

STATE ARBITRATION BOARD
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TALLAHASSEE, FL 32312-2837
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10 November 1993

NOTICE

In the case of Hewitt Contracting and the Florida Department of Transportation on Project No. 01560-3606 in Charlotte County, Florida, both parties are advised that State Arbitration Board Order No. 8-93 has been properly filed on November 10, 1993.



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

S.A.B. CLERK

NOV 10 1993

FILED

Copies of Order & Transcript to:

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

Mr. Gerald Stanley, Manager Bridge Division/Hewitt Contracting

Copy of Order to:

Mr. Rammy Cone, Vice President/The Cone Corporation

STATE ARBITRATION BOARD

ORDER NO. 8-93

RE:

Request for Arbitration by
Hewitt Contracting on
Job No. 01560-3606 in
Charlotte 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 11:45 a.m., Wednesday, September 8, 1993. The Contractor authorized The Cone Corporation, a subcontractor, to pursue claims arising out of this project that are related to work that was subcontracted to them. The Board Members, having fully considered the evidence presented at the hearing, now enter their order No. 8-93 in this cause.

ORDER

The Contractor presented a request for arbitration of a nine part claim for additional compensation and release of assessed liquidated damages totaling \$71,092.56 based on various events that occurred during construction of the project. At the beginning of the hearing, the Contractor submitted revisions to the calculations of amount due for three parts of his claim. This raised the total amount of his claim to \$94,117.94.

The Department of Transportation objected to allowing the Contractor to introduce these changes during the hearing, because they were denied the opportunity to make an adequate study of any new issues so as to present an effective rebuttal. The Board ruled that, if it becomes apparent during the hearing that an inequity exists here, the Department of Transportation will be allowed to submit to the Board for consideration a written rebuttal to any information not previously disclosed and the Contractor will be allowed to make a written response to the rebuttal.

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

PART I Amount Claimed: \$477.76

1. During construction of a storm sewer line we encountered a utility line that was not shown in the plans. Our crew was delayed two hours waiting for the utility owner to assess the situation.

2. It is not reasonable to expect us to move our crew to mitigate damages, because it was uncertain as to how long it would take for a decision to be rendered.

3. The fact that this storm sewer line was done at a time other than as shown in our CPM is irrelevant, because the same delay would have occurred regardless of when this section of the storm sewer work was done.

PART II Amount Claimed: \$18,042.38

1. The plans indicated that the work of Removal of Existing Bulkhead included partial removal (essentially only the cap

portion) of the existing bulkheads at a few locations where they conflicted with a new bulkhead tie back or where a new bulkhead was to be connected to an existing bulkhead. As it turned out, complete removal of the existing bulkhead was required over a total length of approximately 150 feet.

2. The additional work was different in scope than the work shown in the plans.

3. Compensation for the additional length of bulkhead removed as an overrun to the item Removal of Existing Bulkhead did not cover our actual costs for the additional removal.

4. The overrun in the pay quantity for Removal of Existing Bulkhead was included in a Supplemental Agreement along with 15 pay items covering a wide range of types of additional work. The Prime contractor overlooked our outstanding claim when he executed that Supplemental Agreement.

PART III Amount Claimed: \$4,640.39

1. A note adjacent to the detail for construction of the parapet wall on Sheet W-1 of the plans states "Concrete and reinforcing steel for Parapet are included in the quantities for Retaining Walls". However, the reinforcing steel for the parapet wall was not included in the Reinforcing Steel Schedule for the retaining walls per normal DOT design practice.

2. After we began placing concrete in sections of the retaining wall, we discovered that, because they were not listed in the retaining walls Reinforcing Steel Schedule, the Mark "F" reinforcing steel bars for parapet wall that are

be imbedded in the top of the retaining wall had not been furnished by our supplier. These bent, epoxy coated bars had to be specially fabricated which took several weeks.

3. In order to mitigate delay damages we proceeded with construction of the retaining wall and later drilled into the top of the retaining wall and epoxyed in the Mark "F" bars.

4. We are claiming the cost of drilling for and epoxying the Mark "F" Bars.

PART IV Amount Claimed: \$5,680.00

This part of the claim was revised at the beginning of the hearing.

1. The quantity of concrete placed in the keyway between prestressed deck slabs is included in the pay quantity for Concrete (Superstructure).

2. The approved shop drawings for the prestressed deck slab units revised the dimensions of the keyway between the units. This resulted in a reduction in the cross sectional area of the keyway.

3. The Department of Transportation adjusted the pay quantity for Concrete (Superstructure) to reflect the reduction in the keyway area.

4. Since the overall dimensions of the bridge did not change, the reduction in the volume of the keyway causes a corresponding increase in the area of the prestressed deck

slab units. Therefore, we are asking that the pay quantity for the area of Prestressed Deck Slab be increased as follows:

16" Prestressed Slab Units	148 SF @ \$20/SF = \$2,960
19" Prestressed Slab Units	136 SF @ \$20/SF = \$2,720

TOTAL	\$5,680
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PART V Amount Claimed: \$18,514.96

This part of the claim was revised at the beginning of the hearing.

1. The plans provide for construction of a reinforced concrete Poured-In-Place unit to connect the new bulkhead to the existing bulkhead at four locations. The existing bulkhead is shown to extend to the same depth as the new concrete sheet piling.
2. We fabricated steel sheets to be installed to fit against the new and the existing concrete sheet piles, thus serving as forms for the Poured-In-Place units. We and other contractors had successfully used this installation technique on previous projects.
3. We installed the steel sheets and began airlifting soil from within them. After spending nine days on this operation, we discovered that the existing sheet piling were five feet shorter than shown in the plans which caused the lower five feet of our forming system to be open on one side. This situation resulted in undermining of the existing bulkhead and collapse of soil on adjacent property when soil was

airlifted. The Department of Transportation repeatedly insisted that the Poured-In-Place units be installed per the original plans.

4. Since the original design was not constructable, in the interest of mitigating delays to the work, we hired a Professional Engineer to redesign the Poured-In Place units. The new design essentially consisted of terminating the Poured-In-Place units at the lower end of the existing sheet piles.

5. The Department of Transportation originally made payment for the Poured-In-Place units in accordance with the plan dimensions. Much later, they revised this payment to be in accordance with the as-constructed dimensions of the Poured-In-Place units.

6. We incurred additional costs, because of the error in the plans. We were originally willing to accept payment of the plan quantities of the pay items in the Poured-In-Place units as compensation for this additional work. However, we have now decided to pursue recovery of the entire additional costs we incurred because of the plan error and the insistence of the Department of Transportation that the units be installed in accordance with the original plan details.

PART VI Amount Claimed: \$15,786.10

1. Due to existence of overhead utility lines on both sides of the bridge, the only feasible method of erecting the precast deck slab units was to set a crane on the fill immediately adjacent to the end of the bridge. We anticipated

setting all three spans using a crane located at the West end of the bridge.

2. After we set the West and center spans from the West end of the bridge, the Department of Transportation discovered vertical cracks in the retaining walls that parallel the roadway and instructed us to set the precast deck slab units in the East span from the East end of the bridge.

3. The Department of Transportation ultimately determined that the cracks in the retaining walls were not the result of our operations and paid the Prime Contractor for repairing the cracks.

4. We are claiming our costs associated with moving our crane from the West end of the bridge to the East end of the bridge and with lost time while sufficient fill was being placed on the East approach.

PART VII Amount Claimed: \$7,150.00*

* Release of 13 CD Liquidated Damages @ \$550 per day. We are claiming full release of the liquidated damages assessed by the Department of Transportation, because of delays related to various parts of our claim as follows:

PART II 6 Days

The additional work of removing existing bulkhead required 4 working days or 6 calendar days.

PART III 28 Days

We experienced a delay of 28 days as the result of having to wait on fabrication and delivery of the Mark "F" reinforcing steel bars for the parapet wall. Delays were

encountered in beginning work on the parapet wall and due to disruption of the scheduling of a subcontractor to pour sidewalk which abutted the parapet wall.

PART VI 6 Days

We experienced 6 days delay due to having to move our crane from the West end of the bridge to the East end of the Bridge and await placement of fill at the East end.

PART VIII Amount Claimed: \$762.00

The Department of Transportation calculated the final pay area of Bridge Floor Grooving using a width two feet less than the full width of the bridge deck. Their reasoning was that our grooving subcontractor left an approximate width of one foot ungrooved along each side. This is standard procedure for grooving because of the configuration of the grooving equipment.

Article 400-19.4 of the 1986 Edition of the Standard Specifications clearly states that the area of Bridge Deck Grooving shall be determined by measurement of the area bounded by the gutter lines and the ends of the bridge.

PART IX Amount Claimed: \$23,064.35

This part of the claim was revised at the beginning of the hearing.

We are claiming interest on the amount due for each part of our claim at 12% per annum from the date a claim occurred through a target payment date of November 4, 1993.

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

PART I

1. The Contractor did nothing to mitigate delay damages.
2. The storm sewer line was constructed prior to the time shown in the Contractor's approved work schedule.
3. We view this claim as frivolous.

PART II

1. The additional bulkhead removal work was essentially of the same character as the bulkhead removal work shown in the plans.
2. We negotiated with the Prime Contractor for this additional work and he entered into a Supplemental Agreement providing for compensation at the original unit price for Removal of Existing Bulkhead. The additional 146 feet of the item has been included in compensation to the Contractor.

PART III

1. The Mark "F" reinforcing steel bars are shown in the plan detail for the parapet wall (Sheet W-1) and were included in the plan quantity for Reinforcing Steel (Epoxy Coated).
2. It is common industry practice for a contractor to furnish plan sheets to his reinforcing steel supplier for verification of details.
3. Failure to furnish the reinforcing steel for the parapet wall so that it could be embedded in the top of the retaining

wall was the result of a mistake by the Contractor or his reinforcing steel supplier, not by the Department of Transportation.

PART IV

1. The change in keyway dimensions was effected by the Contractor through the shop drawing submittal process.
2. The pay area of prestressed deck slab units is determined based on out-to-out dimensions. These dimensions were not altered by the change in keyway dimensions. Thus, the decrease in keyway area did not affect the pay area of the prestressed deck slab units.
3. The final pay volume for Concrete (Superstructure) within the keyways was based on as-constructed dimensions of the keyways.
4. We cannot pay the Contractor for a volume of Concrete (Superstructure) which he did not place.
5. The Contractor has not proven that he was impacted by the reduction in the quantity of superstructure concrete.

PART V

1. The Contractor attempted to construct the Poured-In-Place units using an inadequate cofferdam and forming system. He made no effort to secure the adjacent properties by utilizing shoring or any other supports. Our Project Engineer recommended to the Contractor on several occasions that shoring would support the fill and allow proper installation.
2. In order to avoid construction of a cofferdam at each location, and without consultation with us, the Contractor

employed a Professional Engineer to revise the design of the Poured-In-Place units.

