

STATE ARBITRATION BOARD


1022 LOTHIAN DRIVE

TALLAHASSEE, FL 32312-2837

PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

NOTICE

In the case of Gulf Construction Group, Inc. versus the Florida Department of Transportation on Project No. 13080-3512 in Manatee County, Florida, both parties are advised that State Arbitration Board Order No. 5-94 has been properly filed on December 9, 1994.


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

S.A.B. CLERK

DEC 9 1994

FILED

Copies of Order & Transcript to:

Mr. J. B. Lairscey, P.E., Director of Construction/FDOT

Mr. G.M. Hobbs, President, Gulf Construction Group, Inc.

STATE ARBITRATION BOARD

ORDER NO. 5-94

RE:

Request for Arbitration by
Gulf Construction Group on
Job No. 13080-3512 in
Manatee County

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

H. Eugene Cowger, P. E. Chairman
Edward Prescott, P. E. Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 9:00 a.m., Monday,
October 24, 1994.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 5-94 in
this cause.

ORDER

The Contractor presented a request for arbitration of
a claim for additional compensation in the amount of
\$30,635.90 based on alleged under payment for the bid items
Barricade (Temporary) (Type III) (6'), Turbidity Barrier-
Relocate Floating, Pilings Removal and Disposal, Pile Holes
Preformed, Pile Wrap (Clusters) and Pile Jacket Integral. The
amount claimed for each of these items was the difference
between the original plan quantity, as increased by
Supplemental Agreement No. 2, dated December 15, 1993, and
the final pay quantity for each item. At the beginning of the
hearing, the Contractor withdrew the portion of his claim

related to Barricade (Temporary) (Type III) (6') and Pile Wrap (Clusters), thus reducing the amount of the claim to \$30,535.00. During the hearing, the Contractor added to the amount claimed, \$3,000.00 to cover his expenses related to pursuing this claim and interest at the rate of one percent per month.

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

1. At the time I negotiated the settlement of claims for additional compensation for work delays, direct costs, changed site conditions, buffer cylinder, electrical and fuel tank as included in Supplemental Agreement No. 3 dated March 23, 1994, it was my understanding that final pay quantities for the items that are the subject of my current claim would be plan quantity as adjusted by Supplemental Agreement No. 2, dated December 15, 1992. On the Monthly Estimates dated November 22, 1993 and the initial one dated January 6, 1994, the pay quantities for Pilings Removal and Disposal and Pile Holes Performed were shown as 100 percent of plan quantity.
2. Subsequent to the initial January 6, 1994 Monthly Estimate the pay quantity for the items Pilings Removal and Disposal and Pile Holes Performed were reduced to 91 percent of plan quantity and ultimately to 76 percent and 80 percent respectively of plan quantity.
3. The records presented by the Department of Transportation (DOT) to support the disputed pay quantities are not original field notes.

The Contractor presented the following information in support of payment based on plan quantity for the various items in question:

Turbidity Barrier Relocate Floating

1. The final pay quantity for this item is less than the original plan quantity. Why did DOT increase the quantity for this item in Supplemental Agreement No. 2 dated December 15, 1993?
2. There were four work areas and we moved back and forth between work areas in some instances. The DOT Inspector was told each time we relocated a turbidity barrier.

Pilings Removal and Disposal

1. In some fashion or another a pile was removed for each new pile installed.
2. Our correspondence supports removal of six additional piles that had to be removed to get to other piles shown to be removed.

Pile Holes Preformed

1. The Project Engineer expressed dissatisfaction with preformed pile holes because they were not done with an auger in accordance with his interpretation of the plans.
2. In many cases it was impossible to use an auger because debris that existed around a pile that was to be removed.

Pile Jacket Integral

1. DOT refused payment for the pile jackets installed at position Nos. 5-A and 15-A because they contend that there are voids between the jacket and the filler concrete.

2. When the DOT Inspector hit the fiberglass form on all of the pile jackets with a hammer the fiberglass form rattled. He said there were voids within the jackets. We drilled and drilled and drilled and couldn't find voids. When concrete shrinks it separates from the form.
3. The DOT Inspector instructed us to stop placing concrete in the jacket at position No. 15-A because the wrong concrete mix was being used. We later completed filling the jacket with expensive epoxy.
4. If we had known before leaving the job that DOT determined these jackets to be unsatisfactory, we would have removed and replaced them because we could have back charged the expense to our concrete supplier.

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

1. The reason that the percent payment for the items Piling Removal and Disposal and Pile Holes Performed was reduced subsequent to the initial January 6, 1994 Monthly Estimate is that the Plan Quantity for those items was increased due to entering Supplemental Agreement No. 2 into our computer system.
2. The Contractor has not furnished proper records to support his contention that the plan quantity of each of the items in question was accomplished.

Turbidity Barrier Relocate Floating

1. We added turbidity barrier relocation on Supplemental Agreement No. 2 in anticipation that additional relocations would be required.
2. Our records indicate 100' of turbidity barrier to be place three times. Of this 100' was paid for under Turbidity Barrier Floating.

Pilings Removal and Disposal

1. Five or six timber piles were pulled in the Southeast corner of the fender area. Our Inspector considered this to be debris removal.
2. In some instances, existing debris was a substantial hindrance to removal. we allowed the Contractor to break a pile off below the mud line.

Pile Holes Preformed

1. The project was designed around using a auger as the method of trying to extract piles because of difficulties we had encountered in the past.
2. After a meeting in early October at which we authorized breaking off piling. almost every pile was broken off instead of being extracted. The explains the reduction in the number of preformed holes per permanent pile from three to one or zero beginning October 7, 1993.

Pile Jacket Integral

1. The concrete placed in the pile jacket at position No. 15-A was an incorrect mix class and had an extremely high slump. When the jacket was partially filled, our Inspector

instructed the Contractor to stop placing concrete. We instructed the Contractor to remove and reconstruct this pile jacket. The Contractor elected to fill the remainder of the jacket with an unknown epoxy material in the absence of the Inspector.

2. Our bridge inspection team reported unsound voids above and below the water line on pile Nos. 5-A and 15-A. We consider these pile jackets to be unacceptable because there is a separation between the fiberglass jacket and the filler concrete which will reduce the service life of the pile jacket.

3. When the acceptability of the pile jackets in question became an issue, we advised the Contractor that we would drop the issue if it was agreed to leave the pile jackets in place without pay.

Interest and Claim Expense

We object to consideration of these costs by the Board because they were not included in the claim as submitted to us for review.

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

1. Testimony related to the pay quantities included in draws (see Contract Summary submitted by the Contractor) dealt only with percent of plan quantity. Neither party presented any information on the actual quantities paid on these draws.
2. The records for final pay quantities submitted by DOT were

not supported by original field notes.

Turbidity Barrier Relocate Floating

1. DOT stated that work sites were added due to damage to the fender system after bids were received and that it may have been necessary to move a turbidity barrier to another work site even though work had not been completed at the first site.

Pilings Removal and Disposal

1. In describing the work included under Pilings Removal and Disposal, SUBARTICLE 110-6.1 of the Special Provisions (Tab 8 of Exhibit No. 2) does not differentiate between timber piles and concrete piles.

2. The DOT records indicate that the only payment for removal of pile was at locations where new concrete piles were installed.

Pile Holes Performed

1. Note H-3 on Plan Sheet R-7 requires that holes performed to release a pile for removal be 30" in diameter. No mention is made of an auger.

2. This is an unusual application of this pay item.

Performing of piles holes is usually done in conjunction with placing new piles.

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 \$26,000.00 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 374.20 for Court Reporting Costs.

S.A.B. CLERK

DEC 9 1994

FILED

Tallahassee, Florida

Dated: 09 Dec 1994

Certified Copy:

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

09 December 1994
Date

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

H. E. Prescott
H. E. Prescott, P. E.
Member

John P. Roebuck
John P. Roebuck
Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

DEC 9 1994

GULF CONSTRUCTION GROUP, INC.)

FILED

- and -

PROJECT NO. 13080-3512

LOCATION: Manatee County,
Florida

DEPARTMENT OF TRANSPORTATION)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Monday, October 24, 1994

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

TIME: Commenced at 9:00 a.m.
Concluded at 11:05 a.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. Edward Prescott
 Mr. Jack Roebuck

APPEARING ON BEHALF OF GULF CONSTRUCTION
GROUP, INC.:

Mr. G. M. Hobbs

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Glenn Ivey
 Mr. Rick Roberts
 Mr. Don Maxwell
 Mr. Ken Blanchard
 Mr. R. C. Renfranz

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	4
Exhibit No. 3 in evidence	46
Exhibit Nos. 4 and 5 in evidence	47
Exhibit No. 6 in evidence	47
Exhibit No. 7 in evidence	51
 CERTIFICATE OF REPORTER	 76

P R O C E E D I N G S

1 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. Ed Prescott, Edward Prescott, was appointed
6 as a member of the Board by the Secretary of the
7 Department of Transportation. Mr. John Roebuck was
8 elected by the construction companies under contract to
9 the Department of 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 official terms began July 1, 1993 and expire
13 June 30, 1995, except for Mr. Prescott's term, who
14 began July 1 of 1994.

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: Okay. The documents which
20 put this arbitration hearing into being are hereby
21 introduced as Exhibit No. 1. This is the request for
22 arbitration of claim as submitted by the contractor and
23 attachments thereto.

24 Some additional information was submitted and
25 distributed to DOT and the Board members consisting of

1 a letter to the Arbitration Board providing some
2 additional information and a contract summary sheet.

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

5 (Discussion off the record)

6 CHAIRMAN COWGER: In accordance with the policy
7 of the Board the DOT submitted to the Board and the
8 contractor received a copy of its written rebuttal
9 package. We will identify that as Exhibit 2.
10 (Whereupon, Exhibit Nos. 1 and 2 were received in
11 evidence.)

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

14 MR. IVEY: No.

15 MR. HOBBS: Not at this time.

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

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

1 Board will furnish the parties a copy of the transcript
2 of this hearing along with its final order, but will
3 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 the DOT will offer rebuttal. Either party may
7 interrupt to bring out a point by coming through the
8 Chairman. However, for the sake of order, I must
9 instruct that only one person speak at a time.

10 Mr. Hobbs, it's appropriate at this point for you
11 to go ahead and make your opening presentation.

12 MR. HOBBS: All right. I'm before the Board here
13 in reference to quantity dispute on the Long Boat Key
14 project, which there's a couple of items that I think
15 have a big impact on this claim, one of them being the
16 supplemental agreement that was dated December 15,
17 1993, concerning additions to and increasing quantities
18 on this contract.

19 Another supplemental agreement that addressed
20 changed conditions and the difficulty of performing
21 this work was negotiated at the end of the project,
22 I think in March or April of '94.

23 That is important because the first -- or the
24 supplemental agreement in December added bid items
25 increasing the amount of the units in the contract.

1 DOT in general, their position is that I'm claiming
2 these units to complete the units in the original
3 contract. That I'm adding -- that I'm just trying to
4 fulfill the total contract quantities.

