

**STATE ARBITRATION BOARD**

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

+ + + NOTICE + + +

In the case of Ila Construction Company, Inc. versus the Florida Department of Transportation on Project No. 86100-3582 E4289 in Broward County, Florida, both parties are advised that State Arbitration Board Order No. 5-91 has been properly filed on September 13, 1991.

*H. E. Cowger*

H.E. Cowger, PE  
Chairman and Clerk

S.A.B. CLERK

SEP 13 1991

**FILED**

HEC/sfc

Copies of Order and Transcript to:  
Rick Chesser, District Secretary/FDOT  
Rajendra U. Patel, President/Ila Construction Co., Inc.

STATE ARBITRATION BOARD

ORDER NO. 5-91

RE: Request for Arbitration by  
Ila Construction Company, Inc. on  
Job No. 86100-3592 E-4289 in  
Broward County

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

H. Eugene Cowger, P. E., Chairman  
Kenneth Morefield, P. E., Member  
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 10:00 a.m., on Tuesday,  
July 16, 1991.

The Board Members, having fully considered the evidence  
presented at the hearing, now enter their order No. 5-91  
in this cause.

ORDER

The Contractor presented a request for arbitration of  
a multi-part claim for release of liquidated damages assessed  
by the Department of Transportation because the work was not  
completed within the time stipulated in the contract and for  
additional compensation for maintenance of traffic costs he  
incurred due to delays, for related overhead costs incurred,  
for quantities of pay items constructed for which  
compensation was not made and for retainage withheld. The  
total amount claimed, including prejudgement interest, is  
\$19,147.40.

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

PART I Liquidated Damages 31 days @ \$100 = \$3,100.00

Work on the project was halted, delayed or rendered  
inefficient by adverse weather on ten days.

Work was delayed for 12 days during January 1988 by our  
inability to obtain the FC-4 asphalt mix required to  
construct the friction course. On January 11, 1988 we  
notified the Department of Transportation in writing of the

difficulty we were encountering in obtaining FC-4 mix and suggested substitution of FC-2 mix. On February 5, 1988 they approved substitution of type S-3 mix for FC-2 mix. If they had approved this substitution in a timely manner, we would have expedited the work which had to precede the friction course, thus allowing work on the friction course to begin earlier. These circumstances delayed the project 12 days.

We requested suspension of charging of the allowable contract time for Contractor's Vacation, as provided for in the contract, for December 24, 26, 28, 29, 30 and 31, 1987 and January 2, 1988. The Project Engineer gave verbal approval of this request, but in a later letter (December 31, 1987) the Department of Transportation denied our request. A total of seven days are requested here.

PART II    Delay Damages            \$2,684.00

This part of our claim is for reimbursement for maintenance of traffic and furnishing of construction traffic control items for the 22 day period during which work was extended beyond the allowable contract time because of adverse weather conditions and the unavailability of FC-4 asphalt mix as described in PART I of our claim.

PART III    Home Office and Field Office Overhead    \$2,637.80

This part of our claim is for home office and field office overhead we incurred for the 22 day period during which work was extended beyond the allowable contract time because of adverse weather conditions and the unavailability of FC-4 asphalt mix as described in PART I of our claim.

PART IV    Underpayment for Asphalt Items            \$2,789.12

We were paid for less than the actual quantities of the items Type S Asphaltic Concrete (Tons) and Asphaltic Concrete Friction Course we placed on the project. We believe that this material was placed in connections to adjacent properties.

PART V Retainage Withheld \$2,664.36

The amount claimed is the amount due us which has been retained by the Department of Transportation.

PART VI Prejudgement Interest \$5,272.12

This is interest at 1% per month for 38 months.

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

PART I

Two of the days on which the Contractor claims he was delayed by adverse weather were Sundays. Requesting additional contract time for these days is invalid because Sunday's were not counted in determining the elapsed contract time. A review of the project records indicates that weather conditions adversely impacted work progress on only one of the days claimed by the Contractor.

We do not agree that FC-4 mix was unavailable. This mix was routinely produced in Broward County, the county in which this project is located. February 1, 1988 was the earliest date on which the friction course could have been placed because other work which must precede this item had not been completed. Between January 11 and February 8, we were awaiting a response from the Contractor agreeing to a 30 cents per square yard reduction in the unit price for the friction course item.

We approved the change in asphalt mix type on the basis of Section 6.1 of the General Mini-Contact Specifications which sets out the type of mixes allowed. We decided that S-3 mix was suitable because it was compatible with the existing pavement adjacent to the work.

The Contractor failed to request the suspension of charging contract time 30 days in advance of the effective date as required by the contract. Also, uninterrupted prosecution of the work was essential because of the low percent progress versus the percent of project time used.

## PART II

It is our position that no additional compensation is due under the item Maintenance of Traffic because the Contractor did not work on the project during the first 50 days of the time allowed and actually worked on the project for only 32 days of the 106 days for which time was charged. In any event, compensation is not due because the delays on which it is based were not caused by the Department of Transportation. We paid for all construction traffic control items (unit price basis) during the entire time these items were in place on the project. We are due a rebate of the amount we paid for these items for the period between the date on which the allowable contract time expires (as may be extended by release of liquidated damages by the Board) and the date on which the project was conditionally accepted.

## PART III

The Contractor is not due reimbursement for overhead costs because the delays on which this part of his claim are based were not caused by the Department.

## PART IV

The quantity of Type S Asphaltic Concrete (Tons) for which the Contractor is claiming compensation is apparently the quantity that we deducted from this item in calculating the final pay quantity. This deduction was made to adjust for under thickness in certain areas of the asphalt surface course and shoulder base items which were paid for on the basis of square yards constructed.

## PART V

The total contract amount shown on the May 1, 1988 Engineers's Weekly Summary was an estimated amount subject to correction during preparation of the final estimate. The amount payable on the final estimate was a negative amount (amount due the Department) so the Contractor is not due any retainage.

The Board in considering the testimony and the exhibits

presented found the following points to be of particular significance:

PART I

It is not clear from the testimony exactly what transpired between January 11, 1988 and February 5, 1988. It appears that the Department of Transportation first wanted a rebate to change the friction course mix type from FC-4 to S-3 but ultimately approved the change without a rebate on the basis of Section 6.1 of the General Mini-Contract Specifications. It is not clear how Section 6.1 applies to this situation because the plans specify a specific mix for the friction course (FC-4).

The contract provides that the Project Engineer has the authority to suspend charging of contract time for Contractor's Vacation.

PART II

Compensation for furnishing construction traffic control items was included in payment under the appropriate unit price items. Weather delays and a portion of delay time claimed by the Contractor for unavailability of FC-4 asphalt mix were not the fault of the Department of Transportation.

PART III

Weather delays and a portion of delay time claimed by the Contractor for unavailability of FC-4 asphalt mix were not the fault of the Department of Transportation.

PART IV

The Department of Transportation did not present specific information on the deduction in the pay quantity for Type S Asphaltic Concrete (Tons).

The Contractor did not submit documentation to substantiate the quantity of Asphaltic Concrete Friction Course he claims to be the final quantity.

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 Release liquidate damages in the amount of \$1,200, the amount assessed for 12 days and pay for Asphaltic Concrete Friction Course at the contract unit price for that item.

PART II \$ 320.00

PART III \$ 400.00

PART IV \$ 825.60

PART V Nothing

PART VI \$1,043.33

The Department of Transportation is directed to base payment for unit price construction traffic control devices (Barricades, Construction Signs, Flashing Arrow Board and High Intensity Flashing Lights) based on the actual number of days these units were in place during construction, not withstanding the days after expiration of the allowable contract time.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$207.00 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$51.75 for Court Reporting Costs.

Tallahassee, Florida

Dated: 10 September 1991


Certified Copy:

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

10 September 1991  
Date

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

  
Kenneth Morefield, P. E.  
Member

  
John P. Roebuck  
Member

S.A.B. CLERK

SEP 13 1991

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STATE ARBITRATION BOARD  
STATE OF FLORIDA

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DEPARTMENT OF TRANSPORTATION )  
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**FILED**

PROJECT NO. 86100-3582 E4289

LOCATION: Broward County,  
Florida

**ORIGINAL**

RE: Arbitration In The Above Matter

DATE: Tuesday, July 16, 1991

PLACE: 1007 Desoto Park Drive  
Tallahassee, Florida

TIME: Commenced at 10:00 a.m.  
Concluded at 11:45 a.m.

REPORTED BY: LAURA MOUNTAIN  
Court Reporter  
Notary Public in and for  
the State of Florida at  
Large



**WILKINSON & ASSOCIATES**

Certified Court Reporters  
P.O. BOX 13461  
Tallahassee, Florida 32317  
904-224-0127



THE RECORD NEVER FORGETS



## 1 APPEARANCES:

2

## 3 APPEARING ON BEHALF OF THE STATE ARBITRATION BOARD:

4 Mr. H. E. "Gene" Cowger, Chairman  
 5 Mr. Ken Morefield  
 6 Mr. John "Jack" Roebuck

6

## 7 APPEARING ON BEHALF OF THE CONTRACTOR:

7

8 Mr. Rajendra U. Patel  
 9 Patrick B. Calcutt, Esquire

9

## 10 APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

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11 Mr. Robert H. Bourdon  
 12 Mr. Charles Manganaro  
 13 Mr. Donald R. Little  
 14 Nancy J. Aliff, Attorney at Law

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## I N D E X

19

## EXHIBITS

PAGE

20

Exhibit Nos. 1, 2 and 3 in evidence  
 Exhibit Nos. 4 and 5 in evidence

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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

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

5 Mr. Ken Morefield was appointed as a member  
6 of the Board by the Secretary of Transportation.  
7 Mr. Jack, John Roebuck was elected by the construction  
8 companies of the contract through the Department of  
9 Transportation.

