

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 Roenca-Dade, Inc. versus the Florida Department of Transportation on Project No. 87120-3534 in Dade County, Florida, both parties are advised that State Arbitration Board Order No. 7-95 has been properly filed on October 25, 1995.

H. Eugene Cowger

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

S.A.B. CLERK

OCT 25 1995

FILED

Copies of Order & Transcript to:

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

Rolando J. Encinosa, Jr., President/Roenca-Dade, Inc.

STATE ARBITRATION BOARD

ORDER NO. 7-95

RE:

Request for Arbitration by
Roenca-Dade, Inc. on
Job No. 87120-3534 in
Dade County

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

H. Eugene Cowger, P. E. Chairman
Bill Deyo, P. E. Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 10:15 a.m., Thursday, August 31, 1995.

The Board Members, having fully considered the evidence presented at the hearing, now enter their order No. 7-95 in this cause.

ORDER

The Contractor presented a request for arbitration of a claim totaling \$250,000 for extra work installing a water line, extended home office and job site overhead and release of liquidated damages assessed by the Department of Transportation. The Contractor reduced the amount claimed for home office and job site overhead from \$215,533.27 to \$37,958.00 in order to keep the total amount of his claim within the jurisdictional limit of the State Arbitration Board.

At the beginning of the hearing, the Contractor stated that his claim is \$250,000 plus accrued interest from April 1, 1994 on any amount awarded.

The Contractor also pointed out that his claim does not cover approximately \$60,000 in pending payment due him from the Department of Transportation.

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

PART I Release of Liquidated Damages

163 CD @ \$1,025 = \$167,075.00

Work on this project was disrupted by the effects of Hurricane Andrew beginning on August 23, 1992. We requested a suspension of charging of contract time because of the longer term impact of this severe hurricane and DOT granted a suspension covering the 92 calendar day period beginning August 31, 1992 and ending November 30, 1992. DOT later reduced this suspension to 28 calendar days ending September 27, 1992, because we returned to work on the project on a limited basis. We contend that the personnel working during this period were not efficient. Our payroll records indicate that we did not consistently have a significant number of personnel on the project during October.

We also requested and DOT denied a 43 day extension of the allowable contract time for the period immediately after November 30, 1992. This request was based on several impacts of Hurricane Andrew including a shortage of trucks, and the inability of subcontractors to return to the project.

On January 29, 1993, DOT ordered suspension of all work on the project until alleged pavement marking deficiencies were corrected. This order included bridge construction which was in no way related to pavement markings. Our striping subcontractor was not available because his operations had been devastated by Hurricane Andrew, so we immediately began corrective work, but could not complete it in time to avoid demobilization of our bridge contractor, who at the time of the suspension of work by DOT was preparing to set piles in predrilled holes. DOT withdrew the order to suspend work on February 5, 1993, but our bridge subcontractor had committed to other work and could not immediately return to the project. This impacted progress on the project by 21 calendar days.

The bulkhead wall scheduled to be completed by March 23, 1993 was not completed until April 8, 1993, because the crew we needed to do this work was involved in Hurricane Andrew cleanup until early February. Also, we were delayed in our work on the bulkhead awaiting completion of adjoining work by others. We requested an extension in the allowable contract time of 14 calendar days and DOT denied our request.

The FC-2 friction course was completed on the entire project on November 30, 1993 and the traveling public had full use of the project after that date. The only work remaining to be accomplished at that time was some sodding, permanent striping, traffic signal induction loops and roadway signs. Liquidated damages should not have been

assessed for the entire period between November 30, 1993 and April 1, 1994. During that period we did about \$40,000 worth of work, but were assessed over \$120,000 in liquidated damages.

PART II Extra Work in Relocating Water Main.

\$44,967.00 plus a time extension of 18 CD

Relocating of an existing 30" water main owned by the Miami-Dade Water and Sewer Authority (WASA) was added to our contract with DOT by a Supplemental Agreement. The plans for this work were provided by WASA.

As we carried out this work, we found that the existing utilities, including WASA facilities, were not in the location or at the elevation shown in the plans furnished to us. These differing conditions changed the manner in which the work was accomplished and made it much more time consuming and costly. Upon discovering that the plan information was incorrect, we gave notice of our intent to claim additional cost to WASA, because they were providing technical inspection. We realize that we do not have a contract with WASA for this work, but felt that they would ultimately be responsible for reimbursing us through our DOT contract for any additional costs we incurred.

PART III Overhead (Job Site and Home Office) \$37,958.00

We are claiming compensation for increased costs due to extended unabsorbed home office overhead for the extended performance period and for extended job site overhead costs.

We reduced the amount claimed from \$215,533.27 to \$37,958.00 in order to allow our claim to go to arbitration and thus be resolved in a expeditious manner.

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

PART I

During the period between September 28, 1992 and November 30, 1992 for which the Contractor requests reinstatement of the suspension of contract time, work under way was paid for under contract pay items. DOT procedures, based on statutes, do not allow payment for work unless there is also time running. Therefore, we had not other choice than to rescind the suspension of charging of contract time during that period. Also the additional time granted by Supplemental Agreement No. 15 (Snapper Creek excavation) overlapped this period.

For the 43 calendar day period from December 1, 1992 to January 12, 1993 the project records indicate: (1) during December 1992, the Contractor had sufficient personnel on the project to proceed with the work; (2) beginning in January 1993, the Contractor abandoned the work to pursue work on Dade County Projects that were in delinquent status.

By January 29, 1993, deterioration of pavement markings (stripes) had created an extremely unsafe condition. We had constantly asked the Contractor to update the striping as required by the contract, but he had not done so. The suspension of work was ordered to pressure the Contractor to

restore the traffic markings. If the Contractor had mobilized his striping subcontractor, instead of using his own inexperienced force, the corrective work could have been accomplished in a expeditious manner and it would not have been necessary for his bridge subcontractor to demobilize.

The project records indicate that the Contractor had sufficient personnel on the project to perform the bulkhead work as early as October, 1992.

Even though warned several times well in advance, the Contractor failed to issue a purchase order for the signs in a timely manner. Acquisition time is necessary in order to process shop drawings and fabricate the signs.

GENERAL STATEMENT IN REGARD TO CONTRACTOR'S PERFORMANCE

The Contractor finished the project 163 calendar days late, because it could not perform its work in a timely fashion nor did it properly supervise and coordinate its subcontractors. A comparison of actual progress to approved planned progress reveals that the Contractor lost pace with its planned progress beginning in late 1992 and this continued until completion of the project.

PART II

DOT was not made aware of the Contractor's intent to claim additional compensation for relocating the 30" water main until after the work on this item was completed. The Contractor initially submitted his claim to WASA. He did not submit the claim to us until after WASA denied it. WASA's

position is that additional payment is not justified, because any problems that appeared during construction were resolved in the field to the best interest of the Contractor. Normal WASA contract documents stated that underground utilities are shown in the plans to an accuracy of two feet from actual location and all of them were within that tolerance.

DOT is not responsible for payment of this claim because we were not furnished proper notification.

PART III

We have clearly shown that the only reason for finishing the project 163 days late was the inability of the Contractor to properly manage the work. Therefore, payment for overhead is not justified.

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

PART I

The period covered by the suspension of contract time that was later rescinded was covered by the additional time granted by Supplemental Agreement No. 15.

The Contractor's overall operations were apparently still being impacted by the aftermath of Hurricane Andrew into early 1993.

DOT suspended work on non-related bridge operations in order to enforce a contract provision requiring maintenance of roadway pavement markings. Notice of intent to suspend all work was not given in writing.

The project was substantially completed approximately 100 calendar days prior to the date on which conditional acceptance was made.

There were periods during 1993 that the Contractor did not actively pursue the work with an adequate work force.

PART II

The contract for relocation of the 30" water main was between DOT and the Contractor. No evidence was submitted substantiating that WASA specifications were added to the contract by the Supplemental Agreement. It is apparent that WASA handled technical inspection of this work and DOT merely passed payments from WASA through to the Contractor.

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

The Department of Transportation shall reimburse the Contractor for his claim as follows:

PART I

Release 120 calendar days of the liquidated damages assessed.

PART II

\$30,000.00

The Board recommends that the Department pursue recovery of this amount from the Miami-Dade Water and Sewer Authority.

PART III

\$25,000.00

INTEREST IN THE AMOUNT OF:

\$12,000.00

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 574.80. for Court Reporting Costs.

S.A.B. CLERK

OCT 25 1995

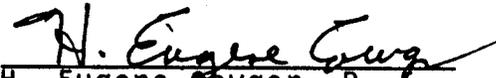
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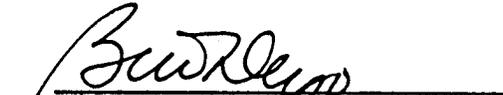
Tallahassee, Florida

Dated: 25 October 1995

Certified Copy:


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


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


Bill Deyo, P. E.
Member


John P. Roebuck
Member

25 October 1995
Date

STATE ARBITRATION BOARD

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

March 27, 1996

Mr. F. Alan Cummings
Cummings, Lawrence & Vezina, P.A.
P. O. Box 589
Tallahassee, Florida 32302-0589

Re: Roenca Dade, Inc.
Florida DOT Job No. 87120-3534
Cummings, Lawrence & Vezina File No. 606-00

Dear Mr. Cummings:

The State Arbitration Board received your letter of March 20, 1996 giving notice that your firm claims a lien against payments to Roenca-Dade, Inc. with respect to any claim asserted by them against the Florida Department of Transportation.

Please be advised that on October 25, 1995, the Board issued an order directing the Florida Department of Transportation to reimburse Roenca-Dade for a claim arising out of the contract for construction of State Job No. 87120-3534. The award was in the amount of \$67,000.00 plus release of 120 calendar days liquidated damages the Department had assessed at \$1,025.00 per day.

We have no knowledge of the status of payment under the aforementioned order by the Department. In any event, the Board has no control over payment to Roenca-Dade, Inc. at this time.

Sincerely,

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

LAW OFFICES

CUMMINGS, LAWRENCE & VEZINA, P.A.

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POST OFFICE BOX 589
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FT. LAUDERDALE, FLORIDA 33302-1116
TELEPHONE (954) 761-8700
FACSIMILE (954) 524-6927

Tallahassee

March 27, 1996

VIA HAND-DELIVERY

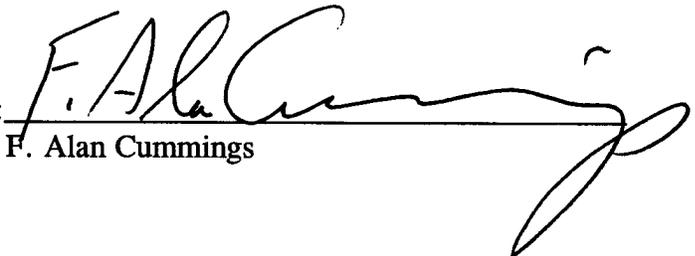
Mr. H. Eugene Cowger, P.E.
State Arbitration Board
1007 DeSoto Park Drive
Suite 202
Tallahassee, Florida 32301

Re: Roenca Dade, Inc.; FDOT Project Number 87120-3534
Our File No. 606-00

Dear Mr. Cowger:

Cummings, Lawrence & Vezina, P.A., counsel to Roenca-Dade, Inc., hereby gives notice that it claims a lien in the amount of \$45,555.18 on any recovery, proceeds or other consideration to be paid to Roenca-Dade, Inc. with respect to any judgment, award, settlement or compromise of the claims asserted by Roenca-Dade, Inc. against the Florida Department of Transportation in this action or otherwise relating to the referenced project.

Cummings, Lawrence & Vezina, P.A.

By: 
F. Alan Cummings

FAC:cdw

cc: Mr. Louis E. Stolba
Mr. Carlos C. Lopez-Cantera
American Home Assurance Company

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Jack Roebuck
 Mr. Bill Deyo

APPEARING ON BEHALF OF ROENCA-DADE, INC.:

Mr. Carlos Lopez-Cantera
 Mr. Rolando Encinosa

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Ronald Steiner
 Mr. Steve McCue
 Mr. Steve Levy

* * *

I N D E X

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P R O C E E D I N G S

1
2 CHAIRMAN COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with
4 Section 337.185 of the Florida Statutes.

5 Mr. Bill Deyo was appointed as a member of the
6 Board by the Secretary of the Department of
7 Transportation. Mr. John Roebuck was elected by the
8 construction companies under contract to the Department
9 of Transportation.

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

12 Will all persons who will make oral presentations
13 during this hearing please raise your right hand and be
14 sworn in.

15 (Whereupon, all witnesses were duly sworn.)

16 CHAIRMAN COWGER: The documents which put this
17 arbitration hearing into being are identified as the
18 request for arbitration, the notice of arbitration and
19 all of the submittals that were with the request for
20 arbitration are hereby identified -- are hereby
21 introduced as Exhibit 1.

22 Exhibit 2 is a rebuttal package submitted by the
23 Department of Transportation in notebook form in July
24 of 1995.

25 Exhibit 3 is a supplemental rebuttal package

1 submitted by the Department of Transportation in August
2 of 1995. Exhibits 2 and 3 were furnished to the
3 contractor prior to this hearing.

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

6 CHAIRMAN COWGER: Does either party have any
7 other information which it wishes to put into the
8 record as an exhibit?

9 (Discussion off the record)

10 CHAIRMAN COWGER: Back on the record. During the
11 time we were off the record, exhibits were exchanged.
12 I will now identify them.

13 Exhibit 4 is a package of payroll data submitted
14 by the contractor, Exhibit 5 is a copy of the monthly
15 progress meeting number 23 report dated September 24,
16 1993, Exhibit 6 is the monthly progress meeting report
17 number 25 dated December 2, 1993.

18 Exhibit 7 is a letter dated May 17, 1991 to the
19 department from Mr. Lopez-Cantera. The exhibits up to
20 this point, 5 through 7 were contractor submitted
21 exhibits.

22 Exhibit 8 is a tabulation of weather data --
23 no, tabulation of manpower data submitted by DOT.
24 Exhibit 9 is a package of correspondence, the first
25 page being an August 31, 1992 memo to contractors in

1 District 6 for Mr. Steiner.

2 Exhibit 10 is a package of correspondence, again
3 submitted by DOT, and the top piece of correspondence
4 is a letter dated July 17, 1992, to Mr. Lopez-Cantera
5 from Mr. Herndon of the Metropolitan Dade County Public
6 Works Department.

7 Did I get them all? Okay.

8 (Whereupon, Exhibit Nos. 4 through 10 were received in
9 evidence.)

10 CHAIRMAN COWGER: Does either party wish
11 additional time to examine the exhibits that were
12 submitted this morning? Hearing nothing, we will
13 proceed on.

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

21 The parties are requested to assure that they
22 have received -- that they do receive properly
23 identified copies of each exhibit submitted during the
24 course of this hearing and to retain these copies. The
25 Board will furnish the parties a copy of the court

1 reporter's transcript of this hearing when we send you
2 the final order, but we will not furnish copies of the
3 exhibits.

4 The hearing will be conducted in an informal
5 manner, first the contractor's representative will
6 elaborate on their claim and then the Department of
7 Transportation will offer rebuttal.

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

12 It is now appropriate that the contractor begin
13 presentation of his claim. We like -- the Board likes
14 to have as your first statement the total amount that
15 you're claiming and then you can proceed on. And
16 I would hope that you would proceed pretty much in
17 accordance with the claim that you submitted as
18 Exhibit 1.

19 MR. LOPEZ-CANTERA: Are you ready for us?

20 CHAIRMAN COWGER: Yes.

21 MR. LOPEZ-CANTERA: Thank you,
22 Mr. Chairman. My name is Carlos Lopez-Cantera with
23 Roenca-Dade, Inc., and I have Rolando Encinosa with me
24 here, who is my partner.

25 The total amount of our claim numerically far

1 exceeds the \$250,000, however because of the rules of
2 these proceedings, we are limiting our claim to
3 \$250,000 plus accrued interest as may be established by
4 this panel.

5 MR. ROEBUCK: Should he break it down in the
6 items?

7 MR. LOPEZ-CANTERA: That is going to be part of
8 my presentation, but I will be happy to do that.

9 MR. ROEBUCK: Then we can address it item by item
10 instead of in toto.

11 CHAIRMAN COWGER: I want to address the issue of
12 the accrued interest. That's not mentioned in your
13 original claim submittal. I can't say at this moment
14 how the Board will deal with that, but I do have one
15 question.

16 Are you saying that if the Board awards some
17 amount less than the \$250,000 that you're asking for
18 accrued interest on that amount?

19 MR. LOPEZ-CANTERA: That is correct. Whatever
20 the amount the Board finally decides we are entitled to
21 should be -- interest should be added to that from
22 April 1, 1994 to date, or to the date the money is
23 actually paid, I guess.