3. The Contractor is not due additional compensation, because a construction technique he selected did not perform satisfactorily.

PART VI

1. We determined that rotation of the sheet pile bulkhead that runs parallel to the end bent caused differential settlement of the retaining walls. The Contractor placing a 180 Ton crane load immediately adjacent to the sheet pile bulkhead at the West end of the bridge was a contributing cause to rotation of the sheet pile bulkhead.

2. Cracks in the retaining walls were caused by differential settlement. The cracks formed within the wall panels instead of in the vertical construction joints because the wall sections are joined by bonded dowel bars.

3. Since both the 180 Ton crane load and placement of bonded dowel bars across vertical construction joints contributed to formation of cracks in the retaining walls, we agree that there is shared responsibility here. We are of the opinion that compensating the Contractor for repairs to the walls adequately covers our share of the sharing of costs.

PART VII

PART II

A part of the additional 34 calendar days added to the allowable contract time by the Supplemental Agreement that

provided compensation for the additional bulkhead removal work was for the time required to do that work.

PART III

Our response to the extra work portion of Part III of this claim applies to responsibility for delays caused by untimely delivery of reinforcing steel for the parapet wall.

PART VI

Our response to the extra work portion of Part VI of this claim applies to responsibility for delays caused by the Contractor having to move to the East end of the bridge to set the prestressed deck slab units in the East span of the bridge.

PART VIII

We agree that the pay area for grooving of the bridge deck should be based on the full width of the deck.

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

PART I

The delay was not extraordinary for a project of this nature.

PART II

The Subcontractor submitted a letter outlining this claim on August 12, 1991 and the Contractor executed the Supplemental Agreement increasing the pay quantity for the original contract item Removal of Existing Bulkhead on September 5,

1991. This Supplemental Agreement covered several changes to the work involving 14 pay items. The reason given for the overrun in Removal of Existing Bulkhead was in part, "The increase in this item is due to a plan error in estimating the original quantities."

PART IV

1. The specifications do not set out how the pay area of a Prestressed Slab Unit is to be measured.
2. The reduction in volume of concrete in the keyways resulted in a corresponding increase in the volume of concrete in the prestressed deck slab units.
3. The value of the concrete represented by the change in keyway dimensions is approximately the same if calculated based on equivalent area of Prestressed Deck Slab units or as Concrete (Superstructure).

PART V

The plan error resulted in an unanticipated condition that caused the construction technique utilized by the Contractor to be ineffective in supporting adjacent soil. The Contractor continued to airlift soil even after it should have been apparent that there was a subsurface condition that was causing a problem.

PART VI

The Reason given in the Supplemental Agreement providing compensation to the Contractor for the item Repair Cracks in Wall is (EMPHASIS ADDED):

"Erratic cracks appeared at two construction joints. It

was obvious that settlement had occurred due to the position of the wall and the severity of the cracks. After an investigation by the Department, conclusive evidence as to why the settlement occurred was not sufficiently clear as to whether the construction effort by the Contractor or design effort by the consultant or both may have contributed to the damage."

It is the Department's decision to compensate the Contractor for the repair of the wall since construction of the wall was accomplished by conventional construction methods and it could not be determined that the Contractor's work effort contributed to the settlement."

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	\$ 9,000.00
PART III	Nothing
PART IV	\$ 4,960.00
PART V	\$ 10,000.00
PART VI	\$ 10,000.00
PART VII	Release 13 Calendars of Liquidated Damages
PART VIII	\$ 762.00
PART IX	\$ 10,450.00

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 253.42 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$ 84.48 for Court Reporting Costs.

S.A.B. CLERK

NOV 10 1993

FILED

Tallahassee, Florida

Dated: 10 Nov 1993

Certified Copy:

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

10 November 1993
Date

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

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

John P. Roebuck
John P. Roebuck
Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

NOV 10 1993

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DEPARTMENT OF TRANSPORTATION)

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PROJECT NO. 01560-3606

LOCATION: Charlotte
County, Florida

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Wednesday, September 8, 1993

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

TIME: Commenced at 11:45 a.m.
Concluded at 1:20 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 Morefield
 Mr. Jack Roebuck

APPEARING ON BEHALF OF HEWITT CONTRACTING/THE
CONE CORPORATION:

Mr. Rammy Cone
 Mr. Bob Graham
 Mr. Jerry Stanley

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Glenn Ivey
 Mr. Rick Roberts
 Mr. Charlie Crews
 Mr. Ken Blanchard

* * *

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. John 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, 1993, and
14 expire June 30, 1995.

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

18 (Whereupon, all witnesses were duly sworn.)

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit No. 1. This consists of the request for
22 arbitration submitted by the contractor and all of the
23 package of information that was attached thereto which
24 was transmitted to the contractor by the Board -- which
25 was transmitted to DOT by the Board on August 2, 1993.

1 Does either party have any additional information
2 it wishes to put into the record as an exhibit at this
3 time?

4 (Discussion off the record)

5 CHAIRMAN COWGER: While we were off the record,
6 the Department of Transportation submitted a black
7 booklet of information in regard to the claim, which we
8 will mark as Exhibit 2.

9 The contractor submitted a revised arbitration
10 claim summary which we will identify as Exhibit No. 3,
11 and he also submitted a revised narrative of his claim,
12 which we are going to identify as Exhibit 4.

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

15 CHAIRMAN COWGER: Are there any other exhibits to
16 be submitted at this time?

17 MR. GRAHAM: I have other exhibits, Gene, but
18 I would prefer to admit them as we get to the specific
19 claim that it involves. There won't be one for every
20 claim.

21 CHAIRMAN COWGER: That's satisfactory.

22 Mr. Ivey, you may want to put on the record the
23 statement that you made while we were off the record.

24 MR. IVEY: I take exception to be surprised by
25 Exhibits 3 and 4 as this is the first time we have seen

1 it. There has been significant change in the dollar
2 value as well as the tact taken in the claim verbiage.

3 CHAIRMAN COWGER: The Board considering that
4 statement will proceed on with the hearing and will
5 give the DOT the opportunity if requested on the three
6 items of the claim that have been revised, as Mr. Ivey
7 described, to submit supplemental information
8 subsequent to the hearing for consideration.

9 Again, only if the DOT requests that will this
10 take place. I think we'll will proceed on.

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

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

25 The hearing will be conducted in an informal

1 manner. The contractor will elaborate on its claim,
2 then the DOT will offer rebuttal. Either party may
3 interrupt to bring out a point by coming through the
4 Chairman.

5 We would like to proceed now. As I understand,
6 the total amount of the contractor's claim at this
7 point is \$94,117.94. Is that correct?

8 MR. CONE: Yes, sir.

9 CHAIRMAN COWGER: Okay. I think if all parties
10 agree, that probably the proper way to approach this
11 matter now is to go through item by item. The
12 contractor can make his presentation, DOT rebuts before
13 they go on to the next item. Does anybody have any
14 problem with that order of procedure?

15 MR. IVEY: No, I don't, as long as we don't take
16 all day.

17 CHAIRMAN COWGER: I did have one question of the
18 contractor before we proceed. In calculating the
19 interest on your claim, which in your original package
20 was the second sheet from the back, how did you go
21 about calculating that interest? First off, date
22 filed, is that the date that you filed the claim?

23 MR. CONE: No, sir. Mr. Cowger, the dates have
24 changed with this revision on the arbitration claim
25 summary. I was --

1 MR. GRAHAM: That might be a moot point because
2 now the interest is calculated from the date the claim
3 occurred to what we anticipate being a receipt of
4 payment, if any.

5 CHAIRMAN COWGER: Instead of having a breakdown
6 item by item, it's all rolled together, the interest?

7 MR. CONE: No, sir, it's still the same format.
8 Would you like to have this submittal now or wait until
9 we get to item number 9?

10 CHAIRMAN COWGER: Let's wait until we get to item
11 number 9. Let's go on then. We will go to part 1. Do
12 you all want to proceed?

13 MR. CONE: Yes, sir. Basically there is just a
14 difference of opinion between us and DOT. What they
15 say as far as performing the work not according to the
16 target schedule is correct. However, we had a crew
17 available on the job to perform the work. So we did
18 it.

19 We ran into an unknown condition, a pipe that was
20 not shown on the plans. As far as whether it was
21 performed according to the CPM or not, the same thing
22 would have occurred, the same unknown condition.

23 As far as DOT's rebuttal that the contractor did
24 nothing to mitigate his work force or mitigate the
25 problem, it was a delay of some two hours. Basically

1 when we ran into it, we informed the inspector and
2 attempted to get ahold of the utility company to make a
3 decision on whether that was a live pipe or not.

4 So, I think two hours was a reasonable time to
5 wait on the utility company.

6 CHAIRMAN COWGER: I think we need to ask the DOT
7 to rebut that now.

8 MR. IVEY: Thank you. While we agree that the
9 delay may have occurred regardless of when the work was
10 to be performed, there were other areas of the project
11 that work could be performed on.

12 We see this claim as somewhat frivolous. We
13 believe that we -- the problem was pursued and
14 corrected in an expeditious fashion, which -- and
15 consequently, since there was utility time in the
16 contract for delay, et cetera, inefficiency, we believe
17 the contractor has mitigated these damages.

18 MR. GRAHAM: There were utilities to be relocated
19 within the project, but this particular problem was not
20 even shown on the plans, so it wasn't anticipated when
21 the utility relocation schedule was even drawn up.
22 Candy had been called prior to the starting of this
23 work on other work, and the line was never identified
24 as being in existence one way or the other.

25 CHAIRMAN COWGER: Is there any reason for us to

1 stay on this subject anymore? Anybody else have
2 anything?

3 MR. IVEY: Not that I'm aware of, Gene.

4 CHAIRMAN COWGER: I think we have heard enough on
5 item number 1. I guess we need to look at dollar
6 amounts that the contractor came up with to develop his
7 \$416, plus or minus. The only question I've got, on
8 the equipment, how did you get that hourly rate?

9 MR. CONE: Gene, those equipment rates would be
10 100 percent of Blue Book.

11 MR. ROEBUCK: They were manned?

12 MR. CONE: No, the labor is broken out
13 separately.

14 CHAIRMAN COWGER: Blue Book what? Monthly,
15 weekly?

16 MR. CONE: 176, monthly rate, as best I can
17 recall.

18 CHAIRMAN COWGER: Do you have anything to say
19 about that, DOT?

20 MR. IVEY: Of course we don't subscribe to that,
21 nor do we subscribe with 15 percent overhead and 10
22 percent profit on a claims situation.

23 MR. CONE: I might have some exhibits to address
24 at this time. I have a letter from our certified
25 public accountants which says that our overhead is

1 19.39 percent.

