

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. 93220-3435 in Palm Beach County, Florida, both parties are advised that State Arbitration Board Order No. 5-96 has been properly filed on October 31, 1996.



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

S.A.B. CLERK

OCT 31 1996

FILED

Copies of Order & Transcript to:

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

Jim Cardaman, Project Manager/Bergeron Land Development, Inc.

STATE ARBITRATION BOARD

ORDER NO. 5-96

RE:

Request for Arbitration by
Bergeron Land Development, Inc. on
Job No. 93220-3435 in
Palm Beach County

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

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

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 10:35 a.m. on Thursday, September 26, 1996

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 5-96 in this cause..

ORDER

The Contractor presented a request for arbitration of a claim in the total amount of \$201,568.75. The amount of the claim was increased from that shown in the information attached to the Contractor's Request for Arbitration due to an increase in the quantity of Sheeting 1-Side for which compensation is claimed and an extension in the period of time for which interest is allegedly due.

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

1. We installed concrete pipe over a section of this project using a trench box, in order to protect adjacent lanes of I-95 on which traffic had to be maintained.

2. The location in which temporary sheeting (Sheeting 1-Side) was to be used was not shown in the plans. On other jobs, the plans have contained a schedule detailing where temporary sheeting is to be used. Since the plan quantity for Sheeting 1-Side coincided with the length of the section of pipe which is in close proximity to the edge of I-95 pavement, the only portion of the project where it is necessary to protect the existing pavement or adjacent property during pipe operations, we included the cost of protection of existing pavement in the bid item for sheeting.
3. At a meeting prior to beginning this pipe work, we discussed with the Department's Project Engineer use of a trench box in lieu of sheeting to protect the existing pavement. This was approved by the Department with the understanding that a quantity of Sheeting 1-Side equal to the length of section in which the trench box was used would be included in the pay quantities. This length is 1,178 feet. The DOT Project Engineer and our superintendent monitored use of the trench box as if it were a pay item.
4. The purpose of sheeting, as set out in the project specifications, is to insure protection of existing pavement and adjacent property. The steel trench box accomplished that purpose. Therefore, we take the position that the trench box is a satisfactory alternate construction method. Section 125 of the Specifications as it relates to sheeting is "boiler plate" language, not project specific provisions.
5. After this section of pipe was installed, the Department made a determination that the cost of using a trench box is included in the unit price for the pipe item and refused to pay for this work under the item Sheeting 1-Side. We disagree with that interpretation. If we had been aware of the Department's interpretation prior to beginning this work, we would have installed sheeting to protect the existing pavement on I-95.
6. Since the soil conditions on this job are sandy, we planned to install temporary sheeting, as we have in the past, using a backhoe, not drive it.
7. We claim interest at a rate of two percent per month on the amount due us under the item Sheeting -1-Side on October 30, 1991 until October 1, 1996. .
8. The specifications and Florida law provide for interest on contract amounts due at the rate of one percent per month.

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

1. We agree that the locations in which temporary sheeting was to be used was not shown in the plans. However, no temporary sheeting was installed on this job.
2. A trench box does not meet the definition for sheeting as set out in Amendment No. 20 in the Special Provisions. (Made of either steel or wood and driven with a hammer).
3. The location in which the trench box was authorized is approximately 1,030 feet long.
4. We did authorize use of a trench box in lieu of sheeting in the location in question here. However, we authorized payment under the sheeting item only for the portion of the pipe under an existing bridge (46 feet).
5. We have determined that, in this instance, the trench box was used as a trench safety system as required by OSHA Safety Standards. The cost of using a trench box should have been included in the unit prices for the various drainage items.
6. The cost of using a trench box is substantially less than that of utilizing temporary steel sheeting, especially when the cost of driving sheeting is considered.

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

1. It was revealed that neither sheeting nor a trench box could be used in constructing the section of storm sewer that is beneath an existing bridge, because of limited vertical clearance.
2. A Contractor's representative, who was present at the meeting prior to beginning work on this section of pipe, said "There was nothing specifically said about not paying for this item" (sheeting).
3. It was not established that the trench box was necessary at the location in question here in order to prevent damage to the adjacent pavement.

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

The Contractor is due nothing for his claim.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$249.20 for Court Reporting Costs.

S.A.B. CLERK
OCT 31 1996
FILED

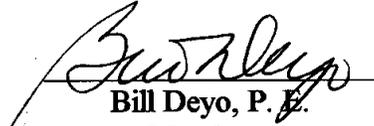
Tallahassee, Florida

Dated: 31 October 1996



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

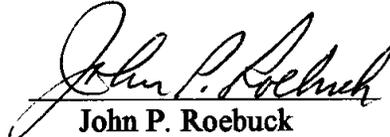
Certified Copy:



Bill Deyo, P. E.
Member



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



John P. Roebuck
Member

31 October 1996
DATE

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

OCT 31 1996

FILED

BERGERON LAND DEVELOPMENT,)
INC.)

- and -)

DEPARTMENT OF TRANSPORTATION)

PROJECT NO. 93220-3435

LOCATION: Palm Beach
County, Florida

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Thursday, September 26, 1996

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

TIME: Commenced at 10:35 a.m.
Concluded at 11:50 a.m.

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

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida
(904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF BERGERON LAND DEVELOPMENT, INC.:

Mr. Jim Cardaman
Mr. Brian Bullerdick

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Stan Balcaitis
Mr. Roy Pytel
Mr. Felix Vergara

* * *

I N D E X

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P R O C E E D I N G S

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

Mr. Bill Deyo was appointed a member of the Board by the Secretary of the Department of Transportation.

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

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

Our terms began July 1, 1995 and expire June 30, 1997.

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

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN COWGER: The documents which put this arbitration hearing into being are hereby introduced as Exhibit 1. This is the request for arbitration that was submitted by the contractor, all of the documents that were attached thereto, and the notice of arbitration hearing. All of those documents were furnished, or that document I should say, was furnished

1 to the DOT well in advance of this hearing.

2 Exhibit 2 is a rebuttal package dated August 21,
3 1996, from DOT. This also was circulated to the Board
4 members and to the contractor well before this hearing.

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

7 (Discussion off the record)

8 CHAIRMAN COWGER: While we were off the record,
9 there was a discussion of the exhibits as to what they
10 consisted of, so now I'm going to identify for the
11 record the exhibits that were -- the additional
12 exhibits that were presented.

13 We have a series of exhibits that were presented
14 by the contractor, all listed on a list of exhibits
15 sheet consisting of ten exhibits. We will identify
16 that sheet and the attached exhibits as Exhibit 3 for
17 the purpose of this hearing.

18 DOT presented a copy of the OSHA regulations on
19 excavations dated October 31, 1989. We will identify
20 that as Exhibit 4.

21 DOT presented a package consisting of a
22 photograph and various sheets from the plans for this
23 project, which we will identify as Exhibit 5.

24 Have I covered all the exhibits?

25 (Whereupon, Exhibit Nos. 1 through 5 were received in

1 evidence.)

2 CHAIRMAN COWGER: Does either party wish any
3 additional time to examine the exhibits that were
4 presented here this morning by the other party?