5 This is not the case because my position is that
6 they would have never increased the quantities in the
7 supplemental agreement if the original quantities
8 wasn't used up.

9 As evidence of that, the summary of the draw
10 schedule which I submitted gives each draw and the
11 percentages of these units that were paid at the time
12 they were paid, the dates they were paid and the
13 percentages. In particular, your big items, the
14 preformed holes and the piling removal and disposal.

15 I submitted that to the Board as one of my
16 exhibits.

17 As you can see, on January -- actually on
18 November 22nd, two to three weeks before the
19 supplemental agreement adding additional units on the
20 piling and the preformed holes, they paid a hundred
21 percent of the piling removal and a hundred percent of
22 the preformed holes.

23 Now either DOT is not certifying their draws
24 correctly or the original units were certified as
25 complete at that time.

1 Now, I don't know what the procedure is of the
2 DOT, but according to the draw schedule, looking just
3 at the draw schedules, they changed this. They again
4 confirmed that in January after the additional units
5 had been dated and signed and a supplemental agreement
6 done. They still paid a hundred percent of the pile
7 removals and a hundred percent of the preformed holes
8 on draw six.

9 Then on draw number seven they decreased the
10 piling removal and the preformed holes to 91 percent
11 from 100 percent. So, that's the strongest evidence
12 that I feel like I've got is the draws itself showing
13 what they had certified that was done.

14 Now, why would they increase the contract on
15 units and say that they -- when a hundred percent was
16 done, and then say that the units were not done.

17 Now, was the second phase not done? Where were
18 the units not done that they're talking about was not
19 completed is my position?

20 They're referring back to notes on the engineer's
21 log. Well, if you refer to their notes on the
22 engineer's log, the engineer, Mr. Renfranz, never
23 stepped down on the barge. He was on the project maybe
24 once a week for an hour or two at a time. He never
25 stepped down on the catwalk, on the fender system. He

1 wasn't aware of what was going on. I have yet to see
2 the logs of the daily inspectors who were taking daily
3 notes. They were not submitted as part of their
4 evidence, only Mr. Renfranz's log.

5 If you will note, Mr. Renfranz's log, all of his
6 notes are dated April 16th. Now, how he could go back
7 and tell what is happening in January or -- November,
8 December when he is logging it -- just logging it in
9 April of -- on April 16, 1994? When all the records
10 show, which is the draw schedules, which as certified
11 by Mr. Ivey as work completed. Now, are they
12 certifying work that's not completed? You know, who is
13 at fault there when the record speaks as it does?

14 I would also like to withdraw the claim on the
15 barricades at this time. I would also like to withdraw
16 the claim on the wrapping of the pile clusters at this
17 time.

18 CHAIRMAN COWGER: How about the pile jackets?

19 MR. HOBBS: The pile jackets I would not like to
20 withdraw, at this time. All right. In particular, our
21 first item would be, if anybody wants to address --

22 CHAIRMAN COWGER: May I interrupt you just a
23 second.

24 MR. HOBBS: Yes, sir.

25 CHAIRMAN COWGER: Just so we understand for sure

1 what you just testified to about the DOT's records
2 being dated some time in April, was that information
3 that was contained in this book?

4 MR. HOBBS: It's in the book, the rebuttal
5 package that was submitted by the State. In
6 particular, if you can refer to --

7 CHAIRMAN COWGER: If we look at Tab 14, is that
8 what we're talking about?

9 MR. HOBBS: That's one of them. That's Tab 14.
10 It's there in a number of places.

11 Tab 6. Tab 6 in particular refers to the first
12 item we're going to talk about, which is the turbidity
13 screen. I believe everyone was aware when we first
14 started this project, we started on the southeast
15 corner.

16 Well, if we did not put out the turbidity screen
17 on the southeast corner, we were in violation of the
18 contract. Either the State let us work in violation of
19 the contract or the screen was put out. I don't know
20 which one this was.

21 This, again, is dated 4-16-94. Now, how did
22 Mr. Renfranz know where the turbidity screen is six
23 months after the work was done? Where is his notes for
24 the dates that the work was done?

25 We had to move that barge in and out every day

1 because of the current, number one. Number two,
2 because of the traffic flow we had through there, which
3 it's excessive amount of traffic. You could not stay
4 out in that channel. Boats would run over you.

5 We had to move in and out. That current ran
6 three or four knots in there every day, that tide
7 dropped and changed two or three foot at times. That
8 turbidity screen was constantly being moved. It was
9 relocated every time we set up. We had to take one end
10 of it, redo it, take it around, rewrap it.

11 That turbidity screen was moved, shuffled around
12 a dozen times on this project and relocated. And the
13 notes were made and the daily inspector was told. He
14 can see it. He never walked down -- the daily
15 inspector, not only Mr. Renfranz, but the daily
16 inspector, residence inspector, never walked down on
17 the catwalk at one time that I can recall, on the
18 barge.

19 We purchased approximately 600 feet of turbidity
20 screen. We never put out but 200, but we kept moving
21 the 200 a number of times.

22 He has it drawn six months after the fact two
23 circles where we worked. The first place we worked is
24 common knowledge because the original notice of change
25 of conditions is on the southeast corner where the work

1 was done on the turbidity screen. Now, at this time --
2 what I would like to do is go over one item at the
3 time.

4 CHAIRMAN COWGER: I would love to have you do it.

5 MR. HOBBS: Then talk about --

6 CHAIRMAN COWGER: Let's let DOT rebut. Before
7 they start, let me ask a question of someone. This
8 drawing which is Tab 6 of the DOT rebuttal package, it
9 shows the turbidity screen located in two locations,
10 which is around the fender system work area itself.

11 Was that the -- was the purpose of the turbidity
12 screen to surround the work area or was there ever any
13 intent to put it around the equipment itself?

14 MR. HOBBS: I'm assuming it was for the work area
15 only.

16 MR. RENFRANZ: That's correct.

17 MR. HOBBS: I would like to add that these two
18 areas are not the only two work areas. In other words,
19 we worked, according to the plans and specs, you had
20 work on the southeast corner, you had work in the
21 middle of the south side, you had work on the northwest
22 corner, you had work on the northeast corner.

23 And each one of these locations we moved in and
24 out of a number of times as the record and our daily
25 reports will reflect. It was in and out every day. We

1 did not take the turbidity screen up every day because
2 the tides -- but we did move it when we moved our barge
3 and relocated our equipment. Not every time, but in
4 excess of a dozen times.

5 CHAIRMAN COWGER: Okay. I think it's appropriate
6 now that we have DOT rebut this.

7 MR. ROBERTS: Mr. Hobbs has made reference to
8 Exhibit 6 with specific emphasis on the entry made
9 4-16-94. It's obvious that that's the day the entry
10 was made in the book, but if you will look at the top
11 left-hand corner of the page where it denotes the
12 different locations, it will reflect the days that the
13 turbidity barrier was in place appropriately.

14 So, the fact that it says 4-16-94 I think has no
15 bearing as to when it was actually put in place. There
16 was -- yes, there was work done in other locations.
17 There were piles that were not completed in the
18 original scope of work, and that had bearing on the
19 amount of times that the turbidity barrier was
20 relocated.

21 Mr. Maxwell is going to try to identify the areas
22 that were not completed.

23 (Discussion off the record)

24 MR. ROBERTS: DOT is not prepared to name the
25 specific area. We did not bring a set of plans with

4 1 us. There was an area that was worked on at Mr. Hobbs'
2 2 expense where his barge damaged the existing fender
3 3 system and it had to be replaced. All the work in that
4 4 area was done at Mr. Hobbs' expense.

5 CHAIRMAN COWGER: It's your position then, DOT,
6 6 that these notes in Tab 6 of your exhibit adequately or
7 7 accurately reflect the relocations of turbidity
8 8 barrier?

9 MR. ROBERTS: Yes, it is.

10 CHAIRMAN COWGER: The dates in the upper
11 11 left-hand corner are the dates the work actually took
12 12 place?

13 MR. ROBERTS: Taken from the daily reports, yes,
14 14 sir.

15 CHAIRMAN COWGER: So, what you're saying is that,
16 16 again, the same exhibit, this information was, in fact,
17 17 written down in this notebook on 4-16-94, but it was,
18 18 in fact, taken from DOT daily records?

19 MR. ROBERTS: Yes, sir.

20 MR. ROEBUCK: You indicate only two days these
21 21 barriers were moved, and yet Mr. Hobbs is saying for
22 22 various reasons these were moved at least a dozen times
23 23 back and forth, some of which may have been his and
24 24 some of which may have been yours, the job.

25 MR. MAXWELL: There were several times the

1 turbidity was there, but it was not around the piles
2 and was not in place to be properly paid for. And in
3 one instance, several instances it was hooked off at
4 the end of the northwest corner and it hooked to his
5 barge, but it didn't protect anything. So we can't pay
6 for it under those circumstances.

7 MR. HOBBS: I would like to reply.

8 CHAIRMAN COWGER: Go ahead.

9 MR. HOBBS: Number one, I was never notified or
10 instructed by any DOT representative that the turbidity
11 screen was improperly installed. I feel like that
12 would have been in order.

13 Number two, why didn't DOT submit their notes
14 out of their working book instead of a summary that
15 Mr. Renfranz did six months after the fact.

16 Number three, why did DOT add an additional 400
17 feet of moving and relocating turbidity screen on
18 December 15th if the original wasn't even used, it
19 wasn't relocated but one time or two times, whatever
20 the amount is that they have here?

21 So, that's three items right there that I think
22 would weigh in the favor of the contractor on the
23 turbidity screen.

24 MR. ROBERTS: The additional linear foot of the
25 silt barrier was added, and we were expecting a certain

1 amount of additional work to take place. These were
2 estimated quantities. We had no way of actually
3 knowing exactly how many times this was going to be
4 necessary.

5 MR. HOBBS: But then again why would you add
6 four moves when you didn't have but two already on
7 the original? You still had two left on the original
8 quantities.

9 MR. ROBERTS: We were estimating how many times
10 it was going to be necessary.

11 MR. HOBBS: All you were adding was one wing wall
12 on the northwest side, corner. It really shouldn't
13 have to be moved but one time theoretically if that's
14 the case because there was just one area you were
15 working in, to add the additional piling.

16 In summary on that item, I just feel like DOT was
17 aware of the problem with the tides, the currents, the
18 situation there on the working conditions that you
19 constantly had to be moving that turbidity screen due
20 to not just where you had to work, but the conditions
21 that you were working in.

22 CHAIRMAN COWGER: Does either party have anything
23 else to say on this issue? Does either Board member
24 have any questions?

25 MR. PRESCOTT: I don't have any.

1 CHAIRMAN COWGER: I have one question. There
2 were two bid items. There was a turbidity barrier
3 floating and then a turbidity barrier relocating. You
4 paid 100 linear feet, DOT, for original floating silt
5 barrier, and then 200 feet for relocation. I assume
6 that that 200 feet is relocating the original 100 feet
7 two more times?

8 MR. MAXWELL: That's correct.

9 CHAIRMAN COWGER: So, really, the barrier was
10 installed at three different locations, but these notes
11 that we see in Tab 6 only include the relocation?

