

STATE ARBITRATION BOARD

10780 Anderson Lane
Lake Worth, FL. 33467-5464

Phone (772) 299-3290

FAX (772) 299-3568

February 3, 2003

Bill Albaugh
Highway Operations
Florida Department of Transportation
605 Suwannee Street MS 31
Tallahassee, FL. 32399-5200

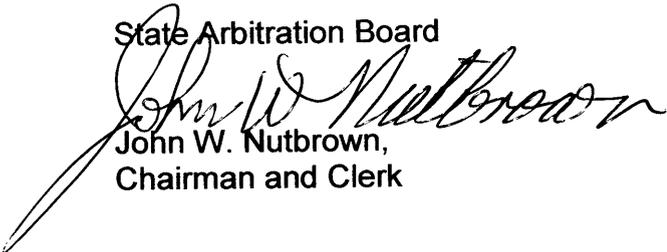
Re Arbitration Order 2-2002
DOT Project No. 55003-3517
Leon County Florida

Dear Bill:

Find enclosed Arbitration Order 2-2002 for the above captioned project. A copy of the transcript, Contractors submittal and the Department rebuttal are being kept by Freddie Simmons for you use .

Sincerely;

State Arbitration Board



John W. Nutbrown,
Chairman and Clerk

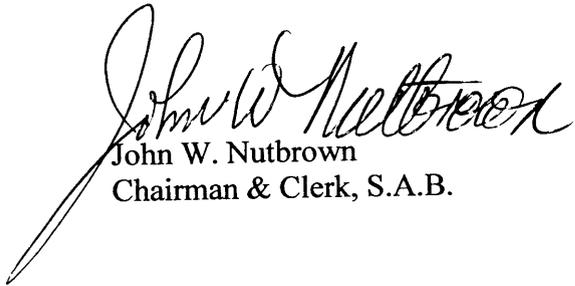
Cc: All Board Members

STATE ARBITRATION BOARD

Order No. 2-2002

/// NOTICE ///

In the case of White Construction Company, Incorporated versus the Florida Department of Transportation on Project No. 55003-3517 in Leon County, Florida, both parties are advised that the State Arbitration Board Order 2-2002 has been properly filed with The Clerk of the State Arbitration Board on December 27, 2002


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

S.A.B. CLERK

DEC 28 2002

FILED

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

Luther White, Jr Vice President, White Construction Co., Inc..

STATE ARBITRATION BOARD

Order No. ~~6-2001~~²⁻²⁰⁰²

RE: Request for Arbitration
White Construction Company, Inc.
State Project No. 55003-3517 in
Leon County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Freddie Simmons, Board Member
John C. Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 2:00 P.M. February 12, 2002

The Contractor, White Construction Company, Inc. presented a written request for arbitration of its claim in the total amount of \$142,614.33. The claim arises out of the effects catastrophic weather conditions, increased rain, during a period of October 27, 1997 to March 22, 1998 and other items Leon County, Florida. The Department of Transportation presented a written rebuttal and summary of position. At the time of hearing the Contractor had been able to settle other parts of the claim and reduced its claim to \$105,060.85. The Board has considered the written submissions and the testimony and evidence presented at the hearing on February 12, 2002 and enters this Order Number 2-2002

ORDER

The Board is unanimous in this decision.

At the hearing testimony was given by both the Contractor and the Department as to weather conditions on the project during the specified period. Both presented Weather Department records showing the amount of rain at various locations in Leon County and the surrounding areas. None of the records pinpointed the project sight exactly and the Department was requested to furnish records showing the number of days for which rain was recorded. The record was submitted to Board members after the hearing and showed an increase in the number of rain days by approximately twenty percent (20%) during the calendar period October 27, 1997 and March 22, 1998 as in previous years.

During construction of the project some of the Board members had traveled through the project and noted the extremely wet soil conditions. In these wet conditions the clay type soil found in the area would not require a large amount of precipitation to stay in a wet and un-workable condition.