5 Okay. During this hearing the parties may offer
6 such evidence and testimony as is pertinent and
7 material to the controversy and shall produce such
8 additional evidence as the Board may deem necessary to
9 an understanding and determination of the matter before
10 it. The board will be the sole judge of the relevance
11 and materiality of the evidence offered.

12 The parties are requested to assure that they
13 receive properly identified copies of each exhibit
14 submitted during the course of the hearing and to
15 retain these exhibits. The Board will furnish the
16 parties a copy of the court reporter's transcript of
17 this hearing, along with its final order, but will not
18 furnish copies of the exhibits.

19 I'm assuming that as I went through identifying
20 the exhibits by number each of the parties and the
21 Board members so noted those numbers on the exhibits.

22 The hearing will be conducted in an informal
23 manner. First the contractor's representatives will
24 elaborate on their claim, and then the Department of
25 Transportation will offer rebuttal.

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

5 We are ready to proceed now with the contractor's
6 presentation of his claim. The Board prefers that the
7 first statement the contractor makes is the total
8 amount of his claim. That's the total amount of all
9 parts.

10 MR. CARDAMAN: It's approximately 103,000 plus,
11 which I think includes interest. The end number is
12 based on how the interest is calculated.

13 CHAIRMAN COWGER: Okay. Is it safe to say that
14 the amount is \$55,156.50 plus interest?

15 MR. CARDAMAN: That's correct. That's exactly
16 right.

17 CHAIRMAN COWGER: That the interest is being
18 claimed at 2 percent per month?

19 MR. CARDAMAN: And I do have my document that
20 supports that the total amount claimed -- and this has
21 been revisited since the submission. After going
22 through the documents, the base amount is \$61,609.40.

23 CHAIRMAN COWGER: Instead of the 55,000?

24 MR. CARDAMAN: That's correct. With the interest
25 calculated monthly at 2 percent from October of 1991

1 when payment should have been made through October of
2 1996, the total amount due is \$201,568.75.

3 CHAIRMAN COWGER: 201 --

4 MR. CARDAMAN: 568.75.

5 CHAIRMAN COWGER: That's the total amount?

6 MR. CARDAMAN: That's inclusive of the interest.

7 CHAIRMAN COWGER: Okay.

8 MR. VERGARA: I would like to have the first
9 amount that he mentioned.

10 MR. CARDAMAN: 61,609.40.

11 CHAIRMAN COWGER: 61,601.48.

12 MR. CARDAMAN: 40.

13 CHAIRMAN COWGER: Okay. I think we've got that
14 down now.

15 Let me make one quick comment that might expedite
16 the hearing. There's four parts to this. Wait a
17 minute, now. Hold on, I'm in the wrong claim. Okay.
18 Proceed on.

19 MR. CARDAMAN: I'd like to start with an opening
20 argument, and I'd like to make a brief statement before
21 I start the opening argument.

22 My opening argument kind of gets off on a tangent
23 in somewhat answering the DOT's August 21st rebuttal,
24 but again we feel the August 21st rebuttal is getting
25 off track of what the original subject is, and that is

1 that there was an agreement made between the Department
2 of Transportation and the contractor and a
3 subcontractor.

4 Some work was performed that was relevant to that
5 agreement, and the Department later changed their mind
6 about what the agreement was and wanting to pay under
7 the terms of the agreement. With that I will read my
8 opening argument.

9 This claim arises out of the promise of agreement
10 made between Bergeron Land Development and Florida
11 Department of Transportation, a promise that was made
12 before this work ever began.

13 The trench box option was an alternate method of
14 securing the slope adjacent to I-95 roadway. It was a
15 more effective method of obtaining the intent of
16 Section 125 of the special provisions.

17 If the contractor had known before commencement
18 of this work that the Department would later renege
19 on their agreement to make compensation for this work
20 under item number 125-77-1, they would have simply used
21 the steel sheeting method.

22 In either method, the cost to do the work would
23 still be incurred. Bergeron Land Development contends
24 that the sheeting was steel, and, therefore, meet the
25 requirement of Section 125 of the special provisions.

1 We supplied an alternate sheeting of adequate
2 length to protect the existing pavement and adjacent
3 property. The alternate procedure used effectively
4 protected the existing pavement and adjacent property.

5 No failures occurred in the trench slope and no
6 roadway pavement was lost during this operation.

7 Bergeron Land Development, Inc., also contends
8 that Section 125 of the special provisions is a
9 boilerplate spec referring to the generally utilized
10 steps for standard sheeting. Bergeron used an
11 alternate method with procedure steps that were
12 concurrent with its recommended use.

13 That they should not cause Bergeron to be
14 penalized by nonpayment even though the work was
15 performed. The Department authorized the use of a
16 trench box in lieu of sheeting for the entire length of
17 1178 feet of drainage installation along 95 to the
18 right of the right roadway.

19 Brian Bullerdick is present at this date to
20 attest to the verbal authorization given by the DOT
21 prior to the performance of this work. During this
22 construction the DOT inspector received and reviewed
23 the quantities for the sheeting, logged them as if he
24 intended to make payment.

25 This assertion is also substantiated by the sworn

1 statement made by Mr. Jack Vann, who was the project
2 superintendent for this project, and Dan Sanders,
3 property manager for Tropical Utilities. The actual
4 length of installation is documented by Tropical
5 Utilities' daily report as well as by the foreman,
6 Brian Bullerdick's report.

7 There was a specific pay item in the contract,
8 item 125771 to cover the cost to shore this area.
9 Because this item was included, the contractor was
10 required to utilize it for this work and, therefore,
11 would have no reason to include the cost of a second
12 time in the drainage pipe pay item.

13 If the contractor had included this work in the
14 respective drainage item, then the bid for both the
15 respective drainage item and the sheeting item would be
16 irregular and would potentially have caused Bergeron
17 Land Development's bid to be rejected, see subarticle
18 2-6, page ten of the standards.

19 Bergeron Land Development herewith provides
20 documentation to prove that the trench shoring was not
21 included in the respective drainage items. It further
22 challenges the Department to disclose the calculations,
23 documents, et cetera, that the Department used to
24 determine and in quotations that the cost of the trench
25 box, if used, was included in the bid price for the

1 construction of the different drainage items.

2 The contractor did, in fact, provide an alternate
3 form of steel sheeting in the steel trench box. The
4 special provisions and plans were by no means specific
5 of the type of sheeting to be used, and therefore left
6 it open to use an alternate method.

7 Other projects demonstrate that when a specific
8 type of sheeting is required, it is shown in the plans.

9 On State project -- and I didn't bring any
10 supporting other than the copy of the excerpts from the
11 plans on this project. I don't have the contract
12 documents with me, project number 86070-3460 and 3422,
13 a specific method of sheeting was specified.

14 The contractor utilized a Hilfiker wall as an
15 alternate method of sheeting to sheet depths of up to
16 approximately 20 feet. The Department paid for this
17 alternate method under the sheet piling item.

18 In doing this the Department clearly has set
19 precedence in paying for this work when the contractor
20 successfully utilizes an alternate method of
21 construction.

22 Then I will turn to my list of exhibits, and if
23 I could briefly run through them and show how their
24 pertinence is to the opening argument that we made.

25 Exhibit 1 shows pictures of the area where the

1 trench box took place. I think the Department has also
2 represented this. The pictures clearly show that there
3 was no -- well, maybe not clearly, but they do show
4 there was no pavement loss as a result of this
5 operation.

