

Please Read Instructions on Reverse Side of Yellow copy

Arkansas

State Claims Commission

D.03a

Please print in ink or type

JUL 29 2019

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

RECEIVED

- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

JAMES CONSTRUCTION GROUP, LLC, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. \_\_\_\_\_

Date Filed \_\_\_\_\_  
(Month) (Day) (Year)

Amount of Claim \$ \_\_\_\_\_

Fund \_\_\_\_\_

COMPLAINT

James Construction Group, LLC, the above named Claimant, of 18484 E. Petroleum Dr., Baton Rouge  
(Name) (Street or R.F.D. & No.) (City)

Louisiana 70809 225-295-4830 Parish East Baton Rouge represented by Jack East III  
(State) (Zip Code) (Daytime Phone No.) (City) (Legal Counsel, if any, for Claim)

of 1100 N. University Ave, Ste. 140, Little Rock, AR 72207 501-372-3278 NA, says:  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Dept. of Transportation Amount sought: Over \$500,000

Month, day, year and place of incident or service: April 7, 2015 through November 1, 2018 and forward

Explanation: See Complaint attached.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

Yes; when? July 21, 2018; to whom? Chief Engineer of ARDOT  
(Yes or No) (Month) (Day) (Year) (Department)

: and that the following action was taken thereon: Claim denied on November 1, 2018

and that \$ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: : and was acquired on, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Jack East III  
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at N. Little Rock AR  
(City) (State)

on this 29th day of July, 2019  
(Date) (Month) (Year)

My Commission Expires: 9 30 2020  
(Month) (Day) (Year)

(SEAL)



SF1- R7/99

JUL 29 2019

**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**JAMES CONSTRUCTION GROUP, LLC**

**RECEIVED  
CLAIMANT**

**VS. CLAIM NO. 19 -**

**ARKANSAS DEPARTMENT OF TRANSPORTATION, and  
ARKANSAS STATE HIGHWAY COMMISSION**

**RESPONDENTS**

**COMPLAINT**

Comes now James Construction Group, LLC (James), and for its Complaint against the Arkansas Department of Transportation (ARDOT) and Arkansas State Highway Commission (ASHC) states:

1. James is a highway construction contractor headquartered in Baton Rouge, Louisiana.
2. ASHC and ARDOT are agencies of the State of Arkansas.
3. The Commission has jurisdiction of the defendants and subject matter.
4. On or about April 7, 2015 James and the ASHC entered into two construction contracts (Contracts) requiring James to complete the construction projects (Jobs) known as "Job BB0113, Federal Aid Project NHPP-B40-0(230), Shell Lake STR. & APPRS. (S)" and "Job BB0114, Federal Aid Project NHPP-B40-0(231) in St. Francis County, Arkansas. The estimated Contract sum of Job BB0113 was \$33,184,732.08. The estimated Contract sum of Job BB0114 was \$26,928,393.68.

The Project work for Job BB0113 may be generally described as follows:

**THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A MAIN LANE**

BRIDGE SPANNING ACROSS BOTH THE LEFT AND RIGHT I-40 MAIN LANES WITH ROADWAY APPROACHES, EAST OF FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF EARTHWORK, AGGREGATE BASE COURSE, ACHM BASE, BINDER, AND SURFACE COURSES, GUARDRAIL, A COMP. STEEL W-BEAM UNIT BRIDGE (562.48'), EROSION CONTROL, AND MISC. ITEMS.

The Project work for Job BB0114 may be generally described as follows:

THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A MAIN LANE BRIDGE SPANNING ACROSS BOTH THE LEFT AND RIGHT I-40 MAIN LANES WITH ROADWAY APPROACHES, EAST OF FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF EARTHWORK, AGGREGATE BASE COURSE, ACHM BASE, BINDER, AND SURFACE COURSES, GUARDRAIL, A COMP. STEEL W-BEAM UNIT BRIDGE (562.48'), EROSION CONTROL, AND MISC. ITEMS.

A true but unsigned copy of the BB0113 Contract is attached as Exhibit A. A true but unsigned copy of Contract BB0114 is attached as Exhibit B. Plans, Specifications and Special Provisions of these Contracts are not attached because they are voluminous and bulky but they will be made available promptly upon request.

5. James substantially completed Job BB0113 on April 21, 2018. James substantially completed Job BB0114 on March 20, 2018. James has fully performed an initial ARDOT punch list except the work demanded by ARDOT to allegedly correct bridge deck concrete cracks and concrete spalling as described below.

6. During its performance of the construction work on both Jobs James determined it would be more efficient to pour bridge deck concrete in one continuous pour for each phase of the Jobs. James then sought ARDOT permission to perform these concrete pours continuously rather than as per plan sequencing. ARDOT approved James'

requests for continuous concrete pours on July 11, 2016 before any bridge deck concrete was poured.

7. James successfully completed each continuous bridge deck concrete pour in compliance with ARDOT Standard Specifications, Special Provisions and ARDOT instructions and requirements. ARDOT has not asserted James failed to perform its concrete pours in an unworkmanlike manner or in violation of any ARDOT requirement.

8. Long after completion of the pours described above ARDOT notified James on March 12, 2018 that there was unacceptable concrete cracking in the bridge decking concrete on Job BB0114. Cracking was subsequently claimed by ARDOT to be unacceptable in the concrete decking of Job BB0113. ARDOT erroneously claimed the concrete cracking resulted from the continuous concrete deck pours.

9. ARDOT subsequently made demand upon James to repair the concrete deck cracking on both Jobs at James' cost. James protested these demands on the grounds that the work had been done in strict compliance with ARDOT requirements, and core tests of the concrete did not indicate to James that the concrete itself was defective or failed to comply with ARDOT specifications. Further, the concrete cracking did not result from the continuous pours as approved by ARDOT. Finally, the majority of the concrete cracks are cosmetic in nature.

10. James presented its protest to the Resident Engineer (RE) for both projects as required by ARDOT specifications. Upon the RE's denial of this protest James appealed to the Chief Engineer for ARDOT as authorized by the specifications. The Chief Engineer denied the appeal on November 1, 2018. Attached as Exhibit C is a true copy of his

decision denying the appeal. Per James' request the Chief Engineer extended the time to appeal to the Claims Commission for an additional 90 days on April 25, 2019.

A copy of this extension letter is attached as Exhibit D.

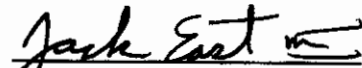
11. James has agreed to perform the concrete repairs in accordance with ARDOT demands and requirements under protest. Although James has begun such repairs it has not completed the repairs. Consequently, James is unable to state its damages in a sum certain at this time.