12 MR. ROBERTS: That's right.

13 MR. MAXWELL: And once the turbidity barrier was
14 relocated to a section of working area, there was no
15 need to move it in and out as Mr. Hobbs indicates,
16 because if it was encircling the piles as was necessary
17 to protect the area, it could stay in place no matter
18 where his barge was moving around.

19 CHAIRMAN COWGER: What you're saying is that once
20 the turbidity screen was located in a particular
21 location, it could have stayed right there?

22 MR. IVEY: As long as work was being performed in
23 that area.

24 CHAIRMAN COWGER: Right, regardless of whether or
25 not the barge moved?

1 MR. IVEY: Right.

2 CHAIRMAN COWGER: Mr. Hobbs?

3 MR. HOBBS: I would state you would never need to
4 add the additional movement of the turbidity screen if
5 that was the case because all you had was four areas
6 that you were working in, contract-wise.

7 MR. IVEY: I don't see the point, Mike, in
8 referring to adding additional quantities for turbidity
9 barrier. Certainly we wanted to pay you for each time
10 you had to relocate it, but if you didn't have to
11 relocate it, we didn't have to pay you for it.

12 MR. HOBBS: Why did you add the additional in
13 there? You just stated that once it was set up, you
14 didn't have to move it again. Why did you add four
15 additional movements to work one place?

16 MR. IVEY: Considering your sequence of
17 operations it could very well have been necessary.

18 MR. HOBBS: That's my position, it was necessary,
19 and we did move it. That drawing was also submitted,
20 for the record, that shows the different areas we
21 worked in, on my original submission, a part of my
22 original package.

23 CHAIRMAN COWGER: Mr. Ivey, are you saying that
24 due to his sequence of operations it may have been
25 necessary to move the turbidity screen?

1 MR. IVEY: Yes.

2 CHAIRMAN COWGER: Even though work was not
3 completed at a particular area?

4 MR. IVEY: Yes.

5 CHAIRMAN COWGER: Can you explain that a little
6 bit, how that would come about?

7 MR. IVEY: Do you want to help me out here, Don?

8 MR. MAXWELL: There were several times that
9 Mr. Hobbs would set up on a particular set of piles,
10 work on them for a few days, and even though he didn't
11 complete the work, would then move to another set
12 because he felt they were too difficult at that
13 particular time to work on. So, he moved back and
14 forth several times on different piles, and the daily
15 logs show that.

16 CHAIRMAN COWGER: Okay.

17 MR. PRESCOTT: Was the turbidity screen moved
18 from the location where he was working to the location
19 that he moved to?

20 MR. MAXWELL: Not always, just these couple of
21 times where he had significant areas to protect that he
22 set it up and would leave it there. Some isolated
23 individual piles he never did set it up. That's why we
24 didn't pay him for the relocation.

25 MR. PRESCOTT: The locations where he began work,

1 if there were locations where the contractor began work
2 that required the turbidity screen to be there, and
3 then he elected to move and go to another location, did
4 he move the turbidity screen from that location to the
5 other, or was it left around that work site?

6 MR. MAXWELL: It was left around that work site
7 in some instances. In a couple of places, as you can
8 see by the notes, he did move it. But other than that,
9 he didn't move the turbidity barrier every time he
10 moved to a separate pile.

11 MR. PRESCOTT: Okay.

12 CHAIRMAN COWGER: One other comment I wanted to
13 make. I think it will pertain to other parts of this
14 claim. Looking at the supplemental agreement number 3,
15 which is the last one that was the claims settlement,
16 apparently -- and also supplemental agreement number 2,
17 which added quantities to various items, apparently
18 the work to be done, as it turned out on this fender
19 system, was significantly different from what is shown
20 in the plans. Is that correct?

21 MR. MAXWELL: That's correct. The wing wall on
22 the northwest corner was found to be completely gone
23 after a contract was let. That's the main portion of
24 the added work to this project was that northwest
25 corner.

1 CHAIRMAN COWGER: Okay. And that's what is shown
2 in your Tab 6, one of the places that he relocated the
3 turbidity screen to was in that northwest corner?

4 MR. MAXWELL: That's correct because that little
5 wing was gone.

6 CHAIRMAN COWGER: Also, as I recall reading some
7 of the correspondence, the contractor encountered --
8 and we're going to get into that in the other items --
9 but the contractor encountered problems in pulling and
10 placing the -- pulling the old piles and placing the
11 new piles due to obstacles he encountered underground
12 that weren't anticipated, or at least were lying on the
13 bottom of the bay, is that correct?

14 MR. MAXWELL: That's correct.

15 CHAIRMAN COWGER: Okay. Can we leave this item,
16 or does anybody else have any further questions or
17 comments?

18 MR. HOBBS: I have one additional comment. If
19 this was the case, if this was correct, what the
20 State's position is on the moving of the turbidity
21 screen, I'm still entitled to variation in estimated
22 quantities because this is under 15, or it's under the
23 original estimated quantities that we estimated on this
24 project which would throw me out of sequence and make
25 the bid heavy and not distribute the cost amongst the

1 items which I originally anticipated on the bid.

2 I don't know what that percentage is with the
3 State. I know what it is with the Federal government,
4 and it's 115 percent or 85 percent of the estimated bid
5 items.

6 MR. ROBERTS: Article 2-3 of the specifications,
7 and by the contract that Mr. Hobbs and the Department
8 signed, Mr. Hobbs agreed not to claim this
9 understanding by any of the quantities.

10 And the Department is not responsible to assure
11 that the final quantities will be in accordance with
12 the estimated quantities. We have the contractual
13 right to increase, decrease or omit portions of the
14 contract as we deem necessary to fulfill the intent
15 of that contract. And we believe that the
16 specifications support this action.

17 MR. HOBBS: If you double the scope of the work
18 or cut the scope of the work in half, doesn't that
19 impact the total cost of the project? Just as a
20 statement, that's my position, that we moved the
21 turbidity screen, fulfilled the contract amount, in
22 excess of the contract amount on the relocation of the
23 turbidity screen.

24 CHAIRMAN COWGER: I think we can move on to the
25 next item.

1 MR. ROEBUCK: One question, just to get my mind
2 clear. You bid this job in '90. About three years
3 later you were awarded the contract, is that right?
4 There is a three-year delay between July '90, the bid
5 date, and May of '93?

6 MR. ROBERTS: That must be a typo. It was bid
7 February 25 -- 24th --

8 MR. ROEBUCK: I'm looking at the first sheet in
9 the booklet.

10 CHAIRMAN COWGER: When was it bid?

11 MR. ROBERTS: The bid date, that is a typo. The
12 whole date is wrong.

13 CHAIRMAN COWGER: What was the bid date?

14 MR. ROBERTS: February 24, 1993.

15 MR. ROEBUCK: Okay, I thought maybe that long gap
16 in the award was part of the increased scope.

17 MR. ROBERTS: No, sir, no, sir. We have a
18 typographical error of a complete month, year and date.

19 MR. ROEBUCK: Okay.

20 MR. HOBBS: Are you ready to move on?

21 CHAIRMAN COWGER: I think so, yes, sir.

22 MR. HOBBS: The next item is additional cost for
23 removal and disposal of piling. Again I would like to
24 refer to my summary sheet of the draw schedule, as
25 I stated earlier.

1 On November 22nd, a hundred percent of the pile
2 removal and disposal was paid for on the original
3 contract amount. On December 15th, some two to three
4 weeks after, there was a supplemental agreement dated,
5 adding additional piling, removal, and disposal to the
6 contract.

7 Again, DOT, they certified incorrectly that draw
8 or the work was completed or it was approved and paid
9 for under that bid item. Either way, it confirms my
10 position on the piling removal and replacement -- I
11 mean disposal.

12 In addition to that, I would like to state that
13 we did have a claim for the difficulty in removing
14 these piling and negotiating a settlement on that, but
15 the supplemental agreement that added piling, they
16 added a total of six to be removed under the
17 supplemental agreement, to equal 33 total.

18 The State was put on notice on a number of
19 letters that we encountered additional piling that was
20 not shown on the drawings that had to be removed in an
21 effort to get to the piling to remove them. For every
22 piling that was installed, there was one removed in
23 some form or fashion.

24 We did agree in a meeting, which the minutes were
25 submitted as part of the evidence, to start breaking

1 them off at the mud line versus pulling them, but it
2 was not to be subtracted from the removal and disposal.
3 We still had to handle it. We still had to remove
4 them. We disposed of them in the canal. A lot of
5 these were done, broken off, laid over in the channel
6 as we were instructed as do the minutes of that meeting
7 reflect.

8 If you take the additional piling that we had to
9 remove and replace, which I think the total is this --
10 is six different -- I think the record will reflect
11 that we removed an additional six piling on various
12 different letters that we submitted that was not known
13 or shown on the drawings.

14 I'd like to refer to my log of correspondence
15 that I submitted as part of my original package.
16 I believe the letters, copies of the letters were also
17 submitted. If not, I have them enclosed here in my
18 package, putting the State on notice on the change in
19 conditions of the additional piling.

20 As I stated, the modifications of the change in
21 conditions was for the difficulty only, not for
22 pulling. That was not part of the supplemental. The
23 original contract took care of the pulling of the
24 piling.

25 MR. ROBERTS: Which supplemental agreement are

1 you referencing?

2 MR. HOBBS: To the change in conditions. The one
3 we were negotiating was for the difficulty, not for the
4 additional piling, but for the difficulty of the
5 piling, pulling.

6 MR. ROBERTS: Supplemental agreement --

7 MR. ROEBUCK: Three?

8 MR. HOBBS: Yes, three, two added the piling.

9 CHAIRMAN COWGER: So, you're saying that
10 supplemental agreement number 3 actually had nothing to
11 do with the number of piles to be pulled?

12 MR. HOBBS: That was the way I negotiated it,
13 the way I understood it. And as we were negotiating,
14 I also stated, and I believe Mr. Roberts can confirm
15 that, that this -- the negotiations had nothing to do
16 with the amount of the piling. He said that was up
17 to -- that was up to Mr. Renfranz, I believe is what
18 you stated.

19 CHAIRMAN COWGER: Now, at the time that the
20 supplemental agreement was being negotiated, what did
21 the monthly estimates show as far as quantities? Were
22 they still up at plan quantity at that point?

23 MR. HOBBS: The estimate changed every month.
24 It didn't matter what I submitted, it didn't come out
25 anything like it. I wrote a number of letters and

1 protested the way the draws were being handled. You
2 never knew because evidently there was shuffling around
3 of money in the Bartow office to make it jive, to make
4 the draws paid.

5 But at this particular time I believe, you know,
6 it's caught up with them, the shuffling, in reference
7 to what was done. I don't know if anybody can actually
8 figure out the actual where we were at any one time
9 after this January estimate.

