

**STATE ARBITRATION BOARD**

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

*SCD'S/KO*  
*12-5-07*  
*MBW*

20 July 1992

+++ NOTICE +++

In the case of Downs Engineering and Construction, Inc. versus the Florida Department of Transportation on Project No. 13560-3611 in Manatee County, Florida, both parties are advised that the State Arbitration Board Order No. 3-92 has been properly filed on July 20, 1992.

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

S.A.B. CLERK

JUL 20 1992

**FILED**

HEC/sfc

Copies of Order & Transcript to:

Cherie D. Hodge, President/Downs Engineering & Construction, Inc.  
J.B. Lairscey, Jr., PE, Director of Construction/FDOT

STATE ARBITRATION BOARD

ORDER NO. 3-92

RE:

Request for Arbitration by  
Downs Engineering and Construction, Inc. on  
Job No. 13560-3611 in  
Manatee County

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

H. Eugene Cowger, P. E. Chairman  
Kenneth N. Morefield, P. E. Member

Member, John Roebuck declared that he has a conflict of  
interest in regard to this cause, because of his direct  
involvement in one of the issues in dispute. Upon his  
recommendation, the other two members of the Board selected  
Robert G. Burluson to serve an alternate member for this  
hearing.

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 10:30 a.m., on  
Thursday, June 4, 1992.

The Board Members, having fully considered the evidence  
presented at the hearing, now enter their order No. 3-92 in  
this cause.

ORDER

The Contractor presented a request for arbitration of  
a three part claim for additional compensation in the total  
amount of \$75,000.00 to cover the additional costs he  
alleges to have incurred due to delays to the work caused by  
the Department of Transportation and for renting a drill rig  
to preform pile holes.

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

PART I Delay in Concrete Manufacture and Test Pile Driving  
\$55,900.00

CONCRETE SUPPLY

1. Work was delayed by the problems we and our concrete pile  
supplier encountered in obtaining concrete under the  
relatively new Department of Transportation (DOT)  
specification for concrete (Section 346) which sets out

stringent quality control procedures, including developing of acceptable design mixes.

2. Our concrete pile supplier was delayed in casting the test piles for this project, because they were unsuccessful in obtaining DOT approval of their concrete design mixes and ultimately had to obtain concrete from a concrete supplier who had an appropriate DOT approved design mix.

3. At the time we bid the project, we received a quote from Rinker Materials to furnish the concrete for on-site work. Rinker later found that it was economically unfeasible to furnish concrete meeting the requirements of the new Section 346 and on April 5, 1990 advised us that they would not furnish the concrete. We had considerable difficulty in locating a plant that could furnish concrete in accordance with Section 346 and it was not until June 20, 1990 that we were able to notify DOT that Florida Mining and Materials would be our concrete supplier.

#### TEST PILE DRIVING

1. From interpretation of the plan soil borings, we anticipated sandy subsurface conditions in which the piling could be installed by driving with use of jetting to aid in obtaining penetration. We encountered rock-like material in driving the test piles and as a consequence both test piles were broken. DOT did not instruct us to preform pile holes until after these two test piles were broken in driving. There was a delay while new test piles were cast.

2. Our bid price for Preformed Pile Holes was \$1 each. If we had anticipated the need to preform pile holes we clearly would have bid a higher price for this item.

3. We attempted, without success, to punch pile holes but the punch would not penetrate the hard material. It was, therefore, necessary for us to rent a drilling rig to preform holes for permanent piles.

We are claiming extended equipment and labor costs for the period between the date work began (March 28, 1990) and the date we began pre-drilling holes for the permanent piling

(May 21, 1992). We also claim the rental cost of a drilling rig to preform pile holes.

PART II Delay in Reinforcing Steel Inspection and Approval  
\$12,700.00

1. The epoxy coated reinforcing steel was delivered to the project well before we mobilized to begin placing it. During that period, DOT made payment for this reinforcing steel. After we mobilized to begin placing reinforcing steel, the DOT rejected this material and we were forced to reorder it.
2. DOT should have found the holiday markings indicating coating deficiencies in a more timely manner.
3. We claim extended equipment and labor costs for the 13 days period we were delayed by the untimely action or DOT in rejecting the reinforcing steel and the cost of remobilization.

PART III Release of Assessed Liquidated Damages  
16 Days @ \$ 400 = \$6,400.00

1. The delays caused by DOT as described in PARTS I and II of this claim justify extension of the allowable contract time by 67 Calendar Days.
2. DOT charged the Fourth of July and Labor Day as contract days. These days should have been treated as Contractor Vacation Days per Article 8.6 of the Standard Specifications.
3. The contract provides for a 30 day waiting period between placement of the friction course and application of pavement markings. During that period charging of contract time is to be suspended if all work other than pavement markings has been completed. DOT should have suspended charging of contract time between October 27, 1990 (CD 214), the day on which application of Class V Surface Finish to concrete surfaces was completed and November 8, 1990 (CD 226) the day on which permanent pavement marking were placed.

The Department of Transportation presented the following information in rebuttal of the claim:

PART I

CONCRETE SUPPLY

1. The bidding documents included Section 346. Therefore, the Contractor had the responsibility for locating a source to supply concrete under that specification.
2. If the Contractor had supplied them the project specifications immediately after execution of the contract (February 9, 1990) instead of February 22, 1992 the pile supplier would have been able to resolve his concrete supply problem without delaying delivery of the test piles.
3. There were ready-mix concrete suppliers in the vicinity of the project who had approved concrete design mixes at the time Rinker notified the contractor that they could not supply the concrete for this project. However, their price was higher than Rinker's price.

TEST PILE DRIVING

1. The boring logs in the bridge plans indicate that the blows per foot on the sampling spoon was high at depths through which the piling would have to be driven.
2. Including an item for Preformed Pile Holes in the Summary of Quantities should have alerted the Contractor that the Department had interpreted from the boring logs that dense strata requiring preforming of pile holes would be encountered during pile driving.
3. The Standard Specifications state that payment for preformed pile holes will be made where it is demonstrated that such work is necessary to achieve the required penetration of piles.
4. The procedure the Contractor utilized to drive the test piles was very contributory to them breaking.

PART II

1. Article 6.3.1 of the Standard Specifications states: "Any materials proposed for use may be inspected or tested at any time during their preparation and use."
2. When the epoxy coated reinforcing steel was removed from shipping bundles, it became apparent that steel was marked in

such a manner that it was in conflict with the producer's certification.

#### PART III

1. The specifications do not designate the Fourth of July or Labor Day as time periods days which qualify for an automatic suspension of charging of contract time. The Contractor did not submit an advance written request for suspending operations on these days as required by the specifications.

2. The Department's Resident Engineer waived the 30 day curing period. The pavement marking subcontractor did not have the sealant required in conjunction with placing pavement markings on concrete surfaces (the bridge) on hand, so could not place pavement markings until it arrived.

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

#### PART I

##### CONCRETE SUPPLY

The Contractor's original concrete supplier withdrew his quote to furnish concrete approximately four months after bids were received for the project. Even though there were ready-mix concrete suppliers in the vicinity at that time who had DOT approved design mixes, another two months elapsed before the Contractor notified DOT of his new supplier.

##### TEST PILE DRIVING

1. A plan note states: "Pile tips shall be driven to below Elevation -30. The Contractor is cautioned against over driving piling."

2. Article 455-10.3 of the DOT Standard Specifications states: "Payment for preformed pile holes will be made where it is demonstrated that such work is necessary to achieve the required penetration of the pile." The need for preforming of pile holes is "demonstrated" during driving of test piles.

#### PART II

The epoxy coated reinforcing steel was accepted on the basis of a certification from the fabricator that the coating met

DOT specifications. The coating on the reinforcing steel received on the project did not comply with the specification requirements.

PART III

DOT did not give notice to the Contractor of their intent to waive the 30 day curing period for friction course in a timely manner.

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

The Department of Transportation is ordered to compensate the Contractor for his claim as follows:

PART I Nothing

PART II Nothing

PART III Release liquidated damages in the amount of \$6,400.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$93.00 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$185 for Court Reporting Costs.

