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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
In Proceedings for the Reorganization of a Railroad

: IN THE MATTER OF :
: :
: BOSTON AND MAINE CORPORATION : No. 70-250-F
: :
: Debtor :
: :

STENOGRAPHIC TRANSCRIPT OF HEARINGS BEFORE
FORD, SR. D.J., ON PETITION FOR ABANDONMENT.

F O U R T H D A Y

Courtroom No. 2
United States Post Office and
Courthouse, Boston
Thursday, March 15, 1973

G. STANLEY GOWAN, Sworn

Direct Examination by Mr. Collins

1
2
3 Q Will you state your full name, please?

4 A My name is G. Stanley Gowan.

5 Q What is your home address, sir?

6 A My home address is Great Bay Drive, Greenland, New
7 Hampshire.

8 Q By whom are you employed?

9 A I am employed by the Home Gas Corporation.

10 Q In what capacity are you employed by the Home Gas
11 Corporation?

12 A District Manager of New Hampshire.

13 Q What does that district cover?

14 A It covers the whole state of New Hampshire.

15 Q Where are the home offices of the Home Gas Company?

16 A The home office is in Great Barrington, Massachusetts.

17 Q What offices do you have or places of business do you
18 have in the State of New Hampshire?

19 A We have five plants plus a satellite plant, one in
20 Portsmouth, one in Epping, one in Nashua, one in
21 Goffstown and one in Tilton, and a satellite plant in
22 Meredith.

23 Q All in the State of New Hampshire?

24 A All in the State of New Hampshire.

25 Q Do you have any other particular office among those?

- 1 A In Goffstown is mostly a headquarters, although I
2 operate out of my home mostly.
- 3 Q Would you tell the Court in what business the Home
4 Gas Company is engaged?
- 5 A We are wholesalers of propane bottled gas. We,
6 through distributors, supply consumers throughout the
7 area.
- 8 Q How many customers do you have in the State of New
9 Hampshire for your product, if you know?
- 10 A Well, I don't know because we are wholesalers,
11 Distributors, we have about 25, I would say.
12 Customers, I don't know. Several thousand.
- 13 Q The Home Gas Company distributes it to retailers?
- 14 A To retailers.
- 15 Q Who in turn distribute it to the ultimate consumer?
- 16 A Consumer.
- 17 Q So that ultimate consumers consist of both home
18 owners and industry, or is it mostly one or the other?
- 19 A No. It is both.
- 20 Q Which of your plants are situated on the Lincoln
21 branch, so-called, of the Boston & Maine Railroad?
- 22 A Tilton would be the one affected.
- 23 Q And did you say that you had a satellite plant in
24 Meredith?
- 25 A Yes.

1 Q What do you mean by satellite plant?

2 A A satellite plant is a plant where we have additional
3 storage but we do not have it manned by employees.
4 It is just additional storage to make it easier for
5 distributors in the area.

6 Q How does the gas arrive at the Meredith satellite,
7 so-called?

8 A We take it over by transport truck from our Tilton
9 plant.

10 Q How does it get to Tilton?

11 A Rail, B & M.

12 Q Where does it come from?

13 A Many places. We would have --- we have no way of
14 telling. We have several suppliers and these
15 suppliers are on yearly contracts, they can send gas
16 to us from many plants that they in turn have, so we
17 don't even know ourselves where the gas is coming
18 from.

19 I can give you this much information on that.

20 We have most of it coming from --- some of it ---
21 Selkirk, New York, Philadelphia, Newark, Hartford
22 Mills, I guess in New York, too.

23 Q How much of it comes from Selkirk, or can you tell?

24 A I can't tell because it will vary from month to
25 month.

1 Q How many carloads a year do you receive in Tilton,
2 which would cover both Tilton and your Meredith
3 satellite plant?

4 A Our last fiscal year, which ended last April, there
5 was 65 cars that went into Tilton.

6 This year, with another month and a half
7 to go, it looks like about a 10 percent growth, so
8 we figure about 72 cars this year, but that of course ---
9 the year is not over.

10 Q How does that compare --- how did your last complete
11 fiscal year compare to the year prior to that?

12 A They are pretty stagnant, 10 percent growth, and there
13 has been for the last five years.

14 Q Do you anticipate a further growth in your business
15 at Tilton and Meredith?

16 A Yes, I do.

17 Q Do you have that number of cars translated into
18 dollars? Do you know how much you have paid to the
19 Boston & Maine Railroad in your last fiscal year?

20 A That, too, is a hard question to answer. When we
21 buy this gas, we buy it freight prepaid. We are
22 billed back on that.

23 It costs us somewhere between \$900 and
24 \$1,100 for each car that we get. How much ---
25 depending upon where it comes from, and it would be

1 almost impossible for us to break down the figures
2 on how much ^{are} B & M and how much are other rails
3 charges. Some of it even comes from Canada.

4 Q Do you know how much you have paid in freight bills
5 during the fiscal year?

6 A I don't have those figures with me.

7 Q Have you had a per car average?

8 A \$900 to \$1,100.

9 Q Tell me which other of your plants in New
10 Hampshire are situated on Boston & Maine Railroad
11 sidings.

12 A All of them except the satellite plant.

13 I would like to add we --- our first plant
14 I think was built about 17 years ago and we have
15 looked for land on railroad sidings and paid premiums
16 for it to have the rail sidings.

17 Q Why would you do that?

18 A Well, because of the savings in our operation.

19 A ball park figure is about \$40,000 it would
20 cost us additional annually if this Tilton plant has
21 to be handled by transport truck.

22 Q That is your Tilton plant alone, together with the
23 Meredith satellite?

24 A Yes.

25 Q Would you explain how you arrived at that figure of

1 \$40,000, that approximation?

2 A Yes. Firstly, we would have to find someplace to
3 unload these cars.

4 Again, we have this plant in Goffstown,
5 and that would be on a spur line, too.

6 I think perhaps our thinking would be that
7 we would move additional storage and perhaps five or
8 six or more 30,000 gallon storage tanks into our
9 Portsmouth plant. From there we would have it
10 trucked with our trucks to these various plants.

11 Now, a transport truck would take somewhere
12 around 800 to 8,400 gallons, the ones we had would.
13 So we are talking about four transport loads for one
14 rail car, which is about 30 gallons, one rail car.

15 Your figures are about one dollar a mile
16 to operate these transports.

17 From Tilton to Portsmouth, it would be
18 about 68 miles, so we would have twice that, or
19 \$136 and a little better than 300 trips that we would
20 have to make on the basis of what we figure we are
21 going to have tank cars in there for, and the figures
22 are up very close to \$40,000.

23 That is how we arrive at that.

24 Q Do you know what your gross revenues derived from
25 the business you do out of Tilton and Meredith amounts

- 1 to in the course of a fiscal year?
- 2 A I didn't bring those figures with me.
- 3 Q Do you have an approximation?
- 4 A The best figure I can give you would be we run
- 5 better than --- with the two plants --- better than
- 6 a million gallons, so --- does that give you what you
- 7 want?
- 8 Q Not until you convert it into dollars.
- 9 A I would say that our average price might be in the
- 10 neighborhood of 36 or 37 cents per gallon, and it would
- 11 \$70,000 gross business. Is that the figure? I don't
- 12 know.
- 13 Q One million gallons at 26 cents a gallon?
- 14 A Yes. 260,000.
- 15 Q It would be roughly your gross at that location?
- 16 A Yes.
- 17 Q Are you in a position to state what your margin of
- 18 profit is, given that gross attributable to that
- 19 location?
- 20 A I wouldn't have those figures.
- 21 Q What of your plants are located on branch lines of
- 22 the Boston & Maine Railroad?
- 23 A All of them, I guess.
- 24 Q Portsmouth is ---
- 25 A Portsmouth is a very short way off the main line that

1 goes up into Maine. However, I understand in talking
2 to people in the area that that little short branch
3 is very busy. They do a great deal of business there.
4 Therefore they feel that that line will be kept,
5 along with the main line.

6 Our Goffstown plant is on a spur that goes
7 from the Manchester yards into Goffstown and it ends
8 there.

9 Our Nashua plant is on a line that goes
10 from Ayer, Massachusetts into Hollis. Actually
11 that is where the plant is, Hollis Depot they call
12 it, so that is on a branch line.

13 Epping is scheduled for a petition, the
14 next one in line.

15 Q What branch is that on Epping?

16 A Epping, we call it the Newfields branch, I believe.
17 It goes from Manchester across to Fremont and toward
18 Newmarket.

19 Q Have you made any effort to determine what it would
20 cost your company annually to convert totally to
21 motor carrier transportation?

22 A Well, yes. We are thinking of this all the time.

23 The cost is fantastic because, first of all,
24 we would be faced with the problem of buying a fleet
25 of transportation trucks.

1 Secondly, we are going to have to have a
2 field of tanks somewhere. Where this is going to be,
3 we don't know yet. Again we are thinking of
4 Portsmouth because that seems to be the nearest to
5 a main line that would perhaps stay in operation.

6 Q When you say fantastic, do you have any idea what
7 that means in dollars?

8 A Well, you take the Tilton plant times five, we are
9 getting somewhere in the area. It would cost ---
10 I would say maybe a more realistic figure would be
11 times four, because if we could keep that Portsmouth
12 plant and use that as our base for trucking, it
13 would eliminate the additional cost there, but I
14 would say that somewheres around \$160,000 wouldn't
15 be too far out of line. That is an estimate.

16 Q Do you have anything to do with the pricing of your
17 product?

18 A To our distributors?

19 Q Yes.

20 A Oh, yes.

21 Q Would you anticipate you would increase the price of
22 your product to your distributors in the event that
23 you had to incur additional transportation,
24 substantial additional transportation costs?

25 A Well, I would say that would be the inevitable result.

1 We would have to increase the cost to our
2 distributors and they in turn to the consumers. I
3 couldn't see any other way out.

4 Q Do you have any knowledge as to what the profit or
5 loss to your corporation was during the past fiscal
6 year?

7 A I don't have those figures with me.

8 Q Do you have any knowledge as to whether there was a
9 profit or a loss?

10 A It was a profit but I don't know what it was.

11 MR. COLLINS: I have no further questions.
12 Thank you.

13
14 Cross Examination by Mr. Weinberg

15 Q Mr. Mc Gowan, I am the attorney for the Boston &
16 Maine Corporation. Do I take it from the last few
17 questions directed to you by Mr. Collins that the
18 ultimate effect on your corporation in having to go
19 to a combination of truck and rail transportation to
20 Tilton would not endanger your competitive position?

21 A Endanger our competitive position? I would have to
22 say I don't think it would because other suppliers
23 of propane would have the same problems that we would
24 have.

25 Q And do I take it that there is^a terminal and storage

1 facility with the same amount of employees as at
2 Tilton located at Goffstown?

3 A The same storage facilities and --- but --- the same
4 number of employees in the plant, although we do ---
5 we shuffle around a bit and sometimes we have crews
6 working out of Tilton who set tanks for us and remove
7 storage tanks, so there might be one truck --- as
8 far as the plant operation is concerned, the storage
9 is the same and the employees would be the same.

10 Q And Manchester is much closer to the Concord to
11 Tilton branch than Portsmouth, isn't it?

12 A True.

13 My only reason for saying that we are
14 leaning toward Portsmouth is because it is near the
15 main line. You see, the main line going up into
16 Rigby, or whatever that yard is up there, it goes
17 fairly close.

18 Our Goffstown plant is just out of the
19 Town of Goffstown. We would haul out of Goffstown
20 for as long as we could, naturally.

21 However, when it came time to put a few
22 more 30,000 gallon tanks in, we want to have some
23 assurance that that branch is going to stay in
24 operation for some time.

25 Q You never heard any plan on the part of the Boston &

1 Maine to abandon service to Goffstown, have you?

2 A No, I haven't, except for this. I was worried about
3 this up until yesterday and I went to B & M yesterday
4 and got a map of their lines. I know there is a
5 Hillsboro line that is up for petition, too, and I
6 thought that that was the one but I was wrong. It
7 is not.

8 Q So at this stage there is no reason for you not to
9 duplicate the facilities now at Tilton to the location
10 at Goffstown?

11 A Right, except for one other thing. We have land
12 where our plant is in Portsmouth where we could
13 put many large storage tanks which we do not have at
14 our Goffstown plant.

15 Q Could you acquire such land?

16 A It is owned by the State, most of it would be
17 available. It may be.

18 Q That would reduce considerably the estimate of your
19 additional trucking costs you projected in answer to
20 questions by Mr. Collins?

21 A Yes, by about \$7,000 or \$8,000 a year, I would say.

22 Q That is rough figures; you are not relying upon any
23 studies?

24 A No.

25 Q You are picking those figures at random, more or

1 less?

2 A Yes. Right.

3 Q Now, as far as the retail customers, you don't have
4 any connection with them whatsoever, do you?

5 A Very rare.

6 Q What happens at these facilities is that the
7 wholesalers come to you in an enclosed facility, pull
8 up their truck to the various pumps and so forth
9 leading out of the tanks?

10 A Right.

11 Q And take their requirements away?

12 A Right.

13 Q So that it wouldn't make any difference to them,
14 would it, aside from price at the pumping outlet,
15 where they receive the liquefied petroleum gas?

16 A Where they received it?

17 Q Yes.

18 A Oh, yes indeed, because we would set up a
19 distributor and their truckers support them, too,
20 so that is why we have all these plants. If it
21 didn't make any difference, you could do it with one
22 plant, but you have to have them within a reasonable
23 radius for these people to truck into their areas.

24 It would be important for distributors out
25 of Tilton, for example, for us to have a plant at

1 Tilton. Is that what you mean?

2 Q You could maintain a satellite there, couldn't you?

3 A No, sir, you can't, because satellite plants are only
4 for additional storage.

5 Bear this in mind, that we have these
6 plants and we bottle gas. These distributors bring
7 in these 100 pound cylinders and we in turn give them,
8 or they bring in a lot of empty cylinders, and we
9 give them filled cylinders.

10 We then pay to stencil and refill these
11 ready for the next person who comes in, so that you
12 can't operate your plant in any other way. You have
13 these facilities all the time.

14 Q Can't these containers of the distributor be equally
15 loaded from a satellite plant as from a main plant?

16 A No.

17 Q It is purely for storage, a satellite plant?

18 A Yes. Not purely for storage, but they are used only
19 for what we call bulk distributors, people who
20 supply consumers with bulk trucks, in other words,
21 tank trucks, and these satellite plants, they pump,
22 and that is actually all it is.

23 Q So they could be served from a satellite?

24 A But not the cylinders. They could load trucks but
25 you can't load cylinders.

1 Q It will meet part of the requirements of the people
2 on the distribution chain lower than your operation,
3 they could satisfy their requirements out of the
4 satellite place or station?

5 A Only the bulk distributors. Most of our distributors
6 distribute cylinders.

7 For instance, out of the Tilton plant we
8 have 3 bulk distributors and all the rest are cylinder
9 distributors.

10 It would be impossible to close that plant.

11 Q Did you tell us what the average cost to you of a
12 delivered car of liquefied petroleum gas is?

13 A I didn't. I said the average freight cost. I wouldn't
14 know what the average cost is.

15 Q So that the price to the distributor from you varies,
16 does it not, with the point of origin from which
17 you receive the liquefied gas?