10 CHAIRMAN COWGER: The negotiations for that
11 supplemental agreement, which was dated in March
12 I believe -- supplemental agreement number three --

13 MR. HOBBS: Right, for changed conditions.

14 CHAIRMAN COWGER: -- took place in maybe January
15 or February?

16 MR. HOBBS: It started in there. There's a
17 letter in the file. I believe I submitted it in the
18 starting of the negotiations. I wrote a letter that we
19 were starting serious negotiations. I sent a breakdown
20 of our daily costs just so Mr. Roberts would be aware
21 of what kind of money we were talking about per day,
22 which is part of the file.

23 Now, I did say in our negotiations, and I assume
24 that the quantities were going to be paid for. He said
25 that's not up to me, that's up to the project engineer.

1 And that was the comment, I believe, the exact comment
2 I said, or something very similar to that.

3 MR. IVEY: I'm sure he said also that you would
4 be paid for work performed.

5 MR. HOBBS: Well, I mean that was probably added.
6 You know, I don't doubt that. I just remember what
7 I said, and he referred back to the project engineer,
8 that that was up to the project engineer. I assumed
9 that we were going to be paid because the work was
10 performed as far as I was concerned.

11 If you look at the piling disposed, you're
12 looking at six extra piling. If you take the amount
13 of piling they're paying for, which is 76 percent,
14 I believe, according to that last draw, draw 13, if you
15 didn't do anything but pay the 76 percent of the 33
16 piling, it would put you over the amount that had to be
17 installed.

18 See, there was 13 and 14, 27 piling to be
19 installed. 27 percent, I don't have a calculator, but
20 27 percent of 33 -- I mean 76 percent of 33 is what?

21 MR. ROEBUCK: About 25.

22 MR. HOBBS: 25, and they paid for 27.

23 CHAIRMAN COWGER: Mr. Roberts, you have a copy of
24 the contract there, don't you?

25 MR. ROBERTS: Yes, sir.

1 CHAIRMAN COWGER: Could you pass it down and let
2 me look at it while we're talking.

3 I have a question, DOT. I think you need to go
4 ahead and start your rebuttal, but in the course of
5 your rebuttal, we need to hear whether there was some
6 dispute about what constituted removable of pile.
7 Mr. Hobbs discussed snapping some of them off at the
8 mud line as opposed to removing them. We need to hear
9 from you all how you handled that. Okay?

10 MR. ROBERTS: I would first like to address the,
11 as Mr. Hobbs has referred to the estimates, it was
12 apparent that DOT did not have control of the funds on
13 this particular item or on this project.

14 As you look down the list, the submission by Gulf
15 Construction, you will see that in December and as late
16 as January 6, 1994, the piling removal and disposal
17 item was at 100 percent.

18 The exhibit in the Department's package,
19 Exhibit 14, the supplemental agreement that made the
20 changes to the project -- excuse me, that's
21 Exhibit 15 -- the document was executed in the middle
22 part of December of '93.

23 At that point in time it would have been
24 virtually impossible to have entered this document
25 into the system due to the Department's policies for

1 estimates. The system is shut down and you cannot
2 enter into the system any supplemental agreements until
3 the estimate packages are ran and distributed to the
4 respective offices.

5 This item as it was increased, you see in January
6 I believe that the item could not make it on this
7 estimate, but did make it on the following estimate,
8 the February estimate -- excuse me, that would be -- we
9 ran a progress estimate, apparently for Mr. Hobbs. We
10 have -- he has two entries here, January 6th, and I'm
11 not sure what the intent of that is.

12 The point I'm trying to make is the reason it
13 went from 100 percent and it was reduced is because the
14 contract quantity was increased. It wasn't because DOT
15 was having difficulty managing our monies, it was
16 because the supplemental agreement was added at that
17 time and then the quantity was increased.

18 CHAIRMAN COWGER: Wait a minute. Are you
19 saying the quantity was decreased or that caused the
20 percentage to decrease?

21 MR. ROBERTS: That caused the percentage to
22 decrease, not the quantity. That's the reason that
23 this happened. It's not a result of mismanagement.

24 The project was not without difficulty, as you
25 can see by the two supplemental agreements. We did

1 encounter conditions out there from the time the
2 original design, from the time the contractor showed up
3 and actually began work. Conditions had changed due to
4 some accidents to the fender system, thus the necessity
5 of entering into the supplemental agreement with
6 Mr. Hobbs to perform additional work to the contract.

7 Those items could only be estimated as to what we
8 thought would actually be needed and the amount that is
9 done and documented in our claims package is the amount
10 taken directly from the daily reports and cross
11 referenced in Mr. Hobbs' superintendent's personal
12 diary.

13 When we first entered into discussion of these
14 items, I asked Mr. Hobbs to provide me any information
15 that he might have that would support his claim. That
16 if he had done the work and it was just a difference of
17 records, that we possibly could work this out and come
18 to some terms.

19 However, looking at his information, apparently
20 his project superintendent made an entry each day for
21 piles removed and disposed, preformed pile holes, so on
22 and so forth.

23 The records are erratic. I could not ascertain
24 an actual number from Mr. Hobbs' records so that we
25 could reach some type of agreement on this item. His

1 records do not support the fact that the work was
2 actually accomplished.

3 I would like to make a comment concerning the
4 breaking off of the piling, as Mr. Hobbs made reference
5 to. We had a meeting in October of '93 to discuss this
6 project. And he was having a terrible time out there.
7 He was encountering some piling that was beneath the
8 mud line. He was having difficulty pulling some piling
9 with the equipment that he had.

10 And one of the key things that I remember out of
11 the meeting that we had in October that speaks directly
12 to the difficulty that he was having was that the area
13 was -- the piling he was trying to pull had other
14 piling in the vicinity and he could not get hold of the
15 piling and remove it because there were other piling
16 that were blocking and restricting his work activity.

17 And at that particular time, we said that if it
18 is going to eliminate some difficulty for you right
19 here -- and since we already have some piling that are
20 broken off below the mud line -- go ahead and break
21 this piling off and ease the problem.

22 We did discuss that if there were circumstances
23 in the project that we got into the -- had the same
24 constraints, that if he would bring this up to the
25 project engineers and inspectors, that this might be a

1 possibility that we could work this out, but it was not
2 to carte blanche just go out and break off piling
3 instead of pulling them.

4 I can't speak to the actual conditions on the
5 project and what we did encounter in certain
6 situations, but it was not a comment that was intended
7 to say go ahead and break off everything you come to.
8 We wanted the pilings pulled.

9 MR. ROEBUCK: Did I hear, Mr. Roberts, you were
10 having difficulty ascertaining the quantities of pile
11 removed?

12 MR. ROBERTS: No, sir.

13 MR. ROEBUCK: Then why would you have been
14 looking to the contractor's notes to verify quantities?

15 MR. ROBERTS: We have our notes. They're
16 established and provided in the claim package that we
17 submitted. Those are our daily records recorded. They
18 have a date each day he pulled and disposed of a pile.
19 That quantity is shown in Exhibit 9.

20 I asked Mr. Hobbs, since we had a quantity
21 dispute, if he could provide me with his records that
22 would show something different than what the Department
23 had recorded.

24 What I received was a copy of the
25 superintendent's job diary where entries were made.

1 I do not know if Mr. Hobbs submitted this to the Board.
2 I brought it with me. I have been through it various
3 times trying to detail and find out how many piles that
4 Gulf Construction actually recorded as removed.

5 I found duplication. I found erratic records.
6 And I could not verify quantity from what Mr. Hobbs
7 submitted. That's the reason that I asked for
8 documentation, if he had something that would support
9 his claim other than we pulled a lot of piles.

10 So, that's what I was after.

11 MR. HOBBS: The only piling that would be
12 critical would be the ones at the first of the project.
13 Because if you get one on one, you're just talking
14 about six here, is the difference, at the first of the
15 project. You had one out for every one in after that.
16 So, your additional had to be at the first of the
17 project, which we documented on the letters, that we
18 were running in. You had to pull one to get to another
19 one to get to another one to get a choker on the other
20 one.

10

21 In addition, these piling were 55 foot long,
22 which in no place does it state that they were 55 foot
23 long in that area. We were replacing them with 45
24 footer. His notes were the 16th of April. Mr. Renfranz
25 was busy that day, recording how many piling we pulled.

1 Also on his summary sheet it was all written down
2 on the same day, all same pen, same handwriting. I'm
3 assuming that was done on the 16th. There is not a
4 date on this pile log summary. But that is not a
5 standard pile log.

6 If you ever notice a pile log, it's different
7 hands, different pens, different dates, dirty pages.
8 I've driven enough piling to know.

9 What I'm saying is Mr. Renfranz's records won't
10 hold up as far as I'm concerned.

11 CHAIRMAN COWGER: Let me interrupt a moment. Are
12 we looking at DOT Tab 9?

13 MR. HOBBS: Yes, sir. His log. In other words,
14 his log -- this is not a daily log is what I'm saying.
15 He's referencing a daily log.

16 MR. IVEY: You are absolutely right. That is not
17 a daily log, that is a summary.

18 MR. HOBBS: Okay. In addition to that, if you
19 will look, the only increase in items that we had on
20 this project was on that December 15th. If you look
21 down here on every draw from that, you can see what the
22 contract was. That brought it up to \$510,000 on the
23 estimate 8 it's 510,000. On estimate 9, 91 percent,
24 estimate 10, 91 percent.

25 No, estimate 10 it drops down to 82 percent of

1 pile. How did we go down if the quantities didn't
2 change if he didn't mismanage this contract?

3 Then you look at the next month on item 11 it
4 goes to 82 percent of pile removal. Then on 12 he goes
5 to 79 percent. He's taken away stuff he's already
6 certified we had done. In other words, if that's not
7 mismanagement of the numbers, what is?

8 Then you end up with 76 percent versus 91 percent
9 that we had on February. And the amount of the
10 contract quantities has not changed.

11 CHAIRMAN COWGER: Let me see if I can deal with
12 that just a minute. Looking at these draws, where the
13 percentage went down was in January, it was -- let's
14 look at the pile removal. It was a hundred percent
15 in -- well, now, wait a minute. I don't understand.
16 You've got January in here twice.

17 MR. HOBBS: He did two draws. There was a
18 supplemental draw in January.

19 MR. ROEBUCK: When the 13 went in, the percentage
20 went down.

21 CHAIRMAN COWGER: That makes sense.

22 MR. HOBBS: They can explain that, but how can
23 they explain the percentages keep going down when the
24 quantities haven't gone down. They go down every
25 month.

1 CHAIRMAN COWGER: What I'm curious about, what
2 happened here on draw 10, I think I can understand
3 going from 100 to 91. But what I don't understand is
4 in draw number 10, March 22, 1994, it went from 91
5 percent the previous month down to 82. That's kind of
6 hard to understand there. Of course, you know,
7 I don't --

8 MR. HOBBS: There's no way to explain it unless
9 we put piling back in that we took out.

10 MR. IVEY: Or we realized we overpaid you.

11 MR. HOBBS: Did you realize it two different
12 times?

13 MR. IVEY: May have.

14 CHAIRMAN COWGER: I only see one time, Mr. Hobbs.

15 MR. HOBBS: Goes from 91 to 82 to 79 to 76.

16 CHAIRMAN COWGER: Oh, I didn't look far enough
17 down. I apologize.

18 DOT, let me ask you about Tab No. 6 just a
19 minute. As I understand this, there's two pages,
20 really, page 11 and 12 in the upper right-hand corner.
21 And then another page that summarizes it all.