Tallahassee, Florida

Dated: 20 July 1992

Certified Copy:

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

20 July 1992  
Date

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

K. N. Morefield  
K. N. Morefield, P. E.  
Member

Robert G. Burlison  
Robert G. Burlison  
Alternate Member

S.A.B. CLERK  
JUL 20 1992  
FILED

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

JUL 20 1992

DOWNS ENGINEERING & )  
CONSTRUCTION )

**FILED**

- and - )

PROJECT NO. 13560-3611

LOCATION: Manatee County,  
Florida

DEPARTMENT OF TRANSPORTATION )  
\_\_\_\_\_ )

**ORIGINAL**

RE: Arbitration In The Above Matter

DATE: Thursday, June 4, 1992

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

TIME: Commenced at 10:30 a.m.  
Concluded at 12:10 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. Ken N. Morefield  
 Mr. Bob Burleson

APPEARING ON BEHALF OF THE DOWNS ENGINEERING &  
CONSTRUCTION:

Ms. Cherie D. Hodge  
 Michael Riley, Attorney

## APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Marshall Dougherty  
 Mr. Ken Blanchard  
 Mr. A. R. Davison  
 Ava Parker, Attorney  
 Reynold Meyer, Attorney

\* \* \*

## I N D E X

EXHIBITS	PAGE
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CERTIFICATE OF REPORTER	57

P R O C E E D I N G S

1 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. Ken Morefield was appointed as a member of  
6 the Board by the Secretary of the Department of  
7 Transportation. Mr. Jack Roebuck was elected by the  
8 construction companies under contract to the Department  
9 of 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 expire  
14 June 30, 1993.

15 Mr. Roebuck has disqualified himself for  
16 participation in this hearing because of his direct  
17 involvement in one of the issues in dispute. He has  
18 appointed Mr. Robert Burleson as the construction  
19 company's representative for this hearing.

20 Does either party have any objection to that?

21 MS. HODGE: No.

22 MR. DOUGHERTY: No, sir.

23 CHAIRMAN COWGER: Will all persons who intend to  
24 make oral presentations during this hearing please  
25 raise your right hand and be sworn in.

1 (Whereupon, all witnesses were duly sworn.)

2 CHAIRMAN COWGER: The documents which put this  
3 arbitration hearing into being are hereby introduced as  
4 Exhibit 1. This consists of the contractor's request  
5 for arbitration and all the attachments that were --  
6 that accompanied that request.

7 Both parties have had ample opportunity now to  
8 review that entire package, and will be -- this will be  
9 identified as Exhibit No. 1.

10 (Whereupon, Exhibit No. 1 was received in evidence.)

11 CHAIRMAN COWGER: Does either party have any  
12 other information it wishes to put into the record as  
13 an exhibit? We will go off the record for a moment  
14 while we discuss the exhibits a little bit.

15 (Brief pause)

16 CHAIRMAN COWGER: While we were off the record,  
17 exhibits were submitted and identified. DOT submitted  
18 a rather thick package of information entitled Downs  
19 Engineering, FDOT Claims Analysis, which is identified  
20 as Exhibit 2.

21 The contractor submitted three exhibits, a copy  
22 of what appears to be core boring information from the  
23 construction plans, identified as Exhibit 3, a copy of  
24 a letter dated February 20, 1991, from Mr. Dave Hughes,  
25 Exhibit 4, and a copy of a letter dated June 20, 1990,

1 to Bill Hodge, from Cecil Wolfe, identified as  
2 Exhibit 5.

3 (Whereupon, Exhibit Nos. 2, 3, 4 and 5 were received in  
4 evidence.)

5 CHAIRMAN COWGER: Do the parties need any  
6 additional time to examine the exhibits presented by  
7 the opposing party?

8 MS. HODGE: No, sir.

9 MR. DOUGHERTY: No, sir.

10 CHAIRMAN COWGER: Are there any other exhibits to  
11 be presented?

12 During this hearing the parties may offer such  
13 evidence and testimony as is pertinent and material to  
14 the controversy and shall produce such additional  
15 evidence as the Board may deem necessary to an  
16 understanding and determination of the matter before  
17 it. The Board shall be the sole judge of the relevance  
18 and materiality of the evidence offered.

19 The hearing will be conducted in an informal  
20 manner. The contractor will elaborate on their claim,  
21 and then the DOT will offer rebuttal. Either party may  
22 interrupt to bring out a point by coming through the  
23 Chairman.

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

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

4           It is now appropriate for the contractor to  
5 begin his presentation. We ask that you state at the  
6 beginning of your presentation the total amount of your  
7 claim so that there's no confusion on that.

8           Also, it appears that there are three basic  
9 issues in dispute. I think it would be appropriate for  
10 us to deal with those individually as you go through  
11 and possibly stop after the presentation of the  
12 contractor of the first issue, let DOT rebut on the  
13 issue as to the factual determinations, and then we  
14 will come back at the end and deal if appropriate with  
15 the amount of damages.

16           So, I think it would be appropriate if you would  
17 go ahead and begin then. As I see it, the first issue  
18 has to do with Section 346 of the specifications.

19           MS. HODGE: Yes, sir.

20           CHAIRMAN COWGER: The second issue has to do with  
21 rejection of the reinforcing steel, and the third issue  
22 has to do with liquidated damages.

23           MS. HODGE: Yes, sir.

24           CHAIRMAN COWGER: That third issue is kind of  
25 intertwined with the first two.

1                   So, if you will begin, please.

2                   MS. HODGE: Okay. My name is Cherie Hodge. I am  
3 president of Downs Engineering and Construction of Fort  
4 Lauderdale, Florida. We are a DBE contractor with the  
5 State of Florida. We are engaged in building bridges  
6 primarily for the Florida Department of Transportation.

7                   We are now a certified DBE, but we were not at  
8 the time of this contract a certified DBE contractor  
9 with the State of Florida.

10                  This was our first contract as a prime contractor  
11 with the State of Florida. The contract called for the  
12 replacement of an existing low-level three-span  
13 concrete bridge with the same.

14                  The contract included certain roadway, signing,  
15 and marking items which were subcontracted to DBE firms  
16 to meet the DBE goal.

17                  We based our equipment and mobilization on the  
18 information contained in the contract drawings and  
19 information furnished by the DOT.

20                  The problems which we encountered during the  
21 course of the project were not anticipated by us, and  
22 we do not believe could have been foreseen by us, but  
23 were the result of actions and inactions on the part of  
24 the DOT.

25                  We had no idea and could not have foreseen the

1 difficulty suppliers would have in making the change to  
2 the 346 spec. The suppliers also were apparently  
3 unaware of the difficulty meeting the specification  
4 because to date we are still encountering these same  
5 delays with regard to the 346 spec.

6 MR. BLANCHARD: Mr. Chairman, may I interrupt to  
7 ask for a statement of the amount of the claim?

8 MS. HODGE: I'm sorry. The amount of the claim  
9 that we are asserting today is \$75,000.

10 CHAIRMAN COWGER: Now I need to ask a question.  
11 In the transmittal letter from Cummings and Lawrence --  
12 Cummings, Lawrence & Vezina, an amount was stated of  
13 83,300.

14 MS. HODGE: Yes, sir.

15 CHAIRMAN COWGER: So, is 75,000 the total amount  
16 of your claim?

17 MS. HODGE: This is the amount we have outlined  
18 in the material furnished to the Board.

19 CHAIRMAN COWGER: Mr. Riley, is there some reason  
20 that the amount and the letter differ?

21 MR. RILEY: Mr. Chairman, at that time we were  
22 anticipating submitting a claim for from the beginning  
23 of the planned mobilization date. Since that time  
24 Downs has concluded that it is more appropriate to  
25 present the claim from the date that the contract time

1 was first charged.

2 CHAIRMAN COWGER: Okay. So \$75,000 is the amount  
3 you're claiming. Okay.

4 MS. HODGE: We contacted Rinker Materials and  
5 several other ready-mix suppliers at the time the  
6 project was bid and obtained quotations on furnishing  
7 this material for the project. Rinker Materials had  
8 the low price. Naturally they were our first choice as  
9 a supplier on the project.

10 We've had a long and satisfactory relationship  
11 with Rinker Materials. We have never had any problem  
12 with the product that they have supplied to any of our  
13 projects.

14 Rinker tried diligently to come into compliance  
15 with the 346 requirements, but after failing on their  
16 mix designs for the third time, they declined to supply  
17 ready-mix for the project because it was economically  
18 unfeasible.

19 Rinker notified us that they could not supply  
20 concrete for the project after we had mobilized for the  
21 project. We then began a search for an alternate  
22 supplier of ready-mix.

23 We did not, as the DOT asserts, behave in an  
24 irresponsible manner or take a path of inactivity on  
25 this matter.



1 Florida Mining & Minerals finally agreed to  
2 supply ready-mix to the project but was not approved  
3 by DOT until some three months of contract time had  
4 elapsed. We have been charged with all this contract  
5 time.

6 We suffered delay on manufacture of the prestress  
7 piling because of the 346 spec, also. We had several  
8 meetings with Southern Prestress, Florida Rock and FDOT  
9 representatives Charlie McCue and Jim Ward to try and  
10 expedite production of the prestressed piling.

11 DOT was well aware of the difficulties we were  
12 having with the concrete on this project due to their  
13 direct involvement in trying to obtain concrete for the  
14 prestress piling.

15 Southern Prestress in the end obtained ready-mix  
16 concrete from Florida Rock who at that time had an  
17 approved mix that would meet the requirements for the  
18 prestress.