12. James asserts ARDOT's demand that James correct the alleged excessive bridge deck cracking was unreasonable, not in accordance with ARDOT specifications or the two Contracts and results in an allowable claim under ARDOT Standard Specifications.

13. James files this Complaint with the Claims Commission at this time to prevent the expiration of the time for an appeal from the Chief Engineer's decision, as extended.

14. James reserves the right to amend this Complaint as provided by law and applicable Rules.

**WHEREFORE**, James Construction Group, LLC prays the Claims Commission allow and award its claim consisting of the cost to repair the bridge deck cracking as determined by the Commission and evidence and for all other appropriate relief.



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**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**JAMES CONSTRUCTION GROUP, LLC**

**CLAIMANT**

**V.**

**CLAIM NO. 200115**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION and ARKANSAS  
STATE HIGHWAY COMMISSION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of James Construction Group, LLC (the “Claimant”) against the Arkansas Department of Transportation and the Arkansas State Highway Commission (collectively referred to herein as the “Respondent” or “ArDOT”). At the hearing held September 13, 2021, Claimant was represented by Jack East. Trella A. Sparks appeared on behalf of Respondent.

**Procedural History and Witness Testimony**

1. Claimant filed this claim against Respondent on July 29, 2019, seeking “over \$500,000” in damages. In April 2015, the parties entered into construction contracts (collectively referred herein as the “Contracts”) regarding two bridge repair and widening jobs on I-40 projects: Job No. BB0113 (the “Shell Lake Project”) and Job No. BB0114 (the “Blackfish Lake Project”). The Shell Lake Project and Blackfish Lake Project are collectively referred to herein as the “Projects.” Claimant alleged that, after substantial completion of the Projects, Respondent demanded that Claimant “perform additional work to address bridge deck concrete cracking on all four bridges” without identifying any contractual specification that Claimant’s work had violated.<sup>1</sup> Claimant seeks its costs in remediating the concrete “because concrete cracking should be expected

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<sup>1</sup> Claimant’s PreHearing Brief at p. 1.

to a certain extent – especially on these [j]obs due to the heavy truck traffic on the bridges during construction as required by the two Contracts.”<sup>2</sup>

2. Respondent filed an Answer denying liability.

3. On May 6, 2021, Claimant filed its first amended complaint to “aver completion of the work demanded by ARDOT” and to specify the total amount of alleged damages.

4. Respondent filed an Answer denying liability.

5. On July 27, 2021, Claimant filed its second amended complaint to reduce the total alleged damages to \$375,882.66.

6. Respondent filed an Answer denying liability.

7. At the beginning of the hearing, Claimant’s Exhibit Nos. 1–14 were admitted without objection. Respondent’s Exhibit Nos. 1–21 and 23 were admitted without objection. Claimant objected to Respondent’s Exhibit No. 22. The Claims Commission finds that Claimant’s objection is proper for hearsay and timeliness reasons, although Respondent was permitted to proffer Exhibit No. 22 at the hearing for purposes of any potential appeal.

8. Also at the beginning of the hearing, Claimant offered the deposition of Charles Munn as part of its case. Respondent did not object to the admission of Munn’s deposition transcript.

9. Elvis Richmond, Dale Willis, Tim Cost, and Ryan Blankenship were sworn in by the Claims Commission.

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<sup>2</sup> *Id.* at p. 1–2.

### Testimony of Dale Willis

10. Claimant called Dale Willis to testify.

11. Willis lives in Bossier City, Louisiana. He has a bachelor's degree in construction engineering from Louisiana Tech. He is a project manager for Claimant and became the project manager for the Shell Lake Project and Blackfish Lake Project.

12. Willis has previously done continuous concrete pours and sequenced concrete pours. The advantage of a continuous pour is that it is a lot faster and a lot cheaper. The Projects were bid as continuous pours. A sequenced, segmented pour requires a lot more forming of the joints and takes a lot longer.

13. The site superintendent for these jobs was William Nichol, who has since passed away. The original project manager for the Projects was Mitchell Parris, who now works for a company in Kansas City, Missouri. Willis reviewed the bids before they were submitted. The bids did not include any amount for bridge deck crack repairs. Claimant also bid the time of performance.

14. The Projects were twin bridge projects spanning two oxbow-type lakes: Shell Lake and Blackfish Lake. The scope of the Projects was to replace the twin bridges with one four-lane bridge with a median. These bridges are on I-40 between Forrest City and West Memphis. Willis was on site on a regular basis. There is a huge amount of truck traffic on this stretch. For the new construction, the middle section of the bridge (the median) had to be poured first to move traffic, then the outside lanes were poured. This meant that Claimant was pouring fresh concrete five feet away from heavy truck traffic.

15. When Claimant ordered concrete, there were quality control technicians at the concrete plant, and Claimant hired Burns Cooley Dennis, an independent testing lab in Mississippi,



to provide quality control on the job site. Respondent accepted Claimant's use of Burns Cooley Dennis. Munn was employed by Burns Cooley Dennis. Respondent also had people onsite testing the concrete.

16. Claimant's Exhibit No. 2 is a copy of the relevant specifications from the Standard Specifications for Highway Construction (the "Standard Specifications"), including Section 802, which has rigorous standards for concrete.

17. Willis stated that the concrete was tested at the end of the pump while it was being poured. He stated that every truck was tested. Claimant's Exhibit No. 11 is part of Munn's report and shows that each truck was tested for air content and "slump." Respondent never advised during the pours that the concrete was out of compliance.

18. Willis never heard anyone from Respondent say that a continuous pour contributes to bridge deck cracking.

19. Claimant's Exhibit No. 6 includes two June 11, 2016, letters from Claimant to Ryan Blankenship, Respondent's resident engineer for the Projects. The letters requested approval to do continuous pour on each Project.

20. Claimant's Exhibit No. 7 includes two July 11, 2016, letters from Blankenship to Claimant approving the continuous pour for each of the Projects. In each of the letters, Respondent "strongly advise[d]" against a continuous pour and warned that "excessive cracking . . . may result in repairs or replacement of the deck at no cost to" Respondent.

21. The concrete did crack in both Projects, but it was not because of the continuous pours.

22. Claimant's Exhibit No. 5 includes Claimant's request to use a lithium cure on the concrete and the resulting change order approving this request. A lithium cure is not unusual, and

Willis used it previously. The Standard Specifications listed a wet cure or boiled linseed oil. The curing method did not cause the cracking, and Willis did not hear anyone at ArDOT say otherwise.

