

# STATE ARBITRATION BOARD

16 DECEMBER 1997

## NOTICE

In the case of Leware Construction Company versus the Florida Department of Transportation on Project Nos. 50030-3533 and 55060-3547 in Gadsden and Leon Counties, Florida, both parties are advised that State Arbitration Board Order No. 3-97 has been properly filed on December 16, 1997.

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

S.A.B. CLERK

DEC 16 1997

FILED

### Copies of Orders & Transcript to:

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

Andrew M. Clark, Vice President/Leware Construction Company

# STATE ARBITRATION BOARD

ORDER NO. 3-97

RE:

Request for Arbitration by  
Leware Construction Company

Job No.50030-3533 and 55060-3547 in  
Gadsden and Leon Counties

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 11:38 a. m. on Thursday, September 25, 1997.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 3-97 in this cause..

## ORDER

The Contractor presented a request for arbitration of a claim in the total amount of \$169,547.51. The Contractor is claiming additional costs incurred due to the Department of Transportation requiring that coring beneath drilled shafts be done with a double barrel coring device. The Drilled Shaft Plan they originally submitted indicated that this coring would be done with a single core barrel attached to the Kelly bar of the drilling rig, a less expensive method in this situatuion

At the beginning of the hearing, the Contractor submitted a revised Claim Summary. This reduced the total amount claimed to \$158,514.44 by reducing the number of hours claimed for rental of Sectional Barges and the related markup. They also added a request for payment of interest on the amount due from the time additional costs were incurred through September, 1997. The total amount claimed is now \$199,353.33

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

1. In preparing our bid for this project, after a careful review of the plans and specifications and based on our experience in constructing drilled shafts on other DOT projects, we anticipated using a 5' single wall core sampler attached to the kelly bar of our drill rig to core beneath each drilled shaft as shown in the plans. Since the plans do not provide for any cores to be taken from the ground surface to below the shaft tip, in order to make our bid competitive, we elected to use this method of coring instead of using more expensive separate core boring equipment.

2. The drilled shaft installation procedure we submitted on September 20, 1994 provided for use of a single wall coring device. During their review of this procedure, the only mention by DOT made of this part of the procedure was in a letter dated December 21, 1994 from Parsons Brinckerhoff, the DOT CEI Consultant which stated that our subcontractor's coring device "must be capable of coring and recovering an adequate rock core. Based on experience using this method of coring on 11 previous DOT projects, our drilled shaft subcontractor advised DOT that their coring method would be capable of providing an adequate core. A letter from Parson Brinckerhoff dated January 12, 1995 stated that it was not feasible to core to a depth of more than 5 feet with a core barrel attached to a kelly bar and that the District Geotechnical Engineer and Williams Earth Sciences have indicated that similar single-wall core barrels have not produced an undisturbed sample on previous jobs, but we would be permitted to use the single wall core sampler in the test shaft to demonstrate its capability of achieving an undisturbed sample. This was the first mention by DOT of their concern for retrieving an "undisturbed sample." We were prepared to core in increments to a depth greater than 5' if the Engineer should determine this to be necessary. In our opinion, the degree to which a core is disturbed relates to the characteristics of the material being cored as well as the coring method used.

Also, it is not feasible to recover a totally undisturbed core regardless of the coring method used.

3. After evaluating the adequacy of the core taken in the test shaft, DOT found that there was 90% recovery and a 13% Rock Quality Designation. However, they rejected our core sampling device on the basis that this core did not meet the specification requirement for an "undisturbed sample". Our position is that our single-barrel coring method met the requirements of the project plans and specifications and that DOT departed from their established statewide practice for acceptance of core samples. At this point, since we had mobilized on the job and the drilled shaft work was on the job critical path, we had no choice but to use a double-barrel coring device as suggested by DOT.

4. We stopped drilled shaft operations on January 18, 1995 and arranged for a testing firm to do the coring utilizing a separate piece of equipment. Coring began work on January 24, 1995. In order to prevent delays and congestion at the site, we until January 30, 1995 to resume production drilling..

5. As work progressed on the drilled shafts, we realized that another separate coring operation would be necessary in order to keep the work progressing in an effective manner and employed another testing firm to supplement this operation..

6. The extra costs we incurred as a result of DOT requiring use of a double-barrel coring device were:

a. Employing two testing firms to do coring.

b. Idle equipment and superintendent salary for our drilled shaft subcontractor while waiting for the initial testing firm to complete sufficient coring so that their operations could be efficient.

c. Labor and supervisory costs incurred by our drilled shaft subcontractor during the later days of drilled shaft construction due to inefficiencies created by having to conduct both coring and drilling operations off of a barge.

d. Labor and equipment costs we incurred in providing logistical supporting to our drilled shaft subcontractor that were caused by having to conduct coring as a separate operation. (The amount claimed is the cost of an average crew assigned to the job for one month. This represents extra work done to support the coring operation over a period of two months).

7. It is our position that the DOT decision to require a double-barrel coring device was beyond the requirements of our contract. We had previously used a single-barrel coring device on 11 other DOT jobs without the adequacy of core samples being questioned. Some of the other bidders may have been aware of the DOT District 3 preference for double-barrel coring devices, but if we had considered this in our bid we may have not been competitive with all other bidders.

8. We used the double-barrel coring method on some other jobs in DOT District 3 because (a) it was necessary to mobilize a testing firm to accomplish the full depth cores required on those jobs and (b) the economics and scheduling on these jobs justified use of a testing firm to do all cores in advance of drilling operations.

9. We did not credit to the amount of our claim any of the amount paid to us under the item Core (Shaft Excavation), because the cost of coring in using the drilled shaft rig with a single barrel coring device is minimal. Also, our subcontractor's bid price for this item included certain fixed costs such as mobilization, setup, teardown and demobilization.

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

1. The specifications provide "The core barrel shall be designed: (a) to cut a core sample from four to six inches in diameter, (b) so that the sample of material cored can be removed from the shaft excavation and the core barrel in an undisturbed state, and (c) in sufficient length to provide core samples, as directed by the Engineer, up to a depth of 20 feet below the bottom of the drilled shaft excavation. (455-13.6) The single barrel coring device proposed by the contractor failed to meet the last two of these requirements. The demonstration during construction of the test shaft showed that a core could not be removed from the barrel in an undisturbed state and the core barrel could not be extended within the Kelly-bar to accommodate an extension for 20' cores. We consider the coring specification to be a performance specification and the single barrel coring device could not meet performance requirements.
2. The 11 jobs where the subcontractor had previously used a single barrel coring device were in other DOT Districts where the soil is completely different.
3. The subcontractor had previously used a double barrel coring device on other projects in District 3.
4. In the event that the State Arbitration Board should find that there is entitlement for additional compensation, the following should be given consideration:
  - a. The prime contractor's crew was not delayed for one month due to rejection of the single barrel coring device as claimed. He did not have a crew inactive for one month. Their crews were fully employed during the period between 1/13/95 and 1/30/95.
  - b. In developing the amount claimed no consideration was given to the \$23,775.00 paid to the Contractor under the item Core (Shaft Excavation).
  - c. Calculation of interest should be limited to the period after April 22, 1996, the date on which the Contractor submitted this claim.

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

1. DOT testified that their experience with scouring at other river crossings has caused them to run compression and split tensile tests on cores taken beneath drilled shafts for entry into their database. Requiring cores of the quality needed for these tests appears to be beyond the scope of this contract. They also stated that the intent of coring beneath a drilled shaft is to assure that the shaft is tipped in zero percent RQD material and they are not sure whether the limestones encountered in District 3 differ from those encountered elsewhere in Florida.

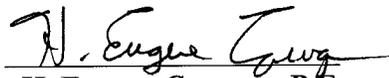
- 2. DOT did not reveal its experience with unsatisfactory cores being produced by single wall coring devices until after the Contractor began mobilizing for drilled shaft operations. This severely limited the Contractor's course of action when the coring method he had proposed several months earlier was rejected by DOT.
- 3. The late decision by DOT to reject the coring method proposed by the Contractor severely disrupted scheduling of operations.
- 4. Having to use a separate rig to do coring significantly increased the operational support effort provided by the Prime Contractor.
- 5. A later DOT specification for Drilled Shaft Foundations contained specific requirements for the type of coring equipment to be used that require a double barrel device.

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 the amount of \$ 123,000.00 for his claim. This amount includes \$30,000 of additional compensation for the coring operation conducted by a Subcontractor.

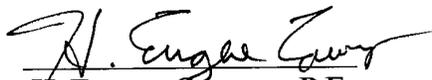
The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 391.90 for Court Reporting Costs.

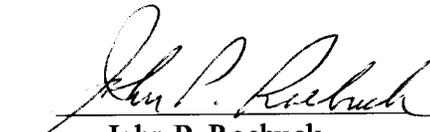
Tallahassee, Florida  
Dated: 12/12/97

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

Certified Copy:

  
Bill Deyo, P. E.  
Member

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

  
John P. Roebuck  
Member

S.A.B. CLERK

12/16/97  
DATE

DEC 16 1997

**FILED**

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

DEC 16 1997

FILED

LEWARE CONSTRUCTION COMPANY, )  
)  
)  
- and - )  
)  
)  
DEPARTMENT OF TRANSPORTATION )  
\_\_\_\_\_ )

PROJECT NOS. 50030-3533, 55060-3547

LOCATION: SR-10 (U.S. 90)  
in Gadsden County and  
Leon County

**ORIGINAL**

RE: Arbitration in the Above Matter

DATE: Thursday, September 25, 1997

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

TIME: Commenced at 11:38 a.m.  
Concluded at 1:33 p.m.

REPORTED BY: Mindy Martin, RPR  
Notary Public in and for  
the State of Florida at Large

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

H. E. Cowger, Chairman  
Bill Deyo  
Jack Roebuck

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Steve Benak  
John Gard  
Marcus Kelly  
William F. Knight  
Scott Stoutamire

APPEARING ON BEHALF OF LEWARE CONSTRUCTION COMPANY:

Andrew M. Clark  
Bud Khouri  
James F. Leware, Jr.  
Chuck Puccini  
Keith Waugh

I N D E X

EXHIBITS

Exhibit No. 1 Received in Evidence	5
Exhibit No. 2 Received in Evidence	6
Exhibit No. 3 Received in Evidence	7
Exhibit No. 4 Received in Evidence	7
Exhibit No. 5 Received in Evidence	9
Exhibit No. 6 Received in Evidence	81
CERTIFICATE OF REPORTER	82

P R O C E E D I N G S

1  
2 MR. COWGER: This is the hearing of the State  
3 Arbitration Board established in accordance with Section  
4 337.185 of the Florida Statutes. Mr. Bill Deyo was  
5 appointed as a member of the board by the secretary of the  
6 Department of Transportation. Mr. John Roebuck was elected  
7 by the construction companies under contract to the  
8 Department of Transportation. These two members chose me,  
9 H. E. Cowger, to serve as the third member of the board and  
10 as chairman. Our terms began July 1, 1997, and expire  
11 June 30th, 1999.

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

15 (Whereupon, all witness were duly sworn by the chairman.)

16 MR. COWGER: The documents which put this arbitration  
17 hearing into being are hereby introduced as Exhibit Number  
18 1. That consists of the contractor's request for  
19 arbitration and all the information that was attached  
20 thereto and any supplemental correspondence in relation to  
21 that matter that has been sent to the board and exchanged  
22 with the parties, with the other party, meaning the DOT,  
23 since that date.

24 Let me, while we're there, make sure, now, that we've  
25 got everything. The original request for arbitration is

1           dated June 12th, 1997. This was submitted to  
2           Mr. Lairscey's office on July 2nd, and the board issued  
3           notice of this hearing on September the 10th. There's some  
4           correspondence to the board that was submitted subsequent  
5           to June the 12th. There was a transmittal letter with the  
6           request dated June the 25th which contains certain  
7           information which I think merely repeats what's been said  
8           elsewhere. I'm not sure whether DOT has this or not.

9                     MR. BENAK: (Shaking head negatively)

10                    MR. COWGER: I don't think it's pertinent because it  
11                    just reiterates things that have been said previously. And  
12                    then there's a letter dated June the 24th, 1997, which  
13                    submits certain correspondence related to the drill shaft  
14                    plan, which is all in the DOT's records. Again, unless  
15                    there's a strong objection to it, I don't see any problem  
16                    with us going ahead and just accepting all that information  
17                    as part of the record. DOT, do you have any problem with  
18                    any of that?

19                    MR. BENAK: I don't know what you're -- I haven't  
20                    seen it. I don't know what you're talking about.

21                    MR. COWGER: Okay. I tell you what let's do. Let's  
22                    take these two documents, the June 24th letter and June  
23                    25th letter from Leware to the arbitration board and give  
24                    them to DOT at this point and let them take a look at it.  
25                    And sometime between now and the close of the hearing, if

1 DOT wants to make an issue about not having this  
2 information on hand, bring it up, okay?

3 MR. BENAK: All right.

4 MR. COWGER: Or if you don't feel like, if DOT  
5 doesn't feel like they've had adequate opportunity to  
6 review any of that, we'll certainly, at the end of the  
7 hearing, before we close out, offer the DOT the opportunity  
8 to provide a written statement on any of that information.  
9 But somebody needs to take a look at that.