STATE ARBITRATION BOARD

Order No. ²⁻²⁰⁰² 6-2001

The Department is ordered to compensate the Contractor in the amount of \$35,029.82 which includes interest at the statutory rate since August 27, 1999.

The Department shall reimburse the State Arbitration Board \$183.80 for court reporting costs.

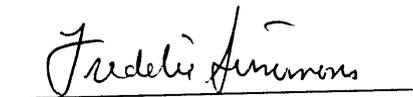
Vero Beach, Florida

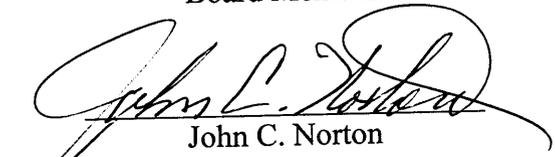
Dated December 28, 2002

Certified copy:


John W. Nutbrown
Chairman & Clerk


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member


John C. Norton
Board Member

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Vero Beach, Florida

Dated: December 28, 2002

John W. Nutbrown
Chairman & Clerk

Freddie Simmons, P.E.
Board Member

Certified copy:

John W. Nutbrown
Chairman & Clerk

John C. Norton
Board Member

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. John W. Nutbrown, Chairman
Mr. Freddie Simmons
Mr. John C. Norton

APPEARING ON BEHALF OF THE CONTRACTOR:

Ms. Cynthia Snow White
Mr. Glen Sever

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Glenn Edwards
Mr. John Gard

* * *

I N D E X

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

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

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

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

Our terms expire June 30, 2003.

Will each person who will make oral presentations during the hearing please raise your right hand and be sworn in.

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN NUTBROWN: The request for arbitration of a claim submitted by the claimant, including all attachments thereto and the administrative documents preceding this hearing are hereby introduced as Exhibit No. 1.

Does either party have any information you wish to enter into the record at this time? I have a packet here which was furnished by White Construction. I'd

1 like you to look at it. Basically this is a copy of
2 weather department records in the period of time that
3 this claim covers. Are there any objections to this
4 being entered into the record?

5 MR. GARD: I'd like to look it over.

6 CHAIRMAN NUTBROWN: We will give you that time.

7 MR. GARD: Please.

8 (Brief pause)

9 MR. GARD: I have no objection if I can be given
10 some time to present what was received the year before
11 and the two previous years. I haven't looked at that.
12 I know that the two previous years were similar, more
13 similar to the year in question than what is shown
14 here.

15 I don't say we put off the hearing, but if I can
16 present that at a later date for you all to review
17 before you make any final decisions or anything. Am
18 I making sense?

19 CHAIRMAN NUTBROWN: Do you have a problem with
20 him submitting that to the Board?

21 MS. WHITE: No. I would have presented it if
22 I had had access to it. I have no problem.

23 CHAIRMAN NUTBROWN: All right. The Board will
24 abstain from rendering an order until we receive that
25 information. We have no problem with that.

1 MR. GARD: Glenn, do you agree? Do you have any
2 other comments?

3 MR. EDWARDS: No.

4 CHAIRMAN NUTBROWN: Okay. This will be marked
5 Exhibit No. 2. The subsequent information from the
6 Department will be Exhibit 3, and everybody has
7 examined it at this time.

8 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in
9 evidence.)

10 CHAIRMAN NUTBROWN: During the hearing the
11 parties shall offer such evidence and testimony as is
12 pertinent and material to the dispute being considered
13 by the Board, and shall produce such additional
14 evidence as the Board may deem necessary to an
15 understanding of the matter before it.

16 The Board shall be the sole judge of the
17 relevance and the materiality of the evidence offered.

18 The parties are instructed to ensure they receive
19 properly identified copies of each exhibit used in the
20 proceedings. You should retain these exhibits. The
21 Board will send the parties a copy of the court
22 reporter's transcript, along with our order, but will
23 not furnish copies of the exhibits.