22 This shows all the piling that were driven.
23 These are the measurements of the elevations of the
24 ground, the pile top, the pile tip and all. So, this
25 represents every pile that was driven, every concrete

1 pile that was driven on this job, right?

2 MR. MAXWELL: Right.

3 CHAIRMAN COWGER: Then you have a column over
4 there on the extreme left-hand side on the right-hand
5 page. I think it says pull pile. And when you add
6 those up, that's where you got the number of piling
7 pulled or, what do you call it, anyway, the number of
8 piling pulled that you paid for.

9 MR. MAXWELL: That's correct.

10 CHAIRMAN COWGER: Okay. What does -- I notice a
11 couple of zeros in there. What does that mean?

12 MR. MAXWELL: In specific pile 78 and 79 he did
13 not have to remove piles to install those.

14 CHAIRMAN COWGER: Okay. While we're on that
15 page, and this is the next item we're going to discuss,
16 but looking at page 11, you've got a column here that
17 says preformed holes. You've got three in there. How
18 did he end up performing holes three times to replace
19 one pile?

20 MR. MAXWELL: It was anticipated in the original
21 contract that in order for Mr. Hobbs to pull one pile,
22 sometimes as many as two holes, one on each side would
23 be required in order to loosen the pile up so he could
24 get ahold of it. And the third one would be for
25 reinstalling the new piles.

1 That was how come three were set up originally in
2 this contract.

3 CHAIRMAN COWGER: So, what you're saying,
4 payment was made for preformed holes that were used in
5 conjunction with removal of an existing pile as well as
6 preformed holes for installing new piling?

7 MR. MAXWELL: That's correct.

8 CHAIRMAN COWGER: Okay. Now we will go back to
9 the original, removing and disposing piling.

10 MR. HOBBS: For every piling, like I say, that
11 came out, there was -- that went in, it came out. It
12 might not have been in the exact same place. That
13 would be the difference there. Some of the piling were
14 leaning over and they could not be seen from the
15 surface, as the diver could verify. He did verify in
16 the notes to the minutes -- the notes on the meeting
17 that we had.

18 So, some of the piling were, you know, cockeyed,
19 leaning over, broken, halfway cracked. You had to just
20 get them on out of there, lay them in the channel. The
21 preformed holes are in conjunction with that.

22 I would also like to submit, this is a memo that
23 I FAXed down there to my superintendent at the time
24 about the draws. Because after we got the first draw
25 had been changed, the second draw was changed 100 and

1 something thousand dollars, which I wrote a letter on.
2 I FAXed a copy of a note down there to my
3 superintendent on going over the draws every month with
4 Renfranz to make sure that we wouldn't keep having
5 that, and it just didn't make any difference. We just
6 continuously had the problem on that.

7 If we had had some communications, probably a lot
8 of this could have been avoided. But I was talking to
9 the inspector. Mr. Renfranz was upset, according to
10 the inspector, about the way we were performing the
11 holes, the way we were removing the piling, the way we
12 were doing the whole project.

13 So, evidently he was getting his instructions,
14 and I haven't seen his notes yet, but he said he was
15 noting it in his logs, which I specifically asked him,
16 I said be sure you note what I am telling you we did in
17 the daily logs.

18 Whether he did or not, I don't know. I don't see
19 his logs as evidence. But it's easy to understand how
20 I could move an additional six piling because we had
21 the supplemental agreement on the difficulty on
22 removing them. That's what the whole supplemental
23 agreement was about, the delay at the first of the
24 project and the difficulty in removing the original
25 piling on the first corner before we had the meeting.

1 And, again, I noted it in my letters, which
2 I submit to the file, putting them on notice on this,
3 how much have you got -- how much notice is enough
4 notice to put the State on that you've got a problem.

5 Like I say, the problem on the difficulty was
6 addressed, but the problem on pulling them was never
7 addressed.

8 And this -- these letters I have, which is one is
9 dated the -- I don't know, looks like it's dated 1-8.
10 Well, let's see. That's on replies, the
11 difficulties -- September 15th they were put on notice
12 on the difficulty of hitting a piling under piling and
13 having to pull additional piling. September 15th they
14 were put on notice on additional piling that we had.

15 Also, in the notes of the minutes, I was assured
16 that I would be paid for any additional work that I had
17 to -- that had to be done. This additional work was
18 removing additional piling.

19 Now as it turned out, this was covered in the --
20 in the scope sheet and the units on the original
21 contract. But there's another letter, 9-17, addressing
22 additional piling to be removed underneath. Here is
23 another one on 9-20, additional piling, hitting
24 additional piling underneath.

25 Now it doesn't distinguish on removing piling

1 whether it says creosote piling or concrete piling. It
2 says pile removal. A lot of these were creosote piling
3 which nobody has addressed up to this point because
4 they were stuck in there. Originally fender system at
5 one time was creosote. They were all broken off.
6 I state in here we hit broken creosote piling.

7 Here is another one, 10-7, while trying to remove
8 pile 65, we encounter change in conditions, two wooden
9 piling in the way of pulling 65.

10 As per your instructions any piling in the way of
11 replacing new piling, DOT will pay for the removal of
12 these piling. It's right here in this letter, which
13 that's part of the evidence that I submitted on item
14 number 4 that you requested additional information.

15 Here we are ordering two additional piling due to
16 replacing additional piling. This was done at your
17 direction.

18 CHAIRMAN COWGER: Let me interrupt you just a
19 minute and ask a question. As I see it, the pay
20 quantity for the piling removal and disposal was
21 calculated on this sheet that we just looked at a
22 minute ago.

23 MR. ROEBUCK: Summaries.

24 CHAIRMAN COWGER: And apparently the only removal
25 work that was paid for was when a pile was removed in

1 conjunction with installation of another pile.

2 MR. HOBBS: It appears that's how the State
3 calculated it.

4 CHAIRMAN COWGER: Is that correct?

5 MR. MAXWELL: Yes, that's the normal situation.

6 CHAIRMAN COWGER: Now, there's some discussion
7 that's been going on here about the fact that there
8 were some additional piling, maybe timber piling that
9 were pulled that didn't really relate to, necessarily
10 to the driving of an individual pile.

11 In other words, it's not necessarily true,
12 according to what Mr. Hobbs said, that the number of
13 piling pulled should correspond with the number of new
14 piling installed. I'm not sure I got that question
15 over right.

16 MR. HOBBS: That's correct.

17 CHAIRMAN COWGER: What do you have to say about
18 that, DOT? In other words, did he pull some piling
19 that were in the way, whether they be timber or
20 creosote, that had to be removed to complete the work,
21 or actually did he pull more piling than he installed?
22 I guess that's the easiest way to put the question.

23 My calculations indicate that he installed 27 new
24 piling, and your records show 27 pulled less 2 where
25 you had those zeros. So, if we look at DOT's records,

1 there were 27 piles, new piles installed and in all but
2 two of those instances you paid for a pile pulled. The
3 question is were some additional piling over and above
4 those that are shown here pulled?

5 MR. ROEBUCK: Mr. Renfranz, you can talk.

6 MR. RENFRANZ: I would estimate that there were
7 five or six creosote timber piling that were pulled
8 down in position in the southwest fender system,
9 southwest corner.

10 MR. HOBBS: Well, that resolves it. All we're
11 asking for is six.

12 MR. RENFRANZ: I considered them as debris.
13 There's a note on the plans sheet that there was rubble
14 and debris in the area that would have to be removed
15 and replaced during the pile operation.

16 CHAIRMAN COWGER: Which corner did you say it
17 was?

18 MR. ROEBUCK: Southwest corner.

19 MR. RENFRANZ: Southeast corner.

20 MR. HOBBS: That's the first area we worked in.

21 MR. ROEBUCK: So, there we're talking about a
22 matter of interpretation, not quantity, really?

23 MR. RENFRANZ: That's correct.

24 MR. ROEBUCK: That sure cleared up a ton of
25 stuff.

1 CHAIRMAN COWGER: I think somebody else from DOT,
2 either Mr. Roberts or Mr. Ivey ought to comment on that
3 as to what the contract said in that respect.

4 MR. IVEY: Gene, the intent of the contract was
5 to clean up the site that had many different fender
6 systems over several years, probably on the order of 30
7 or 35 years. The site was surveyed by our divers.
8 Those piles that were visible were identified on the
9 plans. Those that weren't visible weren't identified
10 on the plans.

11 The current runs through there at a considerable
12 pace. One day you can go out there and identify a pile
13 that at one time may have been broken off below the mud
14 line. The next day you may go out there and not
15 identify it because it was not visible. The intent of
16 the plans was to clean the site up. Every time we went
17 out to install a new fender system, we encountered
18 difficulty in installing piles. The intent was to
19 remove some debris in the bottom of the bay.

20 The interpretation of the plans, I don't recall
21 specifically how they addressed the wooden piles or if,
22 in fact, they did address them in any specific fashion.
23 Certainly if a pile was pulled, a pile should have been
24 paid for.

25 Don, do you remember the specifics as to how the

1 debris on the bottom of the bay was specified and
2 identified and how it was to interact with the pile
3 pulling item?

4 MR. MAXWELL: Just the plan notes that made
5 reference to the debris and stuff that had accumulated
6 over the years. The quantities in the quantity book
7 were all based on concrete piles. There was no
8 reference made to any wood piles. The wood piles were
9 considered part of the debris. The whole fender system
10 out there was concrete, rocks.

11 MR. ROBERTS: The supplemental agreement that the
12 Department negotiated with Mr. Hobbs reflected the
13 obstructions. Supplemental agreement number 3
14 reflected the obstructions that he encountered while
15 trying to repair the fender system. That was full and
16 final settlement for all of the delays involved.

17 MR. ROEBUCK: It's been pretty well stated it
18 related to difficulties he encountered beyond and above
19 the call of duty but not quantities?

20 MR. ROBERTS: That's correct.

21 MR. ROEBUCK: Debris is one thing, but if you
22 have a 12-inch timber piling and pull it, you've got
23 piling.

24 MR. HOBBS: Eighteen inch in diameter. They were
25 big ones. I would like to submit this plan on the part

1 of the plans as part of the record which shows the
2 debris on the bottom which indicates some wooden piling
3 laying on the bottom.

4 CHAIRMAN COWGER: What sheet number is that,
5 please?

6 MR. HOBBS: It is R-11.

7 CHAIRMAN COWGER: Okay. Let's identify that as
8 Exhibit 3.

9 (Whereupon, Exhibit No. 3 was received in evidence.)

10 MR. HOBBS: I would also like to submit part of
11 the specifications which is 455-9.12, pile extractions,
12 the quantity to be paid for under this item shall be
13 the number of piles each authorized to be extracted.
14 I was authorized to pull these piling that were in the
15 way as per the minutes of that meeting.