10 I apologize. Probably some of that came in and  
11 should have been forwarded on to DOT. So if there's a  
12 fault, it's my fault for not forwarding it to you. But my  
13 analysis of the thing, there's nothing in there that's  
14 going to be a surprise. If DOT feels differently or if  
15 they feel that they need to review that in more detail,  
16 we'll certainly be happy to furnish you a copy of it.

17 Okay. Let's go on. So we've identified Exhibit  
18 Number 1 and discussed it amply.

19 (Whereupon, Exhibit No. 1 was received in evidence.)

20 MR. COWGER: Exhibit Number 2 is a rebuttal package  
21 that came to the board with a transmittal dated September  
22 the 18th, 1997, a copy of which was in possession of the  
23 contractor, Andy, am I right, on Monday?

24 MR. CLARK: No. We got it Friday prior to that.

25 MR. COWGER: Friday, okay.

1 (Whereupon, Exhibit No. 2 was received in evidence.)

2 MR. COWGER: Are there any other exhibits that the  
3 parties need to present?

4 MR. BENAK: We've got these two cores here. I don't  
5 know whether you want to -- it's just for illustration  
6 purposes.

7 MR. COWGER: Strictly for illustration. We will not  
8 treat them as exhibits. We don't want them.

9 MR. BENAK: Well, that's what I figured. We'll take  
10 them back.

11 MR. COWGER: The contractor, I believe, has some.

12 MR. CLARK: Similarly, we might have some pictures to  
13 refer to that are just for information.

14 MR. COWGER: We will accept those just for  
15 information also. And if the board decides, we may want to  
16 keep them to look at but probably not. I believe the  
17 contractor has a couple other things that they want to  
18 present. Let's try to get on through that so we can get  
19 on.

20 MR. CLARK: This is the revised claim that lowers it  
21 about \$11,000 because of that typographical error.

22 MR. COWGER: We're going to identify this as Exhibit  
23 Number 3. Does this lower or raise the amount?

24 MR. CLARK: Lowers.

25 MR. ROEBUCK: Lowers.

1 MR. CLARK: That's Exhibit 3.

2 MR. COWGER: Everybody mark that as Exhibit 3.

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

4 MR. CLARK: Then I have the interest tabulation.

5 MR. COWGER: So what this amounts to is that you're  
6 adding a part to your claim? You're asking for interest?

7 MR. CLARK: Uh-huh.

8 MR. COWGER: We'll identify that as Exhibit Number 4  
9 and we'll discuss it later on. We ask if the contractor,  
10 in making his presentation, make note of the fact that he  
11 has asked for interest in the amount of \$40,838.89 in  
12 addition to what he originally claimed. Is that a correct  
13 statement?

14 MR. CLARK: Yes.

15 MR. COWGER: Off the record.

16 (Whereupon, Exhibit No. 4 was received in evidence.)

17 (Discussion off the record)

18 MR. COWGER: I believe there's one other piece of  
19 information that the contractor wants to submit?

20 MR. KHOURI: As I mentioned earlier, this is copies  
21 of specifications and one plan sheet with notes from a  
22 previous --

23 MR. COWGER: How many copies of this do you have?

24 MR. KHOURI: I have three copies.

25 MR. COWGER: Give us two and give DOT one.

1 MR. KHOURI: Here's two.

2 MR. COWGER: And you've got one more for DOT?

3 MR. KHOURI: I've got one more for DOT.

4 MR. COWGER: Can you all share for the time being,  
5 Jack, you and Bill share that one?

6 MR. ROEBUCK: Yes.

7 MR. COWGER: We'll identify that as Exhibit Number  
8 4.

9 MR. KHOURI: I have two more for DOT.

10 MR. COWGER: Oh, okay. Well, give us one more,  
11 then. Well, sometime when you get finished, identify this  
12 as Number 4. Keep it for right now, Bubba. You all may  
13 need it. When the hearing is over, DOT, would you give one  
14 of those copies back to the board so the board members will  
15 each have one.

16 Now, as I understand it, this exhibit is a  
17 specification for drill shafts that does not apply to this  
18 job that was adopted by DOT sometime after bids were taken  
19 on this particular project. In other words, it's a new  
20 specification.

21 MR. KHOURI: Yes. It was a specification for an FDOT  
22 job bid in 1995.

23 MR. COWGER: Which was after the job that we're here  
24 to consider today.

25 MR. KHOURI: It coincidentally happened after the

1 instance we had on this particular project in Gadsden  
2 County.

3 MR. COWGER: Well, you can testify to that later.  
4 I'm just trying to get the exhibits identified. What is  
5 this plan sheet that's part of Exhibit Number 4?

6 MR. KHOURI: The plan sheets shows the plan and  
7 location of all the drift shafts. And on one of the notes  
8 on this particular plan sheet, it refers to the technical  
9 special provisions.

10 MR. COWGER: But this is another project that was let  
11 subsequent?

12 MR. KHOURI: It was the same project.

13 MR. COWGER: It goes with the spec?

14 MR. KHOURI: Yes, the spec.

15 MR. COWGER: I got you. Okay. Unless somebody has  
16 got a question, I think I'm straight on that except we gave  
17 it the wrong number. I'm sorry. That's 5. The drill shaft  
18 specification is Exhibit 5. Okay. Are we through with  
19 introducing of exhibits, I hope?

20 (No response)

21 (Whereupon, Exhibit No. 5 was received in evidence.)

22 MR. COWGER: No comment, we'll move on. During this  
23 hearing the parties may offer such evidence and testimony  
24 as is pertinent and material to the controversy and shall  
25 produce such additional evidence as the board may deem

1           necessary to an understanding and determination of the  
2           matter before it.

3           The board shall be the sole judge of relevancy and  
4           materiality of the evidence offered. The parties are  
5           requested to assure that they receive properly identified  
6           copies of each exhibit submitted during the course of the  
7           hearing and to retain these exhibits. The board will  
8           furnish the parties a copy of the court reporter's  
9           transcript of this hearing along with its final order but  
10          will not furnish copies of the exhibits because everybody  
11          has those now.

12          The hearing will be conducted in an informal manner.  
13          First the contractor's representative will elaborate on  
14          their claim, and then the Department of Transportation will  
15          offer rebuttal. Either party may interrupt to bring out a  
16          pertinent point by coming through the chairman. However,  
17          for the sake of order, please speak one at a time.

18          Just for the record, going through here, I notice  
19          that this claim has been considered by the department's  
20          claims review committee.

21                 MR. BENAK: Yes.

22                 MR. COWGER: So it's been elevated to the highest  
23          level within the department for consideration, and the  
24          claims review committee rejected the claim.

25                 MR. BENAK: Yes.

1           MR. COWGER: Just for the record. I believe it's  
2 appropriate now for the contractor to go ahead and make his  
3 presentation. Is there any feeling by either party that  
4 there's any way that this could be broken out into distinct  
5 parts so that we could get testimony from the contractor  
6 and rebuttal point by point, or is it pretty much all, as  
7 I see it, it's pretty much all one point except for the  
8 interest part, which will be introduced at some point.

9           Am I correct? You really can't, other than the  
10 interest, you can't really break this thing down into the  
11 parts? Okay. Let's go on, then. Contractor, would you  
12 like to make your initial presentation, please.

13          MR. CLARK: Okay. This concerns a project west of  
14 town on U.S. 90. It called for the reconstruction of U.S.  
15 90. There were two structures, one over the Ochlockonee  
16 River and a relief bridge, which the existing bridges were  
17 to be taken down and replaced with new structures. The new  
18 structures were on drill shaft foundations.

19          We solicited the services of Coastal Caisson to  
20 perform the drill shaft operations. In our role in helping  
21 them, assist them in their work, we had to maintain  
22 support, giving them access, providing them, say, suitable  
23 access and conditions to perform their work.

24          At this point, Gene, I think it's appropriate to let  
25 a representative from Coastal continue with the details of

1 the claim. Bud?

2 MR. KHOURI: Bud Khouri with Coastal Caisson. What  
3 I'd like to do is just outline my portion of this  
4 presentation. What I'd like to do is just talk about how  
5 we bid work from the stage we received plans and specs, how  
6 we looked at the work to bid it, how we put it together.  
7 And also I'd like to talk about what the department is  
8 saying, that we have used double wall four barrel on  
9 projects in this district, District 3.

10 And I'd like to say why we used it and how we put it  
11 together at bid time and how we used it in preparation of  
12 the bid on this particular project in Gadsden County. And  
13 I'd like to talk briefly about the example, Exhibit Number  
14 5, that I just submitted to you all.

15 In general, how we bid work: Myself, being in charge  
16 of estimating and bidding for our company, and with being  
17 an engineer, having an engineering background, what  
18 I usually do, and the estimating group, we go through the  
19 plans and specs on every single project we look at. We  
20 basically, from that point, we decide, for various reasons,  
21 whether yes or not we will bid the work.

22 On this particular job we looked at the plans and  
23 specs. We read them. And I particularly looked at notes.  
24 I read all notes on the plans and the specs, again, because  
25 of my engineering background. I just want to make sure

1 I understand everything. And we decided to bid this job in  
2 Gadsden County. And that's that we did.

3 When we bid this job, there were no special notes  
4 regarding anything to the matter of which method to use to  
5 take the core samples. Looking at the plans, it just said  
6 cores had to be taken, basically, five-foot cores. Looking  
7 at the bid quantity, that basically gave us the bid  
8 quantity a five foot, five feet of A core sample times the  
9 number of shafts. And looking at the specs, it basically  
10 says the regular standard specifications for B-455 drill  
11 shafts.

12 At the time I didn't feel like anything special had  
13 to be done in the bidding process in preparing our numbers  
14 for the project to be bid. And that's basically how we put  
15 it together. We put it together as our own in-house labor  
16 force, in-house equipment, in-house tools, to do the coring  
17 after we get the shaft excavation down to tip elevations.

18 There was no reason to do it any other way. And by  
19 reading the department's rebuttal on our claim, it  
20 basically says that we are using and have used the dual  
21 wall core barrel on other projects in this district. And  
22 it alludes to the fact that Costal Caisson should have  
23 known that we should be using double dual wall core barrels  
24 for work in this district.

25 To that effect, I'd like to go back to one of the,

1 I believe it was the original, one of the original  
2 exhibits, what we call Exhibit A, for one of the projects  
3 that we did for the district. And it was around the same  
4 time frame in 1994. And in particular, for the state, the  
5 project SR-2 over Marshall Creek. And if you can turn over  
6 to that particular plan sheet that we called A, Exhibit A,  
7 within that exhibit. As I said earlier, when we look at  
8 work to bid, we basically study the plans, look at all the  
9 notes and specs. And on that particular project, it  
10 basically says, note A, we labeled note A, it basically  
11 said includes --

12 MR. COWGER: Let's find -- which one is it? Marshall  
13 Creek?

14 MR. CLARK: It's the one that's attached to the June  
15 24th letter.

16 MR. COWGER: Is it sheet B-15?

17 MR. KHOURI: Sheet B-15, that's correct.

18 MR. COWGER: It's also about midway through your  
19 original submittal package, the submittal by Coastal.  
20 About halfway through there you'll find several plan sheets  
21 and about the fourth one deals with, well, it's sheet B-15  
22 from the Marshall Creek job, so we're all together. Go  
23 ahead.

24 MR. KHOURI: If we're all on that sheet, I'd like  
25 just to read that note. And that note, the way, the reason

1 we highlighted this point, this particular note, is because  
2 it was on the plans prior to bidding the work. So when  
3 I read it, it says, "Includes one core (shaft excavation)  
4 required through the entire shaft prior to excavation to a  
5 depth up to 20 feet below the required tip elevation of one  
6 shaft each in bents six, seven and eight."

7 When I read this note prior to bidding the work, this  
8 note tells me that I need to do shaft excavation slash  
9 coring required on the job from existing grade. And to be  
10 able to do that, any drilling company, any contractor in  
11 the drilling business would know, should know that to do  
12 that, you have to have a basically separate rig with a dual  
13 wall core barrel to be able to do this kind of work.

14 So from the get-go I knew we had to have in our  
15 budget, for estimating purposes and bidding, we had to have  
16 something, some dollar value to do this particular work  
17 this particular way.