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

13 Our terms of office began July 1, 1991, and  
14 expired June 30, 1993.

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

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

20 CHAIRMAN COWGER: The documents which put this  
21 arbitration hearing into being are hereby introduced as  
22 Exhibit No. 1. Exhibit No. 1 consists of the notice of  
23 arbitration hearing, the request for arbitration  
24 submitted by the contractor and the information that  
25 was accompanying that request.

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

3 (Off the record)

4 CHAIRMAN COWGER: During the time that we were  
5 off the record, there was an informal discussion of  
6 exhibits presented and we will now identify those  
7 exhibits.

8 DOT presented a package of information, the top  
9 piece of which is notice of beginning and completion of  
10 construction dated August 1, 1988, with several  
11 attached sheets. We will call that Exhibit No. 2.

12 The contractor presented an amendment to his  
13 claim which we will identify as Exhibit No. 3.

14 Does either party wish any additional time to  
15 examine the exhibits? Hearing nothing, we will  
16 proceed.

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

19 During this hearing the parties may offer such  
20 evidence and testimony as is pertinent and material to  
21 the controversy and shall produce such additional  
22 evidence as the Board may deem necessary to an  
23 understanding and determination of the matter before  
24 it.

25 The Board shall be the sole judge of the

1 relevance and materiality of the evidence offered.

2 The hearing will be conducted in an informal  
3 manner. The contractor will elaborate on their claim  
4 and then the DOT will offer rebuttal.

5 Either party may interrupt to bring out a point  
6 by coming through the Chairman. However, for the sake  
7 of order and the sake of our court reporter, I must  
8 instruct that only one person speak at that time. And  
9 please introduce yourself the first time you speak.

10 It's appropriate now for the contractor to begin  
11 his presentation. Before you begin, though, might I  
12 suggest that maybe it would be good to proceed through  
13 this to some degree point by point and do the rebuttal  
14 as we go.

15 MR. CALCUTT: I'm Patrick Calcutt with the firm  
16 Cummings, Lawrence and Vezina. We represent Rajendra  
17 Patel, president of Ila Construction Company, who was  
18 the prime contractor on the project that is the subject  
19 of this claim on the arbitration hearing.

20 The claim is comprised of two primary elements.  
21 First is the delay claim. The second is a payment  
22 claim based on quantity overruns and we believe  
23 wrongfully withheld retainage, although at the request  
24 of the Board, we will take them point by point,  
25 beginning with the delay claim.

1           To roughly summarize, Ila claims delays for bad  
2 weather during January of 1988 and early February,  
3 1988, and delays associated with inability to obtain  
4 Type FC-4 asphalt.

5           Ila also claims revision of liquidated damages  
6 associated with, we believe, wrongful refusal to grant  
7 the contractor the automatic vacation suspension for  
8 the Christmas holiday period of 1987, '88.

9           I would like to turn this over to Mr. Patel so he  
10 can explain the elements first of the weather claims  
11 and the inability to obtain the FC-4 asphalt.

12           MR. PATEL: I'm Rajendra Patel. I am the  
13 president of Ila Construction Company. The contract  
14 was awarded to us on the 15th of July, 1987, with the  
15 notice to proceed issued on September 29th, 1987.

16           We had a preconstruction meeting where we had  
17 indicated to the Department of Transportation that we  
18 would start the job somewhere around about the 2nd of  
19 November. The 2nd of November, the starting date was  
20 given to them in consideration of one of the jobs which  
21 was a turnpike job which we were able to start also  
22 just before that.

23           The turnpike job was canceled and subsequently  
24 this job was delayed, also. And we started the job  
25 sometime in the latter part of November 30th, 1987.

1           We expected both the jobs to start at the same  
2 time, but because the one job was canceled, we thought  
3 that we would move the personnel from one of our other  
4 jobs, which was ongoing at the time, to this particular  
5 job without transferring a lot more equipment from our  
6 either tractors or from lifting of the other equipment  
7 necessary to do this particular job.

8           When we started the job, we had all intentions of  
9 finishing the job within the time period that we were  
10 allocated. So at the time when we started the job, we  
11 started the job with the intention of time.

12           However, during the course of our action, we  
13 presume that we would be given automatically, according  
14 to the Florida Department of Transportation standard  
15 section, the allowance for the Christmas holidays. And  
16 when we were -- when we requested the automatic  
17 suspension of time, it was given to us verbally by the  
18 project engineer.

19           And we did not really carry out any work during  
20 that week. We had complete shut down from Christmas,  
21 the 24th, until the 1st of January or 2nd of January,  
22 assuring that nothing would be -- we won't be charged  
23 for these calendar days.

24           However, during the week of Christmas, we were  
25 told that we should meet the foreman's request

1 forgetting the suspension of time, which we did.

2 And then on the 3rd or 4th of January, we  
3 received the letter from the DOT telling us that  
4 they -- we are far behind in the work, we are not going  
5 to give you automatic extension of time. But then  
6 again, it was too late for the fact.

7 Also in the vicinity of Brevard County and Dade  
8 County, none of the asphalt plants had the capacity of  
9 furnishing FC-4.

10 We had done several jobs in other districts where  
11 we had installed FC-4 without any problem.

12 But FC-4 was a problem for asphalt plants in  
13 Brevard County and Dade County.

14 While this thing was going on, we contacted  
15 several asphalt plants and we also requested Weekly  
16 asphalt plant turning out the material we needed, we  
17 will be more than happy to bring the material from  
18 outside and truck it in.

19 However, for a small lot or small batch of  
20 asphalt that we were going to need on this particular  
21 job and one other job at the time, most of the asphalt  
22 plants were refusing to meet the quantity that we  
23 needed for this particular job.

24 Meanwhile, we submitted the paperwork to the  
25 proper authority asking them for variance of work, what

1 we should do. And then we had to wait about three to  
2 four weeks to get the answer from them what exactly was  
3 required of us to do on the job in lieu of FC-4.

4 We also lost a lot of time due to weather, and  
5 the record will tell from the DOT daily logs. We lost  
6 several days on account of that.

7 Our basic claim really is for the -- really, in  
8 package number two, amounts to the liquidated damages,  
9 which is 3100. And on account of delays, a further  
10 claim for maintenance of traffic and the field office  
11 overhead expenses.

12 If you would like to reflect back and go back on  
13 Exhibit No. 3, the engineer's weekly summary report  
14 that indicates an item that shows the \$96,877.90 as an  
15 item. And we indicated that the contract was overrun  
16 by 8 percent.

17 We did not really claim 8 percent extra time on  
18 the job being above what we were really asked to do on  
19 the job, but I believe that considering all the  
20 elements, we should be granted 8 percent more allowance  
21 on the overall duration of the job, also.

22 During the course of the final settlement the  
23 Department -- we gave them our correspondence and a  
24 copy of all the asphalt tickets that would validate  
25 what exactly had been overrun on the job, to which



1 subsequently we received no letters or no payment.

2 We never received a final estimate on the job  
3 from the Department of Transportation in spite of our  
4 several requests and several phone conversations with  
5 the resident engineer, Mr. Eddie Yue.

6 In our file and in the various exhibits you will  
7 see various correspondence that transpired between us  
8 and Eddie Yue.

9 The asphalt -- our basic claim really amounts to,  
10 as per Exhibit No. 1, to the amount of 8,000 --

11 CHAIRMAN COWGER: May I interrupt? If it's  
12 already in the documents, you don't need to repeat it.  
13 You don't need to repeat any of these amounts that are  
14 already documented.

15 MR. PATEL: Okay.

16 CHAIRMAN COWGER: That will save us a little  
17 time.

18 MR. PATEL: Sure. Basically, then, we are here  
19 to claim, against the Department of Transportation,  
20 what we have given to you as package number one and  
21 package number three. And I will be more than happy to  
22 answer any questions.

23 CHAIRMAN COWGER: Before the DOT is allowed to  
24 begin their rebuttal, does either one of the Board  
25 members have any questions?

1 MR. MOREFIELD: One. What was your reason for  
2 the overruns on the asphalt?

3 MR. PATEL: The overrun on the asphalt,  
4 I believe, because of the adjoining property, we were  
5 requested to do the leveling course and resurfacing  
6 course.

7 And the several course and resurfacing course,  
8 including the base course, all the ground pitch to the  
9 adjoining property and the driveway, we were required  
10 to do a lot more additional work so that all the  
11 drainage or it would not really drop into the parking  
12 lot of the adjoining property in a very steep manner.  
13 We had to correct all that.

14 CHAIRMAN COWGER: Anything else, Mr. Morefield?

15 MR. PATEL: Also, the contour of the  
16 cross-section did not work out exactly the same way as  
17 the contour that existed in the overall picture.

18 MR. ROEBUCK: In your FC-4 case, realizing with  
19 the small quantity, that can be a problem, did you have  
20 any commitment prior to commencement that it would be  
21 available?