18 A No, not necessarily.

19 We have contracts with our distributors and
20 they pay so much money.

21 There may be price increases from time to
22 time but it isn't an increase or decrease in every
23 car or so many cars.

24 We would have, for instance --- we had a
25 raise in price last October in our cylinder gas, and

- 1 the one before that was two years ago.
- 2 Q How often do you look for sources of supply and for
3 what period?
- 4 A Every year.
- 5 Q Annually you go out in the market and find out where
6 you can purchase liquefied gas and at what price?
- 7 A Yes. We are working on next year's supply right now.
- 8 Q So from year to year that price varies, does it?
- 9 A Definitely. Even after you make contracts, it varies.
10 It has this year.
- 11 Q Depending on the price paid by parties at these
12 different locations in New York State and
13 Pennsylvania that you talked about as your sources of
14 origin of this commodity, the transportation costs
15 vary, do they not?
- 16 A Yes.
- 17 Q And that is figured into the price at which it is
18 offered to you?
- 19 A Yes, it is.
- 20 Q So that price varies based on the transportation cost
21 also?
- 22 A Definitely.
- 23 Q And does that yearly price also vary on the labor
24 rates that are applicable --- strike that. Does
25 that price also vary as offered to you by these

- 1 suppliers in accordance with their applicable wage
2 rates at the time?
- 3 A It could.
- 4 Q And all other overhead that they experience from
5 year to year?
- 6 A It could, if I understand your question correctly.
7 Are you asking me if we contract, for example, for a
8 million gallons of propane, are you asking if this
9 price could change during the year, labor prices?
- 10 Q Change from year to year?
- 11 A Oh, yes. Yes.
- 12 Q Can you tell us what the cost per car of propane gas
13 containing --- 30,000 gallons, is that what you said?
- 14 A Yes.
- 15 Q --- containing 30,000 gallons is to you under the
16 last contract?
- 17 A No. I don't have those figures.
- 18 Q Do you have an approximation of what it is?
- 19 A This year I would prefer not to because we have had
20 some very radical changes in price this year.
- 21 Q What are the extremes of the price at which you are
22 purchasing from your suppliers a tank of 30,000
23 gallons of liquefied petroleum gas?
- 24 A You mean the top and the bottom?
- 25 Q The range of prices, yes.

- 1 A Again I wouldn't be the one to answer that. I don't
2 buy the product.
- 3 Q You are telling us what the transportation costs are.
4 A Yes.
- 5 Q You must know also what the total cost is, don't you?
6 It is included in the price.
- 7 A Well, I don't have those figures with me.
- 8 Q Can you give us some idea of it?
9 A I would say that --- the best idea I can give you is
10 that the Bellevue posted price right now is 5 3/4 cents
11 per gallon. That plus any freight or any transportation
12 charges across the country would be what it would
13 cost us.
- 14 My guess would be somewhere around 10 cents
15 a gallon.
- 16 Q So the average cost to you of ^a tank car load of
17 liquefied petroleum gas is something like \$300,000?
18 A Oh, no. \$300,000?
- 19 Q 30,000? What is that?
20 A Ten cents a gallon would be \$3,000 plus your freight,
21 wouldn't it?
- 22 Q \$3,000 plus the freight, which you say ranges ---
23 A I say total cost probably would be around 10 cents,
24 so \$3,000 would be the cost, of which 9 to 1100
25 would be freight charges, transportation charges.

- 1 Q So you are saying one-third of the cost to you of a
2 tank car of liquefied gas is due to the freight
3 charges?
- 4 A I would say approximately.
- 5 Q And those freight charges vary, did you say, between
6 500 to 1,100 per car because of the different points
7 of origin from which you receive it?
- 8 A 9 to 11.
- 9 Q 9 to 11?
- 10 A Yes.
- 11 Q And all these other things which you told us about,
12 namely the price quoted by the supplier to you based
13 on wages, overhead, transportation and basic cost of
14 oil varies the price just the same as any change in
15 the transportation costs would vary the price, wouldn't
16 it?
- 17 A It would vary, yes.
- 18 Q All of which you can pass on to your distributors?
- 19 A Well, that I don't know. There are times when you
20 can and times when you cannot.
- 21 Q Then you are saying ---
- 22 A We were unable to last year, for a while.
- 23 Q What you are saying is that no competitor would be in
24 any better competitive position if they, too, were
25 forced to use trucks in some part of their haul?

1 A That is true because they would have the same
2 problems as we.

3 Q Can you give us an approximate cost of trucking
4 this one tank car of 30,000 gallons of liquefied
5 petroleum gas from Goffstown to your distributors?
6 Strike that. To the present storage facilities which
7 you have at Tilton.

8 A Well, you would have say --- I feel the same way as
9 I did from Portsmouth.

10 The only difference would be in the mileage
11 and the mileage from our Goffstown plant would be
12 about 41 --- about 82 miles round trip, and there
13 would be \$82 times about 306 cars.

14 That would be about \$25,000 out of our
15 Goffstown plant, if my figure is correct.

16 Q On what basis do you use a dollar a mile?

17 A Those are figures you come up with with the cost of
18 running transports, and those are pretty close.

19 Q Do you consider it a fair equivalent where the
20 ordinary business uses something like 12 cents a
21 mile in establishing the fair cost to them of
22 automobile use?

23 A Oh, yes, because you have a different thinking
24 entirely. First of all, propane carriers, that is a
25 liquid under pressure and that means you have pretty

1 heavy tanks, large tanks, and Mack tractors.

2 Just the cost to purchase it is high. What
3 I am saying is that the initial investment is
4 \$30,000-odd.

5 Your licensing is fantastic.

6 Q Are there contract carriers that haul tank cars of
7 liquefied petroleum gas?

8 A Yes.

9 Q Have you ever sought from any contract carrier the
10 price of hauling per mile?

11 A Yes, we have.

12 Q What price have they quoted you?

13 A Those figures I can't give you, either. I don't have
14 those with me, but we have contacted them.

15 That is why we bought one transport of our
16 own for this area because we could do it cheaper by
17 having our own.

18 Q What price did they quote you, sir?

19 A I don't know.

20 Q Something less than one dollar a mile, wasn't it?

21 A They go by the price per gallon, so I don't know.

22 It depends on where they start from.

23 MR. WEINBERG: I have no further questions.
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Cross Examination by Mr. Killkelley

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Q Mr. Gowan, what are representative consumers of your product in the New Hampshire area?

A Home owners, restaurants, hotels, motels.

Q This is utility gas?

A It is gas that is used the same as utility gas.

Q And your plant in Tilton is south of Meredith; is that correct?

A Yes, it is.

Q And the Tilton plant is on the main line of the Concord to Lincoln?

A Yes.

Q It isn't on the line that goes over to Franklin, that branch line?

A No, it is on the main line.

MR. KILLKELLEY: Thank you.

MR. WEINBERG: No questions.

MR. COLLINS: Mr. Whitney, please.

ROBERT J. WHITNEY, SwornDirect Examination by Mr. Collins

1
2
3 Q Will you please state your name?

4 A Robert J. Whitney.

5 Q Where do you live?

6 A Perkins Street, Milton, New Hampshire.

7 Q By whom are you employed?

8 A Merrimack Farmers Exchange, Inc.

9 Q Where is the principal place of business of Merrimack
10 Farmers Exchange, Inc.?

11 A Our main office is at 18-22 Low Avenue, Concord,
12 New Hampshire.

13 Q Is that your office?

14 A This is my office.

15 Q And what is your title with that company?

16 A General Manager.

17 Q What are the duties of general manager?

18 A This is a little hard to define. It is total
19 supervision of the entire company, all four divisions.

20 Q Tell me what the company does.

21 A Our principal business started in 1920, 52 years ago.

22 Basically 80 percent of our business deals
23 with agricultural supplies to the farmers in the
24 State of New Hampshire. About 50 percent of our
25 total business is direct mixing of livestock, poultry

1 and dairy feed for these people.

2 Other supplies would be fertilizer, farm
3 seeds, power equipment and things of this type.

4 Q You receive those products in New Hampshire and then
5 distribute them to various points in New Hampshire
6 to be purchased by farmers; is that correct?

7 A The products which we don't manufacture are brought
8 in mostly by rail from other suppliers.

9 The farm feeds, which is about 50 percent
10 of our business, we bring in as raw ingredients,
11 principally by rail, and then mix those into balanced
12 rations for the livestock and the poultry.

13 Q Those things that come in to be redistributed, where
14 do they come into in the State of New Hampshire?

15 A All of our feed supplies come into our central mill
16 at Bow, New Hampshire, three miles south of our
17 office. All the other materials, the basic part of
18 them come into our central warehouse at Bow, New
19 Hampshire by truck and rail and are broken up into
20 smaller units for distribution to our 21 stores
21 throughout the State.

22 Q So your principal plant is in Bow; is that correct?

23 A That's correct.

24 Q Is that located on a line of the Boston & Maine
25 Railroad?

1 A Yes, it is.

2 Q What line is that located on?

3 A It is the main line through the central part of the
4 state. I don't know the identification of it.

5 Q That line from Manchester to Nashua, New Hampshire to
6 Concord?

7 A That's right.

8 Q How many distribution points do you say you had within
9 the State of New Hampshire?

10 A Twenty-one.

11 Q Where are they located, if you can tell us?

12 A Do you want me to read the entire list?

13 Q Yes, I think so, in the State of New Hampshire.

14 A All of our operations are in the State of New
15 Hampshire.

16 We have one at Manchester, Woodsville,
17 Rochester, Laconia, Pittsfield, Nashua, Epping,
18 Henniker, Bradford, Goffstown, Derry, Milford,
19 Claremont, Keene, Plymouth, Franklin, Ossipee, Epsom,
20 Exeter, Bow and Lancaster.

21 Q How many of them are not located on railroad sidings
22 or near railroad sidings?

23 A Five.

24 Q Which are they?

25 A Manchester is not. That is by our choice.

1 Henniker and Bradford are on the old
2 Concord-Clairemont line that has been abandoned.

3 Epsom and Pittsfield are on the old
4 Suncook Valley, which is abandoned.

5 Q And the rest are on existing lines or branches of
6 the Boston & Maine?

7 A That's correct.

8 Q Which ones if any are on the Lincoln branch, so-
9 called?

10 A We have three in Franklin, Laconia and Plymouth.

11 Q And do you transport commodities from your
12 plant in Bow to those three points on the Lincoln
13 branch?

14 A By rail?

15 Q By rail.

16 A Yes.

17 Q Can you tell me in the course of a year how many
18 cars are shipped from Bow to each of those three
19 points?

20 A Yes, I can.

21 Q If you would, identify the years which you take.

22 A It was surveyed for the calendar year 1972, January
23 through December.

24 At our Franklin store, during that period
25 we put in a total of 24 cars totaling 654 tons.

1 This is not a fair figure in that the railroad was
2 closed between December and April.

3 Q The railroad was what?

4 A Closed. Due to ice on the rail, tracks.

5 Q You mean if it were not for that embargo, you would
6 have shipped more by rail?

7 A Yes, we would have.

8 Q Do you know how much more?

9 A About a third more than this.

10 In our normal course of business in
11 livestock feeds the business picks up more in the
12 winter months. We supply many of the small towns in
13 that area with road salt, calcium chloride and so on,
14 which they are not in a position to buy a carload
15 themselves.

16 We bring these cars up, break it up and
17 transport it by trucks to the small towns.

18 Q That was Franklin; is that correct?

19 A Yes.

20 Q Continue, please.

21 A At Laconia during the same period we put in 44
22 carloads totaling 1,497.5 tons.

23 At Plymouth we shipped 19 cars, the
24 equivalent of 567 tons.

25 The three combined represent 87 cars, total

1 tonnage of 2,718.5.

2 Q Do you know how that compares to the year prior?

3 A There is a slight increase. It is minimal, again,
4 because the Franklin line was closed down.

5 The last figures we ran on this particular
6 branch were when the hearing came up in May of 1970.
7 We haven't done it again until this year.

8 Q Have you experienced growth in the receiving end of
9 redistributing at those three points?

10 A Yes, we have.

11 I would like to give you, if permissible,
12 just an overall picture of our total operation.

13 Q Tell us about your total operation.

14 A This is just in car shipments now. Over the past
15 year we moved 1,760 cars over the B & M totaling
16 71,296.5 tons.

17 At testimony before a federal examiner
18 last year, the 1971 season, we had a total of 1,808
19 cars representing 69,800 tons, so that this year,
20 while there are less cars, due to the size of the
21 cars that are required to take the lower freight rate,
22 our total rail shipment was increased by about 1,500
23 tons in round figures.

24 Q Of what commodities are these comprised for the most
25 part?

1 A Principally livestock feed. Inbound at our Bow
2 mill is all livestock feed. We had 794 cars during
3 the 1972 year representing 41,045.5 tons.

4 Q That is inbound to Bow?

5 A That is inbound to Bow over the B & M.

6 We shipped out by rail 793 cars
7 representing 22,458 tons.

8 Q That is to all ---

9 A That is to all points that had rail service, and
10 all on the B & M.

11 We do have a supply of shipments of certain
12 types of feeds direct to the stores, bypassing the
13 mill, and directly to some of these stores, which
14 would be beet pulp, citrus pulp and alfalfa, materials
15 that didn't have to be processed. That was 15
16 carloads representing 335 tons.

17 In our Bow warehouse, we broke them up
18 into small shipments and we had 86 carloads
19 representing 4,370 tons.

20 Miscellaneous goods, such as road salt,
21 calcium chloride, cement and wood shavings, went
22 directly from the manufacturer, bypassing our
23 warehouse, 74 carloads representing 3,088 tons.

24 This is how we arrived at our figure of
25 71,296.5 tons total tonnage over the B & M.

- 1 Q Originally, were all of your distribution points
2 situated on lines of the railroad?
- 3 A They were at one time, yes.
- 4 Q Was there a reason for locating on railroad lines?
- 5 A Yes, very definitely.
- 6 Q Would you explain to us what that reason was?
- 7 A Mainly because of the bulk shipments, the type of
8 goods we carry are extremely bulky. We found that
9 over the years, very necessarily, making bulky
10 shipments, it is far less costly at these points by
11 rail than by truck.
- 12 Q And since lines have been abandoned, leaving five of
13 your distribution points off of rail service, have you
14 had experience with increased costs as a result of
15 changing to motor carrier?
- 16 A Very definitely.
- 17 Q Can you substantiate your experience along those
18 lines?
- 19 A Perhaps I can give you figures here on our latest
20 information received from our feed manager as to what
21 this means, if you want to relate it directly to this
22 particular case, the exact tonnage.
- 23 Q Give us specific examples.
- 24 A For example, you are talking about Franklin, Plymouth
25 and Laconia, if you don't use the rail service, we will

1 have to buy, and I put the figures a little bit on the
2 low side, a tractor and 40-foot trailer.

3 Assuming a four-year life of this, we will
4 have an original investment of \$20,000.

5 We have broken down fixed costs under this
6 based on a four-year life, depreciation, registration,
7 town taxes, insurance, liability, collision, highway
8 use tax and the driver.