19 They purchased the ready-mix from Florida Rock's  
20 plant near Misner Marine in Tampa, Florida, trucked it  
21 across town to Southern Prestress plant and added the  
22 plasticizer to the mix at the prestress yard, then  
23 formed the piling.

24 We prepared our test pile driving operation to  
25 include water jetting as our only penetration bid after

1 review of the boring information furnished by DOT.

2 CHAIRMAN COWGER: Wait just a minute, if you  
3 would, please. Are you moving into the next part?

4 MS. HODGE: We have linked these two items  
5 together because they are so closely related.

6 CHAIRMAN COWGER: Go ahead then.

7 MS. HODGE: On our initial test pile operation,  
8 no one with DOT authorized us to preform any pile  
9 holes. It is my understanding from reading the  
10 specification book that we must demonstrate the need to  
11 preform pile holes and then must be directed by DOT to  
12 do so or it will be at our own expense.

13 We did not anticipate drilling the pile holes or  
14 clearly we would have bid more than \$1 per hole. DOT  
15 never attempted to reject this bid on the basis that it  
16 was unbalanced.

17 And that is the extent of my information on the  
18 test pile and on the 346 spec.

19 CHAIRMAN COWGER: Before DOT starts, can I ask a  
20 couple of questions.

21 MS. HODGE: Yes, sir.

22 CHAIRMAN COWGER: The testimony was that the two  
23 test piles were broken in an attempt to drive them?

24 MS. HODGE: Yes, sir.

25 CHAIRMAN COWGER: Can you tell us a little about

1 the mode of the failure? How did they break?

2 MS. HODGE: The two test piles sheared. I was  
3 not present during the test pile operation, but both of  
4 the test pile sheared during driving.

5 CHAIRMAN COWGER: Okay. The specifications  
6 provide for preformed pile holes to be constructed by  
7 either punching and withdrawing a punch or by drilling.  
8 Was there a particular reason why you selected to drill  
9 rather than punch?

10 MS. HODGE: We did attempt to punch the holes, in  
11 fact, but the punch would not penetrate. There was,  
12 apparently, some large rocky mass in a place that it  
13 should not have been according to the borings, and it  
14 was deflecting the punch when we tried to use it.

15 CHAIRMAN COWGER: Okay. DOT, would you like to  
16 begin your rebuttal then to what we are calling part  
17 one?

18 MR. DOUGHERTY: Yes, sir, if we could. My name  
19 is Marshall Dougherty. We went through, and in our  
20 package you will see we took the major statements made  
21 and rebutted them. I will go through it very cursorily  
22 if I could.

23 The 346 was a specification added to this bid  
24 contract in the specification section. All qualified  
25 bidders had the same responsibility to assure they

1           could come up with a source that could provide this  
2           concrete.

3           The fact that Rinker Concrete was their first  
4           selected source and they could not come up with this  
5           mix, we don't believe that is a part of our  
6           responsibility as part of the bidder in the  
7           subcontractor and prime contractor relationship.

8           That, you know, we understand that their problems  
9           may have occurred, but there are sources that were  
10          available that could meet the criteria necessary, and  
11          not necessarily because they were the low price, which  
12          I know is what was the controller as far as the  
13          contractor was concerned. I think they were  
14          responsible for misrepresenting themselves to the prime  
15          contractor.

16          I don't think the Department should be  
17          responsible for a relationship set up by the prime  
18          between himself and the subcontractor.

19          The availability of the test piling and the soil  
20          boring information, they provided you a copy of the  
21          soil boring sheet as we have attached to the back of  
22          our packet. If you look at both holes, there was some  
23          material that was encountered, in minus 25 to minus 30  
24          feet that required 50 blows of the soil boring to  
25          penetrate point two feet and point one feet. That

4 1 would indicate a very hard rock-like layer down below.

2 I would think taking this information and looking  
3 at it, a reasonable assessment would be that preformed  
4 pile holes would be a necessity.

5 We have a copy attached in our pack, also, of the  
6 bid tabs they submitted. They showed, in fact, a  
7 dollar contract price per preformed pile hole. I'm not  
8 the responsible party to determine whether it's a  
9 balanced or unbalanced bid. I understand this is quite  
10 a common practice, but yet for a bridge that had 20  
11 piling, it had a quantity of 20 preformed pile holes  
12 shown. I would think that would indicate to any bidder  
13 that there was a very good contingency that they would  
14 be necessary on all pile locations.

15 From where we stand, we think the Department has  
16 no involvement or has no responsibility in either one  
17 of these areas.

18 CHAIRMAN COWGER: May I ask you a couple of  
19 questions about the borings?

20 MR. DOUGHERTY: You certainly may, sir.

21 CHAIRMAN COWGER: I'm looking at the contractor's  
22 Exhibit 3 on the second page. Up at the top it shows a  
23 plan view as to where these corings were taken.

24 MR. DOUGHERTY: Yes, sir.

25 CHAIRMAN COWGER: As I understand, there were two

1 corings?

2 MR. DOUGHERTY: Yes, sir.

3 CHAIRMAN COWGER: One apparently near either end  
4 of the bridge, or is that so?

5 MR. DOUGHERTY: Yes, sir.

6 CHAIRMAN COWGER: How long is the bridge?

7 MR. DOUGHERTY: The bridge is 93 feet -- proposed  
8 construction was 94 feet.

9 CHAIRMAN COWGER: You mentioned the hard strata  
10 that was encountered in boring number two as I see it.

11 MR. DOUGHERTY: There are some in number two and  
12 some in number three. The copy is not real good that  
13 you're looking at. I have the full-size plans here if  
14 you would like to look at them.

15 CHAIRMAN COWGER: Let me mention one other thing.  
16 Let's talk about only the intermediate bents for a  
17 moment.

18 Looking through the information that was  
19 submitted, the tip elevation as established after the  
20 test piles were driven was minus 30.

21 MR. DOUGHERTY: Yes, sir.

22 CHAIRMAN COWGER: Which on boring number two it  
23 looks like the hard material started at elevation minus  
24 27, 26, something like that?

25 MR. DOUGHERTY: 25, somewhere in that area.

1           CHAIRMAN COWGER: Now what do we see on boring  
2 number one there between 20 and 30 feet?

3           MR. DOUGHERTY: Boring number one, the hard layer  
4 starts you have a layer you're hitting 94 times to  
5 penetrate a tenth of a foot. It starts at about minus  
6 30, somewhere in that range.

7           Then you encountered a very similar layer at  
8 about minus 40 feet that you encountered at minus 25  
9 feet up here.

10          CHAIRMAN COWGER: Can someone tell us how long  
11 the test piles were on this job?

12          MR. DOUGHERTY: I don't recall.

13          CHAIRMAN COWGER: You have the plans right there.  
14 Shouldn't there be a note somewhere on there either on  
15 that sheet or on the cover sheet? Look at the  
16 quantity. We know there were two test piles.

17          MR. BURLESON: Take the quantity and divide it by  
18 two.

19          MS. HODGE: They were 35 footers.

20          MR. DOUGHERTY: I was going to say I thought they  
21 were 35.

22          CHAIRMAN COWGER: Thank you. Does that conclude  
23 your testimony then, DOT, on part number one?

24          MR. BLANCHARD: Mr. Chairman, if I may add, the  
25 fact that preformed pile holes were shown as a bid item

1           for -- one for every pile shown in the plans, they  
2           should have -- it should have been obvious to the  
3           contractor that the Department anticipated the use of  
4           preformed pile holes.

5                     The other part of that argument is that the  
6           Department never directs the contractor to use  
7           preformed pile holes. It's the contractor's  
8           responsibility to get the piles in, and if the  
9           contractor feels the preformed pile holes are in order  
10          here, then the contractor requests permission from the  
11          Department to install them.

12                    The other part of this thing is the unbalanced  
13          bid issue. The Department in my experience doesn't  
14          reject bids for the type of imbalance we have seen  
15          here, \$1 per unit price per pile hole.

16                    The only time the Department in my experience  
17          rejects a bid is if that bid is proven to be materially  
18          unbalanced in the sense that it's anticipated it will  
19          put the other bidders in an adverse position or will  
20          affect the Department financially.

21                    For instance, if that item had been bid  
22          exorbitantly high and for some reason we anticipated a  
23          tremendous overrun, then that we would consider a  
24          problem. It appears that the preformed pile hole  
25          issue, the contractor simply requested the Department

5



1 to take on part of their responsibility here in running  
2 the job.

3 MR. BURLESON: Can I ask a question?

4 CHAIRMAN COWGER: Certainly.

5 MR. BURLESON: Are preform pile holes a bid item  
6 on virtually all bridge projects with piling?

7 MR. BLANCHARD: No.

8 MR. DOUGHERTY: In my experience yes, they are,  
9 but they are --

10 MS. HODGE: In my experience, yes.

11 MR. DOUGHERTY: There is an intangible quantity  
12 put in there, it's not the whole pile, not normally.

13 MR. BLANCHARD: According to the specification  
14 there, preformed pile holes are included in a contract  
15 or in a set of plans where the Department anticipates  
16 the use of preformed pile holes.

