

**STATE ARBITRATION BOARD**

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

23 March 1993

† † † NOTICE † † †

In the case of Mid-State Paving Company, Inc. versus the Florida Department of Transportation on Project No. 16130-3519 in Polk County, Florida, both parties are advised that State Arbitration Board Order No. 2-93 has been properly filed on March 23, 1993.



H. Eugene Cowger, PE  
Chairman & Clerk, S.A.B.

S.A.B. CLERK

MAR 28 1993

**FILED**

Copies of Order & Transcript to:

J.B. Lairscey, Jr., PE, Director Office of Construction/FDOT

Jon d. Chellgren, President/Mid-State Paving Co., Inc.

STATE ARBITRATION BOARD

ORDER NO. 2-93

RE:

Request for Arbitration by  
Midstate Paving Corp. on  
Job No. 16130-3519 in  
Polk 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  
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 11:25 a.m., January 27,  
1993.

The Prime Contractor executed an Authorization for  
Subcontractor to Pursue Arbitration form authorizing Pavex  
Corporation, a subcontractor, to act as its agent in pursuing  
this claim.

The Board Members, having fully considered the evidence  
presented at the hearing,, now enter their order No. 2-93 in  
this cause.

ORDER

The Subcontractor presented a request for arbitration of  
a claim for additional compensation in the total amount of  
\$23,750.63 for additional work ordered by the Department of  
Transportation. This work consisted of removing and replacing  
5,620 of Asphaltic Concrete Friction Course from the inside  
lane of the Eastbound roadway between Station 317+25 and  
Station 373+45.

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

1. On May 12, 1992, we were placing the last of the mainline FC-2 friction course on this project using two pavers, each manned with a complete crew.
2. At 4:30 p.m. on that day, the Department of Transportation ordered us to shut down one of the pavers which was placing FC-2 adjacent to a previously laid pass of FC-2. The reason given was that the paver did not have a functional joint matcher (a violation of Article 337-7.5 of the Standard Specifications).
3. Prior to that point in time, we had placed FC-2 under these same circumstances on the entire project without using a joint matcher.
4. The delay in getting another paver with a functional joint matcher to the location where the shut down occurred caused paving operations to extend past 6:00 p.m. and into the hours of darkness.
5. The Department did not question our paving after 6 p.m. on days prior to May 12th.
6. The Department ordered us to remove and replace, at our expense, all of the FC-2 placed from the point at which the shut down was ordered to the end of the project.
7. Prior to doing the ordered corrective work we requested that the Department make an engineering evaluation of the section of FC-2 in question. We, also, offered to extend a one-year warranty for this section of pavement, backed by a

bond, or, if the FC-2 was determined to be below the specified quality, to consider a reduction in payment.

8. The Department did not do an engineering evaluation and we were never furnished a list of specific deficiencies in this section of FC-2.

9. It appears to us that DOT ordered removal of the entire section of FC-2 placed ahead from where the paver was ordered shut down as a penalty for failing to follow instructions issued by their project personnel.

10. It is our position that the quality of the FC-2 surface in the section in question was equal to that elsewhere on the project and that a penalty was improperly applied here.

The Department of Transportation rebutted the Subcontractor's claim as follows:

1. Our inspector informed the Subcontractor's superintendent of the specification violation in regard to use of a joint matcher at 2:30 p.m. on the day in question.

2. The Subcontractor continued to produce FC-2 mix at the asphalt plant, located at approximately a one hour haul distance from the project, until 5:55 p.m.

3. The contract provides that construction activities requiring heavy equipment must be confined to between 7 a.m. and 6 p.m. and work shall not be done during the hours of darkness unless written permission is obtained from the Engineer. No such permission was granted. The Subcontractor violated these contract provisions and demonstrated disregard for public safety by continuing to pave after darkness

without traffic control devices suitable for night operations.

4. The subcontractor responsible for temporary pavement markings left the project at dark because he was not equipped for night work. Temporary pavement markings were not placed in the section of the project in question until the next day.

5. We did a field evaluation of the pavement surface and found it did not meet the requirements of Article 330-12.2 in regard to texture of the finished surface. The mat was thin (no more than one aggregate thick) in places, at many locations exhibited crushed aggregate in the center of the lane, had numerous areas where pulls caused the underlying surface course to be visible and had areas which had not been rolled.

6. Our inspector noticed that paving operations were speeded up over this section of the project. This may explain the demise of quality.

7. Our position is that we had no alternative to requiring removal and replacement of this section of FC-2 because of the events that occurred and the final quality of the product.

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

1. Prior to May 12, 1989, the Department did not question placing FC-2 on this project adjacent to a previously laid pass of FC-2 with a paver lacking a functional joint matcher,

- 2. Prior to May 12, 1989, paving operations were conducted after 6 p.m. and the Department did not object.
- 3. It is a strange coincidence that the limits over which the Department found FC-2 to be unacceptable exactly coincide with the area of FC-2 placed on May 12th to complete the lane in which one of the pavers was ordered shut down.

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 \$15,000 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$288.70 for Court Reporting Costs.

Tallahassee, Florida

Dated: 23 March 1993

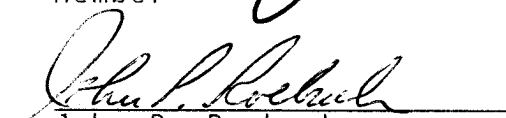
Certified Copy:

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

23 March 1993  
Date

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

  
 K. N. Morefield, P. E.  
 Member

  
 John P. Roebuck  
 Member

S.A.B. CLERK

MAR 23 1993

**FILED**

S.A.B. CLERK

MAR 23 1993

FILED

STATE ARBITRATION BOARD  
STATE OF FLORIDA

MID-STATE PAVING CO., INC. )  
and PAVEX CORPORATION )  
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- and - )  
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DEPARTMENT OF TRANSPORTATION )  
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PROJECT NO. 16130-3519

LOCATION: Polk County,  
Florida

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Wednesday, January 27, 1993

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

TIME: Commenced at 11:25 a.m.  
Concluded at 12:55 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. John Roebuck

APPEARING ON BEHALF OF MID-STATE PAVING AND PAVEX:

Mr. Jon Chellgren  
Mr. Jody Caliguire  
Mr. Tom Glor

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Marshall Dougherty  
Mr. Ken Blanchard  
Mr. Don Maxwell  
Mr. Rick Roberts

\* \* \*

I N D E X

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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 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, Gene Cowger, to serve  
11 as the third member of the Board and as Chairman.

12 Our terms of office began July 1, 1991, and  
13 expire June 30, 1993.

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

17 (Whereupon, all witnesses were duly sworn.)

18 CHAIRMAN COWGER: The documents which put this  
19 arbitration hearing into being are hereby introduced as  
20 Exhibit 1. They consist of the notice of arbitration,  
21 the request for arbitration form, and all of the  
22 documents that were attached to that request. The DOT  
23 has had that information for some time now, they had  
24 the opportunity to review it.

25 Does either party have any other information they

1 wish to put into the record as an exhibit?

2 (Discussion off the record)

3 CHAIRMAN COWGER: While we were off the record,  
4 DOT presented a bound folder of information entitled  
5 FDOT analysis, friction course claim, 16130-3519, which  
6 we will identify as Exhibit No. 2.

7 Does either party have any other exhibits they  
8 wish to enter at this time? Does either party wish  
9 additional time to consider any of the DOT exhibits?  
10 Hearing nothing we will proceed.

11 (Whereupon, Exhibit Nos. 1 and 2 were received in  
12 evidence.)

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

20 The parties are requested to assure that they  
21 receive properly identified copies of each exhibit  
22 submitted during this hearing and to retain those  
23 exhibits. The Board will furnish the parties a copy of  
24 the transcript of this hearing, along with its final  
25 order, but will not furnish copies of the exhibits.

1           This is for the -- in the interest of saving  
2 postage on the part of the Board, those exhibits will  
3 be retained. If either party should need them, request  
4 them, we will send them to you.

5           The hearing will be conducted in an informal  
6 manner. The contractor will elaborate on their claim  
7 and then DOT will offer rebuttal. Each party may  
8 interrupt to bring out a point by coming through the  
9 Chairman. However, for the sake of order, I must  
10 instruct that only one person speak at a time.