24 CHAIRMAN COWGER: We understand what you are
25 saying. The Board in our deliberations will have to

1 decide what to do with that issue. You are really
2 claiming more than our statutory limit by doing this,
3 and we are going to have to sit down and talk about
4 that.

5 Okay. DOT, did you have any comment on the
6 interest issue only?

7 MR. STEINER: No.

8 CHAIRMAN COWGER: Okay. Then I would suggest
9 that you do as Mr. Roebuck just mentioned. We've got
10 three parts to the claim, the claim for the extra work
11 on the waterline, your claim for overhead costs and
12 return of liquidated damages. There's three parts to
13 it. DOT has addressed it in their first rebuttal deals
14 with the liquidated damages issue.

15 Would it be acceptable for you to --

16 MR. LOPEZ-CANTERA: I would prefer to present it
17 in that order because I think it would keep everything
18 in the same order.

19 CHAIRMAN COWGER: It would be a lot easier for
20 the Board if you will do that.

21 MR. LOPEZ-CANTERA: Yes, I will.

22 MR. ROEBUCK: Call that claim one?

23 MR. LOPEZ-CANTERA: My first presentation would
24 be liquidated damages and the time extensions.

25 MR. ROEBUCK: Is there any preference to the

1 other two?

2 MR. LOPEZ-CANTERA: I will do the canal crossing
3 second and then finally the overhead issue.

4 CHAIRMAN COWGER: Okay.

5 MR. LOPEZ-CANTERA: I think that very quickly by
6 way of background I will tell you that this job was bid
7 in '90, started in '91, and is basically
8 reconstruction, adding two lanes to what we call down
9 there the Tamiami Trail, which is U.S. 41, Southwest
10 8th Street. I think we are all familiar with it.

11 The original contract amount was \$5,100,000. And
12 the contract time was 650 days.

13 The Department granted extensions of time of 202
14 days for a total of 852. There was an additional 163
15 days by the Department's count that they are
16 considering as liquidated damages.

17 If we look at the 852, that is the original
18 contract time plus the granted extensions, the contract
19 was increased time-wise by 31 percent. The dollar
20 amounts was increased by 7 and a half percent for the
21 same time and the same work.

22 If you increase the contract time by the 163,
23 that is you agree with me that that's not liquidated
24 time, damage time, but it's actually contract time, and
25 that my claim is valid and therefore the contract has

1 increased, then the contract time will have increased
2 by 56 percent, whereas the money has increased by 9
3 percent.

4 Now, I want to make one thing clear, which is not
5 in any of the documents but there is pending a payment
6 from the Department on the contract of about \$60,000,
7 according to their numbers, which is not in dispute
8 here, it is not going to be considered. That \$60,000
9 is not part of the money that you will be judging or
10 considering. That money is not in dispute at this
11 time.

12 Now, I want to make that clear on the record so
13 that whatever amount you decide on will be plus the
14 \$60,000 that they have already agreed to.

15 Now, if you look at the rebuttals, for time, for
16 money, you will see that the Department's position is
17 that we are entitled to no time and no money. However,
18 that's in direct contradiction to letters the
19 Department has written to us and the positions they
20 have taken in the past.

21 I would like to show you a letter of January 27,
22 from Mr. Joe Thornton, Department of Transportation.
23 These letters are all in the package, but we just want
24 to point out that in this letter the Department has
25 taken page two -- the Department specifically admits

1 that because of the hurricane we are entitled to
2 additional time. That time they estimate at that time
3 to be approximately 60 days. This 60 days, where it is
4 later taken back and not given to us anymore.

5 In the first page of that letter at the bottom
6 you will see that there is also room for a question as
7 to we are entitled to time in another location where we
8 requested time.

9 Later in 1995 -- much later in 1995 the
10 Department claim review, looked at our claim and
11 decided that we were entitled to \$53,000 in
12 compensation beyond the contract amount. We rejected
13 that offer and therefore it was rescinded.

14 However, there is no doubt that District 6
15 looking at this claim has decided that both time and
16 money were forthcoming to us. We rejected the amounts
17 because we think they are far short of what we are
18 really entitled to; however, they have now taken the
19 position that we are entitled to no time and no money.

20 CHAIRMAN COWGER: Excuse me, no time or no money
21 over and above what they have already granted?

22 MR. LOPEZ-CANTERA: Exactly. Now, let's talk
23 about Hurricane Andrew. As we all know Hurricane
24 Andrew hit south Florida on August 24, 1992. Some time
25 after that the Department wrote us a letter granting us

1 92 days of extension from the time of the hurricane.

2 And in that letter -- that letter is actually in
3 response to a request for such extension that we sent
4 on September 14th. You will see there they are
5 granting us 92 days.

6 Now, if you look at our chart, and we will give
7 you copies of the way we see manpower of the job, you
8 will see that on August 24th, of course, our population
9 on the job site goes down to zero. It stays at zero
10 for several weeks.

11 Now on September 28th there is one employee --
12 one employee that worked eight hours on Monday and five
13 and a half hours on Tuesday, one employee. Because of
14 that one employee being on the job site, the Department
15 writes us a letter saying -- first informs us verbally.

16 You have to remember at the time things were very
17 hectic down in south Florida. A lot of this was
18 verbally. A letter followed in a few weeks. But we
19 were told verbally, we are cutting your time, you are
20 back on time.

21 We had a guy there one day. And after that for
22 two weeks we had zero people on the job.

23 CHAIRMAN COWGER: We are talking about --

24 MR. LOPEZ-CANTERA: The 29th of September. Now,
25 if you look at the big long line, that's October 20th.

1 That week of October 20th looks like we had 20 people
2 out there. This is our own numbers we are showing you
3 there. It is true. Our payroll report will show you
4 that.

5 However, what you need to remember and if you
6 look at the payroll request, of the 20 employees, 16
7 worked one day and four worked a week. So, the numbers
8 are misleading at best.

9 In fact, I will refer you to their rebuttal in
10 number 2 -- and by the way, we got this a day and a
11 half ago, and I think we have been able to digest it
12 pretty well, but I do want to make -- put it on the
13 record that we were provided a copy of this a day and a
14 half ago.

15 But no matter. If you look at their chart of
16 what happened in the same period of time, and this you
17 have in your rebuttal number 2, you will see that they
18 are saying that in September we had an average of 6.3
19 people on the job and that in October we had an average
20 of 9.5 people on the job.

21 I would like for somebody to explain that to me.
22 Their own chart in September shows that we had no one
23 on the job until the 28th, zero people. And on the
24 28th, 29th and 30th they show five people.

25 I can refer you to our certified payrolls that

1 will show there are zero people on the job all of
2 September and one person on the 28th and 29th. If you
3 do the numbers, the mathematics, it's less than one,
4 the average for September is less than one. I don't
5 know why the Department insists on putting forth
6 information like this which is clearly incorrect.

7 The average for October is also incorrect. We
8 have also provided you with a copy of their charts for
9 October, which is also incorrect. Please look at our
10 payroll records.

11 Now, granted the Department's standard
12 specifications require that under a time suspension you
13 will have some personnel on the job to take care of MOT
14 and things like that. Since we had no employees, our
15 supervisors, my partner and myself, we were out there
16 picking up barricades and things like that. We don't
17 count that as payroll on the job.

18 I don't know why the Department insists on
19 misleading you in telling you we had an average of six
20 people per day in September when it's clearly not true.
21 Even under their calculations, even if their numbers
22 were true, which it is not, that we had five people on
23 Monday, Tuesday and Wednesday, the average is still
24 wrong. It's less than one person per day. In October
25 it was less than two. We had three weeks where we had

1 zero people on the job.

2 CHAIRMAN COWGER: Let me understand this calendar
3 just a minute if I could interrupt you. These numbers
4 I see like on the 28th of September --

5 MR. LOPEZ-CANTERA: The first number is our
6 people, the second is our subcontractors' people.

7 CHAIRMAN COWGER: Prior to the 28th, you had no
8 one on the job.

9 MR. McCUE: The average is based on the number of
10 people on the job divided by the number of days they
11 worked on the job. If they worked three days, the time
12 was suspended in that month, he averaged when he
13 worked, 6.3 men per day. It's not 6.3 men per day for
14 every day of the month, it's for the days they were
15 actually on the project.

16 MR. LOPEZ-CANTERA: This is clearly misleading
17 from the chart. The chart says this is the average
18 personnel on the job site. It doesn't say for the days
19 that were there. It says average personnel on the job.

20 CHAIRMAN COWGER: Let me make sure I understand
21 this. Let's look at the 6.3 in September. The way
22 that was obtained, looking at the calendar now, you
23 took 6, 5, and 9, added them together and divided by
24 three.

25 MR. McCUE: Correct.

1 MR. LOPEZ-CANTERA: When I went to school that's
2 not the way you average the number of people on a
3 month-by-month basis. They don't say days, they say
4 month of September.

5 MR. McCUE: This is --

6 MR. LOPEZ-CANTERA: If you will allow me to
7 complete my statement. This is clearly an indication
8 they are trying to mislead you or they made a mistake.
9 I am not saying they did it on purpose. But you need
10 to keep that in mind. You may refer to our certified
11 payroll forms which you have been provided copies. The
12 dates on the tabs match the dates on the weeks of the
13 payrolls the way we end the weeks.

14 You will see that they say no personnel on the
15 job site. Clearly, and they were certified payrolls.
16 They were never challenged, never returned to us,
17 reviewed by the Department of Labor and everybody else.
18 Whenever we did make a mistake, we got hammered on it.
19 It clearly shows you that the information that they
20 provided you is incorrect.

21 CHAIRMAN COWGER: Question. This was developed
22 from your payroll records?

23 MR. LOPEZ-CANTERA: I have no idea where this was
24 developed.

25 CHAIRMAN COWGER: This was the DOT?

1 MR. LOPEZ-CANTERA: That's the DOT form.

2 CHAIRMAN COWGER: I've got you. Go ahead.

3 MR. LOPEZ-CANTERA: The letter where they cut off
4 our time, which is dated -- I believe -- it's part of
5 the package that you have, says in there that if we can
6 establish that we were inefficient after they started
7 our time, they will consider it.

8 Well, for three weeks we were very inefficient
9 because we weren't on the job, only one person was
10 there. What happened here? Looks like we have a lot
11 of people coming back on the job after we went back on
12 the job.

13 Let me tell you, it's very clear. This is the
14 only job. This is the furthestmost north job that we
15 had. This is outside the northern fringes of the
16 hurricane. As you go south, the devastation was
17 greater and greater. The other jobs we had were south
18 of this job and could not be started. Some of our
19 employees we never saw again. Some did come back to
20 work but had no home in many, many instances and they
21 were living in a tent or something.

22 It's probably not very good economics, but we
23 cannot turn to somebody and say go home, we have no
24 work for you. We put them all on this job. Were they
25 efficient? Of course not. When our payroll numbers

1 are here for months and months before the hurricane,
2 doing this is very inefficient. We think it was good
3 for our employees and we decided to do it. Were we
4 efficient after that? Definitely not.

5 In fact, their own submittal to you of a daily
6 report in December of 1992 -- this is already two or
7 three months after we returned to work -- will show you
8 that we were delivering rock with our own trucks. As
9 you know, every truck from New York south was in south
10 Florida hauling debris.

11 How could we get rock delivered to the job? We
12 used our own trucks. We had five. Now this is a \$5
13 million job. Five trucks delivering rock to the job is
14 efficient? This is what they are telling you? This is
15 the reason we are back on production because we have
16 five trucks delivering rock, two rock crews, finishing
17 crews.

18 It's absurd. There is no way we can be efficient
19 under these circumstances, yet this is what they are
20 using to tell you we were back on the job. Yes, we
21 were there physically. Were we productive? Absolutely
22 not.

23 Now, we went ahead and detailed in our letter of
24 August 1993, which is after we knew exactly where we
25 were, this letter is also part of the package, we

1 detailed --

2 MR. ENCINOSA: There's three copies of letters
3 stapled together.

4 MR. LOPEZ-CANTERA: The last copy is a letter
5 dated August -- that's it. We highlighted the problems
6 we had and the time we asked for because of the
7 hurricane.

8 What we are saying is guys, give us back -- the
9 rest of the 92 days you originally gave us and we need
10 43 more days. Those 43 days include not only the
11 inefficiency portion but also other time extensions
12 that we have requested. Quite frankly is the reason is
13 some of our subs were never to be seen again. The
14 concrete sub, who did the curb and gutter, we have
15 never seen him to this day.

16 It's not funny. The guy lost his business, he
17 was literally wiped out, employee-wise and also
18 capital-wise. So we had to go somewhere else to get
19 the work done and that created delays.

20 Some of the work we had to do ourselves. There
21 is a big bulkhead wall that for the price we had on the
22 original subcontract, no one would do it; we had to go
23 back and do it ourselves. We are claiming 14 days for
24 that. That's part of the 43 days where we saved, plus
25 an additional 43 days. We think the time extension we

1 requested, which is 107 days, is more than reasonable
2 under the circumstances.

3 Now, that's the first part of the time problem.
4 The second part is the work suspension that occurred in
5 January of '93. This one I think is beyond
6 comprehension under any scrutiny.

7 On Wednesday, January 27, 1993, we were informed
8 that some of our temporary stripes, paint stripes were
9 deficient, they were less than four inches wide. At
10 the same time the Department had changed their specs
11 and now their stripes are six inches instead of four
12 inches, both temporary and permanent.

13 Okay. We had some deficient stripes. It wasn't
14 the whole job, but a portion of the job. Frankly, the
15 man did a poor job, the paint gun didn't work, for
16 whatever reason there was a slight deficiency.

17 On Thursday, the next day, even though the
18 subcontractor was nowhere to be found, he was still
19 devastated by the hurricane, we went out, rented a
20 machine, and by 11:00 a.m., according to their own
21 reports, which I will hand to you right now -- this is
22 the report for Thursday, the day after we were notified
23 to proceed -- and on that day, on Thursday, at 11:00
24 a.m. we moved in and we did about a mile and a half,
25 which covered most of the deficient stuff, the stripes

1 that were too narrow, even narrower than four inches.

2 Friday we came back and did an additional two or
3 three miles and you will see that two pages down on
4 Friday the 29th.

5 This is a 1.7 mile job, now. We had already done
6 now five miles of restriping and they shut the job down
7 on Friday afternoon for five days until we had every
8 single stripe -- ever single foot of stripe on the job
9 restriped. Not only the deficient ones but every other
10 lineal foot of temporary stripe.

11 Now that's a five-day delay. May not be the end
12 of the world, but the problem was the bridge
13 subcontractor had just moved back on the job after a
14 200-day delay to complete a critical bridge. He was
15 shut down. When they shut him down, he said, well,
16 guys, I'm going to another job, I will see you later.
17 Three, four weeks minimum before I get him back. This
18 is Anzac Contractors, the bridge subcontractor.

19 We went to the Department, said look, the man is
20 going to move out, let him work, he's off from the
21 traffic, up in an area where he doesn't affect anybody.
22 Don't shut him down. No, the whole job is shut down.

23 So, he needs to move out. He doesn't come back
24 for three weeks. He said four or five, but we got him
25 back in three weeks.

1 What we are asking here is of those 21 days they
2 should not be charged to us because the work stoppage
3 was unnecessary under any -- under the most stringent
4 requirements.

5 We were notified on Wednesday and on Thursday we
6 are moving in and doing an effort. Friday we keep
7 worrying all of the following week until every foot was
8 restriped -- deficient and not deficient, we were not
9 allowed to go back to work on a full-time basis.

10 MR. DEYO: You are saying you were not allowed to
11 work, yet these days are included in the liquidated
12 damages total?

13 MR. LOPEZ-CANTERA: Yes, we requested a time
14 extension, it was denied. We were given zero days.

15 CHAIRMAN COWGER: Just to clarify this, this
16 occurred essentially the first couple of weeks in
17 February? The first three weeks in February?

18 MR. LOPEZ-CANTERA: Exactly.

19 CHAIRMAN COWGER: Not exactly, but that's in the
20 time frame.

21 MR. LOPEZ-CANTERA: Not exactly, but the notice
22 was given the 28th, the shut-down was the 29th --
23 sorry, the notice was the 27th, the shut-down was the
24 29th, and the restart was the 5th of the following
25 month, like a Thursday in the following week.

1 We think we should be entitled to those 21 days.
2 The impact I'm sure was much greater. We only ask for
3 the time that it took from the time the guy left the
4 job until the time the -- the guy being the
5 subcontractor -- returned.

6 You will have to pardon my language sometimes.

7 Anyway, the third time extensions that we are
8 looking for is with the canal crossing. I think at
9 this time I will join -- the canal crossing is money
10 and time.

11 CHAIRMAN COWGER: Now, could we stop you at this
12 point. I think it would be appropriate to let DOT
13 rebut.

14 MR. LOPEZ-CANTERA: Then let me finalize the
15 liquidated damages and then we will come back to the
16 canal crossing, even though we have 18 days there. We
17 will deal with that.