23. Prior to substantial completion, Respondent started demanding that the cracking be repaired. Claimant's Exhibit No. 8 includes Blankenship's March 12, 2018, letters to Claimant regarding both Projects stating that there were multiple cracks in the bridge decks and requesting that Claimant submit repair plans. Claimant's Exhibit No. 8 also includes Respondent's notices of substantial completion for each of the Projects and punch lists of repairs. The Blackfish Lake Project was substantially complete on March 20, 2018, and the Shell Lake Project was substantially complete on April 21, 2018.

24. Willis stated that Respondent wanted every crack sealed and a polymer overlay applied on the eastbound lane of the Shell Lake Bridge, which was 650 feet long and 36 feet wide. Claimant's Exhibit No. 10 includes Blankenship's March 21, 2019, correspondence to Willis stating that there were only isolated areas of excessive cracking and that the "majority of the cracking . . . is not 'excessive,' but still needs to be sealed to preserve the life of the bridge deck." Willis stated that there were two small areas of spalled concrete, and Claimant removed and replaced those at no cost to Respondent.

25. Claimant then got Tim Cost involved.

26. Willis stated that the cracking of the concrete was typical. Concrete cracks in sequenced pours as well as in continuous pours. Nothing in the Standard Specifications required Claimant to remediate cracking, other than the spalled areas, which Claimant needed to fix.

27. Willis stated that Claimant saved 120 working days on each of the Projects by doing a continuous pour.

28. Claimant's Exhibit No. 13 is a breakdown of Claimant's damages, including labor, materials, equipment, subcontractors, and bond/insurance/taxes. For labor, this exhibit shows how much each employee was actually paid. For materials, Claimant's counsel noted that the \$5,000 charge for "Claims Commission appearance fee" can be removed. For equipment, Claimant needed light towers because most of the work was performed at night. For subcontractors, Willis stated that PBX did the polymer overlay, Contractors Specialty did the striping, Arkansas Sign and Barricade did the signs, American Engineering did the forensic testing, VT Cost Consulting did the report to figure out what caused the cracking and Cost provided expert testimony, and Burns Cooley Dennis is the testing lab that Claimant used on the Projects. Willis clarified that the total amount of alleged damages was now \$370,882.66.

29. The polymer overlay done by PBX included the spalled areas because you cannot overlay everything but a five-foot square.

30. On cross-examination, Willis stated that the American Engineering, VT Cost Consulting, and Burns Cooley Dennis were utilized to figure out what caused cracks and whether Claimant was responsible for the cracks. Willis stated that Claimant could have just had the deck sealed without figuring out the cause but did not want to do so without knowing why the concrete had cracked. VT Cost Consulting was a subcontractor on the Projects. Burns Cooley Dennis obtained the cores sent to American Engineering. Willis agreed that there is an issue with the cost calculation for Burns Cooley Dennis in its damage summary.<sup>3</sup> Willis knew that Section 108.01 of the Standard Specifications addressed subcontractors, and Claimant did not submit the subcontract for American Engineering or VT Cost Consulting to Respondent for acknowledgement. Claimant did submit the subcontracts for PBX and Burns Cooley Dennis. Willis did not agree that the ten

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<sup>3</sup> Claimant's Exhibit No. 13 at p. 3.

percent allowable on the subcontractors, representing Claimant's cut of the subcontract work, should not apply for American Engineering and VT Cost Consulting.<sup>4</sup> Willis stated that Curtis Ardoin's per diem, as well as the lodging costs and the employee food per diems, were materials and that the fifteen percent markup was proper.<sup>5</sup> Willis agreed that the "Claims Commission Appearance Fee" listed in the materials section should be removed, as well as the fifteen percent markup for that item and the nine percent in taxes. Willis was not aware of the traffic volume, although Respondent stated that Claimant would have had this information prior to bidding.<sup>6</sup> Regarding the July 11, 2016, letters from Blankenship approving the continuous pours, Claimant complied with the requirement to provide a satisfactory product.<sup>7</sup> Claimant wanted to utilize a lithium cure because it is a membrane cure and easier to do than a wet cure. Willis agreed that spalling is unsatisfactory, and there are no costs included for repairing the spalled areas. Willis did not know why the cracks occurred, and in tests performed afterwards, some of the concrete contained up to fifteen percent air, which was outside of the Standard Specifications. Claimant is not alleging a design deficiency. Willis assumed that it would be allowed to do a continuous pour when Claimant was bidding the Projects. There are usually some cracks in the concrete, although there were more cracks than usual in these Projects. Regarding Munn's testing, there was one test that was borderline out of range.<sup>8</sup> While the polymer overlay was applied to the spalled areas, that would be a very small amount of labor.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1, 3.

<sup>6</sup> Respondent's Exhibit No. 10.

<sup>7</sup> Claimant's Exhibit No. 7.

<sup>8</sup> Claimant's Exhibit No. 11 at p. 18.

31. On redirect, Willis stated that Claimant reduced its original damage estimate to remove the cost of repairing the spalled areas and expected attorney's fees. He also stated that during the original part of the job, the per diems and lodging costs would have been a bid item.

32. Upon a question from a commissioner, Willis stated that if Respondent had not approved the continuous pour, Claimant would have only received its bid amount.

33. Upon a question from a commissioner, Willis stated that he does not know how long it would be before repairs had to be done for cracking. Willis did not know whether cracking would affect the life expectancy of the bridge. Willis noted that it would have cost a lot more to do a sequenced pour.

34. Upon a question from a commissioner, Respondent's counsel stated that she does not have a number for the amount of damages left after removing the items Respondent's counsel asked Willis about on cross-examination.

#### Testimony of Tim Cost

35. Claimant called Tim Cost to testify.

36. Cost testified that he lives in Mesquite, Nevada. He has a degree in civil engineering from Mississippi State and did his graduate studies there as well. He is a concrete consultant. His curriculum vitae is included in Claimant's Exhibit No. 12. He worked for the US Army Corps of Engineers from 1976–1986 doing reinforced concrete studies. From 1986–1996, Cost was a field engineer for the Portland Cement Association and became director over the Mississippi Concrete Industries Association. From 1996–2017, he was a senior technical service engineer for LafargeHolcim Southern Region. Cost has dealt with disputes over concrete for 31 years and has testified regarding concrete cracking.

37. Claimant's counsel offered Cost as an expert witness as to the causes of concrete cracking. Respondent did not object.

38. In 2019, Cost was hired by Claimant to investigate and evaluate causes of cracking on the bridge deck. Cost acquired information from Claimant and others, including documents for both Projects, plans and specifications, and correspondence. He went to the job site to talk with the project manager in January 2019 and to inspect the bridge decks. He looked at the QC data throughout the Projects, the weather conditions on placement days to evaluate the evaporative conditions, construction schedules, curing info, and testing protocols.