9 Our fixed cost would be \$15,975.76 at this
10 point. This is an annual fixed cost.

11 Assuming again that we use a brand new
12 vehicle to have the lowest maintenance cost possible,
13 our operating cost per mile would be 23.24 cents.

14 Q How do you arrive at that 23.24 cents?

15 A This is assuming the average cost of good quality
16 tires and oil and filters and lubrication, gasoline,
17 general maintenance, which is lubrication, this type
18 of thing, and minor tuneups and major maintenance
19 based on known costs of the exact same type of
20 vehicle we are running right now gives us a total
21 variable cost per mile of 23.24 cents, which is very
22 low.

23 Q From that have you been able to conclude what you
24 would expect your increased costs would be if the
25 Lincoln branch is abandoned?

1 A We have these determined within possibly a cent or
2 two per ton.

3 Q Can you tell us that?

4 A Yes. Based on the 2,718 tons shipment to those
5 three points, our cost right now, and we have to
6 average it because we buy our ingredients and ship
7 them at three different rates, which is a flat rate,
8 a mileage rate and mill in transit.

9 It depends on how the railroad decides to
10 ship materials to us, whether we can use the mill in
11 transit rate or we have to use the mileage rate or
12 the flat rate.

13 The carloads that we ship representing
14 this tonnage, we pay the railroads \$5,976.60 for
15 shipments to those branches.

16 If we ship by truck, based on the costs I
17 just gave you, this will cost us \$15,764.40.

18 That means an increase of approximately
19 \$3.50 per ton of feed to every single farmer in that
20 area. If you want to bring this a little further,
21 an average customer buys about ten tons a week, which
22 means an additional \$35 a week times 52 weeks a year.

23 Q When you speak of a customer, you are talking about
24 individual farmers?

25 A Yes. While we are basically manufacturers, our whole

- 1 operation is retail, direct to farmers.
- 2 Q Do they, the farmers, also comprise your stockholders?
- 3 A Yes, many of them do.
- 4 Q So that one way or another any increase in costs are
- 5 going to be passed on to the individual farmers?
- 6 A Yes.
- 7 Q Is what you are telling us with respect to projected
- 8 increase in costs as a result of abandonment of these
- 9 lines consistent with what your experience has been
- 10 with respect to other points upon which you have
- 11 experienced an abandonment? With respect to Lincoln,
- 12 Plymouth, are your projections consistent with what
- 13 you have experienced ---
- 14 A This would vary some but I would say in the general
- 15 area, yes, they are consistent.
- 16 We did have to do this type of thing a year
- 17 or so ago on an abandonment of another line which is
- 18 further north and to the east of us, and the increased
- 19 costs in that area would be in excess of \$5 a ton
- 20 rather than \$3.50. We do have a mileage factor in
- 21 here.
- 22 Q Do you have any other plants that are on lines which
- 23 are proposed for abandonment by the trustee of the
- 24 Boston & Maine Railroad?
- 25 A Yes.

1 Q Which ones?

2 A The most recent ones, the current one is the notice
3 received on the Portsmouth line known as the
4 Newfields line, and we have a store in Epping on
5 that.

6 Q Is that the only one you know of that is proposed for
7 abandonment?

8 A It is the only one that I know of that I actually
9 received the official documentation on.

10 MR. COLLINS: I have no further questions.

11 MR. KILLKELLEY: I have no questions.

12
13 Cross Examination by Mr. Weinberg

14 Q Mr. Whitney, Bow is very essential, is it not, in
15 the rail operation at Bow, to the well-being of the
16 Merrimack Farmers Exchange Cooperative?

17 A Absolutely.

18 Q And at Bow you received and forwarded something like
19 over 2,500 cars in the year 1972?

20 A No. 1,760.

21 Q What about forwarded?

22 A This is total.

23 Q And at the same time the only rail service to these
24 localities affected by the proposed abandonment
25 totaled 87 cars; is that so?

- 1 A That's correct.
- 2 Q So that ---
- 3 A That represents three--- again only rail shipments,
4 this represents 3.813 percent of our total business.
5 That figure would have been higher at the Franklin
6 branch (Inaudible,)
- 7 Q By another eight carloads?
- 8 A Yes.
- 9 Q So that there is no comparison, is there, between
10 the continuation of B & M rail service generally in
11 interstate transportation and the continuance of the
12 local rail service to the points on the Concord to
13 Lincoln line proposed for abandonment?
- 14 A I don't understand your question.
- 15 Q There is no comparison in importance to the Merrimack
16 Farmers between the continuation of rail service
17 generally by the Boston & Maine Corporation, including
18 its service to the Bow facility, than the service to
19 be terminated if the abandonment is authorized?
- 20 A I think there would be definitely a comparison. I
21 tried to express it in a percentage to you.
- 22 Q Three percent?
- 23 A No. 3.8. If we had the other eight cars, it would
24 be over 4 percent of our total business by rail.
25 That's a lot.
- Q Those 87 cars going to these local points depended,

- 1 did it not, on the existence of your facility at Bow?
- 2 A Absolutely.
- 3 Q They stopped at Bow before they went up there?
- 4 A Absolutely.
- 5 Q So that the most important thing to the Merrimack
- 6 Farmers Cooperative is the continuance of rail
- 7 service to Bow, isn't it?
- 8 A It is the most important, but not entirely.
- 9 Q Of these 87 cars that were shipped to these points
- 10 in Franklin, Laconia and Plymouth, did that
- 11 represent the total amount of products that were
- 12 shipped from Bow to these facilities?
- 13 A No.
- 14 Q You shipped by truck, too, did you not?
- 15 A Yes.
- 16 Q How many trucks did you ship to Franklin, say?
- 17 A I will give you a minimum figure to each store. It
- 18 will be on the low side of 52.
- 19 Q So more truckloads than carloads ---
- 20 Q We serviced each store at least once a week by truck
- 21 on the miscellaneous goods, but we bring in carloads
- 22 to Bow and break them up, because we don't need a
- 23 carload of lawn mowers, say, at Franklin, so we bring
- 24 them up at one point and distribute them by truck
- 25 to the other locations.

- 1 Q So they are serviced daily?
- 2 A Once a week from Bow by truck.
- 3 Q And the truckloads exceed the rail carloads that you
- 4 move up from Bow to these facilities?
- 5 A Yes.
- 6 Q Couldn't you take the same equipment that presently
- 7 uses your bulk commodities and bring them up to these
- 8 facilities in the event that abandonment were
- 9 authorized?
- 10 A No, absolutely not.
- 11 Q Why couldn't you?
- 12 A I have 65 trucks in my fleet right now servicing
- 13 these stores in addition to the railroad. We are
- 14 right up to capacity and I have already testified
- 15 that if we lose this rail service, we would/at least ^{need}
- 16 one tractor and trailer and driver plus the cost of
- 17 the vehicle.
- 18 Q The price you quote to the farmers of the finished
- 19 feed product that they use depends on many factors,
- 20 doesn't it?
- 21 A It does.
- 22 Q It depends first on your costs from your supplier?
- 23 A Yes.
- 24 Q As far as the basic commodities that go into the
- 25 feed, and that varies how often?

1 A We price once a week. We test market daily to set
2 our prices once a week on Thursday morning for the
3 following week.

4 Q And the basic ingredients that go into your feed are
5 what? Agricultural products such as wheat and corn
6 and so forth?

7 A It takes 54 different ingredients to make up our
8 different formulas. Some are based on corn, soybean,
9 wheat middlings, hominy, alfalfa, potato meal. That
10 gives you a rough description.

11 Q So that all of these products of the earth, more or
12 less, coming to Bow vary almost weekly?

13 A They do vary weekly.

14 Q And do they also vary on account of labor costs that
15 go into the processing of these products?

16 A That would be on the --- in relation to us, the
17 manufacturing, it would be pretty much on an annual
18 basis, and our type of mill is one of the more
19 modern in the east, which was built with fixed costs
20 in mind.

21 Fuel and power would be variable, depending
22 on demand.

23 Q And it depends on the fluctuations in overhead to the
24 processors of these products of the ground, too,
25 doesn't it?

- 1 A Not in the sense of overhead. Our basic cost for
2 operation of that mill --- it is the cost of
3 ingredients, the biggest area, by far.
- 4 Q The net price also depends, does it not, on the
5 process and overhead costs from time to time ---
- 6 A Yes, and shipments to Russia and the railroad
7 service. That's correct.
- 8 Q So that the actual cost to the farmers at the retail
9 establishments at Franklin and Laconia and Plymouth
10 can't be determined except by a cost averaged out
11 for all the ingredients that come in on a tank car
12 that make up their feed?
- 13 A They are not averaged out. Every one is handled
14 specifically down to four decimal places.
- 15 Q But you quote to the farmer the cost for the feed
16 product, do you not?
- 17 A For one week.
- 18 Q And that weekly cost to the farmer is based on your
19 costs for all of these goods basically coming in to
20 you to make up the feed?
- 21 A They are based on our --- what we know as our
22 operating cost plus ingredients plus whatever margin
23 we feel we operate under. We are operating right now
24 on 1.04 percent net margin. It doesn't leave much
25 room for guesswork.

1 Q And you told us now of the fluctuation of the cost
2 of ingredients. Your costs also fluctuate weekly?

3 A Yes, but very little, only to the point of fuel and
4 electricity.

5 Q And yearly it fluctuates with labor, doesn't it?

6 A Yearly. Once a year.

7 Q And can you tell us what the average cost per carload
8 of ingredients is to you, including transportation
9 costs, if there is such an average?

10 A I will have to take a specific ingredient. I will
11 take two, if you would like something representative.

12 A car of soybean meal would run about
13 \$23,000. That is an 80-ton car.

14 If you would like to take corn, those come
15 in 3-car minitrains. These cost us, based on our
16 present market today, \$1.94-3/8 a bushel, \$18,000
17 with \$3,600 freight on them.

18 Q What does it cost per car?

19 A It would be 18 plus 3,600 divided by --- a little over
20 \$7,000, \$7,200 a car.

21 Q Can you tell us how many farmers on the average can
22 be accommodated from let's say \$23,000 worth of one
23 car of soybeans?

24 A That depends on the formula. We've got 36 formulas
25 Some of them call for as low as ten pounds to a ton

1 and some as high as 700 pounds to a ton. This is
2 a book in itself.

3 Q But you will admit with me, won't you, Mr. Whitney,
4 that you can't really ascribe any increase in cost
5 to any farmer as a result of any change in the line
6 of processing the materials coming to him in the
7 finished product of feed?

8 A Not in the line of processing, no. Our margins haven't
9 changed in three years.

10 Q And there are many variables that go into fixing any
11 particular cost to any particular farmers?

12 A Yes. The two big variables I just mentioned.

13 Q And any increase in transportation costs wouldn't
14 render you non-competitive in the business in which
15 you are engaged, would it?

16 A We pass those on or we make it --- we all have to do
17 this on the margin.

18 Q And what --- you can give us a percentage that you
19 think on the average the transportation costs bear to
20 all other costs in the price of the materials going
21 into feed?

22 A Our annual statement in the fiscal year showed the
23 transportation cost by rail of 7.4 percent of our
24 total cost of operation.

25 Q So that the total transportation costs of all the

1 B & M services to the farmer in getting his
2 requirements for feed represented by transportation
3 costs is approximately 7.4 percent; is that so?

4 A No. That is not what I said.

5 Q You are saying your total transportation costs are
6 approximately 7.4 percent?

7 A Yes, 7.4 percent for rail shipments only, but we do
8 ship other things by rail that don't go to farms.

9 Q I am talking about just feed.

10 A I couldn't break that out, not at the moment.

11 Q So that at any rate the price that he pays for feed
12 is going to be markedly lower in proportion to his
13 total price than 7.4 percent of transportation costs
14 for the shorter haul from Bow to his --- where he
15 picks it up?

16 A I can't answer that.

17 Q If the total transportation cost passed on to the
18 farmer, because of your experience in handling the
19 feed, is 7.4 percent, in all rail transportation from
20 all points in the country and to all points that you
21 ship it to is 7.4 percent, then we can conclude, can't
22 we, that the additional --- strike additional ---
23 then we can conclude, can't we, that the transportation
24 cost that is passed on to the farmers represented by
25 the cost of transporting it from Bow to these points

1 at Franklin, Laconia and Plymouth, is much less than
2 7.4 percent of the cost to him?

3 A It would be higher. You have to take these items
4 selectively. Every single one of them has a
5 different freight rate and it may pass over ten
6 railroads, and it may come from Merrimack, 16 miles
7 from Bow, and that would be one rate.

8 It would probably be on a selected basis,
9 and this is the way we have to do it because our
10 company is broken up in four divisions. Probably
11 it would be higher.

12 If I took it out strictly as feed items
13 to the farmer, most of these come from the midwest,
14 the far west and Canada, on the feed items alone
15 that we have to bring in to process.

16 Fuel comes from fairly local points such
17 as Merrimack, New Hampshire, and Rhode Island and
18 New Jersey, but if I took just the feed alone and put
19 the total transportation cost on it, it would be much
20 higher.

21 We average about \$12 a ton to the B & M
22 alone for incoming freight. If we add the \$2.20
23 which I testified to ship it out, you get \$14.20,
24 which is far higher on an average \$100 per ton that
25 it costs for the feed.

- 1 Q Let's go back to feed, then, alone which you say
2 represents 50 percent of your business.
- 3 A Yes, about that.
- 4 Q Will you tell us what the transportation costs to you
5 on feed were for the last year?
- 6 A In dollars?
- 7 Q What percentage of the total cost of the ingredients
8 of feed?
- 9 A I don't know at this point without my operating
10 statement.
- 11 Q So the best you can give us is the total cost of
12 transportation for all products is 7.4 percent?
- 13 A That is correct.
- 14 Q And you are trying to say to us, are you, that averaged
15 into that 7.4 percent is the feed transportation cost,
16 which is higher?
- 17 A Would be, yes, very definitely.
- 18 Q How much higher?
- 19 A It is a qualified guess.
- 20 Q One percentage point ---
- 21 A Almost double.
- 22 Q You are saying feed averages 14 percent for the total
23 haul throughout your handling of the products made
24 from it?
- 25 A I will say that as a close approximation.

1 Q Isn't it something that we can infer, that the total
2 cost percentage-wise of the product finally
3 delivered to the farmer in any of these locations is
4 going to be less than 15 percent because you only
5 have the haul from Bow to his locality rather than
6 ingredients from all over that came into your
7 facility at Bow?

8 A Most of these points, yes.

9 Q It is going to be substantially lower?

10 A I have already given you the figure.

11 MR. WEINBERG: That's all the questions I
12 have.

13 MR. SCHERER: Your Honor, we have one final
14 witness, Mr. Normand, president of ---

15 THE COURT: You say you have a witness?

16 MR. SCHERER: Yes, sir.

17 THE COURT: Go ahead.
18
19
20
21
22
23
24
25

ARTHUR NORMAND, SwornDirect Examination by Mr. Scherer

1
2
3 Q Will you please identify yourself by name and your
4 address?

5 A Arthur Normand, 63 Beethoven Avenue, Waban,
6 Massachusetts.

7 Q Will you please state what your official capacity is
8 relative to these proceedings, your employment at the
9 present time?