18 We believe the Department should not access any
19 liquidated damages, not only because of the time
20 extensions we just pointed out to you, but because the
21 job was, in fact, completed much, much before the
22 April 1st date.

23 Let me give you a for instance. The FC-2, the
24 final course and the temporary striping was done late
25 in November of '93. Over 100 days of liquidated

1 damages were charged after that date.

2 The reason that we wanted to do it before
3 Christmas is very clear, and that is that there was a
4 ramp from the turnpike construction contract, which had
5 nothing to do with us, but it tied into our work, and
6 they wanted that ramp open. We could have left it
7 closed until we were completely finished. They asked
8 us and we said sure.

9 Now, this added a tremendous amount of traffic to
10 our work. They needed it. We understood for Christmas
11 and everything else. It was necessary.

12 Every lane was open, all the sod was down. The
13 only thing that was missing -- and that is in writing
14 from them in that same letter of January 27th, the
15 first letter I showed you -- they say the only thing we
16 are missing as of January -- the beginning of January
17 is the permanent striping and some signs.

18 Hey, we will talk about the signs in a minute,
19 but these were signs that were there and they wanted
20 new signs. It wasn't like the public was not being
21 informed. A fully open road, every lane was open, all
22 the sod was down, cleaned up. The only thing missing
23 was a few signs and the permanent striping.

24 Of course, you know you have a 30-day wait
25 between the FC-2 and the permanent striping

1 construction, yet they were charging us for every day.

2 There is more, there is more. On December 2nd --
3 this is one of the meetings that we added as an
4 additional exhibit. There is a meeting with
5 Mr. Al-Said, the project engineer from the Department
6 and Mr. Encinosa was present. They asked us do you
7 want the automatic time suspension for Christmas? And
8 we said yes. It's part of the record. The one for
9 December 2nd.

10 The last -- the next to the last statement or
11 paragraph on that report says, "The contractor will
12 take advantage," or whatever, of the automatic time
13 suspension. We were in the middle -- we didn't know
14 it, but we were in the middle of liquidated damages.
15 Nobody told us this. They asked us do you want
16 automatic time suspension? Sure, 10, 15 days. They
17 charge us a thousand dollars a day for every one of
18 those days, that automatic, quote, unquote, time
19 suspension.

20 Same thing for Thanksgiving, by the way, because
21 they cut the contract off on October 20th.

22 Now, if we were on time -- on liquidated damages,
23 even though none of the pay forms reflected any
24 liquidated damages, October, November, December,
25 January -- none of them reflected liquidated damages,

1 no mention we were on liquidated damages, and in the
2 meeting they say you want the automatic time extension,
3 we say sure, because we were waiting for the FC-2 to
4 cure and we say sure. It cost us \$10,000 or \$15,000 in
5 liquidated damages for us to agree to that time
6 extension.

7 Even before that in September of '93, at a
8 meeting that Mr. Encinosa attended, I was not there,
9 there was concern about those particular signs that
10 I mentioned before. And Mr. Encinosa handled that
11 personally, but I want him to explain to you what
12 happened with those signs. That was the last bit of
13 work to be done on the job.

14 MR. ENCINOSA: When we met, of course, the main
15 concern on the project was the big overhead signs.
16 What had happened was we went ahead and sent the
17 purchase order to our sub that had quoted the job. The
18 job was quoted two years before.

19 So, the sub said that he wasn't going to do the
20 job, he couldn't do it, couldn't mobilize, the price
21 had changed, everything had changed.

22 So, we went ahead and from that meeting we
23 explained to the Department we had no choice but to do
24 this ourselves. In other words, we are going to become
25 sign contractors, also, and go ahead and order the

1 signs, put them up. We asked for them to help us out
2 along the way because we had never done signs before.

3 In that meeting, the same meeting, the project
4 engineer for DOT, Mr. Al-Said told me personally that
5 we were not going to be assessed liquidated damages if
6 we showed that we were trying to get the project
7 finished, if we showed good faith in working out there.

8 That was the -- the last thing that we had spoke
9 about. I was on that project personally every day to
10 see those signs got put up.

11 Like Carlos said before, if we had known we were
12 in liquidated damages, we wouldn't have taken off for
13 Christmas. It never showed in any of our estimate we
14 were being penalized. These all came in at the end.

15 MR. LOPEZ-CANTERA: Those signs were ordered
16 immediately, they were not delivered until January of
17 '94 and they were installed between the end of January
18 and the beginning of February of '94.

19 One last thing I need to tell you. Keep in
20 mind they are charging us time until April 1st. On
21 January 27th Joe Gomez writes a letter that says all
22 we're waiting for is the striping and for the final
23 punch list to be done.

24 In -- in the first week in March Mr. McCue calls
25 for a preliminary final inspection. That's where the

1 punch list was developed that we later completed and we
2 were given a final clean bill of health. But even
3 after the -- that inspection, a rather simple punch
4 list, we are still charged another 20 or 30 days of
5 liquidated time until April 1st, another 20,000 or
6 30,000.

7 Now, 20,000 or 30,000 here, 10,000 or 15,000
8 there, before you know it that is a couple of dollars.
9 And the \$167,000 we believe is outrageous. We believe
10 that fully a hundred days before April 1st, that job
11 was not only substantially completed, but the
12 Department and the public had beneficial use of it of a
13 hundred percent. The signs and the temporary striping
14 or permanent striping I think are inconsequential.

15 Dollar-wise, if you look at the monies after that
16 December date through the completion of the job, and if
17 you take out the final adjustments that they always
18 make on the quantities and things like that, and the
19 striping and the signs, we did \$40,000 worth of work in
20 four months. That's less than 1 percent of the job,
21 but we were charged a hundred percent of the penalty
22 for a hundred percent of the time.

23 I think that's patently unfair, and I will stop
24 here so I don't bore you to death and let DOT do their
25 thing. Of course, we will be coming back for the other

1 two items.

2 CHAIRMAN COWGER: And you will have the
3 opportunity to come back on this one if necessary.

4 Quick question. The date that you quoted that
5 the friction course was completed, I missed it and
6 I would like to have that.

7 MR. LOPEZ-CANTERA: The friction course was late
8 November of '93.

9 CHAIRMAN COWGER: Okay. That's all I needed to
10 know. Okay. A lot said. DOT, are you ready to begin
11 to respond?

12 MR. STEINER: I think so. I'm certainly not as
13 impassioned as Mr. Lopez-Cantera, but I do feel that
14 the panel is really being misled very substantially
15 here by those impassioned pleas.

16 The 90 days -- let me discuss even before that.
17 Mr. Lopez-Cantera complains about receiving the second
18 package. The truth of the matter is at least the
19 district, and I do not know about the DOT, did not
20 receive the entire package. We received nothing after
21 that sheet that says summary of claim until the day
22 before the first hearing.

23 So, the only reason we even had to put together
24 the second package was because we -- and I say we, the
25 district, I'm not sure, nobody seems to be able to tell

1 me otherwise at the central office right now, that we
2 ever received the rest of that package before that
3 date.

4 So, that is the reason for it. It was not a
5 matter of trying to be surreptitious or anything of
6 that nature, which is the impression that is being
7 given to the panel here. It is a matter that we didn't
8 have the information, the details of the claim as we
9 were supposed to in time for the hearing.

10 CHAIRMAN COWGER: The panel -- I don't think
11 that's going to be a pertinent issue.

12 MR. STEINER: I am bringing that out as an
13 identification of the series of accusations hurled
14 against the Department with regard to being misleading.

15 MR. DEYO: I think our concern is that we have
16 got all of the information from both parties to
17 consider.

18 MR. STEINER: At this point I would say you do.

19 CHAIRMAN COWGER: We will have to see, because
20 the second submittal had to do with what I call part B
21 and part C of the claim dealing with the waterline
22 relocation and the overhead.

23 MR. STEINER: I understand.

24 CHAIRMAN COWGER: So, we haven't even gotten to
25 those issues.

1 MR. STEINER: And I shudder to think where the
2 Department would be if Hurricane Erin hadn't hit, even
3 though this claim is mostly about Hurricane Andrew. We
4 got a reprieve because of Hurricane Erin.

5 CHAIRMAN COWGER: I want to make it clear we
6 furnished to the Department the complete submittal that
7 the contractor sent in. It had those other two parts
8 in it. I noted when your original rebuttal came in,
9 you did not rebut the second two parts.

10 MR. STEINER: That was the reason why. At least
11 the district did not receive it.

12 CHAIRMAN COWGER: The contractor did submit it.
13 He is not at fault. I don't think the Board is at
14 fault, but I don't think it is going to be an issue.

15 MR. STEINER: I am explaining a lot because of
16 the impression being given to the Board of why they got
17 the package so late.

18 Let me discuss the Hurricane Andrew aspect. The
19 biggest complaint here appears to be with regard to the
20 90-day time extension that we took away the time
21 because of, one, labor. That is misleading. There was
22 a higher ratio of labor that's on the job.

23 But even if there was one laborer on the job, the
24 Department's internal procedures, which are based on
25 statute, does not allow payment for work to be done in

1 the field; that is, pay items to be reimbursed, unless
2 there is also time running during the same period. So,
3 our rescission of the time extension was technical.

4 Now, let me also indicate that, in fact, Roenca
5 got the whole 90 days. I will point out to you by
6 either their documents or ours, the package that we
7 gave you, let me go right now to package number 9 and
8 lead you through it.

9 Package 9 was a letter that I wrote to all the
10 contractors immediately after we had a general idea of
11 exactly the initial down period for all the
12 contractors. There was a period of time of eight days
13 I determined, and I was the one out there doing the
14 cleanup operation with our people and with the
15 contractor's people because at that time the south Dade
16 maintenance yard was completely wiped out. We had to
17 resort for cleanup to calling in the contractors that
18 were working in the district.

19 I was not sure how anybody was going to get paid,
20 so what I did was I called up the contractors who had
21 contracts with us and were generally working in an area
22 which was not affected but was available.

23 Roenca-Dade was one of those contractors. We
24 hired them. Up to the time of the hurricane our work
25 with them had been good. Their project manager in the

1 field, Mr. Park, who everybody refers to as Skeeter,
2 was an excellent leader. They had personnel available,
3 as Mr. Lopez-Cantera said. They were at the northern
4 fringe so their equipment wasn't affected.

5 We used these people to help clear the roads so
6 the Corps of Engineers could get down there. That
7 initial involvement ended on August 30, and therefore
8 at that point in time was probably the earliest anybody
9 could go back to work in the district.

10 I immediately granted a blanket letter granting
11 eight days. Those eight days are in that 90-day
12 request being made here today.

13 The next item --

14 MR. ROEBUCK: Are you saying you agree with those
15 eight days?

16 MR. STEINER: We gave it to them. Their request
17 of 90 days is saying we didn't give it to them, and I'm
18 saying we did. They are claiming again for something
19 we already gave them. That is misleading. You are
20 obviously confused by that fact. I'm going to explain
21 where we gave them the 90 days that they now say we
22 didn't give them.

23 The first letter, therefore, covers eight days.

24 CHAIRMAN COWGER: Eight of the 90?

25 MR. STEINER: As it turns out, we gave them 96.

1 On September 12th they asked us for 90 days. That's in
2 your package. That's the last item in that package.
3 It's the last letter in that package.

4 On September 12th, Carlos himself, Lopez-Cantera,
5 asked for 90 days. That's what they estimated would be
6 their need before they could get into the job at all.

7 You will notice there in the second paragraph it
8 says, "We have agreed not to seek additional
9 compensation from FDOT for that extended time."

10 So of the 90 days, which they have included in
11 their overhead calculation -- not to bounce back and
12 forth, but in order to maintain consistency here --
13 that time for the hurricane they are claiming, the 90
14 days, is actually being used in their calculation for
15 the overhead cost.

16 MR. LOPEZ-CANTERA: Can we --

17 CHAIRMAN COWGER: We will come back to that.

18 MR. ENCINOSA: Are they claiming --

19 MR. LOPEZ-CANTERA: We are not claiming for one
20 day of overhead on the 163 days.

21 CHAIRMAN COWGER: When we get to the overhead,
22 you can come back.

23 MR. STEINER: You will get your chance.

24 Based on that request, which was an estimate, we
25 were trying to be as generous as we could. Many of

1 them were continuing to work with us on the cleanup
2 operation. Roenca was one of those firms. We agreed
3 to the 92 days, as is pointed out, September 24, 1992.

4 By any criteria, if Roenca during that suspension
5 period goes out and does work for whatever reason and
6 wants to be paid for that work, we must charge contract
7 time. That is part of our procedure. It's based on
8 statute. It's not anything surreptitious or anything
9 of that nature.

10 If there's anything that's potentially a question
11 here, if you ask for a time period of 90 days when you
12 feel you are not going to get there, why are you going
13 out there and doing work? At what point were you
14 misleading me, when you asked for it or later on?

15 When we were discussing this matter in the field
16 with Skeeter, we explained to him, if you are going to
17 go out and do work and ask for payment, and which they
18 did and which we made, then you are going to have to be
19 charged contract time.

20 So, as of the September 28th letter, my
21 response -- I'm sorry, my response to the September
22 request in -- on October 29th, was to grant them the 28
23 days where they actually did not show up. They did
24 start work on September 28th. At this point on
25 October 29th, they have 36 days that we granted. We

1 granted the 28 days in addition to the eight previous
2 days, so now they have 36 days of that 90-day request
3 that has been granted to them.

4 CHAIRMAN COWGER: Okay.

5 MR. STEINER: Now let me point you to --

6 MR. DEYO: Question, Ron. At that time on the
7 28th when they returned to work and requested payment,
8 then you in effect started contract time again totally?

9 MR. STEINER: Correct, in order to provide --
10 without starting time, we could not process pay
11 requisitions. We could not pay them for work
12 performed, however many people they had out there.

13 CHAIRMAN COWGER: Let's move away from the
14 technical issue just a minute --

15 MR. STEINER: I would like to go through the
16 math. The math is not finished, if I may. I want to
17 discuss where the rest of the 90 days is. Would that
18 be out of order?

19 CHAIRMAN COWGER: Go ahead. I will hold my
20 question.

21 MR. STEINER: Well, I'm hoping we will answer it
22 if possible. If you will go to Tab 4 in Exhibit 1 --
23 Exhibit 2, in the bottom paragraph, Mr. Parks, Skeeter,
24 made a request which included some additional work.
25 The bottom paragraph, it is indicated here, "A time

1 extension request is enclosed. The request is for 122
2 days. It is based on an extension of 57 days for the
3 extra work."

4 And then if you proceed down further, it
5 indicates, "The late start date for the Snapper Creek
6 Bridge in the approved schedule, to August 24, 1992
7 when time was suspended for the hurricane. Time was
8 suspended from August 24th until September 28th," and
9 that's where we get the theory of six days from, an
10 additional extension of 65 days requested from
11 September 28th to December 2nd.

12 We granted a time extension through a
13 supplemental agreement for the 57 days and the 65 days,
14 122 days. There was an adjustment made later for other
15 technical reasons. But basically those days were added
16 by supplemental agreement. And this is the additional
17 65 days that we so-called took away from the contractor
18 when the contractor said there was inefficiency.

19 He had some difficulty, we understood that, and
20 therefore when this extra work supplemental came
21 around, this was the vehicle that we used to put the
22 time back.

23 CHAIRMAN COWGER: Where did that -- in essence
24 that gave him --

25 MR. STEINER: A total of 96 days.

1 CHAIRMAN COWGER: How much?

2 MR. STEINER: Ninety-six days were granted if you
3 add the 36 and the 65. And there was an adjustment
4 there. Basically 96 days were granted to the
5 contractor for the hurricane, net.

6 CHAIRMAN COWGER: That took him up to about what
7 date?

8 MR. STEINER: That took him -- if you will read
9 further on here, in that exhibit it says, "Based on the
10 last estimate we understand we have 194 days remaining.
11 This period, together with the time extension" -- the
12 one we are dealing with through that supplemental
13 agreement -- "is sufficient to complete the project in
14 accordance with the plans."

15 CHAIRMAN COWGER: Okay.

16 MR. STEINER: So, they agreed with -- once we
17 gave them the 90 or so days of the hurricane, plus the
18 extra work, plus the time remaining, by December of '92
19 they had completed enough time to have completed the
20 project.

21 CHAIRMAN COWGER: Let me ask you this. Just
22 so -- I think I understand, the 92 days that was
23 granted and later withdrawn, partially withdrawn is
24 overlapped, you might say, by this supplemental
25 agreement on the Snapper Creek excavation, 100 percent?

1 MR. STEINER: The difference is it is covered
2 completely in that supplemental agreement.

3 MR. DEYO: That was 60 days.

4 MR. STEINER: They requested 65. I think our
5 analysis shows about 60. We gave them 116 days total
6 in that supplemental of which 57 days was because of
7 the extra work. The balance was the effects of the
8 hurricane, inefficiency, lack of trucks. We don't
9 disagree with that generally.