39. The cracks in the bridge deck fell into two categories: typical and atypical. The great majority of the cracks were typical for bridge decks of this type. There was some spalling that was not typical. The spalled areas were small in relation to the bridge deck. There were minor errors in the expert report based on incorrect information supplied to Cost, but none of those minor errors affected Cost's conclusions.

40. As to these Projects, the concrete cracking was the result of a variety of influences. There was a heavy volume of truck traffic adjacent to construction that produced movements in the fresh concrete and caused cracking. Through petrographic testing of core samples, there were also some air voids that were unexpected both in volume and in the fact that the air bubbles clustered together. The air content in some areas was in excess of the specified limits. The spalled areas were caused by a high water content in the concrete in those areas. The effectiveness of the cure used varied due to environmental influences, including a lot of wind that caused extreme evaporation.

41. Cost stated that, other than the small spalled areas, Claimant did nothing wrong. There are benefits to using curing compounds as opposed to wet curing, and lithium cures are very

popular. Functionally, the results using curing compounds can be equivalent to wet curing. Less can go wrong with curing compounds than with wet cures. Cost did not see the curing compound as a factor in the concrete cracking.

42. The great majority of the cracks appeared to be random and expected cracking in a bridge deck. The exception would be the spalled areas.

43. Cost stated that the continuous pour did not have any effect on the concrete cracking.

44. Upon a question from a commissioner as to why the continuous pour did not affect the concrete cracking, Cost stated that the cracks observed here do not appear to be structural cracks. Instead, they are normal cracks associated with concrete shrinking. In Respondent's crack mapping reports, the formation and geometry of the cracks appear to be random and not concentrated in areas of negative moments (vents).

45. Cost stated that the placement of concrete is a complex process, and the Standard Specifications may not encompass every possibility. Arkansas's specifications are prescriptive in nature and specify how the work must be done. Moving toward a result-based specification may be helpful.

46. Cost noted that Arkansas, like all state departments of transportation, recognizes that bridge deck cracking is a significant problem that is not widely understood.<sup>9</sup> Current methods do not address the cracking problems.

47. Petrographic testing was performed on the concrete cores from the bridge deck. Petrographic testing can provide information about a bunch of concrete problems. The suggestion that the concrete had excessive air content necessitated the corings to figure out if that was the

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<sup>9</sup> Claimant's Exhibit No. 17 at Ex. 3 is a request for proposal by Respondent titled "Investigating Concrete Deck Cracking in Continuous Steel Bridges."

cause of the cracking. When the tests identified excessive air content, more information was needed to figure out why the air content tests during the pour did not reflect these issues.

48. Cost stated that nothing would have been different if Claimant had done a sequenced pour instead of a continuous pour.

49. Cost charged Claimant \$19,714.19, so the amount in Claimant's Exhibit No. 13 should be adjusted accordingly, as well as the ten percent markup.

50. On cross-examination, Cost agreed that traffic numbers can be determined and stated that this information factored into his report. The air content was tested while the concrete was fresh, as required by Respondent, and was fine. The question was why the air content increased. Concrete experiences lower air as a result of pumping, but in some cases, it is possible for much of the air that might have been in the concrete but for the pumping process to re-form once placed and finished. It is never the best practice to have to re-temper concrete on the job site. It is better for all additives to be introduced in concrete plant. However, for rural areas like these job sites, re-tempering is permitted by Respondent, and that can have a significant impact on the development of air content. Re-tempering means adjusting the mix onsite to achieve specified properties. A high range water reducer (HRWR) can be added onsite, which occurred on these Projects. The choice of HRWR can increase air content. Cracking is present in virtually all bridges. ArDOT put out a request for proposal for a study about bridge deck cracking. Cost did not know whether study has been completed or whether there are any results. He has only seen the original proposal. The spalling indicates that something went wrong related to water content. It is possible that it was manipulated in the re-tempering process. Cost was not sure whether that was a cause.

51. On redirect, Cost stated that the polymer overlay was excessive once the spalling had been repaired. Other than the spalled areas, the significance of cracks varies depending on the



climate. Sealing the cracks seemed to be a reasonable mitigation for performance issues. Cost has testified in similar situations previously, but his prior testimony has been for the concrete supplier, not the owner.

#### Testimony of Rick Ellis

52. Respondent called Rick Ellis to testify.

53. Ellis has been with Respondent for over 29 years. He works in the bridge division. He is the state bridge engineer and is familiar with the Projects. He provides oversight for projects.

54. Jacobs Engineering designed the bridges for these Projects. The bridges were designed according to the Standard Specifications. Nothing in the design caused the cracking.

55. Respondent's Exhibit No. 3 includes two pages from the plans, which show the slab pouring sequence in the top right. An incremental pour is preferred because it gives the best chance for good results and limits cracking. Concrete is not strong under tension and will crack. In a continuous pour, there is more opportunity for concrete to be in tension.

56. Ellis testified that Claimant did not do everything according to the plans and Standard Specifications, including the continuous pours and the curing methods. Ellis stated that the method in the Standard Specifications, the wet cure, is best. A wet cure is better than a lithium cure because lithium cure is like a magic potion because it is supposed to allow the concrete to cure and to seal the deck.

57. Respondent's Exhibit No. 7 is the CTL report for the two different concrete cores. The cores showed 15.5 percent and 17.8 percent air content, whereas the acceptable range is four to eight percent. High air content can cause low concrete strength. The CTL report also said that the quality of the concrete is "fairly poor."<sup>10</sup> The mix design of the concrete can also affect

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<sup>10</sup> Respondent's Exhibit No. 7 at p. 2.

cracking, and that is done by the contractor pursuant to Section 802.05 of the Standard Specifications.<sup>11</sup>

58. The useful life of a bridge is a minimum of 75 years. Cracks affect that life expectancy by allowing moisture into the bridge deck. Moisture will corrode the reinforcing steel and cause more cracking and spalling. If Respondent does not require cracks to be sealed, the cracks will age the bridge. Neither the sealing nor the polymer overlay was cosmetic.

59. Respondent put strategic joints in the bridge deck design to cause the bridge to crack in specific spots, which could then be filled with a sealer.

60. On cross-examination, Ellis stated that he does not know where the CTL cores were taken. He stated that the cores could have been from the spalled areas. Ellis does not know the extent of the spalled areas. He examined the crack mapping and agreed that there was no consistency to the cracks according to the mapping. The cracks were random. Ellis agreed that the concrete was not rejected because it passed all of the tests. The continuous pour method causes cracking because the concrete could have been in tension or started to set up. By not doing an incremental pour, Claimant took a chance at not getting a good product. There is no Standard Specification requiring a contractor to put polymer overlay on cracks. A lithium cure supposedly seals the concrete. Spalling is different than cracking.