24 As is typical in arbitration proceedings, the
25 hearing will be conducted in an informal manner. The

1 Board is not required to apply a legalistic approach or
2 strictly apply the rules of evidence used in civil
3 court proceedings.

4 We are primarily looking for information in
5 regard to the facts and the contract provisions that
6 apply to this case.

7 The order of proceeding will be for the claimant
8 in this case, the contractor, to present their claim
9 and then for the respondent to offer his rebuttal.

10 With that, we will go ahead.

11 Also, either party may interrupt to bring out a
12 pertinent point by coming through the Chairman. As
13 I said this morning, Ms. Wilkinson over here, the court
14 reporter, only has two ears and ten fingers, and if we
15 all talk at one time we are going to have a mell of a
16 hess when we get through.

17 If you would please one at a time, and if you
18 have a question, a point, raise your hand, and I will
19 recognize you, and everybody can have a say-so.

20 With that, if the claimant will go ahead and
21 present their side.

22 MR. GARD: Before you start, you mentioned three
23 exhibits. Is one of them the one she presented?

24 CHAIRMAN NUTBROWN: No, the one is the documents
25 you have in your hand, the two notebooks, your rebuttal

1 and her claimant's package. Number two is the weather
2 department documents that she submitted. Number three
3 will be whatever you submit to me in the future.

4 MR. GARD: So, number one is these two combined
5 really?

6 CHAIRMAN NUTBROWN: That's correct. Okay,
7 Ms. White, go ahead.

8 MS. WHITE: Okay, Mr. Nutbrown. The first thing
9 I wanted to clear up is I've had time to review
10 Mr. Gard's package now. He pointed out some errors in
11 our spread sheet.

12 The employee that had worked those up isn't with
13 us anymore, and I couldn't track him down.

14 So from -- we are going to agree with Mr. Gard on
15 that and change our amount requested. I've put that on
16 a little letter, if you need it.

17 CHAIRMAN NUTBROWN: If you want to submit that at
18 this time, that's fine.

19 MS. WHITE: That just changes the amount we are
20 going to request. We are going to agree with Mr. Gard.
21 He had objected to our amount we were requesting.

22 CHAIRMAN NUTBROWN: Okay.

23 MS. WHITE: Other than that, we just feel that
24 the -- not necessarily the amount of rain, but the
25 number of days that it rained were more than we could

1 have anticipated. Even though weather days are not
2 compensated for, we feel like this falls under
3 catastrophic and that some compensation is due.

4 We didn't really have that much to present other
5 than that. We feel it's more than we could have
6 expected at the time of bidding.

7 CHAIRMAN NUTBROWN: Okay. I know that you and
8 Mr. Benak recently have been able to settle the other
9 issues in this claim. Was there any settlement offered
10 in this item by the Department?

11 MS. WHITE: No, sir.

12 CHAIRMAN NUTBROWN: All right. Will the
13 Department go ahead with your presentation.

14 MR. GARD: We feel that the number of days of
15 weather, we did give them weather days in accordance
16 with the contract. We don't think it was catastrophic.
17 It wasn't that extensive or that much more.

18 You know, when they first gave notice of --
19 notice of intent that they called it catastrophic, we
20 presented them with records showing that the two
21 previous years at that time they had received -- they
22 had more weather days the two previous years than they
23 had this year. So it couldn't have been catastrophic.
24 It was even less at the time that they called it
25 catastrophic.

1 Now as time went on and later on in the year and
2 beginning of -- the beginning of the next year, they
3 did experience more rain due to El Nino. This was one
4 of the El Nino years.

5 Over that period they did receive more weather
6 days than the two previous years, but it wasn't a big
7 amount or it wasn't, you know, catastrophic. We don't
8 feel it was catastrophic or extensive.

9 We just say there was more weather days than we
10 granted them weather days in accordance with the
11 contract. The contract states no additional
12 compensation will be, you know, given for weather.