22 MR. PATEL: Commencement of bidding of the job?  
23 Well, we never had any problem trying to get FC-4 in  
24 the other district, and we believed at the time we bid  
25 the job that DOT, if they required us to bid the item

1 on FC-4, that it wouldn't be any problem getting FC-4.

2 We were relying on the fact that DOT had  
3 specified FC-4 and they must know the availability of  
4 the asphalt in the vicinity.

5 CHAIRMAN COWGER: Let me ask a question to make  
6 sure I understood some testimony. You said that you  
7 contacted several sources in attempting to get the  
8 FC-4, couldn't obtain it, and one of the principal  
9 reasons that you couldn't obtain it was because the  
10 plants didn't want to produce such small quantities.

11 MR. PATEL: Not only that, but in Brevard and  
12 Dade County, we have never installed FC-4, according to  
13 most of the asphalt plants that we contacted. They had  
14 always gone with the Papon mix, which is FC-2.

15 MR. MOREFIELD: At the start time, you said there  
16 was another contract on the turnpike that caused you  
17 delay on this project.

18 MR. PATEL: That's correct.

19 MR. MOREFIELD: And you said that one was  
20 ultimately canceled.

21 MR. PATEL: It was canceled --

22 MR. MOREFIELD: When was that canceled in  
23 relation to the --

24 MR. PATEL: We were scheduled to start that job  
25 just before November 15th or so. In the first week of

1 November, if I recall correctly, that's the time when  
2 we were supposed to start that job.

3 MR. MOREFIELD: But this job was supposed to  
4 start --

5 MR. PATEL: At the same time that we were going  
6 to start the other job. I was going to move the  
7 equipment to take care of both the projects at the same  
8 time.

9 Both the projects required asphalt work, and  
10 I didn't really want to have at the start our asphalt  
11 equipment over there, because the job doesn't really  
12 pay that kind of money to have another site of  
13 equipment.

14 MR. MOREFIELD: Now, just so I get the date  
15 right, you started work on this particular project, the  
16 one in question, on November 30th or thereabouts.

17 MR. PATEL: That is correct.

18 MR. MOREFIELD: And that was about 50 days?

19 MR. PATEL: No.

20 MR. MOREFIELD: The contract day on which the  
21 contractor began work.

22 MR. PATEL: We had promised DOT that we would  
23 start the job on November 2nd as per the  
24 preconstruction meeting that we had with them. In  
25 spite of the fact that we started on the forty-ninth or

1 fiftieth day, we still had all the intentions of  
2 finishing the job.

3 MR. MOREFIELD: I know, but back that up, now.  
4 I'm trying to relate that back to your turnpike job, if  
5 you had started this one, which one was supposed to  
6 start first, this one or the turnpike?

7 MR. PATEL: Both of the jobs were going to start  
8 at the same time.

9 MR. MOREFIELD: You just told me November 15th.

10 MR. PATEL: November 15th --

11 MR. MOREFIELD: Back off 49 days.

12 MR. PATEL: November 2nd was the time when we  
13 told them that we would start the job.

14 MR. MOREFIELD: Okay, I'm just trying to  
15 understand the 50 days. It says, contract day on which  
16 the contractor began work, 50. What was the calendar  
17 date? Was that November 30th?

18 MR. PATEL: November 30th, that's correct.

19 MR. MOREFIELD: So you back up 50 days from that.

20 MR. PATEL: We were going to start this  
21 particular job on November 2nd and then we were going  
22 to move the equipment from that job to the turnpike job  
23 and we were going to move the equipment back and forth  
24 to take care of both the projects at the same time.

25 MR. MOREFIELD: Okay, I've got you.

1 CHAIRMAN COWGER: Any further questions? DOT, as  
2 you begin your rebuttal, I would prefer or the Board  
3 would prefer that -- let's deal with them a little more  
4 item by item. Let's talk about the weather delays and  
5 then let's talk about the delays due to FC-4 and  
6 proceed on in that manner, if you would, please. So if  
7 you will start.

8 MS. ALIFF: Thank you, Mr. Cowger. My name is  
9 Nancy Aliff and I'm an attorney for the Department of  
10 Transportation. And with me today is Bob Bourdon,  
11 Charlie Manganaro and Don Little.

12 And just to briefly -- I will briefly summarize  
13 the Department's position and then I will turn this  
14 over to Mr. Bourdon and the other gentleman to detail  
15 it for the Arbitration Board.

16 Basically it's the Department's position that the  
17 projects delays were due solely to the contractor not  
18 starting the project until November 30th, 1987.

19 The time charges on this particular project  
20 began, and it's undisputed from what counsel for the  
21 contractor and also Mr. Patel have stated, that the  
22 time charges began on October 12th, 1987.

23 That was addressed at the preconstruction meeting  
24 and we have submitted to the Board a copy of the  
25 minutes of the preconstruction meeting where the

1 contractor was advised that the job would probably  
2 begin on October 12th, 1987 and that this was a 75  
3 calendar day project with a estimated completion date  
4 of December 11th, 1987.

5 Mr. Patel submitted a letter also on  
6 September 21st of 1987, which is included in the  
7 packet, saying that work would begin on or about  
8 November 2nd, 1987. No work had begun by  
9 November 30th, 1987.

10 And also in the packet is a letter from  
11 Mr. Bourdon to Mr. Patel, saying that the Department  
12 was seriously concerned with the lack of activity on  
13 the project, that we had issued a notice to proceed on  
14 September 29th, 1987, and as of November 30th, 1987, 50  
15 days of the 75 day contract had elapsed and no work was  
16 done.

17 Addressing particularly the specific dates which  
18 are set forth in the claim, as to weather delays, many  
19 of these delay days set forth with Sundays, which were  
20 not charged, and the Department has gone back through  
21 the diaries, and the only day, of the days listed,  
22 where we can find any impact due to weather was  
23 February 8th, 1988.

24 And with that I will turn this over to  
25 Mr. Bourdon.

1           CHAIRMAN COWGER: Before Mr. Bourdon starts,  
2 would you explain to me a little bit about that Sunday  
3 business.

4           MR. BOURDON: Gene, I can cover that.

5           CHAIRMAN COWGER: Okay, tell us why it was that  
6 you said Sunday was not a chargeable day.

7           MR. BOURDON: Okay. Robert Bourdon, Department  
8 of Transportation. The mini contract specifications  
9 which you do have a copy of the full contract, does not  
10 charge Sundays in the contract time counting process,  
11 which is provided to the contractor.

12           In reviewing the days that the complaint has  
13 alleged delay days in rain, we did go back through and  
14 review all the records. I do have a handout that I  
15 will provide to all members of the Arbitration Board  
16 here this morning after I have completed that will  
17 highlight specifically each day.

18           For instance, the 5th and 6th of January, '88,  
19 there was no work on the project at all. Mr. Patel was  
20 still on vacation.

21           MR. ROEBUCK: You say no work but not due to  
22 weather?

23           MR. BOURDON: That's correct. He was just not on  
24 the project. He had not returned from his stated  
25 vacation period, which I believe was the 22nd of --



1 21st of December until January 10th, I believe, his  
2 correspondence indicated the vacation time that he was  
3 requesting. And I will get into that a little bit  
4 deeper.

5 One point that Mr. Patel had made in his  
6 presentation was that what caused the delay to this  
7 project was a delay to the turnpike job. The job that  
8 Mr. Patel was referring to was a bridge repair project  
9 that Mr. Patel was successful in obtaining.

10 I do not have the records here present with me,  
11 but my recollection of the project and that was because  
12 of my direct involvement in the negotiation to close  
13 the project out, was that the project was supposed to  
14 start in the early to latter part of September, in that  
15 time frame, August, September time period.

16 It was an emergency project. It was on the  
17 turnpike. A ramp bridge at Pompano interchange that  
18 had the ramp basically closed down and limited to  
19 traffic.

20 Mr. Patel, an assumption on my part, because of  
21 the numerous contracts that he had received during the  
22 June bidding period, which I believe there were six or  
23 seven of them, had obtained him or had gotten himself a  
24 little bit stretched out.

25 The turnpike project was a serious project. We

1 were pushing him on a daily basis as to what his  
2 intention was.

3 It got down to about the November period of time  
4 and my recollection was the early part of November that  
5 we became very concerned over his lack of starting the  
6 turnpike project. And if he had gone any further, he  
7 would be into the middle of the tourist season with the  
8 turnpike severely restricted because of the  
9 construction. That we canceled the contract.

10 It took approximately a year and a half to two  
11 years from that point, if I'm not mistaken, to resolve  
12 the buy-out \*\*provisions of the contract.

13 So in response to his statement that this  
14 particular project on 441 may have been delayed because  
15 of the turnpike project, but the turnpike project was  
16 delayed because Mr. Patel wasn't able to get out there  
17 and do the work, a very serious problem.

18 MR. PATEL: Can I interject something right here?

19 CHAIRMAN COWGER: Okay, go ahead right there, if  
20 you would like to.

21 MR. PATEL: The turnpike project was delayed  
22 because this required a special beam. The special beam  
23 that had to be fabricated and delivered onto the job  
24 site was a big problem.

25 The particular type of beam that was requested in

1 the specification and contract documents, we already  
2 had informed the parties concerned that we will  
3 schedule the job, and we had a confirmed delivery date  
4 on that particular piece of beam.