61. On redirect, Ellis stated that high air content is not the only thing that can cause spalling. Spalling can also be caused by the aggregate bond or weak surface concrete. The heavy truck traffic on the bridge did not contribute to the cracking. Ellis was not sure if the lithium cure was approved by Respondent.

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<sup>11</sup> Respondent's Exhibit No. 5.

62. Upon a question from a commissioner, Ellis stated that a sequenced pour helps to limit cracking.

Testimony of Elvis Richmond

63. Respondent called Elvis Richmond to testify.

64. Richmond has been with Respondent for 32 years. He was familiar with the Projects as a district material supervisor.

65. Respondent's Exhibit No. 8 shows the tests that Richmond would run onsite, including slump, "entrained air," and cylinder weight. Slump is the workability of the concrete. The acceptable range is 1–4. If the slump number is under one, the concrete is too loose or wet. If the number is over four, the concrete is too stiff or hard.

66. Respondent's Exhibit No. 6 shows the air content range percentage. Richmond did not test the air or slump on that report.

67. Darren Henderson did the slump and air tests, but Richmond broke the cylinders, so Richmond's name is on the report.<sup>12</sup> Richmond tested the compressive strength. Respondent got the concrete from the pump truck into a wheelbarrow, then they did the tests. After 28 days, the compressive strength should be a minimum of 4000. Respondent's Exhibit No. 8 shows compressive strength way over 4000.

68. Richmond has seen the CTL reports and stated that those reports are looking at the finished concrete.

69. On cross-examination, Richmond did not personally test the concrete. He watched the contractor do the tests. The concrete passed all tests. Richmond cut the cores and gave them to

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<sup>12</sup> Respondent's Exhibit No. 8 beginning at p. 2. The bottom of these reports shows the testing of the concrete.

his boss. Cores can be taken from a spalled area, but it might cause more damage. Richmond took cores near cracks and lines but does not recall being directly in a spalled area.

Testimony of Ryan Blankenship

70. Respondent called Ryan Blankenship to testify.

71. Blankenship is a resident engineer for Respondent. He has been with Respondent for thirteen years. He was involved in these Projects as the resident engineer.

72. Respondent's Exhibit No. 9 is the pre-bid packet given to potential bidders. Potential bidders were made aware of the location of the project and that the Standard Specifications would apply.

73. Looking at Respondent's Exhibit No. 1, Blankenship stated that Respondent did not pay for per diems or lodging and food costs related to extra work.<sup>13</sup> Section 109 of the Standard Specifications deals with extra work on force accounts, but the parties did not agree to the force account method on the front end.

74. As to the labor costs listed in Respondent's Exhibit No. 1, Blankenship did not find these costs to be accurate. After reviewing the daily work records and other notes, Blankenship found the hours to be quite a bit less than what was shown. Respondent's Exhibit No. 11 compares the reported hours from Respondent and from Claimant. There is a difference of approximately 480 hours.

75. As to the equipment costs listed in Respondent's Exhibit No. 1, the mini excavator should not be included because deck sealing is all hand work. Deck sealing involves cleaning the joints, applying a bead of sealant by hand, using a small rake to spread it, then spreading sand by

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<sup>13</sup> Respondent's Exhibit No. 1 and Claimant's Exhibit No. 13 are the same document.

hand over it. The same issue applies to the tilt trailer and the forklift. These pieces of equipment may have been for punchlist-related work.

76. Blankenship discovered cracking on the bridge deck in the last stage of the Shell Lake Project bridge pour in March 2018 and had discussions with the project supervisor at that time.

77. Respondent's Exhibit No. 12 are the July 11, 2016, letters from Blankenship to Claimant approving the continuous deck pours for the Projects. Blankenship has previously been involved with continuous pours that were small enough to easily completed within an eight-hour day. Respondent prefers a sequenced pour to a continuous pour.

78. Respondent's Exhibit No. 14 are daily work records including notes about the dangers of a continuous pour.

79. Respondent's Exhibit No. 5 is Section 802.05 of the Standard Specifications, which provides that Claimant is solely responsible for deciding on the mix design of the concrete and for implementing that mix design.

80. Respondent's Exhibit No. 15 shows pictures of the bridge where cracks have been sealed. The cracks were not affected by truck traffic.

81. Respondent's Exhibit No. 16 shows the spalled areas. Measurements of the spalled areas were taken by the inspector. These pictures were likely taken by the inspector. There were eight areas of spalling.

82. Respondent's Exhibit No. 17 is a May 18, 2018, letter from Blankenship to Claimant stated that the final product is not acceptable.

83. Respondent's Exhibit No. 18 is Section 105.04 of the Standard Specifications, which provides that unacceptable work must be replaced at no cost to Respondent.

84. Respondent's Exhibit No. 19 is the crack mapping report.

85. Respondent's Exhibit Nos. 20–21 are daily work records showing that the crack sealing for both Projects occurred in July 2019 and that the polymer overlay and striping occurred in August 2019.

86. Blankenship stated that Claimant did not allege a differing site condition.

87. Respondent's Exhibit No. 23 are the Contracts. The contract amount for the Shell Lake Project was over 33 million. The contract amount for the Blackfish Lake Project was over 26 million.

88. On cross-examination, Blankenship stated that the bullet points in Claimant's Exhibit No. 7/Respondent's Exhibit No. 12 were satisfied except for an equipment breakdown. Blankenship did not consider the cracking to be excessive except in the spalled areas. As for Respondent's Exhibit No. 15, the cracks are the transverse dark line. There were 42–43 square yards of spalled areas, out of 2924 square yards in stage 2 of the bridge deck. Looking at 105.18(a) of the Standard Specifications, Blankenship agreed that labor, materials, equipment, subcontractors, and bond/insurance/taxes are direct costs but stated that per diems, food costs, and lodging costs are overhead. As to Respondent's Exhibit No. 11, there is a discrepancy on August 12, 2019, between the daily work record and Respondent's summary because Respondent shows PBX onsite but does not have any notes about Claimant's labor force doing any work. On August 19, 2019, Claimant had laborers on-site, but nothing is listed on Respondent's summary. Blankenship conceded the error in his summary. Blankenship concluded that the concrete was defective (or the methods used to place and cure the concrete) because it cracked.

89. Upon a question from a commissioner as to who makes the determination under Section 105.04 of the Standard Specifications regarding whether a product is inferior or

unsatisfactory, Blankenship said that the engineer does. The resident engineer takes the issue to the chief engineer, and those two individuals determine whether a product is in reasonably close conformity.

