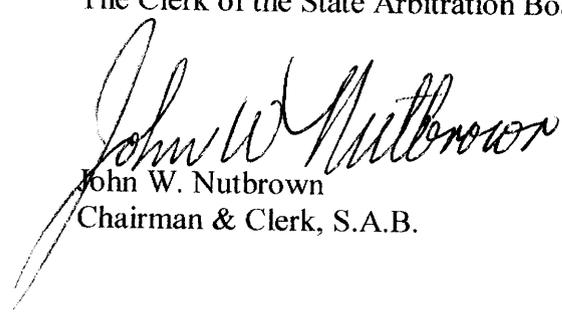


STATE ARBITRATION BOARD

Order No. (1-2001)

/// NOTICE ///

In the case of Hubbard Construction Company versus the Florida Department of Transportation on Project No. 10190-3432 in Hillsborough County, Florida, both parties are advised that the State Arbitration Board Order 1-2001 has been properly filed with The Clerk of the State Arbitration Board on February 28, 2001


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

S.A.B. CLERK

FEB 28 2001

FILED

Copy of Order & Transcript to:

Greg Xanders, P.E. State Construction Engineer

Ernie Wolfe, Vice President, Hubbard Construction Co.

STATE ARBITRATION BOARD
Order 1-2001

RE: Request for Arbitration
Hubbard Construction Company
State Project No. 10190-3432 in
Hillsborough 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 10:00 AM, Thursday, January 25, 2001.

The Contractor, Hubbard Construction Company, presented a written request for arbitration of its claim in the total amount of \$292,996.29. The claim arises out of direction by the Florida Department of Transportation requiring the removal and replacement of a bridge deck on I-4 in Hillsborough County, Florida. The Department of Transportation presented a written rebuttal and summary of position. At the time of hearing the Contractor reduced its claim to \$142,000.00. The Board has considered the written submissions and the testimony and evidence presented at the hearing on January 25, 2001 and enters this Order Number 1-2001.

ORDER

The Board is unanimous in this decision.

The record reflects that the deck pour did not go smoothly and warranted some concern by both the Contractor and the Department. Photos and testimony revealed a delay in completing the floating and method of finishing of the deck causing mortar or grout of questionable quality at the surface. The Department immediately ordered removal and replacement to a depth of 4". The Contractor presented a remedial plan in an effort to mitigate the Department's concerns however it was rejected by the Department. Any further correction of the deck after it was opened to traffic would have severe adverse impact on traffic flow and create an unnecessary hazard to the motoring public. The Department proposed no remedy other than the removal and replacement that it ordered immediately following the deck pour.

The record reflects that the concrete met specified strength requirements, the bridge deck was successfully straight edged and meets specified tolerances. The Board deems that a lack of partnering on the part of both parties led to removal and replacement rather than the negotiation of a more appropriate cost effective resolution of the Department's concerns. The Board deems that some economic waste resulted.

**STATE ARBITRATION BOARD
Order 1-2001**

The Board fully considered the recommendation of the Project Disputes Review Board in regard to this matter. With the additional information presented to the Arbitration Board in the form of sixteen concrete cores in locations identified on Hearing Exhibit Number 2, and the particular set of circumstances involved here, the Board concluded that principles of Equity should be applied to arrive at a fair resolution. The additional information was not presented to the DRB and thus not a factor in the decision they reached.

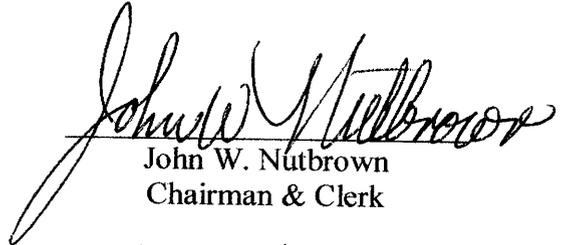
The Department is ordered to compensate the Contractor in the amount of \$77,686.00 which includes interest at the statutory rate since February 07, 2000.

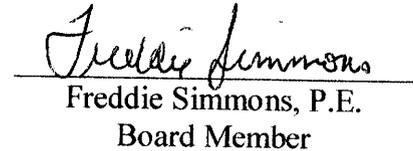
The Department shall reimburse the State Arbitration Board \$207.50 for court reporting costs.

The Contractor shall reimburse the State Arbitration Board \$207.50 for court reporting costs.

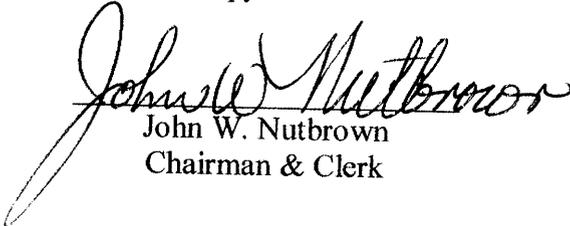
Lake Worth, Florida

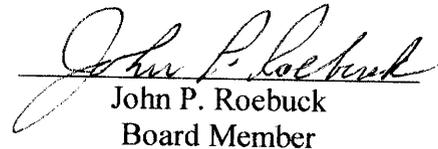
Dated: March 9, 2001


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member

Certified copy:


John W. Nutbrown
Chairman & Clerk


John P. Roebuck
Board Member

S.A.B. CLERK

FEB 28 2001

FILED

STATE ARBITRATION BOARD

10780 Anderson Lane
Lake Worth, FL. 33467-5464

Phone (561) 433-4535

FAX (561) 433-8136

March 26, 2001

Mr. Greg Xander, P.E.
State Construction Engineer
Florida Department of Transportation
605 Suwannee Street MS-57
Tallahassee, FL. 32399-0450

Re: Arbitration Board Order 1-2001
State Project Number 10190-3432,
Hillsborough County

01 MAR 29 PM 3:07

STATE DEPARTMENT OF TRANSPORTATION
STATE CONSTRUCTION ENGINEER

Dear Mr. Xander;

Find enclosed the State Arbitration Order as captioned above.

Mr. Freddie Simmons has a copy of the Claimants package as well as the Departments rebuttal for your use if you will contact him when this arrives.

Sincerely;

State Arbitration Board



John W. Nutbrown,
Chairman & Clerk

cc: Board Members

Original to Jim Woulton₁
D-7 4-3-01

STATE ARBITRATION BOARD
STATE OF FLORIDA

HUBBARD CONSTRUCTION COMPANY)
)
)
)
)

- and -)

) PROJECT NO. 10190-3432

) LOCATION: Hillsborough
) County, Florida
)
)

DEPARTMENT OF TRANSPORTATION)

)

COPY

RE: Arbitration In ~~The Above Matter~~

DATE: Thursday, January 25, 2001

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

TIME: Commenced at 10:15 a.m.
Concluded at 12:05 p.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

CATHERINE WILKINSON & ASSOCIATES (904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF HUBBARD CONSTRUCTION COMPANY:

Mr. Dave Dempsey
 Mr. Ernie Wolf
 Mr. Pete Denson
 Mr. Robert Bistor

APPEARING ON BEHALF OF SOUTHDOWN:

Mr. Ron Terrelonge
 Mr. Paul Okamoto

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Gene Tharpe
 Mr. Hans Harvey
 Ms. Pam Delnegro
 Mr. Richard Frank

ALSO PRESENT:

Mr. Gene Cowger
 Mr. Ross Timmons

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	4

CERTIFICATE OF REPORTER	74
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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 -- before I even start that, I want to make an explanation. Gene Cowger is the outgoing chairman. I am the new chairman. I've asked Gene to be present as an adviser to me more than anything. And he will not be taking an active part as far as questioning or anything. That's up to the Board. But he is here at my request. Does anybody have a problem with that at this point?

MR. DEMPSEY: No.

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

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

Our terms of expire on June 30 of this year.

Will each person who will make oral presentations during this hearing please raise your right hand.

1 (Whereupon, all witnesses were duly sworn.)

2 CHAIRMAN NUTBROWN: The request for arbitration
3 of a claim submitted by the claimant, including all
4 attachments thereto and the administrative documents
5 preceding this hearing are hereby introduced as Exhibit
6 No. 1. And that would be the notebook that was
7 presented at the time.

8 Does either party have any other information that
9 they wish to present at this time? And we want to log
10 it in, of course, if you do.

11 MR. WOLF: We brought the cores that are
12 displayed in the book for reference only. Unless the
13 Board wants the cores, I would be happy to surrender
14 them. We brought them here in reference to pictures
15 that appear in the book. We have a little map here
16 that talks about where the cores were taken at the
17 time.

18 MR. ROEBUCK: We probably ought to have the map
19 circulated. Do you have a copy of the map?

20 MR. DEMPSEY: Yes, sir, a whole bunch.

21 CHAIRMAN NUTBROWN: The map will be entered as
22 Exhibit 2. The Department needs to have a copy. Has
23 everybody got a copy of the map now?

24 (Whereupon, Exhibit Nos. 1 and 2 were received in
25 evidence.)

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

7 The Board shall be the sole judge of the
8 relevance and the materiality of the evidence offered.

9 The parties are assured -- are instructed to
10 receive properly identified copies of each exhibit used
11 in this proceeding, and you should retain these
12 exhibits. The Board will send the parties a copy of
13 the court reporter's transcript, along with our order,
14 but will not furnish copies of the exhibits.

15 As is typical in an arbitration proceeding, this
16 hearing will be conducted in an informal manner. The
17 Board is not required to apply a legalistic approach or
18 strictly apply the rules of evidence used in civil
19 court proceedings. We are primarily looking for
20 information in regard to the facts and the contract
21 that applies for this case.

22 The order of the proceeding will be for the
23 claimant to present their claim and then for the
24 respondent to offer rebuttal.

25 Either party may interrupt to bring out a

1 pertinent point by coming through the Chairman. And we
2 would appreciate that we keep it as orderly as
3 possible. No baseball bats or hammers, please.

4 We have no attorneys present. I think we should
5 go ahead and proceed. Mr. Wolf or either one, whoever
6 is going to be your spokesman.

7 MR. WOLF: Dave is going to start.

8 MR. DEMPSEY: I would like to start. I would
9 like to say that we appreciate having the opportunity
10 to be here. This is kind of uncharted waters for
11 Hubbard Construction Company.

