring binder that you have. And that was the
18 purpose of this schedule.

19 Is there anything that perhaps I could add to it?

20 CHAIRMAN COWGER: I don't have any questions. Do
21 you, Mr. Turnbull, Mr. Carlile?

22 MR. CARLILE: No.

23 MR. TURNBULL: No.

24 CHAIRMAN COWGER: I have one question of you,
25 Mr. Frasier. Are you an employee of Kaco or a

1 consultant?

2 MR. FRASIER: We have a consulting company, a
3 consulting company that has done work, consulting work
4 for attorneys and contractors, Wyco Consulting Company.

5 Most of my activities have been dealing with
6 those particular matters. However, I graduated from
7 the University of Florida in 1950 and have been
8 active in the construction business. I'm a general
9 contractor. I work as the vice-president. When
10 consulting work is slow, I project manage and schedule
11 and do that sort of thing. Thank you.

12 MR. COBLE: Bob Lacey is going to go through the
13 notebook, will go point by point through it, and any
14 questions that may arise as we progress through, please
15 stop us and we will go into that.

16 Before we start, let me say that because of the
17 changes on the job, I was on the job a considerable
18 amount, which is very rare.

19 We were doing at that time somewhere around \$15
20 million worth of construction work throughout North
21 Carolina, North Carolina DOT and in Florida.

22 Bob Lacey and I have also both graduated in
23 building construction from the University of Florida
24 and I have a Bachelor's degree in civil engineering.
25 It's something that pretty much all of us, all three of

1 us have done throughout our lives is construction.

2 We aren't brokers. We had planned to do the job
3 ourselves, hands on. We had the people, the equipment,
4 and we were prepared to do every aspect of it.

5 MR. LACEY: I think Bob Frasier pretty well went
6 through the opening statement. There is not a whole
7 lot that I could add to that except for the fact
8 that I really believe that the drawings from what we
9 understood were designed in 1986. There were some
10 major changes that occurred to the site before we got
11 there.

12 I think that Kaco and the DOT tried to do their
13 best to get some of these problems resolved.

14 To go to Section 2, the current contract status,
15 you start out with 268,000 on the contract. The
16 project quantity adjustments were made in the amount of
17 \$22,157.30.

18 I think that goes to show, especially if you
19 look in the back for the -- which we have included in
20 here -- the final pay items and the quantities that
21 were adjusted on each pay item, you will see that there
22 was a lot of them. It wasn't just one item that had
23 to be adjusted, there were numerous items that were
24 adjusted up and down.

25 I think that represents the fact that -- and

1 points out clearly that there were a lot of changes,
2 that the project was not built the way it was designed.
3 I don't see how that could be argued with.

4 The fact that we did get five additional days for
5 inclement weather that was added to our contract, which
6 gave us 65 days, then we had also been given seven
7 days, which was later rescinded a year and a half after
8 we were done when they made the final audit report and
9 only allowed five days, which they gave us a prorated
10 adjustment based on the contract amount versus the
11 \$22,000.

12 It was just a flat prorated amount. No
13 difficulty of doing the work was taken into account,
14 nothing like that. It was just a flat five calendar
15 days.

16 If you divide by the 16 you get a prorated share.
17 So that's where we're currently at, we have been given
18 70 days. The project took 114 days to complete, is
19 what we were charged. So there's 44 days of overrun.

20 I think Bob explained that we were charged -- we
21 have been charged an ultimate of \$800 a day, 44 days,
22 \$400 for liquidated damages, 44 days of penalty
23 damages, which we didn't know -- which was charged a
24 year and a half after we were done.

25 Now the DOT has requested that we send them a

1 check for \$10,877.74, which we did not do. And as a
2 result of that, they have suspended Kaco's
3 certification. And as a result until this hearing or
4 whatever is resolved, this arbitration is complete.

5 In pay estimate number six, dated 2-21-89, which
6 was the one prior to this final estimate seven, which
7 we got on 11-19-90, we were charged -- we had been
8 allowed 72 days of project time, contract time. We
9 were charged 42 days penalty at \$400 a day, which was
10 \$16,800. Then when pay estimate seven came in, they
11 took the seven days, gave us the five, so that's
12 where -- kind of repeating right there.

13 That's kind of where we stand. I don't know if
14 anybody has any questions about that.

15 CHAIRMAN COWGER: I think we need to get on to
16 the points because most of what you have just said,
17 except for a couple of points, is already in the
18 record.

19 MR. LACEY: Right. All right. Claim item one
20 was a change in some slope of some sidewalks. These
21 claim items weren't put in any particular order, not
22 from start to finish. I probably should have done
23 that.

24 It dealt with some form work and some grading that
25 occurred over -- that we had to wind up redoing. We

1 charged some survey party time, I charged it at \$50 an
2 hour. They were our survey crew. They had a vehicle,
3 survey instruments. We used what we felt was the
4 standard rate.

5 I think we -- we contended the DOT weren't on
6 this job site. The daily reports indicate they weren't
7 on the job site on the weekend. They came in the next
8 day and changes were made.

9 I don't know what else to add to that. This is
10 what we feel we were owed for having to make these
11 adjustments and again it was due to the fact that some
12 grade changes were necessary due to the fact that the
13 existing -- the existing conditions weren't what were
14 shown on the plans.

15 In the back of some of the backup I have provided
16 you a sketch which was made by our surveyor which shows
17 some changes that had to be made to the sidewalk as it
18 was shifted. Then there is -- then there's the DOT
19 daily reports which also indicate -- which you all can
20 read, which states the dates and the fact that they
21 weren't on the job site.

22 CHAIRMAN COWGER: I think we're ready to hear
23 DOT's rebuttal on that.

24 MR. LARGE: On claim item one, my rebuttal would
25 be to just review the documents that I have submitted

1 and at that point I think if you will observe the
2 photographs and the documents I have submitted, then
3 you make a determination as to whether any of these
4 changes were significant or not.

5 I think that's going to be the point that
6 somebody is going to have to make. I say they're not
7 significant, they're minor changes. I think the
8 argument is they're saying they're major.

9 So that's where somebody is going to have to draw
10 the line to determine where that point is, what is
11 significant, what is not significant. That would be my
12 rebuttal.

13 I say there's no compensation due for those claim
14 item one.

15 CHAIRMAN COWGER: I have a question. The
16 contractor has stated that he had to relocate some
17 forms that had already been set due to a change in
18 the plans. And the statement has been made by the
19 contractor that he incurred extra costs due to this
20 error.

21 I noticed in DOT's rebuttal a statement that says
22 any resetting of forms was caused by Kaco's failure to
23 communicate information to subcontractors performing
24 the work.

25 Would you expand on that a little bit for us,

1 please.

2 MR. LARGE: Whenever I made that statement I'm
3 saying that they were prior informed how to set these
4 forms. If they set anything any different than that,
5 then they were setting them wrong to begin with.

6 Also, if you would make reference to cross
7 sections -- and this is going to be in the area of
8 station 16.

9 CHAIRMAN COWGER: Tell us what page in the plans
10 to look at.

11 MR. LARGE: 17+50 -- sheet number 18 would be a
12 good example, on the left side, top section. You can
13 see the red line that I have identified as as-built,
14 the blue line is the plan.

15 CHAIRMAN COWGER: What sheet?

16 MR. LARGE: Sheet number 18.

17 CHAIRMAN COWGER: Excuse me. I was looking at
18 the wrong sheet.

19 MR. LARGE: Cross section sheet. We're talking
20 about changing the slope of the sidewalk over there.
21 The reason why the slope of the sidewalk was changed,
22 if any, was because we didn't have a right-of-way
23 easement on that side.

24 And construction practice teaches you that if you
25 don't have an easement then you match the adjacent

1 property. That would be the only reason why a cross
2 slope would have then been changed in that area.

3 CHAIRMAN COWGER: Let me ask you a question right
4 there. Looking at the cross section at 17+50 on the
5 left, I see some elevations shown there.

6 MR. LARGE: Right.

7 CHAIRMAN COWGER: Now there's an elevation
8 121.23.

9 MR. LARGE: That's a plan elevation.

10 CHAIRMAN COWGER: A plan elevation for the back
11 of the sidewalk?

12 MR. LARGE: Right.

13 CHAIRMAN COWGER: And no elevation above?

14 MR. LARGE: That's actual as-built.

15 CHAIRMAN COWGER: So what happened in that
16 instance, and this may not be a good illustration, but
17 the grade for the sidewalk was changed four hundredths
18 of a foot on the back side and -- hard to say on the
19 front side.

20 MR. LARGE: The only way you could pick it off
21 the front side would be to pick it off the cross
22 section.

23 CHAIRMAN COWGER: Scale it off. Okay. We
24 understand now.

25 MR. LARGE: This is generally the way things are

1 throughout this, you know, set of cross sections.
2 These are recent. There will be some places where it's
3 going to look a little odd. I'll tell you why it does.

4 There's been -- if you will look in your
5 photographs, there's been a station installed on one
6 of those quadrants in there. That station wasn't in
7 there during construction. It's been -- it's been
8 constructed after construction was completed. You're
9 going to see that there was a ditch area, but it
10 doesn't exist anymore. There's a driveway there now.

11 So, those kind of things aren't uncommon on this.

12 CHAIRMAN COWGER: I think we've got enough on
13 that now. We'd like to have the contractor make any
14 further statements he wants to make about what has been
15 said so far on part 1.

16 MR. COBLE: First, let me just make it clear that
17 the inspector was not on site. So these changes that
18 he verbally made to make things work, if we worked on
19 the weekends and worked overtime, they weren't there.
20 And in this tight time frame, we worked Saturdays and
21 Sundays. There was no inspector there because they
22 were sporadic when they would come to the job. We
23 didn't know when they would come. On the weekends we
24 were not able to contact them.

25 I heard Mr. Large go ahead and say that the

15

1 determination is going to be on what is significant or
2 not. I can't help but think about the people who made
3 the decision on the Challenger on the O-ring.
4 Obviously it was -- they didn't feel it was significant
5 and it caused the failure of the whole thing.

6 Any time you have to make a change on a
7 construction site -- I think what he is referring to is
8 there weren't massive amounts of material that needed
9 to be changed, but it just stopped the job. That's
10 what Bob Frasier said at the beginning there. It is
11 something that if there was plenty of time and we were
12 working a 40-hour week, it would not have been a major
13 problem because we wouldn't have been working on the
14 weekend, we wouldn't have been working into the
15 evenings.

16 Many times I had been out there and it had gotten
17 dark on us.

18 CHAIRMAN COWGER: I want to interrupt at this
19 point. I think all the Board needs to know about this
20 particular point, we still haven't zeroed in on the
21 issue of were instructions issued by the DOT inspector
22 on December 2nd, 1988, which must have been a Friday,
23 and then acted on by the contractor during the period
24 of Saturday and Sunday which caused him to incorrectly
25 set the forms?

1 I think DOT, you need to tell us a little more
2 about it.

3 MR. MILTON: I asked the people doing the
4 sidewalk, they told me they were going to work
5 Saturday. I said what are you going to be doing.