10 A I am president of Profile Paper Corporation.

11 Q What is the interest of Profile Paper Corporation in
12 respect to the abandonment proceedings that are
13 pending before this honorable Court?

14 A We depend on the railroad to a very large degree for
15 keeping the mill there.

16 Q What is the activity of the Profile Paper Corporation
17 in respect to freight activities in the State of
18 New Hampshire?

19 A Will you repeat that?

20 Q Could you identify the nature of the business of
21 Profile Paper Corporation in the State of New
22 Hampshire?

23 A We manufacture paper for the printing trades and
24 therefore we have to import products in order to do
25 this.

1 Q Is Profile Paper Corporation currently
2 manufacturing paper?

3 A No.

4 Q Could you state for Judge Ford what the status of the
5 situation is at the present time in respect to
6 acquisition of the pulp and paper manufacturing
7 plant by Profile Paper Corporation and this relates,
8 your Honor, to earlier discussions that we have had
9 in which I described the nature of our activities.

10 A I have formally entered into a purchase and sale
11 agreement of \$75,000 cash non-refundable deposit,
12 and the closing date within 30 days.

13 Q Could you explain to the Court the extent of your
14 personal expenditures ---

15 THE COURT: I am reading from this motion
16 for continuance. Closing will take place before
17 March 1st, 1973?

18 THE WITNESS: Yes, sir.

19 THE COURT: Didn't it take place?

20 THE WITNESS: No, I got an extension.

21 THE COURT: It did not?

22 THE WITNESS: No, sir.

23 THE COURT: Why didn't you tell me that?
24 You omitted that.

25 THE WITNESS: Sorry, sir.

1 THE COURT: Go ahead.

2 MR. SCHERER: Your Honor, I explained at
3 the time of the earlier hearing ---

4 THE COURT: You say you had a binding
5 agreement and you left this closing date and said
6 nothing about an extension to me originally.
7 Probably if I hadn't asked those questions, it would
8 never have been exposed.

9 MR. SCHERER: Your Honor, I did state at
10 the ---

11 THE COURT: You did tell me before?

12 MR. SCHERE: I did, your Honor. I mentioned
13 we had an oral agreement to extend for an additional
14 30 days.

15 THE COURT: What is the extension? What
16 date now?

17 THE WITNESS: April 30th.

18 THE COURT: What was the extension procured
19 for? Lack of money?

20 THE WITNESS: To --- in order to get our
21 permanent financing.

22 THE COURT: That is what I say. Money.

23 MR. SCHERER: Your Honor, it was necessary
24 for us to place cash into a non-refundable deposit
25 in the amount of \$75,000 to continue our legal

1 position.

2 THE COURT: Go ahead.

3 Q Mr. Normand, have you projected the anticipated level
4 of freight that would result in revenue to the
5 railroad from operation by Profile Paper Corporation
6 of the paper mill at Lincoln?

7 A Yes. In our present plans I have --- we hope to
8 ship and receive 150,000 tons per year.

9 Q Would it be possible for you, Mr. Normand, to break
10 that amount down to the various categories to make
11 it perhaps a little clearer?

12 A We have to import 50,000 tons of pulp in order to
13 export 50,000 tons of paper and in that 50,000 tons
14 of paper, the breakdown (Inaudible.) ---

15 Q Perhaps you can state that again.

16 A In order to have 50,000 tons of paper the railroad
17 (inaudible) ---

18 Q You will have to speak up. They are unable to hear
19 you.

20 A Members of the railroad have showed evidence that if
21 we did continue with coal, then they would be more
22 in a position to keep the line open because it means
23 more tonnage, so I went to the air pollution board
24 and I got permission to open up the present use of
25 coal.

- 1 Q Therefore you have made arrangements ---
- 2 A I have reserved my research on the use of oil on the
- 3 basis of opening up with coal.
- 4 Q Therefore you have made arrangements with the state
- 5 to permit you to operate with coal, which would mean
- 6 coal would be shipped by the railroad?
- 7 A That makes 150,000 tons of coal and paper and supplies.
- 8 Q What is your understanding of the number of tons
- 9 on the average that were shipped per carload by the
- 10 railroad in the past to the paper industry?
- 11 A About 80,000 pounds per carload.
- 12 Q Or roughly 40 tons?
- 13 A Right. Between 70 and 80. 35 to 40.
- 14 Q Do you have an awareness based upon evidence that
- 15 was introduced earlier in these proceedings concerning
- 16 the estimated amount of revenue that the railroad
- 17 has received per carload?
- 18 A I can't swear to that. I have no definite answer.
- 19 Just hearsay.
- 20 Q In any event, there would be 150,000 tons of freight
- 21 you anticipate, based upon current projections, per
- 22 year to go over the rail at such time as the plant
- 23 is opened?
- 24 A Right.
- 25 Q Mr. Normand, could you explain for the benefit of this

1 honorable Court a little bit about the result that
2 opening the plant will have in the overall employment
3 situation in the region and explain the impact that
4 abandonment of the railroad line would have upon your
5 ability to open the plant and employ individuals in
6 the town?

7 A We intend to employ 125 people to operate the paper
8 mill and another 25 people in the finishing room,
9 or a total of 150 people would be employed in the
10 paper mill itself.

11 THE COURT: I want to ask a question. Have
12 you brought with you the purchase and sale
13 agreement which you talked about?

14 MR. SCHERER: I could have it for you here,
15 your Honor, within ten to fifteen minutes.
16 I don't have it with me.

17 THE COURT: Hasn't he got it with him?
18 Next question, please.

19 Q What is the status of the employment situation in
20 the region ---

21 THE COURT: Produce it, Mr. Counsel, and
22 file it.

23 MR. SCHERER: Yes, your Honor, I will.

24 Q What is the situation with respect to employment
25 within the region in the Town of Lincoln and what

1 impact will the opening of the mill have on the
2 overall employment picture in the Town of Lincoln?

3 A When the mill closed, they had a paper and a pulp
4 mill. When the mill closed, about 450 people went
5 out of work. That was last year.

6 Since then, some of these people have found
7 other jobs but there's quite a few still on
8 unemployment. I would say roughly 200 people are on
9 unemployment right now.

10 The impact that the mill would have would
11 be to re-establish the balanced economy for the
12 Town of Lincoln, which is the main and only major
13 industry.

14 Q The paper and pulp mill earlier was the principal
15 industry in the town?

16 A Yes.

17 Q Therefore since this shutdown, all the people have
18 had to find work elsewhere or have had to leave the
19 region; is that correct?

20 A Yes.

21 Q Are you aware, Mr. Normand, of the concern by the
22 State of New Hampshire over the unemployment situation
23 in that region and the public interest in that region,
24 and, if so, what knowledge do you have of activities
25 that the state is involved in?

1 A I have had several meetings with the top officials
2 of the State of New Hampshire and they have informed
3 me that they would like to see the industry, whether
4 it is me or somebody else, come back and re-establish
5 itself for the good of the economy because there are
6 quite a few hundreds of thousands of money that goes
7 out each year in the form of unemployment benefits.

8 Q By this you mean the Governor's Office?

9 A Yes.

10 Q To what extent have you made plans with the
11 Governor's Office and with economic development
12 officials in the State of New Hampshire for the
13 development of secondary industry, once the paper
14 mill is operational?

15 A In buying the paper mill, we also buy 200 acres of
16 land with the paper mill, and this is an industrial
17 site, and we have already explained to the Court,
18 I think it was the last time, that we were inducing
19 new companies to come into this area to bring in
20 new business to balance the economy.

21 We have been concentrating mostly on
22 getting the paper mill in operation, but we do have
23 people interested in coming in to build other
24 associated businesses in the wood products line.

25 Q Mr. Normand, shifting the focus a little bit, at the

1 time that we were last here in the court, could you
2 explain precisely the nature of the obligations that
3 Profile Paper Corporation then faced in terms of a
4 closing date and explain what arrangements had been
5 made, in addition to the documents for an extension
6 in time for closing in the event it should become
7 necessary to have more time to raise the necessary
8 financing, and could you explain ---

9 THE COURT: Any further questions on that?
10 What was the original date that first appeared on the
11 purchase and sale agreement?

12 THE WITNESS: March 1st.

13 THE COURT: March 30th of this year?

14 THE WITNESS: March 1st.

15 THE COURT: 1973?

16 THE WITNESS: Right.

17 Q Was there in fact an agreement to extend that time
18 should it become necessary?

19 THE COURT: It was on the original agreement
20 that was entered into, that it was to be completed
21 before March 1st. That is the original date. If I
22 had the original agreement I would be in the clear
23 here.

24 MR. SCHERER: I will bring the agreements
25 to you, sir.

1 THE COURT: I know you will, but you haven't
2 got them here yet. They are very important at the
3 moment. Why didn't you bring them in? Didn't you
4 think they were important in the light of the
5 testimony of this witness?

6 MR. SCHERER: I should have brought them,
7 your Honor.

8 THE COURT: Go ahead.

9 Q Do you have an agreement ---

10 THE COURT: The witness says he entered
11 into an agreement ---

12 MR. SCHERER: We can produce ---

13 THE COURT: The next logical question is,
14 where is the agreement? You should produce it; right?

15 MR. SCHERER: I will produce it, your
16 Honor, and I will produce also verification of the
17 funds that have been paid.

18 Q Mr. Normand, could you explain the nature of the
19 relationship that exists between the seller and the
20 Profile Paper Corporation in respect to ---

21 THE COURT: Let me see if I can get some
22 evidence here. What was the original date that you
23 entered into this so-called agreement, either oral
24 or written?

25 THE WITNESS: The options? Originally

1 November 28th I signed an option, and December 15, 1972
2 I entered into a ---

3 THE COURT: Is that March?

4 THE WITNESS: Yes.

5 THE COURT: I am supposed to try the case
6 and I want the facts.

7 MR. SCHERER: I understand, your Honor.

8 Q Following your acceptance of the option to purchase
9 that was offered to you by the seller, were there a
10 number of agreements that were entered into pursuant
11 to letters which, in the opinion of your counsel and
12 counsel for the seller, had the force and effect of a
13 purchase and sale agreement fairly soon after the ---

14 (Mr. Weinberg rises.)

15 THE COURT: I will have none of that,
16 unless all the other agreements are in court.

17 MR. SCHERER: I will bring them, your Honor.

18 THE COURT: Of course he is going to say
19 yes. Those are leading questions. I learned that in
20 my 40 years of experience on this bench.

21 Go ahead.

22 Q Mr. Normand, will you explain what the status of the
23 activities of Profile Paper Corporation are now in
24 respect to permanent financing and how soon you
25 anticipate you will be able to present to the Court

- 1 a complete statement concerning precisely what the
2 nature of the financing arrangements are?
- 3 A I plan to be in a bank next Wednesday.
- 4 Q In other words, you are ---
- 5 A The accountants are finishing up the updated costs.
- 6 Q Why was it necessary to update your projections and
7 figures in your pro forma and so forth?
- 8 A There has been a radical change in the cost of pulp
9 and some supplies and the price of paper has gone
10 up.
- 11 Q In other words, we could have a final version of the
12 pro forma giving this Court everything that it would
13 need within a week or so?
- 14 A Yes. My timing was off on my pro forma based on all
15 the things I had to accomplish to get this far. We
16 had a series of important problems to resolve.
- 17 Q Mr. Normand, have you had discussions with the Boston
18 & Maine Railroad other than things that might have
19 occurred here in this Court?
- 20 A Yes.
- 21 Q Could you explain --- what were the natures of the
22 discussions that you had?
- 23 A I was talking to the chief executive officer in
24 relation to purchasing the B & M Railroad line from
25 Lincoln to Concord through others, not myself.

- 1 Q Did you also discuss possible guarantees to be
2 provided to the railroad by Profile Paper Corporation
3 so that the railroad could be sure they would have
4 adequate freight to permit them to operate the
5 railroad profitably?
- 6 A There was only a discussion. No firm agreements
7 were made.
- 8 Q Would you be willing to enter into binding agreements
9 with the railroad obligating your corporation to either
10 insure enough freight or offer some other type of
11 revenue to the railroad to insure that they would be
12 able to operate profitably?
- 13 A Within the proper safeguards of my projection, yes.
- 14 Q So that you could guarantee a certain amount of
15 freight?
- 16 A No two ways about it. The only reason I wanted to
17 talk about it was to keep the railroad in the north
18 country, not only if we did it but any other
19 industry that is there to buy that railroad.
- 20 Q Mr. Normand, you mentioned earlier some plans for
21 secondary industry in the area, that you have been
22 involved in some of them, concerning the Governor's
23 Office, involving the other 200 acres. To what
24 extent do the plans for the secondary industries
25 depend upon the railroad line, the Boston & Maine

1 Railroad being continued from Concord to Lincoln?

2 A There again at the present time it is speculation.
3 We are negotiating. We have adjoining line interests
4 and they would be using more tonnage than I would.
5 It is a company that would import tropical hardwoods
6 and finish them in this area.

7 Q Without getting into the specifics of the industry
8 involved, is it clear, based upon your discussions
9 with economic development officials in the Governor's
10 Office, that the abandonment of the railroad line
11 would make it more difficult to put secondary
12 industry into the region?

13 A We would lose that business completely.

14 Q What would be the effect on the economy of the region
15 should the plans for a secondary industry be
16 rendered unattainable?

17 A The area of the north country north of Concord would
18 have to rely on highways for trucking.

19 Q In other words, many types of business simply
20 couldn't be put in on that basis?

21 A I might add in all fairness I could send paper out
22 by truck, but it would be very hard to import pulp
23 by truck from Canada and other places, and I would
24 rather pay the extra cost to have a railroad there
25 and send it out by rail. I went to great lengths

1 to find companies that would buy and be served by
2 rail on the railroad sidings. (Inaudible.)

3 Q In other words, you do have all of your marketing
4 problems handled, and you do have the plant sold out
5 at the present time?

6 A I have customers --- I have the plant sold out
7 several times over to different types of people who
8 want to buy.

9 MR. SCHERER: Thank you. I have no further
10 questions.

11 THE COURT: Any questions?

12 MR. COLLINS: I have one or two, your
13 Honor.

14 THE COURT: Is this mill which you had an
15 option, you say, to purchase, this paper mill, so-
16 called, is that the old Franconia ---

17 THE WITNESS: Yes, sir.

18 THE COURT: That is the one that went into
19 bankruptcy?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. You didn't say
22 anything about it being Franconia and counsel did in
23 his motion for continuance. You just stuck in the
24 paper mill. It is the Franconia Paper Mill.

25 MR. SCHERER: Yes, your Honor.

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THE COURT: Why not the full story?

MR. SCHERER: I didn't intend or didn't mean ---

THE COURT: I just don't approve of it.

MR. SCHERER: I didn't mean to do anything other than to present the whole story, your Honor.

THE COURT: You filed a petition for an arrangement and then withdrew that and filed a petition for straight bankruptcy, and it was found bankrupt, was it? Do you know?

THE WITNESS: Yes, sir.

THE COURT: And it had been bankrupt for some time?

THE WITNESS: Since last April.

THE COURT: Last April, 1972.

When did you first start your negotiations for this mill? Who were you before that? What position did you hold before that, before you started your negotiations for the purchase of the paper mill?

THE WITNESS: I was vice president of another paper mill.

