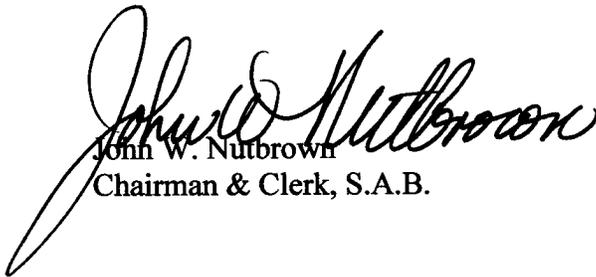


STATE ARBITRATION BOARD

Order No. 5-2001

/// NOTICE ///

In the case of Anderson Columbia Co., Inc. versus the Florida Department of Transportation on Project No. 36070-3514 in Marion County, Florida, both parties are advised that the State Arbitration Board (Order 5-2001) has been properly filed with The Clerk of the State Arbitration Board on February 27, 2001


John W. Nutbrown
Chairman & Clerk, S.A.B.

S.A.B. CLERK

FEB 27 2001

FILED

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

T.H. McRae, President, Anderson Columbia Co., Inc.

STATE ARBITRATION BOARD

Order No. 5-2001

RE: Request for Arbitration
Anderson Columbia Co., Inc.
State Project No. 36070-3514 in
Marion County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Freddie Simmons, Board Member
John P. Roebuck, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 1:00 PM, Tuesday, February 27, 2001.

The Contractor, Anderson Columbia Co., Inc., presented a written request for arbitration of its claim in the total amount of \$21,164.00. The claim arises out of assessment of liquidated damages by the Florida Department of Transportation on the Project. The Department of Transportation presented a written rebuttal and summary of its position. The Board has considered the written submissions and the testimony and evidence presented at the hearing on February 27, 2001 and enters this Order Number 4-2001.

ORDER

The Board is unanimous in this decision.

Contract time began on this project on January 04, 1999. The Contractor requested a delay starting the project due to difficulty obtaining permits to set up an Asphalt Plant in Marion County. This was in no way a time extension and did not relieve the Contractor responsibility of completing the work within the contract time. Actual work on the project began on June 04, 1999.

During performance the overall contract was increased by \$234,222.74 and the Contractor was granted a time extension of 24 work days. Based on the original contract divided by the contract work days the additional time is sufficient to cover the added work.

The Board denies the claim and makes no award in this matter.

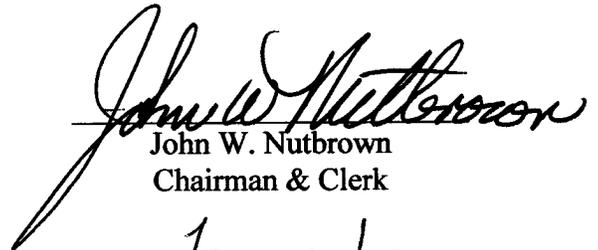
Anderson Columbia Co., Inc. shall reimburse the State Arbitration Board the amount of \$208.50 for court reporting costs.

STATE ARBITRATION BOARD

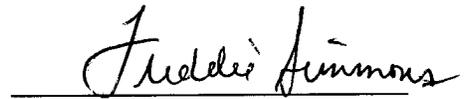
Order No. 5-2001

Lake Worth, Florida

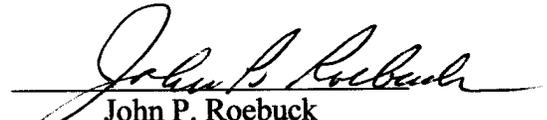
Dated: February 27, 2001



John W. Nutbrown
Chairman & Clerk

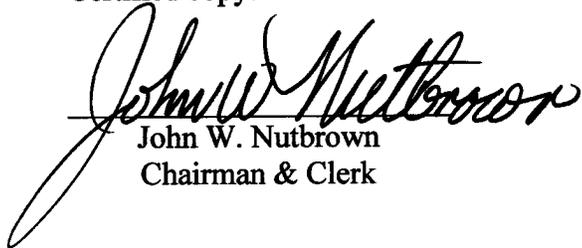


Freddie Simmons, P.E.
Board Member



John P. Roebuck
Board Member

Certified copy:



John W. Nutbrown
Chairman & Clerk

S.A.B. CLERK

FEB 27 2001

FILED

STATE ARBITRATION BOARD

10780 Anderson Lane
Lake Worth, FL. 33467-5464

Phone (561) 433-4535

FAX (561) 433-8136

February 4, 2001

Mr. George Gilhooley
District V Director of Operations
Florida Department of Transportation
719 South Woodland Boulevard
Deland, FL. 32720

Re: Change of Petitioner Representative
Anderson Columbia Arbitration Hearing
State Project 36070-3514
US-27 / SR-5-- Marion County

Dear Mr. Gilhooley:

I have received from Anderson Columbia a letter stating Mr. Jerry Fletcher, Sr. is no longer employed by that firm and they wish to replace Mr. Fletcher with Mr. Kevin Kirby. If you have no problem with this change, no need to take any action. If there is a problem please contact me as soon as possible.

The "Notice of Hearing" states we will begin at 2:00 PM. One of our members is from Tampa and will be taking a 5:00 PM flight South. In order to make available all the time required to hear both side thoroughly we would like to be ready to start at 1:00 PM.

Thank you for your cooperation in this matter.

Sincerely:

State Arbitration Board

John W. Nutbrown,
Chairman

cc: Mr. Freddie Simmons, Board Member /
Mr. Jack Roebuck, Board Member
Mr., H.E. Cowger, Consultant to Board

COPY



ANDERSON COLUMBIA CO., INC.

P.O. Box 1829 • Lake City, FL 32056-1829
(904) 752-7585 • (904) 755-5430 FAX

January 26, 2001

State Arbitration Board
10780 Anderson Lane
Lake Worth, Florida 33467-5464

Attention: Mr. John W. Nutbrown
Chairman

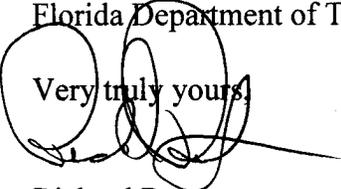
RE: Request for Arbitration of a Claim
State Project number 36070-3514
US 27/SR 500, Marion County

Dear Sir:

Due to the fact that Mr. Jerry Fletcher, Sr. is no longer employed by Anderson Columbia Co., Inc., we respectfully request to replace Mr. Fletcher with Mr. Kevin Kirby as one of the Contractor's representatives at the above referenced arbitration, which is to be held on February 27, 2001.