11           It is appropriate now for the contractor to begin  
12 his presentation. Mr. Chellgren, we would like for you  
13 to tell us first off the total amount of your claim to  
14 get it in the record.

15           MR. CHELLGREN: It's right at \$24,000. The  
16 amount is spelled out in the claim letter, \$23,750.63.

17           CHAIRMAN COWGER: Thank you. You may proceed on.

18           MR. CHELLGREN: I would like to summarize briefly  
19 what we believe this claim to be about. Basically  
20 Pavex is seeking reimbursement for the cost of removal  
21 and replacement of 5620 lineal feet of FC-2 friction  
22 course that was placed on the project on Route 60.  
23 The project on Route 60 is a four-lane divided rural  
24 highway.

25           I think there's three issues in the case. The

1 first issue is the issue of the quality of the mix  
2 in place and whether or not it meets the DOT  
3 specifications, and is of comparable quality with other  
4 projects constructed and accepted in the state.

5 The second issue is an issue concerning the use  
6 of a joint matcher with one of the pavers on the job  
7 and the consequences of the decision relative to that  
8 piece of equipment.

9 The third issue is an issue of working late on  
10 the job and what crime that constituted and what should  
11 be the results of that crime, if any.

12 That briefly is the summarization of the project.  
13 What I would like to do at this time is show you the  
14 project in various aspects. I'm primarily dealing with  
15 the issue of the quality of the mix in place at this  
16 point in time.

17 (Whereupon a video tape was presented.)

18 MR. CHELLGREN: The first four minutes of this  
19 tape involves a ride through the job going first  
20 westbound and then eastbound. I won't at this time  
21 tell you which of the lanes ended up coming out, but  
22 this literally goes from one end of the project to the  
23 other.

24 The project was three miles long. This  
25 particular direction is westbound. Alcoma is a packing

1 plant that's on the side of the project.

2 You can also tell from the general conditions of  
3 the roadway and neighbors, like I say, there's a wide  
4 median and the project is basically in a rural wooded  
5 area. There's a couple of packing plants, really  
6 nothing there.

7 This tape was made prior to the asphalt being  
8 removed on the project. The asphalt came out on  
9 May 22, 1992.

10 The outside lane as you can see has a four-foot  
11 shoulder that was paved together with the main line.  
12 The inside lane has no shoulder, so it was paved 12  
13 foot. The outside was a different setup on the paver  
14 and it was paved 12 and 4.

15 CHAIRMAN COWGER: So you put down 16 feet in one  
16 pass?

17 MR. CHELLGREN: Yes, on the two eastbound and  
18 westbound on the outside lane. The inside lane was 12  
19 foot.

20 CHAIRMAN COWGER: I understand.

21 MR. CHELLGREN: The actual friction course on  
22 this project was laid simultaneously with two crews.

23 To give you a little bit of the sequencing, what  
24 occurred on 5-11, which is the day before the pavement  
25 in question came up, one of the pavers was going

19

1 eastbound on the outside lane pulling 16 foot. When it  
2 got done, it reversed direction and came westbound  
3 continuing to pull 16 foot, because that's what that  
4 paver was set up.

5 The second paving crew started on the inside lane  
6 going westbound pulling 12 foot. It got to the end of  
7 the project, reversed direction, and came back the  
8 other way.

9 We are now heading back.

10 CHAIRMAN COWGER: You're headed in the other  
11 direction now?

12 MR. CHELLGREN: Not yet. We're still heading  
13 toward town. At this point in time that was just  
14 temporary striping that was on the job. That's  
15 actually the end of the friction course.

16 There's a little bit of FC-4 that was laid, and  
17 now we're approaching the town of Lake Wales. And we  
18 will reverse and come back to the eastbound lanes.

19 This joint is the beginning of the project going  
20 eastbound.

21 This plant up here is the Alcoma Packing again,  
22 just for a point of reference.

23 That is the end of the project on the eastbound  
24 lane.

25 The next part of the tape, prior to removing the

1 asphalt, we pulled the rolling straightedge from one  
2 end of the 5620 feet that was scheduled to be removed  
3 to the other end and video taped that operation.

4 I think that it's pretty straightforward. It  
5 took a little while to do this. This tape runs on for  
6 about 14 minutes right now.

7 To go ahead and tell you how it all comes out,  
8 the station that they started removing at was 317+25.  
9 The end of the job was 317+45, which was the 5620 feet.

10 In the entire 5620 feet essentially it looks just  
11 about like that. The only -- they were only into it  
12 about 900 feet at this point in time.

13 Essentially the needle stays right where it is.  
14 The only quiver it gets is a little steel wheel under  
15 it and it vibrates a little as you go down the road.  
16 It vibrates but there's no back and forth movement at  
17 all. You can also see the mat conditions under the  
18 rolling straightedge.

19 CHAIRMAN COWGER: DOT, do you contend there were  
20 any straightedge deficiencies in this section?

21 MR. DOUGHERTY: There were one or two, but no, it  
22 was not a major straightedge deficiency problem.

23 MR. CHELLGREN: This project is highly unusual in  
24 that it is the very first time in my life that I have  
25 ever been required to pave all the crossovers and

1 intersections and turn lanes prior to starting the  
2 paving on the main line.

3 We objected to that requirement, but were  
4 overruled. I think there's a lot of inherent problems  
5 going with construction like that.

6 You're only laying a lift that's essentially half  
7 an inch thick. And as you pull your intersections  
8 first, it is then the main line's problem matching the  
9 intersections as you come by rather than vice versa.

10 Obviously the most important straightedge and the  
11 most important mat is to get the main line straight.  
12 I'm not sure why they came up with the requirement, but  
13 we literally, despite the fact that we had two crews on  
14 the job, had to keep them both doing intersections.

15 We even proposed that one crew pave main line and  
16 another crew pave intersections, but were turned down  
17 on that request.

18 CHAIRMAN COWGER: If we're going to watch more of  
19 this, let me ask DOT why did -- is that true, and if  
20 so, why was that required?

21 MR. DOUGHERTY: I will defer to our resident  
22 engineer.

23 MR. MAXWELL: The friction course being the last  
24 lift, you want the best mat for the place. What you  
25 usually will find is if you place the main roadway mat



1 first and then try and pull your crossovers and other  
2 parts, yes, you will get a better joint, but the  
3 equipment and stuff will have a tendency to tear up  
4 that mat at points.

5 And so it was felt that by doing the crossovers,  
6 getting the hardest part out of the way first and then  
7 pulling the main line you will end up with the best mat  
8 on the main line, which is where you want the best  
9 consistency.

10 CHAIRMAN COWGER: The idea, to make sure  
11 I understand that, the idea was to try to prevent  
12 damage to the main line mats while you were placing the  
13 crossovers?

14 MR. MAXWELL: Right, side streets and crossovers.

15 CHAIRMAN COWGER: And you did require it?

16 MR. MAXWELL: Right.

17 MR. CHELLGREN: There is only one piece in this  
18 entire tape where the needle even flickers. The last,  
19 about 800 feet of this project the friction course was  
20 actually laid over an adjoining job that was paved by  
21 Pavers, Inc.

22 There is one spot that the needle goes a little  
23 bit -- it never gets into the red, but it goes near the  
24 red, and that is on top of the other structural course.

25 If you want to see this, we can continue to watch

1 this or --

2 CHAIRMAN COWGER: I see no reason to see the rest  
3 of your straightedge. Do you have any more video?  
4 I would like to hear the rest of your testimony.

5 MR. CHELLGREN: The total tape is 58 minutes  
6 long.

7 CHAIRMAN COWGER: We haven't got time --

8 MR. DOUGHERTY: We have some video, too.  
9 Pictures are worth a thousand words.

10 MR. CHELLGREN: This is like I say, it does that  
11 for the whole duration.

12 (Brief pause)

13 MR. CHELLGREN: This is the lane that was removed  
14 at normal travel speed. The first drive the tape was  
15 made by one of my men up here. He came back and showed  
16 it to me and said I couldn't pick out which one they  
17 said was bad.

18 Where we finally cut it out, as you can see,  
19 those are the intersections that were paved first.  
20 That's the joint where it literally starts. The  
21 removal was from this lane, from there to the end of  
22 the job. This particular drive takes about two minutes  
23 to view this piece of the tape.