6 Exhibits 2 and 3 substantiate the verbal
7 agreement that was made approximately a week prior to
8 the installation of the shoring.

9 Exhibits 4 and 5 give details from Tropical
10 Utilities' daily report and also excerpts of their
11 report is noted on the plans to identify the locations
12 where the sheeting alternate was used.

13 Exhibit No. 6 substantiates our early paragraph
14 about subarticle 2-6 that we would have created an
15 irregular bid if we included work covered by a separate
16 pay item in another pay item.

17 Exhibit 7, we have a brief cost breakdown for the
18 cost of 30, 36 and 42-inch pipe that represents that a
19 trench box could not have been included in this cost
20 amount.

21 Exhibit No. 8 shows our pay requests, our
22 payments on numbers 4 and 21. We kind of arbitrarily
23 picked two payments early on and late in the other
24 projects that we reference, 86070-3460 and 62 that
25 shows that Bergeron was paid for the Hilfiker wall.

1 Exhibit 9 shows the plans for that same project,
2 and it shows a specific method of sheeting.

3 CHAIRMAN COWGER: May I interrupt you a second.
4 Where does it show that in Exhibit 9? On page 39?

5 MR. CARDAMAN: Actually, the first page is just
6 showing the locale of the project. The second page
7 shows the pay items.

8 It's on page 39, and I think notes the schedule,
9 notes -- note one refers to the schedule, notes two and
10 three --

11 CHAIRMAN COWGER: That's good enough. Just
12 wanted to make sure where we were. You were at
13 Exhibit 10 I believe.

14 MR. CARDAMAN: Exhibit 10 is the specifications
15 on that alternate method of sheeting that we used on
16 another project and were paid for.

17 That's basically just the guideline, just to give
18 the Board an idea, if you're not familiar with Hilfiker
19 wall, what Hilfiker wall is.

20 CHAIRMAN COWGER: Does that complete what you
21 were going to say about your exhibits?

22 MR. CARDAMAN: I think so. Yes, sir.

23 CHAIRMAN COWGER: On the other project where you
24 used the Hilfiker wall, was that installed and left in
25 place or was it later removed?

1 MR. CARDAMAN: Most of it, and I will say
2 probably 90 to 95 percent was removed.

3 CHAIRMAN COWGER: I'm not familiar with this
4 wall. Is it kind of like reinforced earth?

5 MR. CARDAMAN: Yes, it's got the same properties
6 as a reinforced earth wall. The only thing it's
7 lacking is the expensive, cosmetic concrete feature of
8 the panel.

9 CHAIRMAN COWGER: That's all the questions I had
10 about your exhibits.

11 Do either one of the Board members have any
12 questions about the exhibits?

13 MR. DEYO: Not at this time.

14 CHAIRMAN COWGER: Okay. Proceed on then.

15 MR. CARDAMAN: I think I would like to have --
16 I have Brian Bullerdick with me. I would like to have
17 him make a real statement of the meat of this matter.

18 There were two meetings. The first was a meeting
19 of the request of the Department to be allowed to use
20 this trench boxing as an alternate to the sheeting, and
21 would the Department, in fact, make payment for that.

22 The second -- there was a follow-up meeting.
23 There wasn't an answer given at the first meeting.
24 I think the DOT members had to go to a higher authority
25 to get a response, and at the second meeting, the

1 response was given, Brian Bullerdick was present.

2 The other two representatives are not here, but
3 there was testimony in the exhibits.

4 So, with that I would like to turn it over to
5 Brian for a moment. He can basically go through this.

6 MR. BULLERDICK: At one of our weekly
7 subcontractor meetings that we have every week on the
8 job site, me and my project manager, Dan Sanders, we
9 asked if it would be possible for us to use a trench
10 box in lieu of the sheeting item for the simple fact of
11 the main purpose of the sheeting was to protect the
12 existing pavement and the existing property, that we
13 didn't disturb that.

14 At that time, like Jim said, we did not get an
15 answer that they needed to go to their project manager
16 and determine if that would work.

17 So, a few days later at another meeting, they
18 came out and Stan and Dave Pierce were both present
19 from the DOT at that time.

20 They told me that it was okay as long as we were
21 able to maintain the existing pavement, which was right
22 along the edge of I-95. If we were able to maintain
23 that without losing the pavement, then we could go
24 ahead and use the trench box.

25 There was never anything discussed about no

1 payment being made for it or anything like that. And
2 with that, we proceeded to start underneath the bridge
3 at which time I think on the DOT statement they said
4 that, on the rebuttal, they said they would pay us for
5 the part of using the trench box underneath the bridge,
6 of which we did not do.

7 We were unable to use the trench box under the
8 bridge due to the height of the bridge and the machines
9 that we had. We were unable to get in there.

10 We had to use the machine, the loaders and
11 everything, to cut the whole area out to have a safe
12 trench. We did not use the trench box under the
13 bridge.

14 We proceeded to start using it on the north side
15 of the bridge and then ran 1100 feet with the trench
16 box intact to -- was able to successfully not lose any
17 of the pavement. The backfill operation kept up
18 properly. Everything went well.

19 I monitored it on a daily basis on my daily
20 reports. The State monitored it on a daily basis. It
21 wasn't until after the fact that we were all totally
22 done with it that we were told it wasn't going to be
23 paid as this item.

24 CHAIRMAN COWGER: Let me ask you about the
25 portion of the trench that was under the bridge. You

1 say you did not use the trench box there?

2 MR. BULLERDICK: No.

3 MR. CARDAMAN: Our contention is that when this
4 meeting took place, it was nothing like what is noted
5 in page three of August 21, 1996 rebuttal from the
6 Department, I think paragraph 4 -- paragraph 6 where
7 the Department alleges to have made a verbal agreement
8 to use it just under the bridge, which is a very short
9 area.

10 Our contention is that that was one area where it
11 really -- there was nothing you could do there other
12 than, you know, dive into the work, get it done in a
13 hurry, get out of there as quickly as possible and get
14 on to the next step.

15 And what actually I think Tropical Utilities did
16 at the time in that area -- and again this line as it
17 ran north, it meandered closer -- I shouldn't say
18 meandered, it drew closer to the edge of the pavement
19 of the northbound roadway of Interstate 95.

20 MR. BULLERDICK: You can see that by the offset
21 numbers on the plans, detail sheets. It shows it does
22 go closer to the road as it gets underneath the bridge.

23 CHAIRMAN COWGER: Okay. How did you install the
24 pipe under the bridge? You didn't use sheeting or the
25 trench box?

1 MR. BULLERDICK: We used the loaders and we cut
2 all the dirt out in a wide area and made the area wide
3 so we had an adequate safe trench. Like I said, we
4 were --

5 CHAIRMAN COWGER: You were far enough from the
6 roadway that you didn't disturb the roadway?

7 MR. BULLERDICK: Yeah, that we --

8 CHAIRMAN COWGER: Just sort of laid the slope on
9 the roadway side in that particular area back a little
10 bit, to have a stable slope without either sheeting or
11 trench box. Okay. Good enough.