THE COURT: Where is that?

THE WITNESS: Pleasant Valley Paper Mills in Lawrence, Mass.

1 THE COURT: How long had you been there?

2 THE WITNESS: About a year with the
3 Pleasant Valley Paper Mills. I helped to put that
4 package together, too, sir.

5 THE COURT: That's enough. Do you have any
6 questions?

7 Go forward.
8

9 Cross Examination by Mr. Collins

10 Q I believe that you testified that you expected to
11 ship into the plant at Lincoln 50,000 tons of pulp
12 in a year; is that correct?

13 A Yes, sir.

14 Q That will come from where?

15 A About 30 percent would come from the south and about
16 70 percent from Canada.

17 THE COURT: What was the purchase price of
18 this paper mill, so-called, that you were to put
19 in? Was it your company that was going to put in the
20 money, from Lawrence, or you? Who were the parties
21 to this agreement I have been trying to look into?

22 THE WITNESS: The Profile Paper? Me.

23 THE COURT: Just you individually?

24 THE WITNESS: Yes.

25 THE COURT: Not the corporation for which

1 you worked? Yes or no.

2 THE WITNESS: Well, I am putting the money
3 in for the corporation, yes.

4 THE COURT: How much money?

5 THE WITNESS: So far I have put in
6 \$75,000. I will have a total of \$200,000.

7 THE COURT: You are putting it in for your
8 company; is that what you say?

9 THE WITNESS: Profile Paper Corporation.
10 That is my company.

11 THE COURT: Have you talked with them
12 about this arrangement beforehand?

13 THE WITNESS: Talked with whom, sir?

14 THE COURT: If you were putting it in,
15 for the Lawrence ---

16 THE WITNESS: Lawrence is another
17 corporation altogether. It is not connected
18 whatsoever.

19 THE COURT: For what company were you
20 putting this money in?

21 THE WITNESS: This money I am putting in
22 this 35,000 I have already put in, is for Profile
23 Paper Corporation.

24 THE COURT: That is another corporation?

25 THE WITNESS: Yes.

1 THE COURT: Where is that?

2 THE WITNESS: That is a Delaware
3 corporation.

4 THE COURT: Where in Delaware?

5 THE WITNESS: I don't know. It is a
6 Delaware corporation.

7 THE COURT: What part of Delaware? You
8 don't know?

9 THE WITNESS: No, sir.

10 MR. SCHERER: It is a corporation formed ---

11 THE COURT: No, no. I am talking to the
12 witness.

13 THE WITNESS: It is a corporation that my
14 lawyers had formed for me in Delaware, sir, and we
15 are presently operating at ---

16 THE COURT: Mr. Collins, do you want to
17 ask any questions?

18 MR. COLLINS: Yes, I have a few questions.

19 THE COURT: Go ahead, please.

20 Q Where are the principal offices of Profile Paper
21 Corporation?

22 A 100 Charles River Plaza in Boston.

23 THE COURT: Have they offices in Delaware?

24 THE WITNESS: No.

25 Q They are incorporated under the laws of Delaware?

1 A yes.

2 Q Their only office is in Charles River, or is there
3 an office in Lincoln, New Hampshire?

4 A We have a Post Office Box number in Lincoln, New
5 Hampshire, and we are using the office there now as
6 our auxiliary office at the plant.

7 Q You are president of that corporation?

8 A Yes, sir.

9 Q And you are aware of all of its negotiations?

10 A Yes, sir.

11 Q And you have projected what business you will do at
12 the former Franconia Paper Mill if you purchase it;
13 is that correct?

14 A Yes, sir.

15 Q And you have projected ---

16 THE COURT: These are all leading
17 questions.

18 MR. COLLINS: All right. I will stop
19 leading, your Honor.

20 THE COURT: I wish you would.

21 Q How many tons of pulp will you have shipped into
22 Lincoln, New Hampshire?

23 A It will run in the vicinity of 50,000 tons.

24 Q How many carloads would you estimate that will be?

25 A I haven't broken that down to carloads, sir.

1 Q Do you have an idea as to how many tons a car will
2 hold?

3 THE COURT: Never mind ideas. Facts.

4 Q Do you know how many ---

5 THE COURT: Ideas are a guess.

6 A We have 30,000 ---

7 THE COURT: Go ahead. Not ideas.

8 Q How many?

9 A We have a 30,000 ton carload and a 40,000 ton
10 carload on those tracks. We can't bring in
11 100,000 tons.

12 Q How many tons of coal, if any, do you intend to
13 ship into Lincoln?

14 A A full year's supply, according to the last five
15 years' records, and these are not my projections,
16 about 50,000 tons a year.

17 Q Where do you expect that will come from?

18 A Pennsylvania.

19 Q Will that come by rail all the way?

20 A Yes.

21 Q And over what lines of the Boston & Maine Railroad
22 will that --- first the pulp --- come?

23 A I don't really know what lines they will use. I know
24 they had to go through Concord up to Lincoln.

25 Q Some of it ---

1 A Some will come all the way through the line from the
2 south but the others will come in from the west
3 coast, probably, through Concord.

4 Q What do you intend to ship out of the plant in
5 Lincoln, New Hampshire?

6 A Finished paper.

7 Q To what points and places to you intend to ship
8 finished paper?

9 THE COURT: You mean you individually?

10 MR. COLLINS: No, Profile Paper Corporation.

11 THE COURT: That's better.

12 A New York and Springfield.

13 Q Springfield, Massachusetts?

14 A Yes.

15 Q And what means of transportation did you intend to
16 use to ship out the finished product?

17 A We are planning on using rail because we are trying
18 to keep the rail there. We could use truck. We
19 could have used trucks.

20 Q What is your present intention?

21 A Rail.

22 Q And that will be loaded into rail cars in Lincoln,
23 New Hampshire?

24 A Yes.

25 Q And shipped by rail all the way ---

1 A --- to New York and to Springfield.

2 Q Will you use the same size cars to ship the pulp ---
3 strike pulp --- the finished product?

4 A Yes.

5 MR. COLLINS: No further questions, thank
6 you.

7 THE COURT: Who first interested you in
8 the Franconia Mill? Name and address?

9 THE WITNESS: The Franconia Mill?

10 THE COURT: Yes. The one you were to
11 purchase.

12 THE WITNESS: When I was at Pleasant
13 Valley Paper Mills.

14 THE COURT: Who?

15 THE WITNESS: I was with a man named
16 Joe Ardine.

17 THE COURT: What about him?

18 THE WITNESS: He was the president of
19 Pleasant Valley Paper Mills.

20 THE COURT: He was the first one who
21 talked about that matter?

22 THE WITNESS: Yes.

23 THE COURT: What is his address?

24 THE WITNESS: 21 Canal Street, Lawrence,
25 Massachusetts.

1 THE COURT: That's all I wanted to know
2 for the record. Go forward.

3 MR. COLLINS: I am all through, your Honor.

4 MR. KILLKELLEY: I have no questions at this
5 time, your Honor.

6
7 Cross Examination by Mr. Weinberg

8 Q Mr. Normand, do you know a Mr. Marcalus?

9 A Yes, sir.

10 Q What is his full name?

11 A Robert Marcalus.

12 Q Do you know whether he was the owner of the Franconia
13 Paper Corporation --- whether he was the principal
14 officer of the Franconia Paper Corporation prior to
15 1970?

16 A Yes, through another corporation. Franconia Paper
17 Corporation, yes. He was the principal.

18 Q He was the principal officer, and do you know whether
19 that --- whether or not that corporation filed a
20 petition in bankruptcy in 1970?

21 A Yes, sir.

22 THE COURT: We have been all over that.

23 THE WITNESS: Yes, sir.

24 Q And with whom are you dealing in the present ---

25 THE COURT: I am at a loss. I haven't got

1 these so-called agreements. With whom did you enter
2 into these agreements to buy the paper mill? With
3 whom?

4 THE WITNESS: Through Black Acre
5 Woodlands Corporation, owned principally by
6 Robert Marcalus. Black Acre Realty Corporation, a
7 New Hampshire corporation.

8 THE COURT: It is named as a party to
9 these agreements; is that right?

10 THE WITNESS: Yes, sir.

11 Q Who is the principal stockholder of Black Acre Realty
12 Corporation?

13 A Robert Marcalus.

14 Q How did Black Acre Realty Corporation acquire that
15 property; do you know?

16 A At a bankruptcy proceeding.

17 Q At the bankruptcy proceeding of Franconia
18 Manufacturing Corporation?

19 A Yes, sir.

20 Q Which is the second corporation to operate this mill?

21 A Yes, sir.

22 THE COURT: Is that all?

23 MR. WEINBERG: I would like to file at this
24 time, your Honor, the application for leave ---
25 certified copies of the application for leave to

1 foreclose the mortgage brought by Green Acre
2 Woodlands, Inc., which is named in the application
3 as formerly named Franconia Paper Corporation,
4 Proceedings 72-167 in the bankruptcy of Franconia
5 Manufacturing Corporation. For identification.

6 (Application for leave to
7 foreclose mortgage marked
8 Petitioner's Exhibit
9 No. 22 for Identification.)

10 MR. WEINBERG: I would also like to
11 introduce the order of the bankruptcy court in that
12 proceeding granting leave to foreclose mortgages
13 to the Green Acre Woodlands, Inc.

14 (Order granting leave to
15 foreclose mortgages marked
16 Petitioner's Exhibit
17 No. 23 for Identification.)

18 Q Do you know how Black Acre Realty Corporation
19 acquired the title in Green Acre Woodlands, Inc.?

20 A They bid in at foreclosure.

21 Q And Mr. Marcalus was equally the principal of that in
22 interest, in the Black Acre Realty Corporation, as
23 he was in Green Acre Woodlands, wasn't he?

24 A Yes, sir.

25 Q Did you know Mr. Marcalus back in 1970?

A No, sir.

Q 1971?

block

1 A No, sir.
2 Q When was the first time you met Mr. Marcalus?

3 A The first I met Mr. Marcalus was November 15.

4 Q 1972?

5 A Yes.

6 Q How much money have you paid to Mr. Marcalus in
7 consideration of anything connected with your
8 negotiations with him?

9 A \$75,000.

10 Q Is that in cash?

11 A Yes, sir.

12 THE COURT: Cash?

13 THE WITNESS: Yes, sir.

14 THE COURT: Where did you get it?

15 THE WITNESS: I sold my property, I took a
16 mortgage on my property. I have property on the
17 South Shore that I have sold ---

18 THE COURT: Assuming you have, where did
19 you get the cash?

20 THE WITNESS: I borrowed \$100,000.

21 THE COURT: Where?

22 THE WITNESS: Capitol Finance.

23 THE COURT: Where?

24 THE WITNESS: Capitol Finance.

25 THE COURT: Where is that?

1 THE WITNESS: Boston.

2 THE COURT: Boston, Mass.?

3 THE WITNESS: Yes, sir.

4 THE COURT: And you delivered that money
5 to somebody?

6 THE WITNESS: To Marcalus.

7 THE COURT: All right.

8 Q Do you have any bank account?

9 A At the City Bank and Trust.

10 Q Can you tell us what the balance in that bank account
11 is at the present time?

12 THE COURT: Did you deliver it in cash to
13 Marcalus, not a check?

14 THE WITNESS: The lawyers gave it to
15 Mr. Marcalus.

16 THE COURT: Did you deliver it to the
17 lawyers in cash?

18 THE WITNESS: It was a check.

19 THE COURT: Payable to whom?

20 THE WITNESS: Payable to Black Acre Realty.

21 THE COURT: Get it in the record. I have a
22 purpose in getting this in the record.

23 THE WITNESS: Mr. Barron, representing the
24 Capitol Finance Company, and he took charge of the
25 escrow agreements to give the cash to Black Acre

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Realty.

Q Do you have the canceled checks?

THE COURT: 75,000 ---

A My lawyer has copies of the canceled checks.

THE COURT: You delivered the \$75,000 in cash?

THE WITNESS: No, sir. It was a check.

THE COURT: To this man named here, this lawyer?

THE WITNESS: To Mr. Barron, who is the escrow lawyer for Capitol Finance and for Arthur Normand, made out a \$75,000 cashier's check and mailed it last Friday to Mr. Marcalus for Black Acre Realty for a \$75,000 ---

THE COURT: Last Friday?

THE WITNESS: Yes, sir.

THE COURT: Not at the time of the original agreement?

THE WITNESS: No, sir.

THE COURT: Why wasn't it paid then?

THE WITNESS: Because I had originally had a \$50,000 security deposit and --- at March 1st. In order to get an extension, which I was supposed to have verbally but it didn't materialize, he wanted another \$25,000 and they wanted it in a cash deposit

1 instead of a security deposit, a security deposit
2 meaning a mortgage of my property.

3 I changed the mortgage position on my
4 property by capital financing and gave Mr. Marcalus
5 the \$75,000, \$50,000 to cover the \$50,000 security
6 deposit and \$25,000 for the additional money.

7 THE COURT: Any further questions?

8 MR. WEINBERG: Yes, sir.

9 THE COURT: I want to finish this
10 noontime. This is the last witness, gentlemen, do
11 I understand? We will finish, rather than taking
12 a recess and coming back. Finish now, if you can
13 conveniently, of course.

14 Q You are saying that the escrow lawyer --- what is his
15 full name?

16 A Will you ask my attorney? Stanley Barron.

17 Q Stanley Barron, you delivered the check to
18 Stanley Barron?

19 A No, sir. Stanley Barron represented Capitol Finance,
20 who gave me a mortgage of \$100,000, of which \$75,000,
21 a check was made out by Stanley Barron, certified
22 cashier's check was made out by Stanley Barron, who,
23 at the time that the recording was made in Plymouth,
24 mailed, according to the mortgage recorded in
25 Plymouth, Massachusetts of my property, mailed a

1 check to Mr. Marcalus in New Jersey, to New Jersey,
2 and he had received this check. I called him at his
3 home to make sure he got it.

4 THE COURT: One question. I still have to
5 preface it by saying I am at a loss without these
6 agreements in my possession. You paid this 75, or
7 these sums now, so we won't go into too many
8 details, last Friday, you said?

9 THE WITNESS: Yes, sir.

10 THE COURT: Did you know these hearings
11 were being conducted here in this Court on that date?

12 THE WITNESS: Yes, sir.

13 THE COURT: Did you or didn't you?

14 THE WITNESS: Yes, sir.

15 THE COURT: You paid nothing on the day
16 that you executed this so-called option to purchase,
17 no money at all?

18 THE WITNESS: I agreed to pay \$50,000.

19 THE COURT: You paid no cash?

20 THE WITNESS: No, but I gave a security
21 deposit.

22 THE COURT: You paid nothing?

23 THE WITNESS: I paid a security deposit,
24 \$50,000. He could foreclose my property if I didn't
25 pay.

1 THE COURT: That is the question I asked.

2 THE WITNESS: Yes, sir.

3 THE COURT: I want this matter thoroughly
4 investigated.

5 Q Can you ---

6 THE COURT: Do you understand me?

7 MR. WEINBERG: Yes, your Honor.

8 Q Can you acquire from Mr. Barron the canceled \$75,000
9 check to which you refer?

10 A I am sure that my lawyer can do this. He has
11 photostatic copies of these checks.

12 MR. WEINBERG: Can you provide that for the
13 record?

14 MR. SCHERER: Yes.

15 Q And that check was made out to Black Acre Realty?

16 A It is my understanding, yes, sir.

17 Q What other assets do you have at the present time?

18 A I pledged all my assets, sir.

19 Q You have no other assets at the present time?

20 A I pledged a total of \$465,000 worth of purchase and
21 sales agreements of land that I owned on the South
22 Shore.

