

STATE ARBITRATION BOARD

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TALLAHASSEE, FL 32312-2837

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NOTICE

In the case of Bergeron Land Development, Inc. versus the Florida Department of Transportation on Project No. 97861-3355 in Broward and Palm Beach Counties, Florida, both parties are advised that State Arbitration Board Order No. 3-93 has been properly filed on June 10, 1993.



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

S.A.B. CLERK
JUN 10 1993
FILED

Copies of Order & Transcript to:

Mr. J.B. Lairscey, Jr., PE, Director of Construction/FDOT
Mr. Robert C. Platt, Vice President?Bergeron Land Development, Inc.

Copy of Order to:

Mr. Jovan Zepcevski, President/Zep Construction, Inc.

STATE ARBITRATION BOARD

ORDER NO. 3-93

RE:

Request for Arbitration by
Bergeron Land Development, Inc. on
Job No. 97861-3355 in
Broward and Palm Beach Counties

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

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

The Secretary of Transportation appointed V. G. Marcoux,
P. E. to serve as the Department of Transportation member for
this hearing, because K. N. Morefield, P.E. was unable to be
present. Mr. Marcoux will participate in the deliberation of
this claim on a later date.

The Contractor authorized a subcontractor, Zep
Construction, Inc. to act as his agent in pursuing claims
arising out of the bridge work which was subcontracted to Zep
Construction.

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 9:00 a.m. on Thursday,
April 29, 1993.

The Board Members, having fully considered the evidence
presented at the hearing,, now enter their order No. 3-93
in this cause.

ORDER

The Subcontractor presented a request for arbitration of
a claim for additional compensation in the amount of

6. At the time the prime contractor submitted this maintenance of traffic scheme, he gave notice that this change was necessitated by a conflict in the contract documents and that the Department should bear all costs related to implementing the revised scheme.

7. The traffic control scheme ultimately selected by the prime contractor provided for maintaining two lanes of traffic at all times with no diversion of traffic to the opposite roadway, except during weekends when beams were erected and when demolition of the existing bridge was under way.

8. Our costs in performing the bridge construction were substantially increased due to loss of productivity, reduction in the flexibility of construction operations and an increase in the amount of forming material required for deck construction.

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

1. The prime contractor proposed a revision to the maintenance of traffic scheme for the period during which construction of the Hillsborough Boulevard Bridge would be under way. This scheme essentially provided for two lanes of turnpike traffic in each direction with traffic in one direction split to be on opposite sides of the median.
2. The prime contractor's letter (November 10, 1989) in which he first proposed this revised maintenance of traffic scheme

contained a stipulation reading " we expect the Department to bear all costs in implementing it". We believe that, in the context it was used, this statement was describing maintenance of traffic costs only, not impact costs.

3. The prime contractor ultimately used another maintenance of traffic scheme that maintained two lanes of traffic in each direction, but did not involve diverting Turnpike traffic across the median except on weekends when beams were being erected. This reinforces our position that the contractor did not intend to claim additional compensation for impact costs.

4. We feel that the project as a whole was not adversely impacted by using the maintenance of traffic scheme actually utilized by the prime contractor. It appears that the roadway work on this project may have benefited from the change.

5. Article 5-12 of the Standard Specifications provides that the contractor must give notice of intent to file a claim prior to beginning any work on which the claim will be based. The initial notice of intent to file a claim was submitted after all work on Phase II and Phase III of the bridge had been completed.

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

1. General Note No. 5 on Plan Sheet No 78 applies to a lane closure situation similar to that mentioned in the detail for

Phase I construction (Sheet No. 78). The maintenance of traffic details for Phases II through V provide for a detour, not merely a lane closure.

2. The prime contractor was forced to develop an alternate scheme for maintaining traffic when the Department of Transportation took the position that the plan Detour Detail-Hillsboro Blvd. Overpass Construction (Sheet No. 78) could not be operated on a continuous basis.

3. Once the detour scheme shown in the plans was abandoned, it became necessary for the prime contractor to develop an entirely new scheme for maintaining traffic through all phases of the bridge work. The plan Detour Detail-Hillsboro Blvd. Overpass Construction was no longer applicable to any phase of bridge construction.

4. The maintenance of traffic scheme actually used caused an increase in the cost of constructing the bridge because of loss of productivity, a reduction in the flexibility of construction operations and an increase in the amount of deck forming material.

5. Since the claim is based on the total cost concept, notice of intent to file a claim (Article 5-12) is not relevant, because it would not be possible for the Department to keep cost records reflecting the total cost of constructing the bridge.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Boards finds as

follows:

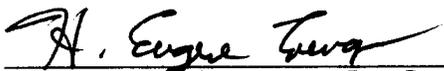
The Department of Transportation is ordered to compensate the Contractor in the amount of \$ 117,000.00 as compensation for this claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 350.20 for Court Reporting Costs.

S.A.B. CLERK
JUN 10 1993
FILED

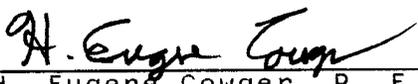
Tallahassee, Florida

Dated: 10 June 1993


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

Certified Copy:
Member


V. G. Marcoux, P. E.


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


John P. Roebuck
Member

10 June 1993
Date

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

JUN 20 1993

FILED

BERGERON LAND DEVELOPMENT,)
INC.)

- and -)

DEPARTMENT OF TRANSPORTATION)

) PROJECT NO. 97861-3355

) LOCATION: Broward/Palm Beach,
) Counties, Florida

COPY

RE: Arbitration In The Above Matter

DATE: Thursday, April 29, 1993

PLACE: Room 350
Hayden Burns Building
Tallahassee, Florida

TIME: Commenced at 9:00 a.m.
Concluded at 11:10 a.m.

REPORTED BY: CATHERINE WILKINSON
CSR, CP, CCR
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida 32317

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
Mr. V. T. Marcoux
Mr. John Roebuck

APPEARING ON BEHALF OF BERGERON LAND DEVELOPMENT, INC.
AND ZEP CONSTRUCTION, INC.:

Mr. Jovan Zepcevski
Mr. Roger Foley

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Walter Lange
Mr. Charles Peterson

* * *

I N D E X

EXHIBITS	PAGE
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P R O C E E D I N G S

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

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

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

13 Our terms of office began July 1, 1991, and
14 expire June 30, 1993.

15 Mr. Morefield is unable to be present today.
16 The Florida Secretary of Transportation has appointed
17 V. T. Marcoux to serve as the Department's member of
18 the State Arbitration Board for the hearings to be held
19 today, and Mr. Marcoux will participate in the
20 deliberation of this claim on a later date.

21 Will all persons who intend to make oral
22 presentations during this hearing and any written --
23 please raise your right hand and be sworn in.
24 (Whereupon, all witnesses were duly sworn.)

25 CHAIRMAN COWGER: The documents which put this

1 arbitration hearing into being are hereby introduced
2 as Exhibit 1. Exhibit 1 consists of the notice of
3 arbitration, the request for arbitration submitted by
4 the contractor, and all of the submittals that were
5 attached to that request, including a supplemental
6 submittal dated February 19, 1993.

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

9 (Discussion off the record)

10 CHAIRMAN COWGER: Back on the record. While we
11 were off the record, there was a discussion of
12 exhibits. The contractor submitted a package entitled
13 document summary, which we will identify as Exhibit 2.
14 Will each party so mark their copy of that exhibit.

15 The DOT presented a drawing, standard index
16 drawing entitled "Multi-Lane Divided Rural Day or Night
17 Operations," which we will identify as Exhibit 3. Will
18 the parties so mark that exhibit that you have in front
19 of you.

20 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in
21 evidence.)

22 CHAIRMAN COWGER: Does either party have any
23 other information that they wish to put into the record
24 as an exhibit? Hearing nothing, we will move on.

25 During this hearing, the parties may offer such

1 evidence and testimony as is pertinent and material to
2 the controversy and shall produce such additional
3 evidence as the Board may deem necessary to an
4 understanding and determination of the matter before
5 it. The Board shall be the sole judge of the relevance
6 and materiality of the evidence offered.

7 The parties are requested to assure that they
8 receive properly identified copies of each exhibit
9 submitted during this hearing and to retain those
10 exhibits. The Board will furnish the parties a copy of
11 the transcript of this hearing, along with its final
12 order, but will not furnish copies of the exhibits to
13 the parties.

14 The hearing will be conducted in an informal
15 manner. The contractor will elaborate on their claim,
16 and then the DOT will offer rebuttal.

17 Either party may interrupt to bring out a point
18 by coming through the Chairman. However for the sake
19 of order, I must instruct that only one person speak at
20 a time. Also, so that our court reporter will be able
21 to produce an accurate record of this hearing, please
22 introduce yourself the first time you speak.

23 We are ready to proceed on. The proper thing at
24 this point is for the contractor to begin presentation
25 of his claim. The Board always likes to have at the

1 very beginning of your presentation for you to state
2 the total amount that you're claiming.

3 MR. ZEPCEVSKI: My name is Jovan Zepcevski from
4 ZEP Construction. We are claiming \$193,064.

5 CHAIRMAN COWGER: You may proceed on.

6 MR. ZEPCEVSKI: All these documents, I'm
7 surprised with so many documents, but I think it's kind
8 of, to me, at least it was a simple matter.

9 First off, I am a subcontractor, bridge
10 subcontractor. I depend on prime contractors to give
11 me a job.

12 Normally the price is important, the low bid, but
13 it's important that my integrity and their belief in me
14 as a subcontractor to complete the job.

15 I think I have built that reputation that the
16 general contractors would trust that I will execute
17 and finish the job regardless of my costs or price or
18 difficulties or whatever, I will assure my prime
19 contractor that I will complete the job regardless of
20 the cost.

21 For this job on Hillsboro Boulevard over the
22 turnpike, when I bid the job, looking at this DOT plan,
23 I assumed that demolition of the existing bridge,
24 erection of the new bridge will be done with no traffic
25 coming in.

1 That assumption is stated with these detours
2 (indicating on chart).

3 On the general notes there is one note for a lane
4 closure, note 5, that says you can close a lane between
5 9:00 and 4:00 --

6 MR. ROEBUCK: 3:00.

7 MR. ZEPCEVSKI: -- weekdays, and there will be no
8 lane closure weekends or holidays.

9 At the same time on note 11 they give us an
10 option for a detour over the weekend, that you can
11 implement a detour. Yes, it is note 11. You can
12 implement a detour from Friday at midnight to Monday
13 morning, 5:00 a.m., which is about 50 hours.