12 Do you have anything further to present? You
13 will be allowed to speak again.

14 MR. BULLERDICK: No, not really.

15 CHAIRMAN COWGER: Either of the Board members
16 have any questions or comments before the DOT starts?
17 Okay. DOT.

18 MR. PYTEL: We will start off with the comment,
19 the agreement that the project engineers made some
20 commitments I understand. Stan was the project
21 engineer. If you will go into what your understanding
22 was of the use of the trench box.

23 MR. BALCAITIS: A second meeting was held right
24 underneath the bridge. The discussion was we can't
25 drive sheeting because we don't have access to be able

1 to drive sheeting under the bridge. At the time the
2 discussion was strictly about just under the bridge.
3 There had been nothing else to prevent them from
4 driving sheeting throughout the run of the pipe.

5 I met Adam. I told him it was impractical and
6 I had no problem with paying for the sheeting under the
7 bridge. I had no problem doing that as long as they
8 could shore up the roadway.

9 I even walked out from beneath the bridge, I said
10 whatever pipe comes out beyond the bridge -- I drew a
11 line in the sand with my foot and said from there on
12 you can drive your sheeting, there shouldn't be any
13 problem.

14 At that time the commitment was made to pay for
15 just underneath the bridge and whatever would be
16 adequately safe to be able to drive sheeting beyond the
17 edge of the bridge.

18 At that point sheeting was to be provided
19 throughout the rest of the run of the pipe.

20 That was the commitment that I had made.

21 MR. PYTEL: Okay. Some of the exhibits I have --

22 MR. DEYO: Can I ask a question. You agree that
23 they could use something other than sheeting. Was that
24 inferred or did they ask specifically for the trench
25 box under the bridge?

1 MR. BALCAITIS: They asked I believe for a trench
2 box in that area.

3 MR. DEYO: Okay, go ahead.

4 MR. PYTEL: Okay. In the exhibits that DOT
5 presented, the ones with the plan sheets, the first one
6 was the picture of the existing bridge. It's right
7 there on the cover. That's the old bridge that is to
8 be removed and that was to be removed in one of the
9 phases in work under that or in that area of that
10 bridge was supposed to be done in Phase 5.

11 If you will notice in the MOT phasing, I have
12 Phase 1 and Phase 5.

13 Phase 5, about the -- the wording is about
14 halfway down, two-thirds of the way down, where it
15 says, "Begin construction of ramp B."

16 In other words, that bridge was already gone,
17 supposed to be gone before they got in there to do that
18 work.

19 Also, the widening for the detour was to be done,
20 so, there was a need for sheet piling if they did their
21 detour widening and removed the bridge. They can put
22 sheet piling all the way through there.

23 Because the contractor changed the schedule and
24 was allowed to change the schedule to get in there and
25 do the underground work prior to any widening of the

1 roadway for the detour, he was able to use a trench
2 box, get in there, blow and go.

3 My contention is that because you didn't have to
4 lay the slope back as much, he didn't have -- he did
5 not put in sheet piling. The specifications call for
6 sheeting, whether it's wood or steel, to be driven. It
7 goes into driving it.

8 The main purpose of sheeting is to protect
9 property, roadway or private property. Because the
10 contractor was able to get in there on Phase 1 prior to
11 any new detour going in there, he didn't need sheeting.

12 Now, the Hilfiker wall that he used on the other
13 project I was not aware of it at the time. I do note
14 one item in the pay items, there is a pay item in here
15 for Hilfiker wall. I do not notice an item in there
16 for sheet piling. To me that was a negotiated item to
17 use the Hilfiker wall in lieu of sheet piling.

18 On our job there was no negotiations about it.
19 I feel \$150 a foot or whatever it is for using a trench
20 box that is a part of OSHA requirements for safety of
21 the people that are working in there, that's the main
22 purpose of a trench box, and that's why I wrote the
23 response to Jimmy Cardaman about the nonpayment of it.

24 I was not aware of any agreement that Stan made
25 to pay for under the bridge, but since they didn't do

1 it, that doesn't matter anyway.

2 MR. BALCAITIS: There's no place in the contract
3 items where it specifies that sheet piling is supposed
4 to be placed. It doesn't say sheet piling from station
5 so-and-so to so-and-so. So, it's a contingency-type
6 item that was to be used if necessary. It obviously
7 wasn't necessary.

8 MR. VERGARA: I would like to point out, also,
9 that in the correspondence the contractor refers to the
10 trench box, they are saying trench box in lieu of
11 sheeting. They are saying by in lieu of sheeting it is
12 not the sheeting specified in the specification.

13 And I would like to -- another thing that we
14 notice today is that this is the first time that we are
15 here that the contractor is claiming a quantity greater
16 than the plan quantity.

17 Our understanding was all the time that they only
18 were claiming for 1,050 linear feet as shown on the pay
19 item. Today is the first time we have been informed of
20 a claim for a quantity greater than the plan quantity.

21 Also, I would like to refer to a letter the
22 contractor submitted.

23 MR. PYTEL: This is on the documents. That
24 exhibit shows his total use was only 800.

25 MR. VERGARA: The contractor submitted in which

1 they admit that the request for the use of the trench
2 box was because of the low clearance on the -- under
3 the bridge. And that is on the letter of December 11,
4 1991. It's a letter from Tropical Utilities, the
5 second paragraph.

6 It says that it was -- it says -- I will read
7 what it says here. "Also the method that we used did
8 accomplish the intended results in that it protected
9 the existing pavement from collapsing and was the only
10 method we were able to use under the bridge because of
11 the low clearance."

12 So, we have a statement from the contractor
13 saying that they did not use it under the bridge, and
14 we have a letter here that said they did use it under
15 the bridge.

16 You know, and given that we admit that we made a
17 verbal agreement, we made the error of not paying the
18 contractor because we made that verbal agreement to pay
19 the contractor for using a trench box under the bridge.

20 Now we are saying we are willing to pay for that
21 distance under the bridge, which was the distance that
22 Stan agreed to.

23 MR. DEYO: But they didn't use the trench box
24 under the bridge?

25 MR. VERGARA: That's what they are saying, but

1 they have a letter here saying they did. The letter
2 says that he used it, but now Brian Bullerdick says he
3 didn't use it.

4 CHAIRMAN COWGER: Is there anybody here from DOT
5 that witnessed what happened?

6 MR. BALCAITIS: To be honest, I don't recall
7 whether they ultimately used it under the bridge or
8 not.

9 MR. CARDAMAN: Brian was the foreman on
10 Bergeron's behalf and on his dailies he noted that it
11 wasn't used under the bridge.

12 MR. DEYO: The contractor says no trench box used
13 under the bridge, but the DOT at this point is agreeing
14 to pay for sheeting?

15 MR. VERGARA: Under the bridge.

16 MR. DEYO: On the August 21st submittal here,
17 1996, you are agreeing to pay for sheeting, one side,
18 under the bridge in lieu of the trench box that they
19 didn't use?

20 MR. VERGARA: Because -- okay, what happened --

21 MR. DEYO: That's what it says.

22 MR. VERGARA: Yes, I do understand that. When
23 I prepared this document, I prepared the response from
24 the Department. I interviewed -- I was not present.
25 I was not in charge of that job. I interviewed the

1 people that were involved. I asked them from where to
2 where did they use the trench box.