24 CHAIRMAN COWGER: The joint matcher dispute only  
25 relates to the joints against the centerline?

1           MR. CHELLGREN: That's correct. All this asphalt  
2 you're viewing now was deemed to be unacceptable and  
3 was taken up and thrown away. That's the end of the  
4 project.

5           CHAIRMAN COWGER: This is in a crossover?

6           MR. CHELLGREN: This is right by Alcoma Packing.  
7 This is the reason why DOT doesn't specify putting  
8 friction course in crossovers. It won't stand the  
9 lateral stress and it's not going to. We requested  
10 that they omit that, but that was not allowed.

11           The truck traffic crossing over makes part of  
12 that problem. This is another section of the project  
13 here.

14           CHAIRMAN COWGER: Where are we here?

15           MR. CHELLGREN: I'll let you look at it and I'll  
16 tell you.

17           CHAIRMAN COWGER: Is that in a through lane that  
18 we're looking at?

19           MR. CHELLGREN: Some of both.

20           The piece you just looked at was all acceptable  
21 pavement. It is not in the area in question. And  
22 I just wanted to give an example of what it looks like  
23 on film so you can compare it to some of the other  
24 areas.

25           This area again is still some of the acceptable

1 pavement.

2 Now what happens is I go back and I start  
3 literally walking the project from one end to the  
4 other. Jody and I did it. I took the camera and he  
5 walked it from the beginning of the station to the end.  
6 We give the station numbers as we go. That was 319,  
7 and we started at 317+75.

8 MR. ROEBUCK: This is what you had to remove?

9 MR. CHELLGREN: All this that came out from the  
10 centerline to that line was removed from the project  
11 and disposed of.

12 CHAIRMAN COWGER: What we saw prior to this time  
13 was not in the removal area, this is?

14 MR. CHELLGREN: Yes. I can show you the break  
15 point. Basically this goes on for a good while. On  
16 the tape -- well, the battery ran down after 14 minutes  
17 and then we go on for another like eight after that.

18 CHAIRMAN COWGER: What is that streak I see down  
19 the middle of the lane?

20 MR. CHELLGREN: A couple of things. One is like  
21 in this lane over here, friction course very quickly  
22 starts graying. You rub the liquid off the top of the  
23 rock and it will happen -- it depends on which cars  
24 drive in which lane the most. That's pretty typical.  
25 A little bit of camera angle will show a difference

1 between one lane and the other.

2 On the second -- after the battery ran down, we  
3 didn't actually tape the second half of it until the  
4 next morning. In the morning the sun was in front of  
5 us. This was done in the afternoon, and the sun was  
6 behind us. That will give a little different  
7 perspective, also.

8 CHAIRMAN COWGER: Am I seeing spots in there  
9 where the friction course has raveled off?

10 MR. CHELLGREN: I didn't see them.

11 CHAIRMAN COWGER: I'm asking because I can't tell  
12 from what I'm seeing here.

13 MR. ROEBUCK: It's the camera angle, the picture  
14 making.

15 CHAIRMAN COWGER: Right there on the right,  
16 you're saying that's not where the aggregate had  
17 raveled off?

18 MR. CHELLGREN: I looked at the job in great  
19 detail. I walked it, looked through the camera. To  
20 say the job was perfect, the rolling straightedge was.  
21 It probably needed half a day's worth of punch list  
22 work.

23 There are some details on the friction you're  
24 going to get from time to time. Some of that sort of  
25 stuff where the roller stops and backs up, you get a

1 little puddle of water, leaves rust marks on the  
2 pavement.

3 CHAIRMAN COWGER: So it wasn't raveling?

4 MR. CHELLGREN: No. You will see it in the other  
5 lanes, too. The fact that I'm closer to this one makes  
6 it show up a little more.

7 CHAIRMAN COWGER: DOT, while this tape is  
8 rolling, what do you all see in this area?

9 MR. DOUGHERTY: I see an asphalt pavement that's  
10 down. I see it from the perspective that I've looked  
11 at it, also. I've walked the entire length of the area  
12 that we asked to be removed.

13 If you stand and look at one end, and I agree  
14 that Jon took a shot riding down the road. If you ride  
15 down the road you cannot see the problems. They're  
16 there, but they're of such a nature that you're not  
17 going to see them.

18 In this particular picture, what you see here,  
19 too, is the little white specs showing up here on the  
20 bottom, that's crushed aggregate, crushed stone that we  
21 found. Like Jon said depending on how the sun is in  
22 your eyes, whether it's behind you, it's how you look  
23 at it.

24 When we looked at this piece of pavement it  
25 looked like there was a virtual white stripe down the

1 middle of this lane. We found that was a line of  
2 severe crushed aggregate down virtually the entire  
3 length of this one particular lane pull.

4 MR. CHELLGREN: The yield for the day on the  
5 project, pound per square yard was 42.8 pounds per  
6 square yard. The yield for the piece that was removed  
7 was 44.9 pounds per square yard based on the tons we  
8 laid in the area that was removed. Our optimum for  
9 FC-2 varies from about 40, 42 and 45.

10 MR. DOUGHERTY: I appreciate the fact of the  
11 yields. Those numbers are fine, but when you got out,  
12 when I looked at it, I see a lot of crushed aggregate.  
13 Our tape will show a little different story, same  
14 pavement, but a little different perspective of looking  
15 at it.

16 CHAIRMAN COWGER: What I'm seeing there those  
17 little white spots that are pretty well scattered over  
18 the pavement are crushed aggregate?

19 MR. DOUGHERTY: Yes, sir.

20 CHAIRMAN COWGER: Do you agree with that?

21 MR. CHELLGREN: I don't disagree there was some  
22 crushed aggregate. I also will state that there's no  
23 more in this lane than there was in that lane or any  
24 other lanes on the project.

25 MR. DOUGHERTY: That's where we take exception.

1 MR. CHELLGREN: Any rock that's manufactured  
2 you're basically laying it one rock thick is not a  
3 hundred percent one size. Any time the paver screed  
4 hits a rock that is not --

5 CHAIRMAN COWGER: We understand.

6 MR. CHELLGREN: You are looking at an aggregate  
7 that's basically a half inch nominal size. You're  
8 going to end up with some occasional five-eighths or a  
9 nine-sixteenths. When the screed hits that it is going  
10 to pop the top off of it, and that applies to every  
11 friction course that is laid around the state.

12 In fact, the weight of the paver is not so heavy  
13 and the screed is all that's literally riding on it,  
14 that it has the ability to recrush any significant  
15 aggregate.

16 CHAIRMAN COWGER: Is there any need for us to see  
17 this whole thing?

18 MR. CHELLGREN: I can fast forward it. It  
19 basically does the same thing --

20 CHAIRMAN COWGER: Can we agree between the  
21 parties that this is a typical situation -- that that's  
22 a typical situation throughout this whole section?

23 MR. DOUGHERTY: I will agree that's the section  
24 we had removed. From their perspective that's typical.

25 CHAIRMAN COWGER: Let's move on and try to get on



1 to something else.

2 MR. CHELLGREN: I have a little bit of the tape  
3 of the removal.

4 (Brief pause)

5 MR. CHELLGREN: This was while we started to  
6 remove the project, taking up the friction course. You  
7 can see the -- (showing video tape). That's a crying  
8 shame.

9 CHAIRMAN COWGER: You were able to just blade  
10 this off?

11 MR. CHELLGREN: We basically took it off with a  
12 loader. A loader went down the center and peeled it  
13 up, a motor grader caught the two edges and brought it  
14 in. That's typical of the asphalt that was coming out.

15 Now we are back walking and we go on from here to  
16 the -- I do want to show you some stuff at the far end  
17 of the tape, though.

18 (Brief pause)

19 You can see it looks a little different because  
20 of the day. You don't see quite the difference, but  
21 you show the tire tracks starting to develop.

22 We are walking now within the traffic control  
23 because the removal is going on behind us. It had  
24 rained the night before, so once in a while you will  
25 see a little surface moisture on the mat, but all this

1 material also came up.

2 Like I say, some days you will see a little more  
3 white than others just depending on how it's going.

4 But all this pavement came up, also.

5 CHAIRMAN COWGER: How old was it at this point?  
6 Had it been down a couple of weeks?

7 MR. CHELLGREN: This tape was made on the 22nd.  
8 The pavement was laid on the 12th. It had been down  
9 ten days.

10 There is going to be an inherent problem. When  
11 you're paving a joint, basically a paver is always  
12 backing up, setting down, pulling forward. The idea  
13 that it can hold a true line going that way isn't as  
14 good. So you will always have a rougher joint.