90. Upon a question from a commissioner as to whether the engineer uses any objective criteria when making this determination, Blankenship stated that engineering judgment determines whether a product is satisfactory.

91. Upon a question from a commissioner as to whether this was the first contract awarded by Respondent to Claimant, Blankenship said no. However, the Projects were the only projects with Claimant where Blankenship has been involved.

92. Upon a question from a commissioner, Blankenship stated that the continuous pour was approved, even though this was one of largest continuous pours that he had seen. The size of the pour was why the level of caution was included in his letters to Claimant.

#### Rebuttal Testimony of Tim Cost

93. Claimant called Tim Cost to testify as a rebuttal witness.

94. Cost listened to Ellis testify about the possible causes of concrete cracking and did not hear anything that changed his opinion.

#### Deposition Testimony of Charles Munn

95. Munn was the senior bridge inspector for Burns Cooley Dennis.<sup>14</sup> He has certifications in concrete testing.<sup>15</sup> He did quality control for Claimant in concrete testing and earthwork testing and had a lab in Forrest City to store and test concrete cylinders.<sup>16</sup> Munn tested

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<sup>14</sup> See Transcript of Charles Munn Deposition at pp. 7–8.

<sup>15</sup> See *id.* at p. 9.

<sup>16</sup> See *id.* at p. 11.

concrete on-site for slump, air, and temperature.<sup>17</sup> To test air, he uses an air pressure meter.<sup>18</sup> The acceptable range for air content is four to eight percent.<sup>19</sup>

96. Munn answered questions about the air, temperature, and slump testing of the concrete on the Blackfish Lake Project and said that all the concrete that was used on the project met the acceptable levels for air, temperature, and slump.<sup>20</sup> Munn noted that an “adjustment” may have been made to one truck by Razorback Concrete to address air content:<sup>21</sup>

A. I can recall, I believe, one . . . test . . . that we were bumping an 8 percent, which an adjustment was made, and that’s the only time that we got on . . . the borderline there. But the producer [Razorback Concrete] took the . . . right action from . . . us communicating with them . . . .

...

Q. Okay. And when you said action had to be taken, what was done?

A. Well, what we do is notify . . . the plant, communicate with the plant, and then they’ll make a . . . tweak, so to say, or make an adjustment or correction at the . . . plant. It’s . . . more the action that’s taken is . . . more of a communication action with speaking with the plant and the dispatcher and speaking with the plant directly

....

...

Q. And then you said that you would contact Razorback to . . . let them know to start making appropriate changes. What about the truck that’s already there?

A. If a truck is out like that . . . normally, the DOT is there, also. So . . . you would communicate also not . . . only with the producer. I mean, that would be my job, to communicate with the . . . concrete plant. But the Department of Transportation is also there on site and . . . an engineer or whoever is representative as being an engineer. They can make a decision on whether . . . [they] want to reject a truck or use the truck but notify the plant. Most of the proper procedure involves notifying the plant and . . . so an adjustment can be made, if . . . need be. . . .

Munn testified that adjustments for air content can be made on-site unless a truck is “totally out of range or out of tolerance.”<sup>22</sup> On the Blackfish Lake Project, high water reducer was added to the mix to provide additional workability to the concrete without having to add water and a retarder

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<sup>17</sup> *See id.*

<sup>18</sup> *See id.* at p. 11–12.

<sup>19</sup> *See* Transcript of Charles Munn Deposition at p. 14.

<sup>20</sup> *See id.* at p. 14–18.

<sup>21</sup> *See id.* at p. 17–19.

<sup>22</sup> *See id.* at p. 19.



was added to delay the setting of the concrete.<sup>23</sup> Slump tells you the workability of the concrete.<sup>24</sup> Air content can change when the concrete is pumped, which is why they normally sample the truck and then check immediately after the concrete is pumped.<sup>25</sup>

97. Arkansas Concrete provided the concrete for the bridge deck pours on the Shell Lake Project.<sup>26</sup> Munn said that all of the concrete used on the bridge deck met the acceptable levels for air, temperature, and slump.<sup>27</sup> Respondent's software program randomly picked where the samples will be taken once poured.<sup>28</sup> Munn took notes that were then put into a report "designed pretty much by" Blankenship to give him the information that he needed.<sup>29</sup>

98. Munn also testified about the relationship between himself, Claimant, and Respondent:<sup>30</sup>

. . . I mean . . . I may show them the report, or . . . if they wanted a copy of it, I'd certainly give it to them. . . . [W]e work very close with . . . these two projects, the relationship with ArDOT and myself was – this was a project that had a very good relationship pretty much all the way around. . . . ArDOT was not viewed as the opposition, or they were not viewed as the enemy or anything. We worked – we all had a common goal, and that was . . . everybody on the project, James crew, all of us, was to . . . deliver that project as soon as we could, and a quality project. . . . [As to the] State and myself, we . . . in no way were trying to oppose each other. We were trying to be a team.

99. Munn testified about the quality of the concrete provided by Razorback Concrete and Arkansas Concrete:<sup>31</sup>

I'll offer this, that it was quality concrete . . . both producers were excellent producers. And . . . when you're pouring that much concrete, you have something

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<sup>23</sup> *See id.* at p. 20.

<sup>24</sup> *See* Transcript of Charles Munn Deposition at p. 22.

<sup>25</sup> *See id.* at p. 23.

<sup>26</sup> *See id.* at p. 25.

<sup>27</sup> *See id.* at p. 26.

<sup>28</sup> *See id.* at p. 26–27.

<sup>29</sup> *See* Transcript of Charles Munn Deposition at p. 29–31.

<sup>30</sup> *See id.* at p. 32–33.

<sup>31</sup> *See id.* at p. 38–39.

you may let them know they need to tweak, but . . . there was never a product out there that was not a quality product.

100. Munn also offered his opinion as to why the cracking occurred on the bridge decks:<sup>32</sup>

. . . I-40 is very unusual, especially . . . between Little Rock and . . . West Memphis. I don't think there's probably anywhere . . . in the United States where there's more freight moved in the specific area as it is there. And I don't know that anybody could ever originally foreseen the amount of traffic and the . . . loads and the freight that was going to be – I mean, when those bridges were originally built, I don't think anybody could ever have had the vision to see that . . . But . . . when you have the construction, the widening . . . you're not realigning the roads. You're working . . . with the parameters of what's already there. And when that many . . . trucks . . . can be on a bridge at one time, there is movement. There's movement, and . . . anything that's attached to that is also – in my opinion, it's going to experience that movement also. And if anybody doesn't know what I'm talking about with movement, you can go out there, pull over on that shoulder on that bridge, and get out of . . . your vehicle and stand there for a few minutes, and you'll know what I'm talking about.