3 And this is the exhibit that we presented here,
4 where we say the use of the trench box. I presented
5 sheet 25 where it says trench box was used starting at
6 about this location, south of the bridge. That's the
7 question I asked. I was shown where according to them
8 they started using the trench box.

9 Also on sheet 26, I asked where did they finish
10 using the trench box, and they pointed out a location
11 where it is.

12 MR. DEYO: I understand. That's on the exhibit.
13 Does that offer still stand? My head is doing this
14 because what I hear is, as a member of this Board, is a
15 change in the claim, a change in the use of the trench
16 box, running stations on the job, the analysis that was
17 done, and then a change in the presentation today.

18 Now, on your rebuttal or your counter to the
19 claim at the time, it was an admission or offer of
20 settlement. Does that still stand today? Is DOT
21 prepared to leave that in or are you going to withdraw
22 that?

23 MR. VERGARA: Well, given that we have a
24 statement from -- I don't have anybody from the
25 Department that can really -- I don't have anybody here

1 that can tell me any different, I'm going to withdraw
2 this offer.

3 CHAIRMAN COWGER: You are going to withdraw the
4 offer?

5 MR. VERGARA: Yes.

6 CHAIRMAN COWGER: I think what happened here is
7 that up until this morning the DOT was relying on what
8 the contractor said, that we installed the trench box
9 the entire length of this particular section of pipe,
10 including the section under the bridge.

11 So, the rebuttal that you prepared was based on
12 that information. You really had no reason to go back
13 and look to see whether they did, in fact, install
14 trench box, you just assumed they did.

15 So your offer was made because of the statements
16 that were made prior to beginning construction of this
17 storm sewer, you did offer to pay for the 50 feet or
18 whatever it was under the bridge.

19 Now the contractor comes in this morning and says
20 that we didn't even install the trench box under that
21 bridge.

22 So, it puts you in kind of a horrible position at
23 this point to have to deal with that. I think the
24 Board can deal with it from this point. Don't you,
25 Bill?

1 MR. DEYO: Yes.

2 CHAIRMAN COWGER: Okay. DOT, what else do you
3 all have to say?

4 MR. PYTEL: We are at the point now where we are
5 discussing in the contractor's own records, which is
6 the first time we have saw it, it says it's a total of
7 828 feet. It says August 23rd.

8 MR. CARDAMAN: That's just a summary to clarify.
9 When you read all of the record --

10 MR. BULLERDICK: If you read it all the way
11 through, you will come up with the right numbers. If
12 you add up the dailies, they add up correctly. There
13 was a problem there on the final day actually is what
14 the day was.

15 CHAIRMAN COWGER: Roy, which exhibit are you
16 looking at with the red numbers?

17 MR. BALCAITIS: It was his daily logs.

18 CHAIRMAN COWGER: Was it part of Exhibit 5? Is
19 that what it was?

20 MR. BALCAITIS: I didn't mark it on there, so
21 I don't really know.

22 CHAIRMAN COWGER: Maybe you didn't get it.

23 MR. BALCAITIS: It's his Exhibit 5.

24 CHAIRMAN COWGER: Okay. On the last page.
25 Subexhibit 5 of Exhibit 3.

1 MR. BALCAITIS: His last page under August 23rd
2 shows total trench box used for four days is 828 total
3 feet.

4 CHAIRMAN COWGER: How much was the -- can
5 somebody tell me right quick how much the original
6 claim was, based on how many feet?

7 MR. CARDAMAN: 1050.

8 MR. DEYO: Plan quantity.

9 CHAIRMAN COWGER: You are saying according to
10 this record here there was really only 828 feet
11 installed.

12 MR. ROEBUCK: If that was complete. Tropical
13 said 850.

14 CHAIRMAN COWGER: I was just trying to get the
15 testimony straight.

16 MR. BALCAITIS: This is the first time I've seen
17 this. Based on seeing this today, he's saying in his
18 own daily documents that there's only 828 feet.

19 I don't know where the --

20 MR. CARDAMAN: If you tally the record Exhibit 5,
21 and it's additionally delineated in the plan use, the
22 total, I believe, 1178 feet, if you take from point A
23 to point B in this exhibit. This is the last page of
24 Exhibit 5. That's where we got the 1178 feet from.

25 We apologize for the change, but when we went

1 back and checked our records, it was different than
2 what we were assuming was the conclusion, which was
3 1050 feet.

4 MR. DEYO: That 1100 or 1050 or 850 or whichever
5 figure we want to use, is that trench excavation?

6 MR. CARDAMAN: That's correct.

7 MR. DEYO: That's your measurement of trench
8 excavation?

9 MR. CARDAMAN: The area of trench -- no, there
10 was a lot more trenching done, but this was the only
11 area that an agreement was made to make payment for
12 using a trench box in lieu of the sheeting.

13 MR. DEYO: That includes the area under the
14 bridge that he says he --

15 MR. CARDAMAN: It does not include the area under
16 the bridge.

17 MR. VERGARA: I would like to make a comment. He
18 said the Department agreed to pay for the trench box as
19 if it were sheeting and that's not what was agreed by
20 Stan. Stan only agreed to pay for the trench box as if
21 it were sheeting under the bridge.

22 MR. DEYO: Got that.

23 MR. PYTEL: As far as the Department goes, there
24 was never any agreement to pay for sheeting outside of
25 the area that's directly under the bridge. That wasn't

1 used. There's no agreement.

2 MR. BALCAITIS: That was made pretty clear.

3 I actually drew in the sand with my foot and said this
4 is the point where we will pay for it, under the
5 bridge.

6 CHAIRMAN COWGER: All right. In Exhibit 3,
7 subexhibit 2, which is an affidavit by Mr. Varn --
8 Vann, he's not here, right?

9 MR. CARDAMAN: No, he's not.

10 CHAIRMAN COWGER: He states in this affidavit
11 that DOT people on August 15th agreed that the trench
12 box was used in lieu of sheeting and would pay for it
13 under the sheeting item.

14 That's contrary to the testimony that we are
15 hearing from one of the parties who was at that
16 meeting.

17 MR. DEYO: The party that made the commitment.

18 CHAIRMAN COWGER: And the party who allegedly
19 made the commitment.

20 MR. VERGARA: However, I would like to point out
21 that here he doesn't say from where to where. Stan has
22 admitted that the Department would pay for trench box
23 as if it were sheeting under the bridge. Here he says
24 they will pay for trench box as if it were sheeting,
25 but he does not go on to specify where and for what

1 distances.

2 MR. CARDAMAN: Mr. Bullerdick was present at that
3 meeting. Would you please tell --

4 MR. BULLERDICK: It was very unclear in the plans
5 where we were supposed to use the sheeting at. It
6 doesn't specify where to use it.

7 So, we asked the question where do we use this?
8 And our answer was any place you are in danger of
9 losing property or existing pavement, you must use this
10 item, and that's exactly what we did. We were able to
11 accomplish that.

12 We were like running six feet or so, seven feet
13 off the edge of I-95. We had no choice but to do it in
14 this manner. We used the trench box in order to keep a
15 compact area. We achieved our goal.

16 MR. DEYO: But you didn't use the sheeting, which
17 was the pay item.

18 MR. BULLERDICK: We established that prior to
19 that, though, we wanted to use the trench box in lieu
20 of sheeting in order to keep this area tighter and in
21 order to enhance the project.