2 CHAIRMAN COWGER: We will identify this as
3 Exhibit 5.

4 MR. CONE: As well, if you all would care to look
5 at it, I have run a calculation out of our audited
6 financial statement, which shows what our overhead was
7 for the past two years. If you would like to verify
8 that is indeed what is in our financial statement,
9 there's our financial statement. I did not run copies
10 of the entire financial statement.

11 CHAIRMAN COWGER: We will identify this statement
12 of operations that Mr. Cone has submitted as item
13 number 6. And we are going to leave this and go on
14 then to item number 2 of the claim. That last was
15 Exhibit 6, now, statement of operations.
16 (Whereupon, Exhibit Nos. 5 and 6 were received in
17 evidence.)

18 MR. GRAHAM: The next item, I have Exhibit 7.
19 This claim involves a pay item based on a linear
20 footage for bulkhead removal. The first page you are
21 looking at in the exhibit is the original plans. And
22 I have highlighted them with colors of portions of the
23 bulkhead that was to be removed.

24 The pink crosshatch sections represent the
25 approximate dimensions of the existing bulkhead that

1 was to be removed.

2 If you will turn to the second page, I have taken
3 the liberty of drawing in the actual limits of the
4 existing bulkhead. And the green area represents
5 basically the part of the bulkhead that is involved
6 with the overrun of the quantity.

7 Page 3 -- basically the disagreement is that DOT
8 has paid the item as an overrun, maintaining that they
9 have the authority to do that based on it doesn't
10 represent a changed condition and is of the same
11 general character of work.

2
12 The last page, the third page showing the removal
13 of the typical section through the bulkhead, basically
14 the original quantity involved removing the cap that
15 was on top of the sea wall in order to accommodate the
16 tie-back anchor pile wire that extended from the anchor
17 pile back to the new sea wall.

18 The lower section in the green depicts basically
19 the overrun quantity that was involved in this item.
20 It required complete removal of both the cap and the
21 sheet pile itself.

22 We maintain that this is not of the same general
23 nature of work and required a much more extensive type
24 of removal than what was originally in the drawings.

25 DOT has taken the position that a supplemental

1 agreement was issued on this matter to compensate the
2 contractor at the contract unit price. It was signed
3 and executed by the prime contractor. There's no
4 argument there. It certainly was signed.

5 The work was being performed as a sub. There was
6 miscommunications between the sub and the prime.

7 The supplemental agreement that was involved in
8 this particular item had some fifteen-odd items
9 involved with overruns. It was an oversight on the
10 prime and the subcontractor as far as not putting a
11 disclaimer for accepting the work.

12 However, the DOT was notified in letter prior to
13 us beginning the work. So as far as them having the
14 opportunity to keep records and make an evaluation of
15 it, they were not denied any access to the project and
16 the work involved with it.

17 Basically the original plan quantity was 50
18 linear feet and the extra work consisted of some 150
19 additional feet, the overrun.

20 MR. ROEBUCK: As I understand it, Bob, that green
21 cross section of page 3 is what you were required in
22 the overrun to take out of your -- of your green line
23 on sheet 2?

24 MR. GRAHAM: That's correct. Sheet 2 did not
25 depict -- sheet 1 shows the original plan which didn't

1 even show the limits of the existing bulkhead other
2 than what I have shaded in the colored area.

3 Sheet 2 I went ahead and -- it's not a hundred
4 percent accurate, but as best I could, depict the
5 actual limits of the existing bulkhead.

6 CHAIRMAN COWGER: Let me make sure I understand
7 the green. On page 2, the original plans did not
8 require those sections of the bulkhead to be removed?
9 Is that correct?

10 MR. GRAHAM: It wasn't in the original quantity.
11 That's correct. Whether it's going to be required to
12 be removed I don't guess we would know until we went in
13 there and laid out the limits of the new bridge versus
14 the existing bulkhead.

15 CHAIRMAN COWGER: Through the green area there
16 was new bulkhead to be constructed?

17 MR. GRAHAM: That's correct.

18 CHAIRMAN COWGER: In that green area why are you
19 saying that you should not have anticipated that that
20 bulkhead had to be removed, only because -- I don't
21 understand.

22 MR. GRAHAM: The green area wasn't even shown on
23 the plans, Gene. We didn't realize there was going to
24 be a conflict until we went out there to do the removal
25 and lay out the limits of the new construction.

1 At bid time the only information we had was
2 page 1, and that's where the original quantities were
3 developed. It's the pink area that's shown in the
4 crosshatch is what was anticipated to be removed.

5 CHAIRMAN COWGER: Where did this number 2 come
6 from, this sheet number 2 come from then? This is not
7 a sheet --

8 MR. GRAHAM: I drew it in in an effort to show
9 you where the existing bulkhead, the full limits of the
10 removal --

11 MR. ROEBUCK: This is as-built, more or less?

12 MR. GRAHAM: That's correct.

13 CHAIRMAN COWGER: You drew in on sheet number 2
14 the configuration of the bulkhead that existed out
15 there?

16 MR. GRAHAM: That's correct.

17 MR. MOREFIELD: You're saying that quantity was
18 not included in the lineal foot item for removal?

19 CHAIRMAN COWGER: There was a separate lineal
20 foot item for removal?

21 MR. GRAHAM: That's correct.

22 CHAIRMAN COWGER: It only included the little
23 short areas in pink?

24 MR. GRAHAM: That's correct.

25 MR. CONE: Basically all the green area was a

3 1 complete, total removal rather than a partial removal.
2 So, therefore, we had to jet them out or pull them out
3 and physically haul them off somewhere.

4 MR. ROEBUCK: Take the sheets out, not just the
5 cap?

6 MR. CONE: Correct.

7 CHAIRMAN COWGER: Okay, DOT.

8 MR. IVEY: We agree that there's two
9 intermingled -- two different scopes of work contained
10 within the bulkhead removal. Part of it was removal
11 only of cap, but part of it was removal full depth.

12 When we recognized that there was a problem with
13 the bulkhead beneath -- that part depicted where your
14 bulkhead would go that needed to be removed, we
15 negotiated a price with the contractor for removal.
16 We both knew full well the scope of work involved in
17 performing that work, which included full depth
18 removal.

19 It's difficult for me to rationalize how I can be
20 approached now for a change in scope of the work when
21 we negotiated the scope of the work when we did the
22 supplemental agreement.

23 MR. MOREFIELD: That was with the prime?

24 MR. IVEY: That's correct.

25 MR. GRAHAM: The pay quantity, the unit price

1 was changed in the supplemental agreement from the
2 original?

3 MR. IVEY: No, I didn't say that.

4 MR. CONE: I think we have a difference of
5 opinion in the definition of negotiation. To my
6 knowledge there was never any verbal negotiation, was
7 there? You're right, a supplemental agreement was sent
8 and it was executed by the prime contractor.

9 MR. GRAHAM: Simply an overrun of the quantity at
10 the same unit price.

11 MR. CONE: Correct. I believe we had already
12 filed this claim before we actually signed the
13 supplemental agreement. I'm not a hundred percent sure
14 of that.

15 MR. MOREFIELD: There was no -- on the
16 supplemental agreement, there was no reservations or
17 statements put on there?

18 MR. CONE: No, sir, there was no disclaimer put
19 on there. It just basically slipped by.

20 MR. IVEY: A copy of it is shown on page 4 of our
21 package there, pages 4, 5 and 6.

22 MR. GRAHAM: As far as negotiating a unit price,
23 that's the same original contract unit price in the
24 supplemental agreement.

25 MR. MOREFIELD: The \$65 a foot?

1 MR. CREWS: Am I correct in assuming that you
2 when contracting knew the quantity that we had come up
3 with for the supplemental agreement was included in
4 that area, in the bulkhead under the existing one?

5 MR. GRAHAM: I'm back to the statement about a
6 negotiation of a new unit price. That hasn't occurred
7 as far as the supplemental agreement.

8 MR. CREWS: At the time the contractor agreed to
9 it, there was no question on renegotiation of the
10 price.

11 MR. GRAHAM: I'm just confused what these
12 negotiations were. All it was was an additional lineal
13 foot, contract unit price.

14 MR. MOREFIELD: Is that 150 foot the actual -- is
15 there 75 foot of surface to top, cap? Where does the
16 150 come from? You increased it?

17 MR. IVEY: We increased the contract amount by
18 150 lineal feet.

19 MR. MOREFIELD: I'm trying to contrast it with
20 the drawing. Is that the green, the lineal footage
21 I see?

22 MR. CREWS: That's including the green lineal
23 feet and the pink, also.

24 MR. MOREFIELD: It says increased --

25 CHAIRMAN COWGER: You didn't really increase it.

1 What you did is you increased it to --

2 MR. MOREFIELD: Increased it to 150?

3 MR. CONE: A total of 200 feet was the total.

4 MR. GRAHAM: The original was 50.

5 MR. MOREFIELD: So you did increase it by --

6 MR. IVEY: We increased it 146.

7 MR. MOREFIELD: That is the surface dimensions?

8 CHAIRMAN COWGER: The length of those two green
9 lines put together is how many feet roughly?

10 MR. IVEY: 146 feet.

11 CHAIRMAN COWGER: In the contractor's package
12 where he put together the amount of this claim, he ran
13 out and got a total cost of the removal of the green
14 line, which was 18,000 and some-odd dollars, and he
15 deducted from that 100 feet at 65 feet. Now, the 100
16 feet and the 146 feet that we talked about earlier
17 don't jive.

18 MR. CONE: I would have to speculate that there
19 was an additional 50 foot that had not been paid for at
20 that time, Gene. So it's very possible that another 50
21 feet should be deducted from this credit that I've put
22 down here, this \$6500 credit.

23 CHAIRMAN COWGER: Okay. So your position is that
24 you would take no objection to changing that hundred
25 feet in this August 12, 1991 letter to 146 and

1 recalculating the amount?

2 MR. CONE: No, sir, I wouldn't have a problem
3 with that.

4 CHAIRMAN COWGER: DOT, do you understand what I'm
5 saying?

6 MR. IVEY: I haven't turned the page yet.

7 CHAIRMAN COWGER: He gave you credit back for 100
8 feet, and he should have given you credit back for 146
9 feet, which would reduce the amount of the claim from
10 111,874 to some \$3,000 or \$4,000 less than that. Okay.
11 I think we understand.

12 DOT, did you have anything further to say on
13 this? I think we have both party's positions on it.
14 The contractor is saying it was a change in the scope
15 of the work, DOT is saying the prime contractor signed
16 a supplemental agreement with no disclaimer in it
17 adding this work to the contract at the contract unit
18 price. Isn't that basically what DOT is saying?

19 MR. IVEY: That's correct. If you look at the
20 cost calculations I'm sure you will find the equipment
21 at a hundred percent Blue Book. I certainly take
22 exception to that.