6 He said we're going to be setting sidewalk forms.
7 I said do you need any of our people out here. He said
8 no.

9 In this particular area where the sidewalk was
10 changed, I told him how to set his grade to get the --
11 from the property line down to the back of the curb.
12 I said that's the way to establish your grade and go
13 from there. So that was why there wasn't anybody
14 there.

15 CHAIRMAN COWGER: We're not arguing that point.
16 What we want to know is what instructions were issued.
17 Are you saying your instructions were to match the
18 existing ground on the back side and then slope it
19 toward the curb?

20 MR. MILTON: Right.

21 CHAIRMAN COWGER: Okay. We are going to leave
22 item number one very quickly, but I want the contractor
23 to rebut what was said if he so desires.

24 MR. COBLE: If that statement was made, it should
25 have been made in a written form so there would be no

1 confusion and then he could present that document to
2 go ahead and say this is what I said was to be done.

3 Obviously there was confusion. There shouldn't
4 have been confusion. If he had put it on a sketch, it
5 wouldn't be a problem. So we wasted a weekend and the
6 overtime and time on the job because it wasn't written
7 out the way he wanted it done.

8 CHAIRMAN COWGER: Quick question of the DOT. Is
9 there any rebuttal on your part that forms were, in
10 fact, set incorrectly and had to be reset?

11 MR. LARGE: Mr. Chairman, I will say that forms
12 were incorrectly set and had to be reset. I made that
13 statement somewhere else.

14 Also, I would like to point out the cross section
15 sheet, or typical section sheet number two, if you
16 would look at the bottom typical, it says Bluford
17 Avenue. You look out here and see your right-of-way.
18 You see natural ground out there. You see sidewalk
19 matches natural ground and slopes toward the curb and
20 gutter. No further comment.

21 CHAIRMAN COWGER: We are going to leave that
22 particular point of the claim.

23 Mr. Frasier, I think you had something?

24 MR. FRASIER: Well, I just wanted to call to
25 your attention one thing. I've looked through the

1 photographs that have been presented here. And of the
2 23 photographs, they are showing 17 of those -- 17
3 elevation changes.

4 Now it's the argument of the beard, but when
5 you're looking at 60 days to do a project, and of these
6 17 elevation changes, they -- one describes the slope
7 change and one describes an alignment change and some
8 of the others I'm not sure what they're there for.

9 There are 17 adjustments to what has been shown
10 on the drawings according to their own photographs.

11 CHAIRMAN COWGER: We understand that. Let's go
12 to point two.

13 MR. LACEY: This one deals with some conflicts in
14 an existing waterline. The plan documents clearly show
15 that there was a waterline that was proposed. It was
16 not until after we had been awarded the project, and
17 I believe it was sometime in September that we got a
18 note -- August 2, we got a letter from the City of
19 Ocoee on August the 3rd saying that they were going to
20 install a waterline and the waterline was to have been
21 done prior to our installation of work.

22 I think that what happened was that the waterline
23 was not installed even where it was shown on the
24 drawings to have been shown, if it was going to be
25 installed. As far as we knew, it was not going to be

1 installed when we bid the project. We didn't know when
2 it would be installed, never any instructions given
3 that it would be installed prior to our work, and we
4 needed to watch for it.

5 As a result the time to install the line, the
6 storm line took longer. Not only did it take longer,
7 but it required some adjustments in the alignment of
8 it.

9 The DOT has acknowledged the delay. They even
10 granted us two days of time in their 12-13-88 letter,
11 which is attached. When we wouldn't accept the time
12 extension without any monetary adjustment, they
13 withdraw it. That's part of the seven days --

14 CHAIRMAN COWGER: May I try to shorten this up a
15 little bit? Really looking at what has happened here,
16 there are minor differences on the amount claimed. DOT
17 is not disputing the entitlement. They are saying you
18 were delayed.

19 Let's discuss for the Board's benefit that 800
20 and some-odd dollars or approximate \$800 difference
21 between what was claimed and what DOT has offered.

22 MR. LACEY: Well, I put down exactly what we felt
23 were fair and reasonable charges, and these charges
24 that are also on there, I think it may be a couple of
25 hours difference I think is where the difference comes

1 in to as far as what the charges -- I'm trying to --
2 I don't remember exactly what DOT's number consisted
3 of. I think the charges we have represented are
4 reasonable. That's all I've got to say about it.

5 CHAIRMAN COWGER: We are not going to spend a lot
6 of time on this point. There's not much money involved
7 and not much difference.

8 DOT, can you tell us why your offer is different
9 from what they're claiming?

10 MR. LARGE: Mr. Chairman, if you will dig back
11 through the documents somewhere you're going to find
12 that my claim represents their cost, and they probably
13 came -- somewhere along the line they gave this figure.
14 But since then I've seen a lot of figure changing. So,
15 you know, I stayed consistent with what I originally
16 offered.

17 CHAIRMAN COWGER: Looks to me like the offer is
18 put together, structured exactly the same as the
19 contractor structured it as far as the way it's
20 structured and the hourly rates for equipment and
21 labor. And the only difference is in hours.

22 MR. LARGE: Right.

23 MR. LACEY: That's correct.

24 MR. LARGE: There was ten hours. I don't know
25 what theirs is. What does theirs show? Against 18.

1 A difference in hours.

2 MR. LACEY: We have included in part of our
3 backup, with the backup from our subcontractor that
4 was working on this work, I did not include our time
5 sheets. Maybe I should have. I believe that we did
6 initially submit a change order which did show a higher
7 dollar amount. It showed \$4200.

8 I think we made an error. We were charging for
9 the full time. When I readjusted it, I dropped one of
10 the days. Obviously we had to have a day to install
11 it. We're saying we should have done it in eight. It
12 took three.

13 CHAIRMAN COWGER: Looks to me like there's a
14 difference of eight hours that the contractor is
15 claiming two days plus two hours on another day as his
16 costs and the DOT is only accepting of those 18 hours
17 only ten hours.

18 DOT, was your ten hours derived from your project
19 diary?

20 MR. LARGE: That's correct, Mr. Chairman.

21 CHAIRMAN COWGER: Did those ten hours span over
22 one day and two hours or are those hours that you're
23 looking at span over the same time frame, i.e., the two
24 days and two hours with less hours per day allowed?

25 MR. LARGE: Mr. Chairman, that stand from

1 October 18th through October 20th. On October 18th
2 there was a one-hour delay. October 19th there was a
3 two-hour delay, and October 20th there was a seven-hour
4 delay. So I compiled the ten hours from the addition
5 of those.

6 CHAIRMAN COWGER: Is that in the notebook?

7 MR. LARGE: That is correct, Mr. Chairman.

8 CHAIRMAN COWGER: All right. I think we have
9 enough on that one. Did you have something else to
10 say?

11 MR. LACEY: Well, I guess I just find it very
12 hard to believe someone can say that just caused you
13 an hour, when I don't see how you can do anything in
14 an hour. I disagree with it from that standpoint.
15 I included also the person who was laying the pipe,
16 his notes on the back that said he lost two and a half
17 days.

18 CHAIRMAN COWGER: I think that's enough
19 information for the Board to make a decision on. We
20 will go to item number three.

21 MR. LACEY: Item three is a conflict between an
22 18 inch RCP and a 15 inch RCP pipe. It's right there
23 that they -- okay, there's an April 11th letter from
24 the DOT that basically acknowledged some of the cost
25 of the delays, but it was never resolved.

1 We are contending that because of the fact of the
2 interference that it cost us time. We used the same
3 rates that we used in claim item number two. That's
4 where we stand. You know, it was initially -- it was
5 definitely a problem. We lost time on it. DOT has
6 acknowledged that. Evidently we just didn't agree on
7 that.

8 CHAIRMAN COWGER: DOT, again we have a situation
9 where the dispute as I understand it is strictly over
10 the number of hours involved in this delay. Correct?

11 MR. LARGE: That is correct. Mr. Chairman, if
12 you will notice, our daily report identifies how much
13 they were delayed. I won't go into that. I have used
14 their figures to calculate those costs.

15 Also, if you would look at the production report,
16 also as a part of this package, you will find that on
17 this particular day that this delay occurred, the
18 production rate is no different than any other date.
19 So how can you say that we have delayed them in that
20 general time frame?

21 CHAIRMAN COWGER: A question about your
22 production report. Is that -- it's the third page
23 under Tab 3 in the DOT exhibit?

24 MR. LARGE: That's correct.

25 CHAIRMAN COWGER: I'm not sure what you're saying

1 about production. Tell me a little bit more about
2 that.

3 MR. LARGE: You want to know what the schedule
4 is, what this report is? This is the item, like
5 18-inch concrete pipe or 18-inch French drain, the
6 length, the date it was laid, and from what station to
7 what station. Basically that's what you're looking at
8 there, a summary.

9 CHAIRMAN COWGER: When you say the production
10 rate wasn't affected, what I might do is look at this
11 page and say on the 21st of October he laid 24 inches
12 of pipe, the 24th, the day in question, he laid 23, and
13 the next day he laid 24?

14 MR. LARGE: That's correct.

15 CHAIRMAN COWGER: You're saying this document
16 indicates there was no change in the production rate?

17 MR. LARGE: That's correct. That's exactly the
18 point I'm trying to make.

19 CHAIRMAN COWGER: All right. There's no argument
20 then about the facts as far as the conflict, it's
21 strictly about the hours?

22 MR. LARGE: That's correct, Mr. Chairman.

23 CHAIRMAN COWGER: I would like to have the
24 contractor make some further statements about the
25 hours.

1 MR. LACEY: Part of what -- I haven't had a
2 chance to review his production report so I don't know
3 how to respond to it, but one thing that needs to be
4 taken into account is that this particular line had to
5 cross the highway. We could only do half at a time.
6 So I think you will have obviously less production on
7 something like that than you would if you were going
8 down a line straight down the sidewalk.

9 CHAIRMAN COWGER: Well, to give you a little
10 better opportunity to comment, though, it looks like
11 the -- again, the work on the 21st, the 24th and the
12 25th -- now the 21st and 24th are on the same line of
13 pipe. What DOT is saying that on one day you've got
14 24 feet, the next day you've got 23 feet, then the
15 following day you have 24 feet of the same size pipe on
16 a different run.

17 I would like to hear your comment on that.

18 MR. LACEY: Basically what they gave us, they
19 allowed us two hours for a superintendent, two hours
20 for a foreman, a couple -- four hours for operators and
21 labor.

22 They're saying in that time frame we should have
23 been able to cut the hole in the pipe, put the collar
24 on there, buy the concrete, have it delivered, do all
25 of this.

1 I don't think that anyone here who knows
2 obviously about construction feels they could do that
3 in two hours. That's what they basically said. I mean
4 it's impossible. By the time you find out the
5 conflict, make the corrections to it, you determine
6 what you're going to do. That's exactly what we had
7 done in the field.

8 We feel we made the correct choice. It's not
9 something that we got a written decision on by the DOT.
10 They put it in their report that it needed to be done.
11 That's what we did. We did it as fast as we could.
12 I think two hours is unreasonable.