12 Over the past couple of years we've been involved
13 literally with dozens of DRB decisions on projects
14 across the state. We have never disputed one. We have
15 accepted their findings when they've been in our favor
16 or have not been in our favor. We believe in them.

17 Us being here, I would like to make clear it is
18 certainly no disrespect to the DRB board that we had.
19 They are a distinguished group of people, and we would
20 look forward to having any or all of them on future
21 boards.

22 I would like to kind of follow that up with the
23 reason that we are here. Of course, as you know, the
24 DRB board on our project ruled against us. The reason
25 that we believe that happened, it was solely an error

1 on our behalf in our preparation for the DRB hearing.

2 When we were preparing all of our documents, and
3 we put our package together and sent it to the DRB
4 members and to the Department, approximately three or
5 four days before the hearing, we realized that we felt
6 we had left out some extremely -- or the most important
7 information, and that is these cores so that the board
8 could actually, visually see and touch what we were
9 discussing.

10 We were concerned that we had left it out, but
11 not greatly at that time. The reason being we had had
12 a previous DRB hearing on that project related to
13 another matter. We were at the DRB that morning. The
14 Department elected to introduce some additional
15 information, which we certainly didn't protest. It was
16 entered into the hearing, and it proceeded.

17 At the DRB hearing in this instance, which
18 I was unfortunately not present, when we tried to enter
19 the cores, I think the Department objected to it. The
20 DRB by the rules, because of the objection, could not
21 enter them into the record. So, therefore, they were
22 not made available.

23 We feel that was critical to our position, and
24 had a substantial bearing on their decision.

25 MR. ROEBUCK: Let me get this straight. You knew

1 you had the cores. You tried to make a presentation of
2 them and were turned down?

3 MR. DEMPSEY: Yes, sir.

4 MR. ROEBUCK: That wasn't clear in any of your
5 documents here.

6 MR. DEMPSEY: Let me clarify that. I wasn't
7 there. Was that the case?

8 MR. WOLF: We actually brought the cores and we
9 had some pictures. We tried to introduce the pictures,
10 the same pictures that appear here, of the cores.

11 None of this was brand-new information. The
12 Department knew about this information at the time.
13 Everybody knew about it. And we wanted to introduce
14 the pictures and the core information to visually
15 display what we were talking about.

16 We talked about the information, but we didn't --
17 and in the same respect, the Department introduced a
18 picture of one core, never said in their information
19 that they were actually bringing the physical evidence
20 of the core with them. And they allowed the core to be
21 passed around and looked at.

22 We felt like we didn't get all the information in
23 we should have.

24 MR. ROEBUCK: The State wants to say something.

25 MR. THARPE: If you look in our original package

1 to the DRB, we list the core that we brought. We
2 included a photograph of it. And we also stated that
3 we would produce it at the hearing, which we did. And
4 that -- let me find that specific reference here.
5 I know that --

6 MR. DEMPSEY: I'm sure that's probably the case.

7 MR. THARPE: I know we specifically say that we
8 would include -- here it is. "We have included a
9 photograph of the core in this package and present the
10 sample at the hearing for your inspection."

11 That's on the original DRB package. The second
12 paragraph of the first page where it says westbound
13 bridge over Park Road, deck concrete replacement.

14 The bottom of the second paragraph, the last
15 sentence in the second paragraph that says we have
16 included a photograph of the core.

17 MR. SIMMONS: That was the one core. What about
18 these 16?

19 MR. THARPE: There was not a mention of the cores
20 in their original package prior to the DRB hearing.
21 When we got to the hearing, they brought forth some
22 photographs which they wanted to enter.

23 We objected on general grounds that we had not
24 had the opportunity to review any of that information
25 and were not prepared with any rebuttal for that. That

1 was the basis of our objection.

2 MR. DEMPSEY: That was our error.

3 MR. SIMMONS: That's basically what happened?

4 MR. DEMPSEY: That was our fault. We erred in
5 not submitting information. Our board -- when the
6 Department objected, they had no alternative by the
7 guidelines. They could not enter it because of the
8 objection. So, that was that.

9 We ended -- we received the ruling from the
10 Board. We expected an unfavorable ruling because we
11 were unable and failed by our own validity to get what
12 we felt was the most critical information in at that
13 time.

14 You've got to keep in mind I think the Park Road
15 deck that this is all about was in April. We poured
16 it, and the problem was created in April 1999. I think
17 our DRB hearing was in late April of 2000.

18 Subsequently, after the -- after we had the
19 ruling, the project was completed, the board was
20 disbanded. We felt it was significant enough to take
21 it to the next highest level -- that was the State
22 Arbitration Board -- for review.

23 If our board had been -- I'm not sure of the
24 protocol, but if our board was still active, the option
25 would probably have been to take it back to them. I'm

1 not sure if that would have been allowed. I'm not
2 familiar with those procedures. We felt like this
3 would be the next step, to have it reviewed.

4 MR. SIMMONS: We are going to let you say
5 whatever you want to say, but the issue about these
6 cores, they were taken in June of '99, which is like
7 two months or so after it started really, the pours and
8 all.

9 Were these brought up after they were done to
10 say, look, this all looks good to us? Did you go to
11 the Department and say, we've taken all these cores and
12 it looks good? This is after --

13 MR. TERRELONGE: I think the cores were actually
14 taken before the demolition. The cores were taken just
15 so we could be familiar with it.

16 MR. DEMPSEY: I think to clarify, when we had the
17 problem, Ron and his folks went out there and took a
18 core. I think when we had the problem we couldn't
19 agree -- we agreed to elevate it through our partnering
20 agreement. We ended up in a meeting with everybody
21 here, and Jim Molton. I think that's when we had the
22 core.

23 The ruling we received from the Department, that
24 one core was not representative, or they weren't
25 comfortable enough with that one core to entertain any

1 kind of remedial action other than the hydroblasting of
2 the deck.

3 Subsequently, when we went in there and realized
4 we felt it was unfair, we took these cores for -- to
5 determine more information on what exactly we had.

6 MR. SIMMONS: You took those before the deck was
7 demolished and replaced?

8 MR. BISTOR: They were taken before --

9 MR. WOLF: The cores themselves were not, but
10 Hubbard's letter of February 7, 2000, and the
11 attachment to it dated February 2 talks about the
12 cores.

13 So, it wasn't something that was new. This was
14 transmitted to Mr. Tharpe on February 7, 2000. The
15 Department had prior knowledge of the cores. It wasn't
16 like this was a new thing that just happened at the DRE
17 hearing.

18 MR. ROEBUCK: Where is that that you are
19 referring to?

20 MR. WOLF: I'm looking at -- actually the
21 Department's rebuttal in its very last letter.

22 MR. DEMPSEY: You know, I'd like to say that the
23 whole problem here, when we started pouring the deck
24 that morning, we had a problem. We had a problem. The
25 material that -- the concrete met all the physical

1 characteristics. We had a problem with the workability
2 of it.

3 So, you know, we knew we had a problem.. I think
4 there was some references in the documents that I read
5 about our screed and our equipment and stuff.

6 I can assure you -- and Pete Denson was my
7 construction manager. I guess he claimed I wasn't
8 paying him enough money, so he quit and started his own
9 company, but Pete and his crew has poured literally
10 dozens of decks with the same people, the same
11 equipment.

12 There was always glitches -- I think a wheel fell
13 off the work bridge at one time, and in starting the
14 mid weld, there was adjustments that had to be made to
15 it. Our equipment or personnel had no bearing on the
16 problem. The problem was we were having a little
17 workability problem with the mix.

18 Regardless of what transpires here, I committed
19 my people for taking a tough situation and trying to
20 make something workable out of it.

21 Ernie, do you want to go over a few items?

22 MR. WOLF: Let me go over a few items here.

23 I think if you all -- you all have read this
24 information. If you put it all together in the
25 context, Hubbard feels like the Department from the

1 onset had decided that this deck was going to come out.
2 And everything thereafter kind of justified the action
3 of taking the deck out.

4 When we did offer a feasible solution to the
5 problem, it was turned down. We had -- the Department
6 is basing a lot of their information on one core
7 taking. They took six different cores, but they only
8 offered one as evidence. And they've based their
9 information of tearing the deck and so on out on that
10 core.

11 If you look at the June 15, 1999 letter of
12 Hubbard from Mr. Gallagher to Mr. Tharpe, he states
13 that the Department's contention that one core sample
14 is not sufficient to back up the Department's request
15 for a repair procedure.

16 Southdown took a core and came up with a repair
17 procedure. At that time one core was not sufficient to
18 base upon a repair procedure, but one core obviously
19 was enough for the Department to decide that we tear
20 out this deck.

21 We offered what we thought was a workable
22 solution. The Department objects to it saying that
23 that particular partner was -- it's not appropriate.
24 But Mr. Tharpe admitted in the documents that he had
25 submitted in the original that it was the practice of

1 the theory. That's when we submitted this hardener.

2 We were submitting a procedure. He said --
3 Hubbard's next proposal was to grind the top three
4 millimeters of the deck to remove the soft concrete and
5 groove the deck and apply penetrating hardeners such as
6 Lapidolith. They even admitted it was such as.

7 Now one of the things that's kind of blatantly
8 absent is we never saw a lot of intervention from the
9 materials lab. I know from a lot of experience, in
10 fact, the materials lab with the Department of
11 Transportation helped me on a bridge with GOAH. We
12 used Methaolate, which is another penetrating sealing
13 material that will seal together plastic seepage
14 cracks, which is not what we have here.

15 That's an innovative process. The Department had
16 that process. They even sent a man out. I don't
17 understand this situation where the materials lab is
18 not out there all over this thing helping us find the
19 solution.

20 MR. DEMPSEY: One thing I left out that I think
21 is important, in our original request for compensation,
22 we had asked for, I think it was \$292,996.29. That
23 number is not applicable.

24 In our original request for compensation, we were
25 impacted 36 days. We had asked for our overhead for

1 that 36 days. Fortunately we finished the job within
2 the approved contract time. So, that cost is not
3 applicable even though we feel like we bore some costs
4 in acceleration.