23 MR. CONE: I would like to point out that the new
24 specification that's in effect now with Blue Book rates
25 was not included in these special provisions.

1 CHAIRMAN COWGER: DOT's position now as
2 I understand it is 50 percent for idle, 75 percent for
3 operating of the --

4 MR. ROEBUCK: Monthly.

5 CHAIRMAN COWGER: -- of the Blue Book monthly
6 rate.

7 MR. GRAHAM: What is DOT's position on overhead
8 and profit?

9 MR. IVEY: Depends on what it is.

10 MR. GRAHAM: Say in this situation.

11 MR. IVEY: If it's extra work, I think you are
12 entitled to some. If it's a claim situation, I don't
13 think you are.

14 MR. GRAHAM: If you acknowledge it is extra work,
15 what would be allowed?

16 MR. MOREFIELD: That's a -- we are working on
17 that policy, but we haven't got a formal policy if
18 that's what you're asking. That hasn't been adopted.

19 MR. GRAHAM: Not even for profit?

20 MR. MOREFIELD: We are working, as you know, in
21 the industry, to come up with it. Right now the
22 districts are free to do whatever they've got to do.

23 MR. IVEY: We try to beat you up as bad as we
24 can, right?

25 CHAIRMAN COWGER: I think we are off the subject.

1 Are we ready to go to item 3?

2 MR. GRAHAM: Yes.

3 MR. CONE: Item 3, I have another exhibit.

4 CHAIRMAN COWGER: I think we are at eight now.

5 (Whereupon, Exhibit Nos. 7 and 8 were received in
6 evidence.)

7 MR. CONE: These are plan sheets out of the plans
8 on the job. Basically we have conflicting reports on
9 the plans. On the first sheet, W-1, in the middle of
10 the page, that section BB, you will see over to the
11 right it says pour E-bars typical. It was shown on
12 this plan sheet.

13 However, on the reinforcing bar list, which
14 typically is what the contractor orders from from the
15 steel company, there are no E-bars listed on the
16 reinforcing steel schedule itself.

17 When we discovered the problem, that we were
18 missing this steel, rather than sit and wait for that
19 steel to come in before we poured the retaining walls,
20 we went ahead and poured those walls in order to try to
21 mitigate the damages to DOT. We came back later and
22 doveled that particular bar in.

23 Also, on that second page, which is W-4 over on
24 the right side, it shows you a detail of that E-bar, if
25 you need to look at it.

1 Basically we are filing for the time it took to
2 install these dowel bars with -- with some minor
3 equipment. Mainly it was labor and some material.

4 And overall, if you read the letter for the claim
5 submitted, I think that lays out our position as far as
6 the delay time. We were delayed a total of 53 days,
7 but there was some work that we did perform during that
8 time. So we estimated 28 days.

9 CHAIRMAN COWGER: How many days are you
10 requesting? I'm a little confused.

11 MR. CONE: Twenty-eight days.

12 CHAIRMAN COWGER: Then you turn around and say we
13 requested nine days and this was denied as well.

14 MR. CONE: Upon reflection, I relooked at it and
15 put it back to 28 days.

16 CHAIRMAN COWGER: Let me make sure I understand.
17 On the first sheet of Exhibit 8, the E-bars are kind of
18 U-shaped bars that are shown in section BB. And they
19 extend upward into a barrier wall of sorts?

20 MR. CONE: Correct.

21 MR. ROEBUCK: Secondary pour.

22 CHAIRMAN COWGER: So you poured the wall up to
23 the level of the top of the approach slab rather than
24 wait on those bars to be sent and set them in place
25 before you poured?

1 MR. CONE: Yes, sir. The barrier would have been
2 a separate pour anyway, but --

3 CHAIRMAN COWGER: I understand.

4 MR. CONE: We didn't have the steel on hand. It
5 could have been anywhere from two weeks to a month
6 before we could get it. We already had it formed up.
7 We figured the best way to do it was pour it, come back
8 later and finish it up.

9 MR. GRAHAM: This was epoxy coated rebar was one
10 of the problems as far as delivery.

11 CHAIRMAN COWGER: Does the estimated quantity
12 shown on sheet W-1 for the rebar include a quantity for
13 the E-bars or not?

14 MR. IVEY: The E-bars are the straight bars,
15 Mr. Cowger.

16 MR. ROEBUCK: What is this right here?

17 MR. IVEY: That's the one that goes into the
18 retaining wall. This is the retaining wall -- the bars
19 at issue are those bars here (indicating).

20 MR. ROEBUCK: 4-F?

21 MR. IVEY: Right.

22 CHAIRMAN COWGER: If you look on the second sheet
23 of Exhibit 8, you will see an E-bar. It's a U-shaped
24 bar.

25 MR. CONE: Correct.

1 MR. ROEBUCK: So is the F.

2 CHAIRMAN COWGER: The F-bars are straight.

3 MR. CREWS: Those E-bars have nothing to do with
4 your parapet walls as shown on that one sheet. The
5 E-bars are shown for the cantilever wall itself. The
6 F-bars are the ones in question.

7 CHAIRMAN COWGER: All right. I'm looking at
8 sheet 1, Exhibit 8. On the lower center, section BB.
9 I see a bar that is in the retaining wall and extends
10 the parapet wall, extends down into the retaining wall.

11 MR. IVEY: Those are the bars in question. They
12 are four E-bars.

13 MR. CONE: I may have mislabeled it. If I could,
14 let me have a little time to look over this reinforcing
15 steel schedule.

16 MR. CREWS: The second sheet that you're looking
17 at, Mr. Cowger, is strictly the steel in the cantilever
18 wall itself.

19 CHAIRMAN COWGER: Does not include the steel in
20 the parapet wall?

21 MR. CREWS: No, sir, it does not.

22 CHAIRMAN COWGER: Where is that shown?

23 MR. CREWS: That's his drawing shown on the first
24 sheet, the center part.

25 MR. MOREFIELD: Is there a bar schedule for that

1 somewhere?

2 MR. CONE: Shouldn't there have been a bar
3 scheduled?

4 MR. CREWS: There was no bar schedule included in
5 the summary of quantities, but there was a summary of
6 the steel included in the final estimate. The pay
7 quantity was correct.

8 CHAIRMAN COWGER: The 14,136 pounds included all
9 the bars shown in the retaining wall data schedule
10 plus --

11 MR. CREWS: Plus the F-bars.

12 MR. IVEY: And the E-bars.

13 MR. CREWS: And the E-bars which were done in the
14 cantilever wall itself. Excuse me, E-bars was your
15 straight bars.

16 MR. IVEY: Right. The quantities shown in W-1
17 include the concrete as well as the steel for the
18 parapet wall as well as the standard index cantilever
19 retaining wall.

20 CHAIRMAN COWGER: But the F-bars, which are the
21 U-shaped bars --

22 MR. GRAHAM: Are not shown on W-4.

23 CHAIRMAN COWGER: Are not shown on W-4. What
24 about the straight E-bars?

25 MR. IVEY: They are not shown on W-4 either.

1 While there may be some straight bars over there, all
2 the quantities on sheet 1 are rolled into the estimated
3 quantities on that page and include the quantities from
4 the cantilever retaining wall.

5 CHAIRMAN COWGER: I think I understand. What it
6 is that sheet W-4 -- that schedule of reinforcing steel
7 doesn't include any of the reinforcing steel that goes
8 into the parapet wall?

9 MR. IVEY: That's correct.

6
10 MR. CREWS: During the placing of the E-bars, the
11 contractor did complete the cantilever wall totally
12 before we came back later on and found out that the
13 F-bars and the remaining bars in the parapet wall was
14 not on the job site. The cantilever wall was complete.

15 CHAIRMAN COWGER: Now you have confused me.

16 MR. ROEBUCK: That confused me, too.

17 MR. CREWS: The cantilever wall was completely
18 poured in place. At the last moment we found out what
19 they was going to tie the handrail seal onto, which was
20 your parapet wall. That's when we found out the
21 parapet wall steel was not on the job site. But the
22 cantilever wall was totally placed.

23 MR. MOREFIELD: Before or after you found out you
24 didn't have the steel?

25 MR. CREWS: Before.

1 MR. CONE: I'm not sure I agree with that.

2 MR. CREWS: They doweled in -- I think you
3 drilled in almost every one of them.

4 MR. MOREFIELD: Let me ask you, if you had them
5 on site, how would you have done it?

6 MR. CONE: Would have tied them in place.

7 MR. MOREFIELD: And poured the wall, had them
8 sticking out?

9 MR. CONE: Yes, sir.

10 MR. CREWS: I believe the total amount had to be
11 doweled in.

12 CHAIRMAN COWGER: All had to be doweled in.
13 I don't think there's any argument over that.

14 MR. MOREFIELD: The four E-bars that are the
15 horizontal bars, I guess it is, were they on site?

16 MR. CREWS: I can't say for sure. I don't know
17 the problem with getting the E-bars or not. The F-bars
18 were the main problem.

19 MR. CONE: I would imagine the E-bars would have
20 been fairly easy to get. They were straight. It's the
21 bending bars --

22 MR. MOREFIELD: I'm just asking, if you get
23 those, you have to get it off of this detail. You
24 would have seen you had to have four E-bars. That's
25 why I'm asking if the four E-bars were already ordered,

1 somebody had to see that those were tied onto the
2 four F's.

3 MR. CREWS: That error was discovered by the
4 inspector and also the contractor. They found out
5 those bars were not there. I assume he ordered enough
6 steel to finish up the parapet wall which included the
7 F-bars and the E-bars.

8 MR. MOREFIELD: Were there any shop drawings done
9 prior to pouring the retaining walls?

10 MR. CREWS: The shop drawings just show the
11 handrail tying onto your parapet wall. The shop
12 drawings did show the parapet wall on top of your
13 cantilever wall.

14 MR. MOREFIELD: Did it show the steel?

15 MR. CREWS: Yes.

16 MR. IVEY: The shop drawing was only for the
17 handrail.

18 MR. MOREFIELD: Okay.

19 CHAIRMAN COWGER: Payment for parapet wall,
20 though, was included in the price of the class S-4
21 concrete retaining wall, right?

22 MR. CREWS: I'm not totally sure without going
23 back to check the records. We did check to see that in
24 the original calculations all the steel was accounted
25 for. I can't remember whether we did the retaining

1 wall steel or the superstructure steel. Without going
2 back and checking the plans, I can't tell you that.

3 CHAIRMAN COWGER: Let me make sure I understand
4 your testimony as to what happened. When the
5 contractor got the retaining wall formed up and was
6 ready to pour the retaining wall, was the fact that the
7 F-bars that were needed to go up into the barrier wall
8 or the parapet wall were not on the job?