13 We feel they've been treated fairly. On top of
14 this, even with this \$64,000 that they've agreed to,
15 there are -- don't quote me, but I think there were six
16 of those days were Sundays and seven more were
17 Saturdays that they're asking for idle equipment time.

18 Although, you know, they did work some Sundays,
19 they didn't work every Sunday. That's just -- their
20 equipment would have been idle half the time anyway.

21 We don't see that there's been any hardship or
22 any -- you know, additional compensation is due.

23 MR. SEVER: What he said I can't disagree with.
24 The only thing is -- now one thing that probably may
25 enter into the -- a factor into this and I want to

1 mention is that when we first started this job, this
2 job had, what was it, the incentive on it.

3 Well, we was running seven days a week pretty
4 much at this time, correct?

5 MR. GARD: At the beginning you did run seven
6 days for several weeks.

7 MR. SEVER: Later on -- I don't have the dates,
8 and I wouldn't try to recall it from memory, but we
9 went on. The problem came up -- we had several little
10 problems which was settled out on the thing.

11 It come to be an issue that due to the problems
12 on the job and then the amount of weather we had we
13 weren't going -- we did work seven days a week.

14 So, we started out running seven days a week on
15 it with the intention of trying to get the incentive.

16 MR. GARD: You started out, but you stopped, you
17 know, at some point.

18 We had -- I don't know, a supplemental. We had
19 some extra work. We negotiated out that. We basically
20 ended up giving you half of that incentive. From that
21 time on you all did not pursue the other half of the
22 incentive or, you know, if you could have -- even
23 though we negotiated and ended up giving you half of
24 that incentive to -- we basically gave you a
25 mobilization to try to achieve the full incentive.

1 You could have ended up with one and a half times
2 that incentive. Once we gave you half of that, you
3 quit. You all went to five and six-day work weeks.

4 MR. SEVER: I agree with you on the thing, but --

5 MR. GARD: There were some weeks where you all
6 went several weeks and didn't have a soul on the job.

7 MR. SEVER: I don't deny that. That's when
8 I made the statement -- I actually pulled some of the
9 people off. I made a statement, I can't get the
10 incentive with what it is right now.

11 If you will remember, we had the problem down
12 there, what was it, the structure, S-2. We had the
13 underdrain to put in. We were compensated. It was
14 settled out. We was give time for doing so.

15 Then for the incentive part, that killed the
16 ability that I saw at the time to get the incentive
17 monies.

18 MR. GARD: I'm saying, yes, that might have been
19 the case, but the incentive had nothing to do with the
20 catastrophic weather either. You know, that was a
21 different issue.

22 I don't -- you've never mentioned that your
23 weather or -- this extensive weather you are claiming
24 for affected your ability to get that bonus.

25 MR. SEVER: I didn't. As far as me, I did not on

1 the thing. I won't sit here and say I did because
2 I didn't mention that.

3 CHAIRMAN NUTBROWN: Let me ask, what is the
4 measured length of this job? Where exactly is it
5 located on Capital Circle?