17 Where the Department has no reason to believe  
18 preform pile holes would be necessary, they would not  
19 be included. And if by chance they were required, then  
20 they would be paid for as extra work. In other words,  
21 a new unit price or a new unit item would be  
22 negotiated.

23 MS. HODGE: I've done quite a few contracts that  
24 had pile hole items and we never placed the pile holes.  
25 That's what we call pretty much the standard procedure

1 is that there is an item listed and it is never  
2 performed. That's why it's generally bid as a dollar a  
3 hole is because they don't get put in.

4 MR. BLANCHARD: As a contingency item, without  
5 specifying an amount. On this job we had exactly the  
6 number of preformed pile holes specified, that was  
7 equal to the number of piles on the job. That should  
8 have been a clue right there.

9 Looking at the foundation, the sheet there which  
10 shows the strata, different layers of material down  
11 there, it appeared obvious there was a hard layer of  
12 material that was going to require -- was going to be  
13 difficult to get through. That appears obvious to me.

14 MS. HODGE: The boring shows sandy silt and a  
15 clay-type material. It doesn't show anything of the  
16 proportion of what we were finding when we were  
17 attempting to punch these holes. We were finding  
18 something that was totally deflecting our punch. The  
19 punch would end up at a 45 degree or better angle to  
20 the spot we were trying to punch the hole.

21 MR. BLANCHARD: Marshall, do you want to address  
22 that?

23 MR. DOUGHERTY: I understand what they're saying,  
24 but the soil is labeled sandy silty clay, hard. For a  
25 soil auger to be hit 50 times and only penetrate

1 two-tenths of a foot and the next layer down hit 50  
2 times and only penetrate one-tenth of a foot, I have  
3 to believe that's a hard layer. I believe any person  
4 looking at this sheet would say that's a very hard  
5 layer.

6 CHAIRMAN COWGER: I have a couple of questions if  
7 I could. Let's go back and talk a minute about the  
8 concrete supply problem. Again looking over the  
9 information that was submitted, and I believe this is  
10 correct in accordance with the testimony, the  
11 contractor notified Rinker on February 7, 1990, that  
12 they wanted Rinker to supply the material?

13 MS. HODGE: I think that's when we notified the  
14 DOT who our intended supplier was. We had been  
15 actually gearing up for this project from the beginning  
16 of the year, which we had contacted Rinker starting in  
17 January.

18 CHAIRMAN COWGER: That's really not the issue  
19 I don't think that I want to get to. The next thing is  
20 on April 5 Rinker said they could not supply the  
21 material.

22 MS. HODGE: Yes, sir.

23 CHAIRMAN COWGER: Then on June 20 there is some  
24 documentation in here that indicates that your firm  
25 requested approval of Florida Mining & Minerals as the

1 concrete source, which was approximately two plus  
2 months later.

3 MS. HODGE: Yes, sir.

4 CHAIRMAN COWGER: Why the delay between April 5  
5 and June 20?

6 MS. HODGE: We had quite a bit of difficulty  
7 finding a plant that had a mix that was already  
8 approved by the DOT. It takes quite a length of time  
9 to approve a new mix design on this 346 specification,  
10 which is the major cause of the delays regarding the  
11 346 spec.

12 CHAIRMAN COWGER: DOT, do you have anything to  
13 say about that?

14 MR. DOUGHERTY: Yes, sir. This was all known  
15 prior to the bid, sir. Each person that picked up the  
16 bid packet was aware of this. From what we heard, we  
17 heard no complications or any concerns from any of the  
18 bidders that they could not meet the specified  
19 requirements.

20 MS. HODGE: I think since the contractors are  
21 still encountering delays today from suppliers, and  
22 this is two years after the fact, that it does show  
23 that there is some cause for concern. The 346 is the  
24 terror word in construction right now. We are still  
25 encountering -- we just encountered a three-month delay

1 on a project in Lake City due directly to the  
2 specification.

3 MR. DOUGHERTY: If I may, in District I I have  
4 had no other delays that I'm aware of dealing with the  
5 346 spec.

6 CHAIRMAN COWGER: Let me ask you this, looking at  
7 a few dates, just to make sure that we understand the  
8 magnitude of the delay. Again, I went through the  
9 information that was submitted with the contractor's  
10 request for arbitration, and I found that the first  
11 attempt to drive test piles was on April 12, and that  
12 you finally succeeded in driving the test piles on  
13 April 30?

14 MS. HODGE: Yes, sir.

15 CHAIRMAN COWGER: And the initial notice to  
16 proceed was issued March 28.

17 MS. HODGE: Yes, sir.

18 CHAIRMAN COWGER: Are you saying that delay in  
19 getting approval of a concrete supplier had any effect  
20 on the driving of the test piling?

21 MS. HODGE: Yes, sir. We had difficulty -- we  
22 had originally asked that this contract start on  
23 February 19. When we found out that we had difficulty  
24 with our suppliers, we started backing off of our  
25 optimum start date and reversed to the latest possible

1 start date.

2 Southern Prestress could not manufacture the  
3 Class 5 concrete requested in the drawings. They had  
4 to shop around and see. And we were involved with this  
5 as was the DOT in trying to find a supplier and a  
6 viable means of getting concrete to the prestress  
7 supplier.

8 CHAIRMAN COWGER: If you hadn't encountered that  
9 delay with the supply of concrete to your prestress  
10 supplier, keeping in mind that DOT did not issue the  
11 initial notice to proceed on this work until March 12,  
12 and work did not begin until March 28, what was the  
13 earliest time that you could have -- or had anticipated  
14 driving these test piles?

15 MS. HODGE: We had anticipated driving the test  
16 pile within the first week of the contract, had the  
17 test pile been ready.

18 MR. BLANCHARD: Mr. Chairman, may I add one note  
19 here. The Department did issue the notice to proceed  
20 within the required time. The Department would have  
21 been prepared to issue the notice to proceed earlier if  
22 the contractor had requested so. The contractor  
23 didn't.

24 CHAIRMAN COWGER: I don't think that's at issue  
25 here. We are not even talking about the issue of

1 trying to mobilize earlier, just trying to see what the  
2 impact of the alleged delay in furnishing concrete had  
3 on the test pile operation.

4 So you're saying as far as the test piling are  
5 concerned, Southern Prestress went to Florida Rock and  
6 got the material?

7 MS. HODGE: Yes, sir, after great decision.

8 CHAIRMAN COWGER: They had an approved design  
9 mix?

10 MS. HODGE: Yes, sir, they had one in existence.

11 CHAIRMAN COWGER: Had they attempted -- I know  
12 they attempted possibly to furnish the material  
13 themselves because I assume that Southern Prestress has  
14 their own concrete plant?

15 MS. HODGE: Yes, sir. On Exhibit 5, that gives  
16 you a narrative of the steps that Southern went through  
17 in order to obtain ready-mix for this project.

18 CHAIRMAN COWGER: Okay. Do we need any further  
19 discussion on part one? Do either of the board members  
20 have any questions?

21 MR. BURLESON: I want to ask a couple of  
22 questions. Cherie, when Rinker quoted you, did they  
23 mention the 346 spec?

24 MS. HODGE: Yes, sir. They didn't anticipate a  
25 problem at the time. Their plant in Palmetto was

1 approximately five miles from the job. That was the  
2 plant they intended to use. It was not at that time  
3 certified by the DOT, therefore, they had to go through  
4 the process of shipping their aggregate and everything  
5 over to Jacksonville, having the mix manufactured,  
6 sending it to Gainesville to have it broken, and it  
7 failed to break three times.

8 MR. BURLESON: Did you end up with the price per  
9 yard you had to pay Florida Mining, was it  
10 significantly greater than what Rinker quoted?

11 MS. HODGE: It was higher. I'm not really  
12 familiar with the exact numbers right now, but it was  
13 higher.

14 MR. BURLESON: Originally there were a lot of  
15 jobs that the quotes were incredibly high on that  
16 concrete?

17 MS. HODGE: Yes, sir.

18 MR. BURLESON: Was Rinker's quote up there with  
19 all the rest of them?

20 MS. HODGE: No, Rinker's quote in this district  
21 was extremely reasonable for the 346. Over on the east  
22 coast it was extremely high. We didn't understand the  
23 difference for the figures.

24 CHAIRMAN COWGER: Do you have anything else?

25 MR. BURLESON: No.



1                   CHAIRMAN COWGER: Ken?

2                   MR. MOREFIELD: No.

3                   CHAIRMAN COWGER: I think we need to move on --  
4                   excuse me.

5                   MR. DOUGHERTY: It hit me, Bob asked the  
6                   question, Mr. Burleson asked the question, what makes  
7                   us then the DOT responsible because their subcontractor  
8                   misrepresented his abilities to them? Why does that  
9                   make us the responsible party in this case?