5 The other item that through the 36 days would
6 include costs for barrier wall rental. We had 43,000
7 feet.

8 So, as we sit here today, our out-of-pocket costs
9 is not the 292 but actually in the neighborhood of
10 \$142,000.

11 MR. ROEBUCK: Is that the number that you are
12 submitting now, 142?

13 MR. DEMPSEY: Yes.

14 MR. ROEBUCK: Any interest connected with it?

15 MR. WOLF: Yes, interest and fees, obviously.

16 MR. ROEBUCK: That's the number we are looking
17 at?

18 MR. DEMPSEY: Yes.

19 MR. WOLF: If you look at -- it's in our packet,
20 the letter of -- from Hubbard to Mr. Tharpe dated
21 February 7th of 2000. There's a breakdown that says
22 bridge deck replacement Park Road westbound. If you
23 look at the bottom you will see that that's a
24 compensable time of barrier wall rent which are
25 time-related items. If you take those two out it would

1 be 142,151.

2 MR. ROEBUCK: Okay.

3 MR. DEMPSEY: Go ahead and finish. I apologize
4 for that.

5 MR. WOLF: The Department has claimed there was
6 no appropriate correction for the deficiencies offered.
7 We felt like we offered an appropriate solution to the
8 problem, it's just that we never felt like we had an
9 adequate partnering on this job for them to consider.

10 Also, consider that Post, Buckley, Schuh and
11 Jernigan had used the same hardening penetrating
12 material that we had suggested, I guess on a job in
13 Ohio someplace. They had knowledge of how to do this.

14 But they never came back and said, no, this won't
15 work or it won't work for this reason. Nothing like
16 that went on.

17 It says that we offered no warranty. We didn't
18 have to offer a warranty because the Department has in
19 their own specifications, they tell you -- they will
20 accept lesser than acceptable concrete. They have a
21 deficiency. So, if you don't meet the strength, they
22 will penalize you for it.

23 They never offered to leave it in place and allow
24 us to do this procedure and take a reduced price.

25 They have a warranty on it. They are saying it

1 would have reduced the life expectancy.

2 They recognize that there are defects of concrete
3 that will reduce life expectancy and, therefore, they
4 allow for them.

5 To say that they didn't have options I think is
6 not correct. They did have options.

7 I'm going to let Pete tell you a little bit about
8 what happened and why the -- what he ended up doing out
9 there on the job site so you all can get a little bit
10 better flavor of what went on.

11 MR. DENSON: When we started off placing the
12 decking, and from the offset had problems working with
13 the grout roll in front of the screed machine. We
14 would fog water on it, couldn't quite get it to create
15 the grout that we were looking for.

16 At one time we did leave one area.

17 What I read was that we were kind of putting
18 concrete on a hardened surface, which was not the case.

19 We did have to hand finish the beginning of it.
20 We used a straightedge. The finishers got in and hand
21 finished it.

22 As we proceeded along, we were still having that
23 problem. As we got further into the deck, the worst
24 problem, it was about midway in the bridge.

25 We were able to seal most things up as we went to

1 a certain degree.

2 They got about halfway to the bridge and we had
3 some areas that we determined that it was in our best
4 interest to go ahead and put power trowels on it and go
5 ahead and close everything up and give the deck a
6 uniform texture, which we did.

7 Basically at the end of the deck, the deck looked
8 as any other bridge deck that we had done numerous
9 times.

10 As far as the introduction of a pressure washer,
11 the pressure washer had a fogging tip on it, the same
12 tip we use on every deck board.

13 It was not a matter that we put different
14 equipment to -- other than the power trowels were the
15 only different equipment we ever used.

16 We fogged the water on and went ahead and got rid
17 of any irregularities that the deck had.

18 I talked with Mr. -- Mr. McCarthy is not here,
19 but prior to -- I told him of our intent to use the
20 power trowel. He said there was nothing in the specs
21 that precluded you from being able to use a power
22 trowel, even though it wasn't called for.

23 We went ahead and put the power trowels on and
24 got the deck in.

25 I think the deck, roughly a week later the DOT

1 went through with us. We straightedged the deck
2 according to the standards.

3 Then I guess it went to the next level of
4 rejection.

5 MR. WOLF: We've got from Southdown today
6 Ron Terrelonge. He's brought the CTL with him.

7 We contend this is economic waste. We conclude
8 that we offered up a possible solution. In the
9 breakdown of damages we gave the Department credit back
10 for what it would cost, and it was considerably less
11 than what it cost to tear this deck out.

12 Mr. Terrelonge will talk about why this was a
13 good solution and why it would have worked.

14 MR. TERRELONGE: I do want to clarify something
15 that Ernie mentioned about Post, Buckley knowing about
16 the -- actually, the information that we had supplied
17 in our package. There is a product called Chemtech,
18 which is a type of hardener.

19 In Chemtech's data they list several jobs where
20 they used this type of product. On one of those jobs
21 Post, Buckley was involved on an airport job where they
22 actually had some surface deterioration and they had to
23 grind down the surface and where they applied this
24 hardener.

25 So, the same procedure that we had proposed

1 basically using the type -- grinding it down and using
2 a type of hardener, Post, Buckley had some experience
3 using Chemtech, although we didn't offer it at the time
4 of the original repair procedure. The idea of using a
5 hardener was definitely planned.

6 I also want to emphasize that when the DOT took
7 their cores and they had the one core here, I want to
8 make sure that we all understand that these cores they
9 took were not random cores. They were cores taken in
10 the most severe area.

11 So, if we look at it, we only have one core out
12 of six cores that the DOT took that they have one
13 problem with.

14 MR. ROEBUCK: What did the other cores look like
15 to you?

16 MR. TERRELONGE: Quite honestly, I don't even
17 know how they evaluated the data. I don't know what
18 they did with the cores. I don't know what scientific
19 data there was. That was never shared with us.

20 MR. DEMPSEY: Did you ever see the other cores?

21 MR. TERRELONGE: No. The first time I saw this
22 core was actually on June 14 with our meeting with
23 Jim Molton, the district structural engineer, when he
24 made the decision. That's the first time I saw the
25 core.

1 They didn't have the five other cores present, at
2 least I don't remember. I just remember this one core
3 that was passed around.

4 They do mention about excessive water added on
5 the deck. Well, a common problem that we have in the
6 concrete industry, I have a finisher who puts an
7 excessive amount of water on the deck, I would have a
8 problem of what is known as dusting, because now we
9 have a relatively high water percent ratio on the
10 surface.

11 We present these cores to look to see -- I don't
12 see a dusting problem here. And also from the
13 petrographic analysis, you don't see evidence there.

14 Now, from our petrographic analysis, we took the
15 one core which we consulted the DOT on our procedure.
16 What we did, we took one core in a problem area, close
17 in proximity where they took the six cores. Then we
18 wanted to take another core on another deck that was
19 approved, placed and finished and approved by the DOT,
20 which was on Charlie Taylor Road. We wanted to use
21 that as a reference because we all have to understand
22 what we are looking at.

23 We evaluate the data, we have to reference it
24 back from something. That's why we took the core from
25 Charlie Taylor Road.

1 When we took that information, and we informed
2 them of what we were doing, and that was our --
3 Southdown's core was taken on May 25.

4 Now, inside the DOT's package it was not until
5 June 4 -- this is ten days later after we took our
6 core -- and they were notified and they were present,
7 it was not until ten days later did they consult an
8 independent engineer to assess what a recommended
9 sampling procedure would be.

10 And in that package it states -- and in that
11 package they could have come up with a conclusion in
12 approximately maybe six or seven days. They could have
13 evaluated the deck.

14 We took the core on May 25. They didn't start
15 looking into the proper sampling size until June 4.

16 Gene writes a letter on June 8th, or June 9th
17 saying he has a concern about the sampling, but it
18 was -- at no point was it ever shared to us what would
19 have been the recommended sampling procedure.

20 And on June 11 we got our CTL report back. Then
21 on June 14 is when we met with Jim Molton and where the
22 deck was officially rejected.

23 Our contention was the data was never shared with
24 us, and then they tried to find ways out of our
25 sampling procedure. And their own recommendation on

1 the sampling procedure discredits their own technique
2 because they're basing it all on one core.

3 Okay. So, now before the demolition, we took 16
4 other cores. So, now we have a total of 23 cores. And
5 out of the 23 cores we have one problem in the 23
6 cores. And in the problem area we took a petrographic
7 analysis.

8 Again, I don't know what the DOT did and how they
9 analyzed it. I can look at that petrographic analysis
10 and come up with concrete conclusions to say, okay,
11 there is a three-millimeter layer that we can grind
12 off, which we recommended to grind off.

13 Okay. So, they talk about the excessive water, a
14 high water percent ratio, I talked about dusting.
15 That's a common problem in the finishing process when
16 they use large amounts of water.

17 Also, they claim there's deep pockets and voids
18 that were filled with this high water-cement ratio of
19 grout.

20 If the grout -- if it has such a high
21 water-cement ratio, it's going to have a color
22 variation compared to the normal concrete. On these
23 cores you don't see any color variations where they
24 claim they had these one-inch pockets filled with
25 grout. We don't see that there. And it's not evident

1 in the petrographic analysis either.

2 Also, our repair procedure which we recommended,
3 to grind off the three millimeters, and we also feel
4 like possibly if we were to grind off the three
5 millimeters that could possibly expose some of these
6 grout patches that they are talking about, and then
7 perhaps we could have isolated a certain area if there
8 was, in fact, a problem. But instead we had to remove
9 the whole thing.

10 In fact, at no point did I ever feel like we had
11 the option to even grind out, grind out three
12 millimeters to see if we did have a problem.

13 The repair procedure we are talking about,
14 besides just grinding, the penetrating sealer was
15 actually, you know, just as an add-on kind of -- as a
16 bonus because we felt like once we grind it off we got
17 to the original deck, which is confirmed in the
18 petrographic analysis.

19 So, to put on that type of hardener -- and again
20 this hardener was used before by Post, Buckley on an
21 airport job, in a taxiway, where they had to grind off
22 about a quarter of an inch.

23 MR. FRANK: Mr. Chairman, this hardener that Ron
24 discusses was never brought up in the original
25 proposal. It was after-the-fact information, after the

1 original repair procedure was proposed and after the
2 level four DRB ruling. This was never heard until they
3 submitted the package to the State Arbitration Board.
4 Thank you.

5 MR. WOLF: I think if you will review the
6 documentation, we submitted a procedure using a
7 penetrating hardener, and that as a concept, as I said
8 before. Not necessarily this particular one, but as a
9 concept.