6 MR. GARD: It runs from -- ran from Mahan Drive
7 down to just south of Park Avenue.

8 CHAIRMAN NUTBROWN: Then there was another piece
9 between there that Mitchell Brothers had?

10 MR. GARD: Yes. That was leg two. This is leg
11 three.

12 CHAIRMAN NUTBROWN: This is to the bottom of the
13 hill?

14 MR. GARD: Yes.

15 CHAIRMAN NUTBROWN: Approximately what is the
16 length of the job?

17 MR. GARD: It was a little over a mile, mile and
18 a half, something like that. Do you recall?

19 MR. SEVER: It was a little over two miles.

20 CHAIRMAN NUTBROWN: Should be in that recap on
21 the bottom.

22 MR. GARD: One point seven miles.

23 CHAIRMAN NUTBROWN: Are there any liquidated
24 damages involved in this?

25 MR. GARD: No.

1 CHAIRMAN NUTBROWN: The job was finished on time?

2 MR. GARD: Yes. Finished on the last day if
3 I recall. It was pushing it.

4 MR. SEVER: It got tight at the end.

5 CHAIRMAN NUTBROWN: What was the total amount of
6 the contract, does anybody remember? It's not in our
7 package.

8 MR. GARD: It was 5.7 -- or 5.1 was the original
9 contract amount. I swear I can't recall -- excuse me.
10 The original contract amount was \$7,950,000. Seems
11 like we ended up close to 9 million, but I couldn't
12 swear to that.

13 CHAIRMAN NUTBROWN: That was mainly what I was
14 concerned about. The other thing I would like to ask
15 is what was the date of actual final acceptance?

16 MR. GARD: It was in June of '99, June 10th.
17 June 10th or 11th.

18 MR. SEVER: I don't remember the dates on it.

19 CHAIRMAN NUTBROWN: I can find out. I was just
20 wondering if anybody knew. It's a lot easier to have
21 it here than go hunting for it.

22 MR. GARD: These are the final plans. I was
23 trying to see if there was a note made on that. Work
24 was completed on June 29 of '99 and conditionally
25 accepted on that same date.

1 CHAIRMAN NUTBROWN: What was the date of final
2 acceptance, does it say?

3 MR. GARD: No. I'm trying to remember what we --

4 CHAIRMAN NUTBROWN: A short time prior to the
5 final?

6 MR. GARD: Right. We had those traffic signals
7 at Park that had a burn-in period. I think that was
8 the, what is it, 60 days on the burn-in period.

9 MR. SEVER: A 30-day burn-in period. Then we had
10 landscaping, also that had a burn-in or had an
11 establishment period. I can find out.

12 CHAIRMAN NUTBROWN: Sometime in July or early
13 August would probably be the date of final acceptance.

14 MR. GARD: I will check that out and let you
15 know.

16 CHAIRMAN NUTBROWN: I would appreciate it. Does
17 the Department have any other information at this time
18 to put forth?

19 MR. GARD: I can't think of anything. Glenn, do
20 you have anything?

21 MR. EDWARDS: We would maybe like to reiterate
22 that we really don't feel that there was a catastrophic
23 weather event. It's more of somewhat of a normal
24 weather pattern that's expected to occur about every
25 nine to ten years. And it's over pretty much a broad

1 band. It's more of a weather pattern than an event.

2 CHAIRMAN NUTBROWN: Based on the information you
3 have, as far as the two preceding years, which I feel
4 are probably a little closer to normal than this was,
5 do you feel that the rain in this period of time was
6 excessive compared to the previous two years?

7 MR. GARD: I don't.

8 MR. EDWARDS: I wouldn't think so, no.

9 MR. GARD: Well, they are talking about El Nino
10 coming back next year already I think. It's -- I don't
11 know, like he said, it's a weather impact that can't be
12 predicted. You know -- you provided the weather for
13 the next year.

14 While I was doing research for this, I saw some
15 research off one of the Web sites for our weather that
16 has weather monitored for the previous 102 years. It
17 tells about, you know, El Nino every so often.
18 I forget the frequency, but they can predict which year
19 El Nino is coming back and everything.

20 MS. WHITE: I think there was only one other El
21 Nino that was as great as this one, and that was late
22 '70s or mid '80s. I've seen that thing you are talking
23 about. Other than that, this was one of the worst
24 El Ninos in the past hundred years he was referring to.
25 Sounds like we were looking at the same Web page

1 probably.

2 CHAIRMAN NUTBROWN: Okay. Ms. Snow, do you have
3 anything more you want to add?

4 MS. WHITE: No, sir. I think it's just a
5 decision of what is going to be catastrophic and what
6 isn't.

7 MR. NORTON: On any of this work did you have
8 washouts or anything that you had to repair due to the
9 bad weather? Was there actual weather repairs? Not
10 erosion control barriers, but washouts on berms or
11 anything like that?