5 That particular piece of beam kept the whole  
6 project -- the particular piece of beam was not going  
7 to be delivered until about the 25th or so of November.  
8 And that's the reason why we were delaying the project  
9 and the schedule was until that time. And this  
10 reference has been given, the documents were provided  
11 to them for that fact. Go ahead.

12 CHAIRMAN COWGER: Mr. Bourdon, we let him  
13 interrupt. Before you come back, at some point in  
14 time, be sure to address specifically what he just  
15 said.

16 MR. MOREFIELD: Before he leaves, let me ask  
17 Mr. Patel a question. So you are saying anticipated  
18 the beam in the turnpike work starting, like you said,  
19 about the same time as this project?

20 MR. PATEL: That's correct.

21 MR. MOREFIELD: But you could have started this  
22 one back on October 12th. So why didn't you start the  
23 other one while you were waiting on the beam?

24 MR. PATEL: I wanted to start both the projects  
25 in a manner so that I can roll out the equipment on

1 both the projects at the same time.

2 MR. MOREFIELD: So it was your decision to delay  
3 the project, is that what you are saying?

4 MR. PATEL: The decision to delay the project  
5 also was based on the fact that the beam was going to  
6 be delivered at the time we were going to start this  
7 project at the same time, and the project was  
8 completely canceled.

9 MR. MOREFIELD: I understand, but it was your  
10 decision to try to coordinate both of them?

11 MR. PATEL: Both the projects at the same time,  
12 that's correct.

13 MR. ROEBUCK: Did you order the beam in fact?

14 MR. PATEL: Oh, yes.

15 MR. ROEBUCK: And that's part of your claim on  
16 the close out of the job?

17 MR. PATEL: Right, that's correct.

18 CHAIRMAN COWGER: I think that it's time to let  
19 Mr. Bourdon come back now.

20 MR. BOURDON: In response to Mr. Patel's  
21 statement, the beam was a very key element to the  
22 contract and in fact the specifications required no  
23 work to start until the beam was on site.

24 The problem was, Mr. Patel was not ordering the  
25 beam in a timely fashion and that was what was causing

1 the problem. He had a financial problem on a previous  
2 construction job that had drained his funds, in my view  
3 of it, and I think, instead of belaboring the point  
4 here, I think that the Department would be willing to  
5 provide a copy, if the Board's pleasure is, of that  
6 particular contract file.

7 I think the record speaks for itself in relation  
8 to the correspondence between Mr. Patel and the  
9 Department, and the actions the Department did take.

10 MR. PATEL: The delivery of the beam at the time  
11 had no reflection of my financial capacity or anything.  
12 My financial capacity was not known to the Department.  
13 The Department made a business of knowing and creating  
14 my goddamn financial difficulties.

15 MR. BOURDON: If it's the Board's pleasure, I'll  
16 move on.

17 CHAIRMAN COWGER: Let's move on. I don't think  
18 we need to hear any more of that.

19 MR. BOURDON: The weather areas that were covered  
20 in the claim as submitted, I think some letters that  
21 are very key that are in the package that we handed out  
22 as an attachment number two. There's a letter in there  
23 dated the 26th of February, 1988 that speaks of the  
24 request for weather delays from Mr. Patel. It has no  
25 details whatsoever.

1 I believe the letters are in chronological order,  
2 also, in the package.

3 And he requested 22 days with no details as to  
4 where the delays were, which is a requirement of the  
5 specification.

6 The Department responded back to Mr. Patel on the  
7 3rd of March, '88. Again, the letter is in the package  
8 requesting details as to what days he was delayed. And  
9 requested that information be furnished back so that it  
10 may be analyzed.

11 The Department again, on the 22nd of March, 1988,  
12 sent a second letter again concerned over no response,  
13 asking for the details. We never did receive any  
14 response to our request until such time as the  
15 arbitration booklet was filed.

16 So we have responded to them in that fashion.  
17 And again, as Ms. Aliff has covered, of all the days in  
18 the claim, one day is the maximum that could be  
19 considered as a delay day, and that was the day of  
20 February where it rained all day long, from the daily  
21 diaries.

22 The other days, there was either major asphalt  
23 work done, the contractor stopped at 2:30 after a  
24 concrete pour, and the records do support that  
25 analysis.

1           The FC-4 delays, as covered in Mr. Patel's part A  
2 of his delay period, in his request for arbitration,  
3 the Department's first notification from Mr. Patel on  
4 the problem with the FC-4 was made on the 11th of  
5 January, 1988 in a handwritten letter to the  
6 Department.

7           Outlining, which is in the package, I believe,  
8 also, his response to the problem, which I would like  
9 to stress material supply problem normally is not a  
10 contractor or is not a Department-caused problem.

11           Normally it goes a supply problem that the  
12 Department does review and if in fact it was  
13 substantiated, would look to a time extension,  
14 noncompensable. We did not receive any correspondence  
15 other than the 11th, I am told, later on in the  
16 process.

17           The letter of the 8th of February states that he  
18 was delayed 12 days because of the asphalt. Again, the  
19 Department's position at that point was that there was  
20 not a delay caused by the Department and therefore  
21 there was not a compensable delay to the project that  
22 was caused by us.

23           The approval of the S-3 usage asphalt was made to  
24 match the existing configuration of the project in the  
25 area where he was working and was done at the

1 Department's request, in concert with his problem that  
2 he alluded to in his 11th of January letter.

3 And it was made in relation to Section 6.1 in the  
4 mini contract specifications, on page nine, that talks  
5 to the substitute being at the engineer's approval.

6 The project records, in reviewing, indicate that  
7 Ila was not ready to place the final S-3 until after  
8 the 1st of February, '88, and that he did not in fact  
9 work until the 5th of February, '88.

10 And there's a note on the asphalt plant report of  
11 that day that indicates that the S-3 was approved and  
12 that note was made by the asphalt plant inspector, the  
13 roadway inspector, to document the file, that it had  
14 been approved.

15 Again, the Department did not see any exposure  
16 to the delay, because it was not a cause to us.  
17 So therefore we do not feel that there's any  
18 compensable overhead time that should be considered  
19 in the process.

20 The Department -- I will admit to a laxity, if  
21 you will. There's records or letters in the file that  
22 indicate that the Department did accept Mr. Patel's  
23 request to change from FC-4 to S-3, and that if fact it  
24 was agreed that there would be a rebate back to the  
25 Department of 30 cents per square yard.



1           That supplemental agreement was never processed  
2 by the Department. We never took advantage of the  
3 rebate simply because of how the project was then  
4 finally coming do you know the line, if you will.

5           We feel that there's a potential rebate that is  
6 due us in that instance.

7           To go on into the liquidated damages area, just  
8 as a summary, which would be in their damage portion of  
9 their booklet, I have taken the liberty --

10           CHAIRMAN COWGER: Let me stop a minute, if we  
11 could, because I think there might be some questions  
12 about the FC-4 delay before you move into liquidated  
13 damages. Let's get those out on the table.

14 Mr. Roebuck?

15           MR. ROEBUCK: You heard, on January 11th,  
16 Mr. Patel ask you for the approval of an alternate  
17 surface scheme for the asphalt. When did you approve  
18 it?

19           MR. BOURDON: The approval was noted on the  
20 asphalt report on the 5th of February and then the  
21 Department, in verbal discussions with Mr. Patel on the  
22 8th of February, '88, Mr. Patel was responding back to  
23 the Department's discussions with him.

24           MR. ROEBUCK: You went formal, but he had already  
25 put you on notice that he was having a problem?

1 MR. BOURDON: That's correct. On the 11th, he  
2 had noted that there was a problem.

3 MR. MANGANARO: By verbal request we also asked  
4 for additional information. Again, a proposal back to  
5 the Department.

6 MR. ROEBUCK: And you had an internal document  
7 approving it earlier than his formal request of the 8th  
8 of February?

9 MR. BOURDON: That's correct.

10 MR. PATEL: During the -- as soon as we started  
11 the job, when we tried to line up the asphalt plant for  
12 FC-4, we did make the project engineer and the  
13 Department aware of the problem, which was done  
14 verbally.

15 But on the first week of January we were asked by  
16 the Department to submit a request to change, formally,  
17 and that's when we formally made the request. That did  
18 not really mean that the Department was aware on that  
19 particular day only. They were aware of the problem a  
20 long time before that.

21 MR. MOREFIELD: Was this rebate you were talking  
22 about ever written? Was that just oral?

23 MR. ROEBUCK: There was an offer by the  
24 contractor.

25 MR. MOREFIELD: It's in here somewhere,

1 documented?

2 MR. BOURDON: Yes. February 8th, 1988, which was  
3 the summation of the discussions that were being held  
4 by the Department and the contractor to resolve --

5 MR. ROEBUCK: And you accept the sloppy clerical  
6 work for putting through this change order, but not the  
7 credit to it, correct?

8 MR. BOURDON: That's correct. We never processed  
9 a supplemental agreement. And part of that we'll get  
10 into in discussions on the asphalt, that is in the  
11 contractor's second hearing.

12 MR. MOREFIELD: Did you try to verify the  
13 availability of FC-4 or did you just take the  
14 contractor's word that he couldn't get it?

15 MR. MANGANARO: Well, again, FC-4, as far as we  
16 understand, again, probably the asphalt supplier would  
17 have a problem supplying FC-4 only because of the  
18 smaller quantity and producing it at that time.