14 And 50 hours is about a whole week of work. To
15 simplify what I am going to say, I don't really want
16 to get it too complicated, on the preconstruction
17 conference I was present on that. I assumed that we
18 are going to be able to construct the bridge the way it
19 shows on the face to face -- on these MOT plans. The
20 engineers said note 5 governs everything, we cannot
21 implement anything else.

22 At the time we argued and argued. Note 5 was
23 almost a law that -- on the preconstruction conference,
24 I got so upset. And they could not understand my point
25 of view. I told them, I said, you get this bridge, you

1 build it yourself. I left.

2 MR. ROEBUCK: I think you were still talking at
3 the end of the preconstruction conference about this
4 problem, weren't you?

5 MR. ZEPCEVSKI: Yes.

6 MR. ROEBUCK: At the end you were still talking.

7 MR. ZEPCEVSKI: I left. I got so mad I just
8 jumped up and left because I tried to put my point
9 about doing the job with no traffic underneath with the
10 detours instead of the note 5.

11 I left. A few days later Bob Glass from Bergeron
12 contacted me on the phone. He said yes, we have to do
13 something. I knew I had to do something. I did give
14 my promise to them I would do the job, and I wouldn't
15 let Bergeron get the blame and me walk away on that
16 job.

17 I didn't have a contract signed at that
18 preconstruction conference. It wouldn't have cost me
19 anything to say I wouldn't do the job and leave.

20 Since I gave my promise to Bergeron, and they
21 accepted my price at the bid opening, I was morally
22 obliged to complete the job. I said well, I know I'm
23 going to lose money, but I'll give it a try because
24 I promised I'd do it. So, I did.

25 From there on is when all these complications

1 started. At the time I think -- I'm not sure, but
2 I think -- I'm not a big contractor to have all this
3 paperwork done. I think I did write what I am
4 claiming.

5 I am not sure, I cannot swear to it. I can't
6 find it. Maybe I just thought of it, maybe I did write
7 it, but I'm not sure about that, about giving some kind
8 of a memo note to Bergeron, about me claiming it.

9 I did tell everybody. Metric was aware that
10 I said verbally to everyone I'm going to claim because
11 there's no way I'm going to execute the job and make
12 money the way it was. I was forced to do it.

13 DOT, or the turnpike authority -- I mean the
14 engineers, not the turnpike -- the engineers requested
15 from Bergeron to submit alternate MOT plan. After
16 three or four months, writing letters between each
17 other, findly Bergeron submitted an alternate MOT plan.

18 When you look at these -- the way it was
19 designed, the way this MOT plan is designed, if we
20 could implement the detours, there would be no problem.
21 The way it was designed, it was workable.

22 The one problem was the engineers got stuck with
23 note 5 and they wouldn't see nothing else beyond that
24 note 5. And they got all these problems.

25 There was a question later why did you proceed,

1 like in the letter from the turnpike authority it said
2 the Phase 2 and 3 --

3 CHAIRMAN COWGER: Excuse me just a minute,
4 please. For the record, Mr. Zepcevski is referring to
5 an exhibit that he has on a board which really consists
6 of sheets 78 and 79 out of the contract plans. Now,
7 proceed on, just so we get it in the record.

8 MR. ROEBUCK: It's just a little larger so we can
9 see it.

10 MR. ZEPCEVSKI: The Phase 2 and 3 before we
11 demolished the bridge, there was only room for three
12 lanes, two in one direction and one in another
13 direction. And on Phase 5 and 6 the bridge was
14 demolished, the piers, intermediate pier close to the
15 road was removed. So there was room for four lanes.

16 Now the one thing that surprises me is this. In
17 the letter from the turnpike authority, they say why
18 didn't you change -- why didn't you make a detour
19 Phase 5 and Phase 6, and they never before mention ever
20 Phase 2 and 3.

21 If they admit for Phase 5 and 6 why don't you
22 make the detour, why don't they mention the Phase 2
23 and 3?

24 And then looking back on hindsight or whatever
25 you call it -- excuse my language, I get excited and

1 I can't even speak English -- but looking back why
2 didn't you go out on the job and do Phase 5 and 6 as
3 shown.

4 Well, the MOT plan was changed. Since the MOT
5 plan was changed, the median barrier walls were
6 changed. There was no opening in the median barrier
7 walls to do the switch.

8 We followed the MOT plan the way it was
9 submitted. So, that's my understanding of all of this.
10 And I think, a simple matter turned into a very
11 complicated matter just because the engineers got
12 hanged on note 5.

13 MR. ROEBUCK: Could you show us what maintenance
14 of traffic you were faced with for Phase 2 bridge
15 construction. Where were the lanes underneath?

16 MR. ZEPCEVSKI: The actual?

17 MR. ROEBUCK: Yes. It was in March, I think,
18 when they got a revised MOT approved, a long time
19 later. I couldn't figure from these plans what you
20 were faced to work with.

21 MR. ZEPCEVSKI: What I was faced to work with,
22 I was working the traffic underneath, under the
23 demolition. We did implement a switch by putting from
24 9:00 to 3:00, putting barricades, for the demolition
25 for a few hours, and for setting the beams. The rest

1 of the time I had to build a double false bottom on the
2 beams with the traffic underneath.

3 If one man was on this side of the bridge, he had
4 to walk all the way around here to come on the top. It
5 was a very, very hard way to do the job.

6 I mean with the traffic and all, everything you
7 do is -- it takes much, much longer. The equipment,
8 you can't position it in a place that you can use it.

9 I was faced with a lot of difficulties because
10 I could not have the traffic from underneath there.

11 We did do a lane -- not detours, but crossovers.
12 Crossovers on a few occasions, but I don't think we
13 ever did a detour with a barrier wall because there was
14 no time, only for a few hours. By the time you put up
15 a barrier wall, it would be time to start putting it
16 back.

17 MR. ROEBUCK: So, you were faced with having to
18 live with the nine o'clock to three o'clock traffic
19 problem?

20 MR. ZEPCEVSKI: Traffic problem. And usually
21 most of the time we didn't even switch the traffic. We
22 had to work with the traffic still going underneath.
23 And many times we did rolling, how would you call it --
24 rolling lane closures by putting two or three police
25 cars or pickups on the turnpike and slowing down the

1 traffic every five minutes to cross a crane over or to
2 move some piece of equipment.

3 MR. ROEBUCK: Have you done -- you've done a lot
4 of this bridge work. Have you done an overpass on --
5 anywhere on the interstate or this turnpike with that
6 general note 5 in the job?

7 MR. ZEPCEVSKI: We did that with it, but we have,
8 like I did on I-95, but we had a detour, implemented --

9 MR. ROEBUCK: Was that note, note 5, a general
10 note in that job that you remember?

11 MR. ZEPCEVSKI: Yes, it was.

12 MR. ROEBUCK: So, it's kind of a note that shows
13 up on many overpass jobs?

14 MR. ZEPCEVSKI: Yes. I did the job for the
15 turnpike about 30 miles north from there with P. J.
16 Construction. We did a lot of traffic, what you call
17 it, lane closures and not detours but a switching --
18 switching traffic on the other side with the cones and
19 barricades, a lot of it.

20 CHAIRMAN COWGER: When you say on the other side,
21 you mean on the other side of the median? Is that what
22 it amounts to?

23 MR. ZEPCEVSKI: Northbound traffic and southbound
24 on one side of the bridge.

25 CHAIRMAN COWGER: Put it all on one side?

1 MR. ZEPCEVSKI: Yes, so you have a clear span
2 underneath.

3 CHAIRMAN COWGER: Have you pretty much completed
4 your opening statement now or have you got some other
5 things to say? I have some questions to ask before we
6 turn it over to DOT, but I don't want to interrupt you
7 at the wrong point.

8 MR. ZEPCEVSKI: I think so.

9 CHAIRMAN COWGER: Let me ask a couple of
10 questions, and see if I can kind of bring out a little
11 more clearly maybe what we're here really to discuss.

12 As I understand the situation, and either party
13 can correct me at any time, looking at plan sheet 78,
14 entitled "Florida's Turnpike Maintenance of Traffic."

15 If we look in the upper right-hand corner of that
16 drawing, which you have on the big sketch down there,
17 during Phase 2 and Phase 3 of the construction, that
18 plan shows all of the traffic on the southbound roadway
19 being condensed to one lane and diverted across the
20 median in a one-lane configuration.

21 So in that situation you would have one lane
22 operating southbound and two lanes operating
23 northbound.

24 During Phase 2 and Phase 3, the contractor was to
25 construct essentially the western half of the bridges,

1 the overpass bridge, which meant that the work zone
2 would be totally remote from traffic.

3 MR. ZEPCEVSKI: Right.

4 CHAIRMAN COWGER: Then in Phase 4 and 5 -- let me
5 go back and speak about Phases 2 and 3 a minute. I've
6 got that wrong a little bit.

7 Phase 2 applied the southbound traffic on the
8 turnpike being diverted to -- being condensed to one
9 lane and diverted to the opposite median.

10 Phase 3 is just the opposite. Northbound traffic
11 would be diverted in a single-lane configuration to the
12 southbound lane and during those periods of time the
13 contractor could construct a portion of the new bridge
14 across the entire turnpike.

15 In Phase 2 he would be constructing a portion of
16 the west half, Phase 3 he would be constructing a
17 portion of the east half.

18 Then in Phase 4 and 5, the contractor would be
19 constructing the remainder of the bridge. During
20 Phase 4 he would be working on the west side, traffic
21 being diverted in a four-lane configuration by that
22 time, and in Phase 5 just the opposite. He would be
23 working on the east side.

24 At the preconstruction conference, as
25 I understand it, DOT decided to invoke general note

1 number 5, which prohibits reducing the traffic below
2 two lanes in each direction. In other words, it says a
3 minimum of two 12-foot lanes in each direction shall be
4 maintained at all times.

5
6 And with that, except for certain hours, and with
7 that note applied to the detour detail, basically what
8 happens is the contractor could use the details shown
9 in the detour plan, but he could only implement them
10 between 9:30 and 3:00 p.m. on weekdays, and couldn't
11 even use that configuration on the weekend according to
12 note 5.