12 MS. WHITE: I'll let Mr. Glen have that. He was
13 out there.

14 MR. SEVER: As far as telling you the exact time
15 and date, I don't know, but it was at different times
16 that we had to do a lot of repair work, especially on
17 what would be the south end of the job down there.
18 There was a lot of washouts during that time there.
19 There were repairs that to be done.

20 CHAIRMAN NUTBROWN: The south end of the job of
21 the downhill slope if I'm not mistaken?

22 MR. SEVER: Yes, sir. It come to a low point out
23 there. It caught up there next to the FCI prison, come
24 back towards 27, in that area there.

25 That's where -- and then up there at the railroad

1 track we also had a good bit of repair to do there
2 where the slope went down to the railroad track. We
3 had to go up there and clean it out beside the railroad
4 track numerous times.

5 I think we had to put fill on some of that bridge
6 part there at the railroad track.

7 MR. GARD: We paid you for that.

8 MR. SEVER: It was paid for in the work orders.
9 All that part, even on that part, like talking about
10 coming down to the south end, during the time it was
11 being done, we got compensated for the work that we
12 were doing on some of that part there by giving weather
13 days on that. And then on that part we did get weather
14 days give to us the days we wasn't able to work.

15 CHAIRMAN NUTBROWN: I saw a couple of items in
16 here broken down by work order for specific areas.

17 MR. SEVER: We did several work orders on the
18 project. There was several different things we did
19 through work orders on the job.

20 As a whole, I'll tell you what, I don't have any
21 complaint with the way that we did the job. I mean
22 everybody was real cooperative throughout the project
23 with me on that thing. It went rather well I thought.

24 I reckon the issue is who decides what on this
25 being catastrophic weather.

1 CHAIRMAN NUTBROWN: Uh --

2 MR. SIMMONS: Between that time period,
3 October 20 of '97 to March 22, '98, the Department
4 granted 60 days, did I see that note?

5 MR. GARD: Yes.

6 MR. SIMMONS: Then you all are asking for 30
7 more, is that right?

8 MR. GARD: They picked out 30 of those 60, if
9 I may, that were our -- where our dailies showed that
10 they were working on erosion control or not working due
11 to, you know -- had idle equipment due to the weather.

12 MS. WHITE: We are not asking for the time, just
13 that those days be compensated for.

14 MR. SIMMONS: I couldn't see the time anywhere.
15 I was confused.

16 MS. WHITE: We don't have an argument with the
17 time. They granted the days on days we felt were due.
18 We feel that some of the days should be compensated
19 rather than falling under your normal weather day.

20 MR. NORTON: I guess what you are saying then, is
21 that those days you worked some kind of erosion control
22 or measures, or is it just that you think that because
23 of the catastrophic weather you should be -- should get
24 the costs for those days?

25 MS. WHITE: We feel that when you bid a job

1 there's going to be a certain number of days that you
2 are going to be rained out and your equipment is going
3 to be sitting there. You figure that into your costs.
4 We feel the days were excessive, and that caused us to,
5 you know, maybe lose on our overhead.

6 Our overhead, you know, MOT costs and stuff like
7 that were more than we could have anticipated. They
8 weren't figured into our bid.

9 That's kind of where we are going with that.

10 MR. GARD: I would like to say one other thing.
11 We feel that for it to be catastrophic, it would have
12 to be declared by someone other than us or White
13 Construction. It would have to be declared by the
14 Governor, or somebody in this area would have to be --
15 this area would have to be declared a disaster area.
16 It wasn't.

17 If we were to, you know, pay White Construction
18 for this, well, then we'd have to pay every contractor
19 in this area for the same thing. It would be --
20 I mean --

21 CHAIRMAN NUTBROWN: Thumbing through those
22 weather report summaries that were printed out, in some
23 cases you'd have three, four, maybe almost a whole week
24 of continuous rain in some amount.