10 CHAIRMAN COWGER: My point is in analyzing the
11 information that was submitted to the Board, I found
12 that when you granted the 92 days that in essence
13 caused a suspension of charging of contract time, you
14 might call it. It was really granting, but it brought
15 him up to November 30, 1992. The supplemental
16 agreement that you have just talked about brought him
17 up to December 1, 1992.

18 So, clearly I think the two overlap. So, I'm
19 agreeing with what you say.

20 MR. STEINER: Right. And now they are asking for
21 the 90 days as if we never gave them anything and
22 that's totally false and misleading. We can't use a
23 suspension if they are working. We have to use a
24 different vehicle if they are working and billing the
25 Department.

1 CHAIRMAN COWGER: We don't need to hear any more
2 about that.

3 MR. STEINER: What I would like to do is go one
4 step further then and have Steve -- is there another
5 question?

6 CHAIRMAN COWGER: No.

7 MR. DEYO: I want to be clear on the days when
8 all of this flushes out, the days actually granted
9 because when you say --

10 MR. LOPEZ-CANTERA: Can we get a shot at this?

11 MR. DEYO: When you say 92 or 93 plus or minus or
12 116, I want to have clear in my mind what it is.

13 MR. STEINER: I will go back through the
14 background again. The August 31, 1992 letter granted
15 eight days. The September 24th letter -- let me go
16 back to the -- September -- I'm sorry.

17 The October 29th letter, which is all in package
18 number 9, essentially when they started work again, we
19 had to take away the suspension because we couldn't
20 have that running.

21 So, the difference in time from the eight days to
22 when they started work was 28 days, so we gave them 28
23 more days by our letter of October 29th. We
24 essentially adjusted the 90-day extension to 28 days.

25 Then in supplemental agreement dealing with the

1 extra work, which is on Tab 4, we gave them essentially
2 60 days. Of the 65 they requested, there was some
3 overlap with other issues. So we gave them an
4 additional 60 of the 65 days. That's in the Tab 4.
5 This figure here where they asked for 65 was adjusted
6 to 60 because of some overlap, they asked for some --
7 overlap -- that essentially is 60 days.

8 You add those figures together, you get 96 days
9 total that were granted, 36 by suspension, 60 by time
10 extension. That difference is very important because
11 that allowed them to work to any extent they wanted to
12 while gaining credit for the hurricane impact and still
13 be able to have progress payments made.

14 CHAIRMAN COWGER: Let me ask something of the
15 contractor just a moment. Is there any dispute about
16 what Mr. Steiner has said about the supplemental
17 agreement?

18 MR. LOPEZ-CANTERA: Absolutely.

19 CHAIRMAN COWGER: There is?

20 MR. LOPEZ-CANTERA: Totally disagree.

21 CHAIRMAN COWGER: Now wait a minute, the
22 supplemental agreement did grant the number of days?
23 Now we will talk I guess about the meaning of that.

24 MR. LOPEZ-CANTERA: That is exactly right.

25 CHAIRMAN COWGER: Before we get to this, can we

1 interrupt you at this point and discuss this
2 supplemental agreement issue without throwing you too
3 far off track?

4 MR. STEINER: Absolutely.

5 CHAIRMAN COWGER: If not, say so.

6 MR. STEINER: No, that's all right.

7 CHAIRMAN COWGER: I think we need to get that
8 resolved.

9 MR. STEINER: I agree. It's the key element in
10 who is being misleading to whom.

11 CHAIRMAN COWGER: The fact that this overlap
12 needs to be resolved, whether, in fact, it is there.
13 Right now it appears that it is.

14 MR. STEINER: Agreed.

15 CHAIRMAN COWGER: Okay. Now --

16 MR. LOPEZ-CANTERA: Thank you. The reason for
17 the letter, the request in the letter, the time that we
18 are asking for here refers to the bridge construction
19 at 117th Avenue. That's where the turnpike intersects
20 with our job, because the Department in designing this
21 project failed to account for the South Florida Water
22 Management District where they were going over one of
23 their canals.

24 When time came, already under construction, when
25 time came to do the work, South Florida said you can't

1 do it. There is channel excavation required, the cross
2 section of this canal is wrong, blah, blah, blah. This
3 happened in the middle of '92.

4 The Department then went back and scurried and
5 tried to get a permit from South Florida Water
6 Management showing the canal excavation they needed.
7 They issued a supplemental agreement in addition to the
8 time one, to pay us and compensate us for the
9 excavation we had to do on this channel before the
10 bridge work could start.

11 This channel excavation occurred after the
12 hurricane and then the bridge work started. You will
13 see the test piles were driven sometime in November or
14 December of '92.

15 What I'm saying to you is that the 116 days
16 compensated us for the bridge delay, which was a
17 critical path item. We have no problem with the 116.
18 We said it was 122, but we are not arguing the six days
19 here. We agree.

20 You will see that it says in here for the 65
21 days, additional extension of 65 days requested from
22 September 28th, when they started the time, until
23 December 2nd, when the critical path construction
24 resumed. That's critical path construction on the
25 bridge. Please read above that this whole letter is

1 referring to the Snapper Creek bridge.

2 Please also note in the part he didn't highlight
3 that on the fourth paragraph and fifth paragraph the
4 writer says, "Impact on subsequent path has not been
5 established." There are other impacts we are
6 considering only for the bridge.

7 What I'm saying to you is that under the theory
8 that the Department is putting forth to you, we are
9 giving 116 days for something that happened on the
10 bridge. The hurricane happens in the middle. If you
11 make them concurrent, you are telling me the bridge
12 had -- that the hurricane had no effect.

13 In other words, the fact that you were given time
14 on the bridge and the hurricane hit and devastated
15 whole south Florida, that means nothing, you get no
16 days for the hurricane impact on the job. You get all
17 your days for the bridge, fine, we agree. We got them.
18 But the fact that the 65 and the 28 adds up close to
19 the 92 is coincidence, just like the 163 in the
20 overhead is coincidence. It has nothing to do, one
21 with the other.

22 Please don't be confused, or to use his words,
23 misled, by the fact that the numbers match. The impact
24 of the bridge, Snapper Creek bridge granted by the
25 Department was due to the bridge and their lack of

1 follow-through on getting permits from South Florida
2 Water Management. We agree with these numbers. We
3 have no problems with these letters.

4 I will be perfectly frank with you. Second
5 page, I wish he hadn't added that letter because he
6 had no way of knowing on December 9th if we could do
7 the project or not. As of that point on December 9th,
8 we had no clue of knowing when we would see a truck in
9 Miami. That was a mistake on our part.

10 I will tell you the time frames he is discussing
11 deal with the bridge. The fact that the hurricane
12 occurred in the middle of this should not be held
13 against us. It's not the Department's fault that the
14 hurricane hit. It's not my fault. The impact of the
15 hurricane was devastating and it was not concurrent.
16 It should be added on top of the bridge time, not
17 concurrent with the bridge time.

18 Let me say here the word impassioned was used
19 four times. I am very impassioned. It is my money,
20 not his money.

21 CHAIRMAN COWGER: We are not going to worry about
22 that.

23 MR. DEYO: Is the only copy that we have of the
24 supplemental agreement that includes 116 days for
25 excavation, that's under Tab 5 from DOT? Is that the

1 one we are referring to?

2 MR. STEINER: Yes. Do I have a chance to respond
3 to that?

4 MR. LOPEZ-CANTERA: No mention of the hurricane.

5 MR. DEYO: It mentions extra work, extra
6 excavation, et cetera.

7 MR. STEINER: You will see under Tab 6 that
8 Steve McCue, who was the resident engineer on the
9 project, analyzed the initial request of Mr. Parks, and
10 for the extra work there was found to be a need for
11 only 57 days and that's all that Mr. Parks really was
12 referring to.

13 The additional time was really considered to be
14 the inefficiency in the secondary impacts which are
15 alluded to here to get this work done because of the
16 impact of the hurricane. It was primarily as a result
17 of that that the extra time was added, not because it
18 was necessary to do the work. In fact, the work was
19 done actually on November 19th, whereas the time
20 extension took them until December 2nd.

21 So, you can see if where -- if we are holding
22 true to form of rescinding time, why didn't we take
23 the time back after they finished the work on
24 November 19th? We didn't do that. The word misleading
25 was yours, Carlos.

1 MR. LOPEZ-CANTERA: The fact is that all of the
2 explanation -- we never saw this until this rebuttal
3 document was presented to us. Notwithstanding that,
4 every indication in here is that the extra work, which
5 is channel excavation, permanent modification, none of
6 this refers to the Hurricane Andrew impact on the job,
7 only to a very limited extent the Hurricane Andrew
8 impact on channel excavation on the bridge work.

9 Please keep those two items separate in your mind
10 because we had Andrew impact on the bridge and the
11 channel excavation, no question about it. We had it on
12 every aspect of the job, every aspect of the job, down
13 to the luminaries which are no longer available after
14 the hurricane. Every aspect of the job was affected
15 because of the hurricane, including this one.

16 This time extension alone, because the permit,
17 the notice to begin, if you read his own exhibit, was
18 given September 28th. The late start date of this
19 bridge was June 29th, three months before we are
20 supposed to start. They tell us to go ahead
21 September 28th. Well, we have no one on the job.

22 MR. STEINER: We didn't tell you to go ahead.
23 You went ahead.

24 CHAIRMAN COWGER: Gentlemen. Go ahead.

25 MR. LOPEZ-CANTERA: We did not start excavation

1 on September 28th.

2 CHAIRMAN COWGER: Let me ask you this. Again, so
3 I can understand this. The supplemental agreement
4 granted 116 days.

5 MR. STEINER: Correct.

6 CHAIRMAN COWGER: According to the correspondence
7 here, that covered a period between June 29th and
8 August 23rd or 24th, whenever that may be, while you
9 were awaiting the permit modification, and the 24th of
10 August, I guess, or somewhere in that vicinity was the
11 date of the hurricane.

12 MR. LOPEZ-CANTERA: Correct.

13 CHAIRMAN COWGER: Now, from that date up until
14 the 29th of February, a little over a month -- I mean
15 of September, from the 24th of August until the 29th of
16 September there is a suspension that was granted, that
17 92 days that was granted was cut back to cover the
18 period between the end of the hurricane delay period
19 and the 29th of September.

20 MR. STEINER: Correct.

21 CHAIRMAN COWGER: Then the additional 60 days
22 that are in the supplemental agreement, 56 plus 60,
23 cover the period of time between the 29th of September
24 and the 1st of December of 1992.

25 MR. STEINER: Right.

1 CHAIRMAN COWGER: So, in essence there was no
2 time charged to the project between the 29th of June
3 and the -- and the 1st of December.

4 MR. STEINER: No, there was time charged but
5 those 60 days were given to the contractor.

6 CHAIRMAN COWGER: It was all given back.

7 MR. STEINER: There is no involvement in that
8 time frame with regard to the claim that we are
9 charging liquidated damages.

10 CHAIRMAN COWGER: Rather than saying there is no
11 time charged, all the time charged was given back.

12 MR. STEINER: Absolutely.

13 CHAIRMAN COWGER: Now we are up to December 1st.
14 Okay. Now according to the records here, the
15 contractor started driving test piles on the Snapper
16 Creek project on December 2nd.

17 It would appear to me that all the hurricane
18 damage, all the hurricane delays have been accounted
19 for in that period of time up through December 1st
20 because once the pile driving started, the test piling
21 driving started, I would assume you were back to the
22 same position that you would have been on the 29th of
23 June.

24 MR. STEINER: Absolutely. Mr. Parks, who is
25 their project manager, really has every reason to know

1 he can finish the job on time because he is the one who
2 was there every single day of the job.

3 MR. DEYO: That is not the contention --

4 MR. STEINER: That's why he is here. If we said
5 yes, he said yes, we wouldn't be there.

6 MR. LOPEZ-CANTERA: What about the rest of the
7 job?

8 MR. STEINER: I will explain the rest of the job,
9 if I can continue my rebuttal.

10 CHAIRMAN COWGER: Go ahead.

11 MR. STEINER: Because I wasn't there every day
12 and neither were they, I would like to point to
13 somebody who was there every day, Steve McCue, who was
14 our resident engineer. He can explain where the
15 project was delayed subsequent to the hurricane.

16 There is no question that prior to the hurricane
17 the things were going well. The hurricane is now being
18 used as an excuse because of delays that occurred
19 subsequently in finishing the job. There were many
20 reasons.

21 We will get into those. Let me have
22 Mr. Steve McCue present the rest of the project, the
23 scenario of what occurred. Do you want to take a break
24 now?

25 CHAIRMAN COWGER: Let's take a short break. Let

1 me ask you one question. Mr. McCue, what you are going
2 to address is events that occurred after December 1,
3 1992?

4 MR. McCUE: Yes.

5 CHAIRMAN COWGER: Let's take about a five-minute
6 break.

7 (Short recess)

8 CHAIRMAN COWGER: Okay. We are going to let
9 Mr. McCue testify now as to what transpired subsequent
10 to December 1, 1992.

11 MR. McCUE: Basically when Roenca remobilized
12 back onto the project, we were in the first stage of
13 our project to rebuild the south side of the roadway.

14 CHAIRMAN COWGER: We have some of this in our
15 exhibits.

16 MR. DEYO: Number 20, tab.

17 MR. McCUE: This is basically the MOT plan.
18 Prior to the hurricane he had constructed all of the
19 roadway. Up here is the Snapper Creek bridge. This is
20 where the excavation was needed.

21 CHAIRMAN COWGER: That's channel excavation?

22 MR. McCUE: Yes.

23 CHAIRMAN COWGER: Go ahead.

24 MR. McCUE: And his -- in his December 9th letter
25 he states that the impact of that letter was only the

1 bridge. When he submitted that letter, that included
2 all parts of the project, roadway, everything to
3 completion. It wasn't the bridge. That was the CPM
4 based on the whole project.

5 So when he submitted that, his critical path
6 showed that the bridge was more critical than building
7 the roadway, which he submitted.

8 Our contention is that the bridge isn't critical,
9 the roadway was critical because he never finished it
10 on time.

11 If you go to Section 3 of the Exhibit B on page
12 13, towards the bottom of this, this is his critical
13 path that he submitted in December. That's Section 3,
14 page 13. This is the critical path that he had
15 submitted in that December letter. In that you will
16 see towards the bottom it says "traffic switched east."
17 The seventh one up from the bottom.

18 His traffic switched east meant that this bridge
19 was complete, this Snapper Creek east bridge. That had
20 to be complete so that he could switch the traffic over
21 here and come through and build the middle of the
22 project.

23 Now, you will notice right above that traffic
24 switched east he has approach slabs. They were
25 finished 7-1-93. That date he should have switched his

1 traffic. He did not switch his traffic until 9-1-93.
2 That's two months later, which meant that the
3 noncritical work items which he had suggested were
4 critical because he wasn't doing them.

5 Ideally, when that bridge was done, he should
6 have shifted traffic. The roadway should have been
7 completed. That's nine months after the beginning of
8 the year.

9 Now, this project, our contention is this roadway
10 wasn't built concurrent with the bridge because he was
11 late on other County projects where he was already
12 delinquent on. That is your Exhibit 10. There's two
13 projects with those letters, which is the Bird Road
14 project and the Coral Way project, which is close to
15 this job.

16 We are saying he was concentrating his efforts on
17 those two projects and not our project. That's why he
18 could not build this roadway, along with this bridge.

19 MR. STEINER: Now he's coming to the DOT and
20 asking for time extensions because of so-called effects
21 of the hurricane, which we disagree with, primarily
22 because we have already given it to him, and any
23 additional time beyond the December 1, 1992 date is
24 unwarranted because of the actions that occurred
25 subsequently.

1 Let me also point out that Mr. Park's letter that
2 says he can complete the project in December -- in his
3 letter of December 1, '92, was based on CPM schedule
4 that was submitted around that time. It was not just
5 idle conjecture. We require the contractor to submit
6 and maintain a schedule. We did this on this job.
7 They hired another consultant to do that work.

8 When we modified the timing of the contract
9 because of the supplemental agreement, we asked for a
10 schedule, we got it, that was totally consistent with
11 the information in Mr. Park's letter.

12 CHAIRMAN COWGER: Is the CPM that he submitted
13 subsequent to the hurricane in this submittal package?

14 MR. McCUE: Yes. That would be Tab 19.

15 CHAIRMAN COWGER: Okay. Now that is a plot of
16 his CPM and this was submitted September of '92 after
17 the hurricane occurred?

18 MR. McCUE: Yes, sir.

19 CHAIRMAN COWGER: Got you.

20 MR. McCUE: I will get back to the CPM in a
21 minute, but I would like to point out the personnel in
22 that project. If you look at that package, number 10,
23 which shows him being delinquent on two other County
24 projects, you will note as his time is going on, he's
25 stacking back up.

1 The project was going on pretty good staff-wise
2 until the dates he goes delinquent on those two jobs
3 and then it plummets. He has abandoned our job to go
4 to these County jobs. This clearly shows his manpower.