13 Now, am I correct there?

14 MR. LANGE: The Phase 4 and 5 could have been
15 implemented.

16 CHAIRMAN COWGER: I stand corrected. Let's talk
17 about 2 and 3.

18 MR. LANGE: Phase 2 and 3 were not consistent
19 with note 5.

20 CHAIRMAN COWGER: Okay. How does note 11 fit
21 into this thing? It seems like notes 5 and 11
22 conflict.

23 MR. FOLEY: I can tell you what I think. I'm
24 Roger Foley and I'm with Mr. Zepcevski. I can tell you
25 this sort of in hindsight and how this became a dispute
I will never understand.

1 Note 5 applies to lane closures. It says lane
2 closures. And under lane closures we often use Type 2
3 barricades and signs. It's eminently feasible,
4 although not convenient, to conduct a lane closure
5 during those hours and do some work. We routinely do
6 that in the industry.

7 Note 11 refers to detours. There is a
8 distinction in my mind between a lane closure and a
9 detour. Note 11 permits detours on the weekends for
10 specific purposes in the construction of the segments
11 of the bridge; that is, to erect the beams, to place
12 the superstructure forward, and to do the pours, the
13 deck pours.

14 MR. ZEPCEVSKI: And demolish.

15 MR. FOLEY: And the demolition of the bridge are
16 all permitted on the weekends under detour conditions.

17 Throughout this debate and throughout the
18 performance of this contract, note 5 was applied to the
19 entire scheme, whether it be a lane closure or a
20 detour. Now, I think, it appears to me, that the
21 designer understood what he wanted to accomplish.

22 MR. ROEBUCK: He was detouring traffic --

23 MR. FOLEY: And the people who interpreted the
24 drawing, either because they did not understand or did
25 not want to use the detour in that configuration, chose

1 to apply note 5 to both lane closures and detours, to
2 my everlasting --

3 MR. ROEBUCK: It makes sense with them clearly
4 defining these restricted areas as detours with single
5 lane traffic.

6 MR. FOLEY: And for some reason the parties, in
7 order to justify note 5, the engineer said well, you
8 can use that if you move the barricades -- if you move
9 the barrier wall in and out every day.

10 I mean it was difficult -- I'm sure it must have
11 been difficult for him to say that.

12 MR. ROEBUCK: It must have been.

13 MR. FOLEY: The quantities, of course, which
14 appear on the drawing, clearly do not support that.
15 I can't explain why the dispute happened, but I think
16 I understand the drawings.

17 CHAIRMAN COWGER: May I ask a question.
18 Differentiate a little bit for us between lane closure
19 and detour.

20 MR. FOLEY: The differentiation that I make is
21 the differentiation that I read on the drawing. That
22 is, a detour is set up as a semi -- if you will, a
23 semi-permanent rerouting of the traffic under a
24 specific condition.

25 CHAIRMAN COWGER: Okay.

1 MR. FOLEY: And the indices tell you how to do
2 it, and this drawing tells you how to do it. There's
3 nothing terribly inconsistent about them.

4 Lane closures, which are done on a daily basis
5 for temporary purposes, usually follow a different set
6 of indices and are also called out on this drawing. To
7 me that's the distinction.

8 CHAIRMAN COWGER: I understand. Another
9 question. The permanent construction of the bridge
10 consisted of, as far as the substructure is concerned,
11 consisted of an end bent on either end and one pier in
12 the median, right?

13 MR. ZEPCEVSKI: Right.

14 CHAIRMAN COWGER: That's all there was, two spans
15 to the bridge?

16 MR. ZEPCEVSKI: Two spans.

17 CHAIRMAN COWGER: Now, we don't have any details
18 in front of us that I can see telling us how traffic
19 was actually maintained during construction. In other
20 words, first off, was it actually maintained in
21 accordance with the maintenance of traffic plan that
22 ZEP submitted two to three months after the
23 preconstruction conference?

24 MR. ROEBUCK: Bergeron submitted it.

25 CHAIRMAN COWGER: All I need is a yes or no on

1 that.

2 MR. ZEPCEVSKI: What we have is a complete mix of
3 everything that possibly we could do to control the
4 traffic and execute the job. We worked with the
5 traffic underneath it. We worked with shifting one
6 lane one way, making a lane closure so we would have a
7 little more room to work.

8 And we had from time to time shifted traffic, as
9 is shown on the detour, but with a barrier --
10 barricades and cones during the hours of 9:00 to 3:00.

11 CHAIRMAN COWGER: So, there were periods of time
12 when you shifted traffic in accordance with the details
13 for Phase 2?

14 MR. ROEBUCK: Detours --

15 MR. ZEPCEVSKI: From 9:00 to --

16 CHAIRMAN COWGER: Only over those restricted
17 hours?

18 MR. ZEPCEVSKI: Right.

19 MR. FOLEY: Mr. Zepcevski had hired me to do a
20 safety inspection. He was having some trouble with
21 OSHA at that time. He hired me to do a safety
22 inspection of that site once a week. So I visited the
23 site once a week.

24 My recollection of how that job was built was the
25 basic approach to maintenance of traffic was two lanes

1 in each direction under the construction. Okay, two
2 lanes in each direction under the construction.

3 When you could not do that, for example, during
4 the erection of the girders, that work was done on the
5 weekends under lane closure conditions from -- from
6 nine o'clock in the morning or so until late in the
7 afternoon.

8 So, we actually moved the traffic over during the
9 daylight hours on the weekends to set the girders.

10 MR. ZEPCEVSKI: Also, we couldn't -- usually you
11 take the girders from the truck and you set them on the
12 bridge. I had to store the girders, set them on the
13 ground. So the next day because there was no time to
14 pick them up and set them on.

15 MR. FOLEY: That's when we did the rolling lane
16 closures, for example. When you wanted to move the
17 crane over to pick the girders up on the other span and
18 set it, we did a rolling lane closure. They would do a
19 rolling lane closure long enough to get the crane to
20 walk across the traffic.

21 CHAIRMAN COWGER: Tell me a little bit more about
22 a rolling lane closure.

23 MR. FOLEY: A rolling lane closure is a term
24 of art, I think, that is not defined in the
25 specifications, but it may be.

1 MR. LANGE: It is.

2 MR. FOLEY: You send a couple of highway
3 policemen, troopers up the road. They get the traffic
4 stopped. They give you 10 or 15 minutes, and then they
5 start the traffic rolling at a very low rate, five
6 miles an hour. They stop the traffic up there long
7 enough that they get some backup, but before they
8 create a major hazard. Then they start moving very
9 slowly. You can see them coming. You have to get your
10 work done before they get there.

11 CHAIRMAN COWGER: What it is, you have an
12 opportunity for a short window of time --

13 MR. ROEBUCK: Exactly.

14 CHAIRMAN COWGER: -- with the roadway closed to
15 traffic. That's all we need to know.

16 MR. ZEPCEVSKI: You actually don't stop the
17 traffic. The police come in and slow them down, get
18 them at five miles an hour, ten miles an hour.

19 MR. ROEBUCK: Gives you a few minutes.

20 CHAIRMAN COWGER: Mr. Marcoux, do you have any
21 questions?

22 MR. MARCOUX: No.

23 CHAIRMAN COWGER: Do you have anything else? You
24 will have the opportunity to come could back later, but
25 I think maybe we ought to let DOT begin to state their

1 position.

2 Before we do that, I have a question of DOT. In
3 this particular situation we have two things to
4 consider. We have entitlement as to whether or not the
5 contractor is due any compensation at all, and then we
6 also have to at some point in time deal with if there
7 is entitlement, what the compensation should be.

8 Are you prepared, DOT, to discuss the
9 compensation issue, or have you come just prepared to
10 discuss the entitlement issue?

11 MR. LANGE: I will discuss anything you want to
12 discuss.

13 CHAIRMAN COWGER: You are prepared then to
14 discuss compensation if we need to?

15 MR. LANGE: That's right.

16 CHAIRMAN COWGER: Okay. I think then we are
17 ready to let DOT come back and -- come in, I guess,
18 I should say, and begin their rebuttal of this.

19 MR. LANGE: Okay. My name is Walt Lange. I work
20 for Florida's Turnpike in the construction division.

21 I need to give you a brief history of how
22 I became involved in this case. I came to Florida, was
23 transferred to Florida in 1988 by a DOT consultant,
24 other than the designer and CEI on this project.

25 I joined the department in September of 1990.

1 This project was let in June or July of '89. It began
2 construction in November -- on November 1, I believe,
3 of '89, the bridge work. Test piles were started in
4 early '91. Actual bridge construction started later in
5 '91.

6 When I joined the Department in 1990, I was
7 resident engineer for District 4 in West Palm Beach. I
8 joined the Turnpike in November of 1991. This project
9 was complete at that time.

10 So, I was not involved in the construction on
11 this project. I live in Broward County. In commute to
12 my office in Palm Beach County, when I was resident
13 engineer, I did drive through this site on a regular
14 basis.

15 In late 1991 or very early 1992 I was contacted
16 by Bob Black and asked to review two open issues on
17 this project. One had to do with payment of topsoil.
18 That has been separately resolved in favor of the
19 contractor, and this claim from Jovan.

20 I reviewed it. We met in early '91 with
21 Bob Black, some other people on my staff in February of
22 '91. They presented their arguments. We reviewed
23 their presentation, which is very similar to what has
24 been submitted to here, reviewed the contract.

25 I came up with a little bit different evaluation

1 from the contract documents than ZEP had, but there
2 were also other factors that weighed very heavily in my
3 belief that the contractor was not due compensation, or
4 if he was due compensation, he was due a very small
5 portion of what he had requested.

6 In our discussions in February Bob Black, who was
7 the superintendent for Bergeron, who was the prime
8 contractor on this project, told me when he submitted
9 the alternate MOT plan, that it was his understanding
10 that ZEP was in full agreement with the alternate MOT
11 plan. He was not aware that they intended to claim.

12 Following the meeting I talked to Neil Gumby with
13 Metric, who I believe was project engineer on this
14 project for Metric and Jerry Swabek, who was the
15 turnpike's program manager at the time, is now a
16 consultant.