16 I'd like to submit the letters dated 9-13,
17 October 8th, 10-7, 9-20, 9-17, September 15, another
18 one the 15th on putting the State on notice on hitting
19 them, and a letter of October 8th where I'm requesting
20 an answer on all my letters and correspondence that
21 I had sent in the beginning in reference to the pile
22 removal.

23 CHAIRMAN COWGER: Let me see that package.

24 MR. HOBBS: And also the letter dated
25 November 17th requesting another answer on my replies

1 on the 20-something letters that I had written
2 concerning the same problem.

3 CHAIRMAN COWGER: I would like to note that we
4 identified that second letter that Mr. Hobbs submitted
5 as Exhibit 4. And we are identifying this package that
6 he just submitted as number 5, noting that in Exhibit 5
7 every piece of this correspondence was directed to
8 someone at DOT. So, we are assuming that DOT has all
9 of this in their files.
10 (Whereupon, Exhibit Nos. 4 and 5 were received in
11 evidence.)

14

12 MR. ROEBUCK: What is the date of the letter on
13 Exhibit 4?

14 MR. HOBBS: In addition to that, I've got one
15 other letter that I would like in particular broken out
16 separate as an exhibit, which is dated 9-29. It
17 states, "Today Gulf has not been notified of the
18 approval of additional work. As you are aware, we have
19 removed and replaced piling that are not on the
20 original contract."

21 CHAIRMAN COWGER: Okay. We will identify that as
22 Exhibit No. 6. This is a letter of September 29, 1993
23 to Mr. Renfranz.

24 (Whereupon, Exhibit No. 6 was received in evidence.)

25 CHAIRMAN COWGER: Gentlemen, I think we have

1 heard about enough on this issue. Why don't we take
2 about a five-minute break, let DOT -- just go off the
3 record for about five minutes.

4 (Brief pause)

5 CHAIRMAN COWGER: DOT, are you ready to go back
6 on the record? What we would like to do is have you
7 say whatever you want to say in rebuttal of this, and
8 we want to leave this item pretty quick now. I don't
9 want to cut you short of what you're saying, but we
10 will, unless Mr. Hobbs has something to say of
11 significance, leave this item and go on to the next
12 one.

13 MR. IVEY: I don't see the relevance of that
14 455-9.12 pile extraction. The -- this comes from the
15 supplemental specifications. The special provisions
16 address Article 110-11, which I believe addresses
17 payment for pile removal and disposal which included
18 pulling. I just don't see the relevance of that.

19 MR. ROEBUCK: I think this was just to
20 differentiate that there was no differentiation
21 between concrete and timber piling. It doesn't say
22 specifically concrete or timber.

23 MR. IVEY: But, again, it's not relevant to
24 this particular pay item under which the removal and
25 disposal was paid.

1 MR. ROEBUCK: But was not paid on some timber
2 pile that were pulled, 5 or 6. Is that right? In
3 other words, that was your testimony?

4 MR. IVEY: That was not my testimony.

5 MR. ROEBUCK: I'm looking at this side. This
6 side of the street said had something to do that five
7 or six timber piles were not paid for and was
8 considered debris.

9 MR. IVEY: That was the testimony.

10 MR. ROEBUCK: So this merely says there wasn't
11 any distinction.

12 CHAIRMAN COWGER: What else do we have to say
13 about this item?

14 MR. MAXWELL: One of the things that needs to be
15 looked at, which Mr. Hobbs made reference to in his 100
16 percent payment, when you look at the dates of when he
17 did the pile removals and replacements and stuff, a lot
18 of the contract work that was specifically in his
19 original contract was -- and you saw the drawing that
20 he handed out -- had Xs on specific pile that he was
21 supposed to be working on. That was his original
22 contract pile that he was told to work on.

23 When you follow this sequence of operations and
24 when he actually worked on piles, you will see that a
25 lot of the supplemental work for pile removal and

1 replacement was done -- was actually done ahead of the
2 supplemental agreement but was being paid for because
3 we had money in a contract for pile removal and
4 replacement.

5 The supplemental agreement actually picked up and
6 was -- and later on the additional quantities, which
7 allowed us to pay for when he went back and did his
8 original quantities, to pay for those, like piles 16,
9 17, 18, and those later on.

10 That was why it may look like he got paid a
11 hundred percent of his contract, and in reality it was
12 part of the original quantity and part of the
13 supplemental agreement quantity that we had money in
14 the contract and could pay him for.

15 But until the supplemental agreement went through
16 in December, then is when I could finally pick up and
17 pay for the rest of the quantity.

18 MR. HOBBS: But that does not explain the
19 differential in draws 9, 10, 11, 12, 13, the percentage
20 is going from 91 to 76 percent changing every month
21 when the quantities was not changed. That doesn't
22 explain that.

23 CHAIRMAN COWGER: I think we have adequate
24 testimony on that.

25 Let me summarize what Mr. Maxwell just said.

1 I think what he's saying is that since you had a bid
2 item for pile removal established, he could go ahead
3 and pay for the actual number removed prior to the
4 supplemental agreement being executed. And what you
5 are really doing, you are handling it as an overrun
6 until the final -- until the supplemental agreement was
7 finally executed.

8 MR. MAXWELL: Right.

9 CHAIRMAN COWGER: I think we can leave that item,
10 except for one thing. I want to take from the contract
11 the article that Mr. Ivey quoted, subarticle 110-6.1 in
12 the special provisions dealing with pile removal and
13 disposal. And I want to introduce that as Exhibit 7.
14 (Whereupon, Exhibit No. 7 was received in evidence.)

15 MR. IVEY: I'd like to make one more comment,
16 Gene, and that is that I think this is a good example
17 where no good deed goes unrewarded.

18 MR. ROEBUCK: A philosopher.

19 CHAIRMAN COWGER: Okay. With that bit of
20 philosophy can we go on to the next item. Before we do
21 that, let me take just a one-minute break. We don't
22 need these exhibits again for a few minutes, do we?
23 I will have your contract back to you in a minute.

24 MR. ROBERTS: Gene, that page is in our package,
25 Exhibit 8.

1 CHAIRMAN COWGER: Okay, then I won't have to make
2 that.

3 MR. ROEBUCK: Give them their contract.

4 (Brief pause)

5 CHAIRMAN COWGER: Exhibit 6 is really Tab No. 8
6 in Exhibit No. 2.

7 Okay, Mr. Hobbs, I think it would be appropriate
8 now for you to go ahead and start on the next item.

9 MR. HOBBS: All right. The next item is the
10 preformed holes. I believe that's where we are. The
11 good deed I think that I guess Mr. Ivey was referring
12 to was shifting that draw around where I could be paid
13 because DOT didn't handle the supplemental agreement in
14 a timely manner.

15 But going on to another item, just so we're all
16 on record here, the preformed holes, I was instructed
17 by Dave, the inspector, that Mr. Renfranz wasn't
18 satisfied with any of my preformed holes due to the
19 fact that we weren't using an auger. He didn't
20 consider a preformed hole a preformed hole, even though
21 I put the State on notice that we were using a
22 percussion probe with a chiseling effect.

23 I would like to refer to the State, the DOT specs
24 again, the supplemental specs that are in the package
25 and read the definition on the preformed holes under

1 455-3.10.4. "Preformed holes for bearing piles should
2 be constructed by drilling or driving and withdrawing a
3 suitable punch or chisel at locations of pile."

4 For every piling that we put in, we put a
5 preformed hole in, out there, or used this percussion
6 probe that we had. Whether he considered it a
7 preformed hole or not, the definition considers our
8 probe that we used a preformed hole.

9 In addition to that, on the beginning of the
10 project, prior to the meeting that we had, which the
11 minutes have been submitted, we preformed 20 to 30
12 holes out there in addition to the piling that was in
13 the contract amount, in an effort to extract those
14 piling on the southeast corner.

15 Again, my letters reflect that we were attempting
16 to preform the holes and encountering debris, according
17 to the definition, and even in the State's submittal
18 under the preformed holes under their definition of the
19 pay item in the Bible I call it, or the small State
20 book, which I think is an exhibit, it's in Exhibit 9 or
21 10.

22 "Work to perform the holes should consist, be
23 considered unforeseen except for the required
24 penetration," et cetera, et cetera. "Quantity to be
25 paid for under this item shall be the number of

1 completed pile holes," et cetera, "providing complete
2 installation of piles regardless of the type and pile
3 installation."

4 It doesn't refer to how deep the preformed holes
5 have got to go, but it does refer to if it goes in
6 excess of 20 feet that it's considered in addition to a
7 preformed hole at the unit price is the way I interpret
8 this.

9 This water was approximately 20 to 25 feet deep.
10 On removing these piling, we preformed holes around the
11 piling. We used two different types of a probe and
12 chisel and punch, one being a 60-foot I-beam with a
13 20-inch pipe around it with a jet running through it
14 with a vibratory hammer on the top of it trying to
15 cut out around it going 55 feet deep, which was in
16 excess of the 20 foot called for in the penetration,
17 which we considered that as additional work in the
18 modification. That's the reason we're not claiming for
19 that.

20 MR. ROEBUCK: It was part of your supplemental
21 agreement?

22 MR. HOBBS: That was part of the supplemental
23 agreement on the difficulty. In doing the preformed
24 holes, we considered we did well in excess of the
25 amount stated on the contract. There was no way that

1 they knew or could log the preformed holes other than,
2 say, where we put a piling in. And that's what they
3 did.

4 And their only explanation or defense of my claim
5 is that I'm just claiming the bid quantities. Sure I'm
6 claiming the bid quantities, because we had the bid
7 quantities plus some. But the plus some and the
8 difficulties were either covered in the supplemental
9 adding the preformed holes or the difficulty in the
10 supplemental on the change in conditions that we
11 negotiated.

12 If I would have known that I would have been cut
13 on my quantities or been aware of it, or even had
14 considered that, I would not have negotiated the
15 settlement that I did on the difficulty claim.

16 Again, you have on the -- you have the same
17 situation as on the draws, on the summary on the draws,
18 beginning on draw number 9, you show 91 percent of the
19 preformed holes. Now, that's already got the
20 supplemental additional holes in there. You come right
21 on down. Every draw after that, cuts it from 91
22 percent to 80 percent, to 80 percent, to 80 percent.

23 So, how did you do less holes than you did in the
24 beginning? He's supposed to be keeping up with it. He
25 was never down there on the barge, never down there on

1 the fender system. Now, he's not aware. All he's
2 taking is you had so many piling, so many holes, just
3 like you did on the pile removal, which is not correct.
4 We went all over that job punching holes, with two
5 different types of probes, as per the contract states
6 that we are allowed to do.

7 CHAIRMAN COWGER: Are you ready for DOT to rebut?

8 MR. HOBBS: Yes.

9 CHAIRMAN COWGER: Before DOT begins their
10 rebuttal, more than one time Mr. Hobbs has made
11 reference to the fact that Mr. Renfranz was not there
12 on the site. Did you all have an inspector on the job?