13 CHAIRMAN COWGER: I think we covered that point.

14 I haven't asked lately, Mr. Turnbull,
15 Mr. Carlile, do you have any comments or questions?

16 MR. CARLILE: No.

17 CHAIRMAN COWGER: All right. Let's go to point
18 four if we could, please.

19 MR. LACEY: That deals with a tree stump that had
20 to be removed. The DOT is contending that the tree
21 stump, I believe, should have been part of clearing and
22 grubbing. It was not shown on the documents. The tree
23 was determined that it had to -- it was a stump. It's
24 not on the plans. We had to remove the tree. We had
25 to mobilize a large backhoe to the site to be able to

1 even pick it up.

2 We did this very quickly from the time that we
3 got called to do it. We were able -- fortunately we
4 had one not too far down the road, I guess in Orlando,
5 and we brought it out.

6 The tree roots -- it became apparent then that
7 the tree roots were intertwined with the telephone
8 conduit, and it was a large telephone conduit. I don't
9 remember what the size of it was.

10 The City of Ocoee came over with their fire truck
11 and they helped wash the lines out of the -- wash the
12 dirt around -- from around the roots. We hand cut some
13 roots, et cetera, et cetera. We got the thing removed.

14 We feel that was not part of clearing and
15 grubbing. We feel that was something that should have
16 been noted on the documents. It was not -- we feel we
17 should be compensated for the time it took to do it.

18 CHAIRMAN COWGER: May I ask a couple of questions
19 then. It's been stated somewhere in the contractor's
20 claim that this stump was not visible from the surface
21 of the ground. Is that correct as to the statement?
22 Is that the position the contractor is taking? Let me
23 back off. Was the stump visible from the surface of
24 the ground?

25 MR. LARGE: Not only was the stump visible, the

1 tree that stood on top of the stump was visible.

2 CHAIRMAN COWGER: Who took the tree down?

3 MR. LARGE: Mr. Chairman, that was the
4 responsibility of Kaco.

5 CHAIRMAN COWGER: So this was a tree in the
6 right-of-way that was part of the clearing and
7 grubbing?

8 MR. LARGE: That's correct, Mr. Chairman.

9 CHAIRMAN COWGER: You don't need to stand up
10 unless you just want to.

11 MR. LARGE: I'm used to standing up.

12 MR. CARLILE: Was the tree shown on the plans?

13 MR. LARGE: Mr. Carlile, the tree was not shown
14 on the plans. What I'm basing it on is we show a
15 clearing and grubbing limits on our typical section.
16 It says from right-of-way to right-of-way. There's a
17 lot of things. None of the trees were shown that were
18 removed. However, they were removed without question.

19 CHAIRMAN COWGER: Another question. Look in that
20 sheet 9 of the plans. As I understand, this conflict
21 that we're talking about occurred left of station
22 18+40.

23 Looking at the plans at that location, can
24 someone tell me where that tree is in location to the
25 right-of-way line? What I'm trying to find out is

1 where was it in relation to those buried telephone
2 cables shown in the plans and is the -- was the plan
3 location of those cables reasonably accurate?

4 MR. LARGE: Mr. Chairman, that was in the
5 approximate location of your curb line at that point.

6 CHAIRMAN COWGER: So the tree was pretty much
7 right on top of where those cables are shown?

8 MR. LARGE: That's correct.

9 CHAIRMAN COWGER: The cables are correctly shown?

10 MR. MILTON: Pretty much so, yes, sir.

11 CHAIRMAN COWGER: Contractor, do you have
12 anything to say about that?

13 MR. COBLE: I would like to ask the DOT a
14 question because I was not there all the time. Were
15 all of the trees within the right-of-way taken out?

16 MR. MILTON: No.

17 MR. COBLE: They were not.

18 MR. LARGE: There was one left.

19 MR. COBLE: So basically this was again one of
20 the arm-waving situations where it was selective
21 clearing. These trees -- it was an undisclosed
22 condition that it was wrapped around the telephone
23 conduit. Someone can say we should have presumed that.
24 Again, we didn't know what we were going to have to
25 take out.

1 I can't speak for the -- the estimator now is in
2 France. I can't speak to him whether he included that
3 or not. It was something that we wound up having to
4 take some trees out, some stayed. It was not a -- it
5 should have been something that was on the plans.

6 MR. CARLILE: I need to ask one more question of
7 the contractor. In your exhibit you state that a large
8 tree stump was discovered in the roadway, and the stump
9 had to be removed, which stopped progress, implying
10 that you were unaware the stump was there. Would you
11 want to clarify that statement?

12 MR. LACEY: I will be honest with you, I was not
13 on the project. I went by the reports I had supplied
14 to me by our superintendent and our managers that did
15 review the project. The note I got was that they
16 couldn't see it. DOT is saying that different. All
17 I can -- this is what we believe to have been correct.

18 MR. CARLILE: I guess my point is it would be
19 easier to miss a tree stump, I'm not sure about a whole
20 tree. As I understand, indeed you cut the tree down,
21 so you knew there was a tree there at some point?

22 MR. LACEY: We have a video of the site. I guess
23 I would have to look at that.

24 MR. COBLE: As you know, we just got this
25 notebook. We took what -- I did not deal with that

1 particular thing when I was on the site either.

2 MR. CARLILE: So you all are not aware that you
3 cut the tree down?

4 MR. COBLE: No, we would have to go back and
5 study that from this issue. We thought it was a stump
6 when we prepared this.

7 CHAIRMAN COWGER: I want to reiterate one more
8 time DOT's testimony. This stump was from a tree that
9 was removed during construction by the contractor, and
10 it was located either on the alignment of the curb and
11 gutter or very close to it. Is that the testimony?

12 MR. LARGE: That's correct, Mr. Chairman.

13 CHAIRMAN COWGER: That's all we need to know
14 about that issue. Does anybody have anything further
15 on item four.

16 MR. FRASIER: Sir, certainly we all recognize
17 that if the City's fire department -- and there was
18 great concern, grave concern about damaging other
19 people's property in removing this stump, that
20 certainly there was something peculiar about this
21 stump.

22 If Kaco had gone in and torn it out, damage
23 might have been great to everyone. In exercising due
24 caution, it just wasn't a normal stump that was part of
25 clearing and grubbing.

1 CHAIRMAN COWGER: There was no relocation of the
2 telephone cable then in conjunction of this operation,
3 is that correct?

4 MR. MILTON: No, sir, the telephone company was
5 out there when they were taking it out. They cut some
6 of the roots that were around their cable so that the
7 stump could be removed without damaging their cable.

8 CHAIRMAN COWGER: I think we know enough about
9 that one now. Let's go to point five.

20
10 MR. LACEY: That was some changes made in plan
11 elevations, revisions over a nine-day period or ten-day
12 period on the curbs and sidewalks. Attached are
13 sketches which indicate -- that show the changes in the
14 curbs and stuff. Mr. Frasier's point that the pictures
15 show 17 changes and then the fact that the DOT had
16 issued a letter granting us five days of time for this,
17 and then that, of course, was rescinded.

18 So, we have asked for equipment and time for the
19 change.

20 CHAIRMAN COWGER: DOT, I believe looking at your
21 documentation your position is that these changes were
22 not significant?

23 MR. LARGE: That's correct, Mr. Chairman.

24 I think this is changes that occur on a daily basis
25 throughout the state of Florida wherever you go.

1 Mr. Chairman, if we can't make these changes, we will
2 never be able to build a job.

3 CHAIRMAN COWGER: In DOT's rebuttal, you make a
4 statement, "Existing grade lines shown for Silver Star
5 Road does not reflect resurfacing project."

6 Tell us a little about that and why you made that
7 statement.

8 MR. LARGE: Mr. Chairman, that's a note in the
9 plans.

10 CHAIRMAN COWGER: What is the significance of
11 that note in relation to this dispute?

12 MR. LARGE: That note was put there for the
13 purpose of letting the contractor know that recently
14 resurfaced project wasn't included as a part of these
15 grades. So he could reasonably expect to have some of
16 those adjustments in there.

17 CHAIRMAN COWGER: Let's look at page seven you
18 are referring to. You talk about a note. Where is the
19 note you are talking about?

20 MR. MILTON: Down at the bottom.

21 MR. LARGE: Sheet number 12.

22 CHAIRMAN COWGER: I see it. I think everybody
23 understands. It's on sheet seven right above station
24 34. Is that the note you're really referring to?

25 MR. LARGE: Correct.

1 CHAIRMAN COWGER: Let me ask you a question,
2 though. Is the contractor's position that the curb on
3 these returns that come into Silver Star Road had to be
4 constructed to elevations different from those shown on
5 the plans?

6 MR. LACEY: Yes. I think if you will look on
7 sheet 12 it further clarifies the note on sheet seven
8 that says, "Existing cross section elevations shown do
9 not reflect recently resurfacing project. However,
10 proposed cross sections do." Which they did not do.

11 CHAIRMAN COWGER: I didn't understand that
12 statement. Would you say it again?

13 MR. LACEY: On sheet 12 it further clarifies what
14 sheet 7 said by saying note one says, "Existing cross
15 section elevations shown do not reflect recent
16 resurfacing project. However, proposed cross sections
17 do."

18 CHAIRMAN COWGER: DOT, what do you say about
19 that?

20 MR. LARGE: Mr. Chairman, basically what I can
21 say about that is you've got to compare what the
22 as-built is to what the plans ask for. Mr. Chairman,
23 it's a different -- the significance, what is a
24 significant change, that's where the thin line seems to
25 be. That's what we're going to have to identify. What

1 is a significant change?

2 I don't know if I've answered your question.

3 I don't know if I understood your question,

4 Mr. Chairman.

5 CHAIRMAN COWGER: I think you've answered it.

6 MR. LACEY: The only thing I can add in rebuttal
7 to that is that the DOT did grant us five days that
8 they then rescinded because we wouldn't accept it
9 without a monetary change. They have acknowledged that
10 there were changes in the picture they presented in the
11 cross sections that they showed because there were
12 changes.

13 CHAIRMAN COWGER: I think that's an important
14 point that we need to talk about a minute, DOT.

15 I notice in the contractor's exhibits under item
16 five, second page, there is a letter dated December
17 13th, where we note that time extension number 20 you
18 granted five days for delays due to field changes. Of
19 course, they were subject to the contractor accepting
20 that without monetary compensation. Are those five
21 days the same five days we have been talking about?

22 MR. LARGE: Mr. Chairman, that's correct.

23 I granted those five days to try to mitigate, to keep
24 from creating these notebooks we are looking in today,
25 Mr. Chairman. I researched my daily documents and

1 I found no document that justified the granting of
2 those five days, but I granted those five days to try
3 to mitigate.

4 At this point I say those five days aren't due.
5 I can find no documents anywhere in the job file that
6 would indicate that they are due. They didn't delay.
7 These revisions were made, again, prior to setting
8 grade, prior to setting the forms.

9 Mr. Chairman, I really can't see the significance
10 if a change is made before the work is performed.

11 CHAIRMAN COWGER: May I ask you a question then.
12 Were there any delays awaiting decisions on the
13 revisions to the grades?

14 MR. LARGE: Mr. Chairman, the decision was made
15 point-blank when the question came up.

16 MR. COBLE: Sir, that is not true. I was out
17 there numerous times. The inspectors were not even on
18 the job when we needed to have the information. They
19 did not maintain -- did not have a resident inspector
20 there all the time. And I was involved with changes.
21 We had to call, they would come out and look at that.
22 They were not made point-blank, period.