19 But FC-4, back to Mr. Patel's statement saying  
20 that FC-4 has never been used in our district, that's  
21 definitely incorrect, because we've placed FC-4 within  
22 Broward County quite a bit. You know, on not heavily  
23 traveled roads, but again, on secondary roads, FC-4 is  
24 used on them.

25 So as far as the use of FC-4, again, during that

1 period of time, we did not explicitly get with weekly  
2 asphalt, but again, the commitment, we felt, if  
3 Mr. Patel had brought it to the Department's attention  
4 earlier out, we could have possibly, again, attended to  
5 the matters prior to them having a problem or being a  
6 delay.

7 Again, Mr. Patel could have, in the beginning,  
8 knowing that he had to have FC-4, contacted Weekly,  
9 known right at that point, or whoever the supplier  
10 would have been, to know that they would not provide  
11 that material, he would have known right off, at the  
12 beginning, and notified us at the beginning and this  
13 would not have been a problem later on in the contract.

14 MR. PATEL: We had contacted Weekly Asphalt, we  
15 had contacted Community Asphalt, we had contacted Hard  
16 Drive of Delray, we had contacted Rancor Construction,  
17 and we had also contacted State Paving.

18 And all of them had indicated to us that they  
19 have never installed FC-4 in the vicinity, they have  
20 always substituted FC-2 or S-3 for FC-4.

21 MR. BOURDON: In response to what I think  
22 Mr. Patel's bottom line statement is, the pertinent  
23 point, the Department does accept an S-3 as a  
24 substitute. It's a normal substitute to meet existing  
25 conditions.

1           Again, I think the record is clear as to the  
2           availability of FC-4 within the general area. It is  
3           obviously extensive.

4           MR. MANGANARO: We feel that it's maybe the  
5           quantity that he may have had a problem with, having  
6           the supplier supply it.

7           MR. BOURDON: It's a scheduling problem.

8           CHAIRMAN COWGER: I think the Board has heard  
9           enough on that, but let me ask a question. Mr. Patel,  
10          DOT testified a moment ago that you were not in a  
11          position to begin placing FC-4 or, as you ultimately  
12          placed S-3, until approximately February 1st of 1988.

13          What do you have to say to that?

14          MR. PATEL: Again, we go by the schedule and what  
15          we have on the job. Unless and until we receive the  
16          confirmation of what we are supposed to be doing,  
17          there's no point in scheduling something which we  
18          cannot do and at the time we have to wait for the damn  
19          thing, anyway.

20          In other words, if we would have known, for  
21          example, January 11th, that -- or even the next day,  
22          when we submitted the letter to them, that, hey, S-3  
23          would be -- you can substitute, we would have rushed  
24          that job, we would have put all of our efforts in  
25          finishing the job in one week.

1           CHAIRMAN COWGER: DOT, can you tell us in between  
2 the dates of the handwritten letter --

3           MR. ROEBUCK: The 11th and the 5th, February 5th,  
4 why, if it's so customary, Bob, to provide at quick  
5 substitution of those two materials, why wouldn't it be  
6 just the same day approval?

7           MR. BOURDON: Normally it is the same day  
8 approval. What was holding it up was Mr. Patel's  
9 response back of reduced cost of the material, which he  
10 did not respond --

11          MR. ROEBUCK: You were awaiting that letter of  
12 February 8th or something to see what the credit was?

13          MR. BOURDON: That is correct. That was the  
14 major holdup of it. As far as the formal approval, we  
15 didn't get that letter until the 8th, but we allowed  
16 him to go to work on the 5th, which was several -- a  
17 few days after he was available to go to work, in light  
18 of his asphalt order.

19          MR. PATEL: What they are claiming is, on the 1st  
20 of February, they gave us the approval to proceed with  
21 S-3 while they were still waiting for the letter, until  
22 such approval. And the letter was issued on February  
23 8th? I think somebody's lying here really badly.

24          CHAIRMAN COWGER: That's a pretty strong  
25 statement. What are they lying about?

1 MR. PATEL: The point is, Mr. Bob Bourdon  
2 indicated to you guys that they were waiting for the  
3 letter for the rebate to come through so they can give  
4 the approval. The approval was already given on  
5 February 1st, and the letter was issued on February  
6 8th? The whole statement is contrary to what the facts  
7 are.

8 CHAIRMAN COWGER: I think we understand that.  
9 Let me ask DOT, now, the question I started to ask a  
10 moment ago. Between the date of the handwritten letter  
11 of January 1, 1988 and the date that you have said that  
12 the contractor could have reasonably begun work in  
13 placing what was ultimately S-3, what was going on on  
14 the project during that time, and was there something  
15 on the project that hadn't been completed that needed  
16 to be completed preceding beginning work on the S-3?

17 MR. MANGANARO: Well, at this point, I can give  
18 you a handout for each --

19 MR. ROEBUCK: Can you describe it?

20 MR. MANGANARO: Yes, I can describe it and also  
21 give you a handout.

22 CHAIRMAN COWGER: Just tell us about it.

23 MR. MANGANARO: All right. Charlie Manganaro,  
24 with the Department of Transportation. We have  
25 documented or summarized the daily diaries onto legal

1 sheets. And 1-3-88, again, that was a Sunday, there  
2 was no work production. Again, this is during the  
3 period of time that they asked for vacation, so there  
4 is no real dailies. There was 1-3-88 that says no  
5 work, and then I have a note, contractor requests  
6 vacation, was denied due to poor production.

7 Then on 1-10-88 is when contract time corrected,  
8 no time to be charged for Sundays and holidays.

9 And then 1-11, 76 calendar days, remove curb and  
10 gutter and sidewalk and asphalt at northwest corner,  
11 remove curb and gutter, left turn lane.

12 1-12, paved from 947 to 942, left at base.  
13 Excavated and removed sidewalk and drain at northwest  
14 corner, formed, graded and compacted same.

15 1-13, excavated and removed existing asphalt in  
16 right turn lane, excavated and removed existing asphalt  
17 in another right turn lane, hauled, dumped, spread fill  
18 in widening area. Poured concrete in sidewalk at  
19 northwest corner.

20 On the 14th, placed forms for curb and gutter,  
21 excavated and cleared for flared end section, paved  
22 right turn lane.

23 On the 15th, placed asphalt for curb pad, paved  
24 ride turn lane, left of centerline. On the 16th, no  
25 work. It was a Saturday. On the 17th, no work, it was



1 a Sunday.

2 On the 18th, poured concrete curb and gutter. On  
3 the 19th, removed existing curb and traffic separator.

4 On the 20th, removed existing median traffic  
5 separator. On the 21st, removed existing head wall,  
6 hand graded and dressed embankment.

7 On the 22nd, placed Type 3 asphalt, right turn  
8 lane, poured Class 1 concrete for curb and gutter.

9 On the 23rd, removed forms for curb and gutter,  
10 saw joints.

11 On the 24, it was a Sunday, no work.

12 On the 25th he set structure S-7 and four foot of  
13 24-inch RCP.

14 On the 26th, he formed and poured curb and  
15 gutter, median. Excavated and placed ditch bottom  
16 inlet, northwest corner, poured median traffic  
17 separator, removed existing head wall.

18 On the 27th, he poured curb and gutter, placed  
19 asphalt for left turn lane taper.

20 On the 28th, placed asphalt from station to  
21 station.

22 Placed four-foot stanchion for structure S-5 and  
23 S-4. Poured concrete collar for same. Set manhole,  
24 removed curb and gutter forms and reset same.

25 1-29-88, saw cut joints, placed eight foot of

1 pipe, poured median traffic separator.

2 On the 30th, no work, a Saturday. On the 31st,  
3 no work, a Sunday.

4 2-1, removed median nose section, poured median  
5 separator. Also curb and gutter.

6 On the 2nd, no work. On the 3rd, no work. On  
7 the 4th, no work.

8 On the 5th, excavated for placement of 24-inch  
9 RCP, paved with Type S-3 at right turn lane. Note,  
10 showing approval to use Type 3 in lieu of FC.

11 CHAIRMAN COWGER: DOT, I think that we got all  
12 that testimony. We appreciate that.

13 Is it your position that due to the work that you  
14 just described to us that was going on during the month  
15 of January, shall we say, that it really wasn't very  
16 practical for the contractor to be placing FC-4 or S-3,  
17 as the case may be?

18 MR. MANGANARO: That's correct.

19 MR. BOURDON: Most of the work during that period  
20 of time was in the right turn lane, which was the  
21 primary part of the work on the contract and the S-3  
22 that he was putting down on the 5th was the base or the  
23 structure course of the project. And then it was  
24 finished out with S-3. And that was the date that it  
25 was approved on.

1           MR. PATEL: Some of the work that he is referring  
2 to as S-3, S-3 was also used for leveling course, so  
3 don't misinterpret that.

4           CHAIRMAN COWGER: We understand. Looking at the  
5 plans, you had a base course of asphalt, I believe --  
6 yes. And a surface course of S-3 and then a friction  
7 course of S-3. We understand.

8           Unless there are further questions, I think that  
9 we ought to proceed on, now, Mr. Bourdon, with the  
10 liquidated damages.

11          MR. BOURDON: Okay. In the liquidated damages  
12 area, I did make an analysis of the three areas that  
13 were questioned in Mr. Patel's presentation. He  
14 requested ten days for weather. The Department sees at  
15 this point one day.

16          The asphalt 12-day delay, the Department sees  
17 zero, but I have taken the liberty of moving it out to  
18 the full 12 days, at the discretion of the Board.