13 MR. MAXWELL: Yes, we did. We had two different
14 ones mainly on the job.

15 CHAIRMAN COWGER: Did they stay there pretty much
16 all the time?

17 MR. MAXWELL: Yes.

18 CHAIRMAN COWGER: Were they responsible for
19 keeping records?

20 MR. MAXWELL: For doing the daily reports, yes,
21 they are.

22 CHAIRMAN COWGER: Okay, DOT, let's hear what
23 you've got to say.

24 MR. MAXWELL: As you can see by the pile log, we
25 initially started paying Mr. Hobbs the three, which is

1 is what he was trying to do to remove pile.

2 MR. IVEY: Exhibit 9.

3 CHAIRMAN COWGER: Okay.

4 MR. MAXWELL: Which was under the intent of the
5 contract. Once we had the meeting in October, we
6 discussed how Mr. Hobbs was putting them in, because
7 the whole intent of this job was originally designed
8 around using an auger as a method of trying to extract
9 these piles because of the difficulty which we had
10 encountered with so many other ones.

11 And that's why Mr. Renfranz tried to insist on
12 Mr. Hobbs at least bringing an auger on site and trying
13 to do the extraction according to the way the contract
14 was set up.

15 Mr. Hobbs never did bring the auger on site, so
16 we never did get to see exactly how that operation
17 might have worked.

18 After the meeting in October, you can see that
19 the preformed pile holes basically was on a one-for-one
20 basis. And that's because Mr. Hobbs did not do the
21 additional preformed holes to try and extract. Almost
22 every pile out there was broken off after that point.
23 There was never an attempt to even pull the piles the
24 way they were supposed to be extracted completely.

25 Granted, there was a lot of debris out there, a

1 lot of situations, it was extremely difficult for him
2 to get ahold of the pile and extract it the full extent
3 the way it was supposed to be done.

4 A lot of these piles had been deteriorated and
5 been hit by construction equipment that had been
6 working in the area prior to Mr. Hobbs being in there.
7 So, they did break. There was no question about the
8 breakage on those.

9 But to go in and preform pile holes after our
10 meeting in October, the only time he did it was to
11 try -- when he tried to put in the new pile itself, not
12 to try to take out the other pile.

13 So, that's why you see the one-for-one basis
14 basically. There were certain ones that you can see
15 in the logs where he never even attempted to put the
16 preform pile in.

17 Like 17, in fact, it was driven out of line to
18 the point where he couldn't even do the pile wraps.
19 That's why the pile wraps were not done on that one,
20 as you can see by the notes and stuff in the
21 correspondence.

22 So, on that basis the account was taken as per
23 the work done and how it was performed on the project
24 and off of the daily logs taken by two inspectors.

25 MR. ROEBUCK: So, these summaries, the September

1 summaries where you were just arbitrarily allowing
2 three for one, more or less to try to estimate --

3 MR. MAXWELL: And he was trying to do it --

4 MR. ROEBUCK: That's probably why Mr. Hobbs is
5 saying he did a lot more performing than what he was
6 paid for. But you gave him three holes for one pile
7 and then he quit doing that?

8 MR. MAXWELL: Right, after our meeting in
9 October. That's when it changed.

10 MR. HOBBS: If that's the case, he owes me two
11 more holes right now. I've got one per piling that
12 went in, and he said I had two additional. If the
13 State is keeping up with it why doesn't it reflect it?
14 Why did you add preformed holes in December when we had
15 already discussed it in September at the meeting, what
16 we were going to do, to change it?

17 All of that was done prior to that meeting.
18 These preformed holes, it wasn't where the piling went,
19 was done prior to that meeting. We stayed out there
20 six weeks doing nothing but performing holes and pulled
21 two piling that were 55 foot.

22 So, I mean if I didn't do -- you know, I burned
23 up a vibratory hammer, I mean I just wore my equipment
24 out right there. We was running -- we stayed hooked to
25 them all night.

1 What I'm saying is if you had the inspector's
2 records they would reflect what we did out there, the
3 daily inspectors. Not this summary that was done
4 April 16th, doing all of the logs and setting them up
5 any way you want to. There shouldn't be any question
6 as to one hole per piling that went in. There
7 shouldn't be any question of the two you just got
8 through admitting.

9 If I stayed there six weeks, what was I doing six
10 weeks? That jet was working with the probe solid
11 continuously for six weeks. That's what the whole
12 thing was about, the additional effort that we was
13 having to go to to do this work. We was doing
14 preformed holes, preformed holes, preformed holes,
15 preformed holes.

16 MR. PRESCOTT: Did you all keep a record, since
17 you were doing all these extra preformed holes, did
18 you keep a record of how many you all had gone to the
19 Department and said, I want authorization for this as a
20 preformed hole?

21 MR. HOBBS: I wrote 20 letters that the State
22 never answered. It's on the record. In other words,
23 I'm not a mind reader. If they wanted an auger, they
24 should have said auger. They said preformed hole. The
25 specs say you can do a preformed hole with a chisel.

18
1 MR. PRESCOTT: That wasn't my question. I don't
2 have a problem with the definition of the preformed
3 hole. What I want to know is since you were apparently
4 indicating that you encountered a number, did you keep
5 some kind of a log that says I want your authorization,
6 I've done this many preformed holes, I want you to look
7 at them?

8 MR. HOBBS: It was a verbal. I myself talked to
9 Dave the inspector about it. I said what is the story?
10 Are you keeping up with these preformed holes?

11 He said I'm keeping up with it in my log. He
12 said Mr. Renfranz is not going to allow them because
13 you're not doing it with an auger. I said we're going
14 to end up in court over this because I want my credit
15 for the preformed holes.

16 You can't stay out there, as the daily reports
17 and my letters reflect, trying to remove piling. What
18 we were doing was putting holes, holes, holes.

19 We had to put preformed holes around the piling
20 that we had to remove to get to the piling that had to
21 be removed. Right off the bat if I kept up with it, it
22 would be owing me another hundred thousand dollars at
23 least in preformed holes.

24 CHAIRMAN COWGER: May I ask a question before
25 I forget to ask it of Mr. Maxwell. This discussion

1 about the use of the auger, where did, in the contract,
2 does it talk about using an auger?

3 MR. MAXWELL: There was a specific -- we were
4 trying to find whether it is in the special provisions
5 or on the plans that makes reference to auger being
6 preferred method of performing the holes to try and
7 remove these piles.

8 CHAIRMAN COWGER: Preferred?

9 MR. MAXWELL: Preferred.

10 CHAIRMAN COWGER: Not specific?

11 MR. HOBBS: We had no success in coordinating the
12 efforts on the project with the daily inspector. We
13 had tried. I tried a number of memos, intercompany
14 memos trying to coordinate it. The only coordination
15 we had was going on the record first writing the
16 Sarasota office then the Bartow office trying to get
17 some relief. It even went as high as trying to go on
18 up to Mr. Ivey's superior.

19 So, I mean we had great difficulty in
20 communicating on this project on everything.

21 MR. IVEY: Mike, may I see that set of plans?

22 CHAIRMAN COWGER: Let's go off the record a
23 minute.

24 (Brief pause)

25 CHAIRMAN COWGER: Are you all ready?

1 MR. HOBBS: I will say what I've got to say on
2 this --

3 CHAIRMAN COWGER: Wait a minute. Let me ask DOT,
4 on the preformed holes, do you have anything further to
5 say?

6 MR. IVEY: Yes, I will refer you to sheet number
7 R-7, note numbers H-3 and 4.

8 CHAIRMAN COWGER: Plan sheet R-7 notes which are
9 what, now?

10 MR. IVEY: H-3 and 4.

11 CHAIRMAN COWGER: Okay. Do you want to read them
12 to us?

13 MR. IVEY: Yes. Note 3, "Unless specified in
14 Table 3, all piling shall be removed entirely prior to
15 placement of new piling. If necessary, the contractor
16 shall preform at least two holes on either side of a
17 pile in order to release pile friction. The hole shall
18 be a minimum of 30 inches in diameter.

19 "Where piles are to be relocated, the existing
20 pile shall be removed to at least two feet below ground
21 line.

22 "The contractor shall be responsible for any
23 piles that are moved or damaged during the placement of
24 the new piles. The contractor shall realign any piles
25 removed, repair or replace any damaged piles as

1 directed by the engineer.

2 "The contractor shall temporarily remove fenders
3 timbered during pile replacement where necessary."

4 Note number 4, "The piling shall be driven in
5 place, jetted or set into preformed pile holes where
6 necessary. If preformed holes are used, the contractor
7 shall drill holes into the lime rock to obtain the
8 desired tip elevation of minus 40.6 feet, drilled holes
9 for the single piles shall be 20 inches in diameter.

10 "The holes shall be washed free of debris
11 followed by placement -- the holes shall be washed free
12 of debris followed by placing the piles and adjusting
13 the proper alignment and elevation as necessary. The
14 predrilled holes are to be allowed to refill naturally
15 or be filled in with sand by the contractor as
16 necessary for lateral stability. The engineer shall
17 decide which option, whether natural or mechanical
18 refilling, average depth approximately ten feet."

19 CHAIRMAN COWGER: I didn't hear anything
20 mentioned about an auger, but I did hear drilling and
21 I also heard something about a 30-inch hole.

22 MR. IVEY: Yes.

23 CHAIRMAN COWGER: Let us borrow that set of
24 plans. We are going to make a copy of that and make
25 that Exhibit 7.

1 Mr. Hobbs, do you have anything further to say
2 about that?

3 MR. HOBBS: Yes, the number of items on that.
4 Number one, you could not get a 30-inch probe or auger
5 down there anywhere. It was impossible. I put the
6 State on notice to that effect. I told them we was
7 attempting to use a 20 to 24-inch hole on my letter
8 dated September 22, 1993.

9 These were also addressed in the meeting that we
10 had and we went over it verbally. I'm submitting this
11 for the record, this letter. It also states on there
12 the conversation that I had with Dave in reference to
13 Mr. Renfranz not wanting to pay for the preformed holes
14 because they were not done with an auger.

15 I assume -- I did not get any correspondence in
16 reference to nonapproving this method throughout the
17 whole project. They continued to pay for these items
18 accordingly, so I assumed it was an acceptable method
19 of doing it.

20 MR. IVEY: I think the appropriate response is
21 the example of another good deed going unrewarded.

22 CHAIRMAN COWGER: I think we're through with that
23 item. Let's go on to the pile jackets then.

24 MR. HOBBS: The pile jackets. We spent about two
25 weeks on these pile jackets trying to correct this

1 item, on this 15-A, 15-B, in an effort to satisfy
2 Mr. Renfranz. I've got a number of correspondence with
3 Florida Mining on the concrete mix that they originally
4 sent out there that was not approved.

5 The pour was stopped midway in the process. My
6 fix was to take epoxy grout and finish topping it off
7 at about \$60 or \$70 a gallon, which I did. As a
8 result, when the inspector went to check all the
9 piling, he took a hammer, hit the fiberglass forms.
10 The fiberglass forms rattled on a number of them. He
11 said they had voids in them. We went back and drilled
12 and drilled and drilled and couldn't find voids.