Thank you in advance for your kind consideration and attention to this matter. Should you have any questions, please do not hesitate to contact us at our office in Lake City, Florida Department of Transportation

Very truly yours,



Richard Rountree
Engineer/Estimator

STATE ARBITRATION BOARD
10780 Anderson Lane Lake Worth, FL 33467-5464
Phone: (561) 433-4535 FAX: (561) 433-8136

MEMORANDUM

DATE: January 22, 2001
TO: Mr. George Gilhooley
District V Director of Operations
Florida Department of Transportation
FROM: John W. Nutbrown, Chairman
RE: REQUEST FOR ARBITRATION OF A CLAIM ON:

COPY

STATE PROJECT NO: 36070-3514
PROJECT LOCATION: US-27 / SR-500 Marion County
CONTRACTOR: Anderson Columbia Co., Inc.

The State Arbitration Board has received the attached Request for Arbitration of a Claim from the Contractor for the above subject projects.

A hearing has been scheduled on **February 27, 2001** in Tallahassee. You will receive a Notice of Hearing stating the exact time set for this hearing no later than twenty one (21) days prior to the hearing date.

NOTE: In accordance with the procedures adopted by the State Arbitration Board, the Department of Transportation must submit its primary rebuttal exhibit, including a summary of their position, directly to the Contractor and to each Member of the Board so that it is received not less than ten (10) days prior to the date of the hearing. Verbal testimony and simple exhibits may be submitted during the hearing. All exhibits submitted during the hearing shall be in quadruplicate, except a single copy of contract plans, specifications, supplemental specifications and special provisions and pay quantity calculations will be permitted.

THE DEPARTMENT OF TRANSPORTATION IS REQUESTED TO MAKE AVAILABLE AT THE HEARING FOR EXAMINATION BY THE BOARD A COPY OF THE CONTRACT PLANS.

SAB MEMBERS

John W. Nutbrown
10780 Anderson Lane
Lake Worth, FL 33467-5464
Phone: 561/433-4535
Fax: 561/433-8136

Freddie Simmons, P. E.
State Highway
Department of Transportation
605 Suwannee Street MS 57
Tallahassee, FL 32399-0450

John P. Roebuck
2922 Hawthorne Road
Tampa, FL 33611
Phone: 813/839-5526
Fax: 813/839-5526

12/21/00

STATE ARBITRATION BOARD

10780 Anderson Lane
Lake Worth, FL. 33467-5464
Phone (561) 433-4535 FAX (561) 433-8136

NOTICE OF ARBITRATION HEARING

TO: George Gilhooley **Title:** District V Director (Operations)
Florida Department of Transportation

TO: Richard Rountree **Title:** Engineer / Estimator

Contracting Firm: Anderson Columbia Co., Inc.

Mailing Address: Post Office Box 1829, Lake City, FL. 32056-1829

Re: State Project No. 36070-3514
Location of Project: US-27 / SR-500, Marion County

Each of the above parties is hereby given notice that a hearing before the State Arbitration Board will be held in reference to the claim submitted on the above referred project in accordance with the following:

DATE: February 27, 2001

TIME: 2:00 PM (To Be Heard First)

LOCATION: Florida Transportation Center Building
1007 Desoto Park Drive, Tallahassee, FL.
(On South side of Lafayette Street about ¼ mile East of DOT Headquarters Building)

The Claimant has advised that they will will not be represented by counsel at the hearing.

THE CONTRACTOR WILL HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
T.H. McRae	President, Anderson Columbia Co., Inc
Stewart Carroll	Estimator & Project Manager, Anderson Columbia Co., Inc
Richard Rountree	Estimator / Engineer, Anderson Columbia Co., Inc.
Jerry Fletcher, SR.	Superintendent, Anderson Columbia Co., Inc

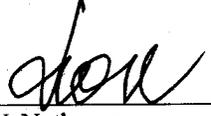
THE CONTRACTOR HAS REQUESTED THAT THE DEPARTMENT OF TRANSPORTATION HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
John Graves	Resident Engineer, Leesburg & Ocala, Florida Offices
Lorie Wilson	District Support Engineer
Alan Bryant	Project Engineer, Ocala, FL.

NOTE: ALL EXHIBITS PRESENTED AT THE HEARING SHALL BE SUBMITTED IN QUADRUPPLICATE

DATE: January 22, 2001

SIGNED: _____


John W. Nutbrown
Chairman, S.A.B.

3. All Board Members
Catherine Wilkinson & Associates

12/21/2000

COPY

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. John W. Nutbrown, Chairman
Mr. Jack Roebuck
Mr. Freddie Simmons

APPEARING ON BEHALF OF ANDERSON COLUMBIA CO., INC.:

Mr. Richard Rountree
Mr. Ted McRae
Mr. Stewart Carroll
Mr. Kevin Kirby

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. John Graves
Mr. Alan Bryant
Mr. Willis Philbeck
Mr. Tim Lattner
Ms. Lorie Wilson

ALSO PRESENT:

Mr. H. E. "Gene" Cowger

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	4
CERTIFICATE OF REPORTER	40

P R O C E E D I N G S

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

Mr. Freddie Simmons was appointed as a member of the Board by the Secretary of the Department of Transportation.

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

These two members chose me, John Nutbrown, to serve as the third member of the Board and as Chairman.

Our terms expire on June 30 of this year.

Now, will each person who will make any oral presentation during this hearing please raise your right hand.

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN NUTBROWN: Thank you. The request for arbitration of a claim submitted by Anderson Columbia, including all attachments thereto and the administrative documents preceding this hearing are hereby introduced as Exhibit 1.

Does either party at this time have any additional exhibits that they would wish to present?

MR. ROUNTREE: Yes, sir.

1 CHAIRMAN NUTBROWN: Do you have copies for
2 everybody?

3 MR. ROUNTREE: I have four sets.

4 CHAIRMAN NUTBROWN: Do we need to make any
5 additional copies so that all parties have it, or does
6 the Department already have that information?