23 That's why I continually requested that they make
24 these changes in writing so we would have them. They
25 wouldn't do it. It was just -- and our clock was

1 running. We were continually hammered, like we're
2 being hammered now. The liquidated damages get thrown
3 in, they get doubled. We are continually hammered on
4 this job. The clock is running. We won't put them in
5 writing. We asked for them in writing. I personally
6 asked for them in writing and they wouldn't do it.

7 It was just -- as professional engineers, I don't
8 understand why it couldn't be a change on a document,
9 as on any other job, when you make a change that's
10 going to affect alignment, where it's going to affect
11 the finished product of a job, it would be in writing.
12 All the other DOT jobs we have asked for it, we have
13 gotten it in writing. They wouldn't do it for us on
14 this job.

15 CHAIRMAN COWGER: I think at this point this
16 applies to many parts of the claim. I think we ought
17 to stop a minute and discuss this.

18 DOT, what is your position on what was just said
19 about documenting changes in writing?

20 MR. LARGE: Mr. Chairman, I think if you look
21 at this book you could tell that I wouldn't mind
22 documenting a change in writing at any point because
23 this basically is what I have done here.

24 Mr. Chairman, also, let me point out that every
25 time that I went through and I wrote a letter whenever

1 we made three hundredths or four hundredths change in
2 curb and gutter, we realized what the process is in
3 getting letters through the system. Think about what a
4 delay it really would be.

5 MR. COBLE: To that, all we wanted -- we didn't
6 require a letter, all we wanted was a field change,
7 something on a DOT piece of paper that would eliminate
8 the confusion. I asked for that. Stanley in the field
9 asked for that. We never got one.

10 It was just a matter of you guys do what you want
11 to do. We're going to do -- your liquidated damages
12 are running. That's why we worked Saturday, Sunday,
13 evenings. We did not have the DOT with us. Never
14 would we not want the DOT there. Never would we
15 release them.

16 We consider inspectors an asset to us so we can
17 go ahead and get at least a change. If we run into a
18 problem on the weekend, we would want to go ahead and
19 have the inspector there to tell us what to do. We had
20 to shut down on several weekends because they were not
21 there.

22 CHAIRMAN COWGER: Go ahead.

23 MR. MILTON: I disagree with Mr. Coble on his
24 statement. We had inspectors there almost all the
25 time they were working except that one Saturday that

1 I mentioned when I asked the people there if they
2 needed our inspectors and they said no.

3 And most of the grade changes that were made were
4 tied into something existing, such as around the
5 radius, tying into the existing street and so forth.
6 I mean you just have to tie into what is there. That's
7 basically all you can do.

8 MR. CARLILE: I need to ask a question. In this
9 particular instance I think everybody is agreed on the
10 change, there was a change, and what the degree of the
11 change was.

12 How is the -- whether it's in verbal or writing,
13 how does that bear on this particular issue or some of
14 the others? Seems like we are getting back to dispute
15 on the effect, not whether or not there was an impact.

16 MR. MILTON: They were verbal, I agree.

17 MR. CARLILE: I'm asking does it matter in
18 resolving these particular items? I think we are in
19 agreement with the changes, what they were.

20 MR. LARGE: To me there is a change. We realize
21 that. I'm not arguing that. There's a change if you
22 want to define these as changes, you know. I'm not
23 sure that we have got any contractor in the state of
24 Florida that can construct within any greater
25 tolerances than these to begin with. These tolerances

1 are well within the spec as identified as significant
2 changes.

3 I think we've got a spec that says it's got to be
4 more than three-tenths of an error in a 500-foot strip
5 before there is a significant change.

6 You know, that don't really apply to this, but
7 we've got to have some sort of baseline to start from.
8 That's sort of where I came from.

9 I say there's insignificant changes. Based on
10 that I would say there are no changes.

11 MR. COBLE: Let me answer your question there.
12 It made a lot of difference to us. They would talk to
13 different people on the job. You would talk to the
14 curb crew, they would give him information, rather than
15 the continuity of the job -- the method of constructing
16 this job is ours.

17 The design is the DOT's. The inspection is the
18 DOT's. The method of how we construct that is ours,
19 our job.

20 When he starts, Stanley starts working as a
21 foreman or a superintendent telling our people what to
22 do, how to do it, rather than going ahead and giving us
23 a written change so we can give it to everybody that it
24 affects down the line, our continuity on a short-term
25 job like that is just lost.

1 When you have a short-term situation like this,
2 whether it be a highway, a building, a pipeline or
3 whatever, the continuity when you've got subs working
4 with it -- and we had several subs on the job. We were
5 required by minority requirements to have several subs
6 on the job.

7 The continuity is lost when he starts talking to
8 other people. And that's -- or if we have to wait for
9 it. And we can't go back and argue. He says he gave
10 it like that. If he would give it with the time, it's
11 right then and there. Then we know when it was given.

12 The biggest thing was the continuity where
13 Bob Frasier started on this job, we just lost it with
14 all of these, what I refer to as arm-waving changes on
15 the job where the plans -- this document needs to speak
16 for itself. He should be out there making sure we're
17 conforming to the document, but not being the design
18 engineer on a daily basis making it work.

19 That's what we're basically saying. All these
20 things if they would have been in writing they would
21 have been voluminous. We just got the ones that we got
22 right here. There were many, many more made out in the
23 field that that's why he wouldn't put any of them in
24 writing for us.

25 CHAIRMAN COWGER: Mr. Milton, were you the one

1 that was on the job pretty regularly, right?

2 MR. MILTON: Yes, sir.

3 CHAIRMAN COWGER: What was your role?

4 MR. MILTON: Project engineer.

5 CHAIRMAN COWGER: Mr. Large, what was your role
6 at that time?

7 MR. LARGE: I was resident engineer.

8 CHAIRMAN COWGER: Mr. Milton, it's admitted that
9 there were several changes from the grades shown in the
10 plans for the curb item. Is it your position that
11 those changes were made in a timely manner? Is that
12 basically what you're saying?

13 MR. MILTON: Yes, sir.

14 CHAIRMAN COWGER: And the contractor's position
15 is that that's not necessarily so, and that you're
16 still demanding that those changes should have been
17 documented in writing?

3
18 MR. LACEY: The other thing I think it would have
19 allowed if it had been in writing -- we went through an
20 inordinate amount of time, almost six or seven months
21 trying to negotiate the settlement of these changes
22 with the DOT. I think if the stuff had been in
23 writing, it would have been able to have been done.

24 CHAIRMAN COWGER: Was this a subcontract item,
25 the curb?

1 MR. COBLE: Yes.

2 CHAIRMAN COWGER: The other question -- and
3 I think this will be the last one I have, can the
4 contractor tell us a little bit about how he arrived
5 at five days, other than that's the time that the DOT
6 granted in their time extension?

7 MR. LACEY: I think there were some discussions
8 and some changes that went back and forth. This came
9 from a change order that was previously submitted and
10 was not able to be settled. I would have to go back
11 and pull that change order. I didn't attach it to the
12 back of this because I've attached it several times.
13 That will take a second.

14 CHAIRMAN COWGER: Does anybody have any questions
15 or comments on point five?

16 MR. LARGE: Mr. Chairman, I would like to make
17 one comment. Mr. Coble said these plans ought to stand
18 on their own. I think you really need to look at these
19 things that I have submitted as a part of the documents
20 and see, in fact, that they do stand pretty well on
21 their own. No further comment, Mr. Chairman.

22 CHAIRMAN COWGER: In DOT exhibit Tab 5, next to
23 the last page talks about a summary of survey party.
24 I assume that's the contractor's survey party. Is this
25 a summary of information taken from your diary?

1 MR. LARGE: That's correct, Mr. Chairman. These
2 are dates they were on the job, hours -- we couldn't
3 get a real --

4 CHAIRMAN COWGER: Just wanted to know where they
5 came from.

6 MR. COBLE: Let me ask a question. Did they
7 check in with you when they came on the job?

8 MR. LARGE: They didn't check in with me.

9 MR. COBLE: When I say you, I mean the DOT. Did
10 they check in with the DOT?

11 MR. MILTON: Well, they --

12 MR. COBLE: That's just an estimate? If that's
13 going to be an issue, we have the time sheets of the
14 guys when they were on the job, if that's an issue.

15 CHAIRMAN COWGER: I don't think it's going to be
16 an issue. Let's go to item number six.

17 MR. LACEY: This refers to some additional
18 asphalt base. Kaco, when we got into this project, as
19 Mr. Coble was explaining, we were running out of time.
20 We were giving it an inordinate amount of pressure on
21 getting some items -- we were very concerned about our
22 relationship with the DOT. We had three other projects
23 going at that time with the DOT. We were constantly
24 warned that, well, if you guys don't get done you're
25 going to have a problem with your certification, et

1 cetera.

2 What we had elected to do when we saw there was
3 a time problem with some limerock base, we went and
4 amongst ourselves decided that it was allowed by the
5 documents that we would change the limerock to asphalt
6 base in an attempt to expedite the construction. We
7 knew it was going to cost us an additional \$20,000.

8 At that time we were very concerned about the
9 relationship with the DOT. We were very concerned
10 about making sure that we did not have a problem. We
11 were with the DOT. We wanted to complete the project
12 on time. That's what we were trying to do.

13 In an attempt to mitigate our damages, we elected
14 to do that.

15 What I have analyzed here, and what I will ask
16 you to look at is the fact that the grades were
17 different than what -- and the quantities were
18 different, which is as reflected in the \$22,000 worth
19 of changes that we have been given. What I have done
20 here is we are contending that we should be allowed the
21 difference.

22 We signed a change order basically waiving our
23 rights to the \$20,000. The core borings that the DOT
24 has made indicate the averages of the thicknesses,
25 which were over and above, and that we feel that's due

4

1 to the fact of the grade changes that went into the
2 project that we had to make, as Mr. Milton and
3 everybody said, make existing conditions work.

4 The whole center of the intersection had to be
5 raised at one point to make it work. And those
6 sketches are attached.

7 We feel we are due the compensation for the
8 additional asphalt that we had to install at the
9 asphalt rate. They have paid it as if it were
10 limerock.

11 We feel we should be paid for the tonnage on the
12 asphalt rate. That's where the difference, that's
13 where our \$11,000 comes, is the difference of that,
14 limerock versus asphalt.

15 We would not have made a conscious decision,
16 probably, to spend an additional \$11,000 or \$12,000.
17 That would have been a real hard decision to have made,
18 to go to \$33,000, or \$32,000 versus \$20,000. It was
19 borderline at \$20,000.

20 MR. COBLE: It didn't equate at \$20,000. It was
21 strictly a relationship thing. That \$400 a day, you're
22 talking plenty of time to put the limerock down.

23 MR. LACEY: We were told we would get a bad
24 grade, I believe is how it was put.

25 CHAIRMAN COWGER: DOT?

1 MR. FIELD: Mr. Chairman, what he's referring to
2 is the substitution was done by a change order. At
3 that time we had change orders still in effect. They
4 signed the change order, and the substitution was made
5 at no increase in cost to the Department.

6 The substitution of limerock, that's fairly
7 standard. We do that quite often with the contractor
8 in an effort to increase the production and cut down on
9 the time he's using, we will request just a substitute.
10 It's always made at no cost as an optional thing.