9 MR. CREWS: No, sir, the parapet wall, the
10 cantilever wall was poured prior to discovering the
11 parapet wall steel was not on the job.

12 CHAIRMAN COWGER: So what you're saying is that
13 the retaining wall was poured without the F-bars being
14 embedded in the concrete at that point in time?

15 MR. CREWS: Yes, sir.

16 CHAIRMAN COWGER: And that it was a matter of
17 everybody having overlooked the fact that those bars
18 were necessary at that point in time?

19 MR. CREWS: At that point in time they was
20 interested in trying to get the cantilever wall
21 finished. As far as going back to your handrail steel,
22 at that point it wasn't even discussed.

23 All of a sudden somebody mentioned how are we
24 going to put the parapet wall up there. That's the
25 point. The cantilever wall I'm almost certain was

1 almost totally poured when we found out the F-bars were
2 not in place.

7
3 MR. CONE: There were about 12 separate pours,
4 Charlie, is that right? As far as I recall, Gene, it
5 was not discovered when we first started pouring these
6 walls, but somewhere after we got started pouring we
7 discovered we had a problem with those F-bars.

8 MR. CREWS: I know we did have several -- I'm not
9 sure whether we had all of them poured, but we had
10 several of them poured.

11 MR. CONE: I will agree with you. At that time
12 we had some of them formed up. The best thing we
13 figured we could do was to just keep on booking it.
14 Time was of the essence.

15 MR. IVEY: A certain amount of take-off has to be
16 done from the standard index drawing to determine the
17 amount of steel, the type of steel needed to build the
18 retaining walls. We believe that the information to
19 build the retaining wall is presented on W-4 and the
20 information to build and order the materials to build
21 the parapet wall is presented on W-1, which requires a
22 certain amount of take-off.

23 MR. GRAHAM: We take the position that the
24 information is probably in the plans. It's difficult
25 to -- right here at this table we're having difficulty

1 deciding where the bars are shown, where they aren't
2 shown.

3 Yes, the contractor has an obligation to get the
4 steel in there as per plans, but prior to pouring the
5 DOT also does an inspection for the quantity of steel
6 that's involved with the pour. Obviously they didn't
7 catch it either before the pour was made.

8 So, we admit some responsibility in this area,
9 but I think it's clear that the plans aren't clear.

10 MR. MOREFIELD: Well, asking both of you, I know
11 the district has built structures like this. I know
12 you all have. You got to tie concrete with something.
13 I mean somebody obviously didn't look at this.

14 What I'm saying is you got to have some steel
15 sticking up to put the other piece of concrete on top
16 of it. Where did it go wrong? I'm asking both of you
17 because obviously the inspector ought to know you've
18 got to have some steel sticking up.

19 MR. CONE: When we were building the retaining
20 wall, I think everybody was looking at this one sheet.
21 Nobody bothered to look on page W-1 that showed that
22 parapet.

23 MR. MOREFIELD: I would assume you all knew a
24 parapet was going on top of it.

25 MR. IVEY: There is a parapet shown across the

1 bridge as well.

2 MR. MOREFIELD: Like a barrier wall going across
3 the bridge, you've got to tie it down to a bridge deck
4 or something.

5 MR. CREWS: Now, one thing. The deck unit was
6 sitting in place. The parapet wall steel was showing
7 in the deck unit on the bridge site.

8 MR. CONE: That's correct.

9 MR. CREWS: Obviously when you come to a certain
10 point you know that the steel has to continue to some
11 point.

12 MR. MOREFIELD: You're saying at the bridge
13 point --

14 MR. GRAHAM: The walls were poured before the
15 slab was set or we wouldn't have the end bents up
16 against the slab.

17 MR. CREWS: We had some units set. The first
18 section we set -- what was it, the first or second
19 section we set barriers?

20 MR. GRAHAM: We waited until it was all
21 backfilled before we were able to get the crane up
22 against the end bents.

23 MR. CONE: We can beat this to death.

24 MR. GRAHAM: I'm not a hundred percent --

25 MR. CREWS: One of the things --

1 MR. GRAHAM: The walls had to be poured up
2 against the end bent before you could backfill it to
3 get the crane up there against it.

4 MR. CREWS: Once we saw the steel on the handrail
5 steel on the bridge and the cantilever wall with no
6 steel, that's when we found out there was a problem.

7 MR. GRAHAM: I agree the ones on the -- let me
8 get my directions straight -- the first two slabs on
9 the west side were set before the retaining walls on
10 the east side. I would agree with that.

11 MR. CREWS: I think so.

12 MR. GRAHAM: I think that's when we saw the
13 problem.

14 CHAIRMAN COWGER: I think we have enough on this.
15 It just boils down to me that really what happened is
16 when the retaining wall was being constructed somehow
17 or other everybody failed to look at sheet W-1 to
18 realize that parapet wall had to be constructed on top
19 of that. That's hard to understand, but that's what
20 happened.

21 On that, now, DOT, what do you say about the 28
22 days? I think we do need a little testimony on that.

23 MR. IVEY: We do not agree that, in fact, this
24 created any delay, Mr. Cowger. Other work was being
25 pursued. This was work that was and could be performed

1 by extra labor if you will and labor that was on the
2 project. It didn't delay the project.

3 CHAIRMAN COWGER: Do you have anything further to
4 say, Mr. Cone, on how you arrived at the 28 days?

5 MR. CONE: Well, the total time was 53 days.
6 I agree with Mr. Ivey that some productive work was
7 being done on the job. We had to shift gears once we
8 found the problem. So yes, we did go and do some other
9 work.

10 MR. ROEBUCK: Your 52 days, the time you called
11 Florida Steel and said I need some F-bars or E-bars, it
12 took you 53 days to get them?

13 MR. CONE: Took 53 days to have them installed.

14 MR. MOREFIELD: That including the order time and
15 the --

16 MR. GRAHAM: Also the drilling and doweling.

17 MR. CONE: And the drilling and doweling.
18 I would also say that we had a subcontractor scheduled
19 to come and pour sidewalk up against that wall on the
20 back side. There wasn't any way to have all of us
21 there working in one area at one time.

22 CHAIRMAN COWGER: I think we are ready to go on
23 to item number 4.

24 MR. GRAHAM: Okay. I don't know what number
25 exhibit this will be.

1 CHAIRMAN COWGER: We are up to 9 now.

2 MR. GRAHAM: This is one of the claims that we
3 changed our position on that the DOT is taking
4 exception to. The claim hasn't changed, it's the same
5 argument.

6 If I could backtrack, originally --

7 CHAIRMAN COWGER: Excuse me just a minute. Let's
8 make these 9 and 10.

9 (Whereupon, Exhibit Nos. 9 and 10 were received in
10 evidence.)

11 CHAIRMAN COWGER: Ten is the calculation sheet.
12 Excuse me.

13 MR. GRAHAM: We have changed our position on the
14 claim. Originally the DOT deducted superstructure
15 concrete from the final pay estimate based on in the
16 field -- well, not in the field, but based on
17 calculated measurements of the actual key-way
18 dimensions.

19 We initially asked for that quantity to be paid
20 for as plan quantity. We revised that, and since the
21 key-way quantity has been reduced, we are asking for an
22 increase in the quantity of the prestressed slab unit
23 superstructure.

24 If you will look on Exhibit 9 with the plan view
25 there, the highlighted green area is the key-way

1 section that is involved with the superstructure
2 concrete.

3 What transpired was that on sheet 2 it shows the
4 original drawings with the key-way detail, and the
5 third sheet shows the revised drawing that was
6 submitted of the shop drawing that was actually
7 installed in the field.

8 CHAIRMAN COWGER: So the third one you mentioned
9 is a shop drawing, and the second sheet is plan?

10 MR. GRAHAM: That's correct. The DOT on the
11 following sheets went back to the original calculations
12 of the original key-way and came up with the cubic
13 footage of concrete involved in that key-way, and then
14 also revised the calculations of the new key-way based
15 on the new shop drawing.

16 We don't take exceptions to those calculations,
17 but logically if the original bridge width and length
18 did not change, if the key-way dimension decreases,
19 then logically you can say the superstructure square
20 footage of the slab unit should increase.

21 What I have done is gone back through the
22 calculations. There's two different depths of slab, a
23 16-inch slab, a 19-inch slab. I have used Charlie's
24 calculations for the new cubic footage of the
25 superstructure concrete, come up with an average

1 key-way width for both the new and the old, increased
2 the quantity of the prestressed slabs accordingly.

3 Like I say, the overall dimensions of the bridge
4 did not change, so if the key-way dimensions decreased,
5 then the slab unit dimensions would logically increase.

6 CHAIRMAN COWGER: May I ask a couple of quick
7 questions. The way this bridge was to be constructed,
8 you had these precast slabs. Then there was a concrete
9 deck to be poured on top of them?

10 MR. GRAHAM: No. The superstructure concrete in
11 this case is the key-way concrete. The joint --

12 MR. GRAHAM: Joint between the slabs.

13 MR. IVEY: As well as the transverse joint at the
14 caps.

15 CHAIRMAN COWGER: Was that set up in cubic yards
16 or cubic feet?

17 MR. GRAHAM: Cubic yards.

18 CHAIRMAN COWGER: The superstructure concrete was
19 to fill joints you might say?

20 MR. GRAHAM: There were other items, but that was
21 the deduction.

22 CHAIRMAN COWGER: For this part of it.

23 MR. GRAHAM: There were other parts of it. There
24 was a median barrier on top of it. The handrail on the
25 outside that we used on the retaining wall.

1 CHAIRMAN COWGER: These handwritten calculations
2 were DOT calculations that you --

3 MR. GRAHAM: That's correct.

4 CHAIRMAN COWGER: I think I understand. DOT.

5 MR. GRAHAM: The quantity increase that I have
6 asked for, I have adjusted it at contract unit price.
7 It wasn't any change in the unit price.

8 CHAIRMAN COWGER: So, the \$20 is contract unit
9 price?

10 MR. GRAHAM: Correct.

11 MR. CONE: DOT might want to take a few minutes
12 to review this because this is the first time they have
13 seen it.

14 MR. IVEY: Thank you so much.

15 MR. ROEBUCK: We are taking a few minutes, too.
16 I've got to get the theory, not the numbers.

17 (Discussion off the record)

18 CHAIRMAN COWGER: Let's let DOT testify on this
19 subject a minute.

20 MR. IVEY: The original plans calculated the
21 square footage required for the deck slabs based on the
22 bottom dimension of the slabs shown in the plans. The
23 bottom dimension from the slabs shown in the plans did
24 not change from the bottom dimension that the
25 contractor presented in his shop drawings.

1 Consequently, the square footage required didn't
2 change. The only thing that changed was the size of
3 the key-way that caused a change in the quantities of
4 closure concrete needed for the key-way and the
5 transverse joints.