17 They both said yes, there were disagreements at
18 the very start of the project, but that when the
19 alternate MOT plan was submitted by Bergeron, that they
20 felt everybody was in full agreement with it. Of
21 course, you heard Jovan say that he felt he had given
22 everybody verbal notice that he intended to claim, but
23 the people including his own prime contractor has told
24 me that their understanding was different.

25 Bob did tell me that he had just had phone

1 conversations with Jovan on this issue. He hadn't sat
2 down with him, but it was the result of those phone
3 conversations that he understood that ZEP could live
4 with this. He did not specifically say is there a
5 claim, but it was his understanding that there would be
6 no claim resulting from the revised MOT plan.

7 In fact, I think it was November following the
8 start of bridge construction in February 1990, almost
9 approximately nine months later that ZEP actually
10 submitted their first letter of claim to Bergeron.
11 That was well after Phase 2 and 3 construction of this
12 bridge was complete.

13 I also -- I don't know if I can read this as well
14 looking at this, but I think it's better for me to
15 point to it (indicating on chart). I have been quite a
16 bit involved in MOT interpretation, heavily on I-95
17 projects, which have required quite a lot of MOT
18 revisions to plans.

19 I did not look at this as the total MOT plan.
20 I thought you had to work with this sheet and this
21 sheet (indicating).

22 I don't say that this MOT plan provides every
23 detail you need for construction. Most of them don't.
24 We are trying to get them, at least the turnpike, more
25 detailed in identifying specifically more phases.

1 Part of ZEP's claim when he presented it in
2 February of last year was that he felt that the center
3 pier line -- I am referring to the top one -- was to be
4 constructed with free access from one side.

5 If you look down here at the cross sections of
6 the roadway on the turnpike, I believe that the lane
7 widths, et cetera, the separation of barrier wall
8 there, would show that you really -- to implement this,
9 you would have traffic too close to this pier line to
10 be able to construct this pier. This pier is pile
11 clusters with caps 12 foot --

12 MR. ROEBUCK: At the centerline.

13 MR. LANGE: Right. 12-foot square caps. The
14 cap would project out into this lane of traffic.
15 Pier 2, the intermediate bent, was best constructed
16 under Phase 1, and I believe that was the designer's
17 intent.

18 If you work it with these notes up here, which
19 are notes identifying notes on Hillsboro Boulevard, not
20 on the turnpike itself, but they indirectly affect your
21 MOT here. They say that Phase 2 and 3 were only to be
22 used for the setting of beams for this span and the
23 false work for these spans, the form work.

24 MR. ZEPCEVSKI: And demolition.

25 MR. LANGE: No. The demolition is referred to

1 separately in a note, index 614.

2 If you were -- I believe you all know that this
3 bridge was -- there was an existing bridge here. He
4 constructed the south side of the bridge first,
5 detoured traffic while you maintained traffic on the
6 existing bridge, detoured traffic onto your new portion
7 on the the south side, then came back and built the
8 remainder of your bridge on the north side.

9 MR. ZEPCEVSKI: The demolition is not --

10 MR. LANGE: I do not -- I believe that's when you
11 have to institute single-lane crossovers, as defined in
12 index 614.

13 I'm getting a little bit out of sequence, but
14 since you brought up demolition, if you look here, you
15 literally have traffic right next to your existing
16 bridge. If you're to remove spans here, saw cutting
17 involved, the removal of bridge materials, you would
18 risk dropping materials onto this travel lane.

19 MR. ZEPCEVSKI: Wouldn't it make more sense if
20 you had traffic over here then (indicating)?

21 MR. LANGE: No, that's when the detours or the
22 crossovers, as they have been referred to, should have
23 been instituted.

24 MR. ZEPCEVSKI: But that's a detour right there.

25 MR. LANGE: This is a detour, but there's also

1 crossovers. Again, if you're working with these notes
2 up here, that's for the erection of the beams and the
3 placement of your form work.

4 Again, I'm not saying that these -- actually if
5 you had to provide every single step that you would do,
6 you might have ten phases. I'm not saying they are
7 specifically given here. I'm saying that the median
8 pier, the intermediate bent was to be constructed in
9 this configuration.

10 MR. ZEPCEVSKI: Okay.

11 MR. LANGE: Physically your cap, your piles would
12 have been under this lane of traffic.

13 MR. ZEPCEVSKI: The median is the easiest part of
14 the job.

15 CHAIRMAN COWGER: I think the Board understands
16 what you're saying, Mr. Lange. Let me interrupt and
17 ask you a question if I could get this in the record.
18 We are looking at sheet number 79 now, which is
19 entitled Hillsboro Boulevard.

20 MR. LANGE: Okay.

21 CHAIRMAN COWGER: In the notes over on the
22 left-hand side under Phase 6 -- excuse me, Phase 5, we
23 are demolishing the western half of the existing
24 structure. Demolish existing structure in Phase 5.

25 MR. LANGE: Right.

1 CHAIRMAN COWGER: If we look at the drawing on
2 the lower right-hand corner for Phase 5, we show that
3 situation.

4 MR. LANGE: These notes are not related to
5 traffic on the turnpike. They are related to work on
6 Hillsboro Boulevard.

7 CHAIRMAN COWGER: Well --

8 MR. ZEPCEVSKI: But they show the cross section.

9 CHAIRMAN COWGER: Let me get to my question.
10 I didn't quite get there. Let's look at Phase 5 a
11 minute. I want to ask you something about what you
12 testified to.

13 Phase 5 on sheet 79. You are saying with the
14 traffic in that configuration, as is shown on Phase 5,
15 which is all four lanes on the easterly side of the
16 median, that when you went in there to demolish half of
17 the existing bridge, you're concerned that he really
18 couldn't have done it the way this drawing shows
19 because he would have dropped possibly some debris on
20 top of the traffic since he was so close to the
21 traffic?

22 MR. LANGE: This Phase 5 could not be implemented
23 until the bridge was demolished because there were
24 existing pier lines that constrained your bearable
25 width.

1 CHAIRMAN COWGER: Well, why in the world did DOT
2 draw this drawing like that?

3 MR. MARCOUX: I think in that reference if you
4 look on page 5, if you look at that third note there,
5 it says the traffic on the turnpike shall be the same
6 as Phase 2. You have to read all of that.

7 CHAIRMAN COWGER: I appreciate that.

8 MR. ZEPCEVSKI: They do say on note 5 -- why do
9 they say demolish bridge on stage 5?

10 MR. LANGE: Again these notes --

11 MR. ZEPCEVSKI: They made a mistake here. It
12 says Phase 4. Phase 4 does not exist (indicating on
13 diagram).

14 MR. LANGE: The phases on Hillsboro Boulevard
15 were different than the phases on the turnpike.

16 MR. ZEPCEVSKI: I agree.

17 MR. LANGE: And you can't take the phases from
18 here, which is Hillsboro Boulevard, and say that they
19 are the same phases on the turnpike. You have to work
20 these notes with the separate phases on the turnpike.

21 CHAIRMAN COWGER: The Board understands that,
22 that you have two separate drawings, but in some
23 respect you've got to work the two together. I realize
24 that the phase numbers don't coincide, but I think it's
25 pretty clear on sheet 79 the Hillsboro Boulevard, that

1 it was depicted how traffic was to be maintained while
2 you were demolishing the existing bridge. Phase 5 and
3 6 on that drawing show the configuration for
4 maintaining traffic while the demolition was underway.

5 MR. LANGE: Phase 5 and 6 here?

6 CHAIRMAN COWGER: Yes, sir.

7 MR. LANGE: No, at this time the existing bridge
8 had to be completely removed because of the constraint
9 from this pier line for the existing bridge. The
10 existing bridge was a four-span bridge. You were --
11 you had to aim the available roadway width on the
12 turnpike.

13 CHAIRMAN COWGER: I understand. What you're
14 saying is Phase 5 could not be implemented as shown on
15 the Hillsboro Boulevard drawing because there was a
16 pier from the existing bridge somewhere within those
17 four lanes?

18 MR. LANGE: Phase 5 could be implemented after
19 the demolition.

20 CHAIRMAN COWGER: I'm talking about before you
21 demolished that pier. I understand what you're saying.

22 MR. LANGE: That's right.

23 MR. FOLEY: But to me the description on sheet
24 79, the description of the phasing is a description of
25 how, among other things, the contractor is to build the

1 Hillsboro overpass, and to coordinate that with the
2 construction of the widening of the turnpike.

3 The engineer when he made this drawing went to
4 the trouble of hashering the various phases so you
5 could relate the hashers on the keys to the individual
6 places where the work was to be performed.

7 For example, in Phase 5 where it says demolish
8 the existing structure, this hasher mark is identical
9 to that one, which is that portion of the bridge which
10 is to be demolished under that phase. That is the
11 portion which is over the traffic.

12 The span which is not over the traffic you can do
13 at your convenience. So, I find nothing inconsistent
14 about this.

15 CHAIRMAN COWGER: So, really what you're saying
16 is that Phase 5 on the Hillsboro Boulevard drawing was
17 intended to be worked with Phase 4 on the Florida
18 Turnpike drawing?

19 MR. LANGE: No, not necessarily.

10

20 MR. FOLEY: The section lines, if you will notice
21 on the plan sections on Hillsboro Boulevard, if you
22 look at the section lines where it says section BB and
23 AA, on the bottom you find those sections. It tells
24 you what the traffic looks like when that work is being
25 done.

1 MR. ZEPCEVSKI: Section B --

2 MR. FOLEY: Section B is shown below.

3 CHAIRMAN COWGER: Okay. Let me ask you about the
4 Florida's Turnpike drawing, now, the upper drawing on
5 that sketch. Now let's look at Phase 4. During that
6 Phase 4, the work to be done is to remove the existing
7 bridge west of the median and to complete the
8 construction of the new bridge west of the median.

9 MR. LANGE: You could have done this several
10 ways --

11 CHAIRMAN COWGER: Wait a minute. Look at
12 Phase 4. Mr. Zepcevski is pointing to it just exactly
13 right. That work in that crosshatched area, the work
14 that was to be accomplished was construction -- was
15 demolition of the old bridge in that area, which is
16 west of the median, and construction of the new bridge
17 through that area.

18 MR. ZEPCEVSKI: Right, but --

19 CHAIRMAN COWGER: Now, just a minute. Let's go
20 to the other drawing. Okay. Now let's look at Phase 5
21 down there in the lower right-hand corner, which is a
22 profile view of the work. That depicts the demolition,
23 if you look at the notes over here on the left-hand
24 side of that same sheet, for Phase 5, it says demolish
25 existing structures.