11 CHAIRMAN COWGER: I don't think that is in
12 dispute, the change itself.

13 MR. FIELD: I thought he wanted to be paid for
14 the asphalt.

15 CHAIRMAN COWGER: Let me ask a question. Reading
16 the plans, the base was an optional base item. It was
17 the contractor's election at the time he bid the job to
18 base his bid on a certain type of material.

19 When was the decision made by the contractor to
20 go from limerock to black base? Before any work began
21 on the base or was part of the base constructed with
22 limerock?

23 MR. LACEY: Part of it was constructed.

24 MR. LARGE: On November 16, 1988, the contractor
25 requested that this change be made.

1 CHAIRMAN COWGER: I'm trying to find out, part of
2 it was done with limerock, then the decision was made
3 to make the change, right?

4 MR. COBLE: Yes.

5 MR. MILTON: The only part that was done with
6 limerock was the pipe crossings, which was --

7 MR. LARGE: Something that had to be done.
8 Whenever you have a pipe crossing you have to close it
9 up then. You don't wait until everything else is ready
10 and then close it up.

11 MR. COBLE: You could have done it with asphalt
12 then just as easily.

13 MR. LARGE: That was just your choice.

14 MR. COBLE: Right. But I'm saying it doesn't
15 make any difference.

16 CHAIRMAN COWGER: I'm trying to find out before
17 any base work other than the pipe crossings, which is
18 merely replacement of existing base was done, the
19 contractor decided to go to black base?

20 MR. LARGE: That's correct.

21 CHAIRMAN COWGER: I notice there's 200 and
22 some-odd yards -- well, there's 300 and some-odd square
23 yards difference between the original plan quantity and
24 the final quantity for the base.

25 My question is how did that come about? Can DOT

1 answer that?

2 MR. MILTON: Well, the plan quantity is just an
3 estimate. The final quantity, which is 200 square
4 yards was an actual measurement of what was excavated
5 and calculated.

6 CHAIRMAN COWGER: Looking through the
7 documentation, to speed this up a little bit, I see
8 I think two things in the contractor's exhibit. There
9 are some explanations of overruns and underruns. And
10 in one place it's explained, as Mr. Milton just
11 explained it, there were some differences in final
12 measured quantities from those shown in the plans, and
13 the rest of it then was where you made the thickness
14 adjustment.

15 Mr. Carlile, did you have a question?

16 MR. CARLILE: You helped answer part of it with
17 your question. I guess in looking at your exhibits,
18 talking to the contractor, you said under item 6 that
19 Kaco is requesting to be reimbursed for the asphalt
20 price not the limerock price. There was only one price
21 in the bid.

22 I guess you're talking about asphalt cost versus
23 limerock cost? There was only one bid for the base
24 option group?

25 MR. LACEY: That's correct for the base option

1 group. The number I picked was an asphalt, in the pay
2 estimate sheets. I quoted off of the sheets of the
3 DOT, which is included in the back back there.

4 MR. MONTGOMERY: Is that a miscellaneous tonnage
5 item cost?

6 MR. LACEY: Listed as asphalt Type S concrete,
7 listed at \$57.74.

8 MR. CARLILE: The bid was for, I guess, square
9 yards in place, whatever the options show?

10 MR. COBLE: To a certain elevation.

11 MR. LACEY: Exactly, for the quantities that were
12 shown.

13 MR. CARLILE: That's all I have, Mr. Chairman.

14 CHAIRMAN COWGER: Where did the -- to the
15 contractor, looking again at your exhibit where you set
16 out your claim, how did you arrive at the 57.74 per ton
17 that you're asking for in the claim?

18 MR. LACEY: I got it off of the DOT pay estimate
19 number seven, which was an allotted amount that they
20 were paying for asphalt, Type S. It's on page two of
21 estimate number seven, final estimate number seven.

22 MR. FIELD: Mr. Chairman, that's the price they
23 bid for the Type S asphalt on this particular job.

24 CHAIRMAN COWGER: That's a bid price for Type S,
25 which is the surface course?

1 MR. FIELD: Yes.

2 MR. LARGE: Per ton.

3 CHAIRMAN COWGER: Yes. That answers that
4 question. Another question I have, the 257 tons was
5 arrived at by a calculation there. My question is in
6 making that calculation did you take into consideration
7 in the areas where there was additional area of
8 pavement, in the location where there was additional
9 area of pavement, did you take into consideration a
10 credit anywhere for the amount that you were paid for
11 under the optional base group item?

12 MR. LACEY: Yes, I did. It's subtracted out
13 down there as \$332, less the supplemental agreement.
14 That's what those two reductions are. One was 2200 and
15 one was a thousand dollars. They're included in my
16 backup.

17 CHAIRMAN COWGER: So those are the extra -- those
18 were your adjustments --

19 MR. LACEY: Made for the additional limerock,
20 yes, sir.

21 CHAIRMAN COWGER: We can look at that in greater
22 depth to be sure later. The Board can look at that.

23 In the DOT exhibit they make a statement that no
24 compensation is due since this is the result of cutting
25 subgrade too low requiring additional asphalt. Now

1 this has nothing to do with any additional areas of
2 payment that were added, this has to do with the
3 dispute about the fact that in some areas the base was
4 constructed substantially thicker than the seven
5 inches, am I correct, shown in the plans?

6 MR. MILTON: Six inches was planned for asphalt.

7 CHAIRMAN COWGER: It was ABC Type 3, six inches.
8 So it's a difference between the six plus the one
9 half that the DOT allowed in making their adjustment
10 and the actual thickness. DOT has taken the position
11 that this happened because the subgrade was cut too
12 low. The contractor is taking the position that it
13 was because there were some, shall we say, erroneous
14 elevations in the plans or some field changes in
15 elevations?

16 MR. LACEY: It was that --

17 CHAIRMAN COWGER: Let's let the contractor
18 discuss that question and then DOT rebut it.

19 MR. LACEY: It was not only that there were some
20 elevation changes but the quantity increased. We got a
21 letter, I believe, from Mr. Large on March 2nd which
22 says that they -- when they sent us the average
23 thicknesses, which is what we worked all this back
24 by, that they wouldn't pay because it was over the
25 half-inch tolerance is basically what they're saying.

1 We're stating we feel the quantity difference is
2 not just in the thickness, but it's also in the fact
3 that the quantity of the surface area increased. We
4 feel a lot of the changes which had to be made out
5 there, which everybody has acknowledged, is that there
6 was some field engineering that had to occur.

7 We feel that the fact that we had incorporated
8 asphalt was of benefit to the DOT, in fact, that these
9 changes were able to be made at a much quicker, easier
10 rate when installing this work.

11 You could just decrease the thickness of your
12 asphalt, versus if you had had limerock you had a real
13 problem.

14 CHAIRMAN COWGER: DOT?

15 MR. LARGE: Mr. Chairman, I think you can see on
16 our claim item one the measured quantities is 2,023
17 square yards as opposed to the plan quantity of 1811
18 square yards. I think you can very well see that we
19 are increasing the square yards as placed. Also
20 further I think you are going to find that we made a
21 core adjustment because of the extra thickness.

22 So I think he has been compensated for the work
23 that he's done.

24 CHAIRMAN COWGER: In the interest of trying to
25 be fair, I'm going to ask my question again because

1 I haven't heard anybody discuss my question yet.

2 My question was DOT said in their statement, no
3 compensation is due since this is a result of cutting
4 subgrade too low, requiring additional asphalt, which
5 would indicate to me that there's some dispute here
6 over the fact that the actual constructed thickness of
7 the asphalt base is greater than six and a half inches,
8 six inches, plus a half-inch pay tolerance. Is that
9 true or not? And if so, what caused it?

10 MR. LARGE: Mr. Chairman, I think it's very true.
11 I think if you look at your core-out averages in the
12 back of this package, you can very well see that it
13 was, in fact. If you're looking at 8, 8 and a half,
14 9.10, 9.4, 6, 8.5, 8.0, 6.83. I'm having a difficult
15 time seeing that, it's been copied so many times.
16 I think you can look at those and tell.

17 CHAIRMAN COWGER: Okay. We are still not
18 answering the question because the question was not
19 so much whether the base was thicker, the -- I think
20 everybody admits the base was thicker. Why was the
21 base thicker?

22 MR. LARGE: The base was thicker because of the
23 controls used in establishing the subgrade. The curb
24 was in, the existing pavement was in. The contractor
25 stretches a string from the lip of the curb to the

1 existing pavement. He measures down. If he overcuts
2 that, then it's going to take additional base to get
3 back to where we started from.

4 CHAIRMAN COWGER: I think we understand the DOT's
5 position very well now, but I'm not sure whether we
6 understand the contractor's position.

7 MR. LACEY: Okay, we'll try again. What we are
8 contending is that there was additional square yardage
9 included. We paid for the 1811 yards of asphalt. They
10 acknowledge payment for additional limerock. We are
11 asking for the difference in the asphalt price.

12 The fact of the matter that I can't swear right
13 here that the curb was installed and that we went to
14 the existing limerock, from what we've got on our
15 sketches that came from the job site, the crown of the
16 road was changed. It had to be raised.

17 We're saying even if the curb -- just
18 theoretically. If the curb was installed at one point,
19 we had to raise the curb, it had to go up. I can't say
20 if it was cut out right or wrong.

21 We are saying we are justified in getting the
22 additional funds for basing it on an asphalt rate
23 versus limerock.

24 CHAIRMAN COWGER: I think we have heard enough on
25 that one. Let's go to item seven.

1 (Brief pause)

2 CHAIRMAN COWGER: Okay. Just for the record,
3 it's been mentioned previously and in the claim here
4 the difference between \$400 a day liquidated damages
5 originally assessed and the \$800 that were assessed
6 later on.

7 DOT, will you explain that so we will have it in
8 the record?

9 MR. FIELD: Mr. Chairman, Florida Statute
10 337.18(3) requires a penalty be applied to liquidated
11 damages, i.e., it doubles the liquidated damages. This
12 was included in the contract that Kaco signed. It was
13 in Section 8 of the special provisions. It clearly
14 says in addition to liquidated damages provided for in
15 810.12, the Florida Highway Code Section, 337.18(3)
16 requires the contractor to pay a penalty for failure to
17 complete the work in the time stipulated.

18 CHAIRMAN COWGER: We understand. Is there any
19 dispute over the Department's right to assess \$800 a
20 day, Mr. Contractor?

21 MR. COBLE: As a penalty?

22 CHAIRMAN COWGER: Right.

23 MR. COBLE: I think there is a dispute over
24 assessing a penalty.

25 CHAIRMAN COWGER: No, talking about strictly the

1 rate now.

2 MR. COBLE: I don't --

3 MR. LACEY: I don't know how to answer that
4 question. It says it right there, what he's reading.

5 MR. COBLE: Let me ask a question, does the DOT
6 always without exception do that to all contractors who
7 run over?

8 MR. LARGE: Mr. Chairman, I would like to address
9 that. Any job that has ever been handled that has went
10 into liquidated damages, we have no choice. It's in
11 the contract. It was by law. If you don't do that,
12 then --

13 CHAIRMAN COWGER: I'm going to cut this off right
14 now because we're wasting time. It's very clear to the
15 Board that the rate at which the damages were assessed
16 is set out very clearly both in the law and in the
17 contract.