7 MR. ROEBUCK: One of them is for the Department,
8 three for us.

9 CHAIRMAN NUTBROWN: Okay. These will be marked
10 as Exhibit 2. This package will be marked Exhibit 2.
11 There are a number of different sheets in it.
12 (Whereupon, Exhibit Nos. 1 and 2 were received in
13 evidence.)

14 CHAIRMAN NUTBROWN: If during your presentation
15 you go to this package would you please note so, so
16 that everybody gets in the same book.

17 I see this was sent to the Department, or at
18 least some of it was. Have you all had a chance to
19 review this information?

20 MR. GRAVES: This that he just gave us?

21 CHAIRMAN NUTBROWN: Yes.

22 MR. GRAVES: No, this is our first time to look
23 at it.

24 MR. ROUNTREE: The top letter is we made an open
25 records request to verify certain records at the

1 Department, and these are copies from that open records
2 request. So, the Department has had this in their file
3 for some time.

4 CHAIRMAN NUTBROWN: Okay. During this hearing
5 the parties may offer such evidence and testimony as is
6 pertinent and material to the dispute being considered
7 by the Board, and shall produce such additional
8 evidence as the Board may deem necessary to an
9 understanding of the matter before it.

10 The Board shall be the sole judge as to the
11 relevancy and materiality of the evidence offered.

12 Let me back up here a minute. The parties are
13 instructed to ensure that they receive properly
14 identified copies of each exhibit used in this
15 proceeding. You should retain these exhibits. The
16 Board will send a copy of the court reporter's
17 transcript along with our order, but will not furnish
18 copies of the exhibit.

19 As is typical in arbitration proceedings, this
20 hearing will be conducted in an informal manner. The
21 Board is not required to apply a legalistic approach or
22 strictly apply the rules of evidence used in civil
23 court procedures.

24 We are primarily looking for information
25 regarding the facts, and the contract provisions that

1 apply to this case.

2 The order of proceeding will be for the claimant
3 to present their claim, and then for the respondent to
4 offer rebuttal.

5 Either party may interrupt to bring out a
6 pertinent point by coming through the Chairman. And as
7 I said before, please, one at a time.

8 And with that, Mr. Rountree, would you proceed.

9 MR. ROUNTREE: Thank you, Mr. Chairman. The way
10 we are going to present ours is I will walk through the
11 claim. Then Mr. Stewart Carroll and Mr. Kevin Kirby
12 are the ones who were actually on the project. They
13 will give their statements. Mr. McRae will be here as
14 our moderator or closer, however you wish to put that.

15 The first project was on U.S. 27, State Road 500
16 in Ocala, Florida. And we feel that we were unjustly
17 charged 11 days of liquidated damages. We feel that
18 the Department has had an opportunity to grant us
19 additional days. They have not applied that.

20 In the context with that we did an open records
21 request of another project. We did an open records
22 request of our project to verify certain documents.

23 The State has responded in their rebuttal with
24 numerous things of which I would like to address down
25 at the bottom here, several items.

1 In their rebuttal they say many other items were
2 underruns, so the entire job only overran \$180,000 for
3 fuel and bituminous adjustments, and they increased the
4 contract by \$184,000 and change in supplemental
5 agreement number two.

6 Supplemental agreement number two addressed
7 certain issues which are documented in the document.
8 However, one of the line items within the project was
9 pavement removal. It overran some 5,000 percent. That
10 item was never addressed in time.

11 When the line item overruns that much, whether a
12 subcontractor does it or not, I think it needs to be
13 addressed in the time line of the project.

14 Now, this particular subcontractor worked
15 directly with the Department, which kind of gets us off
16 guard here because there was very little correspondence
17 that went through our office concerning this problem.

18 If you take the original job and do a dollar per
19 day and you take the revised contract job and do a
20 dollar per day, that generates this overrun just in the
21 pavement removal which would generate nine days of
22 time.

23 Then there was another issue that was brought up
24 on the job, which I will allow Stewart Carroll to
25 address, and that is the milling and paving of the

1 intermediate crossovers where we ask for three days.

2 If you add those two together, that's 12 days,
3 which will completely wipe out the 11-day overrun.

4 Moving on, we did an open records request of
5 another project where we found numerous complaints by
6 the traveling public, numerous newspaper articles and
7 numerous other problems, yet our project has none of
8 this.

9 The other project had no liquidated damages. The
10 other project was cleaned up by the Department.

11 The Department alludes here that they have gone
12 out and cleaned up our project. Well, these two people
13 right here will tell you they don't know anything about
14 that.

15 I'm addressing an e-mail written on February 9,
16 2001 where Ocala Maintenance, responding to Mr. Graves,
17 said they did the following work.

18 Well, on February 13 --

19 MR. McRAE: Point that out --

20 MR. ROUNTREE: It's in their rebuttal. That's
21 an e-mail, about the fourth or fifth sheet back from
22 William Mumford to John Graves at DOT maintenance in
23 Ocala, unpaved shoulders easterly from 80th to the
24 beginning of the undivided roadway at Winn-Dixie were
25 scarified and reworked.

1 This was due in part because of the rap material
2 that was swept onto the shoulder by the contractor
3 during the project. Other debris was picked up beneath
4 the I-75 bridges directly related to the construction.

5 Yes, there was debris picked up under I-75. It's
6 my understanding that it was the guardrail that we left
7 there for the maintenance Department to pick up
8 according to the contract.

9 The thing that bothers me, sir, is I did an open
10 records request of our files in the district office on
11 February 13, four days after this e-mail was written.
12 This is not in our file, in the district. There's
13 nothing in the file in the district other than a couple
14 of letters that we already have where the Department is
15 complaining to us about our milling problems.

16 We have nothing negative in the newspaper. We
17 have nothing negative from the public.

18 In fact, we have in the packet that I just gave
19 you a copy of a letter from Venture Associates to
20 Mr. Graves, not to Anderson Columbia, that states,
21 "Thank you on behalf of Venture Associates,
22 Incorporated and the Ocala Palms Residents Association
23 for recently repaving north U.S. 27. Your efforts to
24 improve the driving conditions on this road and thereby
25 making it safer to travel are very much appreciated."