18 We go on to the next sheet within that same exhibit.  
19 It's sheet number B-13. And that's for Interstate 10 over  
20 Choctawhatchee River. Again, this work was for this  
21 district, District 3. And again, what we labeled note B,  
22 it's basically says, "Note, one core (shaft excavation)  
23 shall be conducted thorough the shaft prior to excavation  
24 of pier one right at a location to be determined by the  
25 engineer. The core (shaft excavation) shall be performed

1 from an elevation of plus 20 to an elevation minus 28 or as  
2 directed by the engineer." And again --

3 MR. COWGER: May I interrupt -- go ahead.

4 MR. KHOURI: And again, me, being an estimator, when  
5 I bid the work and I read this note, this tells me from the  
6 get-go, again, that I have to have a subcontractor, or  
7 I have to have a separate rig with special tools to do it  
8 this particular way. And again, I accounted for it prior  
9 to bid, and we had it in our budget. In contrary to these  
10 two projects --

11 MR. COWGER: Before you go to -- you're going to the  
12 project now that the dispute is on?

13 MR. KHOURI: Yes.

14 MR. COWGER: Let me go back and ask a question to  
15 make sure we understand. When you mentioned, when I saw  
16 these notes in bidding, you were talking about bidding on  
17 these particular projects, not the project we're going to  
18 be talking about today?

19 MR. KHOURI: That is correct.

20 MR. COWGER: Now, the other thing is I notice that in  
21 the estimate quantities, there's a quantity for core shaft  
22 excavation. And that would indicate to me that you had  
23 three 20-foot shafts that you had to drill in bents six,  
24 seven and eight, which makes 60 feet. This quantity is  
25 375. So that 375 included the 60 feet plus, correct me if

1 I'm wrong, a five-foot core at each other shaft?

2 MR. KHOURI: That is correct.

3 MR. COWGER: And on those jobs that you knew you had  
4 to have the double shaft boring device, you were prepared  
5 to do even the five-foot cores with the double barrel  
6 device?

7 MR. KHOURI: That is correct. Since that machine and  
8 that tool was present on the job site, it made perfect  
9 sense for us to keep with that machine.

10 MR. COWGER: We understand that. I wanted to make  
11 sure I understood your testimony.

12 MR. KHOURI: Yes. We move on to the job that we all  
13 are here today for. And the third sheet within that  
14 exhibit, that's sheet number C-12, for SR-10 over  
15 Ochlockonee River. It says under note labeled C, "The  
16 contractor shall perform a four- to six-inch diameter core  
17 run from five to 20 feet below the shaft excavation as  
18 directed by the engineer. A minimum of five-foot core  
19 required for each shaft."

20 This note, contrary to the previous two notes that  
21 I just read from the previous two jobs within the same  
22 district, is completely different, because this note for  
23 Gadsden County basically does not say you have to do the  
24 core from existing grade. So when I read this and I look  
25 at the specs, the exact same thing. It does not tell me

1 exactly, basically doesn't give me an idea of what machine  
2 and what tool I need to use. From this note and the specs,  
3 I can say right away, I don't need anything special to be  
4 accounted for at bid time as far as a dollar value to  
5 perform this particular part of the work.

6 That's basically what we did and what we do at bid  
7 time. Again, I just wanted to let everybody know that, so  
8 you know how we put the numbers together and how we do  
9 account or do not account for any particular portion of the  
10 work that's required on a job.

11 Now, based on the latest note that I read for this  
12 particular project we're here for today, I saw no use, no  
13 need, basically, to go to the expense of hiring another  
14 subcontractor to do this particular coring operation, and  
15 I saw no need for using a double wall core barrel to do  
16 this work.

17 We move on to the exhibit, what we call today Exhibit  
18 Number 5. And I don't know if it's just a pure coincidence  
19 that this particular job bid May of '95. And this  
20 particular job is for the department, FDOT. This  
21 particular job happened to bid in May, which was shortly  
22 after this incident happened in Gadsden County.

23 MR. COWGER: This is Exhibit Number 5 we're talking  
24 about?

25 MR. KHOURI: Exhibit Number 5. Again, being an

1 estimator and reading all the notes before bid time, I look  
2 at this particular sheet and I see the note that says, and  
3 it says basically under revised number three, which is at  
4 the bottom of that long paragraph, basically, "These pilot  
5 holes shall extend a minimum of five feet beneath the  
6 estimated tip elevations shown in the drill shaft  
7 installation table.

8 "All shafts shall be cord at a minimum of five feet  
9 beneath the final shaft tip elevation. At pier..." such  
10 and such. "Coring shall be performed to a minimum of 15  
11 feet beneath the final shaft tip elevation. All pilot  
12 holes and coring shall be performed in accordance with the  
13 technical specification provisions and paid for as core  
14 item number."

15 Let's go, if you would, please, to the drill shaft  
16 specifications for that particular project (indicating).  
17 The plan refers us to that spec. And I'd like to read,  
18 that's the third paragraph on that sheet, Section B-455,  
19 drill shafts. It basically talks about the pilot holes and  
20 the coring beneath the shaft bottom.

21 It basically says, second sentence within that  
22 paragraph, "Both pilot holes and coring shall obtain a  
23 minimum of four-inch diameter rock cores. Examples of  
24 equipment capable of performing this type of work include  
25 drill rigs manufactured by CME, Mobile, Failing, and

1           Diedrich. The drill rig shall be equipped with a high  
2 volume low pressure pump for circulating the drilling fluid  
3 and utilize an NW rod as a minimum size."

4           It goes on to say, "The core barrel shall be capable  
5 of obtaining a minimum four-inch diameter nominal core."  
6 And this is where it's very important. Again, it's  
7 specified that, "The core barrel shall be a double tube  
8 (minimum) meeting the standard of ASTM D 2122," section  
9 such and such, "and the DCDMA standards for core barrels.  
10 The core bit shall be a diamond core," again, it's more  
11 specific, "diamond core bit designed for obtaining cores in  
12 the relatively 'soft' limestones found on this project."

13           The whole point I'm trying to make, this is prior to  
14 bid time. This is a perfect example of what the department  
15 was asking for. And this is a perfect example at bid time  
16 that we knew before we went to construction and before we  
17 bid the work that we had to have a certain amount of money,  
18 dollar figure, to account for this particular portion of  
19 the work.

20           Again, it was very specific. The department knew  
21 exactly what they wanted versus the Gadsden County project  
22 where the notes did not say anything in specific regarding  
23 the method, the machine to use, whether it's single wall or  
24 double wall coring. And that's why we did not account at  
25 bid time for any dollar value for an outside sub or an

1 outside rig, special rig, or a double wall core barrel to  
2 do the work on Gadsden County.

3 MR. COWGER: Are you at a convenient stopping point  
4 in just a minute?

5 MR. KHOURI: Yeah, sure.

6 MR. COWGER: A couple of quick questions. This  
7 specification that's Exhibit Number 5, as I understand it,  
8 this was a specification that was adopted by DOT after the  
9 bids for the project that we're here to discuss today were  
10 taken.

11 MR. KHOURI: That is correct.

12 MR. COWGER: Now, this specification, as I see it,  
13 gets into a method specification basically for the coring,  
14 because it tells you specifically what kind of equipment to  
15 use. It tells that you've got to have a double barrel tube  
16 and all that kind of stuff. Nowhere in here do I see  
17 anything, though, that specifically says that if you use  
18 this equipment, that there's any requirement for you to  
19 recover an undisturbed core. Nothing specifically is  
20 mentioned in this spec.

21 MR. KHOURI: That's right.

22 MR. COWGER: I assume the reason for that is that DOT  
23 assumes that if you use particular equipment, you're going  
24 to get an acceptable core. Now, I don't want discuss now  
25 the relationship of this spec to the dispute we're here

1 about, but I'm just trying to get this exhibit clarified in  
2 my mind. DOT, is what I just said correct, that this new  
3 spec does not discuss an undisturbed core? I couldn't find  
4 it in there.

5 MR. KHOURI: Mr. Chairman, can I just add to your  
6 question one comment. This is not a new spec for this  
7 particular job, Exhibit 5. This was just a supplement to  
8 the special provisions particularly for this particular  
9 job.

10 MR. DEYO: Only a spec for that job.

11 MR. COWGER: Yeah, okay.

12 MR. KHOURI: It was not a new spec. This was just a  
13 supplement to the standard specifications. So in other  
14 words, the design engineer knew from the get-go what they  
15 wanted.

16 MR. COWGER: DOT, I don't even know whether my  
17 question is going to be pertinent to the deliberation to  
18 the board, but I just want to be sure that I read the spec  
19 correctly and that there's no reference to the quality of  
20 the core recovered, correct?

21 MR. BENAK: Doesn't appear to.

22 MR. COWGER: Since it's been brought up that this was  
23 a special provision, again, I don't know how pertinent it  
24 is, but is this a special provision that's typical of what  
25 DOT is using today? I think you revised your drill shaft

1 specifications overall since --

2 MR. BENAK: We've revised it from a performance spec  
3 to a method spec.

4 MR. COWGER: Okay. That's all I need to know. And  
5 again, I want to comment, I want to make everybody  
6 understand, I don't know whether all this is pertinent.  
7 Just trying to get information out on the table. Okay,  
8 Contractor, proceed on.

9 MR. KHOURI: The rebuttal from the department also  
10 states, as I mentioned earlier, that Coastal Caisson  
11 basically should have known, that they shouldn't have used  
12 this particular in-house core barrel that we have. I fully  
13 disagree, because when I read that, I thought immediately  
14 to myself, what if Company XYZ, not familiar with the  
15 drilling aspect of this work, bid the job, they're going to  
16 do their own drilling, and never had any dealings or any  
17 work associated with the drill shafts within this  
18 district?

19 And why would we have, if we had done work for this  
20 district in the past, which we have, and if we had used  
21 double wall core barrels in the past, but it was basically  
22 noted on the plans that that's the way it should be done,  
23 why did we have to assume and be penalized for it, that  
24 double wall core barrel should have been used? That's the  
25 first thing that came to my mind.

1           Second, and I know, again, this district might be  
2           fully right about what they think they needed and what the  
3           intention of the specs or the plans were -- all the other  
4           districts within the department, within FDOT, maybe were  
5           wrong, I don't know -- but on 11 previous projects for the  
6           department for the same owner, we used the same single wall  
7           core barrel and it was accepted. And in my mind, there was  
8           no reason why I had to, at bid time, I had to have a  
9           special dollar figure to have an outside sub work for us to  
10          do this particular operation of coring.

11           At this point I'd like to turn it over to  
12          Chuck Puccini.

13           MR. PUCCINI: My name is Chuck Puccini. I'm the vice  
14          president of Coastal Caisson in charge of operations.  
15          I just wanted to go through how we arrived at constructing  
16          our claim. Bud has explained the cause and I would just  
17          explain the effect.

18           We submitted a revised plan, sent correspondence, no  
19          dispute among the correspondence as its been represented,  
20          and hired a subcontractor to come in and take the samples.  
21          The subcontractor used a dual wall core barrel and took the  
22          cores as agreed.

23           We hired a second subcontractor because, of course,  
24          time is money, and we made every effort possible to speed  
25          the operation along. \$36,000 of our claim is the direct

1 reimbursement for hiring the subcontractor to perform the  
2 retrieval of the cores per the specified manner from the  
3 department.

4 The second part of our claim is the \$11,000 for costs  
5 of interruption of our operation. We distributed our labor  
6 force to other projects, and all we kept idle was the  
7 equipment, tracked the amount of equipment that would have  
8 had to held on site and the supervisor on site.

9 The third part of our claim is for a marginal amount  
10 of money. It's for the last seven days. It's the coring  
11 operation that was on the project. The drilled shaft  
12 construction then caught up with the coring operation and  
13 was slowed down for these last seven days. Very minor  
14 costs. Again, we did everything we could to keep the cost  
15 impact as small as possible. Andy, if you want to go over  
16 the impact it had on your group.

17 MR. CLARK: Our portion of the amount we're seeking  
18 for compensation has to do with the support. Basically, a  
19 firm like Costal Caisson comes in, we've got to provide  
20 them access, suitable access. In the case that we're here,  
21 that we had here, the site was constantly wet in some  
22 areas. We had to provide, I'll say, access roads or  
23 matting that continually had to be moved around. And,  
24 really, for the subcontractors that Coastal had to hire, it  
25 really took more, if not -- as much if not more work

1 getting in and out to get them access to the holes they had  
2 to drill.

3 The coring for the subcontractors that Coastal hired  
4 took approximately two months of which we had a crew for  
5 one month at that time in there shifting equipment around.  
6 And hence, that's where our equipment, I believe we have  
7 176 hours there on equipment, which corresponds to the Blue  
8 Book rental rate, except for the utility boat and the  
9 sectional barge, which was about a week. And that's where  
10 we came up with that amount. Labor was based on the crew  
11 that we had in there that we averaged over a month period  
12 and used that daily rate in coming up times 22 working  
13 days.

14 Basically, that's where our claim came from. We used  
15 the FDOT FDBA system of arriving at the figure. Jim,  
16 I don't know whether you want to add anything to the  
17 day-to-day problems that were --

18 MR. LEWARE: Basically, the quote from Coastal,  
19 they're basically there to drill a hole and put a shaft  
20 in. All support was by us being the prime contractor. A  
21 lot different than any other subcontractor. Shaft  
22 subcontractors are much different than any other subs who  
23 come in and do what I want to call a complete project.