18 Let's go on to talk about the claim itself. I'd
19 like for the contractor to go ahead and begin his
20 presentation then, either in general statements you
21 want to start or go directly to adjustment number one.

22 MR. LACEY: We do not feel there are any
23 liquidated damages or penalties should be assessed to
24 this project. We would ask the Board to also look at
25 the fact that this facility, the road was never closed.

1 We worked -- we had to work out of sequence. We
2 had to do some other things to make sure traffic was
3 always maintained on the site. We feel a penalty is
4 definitely not justified in this. I will go further
5 into each item. We put them down by adjustment
6 numbers, then summarized them at the end to justify our
7 position.

8 Item number -- item number one refers to a notice
9 to proceed. Do you want me to explain, go through?
10 I know we're running short of time here.

11 CHAIRMAN COWGER: In order to expedite this, DOT
12 issued a notice to proceed and 30 days after that
13 notice to proceed they started charging contract time.
14 That 30 days happened to fall on a Saturday.

15 And the contractor's position, I think, is we
16 started work Monday, that's timely, you couldn't have
17 expected us to begin work on Saturday. Is that your
18 position?

19 MR. LACEY: That and the fact we got the notice
20 one day after they issued it. They called us the day
21 after. We didn't even know the clock was running until
22 we got the notice.

23 CHAIRMAN COWGER: You got the initial notice to
24 proceed 30 days prior to that?

25 MR. LACEY: That's not correct. We got it 29

1 days.

2 CHAIRMAN COWGER: DOT? All I want to hear from
3 you is basically rebuttal of what I said.

4 MR. LARGE: Mr. Chairman, it was in the contract.
5 Whenever they signed that contract to do work for the
6 State of Florida, it said that time charges would be on
7 the thirty-first calendar day after the notice to
8 proceed was issued, and it was done so.

9 MR. LACEY: We have attached a letter dated
10 August 26th from Mr. Downs who stated he notified us
11 that the clock started on August 25th and notified us
12 on the 26th. I don't have anything else to say.

13 CHAIRMAN COWGER: We understand that. I think we
14 can go on.

15 MR. LACEY: Item number two dealt with
16 underground utility conflicts. I believe all of these
17 have been referred to previously. I don't need to,
18 I guess, waste time. I don't know how you want to go
19 through this. Attached are some of the reports. It
20 basically refers to items two, three and four.

21 Then there was one on the 19th and 20th which was
22 a power pole problem. We have -- I think the documents
23 show that the DOT has acknowledged some additional time
24 for it and we're asking for six and a half days for
25 that.

8

1 CHAIRMAN COWGER: Let's talk a little bit about
2 the conflict with the power pole. I think we have
3 enough evidence on everything else.

4 Does DOT have anything to say about that? Do you
5 have anything in your rebuttal?

6 MR. LARGE: Mr. Chairman, the only thing we would
7 have in there, whatever is in the daily report of
8 construction. As far as rebuttal, no.

9 Mr. Chairman, I would like to -- I realize this
10 is further in the book, but I think it's a good time --
11 we need to talk about the work progress schedule
12 because we're talking about time. And it is -- it's
13 all related.

14 If you look in the back of the book that I have
15 submitted, you're going to find a work progress
16 schedule that the contractor submitted. Also, if you
17 get down here, you will find some little colored areas
18 that are colored in. This is the times that these
19 particular work categories or subactivities started
20 here.

21 If you look at this thing, I think it can
22 summarize, or I can, that we're in trouble right from
23 the very beginning. You know, they started their
24 earthwork at day 44 into the project basically. We're
25 finishing out there at 80.

1 The contractor -- like on this subgrade base and
2 surface -- and I've got notes attached down at the
3 bottom of this thing because I wanted you to be aware
4 of what was going on. Waiting for earthwork to begin
5 on 11-05-88, contract day 43 for the curb and gutter,
6 excavation for optional base began 11-17, contract day
7 55. Items of subgrade, base and surface, specifically
8 curb and gutter, begin on 11-08-88. This is contract
9 day 46.

10 Placement of optional base began on 11-21,
11 contract day 59. We only had 60 to start with.

12 CHAIRMAN COWGER: I think that's pretty
13 revealing. The contractor has presented this chart
14 that we had at the beginning of this hearing, but
15 I think we ought to stop at this point and give you an
16 opportunity to discuss that a little bit from the
17 contractor's standpoint.

18 MR. FRASIER: I can only comment that --
19 I recognize he is probably reading from some record he
20 has. Those dates are taken from the record that the
21 contractor has.

22 So if there's a large dispute, then those two
23 records have got to be prepared. The as-built portion
24 of that schedule was not invented. Each item that you
25 see as an activity, and it has to do with earthwork,

1 started on the day, according to the contractor's
2 record that is indicated on the chart. Now I'm really
3 at a loss to think that you can start earthwork 44 days
4 into the contract. I'm at a loss to know how you do
5 that.

6 CHAIRMAN COWGER: DOT, do you want to explain
7 that?

8 MR. FIELD: Yes, Mr. Chairman. First of all,
9 that schedule, I don't mind you taking it as a working
10 exhibit, but you have to remember that he has the wrong
11 dates up there. That's not the year the project was
12 even done. That's not a plan schedule that they worked
13 on. That's something developed after the fact, not
14 just the as built, but the plans.

15 They worked in September of '88. You all know
16 this. The claims were coming in in February of '89.
17 It's not even the right time frame. What the
18 contractor has signed -- this did not have a critical
19 path. It has the Department's own work progress
20 schedule chart right here. It was signed by the
21 contractor, it was signed by Mr. Downs, the district
22 construction engineer, that shows he was going to build
23 this job within 60 days.

24 He was not forced to bid on the contract schedule
25 of 60 days. He voluntarily submitted his bid. So he

1 obviously had a plan along with all the other bidders,
2 in how to complete this job within 60 days.

3 The documentation can be verified by the daily
4 records as to when these activities start. And they
5 can be compared and compared against his dates.

6 I assure you they're in 1988, they're not in 1989.

7 CHAIRMAN COWGER: Well, the Board can make those
8 adjustments on the year.

9 MR. FRASIER: I would wish that he would. If
10 I made an error in the year, I certainly have not made
11 an error in the month that the activity occurred.

12 MR. FIELD: I hope not.

13 MR. FRASIER: Trust me.

14 MR. LACEY: What he's referring to as an as-built
15 schedule, we have been going through this for an hour
16 and a half explaining the changes. That's why it took
17 120 days versus 60 days. I can't speak to his thing,
18 because we just got it. There were changes made.
19 That's why we're here.

20 CHAIRMAN COWGER: I think the Board is in a
21 position now to compare the chart on the wall with what
22 the DOT has submitted and make some analysis of that.

23 How about time adjustment? I think we probably
24 ought to jump over to time adjustment number three. In
25 the interest of time, what time adjustment number three

1 deals with is refusal of DOT to grant a time suspension
2 for the period surrounding Christmas of 1988.

3 DOT, why did you do that?

4 MR. LARGE: Mr. Chairman, the contract time had
5 expired at this point. I think we assessed liquidated
6 damages on a calendar day. They had no time to
7 suspend.

8 CHAIRMAN COWGER: What you're saying is that the
9 reason you refused that was that the contract time had
10 expired prior to the December 24th date?

11 MR. LARGE: That's correct, Mr. Chairman.

12 CHAIRMAN COWGER: Is there anything in the
13 contract that addresses that, that action? Is that a
14 Department policy?

15 MR. MONTGOMERY: Your Standard Specifications
16 address that the contractor can request a vacation time
17 at Christmas and such.

18 CHAIRMAN COWGER: About you will not grant it for
19 periods after the allowable contract time expires. Is
20 that a specification provision or is that a Department
21 policy?

22 MR. MONTGOMERY: I don't know where to find it,
23 but it's in the specifications.

24 CHAIRMAN COWGER: We will look into that.
25 Mr. Contractor, we will give you an opportunity to say

1 anything you want to about that item, but I think we
2 understand it.

3 MR. LACEY: Speaks for itself.

4 CHAIRMAN COWGER: Let's go on to number four
5 then, if we could, and see what that is.

6 MR. LACEY: It's 12-6, there was a delay because
7 there was a ground layout problem. We stopped work.
8 DOT says we shouldn't have stopped work. We did. It's
9 in black and white on both sides. It's up to the Board
10 to decide whether we were correct in stopping or not.

11 CHAIRMAN COWGER: I think DOT ought to rebut
12 this a little bit. You've seen it in advance of the
13 hearing.

14 MR. MILTON: The ground was where it was supposed
15 to be, where the plans showed it. They just had a
16 problem with -- they said it wasn't where it was
17 supposed to be. It was basically it is.

18 CHAIRMAN COWGER: How was it actually
19 constructed, per the plans?

20 MR. MILTON: Right. The superintendent that was
21 laying the asphalt had a problem with it because the
22 turn lane, left turn lane would cross the crown. He
23 was -- his problem with it was traffic, when they get
24 in that left turn lane, one side of the tires would go
25 over the crown and that would cause a problem. He said

1 he didn't want to be responsible for it.

2 CHAIRMAN COWGER: Your testimony is that you all
3 gave -- DOT gave proper instructions to pave it per the
4 plans?

5 MR. MILTON: Right, sir.

6 CHAIRMAN COWGER: Okay. We will give the
7 contractor an opportunity to say any more he wants
8 about that and then we will move on to five.

9 MR. LACEY: We feel that the asphalt crew was
10 justified in requesting that be clarified before they
11 went and did it. That's exactly what they did. They,
12 unfortunately, had stopped the asphalt coming in,
13 caused a delay.

14 We feel it was a question that should have been
15 asked. We feel they were correct in asking the
16 question. It was in the interest of both sides to make
17 sure it was done correctly. That's why the question
18 was asked.

19 CHAIRMAN COWGER: Anybody have any further
20 comments on that? Otherwise we will move on to time
21 adjustment number five.

22 MR. COBLE: Just explaining, that was a situation
23 that the inspector was on the job, was not able to give
24 us that answer at that point. The asphalt crew could
25 not just sit there and wait. They didn't know when he

10

1 was going to be there. They shut down. They left.

2 That's the reason we lost the day, rather than
3 put the asphalt down wrong, they shut down until the
4 question could be answered by the DOT, to mitigate
5 their damages.

6 CHAIRMAN COWGER: DOT, what do you have to say
7 about that? Was there a delay in the decision or not?

8 MR. LARGE: Mr. Chairman, I would say the
9 decision was made when we had these (indicating
10 document), the plans.

11 CHAIRMAN COWGER: My question, though, is the
12 superintendent -- is there any dispute that the
13 superintendent questioned whether the plans would
14 result in the desirable end product?

15 MR. MILTON: I was called on the radio by my
16 inspector. I was on my way to the project. I got
17 there in about 20 minutes. I told him that --

18 CHAIRMAN COWGER: There was a question. Now
19 there's no dispute that there was a question asked.
20 Now what is your testimony as to how long it took to
21 resolve that issue?