1 MR. MARCOUX: That's not the same. They're
2 different.

3 CHAIRMAN COWGER: That's the same phase of the
4 work.

5 MR. MARCOUX: Unh-unh.

6 CHAIRMAN COWGER: Mr. Marcoux raises the question
7 about the last note under Phase 5, under the
8 construction notes, saying traffic on Florida's
9 turnpike shall be maintained same as Phase 2. Well,
10 you know, I don't understand all of that.

11 MR. ZEPCEVSKI: Let me say something --

12 CHAIRMAN COWGER: I am very confused as to how
13 the designer intended for it to be done.

14 MR. ZEPCEVSKI: When we did this like you have
15 two spans, two sides of it. The first time when you go
16 over there, you demolish that intermediate pier on that
17 existing bridge. This one here (indicating), in one of
18 the phases, Phase 5 or Phase 6, either way, doesn't
19 matter. You cannot implement this traffic because
20 there is not enough room.

21 After the Phase 1 of the phases then you can do
22 that for the other side.

23 MR. ROEBUCK: This thing started off confused
24 from the initial meeting and it's still confused today.

25 MR. ZEPCEVSKI: To me it's very --

1 MR. ROEBUCK: Now, who is this guy RC that is the
2 designer noted on both of these plans? He spent a lot
3 of time working through that system. Did anybody -- he
4 wasn't in the preconstruction meeting, no one by those
5 initials. Do you know who RC is?

6 MR. LANGE: I do not.

7 MR. ROEBUCK: You don't know who RC is? RC
8 understood it. We forgot to bring RC to the meeting to
9 explain it to all of us, we didn't know what in the
10 hell he was talking about.

11 MR. LANGE: I clearly understand what is
12 required.

13 MR. ZEPCEVSKI: I understand, too. Note 5, if
14 you did not implement note 5 and you let me build the
15 detours, there would have been no problem.

16 MR. ROEBUCK: No problem.

17 MR. ZEPCEVSKI: With note 5 and restricting me to
18 a new MOT plan that you guys, the Florida Turnpike and
19 Metric Engineers forced Bergeron to produce, why didn't
20 you produce your own MOT plan if you wanted to change
21 it? You made Bergeron produce new MOT plan.

22 Then who cares about me? A bridge contractor,
23 you think Bergeron cares or you care? They made their
24 plan for themselves, for you guys. I told them I'll do
25 my best. I told you I'll do the bridge, I'll do the

1 bridge. I did tell everybody. I did tell everybody.

2 CHAIRMAN COWGER: Hold it, stop, stop. I think
3 we have heard enough on that for the moment. I do want
4 to give Mr. Lange the opportunity, though, to come in
5 and say anything he wants to say now about this
6 demolition issue.

7 MR. LANGE: Well, there is -- besides the
8 demolition, there's roadway issues involved. The --
9 this work to implement this has to be worked with the
10 roadway contractor.

11 For instance, before you can implement this
12 stage, the roadway contractor would either have to
13 build temporary pavement out here or the permanent
14 roadway. Before you could implement these phases, the
15 roadway contractor would have to build temporary
16 pavement or permanent pavement.

17 And it would be impractical to build permanent
18 pavement because in phase -- the construction of the
19 north portion of the bridge, you would have to come
20 back and rip out a portion of that pavement. It would
21 be best to be done with temporary.

22 The MOT plan submitted by Bergeron I do not
23 believe was forced upon Bergeron. They did not make
24 that statement to me.

25 It separated the roadway work from the bridge

1 work as much as possible, allowed both contractors to
2 work independently. It did not force the contractor,
3 for instance, as soon as a span of the existing bridge
4 was demolished, including the pier, to come in here and
5 build this exterior widening required to place the
6 traffic in this configuration. Instead, Bergeron could
7 work in accordance with their sequence.

8 This was more than just construction of the
9 bridge. It had a significant length of the turnpike
10 involved, widening from two lanes in each direction to
11 three lanes in each direction. It allowed them to work
12 in their sequence along the median and along the
13 exterior widening.

14 I'm not saying that that separation of roadway
15 and bridge might not have impacted ZEP in some ways,
16 but it also can very much lead to assist the prime
17 contractor, the paving contractors, which were other
18 subcontractors, Weekly Asphalt, the paving
19 subcontractor on this job, in their operations.

20 So, basically ZEP is claiming he was impacted.
21 With Bergeron it's my belief, from the statements that
22 they have made to me, is they separated for the good of
23 the overall project, they separated the roadway and the
24 bridge work as much as possible, did not keep the ties
25 that were imposed by this series of phased work in the

1 project.

2 MR. ZEPCEVSKI: Can I ask a question?

3 CHAIRMAN COWGER: Certainly.

4 MR. ZEPCEVSKI: Why wasn't I permitted to do the
5 bridge in accordance with these detours and why did you
6 have to request from Bergeron to submit a new MOT plan?

7 MR. LANGE: Jovan, I don't pretend to support the
8 Department's position that for you to implement these
9 detours would have required moving the barrier wall on
10 a daily basis.

11 MR. ZEPCEVSKI: Why wasn't I allowed to build the
12 bridge as it was designed with these detours?

13 MR. LANGE: If you look at these detours, this
14 work affected two phases, this work, which is the only
15 one the alternate detour was to support.

16 MR. ZEPCEVSKI: Essentially you disagree with the
17 way the MOT plan was designed? That's why you asked
18 Bergeron to submit a new MOT plan?

19 CHAIRMAN COWGER: I think we are going to cut
20 that off. I'm not interested in -- I don't think we're
21 interested in the answer to that because I think we
22 already know it.

23 Now, let me ask you another question, Mr. Lange.
24 We're looking again at the upper drawing, which is
25 sheet number 78. In the upper left-hand corner we have

1 details for maintaining traffic on the turnpike.
2 I take those details to apply to roadway construction.
3 Because they show shifting lanes, they show what is to
4 be done in each phase.

5 For instance, in Phase 1, which leaves the
6 traffic in its original configuration, they're going to
7 do an overbuild of the existing roadway. They're going
8 to place a four-foot wedge of asphalt on the existing
9 shoulder on both sides, I guess, both outside edges.

10 That would necessarily -- it calls for it to be
11 done under lane closure. There I would think that note
12 5 would apply.

13 MR. LANGE: Definitely.

12
14 CHAIRMAN COWGER: Now we can go on down through.
15 We can look at Phase 2, 3, 4 for the roadway. Now in
16 the upper right-hand corner we have the phasing for the
17 bridge construction. Now, to me those are two separate
18 entities. Those phases don't coincide number-wise with
19 each other.

20 MR. LANGE: They don't, but they have to be
21 worked together.

22 CHAIRMAN COWGER: We understand.

23 MR. LANGE: You cannot construct the median piers
24 in Phase 1 until your traffic has been shifted over
25 that four foot.

1 MR. MARCOUX: The point is you don't work Phase 2
2 and Phase 2, you don't have to work them both at the
3 same time.

4 CHAIRMAN COWGER: Phase 2 in the roadway doesn't
5 coincide with Phase 2 of the bridge.

6 MR. LANGE: Just as the phases on Hillsboro
7 Boulevard don't work phase-wise with the other phases.

8 You have to work all the different sections
9 together.

10 CHAIRMAN COWGER: You really have three different
11 phasings. You have the roadway phasing, overpass
12 phasing on the turnpike, then on sheet 79 we have
13 another set of phasings for the work on Hillsboro
14 Boulevard, which is the work on Hillsboro Boulevard.

15 MR. FOLEY: Right, for example --

16 CHAIRMAN COWGER: Let me -- I understand right
17 now I think. Is it unreasonable to expect that if the
18 contractor followed these two drawings that regardless
19 of the general notes -- let's take the general notes
20 out of it for a minute -- if he followed these drawings
21 as depicted here, that the bridge and the roadway could
22 have been built?

23 MR. LANGE: These drawings require additional
24 interpretation. You cannot take them exactly. This
25 plan is not, you know, a 20-page MOT plan. This is

1 rather condensed.

2 CHAIRMAN COWGER: But it is schematic at least?

3 MR. LANGE: Right.

4 CHAIRMAN COWGER: Let me ask you this. How do
5 you interpret note number 5 under general -- and
6 I emphasize general notes -- to apply to the bridge
7 construction? In other words, the Hillsboro Boulevard
8 overpass construction?

9 MR. LANGE: Note -- as far as on the turnpike?

10 CHAIRMAN COWGER: Yes, sir.

11 MR. LANGE: Note number 5 would apply to all lane
12 closure situations. The only case in which I see it to
13 be ambiguous is this phasing right here.

14 CHAIRMAN COWGER: He's pointing to --

15 MR. LANGE: Phase 2 and Phase 3.

16 MR. ROEBUCK: Where the detours came in about the
17 lane closures?

18 MR. LANGE: Right, but these detours as defined
19 elsewhere are solely for the setting of the beams and
20 the form work for the deck.

21 There is a note in here, I can't see which one,
22 probably Phase 3 or whatever, it says to construct the
23 entire slab at one time. In other words, it does
24 specifically say that these detours are for the setting
25 of the beams and the form work.

1 MR. ROEBUCK: And pouring the deck?

2 MR. LANGE: No, no.

3 MR. ROEBUCK: They wouldn't want that deck poured
4 over traffic either. Did you pour the deck over
5 traffic?

6 MR. ZEPCEVSKI: Yes, we did.

7 MR. LANGE: Once your form work is in and your
8 form work is watertight --

9 MR. ZEPCEVSKI: But we had to do a double --
10 false bottom.

11 MR. FOLEY: Phase 3 clearly says, "Detour
12 northbound traffic, erect the girders southeast
13 portion, and cast the entire slab for the south portion
14 of the bridge."

15 CHAIRMAN COWGER: We are looking at Phase 3 on
16 sheet 79 now.

17 MR. FOLEY: Which is the controlling construction
18 on the Hillsboro bridge.

19 CHAIRMAN COWGER: I think we have heard enough
20 about all of this at this point as far as the phasing
21 is concerned. I think we have heard enough about the
22 notes.