5 Now on this calendar I put just the number of
6 people on the project that day. It's not meant to be
7 misleading, that's just the men per day that he worked.
8 Each calendar shows how many men were on the job each
9 day.

10 MR. STEINER: Let me point out by any calculation
11 method you use, the same results would show that the
12 manpower level immediately preceding the hurricane is
13 about the same level as the manpower level he achieved
14 during the December time extension. He was back up to
15 that level.

16 Whether you calculate it this way, that way, the
17 other way, whatever the scale should be, the net result
18 of the plot should be the same.

19 MR. McCUE: Our contention is that he left our
20 job not because of the hurricane but because he hadn't
21 finished these County projects. As you go through the
22 critical path, you can see through the periods of
23 December and January he's not too bad. The blue, if
24 you will look up in the right-hand, is the plan, the
25 red is the actual, what he -- start and begin dates.

1 You can see the further on in '93 he came, the
2 longer it took him to complete each task and how much
3 further behind he was, which is well after any effects
4 of the hurricane, which is by his own admission in
5 January.

6 Well, after that point he just keeps getting
7 further and further and further behind. It has nothing
8 to do with the hurricane impact. That critical path
9 clearly shows it.

10 If you look at the last item there, the permanent
11 striping, you can see he took three months to do his
12 permanent striping on a 1.275 mile project. Maybe in
13 two to three weeks you could have that thing
14 permanently striped, but three months?

15 CHAIRMAN COWGER: I have a problem with that.
16 I'm looking at permanent striping. I assume I'm
17 looking at the same one you are, Tab 19. About four
18 from the bottom is permanent striping. That red line
19 is only in December. Am I looking on the wrong line?

20 MR. McCUE: It's the next one up, the --

21 CHAIRMAN COWGER: That's loops.

22 MR. DEYO: Permanent striping looks like a week
23 and a half.

24 CHAIRMAN COWGER: It's the induction loops that
25 appear to be out there on the two to three months.

1 MR. McCUE: That is transposed. That should be
2 the permanent striping. The induction loops are only a
3 week.

4 CHAIRMAN COWGER: Those two are upside down?
5 I should move the long red line down?

6 MR. McCUE: And bring the short red line up.

7 CHAIRMAN COWGER: How about the blue ones --
8 well, that wouldn't make any difference.

9 MR. McCUE: That's what he submitted back in
10 December of '92.

11 CHAIRMAN COWGER: You are testifying that chart
12 is wrong?

13 MR. McCUE: Yes, in that regard. That's just a
14 small transposition error. But it still doesn't -- the
15 fact is it still took them three months to do permanent
16 striping which should have taken only two to three
17 weeks under the worst case scenario.

18 Another point here that should be addressed is
19 the beginning of the project -- well, right after the
20 hurricane, he was reminded on a constant basis on this
21 monthly basis about ordering his roadway signs because
22 I knew they weren't familiar with the shop drawing
23 process that you have to go through to get those things
24 approved.

25 A year before this he is reminded of this at

1 these monthly meetings that we have, this is your Tabs
2 22, 21, all under the projects signs. He is constantly
3 reminded to order these signs.

4 He came back and he said that because of the
5 two-year wait and all of that, that the guy did not
6 want to issue a -- to his purchase order. Well, in the
7 correspondence that he had sent to us -- these are
8 letters regarding the percentage --

9 MR. STEINER: Do you want to number that 11?

10 MR. ROEBUCK: Is this in the documents anywhere
11 before?

12 CHAIRMAN COWGER: Let's do that. This is
13 Exhibit 11. That is a letter dated September 20, 1993,
14 from Roenca-Dade with some other letters attached.
15 (Whereupon, Exhibit No. 11 was received in evidence.)

16 MR. McCUE: He says he couldn't get his signs
17 because of the two-year waiting in the purchase order,
18 but if you look from the Advance, he is telling him he
19 can't process him because he isn't given enough time to
20 do the shop drawings which he was on a monthly basis
21 he's been told order your signs, get them going. It's
22 not until a year later that he orders them.

23 His sub is saying I'm not going to do them
24 because you're got giving me enough time to order them
25 and get my shop drawings approved. So, Roenca-Dade

1 ended up putting these minor signs up. They are
2 bridge-mounted signs, four-post signs.

3 I have cantilever signs, and he never built a
4 sign before that I know of on State projects. They
5 have accepted something, they are doing it themselves,
6 but they're not qualified to do. It took them a real
7 long time to do it.

8 CHAIRMAN COWGER: Let me ask you a question.
9 What kind of signs were these, were these ground
10 mounted signs?

11 MR. McCUE: Ground mounted and two bridge
12 mounted, and the rest are ground mounted along with
13 your little stop signs, yield signs. They did the big
14 major signs.

15 CHAIRMAN COWGER: Those are not in question at
16 this point? They were done ahead?

17 MR. McCUE: They did not finish those signs until
18 April 1, 1994.

19 CHAIRMAN COWGER: Tell me what "those signs" are.

20 MR. McCUE: The bridge-mounted signs.

21 CHAIRMAN COWGER: The signs hung on the side of
22 the bridge, they don't have their own structure?

23 MR. McCUE: No, they are hung on the beams.

24 CHAIRMAN COWGER: These are signs hung on the
25 bridge or ground-mounted, single-post signs?

1 MR. McCUE: Yes.

2 CHAIRMAN COWGER: They don't show up on the
3 critical path.

4 MR. McCUE: Right. It wasn't a critical item.
5 It became critical when they didn't finish them on
6 time. It wasn't on the original CPM. That is
7 significant because if this was ordered, you know, we
8 might have finally accepted this project a month
9 earlier, but because they did not do it, they are at
10 the very end, hooking luminaries up to the sign.

11 CHAIRMAN COWGER: The only ones that were lighted
12 were the ones on the bridge?

13 MR. McCUE: Had a big cantilevered sign, too, on
14 the roadway which they put in.

15 CHAIRMAN COWGER: Okay.

16 MR. McCUE: I'd like to address the pavement
17 marking deficiencies now, the 21 days he is asking you
18 for. I gave you a copy of the dailies, which shows
19 that he put in over a mile and a half of temporary
20 stripes. He told you that the project was one and
21 three-quarters mile long, but I have six lines on that
22 one and three-quarters mile. You are looking at
23 probably ten miles of line.

24 His contention is that he did it himself because
25 his subcontractor wasn't available to do the work, so

1 he went out and rented a machine to do it.

2 Whether he rented it or bought it from the sub is
3 irrelevant, the fact is he did not make a concerted
4 effort to get this done. He had two people on a push
5 spray paint machine who had never seen one before.
6 They didn't know what they were doing. He should have
7 gone out and got his subcontractor to do it.

8 That is our contention, it took him seven days to
9 do it. In the worst case scenario, a striper can go in
10 there -- which there were plenty out there at this time
11 to do this work -- if one wasn't available, he should
12 have gotten somebody else.

13 MR. STEINER: Also, the fact Roenca had an
14 obligation to maintain the striping in a safe condition
15 out there as well as the signs out there. What we had
16 at that point in time was an extremely unsafe
17 condition.

18 Tamiami Trail is a high volume traffic generator.
19 There are stores at all of the areas along the job, at
20 the turn-offs and such, and we were getting complaints
21 daily about the fact that the paint striping, which is
22 meant to be maintained by the contractor, was not being
23 maintained. We constantly asked the contractor to
24 update the striping so that we could maintain a safer
25 condition out there.

1 When push came to shove and nothing happened, my
2 assistant took the position to shut the job down until
3 the safety condition was corrected. This was to avoid
4 any further liability to the contractor and to the
5 Department.

6 CHAIRMAN COWGER: May I ask a question about that
7 before you go on, Mr. McCue. How much of the striping
8 was deficient? I've heard different comments about
9 this.

10 MR. McCUE: He is saying that his sub, you know,
11 missed a few spots here and there. The striping was
12 done for over a year. It's the whole project.

13 CHAIRMAN COWGER: The whole project.

14 MR. McCUE: It wasn't a one-mile increment. The
15 whole project needed to be restriped. You couldn't see
16 it at night. The beads had worn off. It had gone down
17 in some spots to two and a half inches.

18 MR. ROEBUCK: It wasn't permanent --

19 MR. DEYO: No, refurbishing of temporary paint
20 stripes.

21 MR. STEINER: For lane shifting going on.

22 MR. McCUE: When he reshifted the traffic to the
23 south side, each two lanes east and westbound was put
24 down there. That's when we went through and restriped,
25 which was a good year after it was originally put down.

1 Even the best stripes won't last for a year. His
2 subcontractor did a real fine job the first time to
3 last that long.

4 CHAIRMAN COWGER: You say your people on the
5 project several times mentioned to the contractor that
6 this needed to be done?

7 MR. McCUE: I can't recall that.

8 MR. STEINER: This was done more by my own staff,
9 Frank Consoli's letter, which is in your tab,
10 identifies that, as does Tony Grau's letter, which is
11 in the file in your first book as well.

12 CHAIRMAN COWGER: He was given advanced notice
13 and he didn't act?

14 MR. STEINER: With regard to the safety issue,
15 there was a constant problem. Every time we would get
16 a call from someone in the area, we would call our
17 field people and say something needed to be done about
18 this. This is a general obligation on the contractor
19 clearly spelled out in the specifications.

20 CHAIRMAN COWGER: Let me ask a rather pointed
21 question, if I could, a two-part question. What was
22 the rationale for using the shut-down order as a means
23 of enforcing the contract, number one? And number two,
24 what was the rationale for requiring the bridge
25 subcontractor to shut down?

1 MR. McCUE: The first part of your question I can
2 answer. When he came back with his own people to do
3 this work, he showed that he wasn't -- his intention
4 was to do it, but we felt he should have responded to
5 it with a stronger force to get it done quicker.

6 By the fact that it took him seven days to do the
7 striping, it showed that a lot of his people were on
8 these County projects doing that work during this same
9 time period and he was using people that basically
10 weren't qualified to do it. That's why it took him so
11 long.

12 CHAIRMAN COWGER: I don't think you answered my
13 question, though. Why did you choose to shut the
14 project down as a means --

15 MR. McCUE: That was your first part of your
16 question.

17 CHAIRMAN COWGER: Why did you choose that means
18 to enforce the contract?

19 MR. STEINER: I would have to conjecture on that
20 because the person who did that was my assistant at
21 that time when they came up. There was a response to
22 calls that were coming in to the front office. The
23 front office would tell us we have a problem out there,
24 go fix it.

25 Our director of operations, Joe Gomez, lived in

1 the general area, a little further south. He was
2 clearly aware.

3 CHAIRMAN COWGER: He was catching it.

4 MR. STEINER: Therefore, I can only offer a
5 conjecture and I don't want to do that.

6 CHAIRMAN COWGER: What about shutting the bridge
7 contractor down?

8 MR. STEINER: I believe the issue was the
9 striping was an unsafe condition. I believe it was a
10 matter of do the thing or don't work at all. I believe
11 it was just a pressure point.

12 CHAIRMAN COWGER: Okay.

13 MR. McCUE: I would like to add one more thing in
14 regards to the -- under Section 3, page 13 where the
15 critical path is shown, another point that should be
16 taken into account here is that the end of the bridge,
17 which is the approach slab pay item number, was
18 finished 7-1-93. That's four weeks behind schedule.

19 Roenca-Dade is asking for three weeks due to this
20 shut-down because it was critical. But the critical
21 path clearly shows at his critical point was the
22 traffic switched east, which he did not complete until
23 two months after when he should have done it.

24 Now, that's not even critical anymore because he
25 did not complete his roadway in a timely manner, so any

1 delay associated with that would just wash because he
2 didn't finish his roadway in time to do his traffic
3 switch. That traffic switch was three months behind
4 their original schedule. So, that three weeks is
5 irrelevant.

6 Critical is that he should have completed that
7 roadway, which he didn't. Anything behind there it's
8 irrelevant because it wasn't on the critical path and
9 we did not affect the critical path, and that's what is
10 determined.

11 CHAIRMAN COWGER: Because the bridge wasn't on
12 the critical path during that time --

13 MR. McCUE: The bridge was the critical path.
14 What I'm telling you is that in that critical path it
15 says my bridge is done, you switch the traffic. When
16 that bridge was done, he switched the traffic two
17 months later.

18 CHAIRMAN COWGER: I've got you. Are you through
19 or do you have something else, Mr. McCue?

20 MR. McCUE: Would you like to add anything?

21 MR. STEINER: Yes, Mr. Grau's letter -- it is in
22 their claim package -- there is a letter -- I didn't
23 make any additional copies, but basically it was
24 pointed out that this had to do with extra work because
25 of four inch to six inch.

1 I want to clarify that it had nothing to do with
2 this issue. This issue was based on the temporary
3 striping, whatever week it was. The fact that there
4 was a four-inch to six-inch change order is irrelevant
5 to this issue.

6 CHAIRMAN COWGER: I think we understand that.
7 I don't think we need any more testimony on that from
8 either side.

9 Before we go back to the contractor, let me ask
10 you a question for my own edification here. The
11 friction course was completed --

12 MR. ROEBUCK: November.

13 CHAIRMAN COWGER: Looks like November 30, 1993?

14 MR. McCUE: Correct.

15 CHAIRMAN COWGER: The only work that took place
16 after that was traffic-type items, induction loops,
17 permanent striping.

18 MR. McCUE: Sodding, signing, lighting,
19 signalization. This was all being wrapped up.

20 CHAIRMAN COWGER: Okay. Just to make sure, the
21 Department did have complete use of the facility during
22 that period of time after the friction course was
23 placed?

24 MR. McCUE: I'm not sure if I understand what you
25 mean.

1 CHAIRMAN COWGER: The traffic was running on the
2 facility?

3 MR. McCUE: The traffic was running on the
4 facility the day they took the project. We did not
5 change that.

6 MR. LOPEZ-CANTERA: That's not the question.

7 MR. DEYO: The question is was traffic allowed to
8 use the new pavement that the job was supposed to be,
9 like if you had six lanes out there, were six lanes
10 open when the FC-2 was completed?

11 MR. McCUE: As soon as the friction course was
12 completed, it was opened.

13 MR. STEINER: The additional lanes?

14 MR. McCUE: Right.

15 CHAIRMAN COWGER: That answered the question.
16 Okay. I think I see some concern on the part of the
17 contractor wanting to have some things to say, so
18 please proceed.

19 MR. LOPEZ-CANTERA: Thank you. We have
20 covered -- I had an opportunity to respond to the time
21 extension of the 116 days versus the hurricane time.
22 I don't want to rehash that whole thing, but I do want
23 to reiterate that our position is that the channel
24 excavation and bridge work time extension, even if they
25 are concurrent does not mean that we shouldn't get the

1 additional time for the hurricane.

2 If you look at December, the beginning of
3 December, the first and second week of December when we
4 prepared the time scales that they are using for us,
5 even then we had no way of knowing the time that it
6 would take for trucks and other materials and
7 subcontractors to be available for us.

8 Our best guess at that time was to hold us to a
9 December 9th schedule and to parade it here now and
10 tell you that was the known factor I think is unfair.

11 The effects and the impact of the hurricane went
12 well into 1993 and everybody knows that as of today.
13 We didn't know that as of December. No one was able to
14 know that.

15 To hold us to that, to that particular CPM
16 I think is unfair.

17 Let me go back to a couple of things he said
18 which I --

19 MR. STEINER: Can I find out why he thinks it is
20 unfair to hold him to his own CPM?

21 MR. LOPEZ-CANTERA: Because the situation changed
22 every day, on a daily basis, after December 9th. The
23 trucks were not available like we thought it was going
24 to be. The burning operations, being shut down
25 required more trucks than we originally anticipated.

1 This was not known. The full impact of this was not
2 known in that time.

3 Now it's very interesting, Mr. McCue points out
4 the bridge was ready a -- what, three weeks, the three
5 weeks we say we were delayed past the time, but the
6 road wasn't ready.

7 What he doesn't tell you is that this ramp that
8 you see right here coming in from the turnpike ties in
9 to our work. It was a bulkhead -- not a bulkhead, a
10 sheet pile retention wall that was built, about a
11 thousand feet on either side of this ramp.

12 We could not do our work on that retention wall
13 until they finished theirs because we have to tie in
14 and go from both ends where they put their sheet
15 piling. That's the reason we were two months late. It
16 wasn't because we weren't ready.

17 Please notice in their chart they are using to
18 say we were three months late and two months late and
19 this is the CPM, this is the critical stuff, that we
20 took our employees to the other Dade County projects,
21 please notice that almost exclusively every item here
22 is a subcontractor item, not stuff we were supposed to
23 do, stuff other subcontractors were supposed to do, who
24 were, in fact, impacted.

25 I think with one exception, we didn't use the

1 same subs on this job and the Dade County jobs. None
2 of this work we did, friction course, lighting,
3 concrete, test pile installation, super structure,
4 approach slabs, traffic switch, temporary striping.