22 MR. MILTON: I don't know exactly what time he
23 asked the question. From the time I got the word that
24 there was a problem, I was there in about 15 or 20
25 minutes.

1 CHAIRMAN COWGER: Is there a possibility that
2 there was a delay between the time the question was
3 asked and the time the inspector got ahold of you?

4 MR. MILTON: Like I say, I don't know what time
5 the question was asked.

6 CHAIRMAN COWGER: Does the contractor have
7 anything to substantiate there was a substantial delay?

8 MR. COBLE: The paving crew had the asphalt ready
9 to go. The incentive is to get the asphalt down. They
10 only get paid by tons on the surface. Them shutting
11 down cost them money on the thing. At the same time if
12 they had gone ahead and put it down wrong, everybody
13 would have had a problem.

14 It was something they realized, just like
15 Mr. Milton said, that was potentially in the paving
16 superintendent's eyes, a potential problem. He wanted
17 it answered. He couldn't get it answered.

18 Rather than have the expense of that crew sitting
19 there with the trucks stacked up on the job, he shut it
20 down when they couldn't get an answer. We were not
21 told when he could get on the job to answer that
22 question.

23 CHAIRMAN COWGER: I think we have heard enough on
24 that. Let's go on to time adjustment item number six.
25 Sorry, I skipped one, go to five.

1 MS. FRAZIER: This refers to the five days we
2 were asking for field changes back -- I forget which
3 claim number it was. I don't know what else to add
4 to it. We're here asking for the five days that was
5 originally granted, that was later denied. That's what
6 that is for.

7 CHAIRMAN COWGER: Let's go on to number six then.
8 I think we understand that.

9 MR. LACEY: Number six is, I think, the very --
10 I guess we don't understand the reason we weren't
11 granted the time. There was a delay in getting the
12 pavement markers from the time of curing to the time at
13 which curing stopped to the time we were able to get
14 them installed. I think it was 21 days. Yes, it was
15 21 days.

16 The problem was that the manufacturer did not
17 have the correct markers. We couldn't put the markers
18 down. We tried to do -- we did what we believed, and
19 I believe what we were told to do is submit
20 documentation on that.

21 And I believe also the DOT specifications
22 indicate that you have -- in standard 8.7.3.2, that you
23 issue verification that you cannot get the material and
24 that you should be granted a time. It was obviously a
25 controlling item because we were charged time for it.

1 Therefore, we feel that we should be granted the
2 days, the actual duration -- we subtracted two day's
3 time. It was actually 23 days from the time in which
4 curing stopped to the time the job was finally
5 accepted. We subtracted two days from that to get to
6 the 21 days for the purpose of the fact the work that
7 was done should have taken two days.

8 We feel we were -- we have been fair in that. We
9 feel we are justified to get the dollars -- the days
10 back and the liquidated damages gone.

11 CHAIRMAN COWGER: Were there other kind of
12 pavement markers other than amber?

13 MR. LACEY: Yes, sir.

14 CHAIRMAN COWGER: There was more than one color.
15 The amber you couldn't get?

16 MR. LACEY: Correct.

17 CHAIRMAN COWGER: Were there other kind of
18 markers on the job other than raised pavement markers?

19 MR. LARGE: Yes, sir.

20 CHAIRMAN COWGER: The only work done after the
21 suspension was application of pavement markers or
22 thermoplastic striping to the pavement?

23 MR. MILTON: There was some manholes and inlets
24 that were tacked, tack welding.

25 CHAIRMAN COWGER: But no original contract work

11

1 other than what you have just described? During the
2 period of the suspension and the period between when
3 the suspension expired and the contract was completed,
4 what kind of markings were out there to guide the
5 traffic?

6 MR. MILTON: Temporary markings.

7 CHAIRMAN COWGER: How effective were those
8 markings in your opinion?

9 MR. MILTON: Well, they were effective as
10 temporary markings can be.

11 CHAIRMAN COWGER: They were paint, right?

12 MR. MILTON: Right.

13 CHAIRMAN COWGER: I've asked my questions now.
14 DOT, what do you have to say in rebuttal of what the
15 contractor said?

16 MR. LARGE: Mr. Chairman, I think in looking at
17 the pavement marker delay, you know, they did submit,
18 in fact, a letter saying that there was a delay from
19 their supplier.

20 I do want to make a point, that the specification
21 says they will submit a substantial number of letters
22 from different suppliers. I want you to know that
23 there needs to be more than one.

24 Mr. Chairman, I have a hard time understanding
25 why we didn't put down the thermoplastic four-inch

1 lines when there was no -- when there in fact was no
2 shortage of those at all. We waited until the pavement
3 markers, apparently, came in and did it all at one
4 time.

5 Basically what we're saying is that everything
6 wasn't done except for the placement of the raised
7 pavement markers. We still had thermoplastic compounds
8 to put down.

9 CHAIRMAN COWGER: I think we have heard all we
10 need to from DOT, but I do think we need to give the
11 contractor an opportunity to rebut what has been said.

12 MR. COBLE: We were never asked to put down the
13 thermoplastic in separation of that, and also there was
14 not just one letter submitted but there were two
15 letters.

16 There was never any question about needing more
17 documentation to substantiate what we were asking for
18 there. If they had wanted more, we would have gotten
19 everybody in the industry to do it. For those kind of
20 dollars, believe me, there would have been no problem.

21 As far as the thermoplastic putting down there,
22 the lines, that's going to be a wearing condition, not
23 a traffic control condition. The thermoplastic is just
24 going to wear a lot longer, be a lot more durable.

25 The lines did the job. If they had wanted the

1 thermoplastic, we would have had the guy come out
2 there. The guy was already hurt bad enough as it was
3 having to wait for the reflectors. There was never a
4 point of contention to the best of my knowledge.

5 CHAIRMAN COWGER: DOT?

6 MR. LARGE: Mr. Chairman, I would like to make a
7 point. Even after the contractor installed the raised
8 pavement markers -- I don't have any documentation to
9 this effect -- even after he installed the raised
10 pavement markings, he installed the wrong ones, had to
11 come back and replace those.

12 CHAIRMAN COWGER: Were the raised pavement
13 markers -- was the placing of the raised pavement
14 markers in any way tied to the placement of the
15 thermoplastic?

16 MR. LARGE: On this particular situation?
17 Normally you do, you put down your raised pavement
18 markers and your thermoplastic at the same time. A
19 good point.

20 The point is that they could have made an attempt
21 to put these down, and we couldn't stop it for no -- we
22 could probably stop the time for a shortage of raised
23 pavement markers, but I can't stop it for
24 thermoplastic. It's not done.

25 CHAIRMAN COWGER: Did they have to be done in

1 conjunction with each other is my question?

2 MR. LARGE: No.

3 CHAIRMAN COWGER: How are the raised pavement
4 markers attached to the pavement?

5 MR. LARGE: With a bituminous compound and
6 probably at this time it might have been a
7 thermoplastic compound. But we have recently changed
8 that spec.

9 CHAIRMAN COWGER: Is there any further
10 conversation on this? If not, let's go, to, am
11 I right, number seven?

12 MR. LACEY: Well, one quick comment. We did
13 install some thermoplastic work on the edges and some
14 stop bars noted on February the 3rd. Also in their
15 February 8th letter to us, it says, "The primary one
16 which is the delay in conditional acceptance of the
17 project is completion of the reflective pavement
18 markers." I will stop there.

19 CHAIRMAN COWGER: Let's go to time adjustment
20 item number seven which has to do with inclement
21 weather. DOT approved five days, contractor says that
22 inclement weather delayed him more days than that and
23 they're seeking an additional four and a half days. Is
24 that correct?

25 MR. LACEY: That's correct.

1 CHAIRMAN COWGER: I think we need to hear DOT's
2 rebuttal first.

3 MR. LARGE: Mr. Chairman, those days are granted
4 based on the weather report and whether the contractor
5 is able to perform at least 50 percent of the workday
6 on a controlling item of work.

7 Mr. Chairman, also, if you look at this weather
8 report, you will find that these days, I believe, that
9 they are requesting, that their superintendent agreed
10 with the project diary and signed to that effect.

11 Mr. Chairman, I think our project documents will
12 identify these particular days that were granted them,
13 and I think you will find that's all that they're
14 entitled to.

15 CHAIRMAN COWGER: Anything from the contractor on
16 that issue?

17 MR. LACEY: We still contend that we feel the
18 time is justified when you go back and you review the
19 overall project and you look at the overall progress of
20 the work, the overall changes made, the fact that we
21 were working extended hours trying to maintain a
22 schedule which turned out to be impossible to be
23 maintained due to the changes, et cetera, that even if
24 it did rain at one o'clock in the afternoon, we feel
25 that stopped us.

1 If you look at our overtime sheets that we
2 submitted further back, it indicates that we did work
3 an exceptional amount of overtime. From one o'clock
4 on, two o'clock on, whenever it started raining, we
5 feel that we should be justified in getting the
6 additional days.

7 MR. COBLE: Basically because the 50 percent, if
8 you're working 12-hour days and four hours runs from,
9 say, 7:00 to 11:00, and you start at 11:30 or 12:00 or
10 one o'clock, it's not half the day, it's not four
11 hours. Half the day if you're working 12 hours is six
12 hours. The 50 percent of what he's referring to would
13 change depending on the hours that we normally worked.

14 MR. LARGE: Mr. Chairman, if you will look at our
15 report, it's identified from zero to two hours or four
16 to six hours or -- it's not identified in a half a day,
17 a quarter of a day. It's identified by hours. I think
18 we need to be looking at that.

19 CHAIRMAN COWGER: Do you dispute that the
20 contractor was working 12-hour days?

21 MR. LARGE: Mr. Chairman, without looking at my
22 daily reports, I couldn't answer your question.

23 CHAIRMAN COWGER: Let me ask the project engineer
24 on the project. Do you have any reason to believe he
25 wasn't working 12-hour days?

1 MR. MONTGOMERY: No.

2 CHAIRMAN COWGER: Let's go on to time adjustment
3 item number eight.

4 MR. COBLE: Mr. Chairman, could I just say one
5 quick thing, on that other thing. If you have a
6 one-hour delay on a particular thing, you don't know --
7 a lot of times you don't know it's going to take one
8 hour. You might assume it will take longer and you
9 shut down operations that resolve around that.

10 An inspector had to stay and watch that delay and
11 said it took an hour. But you can't have people
12 standing around assuming it might take an hour and then
13 it might take longer.

14 CHAIRMAN COWGER: Can we go on to number eight
15 then, having to do with the sidewalk slope changes?

16 MR. LACEY: That refers to item number one that
17 we discussed. We are asking for two days for that time
18 delay that we discussed earlier.

19 CHAIRMAN COWGER: I think DOT covered it pretty
20 well in their written rebuttal. Let's go on to claim
21 item number eight then having to do with job overhead.

22 MR. LACEY: What this refers to is the fact that
23 we feel there should be compensable days for the fact
24 of the claim items 2, 4, 5, 8 and 10.

25 We're asking for 19 and a half days of

1 compensable time. We're asking for that to be paid at
2 their actual job costs which are included in the back
3 of an exhibit, and then divided by the prorated number
4 of days that the actual job took and then multiply it
5 by the days that we're asking for here and then come up
6 with a dollar amount.