10                  MR. BURLESON: Can I ask one more question?

11                  CHAIRMAN COWGER: Yes.

12                  MR. BURLESON: Do you have any time, Cherie, that  
13                  shows when you would have made your first concrete pour  
14                  if you had no 346 delays?

15                  MS. HODGE: We have our work schedule. I'd have  
16                  to look at it.

17                  MR. BURLESON: As compared to when you did make  
18                  the first pours. We had originally anticipated July 19  
19                  to pour on our work schedule. This work schedule was  
20                  based on February 15 start.

21                  MR. BURLESON: That would have been pretty  
22                  distant, though, if you had given an order to Southern  
23                  Prestress at that time, wouldn't it?

24                  MS. HODGE: I know Southern's letter said they  
25                  got the material on the 22nd. We had actually been

1 talking to Southern well in advance of that. They  
2 called us one day and said we don't have any drawings  
3 or any specs. And that was the first news that we had  
4 that Southern did not have any of the information  
5 necessary for the test pile.

6 MR. BURLESON: They probably would never have  
7 proceeded with doing the test pile before they had a  
8 purchase order anyway.

9 MS. HODGE: This was not the purchase order.  
10 I don't know that a purchase order was ever signed with  
11 Southern. I think it was all verbal.

12 CHAIRMAN COWGER: Are there any other questions  
13 then?

14 MR. DOUGHERTY: If I might, I noticed we covered  
15 this, and I did not bring it out earlier, but talking  
16 about driving test piling, part of our defense is that  
17 we were not -- the hard layer was not necessarily the  
18 sole responsibility for breaking the test pile and the  
19 problems they were having. We contend the test piles  
20 were driven with some procedures that weren't  
21 necessarily beneficial to the pile and therefore were  
22 very contributory to the breakage.

23 CHAIRMAN COWGER: I think it is appropriate that  
24 the contractor have the opportunity to respond to that.

25 MS. HODGE: The one item -- we have submitted a

1 letter which is item 4, which answers the DOT's  
2 assertion that the piling were driven without proper  
3 cushion.

4 We had rented a pile driving hammer from  
5 International Construction Equipment. ICE's  
6 representative was on the project during the entire  
7 test pile operation. I don't think they would have let  
8 us use the hammer without a cushion block in it. We  
9 have a statement from the ICE representative stating he  
10 saw a cushion block put in the hammer. That statement  
11 is clearly not true.

12 As far as the assertion the hammer was not  
13 seated, this is the first time I have ever heard any  
14 mention that the hammer was not seated properly on the  
15 piling. There is no notation in the engineer's daily  
16 records that the hammer was improperly seated.

17 MR. DOUGHERTY: For the board, I've got my letter  
18 in here where I approved the hammer based on some  
19 information. I do not find the attached letter.  
20 I have been told by the project engineer the cushion  
21 thickness required was nine inches. If you take the  
22 letter from International Construction Equipment, he  
23 talks about using four pieces of three-quarter inch  
24 plywood. That only amounts to a three-inch cushion.

25 MS. HODGE: He talks about having three or four

1 pieces of that exact width in there.

2 MR. DOUGHERTY: He says four inches of  
3 three-quarters inch plywood.

4 MS. HODGE: Per pad.

5 MR. BURLESON: Says it will give you an  
6 approximate cushion of nine inches.

7 MS. HODGE: Says they installed three cushion  
8 pads that appear to be four pieces of three-quarter  
9 inch plywood.

10 MR. DOUGHERTY: I'm sorry then, I have a very  
11 poor copy.

12 CHAIRMAN COWGER: That coincides with the letter  
13 the district geotechnical engineer submitted saying  
14 that a nine-inch plywood sandwich pile cushion was  
15 approved.

16 Is there any further testimony on anything else  
17 about why those test piling broke? I think it's the  
18 contractor's position that you encountered this  
19 unanticipated extremely hard strata. Is that the --

20 MS. HODGE: Yes, sir.

21 CHAIRMAN COWGER: Is that the point at which the  
22 test piles broke? Do you know when you encountered  
23 that hard strata?

24 MR. DAVISON: Mr. Chairman, the second test pile  
25 was driven out of alignment which we rejected. When we

1 had the test pile of the hole it had cracked and  
2 sheared all the way down. That's why we rejected the  
3 test pile, it was out of alignment completely.

4 CHAIRMAN COWGER: At that point in time there had  
5 been no predrilling?

6 MR. DAVISON: No, sir.

7 CHAIRMAN COWGER: Okay. Is there anything else  
8 on part one? Can we safely move on then to part two?

9 MS. HODGE: The second section would cover then  
10 the inspection of the reinforcing steel. The bridge  
11 deck required the use of a epoxy coated steel. We  
12 selected Florida Steel as our supplier for the epoxy  
13 coated steel because they were the only certified  
14 supplier in the state of Florida at the time.

15 We notified DOT immediately upon their request  
16 who our supplier would be for this material.

17 After the steel was delivered, we submitted a  
18 request for partial payment, stockpiled the material.

19 The material was paid for in the May 1990  
20 estimate.

21 The material supposedly was inspected by DOT  
22 personnel at Florida Steel's plant before it was  
23 shipped to our project. It was again inspected by DOT  
24 personnel when it arrived on the project.

25 In August personnel from the DOT district

1 materials office and the inspector general's office  
2 came out to look at this steel. It was rejected at  
3 that time.

4 We had already mobilized our steel tying crew in  
5 order to tie this steel in when I received a phone call  
6 from Mr. Dave Davison that the steel had been rejected.  
7 This was the controlling item of work at the time.  
8 Everything else on the job hinged on getting this steel  
9 tied in.

10 We contacted Florida Steel immediately and  
11 obtained replacement steel. We still suffered a delay  
12 of 13 days in getting the new steel on the project, but  
13 we proceeded with all haste once we received the new  
14 steel.

15 I requested verbally of Dave when I was notified  
16 of the rejection that the contract time be suspended  
17 until such time as we got new steel on the project.  
18 Dave said that he would look into suspending the  
19 contract time. Later he told me he was unable to  
20 suspend the contract time, and I told him then that  
21 I would put in a claim for it, and I, in fact, did file  
22 a letter claiming the time.

23 Dave told me on the project site that they would  
24 not at this time give me the time, but if I required  
25 the time at the end of the project they would give it

1 back to me. They have not given us one day extension  
2 on this project.

3 If the steel had been inspected properly when it  
4 was delivered to the job site, no delay in the project  
5 would have resulted.

6 CHAIRMAN COWGER: DOT, I have some questions but  
7 I'm going to reserve them until after you make your  
8 statements.

9 MR. DOUGHERTY: The steel deliver by Florida  
10 Steel was, in fact, not acceptable. Whether that --  
11 that was determined at a later date. The DOT by  
12 specification in Article 6-3.1, "Any materials proposed  
13 for use may be inspected or tested at any time during  
14 their preparation and use."

15 This material was stockpiled on the project for  
16 months and we had indicated by partial payment of  
17 stockpiled materials that we were aware of its  
18 presence. The actual inspection of the steel was  
19 hampered somewhat by the way it was bundled. And it  
20 wasn't until later in the efforts that the bundles were  
21 released and it was checked.

22 Secondly, DOT is there to give a secondary  
23 inspection. The supplier again in this particular case  
24 failed to provide materials as per specification. The  
25 contractor is also responsible to provide inspection of

1 the materials when they receive them on the job. We  
2 are there to do that prior to payment being made for  
3 them.

4 We have got -- we also included in your packet a  
5 copy of specification -- I don't have the packet,  
6 I don't know what happened to my official packet --  
7 5.9-2 -- 5.9-2 talks about failure of engineer to  
8 reject work during construction.

9 If you would like I can read it to you or you all  
10 can read it. "If during or prior to construction  
11 operation, the engineer should fail to reject defective  
12 work or materials, whether from lack of discovery of  
13 such defect or for any other reason, such initial  
14 failure to reject shall in no way prevent this later  
15 rejection when such defect is discovered or obligate  
16 the Department to final acceptance, and the contractor  
17 shall make no claim for losses suffered due to any  
18 necessary removals or repairs of such defects."

19 CHAIRMAN COWGER: I think we understand that.

20 MR. DOUGHERTY: I think that fits very well on  
21 this case.

22 CHAIRMAN COWGER: Do you have anything else to  
23 present on this?

24 MR. DOUGHERTY: Not right now.

25 CHAIRMAN COWGER: I want to ask a couple of



1 questions of DOT. There is a statement made somewhere  
2 in Exhibit 1 that says that on August 9, 1990, a  
3 representative of DOT inspector general's office  
4 informed Doug Moore that a portion of the epoxy coated  
5 rebar was marked in such a manner that it was in  
6 conflict with certification issued with the steel.