19          MR. ROEBUCK: A question about the previous  
20 thing. In your earlier testimony about the dates that  
21 he set forth, you mentioned that there were many  
22 Sundays there.

23          MR. BOURDON: That is correct.

24          MR. ROEBUCK: Is there more than one Sunday?  
25 I can't find but one Sunday.

1 MR. MANGANARO: There were two.

2 MR. BOURDON: There was a Sunday charged on 1-10,  
3 and 2-7 was a Sunday, also.

4 MS. ALIFF: Would you, for the record, summarize  
5 what each of the dates were?

6 MR. BOURDON: The dates are in the book. I don't  
7 think that we need to go back over it. We will give  
8 you a copy of this.

9 MR. MANGANARO: And again, I have it summarized,  
10 also, here.

11 MR. ROEBUCK: There were only two Sundays. I got  
12 confused on how many Sundays.

13 MR. BOURDON: But as to the asphalt on the  
14 liquidated damages, the Department has taken the  
15 liberty of showing zero to 12 days, for the discretion  
16 of the Board, as a liquidated damages delay, and  
17 I express that aspect.

18 CHAIRMAN COWGER: Now, let me ask you this. You  
19 are saying that -- you're saying that the Board should  
20 find that the contractor is due relief for liquidated  
21 damages for between one and 12 days as a noncompensable  
22 delay?

23 MR. BOURDON: On the asphalt, the Department's  
24 position, obviously, is zero, but we feel that it  
25 should not be a compensable delay.

1 CHAIRMAN COWGER: I understand.

2 MR. BOURDON: But I did show, for calculations  
3 further down in the presentation, to assist the Board  
4 in the other areas, you will see the reason why I  
5 showed the 12, up to 12.

6 On the vacation area, the contractor requested  
7 seven. Again, the Department's position is zero, but  
8 did stretch it out for seven days to the Board's  
9 discretion.

10 I have highlighted that as the mini contract  
11 specifications in Section 5.9, page 13 requires 30 days  
12 written notification for vacation periods.

13 Also, the Department has the option to reject due  
14 to traffic delays. The contractor's request for  
15 vacation was received on the 21st of December. It  
16 exceeded the days that would be the automatic that he  
17 had testified to.

18 MR. MOREFIELD: Let me ask a question, because  
19 Mr. Patel did say -- I believe he said the project  
20 engineer or somebody gave verbal approval for vacation,  
21 or something like that. What's the Department's  
22 response on that?

23 MR. BOURDON: Further on, that he was advised  
24 that 14 days was the maximum number of days allowed a  
25 contractor on vacation, and that was verbally given to

1 him. The record is not quite clear as to whether he  
2 was verbally approved by the project engineer. But the  
3 written approval --

4 MR. MOREFIELD: For the dates requested?

5 MR. BOURDON: That is correct. But the written  
6 approval on the 24th, which is three days after his  
7 original request, he was advised that the maximum to be  
8 allowed was 14. He had exceeded 14 in his request, and  
9 in fact, the days that he was off the job, he stayed  
10 off the job for the days that he had in his letter.

11 We provided a written denial under my signature  
12 on the 12th -- on the 31st of December. And the  
13 contractor did not return to work until the 11th of  
14 January.

15 MR. PATEL: At this point, I would like to bring  
16 out another point in this issue. And that's the fact  
17 that the contract amount was overrun by 8 percent and  
18 there should be 8 percent overrun, also, on the total  
19 calendar days allowed to the contractor.

20 MR. BOURDON: I don't want to -- I'm sorry.

21 CHAIRMAN COWGER: Go ahead.

22 MR. BOURDON: I don't want to turn it into a  
23 disputing contest, but the specifications are clear as  
24 to an increase in contract quantity, that it is accrual  
25 time. It is automatically provided if in fact the

1 contract is overrun. That is basically in somewhat of  
2 a dispute. But it is not compensable by home office  
3 overload. That's in his bid.

4 CHAIRMAN COWGER: But there's no question that  
5 the contract time will be adjusted at some point in  
6 accordance with the overrun in the contract. In other  
7 words, what's normally called accrued time, once you  
8 agree on what that overrun and the contract amount was.

9 MR. BOURDON: Generally that is done, depending  
10 on what did overrun and the impact to the contractor in  
11 his work effort.

12 And again, that can get to be a play, if you  
13 will, in relation to tonnage of asphalt on a small  
14 amount of project. 20 tons to 30 tons obviously is not  
15 really going to delay the contractor, but theoretically  
16 accrual time is contract time that is adjusted. And he  
17 would receive it in the final estimate.

18 CHAIRMAN COWGER: He will receive it in the final  
19 estimate, then. The allowable contract time will be  
20 adjusted in accordance with the ratio between the final  
21 contract amount that's agreed upon and -- well, the  
22 final contract amount that's paid, I should say, and  
23 the original contract amount?

24 MR. BOURDON: That is correct.

25 CHAIRMAN COWGER: So it's really a nonissue.

1 Okay, go ahead.

2 MR. BOURDON: In the liquidated damages area, the  
3 Department sees that there's a range due the contractor  
4 of \$100 up to \$2,000, which is basically the 20 days  
5 total that I was covering at the upper end.

6 The other areas of delay that Mr. Patel has  
7 covered in his complaint, Section B, into the  
8 maintenance of traffic, he has expanded that in  
9 relation to the -- simply the number of days of time  
10 extension as a lump sum adjustment on a per-day basis,  
11 which is -- which would be allowed on a lump sum item.

12 Again, the question comes in, was there a cost  
13 impact to the contractor. The Department's position is  
14 that for 50 days there was no work on the job at all,  
15 so we really do not see any damages to the lump sum  
16 maintenance of traffic item.

17 In his items two, three, four, in his package,  
18 and five, these are line item maintenance of traffic  
19 objects that are paid on a daily basis. They have used  
20 a unique method of calculating for damages in their  
21 complaint. And again, it is like a lump sum adjustment  
22 instead of a per day at contract unit cost.

23 I did take the liberty of, again, using that  
24 20-day time extension that the Department feels would  
25 be the maximum exposure, at the Board's discretion, and



1 adjusted the contract items of barricades and  
2 construction signs, flashing arrow board, and there  
3 would be \$458 due the contractor if in fact all those  
4 days were granted to him by the Board.

5 We do have some information that however the  
6 Board sees the time, we can provide you the information  
7 that would adjust those items, because it is calculated  
8 on a daily-type basis.

9 Under the home office overhead, the contractor  
10 has requested the full 22 days at his overhead rates.  
11 The Department, again, at the upper end, on 12 weather  
12 days that he has -- ten weather days that he has asked  
13 for, if in fact there were weather days of that  
14 magnitude delay, they are not compensable by home  
15 office overhead.

16 I think the specification is clear that it is  
17 a cause out of the control of both parties, and  
18 therefore, time is just provided.

19 The 12 days on the FC-4, again, the Department  
20 feels that the maximum, that it is a supplier  
21 coordination problem and not that there was a flaw or a  
22 cause of delay by the Department, so therefore we feel  
23 no compensation for home office and field office should  
24 be provided.

25 The last item that was covered was interest

1 payments. I went through again on the assumption of  
2 the one day to 20 day time extension and went on down  
3 through all the areas of payment and the range would be  
4 a \$1,001.98 that the contractor owes us on the project,  
5 to a maximum of \$1620.12 that the contractor would be  
6 entitled to for the 20 days. And that's taking into  
7 consideration the rebate on the FC-4, which was never  
8 processed.

9 CHAIRMAN COWGER: And you are going to present  
10 that information to the Board?

11 MR. BOURDON: Yes.

12 CHAIRMAN COWGER: May I go back and ask a  
13 question that I should have picked up a while ago, but  
14 I didn't.

15 We talked just a moment about the claim based on  
16 the Department's failure to approve the contractor's  
17 request for a time suspension during the Christmas  
18 holiday, and let's talk about the period that in fact  
19 fell between Christmas Day and January 2nd, plus or  
20 minus. In other words, the period that was truly the  
21 Christmas holiday period.

22 Noting that the contract incorporates by  
23 reference the 1986 standard specification book, we've  
24 got a conflict between what the standard specification  
25 book says about granting vacation time and what the

1 mini contract says.

2 MR. BOURDON: Yes, sir.

3 CHAIRMAN COWGER: How does the Department  
4 normally treat that type of conflict between the mini  
5 contract specifications and the standard  
6 specifications?

7 MR. BOURDON: I believe the Department's actions  
8 that Mr. Patel alluded to was that the verbal approval  
9 was potentially given on the project by the project  
10 engineer shows the intent that the Department normally  
11 does follow the standard specifications in those  
12 instances.

13 But again, the Department reserves the right,  
14 because of traffic control problems on the contract, to  
15 deny the contractor a vacation period.

16 But again, I say that up to the seven days is  
17 within the reasonable realm of the issue.

18 CHAIRMAN COWGER: Okay.

19 MR. BOURDON: The only other areas left to  
20 discuss -- and again, we will attempt to do it the best  
21 that we can -- would be the amendment to the claim.  
22 And I will refer most of the discussion to  
23 Charlie Manganaro.