10 We provided additional information to show that
11 there are other products out there.

12 What we are trying to display with the
13 information is that the owner's representative had
14 experience with using this, and if they didn't like
15 this one particular product that we had submitted, that
16 they had the opportunity to come back to us and say,
17 well, we don't like this one, but we may consider this
18 one, this other type of material.

19 We are not purporting that we had ever given them
20 the other product at the time. All we are purporting
21 is that we gave them a procedure, a theory to review
22 and tell us. And if they didn't like the particular
23 product, come back and say is there something else we
24 can use.

25 CHAIRMAN NUTBROWN: In your comment when you say

1 they didn't submit the hardening sealer to you,
2 did they submit the processes as Mr. Wolf said?

3 MR. FRANK: No, they did not. My objection was
4 to the way Mr. Terrelonge was presenting it, as if it
5 was presented at the time that all of us were
6 discussing the repair procedure.

7 I agree with what Mr. Wolf said, there were other
8 alternatives, but I think you will hear more when you
9 hear our side.

10 My objection was really to the after the fact
11 statement that Mr. Terrelonge was presented.

12 MR. WOLF: I'm not sure I heard you right. You
13 are stating we never submitted a procedure to grind the
14 penetrating sealer?

15 MR. FRANK: No, the penetrating sealer and
16 grinding was proposed, not the hardener. The Chemtech
17 and the rest of the stuff that's been talked about
18 here.

19 MR. WOLF: I agree with you. The reason we put
20 some of that stuff in there was to display that Post,
21 Buckley had experience with this. And they were the
22 owner's representative.

23 MR. DENSON: When the hardening was requested, it
24 was not that specific hardener. Basically in the
25 correspondence it said such as, which meant if you

1 didn't like that one, there were other choices.

2 MR. FRANK: Objection to form, that's it.

3 MR. DENSON: "Such as" it's in the
4 correspondence.

5 MR. ROEBUCK: Yes, sir?

6 MR. BISTOR: Mr. Terrelonge had mentioned about
7 the Department's statement about the areas one inch
8 deep that were filled with high water cement ratio
9 grout.

10 In looking back through their supporting
11 documents, the actual inspector out on the project on
12 the deck was Mr. McCarty. In his report from the
13 beginning of the deck pour, he said that, and I go
14 ahead and quote, "The entire deck surface had
15 depressions, ridges, one-eighth inch plus or minus in
16 the area stations 1312+70 to 1312+95, had numerous
17 depressions exceeding one half inch."

18 He's talking about a 25-foot section of the
19 bridge. This bridge was 152 feet long. We are talking
20 about a 25-foot section here, which is only 16.6
21 percent of the total area of the bridge that had some
22 area -- had some of these voids exceeding one half
23 inch. That's all he says, is exceeding one half inch.

24 The rest of the deck had one-eighth, plus or
25 minus, which is within the range of the three

1 millimeters that we had proposed grinding off.

2 Later on in the summary of events, all of a
3 sudden, if you look at the next -- the second page of
4 the supporting documents, number 8, from station
5 1312+70 to 1312+95, the finish was worse than in other
6 areas. The depression increased to over one-half inch
7 in depth with several measuring one inch in depth.

8 We don't see anything in Mr. McCarty's report
9 that says there were depressions one inch deep.

10 Then later on in Mr. Tharpe's letter from
11 April 23rd, he said after the power screed had
12 completed finishing the deck, there remained many areas
13 where the top three-quarters of an inch to one inch of
14 the deck was left open and unconsolidated.

15 I'm seeing this as growing from a 25-foot section
16 of the bridge, only 16.6 percent, to we're talking many
17 areas now. It seems like this area has grown.

18 When the Department cored their six cores, they
19 took them, from my understanding, of that one 25-foot
20 section of bridge.

21 And I've had many years of experience in
22 materials testing of all forms, and if you have a
23 problem situation, it's standard practice to try and do
24 some off-set cores or some off-set samples to determine
25 the extent of the area involved. And I don't see that

1 done here.

2 If you look at our particular cores and the
3 schematic where the cores were taken, you see we try to
4 scatter them out and cover several areas of the bridge
5 deck.

6 You know, if there was a problem, we could
7 somehow isolate the problem. And here a decision was
8 made to remove an entire bridge deck when the area
9 may -- the area of a problem may have only consisted of
10 a 25-foot section.

11 Our procedure that we had proposed to grind off
12 three millimeters of the entire bridge deck would have
13 in itself given the opportunity for further inspection
14 and determination if the problem was, indeed, a
15 widespread problem. We never had that opportunity.

16 If we had ground the bridge deck and saw, yes,
17 there is a major problem, and yes, maybe our solution
18 will not work because the problem is widespread, we
19 never had that opportunity. We were directed to take
20 the bridge deck out based upon one core in a 25-foot
21 section.

22 MR. DEMPSEY: I would like to add one point.
23 When we were directed to remove the deck, we really
24 didn't have much latitude to argue about it anymore.

25 This is a high profile project on I-4. Our

1 liquidated damages, I try to forget what the risk was.
2 It was in the neighborhood of \$11,000 a day. After we
3 had gone through this entire process, when we see a
4 written direction to remove the deck, that's the way we
5 proceeded because our financial risks for delaying the
6 project any further would have been detrimental to
7 Hubbard and to the Department and to the taxpayers and
8 everybody. That was our thought process.

9 MR. SIMMONS: I'd like to talk about the sampling
10 thing a little deeper. All of you have this I'm sure.
11 On June 9th there is a letter here of '99. It's from
12 Post, Buckley to Hubbard.

13 "We have serious concerns and take exception to
14 the sampling method used on the bridge and to what, if
15 any, certain conclusions can be drawn from the results
16 of the examination that Hubbard Construction and their
17 supplier are doing on the samples taken."

18 That letter went to Hubbard. The next day
19 Hubbard writes back and says, "We acknowledge you are
20 aware of our intent and had representatives present
21 when the independent lab took samples almost two weeks
22 ago."

23 Was that the two cores two weeks prior to this
24 June --

25 MR. TERRELONGE: On May 25 is when we took the

1 cores for petrographic analysis.

2 MR. SIMMONS: That was just two cores. All
3 right. We did that.

4 Then the Department says -- I'm trying to walk
5 this through before we get to these.

6 The Department says we have concerns about that.
7 You said why weren't they voiced before this. Then the
8 Department, you know, I guess gets this package of a
9 report on the two cores. Okay. That's all in three
10 days' time, June 9th through the 11th.

11 And then June 15th or the 14th -- the 14th or the
12 15th, that's when it's actually said you've got to
13 replace the deck?

14 MR. TERRELONGE: June 14 was when it was
15 officially decided from, I believe, Jim Molton that
16 said we had to replace the deck.

17 MR. SIMMONS: June 17th you all came in and took
18 these 16 samples?

19 MR. TERRELONGE: I'm not sure of the exact --

20 MR. SIMMONS: It's in one of these letters.
21 Okay. Then the removal was started right after that a
22 day or two later?

23 MR. THARPE: Yes.

24 MR. BISTOR: The taking of these 16 samples, upon
25 removal of the bridge deck, any additional evidence was

1 going to be removed or destroyed in the process. This
2 was to gather, you know, evidence to --

3 MR. SIMMONS: Sure. I don't blame you a bit in
4 the world. Both of you, why didn't we say the 10th or
5 11th or 12th, between then and tearing it all out, why
6 didn't you all -- I just want -- both of you can tell
7 me this -- why didn't you come to some agreement, no,
8 let's go back and get ten samples. I don't see
9 anything from you all or the Department that said let's
10 do it this way.

11 So, what happened really as far as not getting
12 more samples to really do this, either one of you?
13 What you ended up doing, just for protecting yourself
14 later on.

15 MR. DEMPSEY: I'm not sure I can answer it. My
16 project manager that was in charge of the project,
17 Ed Gallagher, is retired now. Gene --

18 MR. SIMMONS: Is there something that happened
19 that we don't see a document on during that time period
20 as far as discussion?

21 MR. FRANK: There was a time line leading into a
22 phase shift of the job in which this bridge had to be
23 complete. The amount of analysis over this bridge
24 really hinged upon this time line. It was going to be
25 detrimental to the Department and the DOT if decisions

1 weren't made regarding the time line here.

2 MR. DEMPSEY: I recall that.

3 MR. FRANK: You know, I guess when you hear us
4 speak a little bit, you will understand. Even up to
5 this point the problem wasn't three millimeters. If
6 the problem was three millimeters we wouldn't be
7 sitting here. We would have had this bridge deck
8 ground and be done with it.

9 As you hear the Department's side and review the
10 photographs of the job, you can see the real concern
11 here was the deep pockets of grout. With that in mind,
12 the repair procedures offered just didn't hold
13 anything.

14 The district construction engineer had to make a
15 decision one way or the other.

16 MR. SIMMONS: Next question would be, Pete,
17 normally -- and I'm not a concrete person, but when you
18 pour -- and I'm just going by the dates that's in one
19 or two of these summaries here that I saw.

20 The concrete started going down in this area like
21 somewhere around three o'clock in the morning, the
22 Bidwell started leveling it out. Looking at the time
23 frame, then it was backing it up, trying to straighten
24 it out, you had new concrete come in, had to move
25 ahead, get it straightened out.

1 I think it was like nine o'clock before you
2 actually got back and started noting this problem,
3 where the problem started. And then that happened then
4 for the next two or three hours.

5 Then finally there is a blanket on it like at
6 noon. This is early morning stuff that's going on.
7 The curing compound went on at like 9:30 or 10:00
8 o'clock in the morning, whatever it was.

9 That's not normally the way you pour concrete, is
10 it? Normally -- that's a long time frame before you
11 start to float something. It's been there six hours.

12 Then the curing compound normally goes on pretty
13 quick right after it's out and you all have got it
14 leveled out and all that. Normally your pourers are
15 right ahead of the Bidwell machine, not down the road
16 50 or 75 feet or whatever it is.

17 I know you were having trouble with the machine,
18 but was there opportunities in that time frame for --
19 and again, you know concrete, I don't, for problems to
20 occur deeper into the deck than what would appear just
21 on the surface?