7 Can you explain to me what that says?

8 MR. DOUGHERTY: We are going back a while. I can  
9 remember when this issue came up. The way I remember  
10 it, and again this is the way I remember it when it  
11 came to me, is apparently the manufacturer had labeled  
12 that steel incorrectly and it was delivered, I guess as  
13 a misrepresentation.

14 CHAIRMAN COWGER: I don't think you've answered  
15 my question because I don't know, this talks about  
16 markings could have been some tag or some other way of  
17 identifying rather than marking right on the steel.  
18 I think it's important to understand what it was that  
19 the inspectors, the IG office found.

20 MR. DOUGHERTY: That's their exhibit, Gene.

21 CHAIRMAN COWGER: But I'm still a little  
22 confused as to what it was that the IG found that  
23 said that this steel was not in accordance with the  
24 certification.

25 MR. DOUGHERTY: Again, I'm giving you my

1 response. That came from the, you know, from their  
2 packet, not from mine. Maybe they can explain it  
3 further.

4 MS. HODGE: What the inspector general's office  
5 found was holiday markings on the steel. What they  
6 termed holiday markings, which indicated a deficiency  
7 in the thickness of the epoxy coating on the rebar.  
8 These were visible at all times.

9 CHAIRMAN COWGER: So when we talk about mark, we  
10 are not talking about a number or something, we're  
11 talking about there were actually you might call them  
12 defects?

13 MS. HODGE: There were physical marks on the  
14 steel to indicate deficiency in the coating.

15 We do not contend that the steel should have been  
16 left or should have been rejected. We contend that the  
17 DOT should have inspected it in a more timely manner.

18 CHAIRMAN COWGER: As I understand it, new rebar  
19 was furnished and the rejected rebar was taken off the  
20 job.

21 MR. BURLESON: The new rebar was furnished  
22 because the rebar that was there was not acceptable,  
23 not because it was mismarked or something of that  
24 nature?

25 MS. HODGE: Yes, sir, it was unacceptable.

1                   CHAIRMAN COWGER: Anything else on part two?  
2                   DOT has brought out on this part the fact that the  
3                   contractor failed to give notice of intent to file a  
4                   claim. Do you have anything further to say about that?  
5                   You mentioned -- somebody's discussion with Mr. Davison  
6                   about a time extension.

7                   MS. HODGE: Yes, I did discuss with Mr. Davison  
8                   the fact that I would file for a time extension due to  
9                   the fact that the contract time was not suspended  
10                  while we were in limbo waiting for the steel to be  
11                  reproduced.

12                  CHAIRMAN COWGER: DOT, do you have anything  
13                  further to say about that? Mr. Davison, do you have  
14                  any specific recollection of that?

15                  MR. DAVISON: There is a letter here from myself  
16                  that says we will hold that 13 days in abeyance until  
17                  the end of the project.

18                  CHAIRMAN COWGER: Okay.

19                  MS. HODGE: Also, Mr. Chairman, our letter  
20                  requesting the time was written the day that we  
21                  received new steel on the project. There was no time  
22                  lapse between receiving the new steel and filing for  
23                  the claim.

24                  CHAIRMAN COWGER: Okay. I think we're ready then  
25                  to move on to part three which had to do with the

1 liquidated damages.

2 MS. HODGE: The contract was originally for 210  
3 days. With all the delays that we have cited so far,  
4 we ran four days -- what we consider to be four days  
5 over the original contract time. We were assessed  
6 liquidated damages for 16 days in the amount of \$6400.

7 Mr. Davison told me that when we laid the  
8 friction course that the time would stop to allow for  
9 the 30-day cure. We had asked that the 30-day cure on  
10 the friction be waived. At the time we requested that  
11 it be waived, we were informed that it would not be  
12 waived.

13 They did -- Mr. Davison did tell me that the time  
14 would stop when the friction was laid. He called me  
15 five days after the contract had expired and told me  
16 that the time was still running on the contract.

17 We had our stripers come in and put down  
18 temporary stripe at our own expense in order to open  
19 the roadway to the public. This was not a bid item on  
20 the contract. We were not compensated by the  
21 Department. We did this simply to open the roadway to  
22 traffic at the earliest possible date.

23 We delivered the project with full use to the  
24 Department on October 27, 1990. The contract time was  
25 not stopped until November 8, 1990. We feel that no

1 time should have been charged after we completed our  
2 last pay item, which was on day number 214. However,  
3 DOT continued to charge us time for 11 additional days  
4 until day 226.

5 MR. BLANCHARD: Question, what was that --

6 CHAIRMAN COWGER: Wait. Are you through with  
7 your statement?

8 MS. HODGE: Yes.

9 MR. BLANCHARD: What was the last pay item?

10 MS. HODGE: The last item of work was to apply  
11 the Class 5 finish to the bridge rail.

12 MR. BLANCHARD: How about the striping, the  
13 permanent striping?

14 MS. HODGE: The permanent striping had to wait  
15 until the friction had cured, which that occurred on  
16 day 226, after they finally waived the cure time on the  
17 friction course.

18 MR. BLANCHARD: Was that the last pay item?

19 MS. HODGE: Well --

20 CHAIRMAN COWGER: Let me try to make this a  
21 little easier if we can. In Exhibit 1, the very last  
22 page of the contractor's original submittal is a, what  
23 I call a summary of all of the time on the project.  
24 The last page shows that on calendar day 214 the  
25 classified surface finish was placed and then on 226

1 the permanent stripe was applied. The only work in  
2 between that was on day 218 some expansion joints were  
3 touched up.

4 MS. HODGE: Yes, sir.

5 CHAIRMAN COWGER: Expansion joint work was done  
6 and the classified finish was touched up.

7 MS. HODGE: Yes, sir. They called us back to do  
8 what constituted punch list work.

9 CHAIRMAN COWGER: Do I understand that on  
10 December -- on calendar day 214 the only work remaining  
11 to be completed was that punch list work and the  
12 application of the permanent stripes? Does anybody  
13 dispute that? And that temporary stripes were in place  
14 by day 214.

15 Now, why was time continued to be charged then  
16 after day 214? Can DOT tell me that?

17 MR. DAVISON: Yes, sir, we still had the  
18 thermoplastic pay item. We still had a pay item on the  
19 project to go so we couldn't suspend time.

20 CHAIRMAN COWGER: Was there a provision in the  
21 contract for a delay between placing the friction  
22 course and placing of this thermoplastic stripe?

23 MR. DAVISON: The spec says that all friction  
24 course shall have 30-day cure time on your friction  
25 course, which we ended up waiving and told them to go

1 ahead and thermoplasty it since it was such a small  
2 job.

3 CHAIRMAN COWGER: When did you waive it?

4 MR. DAVISON: I don't know the exact date.

5 CHAIRMAN COWGER: Does the contract also provide  
6 that the time will be suspended during that 30-day  
7 waiting period if all other work is complete or not?

8 MR. DAVISON: Yes, sir.

9 CHAIRMAN COWGER: Then I'm still not sure why you  
10 didn't suspend charging the contract time on day 214.  
11 You have the opportunity to explain it. I don't  
12 understand.

13 MR. DAVISON: I don't really have an answer to  
14 that. I don't know what the time frame was when we  
15 decided not to suspend the 30 days or waive the 30  
16 days. Therefore, we told the contractor to go ahead  
17 and put the thermoplastic down. Their subcontractor  
18 had a problem with the sealant of the bridge to put the  
19 thermoplastic down, and that's what delayed it beyond  
20 that point.

21 CHAIRMAN COWGER: A problem with what?

22 MR. DAVISON: A sealant. You have to seal the  
23 concrete before you put the thermoplastic down, and he  
24 did not have any.

25 MR. BURLESON: The contractor originally applied

1 for a 30-day delay?

2 MR. DAVISON: The specifications say --

3 MR. BURLESON: I'm confused. Was there something  
4 in the contract that said temporary striping was part  
5 of the MOT?

6 MR. DOUGHERTY: Traffic was diverted off this  
7 structure. In other words, this was totally closed to  
8 traffic. The idea was to come in, replace the small  
9 bridge, get it all finished, open it up to traffic and  
10 then move off.

11 The idea on the cure, remember again discussions  
12 on this, with a small bridge with a 200-foot approach,  
13 that an asphalt cure period is usually given to  
14 eliminate tracking across stop bars and things like  
15 this. With a small bridge like this with 200-foot  
16 approaches, it's almost not necessary. We have since  
17 started waiving. On a smaller approach we don't  
18 necessarily consider a 30-day cure period a necessity  
19 before you lay the thermoplastic down.

20 The timing here is all screwed up. I can  
21 remember a discussion with Doug Moore, who was the  
22 resident, and myself at that time, and the decision was  
23 made to waive the 30 days. Now when that 30 days came,  
24 whether they had already started the 30-day cure period  
25 or before it was to come on, I do not remember.