24 But most of the items, just in general, from what  
25 I recall of reviewing the records, were adjustments to

1 quantities made for several reasons, one of which was  
2 the lack of tickets being delivered to the Department  
3 and there's correspondence in the file that we do  
4 have that will have to be pulled out that will note  
5 conversations with Mr. Patel from Bobbie Spitzkoph --  
6 I believe it was from Bobbie Spitzkoph, I believe it  
7 was -- which was the estimates engineer, which alludes  
8 to the fact that he says that he has more tickets. And  
9 she suggested bring them in, so that we can reconcile  
10 our records.

11 And that goes back and forth several months after  
12 the construction contract. The same thing pretty much  
13 involved in item two, which is the friction course.

14 The retainage, the contract quantities that  
15 Mr. Patel was alluding to is off the Department's  
16 engineer's weekly summary and the figures speak for  
17 themselves in their package.

18 That is an estimate of quantities made by the  
19 project engineer. All estimates, as the Board is well  
20 aware, are scrutinized by the final estimate process.  
21 And in this case that is done in the districts by the  
22 resident estimates engineer.

23 That figure was reduced because of the quantity  
24 problems above and in fact the final estimate on the  
25 project was a negative estimate of a \$1,057, I believe

1 it was, which we have a copy of that particular  
2 estimate for the Board's information. But at this  
3 point I would turn it over to Mr. Manganaro.

4 MR. MANGANARO: We have an asphalt summary of the  
5 asphalt quantities we're using for the basis of payment  
6 as part of our final estimate. And we will make a copy  
7 of this and submit this as an attachment or review.

8 And in that, our final estimates engineer had  
9 stated or came up with theoretical yields on both the  
10 base, the structural course and the shoulder base that  
11 was to be constructed and came up with tonnage that  
12 would be required to produce or perform that work, as  
13 per plans.

14 Now, the actual tickets that were provided us out  
15 in the field came up to a total tons of 391 tons,  
16 391.93 tons. The total tons needed per plan were  
17 429.33 tons.

18 So in certain areas, as Mr. Patel was asking for,  
19 on the structural course or friction course, our final  
20 estimates engineer actually used some of those tons and  
21 reverted them back down into the structural course and  
22 used that in the structural area to provide for the  
23 uniform thickness that we were supposed to achieve  
24 there.

25 Again, he was deficient in certain courses, put

1 it -- if I can say, then, as he was putting his mats in  
2 or his layers, he was not putting them in correctly, to  
3 the proper thickness and to the proper grade that he  
4 should have, when he was laying it.

5 And so, trying to account for the material as it  
6 was being placed, then it would be like a -- to take  
7 the total and then take it and revert it into each and  
8 every group and come up with the total amount of  
9 asphalt that's needed.

10 Now, he's asking, in number one, he is saying  
11 Type S asphalt overrun, item number 533, 5331-2, and  
12 it's 23.5, and we are paying 23.6 and the remaining is,  
13 again, thrown down into the structural course, because  
14 of his deficiency in the area and, again, the  
15 thicknesses.

16 So he will not see that as a quantity increase in  
17 that item, even though he feels that at the time he  
18 placed his asphalt, he felt that he was putting that  
19 many tons in that area.

20 The asphalt concrete friction course -- no, I'm  
21 sorry, that was the Type S asphalt overrun, structural  
22 course. But again, the structural course was deficient  
23 in thickness.

24 And also the -- well, the FC, when he was placing  
25 his FC finishing course, again he is saying the asphalt

1 concrete friction course overrun, item number 5337-1-5,  
2 plan quantity was 1277 square yards. Actual quantity  
3 used was 1954.6. Again, it's a square yard item.

4 Are you saying that's the actual square yard area  
5 or are you converting your tonnage to a square yard  
6 area?

7 MR. PATEL: The square yard area, as such, on  
8 this job.

9 MR. MANGANARO: You're saying that's the actual  
10 square yard out there?

11 MR. PATEL: Uh-huh.

12 MR. MANGANARO: Again, our records indicate 1277  
13 as the final square yard area.

14 MR. PATEL: 1277, your plan area, is not the  
15 actual area.

16 CHAIRMAN COWGER: 1227 is the number, not 1277,  
17 according to the contract. There's a typo there  
18 somewhere.

19 MR. MANGANARO: Okay.

20 CHAIRMAN COWGER: Okay, but the dispute is that  
21 the Department is saying we're going to pay plan  
22 quantity?

23 MR. MANGANARO: The Department is saying, yes,  
24 plan quantity.

25 CHAIRMAN COWGER: And the contractor is saying we

1 placed a larger area than that?

2 MR. PATEL: That's correct.

3 CHAIRMAN COWGER: What do you have to  
4 substantiate the fact that you placed a larger area,  
5 Mr. Contractor?

6 MR. PATEL: We extended the boundary on the  
7 project, we extended the driveway in the other parking  
8 lot where it needed to be corrected, and all that added  
9 up to the quantities that we are claiming.

10 CHAIRMAN COWGER: Did you measure it? Or how did  
11 you arrive at that 1900 and --

12 MR. PATEL: We actually had physically measured  
13 the whole thing.

14 MR. MOREFIELD: And you have verbal, written  
15 directions that the DOT asked you to do that?

16 MR. PATEL: Again, this was all given to the DOT  
17 people in our final estimate. I don't have the copy of  
18 that, but if you recall, in our Exhibit No. 3 and  
19 claim, the Department continually made a record that  
20 our final quantity came to \$96,877.90, and this  
21 particular figure has been reflected on the daily  
22 tickets on about 30 or 40 pages of this.

23 MR. ROEBUCK: And that's included in that?

24 MR. PATEL: And all of that is part of that, and  
25 that's the exact figure which we are claiming.



1           MR. MOREFIELD: But again, the plan area, if it  
2 was 1227, you went beyond that. Under what authority  
3 did you go beyond that? At whose direction?

4           MR. PATEL: We were given -- as per the direction  
5 of the project engineer and the inspector, yes.

6           MR. MOREFIELD: Verbally?

7           MR. PATEL: Yes, because the contractor wanted  
8 the unit price for the payment of these items and there  
9 was no point in going beyond that. I mean, we could go  
10 beyond what was shown on the plan without any problem.

11          MR. MOREFIELD: Does DOT have anything to say  
12 about the verbal?

13          MR. BOURDON: Get the project engineer.

14          MR. LITTLE: My name is Don Little, the  
15 Department of Transportation.

16                 In the field of construction, what we try and do  
17 is we have areas that exceed the project limits, we  
18 request the contractor to submit, in writing, the  
19 quantity or changes reflected in those areas. Outside  
20 of that, we stay within the contract.

21          MR. MANGANARO: I would like to ask a question.

22          MR. ROEBUCK: He says that he billed you for it,  
23 he put it on his request.

24          MR. PATEL: That's correct.

25          MR. ROEBUCK: Did you approve the additional

1 area?

2 MR. LITTLE: No, no, I'm not allowed to approve  
3 that area.

4 MR. PATEL: The number reflected on your own  
5 ticket, your daily logs.

6 MR. MANGANARO: Can I ask a question? You made  
7 reference that that friction course was behind the  
8 sidewalk. You made reference to the connection is  
9 behind the sidewalk.

10 MR. PATEL: Not behind the sidewalk. Behind the  
11 sidewalk?

12 MR. MANGANARO: You made reference to that's what  
13 came up to that quantity.

14 MR. PATEL: The driveways, the driveways and  
15 beyond the project limits, we extended the project  
16 limits and we went out another 20 feet or whatever it  
17 was down in the field. I don't have our exact --

18 MR. MOREFIELD: Now, is that along the project or  
19 down the driveway we're talking about now?

20 MR. PATEL: Down the driveway and alongside --

21 MR. MOREFIELD: You put friction course down the  
22 driveway?

23 MR. PATEL: That's correct.

24 CHAIRMAN COWGER: Why did you place friction  
25 course down the driveway? I guess that's what we're

1 asking.

2 MR. PATEL: In order to --

3 MR. MOREFIELD: Excuse me, let's make it  
4 straight. Was it S-3?

5 MR. ROEBUCK: S-3. He was just putting S-3 in.

6 CHAIRMAN COWGER: But the claim is under the  
7 friction course pay item.

8 MR. PATEL: That's correct.

9 CHAIRMAN COWGER: DOT, I need to go back and go  
10 through your testimony just a little bit. I got a  
11 little confused there when you were talking about how  
12 you arrived at your quantities.

13 But I think what I heard said was that as far as  
14 the type S, item number one is concerned, that there  
15 was some theoretical development of quantities that  
16 assigned tonnage to the base item, which was on a  
17 square yard, as opposed to the Type S tonnage item,  
18 which was paid for by weight.

19 MR. MANGANARO: That's correct.

20 CHAIRMAN COWGER: And the confusion apparently  
21 seems to be over the fact that you think the contractor  
22 is claiming, under the tonnage item, some material that  
23 he in fact should have been paid for or was paid for  
24 under the square yard optional base item, is that what  
25 you are really saying?

1           MR. MANGANARO: Correct. Well, again, as part of  
2 the payment of a square yard item, he should  
3 substantially give the Department a theoretical  
4 thickness. And if it was shy with what we were doing,  
5 then again, making that equivalent thickness.

6           MR. BOURDON: I think that it should be brought  
7 to the Board's attention that in the contractor's  
8 submittal, supplemental submittal to his claim, he  
9 alludes to the project engineer's daily or weekly  
10 summaries that speaks of \$96,000 plus.

