

STATE ARBITRATION BOARD

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

April 11, 1994

+++ NOTICE +++

In the case of Ranger Construction Industries, Inc. versus the Florida Department of Transportation on Project No. 16130-3526 in Polk County, Florida, both parties are advised that State Arbitration Board Order No. 2-94 has been properly filed on April 11, 1994.



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

S.A.B. CLERK

APR 11 1994

FILED

Copies of Order & Transcript to:

Mr. J.B. Lairscey, Jr., Director, Office of Construction/FDOT
Mr. J. Kelly Crick, Vice-President/Ranger Construction Industries, Inc.

Copy of Order No. 2-94 To:
Pavex Corporation, Sub-Contractor

STATE ARBITRATION BOARD

ORDER NO. 2-94

RE:

Request for Arbitration by
Ranger Construction Industries, Inc. on
Job No. 16130-3526 in
Polk County

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

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

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 11:08 a.m., on
Wednesday, February 2, 1994 .

Pavex Corporation was authorized by the prime contractor
to act as an agent in pursuing claims arising out of work
subcontracted to Pavex.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 2-94 in
this cause.

ORDER

The Subcontractor presented a request for arbitration of
a claim in the amount of \$15,488.64 plus interest at the rate
of 12 percent per annum based on a dispute over the pay
quantity for the item Asphaltic Concrete Surface Course
(Tons). Item 5331-2.

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

1. In September 1991, after all the asphalt surface course had been placed on this project, the monthly estimate included payment for 3,528 tons of Asphaltic Concrete Surface Course (Tons) (Item No. 5331-2), approximately the plan quantity for that pay item. Some six months later the pay quantities for square yard pay items were adjusted to reflect corrections to area calculations and the thickness adjustment based on cores taken from the pavement. Using a conversion factor of 100 Lbs. per Sy. Yd. per Inch Thickness, these adjustments amount to a theoretical increase in payment of 856 tons. At the same time, the pay quantity for Item No. 5331-2 was reduced to 2,161 tons, a reduction of 1,367 tons. These changes amounted to a net decrease in payment equivalent to 510 tons.

2. We reviewed the DOT records in depth in an attempt to determine the basis for reducing the pay quantity for Item 5331-2. We noted that, on some days, asphalt was placed under four pay items. Our review revealed significant discrepancies between various DOT records.

a. On some days, the sum of tons shown in DOT Plant Daily Reports and DOT Paving Daily Reports varied significantly from the sum of tons shown in DOT tally books.

b. Overall, the sum of tons shown on DOT Daily Plant Reports was 3,601 less than the tally book total and the sum of tons shown on DOT Paving Daily Reports was 4,632 less than the tally book total.

In most instances, the quantity of production for a day as shown in DOT tally books coincided with our plant scale report and the difference in total production between these records is only 100 tons (24,564 tons vs 24,464 tons).

The sum of tons used by DOT in calculating the bituminous material pay adjustment varied slightly from sum of tally book quantities. However, that quantity varied from our plant scale report by only 140 tons (24,564 tons vs 24,424 tons).

3. From our review of the DOT records, we conclude that several months after asphalt work was completed DOT made a reallocation of the total tons of mix placed on the project between the square yard pay items and the tonnage pay item (No. 5331-2). We found nothing to substantiate how this reallocation was made.

4. Our position is that the final pay quantity for Asphaltic Concrete Surface Course (Tons) (Item 5331-2) is incorrect and cannot be supported from DOT records.

5. We claim payment for an additional 484.02 tons under Item 5331-2. That quantity is the difference between the total quantity shown in our scale report (24,564.39 tons) which, in view of the above described circumstances, we consider to be the most accurate determination of total tons placed and the theoretical tons placed in the square yard pay items (converting the final pay quantities for square yard pay items to tonnage using the following conversion factors: 100 Lb. per Sy. Yd. per Inch Thickness for Type S mix and 49.5 Lb. per Sy. Yd. for Type FC-2 mix) plus the actual tons

for which payment has been made under Item No. 5331-2
(24,082.37 tons).

6. The amount we are claiming is based on 484.02 tons of asphaltic concrete at the contract unit price for Item 5331-2 (\$32.00 per ton) or \$15,488.64 plus interest at 12 percent per annum.

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

1. We inadvertently overpaid the contractor 1,391 tons for Item No. 5331-2 (Asphaltic Concrete Surface Course Type S (Tonnage) on monthly estimate No. 9 issued July 23, 1991. This overpayment was made when paving operations switched from the tonnage item to a square yard pay item. We do not know how the error was made, but, it was discovered several months later when the area calculations for square yard pay items were being verified and the thickness adjustment for square yard pay items was calculated. The sum of tons shown in tally tickets covering the tonnage item was substantially less than the current pay quantity for that item (Item No. 5331-2). That pay quantity was corrected on Tentative Final Estimate No. 17 dated January 31, 1992.
2. Of the 3,509 tons included in the plan quantity for Item No. 5331-2, 3,267 tons was designated for use in overbuilding the inside lane of the right roadway. There was an error in the plan computation book. The correct quantity for the overbuild work was 1,633 tons. Thus the correct plan quantity for Item No. 5331-2 was 1.892. The final pay

quantity for that item was 2,161 tons.

3. Three DOT offices checked the final estimate calculations. We found the area calculations for the square yard pay items and the adjustment of each square yard pay item converting the difference between the average thickness, as determined from cores, and the plan thickness to equivalent square yards to be correct and the yields for square yard pay items to be in line.

4. It appears that the difference between the actual tons placed in the square yard pay items and the theoretical tons calculated based on the total area of each of those items (as adjusted to reflect the average thickness as determined from cores) occurred in areas such as crossovers, side roads and intersections where the as-placed thickness is more difficult to control. Extra thickness in these extra areas are not reflected in the thickness adjustment for a square yard pay item, because only cores taken from traffic lanes are used to calculate the job average thickness. We think it is reasonable to account for the approximate 500 tons in question by assuming that the average thickness of extra areas (19,000 +/-square yards) exceeded plan thickness by 1/2-inch.

5. The subcontractor has not proven that asphalt mix exceeding the quantity we have included for payment under Item 5331-2 was placed in areas of the work for which payment is to be made on a tonnage basis.

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

1. The dispute is over a reallocation by DOT of the total tons of asphaltic concrete surface course placed on the project between square yard pay items and the tonnage pay item. The Standard Specifications provide that payments on monthly estimates are subject to correction in subsequent estimates. However, this reallocation was made several months after all asphalt mix had been placed.
2. DOT did not present specific evidence to document determination of the final pay quantity for Item No. 5331-2. They stated that they cannot determine where the approximately 500 tons of asphalt mix in question was placed.
3. The subcontractor could not substantiate from DOT records the locations where the excess quantity of Asphaltic Concrete Surface Course (Tons) on which his claim is based was placed.
4. DOT did not have sufficient opportunity to analyze the tabulation of DOT project records submitted as an exhibit during the hearing.
5. The configuration of milling actually accomplished in the area over which an asphalt overbuild was placed was significantly different from the plan detail.

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 \$12,000.00 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$264.40 for Court Reporting Costs.

S.A.B. CLERK

APR 11 1994

FILED

Tallahassee, Florida

Dated: 11 April 1994

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

Certified Copy:

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

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

John P. Roebuck
John P. Roebuck
Member

11 April 1994
Date

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK
APR 11 1994
FILED

RANGER CONSTRUCTION)
INDUSTRIES, INC.)