15 If we had paved the intersection from the main  
16 line out, you set the screed flat down on the edge and  
17 you work off of that. We were aiming blind to hit a  
18 joint doing the intersection first and then having to  
19 match to it coming by with the main line.

20 That's the end of the project right up there.  
21 This is the end of the job, this last section. Like  
22 I say, it went over.

23 Now, what this is is this is some other areas of  
24 the project. This piece of the tape takes about four  
25 minutes and I think it's worthwhile looking.

1           This is the project that was paved at another  
2 time that was all deemed to be acceptable. As you can  
3 see, it's got identical differences than the other  
4 piece. If anything, there are other areas that were  
5 much more exaggerated than the areas that ultimately  
6 came out. That is in place today and functioning  
7 appropriately.

8           I've walked every foot of it. I can't tell the  
9 difference between what came out and what stayed in.  
10 This is again Alcoma. You can see a lot of the truck  
11 traffic. That obviously affects how quickly it abrades  
12 the liquid off of the rock.

13           CHAIRMAN COWGER: I think we can cut that unless  
14 there's some reason that you want to show the rest of  
15 it. I think we need to get on.

16           MR. CHELLGREN: The points I want to make at this  
17 time, and I would like to concentrate on my first  
18 point, has to do with the quality and condition of the  
19 mat that was removed.

20           I couldn't tell any difference whether I walked  
21 it, whether we rode it, whether we rode the adjoining  
22 lane. We contend that the pavement is of equal  
23 condition of any other on a job and also it's of equal  
24 or better condition of any laid anywhere else that's  
25 acceptable in the state.

1                   Zero straightedging deficiencies. I don't know  
2                   how you improve upon that. In fact I specifically  
3                   asked Marshall the question before the mix came out if  
4                   we are at zero, how are we going to get better. What  
5                   is going to happen if we go out there and put two or  
6                   three in it?

7                   We're not only going to take out this pavement  
8                   but then we're going to cut a few more holes in it  
9                   later on.

10                  Not only was it zero deficiencies, that needle  
11                  didn't move. That's got to be one of the smoothest  
12                  pavements and the best riding roads around. And we  
13                  took it up and threw it away.

14                  We specifically requested that this Department  
15                  make engineering evaluations on the condition of the  
16                  pavement. We requested that on May 15, three days  
17                  after the pavement was laid when we heard that they  
18                  were going to argue about it. It was refused on  
19                  May 18. Subsequent to that time there was no  
20                  additional effort to reconsider it.

21                  Pavex felt strongly enough about the pavement  
22                  condition that we offered the Department a warranty on  
23                  the work. We told them if that asphalt failed for any  
24                  reason for the first year we would do whatever it took  
25                  to fix it. We offered that warranty in the form of a

1 maintenance bond, so that there would be a financial  
2 obligation on the part of Pavex and its bonding company  
3 to guarantee that that pavement would have stayed in  
4 place.

5 I think any asphalt expert will tell you that any  
6 friction course, since it obviously -- and this is  
7 again part of the area that stayed in place, any of the  
8 asphalt that would have failed for any of the reasons  
9 cited, whether it's thin, it obviously would have  
10 raveled over a relatively short period of time.

11 Anything that would have happened in that period  
12 of time would have occurred within the warranty period  
13 offered and therefore the Department would have been  
14 under no risk to go ahead and leave this asphalt in  
15 place and see what the condition was. That's basically  
16 it.

17 The next issue I would like to address is the  
18 issue of the joint matcher. In response to that,  
19 I would like to get some testimony from Tom Glor that  
20 was our superintendent on the site when both of the  
21 paving crews were working for him at the time.

22 Tom, on May 12, 1992, what time of day or wh  
23 was the first time that you were aware of an issu  
24 the joint matcher?

25 MR. GLOR: The joint matcher issue didn't

1           until four o'clock.

2                   MR. CHELLGREN: What was said and what did you do  
3 as a result of that?

4                   MR. GLOR: I was told by one of the crew members  
5 that the inspector, Morris, had told him that if we  
6 didn't get the joint matcher on that machine that we  
7 would have to get it off the road.

8                   At that point I had a box like this and tried to  
9 hook it up to that machine, but it was a different  
10 manufacturer and wouldn't mate up to that machine, so  
11 we were unable to use it. So we ran out the last  
12 truckload and he told us we could do it. We made a  
13 joint, and had to get the machine off the road.

14                   MR. CHELLGREN: That's a spare joint matcher you  
15 keep with you?

16                   MR. GLOR: Yes.

17                   MR. CHELLGREN: Once you got that machine off the  
18 road, you later picked up from that point and continued  
19 paving?

20                   MR. GLOR: Yes. It was approximately 4:30 when  
21 we made the joint. I had to get that machine off the  
22 road and park it.

23                   The crew that was paving westbound at the time  
24 was paving a 12-foot lane in conjunction with a  
25 four-foot shoulder. They still had about an hour of

1 paving left to reach the end. By the time they got  
2 done with the end, it was 5:30, quarter to 6:00.

3 They had to tram that machine all the way from  
4 one end of the job two miles up the other way, plus  
5 stop at the compound, change the exterior one-foot  
6 extension on the wing where they had been paving the  
7 shoulder, go up to the joint.

8 At that time we had had enough asphalt on the  
9 road to make it to the end of the job, which was  
10 another seven or eight loads. By the time they got up  
11 to the joint, set down, were ready to pave that, it was  
12 probably 6:30.

13 MR. CHELLGREN: Okay. From that point forward  
14 were you ever told by anybody from the Department that  
15 you had to shut down and stop paving?

16 MR. GLOR: No.

17 MR. CHELLGREN: Did you have any discussions with  
18 anybody from the Department complaining about the  
19 condition of the asphalt?

20 MR. GLOR: No. As a matter of fact, during the  
21 day we had compliments. Lab personnel from Bartow were  
22 out there. They thought it looked good. That  
23 particular day two people from the Gainesville lab  
24 visited the job, and they watched both crews for a  
25 period of time and commented on how well each mat

1 looked.

2 That particular crew where the paver was shut  
3 down was actually running down matching the joint on  
4 that 12-foot lane. They commented on how good the  
5 joint looked to them.

6 MR. CHELLGREN: The people from Gainesville had  
7 been on the job about how long that day?

8 MR. GLOR: They were out there probably about two  
9 and a half or three hours.

10 MR. CHELLGREN: What time did they leave?

11 MR. GLOR: It was somewhere around three o'clock,  
12 or 3:30.

13 MR. CHELLGREN: Did Morris Tomlinson, who I guess  
14 was the DOT inspector on the job --

15 MR. GLOR: Right.

16 MR. CHELLGREN: Did he at any time tell you to  
17 shut the project down?

18 MR. GLOR: No, he never mentioned anything about  
19 shutting it down.

20 MR. CHELLGREN: You said he didn't complain about  
21 the pavement conditions?

22 MR. GLOR: No.

23 MR. CHELLGREN: How long did Morris stay on the  
24 job that day?

25 MR. GLOR: Morris was on the job until -- it was



1 right around 8:30 p.m. I noticed he was gone, and the  
2 other inspector on the job had taken over, was taking  
3 what tickets were left and was keeping track of the  
4 spread.

5 MR. CHELLGREN: Did you have any other complaints  
6 from the other inspector on the job about the quality  
7 or yield or anything like that?

8 MR. GLOR: No complaints. He just had one  
9 problem with the spread, which I just contributed to  
10 tickets being out of line in order, the trucks were in  
11 the machine.

12 MR. CHELLGREN: Would you explain what that  
13 means.

14 MR. GLOR: We had to wait for the one crew to  
15 finish going through to the west end. The eight trucks  
16 were all bunched up in one area. And when they pulled  
17 into the lane to finish going out to the east end, they  
18 got in line, and the paver, not in the same order that  
19 they were loaded at the plant. So tickets were out of  
20 order, and the machine was giving mat problems.

21 MR. CHELLGREN: To your information did you at  
22 any time have a yield problem on the project?

23 MR. GLOR: No, that was probably one of the most  
24 average spread jobs we have done. It never varied more  
25 than a pound one way or the other.