23 Q Do you have an appraisal of that land?

24 A No, sir.

25 Q Why do you know it is worth \$400,000?

- 1 A Because the people have bought it and it has gravel
2 and it has water and it is very valuable land.
- 3 Q Has anybody offered you any money for it?
- 4 A Yes, they offered it and I accepted it.
- 5 Q Who offered you money for your land?
- 6 A Consolidated Trust.
- 7 Q Who is Consolidated Trust?
- 8 A It is a development corporation in Boston.
- 9 Q When was it formed?
- 10 A About a year ago.
- 11 Q In October of 1972, wasn't it?
- 12 A I really don't know, sir.
- 13 Q Do you know the three principals of Consolidated
14 Trust?
- 15 A Yes, sir.
- 16 Q What are their names?
- 17 A Marvin Harold and Simeon Niles, and I think a
18 Mr. Murphy, I'm not sure of his first name.
- 19 Q And that was a declaration of trust filed in the
20 Suffolk Registry of Deeds?
- 21 A I imagine so, sir.
- 22 Q And did they, as such trustees, offer you \$400,000
23 for this land?
- 24 A Yes, sir.
- 25 Q Is that offer in writing?

1 A Yes, sir.

2 Q Do you have a copy of the offer?

3 A Not with me but I can present it to you.

4 MR. WEINBERG: Can that be presented in
5 the record also?

6 MR. SCHERER: You will have copies of all
7 the documents. We gave them to you ---

8 THE COURT: If you want it, you will see it.

9 MR. WEINBERG: I have no copy of any offer
10 of Consolidated Realty.

11 MR. SCHERER: You have offers of purchase
12 and sale agreements, though.

13 THE COURT: If there is one in existence
14 and in the possession of counsel, counsel will
15 produce it.

16 MR. WEINBERG: Will counsel produce an offer
17 made by Consolidated Trust to purchase from
18 Mr. Normand for \$400,000 the real estate which he
19 owns in Massachusetts?

20 MR. SCHERER: We don't have an offer. We
21 entered into negotiations resulting in an execution
22 of binding purchase and sale agreements which you now
23 hold.

24 THE COURT: If it is within your power to
25 produce this document, do it.

1 MR. SCHERER: I produced --- I might add
2 that we have ---

3 THE COURT: No further colloquy.

4 MR. WEINBERG: Has this been executed,
5 this which I hold in my hand? I don't see any
6 execution.

7 MR. SCHERER: This is a Xeroxed copy of
8 the executed original, sir. Page 3 shows signatures,
9 shows the principals of Consolidated Trust and
10 Mr. Normand. That one seems to be missing, an
11 execution page.

12 There are two purchase and sale agreements.
13 You also have been given copies of the purchase and
14 sale agreements on the New Hampshire property,
15 although I believe we took a copy back with us.

16 Q Is this the agreement that you say you have entered
17 into --- this is a copy of the agreement you say you
18 entered into for the sale of lands in Massachusetts
19 to the Consolidated Trust?

20 A This is one portion of it. It is in two portions.
21 At the time there was two portions, one for land and
22 one for gravel.

23 Q This is the mineral rights; is that right?

24 A Yes, that is the gravel. This land is adjoining
25 the town gravel bank of Middleboro.

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Q This is for \$200,000?

A Yes, sir.

Q And this unexecuted copy of an agreement, you say, for the purchase of the land, you say that was executed?

A Yes, sir.

Q And that was for \$245,000?

A Supposed to have been \$265,000. We have a new, updated agreement, which is \$265.

Q So this doesn't represent the more complete stage of your negotiations and obligations with the Consolidated Trust?

A I think the 240 was minus the deposits that they put down.

Q Aside from that, do you have any other assets?

A Not that is not pledged.

Q Do you have any other assets?

A Other than what? Other than that, I do, sir. I have other assets other than that.

Q What are those assets?

A I have a building and land at the corner of East Grove and Wareham Streets, Middleboro, Mass., and I have land in South Middleboro, Mass., about two acres, and I have a lot in Carver, Mass., on the waterfront.

- 1 Q That is the total amount of your assets other than
2 this land in Middleboro?
- 3 A Yes, sir. I can get a financial statement at any
4 time you request.
- 5 Q Do you have any bank deposits at the present time?
- 6 A I think the deposits are kind of low right now.
7 I am waiting for more funds to come in.
- 8 Q So that unless the bank or the Capitol Loan Company
9 was willing to offer you additional loan grants on
10 the basis of what they thought was the projected
11 profits to be made from the Franconia mill, you
12 wouldn't get any financing?
- 13 A I stand a chance to lose my 75,000, sir.
- 14 Q And you also stand a chance of not getting the
15 financing to make the balance of the purchase price?
- 16 A Yes, sir.
- 17 Q What is that purchase price?
- 18 A \$1 million.
- 19 Q \$1 million?
- 20 A Yes, sir.
- 21 Q So far all you have put into it is \$75,000?
- 22 A So far I put in \$75,000, plus three months' work,
23 sir.
- 24 Q If you walked away from this deal now, the most that
25 you would lose is the \$75,000?

- 1 A If you are looking at it from the angle you are
2 saying, yes, If I walked away from it now, I could
3 lose a very good business that brings in about
4 \$2 million a year.
- 5 Q What business is that?
- 6 A The paper company, the paper business.
- 7 Q Narrow that down. What business particularly are
8 you referring to, your projected operation of the
9 mill?
- 10 A Yes, sir.
- 11 Q You can't operate the mill unless you have the
12 capital to buy the mill.
- 13 A That's right, sir, but based on the sales that I have
14 promised to me and based on my projections and what
15 the mill really did, what it is thought it could be,
16 I can get the financing. That is what I am placing
17 my confidence in.
- 18 Q On what assurance do you say you can get the financing?
- 19 A I am basing it on the fact that the market is good
20 for paper and that I do have a commitment to sell
21 the paper and the supplies are available and the help
22 is already lined up to go and make the paper and we
23 are only going to operate the paper, not the pulp
24 mill. The pulp mill was the whole culprit of this
25 whole operation.

- 1 Q It is true, isn't it, that any loan company such as
2 the Capitol Loan Company, beyond the \$400,000 that
3 ostensibly you may get in the sale of the properties
4 which you own in Middleboro, has to look completely
5 for the earnings of this mill which you project to
6 operate in Lincoln for the satisfaction of any loans
7 that it might make?
- 8 A I have a purchase and sale agreement for \$465,000 on
9 my property in Middleboro.
- 10 Q What about the \$600,000, you have to get that from
11 banks or lending institutions; isn't that so?
- 12 A Yes, but I have been this way before. I helped to
13 put the Pleasant Valley Paper Mill into business.
- 14 Q For that \$600,000 a bank or lending institution is
15 going to have to look completely, is it not, to the
16 prospects of earnings of your operations of the mill
17 at Lincoln?
- 18 A The bank sets their standards as to what they want
19 to lend money on.
- 20 Q But you can't offer any security other than the
21 prospects of the earnings of that mill at Lincoln?
- 22 A I offer the security of the mill property and also
23 my own personal investments and the operation that is
24 going to be projected and the new situation in the
25 paper market today in comparison with what it was two

1 years ago.

2 Q Can you answer my question? In addition to the
3 \$445,000 that ostensibly you will be able to sell
4 your property in Middleboro for, you don't offer any
5 bank or lending institution any security for the
6 return of any monies loaned to you other than the
7 prospects of earnings from your operation of the mill
8 at Lincoln?

9 A That, based on the mill's records, of the paper mill
10 and not the pulp mill. The last five years showed
11 50,000 tons a year, and 50,000 tons a year is a very
12 good small business for the paper industry.

13 The paper mill did not cause the problems
14 in Franconia.

15 The paper mill, over the last five years,
16 by the records --- and for once I have a record ---
17 no, I just brought the records I thought you would
18 need.

19 I have records available that show 50,000
20 tons plus of paper every year, and the same average
21 was going on at the time of the last foreclosure on
22 the paper mill, but the operation of the pulp mill
23 is just too costly.

24 Q Mr. Marcalus was versed, was he not, in the
25 manufacture of paper and the costs?

- 1 A Yes, sir, he is a very experienced man.
- 2 Q And he lost money in the operation of the mill,
- 3 didn't he?
- 4 A Not the mill, sir.
- 5 Q But he lost money in the paper operation, didn't he?
- 6 A In the pulp operation.
- 7 Q The fact is he went bankrupt, didn't he?
- 8 A He paid one hundred cents on the dollar.
- 9 Q But he closed the business down?
- 10 A Yes, sir.
- 11 Q So he was losing money during the last few years of
- 12 his operation, wasn't he?
- 13 A He invested too much money in the pulp operation so
- 14 he ran out of liquid cash and he closed down his
- 15 operation the day before a strike, and it just so
- 16 happened the people got their unemployment.
- 17 Q Did you know John Potter, the man who ran the
- 18 Franconia Paper Corporation?
- 19 A No, sir.
- 20 Q Is the paper making ---
- 21 A I take that back. I met him once.
- 22 Q He has a lot of experience, has he not, in the
- 23 manufacture of paper?
- 24 A He has had some experience.
- 25 Q And he worked for some large outfit in Glens Falls,

1 New York before he took over this shot, didn't he?

2 A Yes, sir.

3 Q And his shot failed, too, didn't it?

4 A Do you know why?

5 Q He went bankrupt, didn't he?

6 A Yes, sir. He sold ten-cent paper and he made all
7 kinds of crazy colors, real deep colors, and he hit
8 a market that was depressed and he made drop shipments
9 all over the country rather than to go with one
10 company.

11 Q In other words, paper making ---

12 A And he tried to operate the pulp mill.

13 Q So in other words the paper making process is subject
14 to many frailties, and misjudgments in operations
15 can cause serious losses; isn't that so?

16 A Yes, sir.

17 Q So that if you, too, are not immune from making
18 errors of judgment which could cause a loss in the
19 operation which you project ---

20 A You're right, sir, I could, and I can make a lot of
21 profit, too.

22 Q So that a bank loaning you \$600,000 without security,
23 based wholly on the prospects of earnings from the
24 mill, could also stand to risk its loan completely,
25 couldn't it?

- 1 A From the bank's standpoint, the security of that
2 mill I think will be in an enviable position for
3 most anybody.
- 4 Q The mill was built in 1900 to 1910. Is that worth ---
- 5 A The times have changed. Not only the market has
6 increased for the paper industry, but also the real
7 estate has increased.
- 8 Q What could a bank or lending institution levy on that
9 mill to get back the \$600,000 for ---
- 10 A Two and a half miles of frontage on the
11 Kancamagus Highway, and water and sewerage already in
12 and adjacent to a ski area.
- 13 The land alone has increased its value.
- 14 Q In other words, discounting what you could get for
15 the paper making facility?
- 16 A Yes, sir. If I was a paper maker by trade all my
17 life, I would never see the true value of this mill.
18 I would be ripping paper up and looking at the paper.
19 I wouldn't be looking at the assets.
- 20 Q What land are you going to get?
- 21 A 200 acres of land that goes with the mill.
- 22 Q Not timber land?
- 23 A No, sir, this is developed land. The town hall, the
24 fire department, the police department and the post
25 office is on this property. The bank would look at

1 the real estate value as well as the paper mill
2 value, and as a pulp mill, they will discount
3 temporarily, unless somebody came down the road with
4 their own money.

5 Q So that the bank would have to go into the real
6 estate business in order to safeguard its \$600,000
7 investment?

8 A No, sir. They can call several of my accounts and I
9 will guarantee in a telephone call to get a
10 purchaser to certify the total tonnage.

11 Q I'm asking you about a bank, I'm not asking you about ---
12 if you went broke ---

13 A The accounts receivable is \$15 million a year, to a
14 bank. This is what they are interested in.

15 Q So that they would have to go into a collection
16 business to get the money back?

17 A This is factoring. They like that. That is their
18 business.

19 Q How would a bank get its security, realize its
20 security that you offer?

21 A The bank would look at the real estate, number one;
22 number two, the mill; number three, the accounts that
23 are going to buy its paper, and the performance, how
24 the mill is going to be operated, the people that are
25 going to be working there, and the projection of the

- 1 cost of materials against earned profits.
- 2 Q They couldn't look to you personally?
- 3 A Not to me personally, no.
- 4 Q Yet, in talking to Professor Cherington, you are
- 5 talking about acquiring the railroad line itself?
- 6 A Yes, sir.
- 7 Q What do you intend to buy that with?
- 8 A I don't want to see the railroad torn out of there.
- 9 Q What do you intend to put up for that purchase?
- 10 A I, personally, nothing. I would look to others.
- 11 Q So you were just talking?
- 12 A No, sir, I was sincerely interested.
- 13 Q You made no offer of how much you would pay for
- 14 the acquisition of the rail line?
- 15 A We talked of the amount of \$1 million.
- 16 Q What were you going to put up as a guarantee for the
- 17 continuation of operation of this line when you
- 18 talked?
- 19 A In discussing this with Mr. Cherington, the ---
- 20 I told him I didn't personally have these funds;
- 21 that a deposit would come forward if we were going
- 22 to get involved, and I told him the state should have
- 23 to come first, and he already said he had a letter
- 24 to send to the state. The state has the first rights
- 25 to buy the railroad.

1 I only mentioned the fact that I didn't
2 want to see this line torn out of there and that I
3 would endeavor to find people who did have the proper
4 funds to do this.

5 Q But you couldn't, out of your own personal assets,
6 put up anything to guarantee the railroad in
7 continuing operation of this line, could you?

8 A Not today but --- not following through the
9 negotiations. It was my intent to get an option on
10 the line.

11 Q You had more than you could handle in buying the mill,
12 didn't you?

13 A I explained this would be through others. A very
14 feasible approach, sir.

15 MR. WEINBERG: I have no further questions.
16

17 Redirect Examination by Mr. Scherer

18 Q Just to touch on a very few points raised by counsel
19 for the Boston & Maine Railroad, there is a lot of
20 testimony on cross examination relating to your
21 personal assets, and perhaps for the benefit of the
22 Court we can give a clearer picture concerning
23 precisely what your assets amount to and how much you
24 are going to be putting into the acquisitions and
25 operation of the paper mill up in Lincoln, New

1 Hampshire.

2 You testified earlier that your assets at
3 the present time are all tied up in real estate that
4 own; is that correct?

5 A Yes.

6 Q Is it therefore true that you at the present time
7 don't have liquid assets in the sense of cash or
8 stocks and so forth that you can draw upon?

9 A Just a limited amount.

10 Q There was testimony earlier concerning a loan that
11 was recently made by Capitol Finance Corporation,
12 a portion of the proceeds of which were used to
13 supply some cash to Black Acre Realty Corporation
14 through its principal Mr. Marcalus. It raises the
15 question of your earlier plans for interim
16 financing. What had you anticipated earlier would
17 be the way in which you would be able to raise
18 whatever cash you would need for interim purposes,
19 including the making of cash deposits for purchase
20 of the mill in Lincoln?