1           I remember it was waived, therefore they could  
2           have put down the thermoplastic immediately after we  
3           gave them word it was waived, save the sealant  
4           necessary to apply it on the concrete bridge before the  
5           thermoplastic could be put down.

6           MR. BURLESON: Did you instruct them to open the  
7           bridge with the temporary striping?

8           MS. HODGE: No, sir, they did not. We did that  
9           at our own expense in order to furnish the project to  
10          DOT as early as possible.

11          CHAIRMAN COWGER: So the project was actually  
12          open to traffic somewhere around day 214, the day you  
13          finished applying the classified surface?

14          MS. HODGE: Yes, sir.

15          MR. MOREFIELD: Did they ask for the waiver or  
16          did you all just say do it?

17          MR. DOUGHERTY: I think they just did it.

18          MR. MOREFIELD: If you can't tell me when, you  
19          don't know whether they thought that time was being  
20          charged at that point or not?

21          MR. DOUGHERTY: I don't have any idea.

22          CHAIRMAN COWGER: Do we need to discuss part  
23          three, the liquidated damages or the time extension  
24          request any more? Really, all you're asking for is to  
25          be relieved of all the liquidated damages?

1 MS. HODGE: I would exceptionally like to be  
2 relieved of the liquidated damages. It's very damaging  
3 to my company to have liquidated damages assessed no  
4 matter what the amount is.

5 CHAIRMAN COWGER: The liquidated damages as shown  
6 in the contractor's submittal was \$400 a day. I want  
7 to make sure we don't have some confusion here. Was  
8 that liquidated damages plus the penalty or is there  
9 another penalty of \$400 a day floating around on top of  
10 the liquidated damages that we haven't picked up?

11 MS. HODGE: No, sir, the liquidated damages are  
12 \$400 per day.

13 CHAIRMAN COWGER: There's no other penalty  
14 assessed then?

15 MS. HODGE: No.

16 MR. DOUGHERTY: Mr. Chairman, one thing I want to  
17 bring to your attention, I know we're talking only 16  
18 days of liquidated damages, but if you look at the  
19 first sheet after our backup data, after our narrative  
20 is over, we have a backup data sheet. There are  
21 actually 24 days with no work performed at all during  
22 this contract time.

23 We think that is very, very much contributory to  
24 the 16 days liquidated damages. I was just comparing  
25 the fact that they're saying October 27 is, you know,

1 from their standpoint when they should have been  
2 relieved of liquidated damage aspect, that only  
3 accounts for about seven days out of those 24. That  
4 still leaves 17 days of no work at all on the project  
5 prior to that time frame.

6 MR. BURLESON: Marshall, looking back through  
7 here, is that counting days, though, like Friday after  
8 they had poured the deck on Thursday and there's really  
9 nothing else they could do on Friday, things of that  
10 nature?

11 MR. DOUGHERTY: It's just according to our  
12 dailies.

13 MR. BURLESON: Just days they didn't work with no  
14 accounting for whether there's actually any accounting  
15 for anything that could have been done or not?

16 MR. DOUGHERTY: I'm assuming there is something  
17 out there that could be done every day. There is  
18 cleanup, there is grading that could be done.

19 CHAIRMAN COWGER: Does the contractor have any  
20 rebuttal to that?

21 MS. HODGE: Yes, sir, some of these days we have  
22 covered with our contention on the 346 spec, some of  
23 these days are covered by no steel, seven of the days,  
24 as Mr. Dougherty said is covered by the curing time of  
25 the friction course.

1           We had originally anticipated finishing this  
2 project within 110 to 150 days, that is with no work on  
3 Saturdays or Sundays. We proceeded with this work at  
4 all times in order to proceed and finish it on time.  
5 We felt no need to work Saturdays and Sundays, which  
6 has been questioned over and over again by DOT.

7           Had we not encountered these delays -- we can  
8 account for 54 days of delays, and we contend that we  
9 finished the project four days beyond original contract  
10 time. I think we have demonstrated we had ample time  
11 to complete this project had we not been delayed beyond  
12 our ability.

13           CHAIRMAN COWGER: I have one more question about  
14 this time extension that I want to try to wrap up  
15 anything else either of the parties may have first.

16           MR. DOUGHERTY: One of the things that's  
17 interesting that has been pointed out earlier, a lot of  
18 these days not worked were Friday. Virtually all the  
19 month of August virtually every Friday was not worked.  
20 We don't know whether they were looking forward to  
21 three-day weekends or whatever, but a lot of Fridays  
22 weren't worked.

23           MS. HODGE: One Friday was Labor Day and they  
24 didn't give us that.

25           CHAIRMAN COWGER: I think we have heard enough

1 about that issue. We are down to arguing about that  
2 now. We haven't heard much said about the claim that  
3 they shouldn't have been charged for the 4th of July  
4 and Labor Day. Under the procedure that was in effect  
5 at that time, how did you charge contract time? You  
6 were charging on a calendar day basis?

7 MR. DOUGHERTY: Calendar day basis.

8 CHAIRMAN COWGER: What happened when you came to  
9 a Saturday or Sunday? You just counted right on  
10 through?

11 MR. DOUGHERTY: Counted right on through. As an  
12 example, if a weather day is given you use a multiplier  
13 of 1.4 to accommodate the weekend time. If they had  
14 shown a need to work a six-day week, the multiplier  
15 would be different, if they had chosen to work a  
16 seven-day week, it would be different.

17 One of their contentions was that Labor Day and  
18 the 4th of July were counted as contract days. We were  
19 never requested for vacation that I know of on both of  
20 those days. And they are not an automatic time  
21 suspension day. If the contractor so chooses to work  
22 on July 4th, he may do so. As we look back at the  
23 dailies, they didn't work July 4th nor did they work  
24 Labor Day.

25 CHAIRMAN COWGER: Okay. Any further comment on

1 the assessed liquidated damages then?

2 MS. HODGE: Mr. Chairman, with regard to the 4th  
3 of July and the Labor Day holiday, DOT's inspector did,  
4 in fact, ask us not to work. Whether he was speaking  
5 for DOT or for himself, he did, in fact, ask us not to  
6 work those holidays. Therefore, we did not file a  
7 letter because we had been requested by DOT's  
8 representative not to work those holidays.

9 Perhaps we were in error for not filing a written  
10 request for that holiday, but we assumed it was  
11 unnecessary at that time.

12 CHAIRMAN COWGER: Okay. Can we go on then and  
13 talk about the damages just a minute. Looking at  
14 Exhibit 1, the Downs' statement of claim on page four  
15 where we're talking about the damages for delay in  
16 concrete manufacture and test pile driving. The  
17 contractor has based his claim on 54 days of extended  
18 equipment utilization between March 28, the date that  
19 work began, and March 21, the date that driving of the  
20 permanent piling began at \$200 a day.

21 Then a corresponding delay for labor at \$500 a  
22 day, in other words, 54 days at 500.

23 I think we need to hear from the contractor a  
24 little bit about the justification for claiming those  
25 54 days, keeping in mind that it was from the date that

1 work began until the date driving of permanent piles  
2 began.

3 To me there had to have been in your plan some  
4 work between those dates that shouldn't be in these 54  
5 days. Do you understand what I'm saying, Marshall?

6 MR. DOUGHERTY: I believe I do.

7 MS. HODGE: The basis for the 54 days of claim is  
8 due to the fact that the two claims are interrelated  
9 and that the delays there -- the delays are inseparable  
10 basically. We can't break that figure out as to the  
11 delay time that was involved there.

12 CHAIRMAN COWGER: DOT, do you have any rebuttal  
13 to make to that?

14 MR. DOUGHERTY: The only thing we can say is  
15 this relates to the fact there is no concrete supply,  
16 period, and that the Department was not in any way  
17 responsible for the fact that the prime cannot get a  
18 subcontractor to supply materials that are specified in  
19 the bid documents.

20 MR. MOREFIELD: Getting back to the Chairman's  
21 question, if you had gotten concrete on time, you're  
22 claiming a delay from the day you started until the day  
23 you drove your first pile, right, test pile? If you  
24 had got it, aren't you, from March 28 is when you  
25 started work, right?

1 MS. HODGE: Yes, sir, that was the first  
2 chargeable contract day.

3 MR. MOREFIELD: That was before you knew you were  
4 going to have a problem getting your concrete.

5 MS. HODGE: Actually the first chargeable day we  
6 already knew we were in trouble with the concrete. We  
7 had originally asked the contract to begin --

8 MR. MOREFIELD: You're saying from your February  
9 start time until your March start time?

10 MS. HODGE: Yes. We had originally started -- we  
11 had mobilized on February 17 for this project with the  
12 intention of beginning work on the 19th. And after we  
13 were informed about the problems with the prestress and  
14 with the ready-mix, we started backing off of our  
15 original request to start on February 19 and backed all  
16 the way up to the latest possible date, which was  
17 March 28.