25 Now if my memory serves me correctly, a lot of

1 that soil on that particular project is red clay. It
2 doesn't do well with water. Even sandy clay --

3 MR. GARD: Right. That's what I was going to
4 say, there is a sandy clay there. In that lower end
5 where it is sloping is where you had the, I don't know,
6 the biggest problem.

7 MR. SEVER: We had to do a lot more than was set
8 up in the plan for erosion control there on that there
9 part. For the water that was there, we took fence and
10 we put it up. We put hay behind it. It still didn't
11 hold a lot of it there.

12 MR. GARD: You were compensated --

13 MR. SEVER: We did do it one time, kept stacking
14 up hay, then had to go in there, clean that dirt out
15 and put it back, pull it back up the hill.

16 Really, down there on the lower end, we had a
17 problem keeping the pop unplugged where it went across
18 the road there, right?

19 MR. GARD: Yeah.

20 MR. SEVER: There was extreme measures took there
21 on that end with the dirt trying to keep it off the
22 right-of-way on that part. It went beyond anything
23 shown on the plans to try to hold it on the
24 right-of-way, and then we lost some of it.

25 MS. WHITE: I think going back a little bit to

1 what Mr. Gard was saying, the specs weren't real clear
2 on the definition of catastrophic. Maybe they should
3 be in the future. I think it would have to be on a
4 case-by-case basis depending on what, you know, what
5 phase the construction was in when that kind of thing
6 happened.

7 I mean if there wasn't all the dirt work you all
8 are talking about going on, then we probably wouldn't
9 be sitting here. I think it depends. I think you've
10 got to look at what was happening at the time and not
11 whether it was declared catastrophic by the Governor or
12 anything.

13 I think it's a case-by-case basis. I think
14 that's why we are here.

15 MR. NORTON: I was down on the Polk Parkway at
16 the time and I know they were issued some repair costs
17 and days during this period of time.

18 I thought that the Governor did declare a certain
19 week or so of that time catastrophic. I think it was
20 in February when they had all that rain. Now maybe it
21 was just that area.

22 MR. GARD: It wasn't this area.

23 MR. NORTON: We got 12 to 14 inches of rain down
24 in that area of the state in February.

25 It seems to me that maybe -- maybe again it was

1 just that area. I know that the contractors did get
2 compensated for repair, washouts on the berms. They
3 had some big, tall berms. They had to go in and fix
4 them.

5 MR. GARD: I'm almost positive they didn't
6 declare this area.

7 MS. WHITE: I'm going to have to agree with
8 Mr. Gard on that. I think it was done county by
9 county. I know I was working in Hamilton County. They
10 declared that one, but that's because the Suwannee was
11 about to come up over the interstate.

12 I think he picked certain counties. As far as
13 lakes and rivers and stuff, I don't --

14 MR. GARD: We did compensate them with some work
15 orders during this period and for some of the repairs
16 they did.

17 MR. SIMMONS: We had 22 inches one day last June.
18 I don't remember whether they declared that
19 catastrophic, that particular day. Everything was
20 flooded. They may have. It depends on the impact of
21 it, whether they did that or not, from the Governor's
22 office.

23 MR. SEVER: I think on the agricultural end they
24 did declare it catastrophic and the government paid
25 some of the crops.

1 MR. SIMMONS: A lot of times they do that to get
2 Federal reimbursement.

3 MR. SEVER: I'm involved in farming a little bit
4 and I think that's what they did on that.

5 MS. WHITE: FEMA came in and helped some of the
6 counties with their roads in certain areas. They kind
7 of acknowledged that some roads -- those were existing
8 roads, but they were getting some damage, too.

9 CHAIRMAN NUTBROWN: I'm looking at the recaps of
10 daily rain. It's not unusual to see here, not only
11 taking in Tallahassee, but a certain area around, to
12 have -- here's one with ten days straight rain.
13 Unfortunately the rain is such a sporadic thing, it
14 could be six inches at the airport and ten over here on
15 Capital Circle.