1 We have nothing negative that we can find other
2 than from certain instances.

3 We also got numerous punch lists that we
4 addressed. The Department has claimed that this punch
5 list overlapped that punch list because we didn't
6 complete this item and this item and this item.

7 I will allow that to be addressed by Mr. Carroll
8 and Mr. Kirby because they are on the project proper.

9 The issues that really bother us that we have 11
10 days charged to our job. The other contractor --
11 I have a copy of their final estimate -- had no days
12 charged to their job.

13 The other contractor worked beyond his completion
14 date. We have photographs of that. The other
15 contractor has a tremendous amount of rap on his
16 shoulders. He has no LDs.

17 We just think a double standard has been applied
18 here.

19 I'm now going to turn this over to
20 Stewart Carroll first. He will address some of the
21 daily problems that we ran into. I'd like for you to
22 go to the milling problem first.

23 MR. CARROLL: Okay. While we were milling and
24 resurfacing a rural section of the road, we were
25 directed in the field by the head inspector not to mill

1 and resurface turn lanes coming to intermediate
2 crossovers and the intermediate crossovers throughout
3 the project.

4 When we got through with that part of it and got
5 into placing the friction course on that section, we
6 scheduled our work based on not placing friction course
7 on those crossovers.

8 We get out there and get about three days into
9 laying the friction course on the main line, and we
10 were directed in the field to place the friction course
11 on those turn lanes and crossovers.

12 Okay. We sent a letter requesting the three days
13 of contract time for that, and we never received any
14 response on that. We requested three days for that
15 work. That's what additional it would have taken for
16 that part of it.

17 We also were directed in the field not to place
18 any sod in the rural section of this job, which was the
19 area addressed in that e-mail that Mr. Rountree was
20 explaining about.

21 And then towards the end of the job it came up an
22 issue about the sod on that, which ultimately it wasn't
23 done.

24 We were told by the head inspector that the
25 maintenance department would be reworking those

1 shoulders anyway because they were high, which those
2 shoulders probably averaged being about four inches
3 high throughout the length of the job.

4 MR. SIMMONS: You were told by the Department not
5 to put the sod in? Is that what you said?

6 MR. CARROLL: Yes, by the head inspector in the
7 field.

8 MR. ROUNTREE: I would like to interject here.
9 In your booklet under item number 35 is the letter that
10 he refers to that's written on December 13, 1999, where
11 we requested the three days. That was supposedly never
12 received by the Department.

13 Kevin, if you would like to speak to these
14 issues.

15 MR. KIRBY: My main concern is the cleanup issue
16 in relationship to time. According to what we've read
17 here, it appears that we waited until the last two days
18 on the 11th and spent three and a half hours on
19 cleanup.

20 The project was approximately six miles long. On
21 all the in-town part I actually purchased three
22 backpack type blowers and had personnel travel the
23 whole in-town section with those blowers.

24 In the entire rural area it was physically done
25 with power brooms on all the external grass shoulders.

1 That alone took several days.

2 Not only the parts of being out there during the
3 whole consistency of the project.

4 As far as the inconsistencies on the punch lists
5 themselves, it appeared from the head inspector he
6 would be satisfied numerous times saying that we were
7 in good shape when it came down to being close on time,
8 and all the rebuttal I always heard verbally, well,
9 I have to answer to other people. Therefore, we never
10 could get a consistency on where we actually were with
11 the punch list.

12 CHAIRMAN NUTBROWN: Do you have anything else,
13 Mr. Rountree?

14 MR. ROUNTREE: No, sir. We will let Mr. McRae
15 make the closing statement.

16 MR. McRAE: Mr. Chairman and Board members, I've
17 been over here for a lot of times over many years as
18 you can tell from my hair.

19 CHAIRMAN NUTBROWN: Lack of it or otherwise?

20 MR. McRAE: Just the color of it. I've never
21 been over here for an 11-day request for time.
22 I really am amazed that the Department has taken the
23 position not to give us the time when there's plenty of
24 reasons that they had justification to give us time.
25 They could give us three days on additional milling,

1 nine days for the additional removal of pavement, which
2 overran 5,000 percent.

3 I was also amazed by the way the Department
4 handled that. We were kind of cut out of the loop on
5 that, in that the Department dealt directly with our
6 subcontractors to engage all this additional work.

7 The cleanup seems to be an item of dispute. The
8 Department says we didn't clean it up. We said we
9 didn't clean it up.

10 We had numerous punch list items where we would
11 complete some of the items and somebody else would give
12 us another item. I think that was kind of added to the
13 confusion.

14 I really thought the 12 days -- 11 days is a
15 bunch of days that should have been never been charged,
16 or if they were charged then enough time should be
17 given.

18 This is a good job. Everybody was complimentary
19 of this job. I think the job -- it was straightedged,
20 no problems on the job.

21 Originally when this job was let, we were putting
22 in a new asphalt plant in Ocala. It was a brand-new,
23 state of the art plant. We had numerous problems
24 getting the permits and everything dealing with the
25 City of Ocala.

1 Bill Downs and I talked about it originally
2 that -- and the Department had had a lot of problems
3 with Superpave. Superpave was in its infancy. He said
4 that he would give us additional days to delay the
5 start of the project if we would use Miami stone to do
6 the Superpave. I thought that was a fair trade-off.
7 We did that.

8 We had a supplemental agreement to increase some
9 quantities at that time. We agreed that we would ask
10 for no additional days on that supplemental agreement.
11 That supplemental agreement has five or six items. We
12 lived up to that. We haven't asked for any additional
13 time on that supplemental agreement.

14 But the item of this concrete removal seriously
15 overran. The Department dealt with our subcontractor
16 and granted us no time on that.

17 I think to be fair the Department should have
18 dealt with us -- we are the contractor on the job --
19 and not have dealt with the subcontractor.

20 If they had dealt with us, we would have been up
21 front with the Department and said, fine, if this work
22 needs to be done, then you need to give us enough days
23 to accomplish this.

24 Now, the Department has taken the position that,
25 well, that was the subcontractor's work that impacts

1 you.

2 Any additional work on a project impacts you some
3 way or another.

4 On this occasion it was certainly justification
5 to at least give us nine days by the amount of work
6 that was increased on that one item.