22 Not that the cores don't show that, but I'm just
23 asking the question. Stuff occurs that you can't see
24 down lower and get consolidated because they waited too
25 late to float it?

1 MR. DENSON: In my opinion, no. When you start
2 talking about consolidation, before we start to finish
3 the deck at all, we go and vibrate the deck which
4 consolidates the deck. The machine actually goes
5 across and puts a finishing texture on the deck. There
6 is a difference between finishing and consolidation.

7 As far as the pockets that were in there, you
8 know, there are sometimes that you put your
9 straightedge, your ten-foot straightedge to make sure
10 you don't have ridges, and it goes back and seals it
11 up.

12 As far as the time frame, that differs with --
13 concrete behaves differently on different dates. To
14 just generalize and say, well, this should go this way
15 or this should go that way, you really can't do that.

16 MR. SIMMONS: I know it was in vapor or
17 something --

18 MR. DEMPSEY: I'm telling you we didn't bid it to
19 take that long to finish it.

20 MR. HARVEY: When Pete started, he started having
21 problems. He vibrated it like he said. That
22 consolidates it. The screed kind of seals up the top.

23 He had problems all the way through because I was
24 there that night. There was voids in it. I physically
25 measured them. Some of them were an inch deep and

1 scattered throughout the deck.

2 To answer your problem about curing, we finished
3 it, it was probably about 6:00 when we finished getting
4 all the concrete. Then about 7:00 is when he got the
5 pour paddles on it. No curing compound had been put on
6 it.

7 Normally a deck that long, you would have been
8 putting curing compound on what you started at one
9 o'clock normally. When you got to the end, you kind of
10 stepped it along with your finisher, straightedging
11 with the finisher.

12 You screed it, run float, straightedge, then you
13 have curing coming behind all that.

14 That's why you see the 9:30 before the curing
15 compound was put on there.

16 MR. DENSON: To respond to that, the reason that
17 we didn't go back and start spraying curing compound on
18 is because curing compound -- we understood there was a
19 problem. Curing compound acts as a bonder. If I've
20 got a repair procedure or a finishing technique that
21 I plan on using later, if I put curing compound on, I'm
22 defeating the purpose.

23 When the deck was finished, there were no
24 shrinkage cracks. We're talking weeks down the line.
25 There were no shrinkage cracks. There was no dusting.

1 The deck was just as any other deck. Once the deck was
2 sealed, the texture was put on, because we did a broom
3 finish afterwards. The deck was just as any other deck
4 and dozens of others we had done.

5 We went back and applied the curing compound that
6 covered the deck. That was the reason for that
7 extended time as far as putting curing compound on.

8 MR. HARVEY: It was because he had to use power
9 paddles. He had to start at the east end and work to
10 the west. That's why it really delayed curing is to
11 close up all those ridges and voids that the screed
12 didn't close up that should have closed up.

13 MR. THARPE: The biggest problem that I saw --
14 I was there after the concrete had been placed prior to
15 it having been finished, before the paddle floats got
16 there. The concrete had taken its initial set. It was
17 hard like that tabletop. That's the reason that all of
18 the water and all of the paddle floats were necessary
19 to try to salvage the very bad deck situation that they
20 had there.

21 The time had gone. The concrete had set and had
22 left all of these voids, which we will get into more
23 when we present our part of this issue.

24 MR. DENSON: I don't think the cores reflect that
25 condition at all.

1 MR. ROEBUCK: How many concrete experts did you
2 have look at these cores?

3 MS. DELNEGRO: These are not our cores. We
4 weren't made aware of these cores until February of
5 2000, a year after this had taken place.

6 MR. THARPE: Those cores were taken after the
7 decision where -- the meetings between the Department,
8 the contractor, the remedies that they proposed to fix
9 the deck were presented. Then later the cores were
10 taken. We've never been presented those cores.

11 MR. HARVEY: They were only taken a couple of
12 days before the hydro was started.

13 MR. SIMMONS: Were we aware they had done this
14 regardless of whether they came in later or not? Did
15 we know they had gone in and taken a bunch of cores
16 before the deck was taken out?

17 MR. FRANK: We found out the next day.

18 MR. THARPE: Yes.

19 MR. DEMPSEY: Didn't we do it on a Sunday or
20 something?

21 MR. FRANK: Did it in the evening hours.

22 MR. ROEBUCK: The six cores the State took, they
23 were doing that for some purpose. The other five --
24 one had a flaw in the surface, had a hole in it, a rock
25 drug out of it.

1 How about the other five cores, was there any
2 significant problems in the surface of that concrete
3 shown in those five cores out of the bad area?

4 MR. THARPE: No, we didn't find a problem.

5 MR. ROEBUCK: Must be something like these then.
6 These appear to me, the pictures, that they are not
7 flawed too badly in the surface, these cores.

8 MR. THARPE: When we went to the deck to core it,
9 we were looking to -- we had observed all of these
10 large voided areas in the deck. The photographs we
11 had, you know, clearly show what the effect looks like
12 where the tears and the voids were.

13 That was the concern that we had, that all of
14 these holes had been filled now with the grout that
15 they had worked up with the water and paddle floats on
16 the deck. And we went to the deck and looked
17 specifically for, you know, the areas that -- to find
18 those voided areas.

19 This was a core that we took in -- directly in
20 one of those areas.

21 MR. ROEBUCK: We've heard about the finishing
22 technique. It could have been badly wrong, I think,
23 but it didn't prove that way in the finish product. It
24 doesn't seem like in looking at these many cores -- you
25 said your five of your six didn't show any significant

1 surface defects. That's a --

2 CHAIRMAN NUTBROWN: Mr. Roebuck, let's wait a
3 minute. You may be stepping over the line.

4 Ernie, do you have any other presentation that
5 you want to make?

6 MR. TERRELONGE: I do want to mention on May 19th
7 that when Post, Buckley wrote the letter and said -- to
8 remove the deck, that's actually when it was initiated.

9 MR. SIMMONS: What day?

10 MR. TERRELONGE: That was on May 19. That was
11 after they had taken their six cores based on their
12 sampling size, based on their information, that on
13 May 19 they came back and wrote us a letter and said we
14 should remove the deck.

15 MR. SIMMONS: What happened between then and the
16 14th?

17 MR. TERRELONGE: Excuse me?

18 MR. SIMMONS: What happened between then and the
19 June 14 letter? I know there's a bunch of letters.
20 They said remove it on --

21 MR. TERRELONGE: On the 19th. Then on the 24th
22 Hubbard wrote back and said we're going to get the
23 supplier involved, Southdown involved. Then on the
24 25th we took a core, the two samples, to use one as a
25 reference and the other one to analyze. Both samples

1 were taken for petrographic analysis. We were actually
2 waiting to hear back, you know, what they recommended.

3 Again, based on their own sampling size, they
4 rejected the whole deck.

5 MR. FRANK: That was May 19.

6 MR. SIMMONS: You knew that they had -- gosh,
7 these dates are getting a little -- you knew on the
8 19th or the 24th whenever those letters were going
9 out -- the 24th when Hubbard wrote back -- they had
10 taken the six samples by then, right?

11 MR. TERRELONGE: Yes.

12 MR. SIMMONS: You had only seen the report on
13 one?

14 MR. TERRELONGE: I didn't see the report on
15 anything.

16 MR. SIMMONS: Okay.

17 MR. TERRELONGE: The only thing that I knew was
18 that they recommended to remove the deck. So, I didn't
19 see anything. I didn't know what testing they did.

20 MR. SIMMONS: After the 24th then you all went
21 out and took the two?

22 MR. TERRELONGE: Yes.

23 MR. SIMMONS: Was there any reason you didn't do
24 more than that?

25 MR. TERRELONGE: Well, we were trying to

1 identify, like the area, the severe area that they
2 took, the area in question. So, we ended up taking the
3 one in close proximity of their six cores.

4 MR. SIMMONS: Really, the way up to this stuff,
5 these samples were taken, they did one -- well, they
6 did six, but they presented one anyhow, and made the
7 decision from the ones they did that the deck needs to
8 be removed, even if it was off one core. Just assume
9 it was off one core sample.

10 You all come back, take one core sample, you say
11 no, we don't agree with that.

12 Both of you are making a decision initially on
13 just one sample, not having agreed on let's take 10 or
14 15 representative samples.

15 MR. TERRELONGE: Also, I didn't know how they
16 actually analyzed the core. In one of my letters
17 I state we are going to scientifically determine what
18 is on the deck, what layer are we talking about.

19 I had -- again, I had no idea of what they did or
20 the results or anything. I didn't see -- again,
21 I didn't see that core until June 14.

22 MR. BISTOR: Our proposed method would have given
23 us the ability to examine the entire deck after it had
24 been ground.

25 MR. DEMPSEY: Before we close out our side, I'd

1 like Paul, who is the principal with CTL. He's
2 looked at these cores. I'm like you, I'm not a
3 concrete man either.

4 Paul, would you give us your evaluation of these
5 cores?

6 MR. OKAMOTO: Yes, the company I work for is CTL.
7 They were engaged by Southdown. We were the ones who
8 provided the original petrographic reports of the two
9 cores sampled by Southdown.

10 Our conclusions were that there was a soft layer
11 on there which based on the circumstances of
12 construction wouldn't surprise me that they had a very
13 thin, soft layer on there.

14 I've looked at these cores here. It does have a
15 soft layer on the order of less than three millimeters
16 based on what I've examined, which is in line with what
17 we found from the original petrographic reports.

18 As Ron had talked about, if there was this much
19 water that actually did get intermixed below the
20 surface on the concrete, we would have seen a lighter
21 coated paste. You would definitely see a softer paste
22 because your water you are adding is basically diluting
23 the cement, none of which we can see in these cores
24 here.

25 I realize that, you know, why didn't one -- why

1 didn't we look at more than one sample. That's why
2 I wanted to look at these cores to look at them.
3 They're the only remaining evidence we have.

4 Based on what we see here, there might be a soft
5 surface there. Grinding down the surface, based on
6 what we see here, I would have ground that surface
7 down. Then we can be afforded to look for these grout
8 pockets.

9 Going back to either taking another core sample
10 or you can examine these grout pockets in place to
11 determine if these grout pockets are soft. Obviously
12 if they are soft, you can do two things. You can grind
13 them down again or do a localizing removal and
14 replacement.