1 MR. CHELLGREN: Do you know approximately what  
2 time that night sunset was?

3 MR. GLOR: It was somewhere between quarter after  
4 8:00 and 8:30.

5 MR. CHELLGREN: Do you know about what time it  
6 would have gotten dark?

7 MR. GLOR: Quarter to 9:00.

8 MR. CHELLGREN: Do you know when you finished  
9 paving?

10 MR. GLOR: We reached the end shortly after nine  
11 o'clock.

12 MR. CHELLGREN: Had you not been required to take  
13 the other paver off the road, when do you suspect you  
14 would have gotten to the end of the project?

15 MR. GLOR: They would have reached the end by  
16 6:00.

17 MR. CHELLGREN: The next person I would like to  
18 talk to is Jody Caliguire. He's the branch manager of  
19 our Bartow operation.

20 You were on the project that afternoon?

21 MR. CALIGUIRE: I arrived that evening at  
22 approximately ten minutes to 6:00.

23 MR. CHELLGREN: At any time after you got there  
24 did one of the inspectors, either Lucy or Morris, tell  
25 you to shut the job down and throw the asphalt that was

1 on the project away?

2 MR. CALIGUIRE: No one ever told me to shut the  
3 job down.

4 MR. CHELLGREN: Did you have any discussions  
5 about the pavement being unacceptable and anything  
6 having happened to it?

7 MR. CALIGUIRE: Not at that point or even as we  
8 were completing when we sat down at the joint later at  
9 about 6:30 as Tom stated.

10 MR. CHELLGREN: Did any discussions occur  
11 concerning it getting late or dark or anything like  
12 that, that it might cause a problem?

13 MR. CALIGUIRE: There was discussion at about  
14 8:20 or so when Mr. Tomlinson, the DOT inspector, said  
15 it was getting dark, and that he was not going to count  
16 the rest of the square yards from that point, and that  
17 we were laying it at our own risk and he would have to  
18 look at it in the morning to further evaluate it.

19 He then left the project and he left Lucy Leca,  
20 one of the inspectors, still taking tickets and  
21 observing the paving operation as well as calculating  
22 yield.

23 MR. CHELLGREN: Thank you.

24 I guess in summary, Pavex paved 11 miles on  
25 this project without a joint matcher. The rolling

5

1 straightedge on the entire project found one  
2 one-sixteenth inch deficiency in an area outside the  
3 area in question.

4 We had done this all these miles, and one mile  
5 from the end of the job on what would have been the  
6 last day on the main line -- we were still coming back  
7 the next day to do some other work -- at 4:30 in the  
8 afternoon it was determined that our operation had  
9 become unacceptable due to the lack of a joint matcher.

10 At that point in time literally Pavex got caught  
11 with its pants down. From that point forward our only  
12 attempt was to make the best of a bad situation.

13 As you're all aware, asphalt is a perishable  
14 item. Once it's in the truck and it's hot, it's going  
15 to get cold and is useless before long if you don't put  
16 it in the end place.

17 We in theory are dealing with an end result  
18 specification. A joint matcher is a process control.

19 Just to explain a little bit about what a joint  
20 matcher is and why this little box became so important,  
21 literally all it does, it rides on the paver, sticks  
22 out on the paver on the pole about two foot off the  
23 paver. It rides on the existing pavement and tells  
24 the paver -- tells one ram on one side of the screed  
25 whether or not to go up or down.

1           It can't see, it can't think, it can't evaluate.  
2           A joint matcher is a misnomer. It doesn't match any  
3           joints. It has nothing to do with horizontal -- I mean  
4           lateral control of the paver. It is a device that  
5           controls a vertical elevation on one side of the screed  
6           only.

7           Generally speaking, a joint matcher is only used  
8           in conjunction with the lane that has already been  
9           paved under electronic controls. You use the ski pole,  
10          which in fact levels. This machine with this shoe on  
11          it can't level.

12          You pull the first two lanes on this pavement,  
13          one being the inside lane, one being the outside lane,  
14          were paved with both sides of the paver operated  
15          manually. That's the way we're supposed to do it on  
16          friction course.

17          You come back and they require potentially one  
18          side of the screed -- the other side of the screed is  
19          run manually, one side of the screed is run with this  
20          box.

21          The problem with that is that when you ran your  
22          first pass manually, you put a bump in it. That box is  
23          going to transfer that bump to the new mat. It can't  
24          make it go away. A person can do that. The same  
25          person who pulled it the first time if he did it right

1 should be able to pull it right the second time.

2 Of the four edges going down each side of the  
3 lane, three of them are paved manually and only one of  
4 them uses this box.

5 I think the entire issue of darkness and whether  
6 or not we finished up late is totally the function of  
7 the change condition when the paver was shut down when  
8 we were in such a vulnerable position. This changed  
9 condition resulted essentially in the paving being  
10 finished up late that night. If it weren't for that  
11 particular change, I don't think we would be sitting  
12 here today.

13 There are two specifications that have been  
14 cited -- three, I guess, but two that are cited more  
15 often than any others in the letters, and I could  
16 review them, but you have the letters.

17 One is Specification 7.1.1 that says not to do  
18 any construction work after 6:00 p.m. If you look at  
19 the heading on that specification, it is a noise  
20 ordinance. It specifically is designed to not create a  
21 lot of disturbance in built-up and residential areas.  
22 As you can see by the tape, that is neither one.

23 In fact, on seven previous occasions we had  
24 worked well past that time. It was common on the job  
25 to work relatively late.

1           You've also got to remember we were at mid May,  
2           which is four or five weeks off, to the longest day of  
3           the year, so we had quite a bit of construction time to  
4           deal with.

5           The second set of the specification that is being  
6           cited is 330.3.3.1, and that's a general specification  
7           dealing with just not doing any construction work after  
8           dark.

9           As you all are well aware, tens of thousands of  
10          tons of asphalt are laid after dark in Florida. In  
11          fact in the southeast part of the state where we do the  
12          bulk of our work, that's the rule rather than the  
13          exception.

14          Asphalt doesn't know whether it's light or dark,  
15          and its quality is not determined based on that.

16          We think those specifications, particularly in  
17          light of the way they are administered on the project  
18          in the past are not particularly applicable. In fact,  
19          the last load left the plant on this job at 5:55, the  
20          day before that, which no complaint has been issued  
21          relative to the asphalt. The last load left at 6:18,  
22          which is some 23 minutes later than the last load on  
23          this tape.

24          I believe there should be no issue relative to  
25          the quality of the mix, and the mat in place.

1 I believe that the sole issue seems to be whether or  
2 not Pavex in some way refused an instruction from  
3 Department personnel, and what penalty should be  
4 imposed upon Pavex for refusing that instruction.

5 I believe our position is straightforward. We  
6 were never informed to stop and we were never given any  
7 specific instructions.

8 You know, virtually in every job we build Pavex  
9 is at risk, like every contractor, until the final job  
10 is completed and accepted. The fact that someone wants  
11 to reserve judgment on a particular piece of pavement  
12 or wait and check other things before they finally  
13 accept it, that is by no means unusual. This happens  
14 on lots of jobs all the time.

15 If this alleged discussion between the inspectors  
16 and our people on the job -- and you've heard what they  
17 had to say about it, was as serious or potentially  
18 serious as it ended up being, taking out a mile of  
19 pavement, I would have thought it would have been the  
20 Department's responsibility to make sure that  
21 communication was very definitive, was understood.

22 It would have been easy to do with a note or  
23 anything in writing or make it clear to all of the  
24 parties. No communication of that form was ever made  
25 to the parties on the night in question.



1           The first I heard about it was when the letter  
2 came telling us to remove it.

3           CHAIRMAN COWGER: Are you about through?

4           MR. CHELLGREN: Yes. As for the issue of why the  
5 asphalt came out and the specific station numbers, it  
6 appears to me to be a very arbitrary choice.

7           In one of the letters it says the paver arrived  
8 at station 317+25 at 6:00 p.m., and therefore all  
9 asphalt laid after that time was unacceptable. I find  
10 it hard to believe, and I think the tapes back me up  
11 that there is virtually no difference between the time  
12 when it was laid at 5:59 p.m. and the time it was laid  
13 at 6:01 p.m. and right on up there.