6 So, the quantity of deck slab did not increase
7 because it was originally calculated using the bottom
8 dimension.

9 MR. GRAHAM: Gene, we don't find anywhere that
10 the specification as far as measuring the slab units
11 is done from the bottom, the top, the middle.

12 Our position is that yes, the bottom dimension
13 did not change, but, however, if the cubic yardage of
14 the concrete changed, then certainly the area of the
15 prestressed slab unit has changed to compensate for
16 that decrease.

17 The specifications do not tell us that these slab
18 units are measured from the bottom. To me I would
19 think the measurement would be an average width from
20 top to bottom.

21 MR. MOREFIELD: Was this revised key-way stuff
22 initiated by the contractor?

23 MR. IVEY: That is correct. It was initiated
24 with shop drawings.

25 MR. ROEBUCK: Whoever made the slabs had a

1 different key-way than what was planned?

2 MR. CREWS: Had a smaller key-way than what was
3 shown in the plans. Actually it took 15 yards more or
4 less of concrete than what was anticipated.

5 MR. CONE: If we had submitted a shop drawing
6 with a bigger key-way, would you all have paid for the
7 extra superstructure?

8 MR. CREWS: If the plan quantity concept --
9 I can't get into that because the reason we come into
10 it first off was it called for X amount of cubic yards.
11 We didn't pour that on the job. That's when it came in
12 what is wrong. We started checking shop drawings and
13 we found out that the key-way is smaller.

14 MR. CONE: Could somebody answer my question with
15 DOT?

16 MR. CREWS: I can't.

17 MR. IVEY: Ask it again.

18 MR. CONE: If we had submitted a bigger key-way
19 and it had taken more concrete, would we have been
20 compensated for that additional cubic yards of
21 concrete?

22 MR. IVEY: I expect you would have if we had
23 approved your shop drawings.

24 MR. ROBERTS: I have a comment based on the
25 square footage of the slabs. I was concerned with how

1 our quantity was arrived at, so I recalculated the
2 slabs and did in fact find out that the bottom
3 measurement of the slabs, which is the widest area that
4 is utilized in calculating the square footage. It was
5 not a medium measurement of the slab; it was, in fact,
6 the bottom.

10
7 CHAIRMAN COWGER: Let me ask a question. When
8 the dimension of the slab was changed, it required more
9 concrete in the slab because the slab was therefore
10 wider, and that amount of additional concrete
11 corresponded with the amount that the amount of
12 concrete in the key-way was reduced.

13 MR. CREWS: We assumed that, but again the slab
14 was paid for on a square-foot basis. If that had been
15 the case with the cubic yards, we would accept that.
16 But Ricky just mentioned the square footage was based
17 on the bottom dimensions. Now why that is I can't
18 explain that.

19 CHAIRMAN COWGER: I'm ready to go on to the next
20 item. We will go to item number 5 now.

21 MR. IVEY: As I understand I'm supposed to
22 respond to you in regards to the cost of this issue, is
23 that correct?

24 CHAIRMAN COWGER: Are we on item number 4 or 5
25 now?

1 MR. MOREFIELD: The one that just went up in
2 price.

3 MR. GRAHAM: I think you have the option.

4 CHAIRMAN COWGER: Do you want to do that or not?

5 MR. IVEY: Yes, I would.

6 CHAIRMAN COWGER: All right.

7 MR. GRAHAM: Will we have the opportunity to
8 review his rebuttal?

9 CHAIRMAN COWGER: Yes. Anything -- let's get
10 this in the record right now. Anything that you choose
11 to submit to the Board subsequent to this hearing must
12 be received by September 20, and DOT, you must submit a
13 copy of whatever you submit to the Board to the
14 contractor at the same time you submit it to the Board.
15 And the contractor will be given until September 30 to
16 submit any comments he wants to make on your rebuttal.

17 MR. IVEY: Of course he will send me a copy,
18 also?

19 CHAIRMAN COWGER: Yes, he will send you a copy to
20 you, but we're not going from that point on. That is
21 it. When the contractor submits his rerebuttal, that
22 is the end of the testimony, but we do ask as a
23 courtesy that you send it to DOT.

24 MR. CONE: Be more than happy to.

25 CHAIRMAN COWGER: Where are we now, item 5?

1 MR. GRAHAM: And these will be Exhibits 11 and
2 12?

3 CHAIRMAN COWGER: That's correct.

4 MR. GRAHAM: This is the same type of format
5 where the calculations are separate from the additional
6 plan submittal.

7 (Whereupon, Exhibit Nos. 11 and 12 were received in
8 evidence.)

9 MR. IVEY: Which one is this?

10 CHAIRMAN COWGER: The calculations will be
11 Exhibit 11, and number 12 is a letter dated June 24,
12 1991, to Mr. Crews.

13 MR. GRAHAM: Correct. As a background on this
14 one, a similar situation with the previous one in that
15 the plan quantity for substructure concrete was
16 reduced.

17 We took exception to that in our original
18 arbitration letter, requested that the plan quantity be
19 reinstated. We have withdrawn that tact and taken
20 the tact that we are now filing for the delays that
21 were associated with the change.

22 To give you an idea of what we're talking about,
23 if you could, on Exhibit 12, the last two plan pages,
24 the last page is the original plan. The item that
25 we're talking about is a poured-in-place closure pour

1 between new concrete sheet piling and existing concrete
2 sheet piling. It involves a sea wall detail.

3 The original plan is in error where it depicts
4 the matching bulkhead, the existing bulkhead. The
5 bottom of it is showing to be the same limits as the
6 new sheet piling.

7 We went through the installation process of
8 trying to install that closure pour as per the original
9 drawing and found out that the existing sheets were
10 probably only six feet long rather than what is shown
11 on the plans as being 12 foot, 11. We spent
12 approximately nine days trying to do this installation
13 and undermined the existing sea wall and bulkhead
14 because of that.

15 We hired an outside engineer, and the sheet just
16 prior to the last sheet shows his change that he signed
17 and sealed reducing the amount of the length of the
18 closure pour as far as the depth of it to only be one
19 foot below the existing bulkhead.

20 This work was done and accomplished, and
21 subsequently the DOT reduced the amount of concrete
22 that was involved in that type of work.

23 So our claim now involves the extra work that we
24 incurred trying to install the closure pour as per the
25 original drawings.

1 Basically the closure pours were made and plan
2 quantity was paid for. It was at a later date that the
3 quantity was reduced.

4 We initially were under the assumption that we
5 would be paid for the plan quantity, and now the DOT
6 during the final measurements has reduced the quantity.

7 CHAIRMAN COWGER: Just so I can get oriented on
8 this, if we can go back to Exhibit 7, which was a plan
9 view of this same bulkhead -- am I correct?

10 MR. GRAHAM: I think so.

11 CHAIRMAN COWGER: And the connections were made,
12 this bulkhead that we are showing here to be
13 constructed, on either end of that bulkhead you had to
14 tie into the existing bulkhead after you removed a
15 session of the existing bulkhead.

16 MR. GRAHAM: Yes.

17 CHAIRMAN COWGER: So that happened at four
18 locations, two on one side of the channel and two on
19 the other.

20 MR. GRAHAM: Right.

21 CHAIRMAN COWGER: Now, these sheets that I have,
22 I have one -- both of these sheets are identified as
23 end bent detail 1. One of them, the first one that
24 I come to in the lower left-hand corner has some
25 handwritten notes, revisions to poured in place units?

1 MR. GRAHAM: That's correct. This is the
2 engineer that we hired to offer a redesign to match the
3 existing conditions.

4 CHAIRMAN COWGER: Okay. That's by your engineer.
5 And then the next sheet is per the original plans?

6 MR. GRAHAM: That's correct. The problem was
7 that the existing sea wall was not of the same length
8 as the new sheet piles. And when we attempted to make
9 a pour adjacent to that sea wall, some five feet below
10 it, we were undermining it trying to clean it out in
11 order to make the pour.

12 CHAIRMAN COWGER: So, the existing sheets were
13 five feet plus or minus shorter than the new sheets?

14 MR. GRAHAM: Correct.

15 MR. GRAHAM: We didn't initially realize there
16 was a problem when we started the installation
17 procedure. Our full intention was to pour it as per
18 plans. But after some nine days of trying to install
19 it, we realized it wasn't constructed as per the
20 original plans.

21 CHAIRMAN COWGER: So, all this change in the
22 engineering was really just raising the bottom of this
23 cast-in-place unit that you were casting?

24 MR. GRAHAM: That's correct.

25 CHAIRMAN COWGER: So there really wasn't much

1 engineering to it, was there?

2 MR. GRAHAM: No.

3 CHAIRMAN COWGER: Just certifying it would work.

4 MR. GRAHAM: Correct.

5 CHAIRMAN COWGER: But the claim is basically the
6 fact that you were there a considerable length of time
7 attempting to construct these connections per the
8 original plans?

9 MR. GRAHAM: Correct.

10 CHAIRMAN COWGER: How many of these were you
11 trying to do before the change was approved? Did you
12 work on one of them or did you work on all four of
13 them, or does it really make any difference?

14 MR. GRAHAM: I know it wasn't all four of them.
15 The first one?

16 MR. CREWS: Yes.

17 MR. GRAHAM: Where the guy's tree fell in there.

18 MR. CONE: We bought a couple of cedar trees over
19 there.

20 MR. CREWS: The final quantity, Mr. Cowger, was
21 based on remeasurements of the actual closure pours
22 that he did perform, dealt with and everything, which
23 the depths, again, was based on the consultant
24 engineer's design.

25 MR. CONE: Where he showed a wrong dimension.

1 MR. CREWS: What is that?

2 MR. CONE: On the existing bulkhead.

3 MR. CREWS: I don't know. But we actually field
4 measured the actual closure pour.

5 CHAIRMAN COWGER: As-built is what we're saying?

6 MR. CREWS: Yes, sir.

7 CHAIRMAN COWGER: DOT, what do you have to say
8 about all of this?

9 MR. IVEY: I'm unprepared, I guess is the first
10 thing I would say.

11 CHAIRMAN COWGER: Well, is there any -- I think
12 DOT could be prepared to say that, as to whether or not
13 the circumstances that the contractor described are
14 correct or not.

15 MR. IVEY: It is correct that he had difficulty
16 making the closure pour.

17 MR. CREWS: On that one.

18 MR. IVEY: I do recall there was considerable
19 jetting and cleaning, et cetera, that created some
20 erosion that may have contributed to some other
21 problems. I was not aware that it was ever approached
22 to the Department as a plan change.

23 MR. CREWS: I have no knowledge of that either.
24 I know the only thing we had, we was over there
25 designing the change coming in from the contractor.