7 I'm just amazed that has never been done. I'm
8 amazed we are here in this meeting today.

9 That's basically what I wanted to say.

10 CHAIRMAN NUTBROWN: All right. Would the
11 spokesman for the Department proceed, please.

12 MR. BRYANT: Let me address the Department
13 working directly with the subcontractor. We had a
14 preconstruction meeting in November -- on
15 November 19th, 1998. At that time that was the only
16 time that we had any contact with Anderson Columbia.

17 I had made several telephone calls. I've got
18 documentation where I've written them and they did not
19 respond to me until March 1, 1999.

20 They didn't begin work on the project -- now the
21 project is 160 days. They did not even begin work on
22 the project until the 127th day. Their subs -- that's
23 a fact -- the subs, there was API, Anderson. Asphalt
24 Pavers, Inc. was the subcontractor who was out there.
25 We could not get a response. Who did we have to deal

1 with other than their subcontractor?

2 Their subcontractor was out there working doing
3 things that did not affect anything that Anderson
4 Columbia did. They were working on the sides, on their
5 side drains.

6 Anderson was working on the road, the paving
7 operation.

8 If you are not affecting any of the work that
9 Anderson could have done -- and I've got dailies here
10 that show what the controlling items of work were, it
11 wasn't that. It wasn't in the main roadway. They
12 could continue to work out there.

13 As you can probably see, time actually began on
14 the project on January 4, 1999. It was --

15 CHAIRMAN NUTBROWN: Say that date again.

16 MR. BRYANT: January 4, 1999. There were
17 numerous requests from Anderson Columbia to, you know,
18 delay the project, put it off. The whole reason is
19 that they were overran on another project.

20 MR. McRAE: Mr. Chairman, when would it be
21 appropriate for me to ask a question?

22 CHAIRMAN NUTBROWN: Let him finish his statement,
23 then you can go from there.

24 MR. BRYANT: I had Jerry Fletcher come in and sit
25 down and tell me he's going to bust the Department for

1 over a million dollars on a project on U.S. 301.
2 Stewart, you were there, too. But if you don't start
3 working until sometime -- let's see, it looks like work
4 started --

5 MR. GRAVES: June 1, '99.

6 MR. BRYANT: The actual construction, real work
7 didn't begin until October 10, 1999 that Anderson
8 started laying asphalt on the main roadway. Now,
9 that's 11 months after we've had the preconstruction
10 conference and over ten months after work actually
11 began out there.

12 If you can't get a response from somebody, you've
13 got to do what you've got to do to get the thing built.
14 Believe me, I'm looking out for the public's best
15 interest. If it's dealing with the subcontractor
16 because you can't get a response, that's what I will
17 do.

18 They talk about their paving overran 5,000
19 percent. Well, if your sub is doing the work and
20 you're not on the job, how does that affect you? It
21 doesn't. It can't.

22 As they submitted in their package -- you will
23 find some overruns and underruns. These are major
24 items that overran or underran. Ninety percent are
25 underruns.

1 If you underrun something, why do you expect
2 time? Explain to me one thing. What changed in the
3 plans from the day you bid the job? Nothing other than
4 we had a head inspector that was a little overzealous.
5 I don't dispute that he didn't tell them that they
6 didn't have to put the sod down.

7 What I'm saying, you bid the job that way, you
8 knew it was 160 days, and you build it. Nothing
9 changed.

10 Law enforcement underrun, barricades underrun,
11 the mowing, couldn't even get them to mow. The silt
12 fence, they wouldn't even put the silt fence up.

13 Yes, the pavement overran. That's removing the
14 concrete. But it was behind a barrier wall under I-75.

15 The reason that it overran was because the
16 subcontractor, Anderson -- API allowed rain, didn't
17 protect the slope there, and it ate it out.

18 So now trying to do a good thing so nobody gets
19 in an argument or anything, I said, look, we will just
20 pay it. We will pay it because it eroded under it, you
21 had to remove it. There's no way you could compact
22 under that slope pavement.

23 So now I try to be a good guy, get the issue to
24 go away and get bit.

25 They wouldn't put down on any prime coat on the

1 asphalt. The milling underran. If you look at that,
2 that's 33 percent or so. From 80,000, almost 90,000,
3 and then they underran by 22,000. Same thing with the
4 asphalt for the driveways. It underran 183 and a half
5 metric tons.

6 The Superpave that they spoke about underran by
7 3,000. The sidewalk underran by almost 2,000.

8 Water for the sod, they didn't put the sod down
9 so you didn't need water for it. And as I said, the
10 sod, it underran by 10,000.

11 Just numerous, I could go on and on and on about
12 that. I don't want to take up your time because you
13 can well see that there's probably 90 percent of this
14 is underruns.

15 They talk about cleanup. I've got dailies here
16 that show that they actually did work three and a half
17 days -- three and a half hours one day.

18 Jerry Fletcher, Stewart, my head inspector
19 Jack Toddle rode the job several days before time was
20 going to expire. Jerry told me, Kevin has assured me
21 that he's cleaned up the job. I said, man, what world
22 are we living in?

23 We got our car and drove the entire job.
24 I pointed out everything that needed to be done along
25 there. Jerry Fletcher told me, I ain't going to do no

1 more out here. Jerry, of course, no longer works for
2 them.

3 I did everything. I've got letter after letter
4 after letter asking if there's any outstanding issues
5 on this project that the Department has not given clear
6 and direct guidance to notify me immediately, and they
7 waited and waited and waited.

8 I may have some more, but -- John, are you ready?

9 MR. GRAVES: Yes, let me add a few things. The
10 work that was added, the sidewalk removal, was also put
11 back by the sidewalk that was added. That was done, as
12 Alan said, by the subcontractor. It would have been a
13 concurrent activity with the paving if Anderson had so
14 chosen to do that. They did not get in each other's
15 way.

16 The biggest concern we had was Anderson worked
17 from December 10 through -- from October 10 through
18 December 5 doing the asphalt work. They placed
19 miscellaneous asphalt for a couple more days and then
20 from the last allowable contract day, which was
21 December 10th, on through the 19th of which all that
22 time was, as we sent them a letter on, I think it was
23 the 10th, was liquidated damages.