11           There is also, in his package, an estimate that  
12 was processed by the Fort Lauderdale residency, signed  
13 by the Department representative, and the contractor  
14 was paid. That included a correction of that estimate  
15 on the engineer's estimate and did show the quantities  
16 as to how that calculation was made.

17           To my knowledge, other than missing tickets that  
18 I have testified to before, that the Department kept  
19 asking Mr. Patel to supply us, which we never did  
20 receive, the corrections have been made to the  
21 quantities as they exist today, and they are part of  
22 their own exhibits.

23           MR. PATEL: Here is the letter that was issued to  
24 the Department, which was made on May 5th, giving them  
25 the number of tickets, the ticket numbers from the

1 weekly asphalt plan outlining the exact weight on each  
2 one of the tickets. A lot of that was given to them.

3 CHAIRMAN COWGER: DOT, what do you have to say  
4 about that?

5 MR. MANGANARO: Well, we were provided tickets by  
6 Mr. Patel but quite a few of them were also duplicated  
7 tickets that he was requesting compensation for.

8 MR. PATEL: None of the ticket numbers are  
9 duplicated.

10 MR. MANGANARO: Again, Mr. Patel, you had  
11 conversations with Ms. Spitzkoph, went over the  
12 records, she tallied his total tickets up and there  
13 were -- your total tonnage brought up to that job was  
14 not the same --

15 MR. PATEL: You people listed about three days of  
16 my travel time and whatnot, correct all the ticket  
17 numbers and whatnot, and I finally give you people all  
18 the information and still you people have refused to  
19 acknowledge the fact that you have received any asphalt  
20 tickets to correct the problem.

21 CHAIRMAN COWGER: May I interrupt? Members of  
22 the Board, don't you think we have reached a point  
23 where we're down to arguing and it's time to cut this  
24 off?

25 MR. MANGANARO: May I express a couple other

1 things?

2 CHAIRMAN COWGER: As long as it's not --

3 MR. MANGANARO: No, not pertaining to this issue.

4 CHAIRMAN COWGER: Not pertaining to things we're  
5 arguing about now.

6 MR. MANGANARO: It was more on the time issue,  
7 too. I just wanted to cover bases there. Again, back  
8 in the time, in the summary of the daily diaries,  
9 I went through it and the total time period from  
10 October 12th, which was the starting date of the  
11 contract, to February 16th, where we actually initially  
12 accepted the contract, there was a total of 128 days.  
13 Of that period, there was 18 Sundays and four holidays,  
14 counting Christmas Day and New Years.

15 So subtracting from 128 minus 18 and minus four  
16 gave 106 actual days, work days that could have been --  
17 work days that Mr. Patel could have provided.

18 Out of that he worked 32 days and performed all  
19 the work necessary on the job out of 32 days. And that  
20 left 74 days that Mr. Patel did no work on the job.

21 MR. PATEL: That proves the fact that if we had  
22 been given all the information right on time, that we  
23 could have finished the job before the first week of  
24 January.

25 CHAIRMAN COWGER: One other question and we're

1 going to close it off. The contractor has made a  
2 request for relief of liquidated damages and that  
3 amount is somehow or other included in the claim for  
4 prejudgment interest.

5 When were the liquidated -- can DOT tell me the  
6 date or the approximate date on which the liquidated  
7 damages were first assessed and deducted from the  
8 contractor's pay estimates? Do you understand the  
9 question?

10 MR. MANGANARO: Yes.

11 MR. BOURDON: Yes, sir. It appears that the  
12 majority of it was taken out on -- I'm sorry, there was  
13 \$500 taken out on estimate one, and then there was  
14 \$2600 taken out on estimate number two, which was dated  
15 3-23-88.

16 CHAIRMAN COWGER: Okay, that's all we need to  
17 know.

18 MR. ROEBUCK: I think it's in here.

19 MR. BOURDON: Yes, it's in part of their package.  
20 That should give you those dates --

21 CHAIRMAN COWGER: All right, that's good enough.  
22 I want to give everybody the opportunity now to -- each  
23 side, to make any summation statement they want to make  
24 and we're going to stop.

25 MR. CALCUTT: I'll speak for the contractor,

1       briefly, in closing. Our claim is comprised of several  
2       elements today. It's undisputed that the contractor  
3       requested but was denied the opportunity to take the  
4       standard Christmas vacation, plus a few days around it.  
5       The denial came after the vacation period requested was  
6       over, untimely.

7                It's undisputed that the contractor was unable to  
8       obtain Type FC-4 asphalt and the DOT has granted  
9       effectively a no-cause time extension to acknowledge  
10      those delays.

11             The ultimate issue is the contractor is entitled  
12      to and in fact did complete the work in less than the  
13      allotted contract time, even including all the weather  
14      delays, even including the FC-4 asphalt delays, the  
15      contractor completed the job in 56 calendar days in a  
16      75-day contract period.

17             The contractor has a right to complete the work  
18      early within the contract time. The weather delays  
19      inadvertently included two Sundays. Those should be  
20      deducted from the claim, leaving a valid claim for  
21      eight weather delays.

22             And finally, the contractor should be compensated  
23      for the asphalt placed on the job verified by the  
24      originals of the asphalt tickets which have been  
25      provided to the Department and which we also have here



1 today for the Board's review and the review of the  
2 Department.

3 And the contractor feels that it's entitled to  
4 the sums claimed, as adjusted, with the weather delays  
5 and the prejudgment interest from May of 1988.

6 CHAIRMAN COWGER: DOT?

7 MR. BOURDON: Just in closing, Mr. Chairman, the  
8 Department's position is that the delays suffered on  
9 the job were delays caused by the contractor's own  
10 action or inaction in respect to coordinating his work  
11 effort on numerous projects that he had within the  
12 Fourth District.

13 The rain days, as requested, the record speaks  
14 for itself. And I believe the handout that I gave you  
15 will cover that.

16 The damages area, again, the Department's  
17 position is that there should not be any compensable  
18 home office overhead added to any time given for the  
19 simple fact that it was not direct Department cost.

20 We do have some other things, at the pleasure of  
21 the Board, as to what you feel is necessary to arrive  
22 at your decision, as far as the barricade counts and  
23 things of that nature that we can supply you.

24 CHAIRMAN COWGER: I think, under the  
25 circumstances, the Board has all the evidence it needs.

1 Mr. Roebuck or Mr. Morefield, do you have any further  
2 questions?

3 MR. MOREFIELD: I don't.

4 MS. ALIFF: Mr. Cowger, I would like to submit to  
5 you the notes to which Mr. Manganaro referred to.

6 CHAIRMAN COWGER: Okay. Now, so far what we've  
7 taken here in additional information is the notes from  
8 the diary, the project diaries. Did you give me more  
9 than one copy?

10 MS. ALIFF: I believe I handed you three copies.

11 CHAIRMAN COWGER: Okay. Let's identify these  
12 notes from the project diary as Exhibit No. 4. The  
13 contractor was just given a copy. If he will make a  
14 note of that. And was the contractor furnished a copy  
15 of this summation that Mr. Bourdon handed down here a  
16 while ago?

17 MS. ALIFF: Yes.

18 MR. CALCUTT: Yes.

19 CHAIRMAN COWGER: Let's make that Exhibit No. 5.  
20 (Whereupon, Exhibit Nos. 4 and 5 were received in  
21 evidence.)

22 CHAIRMAN COWGER: Before we close, now, I want to  
23 offer the contractor the -- since this information that  
24 was submitted here during the hearing, he really hasn't  
25 had an opportunity to review.

1           Do you desire to make any kind of a response? We  
2 would give you the opportunity to present something in  
3 writing within some reasonable time, commenting on the  
4 factuality of any of the statements that are in these  
5 documents. The factuality, only.

6           MR. PATEL: Most of the facts have really been  
7 brought out in the open and I don't believe that, other  
8 than the dispute, the mayor dispute, there's no dispute  
9 about the unavailability of FC-4. There's no dispute  
10 about the fact that the Department denied us the  
11 vacation and the holiday time.

12           CHAIRMAN COWGER: Under the circumstances, then,  
13 the Board is going to close out the record. We will  
14 accept no more testimony or exhibits.

15           This hearing is hereby closed. The Board will  
16 meet on September 12th, 1991, to deliberate on this  
17 claim and you will have our order shortly thereafter.  
18 (Whereupon, the hearing was concluded at 11:45 a.m.)

19  
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24  
25

CERTIFICATE OF REPORTER

1  
2 STATE OF FLORIDA )  
3 COUNTY OF LEON )

4 I, LAURA MOUNTAIN, Court Reporter and Notary Public in  
5 and for the State of Florida at Large:

6 DO HEREBY CERTIFY that the foregoing proceedings were  
7 taken before me at the time and place therein designated;  
8 that my shorthand notes were thereafter reduced to  
9 typewriting under my supervision; and the foregoing pages  
10 numbered 1 through 60 are a true and correct record of the  
11 aforesaid proceedings.

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

16 WITNESS MY HAND AND SEAL this, the 13<sup>th</sup> day of  
17 August, A.D., 1991, IN THE CITY OF TALLAHASSEE,  
18 COUNTY OF LEON, STATE OF FLORIDA.

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22  
23  
24  
25

Laura Mountain  
LAURA MOUNTAIN  
Court Reporter  
Post Office Box 13461  
Tallahassee, Florida 32317

My Commission Expires  
September 23, 1994