24 Basically, Coastal comes in there with a drill rig  
25 and that's about it. The rest of it, we're their total

1 support. We're their crew. We move them around. We grade  
2 out roads for them. We get them mats. We've got to get  
3 them within three foot of the shaft hole where they can get  
4 their rig there.

5 I mean, it's not like getting a crane or something  
6 like we just sort of get them halfway close. We had to get  
7 access, I'm talking about access right there to the hole we  
8 had to do, because that was the nature of their quote.  
9 I mean, we knew that going in. We had discussions of what  
10 support it would take.

11 I anticipated. We had a plan on where we were going  
12 to start, where we were going to move, how we are going to  
13 do the job, and we were trying to hold to that schedule.  
14 Our intention was to hold to that schedule. And they were  
15 going to be taking their five-foot core at the time when  
16 they were in there.

17 All of a sudden, when we got rejected after the test  
18 shaft, it changed the whole method in which we did the  
19 job. Now not only did I have my crew that I was trying to  
20 keep busy, I had Coastal I was trying to keep busy, but  
21 I had Coastal's two subs and we had two drill shaft subs.  
22 For the most part it was one. Not drill shaft but coring  
23 subs. So I had the coordination factor because where we  
24 were in was soft clay. I mean, you could not get off of  
25 the road we built. You could not get off the mats.

1           Our access was a one-way access. We had underground  
2 utilities that were in there which we knew, but we had that  
3 worked out when we had a one-situation deal, but I could  
4 not work them side by side. And Coastal was off with a  
5 track-mounted machine. The drill people were in  
6 track-mounted machines. It took a different access. We  
7 spent lots of time accessing two different subs, or three,  
8 whether it be Coastal and the two coring units throughout.  
9 And I'm thinking more of the relief structure.

10           When we got to the river structure, I had anticipated  
11 having to put Coastal on a barge. I mean, that was my  
12 responsibility, to have a barge for them to work off of to  
13 supply them, get them on the barge, get them to the  
14 location. Once they couldn't do it, I now had to get  
15 track-mounted coring rigs onto the barge. I had to move  
16 the barge around. I had to put them in location over the  
17 hole. That was my agreement. That was our subcontract  
18 with Coastal. And my understanding, from all the  
19 discussion we had prior to doing the bid, was I knew what  
20 I had to do.

21           All of a sudden, the core from the test shaft was  
22 rejected. I now had a whole other two entities to keep  
23 staffed. I keep two crews or a crew, two crews, whatever  
24 it took to keep them busy, because that was our foundation  
25 work before we could go on. So I did whatever it took to

1 get them to the areas in which it took to get the job  
2 done.

3 I can show that in pictures on what we had to do, but  
4 it's pretty self-explanatory. It was muddy. It was  
5 nasty. And I'm sure nobody disputes the fact that you  
6 couldn't move around on that job. You can go down there  
7 and look today, and people are driving around underneath  
8 it. It was not the case when we were in there. We have  
9 firmed up the area and made the area more stable when we  
10 were in there building it. It was muddy. You could not  
11 get off mats for both of these structures.

12 MR. CLARK: Excuse me. But at the relief bridge, you  
13 were restricted from coming in from the sides. It was  
14 strictly --

15 MR. LEWARE: We were bound by utilities and other  
16 structures. I mean, it was a one-route deal and we were  
17 trying to get Coastal's stuff in there and get the shaft  
18 people in there. We had to coordinate who was in there  
19 first. There was no other, I couldn't find any other  
20 options, and I spent lots of time on the job at the  
21 beginning stages.

22 MR. CLARK: As Jim said, the support that we gave  
23 Coastal is pretty typical for all drill shaft people. This  
24 isn't something particular to Coastal.

25 MR. LEWARE: But the change of requirements just made

1 us reevaluate the whole way to build a job, the whole  
2 attack. Had I known it previously, we probably would have  
3 drilled all the cores through the bridge prior to doing the  
4 removal of the bridge. We would have just cored right down  
5 through it with a track-mounted rig and it would have been  
6 easy, simple. I would have started them on day one.  
7 I would have known what the route was. And I wouldn't have  
8 had to provide them access, because their access would have  
9 been able to go through the bridge. But I wasn't allowed  
10 that option.

11 MR. COWGER: Andy, could I a question. In your  
12 discussion when you were talking about Leware's part of  
13 this claim, did you say it was based on one month?

14 MR. CLARK: Yes. The overall extra drilling, core  
15 drilling was about two months. We had a crew that equated  
16 to about a month.

17 MR. COWGER: Okay. That was the only question  
18 I have, to make sure I heard that properly.

19 MR. CLARK: That's where the 22 days and the 176  
20 hours come from.

21 MR. WAUGH: I was going to say about delay and the 22  
22 days of contract time, many times we hear that the job was  
23 still completed on time and therefore there was no delay.  
24 This job had time extensions for resurfacing and milling  
25 off the east end of the project that let us finish the job

1 on time. But the amount of time we were granted for a  
2 little milling and resurfacing certainly wasn't what was  
3 taken for the milling and resurfacing.

4 And therefore we were delayed during the time. The  
5 job would have overrun over the contract time without this  
6 additional work that was authorized for milling and  
7 resurfacing.

8 MR. COWGER: But as it turned out, there were no  
9 liquidated damages assessed on the project?

10 MR. CLARK: No.

11 MR. WAUGH: Because we had a time extension for other  
12 work.

13 MR. COWGER: Right. Just trying to make sure we're  
14 not talking about something that we haven't heard before.

15 MR. LEWARE: Gene, one other thing, and I don't know  
16 whether it's significant or not, doing the first job, the  
17 work construction did with drilled shafts, I relied heavily  
18 on Coastal's input. We normally use, the majority of our  
19 bridges we've done were on piling. And all I had was the  
20 notes to go on and Coastal's input and what they read into  
21 it and told me what I was going to have to do to support  
22 them. I mean, I hate to be stuck on what they told me, but  
23 having not been familiar with drilled shafts and materials,  
24 I followed their lead, even though we were the prime --

25 MR. COWGER: Are we at an appropriate point now to

1 ask DOT to begin to rebut? Have you made your initial  
2 presentation, Contractor?

3 MR. CLARK: Yes.

4 MR. COWGER: Okay. I think it's appropriate now to  
5 let DOT go ahead and begin their rebuttal.

6 MR. BENAK: My name is Steve Benak. I am the  
7 district construction engineer for District 3. What this  
8 claim all boils down to is, you know, the entitlement for  
9 an undisturbed sampling of cores. It was related to the  
10 contractor through a performance spec. That's one of the  
11 questions we said, what does this contract say.

12 Also, the extraneous jobs that are brought in were  
13 brought in by the contractor at the claims review  
14 committee. When we arrived there, we had the list of those  
15 projects and it was conveyed to us that they had never used  
16 a double wall core in the state of Florida. That's when we  
17 said, no, it's not. They've used it in the third  
18 district. And that's why we had to bring in that  
19 information after the fact.

20 So to get started, also, I'm sorry, I forgot your  
21 name, but he brought up the fact of some other jobs. And  
22 what he's saying was because this note was here, that made  
23 me use a double wall core. That was on State Road 2. The  
24 other half of that job, there was another job on there,  
25 which was Cowarts Creek. The note is not on that job. It

1 was on one job. It wasn't on the other job. So that's  
2 another stretch.

3 I want to go ahead, I didn't know I was going to have  
4 this for the exhibit, but I'd like to go ahead and send  
5 that in now. The other job on that contract did not  
6 contain that note. And so what they were saying was they  
7 were free to use the single wall. They did not. So, you  
8 know, it's black and white right here. They said they went  
9 through the process of bidding it and got the notes and  
10 that's what they used. But that's another job. I want to  
11 concentrate on this job. What does the contract say on  
12 this job.

13 MR. COWGER: Steve, could I interrupt you just a  
14 second. You've come to a point that -- this discussion  
15 about this other job on State Road 2, that's what you've  
16 been talking about for the last minute or so?

17 MR. BENAK: Right.

18 MR. COWGER: Okay. What you're saying there is there  
19 were two bridges in that project.

20 MR. BENAK: There were two bridges in the project.

21 MR. COWGER: And there was nothing in there that  
22 specifically talked about using double walled type coring?

23 MR. BENAK: No, sir.

24 MR. COWGER: But on that job, it's your testimony  
25 that they did, in fact, do some double wall coring.

1 MR. BENAK: Yes, sir.

2 MR. COWGER: Was that job let prior to or after this  
3 job?

4 MR. BENAK: Prior to.

5 MR. COWGER: Let's stop just a minute and let Coastal  
6 comment on that, because we might as well get that out  
7 right now.

8 MR. KHOURI: I'd like to. My name is Bud Khouri.

9 MR. BENAK: I'm sorry.

10 MR. KHOURI: So you know. The reason, again, I state  
11 it again, the reason we had budgeted for a double wall core  
12 barrel on this particular one, Marshall County (sic), was  
13 because of that note. And I think you'd agree with me, you  
14 don't have to say anything, but it was one contract for  
15 both bridges. It was not two separate contracts on SR-2.  
16 Marshall, you had the note on it. Cowarts, it was not  
17 there. For whatever reason, it was not there. But it was  
18 let as one single contract.

19 And for us, we looked at it and we thought, okay,  
20 we're going to have the operation going on on Marshall. It  
21 makes perfect sense to keep that same stuff to do the  
22 coring on the second one. It makes perfect sense for us,  
23 for economic reasons and for scheduling reasons, because  
24 once we have a sub on a job do the coring, they can, just  
25 like Jim mentioned earlier, they could go anytime from day

1 one on the job. They don't have to wait for any access for  
2 anybody to just go do their own thing and off we go.

3 So again, it was a single contract. For whatever  
4 reason, the note was shown on one, not the other. But for  
5 scheduling reasons and economic reasons, we had a sub,  
6 coring sub, in the budget to do the work.

7 MR. COWGER: Okay. I think we've heard that. Now,  
8 Steve, do you disagree with anything he just said  
9 factually? Don't get into his opinions.

10 MR. BENAK: All I'm saying is that the note was on  
11 one that he conveyed to the board that there's an economic  
12 decision, and there are, I think, three locations here  
13 that, through his definition, would require a double wall  
14 or double barrel core rig. There's a whole bridge  
15 available for single wall and the rest of the locations  
16 there on this bridge if that would lower his bid.

17 But like I say, this is, you know, away from this  
18 project right here. What I want to do is concentrate on,  
19 you know, what this contract said.

20 MR. COWGER: I think we're ready to go to that.

21 MR. LEWARE: Excuse me. Can I ask why you didn't  
22 have that note, why you didn't have the note on both  
23 bridges on that project?

24 MR. BENAK: We were interested in these sites right  
25 here. I think there were some voids picked up on the

1 preliminary --

2 MR. LEWARE: So a single wall core would have been  
3 acceptable on the second bridge? Is that what you were  
4 just saying earlier?

5 MR. BENAK: I was going through his definition of why  
6 he used the single wall.

7 MR. LEWARE: Oh, okay. I just thought you were  
8 saying the single wall would have been acceptable on that,  
9 what you were saying earlier.

10 MR. BENAK: No, he was saying that. I was just  
11 trying to elaborate on what he was saying. But what I want  
12 to get into is what does this contract say. And if you'll  
13 turn in our exhibit to the D tab, it's a performance spec.  
14 If you look, oh, let's see what paragraph this is in.  
15 455-13.6, the fourth paragraph, and I want to go ahead and  
16 read that.

17 MR. COWGER: Excuse me just a second, Steve. We're  
18 at tab four?

19 MR. BENAK: Tab D.

20 MR. COWGER: D. We're on the first page. Gotcha.

21 MR. BENAK: Right, that first page. It says, "The  
22 core barrel shall be designed: (a) to cut a core sample  
23 from four to six inches in diameter, (b) so that the sample  
24 of material cored can be removed from the shaft excavation  
25 and the core barrel in an undisturbed state and (c) in

1 sufficient length to provide core samples as directed by  
2 the engineer up to a depth of 20 feet below the bottom of  
3 the drilled shaft excavation."

4 On this project, he couldn't perform two out of these  
5 three. He submitted, I'm probably going to have to have a  
6 little help here on the submittals, but about a month prior  
7 to the test shaft it was noted to the contractor that the  
8 single wall would more than likely not perform.

9 The contractor got back with our people and  
10 indicated, yes, trust us, it will work. So we said, okay,  
11 since it's a performance spec, you can show us. And so on  
12 the test shaft they did show us that it did not produce an  
13 undisturbed sample. And I think that's where we need to  
14 get to looking at our -- this is the sample that came out  
15 of the single wall, this first one right here.