22 MR. DEYO: You are saying there was no agreement,
23 just under the bridge?

24 MR. BULLERDICK: No.

25 MR. DEYO: He didn't draw a line in the sand?

1 MR. BULLERDICK: No, I'm saying we were told to
2 use the trench box where we were -- we were told to use
3 this item, or the trench box, which we agreed to use,
4 in areas where we were in danger of losing existing
5 roadway or existing property lines. That's how the
6 location was determined for this item.

7 CHAIRMAN COWGER: Okay. Now, let me go back to
8 something that you said earlier. When you were
9 describing the two meetings that took place before you
10 started installing any of the storm sewer, you said
11 that at the second meeting, after DOT had had time to
12 go off and think about it and get interpretations that
13 they needed, they okayed the use of the trench box.
14 I don't think there's any dispute about that.

15 Then you said there was no mention of not paying
16 for sheeting. You didn't specifically say to us that
17 they agreed to pay for the sheeting.

18 MR. BULLERDICK: We asked them to use the trench
19 box in lieu of sheeting.

20 MR. CARDAMAN: Was anything said about payment?

21 CHAIRMAN COWGER: Was there anything specifically
22 said about payment? That's the point we're trying to
23 get to.

24 MR. BULLERDICK: There was nothing specifically
25 said about not paying for this item. You know, it

1 was --

2 MR. CARDAMAN: I think the letters kind of lead
3 to the discussion that took place was about -- could we
4 use this in lieu of another payment item.

5 MR. BULLERDICK: Another thing, it was monitored
6 by myself and monitored by DOT as if it was a pay item.

7 CHAIRMAN COWGER: All right.

8 MR. DEYO: Are we done with that?

9 MR. VERGARA: I have a question. The item of
10 sheeting, okay, the way it is specified, it specifies
11 the sheeting to be driven with a hammer. I'm assuming
12 that the contractor estimated a price for sheeting.
13 They asked for the use of a trench box.

14 We have to understand that the trench box is --
15 the use of a trench box on a daily basis or monthly
16 basis is a lot less than coming with a crane and a
17 hammer and driving sheeting on one side or both sides
18 and then coming back later with a crane and pulling the
19 sheeting out.

20 My understanding is that this work to put this
21 1050 lineal feet took about four to five days. Now we
22 have here a contractor requesting to be paid for a
23 trench box which the monthly cost, I'm going to take a
24 guess out here, is less than \$5,000 a month, requesting
25 to be paid \$55,000 for the use of a trench box in this

1 distance.

2 CHAIRMAN COWGER: You say how many days it took
3 to install this pipe?

4 MR. VERGARA: My understanding is it took about
5 five to seven days.

6 MR. CARDAMAN: We don't dispute the time frame.
7 We do dispute the method that the sheeting would have
8 been installed. I think that the specification, 125 is
9 a standard boilerplate, and it's kind of common in the
10 industry for, when a drainage contractor installs a
11 short -- and we consider this a short version of a
12 sheeting, that he would use a backhoe to install it and
13 remove it and it would go a lot faster than, you know,
14 your standard vibratory method of installation, when
15 you're installing 20, 30 feet in depth.

16 CHAIRMAN COWGER: How would you go about
17 installing a pipe with -- the sheeting with a backhoe?

18 MR. BULLERDICK: You can drive it with a backhoe
19 or hang a hammer from the backhoe with a hydraulic
20 pump.

21 CHAIRMAN COWGER: As opposed to having a
22 vibratory hammer?

23 MR. CARDAMAN: This particular area, we didn't
24 bring any soil borings with us, but the terrain was
25 very sandy. I don't think there was very much rocks.

1 At a depth down -- we were only down to a depth of
2 eight or ten feet.

3 MR. VERGARA: The soil conditions, sandy soils in
4 Palm Beach County are real sandy to a depth of 20, 30
5 feet. So, they didn't encounter any conditions any
6 different from anywhere in Palm Beach County.

7 MR. CARDAMAN: Thank you. We agree with that.

8 MR. DEYO: I have a question on times. To the
9 contractor, Tropical's letter dated September 16th,
10 which is in Exhibit 1, the initial claim, the thing is
11 dated September 16th, 1991.

12 It says that on September 12th Tropical was
13 informed that the sheeting would not be allowed for
14 this pay period. Okay. This is September 16th.

15 The letter or affidavit signed on March 22,
16 1993 says that you were given the okay to use the
17 trench box on 8-15. It says '92 there. That must
18 be --

19 MR. CARDAMAN: That's a typo. It must be '91.

20 MR. DEYO: Now, was all of the -- this -- back to
21 the letter of September 16th, was all of the daily
22 footage noted by on-site inspectors, which -- let's
23 don't get into a discussion on that -- total 850 square
24 feet have been lineal feet, was that all constructed
25 to -- prior to September 12th, the entire amount from

1 the time on August 15th which Stan agreed to pay for
2 under the bridge, according to his testimony, was all
3 of the footage done prior to the September --

4 MR. CARDAMAN: Yes, sir. That's demonstrated in
5 our, I think it's exhibit --

6 MR. DEYO: Is it in one of those we have today?

7 MR. CARDAMAN: Yes, in Brian's dailies, 8-19
8 through 8-24 was the installation.

9 MR. DEYO: All right. I will take a look at
10 that. I haven't reviewed that in detail. But that's
11 in the exhibits we have today from you?

12 MR. CARDAMAN: Yes. It's done in two manners.
13 There's a daily and then there's his actual diary
14 excerpts are transcribed onto a plan view in the
15 locations that the -- the time frame to the location
16 that the work took place. It all takes place from 8-19
17 through 8-24.

18 MR. BALCAITIS: This drainage thing started at
19 the bridge and went south.

20 MR. CARDAMAN: That's correct. Actually just a
21 little bit south of the bridge.

22 MR. BALCAITIS: Right.

23 MR. PYTEL: The drainage work under the bridge
24 was on August 19, 1991.

25 MR. BALCAITIS: That's where it started and ran.

1 It started at the bridge, ran south. The work actually
2 began at the bridge.

3 MR. DEYO: Okay. That explains that.

4 CHAIRMAN COWGER: The 1178 feet that you are now
5 basing your claim on was determined by picking off from
6 the plans using stations the length in which this storm
7 sewer was installed in, is that basically it?

8 MR. CARDAMAN: Yes, that in conjunction with
9 Brian's daily reports where he identified where he used
10 the trench box.

11 CHAIRMAN COWGER: Your contention is he used the
12 trench box continuously through that section of pipe
13 except under the bridge?

14 MR. CARDAMAN: That's except, except under the
15 bridge.

16 CHAIRMAN COWGER: You brought up about this
17 Hilfiker wall to illustrate that an alternate method
18 had been allowed on another job, but as I see it,
19 looking at the details for that wall, you couldn't have
20 used it on this job. You couldn't have used the
21 Hilfiker wall because you would have had to dug back
22 into the embankment, is that correct?

23 MR. CARDAMAN: That's correct. It wasn't
24 intended to believe that, but that there are other
25 alternates that have been accepted and paid for on a

1 sheeting item reference.

