

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of Colt Insulation, Inc.)	
)	Docket Nos. MSBCA
Under DHMH Contract No.)	1426 and 1446
SFC 11/9/87-500)	

September 17, 1990

Contract Interpretation - Contra Preferentem. The contractor's interpretation of a specification containing a latent ambiguity concerning the amount of soil required to be removed in an asbestos abatement project was found to be reasonable and the ambiguity was thus construed against the drafting agency.

APPEARANCE FOR APPELLANT:	Joseph C. Kovars, Esq. Blum, Yumkas, Mailman, Gutman & Denick, P.A. Baltimore, MD
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APPEARANCE FOR RESPONDENT:	Jay N. Bernstein Assistant Attorney General Baltimore, MD
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OPINION BY CHAIRMAN HARRISON

On December 5, 1989, the Appeals Board issued a decision in the above captioned matter. The hearing of the appeal and decision at the request of the parties dealt only with issues of entitlement. In its decision the Appeals Board found Appellant entitled to a thirty-seven (37) day compensable time extension comprised of seven (7) days for utility outages and thirty (30) days for additional soil removal. Based on these findings, the Appeals Board denied Respondent's (DHMH) assessment of liquidated damages, sustained Appellant's appeal (as to entitlement) and remanded the matter to the parties for negotiation of quantum. The Appeals Board hereby reaffirms its decision on entitlement issued on December 5, 1989 and incorporates said decision (attached as Exhibit A) herein by reference.

On June 25, 1990, the Circuit Court for Baltimore City granted Appellant's motion to dismiss DHMH's appeal to that court. The basis of the court's dismissal was that the Appeal Board's decision from which DHMH took an appeal to the Circuit Court was not a final decision because the Appeals Board (at the request of the parties) had issued a decision on entitlement only.

On August 21, 1990, over objection by DHMH that it's rights to further judicial review were being pre-empted, the Appeals Board heard the issues of quantum.

During the August 21 hearing the Appellant presented detailed credible evidence demonstrating that its actual, allocable and reasonable costs attributable to the thirty-seven (37) days compensable time extension to which the Appeals Board has found entitlement were \$32,333.28. Such evidence was not challenged by DHMH and the Appeals Board finds that Appellant is entitled to an equitable adjustment of \$32,333.28. At the conclusion of the hearing the Appeals Board reserved ruling on Appellant's claim for predecision interest on the \$32,333.28 and permitted the parties to present their respective written positions on predecision interest. The parties agree that Appellant is entitled to predecision interest from July 11, 1988 a date two months after Appellant submitted its initial claim until August 21, 1990 the date of the hearing on quantum, a period of 771 days. The parties also agree that predecision interest for this period should be based on an equitable adjustment amount that excludes the extended field costs portion of Appellant's claim that were not included in Appellant's

claim as originally filed in May of 1988.

The Appeals Board is authorized to award predecision interest at the rate of interest on judgments as provided under §11-107(a) of the Courts Article §15-222, State Finance and Procurement Article. The Appeals Board agrees with the parties that a fair and reasonable award of predecision interest should be calculated on an amount of the equitable adjustment that excludes extended field overhead costs since DHMH was not on notice of any claim for extended field overhead costs until Appellant submitted its pre-hearing statement of cost with the Appeals Board on August 3, 1990.

Deducting extended field costs from the total equitable adjustment found due by the Board reduces the base amount subject to predecision interest as follows:

Additional labor	\$14,757.08
Extended home office costs	<u>6,566.77</u>
Insurance 12%	\$21,323.85
	<u>2,558.86</u>
Profit 10%	\$23,882.71
	<u>2,388.27</u>
Contract balance	\$26,270.98
	<u>2,550.00</u>
Total	\$28,820.98

Applying the 10% per annum statutory rate over the applicable 771 day period to the base amount of \$28,820.98 results in an amount of predecision interest of \$6,083.19 up to August 21, 1990.

Appellant also claims predecision interest based on the entire equitable adjustment to which Appellant is entitled (\$32,333.28) from the hearing on quantum on August 21, 1990 until the date of

entry of this decision. This calculates out to additional predecision interest in an amount of \$8.86 per day and is allowed.

In summary, the Appeals Board finds Appellant entitled to an equitable adjustment for a compensable thirty-seven (37) day time extension in the amount of \$32,333.28. The Boards awards predecision interest of \$6,083.19 through August 21, 1990 and additional predecision interest from August 22, 1990 through September 17, 1990 in the amount of \$203.78, for a total award of \$38,620.25. Additionally, post decision interest pursuant to §15-222 State Finance and Procurement Article, Md Code Ann. shall accrue at the rate of interest on judgments as provided under §11-107(a) of the Courts Article.