15 Or if they are numerous enough we could have
16 isolated an area, whether it's the 16 percent, the 20
17 or 25 percent. We could have used the repair process
18 to monitor the quality of the restoration.

19 So, you know, in summary on these cores, yes,
20 there's a soft, very soft superficial layer there,
21 nothing to be alarmed about below the surface based on
22 the observation of these cores.

23 MR. DEMPSEY: And one other point, getting back
24 to the deck. I think, if I'm not mistaken, with the
25 strength of the deck in question here, it exceeded the

1 specifications for strength. So, the concrete had the
2 strength, it was just the surface.

3 I'd -- that's pretty much our position now.

4 CHAIRMAN NUTBROWN: You have nothing else?

5 MR. DEMPSEY: No, sir.

6 CHAIRMAN NUTBROWN: All right. Mr. Department.

7 MR. THARPE: Okay. The first -- I think all of
8 the testimony you've heard and all of these cores was
9 considered by the dispute review board. Their ruling
10 was unanimous in favor of the Department that the
11 finishing of this deck did not meet the specifications
12 and that it was such that it caused serious concern on
13 the part of the Department, and that, you know, the
14 Department was correct in their determination that the
15 contractor should remove and replace the upper portion
16 of the deck.

17 From there I think we need to look at the
18 photographs in order to get a perspective of what this
19 situation looked like.

20 I've included a photograph in this package, an
21 overall shot that shows you the situation as far as the
22 traffic goes.

23 This is a westbound bridge over Park Road for
24 Interstate 4. The maintenance of traffic set-up was
25 that the existing bridge was still in place and

1 carrying the traffic. As soon as this bridge deck was
2 finished and traffic switched to this, the old bridge
3 was going to be demolished.

4 Then we have no other alternate route for any of
5 the other interstate traffic. That kind of sets the
6 stage for the importance of this deck or this bridge
7 being opened and not having to ever be shut down again
8 for maintenance.

9 You could not come up with a solution or a remedy
10 that was a wait-and-see attitude because this bridge,
11 once it opened, there was just no way to shut it back
12 down again without creating one tremendous problem for
13 all of the road users.

14 Then the photographs of the deck itself, one is
15 kind of a -- the first shot is a larger scale, but then
16 you can see the close-up. All of these voids that
17 we're talking about that weren't addressed in any of
18 the remedies by the contractor are up to an inch deep,
19 these tears and voids.

20 That was the concern, that when those -- the way
21 they finished the deck off and the grout and the
22 watered down grout that they put in there, it filled
23 those voids.

24 The possibility of failure was of great concern
25 for the Department.

1 MR. SIMMONS: The picture there that you just
2 showed -- you all have that, too, don't you?

3 MR. DEMPSEY: Yes, sir.

4 MR. SIMMONS: Was this after the floating and all
5 that?

6 MR. HARVEY: That was after the screed.

7 MR. SIMMONS: And what happens on the next page,
8 the spraying, right?

9 MR. THARPE: Photograph of spraying the water on
10 the floats, that's the way they did the final finishing
11 of that deck.

12 This, as you heard, is the time line. This is
13 some six or seven hours after this concrete was in
14 place. The concrete was set, and had already taken its
15 initial setup. There was not any remolding of the
16 concrete to fill in these voids. What filled them in
17 was just what grout they worked up on top of the deck.

18 Then the last picture is a picture of the core
19 that we took. We specifically identified one of those
20 voided areas and got a core out of that. And this core
21 is available for them to look at to see that the grout
22 is very soft and pitted.

23 So, those observations are the observations of
24 Mr. Harvey and myself and Mr. McCarty, who was the
25 senior inspector on the job. Unfortunately Mr. McCarty

1 has left the firm to endeavor a -- a new endeavor of
2 his.

3 I do have his affidavit, which I asked him to
4 prepare in the event that any of the observations that
5 were attributed to Mr. McCarty need to be determined
6 since he's not going to be here to testify.

7 MR. ROEBUCK: What was his function? What did
8 Mr. McCarty do?

9 MR. THARPE: He was the senior inspector. He was
10 there from the initial start of this pour to the end in
11 the time line. And the description of the activities
12 that transpired were words that Mr. McCarty -- and his
13 observations.

14 MR. SIMMONS: He was with Post, Buckley?

15 MR. THARPE: He was a Post, Buckley employee. He
16 decided to go into computers.

17 MR. ROEBUCK: Better than concrete.

18 MR. THARPE: Again, the concerns that were
19 really -- the most important part of this thing was
20 that this is an interstate highway deck, bridge deck.
21 The traffic is just -- is as high a count as you can
22 imagine on any of the highways. There is no place to
23 put this traffic should there be any need for remedial
24 work to this deck.

25 It could not -- you couldn't close it down.

1 There's no place suitable to divert the traffic.

2 So, the options of let's groove it and let
3 traffic run on it a little while, and if it starts
4 coming apart we will fix it, none of those were
5 options. The options were only we've got to have a
6 remedy that will absolutely fix any of the perceived
7 problems to this deck.

8 Again, the problems were identified as much
9 from visual inspection by myself, Mr. Harvey and
10 Mr. McCarty, and understanding concrete and finishing
11 concrete, that all of these deep voided areas were
12 going to be left with soft grout in them and the
13 consequences of that for the long-term duration of this
14 deck were a serious question in all of our minds. And
15 as we related it to the Department, it was a serious
16 question to everyone in the Department.

17 The remedy that was proposed was to initially
18 just groove it and put traffic on it and let's see what
19 happens. We rejected that immediately because it would
20 have been nonconclusive and we would have ended up in
21 the same situation with the bridge deck open and
22 traffic running on it and not have any other way to
23 solve the problem had we chosen that avenue.

24 So, we came back with the remedy to grind off a
25 portion of the deck and then treat it with a hardener.

1 We looked at that. We looked at the information
2 provided by the manufacturer of the hardener, and they
3 specifically say that this doesn't fix bad concrete,
4 that it may postpone the failure of the concrete, but
5 it doesn't fix it. That's specific in their
6 disclaimers and their product.

7 Not having any evidence presented that would
8 indicate that this material would be a long-term
9 solution to the problems that we perceived with the
10 deck, that was rejected.

11 The cure that the Department knows that is a
12 hundred percent is to replace it with good, sound
13 concrete. That was the basis the Department made the
14 decision to have the deck replaced.

15 At no time did Hubbard come forth with any
16 warranty that this material was going to work. It was
17 going to leave the Department in an unwarranted risk
18 situation that if it didn't work where are we at with
19 that situation. We would be out there trying to repair
20 a deck under traffic.

21 So, that was the basis that the Department had to
22 make their decision on what to do with this deck.

23 As far as the specifications in the contract,
24 I've listed in our conclusions here the applicable
25 specifications that are the contract for this work. It

1 requires the contractor to leave the -- it says, "The
2 machine shall leave the surface of the contract true to
3 grade and free of irregularities. The addition of
4 water to the concrete surface to assist in finishing
5 operations will not be permitted unless authorized by
6 the engineer."

7 These specifications clearly were not adhered to,
8 were not met.

9 In our contract, also, it directs on how to
10 remedy this. It says that, "In the event the engineer
11 finds the materials of the finished product on which
12 materials were used, the work performed are not
13 reasonably conforming with the plans, specifications
14 and have resulted in an inferior or unsatisfactory
15 product, the work or materials shall be removed and
16 replaced or otherwise corrected and at the expense of
17 the contractor."

18 Once it was determined that the -- we had a
19 seriously flawed deck with inferior material, the
20 solution was to remove the deck. However, we did
21 consider the remedies of the hardener, the grinding of
22 the deck, but nowhere could we find in any of the
23 evidence presented by the contractor that this was a
24 fix-all, that this was going to fix the deck.

25 The manufacturers of the products, any of them,

1 do not warranty their product to fix bad concrete,
2 which we knew we had.

3 Even after the CTL laboratory analyzed this, what
4 made up the surface of this deck, which we know filled
5 all of those voided areas that we obviously saw on the
6 deck and measured and watched them fill, could not fix
7 that problem.

8 (Whereupon, Mr. Ross Timmons left the room.)

9 MR. THARPE: Hubbard after the deck was replaced
10 made this claim for the cost of repairing the deck.
11 The Department denied that. They appealed that down to
12 the disputes review board. Again, the disputes review
13 board, who met all during this period at monthly
14 intervals at the job site and monitoring the problems
15 and the negotiations and the -- as we went along looked
16 at all of the evidence and ruled unanimously in favor
17 of the Department on this.

18 These cores, this evidence was not presented to
19 the Department prior to them making the decision that
20 the deck had to be replaced.

21 The Department in considering the evidence of the
22 pour from CTL and the petrographic analysis, we
23 solicited a proposal from a -- an engineering firm, ASE
24 Geosciences, Inc. They came back with a recommendation
25 that in order to effectively analyze the situation on

1 the deck that they would need cores at every 25 square
2 feet or deck area, some 50 to 60 cores.

3 That was, you know, again, not a viable option
4 for the Department to look at, to go further with that.

5 MR. SIMMONS: When was that? I saw that in
6 there, but I don't remember the time. When did they
7 tell you that?

8 MR. THARPE: Pardon me?

9 MR. SIMMONS: When did they tell you that? I saw
10 it in reading.

11 MR. THARPE: I will have to look at the date.

12 MR. TERRELONGE: June 4th is when they had the
13 meeting and June 8th is when Geosciences wrote the
14 letter.

15 MR. SIMMONS: 50 to 60, that was the letter -- in
16 the letter? They said they would need 50 to 60 cores
17 on June 8th?

18 MR. TERRELONGE: Yes, and we never received that.
19 Again, that was after, ten days after we had already
20 taken our cores.

21 MR. ROEBUCK: With the six cores you took, did
22 you evaluate them any way but visually, looking at the
23 cores?

24 MR. THARPE: No, visually.

25 MR. ROEBUCK: You had good strength reports of

1 the concrete. You allowed only the top four inches to
2 be removed for remedial measures. You must not have
3 felt concern over the concrete.