- and -) PROJECT NO. 16130-3526

) LOCATION: Polk County,
) Florida

DEPARTMENT OF TRANSPORTATION)
_____)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Wednesday, February 2, 1994

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

TIME: Commenced at 11:08 a.m.
Concluded at 12:15 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 RANGER CONSTRUCTION
INDUSTRIES, INC.:

Mr. Jon D. Chellgren

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Glenn Ivey
Mr. Rick Roberts
Mr. Tom Aldridge
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.

7 Mr. John Roebuck was elected by the construction
8 companies under contract to the Department of
9 Transportation.

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

12 Our terms of office began, July 1, 1993, and
13 expire, June 30, 1995.

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

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

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit 1. This consists of the contractor's request
22 for arbitration and the information that was attached
23 thereto. This information was furnished to the
24 Department some several weeks ago.

25 Does either party have any other information it

1 wishes to put into the record as an exhibit?

2 (Discussion off the record)

3 CHAIRMAN COWGER: While we were off the record,
4 DOT presented a bound package of information entitled
5 evaluation of contract claim, which we will identify as
6 Exhibit 2.

7 The contractor submitted two pieces of
8 information on computer bar paper, which we will
9 identify as Exhibit 3, and he will be referring to
10 those later.

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

13 CHAIRMAN COWGER: Does either party wish
14 additional time to examine these exhibits? Hearing
15 nothing, we will proceed on.

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

23 The parties are requested to assure that they
24 receive properly identified copies of each exhibit
25 submitted during this hearing and to retain these

1 exhibits. The Board will furnish the parties a copy of
2 the transcript of this hearing along with its final
3 order, but will not furnish copies of the exhibits.

4 The hearing will be conducted in an informal
5 manner. The contractor will elaborate on their claim,
6 then DOT will offer rebuttal.

7 Either party may interrupt to bring out a point
8 by coming through the Chairman. However, for the sake
9 of order, I instruct that only one person speak at a
10 time.

11 Mr. Chellgren, you may proceed.

12 MR. CHELLGREN: The amount of the claim that we
13 are after in this concerns the payment for 484 tons of
14 asphalt we placed on the project at the bid price of
15 \$32 a ton, or \$15,488.64.

16 Pavex worked on this project from April 1991 to
17 September 1991. During that period of time, we were
18 happy with the pay quantities that were given, the
19 estimates that were paid to us, and the project was
20 completed.

21 On the January 1992 estimate, some four months
22 after the paving was done, to our surprise the Type S
23 asphalt by the ton was reduced by 1366 tons. There was
24 an adjustment in the square yards recorded on the
25 contract, but that only offset it to the extent of 856

1 tons, resulting in a net loss to Pavex of approximately
2 500 tons of asphalt, consequently the \$15,500 claim.

3 The total tonnage paid for finally on the project
4 was 24,082 tons.

5 If you will look at my Exhibit 1, the one that
6 titles the actual quantities they have, that
7 calculation is pretty straightforward. Everyone uses
8 it.

9 The FC-2 really kind of falls out because that
10 was not -- there was never any dispute on that and we
11 agreed with the quantities, but that is the total
12 tonnage placed on the project. As I said earlier, this
13 is approximately 500 tons less than it used to be.

14 The original plans call for 3508 Type S by the
15 ton. We, in fact, were paid for 3528 tons. And this
16 pavement stood for approximately six months.

17 The tentative final in April of 1992, that
18 quantity was dropped down to 2161 tons, which is the
19 1360 tons I talked about earlier.

20 CHAIRMAN COWGER: Can I interrupt a second. Tell
21 me the plan quantity again on the tonnage was.

22 MR. CHELLGREN: 33,508 tons.

23 CHAIRMAN COWGER: Thank you.

24 MR. CHELLGREN: Pavex has gone through and
25 reviewed all the DOT project files in an attempt to

1 reconcile the missing tonnage. The DOT reports their
2 asphalt quantities five different ways. First, there
3 is the tally books. We went through and analyzed all
4 five ways. I have made a summary. It is in front of
5 you.

6 The first column on that is the plant asphalt
7 tally books, 24,463 tons. Now, if you look at the
8 right-hand column, it is Pavex's actual plant scale
9 reports. We are contending we placed 24,587 tons on
10 the project.

11 MR. IVEY: Excuse me, Gene, we don't have a copy
12 of that.

13 MR. CHELLGREN: The second listing is the sum of
14 all the quantities off the plant inspector's reports,
15 that's 20,863 tons. He seems to have misplaced 3500
16 tons from the tally books.

17 The paving inspector's report totals 19,831 tons.
18 This is missing another thousand tons from the plant
19 inspector's report.

20 There is also within the files a typed summary
21 report. We can't really determine what the source of
22 this information is, but it totals another number
23 altogether, 23,856 tons, and it jumps up about 4,000
24 tons from what the paving inspector had.

25 And lastly, there's the bituminous adjustment

1 report. This is 24,424 tons.

2 During the period of time this project was laid,
3 the price adjustment and the index was falling. And it
4 is very interesting to note that there was a credit
5 given to the Department for some \$2960 concerning the
6 reduction in the price index during the period of time.

7 We are actually being charged a credit for the
8 bituminous adjustment on tonnage they are now saying we
9 didn't lay, which is somewhat double counting. I don't
10 know how you can take it back twice.

11 None of the five --

12 MR. ROEBUCK: Let me interrupt. I didn't
13 understand that bituminous adjustment. Where are the
14 origin of those tons?

15 MR. CHELLGREN: I don't know the answer to that.
16 There's no additional records that we could find
17 indicating where those numbers come from. They
18 closely -- there's only 20 tons difference or 40 tons
19 difference between the bituminous adjustment and the
20 plant tally books.

21 None of the five methods match each other. None
22 of the five methods match what was paid for under the
23 project. We know the 24,564 tons, which is the net
24 number that we have at the bottom, were laid on the
25 job.

1 If you look at the DOT totals, one of the five
2 methods agrees with us on every day. There are three
3 exceptions to that, and they total only 13 tons. In
4 fact, on a couple of days they said we made more than
5 we actually produced.

6 The job had no asphalt penalties. It had no
7 rolling straightedge deficiencies on 12 lane miles of
8 roadway. During the project as many as four different
9 pay items of Type S asphalt was being constructed by
10 the same crew on a given day.

11 I believe the basis for the problem, we are just
12 speculating, was that when they decided that they would
13 be up among pay items, it didn't match, didn't total
14 when they did it.

15 We believe it's inappropriate to eliminate
16 Pavex's pay for the 500 tons, and I don't think anybody
17 is arguing, that was built into the project.

18 We have been trying to resolve this issue for
19 three years. I think at the 12 percent statute
20 interest rates, we've incurred \$5576 of cost just in
21 interest on that time.

22 CHAIRMAN COWGER: Are you adding that to your
23 claim?

24 MR. CHELLGREN: Yes.

25 MR. MOREFIELD: That's not in the 15,000?

1 MR. CHELLGREN: It is not in the 15,000. The
2 15,000 is simply the bid price times the tonnage.

3 CHAIRMAN COWGER: What percent interest were you
4 claiming?

5 MR. CHELLGREN: Twelve percent I believe is what
6 the statute allows.

7 CHAIRMAN COWGER: Is it appropriate for us to
8 stop at this point a minute and ask a few questions
9 about this tabulation that you made? Is that going to
10 bother you to stop?

11 MR. CHELLGREN: That's basically my presentation.

12 CHAIRMAN COWGER: Let's ask a few questions about
13 this tabulation and then we will let DOT come back with
14 their rebuttal.