14           In fact, it didn't even start getting dark until  
15 about 8:20, and at that point in time about 110 out of  
16 the 168 tons in question had already been laid. That  
17 work was all observed and no complaints were issued to  
18 Pavex.

19           Pavex in an attempt to resolve this in the few  
20 days between when the asphalt actually came out, we  
21 requested on a couple of occasions that a specific list  
22 of deficiencies of the pavement be given to Pavex so we  
23 could go and evaluate them.

24           Obviously there's a lot of ways to fix a pavement  
25 rather than ripping the entire thing out and starting

1 all over again. If we had been given a deficiency  
2 list, we would have been happy to address those.

3 I concede that like every job there was a little  
4 bit of a punch list. I personally reviewed the job  
5 before it was removed. We had a few raveling spots and  
6 a few incidentals that need a little touch-up work.  
7 That is not hard to do.

8 It appears to me, from where I sit, that the bulk  
9 of this claim comes down to a perception that Pavex in  
10 some way stepped on somebody's toes or did something  
11 that we weren't supposed to do, and that we had to pay  
12 the price for that.

13 I don't understand that. I don't think that  
14 that's the way we ought to be doing business.

15 From that point forward when the original letter  
16 came that required us to remove the pavement, there was  
17 no secondary efforts to reevaluate or consider the  
18 bituminous section's opinion or to get any third party.  
19 It seemed to be that the intent was to enforce the  
20 previous decision that was made.

21 I believe that it is generally in the best  
22 interests of not only the contractor but also the DOT  
23 and also the taxpayers to consider other alternative  
24 resolutions in a dispute of this kind. And in light of  
25 that we would like to be reimbursed for our expense of

1 removing and replacing this pavement.

2 CHAIRMAN COWGER: Are we ready for DOT to  
3 respond? Are you through?

4 MR. CHELLGREN: Yes.

5 CHAIRMAN COWGER: All right. DOT.

6 (Brief pause)

7 MR. DOUGHERTY: This is just a side note, and  
8 I do this, hearing what Jon was saying and all about  
9 the step on the toes and that kind of attitude, I met  
10 with my people last night in a motel room. We wrote  
11 down our thoughts on what I wanted to say today.

12 Oddly enough there's only one item that deals  
13 with going past the time limits of the construction  
14 project. We had mentioned to them at six o'clock.  
15 They may have done it in the past.

16 On this particular day the plans do say six  
17 o'clock and we indicated six o'clock. That's the only  
18 thing I have here.

19 The other thing we came up with, I wanted to  
20 bring to your attention, the maintenance of traffic  
21 utilized while paving this thing was not properly  
22 applied to the circumstances involved. This is  
23 according to our inspectors who were out in the field.  
24 It created a major safety hazard to the traveling  
25 public.

1           The thing that they noticed, too, our inspector  
2 noticed and she indicated to us was looked like the  
3 contractor had started speeding up his paving  
4 operation. And I put down here we are pushing to  
5 finish regardless of the direction giver, i.e., you  
6 guys are working too fast, the striping is not keeping  
7 up with you, whatever.

8           We were told the crew was scheduled to start  
9 another project the next day and had to get through  
10 with that one that day. And so that's where we were.  
11 That's all I had on that.

12           Now when I went out the next day, I was told the  
13 mat was down and didn't look real good. I came out the  
14 next day. I have it written down. There was a thin  
15 mat, only one stone's thickness of aggregate or asphalt  
16 down on a lot of this roadway.

17           There were frequent poles resulting in open  
18 holes. If you look at the picture number 4 that's in  
19 the back of the book, those were very, very constantly  
20 occurring.

21           Crushed aggregate, as I mentioned when you asked  
22 about the white line down the lane, crushed aggregate,  
23 discolored finish, did not match the quality of the  
24 adjacent lane. Unfortunately you've got two lanes  
25 paved, one that we did accept, one questionable to us.

1           It's the difference between night and day if you  
2 stood out there on the side of the road. There were  
3 several areas appeared to be not even rolled. We can't  
4 account for that, whether it was done because of  
5 darkness -- my understanding, too, is that the lighting  
6 operation, Jon said we put down a lot of asphalt at  
7 night.

8           We do. We have proper light plants to do that.  
9 I understand the lighting operation on this job was one  
10 set of headlights and one spotlight. With that kind of  
11 operation they paved until almost 10:30 at night.

12           I can understand where maybe some of the rolling  
13 was missed. Asphalt is black, it's dark, you're going  
14 to miss some of it sometimes. Our contention is it  
15 probably wouldn't have happened had it been done during  
16 the day.

17           Our tape is equally as long as theirs, but  
18 I don't want to show you all of it. Fast forward that  
19 thing up to about number 30.

20           I also, like Jon, walked this thing, and at every  
21 100-foot station I stepped out on the roadway and said  
22 it doesn't look like there's too much wrong here. You  
23 start looking and they start popping up at you then.

24           Here's some crushed aggregate (indicating on  
25 video tape). See all that white? That's all in the

1 pavement, gentlemen. That's all crushed aggregate.

2 Now the difference between their tape and ours as  
3 we focused in on the pavement --

4 (Brief pause)

5 MR. DOUGHERTY: Specification 330-12.2 indicates  
6 finish surface shall be uniform texture and  
7 compaction, surface shall have no pulled, torn or  
8 loosened portions and shall be free of segregation,  
9 sand streaks, sand spots, ripples -- that is a very  
10 common occurrence. That is an amount of crushed stone  
11 that was very common throughout the entire pull, and  
12 why, I don't know.

13 There you are, gentlemen. There is a portion of  
14 roadway.

15 MR. CHELLGREN: That's a portion of shoulder.

16 MR. DOUGHERTY: No, sir, it's not shoulder. Do  
17 you see the difference between the right and left  
18 roadway? I certainly do. These are polled areas. You  
19 can step out on the asphalt anywhere you wanted to on  
20 that rock and you would find areas one or two, three  
21 inches where the structural course was very visible,  
22 through holes in the friction course.

23 And, no, the pavement hadn't started raveling  
24 yet, and I surmise that's because the traffic hadn't  
25 been on it long enough to start it raveling. There's a

1 piece of it right there.

2 Again, these are the things I saw.

3 CHAIRMAN COWGER: That's near the centerline,  
4 isn't it?

5 MR. DOUGHERTY: Edge line. But now --

6 MR. MAXWELL: Left edge.

7 MR. DOUGHERTY: Gentlemen, I'm not an asphalt  
8 expert, but I do know what a consistent mat looks like  
9 when I go out and stand there and look at it. That is  
10 not a consistent mat from our standpoint. Okay?

11 There are the two roadways. Can you see a  
12 centerline? There's the right roadway that's in good  
13 shape. It will come back onto ours. I apologize, too,  
14 for the camera work. This is a project engineer  
15 working with the camera and he's not familiar with it.  
16 Its autofocus is not working properly.

17 CHAIRMAN COWGER: What we're seeing there is  
18 crushed aggregate?

19 MR. DOUGHERTY: Yes, sir. We have pictures that  
20 we included back there, and some of them I think are  
21 very good showing the difference -- there's a hole  
22 (indicating on video).

23 I'm not saying that we're being picky in just  
24 stopping and picking one or two, but I physically  
25 walked out on that pavement at every 100-foot marker.

1 And I stopped and within four or five feet of me  
2 I could pick out four or five of these areas. That  
3 concerned me.

4 There's a difference between the pavements. It  
5 depends on the light, the time of day. Don and  
6 I discussed amongst ourselves. We walked the project,  
7 stood on the west end and looked east when we first  
8 started walking it and it looked very similar to what  
9 their camera showed when they rode down the road.

10 I said it doesn't look bad to me, but upon closer  
11 examination you can see it. It's like a car finish, if  
12 you go up and take a close look you may not want to buy  
13 that car because of the paint job. Unfortunately we  
14 made the decision we didn't want to buy that one  
15 stretch of road because of the structure.

16 This is -- see, the pavement doesn't look that  
17 bad from this view. It's when you stand on it, look at  
18 it. And there's the joint. I will contend it doesn't  
19 look bad from that point of view. He's standing on 317  
20 looking at 318.

21 CHAIRMAN COWGER: We are on the side that's in  
22 question?

23 MR. DOUGHERTY: Right. That joint obviously  
24 occurred around six o'clock. From there on up that  
25 quality of road that we're showing you with all the



1 broken aggregate occurred throughout there.