#### Closing Arguments

101. Claimant argued that nothing raised at the hearing changed the information in Claimant's prehearing brief. There is a CTL report from late in the project showing air in the concrete, but no one knows why the air is there. Claimant argued that it was from heavy truck traffic, not from anything Claimant did. Respondent's resident engineer said that the cracking was not excessive.

102. Upon a question from a commissioner as to the burden of proof, Claimant stated that the burden is on Respondent. Respondent disagreed that it has the burden of proof and argued that because Claimant alleged that Respondent breached the Contracts, Claimant has the burden of proving that a breach occurred. Claimant countered that although Respondent says it received

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<sup>32</sup> See *id.* at 37–38.

an inferior product, Claimant complied with every specification, and there was no proof presented to the contrary.

103. Respondent argued that Claimant is bringing a claim for compensation and has the burden of proof to show that Claimant is entitled to compensation. It is not Respondent's practice to pay extra to fill cracks. Respondent did not pay 60 million dollars for two cracked bridge decks. The buck stopped with the contractor, and Respondent should not have to pay more.

#### Revised Summary of Damages

104. Claimant requested that it be allowed two days to submit a revised summary of damages. The Claims Commission granted Claimant's request and directed Respondent to submit a list of the damages that it believes should not be awarded.

105. On September 16, 2021, Claimant submitted a revised summary of damages totaling \$338,948.15.

#### Submission of Additional Specification

106. Claimant requested that it be allowed to submit Section 105.18 of the Standard Specifications following the hearing as Claimant's Exhibit No. 18. Respondent did not object, and the Claims Commission granted Claimant's request. Section 105.18 addresses claims for adjustment and disputes.

#### **Findings of Fact and Conclusions of Law**

Based upon a review of the pleadings and the law of the State of Arkansas, the Claims Commission unanimously finds as follows:

107. The Claims Commission finds that it has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204.

108. The Claims Commission finds that all witnesses were credible.

109. The Claims Commission finds that the parties entered into the Contracts related to the Shell Lake Project and the Blackfish Lake Project.

110. The Claims Commission finds that Claimant's claim against Respondent is based upon an alleged breach of contract by Respondent. As such, Claimant has the burden of proving that (1) a contract existed between Claimant and Respondent; (2) the contract required action on the part of Respondent; (3) Claimant did what was required; and (4) Respondent did not do what was required.<sup>33</sup>

111. As to the first element, the Claims Commission finds that there is no dispute as to whether the Contracts existed between the parties.

112. As to the second element, the Claims Commission finds that the Contracts required action on the part of Respondent through payment of the contract and through the implied covenant of good faith and fair dealing:<sup>34</sup>

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. Moreover, a party has an implied obligation not to do anything that would prevent, hinder, or delay performance.

113. As to the third element, the Claims Commission finds that Claimant did what was required under the Contracts. As Willis testified, Claimant removed and replaced the two areas of spalled concrete at no cost to Respondent. Moreover, Blankenship stated in his March 21, 2019, letter to Claimant that, other than the isolated spalled areas, the cracking on the bridge deck was "not excessive."<sup>35</sup>

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<sup>33</sup> See Arkansas Model Jury Instructions at AMI 2401.

<sup>34</sup> *West Memphis Adolescent Residential, LLC v. J.T. Compton, et al.*, 2010 Ark. App. 450, \*5–6, 374 S.W.3d 922, 925 (citing Restatement (Second) of Contracts (1981) at § 205, *Cantrell-Waind Assoc., Inc. v. Guillaume Motorsports, Inc.*, 62 Ark. App. 66, 72, 968 S.W.2d 72, 75 (1998)).

<sup>35</sup> Claimant's Exhibit No. 10 at p. 1 (internal quotations omitted).

114. As to the fourth element, the Claims Commission finds that Respondent did not do what was required. Essentially, Respondent found that the cracking was “not excessive” but that Claimant should still do additional work (at no cost to Respondent) by adding the polymer overlay.<sup>36</sup> The Claims Commission finds that Claimant went above and beyond by offering to “[b]lowout the remaining cracks on both projects with an air compressor and seal them in the same manner that Manhattan Construction was allowed to do on the ARDOT Fishing Lake Structures and Approaches Project BB0112 in 2018” under the existing Contracts.<sup>37</sup> However, Respondent demanded the polymer overlay be applied and refused to pay Claimant for that additional work. The Claims Commission finds that this demand violates the implied covenant of good faith and fair dealing.

115. The Claims Commission finds that there is no evidence that the concrete was of poor quality. The Claims Commission finds Munn’s testimony especially significant that both he and Respondent’s representative were present on the job site testing the concrete and that Respondent had the right to reject a load of concrete.<sup>38</sup> Respondent’s witnesses, Ellis and Richmond, testified that the concrete passed all of the tests. Regarding the CTL report discussed by Ellis, the Claims Commission finds it significant that Ellis did not know whether the concrete cores were taken from the spalled areas.

116. The Claims Commission is unpersuaded that Claimant did anything wrong by utilizing a continuous pour or a curing compound. Both were approved by Respondent with the caveat that “excessive cracking, defects or other failures” would require repairs at no cost to Respondent, and Respondent confirmed following the pours that (other than the isolated spalled

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<sup>36</sup> *See id.*

<sup>37</sup> *See id.* at p. 22.

<sup>38</sup> *See* Transcript of Charles Munn Deposition at p. 17–19.

areas repaired by Claimant at no cost to Respondent) the cracking was “not excessive.”<sup>39</sup> Additionally, Cost testified that neither the continuous pour nor the curing compound had any effect on the concrete cracking. The Claims Commission finds it significant that Respondent put out a request for proposal regarding “Investigating Concrete Deck Cracking on Continuous Steel Bridges,” as evidence Respondent has encountered this issue previously and that it does not understand what is causing the cracking.<sup>40</sup> This request for proposal contradicts Blankenship’s conclusion that the concrete was defective (or the methods used to place and cure the concrete were defective) because it cracked.

117. Regarding Respondent’s argument that the buck stops with the contractor, the Claims Commission does not find this argument to be persuasive here because Respondent did not believe that the cracking was excessive (with the exception of the isolated spalled areas repaired by Claimant at no cost to Respondent). Respondent established the standard for a continuous pour, and Claimant’s work met that standard.<sup>41</sup> As such, the additional work required by Respondent on the non-excessive cracks warrants additional compensation to Claimant.