15 First off, is everybody's tabulation -- does it
16 have yellow highlight marks on it?

17 MR. CHELLGREN: What the yellow highlight marks
18 indicate, I've used the plant report as the standard,
19 and every time that one of the five got off from that
20 number, I just put a mark on it. So, some days one was
21 off, some days two was off, some days three, some
22 days -- on some days all five were off.

23 On almost every day one of the five matched what
24 we actually did.

25 CHAIRMAN COWGER: As that turned out, though,

1 the -- there's a little over a hundred tons difference
2 when you look at the bottom line.

3 MR. CHELLGREN: That's true, because the top --
4 there was no one that faulted exactly, although of the
5 group the tally books were the nearest.

6 CHAIRMAN COWGER: I was comparing the tally books
7 to the plant scale report, and they're pretty close.
8 Not exact, but pretty close.

9 This column here entitled FDOT typed summary
10 sheets, what is that? I think you testified you don't
11 know what that is.

12 MR. ROEBUCK: He didn't know --

13 MR. CHELLGREN: That's correct. We went through
14 all the district and residency project files looking
15 for any information where tonnages would have been
16 reallocated, moved, they didn't say we made it, that
17 sort of stuff.

18 We found these, and I included it in the total
19 just because they were another summary from -- whether
20 or not they picked them from other sources, I don't
21 know.

22 MR. ROEBUCK: The DOT ought to answer that.
23 They're your records, not John's.

24 CHAIRMAN COWGER: That's the question I want to
25 know, what that is.

1 MR. ROEBUCK: Typed summary sheet. What is that
2 record?

3 MR. BLANCHARD: I don't know.

4 MR. ROBERTS: We don't know what that is.

5 MR. MOREFIELD: We would have to see it to tell
6 what it was.

7 CHAIRMAN COWGER: Okay. Let me go back to the
8 first page just a minute so I make sure I understand
9 it. This is the tabulation where you ended up just
10 really tabulating each of the pay items showing the pay
11 quantity which I assume is the final pay quantity? Is
12 that correct?

13 MR. CHELLGREN: Unless they made another
14 adjustment, I believe that to be the case.

15 CHAIRMAN COWGER: Now, this is merely converting
16 square yard items to tonnage based on a hundred pounds
17 per square yard per inch. Why are there three inch and
18 a half items with the same number which applies on
19 down? Is that because there were three projects? Is
20 that what that is?

21 MR. CHELLGREN: No, what those are from, when
22 they go and they do either thickness modifications on
23 cores, the way they do it, they don't give you a new
24 unit -- well, they give you a different quantity and a
25 different pay rate.

1 For instance, if it's 3 percent over, they will
2 go back and add it. That's the same thing what they
3 do, like AC adjustment. There's not an item that says
4 core adjustment. There's not an item that says AC
5 adjustment.

6 The way the Department does it, they just pick
7 out a quantity of material at an adjusted unit price
8 and run it through as a modified number. So you can
9 kind of lump all the threes, the one and a halves and
10 all of that together.

11 CHAIRMAN COWGER: Mr. Aldridge, is that basically
12 the way that is? You're familiar with that, aren't
13 you?

14 MR. ALDRIDGE: Yes, I am. I'm not familiar with
15 this particular estimate, but with respect to under a
16 unit price adjustment we do show another item such that
17 the contractor and the Department's construction
18 engineer know that a unit price has been adjusted.

19 CHAIRMAN COWGER: So basically what it is, it was
20 originally one pay item and it's been split into three
21 because you've got three different unit prices due to
22 some of these core adjustments.

23 MR. ALDRIDGE: Yes, the design mix has changed in
24 three instances.

25 CHAIRMAN COWGER: Now the next three items,

1 which in essence are usually rather small quantities,
2 I assume those next three are the thickness adjustments
3 that apply to each of the items above, is that true?

4 MR. ALDRIDGE: Yes, sir, I believe that is. Yes,
5 sir.

6 CHAIRMAN COWGER: I understand now. I think
7 that's -- does anyone else, any of the Board members
8 have any questions about the second sheet now where
9 we've got this tabulation showing these various sources
10 of tonnage data? Okay, I think it would be appropriate
11 at this point if we let DOT now offer their side of the
12 thing. Of course, there will be some rerebuttal I'm
13 sure.

14 MR. IVEY: Gene, from our respect, the contractor
15 is asking the Board to forego our specifications and
16 pay him an additional amount of tonnage asphalt that is
17 derived from square yard items. I think that goes
18 against our procedures, that goes against our
19 specifications.

20 MR. ROBERTS: I would like to first explain and
21 establish something with this particular project. We
22 have been through -- and we don't argue the tonnage.

23 Some of these numbers that we have been presented
24 here with I'm a little surprised that there are some
25 differences. I worked on analyzing this particular

1 claim, with the plant reports, the actual, I guess work
2 sheets, to arrive at a tonnage, and we came up with --
3 very close to what Pavex has.

4 It's obviously indicated by the bituminous
5 adjustment that has been made that we fairly well
6 agree, within a certain realm, that there is that
7 amount of tonnage is there. All these other numbers to
8 me I don't believe that -- we were not inconsistent
9 with what we did on the job.

10 What I would like to talk about, the tonnage item
11 that we had, and Mr. Chellgren referenced the 3508 tons
12 that we had.

13 CHAIRMAN COWGER: Can I ask a question?

14 MR. ROBERTS: Yes, sir.

15 CHAIRMAN COWGER: What is your position at DOT?

16 MR. ROBERTS: With Glenn in his office.

17 MR. IVEY: Rick evaluates claims.

18 CHAIRMAN COWGER: Good enough.

19 MR. ROBERTS: I looked into the situation. The
20 claim was for tonnage asphalt. That's the first place
21 that I looked for. I knew we had a section that we
22 overbuilt on the job to bring up to reach the desired
23 cross slope. It involved some milling. We put down
24 for seven feet an average spread of 250,000 square
25 yards to get the cross slope up.

1 So I went back to the computation booklet.
2 I talked with the project engineer. He said there was
3 an error in the computation book.

4 If you will look back in your -- I've included
5 this in here, Exhibit 2. It's in the back. I don't
6 have the page number.

7 Basically what the designer did, and it was
8 unintentional, he got the square yards, and so he
9 wanted 250 pounds average. He did that. He divided it
10 to get his tons.

11 If you will look where it is circled, he put
12 times two lifts. That is an error. That should not
13 have been that way. That should have really been 1633
14 tons for that particular part of it, adding in the
15 extra areas, the total for the tonnage items should
16 have been 1892 tons, not the 3508.

17 So, the contractor -- there was nothing ever
18 mentioned about this. I only say this to lead into the
19 obvious reduction of the estimate when it got down to
20 the tentative final. There was 2100 tons of asphalt
21 batched to do the overbuilt work. Our records in that
22 area match Pavex's records perfectly. There was no
23 squabble with tonnage asphalt batched on the job. We
24 matched perfectly.

25 Through a problem -- and I've not been able to

1 uncover as to why -- if you will look back at Exhibit
2 No. 3, which is the next page over, this is estimate
3 number 9, you will see what Mr. Chellgren is telling
4 you is absolutely so. There was, under one design mix
5 we paid for 1391 tons.

6 Under another design mix on the tonnage asphalt,
7 we paid for 1679 tons. 3,000 tons of asphalt was
8 placed -- excuse me, was shown on the project as pay.
9 However, the actual amount put out on the project was
10 only 2100 tons.

