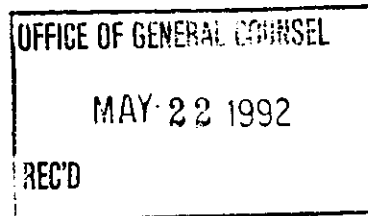


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JUDICIAL ARBITRATION & MEDIATION SERVICES, INC.

May 20, 1992



Mr. William S. Warren  
c/o Pope & Warren  
1600 Franklin Plaza  
111 Congress Ave.  
Austin, TX 78701

Mr. Peter S. Hanke  
Office of General Counsel  
The University of Texas System  
201 W. 7th Street  
Austin, TX 78701-2981

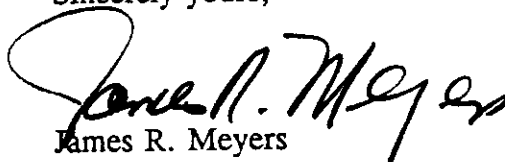
RE: Appeal of Olmos Abatement Inc.

Gentlemen:

I enclose my recommendation to the board of regents in the above matter. I cannot avoid saying that I feel the position of OAI, though sincerely asserted by Mr. Lake, is totally untenable. He may have misunderstood the scope of the contract because of his Lacks contract but had it not been for the Lacks contract there should have been no confusion in his mind about the scope of the work as including the removal of mastic.

I will return under separate cover the exhibits of each party to that party.

Sincerely yours,

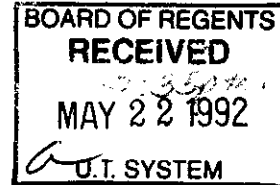
  
James R. Meyers

JRM/td  
Enclosure

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JUDICIAL ARBITRATION & MEDIATION SERVICES, INC.

May 20, 1992



Board of Regents  
University of Texas System  
201 W. 7th Street  
Austin, Texas 78701-2981

*Envelope in addition to  
12th June + ...  
2. Office*

Re: Appeal of Olmos Abatement, Inc. : Contract No. OFPC/C-2537-0/1

Gentlemen:

This report contains my recommendations to the Board of Regents of the University of Texas Systems in the Appeal of Olmos Abatement Inc. (OAI) from the denial by chancellor Mark of the claim of OAI for extra compensation arising under its contract identified above.

After considering all of the testimony, the exhibits offered by the parties and their arguments I am convinced that the decision of the chancellor was correct.

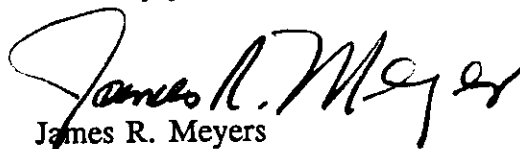
The Hearing commenced on May 12, 1992 at 9:00am and ended at 5:15pm on that same day. Three witness were heard in support of the position of OAI (including one on the issue of attorneys fees) and three witness were heard in support of the position of the University of Texas Systems. Twenty-five exhibits were admitted in to evidence and considered.

The basic dispute is quite simple. OAI, through its Chief Operating Officer Mr. Lake, contends that it was not required to remove mastic in connection with its contract to remove flashing since the word "mastic" was not used in describing the work. The University of Texas Systems contends that mastic is an integral part of the flashing and accordingly a contract to remove flashing includes an obligation to remove mastic. Mastic is the adhesive by which the felt material is made to adhere to the parapet and roof deck. Mr. Lack justifies his position by pointing to a contract unrelated to the Contract in dispute, concerning a building owned by Lacks furniture company which specified that removal of mastic was included in connection with the removal of flashing. Since Asbestos Control Consultants, Inc. (ACC) prepared the description of the work and the specifications in both the Lacks job and the contract in dispute Mr. Lake believes that the omission in the description of the work to be done of the word mastic in the instant contract is proof that the removal of mastic was not required. ACC which is the consultant on the job and stands in the shoes of an architect-engineer disagrees with Mr. Lake's interpretation and has always interpreted the contract as requiring the removal of mastic.

When the contract is read as an entire document, which it must be, it is, in my view, unambiguous and clear that removal of mastic is included within the work OAI was to perform. The contract is clear on this point whether the mastic to be removed contained asbestos or not. The mastic in this instance apparently did contain asbestos and even Mr. Lake agrees, I believe, that he was obligated to remove mastic containing asbestos if he were informed of this fact. However, he contends he was never furnished any tests results and did not know the mastic contained asbestos.

There are collateral issues that would have to be addressed if the chancellor's construction of the contract as requiring of the removal of the mastic were erroneous. Two of these issues would be the amount of compensation for such additional work and the amount of time to be allowed for such additional work to avoid liquidated damages. Mr. Lake believes that the unit price he bid of Seven Hundred and fifty dollars per twenty-five linear feet is a contractually agreed amount for the removal of the mastic which he contends to be additional work. The problem with that position is that the unit price for asbestos abatement clearly contemplates the striping, removing and disposing of flashing and replacing with temporary flashing and not just removal of mastic. To claim that the unit price bid of Seven hundred and fifty per twenty-five linear feet covers any additional work defies reason. However, since these questions are not reached because the removal of mastic was clearly required by the contract there is no need to discuss them further.

Sincerely yours,



James R. Meyers

JRM/td