2 CHAIRMAN COWGER: Just wanted to make sure.

3 MR. CARDAMAN: That particular job was more
4 specific of the type of sheeting to begin with.

5 MR. DEYO: The use of the Hilfiker wall or driven
6 sheet piling in the instance that you gave on another
7 project, this is used to retain constructed embankment
8 because of the anchors associated with that? Whereas
9 the sheeting employed here would be to retain existing
10 or compacted soil?

11 MR. CARDAMAN: That's true.

12 MR. DEYO: Different construction techniques.

13 MR. PYTEL: And also there's a pay item in here
14 for the Hilfiker wall. It's not paying for sheet
15 piling and the Hilfiker wall.

16 MR. CARDAMAN: There is also a pay item for
17 sheeting on that project and that's represented by one
18 of the other exhibits.

19 MR. DEYO: It's different construction
20 techniques.

21 MR. CARDAMAN: Exhibit 9 shows that one item.

22 MR. DEYO: That's embankment construction.

23 MR. VERGARA: Another question. On the Hilfiker
24 wall, was there like a change order where both the
25 Department and the contractor agreed to use that pay

1 item?

2 MR. CARDAMAN: No.

3 CHAIRMAN COWGER: I think we are beyond where we
4 need to be.

5 MR. DEYO: I have a question regarding DOT
6 Exhibit 4, which is the OSHA requirements. The system
7 that you referenced in your opening remarks which
8 provides for a safe trench operation, one of the
9 exhibits in this exhibit, one of the things shows slope
10 in general, which he said he did under the bridge for
11 limited pipe, and then the other one in here is the
12 trench box.

13 MR. PYTEL: That's correct.

14 MR. DEYO: In your letter back to the contractor
15 that disallowed payment for that, you referenced the
16 shoring system. Was this the document you were
17 referring to?

18 MR. PYTEL: Yes.

19 MR. DEYO: This is dated October of '89. Now, my
20 question to the contractor. Do you normally use a
21 trench box on pipe and this type installation?

22 MR. BULLERDICK: Normally unless there's an item
23 specifically stating that sheeting is to take place for
24 trench safety.

25 MR. CARDAMAN: What if you can use a slope?

1 MR. BULLERDICK: If you can use a slope.

2 MR. ROEBUCK: But the pipe was too close to the
3 road?

4 MR. CARDAMAN: Yes, I would say it was always too
5 close. The MOT phasing, ultimately I-95 never moved.
6 Our work was basically done overhead.

7 MR. BULLERDICK: Where this work went, the
8 roadway did not move over any.

9 MR. DEYO: You paralleled pretty much.

10 MR. PYTEL: Paralleled I-95. The roadway did
11 move over in a detour situation, but a detour was not
12 constructed at the time. It was supposed to be
13 constructed, but it was not.

14 If you will notice in my exhibit, and I will
15 bring it up again, Phase 5 calls for work on ramp B.
16 That's where this work is. They've actually done it in
17 Phase 1, which was prior to the installation of the
18 detour.

19 So, that's why they were able to get in there,
20 slope it back a little bit, use a trench box for the
21 safety of the people.

22 And that's why when I wrote the letter I looked
23 at it and said, hey, Mr. Contractor, you were able to
24 get in there earlier. The specifications call for OSHA
25 requirements of a trench box. You did not bring in any

1 vibratory hammer or sheeting of any type.

2 That's why I denied payment as soon as I got
3 something from the contractor in writing.

4 MR. DEYO: Okay. We are clear on that. Thank
5 you.

6 CHAIRMAN COWGER: Let me ask a question about the
7 contract requirements. In Exhibit 2, the DOT's
8 original rebuttal package, Exhibit A of that exhibit,
9 you've got some specifications in there that came out
10 of the special provisions for this job.

11 And on page 20 at the bottom it deals with the
12 item of sheeting. And it carries over to two or three
13 inches into the next page, page 21. Is that the only
14 place the contract mentions the use of sheeting?

15 MR. BALCAITIS: Yes, sir.

16 CHAIRMAN COWGER: And the testimony that we heard
17 about driving the sheeting and all was something that
18 was set out in the contract, came out of that
19 particular part of the specifications, right?

20 MR. BALCAITIS: Yes.

21 CHAIRMAN COWGER: It's true, though, that there
22 was no location shown in the plans for this sheeting.
23 You had a bid item, but there was no schedule or no
24 location, just a number of item. But the number of
25 lineal feet shown reasonably corresponded with this

1 section of pipe?

2 MR. VERGARA: Yes.

3 CHAIRMAN COWGER: How did you determine the
4 relationship between the bid item and where sheeting
5 would be required? Was it just logic? Is that what it
6 amounted to?

7 MR. PYTEL: It would be a logical way because
8 that's the closest area where the pipe was to the
9 roadway.

10 CHAIRMAN COWGER: There was no plan or order or
11 anything about where this sheeting was to go. Okay.
12 Are we getting close to wrapping up because I have one
13 question for DOT.

14 On the interest claim, from the original
15 submittal, the contractor is claiming X number of
16 months. We are not here to talk about the months. The
17 Board will deal with that.

18 The percentage of interest, the contractor is
19 claiming 2 percent per month. I will let you all talk,
20 but do you all have anything to say about the validity
21 of that? Then we will let the contractor answer.

22 MR. PYTEL: I think that's exorbitant. Two
23 percent a month is 24 percent a year. That means you
24 double your money in less than three years.

25 CHAIRMAN COWGER: You don't agree with that?

1 MR. PYTEL: No.

2 CHAIRMAN COWGER: If the Board decided to award
3 something, your position is that the interest was too
4 high?

5 MR. DEYO: Does the specification not limit that
6 to 1 percent per month in the standard specification?

7 MR. PYTEL: I believe so.

8 MR. DEYO: An outstanding balance for a claim.

9 CHAIRMAN COWGER: All right. Are you through,
10 Bill? All right, Mr. Contractor.

11 MR. CARDAMAN: I'm not sure about the 1 percent
12 per month. I think that this is not an issue addressed
13 in the contract and therefore the statutory rate would
14 apply and yes, we would be willing to accept less than
15 2 percent. I think we would be willing to accept 1 and
16 a half percent.

17 MR. DEYO: By reference, the statutes that rule
18 in the essence of claims, final claims, stated at the
19 time 1 percent. Now it's tied to a formula which is
20 set by a floating factor out there.

21 MR. CARDAMAN: If it's etched in stone that way,
22 we would accept that.

23 MR. DEYO: One percent per month.

24 CHAIRMAN COWGER: We are not here to discuss
25 that. You are willing to accept 1 percent?

1 MR. CARDAMAN: Yes.

2 CHAIRMAN COWGER: Good enough.

3 MR. CARDAMAN: We feel that -- Stan had mentioned
4 about under the bridge. We didn't feel it really
5 matters because it wasn't an acceptable alternate.

6 There were a couple of other notes. Hilfiker
7 wall, Roy mentioned that was the first he had heard of
8 it today, but it was mentioned in our September 27th --
9 I guess that's incidental because it's a different type
10 of installation.

11 Also, Felix had mentioned about a lack of
12 knowledge of about certain issues of the installation
13 of the trench box. We did look at the dailies, and we
14 would have expected the Department to do the same.