23 Let's talk a little bit about DOT's position that
24 says that the contractor didn't submit a notice of
25 claim until after Phase 2 and 3 of the bridge

1 construction was completed. I think you testified it
2 was sometime in November of '89?

3 MR. LANGE: No, 1990.

4 CHAIRMAN COWGER: I have my dates all mixed up.

5 MR. LANGE: The bridge construction began in --

6 CHAIRMAN COWGER: I'm sorry.

7 MR. LANGE: -- began in early 1990.

8 CHAIRMAN COWGER: Okay. The testimony was
9 November, I believe, of 1990.

10 MR. LANGE: That's right.

11 CHAIRMAN COWGER: Now, we need to hear a little
12 bit more about that. Mr. Lange is saying that from
13 his understanding of the matter from reviewing the
14 documents, from talking with Mr. Platt at Bergeron,
15 sometime not too long after the preconstruction
16 conference, two or three months, when Bergeron
17 submitted the revised maintenance of traffic plan, DOT
18 thought and Bergeron at least was of the opinion that
19 ZEP did not have any further intention of filing a
20 claim.

21 MR. LANGE: That's right. He told me he thought
22 they were in full agreement with the revised
23 maintenance of traffic plan.

24 CHAIRMAN COWGER: Now, ZEP Construction has said
25 that they protested this change in maintenance of

1 traffic at the preconstruction conference, rather
2 vehemently, and never withdrew that objection formally.

3 Is there anything in the correspondence between
4 the date of the preconstruction conference and this
5 November of 1990 date that would indicate that ZEP
6 wanted to continue holding this out as a claim?

7 MR. LANGE: I believe there was a letter that
8 immediately followed the preconstruction conference
9 which identified this as an issue, and if not resolved,
10 would be a claim. The revised MOT plan was submitted
11 approximately three months later. So, there is nothing
12 that followed the submission of the revised MOT plan or
13 immediately preceded the submission of the revised MOT
14 plan.

15 There is no doubt that the preconstruction
16 conference typically precedes notice to proceed by two
17 weeks or start of construction by two weeks, and then
18 there was -- the start of construction was November of
19 1989. There was a letter, I believe, in early November
20 of 1989 that reiterated the comments made at the
21 preconstruction conference.

22 MR. ROEBUCK: You have the DOT letter of '92
23 referred to it?

24 MR. LANGE: Right.

25 MR. ROEBUCK: Their interpretation, and I'll read

1 it, the letter said, "The Department shall bear all
2 costs in implementing this plan. By this statement
3 and the context in which it was used, we believe the
4 contractor was describing MOT costs only, not impact
5 costs." So there is the confusion.

6 MR. LANGE: Well, on the revised submittal of the
7 maintenance of traffic plan, part of that approval, it
8 was agreed that the Department would pick up all
9 maintenance of traffic costs associated with daily lane
10 closures, traffic switches, detours, et cetera.

11 And to the best of my knowledge, to the best of
12 Bergeron's knowledge, all of those costs were
13 addressed. That they were not aware that there was
14 impact costs that would follow. Regardless of that,
15 when I reviewed this claim on two separate occasions,
16 after a first denial, we went back and met with Jovan
17 again.

18 We felt if we could verify that the project as a
19 whole was impacted, regardless of the notice, that the
20 contractor should be compensated. But we could not
21 verify that the project as a whole was impacted.

22 In fact, it appeared that the prime contractor
23 and some of the other subs may have benefited from the
24 revised MOT plan submitted by Bergeron.

25 If ZEP was impacted, we felt the only impacts

1 were from the approximately five weeks when Phase 2 and
2 3 were in effect.

3 And at our last meeting we asked Jovan if we made
4 him an offer to address what we felt were the impacts
5 during these two phases for that time period, and we
6 felt the impacts, if anything, were the false bottom on
7 the form, which he had to place over the 24-foot of
8 roadway, plus a safe distance beyond, say 40 foot of
9 false bottom on a 100-foot span, additional overtime
10 during the five weeks, that these phases should have
11 been in effect, if he would consider that an equitable
12 offer.

13 He told us, we were not making this offer --

14 MR. FOLEY: Mr. Chairman --

15 CHAIRMAN COWGER: Let him finish.

16 MR. FOLEY: I want to ask a question. Is a
17 settlement conference that occurred a year and a half
18 ago, is the settlement conference, the process of that
19 settlement conference to be presented to this
20 Arbitration Board? That's what was going on, the two
21 parties were trying to make a deal. They were not
22 successful.

23 CHAIRMAN COWGER: We understand, and we will
24 listen to the testimony, but we will also weigh it.

25 MR. LANGE: Again, we considered Jovan -- I think

1 he said he had a good reputation. We believe that. We
2 wanted to try and address these issues.

3 But quite honestly, you have to understand
4 because of the lack of notice, records were not
5 maintained of the impacts. So we were going back and
6 trying to interpret how he could have been impacted
7 and what we could have done had we known, had he stated
8 the impacts prior.

9 We felt we would have paid him for the false
10 bottom on his form work. This was if he identified it
11 at the time of the MOT, and overtime over these two
12 phases, which were rather short.

13 CHAIRMAN COWGER: Now, let me --

14 MR. LANGE: He told us that the number -- the
15 number we threw out was way less than his minimal offer
16 and not to insult him.

17 CHAIRMAN COWGER: Let me go back and ask you a
18 question. Now, the testimony that you just gave in the
19 last minute or two you were pointing to what I refer to
20 as sheet 79 called the Hillsboro Avenue. The two
21 phases you're talking about as shown there in the lower
22 right-hand corner of that drawing were which two?

23 MR. LANGE: Phase 2 and 3.

24 CHAIRMAN COWGER: Okay.

25 MR. LANGE: Again, we felt he might have been

1 impacted by the Department's interpretation during
2 those two phases only.

3 CHAIRMAN COWGER: During those two phases, in
4 accordance with sheet 79, he would have been erecting
5 girders on the -- let me talk about Phase 2 first.

6 On Phase 2 the work on the new construction would
7 have consisted of erecting girders and working on
8 superstructure foundations?

9 MR. LANGE: Just superstructure, I believe.

10 CHAIRMAN COWGER: On the west side. Okay.
11 Superstructure form work. Sorry, I misread that note.

12 Basically what would have been going on in
13 Phase 2, he would have been setting the girders on the
14 south half of the new bridge and pouring the decks.

15 MR. LANGE: Right.

16 CHAIRMAN COWGER: On Phase 3 it would have been
17 the same thing except he would have been on the other
18 side of the median.

19 MR. LANGE: Except a note that says basically get
20 all your form work on before you cast the deck. Don't
21 cast half of your deck then set your beams. Set your
22 beams then cast the other half.

23 CHAIRMAN COWGER: Where is that note?

24 MR. LANGE: On the notes for Hillsboro Beach
25 Boulevard.

1 CHAIRMAN COWGER: Okay.

2 MR. LANGE: It says cast entire slab for south
3 portion of the bridge.

4 CHAIRMAN COWGER: That was a structural
5 consideration, though, was it not?

6 MR. LANGE: Right. That's right. But it's also
7 a construction constraint, too.

8 CHAIRMAN COWGER: I understand. Now, you
9 mentioned extra forming work, false bottom. What he
10 actually had to do, once the girders were set, then he
11 had to erect the form work and pour the concrete in
12 the -- set the steel, pour the concrete and all for the
13 decks --

14 MR. LANGE: Right.

15 CHAIRMAN COWGER: -- over traffic. The extra
16 form work, I assume what he had to do was put some kind
17 of a false bottom below the girders to protect the
18 traffic that was going under the bridge while he was
19 working?

20 MR. LANGE: The false bottoms, I don't know how
21 he did it, but on other jobs the way we have done is it
22 two-by-fours on two-by-sixes are laid across the bottom
23 phalange of the AASHTO beams and then plywood on top of
24 that. That protects traffic and the work during
25 erection of the form work. It is a relatively simple

1 operation because it's dropped in from the top. It's
2 more difficult to remove.

3 Traffic for this 100 plus foot span was only
4 under 24 foot of the deck.

5 CHAIRMAN COWGER: What about the overhang
6 portions, what did he do there?

7 MR. LANGE: I don't know. It's typical to use
8 overhang brackets. That form work would extend well
9 beyond the typical overhang work.

10 CHAIRMAN COWGER: You think you would have
11 allowed him to set the overhang brackets over traffic
12 with nothing underneath it?

13 MR. LANGE: I don't believe he could have had a
14 false bottom on his forms with the overhang bracket.
15 Typically they are set over traffic.

15

16 CHAIRMAN COWGER: Let's ask the contractor. How
17 did you do this false bottom work over traffic?

18 MR. ZEPCEVSKI: We had to get a piece of plywood.
19 You start from one side. You start here where there is
20 no traffic.

21 CHAIRMAN COWGER: I understand.

22 MR. ZEPCEVSKI: Then you go forward. When you
23 come over the traffic, you make sure there is no car
24 coming through before you lay your two-by-eights,
25 actually we had two-by-eights.

1 CHAIRMAN COWGER: We understand that.

2 MR. ZEPCEVSKI: So, we did that. As far as the
3 overhang, we had to either do the rolling or shift
4 traffic from one lane.

5 CHAIRMAN COWGER: You could put traffic for a
6 short period of time --

7 MR. ZEPCEVSKI: In one lane.

8 CHAIRMAN COWGER: -- in one lane while you
9 erected the overhang brackets. I understand.

10 MR. ZEPCEVSKI: For a very short time. Then we
11 had to deck it right away, put a hand rail so nobody
12 gets over.

13 CHAIRMAN COWGER: You were allowed to pour
14 concrete over a traffic lane provided that you either
15 had that false bottom in there or your forms extended
16 far enough beyond the edge of the bridge so there
17 wasn't any likelihood of any concrete falling on the
18 traffic?

19 MR. ZEPCEVSKI: That is the risk the contractor
20 has to take. I just want to remind you of another
21 thing. With all of this, the risk of somebody getting
22 hurt and my liability as a contractor is sky high.

23 CHAIRMAN COWGER: We understand.

24 MR. ZEPCEVSKI: And I would also like to
25 mention --

1 MR. LANGE: Again, traffic, I believe these were
2 100 foot, five-foot spans, traffic was under 24 foot of
3 this section. It was not under the whole section.