11 Pavex was aware that they had placed 2100 tons.
12 Pavex was also aware that they had been paid for 3,000
13 tons, and DOT was in error.

14 So, in essence, we had paid them about \$30,000 of
15 money for that item over and above and beyond what they
16 had actually performed.

17 There was another problem --

18 CHAIRMAN COWGER: Excuse me just a minute. I'm
19 temporarily lost. We're looking at Exhibit 6?

20 MR. ROBERTS: Three.

21 CHAIRMAN COWGER: Okay. I've got you.

22 MR. ROBERTS: So, there was some problems with
23 the estimate. The claim was presented that an X amount
24 of tons was deducted arbitrarily from the estimate. We
25 don't know why. The error was not called until late in

1 the project. We had some problems with square yards as
2 far as what was called in prior estimate. When they
3 were balanced out and checked, the error was reduced
4 and only amounted to, what Mr. Chellgren said, about
5 500 tons.

6 We did have some errors in payment through this
7 project. Now that's why the reduction was made. The
8 reduction was not arbitrarily made.

9 MR. MOREFIELD: The reduction, that was a
10 reduction in an estimate on a future estimate? The
11 reduction occurred on a future estimate?

12 MR. ROBERTS: The estimate that the error was
13 made was estimate number 9. The error was not taken
14 care of until months later on the tentative final
15 estimate number 17.

16 MR. MOREFIELD: And the specifications allow you
17 to do that?

18 MR. ROBERTS: Yes, sir.

19 MR. MOREFIELD: Is there a specification that
20 says you can correct up errors on one estimate on
21 future estimates?

22 MR. ROBERTS: This was corrected by Tallahassee.

23 MR. ALDRIDGE: Yes, sir, under section 9,
24 I believe it's in the last section, the Department is
25 allowed to correct up.

1 CHAIRMAN COWGER: We will go back to Exhibit 4
2 just a minute. It's the first page of Exhibit 4. You
3 said on tentative final estimate -- tentative final
4 estimate number 17 that that's where the adjustment was
5 made?

6 MR. ROBERTS: Yes, sir.

7 CHAIRMAN COWGER: How come in the column where it
8 says this estimate, it shows zero? I'm a little
9 confused there is all. The ones you've got circled
10 over there with the arrow pointing to them I think
11 you're saying are the corrected quantities?

12 MR. ROBERTS: This is where this first showed up.
13 This item was not -- this was not placed in there. The
14 zero showed up. This is how I found it to be in the
15 estimate. Estimate 16 did not reflect it.

16 CHAIRMAN COWGER: I don't understand how you
17 got -- how you ended up reducing the column called to
18 date from previous without the column called this
19 estimate showing a minus.

20 MR. ROBERTS: I would have to check that.

21 CHAIRMAN COWGER: It must have happened on
22 estimate 16.

23 MR. ROBERTS: It should have. This is where
24 I found the estimate. I may have overlooked it. But
25 this estimate best shows what we were trying to show

1 the Board.

2 MR. MOREFIELD: The letter says estimate 16.

3 CHAIRMAN COWGER: All right.

4 MR. ROBERTS: We found where it was corrected and
5 the quantities stood.

6 CHAIRMAN COWGER: You've answered my question, to
7 put it that way.

8 MR. ROBERTS: We didn't have any problems up
9 until that time. So -- until we made this correction
10 there were no problems on the project. Once we made
11 that, then we started looking and we could not find --
12 we just knew that the asphalt had been placed
13 somewhere, we could not find where. We wanted to
14 eliminate the tonnage and the problem with the tonnage
15 asphalt first.

16 The remaining items on the project were inch and
17 a half asphalt, three inch asphalt and three and a half
18 inch asphalt and your friction course.

19 The problem was not within the tonnage item. We
20 agreed with the contractor on that. We then sought to
21 isolate and find where the problem was.

22 We went and checked our cores, checked
23 calculations. The asphalt was not there. It could not
24 be found.

25 The cores had not been questioned, with the

1 exception that Mr. Chellgren met with us in the
2 district office and we discussed the possibility of the
3 cores, but we did some checking and eliminated that.

4 The cores have not been questioned. The area
5 in square yards has not been questioned. By
6 specifications we have went out and performed our
7 function.

8 We don't know where to turn. We're not allowed
9 to compensate Pavex for the asphalt that's been put out
10 there because it is not in a payable position.

11 MR. MOREFIELD: Explain not in a payable
12 position.

13 MR. ROBERTS: The asphalt is placed out there.
14 We have specifications that say we will pay for a core
15 thickness, we will adjust the square yards on the
16 project by a core thickness. We go, we core the job,
17 every 200 feet through the length of the roadway to
18 arrive at that adjusted thickness. That number is then
19 applied to the square yards.

20 We don't core extra areas unless they are
21 substantial in length that it would behoove the
22 Department and the contractor to get into these areas.
23 This is not standard procedure.

24 We sought and approved where the material was.
25 We even went to the trouble to take the extra areas,

1 calculate possible tonnage in these areas. And the
2 Department feels like that it's possible this tonnage
3 could be in an area such as this where beyond the
4 asphalt that we required.

5 It's possible that the asphalt could be in the
6 roadway and the cores did not pick it up; however, that
7 is unlikely. We generally -- I went back and checked
8 the inch and a half asphalt. It matched within 11
9 tons. I took the tonnage back, applied the application
10 rate, and it matched.

11 The asphalt does not show up in the cores. We
12 could not find the asphalt on the job.

13 CHAIRMAN COWGER: Let me ask you, what you did
14 now, you took the tickets, your tally tickets that
15 corresponded to the area that was an inch and a half
16 thick?

17 MR. ROBERTS: Yes, sir.

18 CHAIRMAN COWGER: Got a total?

19 MR. ROBERTS: Yes, sir.

20 CHAIRMAN COWGER: Went back, took the number of
21 square yards in that same area, calculated the tonnage
22 based on a hundred pounds per square yard inch, is that
23 correct?

24 MR. ROBERTS: I calculated --

25 CHAIRMAN COWGER: Plus then you also adjusted it

1 for thickness according to the cores?

2 MR. ROBERTS: Right.

3 CHAIRMAN COWGER: But it was based on a hundred
4 pounds per square yard inch?

5 MR. ROEBUCK: Not what he cored. What he cored
6 was based on the course.

7 MR. ROBERTS: We took the cores, what they said,
8 and we calculated it out and showed that what we said
9 was batched and put in those areas matched what the
10 cores showed. We took actual tickets.

11 Say the contractor put 200 tons in those areas,
12 and by cores it shows that he should have 200 tons, we
13 matched it.

14 CHAIRMAN COWGER: I've got you.

15 MR. ROBERTS: We were not able to do that with
16 the other two asphalt square yard items, the three inch
17 and the three and a half inch. The three inch item
18 contained approximately 15,000 square yards of extra
19 area, the three and a half inch item contained the
20 other 4,000.

21 MR. MOREFIELD: What kind of areas?

22 MR. ROBERTS: These were intersections, median
23 operations, decel lanes, side roads.

24 MR. MOREFIELD: You're saying that was not called
25 to be paved in the plans?

1 MR. ROBERTS: They were called to be paved. The
2 contractor paved these items with square yard items,
3 and historically when you pull roadway, you can control
4 your asphalt and put down a consistent mat, and your
5 spread runs very smooth and consistent.