24 Anderson Columbia did not come out at all and
25 complete filling in the guardrail holes where the

1 guardrail removal was. They didn't do any cleanup
2 during that time.

3 It seems to me if they were so concerned about
4 liquidated damages they could have come out a lot
5 sooner and performed some cleanup.

6 In reference to the other projects that they were
7 talking about not being cleaned up, unfortunately both
8 jobs fell far short of the cleanup the Department
9 expects. In both cases we got to a certain point and
10 said that's enough.

11 With what Anderson was doing, they still were
12 finishing up pay item work. They hadn't gotten their
13 signals set that we could accept the signals at the
14 intersections.

15 They hadn't filled in around the signal work they
16 had done. They hadn't finished cleaning up their piles
17 of concrete.

18 The signal loop -- what else did you have -- we
19 found there was some stop bars that weren't done on one
20 of the side streets.

21 There was a lot of work sitting out there waiting
22 to be done for 11 days that Anderson Columbia knew they
23 were supposed to do. We listed it on their punch list.
24 We gave them a preliminary punch list so they could
25 have the opportunity to have it done before time ran

1 out. We didn't add any imaginary items to the punch
2 list. Some items were added. The sod issue was taken
3 off.

4 By underrunning the sod as much as we did, that
5 saved Anderson quite a bit of time, too.

6 Once we got everything cleaned up and all the pay
7 items done, we accepted the job.

8 Did they have to still go out there and do the
9 cleanup and rework the shoulders? Part of it was
10 because the shoulders were high and there was material
11 left on the shoulders.

12 We had a similar situation on the other project
13 on 441. The reason that made the paper more often was
14 because the City of Belleview is very outspoken with
15 the media. Unfortunately there's nothing we can do
16 about that.

17 In the Ocala area nobody was up to making
18 comments about that on either job, both of which came
19 through okay.

20 As far as we know, we didn't receive the
21 three-day time request to add for putting the friction
22 course on the crossovers. That was part of the
23 original work in the plans.

24 The senior inspector, we understand, had directed
25 them not to mill and pave those areas, and then at a

1 later time he said yes, we need to pave them per the
2 plans.

3 Whether he misunderstood what the plans showed,
4 it was miscommunication in the field or not, we don't
5 know.

6 CHAIRMAN NUTBROWN: Let me ask you a question.
7 Was the area in the crossovers and so forth, did it
8 have to be milled out after the fact?

9 MR. GRAVES: No. All we did was just put the
10 friction on.

11 CHAIRMAN NUTBROWN: Okay. Go ahead. Sorry.

12 MR. GRAVES: That's okay. As for the e-mail that
13 wasn't in the documents for the job, that's not
14 specifically a job document. If you asked our
15 maintenance office what they did, if anything, to work
16 on the project, and they replied in the e-mail.

17 Since the project was already over and it's in
18 final estimates office, it didn't get transferred over
19 there. It's still pending. We did include it in our
20 package so Anderson would have a chance to look at it.

21 MR. BRYANT: In one of the letters they --
22 Anderson says that I had directed them to do something.
23 I go back and look. And I mean a lot of days they said
24 that.

25 We did not get a letter in that office requesting

1 three days. Almost the entire package, if you will
2 notice, is letters from me to Anderson. Their own
3 evidence speaks for itself.

4 Truthfully, we did everything we could to try to
5 get that job done.

6 CHAIRMAN NUTBROWN: I see that there is a package
7 in here of pay estimate. Just without doing a whole
8 lot of figuring, what was the original contract amount
9 and what was the final contract amount?

10 MR. BRYANT: It was like two million, five, and
11 it ended up being right at the same thing pretty much.

12 MR. ROUNTREE: Had \$120,000 increase overall.

13 MR. BRYANT: Right, but that was addressed by
14 Mr. --

15 CHAIRMAN NUTBROWN: The original was two, four
16 something, wasn't it?

17 MR. BRYANT: Yes, two, four.

18 CHAIRMAN NUTBROWN: The final was?

19 MR. BRYANT: Two, five. This is round numbers
20 I've got. If you need the exact numbers --

21 CHAIRMAN NUTBROWN: Richard, do you have it?

22 MR. ROUNTREE: I can find it.

23 MR. BRYANT: 2,419,492.18.

24 CHAIRMAN NUTBROWN: That's fine. That's the
25 original --

1 MR. BRYANT: Yes. 2,529,421 --

2 MR. ROUNTREE: That's an increase of --

3 MR. BRYANT: Increase like he said of about
4 \$180,000. I think it's addressed in Mr. Wagner's
5 response. That was addressed back in March, not in
6 December whenever, you know, we are trying to clean
7 everything up.

8 They wanted time. They worked out a deal with
9 Mr. Downs to give them the time. I think it's 92 days.

10 But if you don't start work until October 10, 127
11 days into the contract, you can't get it done. That's
12 physically impossible. That's what happened, sir.

13 CHAIRMAN NUTBROWN: All right. Ted?

14 MR. McRAE: This is a milling and resurfacing
15 job. Part of it was in the city limits of a municipal
16 section. Asphalt Pavers was the subcontractor who did
17 all the concrete work.

18 There was -- the original time might have started
19 on January 4, but it was suspended until June 1.
20 I want to get that straight. It wasn't that we didn't
21 do any work from January 4 to June 1. The time was
22 suspended.

23 Now then when time started, Asphalt Pavers went
24 in and went to work on doing all this concrete work.

25 Now granted we didn't come in and do the milling

1 and resurfacing until we had this new asphalt plant set
2 up and operating. That's when we came in and did our
3 work.

4 There was ample time to do the job. In fact, the
5 job was 11 days over, but the reason it's mainly 11
6 days over is because it had one sign that wasn't in or
7 a couple of stop bars that wasn't in. Because the
8 Department took the position that the job was not amply
9 cleaned up.

10 To say that we dilly dallied around and didn't
11 get in there in ample time is not true. We got in
12 there in ample time to do the project, if the time had
13 been stopped and if these two minor things had been
14 done.

15 Second, the job overrun. Now you can say it
16 overrun -- the Department is taking the position that,
17 well, you sign away your rights when the Department
18 suspended time, and you sign away your rights to get
19 any additional days. I did on that part of the work,
20 but I didn't sign away my rights when I've got to --
21 not a major item but a big item that overrun by 5,000
22 percent.