4 MR. ROEBUCK: Gene, how about questioning
5 Mr. Lange related to the costs that he submitted, as
6 it was, to get the liability involved. Did you study,
7 Mr. Lange, any of the rationale in his \$193,000 claim?

8 MR. LANGE: I did. Roger explained that when he
9 came in in February of '91. To be honest with you,
10 I don't know if I could tell you all the logic right
11 now. I'm not sure I understood it all then.

12 It is, again, a total cost claim. It reflects
13 what they contend are the additional costs for the
14 total construction of the bridge for the full period of
15 construction.

16 My position was, again, if there was an impact,
17 if there was, and if the contractor was compensable,
18 then it was only for the approximate five-week period
19 during which he actually did the work that was
20 described in Phase 2 and Phase 3. It was not for the
21 full duration of the project.

22 I didn't see how a total cost claim could be
23 applied. There were certain phases of the MOT plan
24 that were not implemented. Whether they were Jovan's
25 choice or not, the prime contractor chose not to

1 implement them. I don't know.

2 Again, there was, apparently, a decision on the
3 project to separate the roadway work as much as
4 possible from the bridge construction. It benefited
5 some contractors. It might have impacted Jovan.

6 Representing the State, I didn't think it was my
7 job to look solely at the impacts to one contractor,
8 but the impact to the contractors as a whole. The subs
9 should argue and fight with their prime, and the prime
10 has an obligation to defend the rights of their
11 individual subs.

12 Again, knowing Bob Black, and I've known him for
13 a while, I've dealt with him on a number of issues, and
14 we have always settled amicably. I think if he had
15 known Jovan was going to submit a claim for impacts he
16 would have handled things differently. That's just my
17 feeling.

18 I think he would tell you that if he was here.
19 I personally asked him to be here. I didn't make
20 anything other than that. I did make a phone call
21 because a large part of my decision was based on what
22 he had told me, the fact that he felt that ZEP
23 Construction was in agreement with the revised
24 maintenance of traffic plan.

25 CHAIRMAN COWGER: Mr. Lange, you are saying that

16
1 in your opinion, at least, a part of the reason for
2 submitting a revised maintenance of traffic plan was an
3 interest on the part of Bergeron to improve the flow of
4 work, you might say, on the overall project,
5 coordinating roadway work with bridge work? Is that
6 basically what you're saying?

7 MR. LANGE: That's right. It would have --
8 definitely this revised MOT plan would have helped
9 everybody working on the roadway. Because implementing
10 this -- these traffic control plans required pavement
11 construction to immediately follow a whole series of
12 phases of bridge construction.

13 And, if I may add, I personally believe it would
14 have impacted ZEP Construction because they might have
15 been forced to demobilize or greatly reduce their work
16 effort while the roadway contractor was in there,
17 depending on how long the roadway contractor took to
18 build these certain phases.

19 Again, I don't think it was an attempt on
20 Bergeron to hurt ZEP. I think it was that they saw an
21 opportunity to help the whole project.

22 MR. ZEPCEVSKI: Can I say something?

23 CHAIRMAN COWGER: Can you hold on just a minute.
24 Let me ask him a question. There's quite a bit of
25 testimony that has been given that said in essence that

1 Bergeron voluntarily submitted this revised maintenance
2 of traffic plan on one hand, and then on the other hand
3 the testimony says that he did it essentially under
4 duress where he was forced to submit this maintenance
5 of traffic plan by DOT, that he did not do it
6 voluntarily.

7 How do you see that, Mr. Lange?

8 MR. LANGE: I was not there at the time. Again,
9 if I was the consultant or Department representative on
10 this project I would have handled it differently. I'm
11 not pleased with the stance the Department took
12 related to this. I think we should have had a more
13 cooperative attitude at the start of the project. That
14 is the only thing I feel the Department did wrong.

15 I think that ultimately what was done benefited
16 the project, even though there is a possibility it did
17 hurt ZEP's construction, it benefited the project as a
18 whole.

19 I think Bergeron would have preferred that, for
20 liability and other situations, that he not be forced
21 to submit this, that the Department give him this
22 revised MOT plan and then let him accept it.

23 Any time a contractor has to submit a revised
24 MOT plan, he assumes liability. I understood that as
25 Bergeron's concern. But the consultant for the

1 Department, in my opinion, was too hardnosed in their
2 attitude. They required the contractor to submit what
3 everybody believed, except ZEP, was of benefit to the
4 project.

5 Again, as I saw it, Bergeron would have objected
6 because of the liability of them submitting it, the
7 impacts that might have happened if somebody had an
8 accident.

9 CHAIRMAN COWGER: You know, the Board has never
10 seen a revised maintenance of traffic plan. Is that
11 available? Is it in a drawing? What did ZEP submit?

12 MR. LANGE: ZEP did not submit anything.

13 CHAIRMAN COWGER: I mean Bergeron.

14 MR. LANGE: I do not have this, I was told this.
15 They submitted a letter and a revised sketch, 614,
16 which said it would be implemented with barricades on a
17 daily basis, and we extended additional lane closures
18 through the weekend.

19 Again, I understand it was worked out between the
20 CEI of the Department and Bergeron, but the only thing
21 was as a formality the Department and the consultant
22 said Bergeron has to submit this, even though it's
23 worked out by all parties, everybody is agreeable to
24 it, as a formal submittal it has to come from the
25 contractor.

1 That I think the Department should have taken the
2 initiative.

3 CHAIRMAN COWGER: Was that plan certified by a
4 professional engineer?

5 MR. LANGE: I do not know. I looked through,
6 I don't have it.

7 CHAIRMAN COWGER: The Board is going to ask that
8 that be produced for our review prior to May 15. We
9 are asking that the DOT produce that document to the
10 Board by May 15.

11 MR. LANGE: I went through the project files.
12 And other than a letter description and a marked-up
13 615, or 614, that was the only thing I saw. If that
14 was the actual document, I do not know.

15 CHAIRMAN COWGER: That's all we are -- whatever
16 is in your file is what we want to see.

17 MR. ROEBUCK: Whatever you ran across relating to
18 that March approval letter.

19 MR. LANGE: Bergeron might have a copy of that.
20 Again, I'm --

21 CHAIRMAN COWGER: I'm not interested in
22 Bergeron's files, I'm interested in what is in DOT's
23 files.

24 Does the contractor have any comments on what
25 I just instructed DOT to do?

1 MR. ROEBUCK: Would you like to see that?

2 MR. ZEPCEVSKI: Well --

3 MR. ROEBUCK: Whatever was approved for the
4 maintenance of traffic plan in March of '90.

5 MR. ZEPCEVSKI: I don't have it. Whatever you
6 send to the Board, yes.

7 MR. LANGE: From what I saw in the file was just
8 a letter of submittal and a marked-up copy. I'm going
9 to have to get with the people on the project and see
10 if that was the formal submittal.

11 CHAIRMAN COWGER: Whatever it was. We are not
12 asking it to be a detailed plan. We are asking what it
13 is that Metric or DOT, in fact, acted on in approving a
14 revised maintenance of traffic scheme.

15 And when you send that to us, to the Board, we
16 ask that you send a copy of your letter and the
17 attachments to Bergeron.

18 MR. ROEBUCK: And ZEP.

19 CHAIRMAN COWGER: With -- just send them to
20 Bergeron.

21 Now, Mr. Zepcevski, it's up to you to contact
22 Bergeron and tell them when they receive that to
23 immediately forward that to you because you're acting
24 as an agent here today of the prime contractor. We
25 want DOT to continue to correspond with the prime. But

1 if you don't receive that at some reasonable point in
2 time, you contact us.

3 MR. LANGE: Who do I send it to specifically?

4 CHAIRMAN COWGER: To the Arbitration Board, the
5 same address on the notice of hearing.

6 MR. LANGE: I assume I should copy the State
7 Construction Department?

8 CHAIRMAN COWGER: That's up to you. Whatever
9 Mr. Peterson wants.

10 Let's talk about the compensation a minute or
11 two. I know Mr. Foley has questioned that this
12 conference you had trying to negotiate was a good-faith
13 effort on both parties to try to settle this. You
14 mentioned a five-week impact period. In analyzing the
15 cost data submitted, can you give us the number that
16 DOT thought was reasonable for that five weeks?

17 MR. LANGE: We were considering an offer in the
18 range of \$10,000 to \$20,000.

19 CHAIRMAN COWGER: Okay.

20 MR. LANGE: We were not certain at the time we
21 could make that offer because the -- at that time the
22 contractor had already submitted a qualified acceptance
23 of the project that did not include the ZEP claim.

24 And we told that to ZEP at the time, that if we
25 could even make this offer, it had to be verified

1 through a State -- through State Construction, whether
2 legally we could make an offer on a project that we
3 thought might have been completely closed out.

4 CHAIRMAN COWGER: Mr. Peterson, was anything ever
5 looked into on that? This is brand-new testimony that
6 I've never heard anything on before. What he's saying,
7 I think, is that this claim did not come forth until
8 after the notice --

9 MR. PETERSON: I was going to comment on that.
10 I just found this out in the last week or so. The
11 original -- there was an original qualified acceptance
12 letter that did not contain this claim. It contained a
13 request for some topsoil that had failed.

14 Walt talked with me. We worked up -- their
15 office worked up a supplemental agreement on that
16 because there were some mitigating circumstances we
17 felt on the failure of the topsoil.

18 What happened, with the working up of the
19 supplemental agreement, it reopened the contract in a
20 sense, and we got a second qualified acceptance letter,
21 which included this claim. Mind you, it didn't include
22 it on the first qualified acceptance letter, only
23 included it on the topsoil. But the second one did.

24 Final Estimates submitted that second letter,
25 because they've had many types of this, claims come in

18
1 after the fact, and always before as I understood,
2 since it wasn't on the qualified acceptance after the
3 contract, it couldn't be accepted.

4 However, with the resubmittal involving the
5 supplemental agreement, which our office signed off on,
6 and we concurred with what the Turnpike -- for the
7 reasons stated, sounded completely legitimate, the
8 circumstances, Legal said you have reopened it, you
9 have to accept the new qualified acceptance letter.
10 Here we are.