1 We -- the project person wasn't aware of a design
2 change coming through.

3 MR. IVEY: From the surface it would appear to
4 have been a constructibility problem, which I don't
5 believe the DOT owns.

6 MR. MOREFIELD: Let me ask one question. What is
7 the difference in dollars? What wasn't in the original
8 one, which was -- what was the number, around 3600,
9 versus the 18,5 now. What is different?

10 MR. GRAHAM: The original claim, Ken, was just
11 requesting the quantity be paid as per plan.

12 MR. MOREFIELD: So it's the plan quantity?

13 MR. ROEBUCK: Right.

14 CHAIRMAN COWGER: As I understand it, your
15 original claim was based on you wanted to be paid for
16 the plan quantity of concrete at each of those closure
17 pours?

18 MR. GRAHAM: Correct.

19 CHAIRMAN COWGER: Now you have withdrawn that
20 part of your claim and you're saying we want
21 compensation for the actual additional effort that we
22 expended in --

23 MR. GRAHAM: Prior to the design change.

24 MR. CONE: That's correct.

25 CHAIRMAN COWGER: The actual pouring then of the

1 concrete would be paid for at the contract unit price
2 per the changed dimensions. That's not in dispute.

3 MR. GRAHAM: That's correct.

4 CHAIRMAN COWGER: What is in dispute is you're
5 saying you should be compensated for the nine day's
6 worth of work that you did that in essence accomplished
7 nothing?

8 MR. GRAHAM: Correct.

9 CHAIRMAN COWGER: Now I've summed up the
10 contractor's part of it. Now, DOT, we will give you
11 the opportunity to rebut on that.

12 MR. IVEY: I think in the beginning we were
13 dealing with an issue here where we were never given
14 the opportunity to address the problem. We are also
15 dealing with construction in an area of tidal
16 influence.

17 The means and methods the contractor chose to
18 employ to attempt to install the closure pour may not
19 have been appropriate for the conditions. But I think
20 the strongest point is that we were never given the
21 opportunity to address the problem.

22 MR. GRAHAM: In order to mitigate, further delay
23 damages, we took the initiative to try to offer a
24 design that was constructible.

25 Our position is that original design was not

1 constructible because the plans were in error. The
2 intent of it was to pour the closure point the same
3 length as the existing bulkhead. The existing bulkhead
4 was a lot shorter than what was shown on the plans,
5 therefore, the problem is in the constructibility of
6 it.

7 CHAIRMAN COWGER: What work was going on during
8 the time that is covered by Exhibit 11, your
9 calculations? Was it essentially -- I don't know,
10 what were you doing during this time? What does this
11 \$18,000 worth of work effort cover?

12 MR. GRAHAM: Strictly the working on that closure
13 pour. There was other work going on at that time.
14 I don't know specifically what it was.

15 CHAIRMAN COWGER: Again, what were you --

16 MR. GRAHAM: This was a separate crew involved in
17 that work.

18 CHAIRMAN COWGER: What were you doing?

19 MR. GRAHAM: Gene, the methodology of installing
20 this closure pour is that we fabricated two steel
21 sheets to form as side forms for the closure pour. The
22 steel sheets were set in place. Then we had an airlift
23 hooked up to a big air compressor that we attempted to
24 airlift the material out between the steel sheets, at
25 the same time setting the sheets down to grade.

1 Because the sheets were flush up against the
2 edges of existing bulkhead, but once they got below the
3 existing bulkhead where the sheets, the existing
4 bulkhead was not as long as the steel sheets, when we
5 airlifted the material, all we were airlifting was
6 material underneath the existing bulkhead.

7 I don't know how you could ever seal off that
8 particular part of the pour in order to build it as per
9 plans.

10 CHAIRMAN COWGER: Because of the fact that as you
11 advance those two sheets down, you had two open sides,
12 you might say?

13 MR. GRAHAM: That's correct.

14 CHAIRMAN COWGER: The minute you got below the
15 bottom of the existing bulkhead --

16 MR. GRAHAM: Sealed off against the new sheet.

17 MR. IVEY: One open side.

18 CHAIRMAN COWGER: One open side.

19 MR. GRAHAM: Sealed off against the new sheet,
20 but the problem was against the existing sheet once we
21 got the steel sheets below that.

22 CHAIRMAN COWGER: You all spent nine days at one
23 location trying to do something with this?

24 MR. GRAHAM: Correct.

25 MR. CREWS: Which they lost the cedar trees in

1 the process. The back side, along the property line,
2 there was no adequate protection even to make this kind
3 of a cofferdam-type deal which you normally need. We
4 had quite a bit of erosion on private property from the
5 back side.

6 CHAIRMAN COWGER: While this operation was going
7 on?

8 MR. CREWS: While this operation was going on,
9 yes.

10 CHAIRMAN COWGER: What did the existing bulkhead
11 consist of? Was it typically sheet piling with a cap
12 on it?

13 MR. CONE: One section was.

14 MR. CREWS: One was and one was blocked. One
15 side was a small connection type sheet pile. One was
16 layers of block.

17 CHAIRMAN COWGER: Okay. This was done by private
18 individuals. This wasn't DOT-type construction?

19 MR. IVEY: This was an off system bridge
20 replacement project.

21 CHAIRMAN COWGER: I think we will move on from
22 this then. DOT, if you wish, the same offer exists
23 that we made in claim -- regarding claim number 4. We
24 assume that essentially any information you will be
25 submitting will deal with the Exhibit 11, the

1 calculation of the amount due. Is that correct?

2 MR. IVEY: That's correct.

3 CHAIRMAN COWGER: Okay. Now we can go to 6.

4 (Short recess)

5 CHAIRMAN COWGER: We are ready to go.

6 MR. GRAHAM: Claim number 6, the background on
7 this claim is that we erected the first two spans of
8 slabs on the bridge from the west side. After the
9 erection of the second span, there was problems with
10 the retaining walls that were discovered, basically
11 there were some cracks involved with them and other
12 associated problems.

13 At that time we were instructed not to erect the
14 third span from the same location that we had prior
15 erected the first two spans.

16 Subsequently we were instructed to move the crane
17 to the other side of the bridge and erect the slabs
18 from the east side of the bridge and maintain a certain
19 distance off the existing retaining wall bulkhead, some
20 40-odd feet.

21 The exhibit shows as bid location that we wanted
22 to erect the third span of slabs from, and the last
23 page shows the crane in position on the east side once
24 it was moved around in order to accommodate this
25 erection.

1 The --

2 CHAIRMAN COWGER: May I interrupt you just a
3 minute. The documents that you are referring to are
4 three sheets of paper that we are identifying as
5 Exhibit 13. They are drawings showing crane locations.

6 MR. GRAHAM: That's correct.

7 (Whereupon, Exhibit No. 13 was received in evidence.)

8 CHAIRMAN COWGER: Proceed on.

9 MR. GRAHAM: The question may arise, you know,
10 why did you have to go from one side of the bridge to
11 the other, why couldn't you just set the span from
12 either side of the bridge.

13 The first sheet shows the location of existing
14 utilities, one, an overhead electric line on the south
15 end. The other was an aerial sanitary force main that
16 was temporarily supported on the north side, therefore,
17 not allowing access of the crane to work on either side
18 of the bridge.

19 The only feasible construction position for the
20 cranes to be in were on one side or the other side of
21 the bridge itself and erect from the ends.

22 The claim is basically a six-day delay associated
23 with us being ready to erect the third span from the
24 west side of the bridge. The associated time of
25 demobilizing and delays associated with moving the

1 crane to the east side of the bridge and waiting for
2 sufficient backfill at that location in order to make
3 the third span erection.

4 CHAIRMAN COWGER: Was this a three-span bridge?

5 MR. GRAHAM: Correct. The heaviest lift, Gene,
6 in the bridge is the center span. It's the longest
7 span, also a 19-inch-deep slab. That lift was actually
8 closer to the capacity of the crane than the third span
9 was, even though the third span was a longer reach.
10 The center span was the problem as far as being up
11 against the end bent and erecting it.

12 CHAIRMAN COWGER: Which side did you erect the
13 center span from?

14 MR. CONE: West side.

15 MR. GRAHAM: It's on the first page --

16 CHAIRMAN COWGER: Two spans from the west side
17 and you anticipated doing the third span from that
18 side.

19 MR. GRAHAM: Correct.

20 CHAIRMAN COWGER: But because of the problem that
21 developed in the cracking of the retaining wall, you
22 had to move the crane around to the east side, and that
23 allowed you to keep the crane back considerably further
24 from the bulkhead?

25 MR. GRAHAM: That's correct.

1 CHAIRMAN COWGER: Okay. We are ready for DOT to
2 tell us what they think about this one then.

3 MR. IVEY: Okay. I guess we first realized that
4 we had evidence of a problem with the crane sitting
5 where it was sitting on the west bulkhead when we
6 experienced the cracks in the retaining wall, as well
7 as there was evidence that the sheet pile line under
8 the bulkhead under the end bent had rotated as well.

9 We were concerned in regards to what was going
10 on, asked for an investigation by a geotechnical
11 engineer. And the information that he presented to us
12 is shown in your package as page 38, which indicated
13 that the wall had settled causing it to crack and that
14 the sheet piles had moved as a result of settlement,
15 also.

16 And the reason for the settlement was attributed
17 to the additional load of the crane, which happened to
18 be on the approach embankment that was the highest.

19 The conclusion was that the crane contributed to
20 the damage to the retaining walls. In order to
21 minimize any additional damage due to settlement, the
22 contractor was directed to perform the construction a
23 little differently in order to minimize that damage,
24 which involved moving the crane back away from the
25 bulkhead.

1 CHAIRMAN COWGER: May I interrupt you a minute.

2 MR. IVEY: Certainly.

3 CHAIRMAN COWGER: Where did the cracks occur, in
4 the cap?

5 MR. IVEY: The cap of the retaining wall?

6 CHAIRMAN COWGER: Of the bulkhead --

7 MR. IVEY: There was two items involved, the
8 sheet pile line under the bulkhead as well as the
9 retaining wall. The end of the retaining wall adjacent
10 to the bridge settled. That's the highest point of the
11 fill, where it has the greatest load applied. That's
12 also the place where the crane was sitting.

13 The Department entered into a supplemental
14 agreement with the contractor, supplemental agreement
15 number 5, which we have referenced before, which is
16 shown on page 39, which included \$15,000 to repair the
17 cracks in the wall.

18 At the time, and still, we considered the damage
19 to the wall to be shared by both parties. We
20 considered that because the construction joints --
21 joint where the cracking occurred in the wall was
22 constructed with dowels across the joint that did not
23 allow any movement.

24 Due to the settlement of the wall, as well as the
25 expansion and contraction forces involved with the

1 concrete, the wall cracked.