6 When you work in extra areas, it is harder to
7 control your spread. It could fluctuate up and it
8 could fluctuate down. You never know exactly what is
9 going to happen. You do your best to control it. But
10 these extra areas sometimes can get away from you if
11 you're not careful.

12 The Department feels like obviously there's some
13 asphalt out there that does not show up in the cores
14 and it could possibly be in the extra areas where we
15 did not want it.

16 And we're of the opinion that if we can't find it
17 in a payable position with our cores, that it's of no
18 benefit to the Department, and it's the contractor's --
19 through his procedure, through his method, through his
20 crew, their work habits or whatever, if they put down
21 more asphalt in an area than what the Department wants
22 and what we're obligated to pay for by specification,
23 we don't feel like we should be responsible for it.

24 CHAIRMAN COWGER: Let me stop you and ask you a
25 couple of questions. Going back just a second, you

1 said that these so-called extra areas, we understand
2 what that means, were done with the three and the three
3 and a half inch asphalt?

4 MR. ROBERTS: Yes.

5 CHAIRMAN COWGER: Not the inch and a half because
6 the inch and a half was probably on the shoulders?

7 MR. ROBERTS: There was an inch and a half that
8 was crossed in some areas that was calculated in the
9 original computations, but it was very easy for them to
10 control that.

11 CHAIRMAN COWGER: Now, I guess -- let me kind of
12 try to focus this thing on what I see is the real
13 issue. Not that anything you've said up to this point
14 isn't pertinent, but the real issue is that the pay
15 quantity for tonnage asphalt got to a certain level and
16 then after the job was completed, several months later,
17 after that asphalt was placed, that tonnage item was
18 reduced by so many tons. It's in the testimony here
19 somewhere, 1,366 tons.

20 My question is -- well, let me go on. I would
21 assume that the way that tonnage item is calculated,
22 computed I guess I should say, is merely by summing the
23 tally tickets for materials placed in tonnage areas,
24 which on this project as I understand it, was maybe not
25 a hundred percent, but close to a hundred percent in

1 the overbuild. You might have had a few little
2 incidental areas that were paid by the tonnage, but the
3 tonnage was essentially in the overbuild, right?

4 MR. ROBERTS: Correct.

5 CHAIRMAN COWGER: How did you go about making the
6 determination that this 3,000 -- this 1,366 tons was
7 placed in the wrong pay item, i.e., in the tonnage
8 item, when it should have been in the square yard item?

9 MR. ROBERTS: The engineer in the resident office
10 when going through the tally tickets discovered that it
11 did not match. The tonnage came up at 2100 tons, and
12 obviously there was a problem. So when they calculated
13 this, that's when they found it.

14 CHAIRMAN COWGER: Tell me a little bit more about
15 that calculation. First off, what did it not match?
16 It didn't match the theoretical quantity that it should
17 have gone in the overbuild as is corrected?

18 MR. ROBERTS: No, this had nothing to do with
19 theoretical quantities. This had to do with actual
20 material placed to build up a slope and the respective
21 tally books that the daily quantity was recorded in,
22 added up and totaled. This was not a theoretical
23 placement of material here.

24 The tonnage item was never contested. We matched
25 the contractor completely.

1 MR. CHELLGREN: Do I save my interruptions for
2 later?

3 CHAIRMAN COWGER: Let me ask one more question,
4 then I'm going to let you come back and ask your
5 questions.

6 I'm still a little bit confused. What happened?
7 Was there an error in adding up the tally books?

8 MR. ROBERTS: No, sir, no, sir. I do not
9 understand how the error was made on the estimate.
10 That I have not been able to ascertain, but there was
11 an error. That's why I provided the exhibits to show
12 that the Department did make an error. I provided the
13 exhibit to show that the designer in his original
14 computations made an error.

15 Thus, correcting that shows that the actual
16 quantity needed to perform the overbuild in tonnage was
17 1892 tons and the original plans were 3508, showing the
18 error and not showing that there was any argument that
19 we had matched the contractor with tonnage of batch to
20 perform this work, then we could lay to rest the
21 tonnage portion of the job and focus on the square
22 yards where the contractor obviously feels that he has
23 lost payment for materials.

24 MR. MOREFIELD: 2100 is what was actually paid is
25 what you're saying?

1 MR. ROBERTS: Yes.

2 MR. MOREFIELD: You're saying that your numbers
3 agree with his batch numbers or whatever?

4 MR. ROBERTS: Yes.

5 MR. MOREFIELD: Just wanted to make sure
6 I understood what you were saying.

7 MR. ROBERTS: If I could, and allow Mr. Aldridge
8 to talk a moment, to virtually verify what we have done
9 and how we have approached it, the square yards have
10 been checked, all of the tickets have been checked, and
11 these things have been calculated. The estimates have
12 been calculated first by the resident, then it's passed
13 along to the district, and then eventually it comes
14 along to Mr. Aldridge's shop.

15 CHAIRMAN COWGER: I think we understand that.

16 MR. ROBERTS: It's inconceivable that an error of
17 500 tons could be dropped in a square yard situation.

18 MR. ROEBUCK: It's only 2 percent of the whole
19 job, so it's not a big number. But as a mathematician,
20 I cannot see this.

21 When you evaluated this, didn't that tally book
22 record which you used for so many pay items and times,
23 why didn't it wake you up and say hey, we are 400 tons
24 off of this by our own tally book?

25 MR. ALDRIDGE: Is the question put to me?

1 MR. ROEBUCK: I don't know who. What is the
2 rationale of it?

3 CHAIRMAN COWGER: You have the question. Now,
4 let's let DOT or whoever wants to answer it and let's
5 let Tom go on and make whatever statement he wanted to
6 make.

7 MR. ROBERTS: We never said that we disagreed
8 with the 500 tons. I'm saying that if you look at the
9 24 -- the 24,424, that's what DOT made an adjustment on
10 the bituminous material with. We made that adjustment.

11 The problem is by specification we paid him for
12 the tonnage that he put on the job under the tonnage
13 item, we cored his square yard items. By
14 specifications we're not allowed to pay him for a
15 tonnage job.

16 He came into the project knowing he was going to
17 get paid by square yard items. Contractually we're
18 bound to pay by square yards, and now he's requesting
19 pay on tons.

20 CHAIRMAN COWGER: We understand all of that.
21 Let's let Tom make his statement, then I want to let
22 Mr. Chellgren come back and ask some questions, because
23 I hope he asks the questions I want the answers to.

24 MR. ALDRIDGE: All right, sir. I was invited
25 here to tell what the final estimates office did with

1 respect to this job. And we have, in fact, taken the
2 project records from our project staff and done an
3 engineering audit on it. We have checked the tonnage
4 item. In fact, the tonnage pay item specifically. And
5 each of the square yard items, too, and ran yields on
6 that and compared that with the tally tickets that the
7 field engineer submitted to our office. We find them
8 in compliance.

9 We also provided the contractor an asphalt
10 adjustment as agreed to by the contract. Negative or
11 positive, I'm not sure what the net value of that is.
12 I didn't look at that. There was no contesting of that
13 asphalt adjustment by the firm.

14 CHAIRMAN COWGER: No problem.

15 MR. ALDRIDGE: The project records that we have
16 in our office, we agree totally with the position that
17 our staff has at the district level, and we offered
18 final payment to the contractor reflecting those
19 records.

20 After we submitted those, the estimate to the
21 contractor, an offer of final payment, is when we were
22 introduced to a dispute between the quantity that he
23 has delivered to the job and the respect of where this
24 final disposition went. Was it in a tonnage item, was
25 it in a square yard item?