23 You know, it's just the position that the
24 Department is taking on this project to give us
25 numerous, numerous, numerous punch lists, and you can

1 never finish the punch lists. You can never complete
2 them all. To say this we had to put in three and a
3 half hours for cleanup is actually ludicrous.

4 Kevin has already testified that he went down
5 there and blew part of the project in the municipal
6 section with three blowers, blew that off.

7 I've never been on a project before, I guess this
8 is a new thing, where you take a power broom and go
9 down the grass shoulders of a road and sweep off the
10 grass shoulders. I've never seen that before, but we
11 did it on this project.

12 You know, it's just like many things, it's a
13 matter of opinion of whether you did a good job or you
14 didn't or you made an effort or didn't make an effort.

15 Granted we got in at the tail end of job, but we
16 had ample time to finish the job with a new plant and
17 new people.

18 There was some personality conflict on this job
19 between us and the Department. There was personality
20 conflict on this job between some of the Department's
21 personnel.

22 You know, all we are asking is to be treated
23 fairly. The Department has not treated us fairly on
24 this job.

25 You've got another contractor doing a similar

1 job, he's working after the time has been accepted.
2 He's out there doing cleanup after the time is
3 accepted.

4 They've got maintenance forces out there doing
5 his cleanup after the time is accepted, and he's not
6 charged one single day of LDs, but he's still doing a
7 lot of cleanup and maintenance is helping him do the
8 cleanup. He's not charged one single day.

9 If the Department is going to do that for him,
10 they should have given us the additional time we should
11 have been due on the project.

12 Richard wants to say something.

13 MR. ROUNTREE: Mr. Chairman, at Anderson Columbia
14 I wear several hats. One of them happens to be
15 contract manager, not by request.

16 Alan Bryant never called me. He says he tried to
17 call Anderson Columbia. I sign every document that's
18 sent out as the sublet request or subcontracts or the
19 prework package.

20 I never got a call from Alan Bryant. If he had
21 called me and said where are you, I would have found
22 out for him.

23 His phone number has never rung in my office.
24 I disagree with his statement that he tried to contact
25 me and no one answered. He never called me. Maybe he

1 tried to get Stewart, maybe he tried to get someone
2 else, but he never tried to call me.

3 I know my name is known down there, not that
4 I want it to be, but because I sign all the documents.

5 I would like to read into the record -- this is
6 the explanation of overruns and underruns performed by
7 the Department discovered in discovery.

8 Paving operations that required -- ODL did not
9 start until day 127 of 160. That's a fact.

10 The contractor moved very quickly through this
11 phase of the construction. This is written by the
12 State, sir, not by us. This is in the package that
13 I gave you earlier.

14 CHAIRMAN NUTBROWN: It's in the explanation of
15 overruns and underruns?

16 MR. ROUNTREE: Yes. Just began producing asphalt
17 from a new high-tech asphalt plant they just opened
18 weeks earlier.

19 So we moved through the asphalt paving very
20 quickly according to their own words. The e-mail they
21 attached to their rebuttal talks about maintenance
22 going out and reworking the shoulders.

23 I would bring you to item 2570-9, page four of
24 seven. "Due to existing high roadway shoulder
25 conditions in the rural areas of this project, the

1 chief inspector determined sodding could not be placed
2 in these areas. Reworking of shoulders was not a part
3 of this contract, therefore, no sod was placed along
4 the edge of the pavement in the rural areas of the
5 project and no watering was required."

6 It's repeated down into sodding.

7 I would bring to Mr. Bryant's attention that yes,
8 we did bid the job. We bid off the plans supplied by
9 the Department. The Department came to us with
10 numerous calculation areas made in developing six of
11 the quantities included in the bid form.

12 If you want us to prepare a good bid, give us a
13 good set of plans.

14 MR. BRYANT: Let me submit to you gentlemen that
15 Mr. Rountree is correct. I never did call him. He
16 wasn't at the -- he wasn't the project manager for that
17 job. That was Tony Williams. That was the contact.
18 That was discussed at the preconstruction conference
19 who the contact person was.

20 I've got letters in the file that show that I had
21 asked him if his phone was broke. Every time I called
22 he would be out of the office, I would leave him a
23 message or get on the phone mate. I sent him a letter
24 telling him time was expiring, that I needed something.
25 I did not hear back from him.

1 That was -- then the next thing I know Mr. McRae
2 has a meeting with Mr. Downs to discuss that. They
3 talked about they've never seen a broom truck out there
4 sweeping shoulders.

5 Well, I submit if you are doing 441 and you've
6 got a broom truck out there sweeping the shoulder --
7 and I wrote a work order for \$2500 for you to do that.

8 Let me submit, gentlemen, we held a
9 preconstruction conference on November 19, 1988 --
10 1998. At the meeting I asked the standard question
11 that's in my precon minutes, are there any errors or
12 omissions in the plans that you found? Nope. None
13 noted was the response that I got.

14 Now, December 31, 1998, request -- the contractor
15 requests six items to be reviewed. So, we reviewed
16 them.

17 The contract time starts January 4, 1999. I sent
18 them a letter. Are there any outstanding issues on
19 this job, let me know.

20 January 12, same thing, January 25, same thing,
21 if there's any problems that the Department has not
22 given clear and direct guidance.

23 Okay, here is delay number one. The asphalt
24 design mix, they said they had trouble getting the
25 asphalt. They wanted time suspended for two months.

1 On January 21, 1999, the Department grants time
2 suspension from January 4 to April 1 of 1999.

3 March 1 comes along. Again, time suspension for
4 three months they ask for.

5 March 10, time was suspended for another day.

6 Now we are at 157 days into the contract from
7 when they should have started the work or since we had
8 the preconstruction, almost six months now.

9 July 12, February 18, are there any problems, any
10 outstanding issues, no response.

11 February 26, we asked for a work plan, what are
12 you going to do. Again, we ask, are there any
13 outstanding issues, no response.

14 The contractor requests on September 13 -- now
15 remember that's 1999. Now back in November is when we
16 had the precon. Now they say there's an aggregate
17 shortage. We denied that request because they didn't
18 put their order in for the aggregate until May 1, 1999.
19 That's 167 days after the contract was signed.