5 We didn't do any of this stuff, and yet they are
6 claiming because we took our forces somewhere else we
7 didn't do it on time. It had nothing to do with that,
8 absolutely nothing to do with that.

9 Let me refer to it because they make a big issue
10 about that, that we were delinquent with the County
11 job. The letter from the County is July of '92, four
12 months before the hurricane. We were behind for a
13 period of time. We caught up, that was the end of it.
14 Was the hurricane impacting these jobs? Of course it
15 did. It impacted every single job.

16 This particular situation was something that
17 occurred in July of '92, three months before the
18 hurricane, almost a year before he said we took the
19 people away, and started and ended there, that was the
20 end of it.

21 It had nothing to do with our moving people in
22 and out. Even if we did move people in and out, it had
23 nothing to do with this because this is all subcontract
24 work. The CPM work they are showing there is all
25 subcontract work.

1 MR. ENCINOSA: We discussed this with the County.
2 Sent these letters out. They do this as a ratio in
3 money against time. Some of your items on the project
4 as you know, the major money items, as you know, are
5 towards the end. When they see the time is going by,
6 you are going out there, you are just doing subgrade
7 and it's taking you two months when maybe you should
8 have, according to the ratio, you should have been done
9 in a month or a half.

10 As soon as you fall 5 or 7 percent or whatever
11 behind that ratio, they send a letter. We are trying
12 to tell them that's the wrong way to do it. If you
13 have a bridge or something finished at the end, that's
14 the wrong way to adjust it. That's why these letters
15 came out. I'm sure they send lots of them.

16 MR. LOPEZ-CANTERA: Even though we have shown it
17 is at least in part inaccurate, I want to use their
18 chart on the manpower. Mr. Steiner pointed to the blue
19 line how we are going in and out. The blue line is the
20 subcontractor work force. The red line is Roenca.

21 If you look at it, the work we had before, the
22 work we had after, is only affected in the months of
23 January, February and March, and that is because at
24 this time frame in here, after the hurricane, as
25 I explained to you before, we put all of our work force

1 in here.

2 After we had to start the other jobs, we had to
3 separate our work force so that each job is taking
4 their people. The people that were in this Dade County
5 project simply went back.

6 It's true that we had somewhat less, but our
7 payroll dollars will show, if you look at it, that we
8 worked overtime to try to make up for the difference.

9 The whole thing becomes irrelevant when you
10 figure out that the critical path issues that are
11 delayed -- he says these are the important things.
12 This is not our stuff, this is subcontractor stuff.
13 These two months he's talking about, I'm shocked that
14 he didn't point out that this ramp, which is not in our
15 contract, the intersection of this ramp to the
16 southwest entrance was impacted by two months.

17 Why didn't we do a time extension for that? In
18 essence by giving us the time that we are requesting,
19 we don't need any more time. We are not saying that we
20 need to have a time completion of May of '95 -- of '94,
21 no, no, no. We finished the work. They had initial
22 occupancy of every single lane in November of '93.

23 The last thing is the deficiencies on the paint
24 stripes. I want to tell you something. The letters
25 that he refers to about constantly calling us are dated

1 after the job was shut down.

2 There is not written communication that I know of
3 before that time that we were constantly told. If we
4 were told on Wednesday do it, on Thursday we were
5 there. Sure, with only a couple of men. My goodness,
6 we didn't have a very large work force.

7 The subcontractor was not available. It's true
8 we used minority subcontractors. I think that is --
9 speaks well of us. But that's all right. The man
10 simply could not handle it. So we went out and we did
11 the best we could under the circumstances. The best we
12 could, by the way, and if the detail was so hurried
13 that it had to be done in two days, we should have been
14 done if we were being told.

15 They were being told months and months ahead of
16 time. Why didn't they tell us? Why did they shut the
17 whole job down when it had nothing to do with the
18 traffic? The bridge work had nothing to do with the
19 traffic. I think this shows something that I don't
20 even want to get into. It shows the type of attitude
21 that the Department took against us.

22 CHAIRMAN COWGER: Cut it off. We don't want to
23 hear about that. We can draw our own conclusions, sir.
24 It's to your benefit not to get into this. Everybody's
25 benefit, really.

1 MR. STEINER: Can I respond to just a couple of
2 items?

3 CHAIRMAN COWGER: Yes. We want to try to wrap
4 this part of the thing up pretty quickly. I have think
5 we have heard about everything we have to hear except
6 I want to let the DOT give a response and maybe we will
7 have a couple of questions, then we will move on.

8 MR. STEINER: The fact that they may be talking
9 about subcontractors, and I won't get into rebutting
10 that, the general contractor is still responsible for
11 his subs. As far as we are concerned, it didn't matter
12 who was doing the work. As you can see, there was a
13 mix of both subs and generals. That's normal.

14 To say that the sub is working, therefore, it's
15 not our responsibility, that's great, but why is the
16 Department being held responsible for the deficiencies
17 of the subs to perform if that's the case?

18 I want to get into that. With regard to the Dade
19 County letters, Mr. Lopez-Cantera says January,
20 February and March were the periods when the impacts on
21 our job occurred.

22 If you look at the backup on Exhibit 10,
23 notwithstanding the letter that is being described to
24 be routine, the specific periods of time referred to in
25 the backup letters in December -- in the December 16th

1 letter which is the next letter back from the cover
2 letter, it specifically identifies the period January
3 '93 through March 15th of potential liquidated damages.
4 That's a routine letter.

5 The next one is -- let me go back to two pages
6 before the end of the page, January 17th, liquidated
7 damages for the County job, actually -- correct,
8 January, February, March being the problem period.
9 This is again why. Those are the dates when the County
10 was assessing liquidated damages, which is not simply a
11 routine delinquency.

12 MR. McCUE: With regard to his bulkhead wall, he
13 had to install a bulkhead wall on the southwest ramp.
14 This is part of the noncritical work that he needed to
15 perform concurrently with the subs who were on the
16 critical path. If he doesn't maintain his schedule, no
17 matter what his subs do, it doesn't matter because he
18 is going to become critical, which he did become
19 critical.

20 And in Tab No. 9 on package B, he's got a request
21 for 14 days, which is basically saying that he and his
22 manpower were somewhere else doing hurricane cleanup
23 work and that's why they didn't do the bulkhead wall.
24 It had nothing to do with the fact that they didn't
25 rush through here --

1 MR. LOPEZ-CANTERA: I need to respond to that.

2 CHAIRMAN COWGER: Wait a minute. I'm confused.

3 A while ago the contractor testified to that ramp
4 coming off the interstate. Is that what you're talking
5 about? This bulkhead interconnected with that?

6 MR. McCUE: Yes. The turnpike came in. They
7 built a bridge. Our contract called for us to build
8 the approach to the bridge. That approach included the
9 roadway out in front of it.

10 CHAIRMAN COWGER: It only included work -- on the
11 roadway side of the bridge?

12 MR. McCUE: Abutted right up beside it. That
13 work involved placing of a bulkhead wall here.

14 CHAIRMAN COWGER: Along Snapper Creek?

15 MR. McCUE: Yes, which he had to install. He
16 came through. This bridge was already in place when
17 he installed this wall. Actually the turnpike, they
18 installed a portion of that bulkhead. They took it
19 from our contract so that he could come up and hook
20 next to them and put it in with no problem. He didn't
21 have --

22 MR. LOPEZ-CANTERA: Two months later.

23 MR. McCUE: When he came in to build that
24 bulkhead, nobody was around there. He did it, he could
25 have done it four months earlier.

1 CHAIRMAN COWGER: What was the statement a minute
2 ago? The ramp coming off of the turnpike, what impact
3 did that have?

4 MR. LOPEZ-CANTERA: He just described it to you
5 very simple. His time frame he is confused on. They
6 took away the bulkhead on both sides of the bridge so
7 that this contractor could do it and tie into it
8 himself. But we couldn't do the bulkhead until that
9 bulkhead was completed because we were tying into it
10 and going this way and that way.

11 We had delays, a 14-day delay here on 122nd
12 Avenue, a very large bulkhead wall, complicated
13 construction. That's what that 14 days refers to, not
14 a thousand feet to the east. The problem is the delay
15 in this contractor giving us his bulkhead is what
16 created us with the inability to start.

17 Plus if the guy is late giving it to us, it
18 doesn't mean we are standing by with our piling machine
19 ready to work. Now we have got to immobilize and
20 everything else. We were delayed by this operation,
21 period.

22 MR. McCUE: I would like to address that. He is
23 claiming the bulkhead is over on 122nd, but its
24 critical path, which if you look under Tab 9 in package
25 B, he has requested that 14 days.

1 MR. STEINER: Exhibit 2.

2 MR. McCUE: Tab 9. He specifically refers to
3 that bulkhead activity as 10-10, which on his critical
4 path submission was the bulkhead wall. It's a concrete
5 footer with a barrier wall on it.

6 CHAIRMAN COWGER: Before we let the contractor
7 have one more statement, I've got to ask something
8 about the striping. The contractor testified a moment
9 ago that the letters that he got dealing with the
10 critical nature of that temporary striping and warning
11 him that it needed to be done were after the shut-down
12 period. Is that true or not?

13 MR. McCUE: I don't think he ever got any letters
14 warning them.

15 MR. STEINER: I didn't say that the information
16 about upgrading the striping work was done in writing.
17 Most of that stuff would be handled in the normal
18 course of meetings out in the field with my project
19 manager and his project manager.

20 It was not until --

21 CHAIRMAN COWGER: I'm not saying you did.

22 MR. LOPEZ-CANTERA: If they are going to shut my
23 job down, some paperwork should preclude it.

24 MR. STEINER: We put it in writing after it was
25 stated in the field because we considered it to be an

1 emergency condition. So we stated in the field you are
2 now shut down. We followed up with the paperwork.

3 CHAIRMAN COWGER: We understand that. I got a
4 little confused when he started throwing in the part
5 about the letters.

6 MR. STEINER: I think that is not accidental that
7 he confused you.

8 MR. ENCINOSA: There is no confusion here. There
9 has been no writing.

10 CHAIRMAN COWGER: The Board will not be confused.

11 MR. ENCINOSA: If there had been a problem with
12 shut-downs, I would have known. On the signs he
13 brought in this letter that I wrote saying the problem
14 I had with the subs and the sub's letter.

15 He didn't say anything about my answer to the
16 sub. What the sub put on here is incorrect. I went
17 ahead and sent him a letter and let him know who
18 ordered the things, when they were ordered.

19 CHAIRMAN COWGER: I read that. Now, do you all
20 have anything to say about the time extension because
21 we are going to quit on that.

22 MR. LOPEZ-CANTERA: Only if they have something.
23 No, we are ready to go.

24 CHAIRMAN COWGER: Let's go on to Part B, which
25 has to do with the conditional payment for the

1 waterline.

2 MR. LOPEZ-CANTERA: All right.

3 CHAIRMAN COWGER: Extra work due to errors in
4 location of underground utilities where waterline at
5 turnpike canal was being relocated. Are we all
6 together as to where we are?

7 MR. LOPEZ-CANTERA: The background on this, at
8 the prework conference the water and sewer authority,
9 and we are referring in letters and speaking to WASA --
10 Water and Sewer Authority, and I didn't know if
11 everybody was familiar with that terminology, but the
12 Water and Sewer Authority showed up at the prework
13 meeting and admitted that the relocation that they were
14 supposed to be doing maybe a year ago was not done.

15 And this was a problem because this was right
16 where also a bridge was supposed to be built and that
17 was part of the critical path.

18 So they asked us to give them a price to do it
19 because they knew, they being WASA, knew that we were
20 adept at doing this kind of work.

21 We did give them a price. The price was to
22 relocate it X number of feet south to move it away from
23 where the new bridge was coming in. The price was to
24 include doing the work as per WASA specifications,
25 meaning the type of material to be used, the type of

1 testing to be done, disinfection, the typical things
2 you think about when you deal with it.

3 When we gave them the price, the Water and Sewer
4 Authority decided for some reason that they were going
5 to put it out for bids. And we said fine. We did not
6 bid the work. The lowest bid that came in was about
7 \$150,000.

8 Like I said, we did not participate because the
9 contract they put out for bids included language we
10 could not accept, we found unacceptable, knowing the
11 conditions we had there.

12 After they received bids for 150,000, our bid was
13 like 115,000. Not our bid, but our proposal had been
14 like 115,000. They came back to us and said you go
15 ahead and do it.

16 The other contractor complained to the
17 commissioner. They were paid substantial sums of money
18 not to do the work. We said we will go and do it. We
19 did do it.

20 What happened was the plans that were provided to
21 us did not properly reflect the conditions in the
22 field. The conditions in the field where we had,
23 I think, six or seven utilities crossing, what happened
24 after they crossed and went underground was totally
25 different from what was shown on the plans.

1 It took us, I believe it was 13 to 14 additional
2 working days or 18 calendar days to complete the work.
3 And the cost attached to the additional equipment that
4 we had to bring in, plus the 13 days was \$44,000.

5 Now don't forget this contract started in the
6 March, April time frame of 1991. In May of 1991 we
7 already are notifying both authorities, and by the way
8 with copies always to the Department, that we were
9 having problems. They couldn't shut down the main for
10 us to cut it and move it. Things like that.

11 In June, on June 24th we are already telling
12 them, hey, on June 24th we are saying, that's the
13 second letter, we have a serious problem here, and two
14 days later we are writing a letter, this is a critical
15 problem. And I am just rephrasing the letter.

16 The third letter, the June 27th letter, was FAXed
17 both to Mr. Grant, who is a construction engineer with
18 the Water and Sewer Authority, by FAX and hard copy to
19 Mr. McCue.

20 More than once I was out there because of the
21 tremendous amount of problem we had in making this --
22 moving this crossing over to the south. More than once
23 I was on the job personally trying to see if we could
24 get out of this thing.

25 Mr. McCue, as the resident engineer -- not the

1 resident engineer, but the consultant on the job, was
2 also there. He knew exactly what was happening and why
3 it was happening. He had copies of the letters and all
4 of the correspondence. We told him you're going to be
5 charged extra time and money for the problems that we
6 are having here.

7 The authority at one point said, well, you don't
8 have a contract with me so I don't want to talk with
9 you. It's true, we didn't have a contract. But we
10 knew, and there is a copy of the check here, the
11 authority was paying the DOT to reimburse us.

12 But our contract, supplemental agreement was with
13 the Department. That supplemental agreement does not
14 make any reference to any Miami-Dade contract except
15 the specifications, the book of specifications,
16 standard specifications.

17 It took us, quite frankly, an extended period of
18 time to develop the amount of money that we were
19 requesting at the time, but we finally prepared it and
20 send it late in 1992 sometime -- I'm sorry, in 1991.

21 Now, we are seeking \$44,000. We sent a breakdown
22 with a true cost and everything else. No one, not the
23 Department, not the authority, ever came back and said
24 your numbers are wrong, your dates are wrong, no one
25 ever challenged the claim until now.

1 Now in their rebuttal they are saying we didn't
2 know about it, we didn't know what was going on. It is
3 patently untrue because they were copied with all of
4 the correspondence. They were there, they knew exactly
5 what was happening. Lack of knowledge is not an
6 excuse.

7 Secondly, once they received the claim, they
8 never said we don't agree, give me a breakdown,
9 nothing. They just let it sit, ignored it. It didn't
10 go away. It is still here. We believe we are still
11 entitled to it.

12 Unfortunately we haven't had a chance to go into
13 analyzing the claim item by item, but we can if you
14 want to take the time. We did give them a detailed
15 breakdown of the time involved, the people, the
16 equipment, everything it took to complete on a timely
17 basis.

18 We think that we are entitled to the \$44,000 plus
19 accrued interest and that we are entitled to the 18
20 days of calendar time that we are requesting. Thank
21 you.

22 MR. ROEBUCK: The DOT paid you for your initial
23 proposal but have not replied to the change order
24 amount?

25 MR. LOPEZ-CANTERA: Well, they replied now, yes.

1 CHAIRMAN COWGER: What it is, there was a
2 supplemental agreement issued to the contractor to add
3 this work to the DOT contract.

4 MR. LOPEZ-CANTERA: Exactly.

5 CHAIRMAN COWGER: And the DOT was reimbursed by
6 the County, but that's probably not pertinent really.
7 It's a part of this contract we are talking about. And
8 we are fully aware of everything that's happened here
9 about these notice requirements and all.

10 I don't think we need to get into that in great
11 depth. I think what we need to get into, though, is,
12 DOT, you never analyzed this claim as to whether or not
13 the monetary amount was proper or not, you rejected the
14 claim based it on not having any merit up front, is
15 that correct?

16 MR. STEINER: Absolutely not. We never saw the
17 claim. The claim was never presented to DOT until
18 after it was rejected by WASA and submitted to this
19 tribunal.