18 MR. MOREFIELD: Okay. That answers my question.

19 CHAIRMAN COWGER: DOT, let's get into that just a  
20 minute if I could. Looking at the dates, the contract  
21 was executed on February 9. You issued the initial  
22 notice to proceed on March 12, which is approximately a  
23 month.

24 MR. DOUGHERTY: Thirty-one days, yes, sir.

25 CHAIRMAN COWGER: Why did you wait so long?



1           MR. DOUGHERTY: That's our normal time. That's a  
2 standard administrative timing that we have, and we had  
3 no request for early issuance.

4           CHAIRMAN COWGER: Is there anything in the  
5 contract that says how long you've got before you issue  
6 the initial notice?

7           MR. DOUGHERTY: By specification or procedure  
8 I think we have a maximum time we have to before we can  
9 allow it, but there's no minimum time. But again,  
10 this -- I think if you look at the work orders issued  
11 from our office, they usually occur around the 30-day  
12 cycle.

13           CHAIRMAN COWGER: Contractor, why did you  
14 anticipate mobilizing before you had a notice to  
15 proceed?

14  
16           MS. HODGE: We originally requested of  
17 Mr. Davison that we get the earliest possible start  
18 date on the project. That was stated in the minutes of  
19 the preconstruction meeting that we had intended to  
20 begin work on February 19. Like I said, after we ran  
21 into problems with suppliers was when we started trying  
22 to get off of the optimum start date.

23           MR. DOUGHERTY: But see, Mr. Chairman, that all  
24 occurred prior to -- in other words, if we had given  
25 them a work order when they initially requested it,

1 they would have had, you know, that many more days.

2 CHAIRMAN COWGER: I think we have heard enough on  
3 that. DOT, as for an opinion of yours, again back on  
4 damages, delay -- damage number one, delay in concrete  
5 manufacture and test pile driving, the contractor has  
6 included a cost of \$500 per day for extended labor.

7 Assuming that there would be entitlement for this  
8 delay, have you looked at that to determine whether  
9 that is a reasonable amount?

10 MR. DOUGHERTY: No, sir.

11 CHAIRMAN COWGER: How did you arrive at the \$500?

12 MS. HODGE: These costs were taken directly from  
13 our certified payrolls for the project. There is no  
14 markup included for profit or overhead in any of these  
15 figures. They're all the figures -- equipment, labor,  
16 everything is direct cost. It is not inflated in any  
17 way to account for profit or overhead.

18 MR. BURLESON: No labor burden?

19 MS. HODGE: No, sir, direct labor costs.

20 CHAIRMAN COWGER: Another question, on the next  
21 page, on page five, you've got a \$7500 charge in there  
22 for, I assume to be rental of the drill for six weeks?

23 MS. HODGE: Yes, sir.

24 CHAIRMAN COWGER: Since there was a pay item for  
25 preformed pile holes, how do you justify charging

1 rental for the drill?

2 MS. HODGE: We had not intended to use a drill.  
3 It was required by the subsurface conditions. We had  
4 in no way intended to rent an auger for this project.

5 CHAIRMAN COWGER: That answers that question.

6 MR. DOUGHERTY: Do you need any comment from the  
7 Department on that, sir?

8 CHAIRMAN COWGER: Please.

9 MR. DOUGHERTY: We feel like that is probably a  
10 bid error on their part.

11 MR. MOREFIELD: What you're saying is that is  
12 included in the preform pile hole costs?

13 MR. DOUGHERTY: Yes, sir. The fact that they  
14 submitted a dollar, just a, you know, a minor amount  
15 per a bid item we feel is a bid error on their part.

16 CHAIRMAN COWGER: One other question. Again in  
17 regard to damages, on page five you're claiming 13 days  
18 from August 10 to August 22 for both extended equipment  
19 time and extended labor.

20 Looking at the chronological listing of events  
21 in the back of Exhibit 1, we note that the steel was  
22 rejected on August 10, the first date that we mentioned  
23 earlier, and that the tying of steel for the deck began  
24 on August 22.

25 Is it a fact that no work could take place on the

1 project during that time?

2 MS. HODGE: Yes, sir.

3 CHAIRMAN COWGER: It looks like you're claiming  
4 extended equipment and labor on a calendar day basis  
5 ignoring the fact that there were two weekends that  
6 occurred in that time period.

7 MS. HODGE: Yes, sir. I think that has to do  
8 with the fact that there are liquidated damages  
9 assessed on a calendar day basis with no accounting for  
10 weekends.

11 CHAIRMAN COWGER: You didn't anticipate working  
12 Saturdays and Sundays, did you?

13 MS. HODGE: No, sir, possibly Saturday, probably  
14 not Sunday.

15 MR. BURLESON: What is the \$500 a day in labor?  
16 Is that your bridge crew?

17 MS. HODGE: That's the entire staff of that crew,  
18 yes.

19 MR. BURLESON: What were they doing?

20 MS. HODGE: Basically we have to maintain them  
21 on the payroll. They're guaranteed 40 hours a week  
22 whether they work or not. We can't just tell the guys,  
23 sorry, the steel is bad, go home.

24 MR. BURLESON: Everybody on the payroll is paid  
25 whether they worked or not?

1 MS. HODGE: Everybody was paid whether they  
2 worked or not.

3 MR. DOUGHERTY: Mr. Chairman, this is one point  
4 I would like to make at this time. The 13 days,  
5 I don't know how you all are looking at that, that's  
6 whatever, but the 54 days, there is always an encumbent  
7 need or encumbent responsibility of the contractor to  
8 try to mitigate any prolonged delays that he could  
9 foresee.

15

10 You know, 54 days of a crew, at \$500 a day, you  
11 tell me there is no mitigation effort made on the prime  
12 at all to reassign those to some other crew. The 54  
13 days of no productivity from a crew is kind of hard for  
14 the Department to understand. That's probably a basic  
15 philosophy right now. I don't know whether that's  
16 germane to what we're talking about.

17 Reasonable attempts, if delays are foreseen,  
18 reasonable attempts should be made to mitigate those  
19 costs, and that is a prime area.

20 CHAIRMAN COWGER: Does the contractor have  
21 anything further they want to say at this point? We're  
22 getting ready to close.

23 MS. HODGE: Just that we always intended to  
24 complete this project timely despite DOT's estimation  
25 of our position or what we should have done or what we

1 did not do. The DOT was directly involved in our  
2 efforts to alleviate the delays with regard to the 346  
3 spec, and we feel that most of the test pile delays  
4 were due directly to DOT, and that we have done  
5 everything humanly possible to complete this project  
6 within the contract time.

7 We had anticipated completing this project much  
8 quicker than 210 days. We have obviously incurred  
9 extra costs due to the fact we were on this project for  
10 226 days rather than the 150-day maximum that we had  
11 stated at the preconstruction meeting.

12 And the liquidated damages do damage my company  
13 in reputation, not only financially, but in reputation.  
14 We do not like it said that we finished a contract  
15 after the contract time had expired.

16 CHAIRMAN COWGER: DOT, do you have anything to  
17 complete your rebuttal?

18 MR. DOUGHERTY: We would just like to say that  
19 basing -- looking at this claim, we feel that most of  
20 the responsibility if not all of the responsibility  
21 falls on the contractor. Their coordination efforts  
22 with their subcontractors and the efforts that we saw  
23 being taken in the field and that we in no way intended  
24 to extend any contract time.

25 Our responsibility and our concern was to get

1           this bridge open to traffic as soon as possible. Yet  
2           we were also charged to follow responsibilities in the  
3           way of specifications and in work efforts.

4           So I think one good area that I might add is the  
5           waiver of the 30-day curing time was an effort on our  
6           part to ensure a quicker finish to that project than  
7           what would normally have been allowed.

8           CHAIRMAN COWGER: Mr. Morefield, do you have any  
9           further questions?

10          MR. MOREFIELD: No, sir.

11          CHAIRMAN COWGER: Mr. Burleson?

12          MR. BURLESON: No, sir.

13          CHAIRMAN COWGER: This hearing is hereby closed.  
14          The Board will meet on July 14 to deliberate on this  
15          claim, and you will have our order shortly thereafter.  
16          (Whereupon, the hearing was concluded at 12:10 p.m.)

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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 foregoing proceedings were  
taken before me at the time and place therein designated;  
that my shorthand notes were thereafter reduced to  
typewriting under my supervision; and the foregoing pages  
numbered 1 through 56 are a true and correct record of the  
aforesaid proceedings.

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

WITNESS MY HAND AND SEAL this, the 23rd day of June,  
A.D., 1992, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,  
STATE OF FLORIDA.

Catherine Wilkinson  
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My Commission Expires June 27, 1994