1 Those things are -- we feel are very comparable
2 with the figures we have showing in the square yards
3 and its use.

4 CHAIRMAN COWGER: You say the adjustment to the
5 tonnage that was done on tentative final estimate 16 or
6 17, wherever it was, was done at the district -- your
7 office didn't do it?

8 MR. ALDRIDGE: I'm sorry, sir. The fuel
9 adjustment?

10 CHAIRMAN COWGER: No. No. When they adjusted --

11 MR. ALDRIDGE: That was made by the field
12 engineer, correct, sir.

13 CHAIRMAN COWGER: The 1300 and some-odd tons
14 that's in question, in my mind anyway, where you
15 reduced the tonnage pay items by 1366 tons, that was
16 done at the district?

17 MR. ROBERTS: If it was done on estimate 16, yes,
18 sir.

19 CHAIRMAN COWGER: Okay. That's all I wanted to
20 know. Just wanted to know where it was done.

21 Mr. Chellgren, I think it's time maybe you were
22 offered the opportunity to say a little more.

23 MR. CHELLGREN: My first comment, it wasn't done
24 on estimate 16, it was done on estimate 14 in January.
25 And number 17 was in April.

1 There seems to be a lot of statements by the
2 Department that Pavex agreed with all the tonnage and
3 all that happens. Let me explain a little bit about
4 our side.

5 First I disagree entirely with that assumption.
6 We are a subcontractor on this project. We're not
7 running it, administering it. The prime calls us, send
8 a paving crew. We go out there and pave where they
9 tell us to pave and what needs to be built.

10 We are not of a habit to try to get within the
11 Department's head and figure out how they're balancing
12 their stuff. We've got one guy that's trying to run a
13 paving crew, they've got people to do that kind of
14 stuff.

15 Generally speaking, they tell us call this, that,
16 and that's what they call the plant. We operate off of
17 what runs the plant. We do it every month. That's our
18 standard procedure.

19 What we do every month when a DOT estimate comes
20 in, within our computer programs, and we punch this
21 out, it cranks out theoretical tonnage when we put in
22 the pay items. We have our plant reports every month.
23 That's how we double check everything. We work
24 everything off of tons.

25 Even our estimates, it doesn't matter whether I'm

1 bidding one-inch asphalt, three-quarters inch or by the
2 ton or miscellaneous, every cost estimate I get comes
3 back to a net unit price per ton and then I convert it
4 to whatever happens to be the bid item, and that is
5 almost incidental with how we keep our books and
6 operate our system.

7 If this error that I believe the Department is
8 acknowledging was present at the time of construction,
9 I think there was probably a fighting chance that we
10 would have been alerted, somebody could have done
11 something about it, we could have looked at the
12 crossovers and the cores or whatever we had to do.

13 I can't explain how this -- they now determine
14 that we say there was 2,011 done. We were on and off
15 that project on a number of instances. You can see by
16 the list the number of days we paved out there.

17 Basically this was two new lanes constructed, an
18 old existing road was milled, not all the way across.
19 It was really kind of a -- it's a shame to do one like
20 this, but what they did is they milled kind of like
21 that (indicating by drawing diagram), because the
22 objective was to make a cross slope out of what would
23 have been a crown section.

24 Rather than mill the top off of it, they kind of
25 milled at an angle, then you were paving anywhere from

1 zero to six or eight inches and all of that.

2 The practical side is, if you go lay an asphalt
3 from zero to six inches, on the six-inch side you're
4 going to have to compress under the roller an inch and
5 a half.

6 When you say okay, I'm keeping track of four pay
7 items that day, this pass was tonnage, this pass was
8 thickness, now I pull a core and they say all the cores
9 match, well, that's because you're pulling a six or
10 eight inch core out, you're measuring to the first
11 joint, you say that's my square yardage item and
12 everything below that.

13 They don't build that way. That's the advantage
14 of multiple lifts of asphalt. The job rode very well.

15 When you're paving you can't pave for line,
16 thickness and cross slope simultaneously. You've got
17 to control with one item and the other two fall where
18 they may and you've got to fix them later. If you're
19 holding one end, a cross slope at one and a half or two
20 percent, then the thicker the asphalt you're going to
21 lose a quarter inch to the inch of what you're putting
22 down on density.

23 All of these factors come into this. We follow
24 this road. The road takes me to this location, but
25 I don't think there's any argument about that the road

1 came out right, that we did the work, we put it in
2 place.

3 It seems very scientific now to listen to the
4 explanation, but I can't even figure out what all this
5 said (indicating), and we looked at every sheet in the
6 file.

7 Now, it might make sense now to somebody, but it
8 has yet to make any sense to us.

9 I know we did the work, we put it in place. We
10 just would like to be paid for it.

11 CHAIRMAN COWGER: May I ask a couple of
12 questions. First off, I looked at the plans on this
13 job. It appears to me that the plans call for milling
14 of two inches across the entire existing roadway. Your
15 testimony there a moment ago was saying that that's not
16 really the way it was done on the inside lane, what
17 became the inside lane?

18 MR. CHELLGREN: That's true.

19 MR. ROBERTS: He's correct.

20 CHAIRMAN COWGER: There was some modification to
21 a uniform two-inch milling on the inside lane?

22 MR. ROBERTS: Yes, sir.

23 CHAIRMAN COWGER: The significance of that is
24 that that to some degree could throw off the
25 theoretical plan quantity for that inside lane for the

1 overbuild.

2 MR. ROBERTS: No, sir.

3 CHAIRMAN COWGER: Tell me why not.

4 MR. ROBERTS: You had an established area that
5 you milled. Seventeen feet of roadway is what it
6 calculated out to be that we actually milled. And
7 that, the last seven feet we overbuilt to bring up the
8 grade.

9 So we were working with some well-defined areas.
10 Knowing, of course, that we were dealing with a tonnage
11 item, and that if it took a few more tons, which it
12 did, that we were paying for those tons.

13 Then we brought, by putting the overbuild in,
14 paying for the specific amount of tons batched, we had
15 an as perfect a cross slope as we could.

16 CHAIRMAN COWGER: Let me ask another question
17 then of DOT. The three and a half inch surface course
18 that went across the entire roadway, through lanes, you
19 ended up with 24 feet of pavement and you put three and
20 a half inches across that entire 24 feet after the
21 overbuild was completed.

22 MR. ROBERTS: Yes, sir.

23 CHAIRMAN COWGER: When you took your cores to
24 evaluate the thickness, make your thickness adjustment,
25 you got on the inside lane where you were coring over

1 the overbuild, which was the same material that is in
2 the structural layer that goes on top of it.

3 In taking that core, how did they differentiate
4 as to where the three and a half inches stopped and the
5 overbuild started?

6 MR. ROBERTS: The overbuild had been tacked along
7 with the rest of the lane. I provided you with, in the
8 back -- I never did get around to saying this -- when
9 you read through the narrative, you will see, but if
10 you will look at Exhibit 5, and I just took a couple of
11 days, for instance, to show that we had the Type S
12 tonnage asphalt placed. We also had the three and a
13 half square inch. And to show that we did, in fact,
14 tack these areas.

15 So when the core crew went out, there was
16 something to distinguish between the layers.

17 CHAIRMAN COWGER: I understand how that works.
18 We're not questioning whether or not it was tacked.
19 So, you could -- you're saying you could distinguish
20 the -- the coring crew could distinguish where the
21 surface course stopped?