20 And this is where we are really going to confuse
21 you now because we are going to be left and right here,
22 there is no question about it. The JPA we paid. The
23 extra work being claimed -- I just want to summarize.
24 I want to turn it over to Steve Levy, from Miami-Dade
25 Water and Sewer, who was the inspector on the project.

1 Basically two issues were raised in the claim
2 package, the extra cost for the 30-inch valve. That
3 valve was paid for by WASA. In the claims package
4 there is a letter that identifies that there is \$12,000
5 being given to Roenca because of the valve. The valve
6 was outside the State project limits.

7 You will notice all of these letters are not
8 addressed to the DOT. I will agree with you about
9 generally noticed. However, if you are going to come
10 after us for something, you ought to tell us that.
11 That never happened until after they took care of
12 everything they could with the County and failed to get
13 satisfaction. They want us to pay now for what they
14 couldn't get from the County. I have the County here
15 to identify what the circumstances were.

16 The reason it's not in the JPA and not part of
17 the supplemental agreement, part of the problem, the
18 valve had already been paid for. That was paid
19 directly between the County and Roenca.

20 (Brief pause)

21 MR. STEINER: Let me introduce Steve Levy from
22 Miami Water and Sewer. Neither Steve McCue or
23 Steve Levy are being paid by the DOT or anybody else to
24 be here. They are just looking to get to the truth.

25 CHAIRMAN COWGER: They are good guys? Somebody

1 get the white hats.

2 MR. STEINER: I would like him to address the
3 30-inch line and also the issues of the arrows with the
4 location of the pipe, which was alluded to in the
5 claim. I think he can elaborate greatly on it.

6 CHAIRMAN COWGER: I am most interested, and what
7 the Board is most interested in hearing is the
8 contractor is claiming in essence that he was delayed
9 13 days.

10 MR. STEINER: Number one, I can say that the
11 entire issue here is not critical. The 30-inch
12 waterline, the 30-inch valve issue, number one, Roenca
13 messed it up. Steve was there personally, can testify
14 to that effect. It was handled directly between Roenca
15 and the County, because it was outside the State
16 project limits and the JPA, had nothing to do with us.
17 Because they can't get the money from the County so now
18 they are here.

19 CHAIRMAN COWGER: The 30-inch valve is off the
20 limits of the JPA?

21 MR. ROEBUCK: Let's hear from the man who knows.

22 MR. LEVY: I'm not certain initially about the
23 30-inch valve being part of or off of. I know the
24 30-inch valve after we ran into a problem, not being
25 able to shut the main down, the 30-inch valve was

1 deleted at the beginning and then was reinstated at
2 another point on the job.

3 Initially we had asked them to provide the valve.
4 And again, I'm not absolutely certain how the valve
5 appeared, but the valve -- they were asked to install
6 the valve to the west of our line, under the bridge,
7 almost under the bridge on the overpass to the
8 expressway. That was so that we could shut the water
9 down to the west portion of the line, which fed a
10 building just west of the expressway there.

11 We had a design in order to put that valve on,
12 where they put a collar around the pipe and put
13 restraining bolts through the collar in order to hold
14 the valve on.

15 When they poured the collar, unfortunately, three
16 or four of the pieces of pipe they had put through the
17 collar, in order to hold the restraining bolts, became
18 filled with concrete and they were put on the inside of
19 the form instead of through the form.

20 They weren't able to restrain the bottom portion
21 of the valve properly. The first two times they
22 installed the valve, we had to shut the main back down
23 because it leaked on the bottom. We were not able to
24 shut the main down in a timely fashion.

25 There were delays prior to this, and they were

1 documented.

2 The biggest problem we had with this job became
3 with the location of the 30-inch water main as it
4 appeared on the as-built drawings. And I would like to
5 say at this time that Roenca themselves installed that
6 initial 30-inch water main some years prior and
7 supplied us with the as-built information, which
8 ventured out to be wrong in the field.

9 Also, there was a canal crossing that was
10 existing that they had been asked to move. As part of
11 that canal crossing that they were going to move, the
12 initial contract required that they build a new canal
13 crossing piece, steel pipe.

14 And they requested from us in writing to use the
15 existing pipe so that they could save some time and do
16 it in a more timely fashion.

17 When we went to put the piece together, we found
18 that, (a), we had a lot of trouble shutting the mains
19 down, that we had a lot of trouble putting the 30-inch
20 valve on, but we felt that was Roenca's problem. They
21 put together a claim to us citing all these problems.

22 Our position was that the location of the
23 existing utilities was within plus or minus two feet,
24 which was exactly what they could locate them to.

25 And our contract, or our normal contract

1 documents required that they be within two feet of
2 where they were designed or on the design drawings or
3 we denied liability because that was as close as the --
4 as they could be located for us by the utility
5 companies.

6 Also, the information that they supplied us as to
7 the location of their 30-inch water main some years
8 before was bad information, and therefore it was on the
9 wrong side of the utilities in some places, requiring
10 them to go under some that they shouldn't have had to
11 go under.

12 We also felt that there was some problem with
13 using the same pipe on the canal crossing. It was not
14 exactly the same as the pipe was designed for the new
15 canal crossing. This caused them some more problems in
16 alignment and bringing the pipe together the way it was
17 designed.

18 Consequently, we decided that the problems were
19 primarily Roenca's and not the County's in design or
20 execution, and we denied their claim.

21 MR. STEINER: I would like to emphasize the
22 County denied the claim. When it is stated the DOT
23 took no action, the DOT wasn't asked to take any action
24 during the course of most of the project until at the
25 end when the rejection information was given to us. We

1 never got a notice of intent until this hearing that we
2 needed to take any action.

3 MR. DEYO: Did you not go by copy of the
4 December 20, 1991 letter that they sent to Miami-Dade
5 Water, says by copy of, making a claim under current
6 contract for this additional amount by copy of this
7 letter?

8 MR. McCUE: That's when we first received notice
9 of their intent to claim. That's four or five months
10 after that crossing was completed. At that time I gave
11 it to the district utility engineer who then got in
12 touch with WASA and WASA said they denied it.

13 MR. DEYO: You took no action other than that?
14 You were aware of it in December of '91 or January of
15 '92?

16 MR. STEINER: At that point in time we were aware
17 of the action taken by the County. Up to that point in
18 time everything had been done directly between the
19 contractor and the County.

20 MR. McCUE: WASA did the day-by-day inspections
21 on the contract. I would go to them at each estimate
22 and they would tell me what percentage to pay.

23 I wasn't on the day-to-day operation over there.
24 I had nothing to do with it. I really can't tell them
25 that their claim for 44,000 is accurate because I have

1 no records. I wasn't given the opportunity --

2 CHAIRMAN COWGER: Mr. McCue, I see a letter that
3 was in this package here that's three letters here.
4 I don't know who sent this around.

5 MR. LOPEZ-CANTERA: I did.

6 CHAIRMAN COWGER: Okay, 7, 8 and 9. Number 9 is
7 a letter dated June 27, 1991, talks about, I think,
8 this claim, the last sentence says, "Cost attached
9 thereto will be charged accordingly," and it's talking
10 about a problem with insulation of the line.

11 I notice you were copied on the letter. Are you
12 saying you never received it?

13 MR. McCUE: That was in the submission brief
14 under Tab F, the black letter tab.

15 CHAIRMAN COWGER: Let me take a look. Okay.
16 That's where it is. Right.

17 MR. McCUE: I highlighted the May 6th date. The
18 date I stamped my letter was January 10th.

19 MR. STEINER: The answer to your question is yes,
20 we did not get it.

21 MR. LOPEZ-CANTERA: Can I respond to this?

22 MR. STEINER: Quite frankly, even if we had, the
23 issue was addressed to the County. That was an issue
24 in our opinion between the two of them.

25 CHAIRMAN COWGER: I don't think we need any

1 rebuttal. We can sort that out. Well, go ahead and
2 give us a quick --

3 MR. LOPEZ-CANTERA: It is important because they
4 are talking about the County had to pay us additional
5 monies for this, that and the other. March 1, 1991, we
6 gave the water and sewer authority an estimate to do
7 the work, which was \$115,000. If we can keep these
8 numbers, it's very simple. We said if you want us to
9 furnish a valve, it will be an additional \$12,000.

10 We did not furnish that valve. We asked later to
11 use -- in fact, reuse the top portion because it would
12 shorten the time. We gave them a credit of \$10,000 for
13 that, which they accepted. So we were paid 105,000.
14 We were not paid anything else by WASA for anything --
15 of all the other things that happened, not one single
16 cent.

17 Now, I think I need to respond to what Mr. Levy
18 has said because he was introduced to you as the
19 inspector on the job. He was not the inspector. He
20 was the supervisor of the inspector on the job. He was
21 not there every day.

22 MR. LEVY: Well, Carlos --

23 MR. LOPEZ-CANTERA: Let me finish because
24 I didn't interrupt you.

25 CHAIRMAN COWGER: I will let you come back.

1 MR. LOPEZ-CANTERA: The reason he wasn't -- well,
2 the problem that we had was with the existing
3 utilities, not only the pipe that we were to install,
4 but the other utilities.

5 The work that we had done years before and the
6 utilities that were installed after we left that job,
7 we had no control over. Why are we being blamed for
8 all of that? The utilities installed were shown --
9 were not as shown in the plans. He says the contract
10 says if they were within two feet.

11 That was the reason we refused to even bid the
12 job or sign because we did not want to accept those
13 requirements that now he is imposing on me, although
14 there is no contract with WASA, and their letter says
15 we have no contract with you. They admit they have no
16 contract and yet they want to impose those requirements
17 on us.

18 My point is the reason we didn't want to accept
19 it, we knew in an area the size of this room, we had
20 seven utilities, including high pressure gas lines,
21 30-inch water mains, force mains. We had so many
22 utilities that we knew there was a potential for a
23 problem in there.

24 If their plans were correct, we had no problem.
25 If their plans were incorrect -- they are saying the

1 plans are incorrect because the as-built information
2 was incorrect.

3 We didn't install the telephone line, gas line or
4 any other utilities that were in conflict with us. We
5 installed only the 30 inch.

6 I don't have the records to prove our information
7 was correct. Perhaps when they drew their plans they
8 made a mistake. The conflicts were there, we had to
9 deal with it.

10 We had difficulty installing that. We had
11 difficulty doing all of the work. But had the work
12 been as shown in the plans, we would not have needed
13 the restraining that he's talking about because the
14 restraining he is talking about is required because an
15 additional bent had to be put in the pipe very close to
16 the valve where we thought it would blow out.

17 That is the reason for the restraint. Had the
18 pipe gone straight through, there would have been no
19 need for it and we would not have had that trouble.
20 So --

21 CHAIRMAN COWGER: What you are really talking
22 about is where that bent took place you had a reaction
23 block sort of?

24 MR. LOPEZ-CANTERA: The problem is there was
25 nothing to back up the reaction block. We had to

1 design a concrete collar around the pipe to tie
2 everything to and hope that collar would not push out
3 because all of the dirt that was behind that bed would
4 have blown out because it was just dirt sitting there.

5 MR. ENCINOSA: Let me add something to that.
6 When we got the go-ahead to do that job, that line was
7 supposed to be dead. Supposed to be no water in there.
8 We cut, we tied both ends. Yes, the valve actually was
9 deleted. It was added on the other side.

10 We didn't need the valve. If it hadn't have
11 been, that building would have been out of water. We
12 didn't need the restraining block. We didn't bid on
13 putting a valve on the other side. We didn't bid on
14 getting the other lane of traffic to take care of the
15 one building. All these things were very different.

16 CHAIRMAN COWGER: This is very interesting, but
17 you were going to comment on your role as to whether or
18 not you were there every day.

19 MR. LEVY: Number one, Gary Harris hurt his back
20 during the job and I did finish the job. I took it
21 over about halfway into it when they were pouring the
22 collar. The collar had to be poured because we had to
23 take the initial pipe completely out of service ahead
24 of time in order to dismantle the canal crossing and
25 move it to the new piling caps.

1 We would not have had to do that at that point
2 had we used -- had we done it by the original plans.
3 Originally the plan was to put a new canal crossing
4 together, do all the piping right to the point where we
5 would cut and tie in, then we could take the old main
6 out of service and we wouldn't have had to shut it down
7 for as long a period of time.

8 CHAIRMAN COWGER: What caused this change?

9 MR. LEVY: The moving of the bridge. Our pipe --

10 CHAIRMAN COWGER: The contractor wasn't involved
11 in that change?

12 MR. LEVY: No.

13 CHAIRMAN COWGER: Now he testified a minute ago
14 that he had anticipated that line would be dead -- the
15 existing line would be dead when he began his work.

16 MR. LEVY: That's true. The valve we are talking
17 about should have been installed on the other side of
18 the line.

19 CHAIRMAN COWGER: Again, did the contractor have
20 anything to do with that decision?

21 MR. LEVY: That was a valve we were going to put
22 into a new line but it wasn't necessary because of the
23 way we wanted to use the same canal crossing. However,
24 it became necessary when we found we couldn't kill the
25 main.

1 CHAIRMAN COWGER: Let me ask you about killing
2 the main. Was the decision that you couldn't kill that
3 main because of a customer somewhere down the line made
4 after the contract was -- after the supplemental
5 agreement adding this work was executed?

6 MR. LEVY: Yes, sir.

7 CHAIRMAN COWGER: Go ahead.

8 MR. LEVY: Also, if you will look at the letter
9 where they did request the valve, there is a thousand
10 dollars in there for labor that they were going to give
11 us back if that valve was not installed. That valve
12 was originally to be installed on the other side. We
13 swapped the labor portion of it, the \$1,000 to install
14 it on the west side of the canal crossing instead of
15 the east side of the canal crossing.

16 MR. STEINER: Was there a direct payment made?

17 MR. LEVY: It was part of the \$105,000.

18 MR. STEINER: What about the emergency purchase
19 order?

20 MR. LEVY: The emergency purchase order was if
21 they had to provide the valve. But they didn't. We
22 ended up having to take another valve from elsewhere.
23 But the time factor was different. We were able to get
24 our valve out of stock because we didn't need it.

25 MR. LOPEZ-CANTERA: Keep in mind the water and

1 sewer authority should have moved this thing two years
2 before we were on the job. That was not our fault they
3 didn't do it when they were supposed to, and all of
4 these things done within plenty of time could have
5 saved them a lot of money. The fact is they waited
6 until it was too late.

7 They even bid it out and decided not to give it
8 to somebody else. They decided to give it to us --

9 CHAIRMAN COWGER: I'm not sure all this is
10 relevant.

11 MR. ROEBUCK: Let me get the contractual part of
12 this thing straight. You had a contract with a change
13 negotiated through the DOT.

14 MR. LOPEZ-CANTERA: Right.

15 MR. ROEBUCK: Now you got involved with something
16 outside with the DOT right-of-way and you are dealing
17 directly with WASA.

18 MR. LOPEZ-CANTERA: No.

19 MR. ROEBUCK: You are communicating with them for
20 a claim. How do you tie the DOT into this claim?

21 MR. LOPEZ-CANTERA: The DOT was involved because
22 the pipe was in conflict with the proposed bridge. It
23 was in the bridge, under the bridge, one of the bents
24 I believe of the bridge. This pipe had to be
25 relocated. There was no time to relocated it.

1 WASA decided they couldn't relocate it, were
2 using another contractor. They came back to us, said
3 do it. It was within the right-of-way where we did the
4 work. Not only are we within the right-of-way -- it is
5 irrelevant if we are within the right-of-way. The
6 point is it was moved because it was necessary for this
7 project to continue in order to move this pipe.

8 The reason we are dealing with WASA is because
9 the Department -- Mr. McCue had no knowledge of how to
10 do these things. You better talk to these guys if you
11 have a problem. I said fine. We will do that, but we
12 want you to be responsible.

13 And we specifically asked. Otherwise we could
14 have just said let us deal with WASA, let them pay us
15 directly, you are out of it. That is not what we
16 requested. We said you are responsible, otherwise we
17 are not doing it. We are not dealing with WASA
18 directly because we know what is in here, we won't bid
19 their work, we refuse to bid the work. We showed it
20 because we didn't participate in the process. We want
21 to go through you because we are afraid of what will
22 happen. Now we have the result here.

23 MR. ENCINOSA: The old pipe, it really kind of
24 bothers me because they bring that up because it was
25 going to take four to six weeks to get new steel pipe.

1 The pipe was there, perfectly fine. We worked a little
2 harder to try to use the old one to expedite the job.

3 CHAIRMAN COWGER: You took the existing 30-inch
4 pipe up and relayed it?

5 MR. ROEBUCK: Steel pipe.

6 MR. ENCINOSA: Steel pipe.

7 CHAIRMAN COWGER: We are getting very close to
8 wrapping this part up, but I want to know one thing.
9 These 13 days -- and I will ask this to the contractor,
10 these 13 days you say you were delayed because of
11 things that were in the right-of-way that weren't as
12 shown, utilities that were in the right-of-way, not as
13 shown, how did that impact you? How did those
14 utilities being in the wrong location impact you?