15 I have a closing argument if I could read quickly
16 and then I think that's all I will need to say.

17 Bergeron has presented documents and a witness
18 that identified that an agreement was struck between
19 Bergeron and the DOT to pay for the trench box in lieu
20 of sheeting for this work.

21 We have identified that the intent of Section 125
22 was met. The work was performed and quantified. We
23 have proven that to include this work in another pay
24 item as the DOT asserts would be in breach of the DOT
25 standards.

1 We have documented that the DOT assertions in
2 including this work in other items are arbitrary and
3 frivolous. We have presented documents that shows the
4 precedence has been set by the Department to pay for
5 sheeting when an alternate method is utilized.

6 In summary, BLD and its subcontractors should be
7 compensated for this alternate form of performance on
8 contractual work. Compensation has been due since
9 October of 1991, and in light of this, we are due the
10 cost of the work plus any statutory interest that's
11 due.

12 The total length as stated is 1178 feet. Do you
13 have anything else?

14 MR. BULLERDICK: No, other than it was monitored
15 by the DOT on a daily basis. They agreed with the
16 quantities that we both agreed on on our dailies as we
17 used this on an area that they established to use this
18 method.

19 And it wasn't until after the fact when it came
20 time for the payment to come through that they came and
21 told us that we were not getting paid for this item.

22 MR. CARDAMAN: If at this meeting that you felt
23 you were told you would be paid for the sheeting in
24 lieu of the mule, or trench box, if you had been told
25 you would not be, that you would have to use sheeting

1 in order to get paid, what would have happened?

2 MR. BULLERDICK: We would have probably had to
3 sheet the whole thing in order to keep our production
4 level up in order to meet -- our unit prices are
5 established on one of these sheets here. The unit
6 prices for these pipe items are quite low.

7 MR. CARDAMAN: They are based on a production of
8 375 feet per day.

9 MR. BULLERDICK: We didn't get that with the
10 trench box. It does not work. We didn't get it. If
11 we would have sheeted it, we probably could have
12 achieved that, which we did achieve on the rest of the
13 project.

14 MR. ROEBUCK: To avoid some confusion, if you had
15 one side sheeted would you have needed the trench box
16 for any personnel safety?

17 MR. BULLERDICK: No. We could have sloped the
18 other side as we did the rest of the other job.

19 MR. PYTEL: By sloping you have to remove more
20 dirt, so that takes more time.

21 CHAIRMAN COWGER: Is there any question that the
22 trench box did the job? In other words, did it
23 adequately support the existing road? Is there any
24 question about that?

25 MR. PYTEL: I think the contractor's own pictures

1 here show that you had some failures on the roadway.
2 In this first picture you have a major failure.

3 MR. CARDAMAN: That's dirt piled on the road.

4 MR. BULLERDICK: There was no failures.

5 MR. CARDAMAN: There's two originals that were
6 taken on August 26th.

7 CHAIRMAN COWGER: I don't think we need to argue
8 that. I can see that's a pile of dirt.

9 MR. BULLERDICK: There were absolutely no
10 failures along the edge of the road.

11 MR. VERGARA: Is the contractor saying because of
12 using the sheeting -- using the sheeting took longer
13 and your production decreased?

14 MR. BULLERDICK: Our production decreased because
15 of the use of the trench box. The sheeting would have
16 been done by a separate crew in order to put the
17 sheeting out ahead of us where I could have kept the
18 pipe crews busy accordingly.

19 MR. VERGARA: You are saying because you used the
20 trench box it took you longer? Is that what you are
21 saying?

22 MR. BULLERDICK: Well, we can show it with the
23 footages on our daily reports.

24 MR. VERGARA: How --

25 MR. DEYO: I have a question on the use of the

1 sheeting. As far as your production effort, that
2 wasn't part of your operation?

3 MR. BULLERDICK: Yes, would it have been part of
4 our operation.

5 MR. DEYO: If you go out and drive sheeting,
6 that's not taken into account as part of your overall
7 production?

8 MR. BULLERDICK: We have crews that lay pipe and
9 crews that would do the sheeting. The sheeting would
10 have been done before the pipe crews got there.

11 MR. DEYO: Still a work item related to the
12 installation of the pipe?

13 MR. BULLERDICK: Yes.

14 MR. DEYO: Which is overall production of that
15 pipe?

16 MR. CARDAMAN: I don't think that would affect
17 the production. If one crew is putting sheeting and
18 the other crew is putting the pipe in, that would
19 change.

20 MR. BULLERDICK: It was very important on this
21 project as tight as it was to lay pipe every single
22 day. If we had the sheeting out in front of us, the
23 pipe crews would have laid pipe every single day.

24 CHAIRMAN COWGER: They could have laid it faster
25 because using the trench box impedes the efforts --

1 MR. BULLERDICK: The backfill operation has to be
2 kept very, very tight.

3 CHAIRMAN COWGER: I think we've got that.

4 MR. VERGARA: I would like to refer to that,
5 there is a letter dated here December 11, 1991, the
6 last paragraph, where the subcontractor is writing to
7 the contractor saying, "Jim, we gave Bergeron and DOT a
8 quality product, and did so in record time."

9 There's no mention to delay here or being pulled
10 back.

11 MR. BULLERDICK: We were delayed because we used
12 the trench box.

13 MR. VERGARA: "We also did work out on the force
14 lane at no cost to DOT in the interest of speeding up
15 construction of this project."

16 So, here we have a man saying they were delayed
17 here, here we have a letter saying they did all the
18 work in record time.

19 MR. PYTEL: In a final analysis, I would like the
20 Board to look at the fact that we had a specification
21 in the plans, the contractor did a little bit out of
22 schedule, the bridge was still there while he laid the
23 pipe where he -- if he did it according to plans, you
24 wait. And then he definitely would have had to sheet.

25 By sheeting he would have had to bring in another

1 crew, more equipment to drive that sheeting and to
2 remove it.

3 Now, you have to take into account that cost.
4 The contractor had not reflected that cost. He said,
5 all right, I've done it within seven days or five days
6 or whatever it is, how much time, you know, is that
7 worth the \$100 and some-odd thousand that he's asking
8 for or even \$55,000, for one or two days' worth of
9 work, I don't think that's quite accurate.

10 CHAIRMAN COWGER: Okay. Does either party have
11 anything else that they want to present? Does either
12 one of the Board members have any questions?

13 MR. ROEBUCK: No, it's pretty clear.

14 MR. DEYO: No, sir.

15 CHAIRMAN COWGER: The hearing is hereby closed.
16 This Board will meet to deliberate on this claim in
17 approximately six weeks and you will have our final
18 order shortly thereafter.

19 (Whereupon, the hearing was concluded at 11:50 a.m.)
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CERTIFICATE OF REPORTER

1
2 STATE OF FLORIDA)
3 COUNTY OF LEON)

4 I, CATHERINE WILKINSON, Court Reporter, do hereby
5 certify that I was authorized to and did stenographically
6 report the foregoing proceedings; and that the transcript is
7 a true record of the testimony given.

8 I FURTHER CERTIFY that I am not a relative, employee,
9 attorney or counsel of any of the parties, nor am I a
10 relative or employee of any of the parties' attorney or
11 counsel in connection with the action, nor am I financially
12 interested in the action.

13 Dated this 17th day of October, 1996.

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