2 We paid the contractor \$15,000 to fix the wall
3 and added contract time to the contract in the order of
4 34 days.

5 We considered this full and final compensation
6 for a shared problem.

7 MR. GRAHAM: Just a point, Glenn. On that 34
8 days, that supplemental agreement included more than
9 just that item.

10 MR. IVEY: That is correct.

11 MR. GRAHAM: Wasn't just for that particular
12 item. Our position as far as the crane causing the
13 problems, it's never been proven conclusively if that
14 was the sole reason that the wall did crack.

15 We had movement of the sheet pile wall on the
16 east side of the bridge as well, and there wasn't
17 any -- and the crane was held back 40 feet from that
18 sheet pile wall.

19 The wall experienced movement during the
20 backfilling operations, should not have been unexpected
21 because the tie back rods that were holding the
22 bulkhead back to the anchor piles were not tension.
23 These are just ordinary rebar that had some flexibility
24 in it.

25 I'm not a design engineer, but I would not think

1 it would be unexpected that the wall would rotate some
2 during the backfill operation in order to put tension
3 on those anchor rods to hold it up.

4 We believe that as far as the constructibility of
5 the job, the only way to erect these slabs were from
6 each -- from one end of the bridge or the other. We
7 had a sufficient crane in order to erect all three
8 spans.

9 Like I previously stated, the center span was the
10 heaviest lift and it didn't matter which side of the
11 bridge you were going to be on, you had to be right up
12 next to the end bent in order to handle that weight at
13 that distance.

14 MR. CONE: I would agree that the DOT did
15 compensate us for the \$15,000 for repair of the wall,
16 but at the same time we were directed to cease our slab
17 setting operation for six days, which in my opinion is
18 a separate issue from the wall itself, the wall repair
19 itself.

20 MR. IVEY: I see them as directly interrelated.
21 As I see the means and methods used to attempt to
22 install the closure pour, which was at the northwest
23 corner of the wall that settled that had the most
24 damage.

25 And at that point the footing of the wall closest

1 to the channel was undermined, which in my opinion
2 contributed additionally to the amount of settlement
3 that occurred there.

4 (Discussion off the record)

5 CHAIRMAN COWGER: Back on the record. I think we
6 have heard quite a bit on this now. I think we have
7 got enough information about looking at what has been
8 said, what the contractor has said, what DOT has said.

9 What else needs to be said on either side about
10 part number 6?

11 MR. CONE: I will be brief. I still can't see
12 how the supplemental agreement has to do with this
13 actual slab setting delay and the monetary compensation
14 we are asking for as well as the six delay days, and
15 I will leave it at that.

16 CHAIRMAN COWGER: Is your statement that when we
17 look at the supplemental agreement, the part of the
18 supplemental agreement that's in question here is item
19 number 1, repair cracks in wall?

20 MR. CONE: Yes, sir.

21 CHAIRMAN COWGER: Your testimony says that that
22 \$15,000 covered merely the cost that DOT agreed to pay
23 you to repair the cracks that occurred in the retaining
24 wall back some distance from the bridge?

25 MR. CONE: Yes, sir, that's correct.

1 CHAIRMAN COWGER: All right.

2 MR. CREWS: Now this was paid to Hewitt.

3 CHAIRMAN COWGER: Somebody. Anyway, what is your
4 position on that, DOT?

5 MR. IVEY: Our position was this was a negotiated
6 settlement for work that we considered necessary
7 because of a shared problem. We considered it full
8 and final compensation. In fact, that supplement did
9 include significant time to perform that work. I don't
10 recall the exact numbers, but the -- for that
11 particular item.

12 MR. GRAHAM: As far as being shared, the
13 supplemental agreement, the work was performed by
14 Hewitt, Cone was not a party to that \$15,000. We
15 weren't involved with that repair work itself.

16 MR. IVEY: But I didn't have a contractual
17 relationship with Cone Corporation.

18 CHAIRMAN COWGER: Right quickly, how was the
19 split of work on this job between Hewitt and Cone? Did
20 you basically do the bridge? Did Cone basically do the
21 bridge work, the retaining walls and the bulkhead? How
22 was it split?

23 MR. CONE: We virtually did most of the work. We
24 did the roadwork, pipe work, wall work and the bridge
25 work.

1 MR. GRAHAM: Hewitt did the sheet pile.

2 MR. STANLEY: We did the sheet pile and post
3 tensioning.

4 CHAIRMAN COWGER: Okay. Do we have anything else
5 to discuss on this part of the claim, part 6? Let's go
6 on to part 7.

7 MR. CONE: Basically we have requested 40 days
8 additional on the project and there's 13 days worth of
9 liquidated damages, and we would just like to get our
10 money back if possible.

11 CHAIRMAN COWGER: DOT, is 13 days the correct
12 number of liquidated damages that have been assessed?

13 MR. IVEY: Yes, it is.

14 CHAIRMAN COWGER: Do we really need to spend any
15 time talking about this issue?

16 MR. IVEY: I don't think so. I think it's very
17 straightforward.

18 CHAIRMAN COWGER: Let's go to 8.

19 MR. CONE: Item 8 --

20 MR. GRAHAM: I don't think we need to talk about
21 this one. Does DOT take exception to this one?

22 MR. CONE: We need to look in their book.

23 CHAIRMAN COWGER: On part 8, the grooving
24 reduction. The issue here is how to measure the
25 quantity, is that correct?

16

1 MR. CONE: The DOT has acknowledged the claim, so
2 I guess that's a moot point.

3 MR. ROEBUCK: They've accepted it.

4 CHAIRMAN COWGER: Okay.

5 MR. CONE: Thanks, Glenn.

6 MR. IVEY: No problem.

7 CHAIRMAN COWGER: Then we go to the interest.

8 MR. CONE: Calculated interest at 12 percent from
9 the date the claim started, using a target payment
10 date, November 4, 1993.

11 MR. ROEBUCK: You incurred the costs is when you
12 started?

13 MR. CONE: Correct. This is a revised sheet
14 because we revised several of the claims.

15 CHAIRMAN COWGER: This is Exhibit 13 --

16 MR. CONE: I think it may be 14.

17 CHAIRMAN COWGER: Fourteen.

18 (Whereupon, Exhibit No. 14 was received in evidence.)

19 CHAIRMAN COWGER: Total interest is \$23,064.35.
20 Each portion of the claim, though --

21 MR. ROEBUCK: Different dates depending on --

22 CHAIRMAN COWGER: What is that date again?

23 MR. CONE: That is the date of the occurrence of
24 the claim.

25 MR. MOREFIELD: Your notice is to the Department

1 or Hewitt's notice or whatever?

2 MR. CONE: It's the date of the occurrence of the
3 claim.

4 CHAIRMAN COWGER: Of the event that led to the
5 claim.

6 MR. CONE: Yes, sir.

7 CHAIRMAN COWGER: What is this compounded
8 business?

9 MR. CONE: Compounded?

10 CHAIRMAN COWGER: Interest compounded monthly.
11 I tried to calculate one of these things from your
12 previous submittal using simple interest and I couldn't
13 get the numbers to come out right. You must have
14 compounded it using some kind of a system.

15 MR. CONE: To be honest with you, our bean
16 counter did that, and he's not here.

17 MR. ROEBUCK: That's a little too sophisticated
18 for us.

19 CHAIRMAN COWGER: But you do admit that it's
20 compounded?

21 MR. CONE: If it says so on that sheet.

22 CHAIRMAN COWGER: Compounded it monthly.
23 Apparently what he did is he compounded it monthly. We
24 understand that. We are not going to spend some time
25 talking about that.

1 MR. IVEY: Let's talk about the 12 percent,
2 period.

3 CHAIRMAN COWGER: Don't bother talking about the
4 compound. We're not going to consider compounded
5 interest. I'm saying the Board is not going to award
6 based on compound interest. Now you want to talk about
7 the 12 percent simple?

8 MR. IVEY: I think 12 percent far exceeds any
9 available interest rates in the market today.

10 MR. GRAHAM: We believe that's a statutory
11 interest rate.

12 MR. MOREFIELD: It is. Applicability may be
13 questionable in some cases, but it's in the statutes.

14 CHAIRMAN COWGER: I think we will leave the
15 interest at this point.

16 MR. MOREFIELD: One percent per month is what is
17 in the statutes.

18 MR. IVEY: But what is it on? That's my point.

19 MR. MOREFIELD: Applicability, what it applies to
20 is the question. I don't have the statutes in front of
21 me.

22 CHAIRMAN COWGER: We will consider that, take a
23 look at that. But I think we are probably going to be
24 bound by what the statute says in this case, as to the
25 rate. But as to the period of time that the interest

1 is applicable to, the Board will take a look at that.
2 Is that what you're interested in?

3 MR. ROEBUCK: He questions the rate. It may be
4 subject to question, but I don't think we can change
5 it.

6 MR. IVEY: My point was what is it applied to.
7 I think if it certainly is applied to amounts due the
8 contractor that are being held in final estimates or
9 whatever and it is late in payment, I certainly think
10 it applies to that.

11 MR. MOREFIELD: I think the statute does say
12 whether the claims are involved, he is entitled to
13 interest at that rate, whether it is -- don't worry
14 about final estimates holding back judgments, that's in
15 there, too. If you don't pay it within 45 days,
16 whatever it is. But there is definitely a section in
17 there that entitles them to interest on the claim.

18 MR. ROBERTS: The word litigation comes to mind
19 whenever I remember reading the statute. Without
20 being --

21 MR. MOREFIELD: The Board has a set of statutes.
22 We will look at it.

23 MR. GRAHAM: I'm sure the Board addresses this
24 at every instance. I don't know that this is any
25 different than the rest of them.

1 MR. IVEY: Yes, it is, it's mine.

2 CHAIRMAN COWGER: Okay. I think we are ready to
3 close. A couple of little housekeeping things. DOT,
4 we are expecting something from you then on parts 4 and
5 5 of the claim. I don't think we expect anything on
6 part 9, the interest part to come in from you.

7 MR. IVEY: Right.

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

10 MR. ROEBUCK: No.

11 CHAIRMAN COWGER: Mr. Morefield?

12 MR. MOREFIELD: No.

13 CHAIRMAN COWGER: This hearing is hereby closed.
14 The Board will meet in approximately six weeks to
15 deliberate on your claim, and you will have our order
16 shortly thereafter.

17 (Whereupon, the hearing was concluded at 1:20 p.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)

COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings;

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

Dated this 16th day of September, 1993.



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

STATE OF FLORIDA)

COUNTY OF LEON)

The foregoing certificate was acknowledged before me
this 16th day of September, 1993, by CATHERINE WILKINSON who
is personally known to me.



KATHLEEN GROW
Notary Public - State of Florida
My Commission expires April 20, 1997
Commission # CC278204
BONDED THRU TROY FAIR INSURANCE, INC.