16 And then what I wanted to do is compare this one to  
17 the one that came out of the double wall.

18 MR. COWGER: And you've got both of those cores with  
19 you?

20 MR. BENAK: Yes.

21 MR. COWGER: Now, before you get to that, let me make  
22 sure we understand what you've said. You said that about a  
23 month prior to the time that the work began on the test  
24 shaft --

25 MR. BENAK: Yes, sir.

1           MR. COWGER: -- that there was, let me paraphrase it  
2 a little bit, there was discussion between DOT's  
3 representatives and the contractor about the suitability of  
4 a single core device. And then DOT took the position at  
5 that point, well, Contractor, you can try it if you want  
6 to, but you've got to demonstrate to us that you can get a  
7 satisfactory core.

8           MR. BENAK: Yes.

9           MR. COWGER: Now, I think that the contractor wants  
10 to rebut a little bit on that. Let's come back and get  
11 with that before we look at the cores.

12          MR. PUCCINI: I don't want to change anybody's  
13 testimony. I'd just prefer that since he's testifying  
14 about something that's written, that we go by the words  
15 that are written.

16          MR. BENAK: That's fine.

17          MR. PUCCINI: In fact, I would prefer that you even  
18 read it, the correspondence back and forth, what you're  
19 referring to.

20          MR. COWGER: By the way, there was, obviously, from  
21 the people who are represented here today, there was a  
22 consultant doing the CPI.

23          MR. BENAK: Yes, sir.

24          MR. COWGER: Okay. Good enough. Just getting that  
25 in the record.

1 MR. DEYO: Irrelevant.

2 MR. COWGER: Not that it makes any difference.

3 MR. DEYO: Correct.

4 MR. COWGER: Mr. Deyo points out that it's  
5 irrelevant.

6 MR. PUCCINI: If you could just read the circles,  
7 I think that's what you were trying to say before.

8 MR. BENAK: It was in one of two, December 21.

9 MR. COWGER: We're looking at attachment four. Now,  
10 this is in the original package.

11 MR. GARD: It's in both of them.

12 MR. COWGER: Okay. I've found -- no, I haven't,  
13 either. I haven't found tab four.

14 MR. KELLY: It's a letter to Robert Eison dated  
15 December 21st, 1994.

16 MR. COWGER: Now, tell me again where it is.

17 MR. GARD: It's in the tab, the latest submittal of  
18 the tab E, attachment four of that tab.

19 MR. COWGER: I'll get there in a minute. And that is  
20 a letter dated December 21, '94.

21 MR. GARD: Right.

22 MR. COWGER: Okay. I'm with you.

23 MR. GARD: Down there at the bottom where it's  
24 circled, that's where we brought it up. It says, "Your six  
25 inch core barrel must be capable of coring and recovering

1 in that open rock core. Please acknowledge this  
2 capability." That was where we requested it.

3 MR. PUCCINI: That's the point I was trying to make,  
4 if I could speak again. The word there is adequate. It's  
5 not disturbed, undisturbed, slightly disturbed,  
6 over-disturbed. It says adequate. And based on our past  
7 experience dealing with the department on 11 prior jobs,  
8 that core barrel delivered an adequate core. And that is  
9 why we made the response that our core barrel can deliver  
10 an adequate core.

11 MR. BENAK: Can I speak again now?

12 MR. COWGER: Uh-huh.

13 MR. BENAK: That's why we have this exhibit here.  
14 This is what is determined, what they consider adequate.  
15 And this is what, you know, we consider adequate  
16 (indicating).

17 MR. COWGER: I think Steve is right. We need to be  
18 talking about the issue of adequacy. And that's what we're  
19 going to do right now.

20 MR. BENAK: These cores, and you may want to  
21 elaborate on this, Bubba, these cores have to be tested.  
22 And based on the diameter that is retrieved, it has to be  
23 twice the length and diameter to be tested. But this what  
24 was cored out of the single, this first exhibit, that was  
25 recovered out of the single barrel. And this is what was

1 recovered out of the double barrel (indicating).

2 MR. COWGER: May I ask, were these two cores taken at  
3 approximately the same location?

4 MR. BENAK: It's on the same job. This is the  
5 test --

6 MR. COWGER: Were they taken out of the same shaft,  
7 though? Or are these remote?

8 MR. BENAK: We've got three more out in the truck.

9 MR. COWGER: Let's just say are these typical?

10 MR. BENAK: These are typical.

11 MR. COWGER: This one here is typical of what you  
12 recovered with the double shaft?

13 MR. BENAK: Yes, sir.

14 MR. DEYO: The dual core.

15 MR. COWGER: And this was the only one you took with  
16 the single shaft?

17 MR. BENAK: Yes.

18 MR. DEYO: Single core.

19 MR. COWGER: Okay. Just so I understand. The first  
20 five feet below the bottom of the test hole, right?

21 MR. BENAK: Right.

22 MR. COWGER: And this was in that same location, five  
23 feet below the bottom of the test hole?

24 MR. BENAK: Yes, sir.

25 MR. KNIGHT: To answer the chairman's question, this

1 is five foot below one of the production shafts. These  
2 results are five feet below the test shaft.

3 MR. COWGER: And the last one he referred to was the  
4 one taken with the single barrel coring device. Okay.

5 MR. KELLY: Mr. Chairman, the result -- Steve pointed  
6 out three requirements in the supplemental specs, and he  
7 said that it didn't meet two of the requirements. This is  
8 one of them that Steve is pointing out in representing an  
9 undisturbed sample. The other requirement that the single  
10 wall barrel that was supplied on the job didn't meet is it  
11 wasn't capable with the equipment it was attached to  
12 achieve a 20-foot sample below the shaft.

13 MR. COWGER: Okay. Let's stay for a moment, if we  
14 can, we'll come back to that if you want to, let's stay on  
15 the adequacy of the five-foot core itself. Let's stay away  
16 from the 20-foot issue for the moment.

17 One thing I notice, it looks like the five-foot, the  
18 core taken with the single core method was larger in  
19 diameter than the one taken with the double core method.  
20 I'm not sure it makes any difference, but I just note that  
21 this diameter on this single core looks larger, about six  
22 inches, right?

23 MR. BENAK: Six inches.

24 MR. COWGER: Don't know whether it's pertinent or  
25 not. Just wanted to note that.

1 MR. KHOURI: May I say something?

2 MR. COWGER: One more thing. I notice one of these  
3 specimens from the double wall shaft core has been capped  
4 and apparently to illustrate that you intend to run some  
5 kind of a test on that piece of the core?

6 MR. KNIGHT: Yes.

7 MR. COWGER: Is that typical, that you pull it and  
8 run, what, a compression test on it or something?

9 MR. KNIGHT: We're running compression tests and  
10 splint tensile tests on the results.

11 MR. COWGER: Okay.

12 MR. KNIGHT: We're making those part of the permanent  
13 record on the bridge structure based on our experience that  
14 we've been having in bridges, encountering difficulties  
15 from scour, storms, et cetera.

16 MR. COWGER: Tell me just a little bit more about how  
17 that relates to scouring. If the material is not strong  
18 enough, you're liable to have scouring below the bottom of  
19 the shaft?

20 MR. KNIGHT: Based on the experiences we had on  
21 previous projects where rivers have scoured, the lack of  
22 information to make suitable decisions on whether or not  
23 the structure was safe to keep open for the traveling  
24 public, we're requiring this information and entering it  
25 into the database on the new bridges we're building so that

1 future decisions about the suitability of the structures  
2 for the traveling public and their safety is available to  
3 make decisions.

4 MR. COWGER: When did you adopt that procedure? When  
5 did you start doing that, I guess I should say? Before of  
6 after this job was bid?

7 MR. ROEBUCK: It sounds like this is an informational  
8 matter for the department, not acceptance data.

9 MR. DEYO: It's doesn't bear on the acceptance of the  
10 drill shaft for this job.

11 MR. ROEBUCK: Just information.

12 MR. COWGER: Let's go on from there. Mr. Deyo  
13 clarified that very well, I think. I think maybe we need  
14 to let Coastal comment on the cores a little bit, and then  
15 we'll let DOT come back in.

16 MR. KHOURI: Yes, Bud Khouri with Coastal Caisson.  
17 I'd like to state that regardless of the quality, quote,  
18 unquote, of the core, whether it's good quality, bad  
19 quality, it meets the specs or not, to us, at this point,  
20 it is completely irrelevant, because we go back to the  
21 bidding stage, the bid stage. And after we bid the job and  
22 we said in our correspondence and the DOT, the department  
23 asked the question, will your single core wall barrel be  
24 capable of achieving this. And it's yes, we believe it  
25 will be capable, because of 11 previous projects for the

1 department where we used it and it was acceptable. That's  
2 where we're coming from.

3 The issue is at bid time it was not specified like on  
4 other example projects where the department said we want  
5 this particular double wall core barrel, this particular  
6 method, to be done, to be performed. And from an  
7 engineering standpoint, I fully agree with you. You're  
8 absolutely right. And all the other districts were wrong.  
9 But it was not known to us at bid time. That's exactly  
10 what you wanted. If you want it, specify it. That's where  
11 I'm coming from.

12 MR. COWGER: I think we understand that. I would  
13 like to ask a question, though, before Mr. Leware comes in  
14 in regard to that last statement. And this is a question  
15 for both parties to answer. This core that we're looking  
16 at now, which is the core that was taken with the single  
17 barrel device, is that typical of core recovery that you in  
18 the past had with the single barrel device or was this  
19 unique?

20 MR. BENAK: We don't know. We don't use that.

21 MR. ROEBUCK: This is about the only drill shaft  
22 contractor in Florida.

23 MR. COWGER: You've used the single barrel coring  
24 before.

25 MR. BENAK: Down in District 6 you're talking about?

1           MR. COWGER: No, DOT. You all never used the single  
2 barrel core ever prior to the time this job was let? Is  
3 that what you're saying?

4           MR. BENAK: For drill shafts?

5           MR. COWGER: Yeah.

6           MR. KNIGHT: Not on jobs I've been related to.

7           MR. KELLY: I think the 11 jobs he's referring to  
8 were mostly down south.

9           MR. KHOURI: They were in Jacksonville, they were in  
10 Tampa, and in south Florida.

11          MR. COWGER: Let's let him come back next, now.  
12 Mr. Khouri?

13          MR. KHOURI: Yes.

14          MR. COWGER: Let's let him comment first.

15          MR. WAUGH: If we could refer to tab E, there was a  
16 letter dated January the 12th from Parsons to Bob Eison and  
17 Leware. And on page two of two, this is the day -- this is  
18 after the first sample was taken. And in the middle of  
19 that second paragraph it says, "Our discussions with the  
20 district geotechnical engineer and Williams Earth Sciences  
21 have indicated that the similar single wall core barrels  
22 have not produced an undisturbed sample on previous  
23 projects." We just asked about those previous projects  
24 and --

25          MR. KELLY: William Earth Sciences may have done

1 other projects other than DOT. This was information from  
2 Williams Earth Sciences.

3 MR. CLARK: Does that mean that nowhere have they  
4 done single cores that are good, Williams Earth Sciences?

5 MR. KELLY: That was our advice from Williams Earth  
6 Sciences. I don't know what he based it on. That was just  
7 his advice to us as our sub consultant. We're on page two  
8 of two, a letter dated January 12th, '95, section E,  
9 attachment eight. That's what he's talking about.

10 MR. COWGER: Okay. The court reporter can't hear,  
11 I'm sure, what's going on. But what we're talking about is  
12 in that January 12th letter on the second page. It's a  
13 discussion about our discussion with the district  
14 geotechnical engineer and Williams Earth Sciences have  
15 indicated that similar single wall core barrels had not  
16 produced an undisturbed sample on previous jobs.

17 MR. KELLY: Yes.

18 MR. COWGER: That's what we're talking about right  
19 now, correct?

20 MR. KELLY: Yes, sir.

21 MR. COWGER: Now, what else needs to be said about  
22 that?

23 MR. KELLY: At this point, we haven't done the test.  
24 We haven't received the equipment to do the test. We had  
25 questioned it back in January -- in December. I'm sorry.

1 This is January 12th.

2 MR. LEWARE: After the test shaft was --

3 MR. KELLY: This is after the test shaft.

4 MR. LEWARE: Well, the discussion was during the  
5 shaft. It's dated after the shaft, though.

6 MR. KELLY: What we're trying to do is trying to keep  
7 out of the contractor's means and methods, Mr. Chairman,  
8 and allow him to demonstrate the capability of the barrel.

9 MR. COWGER: We can understand that.

10 MR. LEWARE: Can I ask a question, just on -- I know  
11 that when you went to the warehouse to pick up these  
12 samples that you had one box with a test shaft in it and  
13 you had 50 boxes with permanent shaft cores. What method  
14 did you go about picking the boxes? Did you go through and  
15 look for the good cores? Or is there any cores that we  
16 took on the double barrel method that fell apart and were  
17 not held together as well as the one you brought in here to  
18 show us, Bubba?

19 MR. KNIGHT: I sent for the boxes. There were three  
20 boxes picked. There are two more boxes out in the back of  
21 the truck if you'd like to evaluate or look at those. We  
22 did not open and select the best.