2 Now this is the new pavement. We are at 175 now.  
3 This is the replaced pavement.

4 CHAIRMAN COWGER: Same mix?

5 MR. DOUGHERTY: Same mix, everything. We just  
6 wanted to show you that the pavement -- now when you go  
7 down this roadway and look there's not a night and day  
8 between left and right. They are similar in quality  
9 and we're very pleased with the quality of the final  
10 product. Again, it starts at that joint and off it  
11 goes. Again, that's the Alcoma plant I think that Jon  
12 had mentioned as far as a reference is concered.

13 We do not understand it. We just know that the  
14 finished product we looked at was not acceptable to us.  
15 There was a striking difference between the new and the  
16 old pavement, very striking difference. There's the  
17 new pavement, again.

18 So, anyway, that's where we're coming from. When  
19 we were approached about a claim and are going to ask  
20 for \$23,000, our first and should be rightful opinion  
21 was why. We asked for something that was poor quality  
22 be removed, be replaced. The replacement structure we  
23 think is of good quality and was excellently done. So  
24 we have no qualms.

25 CHAIRMAN COWGER: Your contention is that the

1           quality of -- let me not put it that way. Is it your  
2           contention that the quality of work within the section  
3           in question here today was substantially less than the  
4           remainder of the project?

5           MR. DOUGHERTY: In the portion I saw, yes, sir.

6           CHAIRMAN COWGER: Did you examine the other  
7           portions of the work to the degree that you did here?  
8           I'm not talking about the whole 11 miles.

9           MR. DOUGHERTY: No, sir, I examined this portion  
10          more closely than others because it was brought to my  
11          attention by my inspectors in the field. I'm assuming  
12          they know what is good and what is bad.

13          CHAIRMAN COWGER: Let me ask two or three  
14          questions that we need to have some information on.

15          DOT did, in fact, instruct the contractor to stop  
16          paving with the paver without the joint matcher at 4:30  
17          plus or minus.

18          Why? What was the basis for that decision,  
19          because the contractor has testified that he had paved  
20          in that manner several other days on this same project,  
21          true or not?

22          MR. DOUGHERTY: If he says it, I'll say it's  
23          true, but I'm going to say that at this point there's  
24          a lot going on in a construction project. If our  
25          inspector didn't catch it until that time and bring it

1 to their attention, it should have been corrected.  
2 That may be the circumstance behind it. I apologize if  
3 that's it. We were asking that our specifications be  
4 followed.

5 I do not think that should lessen the impact of  
6 Pavex as far as it's concerned. If that was required  
7 by spec, which it is, and hopefully they won't deny  
8 that, they should not have been paving without the  
9 joint matcher in the first place. They are a qualified  
10 contractor and know the specifications and how the work  
11 is supposed to be accomplished.

12 CHAIRMAN COWGER: DOT had inspectors out there  
13 the entire time the work was going on and on other days  
14 they allowed the contractor to pave in an identical  
15 situation without a joint matcher? Is that true?

16 MR. DOUGHERTY: On other days maybe they didn't  
17 catch the fact that the joint matcher wasn't there and  
18 were assuming that it was there.

19 MR. ROEBUCK: It is a fact?

20 MR. DOUGHERTY: It is a fact.

21 CHAIRMAN COWGER: That's all we have to get is  
22 the facts.

23 I hear some dispute over the time that paving was  
24 actually completed. I heard the contractor testify  
25 that paving was completed about nine o'clock, which is

1           only shortly after dark.

2                   I hear DOT say that paving was completed about  
3           ten o'clock, which was substantially after dark. Where  
4           do we stand on that?

5                   MR. CHELLGREN: I'm not sure it's that far off.  
6           After we stopped paving, they took the equipment off  
7           the road, took down maintenance of traffic. There's  
8           probably 15, 20 minutes --

9                   CHAIRMAN COWGER: Not in dispute. Okay. We have  
10          got it.

11                   MR. DOUGHERTY: One thing that wasn't brought up,  
12          in this one-mile section of road that work was taking  
13          place at such a late point in time that the  
14          subcontractor involved in the striping aspect refused  
15          to get out and stripe the road because it was darkness  
16          and he couldn't see. That one lane, one mile stretch  
17          of road went unstriped that entire evening.

18                   CHAIRMAN COWGER: Okay. Unless either one of the  
19          Board members have further questions at this point we  
20          need to let Mr. Chellgren come back and comment on what  
21          the DOT has said now.

22                   MR. CHELLGREN: First comment that was on the  
23          unstriped, it was not the entire mile that was  
24          unstriped, it was just the last little bit of it, which  
25          was, like I say, it didn't get dark until pushing nine

1 o'clock.

2 On your pictures in the book, picture 1, for your  
3 information, a joint shown is the joint between the  
4 main line and the piece of shoulder, not across the  
5 main line.

6 That is the inherent problem that I'm afraid we  
7 will have on every job where you do the edges first.  
8 You can't pull an edge line exactly straight. The  
9 paver coming by it is going to do a much better job  
10 than sitting down hanging a screed out in the air and  
11 pulling it off.

12 So you're always going to have a little more  
13 variation on the edge lines and where the shoulders are  
14 when you attempt to proceed in that manner.

15 I believe picture 2 actually again is showing a  
16 piece of shoulder, because you can see the two travel  
17 lanes in the pavement as opposed to part of the main  
18 line, which was removed.

19 I really can't comment on 3 and 4 other than to  
20 say that the fact that there is an occasional knot or a  
21 hole in the friction course is not at all unusual. We  
22 have on numerous occasions had to go back and make  
23 slight repairs to that. It's a fixable problem, and we  
24 don't get --

25 CHAIRMAN COWGER: Before you go any further, let

1 me go back and ask about photo 2. DOT, how do you see  
2 photo 2?

3 MR. DOUGHERTY: That's a large portion of  
4 pavement up near the east end of the job that was  
5 fairly representative of a large area of that pavement.  
6 That is not just a wheel path. That continued across  
7 the entire job.

8 CHAIRMAN COWGER: Is it in the through lane or --

9 MR. DOUGHERTY: That's the through lane. That is  
10 in the through lane, sir. That is inside through lane,  
11 outside through lane, that's a turn lane near the end  
12 of the job, sir.

13 CHAIRMAN COWGER: So we have a dispute as to what  
14 is being seen here.

15 MR. DOUGHERTY: We can show that on our video.  
16 I'm not saying anything, but when Jon got to that  
17 portion of the film going eastbound walking, his film  
18 quit and went t showing full pavement, and he didn't  
19 cover that portion of it.

20 CHAIRMAN COWGER: In the interest of time let's  
21 go on.

22 MR. CHELLGREN: Picture 6, those discrepancies  
23 are primarily in the turn lane. It think that's  
24 obvious that it is a turn lane.

25 MR. MAXWELL: It's not the turn lane that's of

1 concern. It's the through lane, where the outside two  
2 feet was not even rolled.

3 MR. CHELLGREN: I walked the job every foot.  
4 I didn't see -- I saw one piece maybe four inches wide  
5 that tapered to nothing in about a three-foot area.  
6 I did not see any pavement out there inside of an edged  
7 line that wasn't rolled. Believe me, you can really  
8 tell the difference if the roller never hit it.

9 CHAIRMAN COWGER: Quick question. Number 6, the  
10 area that DOT is saying is poorly rolled is in the  
11 vicinity of that yellow line that we see going down  
12 there, correct?

13 MR. DOUGHERTY: Yes.

14 CHAIRMAN COWGER: Go on.

15 MR. CHELLGREN: Next issue, I think it is  
16 important to reference the point right around Alcoma,  
17 there are hundreds of trucks a day that come and go.  
18 That's a packing plant. They were in the season.

19 It does have an effect. You could see the  
20 pictures we had on the crossover and turn lane. They  
21 were turning not only in the crossover, but they make  
22 the swing and go out into the pavement.

23 That piece of friction course directly opposite  
24 that turn lane did look worse than any other on the  
25 job. To say that means that 5620 feet is unacceptable

1 I think is extending an isolated problem to a much  
2 bigger area.

3 CHAIRMAN COWGER: The Alcoma Packing Plant is  
4 within the limits of the area in dispute?

5 MR. DOUGHERTY: Yes.

6 MR. CALIGUIRE: Both east and west.

7 MR. CHELLGREN: As far as a number in the picture  
8 showing color, you've got to remember that all of this  
9 pavement is going to turn white in pretty short order.  
10 Just in the ten days that we were -- between the time  
11 we first laid it and paved it, there is a lot of that  
12 occurring already.