22 MR. ROBERTS: Yes, sir.

23 CHAIRMAN COWGER: Do you have anything to say
24 about that, Mr. Chellgren?

25 MR. CHELLGREN: I guess not.

1 CHAIRMAN COWGER: I let the DOT comment, I will
2 let you.

3 MR. CHELLGREN: I guess not.

4 CHAIRMAN COWGER: That was probably an
5 off-the-wall question, but I needed to know the answer
6 to it.

7 Looking at Exhibit 5, since you brought it up,
8 I see there that on this day you've got two pay items
9 there for Type S-1. One of them is shown by the ton,
10 the other is shown by the square yard.

11 MR. ROBERTS: Yes, sir.

12 CHAIRMAN COWGER: Now, so you were placing
13 material under both items the same day?

14 MR. ROBERTS: Yes, sir.

15 CHAIRMAN COWGER: I notice up at the top there
16 we're talking about lane Type S-1 asphalt overbuild and
17 we're talk dropping down about three or four lines,
18 from certain stations, drop down, structural, three and
19 a half inch. Okay. And some stations and locations.

20 So, during that day you were laying two kinds of
21 material. You were laying the same material, but you
22 were laying it in two different applications, one
23 structural course and one overbuild?

24 MR. ROBERTS: Yes.

25 CHAIRMAN COWGER: Overbuild is paid for by the

1 ton, and that tonnage is determined to get from -- to
2 get to the pay quantity, you've got to sum tally
3 tickets, right?

4 MR. ROBERTS: Yes, sir.

5 CHAIRMAN COWGER: But you've also got tally
6 tickets for the tonnage that was placed in the square
7 yards?

8 MR. ROBERTS: Yes, sir.

9 CHAIRMAN COWGER: How do you separate them? How
10 do you determine -- how did the inspector at the end of
11 the day get those two -- get that quantity of 391.51
12 tons for the material that was placed in the overbuild?
13 How did he do that? Explain that to us.

14 MR. ROBERTS: He very well could have been at
15 the end of a truck when they stopped and it could have
16 been easy to compute the tally tickets for the specific
17 loads that went into that. According to the road
18 report that you're looking at here, he's saying that we
19 had loads 1 through 14, 15 and then 16, 17 and 19,
20 through 19 that went in to the tonnage items.

21 If you will look back over in the next road
22 report, one takes it forward, the three and a half inch
23 item, he shows that loads 20 to 25 and -- were involved
24 in the square yard items.

25 CHAIRMAN COWGER: What page are you -- in the

1 upper right-hand corner, what page are you on?

2 MR. ROBERTS: Twelve.

3 CHAIRMAN COWGER: Wanted to make sure we're in
4 the same place.

5 MR. ROBERTS: But it's very easy for the
6 inspector when he's out there, and if the pavement
7 foreman is there with him, if we were changing over
8 from a tonnage item to a square yard item to come to
9 some type of agreement as to how much asphalt is left
10 in the truck and say -- if it happened to fall in the
11 middle of the truck.

12 CHAIRMAN COWGER: I'm not concerned about it
13 falling within the middle of the truck. I understand
14 now, though. Basically what it amounts to is that the
15 inspector keeps the tickets in two piles. He has a set
16 of tonnage tickets and a set of square yard tickets,
17 hasn't he, basically?

18 MR. ROBERTS: The plant should be notified upon
19 changing pay item. They should change over into tally
20 books, different tally books.

21 Isn't that the way this works, Tom? The plant
22 should be notified whenever we're changing an item
23 number?

24 MR. ALDRIDGE: Yes.

25 MR. ROBERTS: If we're working on square yards,

1 the plant should be notified so we go into tonnage
2 mode.

3 CHAIRMAN COWGER: Basically there are two sets of
4 tickets, one for tonnage items, one for square yard
5 items, and how you separate them I'm not too interested
6 in.

7 Somehow or another, though, through some
8 mechanism that's done. The inspector out there still
9 has two sets of tickets in his hands. And from that --
10 the split load, when they switch from tonnage to square
11 yard or vice versa, I understand how that's worked out.
12 That's not, I don't think, an issue here, because it
13 can't be but a few tons.

14 The point I'm asking, it still comes down,
15 I don't understand exactly how the 1,366 ton reduction
16 occurred. What records was that based on? Because you
17 should have had a batch of tonnage tickets over here
18 that summed up to a certain amount. You should have
19 had a batch of square yard tickets that added up to so
20 much. Did you find that somebody added the tickets up
21 wrong?

22 MR. ROBERTS: We were never able to determine
23 from the resident office how the mistake was made. We
24 just know, and we feel like we have proven that it was
25 made and corrected. We don't know how it was made.

1 There was some confusion.

2 CHAIRMAN COWGER: Okay. John.

3 MR. CHELLGREN: Just a couple of points. If you
4 go back to my summary of all the five sheets --

5 MR. ROEBUCK: 620.

6 MR. CHELLGREN: Two out of the five just got part
7 of it, the other three got it all.

8 MR. ROEBUCK: Apparently. They lost the square
9 yard tons.

10 MR. CHELLGREN: You know, the point of which is
11 that we've had times when we've had as many as three
12 pay items coming out under the bottom of the paver
13 screed simultaneously.

14 When you're paving one of these jobs, it's been
15 partially milled, partially overbuild, you're square
16 yarding part of the old road, then you have a four foot
17 widening over here by the square yard.

18 On a lot of these projects that is a very
19 difficult thing to administer. It's administered just
20 by an approximation, a guess, or you just put it out
21 there. And nine times out of ten, in all the years we
22 have been doing this, it doesn't end up being a
23 significant difference and it doesn't come back and
24 haunt us.

25 This one and/or we -- we are aware of it early in

1 the system, we speak up and yell. When we get an
2 estimate back that they've shorted us 300 or 500 or
3 1,000 tons on an estimate, we go looking for the
4 resident and say what happened, then it kind of all
5 self-corrects.

6 When you get all this six months after the fact
7 and now it's cast in stone, there's no fixing it. We
8 can't go back and say, no, no, that really is part of
9 this because we're having to pave it this way, you
10 know, the crossovers have to meet the old road, they
11 have to meet the new road, we have to meet the side
12 streets, we're adjusting all this stuff up. So let's
13 make sure this comes out right.

14 We didn't have any of those options in this
15 choice. We got down to the end and we just took the
16 hit.

17 CHAIRMAN COWGER: Going back to what you said
18 earlier, Mr. Chellgren, you described the situations
19 that occur on jobs. But on this job it looks to me
20 like it's a little more clear cut than that. Here the
21 only significant tonnage was in the overbuild. You
22 didn't have these areas where you had the different
23 materials coming out from underneath -- different pay
24 items coming out from under the screed.

25 MR. CHELLGREN: When you opt to mill 17 feet out

1 of a 24-foot road and you're saying that I'm going to
2 pay square yards on seven feet of it, tonnage on 17
3 feet of it, and that whatever you determine to be the
4 edge of the milling is just going to come out right,
5 you know, it just doesn't come out right.

6 CHAIRMAN COWGER: We understand.

7 (Brief pause)

8 CHAIRMAN COWGER: Back on the record. While we
9 were off the record, I was just trying to identify the
10 line that Mr. Roebuck had been talking about earlier,
11 and I found it, June 20, 1991. There seems to be a
12 significant difference between the FDOT tally books and
13 the DOT daily reports, both in plan and paving. We
14 will weigh the significance of that later.