23 MR. COWGER: Let me make sure we understand. How  
24 were the three selected?

25 MR. KNIGHT: As far as I know, by random.

1           MR. COWGER: Just by random. But nobody went through  
2 and looked at -- how many did you say, Jim?

3           MR. LEWARE: There were 50 --

4           MR. CLARK: Fifty.

5           MR. COWGER: Nobody went through and looked at the 50  
6 cores and made a determination as to what might have been  
7 typical? You just did it by random selection?

8           MR. KNIGHT: Yes, sir, as far as I know.

9           MR. COWGER: Again, not commenting on the validity of  
10 what you did. Just making sure of what you did.

11           MR. KHOURI: I'd like to make another comment. If  
12 you go back to the contract documents and you look at the  
13 borings taken by the department prior to bid time, on those  
14 borings, cores were obtained by the department. And on  
15 those borings, it states very clearly the recovery on some  
16 locations was 20 percent, 50 percent, 100 percent. The RQD  
17 varied from zero to 80, to 85. So to me, this means  
18 nothing. They both fit together within the same borings  
19 indicated on the plan.

20           MR. LEWARE: And if I understand correctly, the test  
21 shaft was marked as a 90 percent recovery?

22           MR. KHOURI: Ninety percent recovery.

23           MR. LEWARE: Which I would assume 90 percent recovery  
24 is up there.

25           MR. KELLY: I think the key word here is the specs

1           require an undisturbed sample. I think that's the key  
2           point here.

3           MR. LEWARE: Mark, what does undisturbed mean?

4           MR. KELLY: It spells it out right in the provisions  
5           if you read it.

6           MR. COWGER: Gentlemen, I think this is what we need  
7           to focus on because, not to put words in anybody's mouth,  
8           but when we talk about recoveries, and correct me if I'm  
9           wrong, recovery means what volume of the sample within that  
10          core you got back. Doesn't talk about the integrity of the  
11          core at all. It just talks about what percentage you  
12          recover. And that, you know, that may relate somewhat to  
13          the integrity, because if you've got 100 percent recovery,  
14          then you obviously had a very sound sample.

15          MR. KNIGHT: Not necessarily.

16          MR. COWGER: No?

17          MR. KNIGHT: If you had a sample that stuck in the  
18          barrel.

19          MR. COWGER: I stand corrected. I agree.

20          MR. WAUGH: We use the term undisturbed and  
21          adequate. Adequate has come in today also into some  
22          correspondence, but it was rejected because of  
23          undisturbed. And I had wondered if, you know, the degree  
24          of disturbance to the sample is sometimes related to the  
25          characteristics of the soil itself, not 100 percent based

1 on the method used to sample it.

2 And I had another point along that same line, that we  
3 talked about specs and specs for another project that was  
4 let after this problem. And it's been historically, the  
5 department has revised specifications through technical  
6 special provisions or through planned notes based on  
7 occurrences, either positive or negative, on previous  
8 projects. So they try to better themselves through adding  
9 a note or clarify themselves through adding a note for a  
10 special technical provision on a job.

11 So I believe, at least that's been our indication  
12 through previous arbitration, spec changes have been  
13 changed based on arbitration rulings. Specifications and  
14 plan notes are changed based on past occurrences, either  
15 positive or negative.

16 MR. COWGER: He's not talking specifically about  
17 coring, are you?

18 MR. WAUGH: No, sir.

19 MR. COWGER: You're talking about other cases  
20 where --

21 MR. WAUGH: General revisions of specifications or  
22 plan notes are based on occurrences, past occurrences. We  
23 all learn from them, whether they were positive  
24 occurrences. We recently had a project we were bid and the  
25 plan notes were changed base on the method we had utilized

1 on a previous job.

2 MR. COWGER: Just to make it clear, Mr. Deyo, in a  
3 side conversation, mentioned the fact that the issue of  
4 coring in relation in conjunction with drill shaft work has  
5 never been an issue before this panel before.

6 MR. WAUGH: Correct.

7 MR. COWGER: Just to get that in the record. Yes,  
8 Jim?

9 MR. LEWARE: I guess I'm directing this to Bubba. Do  
10 you not have a good enough sample there to know whether  
11 that shaft is good or not good from our test shaft from --

12 MR. KNIGHT: I do not know whether that is the  
13 material weakness or whether the barrel did that to the  
14 material and the material is adequate.

15 MR. LEWARE: So you could not -- you would say that  
16 you could not determine whether that shaft was good or  
17 not?

18 MR. KNIGHT: I would not have known whether to extend  
19 that shaft to a deeper depth than its excavation.

20 MR. LEWARE: So 90 percent recovery does not allow  
21 you enough information to make that decision?

22 MR. KNIGHT: Undisturbed material at 90 percent  
23 recovery would.

24 MR. KHOURI: Mr. Chairman, I have a question/comment.

25 MR. COWGER: Uh-huh.

1           MR. KHOURI: If the district has never used, on drill  
2 shaft projects, has never used or allowed the use of single  
3 wall core barrel during construction to take cores, to me,  
4 why did not the district specify prior to bidding on the  
5 plans that needs to be done?

6           MR. BENAK: We did. We did on a performance spec.  
7 We hope that the contractor is capable of performing and  
8 giving us that product. And the reason we turned around  
9 and had to change it and make it more specific, it was  
10 evident that they were not capable of providing that  
11 product to us unless we dictated to them exactly what to  
12 do. So that's why we changed the spec.

13          MR. COWGER: Couple of comments. You talk about  
14 changing the spec. That was done on a statewide basis,  
15 though, wasn't it? Or not? Is this revised spec that we  
16 saw in Exhibit Number 5, I believe it was --

17          MR. KNIGHT: It's a technical special provision for a  
18 specific project.

19          MR. COWGER: Is that something developed by District  
20 3 or --

21          MR. KNIGHT: No, sir. That project is not in  
22 District 3. It's District 7.

23          MR. DEYO: It's Hillsborough County.

24          MR. COWGER: Good point. That's down in Broward  
25 County.

1 MR. DEYO: Tampa.

2 MR. COWGER: One more question right quick. Really,  
3 gentlemen, in the interest of trying to expedite this  
4 thing, what Steve was just saying, to sum it up, he's  
5 saying that we had a performance specification that said  
6 you had to recover an undisturbed core, a core in an  
7 undisturbed state, to be more specific, from your core  
8 barrel.

9 MR. BENAK: To a depth of 20 feet below the --

10 MR. COWGER: Let's stay away from the 20 feet at the  
11 moment. I'll give you the opportunity to come back to that  
12 in a minute. Let's stay focused on undisturbed state for a  
13 minute. That's more of what we're here to talk about than  
14 anything else, is what did the contract say about the  
15 quality of the core. And it said undisturbed state. So  
16 let's talk a little bit about what that means to Coastal  
17 and to DOT. Let's let Coastal go first.

18 MR. KHOURI: Mr. Chairman, we have seen the standard  
19 specs and we're very familiar with them. And the standard  
20 specs which apply for this particular project, this  
21 contract, is typical in all of the state of Florida on all  
22 FDOT projects. And to me, as an estimator slash  
23 contractor, when I look at that spec and I know I've used  
24 single wall barrel in other districts for the same owner,  
25 for the department, there is no, for me, there is no reason

1           why I should do any different for this particular district  
2           except if the district specifically tells me prior to bid  
3           time this needs to be done this way.

4           MR. COWGER: May I ask a question to clarify what you  
5           just said?

6           MR. KHOURI: Yes.

7           MR. COWGER: What you're saying is this specification  
8           was used in other districts, you've constructed jobs in  
9           other districts using the single barrel method, and the  
10          cores recovered were satisfactory to DOT?

11          MR. KHOURI: That's correct.

12          MR. COWGER: Let me finish just a second and I'll let  
13          you all come back. Can you testify to anything that says  
14          whether the types of cores that you recovered in the other  
15          districts going through limestone material were similar to  
16          this core that we see for the single barrel here?

17          MR. KHOURI: They might have been better than these  
18          or even worse than these.

19          MR. COWGER: Okay. That's enough. Now, Mr. Kelly  
20          had something he wanted to say.

21          MR. KELLY: I was curious if those other 11 projects  
22          you're referencing had the same language that this contract  
23          did requiring an undisturbed sample. Are the three  
24          requirements that this contract did, did they also list  
25          these requirements on the 11 projects?

1           MR. KHOURI: My answer to that is no one is  
2 absolutely 100 percent sure, but I truly believe the same  
3 standard specs, B-455, has applied to all the other 11  
4 projects.

5           MR. KELLY: But the supplemental specs, which are job  
6 specific to each project, what my question was, were the  
7 other supplemental specifications that were job specific,  
8 did they have the same requirements as this contract?

9           MR. KHOURI: That is correct. They all had the same  
10 requirement.

11          MR. KELLY: Thank you.

12          MR. COWGER: Is there any reason to dispute that,  
13 Mr. Kelly --

14          MR. KELLY: No, sir.

15          MR. COWGER: -- his answer that said, yeah, they were  
16 the same?

17          MR. KELLY: No.

18          MR. COWGER: Okay. Go ahead.

19          MR. STOUTAMIRE: I'm just curious whether he would  
20 consider that an undisturbed sample. He never has come out  
21 and said it. I'm just curious what Mr. Khouri thinks, if  
22 it's disturbed or undisturbed.

23          MR. LEWARE: It appears to me that both of them are  
24 disturbed.

25          MR. STOUTAMIRE: I asked about this one (indicating).

1           MR. COWGER: My answer is this one is disturbed. And  
2 to follow up to my answer, the other one is disturbed  
3 also. Before I came up here yesterday, I called many  
4 geotechnical, independent geotechnical firms who have done  
5 work for the department and still are doing work for the  
6 department. And all their answer was, you can never  
7 retrieve a core that is undisturbed, purely undisturbed.

8           MR. COWGER: Well, we're focused on the main issue.

9           MR. DEYO: Can I ask a question. For the sake of  
10 argument, though, disturbed, we identified earlier, was  
11 percent recovery, because we're basing our test and our  
12 final acceptance on not the condition of the actual core  
13 five- or 20-foot lengths or whatever it is but on the  
14 material recovered from that shaft to determine the  
15 underlying support characteristics of Mother Earth or  
16 whatever you want to call it down there. This is for  
17 foundation design. The depth of shaft is what we're trying  
18 to determine.

19           MR. KNIGHT: Yes, sir.

20           MR. DEYO: You could do SBT or whatever other test  
21 available to determine the quality of the underlying  
22 strata; is that correct?

23           MR. KNIGHT: Yes.

24           MR. DEYO: Okay.

25           MR. KHOURI: I'd like to clarify one minor item.

1           When you said the quality, the quality is measured by the  
2           RQD percentage.

3           MR. DEYO:    Sure.

4           MR. KHOURI:  Recovery is how much you recover from  
5           within that core, and the quality of that core or the  
6           quality of that material is designated by the RQD  
7           percentage.

8           MR. DEYO:    Yes.

9           MR. KHOURI:  And it could be zero percent.  It could  
10          be 100 percent.  And on this particular contract, the  
11          borings indicate that that is very well true.  It varied  
12          from zero percent to 100 percent.

13          MR. COWGER:  But again, we're looking at the  
14          information that was contained in the plans.

15          MR. KHOURI:  (Nodding head affirmatively)

16          MR. COWGER:  Okay.  Just want to make sure.  Yes,  
17          sir.  Go ahead.

18          MR. KNIGHT:  According to what Mr. Khouri pointed out  
19          that was existing on the boring logs for the RQD from zero  
20          percent to 100 percent, the intent of the five-foot core is  
21          to be sure that we're not tipping the shaft in some of the  
22          zero percent RQD material, which might cause a settlement  
23          of the structure, which would be detrimental to the new  
24          structure.  Thus the desire for an undisturbed sample to  
25          note it is indeed the material and not the barrel.

1           MR. COWGER: What you're looking for, though, is  
2           you're looking to somehow or other be able to evaluate  
3           whether that first five feet immediately below the tip is  
4           sound and you won't have any problem with performance of  
5           the shaft in the future.

6           MR. KNIGHT: We are looking for a good resting place  
7           for the shaft to tip, just as we're looking for the blow  
8           count on a pile. If the pile does not have the blow count,  
9           we continue.

10          MR. COWGER: And the same thing with the coring, if  
11          you're not satisfied with that first five feet, you may  
12          want to go deeper?

13          MR. KNIGHT: Yes, sir.

14          MR. COWGER: Or you may want to do something else  
15          altogether.

16          MR. KNIGHT: Yes, sir, it's possible.

17          MR. COWGER: Go deeper with the shaft or something.  
18          I guess I had a question, but I don't remember what it was  
19          now. That's bad.

20          We need to give the department the opportunity,  
21          because I cut them off about two or three different times,  
22          on the core barrel being sufficient to allow core to be  
23          taken 20 feet below the bottom of the drill shaft. So  
24          I think, DOT, you need to make a statement on that, and  
25          then we'll let the contractor rebut that and we'll move on.