21 A I had other partners that were supposed to come into
22 this deal and they dropped off.

23 Q Did you also anticipate that there would be a closing
24 on the --- in respect to your property in
25 Middleboro, Mass. --- this is the purchase that would

1 be governed by the purchase and sale agreements that
2 Mr. Weinberg showed to the Court a few moments
3 ago? Had you anticipated that there would be a
4 closing of that sale which would yield substantial
5 cash for you for your purposes in New Hampshire?

6 A Yes.

7 Q Could you state for purposes of clarification why
8 it was that there were two purchase and sale
9 agreements?

10 A One was for the real estate and improvements, and
11 a two-story house, and the other was for gravel
12 which is going to be used to be sold off on an
13 on-project operation.

14 Q Was it at the request of the buyer that there be
15 two purchase and sale agreements, one for mineral
16 rights and one for the land?

17 A Yes.

18 Q Would that relate to his own personal needs?

19 A To his needs, not mine.

20 Q In effect you had one agreement to sell the land with
21 the gravel between yourself and Consolidated Trust;
22 is that correct?

23 A Yes.

24 Q What is the total purchase price?

25 A \$465,000.

1 Q At the time at which you entered into those agreements,
2 what was the total of mortgages, liens and
3 encumbrances running against the property?

4 A \$65,000.

5 Q Therefore, you would have cleared \$400,000?

6 A Yes, sir.

7 Q Did the buyer, pursuant to those purchase and sale
8 agreements, close that purchase and sale in time
9 for you to raise your cash?

10 A No. I was put in a very embarrassing position.

11 Q When you were, therefore, caught short on your cash
12 needs to fulfill your obligation to Mr. Marcalus,
13 did you then attempt to arrange a borrowing based on
14 the value of the Middleboro real estate?

15 A Yes.

16 THE COURT: Of course he is going to say
17 yes to all these leading questions.

18 MR. SCHERER: Your Honor, Mr. Weinberg,
19 in his questioning, implied that the borrowing, the
20 reason it took place was based upon projected profits
21 of New Hampshire.

22 THE COURT: All I was talking about was
23 leading questions.

24 MR. SCHERER: I understand, your Honor.

25 Q What was the security given to Capitol Finance for

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their loan?

A The land that is out for sale to Consolidated Trust plus other assets that I own.

MR. WEINBERG: What was the last?

MR. SCHERER: Plus other assets that he owns.

Q Were those assets real estate?

A Yes.

Q Could you state what real estate?

A The real estate at the East Grove and Wareham Streets building and land and two acres of land in South Middleboro.

Q For the security for that borrowing, was the property subject to the purchase and sale agreement, plus two other lots?

A Yes.

Q What would you estimate would be the fair market value of those other two lots?

A About \$30,000.

Q Therefore the security was \$30,000 of property plus the Middleboro property that has the \$465,000 purchase price?

A Yes.

Q In the event you do not go forward on the New Hampshire property, would this affect Capitol Finance

- 1 in terms of the security arrangements that have been
2 made?
- 3 A No.
- 4 Q Therefore it was a straight real estate loan?
- 5 A Yes, based on my personal real estate.
- 6 Q Was it --- did the lender appraise the real estate
7 in Middleboro prior to making the loan?
- 8 A Yes, the lender took people down in construction and
9 I had people meet him down there to show him around
10 the land.
- 11 Q There was some confusion resulting from questioning
12 relative to the way in which the payment was made.
13 At the time that the loan was consummated, what
14 arrangement was made for sending the \$75,000 to
15 Mr. Marcalus that he required?
- 16 A Of the \$100,000 that I borrowed on the land, I asked
17 Mr. Stanley Barron if he would send a check
18 directly to Black Acre Realty and/or Mr. Marcalus,
19 which, as an escrow lawyer handling the transaction,
20 he did.
- 21 Q Were there any other funds resulting from that loan
22 on your Middleboro property which you anticipate
23 will be used for interim financing purposes for New
24 Hampshire?
- 25 A Yes.

- 1 Q Could you explain a little bit?
- 2 A We have costs that go along not only in buying the
3 mill, to have costs in hiring attorneys and
4 accountants and other costs.
- 5 Q How much money did you receive from the loan?
- 6 A \$100,000.
- 7 Q How much money did you send to Mr. Marcalus?
- 8 A \$75,000.
- 9 Q Of the remaining \$25,000, how much is being used
10 for purposes other than New Hampshire?
- 11 A About \$10,000.
- 12 Q Therefore the balance is being used as additional
13 expenditures by you in respect to New Hampshire?
- 14 A Right.
- 15 Q If New Hampshire does not go forward, what will be
16 your personal financial loss therefor?
- 17 A I would say about, in cash, about \$75 --- \$90,000,
18 not counting what I spent, about \$100,000 in cash,
19 plus loss of time and loss of position because I
20 resigned from the other company.
- 21 Q Was Profile Paper Corporation in existence prior
22 to the time that you began negotiations on the
23 New Hampshire property?
- 24 A I'm sorry, I didn't get that.
- 25 Q Has this been a going corporation for some period of

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time?

A Profile Paper is a new corporation.

Q For what purpose was it formed?

A To accept the purchase of the Franconia Paper Mill into a new corporation.

Q Are you the principal stockholder in Profile Paper Corporation?

A Yes, but I have stock available in case I have to bring other people in for extra financing by other banks.

Q Do you anticipate you personally will make an investment in the corporation for the New Hampshire property beyond the \$75,000 that you have already made?

A Yes.

Q How much more do you think you will be putting in as a part of the total financing package?

A Totally I think I will be putting in about \$225,000.

Q Mr. Normand, based upon appraisals that have been done and that are currently under way, what do you think the fair market value of the 200 acres of real estate, standing alone, would be at the present time?

A About \$1 million.

Q How much of that, or how would that be used? How do

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you justify that money?

A Because I have checked the surrounding area. House lots are going \$15,000 to \$20,000.

Q How much could be used for house lots as opposed to industrial?

A House lots in the general area are around \$5- or \$6,000.

Q From the standpoint of discussions you are now having with banks, would it be a fair statement, based upon what Mr. Weinberg said earlier that much of the security for the bank would be the real estate itself?

A Yes.

Q Do you happen to know, at the time that the bankruptcy proceedings went through earlier, from Mr. Potter what was the appraisals at that point in time for the salvage value of the machinery and equipment?

A I don't have anything in writing.

Q Do you have any idea what that would be?

A Judging from appraisals I had in other mills, I would say about a million and a half dollars.

Q In any event, there would be residual value in the real estate and machinery and equipment on a salvage basis to support a loan?

A Absolutely. The insurance --- if I may add, in order to get this plant properly insured at replacement

1 value, my insurance policy would be \$17,500,000.
2 As a down mill, it is only worth about \$3 million,
3 but as a going mill, the replacement value is about
4 \$17,500,000.

5 To sell the mill after it is going, it
6 would have been about \$25 million.

7 Q At the time you entered into the original option
8 agreement with Mr. --- let me ask another question.
9 Did you have negotiations concerning --- just tell
10 me, who is it you had those negotiations with in
11 respect to the plant in New Hampshire?

12 A Marcalus.

13 Q Mr. Ardine was mentioned earlier. Have you had any
14 negotiations with him or does he have any role at all
15 in respect to New Hampshire?

16 A Absolutely none.

17 Q Were your original negotiations concerning purchase
18 of the plant in New Hampshire with Mr. Marcalus?

19 A Yes.

20 Q Had he been the previous owner prior to Mr. Potter?

21 A Yes.

22 Q Have you had negotiations with anyone other than
23 Mr. Marcalus and his lawyer?

24 A No.

25 Q At the time that you entered into the option agreement,

1 could you explain a little more fully precisely what
2 the nature of that security deposit was?

3 THE COURT: What was what?

4 MR. SCHERER: What the nature of the
5 security deposit was.

6 THE COURT: Didn't that all appear in this
7 agreement?

8 MR. SCHERER: Yes, your Honor.

9 THE COURT: Had these agreements been
10 produced today, it wouldn't have necessitated so
11 many questions.

12 MR. SCHERER: I understand, your Honor.

13 THE COURT: I have ordered you to bring
14 in that agreement. That's that. I think it may
15 clear up a lot of these questions. It may not.

16 MR. SCHERER: If you would like ---

17 THE COURT: The Court was in the dark from
18 the start and I couldn't get a foothold.

19 MR. SCHERER: I will introduce them, your
20 Honor, copies of the original option agreement ---

21 THE COURT: By the way, one further
22 document. When you paid this \$75,000 last Friday,
23 did you sign any further documents?

24 THE WITNESS: I signed the documents on the
25 first of March, sir.

1 THE COURT: I am talking about when you
2 deposited the 75.

3 THE WITNESS: No other documents. It
4 wasn't required.

5 THE COURT: There were no further documents
6 required?

7 THE WITNESS: No, sir.

8 MR. SCHERER: Mr. Normand is not an
9 attorney, your Honor.

10 THE COURT: That would be in this missing
11 agreement; right?

12 MR. SCHERER: We have about 25 documents,
13 your Honor.

14 THE COURT: He said there was no necessity
15 of any further documents, so all I say, the
16 provisions with respect to it are all in the original
17 option agreement. That is what he says.

18 THE WITNESS: Yes.

19 THE COURT: Don't you say anything
20 differently because he says that. Right?

21 THE WITNESS: Yes, sir.

22 THE COURT: Are you in a quandary still?

23 MR. SCHERER: No, your Honor, I am not.

24 We will submit, your Honor, copies of the
25 original option, the promissory note and the mortgage

1 and all the documents, and I will separate them into
2 two portions in respect to Middleboro. We have
3 purchase and sale agreements plus a closing packet
4 of documents used for the purposes of the loan
5 last week.

6 I will also submit the documents relating to
7 New Hampshire and copies of the checks.

8 THE COURT: The documents he says he
9 entered into with respect to the purchase of this
10 mill, that's all. Any sane man would want those.

11 Q Mr. Normand, has the seller of the property indicated
12 that he is going to cooperate with you in arranging
13 the financing and that the current dates that exist
14 are flexible dates and can be modified if it becomes
15 necessary to insure that the plant does open?

16 A Yes. There was a question of credibility and I had
17 the security piled up and I went past my deadline ---

18 THE COURT: Don't argue it. I will draw
19 all the conclusions if I can get these documents.

20 MR. SCHERER: Fine. I will supply them.

21 I have no further questions.
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Recross Examination by Mr. Collins

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2 Q Mr. Weinberg ---

3 THE COURT: I was pretty severe with
4 counsel about not producing that because I sensed
5 from the beginning it would have shortened these
6 inquiries, if I had the documents from the beginning.
7 I didn't have them.

8 Go ahead now, Mr. Collins, if you have
9 something.

10 Q When Mr. Weinberg pointed out to you the lack of
11 success of the last operator of the plant, was that
12 news to you?

13 A No.

14 Q What makes you think you can do better?

15 A Very simply, I did a lot of checking in that plant
16 and I find that the record shows that there is 50,000
17 tons of paper each year the last five years, 50,000-
18 plus, including the same amount monthly, on the last
19 company that went bankrupt; that this paper mill
20 did manufacture good paper and had no problems as far
21 as the paper making was concerned with the labor or
22 the mill or the equipment.

23 The problems were in the pulp operation.
24 They put \$3 million into a system to get rid of the
25 liquors, of cooking the pulp.

- 1 Q Getting rid of what?
- 2 A The liquors. It is the residue from the pulp
- 3 operation, and they put \$3 million into a new
- 4 bleach plant, and they didn't put in a new wood room.
- 5 They have an old, obsolete wood room. They don't
- 6 have any drying and packaging facilities or they
- 7 don't have good boilers.
- 8 Q These lacks that you point out all relate to the
- 9 pulp making business?
- 10 A Yes.
- 11 Q And you don't intend to operate pulp making?
- 12 A No. When they make the pulp, they couldn't get
- 13 enough pulp, the paper machines have to stop.
- 14 Q Where are you going to get your pulp?
- 15 A Purchase pulp from Canada.
- 16 THE COURT: They are not going to make any
- 17 pulp?
- 18 THE WITNESS: No.
- 19 THE COURT: So that the pulp aspect of this
- 20 purchase is, in your mind, out?
- 21 THE WITNESS: Yes, sir. Absolutely.
- 22 The pulp operation as it is presently run is no good.
- 23 You need another \$3 million to make that pulp mill
- 24 work right.
- 25 Q You are going to bring in pulp by rail?

1 A Yes, sir.

2 Q And your predecessor did not?

3 A No. They brought a portion in by rail.

4 Q When you say that you had \$75,000 of your personal
5 money at risk, Mr. Weinberg pointed out to you that
6 there was a possibility in the paper industry of
7 losing that, and you made a reference to changes in
8 the paper industry during the past two years. Will
9 you explain what changes you are talking about?

10 A The cycle of the paper industry was at a low when
11 the last operation was there. Ten cents a pound
12 paper.

13 The cycle has reversed itself into a sharp
14 upgrade and the projections are that the next two
15 or three years will be very good for the paper
16 industry. Now the paper is at 14 cents.

17 The price of pulp and supplies didn't grow
18 as high as the price of paper has grown so that the
19 profit margin in the paper industry today is very
20 good, very healthy.

21 Let me explain one thing about this
22 company that lost money. In losing money, it shows
23 on the records a breakeven or loss of \$60,000, but in
24 that projection there was a \$750,000 sales budget
25 and there is a \$5,000 budget that went to the home

1 office, so there's over one million some odd dollars
2 right there that were actually not losses. They were
3 money put in other directions for other reasons.

4 We don't have a sales department.

5 Q How do you plan to accomplish sales?

6 A We have no out of town companies to send money to.

7 Q How do you plan to accomplish sales without a sales
8 department?

9 A The present market we have entered into, we have
10 preliminary agreements with several large companies
11 in which either one will take our entire output.

12 Q Were those written agreements?

13 A I have copies of the types of orders that we have
14 here.

15 Q What companies are you talking about, or is that
16 privileged?

17 A Well, at this point I would rather not have anything---

18 Here is one from Beekman that will give the
19 purchase order and the total tonnage.

20 (Brief recess.)

21
22 Q Mr. Normand, do you have sufficient orders in
23 writing to convince you that you can sell all the
24 finished product that you can make?

25 A Yes.

1 Q Is that why you are willing to risk \$75,000 of your
2 own money on this option?

3 A Yes.

4 Q And you were aware of the risks before you did that?

5 A Yes.

6 Q Would you like to compare that investment to \$75,000
7 worth of railroad bonds?

8 A I would just as soon take my own chances ---.

9 MR. COLLINS: I have no further questions.

10
11 Recross Examination by Mr. Weinberg

12 Q Mr. Marcalus is a good businessman, in your
13 judgment?

14 A Yes, sir.

15 Q He knows value as well as you do?

16 A No, sir, not in relation to this mill.

17 Q He has been in business for himself ---

18 A He might have his own reasons for wanting to sell
19 at the price he did, but I know the value of this
20 mill and this property I believe better than
21 Mr. Marcalus.