11 MR. ROEBUCK: You did get a legal opinion?

12 MR. PETERSON: Yes. He got in on the replay.

13 CHAIRMAN COWGER: That settles that.

14 MR. LANGE: As of our last meeting with Jovan, we
15 were not certain how those issues would play. We got
16 the legal opinion after. We met with him not knowing
17 whether we could settle, just trying to resolve it in
18 everybody's mind whether he was entitled. We wanted to
19 be as fair as be possible.

20 CHAIRMAN COWGER: Let me ask another question.
21 From reading all of the documents that we received,
22 there was a statement in some of the correspondence by
23 DOT saying that the -- let me see -- saying that the
24 contractor, the bridge contractor still had the option
25 to use Phase 3 and Phase 4 maintenance of traffic

1 scheme for the Hillsboro Boulevard overpass
2 construction, upper right-hand corner of sheet 78, but
3 elected not to do so.

4 MR. LANGE: That should be Phase 4 and 5.

5 CHAIRMAN COWGER: What did I say?

6 MR. ROEBUCK: Three and four.

7 CHAIRMAN COWGER: You're right, 4 and 5. And the
8 contractor came back then, ZEP came back and said the
9 problem with that was that by the time he reached
10 Phase 4, the permanent median barrier had been
11 constructed throughout the length of the project, which
12 precluded him from diverting traffic to the other side
13 of the median.

14 First off, Contractor, can you expand on that a
15 little bit as to whether it was a case of Bergeron
16 putting you in that position or whether it was a case
17 of the revised maintenance of traffic plan putting you
18 in that position.

19 MR. FOLEY: Certainly. The idea that -- the
20 original maintenance of traffic plan in Phases 4 and 5,
21 or 5 and 6, depending on how you read it, does permit
22 two lanes of traffic in each direction under the
23 detour, and therefore didn't violate note 5.

24 It was the State's contention during the
25 discussion of this claim that, gee, whiz, if you had

1 impacts during Phases 4 and 5, that was your fault.
2 Because if you could have implemented the maintenance
3 of traffic plan, and had two lanes in both
4 directions -- and they're exactly right in hindsight.

5 The problem was after day one, when it was
6 decided that you couldn't do this, and Bergeron came up
7 with a new plan, nobody ever went back to the original
8 maintenance of traffic plan.

9 And for whatever reason, Bergeron built the
10 barrier wall, the median barrier wall right up to the
11 bridge. So that even if somebody had decided they
12 wanted to do that, they didn't have the opportunity to
13 do that, for whatever reason. Nobody went back.

14 Bergeron built the second phase of the bridge in
15 exactly the way he built the first phase. So it's my
16 view that irrespective of what might have been
17 possible, given what happened at the beginning of the
18 job, we should now look at what actually happened and
19 what were the impacts that actually occurred.

20 MR. LANGE: But the restriction from Phase 2 and
21 3 was only that you not have permanent one lane in each
22 direction. Phase 4 and 5 did not show one lane in
23 either direction. Those, to my knowledge, were never
24 at issue.

25 MR. ZEPCEVSKI: You want to take the best notes

1 from here (indicating on document)?

2 MR. LANGE: No, I really want to look at the
3 facts. That was the discussion, there could not be a
4 permanent one lane in each direction. The discussion
5 never had -- was that you couldn't detour the traffic
6 to the other side. In fact, the revised MOT plan was
7 daytime crossovers.

8 And so I don't know why Bergeron would have,
9 other than it might have expedited their roadway. It
10 definitely would have expedited their roadway, if
11 that's where their barrier wall work was at the time.
12 It would have constructed the barrier wall up to the
13 bridge, when their revised MOT plan showed crossovers.

14 To do a crossover you need an opening in the
15 barrier wall.

16 MR. FOLEY: You have to recall that the
17 interpretation at the time, sure you can use those
18 detours, as long as you put the barrier wall up there
19 every day, take it down every night.

20 MR. LANGE: That was for single lane.

21 MR. FOLEY: That's not what the letter says. It
22 states -- the original denial letter does not say that.
23 It was only after Mr. Lange became involved in this
24 thing and correctly had an excellent insight into the
25 work, unfortunately it was all hindsight.

1 MR. ZEPCEVSKI: Yes, and we had to deal with your
2 engineers, Metric Engineering.

3 MR. LANGE: But the only restriction ever
4 discussed was the single lane lane closure.

5 MR. ZEPCEVSKI: It was discussed, the plans, the
6 whole MOT. It was discussed, refused, another one was
7 done, and we build the job. It's easy for me -- now
8 I can do a lot of things. If I do the job over, I know
9 what to do. Trouble is it's done.

10 MR. MARCOUX: Mr. Chairman, I'm a little bit
11 disturbed that we don't have this other plan that we
12 keep referring to. And we go into great detail to
13 interpret all these fine printings on these drawings
14 and we don't know what we're working with.

15 CHAIRMAN COWGER: I think we have got enough
16 testimony in regard to the entitlement part of this
17 thing.

18 I think it is critical, as Mr. Marcoux says, that
19 the Board get that revised plan so we can study it,
20 because it's very difficult for us to understand
21 exactly what happened.

22 MR. FOLEY: We would also ask that if the Board
23 feels it is important, that we ask the Board not to
24 draw any inference from Mr. Platt's absence today. If
25 you think it's important to discuss this matter with

1 Mr. Platt, we invite you to do so, with regard to all
2 the matters discussed here and what actually went on
3 during the job. His absence here today has nothing to
4 do with our position, so to speak. We have nothing to
5 hide.

6 CHAIRMAN COWGER: Mr. Lange has discussed in
7 detail the discussions that he's had with Mr. Platt
8 about what transpired at the preconstruction conference
9 and in the two or three months ensuing.

10 Do you as a contractor have anything to say about
11 what Mr. Platt may have said to you?

12 MR. LANGE: He is available by phone, isn't that
13 what you said?

14 MR. ZEPCEVSKI: Yes. What happened was, you
15 know, we had the preconstruction conference. Then he
16 calls me back, says we have to do this job, please help
17 us. I said fine, I will do it.

18 Then he calls me on the phone again and says,
19 well, I want to submit some plan to do the bridge the
20 way it was discussed on the preconstruction conference
21 with the MOT that they submit.

22 I said, Bob, I will do it because I promised.
23 I will lose my tail or whatever I said, but since
24 I promised, I will do it.

25 And I'm not sure, as I said before, about writing

1 a note about a claim or more money. In my business,
2 I'm getting smarter the last few years, but I never go
3 on a job looking for a claim. I never even think about
4 a claim. I never used to even think about that I would
5 ever put in a claim.

6 I get spoiled now because so many people are
7 claiming and everybody expects you to try to claim.
8 And at the time I wasn't -- I told Bob, I said I will
9 try my best to do the job. That's all I can remember.

10 But I did tell him on the preconstruction
11 conference, I told Metric Engineering, Nelson Perez,
12 his inspectors that I will claim and they refused it.
13 In my face I mean they didn't admit that I told them
14 that.

15 MR. LANGE: I was not involved with the project,
16 so I don't know what verbally went on at the
17 preconstruction.

18 MR. FOLEY: I think if you would speak to
19 Mr. Platt, and he will put it in his own words. The
20 contract says the engineer has the right to interpret
21 the drawings. The engineer interpreted the drawings.

22 The contractor has only two options left,
23 either default or perform. In the process he's
24 entitled to make claim if he thinks the interpretation
25 is wrong.

1 The purpose of notice is so that the State is
2 not disadvantaged by the absence of knowledge that
3 something is wrong. The State knew there was something
4 wrong from the day of the preconstruction conference.
5 They took records every single day about what went on
6 out there, what equipment was there and so on and so
7 forth.

8 So, I mean if this were a court, Mr. Zepcevski
9 might have some problems, but this isn't a court.
10 This is a question of equity. The State was not
11 disadvantaged. They knew all along that Mr. Zepcevski
12 was unhappy about this thing.

13 I think if you discuss it with Mr. Platt, you
14 will find Mr. Platt was not happy. He didn't want
15 anything to do with the MOT plan. The fact is that he
16 ultimately, in order to get along with the State, was
17 forced to produce one.

18 Now somehow the State wants to say that somebody
19 got an advantage and Mr. Zepcevski got a disadvantage,
20 and that's between Mr. Zepcevski and the prime
21 contractor.

22 Our position is the State made a decision which
23 presumably suited their purposes. They have the
24 obligation to make Mr. Zepcevski well, to the extent
25 that he was damaged by that decision.

1 MR. LANGE: The purpose of notice is so that we
2 can mitigate impacts. And certainly if we had the
3 notice of intent to claim --

4 MR. ZEPCEVSKI: I told them at the
5 preconstruction conference that I will claim, I am not
6 going to do the job, I will leave.

7 CHAIRMAN COWGER: We have heard this testimony
8 before. We know what was said. Let's go off the
9 record a minute and take about a five-minute recess.
10 (Short recess)

11 CHAIRMAN COWGER: Gentlemen, we had a little
12 discussion of the Board while you were gone, and we
13 decided that we really don't need any additional
14 testimony at this point.

15 DOT, don't forget to send us the revised
16 maintenance of traffic plan. We would like each party
17 to have the opportunity to make any summation they want
18 to at this point, if you feel it necessary.

19 MR. FOLEY: No.

20 CHAIRMAN COWGER: DOT?

21 MR. LANGE: I have stated all I -- again, my
22 contention is if there were impacts, it was only during
23 Phase 2 and 3. I have already made my statement about
24 how it relates to other contractors on the project.

25 CHAIRMAN COWGER: Mr. Marcoux, do you have any

1 questions?

2 MR. MARCOUX: No.

3 CHAIRMAN COWGER: Mr. Roebuck?

4 MR. ROEBUCK: No.

5 CHAIRMAN COWGER: This hearing it is hereby
6 closed. The Board will meet on June 2 to deliberate on
7 this claim. You will have our final order shortly
8 thereafter.

9 (Whereupon, the hearing was concluded at 11:10 a.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I CATHERINE WILKINSON, Certified Shorthand Reporter
and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings were
taken before me at the time and place therein designated;
that my shorthand notes were thereafter reduced to
typewriting under my supervision; and the foregoing pages
numbered 1 through 71 are a true and correct record of the
aforesaid proceedings.

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

WITNESS MY HAND AND SEAL this, the 12th day of May,
A.D., 1993, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,
STATE OF FLORIDA.

Catherine Wilkinson

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

My Commission Expires June 27, 1994