7 We aren't asking for the full 44 days or 55 days
8 that the job actually overran. We're asking for the 19
9 and a half days because we don't feel that we should
10 be -- either side should be charged for the 21 days of
11 the pavement marker delay.

12 Then there was a couple of other days there. We
13 didn't feel that -- we felt it was an act of God and we
14 can't control it.

15 MR. COBLE: That does not include my time,
16 Bob Frasier's or a general superintendent's time, the
17 time we had to be on that job either. I'm talking when
18 we were actually on the job, I would be considered job
19 overhead. We did not charge for any of those things.
20 We were trying to rearrange the conflicts that were in
21 the plans.

22 CHAIRMAN COWGER: DOT, let's have a little
23 rebuttal on this.

24 MR. LARGE: Mr. Chairman, all of the rebuttal on
25 that that I have is in my claim. I have lumped those

1 claims together with claims 9, 10 and 11.

2 My rebuttal would be that if the contractor had
3 performed in accordance with his original submitted job
4 schedule, we wouldn't have got into this situation to
5 begin with.

6 CHAIRMAN COWGER: May I ask a question on part
7 eight. If you will open up to the contractor's claim
8 book, item number eight, the first sheet is
9 calculation. The second sheet as I understand it is a
10 documentation of how he arrived at the overhead rate.

11 MR. FIELD: That's correct.

12 CHAIRMAN COWGER: Actually how you arrived at
13 your overhead costs. There are items in there shown
14 with brackets which I assume are the items that you
15 took out before you calculated your total overhead
16 cost?

17 MR. LACEY: That's correct.

18 CHAIRMAN COWGER: We note in there that there are
19 some things that question whether or not they're time
20 related. Things like construction photos, trucking,
21 freight, mobilization -- of course that's a pretty
22 small one, I'm not going to discuss that. Is this a
23 normal way of putting together your overhead costs?

24 MR. LACEY: That's correct.

25 CHAIRMAN COWGER: I don't think that question is

1 worth pursuing now that I look at it.

2 DOT, you did have the opportunity to look at this
3 calculation of the overhead. If we make the assumption
4 that this is a compensable delay, and that's only an
5 assumption, how do you feel about the reasonableness of
6 the per day amount that he's claiming?

7 MR. FIELD: We would want to audit his records.
8 I might add, Mr. Chairman, that as you may or may not
9 be aware, we have been negotiating this claim since
10 they submitted it in February of 1989.

11 The items we have covered up to now were always
12 the same items. A lot of the figures have changed back
13 and forth since that date. But we have negotiated in
14 good faith for almost two years with Kaco.

15 At the point where they submitted this claim,
16 these last three items, the job overhead and the
17 equipment, whatever the last three items were,
18 obviously their attorney advised them to include these
19 in the claim and they added those. We only saw this
20 since April 26th or whenever we got the book. We
21 couldn't comment without an audit on these figures. We
22 have no records to substantiate any of that.

23 MR. COBLE: Can we respond to that?

24 CHAIRMAN COWGER: Certainly.

25 MR. COBLE: Our attorney never advised us to

1 include this.

2 MR. FIELD: All I was pointing out is it was not
3 in their original claim submitted in February of '89,
4 which we have been negotiating through our attorney.

5 CHAIRMAN COWGER: We understand. Okay. Looks to
6 me like on parts eight and nine that the dispute is
7 whether or not these delays were compensable and that's
8 about it. And I think the Board will have to take a
9 look at that and decide.

10 Unless someone has any additional comments,
11 questions on items number eight and nine of the claim,
12 we're going to move on to item number ten. I think we
13 need to discuss that one just a little bit.

14 This, as I understand it, has two parts to it.
15 The contractor is claiming three weeks of additional
16 compensation for certain pieces of equipment, and that
17 three weeks is attributed partly due to the extended
18 time that he had to be on the project. And part of it
19 is additional pieces of equipment which were made
20 necessary by the contractor being forced to work out of
21 sequence. Does that pretty well sum up the claim?

22 MR. COBLE: Yes, sir.

23 CHAIRMAN COWGER: Now I don't want to deny the
24 contractor the opportunity to make any points about it,
25 now that I have summed it up.

14

1 MR. COBLE: I think you have pretty well laid it
2 out. When you go ahead and flow a job, when you plan
3 any kind of job, you plan to get in and get out. When
4 you have to work out of sequence, you can't sequence
5 the work, you wind up leaving pieces of equipment and
6 people falling back and doing parts of the work.
7 That's exactly what we ran into. That was the
8 equipment that was attributed to that.

9 CHAIRMAN COWGER: DOT, what do you have to say
10 about this part of the claim?

11 MR. FIELD: I would like to add that this also
12 is new to the claim. Just so the Board is aware,
13 our attorney, Bob Daniti, negotiated with their
14 attorney, Joe Lawrence. And on March 5, 1990, an offer
15 was made on behalf of DOT for \$10,000 to settle this
16 claim.

17 The claim we were negotiating on was, as
18 I described, pretty much what we covered up until we
19 got to this job overhead, home office overhead,
20 additional equipment. That's a brand-new element that
21 we have not reviewed until it came in this claim
22 package on 4-26.

23 We have not gone in to examine whether the rates
24 are correct. I do know that they didn't use the Blue
25 Book correctly. The Department's policy is not to even

1 use the Blue Book anymore. They've gone to another
2 construction manual, a cost accounting book.

3 If we were to get into those actual costs that
4 they have in there, we would have to go to that.

5 MR. COBLE: I guess our response would be that we
6 sure gave them plenty of time to review that if they
7 wanted to do it. If they had any questions about it,
8 we could have backed it up.

9 MR. LACEY: The other point is he keeps accusing
10 us of giving them things that they got a month ago.
11 And they're using things that we have never seen.

12 CHAIRMAN COWGER: We don't want to get into that
13 any further. The three weeks is essentially determined
14 based on the 19 and a half days compensable delays that
15 have been discussed earlier?

16 MR. COBLE: That's correct.

17 CHAIRMAN COWGER: That's just an approximation
18 you might say. But we understand that those things
19 cannot be precisely arrived at.

20 Okay. Let's talk about item number 11, the
21 additional overtime, and we're at the end.

22 MR. LACEY: This is basically the fact that we
23 did spend a lot of excessive overtime. We worked a lot
24 of Saturdays and Sundays. We feel that, like you just
25 said, that it's very difficult to quantitatively put a

1 dollar value on every item of change.

2 We have attached the time sheets to the back
3 which indicates the hours that we have spent and the
4 dollars that we spent against it on the overtime
5 portion. We feel that we're asking for 50 percent of
6 the overtime to be reimbursed for that period of time.

7 It's not as scientific as everyone would probably
8 like, but it's to the best that anyone could come up
9 with. The fact that the project did -- I guess it goes
10 back to whether an item was significant or not. We
11 feel there were enough items in this project that were
12 significant, that if you look at the overall picture
13 it's a very significant problem. We don't believe
14 anybody could have built it in 60 days.

15 MR. COBLE: With the designed in problems, the
16 errors in the plans. When we bid it, it surely was
17 feasible to go ahead, and the procedures we used in
18 estimating are the same, the ones we have used for 20
19 years. It's something that could have been done in
20 that time if the plans hadn't required so much special
21 help from the DOT field people.

22 CHAIRMAN COWGER: DOT, do you have any further
23 comments about the additional overtime or about the
24 last statement the contractor made? We're about to
25 quit.

15

1 MR. LARGE: Mr. Chairman, I would like to once
2 again say if we go back to the original schedule, the
3 contractor had performed his work as planned, then
4 those last items would not be there to begin with. So,
5 the question that you're going to have to determine is
6 whether those are compensable days or not.

7 CHAIRMAN COWGER: Does the contractor have any
8 further statements?

9 MR. COBLE: In closing? Well --

10 CHAIRMAN COWGER: Just one moment, did you have
11 something?

12 MR. FIELD: On that, we have talked about these
13 changes, but we all recognize that plans are not put
14 out as a hundred percent perfect. Field adjustments
15 are made.

16 Our Leesburg office has done 20 or 30 of these,
17 same type jobs, and we have not appeared to you before
18 in arbitration. We have been able to settle our
19 differences, the contractor has worked with us. This
20 has been an unusual circumstance. I want the Board to
21 understand that they're painting a picture of a
22 horrible messed up job, but this is a routine job that
23 we have successfully completed many times with this
24 same resident and project engineer.

25 MR. COBLE: Can I respond to that?

1 CHAIRMAN COWGER: Yes, and then if you would also
2 make any summary you want to make.

3 MR. COBLE: Let me say I think as far as the
4 field people, they made these plans work. I'm not
5 questioning that. That's a compliment to them, to get
6 the job done.

7 What I'm saying is the plans should have been --
8 they should have been inspecting what these plans
9 created. There were a lot of things out there. It
10 talked about another set of plans. It says, however,
11 proposed cross sections, you know, go ahead and they
12 talk about something they were going to do more work
13 on. They didn't do the more work, which it's a
14 compliment to these gentlemen that they could go ahead
15 and, the term we use is arm wave it, and make it work
16 out.

17 We're just saying that we were hurt in this
18 process. I think the DOT did an excellent job.
19 I think at the same time, just let me merge right into
20 the concluding statement, that the LDs were assessed
21 and there was no time that road was ever closed, the
22 traffic always flowed, closed for not any major time.
23 It isn't like a new road you're not able to use the
24 road. The road was always in service.

25 The liquidated damage in this case is being

1 applied as a penalty rather than liquidated damages.
2 You asked the question about Bob Frasier. We have been
3 together the last eight years. He is a principal with
4 us. He's the vice-president, very active in our
5 operation.

6 CHAIRMAN COWGER: Okay. I like to have that
7 information.

8 Mr. Turnbull, do you have any questions?

9 MR. TURNBULL: No.

10 CHAIRMAN COWGER: Mr. Carlile?

11 MR. CARLILE: You indicated earlier that you were
12 taken off the bidders list, is that correct?

13 MR. LACEY: That's correct.

14 MR. CARLILE: You could have filed a qualified
15 acceptance letter.

16 MR. LACEY: They told us to send them \$10,000 and
17 we refused.

18 MR. CARLILE: You had an option. You could have
19 then made the claim?

20 MR. LACEY: Correct. As the backup shows in our
21 documents, I think in our overhead we showed the job
22 cost, we lost money. There was no doubt. It's right
23 there in black and white. We included it.

24 CHAIRMAN COWGER: I think we have all the
25 testimony. Any further questions by either Board

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member?

This hearing is hereby closed. The Board will meet on June 26th to deliberate on this claim and you will have our order shortly thereafter.

(Whereupon, the hearing was concluded at 1:30 p.m.)

CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I, CATHERINE WILKINSON, Certified Shorthand Reporter
and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the proceedings were taken
by me at the time and place therein designated; that my
shorthand notes were thereafter reduced to typewriting
under my supervision; and the foregoing pages numbered 1
through 94 are a true and correct record of the aforesaid
proceedings.

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

WITNESS MY AND AND SEAL this, the 17th day of June,
A.D., 1991, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,
STATE OF FLORIDA.



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

My Commission Expires June 27, 1994