22 Q He has owned real estate in New Hampshire longer than
23 you have, hasn't he?

24 A Yes, sir.

25 Q And he has owned more paper making facilities in New

- 1 Hampshire than you have?
- 2 A Yes, sir.
- 3 Q And he presently, through Black Acre Realty, owns this
- 4 200 acres of real estate that you are talking about?
- 5 A Yes, sir.
- 6 Q And you say this is worth a million dollars?
- 7 A Yes, sir.
- 8 Q Real estate alone, and yet he is selling you the
- 9 whole kit and caboodle for a million dollars, the
- 10 mill, too?
- 11 A Yes, sir.
- 12 Q You haven't got an appraisal at the present time of
- 13 this land?
- 14 A No. It will be ready in about a week.
- 15 I am a qualified individual, as far as real estate.
- 16 Q What qualifies you as a real estate appraiser?
- 17 A I am a fourth generation builder. I have been in
- 18 real estate, I have a real estate license and I have
- 19 been in finance.
- 20 Q How many appraisals of real estate have you made for
- 21 others?
- 22 A I have run multiple tract areas.
- 23 Q How many real estate appraisals have you made for
- 24 others?
- 25 A I am not a qualified appraiser, licensed, no, sir.

1 Q In looking for this \$100,000 loan, did you go to
2 a regular lending institution, a savings bank or
3 cooperative bank or other institution?

4 A No, sir, I didn't think I had to.

5 Q Well, Capitol Finance Corporation charges rates of
6 interest on its loans higher than the ordinary loans
7 from a regular lending institution, doesn't it?

8 A From experience from selling real estate for others,
9 I realize that banks don't give loans on real estate
10 land readily. There is so much land around for them
11 to do it. They have other diversified interests.

12 Q What rate of interest are you paying to Capitol
13 Finance Corporation?

14 A That is personal. The documents will show that to
15 the judge.

16 Q Did you attempt to get a --- you have come here in
17 Court and you can answer now. Did you attempt to
18 get a lower rate of interest from a lending
19 institution?

20 A No.

21 Q You went right to Capitol Finance Corporation?

22 A I was working the loan through others and I did go
23 through Capitol Financing. Capitol Finance was
24 recommended to me. I was caught in a very short
25 period of time to get the money. I was asked to

1 change a security deposit on March 1 to a cash
2 position, and no bank can do this for me in that
3 short a period of time. The banks told me they
4 couldn't do this.

5 Q As a good businessman, would you say you are ---

6 A I was lucky ---

7 Q Please wait for my question. As a good businessman,
8 which you say you think are, you would, in the normal
9 course of trying to get a loan, expect that a bank
10 would give you a lower rate of interest on a loan
11 than a finance company, wouldn't you?

12 A During the time ---

13 Q Will you answer the question?

14 A I know the banks would give less money. After I got
15 the loan, the bank told me I would get less money,
16 after I got it, not before I got it.

17 Q But you never asked the bank for this loan?

18 A Not in that short period of time. I only had a few
19 days, and it landed on a weekend, besides.

20 Q Yet you are sure that the value of your Middleboro
21 land is \$445,000?

22 A Yes, sir.

23 Q And yet that was placed wholly to secure ---

24 A I didn't have any appraisal. A bank requires an
25 appraisal. I did not have an appraisal for that.

1 Q What I am saying is you had to pledge your entire
2 interest in that property, which you say has a
3 purchase price of \$445,000, for a \$100,000 loan; is
4 that right?

5 A For a fast loan, yes.

6 Q I will show you again the only signed copy of an
7 instrument which purports to be an agreement to buy
8 your Middleboro property, and I ask you whether or
9 not the date set for passing of papers was
10 January 22nd, 1972 on that instrument.

11 A Originally it was.

12 Q Yet the trust that was buying it from you wasn't
13 formed, was it, until October 11th, 1972, on the face
14 of the declaration of trust and the agreement for
15 purchase?

16 MR. SCHERER: There is a typographical
17 error which I pointed out earlier.

18 THE COURT: Answer the question.

19 A My lawyer just informed me there is a mistake in the
20 document.

21 Q It shows Consolidated Trust was created by and under
22 an indenture of trust duly recorded October 11th of
23 1972?

24 A You are bringing that to my attention, sir.

25 Q And the date for passing of papers to this trust,

1 which was created in October of 1972, was set for
2 January 22nd, 1972, was it not?

3 A January 22nd is right.

4 MR. WEINBERG: I would like to introduce
5 this. I think other copies were provided by counsel.

6 MR. SCHERER: I explained to counsel that
7 there was a typographical error.

8 THE COURT: If you want to ask any question,
9 ask it, please. Have you any objection to the
10 admissibility of that document?

11 MR. SCHERER: No, I don't, your Honor.
12 I object to the procedure counsel just conducted.

13 Q Was the same thing true of the agreement for purchase
14 of the mineral rights?

15 A I imagine so, sir. The same set of documents.

16 Q I show you the mineral rights agreement and the same
17 discrepancy is true, too, that the Consolidated
18 Trust was there established as having been recorded
19 in the Suffolk Registry of October 11th, 1972, and
20 the date set for passing of papers to the purchaser
21 was January 22nd, 1972.

22 A Thank you for bringing that to our attention.
23 However, the new documents, I hope, are in order.

24 THE COURT: Nothing else?

25 MR. WEINBERG: I will move for the

1 introduction of these.

2 THE COURT: Are you through, Mr. Collins?

3 MR. COLLINS: I have no objection.

4 MR. SCHERER: No objection.

5 MR. WEINBERG: I would like to offer
6 these for identification.

7 THE COURT: Mark them as exhibits.
8 They have no objection. They have no objection to
9 their admissibility.

10 (Purchase agreement and
11 mineral rights agreement
12 marked Petitioner's Exhibits
Nos. 24 and 25.)

13 Q There is no question, is there ---

14 THE COURT: Wait a minute.

15 (Brief pause.)

16 Q The pulp that you intend to purchase will be a cost
17 additional to that experienced by either Mr. Marcalus
18 or Mr. Potter; is that right? They didn't purchase
19 pulp; they manufactured it?

20 A Right.

21 Q And if a person owns woodlots and manufactures his
22 own pulp, if he manufactures it efficiently, he
23 doesn't have the margin of profit that you would
24 expect the manufacturer of pulp to ask you to pay
25 for the same product; isn't that so?

- 1 A I'm glad you asked that. In their manufacturing of
2 pulp, it would put them out of business, it cost
3 them so much.
- 4 Q What I am asking you for is that there is a margin
5 of profit in the purchase of pulp paper after their
6 costs that you would have to pay that Mr. Marcalus and
7 Mr. Potter wouldn't have had to pay in their
8 operation?
- 9 A For example, my pulp ---
- 10 Q Would you answer the question? It is true, isn't it,
11 they don't pay the margin of profit of a
12 manufacturer of pulp when they manufacture their own?
- 13 A If a person manufactures pulp ---
- 14 Q Will you answer my question?
- 15 A A yes or no answer?
- 16 Q Yes.
- 17 A What was the question again?
- 18 Q Isn't it true that they do not have to pay, when they
19 manufacture their own ---
- 20 A You say ---
- 21 Q --- when they manufacture their own pulp, either
22 Mr. Marcalus or Mr. Potter, in their manufacture of
23 their own pulp, they didn't have to pay the margin
24 of profit to anybody for the pulp which they
25 manufactured?

1 MR. SCHERER: Objection.

2 THE COURT: If he knows.

3 Q If you know.

4 A It has not been established that they did successfully
5 manufacture pulp, and that is the premise of that
6 question.

7 Q In their manufacture, they manufactured pulp, didn't
8 they?

9 A Yes, sir.

10 Q When they manufactured it themselves, they didn't
11 have to pay a margin of profit to anybody, did they?
12 Yes or no?

13 A They didn't --- when they manufactured pulp themselves,
14 on that pulp they didn't pay others.

15 Q And you will have to pay a margin of profit that
16 other manufacturers of pulp require from ---

17 A Yes, sir. Willingly. Because the way they made pulp,
18 it cost too much.

19 MR. WEINBERG: That is the only question
20 I have.
21
22
23
24
25

Further Redirect ExaminationBy Mr. Scherer

1
2
3 Q Would Mr. Potter, who was the president of the
4 bankrupt corporation, make a profit on this pulp
5 operation?

6 A No, sir.

7 Q Had he operated the paper operation alone, would he
8 have made a profit?

9 A According to the records that I saw, he could have,
10 if he had enough money to work with.

11 Q Did he have problems other than business problems
12 related to the pulp operation?

13 A Yes.

14 Q What were those problems?

15 A He was in a depressed market and he was making ---
16 he had water pollution problems.

5 17 Q Did the water pollution problems relate to the pulp
18 mill or the paper mill?

19 A The pulp mill.

20 Q Had he not operated the pulp mill, would he have a
21 problem with pollution?

22 A No.

23 Q During the last two or three years in which the
24 pulp mill and the paper mill were operated by
25 Mr. Marcalus, did Mr. Marcalus make an overall profit

1 in respect to the pulp mill?

2 A Not in the later years.

3 Q Why was that?

4 A In prior years, yes.

5 Q Why, during the last two or three years when he
6 operated the pulp mill, did he not make a profit?

7 A Because at this time in Mr. Marcalus' career of paper
8 making, the United States government had government
9 regulations about materials going into the water,
10 and that water in that river, being so clear, his
11 standards were the highest, and through the government
12 and the state and Marcalus, they put in a \$3 million
13 plant to help control the pollution to prevent
14 material from going into the river.

15 At the same time Marcalus put in about
16 \$2 million or \$3 million into a new bleach plant.

17 Q That's enough. Just answer the question.

18 THE COURT: Wait a minute. He is trying
19 to stop you.

20 Q In other words, there were substantial expenditures
21 which Mr. Marcalus had to solve the pollution
22 problems in the pulp mill?

23 A Yes, and he ran out of cash.

24 Q One last question. Mr. Weinberg showed you copies
25 of the purchase and sale agreement, and they were

1 marked as an exhibit.

2 So that there will be no confusion concerning
3 the legitimacy of these documents, would you read
4 the first part of the agreement and state what the
5 date of that agreement is?

6 A Agreement made this 19th day of December A.D. 1972
7 between Arthur ---

8 Q That's fine.

9 Directing your attention to the top line
10 of the second page, what is stated to be the date
11 for closing?

12 A On or before January 2nd, 1972, but ---

13 Q That's fine. Is that date, 1972, accurate?

14 A Yes.

15 Q Mr. Normand ---

16 A I don't know.

17 Q If the document was signed December of 1972, how
18 could there be a closing schedule for eleven months
19 earlier? Should that date be 1972 or 1973?

20 A 1973.

21 Q Is that an indication ---

22 A I made the same mistake myself.

23 Q Is that in fact a typographical error, the 1972?

24 A It is supposed to be 1973.

25 Q Do the documents that have been executed subsequent

1 to these documents extending time for performance
2 include accurate dates for closing?

3 A Yes.

4 Q Have you cured the error put in by your counsel?

5 A I hope so.

6 MR. SCHERER: The typographical error,
7 your Honor, was pointed out to Mr. Weinberg before
8 his cross examination.

9 Q Was that date of January 1973 the date when you
10 originally anticipated there would be a closing and
11 you would have cash available for your purposes in
12 New Hampshire?

13 A Yes.

14 MR. SCHERER: Thank you. I have no
15 further questions.

16
17 Further Recross Examination

18 By Mr. Weinberg:

19 Q The two agreements with Consolidated Trust called
20 for deposits with the agreement of \$10,000 for the
21 land and \$1,000 for the mineral rights, \$11,000.
22 Was that money paid?

23 A Yes, sir. The banks --- showed a deposit in the bank,
24 as I mentioned to you.

25 Q Will you show ---

- 1 A They show a \$8,500 deposit.
- 2 Q \$11,000 --- do you have a record of such a payment?
- 3 A Yes.
- 4 Q What record do you have?
- 5 A It was a \$10,000 cash check. \$10,000 in a check from
- 6 Consolidated Trust to Arthur Normand.
- 7 Q Have you deposited it in the bank?
- 8 A Yes.
- 9 Q On what date?
- 10 A Sorry, I can't recall, but I can get the record.
- 11 Q Can you get those for us?
- 12 A Yes.
- 13 MR. SCHERER: We can produce copies of
- 14 the checks, records showing the cash payment of
- 15 \$10,000 that was made in connection with these
- 16 agreements.
- 17 Q Do you have any commitment in writing to take all
- 18 of the product of the mill you intend to operate?
- 19 A I have several, sir, that I haven't taken yet
- 20 because I'm not sure whether I will have a railroad
- 21 or not.
- 22 Q Do you have a commitment in writing, if you
- 23 manufacture paper, that they will take your complete
- 24 requirement?
- 25 A Yes, sir.

- 1 Q Your complete output --- strike that. May I see one
2 of them?
- 3 A Here is one of them, sir, here.
- 4 Q That doesn't say your complete production, does it?
- 5 A No, but you call them ---
- 6 Q I asked you --- you said somebody will take your
7 complete output. Show us something in writing that
8 you say you have whereby a recognized distributor of
9 paper products says he will take your complete output.
- 10 A This is a --- in the paper industry, this is a
11 purchase order.
- 12 Q Do you have a complete output ---
- 13 A Right here, sir. As per our discussion, we are
14 interested in purchasing from the Profile Paper Mill
15 in Franconia annual tonnage of 50,000 tons first
16 quality printing paper ---
- 17 Q That isn't responsive. Mr. Witness, you stated in
18 response to questions by either Mr. Collins or
19 Mr. Scherer that you had commitments in writing to
20 take the entire output of the mill which you intend
21 to operate and I ask you whether you have that in
22 writing, the entire output. Do you have such a
23 writing?
- 24 A In the way the paper industry says, yes.
- 25 Q You are unable to produce any such writing?

1 A I have quite a few orders here.

2 Q Will you produce one which says they will take your
3 entire output of paper product?

4 A Here is another one, here is one for 5,000, 10,000
5 tons --- these people want the paper.

6 Q There is none which say they will take your entire
7 output?

8 A Not the way you are describing it.

9 MR. WEINBERG: That's all the questions.

10
11 Further Redirect Examination

12 By Mr. Scherer

13 Q What is your total output?

14 A 50,000 tons.

15 Q And what is the order, how many tons does Beekman
16 state that they require and will purchase?

17 A A minimum of 50,000.

18 Q Does not, therefore, the \$50,000 mentioned in that
19 letter represent the total output?

20 A Yes, sir.

21 MR. SCHERER: That's all the questions.

22 Q That is only one letter of many orders, I take it?

23 A Absolutely.

24 MR. SCHERER: Thank you.

25 THE COURT: Does that close the testimony?

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We have the usual program.

MR. WEINBERG: Your Honor, may I now offer --- I move to admit into evidence Exhibits 22 and 23 which I offered only for identification.

THE COURT: Mark them as exhibits.

MR. WEINBERG: They were marked only as for identification.

MR. KILLKELLEY: No objection.

MR. COLLINS: No objection.

(Petitioner's Exhibits Nos. 22 and 23 for Identification received in evidence.)

(Conference at the bench.)

(Adjournment.)

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