1           MR. BENAK: Well, looking at the summary of claim  
2 which is on part A, in there it says original barrel was  
3 fixed and could not be extended with kelly box to  
4 accommodate an extension of four 20-foot cores. So it  
5 wasn't in compliance with the contract. That was another  
6 issue that was not in compliance. So two out of three it  
7 did not meet.

8           MR. COWGER: Before you leave that, suppose that  
9 after he took the five-foot core, you decided that you  
10 wanted to go down to 20 feet. Let me ask the contractor  
11 about this. Would it have been possible to put a longer  
12 barrel on the bottom of your kelly box and go 20 feet or  
13 not? Have you ever done that?

14          MR. ROEBUCK: Are you able to put a five-foot  
15 extension on that?

16          MR. PUCCINI: No, not on the core barrel. No. It  
17 takes a five-foot core.

18          MR. COWGER: You would have been in the position of  
19 having, the DOT said the specifications require us to core  
20 between five and 20 feet, and suppose DOT had said after  
21 they evaluated the first five feet that they wanted to go  
22 another, just for instance, five more feet. What would you  
23 do?

24          MR. PUCCINI: We would take that same core barrel and  
25 take another bite out five feet further down.

1           MR. COWGER: I see somewhere in all of this, though,  
2 that says you can't do that because of the kelly box not  
3 being able to going down through that first five feet.

4           MR. PUCCINI: Well, you'd have to expand the hole.  
5 You'd have to do an overcut. And there's nothing in the  
6 specification that defines how much overcut you can have or  
7 not have. So all you can do is overcut it and take another  
8 bite. It's similar to taking the whole shaft down.

9           MR. COWGER: You're not talking about going at the  
10 full width of the shaft?

11          MR. PUCCINI: No.

12          MR. COWGER: Just enough to accommodate the kelly  
13 box?

14          MR. PUCCINI: That's correct.

15          MR. COWGER: All right. DOT, what have you got to  
16 say about that?

17          MR. BENAK: I don't really understand what they're  
18 saying. Are you saying you're going to extend the drill  
19 shaft down five more feet and then set up again and then go  
20 five feet deep?

21          MR. PUCCINI: That's what I said. I would overcut  
22 the core hole.

23          MR. BENAK: Overcut the core hole with what?

24          MR. PUCCINI: Cutting tool.

25          MR. COWGER: You'd have to overcut the core hole

1 enough to accommodate the kelly box.

2 MR. PUCCINI: That's right.

3 MR. KNIGHT: Was that submitted as part of your drill  
4 shaft plan?

5 MR. PUCCINI: No, it wasn't.

6 MR. LEWARE: The drill shaft plan was accepted.

7 MR. KHOURI: It was accepted and we didn't have to  
8 clarify it any further because no clarifications are  
9 needed.

10 MR. BENAK: How big would you have to cut in the  
11 bottom of the existing over these three-foot shafts or  
12 four-foot shafts?

13 MR. COWGER: Forty-two inches.

14 MR. BENAK: How big would the hole be in the bottom  
15 down there to accommodate that kelly box?

16 MR. PUCCINI: Are you asking me for a measurement?

17 MR. BENAK: Yeah.

18 MR. PUCCINI: I would have to measure the box. The  
19 bar on the drill is six inches and then it's an inch on  
20 either side for the width of the box.

21 MR. BENAK: And you have augers that size?

22 MR. PUCCINI: Absolutely.

23 MR. KHOURI: In other words, to clarify it very  
24 simply, we would have done whatever we had to do to take  
25 the shaft down another five feet, whether it's the whole

1 diameter, 30-inch diameter 24-inch diameter, whatever we  
2 had to do. We had the capability to do it. Take it down  
3 another five feet at our own expense and take another  
4 five-foot core.

5 MR. COWGER: So you're saying that even if it  
6 required, at your expense, going five foot deeper with the  
7 drill shaft or ten foot deeper, that's a possibility of  
8 something could you have done?

9 MR. KHOURI: Absolutely.

10 MR. PUCCINI: Absolutely.

11 MR. KHOURI: Without any problem from our part.

12 MR. COWGER: I think we need to leave this 20 foot,  
13 but let me ask Mr. Knight one question. Suppose they would  
14 have gone in there and drilled through that first five  
15 feet, with an auger or something big enough to accommodate  
16 the kelly box going five foot down below the bottom of the  
17 shaft, what effect would that have had on the adequacy of  
18 the shaft by having that larger hole than the six-inch hole  
19 you'd anticipated?

20 MR. KNIGHT: If it was filled during the concrete  
21 operation, none.

22 MR. ROEBUCK: Yeah, you're going to fill it with  
23 concrete anyway.

24 MR. COWGER: Just making sure we understand that.  
25 Gentlemen, for the board members, I think we've heard

1 enough about the 20-foot issue, don't you?

2 MR. ROEBUCK: Yes.

3 MR. COWGER: Because the real issue, in my mind, is  
4 going back to the undisturbed state again and all the other  
5 testimony that's been given in regard to that particular  
6 item.

7 Somewhere in the correspondence the contractor made  
8 the statement that DOT rejected the use of the single core  
9 barrel device prior to examining the test core. Now, I saw  
10 that somewhere in the correspondence in a letter -- let me  
11 read what it says.

12 The contractor stated in a letter that DOT rejected  
13 the use of a single barrel core device prior to examining  
14 the test core. Rather than going back and trying to find  
15 that letter, DOT, did or did not you do that? What's your  
16 position on that statement?

17 MR. KELLY: I disagree with it.

18 MR. BENAK: It was a performance specification and  
19 they have to perform and provide us with the end product.  
20 And we did not reject it until after the sample was poured  
21 out on the ground.

22 MR. COWGER: Since that was in there, I want to make  
23 sure that everybody understands. I'm not trying to pursue  
24 the contractor's case for him, but since I saw that in  
25 there, I felt we needed to have DOT'S position on it.

1           MR. KELLY: As I recall, the correspondence will show  
2 that there were concerns brought up approximately a month  
3 prior to the actual demonstration, but the rejection was  
4 not formally submitted until after that demonstration. As  
5 I recall, that's what the correspondence will show.

6           MR. COWGER: Well, there's no question that there's  
7 correspondence in there that says there was a concern  
8 expressed by the engineer about whether or not an adequate  
9 core was, that was the term used, could be recovered. That  
10 was expressed 30 days or more prior to the time that you  
11 moved in to do the test shaft. I don't think that's in  
12 dispute. But what's in dispute is what adequate core meant  
13 and what undisturbed state means and how that relates to  
14 previous practice by DOT. Now, go ahead.

15           MR. KHOURI: I'd like to rephrase myself again one  
16 more time, and hopefully the last time. But the question  
17 was brought up as to whether or not our core barrel will be  
18 capable of giving an adequate sample. Our answer was that,  
19 yes, we believe our six-inch core barrel will be capable of  
20 coring and recovering an adequate rock core when required  
21 by the engineer. We stated that based on, again, based on  
22 the fact that we have used the single core barrel for the  
23 department's jobs within the state of Florida on 11  
24 previous projects.

25           Now, whether the other districts were wrong by, yes,

1           accepting it, I have no idea. But did the other districts  
2           allow it to happen where the bridge is built on something  
3           that is questionable, I have no idea. But they did accept  
4           it. And to us, to me, at least, at bid time and prior to  
5           starting construction, that was more than enough to say,  
6           yes, we believe it will be enough.

7           MR. KELLY: Mr. Chairman, I believe the intent -- as  
8           I recall, I wrote that letter. The clarification for the  
9           word adequate specifically was directed towards this  
10          contract language. I understand what you're saying as far  
11          as your basing it on previous projects. But the intent of  
12          the word adequate on this particular letter was  
13          specifically for the contract for requirements on this  
14          specific job.

15          MR. COWGER: But I think we've already established  
16          that to the best of our knowledge, the comment about the  
17          core being recovered in an undisturbed state was in the  
18          contract for those other projects that he talked about.

19          MR. KHOURI: Right. That is correct.

20          MR. COWGER: Okay. Just so we've got that  
21          established. Let me ask you a question that I think we  
22          need to know a little something about. And I think we're  
23          getting close to the end here, by the way. Mr. Roebuck is  
24          worrying about his plane already. I think we're getting  
25          close to the end.

1           But I think it's important that we maybe ask DOT to  
2 tell us is there something unique about the limestone in  
3 District 3 that would cause you to require a different  
4 standard to define undisturbed state than what had been  
5 done in the other districts? And if that's not an  
6 appropriate question, just tell me so.

7           MR. KNIGHT: Well, I haven't done any geotechnical  
8 investigations in the other districts, and I haven't  
9 evaluated any core barrels below any shafts in the other  
10 districts, so I'm not sure I can answer your question.

11          MR. COWGER: Okay. I think that's good enough.

12          MR. KNIGHT: The question is dealing with lime rock  
13 in District 3?

14          MR. COWGER: Yeah, as opposed to the limestones that  
15 have been recovered under cores in other districts.

16          MR. BENAK: I think the key word there is between  
17 limestone and lime rock, just to make that point.  
18 Limestone is a little harder than lime rock.

19          MR. COWGER: Let's not get into that discussion.

20          MR. KHOURI: It's really all academic.

21          MR. COWGER: We don't want to hear any more about  
22 that, because we understand what Steve is saying and we can  
23 weigh that.

24          MR. BENAK: Stick with this job. All this extraneous  
25 information was brought in, you know, but I got cut off

1 here on my number two issue, which was what happened in  
2 this project. And I think we've beat that horse. The  
3 third one is did the contractor have prior knowledge of  
4 double wall core barrels in District 3. And the answer is  
5 yes. There are, I think, three jobs that we have --

6 MR. COWGER: And we've kind of beat that one around a  
7 lot too, Steve.

8 MR. BENAK: We've beat that around a little bit. But  
9 there are three jobs there that this company had double  
10 wall core barrels in District 3. They had prior knowledge  
11 of its use.

12 MR. COWGER: But am I right in saying that each of  
13 those three instances, there was a specific plan note that  
14 required at least some cores to be taken with a double bore  
15 device?

16 MR. KNIGHT: No. All it said was core of 20 feet  
17 below the bottom of the shaft. And they did not submit  
18 their single wall core barrel doing augering below.

19 MR. KHOURI: I'm sorry. I have to disagree with that  
20 comment, Bubba, because on the plans it shows from an  
21 elevation of 20, which was grade elevation, down to --

22 MR. KNIGHT: You said you could excavate core, your  
23 core barrel to any depth.

24 MR. ROEBUCK: You wouldn't want to go 70 feet five  
25 foot at a time.

1           MR. KHOURI: To do that economically, we had to go to  
2 a coring sub.

3           MR. COWGER: I don't think we need to discuss that  
4 anymore, because the board can read what the notes say and  
5 make their own decision on that. Go ahead, Steve.

6           MR. BENAK: There is one project, I think it was the  
7 first one on Choctawhatchee Bay, that did not contain, like  
8 I think they were talking about, the notes that were in the  
9 plan. On State Road 2 there was one portion there that did  
10 not contain those notes.

11          MR. COWGER: But that was only one of two jobs in the  
12 same contract.

13          MR. BENAK: Right, one of two jobs. There were three  
14 areas that the geotechnical engineer was interested in.  
15 And he wanted to see if there were any voids down there to  
16 be sure that we could ascertain, you know, what was down  
17 there.

18          Another point I wanted to make is that he indicated  
19 that it's like a specialized function for this double wall  
20 coring, double barrel coring. And we have a lot of firms  
21 doing drill shafts in the third district. We have no  
22 problems with them. We have Fairchild, F&W. Let me see.  
23 We had Zep that just came in on one single project. They  
24 had no problem with figuring out that there was a double  
25 wall core barrel.

1 MR. LEWARE: How was his recovery?

2 MR. BENAK: I don't know for sure.

3 MR. LEWARE: I do because I talked to them  
4 yesterday. But I don't know if that's pertinent to this,  
5 but you don't want to discuss it.

6 MR. BENAK: The point is is that they used a double  
7 wall core barrel. Coastal has used it. Who's down at  
8 Blountstown?

9 MR. KNIGHT: Farmer.

10 MR. BENAK: Farmer. Who else were you talking  
11 about?

12 MR. KNIGHT: Smith and Vickers. We've had a lot of  
13 contractors in the third district doing drill shafts and we  
14 have not had this problem.

15 MR. COWGER: Okay. Were those jobs let subsequent to  
16 this particular project that we're talking about today?

17 MR. BENAK: Some were, some weren't.

18 MR. KNIGHT: Some preceded, some were simultaneous,  
19 some were afterwards.

20 MR. COWGER: I think we've got enough on that.  
21 Steve, do you have any other points?

22 MR. BENAK: Just that this contract had a performance  
23 specification in it. It didn't have a method spec. The  
24 contractor chose his own means and methods to come up with  
25 these samples. He didn't comply with the contract. So

1           that's why we determined that there was no entitlement  
2           here.