4 MR. THARPE: There was not a concern with the
5 concrete below one inch of the surface. That's
6 correct.

7 CHAIRMAN NUTBROWN: Did the Department at any
8 time ever consider any other corrective action other
9 than what the contractor had proposed below the --

10 MS. DELNEGRO: No, we didn't.

11 MR. THARPE: We considered the remedies that were
12 presented by the contractor.

13 MR. FRANK: However, as the Department's project
14 manager on that project, I began calling just about
15 everybody I could find to find out information on
16 repair procedures involving this.

17 All I kept getting back was that the deck is
18 going to have to be removed and replaced with sound
19 concrete, and we are going to have to go down below the
20 top mat of steel to lock that deck in.

21 That was what I was getting back out of
22 Steve Glock here in Tallahassee and our district
23 materials folks that had visually analyzed the other
24 cores that we had referred to earlier. That's pretty
25 much that.

1 MR. SIMMONS: It ended up being four inches that
2 were removed?

3 MS. DELNEGRO: Yes.

4 MR. FRANK: That put us basically one inch under
5 the top mat of the steel.

6 MR. ROEBUCK: That was a structural decision, not
7 a surface decision?

8 MR. FRANK: Yes, sir.

9 MS. DELNEGRO: I think another point that we need
10 to make clear, too, is that we didn't have a lot of
11 time with this issue. The bridge deck was on the
12 critical path. Hubbard was already behind schedule.
13 The Department didn't have a lot of time to mull this
14 over and decide what are we going to do.

15 Any time that we spent not rendering a decision
16 was an impact, you know, day-for-day delay to the
17 contractor.

18 We had a deck that wasn't constructed per the
19 specs. Our decision to remove the deck was not based
20 on one core, it was based on what our project people
21 saw out there that happened. They knew the deck wasn't
22 constructed per specs.

23 We told them soon after or the next day, this
24 deck is not acceptable. You need to remove and replace
25 it. Our decision, we basically put it back on them to

1 come up with something else if they wanted. It wasn't
2 our responsibility to come up with a repair method for
3 the deck.

4 They are the ones that constructed it wrong. We
5 considered everything they gave us, and we still came
6 back to the same decision we did a month later after we
7 made the first decision.

8 CHAIRMAN NUTBROWN: What was the time line that
9 bridge had to be opened by?

10 MR. WOLF: At this time I can't answer your
11 question. I can look.

12 MS. DELNEGRO: I can't remember the schedule.

13 MR. WOLF: Apparently we finished the job. We
14 had no penalties on the job. We accelerated and made
15 up the 36 days we lost.

16 MR. DEMPSEY: I'm not sure, I may be wrong, but
17 I recall from the day we poured the deck to the day we
18 received the written direction to remove it was almost
19 a month.

20 MS. DELNEGRO: There was a lot of reworking
21 almost immediately, wasn't there, Gene?

22 MR. DEMPSEY: Well, maybe I'm thinking about our
23 follow-up meetings.

24 MR. SIMMONS: The pour was on the 23rd. There is
25 a letter dated the 23rd that went to Hubbard from Post,

1 Buckley saying they have got concerns about it.

2 Hubbard didn't respond for over three weeks, written.

3 Do you know why it took so long for that to
4 happen?

5 MR. DEMPSEY: No, sir, I do not. Bob, do you, or
6 Pete, do you have any idea?

7 MR. DENSON: As far as?

8 MR. DEMPSEY: After the letter we received that
9 morning from Gene voicing his concern over the deck, it
10 was three weeks before we or Gallagher responded in
11 writing?

12 MR. DENSON: I'm not sure about that. I know
13 that on the day of the deck pour or the day following
14 the deck pour Mr. Gallagher and Mr. Tharpe talked about
15 the grinding. The grinding was brought up prior to the
16 correspondence stuff.

17 MR. SIMMONS: Let me ask --

18 MR. DEMPSEY: We were partnering. We figured we
19 could work this out.

20 MS. DELNEGRO: The Department, when we found out
21 they took two cores, one from this bridge deck and one
22 from the other, and they were sending it off for a
23 petrographic analysis, we didn't know what that was.
24 I had never heard of it. Nobody I had talked to could
25 give us an idea.

1 That's when we approached ASE and said hey, what
2 is this? Is this going to give us an answer that we
3 need? When we got the report from ASE, they said this
4 is what you have to do, to use petrographic analysis to
5 determine if those cores are good. We did not on our
6 own do this so if they came back with their analysis so
7 that we could have the knowledge to try to interpret
8 that.

9 MR. SIMMONS: ASE sent that on the 8th I believe.

10 MR. WOLF: Of June.

11 MR. SIMMONS: We wrote them back on the 9th
12 saying we don't agree with your method of sampling, but
13 did we tell them you may need 50 or 60 samples? Do you
14 know if we shared that with them or not, when you said
15 we don't -- you are not doing right?

16 MR. WOLF: I don't think that happened to our
17 knowledge.

18 MS. DELNEGRO: I don't know when they took the
19 samples. We may have had somebody out there, but
20 I don't think we found out until later what they were
21 actually doing with those cores. It wasn't something
22 discussed ahead of time that, hey, we are going to send
23 this off for petrographic analysis. They sent us a
24 letter we received on June 1, we sent these off for
25 petrographic analysis.

1 It was a couple of days later when we got the
2 report back. It wasn't like on May 25 we knew what
3 they were doing. It wasn't until June 1 that we knew
4 what they were doing.

5 MR. WOLF: It says, "As you are made aware, our
6 supplier's intent was to have representatives present
7 when their independent lab took samples on those two
8 weeks ago."

9 MS. DELNEGRO: We didn't know what you were doing
10 with the cores. Who was out there when they took the
11 cores?

12 MR. WOLF: I can't speak to that today, but from
13 Ed Gallagher's letter it looks like the Department knew
14 what was going on.

15 That's the June 9th letter that says you had
16 serious concerns. It says we have serious concerns and
17 take exception to the sampling, but never mentions
18 about an independent analysis being done.

19 Ed writes back and acknowledges the letter,
20 questioning the timing, you were made aware of our
21 supplier's intent and had a representative present when
22 their independent lab took samples almost two weeks
23 ago.

24 MR. TERRELONGE: On May 28 is when I wrote a
25 letter describing the procedure of what we were doing.

1 MS. DELNEGRO: We received that letter on
2 June 1st. We were notified of the petrographic
3 analysis on June 1st.

4 MR. FRANK: I remember calling Mike Bergen up at
5 the State materials office in Gainesville, and then
6 I actually called CTL myself because none of us had
7 ever heard of a petrographic analysis. We wanted to
8 find out if the data that was going to be presented to
9 us would tell us information that we wanted to know.

10 In fact, the answer was that the data would give
11 us information we wanted to know.

12 When the data came back with the top three
13 millimeters showing soft, high watered-down paste, that
14 our conclusion was this is the same paste that filled
15 up the small voids as well as the large voids. That is
16 the true crux of this issue is the large voids.

17 MR. SIMMONS: Let me ask you this. Now, this is
18 how this looked right here before you all went back in
19 and floated it and did the pressure wash (indicating
20 photograph)? I don't know how hard this is, but it's
21 already set up to some extent. Okay? You can tell it
22 is.

23 Then you all came in and did this to it, in which
24 there is a float and there is a float, and you are
25 spraying it (indicating on photograph).

1 If this is as hard as this is, what is a float
2 going to do to it? Is a float going to break this down
3 enough? You've got stuff here, there's no way that
4 three millimeters will do -- what is a float going to
5 do to this surface here?

6 MR. DENSON: You not only had low spots, you had
7 ridges, also, and it went in and filled in and sealed.

8 MR. SIMMONS: Is a float going to basically level
9 this out?

10 MR. DENSON: Yes.

11 MR. SIMMONS: As hard as this looks like?

12 MR. DEMPSEY: This is it (indicating concrete
13 core on table).

14 MR. DENSON: This deck was straightedged
15 according to the specs. There were no pockets, there
16 were no dips.

17 MR. HARVEY: They have 35 deficiencies.

18 MR. DENSON: The tolerance is a quarter inch.
19 They were at tolerance. We were never instructed to
20 grind anything. It was either at tolerance or below
21 tolerance.

22 MR. SIMMONS: I'm not sure exactly, just whenever
23 you all were basically through here and then the
24 Department says it's not good, and you all said, well,
25 our offer is to go back and grind three millimeters and

1 then use the hardening stuff.

2 And then Paul said -- and correct me if I missed
3 what you said, that what we could have done was to
4 grind it, see how basically if it's basically
5 consistent at that time.

6 And what I was reading into what you were saying,
7 if it hadn't been, we could have ground it a little bit
8 more until we finally got all the holes out we were
9 concerned about, then put a hardening on it.

10 Wouldn't that have been a reasonable process to
11 have done, you know, grind it three millimeters, if it
12 looks good, and if they say okay, and if it doesn't, go
13 another three millimeters? Again, I'm not a concrete
14 person.

15 MR. OKAMOTO: That's correct.

16 MR. SIMMONS: I thought I heard you say let's see
17 how deep we need to go.

18 MR. OKAMOTO: Typically what they do, after they
19 grind it off, if you can't identify easily any soft
20 spots, they will sandblast it. The sandblasting will
21 expose some of these pockets that are still left. That
22 would be a quick, easy way to make sure that spots were
23 completely ground out.

24 MR. SIMMONS: Okay.

25 MS. DELNEGRO: Let me add that was never

1 presented to the Department.

2 MR. SIMMONS: Did you all propose let's do it
3 that way? All I see is let's do it three millimeters,
4 hardening and it's okay.

5 MR. DENSON: I know Mr. Tharpe and Mr. Gallagher
6 spoke of grinding the top three millimeters either the
7 day of the pour or the day after. It was mentioned
8 early.

9 MR. WOLF: To answer your question, I don't --
10 Ron may know more about it than I do, but I don't think
11 it got that far into discussing specifics because the
12 procedure itself I don't believe was ever a real
13 consideration. It never got to the Department coming
14 back and saying, well, okay, we will let you grind it,
15 but I want to sandblast it or review it, then if it's
16 still bad you've got to take it back anyway. There was
17 never that back and forth type stuff.

18 MR. SIMMONS: With the number of samples, I don't
19 see, like Paul was saying, or really we said, okay,
20 let's work it this way. I don't see that in any
21 correspondence anywhere.