118. With regard to the damages claimed by Claimant, Claimant submitted a revised damage estimate following the hearing, alleging damages in the total amount of \$338,948.15. While Respondent does not concede that Claimant is entitled to any damages, at the Claims Commission’s request, Respondent submitted its own accounting stating that, at most, Claimant would be entitled to \$259,230.51.

119. As to the claimed labor damages, Blankenship stated that the hours reflected in Respondent’s records were significantly lower than that claimed by Claimant. However,

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<sup>39</sup> Claimant’s Exhibit Nos. 5–7, 10.

<sup>40</sup> Claimant’s Exhibit No. 17 at Ex. 3.

<sup>41</sup> Claimant’s Exhibit Nos. 7, 10.

Blankenship conceded that his summary was not completely accurate, as evidenced by the fact that his summary did not include any hours for August 19, 2019. Given the dispute between the parties as to the labor costs (Claimant: \$24,098.08; Respondent: \$11,625.81), the Claims Commission finds that the median of the parties' labor calculations (\$17,861.95) is the appropriate award, plus the twenty percent allowable markup for labor (\$3,572.39), for a total labor award of \$21,434.34.

120. As to the claimed material damages, the Claims Commission finds that Claimant is entitled to \$7,213.02 in damages listed in its revised summary for the sand (\$906.98), polymer overlay (\$4,971.04), and epoxy grout (\$1,335.00), plus the fifteen percent allowable markup for materials (\$1,081.95), for a total material award of \$8,294.97. The Claims Commission agrees with Respondent that an employee's per diems or lodging costs would not be compensable as materials and makes no award for those claimed damages. The Claims Commission also finds that there was no testimony that the "small tools" referenced in Claimant's damage summary had to be purchased specifically for the polymer overlay work and makes no award herein for those claimed damages. The Claims Commission declines to award Claimant's costs for VT Cost Consulting or American Engineering and Testing.<sup>42</sup>

121. As to the claimed equipment damages, the Claims Commission finds that Claimant is entitled to damages listed in its revised summary for the concrete planer (\$239.78), the light towers (\$606.73), and the pickup trucks (\$6,403.20), for a total of \$7,249.71. The Claims Commission finds Blankenship's testimony about why a mini excavator, tilt trailer, and forklift

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<sup>42</sup> These costs were originally listed in the "Subcontractor" section of Claimant's damage summary but in the revised damage summary, VT Cost Consulting and American Engineering and Testing were listed in the "Materials" section.

would not be needed for the polymer overlay to be persuasive and herein makes no award for those claimed damages.

122. As to the claimed subcontractor damages, the Claims Commission finds that Claimant is entitled to damages listed in its revised summary for PBX Corporation less the cost of overlaying the 0.014% of the bridge decks that were spalled<sup>43</sup> (\$160,998.02), for Contractors Specialty (\$6,623.55), and for Arkansas Sign and Barricade (\$37,703.13), plus the applicable ten percent allowable markup, for a total of \$225,857.17. The Claims Commission declines to make an award for the Burns Cooley Dennis expenses.

123. As to the claimed insurance/taxes damages, the Claims Commission finds that Claimant is entitled to \$5,485.40 representing 30.71%<sup>44</sup> of the base amount of awarded labor damages (\$17,861.95<sup>45</sup>), plus Claimant's \$1,750.00 bond, for a total of \$7,235.40.

#### Conclusion

124. The Claims Commission unanimously AWARDS Claimant \$270,071.60, representing \$21,434.34 in labor costs; \$8,294.97 in material costs; \$7,249.71 in equipment costs; \$225,857.17 in subcontractor costs; and \$7,235.40 in insurance/taxes/bond damages.

125. Pursuant to Ark. Code Ann. § 19-10-215(b), the Claims Commission refers this award to the General Assembly for review, approval, and, if approved, placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

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<sup>43</sup> Blankenship testified that out of the 2924 square yards of concrete in the bridge deck, there were 42-43 square yards of spalled areas, or 0.014% of the bridge deck.

<sup>44</sup> See Claimant's Exhibit No. 13, as well as the revised version submitted by Claimant after the hearing.

<sup>45</sup> See Paragraph 119, *infra*.

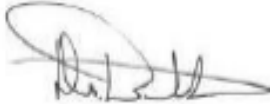


IT IS SO ORDERED.



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ARKANSAS STATE CLAIMS COMMISSION  
Courtney Baird



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ARKANSAS STATE CLAIMS COMMISSION  
Dexter Booth



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ARKANSAS STATE CLAIMS COMMISSION  
Paul Morris, Co-Chair

DATE: March 31, 2022

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**JAMES CONSTRUCTION GROUP, LLC**

**CLAIMANT**

**V.**

**CLAIM NO. 200115**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION and ARKANSAS  
STATE HIGHWAY COMMISSION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by James Construction Group, LLC (the “Claimant”) for attorney’s fees related to its claim against the Arkansas Department of Transportation and the Arkansas State Highway Commission (collectively referred to herein as the “Respondent” or “ArDOT”). At the hearing held May 12, 2021, Claimant was represented by Jack East. Trella A. Sparks appeared on behalf of Respondent.

At the outset of the hearing, the chair commissioner noted that the Claims Commission previously entered an order on March 31, 2022, awarding Claimant \$270,071.60 and that Claimant is now seeking \$24,120.00 in attorney’s fees.

Respondent argued that an award of attorney’s fees is discretionary and that the Claims Commission did not make a finding in its March 31, 2022, order that Respondent had acted in faith.

Upon a question from a commissioner, Respondent confirmed that, while it does not agree that attorney’s fees should be awarded, it does not take issue with the number of hours billed or Claimant’s counsel’s billable rate.

Ark. Code Ann. § 16-22-308 provides that the prevailing party in a breach of contract action may be allowed a “reasonable attorney’s fee.”

Considering the significant experience and ability of Claimant's counsel, the amount involved in this claim, the award in Claimant's favor, and the reasonableness of Claimant's counsel hourly rate and hours billed, the Claims Commission finds that Claimant's motion for attorney's fees should be GRANTED. *See Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).


As such, the Claims Commission unanimously AWARDS Claimant \$24,120.00 in attorney's fees and will refer this claim to the Arkansas General Assembly pursuant to Ark. Code Ann. § 19-10-215 for review, approval, and placement on an appropriations bill.

IT IS SO ORDERED.



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ARKANSAS STATE CLAIMS COMMISSION  
Courtney Baird



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ARKANSAS STATE CLAIMS COMMISSION  
Dexter Booth



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ARKANSAS STATE CLAIMS COMMISSION  
Paul Morris, Chair

DATE: May 25, 2022

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
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- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).