3           Another point that we were talking about earlier was,  
4           I think, that their methods for determining the money on  
5           this claim was for all cores. It doesn't take into account  
6           that we had cores to begin with. So they had something in  
7           the contract for cores originally, and then now after  
8           they're charging us again.

9           MR. COWGER: To sum that up, you're saying there was  
10          no credit given back for the cost of --

11          MR. BENAK: A little duplication of payment.

12          MR. COWGER: -- whatever cost was in the bid for  
13          taking cores to begin with?

14          MR. BENAK: Double charge.

15          MR. CLARK: I'd like to say something about that,  
16          Mr. Chairman.

17          MR. COWGER: Go ahead.

18          MR. CLARK: He could be right. I mean, I understand  
19          where he's coming from. But to me, that was never brought  
20          up through the claim process. And had it been, we'd have  
21          been glad to address it. But, you know, we'd have  
22          addressed it.

23          MR. GARD: The reason we didn't bring it up was  
24          because we didn't think any of it was, you know, relevant.  
25          But also, you say we didn't bring that up. You didn't

1 bring up anything on interest prior to this.

2 MR. BENAK: Just one more point. Two questions that  
3 the claims review committee came up with was, one, did the  
4 single core barrel recover rock cores meeting  
5 specifications. And, two, should the contractor have  
6 anticipated that the dual wall barrel would be necessary in  
7 this section of Florida. And that was Jimmy Lairscey  
8 looking at this after.

9 MR. COWGER: "In this section of Florida" is kind of  
10 the key there, right?

11 MR. BENAK: Yes, sir.

12 MR. COWGER: I think we can leave the issue now.  
13 We've got a couple of exhibits to discuss yet, but I think  
14 Steve just kind of gave a summary of their position.  
15 I think the contractor ought to have the opportunity to  
16 rebut that. And then we're going to go to Exhibits 3 and 4  
17 very, very briefly.

18 MR. KHOURI: I'd like to comment on Steve's  
19 comments. Steve commented that other contractors who have  
20 done work in this district knew about it and have done it.  
21 That's great, that's absolutely great, but it does not mean  
22 that we had to know about it and read in between the lines  
23 to know that we had to have a double wall core barrel,  
24 period.

25 Secondly, CCC should have known about it. No, we

1           should not have known about it. Why do we have to be  
2           penalized because we should have known. If the district  
3           wanted it, it should have been specified in the  
4           supplemental specs, period.

5           And the third comment was did not comply with the  
6           contract specs. We disagree because the contract specs,  
7           the spirit maybe is clear to Steve and maybe to all of us,  
8           but all they had to do was just spell it out. We did  
9           comply with the contract specs. And you asked the question  
10          whether we were capable of doing it. And we said, yes, we  
11          believe we're capable of doing it.

12          MR. COWGER: Is that it?

13          MR. PUCCINI: I want to address the reason we're  
14          here, that there were two reasons that they're saying they  
15          rejected the core barrel. One is it could not bring up an  
16          undisturbed sample. And if we're going to be governed and  
17          go by the rules written on the page, then the word  
18          undisturbed is truly defective, because there's only one  
19          way to get it out without disturbing it and that's Superman  
20          with his x-ray vision to pour it out of the ground. Other  
21          than that, we've disturbed it to some degree. Therefore  
22          the word is defective.

23          MR. COWGER: Even this double barrel core we see is  
24          disturbed? Is that what you're saying?

25          MR. PUCCINI: Absolutely. That was disturbed to get

1           it into that state. And someone may say we have a scale of  
2           disturbedness and it's somewhere on this scale of  
3           disturbedness. So as the contractor, we can't define the  
4           words. The words must define themselves.

5           The second thing where you said the core barrel was  
6           refused, so they could not do a 20-foot core. We were not  
7           asked to provide a 20-foot core. That was done on a visual  
8           inspection and then a rejection. That's all I've got to  
9           say about that.

10           MR. COWGER: DOT, do you have anything real burning  
11           you've got to say about that? I think we've heard rebuttal  
12           to everything he's just said, just kind of a summary.

13           MR. BENAK: (Nodding head affirmatively)

14           MR. COWGER: That's going to close out that issue,  
15           now. We're going to go to Exhibit Number 3. And this is  
16           the correction to the amount claim submitted by Leware. As  
17           I understand it, there was a mathematical error, you might  
18           say, in the original calculation. This corrects it and  
19           reduces the total amount claimed by \$10,000, \$11,000 or  
20           something.

21           MR. CLARK: 11,000.

22           MR. COWGER: Does anybody dispute accepting this  
23           exhibit and going on?

24           MR. BENAK: We've got it.

25           MR. COWGER: I don't see how the DOT would object to

1           it being less. Let's go to Exhibit Number 4, which is the  
2           interest. First off, this is a new item that's been  
3           brought up. The board, in the past, had allowed this sort  
4           of thing to be added to the claim during the course of the  
5           hearing on other projects. I'll let DOT rebut that in a  
6           minute.

7                     But, question, the period defined covered begins with  
8           March of '95. What's the significance of that date?

9                     MR. CLARK: That's when we incurred the extra costs.  
10           The end period of when the costs --

11                    MR. COWGER: End of drill shaft.

12                    MR. CLARK: The extra drilling was January, February.

13                    MR. DEYO: I'd like to make a point here. The  
14           heading on this said Glades County, Project 050203529.  
15           I think that's probably an error.

16                    MR. CLARK: Typographical.

17                    MR. DEYO: So we want this to refer to the disputed  
18           contract?

19                    MR. CLARK: Yes.

20                    MR. COWGER: Good point.

21                    MR. DEYO: Just trying to help.

22                    MR. COWGER: You're claiming nine percent. Where did  
23           that come from?

24                    MR. CLARK: That's the rate that --

25                    MR. LEWARE: That's the rate that I'm paying on most

1 of my equipment and what I'm paying for money.

2 MR. DEYO: That's a good deal.

3 MR. ROEBUCK: Yeah, better than the book.

4 MR. LEWARE: You know, I just --

5 MR. DEYO: So that's your cost of money?

6 MR. LEWARE: Yeah.

7 MR. COWGER: Now, the other question or the other  
8 part is this interest calculation was run through the end  
9 of this month that we're in right now?

10 MR. CLARK: Yes.

11 MR. COWGER: Okay. Now, do you have anything further  
12 to say about that?

13 MR. CLARK: No.

14 MR. COWGER: DOT, now I think you need to rebut a  
15 couple of things. One, the period of time over which the  
16 contractor is claiming interest. Number two -- well, let's  
17 reverse this. That's number two. Number one is what's  
18 your position on him claiming interest?

19 MR. BENAK: Claiming interest on what we entitled,  
20 you know, zero is zero. But, you know, they have their own  
21 idea of what it's worth. I have settled claims with  
22 interest in the past, but it's been statutorily connected,  
23 and I don't know what the rate is.

24 MR. COWGER: It's either six or 12. Depends on how  
25 you look at it.

1           MR. BENAK: I think it's hooked up to something  
2 different now. It's not either.

3           MR. COWGER: The point is that, yeah, there is a  
4 another way of calculating it now based on the prime plus  
5 something.

6           MR. BENAK: I don't know what it is right now.

7           MR. COWGER: But anyway, assuming, again, assuming  
8 that the board finds entitlement to some dollar amount,  
9 then does DOT object to adding interest to it? Do you have  
10 a reason to object to it?

11          MR. BENAK: I've done it in the past. I don't have  
12 any --

13          MR. COWGER: And the other thing, what about the time  
14 period that he's asking for?

15          MR. BENAK: I don't know about the time period.

16          MR. GARD: The only thing I would question is really  
17 that first month, because they didn't finish until the end  
18 of March. But other than that --

19          MR. COWGER: Does anybody else have anything else  
20 they want to say about the interest?

21          MR. ROEBUCK: I want to ask Mr. -- no.

22          MR. COWGER: Gentlemen, we're going to close out,  
23 then, unless either party --

24          MR. ROEBUCK: I've got one question for John.  
25 Mr. Gard, in one of your letters you mention that the bid

1 item, which is 455.111, only allows payment for five foot  
2 of core. And I think that's right.

3 MR. GARD: Yes.

4 MR. ROEBUCK: Now, how did an engineer rationalize  
5 requesting ten, 15, or 20 feet of core?

6 MR. GARD: Well, if we requested it, we paid, we did  
7 pay for more than five foot.

8 MR. ROEBUCK: Oh, you do?

9 MR. GARD: The contractor just specified five foot.

10 MR. KELLY: Correct.

11 MR. ROEBUCK: Right.

12 MR. GARD: And if we did, there were several shafts  
13 that the geotech did ask that they go, you know, more than  
14 five foot. And that was paid for.

15 MR. COWGER: That's after you went to double wall  
16 coring, though?

17 MR. GARD: Right.

18 MR. LEWARE: Every shaft.

19 MR. KELLY: Authorized overruns were compensated at  
20 the contract price.

21 MR. BENAK: One other point. I need to expand on  
22 this a little bit. Were these done prior to the shaft  
23 excavations?

24 MR. GARD: Yes.

25 MR. BENAK: Okay. Well, I think that's what that

1 letter was referring to, because the contractor chose to  
2 come up here first and drill down, so everything, until you  
3 get to that point, we're not going to pay for that.

4 MR. GARD: That's what that letter was. It  
5 references to prior drilling.

6 MR. PUCCINI: There's no request for payment for  
7 that.

8 MR. COWGER: Gentlemen, I think we've got that  
9 squared away. One comment right quick and then we're going  
10 to close. Mr. Roebuck, do you have any further questions?

11 MR. ROEBUCK: No.

12 MR. COWGER: Mr. Deyo?

13 MR. DEYO: No, sir.

14 MR. COWGER: The only thing we've got to say before  
15 we close now, I passed out three documents here at the  
16 beginning of the hearing. DOT, did you desire to have  
17 copies of these? I think most of this you've already got.  
18 The only thing is I can't tell.

19 MR. BENAK: I don't know if we have it or not.

20 MR. GARD: No, we don't have any of that. I would,  
21 just for the record.

22 MR. COWGER: What we'll do, then, is we will, the  
23 board will copy these three documents, a letter from Leware  
24 dated June 24th, another letter dated June 24th, and  
25 another one dated June 25th, furnish them to you, and allow

1           you to review them. And if you find anything in there  
2           that's a surprise to you that you did not have time to  
3           adequately prepare for today, then by October the 15th,  
4           give us a written statement on that. And at that time  
5           furnish a copy of it to the contractor.

6                     And then if the contractor gets something like that,  
7           if he gets it, then he needs to furnish, say, within ten  
8           days of receipt, back to the board and to the department  
9           any comments he may have. And we're stopping at that  
10          point, now. Go ahead.

11                    MR. BENAK: I need to give these exhibit to you.  
12          Since they framed their job as being that this note applied  
13          to, you know, both bridges, then on this, this is that  
14          State Road 2 issue, I've got some copies for you all.

15                    MR. COWGER: So you're going to make some sort of  
16          a --

17                    MR. BENAK: Well, you know, I didn't know that they  
18          were going to bring that up, but they did. So, you know,  
19          I told you to wait. At the beginning --

20                    MR. COWGER: So do you have enough copies?

21                    MR. BENAK: I've got four. It's also, it's the one  
22          that does not have the note on it, the bridge that does not  
23          have the note on it.

24                    MR. COWGER: Can we just agree that we'll accept  
25          those as Exhibit Number 6 and go on?

1 MR. BENAK: That will be fine.

2 MR. COWGER: Give us three. Give the contractor  
3 one. And everybody mark it as Exhibit Number 6. And we'll  
4 take that into consideration.

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

6 MR. KHOURI: Can you please add, Mr. Chairman, that  
7 this exhibit is part of the same contract as Exhibit Number  
8 5? It's a single contract.

9 MR. COWGER: Okay. Is it just one sheet, Steve?

10 MR. BENAK: Yeah. He had the exhibit where there was  
11 a note on it. This one is absent of the note.

12 MR. COWGER: There's another sheet for this same job  
13 that has the note. I've got you.

14 MR. KHOURI: I apologize. It's not Exhibit Number  
15 5. It's part of what I read.

16 MR. COWGER: This one that was just handed in should  
17 have been Exhibit Number 6, correct?

18 MR. KHOURI: That's fine.

19 MR. COWGER: Okay. Does anybody have anything else?  
20 (No response)

21 MR. COWGER: The hearing is hereby closed. The board  
22 will meet to deliberate on this claim in about six weeks,  
23 and you'll have our final order shortly thereafter. That  
24 will do it.

25 (Whereupon, the hearing was concluded at 1:33 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, MINDY MARTIN, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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 attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 10<sup>th</sup> day of October, 1997.

*Mindy Martin*

Notary Public, State of Florida



Mindy Martin  
MY COMMISSION # CC594513 EXPIRES  
December 3, 2000  
BONDED THRU TROY FAIN INSURANCE, INC.