15 MR. ROBERTS: I would like to make a comment if
16 I could about this sheet that Mr. Chellgren has
17 provided.

18 In reference to the many different totals that
19 come up, in the FDOT plant reports and the FDOT paving
20 daily reports, he shows a significant difference.

21 These are the two items that I used going through
22 and tabulating my tonnage up that was batched on the
23 job. I do not have the documents, nor did I think it
24 was appropriate or important. I wish I had done it to
25 submit it, but I believe that the difference is not as

1 significant as is shown here.

2 I do not believe that any inconsistencies shown
3 in here should have any bearing on what we're doing.
4 What we should be looking at is the bituminous
5 adjustment or the plant reports as are -- or tally book
6 reports as to Pavex's.

7 CHAIRMAN COWGER: Are you through?

8 MR. ROBERTS: There is too much inconsistency
9 here. I did not find that much inconsistency with the
10 documents I had been furnished to work this up with.

11 CHAIRMAN COWGER: Can I ask a question,
12 Mr. Aldridge. In doing the audit that you talked
13 about, when you were trying to audit the pay items that
14 were paid for by the ton, actually it was one pay item
15 with three different unit prices is what it turned out
16 to be, I think.

17 But when you were auditing those tons, what did
18 you have to audit other than tally tickets?

19 MR. ALDRIDGE: Tally tickets, sir.

20 CHAIRMAN COWGER: So, the tally tickets as turned
21 in to you verified the final pay quantity for tonnage?

22 MR. ALDRIDGE: For the tonnage items
23 specifically, yes, sir. We also took the tonnage -- we
24 had all tonnage tickets that were for all material
25 entered into this contract and its other items, the

1 square yard items. We ran a yield and we felt secure
2 with the yield.

3 CHAIRMAN COWGER: You did a theoretical analysis?

4 MR. ALDRIDGE: Yes, against our extra thickness
5 and felt very comfortable with the thickness.

6 CHAIRMAN COWGER: I understand that, and that
7 seems to make sense, but do either one of the Board
8 members have any questions? I think we're getting
9 close to closing out.

10 I have one more question I'm going to ask before
11 we quit.

12 MR. ROEBUCK: I see the differences that he said
13 he wasn't aware of, it occurred in John's submittal
14 here in a total of six days you had 3700 or 3800 tons
15 added to his plant daily reports, which would about
16 match his tally sheets. It just occurred in six days,
17 the 20th and 21st of June, down in the early August
18 dates. That's where most of the differences were.

19 We saw how one could have been paperwork, and
20 that's probably what it was. But we're looking at
21 something to approximate the daily tally books of
22 yours, and that's about what Mr. Chellgren is saying he
23 has been shorted.

24 It's just a tally book -- tally book on dirt,
25 whatever it might be, those are your tally book

1 numbers, unless he made a clerical error in punching
2 the numbers in wrong. I presume that that's about the
3 number that went in the job. Here we've sat, and --
4 only you geniuses know to figure out where that
5 difference is. You say there is a difference. You
6 can't find the means to pay for it. John is doing his
7 theoretically after the fact, except for the core
8 determinations.

9 John brought out an area where it may be in that
10 milling and overbuild portion where there could be some
11 lost tons in there.

12 It don't seem too significant to me that this
13 could happen. Do you have this arise on every job?
14 You say you catch it quicker than this one, which you
15 were six months behind, but is it a normal thing that
16 you have to sit down and negotiate your records against
17 the DOT's with asphalt?

18 MR. CHELLGREN: Not of a significant nature, but
19 from time to time on jobs we get ahead or behind the
20 curve, generally behind the curve. And we get into it,
21 the job is in process.

22 We just figure out why it's not getting
23 calendared appropriately, and you figure out that
24 leaving off the intersections, you're not accounting
25 for this, then the people in the field are more

1 cognizant, aware, and they put it in a different pile
2 that day and it kind of works out.

3 When it's six months later, none of the options
4 are available.

5 CHAIRMAN COWGER: Let me ask you a question.
6 This analysis sheet that the contractor submitted,
7 which is based on DOT records, there was no way --
8 there was no attempt made in this analysis to try to
9 separate material that was paid for under the tonnage
10 item from that that was paid for under the square yard
11 item, is that correct?

12 MR. CHELLGREN: We didn't break all of that out.
13 We do everything by the ton. That's what we live off
14 of.

15 CHAIRMAN COWGER: I still have the question in my
16 mind, DOT, how you got from one quantity under the
17 tonnage item, four or five months later, to a lower
18 quantity, and was there an error in adding the tickets
19 at some point in time?

20 MR. ROBERTS: That's a possibility. It's a
21 possibility that some had been misplaced. It's a
22 possibility that some had been calculated double. Our
23 analysis and in interviewing individuals never
24 uncovered how the error came about. We just know that
25 an error was committed.

1 MR. ALDRIDGE: Could I ask this. Was it a
2 possible error in the CRS system and no error in the
3 tickets? That could have been a feasible alternative,
4 that no ticket was really in error, that in fact a CRS
5 error, and those happen quite frequently, as all of us
6 are aware of, CRS being the contract reporting system.

7 CHAIRMAN COWGER: The only way that could have
8 happened is that the guy put it in the system wrong.

9 MR. ROEBUCK: That's where four or five of those
10 errors happened, they failed to put their ticket in
11 there.

12 MR. ALDRIDGE: That's a possibility. The error
13 of the source sight record is the tally book. I can't
14 see how we have an error in that.

15 MR. ROEBUCK: I can't either.

16 MR. ALDRIDGE: Now the CRS system is very
17 vulnerable.

18 CHAIRMAN COWGER: Does either party have any
19 additional comments they want to make?

20 MR. IVEY: I do, Gene. I think John brought out
21 an important point. John was the paving sub on this
22 contract. He was not responsible for grade control and
23 base finishing. He was responsible for providing a
24 finished product, a finished paved surface that rode
25 well and that all the edges matched and that looked

1 good.

2 And since he was not responsible for finishing
3 and controlling the grade on the base, but was
4 responsible for having good joint matches, I can
5 certainly understand how a lot of additional tonnage
6 may have been laid in the square yards item.

7 And I don't think we're -- we're not disputing
8 that the tons were batched. Our point is that we don't
9 have a means to pay the man. And that should we pay
10 the man, should it be the prime contractor's
11 responsibility because he finished the bases low.

12 We didn't ask for the asphalt.

13 MR. CHELLGREN: If I can comment on that. If the
14 bases were low, in the base finished areas it should
15 have been reflected in the cores and/or the milling
16 areas. We either paved on milling or on base. We
17 didn't pave anywhere else except some side streets.

18 CHAIRMAN COWGER: And the only base was in the
19 widening strips?

20 MR. CHELLGREN: Well, it was two lanes.

21 CHAIRMAN COWGER: I apologize. I withdraw that.

22 MR. IVEY: That is not the case. We did not core
23 any of the extra areas, which is the areas that I'm
24 speaking to in regard to the potential for the low
25 finish of the base. The base could have been finished

1 low but still had the proper thickness.

2 CHAIRMAN COWGER: Either party have any more
3 questions, comments? Mr. Morefield, Mr. Roebuck?

4 This hearing is hereby closed. The Board will
5 meet in approximately six weeks to deliberate on this
6 claim, and you will have our final order shortly
7 thereafter.

8 (Whereupon, the hearing was concluded at 12:15 p.m.)

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CERTIFICATE OF REPORTER

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 hearing;

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 15th day of February, 1994.



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 15th day of February, 1994, 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 FAIN INSURANCE, INC.