13 Needless to say when concrete shrinks it
14 separates from the form. The concrete and fiberglass
15 shrink at two different rates.

16 We bought \$2600 worth of epoxy to go in there and
17 fix them. There was no fix needed. My situation was
18 originally they were poured with nonapproved grout.
19 I wrote Florida Mining a letter. I was prepared to, if
20 they told me to take them down and it was not approved,
21 to take the whole situation down if it cost \$100,000,
22 because I was going to let Florida Mining pay for it.

23 I've got correspondence to that effect. It was
24 never stated. It was finally dropped, I assumed that
25 it was approved as per we did it.

1 Today you can go out there. I would be perfectly
2 willing to test these piling. If there's something
3 wrong with them, I will fix them. If there's nothing
4 wrong with them, then the State pays me for my time in
5 addition to the contract amount of time for trying to
6 fix these piling.

7 CHAIRMAN COWGER: What do you say, DOT?

8 MR. ROBERTS: At the time we had the discrepancy,
9 Mr. Hobbs and I had a lot of discussion. Although it's
10 not a matter of record, we did discuss the -- we would
11 agree to leave them in place, then the issue would be
12 dropped. The issue is not dropped. We left them in
13 place without pay because they were unacceptable as
14 they were -- as noted in Exhibit 14. There was
15 vibration.

16 Mr. Hobbs is correct. You do have some shrinkage
17 at times, but in this particular case, it was reported
18 to me that we did find some voids, and we used a grout
19 gun, for lack of a better expression, to fill the voids
20 with some type of material.

21 But these piles, the jackets did separate, and
22 which will allow in time intrusion of salt water, once
23 these things separate like this. They were left in
24 place with no pay because we have -- we anticipated
25 having to go back in and repair in the future.

1 CHAIRMAN COWGER: Let me understand this just a
2 little better. The jackets, there was two of them in
3 question, as I recall, is that right?

4 MR. MAXWELL: Right.

5 CHAIRMAN COWGER: These jackets somehow or
6 another separated from the existing pile? So, there
7 was some sort of a void between the existing pile and
8 the jacket?

9 MR. ROEBUCK: You pour in there, Gene, there's
10 grout to fill up around between the jacket and pile.
11 You pour a concrete grout in there.

12 CHAIRMAN COWGER: Where was the void?

13 MR. ROBERTS: Between the form and the filler
14 material.

15 MR. ROEBUCK: The fiberglass and the filler.

16 MR. ROBERTS: And in the filler material.

17 MR. MAXWELL: Part of the problem was the mix
18 design, the slump was so small that it didn't allow for
19 the mix to fill all of the jacket. And when Mr. Hobbs,
20 like he said, went back in there to try and do it, he
21 did not give us any method as to how he was going to
22 fix it.

23 He was found using basically a, like a grease gun
24 type application with the epoxy trying to fill them.
25 When district bridge came down and looked at those

1 specific two pile jackets, they agreed that there was
2 voids there and recommended that it not be paid for
3 either. It was not acceptable work.

4 MR. HOBBS: They all had voids. They all
5 separated, every one of them. These are no different
6 than the rest of the piling. The only -- in an attempt
7 to fill up that space, you could have pumped grout in
8 there until hell froze over in that void where that
9 form had separated. They all separated. I don't know
10 whether it was the temperature, the weather or
11 whatever.

12 Now, the concrete had the strength that was
13 poured out there. It was the wrong mix, I will agree.
14 But we went in there, stopped, I think right at the
15 waterline, topped it off with epoxy.

16 I would be perfectly willing to go out there,
17 test it, core it, bust the cylinders, whatever. That
18 would have been the proper way rather than stopping the
19 pour right in the middle of the process.

20 I'm fully aware of my responsibility. I didn't
21 think the way DOT handled it -- I thought it was just
22 another one of Mr. Renfranz's tricks, and that's the
23 way I approached it.

24 And my conversation with Dick Roberts was that
25 it would be dropped. I thought the problem would be

1 dropped, not the money would be dropped, needless to
2 say. I had about 10 percent of what it cost to do that
3 in the draw anyway.

4 CHAIRMAN COWGER: Let me ask you one question
5 now. You were pouring -- these ones you topped off
6 with the epoxy, you were pouring some sort of a
7 concrete grout in there?

8 MR. HOBBS: Yes, sir.

9 CHAIRMAN COWGER: At some point around the
10 waterline you stopped and then you put epoxy in?

11 MR. HOBBS: We were ordered to stop because the
12 mix -- we had started pouring it. Mr. Renfranz come
13 out, looked at the ticket. Evidently Florida Mining
14 had the wrong mix that they sent out there. But it was
15 a mix that had been approved on another project for the
16 same application.

17 CHAIRMAN COWGER: So, you stopped?

18 MR. HOBBS: It did have the strength, but the
19 size of the grout was different. We were pumping it in
20 from the bottom up.

21 CHAIRMAN COWGER: So, you stopped?

22 MR. HOBBS: We stopped right in the middle.

23 CHAIRMAN COWGER: You did the --

24 MR. HOBBS: We had the epoxy to come and top it
25 off. We wanted to make sure it would bond to the

1 existing concrete and wouldn't have a cold joint there.
2 That was standard fix for concrete patching.

3 CHAIRMAN COWGER: I've got you.

4 MR. ROEBUCK: We've had enough of that.

5 CHAIRMAN COWGER: DOT, do you have anything
6 further to say?

7 MR. IVEY: Don, do you want to say something?

8 MR. MAXWELL: Just that the pile, there was two
9 types of pile jacket repairs on this. One called for a
10 specific mix design, one called for a concrete seal.
11 15-A was a seal. That was part of the reason why the
12 conflict with the mix that he was using on this one.

13 Again, the mix only had an inch and a half slump
14 according to the records, so it's not going to go into
15 the jacket and consolidate properly without having
16 voids in it.

17 So, that's why Mr. Renfranz stopped the pour so
18 that hopefully the jacket could have been removed and
19 replaced, would have been the proper method for repair.
20 However, Mr. Hobbs did not even consider that. He
21 filled the jacket and tried to get it acceptable. It
22 was not an acceptable method of operation.

23 MR. HOBBS: We sent a number of letters to DOT on
24 this from -- copies of the correspondence, Florida
25 Mining, their backup, signed by their engineer stating

1 the strength of the concrete, the validity of what we
2 did. I think also we did send a letter from Pilgrim on
3 the method that we were using to do the fix, also, the
4 supplier of the epoxy.

5 And the inspector was out there and said that's
6 all you can do, when we went back and fixed it, tried
7 to fix voids that did not exist. He could verify it.
8 He did make notes in his file. He did accept the
9 project as complete, as per our notes.

10 CHAIRMAN COWGER: Okay. Does either party have
11 anything else to say about these issues?

12 MR. HOBBS: I would like to summarize.

13 CHAIRMAN COWGER: All right.

14 MR. HOBBS: In summary, according to my draw
15 schedule amount and according to my bond premiums,
16 which I paid after they did an audit on this project,
17 after completion, I paid bond premiums on \$626,426.85
18 was my bond premiums at 2 and a half percent. That
19 money has been spent.

20 I'm aware this is a unit price project. We had
21 in excess of the units -- I'm not trying to make up the
22 units, I'm trying to make up the gap between the extra
23 and the original, is what I'm trying to make up.
24 There's a difference of \$37,000 here.

25 The only difference, the only credit that the

1 State has got due is the two pile wraps and the \$60 on
2 the sign should be subtracted from that. I'm due that.
3 I've got \$3,000 in expense for this claim, counting the
4 thousand dollar arbitration and my expense of preparing
5 it, coming over here, being off a day at work. My time
6 is worth something.

7 I've got interest since this claim was certified.
8 So, I should be due the 37,457, or somebody should show
9 me where that money went. It got eaten up. They
10 played with the money every draw, every draw. The
11 documentation shows that. It got shuffled and shifted
12 around.

13 Now, the only way I can compute the amount of the
14 contract is this. I can tell you what I didn't do, but
15 nobody can tell me what I did do. That's the problem
16 with this contract. It's here. The records show it,
17 \$37,457.29, less two pile wraps, less the signs that
18 I cannot prove. The signs were there.

19 We were 145 days over the time, which we
20 negotiated. I did not have the backup on the signs.
21 That's the reason I didn't claim the signs. The two
22 wraps were not wrapped because the piling would not go.
23 They weren't misplaced. They were placed where I could
24 put them and it was the only place I could put them.
25 It was too far to wrap. I did have approval to put

1 them there or they never would have been paid for.

2 In conclusion, I need my money. We're a small
3 disadvantaged company. Since this has happened we have
4 done no DOT work. We need the interest on the money,
5 we need to be reimbursed for the \$3,000 that we've got
6 in expense which we feel like is reasonable, which
7 could have been 10 if I had let a lawyer handled it.
8 I appreciate your time.

9 CHAIRMAN COWGER: To summarize what you're
10 asking for, in addition to the amount that you're
11 claiming, you're also claiming \$3,000 for your expenses
12 related to processing this claim plus interest on
13 whatever you're awarded?

14 MR. HOBBS: That's correct.

15 CHAIRMAN COWGER: At what percent?

16 MR. HOBBS: One percent per month.

17 MR. IVEY: Gene, I object to that.

18 CHAIRMAN COWGER: You certainly have the right to
19 do that.

20 MR. IVEY: I see here in this correspondence from
21 Mr. Hobbs, total amount of the claim, \$30,635.90.

22 MR. PRESCOTT: That's right.

23 MR. HOBBS: Well, the record speaks for itself.

24 CHAIRMAN COWGER: What are you objecting to, the
25 add-ons?

1 MR. IVEY: Yes.

2 CHAIRMAN COWGER: On what basis? I understand
3 what you're saying.

4 MR. IVEY: Well, he's coming up with some
5 additional claim here that we haven't even had the
6 opportunity to address. I think it's totally unfair.

7 MR. HOBBS: The draws speak for themselves. You
8 add it up, you got money missing. Where did it go?
9 I paid the bond premiums on it. The contract amount is
10 for that. You got to tell me what work I did do or
11 didn't do. You all haven't proved what I didn't do.

12 MR. IVEY: What you did do, Mike, is what we paid
13 you for.

14 MR. HOBBS: Well, that's why we're sitting here.

15 CHAIRMAN COWGER: I think we have heard enough
16 from everybody.

17 Mr. Prescott, do you have any questions?

18 MR. PRESCOTT: No questions.

19 CHAIRMAN COWGER: Mr. Roebuck?

20 MR. ROEBUCK: No questions.

21 CHAIRMAN COWGER: This hearing is hereby closed.
22 The board will meet in approximately six weeks to
23 deliberate on this claim. You will have our final
24 order shortly thereafter.

25 (Whereupon, the hearing was concluded at 11:05 a.m.)

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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; and that the transcript is a true record of the testimony given.

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 2nd day of November, 1994.

Catherine Wilkinson

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 2nd day of November, 1994, by CATHERINE WILKINSON who is personally known to me.

Kathleen Grow

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