22 MR. WOLF: I don't see partnering.

23 MR. SIMMONS: I see a proposal from you all and a
24 denial from the Department.

25 MR. WOLF: I don't believe there was a lot of

1 partnering going on in this situation.

2 MR. DEMPSEY: No.

3 MR. SIMMONS: This is the final, after it's been
4 taken out and redone?

5 MR. WOLF: Part of it is the new, part of it is
6 the old. The line runs right along the striping. The
7 stuff that looks like, at the bottom of the page,
8 that's the old, that's the new. Yes, sir.

9 MR. BISTOR: Only the travel lanes were removed.
10 The shoulders were left in place.

11 MR. SIMMONS: This is the shoulder, this is our
12 six-inch stripe?

13 MR. WOLF: That's correct. Somewhere in the
14 six-inch stripe, I'm not sure where the line is, it's
15 not really discernible by looking at the picture, but
16 somewhere in that six-inch stripe is the line.

17 CHAIRMAN NUTBROWN: Does the Department have
18 anything further?

19 MR. THARPE: No.

20 MR. WOLF: I'd like to say one thing. I've heard
21 a lot about this no warranty thing. Everybody has
22 forgotten that State statute allows a latent defect
23 warranty. If they found a latent defect in this deck
24 after we had been gone, they could have required us to
25 come back and repair the deck.

1 And they had four years from the date of the
2 first notifying the latent defect in order to notify us
3 and get us to do the repair procedures. You say there
4 is no warranty, there is always a latent defect
5 warranty regardless of whether they accept the job or
6 not.

7 MR. THARPE: As compared to the expected life of
8 the bridge, though, it's -- you know, the Department is
9 looking to that bridge to support I-4 traffic for in
10 excess of 50 years.

11 MR. WOLF: What would you have done if the
12 concrete wouldn't have broke the strength? You would
13 have made us take a penalty. You wouldn't have gotten
14 your life expectancy out of the bridge then, right?

15 MR. FRANK: That's a structural design issue.

16 MR. WOLF: Isn't that the reason you do that?

17 MR. FRANK: I can't answer that. I know there
18 are some design parameters that are designed into it
19 that allow for low strength concrete to be left in
20 place down to 500 psi. After that a structural
21 analysis has to be performed by the contractor at his
22 expense in order to leave it in place. It's much
23 bigger than that.

24 CHAIRMAN NUTBROWN: Is my total understanding
25 that strength is not an issue?

1 MR. FRANK: No, the in-place concrete is not at
2 issue. We have a problem that is the finish issue.

3 I have to say one thing in rebuttal to Mr. Wolf
4 on the warranty. This was never, never discussed by
5 anybody until the very last letter when we were accused
6 of not letting them have a warranty. A warranty was
7 never offered or implied on any part of this until the
8 February 7th letter if my memory serves me correct.

9 MR. WOLF: Do you all want us to leave these
10 cores here for your use?

11 MR. TERRELONGE: The cores that you are looking
12 at, the majority of those cores were taken in the area
13 that was considered most severe.

14 MR. SIMMONS: Pardon?

15 MR. TERRELONGE: Most of those cores -- they are
16 numbered 1, 2, 3, 4, 11, 12, 13, 14. They were taken
17 in close proximity to the area that would be
18 considered, what they considered most severe.

19 MR. SIMMONS: These pieces that have popped off
20 on the top, is that just from the coring process?

21 MR. TERRELONGE: Because the core wasn't taken
22 all the way through, you have to try to pop it out.
23 When you have to remove those cores, you have to pry it
24 out with some type of screwdriver device and that will
25 normally spall that edge.

1 I think the cores dispute the fact that they are
2 talking about all those voids and depressions. There's
3 no evidence of that in these cores, in one core -- one
4 core out of 23 cores.

5 They claim with the excessive amount of water you
6 would expect some type of dusting. You can feel that
7 surface. It's a hard surface. Normally with a dusting
8 you would be able to run your hands and feel the sand
9 grains run up.

10 MR. DEMPSEY: I'd like to say, again, that our
11 DRB board was highly respected. The decision they made
12 we don't dispute. Our problem is that we kind of
13 dropped the ball in providing the proper information to
14 them.

15 In speaking to numerous people after the fact
16 now, including some other distinguished folks that are
17 on DRBs that if we had done our homework and submitted
18 our cores as we tried to do and didn't get them in
19 through our own fault, that our DRB board would have
20 hopefully had a different decision.

21 MR. SIMMONS: You all help me with this. We
22 require two inches cover on steel?

23 MR. THARPE: Two inches.

24 MR. SIMMONS: Okay.

25 CHAIRMAN NUTBROWN: At any time, Dave, was any

1 consideration given to the fact -- how soon was the job
2 over after the April DRB hearing?

3 MR. FRANK: We finally accepted the job I believe
4 two days prior to the DRB hearing. I think the DRB
5 was on April 25. We accepted the job on April 23rd of
6 2000.

7 CHAIRMAN NUTBROWN: As far as coming back to the
8 DRB for a subsequent hearing, was that allowable?

9 MR. DEMPSEY: As a matter of fact, I think
10 I had received the letter that the board was
11 disbanding, and we caught them and said could we hear
12 this issue.

13 MR. FRANK: The Department feels -- we looked at
14 the package. We realize that Hubbard's package
15 contains new evidence. I think we have rebutted it
16 effectively in our hand-out to the Arbitration Board.

17 We probably could have reassembled the Board. In
18 the interest of time and everything else, we are
19 satisfied where it's at.

20 MR. SIMMONS: Was the 142,115, or whatever the
21 number was, is this the first time that's been shared?

22 MR. DEMPSEY: Yes, sir.

23 MR. SIMMONS: That didn't go to the DRB?

24 MR. WOLF: The 292 went to the DRB.

25 MR. DEMPSEY: I believe at that time all the

1 contract time had not been settled. Since the project
2 has been timely accepted and with the extensions we
3 were granted, the time was not an issue.

4 MR. SIMMONS: So, now the new number is 142,151
5 plus interest?

6 MR. DEMPSEY: Yes, sir.

7 MR. SIMMONS: Do we have a new letter with that
8 in it somewhere?

9 MR. DEMPSEY: No, you don't. I will be happy to
10 provide it.

11 MR. ROEBUCK: It's in this record. She's got it.

12 CHAIRMAN NUTBROWN: Okay. Mr. Dempsey, do you
13 have anything else that you want to add?

14 MR. DEMPSEY: No, sir. Appreciate your time.

15 CHAIRMAN NUTBROWN: You've completed your
16 presentation?

17 MR. OKAMOTO: Can I add one thing? If you look
18 at this one core here you can see that's not the full
19 core that contains a defect at the surface. It's only
20 part of the top portion of that core.

21 Rightly so, someone suggested or asked about the
22 spalling on all these other cores, why it spalled off.
23 The reason, of course, is how we get the cores out.

24 You can even see evidence of a spalling on one of
25 those broken pieces there because the portion of that

1 top of that core that is fractured actually fractured
2 through the cores aggregates. You know there had to be
3 a lot of pressure to break the aggregates there.

4 That is an indication that a portion of that
5 particular core there has a strong surface on there
6 because the crack -- you had to crack the aggregates
7 off.

8 Granted, the second piece there, the loose piece
9 there is very soft. It's a different color compared to
10 these other 16 cores here. This is what we are talking
11 about in terms of, you know, one alternative would have
12 been to grind it, look for color differences, sandblast
13 it. You could have exposed some of the soft surface
14 that was remaining.

15 The other thing I would like to point out is that
16 I think everyone recognizes there may have been a
17 sample size issue here. I did see the Geosciences
18 letter recommending a core every 25 feet. That may be
19 in excess in my opinion.

20 What is typically done is you will start out with
21 four or five cores. If those four or five cores are
22 satisfactory, you can at that point make a decision
23 that the -- to core more.

24 Certainly if one of the four or five cores you
25 initially take shows a defect, at that point a decision

1 could be made to look at other cores. Eventually you
2 will come to a conclusion that it's not worth testing
3 all 50 or 60 cores, whatever Geosciences has proposed,
4 or you've isolated the area to a smaller area where a
5 decision can be made do we need to replace this whole
6 deck if we know a problem area is confined to a certain
7 smaller area that can be localized.

8 I just wanted to bring up those two points.

9 CHAIRMAN NUTBROWN: Do you have anything else?
10 You are complete?

11 MR. DEMPSEY: Yes, sir. Thank you.

12 CHAIRMAN NUTBROWN: Department, have you
13 completed your rebuttal?

14 MR. THARPE: Yes, sir.

15 CHAIRMAN NUTBROWN: Mr. Simmons, do you have any
16 further questions?

17 MR. SIMMONS: If I did, I wouldn't know what to
18 ask. I've already asked more than I know already.
19 I don't have any more.

20 CHAIRMAN NUTBROWN: Any questions from either
21 party?

22 MR. ROEBUCK: We've covered the waterfront.

23 CHAIRMAN NUTBROWN: Mr. Roebuck?

24 MR. ROEBUCK: I think we have covered it.

25 CHAIRMAN NUTBROWN: Okay. The hearing is hereby

1 closed. The Board will meet and deliberate on this in
2 approximately six weeks. Each party will be furnished
3 a copy of the transcript, and you will be furnished a
4 copy of the order thereafter.

5 Thank you very much for coming.

6 MR. ROEBUCK: I would like to make this a general
7 comment and hopefully we can all learn something.

8 In these DRB meetings, and I'm on a few of them,
9 it seems like we ought to have an attitude about
10 comparing all the information. Even in court the
11 lawyers want each other to provide them every bit of
12 information they've got.

13 It's a darn shame in my mind that these cores
14 were not presented to the DRB.

15 MR. DEMPSEY: That's our fault, our fault.

16 MR. ROEBUCK: Regardless of the fault, they were
17 available. Both sides knew they were available
18 somewhere. They had seen them drilled or whatever.
19 They were in the package. Yet, you know, we nitpicked
20 around and tried to keep them from laying them on the
21 table.

22 MS. DELNEGRO: That's not true.

23 MR. WOLF: You all would not allow us --

24 CHAIRMAN NUTBROWN: Wait. The hearing is closed.
25 (Whereupon, the hearing was concluded at 12:05 p.m.)

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 31st day of January, 2001.


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