16 To say that this is the gospel is not really --

17 MR. NORTON: Glen, you didn't keep any rain gauge
18 on the project or --

19 MR. GARD: We had one, but I don't think we kept
20 track of the amount of inches.

21 MR. SEVER: I didn't have one personally on the
22 job, no, sir, to answer your question.

23 MR. NORTON: You said you had one?

24 MR. GARD: We had one there at our office, which
25 was right there on the job. I don't think we --

1 I can't recall a record that mentions by inches or
2 anything.

3 MR. NORTON: I didn't see it on the daily
4 reports.

5 MR. GARD: Periodically they would make a note on
6 their daily reports if it was above normal or
7 something, but otherwise they would just say it rained
8 or didn't rain. We probably should have kept better
9 records of the quantity of rain than we did.

10 MR. NORTON: I see it says heavy rain, four to
11 six hours, but they don't really tell you in --

12 MR. EDWARDS: There may be some days like on the
13 project diaries where they might have had rains for
14 three days, off and on showers, and then it might take
15 them, you know, two or three days to dry out and make
16 necessary repairs.

17 And if they're not working at least on a
18 controlled item of work 50 percent of the days, you
19 know, those days behind the rain are also granted for
20 weather days.

21 MS. WHITE: We have no complaint with the days
22 they granted, just that those were more days than you
23 could have imagined having to not get the 2 percent of
24 your work done.

25 MR. NORTON: I guess essentially what you are

1 saying, Snow, is that you anticipate when you bid a job
2 or in your costs you anticipate a certain number of
3 rain days, whether you actually say we are going to
4 have a week of rain or something like that, but your
5 costs, your historical costs include a pattern of rain.
6 And this was beyond what your historical costs were?

7 MS. WHITE: Yes, sir.

8 MR. NORTON: Okay.

9 MR. SIMMONS: Did we ask the original contract
10 days?

11 CHAIRMAN NUTBROWN: Number of days in the
12 original contract. It should be on the cover of the
13 contract if you've got it there.

14 MR. EDWARDS: The contract calendar days was 515.

15 MR. SIMMONS: And the actual start work date was
16 when? You have a completion date, but you didn't get a
17 start date, did you?

18 CHAIRMAN NUTBROWN: No.

19 MR. GARD: I don't have that either. I will get
20 that for you.

21 CHAIRMAN NUTBROWN: Do you have any other
22 questions or comments, Freddie?

23 MR. SIMMONS: No.

24 CHAIRMAN NUTBROWN: Jack?

25 MR. NORTON: No.

1 CHAIRMAN NUTBROWN: Snow, do you have any other
2 comments?

3 MS. WHITE: No, sir.

4 CHAIRMAN NUTBROWN: Does the Department have any
5 other comments or info? Anything?

6 MR. EDWARDS: No, sir.

7 CHAIRMAN NUTBROWN: Okay.

8 MR. GARD: I will research the previous two years
9 for rain and everything and try to get that out by the
10 end of -- by early next week, Monday or Tuesday,
11 something like that.

12 MS. WHITE: Will you get the start date for them,
13 too?

14 MR. GARD: Yes, and final acceptance.

15 CHAIRMAN NUTBROWN: At the same time will you
16 furnish Snow the same information?

17 MR. GARD: Yes.

18 CHAIRMAN NUTBROWN: Okay. This hearing is hereby
19 closed. The Board will meet to deliberate on this
20 claim in approximately six weeks, and the parties will
21 be furnished our order shortly thereafter.

22 I want to thank each and every one of you for
23 your participation in coming, and I realize the
24 problems that Snow had today, and I can certainly
25 understand.

1 MS. WHITE: I apologize for being late again.

2 CHAIRMAN NUTBROWN: You weren't late.

3 (Whereupon, the deposition was concluded at 2:55 p.m.)

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