20 Finally here comes October 10, ten months after
21 contract time and three months after our original
22 prepave conference. This is October 10, 1999. Then on
23 October 13 we ask if there are any outstanding issues.
24 Don't hear anything.

25 Finally on October 13 we get our first claim

1 letter -- December 13. The job had been closed out.

2 Then on December 16 another issue about the sod.
3 We brought that issue. We said, okay, we are not going
4 to fight with you, we just want the job cleaned up.

5 December 11, the subcontractor installs the last
6 two signs but there's no work by the contractor.

7 December 12, no work by the contractor.

8 December 13, subs out there picking up concrete debris,
9 but no work by the contractor. He's not out there
10 cleaning his milling and stuff.

11 December 14, the subcontractor cleans up
12 concrete. Traffic signal inspection fails.

13 So, it's been one thing after another after
14 another.

15 This project like I said has taken over a year,
16 about a year and 13 months to try to get it resolved.
17 And here it is 2001 and we are still -- had to send our
18 own crews out there to clean it up. It was only, you
19 know, a 160-day contract and it took over a year.

20 MR. SIMMONS: On these time lines, the milling
21 and paving was your work, right? Everything else was
22 the subcontractor, right?

23 MR. McRAE: Right.

24 MR. SIMMONS: The milling and paving began, if
25 this states right on the time line, October 10 and was

1 finished December 5?

2 MR. BRYANT: Yes, I believe that's correct.

3 MR. SIMMONS: After the last allowable contract
4 day, which was December 10, signal work was not
5 finished?

6 MR. BRYANT: Right.

7 MR. SIMMONS: Cleanup, which we talked about
8 cleanup. There was some more painting to be done,
9 markings.

10 MR. BRYANT: Yes.

11 MR. GRAVES: The guardrail removal, the holes
12 hadn't been filled.

13 MR. BRYANT: We don't dispute that they moved
14 fast through the project. They did.

15 MR. SIMMONS: The asphalt work went fast?

16 MR. BRYANT: Yes. No doubt, you are working 12
17 hours and at night.

18 MR. LATTNER: It had to.

19 MR. BRYANT: That's another thing I want to bring
20 out. We talked about somehow the work of the sub was
21 impacted somehow on Anderson. The subs worked in the
22 daytime. Anderson worked at night. Doesn't figure to
23 me. You are not even out there at the same time. Why
24 do you need time for something your sub is doing in the
25 daytime and that he had already finished?

1 Somewhere -- it was in November of 1999 is when
2 the sub finished the concrete work, and the job wasn't
3 accepted until the 21st of December, almost two months
4 later.

5 I think I'm a fair and reasonable person, and
6 I try to go out of my way to look. And if it rains and
7 it looks like they are going to run out of time, we
8 will give you weather. That's nothing out of the
9 Department's pocket to give you weather. I truly
10 believe in this case the Department is correct in
11 assessing the damages.

12 CHAIRMAN NUTBROWN: Mr. Roebuck, any other
13 questions?

14 MR. ROEBUCK: Nothing.

15 CHAIRMAN NUTBROWN: Mr. Simmons?

16 MR. SIMMONS: No, sir.

17 CHAIRMAN NUTBROWN: Mr. Contractor, anything
18 else?

19 MR. MCRAE: In closing I'd like to say that
20 I don't think we were treated fairly by the Department.
21 Granted there was some delay in starting this project,
22 we knew that. We were putting in a new asphalt plant.
23 If you have ever tried to get the permits and dealt
24 with the City of Ocala, you would understand why. It
25 took us three or four months longer.

1 We made a deal with the Department that we would
2 not ask for additional times for the original overruns
3 that were discovered. The Department had errors in the
4 plans, way underestimated some of the quantities. We
5 realized that. We come to an understanding of that,
6 Mr. Downs and myself.

7 They had overruns we didn't catch, and the
8 Department dealt directly with the subcontractor. They
9 never dealt with us on it.

10 If you want to be treated fair, what you do for
11 one contractor, you should do for the other contractor.

12 I don't think anybody in this room cannot say
13 that's not a good job. It is a good job. They treat
14 one contractor one way, treat us another way. We don't
15 like it. I will be honest with you. If they are going
16 to treat our competitor and not charge him time and
17 he's out there doing the same thing we are doing,
18 that's not right.

19 CHAIRMAN NUTBROWN: Does the Department have any
20 other comments?

21 MS. WILSON: If you will go back to the files,
22 the other project, you will see letters in that file.
23 We shut that job down for a couple of days and made
24 them come and clean up that project because it was
25 negative to us. At no time have we been unfair to

1 Anderson and more fair to the other contractor.

2 MR. McRAE: The problem is you didn't charge them
3 any LDs.

4 MS. WILSON: They didn't run out of time.

5 MR. McRAE: Yes, they did. We have pictures of
6 them out doing work when the job was accepted.

7 MR. ROUNTREE: The job was accepted and these
8 photographs are taken by Stewart Carroll 11 days after
9 acceptance. Here is their air boards, milling,
10 vehicles working on the job.

11 MS. WILSON: We had some instances after the job
12 was accepted that the City of Belleview, who give us a
13 fit throughout that entire project, and basically out
14 of the goodness of the other contractor's heart he went
15 back and took care of some things for us.

16 CHAIRMAN NUTBROWN: Unfortunately the other
17 project isn't part of this hearing.

18 MR. ROUNTREE: It's a double standard.

19 CHAIRMAN NUTBROWN: We have no other questions?

20 MR. LATTNER: They talked about this 5,000
21 percent overrun and this other project. Basically
22 I believe the Department gave them ample time to
23 complete this project. If they had started on time,
24 they wouldn't be here today. Frankly I'm surprised
25 they are here on 11 days.

1 MR. McRAE: Me, too. That's one thing we can
2 agree on.

3 CHAIRMAN NUTBROWN: There being no further
4 questions or comments, we will close this hearing. The
5 Board will take everything into consideration. We will
6 deliberate in -- sometime between a month and six weeks
7 we hope to be able to have an order out as to the
8 finalization of it.

9 And with that we will move on.

10 (Whereupon, the hearing was concluded at 2:20 p.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

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

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

Dated this 13th day of March, 2001.


CATHERINE WILKINSON
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