15 MR. LOPEZ-CANTERA: When you are coming across
16 with a 30-inch pipe, you don't have a lot of
17 flexibility of movement. You are pretty rigid of how
18 you get there.

19 You have a canal going across here, you have a
20 pipe goes over and under. Now you want to take this
21 pipe over the canal, move it over ten feet or whatever.
22 The existing pipe or the pipe coming under the ground
23 ends right here somewhere and then it goes up.

24 Now you have to move it over, take this pipe, put
25 it over here, come down, come over and tie into the

1 existing.

2 CHAIRMAN COWGER: The problem is when you came
3 underground?

4 MR. LOPEZ-CANTERA: Exactly. The utilities
5 between this new location over here and the existing
6 location did not permit me to do a simple -- do a bend,
7 turn the bend over and come back up. We have gas line,
8 telephone line, everything in the same elevation as my
9 pipeline. Now we've got to go under it.

10 If you go over, you go out of the ground. You
11 have to go under. It's in seven feet of water. It's a
12 completely different job. More fittings, more pipe to
13 be used.

14 Because that valve was required on this side,
15 because the building was out we needed to design a new
16 collar to restrain the thing. The whole thing would
17 have blown out, a 30-inch pipe, at a hundred pounds,
18 generates about half a million pounds of thrust. It
19 would have blown right out of there unless we had solid
20 rock or a concrete collar, which is what we designed.

21 All of these things were beyond the contract's
22 scope and beyond what we had originally bid. Now they
23 want to not compensate us because they say we are not
24 to be compensated. This issue with the valve and the
25 collar having to deal with going over and under all of

1 the utilities and then coming back up and tying in were
2 not -- this was not our as-built information that was
3 erroneous, it was their as-built information.

4 CHAIRMAN COWGER: Let me zero in now. When you
5 were installing the new line, the new 30-inch line, you
6 were down into the ground, and you were turning to come
7 back around to tie into the existing line.

8 Your contention is that in that area you had to
9 thread that 30-inch line, you might say, through there
10 underground. And are you telling me or telling the
11 Board that it was more difficult to install that
12 underground portion because of the fact that the
13 utilities that were shown in the plans in those areas
14 were not as shown?

15 MR. LOPEZ-CANTERA: Exactly.

16 CHAIRMAN COWGER: How did that affect you?

17 MR. LOPEZ-CANTERA: The plans showed the 30-inch
18 pipe would easily turn, fit under the existing
19 utilities and come back up. What we had to do was
20 build sort of a -- I don't know what to describe it as,
21 sort of a wormy type situation to get across.

22 Please remember this is a 30-inch ductile iron
23 pipe. This is not something you will thread like a
24 half inch PVC. This is something that will be very
25 rigid and difficult to restrain so that it doesn't blow

1 out when you test it.

2 With those utilities not being at the elevation
3 shown on the plans, it generated a need for us to go
4 either under or over. I believe we went under. We had
5 to go way down there, start installing additional
6 fittings and come back up.

7 Now we didn't buy the fittings. The materials,
8 for the most part were supplied by the authority,
9 valves and things like that. We are not claiming, but
10 the work to install it far exceeds the cost of the
11 unit.

12 CHAIRMAN COWGER: The relocation of the
13 utilities -- the location of the existing utilities
14 was an elevation difference, at least that's what
15 caused you the problem?

16 MR. LOPEZ-CANTERA: Right.

17 CHAIRMAN COWGER: Let's let the man from the
18 water authority come back and then we are going to cut
19 it off. I want you to comment specifically on how it
20 impacted his work.

21 MR. LEVY: What he said is basically true. The
22 only place where we differ is there was a -- I believe
23 it was either a Southern Bell telephone duct or an
24 electric duct line that was the primary problem. He
25 had to go down under it and come back up and over the

1 other one.

2 Our department took the stance that really that
3 telephone duct line was in the right-of-way area where
4 his pipe should have been. That crossing would have
5 not been necessary nor would they have put their
6 utilities there.

7 The project engineer involved in my work is very
8 precise about some of this stuff. I know that Carlos
9 and Rolando had a lot of dealings with him and a lot of
10 arguments with him, but this was the stand that he
11 took, was that since -- it shouldn't have been where it
12 was. It wouldn't have required the same amount of work
13 had everything been correct.

14 We felt that this -- we felt that the problems
15 they had with the valve were of their own creation,
16 primarily because they didn't put the collar together
17 right, it didn't work for them. Delays there were not
18 a result of the design work, they were a result of the
19 work in the field.

20 CHAIRMAN COWGER: The telephone duct system, how
21 could that have been the contractor's fault? If the
22 duct wasn't where it was shown on the plans, in other
23 words, if it was at different elevation than shown on
24 the plans, how can it possibly be the contractor's
25 fault?

1 MR. LEVY: Our specifications, which again he
2 claims he didn't have to come under, but the claim was
3 to us. As such, we have to go by our specifications.
4 Our specifications say that we will not pay if it's not
5 more than a specific amount, and this was less than
6 that amount.

7 CHAIRMAN COWGER: Two feet.

8 MR. LEVY: Which was two feet.

9 CHAIRMAN COWGER: Now, let me ask one question
10 of the DOT, then we are going to cut this off because
11 I think we have heard all we need to hear.

12 You have a supplemental agreement to this
13 contract adding this water main work into the contract,
14 into the DOT contract, \$105,000. I know there's a lot
15 of correspondence that goes with it, but were any
16 specific contract documents added by that supplemental
17 agreement?

18 MR. STEINER: The JPA, the joint project
19 agreement I believe was added because that's the
20 vehicle that was used to add it. I don't know if the
21 document itself was added, but the work associated with
22 it was added.

23 MR. ROEBUCK: You were getting paid by WASA. You
24 had to have some agreement with them, right?

25 MR. STEINER: That was the JPA. We took that

1 work and incorporated it into the supplemental
2 agreement. I'm using the JPA now in a literal sense.
3 The JPA is what we had with WASA for reimbursement. We
4 took the County's plans and specifications for this
5 work, they designed it, set it up, they specified it.
6 We incorporated it into the contract through the
7 supplemental agreement.

8 Again, let me go back to the issue of this extra
9 item. The DOT really was not involved in this and the
10 evidence of that is really in the letters themselves.
11 They are all directed to the County directly. Any
12 other claim that had to come to DOT for consideration
13 should have been addressed to DOT. None of this was.

14 CHAIRMAN COWGER: We have heard that enough
15 times. We understand what you are saying.

16 MR. STEINER: All the detail that I'm saying now
17 has never been presented to the DOT.

18 CHAIRMAN COWGER: Unless the other Board
19 members --

20 MR. DEYO: I have one thing. I have been looking
21 at two different letters in here. The one in your
22 rebuttal dated December 27, 1991, this is from WASA,
23 "Since we have no contract with Roenca-Dade and our
24 agreement with DOT was for a complete project."

25 So they are absolving themselves, you are

1 absolving DOT, so these guys here are out in the cold.
2 WASA said they don't have a contract with them, they
3 have it with you. You say you have an agreement with
4 WASA, not with them.

5 (Discussion off the record)

6 MR. LOPEZ-CANTERA: The letters they are showing
7 you now all have the same stamp of January 10th because
8 it was all included in the package. It does not mean
9 it was not sent prior.

10 CHAIRMAN COWGER: We don't need to hear any more
11 about that. I'm looking at the supplemental agreement
12 that added this work to the contract.

13 The DOT says -- they are creating a new pay item.
14 They also go on to talk about the new pay item is
15 established to compensate the contractor for relocation
16 of a 30-inch water main, et cetera, et cetera, et
17 cetera.

18 Nowhere in this document does it talk about
19 adding any other contract requirements to the project.

20 MR. STEINER: The design for the work was done by
21 the County.

22 CHAIRMAN COWGER: We realize that. Okay.
23 I think, unless somebody really objects, we are going
24 to go to issue C, the home office and job site
25 overhead.

1 The 163 days that are in that part of the claim,
2 am I correct in saying that those are the same 163 days
3 that are in the liquidated damages claim?

4 MR. LOPEZ-CANTERA: No, sir. We notice that in
5 their rebuttal they are referring to -- they just
6 simply brush off the home office overhead on our 163
7 days because we are not entitled -- it's all liquidated
8 damage time.

9 This is the first time that -- this we received a
10 day and a half ago (indicating). They apparently
11 misunderstood our claim and to the extent that the
12 numbers are the same, I apologize, but if you take 202,
13 which is our calculation, the 202 days of contract time
14 by our calculations, we had 39 -- I don't have it in
15 front of me. I think it's like 39 days of weather days
16 that we feel were not compensable time.

17 Part of the hurricane they did grant to us, which
18 is 20 some-odd days. In any event, that's the way we
19 calculated it. It was 202, minus 39, which is 163.
20 That is the part of the time that they did grant.

21 Now, our position is that it could be entirely
22 possible that we would be entitled to the liquidated
23 damages of 163 days if you decide that, in fact, we
24 were not -- they were not entitled to liquidated
25 damages.

1 In any event, either number far exceeds the
2 ability for us to collect during -- in this proceeding
3 because it far exceeds the \$250,000. At the 163 you
4 will see that the numbers are is \$170,000, \$181,000 --
5 \$182,000. That alone almost exceeds our ability.

6 So even if we went, came back, added another 163
7 days, I don't know what it would mean. I think it
8 would be irrelevant for purposes of this panel.

9 In thinking about it, now that I saw their second
10 rebuttal, it strikes me, like our claim, instead of
11 being a \$400,000 claim, it could easily be a \$600,000
12 claim, if those days were contract days instead of
13 being liquidated damage days.

14 There is very little else I can tell you. This
15 was based on the Eichleay formula and we used that
16 information. Their rebuttal has no information as to
17 whether our amount per day is right or wrong.

18 We reserve the rights under the supplemental
19 agreements to request this money at the end of the
20 project as we were instructed to do, and basically the
21 only reason -- if you add all these monies and it goes
22 to \$400,000 as such, we recognize that to litigate this
23 thing, to try to collect the full amount would take us
24 a year and a half or two years and cost us \$150,000, so
25 we are really not too far off if we are successful

1 here.

2 MR. ROEBUCK: In your calculation sheet that you
3 submitted in your package, you have some numbers.

4 MR. LOPEZ-CANTERA: Yes.

5 MR. ROEBUCK: We have asked in the past to bring
6 in most recent audited statements to confirm your
7 office overhead. This number, did you get these
8 numbers from an
9 audited --

10 MR. LOPEZ-CANTERA: Yes.

11 MR. ROEBUCK: -- audited statement?

12 MR. LOPEZ-CANTERA: Yes, they are all audited,
13 the financial statements. This is the year of '92.
14 I take that back, the year 1992 was not an audited
15 statement, but we will submit it for audit by the
16 Department, by anybody to see if there are any
17 mistakes. I assure you there are not.

18 We got this from the tax returns and the
19 financial statements that we prepared as of
20 December 31, 1992.

21 CHAIRMAN COWGER: Okay. Let me ask you
22 something. Again, that same sheet that Mr. Roebuck is
23 looking at, which is in your original submittal
24 package, part C, extended home office and job site
25 overhead. Is the amount that you arrived at in

1 actuality \$1,245? No, no -- how much is your daily
2 charge?

3 MR. LOPEZ-CANTERA: 1,222.

4 MR. STEINER: Roman numeral II under the second
5 section.

6 CHAIRMAN COWGER: That's all I wanted to know.

7 MR. LOPEZ-CANTERA: That was a million, 245
8 divided by the 1100 days.

9 CHAIRMAN COWGER: Sorry, I got confused. What is
10 the 163 days? Is it not the same 163 days or not?

11 MR. LOPEZ-CANTERA: No, sir, it's not. Please
12 notice in the first sheet of our claim we present to
13 you with the fact that the contract time extension is
14 granted by DOT is 202. These are undisputed. These
15 are being granted already.

16 Our calculations show that of that 202 we are
17 entitled to 163 days of compensable time. Now that
18 that is brought up, we may be entitled to an additional
19 163 depending on what decision this panel makes. It's
20 irrelevant because in either case we go over the limit
21 anyway.

22 The only thing I would change in my position at
23 this point is that we would request the panel to take
24 the position that's most beneficial to us.

25 And what I mean by that is if you decide that for

1 any reason we are not entitled to a full return on
2 liquidated damages, that you make up the difference
3 with the extended office overhead, which would keep us
4 at the maximum level.

5 The last thing I have to say is this memorandum
6 of law business, if you want to, I can talk about two
7 seconds about this and put it behind us on liquidated
8 damages.

9 MR. ENCINOSA: The last page.

10 CHAIRMAN COWGER: I know what you're talking
11 about. I saw it.

12 MR. LOPEZ-CANTERA: We included some memorandum
13 of law on why we shouldn't be charged liquidated
14 damages. Their rebuttal is another memorandum of law.

15 Quite frankly looking at it, I didn't have much
16 problem with it. The first thing is a dictionary
17 definition of damages. We don't object to that. The
18 second part is a California case, and the third part
19 says Supreme Court case says that liquidated damages
20 are entitled to in the event of a breach, and we don't
21 have a problem with that either.

22 The thing is we don't think we have a breach. We
23 don't have a big problem with the memorandum. I don't
24 think it makes any difference on the issue.

25 CHAIRMAN COWGER: DOT, we will give you a brief

1 time to rebut the overhead part of the claim and then
2 we are going to close.

3 MR. STEINER: Well, actually this treads into a
4 substantial legal area as I'm sure you are well aware.
5 The question of the applicability of the Eichleay
6 formula for unabsorbed overhead, if what he is saying
7 is the 163 days is not the time we are discussing now,
8 which is primarily hurricane, and we feel we've already
9 granted that, and now he's going back, which is
10 absolutely unclear, not spelled out here.

11 Even so, take Tab 17, you can see that the
12 majority of the time that was granted, it's all
13 summarized here. There isn't even 148 -- there isn't
14 even 163 supplemental agreement that was granted, only
15 148. The rest was weather delays or suspension because
16 of holidays or other sort of things.

17 They are in essence trying to get paid again
18 twice for areas which even by Eichleay are totally
19 unallowable.

20 The supplemental agreements have in them language
21 which says this is full and complete settlement.

22 I have never seen this letter before, but frankly
23 it's addressed to the State of Florida. It's a general
24 blanket, we don't agree to anything in supplemental
25 agreements. I question whether that has any weight

1 whatsoever.

2 The areas that we have discussed up to now,
3 hurricane, if it's the same 163 -- I won't even go into
4 it because it's just so ludicrous.

5 MR. LOPEZ-CANTERA: I wouldn't have said anything
6 if he hadn't used that word.

7 MR. STEINER: Should I continue talking?

8 CHAIRMAN COWGER: Go ahead.

9 MR. LOPEZ-CANTERA: The job took longer because
10 of times they granted -- even if they only accept 116
11 days for the channel excavation and bridge fiasco,
12 which was clearly under their fault and extended the
13 job, just 116 days, puts us way over the \$150,000.

14 I'm not going to argue a day or two. If I say
15 it's 163 and they say it's 145, again, we could argue
16 something that's irrelevant for your purposes of
17 consideration because you can't apply 163 or 145 or
18 even 116 if you allow the other items.

19 MR. STEINER: That's not the issue. The issue is
20 if you have the time in the supplemental agreement.
21 The supplemental agreement is full and complete
22 compensation. If you want to change something, the way
23 to do it is not to write a letter to the State of
24 Florida.

25 MR. LOPEZ-CANTERA: That's the way we were told

1 to do it.

2 MR. STEINER: But to do it -- I assume your
3 attorney told you that.

4 MR. LOPEZ-CANTERA: No, Mr. McCue told us that.

5 MR. STEINER: To change that, supplemental
6 agreement language, much of that work was by unit
7 prices, whole bunch of -- home office overhead --

8 CHAIRMAN COWGER: Supplemental agreement is
9 executed.

10 MR. STEINER: The 116 days included as we already
11 discussed the hurricane time. You can see in the
12 supplemental agreement the ratio to dollars which
13 demonstrates that even by Reikers' admission in their
14 letter of December '92 they were not looking for
15 compensation for that period.

16 CHAIRMAN COWGER: I think we have heard enough
17 unless somebody has really got something outstanding.

18 Mr. Roebuck, Mr. Deyo, do you have any
19 questions?

20 MR. DEYO: No, I think we have adequate
21 documentation.

22 CHAIRMAN COWGER: This hearing is hereby closed.
23 The Board will meet to deliberate on this claim in
24 approximately six weeks, and you will have our final
25 order shortly thereafter.

1 MR. ENCINOSA: Thank you very much.

2 MR. LOPEZ-CANTERA: Thank you.

3 (Whereupon, the hearing was concluded at 1:15 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing hearing; and that the transcript is a
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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 in connection with the action, nor am I financially
interested in the action.

Dated this 22nd day of September, 1995.

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