13 That problem self-corrects and it doesn't really  
14 present any structural or engineering problem.

15 I will make this statement. I can go to any  
16 friction course job laid in the state and take these  
17 same kinds of pictures. I have here in front of me --  
18 these are pictures taken not from the Pavex job but  
19 from two other jobs.

20 One of them is on Route 60 and one of them on 27,  
21 both of which are accepted. And then one of them was  
22 done by Couch Construction and another was done by  
23 Apack. I contend that those pictures show comparable  
24 things that occurred within the job in question.

25 As for the joint matcher, Pavex is ultimately



1 responsible for the straightedge. We are going to be  
2 separately inspected on that. The gauge is going to  
3 say whether or not we take anything out or we're  
4 penalized and remove it.

5 I think it's a problem when you say you have to  
6 use that box, and if that box makes a mistake, you're  
7 still guilty. We have had joint matchers go haywire,  
8 the sensitivity is adjusted.

9 On friction course, not on certain types of  
10 pavement, when you're pulling heavier depth,  
11 particularly if you can use a ski ple, but when you're  
12 using a joint matcher, it's a dumb machine. It will  
13 send that ram up and down depending on what happens to  
14 the adjoining lane, not whether or not the pavement is  
15 improved.

16 I think the main thing that bothers me about this  
17 is that there are other alternatives other than what  
18 occurred. We requested -- Mr. Dougherty has said, you  
19 know, that he is not a paving expert.

20 We specifically requested it would be appropriate  
21 for a Gainesville lab, someone to come down, if they  
22 could have pointed out the specific deficiencies.  
23 I have been around asphalt a long time. I would be  
24 happy to consider them.

25 I wouldn't knowingly allow any deficient asphalt

1 to stay. We have been in this 55 years. We are going  
2 to be in it an additional time. And for the price of a  
3 little bit of pavement one way or the other, that isn't  
4 something we get real concerned about.

5 If we have an honest engineering dispute and  
6 we're proved wrong, we would have stood by that and we  
7 wouldn't have been here today.

8 Six days after this asphalt was laid, before any  
9 of those evaluations that said come out, no matter  
10 what, how they picked station 317+ I have no  
11 understanding.

12 Almost all those pictures, at least the ones  
13 I saw and most of the white pictures deal right around  
14 the area where Alcoma was. You're coming up over the  
15 top of a hill there and that's where all the trucking  
16 is. That is not representative of the overall 5620  
17 feet.

18 That's essentially the rebuttal I have -- one  
19 other point if I might make it. FC-2 is designed to  
20 lay one rock thick. There is a comment that it was  
21 only one rock thick, and you're right. That's what  
22 we're supposed to be doing. That's what we should do.  
23 Any time you do that, you're going to have some  
24 inherent circumstances. There was no yield problem on  
25 the project either at the day in question or the period

1 in question.

2 MR. DOUGHERTY: I can handle it real quickly.

3 CHAIRMAN COWGER: Go ahead.

4 MR. DOUGHERTY: Several things. One, their  
5 pavement probably didn't show as much black or as much  
6 crushed aggregate as ours did.

7 To theorize, say we have an asphalt cure period,  
8 so we don't mark up white thermoplastic, you will track  
9 and tack asphalt over any stones left in place.

10 The joint match was perfectly okay the second  
11 time they did their work when it was apparent they had  
12 the time and they worked during daylight. Knot holes,  
13 sorry, I walked out on that pavement and I saw more  
14 knot holes than I had ever seen on any other pavement.

15 Turn lanes did not dictate pavement removal.  
16 They were completely independent of that. Straightedge  
17 edge was not a problem. Jack Buckley, our district  
18 bituminous engineer, visited the site and agreed with  
19 our findings.

20 CHAIRMAN COWGER: Can I ask a couple of quick  
21 questions. In the area that the pavement was removed,  
22 we see some photographs here that DOT has in their  
23 exhibits showing deficiencies.

24 Were there any deficiencies in the way of lack of  
25 compaction or low areas or whatever it might be in the

1 area adjacent to the centerline? In other words,  
2 adjacent to the area -- to the lane that had been  
3 previously placed, that would indicate a problem?

4 MR. MAXWELL: There were some areas that showed  
5 that the roller did not properly make passes the way  
6 they should. And after dark he can't tell where he's  
7 done it and where he hasn't. So we did find areas that  
8 were improperly compacted along that, outside that one  
9 area that shows the two foot that was done that way.

10 I might add, because I don't think she's got it  
11 in the record, I'm Don Maxwell, the resident engineer.  
12 I have got over 20 years experience in asphalt. So  
13 I know what I'm looking at.

14 I brought it to Marshall's attention so he could  
15 be out there the next day and look at it. That's why  
16 the decision was made to --

17 CHAIRMAN COWGER: Is your experience on the  
18 engineering side or the contractor's side?

19 MR. MAXWELL: Pardon?

20 CHAIRMAN COWGER: Is your experience as an  
21 engineer for an agency or for --

22 MR. MAXWELL: Agency. Three municipalities and  
23 Army Corps of Engineers.

24 MR. CHELLGREN: If I might make one comment on  
25 rolling. The requirement on FC-2 is one pass with the

1 light roller, specifically it's got to be a light  
2 roller.

3 Any rolling in the traditional sense will break  
4 aggregate and will overroll it. All you have to do is  
5 seal the surface. And everywhere I saw that occur  
6 except for the one sliver that was two square feet on  
7 the entire project.

8 MR. DOUGHERTY: I have to add one thing. My  
9 inspector did indicate to me when the roller was  
10 finished with the job it made one complete run down the  
11 middle of the lane going back towards the compound for  
12 Pavex.

13 That was one of our "also" theories I did not  
14 bring up as far as crushing the aggregate.

15 MR. GLOR: That didn't happen. We parked the  
16 paver being as late as it was. We parked the paver off  
17 the end of the job so it wouldn't have to run on that  
18 material.

19 CHAIRMAN COWGER: DOT doesn't have anybody here  
20 representing them that was on the project, right, at  
21 the time this occurred?

22 MR. DOUGHERTY: No, sir. At the time it  
23 occurred, no, but I have a resident engineer that was  
24 there the day after and has been involved and that's  
25 Mr. Maxwell.

1                   MR. ROBERTS: Mr. Chairman, we did let the  
2 inspector, Morris Tomlinson, review this package. On  
3 page nine of the package he has provided a sworn  
4 statement that he agrees with our analysis.

5                   CHAIRMAN COWGER: We heard some testimony, too,  
6 about the degree of lighting that was available,  
7 I believe during the hours after sundown. DOT said  
8 that all he saw was truck headlights and that sort of  
9 thing.

10                   Contractor, do you have any rebuttal to that?

11                   MR. GLOR: The roller had lights. There was one  
12 light on the paver, other than the halogen light off of  
13 our mechanic's truck.

14                   MR. DOUGHERTY: Spotlight.

15                   MR. CHELLGREN: For information, we have done an  
16 awful lot of night paving. We have gotten away from  
17 lots of lights to small concentrated lights because if  
18 you have ever been in and out of a dark room you find  
19 that you do better with consistent lighting even if  
20 it's low than you do bright big differences.

21                   So what you find on our paving spread is a few  
22 specific areas where you're working. For instance,  
23 down where the screed people are, down where the augers  
24 are, as opposed to lighting up the construction zone as  
25 you would with power lights and all that stuff.

1                   CHAIRMAN COWGER: I think we have probably got  
2 everything we need.

3                   Mr. Morefield, do you have anything?

4                   MR. MOREFIELD: No.

5                   MR. ROEBUCK: Nothing.

6                   CHAIRMAN COWGER: Either party?

7                   MR. DOUGHERTY: No.

8                   CHAIRMAN COWGER: The hearing is hereby closed.  
9 The Board will meet on March 10 to deliberate and you  
10 will have our order shortly thereafter.

11                   (Whereupon, the hearing was concluded at 12:55 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 57 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 19<sup>th</sup> day of February,  
A.D., 1993, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,  
STATE OF FLORIDA.

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

My Commission Expires June 27, 1994